Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 April 2021 *

(Reference for a preliminary ruling – Approximation of laws – Telecommunications sector – Harmonised use of radio spectrum in the 2 GHz frequency bands for bringing into operation systems providing mobile satellite services – Decision No 626/2008/EC – Article 2(2)(a) and (b) – Article 4(1)(c)(ii) – Article 7(1) and (2) – Article 8(1) and (3) – Mobile satellite systems – Concept of 'mobile earth station' – Concept of 'complementary ground components' – Concept of 'required quality' – Respective role of satellite and ground components – Requirement for a selected operator of mobile satellite systems to provide service for a certain percentage of the population and territory – Non-compliance – Effect)

In Case C-515/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 28 June 2019, received at the Court on 8 July 2019, in the proceedings

Eutelsat SA

v

Autorité de régulation des communications électroniques et des postes (ARCEP),

Inmarsat Ventures SE, formerly Inmarsat Ventures Ltd,

interveners:

Viasat Inc.,

Viasat UK Ltd,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, A. Kumin (Rapporteur), T. von Danwitz, P.G. Xuereb and I. Ziemele, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

* Language of the case: French.

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Eutelsat SA, by L. de la Brosse and C. Barraco-David, avocats,

– Inmarsat Ventures SE, by C. Spontoni, N. Brice and É. Barbier de La Serre, avocats,

– Viasat Inc. and Viasat UK Ltd, by L. Panepinto, P. de Bandt and H. Farge, avocats, and by J. Ruiz Calzado, abogado,

– the French Government, by A.-L. Desjonquères, E. de Moustier and P. Dodeller, acting as Agents,

– the Belgian Government, by P. Cottin and J.-C. Halleux, acting as Agents, and by S. Depré, avocat,

– the United Kingdom Government, by S. Brandon, acting as Agent, and by J. Morrison, Barrister,

– the European Commission, by É. Gippini Fournier, G. Braun and L. Nicolae, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 November 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(2)(a) and (b), Article 4(1)(c)(ii), Article 7(1) and (2) and Article 8(1) and (3) of Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) (OJ 2008 L 172, p. 15) ('the MSS decision').

2 The request has been made in proceedings between Eutelsat SA and the Autorité de régulation des communications électroniques et des postes (Authority for the Regulation of Electronic Communications and Postal Services, France) (ARCEP), concerning the latter's decision to grant Inmarsat Ventures SE, formerly Inmarsat Ventures Ltd ('Inmarsat'), rights of use for complementary ground components ('CGCs') of mobile satellite systems.

Legal context

International law

The ITU Constitution

3 The International Telecommunication Union (ITU) is a specialised United Nations agency responsible for information and communication technologies. As is apparent from, inter alia, Article 1 of the ITU's constitution, it is within the framework of the ITU that radio spectrum and satellite orbits are allocated on a global scale and that technical standards are developed which ensure the interconnection of networks and technologies.

4 In accordance with Article 2 of its constitution, the ITU is composed of Member States and Sector Members. At present, 193 States are members of the ITU, including all the Member States of the European Union, which is itself a 'Sector Member'.

5 Article 4 of that constitution, entitled 'Instruments of the [ITU]', provides in paragraph 3:

'The provisions of both this constitution and the convention are further complemented by those of the Administrative Regulations, enumerated below, which regulate the use of telecommunications and shall be binding on all Member States:

…

– Radio Regulations.

…'

The Radio Regulations

6 World radiocommunication conferences (WRCs) have the task of reviewing and, if appropriate, revising the Radio Regulations referred to in Article 4 of the ITU Constitution. Those regulations, in the version which resulted from the WRC held in Geneva (Switzerland) on 23 January 2012 (WRC-12) ('the Radio Regulations'), include Chapter I, entitled 'Terminology and technical characteristics', which contains Article 1 of those regulations, entitled 'Terms and definitions'. That article is divided into sections, Section III of which is entitled 'Radio services'. The sections are themselves divided into numbers. Section III includes, inter alia, No 1.25 of Article 1, which is worded as follows:

'mobile-satellite service: A radiocommunication service:

– between mobile earth stations and one or more space stations, or between space stations used by this service; or

– between mobile earth stations by means of one or more space stations.

This service may also include feeder links necessary for its operation.'

7 Article 1 of the Radio Regulations has a Section IV, entitled 'Radio stations and systems', which contains, inter alia, Nos 1.61, 1.63, 1.64, 1.67 and 1.68 thereof, which are worded as follows:

'1.61 station: One or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service, or the radio astronomy service.

Each station shall be classified by the service in which it operates permanently or temporarily.

…

1.63 earth station: A station located either on the Earth's surface or within the major portion of the Earth's atmosphere and intended for communication:

– with one or more space stations; or

– with one or more stations of the same kind by means of one or more reflecting satellites or other objects in space.

1.64 space station: A station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth's atmosphere.

…

1.67 mobile station: A station in the mobile service intended to be used while in motion or during halts at unspecified points.

1.68 mobile earth station: An earth station in the mobile-satellite service intended to be used while in motion or during halts at unspecified points.'

EU law

The MSS decision

8 Under recitals 1, 4, 5, 18 and 19 of the MSS decision:

'(1) As confirmed by the Council in its conclusions of 3 December 2004, effective and coherent use of radio spectrum is essential for the development of electronic communications services and contributes to stimulating growth, competitiveness and employment; access to spectrum must be eased to improve efficiency and promote innovation as well as greater flexibility for users and more choice for consumers, while taking account of general interest objectives.

…

(4) 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) [(OJ 2002 L 108, p. 33)] aims at encouraging efficient use and ensuring effective management of radio frequencies and numbering resources, removing

the remaining obstacles to the provision of the relevant networks and services, ensuring that there is no discrimination and encouraging the establishment and development of trans-European networks and the interoperability of pan-European services.

(5) The introduction of new systems providing mobile satellite services (MSS) would contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services and end-to-end connectivity as well as encouraging efficient investment. MSS constitute an innovative alternative platform for various types of pan-European telecommunications and broadcasting/multicasting services, regardless of the location of end users, such as high-speed Internet/intranet access, mobile multimedia and public protection and disaster relief. MSS could, in particular, improve coverage of rural areas in the Community, thus bridging the digital divide in terms of geography, strengthening cultural diversity and media pluralism and simultaneously contributing to the competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy. …

…

(18) [CGCs] are an integral part of a mobile satellite system and are used, typically, to enhance the services offered via the satellite in areas where it may not be possible to retain a continuous line of sight with the satellite due to obstructions in the skyline caused by buildings and terrain. … The authorisation of such [CGCs] will therefore mainly rely on conditions related to local circumstances. They should therefore be selected and authorised at national level, subject to conditions established by Community law. This should be without prejudice to specific requests made by competent national authorities to the selected applicants to provide technical information indicating how particular complementary ground components would improve the availability of the proposed MSS in geographical areas where communications with one or more space stations cannot be ensured with the required quality, provided that such technical information has not already been provided in accordance with Title II.

(19) The limited amount of radio spectrum available implies that the number of undertakings that may be selected and authorised is also necessarily limited. However, if the selection process leads to a finding that there is no radio spectrum scarcity, all eligible candidates should be selected. The limited amount of radio spectrum available may mean that any merger or takeover of any operator providing MSS with or by another could significantly reduce competition and would therefore be subject to scrutiny under competition law.'

9 Article 1 of the MSS decision is worded as follows:

'1. The purpose of this Decision is to facilitate the development of a competitive internal market for mobile satellite services (MSS) across the Community and to ensure gradual coverage in all Member States.

This Decision creates a Community procedure for the common selection of operators of mobile satellite systems that use the 2 GHz frequency band in accordance with [Commission] Decision 2007/98/EC [of 14 February 2007 on the harmonised use of radio spectrum in the 2 GHz frequency bands for the implementation of systems providing mobile satellite services (OJ 2007 L 43, p. 32)], comprising radio spectrum from 1 980 to 2 010 MHz for earth to space communications, and from 2 170 to 2 200 MHz for space to earth communications. It also lays down provisions for the coordi-

nated authorisation by Member States of the selected operators to use the assigned radio spectrum within this band for the operation of mobile satellite systems.

2. Operators of mobile satellite systems shall be selected through a Community procedure, in accordance with Title II.

3. The selected operators of mobile satellite systems shall be authorised by Member States in accordance with Title III.

…'

10 Article 2(2) of that decision provides:

'… The following definitions shall also apply:

(a) "mobile satellite systems" shall mean electronic communications networks and associated facilities capable of providing radio-communications services between a mobile earth station and one or more space stations, or between mobile earth stations by means of one or more space stations, or between a mobile earth station and one or more [CGCs] used at fixed locations. Such a system shall include at least one space station;

(b) "[CGCs]" of mobile satellite systems shall mean ground-based stations used at fixed locations, in order to improve the availability of MSS in geographical areas within the footprint of the system's satellite(s), where communications with one or more space stations cannot be ensured with the required quality.'

11 Title II of the MSS decision, entitled 'Selection procedure', contains, inter alia, Articles 3 and 4 of that decision. Article 3(1) of that decision provides:

'A comparative selection procedure shall be organised by the Commission for the selection of operators of mobile satellite systems. …'

12 Article 4(1) of that decision provides:

'The following admissibility requirements shall apply:

…

(b) applications shall identify the amount of radio spectrum requested, which shall be no more than 15 MHz for earth to space and 15 MHz for space to earth in relation to any single applicant and shall include statements and evidence concerning the radio spectrum requested, the required milestones and the selection criteria;

(c) applications shall include a commitment on the part of the applicant that:

…

(ii) MSS shall be available in all Member States and to at least 50% of the population and over at least 60% of the aggregate land area of each Member State by the time stipulated by the applicant but in any event no later than seven years from the date of publication of the Commission's decision [on the selection of applicants].'

13 Title III of the MSS decision, entitled 'Authorisation', contains Articles 7 and 8 of that decision. Under Article 7 of that decision:

'1. Member States shall ensure that the selected applicants, in accordance with the time frame and the service area to which the selected applicants have committed themselves, in accordance with Article 4(1)(c), and in accordance with national and Community law, have the right to use the specific radio frequency identified in the Commission decision [on the selection of applicants] and the right to operate a mobile satellite system. They shall inform selected applicants of those rights accordingly.

2. The rights covered by paragraph 1 shall be subject to the following common conditions:

…

(c) selected applicants shall honour any commitments they give in their applications or during the comparative selection procedure, irrespective of whether the combined demand for radio spectrum exceeds the amount available;

…'

14 Article 8 of the MSS decision provides:

'1. Member States shall, in accordance with national and Community law, ensure that their competent authorities grant to the applicants selected in accordance with Title II and authorised to use the spectrum pursuant to Article 7 the authorisations necessary for the provision of [CGCs] of mobile satellite systems on their territories.

…

3. Any national authorisations issued for the operation of [CGCs] of mobile satellite systems in the 2 GHz frequency band shall be subject to the following common conditions:

(a) operators shall use the assigned radio spectrum for the provision of [CGCs] of mobile satellite systems;

(b) [CGCs] shall constitute an integral part of a mobile satellite system and shall be controlled by the satellite resource and network management mechanism; they shall use the same direction of transmission and the same portions of frequency bands as the associated satellite components and shall not increase the spectrum requirement of the associated mobile satellite system;

(c) independent operation of [CGCs] in case of failure of the satellite component of the associated mobile satellite system shall not exceed 18 months;

(d) rights of use and authorisations shall be granted for a period of time ending no later than the expiry of the authorisation of the associated mobile satellite system.'

The selection decision

15 Under Article 2 of Commission Decision 2009/449/EC of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS) (OJ 2009 L 149, p. 65) ('the selection decision'):

'Inmarsat Ventures Limited and Solaris Mobile Limited are eligible applicants as a result of the first selection phase of the comparative selection procedure provided in Title II of [the MSS decision].

As the combined demand for radio spectrum requested by the eligible applicants retained as a result of the first selection phase of the comparative selection procedure provided in Title II of [the MSS decision] does not exceed the amount of radio spectrum available identified in Article 1(1) of [the MMS decision], Inmarsat Ventures Limited and Solaris Mobile Limited are selected.'

16 Article 3 of the selection decision is worded as follows:

'The frequencies which each selected applicant shall be authorised to use in each Member State in accordance with Title III of [the MSS decision] shall be the following:

(a) Inmarsat Ventures Limited: from 1 980 to 1 995 MHz for earth to space communications and from 2 170 to 2 185 MHz for space to earth communications;

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 At the end of the selection procedure referred to in Title II of the MSS decision, Inmarsat was selected, pursuant to the second paragraph of Article 2 of the selection decision, as one of the operators of mobile satellite systems.

18 Inmarsat has developed a system called the 'European Aviation Network' (EAN), designed to provide in-flight connection services to planes flying over the European Union, using satellite transmissions received by a terminal located above the aircraft fuselage, and transmissions from CGCs deployed on the territory of the European Union, received by a terminal located below the aircraft fuselage.

19 By decision of 21 October 2014, the ARCEP authorised Inmarsat to use the frequencies referred to in Article 3(a) of the selection decision in metropolitan France. In addition, by decision of 22 February 2018 ('the decision of 22 February 2018'), that authority granted Inmarsat authorisation to operate mobile satellite system CGCs.

20 Eutelsat, a competitor of Inmarsat, brought an action before the referring court, the Conseil d'État (Council of State, France), seeking annulment of the decision of 22 February 2018 on the ground, inter alia, of an infringement of EU law.

21 In that regard, Eutelsat raises three main pleas. It submits, first, that the EAN system planned by Inmarsat is not a mobile satellite system since its CGCs do not form an integral part of it. Secondly, the CGCs authorised by the decision of 22 February 2018 are not complementary with

respect to the satellite component of that network. Thirdly, the fact that Inmarsat had not provided mobile satellite services by the date laid down in Article 4(1)(c)(ii) of the MSS decision precluded the authorisation to operate mobile satellite system CGCs from being granted.

22 Viasat Inc. and Viasat UK Ltd (together 'Viasat') intervened in support of the action for annulment brought by Eutelsat.

23 The referring court considers, first of all, that the answer to the first plea referred to in paragraph 21 above requires in particular a determination of the legal criteria to be used in identifying a 'mobile earth station', within the meaning of the MSS decision, in order to ascertain whether the EAN system may be regarded as satisfying those criteria.

24 Next, according to that court, the answer to the second plea referred to in paragraph 21 above requires clarification of the respective role of the satellite and ground components of a mobile satellite system, pursuant to Article 2(2) of the MSS decision, and of the concept of 'required quality', within the meaning of Article 2(2)(b) of that decision.

25 Lastly, the referring court considers that the answer to the third plea referred to in paragraph 21 above requires the Court to clarify the effect of any failure by the operator, selected in accordance with Title II of the MSS decision, to comply with the deadline laid down in Article 4(1)(c)(ii) of that decision for geographical coverage by means of a mobile satellite system and, in particular, to determine whether, in the event of such a failure, the competent authorities of the Member States must refuse to grant authorisations to operate CGCs or whether, at the very least, they may refuse to grant those authorisations.

26 In those circumstances the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) What legal criteria are to be used in identifying a mobile earth station within the meaning of [the MSS decision]? Is that decision to be read as requiring that a mobile earth station which communicates with a [CGC] must also be capable, without the use of separate equipment, of communicating with a satellite? If so, how is it to be determined whether the equipment is one and the same?

(2) Is Article 2(2) of [the MSS decision] to be interpreted as meaning that a mobile satellite system must be principally based on a satellite element, or can the view be taken, on a correct interpretation of that provision, that it is immaterial what the respective roles of the satellite and ground elements may be, even where the satellite element serves a purpose only where communication with the ground element is impossible? Can [CGCs] covering the entire territory of the European Union be installed on the basis that communications with the space stations cannot be ensured with the required quality in any respect, within the meaning of Article 2(2)(b) [of that decision]?

(3) In a case where it is shown that an operator selected in accordance with Title II of [the MSS decision] has not, by the deadline laid down in Article 4(1)(c)(ii) [of that decision], complied with the commitments as to geographical coverage of mobile satellite systems set out in Article 7(2) [of that decision], are the competent authorities of the Member State required to refuse authorisation to operate [CGCs]? If not, are they entitled to refuse such authorisation?'

Consideration of the questions referred

The second question

27 For the purposes of answering the second question, which it is appropriate to examine first, it must be pointed out that it is common ground in the present case that the system developed by Inmarsat, while equipped with a satellite, is, in terms of capacity of transmitted data, mainly based on communications with ground-based stations, which cover the entire European territory of the Member States. Accordingly, the ground-based stations at issue in the main proceedings which Inmarsat has been authorised to operate as mobile satellite system CGCs, by the decision of 22 February 2018, cover all of metropolitan France.

28 Consequently, as the Advocate General observed in point 67 of his Opinion, it is apparent from the documents before the Court that the satellite deployed by Inmarsat as part of its mobile satellite system is intended for use only in areas not covered by the ground-based stations operated by that undertaking, that is to say, in particular, over the seas.

29 By its second question, the referring court asks, in essence, therefore whether Article 2(2)(a) and (b) of the MSS decision must be interpreted as meaning that a mobile satellite system has to be principally based, in terms of the capacity of transmitted data, on the satellite component of that system, and whether mobile satellite system CGCs may be installed so as to cover the entire territory of the European Union, on the basis that that satellite component cannot ensure communications at any point of that territory with the 'required quality', within the meaning of that provision.

30 It must be borne in mind that, under Article 2(2)(a) of the MSS decision, 'mobile satellite systems' are defined as electronic communications networks and associated facilities capable of providing radio-communications services between a mobile earth station and one or more space stations, or between mobile earth stations by means of one or more space stations, or between a mobile earth station and one or more CGCs used at fixed locations. That provision also states that such systems are to include at least one space station.

31 In addition, under Article 2(2)(b) of that decision, 'CGCs of mobile satellite systems' are ground-based stations used at fixed locations, in order to improve the availability of the mobile satellite service in geographical areas within the footprint of the system's satellite or satellites, where communications with one or more space stations cannot be ensured with the required quality.

32 As regards the authorisations necessary for the provision of CGCs of mobile satellite systems, Article 8(1) of the MSS decision provides that it is for the competent authorities of the Member States to grant those authorisations, applicable to their respective national territories, to the applicants selected in accordance with Title II of that decision and authorised to use the spectrum pursuant to Article 7 of that decision.

33 In accordance with Article 8(3) of that decision, those authorisations are to be subject to common conditions, listed in subparagraphs (a) to (d) of that provision. Accordingly, operators are required, inter alia, to use the assigned radio spectrum for the provision of CGCs of mobile satellite systems. In addition, CGCs must constitute an integral part of a mobile satellite system, must be controlled by the satellite resource and network management mechanism, must use the same direction of transmission and the same portions of frequency bands as the associated

satellite components, and must not increase the spectrum requirement of the associated mobile satellite system. Moreover, independent operation of CGCs in case of failure of the satellite component of the associated mobile satellite system must not exceed 18 months.

34 First of all, it is apparent from the provisions referred to above that a 'mobile satellite system', within the meaning of the MSS decision, must necessarily include at least one space station, whereas the operation of CGCs is merely optional. In addition, where an operator wishes to use CGCs, the common conditions laid down in Article 8(3) of that decision must be complied with.

35 In that regard, it should be stated that neither Article 2(2)(a) and (b) nor Article 8(1) and (3) of the MSS decision defines, in terms of capacity of transmitted data, the relationship between the satellite component of a mobile satellite system, on the one hand, and the ground component of that system, on the other.

36 In particular, no conclusion can be drawn on that point from the use of the word 'complementary' in the term 'complementary ground components', since, as the Advocate General observed in point 77 of his Opinion, that word is silent on the relative importance of the two components.

37 Consequently, it cannot be considered that a mobile satellite system, which includes both a satellite and CGCs, has to be principally based, in terms of capacity of transmitted data, on the satellite component of that system.

38 Next, as regards the extent of the coverage of CGCs, it must be noted, at the outset, that, in accordance with Article 8(1) of the MSS decision, the competent authorities of the Member States are to grant the authorisations necessary for the provision of CGCs of mobile satellite systems only in respect of their own national territories.

39 In accordance with the condition laid down in Article 8(3)(a) of that decision, which is common to all the authorisations granted by Member States, an operator must use the assigned radio spectrum for the provision of CGCs of mobile satellite systems. Therefore, the ground-based stations which an operator seeks to use as a CGC must correspond to 'CGCs of mobile satellite systems' within the meaning of Article 2(2)(b) of that decision.

40 That latter provision shows that there are two main requirements for a ground-based station to be classified as a 'CGC of mobile satellite systems'. In terms of positioning, that ground-based station must be used at a fixed location and cover a geographical area within the footprint of the satellite or satellites of the mobile satellite system concerned. In addition, in terms of function, the station must be used to improve the availability of the mobile satellite service in areas where communications with the satellite component of that system cannot be ensured with the required quality.

41 It follows that where those requirements have been satisfied and the other common conditions, laid down in Article 8(3) of the MSS decision, have been fulfilled, no limitation as to the number of CGCs that can be used or the extent of their geographical coverage may be inferred from Article 2(2)(b) of the MSS decision, or from any other provision of that decision.

42 As regards, in that context, the concept of 'required quality' in Article 2(2)(b), specifically mentioned by the referring court, the Commission submits in its written observations that that concept should be interpreted in relation to the satellite component of the mobile satellite system concerned. Consequently, the 'required quality' should be understood as being the maximum level

of capacity of data transmission that that component would be capable of providing in normal circumstances of commercial operation, in ideal communication conditions, in a given location where a ground-based station is situated.

43 Since it has no basis in the wording of Article 2(2)(b) of the MSS decision, that interpretation cannot be accepted.

44 On the contrary, taking account of the context of Article 2(2)(b) and the objectives pursued by the MSS decision, it should be held that the 'required quality', within the meaning of that provision, is to be determined, in the first place, in relation to the level of quality necessary to provide the service offered by the operator of the mobile satellite system concerned.

45 In accordance with Article 8(3)(b) of the MSS decision, read in the light of recital 18 of that decision, CGCs are an integral part of a mobile satellite system. In that regard, the services provided by such a system constitute, as is apparent from recital 5 of that decision, an innovative alternative platform for various types of pan-European telecommunications and broadcasting/multicasting services, such as high-speed internet/intranet access, or mobile multimedia. Furthermore, it is clear from recitals 1 and 5 of that decision that it is intended to promote innovation and consumer interests.

46 The provision of such innovative and high-quality services requires ever greater capacity. Moreover, it does not appear to be technically possible or commercially viable for the operator of a mobile satellite system to meet demand for increased capacity and, consequently, increased quality, by strengthening only the satellite component of its system, given that the quantity of radio spectrum available to that operator is limited and amounts, in accordance with Article 4(1)(b) of the MSS decision, to a maximum of 15 MHz for earth to space communications and a maximum of 15 MHz for space to earth communications.

47 In those circumstances, the increased use of ground-based stations, which, having regard to their intrinsic technical properties, are more effective in terms of capacity, may be better suited to meeting those needs and also enables a more efficient use of radio frequencies, an objective set out in recital 4 of the MSS decision.

48 It must also be noted, in that regard, that the principle of technological neutrality, which should be taken into account in that field, requires that the interpretation of the provisions at issue does not hold back innovation and technological progress.

49 Moreover, the wording of recital 18 of the MSS decision does not preclude such an interpretation in so far as, in stating that CGCs are used, typically, to enhance the services offered via the satellite in areas where it may not be possible to retain a continuous line of sight with the satellite due to obstructions in the skyline caused by buildings and terrain, it simply describes a certain type of possible CGC usage, without thereby excluding others.

50 It should be added, however, that the purpose of the MSS decision, pursuant to Article 1(1) thereof, is to facilitate the development of a competitive internal market for mobile satellite services, a goal which is also stated in recitals 5 and 19 of that decision. Having regard to that purpose, the right to use CGCs conferred on the operator of such a mobile satellite system should not result in competition being distorted on the market concerned.

51 It is, therefore, for the competent national authority, which alone is empowered to grant the authorisations necessary for the provision of mobile satellite system CGCs, to examine to what extent the requested operation of CGCs is liable to give rise to distortion of competition and to include in those authorisations the appropriate and necessary limitations and obligations so that competition is not distorted, or even, as the case may be, to refuse authorisation.

52 It follows that the competent authority of a Member State is empowered to authorise the operation of CGCs of mobile satellite systems so as to cover the entire territory of that Member State, on the basis that the satellite component of the mobile satellite system concerned cannot, at any point on that territory, ensure communications with the 'required quality' within the meaning of Article 2(2)(b) of the MSS decision, understood as the level of quality necessary to provide the service offered by the operator of that system, provided that there is no distortion of competition.

53 Lastly, it is also for that authority to establish compliance with the common condition, laid down in Article 8(3)(c) of that decision, that any independent operation of CGCs is limited to the case of a failure of the satellite component of that system and must not exceed 18 months.

54 Indeed, it is clear from that provision, read in conjunction with Article 2(2)(a) and (b) of the MSS decision, that, as the Advocate General observed in point 72 of his Opinion, a mobile satellite system must not only possess a satellite component, but that component must also actually be used.

55 Accordingly, the satellite component of a mobile satellite system must, in practice, operate jointly with the CGCs and its role cannot in fact be merely to ensure that the conditions laid down by the MSS decision have been met in formal terms.

56 The competent national authority is, therefore, required to verify that the satellite component of the mobile satellite system concerned has real and specific usefulness, in that such a component must be necessary for the functioning of that system, save where, as stated in paragraph 33 above, there is independent operation of the CGCs, in the case of failure of the satellite component, which must not exceed 18 months.

57 In view of all the foregoing considerations, the answer to the second question is that Article 2(2)(a) and (b) of the MSS decision, read in conjunction with Article 8(1) and (3) of that decision, must be interpreted as meaning that a mobile satellite system does not have to be principally based, in terms of capacity of transmitted data, on the satellite component of that system and that CGCs of mobile satellite systems may be installed so as to cover the entire territory of the European Union, on the basis that that satellite component cannot ensure communications at any point of that territory with the 'required quality', within the meaning of Article 2(2)(b) of that decision, understood as the level of quality necessary to provide the service offered by the operator of that system, provided that there is no distortion of competition and that that satellite component has real and specific usefulness, in that such a component must be necessary for the functioning of the mobile satellite system, save where there is independent operation of the CGCs, in the case of failure of the satellite component, which must not exceed 18 months.

The first question

58 By its first question, the referring court asks, in essence, whether the concept of 'mobile earth station', within the meaning of Article 2(2)(a) of the MSS decision, must be interpreted as requiring that, in order to fall within that concept, such a station is capable of communicating, without the use of separate equipment, with both a CGC and a satellite.

59 As a preliminary point, it must be borne in mind in the present case that aircraft equipped with the system developed by Inmarsat have a reception terminal located above the fuselage and a reception terminal below it. While the first terminal receives satellite communications, the second receives communications which arrive from CGCs. In addition, it is apparent from the documents before the Court that the two terminals are connected by a communication driver.

60 In that regard, Eutelsat and Viasat argue, in essence, first, that the reception terminal located below the fuselage cannot be considered a 'mobile earth station', within the meaning of Article 2(2)(a) of the MSS Decision, since that reception terminal is not capable of communicating with a satellite. Secondly, according to those parties, the two terminals and the communication driver, taken together, cannot be regarded as constituting such a station.

61 It should be noted that while the MSS decision does not provide any details as to the sense of the concept of 'mobile earth station' within the meaning of Article 2(2)(a) of that decision, the Radio Regulations do provide a definition of such a concept.

62 In accordance with the settled case-law of the Court, EU legislation must, so far as possible, be interpreted in a manner that is consistent with international law (judgment of 4 September 2014, *Zeman*, C-543/12, EU:C:2014:2143, paragraph 58 and the case-law cited). That applies in particular where such a text has recourse to specific concepts employed in an international agreement concluded under the aegis of an international organisation, such as the ITU, of which all EU Member States are members and of which the European Union itself is a 'Sector Member'.

63 Consequently, for the purposes of interpreting the concept of 'mobile earth station' within the meaning of Article 2(2)(a) of the MSS decision, it is necessary to take account of the definition provided by the Radio Regulations.

64 Under No. 1.68 of Article 1 of the Radio Regulations, a 'mobile earth station' is an earth station in the mobile-satellite service intended to be used while in motion or during halts at unspecified points. In that regard, the words 'station', 'earth station' and 'mobile-satellite service' are themselves defined in Nos 1.61, 1.63 and 1.25 of Article 1 respectively.

65 It follows from all those provisions that a mobile earth station, within the meaning of the Radio Regulations, is characterised by four distinct elements, in terms of structure, location, mobility and function.

66 First, as regards its structure, such a station consists in one or more transmitters or receivers, or a combination of transmitters and receivers, including the accessory equipment.

67 Secondly, as regards its position, a mobile earth station is located either on the Earth's surface or within the major portion of the Earth's atmosphere.

68 Thirdly, as regards the mobility aspect, such a station is intended to be used while in motion or during halts at unspecified points.

69 Fourthly, as regards the functional aspect of a mobile earth station, it should be noted that, in the context of the provision of certain types of radiocommunications services, a mobile earth station is intended to enable communication between space stations, or to communicate with one or more space stations, or with other stations of the same kind by means of one or more space stations.

70 As regards that functional aspect, and as the Advocate General observed in point 46 of his Opinion, unlike the Radio Regulations, Article 2(2)(a) of the MSS decision does not include, as regards radiocommunications services covered by that provision, communications between space stations, whereas it does include communications between a mobile earth station and one or more CGCs. In addition, that provision states that mobile satellite systems are to include at least one space station.

71 It must be held, therefore, that a 'mobile earth station', within the meaning of Article 2(2)(a) of the MSS decision, is a station, that is to say one or more transmitters or receivers, or a combination of transmitters and receivers, including the accessory equipment, located either on the Earth's surface or in the major portion of the Earth's atmosphere, intended to be used while in motion or during halts at unspecified points, which must be capable of communicating with one or more space stations, or with other stations of the same kind by means of one or more space stations, and which may be capable of communicating with one or more CGCs.

72 As regards a configuration such as that at issue in the main proceedings, it must be held that those requirements are met by a combination of two separate reception terminals linked by a communication driver, the first terminal being located above the aircraft fuselage and communicating with a space station, and the second located below that fuselage and communicating with CGCs.

73 By contrast, as the Advocate General observed, in essence, in point 57 of his Opinion, it is irrelevant in that regard that the individual components do not form a physically indivisible whole.

74 In view of all the foregoing considerations, the answer to the first question is that the concept of 'mobile earth station', within the meaning of Article 2(2)(a) of the MSS decision, must be interpreted as not requiring that, in order to fall within that concept, such a station is capable of communicating, without the use of separate equipment, with both a CGC and a satellite.

The third question

75 By its third question, the referring court asks, in essence, whether Article 8(1) of the MSS decision, read in conjunction with Article 7(1) of that decision, must be interpreted as meaning that, where it is established that an operator selected in accordance with Title II of the MSS decision and authorised to use the radio spectrum pursuant to Article 7 of that decision has failed to provide mobile satellite services by means of a mobile satellite system by the deadline set in Article 4(1)(c)(ii) of the MSS decision, the competent authorities of the Member States must, or, at least, may, refuse to grant the authorisations necessary for the provision of mobile satellite system CGCs to that operator on the ground that that operator has failed to honour the commitment given in its application.

76 Since, in its judgment of 5 March 2020, *Viasat UK and Viasat* (C-100/19, EU:C:2020:174), the Court has already had occasion to consider an identical question, the answer given by the Court to that question, as set out in the operative part of that judgment, is entirely applicable to the present question referred for a preliminary ruling.

77 In those circumstances, the answer to the third question is that Article 8(1) of the MSS decision, read in conjunction with Article 7(1) of that decision, must be interpreted as meaning that, where it is established that an operator selected in accordance with Title II of that decision and authorised to use the radio spectrum pursuant to Article 7 of that decision has failed to provide mobile satellite services by means of a mobile satellite system by the deadline set in Article 4(1)(c)(ii) of the MSS decision, the competent authorities of the Member States are not entitled to refuse to grant the authorisations necessary for the provision of mobile satellite system CGCs to that operator on the ground that that operator has failed to honour the commitment given in its application.

Costs

78 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 2(2)(a) and (b) of Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS), read in conjunction with Article 8(1) and (3) of that decision, must be interpreted as meaning that a mobile satellite system does not have to be principally based, in terms of capacity of transmitted data, on the satellite component of that system and that complementary ground components of mobile satellite systems may be installed so as to cover the entire territory of the European Union, on the basis that that satellite component cannot ensure communications at any point of that territory with the 'required quality', within the meaning of Article 2(2)(b) of that decision, understood as the level of quality necessary to provide the service offered by the operator of that system, provided that there is no distortion of competition and that that satellite component has real and specific usefulness, in that such a component must be necessary for the functioning of the mobile satellite system, save where there is independent operation of the complementary ground components, in the case of failure of the satellite component, which must not exceed 18 months.**

2. **The concept of 'mobile earth station', within the meaning of Article 2(2)(a) of Decision No 626/2008, must be interpreted as not requiring that, in order to fall within that concept, such a station is capable of communicating, without the use of separate equipment, with both a complementary ground component and a satellite.**

3. **Article 8(1) of Decision No 626/2008, read in conjunction with Article 7(1) of that decision, must be interpreted as meaning that, where it is established that an operator selected in accordance with Title II of that decision and authorised to use the radio spectrum pursuant to Article 7 of that decision has failed to provide mobile satellite services by means of a mobile satellite system by the deadline set in Article 4(1)(c)(ii) of**

Decision No 626/2008, the competent authorities of the Member States are not entitled to refuse to grant the authorisations necessary for the provision of complementary ground components of mobile satellite systems to that operator on the ground that that operator has failed to honour the commitment given in its application.

[Signatures]