JUDGMENT OF THE COURT

12 December 1996 *

In Case C-302/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice (Queen's Bench Division) for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Secretary of State for Trade and Industry,

Ex parte: **British Telecommunications plc**

on the interpretation of 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) and on the interpretation and validity of Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (OJ 1992 L 165, p. 27),

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, G. F. Mancini and J. C. Moitinho de Almeida (Presidents of Chambers), C. N. Kakouris, C. Gulmann, D. A. O. Edward, J.-P. Puissochet (Rapporteur), P. Jann and H. Ragnemalm, Judges,

Advocate General: G. Tesauro,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— British Telecommunications plc, by G. Barling QC and D. Anderson, Barrister,

— the United Kingdom Government, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, and by K. P. E. Lasok QC and S. Richards, Barrister,

— the French Government, by E. Belliard, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and J.-M. Belorgey, Head of Section in the same directorate, acting as Agents,

— the Council of the European Union, by A. Lopes Sabino and M. Bishop, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by R. Wainwright, Principal Legal Adviser, and C. Schmidt, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of British Telecommunications plc, represented by D. Wyatt QC and D. Anderson, the United Kingdom Government, represented by J. E. Collins and K. P. E. Lasok, the French Government, represented by J.-M. Belorgey, the Council of the European Union, represented by A. Lopes Sabino and M. Bishop, and the Commission of the European Communities, represented by R. Wainwright and C. Schmidt, at the hearing on 9 January 1996,

after hearing the Opinion of the Advocate General at the sitting on 23 May 1996,

gives the following

Judgment

By order of 25 July 1994, received at the Court on 14 November 1994, the High Court of Justice (Queen's Bench Division) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation of 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, 'the "open networks" directive') and on the interpretation and validity of Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (OJ 1992 L 165, p. 27, 'the "leased lines" directive').

The 'open networks' directive, which was adopted on the same day as Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10, hereinafter 'the "services"

directive'), is part of the action undertaken by the Community with a view to establishing a Community-wide market in telecommunications services. It is based on Article 100a of the Treaty and intended to introduce open network provision in order fully to establish that Community-wide market (see the fourth recital in the preamble to the 'open networks' directive).

3 The 'open networks' directive reproduces in Article 2(1) and (2) the definitions given in the first and second indents of Article 1(1) of the 'services' directive. It provides as follows:

'For the purposes of this Directive:

1. "telecommunications organizations" means public or private bodies, to which a Member State grants special or exclusive rights for the provision of a public telecommunications network and, where applicable, public telecommunications services.

For the requirements of this Directive, Member States shall notify the Commission of the bodies to which they have granted special or exclusive rights;

2. "special or exclusive rights" means the rights granted by a Member State or a public authority to one or more public or private bodies through any legal, regulatory or administrative instrument reserving them the right to provide a service or undertake an activity'.

Article 2(10) of that directive further provides that

'"open network provision conditions" means the conditions, harmonized according to the provisions of this Directive, which concern the open and efficient access to public telecommunications networks and, where applicable, public telecommunications services and the efficient use of those networks and services'.

According to Article 3 of that directive, open network provision conditions must be based on objective criteria, be transparent and published in an appropriate manner, guarantee equality of access to network operators and not be discriminatory. Moreover, such conditions must not restrict access to public telecommunications networks or public telecommunications services, except for reasons based on essential requirements, namely security or maintenance of network integrity, interoperability of services and protection of data, or for reasons deriving from the exercise of special or exclusive rights granted by Member States.

Article 6 of the 'open networks' directive provides that the Council, acting in accordance with Article 100a of the Treaty, is to adopt specific directives establishing open network provision conditions.

The 'leased lines' directive was adopted pursuant to that provision and accordingly based on Article 100a of the Treaty. That directive, according to Article 1 thereof, concerns 'the harmonization of conditions for open and efficient access to and use of the leased lines provided to users on public telecommunications networks, and the availability throughout the Community of a minimum set of leased lines with harmonized technical characteristics'.

8 Article 2(1) of that directive provides:

'The definitions given in Directive 90/387/EEC shall apply, where relevant, to this Directive'.

9 Article 2(2) defines 'leased lines' as 'the telecommunications facilities provided in the context of the establishment, development and operation of the public telecommunications network, which provide for transparent transmission capacity between network termination points and which do not include on-demand switching ...'.

10 Articles 3 to 10 of that directive impose a number of obligations on Member States with respect to the supply of leased lines:

— Article 3(3) requires Member States to ensure that information concerning new types of leased line offerings is published within a specified period;

— Article 5 requires the Member States to ensure that offerings continue for a reasonable period of time, that an offering can be terminated only after consultation with users affected and that users are entitled to bring the case before the national regulatory authority where they do not agree with the termination date as envisaged by the telecommunications organization;

— Article 6 imposes certain conditions with regard to access and usage of leased lines;

— Article 7(1) requires the Member States to ensure that the respective telecommunications organizations separately or jointly provide a minimum set of leased lines in accordance with Annex II to the directive in order to guarantee a harmonized offering throughout the Community;

— Article 8 requires the national authorities to ensure that telecommunications organizations adhere to the principle of non-discrimination when they make use of the public telecommunications network for providing services which are or may be provided also by other service providers;

— Article 10 requires the Member States to ensure that tariffs for leased lines observe certain basic principles of cost orientation and transparency.

11 According to the documents before the Court, a person who operates a telecommunication system within the United Kingdom is guilty of a criminal offence unless he is licensed by the Secretary of State under section 7 of the Telecommunications Act 1984.

12 Section 9 of the Telecommunications Act empowers the Secretary of State to designate as a 'public telecommunication system' any telecommunication system having a licence which satisfies the conditions laid down in section 8 of the Act, such as the obligation to provide specified services and to accept connections to other telecommunication systems. The operators of such systems are known as 'Public Telecommunications Operators' ('PTOs').

13 In order to perform their licensed functions, PTOs may be given certain exceptional legal powers, including the power to acquire land compulsorily, to enter land for exploratory purposes, to place network equipment in, over or under the public highway and to place apparatus on private land, subject to the consent of the persons having an interest in that land unless a dispensation is granted by the court.

14 According to the order for reference and the observations submitted to the Court, between 1983 and 1991 the United Kingdom Government granted licences to provide telecommunications services over fixed links to British Telecommunications plc ('BT') and Kingston-upon-Hull City Council (Kingston Communications plc, 'Kingston'), on the one hand, and to Mercury Communications Ltd ('Mercury'), on the other.

15 BT runs a public telecommunications network, providing public telecommunications services throughout the country, with the exception of the Hull area, where Kingston operates its own network. Those two undertakings are in particular subject to a 'universal service obligation', which means that they must provide voice telephony services to anyone who requires them in the area in which they operate their networks.

16 Mercury also operates a network, providing nationwide public telecommunications services. It is not, however, subject to a universal service obligation.

17 The United Kingdom authorities brought that duopoly policy to an end in March 1991 and decided, in principle, to grant licences to operate telecommunications networks in the domestic market unless a good reason existed for not doing so.

18 It appears from the documents in the file that, since then, about 600 licences have been granted and that about 140 operators now have the status of PTOs, namely BT, Mercury, Kingston, some 100 cable operators and a small number of cellular radio operators.

19 BT and Mercury remain, however, the only operators authorized to operate international links, in particular intra-Community links. The national court states in that regard that no licences for the operation of such links have been granted since 1991 but that the other telecommunications operators have the possibility of interconnection with BT or Mercury networks or of leasing circuits from BT or Mercury in order to provide international telecommunications services.

20 The documents before the Court show that in 1993/1994 BT had approximately 800 000 leased lines in service, both within the United Kingdom and internationally, Mercury approximately 8 300 leased lines in the United Kingdom and 800 international leased lines and Kingston approximately 4 000 lines in the United Kingdom, whilst the 200 to 300 remaining lines in the United Kingdom were shared between the other 130 PTOs.

21 Pursuant to Article 2(1) of the 'open networks' directive, the United Kingdom notified the Commission that it had granted special or exclusive rights to BT, Mercury, Kingston, 12 other companies and over 100 cable companies.

22 The United Kingdom implemented the 'leased lines' directive by means of the Telecommunications (Leased Lines) Regulations 1993 (SI 1993 No 2330). Those regulations amended the licence conditions of BT, Kingston and Mercury so as to impose upon them some or all of the obligations of the directive. Those obligations were not imposed on any other operator, not even on those notified to the Commission under Article 2(1) of the 'open networks' directive.

23 BT brought an application against the Secretary of State for Trade and Industry contesting the implementation of the 'leased lines' directive. BT considers that it does not enjoy special or exclusive rights within the meaning of the 'open

networks' directive and that it should therefore not be subject to the obligations set out in the 'leased lines' directive. Even if the United Kingdom were entitled to impose those obligations on it, the principle of non-discrimination would require it to impose them on all operators authorized to provide leased lines. The reason for this is that the 'leased lines' directive does not provide for a *de minimis* exception or a threshold below which operators are not subject to the obligations of the directive. Lastly, BT claims that the obligation to provide a minimum set of leased lines possessing certain harmonized technical characteristics infringes the principle of proportionality, there being no demand for such services in the United Kingdom.

24 Mercury and Kingston have intervened in the national proceedings in support of BT.

25 In the course of those proceedings, the High Court of Justice (Queen's Bench Division) submitted the following questions to the Court of Justice for a preliminary ruling:

'1. (a) Are Council Directives 90/387/EEC and 92/44/EEC to be construed as entitling or requiring Member States to perform the obligations imposed upon them by Articles 3 to 10 of Directive 92/44/EEC by imposing requirements only on public or private bodies ("undertakings") within the meaning of Article 2(1) of Council Directive 92/44/EEC, i. e. those to which a Member State has granted "special or exclusive rights" in respect of the provision of leased lines?

(b) If the answer to Question 1(a) is in the negative, in what circumstances is a Member State entitled or required to perform the said obligations by imposing requirements upon an undertaking which does not have such "special or exclusive rights"?

2. (a) For the purposes of Directive 92/44/EEC, is a Member State entitled to treat an undertaking as having "special or exclusive rights" within the meaning of Article 2 of Directive 90/387/EEC where:

(i) the running of a telecommunication system within the Member State concerned without a licence granted by the competent authorities of that State is a criminal offence;

(ii) the published policy of the Member State concerned is that all applications for licences relevant to the provision of the service in question are considered by the Member State, within the framework of the applicable national law, on their merits and on the basis of a general presumption on the part of the licensing authority that applications will be granted unless there are specific reasons to the contrary, and without applying any limit to the number of such licences granted;

(iii) several undertakings (including the Applicant and the Interveners herein) are actually providing leased lines within the terms of such licences?

(b) If the factors set out in Question (a) above are not determinative of the answer to that question, what other criteria are relevant?

3. Subject to the answers to Question 1 and/or 2:

(a) is Directive 92/44/EEC to be interpreted as entitling a Member State to refrain from imposing the obligations envisaged in Articles 3 to 10 of that Directive or any of them upon an undertaking:

(i) which is authorized by the Member State to provide leased lines but is not currently offering that service;

(ii) which is offering the service in question?

(b) If the answer to Question 3(a)(i) and/or (ii) above is in the affirmative, in which circumstances and by reference to which criteria is Directive 92/44/EEC to be interpreted as permitting a Member State to refrain from imposing the said obligations, or any of them, upon such an undertaking?

(c) In particular,

(i) is the Directive to be interpreted as permitting a Member State so to refrain on the ground that the actual provision of leased lines by an undertaking is, in the estimation of that Member State, *de minimis*?

(ii) If so, how is the *de minimis* exception to be defined? In particular, may a Member State confine its assessment to the market position at the date of implementation of the Directive, or must it have regard also to the potential development of the market?

(iii) Does the principle of non-discrimination, taken in conjunction with the principle of legal certainty, require any *de minimis* threshold, if permissible, to be specified in the national measures implementing the Directive?

4. Subject to the answers to Questions 1 and/or 2 above, is Directive 92/44/EEC and in particular Article 7(1) to be interpreted as entitling or requiring a Member State to impose upon two of the undertakings authorized by the Member State to provide the service in question, but upon no other such undertaking, the obligation to provide a minimum set of leased lines in accordance with Annex II?

5. If the answer to any part of Questions 3 or 4 is in the affirmative, is Directive 92/44/EEC *pro tanto* invalid as in breach of, *inter alia*, the principle of non-discrimination?

6. Is Directive 92/44/EEC, and in particular Article 7(1) together with Annex II, invalid as infringing the principle of proportionality to the extent that it requires the provision within all Member States of 2 048 kbit/s digital structured leased lines in accordance with technical characteristics specified in the said Annex?

7. (a) Is a Member State liable as a matter of Community law to compensate an undertaking in damages for loss which it has suffered as a consequence of:

   (i) the wrongful implementation in relation to that undertaking of the obligations referred to in Articles 3 to 10 of Directive 92/44/EEC or any of those obligations;

   (ii) the implementation of the Directive in question in such a way as to infringe the principle of equal treatment?

   (iii) the implementation of the obligations in question in circumstances where the relevant provisions of the Directive are invalid as infringing the principle of equal treatment and/or the principle of proportionality?

   (b) If the answers to Question 7(a)(i), (ii) and (iii), or any of them, is in the affirmative, under what conditions does such liability arise?'

The first four questions

26 By its first four questions, which, being closely linked, may conveniently be considered together, the national court raises questions as to the scope of the 'leased lines' directive. It asks whether that directive is applicable to 'telecommunications organizations' within the meaning of Article 2(1) of the 'open networks' directive, that is to say, to public or private bodies to which a Member State has granted special or exclusive rights for the provision of a public telecommunications network or public telecommunications services (first question), while requesting the Court to particularize the definition of those rights (second question), or whether the 'leased lines' directive is applicable to other undertakings and, if so, which (third question), in particular as far as Article 7 of that directive is concerned (fourth question).

27 According to the second recital in the preamble to the 'services' directive, at the time when that directive and the 'open networks' directive were adopted, the provision and operation of telecommunications networks and the provision of related services were generally delegated, in all Member States, to one or more undertakings which enjoyed, to that end, 'exclusive or special' rights, that is to say, rights 'characterized by the discretionary powers which the State exercises in various degrees with regard to access to the market for telecommunications services'.

28 The 'services' directive required Member States to withdraw all special or exclusive rights granted to those undertakings for the supply of most telecommunications services so as to ensure that those services may be freely offered throughout the Community (see in particular the first paragraph of Article 2 of the directive).

29 In contrast, exclusive or special rights granted to those undertakings for the provision and operation of networks have not been called in question.

30 In order to prevent retention of those exclusive or special rights in respect of telecommunications networks from impeding freedom to provide telecommunications services within and between the Member States, the 'open networks' directive provided for the creation of a Community-wide, open telecommunications network accessible to all operators on the same terms. Accordingly, the directive harmonizes certain of the conditions governing access to telecommunications networks and the use thereof.

31 Under that directive, however, harmonization is to be carried out in stages so as to take account of the situations and technical or administrative constraints existing in the various Member States (see the fifth recital in the preamble to the directive and Article 4).

32 The 'leased lines' directive is a specific directive which sets out, pursuant to Article 6 of the 'open networks' directive, the conditions for access to leased lines provided by operators of telecommunications networks in the Member States. It harmonizes some of the conditions governing access to leased lines, notably with regard to tariffs (Articles 3 to 10), and provides for a minimum set of leased lines with harmonized characteristics to be made available to users in each of the Member States (Article 7).

33 According to the preamble to and the provisions of the 'open networks' directive and the 'leased lines' directive (see, in particular, Articles 6(4), 7(1), 8(2) and 10(2) of the latter directive), those various obligations are intended to be applied to 'telecommunications organizations'. Thus, according to the definitions given in Article 2(1) of the 'open networks' directive, to which Article 2(1) of the 'leased lines' directive refers, public or private bodies to which Member States have granted exclusive or special rights for the provision of public telecommunications networks and, where applicable, of public telecommunications services.

34 It is clear, first, from Article 2 of Commission Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications (OJ 1994 L 268, p. 15) — which amends the definitions set out in Article 1(1) of the 'services' directive and is repeated verbatim in Article 2(1) and (2) of the 'open networks' directive — second, from the factual context in which the 'services', 'open networks' and 'leased lines' directives were adopted and, third, from their intended objectives, that the exclusive or special rights in question must generally be taken to be rights which are granted by the authorities of a Member State to an undertaking or a limited number of undertakings otherwise than according to objective, proportional and non-discriminatory criteria, and which substantially affect the ability of other undertakings to provide or operate telecommunications networks or to provide telecommunications services in the same geographical area under substantially equivalent conditions.

35 Since the national court raises the question as to application of the concept of exclusive or special rights in relation to its domestic legislation, it should be examined whether the matters mentioned in the order for reference, in particular in the second question, are such as to constitute exclusive or special rights.

36 The national court mentions first that the national authorities informed the Commission, pursuant to the second subparagraph of Article 2(1) of the 'open networks' directive, that they had granted exclusive or special rights to BT, Kingston, Mercury and some 100 other undertakings.

37 The mere fact that the name of an undertaking is notified to the Commission does not mean that the rights enjoyed by that undertaking must be regarded as exclusive or special rights, although such notification may raise a strong presumption that they are. Whether directives apply to particular bodies cannot turn on statements made by the Member State concerned. The United Kingdom Government states, moreover, that it notified most of the undertakings as a precaution in response to a question from the Commission.

38 The national court observes, second, that, in the case of the United Kingdom system, the operation of telecommunications networks on the national market requires a licence from the competent authority. The licence is granted, unless there are specific reasons to the contrary, on the merits of the application and without applying any limit to the number of such licences. The national court states, moreover, that the applications which have not been granted to date 'have been refused on objective grounds'.

39 The grant of a licence in those circumstances cannot be described as the grant of exclusive or special rights. The rights which such a licence confers are granted according to criteria which the national court presents as objective, proportional and non-discriminatory, and do not have the effect of limiting the number of undertakings which operate public telecommunications networks or services.

40 The national court points out, third, that 'all PTOs may be empowered to acquire land compulsorily, to enter land for exploratory purposes and to acquire land by agreement' and that 'most PTOs ... are authorized ... to place network equipment in, over or under the public highway and are able to place apparatus on private land with the consent of the persons having an interest in that land (which consent can be dispensed with by the court ...)'.

41 Such powers cannot be regarded as being exclusive or special rights either. Prerogatives of that kind, which are merely intended to facilitate the provision of networks by the operators concerned and which are or may be conferred upon all those operators, do not give their holders any substantial advantage over their potential competitors.

42 The national court observes, fourth, that two undertakings, BT and Mercury, are alone licensed to operate international lines, including intra-Community lines. It points out that other operators are, however, entitled to interconnect to those undertakings' networks and lease international private circuits from them.

43 In addition, according to observations submitted to the Court, in particular by BT, the United Kingdom authorities do not envisage, for the time being, licensing other undertakings to operate international lines because they consider that the conditions necessary for changing their policy in this field are not yet fulfilled.

44 The fact that the operation of international links, in particular intra-Community links, is reserved to two undertakings, such as BT and Mercury, is sufficient to constitute the grant for their benefit of exclusive or special rights in respect of public telecommunications networks or public telecommunications services.

45 Accordingly, those two undertakings have been granted, according to criteria which appear to be neither objective nor proportional nor free from discrimination, a substantial competitive advantage over other network operators and other providers of telecommunications services. First, they alone may operate international lines, which are essential to the provision of telecommunications services between Member States. Second, they may easily interconnect their own domestic lines, which cover virtually the entire country, with those international lines and thus offer a wider range of telecommunications services on those lines.

46 Whilst it is true that the undertakings in question are obliged to accept, in return, other operators' being connected to their networks at tariffs fixed by the public authority, it does not appear that those constraints are such as to deprive them of the advantages available to them. First, as the United Kingdom Government and the Commission rightly point out, only those undertakings have direct access to foreign networks and may therefore negotiate tariffs for access to those networks. Second, the tariffs which the public authority imposes on them are intended in particular, as the United Kingdom Government confirms, to prevent those undertakings from abusing their position *vis-à-vis* other operators.

47 It follows that such undertakings must be regarded as 'telecommunications organizations' within the meaning of the 'open networks' and 'leased lines' directives.

48 Lastly, the order for reference suggests that Kingston's licence was issued in accordance with criteria which are neither objective nor proportional nor free from discrimination, and gives it the exclusive right to operate a public telecommunications network in a specific geographical area.

49 If this is in fact the case, which it is for the national court to determine, the rights so conferred on that undertaking must also be considered exclusive or special rights.

50 Consequently, an undertaking of that type likewise constitutes a 'telecommunications organization' within the meaning of the 'open networks' and 'leased lines' directives.

51 It follows that undertakings such as those in question in the main proceedings must be subject to the provisions of the 'leased lines' directive.

52 In its fourth question, however, the national court asks the Court whether it is possible for a Member State to apply Article 7 of that directive only to certain undertakings.

53 In order to ensure the development throughout the Community of telecommunications services using leased lines, the Community legislature considered that it was necessary to make available to users throughout the Community a minimum set of leased lines complying with harmonized technical specifications (see the 12th recital in the preamble to the directive).

54 Article 7 of the directive provides that that minimum set of leased lines, whose technical characteristics are defined in Annex II to the directive, must be provided by one or more telecommunications organizations in each of the Member States.

55 It is therefore for the authorities in the Member States to determine which telecommunications organizations must be required to provide leased lines complying with the technical characteristics defined in Annex II to the directive so as to ensure that a minimum set of lines of that type is available throughout their territory.

56 Consequently, a Member State is entitled to impose the obligations laid down in Article 7 of the directive on only some telecommunications organizations, since the imposition of those obligations is sufficient to make available to users throughout the national territory a minimum number of leased lines complying with the specifications laid down by the directive. In particular, it is entitled to impose those obligations on only those telecommunications organizations which are the principal operators of telecommunications lines in each of the geographical areas comprising its territory.

57 Accordingly, the reply to the first four questions should be that the 'leased lines' directive applies to 'telecommunications organizations' within the meaning of Article 2(1) of the 'open networks' directive. *Inter alia*, the two undertakings to which a Member State has reserved, otherwise than according to objective, proportional and non-discriminatory criteria, the operation of international and in particular intra-Community telecommunications lines and likewise the undertaking to which a Member State has reserved, on the same terms, the operation of a public telecommunications network in part of its territory constitute 'telecommunications organizations' within the meaning of that provision. A Member State is entitled to impose the obligations laid down in Article 7 of the 'leased lines' directive on only some 'telecommunications organizations', since the imposition of those obligations is sufficient to make available to users throughout the national territory a minimum number of leased lines complying with the specifications laid down by that

directive. In particular, a Member State is entitled to impose the obligations laid down in that provision on only those 'telecommunications organizations' which are the principal operators of telecommunications lines in each of the geographical areas comprising its territory.

The fifth and sixth questions

The national court's fifth and sixth questions are concerned with the validity of the 'leased lines' directive.

The fifth question is to be answered only in the event that the Court holds that the 'leased lines' directive applies to undertakings other than 'telecommunications organizations'. In view of the replies given to the first four questions, there is no need to reply to that question.

The sixth question seeks to ascertain whether the 'leased lines' directive, in particular Article 7(1) and Annex II, is not in breach of the principle of proportionality.

In its order for reference, the national court states that the directive requires the provision within all Member States of leased lines of a certain digital type complying with the technical characteristics specified in Annex II, irrespective of whether there is a demand for such a service on the national market. There is apparently no demand for leased lines meeting the standards referred to in Annex II on the United Kingdom market.

62 As far as this point is concerned, it should be recalled that Article 7 of the directive is intended to guarantee a harmonized offering throughout the Community of a minimum set of leased lines in accordance with the specifications laid down in Annex II to that directive.

63 As is stated in the 12th recital in the preamble to the directive, the provision of that harmonized minimum set of leased lines is to be guaranteed for communications both within a given Member State and between Member States.

64 It follows from the foregoing that the aim of the directive is both to harmonize the conditions of offer in the various Member States and to remove technical barriers to cross-border telecommunications services.

65 In those circumstances, the directive cannot be considered to be in breach of the principle of proportionality on the ground that, at the time when it was adopted or transposed into national law, there was no demand on the national market of a Member State for the type of services which the directive requires to be offered.

66 The reply should therefore be that examination of the questions referred for a preliminary ruling has disclosed no factor capable of affecting the validity of the 'leased lines' directive.

The seventh question

67 In view of the replies given to the preceding questions, there is no need to reply to that question.

Costs

8 The costs incurred by the French and United Kingdom Governments, the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the High Court of Justice (Queen's Bench Division), by order of 25 July 1994, hereby rules:

1. **Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines applies to 'telecommunications organizations' within the meaning of Article 2(1) of 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. *Inter alia*, the two undertakings to which a Member State has reserved, otherwise than according to objective, proportional and non-discriminatory criteria, the operation of international and in particular intra-Community telecommunications lines and likewise the undertaking to which a Member State has reserved, on the same terms, the operation of a public telecommunications network in part of its territory constitute 'telecommunications organizations' within the meaning of that provision. A Member State is entitled to impose the obligations laid down in Article 7 of Directive 92/44 on**

only some 'telecommunications organizations', since the imposition of those obligations is sufficient to make available to users throughout the national territory a minimum number of leased lines complying with the specifications laid down by that directive. In particular, a Member State is entitled to impose the obligations laid down in that provision on only those 'telecommunications organizations' which are the principal operators of telecommunications lines in each of the geographical areas comprising its territory.

2. Examination of the questions referred for a preliminary ruling has disclosed no factor capable of affecting the validity of Directive 92/44.

Rodríguez Iglesias Mancini Moitinho de Almeida

Kakouris Gulmann Edward

Puissochet Jann Ragnemalm

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass G. C. Rodríguez Iglesias

Registrar President