

OPINION OF ADVOCATE GENERAL

JACOBS

delivered on 2 June 2005¹

1. In this case, the Commission seeks a ruling that the Grand Duchy of Luxembourg has failed to comply with certain obligations, under Article 7(5) of Directive 97/33/EC² and Article 18(1) and (2) of Directive 98/10/EC,³ concerning the annual verification of compliance of telecommunications operators' cost accounting systems by an independent competent body and the annual publication of statements of compliance.

application to the more recent legislation are in breach of the pre-litigation procedure and of Luxembourg's rights as a defendant. In any event, it asserts, the action is unfounded.

Legislation

2. The Luxembourg Government contends primarily that the action is inadmissible because the directives in question had been superseded by other Community legislation before the application was lodged. Consequently, the Commission has no interest in bringing the action, and its references in its

Community regulation of the telecommunications sector

3. Since 1987,⁴ there has been evolving Community regulation of telecommunications infrastructure and services, aimed at making the sector more competitive.

¹ — Original language: English.

² — 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).

³ — 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 (OJ 1998 L 101, p. 24).

⁴ — See 'Towards a dynamic European economy — Green paper on the development of the common market for telecommunications services and equipment', Com(87) 290 final.

4. A fundamental feature is that regulatory and operational functions must be separated, the former being taken away from (previously usually monopolistic) public telecommunications operators and entrusted to an independent body — now designated ‘national regulatory authority’ — in each Member State,⁵ to ensure competition on equal terms between the public operators and other operators.

works and services throughout the Community’.⁶ One of its features was to allow for certain obligations, previously imposed in order to ensure the achievement of free competition, to be relaxed where the existence of competition could be established.

5. As part of the process, full liberalisation was to be achieved, as from 1 January 1998, by the ‘1998 regulatory framework’, which comprised a number of directives adopted mainly in the period 1996 to 1998 and including the two whose infringement is alleged in the present case.

7. The new framework replaced and to a large extent repealed the 1998 framework, subject however to a number of transitional measures which have been extensively discussed in the present case.

The 1998 regulatory framework

Directive 97/33

6. Then, following a review in 1999 and the conclusions of the European Council at Lisbon on 23 and 24 March 2000, a ‘new regulatory framework’ was adopted in 2002, to be implemented by 24 July 2003. Its overall aim was to provide ‘a more harmonised and less onerous market access regulation for electronic communications net-

8. Directive 97/33 sought to establish a general framework for interconnection to public telecommunications networks and publicly available telecommunications services, together with fair, proportionate and non-discriminatory conditions for intercon-

5 — See, for example, Article 6 of Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment (OJ 1988 L 131, p. 73), and Article 7 of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10).

6 — See recital 1 in the preamble to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

nection and interoperability.⁷ Those conditions included, in cases where an organisation providing telecommunications services enjoyed significant market power or had special or exclusive rights in a non-telecommunications field, accounting separation between the relevant activities in order to discourage unfair cross-subsidies and to identify all elements of cost and revenue related to those activities, ensuring transparency of internal cost transfers.⁸

which costs are grouped and the rules used for the allocation of costs to interconnection, is made available on request. Compliance with the cost accounting system shall be verified by the national regulatory authority or another competent body, independent of the telecommunications organisation and approved by the national regulatory authority. A statement concerning compliance shall be published annually.⁹

9. To that end, Article 7(5) provided:

10. The Commission adopted the recommendations required under Article 7(5) on 8 April 1998.¹⁰

‘The Commission shall ... draw up recommendations on cost accounting systems and accounting separation in relation to interconnection. National regulatory authorities shall ensure that the cost accounting systems used by the organisations concerned [⁹] are suitable for implementation of the requirements of this Article, and are documented to a sufficient level of detail ...

11. Article 23(1) of Directive 97/33 provided: ‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1997.’

Directive 98/10

National regulatory authorities shall ensure that a description of the cost accounting system, showing the main categories under

12. Directive 98/10 concerned in particular liberalisation of the voice telephony sector.

⁷ — Recital 2 in the preamble.

⁸ — Recital 11.

⁹ — That is to say, essentially, public telecommunications operators having ‘significant market power’ (Article 7(1)).

¹⁰ — Commission Recommendation 98/322/EC of 8 April 1998 on interconnection in a liberalised telecommunications market (Part 2 — Accounting separation and cost accounting) (OJ 1998 L 141, p. 6).

One of its aims was that users should be provided with services at an affordable price.¹¹ In that connection, the preamble stated in particular that 'price transparency should ensure that residential subscribers do not subsidise discounts to business customers'.¹²

are verified by a competent body which is independent of those organisations. National regulatory authorities shall ensure that a statement concerning compliance is published annually.

13. Thus, with regard to pricing, under Article 17(1) national regulatory authorities were to ensure that organisations providing voice telephony services and having 'significant market power' complied with a number of tariff principles set out in Article 17(2) to (6).

2. National regulatory authorities shall ensure that a description of the cost accounting systems referred to in paragraph 1, showing the main categories under which costs are compiled and the rules used for the allocation of costs to voice telephony services, is made available to them on request. National regulatory authorities shall submit to the Commission, on request, information on the cost accounting systems applied by the organisations concerned.

14. In so far as is relevant Article 18, entitled 'Cost accounting principles', provided as follows:

...

'1. Member States shall ensure that, where an organisation has an obligation for its tariffs to follow the principle of cost orientation in accordance with Article 17, the cost accounting systems operated by such organisations are suitable for the implementation of Article 17 and that compliance with such systems

15. Under Article 32(1), Member States were to take the measures necessary to comply with the directive by 30 June 1998.

11 — Recital 4 in the preamble.

12 — Recital 14.

The new regulatory framework

alia, Article 7 of Directive 2002/19 and Article 16 of Directive 2002/22; in other cases, they were to impose appropriate obligations on undertakings.

Directive 2002/21¹³

16. Article 26 of Directive 2002/21 repealed, *inter alia*, Directives 97/33 and 98/10 with effect from 25 July 2003.

Directive 2002/19¹⁴

17. However, under Article 27, entitled 'Transitional measures', Member States were to 'maintain all obligations under national law referred to in Article 7 of Directive 2002/19/EC (Access Directive) and Article 16 of Directive 2002/22/EC (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'.

18. Article 16 provided for a market analysis procedure to be carried out by national regulatory authorities. Essentially, if those authorities found effective competition to exist, they were not to maintain the obligations on undertakings referred to in, *inter*

19. Article 7 of Directive 2002/19, referred to in Articles 16 and 27 of Directive 2002/21, provides, *inter alia*: 'Member States shall maintain all obligations on undertakings providing public communications networks and/or services concerning access and interconnection that were in force prior to the date of entry into force of this Directive under [*inter alia*, Article 7 of Directive 97/33], until such time as these obligations have been reviewed and a determination made in accordance with' Article 16 of Directive 2002/21.

13 — 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).

14 — Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7)

20. Member States were to adopt and publish the laws, regulations and administrative provisions necessary to comply with the directive by not later than 24 July 2003.

Summary

Directive 2002/22¹⁵

21. Article 16 of Directive 2002/22, referred to in Articles 16 and 27 of Directive 2002/21, requires Member States to maintain all obligations relating to, inter alia, retail tariffs for the provision of access to and use of the public telephone network, imposed under Article 17 of Directive 98/10, until such time as those obligations have been reviewed and a determination made in accordance with Article 16 of Directive 2002/21.

22. Member States were to adopt and publish the laws, regulations and administrative provisions necessary to comply with the directive by not later than 24 July 2003.

23. Member States thus had to ensure, by 31 December 1997, that compliance with the cost accounting obligations under Article 7 (5) of Directive 97/33 was verified and a corresponding statement published annually. Article 7(5) was repealed with effect from 25 July 2003 and superseded by a new assessment procedure, itself to be implemented by 24 July 2003. However, Member States were to maintain in force all obligations on undertakings previously in force under Article 7(5) until such time as a determination as to the need for obligations had been made under the assessment procedure.

24. In addition, Member States had to ensure, by 30 June 1998, that compliance with the cost accounting obligations under Article 18 of Directive 98/10, which were to follow the principle of cost orientation in accordance with Article 17 of the same directive, was verified and a corresponding statement published annually. Again, those provisions were repealed with effect from 25 July 2003 and superseded by the same new assessment procedure. However, Member States were to maintain in force all obligations on undertakings previously in force

¹⁵ — 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) (OJ 2002 L 108, p. 51).

under Article 17 of Directive 98/10 until such time as a determination as to the need for obligations had been made under the assessment procedure.

27. The national regulatory authority was originally the Institut Luxembourgeois de Télécommunications ('ILT'), subsequently changed to the Institut Luxembourgeois de Régulation ('ILR').¹⁶

25. It may be noted at this point that, on 10 March 2005, in Case C-236/04 *Commission v Luxembourg*, the Court found that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directives 2002/19, 2002/20, 2002/21 and 2002/22, the Grand Duchy of Luxembourg had failed to fulfil its obligations under those directives. In those proceedings, Luxembourg acknowledged that it had not transposed the directives within the period prescribed.

28. In 1998, the Luxembourg Government sent the Commission copies of various legislative measures which it had adopted with a view to transposing into national law the provisions of, inter alia, Directives 97/33 and 98/10.

29. On 9 March 2000, the Commission requested the Luxembourg Government to provide it with, inter alia:

Pre-litigation procedure

26. In Luxembourg, significantly more than half of the telecommunications market, whether in general or in the field of voice telephony, is held by the public operator *Entreprise des Postes et Télécommunications* ('EPT'). It is not disputed that EPT has 'significant market power' within the meaning of Articles 7(1) of Directive 97/33 and 17(1) of Directive 98/10, bringing it within the scope of the cost accounting obligations flowing from Article 7(5) of the former and Article 18(1) and (2) of the latter.

- a description of the cost accounting systems mentioned in Articles 7(5) of Directive 97/33 and 18(1) and (2) of Directive 98/10, as required by those provisions; and
- copies of the annual statements of compliance required by those provisions, for the years 1998 and 1999.

¹⁶ — Law of 24 July 2000 concerning the organisation of the electricity market.

30. In its reply of 8 June 2000, the Luxembourg Government provided information concerning the cost accounting systems, but no statements concerning compliance. Indeed, the reply stated that the relevant legislation did not provide for any approval of cost accounting systems by the ILT or other body and that, in any event, no certificate of compliance could be issued because EPT had not provided the ILT with all the relevant information.

31. On 30 April 2001, the Commission sent the Luxembourg Government a letter of formal notice stating its view that the national implementing measures did not clearly embody an obligation to publish an annual statement concerning compliance and noting that no such statement had in fact been published. It asked the Luxembourg Government to submit its observations within two months.

32. On 13 July 2001, the Luxembourg Government replied, producing a copy of a Grand-Ducal Regulation of 18 April 2001, which specified that compliance of the cost accounting systems in question was to be verified by a competent independent body and that the certificate of compliance was to be published annually. However, since those provisions did not enter into force until

6 May 2001, the first certificate of compliance to be published could only be for the year 2000 or 2001.

33. On 21 March 2002, the Commission sent the Luxembourg Government a reasoned opinion pursuant to Article 226 EC ('the first reasoned opinion'), concerning Article 7(5) of Directive 97/33, together with a further letter of formal notice, concerning both that provision and Article 18(1) of Directive 98/10.

34. In its first reasoned opinion, the Commission stated that the ILT had not taken the necessary steps to verify compliance with the cost accounting system or published the relevant statements concerning compliance for 1998 and 1999, as required in both cases by Article 7(5) of Directive 97/33. It invited Luxembourg to comply with the opinion within a period of two months.

35. In reply, the Luxembourg Government reiterated that the relevant provisions had been adopted in the regulation of 18 April 2001, which entered into force on 6 May 2001 but had no retroactive effect.

36. In its second letter of formal notice, of 21 March 2002, the Commission stated that apparently no verification had yet been carried out of the conformity of the cost accounting systems, and no statement of compliance had been published, for the year 2000, contrary to Articles 7(5) of Directive 97/33 and 18(1) of Directive 98/10. It asked the Luxembourg Government to submit its observations within two months.

39. The Luxembourg Government replied on 1 October 2003, in substantially the same terms as its letter of 28 May 2002, attaching also a copy of the ILR's guidelines for separate accounting and stating that the ILR intended to impose administrative penalties on EPT if the latter did not comply with its obligations.

Forms of order sought

37. The Luxembourg Government replied on 28 May 2002, to essentially the same effect as before, namely that the relevant statutory adjustments had been made by the regulation of 18 April 2001, which entered into force on 6 May 2001 but did not have retroactive effect.

40. The Commission seeks a declaration by the Court that:

38. On 11 July 2003, the Commission sent the Luxembourg Government a further reasoned opinion pursuant to Article 226 EC ('the second reasoned opinion'), in which it stated that, according to the information in the Commission's possession, there had been up to that date no verification or statement of compliance of the kind required by Article 18(1) and (2) of Directive 98/10. It concluded that by failing in practice to apply correctly the measures adopted for the purpose of implementing those provisions, Luxembourg had failed to comply with its obligations under that directive, and invited Luxembourg to comply with the opinion within a period of two months.

- by failing to comply with the obligation to verify the compliance of cost accounting systems by an independent competent body and to publish a statement of compliance for 1998 and 1999, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 7(5) of Directive 97/33; and that
- by failing in practice to apply correctly the measures adopted for the purpose of implementing Article 18(1) and (2) of Directive 98/10 as regards verification

of the compliance of the cost accounting system by the national regulatory authority or another competent body, independent of the telecommunications organisation and approved by the national regulatory authority, and as regards annual publication of a statement of compliance, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 18 of that directive.

Admissibility

41. Luxembourg contends essentially that, as regards the alleged infringement of Directive 98/10, that directive had been repealed before the expiry of the period allowed for compliance in the second reasoned opinion; the Commission's application is thus inadmissible to that extent. Furthermore, even though the same is not formally true with regard to Directive 97/33, the situation is none the less substantially comparable in that the Commission had already finalised its proposals for the new regulatory framework, repealing that directive, at the time when it sent the first reasoned opinion. In any event, since both directives alleged to have been infringed had been repealed before the matter was brought before the Court of Justice, the Commission has no interest in bringing the proceedings. The references in the application to the transitional provisions, which had not been

mentioned in the preliminary procedure, constitute an inadmissible attempt to change the legal basis of the proceedings and an infringement of Luxembourg's right to defend itself.

42. The Commission maintains that the transitional provisions of the new regulatory framework maintain the relevant obligations under the 1998 framework until such time as a decision is taken in accordance with the new framework as to the correct action to be taken; it stresses that Luxembourg has still not implemented the new framework. The Commission cites the Court's case-law to the effect that 'where Community law is amended during the course of the pre-litigation procedure, the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the initial version of a Community measure, subsequently amended or repealed, and which were maintained in force under the new provisions'.¹⁷ That case-law shows both that the action is admissible and that the reference to the transitional provisions in no way extended the subject-matter of the action or infringed the rights of defence.

43. Both parties have discussed at some length the relevance of that case-law to the

¹⁷ — Case C-363/00 *Commission v Italy* [2003] ECR I-5767, paragraph 22.

circumstances of the present case, a task not facilitated by the subtle complexity of the transitional provisions and of their relationships with each other and with the provisions whose infringement is alleged.

and (2) of Directive 98/10 in the year 2000, and to ensure publication of a statement concerning compliance for each of the years in question.

44. However, it seems to me that the discussion, and indeed the whole issue of admissibility as it has been raised, is based on a misapprehension.

47. Certain other matters — such as the possible initial failure to define the relevant cost accounting systems, or to provide with sufficient clarity for compulsory verification of compliance — arose in the course of the pre-litigation procedure, but the two reasoned opinions do not mention those matters, on which the Commission may be presumed to have felt satisfied. The reasoned opinions are confined to the failures in practice to verify compliance and to publish statements of compliance.

45. As the Luxembourg Government rightly points out, the subject-matter of proceedings under Article 226 EC is delimited by the pre-litigation procedure, in particular by the reasoned opinion.¹⁸

46. It is clear from the case-file that the Commission's complaint concerns Luxembourg's alleged failure to ensure verification by a competent independent body of EPT's compliance with the cost accounting requirements in Article 7(5) of Directive 97/33 in the years 1998 and 1999, and of the equivalent requirements under Article 18(1)

48. The first reasoned opinion (Directive 97/33) specifies that it concerns the years 1998 and 1999. In the second reasoned opinion (Directive 98/10), it is true that the year 2000 is no longer specifically mentioned, as it was in the preceding letter of formal notice; the opinion states simply that no verification or publication has taken place 'jusqu'à présent'. That might be construed as extending the allegation of infringement to all years from 1998, when the directive entered into force, to 2002, the last year preceding the reasoned opinion. However, there is no explicit indication to that effect and in principle the subject-matter of the action should not be extended, other than in matters of detail, beyond that defined in the letter of formal notice; I therefore think it

¹⁸ — See, for a recent statement of the principles, Case C-350/02 *Commission v Netherlands* [2004] ECR I-6213, paragraphs 18 to 21.

preferable to consider that only the year 2000 is concerned. The second form of order sought must also be construed in that light.

Luxembourg had not by that date taken steps to ensure the relevant verification and publication for the years 1998 to 2000, it was not then freed from its obligation to do so.

49. In any event, it is clear from the pre-litigation procedure as a whole that the proceedings concern only specific failures to ensure verification and publication in respect of years during which the directives were fully in force and the Member States required to comply with them.

52. Luxembourg's argument that Directive 98/10 had 'exhausted its effects' before the end of the period laid down for compliance in the second reasoned opinion is therefore irrelevant; it had not exhausted its effects with respect to the periods concerned. In that regard, references to dicta in the Court's case-law stressing the need to assess the situation at the end of the period laid down for compliance, and for the infringement to be still current at that point in time, are of no avail.

50. There is no question of any failure to comply with any obligation in respect of the subsequent period during which the new framework and/or the transitional provisions were in force. Those provisions thus seem to me to be wholly irrelevant to the proceedings.

51. Nor is the repeal of Directives 97/33 and 98/10, with effect from 25 July 2003, relevant in any other regard. Since they were not repealed with any retroactive effect, the obligations which they had placed on Member States in respect of periods prior to the repeal were not removed. Thus, if Luxem-

53. Here, without there being any need to consider the effect of the transitional provisions, the allegation is that Luxembourg had still not complied, at the end of the period laid down for that purpose, with its obligation to carry out verifications and publish statements of compliance for periods in respect of which that obligation had not been repealed. That is a very different situation from, for example, a failure to transpose a directive which had been repealed before the end of the period laid down for compliance. The same reasoning must hold true, a fortiori, in relation to

Directive 97/33, which was still in force at the end of the period laid down in the first reasoned opinion. It may be added that the interest in obtaining a ruling of infringement may lie in the possibility for parties to rely on that ruling in possible claims for damages.

the publication of the directives making up the new regulatory framework, on 24 April 2002, further transposition of the obligations under the 1998 framework could be effected only if it was compatible with the new framework. The automatic obligations under Directives 97/33 and 98/10 were not compatible with the system of assessment of the need for obligations under the new framework.

54. I am accordingly of the view that the objection to admissibility is unfounded.

Substance

55. Luxembourg puts forward two principal arguments to support its contention that the action is unfounded.

57. Again, that argument seems to me to be based on a misapprehension of the scope of the action. The Commission is not complaining that Luxembourg failed to comply with any obligation in respect of any period subsequent to 24 April 2002, but that it failed to ensure the relevant verification and publication in respect of the years 1998 and 1999 (Directive 97/33) and 2000 (Directive 98/10). I do not see how compliance with those obligations could have the slightest effect on the transposition of the new directives with regard, necessarily, to subsequent years.

56. First, it cites the Court's judgment in *Inter-Environnement Wallonie*¹⁹ to the effect that during the period laid down for transposition of a directive, Member States must refrain from taking any measures liable seriously to compromise the result prescribed. Consequently, from the moment of

58. Second, Luxembourg argues that the transitional provisions of the new regulatory

19 — Case C-129/96 [1997] ECR I-7411, paragraph 45.

framework are inapplicable to the circumstances of this action. That is in my view quite correct *ratione temporis*, as I have explained above, regardless of their applicability *ratione materiae*. Since they are inapplicable, they are simply of no relevance to the assessment of the Commission's action.

59. Finally, Luxembourg puts forward briefly a third 'supererogatory' defence ('à titre surabondant'). It points out that, for every year since 1998, the ILT and its successor the ILR have examined and approved EPT's reference interconnection offers, and that those offers have been published. That process involves verifying EPT's compliance with the principle of cost orientation, which necessarily entails checking that the appropriate cost accounting mechanisms have been applied. Consequently, the Luxembourg authorities did in reality comply with their obligations to verify compliance and publish statements of compliance.

60. That argument, if valid, must surely have greater importance than Luxembourg appears to accord it. However, in my view it does not require lengthy examination.

61. Reference interconnection offers are provided for in Article 7(2) and (3) of Directive 97/33, which are to be applied, in the same way as Article 7(5), to public telecommunications operators having significant market power. In so far as is relevant, those provisions read as follows:

'2. Charges for interconnection shall follow the principles of transparency and cost orientation. The burden of proof that charges are derived from actual costs including a reasonable rate of return on investment shall lie with the organisation providing interconnection to its facilities. National regulatory authorities may request an organisation to provide full justification for its interconnection charges, and where appropriate shall require charges to be adjusted. ...

3. National regulatory authorities shall ensure the publication ... of a reference interconnection offer. The reference interconnection offer shall include a description of the interconnection offerings broken down into components according to market needs, and the associated terms and conditions including tariffs.

Different tariffs, terms and conditions for interconnection may be set for different categories of organisations which are authorised to provide networks and services, where such differences can be objectively justified on the basis of the type of interconnection provided and/or the relevant national licensing conditions. National regulatory authorities shall ensure that such differences do not result in distortion of competition, and in particular that the organisation applies the appropriate interconnection tariffs, terms and conditions when providing interconnection for its own services or those of its subsidiaries or partners ...

The national regulatory authority shall have the ability to impose changes in the reference interconnection offer, where justified.

...'

62. It seems to me that proper verification of compliance with appropriate cost accounting systems is indeed a prerequisite for adequate assessment of reference interconnection offers. However, the conclusion which I draw is not that completion of the latter assessment establishes compliance with the cost accounting requirements. On the contrary, it is only once those requirements have been complied with that the validity of the reference interconnection offer assessment can be assured.

63. Consequently, the Luxembourg Government's final argument does not seem relevant to its defence in this action. Moreover, as the Commission has pointed out, it conflicts with the Government's explicit acknowledgment during the pre-litigation procedure that no verification or publication of the kind required by Articles 7(5) of Directive 97/33 or 18(1) and (2) of Directive 98/10 had taken place in respect of the years in issue because, *inter alia*, EPT had not provided all the relevant information.

Costs

64. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

65. In the present case, the Commission has not asked for costs, so the parties must each bear their own costs.

Conclusion

66. I am therefore of the opinion that the Court should:

(1) declare that:

- by failing to comply with the obligation to verify the compliance of cost accounting systems by an independent competent body and to publish a statement of compliance for 1998 and 1999, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 7(5) of Directive 97/33/EC; and that

- by failing in practice to apply correctly, in respect of the year 2000, the measures adopted for the purpose of implementing Article 18(1) and (2) of Directive 98/10/EC as regards verification of the compliance of the cost accounting system by the national regulatory authority or another competent body, independent of the telecommunications organisation and approved by the national regulatory authority, and as regards annual publication of a statement of compliance, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 18 of that directive;

(2) order the parties to bear their own costs.