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The European Commission's Progress Toward a New Approach for Competition in Telecommunications†

The technological explosion in the telecommunications industry over the past decade has stood the legal status of the national telecommunications monopolies in the European Community on its head. Led by advances in telecommunications and by the impetus of the Single European Act, the European Commission is opening the market for both telecommunication equipment[1] and services,[2] except for basic voice services, because these national monopolies can no longer justify their exclusive dominance of the market. This change comes at a time when competition in the telecommunications industry is expected to spur the development of an efficient, common telecommunications network necessary for the establishment of a "Single Europe": "A technically advanced, Europe-wide and low-cost telecommunications network will provide an essential infrastructure for improving the competitiveness of the European economy, achieving the Internal Market and strengthening Community cohesion—which constitute priority Community goals reaffirmed in the Single European Act."[3] Additionally, the contribution that telecommunications equipment and services make to the Community Gross Domestic Product is expected to increase from its current level of two

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1. Commission Directive on Competition in the Markets in Telecommunications Terminal Equipment, 1988 O.J. (L 131) 73 [hereinafter Equipment Directive].

2. Commission Directive on Competition in the Markets for Telecommunications Services, 1990 O.J. (L 192) 10 [hereinafter Competition Directive].

3. Green Paper on The Development of the Common Market for Telecommunications Services and Equipment, COM(87)290 at 4 (Summary Report) [hereinafter Green Paper].

percent to as much as seven percent by the end of the century.[4] Thus, a strong telecommunications industry is vital for both unifying the European market and for promoting the economic health of the European Community.[5]

Although driven by the need for a vibrant, integrated telecommunications network, the Commission's actions to open the market to competition rely primarily on the principle that the competition provisions of the European Economic Community (EEC) Treaty[6] (Treaty), which help safeguard the free movement of goods and services, apply to the Member States' telecommunications monopolies.[7] The Commission's increasingly aggressive application of this principle over the last decade is largely due to its recognition of fundamental technological changes that have altered the telecommunications market and have undermined the "natural monopoly" justification that has traditionally supported the existence of the national telecommunications monopolies.[8]

These monopolies are usually the Post, Telegraph, and Telecommunications administrations (PTTs) of individual Member States.[9] Traditionally, these PTTs have exercised authority over both the regulation of their respective nations' telecommunication networks and the operation of those networks. From a United States perspective, in the area of telecommunications PTTs are like the FCC and AT&T (before the breakup) rolled into one.[10] As government-affiliated organizations, PTTs often have policy goals that conflict with the efficient operation of the telecommunications network. In particular, PTTs have used their regulatory power to insulate themselves (and their domestic equipment suppliers) from competition and to restrict new technology that threatens their existing practices.[11] Accordingly, PTTs, and until recently their respective governments, have often been opposed to the Commission's efforts to permit competition.

This tension between the Commission and many of Europe's PTTs is primarily responsible for the unique twist in the EEC's development of its telecommunications industry: Although the theory of opening telecommunications to competition has been adopted in the EEC, the corresponding changes to the telecommunications system have been primarily supply-driven, rather than demand/user-driven as would be expected in a market being pushed toward

4. *Id.* at 4.

5. Silda A. Wall, Comment, *The British Telecommunications Decision: Toward a New Telecommunications Policy in the Common Market*, 25 HARV. INT'L L.J. 299, 299–300 (1984).

6. Treaty Establishing the European Economic Community (EEC), 25 Mar. 1957, 298 U.N.T.S. 3 [hereinafter Treaty].

7. Green Paper, *supra* note 3, at 124.

8. Muller, *Natural Monopoly, Deregulation and Competition*, in LEGAL AND ECONOMIC ASPECTS OF TELECOMMUNICATIONS 303–19 (S. Schaff ed., 1990).

9. Thomas B. Bacon, Comment, *Intelsat: Greater Price Flexibility to Preserve the System*, 3 AM. U.J. INT'L L. & POL'Y 383, 402–03 (1988).

10. Bert W. Rein et al., *Implementation of a U.S. 'Free Entry' Initiative for Transatlantic Satellite Facilities: Problems, Pitfalls, and Possibilities*, 18 GEO. WASH. J. INT'L L. & ECON. 459, 474 (1985).

11. Wall, *supra* note 5, at 301–02.

competition.[12] Unfortunately, the supply-driven approach, while cushioning the impact of full-blown competition on PTTs, is inherently unable to create an efficient European telecommunications system because the extraneous policy interests of PTT suppliers constantly conflict with this goal. The tension between PTTs and the Commission is present in each step that has been taken toward open competition for telecommunications equipment and services. The tension also reflects the Commission's basic problem of taking into account the interests of Member States while also pushing forward in its efforts to integrate the European market.

I. The *British Telecom* Decision

Ironically, the Commission's first application of the competition provisions of the Treaty to a national telecommunications monopoly involved British Telecommunications (British Telecom), a privatized corporation established under a 1981 United Kingdom statute, which was one of the first steps taken by a Member State to encourage competition in the telecommunications field. British Telecom and its predecessor, the United Kingdom Post Office, had adopted rules that prohibited private message-forwarding carriers in Britain from relaying messages from one foreign country to another. British Telecom took this action in response to pressure from other European PTTs whose telex charges were so high compared to those of British Telecom that their customers were sending telexes through agencies in Britain, causing a serious loss of revenue for those PTTs. The Commission found that British Telecom's prohibition constituted an abuse of a dominant position under article 86 of the Treaty, and thereby established a precedent for the Commission's application of the Treaty's competition provisions to state telecommunication monopolies.[13]

In the *British Telecom* decision the Commission balanced the Member States' power to create and define national telecommunications monopolies implied under article 222 of the Treaty against the language of article 90(1), which subjects state monopolies to the Treaty's competition rules. These two provisions of the Treaty converge in article 90(2), which sets forth an exception to the competition rules:

> Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.[14]

12. Crawford, EC '92: The Making of a Common Market in Telecommunications 20–21 (1988) (incidental paper of the Program on Information Resources Policy, Harvard University).

13. Commission Decision Relating to a Proceeding Under Article 86 of the EEC Treaty (IV/29877-British Telecommunications), 1982 O.J. (L 360) 36 [hereinafter Decision].

14. Treaty, *supra* note 6, art. 90(2), 298 U.N.T.S. at 50.

In essence, article 90(2) provides that PTTs are subject to Treaty competition rules except in circumstances where (1) application of the rules would obstruct the performance of their assigned tasks, *and* (2) exemption from the rules would not affect the development of trade "to such an extent as would be contrary to the interests of the Community."[15]

Significantly, the Commission avoided using the second part of this exemption to explain its decision under article 90. It could have easily argued that British Telecom's actions fell outside the article 90(2) exemption because an outright prohibition of certain message-forwarding services has a substantial negative effect on trade. This argument would have been a natural progression since the Commission, under the section of the decision dealing with article 86, had found that British Telecom had abused its dominant position because the message-forwarding prohibitions were a "clear restriction on trade between Member States."[16]

Nevertheless, in regard to article 90(2) the Commission supported its decision entirely on the basis that application of the competition rules did not obstruct British Telecom's performance of its tasks. The Commission stated that the services of a "general economic interest" provided by British Telecom only included running the telecommunications system, and did not include the offering of services making use of the system. The Commission went on to say that even if British Telecom had a monopoly over services, it would be required to exercise its monopoly powers in accordance with the EEC rules on competition.[17]

Thus, in its decision the Commission avoided establishing a precedent that would have led to a lengthy series of case-by-case battles with PTTs in which specific violations under article 86 due to restraint of trade would have to be found. Instead, the Commission cut right to the heart of the matter and established the principle that state telecommunications monopolies were subject to full application of the Treaty's competition rules for all of their operations. By taking this approach the Commission was later able to use the *British Telecom* decision to support the much broader principle that Member States' PTTs should be allowed a monopoly only for the operation of their basic telecommunications network, and not for the services and equipment that use the network.

II. The *British Telecom* Decision Challenged: *Italy v. Commission*

Shortly after the Commission rendered its decision, the Italian Government petitioned the Court of Justice of the European Communities to declare it void. The Court upheld the Commission's decision. It ruled that British Telecom was

15. Lake, *Monopoly or Competition: the Legal Framework in the European Communities*, in LEGAL AND ECONOMIC ASPECTS OF TELECOMMUNICATIONS 297 (S. Schaff ed., 1990).

16. Decision, *supra* note 13, para. 39.

17. Decision, *supra* note 13, paras. 33, 41.

subject to the Treaty's competition rules, and that it had violated those rules by prohibiting the message-forwarding services.[18]

However, the Court's ruling did not endorse the reasoning of the decision as completely as the Commission might have hoped. Although the Court found that the Commission's application of article 86 to British Telecom was appropriate, the Court never specifically adopted the Commission's assertion that all state telecommunications monopolies are subject to the Treaty's competition rules. Instead, the Court found that British Telecom was not exempt from the competition rules under article 90(2) because its particular authorization under the U.K. statute granted a monopoly only for the basic task of managing the telecommunications network. Thus, the Court said, British Telecom's tasks were not obstructed by application of the competition rules to areas such as message-forwarding services that fell outside the scope of its statutory monopoly.[19]

Following the Court's ruling, the PTTs could have tried to limit the precedential effect of the judgment by arguing that the case had no impact on them because, unlike British Telecom, their statutes included the exclusive authority to provide most equipment and services. However, the Commission aggressively embraced the judgment as affirming its position that PTTs were subject to all of the Treaty rules, including the rules on competition. The Commission took a step further by using the decision to establish the position that a Member State's granting of exclusive rights for telecommunications equipment and services undermined the basic rules of the Treaty relating to free movement of goods and services and the rules relating to competition, all of which applied to PTTs as public undertakings under article 90(1). The Commission gained credence for this principle by using it to challenge Member States each time they attempted to expand their PTTs' statutory monopoly to cover a newly developed type of telephone terminal equipment. Additionally, many of the Member States were beginning to follow the United Kingdom's lead in slowly deregulating their telecommunications markets. All of these points rose to the surface in the Commission's report on telecommunications in 1987.[20]

III. The Green Paper

After the Commission's White Paper on Completing the Internal Market in 1985 and the adoption by the Member States of the Single European Act in 1986, the Commission submitted a Green Paper on the development of the telecommunications sector of the Common Market. The thrust of the Green Paper was that telecommunications, because it serves as the "nervous system" of modern society and because it is an area where there is tremendous potential for growth,

18. Case 41/83, Italy v. Commission, 1985 E.C.R. 873, [1985] 2 C.M.L.R. 368.
19. *Id.* paras. 22, 33.
20. Green Paper, *supra* note 3, at 64–67, 128.

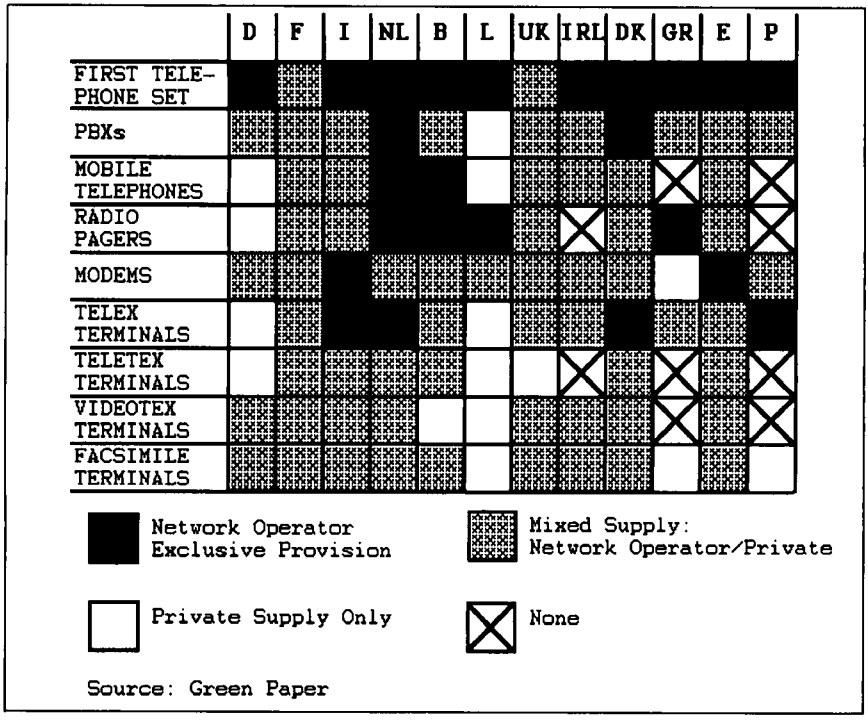
is one of the key components of establishing a common market for goods and services. To foster the development of the telecommunications industry, the Green Paper asserted that free and open competition was necessary.[21] Having established the importance of telecommunications and the need for open competition, the Green Paper then used the British Telecom decision to help introduce its position that PTTs should be allowed an exclusive monopoly only for the basic operation of the telecommunications network; the equipment and services market should therefore be open to outside competition.[22]

Thus, the Green Paper went beyond simply stating that PTTs were subject to all of the Treaty rules; it applied those rules and arrived at the conclusion that an exclusive right to supply telephone equipment and services was in opposition to the terms and purposes of the Treaty. This was not an entirely new position for the Commission. Before the Green Paper, it had actively tried to limit the scope of the PTTs' monopoly powers. Using article 37 of the Treaty the Commission had challenged the Governments of West Germany, Belgium, Italy, and the Netherlands regarding changes to their laws that expanded the statutory monopoly of each of their respective PTTs to include new forms of telephone terminal equipment such as cordless telephones, modems, and telex terminals. In each case the Commission's aggressive stance resulted in the particular Member State's agreement to reform the objectionable statute or regulation. In the Green Paper the Commission used its success to support the position that the terminal equipment market should be fully open to competition.[23]

However, in the Green Paper the Commission was not just using technical legal interpretations of the Treaty to justify opening the telecommunications market. The Commission pointed out that the market itself had changed significantly. The market was undergoing a metamorphosis caused by what the Green Paper described as a "collision" between the traditional, highly regulated telecommunications sector and the dynamic, highly competitive computer sector.[24] The Green Paper also noted that potential opportunities provided by the convergence of computer technology and telecommunications technology had led to a growing consensus among Member States to begin making room for competition.[25] Partly due to this consensus, and partly due to the Commission's aggressive actions referred to previously, the terminal equipment market was making significant strides toward open competition.[26] Nevertheless, the consensus among Member States for allowing competition was the strongest in the field of "value-added services." "Value-added services," sometimes referred to as "en-

21. Towards a competitive Community-wide telecommunications market in 1992—Implementing the Green Paper, COM(88)48 at 5.
22. Green Paper, *supra* note 3, at 65, 124.
23. *Id.* at 124–26.
24. *Id.* at 25.
25. *Id.* at 64.
26. *See* Figure 1.

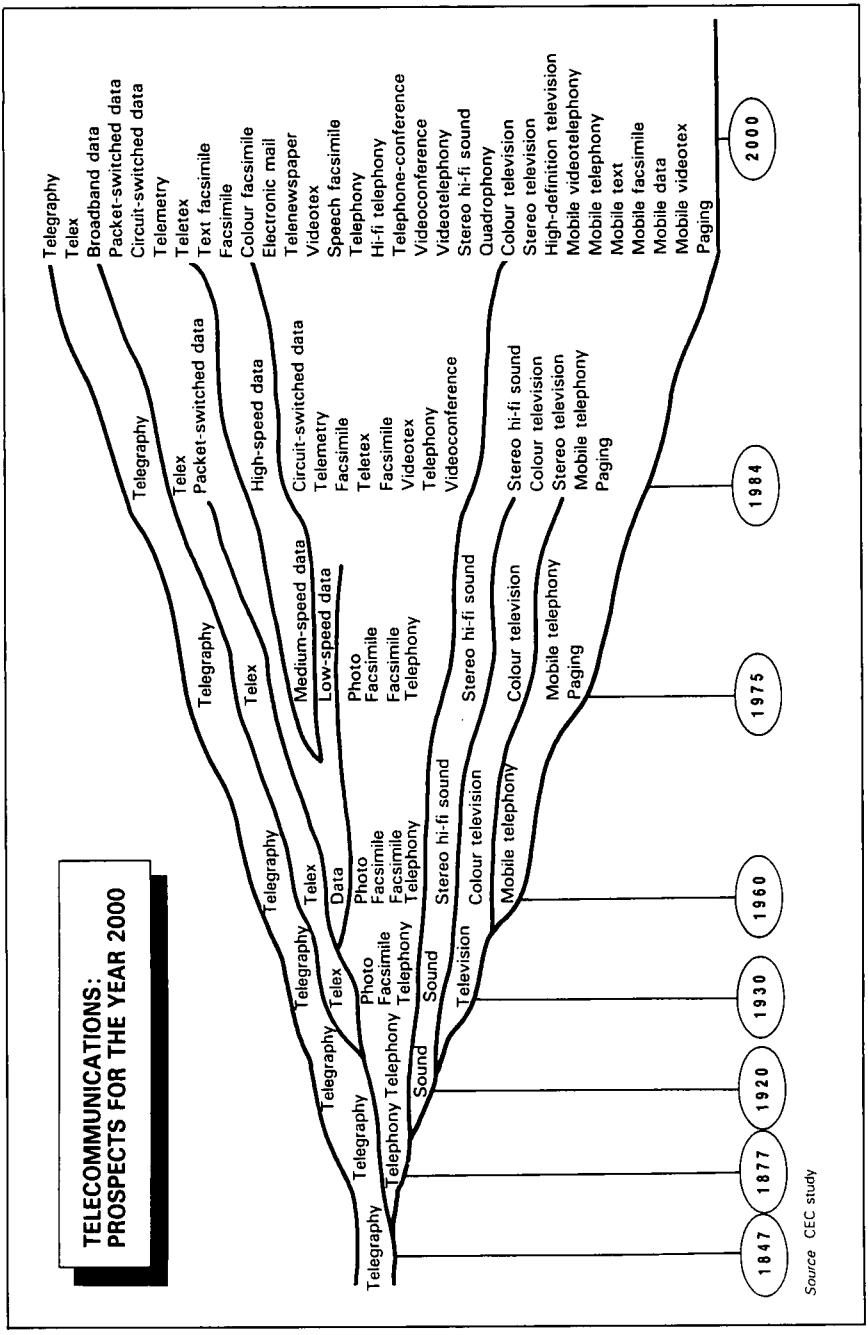
FIGURE 1
SURVEY OF TERMINAL EQUIPMENT REGULATORY SUPPLY CONDITIONS



hanced services," include such things as voice mail and facsimile; however, the pace of technological development makes it difficult to maintain a stable definition of what exactly is included in the term "value-added services."[27] One of the primary innovations in the Green Paper was the way in which the Commission dealt with this issue. Instead of struggling to define the "value-added services" that would be open to competition, the Commission inverted the problem and concentrated on the services that should be reserved from competition (reserved services).[28] This new approach, combined with the British Telecom precedent, the changing technological environment, and the growing consensus by Member States to permit competition, allowed the Commission to finally conclude that reserved services should be narrowly defined to include only the basic operation of the telecommunications network.[29]

27. *See* Figure 2.
28. H. UNGERER, TELECOMMUNICATIONS IN EUROPE 29 (1988).
29. Green Paper, *supra* note 3, at 67, 71.

FIGURE 2


TELECOMMUNICATIONS:
PROSPECTS FOR THE YEAR 2000
1847
1877
1920
1930
1960
1975
1984
2000
Telegraphy
Telex
Broadband data
Packet-switched data
Circuit-switched data
Telemetry
Teletex
Text facsimile
Facsimile
Colour facsimile
Electronic mail
Telenewspaper
Videotex
Speech facsimile
Telephony
Hi-fi telephony
Telephone-conference
Videoconference
Videotelephony
Stereo hi-fi sound
Quadrophony
Colour television
Stereo television
High-definition television
Mobile videotelephony
Mobile telephony
Mobile text
Mobile facsimile
Mobile data
Mobile videotex
Paging
Source CEC study

IV. Telecommunications Directives

Based on the new narrow definition of what areas may be exclusively reserved for PTTs, the Commission issued two directives instructing the Member States to amend their laws to withdraw exclusive or special rights granted to PTTs for the provision of telecommunications terminal equipment (Equipment Directive) and services (Service Directive), with the exception of basic telephone services.[30] In these directives the Commission attacked not just the expansion of these monopolies over new equipment or services, but the existence of the monopolies themselves. Both directives were challenged by a number of Member States. On March 29, 1991, the European Court of Justice rendered its decision with regard to the Member States' challenge of the Equipment Directive.[31]

V. *France v. Commission*—The Equipment Directive Case

France, supported by Italy, Belgium, Germany, and Greece, challenged articles 2, 6 and 7 of the Equipment Directive. Article 2 provides for the withdrawal of exclusive or special rights for the importation, marketing, connection, bringing into service, and maintenance of terminal equipment. Article 6 requires that Member States entrust an independent body with the responsibility of drawing up technical specifications for terminal equipment and monitoring their application. Article 7 instructs the Member States to take measures to ensure that long-term lease and maintenance contracts for terminal equipment between monopoly undertakings and customers may be terminated with a notice period of not more than one year.[32]

The French Government primarily contested the Commission's authority to issue the directive; it also asserted that the directive itself violated Treaty provisions. The dispute turned essentially around the correct interpretation of article 90(3) of the Treaty, which reads as follows: "The Commission shall ensure the application of the provisions of this Article and shall, where necessary address appropriate directives or decisions to Member States."[33] This provision explicitly authorizes the Commission to issue directives that specify the Treaty obligations of Member States under article 90(1), which subjects state monopolies to the rules of the Treaty.

France challenged the Commission's power to issue the directive on two grounds. First, it argued that article 90(3) did not affect preexisting statutory grants of exclusive or special rights, and, as a consequence, simply maintaining such rights would not entitle the Commission to intervene. In essence, France

30. Equipment Directive, *supra* note 1; *see also* Competition Directive, *supra* note 2 (regarding the Commission's Directive on Services).

31. Case 202/88, *France v. Commission* (1991).

32. Equipment Directive, *supra* note 1.

33. Treaty, *supra* note 6, art. 90(3), 298 U.N.T.S. at 50.

was arguing that the PTTs' monopolies were grandfathered. Second, France contended that a policy of restructuring the telecommunications market, which the challenged provisions of the directive would bring about, was a matter for the Council under article 100a. The European Court of Justice rejected both arguments. The Court found the first to be unpersuasive because it advocated a position that would allow the perpetual existence of state monopolies regardless of their compliance with Treaty provisions. This position would contravene the language of article 90(1), which declares that in the case of public monopolies Member States "shall . . . neither enact nor *maintain*"[34] measures contrary to the rules of the Treaty. With respect to the second argument, the Court distinguished the exceptional power of the Commission under article 90(3) to adopt directives and decisions as part of its specific supervisory authority over enterprises subject to article 90(1), from the power of the Council to adopt directives and regulations concerning competition law under article 87 and concerning the creation of the single market under article 100a. The Court found that nothing in these latter two provisions prevented the Commission from promulgating rules under article 90(3).[35]

An interesting sidenote to this case is that France and the other Member States failed to claim that their national telecommunications monopolies were exempt from the Treaty provisions under article 90(2). This omission implies that the Member States accepted the Commission's interpretation of the Court's holding in *British Telecom* that the conditions for an exemption from the Treaty provisions under article 90(2) do not exist except in the limited instances involving the supply of basic network services.

In its analysis of the substantive provisions of the Equipment Directive, the Court generally supported the Commission and rebuffed France's challenge. The court upheld article 6, it upheld article 2 to a substantial degree, and it annulled article 7.

Article 6 of the directive provides that the power to establish technical specifications for telecommunications equipment and to monitor their application must be transferred to an independent institution rather than allowing such power to reside with any entity that provides telecommunications goods or services. The Court found that this measure was necessary to ensure that the state monopoly holder would not be able to gain an unfair advantage in the competition for the terminal equipment market.[36]

In regard to article 7 of the directive, mandating the termination of long-term lease and maintenance contracts between PTTs and their customers, the Court found that the Commission had exceeded its powers under article 90(3) of the Treaty. The Court stated that article 90 conveys a supervisory authority only with

34. *Id.* art. 90(1), 298 U.N.T.S. at 50 (emphasis added).
35. *France v. Commission*, paras. 19–27.
36. *Id.* para. 51.

respect to measures enacted by Member States. Anticompetitive measures adopted by state monopolies on their own initiative, without being under some obligation to do so vis à vis the state, are not state measures within the meaning of article 90. The legality of such measures must be scrutinized by the Commission individually under the competition provisions of the Treaty (articles 85 and 86), rather than being dealt with under the Commission's broad power to issue directives to Member States under article 90.[37]

The Court upheld the key provision of the directive, article 2, to the extent it required the withdrawal of what the directive termed "exclusive rights" to import, market, connect, and maintain terminal equipment; but the Court annulled the directive's requirement to withdraw "special rights" for the same activities. The Court was of the opinion that the Commission had failed to specify these special rights adequately and had given no explanation as to how these rights conflicted with the provisions of the Treaty.[38]

However, to a great extent the Commission succeeded with respect to article 2. On the basis of its famous *Dassonville* decision[39] the Court found that exclusive rights to import, market, connect, bring into service, and maintain terminal equipment violated article 30 of the Treaty, which provides for the free movement of goods within the European Community. According to the *Dassonville* formula, all trading rules of the Member States capable of hindering intra-Community trade are measures having the effect equivalent to quantitative restrictions on trade between Member States, which is prohibited by article 30. The Court found additional support for its position by looking at the special traits of the telecommunications equipment market. The Court stated that because the terminal equipment market is characterized by constantly advancing, highly technical products, it cannot be assured that a state monopoly is capable of offering all models available, keeping customers informed of the state of the art of terminal equipment, and guaranteeing the quality of all such equipment.[40] Under the *Dassonville* test this inability of state monopolies results in an unjustifiable exclusion of products of other Member States. Therefore, the Court found that the state telecommunications monopolies' exclusive control over the terminal equipment market is a prohibited measure having an effect equivalent to a quantitative restriction on trade between Member States.

VI. Future Development

This landmark decision in the telecommunications field is certainly a major victory for the Commission and a huge step towards a more competitive telecommunications market in the European Community. However, whereas the

37. *Id.* paras. 53–57.
38. *Id.* paras. 45–47.
39. Case 8/74, Procureur du Roi v. Dassonville, 1974 E.C.R. 837, [1974] 2 C.M.L.R. 436.
40. *France v. Commission*, paras. 33–35, 40–44.

Commission's efforts to deregulate the telecommunications market has generally been approved by the European Court of Justice, the Court's holding in the Equipment Directive case still leaves Member States room to delay the process of fully opening the market to competition. Three issues are critical in this respect: (1) the exclusion of "special rights" from the requirements of article 2 of the Equipment Directive; (2) the pending challenge of the Services Directive; and (3) the need for the Commission to challenge individually long-term lease and maintenance agreements between PTTs and their customers.

A. The Exclusion of Special Rights

The term special rights is neither defined in EEC law nor has it any settled meaning. The phrase "special or exclusive rights" used by the Commission in both the Equipment and Service Directives tracks the language of article 90 of the Treaty, which uses the same phrase, and was generally understood to mean the grant of a monopoly by a Member State.[41] However, the ruling in the Equipment Directive case that special rights must be defined suggests that the Court believes this term may have a meaning independent of its companion term, "exclusive rights." The Court may have felt that "special rights" refers to nonexclusive rights such as licenses or permits to import, market, connect, or maintain terminal equipment. Unfortunately, the Court failed to indicate under what circumstances, if any, special rights would amount to a measure having an equivalent effect to a quantitative restriction on interstate trade. It also did not offer any guidelines as to where to draw the line between permitted and unlawful restriction of competition by a system of special rights, whether granted through licenses or permits, or by some other means. Thus, the Court has left the Commission exposed to future challenges of its authority in this undefined area of special rights.

B. The Pending Challenge of the Services Directive

The Court's reasoning regarding the Equipment Directive is also likely to be applied to uphold the Services Directive. The primary reason the Court supported the Commission in its struggle to deregulate the terminal equipment market was that this market has special features, such as the complex technical nature and variety of products. The Court indicated that because of the technical progress in the development of terminal equipment, the existence of state monopolies in this area was no longer justified.[42] Given the equally broad expansion of services available and the relatively easy access to related technologies, this argument is also applicable to the market for telecommunications services. How-

41. H. Smit & P. Herzog, The Law of the European Economic Community 348–50 (1988).
42. *France v. Commission*, para. 35.

ever, like the Equipment Directive, the Services Directive refers to "special rights" without defining it as a separate independent term. As a consequence, the Court may support the Commission only with respect to "exclusive rights" while leaving open the question of "special rights." This would create the possibility of delay of the Commission's efforts to deregulate the market for services because Member States could challenge future restrictions of "special rights" by the Commission.

C. Case-by-Case Challenges to Long-Term Lease and Maintenance Agreements

Although the Court ruled that the Commission could not issue a directive under article 90 to eliminate the existence of long-term lease and maintenance agreements, the Court indicated that the Commission could attack these agreements individually on a case-by-case basis under articles 85 and 86.[43] The *British Telecom* case, discussed previously, and an earlier ruling, the *Sacchi*[44] case, established the Commission's power to use articles 85 and 86 to liberalize the telecommunications market. Both cases would support the Commission's use of article 86 to challenge individual long-term lease and maintenance agreements. However, the necessity for the Commission to institute individual proceedings against a large number of PTTs in regard to these long-term contracts for terminal equipment creates another delay in the Commission's efforts to open up the market, particularly when one considers that these agreements bind a considerable number of consumers to the state monopolies even though the market has been opened to other competitors.

D. The Commission's Position as a Result of the Terminal Equipment Case

The Commission has won a major victory, but the Court's decision on the Equipment Directive still leaves the Member States with some tools to slow the progressive liberalization of the European telecommunications market. Given this possibility of delay, the Commission has an interest in reaching an agreement with the Member States that ensures steady movement toward an open competitive market. The Court's support, by upholding the basic provisions of the Equipment Directive, has certainly strengthened the Commission's position in forthcoming negotiations or proceedings.

43. *Id.* paras. 53–57.

44. Case 155/77, *In re Sacchi*, 1974 E.C.R. 409, [1974] 2 C.M.L.R. 177 (the European Court of Justice holding that imposing unfair conditions on users of services of state monopolies, and unequal treatment of nationals of other Member States by those monopolies, may amount to an abuse of a dominant position).

VII. Conclusion

The Commission's use of the *British Telecom* case together with the market analysis of the Green Paper created a new perspective from which the Commission reconsidered the structure of the telecommunications sector in the European Community. The European Court of Justice supported this approach in its decision regarding the Equipment Directive.

It is reasonable to conclude that the role of the state telecommunications monopolies has been redefined. Increasing competition in the field of telecommunications equipment and services, except for basic voice services, can be expected over the next decade. Nevertheless, monopoly control over the telecommunications network leaves the state monopolies with substantial influence even in an otherwise fully liberalized market. These state monopolies have much more influence than any telecommunications entity in the United States, where the market is relatively free to respond to consumer demand. However, to state the obvious, Europe is not the United States; and contrary to widespread belief in the United States, the Community's 1992 initiative will not suddenly create an integrated market similar to the U.S. market. At best it will build the structures necessary for a successful integration. If one takes the numerous practical, technical, and economic problems related to the telecommunications market as an example, the enormity of the task of creating a single European market becomes clear. In addition, national interests, such as preservation of jobs and protection of domestic industries, will continue to be an important factor in the telecommunications sector. With this in mind, the Commission's progress toward a liberalized telecommunications market is astonishing. Its continued success, however, depends on the Commission's ability to strike the appropriate balance between the needs of the Community and the interests of the Member States.