

Case 247/86

**Société alsacienne et lorraine de
telecommunications et d'électronique (Alsatel)**

v

SA Novasam

(reference for a preliminary ruling
from the tribunal de grande instance, Strasbourg)

(Payment of compensation for the termination
of a contract for the rental of telephone
installations — Abuse of a dominant position)

Report for the Hearing	5989
Opinion of Mr Advocate General Mancini delivered on 31 May 1988	5999
Judgment of the Court (Sixth Chamber), 5 October 1988	6005

Summary of the Judgment

- 1. Preliminary questions — Jurisdiction of the Court — Extension of the subject-matter of the question submitted for a preliminary ruling in disregard of the jurisdiction of the national court — Not permissible
(EEC Treaty, Art. 177)*
- 2. Competition — Agreements, decisions and concerted practices — Dominant position — Effect on trade between Member States — Condition for the application of Community rules
(EEC Treaty, Arts 85 and 86)*
- 3. Competition — Dominant position — Concept
(EEC Treaty, Art. 86)*
- 4. Competition — Dominant position — Relevant market — Determination — Supply of telephone installations by authorized undertakings under a State monopoly — Domestic market
(EEC Treaty, Art. 86)*

5. *Competition — Dominant position — Existence — Large market share — Insufficient evidence*
 (*EEC Treaty, Art. 86*)

1. The Court cannot, whether it be at the request of a party to the main proceedings or at the request of an institution which has exercised its right to submit observations, extend the subject-matter of a question referred to it for a preliminary ruling where it appears that that extension was expressly sought by a party before the national court and was refused.
2. The interpretation of the condition that trade between Member States must be affected, which is set out in Articles 85 and 86 of the Treaty, must be based on its purpose, which is to determine the scope of application of Community competition law. Community law applies to any agreement, decision or concerted practice which may influence, directly or indirectly, actually or potentially, patterns of trade between the Member States and thereby hinder the economic interpenetration intended by the Treaty by partitioning the market.
3. The dominant position referred to in Article 86 is a position of economic strength enjoyed by an undertaking which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors and customers.
4. Contractual practices, even abusive ones, on the part of an undertaking supplying telephone installations which has a large share of a regional market in a Member State do not fall within the prohibition in Article 86 of the EEC Treaty where that undertaking does not occupy a dominant position on the domestic market in telephone installations. Only that market may be taken into consideration in that sector since it is only at that level that the conditions of competition are sufficiently homogeneous, in view of the existence of a telecommunications monopoly which means that telephone installations can be supplied only by the postal and telecommunications authorities or by private installers to whom those authorities delegate in part the exercise of the monopoly, by means of authorizations valid throughout the country.
5. While the fact that an undertaking holds a very large market share may be important evidence of the existence of a dominant position, that factor, taken separately, is not necessarily decisive but must be taken into consideration together with other factors.