

OPINION OF ADVOCATE GENERAL

RUIZ-JARABO COLOMER

delivered on 27 February 2007¹

I — Introduction

1. Pursuant to Article 234 EC, the *Obvodní soud pro Prahu 3* (Prague 3 District Court (Court of first instance)) refers to the Court of Justice a set of questions which are framed in a complicated fashion but which hide a more straightforward legal problem.

2. In fact, the objective is to ascertain whether, after the accession of the Czech Republic to the European Communities (1 May 2004) and after the conclusion of administrative proceedings commenced before that date, an undertaking, dominant in the telecommunications sector, may be obliged to connect its network with that of another company, without the market analysis required by Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services ('the Framework Directive') and Directive 2002/19/EC on access to, and interconnec-

tion of, electronic communications networks and associated facilities ('the Access Directive').² The first three questions referred for a preliminary ruling relate to this issue.

3. Given that the national legislation does not make provision for such an analysis, and that the above directives are cited by the party which takes exception to the imposition of that obligation, the referring court raises the issue of their possible direct effect, which is the substance of the fourth question.

II — The legal framework

A — Telecommunications in Community law

1. An overall view

4. In my Opinion in *Nuova società di telecomunicazioni* (point 3 et seq.), delivered

¹ — Original language: Spanish.

² — Directives of the European Parliament and of the Council of 7 March 2002 (O) 2002 L 108 pp. 33 and 7 respectively).

on 27 October 2005,³ I emphasised the efforts made by the European Community, begun at the dawn of the final decade of the last century, to open up the supply of electronic communications, taking action in two directions: towards the increased flexibility of the markets and the harmonisation of the legislation of Member States.

5. Such was the start of the liberalisation of telecommunications which, allowing for transition periods for certain Member States, came to fruition on 1 January 1998.⁴ The nascent Community dimension in this field required harmonisation of the conditions of access to and use of the infrastructures and guaranteed interconnection between the public networks and their suppliers.

6. Those objectives led to the adoption of, inter alia,⁵ Directive 97/33/EC 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.⁶

7. Once the conditions for effective competition had been created, a new body of laws and regulations had to be adopted. On 7 March 2002 the European Parliament and the Council approved four measures, beginning with the Framework Directive and the Access Directive.⁷

2. The obligation of interconnection⁸

8. Directive 97/33 granted to the authorised providers of public telecommunications networks and telecommunications services the right, while also imposing on them the obligation, to negotiate their interconnection, with a view to ensuring provision of these networks and services throughout the

3 — Case C-339/04 *Nuova società di telecomunicazioni* [2006] ECR I-6917.

4 — The point of departure was Commission Directive 90/388/EEC of 28 June 1990 on competition in telecommunications services (OJ 1990 L 192, p. 10) amended on several occasions until its replacement by Commission Directive 2002/77/EC of 16 September 2002 (OJ 2002 L 249, p. 21).

5 — 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), as amended by Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 (OJ 1997 L 295, p. 23). Also within this group are Council Directive 92/44/EEC of 5 June 1992 (OJ 1992 L 165, p. 27) and Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 (OJ 1998 L 101, p. 24), the first of which extends open network provision to leased lines, and the second to voice telephony.

6 — OJ 1997 L 199, p. 32.

7 — Together with 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) and 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, pp. 21 and 51).

8 — 'Interconnection' means the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users to communicate or to access their respective services (Article 2(1)(a) of Directive 97/33 and Article 2(b) of the Access Directive).

Community (Article 4(1)). Those organisations with significant market power were required to accept all reasonable requests for access to the network (Article 4(2)).

9. Similar provisions are to be found in the Access Directive of 2002 (Article 4(1) and Article 5(1) and 5(4)), which also imposes specific obligations on dominant operators. (Article 8 read in conjunction with Article 12).

3. The concept of an operator with 'significant market power' and its consequences

10. Under Directive 97/33 an operator having a market share of more than 25% was presumed to have significant market power although, depending on its ability to influence market conditions, its turnover, its control of the means of access to end-users, its financial resources and its experience, the operator might merit the application of this description without that percentage's being reached, or might not merit the description in spite of exceeding that percentage (Article 4(3)).

11. The Access Directive leaves it to the Framework Directive to attach the description of operators with significant market power to undertakings which, either individually or jointly with others, enjoy a position equivalent to dominance, that is to say a position of economic strength affording them the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers (Article 14(2), first paragraph, of the Framework Directive).

12. In particular, national regulatory authorities are, when assessing whether two or more suppliers are jointly in such a dominant position in a market, to act in accordance with Community law and take into account the 'guidelines on market analysis and the assessment of significant market power' published by the Commission pursuant to Article 15 of the Framework Directive (Article 14(2), second paragraph).

13. Article 15, headed 'Market definition procedure', sets out a procedure whereby the Commission, after public consultation and consultation of national regulatory authorities, is to adopt a recommendation, to be regularly reviewed, identifying the markets which, defined in accordance with the principles of competition law, may be such as to merit the imposition of specific obligations (Article 15(1)), and publishes the guidelines mentioned above (Article 15(2)).

National regulatory authorities, taking account of the recommendation and the guidelines, are to define their relevant markets (Article 15(3)) while the Commission, after consulting those regulatory authorities, does the same in relation to transnational markets (Article 15(4)).

14. Article 16 of the Framework Directive provides that national regulatory authorities are then to carry out their analysis, in collaboration with the national competition authorities (Article 16(1)), and in those markets identified as effectively competitive (Article 16(2)), they are not to impose specific regulatory obligations but are to withdraw any such existing obligations (Article 16(3)). Where the opposite is found to be the case, they are to identify the undertakings concerned and act accordingly (Article 16(4)). The analysis of transnational markets is to be conducted jointly by the institutions of the Member States concerned which are to decide on obligations in a concerted fashion (Article 16(5)).

15. Both the definition and the analysis of the markets are to be carried out in accordance with the procedures and principles of Article 6 and Article 7 of the Framework Directive (Article 15(3) and Article 16(6)).

4. The transition from Directive 97/33 to the Directives of 2002

16. The Access Directive (2002/19) is concerned with carrying over the obligations imposed within the earlier regulatory framework, without prejudice to their immediate review (12th recital in the preamble and Article 7(1)), to which end the Commission is to indicate the markets affected both in the initial recommendation and in the decision identifying transnational markets (Article 7(2)). For the same purposes, the authorities of every State are to act in a similar manner (Article 7(3)).

17. The Framework Directive is imbued with the same spirit and the first paragraph of Article 27 requires Member States to maintain all obligations referred to in Article 7 of the Access Directive — referring to the obligations of access and interconnection which are incumbent on suppliers under Article 4 of Directive 97/33 — until such time as a determination is made in respect of those obligations by a national regulatory authority in accordance with Article 16 of the Framework Directive.

B — Telecommunications in the Czech republic

18. The Zákon o telekomunikacích (Telecommunications Law No 151/2000), which

governed this sector within the Czech Republic between 1 July 2000 and 30 April 2005, implemented Directive 97/33, in particular its Article 37(1); in the same way as Article 4(2) of that Directive, it required dominant operators to respond to applications for interconnection. Failing agreement between the parties concerned, Article 40(5) authorised the Český telekomunikační úřad (Czech Telecommunications Office), the relevant national authority, to impose such an obligation in the general interest.

19. On 30 April 2005 the Zákon o elektronických komunikacích (Law of Electronic Communications No 127/2005), entered into force and this, in the opinion of the referring court, adequately transposes the directives adopted in 2002.

III — The facts of the main proceedings

20. Telefónica O2 Czech Republic, a.s. (formerly, Český Telecom, a.s.) and Czech On Line, a.s. supply telecommunications services in the Czech market, within which, at the material time, the former occupied a significant position.⁹

21. On 29 January 2001 the two companies agreed on the interconnection of their fixed telecommunications networks. On 3 February 2003 Czech On Line suggested that the collaboration be extended to broadband high-speed Internet services (*Asymmetric Digital Subscriber Line — ADSL*), in order to distribute them to its clients using its own infrastructure, instead of, as had been the case until then, the infrastructure of Telefónica O2, but this proposal was not accepted.

22. Czech On Line made a request to the Czech Telecommunications Office that Telefónica O2 should be ordered to permit interconnection as described above. The Office upheld the request on 30 April 2004;¹⁰ however, its President, ruling in an appellate capacity, annulled the decision and remitted the case back to the Office, which, by means of a fresh resolution dated 9 September 2004, ratified on 20 January 2005, obliged both undertakings to cooperate in the ADSL field.

23. Telefónica O2 brought an action before the Obvodní soud pro Prahu 3 for annulment of that resolution, arguing that the Law No 151/2000 did not adequately transpose the Framework and Access Directives, and that their direct effect required that, before Czech On Line's request could be dealt with,

⁹ — In August 2002 the Czech Government privatised Český Telecom, the dominant operator in which the State held a majority shareholding.

¹⁰ — The legal basis of the order was Article 40(2) and Article 40(5) of Law No 151/2000.

the relevant market should be analysed, in order that the extent of competition be measured.

IV — The questions referred for a preliminary ruling

24. The abovementioned court stayed proceedings and on 24 November 2005 referred the following questions to the Court of Justice:

(1) Did the [national telecommunications regulator] ... have the power, by an administrative decision made after 1 May 2004, and thus after the date of the Czech Republic's accession to the European Communities, to impose on a telecommunications company with significant (dominant) market power in the telecommunications market an obligation to conclude a contract for the interconnection of its networks with those of another operator?

(2) If so:

Was the national regulatory authority entitled to impose such an obligation solely on the conditions set out in Article 8(2) of the [Access Directive] namely on the strength of a previous market analysis carried out in accordance with Article 16 of the [Framework

Directive] and with the preliminary procedure prescribed in Article 6 and Article 7 of the Framework Directive, or could it, (for example, in accordance with recital 15 of the preamble, Article 3, Article 4(1), Article 5(1)(a) and Article 5(4), Article 10(1) and 10(2) of the Access Directive), act without that prior market analysis?

(3) Is the answer to the second question affected by the facts that the request of a particular operator for the compulsory interconnection of his network with the network of an operator with significant (dominant) market power was lodged with the national regulatory authority before 1 May 2004, and the proceedings relating to that request took place before that authority before 1 May 2004, i.e. before the date of the accession of the Czech Republic to the European Communities?

(4) To the extent that at the material time — from 1 May 2004 to 30 April 2005 — the Czech Republic had not adequately implemented the abovementioned Directives, is it possible directly to apply the Framework and Access Directives?, and consequently,

(a) are those directives (or one at least of them) unconditional and sufficiently precise to be applied by a court in place of national law?

on specific conditions for interconnection of operators' sites, and imposes specific obligations on individuals?'

(b) is an operator with significant (dominant) market power in the telecommunications market entitled to rely on (or has it the status to rely on), as a result of their incorrect transposition, the direct effect of the Access Directive and the Framework Directive (or one of them), and do those directives protect the interests of that operator in its refusal to conclude an agreement on interconnection (in the area of ADSL services) with other national companies (when, in the opinion of the national regulatory authority, which is subject to review by courts of law, that operator is not respecting the objectives of the new regulatory framework)?

V — The procedure before the Court of Justice

25. The reference for a preliminary ruling was lodged at the Registry of the Court of Justice on 6 February 2006. The parties in the main proceedings, the Czech and Netherlands Governments and the Commission have lodged written observations, and, with the exception of the Netherlands Government, attended at the hearing which was held on 1 February 2007, in order to set out their arguments orally.

VI — Analysis of the questions referred for a preliminary ruling

A — Defining the issues

(c) Can that operator rely on the direct effect of directives that have not been sufficiently implemented (or of one of them), if (even where the conditions set out in the directives are met) the national regulatory authority comes to a decision based

26. In order to resolve the dispute between the two Czech telecommunications companies, the Obvodní Soud requires a response

which is more straightforward than one might expect given the motley set of questions which it has presented. In fact, the only true journey is made not by travelling to other lands, but by having fresh eyes, seeing the world through the eyes of another.¹¹

27. The problem does not lie in whether the Czech Telecommunications Office was authorised, after the entry of the Czech Republic into the European Union, to compel Telefónica O2 to connect its network with that of Czech On Line (first question), a power which, as I will now explain, is unarguable.

28. The key to the problem lies in the procedural framework for the ordering of such an obligation (second question) and in determining the relevance of the fact that the administrative procedures took place when accession had not yet occurred (third question).

29. More specifically, the referring court seeks to ascertain whether the national authorities ought to have had in their possession an analysis of the relevant market, in accordance with Article 8(2) and Article 12 of the Access Directive, read in conjunc-

tion with Article 16, Article 6 and Article 7 of the Framework Directive. Given that Law No 151/2000, in force at the time, was not compatible with the Community rules which were adopted in 2002, that hypothesis presupposes the direct effect of the said directives (fourth question).

30. In summary, the Court of Justice is requested to indicate whether the said Community rules govern the events of the dispute in the main proceedings.

B — *The jurisdiction of the Court of Justice*

31. This way of approaching the argument makes it obvious that the Czech Government's contention that the questions referred for a preliminary ruling should be immediately dismissed, on the ground that the Court of Justice has no jurisdiction *rationae temporis*, is without foundation.

32. The issue in the present case does not relate, as in *Ynos*,¹² to events which took place and were completed in a Member State

11 — Proust, M.: *À la recherche du temps perdu III, La prisonnière*, Ed. Gallimard, Bibliothèque de la Pléiade, 1988, p. 762.

12 — Case C-302/04 [2006] ECR I-371, paragraphs 35 to 37. See, to the same effect, the order of 9 February 2006 in Case 261/05 *Lákey and Others* (not published in the ECR), paragraphs 17 to 21.

prior to its entry into the Communities, a state of affairs where the Court of Justice would have no jurisdiction,¹³ but rather to determining the applicability in time of certain directives in relation to an event which began before and ended after that date of entry, a situation in which the Court is certainly competent as supreme and ultimate interpreter of Community law.

33. Although Czech On Line's application was submitted and decided at first instance at a time when the Czech Republic was not yet a member of the Communities,¹⁴ the decision was revoked later, at a time when the Czech Republic had joined the European Union.¹⁵ It is not appropriate then that the Court of Justice should assess either the annulment or what followed; rather, in order to legitimise the Court's action in giving a preliminary ruling, it is enough that the national courts confronted by such a set of circumstances have a doubt as to the application of Community law to the case and refer questions to the Court of Justice on the temporal validity of the Community rules.

34. Consequently, the questions raised are bound up with the Community legal order and it is the duty of the Court of Justice to

give an interpretation as requested.¹⁶ It must not be forgotten that, in the dialogue of Article 234 EC, it falls to the national court, before which the principal dispute has been brought and which must assume responsibility for the decision, to assess whether interpretation is necessary and whether the questions referred are relevant.¹⁷ The reference will be presumed to be relevant except when the questions on Community law bear no relation to the object of the proceedings, the problem raised is hypothetical, or the Court of Justice does not have before it the factual or legal material necessary to give a useful answer.¹⁸

C — The first question referred: unnecessary consultation

35. Nonetheless, the Czech Government is partly right, since the Obvodní Soud outlines a problem which need not have been brought before the Court of Justice, that is, the consideration of whether, once the Czech Republic was a member of the European Union, the Czech Telecommunications Office could oblige Telefónica O2 to connect its network with that of Czech On Line.

13 — Case C-321/97 *Andersson and Wåkerås-Andersson* [1999] ECR I-3551.

14 — The first measure of the Czech Telecommunications Office is dated 30 April 2004, the day before the date of accession.

15 — 9 September 2004.

16 — Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33.

17 — Case C-62/93 *BP Soupergaz* [1995] ECR I-1883, paragraph 10; Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59; Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38; Case C-326/00 *IKA* [2003] ECR I-1703, paragraph 27.

18 — Case C-355/97 *Beck and Bergdorf* [1999] ECR I-4977, paragraph 22.

36. The outcome is the same, whatever the legislation examined: whether reference is made to Directive No 97/33, or whether the Framework and Access Directives are chosen, or whether, if the matter is regarded as outside the scope of Community law, Law No 151/2000 is chosen, the Czech Telecommunications Office had the power to impose that obligation, since there is no divergence on that point.

before the Obvodní Soud, where the contested administrative decision imposed the obligation *ex novo*.

D — The second and third questions referred for a preliminary ruling

37. Consequently, no Court of that Member State would have any doubt as to the response, since Law No 151/2000 specified that possibility (Article 40(5) read in conjunction with Article 37(1)), without the interpretation of Community law affecting the decision, since the latter also envisages that possibility, both in Directive 97/33 (Article 4(2)) and in the directives adopted in 2002 (Article 8 read in conjunction with Article 12 of the Access Directive). On that point there is no difference between the national legal system and the European, so that calling on the latter order appears unnecessary.

39. The argument is different. Once Telefónica O2 was recognised to have significant market power, the Czech Telecommunications Office was able to order the interconnection of its network with that of Czech On Line, but it remains to be clarified whether the Czech Telecommunications Office could do that automatically, as permitted by the national legislation, or whether a market analysis had to be carried out, as stipulated by the law of the European Union (second and third questions).

38. Accordingly, since the Czech court's first question does not touch on Community law, the Court of Justice must be silent and must not undertake the 'inter-temporal' analysis which the Commission incorporates in its written observations, since, in accordance with the first paragraph of Article 27 of the Framework Directive, that implies the existence of earlier obligations, a hypothesis which does not accord with what is at issue

40. Given that Law No 151/2000 was not compatible with the 2002 Directives, the applicability of Community law moves the centre of gravity of the argument towards the fourth question, which inquires whether, because of their primacy,¹⁹ those Directives

¹⁹ — Stated in general terms in Case 6/64 *Costa v ENEL* [1964] ECR 585, and on the subject of directives in Case 148/78 *Ratti* [1979] ECR 1629.

satisfy the requirements necessary in order to have direct effect and to displace unharmonised national law.

41. If the answer to the last question is negative, the response to the second and third questions would be immaterial, since, in both possible cases the Czech Telecommunications Office could impose the obligation without undertaking the market analysis, because the said Directives would lack direct effect.

42. Consequently, this apparently complex reference for a preliminary ruling, now that the ground has been cleared, is reduced to deciding whether Article 8(2) of the Access Directive and Article 16, read in conjunction with Article 6 and Article 7, of the Framework Directive meet the conditions set out in the case-law in order for a provision of this kind to be directly applicable.

E — *The fourth question: direct effect*

43. This characteristic of the provisions of a directive, which is a corollary of and at the same time the instrument of the primacy [of

Community law] over national law,²⁰ is construed as an automatic ‘sanction’ on Member States which avoid compliance with their obligations, given that they must refrain from relying on their own law in order to resist the provisions of a directive which, as to content, are unconditional and sufficiently precise.²¹

44. Those are the criteria for provisions unequivocally laying down an obligation which is not qualified by any condition²² and is not made subject, in its implementation or effects, to the adoption of any measure either by the Community institutions or by the Member States.²³

45. There is no difficulty in finding that the provisions of the Framework and Access Directives do not have such characteristics, since the market analysis, to which Article 8(2), of the Access Directive refers, is carried out under Article 16 and is based on the principles set out in Article 6 and Article 7 of the Framework Directive. In other words, such analysis is subject to the guidelines

20 — In accordance with *Ratti*, on expiry of the time fixed for the coming into force of a directive, a Member State cannot apply its own unaltered law to a person who has complied with the provisions of the Community legislation, which means that national laws which contradict the latter are of no effect.

21 — Case 8/81 *Becker* [1982] ECR 53, paragraphs 24 and 25.

22 — This follows from the reasoning of Case 152/84 *Marshall* [1986] ECR 723, paragraph 52 repeated in Case C-389/95 *Klattner* [1997] ECR I-2719, paragraph 33.

23 — Paragraph 33 of *Klattner*, which refers to Case 28/67 *Molkerei* [1967] ECR 143, and paragraph 18 of Joined Cases C-246/94 to C-249/94 *Cooperativa Agricola Zootechnica S. Antonio and Others* [1996] ECR I-4373.

which, in accordance with Article 15(2) of the Framework Directive itself, the Commission approves in collaboration with the national competition authorities (Article 16(1)), and must comply with rules which the appropriate national authority must publish, in order to satisfy the criteria of transparency and consultation (Article 6) with the assistance of the Commission and the relevant bodies of other Member States (Article 7(3), Article 7(4) and Article 7(5)).

46. Even if it were to be accepted that those provisions combine the conditions which are essential if they are to have direct applicability, in the present case this could not be achieved, since Community case law denies such effect to Directives where the dispute is between private parties. In the Opinion delivered on 6 May 2003 in *Pfeiffer*,²⁴ I observed that the Court of Justice consistently refuses to recognise that one individual can rely on a directive against another individual if the directive has not been correctly implemented by the Member State within the prescribed period. The Court has stated that in accordance with Article 249 EC, the binding nature of a directive, which constitutes the basis for the possibility of relying on it before a national court, exists only in relation to ‘each Member State to which it is addressed’, from which it follows that a directive cannot itself create obligations which can be enforced by an individual,

nor can they be enforced against him (paragraph 56).²⁵

47. The dispute giving rise to this reference for a preliminary ruling is a model case of a dispute *inter privatos*. Two undertakings do battle over the obligation which the Access Directive imposes on the dominant company to allow the interconnection claimed by the other, and the intervention of the administrative authorities has no other purpose than to take the place of the willingness of the competing parties in order to effect an agreement which they are incapable of concluding. This perspective differs from that envisaged in *Wells*,²⁶ where the direct effect of a directive²⁷ was recognised in favour of a British resident against the State, although indirectly this recognition affected the legal rights of another individual.

48. In short, the articles above referred to of the Framework and Access Directives do not have direct effect, with the result that Telefónica O2 cannot rely on them in order

25 — *Marshall* paragraph 49; Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969, paragraph 9; Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 24; Case C-192/94 *El Corte Inglés* [1996] ECR I-1281, paragraphs 16 and 17; and *Pfeiffer*, paragraphs 108 and 109.

26 — Case C-201/02 [2004] ECR I-723.

27 — Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (O) 1985 L 175, p. 40).

24 — Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835.

to annul the decision of the Czech Telecommunications Office.²⁸

F — *By way of epilogue*

49. The reference for a preliminary ruling is a procedure which is at the service of the Courts of the Member States, so that the Court of Justice may provide them with guidance which is sufficient for the execution of Community law. The system under Article 234 EC rests on the difference between the interpretation and application of legal rules, allowing a reconciliation of the legitimate authority of the national court with the indispensable uniformity of the Community legal order, which is, as Robert Lecourt has pointed out in the past,²⁹ a task which requires a finely-drawn division of powers.³⁰

28 — It seems obvious that, given the lack of such a characteristic, it is not appropriate, in the present case, to advise the national court that, in reliance on the 'principle of consistent interpretation' (Case C-106/89 *Marleasing* [1990] ECR I-4135), it should do violence to the meaning of Law No 151/2002 so as to create, by the judicial process, a procedure (the market analysis) which that Law excludes, since that principle is restricted inter alia by the qualification that it is proper to avoid praeter legem interpretations. Case C-168/95 *Arcaro* [1996] ECR I-4705 underlined that Community law does not incorporate any mechanism which allows the national court to disregard provisions of national law which are contrary to those of a Directive which cannot be relied on before the national court (paragraph 43). Further, it must not be forgotten that, as I have observed, the Czech regulations and the Community regulations (both the original and current) are substantially the same in authorising the competent authorities to impose obligations of interconnection on dominant undertakings, to a degree that the discrepancies are restricted to matters of form.

29 — Lecourt, R: *Le juge devant le Marché commun*, Ed. Institut Universitaire des Hautes Etudes Internationales. Geneva, 1970, p. 50.

30 — Lagrange, M: 'L'action préjudicielle dans le droit interne des États membres et en droit communautaire', *Revue trimestrielle de droit européen*, 1974, p. 268.

50. This approach to the structure of the reference for a preliminary ruling leads to the recommendation that the Court of Justice should reduce its intervention to what is strictly necessary, and should restrict itself, within the limits defined by the order for reference,³¹ to providing a solution which is of assistance, and should avoid making declarations which are of no assistance to the original dispute. The solution would otherwise take on the appearance of an abstraction, unconnected to any specific circumstances, as if what was at issue was an action for judicial review.

51. In the light of the foregoing reasoning, the provisions of the Framework and Access Directives cited in the order for reference do not serve to resolve the dispute, and accordingly any interpretation by the Court of Justice is superfluous. In order to give an answer which is of use,³² the Court must make it clear to the referring court that the provisions in question do not have direct effect and that, consequently, the Czech Telecommunications Office was not obliged to carry out an analysis of the market in order to compel Telefónica O2 to connect its ADSL network with that of Czech On Line.

31 — De Richemont, J: *L'intégration du droit communautaire dans l'ordre juridique interne*, Ed. Librairie du Journal des Notaires et des Avocats, Paris, 1975, p. 41 et seq.

32 — It appears relevant to add that, in the context of the judicial cooperation of Article 234 EC, it falls to the Court of Justice to give to the referring Court a solution which is adequate for the resolving of the dispute (Case C-334/95 *Krügger* [1997] ECR I-4512 paragraph 22, Case C-88/99 *Roquette Frères* [2000] ECR I-10465, paragraph 18), reformulating where appropriate the question referred to it (Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 32, Case C-210/04 *FCE Bank* [2006] ECR I-2803, paragraph 21).

VII — Conclusion

52. In the light of the foregoing, I propose that the Court of Justice give the following answer to the question submitted by the Obvodní soud pro Prahu 3:

Article 8(2) of 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) and Article 16 read in conjunction with Articles 6 and 7 of 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), since they have not been transposed into national law, do not fulfil the conditions necessary to have direct effect and accordingly are not applicable to the facts of the main proceedings. That being the case, it follows that the power of Český telekomunikační úřad (Czech Telecommunications Office) to compel Telefónica O2 to connect its ADSL lines with those of Czech On Line was not dependent on a prior analysis of the market.