II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 February 1992

settling the dispute between the United Kingdom and Germany over the creation of a special regular coach service

(Only the English and German texts are authentic)

(92/138/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Regulation (EEC) No 517/72 of the Council of 28 February 1972 on the introduction of common rules for regular and special regular services by coach and bus between Member States [1], as last amended by Regulation (EEC) No 1301/78 [2], and in particular Article 14 thereof,

Whereas Cliff's Coaches of Burlington House, 20 Hardwick Street, Buxton, Derbyshire applied to the United Kingdom authorities on 3 October 1988 for authorization to run a special regular coach service carrying members of the British Armed Forces, their dependants and relatives, and Ministry of Defence sponsored employees, between London and Lemgo in Germany;

Whereas by a letter of 7 June 1990 the British Government asked the Commission to decide on this application pursuant to Article 14 of Regulation (EEC) No 517/72, since Germany, in agreement with whom a decision on the application has to be taken by virtue of Article 13 (1) of that Regulation, was unable to give a decision on the application; whereas the reason given by the German Government was the existence of proceedings before an Administrative Court in Minden, Germany, by other coach operators; whereas the appeal was against the intention of the local authority, Detmold, to approve an application by Christa Voss, a German operator, for authorization to run the same service in partnership with Cliff's Coaches; whereas the German Government indicated that they could not decide on either application until the legal proceedings had been concluded;

Whereas the operator, Cliff's Coaches, indicates that the proposed special regular service could serve a market of some 140 000 potential passengers comprising army personnel, their families and other persons connected with the British military authorities in Germany;

Whereas the British Government favours the creation of a special regular service for security and welfare reasons as the customers could then be only military and associated personnel, and subject to a system of controlled bookings in order to prevent unauthorized persons using the service; whereas additionally, a special regular service could be tailored to meet the specific needs of these customers; whilst an ordinary regular service, open to all passengers, cannot be adapted so easily to meet the specific requirements of the military clientele;

Whereas the United Kingdom authorities consider that, in view of the time that has elapsed since the submission by Cliff's Coaches of their application for authorization in 1988, the applicant should have a decision on his application to start this special regular coach service;

[1] OJ No L 67, 20. 3. 1972, p. 19.
[2] OJ No L 158, 16. 6. 1978, p. 1.

Whereas the United Kingdom authorities have stated that the Belgian and Netherlands Governments, as countries which would be crossed by the proposed special regular service, have raised no objections;

Whereas the local authority in Germany, Detmold, has examined the objections raised by Anglo-German Transline GmbH to the application by the German operator, Christa Voss, to start a service in cooperation with Cliff's Coaches on two occasions and decided that authorization could be granted; whereas the United Kingdom authorities are willing to grant the German operator, Christa Voss, an authorization to run the coach service jointly with Cliff's Coaches if the results of the legal proceedings before the court in Minden so permit;

Whereas the German Government considers that the applications by Christa Voss and by Cliff's Coaches are for the same service; whereas it cannot therefore express an opinion on either application until the appeal by existing operators against the proposed new service has been decided in the German court; whereas, because of these court proceedings, the German authorities consider that the Commission should not decide on the application by Cliff's Coaches at present either, otherwise any decision taken would render the court's judgment worthless;

Whereas the German authorities have indicated that they are opposed to a duplication of regular coach services in this region, since Anglo-German Transline Bus GmbH and other companies are already running regular services there and, even if these are regular and not special regular services, 80 % of their clientele are connected with the British Armed Forces; whereas the German Government considers that, in accordance with Article 16 (2) of Regulation (EEC) No 517/72 undertakings are to be 'given the opportunity to make representations concerning their interests, by appropriate means, ...';

Whereas the application to the United Kingdom authorities by Cliff's Coaches to establish a special regular service between London and Lemgo was made on 3 October 1988 and, therefore, should have received an answer by now; whereas this application is not subject to legal proceedings in the German Administrative Court in Minden, which appear to relate only to the parallel application by Christa Voss;

Whereas the special regular services proposed by Cliff's Coaches meet a need that cannot entirely be met by existing regular services, in that the special regular service will be limited exclusively to persons connected with the British Armed Forces and, therefore, offers more security than a regular coach service, which is open to the general public;

Whereas the British military authorities have expressed an interest in having a special regular service for their staff and families; whereas there appears to be a potential market for this service; whereas the local authority in Germany, Detmold, having on two occasions examined objections by existing operators, considered that the proposed special regular service, which would be run by Christa Voss in partnership with the service by Cliff's Coaches, could be allowed;

Whereas this examination of the objections made by existing operators in the area can be considered as complying with the requirements of Article 16 (2) of Regulation (EEC) No 517/72; whereas the Court of Justice ruled in Case 88/86 [1] that the provisions of Article 16 (2) were satisfied if operators opposed to a new coach service were enabled to make their views known before a decision was taken on the application to run the new service;

Whereas, as regards the Commission's powers to decide on the application by Cliff's Coaches, Article 14 (1) of Regulation (EEC) No 517/72 states that the Commission shall 'as soon as possible adopt a decision ...'; whereas the case-law of the Court of Justice has confirmed that a Member State may not plead provisions, practices or circumstances in its internal legal sysem in order to justify a failure to comply with Community law, notably in Case 46/88 [2] whereas any Member State which is opposed to the Commission's decision may refer it to the Council for decision by virtue of Article 14 (2) of Regulation (EEC) No 517/72; whereas the Commission may modify its decision if the Member States subsequently agree between themselves in accordance with its Article 14 (3),

HAS ADOPTED THIS DECISION:

Article 1

Cliff's Coaches of Burlington House, 20 Hardwick Street, Buxton, Derbyshire, is to be authorized to operate a special regular coach service exclusively for personnel of the British Armed Forces, their dependants and other persons approved by the British military authorities between Lemgo, in Germany, and London.

Article 2

This Decision is addressed to the United Kingdom and to the Federal Republic of Germany.

Done at Brussels, 12 February 1992.

For the Commission

Karel VAN MIERT

Member of the Commission

[1] [1987] ECR p. 5429.
[2] [1989] ECR p. 1133.