## PREDATORY PRICING (POSTAL SERVICES): THE DEUTSCHE POST CASE (3)

Subject: Abuse of a dominant position
Discounts
Rebates
Predatory pricing

Industry: Postal services

Parties: Deutsche Post AG

Source: Commission Statement IP/00/919, dated 8 August 2000

*(Note. This is another episode in the long-running saga of the Commission's generally admirable attempts to liberalise the postal services market. However, there is a difference in this case. Originally, the Commission had defended the German Post Office from complainants; but the Court of First Instance decided that the complainants had a case and that the Commission should have acted on it. So now the Commission has changed its role and is attacking the German Post Office. The outcome will be determined after the hearing of the Post Office's response to the Commission's statement of objections. Two other cases against Deutsche Post are referred to in the Commission's Statement. Meanwhile, as the next report in this issue points out, the Commission is taking other, more generalised, action to liberalise the market.)*

In response to a number of complaints, and a judgment in the Court of First Instance finding that the Commission had wrongly failed to act in the matter, the Commission has initiated formal proceedings against the German postal operator, Deutsche Post, for abuse of its dominant position. These proceedings are concerned in the first place with Deutsche Post's pricing of parcel delivery services for mail-order business. The Commission's preliminary enquiries suggest that Deutsche Post allows large mail-order traders substantial discounts if they undertake to send all their parcels through Deutsche Post. They also suggest that Deutsche Post does not come anywhere near covering the costs of its mail-order parcel services. This means that no private provider of parcel services to mail-order firms has been able to achieve any firm foothold in Germany. The proceedings likewise question the postage charged by Deutsche Post for the letters it delivers under its monopoly rights. At this stage the Commission is asking Deutsche Post to explain why it is that even taking account of quality of service and density of population German customers pay the highest postage in Europe.

The Commission began investigating commercial parcel services in 1994, following complaints lodged by United Parcel Service (UPS) and a number of small and medium-sized carriers grouped in an association known as BIEK. The complainants argued that Deutsche Post was pricing below cost, and that this excluded private competitors from the liberalised commercial parcel services business. UPS subsequently brought an action before the Court of First Instance

seeking a finding that the Commission had wrongly failed to act on its complaint, and on 9 September 1999 the Court held that the Commission ought either to have initiated proceedings against Deutsche Post or to have finally rejected the complaint.

In April of this year the Commission discovered hard evidence that Deutsche Post was giving substantial discounts especially to its large customers. There was also growing evidence that large mail-order customers secured the highest rates of discount only if they sent their entire parcel business or at least a sizeable proportion of it via Deutsche Post. Discounts of this kind have knock-on effects that damage competition.

The Commission's enquiries have confirmed that no private provider of mail-order parcel services is able to secure a foothold in Germany.

A thoroughgoing investigation of the parcel services which Deutsche Post provides to mail-order firms has shown that the extent to which it covers its costs here is a great deal more limited than it is in the case of other commercial customers, or even in the case of the extremely high-cost service for parcels handed in at post office counters.

This suggests that in the mail-order business Deutsche Post is selling its services below cost. If this is confirmed in the formal proceedings, Deutsche Post's conduct would constitute predatory pricing which infringes the prohibition on abuse in Article 82 of the EC Treaty. Deutsche Post's discount agreements would also constitute fidelity rebates incompatible with Article 82.

Parcel services are outside the postal monopoly in Germany. Private service providers such as UPS, Deutsche Paketdienst or German Parcel have been providing commercial parcel services, mainly "business-to-business" or "B-to-B" services, since 1976. But none of the competitors who have been successful in the B-to-B sector have been able to carry their success over into mail-order parcel services.

In February of this year, while the investigation into the mail-order sector continued, the German Association of Postal Service Users ("DVPT") lodged a complaint against what it alleged was an excessive level of postage for the letters service which does form part of Deutsche Post's monopoly. The association argued that postage for standard letters bore no reasonable relation to the service actually provided. The Commission made enquiries, and requested further information from Deutsche Post. From a detailed comparison, which also took account of quality of service and population density, it appeared that German customers were paying by far the highest postage in Europe.

## The next steps

Deutsche Post may produce evidence of its own, and may ask for a hearing at which it can present its defence orally. The Commission will then decide whether it should prohibit the conduct at issue. The Commission also has power to

impose fines for infringement of the EU competition rules; the level of the fine depends on the gravity and the duration of the infringement.

## Other proceedings against Deutsche Post

In July 1999 the Commission initiated proceedings for unlawful state aid. Those proceedings are concerned with cross-subsidisation of a number of domestic and foreign company acquisitions by Deutsche Post using revenue from the letters monopoly, and the use of revenue from the letters service to offset losses on the parcel service. The decision in the state aid case will have to take account of the outcome of the enquiries in the proceedings now being initiated for abuse of a dominant position.

In May of this year, following a number of complaints, the Commission initiated separate proceedings for abuse of Deutsche Post's dominant position, on the ground that Deutsche Post had disturbed international mail traffic. The Commission accused Deutsche Post of infringing the competition rules of the European Union by frequently and systematically intercepting incoming cross-border mail, imposing surcharges and delaying delivery. The proceedings in that case have no direct implications for the other cases referred to here.

Mail-order parcel services are also known as "business to private" or "B-to-P" services. The carrier may collect sorted and stamped parcels from the customer, or the customer may deliver the sorted and stamped parcels to a freight centre. Under special agreements Deutsche Post may compensate for the cost of the preparatory steps involved. B-to-P services are distinguished from "business-to-business" or "B-to-B" services. B-to-B services consist exclusively of deliveries between business premises, mainly in industrial areas. There is no need here for the relatively costly process of delivery to private customers.

Deutsche Post still offers the traditional over-the-counter parcel service. This is known as the "private-to-private" or "P-to-P" service. These parcels are accepted at post office counters at standard rates. There is no collection from the customer's own premises. Nor are there any special rates, as Deutsche Post itself sorts and stamps the parcel handed in at the counter and delivers it to the private addressee. ■

### The CNSD Case

The Commission has decided to send Italy a reasoned opinion for failure to comply with the competition rules in respect of the remuneration of customs agents despite a Court of Justice judgment. The case goes back to 1993 and the Italian Government recently expressed its intention of adapting its legislation so that customs agents would be free to set their own remuneration. Nevertheless, by sending a reasoned opinion the Commission wishes to ensure that the process will in fact be completed. Source: Commission Statement IP/00/918, dated 8 August 2000.