REBATES (PARCEL SERVICES): THE DEUTSCHE POST CASE

Subject: Rebates

Industry: Parcel services

Parties: Deutsche Post AG

Source: Commission Statement IP/00/1108 dated 4 October 2000

(Note. Our last issue contained particulars of the Statement of Objections by the Commission, addressed to the German Post Office. The Commission has now taken the unusual course of adding to its Statement of Objections because of further evidence received in the last few weeks. The case against the German Post Office is therefore on the face of it more substantial than before. The Post Office now has an opportunity to respond.)

In the light of new evidence concerning Deutsche Post AG' s contracts with its major mail order customers, the Commission has widened the scope of its formal proceedings launched on 8 August 2000 against the German postal operator. The Commission's examination of these contracts has revealed that they contain a combination of fidelity and target rebates. According to these rebate schemes large mail-order customers are granted discounts on the double condition of them sending all their parcels and an annual minimum volume through Deutsche Post AG. Deutsche Post's rebate scheme means that no private provider of parcel services to mail-order firms has been able to achieve any firm foothold in Germany. A supplementary statement of the Commission's objections has been sent to Deutsche Post.

An examination of Deutsche Post's contracts revealed that the operator, since 1974, had concluded contracts making discounts conditional on the customer shipping all his parcels through Deutsche Post.

The investigation has also revealed that, as of November 1997, Deutsche Post concluded a new series of parcel delivery contracts which contained a scheme of combined fidelity and annual target rebates. This confirms the Commission's initial finding that large mail-order customers secure the highest rates of discount only if they sent their entire parcel business and at least the agreed upon target volume through Deutsche Post.

Schemes under which a customer has to purchase all or a large proportion of his requirements from a dominant supplier are an abuse within the meaning of Article 82 of the Treaty as their aim is, by granting financial advantages, to prevent customers from obtaining their supplies from competing suppliers. Furthermore, a system based on annual targets puts strong pressure on the customer to obtain his supplies from the same supplier because of the risk of

losing the discount if the target is not attained at the end of the year. Annual target rebates are also contrary to Article 82 of the Treaty because they prevent customers from being able to select their supplier freely at any time or to change supplier without suffering appreciable economic damage.

The next steps

Formal proceedings against Deutsche Post AG for the infringement of the EC Treaty competition rules began with an initial statement of objections sent on 8 August 2000. The statement of objections gives a detailed account of the allegations made and explains why the Commission believes that Deutsche Post has infringed Article 82.

Deutsche Post's rebate schemes. which have came to light in the meantime, necessitate a widening of the initial proceedings. In order to grant Deutsche Post the right to defend itself, the Commission has issued the supplementary statement of objections. After having received Deutsche Post's defence on the initial and supplementary statements of objections, the Commission will decide whether it should prohibit the conduct at issue and, if so, whether to impose fines for infringement of the EC competition rules.

As a reminder of the terms used in the parcel business, 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 WPP / Y&R Case

The Commission has cleared the proposed acquisition of Young& Rubicam by WPP. The companies' merger will not create a dominant position in the markets for marketing communication services and media buying. Some of WPP's leading agencies include J. Walter Thompson, Ogilvy & Mather, Conquest, MindShare and Research International. Young & Rubicam's primary agencies include Y&R Advertising, The Media Edge, KnowledgeBase Marketing and Burson-Marsteller. Source: Commission Statement IP/00/943, dated 25 August 2000.