REBATES (POSTAL SERVICES): THE BELGIAN POST OFFICE CASE

Subject: Abuse of dominant position
Rebates
Monopoly
Tying

Industry: Postal services
(Some implications for most industries)

Parties: La Poste (Belgium)
Hays Management Services SA (complainant)

Source: Commission Statement IP/01/791, dated 6 June 2001

(Note. If the complainant in this case is correct, the Belgian Post Office is fighting a rearguard action, before the threatened liberalization of postal services takes place in the next two or three years, to drive out competitors while it still enjoys a statutory monopoly. The main weapon it is using is the special rebate, never popular with the Commission, combined with a certain pressure on customers to sign up for an additional service. In the light of Article 82(d) of the EC Treaty, it will be interesting to see whether the Post Office argues that the supplementary obligations which it is seeking to impose do "have a connection with the original contracts".)

Commission's Statement of Objections

The Commission has addressed a Statement of Objections to the incumbent Belgian postal operator, La Poste. According to the Commission's preliminary investigation, La Poste granted rebates on its traditional mail service - where it has a statutory monopoly - to customers who have agreed in addition to subscribe to a new business mail service which it launched at the beginning of 2000. This new service competes with the document exchange service offered by the complainant in the case, Hays Management Services SA. Due to the attractive rebates offered by La Poste with respect to letter mail in the monopoly, many clients opted for the business mail service provided by La Poste and abandoned Hays. If the current trend is not reversed, Hays expects to be forced out of the Belgian market by the end of the year 2001.

Business mail services offer a series of features complying with the special needs of business customers, such as a special delivery before business hours and a special pick-up after business hours. These characteristics are limited to the mail items they exchange among themselves as part of their professional activities. As opposed to the general letter mail service that is protected by the postal monopoly, business mail services are not destined to the public at large but to other subscribers of the service. These subscribers form a so-called closed user group.

According to the Commission, if the progressive liberalisation of postal services is to become a success, incumbent operators enjoying a statutory monopoly must not be allowed to extend their dominance to new services by abusing their unique market position, in this case, the use of discounts in the monopoly area by La Poste as a means to attract clients to other services endangers the viability of competition in those areas which are open to alternative operators.

The formal complaint

On 7 April 2000, Hays lodged a complaint with the Commission against La Poste. Since 1982, Hays has been the only alternative provider of a business letter mail infrastructure in Belgium (the document exchange or DX service). Hays is the Belgian subsidiary of Hays plc., a United Kingdom based provider of express courier, documents exchange and parcel delivery services. Documents can also be sent from Belgium to Hays' document exchanges located in the United Kingdom, Ireland and France. In its complaint, Hays alleges that La Poste, anticipating a further liberalisation of postal services in Belgium, has now embarked on a plan of driving Hays out of the Belgian market. In this respect, Hays alleges that La Poste offers a new business letter mail service for insurance companies and insurance brokers, which is closely modelled on the existing Hays DX service. In order to induce Hays' customers to subscribe to this service, La Poste allegedly offers a substantial rebate on the general letter mail which is protected by its statutory monopoly to all subscribers of its new business mail service.

The Commision's investigation has revealed that the new business mail service of La Poste and the Hays DX service form part of the same relevant market and compete directly with each other. They are both business mail services supplied to a closed user group comprising, in the case at issue, insurance companies and insurance brokers in Belgium.

During the course of the investigation, the following facts emerged. After Hays' customers in the insurance sector indicated that they were not interested in the new business mail service offered by La Poste, within days, the latter unilaterally terminated the preferential tariffs that these customers enjoyed previously when sending their general letter mail. Second, in the ensuing negotiations launched by the insurance companies in order to regain the preferential tariff, La Poste made it clear that the preferential tariff was linked to a subscription to the new business mail service. Third, in their negotiations with the insurance brokers, La Poste also stated that any tariff preference for the general letter mail protected by the monopoly was linked to a subscription to the new business mail service.

The policy of La Poste described above makes the granting of a preferential tariff on the general letter mail product covered by the statutory monopoly subject to the acceptance by the insurance companies and brokers of a supplementary contract covering the new business mail service. Such a policy contravenes Article 82(d) of the EC Treaty, which prohibits the tying of two distinct services. ■