STATE AIDS (POSTAL SERVICES): THE UFEX CASE

Subject: State aids
Monopolies
Annulment (of Commission Decision)
Complaints

Industry: Postal services

Parties: Union Francaise de l'Express (UFEX)
DHL International
Federal Express
CRIE
(SFMI-Chronopost)
Commission

Source: Court of Justice Press Release 91/00 of 14 December 2000, referring to the Judgment of the Court of First Instance in Case T-613/97 (*UFEX and Others v Commission*)

(Note. This case is more important than it seems; and it is unfortunate that the Court has not yet made available an English language version of its judgment. Unless we produce our own version of the judgment, we shall have to be content for the time being with the Court's press release. Meanwhile, it is necessary to draw a distinction between two connected but distinct lines of litigation: the first being concerned with the accusation that La Poste abused its dominant position and the second with the question of state aids. The first of these issues was the subject of the case referred to in the Masterfoods judgment, paragraph 46, elsewhere in this issue. The Court of Justice overruled the Court of First Instance on that issue and upheld part of the complainants' plea. The present case is concerned primarily with the state aids issue but covers much the same ground, particularly as regards the Commission's assessment of "logistical and commercial assistance" afforded by La Poste to its subsidiary.)

According to the Court of First Instance the Commission should have checked that La Poste had not used its monopoly position on the ordinary postal service market to favour its subsidiary SFMI-Chronopost, enabling it to obtain services for less than their market value

By decision of 1 October 1997, the Commission found that logistical and commercial assistance provided by La Poste to its subsidiary SFMI-Chronopost did not constitute State aid. According to the Commission's method of calculation, the subsidiary did not derive any financial benefit from that assistance.

The Union Française de l'Express (UFEX), DHL International, Federal Express International and CRIE contested that decision before the Court of First Instance.

Those undertakings, all of which are in competition with SFMI Chronopost, submitted primarily that the assistance fell within the definition of State aid, maintaining that La Poste's commercial relations with its subsidiary amounted to a form of aid contrary to Community competition law. They argued that without any good reason the Commission omitted to take normal market conditions into account when examining La Poste's return on the assistance provided. They also criticised the Commission for refusing to regard as State aid certain other benefits enjoyed by SFMI-Chronopost (such as exemption from stamp duty, privileged access to Radio-France, and preferential customs clearance procedures).
The Court of First Instance pointed out, first, that in order to assess whether the measures at issue may constitute State aid, the situation must be examined from the point of view of the recipient undertaking. This presupposes an economic analysis which takes into account all the factors which an undertaking supplying services, operating in normal market conditions, ought to have taken into consideration when setting a price on services rendered.

The economic analysis undertaken by the Commission failed to demonstrate that the transaction in question was comparable to a transaction between undertakings operating in normal market conditions.

Accordingly, the Court criticised the Commission for merely verifying that internal prices for the services exchanged between parent company and subsidiary were calculated on the basis of full costs. It should have examined whether those full costs genuinely reflected the elements which go to make up the price paid by a subsidiary to its parent company in normal market conditions.

The Court observed that La Poste might, by virtue of its position as a public undertaking engaged in provision of a monopoly (reserved sector) service, have been able to provide some of the logistical and commercial assistance to its subsidiary at a cost lower than would have been charged by a company operating in normal market conditions.

By ruling out the existence of State aid without first checking those points, the Commission had based its decision on an incorrect interpretation of the concept of State aid. The Court therefore annulled the Commission decision in that respect. ■

SmithKline Beecham / Block Drug

The Commission has granted regulatory clearance to the proposed acquisition by UK-based SmithKline Beecham of Block Drug, which operates as Stafford-Miller in many countries outside the US. The companies' activities overlap in a number of product areas within the health and oral care sectors including, within oral care, toothpaste, toothbrushes, and cosmetic mouthwashes, and, within health care, products for treating mouth infection, acidity/heartburn, allergies, and inflammatory bowel disease. But the Commission's review showed that sufficient competition would remain in all the markets concerned. (Source: Commission Statement IP/01/34 dated 11 January, 2001.)