STATE AIDS (POSTAL SERVICES): THE BRITISH POST OFFICE CASE

Subject: State aids

Industry: Postal services; associated counter services

Parties: Post Office Ltd (a 100% subsidiary of "Consignia plc")

Source: Commission Statement IP/02/1328, dated 18 September 2002

(Note. In restructuring the British Post Office system, the United Kingdom has had two major problems and two major legal advantages, from the point of view of the rules on competition. The problems are, first, the combination of postal services and social services; the second, the largely uneconomic, but socially important, role played by sub-post offices, most of them combined with small general stores. The restructuring clearly calls for some government help. Here the advantages are, first, that recent Court rulings on the equivalence between public financing and private financing may justify what could otherwise amount to a state aid; and, second, that an overwhelming proportion of the transactions effected over post office counters give the post offices the status of "public undertakings entrusted with public service obligations" – see the last sentence.)

The Commission has decided not to raise objections under the European Community's rules on competition, including the state aid rules, to the measures notified by the UK Government under the heading "Reinvention of the urban postal counter network". In the Commission's view the Government resources to be dedicated to the project will not exceed the net additional costs of the related public service.

The "reinvention of the urban postal counter network" is aimed at restoring the urban post office network to sustainability by reducing its size while both keeping to the newly redefined urban counter cover obligation (95% of urban residents must live within a mile of a post office) and optimising counter location. The proposed programme, which has still to be approved by the UK Parliament, comprises two measures financed by the State through a refund to the postal counter network, Post Office Ltd (POL), of the related expenses. The first refund is based on the payment of a termination indemnity by POL for investment loss to some 3,000 "sub-postmasters" - the agents who run mainly on an individual basis 17,000 out of 17,600 post office counters - whose counters will close (£180m maximum). The second refund is based on an investment grant paid also by POL to those sub-postmasters whose counters are expected to experience a surge in business as a result of the other counter closures so that the appropriate investments are made to prevent any discontinuity in public service delivery throughout the transfer period (£30m maximum).

POL, a 100% subsidiary of Government-owned "Consignia plc" (the oddly named UK Post Office), is the largest retailer in Europe by number of outlets. It

acts as a main interface between Government and citizens while providing over-the-counter access. POL's services are used disproportionately by those in the lower socio-economic groups who are not particularly well catered for by retailers and banks, especially the aged and those living on social security. Over 80% of POL's turnover is attributable to public services (services of general economic interest and universal postal services). The losses of POL, which is essentially a public service network, are caused to a major extent by the obligation to provide a country-wide network leading to the maintenance of uneconomic counters. The postmasters' severance indemnities, which are aimed at making the urban network sustainable, represent an additional cost attributable to the universal counter cover obligation. Since the actual severance indemnities payments to sub-postmasters will be exactly refunded to POL within the agreed ceilings and since "Consignia's" postal activities are not making any surplus monopoly profit out of the reserved area, as shown by the separate postal service accounts, there is no risk of over-compensation of the specific additional costs incurred by POL. As a matter of fact, POL's losses are threatening the viability of "Consignia" as a whole and the very delivery or the universal postal service.

Similarly, the investment grants awarded to sub-postmasters will be refunded to POL on the basis of the payments actually effected. Without any Government intervention, there is a genuine risk, in the Commission's opinion, that the remaining sub-postmasters do not invest in what is necessary to absorb the extra flow of business, essentially of a public nature, resulting from the counter closures, thus causing a discontinuity in the delivery of a quality public service.

The restrictive number of items qualifying for grants to sub-postmasters are specifically aimed at preventing public service disruption and any loss in delivery quality over the transfer period. Taking into account the modest size of the investment grant which has, in addition, to be matched by the sub-postmasters involved, the Commission is satisfied that the maximum compensation for the urban counter up-grade is not likely to overcompensate the additional costs of ensuring public service continuity. In the unlikely case where an over-compensation would occur, the United Kingdom Government has committed itself to recovering the excess compensation within reasonable delays on the basis of a separation of accounts applying the principles of the Transparency Directive (2000). This undertaking has also enabled the Commission to deal with the notification without prejudice to subsequent notifications.

As the compensation which will be paid to POL under the two measures is likely not to exceed the net cost of ensuring the continuity of the public service and as the mechanisms will be put in place to ensure that, should any over-compensation occur, it will be detected through POL's separation of accounts and recovered within reasonable delays, the Commission has concluded, in the light of the recent Court jurisprudence, that the notified measures do not constitute state aids. Moreover, even if the measures were considered to be state aids, they would be compatible with the Treaty's rules on undertakings entrusted with public service obligations (Article 86(2). ■