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Definition of the Product Market

Despite its specialised character, a recently reported case does in fact raise a point of general principle. Some weeks ago the Commission expressed its concern that, by setting up a joint venture *providing information technology solutions to the problems of port terminal operators*, an established firm in the field of information technology and a new firm in the same field would be in a position to dominate the market. The narrower the market definition, the easier it is to show the risk of dominance. Moreover, the Commission had to take into account the fact that both the IT firms sharing responsibility for the joint venture were subsidiaries of companies "active in container terminal services and intermodal transport"; the in-depth investigation was therefore fully justified.

In the event, the proposal was approved. The Commission authorised the creation by Maersk Data (USA) Inc and Eurogate IT Services GmbH (Germany) of a joint venture called Global Transport Solutions LLC. The investigation had shown that the proposed transaction did not give rise to any competition concerns, since there were several other established competitors in the market. Potential customers of GTS would also be competitors in the downstream market for terminal operation; it was therefore likely that they would prefer an independent supplier. Finally, potential clients had produced, and would also in the future be able to produce, the required software in-house or to collaborate with other software producers to satisfy their requirements. This was a happy outcome. However, if the market had been defined in some other way (perhaps, as providing information technology solutions to commercial firms, or providing consultancy services to port terminal operators), the competition concerns might not have arisen in the first place.

Access to facilities by third parties

Another point of principle, raised both in the report in this issue on the gas cases (page 109) and in a recent statement by the Commission, is that of access to networks and other facilities. In the gas cases, the network was the gas grid. In the other case, concerning "public postal operators" and often referred to as the REIMS II case, the parties to the Agreement for the Remuneration of Mandatory Deliveries of Cross-Border Mails will be required to give the same treatment to third parties as to themselves. The agreement governs the remuneration that public postal operators pay each other for the delivery of incoming cross-border mail. The previous agreement had been exempted and appeared to work well; but the exemption has expired. The Commission intends to exempt the follow-up agreement from the anti-trust rules for another limited period of time, but is also intent on fostering competition in the newly opened market for outgoing cross-border mail. The decision exempting the agreement from the antitrust rules will therefore require the REIMS II parties to deliver mail for third party operators according to the same terminal dues they charge among themselves. ■