

# Case T-53/01 R

Poste Italiane SpA

v

Commission of the European Communities

(Procedure for interim relief — Article 86 EC in conjunction with Article 82 EC — Article 86(2) EC — Postal services — Urgency — Balancing the interests)

Order of the President of the Court of First Instance, 28 May 2001 . . . . II-1482

## Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions for granting — Prima facie case — Urgency — Cumulative requirements — Balancing of all the interests at stake — Provisional nature of the measure*  
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. *Procedure — Intervention — Persons concerned — Dispute concerning the conditions for implementing the provisions of Articles 86 EC and 82 EC in the area of postal services — Application for leave to intervene lodged by an association of delivery agencies authorised to provide non-reserved postal services — Whether admissible (Arts 82 EC and 86 EC; EC Statute of the Court of Justice, Art. 37(2))*
3. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Financial damage — Application lodged by the provider of a universal service, entrusted with a task of general economic interest (Arts 86(2) EC and 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))*
4. *Applications for interim measures — Suspension of operation of a measure — Suspension of operation of a Commission decision concerning proceedings pursuant to Article 86 EC — Conditions for granting — Balancing of all the interests at stake (Arts 86 EC and 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))*

1. Article 104(2) of the Rules of Procedure of the Court of First Instance provides that an application for interim relief is to specify the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim relief applied for. Those conditions are cumulative, so that an application for interim relief must be dismissed if any one of them is absent. Where appropriate, the judge hearing the application for interim relief also weighs up the interests involved. The measure requested must further be provisional in the sense that it must not prejudge the points of law or fact in issue or neutralise in advance the effects of the decision subsequently to be given in the main action.
2. Under the second paragraph of Article 37 of the EC Statute of the Court of Justice, applicable to the Court of First Instance by virtue of the first paragraph of Article 46 of the Statute, the right to intervene is subject to the requirement of establishing an interest in the outcome of the case.

Representative associations whose object is to protect their members in cases raising questions of principle liable to affect those members are allowed to intervene.

In a case raising matters of principle relating to the conditions for implementing the provisions of Articles 86 EC and 82 EC in the area of new postal services with a guaranteed day or time-certain delivery in Italy and, in parti-

(see paras 43-44)

cular, to the extent of that area which may be reserved by the operation of those provisions, an association of delivery agencies authorised to provide non-reserved postal services can establish such an interest.

(see paras 46, 51-58)

3. In the context of an examination of an application for suspension of operation of a measure by the court hearing that application for interim relief, damage of a purely pecuniary nature cannot, save in exceptional circumstances, be regarded as irreparable or even as reparable with difficulty, since it may be the subject of subsequent pecuniary compensation.

An application for suspension of operation of a measure would be justified if it appeared that, if the suspension were not granted, the applicant would be in a situation which might jeopardise its very existence.

Where an application is brought by a provider of a universal service, entrusted with a task of general economic interest within the meaning of Article 86(2) EC, performance of which is essential, the measure

requested would also be justified if it was apparent that, if the measure were not granted, the provider would be prevented from carrying out successfully the task entrusted to it until judgment were given on the merits of the main application. Such proof would be furnished if it were shown, in the light of the financial conditions in which the task of general economic interest had been performed successfully up to that point, that the exclusive right concerned is absolutely necessary to the performance of that task by the holder of the right.

(see paras 119-121)

4. In the context of an application for suspension of operation of a Commission decision concerning proceedings pursuant to Article 86 EC it is for the court hearing the application to balance on the one hand, the applicant's interest in obtaining the interim relief requested and, on the other, the public interest in the implementation of the Commission's decision adopted under Article 86(3) EC, the interests of the Member State to which that measure is addressed and the interests of third parties who would be directly affected by a possible suspension of the contested decision.

(see para. 130)