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EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

## Press and Information

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Judgment of the Court of First Instance in Case T-388/03

*Deutsche Post AG and DHL International v Commission*

### **THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION DECISION APPROVING A CAPITAL INJECTION OF EUR 297.5 MILLION FOR BELGIAN POSTAL OPERATOR, LA POSTE**

*The assessment of whether this measure was compatible with the common market presented serious difficulties requiring the initiation of the detailed investigation procedure which would have permitted Deutsche Post and DHL International to submit their observations*

La Poste SA is the public undertaking responsible for the universal postal service in Belgium and, in 2003, was wholly owned by the Belgian State. Its public service duties, the charging system applicable in respect of those duties, the rules of conduct with regard to users and the subsidies are detailed in a management contract with the State. The management contract also determines the rules for compensating the additional net cost of services of general economic interest ('SGEIs'). In 2003, La Poste had an 18% market share in the express parcels sector. Deutsche Post Group (Deutsche Post AG and its Belgian subsidiary DHL International) held a 35% to 45% share of that market.

By letter of 3 December 2002, Belgium notified the Commission of a proposal to increase La Poste's capital by EUR 297.5 million. Between December 2002 and April 2003, three meetings took place between the Commission and the Belgian authorities and they exchanged a number of letters. Deutsche Post and DHL International learned of the existence of an examination procedure in July 2003 and submitted to the Commission a request for information on the state of the procedure with a view to possibly participating in it.

On 23 July 2003, the Commission decided to raise no objections to the plan to increase La Poste's capital. The Commission found that, as the amount of the increase in capital notified was lower than the undercompensation of net additional costs of SGEIs over the period 1992-2002, that increase in capital did not, in itself, constitute State aid. The Commission also satisfied itself that, since its transformation into an autonomous public undertaking, La Poste had not benefited from measures liable to be classified as State aid incompatible with the common market.

Taking the view that the Commission should have initiated the formal examination procedure, Deutsche Post and DHL International brought proceedings for the annulment of the decision not to raise objections.

In today's judgment, the Court of First Instance recalls that an action brought by an undertaking competing with the beneficiary of State aid may, under certain conditions, be admissible even where that competitor's position on the market is not substantially affected. Deutsche Post and DHL International, as direct competitors of La Poste, were unable to present their observations on the measure at issue unless the Commission initiated the formal investigation. Consequently, the action by which those undertakings contested the Commission's decision to rule on the measures at issue without initiating the formal investigation is admissible.

Although it is not for the Court to rule at this stage of the Commission's procedure for examination of aid on whether aid exists or whether it is compatible with the common market, the Court must, however, take into account all the evidence enabling it to verify whether the Commission experienced serious difficulties during the preliminary examination.

If the preliminary examination presents serious difficulties, the Commission is required to initiate the formal investigation procedure and has no discretion in this regard. The Court states that if the examination is insufficient or incomplete, this constitutes evidence of serious difficulties.

The Court finds evidence of the existence of serious difficulties in the length and the circumstances of the preliminary examination procedure. It notes, in particular, that the seven-month period between notification of the aid proposal and adoption of the decision by the Commission manifestly exceeded the two-month period laid down for that procedure by Community law. Moreover, the Commission, whose investigation was very wide ranging, recognised the complexity of the case and requested additional information on three occasions, despite the three meetings organised with the Belgian authorities.

Concerning the insufficient and incomplete nature of the examination, the Court finds that the Commission did not have information at its disposal which would have enabled it to rule on the classification of one of the prior measures in favour of La Poste, namely the transfer of properties by the Belgian State at no cost. In addition, the Commission did not carry out an examination of the cost of the services of general interest provided by La Poste compared with the costs which a typical undertaking would have borne, in accordance with the *Altmark* judgment<sup>1</sup>, an appraisal which might have enabled it to find that the measures examined did not constitute State aid.

The Court concludes that there exists a body of objective and consistent evidence – deriving from the excessive length of the preliminary examination procedure, from the documents which reveal the scope and complexity of the examination to be carried out and from the partially incomplete and insufficient content of the contested decision – which shows that the Commission adopted the decision not to raise objections in spite of the existence of serious difficulties. Consequently, the Court annuls the decision.

**REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.**

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<sup>1</sup> Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 93 (see also PR 64/03).

*Unofficial document for media use, not binding on the Court of First Instance.*

*Languages available: DE EL EN FR IT NL*

*The full text of the judgment may be found on the Court's internet site  
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-388/03>  
It can usually be consulted after midday (CET) on the day judgment is delivered.*

*For further information, please contact Christopher Fretwell  
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*