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Press and Information

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Advocate General's Opinion in Case C-357/07

*TNT Post UK Ltd v The Commissioners of Her Majesty's Revenue & Customs*

**IN THE OPINION OF ADVOCATE GENERAL KOKOTT, THE POSTAL SERVICE OF  
THE ROYAL MAIL IN THE UNITED KINGDOM IS, IN PRINCIPLE, EXEMPTED  
FROM VALUE ADDED TAX**

*As the provider of a universal service which is defined and controlled in the public interest, the Royal Mail is liable to pay value added tax only where it is providing services under individually negotiated conditions*

The Opinion delivered today addresses the question of what conditions must apply in order for postal service providers to be exempted from value added tax. This question arises following an objection made by TNT Post UK Limited, which takes the view that the postal services provided by the Royal Mail should not be exempted from value added tax. Under the Sixth VAT Directive<sup>1</sup>, such an exemption is available in respect of 'public postal services'. In the fully-liberalised market of the United Kingdom, a public postal service no longer exists.

In her Opinion, Advocate General Juliane Kokott emphasises that it would be inconsistent with the objective of the exemption from VAT for only State providers to be exempted or no longer to apply the exemption at all where a State provider no longer exists. The objective of not raising the price of postal services, whose supply at a reasonable price as part of the public service is in the general interest, is also pursued in the liberalised market. Accordingly, the Postal Directive<sup>2</sup> provides that, even where there is no State postal monopoly, users are to enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at affordable prices for all users. **Because the Postal Directive and the VAT Directive overlap in seeking to ensure the general provision of postal services at affordable prices, the operators of the public postal network who provide the universal service can be regarded as public postal services.**

<sup>1</sup> Sixth Council Directive 77/377/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), replaced with effect from 1 January 2007 by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

<sup>2</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14), in the version amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 (OJ 2002 L 176, p. 21).

The only universal service provider in the United Kingdom is at present the Royal Mail. It must comply with a number of conditions and in particular must ensure that all points in the territory of the United Kingdom are supplied with postal services at uniform and affordable tariffs. In providing postal services, the Royal Mail is also under a duty to maintain a sufficient network of access points (post offices and pillar boxes) for the general public, to collect postal items received there on every working day and to deliver them to every address in the United Kingdom. In so doing, the Royal Mail is subject to certain quality standards: first class letter post is, as a rule, to be delivered on the next working day.

**Nevertheless, the Advocate General takes the view that not all services provided by the Royal Mail are, of necessity, exempted from value added tax.** Rather, the exemption applies only to those services which are provided in the public interest.

Since, in transposing the Postal Directive, the Member States specified the postal services which were to be guaranteed in the public interest in the light of their own individual geographical, social and economic characteristics, they must adhere to the approach which they have adopted in the context of postal regulation when applying the value added tax exemption.

A universal postal service does not exist merely when it is provided by means of the infrastructure of a universal service provider. It must also be made available in accordance with the standardised terms and conditions in force for the general public. Only then can it be regarded as a service which a public postal service as such provides and which benefits the public interest in a particular way. **The exemption cannot, in any event, apply where items are carried at individually negotiated prices.**

**IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.**

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

*Languages available: DE EL EN FR IT NL SV*

*The full text of the Opinion may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-357/07>*

*It can usually be consulted after midday (CET) on the day of delivery.*

*For further information, please contact Christopher Fretwell*

*Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*