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Press and Information

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Judgment of the Court of Justice in Case C-357/07

TNT Post UK Ltd v The Commissioners for Her Majesty's Revenue and Customs

THE UNIVERSAL POSTAL SERVICE PROVIDED BY THE ROYAL MAIL IS EXEMPT FROM VAT

The Royal Mail is subject to VAT where it supplies services on terms which have been individually negotiated

The Sixth VAT Directive¹ exempts ‘public postal services’ from VAT on the basis that they represent activities in the public interest. The postal directive² began the process of the gradual liberalisation of the postal services market. It lays down rules concerning the provision of a universal postal service and the criteria defining the services which may be reserved to the universal postal service providers.

In 2001, Royal Mail was designated the only universal postal service provider in the United Kingdom. Under that licence, Royal Mail is obliged to provide a universal postal service including at least one delivery to every address and one collection from every access point every working day at affordable and uniform prices. From 2006, the postal market in the United Kingdom was fully liberalised, without affecting the status and obligations of Royal Mail. The conveyance by Royal Mail of postal packets and letters is not subject to VAT.

TNT Post offers ‘upstream services’ for business mail. It collects, sorts and delivers the mail to one of Royal Mail’s regional depots. Royal Mail then provides ‘downstream services’ by distributing that mail, since TNT Post does not have a distribution service. VAT is charged on TNT’s services.

TNT brought an action before the High Court of Justice calling into question the validity of the exemption from VAT of Royal Mail’s postal services, submitting that their services are the same

¹ Sixth Council Directive 77/388/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).

² 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 as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 (OJ 2002 L 176, p. 21).

as those provided by Royal Mail but are subject to VAT. That court requested the Court of Justice for an interpretation of the expression ‘public postal services’ in the context of a fully liberalised market and the extent of the VAT exemption for those services.

The Court first notes that the expression ‘public postal services’ refers to the operators which supply the services and not the services themselves, regardless of the status of the provider of those services. Furthermore, the liberalisation of the market does not exclude the application of the exemption.

The Court points out that the exemption encourages the public interest objective of offering postal services which meet the essential needs of the population at a reduced cost. That objective matches the definition of the universal postal service found in the postal directive and that concept thus constitutes a useful point of reference for the purpose of interpreting the term ‘public postal services’.

Consequently, the Court declares that **‘public postal services’ must be regarded as operators, whether public or private, who undertake to supply postal services which meet the essential needs of the population** and therefore, in practice, to provide all or part of the universal postal service in a Member State.

In addition, the Court considers that such an interpretation is not contrary to the principle of fiscal neutrality since, on account of the obligations imposed under its licence, Royal Mail supplies postal services under a legal regime which is substantially different from that of an operator such as TNT Post. The supplies of services by those two companies are therefore not comparable.

Nevertheless, the Court states that **not all the supplies of services by the public postal services are exempt**, regardless of their intrinsic nature. Only the supply by the public postal services acting as such, in their capacity as the provider of the universal postal service, are exempt. **Supplies of services for which the terms have been individually negotiated are excluded from the exemption.**

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

Languages available: DE EN ES EL FR HU IT NL PT

*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=C-357/07>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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