COMMISSION DECISION

of 23 October 2003

relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement

Case COMP/C/38.170 — REIMS II renotification

(notified under document number C(2003) 3892)

(Only the Spanish, Danish, German, Greek, English, French, Italian, Dutch, Portuguese, Finnish and Swedish texts are authentic)

(Text with EEA relevance)

(2004/139/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by Regulation (EC) No 1/2003 [2], and in particular Articles 2, 6 and 8 thereof,

Having regard to the application for negative clearance and the notification with a view to an exemption submitted pursuant to Articles 2 and 4 of Regulation No 17 on 18 June 2001,

Having regard to the Commission decision of 14 April 2003 to initiate proceedings in this case,

Having regard to the summary of the application and notification published pursuant to Article 19(3) of Regulation No 17 [3],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer in this case [4],

Whereas:

1. INTRODUCTION

(1) On 18 June 2001, the REIMS II (remuneration of mandatory deliveries of cross-border mails) Agreement was notified to the Commission with a view to obtaining negative clearance pursuant to Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement or an exemption pursuant to Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement, upon the expiry of the exemption granted by the Commission in its decision of 15 September 1999 (the 1999 exemption decision) [5].

(2) The REIMS II Agreement is the instrument by which certain public postal operators (PPOs) [6] collectively determine terminal dues. Terminal dues are the remuneration that PPOs pay each other for the delivery of incoming cross-border mail. The receiving PPO is remunerated by the sending operator for the delivery of the latter's cross-border mail.

(3) In the Agreement, terminal dues are expressed as a percentage of domestic tariffs in the receiving country. The original REIMS II Agreement was first notified to the Commission in 1997. It received an exemption in 1999. According to the original REIMS II-Agreement, terminal dues were to increase over a transitional period until they reached a maximum of 80 % of domestic tariffs in 2001. In the 1999 Exemption Decision, however, the Commission only exempted the Agreement until the end of 2001 and limited the exemption to a level of terminal dues not higher than 70 % of domestic tariffs.

[1] OJ 13, 21.2.1962, p. 204/62.
[2] OJ L 1, 4.1.2003, p. 1.
[3] OJ C 94, 23.4.2003, p. 3.
[4] OJ C 48, 24.2.2004.

[5] Commission Decision 1999/695/EC in Case No COMP/36.748 — REIMS II) (OJ L 275, 26.10.1999, p. 17).

[6] PPOs are corporations or government departments with the primary obligation of providing universal postal services across the national territory, often at a unitary price. They are also obliged to provide international postal services passing international mail to PPOs in other countries for distribution abroad and delivering incoming international mail. In the context of the notified Agreement, PPO refers to both public and private postal operators which are subject to a universal delivery service obligation.

(4) In limiting the duration of the exemption until the end of 2001, the Commission stated that the final increase of 80 % of the domestic tariff should only take place after the Commission had had the opportunity to review the system on the basis of proper cost accounting data. The Commission also made the exemption subject to the fulfilment by the Parties of several conditions and obligations ([7]).

(5) The renotification in 2001 included a request for a renewal of the exemption. In the renotified version of the REIMS II Agreement, the 80 % level would not be reached until 1 January 2004 and two intermediate steps were introduced (73,3 % on 1 January 2002 and 76,6 % on 1 January 2003). A short summary of the notification was published in the *Official Journal of the European Communities* inviting third parties to comment ([8]). This was followed in April 2003 by the Notice pursuant to Article 19(3) of Regulation No 17 which set out the Commission's preliminary view and gave third parties an opportunity to comment on the proposed favourable approach.

2. THE PARTIES TO THE PROCEEDINGS

(6) Thirteen PPOs had signed the original REIMS II Agreement on 9 July 1997. Four more PPOs have since joined. At the date of the renotification on 18 June 2001, the 17 Parties to the REIMS II Agreement (the Parties) comprised: Österreichische Post AG, La Poste/De Post (Belgium), Post Danmark AS, Finland Post, La Poste (France), Deutsche Post, Hellenic Post ELTA, Iceland Post, An Post (Ireland), Poste Italiane, Entreprise des Postes & Télécommunications (Luxembourg), Posten Norge AS (Norway), CTT Correios de Portugal, Sociedad Estatal Correos y Telégrafos (Spain), Sweden Post, Swiss Post and Consignia plc, now Royal Mail Group plc (United Kingdom) ([9]). The REIMS II Parties are the incumbent PPOs in their respective States.

(7) The business of the Parties is the transportation and delivery of documents and goods. All of the Parties are universal service providers as defined in Article 2(13) of 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 ([10]) (the Postal Directive), as amended by Directive 2002/39/EC ([11]) (the Amending Directive). Most of the Parties have been assigned a reserved sector to ensure their ability to provide the universal service. The Parties also provide other services which are not part of the universal postal service obligation.

3. LEGAL AND FACTUAL BACKGROUND

3.1. Remuneration for the delivery of incoming international mail items (terminal dues)

3.1.1. *The UPU system*

(8) Under the Universal Postal Convention (UPU Convention) ([12]), members of the Universal Postal Union (the UPU) ([13]), involving almost all countries in the world, agree to provide domestic delivery services for incoming cross-border mail. The obligation is a mandatory part of the UPU and underpins the worldwide postal network which exists today. Originally, PPOs did not compensate each other for cross-border mail because mail flows between countries were assumed to be in balance. However, in the 1960s, large imbalances in the flows of cross-border mail occurred with the result that PPOs in some countries were incurring delivery costs for incoming mail without generating sufficient revenue from outgoing mail to cover these costs.

(9) To compensate receiving PPOs, a system of payments, called terminal dues, was established in 1969. Under this system, a receiving PPO was paid a specified rate, based on weight, for incoming mail which it was required to deliver. However, this system resulted in a divergence between cost and remuneration ([14]).

([7]) See Article 2 of the 1999 Exemption Decision, op. cit.
([8]) OJ C 195, 11.7.2001, p. 11.
([9]) Swiss Post is not a notifying party since it has not signed the notification to the Commission.
([10]) OJ L 15, 21.1.1998, p. 14.
([11]) OJ L 176, 5.7.2002, p. 21.
([12]) The Universal Postal Convention, agreed to and signed by governments at the UPU Congress, concerns the formation of a single postal territory, freedom of transit, standardisation of postage rates, the institution of arbitration proceedings and the establishment of terminal dues.
([13]) The UPU was founded in 1874 and forms the framework for postal relations between its members. The UPU is an organisation of governments and was recognised as a special agency of the United Nations in 1947.
([14]) See recital 9 of the 1999 Exemption Decision.

(10) In 1989, a recommendation of the Conférence Européenne des Administrations des Postes et Télécommunications ([15]) (CEPT), which was subsequently implemented through a number of bilateral agreements concluded between CEPT members, brought terminal dues closer to costs ([16]). They were, nevertheless, still based on an average across the participating administrations and, as is generally recognised, did not cover costs ([17]).

(11) Since 1989, the UPU system has made progress in orienting terminal dues to costs. The 1999 Beijing UPU Convention contains special terminal dues provisions applicable to exchanges between industrialised countries ([18]).

3.1.2. *The Postal Directive*

(12) The main regulatory framework with regard to cross-border mail and terminal dues, as far as Community law is concerned, is the Postal Directive.

(13) The Postal Directive contains important provisions with regard to terminal dues and liberalisation of the outgoing cross-border mail market.

3.1.2.1. Terminal dues

(14) With regard to terminal dues, recital 27 of the Postal Directive states that

'the remuneration for the provision of the intra-Community cross-border mail service, without prejudice to the minimum set of obligations derived from Universal Postal Union acts, should be geared to cover the costs of delivery incurred by the universal service provider in the country of destination'.

(15) The first, second and third indents of Article 13(1) of the Postal Directive provide that:

'— terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,

— levels of remuneration shall be related to the quality of service achieved,

— terminal dues shall be transparent and non-discriminatory'.

3.1.2.2. Liberalisation

(16) To date, only two Member States (Sweden and Finland) have abolished their postal monopolies. PPOs in all other Member States benefit from a reserved area by virtue of national law in which they have the exclusive right to provide a range of postal services. The boundaries within which Member States are entitled to reserve specified postal services are indicated in the Postal Directive.

(17) Article 7 of the Postal Directive defines the degree of liberalisation for both incoming and outgoing cross-border mail.

(18) As far as domestic mail and the delivery of incoming cross-border mail are concerned the first subparagraph of Article 7(1) of the Postal Directive provides as follows:

'To the extent necessary to ensure the maintenance of universal service, Member States may continue to reserve services to universal service provider(s). Those services shall be limited to the clearance, sorting, transport and delivery of items of domestic correspondence and incoming cross-border correspondence, whether by accelerated delivery or not, within both of the following weight and price limits. The weight limit shall be 100 grams from 1 January 2003 and 50 grams from 1 January 2006. These weight limits shall not apply as from 1 January 2003 if the price is equal to, or more than, three times the public tariff for an item of correspondence in the first weight step of the fastest category, and, as from 1 January 2006, if the price is equal to, or more than, two and a half times this tariff'.

(19) The conveyance of outgoing cross-border mail, however, is not included in the list of services which Member States may continue to reserve pursuant to Article 7 of the Postal Directive. Therefore that service is completely liberalised as of 1 January 2003. However, in order to safeguard the provision of the universal postal service, the fourth subparagraph of Article 7(1) of the Postal Directive provides that:

([15]) The CEPT was a restricted subgroup of the UPU which, up to 1992, brought together both the regulators and the operators of the European postal and telecommunication authorities. In September 1992, a major reform of the CEPT was undertaken and the CEPT adopted a new constitution which reserved membership to regulatory authorities. The operators created their own organisation, PostEurope.

([16]) The CEPT system took account of total weight and number of items with payment based on a rate per item and a rate per kilogram. It recognised that the composition of mail in one direction may well differ from the composition in the other.

([17]) See, for example, recital 10 of the 1999 Exemption Decision. See also the judgment of the Court of Justice in Joined Cases C-147/97 and C-148/97, Deutsche Post AG v GZS Gesellschaft für Zahlungssysteme mbH (GZS) and Deutsche Post AG v Citicorp Kartenservice GmbH, [2000] ECR 1-825, paragraph 54.

([18]) Article 48(2) of the 1999 UPU Convention fixes a ceiling of 60 % of the charge for a 20 gram letter in the domestic service.

'To the extent necessary to ensure the provision of universal service, for example when certain sectors of postal activity have already been liberalised or because of the specific characteristics particular to the postal services in a Member State, outgoing cross-border mail may continue to be reserved within the same weight and price limits'.

(20) The concrete consequence of that new regime, which applies from 1 January 2003, is that the conveyance of outgoing cross-border mail is open to competition unless the exception provided for in the fourth subparagraph of Article 7(1) applies.

4. THE REIMS II AGREEMENT

4.1. The exemption of the original REIMS II Agreement

(21) The original REIMS II Agreement ([19]) was notified to the Commission in 1997. On that occasion, after a preliminary examination, the Commission indicated to the Parties several aspects which had to be changed, adapted or clarified before it could consider adopting a positive attitude with regard to the Agreement.

(22) The Parties, in order to qualify for exemption, prepared a first amendment to the REIMS II Agreement (the first Supplementary Agreement) which entered into force on 1 October 1998.

(23) On 15 September 1999, the Commission granted an exemption pursuant to Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement until 31 December 2001. The Commission limited the increase of terminal dues to 70 % of the domestic tariffs. The Commission stated that the final increase to 80 % of the domestic tariffs should only take place after the Commission had had the opportunity to review the system on the basis of proper cost accounting data, which was not available in 1999.

4.2. Amendments to the REIMS II Agreement

(24) Since the first notification to the Commission on 31 October 1997, the REIMS II Agreement has been amended by the Parties five times by means of supplementary agreements. Some of the amendments have been agreed by those Parties at their own initiative, while others have been agreed in order to meet the competition concerns expressed by the Commission in its evaluation of the REIMS II Agreement.

(25) The first Supplementary Agreement was signed on 22 September 1998 and related primarily to the link between terminal dues and quality of service and Level 3 access.

(26) On 14 January 2000, the Parties signed the second Supplementary Agreement, the aim of which was, on the one hand, to implement the Commission's conditions set out in Article 2(1) of the 1999 Exemption Decision and, on the other hand, to take into account the accession of Swiss Post to the REIMS II Agreement.

(27) On 4 April 2000, the Parties signed the third Supplementary Agreement, the key features of which were to ensure end-to-end quality of service and to review the quality of service standards. As regards the former, the third Supplementary Agreement contemplated the inclusion of the measurement of the performance of sending PPOs with respect to outgoing mail in a future model refinement and the application of appropriate quality-of-service targets and penalties as of 2002. As regards the quality-of-service standards, the previous version of the REIMS II Agreement identified two groups of REIMS II Parties, each one with a different quality-of-service target. The third Supplementary Agreement led to a convergence of those groups to a universal standard of 93 %.

(28) On 7 June 2001, most of the Parties executed a fourth Supplementary Agreement. To date, 16 of the Parties have signed that Agreement. The main objective of the fourth Supplementary Agreement was to extend the transitional period by another three years. According the fourth Supplementary Agreement, terminal dues would reach 80 % of domestic tariffs in 2004, accordingly two years later than planned. The 80 % rate would be replaced by 73,3 % in 2002 and by 76,6 % in 2003 ([20]).

(29) In addition to extending the transitional period, the Parties also agreed on a freeze of the domestic tariffs used as a basis for the calculation of terminal dues until the end of 2004. Consequently, increases of a Party's domestic tariff after 1 September 2001 will not be taken into account in the calculation of terminal dues for 2003 and 2004 ([21]). However, decreases of domestic tariffs are to be taken into account, so that the 'freeze' effectively creates a ceiling, but allows for downward adjustments ([22]).

([19]) A brief explanation of the REIMS I Agreement and a detailed description of the REIMS II Agreement, as notified to the Commission in 1997, are set out in recitals 12 to 43 of the 1999 Exemption Decision.

([20]) In view of the discounts that they will grant until the end of 2004 (see footnote 22 below), Deutsche Post AG and Poste Italiane SpA would only reach the full 80 % level in 2005.

([21]) Paragraph 3(4) of Annex 4 to the REIMS II Agreement as amended by Article 3(3) of the fourth Supplementary Agreement.

([22]) Deutsche Post AG continues to grant the discount agreed in the third Supplementary Agreement until 31 December 2004. Poste Italiane SpA has also agreed to give a discount until that date: paragraphs 9 and 10 of Annex 4 to the REIMS II Agreement, as amended by the fourth Supplementary Agreement.

(30) The fourth Supplementary Agreement also introduced a 'geographic coverage' provision. If a Party whose domestic market is liberalised can prove that the geographical structure of incoming mail from a sending PPO has changed to such an extent that the percentage of the domestic tariff used under the REIMS II Agreement is insufficient to meet the costs incurred by the Party for the delivery of that mail, the Party can ask for a renegotiation of the terminal dues paid by that sending PPO ([23]).

(31) The REIMS II Agreement renotified to the Commission on 18 June 2001 was the consolidated version of the Agreement as amended by the first, second, third and fourth Supplementary Agreements.

(32) Finally, since its renotification to the Commission on 18 June 2001, the REIMS II Agreement has been amended again. On 24 January 2003 the Parties signed the fifth Supplementary Agreement, the purpose of which is to address the competition concerns identified by the Commission with regard to the renotified REIMS II Agreement, mainly relating to the level of terminal dues and to a low-cost alternative to terminal dues ([24]). The REIMS II Agreement which is the subject of this Decision is the REIMS II Agreement as amended by the first, second, third, fourth and fifth Supplementary Agreements.

4.3. **The renotified REIMS II Agreement**

(33) Recitals 34 to 50 contain a brief description of the contents of the REIMS II Agreement as notified by the Parties in the renotification of 18 June 2001.

4.3.1. *Membership*

(34) Membership of the REIMS II Agreement is open to public and private operators of a mandatory, universal postal service provided that they have or contract to have an obligation to provide this service to the other parties.

4.3.2. *Purpose*

(35) According to the Parties, the main aims of the REIMS II Agreement are to provide the Parties with fair compensation for the delivery of cross-border mail which reflects more closely the real costs of delivery of each Party, and to improve the quality of the cross-border mail service.

4.3.3. *Products covered*

(36) The REIMS II Agreement covers all mail items as defined in Article 8 of the UPU Convention (with the exception of 'M bags') ([25]).

4.3.4. *Terminal dues*

4.3.4.1. Principle

(37) The REIMS II Agreement links terminal dues to domestic mail tariffs in the country of destination and to the quality of service provided by the PPO that delivers the mail in that country. Under the renotified version of the REIMS II Agreement, terminal dues are to increase over a transitional period until they reach a maximum of 80 % of domestic tariffs in 2004, subject to penalties which are to accrue if the requisite quality-of-service target is not met.

4.3.4.2. Domestic tariffs serving as reference

(38) Domestic tariffs usually distinguish between different weight steps (for example, 20, 50 and 100 g for letters). According to the REIMS II Agreement, those different tariffs are converted, on the basis of a standard structure, into 'linear tariffs' for the purpose of calculating terminal dues.

4.3.4.3. Levels of terminal dues

(39) The REIMS II Agreement distinguishes between four different levels of terminal dues:

a) Level 1: Priority mail items presented in mixed bags (which may contain letters, flats and packets). Terminal dues for such items are ultimately to be 80 % of domestic tariffs excluding VAT.

b) Level 2: The delivering PPO may offer rebates on the Level 1 remuneration on the basis of work sharing/preparation of mail (for example by pre-sorting mail according to format or destination). The same discounts must be offered to all sending REIMS II PPOs when equal conditions are met.

([23]) Article 11(4) to (7) of the REIMS II Agreement, as amended by Article 2(2) of the fourth Supplementary Agreement.

([24]) See section 4.5.

([25]) Bags containing bulk mail for one addressee.

c) Level 3: All the Parties are obliged to grant each other access to the 'generally available domestic rates' (such as bulk rates for direct mail, printed matter or periodicals) in the country of delivery.

d) Non-priority mail: The terminal dues to be applied to mail designated as 'non-priority' are 10 % less than the terminal dues for Level 1 mail.

4.3.5. *Transitional period* ([26])

(40) In the renotified REIMS II Agreement terminal dues are to be increased, subject to penalties which are to accrue if the required quality-of-service target is not met, over a transitional period as follows:

a) 2002: 73,3 % of domestic tariffs;

b) 2003: 76,6 % of domestic tariffs;

c) 2004: 80 % of domestic tariffs.

4.3.6. *Quality of service/penalties system*

(41) The REIMS II Agreement has introduced a system of quality-of-service standards for Level 1 and Level 2 mail in order to improve the quality of service. The standards are defined as the percentage of incoming cross-border mail which has to be delivered within one working day after the day of arrival ('J') in the office of exchange of the receiving PPO, provided that it arrives there before the latest arrival time ([27]). For example a standard of '80 % J+1' means that 80 % of the incoming mail is to be delivered to its final destination within one working day after the day of arrival. The performance of the individual Parties is measured by means of a diagnostic system set up by the International Post Corporation (IPC) ([28]).

(42) A penalty system is applied when the agreed quality-of-service standards are not met. The level of terminal dues which would otherwise be payable is reduced by $1\frac{1}{2}$ % where the actual result amounts to between 90 % and 100 % of the target to be reached and $3\frac{1}{2}$ % where the actual result amounts to between 80 % and 90 % of the target to be reached respectively for each percentage point by which the PPO concerned fails to reach the requisite quality-of-service standard ([29]). In the worst case, if the result actually achieved by the delivering PPO amounts to no more than 80 % of the target, these penalties will thus reduce by half the terminal dues to which a PPO is entitled.

4.3.7. *Non-discrimination rule*

(43) Under the REIMS II Agreement ([30])'each Party shall apply the same rates of terminal dues to all other parties provided that the transactions are equivalent.' That means that, in principle, two REIMS II PPOs competing for outgoing cross-border mail in a given REIMS II country to another REIMS II country would bear the same costs for the delivery of this mail in the country of destination. The same rate, however, will not be available to non-REIMS II operators competing in the same market which will be obliged to pay the full domestic tariff in the country of destination, or the full international tariff in the country of origin, minus any available discount ([31]).

4.3.8. *Articles 43 and 49 of the 1999 UPU Convention*

(44) Article 43 of the 1999 UPU Convention contains provisions on the treatment of domestic mail posted abroad, known as remail. Article 49(4) concerns terminal dues for incoming bulk mail. Under the renotified REIMS II Agreement, after the end of the transitional period, Article 43 and Article 49(4) of the 1999 UPU Convention are no longer to be applied between the Parties.

([26]) The fifth Supplementary Agreement amends the transitional period and the terminal dues to be applied. See section 4.5.

([27]) The 'latest arrival time' is the latest acceptable time of touchdown, permitting delivery of airmail items the next working day.

([28]) The International Post Corporation is a company co-owned by a number of PPOs including, for Europe, all the REIMS II Parties plus the PPOs of the Netherlands, Cyprus and Norway and, outside Europe, the PPOs of the USA, Australia and Canada. The IPC provides administrative and practical services to the REIMS II Parties. The UNEX quality-of-service measurement system — which serves as the basis for the REIMS II quality targets and determines penalties — is operated by the IPC.

([29]) For example, if the quality-of-service target provides that 90 % of incoming cross-border mail must be delivered the next day, and that the actual result is that only 87 % of the mail is delivered within this time, then only 97 % of the target is reached (87 is 97 % of 90). Thus, the loss of quality is 3 %. Since this figure is within the 90 % to 100 % range, a penalty of $1\frac{1}{2}$ % for each percentage point accrues. The penalty is thus $3 \times 1\frac{1}{2}\ \% = 4\frac{1}{2}\ \%$ of terminal dues payable. This means that the delivering PPO concerned is allowed to charge only $95\frac{1}{2}$ % (100 %–$4\frac{1}{2}$ %) of the full terminal dues to which it would otherwise be entitled. In 1998 when terminal dues for Level 1 amounted to 55 % of domestic rates, the PPO would thus receive terminal dues amounting to $52\frac{1}{2}$ % of domestic rates (namely $95\frac{1}{2}$ % of 55 %).

([30]) Article 2(11) of the REIMS II Agreement.

([31]) This is the interpretation of this clause that the Parties have given in the course of the Commission's investigation.

4.3.9. *Term*

(45) The REIMS II Agreement is entered into for an indefinite period of time. Any Party may, however, withdraw from the REIMS II Agreement at any time. Such withdrawal becomes effective at the end of the first full calendar year after notice has been given. In particular circumstances, a Party may also withdraw from the REIMS II Agreement by giving six months' notice.

4.3.10. *Link between terminal dues and quality of service*

(46) The REIMS II Agreement establishes the principle that no increase in terminal dues is to take place during the transitional period if the quality of service of the Party concerned deteriorates. In order to determine whether that is the case, the quality-of-service performance in a given year is compared with the average quality-of-service performance achieved by that Party in preceding years. That rule does not apply to those PPOs for which transitional arrangements exist. It is also not to be applicable if the quality-of-service of a PPO deteriorates but still matches the relevant standard set by the REIMS II Agreement. Terminal dues may also be increased if it can be shown that a deterioration of a Party's quality of service is caused by special efforts undertaken by that Party to improve its delivery system and is only temporary in nature.

4.3.11. *Level 3 access*

(47) The Parties are bound under the REIMS II Agreement to grant Level 3 access (namely access to domestic bulk mail rates) to each other. In order to facilitate such access, the 1999 Exemption Decision imposed a condition on the Parties to relax domestic regulations for other Parties where such regulations are not justified and would in reality bar the other Parties from access to domestic bulk mail rates. Where the domestic regulations concerned have been set by the State, the Parties must use their best efforts vis-à-vis the relevant national authorities to remove them ([32]).

(48) All the tariffs and conditions relevant for Level 3 access have to be made available to all the Parties through a database managed by the IPC. The Parties have undertaken to update that database without delay when their respective tariffs and conditions change.

4.3.12. *Bilateral agreements*

(49) The REIMS II Agreement provides that the Parties are free to conclude bilateral or multilateral agreements on terminal dues between themselves in which different conditions, in particular other levels of terminal dues, may be fixed. Where a Party grants another Party, or other Parties, lower terminal dues in such an agreement, it is obliged to apply the same terminal dues to all the Parties, provided the transactions are equivalent.

4.3.13. *Late, lost and damaged mail*

(50) The Parties have introduced provisions on late, lost and damaged mail which establish a proper system for dealing with and analysing complaints.

4.4. Main market and other developments since the 1999 Exemption Decision

4.4.1. *Improvements in cross-border mail quality of service*

(51) Recital 70 of the 1999 Exemption Decision states that 'The most substantial advantage which the (REIMS II) Agreement is expected to produce consists in a substantial increase in the quality of cross-border mail services'. The information gathered by the Commission in the course of its investigation upon renotification of the REIMS II Agreement shows that, since the exemption was granted, the overall quality of cross-border mail delivery provided by the Parties has improved. For most of the Parties in 2000, 2001 and 2002 there has been a substantial increase of quality in terms of J+1 delivery of incoming cross-border mail. Those quality increases are demonstrated in the table set out in Annex I.

4.4.2. *Other important developments*

(52) The Commission's assessment of the renotified REIMS II Agreement must take into account the following developments:

a) the cost data provided by the Parties showing the costs of delivery of cross-border mail items;

([32]) See Article 2(1)(b) of the 1999 Exemption Decision which also stated that: 'In order to facilitate this access, the Parties must relax domestic conditions for other Parties where those rules are not justified and could in practice bar other Parties from access to the domestic rates or (where it is not in their power to do so) they must use their best efforts vis-à-vis the relevant national authorities to remove those rules'.

b) the implementation of the REIMS II Agreement during the period of the exemption;

c) the adoption by the European Parliament and the Council of the Amending Directive.

4.4.2.1. The Parties' cost data

(53) Further to the implementation by the Parties of the obligation imposed in the 1999 Exemption Decision to introduce transparent cost accounting systems ([33]), the Commission has obtained data showing each Party's costs for the delivery of incoming cross-border mail items.

(54) The cost data, which were not available at the time of the 1999 Exemption Decision, have permitted a more thorough evaluation by the Commission of the levels of terminal dues. The cost-to-revenue ratios ([34]) of the respective Parties are set out in the table in Annex II.

4.4.2.2. Implementation of the REIMS II Agreement

(55) Regarding Level 3 access, the Parties contractually committed themselves to relax domestic regulations for other Parties where those regulations are not justified and to use their best efforts vis-à-vis the relevant national authorities to remove them where the regulations concerned have been set by the State.

(56) The investigation carried out in the course of the current procedure has shown that, despite the amendments made to the REIMS II Agreement by the second Supplementary Agreement, Level 3 access does not function as desired by the Commission in the 1999 Exemption Decision. The reports submitted ([35]) indicate that although the Parties state that they do offer each other Level 3 access, there still are significant obstacles for accessing domestic bulk mail rates.

4.4.2.3. The Amending Directive

(57) As referred to in recital 12, on 10 June 2002 the Postal Directive was amended by the Amending Directive, with a view to further liberalisation of the European postal markets.

(58) One of the major amendments to the Postal Directive is that, as of 1 January 2003, Member States are not to include the market for outgoing cross-border mail in the reserved services ([36]) unless it is necessary to ensure the provision of the universal postal service. Accordingly, as from 1 January 2003, PPOs in principle face competition with regard to the forwarding of cross-border mail from one REIMS II country to another.

(59) That new circumstance needs to be evaluated together with the fact that the REIMS II Agreement is only open to universal service providers ([37]) and that, although nothing in the Agreement prevents them from doing so, the Commission's investigation has shown that it is unlikely that the Parties will enter into identical or similar agreements on terminal dues with third parties.

(60) As explained in detail below ([38]), the absence of access to REIMS II terminal dues for non-REIMS II parties could result in an elimination of competition within the meaning of Article 81(3)(b) of the EC Treaty. The Commission considers therefore that an exemption should not be granted in respect of the REIMS II Agreement unless non-REIMS II postal operators are granted access to REIMS II terminal dues at non-discriminatory conditions.

4.5. Amendments to the REIMS II Agreement following the renotification

(61) On 24 January 2003, following discussions with the Commission, the Parties ([39]) signed the fifth Supplementary Agreement. That Agreement amends the notified REIMS II Agreement with regard to terminal dues to be applied during the transitional period and the introduction by the Parties of the international direct mail product.

([33]) See Article 2(2)(a) of the 1999 Exemption Decision.

([34]) The cost-to-revenue ratio indicates the ratio — expressed as a percentage — between the average cost of delivering one incoming cross-border mail item and the standard tariff for the corresponding domestic mail item.

([35]) Article 2(2)(b) of the 1999 Exemption Decision obliges the Parties to provide annual reports on several issues including information on the implementation of Level 3 access.

([36]) Article 7(1) of the Postal Directive.

([37]) Article 9 of the REIMS II Agreement as notified on 18 June 2001.

([38]) See section 9.4 on elimination of competition.

([39]) The Agreement has not been signed yet by La Poste/De Post Belgium, Royal Mail UK and An Post Ireland. These Parties, however, are still signatories of the REIMS II Agreement as amended by the fourth Supplementary Agreement, any implementation of which is not covered by the exemption granted in this Decision.

4.5.1. *Level of terminal dues*

(62) The fifth Supplementary Agreement amends Annex 4 to the notified REIMS II Agreement both as regards the duration of the transitional period and the level of terminal dues to be applied. The duration of the transitional period has been extended from 31 December 2004 to 31 December 2006. The terminal dues to be applied from 1 January 2002 to the end of the transitional period have been amended as follows:

a) 73,3 % for 2002;

b) 74,5 % for 2003;

c) 75,7 % for 2004;

d) 78,5 % for 2005 and 2006.

4.5.2. *The international direct mail product (the IDM product)*

(63) As regards the introduction of a low-price alternative to terminal dues for bulk mail, Article 2 of the fifth Supplementary Agreement obliges the Parties to deliver international direct mail items forwarded by other Parties under the terms of the REIMS II IDM Agreement. Article 2 of the fifth Supplementary Agreement provides that that obligation is to enter into force six months after the Commission issues a second exemption decision for the REIMS II Agreement, although the Parties are free to provide the IDM product before that date.

(64) On 24 January 2003, the Parties ([40]) signed the separate Agreement for the Delivery of REIMS International Direct Mail (the REIMS IDM Agreement) which creates the IDM product ([41]).

(65) The core product specifications of the IDM product are the following:

a) common product specifications that obviate the need to conform with national product requirements;

b) reference to delivery of direct mail as defined in Article 2(8) of the Postal Directive;

c) a maximum weight of the item to be delivered of 2 kg;

d) a minimum volume of 500 items;

e) a best effort quality of service standard of J+5;

f) pure cross-border mail product;

g) UPU specifications for maximum and minimum size;

h) pre-sorting is not required.

(66) The remuneration for the delivery of the IDM product is calculated as the lower of the domestic tariff for comparable unsorted mail and non-priority REIMS II terminal dues minus 7 %. If there is no unsorted bulk mail rate, the sorted bulk mail rate plus a mark-up of 3 % is to be used.

4.5.3. *Other amendments*

(67) Recitals 68 and 69 set out other minor amendments introduced by the fifth Supplementary Agreement at the initiative of the Parties.

(68) First, pursuant to Article 5 of the renotified REIMS II Agreement, after the end of the transitional period, Article 25 and Article 49(4) of the 1994 UPU Convention ([42]) are no longer to be applied between the Parties. Article 5 of the REIMS II Agreement as amended by the fifth Supplementary Agreement now provides that: 'Nothing in the REIMS II Agreement shall keep a Party from applying Article 43 of the UPU Convention against another Party' ([43]).

(69) Pursuant to Article 11 of the renotified REIMS II Agreement, any withdrawal from that Agreement takes effect at the end of the first full calendar year following the notice of the withdrawal. However, Article 11 of the REIMS II Agreement, as amended by the fifth Supplementary Agreement, provides that in particular circumstances, any Party may withdraw from the REIMS II Agreement by giving not less than six months written notice to the end of a calendar month.

([40]) With the exception of Royal Mail Group plc and An Post.

([41]) International direct mail (IDM) is the name the Parties have given to this cross-border mail product.

([42]) The renotified REIMS II Agreement refers to Articles 25 and 49 of the UPU Convention signed in 1994. The fifth Supplementary Agreement refers to the UPU Convention signed in 1999. In the 1999 UPU Convention, ex-Article 25 is Article 43.

([43]) See section 4.3.8.

5. THE RELEVANT MARKETS

5.1. Product market

(70) The notified REIMS II Agreement concerns the markets for normal - as opposed to express - cross-border mail between the countries concerned, that is to say, cross-border mail exchanged between REIMS II countries. More specifically, the REIMS II Agreement covers all letter-post items as defined in Article 8 of the UPU Convention. That definition comprises items which weigh up to 2 kg. The importance of cross-border mail varies from country to country. In smaller Member States, cross-border mail generally represents a higher share of the overall mail market than in larger Member States. On average, cross-border mail has been estimated to represent well under 10 % of the overall mail market in the Community ([44]).

(71) The relevant product market may be further divided into a market for the forwarding of outgoing cross-border mail, on which PPOs and private companies collect mail from customers in the originating country for delivery in other countries, and a market for delivery of incoming cross-border mail on which PPOs (and for a very small part other postal operators) offer mail delivery services for cross-border mail to PPOs and private mail companies.

5.1.1. *Cross-border and domestic mail*

(72) From the customer's perspective the outgoing cross-border mail market is separate from that of domestic mail since demand for mail services for international destinations cannot be satisfied by services for domestic destinations.

(73) From the supplier's perspective, international transportation involves different requirements (international line-haul, delivery in foreign countries) from those of domestic transportation.

(74) Unlike domestic mail, cross-border mail involves services in at least two different countries and, normally, the engagement of at least two service providers. International mail is therefore more complex logistically than domestic mail. Outgoing cross-border mail was liberalised from 1 January 2003, while in the majority of Member States most domestic mail services, including the delivery service, are still reserved. The Commission has consistently treated outgoing cross-border mail as a product market distinct from the national market for the delivery of incoming cross-border mail ([45]).

(75) A distinction should also be made between the 'normal' cross-border mail market and cross-border express delivery services which are substantially faster than normal cross-border mail and which may provide the customer with certain options such as proof of delivery, track and trace, insurance and the possibility of altering the destination of the consignment during its journey. They are also substantially more expensive. The Commission has recognised the distinction between normal and express delivery services in previous decisions ([46]).

(76) The distinction between domestic and cross-border mail was reinforced by the changes to the Postal Directive introduced by the Amending Directive. From January 2003 outgoing cross-border mail is liberalised in all Member States where it is not necessary to maintain the monopoly in order to sustain the provision of the universal services. The new regulatory rules therefore expose PPOs to increased competition for the forwarding of cross-border mail from one Member State to another.

5.1.2. *Geographic market*

(77) The relevant geographic markets in the cross-border mail market coincide with national boundaries, as these mark the boundaries of national monopolies and the main players on each of the national markets are different. Pick-up and delivery is organised on a national basis within the countries concerned. Prices and pricing systems differ for every country, largely in relation to costs ([47]).

([44]) This figure is based on the analysis of the data on incoming and outgoing cross-border mail volumes provided by the Parties in their answers to the Commission's formal request for information of 6 August 2001.

([45]) See Commission Decision 2001/892/EC in Case COMP/C-1/36.915 — *Deutsche Post AG* — Interception of cross-border mail (OJ L 331, 15.12.2001, p. 40) (*Deutsche Post II*), recitals 84 to 87.

([46]) See for example, Commission decisions in Case No M.102, *TNT* v *Canada Post, DBP Postdienst, La Poste, PTT Post and Sweden Post*; Case IV/M.787, *PTT Post* v *TNT-GD Net*; Case No IV/M.843, *PTT Post* v *TNT/GD Express Worldwide*; Case IV/M.1168, *Deutsche Post* v *DHL*. See also recital 18 of the Postal Directive.

([47]) See the decision in *Deutsche Post II*, recitals 84 to 87.

6. STRUCTURE OF THE MARKETS

6.1. Outgoing cross-border mail

6.1.1. *Barriers to entry*

(78) According to the Parties, in order to compete in the outgoing mail market, a postal operator may require a local pick-up service and sales force in country A, access to a transport service from country A to B, and an agent in country B to put the mail in the regular mail-stream there. Any pick-up service can carry out these activities without significant additional expense. Technical barriers to entry are also low. However, if a company wishes to establish a universal collection service such as those established by the PPOs, this would require substantial investment. Moreover, postal monopolies, where still in place, provide a legal barrier to entry.

6.1.2. *Market volumes of outgoing cross-border mail between REIMS II countries*

(79) The table in Annex III gives an outline of the dimension of the market, in terms of number of items sent to or received from REIMS II countries. It also gives an idea of the structure of the markets by indicating the market share of the incumbent and its main competitors.

6.2. Incoming cross-border mail

6.2.1. *Barriers to entry*

(80) In order to compete on the incoming mail market to the extent that it is allowed under national law, a new entrant requires a distribution network. This can be prohibitively expensive if it intends to cover a whole country and starts from scratch. However, if the new entrant limits its service to delivery in one or several cities or to business mail, there will be much less of a barrier. Postal monopolies constitute a legal barrier to entry.

6.2.2. *Market volume of incoming cross-border mail between REIMS II countries*

(81) Incoming cross-border mail continues to be reserved within the price and weight limits provided for in the Amending Directive. Accordingly the structure of the market tends to be far less competitive with the incumbents having very high market shares.

(82) These differences were already present before the adoption of the Amending Directive, since outgoing cross-border mail had already been de facto or *de jure* liberalised in most REIMS II countries. The table in Annex IV sets out the incumbents' market shares and the name of their main competitors in the incoming cross-border mail markets in 2000. The table in Annex IV also shows how, already in 2000, the structure of the two markets was substantially different in many REIMS II countries.

7. THIRD-PARTY OBSERVATIONS

(83) In the Notice published pursuant to Article 19(3) of Regulation No 17 ([48]), the Commission set out details of the renotified REIMS II Agreement and indicated that it proposed to adopt a positive view.

(84) In total, 10 replies were received by the Commission to that Notice. The most important comments are summarised in recitals 85 to 92.

(85) One of the main concerns expressed by third parties concerns the lack of an effective low-cost alternative to paying terminal dues. It is argued that the conditions to be fulfilled for Level 3 access are unclear and that the IDM Agreement is not an adequate solution in that respect, as it only covers direct mail within the definition given in the Postal Directive. According to those third parties IDM also needs to be offered to third parties at non-discriminatory conditions, otherwise it will result in a serious restriction of competition.

(86) Certain third parties allege that the quality improvements registered in the cross-border mail sector are only in part a consequence of the implementation of the REIMS II Agreement. According to them, improvements in domestic mail quality have been the main driver for the improvements in the quality of service.

(87) According to one third-party it would be more efficient to have a network of bilateral agreements permitting PPOs to diversify terminal dues according to the quantity of mail sent by the counterparts and quality of service.

(88) One commentator alleges that terminal dues should not be expressed as a percentage of domestic tariffs but expressed in absolute value and queried whether the figures indicated in the Notice pursuant to Article 19(3) of Regulation No 17 indeed represent a reliable proxy for the Parties' costs.

([48]) See footnote 3.

(89) Several third parties stated that there should be quality-of-service standards for non-priority and bulk mail as well.

(90) Another third-party states that the 'geographic coverage' provision ([49]) opens the field to possible abuses in its application by the Parties. The third-party states that that provision could lead to pricing aimed at excluding new entrants.

(91) Certain third parties state that the additional costs that third parties incur for having access to REIMS II terminal dues (in particular the costs related to the system for the measurement of the quality of service) need to be set out in detail and monitored carefully by the Commission.

(92) Finally, according to the Irish postal regulator ComReg, the price-freeze provision ([50]) is inconsistent with the requirement that terminal dues be related to costs.

(93) All comments received have been carefully reviewed and to the extent that the third-party comments reflect genuine competition concerns, the Commission's reasoning on the concerns raised is set out in the relevant parts of the legal assessment.

8. ARTICLE 81(1) OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

8.1. Agreement between undertakings

(94) All the Parties to the REIMS II Agreement are engaged in economic activities and are therefore to be considered as undertakings within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. The REIMS II Agreement is thus an agreement within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. This was already established in the 1999 Exemption Decision.

8.2. Restrictions of competition

8.2.1. *Price fixing*

(95) In the 1999 Exemption Decision, the Commission considered that the REIMS II Agreement constituted a restriction of competition falling within the scope of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement because it collectively established a common level of terminal dues expressed as a percentage of the domestic tariff in the receiving country. The Commission concluded that, although the amounts in absolute terms were not fixed, the REIMS II Agreement had the effect of jointly fixing prices. By linking the price for the cross-border delivery service to the price for the domestic service, which is determined primarily by domestic considerations, the Parties eliminate or reduce their freedom to set the prices they charge for the delivery of incoming cross-border mail. In fact, the REIMS II Agreement eliminates any incentive to conclude separate agreements on a bilateral basis between the Parties, although contractually this remains possible.

(96) The Commission's investigation following the Parties' request for renewal of the exemption has not revealed any reason to deviate from the assessment made in the 1999 Exemption Decision as regards the applicability of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. Indeed, as regards the collective agreement on the level of terminal dues, no REIMS II Party has entered into a bilateral agreement with another REIMS II Party. It is thus clear that all REIMS II Parties collectively adhere to the remuneration levels and the conditions of the REIMS II Agreement.

(97) Furthermore, developments in postal markets have given rise to new competitive concerns in addition to those referred to in the 1999 Exemption Decision.

(98) The markets for cross-border mail have evolved substantially in the last few years. To an increasing extent, PPOs within the Community and the EEA are in direct competition with each other and other postal operators on each other's home markets for outgoing cross-border mail.

(99) The Postal Directive, as amended by the Amending Directive, has now removed outgoing cross-border mail from the area of service reserved to the universal service providers unless its revenues are necessary to finance the net cost of the universal postal service.

(100) According to the REIMS II Agreement ([51]), receiving PPOs are obliged to apply the same terminal dues to all other REIMS II parties. That means that all REIMS II PPOs sending mail from country A to country B are to pay the same terminal dues to the PPO in country B. The costs all REIMS II parties incur for the end-to-end cross-border service (mail from country A to country B) will

([49]) See recital 30.
([50]) See recital 29.
([51]) Article 2(11) of the REIMS II Agreement.

thus include the jointly agreed common terminal dues to be paid to the PPO of country B. As terminal dues account for the largest portion by far of total conveyance costs for cross-border mail ([52]), competition between the Parties on the outgoing cross-border mail market in country A will be substantially diminished or even eliminated.

(101) Therefore, the conclusion should be drawn that the restrictive effects of the REIMS II Agreement have expanded beyond the price-fixing identified in the 1999 Exemption Decision ([53]) to competition between REIMS II Parties competing in the market for outgoing cross-border mail from one REIMS country to another. The Commission continues to consider the Agreement to have as its object or effect to prevent, restrict or distort competition within the common market. Consequently, Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement still apply.

8.2.2. *Membership restriction*

(102) Membership of the REIMS II Agreement is limited to postal operators (private or public) which operate a mandatory universal service. This could be interpreted as precluding other operators from benefiting from the same rates as the Parties to the REIMS II Agreement. However, nothing in the Agreement prevents the Parties from entering into identical or similar agreements on terminal dues with third parties. The condition for membership of the REIMS II Agreement thus does not appear to represent a restriction of competition in itself but would give rise to a restriction of competition if it prevented third-party postal operators from having access to REIMS II terminal dues.

8.3. **Effect on trade**

(103) The REIMS II Agreement concerns the remuneration for the delivery of incoming cross-border mail services and therefore has an effect on trade between Member States and on trade between the contracting Parties to the EEA Agreement ([54]).

(104) In view of the importance of the REIMS II Parties on the markets for incoming cross-border mail between their respective countries, that effect should be regarded as appreciable.

([52]) Source: Parties' answers to Commission's formal request for information of 6 August 2001.
([53]) See recital 65 of the 1999 Exemption Decision.
([54]) See decison in *Deutsche Post II*, recital 179.

9. **ARTICLE 81(3) OF THE TREATY and ARTICLE 53(3) OF THE EEA AGREEMENT**

9.1. **Technical and economic progress**

(105) The Commission considers that the REIMS II Agreement produces improvements which fulfil the first prerequisite for exemption under Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement. The following improvements should be taken into consideration:

a) increased correlation between terminal dues and the Parties' costs for the delivery of incoming cross-border mail; and

b) improvement in quality of service for cross-border mail.

9.1.1. *Cost-based terminal dues*

(106) The REIMS II Agreement has the effect of increasing the correlation between terminal dues and the Parties' costs for the delivery of incoming cross-border mail ([55]).

(107) If terminal dues do not cover costs, losses incurred delivering incoming cross-border mail have to be covered, making use of profits generated by domestic mail or outgoing cross-border mail services. Postal operators should be entitled to receive remuneration for the delivery of cross-border mail which covers the costs caused by that activity. A move towards a cost-based system allows the postal operators to maintain and improve their service of incoming cross-border mail delivery.

(108) In light of the data on costs provided by the Parties, the Commission acknowledges that the arrangement on terminal dues in the fifth Supplementary Agreement increases the correlation between the Parties' costs for the delivery of incoming cross-border mail and the remuneration that they receive for the provision of this service.

(109) As regards the 'price-freeze' provision, the multilateral nature of the REIMS II Agreement means that the terminal dues agreed by the 17 Parties cannot be fixed in relation to each Party's costs of processing and delivering incoming cross-border mail. As a consequence, it is more appropriate to look at the average of the Parties' costs rather than at their individual costs to assess if and to what extent terminal dues are fixed in relation to the costs of processing and delivering incoming cross-border mail.

([55]) See recital 69 of the 1999 Exemption Decision.

(110) In light of the matters referred to in recital 109, the Commission considers that the application of the 'price-freeze' clause, which in any event is to end after 2004, cannot be considered inconsistent with the above analysis regarding the correlation between REIMS II terminal dues and the Parties' costs.

9.1.2. *Improvement in quality of service*

(111) The main improvement produced by the REIMS II Agreement is the observed increase in the quality of cross-border mail services, notably the delivery of incoming cross-border mail. The link between terminal dues payable to the receiving Party and improvements in the quality of service is a strong incentive to improve service quality.

(112) The receiving Party may onlyclaim higher terminal dues from the other Parties if itmanages to meet the quality-of-service targets set out in the REIMS II Agreement. If the receiving Party does not meet the targets, penalties considerably reduce the terminal dues to which it is entitled.

(113) The data gathered in the course of the proceedings show that since the 1999 Exemption Decision, the overall quality of service for the delivery of incoming cross-border mail by the Parties has improved substantially ([56]).

(114) It has been questioned whether those improvements in quality of service for cross-border mail have causes other than the implementation of the REIMS II Agreement, notably improvements in quality of domestic mail delivery.

(115) The available data show, however, that, since the entry into force of the REIMS II Agreement, quality of service for cross-border mail has improved more than quality of service for domestic mail. For example in 1994 only 69,1 % of all cross-border letters were delivered within three days of posting (J+3). By 2001, that figure had risen to 92,0 % and by 2002 to 93,5 % ([57]). At the same time the first paragraph of Article 17 of the Postal Directive provides that Member States are to lay down quality standards for national mail and ensure that they are compatible with those laid down for intra-Community cross-border services, namely 85 % of J+3 ([58]). Accordingly, in the period in which the REIMS II Agreement has been applied, cross-border mail has achieved a quality of service substantially higher than that imposed by the Postal Directive with respect to both domestic and cross-border mail ([59]). That conclusion is also confirmed by the data on quality of service provided by the Parties. These data show that in the period 1999 to 2000 quality of service for the delivery of incoming cross-border mail has reached, in most Member States, a level which goes beyond what is imposed by the Postal Directive ([60]).

(116) No specific quality-of-service targets have been set for Level 3 access. However, the very essence of Level 3 access is that such mail should be treated like domestic mail. Where there are quality-of-service targets for domestic mail, they will thus be equally applicable to the relevant incoming cross-border mail. In addition, the REIMS II IDM Agreement introduces quality standards for the delivery of international direct mail.

(117) The REIMS II Agreement will also stimulate the improvement of outgoing cross-border mail quality. Article 3(8) of the renotified REIMS II Agreement obliges the sending operators to use their best efforts to afford outgoing priority mail a quality of service which conforms to the standards set out in Annex 7 to that Agreement. Pursuant to those provisions the Parties aim at achieving a standard of 85 % J+1 by 2002, that is to say, 85 % of outgoing priority cross-border mail should arrive at the receiving operator's office of exchange within one working day after having been posted with the sending Party ([61]).

9.2. **Benefits for consumers**

(118) The improvements referred to in recitals 105 to 117, in particular the better quality of service for cross-border mail, as well as the obligation for the Parties to give access to competing postal operators to REIMS II terminal dues at non-discriminatory conditions ([62]), are beneficial for consumers. For the following reasons, the Commission considers that the REIMS II Agreement will allow consumers a fair share of the benefits resulting from it.

([56]) See the table in Annex I.

([57]) Source: UNEX official end-to-end results, Europe.

([58]) See the Annex to the Postal Directive.

([59]) The fact that REIMS contributed to the improvement of the quality of service in cross-border mail is specifically acknowledged in the 'Study on the Impact of Certain Aspects of the Application of the Directive 97/67/EC on the Postal Sector' conducted by Omega Partners for the Commission in August 2001.

([60]) See Annex I to this Decision.

([61]) The target is slightly lower (80 %) for Greece, Iceland, Portugal and Spain.

([62]) See section 4.4.

9.2.1. *Reduced cross-subsidisation*

(119) To the extent that the increases in terminal dues result in remuneration which is closer to the actual costs of delivering the mail, the REIMS II Agreement will entail a reduction of possible cross-subsidisation. Since the users of domestic mail or outgoing cross-border mail would thus no longer (or at least to a lesser extent) have to contribute to the cost of delivering incoming cross-border mail, the PPOs will be able to adjust the tariffs for domestic mail and outgoing cross-border mail where appropriate.

9.2.2. *Increased quality of service*

(120) Since terminal dues may only be increased if the quality of service improves, any increases in tariffs for cross-border mail due to the increase of terminal dues ([63]) would be accompanied by improvements in the service rendered or by the maintenance of the quality levels already achieved. Consumers may therefore be expected to get a fair share of the benefits if the quality of the service improves ([64]).

9.2.3. *Low-cost alternative to terminal dues for bulk mail*

(121) The REIMS II Agreement itself provides two possibilities to reduce its financial impact, the Level 3 access and the IDM Agreement.

(122) Whereas the level of terminal dues established pursuant to the REIMS II Agreement is a percentage of domestic tariffs for priority mail, Level 3 access offers the possibility of benefiting from reduced domestic tariffs for bulk mail. Level 3 mail is treated like domestic mail. That possibility is of particular significance for bulk mail but also for items such as newspapers.

(123) The Commission's investigation with regard to Level 3 access has, however, shown the application of the Level 3 access to have been less than expected. One reason appears to be that as long as terminal dues are still comparatively low, there is no incentive for sending PPOs and their customers to avail themselves of Level 3 access. During the period in which the previous exemption was in force terminal dues paid by the Parties have remained low because of the 70 % limit imposed in the 1999 Exemption Decision and because of the application of the penalties. The volume of cross-border bulk mail making use of Level 3 access is however progressively rising from only 34 million items in 1999 to more than 80 million items in 2001 and more than 120 million items in 2002.

(124) The Commission therefore considers that Level 3 access, if implemented properly, constitutes a viable and less costly alternative to terminal dues for the delivery of cross-border bulk mail. Such alternative will contribute in a substantial way to passing on to consumers the benefits of the REIMS II Agreement. It appears therefore necessary to make the granting of the present exemption depend on satisfactory Level 3 access being granted, both to the Parties and to third-party competing postal operators ([65]), under the same terms set out in the 1999 Exemption Decision.

(125) Furthermore, to address the Commission's concerns regarding the lack of harmonisation between the different domestic products for bulk mail, 15 out of the 17 Parties signed the REIMS II IDM Agreement on 24 January 2003.

(126) The IDM Agreement introduces the first harmonised product for bulk mail which can be sold in almost all the REIMS II countries. The IDM Agreement is applicable only to a part of the overall bulk mail volumes, namely direct mail. According to estimates given by the Parties, of the more than 120 million items that REIMS II Parties have received as incoming Level 3 mail from other REIMS II Parties, around 75 % were direct mail items. The Commission therefore considers that the implementation of the IDM Agreement, together with an effective application of Level 3 access, will constitute low-price alternatives to terminal dues and will allow consumers a substantial share of the benefits produced by the REIMS II Agreement.

9.2.4. *Third-party access to terminal dues*

(127) As will be explained in detail in recitals 145 to 157, the Commission considers that an exemption cannot be granted to the REIMS II Agreement unless third-party postal operators competing with the Parties in the outgoing cross-border mail markets from one REIMS II country to another are granted access to REIMS II terminal dues at non-discriminatory conditions.

([63]) It is possible that increases in tariffs are decided by the national regulators on the basis of different circumstances than increases in terminal dues. Recital 120 is therefore valid also in these particular circumstances since such increases of tariffs are not causally linked to the increases of terminal dues.

([64]) See recital 80 of the 1999 Exemption Decision.

([65]) Third-party access to Level 3 rates also necessitates access for third parties to the IPC database in which all the tariffs and conditions relevant for Level 3 access are made available. See recital 48.

(128) The main reason for that consideration is that exempting the REIMS II Agreement without avoiding important price discrimination to the detriment of third parties would result in a substantial elimination of competition in the recently liberalised market of outgoing cross-border mail forwarding. If third parties are not in a position to compete with the Parties for outgoing mail from one REIMS II country to another, insufficient competitive pressure would exist, ultimately resulting in a detrimental situation for consumers.

(129) On the contrary, third-party access to REIMS II terminal dues on non-discriminatory conditions strengthens the likelihood of effective price and non-price competition by third-party operators which will pay much lower prices than before for the delivery of their incoming cross-border mail items.

(130) Accordingly the choice of the consumer will be enriched with new offers that will most probably be attractive both on price and on non-price issues since third-party operators need to compete more aggressively in order to enter the market.

9.3. **Indispensability**

9.3.1. *The common level of terminal dues*

(131) In order to qualify for an exemption pursuant to Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement, restrictions of competition must be indispensable to the attainment of the relevant objectives. That presupposes that the levels of terminal dues agreed upon by the Parties reflect the actual delivery costs. As explained in the 1999 Exemption Decision, the REIMS II Agreement does not establish a direct link between terminal dues and actual costs, but expresses terminal dues as a percentage of domestic tariffs.

(132) Accordingly, the Commission considers that the conclusion of an agreement setting terminal dues at the same percentage of domestic tariffs and upon the same conditions for all the Parties continues to be indispensable in order to attain the benefits aimed at by the Parties. Although the Parties could have concluded bilateral agreements on terminal dues, it appears unlikely that such agreements would have attained as quickly and as efficiently the benefits in terms of quality of service improvements which the present Agreement produces.

(133) Although the Commission accepts that the conclusion of the REIMS II Agreement may be considered indispensable for attaining the objectives pursued, it should be verified whether the level of terminal dues agreed is indispensable in this respect.

(134) In the 1999 Exemption Decision the Commission considered that due to the lack of a cost accounting system enabling them to calculate precisely the cost of a particular service the Parties were not able to prove that 80 % of the domestic tariffs corresponded to the costs of delivering incoming cross-border mail ([66]).

(135) Since the 1999 Exemption Decision, the Parties have developed cost accounting systems which allow them to collect and elaborate accounting data on the costs of incoming cross-border mail delivery.

(136) The cost data provided by the Parties show that approximately half of the parties have cost-to-revenue ratios lower than 80 % ([67]).

(137) Taking into account those elements, the Commission considers that the Parties have failed to demonstrate that 80 % of the domestic tariffs is a sufficiently accurate approximation of the cost of delivering incoming cross-border mail. Increasing terminal dues to 80 % is thus not indispensable for the achievement of the positive effects which the REIMS II Agreement is expected to produce.

(138) On the other hand, the Commission accepts that the level of terminal dues should, on average, allow operators to cover their costs of delivery. An increased correlation between terminal dues and Parties' costs for the delivery of incoming cross-border mail is one of the improvements that the REIMS II Agreement produces. The Commission considers it to be justified to allow the Parties to apply, during the period covered by the present exemption, terminal dues corresponding, on average, to the weighted average of the Parties' costs over the entire period ([68]).

(139) The Commission also acknowledges that important investments have been made by the Parties in order to meet the quality targets set out in the REIMS II Agreement and that such investments have, on average, increased their costs for the delivery of incoming cross-border mail.

([66]) See recitals 86 and 88 of the 1999 Exemption Decision.

([67]) The relevant data are gathered from the Parties' answers to the Commission's request for information, which were received on 24 September 2001.

([68]) Weighted average is obtained by multiplying the cost-to-revenue ratio of each Party by a weighting factor, which is obtained on the basis of the volumes of incoming cross-border mail processed, and then calculating the average value.

(140) Finally, the Commission also recognises that the terminal dues set out in the fifth Supplementary Agreement ([69]) are only the gross values to be applied and are subject to substantial reductions where penalties are applied. In that regard, in 2002 the application of the penalties system excluded 10 out of the 17 Parties from the application of the full terminal dues set out in the REIMS II Agreement.

(141) In light of the matters set out in recitals 131 to 140, the Commission considers that the terminal dues levels set out in the fifth Supplementary Agreement are indispensable in order to achieve the increases in quality of service as well as the increased correlation between terminal dues and the Parties' costs for the delivery of incoming cross-border mail.

9.3.2. *The 'geographic coverage' clause*

(142) The renotified REIMS II Agreement contains a 'geographic coverage' clause which provides that if a Party whose domestic market is liberalised can prove that the geographical structure of incoming mail from a sending PPO has changed to such an extent that the percentage of the domestic tariff used under the REIMS II Agreement is insufficient to meet the costs incurred by the Party for the delivery of that mail, the Party may ask for a renegotiation of the terminal dues paid by the sending PPO ([70]).

(143) That provision is aimed at avoiding an imbalance between the terminal dues received by the delivering PPO and its costs for the delivery of incoming cross-border mail. Such imbalances would reduce the correlation between the costs of the receiving PPO and the remuneration it receives thus eliminating one of the major improvements produced by the REIMS II Agreement. In the second place, such an imbalance could also have the effect of increasing the universal service burden of the receiving PPO thus possibly threatening its ability to fulfil its universal postal service obligation.

(144) The Commission therefore considers that, to the extent that the conditions for a renegotiation of the terminal dues are met and that the new terminal dues are proportionate to the new geographical cost structure of mail delivered by the invoking Party, the 'geographical coverage' clause is indispensable for the attainment of the improvements produced by the REIMS II Agreement.

9.4. **Non-elimination of competition**

(145) The REIMS II Agreement is only open to universal service providers ([71]), which means that other postal operators are barred from being signatories to the Agreement. Although nothing in the REIMS II Agreement prevents the Parties from entering into identical or similar agreements on terminal dues with third parties, none have done so until now and several Parties have indeed stated that they do not have any intention to conclude such agreements.

(146) Given the restriction of competition between REIMS II parties for the outgoing cross-border mail from one REIMS II country to another as a result of the commonly agreed level of terminal dues and the non-discrimination clause contained in Article 2(11) of the REIMS II Agreement, there is a risk that that Agreement will eliminate competition on a substantial part of the market for outgoing cross-border mail from one REIMS II country to another.

(147) The Amending Directive has legally opened to competition outgoing cross-border mail in most Member States from 1 January 2003. Without access to delivery services on equivalent or more favourable terms in receiving countries, private competitors would be unable to compete on price with the sending REIMS II Parties for outgoing cross-border mail between REIMS II countries.

(148) At present, a private operator competing with a REIMS II Party in the markets for outgoing cross-border mail has two alternatives:

a) turning the mail over to the sending PPO in the country of origin and paying the full international tariff; or

b) transporting the mail itself to the receiving country where the mail is handed over to the incumbent REIMS II Party and the full domestic tariff is paid ([72]).

(149) Removing the national monopolies for outgoing cross-border mail while allowing the REIMS II Parties to deny competitors access on non-discriminatory terms for delivery of incoming cross-border mail would, therefore, negate the procompetitive impact of the market opening for outgoing cross-border mail.

([69]) See section 4.5.

([70]) Article 11(4) to (7) of the REIMS II Agreement as amended by Article 2(2) of the fourth Supplementary Agreement.

([71]) Article 9 of the REIMS II Agreement as amended by the fourth Supplementary Agreement.

([72]) The only exception is Sweden where alternative providers of delivery services are being used.

(150) If competition between the parties to an agreement is eliminated or severely curtailed, an exemption will depend on the intensity of third-party competition ([73]). Because none of the Parties have granted access to terminal dues on REIMS II terms to competing postal operators, it is very difficult, if not impossible, for the latter to compete on price with the Parties in the markets for outgoing cross-border mail between REIMS II countries, since they would always have to pay 100 % of the domestic tariffs in the country of delivery or the full international tariff in the country of origin.

(151) In other words, the price that third parties must pay for delivery would always exceed the price for REIMS II Parties. There is thus insufficient competitive pressure from third parties which would help to neutralise the negative effects of the elimination of competition between the REIMS II Parties. In order to create a viable competitive alternative to the Parties for outgoing cross-border mail in REIMS II countries, competing postal operators should therefore be granted equal access to the terminal dues applicable to the Parties.

(152) In the absence of such an opportunity for non-REIMS II parties, the restrictive effects of the REIMS II Agreement in the outgoing cross-border mail market could result in a possible elimination of competition within the meaning of Article 81(3)(b) of the EC Treaty and Article 53(3) of the EEA Agreement. Therefore, an exemption should not be granted in respect of the REIMS II Agreement unless non-REIMS II postal operators are granted access to the incoming cross-border mail delivery provided by the REIMS II Parties on conditions which are non-discriminatory as compared to those offered to the other Parties. Terminal dues and other conditions offered to third-party postal operators need not be better than those offered to the REIMS II Parties.

(153) This analysis only applies to cross-border mail as defined in section 5 on market definition. Cross-border mail is a service which is distinct and separate from domestic mail. As a consequence, this analysis does not apply in the event that third-party operators request that domestic mail be delivered at terminal dues rates.

([73]) See Commission Decision 83/390/EEC in Case No IV/30.437 *Rockwell* v *Iveco* (OJ L 224, 17.8.1983, p. 19); judgment of the Court of Justice in Case C-75/84 *Metro SB-Grossmärkte* v *Commission* [1986] ECR 3021, paragraphs 34 to 46; Commission Decision 94/29/EC in Case No IV/29.420 *Grundig's EC distribution system* (OJ L 20, 25.1.1994, p. 15) recitals 39, 40 and 41.

(154) As mentioned in recital 152, third parties must be given access to REIMS II terminal dues under non-discriminatory conditions. As regards the remuneration for the delivery of outgoing cross-border mail conveyed by them, these operators should therefore be treated on a similar basis as REIMS II Parties.

(155) That means that any unjustified difference between the treatment of third parties and that applied by the Parties to each other is not in line with that requirement.

(156) In particular, the Commission considers justified that, in order to have access to REIMS II terminal dues, third-party postal operators should comply with operational requirements set forth in the REIMS II Agreement.

(157) The Commission also considers justified that terminal dues payable by third-party postal operators may, in some cases, exceed those payable by the Parties. This is the case where the Parties are able to demonstrate that the cost of administering REIMS II, the cost of setting up and operating the quality-of-service monitoring system, the extra cost incurred by accepting mail items from non-UPU members and other such costs are not covered by the terminal dues paid by the sending operator. This is also the case where the Parties are able to demonstrate that the cost of handling mail items forwarded by third-party postal operators exceeds the costs of handling mail forwarded by the Parties.

9.5. **Conclusion on Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement**

(158) For the reasons set out in recitals 105 to 157, the Commission considers that the requirements for exemption pursuant to Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement are fulfilled, provided that certain conditions are met.

10. **DURATION OF THE EXEMPTION CONDITIONS AND OTHER REQUIREMENTS IMPOSED BY THE COMMISSION**

(159) Article 8(1) of Regulation No 17 provides that a decision in application of Article 81(3) of the Treaty shall be issued for a specified period and conditions and obligations may be attached thereto.

10.1. **Duration**

(160) In the 1999 Exemption Decision the Commission limited the duration of the exemption to 31 December 2001 in order to make the exemption period come to an end before the final increase in terminal dues from 70 to 80 % of domestic tariffs was implemented. The reason was that the Commission had insufficient evidence that terminal dues had to be increased to a level of 80 % of domestic tariffs to enable the Parties to cover their costs.

(161) In the present case, however, the Parties' costs are known to the Commission. It is therefore appropriate that the exemption should cover a longer period of time than the previous one. Accordingly the exemption should be granted for a period of five years, from the date of the expiry of the previous exemption. The exemption period should therefore commence on 1 January 2002 and end on 31 December 2006.

10.2. **Amendments to the REIMS II Agreement at the request of the Commission: level of terminal dues**

(162) The Commission has come to the conclusion that the Parties have failed to demonstrate that 80 % of the domestic tariffs is a sufficiently accurate approximation of the costs of delivering incoming cross-border mail.

(163) The Commission therefore considered that Article 2 of the REIMS II Agreement should be amended so that terminal dues for priority mail to be applied during the period of the exemption are oriented to the weighted average of the Parties' costs for the delivery of inbound cross-border mail over the period from 1 January 2002 to 31 December 2006.

(164) The Parties have already amended the REIMS II Agreement in that respect. Following discussions with the Commission, on 24 January 2003, the Parties signed the fifth Supplementary Agreement.

(165) As referred to above ([74]), the fifth Supplementary Agreement amends Annex 4 to the notified REIMS II Agreement both as regards the duration of the transitional period and the level of terminal dues to be applied. The transitional period has been prolonged to 31 December 2006.

(166) The terminal dues to be applied from 1 January 2002 to the end of the transitional period have been amended as follows: 73,3 % for 2002, 74,5 % for 2003, 75,7 % for 2004 and 78,5 % for 2005 and 2006. In that respect, the Commission considers that a more gradual progressive increase in terminal dues is a smoother and better solution than abrupt increases. The Commission has therefore evaluated the correlation between terminal dues and the Parties' costs with regard to the whole period of the exemption. In this respect, the Commission acknowledges that the average of the rates to be applied over the entire five-year period corresponds to the weighted average of the Parties' costs for the delivery of inbound cross-border mail ([75]).

(167) Having revised the cost data provided by the Parties with regard to the delivery of incoming cross-border mail and the data on quality of service achieved by the Parties in 2001 and 2002, the Commission considers that the average value of terminal dues applicable during the exemption period corresponds to the weighted average of Parties' costs for the inbound delivery of cross-border mail ([76]). Also, the Commission has taken into account that the terminal dues levels set out in the fifth Supplementary Agreement are only gross values and that the terminal dues actually payable are subject to substantial reductions where penalties are applied. In conclusion, the Commission considers that the terminal dues set out in the fifth Supplementary Agreement correspond to a sufficiently accurate approximation of the Parties' costs.

10.3. **Conditions**

(168) In light of the analysis developed in Section 9 on the applicability of Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement, the Commission considers that, in application of Article 8 of Regulation No 17, an exemption should only be granted in respect of the REIMS II Agreement provided that certain conditions are met.

([74]) See section 4.5.

([75]) The cost data in question are gathered from the answers to the Commission's request for information of 6 August 2001 and make reference to Parties' costs for the delivery of incoming cross-border mail in 2000.

([76]) It has been specified by the Parties that the cost data submitted to the Commission do not include any profit margin.

10.3.1. *Non-discriminatory third-party access*

(169) The Commission considers that, following the liberalisation of outgoing cross-border mail, the mechanism contained in the REIMS II Agreement for the remuneration of the delivery of incoming cross-border mail leads to price discrimination in favour of the Parties and to the detriment of third-party operators carrying outgoing cross-border mail from one REIMS II country to another.

(170) Pursuant to Article 2(3) of the REIMS II Agreement, the REIMS II Party in the country of delivery charges REIMS II terminal dues for the delivery of mail items forwarded by any other REIMS II Party. Third-party operators engaged in forwarding outgoing cross-border mail must, however, pay the full domestic tariff for the delivery of the mail items in the country of destination.

(171) In the light of the matters referred to in recitals 145 et seq., the Commission considers that each REIMS II Party should provide to any third-party postal operator competing with the REIMS II Parties for the provision of outgoing cross-border mail services in any other REIMS II country, delivery of incoming cross-border mail in its country at terminal dues and under conditions which are non-discriminatory as compared to those that the REIMS II Party offers to the REIMS II Party(ies) in the sender's country.

(172) A detailed description of how the REIMS II Parties should grant third-party access in order to comply with this condition is set out in Annex V.

10.3.2. *Level 3 access*

(173) As already referred to in the 1999 Exemption Decision, the existence of a viable low-cost alternative to terminal dues and in particular Level 3 access, are of considerable importance to the consumer, since direct mail and other types of commercial mail account for the most important part of cross-border mail. Enabling sending parties to benefit from the delivering operator's domestic tariffs for such mail is therefore essential to balance the negative effects of the REIMS II Agreement.

(174) The investigation carried out has shown that Level 3 access is increasingly sought as the level of terminal dues rises. Accordingly, the Commission considers it necessary to include in this Decision the same requirement as in the 1999 Exemption Decision with regard to Level 3 access ([77]).

([77]) Article 2(6) of the REIMS II Agreement obliges the Parties to grant such access to other Parties.

(175) In order to facilitate Level 3 access, when such access is requested by another Party or by a third-party postal operator, the Parties should relax domestic conditions where those rules are not justified and could in practice bar the access to the domestic rates. Where it is not in their power to do so, the Parties should use their best efforts vis-à-vis the relevant national authorities to remove those rules.

(176) In order to ensure that the Parties comply with that requirement and grant each other and third-party postal operators effective Level 3 access, it is necessary to make the exemption subject to a condition to that effect.

(177) Moreover, the Commission has come to the conclusion that, in addition to the application of Level 3 access, there is a need for an increased degree of harmonisation as far as cross-border bulk mail exchanged between REIMS II countries is concerned.

(178) The Commission considers that with respect to the part of bulk mail which falls under the definition of 'direct mail' contained in the Postal Directive, the IDM product may be considered a viable and less expensive alternative to terminal dues.

(179) Level 3 access, delivery of international direct mail at IDM conditions and any other special bulk mail rates that the Parties will offer each other in the framework of the REIMS II Agreement should also be offered, under non-discriminatory conditions, to third-party postal operators competing with the Parties for outgoing cross-border mail from any REIMS II country to any other REIMS II country.

(180) The Commission considers that the measures relating to Level 3 access and the IDM product provide both the Parties and their competitors in outgoing cross-border mail markets with low-cost alternatives to REIMS II terminal dues.

(181) In order to ensure that the Parties comply with that requirement, it is necessary to make the exemption subject to a condition to that effect.

(182) This Decision is without prejudice to the application of Article 82 of the Treaty and Article 54 of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Exemption

1. Pursuant to Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement, the provisions of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement are declared inapplicable to the REIMS II (remuneration of mandatory deliveries of cross-border mails) Agreement, as amended for the last time by the fifth Supplementary Agreement of 24 January 2003, from 1 January 2002 until 31 December 2006.

2. The exemption provided for in paragraph 1 shall be subject to compliance with the conditions set out in Articles 2 and 3.

Article 2

Level 3 access between the REIMS II Parties

The Parties to the Reims II Agreement shall take all the necessary steps in order to grant each other effective access to the generally available domestic rates in the country of delivery (Level 3 access). In order to facilitate such access, the Parties shall relax domestic rules for other Parties where such rules are not justified and could in practice prevent other Parties from having Level 3 access.

Where it is not in their power to relax domestic rules, the Parties shall use their best efforts vis-à-vis the relevant national authorities to remove those rules.

Article 3

Non-discriminatory third-party access to REIMS II terminal dues and conditions

The Parties shall grant third-party postal operators competing with the Parties for the provision of outgoing cross-border mail services in any other REIMS II country access to terminal dues and other special arrangements on the same conditions as those applied to other Parties, in accordance with Annex V.

Article 4

This Decision is addressed to:

Österreichische Post AG Postgasse 8 A-1011 Wien	Poste Italiane SpA Viale Europa 175 I-00144 Rome
De Post/La Poste Muntcentrum/Centre Monnaie B-1000 Brussels	Entreprise des Postes & Télécommunications 8a, Avenue Monterey L-2020 Luxembourg
Post Danmark AS Headquarters Tietgensgade 37 DK-1566 Copenhagen V	Posten Norge AS Biskop Gunnerusgt 14 NO-0001 Oslo, Norway
Finland Post Corporation (Suomen Posti Oyj) Postintaival 7 FI-00230 Helsinki	CTT Correios de Portugal, SA Rua de José, 20 P-1166-001 Lisboa
La Poste Siège social 44 boulevard de Vaugirard F-75757 Paris Cedex 15	Sociedad Estatal Correos y Telégrafos, SA Vía de Dublín 7 E-28070 Madrid
Deutsche Post AG Zentrale Charles-de-Gaulle-Str. 20 D-53113 Bonn	Posten Sverige AB S-105 00 Stockholm
Hellenic Post ELTA 1 Apellou Street GR-10188 Athens	Royal Mail Group plc 148 Old Street London EC1V 9HQ, United Kingdom
Iceland Post Storhofdi 29 IS-110 Reykjavik, Iceland	An Post General Post Office O'Connell Street Dublin 1, Ireland

Done at Brussels, 23 October 2003.

For the Commission

Mario MONTI

Member of the Commission

ANNEX I

Quality-of-service improvements

(Business secrets)

		REIMS penalty threshold 2001	On-time % performance 2001	REIMS penalty threshold 2002	On-time % performance 2002	Progress 2002 vs 2001
Österreichische Post	AT	93	[...] (*)	93	[...] (*)	[...] (*)
The Belgian Post Group	BE	93	[...] (*)	93	[...] (*)	[...] (*)
Swiss Post	CH	93	[...] (*)	93	[...] (*)	[...] (*)
Post Denmark	DK	93	[...] (*)	93	[...] (*)	[...] (*)
Finland Post Corporation	FI	93	[...] (*)	93	[...] (*)	[...] (*)
An Post	IE	93	[...] (*)	93	[...] (*)	[...] (*)
Iceland Post	IS	93	[...] (*)	93	[...] (*)	[...] (*)
Postes et Télécommunications	LU	93	[...] (*)	93	[...] (*)	[...] (*)
Posten Norge	NO	93	[...] (*)	93	[...] (*)	[...] (*)
Posten	SE	93	[...] (*)	93	[...] (*)	[...] (*)
Deutsche Post	DE	93	[...] (*)	93	[...] (*)	[...] (*)
La Poste	FR	90	[...] (*)	90	[...] (*)	[...] (*)
Royal Mail Group plc	UK	90	[...] (*)	90	[...] (*)	[...] (*)
Poste Italiane	IT	90	[...] (*)	90	[...] (*)	[...] (*)
CTT Correios de Portugal	PT	91,5	[...] (*)	93	[...] (*)	[...] (*)
Correos y Telégrafos	ES	85	[...] (*)	85	[...] (*)	[...] (*)
Hellenic Post ELTA	EL	80	[...] (*)	85	[...] (*)	[...] (*)

(*) Business secrets.

ANNEX II

Parties' cost-to-revenue ratios

Austria	
United Kingdom	
Spain	
Luxembourg	
Portugal	
Belgium	
Ireland	
Finland	
Norway	
Denmark	
France	
Greece	
Sweden	
Germany	
Italy	
Iceland	

ANNEX III

Structure of the outgoing cross-border mail markets (1)

	Market volume (× 1 000) (2)	USP's share	Main competitors
Austria	8 500	[...] (*)	1. Deutsche Post AG; 2. TNT; 3. Globe Mail
Belgium	10 357	[...] (*)	1. La Poste Fr.; 2. TNT (Mailfast); 3. DHL International; 4. Royal Mail; 5. Belgian Mailhouse (A. Baeke)
Denmark	9 905	[...] (*)	1. DHL; 2. TNT; 3. IRS (International Remail System); 4. Deutsche Post AG; 5. Sweden Post
Finland	2 258	[...] (*)	1. DHL; 2. TNT; 3. UPS
France	31 900	[...] (*)	
Germany	25 997	[...] (*)	1. TNT; 2. UPS; 3. FedEx; 4. Logitrans; 5. Post Office International Services; 6. Swiss Post
Greece	3 102	[...] (*)	None
Iceland	3 310	[...] (*)	DHL
Ireland	6 110	[...] (*)	1. Royal Mail plc; 2. Deutsche Post World Net; 3. DHL; 4. TNT; 5. Transnet Ltd
Italy	11 092	[...] (*)	1. Swiss Post; 2. TNT; 3. DHL; 4. UPS; 5. Royal Mail
Luxembourg	4 821	[...] (*)	N/A
Norway	2 523	[...] (*)	1. DHL; 2. TNT
Portugal	3 979	[...] (*)	1. DHL; 2. TNT; 3. SEUR; 4. Chronopost
Spain	11 940	[...] (*)	1. DHL; 2. TNT; 3. SEUR; 4. Royal Mail; 5. IFCC
Sweden	6 361	[...] (*)	
Switzerland	17 032	[...] (*)	N/A
United Kingdom	45 271	[...] (*)	1. Deutsche Post; 2. La Poste Fr.; 3. Swiss Post; 4. Mercury International; 5. Pharos International Ltd

(*) Business secrets.

(1) The data contained in the table are contained in the business secrets Annex to the notification and relate to the year 2000.
(2) From REIMS II countries.

ANNEX IV

Structure of the incoming cross-border mail markets (1)

	Market volume (× 1 000) (2)	USP's share	Main competitors
Austria	109 235	[...] (*)	
Belgium	119 478	[...] (*)	BD (Belgique Diffusion) Direct
Denmark	80 658	[...] (*)	1. DHL; 2. TNT; 3. Forbruger Kontaky; 4. Dansk Total Distribution; 5. Dansk Distributionscenter
Finland	34 536	[...] (*)	1. DHL; 2. TNT; 3. UPS
France	272 000	[...] (*)	
Germany	482 492	[...] (*)	1. Royal Mail; 2. TNT; 3. La Poste Fr.; 4. Swiss Post; 5. Mercury Post
Greece	22 085	[...] (*)	None
Iceland	1 870	[...] (*)	DHL
Ireland	124 700	[...] (*)	1. DHL; 2. TNT; 3. Erin Swiftpost Ltd 4. Transnet Ltd
Italy	168 491	[...] (*)	None
Luxembourg	26 912	[...] (*)	N/A
Norway	53 847	[...] (*)	None
Portugal	33 382	[...] (*)	1. DHL; 2. TNT; 3. SEUR; 4. Chronopost
Spain	134 196	[...] (*)	1. DHL; 2. SEUR; 3. UPS; 4. MRW; 5. TNT
Sweden	75 661	[...] (*)	
Switzerland	192 418	[...] (*)	N/A
United Kingdom	198 997	[...] (*)	1. DHL; 2. TNT 3. FedEx; 4. UPS; 5. Deutsche Post AG

(*) Business secrets.

(1) The data contained in the table are contained in the business secrets Annex to the notification and relate to the year 2000.
(2) From REIMS II countries.

ANNEX V

Non-discriminatory third-party access

Each REIMS II Party shall provide to any third-party postal operator competing with REIMS II Parties for the provision of outgoing cross-border mail services in any other REIMS II country delivery of inbound cross-border mail in its country at terminal dues and on conditions which are non-discriminatory as compared to those that the REIMS II Party offers to the REIMS II Party in the sender's country. This obligation is limited to mail from senders in REIMS II countries and to requests from third-party postal operators that:

i) are entitled to provide outgoing cross-border mail services under the domestic rules applicable in the sender's country and provided that outbound cross-border mail has been liberalised for the mail items in question in the country in which the mail was produced and those through which it may have transited;

ii) are competitors of the REIMS II Parties for the provision of these services; and

iii) enter into an agreement with the delivering REIMS II Party, pursuant to which they agree to:

— comply with REIMS operational conditions and requirements, including participation in the quality-of-service measurement systems [1],

— pay the terminal dues offered to the REIMS II Party in the sender's country plus an appropriate share of the cost of administering REIMS and the extra cost incurred by handling their mail as compared to mail from other REIMS Parties, if any,

— pay the delivering REIMS II Party's domestic rates for mail items tendered under this obligation that fall under the exception set out below,

— upon request, post adequate security for such payments,

— endeavour to provide specimens of larger quantities of business mail items,

— respect the reserved area of the REIMS II Party and provide all their incoming reserved mail to be delivered by the REIMS II Party.

This obligation does not apply to domestic mail. Furthermore, this obligation shall not apply to mail items that senders residing in the country of the delivering REIMS II Party post or cause to be posted in a foreign country with the object of benefiting from lower rates available through this obligation. Within the limits of the present and future case-law of the Court of Justice, the latter exception to the obligation shall apply both to mail items made up in the sender's country of residence and then carried across the frontier and to mail items made up in a foreign country.

The same conditions regarding third-party access apply to any other special arrangements on tariffs and rates to be applied between REIMS II Parties contained in the Agreement. This is in particular true as regards conditions of access to Level 3 rates and for delivery of cross-border direct mail in accordance with the REIMS II IDM Agreement. Such rates must be made available to third-party operators competing with REIMS II Parties for the provision of outgoing cross-border mail services in any other REIMS II country, on conditions which are non-discriminatory as compared to those that the delivering REIMS II Party offers to the REIMS II Party in the sender's country.

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[1] Currently UNEX and Diagnostic.