JUDGMENT OF THE COURT

10 February 2000 *

In Joined Cases C-147/97 and C-148/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Oberlandesgericht Frankfurt am Main, Germany, for a preliminary ruling in the proceedings pending before that court between

Deutsche Post AG

and

Gesellschaft für Zahlungssysteme mbH (GZS), (C-147/97)

Citicorp Kartenservice GmbH (C-148/97)

on the interpretation of the second paragraph of Article 5 of the EC Treaty (now the second paragraph of Article 10 EC), Articles 30 and 59 of the EC Treaty (now, after amendment, Articles 28 EC and 49 EC) and Articles 85, 86 and 90(1) and (2) of the EC Treaty (now Articles 81 EC, 82 EC and 86(1) and (2) EC),

* Language of the case: German.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, L. Sevón, R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn (Rapporteur), C. Gulmann, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: A. La Pergola,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Deutsche Post AG, by D. Schroeder, Rechtsanwalt, Cologne,

— Gesellschaft für Zahlungssysteme mbH (GZS), by M. Bechtold, Rechtsanwalt, Frankfurt am Main,

— Citicorp Kartenservice GmbH, by P. Mailänder and U. Schnelle, Rechtsanwälte, Stuttgart,

— the Danish Government, by P. Biering, Head of Division in the Ministry of Foreign Affairs, acting as Agent,

— the Italian Government, by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, and O. Fiumara, Avvocato dello Stato,

— the Netherlands Government, by J.G. Lammers, Acting Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Austrian Government, by C. Stix-Hackl, Gesandte in the Federal Ministry of Foreign Affairs, acting as Agent,

— the Finnish Government, by H. Rotkirch, Ambassador, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by C. Schmidt, F. Mascardi and K. Wiedner, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Deutsche Post AG, represented by D. Schroeder; Gesellschaft für Zahlungssysteme mbH (GZS), represented by M. Bechtold and A. Wagner, Rechtsanwalt, Frankfurt am Main; Citicorp Kartenservice GmbH, represented by P. Mailänder and U. Schnelle; the Danish Government, represented by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent; the Greek Government, represented by M. Apessos, Legal Representative of the State Legal Service, and N. Zemperis, Legal Adviser of the Greek Post Office, acting as Agents; the French Government, represented by K. Rispal-Bellanger, Deputy Director of the Legal Affairs Directorate of the Ministry of Foreign Affairs, and F. Million, Chargé de Mission in the same directorate, acting as Agents; the Italian Government, represented by O. Fiumara; the Netherlands Government, represented by M. Fierstra, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; and the Commission, represented by K. Wiedner, at the hearing on 29 September 1998,

after hearing the Opinion of the Advocate General at the sitting on 1 June 1999,

gives the following

Judgment

1 By two orders of 25 March 1997, received at the Court on 17 April 1997, the Oberlandesgericht (Higher Regional Court) Frankfurt am Main referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) five questions on the interpretation of the second paragraph of Article 5 of the EC Treaty (now the second paragraph of Article 10 EC), Articles 30 and 59 of the EC Treaty (now, after amendment, Articles 28 EC and 49 EC) and Articles 85, 86 and 90(1) and (2) of the EC Treaty (now Articles 81 EC, 82 EC and 86(1) and (2) EC).

2 Those questions were raised in two actions brought by Deutsche Post AG (hereinafter 'Deutsche Post') against Gesellschaft für Zahlungssysteme mbH (GZS) (hereinafter 'GZS') and Citicorp Kartenservice GmbH (hereinafter 'CKG') concerning the delivery of post from abroad using non-physical remail.

Legal context

Universal Postal Convention

3 Under the Universal Postal Convention, whose first version dates back to 1874, the postal services of a Contracting State are obliged to forward and deliver to the relevant addressees international letter-post items which are passed to them by the postal services of other Contracting States and are addressed to persons resident in the first State.

4 The main actions are concerned with the Universal Postal Convention as adopted on 14 December 1989 in Washington (hereinafter 'the UPC'). In Germany the UPC was ratified by the Gesetz zu den Verträgen vom 14. Dezember 1989 des Weltpostvereins (Law concerning the Treaties of 14 December 1989 of the Universal Postal Union) of 31 August 1992 (*Bundesgesetzblatt* II, p. 749).

5 Initially, postal services delivered international mail without being paid for that task. One of the fundamental principles of the CPU was that, since every letter calls for a reply, the flows of postal traffic between two Contracting States would therefore balance out. However, it became apparent that the postal services of the various States had to process quantities of international mail which differed greatly and special provisions were laid down in that regard from 1924.

6 Article 25 of the UPC provides:

'1. A member country shall not be bound to forward or deliver to the addressee letter-post items which senders resident in its territory post or cause to be posted in a foreign country with the object of profiting by the lower charges in force there. The same shall apply to such items posted in large quantities, whether or not such postings are made with a view to benefiting from lower charges.

2. Paragraph 1 shall be applied without distinction both to correspondence made up in the country where the sender resides and then carried across the frontier and to correspondence made up in a foreign country.

3. The administration concerned may either return its items to origin or charge postage on the items at its internal rates. If the sender refuses to pay the postage, the items may be disposed of in accordance with the internal legislation of the administration concerned.

4. A member country shall not be bound to accept, forward or deliver to the addressees letter-post items which senders post or cause to be posted in large quantities in a country other than the country in which they reside. The administration concerned may send back such items to origin or return them to the senders without repaying the prepaid charge.'

Terminal dues

7 Terminal dues are the dues which one postal administration collects from another for the delivery of its international mail. Rules governing them were first introduced in the Universal Postal Convention of 1969. However, those rules were not sufficient to cover the costs of the postal services in the country to which the mail was sent, in particular because, without the agreement of developing countries, it was impossible to impose higher terminal dues.

8 In 1987, within the framework of the European conference of post and telecommunications administrations which took place in Berne, Switzerland, public postal operators of certain Member States of the European Community and of non-member countries concluded an agreement to introduce a new formula for calculating the rates of terminal dues.

9 On 13 December 1995, 16 postal services, including those of all the Member States of the European Union other than Spain, together with those of Norway and Iceland, concluded the 'REIMS I Agreement'. That agreement provided for a gradual increase in terminal dues over a period of six years. In 2001 those dues were to reach a level corresponding to 80% of internal postal rates. Pursuant to a termination clause relating to the admission of the Spanish postal service, that agreement came to an end on 30 September 1997.

10 On 9 July 1997 the postal services of ten States, namely Denmark, Germany, Finland, France, Greece, Iceland, Italy, Norway, Austria and Spain, signed the 'REIMS II Agreement', which entered into force on 1 October 1997. That agreement provides for a shorter transitional period. At the end of that period, Article 25 of the UPC will no longer apply between the Contracting Parties.

Remail

11 It is apparent from the file that, so far as concerns remail services, a distinction is generally drawn between physical and non-physical remail.

12 Physical remail covers the following cases:

— 'ABA remail': the letters come from State A but are posted in State B for delivery in State A;

— 'ABB remail': the letters come from State A but are posted in State B for delivery in that State;

— 'ABC remail': the letters come from State A but are posted in State B for delivery in State C.

13 In the case of non-physical remail, the content of the letters is transmitted by electronic data transfer from State A to State B, where the information is printed out for delivery in State A, B or C.

Case C-148/97

Main proceedings

14 The European credit card operations of the Citibank group are directed by the European Headquarters of Citibank NA in Brussels. In the various Member States, the Citibank group has subsidiaries or branches which operate in the banking services market, such as Citibank Privatkunden AG and Diners Club Deutschland GmbH in Germany. The undertakings in the Citibank group also include CKG, whose registered office is in Frankfurt am Main. CKG is a service company which attends to the preparation and dispatch of statements, confirmations, bills and payment or billing requests for customers holding a Visa card or other cards.

15 In 1993 the Citibank group decided to set up a centralised body for the preparation and dispatch of statements and other standardised banking statements of account, namely Citicorp European Service Center BV (hereinafter 'the CESC'), whose registered office is in Arnhem, Netherlands.

16 Until 30 June 1995 the data processing was carried out at CKG's computer centre in Frankfurt am Main. The processed data relating to customers holding Visa cards were first transmitted by electronic data transfer to the CESC in order for it

to draw up account statements and confirmations, detailed statements of account and payment and settlement requests. Next, the CESC printed the data out on standardised forms, which were then placed in envelopes for dispatch and the envelopes were franked for that purpose. Those items of mail were finally handed over to PTT Post BV (the Netherlands Post Office; hereinafter 'PTT Post') in Arnhem for onward carriage. PTT Post transmitted them to Deutsche Post in order for it to deliver them to addressees resident in Germany.

17 Apart from CKG, undertakings and branch networks of the Citibank group in France, Belgium, Spain, Portugal and Greece are linked to the central CESC facility for data acquisition, data processing, data print-out and mailing. The latter currently employs 22 people for sending letter-post items to addressees resident in the Member States of the European Union.

18 According to the file, since 1 July 1995 the data are no longer processed in the Citibank group's places of business in various States, but centrally in a worldwide operation using computers in the group's data-processing centre in Sioux Falls (South Dakota, United States). The credit-card slips are submitted by the authorised traders to CKG which inputs the data relating to the trader who has sent in the slips, the amount debited to the card and the data relating to the customer. Those data are then transmitted via satellite to the Sioux Falls processing centre. There, the further data processing is carried out, by making a credit entry and correspondingly debiting the customer's account. The resulting data are finally sent by satellite to the CESC which prints and dispatches them.

19 In the case of letter-post items to addressees resident in Germany, PTT Post receives, in the Netherlands, the normal charge for international mail, that is to

say approximately DEM 0.55. It pays Deutsche Post the terminal dues which, at the material time, were from DEM 0.37 to DEM 0.40 per letter.

20 Relying on Article 25(3) of the UPC and Paragraph 9 of the Postgesetz (Law on Postal Services), Deutsche Post claimed postage at its internal rate, namely DEM 1 per letter, in respect of each of CKG's letters delivered in Germany. For the period from 24 February 1995 to 9 July 1995 Deutsche Post sought payment of a sum of DEM 3 668 916, which corresponds to letter-post items specifying the sender as 'Citicorp European Service Center, P.O. Box 5411, 6802 EK Arnhem, The Netherlands' or 'Citicorp European Service Center BV, P.O. Box 5200, 7570 GE Oldenzaal, The Netherlands' which arrived at the post office responsible for receiving post from the Netherlands.

21 When CKG refused to pay the sum demanded, the case was brought before the Landgericht (Regional Court) Frankfurt am Main. By judgment of 8 May 1996, that court dismissed Deutsche Post's application, on the ground that Deutsche Post could not infer a contractual right from Article 25(3) of the UPC since that provision constituted a basis solely for claiming additional charges in a public-service relationship governed by public law. In addition, it held that the printing of the letters in the Netherlands did not amount to the 'making-up' of correspondence within the meaning of Article 25 of the UPC. In the context of the internal Community market, it was not decisive that the operation of printing letters and placing them in envelopes was transferred abroad.

Questions referred for a preliminary ruling

22 On 20 June 1996 Deutsche Post appealed against that judgment to the Oberlandesgericht Frankfurt am Main, which decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 90 of the EC Treaty to be interpreted as meaning that, in so far as a law ratifying the Conventions of the Universal Postal Union of 14 December 1989 creates the right for the postal service of Member State A to demand internal postage for the delivery of letter-post items sent in Member State B or to refuse delivery if internal postage is not paid, where the content of the letters is determined by an undertaking in Member State A and transmitted by electronic data transfer to an undertaking having its seat in Member State B in order to be printed out, prepared for dispatch and handed over to the postal service there, that law constitutes a State measure by which, contrary to Article 90(1) of the EC Treaty, a measure was adopted conflicting with Article 86 of the EC Treaty which does not fall within the exceptions contemplated by Article 90(2)?

(2) Are Articles 30 et seq. and 59 et seq. of the EC Treaty to be interpreted as meaning that the power of the postal service in Member State A to demand internal postage for the delivery of letter-post items posted in Member State B to addressees resident in Member State A or to refuse to deliver such letters if internal postage is not paid is contrary to the guarantee of the free movement of goods where the content of the letters is determined by an undertaking in Member State A and transmitted by electronic data transfer to an undertaking having its seat in Member State B in order to be printed out, prepared for dispatch and handed over to the postal service there?

(3) In the event that the answer to the above questions submitted for a preliminary ruling discloses an infringement of Community law only because the postal service of Member State A receives or, by refusing to deliver mail, can enforce payment of internal postage in addition to the postal charges paid in Member State B or in addition to the terminal dues collected pursuant to the Universal Postal Convention and/or the CEPT Agreement:

Is the second paragraph of Article 5 of the EC Treaty to be interpreted as meaning that a law of Member State A ratifying the Conventions of the Universal Postal Union of 14 December 1989 is completely inapplicable or only in so far as payment of internal postage in addition to the postal charges paid in Member State B and/or in addition to the terminal dues collected pursuant to the Universal Postal Convention or the CEPT Agreement may be demanded or enforced by refusing to deliver the mail in question?

(4) Is the answer to Questions 1, 2 and 3 altered by the fact that the undertaking having its seat in Member State B which is responsible for printing out mailings, preparing them for dispatch and delivering them to the postal service in that country is linked, as a member of the same group, to the undertaking in Member State A which determines the content of the mailings?

(5) Does the answer to Questions 1, 2 and 3 depend on whether the undertaking having its seat in Member State B which is responsible for printing out mailings, preparing them for dispatch and delivering them to the postal service in that country operates only for the undertaking in Member State A which determines the content of the mailings or for a number of principals of the same type?'

Case C-147/97

Main proceedings

23 GZS, whose members are credit institutions which issue the Eurocard credit card, is the largest operator in respect of transactions carried out using Eurocard credit cards in Germany. In the course of its data-processing operations it draws up, for the holders of that card and the authorised traders, monthly statements which are sent by post.

24 Initially, GZS was responsible for printing out the statements, placing them in envelopes and handing the letters over to Deutsche Post for delivery. Since the summer of 1995 GZS has transmitted the necessary data by electronic data transfer to its Danish contractual partner in order for it to draw up the statements. It is there that the statements are drawn up, printed out, placed in envelopes and then handed over to the Danish post office. The latter transmits them to Deutsche Post for onward carriage in Germany and delivery to addressees resident in that Member State. For letter-post items to those addressees, the Danish postal service receives the postage charged in Denmark for international mail, which is lower than the internal rate in force in Germany. It pays Deutsche Post the terminal dues which, at the material time, amounted to DEM 0.36 per letter.

25 Deutsche Post demanded from GZS payment of the sum of DEM 623 984 in accordance with Article 25(3) of the UPC and Paragraph 9 of the Postgesetz. When GZS refused to pay that sum, the case was brought before the Landgericht Frankfurt am Main, which dismissed the application on the same grounds as those referred to in paragraph 21 of this judgment.

Questions referred for a preliminary ruling

26 On 8 September 1996 Deutsche Post appealed against that judgment to the Oberlandesgericht Frankfurt am Main, which decided to stay proceedings and to refer three questions to the Court for a preliminary ruling, whose wording is identical to that of the first three questions in Case C-148/97.

27 By order of 8 July 1997, the President of the Court decided to join the cases for the purposes of the written and oral procedure and the judgment.

28 It is to be noted first of all that Article 25(1) of the UPC distinguishes two cases where the postal services of the Contracting States are not obliged to forward or to deliver to the addressee letter-post items which senders resident in a Contracting State post or cause to be posted in another Contracting State. The case referred to in the first sentence of Article 25(1) concerns letters posted in another Contracting State with the object of profiting from the lower charges in force there. The second sentence of Article 25(1) relates to letters posted in large quantities, whether or not with a view to benefiting from lower charges.

29 In accordance with Article 25(2) of the UPC, Article 25(1) applies without distinction both to correspondence made up in the Contracting State in which the sender is resident and then transported to another Contracting State and to correspondence made up in the latter State.

30 As provided in Article 25(3), postal services may, in the cases referred to in Article 25(1), either return the mail to origin or charge postage on it at its internal rates.

31 It is apparent from the file in Case C-148/97 that the CESC prints out and sends, from the Netherlands to addressees resident in the Member States of the European Union, approximately 42 000 000 items of mail per year which are drawn up on the basis of data processed by CKG and transmitted by electronic data transfer. According to the file in Case C-147/97, GZS transmits by the same means to its Danish contractual partner data relating to approximately 7 000 000 credit-card holders in order for the data to be sent by the Danish post office.

32 It is likewise apparent from the files and the orders for reference that, in accordance with Article 25(3) of the UPC, the national legislation entitles Deutsche Post to demand postage at the internal rate in respect of each of the letters sent by CKG and GZS which it delivered in Germany.

33 It is clear finally that, in order to answer the questions submitted, there is no need to take into consideration the particular fact that, in the present case, the content of the mail has been transmitted by electronic data transfer (non-physical remail).

34 Accordingly, the questions referred for a preliminary ruling relate to the case envisaged in the second sentence of Article 25(1) of the UPC, read in conjunction with Article 25(2), namely the posting with the postal services of other Member States of large quantities of mail prepared or made up in those States. It is therefore unnecessary, in order to give an answer which will assist in determining the main proceedings, to consider whether CKG and GZS post their mail with the postal services of other Member States with a view to benefiting from the lower charges in force there.

35 As regards the interpretation of Article 30 of the Treaty requested by the national court, suffice it to state that Article 30 does not apply in the main proceedings. International letter-post constitutes a cross-border service provided under the universal postal service, which requires the postal services of the Contracting State to which letter-post items are sent to forward and deliver them.

36 Having regard to the foregoing considerations, the national court is to be understood in the first three questions as essentially asking whether it is contrary to Article 90 of the Treaty, read in conjunction with Articles 86 and 59 thereof, for a body such as Deutsche Post to exercise the right provided for by Article 25(3) of the UPC to charge, in the cases referred to in the second sentence of Article 25(1) and Article 25(2), internal postage on items of mail posted in large quantities with the postal services of a Member State other than the Member State to which that body belongs.

37 To reply to that question, as reformulated, it should first be noted that a body such as Deutsche Post, which has been granted exclusive rights as regards the collection, carriage and delivery of mail, must be regarded as an undertaking to which the Member State concerned has granted exclusive rights within the meaning of Article 90(1) of the Treaty (Case C-320/91 *Corbeau* [1993] ECR I-2533, paragraph 8).

38 Also, it is settled case-law that an undertaking having a statutory monopoly over a substantial part of the common market may be regarded as holding a dominant position within the meaning of Article 86 of the Treaty (see Case C-179/90 *Merci Convenzionali Porto di Genova* v *Siderurgica Gabrielli* [1991] ECR I-5889, paragraph 14, Case C-18/88 *RTT* v *GB-Inno-BM* [1991] ECR I-5941, paragraph 17, and *Corbeau*, cited above, paragraph 9).

39 The Court has had occasion to state in this respect that although the mere fact that a Member State has created a dominant position by the grant of exclusive rights is not as such incompatible with Article 86, the Treaty none the less requires the Member States not to adopt or maintain in force any measure which might deprive that provision of its effectiveness (see Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 35, and *Corbeau*, cited above, paragraph 11).

40 Article 90(1) of the Treaty thus provides that in the case of undertakings to which Member States grant special or exclusive rights, they are neither to enact nor to maintain in force any measure contrary, in particular, to the rules contained in the Treaty with regard to competition (see *Corbeau*, paragraph 12).

41 That provision must be read in conjunction with Article 90(2) which provides that undertakings entrusted with the operation of services of general economic interest are to be subject to the rules contained in the Treaty in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

42 A final point to note is that the UPC proceeds on the basis of a market in letter-post where the postal services of the various Contracting States of the Universal Postal Union are not in competition.

43 In that context, the UPC is designed to establish rules ensuring that international items of mail addressed to residents of a Contracting State and passed on by the postal services of other Contracting States are forwarded and delivered. One of the fundamental principles of the UPC, set out in Article 1 thereof, is the obligation of the postal administration of the Contracting State to which international mail is sent to forward and deliver it to addressees resident in its territory using the most rapid means of its letter post. In that regard, the States which have adopted the Convention of the Universal Postal Union constitute a single postal territory, in which the freedom of transit of reciprocal international mail is in principle guaranteed.

44 For the postal services of the Member States, performance of the obligations flowing from the UPC is thus in itself a service of general economic interest within the meaning of Article 90(2) of the Treaty.

45 In the present case, German legislation assigns the operation of that service to Deutsche Post.

46 As has been noted in paragraph 5 of this judgment, postal services initially delivered international mail without being paid for that task. However, when it became apparent that the flows of postal traffic between two Contracting States frequently did not balance out, so that the postal services of the various Contracting States had to process quantities of international mail which differed greatly, specific provisions were laid down in that regard, one of which is Article 25 of the UPC.

47 Under Article 25(3) of the UPC, the postal services of the Contracting States may in particular, in the cases referred to in Article 25(1) and (2), charge postage on items of mail at their internal rates.

48 The grant to a body such as Deutsche Post of the right to treat international items of mail as internal post in such cases creates a situation where that body may be led, to the detriment of users of postal services, to abuse its dominant position resulting from the exclusive right granted to it to forward and deliver those items to the relevant addressees.

49 It is accordingly necessary to examine the extent to which exercise of such a right is necessary to enable a body of that kind to perform its task of general interest pursuant to the obligations flowing from the UPC and, in particular, to operate under economically acceptable conditions.

50 If a body such as Deutsche Post were obliged to forward and deliver to addressees resident in Germany mail posted in large quantities by senders resident in Germany using postal services of other Member States, without any provision allowing it to be financially compensated for all the costs occasioned by that obligation, the performance, in economically balanced conditions, of that task of general interest would be jeopardised.

51 The postal services of a Member State cannot simultaneously bear the costs entailed in the performance of the service of general economic interest of forwarding and delivering international items of mail, which is their responsibility by virtue of the UPC, and the loss of income resulting from the fact that bulk mailings are no longer posted with the postal services of the Member State in which the addressees are resident but with those of other Member States.

52 In such a case, it must be regarded as justified, for the purposes of the performance, in economically balanced conditions, of the task of general interest entrusted to Deutsche Post by the UPC, to treat cross-border mail as internal mail and, consequently, to charge internal postage.

53 It would be otherwise if terminal dues for incoming cross-border mail within the Community were fixed in relation to the actual costs of processing and delivering it by agreements between the postal services concerned of the kind envisaged by Article 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 (OJ 1998 L 15, p. 14).

54 Article 90(2) of the Treaty therefore justifies, in the absence of an agreement between the postal services of the Member States concerned fixing terminal dues in relation to the actual costs of processing and delivering incoming trans-border mail, the grant by a Member State to its postal services of the statutory right to charge internal postage on items of mail where senders resident in that State post items, or cause them to be posted, in large quantities with the postal services of another Member State in order to send them to the first Member State.

55 It follows that, even if Article 25(3) of the UPC could be considered, in view of its effects when applied by a body such as Deutsche Post, to be such as to constitute a barrier to the freedom to provide services, Article 90 of the Treaty would likewise not preclude a provision of that kind.

56 On the other hand, in so far as part of the forwarding and delivery costs is offset by terminal dues paid by the postal services of other Member States, it is not necessary, in order for a body such as Deutsche Post to fulfil the obligations flowing from the UPC, that postage be charged at the full internal rate on items posted in large quantities with those services.

57 It is to be remembered that a body such as Deutsche Post which has a statutory monopoly over a substantial part of the common market may be regarded as holding a dominant position within the meaning of Article 86 of the Treaty.

58 Thus, the exercise by such a body of the right to demand the full amount of the internal postage, where the costs relating to the forwarding and delivery of mail posted in large quantities with the postal services of a Member State other than the State in which both the senders and the addressees of that mail are resident are not offset by the terminal dues paid by those services, may be regarded as an abuse of a dominant position within the meaning of Article 86 of the Treaty.

59 In order to prevent a body such as Deutsche Post from exercising its right, provided for by Article 25(3) of the UPC, to return items of mail to origin, the senders of those items have no choice but to pay the full amount of the internal postage.

60 As the Court has stated in relation to a refusal to sell on the part of an undertaking holding a dominant position within the meaning of Article 86 of the Treaty, such action would be inconsistent with the objective laid down by Article 3(g) of the EC Treaty (now, after amendment, Article 3(g) EC), as explained in Article 86, in particular in subparagraphs (b) and (c) of its second paragraph (Case 27/76 *United Brands* v *Commission* [1978] ECR 207, paragraph 183).

61 It follows from all the foregoing considerations that, in the absence of an agreement between the postal services of the Member States concerned fixing terminal dues in relation to the actual costs of processing and delivering incoming trans-border mail, it is not contrary to Article 90 of the Treaty, read in conjunction with Articles 86 and 59 thereof, for a body such as Deutsche Post to exercise the right provided for by Article 25(3) of the UPC, in the version adopted on 14 December 1989, to charge, in the cases referred to in the second sentence of Article 25(1) and Article 25(2) thereof, internal postage on items of mail posted in large quantities with the postal services of a Member State other than the Member State to which that body belongs. On the other hand, the exercise of such a right is contrary to Article 90(1) of the Treaty, read in conjunction with Article 86 thereof, in so far as the result is that such a body may demand the entire internal postage applicable in the Member State to which it belongs without deducting the terminal dues corresponding to those items of mail paid by the abovementioned postal services.

62 Having regard to the answer to the first three questions, it is unnecessary to reply to the other questions submitted.

Costs

63 The costs incurred by the Danish, Greek, French, Italian, Netherlands, Austrian and Finnish Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Oberlandesgericht Frankfurt am Main by orders of 25 March 1997, hereby rules:

In the absence of an agreement between the postal services of the Member States concerned fixing terminal dues in relation to the actual costs of processing and delivering incoming trans-border mail, it is not contrary to Article 90 of the EC Treaty (now Article 86 EC), read in conjunction with Article 86 of the EC Treaty (now Article 82 EC) and Article 59 of the EC Treaty (now, after amendment, Article 49 EC), for a body such as Deutsche Post AG to exercise the right provided for by Article 25(3) of the Universal Postal Convention, in the version adopted on 14 December 1989, to charge, in the cases referred to in the second sentence of Article 25(1) and Article 25(2) thereof, internal postage on items of

mail posted in large quantities with the postal services of a Member State other than the Member State to which that body belongs. On the other hand, the exercise of such a right is contrary to Article 90(1) of the Treaty, read in conjunction with Article 86 thereof, in so far as the result is that such a body may demand the entire internal postage applicable in the Member State to which it belongs without deducting the terminal dues corresponding to those items of mail paid by the abovementioned postal services.

Rodríguez Iglesias		Moitinho de Almeida
Sevón	Schintgen	Kapteyn
Gulmann	Puissochet	Hirsch
Jann	Ragnemalm	Wathelet

Delivered in open court in Luxembourg on 10 February 2000.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President