Summary of Commission Decision
of 7 October 2008
relating to a proceeding under Article 86(3) of the EC Treaty on the Slovakian postal legislation
relating to hybrid mail services
(Case COMP/F-1/39.562)
(notified under document number C(2008) 5912)
(Only the Slovak text is authentic)
(2008/C 322/06)

1. On 7 October 2008, the Commission adopted a decision pursuant to Article 86(3) of the EC Treaty. The Commission herewith publishes the main content of the decision and the name of the undertaking concerned, having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision in the authentic language and in English is available on the Competition Directorate General website at the following address:

http://ec.europa.eu/comm/competition/antitrust/cases/index.html

2. This decision is addressed to the Slovak Republic. The subject matter of the procedure is the extension of the postal monopoly of the postal incumbent Slovenská pošta.

3. Hybrid mail is a specific form of postal service where the content is electronically transferred from the sender to the postal service operator who then prints, envelopes, sorts and delivers the postal items. Hybrid mail is an important feature for companies such as banks, insurance companies and telecommunication undertakings who regularly have to send large amounts of mail (for example invoices).

4. In the Slovak Republic, the delivery of hybrid mail items was open to competition and several private companies were active on the market. However, on 8 November 2007, a legislative proposal aimed at reserving the delivery of hybrid mail to Slovenská pošta was introduced in Parliament. This proposal was adopted in second reading on 15 February 2008 and became applicable on 1 April 2008.

5. At the same time, on 30 November 2007, the Postal Regulatory Office issued a public statement informing stakeholders that, despite previous statements and decisions, it would now consider hybrid mail delivery to be part of the postal monopoly.

6. As a consequence, the private operators were prevented from exercising their activity in this field and incurred losses that endangered their viability. Moreover, the value added services that these operators offered were no longer available to customers.

7. Slovenská pošta is fully owned by the Slovak Republic and is thus a public undertaking. It also enjoys exclusive rights in relation to traditional mail items below 50 g and 2.5 times the basic postal tariff. Accordingly, Article 86 is applicable.

8. As a result of its exclusive rights, Slovenská pošta is dominant on the market of traditional postal services in a substantial part of the common market, namely the territory of Slovakia. By extending the postal monopoly to delivery services of hybrid mail, which were so far open to competition, and thereby by restricting the offer of postal services available to customers the Slovak Republic infringed Article 86(1), in conjunction with Article 82 of the EC Treaty.

9. Under Article 86(2) of the EC Treaty, undertakings entrusted with an operation of services of general economic interest shall be subject to treaty rules, in particular the rules on competition, in so far as the application of such rules does not obstruct the performance of the particular task assigned to them. It is for the Member State to demonstrate that the restriction of competition is necessary for providing such services of general economic interest.
10. The Slovak Republic and Slovenská pošta claimed that the restriction of competition at hand was necessary for the provision of the postal universal service. However, neither the Slovak Republic nor Slovenská pošta have been able to provide convincing evidence that, without the re-monopolisation of hybrid mail, Slovenská pošta would no longer be in a position to provide the postal universal service under economically acceptable conditions.

11. The Decision calls upon the Slovak Republic to propose effective measures so as to put an end to the infringement and to inform the Commission accordingly within one month of receipt of the decision.