

**Action brought on 21 December 2004 by the Federal Republic of Germany against the Commission of the European Communities**

(Case T-490/04)

(2005/C 31/54)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 December 2004 by the Federal Republic of Germany, represented by W.-D. Plessing and T. Lübbig, Rechtsanwalt, acting as Agents.

The applicant claims that the Court should:

- annul Commission Decision K(2004)4001/3 of 20 October 2004 on the German legislation governing the area of mail pre-sorting services, in particular access for self-delivery intermediaries and mail consolidators to the public postal net work and the associated special rates (BdKEP – restrictions in the area of mail pre-sorting);
- order the Commission to pay the costs of the proceedings.

*Pleas in law and main arguments:*

According to the contested decision, Paragraph 51(1), second sentence, point 5 of the Postgesetz (German Postal Law), under which Deutsche Post AG is granted for a transitional period a privileged legal position (the so-called exclusive licence) for its mail delivery activities, breaches Article 86(1) EC, in conjunction with Article 82 EC, in so far as that provision prevents commercial mail pre-sorting firms, irrespective of whether they are acting as self-delivery intermediaries for a single sender or as mail consolidators for several customers, from securing volume-dependent part-performance discounts for the delivery of mail to Deutsche Post AG sorting centres.

In this action brought under the second paragraph of Article 230 EC, the Federal Republic of Germany submits that the contested decision breaches both Article 82 EC and Directive 97/67/EC on postal services <sup>(1)</sup> for the following reasons:

- the Commission incorrectly assumes that the German provision extends the dominant market position of the universal service provider Deutsche Post AG within the reserved sector to the upstream market in mail pre-sorting, to the detriment of mail pre-sorting firms;
- the differing treatment of self-delivery by senders as compared with that of commercial postal service providers does not constitute discrimination within the terms of 82 EC or the fifth indent of Article 12 of the Directive on postal services; and

- the contested decision amounts to a premature intrusion into the area covered by the exclusive licence of Deutsche Post AG, which could lawfully be reserved under Article 7(1) of the Directive on postal services.

The Federal Republic of Germany submits further that the contested decision is not adequately reasoned, contrary to Article 253 EC.

<sup>(1)</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14).

**Action brought on 22 December 2004 by Deutsche Post AG against the Commission of the European Communities**

(Case T-493/04)

(2005/C 31/55)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 December 2004 by Deutsche Post AG, Bonn (Germany), represented by J. Sedemund, lawyer.

The applicant claims that the Court should:

1. annul the Commission's Decision of 20 October 2004 (K(2004)4001/3) on the German legal framework governing the provision of postal services, in particular access by private postal service providers and consolidators to the public postal network and the special tariffs connected therewith (BdKEP – Beschränkungen im Bereich der Postvorbereitung (restrictions on postal services);
2. Order the Commission to pay the costs.

*Pleas in law and main arguments:*

The pleas in law and main arguments of Deutsche Post AG in the proceedings brought under Article 230(4) EC correspond, with regard to Article 82 EC and the Postal Service Directive 97/67/EC <sup>(1)</sup>, to those of Case T-490/04.

<sup>(1)</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).