

COMMISSION

COMMISSION DECISION

of 21 December 2000

concerning proceedings pursuant to Article 86 of the EC Treaty in relation to the provision of certain new postal services with a guaranteed day- or time-certain delivery in Italy

(notified under document number C(2000) 4067)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/176/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 86(3) thereof,

Having given the Italian authorities, by letter of 16 May 2000, and the incumbent operator, Poste Italiane SpA, by letter of 30 May 2000, notice to submit their comments on the Commission's objections in respect of Article 4(4) of Legislative Decree No 261 of 22 July 1999,

Whereas:

I. THE FACTS

A. The national measure in question

- (1) On 6 August 1999 Legislative Decree No 261/99 of 22 July 1999 (the 'Decree') entered into force ⁽¹⁾. Article 4(1) of the Decree defines the area reserved to the incumbent operator, Poste Italiane SpA (PI), as the

'clearance, transport, sorting and delivery of items of domestic and cross-border correspondence, whether by accelerated delivery or not, the price of which is less than five times the public tariff for an item of correspondence in the first weight step of the fastest standard category, provided that the items weigh less than 350 grams.'

- (2) Article 4(4) states:

'with respect to the delivery phase, the items of correspondence provided by paragraph 1 include those generated by telematic technologies.'

- (3) The delivery of items of correspondence generated by telematic technologies is part of the so-called hybrid electronic mail service. The exclusive right granted to PI by virtue of Article 4(4) of the Decree covers all deliveries undertaken for mail items created by telematic means, irrespective of whether they provide added value when compared to the conventional delivery service and irrespective of whether PI provides the added value delivery service itself or not. Private operators are thus precluded from satisfying the special demand for such added-value deliveries.

⁽¹⁾ Legislative Decree No 261 of 22 July 1999, published in Gazzetta ufficiale della Repubblica italiana, serie generale, No 182.

- (4) Before the entry into force of Article 4(4), no State measure granted PI any special or exclusive rights for any phase of the hybrid electronic mail service. Ministerial Decrees No 333 of 24 June 1987 ⁽¹⁾, No 269 of 29 May 1988 ⁽²⁾ and No 260 of 7 August 1990 ⁽³⁾, which provided the legal basis for the establishment of the incumbent's hybrid electronic mail service, did not reserve the delivery phase of this service. By virtue of Article 2(19) of Law No. 662 of 1996 ⁽⁴⁾, all postal services not explicitly reserved to the incumbent by law were open to competition.

B. The relevant services

- (5) PI offers the following universal postal services in Italy:
- a basic letter service. This service provides a non-binding delivery target of J + 3 for 80 % of mail items, J + 4 for 90 % and J + 5 for 99 % of mail items,
 - the hybrid electronic mail service. The delivery target is identical to that governing the basic letter service,
 - a basic registered letter service. This service is governed by the same non-binding delivery target as the basic letter mail service. According to PI, the registered mail service in Italy comprises two delivery attempts, a system of tracking and tracing, the possibility to change the addressee in transit and a system of electronic certification of delivery,
 - a priority letter service ⁽⁵⁾. For urban destinations this service is governed by a non-binding delivery target of J + 1 for 80 %, J + 2 for 90 % and J + 3 for 99 % of mail items. For rural destinations it is governed by a non-binding delivery target of J + 2 for 85 %, J + 3 for 95 % and J + 4 for 99 % of mail items. According to PI, the priority mail service in Italy allows for the possibility to change destination or addressee in transit and offers a service reporting an addressee's change of address or the fact that the new address could not be traced.
- (6) Private operators have begun offering new mail outsourcing service packages to business customers. Such services include the production, preparation, transport and delivery of time-sensitive mail items. In the more advanced outsourcing services, the collection, sorting and transport of data is done electronically, while delivery, after printing, takes place in physical form. The hybrid electronic mail service organises the production process in a way to reduce the necessity for physical transport of the message, before it is printed and delivered. The outsourcing package increases speed and reliability at the delivery phase by providing for two key features:
- guaranteed delivery at a pre-arranged day ('day-certain' delivery), or
 - guaranteed delivery at a pre-arranged time ('time-certain' deliveries).
- (7) Payment for the day- or time-certain delivery service is conditional on the delivery occurring either at the pre-arranged day or the pre-arranged time. The provider undertakes a guarantee that day or time certain delivery is provided across at least the territory of an entire province in Italy.
- (8) Variants of these two key features include the following: 1. a service providing for day or time-certain delivery according to a day or time sequence determined by the customer, 2. day-certain delivery to (one or several) alternative destinations, where delivery at the first chosen location is unsuccessful. The following features are usually associated with the day- or time-certain delivery service: 1. tracking and tracing throughout the electronic and physical delivery phase, 2. electronic reporting on successful delivery at either the pre-arranged day or at the pre-arranged time, 3. electronic records of these delivery reports, 4. electronic reporting on failed deliveries, 5. effort to locate the customer at his new address, and 6. constant updating of customer-specific mailing lists. Sometimes the verification of the addressee's response (e.g. collection of payment upon receipt of a notice of payment for insurance premiums) is also offered.

⁽¹⁾ Gazzetta Ufficiale della Repubblica italiana No 184, 8 August 1987.

⁽²⁾ Gazzetta Ufficiale della Repubblica italiana No 165, 15 July 1988.

⁽³⁾ Gazzetta Ufficiale della Repubblica italiana No 218, 18 September 1990.

⁽⁴⁾ Law No 662 of 23 December 1996, published in Gazzetta Ufficiale della Repubblica italiana No 303.

⁽⁵⁾ The priority letter service was introduced by a Ministerial Decree of 24 May 1999, published in Gazzetta Ufficiale della Repubblica italiana, serie generale No 128, 3 June 1999.

- (9) Banks, insurance companies or other undertakings demand guaranteed day- or time-certain deliveries for a number of time-sensitive mail items. These include documents sent in order to meet a legal deadline, notices for payments due (with respect to a series of financial instruments such as bills of exchange, promissory notes or letters of credit), time-limited offers to subscribe to a series of financial or insurance products and services, last-minute statements of accounts, notices collecting insurance premiums, time-limited promotional offers for product launches. Time-sensitive mail items lose their entire value once the legal deadline to respond has expired, the relevant subscription period has elapsed or the relevant event has taken place. Therefore, customers need to have certainty that the time-sensitive item is delivered exactly at a pre-arranged day or exactly at the pre-arranged time.
- (10) Private operators in Italy have established the infrastructure necessary to provide the hybrid electronic mail outsourcing service across a substantial part of the Italian national territory. At present, their delivery infrastructure covers several provinces and approximately 40 % of the country. Once the critical volume is achieved, it will be extended to cover the entire national territory. Access to the incumbent's delivery network does not maintain the guaranteed day or time certain delivery features. This is because the delivery services as provided for by the incumbent do not reach the requisite quality of service level.

C. The proceedings

- (11) On 16 May 2000, the Commission initiated infringement proceedings against Italy for violation of Articles 86 in conjunction with Article 82 of the EC Treaty and invited the Italian Government to transmit, within a period of two months after receiving the letter of formal notice, either the measures it intends to adopt in order to bring the infringements to an end or its observations on the issues raised in the letter of formal notice. The Italian Government submitted its observations on 26 July 2000. PI, which had been invited to present its observations on 30 May 2000, responded on 14 July 2000. Prior to launching the proceedings, the Commission held several meetings with the Italian Government and PI in order to discuss the concerns raised by Article 4(4) of the Decree. In particular, meetings were held with the Italian Government and PI jointly on 23 February and 28 March 2000 respectively. An additional meeting was held with PI alone on 13 March 2000. The objections raised in the letter of formal notice were discussed in a further meeting with the Italian Government and PI jointly on 11 September 2000. A further meeting was held with the Italian Government on 23 October 2000. A separate meeting was held with representatives of PI on 11 October 2000. At the request of PI, the Commission repeatedly extended the deadline for submitting observations on its letter of formal notice. PI was granted the opportunity to submit further observations, which were received on 28 and 30 October 2000 respectively. On 15 November 2000 PI submitted an additional legal opinion.

II. LEGAL ASSESSMENT

Article 86

- (12) Article 86(1) of the Treaty, provides that, in the case of public undertakings and of undertakings to which Member States grant special or exclusive rights, Member States must neither enact nor maintain in force any measure contrary to the rules contained in the Treaty, in particular those relating to competition. PI is a public undertaking within the meaning of Article 86(1) because it is wholly owned by the Italian State. In addition, by virtue of Article 4 of the Decree, the state has granted PI exclusive rights.
- (13) Under Article 86(1), Member States may not, by laws, Regulations or administrative measures put public undertakings and undertakings to which they grant special or exclusive rights in a position which the said undertaking could not themselves attain by their own conduct without infringing Article 82 ⁽¹⁾. Accordingly, where the Commission identifies a State measure that is enacted or maintained in violation of Article 86(1) in conjunction with Article 82, Article 86(3) empowers it to 'address appropriate... decisions to Member States.'

⁽¹⁾ See Case C-18/88 Régie des télégraphes et des téléphones v GB-Inno [1991] ECR I-5941, Point 20 and Case C-320/91 Corbeau [1993] ECR I-2533, Point 12.

- (14) It is apparent from the wording of Article 86(3) and from the rationale behind Article 86 as a whole that the Commission may take all action it considers necessary in order to safeguard the competition rules ⁽¹⁾. The Commission enjoys the discretion to determine whether it is expedient to take action against a Member State under Article 226 or Article 86(3) of the Treaty ⁽²⁾. Therefore, if the Commission deems it necessary in order to safeguard the competition rules, it may proceed under Article 86(3) instead of Article 226 ⁽³⁾. The Italian Government cannot, therefore argue that the Commission's action with respect to Article 4(4) should have been based solely on Article 226 and that this procedure is a *lex specialis* in relation to the Article 86(3) proceedings.
- (15) Furthermore, the proceedings launched under Article 86(3) of the Treaty fully safeguard the Member States' rights of defence ⁽⁴⁾. Proceedings are opened by sending a letter of formal notice to the Member State concerned, which is given the opportunity to express its views within a deadline of two months. The Commission is entitled to adopt the decision foreseen in Article 86(3) only, after considering the Member States' observations submitted within this deadline ⁽⁵⁾. In addition, without being under any legal obligation to do so, in the present case the two-month deadline has been extended repeatedly in order to provide both PI and the Italian Government with a series of further opportunities to make their arguments known. Finally, the legality of the Commission's decision is subject to review by the European Courts. Review by the European Courts of all Commission measures taken pursuant to Article 86(3) ensures the balance between the institutions. Contrary to the view of the Italian Government, proceedings under Article 86(3) therefore do not distort the institutional balance between Member States, the Council and the Commission.

A. The relevant markets

- (16) Two markets are relevant for this decision: 1. Non-conventional deliveries, which comprise the above mentioned guaranteed day- or time-certain deliveries, and 2. Conventional deliveries, which are governed by delivery targets but do not provide for certainty and guarantee as to the exact day or time of delivery.
- (17) Guaranteed-time or day-certain deliveries differ significantly from the conventional deliveries as regards 1. their features, and 2. the needs they satisfy:
1. the conventional delivery service does not offer any guarantee as to the day or time on which the item of correspondence is delivered ⁽⁶⁾. The conventional delivery service is governed by general delivery targets which never specify the exact day or exact time of delivery. The conventional delivery service does not offer a guarantee as to the precise day or time the item is delivered;
 2. the conventional delivery service cannot match the above-described demand for guaranteed day or time certain deliveries. The two services are not interchangeable. As mentioned above, time- or day-certain deliveries meet the special need of business customers which require that a series of

⁽¹⁾ Case T-266/97, *Vlaamse Televisie Maatschappij NV*, Point 75.

⁽²⁾ Conclusions of Advocate General Mischo, presented on 19 October 2000 in Case C-163/99, *Portuguese Republic v. Commission*, Point 46. See also Case C-202/88, *France/Commission*, [1991] ECR I-1223.

⁽³⁾ Joined Cases C-48/90 et C-66/90, *Netherlands./Commission*, [1992] ECR I-627, Points 33-35.

⁽⁴⁾ Joined Cases C-48/90 et C-66/90, *Netherlands./Commission*, [1992] ECR I-627, Points 33-35 and Point 37.

⁽⁵⁾ Joined Cases C-48/90 et C-66/90, *Netherlands./Commission*, [1992] ECR I-627, Points 33-35 and Point 37.

⁽⁶⁾ The conventional delivery service also does not offer the above mentioned variants of these two key guarantees such as: 1. a service providing for day or time-certain delivery according to a day or time sequence determined by the customer; 2. day-certain delivery to (one or several) alternative destinations, in case delivery at the first chosen location is unsuccessful. As these features are variations of the key features, that is day- or time-certain delivery, their presence, in addition to day- or time-certain delivery, is not a prerequisite in order to distinguish conventional from non-conventional delivery services.

time-sensitive items of correspondence are delivered at the precise date or time. The conventional delivery service, on the other hand, meets the general need of the public. For these customers the precise day or time at which the item is delivered is not relevant ⁽¹⁾.

- (18) As they offer different features and satisfy significantly different needs, it is not correct for PI to assert that guaranteed day- or time-certain deliveries are a mere evolution, and adaptation of the conventional delivery service ⁽²⁾. Furthermore, contrary to the Italian Government's assertion, the platform on which the letter mail item was produced was not used for defining the market. The distinction between conventional deliveries and day- or time-certain deliveries is made on the basis of the different features and different needs the two services satisfy and is thus independent of whether the mail item was collected and transported physically or electronically. The Italian Government and PI are thus wrong to argue that the Commission's definition of the relevant market was undertaken on the basis of the mode of production for the mail item.
- (19) PI argues that there is no real demand for a day- or time-certain delivery service ⁽³⁾. However, private operators have undertaken the investment to establish the infrastructure necessary to provide the hybrid electronic mail service with day- or time-certain delivery. This is an indication that these operators have concluded that there is customer demand for the day- or time-certain delivery service. In addition, the fact that banks and insurance companies may be more price-sensitive than time-sensitive with respect to their non time-sensitive standard letter mail items ⁽⁴⁾, does not alter the fact that they are time-sensitive with respect to the particular mail items mentioned above.
- (20) Finally, day- or time certain-delivery is also different from the delivery on appointment feature that PI claims to be part of its 'Postacelere' service ⁽⁵⁾. PI describes this feature as an ad hoc delivery service for individual mail items outside of the postman's regular delivery round ⁽⁶⁾. According to PI, once the item has arrived in the distribution centre, the postman arranges for a prior appointment with the recipient in order to establish a mutually convenient delivery date and time ⁽⁷⁾. It becomes clear that this service differs fundamentally from the guaranteed time or day certain delivery service in several respects:

- the postman only arranges for an appointment when the item has arrived in the distribution centre. The ad hoc delivery does not change the fact that the service, as all other PI services mentioned above, is governed by delivery targets rather than by a guarantee that delivery takes place at a pre-arranged day or time. A system of non-binding delivery targets differs fundamentally from a guarantee that mail items are delivered on a precise pre-arranged day or at a pre-arranged time ⁽⁸⁾,
- payment for the 'Postacelere' service is not conditional on the accomplishment of guaranteed delivery at a precise day or time. No conventional delivery service in Europe, including Italy, makes payment conditional on the successful accomplishment of delivery on a precise pre-arranged day or at a pre-arranged time.

⁽¹⁾ As mentioned above, the following features are usually associated with the day- or time-certain delivery service: 1. tracking and tracing throughout the electronic and physical delivery phase; 2. electronic reporting on successful delivery at either the pre-arranged day or at the pre-arranged time; 3. electronic records of these delivery reports; 4. electronic reporting on failed deliveries; 5. the attempt to locate the customer at his new address; and 6. constant updating of customer-specific mailing lists. Sometimes the verification of the addressees' response (e.g. collection of payment upon receipt of a notice of payment for insurance premiums) is also offered. While these additional service features are usually associated with day- and time-certain deliveries, their presence is not a prerequisite in order to distinguish the conventional from the non-conventional delivery service.

⁽²⁾ See submissions by Poste Italiane of 15 November 2000, p. 7.

⁽³⁾ Annex 2 to Poste Italiane's submission of 11 October 2000, p. 2.

⁽⁴⁾ Annex 2 to Poste Italiane's submission of 11 October 2000, p. 2.

⁽⁵⁾ Annex 3 of Poste Italiane's submission of 11 October 2000 and p. 4, footnote 1, of Poste Italiane's submission of 28 October 2000.

⁽⁶⁾ Annex 3 of Poste Italiane's submission of 11 October 2000, p. 3. Poste Italiane itself states that this service is not universal.

⁽⁷⁾ Annex 1 of Poste Italiane's submission of 28 October 2000, p. 4.

⁽⁸⁾ The Italian Government itself states that postal services are inherently based on delivery targets but not on contractual guarantees. No bank would be interested in a guaranteed time or day-certain delivery service.

- (21) In light of the above, non-conventional delivery services can be distinguished by their day- or time-certain delivery which forms the object of a contractual guarantee. They form a market distinct from the conventional delivery service, which neither provides for day- or time-certain delivery nor offers any guarantee in this respect. In view of this clear distinction between non-conventional and conventional services, PI cannot claim that private operators would advertise day- and time-certain deliveries merely as a screen for providing conventional delivery services ⁽¹⁾.

B. The relevant geographic markets

- (22) The geographic scope of the markets concerned is Italy. The general letter mail monopoly, including the delivery phase of the hybrid electronic mail service reserved by Article 4(4) of the 1999 Decree, covers the entire Italian territory.

C. The dominant position

- (23) Article 4 of the Decree grants the public postal operator an exclusive right covering the entire Italian territory. Therefore, the beneficiary of this right holds a dominant position as regards the service covered by the exclusivity. According to the jurisprudence of the Court, an undertaking vested with a legal monopoly in a particular market may be regarded as occupying a dominant position in that market within the meaning of Article 82 of the Treaty ⁽²⁾. In addition, the territory of a Member State to which that monopoly extends constitutes a substantial part of the common market ⁽³⁾.

D. Abuse of dominant position

- (24) According to the Court, an abuse within the meaning of Article 82 is committed where, without any objective necessity, an undertaking holding a dominant position on a particular market reserves to itself other activities in separate and distinct markets ⁽⁴⁾, although these activities could also be carried out by another undertaking as part of its activities on this neighbouring but separate market ⁽⁵⁾.
- (25) With respect to the combined application of Articles 86 and 82 of the Treaty, the Court has held that the extension, by means of a measure adopted by the State, of a monopoly into a neighbouring and competitive market, without any objective justification, is prohibited as such by Article 86(1) in conjunction with Article 82 ⁽⁶⁾.
- (26) PI has submitted that, at this stage, it does not offer a day- or time-certain delivery service in Italy ⁽⁷⁾. Nevertheless, a State measure reserving a neighbouring but separate market contravenes Article 86(1) in conjunction with Article 82 whether or not the incumbent is already active on the distinct service market itself:
- In so far as the extension of the reserved area to include days- or time-certain deliveries induces PI to offer day- or time-certain deliveries itself, Article 4(4) is liable to extend PI's dominant position with respect to conventional deliveries into the neighbouring but distinct market for day- or time-certain deliveries,
 - In so far as PI does not offer day- or time-certain deliveries, Article 4(4) induces PI, by the simple exercise of its exclusive right, to limit supply of the relevant service, as private operators are precluded from satisfying the demand for guaranteed day- or time-certain deliveries ⁽⁸⁾.

⁽¹⁾ Annex 2 of Poste Italiane's submission of 11 October 2000, p. 1.

⁽²⁾ See Case C-320/91 Corbeau [1993] ECR, Point 9.

⁽³⁾ See Cases C-41/90 Höfner [1991] ECR I-1979, Point 28, and C-260/89 ERT [1991] ECR I-2925, Point 31.

⁽⁴⁾ See Case C-320/91 Corbeau, ECR 1993, I-2533, Point 19.

⁽⁵⁾ See Case 311/84 CBEM [1985] ECR 3261.

⁽⁶⁾ See Case C-18/88 Régie des télégraphes et des téléphones v GB-Inno [1991] ECR I-5941, Point 24.

⁽⁷⁾ In its submission of 11 October 2000, PI questions whether there is demand for day- or time-certain deliveries and consequently whether there is a market for these services. According to PI, banks or insurance companies do not demand time-certain deliveries but cheap deliveries (Annex 2 of the submission of 11 October 2000, p. 1 and 2). Furthermore, in Annex 3 of its submission of 11 October 2000, PI submits a list of all the delivery services (reserved and non-reserved) it provides. Day- and time-certain deliveries are not contained in this list.

⁽⁸⁾ See Case C-41/90 Höfner [1991] ECR I-1979, Point 31.

- (27) It is not relevant whether the delivery phase of the hybrid electronic mail service was or was not open to competition prior to the entry into force of Article 4(4). Even if the delivery of the hybrid electronic mail services was reserved prior to the entry into force of Article 4(4), which is not born out by the relevant Italian legislation cited above, Article 4(4) would still be contrary to Article 86 in conjunction with Article 82, because Article 86(1) also prohibits maintaining State measures contrary to Article 82.
- (28) To the extent that the Italian Government argues that the extension of the reserved area is objectively justified in order to safeguard the financial equilibrium of PI, reference is made to the section on Article 86(2), below.

E. Effect on trade between Member States

- (29) The responsibility of Member States pursuant to Articles 86(1) and 82 of the Treaty only arises where the abuse is capable of affecting trade between Member States. Such an effect exists in this instance because the exclusion of competition in a market distinct from and separate to the reserved area prevents undertakings established in other Member States, who have considerable expertise in providing day- or time-certain deliveries, to extend their activities to Italy.

F. Article 86(2) of the Treaty

- (30) Under Article 86(2) of the Treaty, the rules of the Treaty and, in particular the competition rules, apply to the incumbent postal operator entrusted with a service of general economic interest, unless their application obstructs the performance, in law or in fact, of the particular tasks assigned to it. It is for the Member State to prove that the application of the competition rules would have such an effect. For the following reasons the Italian Government and PI cannot consider either 1. that competition with respect to day- or time-certain deliveries would jeopardise the financial equilibrium of PI ⁽¹⁾, or 2. that opening the time- or day-certain delivery phase to private operators would result in the creaming off of PI's revenues ⁽²⁾.

— firstly, as mentioned above, PI, at this stage, does not offer a guarantee for day- and time-certain delivery as part of any of its postal services ⁽³⁾. Therefore PI would not suffer any loss of revenue, which it would have otherwise gained on this market. In addition, in order to ensure day- or time-certain deliveries, PI would have to undertake a complete reorganisation of its sorting and delivery phases. This makes PI's entry into this market unlikely in the short and medium term. In any event, the additional revenue to be gained by providing highly specialised time-sensitive mailings would remain marginal in relation to PI's deficit,

— secondly, day- and time-certain deliveries satisfy a very special but limited demand with respect only to time-sensitive mailings. Time-sensitive mailings are a new service which creates additional mail volume. Therefore, time-sensitive mailings do not replace or attract away demand from conventional (reserved) deliveries and consequently will not reduce the conventional mail volume and the revenue generated by PI in the reserved area,

— thirdly, the private operators' delivery infrastructure already covers the entire territory of several provinces in Italy. These provinces together amount to a nationwide coverage of 40 %. This service, covering the territory of entire provinces, is not limited to the profitable urban mail routes, leaving the unprofitable rural mail routes to PI.

⁽¹⁾ Submissions by the Italian Government of 26 July 2000, pp. 19-21. Submission of Poste Italiane of 14 July, p. 92 to 99, submission of Poste Italiane of 11 October 2000, p. 1 and 2, and submission of Poste Italiane of 15 November 2000, p. 23.

⁽²⁾ Submissions of the Italian Government of 26 July 2000, p.11. Submission of Poste Italiane of 11 October 2000, point C, p. 3, and point F, p. 4, and submission of Poste Italiane of 14 July, points 95 and 96.

⁽³⁾ See the list of Poste Italiane's (reserved and non-reserved) services as submitted at Annex 3 of its submission of 11 October 2000.

III. CONCLUSION

- (31) In light of the above, the Commission considers that Italy, by excluding competition with respect to the day- or time-certain delivery phase of hybrid electronic mail service, infringes Articles 86(1) and 82 of the Treaty, read in combination. As no other Member State except Italy has adopted a provision like Article 4(4), which specifically reserves the delivery phase of the hybrid electronic mail service irrespective of the special features offered in this phase, the Commission has to adopt a decision with respect to Italy only,

HAS ADOPTED THIS DECISION:

Article 1

The Italian postal legislation, as presently reflected in Article 4(4) of Legislative Decree No 261 of 22 July 1999, contravenes Article 86(1) in conjunction with Article 82 of the Treaty, insofar as it excludes competition with respect to the day- or time-certain delivery phase of hybrid electronic mail services.

Italy shall bring this infringement to an end by eliminating the exclusive rights granted to Poste Italiane SpA with respect to the day- or time-certain delivery phase of hybrid electronic mail services.

Article 2

Italy shall refrain in the future from granting exclusive rights with respect to the day- or time-certain delivery phase of hybrid electronic mail services.

Article 3

Italy shall inform the Commission within three months of notification of this Decision of the measures taken in order to end the infringement referred to in Article 1.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 21 December 2000.

For the Commission

Mario MONTI

Member of the Commission
