

Judgment of the Court (Second Chamber) of 6 October 2015 (request for a preliminary ruling from the Sø- og Handelsretten — Denmark) — Post Danmark A/S v Konkurrencerådet

(Case C-23/14) ⁽¹⁾

(Reference for a preliminary ruling — Article 82 EC — Abuse of a dominant position — Market for the distribution of bulk mail — Direct advertising mail — Retroactive rebate scheme — Exclusionary effect — ‘As-efficient-competitor’ test — Degree of likelihood and seriousness of an anti-competitive effect)

(2015/C 389/04)

Language of the case: Danish

Referring court

Sø- og Handelsretten

Parties to the main proceedings

Applicant: Post Danmark A/S

Defendant: Konkurrencerådet

Operative part of the judgment

1. *In order to determine whether a rebate scheme, such as that at issue in the main proceedings, implemented by a dominant undertaking is capable of having an exclusionary effect on the market contrary to Article 82 EC, it is necessary to examine all the circumstances of the case, in particular, the criteria and rules governing the grant of the rebates, the extent of the dominant position of the undertaking concerned and the particular conditions of competition prevailing on the relevant market. The fact that the rebate scheme covers the majority of customers on the market may constitute a useful indication as to the extent of that practice and its impact on the market, which may bear out the likelihood of an anti-competitive exclusionary effect.*
2. *The application of the ‘as-efficient-competitor’ test does not constitute a necessary condition for a finding to the effect that a rebate scheme is abusive under Article 82 EC. In a situation such as that in the main proceedings, applying the as-efficient-competitor test is of no relevance.*
3. *Article 82 EC must be interpreted as meaning that, in order to fall within the scope of that article, the anti-competitive effect of a rebate scheme operated by a dominant undertaking, such as that at issue in the main proceedings, must be probable, there being no need to show that it is of a serious or appreciable nature.*

⁽¹⁾ OJ C 78, 15.3.2014.