

European Commission
Case IV/32.791 - Remail
Decision SG (95) D/1790
17 November 1995

COMMISSION OF THE EUROPEAN COMMUNITY
KAREL VAN MIERT
Member of the Commission

Brussels, 17. II. 1995

Sent by Registered Mail
with Acknowledgement of Receipt

International Express Carriers Conference
To the attention of Mr. J.I. Campbell Jr.
2011 Pennsylvania Ave. , N.W., Suite 500
Washington, D.C. 20006
UNITED STATES OF AMERICA
Fax No. (001-202) 457.91.21

SG (95) D/1790

Dear Madam / Sir,

Subject: Case No. IV/32. 791 - Remail

1. The Commission refers to your complaint submitted to my services on July 13, 1988. That original complaint contained two separate allegations, namely that (i) the system of terminal dues referred to as CEPT 1987 constituted a collusion between European postal administrations to prevent competition from remail companies and (ii) some postal administrations were invoking Article 25 UPU Convention to stifle competition by intercepting inbound or outbound cross-border mail.
2. On September 23, 1994 the Commission addressed a letter pursuant to Article 6 of Regulation No 99/63 to you indicating that with respect to the first allegation made in your complaint and in view of the considerations equally set out in that letter the Commission had decided that it is at the present time not appropriate to grant your application. Also, that letter invited you to submit any observations you deemed suitable and informed you that further to an extensive investigation the Commission intended to deal separately with the issue of Article 25 UPU Convention.

3. The observations submitted on your client's behalf on November 23, 1994 do not contain any new argument that would Justify a change in the Commission's conclusions set out hereinafter. [2]
4. In the light of these observations this letter is to inform you about the final decision reached with regard to your complaint as regards the allegations on the CEPT 1987 scheme.
5. As you are aware, the complaint about the 1987 CEPT agreement was investigated fully by the Commission and culminated in the issuance of a Statement of Objections on 5 April 1993 against seven postal administrations. Our key objection to the system of terminal dues outlined in the 1987 CEPT agreement was that it was not based on the costs incurred by a postal administration in processing incoming international mail. Instead, such agreement fixed a rate for the processing service to be applied by all signatory postal administrations. As a consequence, customers seeking service from postal administrations faced a system of artificially fixed prices rather than competitive prices reflecting the costs of different postal administrations. Therefore, the Statement of Objections emphasised that charges levied by postal administrations for processing incoming international mail should be based on their costs.
6. The Commission accepted that these costs could be difficult to calculate precisely and stated that domestic letter tariffs could be deemed an adequate indication of these costs. As you know, that approach was also developed in the Commission's 1992 Green Paper on the Development of the Single Market for Postal Services (the "Green Paper") which recommended that postal administrations should charge for the processing of incoming international mail on the basis of their normal domestic tariffs. The Green Paper acknowledged that such approach would lead to terminal dues higher than those charged under the pre-CEPT regime and indeed possibly higher than those charged under the CEPT regime.
7. The relevant feature of the regime recommended by the Green Paper is that charges would reflect the individual costs of the postal administrations concerned and allow retail operators to either contract or compete with individual postal administrations depending on their cost effectiveness and quality of service. You are quite right to observe that the Green Paper does not provide an enforceable solution to your complaint. However, it is a source of inspiration that adequately identifies the features required for a cost regime to be acceptable both under the Commission's competition policy and the Single Market programme, as the Commission emphasised in its first statement of objections.
8. Further to the Commission's Statement of Objections, several European PPOs formed a group to design a new system of mutual charges for the processing of incoming international mail. The Commission has been kept informed of progress towards the proposed new "System for the Remuneration of Exchanges of International Mails between Public Postal Operators with a Universal Service Obligation" (the "REIMS scheme") On 17 January 1995, 14 public postal operators (PPOs), 12 of which belonging to the European Union, signed a

draft agreement on terminal dues with a view to Implementation on 1 January 1996. According to information provided on an informal basis by the International Post Corporation, the recently signed draft envisages a system whereby the receiving PPO would charge the originating PPO a fixed percentage of the former's domestic tariff for any post received. The receiving PPO may reduce that percentage if [3] certain processing of the mail is carried out before its reception, e.g. pre-sorting or presentation by format.

9. The Commission thus notes that the PPOs are actively working towards a system of new charges and at this stage believes that the parties are endeavouring to address the Commission's concerns under competition law shared by your complaint against the old system. It is the Commission's view that pursuing the infringement procedure with respect to the soon to be defunct 1987 CEPT scheme would hardly bring about a more favourable result for your clients. Indeed, the likely result of a prohibition decision would merely be to delay if not disrupt the wide-ranging reform and restructuring of the terminal dues system currently taking place, whereas the revised system should be implemented in the near future. In the light of the above and of the European Court of Justice's judgement in the *Automec II* case,¹ the Commission considers that it would not be in the interest of the public of the Community to devote its scarce resources to moving, at this stage, towards resolving the terminal dues related aspect of your complaint by means of a prohibition decision.
10. Your client is undoubtedly aware of the complex issues raised by any system designed to regulate mutual compensation of PPOs participating in cross-border mail flows. Such system must take account of asymmetrical national or regional tariff structures. Also, differences and variations in volumes of cross-border mail have direct effects on the calculation of costs and thus on compensatory charges. Therefore, the Commission has monitored closely the efforts undertaken over the past few years by PPOs to design a new system set to deal with all relevant aspects of international postal exchanges.
11. The result of these efforts is the aforementioned REIMS scheme, an outline of which was attached to the Commission's letter of December 15, 1994 sent to your attention. As a result of extensive discussions between experts the REIMS scheme will introduce a new comprehensive economic framework for international mail exchanges. The Commission is convinced that nothing positive would be achieved at this stage by a decision to prohibit the current system of mutual compensation between PPOs. Therefore, the Commission fails to see a Community interest in jeopardising the results of recent constructive effort for the benefit of merely declaring any current scheme anti-competitive.
12. Most importantly, the Commission, on the basis of the information it has, considers that the REIMS scheme may be liable to provide solutions for the concerns expressed in the Statement of Objections forwarded to several postal administrations. It would undoubtedly not be in the interest of the public of the Community to see yet another agreement restrictive

¹ T-24/90 *Automec Srl v Commission* [1992] ECR II-2223

of competition substitute the 1987 CEPT agreement. Nevertheless, the REIMS scheme appears to provide at least for a transitional period alternatives to the formerly restrictive clauses which were of concern to the Commission. Notably, the REIMS scheme, despite possible imperfections, provides a link between terminal dues and the domestic tariff structure, i.e. allows individual PPOs to reflect their costs in the long term. In the Commission's view, granting PPOs that possibility until such date as terminal dues are entirely and globally costlinked is an acceptable response to the Statement of Objections. The Commission concludes that the implementation of the REIMS scheme [4] is a step in the right direction and that measures against such implementation are not at this stage of Community interest.

13. There is no doubt that the Commission shall thoroughly analyse the future REIMS scheme and its implementation under the competition rules. It shall notably examine the issue of Community interest both in terms of the substance of the reforms and the pace of their introduction should progress towards an acceptable system of terminal dues beyond the REIMS scheme be insufficient. The Commission may consider adopting a formal Decision at that time.
14. For the above considerations I inform you that your application of July 13, 1988 pursuant to Article 3(2) Regulation No 17/62, as far as the alleged collusion between postal administrations by means of the 1987 CEPT agreement is concerned, is hereby rejected.

Done in Brussels,

For the Commission

[signed] Karel van Miert