JUR1310 BA level

EU Competition Law Autumn 2022

In each of the two neighbouring EU Member States Hispania and Germanica, there were three undertakings offering parcel delivery services from distance selling companies to private consumers. In both countries, the three undertakings were H-Post, G-post and Continental Post. H-Post and G-Post were the incumbent national post-operators in Hispania and Germanica respectively and offered a full range of postal services. Continental Post had relatively recently entered the Hispanic and Germanic markets and specialized in parcel delivery services.

H-Post, G-Post and Continental Post collected, sorted and delivered a wide variety of packaged goods sold by different sellers on the internet and purchased by consumers. The consumers could either pick up their parcels over-the-counter in a retail outlet ("over-the-counter delivery") or receive the parcels at their place of residence ("home delivery").

Continental Post, G-Post and H-Post each had several strategically placed sorting facilities (terminals) in Hispania and Germanica. They had also made large investments in sophisticated logistics software as well as in large fleets of vehicles for parcel delivery. Each of the three undertakings could deliver several million parcels each year. However, if they were to substantially increase their capacity to collect and deliver even more parcels, significant investments in additional terminals and vehicles would be necessary.

The parcel delivery services offered by H-Post, G-Post and Continental Post were paid for by the distance selling companies based on individually negotiated prices. H-Post, G- Post and Continental Post respectively did not know the prices charged by the two other undertakings for their parcel delivery services.

Hispania and Germanica constituted separate relevant geographic markets for the service of delivering parcels from distance selling companies to private consumers. In the relevant Hispanic market, H-Post held a market share of 50 %, G-Post´s market share was 30 % and Continental Post had a market share of 20 %. In the relevant Germanic market, H-post´s market share was 30 %, G-Post had 50 % and Continental Post 20 %.

In 2022, H-Post and Continental Post signed a merger agreement. The merging parties formulated a detailed business plan for the new undertaking, which would be named HC-Post, in particular with a view to expanding its market positions.

Firstly, in order to build volume with each customer, it considered to introduce a rebate system open to all customers, where the rebate was triggered provided that the customer reached an estimated and agreed volume threshold over an annual reference period. If the rebate was triggered, it would reduce the price of all the package deliveries made in the reference period, and not only to deliveries exceeding the threshold.

Secondly, as HC-Post would likely face more aggressive competition in the Germanican market, and as the level of costs in Hispania was higher, it planned to differentiate the price level between parcels delivered in Hispania and Germanica respectively. Although this would make the operations in Germanica unprofitable in the short run, it considered that it would weaken its competitor G-Post, and that it could be cross-subsidized with profits earned in Hispania.

Q 1: Discuss (i) whether the new company HC-Post would have a dominant market position within the meaning of Article 102 TFEU in the relevant Hispanic market, and (ii) whether HC-Post and G-Post together would have a collective dominant market within the meaning of Article 102 TFEU in the relevant Germanic market.

Q 2: Provided HC-Post holds a single dominant position in the relevant Hispanic market after the merger; discuss whether HC-Post´s planned pricing practices are likely to infringe Article 102 TFEU.