

Release of undertakings relating to the supply and maintenance of postal franking machines

Advice to the Secretary of State by Sir John Vickers, Chairman of the OFT

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ISSUE

1. Section 88(4) of the Fair Trading Act 1973 (FTA) requires the Office of Fair Trading (OFT) to keep under review undertakings given as a consequence of a Monopolies and Mergers Commission (MMC) monopoly report and to advise you if we believe that changes are appropriate.
2. This advice relates to undertakings given by Pitney Bowes Plc (Pitney Bowes) in 1988 on the supply and maintenance of postal franking machines.

RECOMMENDATION

3. That you release Pitney Bowes from its undertakings.

TIMING

4. Routine. My officials will liaise with yours on when we will accept the new undertakings.

BACKGROUND

5. The undertakings have been reviewed as a part of our programme of reviews of undertakings and Orders.

6. In 1986 the MMC reported on the postal franking machine market in the UK.¹ It found that a monopoly situation existed in the supply, maintenance and repair of postal franking machines in the UK with respect to the two leading manufacturers and suppliers of postal franking machines: Pitney Bowes and Roneo Alcatel Limited (Alcatel) and their respective groups of interconnected bodies corporate.^{2,3}
7. The MMC found that these companies' policies of selling directly to customers without supplying price lists had restrained price competition.⁴ Other practices were also found to have had a negative impact on competition. For example, requiring leased franking machines to be returned to the original supplier.
8. In addition, the MMC concluded that the Post Office's regulations and practices had restricted competition.⁵ This was because they effectively prevented the distribution of franking machines through dealers and the independent maintenance of these machines, and hindered the sale of second hand equipment.
9. As a consequence of the MMC's findings, five undertakings were given by Pitney Bowes and Alcatel in 1988 under section 88 of the FTA. The undertakings were intended to help open up the supply of maintenance and repair services, and to ensure pricing information was given to prospective users.
10. In 1992 Alcatel was broken up and subject to a management buy-out which subsequently created Neopost Limited (Neopost). In that instance the obligation to observe the undertakings did not pass on to Neopost but Neopost voluntarily gave assurances to the OFT that it would nevertheless comply with the undertakings.

ASSESSMENT

11. Our review of the undertakings concluded that the existing undertakings are outdated and inadequate. They have been ineffective in bringing about the changes the MMC envisaged. The supply of second hand machines via independent sources has not developed, only a small number of firms have been approved by Royal Mail as independent maintainers and inspectors, and these

¹ MMC 1986, Postal Franking Machines: a report on the supply, maintenance and repair of postal franking machines in the United Kingdom, Cmnd. 9747.

² MMC 1986, paragraphs 9.79 and 9.80.

³ In 1994 Pitney Bowes Plc de-listed and registered as a private company, Pitney Bowes Limited, which is now bound by the undertakings.

⁴ MMC 1986, paragraphs 9.44 and 9.81.

⁵ MMC 1986, paragraphs 9.46 and 9.82.

firms do not offer effective competition to the manufacturers for maintenance and inspection work. Price competition may still be restricted as a result.

12. We also concluded that there are a number of features present in the industry today, including some not originally addressed by the MMC, which we suspect prevent, restrict or distort competition.
13. Consequently, in June last year the OFT was minded to refer the market to the Competition Commission for investigation under section 131 of the Enterprise Act 2002. In August the OFT consulted with affected parties on the proposed market investigation reference. During this consultation the main parties – Pitney Bowes, Neopost and Royal Mail – indicated a willingness to offer undertakings in lieu of a reference and subsequently did so.
14. In February of this year the OFT consulted on the proposed undertakings in lieu. Following this, the parties offered some minor, non-material modifications to the proposed undertakings.
15. The OFT has decided to use powers under section 154 of the Enterprise Act 2002 to accept the proposed undertakings, as modified.
16. The new undertakings are annexed to this advice. We believe that they offer a significant improvement on the status quo, especially in regard to Royal Mail's procedures which will:
 - help open up the supply of maintenance services by making becoming an authorised third party maintainer and inspector easier; and
 - remove some impediments to the supply of second hand machines by being less restrictive on who can be responsible for franking machine dies and security devices.
17. Those undertakings relating to Pitney Bowes and Neopost will strengthen competition by:
 - ensuring prospective users will have access to a comprehensive suite of price information;
 - removing impediments to third party supply of maintenance services;
 - increasing the scope for third party supply of new and second hand franking machines; and
 - removing some restrictions on independent supply of ink cartridges.

CONCLUSION

18. The new undertakings largely cover and extend the old undertakings. They are more reflective of today's market conditions. We conclude that you should release Pitney Bowes from its 1988 undertakings.