



II-2.12: The French Competition Authority takes protective measures to suspend a partnership between La Poste and Mondial Relay

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Translated
Article

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MAIN INFORMATION

On May 12, 2011, the *Autorité de la Concurrence* (French Competition Authority) took protective measures to suspend a planned partnership between La Poste (The French postal service) and Mondial Relay, an alternative parcel delivery company. The *Autorité de la Concurrence* strongly suspects that this agreement would reinforce La Poste's dominant market position and hinder the development of competition on the market for parcel delivery.

CONTEXT AND SUMMARY

The *Autorité de la Concurrence's* May 12, 2011 decision to suspend a planned partnership between La Poste and Mondial Relay was made following an opinion sent by the *Autorité de régulation des communications électroniques et des postes* (ARCEP — French postal and telecommunications regulator) on March 8, 2011, in order to preserve competition on the parcel delivery market.

This decision was spurred by two complaints filed in 2010 with the Competition Authority by the French Ministry of Economics, Finance, and Industry, and Kiala France, one of Mondial Relay's major competitors, respectively, relative to the anticompetitive nature of the planned partnership between La Poste and Mondial Relay.

Indeed, La Poste has a more than 70% market share on all parcel delivery in France. Its major competitors are both collection-point delivery services, such as Mondial Relay, or competing home delivery services run by major mail-order catalogues. Mondial Relay has a 15–20% market share of all parcel delivery in France.

Mondial Relay's business model is based on the collection-point delivery system. This means that a parcel is delivered to a retailer close to the recipient's house, instead of home delivery. The recipient is notified by email of the parcel's availability and the retailer's address, and must go collect the parcel from the retailer. Retailers that are partnered in this way with Mondial Relay receive remuneration for their role as an intermediary.

Unlike Mondial Relay, La Poste mainly ensures at-home delivery of its parcels. This method of delivery is relatively inconvenient for urban customers, who often do not have anyone to collect their parcels in their absence, and who work during post offices' opening hours.

The proposed partnership between Mondial Relay and La Poste was intended to allow customers to choose to receive their parcels sent either by La Poste or by Mondial Relay via La Poste's home delivery service or post office network or via Mondial Relay's retail collection-point network.

Indeed, this would be extremely advantageous for both companies, for a number of reasons.

First of all, La Poste would benefit from the possibility of allowing its customers to receive packages through retail collection-points, without having to invest in special 24-hour package delivery rooms (of which 28 already exist in France under the *Cityssimo* brand) or having to create its own retail collection-point network. This is an advantage for La Poste, because its main vulnerability faced with its competition is the inflexibility of home delivery, and the inconvenience for customers of having to pick up their parcels from their local post office in case they were not home at the time of the package's attempted delivery.

Second of all, Mondial Relay would benefit from La Poste's network: La Poste has 17,000 points-of-sale in France, whereas Mondial Relay only has 4,200 retail partners. This would allow Mondial Relay

to benefit from post-office pickup in places where it does not have any retail partners.

Lastly, Mondial Relay would benefit from extra revenue generated from La Poste's use of its retail collection-point network, for it would be remunerated for every parcel it delivered for La Poste within the framework of this partnership.

However, the Competition Authority found that this partnership would potentially be extremely harmful for competition on the parcel delivery market. Indeed, La Poste retains an extremely dominant position over this market, and while Mondial Relay is a quickly-growing competitor, this partnership would likely shut out all other current or potential competitors from the market.

Indeed, parcel delivery services are the only portion of the entire postal market in which La Poste faces serious competition (its letter delivery activities have been unaffected since the liberalization of the market). However, granting Mondial Relay access to La Poste's dense, nationwide network, which is La Poste's major competitive advantage, would give Mondial Relay an insurmountable advantage as compared to other competitors, and would also reduce competitive pressure from La Poste, which would not have to invest in 24-hour package delivery services, and would likely dominate nearly 100% of the market along with its partner, Mondial Relay. Therefore, La Poste would no longer face competition on the only portion of its activities where it currently faces serious and growing challengers.

For these reasons, the Competition Authority, with the support of the ARCEP, has ordered the suspension of this partnership agreement until it renders its final decision in the upcoming weeks.

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BRIEF COMMENTARY

This decision is very important in shaping the future of competition on the newly liberalized market for postal services in France.

The Competition Authority and the ARCEP are careful to point out that this decision is intended to promote competition on the market for parcel delivery services primarily by forcing each operator to develop its own network.

This means that Mondial Relay, like all alternative operators, are not to use La Poste's network, and that La Poste is to make the necessary investments in order to remain competitive (i.e. invest in 24-hour package delivery rooms).

Both authorities state that granting competitors access to La Poste's distribution network is a second-best solution that is only to be envisaged in the event that competition was truly lacking on the market. Furthermore, the ARCEP pointed out in its opinion that granting competitors access to La Poste's distribution network, including sorting facilities and post offices, would require improved analysis methods and reporting standards of La Poste's actual costs in order to implement cost-oriented pricing for competitors' access to these facilities.

This decision is likely not negative for La Poste in the long run, because although it was denied the partnership on grounds that it would entirely control the market and quash all current and potential competitors, it also does not belie a desire to grant competitors access to La Poste's distribution network.

Therefore, the network has not been deemed an "essential facility" or a "natural monopoly," and competitors will be forced to develop competing networks in order for consumers to benefit from more choice, improved quality, and lower prices, both from La Poste and from its new competitors. This decision is also characteristic of the Competition Authority's tendency towards behaving like an ex ante industry-specific regulator. While it is true that statute allows the Authority to take such "protective measures" before the contract has even been signed, it would be more characteristic of a Competition Authority to take action against the contract once its anticompetitive effects were proven and observable on the market.

However, this measure also allows the Authority to avoid the irreparable. Since, in this case, the ARCEP did not have the requisite powers to stop this agreement from being implemented, common competition law steps in to fill the void. Therefore, this is a perfect example of the Competition Authority's growing tendency to intervene *ex ante*.