

Brussels, 13th October 1997

Following an undertaking by S.W.I.F.T. to change its membership rules, the European Commission suspends its action for breach of competition rules

After the European Commission stated its objection to S.W.I.F.T. (Society for Worldwide International Financial Telecommunications s.c.) for infringement of the EU competition rules earlier this year, it has obtained an undertaking from the Society to modify its membership rules. S.W.I.F.T. has thus proposed to provide full access to a new category of participants who fulfil the criteria laid down by the European Monetary Institute for admission to domestic payment systems (the "EMI Criteria"). In the past S.W.I.F.T. reserved full access to its services only to its shareholding members; it has now agreed to make a clear distinction between shareholding and the extent to which access to its services is granted. As a consequence, the procedure for breach of competition rules which was opened against S.W.I.F.T. in March 1997 is suspended.

S.W.I.F.T. will grant full access to any institution in the European Union which provides cross-border payment services to the public and fulfils the criteria laid down by the European Monetary Institute (or any successor organisation) for admission to domestic payment systems. The current EMI Criteria are :

- (i) the entity is authorised to hold accounts for customers;
- (ii) its direct participation in one or more EU fund transfer systems processing third-party payments has the approval of the central bank; and
- (iii) (a) its public nature ensures little risk of failure, or (b) its financial service activities are supervised by a recognised competent authority.

The Commission will monitor S.W.I.F.T.'s compliance with the terms of the undertaking.

The new category of participants will be created at the next S.W.I.F.T.'s Annual General Meeting (June 1998). In the meantime, S.W.I.F.T. will sign transitional co-operation agreements with any applicant meeting the EMI Criteria. Mr Van Miert made clear that he would consider that the infringement to the competition rules as set out in the statement of objections, will only come to an end when the new category will be created or if all applicants fulfilling the EMI Criteria are granted membership. This undertaking (to be published in the Official Journal of the European Communities), was signed on 26 September 1997. It satisfies the Commission that S.W.I.F.T. will not in future be in breach of Article 86 of the Treaty, which prohibits abuses of a dominant position.

Background

S.W.I.F.T. is a co-operative owned by over 2,000 banks. It operates a specific international telecommunication network which offers reliable and secure data communication and processing to financial institutions located all over the world.

The Commission launched an investigation into S.W.I.F.T.'s admission policy following a complaint of July 1996 from the French La Poste. Following an unfruitful exchange of correspondence with the Groupement des Utilisateurs de S.W.I.F.T. en France ("GUF", an association regrouping most of French members and users of S.W.I.F.T.) since 1990, La Poste lodged a formal application to join S.W.I.F.T. as a member in December 1994. S.W.I.F.T., following the advice of the GUF, rejected La Poste's application in April 1995. In its complaint La Poste contended that S.W.I.F.T. together with the GUF had infringed both Articles 85 and 86 of the Treaty.

On 24 March 1997, the Commission opened a formal procedure against S.W.I.F.T. by sending a statement of objections for infringement of Article 86 of the Treaty. The GUF was left out of the procedure because its role was merely to advise S.W.I.F.T.. The Commission argued that S.W.I.F.T. is an essential facility for two reasons. First of all, it holds a monopolistic position in the market for international payment message transfer networks. In addition, to deny membership to an entity would in effect exclude it from the international transfer market. S.W.I.F.T. is indeed the only network providing connections to banks located anywhere in the world. The Commission further took the view that S.W.I.F.T. abused its dominant position for two reasons. First, its current membership criteria were unjustified since they relate to the overall conditions under which applicants pursue their financial activities and not to their involvement in payment systems. Moreover, S.W.I.F.T. applied its membership criteria to La Poste in a discriminatory way.

S.W.I.F.T. denied in block all of the Commission findings. In its view it does not constitute an essential facility. Notably thanks to the telecom revolution, there are many alternatives available to would-be international payments providers in France and abroad. In addition, it argued that the exclusion of La Poste had no appreciable effect on the structure of competition in the French banking market. However, soon after receiving the Statement of Objections, S.W.I.F.T. made clear its willingness to settle the case.

The Undertaking signed by S.W.I.F.T. follows a settlement agreement between La Poste and S.W.I.F.T. and GUF.