

Recent developments in the enforcement of Article 102: predation

Frederic Jenny
Professor of Economics ESSEC
Chairman OECD Competition Committee

**IV Intertic Conference an Antitrust
May 24 2012, Italian Antitrust Authority, Rome**

Outline

1) The Vedettes Vendéennes case in France

2) EU case law on predation : from average variable cost to attributable incremental cost:

Akzo

Deutsche Post AG

3) Criticism of attributable incremental cost

4) From attributable incremental cost to average incremental cost: the Danmark A/S v Konkurrencerådet case

1) Opinion of Attorney General Mengozzi

2) Court Judgment

5) From a cost based analysis of predation to an effects test: the Danmark A/S v Konkurrencerådet case

Court Judgment

6) Implications for the Vedettes Vendéennes case in France

L'île d'Yeu



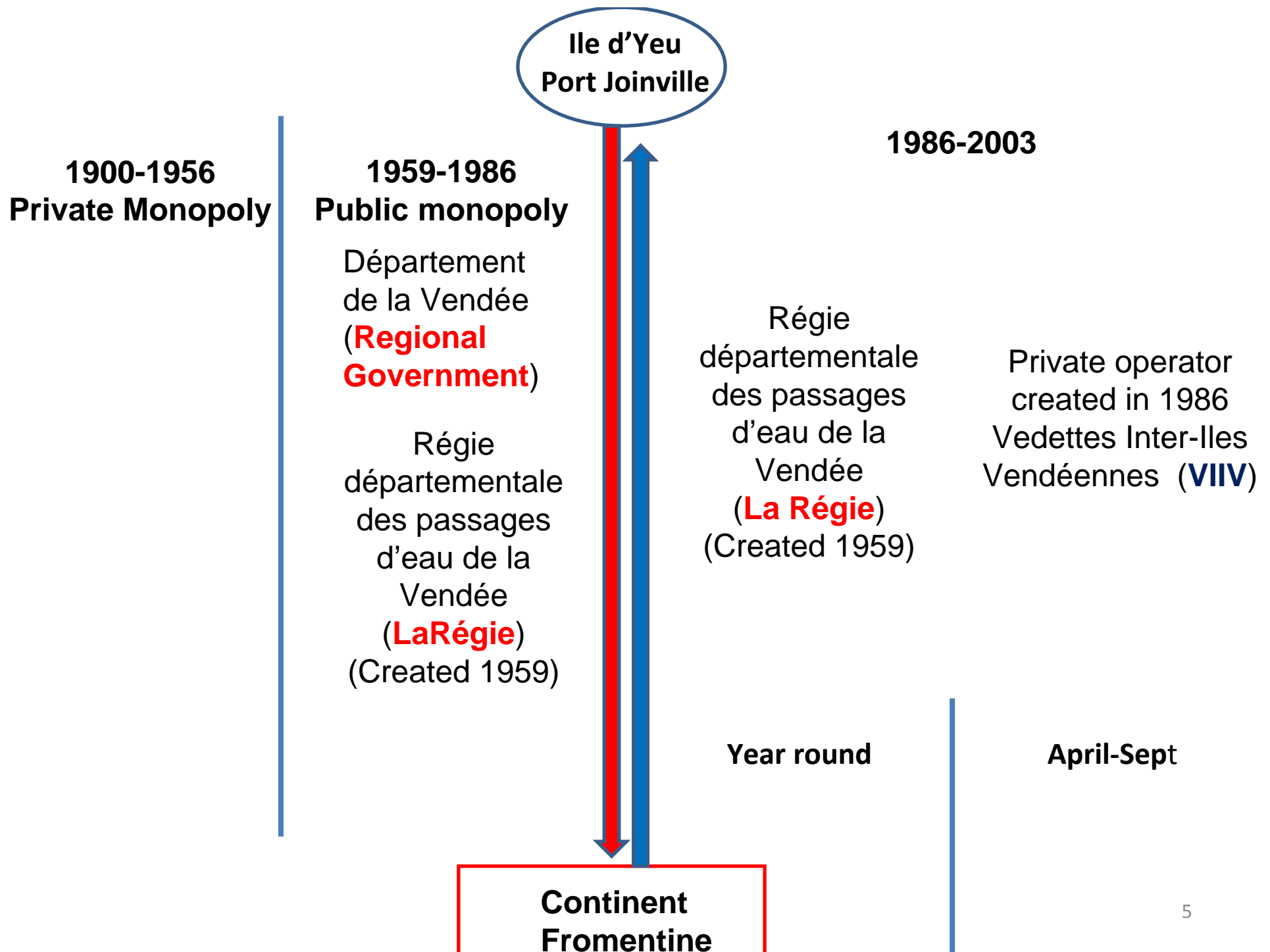
Découverte de l'île d'Yeu à vélo
Texte : Philippe SALAMONE / Photos : Serge KLEBAIRT

S'étendant sur une dizaine de kilomètres de long pour 4 kilomètres de large, l'excursion sur l'île d'Yeu présente un atout majeur : une journée suffit pour en faire le tour à vélo. Dépaysante et chaleureuse, Cette île vous enchantera, en toute saison...

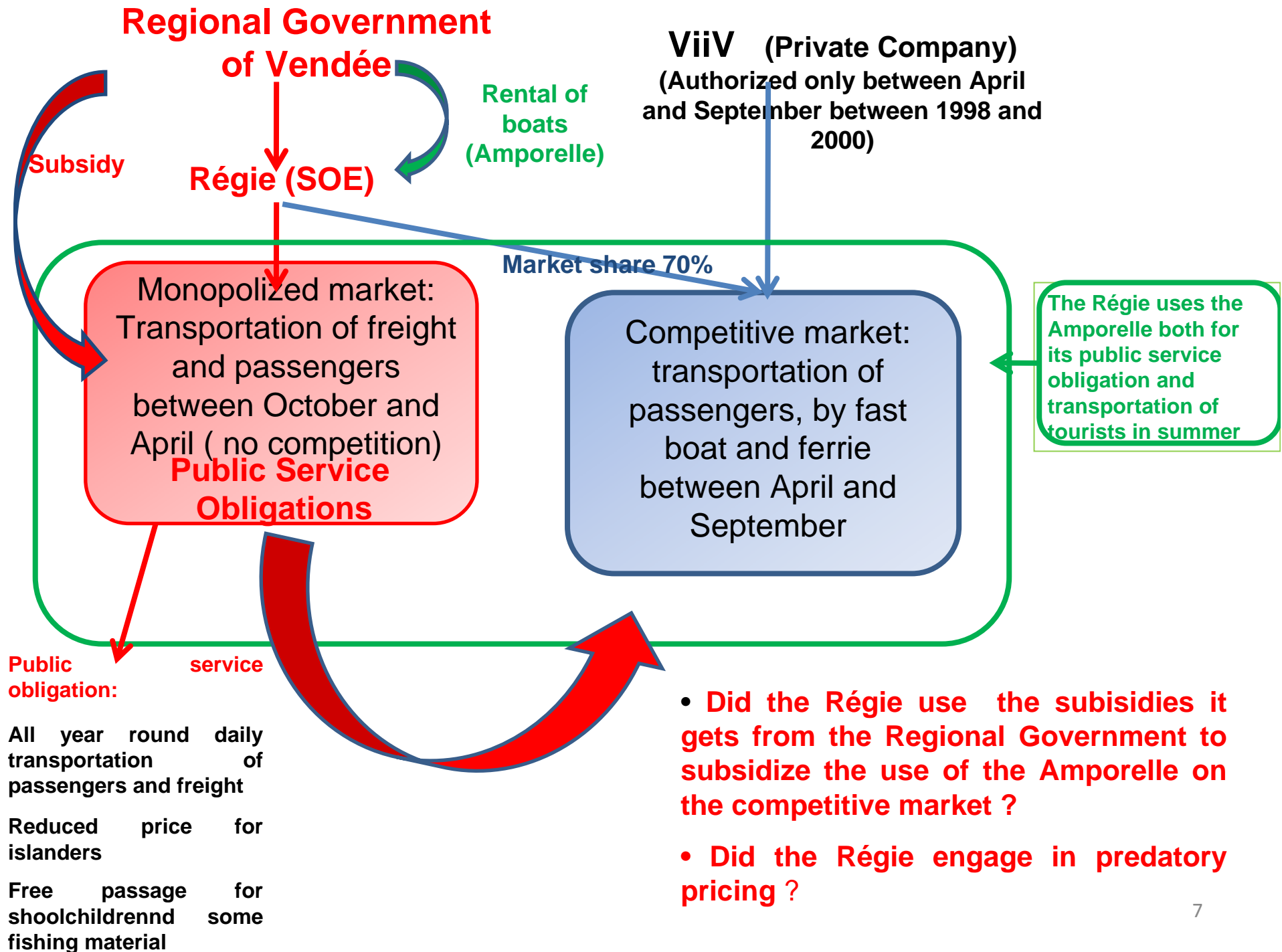
A photograph showing two people riding bicycles on a dirt path. They are facing away from the camera, looking out over a rocky coastline and the sea. The sky is overcast and grey. The foreground is filled with dry, scrubby vegetation.

Access to Ile d'Yeu









Outline

- 1) The Vedettes Vendéennes case in France
- 2) **EU case law on predation : from average variable cost to attributable incremental cost:**
Akzo
Deutsche Post AG
- 3) Criticism of attributable incremental cost
- 4) From attributable incremental cost to average incremental cost: the Danmark A/S v Konkurrencerådet case
 - 1) Opinion of Attorney General Mengozzi
 - 2) Court Judgment
- 5) From a cost based analysis of predation to an effects test: the Danmark A/S v Konkurrencerådet case
Court Judgment
- 6) Implications for the Vedettes Vendéennes case in France

AKZO v COMMISSION JUDGMENT OF THE COURT

(Fifth Chamber) 3 July 1991 In Case C-62/86,

71 **Prices below average variable costs** (that is to say, those which vary depending on the quantities produced) **by means of which a dominant undertaking seeks to eliminate a competitor must be regarded as abusive.** A dominant undertaking has no interest in applying such prices except **that of eliminating competitors** so as to enable it subsequently to raise its prices by taking advantage of its monopolistic position, since each sale generates a loss, namely the total amount of the fixed costs (that is to say, those which remain constant regardless of the quantities produced) and, at least, part of the variable costs relating to the unit produced.

72 **Moreover, prices below average total costs, that is to say, fixed costs plus variable costs, but above average variable costs, must be regarded as abusive if they are determined as part of a plan for eliminating a competitor.** Such prices can drive from the market undertakings which are perhaps as efficient as the dominant undertaking but which, because of their smaller financial resources, are incapable of withstanding the competition waged against them.

AKZO v COMMISSION JUDGMENT OF THE COURT

(Fifth Chamber) 3 July 1991 In Case C-62/86,

71 **Prices below average variable costs** (that is to say, those which vary depending on the quantities produced) **by means of which a dominant undertaking seeks to eliminate a competitor must be regarded as abusive.** A dominant undertaking has no interest in applying such prices except **that of eliminating competitors** so as to enable it subsequently to raise its prices by taking advantage of its monopolistic position, since each sale generates a loss, namely the total amount of the fixed costs (that is to say, those which remain constant regardless of the quantities produced) and, at least, part of the variable costs relating to the unit produced.

72 **Moreover, prices below average total costs, that is to say, fixed costs plus variable costs, but above average variable costs, must be regarded as abusive if they are determined as part of a plan for eliminating a competitor.** Such prices can drive from the market undertakings which are perhaps as efficient as the dominant undertaking but which, because of their smaller financial resources, are incapable of withstanding the competition waged against them.

AKZO v COMMISSION JUDGMENT OF THE COURT

(Fifth Chamber) 3 July 1991 In Case C-62/86,

106 It must be pointed out that **AKZO's quotations are below their average total costs, but above their average variable costs**, as ascertained above (see paragraphs 89 and 97), and that, in the case of the quotation in October 1982 relating to vitamin mixes, they are even below its variable costs.
(...)

108 It should further be noted that the prices quoted by AKZO in December 1980 to this category of ECS's customers show that **AKZO's aim was to damage ECS and not to restore its own profit margins. Those prices are well below what was necessary to compete with ECS, since, compared with the prices charged to this category of customers by ECS at that time**

109The Commission therefore rightly found that AKZO had offered and supplied flour additives to customers of ECS in the category of the 'large independents' at unreasonably low prices with the aim of damaging ECS's viability.

AKZO v COMMISSION JUDGMENT OF THE COURT

(Fifth Chamber) 3 July 1991 In Case C-62/86,

101 With regard to the vitamin mixes (sold in 1981) (...)these prices are below AKZO's average total costs but above its average variable costs as found above (see paragraphs 89 and 97).

(...)

102 Moreover, all these quotations **can only be explained by AKZO's intention to damage ECS and not by its endeavour to restore its profit margins**. A note prepared by one of AKZO's representatives (...) shows that AKZO established the prices offered to Allied Mills in January 1981 by calculating that they were well below those charged to Allied Mills by ECS. This shows that AKZO's intention was not solely to win the order, which would have induced it to reduce its prices only to the extent necessary for this purpose. In addition, in quoting to Allied Mills a price equal to that offered to Spillers by ECS, AKZO's objective was to set its prices at the lowest level possible without infringing the undertaking that it had given in the High Court in London not to reduce its selling prices for benzoyl peroxide with the aim of eliminating ECS.

103 **The Commission was therefore right in considering that AKZO had offered and supplied flour additives to Allied Mills and mills in the Allied group at unreasonably low prices with the aim of damaging ECS's viability.**

Outline

- 1) The Vedettes Vendéennes case in France
- 2) **EU case law on predation : from average variable cost to attributable incremental cost:**
 - Akzo
 - Deutsche Post AG**
- 3) Criticism of attributable incremental cost
- 4) From attributable incremental cost to average incremental cost: the Danmark A/S v Konkurrencerådet case
 - 1) Opinion of Attorney General Mengozzi
 - 2) Court Judgment
- 5) From a cost based analysis of predation to an effects test: the Danmark A/S v Konkurrencerådet case
 - Court Judgment
- 6) Implications for the Vedettes Vendéennes case in France

COMMISSION DECISION of 20 March 2001 (Case COMP/35.141 — Deutsche Post AG)

UPS alleged that DPAG was using revenue from its profitable letter-post monopoly to finance a strategy of below-cost selling in parcel services, which are open to competition.

Without the cross-subsidies from the reserved area, DPAG would not have been able to finance below-cost selling there for any length of time. UPS therefore calls for a prohibition of sales below cost and the structural separation of the reserved area and the parcel services open to competition. Otherwise, UPS contends, an efficient firm would not be able to compete and at the s

COMMISSION DECISION of 20 March 2001 (Case COMP/35.141 — Deutsche Post AG)

(6) From an economic point of view cross-subsidisation occurs where the earnings from a given service do not suffice to cover the incremental costs of providing that service and where there is another service or bundle of services the earnings from which exceed the stand-alone costs (7). The service for which revenue exceeds stand-alone cost is the source of the cross subsidy and the service in which revenue does not cover the incremental costs is its destination. The reserved area is a likely and permanent source of funding as the figures presented by DPAG in Table 1 show that overall revenues in the reserved area exceed its stand-alone costs (8).

(7) This means that, **when establishing whether the incremental costs incurred in providing mail-order parcel services are covered, the additional costs of producing that service, incurred solely as a result of providing the service, must be distinguished from the common fixed costs, which are not incurred solely as a result of this service.**

COMMISSION DECISION of 20 March 2001 (Case COMP/35.141 — Deutsche Post AG)

(8) When calculating the share of the common fixed costs it must be borne in mind that DPAG is required by law to maintain a capacity reserve large enough to cover any peak demands that may arise in over-the-counter parcel services while meeting statutory service-quality standards for those services (9). **Even if DPAG were no longer to offer mail-order parcel services, it would still be obliged vis-a-vis every mail-order customer to provide catalogues and parcels over the counter within a specified delivery target.** This follows from the universal service obligation whereby every potential postal user is entitled to receive from DPAG over-the-counter parcel services of the prescribed quality at uniform prices. **If DPAG were to stop offering a specific parcel service, it could not, unlike a private firm such as UPS, cut back on staff and equipment in perfect proportion to the reduction in volume.** Even if the specific parcel service were stopped, staff and equipment could not be reduced to the full extent of the cut in service, as some staff and equipment are also needed to provide over-the-counter services that meet statutory quality standards (D + 2 for 80 % of the consignments). **This obligation to maintain a reserve capacity is known in economic terms as the carrier of last resort (10).**

COMMISSION DECISION of 20 March 2001 (Case COMP/35.141 — Deutsche Post AG)

(9) Where DPAG maintains an infrastructure to fulfill its public service mission, a distinction must be made between the cost of maintaining capacity and the specific incremental costs of producing individual services:

— The costs of maintaining capacity arise independently of the services provided and the volume of parcels processed only as a consequence of maintaining capacity to allow everyone the standard option of having their parcels sent over-the-counter in the normal way. **The legal obligation to remain ready to offer a standard parcel delivery service at a uniform tariff increases the proportion of common fixed costs that a carrier of last resort bears in comparison with companies who do not have this obligation. Costs arising from the legal obligation to maintain an option for everyone to have parcels carried at a geographically averaged tariff also arise even if commercial parcels not dealt with at the postal counter are discontinued.**

This means that these capacity costs are not attributable to a specific service and must be treated as DPAG's common fixed costs. Common fixed costs cease to exist only where the statutory obligation no longer applies,

COMMISSION DECISION of 20 March 2001 (Case COMP/35.141 — Deutsche Post AG)

(10) To avoid subsidising mail-order parcel services by using revenue from the reserved area, **DPAG must earn revenue on this parcel service which at least covers the costs attributable to or incremental to producing the specific service.** Emphasising the coverage of costs attributable to a particular service also makes it possible to take account of the additional burden incurred by DPAG as a result of fulfilling its statutory obligation of maintaining network reserve capacity (12). As this emphasis is expressly intended to take account of network capacity costs as an additional burden. DPAG is required only to cover the costs attributable to the provision of mail-order parcel services. This means that these operations are not burdened with the common fixed cost of providing network capacity that DPAG incurs as a result of its statutory universal service obligation (13).

Outline

- 1) The Vedettes Vendéennes case in France
- 2) EU case law on predation : from average variable cost to attributable incremental cost:
 - Akzo
 - Deutsche Post AG
- 3) Criticism of attributable incremental cost**
- 4) From attributable incremental cost to average incremental cost: the Danmark A/S v Konkurrencerådet case
 - 1) Opinion of Attorney General Mengozzi
 - 2) Court Judgment
- 5) From a cost based analysis of predation to an effects test: the Danmark A/S v Konkurrencerådet case
 - Court Judgment
- 6) Implications for the Vedettes Vendéennes case in France

Criticism of the Deutsh Post decision: is the attributable incremental cost standard too narrow

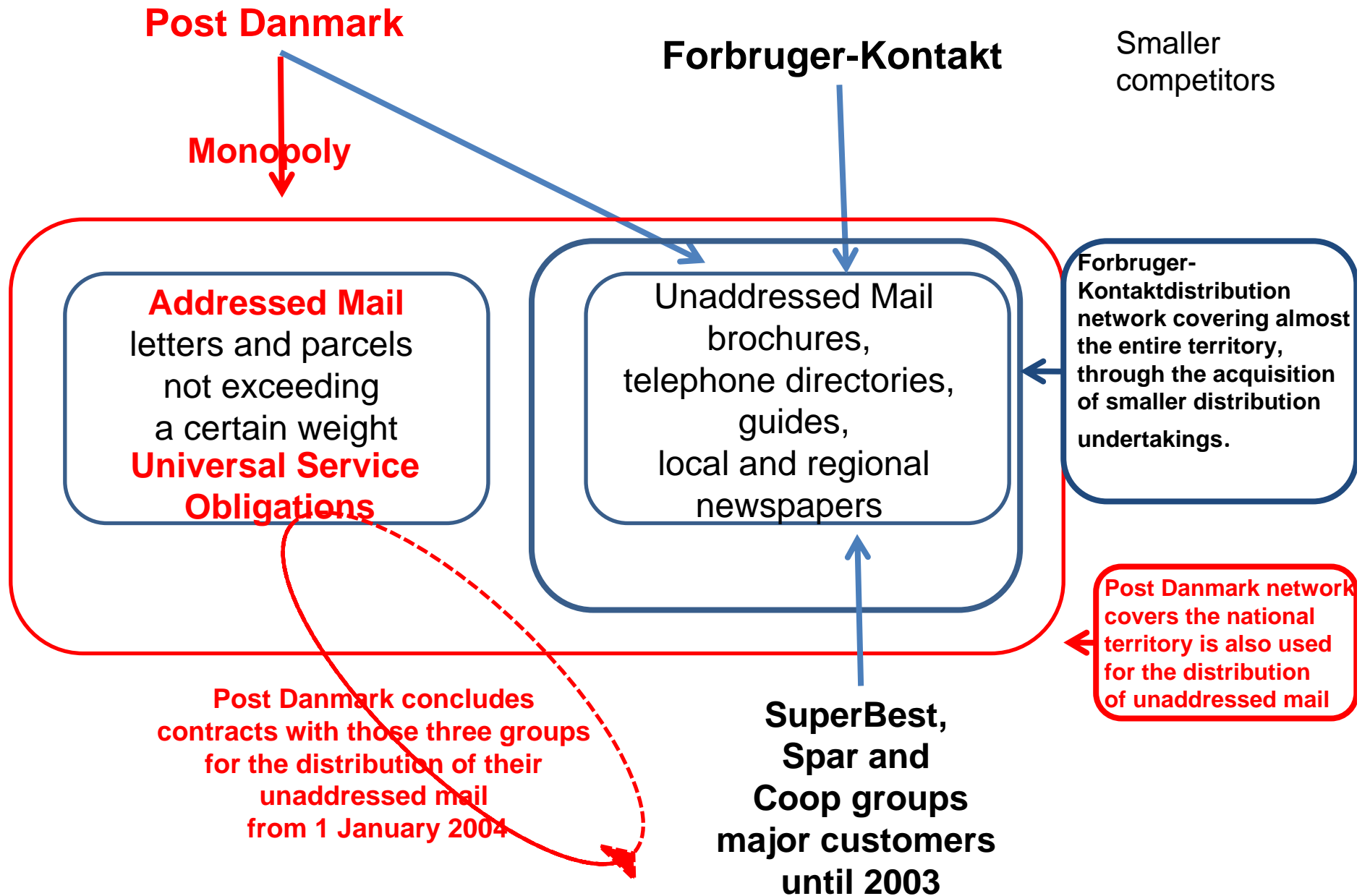
(Some authors have argued that) by accepting the principle that certain cost - such as the cost of operating a common sorting infrastructure or conducting daily long-distance transport between the sorting hubs - can not be attributed to one particular service, the **Decision has given the incumbent unsuitable freedoms to allocate cost of providing competitive service to the infrastructure and thus distort competition** (Niederprüm, Quersubventionierung und Wettbewerb im Postmark, Diskussionsbeitrag Nr. 225, Wissenschaftliches Institut für Kommunikationsdienste (WIK), page 70).

Does a standard based on (attributable) incremental cost not properly allocate the cost that arises from the operation of a common infrastructure. In other terms, as this common infrastructure was identified as a prerequisite for DPAG to provide services of general economic interest (paragraphs 8 and 9 of the Decision), does this method overestimate the cost of being a carrier of last resort ?

The issue was not dealt with in the Deutsh Post Decision as as already the mail-order delivery service achieved revenue inferior to the individual and service specific incremental cost of its provision.

Outline

- 1) The Vedettes Vendéennes case in France
- 2) EU case law on predation : from average variable cost to attributable incremental cost:
 - Akzo
 - Deutsche Post AG
- 3) Criticism of attributable incremental cost
- 4) From attributable incremental cost to average incremental cost: the Danmark A/S v Konkurrencerådet case**
 - 1) Opinion of Attorney General Mengozzi**
 - 2) Court Judgment
- 5) From a cost based analysis of predation to an effects test: the Danmark A/S v Konkurrencerådet case
 - Court Judgment
- 6) Implications for the Vedettes Vendéennes case in France



JUDGMENT OF THE COURT (Grand Chamber) 27 March 2012 Case C-209/10, Post Danmark A/S v Konkurrencerådet,

17 **Post Danmark** brought an appeal against that decision of the Østre Landsret before the court making the reference. In particular, it **claimed that**, according to the criteria stemming from the judgment in Case C-62/86 AKZO v Commission [1991] ECR I-3359, as ‘adapted’ by Commission Decision 2001/354/EC of 20 March 2001 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/35.141 — Deutsche Post AG) (OJ 2001 L 125, p. 27), **the prices offered to the Coop group may be considered to amount to abuse only if an intention to drive a competitor from the market can be established. For its part, the Konkurrencerådet maintained that an intention to drive a competitor from the market is not absolutely necessary in order for a practice of selective prices, lower than average total costs but higher than average incremental costs, to amount to an abuse of a dominant position.**

Case C-209/10 Post Danmark A/S v Konkurrencerådet. Opinion of Mr Advocate General Mengozzi 24 May 2011.

112. In other words, **it is perfectly possible, taking the average incremental cost as the yardstick, for the dominant undertaking to be able to charge a price slightly higher than that average (thus preventing the price from being automatically regarded as predatory) by causing all or part of the common fixed costs to be borne by the partly reserved operations in the market in which it has a universal service obligation, and those operations therefore subsidise the price offered on the market which is open to competition.** Whether selective or not, such a practice could eventually lead to driving competitors from the liberalised market, that is to say, in the main proceedings here, those operating in the Danish market for the distribution of unaddressed mail which, of course, do not benefit from the same cross-subsidy arrangement. (52)

Case C-209/10 Post Danmark A/S v Konkurrencerådet. Opinion of Mr Advocate General Mengozzi 24 May 2011.

113. I consider, therefore, that **the fact that a dominant undertaking, such as Post Danmark, charges a selective price higher than the average incremental cost does not make it impossible**, contrary to what was in essence suggested by Post Danmark and the Czech Government in their observations before the Court, **that such a price level may entail a risk of driving out that undertaking's competitor, since the price is likely to be subsidised by the earnings from the partly reserved business of the dominant undertaking on the market on which it operates while carrying out universal service obligations.**

Case C-209/10 Post Danmark A/S v Konkurrencerådet. Opinion of Mr Advocate General Mengozzi 24 May 2011.

114. In order to ascertain whether that is so, I think it would be necessary to establish the ‘stand-alone’ cost of the services provided by the dominant undertaking in the market in which it carries out universal service obligations and to determine whether the earnings generated by those services exceed such cost. **If so, it would probably have to be found that there was a cross-subsidy of sales on the market open to competition, for which the price charged is less than the average total cost. In view of the particular responsibility of an undertaking in a dominant position for maintaining the competition structure of the market, the use of such cross-subsidies would eventually involve a real risk of driving out the competitor and would, in my view, justify preventive action by the competition authorities.**

Case C-209/10 Post Danmark A/S v Konkurrencerådet. Opinion of Mr Advocate General Mengozzi 24 May 2011.

123. For all those reasons, I consider that Article 82 EC is to be interpreted as meaning that the conduct of a dominant undertaking **constitutes abuse of a dominant position** when that undertaking thereby offers a selective reduction in prices, at a level higher than the average incremental costs but lower than the average total costs of that undertaking, to the main customer of its main or only competitor on the national market for the distribution of unaddressed mail, which is fully open to competition, **if the selective price offer is likely to be subsidised by the earnings from the dominant undertaking's operations, which are partly reserved, on the market for postal services on which it operates by carrying out universal service obligations, so having the effect of driving that competitor from the market.** In that connection, in order to establish the existence of unlawful cross-subsidisation of the dominant undertaking's unaddressed mail business, **it is necessary to determine whether the earnings generated by its services in the postal services market on which it carries out universal service obligations exceed the 'stand-alone' cost of those services.** It is for the national court to determine whether such is the case in the dispute in the main proceedings.

Outline

- 1) The Vedettes Vendéennes case in France
- 2) EU case law on predation : from average variable cost to attributable incremental cost:
 - Akzo
 - Deutsche Post AG
- 3) Criticism of attributable incremental cost
- 4) From attributable incremental cost to average incremental cost: the Danmark A/S v Konkurrencerådet case**
 - 1) Opinion of Attorney General Mengozzi
 - 2) Court Judgment**
- 5) From a cost based analysis of predation to an effects test: the Danmark A/S v Konkurrencerådet case
 - Court Judgment
- 6) Implications for the Vedettes Vendéennes case in France

JUDGMENT OF THE COURT (Grand Chamber) 27 March 2012 Case C-209/10, Post Danmark A/S v Konkurrencerådet,

32. However, as the Danish Government stated in its written replies to those questions, a notable feature of the case in the main proceedings is that **there are considerable costs related both to the activities within the ambit of Post Danmark's universal service obligation and to its activity of distributing unaddressed mail.** These 'common' costs are due, in particular, to the fact that, at the material time, Post Danmark was using **the same infrastructure and the same staff for both the activity** of distributing unaddressed mail and the activity reserved to it in connection with its universal obligation for certain addressed items of mail. **That government states that, according to the Konkurrencerådet, because Post Danmark's unaddressed mail activity used the undertaking's 'common distribution network resources', the costs of its universal service obligation activities could be reduced over a period of three to five years if Post Danmark were to give up distributing unaddressed mail.**

JUDGMENT OF THE COURT (Grand Chamber) 27 March 2012 Case C-209/10, Post Danmark A/S v Konkurrencerådet,

33. In those circumstances, it emerges from the case-file, and in particular from paragraphs 148 to 151 and 200 of the Konkurrencerådet's decision of 24 November 2004, mentioned in paragraph 13 above, that **for the purpose of estimating what it described as 'average incremental costs', the Konkurrencerådet included, among other things, not only those fixed and variable costs attributable solely to the activity of distributing unaddressed mail, but also elements described as 'common variable costs', '75% of the attributable common costs of logistical capacity' and '25% of non-attributable common costs'.**

34 In the specific circumstances of the case in the main proceedings, it must be considered that such a method of attribution would seem to seek to identify the great bulk of the costs attributable to the activity of distributing unaddressed mail.

JUDGMENT OF THE COURT (Grand Chamber) 27 March 2012 Case C-209/10, Post Danmark A/S v Konkurrencerådet,

35 When that estimation was completed, it was found, among other things, that the price offered to the Coop group did not enable Post Danmark to cover the average total costs attributed to the activity of unaddressed mail distribution taken as a whole, but did enable it to **cover the average incremental costs pertaining to that activity, as estimated by the Danish competition authorities.**

38 Indeed, to the extent that a dominant undertaking sets its prices at a level covering the great bulk of the costs attributable to the supply of the goods or services in question, it will, as a general rule, be **possible for a competitor as efficient as that undertaking to compete with those prices without suffering losses that are unsustainable in the long term.**

Outline

- 1) The Vedettes Vendéennes case in France
- 2) EU case law on predation : from average variable cost to attributable incremental cost:
 - Akzo
 - Deutsche Post AG
- 3) Criticism of attributable incremental cost
- 4) From attributable incremental cost to average incremental cost : the Danmark A/S v Konkurrencerådet case
 - 1) Opinion of Attorney General Mengozzi
 - 2) Court Judgment
- 5) From a cost based analysis of predation to an effects test: the Danmark A/S v Konkurrencerådet case**
Court Judgment
- 6) Implications for the Vedettes Vendéennes case in France

JUDGMENT OF THE COURT (Grand Chamber) 27 March 2012 Case C-209/10, Post Danmark A/S v Konkurrencerådet,

39 It is for the court making the reference to assess the **relevant circumstances** of the case in the main proceedings in the light of the finding made in the previous paragraph. In any event, it is worth noting that it appears from the documents before the Court that **Forbruger-Kontakt managed to maintain its distribution network despite losing the volume of mail related to the three customers involved and managed, in 2007, to win back the Coop group's custom and, since then, that of the Spar group.**

Outline

- 1) The Vedettes Vendéennes case in France
- 2) EU case law on predation : from average variable cost to attributable incremental cost:
 - Akzo
 - Deutsche Post AG
- 3) Criticism of attributable incremental cost
- 4) From attributable incremental cost to average incremental cost : the Danmark A/S v Konkurrencerådet case
 - 1) Opinion of Attorney General Mengozzi
 - 2) Court Judgment
- 5) From a cost based analysis of predation to an effects test: the Danmark A/S v Konkurrencerådet case
 - Court Judgment
- 6) Implications for the Vedettes Vendéennes case in France**

History of the Case against the Régie Départementale

AKZO v COMMISSION JUDGMENT OF THE COURT (Fifth Chamber) 3 July 1991 In Case C-62/86 COMMISSION DECISION of 20 March 2001 Case COMP/35.141 — Deutsche Post AG)

- 1) Decision Conseil de la concurrence n° 04-D-79 du 23 décembre 2004: strict application of the DeutschPost AG methodology
- 2) Arrêt Cour d'appel 28 Juin 2005: upholds the Decision of the Conseil de la concurrence
- 3) Arrêt Cour de Cassation 17 juin 2008: overturns the Arrêt of 28 June 2005 on multiple grounds including the fact that the Court of Appeals has not established that the use of the Amporelle was necessary for the Régie to meet its public service obligations
- 4) Arrêt Court of Appeal 9 June 2009: upholds again the Decision of the Conseil de la concurrence

History of the Case against the Régie Départementale

5) Arrêt Cour de cassation 2010: Overturns the Arrêt of 9 June 2009 on the ground the Appeals court held, the incremental cost test derived from AKZO and Deutsch Post were not relevant to the case.

Case C-209/10 Post Danmark A/S v Konkurrencerådet. Opinion of Mr Advocate General Mengozzi 24 May 2011

JUDGMENT OF THE COURT (Grand Chamber) 27 March 2012 Case C-209/10, Post Danmark A/S v Konkurrencerådet

6) New Appeal (Decision expected in 2012)

Decision n° 04-D-79 of the Conseil de la concurrence

103. The fixed costs due to the utilisation of the Amporelle and , in particular the rent paid by the Régie to the Regional Government for this boat, are not part of the incremental costs which the Regie could avoid during the summer months if it did not offer transportation services on the competitive market . Therefore consideration of this rent is irrelevant to assess whehter the pricing practices of the Regie for the transportation of passengers during the summer is abusive.

Decision n° 04-D-79 of the Conseil de la concurrence

Basing itself on the result of an expert's report and after having excluded the rental cost of the Amporelle (paid by the Régie to the Département) which it considered not to be oversized to meet the public service obligations of the Régie, the Conseil de la concurrence held that : « **from 1998 to 2000 the Régie charged, between April and September, transportation prices on the Amporelle which were higher than the attributable incremental costs. Therefore it did not abuse its dominant position ».**

Crucial issues in the ViiV case

After DeutschPost but before Post Danmark A/S v Konkurrencerådet

Were the power and the draft of the Amporelle strictly necessary for the Régie to meet its public service obligations ?

Was the capacity of the Amporelle strictly necessary for the Régie to meet its public service obligation ?

Was the Regie not meeting its public service obligations before it had the Amporelle ?

Difficulty: definition of the public service obligation

quality of the public service (is offering a faster service in the discharge of public service obligations a relevant consideration).

who decides what the public service obligations are (the regional authority which is also the owner of the Amporelle)

Who is to decide that the Amporelle is or is not strictly necessary for the Regie to meet its public service obligations ? (Administrative courts or Civil courts)?

If the Amporelle is considered strictly necessary for the public service obligation, was there a plan for the Regie to exclude its competitor ?

Crucial issues in the ViiV case

After Post Danmark A/S v Konkurrencerådet

Most of the previous questions become irrelevant

What is the share of the costs of the Amporelle which can be attributed to the public service obligations of the Regie and what is the share of the cost of the Amporelle which can be attributed to its competitive activity? (the latter to be added to the attributable incremental cost of the service on the competitive market for the Regie to get its average incremental cost)

Is the price charged by the Amporelle larger than the average incremental cost of the transportation service offered by the Regie on the competitive market ?

What is the stand alone cost of the public service obligation of the Regie and is the public service obligation activity of the Regie subsidising its activity on the competitive market ? (if one follows the lead of Advocate General Mengozzi)

What have been the effect of the practice on the competitor (has the ViiV been driven out of the market)?

Thank you very much

frederic.jenny@gmail.com