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Royal Mail plans could breach EU law

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By Tom Selby

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The Royal Mail's taxpayer-guaranteed 38-year recovery plan could leave it in breach of EU competition rules, lawyers say.

The warning follows Richard Hooper's recommendation that government takes responsibility for the company's £8bn scheme deficit to facilitate modernisation (PP Online, 10 September).

If Hooper's proposals are implemented other parts of Royal Mail will be privatised, but remain free to operate without the constraint of funding the pension shortfall.

However, Silverman Sherliker partner Jennie Kreser said the firm would have to be "very careful" not to fall foul of the strict European competition rules encountered by BT in February 2009.

The UK crown guarantee granted to BT was deemed partially unlawful under EC Treaty state aid rules because the firm became exempt from certain common law financial obligations, such as the payment of a levy into the Pension Protection Fund.

Following an in-depth investigation, the EC concluded this exemption conferred an "unfair" state aid to BT.

Nabarro partner Anne-Marie Winton agreed there could be an analogy with the case if government pursued Hooper's reforms.

She added: "A 38-year recovery plan is almost off the scale of potential private sector outcomes.

Allowing a recovery plan of this length would generally only be possible in two extreme cases: either where the covenant is so weak, that the employer can only afford payments over a very long period; or where the covenant is so strong, there is little risk of default."

Begbies Traynor partner Len Fawke – a former head of scheme specific funding at The Pensions Regulator – said the length of the recovery plan wasn't surprising.

"I was presented with a 63-year recovery plan by the private sector when at the regulator and indeed a 28-year recovery plan where the deficit was less than £20,000," he said.

He added that if, as indicated in the Hooper Report, the Royal Mail was unable to reduce the funding period TPR was unlikely to take "puerile" action.

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