

Newsletter

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EDITORIAL

Public services should NOT be exempted from competition rules



Philippe Bodson

The EU recently celebrated the tenth anniversary of the Internal Market. At this occasion, the European Commission confirmed that the Internal Market has brought real benefits to consumers: more jobs, cheaper goods and services of better quality and access to the entire European market. This is indeed an achievement that should make the critics of Internal Market liberalisation think twice.

Even in a sector, like the postal one, where resistance from special interests to market opening has been the strongest, the benefits of the limited EU market opening to date are clearly identifiable. The Commission reports that the '97 Postal Directive has had a significant positive impact on the sector: Significant improvements in the quality of service, a safeguarded universal postal service and the expectation of further liberalisation, which in turn has increased both the pace of national postal reform and of the restructuring of the sector towards efficiency and profitability.

European Heads of State and Government discussed economic reform and the Lisbon process at their most recent summit. They insisted that broad EU economic policy guidelines should deliver a more comprehensive and coherent approach to reform. Based on the merits of the gradual and controlled market opening process so far, one should indeed keep a coherent approach towards the further development of the postal market and remain consistent in its policy of market opening and fostering competition.

The Council's decision to conduct further work to ensure that the provision of public services is compatible with EU State aid and competition rules will certainly stimulate the discussion on Services of General Economic Interest (SGEI).

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Postal liberalisation works: 3 examples

1. Postal users amongst the most satisfied

According to the results of the 2003 Eurobarometer survey on public services, postal services and electricity achieved the highest ratings for consumer satisfaction in the EU. The services with the highest level of overall satisfaction are postal services (74%), electricity supply services (73%), fixed telephone services and water supply services (both 71%). The services with the lowest levels of overall satisfaction are urban transport (59%) and inter-city rail services (52%).

2. Employment Increase: PLS Ramboll Study

A recent study issued by the European Commission confirms an increase in sector related employment between 1995 and 2000 of 4.73%. Although original fears existed that the liberalisation process would result in a reduction of the workforce, it has rather increased from 1.647.830 ('95) to 1.725.827 (2000) full time equivalents.

Total postal employment, combining direct, indirect and induced employment has reached 5.297.873 jobs in 2000.

3. Quality improvement

Measurement of service quality and constant monitoring of quality of first class cross border mail indicate significant improvements of priority mail delivery. According to the UNEX data, in the full year 2002, 93.5% of priority cross border mail was delivered in J+3 (speed indicator) compared to only 69.1% in 1994.

These are positive developments and users of mail services look forward to seeing similar trends in 2nd class mail.

Further liberalisation of the EU postal sector will benefit users and consumers by increasing choice, providing affordable prices and improving quality of services.

VIEWPOINT

By David Sibbick
Director Regulatory Affairs, Hays DX

This article looks at postal liberalisation in the UK from the viewpoint of a competitor to the dominant incumbent, Royal Mail. However, Hays DX is not a new entrant to the UK mail market – we have been providing overnight B2B mail services for more than 25 years. The long-term licence recently granted by the UK regulator, PostComm, will enable Hays to substantially extend and improve its services.

But what of the wider picture in the UK? PostComm, has decided to adopt a phased approach leading to full postal liberalisation in 2007. The first phase, which began on 1 January this year, is designed to open up around 30% of the market by allowing competitors to deliver bulk mail and consolidation activities for subsequent injection into Royal Mail's delivery infrastructure. The second phase will be implemented in 2005 and is designed to open up a second tranche of 30%, primarily through a reduction (so far unspecified) in the bulk mail threshold. The third phase will be full liberalisation in 2007.

Is this a sensible strategy, and will it work? Critics have argued that if PostComm has decided that it is possible for the universal service to be maintained without the need for a reserved area, why not move to full liberalisation immediately? Further, if you believe, as we at Hays believe passionately, that a properly functioning, fully competitive market is the best and indeed the only way of controlling prices, of driving efficiency and innovation, of providing customer choice and, as a result of all those benefits, both widening and deepening the market, why wait?

As attractive and persuasive as these arguments undoubtedly are, there is another side to the picture that also needs to be taken into account. We are convinced that a gradual and controlled opening of the market will in the end serve the interests of customers, competitors and the market as a whole better than the "big bang" approach. If after some 350 years of tightly controlled monopoly the brakes are suddenly removed, the risk is that the market would turn virtually overnight into the Klondike, with many players rushing in looking to make a quick fortune. Then, after this initial gold rush, there would follow a period of attrition and consolidation during which large numbers of the initial entrants would either get out or would be squeezed out. Finally, a phase would be reached where the market, having done its work, would then stabilise. The intense turbulence before the market readjusts would be

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SERVICES OF GENERAL ECONOMIC INTEREST

The FFPI calls for fair competition in the services market

Background and current status of SGEI

- The 1997 Amsterdam Treaty introduced a new Article 16, which recognised that “services of general economic interest” were part of the “shared values of the Union”.
- In a report submitted to the December 2001 European Laeken Summit, the Commission outlined its future strategy, including a revision of State aid rules for SGEI.
- In a Communication adopted on June 18, 2002, the EU executive said it would evaluate annually the performance of public services across the Union, starting in autumn 2003.
- Even though it has not yet been decided whether to propose a Framework Directive setting minimum standards for all public services, or whether to take a sector-by-sector approach, the Commission will issue a Green Paper on SGEI that should be published by summer 2003 and that will constitute the framework for the EU policy on SGEI.

- The European Parliament will issue a report on the Green Paper. The working document on the Green Paper on the future of SGEI in the EU, prepared by MEP Philippe Herzog (Greens, France) for the Committee of Economic Affairs of the European Parliament, was discussed on 25 March in Brussels.
- The protection of SGEI has also become one of the issues submitted to the work of the European Convention and its Social Europe working group. The stakeholders that are pushing for the safeguard of SGEI by changing the Treaties and competition rules are also aiming to have specific mention of SGEI in the EU Constitution.
- EU Heads of State and Government invited the Competitiveness Council to take the necessary procedural decisions for a legal framework on SGEI (March 2003).

The FFPI and SGEI

- The FFPI considers that market opening in the service market has proved positive in terms of bringing benefits to consumers, employment and economy in general. Granting an exemption of competition rules for certain public service providers would result in a decline of the EU's Internal Market policy benefits and hamper the achievement of a level-playing field.
- For this reason, **the FFPI has joined the Coalition for Fair Competition in the Services Market**, a group of European Associations representing providers and users of various services, including telecommunications, television, publishing, express delivery and postal services. The Coalition believes that there is no incompatibility between the provision of public services and sound competition and that the debate on SGEI should also take into consideration the benefits that competition brings to the services markets ■

Coalition for Fair Competition in the Services Market Statement of Principles

The coalition is of the opinion that the current debate on SGEI should take account of the importance of competition and fair market conditions in achieving the EU's social objectives. The debate on SGEI cannot be conducted without considering the competitiveness goals underlying the EU economic and social agenda for the next ten years and the economic importance of a liberalised services market to the EU.

The coalition therefore stands to uphold the following objectives/principles in upcoming debates on the development of a European policy framework for SGEI:

- Expressing the overriding economic and social importance of pursuing and achieving the Lisbon objectives (“To become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and social cohesion”) within the European services market.
- Promoting Article 16 of the current Treaty on European Union as the proper legal basis for the protection of SGEI.
- Supporting the strict application of competition rules in assessing the provision of SGEI
- Underlining that the universal service in specific sectors is already guaranteed by sector specific legislation.
- Highlighting that the debate on SGEI should not lead to a weakening of existing competition rules.
- Advocating the role of independent and strong national regulators.



THE GATS NEGOTIATIONS

Challenges and opportunities for the postal users

ABC on GATS

The 1995 General Agreement on Trade in Services (GATS) defines multilateral rules on trade in services. It consists of two parts:

- A framework agreement containing the general rules and disciplines;
- National "schedules" in which each WTO Member freely chooses which services to commit and specifies the degree of access it is prepared to guarantee for foreign service suppliers.

The GATS covers all services with two exceptions: services provided in the exercise of governmental authority and air traffic rights. For those services that are committed, limitations can be set to specify the level of market access and the degree of national treatment guaranteed by the WTO Members.

There are 4 ways in which a service can be traded under the GATS:

- Cross-border supply: service supplied from one country to the other (ex: information sent by e-mail or fax);
- Consumption abroad: consumers from one country making use of a service in another country (ex: tourists sending a post card to his home country);
- Commercial presence: ability to set up subsidiaries (ex: postal or express courier operator setting up a branch in a foreign country);
- Presence of natural persons: individuals travelling to another country to supply services (ex: temporary presence of a foreign postal worker).

✦ The FFPI considers that the GATS negotiations offer both substantial opportunities for postal users around the world and major challenges for European postal users. The next steps of the negotiations need to be watched closely. The risks linked to the current debate on GATS were addressed by FFPI President Bodson in a letter sent to the Financial Times on 18 March (<http://www.freefairpost.com/pdf/ftletter.pdf>).

✦ In order to stay fully abreast and participate proactively in the debate on GATS the FFPI has applied for registration as a Non-Governmental Organisation (NGO) to participate in the 5th Ministerial Conference in Cancun in September 2003.

As regards postal and courier services, less than 40 WTO members have so far made commitments, including only one EU Member States, that is Austria ■

Ongoing GATS talks

The current Doha round of WTO talks includes the new GATS negotiations that started in January 2000 to further the liberalisation of services. The calendar is as follows:

- Requests for market access: by 30 June 2002
- Initial offers of market access: by 31 March 2003
- Stock taking: 5th Ministerial Conference, September 2003 in Cancun (Mexico)
- Deadline for the completion of the negotiations: by 1 January 2005

Although the GATS negotiations are considered as the most advanced negotiations of the Doha round, much remains to be done as few Members have taken an active part in the talks so far.

The European Commission has drafted the EU offers to the other WTO members, which will have to be finalised by 31 March 2002 ■

GATS Opportunities	GATS Challenges
Improve access to quality postal services around the world at an affordable price without jeopardizing the Universal Service Obligation (USO)	Push for GATS talks on postal and courier services to bring concrete results for postal users, including in developing countries
Foster competition in the express services at global level, remove trade barriers and introduce competitive safeguards.	Prevent the EU anti-liberalisation camp to use the GATS negotiations to delay the next step of market opening in the EU
Eliminate price fixing agreement in the postal sector	Ensure that GATS negotiations are not being used as an excuse to protect EU postal monopolies
Assist developing countries in building up efficient postal and express courier sectors	

To learn more about the FFPI and to read the latest news on key topics for the postal sector, please visit: www.freefairpost.com

The recent debate on SGEI has proven valuable by seeking greater attention for citizens' rights to basic services and the quality of these services. SGEI do indeed perform a fundamental function and constitute a significant part of the economic and social fabric in the EU. The EC Treaty in fact recognizes SGEI (art 16), and already provides for several exemptions with regards to State aid rules (art 86/2).

A Green Paper, that should be soon issued by the Commission, is likely to examine the need for a new EU framework law on SGEI. In addition, the Commission is looking at a revision of the EU State aid rules with a view to examining the possible need for new exemptions. A potential problem is that the debate is being used by stakeholders representing the interests of the public sector as a means to exclude SGEI providers from competition. I believe that it is important that decisions in this area are preceded by an informed debate where the positive effects of market openings are fully taken into consideration.

The absence of the application of competition rules to SGEI becomes particularly problematic when SGEI providers also provide services that are open to competition. This is where the EC Commission comes in as an important arbiter to ensure that these entities do not abuse their social role as a Trojan horse for their ambitions to wield their market power into new markets. The Commission recently restated the serious distortions caused by postal monopolies: "Continuing regulatory asymmetry threatens to distort the market as further steps are taken towards the full accomplishment of the internal market, and there have already been a number of infringement cases on this issue. Further, the coexistence of reservation [monopolies], variable regulation and competitive market segments has produced perverse incentives for market players, and when combined with the corporatisation of the Universal Service Providers, clear issues of competition have emerged".

Philippe Bodson

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highly unsettling to customers that would doubtless suffer serious damage as a result. This is not purely speculation – we have seen this happen in the past when Royal Mail has been on strike for any length of time. Customers would seek refuge from the turbulence through increased reliance on electronic communication, and the market, when it finally emerged into calmer waters, would be smaller and less committed to mail than would have been the case if the floodgates had been opened in a more gradual and controlled manner.

There are also dangers in the opposite direction, that of being too gradual. We believe for example that the pace of liberalisation dictated by the EU Postal Directive falls precisely into this trap, being so slow and uncertain that the markets in Member States that do not choose to move more rapidly will simply lose patience and move elsewhere. A major advantage of PostComm's approach is that in setting a clear date for full market opening – 2007 – all parties are able to plan for the future with a high degree of confidence. So if PostComm seem to have got the strategy broadly right, how is the first definitive stage of its implementation working in practice? The answer is that at the moment there are two major roadblocks.

The first of these is VAT. Under the EU 6th VAT Directive, public postal operators are accorded VAT exempt status, while private competitors must charge VAT. The problem arises when the customer concerned is itself VAT exempt. The customer is unable to reclaim the VAT charged, and, in the case of the UK, Royal Mail has an immediate price advantage of 17.5%; a price advantage which the private competitor will find difficult or impossible to overcome. This is unacceptable. A change to UK VAT legislation that will enable us to compete with Royal Mail on a more level playing field is essential. The European Commission intends to soon propose a Directive aimed at finding a solution to this problem, but the progress of any such Directive may be slow and uncertain. We have recently filed a formal complaint with the EU Commission to address this situation, and are currently awaiting a response.

The second roadblock concerns the price that Royal Mail should charge competitors who wish to use part of its infrastructure for "final mile" delivery. Competitors have been unable to agree an access price with Royal Mail. The difficulty for PostComm in fixing this is that if the price is too low, Royal Mail will challenge it on the grounds that it will be unable to sustain the universal service obligation. On the other hand, if it is not pitched low enough, it will severely limit the prospects of competition in the business to consumer sector of UK postal market.

Despite these difficulties we remain convinced that competition and the provision of universal service are not mutually exclusive, and that the introduction of competition will prove of lasting benefit to customers, competitors and Royal Mail alike ■

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- **13-15 May 2003: World Mail and Express Europe, Rome**
 - **22 May 2003: CERP Forum on the Universal Service Obligation, Vienna**
 - **26 May 2003: EPP Hearing on GATS, European Parliament, Brussels**
 - **18 June 2003: Postal Services Liberalisation and EC Competition Law IBC Conference, The Renaissance Hotel, Brussels**
 - **7-9 October 2003: Post-Expo 2003, Brussels**



Upcoming events