Speech for Philippe Bodson - FFPI
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Good afternoon Ladies and Gentlemen,

Let me first thank the organisers for inviting me to participate for a second time in this interesting forum of the European Committee for Postal Regulation. I am glad to be here in Vilnius today, a new capital within the European Union, and to have the opportunity to share with the European Postal Regulators and other key stakeholders the views of the postal users.

The subject of today's forum, access to the network of the universal service provider, is of great importance for the development of the European postal sector and, therefore, of great interest to the Free and Fair Post Initiative.
You are already familiar with the FFPI. Therefore, I will not take your time to introduce myself and our Initiative.

I will just say that the users of postal services, that the FFPI represents, need better quality standards and fair prices for postal services. And we, at the FFPI, are convinced that these fundamental elements can only be ensured through more choice for users and genuine competition for the providers. This is the only way to achieve an efficient postal market.

If you look at the postal sector today, no one can challenge the fact that it is difficult, if not impossible, to set up a network to compete with the incumbent. Indeed, who can offer access to all households, many times a week, throughout the year? Who can achieve to do so, if starting from scratch, and, even worse, in the presence of the incumbent?

The provision of the universal service obligation has offered the national Postal Offices the means to establish and develop a unique and priceless infrastructure. As described in a recent document of the Swedish Regulator on the impact of liberalisation in Sweden, the incumbents have a substantial competitive hedge which is in large part due to their nationwide distribution network. A network, as PTS, the Swedish authority, would say, that in most cases “took hundreds of years to set up, funded by profits in a non-competitive environment”.

I find particularly instructive the estimate made by the Swedish Regulator who adds that “any competitor aiming to challenge or copy the incumbent’s network must be prepared to finance a business case with a pay back time well exceeding ten years”. I doubt whether there is any realism at all in expecting that international capital would consider making such investments, in particular when most European incumbents maintain significant reserved areas and when not even a final date for full liberalisation has been set.

Today, let’s face it, competition in the postal market is limited, even in those countries that have taken unilateral initiatives to open their market.

As mentioned in the former Dutch Prime Minister Wim Kok’s report on the Lisbon Agenda published a few weeks ago, it is said and I quote that in “supposedly liberalised sectors such as network utilities, incumbent operators continue to develop national markets, often limiting the advantages to consumers”[1].

I believe that the general competition rules are not enough to ensure that new players are in a position to enter the market. More detailed and specific regulatory models are needed to ensure that incentives are created to allow for competition on paper to become competition in practice.

The EU has to move from only providing framework rules to govern the EU's postal sector to providing more detailed norms (as in the telecom sector) for instance as regards national regulatory authorities, access to essential facilities, etc. Currently, the EU's and most Member States' regulatory framework is far too loosely knit, resulting in large grey areas, or loopholes, providing little guidance. This situation either inevitably benefits the incumbent and deters potential operators to enter the market, or will result in years of litigation between competitors, therefore in both cases, no real competition. The reason for this being that the regulatory framework is too loosely knit to provide any real direction. Without strong regulators at national level, the economic and legal barriers to enter the postal market will be too steep even for large companies.

But then what are the instruments to put in place in order to transform ideas in reality, to transform a closed market into an open one?
If no ideal model has yet been developed, different options can probably be chosen.

But the one we believe that could guarantee true openings is to ensure competitors access to the USP's network. In my view, large public operators should be opening up their facilities for third parties, leveraging the efficiencies of the existing infrastructures. Allowing new entrants would avoid duplications and therefore would mean making best use of an efficient network to satisfy at best the users' and consumers' needs and demands. But is this realistic?

But why do we at the FFPI believe that third party access can work, promote competition and spur new entries in the industry? Because this system has two major advantages.

Firstly, a work-sharing downstream access arrangement whereby USPs would be charged with local distribution of mail and management of postal offices, and other parts of the network would

[1] Facing the Challenge, The Lisbon Strategy for Growth and Employment, Report from the High Level group chaired by Wim Kok, November 2004

be open to competition and accessible for third-party operators, would allow POs to maintain their position as social link while at the same time stimulate them to innovate and modernise in order to be able to compete with other players. The so-called “familiar face” of the postman vis-à-vis consumers, particularly the old and isolated ones, would therefore remain intact.

Secondly, by signalling to potential competitors that the last kilometre service will remain ensured, companies providing different services at different levels in the value chain might be encouraged to enter the market, despite all remaining hurdles for market entry, whether of legal, economical or historical origin. This could bring some dynamism in a sector where, despite of the progress made under the pressure of EU or national measures, is still vastly characterized by inertia.

In opening up access to the networks, it would be possible to to reduce the market dominance of the incumbents and the process of determining the price that new market entrants would have to pay to access the network would provide invaluable guidance as regards control on cost and profits of the USPs. As a side benefit, introduction of competition would therefore also reduce opportunities for unlawful cross-subsidisation and abuse of dominant market position. But Ladies and Gentlemen, I have already stated it, a strong, pro-active and independent national postal regulator is a prerequisite for the success of this approach because we need an independent body to set the cost of third party access to the network and to prevent time-consuming and costly litigation when disputes arise, as they surely would.

But do we have examples in Europe to demonstrate the effectiveness of the switch to a third party access system?

Unfortunately there is no experience of an access regime that has been in place for enough time to show the merits or the drawbacks of this interesting option. However, although it is too early to provide an assessment of this case, a postal market where we have witnessed during the course of this year a dynamic increase in service providers is undoubtedly the UK, as illustrated earlier by Mr Walsh.

Following the conclusion of the agreement between Royal Mail and UK Mail for access to Royal Mail's network in February 2004, whereby the incumbent's competitor can inject pre-sorted mail into Royal Mail's network for final delivery by the postmen, other operators such as Deutsche Post and TPG, have demanded access and are now competing in the mail sector. Within the access system, Royal Mail keeps its role in the overall downstream access providing sorting and delivery capabilities, while maintaining the provision of the universal service obligation.

PostWatch, which attentively analyses market and regulatory developments in defence of the UK users' and consumers' interests, in its comments to the consultation on UK Mail's access to Royal Mail's network, explains that "downstream access at a fair price makes it much less likely that operators will set up competing end-to-end networks. Royal Mail's universal service obligation depends on a viable delivery structure and experience from the US demonstrates that access has the potential to grow the volumes passing through the downstream network"2. I fully share PostWatch's view that access to the incumbent's pipeline by consolidators is vital to the development of competition in postal services.

The positive example developing in the UK postal market shows that where operators, such as UK Mail, Deutsche Post, TPG, can offer postal services thanks to the access to the incumbent's delivery network, barriers to entry are reduced and consequentially competition increases.

The Roland Berger customer survey[3], already mentioned a number of times this afternoon, Commissioned by Postcomm and issued in April 2004, reports on the consumers' limited inclination to switch to new service providers, points out that users have a certain reluctance to change for the unknown and that they are not sufficiently informed about the alternative operators. Undoubtedly disappointing, these results are purely based on perceptions, not on experience. In fact the report was issued at a time when the new regime hadn't been tested for a long enough period. I am convinced that, if the same exercise is repeated at a sufficient time-span after the start of the access system, results would likely be more encouraging.

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[2] Response to Postcomm consultation on a proposed direction to Royal Mail on downstream access, by UK Mail, to Royal Mail's postal facilities, August 2003.

[3] Roland Berger customer survey "Monitoring developments in the postal market – market survey", London April 2004, commissioned by Postcomm

The initiative taken by the UK Regulator should, in my view, be followed by other national authorities in order to achieve better quality of service and more affordable rates for users. I say this without wanting to appear as I if I was believing that there is a one size fit-all solution that would suit all Member States. But the UK example shows what can be achieved if there is sufficient backing of the Regulator by national Governments it also provides a good example of how to get rid of the unhealthy and unfortunate fixation with maintaining reserved areas for basic postal services.

The question is therefore with you all Regulators. Are you ready to grant third party access to the incumbent's network in all countries in the EU or to make such proposals to your respective Governments?

Unfortunately, as you all know well, there are a number of EU States where serious problems with access exist and where the Postal Directive is not even fully and correctly implemented. As reported in the WIK Study on the EU postal sector issued for the European Commission in August, a number of the Directive's most crucial provisions are not respected in some member States. And these include the reduction of the reserved area, transparency of accounts, control on tariffs and other important element of the EU regulatory framework for the postal sector. Aren't we therefore far away from open access?

If I look at the recent past I find an example that demonstrates what I just said as regards existing barriers to entry in some markets: that is the infringement case opened a few weeks ago by the European Commission against Germany as regards breaches of EU competition rules in the preparation mail area. The Commission, after having repeatedly warned the German Government on its national postal law that actually forbids third party consolidation services, the EU has now taken legal action. The German law, as it stands, leads to a situation that ultimately impedes to private mail sorting companies to compete with Deutsche Post. The German

Regulator, RegTP, has in the past acknowledged and reported that competition in upstream markets (mail preparation, printing, consolidation) might be hindered by the existing national norms. RegTP has noted that subsidiaries of Deutsche Post have been increasingly active in this market segment and that smaller operators are placed at a competitive disadvantage.

Those types of behaviour, and the restrictions of the network access in Germany have been a significant concern to the FFPI, which considers that distortions such as the one just described are severely affecting firms competing with the universal service provider, as well as users. I remain optimistic and I believe that, without having to wait for years, a positive outcome of the procedure launched by the Commission will open new opportunities for both mail service providers and users in Germany and in Europe.

Of course, it is fundamental to ensure that the arrangement agreed between the two parties is fair for both. In addition to the price paid for access, the operational details are just as important in ensuring that the day-to-day operation of the access regime between the parties functions smoothly and customers receive their mail on time. It is vitally important that access terms are non-discriminatory, particularly when the common carrier owns a competing business.

The question of the fixation of a fair access price is very important. The price to be paid by the new entrant to the incumbent needs to be fair for both parties and should not give an advantage to the USP. It should be cost based and leave room for a reasonable profit margin for the incumbent, avoiding excessive profits. But in order to calculate the right amount a clear overview of the costs incurred by the incumbent for the specific downstream activities needs to be available to the NRA. Better usage of the incumbents network and an increase of the volumes entering the network should help to reduce the cost of downstream services. All these factors should be taken into consideration when setting the price. Should it become impossible for the two parties to agree, the Regulator should have the authority to enforce the creation a separate company, operating the network, providing a basic delivery service at cost based price, equal for all operators that wish to use its facilities. This should however be a last resort in case other solutions fail to deliver.

To conclude, Ladies and Gentlemen, I would like to stress again that access appears as a very interesting route to be pursued in the overall attempt towards the introduction of competition and the creation of a level-playing field in the postal markets in Europe. I leave it to you to judge whether in each of your markets it is a feasible option or whether there are any more suitable ways to ease and speed up this lengthy and cumbersome process that liberalisation of postal services has so far been in Europe. In particular, I would be interested in hearing your views about how the postal Directive could be improved, perhaps by providing a more comprehensive regulatory framework than the current text, in order to achieve greater competition and choice for consumers. But this might be the topic of the next conference.

Thank you.
