



## **Is competition developing in the postal market ?**

### ***Comparison study of the French, German, Dutch and Belgian postal legislations***

Brussels, 22 September 2009

The Third Postal Directive fixed a final date for the postal market full opening on 31 December 2010 for more of the Member States. Following the implementation of the Directive, the Free Fair Post Initiative (FFPI) compared four postal laws/bills from Germany, France, The Netherlands and Belgium.

This study shows different provisions in the current and newly proposed national postal legislations. The FFPI is concerned that too much divergence in the various national legislations will harm the development of competition of the sector. This will again postpone the development of free and fair competition.

#### **1. Is the implementation of the postal Directive leading to a level playfield?**

Our comparative study shows important differences between the 4 legislations including for instance the universal service obligations and the licensing system for postal operators.

The definition of the universal service does not differ drastically from one Member State to another and generally correspond to the definition given in the Directive. However, the scope of the universal service changes slightly amongst the Member States. France and Germany, for instance, include the distribution of newspapers in the scope of their universal service obligation. Moreover, the financing of the universal service clearly vary from one country to another.

These differences lead to a situation in the Member States which can potentially damage the possibility for new operators to enter the market.

#### **2. Historical operators stay in charge of universal service**

In the four Member States, the historical postal operators remain or will remain in charge of the universal service. The French bill proposes for instance to appoint La Poste for the next 15 years as USP. This appointment of La Poste as USP for the next 15 years will not give a lot of room for others to enter this market segment and seems quite long compared with the other countries.

In Belgium, Belgian La Poste has also been appointed for a determined period of time. Its contract will expire in 8 years and a transparent selection procedure will have to take place three years before the end of the contract in order to appoint the new USP. In Germany and in the Netherlands, flexibility is even greater as Deutsche Post and TNT do not have a fixed term contract.

### **3. Great differences in universal service financing scheme**

As regards the financing of the universal service, the process also differs amongst the 4 countries:

- a. In Germany, for instance, no compensation is foreseen.
- b. In France and the Netherlands possible net costs of the universal services will be spread amongst the postal operators on basis of their annual turnover.
- c. In Belgium, the government will finance the universal service net costs.

### **4. Is licensing a potential barrier to entrance?**

In France, Germany and Belgium, authorisations are needed to provide some postal services. If a new market entrant wants to obtain a postal license in Belgium he will have to commit to several obligations such as covering 80% of the national territory after 5 years of activity, or distribute mail at least two days per week, etc. This will constitute a clear barrier for new entrants.

In Germany a minimum wage has been fixed for postal workers and postal operators which want to be active on the German market. This results in a very high cost for new entrants and has already resulted in some stepping out of the market.

All these measures will play a negative role on the development of competition by limiting the entrance of new operators and could lead to maintaining de facto monopolies instead of fair competition.

### **5. Conclusion**

Differences exist amongst Member States in the way they decided to liberalise their postal market. Barriers to the entrance still persist in some of them because of their restrictive licensing system or the advantage that is given to the historical incumbent. The FFPI fears that these differences will neglect the true objective of the Third Postal Directive and benefit only to the historical incumbents. Free and fair competition risks to be postponed yet again!

## **Background information**

### **1. The 3<sup>rd</sup> postal Directive**

Some Member States had already opened their postal markets even before the adoption of the 3<sup>rd</sup> postal Directive, which foresees the full opening of the postal market in most of the Member States for 2011, and others are currently discussing new postal legislation to implement the European Directive.

Germany was the first of these four countries to fully open its market on 1 January 2008 before the adoption of the Third Postal Directive. It was followed by the Netherlands which opened their market on 1 April 2009. In France and Belgium, monopolies still persist but discussions on the abolition of the reserved area are currently going on.

### **2. The Free and Fair Post Initiative (FFPI)**

The Free and Fair Post Initiative (FFPI) is a unique European initiative that brings together users and competitors of the public postal operators who strongly believe in the benefit of a liberalised and more competitive postal market. The FFPI key objectives are to secure full liberalisation of postal services and a fair playing field in the postal sector to prevent public postal monopolies to turn into private ones.

For more information, visit our website [www.freefairpost.eu](http://www.freefairpost.eu) or contact Sophie Jacobs Tel: 32-2-777.05.35. E-mail: [sj@freefairpost.com](mailto:sj@freefairpost.com).

	France	Germany	Netherlands	Belgium
<b>Date of full market opening</b>	01-Jan-11	01-Jan-08	01-Apr-09	01-Jan-11
<b>Universal Service</b>				
<b>Universal Service Definition</b>	Every natural or legal person has access to mail services (letter and parcel) everywhere in France at a reasonable price. The clearance and delivery of postal items should take place every working days (6 days per week). (Article L.1 of the postal code)	Minimum set of postal services provided in specified quality throughout Germany at an affordable price. Furthermore, the universal service shall be limited to postal services subject to a licence and to such postal services that can, at least in part, be provided using conveyance means of postal services subject to licence. Finally the universal service only includes those services that are generally deemed to be indispensable. There shall be a minimum of one delivery and clearance per working day (six days a week).	Regarding the delivery of postal items, article 16 sub 5 of the Postal Act 2008 states that the USP is obliged to collect mail at least six days a week (from street post boxes or other specific facilities) and also to deliver mail at least six days a week to all addresses in the Netherlands.	The USP is obliged to collect mail at least five days a week and also to deliver mail at least five days a week to all addresses in Belgium.
<b>Universal Service Scope</b>	The USO includes national and cross-border services for mail (including items of correspondence, newspapers, periodicals, catalogues, printed matter) weighing 2kg or less, parcels weighing up to 20kg, recorded delivery items and declared value items. (Article L.1 of the postal code)	Universal service includes: - the conveyance of letter items provided their weight does not exceed 2kg; - the conveyance of addressed parcels whose individual weight does not exceed 20kg ; - the conveyance of newspapers and magazines: - registered items; - insured items; - cash-on-delivery items and - express delivery items.	Article 16 sub 1 and 2 of the Postal Act 2009 obliges the USP to convey postal items inside the Netherlands and abroad. According to this article, these postal items encompass: - inside the Netherlands: letters up to 2kg, parcels up to 10kg and postal items for blind and partially sighted people up to 7kg; - outside the Netherlands: letters up to 2kg, books up to 5kg, parcels up to 20kg and postal items for blind and partially sighted people up to 7kg.	The universal postal service includes: - The collection, sorting, transport and delivery of postal items up to 2 kilogram; - The collection, sorting, transport and delivery of postal parcels up to 10 kilogram; - The delivery of postal parcels received from other Member States and weighing up to 20 kilogram; and - Services related to registered items and insured items.
<b>Universal Service Provider</b>	La Poste has been assigned as USP for the next 15 years. (Article 14 of the postal bill)	Since 1 January 2008, Deutsche Poste AG is not longer obliged by law to provide a universal service, but is still bound to provide it. It does not have a specific term but should inform 6 months in advance, if it does not want to provide these services anymore. The national regulator has to ensure that all universal services are provided. If this is not the case, it should find another postal operator that is willing to deliver a specific service without additional compensation.	TNT has been assigned as the first universal service provider without selection process as at that moment, TNT Post was the only operator capable of this role. It has been appointed for non-determined period for time. There might be a transparent selection process in the future, as provided for in article 15 of the Postal Act 2009.	La Poste has been assigned as the universal service provider until 31 December 2017. At the end of this period USP will be assigned for a period of 10 years.
<b>Universal Service Financing</b>	Compensation fund financed by other postal providers having a licence. (Article 16 of the postal bill).	No compensation.	The USP must inform OPTA when it expects a net cost for the next calendar year. Within six months after the end of a particular calendar year, the USP can ask the regulator for compensation. The regulator will assess the exact net costs. The net cost will be spread between all postal operators and will be based on their annual turnover.	The net costs of the universal services will be paid by the Belgian State.

	France	Germany	Netherlands	Belgium
<b>Date of full market opening</b>	01-Jan-11	01-Jan-08	01-Apr-09	01-Jan-11
<b>Licensing</b>				
<b>Licensed area</b>	Postal operators that provide postal services relating to items of correspondence (including cross-border items) should hold an authorisation, unless their activity is limited to domestic correspondence and does not include delivery (Article L.3 of the postal code). Some general requirements are linked to the authorisation such as the respect of the provisions of the Labour Code, the Social Security and of the specific collective agreements. (Article 18 of the postal bill) Authorisation holders have access rights to (a part of) the La Poste network, to individual letter boxes and to certain information kept by La Poste.	The conveyance - on a profit-oriented basis - of letter mail items weighing not more than 1kg requires authorisation (a licence). The operator has to comply with a number of specific requirements (e.g. employment conditions such as minimum wage). Providers of other postal services (e.g. conveyance of parcels) have to register. The licensed area excludes courier services and certain other services. There is mandatory access to the network of a dominant postal operator (currently Deutsche Post AG) under conditions considered reasonable by the NRA.	(i) No licence is needed, but operators need to register. (ii) TNT is not obliged to provide access to third parties at a discount, but this can be negotiated. (iii) TNT is obliged to grant competitors access to PO boxes on reasonable, objectively justified and non-discriminatory conditions and tariffs. (iv) Information related to the postal code system (including change of address information) is available for competitors and customers, against commercial tariffs.	Licence is needed for postal operators who have to comply with a number of requirements including: - The obligation to deliver mail at least twice per week after two years of activity - To cover 80% of the national territory after 5 years of activity (10 % the 1st year, 20 % the 2nd year, 40 % the 3rd year and 60 % the 4th year) - To apply uniform tariffs for the all territory Certain postal services are excluded from the licensed area such as express services, services dealing with mail heavier than 50 grams.