

# Newsletter

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Free & Fair Post

## EDITORIAL

## VIEWPOINT



Philippe Bodson

### No more barriers to market opening

The destiny of the European postal sector is due to be decided upon in the next months. The European Commission will this week adopt a proposal for a Third Postal Directive which will shape the future of the postal services market in the EU.

According to what reported in the past days by the media, the Commission's upcoming proposal should finally force all member States to allow competition in every area of the postal services market by 2009, thus putting an end to the existing monopolies. This is, in the view of postal users, the only way we can get to a truly competitive and dynamic mail sector.

I could not support more the Commission's determination to sweep away the last remnants of a time in which postal services were dominated by state-owned monopolies, and complete the market's transformation into a modern service sector.

In order to companies to innovate and respond to changing needs, liberalisation has to go hand in hand with a suitable legal framework. The move towards market opening should be accompanied with a move for greater regulatory symmetry across the member States if we are to create a level playing field for all operators.

In addition to maintaining 2009 as final date, what is needed from the Commission proposal is a clear definition of the Universal Service. Technology moves ahead fast and consumer needs along. The current USO should be redefined in terms of the minimum level of service that is to be guaranteed. Once this framework is established, the needs of consumers will be reflected by the

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### *The must haves of postal liberalisation*

By Alex Pigot, Managing Director of TICo Group Ltd

The third directive is on its way and hopefully it will be the last before full liberalisation. As a medium sized business operating in the European postal environment what I would like to see in the directive is as follows.

- **Downstream Access must be enforced.**

Downstream access is the sorting or sorting and delivery of mail by an intermediary to the point from which the postal delivery person takes it and travels the final mile to deliver it to an address. How can this be enforced? The only way is to allow full liberalisation (i.e. end to end competition). By being forced by legislation to allow other operators into the domestic postal collection and delivery market the National Regulatory Authorities (NRAs) will be forced to broker access agreements for final mile delivery between the incumbent Post Office and the new operators. The tariffs within those agreements must be such as to obey the tariff principles – so effectively introducing downstream access. Therefore, the directive must provide for the end of the monopoly in the postal market, so effectively introducing downstream access.

Why am I harping on about downstream access though? Surely I would be happy with full liberalisation. The problem is economics. The most economic number of postal delivery persons to a single address in a single day is obviously one. Therefore, the best quality of service should come from having a monopoly supplier in the delivery of mail in the final mile. However, the Universal Service Provider (USP), as with any business in the comfortable position of being a monopoly supplier, will not encourage the introduction of downstream access unless obliged to. And the only way of forcing them to do so is the introduction of full liberalisation. But in the end of the day they will retain the monopoly in the last mile as competitors pull back to operating in the upstream area only.

- **NRAs must have the power to sort out customer complaints.**

We have welcomed the recent news (from the PWC Study on The impact on Universal service of the full market accomplishment of the postal internal market in 2009) that all member States have implemented the second directive's complaints procedure into national law. In my view, the best way to enforce requirements on quality of service (QoS) is to penalize the USP for not keeping up with the standards laid down by the NRA. In the UK for instance, if the USP does not perform according to the QoS targets set down by their Regulator, Postcomm, then the USP must compensate bulk mailers. Does this happen in any other member State? – Not that I know of. Therefore since USPs happily obligate themselves under REIMS to give each other QoS failure discounts why should they refuse to give the same discounts to their best domestic customers? This anomaly should be addressed by the third directive, forcing at least the discounts available under REIMS for QoS failure (as decided by the NRA) to be given to all mailers in the member States.

- **We must have an internal market for post.**

As all mailers know, the 1997 judgment in the Citicorp vs. Deutsche Post (where Citicorp, based in Germany, mailed its German customers from the Netherlands and was penalized for the difference between what Citicorp would have paid Deutsche Post if it mailed its customers from Germany at non bulk mail rates and what was paid by TPG to Deutsche Post for this mailing) case was a travesty of justice. between the mailer and Potzka Polska.

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If we want a proper internal market for post then why cannot a mailer in Ireland negotiate with the Polish USP, Potzca Polska (or any other REIMS signatory) to be allowed put the Potzca Polska PPI (postal paid impression – used instead of stamps or franking marks) on the front of an envelope (packed in Ireland) and delivered in Ireland to An Post, and for the mailer to pay Potzca Polska the tariff agreed The Polish Post is then charged by An Post for the mail sorted and delivered, which the mailer has already paid to Potzca Polska.

- **The tariff principles must be obeyed.**

Under REIMS and the UPU agreements USPs pay each other annually for the difference in mail traffic. This effectively means that USPs give each other a year's credit on mail they sort and deliver for each other. Why? Surely, agreements such as these should be reserved for their best customers. However in some member States credit terms for domestic customers can be as long as 30 days, while in others payment must be made on the day of posting. For instance, in Ireland, my company, TICO Group Ltd, produces more mail for An Post to deliver than all other USPs (with the exception of Royal Mail)

but unlike the year long credit given to other USPs my company must pay for its mail on the day of posting. The third directive should ensure that NRAs have the power to rid the postal market of anomalies such as this.

- **Direct Mail must be protected.**

As we all know, if we want a vibrant postal market to continue growing, while B2B mail is decreasing and B2C commercial mail is stagnant, the only volume growth is from the B2C direct mail area. Therefore we must protect this segment. European data protection enforcers are making inroads into list availability, especially the most basic list of all, the electoral roll. While all direct marketers are happy to respect opt out lists (who wants to spend money mailing to someone who is going to bin the letter?) data protection commissioners (DPCs) see their role more and more to limit the availability of lists for direct marketing purposes. The third directive should make it clear that lists of names and addresses in the public domain should be available for direct mail purposes (as well as market research and credit checking) while respecting the wishes of the data subjects not to receive direct mail and the cost of obtaining those lists should be as per the Access to Public Data directive■

## 2009 AS FINAL DATE FOR LIBERALISATION

### *FFPI open letter to European Commissioners*

*Dear Commissioner,*

*I am writing you in my position of President of the Free and Fair Post Initiative (FFPI) to draw your attention on the view of the users of postal services as regards the long-awaited completion of the Internal Market for mail services in the European Union (EU). The FFPI is an initiative that brings together users of postal services and competitors of the incumbent postal operators. The FFPI's main objectives are to promote full liberalisation of postal services and to work for improved enforcement of the EC's competition rules with regard to the European postal market. The FFPI is composed of European and national business associations as well as individual companies from several member states and industry sectors, currently representing more than 7, 1 million businesses.*

*As you know, 2006 will mark a milestone for the future of the European postal sector as the European Commission will soon present a proposal confirming 2009 as final date for the completion of liberalisation of the sector or extend the deadline yet again. The FFPI and, as demonstrated by a recent public consultation of stakeholders, many other organisations, strongly believe that **2009 should be maintained as a final date for accomplishing full market opening**. This position is reflected in the enclosed joint appeal which calls on the European Institutions to respect the timeline foreseen in the Postal Directive. This joint statement, co-signed by several groups which represent key industry sector for the EU economy and for consumer protection, calls for liberalisation in 2009 at the latest, and highlights that liberalisation will result in more choice for users and consumers, better quality of service, increased competitiveness for the European economy, increased investment leading to new jobs and legal certainty for employees, users, postal operators and investors.*

*We are confident that the Commission in its upcoming proposal will take these positions into consideration and that it will undertake all the necessary steps to achieve positive results in this important debate.*

*Yours sincerely,*



Philippe Bodson  
President FFPI

# ON THE RIGHT WAY TO A FAIR POSTAL MARKET?

## *The EU scrutinises Postal Operators' structures and behaviour*

In the past weeks, the EC Institutions in charge of policing the Internal Market has clamped down on irregularities distorting competition in the EU's postal sector. In parallel, the EC Commission is in the final stages of preparing the proposal for a new postal Directive that hopefully will contain new rules not only about full liberalisation, but also about more effective regulatory oversight to ensure a level playing field before and after the EU's postal market has been opened.

The targets of the policing activity of the EC Commission and the European Court of Justice were three main actors in the postal sector scene: Poste Italiane, La Poste of France and TNT.

The Commission on 26 September opened a formal investigation under the state aid rules into the level of interest rates applied to the funds collected from Poste Italiane's customers' current accounts and deposited with the Treasury as of 2005. Commissioner Kroes in this respect said *"I am satisfied that the compensation for 'Poste Italiane's public service obligations has not unduly distorted competition. However, we have to investigate the interest received by the 'Poste Italiane' from the Treasury because it could constitute an illegal subsidy."* This intervention is of a key importance in order to set the conditions for a liberalised postal market, in fact the prevention of illegal State aids is particularly important in the postal sector because of the universal service obligations imposed on postal incumbents.

Furthermore, TNT and The Netherlands were the object of a decision of The European Court of Justice on the 28<sup>th</sup> of September. The Court decided that the practice of holding a share which gives the state a veto over mergers was incompatible with the free movement of capital in the internal market. The ruling is in line with the Commission's decision taken against the Dutch government in 2003, which stated that the influence that was given to the Dutch state as holder of the special share ("golden share") could deter investors from other member states from investing capital.

The Dutch government argued that holding this special share was necessary to guarantee a universal mail service. But the court decided that "the special share goes beyond what is necessary to safeguard the solvency and continuity of the provider of the universal postal service". The court said the mechanism, which had given the state a veto on mergers and takeovers, "restricted the free movement of capital". The Dutch government has held a golden share in TNT since the firm was privatised and split into two in 1998, arguing that it was necessary to guarantee a universal mail service. This decision of the court contributes to avoid distortions of competition as regards merger and takeover activity in the postal sector.

In addition, the Commission on the 4 October sent France a recommendation that it should end the unlimited guarantee enjoyed by the French Post Office (La Poste) in its capacity as a public body, by the end of 2008. As part of its monitoring of existing state aid schemes under the EC Treaty, the Commission examined the guarantee under which the state has responsibility for liabilities entered into by the La Poste.

The fact that the guarantee is unlimited allows La Poste to obtain finance on more favourable terms than otherwise, giving it an advantage over its competitors and thus distorting competition on a market which is in the process of being liberalised. France has now one month to respond to the Commission's recommendation. La Poste's unlimited guarantee stems from its status as a legal entity governed by public law. This status means that La Poste is not subject to the insolvency and bankruptcy procedures provided for under ordinary law. In addition, in the event of financial failure of the post office, the state could be held responsible in last resort for its rights and obligations. This situation is tantamount to a state guarantee that is unlimited in amount and in duration and covering all of the liabilities of La Poste.

Also, on the 12<sup>th</sup> of October the Commission has decided to open an in depth investigation into the proposed reform for the financing of the pensions of the French Post Office workers' The Commission will examine whether the reduction in La Poste's costs, sought by the reform, will not give the incumbent an advantage over its competitors.

The actions against Poste Italiane, TNT and La Poste of France all have in common that the breaches of the EC rules (confirmed or under investigation) are significant breaches of fundamental rules to ensure a level playing field, perpetrated by sophisticated companies who surely cannot have been unaware of the fact that EC rules were being broken. In case of doubt, the postal operators could always have consulted the EC Commission for advice.

These recent incidents, together with the other cases pending against incumbent postal operators at both EU and national level, demonstrate that full market opening alone might not necessarily bring about real competition and increased choice. A strengthening of regulatory oversight, as has been achieved in some Member States, is a prerequisite for successful liberalisation.

market, as consumers will be able to choose the service provider that better satisfies their needs, which will ultimately result in greater quality of service and competitive pricing.

Since member States have so far opted for very different conceptions of Regulators, it is also fundamental that the role and responsibilities of the NRAs are clearly defined in the third Directive. NRAs should focus particularly on taking care that the USO is adequately provided, ensuring that prices are affordable and geared to costs, that the provisions on transparency of accounts and cost allocation by USPs are respected and that abuses by market players are prevented. I hope the Commission will put the due emphasis on the need to empower and better specify their role, which is of a crucial importance for the transition to a competitive market.

However, it would be naïf to believe that all these points we wish to see in the proposal will go through the legislative process in a smooth and easy way. Certainly resistance is expected from all those who are traditionally keen to defend public services against private sector competition and anachronistically promote national champions.

Commissioner McCreevy recently stated in a speech at the Annual Austrian Post Event 2006 "Post.Evolution": *"We cannot miss the opportunity to take the final step. I am firmly of the view that the existing Postal Directive has played a significant role in ensuring high quality postal services are accessible to all through the universal service obligation. So, you may rest assured that I will ask my fellow Commissioners to deliver an ambitious, but balanced, proposal that aims at full market opening in 2009 and that preserve the universal services obligation"*.

I am confident that the Commission will keep its promises. I also hope that its hard work and ambitions will not be frustrated by the protectionist positions of those who want to slow down the process once again. I am confident that, on the basis of what experience has showed in some EU countries, the European Parliament and Council Europe will come to an agreement that will finally lead to a well functioning internal market for postal services to the benefit of consumers and market players alike ■

*Philippe Bodson*

European stakeholders and the media have been covering with interest the developments of the postal sector in the past weeks and will follow the adoption of the Commission proposal for a third Postal Directive in the next days.

If you want to know what is going on keep an on [www.freefairpost.com](http://www.freefairpost.com) and tell us what you think on the **FFPI BLOG!**

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- **18 October 2006:** Possible adoption of Commission proposal for a third Postal Directive
  - **31 October -1 November 2006:** The Mail Show Conference and Exhibition, London
  - **14 -16 November 2006:** Universal Postal Union's Strategy Conference
  - **27 November 2006:** Next FFPI Stakeholders' Roundtable debate

