



FFPI RESPONSE TO THE EUROPEAN COMMISSION PUBLIC CONSULTATION ON POSTAL SERVICES

- PART 2 –

27 January 2006

Q.1 In relation to the scope of the universal service:

What postal services should the universal service include?

The Universal Service Obligation (USO) is in our view compatible with a market open to competition. Its scope should be limited to guarantee the supply of basic postal services in those cases where the market is not capable of covering this demand from consumers.

In light of the technology progress and changing consumers' and users' needs, the definition of the USO needs to be modernised.

What steps should be taken by Member States to ensure that universal services are clearly defined to reflect the needs of customers?

The current USO obligation is rather vague and extensive in scope; it should be redefined in terms of the minimum level of service that is to be guaranteed to consumers.

Once this framework is established, the needs of consumers will be reflected by the market, as consumers will be able to choose the service provider that better satisfies their needs, this availability of choice will ultimately result in greater quality of service and competitive pricing.

Should the scope of universal service products be further harmonised at EU level, or should some elements remain an issue for Member States to determine based on users' needs and market development?

The FFPI believes that the scope of the USO should be defined at EU level indicating what the USO should comprise and should not comprise, so as to provide more legal certainty for Regulators and Postal Operators alike and to consolidate an effective internal market for postal services.

However, member States should maintain their competence in adapting to their national markets and consumers' needs the exact description of the USO. Review mechanisms for the USO should also be defined at the Member States level in order to ensure that the USO responds to evolving consumer preferences.

Q.2

Are the current universal postal service obligations still appropriate?

In light of the on-going transformation of the postal sector, the current definition of the Universal Service Obligation is no longer appropriate for the development of the market.



The EU postal Directives conceived a transition regime where the member States ensured the provision of the USO through the Universal Service Provider, who was also the sole operator in the reserved area. In our view, the maintenance of monopolies hinders the development of competition in the market.

In a fully liberalised market, that the FFPI wishes to be fixed for 2009 at the latest, the USO has to be no longer associated with the USP, but rather be defined as the minimum basic service to be provided by the system but not necessarily by the USP.

Should universal postal service obligations be applied uniformly?

The USO should require a minimum uniform level of service to cover the basic needs of consumers (included a basic quality standard and basic coverage).

Q.3

Is the reserved area necessary to maintain the universal service? What are the risks and opportunities to ensuring a universal service in a competitive environment?

No, the necessity of maintaining a reserved area to finance the USO has not been proven; moreover it has often been used as an excuse to protect the USP monopolies.

Open competition will increase choice, reduce prices and improve quality standards. The risk lays in delaying the full accomplishment of the internal postal market by maintaining a reserved area that discriminates new entrants and hinders competition.

The development of competition will not be immediate as it will take some time for new market entrants to develop their networks. More efficient surveillance mechanisms by NRA's need to be put in place in order to avoid market distortions.

Q.4

Should a common methodology for assessing the cost of universal service be determined (e.g. following the approach taken in telecoms), and if so, who would determine this? In broad terms what elements should be taken into account in this calculation?

Under the current methodological approach, the regulatory authorities in the postal sector continue to fail in producing reports and data that would allow users to understand to what extent they receive quality services for the best possible prices.

There should be more transparency and a common methodology for calculating the cost of USO, based on a *price geared to costs system*. The provisions of the Postal Directives as regards separation of accounts should be reconfirmed and mechanisms to ensure that they are fully and constantly respected should be ensured by the NRAs.

Furthermore the FFPI believes that the VAT exemption on postal services should no longer be applicable, in accordance to the draft *proposal for a Council Directive amending Directive 77/388/EEC as regards value added tax on services provided in the postal sector*, currently held at the Council. VAT costs should be clarified allowing VAT cost to be also included in the calculation and ensuring a level playing field amongst all operators.



Q.5

Universal Service Provision-Safeguard Mechanisms

In the absence of a reserved area, what safeguard mechanisms are needed to ensure the contained ability to provide a universal service that would be appropriate in a liberalised market, equitable to citizens (as both users and taxpayers) and competing market participants, as well as practical and cost effective to administer?

NRAs will be key for this safeguard role and it is essential that the third Directive clearly sets their power and competences to ensure that the USO is properly provided.

Also, the appropriateness of the service provided could be controlled by national watchdogs that would be created to allow users to raise concerns on the provision of the USO (e.g. PostWatch in the UK).

Q.6

Should minimum domestic quality of service levels be further harmonised, to what degree of convergence, for which product types and how should targets be set?

Further harmonisation of domestic quality of service targets should only focus on the required level of quality of the basic service, while the quality of added value mail categories should be open to competition allowing the market to set its quality standards.

Q.7

Should complaint and redress procedures be strengthened at EU level; if so, what proportionate intervention would be needed, taking into account experience with existing approaches?

Existing rules in these areas are quite detailed in the Postal Directive and under EU competition law. However, the FFPI laments the still incomplete implementation of some provisions of the Postal Directive by some member States and the often slow scrutiny procedures by the competent authorities (National Competition Authorities and the European Commission) in case of competition rules' breaches.

The Commission should be encouraged to take action more strongly and swiftly against Member States that fail to apply the rules and to take measures to ensure that abuses by monopolies are sanctioned and that unjustified subsidies from the Member States to the postal operators are condemned.

Q.8

What role should standardisation play in future postal markets?

Standardisation should be limited to providing a minimum level of harmonisation that allows for legal certainty allowing operators to use the same minimum standards in order to operate freely within the internal postal market.

Q.9

Respondents are invited to comment on these options, including, where appropriate the nature of conditions that may be associated with authorisations, (in particular universal service obligations), to whom associated conditions should be applied, and how are they to be enforced.

A number of options exist with respect to authorisation and licensing, these include:

- 1. Abolishing the use of individual licenses. All sector specific conditions are applied through a general authorisation scheme.**
- 2. Maintain the existing situation (the use of individual licenses and general authorisations continues to be allowed under the existing conditions).**
- 3. Widen the conditions for the possible use of licenses and general authorisations.**
- 4. Clarifying and harmonising further: the range of services that may be subject to authorisation, the types/form of authorisations that may be introduced (including individual licenses) and the range of conditions that may be associated with authorisations.**

In order to increase the options available to consumers the systems should progressively abolish individual licenses and move to a general license scheme for all operators. The general authorisations would set the mandatory obligations necessary to operate in the market which would be the same for all operators.

Q.10

Building on the postal Directive's objectives, are more precise definitions needed concerning the independence, role and responsibilities of NRA's?

The establishment of truly independent NRAs to date has proven to be slow and somewhat erratic, since the Member States have opted for very different conceptions of NRAs and have often delayed the implementation of the Directive in this respect.

It is fundamental that the role and responsibilities of the NRAs are clearly defined in the third Directive. NRAs should focus particularly on ensuring 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.

Q.11

Should a detailed definition of regulatory tasks and the sharing of best practice be facilitated by setting up a European group of postal regulators, or progressed through existing bodies?

CERP exists already and we could imagine a review of its functions and competences.

However, greater participation of stakeholders is necessary at EU level, such intervention could be channelled through the creation of a postal forum an advisory body composed of all the stakeholders including the private and public postal operators, trade unions, EU institutions, users, consumer organisations, as an effective instrument to debate common concerns, confront



challenges, and propose solutions and generally overview the functioning of the postal sector in Europe.

Q.12

Should measures determining the financing of NRAs be prescribed at EU level, or left to the Member States to determine?

In order to ensure that NRAs are independent, more transparency requirements should be prescribed at EU level while also allowing Member States to determine the specific financing scheme.

Q.13

Should the postal Directive's provisions on downstream access be maintained or is a detailed mandatory model necessary?

The FFPI believes that downstream access systems will lead to more competition. Therefore we would support framework provisions in the third Directive that are aimed to increase and guarantee downstream access opportunities for all operators to existing postal networks therefore ensuring a level playing field for new market entrants.

However, heavily detailed rules on mandatory access models could risk adding excessive administrative burdens and hampering the development of competition in a liberalised market.

Q.14

Leaving aside the issue of downstream network access to which elements of the postal infrastructure should equitable access be required, and how should this be remunerated? Which elements, if any, would be best prescribed at EU level?

The provisions on access at EU level should be limited to the establishment of minimum conditions to access the network ensuring a level playing field for all operators. Detailed rules should be left to the competence of member States and the National Regulatory Authorities.

Q.15

Cost Coverage:

Cost Coverage: should the authorisation for the imposition of uniform tariffs be applicable to all universal service products? How should the decision on uniform tariffs vs. cost coverage be regulated?

Universal service product tariffs should be affordable and cost based but not uniform in price.

Should the Directive's provisions on terminal dues be maintained?

The terminal dues system should be abolished as it distorts competition and is counterproductive to the introduction of competition in the area of cross border mail. Price agreements between competitors are not compatible with EU competition rules. Despite the reference to 3rd parties in



the Commission decision on Reims, it is still not possible for non-USP to have access to the system, hence enforcing the competitive distortion.

In the Framework of EU competition law, should the postal Directive's provisions for achieving non-discrimination in respect of special tariffs be maintained?

Q.16

Cost accounting

**Are the current cost-allocation principles in the Directive unnecessarily rigid?
Are the cost accounting rules in the Directive too rigid or too open, or insufficiently clear?
Should a common cost allocation methodology be made mandatory?
What should be the level of public disclosure of regulatory accounts of universal service providers, and would full market opening change the appropriate level of disclosure?**

Full implementation of the provisions on separation of accounts between reserved and non-reserved area market segments has to be a priority for the Commission. Without transparent accounting there can be no level playing field. So far the implementation of these provisions has been poor.

Regulators must guarantee that a transparent and effective tariff setting system is in place in the Member States, particularly until monopolies continue to exist.

Q.17

Should price controls be restricted to postal services provided under conditions of market dominance? If so, in broad terms, how should dominance be assessed, at what level, and by whom?

Price controls would not be necessary in an environment fully open to competition.

Q.18

Do you envisage overall economic growth in the postal sector following full market opening and how might this develop over time? What will be the impact on employment?

The majority of economic studies agree that the postal sector will grow overtime following full market opening. Market liberalisation will indeed create a dynamic mail sector where jobs will increase. Public sector jobs will be protected if the public operators become more flexible and cost effective.

The European Commission has quoted the telecom sector as a positive example of successful liberalisation in terms of employment. Similarly, we believe, liberalisation will bring growth and jobs.

Q.19

What positive or negative social impacts could result from full market opening? How may negative impacts be avoided or limited?

Full market opening would offer considerable opportunities for dynamism and growth, allowing market operators to make best use of an efficient network to satisfy at best the users' and



consumers' needs and demands. In order to companies to innovate and respond to their changing needs competition liberalisation has to be accompanied by a suitable legal framework, regulators must ensure that incumbents do not abuse their dominant position. 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 operators.

Q.20

Please add final comments you feel may be helpful to the development of the Commission's 2006 proposal on postal services.

2006 will mark a milestone for the future of the European postal sector; the dynamism and growth of the mail sector are more than ever at stake. The decisions that will be taken next year will set the rules for a long time ahead and will hence have to be the fruit of an objective and unbiased analysis of the key elements and reflect the views of all the actors involved. We believe that after a lengthy period of "gradual and controlled" market opening, it is now time for the Commission to commit to this long-awaited final step of the postal reform by confirming 2009 as the date for the accomplishment of the postal market.

Q.21

Please explain the nature of your interest in the sector (or that of your organisation), and in what capacity you are responding to this consultation.

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. Through its membership, the FFPI currently represents more than 7,1 million companies.

The FFPI key objectives are to secure full liberalisation of postal services that should be in 2009 at the latest and a fair playing field in the postal sector to prevent public postal monopolies to turn into private ones.

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