

Newsletter

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Free & Fair Post

EDITORIAL

VIEWPOINT



Philippe Bodson

On 1 January, the liberalisation of a majority of European postal markets has to be effective. Nevertheless, serious concerns and challenges remain as regards the full and efficient implementation of the Third postal Directive in some Member States.

2011 is therefore crucial in order to ensure the development of a fair level playing field. It will certainly be the year of truth for the postal market and a milestone for its future. Is the liberalisation going to stay a paper exercise?

In this context, this newsletter focuses on the issue of achieving a level playing field. We are therefore happy to receive a contribution from Rudy Van Rillaer, president of the Belgium Mail Users Association. It outlines his vision of the current postal liberalization in Belgium and his fears regarding unfair VAT treatment. He highlights the problems caused by cross-subsidization between the new entrants and the incumbent.

We are very concerned that sound postal liberalisation could be further delayed with some countries accommodating the historic incumbents who have benefited from the monopoly. In this regard, the example of Belgium is rather worrying.

Therefore, we are strongly convinced that the Commission and the Member States have a key role to play. Firstly, by actively using its regulatory powers and launching infringement procedures, the Commission could send a sharp signal in order to safeguard a level playing field. Secondly, Member States have to show their commitment to comply with the community legislation and cooperate thoroughly with all stakeholders and postal market players.

These are the necessary conditions to get a successful liberalisation of the postal market and active operators subject to the same rules and treated equally.

Philippe Bodson ■

The Belgian postal market needs to reach a fair level playing field

'By Rudy Van Rillaer, president of Belgium Mail Users Association'

Further to the third European Postal Directive, the postal market was expected to become competitive and create a fair level playing field in most Member States, including Belgium, from 01 January 2011. Thanks to the dual ambition of Europe to both remove the national monopolies and to make competition improve prices and quality, the Belgian government has to guarantee a free postal market. Nevertheless, with the amendments to the new Belgian postal law approved in the federal Parliament, we are heading for a missed opportunity in terms of liberalization and the national quasi-monopoly is likely to be maintained. Regarding a fair level playing field for the postal market, the Belgian situation is quite symbolic.

First, tax inequalities are still important in Belgium. VAT inequality between the newcomers and the USP (Universal Service Provider) on the Belgian postal market remains a major stumbling block in terms of pricing in the market. Because there is only one USP for the Belgian territory and this situation will remain for the next eight years, VAT must not be charged on postage. Entrants or USP competitors are obliged to charge VAT at a rate of 21% for services. This already creates a real difference for the new entrants and put a clear pressure on them.

Normal businesses do not suffer as much as postal companies from the VAT, but a large part of the postal market are associations, banking and insurance which are usually not subject to VAT and must include the VAT as an expense. Consequently the VAT is an additional cost factor. Besides the already existing competitive advantage for the incumbent, this creates a distortion at a rate of 21%, a rate not significantly bridged in this large segment of postal flows both in frequency and volume.

Moreover, the issue of cross-subsidization is also a major one regarding the situation in Belgium. The USP benefits from various guarantees and financial support from the government. These advantages encompass the compensation for universal service and the guaranteed period of 8 years representing 300 millions of dollars a year.

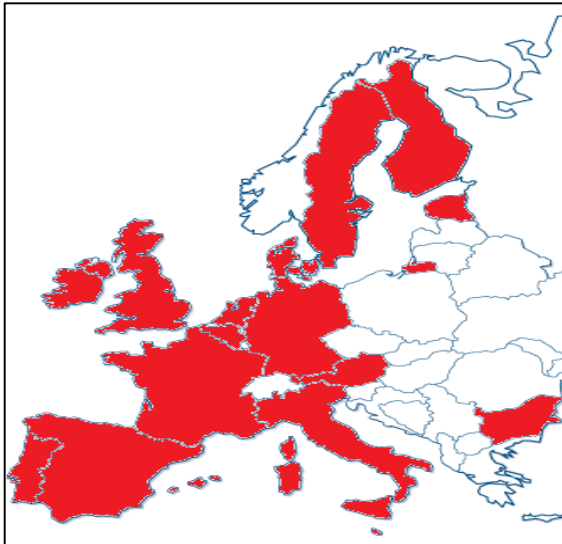
Such a system of compensation is linked to tax benefits through the management contract between the State and the incumbent (which is already of concern to the European Commission), and the loss coverage for newspapers and magazines. How is a competitor expected to challenge this privileged position through a competitive fight? One can also ask whether the government and the EU are able to provide appropriate safeguards to combat cross-subsidy.

Finally, the Belgium Mail Users Association (bmua) highlights several recommendations to contribute to create an open and fair postal market in Belgium. These recommendations are especially the immediate prohibition of discriminatory measures and consolidation of access to the postal market, the reduction of universal services in terms of both content and time, the treatment of VAT obligations for all postal operators, the establishment of new criteria for coverage and access to postal infrastructures and the redefinition of the terms of cross-subsidization (USO contribution, management contract, loss compensation).

Such measures would help the Belgian market to reach a fair level playing field and hold the promises coming from liberalization of EU postal markets. In addition, the Commission should also actively review the new Belgian postal law for its incompatibilities with the Third postal Directive. ■

HOW TO GUARANTEE A SUCCESSFUL POSTAL LIBERALISATION ?

On 1 January 2011, most of the European Postal Markets has been opened up for full competition in the letter mail business. However, the development of competition in the postal sector remains very slow since the adoption of the Third Postal Directive, three years ago. The FFPI therefore calls upon the EU Member States and the European Commission to undertake clear actions to achieve effective postal liberalisation.



In a [White Paper on postal liberalisation](#) published last December, the FFPI identifies 5 key conditions for a successful postal liberalisation:

1. **No barriers to entry – Open access to the market:** Remaining barriers to entry should be abolished, and licensing conditions, when they exist, need to be appropriate. These barriers can be legislative or non-legislative. Specifically, inaccurate implementation of the postal Directive through inadequate national legislation remains a problem in several Member States. Furthermore, limited accessibility to existing postal networks could also be considered as an added burden.
2. **Develop a fair level playing field:** It is key that all of the active operators in the market are subject to the same rules and are treated equally. When analysing the situation in the different Member States, some important differences became clear with regard to the VAT regime, labour rules, minimum wage and the problems between the incumbents and new entrants caused by cross-subsidisation. An unfair VAT regime in favour of one operator or social dumping between the different postal service providers should clearly be avoided. On the other hand, labour conditions should not be used as a barrier to entry by setting for instance a minimum wage for postal worker above the minimum wage average in this sector. Moreover, in order to ensure a level playing field, it is also essential that all operators are subject to the same financing rules. Cross-subsidisation abusing universal service compensation and monopoly proceeds should therefore be addressed.
3. **Clear Universal Service definition and calculation of costs:** Differences remain amongst the Member States as regards the definition of the postal universal service. However, it is important to have a clear definition of the universal service obligations and scope in order to ensure proper calculation of the net costs. The method used to calculate these costs should also be very clear and transparent and should be applied equally across the EU, which is currently not the case.
4. **Strong and independent national regulators:** national regulators also play a key role in a liberalised postal market. They should closely control price setting by the national incumbents in order to guarantee that they are based on real costs. Furthermore, national regulators should closely scrutinise any USO calculation in order to ensure that cross-subsidisation is not abused at the expense of other competitors in the market. National regulators should therefore be independent and have the necessary powers and competences to act autonomously.
5. **Proactive Commission supervision:** the European Commission should pay specific attention to and ensure that the competition rules are properly enforced. In the current context of postal liberalisation, it is key that the Commission continues to act quickly and forcefully when competition issues arise in the postal sector. More than ever, its decisions will be analysed and could serve as “jurisprudence” for the future. Anticompetitive behaviour as well as State Aid abuse should not be allowed in the newly liberalised postal market. The Commission also needs to be strongly supported to continue its work on pre-screening of national legislative proposals to assess their compatibility with the Postal Directive.

To ensure that these five key conditions are met, the European Commission and the individual EU Member States will have to step up their efforts. Good cooperation amongst all the stakeholders involved in the postal market is essential to develop a fair level playing field and to achieve a successful liberalisation where all postal operators will have to apply and respect the same rules.

Member States, national regulators, postal providers and also the European Parliament, all have an important role to play to increase competition in the postal sector, decrease prices and enhance the value to consumers. ■

■ A FAIR LEVEL PLAYING FIELD

No Cross-Subsidisation, VAT discrimination and unfair labour rules...

In our last Newsletter, we further developed the first chapter of the FFPI White Paper, meaning "No barriers to entry". In this edition we will focus on the fair level-playing field condition.

Ensuring the development of fair competition in the postal market to provide free access to the market is not enough. It will also be key that all of the active operators in the market are subject to the same rules and are treated equally. When analysing the situation in the different Member States, some important differences became clear with regard to the VAT regime, labour rules, minimum wage and the problem of cross-subsidisation.

First as regards the cross-subsidisation problem, it is clear that cross-subsidisation abusing the universal service compensation and monopoly proceed as long as monopolies exist should be actively addressed as it leads to abusive practices by dominant utilities, such as predatory pricing and selective price cutting which is likely to distort competition.

In its 1998 Notice on the application of the competition rules to the postal sector, DG Competition highlighted that subsidising activities open to competition by allocating their costs to reserved services is likely to distort competition in breach of Article 86 of the TCE. With the abolition of the reserved area, it will be key to update the notice and to highlight that any aid received from the State or any compensation fund to cover the net costs of the USO should not be used to subsidise activities outside the USO as this would distort competition.

Secondly, VAT discrimination also remains an issue in some EU Member States. Discussions are currently taking place in several countries with regard to VAT exemption for the national incumbent. The Sixth VAT Directive, dating from 1977, provides that the supply of 'public postal services' should be exempted from VAT. However, in practice, Member States have interpreted this provision differently and have offered different exemptions for postal services. Consequently, in some Member States, the public postal operator is fully exempted from VAT, whereas other market parties do not enjoy such exemptions. This situation has led to a considerable market distortion and to several complaints such as TNT's complaint against the VAT exemption of Royal Mail.

The 2009 [European Court of Justice decision on this case](#) was a first step in the right direction. However, in the absence of a clear set of EU rules, the 2009 ruling is likely to be insufficient with regards to setting a harmonised set of taxation and competition rules in the European Single Market for postal services.

The results of the latest discussions in the Council on VAT for postal services were also very disappointing as the Presidency concludes that the only possible option is the status quo which is clearly not a solution. Moreover, the Commission is unfortunately considering withdrawing the VAT proposal.

Finally, the development of new rules with regards to working conditions, which have been negotiated in an unfair manner, are also used in some Member States to protect the national incumbent.

The labour question is a very sensitive issue when dealing with postal services. Labour conditions sometimes vary greatly between the postal operators. The respect of fair working conditions is therefore key if we do not want to assist any social dumping between the different postal service providers. However, it is key that labour rights and conditions in the postal sector are not used to favour the national incumbent and limit the development of competition in the postal market.

A fair level playing field and legal certainty are essential for the development of a truly liberalized market for postal services in Europe. The European Commission but also the Member States should therefore pay particular attention to these issues. The Commission should continue and intensify its role as competition regulator and should actively address cross-subsidisation abusing the universal service compensation and monopoly proceeds as long as monopoly exists.

Discussions on VAT for the postal market should not be closed, and a compromise agreement should be reached as soon as possible on this issue. Consequently, the Commission should find ways to keep the VAT issue on the table.

Finally, the European Commission should closely monitor any national legislations as regards labour rights and conditions in the postal sector in order to ensure that these rules are not used to favour the national incumbent and limit the development of competition in the postal market. ■

■ **ESSENTIAL COMPETITION DECISIONS STILL PENDING**

In a press article published in September, Amelia Torres, Commission spokeswoman, said that the Commission will “study carefully” the State Aid competition ruling against Deutsche Post in order “to comprehensively address all potential distortions of competition resulting from the total amount of state resources granted to Deutsche Post.”

However, decisions on competition cases, such as the one against Deutsche Post or the one against the Belgian Post, are still pending. Decisions on these cases are nonetheless becoming more and more urgent with the liberalisation of the postal market, in order to help market players to understand to which extent resources granted by the State are compatible with the EU competition rules and thus ensure the development of a fair level playing field in the postal sector.

In order to ensure a successful postal liberalisation, it is essential that the Commission deals in parallel with two approaches: the right implementation of the Third Postal Directive in the Member States and the effective application of competition rules in this sector.

These two approaches are fully interlinked. The development of a fair level-playing field is as important as the respect by the Member States of the EU rules in order to boost the development of the European Single Market. Competition decisions play an essential role in the implementation and interpretation of the Postal Directives and the development of a fair postal market. It is therefore crucial that the Commission continues to take clear decisions on competition pending cases.

In the past years, the European Commission’s Competition authorities have assumed their responsibilities and played a significant role by taking numerous important decisions in cases dealing with abuse of dominant position and unfair State Aid. However, long-awaited decisions in the investigation on the use of State Aid remain to be taken (cases against Deutsche Post and the Belgian Post). These decisions are key in order to ensure legal certainty in a liberalised market, to shape a fair level playing field in the postal sector and – equally important – to help market players to understand to which extent resources granted by the State are compatible with EU competition rules.

In addition to monitoring the implementation of the Third Postal Directive in the Member States, the Commission should therefore play a proactive role and pay specific attention to the competition rules and ensure that they are properly enforced. In the current context of postal liberalisation, it is key that the Commission continues to act quickly and forcefully when competitions issues arise in the postal sector. More than ever, its decisions will serve as “jurisprudence” for the future. Anticompetitive behaviour as well as State Aid abuse should not be allowed in the newly liberalised postal market. ■



Upcoming events

- **30-31 March 2011:** Marketforce and the IEA's 14th Annual Conference: The leading strategic forum for the postal industry
- **7 April 2011:** Mail & Express Delivery Show 2011