



The Free and Fair Post Initiative's (FFPI)

**Answer to the European Parliament's questionnaire for the
hearing on services of general interest in Europe
6 March 2001**



FFPI Submission on the hearing on 'services of general interest in Europe', 6 March 2001

The Free and Fair Post Initiative (FFPI) was officially launched on 23 October 2000 in Brussels by its President, the Belgian Senator Philippe Bodson. The FFPI is a voluntary, independent, not-for-profit, initiative and does not receive any subsidies from any governmental body and it relies on membership dues and user fees to cover its operating expenses.

The current membership is composed of European and national business associations and individual companies from several EU Member States and industries. The FFPI represents more than 7,1 millions companies that are mainly users of postal services although some members are active in the postal market or neighbouring sectors.

When the EU leaders met in Lisbon a year ago, they agreed to speed up liberalisation in post, gas, electricity and transport. The postal sector, like other delivery services, is increasingly recognised as a key industry for the Internal market in Europe and is today at the heart of the political debate on services of general interest in Europe.

The Free and Fair Post Initiative (FFPI) strives to promote full liberalisation of Postal services in 2007 at the latest and fair competition in the Postal sector. The sphere of the FFPI interest also includes services that are ancillary to Postal services, such as communication, transport and logistic.

The Initiative recognises that the Universal Service Obligation (USO) is vital in order to guarantee the supply of postal services for the benefit of consumers.

1. How do you assess the liberalisation so far of various services of general interest in the EU in terms of security of supply, technical progress and the evolution of costs to the general public and in regard to employees of former and existing undertakings in the relevant market segment?

It is the FFPI view that the process of liberalisation has allowed the transition to a competitive situation, which benefits consumers. This is acknowledged by consumer organisations working in this area.

A combination of consumer demand, political vision, technological evolution and market forces has set a process of rapid EU wide deregulation of most of the traditional monopolies in motion that has lead to benefits to society that exceed most predictions. Initial resistance to EC liberalisation in some countries, caused by doubt surrounding the scrapping of familiar utilities in favour of an environment with multiple suppliers and diversified services, has disappeared. Few

question the enormous benefits of EC liberalisation and calls to re-monopolise deregulated industries are unheard of. Past fears of job losses in liberalised industries have been replaced by general recognition of their potential as job creators.

Several former natural monopolies are now growth industries and constitute the corner stones on which the future European economy is being built on. This means that the market openings created by EC liberalisation can lead to results that go far beyond what could be envisaged at the time when deregulation measures were first put in place. Consequently, the numerous success stories of EC liberalisation in recent years should be enough for regulators and politicians to make sure that opportunities to achieve the same results in other sectors of the economy are not wasted.

The FFPI believes that the EC and the EU Member States within their respective spheres should therefore set the postal industry's growth potential free through full liberalisation. Increased economic freedom in the postal sector will spur innovation, increase choice for consumers and lead to more jobs. Without liberalisation, outdated economic structures will remain and the Industry will not be modernised. The FFPI seeks to ensure that the EU carries out its pledge and creates a liberalised Internal market for postal services in 2007 at the latest where customers' interests are put first. Liberalisation must however be carried out in such a way that security of supply is not endangered. A recent example of a liberalisation process that has been partially unsuccessful, due to insufficient security of supply, is the energy sector in the U.S. State of California. The Californian consumers now have to pay for the states' regulatory failure.

2. To what extent are structures and institutions providing services of general interest affected by EU verification of subsidies and by the imminent further liberalisation projects at EU level (e.g. water, railways, postal services, gas and electricity, social services such as health, education, services for the elderly)?

The FFPI considers that the liberalisation of the postal sector and the application of the EC competition rules in that sector should not be perceived as endangering the Universal Service Obligation. The obligation to provide services of general interest should not be used incorrectly as argument against liberalisation in the debate. There is no need to maintain a reserved area, i.e. a letter monopoly, in order to secure the financing of the Universal Service Obligation. Whole ranges of other possible solutions exist that do not block the benefits of liberalisation as the reserved area currently does¹.

¹ It is interesting to note that in Sweden where postal services were fully deregulated in 1993, the Swedish independent postal authority, PTS, recently concluded that "the Swedish legislation is founded on the notion that the universal service can be provided on a strictly commercial basis, which has proved to be correct."

It is important to recognise that liberalisation, in particular of postal services, will take place whether the EC regulates the market or not. However, without appropriate EC rules, the potential of the ongoing process in terms of growth, consumer choice, competitive prices and new jobs will be missed.

The postal sector is undergoing a dramatic modernisation that is driven by three converging factors, changing consumer preference, technological improvements and increased market concentration. It is essential that EC measures reflect these rapidly evolving market conditions. The contents of the rules in place will be decisive to determine if the transformation will be successful.

The FFPI believes that if EC liberalisation of the postal sector continues at minimal speed, both regulators and the postal operators soon will be overtaken by market developments. For instance, more and more people seem to recognise that the EU risks seeing its public monopolies replaced with private ones unless the market is regulated and policed more efficiently. In a scenario where the liberalisation is too slow, the transition of the postal sector will suddenly accelerate due to market changes and, eventually, be brutal. It will therefore not be, as intended, gradual and controlled, since the rules that regulate the market will be out of tune with reality. This is to a certain degree already the case. It would be unfortunate if postal liberalisation in practice would turn out to be carried out by DG Competition on a case by case basis.

It is therefore the FFPI view that structures and institutions providing services of general interest, such as postal monopolies, but also and more importantly users and the whole EU economy, would benefit from EU verification of subsidies and further liberalisation projects at EU level.

3. How do you assess the practice of the European Commission in implementing the EU's competition arrangements in terms of aspects relating to the public interest and of the structuring of services of general interest by the Member States and subordinate institutions of the EU?

No market can function properly unless the rules that determine and prohibit anti-competitive behaviour are applied swiftly and with determination by the authorities. The developments in the postal sector in recent years are unfortunately to a large extent a case of supervisory failure. The EC Commission has been unable to police the market in a satisfactory way. This has contributed to distortions of the market and widespread uncertainty for companies and consumers.

It is forbidden for postal monopolies that provide universal services to cross-subsidise the competitive activities with resources from the reserved, monopolistic, area. Complaints about illegal cross-subsidies are however frequent and it is therefore essential that the Commission

finalises its pending investigations without further unnecessary delay to set up clear guidelines on what is and what is not allowed.

Other complaints relate to abuse of dominant position from public postal operators. As such, the decision that has been taken by the Commission on March, 20 on the Deutsche Post abuse of dominant position case has to be welcomed. It is an important first step towards establishing a level playing field in the postal sector. It sets out important guidelines on what is and what is not allowed and, in particular, call for more transparency of accounts of public postal operators.

However, many complaints are still pending, including cases that relate to alleged incorrect implementation of the first EC Directive on postal services from 1997. The Commission should take its decisions more swiftly in the future or we risk to see more and more breaches of EC postal and competition rules. This is especially important taking into account that the Commission's failure to police the postal market has repercussions across borders and far beyond the market for postal services.

4. Are you convinced that changes are necessary to the EU Treaties, particularly to Article 16 and, where appropriate, Article 87 of the EC Treaty? Do you consider it essential that the terms of reference of the Member States be spelt out and that provision be made for greater transparency?

The FFPI considers that the scope and content of the Services of General Interest should evolve over time in order to respond to customers' needs but also to provide for the flexibility and adaptability that are necessary for the development of technology and of the overall European economy. Furthermore, it should be reviewed and benchmarked constantly.

Broadly speaking, each Member State should have the right to define the scope and content of its services of general interest. However, the FFPI believes that safeguard mechanisms should be put in place. First, transparency should be mandatory especially with regard to the amount and the justification of State aids granted to providers of the services of general interest. Second, the European Commission should fully apply article 87 and should ensure that aids that are given do not prevent competition on the market.

5. Do you favour a framework directive being drawn up on services of general interest in order to spell out and implement Article 16 of the Treaty?

The FFPI considers that, according to the principle of subsidiarity, each Member States should be allowed to define the scope and content of the services of general interest that they would like to provide to their citizens. Each European country is different and citizens do not have the same expectations and understanding of services of general interest. Consequently, the FFPI does not support the adoption of a framework Directive on services of general interest which

might, if adopted, prevent Member States to respond to the specific requirements and expectations of their citizens, especially in the postal sector.

What is needed is a better application of the current EC competition and postal rules. One important example concerns the Member States' independent regulatory bodies. According to EC postal rules, Member states have to appoint National Regulatory Authorities that will monitor the transparency of accounts in an independent manner. The true independence and efficiency of several national postal authorities are however questionable. It is urgent that the EC adopts new rules that guarantee that the national postal authorities are truly independent and that they are held accountable for performing their task to protect the interests of the postal users against the abuses of postal monopolies.

6. How do you assess the existing legal framework and/or the Commission guidelines and regulations on aid with particular reference to:

- **small and medium-sized undertakings,**
- **the 'de minimis' rule,**
- **employment subsidies,**
- **regional subsidies,**
- **environmental protection subsidies,**
- **research and development subsidies,**
- **subsidies in disadvantaged urban areas,**
- **cases of minor importance,**
- **social services (health, education, services for the elderly)?**

The FFPI is not able to assess these in the postal sector.

7. What need do you see for clarification of when and under what conditions infringements of intra-Community trade exist?

In a broader perspective a clarification on what the institutions that provide services of general interests can and can not do under the Internal market and competition rules is essential in order to guarantee the fulfilment of these services as demanded in the Commission's communication.

The FFPI considers that postal operators as well as users and consumers of postal services suffer from a lack of legal certainty as the Commission does not take decisions quickly. As a result, the Commission does not respond to market developments and consumer needs. Similarly, neither the first postal Directive, nor the Commission's postal guidelines provide a clear and adapted legal framework.

Commission decisions on competition matters are needed to provide the public with clarifications on how the new and complicated EC rules shall be applied in practice. In addition, a straightforward approach towards Member States that fail to apply the rules is crucial to raise the EU citizens' confidence in the Commission's determination to do its job.

8. How do you assess the Commission's general power to investigate abuses under Article 86(3) of the EC Treaty and do you regard it as a problem that the Commission thereby acquires influence over shaping the substance of services of general interest as they are developed?

As stated above, the FFPI considers that the Member States should have a large freedom to organise and finance the universal service obligation as they wish, provided that the EC rules on competition are respected.

Consequently, the role of the Commission in terms of policing the postal market is extremely important. If Member States were to be left under no supervision, they would almost certainly support their public postal operators through State aids even more than now, allowing them to expand and grow further into non-reserved areas. Such a development would benefit large Member States, that can afford to subsidise more, at the expense of the competitiveness of smaller Member States. This would rapidly have serious consequences on competition and on consumers in terms of choice, price and quality of service.

The FFPI therefore considers that the Commission's role should be reinforced in order to better police the market and prevent abuses of providers of services of general interest.

9. What areas not covered by the existing rules should in your opinion be excluded from the scope of competition law or additionally be brought within its scope and where do you see the need for further action by the Commission, the Council and, where appropriate, the European Parliament? Do you consider further initiatives in the area of EU secondary legislation to be necessary and meaningful in the interests of greater legal certainty for service providers? If so, in which specific regulatory areas?

Current EC rules for the postal industry are insufficient and unclear and make the infringement of EC competition and Internal market rules a possibly lucrative alternative for postal operators. New rules on liberalisation must be accompanied by clearer and more stringent rules on what the Member States and postal operators can and cannot do.

10. What additional developments, problems and opportunities do you see as a result of economic and technological change in recent years that are not analysed and dealt with in the Commission communication?

The issue of monopolies receiving state aid has become a serious problem. The FFPI thinks that this is an important issue, which needs to be dealt with in an appropriate manner.

Postal monopolies have the freedom to expand into new business areas in competitive sectors as all other European businesses under the EC rules. All but one postal monopoly is now breaking even and, for some of them, the financial strength they have built up is being used to expand rapidly and massively into neighbouring markets, often through acquisitions of companies in the logistics, transport, express and parcel sectors. They also use their financial muscles to enter new markets, providing their portfolio of consumers with services in the e-commerce, banking, insurance sectors, etc...The postal monopolies' expansion is taking place both domestically and abroad. Their involvement in related markets is often damaging as it results in destabilising a sector through circumventing competition.

In view of the Commission's recent decision regarding abuse of dominant position by Deutsche Post AG, a discussion of possible legal separation of companies' competitive and non-competitive activities in order to achieve full transparency has become relevant. In that decision, the Commission seems to indicate that it in the future will analyse, on a case by case basis, if it will be necessary to split companies' in order to achieve the desired result; a clear division of competitive and non-competitive activities. Future EC policy documents will have to take this into account.

Furthermore, the decision-making process for funding universal service should be carried out transparently with full public consultation.

11. What impact do in your opinion the rules governing services of general interest in Europe and liberalisation decisions have on future economic developments and the Internal and external stability of the euro?

Increased economic freedom in the postal sector will provide the necessary dynamics for innovation and competition, especially for business and consumers to reap the full potential of e-commerce, and for the advertising, communication and delivery industry. Without liberalisation, outdated economic structures will remain and the Industry will not be modernised. Europe will therefore have let down consumers and lost an opportunity to create growth and jobs.

The universal service obligations should be maintained and should be continuously reviewed at Member State level in order to correspond to evolving consumer preference. In addition, the FFPI strongly believes that it is not necessary to maintain letter monopolies in order to perform the USO.

12. What additional proposals for future rules on services of general interest in Europe and what changes to competition law are you proposing?

The FFPI stresses the importance of the full implementation of the current EC competition rules as a starting point. What is needed is to help the Commission to tackle competition complaints more swiftly. The FFPI believes that in order to do so, the Commission Directorate General for Competition does not need more power; it needs to have more financial, technical and human resources.

As regards the services of general interest, Member State should be free to set up their own requirements, provided that they do not impede development of a sector, nor the interest of consumers.

13. How do you assess the stance adopted at the Nice summit and do you share the summit's conclusions on the issue of services of general interest in Europe?

The FFPI is in favour of opening the debate on services of general interest in Europe and agrees with the conclusions in so that, e.g. the scope of services of general economic interest should not remain fixed, but should reflect our rapidly changing economic, scientific and technological environment. In addition, the FFPI agrees with the conclusions' assessment that the opening up to the market of certain services of general economic interest undertaken within the context of the Single Market Programme has a positive impact on the availability, quality and pricing of such services.

14. What experience with liberalisation affecting services of general interest (not only in the EU but also in third countries) could in your view serve as an example for the EU and the Member States?

The FFPI considers that the best example in terms of postal liberalisation is the one of New Zealand. New Zealand Post has made impressive gains in efficiency since the end of its statutory monopoly position in 1987 and the introduction of a fully competitive regime for postal services on 1 April 1998. New Zealand Post's achievements have been the following:

- Moved from a loss of NZ\$37.9 million in 1986/1987 to a NZ\$47.7 million after-tax profit in 1996/1997.
- Through a better and more efficient network configuration, NZ Post now has more outlets than before when it was a monopoly
- The basic letter price has increased just once since the privatisation (from 40 cents to 45 cents in late 1991). It was reduced back to 40 cents effective from 2 October 1995



- Increased productivity: 40% fewer staff since 1987 now handle 20% more business.
- Larger business customers benefit from volume and pre-sorting discounts
- Service delivery performance for a basic letter has improved sharply