



Case No COMP/C2/38.170-REIMS II
European Commission
DG Competition
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The Free and Fair Post Initiative's (FFPI) comments on the EC notification of the Reims II Agreement

Introduction

In April 2003 the European Commission opened a consultation on its notification on the Reims II Agreement.

In the notification the Commission has clarified the grounds and conditions linked to granting a further exemption to competition rules for the terminal dues agreement between the parties of the Reims II Agreement.

The Reims II Agreement, which regulates the remuneration that public postal operators (PPOs) pay each other for the delivery of incoming cross-border mail, is in conflict with the normal application of competition rules, as the Agreement constitutes, in practice, a price fixing regime. The price is set by the PPOs as a percentage of their published domestic tariff. However, given the special character of the services provided, the Commission has allowed this Agreement to remain in force as an exemption limited in time.

The special character of the services provided under the Reims II Agreement was justified by the Commission, as they were part of the Universal Service Obligation (USO), therefore requiring extra attention on quality. The agreement also is an exception to the normal UPU terminal dues system.

Timeframe

The original Reims II Agreement was allowed by the Commission as a purely transitional agreement that should expire at the end of 2004. In view of this upcoming deadline, the Commission is now proposing to continue to allow for the exemption. The new notice will allow for further continuation of the *transitional period* between 2004 and 2006 (7.1.1).

Whereas the notice clearly refers to an explicit transitional period it also states that "*The agreement is entered into for an indefinite period of time*" (5.5). This is in contradiction with the defined time span.

The FFPI raises the following concerns as regards the suggested timeframe:



- How would the Commission justify the need for the extension of the transitional period? The PPOs should be encouraged to work towards using a model of clear and transparent cost-based pricing. Further exemption is also counterproductive to the introduction of competition in the area of cross border mail. Outbound cross border mail is no longer part of the reserved area since 1.1.2003. Allowing for price agreements between the dominant players in the market on inbound prices will not encourage new entrants to participate in the market. Therefore, in the FFPI's view, there is no need for continuing the transitional phase.
- Points 7.1.1. and 5.5. seem to contradict each other with regards to the timeframe allowed: one refers to indefinite, the other refers to a specific transitional period, including a beginning and end date.

Pricing Methodology

The Commission is proposing to allow for the current pricing methodology to continue. This pricing methodology is based on a percentage of domestic tariff. It is proposed that the percentage charged can increase over time:

73.3% of domestic tariff in 2002;
74.5% of domestic tariff in 2003;
75.7% of domestic tariff in 2004;
78.5% of domestic tariff in 2005 and beyond.

The Commission indicates that additional information has been provided by the PPOs enabling the Commission to review the system on the basis of proper cost accounting data. The notification also states that: *"if appears that the TDs (terminal dues) to be applied for the delivery of Reims II cross border mail as defined in the notified agreement (28) are not in line with the cost data provided by the Parties."*

The FFPI raises the following issues with the methodology for calculating terminal dues:

- It is still unclear to what extent domestic tariff – or a percentage thereof – is geared to cost of providing the service. Users should have insight to the actual cost of providing the service, as provided for in the Postal Directive (97/67/EC).
- It is unclear to what extent an increase of the percentage charge is justified over the years. Why should the price of delivering mail increase as a percentage of domestic tariff? Allowing for an increase of the percentage between now and 2005 is premature, certainly in the absence of transparent public accounting data.
- It is unclear to what extent the change in percentage charge is justified in case of increases of domestic tariff. One can only assume that it is based on the assumption that stamp prices will increase as a result of the increase of cost.
- The statement made in the notice on terminal dues being not in line with cost data provided by the parties raises great concerns about the quality of data but even more



about the cost allocation methods applied and the regulatory involvement in understanding, approving and controlling price and cost for the reserved area and universal service area. The statement indicates a clear divergence from the principle of prices being geared to cost, as required by the Postal Directive (97/67/EC).

Third Party Access

The notification introduces the requirement for granting access for third parties to the postal system on the same conditions as the Parties, these third parties should contribute to fulfil the conditions of the universal service. The FFPI fully supports the principle to allow for other parties to access the network. We are however unclear about the exact modalities of this requirements and possible implications on alternative entrants.

Issues raised by the FFPI in relation to Third Party Access

- The Postal Directive(s) already require USPs to grant access to the network for third parties. One could argue that it should not be necessary to add such a specific requirement to the Reims II Agreement. We would consider this condition to be a confirmation of the existing obligations for USPs derived from the Postal Directive(s).
- Given the obligation for USPs to grant access to the network, it would be unfair if only certain third parties would be able to benefit from a certain price setting. The principle of cost based pricing should apply to all parties that would like to access the USPs network. This would contribute to the creation of a level-playing field in the postal markets.

Conclusions

The notification raises two fundamental questions with regards to the Reims II Agreement, which apply to market liberalisation and fair competition in the postal sector:

- *Liberalisation*: Why should we continue to have a price fixing agreement between postal incumbents that already have market dominance in the letter mail market? Allowing for this exception to continue is counterproductive to introducing competition in the cross border mail market and discouraging access of new entrants. We encourage the Commission to provide indications on how it intends to reconcile a continued exemption with its purposes of liberalising further the EU postal market.
- *Fair Competition*: Should PPOs be allowed to continue their pricing policy without users having a clear insight and understanding to what extend the prices charged are geared to cost? Regulatory authorities in the postal sector continue to fail in producing reports and data that would allow users to understand to what extend they receive quality services for the best possible prices. Postal operators



continue to achieve significant profits on many of their monopoly services without justification of the tariff levels.

In the light of the arguments outlined above, we would encourage the Commission to seize granting an exception for the Parties and encourage them to look for solutions that are more geared on a commercial approach, introducing competition in the postal market.

I remain at your disposal for any questions you may have.

Yours sincerely,

Philippe Bodson
President