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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.03.2005
COM(2005) 102 final

**REPORT FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

**on the application of the Postal Directive
(Directive 97/67/EC as amended by Directive 2002/39/EC)**

{SEC(2005) 388}

Report from the Commission to the Council and the European Parliament on the application of the Postal Directive

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1. THE IMPORTANCE OF POSTAL SERVICES AND THEIR CHANGING ROLE

In 2002, EU postal revenues amounted to about €88 billion or roughly 0.9% of EU GDP. Over 5 million jobs are estimated to be directly dependent on or closely related to the postal sector. Direct employment is still mainly in Universal Service Providers (USPs) and, according to a recent study by Wik-Consult¹, amounted to about 1.85 millions in 2002.

Postal services provide vital infrastructural support for the commercial, governmental, intellectual, and social activities in the European Union. In addition, many of the USPs have an important role in the provision of financial services (post banks).

Postal services are evolving rapidly. This is due to internal pressures within the sector and to the influence of the closely related communications, advertising, and transportation sectors, each of which is open to competition and undergoing rapid evolution.

Postal services are essential for communication and trade and as such have an important role to play in the economic and social cohesion of the EU. They are also strategically important as part of the wider communications and distributions market. Many key sectors, such as e-commerce, publishing, mail order, insurance, banking and advertising depend on the postal infrastructure. The key role played by the postal sector places it at the heart of the Lisbon Agenda².

The recent Kok Report³ emphasises that there is still enormous scope for further market integration and greater economic gains for both consumers and enterprises in the Internal Market. The Commission communication on the Lisbon Midterm Review⁴ recognizes that public services have a central role in an effective and dynamic single market. Providing high quality services of general interest to all citizens at affordable prices is also necessary. Postal services are a good example of where such gains can be made. In close cooperation with Member States, the Commission will look at effective and innovative means of removing barriers to competition in the postal sector so as to boost innovation and efficiency which in turn should benefit consumers, while preserving the universal service.

These efforts are all the more important as the image of the traditional postal services is now changing. Postal services providers have evolved into complex modern industrial organisations, benefiting from technology developments that create new opportunities for more innovative, tailored, value added services in the interest of both commercial customers and end consumers.

¹ "The Study of the Main Developments in the European Postal Sector" by WIK-Consult, July 2004.

² Lisbon European Council, Presidency Conclusions, March 2000.

³ Facing the challenge, Report from the High Level Group chaired by Wim Kok, November 2004.

⁴ COM (2005) 24 – Working Together for Growth and Jobs – A new Start for the Lisbon Strategy, p17.

One example of this change is the key role played by postal operators in the fast growing home shopping business. Post, together with other communication media, is now a vital player when it comes to channelling information and goods to the consumer. The image of mail as a dying media is no longer a valid one in this new environment where market forces and regulatory incentives create the conditions for developing the value and future prospects of the mail media.

2. THE PURPOSE OF THIS REPORT

The Community framework for EU postal services is set out by Directive 97/67/EC as amended by Directive 2002/39/EC (hereafter referred as “the Postal Directive”)⁵. Article 23 of Directive 2002/39 requires the Commission to report on the application of the Postal Directive to the European Parliament and Council “every two years”. It also requires that this report should include “appropriate information” on market developments including technical, social, employment and quality of service aspects.

This Report is a follow-up to the first Commission Report on the Application of Postal Directive 97/67 which was submitted at the end of 2002⁶. The Report presents the summary of the main conclusions drawn from the analysis provided in the Commission Staff Working Paper [SEC(2005) 388] which assesses in details the overall transposition of the Postal Directive in Member States, the application of key elements of the Directive as well as general market trends (including economic, technical, social, employment and quality of services aspects). In addition, it provides an outline of the perspective and recommendations for future policy development.

An important role of this Report is also to assess the achievements of the objectives of the Directive, and, as such, it serves as a general evaluation of the Directive. The regular evaluation of activities and results in achieving policy objectives is an essential element of the new policy-driven decision –taking mechanism.

The Report confirms that, in sum, the reform of the postal sector in the EU is well on track. Though not yet completed, it has already resulted in a number of significant improvements notably as regards quality of services, improved business efficiency, and the separation of regulators from operators. The role of postal services remains vital in delivering the benefits of the Internal Market to citizens, consumers and business.

The Report is being presented against the background of continuing dynamic regulatory and market development in the postal sector and the timetable set out in the Postal Directive for the Commission to make a proposal by the end of 2006, “confirming if appropriate the date of 2009 for the full accomplishment of the postal internal market or determining any other step”.

⁵ Directive 97/67/EC of the European Parliament and the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service; Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services.

⁶ Report on the application of the Postal Directive (97/67/ EC), COM (2002) 632 final of 25.11.2002.

3. THE APPLICATION OF THE POSTAL DIRECTIVE

The transposition of the Community framework is now largely complete although there are still some problems which affect in particular a number of the new Member States.

However, transposition is merely the first step in the process of full implementation of the Community framework. The practical implementation of some of the more complex regulatory requirements of the Postal Directive (tariff control, transparency of accounts, authorisation and licensing) still requires further efforts and attention from Member States and the Commission.

There is in particular a clear need for Member States, and more specifically National Regulatory Authorities (hereafter referred to as NRAs), to become more active in reviewing the separation of accounts, cost allocation, and monitoring prices of universal services by conducting investigations into the major areas of tariff policy, including special tariffs, terminal dues, and cross subsidies.

In addition, there have been significant regulatory developments in the EU, which go beyond the transposition and application of the EU regulatory framework, with some NRAs taking the lead in introducing new approaches on key issues such as price control, access pricing and licensing. The framework harmonisation nature of the Directive has thus provided possibilities for Member States to pursue distinctive paths.

In the 2002 Application Report, a concern was raised about the lack of effective regulation in some Member States and an emerging regulatory asymmetry that could in turn foster market asymmetry in the Member States. Even if there has been good progress towards greater independence for NRAs and effective regulation at national and Community level, there is still a significant risk that inadequate regulation in some Member States could prevent the emergence of a single market for postal services.

Finally, the overall evolution of the sector may now require the introduction of more precise definitions so that the legislation better reflects the realities of the sector.

4. MARKET TRENDS

Broadly speaking, the postal market has continued to move towards a one way distribution market and away from the more traditional two way communications model. If this trend continues into the future, there may be the need to review the modalities of the current universal service obligations, with a view to allow for some additional flexibility while continuing to guarantee consumer rights. This trend also highlights the potential for developing a dynamic postal market which can exploit opportunities in the wider communication market (home shopping, e-commerce, hybrid mail and value added services) in the interest of all customers.

However, competition has yet to develop in the addressed mail market segment outside niche services, and this suggests that limited initial market opening combined with sometimes limited regulatory capacity or certainty, advantages enjoyed by incumbents, and regulatory asymmetries have all combined to deter entry.

Among these regulatory asymmetries, the different tax liabilities faced by incumbents and market entrants as regards VAT is of particular concern. In most Member States⁷, most if not all services provided by the national Universal Service Provider are VAT exempt, while services supplied by its competitors are subject to VAT at the standard rate. In practice this leads to an increase in the scope of services, beyond those mentioned in article 7 of the Postal Directive, where competition is de facto not possible, so as to include all services provided to customers who cannot deduct VAT such as financial institutions and the public sector. In 2003 the Commission proposed amending the VAT Directive⁸ in order to restore tax neutrality. However, the Council has not reached yet an agreement on that proposal.

There are indications that the absence of competition has also affected the pace of the modernisation of the sector. One such indication is the differing infrastructural costs across Member States.

Similarly, regulatory asymmetry and the continued protection for incumbents have affected mail market development. This has been varied across Member States. In some, the Universal Service Providers (USPs) continue to enjoy high profit margins and can exploit key market developments. In other Member States, USPs face more difficult conditions. To a large extent this variation can be explained by the different types of market intervention, different ownership and incentive structures, and different price levels set for services in a market with low price elasticity and traditionally captive customers.

In the competitive parcels and express markets, margins remain tight, but consolidation has continued with some of the more profitable USPs acquiring dominance in this market segment and also moving increasingly into ancillary markets to control the entire value chain. This suggests that continued reservation and distortion in the mail market may be affecting ancillary markets and reinforces concerns over potential breaches of competition law by dominant suppliers.

All this reinforces the need to consider how to move towards more effective and better regulation and an Internal Market for postal services in order to ensure better services for all consumers, including commercial customers and end consumers (greater choice, access, innovation, quality, price options, etc).

5. THE MARKET IMPACT OF THE POSTAL DIRECTIVE

The implementation of the Postal Directive by Member States and its application has had significant regulatory and market impacts. The legislation has been a major driver in improving quality of service and has reached its broad objective of securing universal service while gradually opening the market. By laying out the milestones towards the achievement of the Internal Market for postal services, the legislation has contributed to a dynamic reform process, greater efficiency and the development of the market in the interests of the customers.

This in turn has led to the development of competition, which has generated further flexibility in the operations of universal service providers increased their ability to meet customer needs, and has thus had a positive effect on universal service. External forces have also contributed

⁷ Sweden, Finland and Slovenia are the only exceptions.

⁸ COM (2003) 234 later amended by COM (2004) 465.

to the pace of reforms. The effects of increasing electronic substitution on universal postal service seem to act as an incentive which is partly similar to the effects generated by market opening.

On the demand side, according to recent Eurobarometer surveys⁹, consumer satisfaction as regards postal services ranks first, compared to other services of general interest. Overall, the majority of European consumers (74 %) are satisfied with the postal services that are provided to them. However, end consumers in some Member States express concerns and, rightly or wrongly, perceive the current evolution of postal services rather negatively.

The Postal Directive has created an expectation of further market opening, which would have a positive impact on the market. As noted from the analysis above, the postal market is at a crucial stage in its development. Further steps are needed to promote actual competition in the market, while addressing the end-consumer concerns, as well as much needed innovations in order to promote continued market developments of the postal sector in the wider and quickly evolving communication market.

6. THE PERSPECTIVES FOR THE FUTURE

Facilitate the conditions for further modernisation

The postal market is evolving quickly. The clear challenge for regulators and operators is to seize the opportunities. Postal organisations are becoming increasingly flexible in the provision of tailored services to clients. Some of the public postal operators have taken advantage of the gradual opening of the market provided by the Directive to reorganise and modernise. Some others may not have prepared themselves as carefully so as to meet the challenges ahead. Those who did not seize the opportunities of the last few years and commit themselves to reforms are now coming under market pressure to do so. Further regulatory initiatives may be needed to secure the benefits of a postal internal market for all customers.

Respect the timetable set in the Directive

In order to ensure that consumers can continue to enjoy the benefits of the Internal Market, it is essential to maintain (in parallel) the pace of regulatory reform and respect the timetable set in the Directive for accomplishing the Internal Market for postal services. Developments to date provide no evidence supporting the need for a change of the deadlines set out in the Postal Directive.

Monitor carefully regulatory developments

Stronger regulatory scrutiny is needed from Member States and the Commission to sustain the drive towards the adoption of appropriate regulatory models. On critical issues, such as market opening, universal service (quality of services, prices, accessibility from the perspective of the various stakeholders categories) the Commission will carefully monitor developments, and where appropriate take the necessary steps to ensure that Member States meet the requirements set out in the Postal Directive.

⁹ At EU level, see Eurobarometer (2002) in EU 15, Eurobarometer (2003) in the most recent Member States and Qualitative study on European consumers and services of general interest (EU-25) (Optem - 2003).

Intensify cooperation on regulatory issues

In order to tackle the more complex technical issues (such as licensing, access, regulatory accounting, or market data), the Commission intends to assist NRAs by working on two levels:

- Bilateral co-operation between the services of the Commission and the NRA, and notably with the new Member States;
- Technical cooperation at the European level within the framework of the Postal Directive Committee in order to assist the Commission in developing appropriate benchmarking together with national regulators.

Promote an in depth debate on the future postal policy

In light of the rapid evolution of the global communication market, and in the view of the 2006 deadline, it is necessary to open as soon as possible the debate on the future of postal policies to a wide audience, including all stakeholders (public and private operators, customers, consumer associations, social partners, NRAs, Ministries, experts, academics, and industry) at national level as well as at EU level.

In addition to analysing the merits of retaining or removing the reserved area, the debate will need to address key issues such as how to best promote the postal sector, how to ensure the financing of the universal service, and what kind of postal universal service is needed in the future. It will also be necessary to assess the situation in the Member States where the reserved services have been removed, including from an end-consumer perspective.

With this in mind, the Commission is launching two studies, on the development of competition and the evolution of the regulatory model for European postal services. Stakeholders are invited to participate in two workshops to comment on the progress of the two studies, and to provide feedback to the Commission on the conclusions of the consultants. Towards the end of 2005, the Commission will launch the study on the impact on universal service of the full accomplishment of the postal internal market. Stakeholders will be consulted in the same manner as outlined above. Extensive debate will pave the way for the development of the future of postal sector policy.