

ROLE OF THE REGULATOR IN LIBERALIZED POSTAL MARKET SERVICES

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Abstract: In the face of rapidly growing wave of postal market liberalization, it is extremely difficult to sustain the meaningful level of Universal Service Obligation and at the same time develop competitive postal market without efficient postal framework regime and efficient regulator. Regulatory bodies in most developing countries and even in some more industrialized countries are attempting to regulate postal market based on the old monopoly concept, rather than on the customer driven concept of the future. It is of great importance that regulatory framework and secondary postal legislation provide adequate division of responsibilities amongst policy makers, regulators and postal operators. The need for institutional clarity with defined rules for the roles of government, regulator and operator should be very much respected in the Postal Regulations which should also be the guarantee of future development of postal services according to customers needs, respecting the standards of European Union and all the other international standards.

Key words: regulation, liberalisation, market, customers, services

1. A need for regulation

The postal services market has been going through big changes for the past twenty years mostly due to the fast development of new technologies and evolution of customers needs which all created new challenges for the governments, which are expected to define new rules of competition. Postal services offered by public and private operators have undergone a period of rapid and fundamental evolution. Advances in electronic communications, information processing, and transportation systems have caused basic changes in the supply and demand chains for postal services. These market developments have been followed by legal and institutional changes accompanying the creation of a single European market.

The first EU Directive on Development of Postal Services Market from 1997 required Member States to regulate postal markets to provide universal postal service in accordance with specified criteria, while at the same time promoting the course of “gradual and controlled liberalization” and guaranteeing basic protections to users of universal services. To implement these obligations, the directive required Member States to establish one or more “national regulatory authorities” (NRAs) for the postal sector.

Regulators in most developing countries and even some industrialized countries are attempting to regulate in a way more suited to monopoly based old fashion postal industry than to the innovative customer oriented market of the future. Regulatory frameworks of these countries often do not provide an adequate division of responsibility amongst policy makers, regulators and operators themselves. In some cases the regulator is part of the same ministry that acts as the policy maker and represents the government as owner of the Public Postal Operator.

By establishing the regulatory body it is necessary to enable as higher degree of independence as possible in comparison to the Public Postal Operator as well as in comparison to the State as a founder.

Basic criteria determining the degree of independence of the regulatory body are as follows:

- In the process of decision-making, regulator is guided by postal regulations and regulations form the field of prevention of monopoly behavior on the market;
- Decisions made by the regulatory body are not subject to the political influence;
- In the process of decision-making regulatory body do not accept instructions from other bodies;
- Regulator controls entire postal service market, not just the business operations of the Public Postal Operator, meaning that all operators must act in accordance with the Law and other regulations;
- Regulator makes the decisions in objective, rightful and transparent manner that is public and available to the operators, as well as to the customers;
- Regulations based on the above principles, represent the favorable legal environment for the incitement of investments in the postal sector and prevents the excessive regulating that would bring to a halt in a market development process.

All the National Regulatory Authorities NRAs and other regulators of postal markets i.e., ministers, legislators, national competition authorities, etc. should put an effort to establish a sound basis for implementing the Third Postal Directive by reviewing the manner in which Member States have implemented the original Postal Directive and its 2002 amendment.

2. The Third Postal Directive

Two years ago the Council and the European Parliament adopted the Third Postal Directive that set a deadline for the full market opening by 31st December 2010 for the majority of Member States like Germany, France, Italy or Spain and by 31st December 2012 for the other Member States. The Third Postal Directive provides the legal basis for the accomplishment of the internal market for postal services. It is the right step to abolish the last legal monopolies and to represent a unique opportunity for the postal sector as well as for the whole economy in general. Directive creates competition and leads to higher quality and more customer oriented postal services as already identified in Member States that fully opened their market

Lots of discussions were going on in several Member States such as Belgium, Denmark, Ireland, Lithuania, Italy, Spain, Slovenia, Portugal concerning the full market opening. Important differences remain amongst Member States in the way they are implementing the Directive especially regarding the universal service obligations and the licensing system for postal operators. In France, the new postal law was adopted in January 2010 and it has foreseen the full market opening for 1 January 2011 and status change of the French La Poste to a publicly owned limited company, which allows possible future privatization. This change in status, which entered into force on 1 March, offered La Poste one year to adapt itself to competition. Further to this change in status, La Poste was supposed to receive an extra 2.7 billion Euros from the French State. It will be important that this capital increase will not lead to competitive distortion and will be subject to approval by the appropriate authorities. Moreover, the new French postal law also appointed La Poste as the universal service provider for the next 15 years which seems very long

In Belgium, the new postal bill, defines licensing conditions that are very restrictive. If a new market entrant wants to obtain a postal license in Belgium, he will have to commit to

several obligations such as covering 80% of the national territory after 5 years of activity, or distribute mail at least two days per week, etc.

The scope of the universal service also differs drastically from one Member States to another. In France and Germany for example, newspapers are included in the scope of the universal service as in other countries this is not the case. Questions still remain on the financing of the universal service obligations. If the regulator should be able to control that the tariffs of the universal service obligations are cost-based and non-discriminatory, there needs to be separate accounts for universal services and non-universal services, as well as for reserved services and non-reserved services. Unfortunately, this is not the case in most of the Member States. Data is often unclear and insufficient.

The Directive foresees that Member States should ensure that customers enjoy the right to a universal service. The definition of the universal service obligations vary from one Member State to another.

3. Universal Service Cost

The sustainable provision of the universal service is an obligation of the Member States alongside to the liberalization of the postal market. The 3rd Postal Directive provides a series of alternatives in that respect. It is up to the Governments now to guarantee that liberalizing of postal market will only mean better services at more affordable prices. The countries did not succeed in finding the common solution one –size –fits –all solution with mechanism for guaranteeing a true level-playing field. The EU has set the framework, and Member States should now proceed with its transposition, implementation and enforcement. A unique mechanism for safeguarding the universal service cannot apply for all Member States, since it is supposed to be related to the special characteristics of each country, its economic status and mail traffic, its geographic specificities and the special conditions of the local postal market.

The traditional view in postal politics has been that the requirement to provide universal service throughout a country is not commercially viable, and that the universal service obligation (USO) is a burden on any operator that is faced with such an obligation. Traditionally, this supposed burden was used as a justification for maintaining postal monopolies („reserved areas“). However, there is little real-life evidence so far to support that universal postal service cannot be provided profitably and without any subsidy. On the contrary, universal service is provided without any subsidy to finance USO burdens in all countries that have fully liberalized their postal markets so far (Sweden in 1993, Finland 1997, UK 2006, Germany 2008, Netherlands 2009, Estonia 2009).

The Third Postal Directive (2008/6/EC) has formally introduced the term of USO net costs to the postal sector, and has thereby substantially clarified how the potential burdens of universal service should be measured. According to this Directive, universal service providers may be compensated only if „a Member State determines that the universal service obligations, as provided for in this Directive, entail a net cost [...] and represent an unfair financial burden on the universal service provider(s)“.

The Postal Directive clearly states that net costs must be finally assessed by independent regulators. As a practical matter, calculations are likely to be submitted by providers of universal service that attempt to claim compensation. The task of the regulator is to carefully review this calculation, and correct or alter it where appropriate. Even when a net cost can be quantified, this does not automatically trigger compensation – as the Directive allows to compensate only such net costs that „represent an unfair financial burden“. The final step of the regulatory process begins when a national regulator has concluded that there

is a net cost, and introduces compensation. Like any other public compensation, USO net cost compensations are subject to State Aid control by the European Commission.

The reserved area which is currently used to finance the universal service obligation is supposed to disappear. The question is thus “how will the universal service obligations be financed?” According to the European regulation, Member States have two ways to ensure the funding of the universal service obligation net costs:

- Public fund compensation
- Sharing of the net cost of the universal service obligations between providers of postal services or users

In the Member States which have already opened their market, no compensation has been awarded for the USO even if some of them foresee the possibility of spreading the net costs between all postal operators. Decision to compensate USO net costs should be based on the calculation of these net costs. However, large differences remain amongst the Member States in their evaluation of the costs that universal service obligation will induce, especially in the ones which have yet to open their market. In parallel to the progressive liberalization of the postal market, it is important to ensure that fair competition can develop in this market. The European Commission therefore plays an essential role, as it is currently the only institution which has the regulatory powers to intervene when competition law is infringed. Anticompetitive behavior as well as State Aid, should not be allowed in the newly liberalized postal market.

4. Slow development on competition

The Third Postal Directive was adopted two years ago with the objective of full EU harmonization of the postal market. However, the development of competition in postal markets remains very slow. Markets will not be liberalized across Europe until all the provisions of the Directive are correctly and fully implemented. For liberalization to be a success, the transposition into national law has to respect not only the spirit but also the details of the EU text. Postal liberalization could be further delayed with some countries introducing new protectionist measures in order to accommodate the historic incumbents who have benefited from the monopoly. According to European law, it will no longer be forbidden to compete with public postal monopolies. However, instead of letting competition develop freely, it seems that Member States overwhelm the postal sector with new series of regulations that risk killing the emerging postal competition.

The adoption of the European Directive was a good step in order to ensure postal liberalization; however, it remains key that barriers to entry disappear. These barriers can be legislative or non-legislative. The first ones are the results of existing or new national legislation, and the other ones are consequences of current practices or bad accessibility to the existing network, etc. In opening up their postal markets, Member States have developed different legislations which transpose the provisions of the Third Postal Directive into national laws. However, differences remain among the Member States’ access to the market. In several Member States, operators which would like to enter the market need to get authorization or a license. Conditions to obtain the license are very strict in some Member States and constitute obstacles in penetrating the market.

These conditions are clear barriers to entry of the postal market and do not respect the provisions of the Third Postal Directive. Belgium is a good example of these kinds of barriers. In its new postal bill, the Belgian government states that new entrants will have to meet several obligations to obtain their license such as: covering 80% of the national territory after 5 years of activity, distributing mail at least two days per week after 2 years of activity, applying uniform tariffs to the entire covered territory, etc.

Further to the recent EU reforms, the postal market is expected to become competitive in most Member States at the end of the year. According to European law, it will no longer be forbidden to compete with public postal monopolies. In order to ensure a free and fair postal market, it is key that all interested operators can enter the market.

We are now at the point in time where the postal market is largely depended on the developments in other sectors. Electronic communications are constantly overtaking what was traditionally part of the postal market. In that respect, we need to see in our future policies what is the added value of the sector and how this can be promoted. Postal networks are huge physical networks that historically have been facilitating national economies and regional growth. This need is still valid. Even in a digital world someone must deliver the goods. Therefore, the operators and especially the traditional ones due to their size and role in the market, should examine ways of adapting not only to a deregulated market, but also to a radically changing one. This may be through re-organizing their services and their workforce, through a new approach towards the customer, as well as through development of new services and products. The potential of a competitive market is great and may only prove beneficial for the traditional Universal Service Providers, provided that they will adapt accordingly.

5. Future role of regulator

In the process of liberalizing the market, the role of the national regulatory authority becomes even more important. The national regulators' responsibilities are now more enhanced and they now have to play a significant role in monitoring the postal sector, guaranteeing better services and reinforcing at the same time consumers' rights. In most Member States there is significant room for improvement in the regulation of postal services. National Regulatory Authority need to be more independent of political authorities and reinforced in terms of resources and authority.

The Postal Directive provides that a minimum range of regulatory functions should be committed to an independent regulator and not resolved by political agencies. Most Member States have determined most major policy issues by primary legislation or ministerial regulation and committed most administrative tasks to the NRA. To promote objective and impartial policies and regulation in the postal sector, regulatory authority should be appropriately allocated among four separate institutions: (1) a ministry that determines public policy for the postal sector; (2) a ministry or agency that exercises the ownership rights of the government in the public postal operator, if any; (3) an independent regulator of the postal sector; and (4) a national competition authority.

However, liberalizing the market calls for caution when it comes to regulation, so that more liberalization will not lead to more regulation. Liberalization should be seen as a mean for better universal services, and thus Member States should be cautious at the approach taken. The task of calculating the net cost of the universal service, and thus defining the unfair burden of the universal service provider, is one that will assist determining the compensation or net cost sharing mechanism within each national market.

The postal service operators should adapt in an ever changing environment where electronic communications seem to have an advantage. In this environment, the Member States should guarantee the provision of universal postal services, adapted to the specificities of each market. And the national regulatory authorities should make sure that citizens' rights are protected, without over-regulating a newly liberalized market.

6. Role of regulator in the postal market of Serbia

The "Postal Services Law", adopted in the Parliament of the Republic of Serbia, in 2005 and "Amended Postal Service Law" in 2010 keeps the necessary balance between the inevitable liberalization of postal market and the provision of Universal Postal Service, through the established mechanism of reserved services, based on economic viability of the

basic postal network. In order to guarantee the implementation of the provisions of the Law, authorities and competencies are strictly divided between:

- Government of the Republic of Serbia
- Competent Ministry for postal services;
- Republic Agency for Postal Services

The Government determines the policy and development strategy, general commitments and principles related to the performing of postal activities, and in this process Government is generally led by public interest in this field, professional principles of postal profession, principles of the Universal Postal Union and other international associations, as well as by already accepted international obligations.

The Ministry carries out the Government's policy in the field of Postal Services, supervises the application of this Law and secondary legislation based on it. The Ministry competent for the postal services is responsible for the monitoring of implementation of this Law and other regulations that define providing of postal services.

Republic Agency for Postal Services is defined as an independent legal subject, functionally independent from any other state body, as well as from any organization or persons performing the postal services. Agency functions pursuant to the public service regulations, and functioning as such is obliged to enable the competition and to prevent any kind of monopolistic behavior on the postal services market. Agency ensures providing of Universal Postal Service pursuant to this Law, respecting the proscribed technical and quality standards, with the goal of satisfying the customers' needs and national economy as a whole.

Legal status of the Postal enterprise or Designated Postal Operator in a country is determined by the country's national legislation and its specific features. Laws, secondary legislation and other legal acts that are being enforced through the competent institutions of the system, represent the institutional framework for conducting Postal business. As a public postal operator responsible for providing USO, Serbian post-Public Enterprise of PTT "Serbia" Communications, is recognized as an efficient commercial postal business, operating at highest European standards and practice. In order to maintain its strong position, Serbian post is strengthening its respond to national and international competitors by developing a wide range of new products and services and by becoming the more profitable business.

Postal Services Law introduces the competition into the postal traffic, through gradual liberalization of the postal services market, where all players, Public Postal Operator and other postal operators shall provide postal services to the customers, in accordance with the provisions determined by the Law. The basic aim of "Postal Services Law" is to place the future postal operators in a position that enables them maximum developing of postal services, respecting the obligation of harmonizing their activities with already defined principles of national legislation and other European and world principles and standards.

As a preaccession country, Serbia has an opportunity to better adapt in the new environment and explore the feedback from the various alternatives, always in conformity to the EU and UPU rules. The experience of other Member States has always been of utmost importance for us. We believe it is wise to see how the universal service provision is safeguarded in countries that already liberalized their markets. By adjusting this experience to our own market development, we will be able to implement a balanced policy that will secure the Universal Service provision and ensure fair, unbiased and transparent competition for the benefit of all our customers.

ULOGA REGULATORA NA LIBERALIZOVANOM TRŽIŠTU POŠTANSKIH USLUGA

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