



EUROPEAN COMMISSION

Competition DG

Deputy Director general

Brussels, 25 January 2002
COMP/STAFF/02/JFP/jv D(2002) * 17

POSTAL LIBERALISATION AND REGULATION

The European Union's Perspective

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IPC Shareholders' Conference

Brussels, 25 January 2002

Ladies and Gentlemen,

I would like to start by thanking you (and in particular Mr. Clermont) for your invitation to address this annual conference of IPC's shareholders, i.e. the leaders of the national postal operators in Europe and in North America.

In the panel this afternoon about postal liberalisation and regulation, you have asked me to present the European Union's Perspective. This is a very ambitious programme for a short presentation.

So I would try to focus on:

- our analysis of new trends in postal services;
- the main aspects of the recent political agreement in the Council on a new directive;
- the lessons to be taken from recent competition policy decisions.

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I. New trends in postal services.

The trends that have characterised the postal sector in the last years show many important changes:

- (i) A stability of the traditional postal services which, from one hand, have not particularly lost volumes of correspondence items and, from another hand, are facing the challenges of more modern means of communication by huge restructuring of the networks and by investments in new technologies capable to give them added value and an overall better quality;
- (ii) The strong development of new and specific services: delivery of parcels linked to e-commerce; hybrid mail services; services with added value features (tracking and tracing, delivery at the addressee in person).
- (iii) The always bigger tendency of PPOs for launching themselves beyond the national boundaries, opening subsidiaries in other Member States and merging with other operators, to respond to these developments and adapt themselves to the progressive opening of the European postal market to competition.

II. The agreement on the new regulatory rules and the new context of post in Europe.

As you all know, new regulatory rules on post have been accepted by the Council on 15 October 2001. To reach such a compromise has been quite a difficult task given the significant differences in the positions of the Member States' delegations in the Council. These differences reflect the state of the postal sector in Europe with some PPOs strongly committed in expanding themselves in other national markets as well as in the international ones and other PPOs giving priority to internal efforts (productivity, quality) in order to maintain their position in the future scenario of the progressive liberalisation.

In this respect, we have to praise the Belgian Presidency whose strong commitment to this important file has permitted, finally, to reach a compromise in the Council.

Now the new regulatory package is in front of the European parliament which is expected to express its first opinion on it by next April.

As regards the major changes that the new regulatory package will bring, if not modified by the EP, we can mention the following:

The timetable for further market opening: The price and weight limit of the reserved area will be reduced in two steps (in 2003 and in 2006) down to 50g and 2.5 times the standard tariff.

Final step for liberalisation: The completion of the Internal postal market has not yet been decided. In fact, the new package states that, on the basis of a study regarding the impact on the universal service in each Member State of the previous market openings, the Commission shall - if appropriate - table by 31 December 2006 a proposal for a further, "decisive step" towards market opening in 2009. This Commission proposal shall be adopted by the Council and the European Parliament by 31 December 2007.

Outgoing cross-border mail: The Council has accepted the Commission's proposal of opening outgoing cross-border mail to competition. However, the Council has added the provision that these services may continue to be reserved if the revenue is necessary to ensure the provision of the universal service.

The definition of special services: It is worth noting that, although a definition of special services (*i.e.* services that are clearly distinct from the universal service, which meet particular customer requirements and which offer additional added-value service features not offered by the standard postal service) was present in the Commission's proposal, the Council's common position does not contain such a definition.

That is why some Member States considered the definition too vague and were afraid that it would have jeopardised the universal service.

The consequence of the lack of a definition of special services in the wording of the common position will be that the Commission will continue to evaluate special services on the basis of the rules contained in the old Directive.

Moreover, as regards the application of competition rules, the Commission will remain vigilant applying competition rules (in particular Article 86) along the lines of our recent case law *i.e.* the Commission decision of December 2000 regarding added value Hybrid mail services in Italy (in particular Hybrid mail services characterised by delivery at a certain, guaranteed day and/or time).

This means that the Commission will be concerned of avoiding that new special services be reserved to incumbent operators by law and will do this taking in consideration the necessity to respect the capability of PPOs to fully accomplish their universal service mission.

III. Competition policy decisions.

A number of important decision applying competition rules in then postal sector have been taken in the last two years which mainly go in the direction of protecting competition in the markets open to competition.

1. Mergers:

As regards mergers, it is worth remembering the TPO/TPG/Singapore Post J.V. agreement which was authorised by the Commission on March 2001. It concerned the creation of two joint ventures with world-wide activities for outbound cross-border mail.

In its decision, the Commission evaluated differently the effects of the J.V. in the UK and in the Dutch, market.

As regards the UK, it concluded that the concentration would not have led to the creation or strengthening of a dominant position. In fact, although the parties would have had relatively high market shares in the market for outbound cross-border business mail, there were a number of other players in the market with significant shares, including consolidators and third country PPOs.

As regards the Netherlands the Commission found that the market for outbound cross-border business mail in the Netherlands had fewer operators than on the UK market, and that they were relatively small with the exception of TPO itself. As a consequence the concentration would have had the effect of eliminating competition between the dominant player, TPG, and the largest entrant into the Dutch market, TPO.

For these reasons the Commission imposed the dismissal of TPG cross-border mail activities in the Netherlands which have been acquired by Swiss Post.

In conclusion we can say that, given the present tendency towards restructuring between European PPOs, Merger control rules will be implemented in this sector more than in others.

As the above mentioned case shows, however, the approach of the Commission will be a reasoned one, limiting operators' freedom to merge only in cases where this will create artificial barriers to the entry of new operators in the markets.

2. Antitrust:

As regards the implementation of the antitrust rules, it is worth noting that the recent case law of the Commission as well as the complaints it is actually dealing with show a series of major competition concerns regarding the postal sector.

Monopoly extension: (added value hybrid mail services in Italy "Risposta")

In some cases legislation transposing the postal directive was enacted that actually *increased* the scope of the monopoly reserved for the incumbent operator. The Commission has adopted one Decision concerning such an attempt by the Italian State to extend its postal monopoly to added value hybrid mail services. We are actually receiving many other complaints regarding similar cases. As I have already said, the Commission will analyse this cases along the lines of its recent case law.

Lack of independent national regulation: (SNELPD)

The progressive construction of the internal postal market will make always more crucial the role played by national regulators. Some Member States have adopted legislation that in some respects fails to meet the requirements of the Postal Directive for what regards the independence of these institutions. The Commission has adopted one Decision which addresses this problem – the "SNELPD" case. As you probably know it concerns the necessity of putting into place in France an independent regulatory authority in the postal field.

Predatory pricing, cross-subsidisation, tying and excessive pricing: (Deutsche Post/UPS – La poste/Hays)

A number of complaints filed with the Commission concerns the behaviour of the PPOs in markets outside the scope of the postal monopolies alleging that incumbent operators compete with very low prices in markets subject to competition and that incumbents' sales of services subject to competition have been combined with rebates for monopoly services (so-called tying of monopoly and non-monopoly services). This is in particular the case in the so called "Deutsche Post I" decision, where monopoly revenue from the letters market was used to cover losses in the parcels market which is open to competition, and of the "Hays" decision, which concerned tying practices between products in competitive and non-competitive markets.

Remuneration for international mail traffic: (BPO/Deutsche Post AG)

The Commission has received a number of complaints in which it is claimed that normal cross-border mail has been intercepted, surcharged and delayed in an abusive manner by certain PPOs. The Commission Decision in the "Deutsche Post II" has for the first time condemned Deutsche Post for such practises and will be an important precedent for the future application of Article 82 to these particular behaviours.

IV. Conclusions.

The new regulatory package and the recent competition decisions will help the Commission to sustain the gradual opening of the reserved areas and to improve an adequate level of competition in the markets already liberalised.

It is worth underlining that, in this sector, PPOs have a crucial role to play which can also go in the direction of expanding their activities in other product and geographical markets.

However, it is fundamental that any improvement or expansion of activities by the incumbent operators must not threaten the construction and maintenance of a level playing field on which other operators and, most of all, new entrants will be able to compete with the same opportunities.