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**PROMOTING COMPETITION IN POSTAL SERVICES**

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## **FOREWORD**

This document comprises proceedings in the original languages of a Roundtable on Promoting Competition in Postal Services which was held by the Working Party n°2 of the Committee on Competition Law and Policy in February 1999.

This compilation, which is one of several published in a series named “Competition Policy Roundtables”, is issued to bring information on this topic to the attention of a wider audience.

## **PRÉFACE**

Ce document rassemble la documentation dans la langue d’origine dans laquelle elle a été soumise, relative à une table ronde sur la promotion de la concurrence dans les services postaux qui s’est tenue en février 1999 dans le cadre du Groupe de travail n° 2 du Comité du droit et de la politique de la concurrence.

Cette compilation qui fait partie de la série intitulée “les tables rondes sur la politique de la concurrence” est diffusée pour porter à la connaissance d’un large public, les éléments d’information qui ont été réunis à cette occasion.

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## EXECUTIVE SUMMARY

In the light of the written submissions, the background note and the oral discussion, the following points emerge:

- (1) *Postal services are one particular form of transportation or communication service for delivering goods and/or information from one point to another. Postal operators compete (at the margin) with a variety of firms offering other delivery or communications services, including, most importantly, telecommunications services.*

Postal services differ from other physical delivery services in that because of the volume and physical nature of mail, postal operators can take advantage of economies of scale and scope in delivery. The economies of scale and scope are stronger the higher the density of delivery points and the volume of mail and the lower the frequency of delivery. Traditional postal operators compete with express and parcel delivery services and point-to-point delivery services. Telecommunications services (fax, email and electronic bill-payment services) are an important substitute for a significant proportion of certain categories of mail.

- (2) *In most OECD countries, postal services are provided by a large, vertically-integrated state-owned firm. In many countries, reform has changed the structure of this incumbent from a government department to a public corporation. Many incumbent postal operators also operate on other markets, such as the provision of financial services. In several countries post offices in smaller towns and rural areas are operated by private operators as “franchises”, often in conjunction with the provision of other services, such as a local store. In a few countries, mail delivery in rural areas is carried out by contractors.<sup>1</sup>*

In most OECD countries, the incumbent postal operator is a large enterprise, employing a large number of people. In many countries, the incumbent postal operator is not profitable and in a few cases, incurs sizeable losses<sup>2</sup>. Over the last decade many countries have reformed the structure and governance of their incumbent postal operators, in a process known as enterprise reform or corporatisation. Such reforms have typically lead to substantial improvements in profitability, service quality, productivity and efficiency<sup>3</sup>. Exceptions include the USA, Japan and Korea, although in all three of these countries there are policy movements in the direction of corporatisation. At the time of writing, only the Netherlands had privatised its incumbent postal operator.

Many incumbent postal operators also operate in other markets, particularly the market for financial services. In several countries, a proportion of all postal outlets are owned and/or operated by private third parties, often in conjunction with other services.<sup>4</sup>

- (3) *In most countries, the incumbent postal operator benefits from a monopoly over the handling of certain classes of mail, usually defined as mail items below a certain weight or price or both. A few countries allow competition in all sectors of the postal industry, including letter delivery. No countries reported a monopoly in express or parcel services.*

*In many cases, there is a lack of competitive neutrality between the incumbent and competing postal operators, on issues such as taxation, civil liability, access to mailboxes and rights to establish mail collection boxes on public highways.*

*The freedom of these postal operators to set postal prices in the monopoly areas is constrained, often by some form of price cap and often by a requirement to maintain a geographically-uniform tariff, at least for the price of a standard letter. All countries reported that the price structure of the incumbent allowed discounts for bulk or pre-sorted mail.*

All countries reported that competition is allowed in some segments of the postal sector, especially express mail and parcel services. Most countries also prohibit competition in some segments of the postal sector, particularly the standard letter delivery. The boundary between the monopoly segment and the competitive segment is defined in various ways, usually based on a price limit, a weight limit or both. In some cases, the boundary of the monopoly also depends on the content of the mail itself<sup>5</sup>, or whether or not the envelope containing the mail is sealed<sup>6</sup> or on the size of the envelope or postcard<sup>7</sup>. The monopoly or “reserved area” is sometimes enforced by the regulatory authority and sometimes (as in Canada and the US) by the postal incumbent, itself. In the case of Italy and the US, competing postal operators are allowed to operate provided they pay the incumbent the full retail price for the same service.

Partly for historical reasons, many incumbent postal operators enjoy certain benefits, such as an exemption from sales tax<sup>8</sup>, or civil liability. In Korea, postal vehicles are exempt from tolls on expressways. Incumbent operators may also operate under certain commercial impediments such as a requirement to comply with civil service labour regulations.

Several countries reported using price caps to control the prices of the incumbent.<sup>9</sup> In Australia, the price of a standard letter, has remained constant at 45 cents since 1 January 1992 and is scheduled to remain fixed in nominal terms until at least 2003. Where prices are controlled there is also some mechanism for ensuring that quality of service is maintained.

- (4) *Economic studies of the cost structure of postal services show that economies of scale and scope in postal services may exist in the different stages of production, particularly in the final delivery service. The extent of any resulting natural monopoly will likely differ between countries, regions and routes, depending upon letter volumes and densities of delivery points. In the absence of regulatory restrictions, the level of competition would likely increase in many segments of the postal sector even without regulated access to the services of the incumbent. The development of effective competition in some areas and for some services is likely to require regulated access to the facilities and services of the incumbent. A few countries have established an explicit access regime under which competing postal operators have access to the delivery network of the incumbent (or other essential facilities).*

*A form of access regime operates at the international level through multilateral and bilateral agreements. Through organisations such as the UPU, incumbent postal operators agree to deliver mail originating in other countries in return for payments known as terminal dues.*

The postal sector can be divided into several complementary activities - collection, sorting, transportation and delivery. Final delivery accounts for the bulk of the costs of mail handling. The economic evidence suggests that there may be a natural monopoly in final delivery,



although this depends on a number of factors including mail volumes and frequency of delivery. There is no natural monopoly in express mail or parcel delivery.

If there is a natural monopoly in final delivery, or if mail customers have a strong preference for dealing with only one postal operator, the establishment of effective competition in the postal sector may require regulatory action to ensure access to the services of the incumbent, including the delivery service in regions where delivery is a natural monopoly and access to post-office boxes on the premises of the incumbent. In addition, it may be necessary to establish centralised arrangements for change-of-address and mail forwarding.

Some countries, including Australia and New Zealand, have established an explicit access regime under which entrants are provided with access to the incumbent's delivery services, at prices that represent a discount off the incumbent's retail prices. In effect, access is granted at prices given by the Efficient Component Pricing Rule. Some other countries enforce a rule which ensures entrants do not receive access at prices higher than other large mail customers, in effect requiring competitors to receive the same treatment as other customers.<sup>10</sup> Such a rule might allow prices higher than given by the ECPR.

- (5) *The primary reason given for the protection of certain areas from competition is the need to preserve the internal cross-subsidisation used to finance non-commercial service obligations. The most important of these non-commercial obligations is the obligation to maintain service quality on unprofitable high-cost or low-volume delivery routes when other concerns (such as the obligation to maintain geographically uniform prices) limit the ability to raise prices.*

*The presence of non-commercial obligations need not lead to restrictions on competition. Where necessary, such obligations can be funded from outside the industry, or in a competitively neutral manner. Both Sweden and New Zealand, which maintain no restrictions on competition at all in this sector, have taken the view that the costs imposed as a result of universal service requirements are not a threat to the profitability of the incumbent and can be borne by the incumbent without the need to establish an explicit mechanism.*

Most OECD countries impose requirements on the incumbent postal operator to provide certain services at a certain level of quality, at a price that would not normally be economically justifiable. Examples include requirements to provide a given frequency of deliveries or collections, or to limit the maximum distance to the nearest post office. Many countries insist on a simple uniform charge for delivery within the boundaries of the country. In larger, sparsely populated countries this can make uneconomic maintenance of regular deliveries on high cost or low volume routes, including routes in remote or rural areas. Some countries do not insist on a simple uniform standard or price throughout the territory and, instead, tolerate lower levels of service or higher prices in some areas.<sup>11</sup>

It is often difficult to determine, in advance of liberalisation, which of the imposed requirements are truly non-commercial. In the case of New Zealand, under the threat of competition, the incumbent operator is providing services in excess of the regulated minimum. In Sweden, the position was taken that the provision of a ubiquitous service was a competitive advantage for the incumbent operator, rather than a burden.

In most countries the costs of these obligations are financed through internal cross-subsidisation. Competition threatens the ability to maintain cross-subsidisation. Liberalising countries must

give consideration to other mechanisms for the provision of any non-commercial services that are to be maintained.

There are a variety of competitively-neutral methods for financing the non-commercial obligations which do not threaten competition. Several countries have or are considering setting up mechanisms for raising the funds for universal service through charges on all postal operators.<sup>12</sup> Where such funds are put in place the subsidies should be made contestable so as to ensure that they are provided efficiently, to minimise the size of the subsidy and to ensure that the incumbent does not receive compensation in excess of the minimum required.

- (6) *A few countries have completely liberalised their postal sector and other countries retain a relatively small reserved area. The liberalising countries reported quality of service improvements, increases in profitability, increases in employment and real reductions in prices.*

At the time of writing three countries have completely liberalised the postal sector - Finland, Sweden and New Zealand. Of these Sweden and New Zealand have several operators competing in letter delivery. Despite being liberalised for several years, Finland has had no new entrants, possibly as a result of fears relating to the size of universal service charges on new entrants. Unlike the other two countries, New Zealand does not maintain a licensing regime. Australia and the Netherlands have also made significant reductions in the size of the reserved area.

Although fears are often expressed that reform will lead to a loss of employment in this sector, both Australia and the Netherlands report that the level of employment in the postal sector has increased during the reform process, due to a diversification of the range of services offered by the incumbent.

In Australia and New Zealand the incumbent postal operator is profitable and has reduced real prices consistently over a number of years. New Zealand reported competitors offering significantly lower prices than the incumbent. Although neither New Zealand nor Sweden directly compensate the incumbent for non-commercial obligations, neither country reported problems in maintaining service quality. New Zealand reported that the postal incumbent was experimenting with an enhanced level of service quality in some parts of the country.

- (7) *Most countries noted that the competition law applies in this industry (especially in the case of those countries which have liberalised) although in some countries the "regulated conduct defence" limits the application of competition law rules.*

*Concerns often arise surrounding the potential anti-competitive behaviour in the competitive segments of the postal sector by incumbent postal operators which benefit from exclusive privileges. These concerns particularly related to anticompetitive cross-subsidisation or predatory pricing. Since there are few sunk costs, barriers to entry in postal services are not unduly high, limiting the likelihood of predatory pricing by profit-maximising firms. However, where incentives for profit-maximisation are limited or restricted (as in the case of regulated or state-owned firms), cross-subsidisation might be within the interests of the incumbent.*

*Many countries seek to control anti-competitive cross-subsidisation through accounting separation. This is unlikely to be fully effective. Given the difficulties in obtaining reliable cost information, anti-competitive cross-subsidisation may only reliably be prevented through structural or regulatory measures such as privatisation, liberalisation or horizontal separation.*

Incumbent operators may, through a variety of actions, such as selective discounting, tying or bundling, act anti-competitively in the competitive sections of the postal market. These practices are equivalent to discounting on the competitive market which may (if the discount is significant enough) amount to anticompetitive cross-subsidisation or predatory pricing. The likelihood of anti-competitive cross-subsidisation is higher in the case of state-owned firms (which may not have strict profit-maximisation objectives).

A firm is said to be engaging in anti-competitive cross-subsidisation if it is charging a price for the competitive service which is less than long-run average incremental cost. In some cases the floor under the prices charged by the incumbent may be set higher by the regulatory authorities, depending on the objectives for competition in the sector.

Many countries (following the EC postal directive) require accounting separation of the competitive and non-competitive activities of the incumbent's postal business as a mechanism for detecting cross-subsidisation.<sup>13</sup> Often this accounting separation relies on a form of "fully distributed cost" accounting (again, following the EC postal directive).<sup>14</sup> The fully distributed cost approach does not yield economically meaningful results and will not yield a reliable price floor for detecting anti-competitive cross-subsidisation. In many cases the accounting and information gathering procedures of public postal operators are not sufficiently rigorous.

Given the difficulties in obtaining reliable cost information, anti-competitive cross-subsidisation may only reliably be prevented through structural or regulatory measures such as privatisation (as in the Netherlands), liberalisation (i.e., elimination of the remaining reserved areas) or horizontal or vertical separation. Horizontal separation involves preventing the incumbent postal operator from providing competitive services such as express or parcel services. Several countries require such competitive services to be provided through an arms-length subsidiary. Vertical separation would involve separating final delivery from the remaining segments of the postal business. Although the final delivery of mail in remote and rural areas is contracted out in some countries, to date no country has systematically sought to separate the delivery activity from the remainder of the postal business.

**NOTES**

- 1 See, for example, the submission of Australia.
- 2 The losses of the incumbent postal operator in Italy amount to 12 per cent of revenues.
- 3 See, for example, the submission of Australia,
- 4 Examples include New Zealand, Mexico,
- 5 As in Japan, where the monopoly is over all mail which expresses an opinion or notifies a fact.
- 6 As in Italy.
- 7 As in Mexico.
- 8 E.g., Denmark.
- 9 Examples include Australia, Denmark, Hungary and New Zealand.
- 10 Examples include Denmark and Mexico.
- 11 In addition to the requirement to maintain a uniform tariff, many countries impose a variety of other obligations on the incumbent operator, such as the requirement to maintain a certain number of post offices, requirement to deliver material for the blind, or to deliver newspapers and magazines at a reduced rate. These requirements are particularly extensive in Japan, which includes discounted mail for academic publications and agricultural seeds and saplings. Although these additional requirements are often funded through cross-subsidisation, it is also common to find they funded through direct subsidy. In Mexico, the incumbent operator is required to deliver for free all mail from the judiciary and political propaganda during election campaigns. Mexico also combines a system of cross-subsidisation and subsidy by requiring that the incumbent operator cover the costs of the non-commercial obligations unless revenues turn out to be insufficient, in which case the Federal government pays a direct subsidy.
- 12 See, for example, the submission of Finland.
- 13 See, for example, the submission of Denmark.
- 14 See, for example, the submission of Denmark.

## SYNTHESE

Il ressort de l'examen des contributions écrites, du document de référence et de la discussion orale, les points suivants :

- (1) *Les services postaux sont une forme particulière de services de transport ou de communication pour l'acheminement de produits et/ou d'informations d'un point à un autre. Les opérateurs postaux se trouvent en concurrence (à la marge) avec toute une série d'entreprises offrant d'autres services de livraison ou de communication dont les plus importants sont les services de télécommunications.*

Les services postaux diffèrent des autres services de livraison physique en ce sens que les opérateurs postaux peuvent bénéficier d'économies d'échelle et de gamme du fait du volume et du caractère physique du courrier. Les économies d'échelle et de gamme seront d'autant plus grandes que sera élevée la densité des points de distribution et le volume du courrier, et que sera faible la fréquence de distribution. Les opérateurs postaux traditionnels se trouvent en concurrence avec des services d'acheminement express du courrier et des colis, et de livraison d'un point à un autre. Les services de télécommunications (fax, e-mail et paiement électronique des factures) sont un substitut important pour une large part de certaines catégories de courrier.

- (2) *Dans la plupart des pays de l'OCDE, les services postaux sont assurés par une grande entreprise publique à intégration verticale. De nombreux pays ont réformé la structure de cet opérateur en titre qui d'administration est devenu une entreprise publique. De nombreux opérateurs postaux en titre interviennent également sur d'autres marchés tels que l'offre de services financiers. Dans plusieurs pays, les bureaux de poste des petites villes et des régions rurales sont exploités par des opérateurs privés dans le cadre d'une franchise et bien souvent associés à d'autres services, par exemple à un commerce local. Dans un petit nombre de pays, la distribution du courrier en milieu rural est assurée par des entreprises<sup>1</sup>.*

Dans la plupart des pays de l'OCDE, l'opérateur postal en titre est une grande entreprise employant un grand nombre de personnes. Dans de nombreux pays, cet opérateur n'est pas rentable et dans un petit nombre de cas, il affiche des pertes colossales<sup>2</sup>. Au cours des dix dernières années, de nombreux pays ont réformé la structure et le mode de gestion de leur opérateur postal en titre dans le cadre d'un processus de réforme des entreprises ou de transformation en société commerciale. Ces réformes ont généralement abouti à des améliorations importantes de la rentabilité, de la qualité du service, de la productivité et de l'efficacité<sup>3</sup>. Les exceptions à signaler sont notamment les Etats-Unis, le Japon et la Corée, encore que dans ces trois pays des mesures soient prises dans le sens d'une transformation de l'opérateur postal en titre en société commerciale. A l'époque de la rédaction de ce document, seuls les Pays-Bas avaient privatisé leur opérateur postal en titre.

De nombreux opérateurs postaux en titre opèrent également sur d'autres marchés, en particulier sur le marché des services financiers. Dans plusieurs pays, une partie des bureaux de poste appartiennent et/ou sont exploités par des tiers privés, et souvent associés à d'autres services<sup>4</sup>.

- (3) *Dans la plupart des pays, l'opérateur postal en titre détient un monopole sur le traitement de certaines catégories de courrier, généralement définies comme de la correspondance en dessous d'un certain niveau de poids, de prix ou de poids et de prix. Un petit nombre de pays autorisent la concurrence dans tous les secteurs de la poste, notamment dans la distribution des lettres. Aucun pays n'a fait état d'un quelconque monopole pour les services express ou les colis.*

*Dans un grand nombre de cas, on constate un manque de neutralité compétitive entre l'opérateur postal en titre et les opérateurs concurrents sur les questions telles que la fiscalité, la responsabilité civile, l'accès aux boîtes à lettres et le droit d'installer des boîtes de collecte des lettres sur la voie publique.*

*La liberté pour ces opérateurs postaux de fixer leurs tarifs postaux dans les régions sous monopole est limitée bien souvent par une forme quelconque de plafond de prix et par l'obligation de maintenir un tarif uniforme dans toutes les régions géographiques, du moins en ce qui concerne le prix des lettres standard. Tous les pays ont fait état de remises accordées par l'opérateur postal en titre en cas de volume important de courrier ou de courrier pré-trié.*

Tous les pays ont indiqué que la concurrence est autorisée dans certaines activités du secteur postal, en particulier dans les services de courrier express et de colis. Par ailleurs, la plupart des pays interdisent la concurrence dans certaines activités du secteur postal, en particulier dans la distribution normale de lettres. La frontière entre le secteur sous monopole et le secteur concurrentiel est définie de diverses façons, généralement sur la base d'une limite de prix, de poids ou de prix et de poids. Dans certains cas, la frontière entre les deux dépend également du contenu du courrier<sup>5</sup>, du fait que l'enveloppe contenant le courrier est close ou non<sup>6</sup> ou encore de la taille de l'enveloppe ou de la carte postale<sup>7</sup>. Dans certains pays, c'est l'autorité de tutelle qui fait appliquer le monopole ou le "secteur réservé" et dans d'autres (comme au Canada et aux Etats-Unis) c'est l'opérateur en titre lui-même. Dans le cas de l'Italie et des Etats-Unis, des opérateurs postaux concurrents sont autorisés à opérer sous réserve de verser à l'opérateur en titre l'intégralité du prix de vente au détail du même service.

Pour des raisons, en partie historiques, de nombreux opérateurs en titre bénéficient de certains avantages tels qu'une exonération de la taxe sur le chiffre d'affaires<sup>8</sup> ou de la responsabilité civile. En Corée, les véhicules postaux sont dispensés de tout péage sur les autoroutes. Les opérateurs en titre peuvent également être soumis à certaines contraintes commerciales telles que l'obligation de se conformer aux réglementations applicables aux travailleurs de la fonction publique.

Plusieurs pays ont signalé utiliser des plafonds de prix pour contrôler les prix de l'opérateur en titre<sup>9</sup>. En Australie, le prix d'une lettre standard (qui est de 45 cents) n'a pas bougé depuis le 1er janvier 1992 et devrait demeurer fixe en valeur nominale jusqu'en 2003 au moins. Lorsque les prix sont contrôlés, il existe également un mécanisme permettant de s'assurer que la qualité du service est maintenue.

- (4) *Des études économiques de la structure des coûts des services postaux montrent que les économies d'échelle et de gamme, dans les services postaux peuvent exister aux différents niveaux de production, notamment à la distribution finale. L'étendue du monopole naturel différera probablement d'un pays, d'une région et d'un itinéraire à l'autre en fonction du volume de lettres et de la densité des points de distribution. En l'absence de restrictions réglementaires, le niveau de concurrence augmentera probablement dans de nombreuses activités du secteur postal, même en l'absence d'accès réglementé aux services de l'opérateur en titre. Le*

*développement d'une concurrence effective dans certains domaines et pour certains services imposera probablement un accès réglementé aux installations et aux services de l'opérateur en titre. Un petit nombre de pays ont établi un régime explicite d'accès dans lequel les opérateurs postaux concurrents ont accès au réseau de distribution de l'opérateur en titre (ou à d'autres installations essentielles).*

*Il existe au niveau international une forme de régime d'accès par le biais d'accords multilatéraux et bilatéraux. A travers des organisations telles que l'UPU, les opérateurs postaux en titre s'engagent à distribuer le courrier en provenance d'autres pays en échange de paiements appelés redevances terminales.*

Le secteur postal peut être subdivisé en plusieurs activités complémentaires : la levée, le tri, le transport et la distribution. La distribution finale représente l'essentiel du coût de traitement du courrier. Les données économiques laissent à penser qu'il peut exister un monopole naturel dans la distribution finale bien que cela dépende d'un certain nombre de facteurs, notamment du volume du courrier et de la fréquence des distributions. Il n'existe pas de monopole naturel dans le courrier express ou la livraison de colis.

S'il existe un monopole naturel dans la distribution finale ou si les usagers ont une très nette préférence pour un système dans lequel ils ne traitent qu'avec un seul opérateur postal, l'instauration d'une concurrence effective dans le secteur postal peut nécessiter l'adoption de mesures réglementaires pour assurer l'accès aux services de l'opérateur en titre, notamment à son service de distribution dans les régions où la distribution est un monopole naturel, et l'accès aux boîtes postales dans les locaux de l'opérateur en titre. En outre, il peut être nécessaire d'établir des accords centralisés pour les changements d'adresse et la réexpédition du courrier .

Certains pays, dont l'Australie et la Nouvelle-Zélande, ont établi un régime explicite d'accès dans lequel les entrants sur le marché ont accès aux services de distribution de l'opérateur en titre à des prix inférieurs aux prix de vente au détail de l'opérateur en titre. En effet, l'accès est accordé à des prix indiqués par l'ECPR (Règlement effective de la tarification des composantes). Quelques autres pays appliquent une règle garantissant aux entrants sur le marché que l'accès ne leur sera pas accordé à un prix supérieur à celui consenti aux autres gros usagers, c'est-à-dire imposant que les concurrents bénéficient du même traitement que les autres clients<sup>10</sup>. Une telle règle pourrait autoriser des prix supérieurs à ceux indiqués par l'ECPR.

- (5) *La principale raison invoquée pour protéger de la concurrence certains domaines est la nécessité de préserver le système interne de péréquation tarifaire utilisé pour financer les obligations non commerciales de service. La plus importante de ces obligations non commerciales est l'obligation de maintenir la qualité du service sur les secteurs de distribution non rentables du fait d'un coût élevé ou d'un volume faible lorsque d'autres préoccupations (comme l'obligation de maintien de prix uniformes dans l'ensemble d'un pays) limitent la faculté d'augmenter les prix.*

*L'existence d'obligations non commerciales n'aboutit pas nécessairement à des restrictions de la concurrence. Lorsque nécessaire, ces obligations peuvent être financées en dehors de l'industrie ou d'une manière totalement neutre pour la concurrence. La Suède et la Nouvelle-Zélande, deux pays dans lesquels il n'existe aucune restriction à la concurrence dans le secteur postal, considèrent que les coûts imposés par l'exigence de service universel ne menacent pas la rentabilité de l'opérateur en titre et qu'ils peuvent être supportés par celui-ci sans que l'établissement d'un mécanisme explicite soit nécessaire.*

La plupart des pays de l'OCDE imposent à l'opérateur postal en titre l'obligation de fournir certains services à un certain niveau de qualité et pour un prix qui normalement ne se justifierait pas économiquement parlant. Ils lui imposent notamment d'assurer une fréquence donnée de distributions ou de levées, ou de limiter la distance maximum par rapport au bureau de poste le plus proche. De nombreux pays insistent sur l'application d'une tarification simple et uniforme à l'intérieur d'un même pays. Dans les grands pays à habitat dispersé, cela peut rendre anti-économique le maintien de distributions régulières dans les secteurs où le coût est élevé ou le volume faible, notamment en milieu rural ou dans les régions éloignées. Certains pays n'insistent pas sur l'adoption d'une tarification simple et uniforme sur tout le territoire mais tolèrent des niveaux de service inférieurs ou des prix plus élevés dans certaines régions<sup>11</sup>.

Il est souvent difficile de déterminer, avant la libéralisation du secteur, quelles sont parmi les exigences imposées, celles qui sont véritablement non commerciales. Dans le cas de la Nouvelle-Zélande, l'opérateur en titre fournit, sous la pression de la concurrence, des services allant au-delà du minimum réglementé. Et la Suède considère que le fait d'offrir un service universel est un avantage concurrentiel pour l'opérateur en titre plutôt qu'une charge.

Dans la plupart des pays, le coût de ces obligations est financé par un système interne de subventions croisées. La concurrence menace la faculté de maintenir cette péréquation tarifaire. Les pays en voie de libéralisation doivent envisager d'autres mécanismes pour l'offre des services non commerciaux qui doivent être maintenus.

Il existe toute une série de méthodes de financement des obligations non commerciales qui sont neutres pour la compétitivité et donc ne menacent pas la concurrence. Plusieurs pays ont mis en place, ou envisagent de le faire, des mécanismes leur permettant de lever les fonds nécessaires au financement d'un service universel par les droits imposés à tous les opérateurs postaux<sup>12</sup>. Lorsque des fonds de ce type sont mis en place, les subventions doivent pouvoir être contestées afin de faire en sorte qu'elles soient accordées de manière efficace, de minimiser le montant de la subvention et de s'assurer que le titulaire ne reçoive pas une compensation supérieure au minimum requis.

- (6) *Un petit nombre de pays ont complètement libéralisé leur secteur postal et d'autres conservent un domaine réservé relativement limité. Les pays où la libéralisation du secteur est en cours font état d'une amélioration de la qualité du service, d'une augmentation de la rentabilité et de l'emploi et de réductions réelles des prix.*

A l'époque de la rédaction de ce document, trois pays ont complètement libéralisé leur secteur postal. Il s'agit de la Finlande, la Suède et la Nouvelle-Zélande. Deux d'entre eux (la Suède et la Nouvelle-Zélande) ont plusieurs opérateurs en concurrence pour la distribution de lettres. En revanche, bien qu'ayant libéralisé son secteur postal depuis plusieurs années, la Finlande n'a enregistré aucun nouvel entrant en raison vraisemblablement des craintes relatives à l'importance des frais qu'implique pour eux le service universel. Contrairement aux deux autres pays, la Nouvelle-Zélande n'a pas de régime d'octroi de licences. L'Australie et les Pays-Bas ont eux aussi réduit de façon significative, la taille de leur secteur réservé.

Malgré les craintes souvent exprimées que la réforme conduise à une perte d'emploi dans ce secteur, l'Australie et les Pays-Bas font état d'une progression du niveau de l'emploi dans le secteur postal durant le processus de réforme en raison d'une diversification de l'éventail des services offerts par l'opérateur en titre.



En Australie et en Nouvelle-Zélande, l'opérateur en titre est rentable et a réduit constamment ses prix réels sur un certain nombre d'années. La Nouvelle-Zélande rapporte que des concurrents proposent leurs services à des prix bien inférieurs à ceux pratiqués par l'opérateur en titre. Bien que ni la Nouvelle-Zélande ni la Suède n'accordent à l'opérateur en titre une quelconque compensation directe pour ses obligations non commerciales, aucun de ces deux pays n'a fait état de difficultés à maintenir la qualité du service. La Nouvelle-Zélande a même indiqué que l'opérateur en titre enregistrait dans certaines régions du pays un niveau accru de qualité du service.

- (7) *La plupart des pays ont constaté que la loi sur la concurrence s'applique dans cette industrie (en particulier dans le cas des pays qui ont libéralisé leur secteur postal) bien que dans certains pays "l'interdiction d'une conduite réglementée" de l'activité limite l'application des règles de la loi sur la concurrence.*

*On s'inquiète bien souvent dans les activités concurrentielles du secteur postal du risque de comportement anticoncurrentiel des opérateurs en titre qui bénéficient de privilèges exclusifs. Ces inquiétudes ont trait en particulier à un comportement de péréquation tarifaire anticoncurrentiel ou à la pratique de prix d'éviction. Dans la mesure où les investissements à fonds perdus sont peu nombreux, les barrières à l'entrée dans les services postaux ne sont pas indûment élevées, ce qui limite la probabilité de voir des entreprises soucieuses de maximiser leurs profits, pratiquer des prix d'éviction. Mais, lorsque les incitations à la maximisation des profits sont limitées ou restreintes (comme dans le cas d'entreprises réglementées ou d'entreprises publiques), il pourrait être intéressant pour l'opérateur en titre de pratiquer la péréquation tarifaire.*

*De nombreux pays cherchent à lutter contre la pratique anticoncurrentielle de la péréquation tarifaire par une séparation des comptes. Il est peu probable que cela soit totalement efficace. Etant donné la difficulté d'obtenir des informations fiables sur les coûts, une péréquation tarifaire anticoncurrentielle ne pourra être véritablement évitée que par des mesures structurelles ou réglementaires de type privatisation, libéralisation ou séparation horizontale.*

Les opérateurs en titre peuvent, à travers toute une série de mesures telles que les remises sélectives ou les achats liés, avoir un comportement anticoncurrentiel dans les secteurs concurrentiels du marché postal. Ces pratiques sont équivalentes à l'octroi de remises sur le marché concurrentiel qui peut (si la remise est suffisamment importante) équivaloir à une pratique anticoncurrentielle de péréquation tarifaire ou à la pratique de prix d'éviction. La probabilité d'une péréquation tarifaire anticoncurrentielle est plus grande dans le cas d'entreprises publiques (qui n'ont pas nécessairement des objectifs stricts de maximisation des profits).

On dit qu'une entreprise s'engage dans une péréquation tarifaire anticoncurrentielle si elle facture pour le service concurrentiel un prix qui est inférieur au coût marginal moyen à long terme. Dans certains cas, le prix plancher facturé par l'opérateur en titre peut être fixé à un niveau plus élevé, en fonction des objectifs de la concurrence dans le secteur.

Suivant en cela la directive postale communautaire, de nombreux pays imposent l'enregistrement comptable séparé des activités concurrentielles et des activités non concurrentielles de l'opérateur postal en titre pour détecter les subventions croisées<sup>13</sup>. Bien souvent, ce mécanisme de séparation de l'enregistrement comptable repose sur une forme de comptabilisation "entièrement répartie des coûts" (là encore suivant la directive postale communautaire)<sup>14</sup>.

L'approche des coûts entièrement répartis ne donne pas des résultats économiquement significatifs et ne donnera pas un prix plancher fiable pour détecter une pratique anticoncurrentielle de péréquation tarifaire. Dans de nombreux cas, la comptabilité et les procédures de rassemblement de l'information des opérateurs du secteur public ne sont pas suffisamment rigoureuses.

Etant donné la difficulté d'obtenir des informations fiables sur les coûts, on ne peut véritablement éviter une péréquation tarifaire anticoncurrentielle que par des mesures structurelles ou réglementaires telles qu'une privatisation (comme aux Pays-Bas), une libéralisation (c'est-à-dire l'élimination des secteurs réservés restants) ou une séparation horizontale ou verticale. La séparation horizontale consiste à empêcher l'opérateur postal en titre d'offrir des services concurrentiels tels que des services de courrier express ou de livraison de colis. Plusieurs pays imposent que ces services concurrentiels soient fournis à travers une filiale opérant dans des conditions de pleine concurrence. La séparation verticale impliquerait de séparer la distribution finale des autres segments de l'activité postale. Bien que certains pays limitent la distribution finale de courrier dans les régions rurales et éloignées, à ce jour, aucun pays n'a systématiquement cherché à séparer l'activité de distribution du reste des activités postales.

## NOTES

- 1 Voir, par exemple, la contribution de l'Australie.
- 2 En Italie, les pertes de l'opérateur postal en titre représentent 12 pour cent de ses recettes.
- 3 Voir, par exemple, la contribution australienne.
- 4 C'est le cas, par exemple, de la Nouvelle-Zélande et du Mexique.
- 5 Comme au Japon, où le monopole concerne l'intégralité du courrier destiné à exprimer une opinion ou à notifier un fait.
- 6 Comme en Italie.
- 7 Comme au Mexique.
- 8 Le Danemark, par exemple.
- 9 C'est le cas, par exemple, de l'Australie, du Danemark, de la Hongrie et de la Nouvelle-Zélande.
- 10 C'est le cas, par exemple, du Danemark et du Mexique.
- 11 Outre l'obligation de maintien d'un tarif uniforme, de nombreux pays imposent à l'opérateur en titre toute une série d'autres obligations telles que le maintien d'un certain nombre de bureaux de poste, l'obligation de fourniture de matériel pour les aveugles ou de livraison des journaux et magazines à un prix réduit. Ces exigences sont particulièrement importantes au Japon qui pratique notamment des remises pour l'envoi de publications universitaires, de graines agricoles et de jeunes plants. Bien que ces obligations complémentaires soient souvent financées par un système de péréquation tarifaire, il est également courant de constater qu'elles sont financées par des subventions directes. Au Mexique, l'opérateur en titre est tenu de livrer gratuitement tout le courrier émanant du pouvoir judiciaire et toute la propagande politique pendant les campagnes électorales. Le Mexique associe également un système de péréquation tarifaire et de subventions directes en imposant à l'opérateur en titre de couvrir le coût des ses obligations non commerciales à moins que ses recettes ne s'avèrent insuffisantes, auquel cas le gouvernement fédéral verse une subvention directe.
- 12 C'est le cas, par exemple, de la Finlande.
- 13 Voir, par exemple, la contribution du Danemark
- 14 Voir, par exemple, la contribution du Danemark.



## BACKGROUND NOTE

### I. Introduction

Despite more than a decade of deregulation initiatives in other sectors, in most OECD countries key postal services continue to be provided under the protection of a statutory monopoly by state-owned incumbent postal operators. “While significant progress in terms of reform has been made in other public service sectors, the postal service is one of the last bastions of the old order”.<sup>1</sup>

Nevertheless, this sector is receiving increasing public policy attention for three main reasons:

- (a) First, ongoing deregulation and liberalisation in other network industries has demonstrated the benefits of competition as a means of enhancing quality, efficiency, innovation and lowering prices to consumers; and has highlighted the incongruity of the remaining monopoly restrictions in this sector;
- (b) Second, technological developments, especially telecommunications technologies such as fax, phone, email and the Internet, are eroding the core business of incumbent postal operators potentially threatening their ability to continue to finance social obligations such as universal service; and
- (c) Third, the growth of competition in competitive segments of the postal sector (including express mail, parcels services and financial services) has been matched by increasingly vociferous claims that incumbent operators are using existing privileges, benefits and advantages to distort and undermine competition in these competitive markets.

As a result of these factors, an international movement for reform of the postal sector is emerging and gaining momentum.<sup>2</sup>

This paper has three objectives: First, it explores the economic basis of the regulatory restrictions on competition in the postal sector, in order to establish a foundation for postal regulatory reform. Second, it explores whether non-commercial service obligations in the postal sector can be addressed without restrictions on competition. Third, it explores the issue of controlling anti-competitive behaviour by incumbent operators that typically compete in both competitive and monopoly markets.

The key ideas of the paper can be summarised at the outset:

- Postal services are one particular form of “transportation”, “delivery” or “communication” service. Postal operators therefore compete (at the margin) with a variety of firms offering other delivery or communications services, including, most importantly, telecommunications services. Postal services differ from other physical delivery services in that because of the volume and nature of letters and other goods delivered through the post, postal operators can take significant advantage of economies of scale and scope in delivery.

- Postal services are predominantly provided by large, vertically-integrated state-owned companies employing a large workforce. These companies often benefit from various competitive advantages not shared by their private competitors, such as exemption from sales or value-added taxes. They may also suffer from competitive disadvantages, such as a need to comply with civil-service labour rules or rules reserving the long-distance transportation of mail to national flag carriers.
- Most OECD countries prevent competition in the delivery of certain items, especially letter mail, where letters are typically defined as items not exceeding a certain weight or for carriage below a certain price (or both). The primary stated purpose of the resulting monopoly is to provide revenue to cross-subsidise non-commercial services, particularly the delivery of mail below cost in high-cost areas (such as rural areas).
- The postal “chain of production” can be divided up into several segments or activities, corresponding to collection, outward sorting, transportation, inward sorting and final delivery. Final delivery (i.e., delivery from the final sorting centre to the customer’s door or mail box) accounts for 60-80 per cent of the total cost of postal service. The economic evidence regarding economies of scale in sorting and transportation are mixed. Concerns over economies of scale and scope, to the extent that they exist, are focused on the final delivery of standard letter mail. There do not appear to be important economies of scale in the delivery of express mail or parcels.
- Even if there are economies of scale in the final delivery of letter mail, the presence of close substitutes for standard letter mail and low barriers to entry suggest that some competition would develop in a completely liberalised postal sector, even without specific regulatory interventions. Where concerns remain over the level of competition, competition can be further enhanced through regulatory interventions now commonly found in other network industries, particularly structural separation of the natural monopoly service or the implementation of an access regime.
- Most countries impose a form of price control that requires the provision of specified services (typically delivery in rural areas) at a price that does not cover costs. Regulatory interventions which maintain prices below cost induce economic distortions in the allocation of resources. Furthermore, to an extent, regulatory interventions of this kind may not be strictly necessary. Experience from other deregulated industries shows that when prices and entry are liberalised service is not necessarily withdrawn from even high cost areas. Where there are concerns about affordability of postal services, these might be addressed, with fewer distortionary effects, through direct subsidies to residents of high-cost areas.
- Even where such price controls are deemed necessary, the funds necessary to support the non-commercial services can be raised in a manner which does not require restrictions on competition, such as through general taxation or a levy on postal operators.
- Concerns have been raised that incumbent operators (whether in a partially or a fully liberalized postal market) may engage in practices such as selective discounting, tying or bundling which seek to prevent or restrict competition in potentially competitive markets (such as the markets for express mail, parcels, financial services or post-related services). From an economic perspective these concerns are equivalent to the concern that the

incumbent is discounting the price for the competitive service. In this context the appropriate measure of cost is average incremental cost of the competitive service.

- A firm can only price below cost in some market if it has a source of funds to cover the losses. The potential sources of funds include prices above costs in markets with regulatory barriers to entry, subsidies paid for other purposes (such as supporting non-commercial services), transfers from the state (perhaps to cover operating losses) or future price rises.
- In principle, pricing below cost could be prevented through careful disclosure requirements. Such disclosure would require accounting separation of the competitive and non-competitive components of the incumbent's postal business. In practice, even careful disclosure requirements cannot entirely limit discretion regarding cost estimates or entirely prevent creative use of accounting. The only sound long-term mechanisms for eliminating anti-competitive cross-subsidisation involve eliminating the source of funding. This can be achieved by eliminating regulatory barriers to entry, privatising the service, separating the non-commercial services structurally or competitive tendering for the non-commercial services. Various forms of these policies have been advocated for the postal sector.
- In short, regulatory restrictions on competition in the postal sector should be eliminated. Where there are lingering concerns over the presence of natural monopoly elements in the postal sector, these can be addressed through an access regime. Where there are remaining price controls which require services to be provided below cost, the below-cost services should be funded in a competitively neutral manner. Remaining competitive advantages and disadvantages of incumbent operators (such as exemptions from taxes) should be eliminated. The resulting increase in competition can be expected to significantly enhance efficiency, productivity and innovation in the postal sector of OECD countries, contributing to overall competitiveness and economic growth. The elimination of regulatory restrictions on competition does not, however, eliminate competition concerns. An incumbent may be able to anti-competitively undercut an entrant as long as it has access to a source of funds such as monopoly rents or state subsidies. Eliminating this source of funds will typically require further regulatory action such as privatisation or structural separation.

The remainder of the paper is organised as follows. Section 2 seeks to provide an overview of the postal industry. This section defines postal services and provides some key background information on postal operators and the regulatory environment in the OECD postal sector. Section 3 seeks to explore the theory underlying the regulation of postal services, with a focus, particularly, on the possible existence of natural monopoly elements and the handling of non-commercial service obligations. Section 4 looks specifically at the potential for anti-competitive behaviour in this sector and how it can be controlled.

## **II. Background: Postal Services And The Postal Sector**

### ***The Definition Of Postal Services***

What are postal services? From a technological perspective, postal services are a form of *delivery* or *transportation* service, for carrying goods from one point to another. Indeed, there is no clear dividing line between postal services and other delivery services such as the delivery/transportation services offered by commercial shippers or freight forwarders, or the door-to-door delivery services provided by deliverers of advertising and other forms of direct mail.

Postal services can, however, be distinguished from these other forms of delivery services. The “core business” of postal services is the delivery of addressed goods for which the nature and volume of the goods is such as to support regular, scheduled, dense deliveries in a region (where “dense” means a delivery network which delivers to or passes close by every delivery point in a region). This ability to exploit economies of scale and scope in delivery through regular, scheduled, dense deliveries, distinguishes mail services from other delivery services.

The goods that fall most directly within this “core business” include personal letters, postcards, bills, invoices, payments, directed advertising and written personal communications of various kinds. In most OECD countries the daily volume of these goods is such as to support a regular, scheduled delivery rounds throughout most of the country.

In addition there are important markets which are closely related to the market for letter mail and are usually included within the wider postal sector:

- (a) Express Mail services. As discussed below, express mail can be distinguished from letter mail as that mail which is delivered more quickly than the normal, regular, scheduled dense deliveries in a region. Because the mail must be delivered quickly, the volume is insufficient to support a dense delivery network. As a result express mail falls outside the “core business” defined above, but is sufficiently close to be included within the postal sector.
- (b) Parcel services. Again, as discussed later, the shipping and handling of packages can also be distinguished from the ordinary letter mail for the simple reason that, because most households do not receive packages on a regular basis, there is insufficient traffic to sustain a regular, dense delivery network in the sense described above, especially when the parcels to be delivered are time-sensitive.
- (c) Unaddressed mail services (such as the door-to-door delivery of newspapers or direct advertising mail). The delivery of such items may involve, regular, scheduled, dense deliveries, and therefore is closely related to mail service, but can be distinguished on the degree of basis of the degree of sorting and handling required.

As Table 1 indicates, the majority of the revenue in the postal sector of the EC comes from the standard letter service (including unaddressed mail items), followed by express services, followed by parcels:

**Table 1: Mail Services — Revenue Percentages By Segment and Operator (1988)**

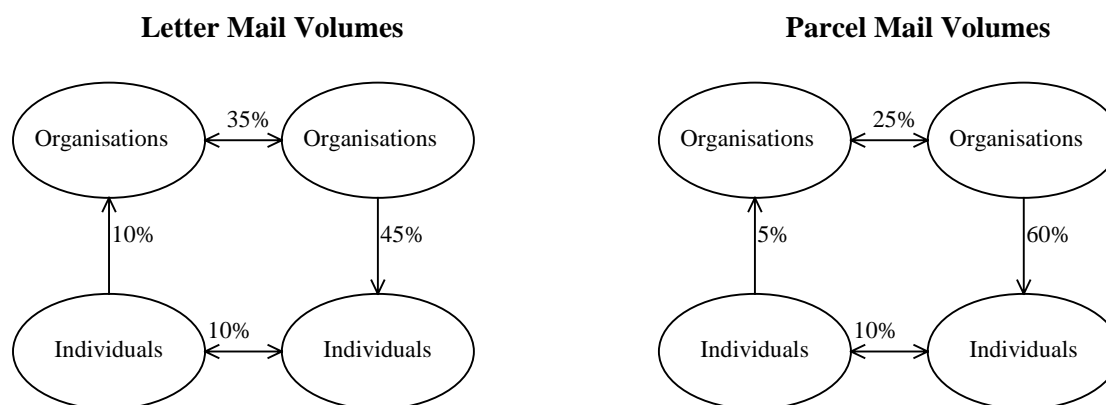
<b>Service</b>	<b>Incumbent Postal Operator</b>	<b>Private Postal Operator</b>	<b>Total</b>
Letters	45.7	2.2	47.9
Parcels	6.5	10.9	17.4
Express	4.3	30.4	34.7
Total	56.5	43.5	100.0

Source: EC (1992), p262.<sup>3</sup>



The majority of letter mail (four pieces in five) is generated by businesses. Individuals account for only 20 per cent of mail generated. On the other hand, individuals are the recipients of 55 per cent of all the mail generated. In the case of parcels, the volumes are even more skewed. Individuals account for only 15 per cent of the parcels generated and are the recipients of 70 per cent of all parcels.<sup>4</sup>

**Table 2: Letter and Parcel Mail Volumes**



Source: EC (1992), p32.

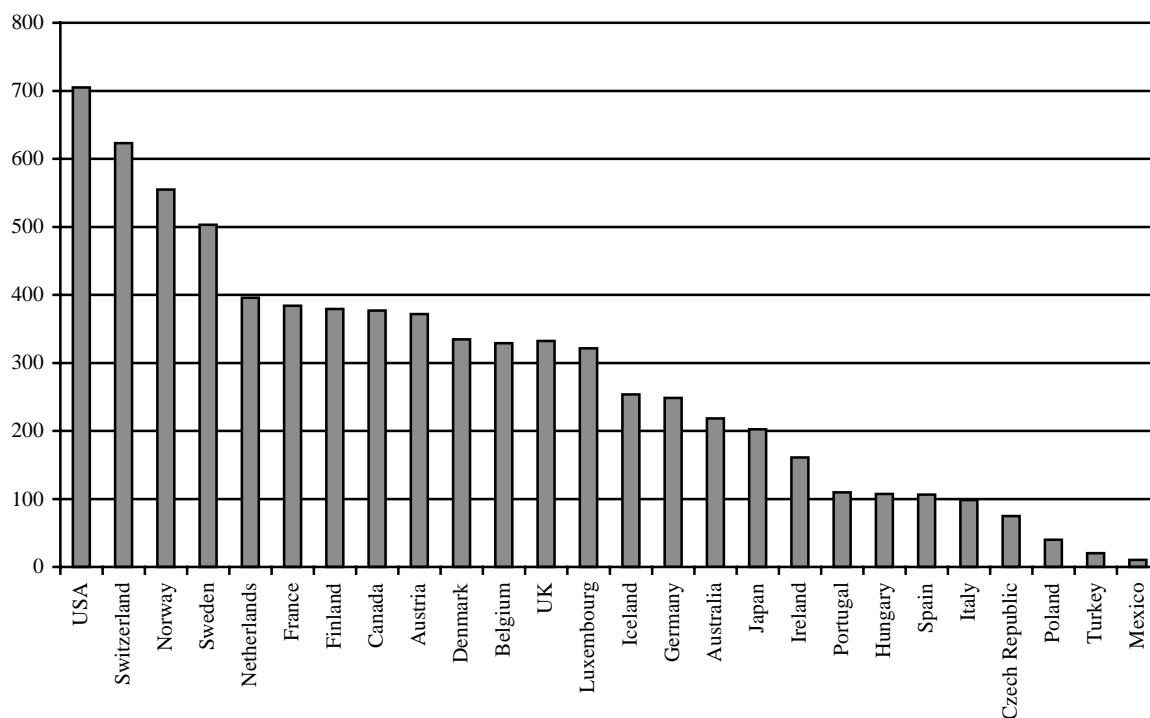
Source: EC (1992), p69.

Interestingly, the bulk of mail is produced by a relatively small number of users. The largest 100 customers of a typical incumbent postal operator generate a large proportion of the total volumes and revenues. The largest ten per cent of all mail customers typically produce well over 80 per cent of all the mail produced.<sup>5</sup> As we will see later, these large mail users (including banks, financial services companies, utilities, publishers, mail order companies and direct mail houses) are themselves often important potential entrants into at least some sectors of the business of mail delivery.

The vast bulk of mail is domestic. According to the EC, 93 per cent of the Community's mail is domestic, four per cent intra-Community and three per cent international.<sup>6</sup> The proportion of international mail is somewhat higher in smaller countries.

Importantly, annual mail volume per inhabitant varies greatly between OECD countries. The average EC citizen received around 380 mail pieces annually in 1997, i.e., a little over one piece per delivery day, on average (assuming delivery once per working day). In contrast, the average US citizen receives 705 pieces annually and the average Japanese citizen only around 205. There is a strong correlation between GDP and mail volumes. The OECD member countries with lower GDP per capita have lower mail volumes.

**Figure 1: Average Number of Letter-Post Items Posted Per Inhabitant**



Source: UPU. All data is for fiscal 1997 except Switzerland (1993), Sweden (1996), Netherlands (1993), Finland (1996), Canada (1993), Denmark (1995), Iceland (1996)

### ***The Postal Marketplace***

What, exactly, is the scope of the market for postal services? In particular, what are the nature and identity of potential substitutes for postal services?

As the previous section noted, postal services are a form of delivery service, for delivering goods of various kinds from one place to another. Importantly, most mail items are address-specific in the sense that they are intended for a specific addressee and it is not possible to substitute a different addressee<sup>7</sup>. A telephone bill that is intended for one person cannot be delivered to another person if the price of the delivery service changes. Therefore, in this sense, the market for postal services can be viewed as a very large number of closely related markets for delivery services between *addresser-addressee pairs*.

The identity and nature of potential substitutes for a particular postal service between an addresser and an addressee clearly depends upon a host of factors including:

- (a) the character of the goods to be delivered, including:
  - whether the goods have the character of information (which may be able to be delivered electronically) or whether the goods must be delivered physically;
  - the weight and size of the goods; and
  - whether the goods require special handling or particularly fast delivery.

- (b) the identity of the start and end points of the delivery (and whether there exists alternative communications paths connecting these points, such as a telecommunications network, the volume of mail over the route and over neighbouring routes);
- (c) the nature of the total delivery demands of the mail producer (a mail producer which produces a very large volume of mail items is more likely to be able to benefit from economies of scale and scope in self-provision than is a small mail user); and
- (d) of course, regulatory factors which restrict or prevent firms from offering competing postal services.

We will focus in this section on potential substitutes outside of the postal sector itself. The most important forms of competition to postal services from outside the postal sector come from point-to-point delivery and telecommunications. Each of these is discussed further below.

Before examining point-to-point delivery and telecommunications, it is important to make the following points:

- First, many firms (particularly banks and utilities) produce large quantities of mail which is “dense” in the sense that the recipients represent a large proportion of the inhabitants of a region. Such companies already often contract out the handling of their mail to mail houses. Such mail houses can therefore exploit a large proportion of the economies of scale and scope in postal delivery themselves. For these firms *self-provision* is a viable alternative to purchasing postal services. Indeed, the practice of self-delivery by utility firms in the USA in the 1930s promoted a legislative response from Congress banning the own-delivery of mail.<sup>8</sup>
- Second, in some cases, a collection of postal consumers may determine that the volume of traffic exchanged between them is sufficiently large and their delivery needs sufficiently specific (such as requirement for several deliveries per day) to warrant a joint arrangement for the provision of postal services. Indeed it is common to find regular, scheduled delivery services operating between “communities of interest” of different forms. Examples might include deliveries between various hospitals and a laboratory, between a library and an archive and so on. Where a firm is itself distributed over several sites it is, of course, common practice to establish a regular, internal mail system.
- Third, in other cases, “communities of interest” need not actively arrange deliveries but merely establish a central mailbox location where mail can be collected and distributed. These are known as document exchanges. In some cases, separate document exchanges are connected by a transportation system which delivers mail to other document exchanges. Document exchanges are likely to be a particularly strong substitute where a group of firms (a “community of interests”) regularly exchange mail *and* can combine the mail delivery and pick up with another regular delivery function. The regular buyers and sellers at a wholesale market might be one such example.
- Lastly, for certain forms of mail, particularly mail whose chief purpose is publicity or advertising, it is clear that there are a large number of potential alternative media including billboards, newspapers, magazines, radio, television and so on.

*Telecommunications*

A significant proportion of the goods delivered by post consist entirely of information, usually in the form of text and/or images (but also potentially sound and video). Where the addressee is equipped with the necessary equipment and where a telecommunications link exists between the originator and the recipient, this information content may be delivered to the addressee via telecommunications, such as telephone, fax, email, or Internet.

Telecommunications is not a perfect substitute for written communications. It has certain advantages (notably that it is faster) and also certain disadvantages (it does not reach all potential recipients, the security is potentially lower and it requires specialised equipment). Table 3 compares the advantages and disadvantages of physical and electronic mail.

**Table 3: Comparison of Physical and Electronic Mail**

	<b>Physical Mail</b>	<b>End-to-end Electronic Mail</b>
<b>Strengths</b>	Paper — can be read anywhere and easy to scan large volumes; Difficult to ignore; Ubiquity of addresses; Low barriers to use; Reasonable reliability against fraud and impersonation	Fast delivery; Low incremental cost per unit; Independent of the physical location of the sender;
<b>Weaknesses</b>	Slow delivery; High unit cost Sender must know physical location of recipient	Must log on to receive messages Lower penetration of access equipment Higher start-up costs Generally unfamiliar to older persons Possibly less secure against fraud and impersonation

Source: Coopers and Lybrand (1996), pII-14, with modifications.

With the growth of the quality, speed and penetration of electronic communications systems, telecommunications is an increasingly strong substitute for physical mail, in some cases threatening traditional revenue streams. America’s Postmaster General Marvin Runyon estimates that:

In the last five years the postal service has lost about 35 per cent of its business-to-business first class mail, or \$6 billion in revenues, to E-mail, tele-conferencing, and faxing. These electronic services, especially E-mail and faxes, are cutting into the service’s first-class mail business, which generates 57 per cent of its revenue.<sup>9</sup>

These concerns are echoed by Canada Post:

Letter mail volumes no longer keep pace with general economic growth, having been eroded by competition from courier services and electronic alternatives such as fax, electronic mail and electronic funds transfer. The dominant users of Canada Post’s letter-mail services — banks, utilities, credit card companies and other businesses — are especially likely to adapt to electronic alternatives where it is cost-effective to do so. The situation poses an acute threat to the long-term viability of universal service at affordable, uniform rates.<sup>10</sup>

A study conducted by Coopers and Lybrand for the EC found that substitution rates away from physical mail would be highest in the business-to-business market and business-to-residential markets. The study found gross substitution rates of 15-30 per cent overall, depending on operator and country characteristics.<sup>11</sup> However, the total net effect on incumbent postal operators was smaller due to growth in some categories of mail, particularly parcels, as a result of stimulation of the mail-order industry. Interestingly, the study noted that electronic communications posed a particular threat to private express carriers, which deal particularly in documents for which speed of delivery is important and for which tariffs are high.

Even where telecommunications is not a substitute for end-to-end delivery of the relevant information, it may still be a partial substitute, to minimise the physical distance (and therefore the cost and delivery time) of postal services.<sup>12</sup> In fact many postal operators offer a service under which correspondence is sent electronically to be printed, for example, in the city of the final recipient, in order to minimise postal charges and delivery times.<sup>13</sup>

### *Point-to-Point Transportation*

In the case of goods which cannot be reduced to their information content, the primary alternative to the use of postal services (with the exceptions of the cases discussed above) is point-to-point delivery.

For delivery of certain goods, particularly goods which are large, heavy or require particularly timely delivery, the potential economies of density through combining shipments are limited. As a result, other normal point-to-point shipping and delivery companies are likely to be competitive with postal services. The same arguments apply for delivery to particularly remote or unusual locations, or for deliveries which require special handling.

Point-to-point transportation is likely to be a least cost-effective substitute (and therefore postal services, as a whole, are likely to have the most market power) for the delivery of goods for which there is a significant volume and no special handling requirements, that is, goods within a common size range, with a reasonable delay and to regularly serviced areas. Standard letter mail is the best example.

### *The Postal Chain of Production*

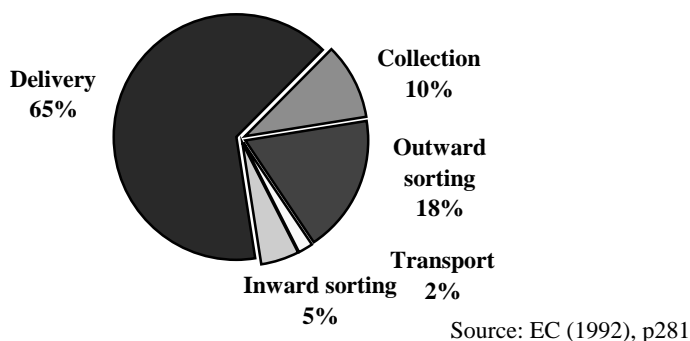
We may identify several distinct activities which are typically combined to provide postal services.

- (a) Collection — the delivery of items from the customer (or from a location near the customer) to the first sorting point.
- (b) Outward sorting — the initial sorting of the mail items into bundles to be delivered to the subsequent sorting office.
- (c) Transport — the delivery of mail from the primary sorting office to the final sorting office.
- (d) Inward sorting — the sorting of mail items for final delivery.
- (e) Final delivery — the door-to-door delivery of mail items.

Depending on the distance of the delivery, stages (b) and (c) may be repeated. For example, a letter from a small town in New Zealand to a small town in the US may pass through from a minor to a major sorting office in New Zealand before being sent to a major sorting office in the US, to be sent on to the local sorting office to be sorted for final delivery.

As an illustration, the proportion of total costs that can be allocated to each of these activities in the case of the EU operators is presented in Figure 2. Collection accounts for around ten per cent of the costs of handling a letter, outward sorting 18 per cent, transport two per cent and inward sorting five per cent. Final delivery alone accounts for around 65 per cent of the entire costs of handling an ordinary letter. In the US, where letter volumes are significantly higher than in the EU, final delivery accounts for a smaller proportion of total costs.

**Figure 2: Approximate Composition Of Letter Mail Operational Costs**



***Incumbent Postal Operators***

In the vast majority of OECD countries, postal services are provided by a large, vertically-integrated, state-owned company. Table 4 sets out key indicators for incumbent postal operators in the EC and the US. It is interesting to note that UPS alone is comparable in size, in revenue terms, to the two largest postal administrations in the EU (France and Germany), *combined*.

**Table 4: Statistical Comparison Of Selected Postal Operators**

	Volumes (millions)			Revenue (million ECU)		Losses (mill ECU)		Employees (thousands)		
	Letters	Parcels	Express	Postal	Financial	Total	%	Postal	Financial	Total
<b>Belgium</b>	3145	3	4.5	824	270.3	242.8	48.3	45.2	3.5	48.6
<b>Denmark</b>	1573	33	0.4	806	350	34.5	4.3	27.6	2.2	29.8
<b>Germany</b>	14262	500	8.0	7000	2180	1210	17.3	313.8	27	340.8
<b>Greece</b>	451	1	3.2	100	35.7	23.2	23.1	10.2	1.3	11.5
<b>Spain</b>	5014	9	0.8	692	488	307.7	44.4	63.5	4.2	67.7
<b>France</b>	15894	311	6.2	7340	5026	498.0	6.8	269.8	29.5	299.3
<b>Ireland</b>	494	4	1.5	188	59	1.3	0.7	9.7	1.2	10.9
<b>Italy</b>	10534	49	5.4	2651	1436	1058	39.9	208.2	25.4	233.6
<b>Luxembourg</b>	168	1	0.2	42	10.4	2.7	6.4	1.5	0.1	1.6
<b>Netherlands</b>	5408	110	3.3	1778	1320	-47.0	2.6	58.9	10.5	69.4
<b>Portugal</b>	596	6	0.3	135	20	35.8	26.7	14.5	1.8	16.3
<b>UK</b>	13774	191	11.95	4643	1783	-159	3.4	184.8	45.5	230.3
<b>DHL</b>				2000						
<b>TNT</b>				3000						
<b>UPS</b>				12000						
<b>Fed Express</b>				700						
<b>EC Total</b>	71313	1216	45.75	26199		3208	12.4	1207	152.2	
<b>USA</b>				42560						

Source: EC (1992), pp 79,115,123,151 and other sources.

As Table 4 indicates, incumbent postal operators tend to be both large and very large employers of labour. For example, in 1994 the United States Postal Service had annual sales of \$49.4 billion and more than 850 000 employees. This ranks the US Postal Service as *11th* in the US Fortune 500, larger than the three largest US airlines (American, United and Delta) combined and larger than all five of the largest package and freight companies combined.<sup>14</sup> In 1970 (a the time of the US Postal Reorganization Act) the US postal workers accounted for 20 per cent of all federal civilian employees and *one per cent* of the entire labour force of the United States<sup>15</sup>. It appears that the size and unionisation of the workforce involved has itself been an obstacle to reform in some OECD countries. As the above table indicates, some postal operators are making sizeable losses. In 1988 the postal operators of Italy, Spain and Belgium were all incurring losses equal to more than 40 per cent of revenues.

As Table 4 indicates, the majority of incumbent postal operators in the OECD also provide non-postal services. In particular, nearly all are also involved in providing financial services.<sup>16</sup> As we will see later, the fact that incumbent postal operators also compete in other competitive businesses is one major source of concern.

With certain exceptions, virtually all of these incumbent postal operators benefit from *competitive advantages* not shared by private operators, including exemptions from taxation and special treatment under various other laws and regulations. For example, relatively few incumbent postal operators pay a sales or value added tax<sup>17</sup> and relatively few are required to pay a dividend corresponding to the full amount of the capital employed. In the case of Canada Post, the employee's pension scheme is funded by the state and not by Canada Post, effectively subsidising Canada Post's wage costs.

It is often alleged that incumbent postal operators benefit from special treatment in the legislation or enforcement of various safety, health or vehicle-related rules. In the case of Deutsche Post AG, "according to the information of private parcel delivery firms, the trucks of the Post AG are allowed to park for free while private firms have to pay for parking tickets". In addition, "private suppliers of parcel delivery must pay for car inspections while the public corporation enjoys an exemption".<sup>18</sup>

The competitive advantages of the US Postal Service have been a particular focus of concern for the US private carriers:

The US Postal Service’s privileges and immunities make it unique among economic enterprises. It pays no income taxes, pays no dividends or return of invested capital to its owners, is not subject to the full enforcement powers of the Occupational Safety and Health Administration. In addition, the Postal Service ... has the priority of the US government with respect to the payment of debts from bankrupt estates, and may borrow directly from the US Treasury or may issue debt to third parties backed by the full faith and credit of the US government.

... Some advantages accorded the Postal Service are utterly arbitrary. For example, a taxpayer is not entitled to the legal presumption that he filed his tax return in a timely manner with the Internal Revenue Service if he uses a private carrier service such as Federal Express rather than the Postal Service. Other privileges are simply bizarre: The Postal Service has been held to have the constitutional right to have its letter carriers take shortcuts across front lawns without obtaining the consent of the affected residents.<sup>19</sup>

Incumbent postal operators also face certain constraints not shared by private operators which raise their costs and therefore act as competitive disadvantages. For example, it is not uncommon for employees of incumbent postal operators to enjoy the status of civil servants, making dismissal difficult. In addition, domestic operators may be restrained to only use domestic carriers for transporting the mail. The USPS, for example, is subject to the obligation to transport its mail on United States flag carriers at prices determined by the Department of Transportation.<sup>20</sup>

The past decade has seen a significant change in the governance arrangements and the institutional form of many of these incumbent postal operators. In particular, many incumbent operators have been “corporatised”, that is, given the form and structure of a normal commercial enterprise and the freedom to operate in a commercial and business-like fashion. Many countries have experience significant gains from these “enterprise reforms”. Since the primary focus of this paper is regulatory reform as opposed to enterprise reform, the latter reforms will not be specifically addressed here. As an example of the benefits of such reforms, Table sets out some of the key effects of corporatisation of the incumbent postal operator in New Zealand.

**Table 5 : Assessment of the Effects Of Corporatisation of New Zealand Post 1987-1998**

Productivity:	40 per cent fewer staff since 1987 handle 20 per cent more business
Profitability:	Loss of \$NZ37.9 million 1986/87 changed to a \$NZ47.7 million after-tax profit in 1996/97
Prices:	Basic letter price at the same nominal level (40 cents) in 1998 as it was in 1987, implying a substantial real price reduction. In addition, the rural delivery fee (an extra charge for rural dwellers) was abolished in 1995. large business customers benefit from volume and pre-sorting discounts.
Service Quality:	Service delivery performance for a basic letter has improved sharply
Source: New Zealand Ministry of Commerce (1998)	



As of January 1999, only the postal service of the Netherlands has been privatised. However, the majority of OECD countries allow various forms of private ownership and operation of post offices. Indeed, in Australia, Canada, the Netherlands, New Zealand and the UK a majority of the postal retail outlets are privately owned or operated. Neither France, Italy nor the US have any form of franchising policy for postal retail services.

### *Services Protected From Competition*

The vast majority of the OECD countries (with the exception of Sweden, Finland and New Zealand) grant a legal monopoly to the incumbent postal operator over certain mail services. These are known as “reserved” services. As a result of recent liberalisations the boundary of the reserved area differs from country to country and has changed quite significantly over time. Table 5 attempts to summarise the current position with regard to reserved services in the OECD countries:

**Table 5: Reserved Services In OECD Countries**

<b>Member Country</b>	<b>Reserved Area</b>
Australia	Australia Post has a monopoly on mail items up to 250 g and at a price less than 4 times the standard letter rate. Outgoing and incoming international mail is not reserved.
Austria	“The monopoly is confined to items containing written, not printed, personal communications”.
Belgium	La Poste has a monopoly over the collection, conveyance and delivery of closed or open “letters” postcards, advertisements, circulars etc. when they bear the address of the addressee, up to 1 kg.
Canada	Canada Post has an exclusive privilege for the collection, transmission and delivery of letters up to 500g to an addressee in Canada. The exclusive privilege does not extend to mail of an urgent nature delivered at a price more than 3 times the rate for addressed letters weighing 50g.
Czech Rep	Monopoly on sealed letters up to 1 kg within certain size limits.
Denmark	The reserved area for inland and incoming international is 250g and, for inland items, 6 times the price of a 20g letter.
Finland	Finland has no monopoly or reserved services. A licence is, however, needed to deliver mail.
France	The monopoly includes the transport and delivery of letters and postal items (including direct mail) up to 1 kg, both domestically and internationally.
Germany	The monopoly includes items up to a tariff of 10 DM and direct mail items weighing up to 100 g. (This monopoly is scheduled to expire on 31 December 2002).
Greece	The Hellenic Post has a monopoly on the conveyance of unsealed and sealed “letters” and postcards.
Hungary	The letter post services are reserved. Hungary Post also has the exclusive right to issue postage stamps, money orders and postal stationery.
Ireland	The incumbent operator has a monopoly on “postal packets” within, to and from Ireland. Postal packets do not include express mail, newspapers or parcels.
Italy	Collection and delivery of ordinary, insured and registered letters weighing up to 2 kg; telegram, telex and public telematics service
Japan	Transportation of letters is reserved to Japan Post
Korea	Korea Post has a monopoly on letter-post items (small packets, parcels, printed matter, periodicals are not reserved)
Luxembourg	Monopoly over the conveyance and delivery of letters and postcards.

**Table 6 : Reserved Services In OECD Countries (cont.)**

<b>Member Country</b>	<b>Reserved Area</b>
Mexico	Monopoly on letters weighing up to 1 kg and within certain size limits
Netherlands	The incumbent operator operates partly under an exclusive concession for the transport of letters weighing up to 50g.
New Zealand	No reserved services
Norway	Norway Post has a monopoly on letters up to 350 grams or 5 times basic domestic tariff.
Poland	Monopoly over acceptance, conveyance and delivery of letter-post items up to 2 kg.
Portugal	Monopoly over the acceptance, conveyance and delivery of all sealed correspondence, postcards and other missives, even those that are unsealed provided that their contents are of a personal nature; the issue and sale of stamps and other postal values; the public fax service.
Spain	Monopoly over all letters and postcards carried inter-city. Letters for collection and delivery in the same town (intra-urban traffic) and postcards are not reserved.
Sweden	No reserved services
Switzerland	Monopoly over letters up to 500g and parcels up to 2 kg.
Turkey	Sealed or unsealed letters and postcards are subject to the postal monopoly
UK	The Post Office has a monopoly on letters below £1 subject to certain exceptions
USA	The US Postal Service has the exclusive right to carry letters under the "Private Express Statutes". The exclusive right is subject to a number of exceptions and has been suspended, subject to some conditions, for extremely urgent letters and outbound international letters.

Source: UPU

In the case of the EU countries, the scope of the maximum allowable reserved area is set out in the EC Postal Services Directive (97/67/EC). This directive is the culmination of a lengthy public debate on the liberalisation of postal services. The outcome of the debate was a compromise position on liberalisation under which "the sector will continue to live under a legal monopoly regime in its core market segments for a number of years to come"<sup>21</sup>. According to the postal directive, member states are not allowed to reserve for the postal incumbent, the delivery of items for a price more than five times the standard tariff for a mail item in the first weight class of the fastest standard category and weighing not more than 350 grams. It is widely acknowledged that the immediate liberalisation effect of this postal directive is limited. "According to estimates, the Directive will generally across the European Union only liberalise an additional three per cent of the market which currently has been kept under a monopoly regime".<sup>22</sup>

However, the Postal Directive is important for EU countries in that it establishes a detailed timetable for further liberalisation. According to the Directive the "European Parliament and the Council shall decide not later than 1 January 2000 and without prejudice to the competence of the Commission, on the further gradual and controlled liberalisation of the postal market, in particular with a view to the liberalisation of cross-border and direct mail as well as on a further review of the price and weight limits, with effect from 1 January 2003."<sup>23</sup> Importantly, liberalisation is proceeding in spite of the weakness of the Postal Directive, for "nearly a third of the [EU] member states have fully liberalised the sector now or are announcing to do this within a time perspective of the year 2003. Even more so on segments such as cross-border mail or direct mail".<sup>24</sup>

The monopoly protections from competition are especially strict in the case of the US. The protections accorded to the US Postal Service are set out in a series of statutes known as the "Private

Express Statutes” which form part of the US Criminal Code. Section 1696 of the US Criminal Code specifies that:

Whoever establishes any private express for the conveyance of letters or packets, or in any manner causes or provides for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town or place to any city, town or place, between which mail is regularly carried, shall be fined not more than \$500 or imprisoned not more than six months, or both.<sup>25</sup>

Unlike most other countries, the US Post Office is itself given some discretion over the definition of what constitutes a “letter” for the purposes of the statutes. It has chosen to define the term broadly. The Postal Service defines a letter to be “a message directed to a specific person or address recorded in or on a tangible object”<sup>26</sup>. This definition is, of course, subject to a multitude of qualifications and caveats.

Unusually, the protection from competition enjoyed by the US Postal Service extends to access to the customer’s mailbox. Section 1725 of the US Criminal Code prohibits the deposit of unstamped “mailable matter” in a customer letterbox approved by the Postal Service, on penalty of a fine.<sup>27</sup> The Postal Service requires that letterboxes and other receptacles designated for the delivery of mail “shall be used exclusively for matter which bears postage”<sup>28</sup>. Of course, this has important effects on the potential for competition as competitors must either operate without designated mail receptacles<sup>29</sup> or supply their own to customers.<sup>30</sup>

As Table 5 shows, there remains significant variation in the size of the reserved area across OECD countries. Spain, for example, has long allowed local intra-city “city-mail” carriers. Most countries permit the operation of document exchanges. In the Netherlands the delivery of Christmas cards is not in the reserved area. The most liberal countries are New Zealand, Sweden and Finland which retain no reserved services at all. In principle, in these countries, competitors are free to compete in all aspects of the postal business (in practice, the need to obtain a licence can act as a barrier to entry).

### ***Non-Commercial Service Obligations***

Perhaps the primary justification for the existence of reserved services is that they are necessary to fund non-commercial obligations.<sup>31</sup> The most important among these is the obligation to provide service in all areas of the country (a “universal” service) at prices that may not cover costs.

To illustrate, the EC postal directive specifies that within the EU, universal service means the delivery every working day and not less than five days per week (except in exceptional circumstances) to home or premises of every natural or legal person (or, under some circumstances, to appropriate installations) of postal items up to 2 kg and postal packages up to 10 kg.<sup>32</sup>

From an economic perspective, these non-commercial service obligations are equivalent to regulatory controls on prices that maintain the price of a service below cost, without allowing the service to be withdrawn.

The associated costs may be important. The Australian National Competition Council recently calculated that in the case of Australia (a large, sparsely-populated country), the cost incurred by Australia Post calculated on a long-run avoidable cost basis was A\$67M in 1995/96, equal to 20 per cent of profits in that year.<sup>33</sup> Studies in the US have found that the routes with the lowest-density (the bottom 20 per cent) had attributable costs exceeding revenues by 16 per cent for a loss of US\$121m.<sup>34</sup>

Note that services for which a “universal service” must be provided are not necessarily co-extensive with services which are reserved. Incumbent postal operators may be required to provide “universal” service for services of which some aspects are competitive, such as parcel service. The situation in the EC that will prevail as a result of the EC Postal Services Directive is set out in Table.

**Table 7: Relationship Between Reserved Areas and Universal Service**

		Weight/Price Criterion	
Universal Requirement	Letters/Postcards (up to 350 g)	Letters (up to 2 kg)	
Universal Requirement	Parcels and Printed Papers (Up to 10 kg)		
No Universal Requirement	Express Items Heavier Parcels and Printed Papers Unaddressed Mail Document Exchange Items		

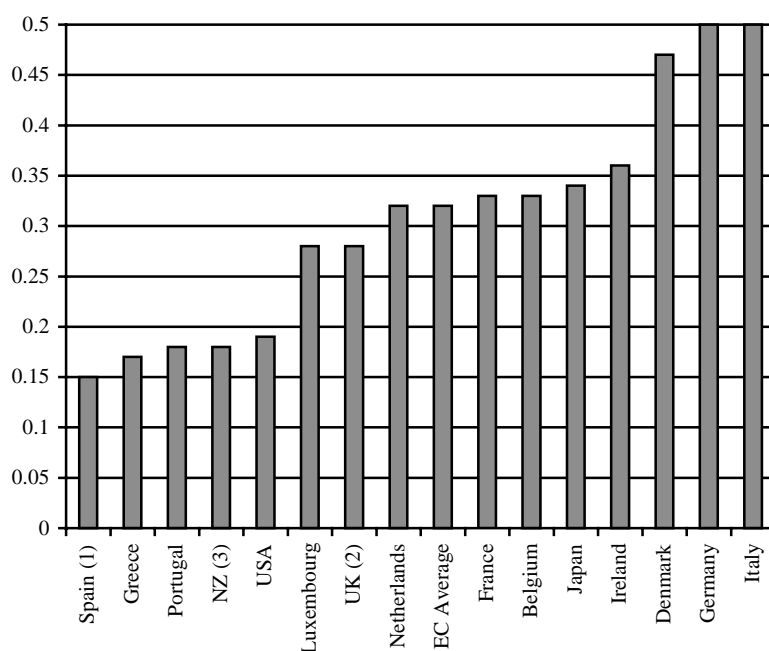
 Reserved       Non-reserved

Source: EC (1992), p207 and Directive 97/67/EC Article 3.

**Pricing Practices**

The vast majority of incumbent postal operators apply a single unitary tariff for “single item” letters — i.e., the same price is paid for delivery anywhere in the country. An exception is the Spanish postal operator which offers separate local tariffs for local delivery. Typically this single tariff represents a maximum price, which is paid primarily by individuals and small businesses. Large business and bulk mailers pay lower prices, which depend on the level of discounts offered for volume and for the degree of pre-sorting.

The actual charges for domestic delivery of a letter vary quite widely across the OECD, as Figure 3 indicates. Note that to an extent the tariffs indicated in Figure 3 may not be strictly comparable as the quality of service also differs widely across countries.

**Figure 3: 1990 Tariffs in Selected OECD Countries**

Note: (1) The price indicated is that for a letter sent between two towns (inter-urban), the price for a letter within the same town (intra-urban) is ECU 0.08

(2) Price shown for first class letter up to 60g.

(3) Price indicated is for the "standard" letter rate. There is a faster "Fastpost" letter rate equal to ECU 0.37.

Source: Based on EC (1992), p92.

Many postal operators publish schedules of standard discounts. For example, the UK offers discounts if addresses can be read by optical character readers. In other cases, discounts are negotiated on a case-by-case basis.

The ability of incumbent postal operators to vary their tariffs unilaterally varies widely. In virtually every case, changes to basic letter tariff require the approval of the government or a government agency, such as the Postal Rate Commission in the US. Exceptions include New Zealand Post and Sweden Post which are currently both free to set all prices except the price for a standard domestic letter. In both cases the price cap on the price of a standard letter is such that the price cannot rise faster than the domestic rate of inflation.<sup>35</sup>

### III. Efficient Regulation Of Postal Services

Having set out some basic facts about the postal sector, we turn now to an analysis of the foundation of economic regulation in this sector.

In order to understand the need for regulation in this sector, we need to understand the nature of the problem that regulation is designed to solve. The principal justification for economic regulation of an industry is the presence of market failure of some kind. The most common forms of market failure arise from the existence of natural monopoly, the presence of public goods or externalities. In the case of the

postal sector, the primary economic concern is the possibility that the postal sector may be a natural monopoly. It is, therefore, this question, on which we will focus in this section.

However, even if the postal sector is a natural monopoly, this could justify certain forms of regulation, but not necessarily the restrictions on entry that are commonly observed. Instead, these restrictions protect the internal cross-subsidisation that is commonly used to finance non-commercial services. We therefore also explore in this section whether the existence of non-commercial obligations is an adequate justification for regulatory restrictions on entry.

### *Are postal services a natural monopoly?*

Economic regulation may be justified where persistent market power will not be eroded through competition. A firm may be able to exercise market power persistently when the cost structure of the industry is such that only one firm can survive in equilibrium (that is, when one firm is able to produce the entire market output more cheaply than two or more firms) and when barriers to entry are high. When an industry has a cost structure with this property, the industry is said to exhibit increasing returns to scale and is said to be a *natural monopoly*.

In many industries the “natural monopoly” component of a sector is limited in scope and is smaller than the entire industry. Classic examples include the track infrastructure in the rail industry or the local loop in telecommunications. One of the most significant developments in regulatory thinking in the past two decades has been the recognition that the presence of a natural monopoly component in one segment of an industry need not imply an absence of competition in all vertically or horizontally related segments. Instead, in certain circumstances it will be appropriate to permit competition in related segments through either separation of the natural monopoly into a distinct firm or through careful regulation of access to the natural monopoly component of an integrated firm.

The application to the postal sector is clear. The question to examine is whether or not all or some segments of the postal sector exhibit increasing returns to scale. If not, there is no need for regulation to control market power - competition alone can be relied on to achieve this task. If there are some segments which exhibit increasing returns to scale, careful consideration needs to be given to the pros and cons of different regulatory approaches for controlling market power. Where barriers to entry are sufficiently low, potential competition alone may be adequate to discipline the market power of the incumbent. When barriers to entry are higher, it may be appropriate to regulate access to the services of the natural monopoly segments, in order to stimulate competition in the remainder of the industry.

Are there economies of scale or scope in the provision of postal services that suggest that this sector has a tendency towards natural monopoly? If so, in what components of the industry do these economies arise?

In the previous section of this paper, the postal “chain of production” was separated into five separate segments or activities: “collection”, “outward sorting”, “transportation”, “inward sorting” and “final delivery”. A large number of economic studies have sought to estimate the magnitude of economies of scale in each of these activities. A review of these studies was conducted in 1996 for the OECD by NERA.<sup>36</sup> A summary of the key results of that review is set out in the following table. In addition, the table includes additional studies on economies of scale suggested by the US Postal Service.

**Table 8: Summary of Empirical Evidence on Economies of Scale and Scope**

Author(s)	Focus of Study	Results
Gupta and Gupta (1985)	Entire US Postal Service	Postal operations exhibit diseconomies of scale but postal technology exhibits economies of scope.
Tabor (1987)	Letters business (UK)	Substantial economies of scale in the letters business.
Estrin and De Meza (1990)	Entire UK postal service	Substantial economies of scale in the letters business
Panzar (1991)	Letters business (US)	Demonstrates that economies of scale in delivery are sufficient to give rise to overall scale economies
Tabor (1991)	Letters business (UK)	Moderate economies of scale in collection, low economies of scale in sorting and high economies of scale in delivery
Waterson (1992)	Letters business (UK)	Royal Mail is not a natural monopoly when not restricted to universal service
Christensen et al (1993)	All postal products of the US Postal Service	Constant returns to scale in the USPS for letters, parcels and packages. They found a 0.788 cost elasticity for volume-related workload and a 0.212 cost elasticity for delivery points
Rogerson and Takis (1993)	All postal products of the US Postal Service	Economies of scale and scope in the delivery of most postal products, although these economies are weak for large parcels and express mail. Long-haul transportation and mail processing do not exhibit strong economies of scale for most postal products.
Bradley and Baron (1993)	“Operating efficiency” of USPS	Operating efficiency improves with volume (implying economies of scale)
Aligon, Cazals, De Rycke, Florens and March (1998)	Sorting (France)	Overall cost elasticity of 0.89, comprising a cost elasticity of 0.69 on first class mail and 0.20 on second class mail.
Bradley and Robinson (1999)	Sorting (USPS)	Returns to scale in the range of 1.3-1.7 in sorting

Source: Marks (1996), Table 1, updated with citations provided by the USPS.

### *Transportation, Sorting and Collection*

Consider first, *transportation*. Transportation costs are incurred for long or short haul trunking between sorting centres. Air and freight rail are used primarily for relatively long-haul movements. Road transport is used for both long and short distance travel.

Although some studies have found a degree of economies of scale in transportation<sup>37</sup>, the evidence suggests that the bulk transportation of mail does not involve substantial economies of scale. Rogerson and Takis, for example, in their investigation of the US Postal Service find that there are no economies of scale in long-haul transportation.<sup>38</sup> Indeed, it is common practice for postal operators to contract out for as much as all of their long-distance transportation needs to competitive operators suggesting strongly that there are no economies of scale in this segment.

[L]ong-distance transportation is not a natural monopoly. Canada Post relies entirely on competitive providers of transportation, including airlines, trucks, ships and railroads for long-distance transportation; it performs none of its own long-distance transportation.<sup>39</sup>

*Sorting* is carried out both manually and by automated sorters using either bar code or optical character readers. The econometric evidence on economies of scale in sorting are mixed. Although the

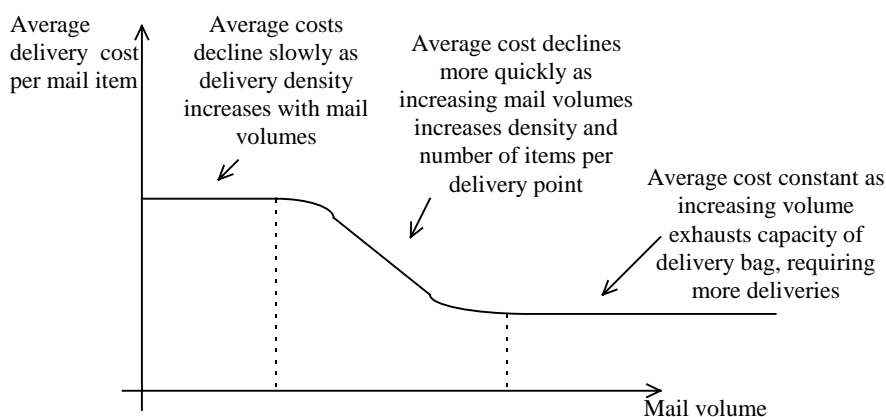
increase in automation in sorting has increased the scale economies in sorting of letters, the capacity of automated sorting machines is such that these economies may be exhausted at volumes far less than the size of the entire market. Aligon et al find sizeable economies of scale in sorting in the context of La Poste in France. Rogerson and Takis, on the other hand find there are also no economies of scale in mail processing, especially in mechanised or automated sorting.<sup>40</sup> Sidak and Spulber observe that “the inward sorting function can be split among multiple firms without loss in efficiency. Just as inward sorting is split across postal employees, it can be split across companies. Indeed, larger mailers commonly perform a degree of inward sorting to qualify for pre-sort discounts”.<sup>41</sup>

*Collection* costs arise from the costs associated with picking up mail at a collection point (“load time”) and the costs of transport between collection points (“running time”). There is a certain amount of evidence of economies of scale in collection. The Commission’s study on Cross-Border Liberalisation notes that “Collection costs rise very much less than proportionately with volume”. However, as that report notes, collection costs represent a relatively minor component of total costs and therefore do not represent an obstacle to the development of competition.

*Final Delivery*

The primary concerns relating to economies of scale in the postal sector focus on *final delivery*. The nature of the economies of scale in delivery relate to the effect of volume of mail on the density of mail delivery points in the delivery area and the number of pieces of mail per delivery point. Where mail volumes are very low, the density of delivery points in the delivery area will be low and the economies of scale weak. Adding additional delivery points adds transportation costs. However, as the density of deliveries rises to the point where virtually every delivery point is passed in the course of an ordinary delivery, the cost of adding an additional delivery point is small. In addition, once a delivery point has been reached, the cost of delivering additional mail items at that delivery point is small. For larger mail volumes, the capacity of the mail delivery bag or the mail delivery van will eventually restrict the extent of the economies of scope. This is illustrated in Figure 4.

**Figure 4: Illustration of Effect Of Volumes On Average Delivery Costs**



These observations suggest that the costs of delivery will depend upon the following factors:

- (a) The frequency of the delivery rounds and the overall volume of mail items. The less frequent the mail deliveries and the higher the volume of mail, other things equal, the higher the density of delivery points per delivery round and the higher the number of deliveries per



delivery point. The frequency of delivery rounds depends in turn, on the time sensitivity of the mail items. Where they are very time sensitive, there will need to be more delivery journeys. Where the mail is not time-sensitive (i.e., deferrable), delivery journeys can be less frequent, with a higher average volume per journey.

- (b) The concentration of the delivery points. In certain areas, such as central business districts and residential areas with large apartment buildings, the volume of mail going to each delivery point is sufficiently high that it is very likely that every delivery point will be visited, even with relatively low mail volumes. The volume of mail delivered at each delivery point can be increased by concentrating delivery points through the introduction of centralised<sup>42</sup> mailboxes (including “post office boxes”).
- (c) The presence of other deliveries (such as advertising, newspapers, express or more urgent mail) which require regular, frequent delivery to virtually every delivery point.

These considerations are borne out by the empirical evidence. Bishop et al note that “Formal studies almost unanimously find evidence of significant economies of scale in delivery”<sup>43</sup>. Phillipa Marks, summarising the results of a NERA study concludes that “though there is not universal agreement, there is a broad consensus that the letters business has scale economies and a cost elasticity between 0.6 and 0.8. That is, a ten per cent volume increase raises costs 6-8 per cent”.<sup>44</sup>

Consistent with this view of economies of scale in delivery, the costs of final delivery are a smaller proportion of total average costs in the US, where the volume of mail handled is so much larger (93 per cent of all possible stops receive mail every day) and the number of items delivered at each address is significantly higher than in Europe. In a study by Cohen and Chu<sup>45</sup>, street delivery was found to account for only around 20 per cent of total costs though it has been calculated that if mail volumes were one third of the current level, this would increase to over 40 per cent. This is consistent with data from the US which suggests that a ten per cent increase in volume would be accompanied by a 3-4 per cent increase in costs.<sup>46</sup>

Although there appear to be economies of scale in letter mail, there appear to be no significant economies of scale in the delivery of express services, registered mail or larger parcels and packages.

For *express services*, the time deadline for delivery is short relative to the time required to merely transport the goods between the two points, and the postal firm cannot take advantage of economies of density in delivery. Physically visiting a number of locations, even locations in a small geographic area, would simply take too long. In the limit, the delivery firm cannot afford to visit *any* other delivery points. In effect, the delivery firm is offering “point-to-point” services and cannot exploit at all the economies of scale from a dense delivery “network”. The economies of scale in point-to-point delivery are limited or non-existent. An increase in the volume of traffic has to be met by a proportionate increase in the number of delivery journeys.

The argument in the case of *parcel services* is similar. The density of parcel deliveries on a given day is typically too low to take full advantage of economies of scale and scope. Parcel customers are typically willing to pay for faster delivery. In effect, parcel services are the equivalent of express services for a lower-volume category of good.

This analysis explains why, for example, there is no natural monopoly in other forms of delivery services in the metropolitan areas, such as firms which provide services for the delivery of pizza, groceries

or furniture. In each case the goods in question are sufficiently time sensitive and of a sufficiently low volume that delivery cannot wait until a sufficiently dense delivery route can be found.

There are two other reasons why the economies of scale and scope are weaker in parcel services. The first is that the size of parcels is such that the capacity of the delivery unit (mail bag or mail van) is reached much sooner. For even low volumes of parcel deliveries, a doubling of the volume would typically require adding additional delivery rounds.

The second reason is that many parcels are (sometimes by definition) too large to fit within a regular letterbox, or to fit through a regular letter-box slot. The delivery of such an item typically requires obtaining the physical presence of the addressee or somebody acting on behalf of the addressee. Registered mail is similar in that the delivery of registered mail requires a signature acknowledging receipt. Obtaining the signature or the physical presence of the addressee takes time. Above a minimum density of deliveries, the cost of obtaining a signature is the most important cost component of delivery, so that an increase in the volume of parcels or registered items to be delivered leads to a roughly proportionate increase in the total cost. As before, above a minimum scale, the economies of scale are insignificant.

### *Conclusion*

To summarise the results of this section, economic studies have found mixed evidence of economies of scale in the activities of transportation and sorting of mail. However economies of scale are present in final delivery. The economies of scale are most pronounced when the mail is deferrable (allowing fewer, higher volume deliveries) and delivery density is high (large number of delivery points per delivery journey) and the economies of scale are weakest (and entry is most likely) when the mail is highly time sensitive (cannot be deferred), and when delivery density is low.<sup>47</sup>

### ***Barriers to entry and the level of competition in postal services***

The presence of economies of scale in components of the postal business does not, in itself, justify regulation, for the threat of entry could still prevent the exercise of market power. This section, therefore, explores the barriers to entry and the possibilities for competition in postal services that might arise in a completely liberalised postal market (and in the absence of further regulatory interventions such as regulated access to the incumbent's final delivery network).

Even in the absence of access to the incumbent's delivery network, it is likely that some important forms of competition would emerge in at least some postal markets. To begin with, there is important competition from products offered in neighbouring markets:

- (a) First, and most importantly, in the absence of regulatory constraints it seems very likely that express mail firms would offer express services at prices which compete more closely with current standard rates for letter mail. The possibility of substituting for express mail is likely to act as an important discipline on prices for at least some categories of first-class mail.
- (b) Second, as emphasised earlier, postal services face competition from a variety of forms of telecommunications such as phone, fax, email and electronic commerce. Over time, there is a strong prospect that these alternatives will further erode at least some components of conventional mail.

- (c) Third, the incumbent operator faces competition from new entrants not offering end-to-end services. For example, new entrants may not offer final delivery to the doorstep of the recipient. Indeed, “this type of ‘doorstep delivery’ which characterises contemporary postal service is only a relatively recent innovation: in the past, mail recipients were expected to collect their mail from the post office”<sup>48</sup>. Even today some consumers maintain a “post office box” within a local post office to which they must go to collect their mail. If the post office box is located in a frequently visited location (such as the local supermarket), the consumer can, in essence, take advantage of his or her own economies of scope in the final delivery of the mail to the home.
- (d) Fourth, the incumbent faces competition from new entrants offering differentiated services. Even in the presence of economies of scale, two or more firms can be supported if they offer a product which is sufficiently differentiated from the perspective of consumers. For example, delivery firms might distinguish themselves on the basis of the timing of the delivery round. Given a sufficient volume of mail, a firm which offers a morning delivery might, in certain circumstances, offer a product sufficiently distinct from a firm offering an evening round as to support both firms.<sup>49</sup>

In addition, barriers to de novo entry into postal services are not unduly high. Much of the new investment required is not sunk. Sidak and Spulber note that in the context of Canada:

Canada Post’s capital consists of buildings, vehicles, and sorting equipment. The buildings, which often are leased rather than owned, can be put to other uses and are not tied to any particular customer location. Vehicles are obviously mobile assets. The services of sorting equipment, while specialised, are not tied to a particular customer, for they can be transferred across market simply by transporting the items to be sorted to and from different locations. Those assets, such as sorting equipment and vehicles, have relatively short economic lives — unlike transmission facilities [in other network industries] — and thus do not represent an insurmountable barrier to entry. Therefore, sunk costs are not large in the postal services industry.<sup>50</sup>

Perhaps the most significant sunk investment for a new entrant into postal services is investment in raising customer awareness, reputation and brand-name recognition. The Competition Bureau of Canada has in one case decided that, at least in the case of the express mail market, these costs are not a significant barrier to entry:

[T]he investment required to enter the small parcel express business on a regional basis is modest, and generally recoverable on exit from the market. In contrast, de novo entry as a full-service, national courier requires incurring substantial costs, such as the establishment of a track and trace system, a substantial delivery network and a brand reputation. While the de novo entry costs may be substantial, recent evidence suggests that they do not constitute a critical impediment to entry.<sup>51</sup>

Since barriers to entry are relatively low in many postal markets, there may be a real threat of new entry from competitors seeking to take the entire market:

- (a) First, and most importantly, there may be a real threat of entry into regular mail delivery from existing carriers such as express mail or parcel carriers.<sup>52</sup>

- (b) Furthermore, there may be a threat of entry from neighbouring postal operators. Although economies of scale may lead to only one mail delivery company in each neighbourhood, there are no economic reasons why one postal company should deliver in many such neighbourhoods. Competition is likely to take place on the boundaries of such regions.
- (c) Last, there may be a real threat of new entry from existing non-postal delivery firms who already have a dense, regular delivery network (such as those firms that deliver advertising or newspapers). Indeed, especially in rural areas it is not uncommon to find mail deliveries combined with other transport services, such as passenger or freight transport.

Some idea of the potential for entry can be obtained through observing the experience of countries which have deregulated permanently or temporarily. In New Zealand, after 8 months of complete liberalisation, 17 new postal operators have registered (their combined market share is currently relatively small). During a strike of Royal Mail workers in the UK in 1971, the government temporarily eliminated the monopoly of Royal Mail and allowed private carriers to process letters under a license regime. The number of licensed carriers during that episode reached 562.<sup>53</sup>

### *Conclusion*

In summary, in the absence of any additional regulatory rules ensuring access by competitors to an incumbent's delivery network, would an effective level of competition emerge in postal services? The analysis above suggests that, despite the presence of significant economies of scope in delivery of certain mail items, the other characteristics of this sector are such that a certain level of competition can be expected to emerge. In particular, significant competition could be expected to emerge in express services, in the delivery of parcels and in some other, probably urban, letter delivery. Furthermore, the absence of significant sunk costs suggests that the threat of new entry will provide some discipline on the ability of incumbent operators to exercise market power. This entry is particularly a threat from firms operating in neighbouring product or geographic markets — in particular, from express, parcel and other delivery firms already delivering in the region and from delivery firms operating in adjacent regions. Bishop et al summarise the situation as follows:

The technological characteristics of many parts of the postal service enable competition to function fully: returns to scale are not too steep in a number of activities (transportation, sorting, and to some extent collection), and the 'unbundling' of services previously performed by a vertically-integrated monopolist does not seem to generate significant diseconomies of scope. The only part of the postal service where the presence of high returns to scale may remain an issue is the regular (daily) doorstep delivery of mail. Nonetheless, experience underway in a number of countries suggests it may be possible to introduce innovations in delivery that exploit economies of scope between letter delivery and delivery of other items, allowing competitors to reach the minimum efficient scale and thus making it possible to sustain a competitive delivery service. There is therefore some uncertainty as to whether street delivery constitutes a natural monopoly and the extent to which entry can be viable and efficient because of economies of scope.<sup>54</sup>

In a completely liberalised postal market a certain level of competition in postal services can be expected to emerge. In some countries, it is possible that this level of competition will be adequate. However, it nevertheless remains possible that the overall level of competition could be materially enhanced through further sector-specific regulatory interventions. These are therefore explored in the next section.

### *The Regulation of access to final delivery services*

The above analysis has suggested that the postal sector resembles many other network industries (telecommunications, electricity and railways all provide good examples) in that there is a single component which has natural monopoly properties and the company which operates the natural monopoly component also competes in upstream or downstream sectors which are potentially competitive. This is known as a “vertically-integrated natural monopoly”.

In the context of a vertically-integrated natural monopoly, policy-makers are essentially faced with three broad public policy choices:<sup>55</sup>

- (a) regulate the vertically-integrated entity as an entirety (e.g., most incumbent postal operators, many railway companies, AT&T in the US prior to divestiture);
- (b) separate out the natural monopoly component into a separate company, subject it to line of business restrictions to prevent reintegration and allow competition in the competitive segments (e.g., the Bell Operating Companies in the US post-divestiture, the railroad industry in the UK and some other countries); or
- (c) introduce competition in the competitive segments, while retaining a vertically-integrated incumbent, which will require regulating the terms and conditions of access to the natural monopoly component (examples include the postal sector in New Zealand, the telecommunications sector in many countries and the railroad sector in the US).

In addition, in each of the above approaches, a degree of horizontal separation of the integrated entity (or the natural monopoly component) may be appropriate (the separation of AT&T’s local telephone company into seven regional Bell Operating Companies post-divestiture is an example).

For decades the predominant form of regulation in industries with a natural monopoly component was (and still is, in the case of the postal sector) approach (a) (regulation of a vertically-integrated monolith) often accompanied by some form of state ownership. The experience of the past two decades of deregulation has shown, however, that it is often preferable to concentrate regulation directly on the natural monopoly component. Doing so simultaneously enhances the scope for competition and diminishes the role for regulation, targeting regulatory intervention (in principle) to the source of the underlying market failure.

Approach (b), (vertical separation) was applied to the US telecomms industry as a result of the 1983 *AT&T* decision and has also been adopted in the rail sector in many countries (the rail infrastructure has been separated from the operation of rolling stock). Approach (b) has the advantage of being analytically tidy and relatively easy to administer. Once the separation is undertaken, the natural monopoly firm has (in principle) incentives to provide access to all-comers. There are, however, two important drawbacks of this approach: the loss of economies of scope from the separation and the difficulty and arbitrariness of drawing a clear line around the “natural monopoly” component of the business which remains meaningful over time.

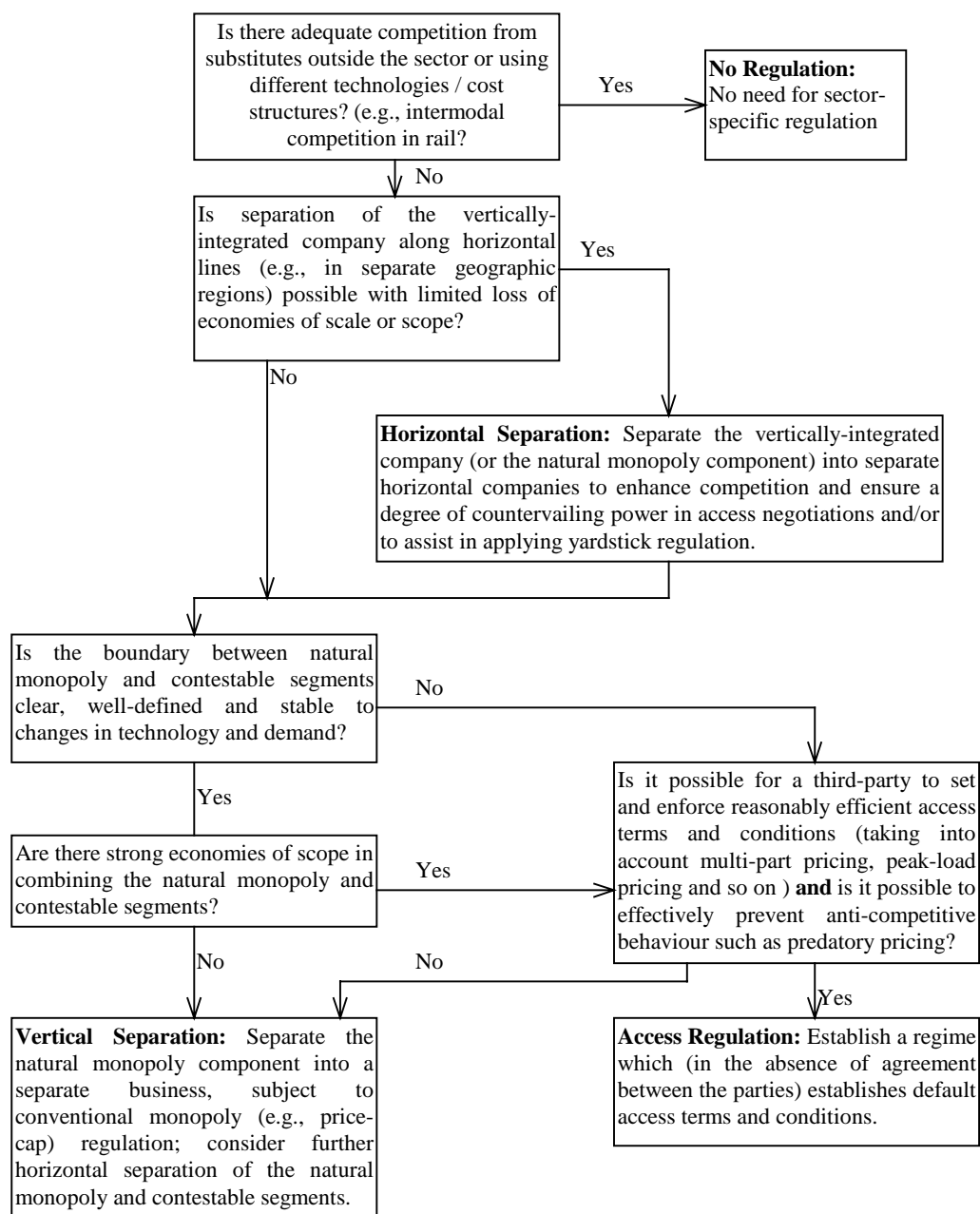
Approach (c) (regulation of access), in contrast, does not involve the separation of an incumbent firm and therefore does not involve the loss of economies of scope. In principle, it allows access to be targeted to just those services for which there is a natural monopoly element. This approach also has its drawbacks. In particular, it can be difficult to administer. The incumbent has strong incentives to hinder

the development of competition, obstructing access through whatever legal or administrative means are available.

There are pros and cons of each approach. Which structure is appropriate will depend upon the circumstances of each industry (and to an extent, each country). As a general principle, at the risk of over-generalisation, approach (a) is likely to be preferable where the natural monopoly elements are widespread throughout the industry, permitting little scope for competition. Approach (b) is likely to be preferable where the natural monopoly elements are a large proportion of the overall business, the efficient access terms and conditions are difficult for an outside party to set appropriately and economies of scope are limited. Approach (c) is likely to be preferable when the natural monopoly components are small relative to the overall business, the efficient access terms and conditions are straightforward to determine and administer and economies of scope are strong.

Figure 5 sets out a general guide for assessing the appropriate regulatory intervention in industries which feature a vertically-integrated natural monopoly:

**Figure 5: Guide For Assessment Of Structural and Regulatory Interventions In Industries with A Vertically-Integrated Natural Monopoly Structure**



The application to the postal sector is straightforward. Our analysis of the economies of scale and scope above showed that there is scope for competition in many of the activities comprising the postal sector chain of production. Economies of scale appear to be important in final delivery. This suggests that if those economies are great enough that final delivery service is a natural monopoly, protected by entry barriers, then we should choose either approach (b) or (c). Under approach (b), the final delivery activity would be separated off from the remainder of the postal business and operated as a stand-alone business in its own right, accepting mail items from all mail carriers. Under approach (c), the incumbent postal carrier would remain vertically-integrated, but would be under an obligation to accept, for final delivery, mail items from competing mail carriers.

Of course, the final delivery business need not itself be an integrated entity — it could be provided by many firms, with a single firm operating in each geographic region. Some commentators have argued that the US Postal Service should be divided into regional firms akin to the seven regional Bell operating companies formed by the AT&T breakup.<sup>56</sup> Indeed, postal delivery might be allocated to the responsibility of local authorities.

The drawback of such vertical separation is that there are certain benefits arising from combining all mail functions from collection to final delivery in a single operator. At the least, such integration facilitates the development of new, innovative postal products which may, for example, require a slightly different form of final delivery.

The alternative is a regime under which competitors have access to the incumbent's final delivery network at regulated terms and conditions. Here, the most important questions to arise are exactly what services should be required to be made available and at what terms and conditions?

Economically speaking, an incumbent should only be required to provide access to services which the entrant will never be able to duplicate profitably. Access should not be required for competitive services such as express mail or parcel delivery. Nor, arguably, should access be mandated to services, such as delivery of mail to large corporations, for which the economies of scale are relatively unimportant.

There is a large and growing literature on the appropriate access prices to charge in such circumstances. Economic theory suggests that the appropriate access price falls within a range between the average incremental cost for the final delivery service and the average stand-alone cost. In addition, it is widely accepted that the access price should not be so high as to prevent the ability of an equally-efficient entrant from competing in the competitive parts of the market (in other words the access price should at least leave the entrant a margin in which to compete, equal to the average incremental cost of providing the competitive service).

In general, the higher the access price, the less the ability of the entrant to compete on the basis of price with the incumbent. Increasingly, in telecommunications, the convention is to choose access prices at the lower end of the feasible range — that is, closer to average incremental cost. Such prices heighten the price competition between the incumbent and the new entrant and therefore yield a secondary benefit of limiting the need for regulatory oversight of the incumbent's retail prices.

The structure of the access prices should reflect the cost structure of the service for which access is being provided. If final delivery features (as is likely) a moderately high fixed cost and a very low marginal cost, the access prices should also feature a two-part tariff with a moderately high fixed cost and a very low marginal cost. Finally, where there are important capacity constraints (as may occur at peak seasons for mail delivery) the access charges should reflect an element of "peak-load" pricing, that is, pricing to reflect the need to fully cover the costs of additional capacity at peak times.<sup>57</sup>

We note that several countries have already explicitly introduced such an access regime into the regulation of the postal sector. The new German Postal Act explicitly requires postal operators in a dominant position to separately "provide parts of its overall conveyance" to competitors.<sup>58</sup> In New Zealand new entrants have successfully negotiated interconnection arrangements with the incumbent, relying on section 36 of New Zealand's competition law (which related to "abuse of a dominant position").



### *Terminal Dues*

Before concluding the discussion on access regulation it is worth noting that a form of access arrangements already exist in the postal sector, in the form of arrangements for exchange of mail between national postal operators. Under the “terminal dues” system postal operators agree to deliver mail which originates in other countries for a fee related to the weight and/or volume of mail carried. From a theoretical perspective, these terminal dues should be set in the same manner as access charges, based on the principles set out above — indeed there is no theoretical reason to distinguish between mail which originates from competing domestic carriers and mail which originates with foreign carriers.

Because transportation costs are a very small proportion of total mailing costs (around two per cent according to Figure 2) a situation can arise when it is cost-effective for a company to carry its mail to a neighbouring country to be posted for delivery back to the originating country.<sup>59</sup> Provided the terminal dues are not less than the costs incurred in delivery, this form of competition, known as “re-mail” can act as an important discipline on domestic mail prices, even in the absence of further domestic liberalisation and therefore should not be prevented.<sup>60</sup> In some cases, the originating company need not even physically carry the mail, it can be sent electronically to be printed and posted in the neighbouring country.

### *Conclusion*

In summary, the economic evidence suggests that there may be economies of scale in the postal sector, particularly in the provision of final delivery. It is not clear whether this alone is a fundamental barrier to competition — barriers to entry are low and there is a significant amount of competition from close substitutes. In any case, competition can be introduced through straightforward regulatory action similar to that in other sectors to ensure that competitors have access to the final delivery service of the incumbent.<sup>61</sup>

### *Meeting Non-Commercial Service Obligations*

The previous sections have addressed the question of the appropriate regulatory regime for postal services in the absence of any sector-specific constraints on public policy in this area. In practice, however, it is common to find that there are various public policy objectives for this sector which may require the provision of services below cost. This section therefore explores whether the presence of such non-commercial service obligations is an obstacle to the introduction of competition in postal services.

As with most other network industries, the cost of providing postal services will differ from region to region and according to the service provided. It is generally assumed, for example, that the higher volumes and densities involved make delivery costs lower in urban areas than in rural areas.<sup>62</sup> While providing a daily door-to-door service may be profitable in urban areas, therefore, the lower volumes of mail and higher transportation costs involved may render the same service, at the same price, unprofitable in rural areas. It is assumed, therefore, that postal operators would, if they were able, respond by either charging more<sup>63</sup> in rural areas, offering a lower quality of service (for example, delivering less frequently or not offering a doorstep delivery service), or withdrawing service entirely.

Most OECD countries therefore restrict the ability of incumbent mail operators to charge more or to offer lower quality service in rural areas. The most common form of this restriction is simply the requirement to provide a (more or less) geographically uniform service — charging the same price and offering the same level of service whatever the geographic location of the customer.

No difference has usually been allowed with respect to the geographical location of delivery: prices have been generally uniform relative to destination; nor have they been adjusted to reflect (within country) distances, or the density of traffic at the origin, at the destination, or on a particular route. It is interesting that while uniform geographic pricing has been the orthodoxy for the past many years, this has not been always so: when the uniform tariff was imposed in Britain in 1840, the suggestion was that there should instead be a two-tier system based on density and the additional costs of delivery outside the major post towns (that is, pricing differently for high-density areas and the countryside). The reasons for uniformity have been mostly social and political...<sup>64</sup>

*Is Regulation To Achieve Geographic Uniformity Desirable or Necessary?*

Before analysing the competition effects of these regulatory requirements we first make four observations. First, regulation that ensures universal service will often be a result of regulatory requirements (such as uniform geographic pricing) that force a range of services to be priced below cost. Second, strict geographic uniformity may be economically inefficient. It may be more efficient to allow prices to differ to reflect underlying costs. Third, it is far from clear that in a deregulated market, the differences in prices and service between high-cost and low-cost areas would be unacceptable or even large. Fourth, if the price/quality differences that resulted in a deregulated market were found to be unacceptably large they could be addressed at a minimum distortion to the overall market, through direct transfers to dwellers in high-cost areas.

Whenever regulation systematically holds prices below cost, some form of additional regulatory requirement is necessary to induce service to be maintained. Regulatory requirements to ensure “universal service” may therefore be a consequence of regulatory controls on price in high-cost areas. Elimination of the restraints on uniform pricing may eliminate the need to regulate to ensure universal service.

In addition, distorting economic prices typically distorts the allocation of resources. Geographically uniform pricing sends inappropriate signals to firms and individuals making location decisions. Firms are inefficiently induced to move away from low-cost areas and are subsidised to locate in high-cost areas. Prices will, in general, not distort location decisions only when relative prices correctly reflect differences in the underlying costs.

In practice, many countries do not insist on a strict uniform price and quality of service, but instead allow a higher price or lower quality service in rural areas. Some countries, such as Spain, have long allowed lower prices for local (intra-city) delivery. The postal legislation in Australia only requires Australia Post to provide a “reasonable standard” of letter service and “reasonable access” to postal services, leaving it to the discretion of Australia Post to determine what is a reasonable standard and reasonable access.<sup>65</sup> The EC postal directive does not require uniform prices but merely that prices in high-cost areas be “affordable”. Virtually all countries, of course, allow substantial discounts for bulk and pre-sorted mail. Rather than strict uniformity, therefore, a lesser, and more appropriate, requirement might be that the price and quality differences between urban and rural dwellers not be “too large”.<sup>66</sup>

A fully liberalised postal sector would almost certainly provide some form of service in all areas of a country. Just as other businesses move into rural areas to serve the various needs of rural customers, postal operators could also be expected to do so. The service quality may not be the same as in urban areas, and the price may be higher, but nevertheless service would be provided:

Our experience with the deregulation of trucking and airlines suggests that fears of significant reductions in rural service due to postal deregulation are probably unfounded. Some small cities

are no longer served by large jets, but commuter airlines have used smaller planes to serve small communities at far lower costs. Thousands of new companies have gone into trucking, and as a result trucking service to rural areas has improved. If we can obtain airline and trucking service throughout the country without a government monopoly, competition can also work for letter delivery. The configuration of service may change somewhat, but ... everyone would have access to affordable mail delivery.<sup>67</sup>

Furthermore, it is not even necessarily the case that the price in rural areas would be higher than in urban areas. In a liberalised market, the decision to adopt a single national price is a product and marketing decision which may be profitable on strictly commercial grounds such as brand recognition or reducing the transactions costs for customers. These benefits may outweigh the costs of providing some services at a loss. The evidence for this is that private firms can and do provide universal service:

[I]n the United States private couriers have adopted uniform pricing for delivery anywhere within the 48 contiguous states. Courier companies do compete on service and price (e.g., negotiated quantity discounts) but rates quoted are uniform for delivery everywhere in the 48 states, including rural areas somewhat distant from airports utilized by the couriers. ... Courier companies do not make money on every single delivery. Every day, deliveries to some addressees are probably "cross-subsidised". Yet private courier companies make no attempt to revise their pricing structure to earn a profit on each and every delivery. Instead, the cross-subsidised deliveries can be likened to 'loss leaders' which couriers use to attract other, highly profitable business.<sup>68</sup>

Even if, in a deregulated market, private firms did charge significantly more (or offer significantly lower quality) in rural areas, this could be addressed through public policy action without distortion to the postal market itself. In particular, the differences in postal quality could be offset through *a direct subsidy* to rural dwellers, to allow them to purchase the postal services that they wish.

Parliament could send postal subsidies directly to consumers in rural areas. Those subsidies could even be means-tested, if one's low income were considered to be more important than one's rural address. Those customers would then be billed directly by the carrier of last resort for the high cost of what might be called 'terminating access' ... The lower basic stamp price that would result would not include the surcharge for delivery to costly, remote areas.<sup>69</sup>

To summarise, regulation to enforce geographically uniform price and quality is inefficient in that it distorts resource allocation decisions; forces other regulation, in the form of universal service obligations; and may be entirely unnecessary. A deregulated market would likely provide service in all areas at price/quality differentials that are not necessarily unacceptably large. If the resulting price/quality differentials were judged to be too large, they could be addressed without distortion to competition and prices through direct subsidies to rural dwellers.

#### *Providing Below-Cost Services Without Distorting Competition*

For the remainder of this section we will assume that the state (for whatever reason) has the objective of controlling the prices of some services so that they can only be provided below cost.

The effects on competition from such price-controls derive from two sources: the means by which the funds are raised to pay for the below-cost services and the potential for re-directing those funds to behave anti-competitively in some competitive markets. We consider first the effect on competition of

the means by which the funds are raised to pay for the below-cost services. The potential for re-directing the funds to behave anti-competitively is addressed in the following section of the paper.

It is very common for the revenues which finance these below-cost services to be obtained by internal cross-subsidisation — that is, by simply raising prices for other services. Maintaining prices above costs invites new entry. Such new entry is often criticised as cream skimming. If the cross-subsidy is to be maintained, entry must be restricted.

Where cross-subsidisation is used as a means for financing below-cost services there are always public policy demands to limit competition simply because competition limits the ability to maintain the cross-subsidies. Or, more succinctly: “Cross-subsidy is the enemy of competition because competition is the enemy of cross-subsidy”.<sup>70</sup> As we have seen earlier, the desire to prevent cream-skimming and to preserve internal cross-subsidisation is *the* primary justification for regulatory barriers to competition in postal services.<sup>71</sup>

Other mechanisms for financing below cost services have less harmful effects on competition. For example, the obligation could be funded through general tax revenues, a specific postal sector tax (such as a tax on the price of a letter-mail stamp), a tax on firms competing in the postal sector (such as a tax on revenues or on access charges) or a tax on the high-cost customers themselves.<sup>72</sup> Some of these alternatives have been or are being implemented in the postal sector. In the new German Postal Act, for example, the cost of universal service is shared with the new entrants through a levy charged on all transactions.<sup>73</sup>

Whatever the precise mechanism involved, if the funds for providing the non-commercial service are raised in ways that do not require internal cross-subsidisation, it is no longer necessary to maintain “reserved” services. Competition can be allowed to enter all aspects of the postal sector.

The provision of a distinct, independent mechanism for funding non-commercial services does not, alone, resolve all of the competition issues arising from non-commercial services. As discussed further in the next section, as long as the costs incurred by the incumbent postal operator remain uncertain and as long as the funds are paid directly to the incumbent postal operator, it is not possible to be sure that the incumbent postal operator will not use the funds to cross-subsidise low prices in other competitive services, as a deterrent to competition.<sup>74</sup> A new entrant may be unwilling to compete against an incumbent who can divert some of the funds received to support the non-commercial service to subsidise competitive services.

The problem of ensuring that the incumbent does not misdirect funds intended for the provision of universal service to other anti-competitive purposes is very closely related to the problem of controlling anti-competitive behaviour in general and is therefore taken up further in the following section. The key results of that section are that although, in principle, anti-competitive cross-subsidisation could be controlled a comparison of revenues and incremental cost for the competitive services, in practice this is not practical and suffers from subjectivity and indeterminacy. In practice the only long-term sound mechanisms for eliminating the potential for anti-competitive cross-subsidisation involve eliminating the source of the funds for the cross-subsidisation.

In the context of non-commercial service obligations, there are two methods for ensuring that the incumbent cannot redirect the universal service funds to support competitive services. The first involves tendering for the provision of the non-commercial services. The second involves dividing the incumbent

into separate companies supplying competitive and non-competitive services (where non-competitive means reserved services and non-commercial services).

Tendering for the non-commercial services ensures that the funding be limited to the minimum necessary to support the non-commercial services, so that none is “left over” to fund anti-competitive behaviour.

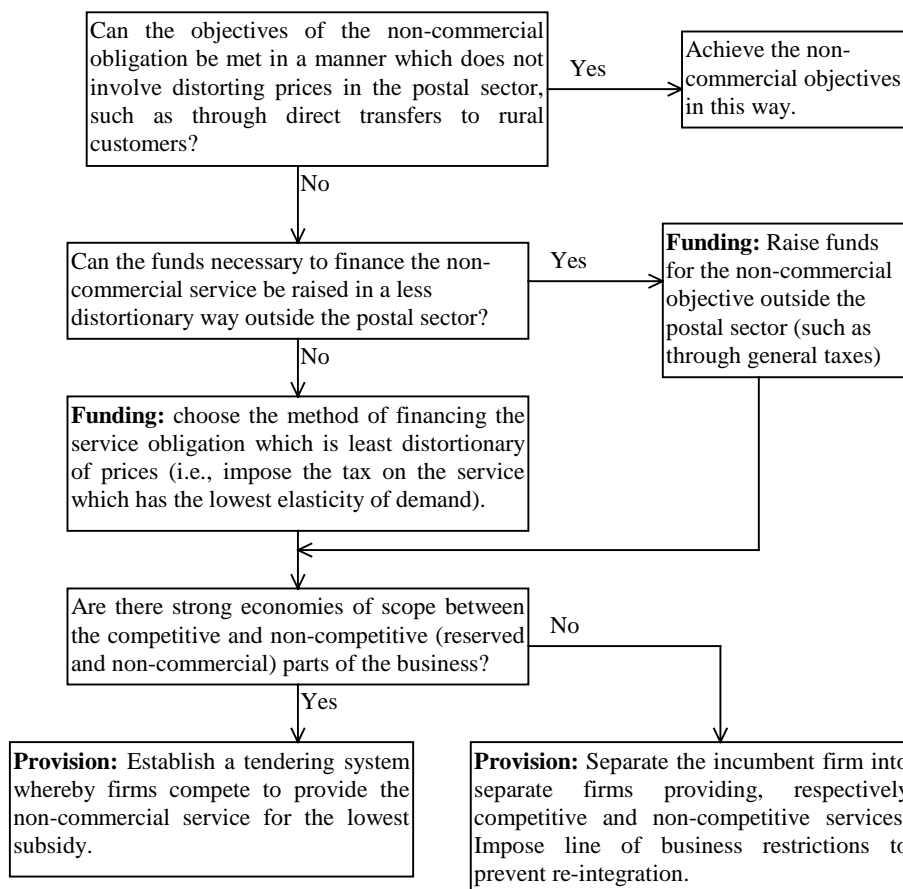
For example, bids for delivery of mail could be solicited for sparsely-settled rural areas. Individuals could bid for a single route, or offer to provide delivery to all addressees within a specified area covered by several routes, and they would be allowed to reorganise existing routes in any way they saw fit so long as they effected delivery to all existing mailboxes. They would also bid for a subsidy. Bidders who offer to provide area-wide delivery would also be allowed to engage in other activities in addition to the delivery of mail, so long as they achieved satisfactory mail delivery as specified in the bid. This type of bidding arrangement would enable the market mechanism to determine the lowest-cost way of delivering mail. Allowing bidders to engage in complementary activities would reduce joint costs, as several possibilities for wider economies of scope would open up. For example, mail delivery might be combined with delivery for local merchants. Alternatively, independent operators might contract with various government agencies to provide limited rural social services.<sup>75</sup>

The potential for cross-subsidising competitive activities from funding intended for non-commercial activities can also be eliminated simply through separating out the competitive services from the incumbent to operate as a separate, independent, company. Cut off from a source of funds for cross-subsidisation, such a firm could no longer engage in distortionary pricing. There have, in fact, been calls to impose line-of-business restraints on incumbent postal operators, restricting them to the non-competitive parts of the postal sector precisely for this purpose. The largest draw-back of this approach is the loss of economies of scope arising from joint operation of the competitive and non-competitive parts of the business.

These methods of handling non-commercial service obligations are not new. Mechanisms for the funding of and tendering for non-commercial services have been used successfully in the deregulation of other industries. Many countries have such systems in place in the telecommunications industry. A similar system was implemented as part of the airline deregulation of the US.<sup>76</sup>

Figure 6 provides a guide of the line of reasoning to be followed in assessing the handling of non-commercial service obligations.

**Figure 6: Guide for Handling Non-Commercial Service Obligations**



*Conclusion*

In conclusion, the existence of a non-commercial service obligation need not hinder the development of competition. From an efficiency perspective, since all distortions of competitive prices lead to a loss of efficiency, the first best alternative is to seek to meet the objectives underlying the non-commercial obligation through other mechanisms outside the postal sector. Where that is not possible, non-commercial obligations can be addressed, with less distortion to competition, through the establishment of an explicit funding scheme and a scheme for directing these subsidies to the firm who can provide the non-commercial obligation at least cost and without the risk of cross-subsidising competitive services.

**IV. Controlling Anti-Competitive Behaviour In The Postal Sector**

The vast majority of incumbent postal operators enjoy the benefits of significant restrictions on competition and subsidies of various kinds. These same postal operators also compete in competitive markets with private operators, including both postal markets (particularly express mail and parcels) and non-postal markets (such as financial services and retailing). A major recent concern of competition authorities therefore has been the control of potentially anti-competitive behaviour by the dominant incumbent postal operator.<sup>77</sup>

We can immediately distinguish one form of anti-competitive behaviour that arises when competitors need access to “essential” services offered by a vertically-integrated incumbent (such as final delivery) in order to offer competing services. In such cases, the incumbent may restrict competition through refusal to deal, or offering access at terms and conditions which are unfavourable to the entrant — in particular, by offering access at terms and conditions which are unfavourable relative to the terms and conditions at which the incumbent offers the complete end-to-end service to its own customers, leaving the entrant too small a margin in which to compete. The control of such anti-competitive behaviour forms part of the problem of the regulation of access, which was discussed in the previous section. For the purposes of this section, we will put this form of anti-competitive behaviour to one side.

### *Definition of anti-competitive cross-subsidisation*

We will therefore focus on the case where the incumbent and the entrant provide competing services. An incumbent may restrict or prevent the development of competition in the competitive services with a variety of practices, such as exclusive dealing arrangements, loyalty discounts or rebates, volume discounts, targeted price cutting, ‘bundling’ (i.e, linking the purchase of some of the incumbent’s services to the purchase of other services) or discounts for purchasing combinations of services from the incumbent.<sup>78</sup> For the purposes of detecting anti-competitive behaviour all of these actions are equivalent to charging a lower price on the competitive service.<sup>79</sup>

We will define a price to be “distortionary” or “predatory” if and only if it is below some appropriate measure of cost. The appropriate measure of cost will be discussed further below. A price is not distortionary simply on account of being low, or lower than another price. Price discrimination (differences in prices for the same, or closely related services, that are not directly related to differences in costs) is not, in itself, economically inefficient. Indeed, in general it is efficient for the incumbent to lower prices for one service or in one geographic region to compete with the entrant, provided the incumbent does not charge below the relevant measure of cost.

In the usual case when the incumbent firm is strictly profit-maximising, pricing below cost is only profitable if it induces a competitor to leave the market and/or raises barriers to entry, enhancing the ability of the incumbent to raise or maintain prices above cost in the future. Interestingly, the ability of the incumbent to engage in anti-competitive cross-subsidisation may be assisted through regulation. Under both price-cap and rate-of-return regulation, the incumbent firm may be able to recover the costs of pricing below cost in the competitive market by raising prices in the protected markets. If so, the incumbent’s threat to engage in predatory pricing is much more credible than in the absence of regulation.<sup>80</sup>

In practice the vast majority of incumbent postal operators are state-owned. The precise objectives of state-owned firms are contested, and probably differ according to the governance arrangements for state-owned firms in each country, but generally-speaking profit-maximisation is typically merely one amongst a number of objectives pursued by such firms. Where a firm, for whatever reason, does not seek to strictly maximise profits, it may be able to sustain prices below cost indefinitely, supported by either prices above cost in some other segment or by some other source of funds.

It is convenient, for the purposes of this paper, to label pricing below cost as “distortionary”.<sup>81</sup> “Predatory” pricing is a temporary form of distortionary pricing. Even where distortionary pricing does not lead to prices subsequently being raised above cost, it may still be of public policy concern, because of the effect on productive efficiency. Distortionary pricing might induce a more efficient firm to leave or to not enter the competitive market.

### ***Incremental Cost, Stand-Alone Cost and Fully-Distributed Cost***

What is the appropriate measure of cost to use in detecting distortionary pricing? In this context, it is useful to recall several insights from the economic theory of industries with economies of scale and scope.

In an industry with substantial “joint and common” costs, it is simply not possible to attribute all of the costs of an enterprise to its outputs in a manner which is economically meaningful. Despite being heavily criticised by economists over the years, the concept of fully distributed costs continues to be used in practice. As an example, the EC Competition Notice explains that prices will not be found to be distortionary when the price exceeds the “average total costs of provision” defined as: “the direct costs plus an appropriate proportion of the common and overhead costs of the operator. Objective criteria such as volumes, time (labour) usage, or intensity of usage, should be used to determine the appropriate criteria”.<sup>82</sup> This is an example of what is known as the fully-distributed cost methodology.

Unfortunately, cost figures derived from a fully-distributed cost methodology have no economic value. In a context of economies of scope, there is not a single relevant notion of cost, but two distinct relevant cost concepts: the incremental cost of the service and the stand-alone cost of the service. The stand-alone cost is always larger than the incremental cost. In the absence of joint and common costs, these two costs are the same. The fully-distributed cost concept is unhelpful precisely because it is neither equal to the incremental cost nor the stand-alone cost. The fully-distributed cost will typically be higher than incremental cost, and therefore will be unreliable in detecting distortionary pricing. On the other hand, the fully-distributed cost will be lower than stand-alone cost and therefore will not reliably indicate whether or not a service is earning economic rent.

A firm which breaks even and is pricing below average incremental cost on one service, or group of services *must* be pricing above stand-alone cost on some other services. (This is demonstrated in the Annex). Pricing above stand-alone cost is not possible in a fully competitive market. Therefore, distortionary pricing requires some constraints on competition. Conversely, eliminating constraints on competition (provided the firm is breaking even and does not have access to other funds) will eliminate distortionary pricing. Conversely, a firm which prices above stand-alone cost on some services and breaks even *must* be pricing below cost on some services.

In principle, the presence of anti-competitive cross-subsidisation could be detected through an accounting separation and disclosure requirement which required disclosure of both the accounts of the entire business and the separate accounts of the competitive parts of the enterprise on the basis of incremental cost. The competitive parts of the business excludes the reserved areas and those services which are non-commercial (perhaps due to universal service obligations).

As an aside, we may note that the disclosure requirements of the EC postal directive are flawed. The EC postal directive requires disclosure of the accounts of the reserved and non-reserved areas separately. As the Annex shows, a firm may be earning no more than its stand-alone costs on the reserved services, but still be charging less than incremental cost on competitive services. In other words, the EC requirements provide no guarantee of detecting and preventing distortionary pricing.



Unfortunately, there are several reasons to believe that accounting separation and disclosure will not detect and prevent distortionary pricing:

- First, the boundary between the competitive and the non-competitive areas is difficult to define and changes over time as technology and tastes change. Any regulatory requirement is therefore likely to be out-of-date and over- or under-inclusive.
- Second, and more importantly, the boundary between competitive and non-competitive areas is highly unlikely to correspond to functional or divisional boundaries within the incumbent firm. As a result the disclosure will correspond to an “artificial” firm which engages in numerous transactions and shares significant costs with the remainder of the firm. This provides substantial opportunity for the incumbent firm to manipulate the costs and revenues disclosed to its own interests.
- Third, the appropriate relevant cost measure is the long-run cost of a firm using the most efficient technology and subject to all the full normal costs of a private firm (i.e., facing a full, normal cost of capital and without any other special treatment such as tax advantages). This cost is typically not discernible from the accounts of the incumbent operator.
- Fourth, the determination of incremental costs and stand-alone costs (although in principle substantially less free from arbitrary judgment than the determination of fully-distributed costs) is nevertheless often difficult and subjective. For example, if the incumbent postal operator withdrew from serving businesses in the Central Business District, how much cost would it save? Presumably fewer delivery people would be needed, but how many fewer? Would it be able to cope with smaller distribution centres, saving on accommodation costs? These judgments are often arguable and thereafter subject to manipulation in the interests of the incumbent firm.

As a result of these observations there are sound reasons for doubting the efficacy of accounting disclosure as a policy for the prevention of distortionary pricing.<sup>83</sup> The Competition Bureau of Canada (amongst others) has, in the past, argued exactly these points:<sup>84</sup>

The Director’s “long-standing position [has been] that costing systems can, at best, provide only reasonable approximations of the costs of broad service categories, and are insufficient alone to prevent the cross-subsidisation of competitive services by monopoly service revenues.”<sup>85</sup>

### ***Control of anti-competitive cross-subsidisation***

In practice, the only sound, long-term method of preventing distortionary cross-subsidisation is to eliminate the sources of funding that can be used to finance the cross-subsidisation. The funds used to finance anti-competitive cross-subsidisation could derive from three sources:

- subsidies or funds to offset losses (particular when the incumbent firm faces a “soft budget constraint”);
- funds provided to support non-commercial services of all kinds; or
- prices above costs for services which are protected from competition.

The elimination of anti-competitive cross-subsidisation therefore requires one or more of the following:

- (a) *Elimination of all subsidies or funds to offset losses.* In practice the state may find it impossible to commit to not finance losses as long as the incumbent firm remains state-owned. Therefore, it may be essential to privatise the incumbent firm, i.e., to place the firm under normal commercial conditions including, most importantly, a “hard budget constraint” and a profit-maximisation incentive.<sup>86</sup>
- (b) *Elimination of regulations which preserve certain services from competition,* and the introduction of regulations which reduce barriers to entry (such as the establishment of an access regime).
- (c) *Introduction of controls on funds intended to support non-commercial services.* In particular, introduce mechanisms for tendering for the right to provide the non-commercial services, in order to make transparent the cost of those services. As we noted in the previous section several commentators have argued for just such an approach in the postal sector.
- (d) *Separation of the competitive and the non-competitive businesses.* This makes cross-subsidisation impossible by cutting off the competitive business from the funds deriving either from the reserved area or from funds intended for the non-commercial area. Structural separation of this kind was carried out in the telecommunications industry in the US. Concerns about the potential for cross-subsidisation was one of the principal factors which lead to the divestiture of AT&T. Within the postal sector there have been calls in other countries, such as Canada and Germany<sup>87</sup> to limit the incumbent operator through line-of-business restraints to non-competitive services. Even within the EU there is a recognition that there may arise a need to go beyond simple accounting disclosure in this sector.<sup>88</sup>

### *Conclusion*

In summary, with the growth of competition in the postal sector and the increasing willingness of incumbent companies to compete in all spheres of the postal business, the control of anti-competitive behaviour will continue to be an important issue for competition enforcers. A particularly important form of anti-competitive behaviour involves practices such as bundling, tying and selective discounting. These practices are all economically equivalent to offering a discounted price on the competitive market.

Pricing below incremental cost is not possible without access to funds. These funds can come from subsidies, funds intended for non-commercial services or from reserved services. Although, in principle, accounting disclosure could reveal such behaviour, in practice the difficulties in preventing self-interested manipulation of the disclosed information make such an approach unreliable. In the long run, the only sound mechanisms for eliminating anti-competitive cross-subsidisation require eliminating the source of funding of the anti-competitive behaviour which requires removing reserved areas, structural separation, tendering for the non-commercial services and/or privatisation.

For information, a summary of the regulatory regime in New Zealand is set out in the attached box.

### **The Regulation of Postal Services in New Zealand**

A brief history of the regulatory regime for postal services in New Zealand can be found in the document New Zealand Ministry of Commerce (1998). New Zealand Post, an independent corporate state-owned entity, was formed out of what was then a government department, on 1 April 1987. As set out earlier, this process of corporatisation, even without further liberalisation, had a significant impact on the productivity and profitability of the postal sector.

In 1987 New Zealand Post had a monopoly over the carriage of letters for \$NZ1.75 or less and weighing less than 500 grams. Successive amendments to the legislation reduced the scope of the reserved area to letters under 200 grams and with a price of less than 80 cents. Finally, with effect from 1 April 1998 the New Zealand government completely removed New Zealand Post's statutory monopoly on the carriage of letters. Any company or individual is now legally able to carry out the business of delivering letters so long as the requirements of the legislation are met. The most important requirement is that all persons carrying letters must be registered. An application for registration can be turned down *only* if the person concerned has been convicted of certain crimes. A person is not required to be registered if his or her business relates only to the carriage of items for more than 80 cents.

Importantly, at the time of the deregulation New Zealand Post was made subject to disclosure requirements. The three most important features of the disclosure requirements are the requirement to disclose separate accounts for business which carries letters priced at less than 80 cents and for the remainder of the business (i.e., separate accounts for the previously reserved area and the previously competitive areas); standard terms and conditions for the carriage of letters and any important discounts offered off these standard terms and conditions; and finally, the full details of all access agreements entered into, within 15 working days of the date on which the agreement is reached.

At the time of deregulation New Zealand Post offered two classes of letter mail — 80 cents for overnight delivery and 40 cents for a delay of 2-3 days.

By the end of December 1998, after only 8 months of operation of the new regime, there were 17 registered operators in New Zealand, most of which were small, localised businesses. However, Fastway Post (a subsidiary of Fastway Couriers) is establishing a nationwide network of retail outlets. New Zealand Document Exchange Limited (which had long been providing document exchange services) has begun providing regular deliveries in the Central Business Districts of the main centres for 30 cents. National Mail (New Zealand) Limited, a third company, is also planning to roll out a national delivery service. All three of these companies have negotiated access arrangements with New Zealand Post, currently paying between 37-38.2 cents per item.

New Zealand Post has, of course, responded to this competition. It has established its own entirely new retail network, through petrol stations and retail stores, offering a price of 35 cents for a standard letter.

Postal competition in New Zealand is still very new. Already, however, postal competition looks set to develop to a greater extent than any other country in the OECD. Early indications are that deregulation will lead to lower prices and to new products and services.

## **Conclusion**

Postal services, like telecommunications services, are a key input into virtually every enterprise. Introducing competition in postal services, therefore, has the potential to lead to important improvements in efficiency, productivity and innovation within the postal sector with consequences for overall welfare and growth.

Regulatory restrictions on competition in the postal sector can no longer be justified. Regulatory objectives (such as requirements to provide universal service) can be met without constraints on competition. The experience of deregulation in other sectors and in the postal sector in Sweden and New Zealand demonstrates that deregulation is not necessarily a threat to universal service objectives.

Postal incumbents and new entrants should compete on an equal footing. Exemptions from federal, state or local taxes applying to incumbent postal operators should be abolished, as should other exemptions from standard traffic, customs or liability rules. Similarly, incumbent postal operators should be freed from requirements not applying to private operators, such as a requirement to transport mail on national flag carriers.

Even in a partially or fully liberated market, competition concerns may remain when the incumbent has access to funds that are not available to the entrant. These funds might come from protected services (when the market is not fully liberalised) or from the state (especially in the case of state ownership) or from other sources (such as funds to subsidise universal services). The incumbent may use such funds to engage in anti-competitive distortionary pricing. Effective control of this behaviour will typically require eliminating this source of funds, through further liberalisation, privatisation or structural separation of the competitive and non-competitive parts of the business.

### Annex A:

The purpose of this Annex is to summarise, the main results of the economic theory relating to cross-subsidisation in a context of economies of scale and scope and to demonstrate that simple accounting disclosure of the reserved and non-reserved segments of an incumbent's business (as required by the EC Directive) is not sufficient to prevent anti-competitive cross-subsidisation.

Suppose a firm provides three services A, B, C. Suppose that the cost of providing A, B, C on a stand-alone basis is  $C(A)$ ,  $C(B)$ ,  $C(C)$ ; the cost of providing A,B together on a stand-alone basis is  $C(A,B)$ ,  $C(A,C)$ ,  $C(B,C)$ . The cost of providing all three services is  $C(A,B,C)$ . We may define the incremental cost<sup>89</sup> of providing A as:

$$IC(A)=C(A,B,C)-C(B,C)$$

Similarly, we can define the revenue that derives from services A, B and C as  $R(A)$ ,  $R(B)$  and  $R(C)$  respectively. The firm as a whole is said to break even if its revenue equals its costs  $R(A,B,C)=C(A,B,C)$ . For a firm which is breaking even, its revenues can be said to be subsidy-free if the revenue from each service and each combination of services covers its incremental cost:

$$\begin{aligned} R(A) \geq IC(A), R(B) \geq IC(B), R(C) \geq IC(C) \text{ and} \\ R(A,B) \geq IC(A,B), R(A,C) \geq IC(A,C), R(B,C) \geq IC(B,C) \end{aligned}$$

The most important result is that a firm which breaks even is subsidy-free if and only if the revenue from each service *and each combination of services* is less than the full stand-alone costs of those services. This is known as the "combinatorial test".

Suppose that the firm breaks even. Then  $R(A)+R(B)+R(C)=C(A,B,C)$ . Then for any bundle of services X, let Y be the remaining services so that X,Y represent all the services offered by the firm, then:

$$\begin{aligned} R(X) \geq IC(X|Y) &\Leftrightarrow R(X) \geq C(X,Y)-C(Y) \\ &\Leftrightarrow R(X) \geq R(X)+R(Y)-C(Y) \\ &\Leftrightarrow R(Y) \leq C(Y) \end{aligned}$$

So, if  $R(Y) \leq C(Y)$  holds for all services or groups of services Y, then  $R(X) \geq IC(X|Y)$  holds for all services and groups of services X, and vice versa.

Note that it is necessary to verify all of these inequalities, not just a few. Consider the following example. Suppose that a postal firm provides three services, labeled A, B and C. Service A corresponds to a "reserved" service over which the firm has a monopoly. Service B corresponds to a competitive service, such as parcel service. Service C corresponds to a non-commercial service of some kind.

For the sake of the illustration suppose that the cost structure is as follows:

$$\begin{aligned} C(A,B,C)=600; C(A,B)=350; C(A,C)=450; \\ C(A)=300 \end{aligned}$$

(i.e., the cost of producing all three services is 600, the cost of producing only A and B is 350, etc.)

The revenue from these three services is:  $R(A)=300$ ;  $R(B)=100$ ;  $R(C)=200$ .

We note that the firm breaks even overall ( $R(A)+R(B)+R(C)=600=C(A,B,C)$ ). In addition, we may note that the non-commercial service is not covering its incremental cost, so we can say definitively that this service is being cross-subsidised from revenues earned elsewhere ( $IC(C|A,B)=C(A,B,C)-C(A,B)= 600-350 = 250$ ).

Now, suppose that the firm is under a requirement to prepare and disclose accounts for its reserved services separately from its other services. If these accounts are prepared as though the reserved service is operated on a stand-alone basis, then they will compare the revenue  $R(A)=300$  with the cost  $C(A)=300$  and not reveal any cross-subsidisation. However, it is clear from the above that the revenue from the competitive service is not covering the incremental costs of the service, so the firm is engaging in distortionary pricing:  $R(B)=100 \leq IC(B|A,C)=C(A,B,C)-C(A,C)=600-450=150$ .

In this simple context with only three services, the absence of cross-subsidisation could be verified by requiring disclosure of the services A and C combined on a stand-alone basis. When the firm is breaking even overall, the condition that the revenue from A and C is less than the stand-alone costs of A and C implies that the revenue from B is sufficient to cover the incremental costs of B, as can be easily demonstrated using the above theory:

$$\begin{aligned} R(A)+R(C) \leq C(A,C) &\Leftrightarrow R(A)+R(B)+R(C) \leq C(A,C)+R(B) \\ &\Leftrightarrow C(A,B,C)-C(A,C) \leq R(B) \\ &\Leftrightarrow R(B) \geq IC(B|A,C) \end{aligned}$$

## NOTES

- 1 World Bank (1996), p.1.
- 2 An excellent overview of the international postal reform movement can be found in Campbell (1998).
- 3 The distribution of mail service by volume is much more uneven. Incumbent postal operators carry 96 per cent of the total volume of mail (and only 57 per cent of the total revenue), while private carriers carry 4 per cent of the total volume. EC (1992), p.272.
- 4 The figures for Japan are slightly different: For regular letter mail, in 1994, business to individuals accounted for 50.4 per cent, business to business, 30.2 per cent, individuals to individuals 17.8 per cent and individuals to businesses 1.6 per cent. Japan (1996).
- 5 Source: EC DG13.
- 6 EC (1992), p269. The proportions by revenue are 90 per cent, 5 per cent, 5 per cent, EC (1992), p.110. The proportion of non-domestic mail is higher in Luxembourg, Ireland and Greece.
- 7 Unaddressed mail is clearly an exception.
- 8 The EC postal directive allows “own delivery” of mail through subsidiaries. Concerns have been expressed that groups of large mail producers may combine to establish a joint venture for the provision of mail services.
- 9 “The US Post Office Girds for Email Competition”, Business Week, January 26, 1998. Retiring US Postmaster General Marvin T. Runyon, in a speech to the US National Press Club in April 1998 noted that “Research tells us that within the next 10 years, the infrastructure, security and public acceptance issues that now limit electronic diversion (of communications currently sent as first class mail) will be solved. ... By the year 2020, there will be so many ways to communicate, advertise and ship merchandise, the monopoly will simply be irrelevant”.
- 10 UPU, Status and Structures of Postal Administrations, Canada.
- 11 Coopers and Lybrand (1996), pV-4. Herbert Ungerer of the EC’s DGIV notes that “according to estimates by some postal operators, the erosion of the core letter business through substitution by electronic and other means during the next five years could concern up to 10 per cent of current volume”. Ungerer (1998a) and (1998b).
- 12 For example, in February 1996 the US Postal Service announced it was working on a service called “Email to Hardcopy for Worldwide Next Day Delivery” under which the USPS is working with a consortium of European postal operators to send messages electronically near to their point of final delivery. A similar service, called RelayOne, involving Microsoft and the UK Royal Mail, was announced in April 1998.
- 13 At present this practice primarily applies to international mail. The incentives for such cost savings in domestic mail are somewhat muted by the common practice of charging a fixed price for delivery within a country, regardless of distance.

- 14 Sidak (1996), p.74.
- 15 Geddes (1998), p.139.
- 16 Exceptions include the US and New Zealand. In New Zealand the post offices do provide financial services but only acting as agency for other commercial banks.
- 17 See Price Waterhouse (1996), p5. Exceptions include New Zealand, Canada and Sweden.
- 18 OECD (1996), p19. The EC's Postal Notice explicitly acknowledges that some European postal operators are benefiting from subsidies or support not available to private sector competitors: "[I]nformation on underlying financial performance is limited as relatively few operators publish relevant information of an auditable standard on a regular basis. However, direct financial support in the form of subsidies or indirect support such as tax exemptions is being given to fund some postal services, even if the actual amounts are not transparent". EC Notice 98/C/39/2. The notice goes on to list the means by which support is made available to state-owned operators:
- “(a) the setting-off of operating losses;
  - (b) the provision of capital;
  - (c) non-refundable grants or loans on privileged terms;
  - (d) the granting of financial advantages by foregoing profits or the recovery of sums due;
  - (e) the foregoing of a normal return on public funds used;
  - (f) compensation for financial burdens imposed by the public authorities”.
- 19 Sidak and Spulber (1995), p2-3. The adverse publicity that arose as a result of the publication of this work lead the US Congress to repeal the privileges of the USPS relating to the filing of tax returns.
- 20 Vita (1996), p.11.
- 21 Ungerer (1998a).
- 22 Ungerer (1998a).
- 23 EC Directive 97/67/EC, Article 7(3).
- 24 Ungerer (1998b).
- 25 Cited in Sidak and Spulber (1995), p14. Sidak and Spulber in another article note: “The general rule in the Canadian economy is that attempted monopolisation is a crime, but when it comes to delivering letters, it is attempted competition that is the crime”. Sidak and Spulber (1997), p77-78.
- 26 Sidak and Spulber (1995), p.13.



- 27 See Sidak and Spulber (1995), p.33.
- 28 The *Domestic Mail Manual*, §151.2. The *Domestic Mail Manual* is incorporated by reference into Title 39 of the US Code of Federal Regulations.
- 29 This implies, for example, that competitors cannot deposit mail items in the mailbox if the recipient is not home.
- 30 There may be certain types of limited access to mail boxes in some countries. For example, in Canada, if Canada Post owns the mailbox, it is locked, and thus only Canada Post has access to it. This also applies to some centralized apartment mail boxes in secure buildings. GAO (1996), p.8.
- 31 This is stated explicitly in a decision of the US Supreme Court which challenged the postal monopoly: “The monopoly was created by Congress as a revenue protection measure for the Postal Service to enable it to fulfill its mission. It prevents private competitors from offering service on low-cost routes at prices below those of the Postal Service, while leaving the Service with high-cost routes and insufficient means to fulfill its mandate of providing uniform rates and service to patrons in all areas, including those that are remote or less populated”. Chief Justice Rehnquist in *Air Courier Conference of America v. American Postal Workers Union*. Also: “Perhaps the most popular argument for public ownership and control of Canada Post is to ensure reliable postal service throughout the country with the same quality of service for communities of similar size ... The shorthand for that objective is universal service’. ... Canada Post views universal service as the justification not only for retaining its existing monopoly over letter mail, but also for expanding its operations in competitive markets.” Sidak and Spulber (1997), p.44-45.
- 32 The directive allows for these rules to be relaxed by the postal regulator, subject to notification to the Commission.
- 33 Australian National Competition Council (1997).
- 34 Cohen, Ferguson and Xenakis (1993). See Bishop et al (1998), p.18. EC (1992), p.118 notes that one postal administration had calculated that the cheapest total process (from collection to delivery — presumably in an urban area) incurs 70 per cent of the average costs whereas the most expensive (presumably in rural areas) incurs more than 10 times the average. Volumes in the lower-cost areas typically far out-weigh those in higher cost areas.
- 35 In the case of NZ, this price cap expires 17 February 2001. See GAO (1996), p.9.
- 36 See Marks (1996).
- 37 See, for example, Testimony of Michael D. Bradley, on behalf of the US Postal Service, before the Postal Rate Commission, Postal Rate and Fee Changes, 1997, USPS-T-13, Docket No. R97-1.
- 38 Bishop et al (1998), p.7.
- 39 Sidak and Spulber (1997), p.30.

- 40 Rogerson and Takis (1993).
- 41 Sidak and Spulber (1997), p.33.
- 42 “[I]ncreasingly, a postman does not really go all the way to the customer’s door. The delivery of mail in new suburban neighborhoods, for example, is typically to a group of boxes that may be seventy-five feet or more from the customer’s home. Canada Post has increasingly replaced door-step service with delivery to such community or cluster mailboxes”. Sidak and Spulber (1997), p.35.
- 43 Bishop et al (1998), p8. Other studies mentioned included Bradley, Colvin and Smith (1995), Norsworthy and Norsworthy (1991), Cohen and Chu (1997) and Cazals et al (1996) and (1997).
- 44 OECD (1997), p.30.
- 45 Cited in Bishop et al (1998), p.8.
- 46 OECD (1997), p.30. Sidak and Spulber point to an important potential problem in estimating economies of scale. The problem is that, to an extent, the degree of economies of scale is endogenously determined by the postal operator. A 5-day-a-week delivery incurs higher fixed costs than once-a-week delivery. Regulatory requirements which mandate a particular level of service (especially in rural areas) may therefore inflate the fixed costs and therefore exaggerate the apparent economies of scale.
- 47 The Australian Industry Commission has found that: “[E]conomies of scale in collection, transportation between mail exchanges, sorting and delivery were already likely to be exhausted in Australian cities. This was reflected in the fact that other operators (e.g., couriers, mailing houses) were already performing some of these functions. In contrast, in rural areas, where mail volumes are smaller, the Industry Commission considered that it was likely to be more efficient for one firm to provide a letter service. According to the Industry Commission, economies of scope were likely to be greater where mail volumes were low.” Australian Treasury (1997), p. 127.
- 48 Bishop et al (1998), p. 10.
- 49 In practice, where the incumbent already has a range of services covering market demands, the scope for new entry offering entirely new services may be limited.
- 50 Sidak and Spulber (1997), p.41-42.
- 51 Bureau of Competition Policy, *Backgrounder: Canada Post Corporation/Purolator Courier Inc.*, 26 November 1993, p. 4.
- 52 Sidak and Spulber note that in Canada alone there are well over 2000 companies competing in the small parcel express market. Sidak and Spulber (1997), p.42.
- 53 Horstmann (1997), p.308.

- 54 Bishop et al (1998), p.39. Ungerer (1998a) notes: "Given the convergence with other means of transport and the diversification of means of access to the postal network and its distribution and processing points, including telecommunications, it is indeed difficult to see that in the long run a monopoly going substantially beyond delivery could be stable and sustainable".
- 55 For further discussion of this problem see New Zealand Ministry of Commerce (1995).
- 56 See, for example, Oster (1994) and Oster (1995)
- 57 For further discussion of this, see Crew, Kleindorfer and Smith (1990), p.793.
- 58 German Postal Law, 22 December 1997, section 28.
- 59 The most commonly-cited example of such remail involves a case in which Citibank's German Branch transported letters intended for its 400,000 German clients to the Netherlands to be mailed in the Dutch postal system back to Germany. Deutsche Post AG has taken legal action to oppose this activity, claiming that the terminal dues which it receives from the Dutch post office are far below the real cost incurred in the processing of standard letters in Germany. According to Deutsche Post AG it is the inappropriate level of terminal charges which allows the Dutch post office to offer low prices for remailing back into Germany. Horstmann (1997), p.315.
- 60 The Universal Postal Union has attempted to eliminate such remailing practices. Article 25 of the Universal Postal Convention states that a "member country shall not be bound to forward or deliver to the addressee letter-post items which senders residing in its territory post or cause to be posted in a foreign country with the object of profiting by the more favourable rate conditions there". Of course, this form of competition, like all competition, threatens the ability of the incumbent to cross-subsidise to support non-commercial services. If the non-commercial services are to be maintained in the face of such competition, alternative mechanisms will need to be put in place as is discussed in the next section.
- 61 As Panzar notes: "The vertical sequence of activities and the concentration of postal scale economies in local delivery suggest that competition can be efficiently introduced into postal markets through a system of local delivery access pricing, similar to that which has developed in the post divestiture telecommunications industry in the United States" Panzar (1993), p.91.
- 62 This assumption has been challenged by at least one study in the case of the US. A study by Cohen, Ferguson and Xenakis estimated that in 1989 city delivery cost per piece was only 8 per cent lower than rural delivery, but that city delivery cost per delivery point was actually 7 per cent higher than rural delivery costs. That study concluded that there was consequently no cross subsidy of rural delivery by city delivery. Cohen, Ferguson and Xenakis (1993). It is important to recognise that these results may not apply in other countries with different mail volumes and different rural/urban classifications.
- 63 For example, Canadian citizens in very remotes areas in the far North of Canada may receive mail for delivery less frequently each week than those in urban areas of Canada. For most of this century rural dwellers in New Zealand were expected to pay more to have mail delivered to their mailbox.

- 64 Bishop et al (1998), p.16-17. OECD (1996), p16 notes that geographically uniform charges induce inefficient resource allocation decisions: “Price differentials with respect to different spacial conditions help to ensure an efficient regional factor allocation. They are a prerequisite for efficient land use.” A few OECD countries do not insist on uniform geographic tariffs. Spain, for example, has long had a system of lower tariffs for intra-city mail. Following the deregulation in New Zealand, new mail operators are offering lower prices for local mail delivery. The EC postal directive
- 65 Australian Treasury (1997), p.130.
- 66 “It is increasingly accepted that the objectives [of universal service] does not necessarily require uniform prices. A weaker sufficient requirement could be that all citizens should have access to ‘equivalent services’ at ‘reasonable, affordable prices’. This weaker form of USO could require that, at a minimum, similar qualities of service should be offered everywhere in the country, and that price differences between regions are ‘not too large’”. Bishop et al (1998), p.17.
- 67 Miller (1985), p.154.
- 68 Haldi (1995), p.41. This opinion is echoed by the Australian Treasury: “It is not clear that in a deregulated environment, a requirement on Australia Post to continue providing a letter service at a uniform charge would necessarily be onerous. The introduction of differential tariffs (for instance, reflecting geographic cost differences) would impose transactions costs which may not be liked by consumers or postal operators”. Australian Treasury (1997), p.133. Also see Sidak and Spulber (1997), p.46.
- 69 Sidak and Spulber (1997), p.80.
- 70 See Joseph Farrell, “Creating Local Competition,” Federal Communications Law Journal, vol. 49;1, November, 1996.
- 71 See footnote 31.
- 72 Indeed, for many years, rural dwellers in New Zealand were charged a “rural delivery fee” for the privilege of delivery to their mailbox rather than simply to the nearest post office.
- 73 “Universal service is no longer to be funded by cross-subsidy from over-priced monopoly services. Instead, funds to cover the cost of universal service will be generated from a licensing scheme. Every delivery service that provides carriage of addressed written communications weighing less than 1 kg must obtain a license. ... If the market fails to provide universal service within a license area, licensees may be required by a regulatory authority to provide basic postal service and are entitled to compensation for losses incurred. Compensation is to be paid from a fund composed of contributions from all licensees earning more than one million DM annually”. Campbell (1998), p.10.
- 74 As Bishop et al (1998) note: “[The establishment of a USO fund] may not be desirable if it is difficult to dispel the assumption that the USO cost for these purposes would be systematically manipulated by the incumbent”. Bishop et al (1998), p.21.

- 75 Bishop et al (1998), p.21. Also: "...in the absence of the statutory monopoly, it would be possible for the federal government to invite bids from private firms to provide mail service to a particular remote area and to assume the obligation of being the carrier of last resort. Postal customers in that region would continue to pay a nationally uniform price for mail, and private firms would submit competing bids to provide such service for the lowest subsidy to be paid by the federal government. The process would not fundamentally differ from that by which the baker submitting the lowest bid is awarded the contract to supply bread to a military base." Sidak and Spulber (1997), p.46-47. A system of this kind has also been adopted in Sweden, where all sectors of the postal industry have been liberalised. In Sweden the Swedish government has taken on responsibility for ensuring universal service and contracts with carriers to ensure its provision. The Swedish government currently contracts exclusively with Sweden Post to provide universal service but may extend this arrangement to other competitors if they achieve sufficient scope. GAO (1996), p8. Private contractors are already used in Canada to deliver mail to 2.2 million addresses out of a total of 12.3 million. Most rural areas are already served by contractors. Competition Bureau (1996). "A large proportion of postal costs are not sunk, since they consists largely of labour costs (which account for about 63 per cent of total costs) and capital investment is mostly in general purpose buildings and vehicles. Thus, whereas it may not be appropriate to have franchise bidding in local exchange services because of the existence of sunk costs, this type of scheme is likely to lead to the efficient provision of local delivery, if properly administered. ... One example of the use of franchise bidding is a program by the Saskatchewan [Canada] provincial government to ensure bus service to communities where there is insufficient traffic to make such a service commercially viable. Under the Rural Bus Subsidy Program, the Department of Highways can provide a subsidy for a rural bus operator who demonstrates that a particular service cannot be continued without financial loss. The service is awarded through public tender to the operator offering to provide the service for the lowest subsidy". Competition Bureau (1996), p.23-24.
- 76 "If a subsidy [to support universal service in post] is deemed necessary, it might be patterned after the small-community air service program implemented along with airline deregulation. This program now subsidises air service to 145 communities at an annual cost of \$51 million. This cost has declined significantly since the program began in 1978, and the program is scheduled to be phased out. ... On the whole, air service to small communities has improved since deregulation". Miller (1985), p.154.
- 77 See for example, Financial Times, 4 February 1997, *Brussels attacks Deutsche Post over pricing*. More recently, UPS has urged the US Department of Justice to invoke its positive comity agreement with the EU to encourage the EU to respond to complaints of anticompetitive behaviour by Deutsche Post. See Financial Times, 17 May 1999, *UPS seeks action on German 'subsidies'*.
- 78 Another form of anti-competitive behaviour that has been alleged is tying postal patronage with purchases in a completely different market. For example, it has been suggested that since Deutsche Post is a major purchaser of Mercedes Benz vehicles, Mercedes Benz may be unwilling to take part of its mail business elsewhere. However, the threat by Deutsche Post to purchase vehicles from another manufacturer would only be of concern to Mercedes if it was earning more on those vehicles selling them to the Post than it would selling them elsewhere. In other words, the Post must be overpaying Mercedes in return for its loyalty. This is equivalent to offering a discount on its mail business in return for loyalty, which reduces to the cases discussed above.

79 To illustrate this phenomenon, consider the following example: Suppose that an incumbent operator provides service nationwide, while an entrant provides postal service in two major cities, which account for 20 per cent of the total mail volume. Suppose that, initially, the incumbent charges a flat price of \$1 per item for delivery nationwide. The entrant decides to offer a price of 75 cents for delivery in the two major cities. A large mail customer produces approximately 500 000 pieces of mail monthly of which 100 000 is in the two major cities. By switching to the entrant it can reduce its monthly mail costs from \$500 000 to \$475 000, a savings of five per cent.

The incumbent postal operator may respond in various ways. It might simply meet the price of the entrant in the two major cities. The incumbent could match the entrant's threat by, for example, offering a volume discount of five per cent, provided the total volume exceeds 500 000 pieces per month. The incumbent might offer a "loyalty" rebate of five per cent for agreeing to retain all its mail with the incumbent. Or it could offer an exclusive dealing contract at which it offered to handle all the incumbent's items at 95 cents per item, provided the incumbent agrees not to deal with the entrant.

From an economic perspective, all of these approaches are equivalent in that they all have the effect of lowering the effective price charged in the competitive market — in this case the price in the competitive market is lowered to 75 cents. Thus, from the perspective of controlling anti-competitive behaviour, the key question to be answered is whether or not the effective price charged by the incumbent in the competitive market is so low that it can be said to be "distortionary" or "predatory".

Further examples of this type of analysis can be found in Nerep (1996), p.29-30.

80 See for example Brennan (1995).

81 A fuller analysis would acknowledge that a firm may legitimately price below cost under some circumstances, such as when establishing a new product.

82 EC (1997), p.15. Furthermore, the EC Postal Directive requires that universal service providers should keep separate accounts for services within the reserved area, on the one hand and non-reserved services on the other. The postal directive provides detailed guidance as to how costs are to be allocated:

"The accounting systems ... shall ... allocate costs to each of the reserved and non-reserved services respectively in the following manner:

- (a) costs which can be directly assigned to a particular service shall be so assigned;
- (b) common costs, that is costs which cannot be assigned to a particular service, shall be allocated as follows:
  - (i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;
  - (ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which

direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;

(iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the reserved services and, on the other hand, to the other services.” Directive 97/67/EC, Article 14(3).

- 83 Other forms of disclosure, however, can be useful. In New Zealand, the recent liberalisation of the postal sector was coupled with an enhanced disclosure requirement that requirements, amongst other things, New Zealand Post to disclose the prices, terms and conditions and discounts it offers its customers (thereby, in principle, assisting in the detection of distortionary pricing).
- 84 For example: “[T]his proceeding has clearly established that (1) costing methodologies can, at best, provide only reasonably approximate estimates of the costs of broad categories of existing services, and (2) the available methodologies for the costing of individual existing services or groups of existing services below the category level are not sufficiently reliable or auditable to be acceptable as regulatory tools. In the Director’s view, the Commission’s decision should recognise the limited role that service costing can play with respect to the prevention of anti-competitive cross-subsidisation, and the consequent necessity of employing complementary regulatory measures. ...” *Comments on the Report of the Inquiry Officer with Respect to the Inquiry into Telecommunications Carriers’ Costing and Accounting Procedures, Phase III - Costing of Existing Services*, 14 June 1984, pp. 32-33.
- 85 Annual Report, Director of Investigation and Research, Combines Investigation Act, for the year ended 31 March 1985 at p. 59. The same arguments have been made by the US Courts: “Cost misallocations and improper transfer pricing in interaffiliate sales have proved difficult, if not impossible, to detect ... There is no formula for allocating common costs among services, and even if there were, the fact is that the Regional [Bell] Holding Companies alone possess all the relevant cost information and have a great deal of discretion in the treatment of such costs”. *U.S. v. Western Electric Co., Inc.*, [1984-2] Trade Cases 66,264 at 66,266 and 66,269.
- 86 Even privatising a firm may, in certain circumstances not be sufficient to distance the firm from the possibility of government financial assistance. Governments have, often, over the years bailed out large firms, especially large banks. A firm which anticipates government assistance in the event of bankruptcy is at a competitive advantage with respect to competitors which cannot expect such assistance.
- 87 The German Courier and Express Association has argued that the parcel and express activities of Deutsche Post should be separated from the monopoly components.
- 88 “With the growing importance of the issue and the extension of postal operators into the competitive area, it is likely that in certain circumstances one will have to go beyond this requirement for accounting separation, and go as far as, in some instances, requiring a degree of structural separation, in order to ensure the necessary means for the Commission to survey the area”. Ungerer (1998a).

89 Incremental cost is also sometimes known as “Avoidable Cost” as in Baumol (1996).



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## NOTE DE RÉFÉRENCE

### I. Introduction

Malgré les initiatives de déréglementation menées dans d'autres secteurs depuis plus de dix ans, les services postaux essentiels restent, dans la plupart des pays de l'OCDE, sous la protection d'un monopole légal attribué à l'opérateur postal en place, qui est propriété de l'Etat. "Alors que l'on a réalisé des progrès notables dans la voie de la réforme dans d'autres secteurs des services publics, le service postal est un des derniers bastions de l'ordre ancien".<sup>1</sup>

Néanmoins, ce secteur fait l'objet d'une attention croissante des pouvoirs publics, pour trois raisons majeures :

- (a) Premièrement, la déréglementation et la libéralisation en cours dans d'autres industries de réseau ont montré les effets bénéfiques de la concurrence, qui permet d'accroître la qualité, l'efficacité et l'innovation et d'abaisser les prix que paient les consommateurs, et mettent en lumière le caractère inadéquat des restrictions monopolistiques qui subsistent dans ce secteur ;
- (b) deuxièmement, l'évolution technologique, notamment les technologies des télécommunications comme la télécopie, le téléphone, le courrier électronique et l'Internet, érode le noyau d'activités des opérateurs postaux en place, et représente une menace potentielle quant à leur capacité de continuer à financer des obligations sociales comme le service universel ; et
- (c) troisièmement, le développement de la concurrence dans les segments concurrentiels du secteur postal (courrier exprès, services de colis et services financiers) s'est accompagné de plaintes de plus en plus fortes contre les opérateurs en place, accusés d'utiliser leurs privilèges et avantages existants pour fausser et amoindrir la concurrence sur ces marchés concurrentiels.

En raison de ces facteurs, un mouvement international de réforme du secteur postal est né et prend de l'ampleur.<sup>2</sup>

Le présent document a trois objectifs : premièrement, on examine les fondements économiques des restrictions réglementaires imposées à la concurrence dans le secteur postal, en vue de poser les bases de la réforme réglementaire postale ; deuxièmement, on examine s'il est possible d'aborder les obligations de service sans rentabilité commerciale dans le secteur postal sans apporter de restrictions à la concurrence. Troisièmement, on examine les moyens d'empêcher les comportements anticoncurrentiels de la part des opérateurs en place qui, généralement, opèrent en même temps sur des marchés concurrentiels et sur des marchés monopolistiques.

On peut dès le départ résumer les idées clés du présent document :

- Les services postaux sont une forme particulière de service de “transport”, de “livraison” ou de “communications”. Les opérateurs postaux sont donc en concurrence (à la marge) avec diverses entreprises offrant d’autres services de livraison ou de communications parmi lesquels les plus importants sont les services de télécommunications. Les services postaux diffèrent d’autres services de livraison matérielle par le fait que les opérateurs postaux peuvent tirer un grand avantage des économies d’échelle et de gamme résultant du volume et de la nature des lettres et autres biens envoyés par la poste.
- Les services postaux sont fournis de manière prédominante par de grandes entreprises d’Etat verticalement intégrées employant une main-d’œuvre nombreuse. Ces entreprises bénéficient souvent d’avantages concurrentiels variés que n’ont pas leurs concurrents privés, comme l’exonération de la taxe sur le chiffre d’affaires ou de la TVA. Elles peuvent aussi souffrir de désavantages concurrentiels comme l’obligation de se conformer aux règles du travail dans la fonction publique ou aux règles réservant le transport de courrier grande distance aux compagnies aériennes nationales.
- La plupart des pays de l’OCDE interdisent la concurrence dans la livraison de certains envois, notamment dans la poste aux lettres, les lettres étant généralement définies comme les envois ne dépassant pas un certain poids ou transportés au-dessous d’un certain prix (ou les deux). Le monopole qui en résulte a pour principal but déclaré de fournir des revenus destinés à subventionner les services sans rentabilité commerciale, en particulier la livraison du courrier à un prix inférieur au coût dans des zones à coûts élevés (comme les zones rurales).
- La “chaîne de production” postale peut se diviser en un certain nombre de segments ou activités, correspondant à la collecte, le tri pour expédition, le transport, le tri pour distribution et la distribution finale. La distribution finale (c’est-à-dire, la livraison à partir du centre de tri final jusqu’à la porte ou la boîte à lettres du client) représente entre 60 et 80 pour cent du coût total du service postal. Les travaux économiques concernant les économies d’échelle en matière de tri et de transport sont mitigés. Les préoccupations relatives aux économies d’échelle ou de gamme, s’il en existe, concernent principalement la distribution finale de la poste aux lettres ordinaire. Il ne semble pas y avoir d’économies d’échelle importantes dans la livraison du courrier exprès ou des colis.
- Même s’il existe des économies d’échelle dans la distribution finale des lettres, la présence de proches substituts de la poste aux lettres ordinaire et les faibles barrières à l’entrée laissent penser qu’une certaine concurrence se développerait dans un secteur postal complètement libéralisé, même sans intervention réglementaire spécifique. Dans les cas où il subsiste des préoccupations concernant le degré de concurrence, on peut renforcer la concurrence au moyen des interventions réglementaires maintenant courantes dans d’autres industries de réseau, en particulier la séparation structurelle du service relevant d’un monopole naturel ou la mise en œuvre d’un régime d’accès.
- La plupart des pays imposent une forme ou une autre de réglementation des prix exigeant la fourniture de services spécifiés (typiquement, la distribution dans les zones rurales) à un prix qui ne couvre pas les coûts. Les interventions réglementaires qui maintiennent les prix au-dessous des coûts induisent des distorsions économiques dans l’allocation des ressources.

En outre, dans une certaine mesure, les interventions réglementaires de ce genre ne sont pas toujours strictement nécessaires. L'expérience d'autres industries qui ont été déréglementées montre que, quand on libéralise les prix et l'entrée, il n'y a pas nécessairement un retrait du service, même des zones à coûts élevés. Dans les cas où l'accessibilité pécuniaire des services postaux est une source de préoccupations, on peut y remédier, avec moins d'effets de distorsion, au moyen de subventions directes aux résidents des zones à coûts élevés.

- Même quand on juge indispensable ce genre de réglementation des prix, on peut lever les fonds nécessaires au soutien des services sans rentabilité commerciale d'une manière qui n'implique pas de restrictions de la concurrence, comme les recettes fiscales générales ou un prélèvement sur les opérateurs postaux.
- On a exprimé la crainte que les opérateurs en place (sur un marché postal partiellement ou complètement libéralisé) se livrent à des pratiques telles que les remises de prix sélectives, la subordination de vente ou les ventes liées qui visent à empêcher ou restreindre la concurrence sur des marchés potentiellement concurrentiels (comme les marchés du courrier exprès, des colis, des services financiers ou des services en rapport avec la poste). D'un point de vue économique, ces préoccupations sont équivalentes à celle qui concerne les réductions de prix du service concurrentiel pratiquées par l'opérateur en place. Dans ce contexte, la mesure du coût adéquate est le coût incrémentiel moyen du service concurrentiel.
- Une entreprise ne peut appliquer un prix au-dessous du coût sur un marché que si elle dispose d'une source de fonds pour couvrir les pertes. Les sources de fonds potentielles sont notamment : des prix supérieurs aux coûts sur les marchés où il existe des barrières réglementaires à l'entrée ; des subventions versées à d'autres fins (telles que le soutien à des services sans rentabilité commerciale) ; des transferts de l'Etat (peut-être pour couvrir des pertes d'exploitation) ; ou de futures augmentations de prix.
- En principe, on pourrait empêcher la tarification au-dessous du coût en imposant des obligations de communication d'informations bien choisies. Ces obligations nécessiteraient une séparation comptable entre les composantes concurrentielles et non concurrentielles des activités postales de l'opérateur en place. Dans la pratique, même des obligations de communication d'informations soigneusement définies ne peuvent totalement limiter l'arbitraire dans les estimations des coûts ni empêcher totalement la comptabilité artificieuse. Les seuls bons mécanismes à long terme pour éliminer les subventions transversales anticoncurrentielles consistent à supprimer la source de financement. On peut le faire en éliminant les barrières réglementaires à l'entrée, en privatisant le service, en réalisant une séparation structurelle des services sans rentabilité commerciale ou en effectuant un appel d'offres pour les services sans rentabilité commerciale. On a préconisé diverses formes de ces politiques pour le secteur postal.
- En bref, les restrictions réglementaires de la concurrence devraient être éliminées. Quand il subsiste des préoccupations concernant l'existence d'éléments de monopole naturel dans le secteur postal, on peut les traiter au moyen d'un régime d'accès. Quand il reste des mesures de réglementation des prix qui exigent la fourniture de services à un prix inférieur au coût, ces services fournis au-dessous du coût devraient être financés d'une manière neutre à l'égard de la concurrence. Les avantages et désavantages concurrentiels des opérateurs en place (comme les exonérations fiscales) qui subsistent devraient être éliminés. On peut s'attendre à ce que l'accroissement de la concurrence qui en résulte augmente notablement

l'efficience, la productivité et l'innovation dans le secteur postal des pays de l'OCDE, contribuant à la compétitivité générale et à la croissance économique. Toutefois, l'élimination des restrictions réglementaires de la concurrence ne fait pas disparaître toutes les préoccupations en matière de concurrence. Un opérateur en place peut être en mesure de vendre à des prix écartant les entrants tant qu'il a accès à une source de fonds comme des rentes de monopole ou des subventions de l'Etat. L'élimination de cette source de fonds exigera en général une action réglementaire supplémentaire comme la privatisation ou la séparation structurelle.

Le reste du présent document est organisé comme suit. Dans la Section 2, on essaie de donner une vue d'ensemble de l'industrie postale. On définit dans cette section les services postaux et on présente quelques informations générales de base sur les opérateurs postaux et sur l'environnement réglementaire du secteur postal dans la zone de l'OCDE. Dans la Section 3, on examine la théorie sous-jacente à la réglementation des services postaux, en considérant en particulier l'existence possible d'éléments de monopole naturel et le traitement des obligations de service sans rentabilité commerciale. Dans la Section 4, on examine spécifiquement les risques de comportement anticoncurrentiel dans ce secteur et les moyens de s'y opposer.

## **II. Le contexte des services postaux et du secteur postal**

### ***Définition des services postaux***

Qu'est-ce que les services postaux ? D'un point de vue technologique, les services postaux sont une forme de service de *livraison* ou de *transport*, acheminant des biens d'un point à un autre. En fait, il n'existe pas de démarcation claire entre les services postaux et les autres services de livraison comme les services d'acheminement/transport offerts par les compagnies d'expédition ou commissionnaires de transport, ou les services de distribution porte à porte fournis par les distributeurs de publicité ou autres formes de publipostage.

On peut toutefois distinguer les services postaux de ces autres formes de services de livraison. L'activité essentielle des services postaux est la livraison de biens portant une adresse, où la nature et le volume de ces biens conviennent à des livraisons régulières, programmées de manière fixe et denses dans une région (où "dense" signifie un réseau de distribution qui livre en tout point de destination ou passe à proximité de tous ces points). Cette possibilité d'exploiter des économies d'échelle et de gamme dans la distribution au moyen de tournées périodiques régulières et denses distingue les services postaux des autres services de livraison.

Les biens qui entrent le plus directement dans cette "activité essentielle" sont les lettres, cartes postales, factures, paiements, publipostage et communications écrites personnelles de diverses sortes. Dans la plupart des pays de l'OCDE, le volume journalier de ces biens convient à des tournées de livraison régulières dans la plus grande partie du pays.

En outre, il existe d'importants marchés qui sont très proches du marché de la poste aux lettres et que l'on inclut habituellement dans le secteur postal au sens large :

- (a) Les services de courrier exprès. Comme on le verra ci-dessous, le courrier exprès peut se distinguer de la poste aux lettres par le fait qu'il est livré plus rapidement que par les distributions normales régulières, programmées de manière fixe et denses dans une région. Parce que ce courrier doit être livré rapidement, le volume est insuffisant pour justifier un



réseau de distribution dense. En conséquence, le courrier exprès se situe en dehors de "l'activité essentielle" définie ci-dessus, mais il en est suffisamment proche pour être inclus dans le secteur postal.

- (b) Les services de colis. Là encore, comme on le verra plus loin, l'expédition et la manipulation des colis peut aussi se distinguer de la poste aux lettres ordinaire par le simple fait que, comme la plupart des ménages ne reçoivent pas des colis de manière régulière, le trafic est insuffisant pour justifier un réseau de distribution dense et régulière tel que décrit ci-dessus, notamment quand les colis à livrer ne peuvent souffrir de retard.
- (c) Les services de courrier sans adresse (comme la livraison de journaux ou de courrier publicitaire de porte à porte). La distribution de ces envois peut se faire par des livraisons régulières, programmées de manière fixe et denses, et elle est donc très proche du courrier ordinaire, mais elle peut s'en distinguer par le degré de tri et de manipulation nécessaire.

Comme l'indique le Table 1, la plus grande partie des recettes du secteur postal dans la Communauté européenne provient du service de courrier ordinaire (y compris les envois sans adresse), suivi par le courrier exprès, puis par les colis :

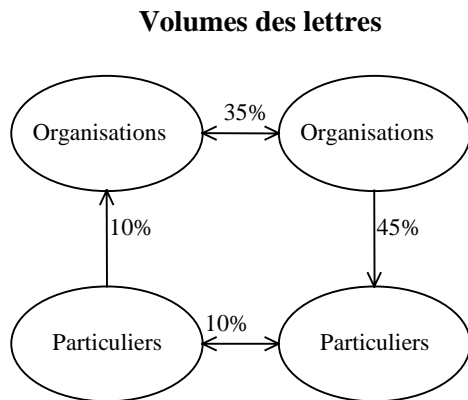
**Tableau 1 : Services postaux — Pourcentages des recettes par segment et opérateur (1988)**

Service	Opérateur postal en place	Opérateur postal privé	Total
Lettres	45.7	2.2	47.9
Colis	6.5	10.9	17.4
Courrier exprès	4.3	30.4	34.7
Total	56.5	43.5	100.0

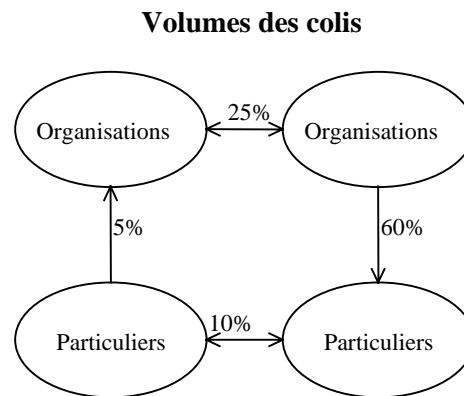
Source : Commission européenne (1992).<sup>3</sup>

La plus grande partie des envois de la poste aux lettres (quatre envois sur cinq) a pour origine les entreprises. Les particuliers ne représentent que 20 pour cent du courrier produit. En revanche, les particuliers sont les destinataires de 55 pour cent de tout le courrier produit. Dans le cas des colis, les volumes sont encore plus déséquilibrés. Les particuliers ne sont les expéditeurs que de 15 pour cent des colis mais ils reçoivent 70 pour cent de tous les colis.<sup>4</sup>

**Tableau 2 : Volumes des lettres et des colis**



Source : CE (1992)

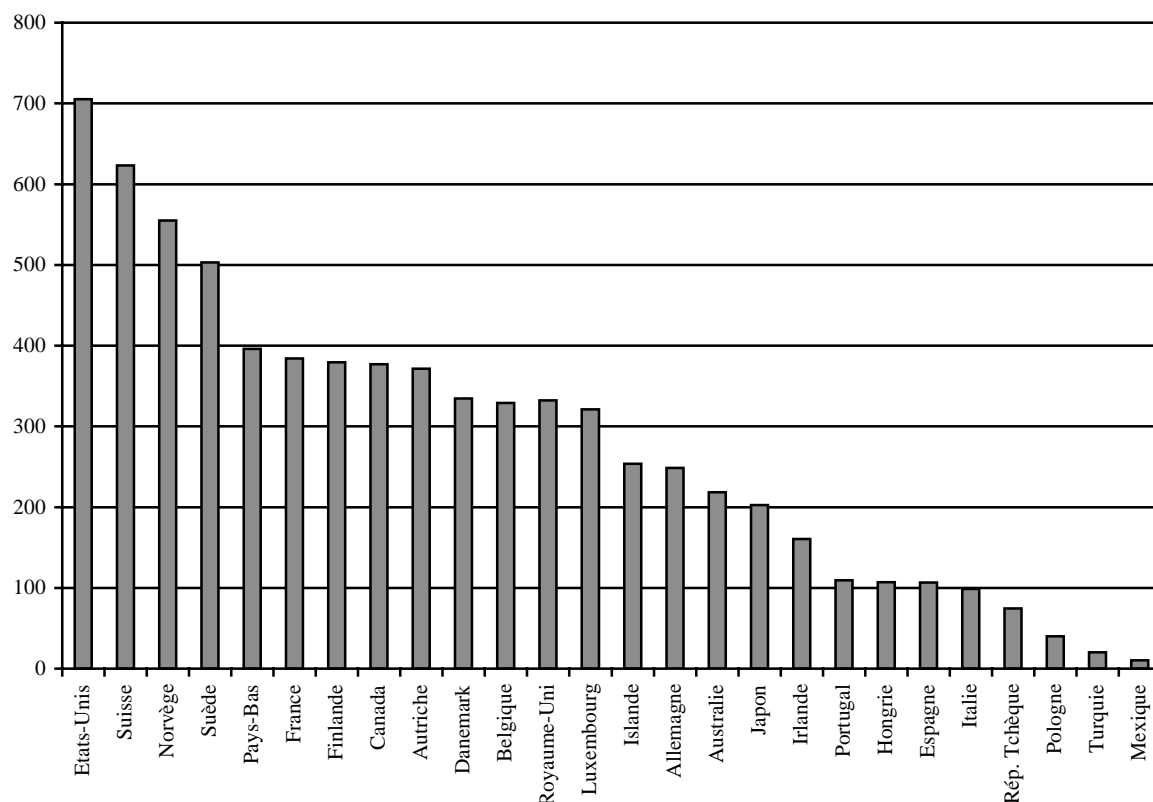


Source : CE (1992)

On notera que la plus grande partie du courrier est produite par un nombre d'utilisateurs relativement faible. Les 100 plus grands clients d'un opérateur postal typique génèrent une forte proportion des recettes et des volumes totaux. La tranche des 10 pour cent de clients les plus importants produit généralement largement plus de 80 pour cent de tout le courrier.<sup>5</sup> Comme on le verra plus loin, ces grands utilisateurs du courrier (comprenant les banques, les compagnies de services financiers, les compagnies d'eau, de gaz et d'électricité, la presse, les sociétés de vente par correspondance et les sociétés de publipostage) sont souvent eux-mêmes d'importants entrants potentiels dans au moins certains secteurs de l'activité de livraison de courrier.

Le courrier est en grande majorité intérieur au pays. D'après la Commission européenne, 93 pour cent du courrier de la Communauté est national, quatre pour cent est intra-communautaire et trois pour cent international.<sup>6</sup> La proportion du courrier international est un peu plus élevée dans les petits pays.

Il importe de noter que le volume annuel du courrier par habitant varie beaucoup entre les pays de l'OCDE. Le citoyen moyen de l'Union européenne a reçu environ 380 envois en 1997, soit un peu plus d'un envoi par journée de distribution en moyenne (en supposant une distribution chaque jour ouvré). En comparaison, le citoyen américain moyen reçoit 705 envois par an et le citoyen japonais moyen seulement 205 environ. Il existe une forte corrélation entre le PIB et les volumes de courrier. Les pays Membres de l'OCDE qui ont le PIB par habitant le plus bas ont aussi les volumes de courrier les plus faibles.

**Figure 1 : Nombre moyen d'envois de la poste aux lettres déposés par habitant**

Source: UPU. Toutes les données pour l'exercice 1997 sauf la Suisse (1993), Suède (1996), Pays-Bas (1993), Finlande (1996), Canada (1993), Danemark (1995), Islande (1996)

### *Le marché postal*

Quelle est exactement l'étendue du marché des services postaux ? En particulier, de quelle nature et quels sont précisément les substituts potentiels des services postaux ?

Comme on l'a noté dans la section précédente, les services postaux sont une forme de service de livraison, servant à acheminer des biens d'un lieu à un autre. Il importait de noter que la plupart des envois postaux ont une adresse propre, en ce sens qu'ils sont destinés à un destinataire précis auquel il n'est pas possible de substituer un destinataire différent<sup>7</sup>. Une facture téléphonique destinée à une personne donnée ne peut être remise à une autre personne si le prix du service de livraison de cette facture change. En ce sens, on peut donc considérer le marché des services postaux comme la réunion d'un très grand nombre de marchés étroitement liés constitués des services de livraison entre les paires *expéditeur-destinataire*.

L'identité et la nature des substituts potentiels d'un service postal particulier entre un expéditeur et un destinataire dépendent clairement d'un grand nombre de facteurs, parmi lesquels :

(a) le caractère des biens à livrer, à savoir :

- si les biens ont un caractère d'information (susceptible d'être livrée électroniquement) ou si les biens doivent être livrés matériellement ;

- le poids et la dimension des biens ; et
  - si les biens nécessitent un traitement spécial ou une livraison particulièrement rapide.
- (b) quels sont les points de départ et d'arrivée de la livraison (et s'il existe d'autres voies de communications possibles reliant ces points, comme un réseau de télécommunications ; le volume du courrier sur le trajet considéré et sur les trajets voisins) ;
- (c) le caractère des demandes totales du producteur de courrier (un producteur de courrier qui produit un très grand volume d'envois postaux est plus susceptible d'exploiter des économies d'échelle et de gamme en assurant pour lui-même ce service qu'un petit utilisateur) ; et
- (d) évidemment, les facteurs réglementaires qui empêchent les entreprises d'offrir des services postaux concurrents ou qui restreignent ces possibilités.

Nous examinerons dans cette section les substituts potentiels en dehors du secteur postal lui-même. A l'égard des services postaux, les formes de concurrence les plus importantes qui se situent en dehors du secteur postal proviennent du transport point-à-point et des télécommunications. On examinera chacune de ces activités plus loin.

Avant d'examiner le transport point-à-point et les télécommunications, il importe de faire les remarques suivantes :

- Premièrement, beaucoup d'entreprises (notamment les banques et les services d'utilité publique) produisent de grandes quantités d'un courrier qui est "dense" en ce sens que les destinataires représentent une forte proportion des habitants d'une région. Ces compagnies sous-traitent déjà souvent le traitement de leur courrier à des préparateurs de courrier. Ceux-ci peuvent donc exploiter eux-mêmes une grande partie des économies d'échelle et de gamme existant dans l'acheminement postal. Pour ces entreprises, *l'autoprestation* est une solution viable substituable à l'achat de services postaux. En fait, la pratique de la livraison de courrier pour leur propre compte par les services d'utilité publique aux Etats-Unis dans les années 30 suscita une réaction législative du Congrès interdisant l'autoprestation postale.<sup>8</sup>
- Deuxièmement, dans certains cas, un ensemble de consommateurs postaux peut juger que le volume du trafic échangé entre eux est suffisamment grand et que leurs besoins en matière de distribution sont suffisamment spécifiques (comme l'exigence de plusieurs tournées par jour) pour justifier un arrangement conjoint pour la fourniture de services postaux. En fait, on rencontre fréquemment des services de livraison réguliers programmés de manière fixe fonctionnant dans des "communautés d'intérêts" de différentes formes. On peut en donner comme exemples les livraisons entre divers hôpitaux et un laboratoire, entre une bibliothèque et un dépôt, etc. Quand une entreprise est elle-même répartie sur plusieurs sites, il est, comme on le sait, courant qu'il existe un système de courrier interne régulier.
- Troisièmement, dans d'autres cas, au lieu d'organiser activement les livraisons, il suffit à certaines "communautés d'intérêt" d'établir une boîte aux lettres centrale où le courrier peut être collecté et distribué. On appelle cela des "échanges de documents". Dans certains cas, des centres d'échange de documents distincts sont reliés par un système de transport qui livre

le courrier à d'autres centres d'échange de documents. Les échanges de documents peuvent être particulièrement aptes à constituer un substitut quand un groupe d'entreprises (une "communauté d'intérêts") échange régulièrement du courrier *et* peut combiner la distribution et la collecte du courrier avec une autre fonction de livraison régulière. On peut en donner comme exemple les acheteurs et vendeurs réguliers sur un marché de gros.

- Enfin, pour certaines formes de courrier, particulièrement le courrier dont le but principal est l'information ou la publicité, il est évident qu'il existe un grand nombre d'autres médias substitutifs comme les panneaux d'affichage, les journaux, les magazines, la radio, la télévision, etc.

### *Les télécommunications*

Une proportion notable des biens distribués par la poste est entièrement constituée d'information, habituellement sous la forme de texte et/ou d'images (mais aussi potentiellement de sons et de vidéo). Quand le destinataire possède les équipements nécessaires et qu'il existe une liaison de télécommunications entre l'expéditeur et le destinataire, il est possible de livrer ce contenu d'information au destinataire en passant par des télécommunications comme le téléphone, la télécopie, le courrier électronique ou l'Internet.

Les télécommunications ne sont pas un parfait substitut des communications écrites. Elles ont certains avantages (notamment d'être plus rapides) et aussi certains inconvénients (elles ne parviennent pas jusqu'à tous les destinataires potentiels, la sécurité peut être plus faible et elles nécessitent des équipements spécialisés). Le Tableau 3 compare les avantages et les désavantages du courrier matériel et du courrier électronique.

**Tableau 3 : Comparaison du courrier matériel et du courrier électronique**

	<b>Courrier matériel</b>	<b>Courrier électronique de bout en bout</b>
<b>Avantages</b>	Papier : lisible en tout lieu et facile de parcourir de grands volumes ; Difficile à ignorer ; Ubiquité des adresses ; Faibles barrières à l'utilisation ; Fiabilité raisonnable contre la fraude et l'usurpation d'identité	Livraison rapide ; Faible coût unitaire marginal ; Indépendant de la localisation physique de l'expéditeur
<b>Désavantages</b>	Livraison lente ; Coût unitaire élevé L'expéditeur doit connaître la localisation physique du destinataire	On doit se connecter pour obtenir les messages Pénétration plus faibles des équipements d'accès Coûts d'établissement plus élevés Généralement non familier aux personnes âgées Peut-être moins sûr contre la fraude et l'usurpation d'identité

Source : Coopers and Lybrand (1996), p. II-14, avec des modifications.

Avec les progrès des systèmes de communications électroniques en qualité, en rapidité et en pénétration, les télécommunications sont de plus en plus substituables au courrier matériel, au point de menacer, dans certains cas, ces flux de recettes traditionnels. Le directeur général de la poste aux Etats-Unis, Marvin Runyon, estime que :

Ces cinq dernières années, le service postal a perdu environ 35 pour cent du courrier de première classe d'entreprise à entreprise, soit 6 milliards de dollars de recettes, au profit du courrier électronique, de la téléconférence et de la télécopie. Ces services électroniques, notamment le courrier électronique et la télécopie, entament les activités de courrier de première classe du service postal, qui représentent 57 pour cent de ses recettes.<sup>9</sup>

La Société canadienne des postes fait écho à ces préoccupations :

Les volumes de la poste aux lettres ne correspondent plus à la croissance économique générale. Ils ont progressivement diminué en raison de la concurrence des services de courrier et des moyens de communication électroniques, comme la télécopie, le courrier électronique et les transferts de fonds électroniques. Les principaux utilisateurs du service de la poste aux lettres de la Société canadienne des postes, à savoir les banques, les services publics, les sociétés de cartes de crédit et autres sociétés, risquent tout particulièrement d'opter pour les moyens de communication électroniques lorsque ces derniers sont plus rentables. Cette situation constitue une menace sérieuse à long terme pour le principe selon lequel la poste doit fournir un service universel à des tarifs raisonnables et uniformes.<sup>10</sup>

D'après une étude réalisée par Coopers and Lybrand pour la Commission européenne, le taux de substitution au détriment du courrier matériel serait le plus élevé sur le marché d'entreprise à entreprise et sur le marché d'entreprise à particulier. D'après cette étude, les taux de substitution bruts se situent globalement entre 15 et 30 pour cent, suivant l'opérateur et les caractéristiques du pays.<sup>11</sup> Toutefois, l'effet net total sur les opérateurs postaux en place est plus faible en raison de la croissance de certaines catégories d'envois, en particulier les colis, due à la stimulation de l'industrie de la vente par correspondance. Il est intéressant de noter que, d'après cette étude, les communications électroniques représentent une menace particulière pour les sociétés de courrier exprès privées, qui traitent principalement des documents pour lesquels la rapidité de livraison est un point important et pour lesquels les tarifs sont élevés.

Même quand les télécommunications ne peuvent se substituer à l'acheminement de l'information correspondante de bout en bout, elles peuvent néanmoins être un substitut partiel réduisant la distance physique (et donc le coût et le délai de distribution) des services postaux.<sup>12</sup> En fait, beaucoup d'opérateurs postaux offrent un service dans lequel la correspondance est envoyée électroniquement pour être imprimée, par exemple, dans la ville du destinataire final, afin de réduire au minimum les frais postaux et les délais de distribution.<sup>13</sup>

#### *Transport point-à-point*

Dans le cas des biens qui ne peuvent se réduire à leur contenu d'information, la principale solution substituable à l'utilisation des services postaux (en dehors des cas examinés ci-dessus) est le transport point-à-point.

Pour la livraison de certains biens, en particulier ceux qui sont grands, lourds ou dont la livraison ne peut souffrir de retard, les économies de densité potentielles résultant du groupement des expéditions sont limitées. En conséquence, les compagnies d'expédition et de livraison point-à-point habituelles peuvent alors concurrencer les services postaux. Les mêmes arguments s'appliquent pour la livraison en des lieux particulièrement reculés ou inhabituels, ou pour les envois qui nécessitent une manipulation spéciale.

Le transport point-à-point risque d'être un substitut moins rentable (et en conséquence les services postaux, globalement, sont susceptibles d'avoir la plus forte puissance de marché) en ce qui concerne la livraison des biens pour lesquels il existe un volume notable et pas d'exigences de manipulation spéciales, c'est-à-dire les biens de dimension courante, souffrant un délai raisonnable et à destination de zones régulièrement desservies. La poste aux lettres ordinaire en est le meilleur exemple.

### *La chaîne de production postale*

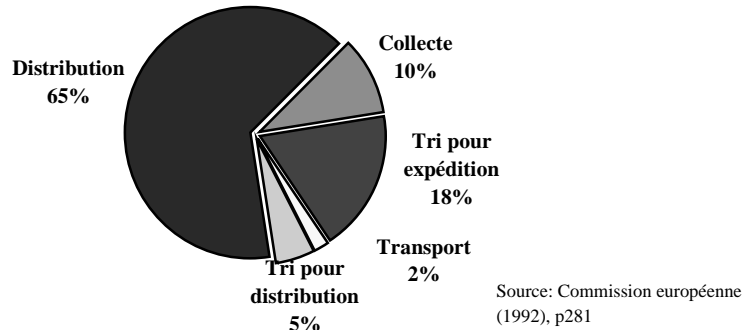
On peut distinguer différentes activités généralement associées pour produire les services postaux.

- (a) Collecte — acheminement des envois à partir du client (ou d'un lieu proche du client) jusqu'au premier point de tri.
- (b) Tri pour expédition — tri initial des envois postaux pour former des liasses à livrer au bureau de tri suivant.
- (c) Transport — acheminement du courrier du bureau de tri initial au bureau de tri final.
- (d) Tri pour distribution — tri des envois postaux pour la distribution finale.
- (e) Distribution finale — livraison de porte à porte des envois postaux.

Suivant la distance d'acheminement, les étapes (b) et (c) peuvent se répéter. Par exemple, une lettre expédiée d'une petite ville de Nouvelle-Zélande à destination d'une petite ville des Etats-Unis peut passer d'un petit bureau de tri à un grand bureau de tri en Nouvelle-Zélande avant d'être envoyée vers un grand bureau de tri aux Etats-Unis, puis vers un bureau de tri local où on la triera pour la distribution finale.

A titre d'illustration, on présente dans la Figure 2 la proportion des coûts totaux que l'on peut attribuer à chacune de ces activités dans le cas des opérateurs de l'Union européenne. La collecte représente environ 10 pour cent du coût du traitement d'une lettre, le tri pour expédition 18 pour cent, le transport deux pour cent et le tri pour distribution cinq pour cent. La distribution finale représente à elle seule environ 65 pour cent du coût total de traitement d'une lettre ordinaire. Aux Etats-Unis, où les volumes de lettres sont notablement plus grands que dans l'Union européenne, la distribution finale représente une part plus faible des coûts totaux.

**Figure 2 : Répartition approximative des coûts d'exploitation de la poste aux lettres**



**Les opérateurs postaux en place**

Dans la grande majorité des pays de l'OCDE, les services postaux sont fournis par de grandes entreprises d'Etat verticalement intégrées. Le Table 4 présente les principaux indicateurs concernant les opérateurs postaux en place dans l'Union européenne et aux Etats-Unis. On notera que la société UPS est à elle seule de taille comparable, pour le montant des recettes, aux deux premières administrations postales de l'Union européenne (France et Allemagne), *additionnées*.

**Tableau 4 : Comparaison statistique de quelques opérateurs postaux**

	Volumes (millions)			Recettes (millions d'ECU)		Déficit (mill. d'ECU)		Salariés (milliers)		
	Lettres	Colis	Courrier exprès	Services postaux	Services financiers	Total	%	Services postaux	Services financiers	Total
<b>Belgique</b>	3145	3	4.5	824	270.3	242.8	48.3	45.2	3.5	48.6
<b>Danemark</b>	1573	33	0.4	806	350	34.5	4.3	27.6	2.2	29.8
<b>Allemagne</b>	14262	500	8.0	7000	2180	1210	17.3	313.8	27	340.8
<b>Grèce</b>	451	1	3.2	100	35.7	23.2	23.1	10.2	1.3	11.5
<b>Espagne</b>	5014	9	0.8	692	488	307.7	44.4	63.5	4.2	67.7
<b>France</b>	15894	311	6.2	7340	5026	498.0	6.8	269.8	29.5	299.3
<b>Irlande</b>	494	4	1.5	188	59	1.3	0.7	9.7	1.2	10.9
<b>Italie</b>	10534	49	5.4	2651	1436	1058	39.9	208.2	25.4	233.6
<b>Luxembourg</b>	168	1	0.2	42	10.4	2.7	6.4	1.5	0.1	1.6
<b>Pays-Bas</b>	5408	110	3.3	1778	1320	-47.0	2.6	58.9	10.5	69.4
<b>Portugal</b>	596	6	0.3	135	20	35.8	26.7	14.5	1.8	16.3
<b>Royaume-Uni</b>	13774	191	11.95	4643	1783	-159	3.4	184.8	45.5	230.3
<b>DHL</b>				2000						
<b>TNT</b>				3000						
<b>UPS</b>				12000						
<b>Fed Express</b>				700						
<b>Total Communauté européenne</b>	71313	1216	45.75	26199		3208	12.4	1207	152.2	
<b>Etats-Unis</b>				42560						

Source : Commission européenne (1992) et autres sources.



Comme l'indique le Table 4, les opérateurs postaux en place sont généralement de grandes entreprises et de très grands employeurs. Par exemple, en 1994 le Service postal des Etats-Unis a enregistré un chiffre d'affaires annuel de 49.4 milliards de dollars et comptait plus de 850 000 salariés. Cela place le Service postal des Etats-Unis au 11<sup>ème</sup> rang du classement Fortune 500 des Etats-Unis, avec un chiffre d'affaires supérieur aux trois premières compagnies aériennes américaines (American, United et Delta) additionnées et supérieur aux 5 premières compagnies de livraison de colis ou de marchandises, additionnées.<sup>14</sup> En 1970 (au moment de la Loi de réorganisation postale des Etats-Unis) les salariés de la poste des Etats-Unis représentaient 20 pour cent des salariés des administrations fédérales civiles et 1 pour cent de toute la population active des Etats-Unis<sup>15</sup>. Il semble que le nombre et la syndicalisation des salariés concernés aient eux-mêmes été un obstacle à la réforme dans certains pays de l'OCDE. Comme l'indique le tableau ci-dessus, certains opérateurs postaux souffrent d'un important déficit. En 1988, les opérateurs postaux de l'Italie, de l'Espagne et de la Belgique enregistraient un déficit supérieur à 40 pour cent de leurs recettes.

Comme l'indique le Table 4, la majorité des opérateurs postaux en place dans la zone de l'OCDE fournissent aussi des services non postaux. En particulier, presque tous ont aussi des activités de services financiers.<sup>16</sup> Comme on le verra plus loin, le fait que les opérateurs postaux en place participent aussi à d'autres activités dans le secteur concurrentiel est une source de préoccupations majeure.

A certaines exceptions près, pratiquement tous ces opérateurs postaux en place bénéficient d'avantages concurrentiels que n'ont pas les opérateurs privés, comme des exonérations fiscales ou un traitement spécial en vertu de diverses lois et réglementations. Par exemple, relativement peu d'opérateurs postaux en place paient une taxe sur le chiffre d'affaires ou la TVA<sup>17</sup> et relativement peu sont tenus de payer un dividende correspondant à la totalité du montant du capital investi. Dans le cas de la Société canadienne des postes, le régime de retraite des salariés est financé par l'Etat et non par cette société, ce qui constitue, de fait, une subvention des coûts salariaux de la Société canadienne des postes.

On avance souvent que les opérateurs postaux en place bénéficient d'un traitement spécial dans la législation ou dans l'application de divers règlements en matière de sécurité, de santé ou concernant les véhicules. Dans le cas de la Deutsche Post AG, "d'après les informations d'entreprises de livraison de colis privées, on permet aux camions de la Post AG de se garer gratuitement alors que les entreprises privées doivent payer des tickets de stationnement". En outre, "les entreprises de livraison de colis privées doivent payer les contrôles des véhicules alors que la société publique bénéficie d'une exemption".<sup>18</sup>

Les avantages concurrentiels du Service postal des Etats-Unis sont une source particulière de préoccupations pour les opérateurs privés américains :

Les privilèges et immunités du Service postal des Etats-Unis ont font un cas unique parmi les entreprises économiques. Il ne paie pas d'impôt sur les bénéfices, il ne paie pas de dividendes ou de rémunération du capital investi à ses propriétaires, il n'est pas soumis à tous les pouvoirs de contrainte de l'Administration de la sécurité et de l'hygiène du travail. En outre, le Service postal ... bénéficie de la priorité du gouvernement américain en ce qui concerne le paiement des dettes sur les actifs de faillite et il peut emprunter directement au Trésor des Etats-Unis ou peut contracter des emprunts auprès de tiers en bénéficiant de toute la confiance et du crédit qui s'attachent au gouvernement américain.

... Certains avantages accordés au Service postal sont tout à fait arbitraires. Par exemple, un contribuable ne bénéficie pas de la présomption légale qu'il a envoyé sa déclaration de revenus à l'administration fiscale dans les délais s'il recourt à un opérateur privé comme Federal Express

au lieu du Service postal. D'autres privilèges sont tout simplement bizarres : il a été statué que les facteurs du Service postal avaient constitutionnellement le droit de prendre un raccourci à travers les pelouses devant les maisons sans obtenir le consentement des résidents concernés.<sup>19</sup>

D'un autre côté, les opérateurs postaux en place sont soumis, à la différence des opérateurs privés, à certaines contraintes qui élèvent leurs coûts et constituent ainsi des désavantages concurrentiels. Par exemple, il n'est pas rare que les salariés des opérateurs postaux en place bénéficient du statut des fonctionnaires, ce qui rend les licenciements difficiles. En outre, certains opérateurs ont l'obligation de recourir exclusivement à des transporteurs nationaux pour le transport du courrier. Le Service postal des Etats-Unis, par exemple, est soumis à l'obligation de transporter son courrier sur les compagnies nationales américaines à des prix fixés par le ministère des Transports.<sup>20</sup>

Au cours de la dernière décennie, beaucoup de ces opérateurs postaux en place ont connu d'importants changements dans leurs modes de direction et dans leur forme institutionnelle. En particulier, beaucoup d'opérateurs en place ont connu une "entreprisisation", c'est-à-dire qu'on leur a donné la forme et la structure d'une entreprise commerciale normale et la faculté d'opérer comme on le fait habituellement dans le monde des affaires. Beaucoup de pays ont recueilli des effets bénéfiques notables de ces "réformes entrepreneuriales". Etant donné que le sujet central du présent document est la réforme réglementaire et non la réforme entrepreneuriale, on n'approfondira pas ici ces dernières réformes. Pour illustrer les effets bénéfiques de ces réformes, on présente dans le Tableau quelques-uns des effets majeurs résultant de l'entreprisisation de l'opérateur postal en place en Nouvelle-Zélande.

**Tableau 5 : Appréciation des effets de l'entreprisisation de la Poste de Nouvelle-Zélande 1987-1998**

Productivité	Un personnel réduit de 40 pour cent depuis 1987 assure des activités qui ont augmenté de 20 pour cent
Rentabilité	Le déficit de 37.9 millions de dollars néo-zélandais en 1986-1987 s'est transformé en un bénéfice après impôts de 47.7 millions en 1996-1997
Prix	L'affranchissement d'une lettre ordinaire est au même prix (40 cents) en 1998 qu'en 1987, ce qui signifie une baisse notable en valeur réelle. En outre, la taxe de distribution rurale (taxe additionnelle imposée aux habitants des zones rurales) a été abolie en 1995. Les grands clients professionnels bénéficient de réduction de tarifs pour les grandes quantités et le pré-tri.
Qualité de service	La qualité de service pour l'acheminement des lettres ordinaires s'est nettement améliorée
Source : Ministère du Commerce de Nouvelle-Zélande (1998)	

En janvier 1999, le seul service postal à avoir été privatisé est celui des Pays-Bas. Toutefois, la majorité des pays de l'OCDE permettent diverses formes de propriété et d'exploitation privées pour les bureaux de poste. En fait, en Australie, au Canada, aux Pays-Bas, en Nouvelle-Zélande et au Royaume-Uni, la majorité des points de vente postaux appartiennent ou sont exploitées par le secteur privé. La France, l'Italie et les Etats-Unis n'ont aucun régime de concession pour les services postaux de détail.

*Les services protégés de la concurrence*

La grande majorité des pays de l'OCDE (à l'exception de la Suède, de la Finlande et de la Nouvelle-Zélande) accordent un monopole légal sur certains services de courrier à l'opérateur postal en place. C'est ce que l'on appelle les services "réservés". En raison des libéralisations récentes, la délimitation du secteur réservé diffère d'un pays à l'autre et elle a notablement changé au cours du temps. Dans le Table 5, on tente de résumer la situation actuelle concernant les services réservés dans les pays de l'OCDE.

**Tableau 6 : Les services réservés dans les pays de l'OCDE**

<b>Pays Membre</b>	<b>Domaine réservé</b>
Australie	La Poste australienne a le monopole des envois postaux jusqu'à 250 g et à un prix inférieur à 4 fois le tarif applicable aux lettres ordinaires. Le courrier international sortant ou entrant n'est pas réservé.
Autriche	"Le monopole est limité aux envois contenant des communications personnelles écrites, non imprimées".
Belgique	La Poste a un monopole sur la collecte, le transport et la distribution des "lettres" closes ou ouvertes et des cartes postales, des publicités, circulaires, etc., lorsqu'ils portent l'adresse du destinataire, jusqu'à 1 kg.
Canada	La poste canadienne a le privilège exclusif de collecter, acheminer et distribuer les lettres ne dépassant pas 500 grammes dont le destinataire est au Canada. Ce privilège exclusif ne s'applique pas à l'acheminement des lettres urgentes à condition que le prix de ce service représente au moins trois fois la taxe postale normale applicable à une lettre d'un poids de 50 grammes.
République tchèque	Monopole des lettres fermées jusqu'à 1 kg répondant à certaines limites de dimensions.
Danemark	Le domaine réservé pour le courrier intérieur et le courrier international entrant va jusqu'à 250 g et, pour les envois du service intérieur, jusqu'à six fois le prix fixé pour une lettre de 20 g.
Finlande	La Finlande n'a pas de monopole ni de services réservés. Une licence est toutefois requise pour assurer la distribution des lettres.
France	Le monopole couvre l'acheminement et la livraison des lettres et des envois postaux (y compris le publipostage) jusqu'à 1 kg, tant pour le courrier national qu'international.
Allemagne	Le monopole couvre les envois jusqu'à un tarif de 10 DM et les envois de publipostage jusqu'à 100 g. (Ce monopole expire le 31 décembre 2002).
Grèce	La Poste hellénique a le monopole du transport des "lettres" ouvertes ou fermées et des cartes postales.
Hongrie	Les services de la poste aux lettres sont réservés. En outre, la Poste hongroise a le droit exclusif d'émettre des timbres-poste, des mandats de poste et des entiers postaux.
Irlande	L'opérateur en place a le monopole des "paquets postaux" sur le territoire national et à destination de l'étranger. Les "paquets postaux" ne comprennent pas le service de courrier exprès, les journaux ni les colis.
Italie	Collecte et distribution des lettres ordinaires, envois recommandés et à valeur déclarée jusqu'à 2 kg ; télégrammes, télex, service de télématique publique.
Japon	Le transport des lettres est réservé à la poste japonaise.
Corée	La Poste coréenne a le monopole de la poste aux lettres (les petits paquets, colis, imprimés et périodiques ne constituent pas des services réservés).
Luxembourg	Monopole du transport et de la distribution des lettres et des cartes postales.
Mexique	Monopole sur les lettres jusqu'à 1 kg et ne dépassant pas certaines dimensions
Pays-Bas	L'opérateur en place fonctionne pour une part dans le cadre d'une concession exclusive pour le transport des lettres pesant jusqu'à 50 g.

**Tableau 6 : Les services réservés dans les pays de l'OCDE (suite)**

<b>Pays Membre</b>	<b>Domaine réservé</b>
Nouvelle-Zélande	Pas de services réservés
Norvège	La poste norvégienne a le monopole des lettres jusqu'à 350 grammes ou cinq fois le tarif national de base.
Pologne	Monopole sur l'admission, le transport et la distribution des envois de la poste aux lettres jusqu'à 2 kg.
Portugal	Monopole sur : l'admission, le transport et la distribution de toutes les correspondances fermées, cartes postales et autres missives, même ouvertes, pour autant que leur contenu soit personnel ; l'émission et la vente de timbres-poste et autres valeurs postales ; le service public de télécopie.
Espagne	Monopole sur toutes les lettres et cartes postales interurbaines. Les lettres et cartes postales collectées et distribuées dans la même ville (tarif intra-urbain) ne constituent pas un service réservé.
Suède	Pas de services réservés
Suisse	Monopole sur les lettres jusqu'à 500 g et les colis jusqu'à 2 kg.
Turquie	Les lettres closes ou ouvertes ainsi que les cartes postales sont soumises au monopole postal.
Royaume-Uni	Le Post Office a le monopole de la transmission des lettres dont l'affranchissement est inférieur à une livre sterling, avec certaines exceptions.
Etats-Unis	Les lois intitulées Private Express Statutes confèrent au Service postal des Etats-Unis le droit exclusif d'acheminer le courrier. Ce droit est soumis à un certain nombre d'exceptions et a été suspendu, sous réserve de certaines conditions, pour les lettres extrêmement urgentes et la poste aux lettres internationale sortante.

Source : UPU

Dans le cas des pays de l'Union européenne, la Directive de la Commission européenne sur les services postaux (97/67/CE) définit l'étendue maximale du domaine réservé admissible. Cette directive est l'aboutissement d'un long débat public sur la libéralisation des services postaux. Le résultat de ce débat est un compromis sur la libéralisation, selon lequel ce secteur continuera pendant un certain nombre d'années à vivre dans un régime de monopole légal pour ses segments de marché essentiels<sup>21</sup>. La directive sur les services postaux stipule qu'il n'est pas permis aux Etats membres de réserver à l'opérateur postal en place l'acheminement des envois à un prix supérieur à cinq fois le tarif public applicable à un envoi de correspondance du premier échelon de poids de la catégorie normalisée la plus rapide et ne pesant pas plus de 350 grammes. On s'accorde généralement à penser que cette directive postale a un effet de libéralisation immédiat limité. D'après certaines estimations, cette Directive ne libéralisera de manière générale dans l'Union européenne qu'une part additionnelle de 3 pour cent du marché restant actuellement sous un régime de monopole.<sup>22</sup>

Cependant, cette Directive postale est importante pour les pays de l'Union européenne parce qu'elle établit un calendrier détaillé pour la poursuite de la libéralisation. D'après la Directive, "le Parlement européen et le Conseil décident, au plus tard le 1<sup>er</sup> janvier 2000 et sans préjudice de la compétence de la Commission, de la poursuite de la libéralisation progressive et contrôlée du marché des services postaux, notamment en vue de la libéralisation du courrier transfrontière et du publipostage, ainsi que d'un nouveau réexamen des limites de prix et de poids, avec effet à compter du 1<sup>er</sup> janvier 2003".<sup>23</sup> Il importe de noter que la libéralisation progresse malgré la faiblesse de la Directive postale, étant donné que près d'un tiers des Etats membres de l'Union européenne ont déjà totalement libéralisé ce secteur ou annoncent qu'ils le feront d'ici l'horizon 2003 et, à plus forte raison, dans des segments comme le courrier transfrontière ou le publipostage.<sup>24</sup>

Les mesures de protection monopolistiques contre la concurrence sont particulièrement strictes dans le cas des Etats-Unis. Ces mesures de protection accordées au Service postal des Etats-Unis sont définies dans une série de lois appelées “Private Express Statutes”, qui forment une partie du Code pénal américain. Aux termes de la Section 1696 de ce Code :

Quiconque établit un service d’acheminement de lettres ou paquets privé ou qui, de quelconque manière, achemine ou fait acheminer ces objets par des voyages réguliers ou à des périodes fixées sur tout trajet postal qui est ou pourra être établi par la loi, ou au départ d’une ville ou lieu quelconque et à destination d’une ville ou lieu quelconque entre lesquels le courrier est régulièrement transporté, sera puni d’une peine d’amende de 500 dollars maximum ou d’une peine de prison d’une durée maximum de six mois, ou les deux.<sup>25</sup>

A la différence de la plupart des autres pays, le Post Office des Etats-Unis a lui-même une certaine latitude pour la définition de ce qui constitue une “lettre” aux fins de la loi. Il a choisi une définition large de ce terme. Le Service postal définit une lettre comme étant “un message destiné à une personne ou adresse précise inscrite sur ou dans un objet tangible”<sup>26</sup>. Cette définition est, bien sûr, soumise à une multitude de restrictions et réserves.

La protection contre la concurrence dont bénéficie le Service postal des Etats-Unis couvre aussi l’accès à la boîte à lettres du client, ce qui est inhabituel. La Section 1725 du Code pénal des Etats-Unis interdit le dépôt “d’objets postables” dans une boîte à lettres de client agréée par le Service postal, sous peine d’amende.<sup>27</sup> Le Service postal exige que les boîtes à lettres et autres réceptacles désignés pour la distribution du courrier “soient exclusivement utilisés pour les objets portant un affranchissement”<sup>28</sup>. Evidemment, cela a d’importants effets sur le potentiel de concurrence, étant donné que les concurrents doivent opérer sans réceptacles de courrier désignés<sup>29</sup> ou fournir leurs propres réceptacles à leurs clients.<sup>30</sup>

Comme le montre le Table 5, l’étendue du domaine réservé reste assez variable parmi les pays de l’OCDE. L’Espagne, par exemple, autorise depuis longtemps les entreprises de “courrier en ville” intra-urbain. La plupart des pays permettent le fonctionnement de centres d’échanges de documents. Aux Pays-Bas, la distribution des cartes de Noël échappe au domaine réservé. Les pays les plus libéraux sont la Nouvelle-Zélande, la Suède et la Finlande qui n’ont plus aucun service réservé. En principe, dans ces pays, les concurrents sont libres de rivaliser dans tous les types d’activités postales (dans la pratique, l’obligation d’obtenir une licence peut être une barrière à l’entrée).

### ***Les obligations de service sans rentabilité commerciale***

La justification essentielle des services réservés est peut-être qu’ils sont nécessaires pour financer les obligations de service sans rentabilité commerciale.<sup>31</sup> La plus importante est l’obligation d’assurer le service dans toutes les zones du pays (service “universel”) à des prix qui peuvent ne pas couvrir les coûts.

Par exemple, la directive postale de la Commission européenne spécifie qu’à l’intérieur de l’Union européenne, le service universel implique la distribution tous les jours ouvrables et pas moins de cinq jours par semaine (sauf circonstances exceptionnelles) au domicile de chaque personne physique ou morale (ou dans certaines conditions, dans des installations appropriées) des envois postaux jusqu’à deux kilogrammes et des colis postaux jusqu’à 10 kg.<sup>32</sup>

D'un point de vue économique, ces obligations de service sans rentabilité commerciale sont équivalentes à des mesures de réglementation des prix qui maintiennent le prix d'un service au-dessous du coût, sans permettre le retrait du service.

Les coûts correspondants peuvent être importants. Le Conseil national de la concurrence australien a récemment calculé que, dans le cas de l'Australie (grand pays à faible densité de population), le coût que supporte la Poste australienne, calculé sur la base des coûts évitables à long terme, était de 67 millions de dollars australiens en 1995-1996, soit 20 pour cent des bénéfices de cet exercice.<sup>33</sup> D'après des études réalisées aux Etats-Unis, les trajets les moins denses (la tranche de 20 pour cent la plus basse) ont des coûts imputables qui dépassent de 16 pour cent les revenus, soit un déficit de 121 millions de dollars.<sup>34</sup>

On notera que les services pour lesquels le "service universel" doit être assuré ne coïncident pas nécessairement avec ceux qui sont réservés. Les opérateurs postaux en place peuvent être tenus d'assurer le "service universel" pour des services dont certains aspects sont concurrentiels, comme le service des colis. Le Tableau 7 présente la situation qui prévaudra dans l'Union européenne en conséquence de la Directive sur les services postaux.

**Tableau 7 : Relation entre les domaines réservés et le service universel**

	Critère de poids ou de prix	
Obligation de service universel	Lettres/ cartes postales (jusqu'à 350 g)	Lettres (jusqu'à 2 kg)
Obligation de service universel	Imprimés et colis (jusqu'à 10 kg)	
Pas d'obligation de service universel	Envois par courrier exprès Imprimés et colis plus lourds Courrier sans adresse Echange de documents	

Réservé       Non réservé

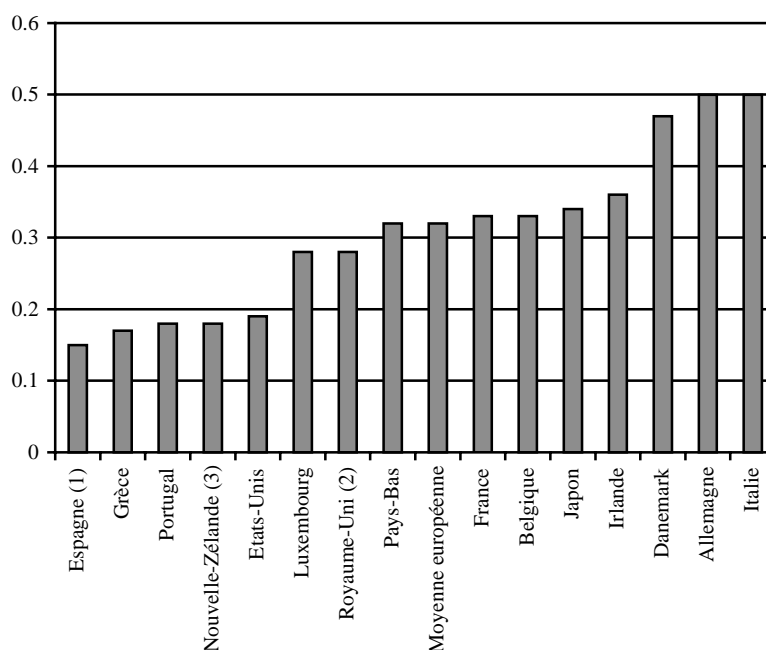
Source : Commission européenne (1992) et Directive 97/67/CE, Article 3.

### ***Les pratiques tarifaires***

La grande majorité des opérateurs postaux en place appliquent un tarif unitaire unique pour les lettres présentées séparément — c'est-à-dire que le prix est le même pour l'acheminement en tout point du pays. Une exception est l'Espagne, où l'opérateur postal offre des tarifs locaux distincts pour l'acheminement local. Généralement, ce tarif unique représente un prix maximum, celui que paient essentiellement les particuliers et les petites entreprises. Les grandes entreprises et les expéditeurs d'envois en nombre bénéficient de prix plus bas, suivant le montant des remises consenties pour les grandes quantités et pour le degré de tri préalable.

Le prix de l'acheminement d'une lettre dans le service intérieur est très variable d'un pays à l'autre dans la zone de l'OCDE, comme le montre la. On notera que, dans une certaine mesure, les tarifs indiqués dans la Figure 3 ne sont pas toujours strictement comparables du fait que la qualité de service est aussi très variable d'un pays à l'autre.

**Figure 3 : Tarifs dans quelques pays de l'OCDE en 1990**



Notes : (1) Le prix indiqué est celui d'une lettre acheminée d'une ville à une autre (interurbain) ; le prix d'une lettre à l'intérieur d'une même ville (intra-urbain) est de 0.08 ECU

(2) Prix d'une lettre de "première classe" jusqu'à 60 g.

(3) Prix du tarif lettres "normal". Il existe un service rapide appelé "Fastpost" au prix de 0.37 ECU.

Source : D'après Commission européenne (1992).

Beaucoup d'opérateurs postaux publient des barèmes de remises de prix standard. Par exemple, la poste britannique offre des remises de prix si les adresses sont lisibles par des lecteurs optiques. Dans d'autres cas, les remises se négocient au cas par cas.

La possibilité qu'ont les opérateurs postaux en place de changer unilatéralement leurs tarifs est très variable. Dans pratiquement tous les cas, les changements du tarif de base des lettres doivent être approuvés par le gouvernement ou par un organisme gouvernemental comme la Postal Rate Commission aux Etats-Unis. La Poste de Nouvelle-Zélande et la Poste suédoise font exception : elles peuvent actuellement fixer librement tous leurs prix, sauf celui d'une lettre ordinaire dans le service intérieur. Dans ces deux cas, le prix pour une lettre ordinaire est soumis à un plafonnement interdisant les hausses supérieures au taux d'inflation national.<sup>35</sup>

### III. Une réglementation efficiente des services postaux

Après avoir présenté quelques faits de base sur le secteur postal, nous passons maintenant à une analyse des fondements de la réglementation économique dans ce secteur.

Afin de comprendre les besoins de réglementation dans ce secteur, il faut saisir la nature du problème que la réglementation est destinée à résoudre. La principale justification de la réglementation économique dans une industrie est l'existence d'une défaillance du marché, d'une forme ou d'une autre. Les formes les plus courantes de défaillance du marché résultent de l'existence d'un monopole naturel, de la présence de biens publics ou d'externalités. Dans le cas du secteur postal, la préoccupation économique essentielle est la possibilité que le secteur postal soit un monopole naturel. C'est donc cette question que nous examinerons dans la présente section.

Cependant, même si le secteur postal est un monopole naturel, cela pourrait justifier certaines formes de réglementation mais pas nécessairement les restrictions de l'entrée que l'on observe couramment. Ces restrictions protègent les subventions transversales internes qui servent couramment à financer les services sans rentabilité commerciale. Nous examinons donc aussi dans cette section si l'existence d'obligations de service sans rentabilité commerciale est une justification légitime des restrictions réglementaires de l'entrée.

#### *Les services postaux sont-ils un monopole naturel ?*

La réglementation économique peut se justifier quand la concurrence ne pourra entamer une puissance de marché persistante. Une entreprise peut être en mesure d'exercer une puissance de marché de manière persistante quand la structure de coûts de l'industrie est telle qu'une seule entreprise peut survivre à l'équilibre (c'est-à-dire, quand une seule entreprise peut produire la production totale du marché à moindre coût que plusieurs entreprises) et quand les barrières à l'entrée sont élevées. Quand une industrie a une structure de coûts ayant cette propriété, on dit que l'industrie présente des rendements d'échelle croissants et qu'elle est un *monopole naturel*.

Dans beaucoup d'industries, la composante de "monopole naturel" d'un secteur est d'étendue limitée et est plus petite que l'ensemble de l'industrie. L'infrastructure des voies dans l'industrie ferroviaire ou la boucle locale dans les télécommunications en sont des exemples classiques. Une des évolutions les plus importantes dans la pensée réglementaire ces vingt dernières années est l'idée que l'existence d'une composante de monopole naturel dans un segment d'une industrie n'implique pas nécessairement une absence de concurrence dans tous les segments qui lui sont verticalement ou horizontalement liés. Dans certaines circonstances, il sera bon d'autoriser la concurrence dans ces segments connexes soit par une séparation du monopole naturel en une entreprise distincte, soit par une réglementation judicieuse de l'accès à la composante de monopole naturel d'une entreprise intégrée.

L'application au secteur postal est claire. Il s'agit d'examiner si la totalité ou certains segments du secteur postal présentent ou non des rendements d'échelle croissants. Dans la négative, il n'est pas besoin que la réglementation contrôle la puissance de marché, car on peut se fier à la concurrence pour atteindre à elle seule ce résultat. S'il existe certains segments qui présentent des rendements d'échelle croissants, il faut soigneusement considérer les avantages et les inconvénients des différentes approches réglementaires visant à contrôler la puissance de marché. Quand les barrières à l'entrée sont suffisamment faibles, la concurrence potentielle est à elle seule susceptible de discipliner la puissance de marché de l'opérateur en place. Quand les barrières à l'entrée sont plus fortes, il peut être bon de réglementer l'accès



aux services des segments de monopole naturel, de manière à stimuler la concurrence dans le reste de l'industrie.

Existe-t-il des économies d'échelle ou de gamme dans la fourniture des services postaux qui donnent à penser que ce secteur a une tendance au monopole naturel ? Dans l'affirmative, dans quelles composantes de l'industrie ces économies se présentent-elles ?

Plus haut dans le présent document, on a divisé la "chaîne de production" postale en 5 activités ou segments distincts : "collecte", "tri pour expédition", "transport", "tri pour distribution" et "distribution finale". Un grand nombre d'études économiques ont tenté d'estimer l'ordre de grandeur des économies d'échelle dans chacune de ces activités. NERA a réalisé pour l'OCDE un tour d'horizon de ces études en 1996.<sup>36</sup> Le tableau suivant en récapitule les principaux résultats. De plus, ce tableau comporte des études additionnelles émanant du service postal des Etats-Unis.

**Tableau 8 : Résumé des éléments empiriques concernant les économies d'échelle et de gamme**

Auteur(s)	Champ de l'étude	Résultats
Gupta et Gupta (1985)	Totalité du Service postal des Etats-Unis	Les activités postales présentent des déséconomies d'échelle mais la technologie postale présente des économies de gamme.
Tabor (1987)	Poste aux lettres (Royaume-Uni)	Economies d'échelle notables dans la poste aux lettres.
Estrin et De Meza (1990)	Totalité du Service postal britannique	Economies d'échelle notables dans la poste aux lettres
Panzar (1991)	Poste aux lettres (Etats-Unis)	Montre que les économies d'échelle dans la distribution sont suffisantes pour donner lieu à des économies d'échelle globales
Tabor (1991)	Poste aux lettres (Royaume-Uni)	Economies d'échelle modérées dans la collecte, faibles économies d'échelle dans le tri et fortes économies d'échelle dans la distribution
Waterson (1992)	Poste aux lettres (Royaume-Uni)	Le Royal Mail n'est pas un monopole naturel quand on ne se limite pas au service universel
Christensen <i>et al.</i> (1993)	Tous les produits postaux du Service postal des Etats-Unis	Rendements d'échelle constants dans le Service postal des Etats-Unis pour les lettres, colis et paquets. Les auteurs trouvent une élasticité du coût de 0.788 relativement au volume de lettres traité et une élasticité du coût de 0.212 pour les points de distribution
Rogerson et Takis (1993)	Tous les produits postaux du Service postal des Etats-Unis	Economies d'échelle et de gamme dans la distribution de la plupart des produits postaux, bien que ces économies soient faibles pour les gros colis et le courrier exprès. Le transport grande distance et le traitement du courrier ne présentent pas de fortes économies d'échelle pour la plupart des produits postaux.
Bradley et Baron (1993)	"opérer avec efficacité" de USPS	L'efficacité dans les opérations croît en proportion du volume (impliquant des économies d'échelle).
Aligon, Cazals, de Rycke, Florens et March (1998)	Le tri (France)	Le coût global d'élasticité de 0.89, comprenant un coût d'élasticité de 0.69 sur le courrier rapide et 0.20 sur le courrier normal.
Bradley and Robinson (1999)	Le tri (USPS)	Retours d'échelle dans une fourchette de 1.3 à 1.7.

Source : Marks (1996), Tableau 1.

*Transport, tri et collecte*

Considérons d'abord le *transport*. Les coûts de transport résultent des liaisons grande ou courte distance entre les centres de tri. On utilise l'avion ou le rail pour des liaisons à relativement grande distance. Le transport routier sert aussi bien pour les liaisons à grande ou à courte distance.

Quoique des éléments d'économie d'échelle en matière de transport<sup>37</sup> figurent dans certaines études, il apparaît que le transport de masse du courrier ne comporte pas d'économies d'échelle notables. Rogerson et Takis, par exemple, dans leur étude sur le Service postal des Etats-Unis, concluent qu'il n'existe pas d'économies d'échelle dans le transport grande distance.<sup>38</sup> En fait, il est courant que les opérateurs postaux sous-traitent jusqu'à la totalité de leurs transports grande distance à des transporteurs concurrentiels, ce qui est une forte indication qu'il n'y a pas d'économies d'échelle dans ce segment.

Le transport grande distance n'est pas un monopole naturel. La Société canadienne des postes recourt entièrement à des transporteurs concurrentiels comme les compagnies aériennes, camions, bateaux et chemins de fer pour le transport grande distance ; elle n'effectue elle-même aucune part de son transport grande distance.<sup>39</sup>

Le *tri* s'effectue manuellement ou au moyen de trieuses automatiques avec des lecteurs de codes à barres ou des lecteurs optiques de caractères. Les études économétriques concernant les économies d'échelle dans ce domaine sont mitigées. Le développement de l'automatisation du tri a augmenté les économies d'échelle dans le tri des lettres mais, en raison de la capacité des machines de tri automatique, ces économies s'épuisent sans doute à des volumes très inférieurs à la taille du marché tout entier. D'après Rogerson et Takis, il n'y a pas non plus d'économies d'échelle dans le traitement du courrier, notamment dans le tri mécanisé ou automatique.<sup>40</sup> Sidak et Spulber observent que "la fonction de tri pour distribution peut se répartir entre de multiples entreprises sans perte d'efficacité. De même que l'on répartit le tri pour distribution entre les employés de la poste, de même on peut le répartir entre des entreprises. En fait les grands expéditeurs de courrier effectuent couramment un certain degré de tri pour distribution afin de bénéficier des remises de prix récompensant le pré-tri".<sup>41</sup>

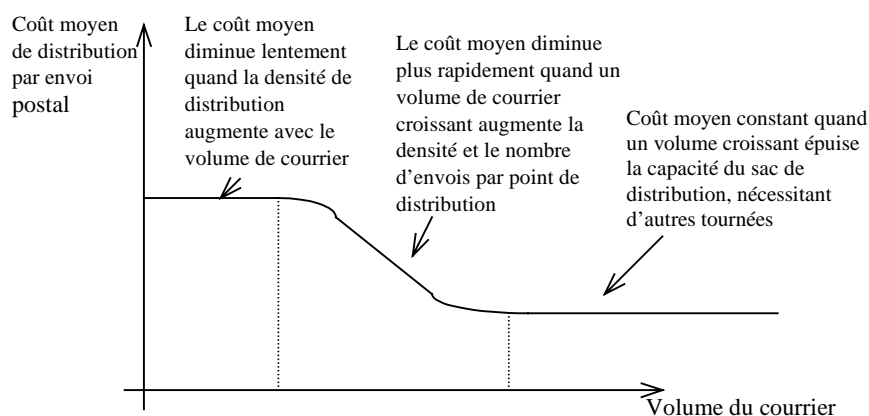
Les coûts de *collecte* correspondent au ramassage du courrier en un point de collecte (temps de chargement) et au transport entre points de collecte (temps de parcours). Certains éléments tendent à indiquer l'existence d'économies d'échelle dans la collecte. D'après l'étude de la Commission sur la libéralisation transfrontière, les coûts de collecte augmentent beaucoup moins que proportionnellement avec le volume. Néanmoins, comme le note ce rapport, les coûts de collecte représentent une part relativement mineure des coûts totaux et ne constituent donc pas un obstacle au développement de la concurrence.

*Distribution finale*

Les préoccupations essentielles relatives aux économies d'échelle dans le secteur postal portent sur la *distribution finale*. Les économies d'échelle dans la distribution concernent l'effet du volume de courrier sur la densité des points de distribution du courrier dans la zone de distribution et sur le nombre d'envois par point de distribution. Quand les volumes de courrier sont très bas, la densité des points de distribution dans la zone de distribution sera basse et les économies d'échelle seront faibles. L'ajout de points de distribution additionnels augmente les coûts de transport. Cependant, quand la densité des envois augmente jusqu'au point où pratiquement tous les points de distribution sont desservis au cours d'un tournée ordinaire, le coût de l'ajout d'un point de distribution additionnel est faible. En outre, dès lors que l'on est arrivé à un point de distribution, le coût de la distribution d'envois postaux additionnels en ce

point de distribution est faible. Pour les grands volumes de courrier, la capacité du sac de distribution ou de la camionnette finira par limiter les économies de gamme. C'est ce qu'illustre la Figure 4.

**Figure 4 : Illustration des effets du volume sur les coûts moyens de distribution**



Ces observations indiquent que les coûts de distribution dépendront des facteurs suivants :

- La fréquence des tournées de distribution et le volume global des envois postaux. Moins les tournées sont fréquentes et plus le volume de courrier est grand, toutes choses égales par ailleurs, plus la densité des points de distribution par tournée sera grande et plus le nombre d'envois par point de distribution sera grand. La fréquence des tournées dépend elle-même du degré d'urgence des envois postaux. Quand ils ne peuvent souffrir de retard, il faudra plus de tournées de distribution. Quand le courrier n'est pas urgent (qu'il supporte un retard) les tournées peuvent être moins fréquentes, avec un volume moyen par tournée plus élevé.
- La concentration des points de distribution. Dans certaines zones, comme les quartiers d'affaires centraux et les zones résidentielles avec de grands immeubles d'appartements, le volume du courrier vers chaque point de distribution est assez grand pour qu'il soit très probable que tous les points de distribution seront visités, même avec des volumes de courrier relativement faibles. On peut accroître le volume du courrier livré à chaque point de distribution en concentrant les points de distribution grâce à l'introduction de boîtes à lettres centralisées<sup>42</sup> (y compris des "boîtes postales").
- La présence d'autres envois (comme la publicité, les journaux, le courrier exprès ou plus urgent) qui nécessitent des livraisons fréquentes et régulières dans pratiquement tous les points de distribution.

Les éléments empiriques confirment ces considérations. Bishop *et al.* notent que "les études en bonne et due forme donnent presque unanimement des résultats confirmant l'existence d'importantes économies d'échelle dans la distribution"<sup>43</sup>. Phillipa Marks, résumant les résultats d'une étude de NERA, aboutit à la conclusion suivante : "bien qu'il n'y ait pas unanimité, il existe un large consensus sur le fait que la poste aux lettres présente des économies d'échelle et une élasticité du coût entre 0.6 et 0.8, ce qui signifie qu'une augmentation du volume de 10 pour cent élève les coûts de six à huit pour cent".<sup>44</sup>

En concordance avec cette image des économies d'échelle, les coûts de la distribution finale constituent une part plus petite des coûts moyens totaux aux Etats-Unis, où le volume de courrier traité est beaucoup plus grand (93 pour cent de tous les arrêts possibles reçoivent du courrier chaque jour) et le nombre d'envois livrés à chaque adresse est nettement plus élevé qu'en Europe. Dans une étude de Cohen et Chu<sup>45</sup>, la distribution rue par rue ne représente qu'environ 20 pour cent des coûts totaux mais, d'après les calculs, elle en représenterait plus de 40 pour cent si les volumes de courrier étaient au tiers du niveau actuel. Cela concorde avec des données des Etats-Unis selon lesquelles une augmentation de volume de 10 pour cent s'accompagnerait d'un accroissement des coûts de trois à quatre pour cent.<sup>46</sup>

A la différence de la poste aux lettres, il ne semble pas y avoir d'économies d'échelle notables dans les services de courrier exprès, de courrier recommandé ou dans les grands colis ou paquets.

Pour les services de *courrier exprès*, le délai de livraison est proche du temps simplement nécessaire pour transporter les biens entre les deux points considérés, et l'entreprise postale ne peut tirer parti des économies de densité dans la distribution. La visite physique d'un certain nombre de points, même dans une petite zone géographique, prendrait tout simplement trop de temps. A la limite, l'entreprise de livraison ne peut se permettre de visiter *aucun autre* point de distribution. De fait, l'entreprise de livraison offre des services "point-à-point" et ne peut absolument pas exploiter les économies d'échelle d'un "réseau" de distribution dense. Les économies d'échelle de la livraison point-à-point sont limitées ou inexistantes. Une augmentation du volume du trafic doit s'accompagner d'une augmentation proportionnée des trajets de livraison.

L'argument est similaire dans le cas des *services de colis*. La densité des livraisons de colis un jour donné est généralement trop faible pour que l'on exploite pleinement des économies d'échelle ou de gamme. Les clients du service de colis sont généralement disposés à payer le prix d'une livraison plus rapide. De fait, les services de colis sont l'équivalent des services de courrier exprès pour une catégorie d'envois à plus faible volume.

Cette analyse explique pourquoi, par exemple, il n'y a pas de monopole naturel pour d'autres formes de services de livraison dans les grandes agglomérations, comme les entreprises qui offrent des services de livraison de pizzas, d'épicerie ou de meubles. Dans chaque cas, les biens en question sont trop sensibles aux retards et en volume trop faible pour que l'on puisse attendre de trouver un trajet suffisamment dense.

Il existe deux autres raisons pour lesquelles les économies d'échelle et de gamme sont plus faibles dans les services de colis. Premièrement, du fait de la dimension des colis, on atteint beaucoup plus vite la capacité maximale de l'unité de livraison (le sac de courrier ou la camionnette). Même pour de faibles volumes de livraison de colis, un doublement du volume nécessite généralement l'ajout de tournées de livraison supplémentaires.

La deuxième raison tient au fait que beaucoup de colis sont (quelquefois par définition) trop grands pour entrer dans une boîte à lettres normale ou pour passer par la fente d'une boîte à lettres normale. La livraison d'un envoi de ce genre nécessite généralement que le destinataire ou une personne mandatée par ce dernier soit présent. Il en est de même pour le courrier recommandé qui nécessite une signature pour accusé de réception. Obtenir une signature ou la présence du destinataire prend du temps. Au-dessus d'une densité minimum de livraisons, le coût de l'obtention d'une signature est la composante des coûts de distribution la plus importante, si bien qu'une augmentation du volume des colis ou des envois recommandés à livrer engendre une augmentation à peu près proportionnelle du coût total. Comme précédemment, au-dessus d'un certain seuil, les économies d'échelle deviennent négligeables.

## *Conclusion*

Pour résumer les résultats de cette section, les études économiques sont mitigées quant aux économies d'échelle dans les activités de transport ou de tri du courrier. Cependant, les économies d'échelle existent au niveau de la distribution finale. Les économies d'échelle apparaissent le plus nettement quand le courrier peut être retardé (ce qui permet des tournées moins nombreuses et de plus grand volume) et que la densité de distribution est élevée (beaucoup de points de distribution par tournée) et les économies d'échelle sont le plus faibles (et l'entrée sur le marché plus probable) quand le courrier est très sensible aux délais (qu'il ne peut être retardé) et que la densité de distribution est faible.<sup>47</sup>

## ***Barrières à l'entrée et degré de concurrence dans les services postaux***

L'existence d'économies d'échelle dans certaines composantes des activités postales ne justifie pas en elle-même la réglementation, car la menace d'une entrée pourrait encore empêcher l'exercice de la puissance de marché. En conséquence, dans cette section, on examine les barrières à l'entrée et les possibilités de concurrence dans les services postaux qui pourraient se présenter dans un marché postal complètement libéralisé (et en l'absence d'autres interventions réglementaires comme la réglementation de l'accès au réseau de distribution finale de l'opérateur en place).

Même en l'absence d'accès au réseau de distribution de l'opérateur en place, il est probable que certaines formes de concurrence importantes apparaîtraient sur au moins certains marchés postaux. Pour commencer, il existe une concurrence importante de la part de produits offerts sur des marchés voisins :

- (a) Premièrement, et le plus important, en l'absence de contraintes réglementaires il semble très probable que les entreprises de courrier exprès offriraient les services exprès à des prix concurrençant de plus près les tarifs actuels ordinaires de la poste aux lettres. Le potentiel de substitution du courrier exprès est capable de discipliner les prix pour au moins certaines catégories de courrier de première classe.
- (b) Deuxièmement, comme on l'a noté plus haut, les services postaux doivent faire face à la concurrence d'un éventail varié de télécommunications comme le téléphone, la télécopie, le courrier électronique et le commerce électronique. Avec le temps, il est très probable que ces autres moyens continueront d'entamer au moins certaines composantes du courrier classique.
- (c) Troisièmement, l'opérateur en place doit faire face à la concurrence de nouveaux entrants qui n'offrent pas des services de bout en bout. Par exemple, il arrive que ces nouveaux entrants n'offrent pas la distribution finale jusqu'à la porte du destinataire. En fait, "ce type de "livraison à domicile" qui caractérise le service postal contemporain est une innovation relativement récente : dans le passé, les destinataires étaient censés prendre leur courrier à la poste"<sup>48</sup>. Aujourd'hui encore, certains consommateurs sont titulaires d'une "boîte postale" dans un bureau de poste local auquel ils doivent se rendre pour prendre leur courrier. Si la boîte postale est située dans un lieu qu'il visite fréquemment (comme le supermarché local), le consommateur peut, au fond, exploiter ses propres économies de gamme dans la distribution finale du courrier à domicile.
- (d) Quatrièmement, l'opérateur en place doit faire face à la concurrence de nouveaux entrants offrant des services différenciés. Même s'il existe des économies d'échelle, plusieurs entreprises peuvent subsister si elles offrent un produit suffisamment différencié, du point de vue des consommateurs. Par exemple, les entreprises de livraison peuvent se distinguer par l'horaire de leur tournée. Avec un volume de courrier suffisant, une entreprise qui offre une

ournée le matin peut, dans certaines circonstances, offrir un produit assez distinct de celui d'une entreprise offrant une tournée l'après-midi pour que toutes les deux puissent subsister.<sup>49</sup>

En outre, les barrières aux entrées nouvelles dans les services postaux ne sont pas excessivement élevées. Pour une large part, les investissements nouveaux nécessaires sont récupérables. Sidak et Spulber notent que, dans le contexte du Canada :

Le capital de la Société canadienne des postes est constitué de bâtiments, de véhicules et d'équipements de tri. Les bâtiments, qui sont souvent loués et non achetés, peuvent être employés à d'autres usages et ne sont pas liés à la localisation particulière d'un client. Les véhicules sont évidemment du matériel mobile. Les services des équipements de tri, bien que spécialisés, ne sont pas liés à un client particulier, car on peut les transférer dans le marché simplement en transportant les envois à trier d'un lieu à l'autre. Ces matériels comme les équipements de tri et les véhicules ont des vies économiques relativement courtes — à la différence des installations de transmission [dans d'autres industries de réseau] — et ainsi ils ne représentent pas une barrière à l'entrée insurmontable. Ainsi, les coûts irrécupérables ne sont pas très élevés dans l'industrie des services postaux.<sup>50</sup>

L'investissement irrécupérable peut-être le plus important pour un nouvel entrant dans les services postaux est l'investissement consacré à se faire connaître de la clientèle et asseoir sa réputation et la notoriété de la marque. Le Bureau de la concurrence du Canada a jugé dans un cas particulier que ces coûts ne constituent pas un obstacle à l'entrée important, au moins dans le cas du marché du courrier exprès :

L'investissement requis pour accéder à ce marché [livraison exprès de petits colis] sur une base régionale est peu élevé et généralement récupérable à la sortie du marché. Par contre, l'accès de novo au marché d'un service national complet de messagerie coûte très cher, entre autres parce qu'il faut mettre sur pied un système de repérage et un réseau de distribution complexe et établir la réputation de la marque. Bien que les coûts d'entrée de novo soient élevés, les renseignements reçus récemment indiquent qu'ils ne constituent pas un obstacle insurmontable à l'accès au marché.<sup>51</sup>

Etant donné que les barrières à l'entrée sont relativement faibles sur beaucoup de marchés postaux, il peut exister une réelle menace d'entrée nouvelle de la part de concurrents visant la totalité du marché :

- (a) Premièrement, et le plus important, il peut exister une réelle menace d'entrée dans la livraison régulière de courrier de la part de transporteurs existants comme les entreprises de courrier exprès ou de colis.<sup>52</sup>
- (b) En outre, il peut exister une menace d'entrée de la part d'opérateurs postaux voisins. Bien que les économies d'échelle puissent conduire à la présence d'une seule compagnie de livraison de courrier dans chaque localité, il n'y a pas de raisons économiques pour lesquelles une unique compagnie postale devrait desservir un grand nombre de ces localités. La concurrence est susceptible d'avoir lieu aux frontières de ces zones.
- (c) Enfin, il peut exister une réelle menace d'entrée de la part d'entreprises de livraison non postale qui ont un déjà un réseau de distribution régulière et dense (comme les entreprises

qui livrent de la publicité ou des journaux). En fait, en particulier dans les zones rurales, il n'est pas rare de trouver une distribution de courrier combinée avec d'autres services de transport, de voyageurs ou de marchandises.

On peut se faire une certaine idée du potentiel d'entrée en considérant l'expérience des pays qui ont déréglementé temporairement ou définitivement. En Nouvelle-Zélande, après 8 mois de libéralisation complète, 17 nouveaux opérateurs postaux se sont fait enregistrer (leur part de marché totale est pour le moment assez petite). Pendant une grève des employés de Royal Mail au Royaume-Uni en 1971, le gouvernement a temporairement supprimé le monopole de Royal Mail et a permis à des entreprises privées de traiter les lettres dans le cadre d'un régime de licences. Le nombre de ces titulaires de licence a atteint 562 durant cet épisode.<sup>53</sup>

### *Conclusion*

En résumé, en l'absence de mesures réglementaires additionnelles assurant aux concurrents l'accès au réseau de distribution de l'opérateur en place, un degré effectif de concurrence apparaîtrait-il dans les services postaux ? L'analyse précédente indique que, malgré la présence d'importantes économies d'échelle dans la distribution de certains envois postaux, les autres caractéristiques de ce secteur sont telles qu'on peut s'attendre à voir apparaître un certain degré de concurrence. En particulier, on peut attendre une concurrence notable dans les services exprès, dans la livraison de colis et dans certains domaines de la distribution de lettres, probablement en ville. En outre, l'absence de coûts irrécupérables importants laisse penser que la menace d'entrées nouvelles empêchera dans une certaine mesure les opérateurs en place d'exercer leur puissance de marché. Ces menaces d'entrée émanent notamment des entreprises opérant sur des marchés de produits ou des marchés géographiques voisins — en particulier des entreprises de services exprès, de colis et autres entreprises de livraison opérant déjà dans la région et des entreprises de livraison opérant dans des régions adjacentes. Bishop *et al.* résument la situation comme suit :

Les caractéristiques technologiques de beaucoup de parties du service postal permettent un plein fonctionnement de la concurrence : les rendements d'échelle ne sont pas trop forts dans un certain nombre d'activités (transport, tri et, dans une certaine mesure, collecte), et le "dégrouperment" des services auparavant assurés par un monopoliste verticalement intégré ne semble pas générer d'importantes déséconomies de gamme. La seule partie du service postal où la présence de forts rendements d'échelle peut rester un problème est la distribution régulière (quotidienne) de courrier à domicile. Néanmoins, à en juger par ce qui se passe actuellement dans un certain nombre de pays, il semble qu'il soit possible d'introduire des innovations dans la distribution qui exploitent des économies de gamme entre la livraison des lettres et la livraison d'autres envois, permettant aux concurrents d'atteindre l'échelle minimale d'efficacité et ainsi de maintenir un service de livraison compétitif. Il y a donc quelque incertitude sur le point de savoir si la distribution rue par rue constitue un monopole naturel et dans quelle mesure l'entrée peut être viable et efficace en raison des économies de gamme.<sup>54</sup>

Sur un marché postal complètement libéralisé, on peut s'attendre à voir apparaître un certain degré de concurrence dans les services postaux. Dans certains pays, il est possible que ce degré de concurrence soit suffisant. Il reste néanmoins possible que l'on puisse sensiblement renforcer le degré global de concurrence par des interventions réglementaires sectorielles. C'est ce qu'on examine dans la section suivante.

### *La réglementation de l'accès aux services de distribution finale*

L'analyse précédente a indiqué que le secteur postal ressemble à beaucoup d'autres industries de réseau (les télécommunications, l'électricité et les chemins de fer en constituent de bons exemples) par le fait qu'il existe une unique composante ayant des propriétés de monopole naturel et que la compagnie qui exploite cette composante de monopole naturel opère aussi dans des secteurs en amont ou en aval qui sont potentiellement concurrentiels. C'est ce qu'on appelle une "monopole naturel verticalement intégré".

Dans le contexte d'un monopole naturel verticalement intégré, les responsables publics ont essentiellement le choix entre trois grandes options :<sup>55</sup>

- (a) réglementer dans sa totalité l'entité verticalement intégrée (par exemple, comme pour la plupart des opérateurs postaux en place, comme beaucoup de compagnies de chemins de fer ou comme AT&T aux Etats-Unis avant son démantèlement) ;
- (b) séparer en une compagnie distincte la composante de monopole naturel, la soumettre à des restrictions du type d'activités pour empêcher la réintégration et permettre la concurrence dans les segments de nature concurrentielle (par exemple, comme pour les Bell Operating Companies aux Etats-Unis après le démantèlement, comme les chemins de fer au Royaume-Uni ou dans d'autres pays) ; ou
- (c) introduire la concurrence dans les segments de nature concurrentielle, tout en conservant un opérateur en place verticalement intégré, ce qui nécessite de réglementer les modalités et conditions de l'accès à la composante de monopole naturel (on peut mentionner comme exemples le secteur postal en Nouvelle-Zélande, le secteur des télécommunications dans de nombreux pays et le secteur des chemins de fer aux Etats-Unis).

En outre, dans chacune des approches précédentes, un certain degré de division horizontale de l'entité intégrée (ou de la composante de monopole naturel) peut être approprié (la division de la compagnie de téléphone local d'AT&T en 7 Bell Operating Companies régionales après le démantèlement en est un exemple).

Pendant des décennies, la forme prédominante de réglementation dans les industries comportant une composante de monopole naturel a été (et est encore, dans le cas du secteur postal) l'approche (a) (réglementation d'un monolithe verticalement intégré) souvent accompagnée d'une forme ou une autre de propriété de l'Etat. Cependant, l'expérience des deux dernières décennies de déréglementation a montré qu'il est souvent préférable de concentrer directement la réglementation sur la composante de monopole naturel. Ce faisant, on accroît le champ de la concurrence tout en réduisant le rôle de la réglementation, en ciblant l'intervention réglementaire (en principe) sur la source de la défaillance du marché sous-jacente.

L'approche (b), (séparation verticale) a été appliquée à l'industrie des télécommunications aux Etats-Unis à la suite de la décision *AT&T* de 1983 et elle a aussi été adoptée dans le secteur des chemins de fer dans de nombreux pays (l'infrastructure des voies a été séparée de l'exploitation du matériel roulant). L'approche (b) a l'avantage d'être analytiquement nette et relativement facile à administrer. Une fois la séparation mise en œuvre, l'entreprise du monopole naturel a (en principe) une incitation à fournir l'accès à tout venant. Cette approche a toutefois deux inconvénients importants : la perte des économies de gamme due à la séparation, et la difficulté et l'arbitraire de délimiter clairement la composante de "monopole naturel" des activités, d'une manière qui reste valable au cours du temps.

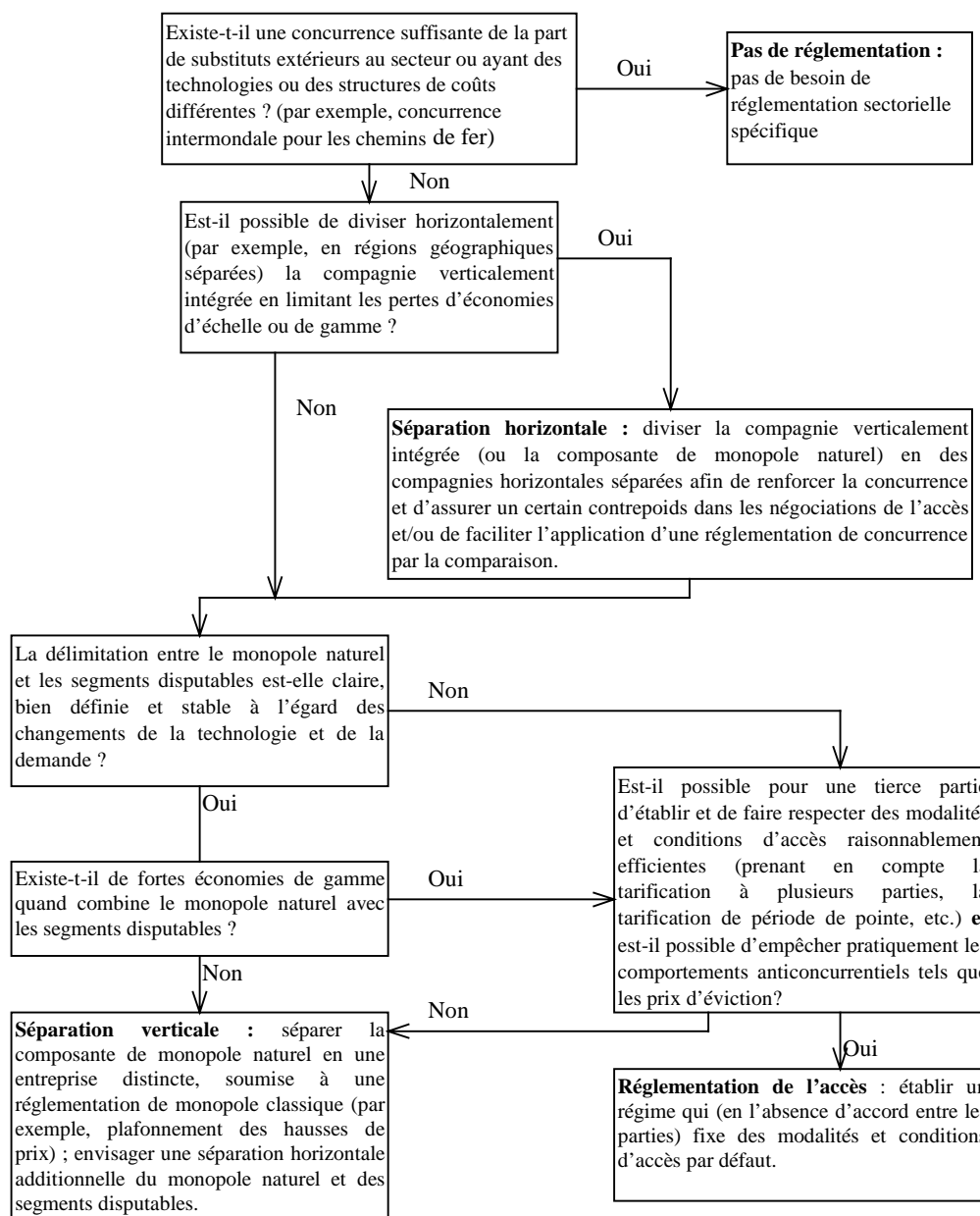


L'approche (c) (réglementation de l'accès), au contraire, n'implique pas une division de l'entreprise en place et n'entraîne donc pas la perte d'économies de gamme. En principe, elle permet de cibler l'accès sur les seuls services pour lesquels il existe un élément de monopole naturel. Cette approche a aussi ses inconvénients. En particulier, elle peut être difficile à administrer. L'entreprise en place a de fortes incitations à entraver le développement de la concurrence, en faisant obstruction à l'accès par tous les moyens légaux ou administratifs possibles.

Il existe des arguments pour et contre chaque approche. Le choix de la structure appropriée dépend de la situation de chaque industrie (et, dans une certaine mesure, de chaque pays). En règle générale, au risque d'une généralisation excessive, l'approche (a) est probablement préférable quand les éléments de monopole naturel sont disséminés dans toute l'industrie, ce qui laisse peu de champ à la concurrence. L'approche (b) est généralement préférable quand les éléments de monopole naturel constituent une large part de l'ensemble des activités, qu'il est difficile pour une partie extérieure de déterminer convenablement les modalités et conditions d'accès efficaces et que les économies de gamme sont limitées. L'approche (c) est généralement préférable quand les composantes de monopole naturel sont petites par rapport à l'ensemble des activités, qu'il est facile de déterminer et d'administrer les modalités et conditions d'accès efficaces et qu'il existe de fortes économies de gamme.

La figure 5 peut servir de guide général pour déterminer l'intervention réglementaire adéquate dans les industries présentant un monopole naturel verticalement intégré :

**Figure 5 : Guide d'appréciation des interventions structurelles et réglementaires dans les industries présentant une structure de monopole naturel verticalement intégré**



L'application au secteur postal est immédiate. Notre analyse précédente des économies d'échelle et de gamme a montré qu'il existe des possibilités de concurrence dans une grande partie des activités qui composent la chaîne de production du secteur postal. Les économies d'échelle apparaissent le plus fortes dans la distribution finale. Cela indique que, si ces économies sont assez fortes pour faire du service de distribution finale un monopole naturel, protégé par des barrières à l'entrée, on doit alors choisir l'approche (b) ou (c). Dans l'approche (b), l'activité de distribution finale sera séparée du reste des activités postales et exploitée comme une activité autonome, acceptant des envois postaux de toutes les entreprises de courrier. Dans l'approche (c), l'opérateur postal en place restera verticalement intégré, mais

il sera soumis à l'obligation d'accepter, pour la distribution finale, les envois postaux des entreprises de courrier concurrentes.

Bien sûr, l'activité de distribution finale ne doit pas nécessairement être elle-même une entité intégrée — elle pourrait être assurée par de nombreuses entreprises, chacune opérant seule dans une zone géographique. Certains commentateurs préconisent que l'on divise le Service postal des Etats-Unis en entreprises régionales similaires aux sept sociétés d'exploitation régionales Bell résultant du démantèlement d'AT&T.<sup>56</sup> En fait, la distribution postale pourrait être confiée à la responsabilité des autorités locales.

L'inconvénient de ce genre de séparation verticale est qu'il y a certains avantages à grouper dans un seul opérateur toutes les fonctions du courrier, de la collecte à la distribution finale. Au minimum, cette intégration facilite la création de nouveaux produits postaux innovants qui peuvent, par exemple, nécessiter une forme de distribution finale légèrement différente.

L'autre solution est un régime où les concurrents ont accès au réseau de distribution finale de l'opérateur en place selon des modalités et conditions réglementées. Dans ce cas, les questions les importantes sont de savoir exactement quels services l'opérateur sera tenu d'offrir et selon quelles modalités et conditions.

Du point de vue économique, l'opérateur en place ne devrait être tenu de fournir un accès qu'aux services que l'entrant ne sera jamais capable de reproduire de manière rentable. L'accès ne devrait pas être exigé pour les services concurrentiels comme le courrier exprès ou la livraison de colis. On peut aussi penser que l'accès ne devrait pas non plus être exigé pour les services, comme la livraison de courrier aux grandes entreprises, pour lesquels les économies d'échelle sont relativement faibles.

La question de savoir quels sont les prix d'accès appropriés à appliquer dans ces circonstances a fait l'objet et continue de faire l'objet d'un grand nombre d'études. D'après la théorie économique, le prix d'accès adéquat se situe dans l'intervalle entre le coût incrémentiel moyen du service de distribution finale et le coût autonome moyen. En outre, on s'accorde en général à penser que le prix d'accès ne doit pas atteindre un montant empêchant un entrant d'efficacité équivalente de rivaliser dans les parties concurrentielles du marché (autrement dit, le prix d'accès devrait au moins laisser à l'entrant une marge de concurrence, égale au coût incrémentiel moyen de fourniture du service concurrentiel).

En général, plus le prix d'accès est élevé, moins l'entrant est capable de rivaliser en prix avec l'opérateur en place. De plus en plus, dans les télécommunications, on convient de choisir des prix d'accès à l'extrémité basse de l'intervalle possible — c'est-à-dire, proches du coût incrémentiel moyen. Ces prix stimulent la concurrence par les prix entre l'opérateur en place et le nouvel entrant et ont ainsi l'avantage annexe de rendre moins nécessaire une surveillance réglementaire des prix de détail de l'opérateur en place.

La structure des prix d'accès devrait refléter la structure des coûts du service auquel on donne accès. Si la distribution finale présente (comme c'est probable) un coût fixe moyennement élevé et un coût marginal très bas, les prix d'accès devraient aussi suivre un tarif à deux parties avec un coût fixe moyennement élevé et un coût marginal très bas. Enfin, quand il existe de fortes contraintes de capacité (comme cela peut arriver en période de pointe pour la livraison du courrier) les prix d'accès devraient comporter un élément de tarification de "période de pointe", c'est-à-dire correspondant à la nécessité de couvrir complètement les coûts de la capacité additionnelle aux périodes de pointe.<sup>57</sup>

On notera que plusieurs pays ont déjà explicitement introduit un régime d'accès de ce genre dans la réglementation du secteur postal. La nouvelle Loi postale allemande oblige explicitement les opérateurs postaux en position dominante à offrir à leurs concurrents "les parties de leur acheminement global" de manière séparée.<sup>58</sup> En Nouvelle-Zélande, les nouveaux entrants ont réussi à négocier avec l'opérateur en place des arrangements d'interconnexion, en s'appuyant sur la section 36 de la loi néo-zélandaise sur la concurrence (concernant "l'abus de position dominante").

#### *Frais terminaux*

Avant de conclure l'examen de la réglementation de l'accès, il convient de noter qu'il existe déjà une forme d'arrangements d'accès dans le secteur postal, à savoir les arrangements pour l'échange du courrier entre les opérateurs postaux nationaux. Dans le système des "frais terminaux", les opérateurs postaux acceptent de livrer le courrier provenant d'autres pays moyennant une rémunération qui dépend du poids et/ou du volume du courrier transporté. D'un point de vue théorique, ces frais terminaux devraient être fixés conformément aux principes exposés ci-dessus de la même manière que les prix d'accès — en effet, il n'y a pas de raison théorique de faire une distinction entre le courrier qui provient d'opérateurs intérieurs concurrents et le courrier qui provient d'opérateurs étrangers.

Etant donné que les coûts de transport constituent une part très faible des coûts totaux du courrier (environ deux pour cent d'après la Figure 2), il peut arriver qu'il soit plus rentable pour une entreprise de transporter son courrier jusqu'à un pays voisin et de le mettre à la poste dans ce pays à destination du pays d'origine.<sup>59</sup> Sous réserve que les frais terminaux ne soient pas inférieurs aux coûts de la livraison, cette forme de concurrence appelée "repostage" peut avoir un important effet de discipline sur les prix du courrier intérieur, même en l'absence d'une plus grande libéralisation intérieure et on ne devrait donc pas l'interdire.<sup>60</sup> Dans certain cas, l'entreprise qui produit le courrier n'a même pas besoin de le transporter matériellement : elle peut l'envoyer électroniquement dans le pays voisin où il est imprimé et posté.

#### *Conclusion*

En résumé, les données économiques montrent qu'il peut exister des économies d'échelle dans le secteur postal, particulièrement dans la distribution finale. Il est difficile de dire si ce seul élément est un obstacle fondamental à la concurrence — les barrières à l'entrée sont faibles et il existe un degré significatif de concurrence de la part de proches substituts. Quoi qu'il en soit, on peut introduire la concurrence par une action réglementaire immédiate similaire à celle appliquée dans d'autres secteurs pour faire en sorte que les concurrents aient accès au service de distribution finale de l'opérateur en place.<sup>61</sup>

#### ***Satisfaire aux obligations de service sans rentabilité commerciale***

Dans les sections précédentes, on a examiné la question de savoir quel est le régime réglementaire adéquat pour les services postaux en l'absence de toute contrainte sectorielle spécifique de la politique publique dans ce domaine. Cependant, dans la pratique, on constate couramment qu'il existe divers objectifs de l'action gouvernementale pour ce secteur qui peuvent exiger la fourniture de services à un prix inférieur au coût. On examine donc dans cette section si l'existence de ces obligations de service sans rentabilité commerciale est un obstacle à l'introduction de la concurrence dans les services postaux.

Comme dans la plupart des autres industries de réseau, le coût de la fourniture des services postaux diffère d'une région à l'autre et suivant le service fourni. On admet généralement, par exemple, qu'en raison des volumes et des densités plus élevés, les coûts de distribution sont plus bas dans les zones

urbaines que dans les zones rurales.<sup>62</sup> En conséquence, si la fourniture d'un service quotidien porte à porte peut être rentable dans les zones urbaines, les volumes de courrier plus bas et les coûts de transport plus élevés peuvent rendre le même service, au même prix, déficitaire dans les zones rurales. On suppose donc que les opérateurs postaux réagiraient, s'ils en avaient la possibilité, en augmentant le tarif<sup>63</sup> dans les zones rurales, en offrant une moindre qualité de service (par exemple, avec des tournées moins fréquentes ou sans livraison porte à porte) ou en supprimant complètement le service.

La plupart des pays de l'OCDE limitent donc la possibilité qu'ont les opérateurs postaux en place d'appliquer des prix plus élevés ou d'offrir une moindre qualité de service dans les zones rurales. La forme la plus courante de ces restrictions est tout simplement l'obligation de fournir un service géographiquement (plus ou moins) uniforme — en appliquant le même prix et en offrant le même degré de service quelle que soit la localisation géographique du client.

Aucune différence n'est habituellement autorisée en fonction du lieu géographique de distribution : les prix sont généralement uniformes par rapport à la destination ; ils ne sont pas modulés en fonction de la distance (à l'intérieur du pays), ni de la densité du trafic au départ, à l'arrivée ou sur un trajet particulier. Il est intéressant de noter que, si l'uniformité géographique des tarifs est le dogme depuis de nombreuses années, il n'en a pas toujours été ainsi : quand l'uniformité tarifaire a été imposée en Grande-Bretagne en 1840, on a proposé un système à deux niveaux en fonction de la densité et des coûts additionnels de distribution en dehors des principales villes de poste (c'est-à-dire, en différenciant les prix entre les zones à forte densité et la campagne). L'uniformité a eu des raisons principalement sociales et politiques...<sup>64</sup>

*La réglementation visant à réaliser l'uniformité géographique est-elle souhaitable ou nécessaire ?*

Avant d'analyser les effets de ces exigences réglementaires sur la concurrence, nous faisons d'abord quatre remarques. Premièrement, la réglementation assurant le service universel sera souvent le résultat d'exigences réglementaires (comme l'uniformité géographique des tarifs) qui obligent à tarifier un ensemble de services au-dessous de leur coût. Deuxièmement, une stricte uniformité géographique peut être économiquement non efficiente. Il peut être plus efficient de permettre aux prix de varier en fonction des coûts sous-jacents. Troisièmement, il n'est pas du tout évident que sur un marché déréglementé les différences de prix et de service entre les zones à hauts coûts et les zones à faibles coûts seraient inacceptables ou même importantes. Quatrièmement, si les différences de prix ou de qualité résultant d'un marché déréglementé s'avéraient d'ampleur inacceptable, on pourrait y remédier au moyen de transferts directs aux habitants des zones à coûts élevés, avec une distorsion minimale de l'ensemble du marché.

Quand la réglementation maintient systématiquement les prix au-dessous des coûts, une exigence réglementaire additionnelle d'une forme ou d'une autre est nécessaire pour obtenir la préservation du service. Les exigences de "service universel" peuvent donc être une conséquence des mesures de réglementation des prix dans les zones à hauts coûts. L'élimination des contraintes de tarification uniforme peut supprimer le besoin d'une réglementation visant à assurer le service universel.

En outre, une distorsion des prix économiques fausse généralement l'affectation des ressources. L'uniformité géographique des prix envoie des signaux inappropriés aux entreprises et aux particuliers qui prennent des décisions de localisation. Cela incite, de manière contraire à l'efficacité économique, les entreprises à s'éloigner des zones à faibles coûts et cela subventionne leur localisation dans des zones à coûts élevés. En général, pour que les prix ne faussent pas les décisions de localisation, il faut que les prix relatifs reflètent correctement les différences des coûts sous-jacents.

Dans la pratique, beaucoup de pays n'exigent pas une stricte uniformité des prix et de la qualité de service, mais permettent un prix plus élevé ou une moindre qualité de service dans les zones rurales. Certains pays, comme l'Espagne, permettent depuis longtemps des prix plus bas pour le courrier local (intra-urbain). La législation postale en Australie oblige seulement la Poste australienne à assurer une "norme raisonnable" pour le service des lettres et un "accès raisonnable" aux services postaux, en laissant l'interprétation de ces termes à la discrétion de la poste.<sup>65</sup> La directive postale de la Commission européenne n'exige pas des prix uniformes mais seulement que les prix dans les zones à hauts coûts soient "abordables". Pratiquement tous les pays, évidemment, permettent des remises de prix substantielles pour le courrier en nombre et le courrier pré-trié. En conséquence, plutôt qu'une stricte uniformité, une exigence moins contraignante et plus appropriée pourrait être que les différences de prix et de qualité entre les habitants des zones urbaines et des zones rurales ne soient pas "trop grandes".<sup>66</sup>

Un secteur postal totalement libéralisé fournirait presque certainement une forme ou une autre de service dans toutes les zones d'un pays. De même que d'autres entreprises entrent dans les zones rurales pour répondre aux divers besoins des clients ruraux, on peut s'attendre à ce que les opérateurs postaux en fassent autant. La qualité de service ne serait peut-être pas la même que dans les zones urbaines et le prix pourrait être plus élevé, mais le service serait néanmoins fourni :

Notre expérience concernant la déréglementation du camionnage et du transport aérien laisse penser que les craintes d'une forte réduction du service rural en raison de la déréglementation postale sont probablement infondées. Certaines villes moyennes ne sont plus desservies par les gros porteurs, mais les compagnies aériennes régionales utilisent des avions plus petits pour desservir de petites localités à des coûts bien moindres. Des milliers de nouvelles compagnies sont entrées dans le camionnage, ce qui a amélioré ce service dans les zones rurales. Si l'on peut obtenir un transport aérien et un service de camionnage dans tout le pays sans monopole d'Etat, la concurrence peut aussi fonctionner pour la distribution des lettres. La configuration du service peut changer quelque peu mais ... chacun aura accès au service du courrier à un prix abordable.<sup>67</sup>

En outre, il n'est peut-être même pas sûr que le prix dans les zones rurales serait plus élevé que dans les zones urbaines. Sur un marché libéralisé, la décision d'adopter un prix unique national est une décision sur le produit et la commercialisation qui peut être rentable d'un point de vue strictement commercial, par exemple pour la notoriété de la marque ou pour réduire les coûts de transaction des clients. Ces avantages peuvent compenser les coûts de la fourniture à perte de certains services. La preuve en est que les entreprises privées fournissent effectivement un service universel :

Aux Etats-Unis, les coursiers privés ont adopté une tarification uniforme pour la livraison en tout lieu à l'intérieur des 48 Etats contigus. Ces entreprises se font concurrence sur le service et sur les prix (par exemple, avec des remises négociées pour les grandes quantités) mais les tarifs proposés sont uniformes pour la livraison en tout point des 48 Etats, y compris les zones rurales assez éloignées des aéroports qu'utilisent ces coursiers. ... Ces entreprises ne gagnent pas d'argent sur toutes les livraisons. Chaque jour, les livraisons à certains destinataires sont probablement "subventionnées" par d'autres. Pourtant, les coursiers privés n'essaient pas de réviser leur structure tarifaire pour être bénéficiaire sur chacune des livraisons. On peut assimiler ces livraisons subventionnées à des "produits d'appel" que les coursiers utilisent pour attirer d'autres demandes beaucoup plus rentables.<sup>68</sup>

Même si, sur un marché déréglementé, les entreprises privées appliquaient des prix nettement plus élevés (ou offraient une qualité nettement moins bonne) dans les zones rurales, l'action des pouvoirs publics pourrait y remédier sans distorsion du marché postal lui-même. En particulier, on pourrait

compenser les différences de qualité postale par une *subvention directe* aux habitants des zones rurales, pour leur permettre d'acheter les services postaux qu'ils souhaitent.

Le Parlement pourrait attribuer des subventions postales directement aux consommateurs dans les zones rurales. On pourrait même soumettre ces subventions à des conditions de ressources, si l'on jugeait qu'un bas niveau de revenu est un élément plus important que le fait d'avoir une adresse à la campagne. Le coût élevé de ce que l'on pourrait appeler "l'accès de terminaison" serait alors directement facturé à ces clients par l'opérateur de dernier recours ... Le prix d'affranchissement de base plus bas qui en résulterait ne comprendrait pas la surtaxe de livraison aux zones reculées à hauts coûts.<sup>69</sup>

Pour résumer, la réglementation destinée à imposer l'uniformité géographique du prix et de la qualité est contraire à l'efficacité économique du fait qu'elle fausse les décisions d'affectation des ressources ; elle implique une réglementation supplémentaire sous la forme d'obligations de service universel et elle peut être totalement inutile. Il est probable qu'un marché déréglementé fournirait le service dans toutes les zones avec des différences de prix ou de qualité qui ne seraient pas nécessairement d'ampleur inacceptable. Si l'on jugeait que les différences de prix ou de qualité qui en résultent étaient trop grandes, on pourrait y remédier sans distorsion de la concurrence et des prix au moyen de subventions directes aux habitants des zones rurales.

#### *Fournir des services à prix inférieur au coût sans fausser la concurrence*

Dans le reste de cette section, nous supposons que l'Etat (pour une raison quelconque) a pour objectif de réglementer les prix de certains services de telle sorte qu'ils ne puissent être offerts qu'au-dessous de leur coût.

Les effets de ces mesures de réglementation des prix sur la concurrence ont deux sources : les moyens par lesquels on lève les fonds nécessaires pour financer les services offerts au-dessous de leur coût et le risque de détournement de ces fonds à des fins anticoncurrentielles sur certains marchés concurrentiels. Nous considérons d'abord l'effet qu'ont sur la concurrence les moyens employés pour lever les fonds servant à financer les services offerts au-dessous de leur coût. On aborde dans la section suivante le risque de détournement des fonds à des fins anticoncurrentielles.

Très souvent, les revenus qui financent ces services offerts au-dessous de leur coût proviennent de subventions transversales internes — c'est-à-dire, en augmentant simplement les prix d'autres services. Le maintien de prix supérieurs aux coûts encourage des entrées nouvelles. On critique souvent ces entrées nouvelles en les qualifiant d'"écrémage". Pour pouvoir maintenir les subventions transversales, il faut limiter l'entrée.

Quand des subventions transversales servent à financer des services offerts au-dessous de leur coût, il est toujours demandé au gouvernement de limiter la concurrence, simplement parce que la concurrence limite les possibilités de maintenir les subventions transversales. Plus succinctement : "les subventions transversales sont l'ennemi de la concurrence parce que la concurrence est l'ennemie des subventions transversales".<sup>70</sup> Comme on l'a vu précédemment, le désir d'empêcher l'écroulement et de préserver les subventions transversales internes est *la* justification primordiale des barrières réglementaires à la concurrence dans les services postaux.<sup>71</sup>

D'autres mécanismes pour le financement des services offerts au-dessous de leur coût ont des effets moins nuisibles sur la concurrence. Par exemple, on pourrait financer cette obligation sur les

recettes fiscales générales, ou par une taxe propre au secteur postal (telle qu'une taxe sur le prix d'affranchissement de la poste aux lettres), une taxe sur les entreprises participant à la concurrence dans le secteur postal (comme une taxe sur les recettes ou sur les redevances d'accès) ou une taxe sur les clients à hauts coûts eux-mêmes.<sup>72</sup> Certaines de ces solutions ont été mises en œuvre ou sont en cours de mise en œuvre dans le secteur postal. Dans la nouvelle loi postale allemande, par exemple, les nouveaux entrants assument une partie du coût du service universel par le biais d'un prélèvement sur toutes les transactions.<sup>73</sup>

Quel que soit le mécanisme précis, si les fonds destinés à assurer un service sans rentabilité commerciale sont levés d'une façon qui ne nécessite pas des subventions transversales internes, il n'est plus nécessaire de maintenir des services "réservés". On peut ouvrir tous les aspects du secteur postal à la concurrence.

L'établissement d'un mécanisme indépendant distinct pour financer les services sans rentabilité commerciale ne résout pas à lui seul tous les problèmes que posent ces services en matière de concurrence. Comme on le verra plus en détail dans la section suivante, tant que les coûts que supportent l'opérateur postal en place restent incertains et tant que les fonds lui sont versés directement, on ne peut pas être sûr que cet opérateur postal en place n'utilisera pas ces fonds pour subventionner des prix bas dans d'autres services (concurrentiels) afin de décourager la concurrence.<sup>74</sup> Un nouvel entrant peut hésiter à lutter contre un opérateur en place qui a la possibilité de détourner une partie des fonds destinés à soutenir le service sans rentabilité commerciale pour les employer à subventionner des services concurrentiels.

Veiller à ce que l'opérateur en place ne détourne pas à d'autres fins (anticoncurrentielles) les fonds destinés à la fourniture du service universel est un problème étroitement lié au problème de la lutte contre les comportements anticoncurrentiels en général, et on l'examine donc plus en détail dans la prochaine section. Les conclusions majeures de cette section sont les suivantes : bien que, en principe, on puisse détecter les subventions transversales anticoncurrentielles en comparant les recettes et le coût incrémentiel des services concurrentiels, dans la pratique ce n'est pas facilement réalisable et c'est une tâche qui souffre d'imprécision et de subjectivité. Dans la pratique, les seuls bons mécanismes à long terme pour éliminer le risque de subventions transversales anticoncurrentielles consiste à éliminer la source de fonds alimentant ces subventions transversales.

Dans le contexte des obligations de service sans rentabilité commerciale, il existe deux méthodes pour faire en sorte que l'opérateur en place ne détourne pas les fonds du service universel au profit de ses services concurrentiels. La première consiste à faire un appel d'offres pour la fourniture des services sans rentabilité commerciale. La deuxième consiste à diviser l'opérateur en place en des compagnies séparées fournissant respectivement les services concurrentiels et non concurrentiels (où "non concurrentiels" signifie les services réservés et les services sans rentabilité commerciale).

Avec un appel d'offres pour les services sans rentabilité commerciale, le financement se limite au minimum nécessaire pour soutenir ces services, si bien qu'il ne reste pas d'excédent pour financer un comportement anticoncurrentiel.

Par exemple, on pourrait lancer des appels d'offres pour la livraison du courrier dans les zones rurales à habitat dispersé. Une personne pourrait soumissionner pour un unique trajet ou offrir la desserte de tous les destinataires à l'intérieur d'une zone spécifiée couverte par plusieurs trajets, et il lui serait permis de réorganiser les trajets existants de toute manière qu'elle jugerait bonne dès lors qu'elle desservirait toutes les boîtes à lettres existantes. Elle soumissionnerait aussi pour une subvention. Les soumissionnaires qui offrent d'assurer la distribution dans toute la zone



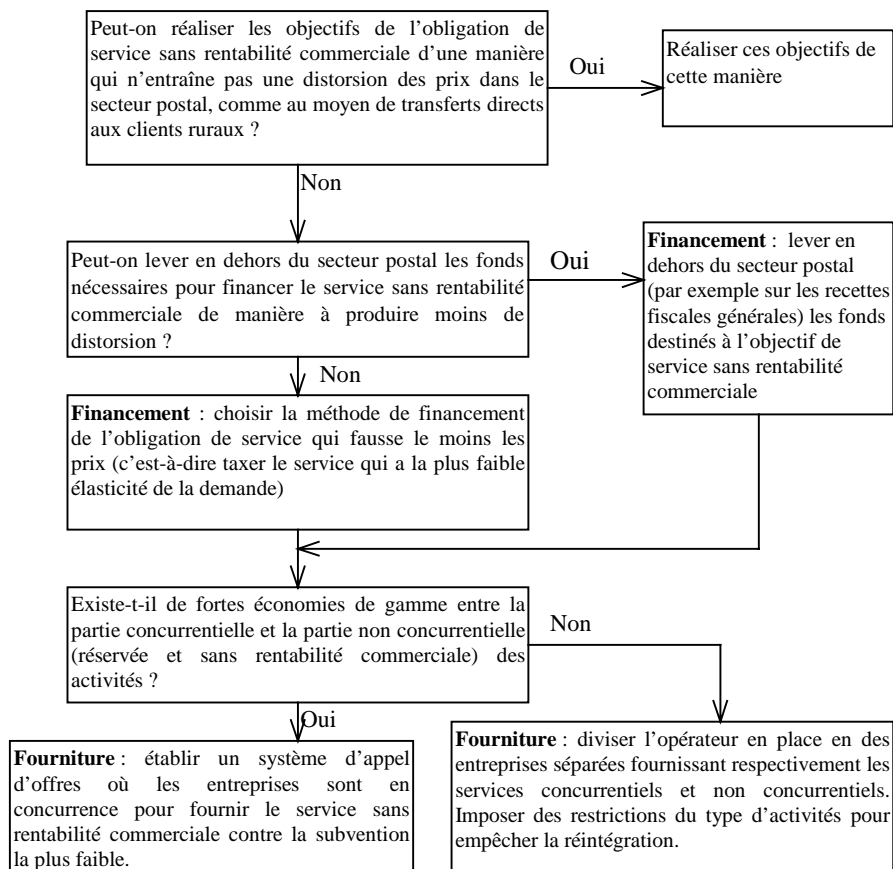
seraient aussi autorisés à entreprendre d'autres activités en plus de la livraison du courrier, s'ils assurent cette livraison de manière satisfaisante comme spécifié dans leur offre. Ce genre d'appel d'offres permettrait aux mécanismes du marché de déterminer la façon la moins coûteuse de livrer le courrier. Le fait de permettre aux soumissionnaires de mener des activités complémentaires réduirait les coûts liés, du fait qu'il s'ouvrirait un certain nombre de possibilités d'élargir les économies de gamme. Par exemple, on pourrait combiner la livraison du courrier avec la livraison pour des commerçants locaux. Ou encore, des opérateurs indépendants pourraient passer contrat avec divers organismes publics pour fournir des services sociaux ruraux limités.<sup>75</sup>

Pour éliminer le risque que des subventions transversales tirées de fonds destinés à des activités sans rentabilité commerciale ne financent des activités concurrentielles, on peut aussi simplement séparer les services concurrentiels de l'opérateur en place de manière à former une entreprise distincte indépendante. Cette dernière entreprise, coupée de la source des subventions transversales, ne pourrait plus appliquer des prix faussés. Certains préconisent, en fait, que l'on impose des restrictions du type d'activités aux opérateurs postaux en place, de manière à les confiner aux parties non concurrentielles du secteur postal précisément pour cette raison. Le principal inconvénient de cette approche est la perte des économies de gamme découlant de l'exploitation conjointe des parties concurrentielle et non concurrentielle de ces activités.

Ces méthodes de traitement des obligations de service sans rentabilité commerciale ne sont pas nouvelles. On utilise avec succès, dans la déréglementation d'autres industries, des mécanismes de financement et d'appel d'offres pour les services sans rentabilité commerciale. Beaucoup de pays ont établi des systèmes de ce genre dans l'industrie des télécommunications. On a mis en œuvre un système similaire dans le cadre de la déréglementation des lignes aériennes aux Etats-Unis.<sup>76</sup>

La Figure 6 présente un guide du raisonnement à suivre pour le traitement des obligations de service sans rentabilité commerciale.

**Figure 6 : Guide de traitement des obligations de service sans rentabilité commerciale**



*Conclusion*

En conclusion, l'existence d'une obligation de service sans rentabilité commerciale ne s'oppose pas nécessairement au développement de la concurrence. Du point de vue de l'efficacité, étant donné que toute distorsion des prix concurrentiels entraîne une perte d'efficacité, la meilleure solution consiste à essayer de réaliser les objectifs sous-jacents à l'obligation de service sans rentabilité commerciale au moyen d'autres mécanismes extérieurs au secteur postal. Quand ce n'est pas possible, on peut aborder les obligations de service sans rentabilité commerciale, avec moins de distorsion de la concurrence, en établissant un dispositif de financement explicite et un système permettant d'attribuer ces subventions à l'entreprise capable d'assurer cette obligation au moindre coût et en évitant le risque de subventions transversales au profit des services concurrentiels.

**IV. Empêcher les comportements anticoncurrentiels dans le secteur postal**

La grande majorité des opérateurs postaux en place bénéficient de restrictions notables de la concurrence ainsi que de subventions diverses. Ces mêmes opérateurs postaux sont aussi en concurrence avec des opérateurs privés sur les marchés concurrentiels, aussi bien postaux (en particulier, le courrier exprès et les colis) que non postaux (comme les services financiers ou le commerce de détail). En

conséquence, une des préoccupations majeures récentes des autorités de la concurrence est d'empêcher les comportements anticoncurrentiels éventuels de l'opérateur postal dominant en place.<sup>77</sup>

Nous pouvons immédiatement distinguer une forme de comportement anticoncurrentiel qui a lieu quand les concurrents ont besoin d'accéder à des services "essentiels" (comme la distribution finale) offerts par un opérateur en place verticalement intégré, afin de pouvoir offrir des services concurrents. Dans ce cas, l'opérateur en place peut restreindre la concurrence en pratiquant un refus de vente ou en offrant l'accès selon des modalités et conditions défavorables pour l'entrant — en particulier, en offrant l'accès selon des modalités et conditions qui sont défavorables par comparaison avec les modalités et conditions auxquelles l'opérateur en place offre le service complet de bout en bout à ses propres clients, laissant à l'entrant une marge de concurrence trop étroite. L'action contre ce genre de comportement anticoncurrentiel constitue une partie du problème de la réglementation de l'accès, que l'on a examiné dans la section précédente. Dans la présente section, on laissera de côté cette forme de comportement anticoncurrentiel.

### *Définition des subventions transversales anticoncurrentielles*

Nous examinerons donc le cas où l'opérateur en place et l'entrant fournissent des services concurrents. L'opérateur en place peut restreindre ou empêcher le développement de la concurrence dans les services concurrentiels par diverses pratiques, comme les accords d'exclusivité, les remises ou rabais de fidélité, les remises pour grandes quantités, les réductions de prix sélectives, la subordination de vente (c'est-à-dire, le fait de lier l'achat de certains services de l'opérateur en place à l'achat d'autres services) ou les remises pour l'achat de combinaisons de services de l'opérateur en place.<sup>78</sup> Du point de vue de la détection des comportements anticoncurrentiels, toutes ces actions reviennent à appliquer un prix plus bas au service concurrentiel.<sup>79</sup>

Nous dirons par définition qu'un prix est un "prix de distorsion" ou un "prix d'éviction" s'il est inférieur à une certaine mesure du coût appropriée. On examinera plus loin quelle peut être la mesure du coût appropriée. Un prix n'est pas un prix de distorsion simplement s'il est bas ou s'il est plus bas qu'un autre prix. La différenciation des prix (différences de prix pour un même service, ou pour des services très proches, qui ne sont pas directement liées à des différences de coûts) n'est pas en elle-même contraire à l'efficacité économique. En fait, en général, l'efficacité veut que l'opérateur en place abaisse ses prix pour un service donné ou dans une région géographique donnée pour faire face à la concurrence de l'entrant, à condition que cet opérateur en place n'applique pas un prix inférieur à la mesure du coût appropriée.

Dans le cas habituel où l'entreprise en place a pour strict objectif la maximisation du profit, la tarification au-dessous du coût n'est rentable que si elle pousse un concurrent à sortir du marché et/ou érige des barrières à l'entrée, ce qui permettra plus facilement à l'entreprise en place d'élever ou de maintenir ses prix au-dessus des coûts ultérieurement. On notera que la réglementation peut aider l'entreprise en place à pratiquer des subventions transversales anticoncurrentielles. Dans le cadre aussi bien d'une réglementation de plafonnement des hausses de prix que d'une réglementation du taux de rendement, l'entreprise en place peut être en mesure de recouvrer les déficits de la tarification au-dessous du coût sur le marché concurrentiel en élevant les prix sur les marchés protégés. Dans un tel cas, le risque que l'entreprise en place pratique des prix d'éviction est beaucoup plus à redouter qu'en l'absence de réglementation.<sup>80</sup>

Dans la pratique, la grande majorité des opérateurs postaux en place sont propriété de l'Etat. Les objectifs précis des entreprises d'Etat sont un sujet controversé et ils diffèrent probablement suivant les modes de direction des entreprises d'Etat dans chaque pays mais, de manière générale, la maximisation du

profit n'est habituellement pour ces entreprises qu'un objectif parmi d'autres. Quand une entreprise, pour une raison quelconque, ne cherche pas strictement à maximiser ses profits, elle peut être capable de maintenir indéfiniment des prix au-dessous du coût, financés par des prix au-dessus du coût dans un autre segment ou par quelque autre source de fonds.

Par commodité, dans le présent document, on qualifie de "prix de distorsion" la tarification au-dessous du coût.<sup>81</sup> La pratique de "prix d'éviction" est une forme temporaire de prix de distorsion. Même quand la pratique de prix de distorsion ne conduit pas ultérieurement à une élévation des prix au-dessus du coût, elle peut néanmoins être une préoccupation des pouvoirs publics en raison de l'effet sur l'efficacité productive. Les prix de distorsion pourraient pousser une entreprise plus efficace à quitter le marché concurrentiel ou à ne pas y entrer.

### *Coût incrémentiel, coût autonome et coût entièrement réparti*

Quelle est la mesure du coût appropriée pour détecter les prix de distorsion ? Dans ce contexte, il est utile de rappeler quelques notions de la théorie économique des industries comportant des économies d'échelle et de gamme.

Dans une industrie ayant des coûts "liés ou communs" importants, il n'est tout simplement pas possible d'imputer la totalité des coûts d'une entreprise à ses productions d'une manière économiquement justifiée. Bien que très critiqué par les économistes depuis des années, le concept des coûts entièrement répartis continue d'être utilisé dans la pratique. Par exemple, la communication de la Commission européenne sur le secteur postal explique que l'on ne considérera pas qu'il y a distorsion si le prix est supérieur ou égal au "coût total moyen des prestations" défini comme "les coûts directs et une part adéquate des coûts communs et des coûts indirects supportés par l'opérateur. Des critères objectifs tels que le volume, le temps ou la main-d'œuvre nécessaire, ou l'intensité de l'usage, devraient être utilisés pour déterminer cette part adéquate".<sup>82</sup> C'est un exemple de ce que l'on appelle la méthodologie des coûts entièrement répartis.

Malheureusement, les valeurs des coûts tirées d'une méthodologie des coûts entièrement répartis n'ont pas de validité économique. Dans un contexte d'économies de gamme, il n'existe pas un unique concept pertinent mais deux, concernant les coûts : le coût incrémentiel du service et le coût autonome du service. Le coût autonome est toujours plus grand que le coût incrémentiel. En l'absence de coûts liés ou communs, ces deux coûts coïncident. Le concept de coût entièrement réparti n'a pas d'utilité précisément parce qu'il n'est égal ni au coût incrémentiel, ni au coût autonome. Le coût entièrement réparti est normalement plus grand que le coût incrémentiel et il ne permet donc pas de détecter de manière fiable les prix de distorsion. D'autre part, le coût entièrement réparti est normalement inférieur au coût autonome et n'indique donc pas de manière fiable si le service recueille ou non une rente économique.

Une entreprise qui est à l'équilibre (non déficitaire) et qui applique un prix inférieur au coût incrémentiel moyen sur un service ou un groupe de services applique *nécessairement* un prix supérieur au coût autonome sur d'autres services. (On le démontre dans l'Annexe). Il n'est pas possible d'appliquer un prix supérieur au coût autonome sur un marché totalement concurrentiel. En conséquence, il n'y a pas de prix de distorsion sans certaines limitations de la concurrence. Inversement, si l'on élimine les limitations de concurrence (à condition que l'entreprise ne soit pas déficitaire et n'ait pas accès à d'autres fonds) on supprime les prix de distorsion. Réciproquement, une entreprise qui applique un prix supérieur au coût autonome sur certains services et qui est juste à l'équilibre applique *nécessairement* un prix inférieur au coût sur certains services.

En principe, on pourrait détecter la présence de subventions transversales anticoncurrentielles en établissant une séparation comptable et une obligation d'information imposant la communication des comptes globaux de l'entreprise ainsi que des comptes séparés pour les parties concurrentielles de l'activité sur la base du coût incrémentiel. Les parties concurrentielles de l'activité ne couvrent pas les domaines réservés et les services sans rentabilité commerciale (dus éventuellement aux obligations de service universel).

Accessoirement, on peut remarquer que les exigences d'information stipulées par la directive postale de la Commission européenne sont défectueuses. Cette directive exige la communication de comptes séparés pour les services réservés et non réservés. Comme le montre l'Annexe, une entreprise peut ne pas gagner plus que les coûts autonomes sur les services réservés mais néanmoins appliquer un prix inférieur au coût incrémentiel sur les services concurrentiels. Autrement dit, les exigences de la Commission européenne ne permettent pas de détecter et empêcher à coup sûr les prix de distorsion.

Malheureusement, plusieurs raisons laissent penser que la séparation comptable et l'obligation d'information ne permettront pas de détecter et d'empêcher les prix de distorsion :

- Premièrement, la frontière entre les domaines concurrentiel et non concurrentiel est difficile à définir et elle varie au cours du temps avec la technologie et les goûts. Toute exigence réglementaire aura donc tendance à se périmier et à couvrir un champ trop large ou trop étroit.
- Deuxièmement, et plus important, la frontière entre les domaines concurrentiel et non concurrentiel a très peu de chances de correspondre aux frontières fonctionnelles ou divisionnaires à l'intérieur de l'entreprise en place. En conséquence, l'obligation d'information correspondra à une entreprise "artificielle" qui conduit de nombreuses transactions et partage un montant de coûts important avec le reste de l'entreprise. Cela ouvre à l'entreprise en place de grandes possibilités de manipuler les coûts et recettes déclarés, pour favoriser ses intérêts.
- Troisièmement, la mesure des coûts véritablement appropriée est le coût à long terme d'une entreprise qui utilise la technologie la plus efficiente et qui est soumise à tous les coûts normaux d'une entreprise privée (c'est-à-dire qui supporte la totalité du coût normal du capital et qui ne bénéficie d'aucun traitement spécial comme les avantages fiscaux). Ce coût est en général impossible à déterminer à partir des comptes de l'opérateur en place.
- Quatrièmement, la détermination des coûts incrémentiels et des coûts autonomes (bien qu'en principe nettement moins arbitraire que la détermination des coûts entièrement répartis) est néanmoins une tâche souvent difficile et subjective. Par exemple, si l'opérateur postal en place cessait de servir les entreprises dans le quartier d'affaires central, quel montant de coûts économiserait-il ? On peut supposer qu'il faudrait moins de personnel de distribution, mais combien de moins ? Pourrait-il s'accommoder de centres de distribution plus petits et économiser sur les coûts des locaux ? Ces appréciations sont souvent discutables et peuvent donc faire l'objet de manipulations servant les intérêts de l'entreprise en place.

En conséquence de ces remarques, on est fondé à douter de l'efficacité des obligations d'information comptable en tant que mesures destinées à empêcher les prix de distorsion.<sup>83</sup> Le Bureau de la concurrence du Canada (entre autres) a dans le passé exprimé une opinion identique :<sup>84</sup>

Le Directeur pense depuis longtemps que les systèmes d'établissement des coûts peuvent uniquement, dans le meilleur des cas, fournir des approximations raisonnables des coûts de larges catégories de services et sont insuffisants à eux seuls pour empêcher l'interfinancement de services concurrentiels au moyen de revenus tirés de services dont les sociétés ont le monopole.<sup>85</sup>

### ***Empêcher les subventions transversales anticoncurrentielles***

Dans la pratique, la seule bonne méthode à long terme pour empêcher les subventions transversales génératrices de distorsion est d'éliminer les sources de fonds pouvant servir à financer ces subventions. Les fonds servant à financer les subventions transversales anticoncurrentielles peuvent avoir trois sources :

- subventions ou fonds destinés à couvrir les pertes (en particulier quand l'entreprise en place n'est pas soumise à de strictes contraintes budgétaires) ;
- fonds fournis pour soutenir les services sans rentabilité commerciale de toutes sortes ; ou
- prix au-dessus des coûts pour les services protégés de la concurrence.

L'élimination des subventions transversales anticoncurrentielles nécessite donc une ou plusieurs des mesures suivantes :

- (a) *Elimination de toutes les subventions ou fonds destinés à couvrir les pertes.* Dans la pratique, l'Etat peut être dans l'impossibilité de s'abstenir de couvrir les pertes tant qu'il reste le propriétaire de l'entreprise en place. En conséquence, il peut être indispensable de privatiser l'entreprise en place, c'est-à-dire de la placer dans des conditions commerciales normales avec, élément le plus important, une stricte discipline budgétaire et une incitation de maximisation du profit.<sup>86</sup>
- (b) *Elimination des réglementations qui protègent de la concurrence certains services,* et introduction de réglementations qui réduisent les barrières à l'entrée (par exemple, mise en œuvre d'un régime d'accès).
- (c) *Introduction de mesures de contrôle sur les fonds destinés à soutenir les services sans rentabilité commerciale.* En particulier, établir des mécanismes d'appel d'offres pour le droit de fournir des services sans rentabilité commerciale, afin de rendre transparent le coût de ces services. Comme on l'a remarqué dans la section précédente, plusieurs commentateurs préconisent précisément cette approche dans le secteur postal.
- (d) *Séparation des activités concurrentielles et non concurrentielles.* Cela rend impossibles les subventions transversales en coupant les activités concurrentielles des fonds qui proviennent du domaine réservé ou des fonds destinés au domaine sans rentabilité commerciale. Une séparation structurelle de ce genre a été réalisée dans l'industrie des télécommunications aux Etats-Unis. Les préoccupations concernant les possibilités de subventions transversales ont été un des principaux facteurs qui ont conduit au démantèlement d'AT&T. A l'intérieur du secteur postal, on a préconisé dans d'autres pays comme le Canada et l'Allemagne<sup>87</sup> de confiner l'opérateur en place dans les services non concurrentiels, par des limitations du type d'activités. Même à l'intérieur de l'Union européenne, on reconnaît qu'il pourrait être nécessaire d'aller au-delà d'une simple obligation d'information comptable dans ce secteur.<sup>88</sup>

*Conclusion*

En résumé, avec le développement de la concurrence dans le secteur postal et le désir croissant des opérateurs en place de participer à la concurrence dans toutes activités postales, la lutte contre les comportements anticoncurrentiels demeurera une question importante pour les autorités chargées de les réprimer. Une forme particulièrement importante de comportement anticoncurrentiel comprend les pratiques telles que les remises de prix sélectives, la subordination de vente ou les ventes liées. Toutes ces pratiques sont économiquement équivalentes à l'offre d'un prix réduit sur le marché concurrentiel.

La tarification au-dessous du prix incrémentiel n'est pas possible sans accès à un financement. Ce financement peut provenir de subventions, de fonds destinés aux services sans rentabilité commerciale ou des services réservés. En principe, les obligations d'information comptable pourraient révéler ces comportements mais, dans la pratique, cette approche n'est pas fiable en raison de la difficulté d'empêcher l'opérateur de manipuler ces informations pour servir ses intérêts. A long terme, le seul bon mécanisme pour éliminer les subventions transversales anticoncurrentielles consiste à supprimer la source de financement du comportement anticoncurrentiel, ce qui nécessite de supprimer les domaines réservés, d'établir une séparation structurelle, de lancer des appels d'offres pour les services sans rentabilité commerciale et/ou de réaliser une privatisation.

A titre d'information, on présente dans l'encadré suivant un résumé du régime réglementaire en Nouvelle-Zélande.

### La réglementation des services postaux en Nouvelle-Zélande

On trouvera un bref historique du régime réglementaire des services postaux en Nouvelle-Zélande dans le document New Zealand Ministry of Commerce (1998). New Zealand Post, société indépendante appartenant à l'Etat, a été constituée le 1<sup>er</sup> avril 1987, à partir de ce qui était jusque là un ministère. Comme on l'a vu plus haut, cette transformation en entreprise commerciale, même sans autre libéralisation, a eu un effet notable sur la productivité et la rentabilité du secteur postal.

En 1987, New Zealand Post avait le monopole de l'acheminement des lettres à un prix maximum de 1.75 dollar néo-zélandais et pesant moins de 500 grammes. Des modifications successives de la législation ont réduit le champ du domaine réservé aux lettres pesant moins de 200 grammes et à un prix ne dépassant pas 80 cents. Enfin, à compter du 1er avril 1998, le gouvernement de Nouvelle-Zélande a complètement supprimé le monopole légal de New Zealand Post sur l'acheminement de lettres. Toute entreprise ou personne a maintenant le droit de mener des activités de livraison de lettres dès lors qu'elle satisfait aux exigences de la législation. La condition la plus importante est que toute personne qui achemine des lettres doit être enregistrée. La demande d'enregistrement *ne peut être rejetée* que si la personne concernée a été condamnée pour certains délits. L'enregistrement n'est pas requis pour une personne dont l'activité consiste seulement à acheminer des envois à un prix supérieur à 80 cents.

Il importe de noter qu'au moment de la déréglementation, New Zealand Post a été soumise à des obligations d'information. Les trois éléments les plus importants de ces obligations d'information consistent à publier : des comptes séparés pour l'activité d'acheminement de lettres à un prix ne dépassant pas 80 cents et pour le reste des activités (c'est-à-dire des comptes séparés pour le domaine auparavant réservé et les domaines auparavant concurrentiels) ; les modalités et conditions standard pour l'acheminement des lettres et toute remise importante par rapport aux tarifs standard ; et enfin le détail complet de tous les accords d'accès, dans les 15 jours ouvrés suivant la conclusion de l'accord.

Au moment de la déréglementation, New Zealand Post offrait deux catégories de courrier - 80 cents pour la livraison le lendemain et 40 cents pour un délai de 2 ou 3 jours.

A la fin du mois de décembre 1998, après seulement 8 mois de fonctionnement du nouveau régime, on comptait 17 opérateurs enregistrés en Nouvelle-Zélande, pour la plupart de petites entreprises opérant localement. Toutefois, Fastway Post (filiale de Fastway Couriers) établit actuellement un réseau national de points de vente. New Zealand Document Exchange Limited (qui fournissait depuis longtemps des services d'échange de documents) a commencé à offrir des distributions régulières dans les quartiers centraux d'affaires des grandes agglomérations au prix de 30 cents. Une troisième compagnie, National Mail (New Zealand) Limited, projette aussi de déployer un service de courrier national. Ces trois compagnies ont négocié des accords d'accès avec New Zealand Post ; elles payent actuellement entre 37 et 38.2 cents par envoi.

New Zealand Post a évidemment réagi à cette concurrence. Elle a elle-même établi un réseau de points de vente entièrement nouveau, dans des stations-service et des magasins, offrant un prix de 35 cents pour une lettre ordinaire.

La concurrence postale en Nouvelle-Zélande est encore très récente. Toutefois, elle paraît déjà prête à se développer plus que dans tout autre pays de l'OCDE. Les premiers signes indiquent que la déréglementation conduira à une baisse des prix et à de nouveaux produits et services.

### Conclusion

Les services postaux, comme les services de télécommunications, sont un intrant essentiel pratiquement pour toutes les entreprises. L'introduction de la concurrence dans les services postaux peut donc engendrer de grandes améliorations en efficacité, en productivité et en innovation à l'intérieur du secteur postal avec les conséquences qui en résultent pour le bien-être global et la croissance.



Les restrictions réglementaires de la concurrence dans le secteur postal ne se justifient plus. On peut réaliser les objectifs de la réglementation (comme l'exigence d'assurer un service universel) sans limiter la concurrence. L'expérience de la déréglementation dans d'autres secteurs, et dans le secteur postal en Suède et en Nouvelle-Zélande, montre que la déréglementation ne met pas nécessairement en péril les objectifs du service universel.

Les opérateurs postaux en place et les nouveaux entrants devraient participer à la concurrence sur un pied d'égalité. Il convient d'abolir les exonérations des taxes fédérales, étatiques ou locales dont bénéficient les opérateurs postaux en place, ainsi que les autres exemptions des règles normales de la circulation, des douanes ou de la responsabilité. De même, il faut libérer les opérateurs postaux en place des exigences qui ne s'appliquent pas aux opérateurs privés, comme l'obligation de transporter le courrier sur les compagnies aériennes nationales.

Même sur un marché partiellement ou complètement libéralisé, la concurrence peut rester une source de préoccupations quand l'opérateur en place a accès à des fonds dont ne dispose pas un nouvel entrant. Ces fonds peuvent provenir de services protégés (quand le marché n'est pas complètement libéralisé) ou de l'Etat (en particulier quand l'opérateur est propriété de l'Etat) ou d'autres sources (comme les fonds subventionnant le service universel). L'opérateur en place peut utiliser ces fonds pour appliquer des prix faussés anticoncurrentiels. De manière générale, pour s'opposer efficacement à ces comportements, il conviendra d'éliminer cette source de fonds par la poursuite de la libéralisation, la privatisation ou la séparation structurelle des parties concurrentielle et non concurrentielle des activités.

### Annexe A :

Cette Annexe a pour objet de résumer les principaux résultats de la théorie économique concernant les subventions transversales dans un contexte d'économies d'échelle et de gamme et de démontrer qu'une simple obligation d'information comptable sur les segments réservés et non réservés des activités de l'opérateur en place (comme le requiert la Directive européenne) n'est pas suffisante pour empêcher les subventions transversales anticoncurrentielles.

Supposons qu'une entreprise offre trois services A, B et C. Supposons que le coût de fourniture de A, B, C de manière autonome soit  $C(A)$ ,  $C(B)$ ,  $C(C)$  et que le coût de fourniture conjointe de A et B de manière autonome soit  $C(A,B)$  (resp.  $C(A,C)$ ,  $C(B,C)$ ). Le coût de fourniture conjointe des trois services est  $C(A,B,C)$ . On peut définir le coût incrémentiel<sup>89</sup> de la fourniture de A comme étant :

$$IC(A)=C(A,B,C)-C(B,C)$$

De même, on peut définir les recettes tirées des services A, B et C comme étant respectivement  $R(A)$ ,  $R(B)$  et  $R(C)$ . On dit que l'entreprise dans son ensemble est juste à l'équilibre si ses recettes sont égales à ses coûts  $R(A,B,C)=C(A,B,C)$ . Pour une entreprise juste à l'équilibre, on peut dire que ses recettes sont sans subventions si, pour chaque service et pour chaque combinaison de services, les recettes couvrent le coût incrémentiel :

$$\begin{aligned} R(A) \geq IC(A), R(B) \geq IC(B), R(C) \geq IC(C) \text{ et} \\ R(A,B) \geq IC(A,B), R(A,C) \geq IC(A,C), R(B,C) \geq IC(B,C) \end{aligned}$$

Le résultat le plus important est qu'une entreprise juste à l'équilibre est sans subventions si et seulement si les *recettes de chaque service et de chaque combinaison de services* ne dépassent pas les coûts autonomes de ces services. C'est ce que l'on appelle le "critère combinatoire".

Supposons que l'entreprise soit juste à l'équilibre. Alors  $R(A)+R(B)+R(C)=C(A,B,C)$ . Alors pour toute combinaison de services X, soit Y les services restants, de telle sorte que X,Y représentent la totalité des services offerts par l'entreprise. Alors :

$$\begin{aligned} R(X) \geq IC(X|Y) &\Leftrightarrow R(X) \geq C(X,Y)-C(Y) \\ &\Leftrightarrow R(X) \geq R(X)+R(Y)-C(Y) \\ &\Leftrightarrow R(Y) \leq C(Y) \end{aligned}$$

Ainsi, si  $R(Y) \leq C(Y)$  a lieu pour tous les services ou groupes de services Y, alors  $R(X) \geq IC(X|Y)$  a lieu pour tous les services et groupes de services X, et vice versa.

On notera qu'il faut que toutes ces inégalités soient vérifiées et non seulement quelques-unes. Considérons l'exemple suivant. Supposons qu'une entreprise postale fournisse trois services, notés A, B et C. Le service A correspond à un service "réservé" dont l'entreprise a le monopole. Le service B correspond à un service concurrentiel, comme le service de colis. Le service C correspond à un certain service sans rentabilité commerciale.

A titre d'illustration, supposons que la structure des coûts soit la suivante :

$$C(A,B,C)=600 ; C(A,B)=350 ; C(A,C)=450 ; \\ C(A)=300$$

(le coût de la fourniture conjointe des trois services est 600, le coût de la fourniture conjointe de seulement A et B est 350, etc.)

Les recettes de ces trois services sont :  $R(A)=300 ; R(B)=100 ; R(C)=200$ .

On note que, globalement, l'entreprise est juste à l'équilibre ( $R(A)+R(B)+R(C)=600=C(A,B,C)$ ). On peut aussi noter que le service sans rentabilité commerciale ne couvre pas son coût incrémentiel, si bien que l'on peut affirmer que ce service est subventionné par des recettes d'une autre origine ( $IC(C|A,B)=C(A,B,C)-C(A,B)= 600-350 = 250$ ).

Supposons maintenant que l'entreprise soit soumise à l'obligation de tenir et de communiquer des comptes pour ses services réservés, séparément de ses autres services. Si ces comptes sont tenus comme si le service réservé était exploité de manière autonome, on compare alors les recettes  $R(A)=300$  avec le coût  $C(A)=300$  et on ne constate aucune subvention transversale. Pourtant, il ressort clairement de ce qui précède que les recettes du service concurrentiel ne couvrent pas le coût incrémentiel de ce service, si bien que l'entreprise pratique des prix de distorsion :  $R(B)=100 \leq IC(B|A,C)=C(A,B,C)-C(A,C)=600-450=150$ .

Dans ce contexte simple avec seulement trois services, on pourrait contrôler l'absence de subventions transversales en imposant une obligation d'information sur la fourniture conjointe de A et C de manière autonome. Quand l'entreprise est juste à l'équilibre globalement, la condition que les recettes de A et C soient inférieures ou égales au coût autonome de A et C implique que les recettes de B suffisent à couvrir le coût incrémentiel de B, comme on peut le démontrer facilement au moyen de la théorie précédente :

$$R(A)+R(C) \leq C(A,C) \Leftrightarrow R(A)+R(B)+R(C) \leq C(A,C)+R(B) \\ \Leftrightarrow C(A,B,C)-C(A,C) \leq R(B) \\ \Leftrightarrow R(B) \geq IC(B|A,C)$$

## NOTES

- 1 Banque mondiale (1996), p. 1.
- 2 On trouvera un excellent exposé sur le mouvement international de réforme des services postaux dans Campbell (1998).
- 3 La répartition en volume du service postal est beaucoup plus inégale. Les opérateurs postaux en place traitent 96 pour cent du volume total (pour seulement 57 pour cent des recettes totales), alors que les opérateurs privés traitent 4 pour cent du volume total. Commission européenne (1992).
- 4 Pour le Japon, les chiffres sont légèrement différents. Pour le courrier ordinaire, en 1994, la répartition était la suivante : d'entreprise à particulier, 50.4 pour cent ; d'entreprise à entreprise, 30.2 pour cent ; de particulier à particulier, 17.8 pour cent ; et de particulier à entreprise, 1.6 pour cent. Japon (1996).
- 5 Source : Commission européenne, DG13.
- 6 Commission européenne (1992). La répartition en recettes est de 90 pour cent, 5 pour cent, 5 pour cent, Commission européenne (1992). C'est au Luxembourg, en Irlande et en Grèce que la part du courrier non national est la plus grande.
- 7 A l'exception, évidemment, du courrier sans adresse.
- 8 La directive postale de la Commission européenne permet "l'autoprestation" du courrier, y compris par des filiales. On a exprimé la crainte que des groupes de grands producteurs de courrier s'associent alors dans des coentreprises pour la fourniture de services de courrier.
- 9 "The US Post Office Girds for Email Competition", Business Week, 26 janvier 1998. Marvin T. Runyon, quittant ses fonctions de directeur général de la poste des Etats-Unis, déclarait en avril 1998 au Club national de la presse des Etats-Unis : "Les recherches nous indiquent que dans les 10 ans à venir, les problèmes d'infrastructure, de sécurité et d'acceptation par le public qui limitent actuellement le détournement [des communications qui passent actuellement par le courrier normal] vers les moyens électroniques seront résolus. ... D'ici l'an 2020, il existera tant de moyens de communiquer, de faire de la publicité et d'expédier des marchandises que le monopole n'aura plus aucun sens".
- 10 UPU, Statuts et structures des Administrations postales, Canada.
- 11 Coopers and Lybrand (1996), p.V-4. Herbert Ungerer, de la DGIV de la Commission européenne, note que, d'après les estimations de certains opérateurs postaux, l'érosion de l'activité de courrier de base du fait de la substitution par les moyens électroniques ou autres au cours des cinq ans à venir pourrait toucher jusqu'à 10 pour cent du volume actuel. Ungerer (1998a) et (1998b).

- 12 Par exemple, en février 1996, le Service postal des Etats-Unis a annoncé qu'il travaillait à un service appelé "courrier électronique vers copie papier pour une livraison le jour suivant dans le monde entier", où le Service postal collabore avec un consortium d'opérateurs postaux européens pour envoyer électroniquement des messages à proximité de leur point de distribution final. Un service similaire, appelé RelayOne, auquel participent Microsoft et la Poste du Royaume-Uni, a été annoncé en avril 1998.
- 13 A l'heure actuelle, cette pratique s'applique essentiellement au courrier international. Les incitations à ces économies de frais dans le courrier national sont généralement moindres, du fait de la pratique courante consistant à tarifer un prix fixe pour la livraison à l'intérieur du pays quelle que soit la distance.
- 14 Sidak (1996), p. 74.
- 15 Geddes (1998), p. 139.
- 16 Les Etats-Unis et la Nouvelle-Zélande y font exception. En Nouvelle-Zélande, les bureaux de poste fournissent des services financiers mais seulement comme intermédiaires de banques de dépôt.
- 17 Voir Price Waterhouse (1996), p. 5. La Nouvelle-Zélande, le Canada et la Suède y font exception.
- 18 OCDE (1996), p. 19. La communication de la Commission européenne sur le secteur postal reconnaît explicitement que certains opérateurs postaux européens bénéficient de subventions ou d'aides que n'ont pas leurs concurrents du secteur privé : "... les informations sur leurs résultats financiers [sont] limitées, puisque les opérateurs qui publient régulièrement des informations selon des critères permettant la vérification comptable sont relativement peu nombreux. Certains services postaux sont toutefois financés directement par des subventions ou indirectement par le biais d'exonérations fiscales, même si les montants réels ne sont pas souvent transparents". Communication de la Commission européenne 98/C 39/2. La communication poursuit en énumérant les types d'aide dont bénéficient les opérateurs d'Etat :
- “(a) la compensation des pertes d'exploitation ;
  - (b) les apports en capital ;
  - (c) les apports à fonds perdus ou les prêts à des conditions privilégiées ;
  - (d) l'octroi d'avantages financiers sous la forme de la non-perception de bénéfices ou du non-recouvrement de créances ;
  - (e) la renonciation à une rémunération normale des ressources publiques engagées ;
  - (f) la compensation de charges imposées par les pouvoirs publics”.
- 19 Sidak et Spulber (1995), p. 2-3. Le mauvais écho qu'a suscité la publication de cette étude a conduit le Congrès des Etats-Unis à abolir les privilèges du Service postal concernant l'envoi des déclarations d'impôts.

- 20 Vita (1996), p. 11.
- 21 Ungerer (1998a).
- 22 Ungerer (1998a).
- 23 Directive de la Commission européenne 97/67/CE, Article 7(3).
- 24 Ungerer (1998b).
- 25 Cité dans Sidak et Spulber (1995), p. 14. Sidak et Spulber notent dans un autre article que : “La règle générale dans l’économie canadienne est que les tentatives de monopolisation sont un délit mais, quand il s’agit de distribuer les lettres, ce sont les tentatives de concurrence qui sont un délit”. Sidak et Spulber (1997), p. 77-78.
- 26 Sidak et Spulber (1995), p. 13.
- 27 Voir Sidak et Spulber (1995), p. 33.
- 28 *Domestic Mail Manual*, §151.2. Le *Domestic Mail Manual* est incorporé sous forme de référence dans le Titre 39 du Code of Federal Regulations des Etats-Unis.
- 29 Cela implique, par exemple, que les concurrents ne peuvent déposer les envois dans la boîte à lettres quand le destinataire n’est pas chez lui.
- 30 Dans certains pays, il peut exister certains types de limitation d’accès à la boîte à lettres. Par exemple, au Canada, si la Société canadienne des postes est propriétaire de la boîte à lettres, celle-ci est fermée à clé et ainsi seule cette société y a accès. Cela vaut aussi pour certaines boîtes à lettres d’appartement centralisées, dans les immeubles sécurisés. GAO (1996), p. 8.
- 31 C’est ce qu’indique explicitement une décision de la Cour Suprême des Etats-Unis qui remet en question le monopole postal : “Le Congrès a créé ce monopole pour protéger les revenus du Service postal afin de lui permettre de remplir sa mission. Ainsi, cela interdit à des concurrents privés de fournir un service sur les trajets à faibles coûts à des prix inférieurs à ceux du Service postal, tout en laissant le Service postal s’occuper des trajets à coûts élevés avec des moyens insuffisants pour remplir sa mission, qui consiste à servir les clients à des prix uniformes dans toutes les zones, y compris les zones reculées ou à faible densité de population” (Déclaration de M. Rehnquist, président de la Cour Suprême, dans l’affaire *Air Courier Conference of America v. American Postal Workers Union*). Egalement : “L’argument sans doute le plus répandu en faveur du maintien de la Société canadienne des postes dans le secteur public est d’assurer un service postal fiable dans tout le pays avec la même qualité de service pour les localités de taille similaire ... Cela s’appelle en deux mots le service universel. ... La Société canadienne des postes considère le service universel comme la justification non seulement du maintien de son monopole existant sur la poste aux lettres, mais aussi de l’extension de ses activités sur les marchés concurrentiels”. Sidak et Spulber (1997), p. 44-45.
- 32 Cette directive permet à l’autorité réglementaire nationale compétente d’assouplir ces règles, sous réserve d’en informer la Commission.

- 33 Australian National Competition Council (1997).
- 34 Cohen, Ferguson et Xenakis (1993). Voir Bishop *et al.* (1998), p. 18. D'après la Commission européenne (1992), une administration postale a calculé que le processus total le moins cher (depuis la collecte jusqu'à la distribution, probablement dans une zone urbaine) représente 70 pour cent du coût moyen alors que le plus onéreux (probablement dans les zones rurales) dépasse dix fois la moyenne. En revanche, les volumes dans les zones les moins chères dépassent largement ceux des zones les plus coûteuses.
- 35 Dans le cas de la Nouvelle-Zélande, ce régime de plafonnement expire le 17 février 2001. Voir GAO (1996), p. 9.
- 36 Voir Marks (1996).
- 37 Voir, par exemple, le témoignage de Michael S. Bradley pour le compte de l'US Postal Service devant la Postal Rate Commission, Postal Rate and Fee Changes, 1997, USPS-T-13, Docket No. R97-1.
- 38 Bishop *et al.* (1998), p. 7.
- 39 Sidak et Spulber (1997), p. 30.
- 40 Rogerson et Takis (1993).
- 41 Sidak et Spulber (1997), p. 33.
- 42 "De plus en plus, le facteur ne fait pas réellement tout le chemin jusqu'à la porte du client. La distribution du courrier dans les nouveaux quartiers suburbains, par exemple, se fait généralement dans un groupe de boîtes à lettres qui peut être à vingt-cinq mètres ou plus du domicile du client. La Société canadienne des postes remplace de plus en plus le service à la porte du client par une distribution dans ces boîtes à lettres collectives ou groupées". Sidak et Spulber (1997), p. 35.
- 43 Bishop *et al.* (1998), p. 8. Les autres études mentionnées sont Bradley, Colvin et Smith (1995), Norsworthy et Norsworthy (1991), Cohen et Chu (1997) et Cazals *et al.* (1996) et (1997).
- 44 OCDE (1997), p. 30.
- 45 Mentionnée dans Bishop *et al.* (1998), p. 8.
- 46 OCDE (1997), p. 30. Sidak et Spulber signalent un important problème potentiel pour l'estimation des économies d'échelle : dans une certaine mesure, l'ampleur des économies d'échelle est déterminée de manière endogène par l'opérateur postal. Une distribution cinq jours par semaine comporte des coûts fixes plus élevés qu'une distribution hebdomadaire. Les exigences réglementaires qui imposent un certain niveau de service (en particulier dans les zones rurales) peuvent ainsi gonfler les coûts fixes et exagérer les économies d'échelle apparentes.
- 47 L'Australian Industry Commission a déclaré que "les économies d'échelle dans la collecte, dans le transport entre les centres de tri, dans le tri et dans la distribution étaient probablement déjà

épuisées dans les grandes villes australiennes. Cela se manifestait par le fait que d'autres opérateurs (par exemple, des coursiers ou des préparateurs de courrier) assuraient déjà certaines de ces fonctions. Par contraste, dans les zones rurales, où les volumes de courrier sont plus faibles, l'Industry Commission considérait qu'il était vraisemblablement plus efficient qu'une seule entreprise assure la poste aux lettres. D'après l'Industry Commission, les économies de gamme étaient probablement le plus grandes dans les cas où les volumes de courrier étaient faibles". Australian Treasury (1997), p. 127.

48 Bishop *et al.* (1998), p. 10.

49 Dans la pratique, quand l'opérateur en place a déjà une gamme de services couvrant les demandes du marché, les possibilités d'entrer sur le marché en offrant des services entièrement nouveaux peuvent s'avérer limitées.

50 Sidak et Spulber (1997), p. 41-42.

51 Bureau de la politique de concurrence, Fiche d'information, *Société canadienne des postes/Purolator Courier Ltée*, 26 novembre 1993, p. 4.

52 Sidak et Spulber notent que, sur le seul territoire du Canada, il existe largement plus de 2 000 compagnies en concurrence sur le marché de livraison exprès de petits colis. Sidak et Spulber (1997), p. 42.

53 Horstmann (1997), p. 308.

54 Bishop *et al.* (1998), p. 39. Ungerer (1998a) note qu'étant donné la convergence avec d'autres moyens de transport et la diversification des moyens d'accès au réseau postal et à ses points de distribution et de traitement, y compris les télécommunications, il est en fait difficile d'imaginer qu'à long terme un monopole s'étendant nettement au-delà de la distribution puisse être stable et durable.

55 Pour un examen approfondi de ce problème, voir New Zealand Ministry of Commerce (1995).

56 Voir, par exemple, Oster (1994) et Oster (1995)

57 Pour approfondir cette question, voir Crew, Kleindorfer et Smith (1990), p. 793.

58 Loi postale allemande, 22 décembre 1997, section 28.

59 L'exemple de repostage le plus couramment cité est l'affaire où la succursale allemande de la Citibank transportait jusqu'aux Pays-Bas des lettres destinées à ses 400 000 clients allemands et les mettait à la poste dans le système postal néerlandais pour les renvoyer en Allemagne. La Deutsche Post AG a intenté une action en justice pour s'opposer à cette activité, en arguant que les frais terminaux qu'elle reçoit de la poste néerlandaise sont très inférieurs au coût réel du traitement des lettres ordinaires en Allemagne. D'après la Deutsche Post AG, c'est le niveau insuffisant des frais terminaux qui permet à la poste néerlandaise d'offrir des prix bas pour le repostage vers l'Allemagne. Horstmann (1997), p. 315.



- 60 L'Union postale universelle a essayé de supprimer ces pratiques de repostage. L'article 25 de la Convention postale universelle stipule qu'"aucun Pays-membre n'est tenu d'acheminer, ni de distribuer aux destinataires, les envois de la poste aux lettres que des expéditeurs quelconques domiciliés sur son territoire déposent ou font déposer dans un pays étranger, en vue de bénéficier des taxes plus basses qui y sont appliquées". Evidemment, cette forme de concurrence, comme toute concurrence, menace l'opérateur en place de ne plus pouvoir pratiquer des subventions transversales pour financer les services sans rentabilité commerciale. Si l'on veut préserver les services sans rentabilité commerciale face à cette concurrence, il faudra mettre en place d'autres mécanismes comme on le verra dans la section suivante.
- 61 Comme le note Panzar : "La succession verticale des activités et la concentration des économies d'échelle postales dans la distribution locale laissent penser que l'on peut introduire de manière efficiente la concurrence sur les marchés postaux au moyen d'un système de tarification de l'accès à la distribution locale semblable à celui qui s'est établi dans l'industrie des télécommunications aux Etats-Unis après le démantèlement". Panzar (1993), p. 91.
- 62 Cette hypothèse est contestée par au moins une étude dans le cas des Etats-Unis. D'après les estimations d'une étude de Cohen, Ferguson et Xenakis, en 1989 les coûts de distribution en ville par envoi étaient inférieurs de seulement 8 pour cent à la distribution rurale, mais les coûts de distribution en ville par point de distribution étaient en fait supérieurs de 7 pour cent à ceux des zones rurales. La conclusion de cette étude est qu'il n'existe donc pas de subvention transversale par la distribution urbaine au profit de la distribution rurale. Cohen, Ferguson et Xenakis (1993). On notera que ces résultats ne s'appliquent pas nécessairement à d'autres pays où les volumes de courrier et les catégories rural/ urbain sont différents.
- 63 Par exemple, les habitants des zones très reculées du grand Nord du Canada ont dans certains cas un nombre hebdomadaire de distributions du courrier plus bas que dans les zones urbaines du Canada. Pendant la plus grande partie de ce siècle, les habitants des zones rurales de Nouvelle-Zélande ont dû payer une redevance supplémentaire pour la livraison du courrier dans leur boîte à lettres.
- 64 Bishop *et al.* (1998), p. 16-17. On note, dans OCDE (1996), p. 16, que l'uniformité géographique des prix induit des décisions d'affectation des ressources non efficientes : "Les différences de prix en fonction des différentes conditions géographiques contribuent à assurer une affectation régionale des facteurs efficiente. Elles sont une condition nécessaire pour un aménagement du territoire efficient". Quelques pays de l'OCDE n'imposent pas l'uniformité géographique des tarifs. En Espagne, par exemple, il existe depuis longtemps un système de tarifs plus bas pour le courrier en ville. En conséquence de la déréglementation en Nouvelle-Zélande, les nouveaux opérateurs postaux offrent des prix plus bas pour le courrier local.
- 65 Australian Treasury (1997), p. 130.
- 66 "On admet de plus en plus que les objectifs [du service universel] n'exigent pas nécessairement des prix uniformes. Une exigence moins stricte pourrait suffire, stipulant que tous les citoyens aient accès à des "services équivalents", à des "prix raisonnables et abordables". Cette forme atténuée d'obligation de service universel pourrait exiger qu'au minimum des qualités de services similaires soient offertes dans tout le pays et que les différences de prix entre les régions ne soient pas "trop grandes"". Bishop *et al.* (1998), p. 17.

- 67 Miller (1985), p. 154.
- 68 Haldi (1995), p. 41. Le Trésor australien fait écho à cette opinion : “Il n’est pas évident que dans un environnement réglementé, l’obligation pour la Poste australienne de continuer à assurer le service de lettres à un prix uniforme serait nécessairement un fardeau. L’introduction de tarifs différenciés (par exemple, en fonction des différences de coûts géographiques) imposerait des coûts de transaction qui peuvent ne pas être au goût des consommateurs ou des opérateurs postaux”. Australian Treasury (1997), p. 133. Voir aussi Sidak et Spulber (1997), p. 46.
- 69 Sidak et Spulber (1997), p. 80.
- 70 Voir Joseph Farrell, “Creating Local Competition,” Federal Communications Law Journal, vol. 49, 1er novembre 1996.
- 71 Voir note 31.
- 72 En fait, durant de nombreuses années, les habitants des zones rurales de Nouvelle-Zélande ont dû payer une “redevance de distribution rurale” pour avoir le privilège de recevoir leur courrier dans leur boîte à lettres plutôt que seulement au bureau de poste le plus proche.
- 73 “Le service universel ne sera plus financé par des subventions transversales provenant de services monopolistiques surtarifés. Les fonds destinés à couvrir le coût du service universel auront pour source un système de délivrance de licences. Tout service de livraison assurant l’acheminement de communications écrites portant une adresse et pesant moins de 1 kg doit obtenir une licence. ... Si le marché ne réussit pas à produire un service universel à l’intérieur d’une zone de licence, une autorité réglementaire peut obliger les titulaires de licence à fournir le service postal de base moyennant une indemnisation des pertes supportées. Cette indemnisation doit être financée par un fonds alimenté par les contributions de tous les titulaires de licence ayant un chiffre d’affaires annuel supérieur à 1 million de marks”. Campbell (1998), p. 10.
- 74 Comme le notent Bishop *et al.* (1998) : “[L’établissement d’un fonds pour l’obligation de service universel] peut n’être pas souhaitable s’il est difficile d’écarter l’hypothèse que l’opérateur en place manipulera systématiquement dans ce cadre le coût de cette obligation”. Bishop *et al.* (1998), p. 21.
- 75 Bishop *et al.* (1998), p. 21. Egalement : “...en l’absence du monopole légal, il serait possible au gouvernement fédéral de lancer un appel d’offres auprès des entreprises privées pour la fourniture du service de courrier dans une zone reculée particulière et pour assumer l’obligation d’être l’opérateur de dernier recours. Les clients de la poste dans la région en question continueraient de payer un prix uniforme sur le plan national pour le courrier, et les entreprises privées soumettraient des offres concurrentes pour fournir ce service moyennant la subvention la plus basse du gouvernement fédéral. Ce processus ne différerait pas fondamentalement de celui par lequel le boulanger le moins disant obtient le contrat de fourniture de pain à une base militaire”. Sidak et Spulber (1997), p. 46-47. Un système de ce genre a aussi été adopté en Suède, où tous les secteurs de l’industrie postale ont été libéralisés. En Suède, le gouvernement suédois a endossé la responsabilité du service universel et il passe contrat avec les opérateurs pour assurer ce service. Actuellement, le gouvernement suédois ne passe contrat qu’avec la Poste suédoise pour assurer le service universel mais il pourrait étendre cet arrangement à des concurrents s’ils atteignent une envergure suffisante. GAO (1996), p. 8. Au Canada, on recourt

déjà à des prestataires privés pour livrer le courrier à 2.2 millions d'adresses sur un 12.3 millions. La plupart des zones rurales sont déjà servies par ces prestataires. Bureau de la concurrence (1996). "Une grande proportion des coûts postaux ne sont pas irrécupérables, étant donné qu'ils consistent pour une large part en coûts de main-d'œuvre (qui représentent environ 63 pour cent des coûts totaux) et que les investissements en capital comprennent principalement des bâtiments polyvalents et des véhicules. Ainsi, alors qu'il peut ne pas être approprié d'instaurer des appels d'offres pour des concessions dans les services de téléphonie locale à cause de l'existence de coûts irrécupérables, ce genre de système conduit probablement à une fourniture efficiente de la distribution locale, si on l'administre convenablement. ... On peut mentionner comme exemple de l'utilisation d'appels d'offres pour des concessions un programme du gouvernement provincial du Saskatchewan [Canada] destiné à assurer un service d'autocars dans des localités où le trafic est insuffisant pour rendre le service commercialement viable. Dans le cadre du programme de subvention aux autocars ruraux, le Department of Highways peut accorder une subvention à un exploitant d'autocars ruraux qui apporte la preuve que le service considéré ne peut être maintenu sans déficit. Ce service est attribué par un appel d'offres public à l'exploitant qui propose de l'assurer contre la subvention la plus faible". Bureau de la concurrence (1996), p. 23-24.

- 76 "Si l'on juge qu'une subvention est nécessaire [pour financer le service universel dans la poste], on peut s'inspirer du programme de service aérien pour les petites localités qui a été mis en œuvre pour accompagner la déréglementation des lignes aériennes. Ce programme subventionne maintenant le service aérien vers 145 localités pour un coût annuel de 51 millions de dollars. Ce coût a nettement baissé depuis le commencement du programme en 1978, et il est prévu de supprimer progressivement ce programme. ... Globalement, le service aérien des petites localités s'est amélioré depuis la déréglementation". Miller (1985), p. 154.
- 77 Voir, par exemple, Financial Times, 4 février 1997, *Brussels attacks Deutsche Post over pricing*. Plus récemment, UPS a poussé le Département de la justice à invoquer son accord de courtoisie active avec l'Union européenne pour encourager cette dernière à répondre aux plaintes de comportements anti-concurrentiels de la Poste allemande, voir Financial Times du 17 mai 1999, *UPS seeks action on German "subsidies"*.
- 78 On a évoqué une autre forme de comportement anticoncurrentiel : le lien entre le choix du fournisseur postal et les achats sur un marché complètement différent. Par exemple, on a avancé que, comme la Deutsche Post est un grand acheteur de véhicules Mercedes Benz, Mercedes Benz hésite peut-être à s'adresser à un autre fournisseur pour une partie de son courrier. Cependant, la crainte que la Deutsche Post n'achète ses véhicules à un autre constructeur ne pourrait peser sur Mercedes que s'il gagnait plus sur ces véhicules en les vendant à la Poste qu'en ne les vendant ailleurs. Autrement dit, la Poste doit surpayer Mercedes en échange de la fidélité de ce dernier. Cela équivaut à offrir une remise sur l'acheminement de son courrier en échange de sa fidélité, ce qui revient aux cas examinés précédemment.
- 79 Pour illustrer ce phénomène, considérons l'exemple suivant : supposons que l'opérateur en place fournisse le service dans l'ensemble du pays, tandis qu'un entrant fournit le service postal dans deux grandes villes, représentant 20 pour cent du volume total du courrier. Supposons qu'initialement l'opérateur en place applique un prix forfaitaire d'un dollar par envoi à destination de tout point du pays. L'entrant décide d'offrir un prix de 75 cents pour la livraison dans les deux grandes villes. Un grand client du service de courrier produit environ 500 000 envois postaux par mois, dont 100 000 dans les deux grandes villes. En s'adressant à l'entrant, il

peut faire passer ses coûts mensuels de courrier de 500 000 dollars à 475 000 dollars, soit une économie de cinq pour cent.

L'opérateur postal en place peut réagir de diverses manières. Il peut simplement s'aligner sur le prix de l'entrant dans les deux grandes villes. L'opérateur en place peut aussi répondre à la menace de l'entrant en offrant, par exemple, une remise pour grandes quantités de cinq pour cent à la condition que le volume total soit au moins de 500 000 envois par mois. L'opérateur en place peut offrir un rabais "de fidélité" de 5 pour cent si le client accepte de le garder comme seul fournisseur. Il peut encore proposer un accord d'exclusivité offrant de traiter tous les envois du client à 95 cents l'unité si le client accepte de ne pas s'adresser à l'entrant.

D'un point de vue économique, toutes ces démarches sont équivalentes par le fait qu'elles ont toutes l'effet d'abaisser le prix effectivement appliqué sur le marché concurrentiel — dans le cas présent, le prix sur le marché concurrentiel est abaissé à 75 cents. Ainsi, du point de vue de l'action contre les comportements anticoncurrentiels, la question clé est de déterminer si le prix effectif appliqué sur le marché concurrentiel par l'opérateur en place est ou non assez bas pour être qualifié de "prix d'éviction" ou "de distorsion".

On peut trouver d'autres exemples de ce type d'analyse dans Nerep (1996), p. 29-30.

80 Voir par exemple Brennan (1995).

81 Une analyse plus complète reconnaîtrait le fait qu'une entreprise peut légitimement appliquer un prix au-dessous du coût dans certaines circonstances, comme l'introduction d'un nouveau produit.

82 Commission européenne (1997), p. 15. En outre, la Directive postale de la Commission européenne exige que les prestataires du service universel tiennent des comptes séparés pour chacun des services compris dans le secteur réservé, d'une part, et pour les services non réservés, d'autre part. Cette directive donne des indications détaillées sur la façon d'affecter les coûts :

"la comptabilité ... répartit les coûts entre tous les services réservés et les services non réservés de la façon suivante :

- a) les coûts qui peuvent être directement affectés à un service particulier le sont ;
- b) les coûts communs, c'est-à-dire ceux qui ne peuvent pas être directement affectés à un service particulier, sont répartis comme suit :
  - i) chaque fois que cela est possible, les coûts communs sont répartis sur la base d'une analyse directe de l'origine des coûts eux-mêmes ;
  - ii) lorsqu'une analyse directe n'est pas possible, les catégories de coûts communs sont affectées sur la base d'un rapport indirect à une autre catégorie de coûts ou à un autre groupe de catégories de coûts pour lesquels une affectation ou imputation directe est possible ; le rapport indirect est fondé sur des structures de coût comparables ;

- iii) lorsqu'il n'y a pas moyen de procéder à une imputation directe ou indirecte, la catégorie de coûts est imputée sur la base d'un facteur de répartition général calculé en établissant le rapport entre, d'une part, toutes les dépenses directement ou indirectement affectées ou imputées à chacun des services réservés et, d'autre part, toutes les dépenses directement ou indirectement affectées ou imputées aux autres services". Directive 97/67/CE, Article 14(3).
- 83 Toutefois, d'autres formes d'obligations d'information peuvent être utiles. En Nouvelle-Zélande, la libéralisation récente du secteur postal s'est accompagnée d'un renforcement des exigences d'information obligeant en particulier la Poste néo-zélandaise à révéler les prix, modalités et conditions et les remises qu'elle offre à ses clients (ce qui, en principe, facilite la détection des prix de distorsion).
- 84 Par exemple : "cette instance a clairement établi que (1) les méthodologies d'établissement des coûts peuvent uniquement, dans le meilleur des cas, fournir des approximations raisonnables des coûts de larges catégories de services existants, et que (2) les méthodologies dont on dispose pour l'établissement des coûts de services existants particuliers ou de groupes particuliers de services existants au-dessous du niveau de la catégorie ne sont pas suffisamment fiables ou vérifiables pour être acceptées comme outils réglementaires. De l'avis du Directeur, la décision du Conseil devrait tenir compte du rôle limité que peut jouer la comptabilité des coûts des services à l'égard de la prévention de l'interfinancement anticoncurrentiel, et, en conséquence, de la nécessité d'employer des mesures réglementaires complémentaires". *Comments on the Report of the Inquiry Officer with Respect to the Inquiry into Telecommunications Carriers' Costing and Accounting Procedures, Phase III - Costing of Existing Services*, 14 juin 1984, p. 32-33.
- 85 Annual Report, Director of Investigation and Research, Combines Investigation Act, for the year ended 31 March 1985, p. 59. Les tribunaux des Etats-Unis ont exprimé la même opinion : "Les mauvaises imputations de coûts et les prix de transfert incorrects dans les ventes entre sociétés affiliées s'avèrent difficiles, voire impossibles, à détecter ... Il n'y a pas de formule pour répartir les coûts communs entre les services et, même s'il y en avait, le fait est que les sociétés régionales Bell sont les seules à posséder toutes les informations pertinentes sur les coûts et qu'elles ont une très grande latitude dans le traitement de ces coûts". *U.S. v. Western Electric Co., Inc.*, [1984-2] Trade Cases 66,264, à 66,266 et 66,269.
- 86 Même la privatisation de l'entreprise peut, dans certaines circonstances être insuffisante pour éloigner la possibilité d'une aide financière de l'Etat. Dans le passé, les gouvernements ont souvent renfloué les grandes entreprises, notamment les grandes banques. Une entreprise qui prévoit que l'Etat viendra à son secours en cas de faillite a un avantage concurrentiel par rapport aux concurrents qui ne peuvent espérer une telle aide.
- 87 L'association allemande des coursiers et du courrier exprès demande que les activités de courrier exprès et livraison de colis de la Deutsche Post soient séparées des composantes monopolistiques.
- 88 "Avec l'importance croissante de cette question et l'extension des opérateurs postaux dans le domaine concurrentiel, il est probable que dans certaines circonstances, au-delà de cette obligation de séparation comptable, il faudra aller jusqu'à exiger dans certains cas un certain

degré de séparation structurelle, pour que la Commission aient les moyens de surveiller ce domaine”. Ungerer (1998a).

89 Le coût incrémentiel est aussi quelquefois appelé “coût évitable”, comme dans Baumol (1996).

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## QUESTIONNAIRE SUBMITTED BY THE SECRETARIAT

*(This questionnaire was sent to Member countries as a guide in the preparation of their submissions and is included here as an aide in the understanding of the submissions that follow.)*

As with most other sectors, we may identify a number of separate markets within the postal sector according to the different services transacted and the different stages of production. From the perspectives of consumers of postal services we may identify different markets according to the quality of the delivery service (e.g., the speed and level of insurance coverage), the size and/or weight of the item to be delivered, the degree of handling/sorting required, whether the items are individually addressed or not and, possibly, the origin or destination of the delivered item (e.g., it may be appropriate at times to distinguish mail to national/international destinations, urban/rural, post-box or regular mailboxes and so on). In many countries, the regulatory regime (and therefore the market structure) will differ across these different markets. For example, virtual all countries permit competition in the markets for the delivery of items requiring delivery at short notice and/or items above a certain weight limit.

We may also identify separate markets corresponding to the different stages of production, such as markets for the collection, the “primary” (or “outgoing”) sorting of the mail, the transportation of the mail to the final sorting centre, the “secondary” (or “inward”) sorting of the mail and the final delivery of mail items. In addition, we may identify a separate market for post-related retail services (i.e., those services traditionally provided by post offices). Again, in many countries, the regulatory regime will differ across these markets. For example, several countries allow the establishment of private post-offices, of various forms. In many cases, new entrants in the postal sector will only target specific stages of production, such as collection, primary sorting and transportation of mail.

For the purposes of the questions below we will focus particularly on the following markets: (a) the market for addressed, unsorted letters; (b) the market for addressed, pre-sorted letters; (b) the market for addressed advertising, periodicals, newspapers and magazines (also called “direct mail”); (c) the market for unaddressed items (such as advertising, flyers, etc.); (d) the market for courier/express services; and (e) the market for parcel services.

In these questions we will refer to firms operating in the postal sector as postal operators. The incumbent (usually government-owned) firm in this sector will be called the incumbent postal operator.

### **I. Key Regulatory Issues**

The purpose of this section is to highlight all of the key regulations affecting competition and business practices in this sector.

#### ***Key Regulation***

- (1.1) What is the title, date and main purpose of the key governing legislation or regulation in this sector?

### ***Regulation of Entry and Licensing***

- (1.2) Which markets within the postal sector are open to competition? Are competitors allowed to engage in the collection, sorting, the transportation and/or final delivery of mail? Are competitors allowed access to mailboxes, post boxes, mailboxes in apartment buildings, and so on? In which markets is entry limited or restricted to only the incumbent postal operator? Please describe how the boundary of the segment opened to competition is determined (e.g., by a weight limit, a price limit, both, or some other criterion).
- (1.3) What proportion of the incumbent operator's business is accounted for by services for which entry is restricted? What proportion of the entire postal sector is accounted for by services for which entry is restricted? Who is responsible for enforcing the prohibition on entry in certain postal services? Have these prohibitions been enforced recently?
- (1.4) For those services which are open to competition, are there licensing requirements? What conditions are imposed on licensees?

### ***Regulation of Access***

- (1.5) Competitive entry in the postal sector may be limited in the absence of "interconnection" or "access" by competitors to key or "bottleneck" services provided by the incumbent, such as the final delivery of mail to households. Are the specific services for which access must be granted specified in advance or is access granted to any/all services fulfilling certain conditions? In the former case, for what services does the regulatory regime require access? In the latter case, what are the conditions to be fulfilled before access will be granted? Is this on the basis of sector-specific legislation, or on the basis of general competition law requirements?

Where access is required, how are the terms and conditions of access determined in the event that the two parties cannot agree on terms and conditions?

### ***Regulation of Prices***

- (1.6) Which prices are controlled (in the sense that they cannot be chosen flexibly by the incumbent postal operator)? How are these prices controlled: do the controls impose price ceilings or price floors? Do these controls extend to services for which there is effective competition? Do they apply to the competing postal operators? What flexibility do firms have to set individual prices within the controls? (i.e., does the incumbent have the flexibility to adjust prices subject to an overall price cap?)
- (1.7) Are there specific regulations (distinct from the competition law) which limit or restrict the ability of the incumbent to offer specific or targeted discounts (such as discounts for bulk mail, pre-sorted mail, mail between post-office boxes or mail which encourages a mailed response?) or to discriminate in its pricing between different classes of buyers?

Where there are price ceilings, what procedures are in place to ensure that quality of service is maintained?

***Non-Commercial Service Obligations***

- (1.8) Is the incumbent postal operator (or any other firm) subject to requirements to provide service to certain customers below cost (including, for example, requirement to provide service in rural areas, a requirement to maintain post offices, or to provide subsidised delivery of literature for the blind)? Are these requirements explicit? If so, please list these obligations as clearly as possible. How are these requirements determined: by negotiation, by legislation or by some other means? What procedures are in place to ensure that the obligations are achieved?
- (1.9) Is the cost of these obligations made explicit? If so, what methodology is used for calculating the costs? Do other firms have the opportunity to compete to provide these services? If another firm sought to provide these services, could it claim compensation for doing so?
- (1.10) How are the funds collected to pay for these non-commercial obligations? Through internal cross-subsidisation, or through a system of explicit subsidies? If the latter, who contributes to the subsidy fund? Are competing firms expected to contribute? On what basis?

***Controls On Ownership, Lines of Business, Etc.***

- (1.11) Are there any regulatory controls (apart from those implicit in competition law) specifically designed to restrict the ability of the incumbent postal operator to cross-subsidise services, or in other ways use its monopoly rights to restrict competition in the competitive markets? (For example, requirements for accounting separation between the competitive and monopoly businesses, or requirements to operate competitive businesses as arms-length subsidiaries and so on).

Are there controls on ownership (including, for example, foreign ownership)?

Are there controls on lines of business, such as restrictions on the lines of business that the incumbent can undertake? (e.g., forbidding it to compete in the financial sector, or in the delivery of parcels?)

***Miscellaneous Issues***

- (1.12) Does the incumbent receive different regulatory treatment, special concessions or advantages which are not shared by competing postal operators:
- (a) Is there specific legislation governing the rights of postal operators to print stamps? If so, please describe the key principles of this legislation. Do these rights differ between the incumbent and competing postal operators?
- (b) Has it been necessary to introduce specific provisions in legislation ensuring the privacy or security of mail? If so, please describe the key principles of this legislation. Do these provisions differ in their application between the incumbent and competing postal operators?
- (c) Are there special rules governing rights of access to roads and footpaths, for the purposes of installing mail collection boxes? Do these rights differ between the incumbent and competing postal operators?
- (d) Does the incumbent receive other benefits that are not share with its competitors:

- does the incumbent receive differential tax treatment, tax benefits or exemptions? (ii) does the incumbent benefit from a partial exemption from other legal obligations, such as partial immunity from civil liability for the actions of its employees? (iii) does the incumbent benefit from other special rights, such as special treatment regarding parking or other rules governing the operation of vehicles?
- (1.13) What arrangements are in place for the international exchange of mail? What bilateral or multilateral arrangements have been agreed either by your country or by the incumbent (or other operators) for the international exchange of mail? How are the “terminal dues” calculated? Can you give an indication of their magnitude? Are foreign operators able to “bypass” terminal dues by making use of tariffs or regulations that apply to domestic operators (e.g., discounts offered to high-volume or pre-sorted mail or direct access to the incumbent’s distribution network?)

## **II. Regulatory Institutions And Market Structure**

The purpose of these questions is to provide a picture of the relevant regulatory institutions and the overall market structure.

### ***Regulatory Institutions***

- (2.1) Who are the key regulatory and policy-making agencies in this sector? Briefly, what are their structure and responsibilities? What are their relationships to one another? To what extent is the regulatory institution independent of the government? To what extent is it independent of the incumbent postal operator?

### ***Overview of Market Structure***

- (2.2) Please briefly summarise the overall market structure in the postal sector: What is the legal status of the incumbent postal operator? What is its ownership? Is its organisation, governance, incentives on management, and managerial discretion closer to that of a private corporation or to that of government department? Is the legal status of its employees closer to that of a private corporation or a government department? (Please explain, in either case).
- (2.3) What postal services does the incumbent postal operator currently provide? What level of postal service is currently offered in rural areas (compared to urban areas)? Briefly, what is the pricing structure of the incumbent postal operator? (how many different domestic mail prices are there and on what basis are they differentiated)? What is its total revenue? What volumes of mail does it carry (by number of pieces and/or by weight)? How many employees does it have? What non-postal sectors does it compete in, if any, (e.g., financial services?)
- (2.4) Who are the key other firms operating in this sector? (include courier firms and firms providing retail services akin to those of a traditional post office) What services do these firms provide? In which markets do they compete? Do they also operate in other non-postal markets (e.g., do they combine the delivery of mail with the delivery of other goods or services? or with the provision of financial services?). Who owns these firms? What is their turnover? What is their market share in the markets in which they operate (if known)? Can you provide information on mail volumes carried or total revenues?

### III. Key Competition Issues

#### *Application and Enforcement of Competition Law*

- (3.1) Does the national competition law apply to this sector without exemption or exception? Describe the exemptions or exceptions that apply.

Who is responsible for enforcing the various components of the competition law in this sector?

#### *Market Definition Issues*

- (3.2) Have the competition authority or the courts had the opportunity to define the relevant markets in competition cases arising in this sector? How have postal markets been defined? Have markets been differentiated according to the class of service (e.g., pre-sorted mail, unaddressed mail, and so on).

What has been determined to be the extent of the relevant geographic market? How was it determined?

#### *Abuse of Dominance*

- (3.3) Have instances of alleged abuse of dominance arisen in this sector? In particular, has the incumbent been accused of cross-subsidising reserved services to competitive services? Please describe these allegations. What sort of behaviour was involved? What action was taken? Has the incumbent postal operator sought to use devices such as selective discounts, volume discounts, exclusivity arrangements and so on, in order to retain customers? What action has been taken?
- (3.4) Have the current regulatory requirements designed to control abuse of a dominant position been effective? For example, have requirements for accounting separation between reserved and non-reserved services been effective in preventing cross-subsidisation?

#### *Other Competition Enforcement Issues*

- (3.5) Have instances of mergers or anti-competitive arrangements between firms arisen in this sector? What analysis was carried out in approving or opposing these mergers or arrangements?

### IV. Effects Of Postal Reform

The purpose of this section is to obtain a picture of some of the costs and benefits of reform that has occurred and is occurring in this sector.

- (4.1) For those countries which have carried out reforms in this sector, what has been the effect of those reforms on:
- (a) Prices (including the range of prices charged, levels of discounts, range of discounts, differentiation between geographic regions, types of mail and so on);
  - (b) Service quality (frequency of deliveries, speed or accuracy of service, waiting times in post offices, and so on);

- (c) New entry (number of operators, market shares, markets in which entry has occurred);
- (d) Productivity (volumes of mail carried per employee);
- (e) Innovation (introduction of new mail services, adoption of new technologies);
- (f) Levels of employment (in both the incumbent postal operator and in the sector as a whole);
- (g) Wages and labour conditions (including levels of unionisation, days lost to strikes, labour-use flexibility, etc.);
- (h) Profitability (of both the incumbent and other postal operators).



## QUESTIONNAIRE SOUMIS PAR LE SECRETARIAT

*(Ce questionnaire a été envoyé aux pays membres comme guide afin de leur permettre de préparer leurs contributions. Il est inclus dans cette publication pour aider à mieux comprendre leurs réponses.)*

Comme pour la plupart des autres secteurs, on peut identifier un certain nombre de marchés séparés à l'intérieur du secteur postal, en fonction des différents services exécutés et des différents stades de production. Du point de vue des consommateurs de services postaux, on peut identifier différents marchés selon la qualité du service de livraison (par exemple la rapidité et le niveau de garantie de l'assurance), la taille et/ou le poids de l'envoi, le degré de manutention/tri requis, le fait que les articles comportent ou non une adresse individuelle et, éventuellement, l'origine et la destination de l'envoi (ainsi, il peut être parfois opportun de classer le courrier selon les critères suivants : destination/nationale/internationale, les régions urbaine/rurale, boîtes postales/boîtes à lettres normales, etc.). Dans de nombreux pays, la réglementation applicable (et, par conséquent, la structure du marché) varie suivant ces différents marchés. A titre d'exemple, pratiquement tous les pays autorisent la concurrence pour les envois exigeant une distribution à bref délai et/ou les envois dépassant un certain poids.

On peut aussi identifier des marchés séparés correspondant aux différents stades de production, par exemple les marchés concernant la collecte, le tri "primaire" (ou tri pour expédition) du courrier, le transport du courrier jusqu'au centre de tri final, le tri "secondaire" (ou tri pour distribution) du courrier et la distribution finale. En outre, on peut distinguer un marché séparé des services de détail liés à la poste (c'est-à-dire les services assurés traditionnellement par les bureaux de poste). Ici encore, dans de nombreux pays le régime réglementaire diffère selon les marchés. Ainsi, plusieurs pays autorisent l'établissement de bureaux de poste privés, sous diverses formes. Dans nombre de cas, les primo-entrants dans le secteur postal ne visent que des stades spécifiques de la production, tels que la collecte, le tri primaire et le transport du courrier.

Pour les questions ci-après, on se focalisera particulièrement sur les marchés suivants : (a) le marché des lettres adressées non triées ; (b) le marché des lettres adressées et triées ; (c) le marché des courriers publicitaires, des périodiques, des journaux et des magazines comportant une adresse (également appelés "courrier direct") ; (d) le marché des envois sans adresse (publicité, brochures, etc.) ; (e) le marché des services de coursier/courrier express ; (f) le marché des services de colis.

Dans ces questions, on appellera opérateurs postaux les entreprises qui opèrent dans le secteur postal. L'entreprise en place dans ce secteur (généralement une entreprise d'Etat) sera appelée l'opérateur postal en place.

### **I. Principales questions réglementaires**

Cette section a pour but de mettre en lumière toutes les réglementations clés qui influent sur la concurrence et les pratiques commerciales dans ce secteur.

**Réglementation clé**

- (1.1) Quels sont l'intitulé, la date et l'objet principal de la législation ou de la réglementation clé dans ce secteur ?

**Réglementation de l'entrée et régime de licences**

- (1.2) Quels marchés du secteur postal sont ouverts à la concurrence ? Les concurrents sont-ils autorisés à effectuer la collecte, le tri, le transport et/ou la distribution finale du courrier ? Les concurrents ont-ils accès aux boîtes à lettres, aux boîtes postales, aux boîtes à lettres des immeubles, etc. ? Dans quels marchés l'entrée est-elle limitée ou restreinte au profit du seul opérateur postal en place ? Veuillez décrire comment est déterminé le périmètre du segment ouvert à la concurrence (par exemple par une limite de poids, de prix, de ces deux éléments ou par un autre critère).
- (1.3) Quelle proportion de l'activité de l'opérateur en place est représentée par des services pour lesquels l'entrée est soumise à des restrictions ? Quelle proportion de l'ensemble du secteur postal est représentée par des services pour lesquels l'entrée est soumise à des restrictions ? Qui est chargé de faire appliquer l'interdiction de l'entrée dans certains services postaux ? Ces interdictions ont-elles été appliquées récemment ?
- (1.4) Pour les services qui sont ouverts à la concurrence, existe-t-il des prescriptions pour l'obtention de licences ? Quelles sont les conditions imposées aux titulaires de licences ?

**Réglementation de l'accès**

- (1.5) L'entrée de la concurrence dans le secteur postal peut être limitée en l'absence d'"interconnexion" ou d'"accès" des entreprises concurrentes aux services clés fournis par l'opérateur en place, notamment la distribution finale du courrier aux ménages. Les services particuliers pour lesquels un accès doit être accordé sont-ils spécifiés par avance ou l'accès est-il accordé à tous les services remplissant certaines conditions ? Dans le premier cas, pour quels services le régime réglementaire exige-t-il l'accès ? Dans le second cas, quelles sont les conditions à remplir avant que l'accès soit accordé ? Sont-elles établies sur la base d'une législation sectorielle ou sur la base des obligations du droit général de la concurrence ?

Lorsque l'accès est exigé, comment les modalités et conditions d'accès sont-elles déterminées dans l'éventualité où les deux parties ne peuvent pas s'entendre sur ces modalités et conditions ?

**Réglementation des prix**

- (1.6) Quels prix sont contrôlés (en ce sens qu'ils ne peuvent pas être choisis de manière souple par l'opérateur postal en place) ? Comment ces prix sont-ils contrôlés : les contrôles imposent-ils des plafonds ou des planchers ? Ces contrôles s'étendent-ils aux services pour lesquels il existe une concurrence effective ? S'appliquent-ils aux opérateurs postaux concurrents ? Quelle marge de manœuvre les entreprises ont-elles pour fixer les prix individuels dans le cadre des contrôles ? (autrement dit, l'opérateur en place a-t-il la possibilité d'ajuster les prix sous réserve de respecter un plafond global ?)
- (1.7) Existe-t-il des réglementations spécifiques (distinctes du droit de la concurrence) qui limitent ou restreignent la capacité de l'entreprise en place d'offrir des rabais spécifiques ou ciblés

(notamment des rabais pour le courrier en grande quantité, le courrier prétrié, le courrier entre boîtes postales ou le courrier qui favorise une réponse par la poste ?) ou d'établir une tarification discriminatoire entre différentes catégories d'acheteurs ?

Dans le cas où des plafonds de prix sont en vigueur, quelles procédures sont en place pour veiller à ce que la qualité du service soit maintenue ?

### ***Obligations de service sans rentabilité commerciale***

- (1.8) L'opérateur postal en place (ou toute autre entreprise) est-il soumis à l'obligation de servir certains clients pour un tarif inférieur au coût (par exemple d'assurer le service dans les zones rurales, de maintenir des bureaux de poste ou d'assurer la distribution subventionnée de livres ou de magazines pour les aveugles) ? Ces obligations sont-elles explicites ? Si tel est le cas, veuillez les énumérer aussi clairement que possible. Comment ces obligations sont-elles déterminées : par voie de négociation, par la législation ou par un autre moyen ? Quelles procédures sont en place pour veiller à ce que les obligations soient remplies ?
- (1.9) Le coût de ces obligations est-il explicité ? Dans l'affirmative, quelle est la méthode utilisée pour calculer les coûts ? D'autres entreprises ont-elles la possibilité d'entrer en concurrence pour la fourniture de ces services ? Si une autre entreprise essayait de fournir ces services, pourrait-elle demander une compensation à ce titre ?
- (1.10) Des fonds sont-ils collectés pour financer ces obligations sans rentabilité commerciale ? Par le biais d'une péréquation tarifaire interne, ou par un système de subventions explicites ? Dans le second cas, qui contribue au fonds de subventions ? Les entreprises concurrentes sont celles censées contribuer ? Sur quelle base ?

### ***Contrôles visant la propriété, les catégories d'activités, etc.***

- (1.11) Existe-t-il des contrôles réglementaires (indépendamment de ceux qui sont implicites dans le droit de la concurrence) destinés spécialement à restreindre la capacité de l'opérateur postal en place d'accorder des subventions croisées à des services ou d'utiliser d'autres façons ses droits de monopole pour restreindre la concurrence sur les marchés concurrentiels ? (par exemple : obligation d'une séparation comptable entre les activités ouvertes à la concurrence et les activités monopolistiques, ou obligation d'exercer les activités ouvertes à la concurrence dans le cadre de filiales autonomes, etc.).

Existe-t-il des contrôles visant la propriété (notamment en ce qui concerne les participations étrangères) ?

Existe-t-il des contrôles visant les catégories d'activités, notamment des restrictions concernant le type d'activité que l'entreprise en place peut entreprendre ? (Par exemple, interdiction pour l'opérateur en place d'être présent dans le secteur financier ou dans le segment de la distribution de colis ?)

### ***Questions diverses***

- (1.12) L'entreprise en place fait-elle l'objet d'un régime réglementaire différent, de concessions ou d'avantages spéciaux qui ne sont pas partagés par les opérateurs postaux concurrents :

- (a) Existe-t-il une législation spécifique régissant les droits des opérateurs postaux d'imprimer des timbres ? Dans l'affirmative, veuillez en décrire les principes essentiels. Ces droits sont-ils différents selon qu'il s'agit de l'entreprise en place ou des opérateurs postaux concurrents ?
- (b) A-t-il été nécessaire d'instaurer des dispositions spécifiques dans la législation pour garantir la confidentialité et la sécurité du courrier ? Dans l'affirmative, veuillez décrire les principes essentiels de cette législation. Ces dispositions diffèrent-elles dans leur application selon qu'il s'agit de l'entreprise en place ou des opérateurs postaux concurrents ?
- (c) Existe-t-il des règles spéciales régissant les droits d'accès aux routes et sentiers, pour l'installation de boîtes de collecte du courrier ? Ces droits diffèrent-ils selon qu'ils s'appliquent à l'entreprise en place ou aux opérateurs postaux concurrents ?
- (d) L'opérateur en place bénéficie-t-il d'autres avantages qui ne sont pas partagés avec ses concurrents :
  - L'opérateur en place bénéficie-t-il d'un régime fiscal, d'avantages ou d'exonérations particuliers ? (ii) bénéficie-t-il d'une exemption partielle d'autres obligations légales, notamment d'une immunité partielle concernant sa responsabilité civile pour les actions de ses salariés ? (iii) bénéficie-t-il d'autres droits spéciaux, par exemple un traitement spécial en ce qui concerne le stationnement ou les autres règles régissant l'exploitation des véhicules ?

(1.13) Quelles dispositions sont en place pour l'échange international de courrier ? Quels accords bilatéraux ou multilatéraux ont été conclu soit par votre pays, soit par l'opérateur en place (ou par d'autres opérateurs) en vue de l'échange international de courrier ? Comment sont calculés les "droits terminaux" ? Pouvez-vous donner une idée de leur ordre de grandeur ? Les opérateurs étrangers sont-ils en mesure de contourner les "droits terminaux" en recourant à des tarifs ou à des réglementations qui s'appliquent aux opérateurs nationaux (par exemple des rabais offerts pour les volumes élevés ou pour le courrier prétrié, ou un accès direct au réseau de distribution de l'opérateur en place).

## **II. Institutions réglementaires et structure du marché**

Ces questions ont pour but de donner une idée des institutions réglementaires pertinentes et de la structure globale du marché.

### ***Institutions réglementaires***

(2.1) Quels sont les principaux organismes chargés de la réglementation et de l'élaboration des politiques dans ce secteur ? Décrivez brièvement leur structure et leurs responsabilités ? Quelles sont leurs relations les uns avec les autres ? Dans quelle mesure l'institution réglementaire est-elle indépendante du gouvernement ? Dans quelle mesure est-elle indépendante de l'opérateur postal en place ?

***Vue d'ensemble de la structure de marché***

- (2.2) Veuillez résumer brièvement la structure globale du marché dans le secteur postal. Quel est le statut juridique de l'opérateur postal en place ? Quel est son régime de propriété ? Son organisation, sa structure de gouvernement, les incitations en faveur de la direction et la liberté d'action en matière de gestion sont-elles plus proches de celles d'une entreprise privée ou de celles d'une administration publique ? (Veuillez justifier votre réponse).
- (2.3) Quels services postaux l'opérateur postal en place fournit-il à l'heure actuelle ? Quel niveau de service postal est offert actuellement dans les zones rurales (par rapport aux zones urbaines) ? En bref, quelle est la structure de tarification de l'opérateur postal en place (combien existe-t-il de tarifs intérieurs différents pour le courrier et sur quelle base sont-ils différenciés) ? Quelles sont ses recettes totales ? Quel volume de courrier transporte-t-il (nombre de pièces et/ou poids) ? Combien de salariés emploie-t-il ? Dans quels secteurs autres que la poste est-il présent, le cas échéant (exemple : les services financiers) ?
- (2.4) Quelles sont les autres grandes entreprises opérant dans ce secteur (à l'inclusion des coursiers et des sociétés fournissant des services de détail voisins de ceux d'un bureau de poste traditionnel) ? Quels services ces entreprises assurent-elles ? Sur quels marchés livrent-elles concurrence ? Opèrent-elles également sur d'autres marchés que le marché postal (par exemple, associent-elles la distribution du courrier avec la livraison d'autres biens ou services ? ou avec la fourniture de services financiers) ? Qui possède ces entreprises ? Quel est leur chiffre d'affaires ? Quelle est leur part de marché sur les marchés où elles opèrent (si celle-ci est connue) ? Pouvez-vous donner des indications sur les volumes de courrier transportés ou sur les recettes totales ?

**III. Principales questions de concurrence*****Mise en application du droit de la concurrence***

- (3.1) Le droit national de la concurrence s'applique-t-il à ce secteur sans exemption ou exception ? Décrire les exemptions ou exceptions en vigueur.

Qui est chargé de mettre en application les différentes composantes du droit de la concurrence dans ce secteur ?

***Problèmes de définition du marché***

- (3.2) L'autorité chargée de la concurrence ou les tribunaux ont-ils eu l'occasion de définir les marchés pertinents lors de litiges en matière de concurrence apparus dans ce secteur ? Comment les marchés postaux ont-ils été définis ? Les marchés ont-ils été différenciés selon la catégorie de service (courrier prétrié, courrier sans adresse, etc.).

Quel périmètre a été déterminé pour le marché géographique pertinent ? Comment a-t-il été déterminé ?

***Abus de position dominante***

- (3.3) Des cas d'abus présumé de position dominante sont-ils apparus dans ce secteur ? En particulier, l'opérateur en place a-t-il été accusé de subventionner les services concurrentiels au moyen des

services réservés ? Veuillez décrire ces allégations. Quels types de comportement étaient en cause ? Quelle action a été menée ? L'opérateur postal en place a-t-il cherché à recourir à des stratagèmes tels que les rabais sélectifs, les rabais pour gros volumes, les accords d'exclusivité, etc. afin de retenir la clientèle ? Quelles mesures ont été prises à cet égard ?

- (3.4) Les obligations réglementaires actuelles destinées à lutter contre l'abus de position dominante ont-elles été efficaces ? A titre d'exemple, l'obligation de séparation comptable entre services réservés et services non réservés a-t-elle été efficace pour empêcher les subventions transversales ?

***Autres questions relatives à l'application du droit de la concurrence***

- (3.5) Des cas de fusions ou d'accords anticoncurrentiels entre entreprises sont-ils apparus dans ce secteur ? Quelle analyse a été effectuée avant d'agréer ou de rejeter ces fusions ou accords ?

**IV. Effets de la réforme postale**

Cette section a pour objet de donner une idée de certains des coûts et des avantages de la réforme qui se sont manifestés et se manifestent dans ce secteur.

- (4.1) Pour les pays qui ont mis en œuvre des réformes dans ce secteur, quel a été l'effet de ces réformes sur :
- (a) Les prix (notamment l'éventail des tarifs pratiqués, les niveaux des rabais, l'éventail des rabais, la différenciation suivant les régions géographiques, les catégories de courrier, etc.) ;
  - (b) La qualité du service (fréquence de la distribution, rapidité ou précision du service, délais d'attente dans les bureaux de poste, etc.)
  - (c) L'entrée de nouveaux concurrents (nombre d'opérateurs, parts de marché, marchés dans lesquels l'entrée s'est produite) ;
  - (d) La productivité (volume de courrier traité par salarié) ;
  - (e) L'innovation (introduction de nouveaux services de courrier, adoption de nouvelles technologies) ;
  - (f) Les niveaux d'emploi (chez l'opérateur postal en place et dans l'ensemble du secteur) ;
  - (g) Les salaires et les conditions de travail (notamment les taux de syndicalisation, le nombre de journées perdues pour fait de grève, la flexibilité dans l'utilisation de la main-d'œuvre, etc.) ;
  - (h) La rentabilité (de l'opérateur en place ainsi et des autres opérateurs postaux).

## AUSTRALIA

### Overview

Australia's communications sector has undergone significant change over the past decade. In particular, the telecommunications industry has been deregulated and the Government-owned telecommunications carrier has been partially privatised. Against this background, there has been pressure for increased competition in the postal services market. While there have been some reforms – for example, Australia Post's legislative protection from competition was reduced in 1994 – there is some way to go in achieving full competition in postal services.

Following an independent review of the postal services market, in 1998 the Government announced further reforms aimed at increasing competition in postal services. In framing its response to the review, the Government was faced with the need to strike a balance between promoting competition and addressing concerns about Australia Post's ability to provide services to rural and remote areas in a deregulated market. While the package of reforms was not as broad-reaching as recommended by the review, it will open a large proportion of the market to competition. These reforms are scheduled to take effect from 1 July 2000.

### Key Regulatory issues

#### *Legislative framework*

Key parameters for the postal services market in Australia are established under the Australian Postal Corporation Act 1989, the Australian Postal Corporation Regulations 1996 and the Australian Postal Corporation (Performance Standards) Regulations 1998. Among other things, the legislation requires Australia Post to provide a letter service for standard postal articles in Australia for a single uniform rate of postage, and confers a monopoly on Australia Post for the provision of certain letter services.

#### *Reserved services*

The Australian Postal Corporation Act reserves certain services to Australia Post, prohibiting other postal operators from providing these services. As noted above, the extent of Australia Post's reserved services protection has been reduced in recent years.

In 1994, amendments to the Australian Postal Corporation Act permitted postal operators to compete with Australia Post in the delivery of letters weighing more than 250 grams (previously 500 grams), or for a delivery charge of \$1.80 (about \$US1.15) or more (previously \$4.50). Other areas were also opened to competition, including the operation of document exchanges, the carriage of letters within organisations, the carriage of newspapers, magazines, books and catalogues, and outward bound international mail. In total, the services opened to competition generated around ten per cent of Australia Post's annual revenues, increasing total revenue open to competition to 60 per cent.

In 1998, the National Competition Council conducted a review of the Australian Postal Corporation Act as part of the Government's commitment to review and, where appropriate, reform legislation which restricts competition. In response to that review, the Government decided that from 1 July 2000 Australia Post's reserved services protection would be further reduced so as to encompass only the delivery of letters weighing up to 50 grams (currently 250 grams), or for which the charge is up to 45 cents (currently \$1.80). In addition, all international mail will be open to competition, although safeguards will be established to prevent this being used to circumvent Australia Post's domestic reserved service. A review will be undertaken in 2002, to be completed by July 2003, to assess the effects of these changes and the need for further change.

In addition to the reserved services noted above, Australia Post also has an exclusive right to issue postage stamps within Australia. Articles that are not directed to a particular person or address, regardless of their weight or the charge for delivery, are non-reserved.

#### *Business accounted for by reserved services*

At present, approximately 60 per cent of Australia Post's activities are open to competition, with the remaining 40 per cent reserved to Australia Post. The reforms to take effect in 2000 will expose 88 per cent of Australia Post's revenue to competition on service (ie. Australia Post's competitors will be able to carry letters weighing less than 50 grams provided they charge at least 45 cents).

The areas of the postal services market that are open to competition have proven to be the most profitable for Australia Post. For example, in 1997-98, services open to competition accounted for 50 per cent of Australia Post's revenue and 68 per cent of its operating profit. In 1993-94, services open to competition accounted for 39 per cent of Australia Post's revenue and 50 per cent of its operating profit.

#### *Enforcement of reserved services*

Australia Post may apply to the Federal Court if it considers that a postal operator has provided, or intends to provide, a reserved service. Australia Post has taken such action in a number of instances.

#### *Regulatory institutions*

Australia does not have an industry-specific regulator for postal services. The Australian Competition and Consumer Commission (ACCC), which has economy-wide responsibility for administering competition law, has specific powers to review bulk interconnection disputes and to conduct prices surveillance in relation to Australia Post's reserved services.

The Department of Communications, Information Technology and the Arts is the primary policy agency in relation to postal services.

#### *Market structure*

Australia Post is the dominant postal operator in Australia. However, it is subject to competition in various markets, as set out in the box below.



<b>Product/Service</b>	<b>Direct Competitors to Australia Post</b>
<i>Express Post</i>	Express distribution and freight transportation companies such as TNT and Mayne Nickless, independent courier companies and freight forwarders.
<i>Delivery of publications</i>	Newspaper distributors and Streetfile (a subsidiary of household distribution and publishing operation PMP Communications).
<i>Unaddressed letters</i>	Salmat, Streetfile, 80 small letterbox distribution companies.
<i>International (outgoing) mail</i>	DHL (Worldwide), TNT, other multinational courier and freight companies.
<i>Parcels</i>	Small-medium metropolitan couriers, large multinational transport companies. United Parcels Services, DHL and Federal Express also compete in international parcels.

Postal operators in Australia also face indirect competition from substitutes such as telephone, email and facsimile. The share of the messaging market held by postal services has declined from 49 per cent in 1960 to 19 per cent in 1996, with most of this market share going to telecommunications services, and a smaller proportion to courier freight and unaddressed leaflets.

Precise statistics on the market shares of Australia Post and its competitors are not readily available. As an indication, however, Australia Post delivers the majority of business mail and has a minority share of the overall parcels market. Australia Post also has a high share of some non-postal services, such as over-the-counter bill payment services provided through its retail outlets.

Australia Post also contracts out a wide range of services. In particular, some of its retail activities are provided through Licensed Post Offices, which are privately owned and operated, Post Office Agencies and Community Postal Agencies. Approximately three-quarters of Australia Post's retail outlets are provided by contracted licensees who receive fees, commissions and discounts for their activities from Australia Post. In most rural and remote areas, mail delivery is also contracted out by Australia Post.

#### ***Access to Australia Post's network***

A legislative framework for bulk mail interconnection to Australia Post's network was established as part of the 1994 postal reforms. Under Section 32A of the Australian Postal Corporation Act, Australia Post must provide interconnection for bulk letters lodged for delivery on the basis of a rate reduction which reflects its estimate of the average transport costs avoided per letter. Australia Post and its customers may negotiate individual terms and conditions of a service and the ACCC has the authority to review the interconnection discounts.

In addition to these interconnection discounts for avoided transport costs, Australia Post may also provide discounts for bulk mail lodgments based on the level of sorting, the speed of delivery required and the number of letters. The size of the discount varies from one cent per letter to \$1.16 per letter. Approximately 34 per cent of all addressed letters receive bulk presort discounts.

Australia Post also intends to introduce discounts for barcoded letters. In addition, the volume threshold for bulk mail discounts will be reduced from 2,500 to 300 and aggregation will be allowed so that smaller mailers can have their letters combined into larger lodgments (minimum of 10,000) to be eligible for bulk mail discounts.

As part of the postal reforms to take effect in 2000, arrangements will be established that provide for access by competitors to Australia Post's network on a similar basis and on terms and conditions no less favourable than Australia Post offers its own customers. The details of the new access arrangements are expected to be announced in 1999.

### ***Price and Quality of Service***

The Board of Australia Post is able to set prices for its services and products, subject to certain limitations. Under Section 33 of the Australian Postal Corporation Act, postage charges for standard articles (roughly, letters conforming to specific weight and size limits) are subject to Ministerial review. In addition, Australia Post's reserved services are also declared under the *Prices Surveillance Act 1983*. Under the provisions of this Act, Australia Post is required to notify the ACCC before increasing the price or terms and conditions of its reserved services. These price controls do not apply to other postal operators in Australia, or to services that are open to competition, such as express post and parcel delivery.

In addition to the discounts for interconnection and bulk mail lodgment noted above, Australia Post also provides discounts for other products, such as seasonal greeting cards, advertising mail and for local delivery.

To ensure that quality of service is maintained, Australia Post has developed a Service Charter, which is underpinned by the Australian Postal Corporation (Performance Standards) Regulations. Among other things, the regulations specify the number of delivery points for certain areas, the minimum retail presence and the minimum dispersion of street posting boxes. Performance against these standards will be audited by the Auditor General and reported to Parliament each year.

### ***Community Service Obligations***

Section 27 of the Australian Postal Corporation Act requires Australia Post to provide a letter service, and that a single uniform rate of postage apply to standard postal articles carried by ordinary post within Australia. A small percentage of deliveries, for example to some rural and remote areas of Australia, cost more than the uniform rate to provide. Letter delivery services are considered to be Community Service Obligations (CSOs) where a private company would not be prepared to provide the service except for a charge greater than the uniform rate.

Australia Post funds the cost of providing CSOs through internal cross-subsidisation, with loss-making routes funded from profit-making areas of its business. The cost of postal CSOs is calculated using the avoidable cost methodology. This methodology counts the cost of a CSO as the net cost that could be avoided over the longer term if the service was not supplied. In 1997-98, postal CSOs in Australia were estimated to cost \$67 million, which represents approximately two per cent of Australia

Post's operating revenue. Many CSO services are ultimately provided by licensed contractors, for example in the delivery of mail to remote areas.

Some services which could be characterised as CSOs are separately funded. For example, Australia Post receives funding for distributing Braille literature free of charge to visually impaired people and delivering mail at concessional rates to Australian Navy and Army forces stationed at sea or overseas. However, Australia Post does not receive additional funding to meet a separate Ministerial direction to provide free pensioner mail redirection for the first month after a pensioner moves address.

The delivery of parcels and other mail items outside the reserved service, even to rural and remote areas, do not fall within the scope of Australia Post's universal service obligation, and are not considered to be CSOs.

## **Other issues**

### *International mail arrangements*

As noted above, outgoing international mail was deregulated in 1994, when consumers were given the ability to choose any service provider for the delivery of mail outside Australia.

Australia Post handles a large percentage of articles posted overseas for delivery in Australia. Incoming mail carried by other national postal operators is lodged with Australia Post at rates governed by the Universal Postal Union. Private postal service operators are charged interconnection rates on the same basis as domestic operators. From July 2000 all incoming and outgoing international mail will be subject to competition.

### *Corporate structure*

Australia Post was corporatised in 1989 and operates under a Board of Directors to meet commercial objectives. The Board is accountable to the Parliament, through the responsible Minister, for its performance. As a government-owned enterprise, Australia Post's strategies and policies must be agreed with the Government. The responsible Minister, however, is unable to specify service or price performance targets.

Australia Post is required to pay a Commonwealth borrowing levy of 0.125 per cent and is liable for all Commonwealth taxes. It is also required to pay dividends to the Government.

## **Key Competition Policy Issues**

### *Exemptions from national competition law*

The postal services market is subject to the provisions of Australia's competition law, the *Trade Practices Act 1974*. However, there are some instances, discussed below, where Australia Post has an exemption from certain provisions of the Act.

*Exemption from access provisions*

Part IIIA of the Trade Practices Act establishes a national third party access regime that provides a right for persons to negotiate with owners for access to a 'declared service' provided by a nationally significant infrastructure facility. Section 32D of the Australian Postal Corporation Act provides an exemption from Part IIIA in relation to the supply of a service by Australia Post. This exemption provides Australia Post with immunity from declaration under Part IIIA. The need for the exemption will be examined in the context of preparing legislation to give effect to the July 2000 postal reforms.

*Resale price maintenance*

Resale price maintenance is *per se* prohibited under the Trade Practices Act (ie. it is not subject to the substantial lessening of competition test). However, resale price maintenance can be authorised by the ACCC subject to a public interest test.

Section 33A of the Australian Postal Corporation Act prohibits, amongst other things, the sale of postage stamps for less than their usual retail price. This legislated retail price maintenance is intended to support the uniform pricing policy for standard letters. As the requirement for this conduct is imposed by Government legislation, it does not breach the resale price maintenance provisions of the Trade Practices Act.

*Competitive neutrality*

Under Australia's Competition Principles Agreement, all governments agreed to ensure that government businesses do not have any advantages or disadvantages by virtue of their government ownership. As noted above, Australia Post is liable to pay all Commonwealth taxes and charges and pays a borrowing levy. However, there are a number of areas where Australia Post benefits from exemptions and is subject to some obligations that do not apply to other postal operators.

Section 95 of the Australian Postal Corporation Act gives Australia Post the right to erect, maintain and use street posting boxes. Although private postal operators may be able to reach agreement with local authorities regarding the erection of similar boxes, some private operators have suggested that Section 95 provides Australia Post with a competitive advantage. In particular, Australia Post has erected boxes for the collection of Express Post items, an area of the market where Australia Post competes with other postal operators.

Australia Post also receives an exemption, under Section 34 of the Australian Postal Corporation from liability for any loss or damage suffered due to an act or omission by it in relation to the carriage of letters or other articles. This exemption has been considered necessary due to the unsolicited nature of the articles carried by Australia Post under its universal letter service.

These issues, along with a number of minor matters, will be considered in the preparation of legislation to give effect to the changes to be introduced to the postal sector in 2000.

## **Effects of Postal Reform**

### ***Australia Post's performance***

#### *Prices*

Australia's postal reforms have provided significant benefits in the form of lower prices. Australia Post has held the price for delivery of a standard postal article constant at 45 cents since 1 January 1992, resulting in an 8.6 per cent fall in real prices to mid 1998. The Government recently announced that the 45 cent rate will remain frozen until at least 2003. Since 1994, pre-sort bulk mailers have received a real reduction in prices of around 13 per cent. Data is not readily available on price movements for other postal services that are open to competition.

#### *Profits*

Since the introduction of postal reforms in 1994, Australia Post's revenues have risen from \$2.6 billion to \$3.3 billion, and operating profits over this period have increased from \$287 million to \$376 million. The return on assets has averaged 14.6 per cent over this period. Dividends paid to the Government have also significantly increased.

#### *Productivity and employment*

Australia Post has also recorded strong productivity gains. Labour accounts for around 60 per cent of Australia Post's total costs, and since 1994 labour productivity (revenue per employee work year) has increased by 28.2 per cent. Work hours lost per year due to industrial stoppages and the frequency of lost time injuries has also declined considerably. Efficiency (articles handled per employee) has also improved, increasing from 97,000 articles in 1993-94 to 110,000 in 1996-97.

The size of Australia Post's workforce has increased by approximately 5,000 persons since the 1994 postal reforms. This is largely accounted for by an increase in the number of Post Office licensees and mail contractors. Employment in other areas of the industry has also increased – for example, Australia Post's workforce increased by around 10 per cent in recent years, compared to 15 per cent in the postal and courier services sector as a whole.

#### *Service quality*

On the basis of a number of indicators, Australia Post's service quality has improved since the 1994 postal reforms. The accessibility of Australia Post's service has increased – Australia Post currently services 8.2 million delivery points, of which 2.35 million are located in rural and remote areas. Delivery frequency, which varies between metropolitan, rural and remote areas, has remained relatively constant. However, certain rural and remote areas are provided with the option of receiving more frequent deliveries. In addition, approximately 94 per cent of ordinary letters are delivered within Australia Post's delivery targets.

### ***Other benefits of reform***

The removal of restrictions on competition in parts of the postal services market has resulted in some new entry – in particular by document exchanges and carriers of international outgoing mail and express post.

Less tangible benefits have also been experienced, such as the introduction of new mail services. Australia Post has introduced a number of new services, such as *Express Post*, *EDIPost* (which provides electronic distribution of bulk mail), *PrintPost* (a publications delivery service), and the development of direct mail support services. Australia Post's retail outlets now also provide a wider range of services, such as bill payment and banking.

## CANADA

### I. Key Regulatory Issues

#### *Key Regulation*

Q. What is the title, date and main purpose of the key governing legislation or regulation in the sector?

A. The *Canada Post Corporation Act* establishes a corporation to provide Canadians postal services. The Act in conjunction with the *Canada Business Corporations Act* and the *Financial Administration Act*, establishes the principles for governance of the corporation as well as the reserved service area.

#### *Regulation of Entry and Licensing*

Q. Which markets within the postal sector are open to competition? Are competitors allowed to engage in the collection, sorting, the transportation and/or final delivery of mail? Are competitors allowed access to mailboxes, post boxes, mailboxes in apartment buildings, and so on? In which markets is entry limited or restricted to only the incumbent postal operator? Please describe how the boundary of the segment opened to competition is determined (e.g., by a weight limit, a price limit, both, or some other criterion).

A. All areas of postal service are open to competition with the exception of the collection, transmission and delivery of letters. Letters are defined to be items weighing less than 500 grams. Mail boxes at private homes may be and are used by competing delivery services. Due to security concerns, equipment belonging to Canada Post Corporation cannot be directly accessed by other service providers.

Q. What proportion of the incumbent operator's business is accounted for by services for which entry is restricted? What proportion of the entire postal sector is accounted for by services for which entry is restricted? Who is responsible for enforcing the prohibition on entry in certain postal services? Have these prohibitions been enforced recently?

A. Because of the nature of the definition of the exclusive privilege and the fact that Canada Post Corporation cannot and does not open lettermail, it is not possible to know what portion of revenues or volumes are derived from the reserved service area. From experience as a receiver of mail, many items received as lettermail are not covered by the exclusive privilege. The exclusive privilege can be enforced through criminal sanctions or through civil remedies. Since the inception of the Corporation in 1981, only civil injunctive relief has been sought, each time successfully.

Q. For those services which are open to competition, are there licensing requirements? What conditions are imposed on licenses?

A. There are no particular licensing requirements for entry into areas not covered by the reserved service area. However, there are transport licensing requirements that may apply, federally, provincially or municipally. These are not particular to this area of endeavour and apply to cartage, cargo, freight and messenger services generally.

#### *Regulation of Access*

Q. Competitive entry in the postal sector may be limited in the absence of “interconnection” or “access” by competitors to key or “bottleneck” services provided by the incumbent, such as the final delivery of mail to households. Are the specific services for which access must be granted specific in advance or is access granted to any/all services fulfilling certain conditions? In the former case, for what services does the regulatory regime require access? In the latter case, what are the conditions to be fulfilled before access will be granted? Is this on the basis of sector-specific legislation, or on the basis of general competition law requirements?

Where access is required, how are the terms and conditions of access determined in the event that the two parties cannot agree on terms and conditions?

A. There are no essential facilities that cannot be replicated by competitors. Indeed, many competitors have established equipment to receive shipments with the consent of property owners or municipalities, as well as delivery boxes. Competitors routinely deliver to households, whether addressed material such as magazines and parcels or unaddressed items such as flyers, competitors have no barriers to entry. In addition, outside of the reserved service area, Canada Post Corporation interconnects with competitors. While not a requirement of competition law, it makes business sense to offer interconnection where technically possible and where it is consistent with the mandate to be profitable.

#### *Regulation of Prices*

Q. Which prices are controlled (in the sense that they cannot be chosen flexibly by the incumbent postal operator)? How are these prices controlled: do the controls impose price ceilings or price floors? Do these controls extend to services for which there is effective competition? Do they apply to the competing postal operators? What flexibility do firms have to set individual prices within the controls? (i.e., does the incumbent have the flexibility to adjust prices to subject to an overall price cap?)

A. Basic lettermail prices are set by regulation under the *Canada Post Corporation Act*. These regulations require the approval of the Governor-in-Council (federal cabinet). There are no price controls on competing operators.

Q. Are there specific regulations (distinct from the competition law) which limit or restrict the ability of the incumbent to offer specific or targeted discounts (such as discounts for bulk mail, pre-sorted mail between post office boxes or mail which encourages a mailed response?) or to discriminate pricing between different class of buyers?

Where there are price ceilings, what procedures are in place to ensure that quality of service is maintained.



A. The *Competition Act* regulates the activities described in this area.

#### *Non-Commercial Service Obligations*

Q. Is the incumbent postal operator (or any other firm) subject to requirements to provide service to certain customers below costs (including for example, requirements to provide service in rural areas, a requirement to maintain post offices, or to provide subsidies delivery of literature for the blind?) Are these requirements explicit? If so, please list these obligations as clearly as possible. How are these requirements determined: by legislation or by some other means? What procedure are in place to ensure that the obligations are achieved?

A. Canada Post Corporation is required to maintain basic customary postal service to all Canadians. In addition it provides special services for the blind and the delivery of letters to and from federal Members of Parliament free of charge. There is no compensation for the universal service obligation, however there is compensation for the parliamentary mail and services to the blind. The parliamentary mail privilege is set out in the *Canada Post Corporation Act*, and the literature for the blind obligation is established by regulation.

Q. Is the cost of these obligations made explicit? If so, what methodology is used for calculating the costs? Do other firms have the opportunity to compete to provide these services? If another firm sought to provide these services, could it claim compensation for doing so?

A. The obligations for which Canada Post Corporation is compensated is determined on the basis of the actual volumes of mail. This is possible due to the discrete nature of the mail in question. Due to the fact that this material is covered by the exclusive privilege, the issue of competitors being compensated does not arise.

Q. How are the funds collected to pay for these non-commercial obligations? Through internal cross-subsidisation, or through a system of explicit subsidies? If the latter, who contributes to the subsidy fund? Are competing firms expected to contribute? On what basis?

A. Where there is compensation, it is provided pursuant to an agreement with the federal government. The funds are paid to the Corporation by the government agency having policy responsibility for the program that is advanced by the obligation.

#### *Controls on Ownership, Lines of Business*

Q. Are there any regulatory controls (apart from those implicit in competition law) specifically designed to restrict the ability of the incumbent postal operator to cross- subsidise services, or in other ways use its monopoly rights to restrict competition in the competitive markets? (For example, requirements for accounting separation between the competitive and monopoly businesses, or requirements to operate competitive businesses as arms-length subsidiaries and so on).

Are the controls on ownership (including, for example, foreign ownership)?

Are the controls on lines of business, such as restrictions on the lines of business that the incumbent can undertake? (e.g., forbidding it to compete in the financial sector, or in the delivery of parcels?)

A. Canada Post Corporation must obtain approval from the Governor-in-Council for its corporate plan. This plan must detail its lines of business, including profitability expectations. Issues of cross subsidy are dealt with as a matter of competition law. Despite allegations by competitors, a recent examination by the Canadian Competition Bureau found no evidence of cross subsidization. Canada Post Corporation reports by line of business within its financial statements. Unlike international competitors, Canada Post Corporation's Canadian revenues and volumes by segment are made public. There are no foreign ownership controls specific to this industry. At the present time, Canada Post Corporation is wholly owned by the federal government. Canada Post Corporation is subject to the same controls as other companies on the entry into markets such as financial services. In addition, entry into these markets requires corporate plan approval.

*Miscellaneous Issues - Special Concessions.*

Q. Does the incumbent receive different regulatory treatment, special concessions or advantages which are not shared by competing postal operators:

(a) Is there specific legislation governing the rights of postal operators to print stamps? If so, please describe the key principles of this legislation. Do these rights differ between the incumbent and competing postal operators?

A. We are not aware of private operators printing stamps, however meters are used as is prepaid stationery. There is no particular restriction in this area

(b) Has it been necessary to introduce specific provisions in legislation ensuring the privacy or security of mail? If so, please describe the key principles of this legislation. Do these provisions differ in their application between the incumbent and competing postal operators?

A. This is assured in the Canada Post Corporation Act. There is no similar protection for items in course of delivery by private operators, with the exception of voluntary privacy codes and private sector privacy legislation in the Province of Québec.

(c) Are there special rules governing rights of access to roads and footpaths, for the purpose of installing mail collection boxes? Do these differ between the incumbent and competing postal operators?

A. While Canada Post Corporation has the right to place mail collection and delivery boxes on public lands, it does so in negotiation with the municipality.

(d) Does the incumbent receive other benefits that are not shared with its competitors: does the incumbent receive differential tax treatment, tax benefits or exemptions? (ii) does the incumbent benefit from other legal obligations, such as partial immunity from civil liability for the actions of its employees? (iii) does the incumbent benefit from other special rights, such as special treatment regarding parking or other rules governing the operation of vehicles?

A. Canada Post Corporation is taxable under the Federal Income Tax Act. The *Canada Post Corporation Act* has an exclusion from liability that is similar to the contractual limitation of liability of private carriers. This is necessary as lettermail services paid for using a stamp are not a contractual relationship. Canada Post Corporation does not enjoy special status with respect to the licensing of vehicles or the violation of traffic laws.

Q. What arrangements are in place for the international exchange of mail? What bilateral or multilateral arrangements have been agreed either by your country or by the incumbent (or other operators) for the international exchange of mail? How are the “terminal dues” calculated? Can you give an indication of their magnitude? Are foreign operators able to “bypass” terminal dues by making use of tariffs or regulations that apply to domestic operators (e.g., discounts offered to high-volume of pre-sorted mail of direct to access to the incumbent's distribution network?)

A. Canada Post Corporation is taxable under the Federal Income Tax Act. The *Canada Post Corporation Act* has an exclusion from liability that is similar to the contractual limitation of liability of private carriers. This is necessary as lettermail services paid for using a stamp are not a contractual relationship. Canada Post Corporation does not enjoy special status with respect to the licensing of vehicles or the violation of traffic laws.

Canada is a signatory to the Convention of the Universal Postal Union, hence we have agreed to the terminal dues exchanges provided for in that convention. In addition foreign mailers, directly or through agents may deposit mail directly in Canada and receive the same treatment as Canadian mailers.

## **II. Regulatory Institutions and Market Structure**

### *Regulatory Institutions*

Q. Who are the key regulatory and policy-making agencies in this sector? Briefly, what are their structure and responsibilities? What are their relationships to one another? To what extent is the regulatory institution independent of the government? To what extent is it independent of the incumbent postal operator?

A. Generally this is an unregulated sector of the economy. Canada Post Corporation is regulated by the Governor-in-Council

### *Overview of Market Structure*

Q. Please briefly summarise the overall market structure in the postal sector: What is the legal status of the incumbent postal operator? What is its ownership? Is its organisation, governance, incentives on management, and managerial discretion closer to that of a private corporation or to that of government department? Is the legal status of its employees closer to that of a private corporation or a government department? (Please explain, in either case).

A. Canada Post Corporation is a federal crown corporation. It is owned by the federal government. As a commercial crown corporation its governance is parallel to that of a private sector company. It has a Board of Directors responsible for the direction and management of the affairs of the Corporation, just as

would be the case in a private company. In all respects Canada Post Corporation's governance and management is closer to that of a private company than that of a government department. At the same time the Government of Canada has the ability to issue directives to the corporation requiring it to take certain actions set out in the directive. While this power has never been used it does exist. Equally, as the sole shareholder the Government has the ability to remove directors and hence influence the direction of the company. Finally the requirement for corporate plan approvals gives the Government the power to influence the direction of the corporation, similar to a majority shareholder.

Q. What postal services does the incumbent postal operator currently provide? What level of postal service is currently offered in rural areas (compared to rural areas)? Briefly, what is the pricing structure of the incumbent operator? (How many different domestic mail prices are there and on what basis are they differentiated)? What is its total revenue? What volumes of mail does it carry (by number of pieces and/or by weight)? How many employees does it have? What non-postal sectors does it compete in, if any, (e.g., financial services?).

A. Canada Post Corporation offers letter delivery, sorted and unsorted; addressed advertising delivery; premium unaddressed advertising delivery; courier/express delivery; parcel services; hybrid and electronic mail services; and special services including agency services on behalf of third parties. In rural areas services are similar to those in urban areas. In some remote communities that are only accessible by air, mail delivery may be less frequent and special deliveries such as perishable foods may be offered.

Prices vary according to mail preparation, speed of service, service options, weight, and in the case of parcels and courier/express services, distance.

Total Revenue: in 1997-98, C\$5,066 million.

Mail Volume: in 1997-98, 9,236 million pieces

Employees: in 1997-98, Full Time: 50,644; Part Time: 12,467;

Total: 63,111

Q. Who are the key other firms operating in this sector? (include courier firms and firms providing retail services akin to those of a traditional post office) What services do these firms provide? In which markets do they compete? Do they also operate in other non-postal markets (e.g., do they combine the delivery of mail with the delivery of other goods or services? or with the provision of financial services?). Who owns these firms? What is their turnover? What is their market share in the markets in which they operate (if known)? Can you provide information on mail volumes carried or total revenues?

A. This according to Industry Canada studies is a market involving over 2,300 competitors. It is not possible to provide the information requested.

### III. Key Competition Issues

#### *Application and Enforcement of Competition Law*

Q. Does the national competition law apply to this sector without exemption or exception? Describe the exemptions or exceptions that apply.

Who is responsible for enforcing the various components of the competition law in this sector?

A. In Canada, the *Competition Act* is of general application; there are no specific provisions in the *Competition Act* for specific industries. The *Competition Act* includes among its provisions criminal sanctions against conspiracies to prevent or lessen competition unduly as well as civil remedies in respect to mergers or abuse of dominant market positions where their effect is to prevent or lessen competition substantially.

The *Competition Act* is binding on and applies to an agent of Her Majesty in right of Canada or a province that is a corporation, in respect of commercial activities engaged in by the corporation in competition with other persons to the extent that it would apply if the agent were not an agent of Her Majesty.

However, the *Canada Post Corporation (CPC) Act* provides that: *...the Corporation has the sole and exclusive privilege of collecting, transmitting and delivering letters to the addressee thereof within Canada.*

The *CPC Act* thus expressly gives Canada Post a statutory monopoly on the handling of letters, as specified in that *Act*. A notable exception to the exclusive privilege are: *...letters of an urgent nature that are transmitted by a messenger for a fee at least equal to an amount that is three times the regular rate of postage payable for delivery in Canada of similarly addressed letters weighing fifty grams.*

Jurisprudence, developed primarily under the criminal provisions of the *Competition Act*, has held that, in certain circumstances, parties who have breached the *Competition Act* may have a defence if those activities are specifically authorized to valid regulatory legislation. This “regulated conduct defense” is not a defence for all types of behaviour in a regulated industry.<sup>1</sup>

With respect to activities which may be subject to the provisions of the *Competition Act*, the Director of Investigation and Research under the *Competition Act* is responsible for enforcement. Cases are adjudicated by the courts, if criminal, and by the Competition Tribunal, if civil.

#### *Market Definition Issues*

Q. Have the competition authority or the courts had the opportunity to define relevant markets in competition cases arising in this sector? How have postal markets been defined? Have markets been differentiated according to the class of service (e.g., pre-sorted, unaddressed mail, and so on).

What has been determined to be the extent of the relevant geographic market? How was it determined?

A. In 1993, Canada Post acquired control of Purolator Courier Inc. The transaction was subject to review by the Competition Bureau (“Bureau”) under the merger provisions of the *Competition Act*. The examination concluded that:

“...the relevant product market in which both Canada Post and Purolator operate is the Small Parcel Express (SPX) market. This product market is defined by service characteristics which distinguish it from other package delivery or transportation services. For instance, door-to-door pickup, track and trace capability, time-certain delivery, and signature proof of delivery are important features of the SPX market. In choosing between competing suppliers of the relevant product, customers consider these service characteristics as well as the price of the product when making their purchase decisions. The Bureau determined that the relevant geographic market in which the parties compete is comprised of a series of origin-destination points within and originating from Canada.”<sup>2</sup>

#### *Abuse of Dominance*

Q. Have instances of alleged abuse of dominance arisen in this sector? In particular, has the incumbent been accused of cross-subsidising reserved services to competitive services? Please describe these allegations. What sort of behaviour was involved? What action was taken? Has the incumbent postal operator sought to use devices such as selective discounts, exclusivity arrangements and so on, in order to retain customers? What action has been taken?

A. Both at the time of the acquisition of Purolator and subsequently, Canada Post has been accused of using revenues from its exclusive privilege letter operations to cross- subsidise its courier (Priority Post and Purolator) activities. In its press-release on its decision in the Canada Post/ Purolator case, the Bureau observed that:

“... (there were) concerns raised by a number of competitors of Canada Post that Canada Post had engaged in cross-subsidization in the past and would use its acquisition of Purolator to further cross-subsidize its activities in the SPX market with funds derived from its exclusive privilege in letter mail. These competitors indicated that they were not concerned about the competitive effects of the transaction so long as Canada Post did not subsidize Purolator's operations. Specifically, there is a concern that Canada Post will allocate its common costs of providing exclusive privilege letter mail and courier services disproportionately towards its exclusive privilege operations by charging Purolator less than market value for the use of Canada Post assets. Should a misallocation of common costs occur in this fashion, Canada Post would be inflating its true costs of providing letter service and possibly use this as the basis for seeking an increase in allowable postal rates. The costs of providing its courier services would be reduced below true levels, thereby allowing Canada Post to price its and Purolator's SPX products below long-run incremental cost. It was then argued that the price reduction in the SPX market would reduce the revenue base of the remaining competitors in the market to the point where one or more of them could be forced to exit the industry resulting in a substantial lessening of competition.”

The Bureau carefully examined whether the proposed transaction would give Canada Post the added incentive to cross-subsidise its courier services with funds derived from its exclusive privilege in letter mail. The proper costing of transactions between Canada Post and Purolator would ensure that no cross-subsidisation occurs while allowing for the attainment of economies of scope, which the Act

encourages. Cross-subsidization is of concern to the Bureau when it is used to finance anti-competitive acts which would likely result in a substantial lessening or prevention of competition.

The Bureau concluded that several conditions must exist for cross-subsidization to result in a substantial lessening of competition under the *Competition Act*. First, Canada Post must be able to increase revenues from its exclusive privilege business to cover any losses in Purolator's courier business that would have occurred if costs were properly allocated. Second, Purolator's prices for its courier services must fall so far below the properly allocated costs of providing these services, as to be uneconomic for competitors to match these prices. Third, a sufficient number of customers must switch their business to Purolator away from existing rivals, so as to force the exit of competing firms. Finally, Purolator must be able to raise prices for its courier services above competitive levels following the exit of its rivals, without fear that new entry or re-entry will force prices back to competitive levels. Alternatively, if prices are not raised, it must be demonstrated that service levels or other non-price forms of competition have declined to a degree that results in a substantial lessening or prevention of competition.

The Director first examined whether Canada Post was, at this time, cross-subsidising its Priority Courier business and concluded that the Priority Courier business is recovering its attributable costs and is not currently being subsidized by the exclusive letter mail operations of Canada Post.

Since it was also argued that the potential exists for Canada Post to cross-subsidize courier services, notwithstanding a finding that it is not currently engaged in such a practice, the Bureau assessed whether such activity, if it occurred, would likely result in a substantial lessening of competition under the *Competition Act*. The Bureau determined that the vigour of existing competition, the large number of potential entrants, the relatively moderate costs of entering or expanding existing businesses, and the sensitivity of customers to overall price and service levels made it unlikely for Canada Post to be in a position to force the exit of rival firms, subsequent to which profitable price increases or reduced service levels could be maintained.

Further examination made as a result of similar complaints came to the same conclusion.

Q. Have the current regulatory requirements designed to control abuse of dominance position been effective? For example, have requirements for accounting separation between reserved and non-reserved services been effective in preventing cross- subsidisation?

A. There has been no conclusive evidence brought to the Competition Bureau that would substantiate a case for abuse of dominance or cross-subsidisation.

#### *Other Competition Enforcement Issues*

Q. Have instances of mergers or anti-competitive arrangements between firms arisen in this sector? What analysis was carried out in approving or opposing these mergers or arrangements?

A. See first answer under the heading Abuse of Dominance (3.3).

#### **IV. Effects of Postal Reform**

The most recent reform of the nature addressed in the study in Canada was in 1981, due to the effects other changes such as substitution of fax and e-mail for traditional postal services, it is not possible to provide significant statistics in this area.

#### **NOTES**

- 1 To date, no jurisprudence has been developed under the *Competition Act* as to potential application of the regulated conduct defence to the postal industry.
- 2 News Release and Backgrounded, November 26, 1993. It should be noted that the courts and the Competition Tribunal have not ruled on these issues.



## CZECH REPUBLIC

### **Regulation and Competition in the Postal Services Sector**

#### ***Regulation***

The foundation of our legislation is the Czech Constitution and the Charter of Basic Rights and Freedoms. Legislation governing postal services is included in Act No. 222/1946 Coll., the Postal Act, in the wording of its later amendments, though it is no longer satisfactory. At present, a new law on postal services expected to be in place as of 2000, is being drafted. The state postal operator is the Czech Post Office (CPO), a self-funding state enterprise - without subsidies from the state budget.

The Czech Republic is a member of the World Postal Union and respects all multilateral agreements arising from membership. The CPO's obligations are stipulated in accordance with the rules contained in international agreements.

The fundamental principles in providing postal services are neutrality (the CPO does not enter into any legal relations between the sender and the addressee), ownership (the consignment belongs to the dispatcher until delivered to the authorised person), confidentiality, and equality of access to postal services. The confidentiality of correspondence is protected by Article 13 of the Charter of Basic Rights and Freedoms. However, under the Postal Act, postal confidentiality has a much broader scope because not just the contents of sealed letter post but the contents of unsealed letter post are protected.

The Postal Act defines so-called postal exclusivity, which says that only the state has the exclusive right to transport written mails and operate a business to transport such mails. The code specifies exceptions to the state monopoly in the written mails sector that relate to written mails someone transports themselves or has transported by an agreed person, papers in mutual service relationships (the mail of state authorities), and open documents that are handed to carriers as proof that objects have been sent. The transport of written mails is considered a natural monopoly. The only exception, not however based on law, is the extraordinarily fast transport of written mails as so-called express and courier services, which are unlike common letter post, based on the individual handling of every consignment with corresponding high prices. A number of the CPO's competitors operate in this.

Besides the delivery of written mails, all markets in the collection, sorting, transportation and final delivery of consignments not containing written communications are open under current valid legislation. The proportion of services not open to competition is about 50 per cent and these are under supervision of the Ministry of Transport and Communications. No licences are required for services open to competition, aside from the postal exception, enterprises in postal services is a "free trade" (the right to undertake business depends only on registration).

A regulated price for in the distribution of letter post and registered letters, packages and other services, including services at postal counters, is in place for domestic postal services, and the level of the regulated price in the case of selected services is given as the maximum sum permitted (price ceiling). Price regulation operates equally for the CPO and for other competitors whilst the price regulator is the Ministry of Finance. It has issued a calculation system to be used in computing all associated expenditures in proportion to individual CPO activities to avoid any cross financing of services in sectors with

permitted competition, from the monopoly service sector. The Office for the Protection of Economic Competition believes the system is ineffective in eliminating cross financing, in particular because it does not provide enough information on each expense item and thus makes it possible for expenses incurred in the non-regulated area to be transferred to the monopoly service sector.

The CPO has the option of giving discounts and does not have to provide services to selected customers at prices below cost. The state's requirements for CPO operations are passed on by means of Ministry of Transport and Communications regulations.

Postage stamps are issued exclusively by the state; no other operator has the right to undertake any such activity.

### ***Market Structure***

The CPO provides classical postal services, express services, monetary services, and the delivery of pensions. The level of postal services in rural areas is comparable to that in towns and cities; however some services might be restricted and concentrated in larger areas to be served, to ensure a full range of services for operational and economic reasons. Prices are identical throughout the country, aside from discounts.

The CPO's revenues in 1997 were 11,267 million CZK (about 365 mil. USD) and the CPO had 34 thousand employees in 1997. Neither the number of consignments delivered nor their weights were statistically monitored.

Except for classical postal services, the CPO competes chiefly with banks in monetary services and pension delivery, and with private companies like DHL Worldwide Express, United Parcel Service, Messenger etc., in express and courier services.

### ***Competition and Cases Settled by the Office for the Protection of Economic Competition***

Competition law applies in the postal services sector without exceptions.

In September 1996 the Office issued a first instance decision in the matter of the CPO's abuse of its dominant position. In the Guidelines that are part of applications for postage on credit, the CPO forced its customers to accept unreasonable conditions. It required a written agreement with the user's bank on a standing order and consent to depositing a guarantee on the account of the pertinent CPO branch to be attached to the credit application. The Guidelines also imposed on the user an obligation to increase the amount of the guarantee under certain circumstances, and gave only the CPO the option of terminating the postal credit permit. The relevant market was specified as the market in the dispatch, transport and delivery of letter post and the market in the dispatch, transport and delivery of package consignments. The CPO's position in the market in dispatch, transport and delivery of letter post is a monopoly under the Postal Act, and it has a 50 per cent share in the market of dispatch, transport and delivery of package consignments. These markets geographically include the Czech Republic. In assessing all the circumstances the Office found that the service of postal credit is not interchangeable; the customer has no other choice and therefore the dominant position was being abused. The CPO was ordered to adjust the relevant provisions of the Guidelines in accordance with the decision. The CPO appealed against the decision.

The second instance investigation discovered that various kinds of payments for postal services (postage stamps, cash, credit) are interchangeable and postal credit is an advantage to the customer (delayed payment). Such asymmetric conditions, that the customer must increase the amount of the

guarantee under certain circumstances, but may decrease it, is not a case of applying disproportionate conditions, because the CPO has never rejected a decrease in the guarantee to anybody. The first-instance decision was cancelled in January 1997 and the proceedings ended.

### ***Postal Reform***

A number of investment projects for the repair of post offices were completed in 1996 and thus over 2,600 post offices from the total of 3,500 were brought up to an appropriate standard. The initial plan to reduce the number of post offices was abandoned to utilise the comparative advantage of the CPO (dense network) in grasping the dynamics of bank service initiation. The CPO began to set up a payment system in 1996, a new database network was set up and selected package consignments are now monitored using bar codes. Except for the legal monopoly for the transport of letter post, the CPO began to provide a greater range of services that can be competed with.

The new law on postal services should make access to business in postal services possible for all entities, except for the transport of letter post, which will be exclusively licensed. The CPO should become a common business entity, and not a company whose position is treated by a special law (State Enterprise Act). The transport of letter post as part of above-standard services will be permitted even without a licence. Additional activities will not be restricted in any manner.

The CPO is not going to establish any new services using the Internet within the immediate future but it has opened an Internet page ([www.cpost.cz](http://www.cpost.cz)).



## **DENMARK**

### **I. Key regulatory issues**

*1.1* The main legislation of the postal sector in Denmark is the Postal Activity act. This Postal Activity act constitutes the legal framework for the regulation of postal activity in Denmark. The Postal Activity act entered into force February 23 1995, and among other things sets up the limits of the reserved area and the universal service obligation (USO).

*1.2* The Danish state has an exclusive right to postal conveyance of inland addressed letters, and inbound cross-border letters up to 250 grams. Postal conveyance is defined as collection, carriage and delivery. The exclusive right is also limited by a price.

The exclusive right of the Danish state includes the sole right to erect mail boxes on streets, roads and at other public accessible site, and the sole right to issue stamps.

Post Denmark, the public postal (and incumbent) operator, is granted this exclusive right by concession.

All other postal markets/products are in principle open to competition.

Of course Post Danmark has agreements with large customers, who pre-sort their mail and are awarded discounts.

*1.3* In 1997, about 54 per cent of the incumbent operators turnover was accounted for by services fully open to competition. We don't have a clear picture on the entire postal market in Denmark. The Postal Supervisory Authority is responsible for enforcing the reserved area.

*1.4* A postal operator has to be registered by the Postal Supervisory Authority. There are no conditions attached to the registration.

#### ***Regulation of access***

*1.5* There are no specific services for which access must be granted. However, discounts must be given on non-discriminatory basis.

#### ***Regulation of prices***

*1.6* The principal rule is that prices are set by the operator, but there are special rules when dealing with prices for services included in the reserved area. A price-cap model is applicable to the reserved area, and to prices for periodicals (newspapers, magazines etc.) distributed by the incumbent operator. The price-cap model stipulates that prices for services included in the reserved area are not allowed to rise more than the development of the consumer price index with a deduction of one per cent-point to induce rationalisation.

This price-cap model is also applicable to periodicals due to the fact that the incumbent operator, Post Danmark, receives a subsidy for distributing newspapers and periodicals at artificially low tariffs. For all other postal services no price control is exercised.

1.7 The discount policy of the incumbent operator must not be discriminatory, and other private postal operators must be able to obtain discounts in the same way as other large customers. These rules are stipulated in the concession for Post Danmark. The discount must be cost-based. Regarding the procedure to ensure that the quality of service is maintained, there is a penalty system in the concession, a system which up till now has not been used.

1.8 The postal legislation specifies that the incumbent postal operator is obliged to maintain a nation-wide network of post offices. Moreover, the incumbent operator is obliged to distribute literature for the blind free of charge. The incumbent operator is also obliged to distribute newspapers and magazines at artificially low tariffs.

1.9 These costs are not made explicit. In general the costs of the different postal services of Post Danmark are calculated on the basis of fully distributed costs.

1.10 Literature for the blind and the maintenance of the post office network are financed through internal cross-subsidisation, while the deficit on magazines and newspapers to some extent is financed through a direct subsidy.

#### ***Controls On Ownership, Lines of Business, Etc.***

1.11 According to the concession for Post Danmark, a set of accounting rules and a set of competition guidelines for Post Danmark have to be established. These guidelines have been established and are attached. The purpose of these regulations are, among other things, to prevent Post Danmark from cross-subsidising from the reserved area to the services fully open to competition (without USO).

The accounting regulation contains requirements for Post Danmark to set up separate accounts for the reserved area, services open to competition with USO, and services open to competition without USO.

Post Danmark is fully owned by the state, and for the moment there exists no plan to sell completely or partly.

The purpose of the incumbent operator is, according to the Post Danmark act, to conduct postal activities. Post Danmark may provide other services within the distribution and communication sector. Furthermore, Post Danmark may carry out other activities on a commercial basis to support the nation-wide post office network.

#### ***Miscellaneous Issues***

1.12 Post Danmark is by concession granted an exclusive right to postal conveyance of domestically distributed letters, and inbound international letters up to 250 grams.

Furthermore Post Danmark receives partial compensation for its obligation to deliver newspapers and periodicals at artificially low tariffs.

- a) The Danish state has an exclusive right to print stamps. Post Danmark is granted this exclusive right by concession.
- b) According to the Postal Activity act no person working in or for a postal business may give any information on the use of postal services by other parties to any unauthorised person, or provide any unauthorised person the opportunity to acquire such information.

This regulation is applicable to both the incumbent operator and other private operators. Postal workers in general have duties of professional secrecy, extending to after the person's work in or for a postal business has been concluded.

- c) No such rules
- d) A liability regime for the services included offered by Post Danmark exist. The liability rules basically contains limits on the liability ( e.g. amounts of compensation) of Post Danmark compared the common Danish Law.

Furthermore Post Danmark is granted VAT-exemption for the services included in the Universal Service Obligation.

- 1.13 UPU-convention, UPU parcels agreement, REIMS, Terminal dues system for Nordic countries (cost bases 70 per cent of domestic tariff). Post Danmark has entered into several bilateral and multilateral agreements. We do not have information about these agreements.

## II. Regulatory Institutions And Market Structure

### *Regulatory Institutions*

- 2.1 The key regulatory authority is the Postal Supervisory Authority (PSA). The PSA is an independent authority established and organised under the Ministry of Transport.

The PSA has certain monitoring functions regarding the incumbent operator. The PSA monitors to ensure that Post Danmark fulfils the obligation to provide a universal service. The PSA furthermore monitors that Post Danmark does not violate the other demands set up in the concession, e.g. quality of service, USO and level of tariffs.

The PSA also monitors other areas, for example that no private operator violates the monopoly of Post Danmark, and that no private operator violates the provisions set up in the Postal Activity act sections 23 (obligation to register), 24 (obligation to label the postal items in order to be able to identify the postal operator), 22 (regulations for the opening of items, for which it has not been possible to find the addressee or the sender) 21 (duty of professional secrecy).

The Ministry of Transport sets up the framework for the legislation of the postal sector. The Ministry of Transport is the owner of the incumbent operator, Post Danmark.

### *Overview of Market Structure*

2.2 The incumbent operator is an independent public enterprise. The Danish state has full ownership of the incumbent operator. The incumbent operator's organisation is very similar to that of a joint-stock company, only without shares. A majority of the employees ( about 60 per cent measured as full time employees) are public servants, and the rest are employed as ordinary postal workers.

2.3 The incumbent operator offers the entire spectre of postal services. The incumbent operator is obliged to offer these services nation-wide to a uniform tariff. The total revenue of the incumbent operator in 1997 was 10 billion Danish kroner (about 1,34 billion euro).

In 1997 the incumbent operator handled 1,5 billion letters, 34,9 million parcels and 1,1 billion un-addressed items. In 1997 32.000 people were employed by the incumbent operator.

2.4 We have no clear picture of the competitors of the incumbent operator. We assume that there is quite heavy competition in the urban areas, especially regarding parcels and courier services. In the rural areas the competition is much more limited.

### **III. Key Competition Issues**

#### *Application and Enforcement of Competition Law*

3.1 The new Danish Competition Act was put into force in January 1998. The Act essentially adapts Articles 85 and 86 of the EC Treaty, prohibiting agreements in restraint of trade (article 6) and abuse of a dominant position (article 11). Articles 6 and 11 do not apply if an anti-competitive practice is a direct or necessary consequence of public regulation.

Regarding the postal sector, articles 6 and 11 do not apply to the exclusive rights described in section 1.2. Post Denmark is by concession granted the said exclusive right. The general articles also don't apply to postal services related to the universal service obligation (USO) placed on Post Denmark – including an obligation to provide daily universal delivery to all addresses in Denmark at uniform and reasonable prices.

The Competition Authorities may, however, approach the competent authority, in this case the Ministry of Transport, and point out potentially detrimental effects on competition and make recommendations for promoting competition in the area concerned (article 2, section 5).

In all areas not covered by the above mentioned exclusive rights the postal activities are fully subjected to the Competition Act.

Competition matters concerning exclusive rights given to Post Denmark and the USO placed on Post Denmark are handled by the Ministry of Transport and the PSA. These authorities – in co-operation with the Competition Authority – have issued special guidelines (Competition Law Guidelines for Post Denmark) for the relationship between the activities of Post Denmark in the areas of competition by way of cross-subsidisation. A copy of the English translation of these guidelines is attached.

The Competition Authority has a general responsibility for enforcing the various components of the competition law in the postal sector, either through articles 6 and 11 or through article 2, section 5.



### ***Market Definition Issues and Abuse of Dominance***

3.2 – 3.3 There are no relevant cases on market definitions or cases concerning abuse of dominant position within the postal sector in Denmark. However, The Preparatory Works to the new Competition Act establish that the interpretation of EC Competition law by the European Court of Justice and the Court of First Instance and by the European Commission, should be taken into account when applying the domestic provisions.

3.4 In co-operation with the Competition Authority the Minister of Transport has issued special Accounting Regulations for Post Denmark and its subsidiaries. One of the objectives of the Accounting Regulations is to ensure that Post Denmark provide the necessary data basis to achieve transparency of accounting within Post Denmark's activities to prevent cross-subsidisation between the reserved activities and non-reserved activities.

Furthermore, the above mentioned guidelines (section 3.1) for the relationship between the activities of Post Denmark in the areas of competition and exclusive right is designed to control abuse of a dominant position. The guidelines may be divided into two major categories, i.e. matters relating to cross-subsidising and matters relating to non-discrimination.

### ***Other Competition Enforcement Issues***

3.5 No relevant cases of mergers or anti-competitive arrangements. However, the new Competition Act includes a transitional period for notification of "old" anticompetitive agreements – that is agreements made before the Act became effective in January 1998. The transitional period ended on the 30<sup>th</sup> of June 1998 and the Competition Authority has received several notifications involving postal activities, including agreements between the public postal operators (PPO's) and agreements between private operators and PPO's concerning cross-border transportation services. The Competition Authority expects to handle these notifications in 1999.

## **IV. Effects of Postal Reform**

4.1 The reform of the Danish postal sector is so recent (1995), that no significant competition effect yet has appeared.

Post Denmark still has a dominant position on the Danish postal market. However, there are signs showing, that the market is attracting new operators, especially for parcel and courier services in urban areas.

The restructuring of the incumbent operator has made it possible to avoid cross-subsidisation that otherwise would lead to distortion of competition, and the incumbent operator would risk being accused of abusing a dominant position.

The Danish Government has chosen not to stand in the way of the increasing competition regarding for example courier services and outbound cross-border mail. Instead of fighting a de-facto liberalised market in these segments, we have chosen to encourage the increasing competition by removing the incumbent operators exclusive right to express mail and outbound cross-border mail.

The reform also has helped preparing the incumbent operator to the increasing competition which unavoidably will be the result of the international reform work, e.g. EEC directives.

Establishing a nation-wide distribution network takes time, and we do not doubt, that a competitive environment will appear, it is just a matter of time.

**Annex :**  
**Competition Law Guidelines for Post Danmark**

## **1. Introduction**

In establishing Post Danmark, it was assumed that the Minister for Transport would lay down special guidelines for the relationship between the activities of the company in the areas of competition and exclusive rights. The special guidelines are to prevent distortion of competition by way of cross-subsidisation. Reference is made to the comments on the Act on Postal Activity, section 11, item 5, and to the Act on Post Danmark, section 8 (1) and (5) with appurtenant comments.

The special guidelines shall be contained in regulations laid down by the Minister for accounting by Post Danmark entitled "Accounting Regulations for Post Danmark".

The guidelines may be divided into two major categories, i.e. matters relating to cross-subsidising and matters relating to non-discrimination. In addition, it is a precondition that the company draws up an internal product financial statement. Furthermore, it is described how to ensure that the guidelines are observed and the procedure to be employed to solve any matters of dispute that may arise. An Annex contains a list of definitions jointly with "Accounting Regulations for Post Danmark".

## **2. Cross-subsidising**

### **2.1 Permissible and non-permissible cross-subsiding**

Based on the Act on Postal Activity, the Statutory Order concerning the Concession for Post Danmark (Statutory Order no. 126 of 23 February 1995) stipulates the following in section 18 (2) and (3):

“(2) Cross-subsidising from the exclusive right area to pure competition areas in which there is no universal service obligation on the concessionaire may not take place.

(3) Cross-subsidising from the exclusive right area to the areas where there is no universal service obligation, but in which the particular modes of dispatch may in fact be supplied by parties other than the concessionaire, may extend no further than necessitated by the maintenance of the nationwide supply of the particular services at a uniform price and at a high level of quality (the universal service obligation) and may not cause distortion of competition”.

A distinction is thus made between:

Permissible cross-subsidising, under certain conditions, from the exclusive right area to competition products within the area of universal service obligation, cf. sections 2 and 3 in the Postal Activity Act.

Non-permissible cross-subsidising from the exclusive right area to the area of pure competition. In practice this covers all products and services not included in the universal service obligation.

## **2.2 Scope of permissible cross-subsidising**

It appears from the comments to Part 2 of the Act on Postal Activity that, “In delimiting the exclusive right, importance has been attached to the fact that, also in the longer term, the latter should have such a scope as to be able to create the financial basis of a universal postal service at uniform prices and of high standard, thus continuing this tradition in Denmark, while ensuring the maintenance of an appropriate fine-mesh post office network. The exclusive right should not, however, extend beyond what is necessary to ensure that the social commitments of the State are met.”

It appears from the comments to section 10 (3) of the Act on Postal Activity that, “Such connection (shall be provided) between the scope of the exclusive right and the universal service obligation of the concessionaire that the revenue from the exclusive right area provides a financial basis for the concessionaire that is adequate to ensure that the universal service obligation is met in the form of a nation-wide service at uniform prices and of high standard.”

The scope of permissible cross-subsidising shall thus be determined in light of Post Danmark's commitments concerning a nation-wide service obligation; however, at the same time steps shall be taken to prevent distortion of competition.

On the basis of the above-mentioned comments on the Act, it follows that to a certain extent Post Danmark may defray expenses to ensure the maintenance of the nation-wide universal service obligation utilising revenue from the exclusive right area. The objective is to place Post Danmark on an equal footing with other actors in the postal area from the point of view of competition.

For this reason, as a general rule Post Danmark can expect the revenue from the exclusive right area to provide coverage for some of the general, fixed costs of the company (indirect capacity costs), any extraordinary items (net), net interest payments, and tax, corresponding to any deficit concerning the nation-wide universal service obligation outside of the exclusive right area of addressed letters over 250 grams *to* countries abroad; in addition 0-250 grams, parcels up to 20 kilograms and addressed postal matter covered by the universal service obligation outside the area of exclusive right.

Special rules apply to permissible cross-subsidising, cf. page 6, section 2.2.2, in the case of obligatory postal transport of daily, weekly and monthly newspapers and magazines and periodicals at specially low rates (the newspaper area).

### **2.2.1 Calculation model for permissible cross-subsiding**

In the statement of permissible cross-subsiding for addressed postal matter covered by the nation-wide universal service obligation outside the exclusive right area but excluding daily, weekly and monthly newspapers and magazines as well as periodicals at specially low rates (the newspaper area), the following *calculation model* shall be employed. With regard to revenue and costs, this is a matter of “The universal service obligation area subject to competition”, cf. p. 8, *less* revenue, costs and subsidy concerning postal transport of daily, weekly and monthly newspapers and magazines and periodicals at specially low rates (the newspaper area).

*Calculation model*

Gross turnover

- Discounts

---

Net turnover

- Directly ascribable unit costs

---

Contribution margin I

- Specific capacity costs

---

Contribution margin II

- 1/3 contribution margin II (profit margin element)

---

2/3 contribution margin II

- Indirect capacity costs

---

Result before financial items etc. and tax

+/- (Extraordinary items (net))

(Financial items (net))

(Tax on year's profit (excluding tax on profit margin element))

-----  
Net result (difference)

Net result (difference) = *Permissible cross subsidisation*, if the result is negative (a deficit) and other conditions according to points 1-6 below are fulfilled:

1. Contribution margin 1, which is defined as net turnover (gross turnover less discounts) less the directly ascribable unit costs, shall be positive.
2. Contribution ratio 1, which is defined as the relation in percentages between contribution margin 1 and net turnover, shall as a minimum correspond to contribution ratio 1 in "Hauliers etc. with pipeline transport". Contribution ratio 1 in hauliers etc. can be calculated on the basis of the table in "Statement of Accounts Distributed on Trades" published in "General Business Statistics and Trade" (Statistics Denmark). In calculating, the most recently published statement of accounts must be used for a whole calendar year previous to Post Danmark's accounting year.
3. Contribution margin II, which is defined as contribution margin I less the specific capacity costs, shall be positive.
4. Contribution margin II shall be at least an amount that corresponds to the indirect capacity costs with the addition of financial items (net) multiplied by a factor of x.xxx. The factor shall be finally settled on the basis of the part accounts for 1995 and 1996 concerning the area of universal service obligation subject to competition, less the newspaper area.
5. The contribution margin II stated under point 4 shall be divided in a ratio of 2/3:1/3. The 2/3 shall be carried forward in the statement of the permissible cross-subsidising, while the 1/3 shall be regarded as an "advance" profit margin for Post Danmark.

6. The Post Danmark indirect capacity costs shall be allocated in the exclusive right area, the universal service area subject to competition excluding the newspaper area, the newspaper area separately and the area of pure competition on the basis of defined principles of allocation. In a similar manner, any extraordinary items (net) and financial items (net) shall be allocated. Tax on the year's result shall be allocated according to the full allocation taxation method.

Hereafter, the allocated indirect capacity costs concerning the area of universal service obligation subject to competition, excluding the newspaper area, shall be deducted from the 2/3 contribution margin II, cf. point 5. Subsequently a regulation (+/-) shall be made for the net effect of the allocated extraordinary items, financial items and the tax on the year's result, likewise excluding the newspaper area. The regulation for the tax on the year's result shall also be reduced by the amount concerning the profit margin element (1/3 contribution margin II, cf. point 5). The net result (difference) which then appears is equal to the permissible cross-subsidisation, on condition that the net result is negative (a deficit) and the conditions under points 1-5 have been fulfilled.

The permissible cross-subsidisation may not be increased to cover competition-related marketing activities and to cover costs beyond the percentage development in the gross price index (consumer price index) less 1 percentage point.

It is, moreover, presupposed that the possibility for cross-subsidisation cannot cause increases in rates in the area of exclusive right, cf. that it is laid down in section 15 of the Concession that the rates for domestic postal matter in the area of exclusive right shall be regulated according to the price ceiling model based on the percentage development in the gross price index (consumer price index) less 1 percentage point.

The Post Danmark aggregated part accounts for the major areas shall account for changes in the amount of the permissible cross-subsidisation and the reasons for this.

### **2.2.2**

Permissible cross-subsidisation concerning postal transport of daily, weekly and monthly newspapers and magazines as well as periodicals at specially low rates (the newspaper area)

As far as the obligatory postal transport of daily, weekly and monthly newspapers and magazines as well as periodicals at specially low rates (the newspaper area) is concerned, Post Danmark may expect the revenue from the exclusive right area to provide full or partial coverage for the company's general fixed costs (indirect capacity costs), any extraordinary items (net), and net interest costs that these postal items involve. This should be viewed in connection with the fact that the subsidy scheme laid down by law (cf. section 14 (3) in the Act on Postal Activity) does not provide full coverage for Post Danmark for all costs related to the postal transport of newspapers and magazines at specially low rates. This also implies that the allocation of the tax on the year's result, which takes place according to the full allocation taxation method, will have a positive effect on the part statements for the newspaper area.

### **2.3 Prevention of competition-distorting cross-subsidisation**

The scope of permissible cross-subsidisation, on the other hand, may not lead to distortion of competition. Applying the rules on (1) product finance statements, part statements and part accounts, (2) allocation of costs, and (3) principles for exchange of services as well as transfer of capital and tangible fixed assets between the major areas, etc. it will, however, be possible to prevent competition-distorting cross-subsidisation. In this connection, the following requirements apply:

### 2.3.1 Product finance statements, part statements and part accounts

Pursuant to the Act on Post Denmark, c.f. section 8 (1), the company shall keep accounts according to the Danish Company Accounts Act, with a few, well-defined exceptions. When the accounts have been approved by the Minister, they will be available to the general public.

As a supplement to the accounting under the Danish Company Accounts Act, Post Denmark is to prepare internal product finance statements, part statements and part accounts according to the “full cost” method of allocation.

The tax on the year's result is to be allocated on the product finance statements, part statements and part accounts according to the full allocation method of taxation.

Product finance statements, part statements and part accounts are to be prepared utilising a contribution margin model that reflects Post Denmark's cost structure.

The part accounts are to be supplemented by balance items and drawn up for the following three major areas:

- \* The exclusive right area
- \* The universal service obligation area subject to competition
- \* The area of pure competition without exclusive right or universal service obligation.

Part statements are to be drawn up for sub-areas within the following major areas as follows:

- \* Within the universal service obligation area subject to competition, a part statement is to be drawn up for the sub-area of postal transport of daily, weekly and monthly newspapers and magazines as well as periodicals at specially low rates (the newspaper area).
- \* Within the area of pure completion without exclusive right or universal service obligation, a part statement is to be drawn up for the sub-area of services covered by the co-operation agreement between BG Bank A/S and Post Denmark.

Product finance statements, part statements and part accounts form the basis for the assessment by the State Authorised Public Accountant appointed by the Minister as to whether Post Denmark is observing the Competition Law Guidelines regulating the interaction between the above-mentioned major areas and sub-areas and which are formulated in the “Accounting Regulations for Post Denmark” as laid down by the Minister.

The provision to the effect that, within the universal service obligation area subject to competition, a part statement shall also be drawn up for the obligatory postal transport of daily, weekly and monthly newspapers and magazines as well as periodicals at specially low rates, has been drawn up to make possible a statement of the subsidy granted by the State to Post Denmark as compensation for this commitment, cf. the Act on Postal Activity, section 14.

Part accounts with appurtenant balance sheets for the major areas will be available to the public at the following aggregated level:

Exclusive right area

Universal service area subject to competition

Area of pure competition

Gross turnover

Result before financial items etc.

Result of year before cross-subsidisation

Permissible cross subsidisation,  
newspaper area

Permissible cross-subsidisation, heavy letters and parcels etc. and letters sent abroad

Result of the year

Balance sheet total

Net capital

State newspaper subsidy

The aggregated part accounts shall account for the principles applied in allocating costs between the major areas.

Should there be changes in the principles of allocation, including the distribution scale applied, an account shall be rendered of these and the reason for same. Furthermore, an account shall be rendered of the effects of the changes on major areas' accounting results and the effects of these changes on the extent of the permissible cross-subsidisation.

As mentioned above, product finance statements, part statements and part accounts shall be drawn up according to the "full cost" method of allocation, while tax on the year's result shall be allocated according to the full allocation method of taxation. This also applies to the area of pure competition. As a minimum, this area shall be self-supporting. Should there, nevertheless, be a deficit, under all circumstances infusion of capital may only take place on market terms ("the market finance investor principle"), whether the infusion of capital is external, or from the area of exclusive right, or from the universal service area subject to competition.

Product finance statements and part statements are not available to the public.

### **2.3.2. Allocation of costs**

Allocation of costs in product finance statements, part statements and part accounts shall include all costs and shall contribute towards providing a true and fair view of Post Danmark's business activities and the extent to which the particular product draws on joint resources.

In allocating costs, a distinction shall be made between directly ascribable unit costs, specific capacity costs and indirect capacity costs as well as extraordinary items, financial items and tax on the year's result.



Product finance statements, part statements and part accounts shall be drawn up according to recognised, uniform theoretical principles and methods for allocating revenue and costs and shall be based on a documented product finance model.

Tax on the year's result shall be allocated according to the full allocation method.

The system of calculation employed when drawing up product finance statements, part statements and part accounts shall be quality certified to a generally recognised international standard.

### **2.3.3. Principles for exchange of services and for transfer of capital and tangible fixed assets between the major areas**

As a main rule, it is presupposed that Post Danmark's prices cover all costs as well as a reasonable profit margin (apart from the newspaper area where specially low rates, politically determined, apply).

Exchange of services between the major areas shall be performed according to business principles.

The specific price shall be based on market evaluations.

The price of a service included in the exclusive right area or the universal service area subject to competition shall correspond to the price charged a third party if the service is sold to a third party on identical terms and in identical amounts.

If it is a case of a sales situation which is not standard compared with the sale of services to a third party when internal exchange of services covered by the area of exclusive right or the universal service obligation area subject to competition takes place, the price shall be calculated separately and be based on costs with the addition of a reasonable profit margin.

Transfer of capital between the major areas shall be carried out on market terms (the "market finance investor principle").

When tangible fixed assets are being transferred between the major areas, or between a sub-area according to section 2.3.1 and the rest of the major area, this shall take place at the book value of the asset according to the provisions concerning this in the Danish Company Accounts Act.

### **3. Non-discrimination**

To further safeguard against distortion of competition in the postal sector and to ensure equal treatment of other postal companies, the following shall, in addition, apply;

Post Danmark's activities in the area of pure competition may not be given preferential treatment in comparison with other postal companies in this area in so far as access to and use of postal services in the exclusive right area and in the area of universal service obligation subject to competition are concerned. This shall apply in all respects, including prices, terms and quality.

Post Danmark's activities in the universal service obligation area subject to competition may, similarly, not be given preferential treatment in comparison with other postal companies in this area in so far as access to and use of postal services in the exclusive right area are concerned. This shall apply in all respects, including prices, terms and quality.

Discounts shall be granted on a purely commercial basis whether it is a matter of the exclusive right area, the universal service area subject to competition, or the area of pure competition.

Discount schemes in the exclusive right area shall be regarded as an isolated matter and may not be conditional on purchase of postal services outside the area of exclusive right. Moreover, discount schemes in the exclusive right area and conditions for achieving these shall be available to the public.

Discounts, including major client discounts and the like, shall be granted to senders on non-discriminatory terms. To the extent to which they wish to utilise services covered by the Post Danmark universal service obligation, other postal companies shall be granted the same possibilities on behalf of their clients as those granted to other users in order to obtain major client discounts.

#### **4. Control/Audit**

The Minister for Transport, through the agency of the Postal Supervisory Authority, shall supervise the observation of the guidelines.

In the first instance, in practice the Postal Supervisory Authority will carry out the supervision. The Minister for Transport will, as needed, base his judgement on the opinion of the State Authorised Public Accountant appointed by him.

When submitting the revised annual accounts to the Minister, Post Danmark shall have a statement forwarded to the Minister by the State Authorised Public Accountant to the effect that the accounting and business of Post Danmark have been carried out in accordance with the accounting regulations approved by the Minister and with the Competition Law Guidelines described here.

The Minister for Transport shall at all times have access to obtaining insight into Post Danmark's accounting and thus may solicit information concerning the financial position of the particular products.

Apart from the control/audit of the Guidelines, the Minister of Transport shall monitor, through the Postal Supervisory Authority, the level of rates for domestic letters covered by the exclusive right and the level of rates for daily, weekly and monthly newspapers and magazines as well as periodicals at specially low rates, cf. section 15 of the Concession.

It is stated in section 15 of the Concession that a price ceiling model shall be drawn up for purposes of approving the level of rates for domestic letters covered by the exclusive right. In the case of daily, weekly and monthly newspapers and magazines and periodicals, it is stated in section 14 (1) and (2) of the Act on Postal Activity that the Minister for Transport may order the concessionaire company (Post Danmark) to transport these postal items from the publisher to addressees in Denmark and the Faroe Islands at specially low rates and, in the case of newspapers, also to Greenland. It is, however, presupposed, that the newspapers etc. are covered by the regulations laid down by the Minister under Statutory Order no. 120 of February 1995 concerning postal transport of newspapers at specially low rates.

One of the objectives of the Minister approving the level of rates is to ensure that the rates are related to the underlying costs. This approval process also contributes to ensuring that the prohibition on competition-distorting cross-subsidisation and discrimination is adhered to.

## **5. Matters of dispute etc.**

Matters of dispute concerning the interpretation of the present Guidelines shall be addressed to the Ministry of Transport.

The Ministry of Transport may, in agreement with the Secretariat of the Competition Council, solicit recommendations from the Council as a basis for the supervision by the Minister for Transport that the Guidelines are being adhered to. Such recommendations will be published in the usual manner.

It should be noted that general Competition Law Guidelines apply concurrently with the principles contained in the Guidelines.

The Guidelines may be amended subject to approval by the Minister for Transport. It is not, however, the intention to amend the basic principles contained in the Guidelines regarding ensuring the observance of the prohibition on competition-distorting cross-subsidisation and on discrimination.

## **6. Entering into force**

The present Guidelines shall apply as per 1 January 1996 and replace the Competition Law guidelines of 29 November 1995.

## **Accounting Regulations for Post Denmark**

### **Part 1.**

#### Objectives, supervision, authority, and duties

##### Section 1.

Pursuant to the Statutory Order on Concession for Post Denmark, section 18 (1), the Minister for Transport has issued the present regulations for accounting and presentation of accounts etc. in Post Denmark and its subsidiaries.

(2)

The Accounting Regulations lay down supplementary rules to the provisions of the Act concerning the presentation of accounts etc. by certain companies (the Danish Company Accounts Act), the Danish Companies Act, with the amendments and additions to these Acts valid under the Act on Post Denmark, section 8, and as stated in the Statutory Order on Concession for Post Denmark.

(3)

The Accounting Regulations shall, moreover, be viewed in connection with the “Competition Law Guidelines for Post Denmark” laid down by the Minister for Transport.

##### Section 2

The objective of the Accounting Regulations is to ensure that such accounts be drawn up and such accounts-related systems be established in Post Denmark that provide the data basis necessary for evaluating whether the special terms for and requirements of Post Denmark have been fulfilled, cf. the Act on Postal Activity, section 10 (3), section 11, item 5, and section 14, as well as sections 3 (3) and 8 (4) of the Act on Post Denmark.

##### Section 3

The Minister for Transport supervises that Post Denmark observes the provisions contained in the Regulations, cf. section 25 of the Concession.

(2)

The Minister for Transport shall at all times have access to insight into Post Denmark's accounting and in this connection may obtain information pertaining to the financial situation of particular products.

(3)

The Minister for Transport shall settle questions of principle and interpretation concerning the Regulations.

(4)

Post Denmark may submit proposals for amendments to the Regulations to the Minister for Transport.

## **Part 2**

### Accounts, annual accounts

#### Section 4

Post Danmark's annual accounts, showing profit and loss account, balance sheet and notes, shall be presented in accordance with the Danish Company Accounts Act, cf., however, section 1 (2), and must provide a true and just view of assets and liabilities, financial position, and result. An annual report shall, moreover, be drawn up.

(2)

In connection with the annual accounts, Post Danmark shall draw up a funds flow analysis that as a minimum shows in which manner and in what amounts the cash flows of that year have been injected into the company for operational, investment and financing activities. The funds flow analysis may be omitted if it is part of consolidated accounts covering Post Danmark, and information to this effect is provided in the annual accounts.

(3) The part accounts mentioned in section 11 shall be published in aggregate form in connection with the annual accounts, cf. the Competition Law Guidelines. Product finance statements and part statements shall not be published.

(4) Should subsidiaries be set up by Post Danmark, consolidated accounts shall be drawn up pursuant to the Danish Company Accounts Act.

## **Part 3**

### Accounting

#### Cross-subsidisation,

non-discrimination, internal exchange of services, capital etc., depreciation, VAT, corporate tax

#### Section 5

Post Danmark must see to it that adequate data registration be performed in a manner that ensures that Post Danmark's accounting system and statistics systems at all times can form the basis of the product finance statements, part statements and part accounts mentioned in Part 4. These shall be drawn up with a view to evaluating whether the rules governing cross-subsidisation have been observed, cf. the Concession for Post Danmark, section 18 (2) and (3).

#### Section 6

Exchange of services between the major areas, cf. section 11, must be conducted on sound business principles.

(2)

Should the services mentioned in (1) comprise part of the area of exclusive rights or of the universal service obligation area subject to competition, under comparable conditions, such services must be supplied on the same terms and at the same prices as prevail in relation to a third party.

(3)

The prices of the services under (2) must be costs-based with the addition of a reasonable margin of profit. The calculations of prices shall apply the cost allocation of the product finance model, cf. section 10 (3-6) and section 11.

(4)

Transfer of capital between the major areas, cf. section 11, must take place on market economy terms in accordance with the market finance investor principle.

#### Section 7

The Board of Post Danmark shall lay down the depreciation profiles to be employed in the accounts for the different tangible fixed assets.

(2)

Transfer of tangible fixed assets between the areas delimited under section 11, cannot alter the value an asset has achieved in relation to the depreciation profile, cf. section 28 of the Danish Company Accounts Act.

#### Section 8

VAT net costs shall be ascribed to the relevant financial statements for products under the area of exclusive rights and the universal service obligation area subject to competition which are not subject to VAT. VAT net costs shall be computed at the final settlement of the VAT deductible percentage for the accounting year.

#### Section 9

Taxation of the year's result shall be allocated among product finance statements, part statements and part accounts according to the full allocation method of taxation.

### **Part 4**

Product finance matters.

Methods, data, division.

Quality assurance.

Newspaper subsidy

#### Section 10

Post Danmark shall draw up internal product finance statements, part statements for families of products, and part accounts in accordance with the competition status of the products, as a supplement to accounting in accordance with the Danish Company Accounts Act.

(2)

Part accounts with appurtenant balance sheet shall be drawn up in accordance with the Danish Company Accounts Act, utilising the same accounting principles as employed when presenting the company's annual accounts, cf., however, (3)-(5).

(3)

Product finance statements, part statements and profit and loss accounts in the part accounts shall be drawn up according to the full- cost allocation method for revenue and expenditure, applying a contribution margin model that reflects Post Danmark's cost structure.

(4)

The contribution margin model shall include the following items:

Gross turnover

- Discounts

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Net turnover

- Directly ascribable unit costs

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Contribution margin I

- Specific capacity costs

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Contribution margin II

- Indirect capacity costs

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Result before EI, FI and TYR

Extraordinary items (EI)

Financial items (FI)

Tax on the year's result (TYR)

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Net result

(5)

Product finance statements, part statements and part accounts shall be drawn up in accordance with recognised, uniform theoretical principles and methods for revenue and cost allocation and shall be based on a documented product finance model.

(6)

Revenue and cost allocation to the particular products shall be carried out on the basis of entering the accounts, ongoing statistics, time studies and sample analyses and by comparing these. The allocations shall result in a true and just picture of the income base of the particular products and the extent to which they draw on joint resources.

(7)

A State Authorised Public Accountant issues a statement to the effect that the product finance model is in accordance with principles and methods, cf. requirements in (1)-(6).

## Section 11

The product finance statement shall be organised in such a way as to make it possible to draw up part accounts and part statements for the following major areas and part areas:

- The exclusive right area

- The universal service obligation area subject to competition; with a part statement for

\* Approved daily, weekly and monthly newspapers and magazines as well as periodicals

- The pure competition area without exclusive right or universal service obligation; with a part statement for

\* Services covered by the co-operation agreement between Girobank A/S and Post Danmark.

(2)

Part accounts with a balance sheet for the major areas shall be co-ordinated with the Post Danmark annual accounts.

## Section 12

Post Danmark shall ensure that the calculation system covering input systems and the product finance model, and according to which the product finance statements, part statements and part accounts for the major areas are drawn up, are quality certified in accordance with a generally recognised international standard.

(2)

Such certification shall ensure that

- the calculation system provides reliable statements based on uniform principles and methods from one accounting year to the next
- the calculation system provides uniform statements that reflect the structure of costs as well as the income base and burden on financial resources of the particular products
- data retrieval at input systems and data processing is of a uniformly high standard
- the calculation system and its application is maintained by means of regular critical auditing

in order to fulfil the provisions of the present Regulations with appurtenant Competition Law Guidelines.

(3)

In the event of any future amendments to the calculation system, including changes in the principles for revenue and cost allocations, the statement by State Authorised Public Accountant, cf. section 10 (7), and the quality certification shall be renewed.

(4)

The Minister for Transport shall be informed that certification in accordance with (1)-(3) has taken place. The renewed statement by the State Authorised Public Accountant, cf. (3), shall be forwarded to the Minister for Transport by Post Danmark.

## Section 13

The subsidy scheme for compensation of the loss incurred in the postal transport of approved daily, weekly and monthly newspapers and magazines as well as periodicals at specially low rates, cf. the Act on Postal Activity, section 14, and the Statutory Order on the statement of subsidy for postal transport by Post Danmark of newspapers and magazines at specially low rates, shall be based on the year's part statement for the newspaper area, cf. section 11.

(2)

When the loss incurred in transporting approved daily, weekly and monthly newspapers and magazines and periodicals at specially low rates is being calculated, the direct revenue, directly ascribable unit costs, and specific capacity costs shall be included. The statement shall comprise the items up to and including contribution margin II in the contribution margin model, cf. section 10 (4).



(3)

The Minister for Transport shall approve the product finance model basis for stating the deficit in the postal transport of daily, weekly and monthly newspapers/magazines as well as periodicals at specially low rates.

## **Part 5**

### Presentation of annual accounts

#### Auditors' report on product finance matters

#### Section 14

Within two weeks upon receipt of the Post Danmark annual accounts, the Minister for Transport shall state whether there are any remarks and, if so, which.

(2)

Simultaneously with the submission of the annual accounts, cf. (1), Post Danmark shall have a statement submitted to the Minister by the State Authorised Public Accountant appointed by the Minister to the effect that Post Danmark's accounting and business have been conducted in accordance with the provisions of the present Regulations and with the appurtenant Competition Law Guidelines.

## **Part 6**

### Entering into force

#### Section 15

The present Accounting Regulations, which replace the Accounting Regulations for Post Danmark of 29 November 1995, shall enter into force as per 1 January 1996.



## FINLAND

### I. Key Regulatory Issues

#### *Key Regulation*

1.1 In Finland, the postal sector is regulated by the Act (No 907/1993) and Decree (No 1385/1993) on Postal Services. The Act was passed by the Parliament on 29 October 1993 and the Decree on 22 December 1993. They both entered into force on 1 January 1994. In addition to this, a new Act on the Fee Collected for Securing the Provision of Postal Services on Sparsely Populated Areas (No 708/1997) entered into force on 1 August 1997.

The Act on Postal Services lays down the general framework for postal operations. The main purpose of the Act on Postal Services is to ensure that post can be sent and received under equal conditions throughout the country.

The scope of application of the Act is postal services (i.e. universal service). In this case, postal services mean regular postal delivery of addressed mail (maximum measurements 25x40x3 cm) against payment. Postal services in this sense do not include either the transport or delivery of newspapers or items weighing more than 2 kg (parcels), a company's internal postal operations or express and courier services. To sum up: only standard letter services are, to some extent, regulated under special postal legislation. Other services (parcels, newspapers, express deliveries etc.) are provided according to the general legislation in fully liberalised conditions.

No radical changes are required in the national implementation of the Directive 97/67/EC of the European Parliament and of 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. Finland's national legislation corresponds, in the main, to the aims of the Directive. The changes needed will be implemented by amending the Decree on Postal Services, and by Decisions of the Ministry of Transport and Communications. The latter will include, for example, provisions on tariff principles and transparency of accounts, quality of services and universal service. In addition, the licence granted to Finland Post Ltd has been amended on 28 January 1999 to meet the requirements of the Postal Directive.

#### *Regulation of Entry and Licensing*

1.2 As the postal monopoly has been abolished, there is no reserved area in the Finnish postal legislation. Operators, to whom the Council of State has granted an operating licence, can provide postal services. Rights and obligations stated in the Act are applied to all postal operators active in the market.

1.3 See above.

1.4 The operating licence shall be granted, provided that the applicant is well established and evidently capable of regularly providing postal services. According to the Act on Postal Services, conditions imposed on licensees may restrict the operations of a postal operator either geographically, or with respect to permissible types of postal items, or in some other appropriate way.

*Regulation of Access*

1.5 There is no specific access-related regulation.

*Regulation of Prices*

1.6 At the moment, the Act on Postal Services only states that prices shall be fair and in reasonable proportion to the average costs incurred. Except for these general principles, there is no actual price regulation on postal services in Finland. Decisions on prices are taken by the operators themselves.

1.7 There is no specific regulation which would limit or restrict the ability of Finland Post Ltd, the incumbent postal operator, to offer discounts.

*Non-Commercial Service Obligations*

1.8 - 1.10 The postal legislation in force does not impose any obligations on the incumbent operator to provide service to certain customers below cost.

*Controls on Ownership, Lines of Business, Etc.*

1.11 The postal legislation in force does not include any provisions on cross-subsidies etc., since, at the regulatory level, the postal monopoly has been abolished in the beginning of 1994.

According to the Decree on Postal Services, the applications for operating licences shall contain a list of the owners, shareholders or members of the applicant. According to the licence conditions, the licence may not be assigned to anyone else. Furthermore, any substantial alterations in the ownership of the licence holder shall be considered such an assignment.

There are no controls or limitations on foreign ownership nor are there any controls on lines of business that the incumbent operator can undertake.

*Miscellaneous Issues*

1.12 a) According to the Act on Postal Services, the Council of State may, on request, grant postal operators the right to issue stamps.

b) According to the Act on Postal Services, postal operators are under obligation to ensure that secrecy of correspondence is maintained with respect to all postal items.

c) In the Act on Postal Services, a provision which governs the conditions for installing letter boxes for both collection and delivery is introduced.

d) At regulatory level, the incumbent operator is in the same position as its competitors. This also applies to what is said in sections (a) – (c).

According to the Act on the Fee Collected for Securing the Provision of Postal Services on Sparsely Populated Areas, only postal operators who have been granted a licence to provide limited postal services are liable to this fee. This means that the incumbent operator, which provides postal services in the whole of Finland, is exempted from the obligation to pay the fee.

1.13 Finland Post Ltd has signed the Reims II agreement on terminal dues.

## **II. Regulatory Institutions and Market Structure**

### *Regulatory Institutions*

2.1 According to the Act on Postal Services, the regulators are the Ministry of Transport and Communications and the Telecommunications Administration Centre, especially its Postal Administration. The latter is a government agency subordinate to the Ministry of Transport and Communications. The Ministry is responsible for the general administration and development of postal services. The Telecommunications Administration Centre monitors compliance with the Act on Postal Services and provisions and regulations issued pursuant to the Act.

### *Overview of Market Structure*

2.2 The incumbent postal operator is Finland Post Ltd (hereinafter the Post), which was granted a licence on the basis of which it provides postal services nation-wide in the beginning of 1994. The Post is a 100 per cent state-owned company under private law. As the legal status of the incumbent operator is a limited company, both its organisation, management etc. and the legal status of its employees are the same as those of any private company.

2.3 The Post offers a wide range of services (letter mail, distribution services for newspapers and magazines, direct marketing deliveries, logistics services etc.) The level of service is quite high, and the service offered in rural areas does not differ much from the service offered in urban areas.

In 1997, the Post's net turnover was FIM 5.507 billion. The number of delivered postal items was 2.5 billion and there were a little over 25,000 employees.

2.4 In March 1997, the Ministry of Transport and Communications granted a second licence to a company called Suomen Suoramainonta Oy. The company has not started its operations yet, due to the introduction of the Act on the Fee Collected for Securing the Provision of Postal Services on Sparsely Populated Areas. According to the Act, companies engaged in limited postal services are liable to a tax-type charge in order to guarantee postal services in remote areas. The charge is defined on the basis of the total value whereby the companies sell postal services and the density of the population in the area covered by the licence. The charge is a maximum 20 per cent of the total value of postal services in the area covered by the licence and it is gradually reduced on the basis of the density of the population to five per cent. The charge is not imposed in areas where the density of the population is less than 250 inhabitants per square kilometre.

The other key operators are international companies like DHL, TNT, PTL and UPS, active in the international express and courier service market.

## **III. Key Competition Issues**

### *Application and Enforcement of Competition Law*

3.1 Competition legislation is wholly applicable to postal operations and is enforced by the Finnish Competition Authority and the Competition Council. The Council is a court-like organ in Finland, and

may prohibit anti-competitive practices and impose sanctions for violations of the prohibitions contained in the Act on Competition Restrictions (No 480/1992). These may be appealed to the Supreme Administrative Court.

### *Market Definition Issues*

3.2 Both the Finnish Competition Authority and the Competition Council have handled several cases dealing with postal operations. In its decision of 16 April 1993, the Finnish Competition Authority defined that the postal services include the collection, transport and delivery of post, customer service at post offices and the postal bus (passenger and goods) services. Unrelated to the actual postal operations, the Post also handles some other tasks by order of the state. The most important include Leonia's banking services; monetary transactions and the collection of licence fees.

The postal delivery operations include the sorting centre and trunk transport operations; foreign connections and address information system. On the basis of its operating licence, the Post is the only company in Finland who has an unrestricted right to postal operations in the entire country. According to the Act on Postal Services, the operations consist of the transmission of postal deliveries from the sender/another postal service to the recipient/another postal service. The Post has an extensive post office network, through which it is possible to reach all households receiving post. With the recent service network reform, a little over 1000 of the 1700 post offices of the Post are operated by private enterprises in the context of stores and kiosks.

In its decision of 17 March 1994, confirmed by the Supreme Administrative Court on 1 November 1994, the Competition Council found that the Post holds a dominant position with respect to postal deliveries, which means the delivery of addressed letters and parcels. In the case under review, a company manufacturing and marketing letter boxes found that the Post marketed its boxes in a manner distorting competition and was thus guilty of an abuse of dominant position. According to the complainant, the Post had favoured one particular manufacturer in the marketing of the letter boxes. The Council held that the manufacture and marketing of letter boxes are not part of the Post's delivery market; instead, they form their own relevant market wherein the Post does not hold a dominant position.

Additionally, in its decision of 20 June 1995, the Competition Council found that the Post has a dominant position in the market of daily deliveries of magazines and newspapers. Both the Post and the newspapers' and magazines' own delivery organisations are active in the delivery market. The Post's share of magazine deliveries has been 100 per cent, and 59 per cent of newspaper deliveries. The delivery of magazines and papers consists of operations spanning daily, early and weekend deliveries, i.e. the delivery of the magazine/newspaper from the post office to the subscriber's address. The delivery to the sales outlets is not part of the relevant market, as the sellers of loose copies are not in a corresponding contractual relationship to the publisher and as they operate as an alternative sales channel.

Daily deliveries consist of the delivery of magazines together with the ordinary post on weekdays, which in practice only occurs through the Post's own delivery network. An alternative nation-wide delivery channel does not exist. Typical users of the Post's daily deliveries are magazine publishers, whose magazines do not come out on weekends. It is not important for these to reach the reader in the morning, with the early delivery of newspapers carried out before most people leave for work. The early delivery cannot replace the daily one because it is not nation-wide and because, even in a restricted area, it is a more expensive delivery method than the daily delivery. The Post's market position in the daily delivery of magazines is based on the possibility to exploit the benefits of scale and those of synergy, which materialise when the magazines are delivered together with letters and advertisements by exploiting the Post's established network.

In Finland, the early delivery is used by daily newspaper publishers, whose subscribers wish to have them at their homes to read before going to work. The majority (ca. 80 per cent) of the early deliveries of newspapers are taken care of by the newspapers' own delivery organisations and the deliveries primarily take place in large population centres. However, the newspaper companies use the Post's delivery services in the smaller population centres and on regions outside their delivery organisations. The share of the Post of the early deliveries of newspapers was found to be 20 per cent in the above-quoted decision of the Competition Council. Now that several newspaper companies have given up their own delivery organisations and become customers of the Post, this share approaches 50 per cent.

Both markets (the delivery of letters and parcels, and daily deliveries of magazines and newspapers) are considered nation-wide.

### *Abuse of Dominance*

3.3 The Finnish Competition Authority has handled several cases where it has been alleged that the Post has used the income obtained through its dominant position to support competition in other fields. E.g. an alleged cross-subsidisation in the goods transport market and chartered bus traffic have come up.

To deem a practice a form of cross-subsidisation forbidden by the Act on Competition Restrictions, it has been required in the case-law of the Finnish Competition Authority that 1) the resources required have been obtained through the use of a dominant position and their allocation into subsidised operations has been so continuous and extensive that it means a supreme competitive advantage over the other incumbent operators in the subsidised field, and 2) the aim of the arrangement is the achievement of a dominant position in the subsidised field or its evident result is such an essential exclusion or barrier to competition that entering and taking over a new industry and, through that, the expansion of a dominant position becomes possible, or the arrangement otherwise distorts the industrial structure of the field to a major extent and thus leads to a long-term decrease in efficiency.

The Post was alleged to have used the revenue generated by its postal operations in the underpricing of its transport services. The Finnish Competition Authority held that this kind of restriction of competition in another field might be assessed as predatory pricing forbidden by the Act on Competition Restrictions. Pricing may be considered predatory when 1) the prices collected by a company undercut the marginal costs or average variable costs of the operations but also when the prices undercut the average total costs, i.e. the combined variable and fixed costs, provided that other circumstances indicate a decisive exclusion of competitors, and 2) the market conditions in the field have changed or are about to change as a result of the arrangement so that, after the exclusion of competitors, it is possible to raise the price level to the extent that it may compensate the income losses resulting from the underpricing.

In its decision of 14 March 1995, the Finnish Competition Authority found that the Post had cross-subsidised its bulk cargo transport through its postal operations. However, the Finnish Competition Authority has not found the Post to follow systematic underpricing in the professional bulk cargo market which would have differed from the other incumbent operators, and the development of its market share does not indicate that the Post would be about to achieve a dominant position in the said market or that competition would otherwise essentially be distorted. The Finnish Competition Authority thus found this not to be an instance of an abuse of dominant position. It did draw attention to the costs not being entirely allocated to the relevant services, which may have caused price distortion between the different services and customers.

In its decision of 30 August 1996, the Finnish Competition Authority held that it had not found evidence for the Post subsidising the chartered bus traffic through the revenue obtained from the postal

operations. In this case, too, the Authority drew attention to the company having to be able to provide the relevant accounts of all its business income and costs.

The Finnish Competition Authority found that the Post had sought to transfer the surplus capacity of its transport operations from the actual postal operations into other fields. The Post was claimed to have engaged in cross-subsidisation by under-pricing its offer in a bid for meal and goods transport for schools. In a decision of 16 June 1997, the Finnish Competition Authority found that the price calculations given by the Post indicated that it had, in its offer, considered the variable costs of the service but had ignored part of the fixed costs. The Post had thus subsidised its meal and goods transport through the revenue from its postal operations.

The activity had, however, been temporally and geographically restricted and the competitive conditions in the said field had not changed to the extent that entering and taking over a new field, thus expanding a dominant position, would have been possible. The entry of new companies into goods transport is not difficult and it is unlikely that the Post could, even after a potential exclusion, raise the price level of the transports to the extent that this could compensate for the income losses caused by under-pricing. The Finnish Competition Authority held that the criteria for a dominant position contained in the Act on Competition Restrictions were not fulfilled but advised the Post to alter its pricing so that the costs would be allocated to the relevant services, and to make sure that the pricing of the Post's goods transport services would thereafter contain all the fixed costs.

The Post was also alleged to have under-priced its direct marketing deliveries. In a decision of 17 June 1998, the Finnish Competition Authority found that, while offering the direct marketing service to circa 0.3 million households in the sparsely populated regions, the Post had not favoured its subsidiaries and associated companies and neither had it priced the said services which it offered throughout the entire country below variable costs, except for short and exceptional periods. In 1994-5, when the cross-subsidisation allegations were at their strongest, the Post's competitors had also been guilty of it and the Post had lost customers due to their more inexpensive offers. The Finnish Competition Authority found that this could not be an instance of systematic under-pricing distorting competition because to replace the income losses with a considerable long-term price increase after an exclusion of competitors could not be possible, since entry into the direct marketing services in the sparsely populated regions of circa 2 million households was unrestricted and higher prices were likely to entice new companies into the field.

The Post has not been found guilty (decision of 4 August 1995) of tying, either, when it has been selling postal envelopes containing postage. In the manufacture of the said envelopes, no manufacturer has been excluded and those using the envelope did not receive any discounts compared to other ways of paying the postage.

The Post renewed its pricing as of 1995, after consultations with the Finnish Competition Authority. These reforms have improved the transparency of its pricing and eliminated suspicions of discrimination as the Post has transferred its discount practices, formerly part of its internal pricing instructions, to its public price tables. The Finnish Competition Authority has also intervened with the aggregated rebates which were contained in the Post's agreements with major customers and determined on the basis of the annual total use of the different delivery services. The Finnish Competition Authority found the aggregated rebates to have tying and exclusionary effects. The Post announced that it will change its terms of agreement in this respect during the transition period underway.

3.4 The changes required by the EU Postal Directive which become effective in February 1999 will be adopted into the national legislation. The proposed changes concern e.g. pricing. The tariffs of the postal service shall be reasonable and such that the services are available to all as decreed in the postal



licence. Pricing shall be transparent and non-discriminatory and proportionate to costs. A general service provider shall use accounting systems which show the reasonableness and cost-accountability of the prices. In cost accounting, a general service provider shall separate at least the general and basic services from the rest. The afore-mentioned changes are in line with the instructions given by the Finnish Competition Authority in the competition restriction cases cited above and ease the monitoring of the Post's pricing practice.

*Other Competition Enforcement Issues*

3.5 The Post has purchased companies engaging in direct marketing deliveries or founded joint ventures with them. At the moment, the Post's market share is almost one half of the combined delivery market of direct marketing in the sparsely and densely populated areas. The Finnish Competition Authority is currently investigating alleged competition restrictions contained in the Post's co-operation agreements.



## HUNGARY

### Introduction

Although the invitation for a written contribution from member countries was addressed first of all to countries which either have reformed or are in the process of reforming the postal sector, the Hungarian delegation found useful even for themselves giving answers to the listed questions having taken into consideration especially the fact that the re-regulation of the postal sector is currently on the agenda in Hungary.

From these answers it emerges that the Postal Act, came into effect in 1992, was progressive at that time, breaking the state owned Hungarian Post's monopoly in the whole range of postal services and separating the authority and management types of activities, however it cannot fulfil the requirements of the present competition policy. The major problem is caused by the fact that the separation of the costs of services between reserved and competitive area has not been realised yet within the state owned Hungarian Post Ltd., which provides public service. Main development, however, that the Hungarian Post Ltd. established a separate company (Express Mailing System) for providing its courier service, which fact resulted in the elimination of anti-competitive cross-subsidisation and created conditions for fair competition.

The ministry, responsible for telecommunication and postal services, is working on a draft concept of re-regulation of postal sector this year. Considering the convergence of the telecommunications and postal services, experiencing these days, the relevant government unit is preparing for composing uniform regulations.

### I. Key regulatory issues

(1.1) The main purpose of the key governing legislation in this sector is worded in Act XLV of 1992 on the Post, amended by the Act XLIX of 1996. (Hereinafter: Postal Act) as follows: this Act is

“...issued by the Hungarian Parliament for the regulation of the postal activity, the promotion of an entrepreneurial-type provision of postal services and an increase in the standards of services.”

#### *Regulation of Entry and Licensing*

(1.2) Postal activity concerning any kind of letter mail (letters, insured letters, postcards) printed papers, sample of merchandise, literature for the blind and – exclusively in international traffic – small parcels shall exclusively be state responsibility, that is of the incumbent operator.

Under the Postal Act competitors may apply for concession<sup>1</sup> rights to provide any kind of services in the reserved area. Any other postal activity is subject to licensing.

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1. No competitor applied for concession yet

The Postal Act does not allow competitors (i.e. couriers) to operate even partially on reserved areas, like collecting, sorting, distributing or delivery of mails. Competitors have no access to public facilities such as post boxes, they have, however, access to mailboxes in apartment buildings and to other household mailboxes.

The boundaries of the restricted sector are determined by weight and size.

(1.3) About 39.8 per cent of the incumbent operator's business is accounted for the reserved area.

Statistical data are not fully reliable in this field. Market analysis shows a 42-48 per cent of the reserved area within the whole market.

The law enforcement authority which is responsible for enforcing the prohibition on entry in certain postal services is the agency called Communication Authority. There are no recent cases of enforcement registered.

(1.4) For services which are open to competition licensees

- have to meet qualification requirements,
- have to have at their command material and technical conditions needed for the provision of the service,
- have to submit for approval their business regulations,
- if they effect a liability insurance in the cases specified by the government decree, they have to hold an effective concession contract for the activity falling in the restricted area.

#### *Regulation of Access*

(1.5) Interconnection or access are not regulated in any way.

#### *Regulation of Prices*

(1.6) - (1.7) Prices falling into the sphere of basic services (universal service/reserved area) are limited by ceiling, negotiated yearly between the Ministry and the incumbent operator. All other prices are freely determined by the service provider.

#### *Non-Commercial Service Obligations*

(1.8) There are obligations imposed by the legislation on the incumbent operator in respect of minimum density of postal offices in rural areas, in connection with the literature for the blind and also about the delivery of some legal documents. Prices and commercial conditions are determined on the annual negotiations between the Ministry and the incumbent operator.

(1.9) The cost of non-commercial obligations, like providing service in rural areas or providing subsidised delivery of literature for the blind, is not made explicit.

(1.10) There aren't any special funds to pay for these non-commercial obligations. Internal cross-subsidisation is working.

*Controls of Ownership, Lines of Business, etc.*

(1.11) There are no regulations prohibiting cross-subsidisation. The abuse of monopoly power is controlled by the means of the annual price negotiations on the basic services (restricted area).

In connection with controls on ownership and lines of business the Postal Act is stating in its Article 2 that:

“(6) In addition to the postal activities listed under Paragraph (2) the state provider of postal services may, on the basis of relevant legal rules and contracts, attend other activities (including banking, securities and insurance agency services, as well as sale of stamps and related items). Postal financial services may be carried out without being covered by special legal provisions. However all those activities should not endanger the standards of the basic services.”

*Miscellaneous issues*

(1.12) The incumbent receives the following regulatory treatment which are not shared by competing postal operators:

(a) The rights of postal operators to print stamps is regulated under Article 3 of the Postal Act which provides as follows:

“(1) The state provider of postal service established by the minister of transport, communication and water management (hereinafter referred to as the Minister) shall be authorised to issue and withdraw from circulation postage stamps and related items, as well as to take over, hand over and transit in the international traffic postal items falling within the scope of the basic service (Article 4, paragraph 1),

(2) The detailed conditions of the issue of postage stamps – in particular the regulations concerning the formation of the annual plan of issue of postage stamps – shall be determined by the Minister through a decree.”

(b) Legislation ensuring privacy and security of mail is including by articles 27-28 of the Postal Act, in which the key principles are:

- legislation concerns equally all operators;
- obligation of secrecy concerns the operator, both its shareholders and employees;
- opening of the mail is allowed only in some well defined cases in course of a precisely regulated procedure;
- regarding the confiscation, retaining and sequestration of a postal item, the rules of the criminal procedure and those of petty offences apply;
- on the basis of a license issued by a special law the operator shall make possible the application of means and methods of secret information gathering.

(c) Local government may reduce or forgive the charge for establishment and repairs of postal facilities and premises in public area for the operator providing basic services (i.e. the incumbent operator).

(d) The incumbent does not receive any other benefit, such as tax benefits or partial exemption from other legal obligations etc..

(1.13) Terminal dues are calculated according to Article 49 of the UPU Convention. Article 51 however allows exceptions. In this context there are bilateral agreements with some countries. For example with Slovakia a Direct Marketing Agreement exists covering direct mail and other mass items, with Switzerland there is a so-called Direct Entry Agreement. Both are essentially based on domestic tariffs instead of international ones.

There are no data available on the magnitude of the terminal dues.

Re-mailing is the essential technique of bypassing dues.

## **II. Regulatory Institutions And Market Structure**

### *Regulatory Institutions*

(2.1) Policy making is the right of the Ministry of Transport, Communication and Water Management. Regulatory tasks are performed by the Communication Authority, which is an agency working under the control of the Minister. Its terms of reference and competence are determined by a Government Decree. The Communication Authority is independent of the postal operators.

### *Overview of Market Structure*

(2.2) The Hungarian Post Ltd. is a 100 per cent state-owned company limited by shares since 1994. Its rights and functioning are governed by general corporate laws. The owner's rights are exercised by the Ministry.

All of its characteristics are closer to that of a private company.

(2.3) The incumbent postal operator currently provides postal services, like:

- Collection, distribution and delivery in domestic and international traffic of
  - letter post items ordinary/special treatment,
  - parcels ordinary/special treatment,
  - addressed printed matters
  - telecopy (fax),
  - money orders
  - giro payments (domestic service)
- Issue, putting into circulation and withdrawal from circulation of stamps and related items.
- Courier services.

The average number of delivery per day is 1.0 in urban areas and the average number of delivery per week in rural areas is 5.0.

Prices may be "authorised prices" (i.e. state determined prices, applied to the restricted area) and "free prices".

Tariff groups of the incumbent operator are:

- Letters
- Postcards
- Response item
- Printed matter
- Sample of merchandise
- Book, periodical, printed booklet
- Postal parcel
- Postal money order
- Telegram
- Telecopy (*fax*)
- EMS (courier service: Express Mailing System)
- Extra services
- Other postal services

The total revenue is HUF 65.5 billion (SDR 238.2 million)

The volumes of the carried mails are:

Item	(million)
• Letter post	658.0
• Un-addressed printed matters	152.0
• Newspapers, periodicals	248.1
• Parcels	10.0
• Telegrams accepted	0.6
• Telegrams delivered	1.2
• Telecopy (faxes) accepted	700.6
• Telecopy delivered	444.1

The number of employees:

full time: 34.784 persons, part time: 8.949 persons, reduced total: 40.906 persons

The competing non-postal sectors are:

Financial services: banking accounts; spare accounts; gathering of charges for public services like gas, electricity, etc.; gathering of subscriptions for newspapers/periodicals; insurance agency services; money transfers; authentication of the Dunabank credit cards; currency exchange; etc...)

Sales of postal and non-postal commercial items.

(2.4) The key firms competing with the Hungarian Post Ltd. are the international courier firms like: DHL. TNT, Federal Express, UPS. They own about 60 per cent of the domestic courier market and 93-94 per cent of the international part of the Hungarian courier market.

There are no reliable data available on their company business indicators.

### **III. Key Competition Issues**

(3.1) The Hungarian Competition Act applies to the activity of postal sector, too. The Competition Office launches investigation if a complaint is made and then the Competition Council makes its decision in the case.

(3.2) Since the Postal Act has entered into force the Competition Office made investigation only in one case against the Hungarian Post Ltd. on abusing a dominant position on the market of financial service. This abusive market conduct was carried out against its consumers.

(3.3) There is actually no legislation on cross-subsidisation in the sector. Harmonisation with the EU legislation is actually under preparation.

(3.4) There are actually no regulation on accounting separation between reserved and competitive activities.

(3.5) There were no merger or anti-competitive arrangement cases arisen.

### **IV. Effects of Postal Reform**

(4.1) Reform in this sector is under preparation which actually means harmonisation with the EU legislation.



## ITALY

### I. Key Regulatory Issues

#### *Key Regulation*

Postal services regulation in Italy is mainly based on Presidential Decree no. 156 (the “Postal Code” hereafter) of 29 March 1973 and the implementing Presidential Decree no. 655/82. In the 1980s and the 1990s many specific provisions have been adopted to amend and supplement the Postal Code; they were often included in the Annual Budget law and in most cases were aimed at widening the scope of activities the public postal operator is allowed to perform and at reducing its budget deficit, in particular by eliminating some external constraints on Poste which resulted in an artificial increase in its costs.

In 1994 the public postal operator, which previously had the legal status of a public administration (*Amministrazione Postale-AP*), was transformed into a public economic body (*Ente Poste Italiane*). As from 18 December 1997, it has become a stock corporation, “Poste Italiane Spa”.

Since 1995, after the transformation of the legal status of the public post operator from a public administration to an economic entity, its activities are also regulated by a bilateral contract stipulated with the Ministry of Communications (so called “*Contratto di Programma*”, Program hereafter). A new Program is expected to be stipulated in a short period of time. The national legislation on postal services will have to be amended in order to become consistent with the EC Directive no. 97/67. A legislative decree to this aim will be enacted in 1999.

#### *Regulation of Entry and Licensing*

According to the Postal Code, the collection, transportation and delivery of “correspondence” up to a weight of 2 kg. are reserved to the State. Correspondence is defined as any mail contained in a sealed envelope or any mail containing personalized messages. The criteria for defining the scope of the reserved area are therefore based on both the weight of mail and its content. Open letters containing non personal communications (e.g. advertisements) do not fall in the reserved area.

Until 1997, the transportation of parcels up to a weight of 20 kg were also reserved to the State; the relevant provision in the Postal Code was canceled by the Annual Budget Law. Transportation of parcels, however, remains a universal service.

Traditionally, the public postal operator (which until 1994 was a body within the public administration) performed all the services reserved to the State. For some reserved services, a public franchise may be granted to other operators: these are the acceptance and delivery of personal express mail within the municipal territory of the sender; the delivery of personal express mail originating outside the municipal territory; the self-provision of reserved services by banks and other institutions within the municipal territory. As for personal express mail, however, one should remark that regulation limits the number of possible public franchisees. For intra-municipal services, a structural regulation approach is provided. For delivery of mail originating outside the municipal territory, only one public franchise for

each province may be granted. Moreover, franchisees are required not to apply prices below those applied, for the same service, by the public postal operator.

More generally, competitors are allowed to provide all reserved services if they pay Poste the price it charges for the full service. This implies that the incumbent will receive the same revenue for any piece of correspondence collected, transported and delivered, whether these services are provided by competitors or by itself. This provision allows other firms to enter in those markets where the cost of a stamp for ordinary mail is relatively low compared to the price consumers are willing to pay for the service (e.g. courier express mail). However, as clarified by a number of ministerial statements in 1989, the collection, transportation and delivery of international courier express mail does not fall within the reserved area.

The manufacturing of stamps is also reserved to the State. The public postal operator, Poste, has the exclusive right for the primary distribution of stamps. Finally Poste is the only operator allowed to place post boxes for mail collection in sites open to the public. This provision results in a competitive disadvantage, for Poste's rivals, in the collection of non-reserved postal items.

The EC Directive no. 97/67 requires Member States to limit the reserved area to the collection, transportation and delivery of items weighing up to 350 grams and for a price not exceeding five times the standard tariff for a mail item in the first weight class of the standard category. The implementing national legislation, which will be adopted in 1999, will therefore have to eliminate from the current reserved area the collection, transportation and delivery of correspondence exceeding 350 grams, and to introduce a price criterion for defining the scope of the reserve. On the other hand, one should also note that, according to Community rules, the collection, transportation and delivery of open envelopes containing non personal messages (now falling outside the reserved area in Italy) might be legitimately reserved by a Member State. However, according to section 6.2 of the Notice from the Commission on the application of the competition rules to the postal sector, it would be appropriate for Member States to inform the Commission of any extension of special or exclusive rights and of the justification therefor.

The national legislation is already consistent with the principle contained in EC Directive no. 67/97, according to which reserved services should be a subset of universal services. Among the non reserved universal services, one may mention the collection, transportation and delivery of parcels up to the weight of 20 kg and public telematic services.

Reserved services account for approximately 69 per cent of the total turnover of the incumbent postal operator (Table 1).

**Table 1 - Poste Turnover (1997)**

	Million	
	Euro	%
Ordinary correspondence (reserved)	1,247.6	39.8
Registered and insured mail (reserved)	924.8	29.5
<i>Total reserved services</i>	<i>2,172.4</i>	<i>69.4</i>
Invoices and other non reserved ordinary mail	231.9	7.4
Newspaper, magazines and other printed items	304.3	9.7
Parcels	124.2	4.0
Express mail	82.3	2.6
Electronic mail	216.5	6.9
<b>Total</b>	<b>3,131.6</b>	<b>100</b>

Source: Poste Business Plan 1997-2000

All non reserved services, including non reserved universal services, are open to competition. There are no licensing requirements to enter these markets; only for financial services, the standard authorization requirements apply. However, whenever Poste intends to provide a new service, it has to obtain a license from the Ministry; the “silence means consent” rule applies.

#### *Regulation of Access*

So far, in Italy there is no legislation dealing specifically with the access to essential or bottleneck services provided by the incumbent postal operator. General antitrust provisions apply. Thus, the conditions at which Poste gives competitors access to its facilities should be consistent with the need to avoid abusing its dominant position. Abuses would be in violation of Section 3 of the Italian Competition Act, no. 297/90.

#### *Regulation of Prices*

Apart from the already mentioned case of reserved services performed by public franchisees (where franchisees may not apply prices below the ones applied by Poste for the same services), price regulation only concerns the incumbent postal operator.

The system of price regulation has been recently changed. It is mainly based on the Law no. 662/96 and the bilateral “Contratto di Programma” (Program) stipulated between Poste and the Ministry of Communications. So far, the benefits of the reform cannot be fully evaluated. In fact, Poste still has a huge budget deficit, amounting to 12 per cent of its turnover in 1997.

General criteria that in principle apply to *all services* offered by Poste, resulting from the Postal Code, are the following:

- 1) prices must be set in accordance to costs;
- 2) price discrimination is prohibited; and

3) there are limits to the possibility of charging the addressees.

Among other things, these general criteria imply that:

- first, any form of strategic pricing below-cost aiming to restrict entry in any relevant market constitutes also a violation of the Postal Code; and
- second, a price above the cost of serving some customers is consistent with the Postal Code if and only if it is necessary to cover the costs of serving other customers which are above the same price.

Tariffs for *reserved services* are set according to the specific criteria formulated in the Programs that are to be stipulated between Poste and the Ministry of Communications. In particular, these Programs have to determine European standards taking into account the best performances of European providers of postal services with respect to the following variables: quality of the services; prices; productivity of the main production factors; and average production costs. Once defined these standards, the parties of the Program must identify the criteria to be applied in setting the prices of the reserved services and define a basket of services and prices to be employed as a basis for the modification of these prices over time. These changes are made following a price-cap method.

As for *universal services which are not reserved*, Law no. 662/96 establishes that neither Poste nor any other postal operator have any price obligation. Hence prices are liberalized.

Section 99 of the Postal Code allowed Poste to grant quantity discounts for the distribution of a large number of parcels sent by the same customer; the possibility of granting discounts has been subsequently extended also to large numbers of other postal items.

As for the exact determination of price levels, prices for reserved services are set through a negotiation between the Ministry and Poste taking the whole business plan of Poste into account. For other services, the Board of Poste notifies the proposed price level to the Ministry. Within 30 days from the communication, the Ministry may annul the deliberations of Poste concerning prices if it is believed that they are contrary to the criteria to be followed.

Special prices are set by the Ministry of Communications for the distribution of newspapers, magazines, publications of local authorities and non-profit organizations. Publishers and booksellers are granted discounts for the delivery of books. However, according to Section 41 of the Budget Law for 1999, from January 1st 2000, senders of these items will be funded directly, and all the mentioned special prices will be abolished.

#### *Non-Commercial Service Obligations*

The Program defines the obligations of Poste concerning the provision of universal services (including quality standards) and guarantees to Poste funds necessary for the financial compensation of services provided below costs.

Poste has to identify its subsidiaries operating in rural areas whose costs are above revenues. It has to elaborate a plan aimed at rationalizing the operations of these subsidiaries so that the financial deficit is reduced to the smallest possible amount. Each year the Ministry of Treasury gives Poste an amount of funds which partially covers the budget deficit stemming from the provision of universal services.

The Government compensates Poste also for the distribution of newspapers and other publications to which special prices applies. The Government pays to Poste, for each item distributed, the difference between the special price and the average price applied for equivalent services. From 2000 Poste will charge regular prices also for the distribution of these postal items. As a consequence there will not be any compensation for the distribution of these items between Poste and the Government.

### *Controls On Ownership and Lines of Business*

Law no. 662/96 requires Poste to keep separate financial records for its different lines of business, identifying costs and revenues associated with the provision of reserved services and of services provided under competitive conditions.

Poste is a stock corporation. The entire stock is currently owned by the Italian Treasury. Poste's bylaw does not prevent foreign entities to acquire shares of its capital.

The Ministry of Communications exerts a control on the line of business Poste can undertake. Poste has an obligation to elaborate a business plan for any new service it intends to supply and to submit this plan to the Ministry. The Ministry has 45 days to take a decision. The "silence means consent" rule applies.

### *Miscellaneous Issues*

A special tax exemption concerning Value Added Tax for the postal services is granted to Poste.

Poste is a party of several international agreements for the remuneration of deliveries of cross-border mails. Terminal dues and other obligations are regulated by the norms of these agreements.

## **II. Regulatory Institutions and Market Structure**

Before 1994 the public postal operator had the legal status of a public administration (*Amministrazione Postale-AP*); more precisely, AP was a division of the Ministry of Post and Telecommunication and was in charge both for the supply of postal services and for its regulation. In 1994 AP was transformed into a public economic body (*Ente Pubblico Economico*); as from 18 December 1997, it has become a stock corporation, "Poste Italiane Spa". Currently, all Poste's shares are owned by the Ministry of Treasury which exerts the financial supervision on the company. All the regulatory tasks previously fulfilled by AP are currently performed by the Ministry of Communications, under Law no. 71/94.

The main postal services currently provided by Poste are the following: collection, transportation and delivery of ordinary correspondence, registered and insured mail, invoices, printed items (e.g. newspapers and magazines), parcels, express mail, electronic (hybrid) mail. Postal services produced in 1997 revenues for about 3,131.6 millions of Euro (See table 1). Poste charges uniform prices on the national territory. Prices in Euro for its main services are described in Tables 2-6.

**Table 2 - Ordinary letters, and other correspondence**

<b>Weight</b>	<b>Price (Euro)</b>
up to 20 gr.	0.41
20 gr. - 40 gr.	0.93
50 gr. - 100 gr.	1.03
100 gr. - 250 gr.	2.32
250 gr. - 500 gr.	3.10
500 gr. - 1 kg.	4.65
1 kg. - 2 kg.	6.20

Source: Poste Italiane Spa

**Table 3 - Ordinary parcels**

<b>Weight</b>	<b>Price (Euro)</b>
up to 3 kg.	2.58
3 kg. - 5 kg.	4.13
5 kg. - 10 kg.	5.16
10 kg. - 15 kg.	5.68
15 kg. - 20 kg.	6.71
20 kg. - 30 kg.	8.26

Source: Poste Italiane Spa

**Table 4 - Parcels containing books**

<b>Weight</b>	<b>Price (Euro)</b>
up to 3 kg.	0.90
3 kg. - 5 kg.	1.81
5 kg. - 10 kg.	2.32
10 kg. - 15 kg.	2.58
15 kg. - 20 kg.	3.36

Source: Poste Italiane Spa

**Table 5 - Registered, insured and “espresso” mail**

Service	Price* (Euro)
Registered mail	2.07
Insured letter up to a value of 10,000 ITL	0.83
Insured letter up to a value of 100,000 ITL	3.10
Insured letter for any additional 100,000 ITL	2.07
Insured parcel up to a value of 50,000 ITL	2.07
Insured parcel up to a value of 100,000 ITL	5.17
Insured parcel for any additional 100,000 ITL	2.58
“Espresso”**	1.89

Source: Poste Italiane Spa

\* Price added to the price of the ordinary mail service

(e.g. price of a registered letter of 10 gr.: 0.41 + 2.07 = 2.48)

\*\* “Espressi” have priority in delivery but are not an express mail service

**Table 6 - Express mail**

Weight	Price*
up to 500 gr.	6.20
500 gr. - 1 kg.	9.30
1 kg. - 2 kg.	12.40
2 kg. - 5 kg.	15.50
5 kg. - 10 kg.	18.60
10 kg. - 20 kg.	21.70

Source: Poste Italiane Spa

\* Special discounts are granted to customers with more than 30,000 items per year

Over the last few years the volume of mail delivered by Poste, with the only exception of parcels, has constantly decreased. The number of delivered parcels increased at the beginning of the 90's and decreased afterwards. From 1990 to 1996 the number of letters and printed items delivered by Poste decreased by 30 per cent.

In 1997 Poste delivered 2,815 billions of items of ordinary correspondence, 382 millions of items of registered and insured mail, 2,867 billions of invoices, newspapers, magazines and other printed items, 51 millions of parcels, 8 millions of items of express mail and 460 millions of electronic hybrid mail. Poste has 192,000 employees and 14,000 subsidiaries scattered over the national territory. It provides also telematic services (telegram, telex, and other public telematic services) and several financial services. Poste currently is not allowed to provide the joint activity of fund raising on a public basis and the granting of credit (banking, as defined in the Italian Banking Law).

### III. Key Competition Issues

#### *Application and Enforcement of Competition Law*

Competition legislation is generally applicable to the postal sector. Section 8 of Law no. 287/90 (Competition Act) provides that undertakings which, by law, are entrusted with the operation of services of general economic interest or operate on the market in a monopoly situation are exempted from competition rules to the extent that the application of those rules would obstruct the performance of the general interest task for which they are responsible. The rule has been interpreted by the Italian Competition Authority, in accordance with the principles of the European competition law, as a very limited exception. In particular, in order for the exception to be applicable, the scope of any special and exclusive right granted and of any conduct held by the incumbent following those rights must be strictly in proportion to the general economic interest which is pursued.

#### *Cases*

Since 1991, in the enforcement of the Competition Act, the Italian Competition Authority has adopted ten decision in the postal sector concerning an agreement, an abuse of dominant position and eight mergers. The incumbent operator, Poste, was involved in both non-merger cases and in two of the eight mergers. In all the cases examined but the one dealing with the abuse of dominant position the Authority found that no violations of the Competition Act had occurred. In the last case Poste has been condemned for abusing its dominant position on the market for mail delivery.

Some cases, concerning express mail and electronic hybrid mail, are summarized in the following sections.

#### *Express mail*

Express mail is a liberalized service featuring, in addition to greater speed and reliability, supplementary services such as guaranteed delivery, collection from the point of origin, monitoring, tracking and rerouting of items dispatched and other personalized services. Customers are generally willing to pay a higher price for this service.

In Italy the latest merger in this market, in which the incumbent operator was involved, took place in July 1998. Before the merger, Poste had a market share of 4 per cent. It acquired the third largest operator in the Italian market, SDA Group, with a 12 per cent market share. The Italian Competition Authority argued that, although the position of Poste was marginal with respect to other operators, its expansion in the express mail market through a concentration could give rise to competitive concerns in consideration of the special and exclusive rights it still maintains with respect to reserved postal services and of its dominant position in other postal services markets already liberalized.

Poste has submitted some commitments which have been deemed acceptable by the Italian Competition Authority. In particular, Poste committed:

- 1) to maintain the structures of Poste and the SDA Group separate, with accounting separation, both for costs and revenue;
- 2) not to use the profits resulting from services offered under a monopoly situation to finance the activities of the acquired companies;



- 3) to guarantee that the commercial relationships between Poste and the SDA Group were regulated exclusively by market conditions;
- 4) to apply immediately the accounting separation between reserved and liberalized services, according to the EC rules; and
- 5) not to use in the near future the structures of Poste to support the activities and organization of the SDA Group, or rather to notify the Authority in advance of any plan in which the SDA Group would use the infrastructure of Poste Italiane.

On the basis of these commitments undertaken by Poste, the Authority decided not to open a formal procedure on the notified concentration.

#### *Electronic hybrid mail*

Electronic hybrid mail is a service which combines some features of electronic mail with those of ordinary mail. Suppliers of this service collect electronic messages from the senders, transmit electronically these messages to the subsidiary closest to the final destination, print and put them into envelopes and finally deliver them to each addressee. Poste is currently the only operator offering the integrated service nationwide. Other operators are active only in some phases of the productive process and depend on Poste for the delivery of their mail.

The Italian Competition Authority examined three cases concerning the electronic hybrid mail market: a merger, an agreement and an abuse of dominant position. Poste was involved in all these cases. Both the merger and the agreement were deemed by the Authority not to be in violation of the Competition Act. However in the agreement case Poste submitted some commitments in order to eliminate any anti-competitive concerns. In particular Poste assumed the following obligations:

- 1) to guarantee access to its mail delivery network to any supplier of electronic hybrid mail at non-discriminatory conditions;
- 2) to keep separate financial records for its delivery of reserved mail and electronic hybrid mail, identifying costs and revenues associated with the provision of the two services;
- 3) not to conclude exclusive agreements with any provider of electronic hybrid mail; and
- 4) not to apply quantity rebates for a period of twelve months starting from the enactment of the regulation concerning this service.

The last case in the electronic hybrid mail market, concerning an alleged abuse of dominant position, was decided by the Italian Competition Authority in December 1998. The Authority argued that the delivery of electronic hybrid mail constitutes a distinct relevant market, where Poste holds a 80 per cent market share. Demand stems from firms that operate in the electronic hybrid mail market, but that cannot afford to have their own delivery network covering the whole national territory. Some providers of electronic hybrid mail complained that Poste had abused its dominant position by:

- 1) setting predatory prices for its electronic hybrid mail services;
- 2) cross-subsidizing the electronic hybrid mail service through revenues generated from reserved services; and
- 3) charging excessive and discriminatory prices for the delivery service in order to foreclose the electronic hybrid mail market.

The Italian Competition Authority dismissed the first two allegations. It found that the final price charged by Poste for its electronic hybrid mail service was above its direct costs plus those overhead

costs imputable to the provision of the service. Hence its price conduct could not be considered predatory nor was there evidence of cross-subsidization.

The Authority, however, ascertained that Poste's delivery network was indispensable for delivering hybrid mail to rural areas and small towns. It found that Poste charged unjustified different prices for delivery services to its own division active in the electronic hybrid mail market and to competing firms. This price discrimination placed Poste's rivals at a competitive disadvantage and was bound to abusively limit production and access to the electronic hybrid mail market, in violation of Section 3 of the Competition Act.

## **JAPAN**

### **I. Present situation of the Japanese postal service**

(1) The postal service in Japan with 24 600 post offices has operated as a national non-profit business since its foundation in 1871. Postal services, postal savings services, and postal life insurance services are operated under a self-sustaining accounting system that does not depend on public taxation.

The objective of the postal service in Japan is to promote the public welfare by providing universal and equitable postal services at the least expensive rates possible. To this end, postal services are provided throughout the nation, including regions that are non profitable, with letters and postcards sent throughout the country at uniform rates through an easy-to-use system of mail collection boxes. Moreover, postage is discounted or exempted for mail items that contribute to enhancing social welfare and the prosperity of communities and cultures.

(2) Post offices are located in all 3 232 municipalities throughout the nation, including rural areas, and have become an integral part of the local community as the public's closest access point to the government.

The postal services, postal savings services, and postal life insurance services provided by post offices all contribute to the improvement of people's lives and to economic and social development as a basic means of communication, finance, and living security. Based on these roles and strong support for such services by the nation, the Ministry of Posts and Telecommunications has defined post offices as local bases for "information, security and exchanges," and strives to effectively utilise the 24,600 post office network to improve people's lives as well as to energise social and economic activities and local communities.

(3) The postal service in Japan provides universal service to all corners of the nation through its nation-wide postal network. The level of postal service is one of the highest of postal operators in the world. Mail is collected from 171 000 post-boxes throughout the nation seven days a week, all types of mail items are delivered on the following day or two days after posting in principle, and mail is delivered to all households and companies six days a week.

### **II. Changing environment surrounding the postal service in Japan**

(1) As in other countries, the environment surrounding the postal service is changing in Japan as well. Letters and postcards are competing with telecommunications media such as the telephone, fax, and e-mail, while parcel post is competing with private parcel delivery companies.

In order to meet the diversified and upgraded demands of our customers, from the view point of inexpensive, speedy, secure and convenient service, the Ministry of Posts and Telecommunications has enhanced a wide range of its services in the increasingly more severe competitive environment which includes development of private parcel delivery companies. As a result, especially with parcel post, the total volume handled by the Ministry has increased by 40 per cent in the past ten years.

Under such circumstances, in order to continue providing stable high-quality services, the postal service in Japan is achieving greater efficiency through vigorous computerisation and mechanisation, along with making improvements to various services. For example, the new 7-digit postal code system, introduced in 1998 to replace the conventional 3- or 5-digit postal code, allows mechanised processing that arranges mail in the delivery route sequence as a means of increasing efficiency. Additionally, hybrid mail service\* that integrates telecommunications and postal services is scheduled to be implemented in the fiscal year ending March 31, 2000.

**\* Hybrid mail service**

A message created by a personal computer is accepted at an acceptance post office via the Internet, and mail is created using a printer and a sealing machine and delivered as an ordinary mail item. A message created by commercial word processor software can be used without change, along with colour and graphic texts.

(2) As part of the administrative reform currently being undertaken by the Japanese government toward a target year of 2001, the Ministry of Posts and Telecommunications will be transformed to the General Affairs Ministry which will plan and manage postal services, and the Postal Services Agency will be created as an external bureau to operate the services. The Postal Services Agency will become a new public corporation (Postal Service Corporation) two years after that.

### **III. Basic concept of entry by private operators in the correspondence sector in Japan**

Mail is a basic means of communication for the public, and the mission of the postal service in Japan is to provide universal postal service equally throughout the nation, including non-profitable areas. As such, when examining specific conditions for private companies to enter the correspondence\* sector which is now monopolised by the government, ensuring universal postal service and sound finances of the postal service is a prerequisite. Toward that end, flexible management practices are essential in postal operations, including the establishment of the provision of negotiated discount postage and investment.

From this viewpoint, specific conditions for allowing private companies to enter the correspondence sector are being examined in conjunction with the creation of the Postal Service Corporation that will facilitate independent and flexible management of postal services.

\* Correspondence generally means documents addressed to specific persons to express one's opinion or to notify them of a fact. As such, newspapers, magazines, periodicals, books, and booklet catalogues are not considered to be correspondence, and delivery of these items is already open to competition with private companies.

### **IV. Conclusion**

The issue of allowing private companies to enter the correspondence sector should be considered not only from the viewpoint of competition policy, but also with regard to the prerequisite of ensuring universal postal service and the sound finances of the postal service. Moreover, consideration must be given to circumstances unique to each country, such as the roles of post offices and postal service standards.

## Annex

### General Issues in the Guide for Country Submissions

#### I. Key Regulatory Issues

The purpose of this section is to highlight all of the key regulations affecting competition and business practices in this sector.

##### *[Key Regulation]*

*What is the title, date and main purpose of the key governing legislation or regulation in this sector?*

Postal Law: Enacted January 1, 1948

The purpose of this law is to promote the public welfare by providing for universal and equitable postal services at the least expensive rate possible. (Article 1)

Postal Regulations: Enacted January 1, 1948

These regulations stipulate the items related to mail sent and received domestically in order to enforce the Postal Law based on the Postal Law and Establishment Law for the Ministry of Posts and Telecommunications. (Article 1)

##### *[Regulation of Entry and Licensing]*

*Which markets within the postal sector are open to competition?*

Except for correspondence, delivery of newspapers, magazines, periodicals, books, booklet-style catalogues and articles is open to competition. (Postal Law, Article 5)

Definition of correspondence: Correspondence generally means documents addressed to specific persons to express one's opinion or to notify them of a fact ..... if it is clear from the envelope that the document is for expressing one's opinion to a specific person or notifying him/her of a fact, the document is regarded as correspondence, even if a document fails to specify the sender or the addressee. (Supreme Court ruling on January 16, 1958)

*Are competitors allowed to engage in the collection, sorting, transportation and/or final delivery of mail?*

The national government monopolises the delivery of correspondence and provides uniform service. For items other than correspondence, private operators can collect, sort, transport, and deliver them.

*Are competitors allowed access to mailboxes, post-boxes, and mailboxes in apartment buildings and so on?*

Mailboxes are managed by the Ministry of Posts and Telecommunications as deposit facilities for the mail handled by the Ministry, and access by the private operator is not permitted. (Postal Regulations, Article 64)

Letter boxes and concentrated letter boxes in apartment buildings are not managed by the Ministry, but by each entity that establishes them, and there is no regulation on access by private operators.

*In which markets is entry limited or restricted only to the incumbent postal operator?*

Delivery of correspondence.

*What proportion of the incumbent postal operator's business is accounted for by services for which entry is restricted?*

Because the volume of mail items and resultant income are classified by the type of mail and do not coincide with the definition of correspondence, the proportion represented by the monopoly field cannot be calculated.

*Who is responsible for enforcing the prohibition on entry in certain postal services?*

The Ministry of Posts and Telecommunications

*Have those prohibitions been enforced recently?*

A case involving a private transportation company was sent to a district public prosecutors office on June 21, 1982.

*Are there licensing requirements for services open to competition? What conditions are imposed on licensees?*

Legislation related to transportation of items other than correspondence is applied to the trucking business.

### ***[Regulation of Access]***

*Competitive entry in the postal sector may be limited in the absence of "interconnection" or "access" by competitors to key or "bottleneck" services provided by the incumbent postal operator, such as the final delivery of mail to households. ....*

Since the meaning of "bottleneck service", "interconnection" and "access" is not clear, we cannot comment on this issue.

### ***[Regulation of Prices]***

*Which prices are controlled (in the sense that they cannot be chosen flexibly by the incumbent postal operator)?*

Regulations on postage of services provided by the Ministry of Posts and Telecommunications are as follows.

*1. First-class and second-class mail postage*

Basic postage is stipulated by the Postal Law (enacted by the National Diet), but postage may be changed by Postal Regulations under designated conditions (special examples).

(1) Special increase (Postal Law, Article 27-4 and Article 27-5)

When it is certain that (1) a loss in a single year, or (2) a cumulative loss has occurred or will occur, a postage may be increased by Postal Regulations within a range that does not exceed the framework of postage change. (It is essential to request the advice of the Postal Services Council (hereafter "Council" that is established by the Minister of Posts and Telecommunications as stipulated by government order.

(2) Special decrease (Postal Law, Article 27)

A postage may be decreased by Post Regulations within a range that does not reduce the income derived from postal services. (It is essential to request the advice of the Council and discuss the matter with the Minister of Finance.)

*2. Third-class and fourth-class mail postage (excluding literature for the blind)*

Postage is determined by Postal Regulations after requesting the advice of the Council. Postage must be set lower than the postage of first-class mail (standard-sized item/non-standard-sized item) of the same weight. (Postal Law, Article 23-4 and Article 26-2)

*3. Parcels*

Postage is determined by Postal Regulations after requesting the advice of the Council and considering the cost required to provide postal parcel service, other postage, and economic circumstances. (Postal Law, Article 31)

*Are there specific regulations that limit or restrict the ability of the incumbent postal operator to offer specific or targeted discounts (such as discounts for bulk mail, pre-sorted mail), or to discriminate in its pricing between different class of buyers?*

The Postal Law stipulates about discounts for bulk mail, pre-sorted mail, and special local mail. (Postal Law, Article 27 and Article 27-2) Specific discount ratios and postage are stipulated by Postal Regulations. A price ceiling system has not been adopted in Japan.

***[Non-Commercial Service Obligations]***

*Is the incumbent postal operator (or any other firm) subject to requirements to provide service to certain customers below cost (including, for example, requirement to provide service in rural areas, maintain post offices, or provide subsidised delivery of literature for the blind)? Are these requirements explicit?*

The Ministry of Posts and Telecommunications provides the following services based on law due to its social role as a national government agency.

*1. Third-class mail*

(Outline) Unsealed periodicals that meet the following conditions and are approved by the Minister of Posts and Telecommunications.

- 1) Issued more than one time annually and more times than stipulated by Postal Regulations, and issued regularly in numerical order.
- 2) Because of the nature of the published item, the final issue cannot be scheduled.
- 3) Issued for the purpose of reporting or discussing politics, economics, culture and other subjects of public interest, and sold nation wide.

Items that satisfy the following conditions are subject to rates lower than general third-class mail.

- 1) One newspaper copy issued three times or more a month, or daily newspaper, and sent by the issuer or seller.
- 2) Periodical issued by a group whose main members have physical or mental disabilities; issued to increase the welfare of these people, and sent by the issuer.

(Purpose) To ease the burden on readers by reducing the postage of periodicals, such as newspapers and magazines that largely contribute to the improvement of national culture, and to allow easier purchase of these periodicals.

*2. Fourth-class mail*

(1) Correspondence education items

(Outline) Mail items sent/received to provide the applicable correspondence education between students and schools or corporations that have obtained permission or approval from the competent regulator based on law.

(Purpose) Correspondence education is systematised by law, such as the School Education Law, as a means to democratise educational opportunities. The postal service contributes to the spread of this type of education that services as an important means to increase educational opportunities.

(2) Items for the blind

(Outline) Publications containing only Braille material, and sent by facilities (limited to facilities designated by the Minister of Posts and Telecommunications), such as Braille material libraries and Braille publication facilities, to increase the welfare of the blind. In addition, mail containing recorded materials for the blind or Braille sheets sent to these facilities.



(Purpose) The blind greatly depend on the postal service to obtain Braille prints or records for both personal information and comfort. Such postal items are heavy and the cost of handling them is high. By eliminating the postage on these items, the postal service contributes to the welfare of the blind.

(3) Agricultural seed and saplings

(Outline) Postal items containing seeds, seedlings or young plants for cultivation, stem or root for planting, or silk worms for breeding.

(Purpose) Facilitating the sale of excellent agricultural seeds and young plants contributes to improving the productivity of agriculture.

(4) Academic publications

(Outline) Mail items containing academic publications (limited to publications designated by the Minister of Posts and Telecommunications) that are published more than one time annually on a continuous basis in order for academic organisations to achieve their purpose, and are sent by the publisher or seller.

(Purpose) Reducing postage contributes to the promotion of academic research.

2. *Parcels*

(1) Book parcels for the physically or mentally handicapped.

(Outline) Parcels containing reading material sent/received between a library established by a local government or the Japanese Red Cross and an individual with a severe physical or mental disability.

(Purpose) To allow individuals who find it difficult to use a library because of a severe physical and mental disability to receive and return library books from their homes.

(2) Parcels for the blind

(Outline) Parcels containing only Braille materials for the blind.

(Purpose) To allow large Braille publications, which cannot be sent as standard-sized mail, to be mailed at reduced postage.

(3) Parcels for the hearing impaired

(Outline) Parcels containing videotapes and not exceeding 3 kg that are sent/returned to facilities (limited to facilities designated by the Minister of Posts and Telecommunications) that serve to improve the welfare of persons with hearing impairments.

(Purpose) To reduce the postage for videotapes with subtitles and sign language for persons with hearing impairments in order to allow easy use of videotapes.

*What is the methodology used to calculate “non-commercial service” obligations?*

The Ministry of Posts and Telecommunications distributes the entire cost required for “commercial” and “non-commercial” service according to a ratio whereby the volume of a type of mail handled is multiplied by the speed of operation (coefficient) for that type of mail, and the applicable cost is calculated for each type of mail.

*How are the funds collected to pay for these non-commercial obligations? (internal cross-subsidisation/system of explicit subsidies)*

The Ministry of Post and Telecommunications divides all postage, including those for “non-commercial services” into letter-post items and parcels. Postage is set so as to manage income and expenditure within these classifications.

***[Controls on Ownership, Lines of Business, etc.]***

*Are there any regulatory controls specifically designed to restrict the ability of the incumbent postal operator to cross-subsidise service, or in other way use its monopoly right to restrict competition in the competitive market?*

There are no regulatory controls.

*Are there controls on ownership?*

There is no concept of ownership because service is provided by the government.

*Are there controls on the lines of business, such as restrictions on the lines of business that the incumbent can undertake?*

Postal services are specifically stipulated by the Establishment Law for the Posts and Telecommunications Ministry, and service other than those stipulated cannot be provided.

Specific postal services, service names and conditions for service provision are stipulated by the Postal Law and Postal Regulations.

***[Miscellaneous Issues]***

*Is there specific legislation governing the rights of postal operators to print stamps?*

The right to print postal stamps lies with the Ministry of Post and Telecommunications, and private companies do not possess such a right.

Article 33 of the Postal Law stipulates that the issuance of certificates to indicate the price of postal stamps and other postage is the right of the Minister of Posts and Telecommunications.

Article 4-31 of the Establishment Law for the Ministry of Posts and Telecommunications stipulates that the issuance of certificates indicating the price of postal stamps and other postage is the duty of the Ministry of Posts and Telecommunications.

*Has it been necessary to introduce specific provisions in legislation ensuring the privacy and security of mail?*

Article 9 of the Postal Law stipulates that 1) secrecy of correspondence while handled by the Ministry of Posts and Telecommunications must not be violated, and 2) postal service employees must protect the privacy of information that comes into their knowledge while working as postal service employees, and this applies to after retirement as well.

Article 100 of the National Public Service Law also stipulates that “officials must not leak secrets that come into their knowledge while working, and this applies after retirement as well.” In this way the secrecy of correspondence is carefully and thoroughly protected.

*Are there special rules governing access to roads and footpaths for the purpose of installing mail collection boxes?*

The Ministry of Posts and Telecommunications is a national organisation and is therefore treated differently from a private company. In terms of permission to occupy a road, Article 32 of the Road Law stipulates that permission must be obtained from the road administrator. For the occupation of a road for business by a national organisation such as the postal service, Article 35 of the same law states that the national government must hold discussions with the road administrator.

Additionally, Article 19 of the Execution Order of the Road Law states that occupation of a road for the installation of mail collection box is to be allowed free of charge.

*Does the incumbent postal operator receive other benefits that are not shared with its competitors? (exemption of tax and legal obligations, special treatment)*

The consumption tax is applied to postage, but other taxes are not applied.

Priority is given to postal items when they are subject to quarantine. (Postal Law, Article 12)

*What arrangements are in place for the international exchange of mail?*

The exchange of international mail is based on the UPU Convention.

The method of calculating terminal dues is stipulated in the UPU Convention. (letter post items: with the right to receive compensation of 3.427 SDR/kg from the depositing administration)

Terminal dues are set at low uniform rates to ensure the universality of international mail, and are much lower than Japan's domestic postage. As such, with regard to postal items sent to Japan, we believe that bypassing the incentive of terminal dues does not work with respect to direct access to domestic postage.

## II. Regulatory Institutions and Market Structure

The purpose of these questions is to provide a picture of the relevant regulatory institutions and the overall market structure.

### *[Regulatory institutions and market structure]*

*Who are the key regulatory and policy-making agencies in this sector?*

The Ministry of Posts and Telecommunications is the key regulatory and policy-making agency.

*What is the legal status of the incumbent postal operator, and what is its ownership?*

Ministry of the government

*What postal services does the incumbent postal operator currently provide?*

### *[Major postal service]*

#### 1. *Letter-post items*

First class (standard-sized, non-standard-sized, letter-card)

Second class (ordinary postcard, double postcard with reply attached, postcard for parcels)

Third class (approved periodicals: newspapers, magazines, etc.)

Fourth class (mail for correspondence education, literature for the blind, seeds and young plants for cultivation, academic publications)

#### 2. *Parcels*

General parcels, book parcels, parcels containing literature for the blind, parcels for the hearing impaired

#### 3. *Special service*

Express mail, registered mail, delivery recorded mail, certification of acceptance time, certification of delivery, certification of contents, special delivery, cash-on-delivery, delivery time specified service, refrigerated mail, Overnight Mail "Morning 10" Service

#### 4. *International mail*

- Letter-post items (letters, postcards, prints, small parcels, literature for the blind)
- Parcel posts
- International express mail (EMS)
- International electronic mail (INTELPOST)
- Special handling (express mail, registered mail, insured mail and notice of delivery)

*What level of postal services is currently offered in rural areas (compared to urban areas)?*

Including rural areas the level of service throughout Japan is equal (collection from post-boxes 7 days a week, and home delivery 6 days a week. A rural area delivery fee is not collected).

*What is the pricing structure of the incumbent postal operator?*

Postage is divided into letter-post items and parcels, and are set so as to manage income and expenditure within these classifications.

*What is the total revenue of the postal service?*

Postal service accounts for fiscal 1997

- Income: 2.3138 trillion yen
- Expenditure: 2.2940 trillion yen
- Profit: 19.8 billion yen

*What volume of mail does the postal service carry?*

Volume accepted in fiscal 1997

- Letter-post items: 25.30654 billion
- Parcels: 325.97 million
- International: 130.62 million
- Total: 25.76313 billion

*How many employees does the postal service have?*

The number of postal service employees was 141 647 in 1997.

*What non-postal sector does the postal service compete in?*

Post offices provide postal, postal savings, and postal life insurance services.

*Who are the key other firms operating in this sector?*

Private companies deliver parcels in the parcel market.

### **III. Key competition issues**

#### ***[Market definition issues]***

*Have the competition authority or the courts had the opportunity to define the relevant markets in competition cases arisen in this sector?*

With regard to the range of correspondence (monopolised field), the Supreme Court has handed down a ruling. (See the related answer above)

#### ***[Abuse of Dominance]***

*Have instances of alleged abuse of dominance arisen in this sector?*

No

*Has the incumbent postal operator sought to use devices such as selective discounts, volume discounts, exclusivity arrangements, and so on, in order to retain customers?*

The Ministry of Posts and Telecommunications has a rational bulk discount system, but under the current postal system, selective discounts and exclusivity arrangements cannot be introduced.

*Have the current regulatory requirements designed to control abuse of a dominant position been effective? For example, have requirements for accounting separation of reserved and non-reserved services been effective in preventing cross-subsidisation?*

The Ministry of Posts and Telecommunications calculates the income and expenditure of letter-post items and parcels respectively, and announces the amounts every year.

## **KOREA**

### **Introduction**

Modern postal services in Korea started in the 1880s. Since then, the postal market over this period has been fully or partly monopolized by the government. There have been studies to restructure or turn the government monopoly into a public corporation. However, such efforts were frustrated as the service involved both a huge deficit, and fulfilment of public obligations.

By the 1980s, one post office was set up in every township, the post code was introduced and everyday delivery(except for Sundays and public holidays) was put into place.

In the late 70s and early 80s, telephone started replacing post as a basic mean of communication, and private couriers started to emerge. Competition was being introduced into the postal sector and public operator had to adapt to the new environment by providing new services.

Entering the 90s, the public operator sought to computerise the postal network and has enhanced the quality of overall services. Nevertheless, the emergence of new technologies and a changing market structure has brought the need to examine the postal market from a competition perspective.

### **I. Key Regulatory issues**

#### *Key Regulation*

(1.1) “Postal Service Act”, which was promulgated in 1 Feb. 1960 and most recently amended in 28 Aug. 1997.

The purpose of this Act is to stipulate fundamental matters on postal services and to provide fair and appropriate postal services and thereby to contribute to the promotion of public welfare.

The other related laws are : Licensed post office Act, Act on Entrustment of postal counter services, Special Act on the postal business operation and their enforcement decrees, regulations, Universal Postal Convention and its detailed regulations.

The postal services are run by the State and are taken charge of by the Minister of Information and Communication. The Bureau of Posts under the Ministry of Information and Communication is responsible for running the postal services. The Bureau of Posts is commonly called “Korea Post” (The incumbent postal operator in Korea shall be referred to as Korea Post hereinafter).

#### *Regulation of Entry and Licensing*

(1.2) The postal market in Korea can be roughly divided between the monopolized market which consists of the letter post and the competitive market which consists of parcels and express mail. Most

postal services except for the letter post are opened to competition in Korea. According to the Postal Service Act, Korea Post is entitled to have an exclusive right to carry correspondence for other persons (letter post), with some exceptions as detailed by the relevant enforcement decree.

Courier services were fully opened to competition in 1996.

Private operators are not allowed to access to the postal network provided by Korea Post.

The Postal Services Act gives Korea Post the sole and exclusive right to carry correspondence for other persons (letter post) with some exceptions. Exceptions prescribed by the enforcement decree on the Postal Services Act are as follows:

- accompanying documents or invoice, which are not sealed, to freight;
- documents relating to export or import exchanged with foreign countries;
- documents exchanged with foreign countries in relation to the introduction of foreign capital or technology;
- foreign exchanges or its related documents exchanged with foreign countries;
- and, commercial documents, provided that they are required to be delivered within 12 hours after their dispatch, exchanged between Headquarters and its branches or among branches in Korea.

The Postal Services Act stipulates that no person may set up in business for conveyance of correspondence for other persons, nor use his organisation or network for conveyance of correspondence for other people. However, the Minister of Information and Communication may entrust part of postal services other than postal counter services to another party as prescribed by the enforcement decree.

(1.3) In 1997, Korea Post received about 3,800 million letters and parcels and its revenue amounted to roughly 1 trillion Won(about US\$ 830 millions). Around 87 per cent of the total revenue was estimated from the monopolized service.

(1.4) The services which are open to competition and the general conditions on the market access are as follows:

<u>Category by service</u>	<u>Regulatory body</u>	<u>Reference</u>
Domestic courier	Ministry of Construction & Transportation	Truck Transportation Act
International courier	Ministry of Construction & Transportation	Aviation Act & its regulation

Service providers who would like to set up a domestic express document courier business must submit a business plan, business registration card and terms of reference for customers to the Regional Office under the Ministry of Information and Communication before opening a business.

Domestic couriers normally operate as freight carriers, so they do not need to submit additional papers to the authority concerned but, on the other hand, international couriers such as DHL, UPS, etc. must submit a business plan to the Ministry of Construction and Transportation according to the Aviation Act and its regulations.



*Regulation of Access*

(1.5) Not applicable.

In Korea, private operators are not allowed to have access to the national postal network at present.

*Regulation of Prices*

(1.6) To set and adjust postal rates on letter post, Korea Post is required to consult the Ministry of Finance and Economy. However, the Minister of Information and Communication sets rates on parcels and EMS(International Express Mail), and fees on postal services.

Korea post does not have control over prices of the competing postal operators.

(1.7) Korea Post offers discounts for bulk-mail, pre-sorted mail, periodicals and large volume mail. Customers for these mail items may receive discounts up to a maximum of 30 per cent reduction compared with normal rates. There are no specific regulations which limit or restrict Korea Post to offer specific or targeted discounts or to discriminate in its pricing between different classes of buyers.

*Non-Commercial Service Obligations*

(1.8) 775 Licensed Post Offices are operated for the welfare of inhabitants in rural areas according to the Licensed Post Offices Act.

Korea Post has universal postal service obligation nation-wide. Postal rates on letter-post and postal parcels in domestic services are set lower than cost for political and economic reasons.

(1) The Minister of Information and Communication shall complete a systematic organisation for the effective delivery of mail across the country and shall supply postal services through which all people can send and receive the following items fairly and at a reasonable price (hereinafter referred to as basic postal services):

1. Letters; and
2. Parcel postal items.

(2) The kinds and the conditions of use of basic postal services referred to in paragraph (1) shall be determined by the Ordinance of the Ministry of Information and Communication.

Korea Post has obligations to provide those postal services described in the "Enforcement decree on the Postal Services Act" free of charge. The scope of free of charge mail is as follows;

- Communication related with postal services;
- Relief work in case of natural disasters;
- The literature for the blind;
- Prisoners of war;
- and, special cases prescribed in law.

(1.9) None

(1.10) Korea Post forms a part of the government structure which means that financial management is principally under control of the government budget although Korea Post has its own budget system for business. The Ministry of Information and Communication bears the cost for those non-commercial obligations.

*Controls On Ownership Lines of Business, etc.*

(1.11) None

In order to make the accounting system more transparent and accurate, accounting separation according to the service category is receiving careful study.

*Miscellaneous Issues*

(1.12) "Postal Services Act" describes as follows:

(a) Article 21 (Issuance of Postage Stamps)

(1) Postage stamps and slips of postal franking impressions shall be issued by the Minister of Information and Communication

(2) The sale, management and other necessary disposition of postage stamps and slips of postal franking impressions shall be prescribed by the Ordinance of the Ministry of Information and Communication.

(3) Postcards may be manufactured privately as prescribed by the Ordinance of the Ministry of Information and Communication.

(b) Article 48 (Violation of Postal Items)

(1) Any person who, without justifiable reason, opens, damages, conceals, abandons or surrenders intentionally to any other than the addressee a postal item being handled at the post office shall be punished by imprisonment not exceeding three years or by a fine not exceeding ten million won (about US\$ 8,000).

(2) Any person engaging in postal service who has committed the acts under paragraph (1) shall be punished by imprisonment not exceeding five years or by a fine not exceeding twenty million won (about US\$ 16,000).

Article 51-2 (Divulgence of Secrets)

Any person who divulges a secret in violation of the provisions of Article 3 shall be punished by imprisonment not exceeding five years or a fine not exceeding twenty million won (about US\$16,000).

(c) The sender may install private mail boxes and send his/her mail using private mail boxes. The conditions for installing and using private mail boxes are regulated by the Enforcement regulation on the Postal Services Act.

(d) Korea Post receives taxes (Value added tax: VAT) exemption with regard to postal services. "Value Added Tax Act" article 12-7 describes that goods and services provided by Government and local governments are exempted from VAT.

Postal staff have the status of state employees, they do not receive any special treatment comparing with employees of private companies in civil liability and etc.

For transportation for mail items, postal vehicles owned by Ministry of Information and Communication are exempt from Expressway toll according to the Road and Transportation Law. However, in this case, the term of postal vehicles is very restrictedly understood as cars and trucks used and owned by Korea Post.

\* Remarks : Postal Services Act  
Article 3-2 (Demand for Carriage of Mail)

(1) The Minister of Information and Communication may demand a person falling under any of the following subparagraphs to carry mail under the conditions as determined by the Presidential Decree:

1. Person who operates railroad, track and cableway business; and
2. Person who operates automobile, shipping or air transport business regularly or temporarily by designating routes to serve the facilities of mass transportation.

(2) The Minister of Information and Communication shall make just compensation to a person who carries mail pursuant to paragraph (1).

Article 3-3 (Preferential Treatment of Mail)

(1) When a person who carries mail removes mail on board a vehicle, ship or aircraft at the destination, or shifts mail on board in passage due to an accident or a fire, he shall remove or shift it on board in priority over other cargo.

(2) When a person who carries postal matter must unavoidably dispose of goods or freight due to an accident or disaster, he shall dispose of postal matter last.

Article 5 (Passage for Mail Carriers, etc.)

(1) In the case of road traffic being obstructed, the mail carrier or postman on duty and aeroplanes, vehicles or boats that are exclusively used in postal services may pass through or other places dry or paddy fields, etc. that are not fenced. In this case, the post office concerned shall, upon demand made by the damaged person, compensate for the damage caused by such passage.

(2) The mail carrier or postman on duty and aeroplanes, vehicles or boats that are exclusively used in postal services may use a ferry station, canal, road, bridge, etc., without paying the toll: Provided, That when it is claimed by the due claimant, the post office shall pay appropriate compensation.

(3) The mail carrier or postman on duty may request permission to use ferries at ferry stations at any time.

(4) The request mentioned in paragraph (3) shall not be refused without justifiable reason.

(1.13) As a member country of the Universal Postal Union, Korea Post follows and obeys UPU regulations for the international mail exchange. Korea Post has bilateral and multilateral agreements with the member countries of the UPU on international postal services. Concerning Express Mail Service (EMS), Korea Post has bilateral agreements with its partners including foreign private operators.

Korea Post does not allow foreign operators to “by pass” terminal dues by making use of tariffs, so called “Remailing”. Korea Post applies the UPU convention Article 25 “Posting abroad of letter-post items” to the mail items which are accepted for the purpose of “by pass” terminal dues.

## **II. Regulatory Institutions And Market Structure**

### *Regulatory Institutions*

(2.1) Government : Bureau of Posts, Ministry of Information and Communication. The Bureau of Posts is called as “Korea Post” which fulfils both regulator and public operator function in Korea. Korea Post manages the operation of postal services and postal financial services. The Ministry of Information and Communication(MIC) also oversees and set policy for the telecommunication.

The Ministry of Construction and Transportation is responsible for business of private couriers except for domestic express document service. The Ministry of Finance and Economy is responsible for overall foreigner's investment. There is not yet an independent regulatory institution on postal services in Korea.

### *Overview of Market Structure*

(2.2) Refer to article no. (1.2), (1.4), (1.12)-(d), (2.1)

All the regular staff of Korea Post enjoy the status of government employees in terms of salary, allowance, promotion, pension and so on. Korea Post has incentive schemes for its employees commensurate with performance and accomplishments.

(2.3) The overview of Korea Post is as follows:

a) Range of main services

- Domestic : Letter post (priority & non-priority), Parcel (priority & non-priority), Express and special value added services (Hybrid mail, Mail order service and so on.)
- International : Letter post, Parcel, Express Mail Service(EMS) and other services.
- Postal financial : Savings, Money Order, Giro and Life insurance service

## b) Postal statistics as of 1997

Mail volume (unit : 1,000)

<u>Domestic</u>	<u>International</u>	<u>Total</u>
3 657 031	26 240	3 804 456

Postal network

<u>Number of P. O. s</u>	<u>Number of employees</u>
3 596	40 227

Postal facilities

<u>Letter-boxes</u>	<u>P. O. boxes</u>	<u>Automobiles</u>	<u>Motorcycles</u>
42 785	35 690	1 470	11 614

Postal revenue : deficit

54 billion won(about US\$ 45 millions)

Delivery achievement rate surveyed by Korean Gall-up in June 1998

<u>Priority mail</u>	<u>Non-priority mail</u>
96.7% within next day	98.5% within 4 days

(2.4) As of 1997, 31 international couriers including DHL, FEDEX, TNT, UPS are in business in Korea. Domestically, 232 couriers are in business for express document and 16 couriers are in business for parcels, freight which are normally within 30 kgs. Korea Post is competition with these operators and is estimated to share around 12 per cent on the above market.

### III. Key Competition Issues

#### *Application and Enforcement of Competition Law*

(3.1) National competition law applies to the postal services except for the monopolized market which means letter post.

Fair Trade Commission are responsible for ensuring fair competition in postal market.

#### *Market Definition Issues*

(3.2) Not Available.

Postal market in Korea can be defined as monopolized market and competitive market. Refer to Article (1-2), (1-3)

#### *Abuse of Dominance*

(3.3) None

(3.4) None

*Other Competition Enforcement Issues*

(3.5) None

**IV. Effects of Postal Reform**

(4.1) We would like to answer to this question with introducing Korea Post's overall reform movement which was launched lately.

The government legislated the "Special Act on the postal business operation" and enforced it on 1 January 1997. The main purpose of this law is as follows:

- to give Korea Post management freedom specially in operational matters in postal business;
- to allow Korea Post to invest its capital to private enterprises;
- and, to introduce various and prompt merit systems according to the employee's achievements.

Under the Special Act on the postal business operation, each management unit of post offices is able to enjoy substantial autonomy within area of operation and is evaluated by its accomplishments, based not only on the criteria of attained goals, but also on overall profit.

Korea Post has began the OPEN 2001 campaign in July 1998 with an objective of transforming itself into a service provider of the best quality in Korea. The OPEN 2001 campaign is the management innovation program of Korea Post and the assemblage of the first letters of Organisation Reinvention, Productivity Improvement, Employees Participation and New Post of the 21st century.

Korea Post recorded 54 billion won(about US\$ 45 millions) in deficit in 1997 and it has an image as a business that runs perennial deficits. However, we are now pushing for an increase in revenues and reduction in costs to make 1998 the first year to make a surplus. The total workforce was reduced by 1,000 persons in June 1998. Our efforts aimed at management innovation are very likely to pay off as a surplus for the first time in the history of Korea Post.

The survey conducted by Gallup Korea in last June 1998 finds that 98.5 per cent of non-priority mail and 96.7 per cent of priority mail have been delivered on time. The another survey conducted in last June 1998 shows that customers consider the quality of service of post offices the same as that of commercial banks and department stores.

Korea Post is currently focusing its energies on restructuring the bureaucratic and inflexible human resources and trying to continue legislative and regulatory reform.

## MEXICO

### I. Key Regulatory Issues

#### *a. Legal Foundations*

According to Article 28 of Mexico's Constitution<sup>1</sup> (hereafter "the Constitution") postal services are a strategic activity, the provision of which is reserved to the Mexican State. Before 1987 postal services were regulated by the Law of General Communications which covered several communication sectors, *inter alia*, roads, railroads and telecommunications.

Postal services were deregulated in 1987 with the entrance into force of the Law of Mexican Postal Services (hereafter "the Law")<sup>2</sup> the aim of which is: "... to regulate all that is related to *Public Postal Service* and to the other services contemplated expressly therein."<sup>3</sup> The Law defines *Public Postal Service* as the reception, transport and delivery of mail. Other activities such as courier and package delivery are outside this definition and can be provided by private economic agents.

#### *b. Restrictions to Competition*

The *Law* limits Public Postal Services to mail services. For this purpose mail is defined as:

"postal pieces contained within a closed envelope and postcards, which adjust to the following size and weight limits:"

#### Envelopes

	Maximum	Minimum
Length:	458 mm	114 mm
Width:	324 mm	81 mm
Weight:	1 kg.	

#### Postcards

	Maximum	Minimum
Length:	148 mm	105 mm
Width:	140 mm	90 mm

Given the definition of mail as stated above, the *Law* leaves room for private participation and competition in the delivery of postal pieces that fall outside those limits.

Private firms have offered courier services since at least 1987. They deliver envelopes or wrappings that do not fall into the definition of mail. In some cases private postal service providers follow the practice of using bigger envelopes in order to increase their market shares in postal services without violating the Law.

The Law applies to the government agency in charge of providing public postal services (SEPOMEX) and to private operators of related postal services. It is important to point out that private operators are not subject to any sector-specific economic regulation. In addition to the Law, private operators are required to register as service providers before the Federal Consumer Protection Agency.<sup>4</sup>

### *c. The Public Postal Operator*

SEPOMEX was created on 20th August 1986, replacing the General Directorate for Postal Services which had operated within the Ministry of Communications and Transport. The new public entity is a decentralised agency from the Ministry whose purpose is to provide the Public Postal Service. SEPOMEX must also comply with the Law of State-Owned Entities.<sup>5</sup>

SEPOMEX's services cover the provision of the basic service of mail (reception, transport and delivery of letters and postcards), as well as of additional services such as registered mail and charge on delivery (COD). A further service consists of the reception, transport and delivery of packages and express mail (courier). All these services are provided both nationally and internationally. Postal money orders is the only non-postal service provided by SEPOMEX.

SEPOMEX post offices are organised at three levels. The first level corresponds to Postal Administrations, which are post offices that provide all postal services and have the necessary personnel to provide home delivery of mail. The second level is integrated by Subsidiary Post Offices, which provide all postal services but have no home delivery infrastructure. Postal Agencies, at the third level, are run by a hired party to act on behalf of SEPOMEX for the provision of a number of services. These agencies are mainly located in rural areas and small towns. Given the requirements to act as a Postal Agent, the hired parties usually own a commercial venue in the area.

Of all postal pieces handled by SEPOMEX, approximately 63 per cent correspond to public postal services. The provision of these mail services accounts for roughly 55 per cent of SEPOMEX's income.

During 1998 SEPOMEX earned a net income of approximately US\$ 185.9 million. The number of pieces handled in 1997 reached a figure of 1.169 billion, of which 834 million were national envoys. As to international mail, the number of pieces sent was 152 million and the pieces received 182 million. Currently SEPOMEX employs 26,341 persons.

### *d. Regulation of access*

Access to postal services, as defined by the possibility of a private operator to make use of the incumbent operator's infrastructure, is possible under general conditions. SEPOMEX has the obligation to deliver all postal material that complies with the applicable rules. It is a common occurrence for a private operator lacking the capacity to make home deliveries in certain rural areas to resort to SEPOMEX to do so. If the material to be delivered covers the required postage, there is no legal basis for SEPOMEX refusing to provide this support.



As regards access to mailboxes, SEPOMEX has the obligation to process any mail which meets postage requirements. This obligation applies even if such correspondence is deposited in public mailboxes (which belong to the State) by other, private, postal operators. As to private mailboxes (those belonging to homes, offices, etc.) these are considered to be property of the addressees and hence can be accessed by any operator.

Post office boxes constitute an integral part of the Post Offices (owned by the incumbent postal operator). They cannot be accessed by other operators. This feature implies that all correspondence addressed to post office boxes has to be channelled through SEPOMEX.

SEPOMEX must also deliver mail originating in another country but posted in Mexico by some foreign operator, again, if the Mexican postage requirements are met. However, in this case a Mexican sender address is required, so that the mail may be returned in the event of SEPOMEX not being able to deliver it.

### *e. Regulation of Prices*

In accordance with the Law, tariffs and discounts for SEPOMEX's services, including both Public Postal Services and services open to competition, are determined by a Board of Directors integrated by officials of the Ministries of Communications and Transport (whose minister is chairman of the board), Finance, Foreign Affairs and Social Development, among others. The Board meets at least four times a year to examine and, when necessary, modify tariffs. In practice the process of modifying tariffs turns out to be quite complex and usually takes between six months and a year. This regulation and procedure makes SEPOMEX's commercial operations less flexible and affects its competitiveness compared to private operators, who may freely determine their prices.

Discount policy is reviewed by the Board when establishing new tariffs and generally is less flexible than the discount policy applied by private operators.

The price structure of SEPOMEX corresponds to the following services and criteria:

1. Postage: National and international.  
(letters, postcards, CODs, printouts, advertising, periodicals and additional services)
2. Parcel Service: National and international.
3. Courier Service
4. Discounts: Criteria:
  - Volume (starting with 500 pieces)
  - Pre-sorted and pre-paid mail
  - Pre-classified and deposited in a delivery centre

***f. Non-Commercial Service Obligations***

SEPOMEX is obliged to provide universal postal services in the Mexican Territory. Provision of service to rural areas is of course more expensive than provision to cities. But also within city limits there are districts where delivery is costly because of infrastructure problems (especially in the so-called shanty towns). Although there is no specific obligation to do so, the Federal Government has established a policy of maintaining at least one service unit (post office, postal agent, etc.) per municipal jurisdiction throughout the country. The Board of Directors monitors compliance by SEPOMEX with the universal coverage requirements.

In accordance with international treaties, the incumbent operator provides free delivery of literature for the blind. Furthermore, SEPOMEX has the obligation to transport and deliver for free all mail of the Judicial Branch, as well as political propaganda in election times. Private operators are not subject to similar obligations.

In order to support the provision of non-commercial services, SEPOMEX uses its own financial resources. When revenues turn out to be insufficient the Federal Government, through its Ministry of Communications and Transport, must grant a direct subsidy to SEPOMEX. Since 1994, there has only been one requirement for direct subsidisation. This was in 1998, and the subsidy was equivalent to 9 per cent of SEPOMEX's costs during that year.

***g. Controls on Ownership, Lines of Business, Etc.***

The incumbent postal operator is owned by the Mexican State. Foreign ownership of the private postal operators is limited to 49 per cent of their capital stock.

SEPOMEX is not allowed to participate in lines of business other than those specifically established in the 1986 Decree that created it. For example, the incumbent operator cannot participate in telecommunications or financial services, with the exception of postal money orders which are considered a traditional postal service. However, it can and does participate in parcel and courier services.

***h. Other Regulations Exclusive to the Incumbent Operator***

- \* SEPOMEX is the only institution allowed to print and use stamps to acknowledge payment of postage dues, subject to a stamp printing authorisation granted by Presidential Decree. Private operators are not allowed to print stamps.
- \* The Law is very clear regarding the obligation of SEPOMEX to ensure, at all times, the privacy and security of mail. The incumbent operator cannot facilitate information about parties using the mail service. Furthermore, unless mandated by duly justified judicial dispositions, mail cannot be subject to revisions of any sort. Private operators are also required to comply with these principles.
- \* Although there are no specific rules governing the installation of mail collection boxes, in practice only the incumbent operator has such boxes on roads and footpaths. One private operator, Estafeta, has installed mailboxes in some shopping centres. Customers may access them by acquiring pre-paid envelopes from the firm. However, it turned out that customers prefer to go directly to Estafeta's offices rather than buy pre-paid envelopes.

- \* SEPOMEX is subject to the same tax treatment as any other firm. Even when in the past it was exempted from local taxes, it has been facing the same fiscal treatment as anyone else for several years now.
- \* One characteristic that distinguishes SEPOMEX from the other operators is the fact that in the eventuality of a civil or criminal liability, charges would be of a federal nature, as its legal status is that of a decentralised public organ.
- \* SEPOMEX's vehicles receive the same treatment as those belonging to private operators.

### ***i. International Exchange of Mail***

The international exchange of mail is regulated by the Universal Postal Convention, which consists of a Multilateral Treaty reached within the Universal Postal Union.

The Universal Postal Convention considers the possibility of making additional bilateral agreements, as long as their objective is to improve service to customers. SEPOMEX has reached a number of agreements with its main trading partner, the United States Postal Service (USPS) regarding, basically, postal money orders and direct access (express mail).

Terminal dues are calculated in accordance to the Universal Postal Convention applying a universal rate for every kilogram of mail received. In the case of Mexico, the net income received from terminal dues in 1997 amounted to US\$ 11.3 million.

Foreign postal operators may have direct access (express mail) to SEPOMEX's mail system once a bilateral agreement has been reached. Currently, only one such agreement has been reached with the USPS. Direct access is often more attractive for foreign operators since Mexican national tariffs are mostly lower than the international terminal dues.

## **II. Regulatory Institutions And Market Structure**

### ***a. Regulatory Institutions***

The regulatory and policy-making decisions are made by the Ministry of Communications and Transport. The Underministry for Communications, defines conducts and monitors policy-making. Under this framework the General Directorate for Telecommunications is in charge of regulation.

As mentioned above, SEPOMEX is a decentralised public agency with its own legal status and budget allocation. The Ministry does not intervene in SEPOMEX's operation and its relationship to the incumbent is limited through SEPOMEX's Board of Directors.

### ***b. Overview of Market Structure***

Although Public Postal Services are exclusively provided by SEPOMEX, there are other operators who compete in the relevant market. There are no reliable statistics, however a postal market research conducted by a private consulting firm found that in 1997, SEPOMEX accounted for merely 60 per cent of the postal services. Just two years earlier SEPOMEX had a 75 per cent market share, indicating that it is quickly losing ground.

There are more than 4,000 private firms operating in the postal sector. These vary from big international firms to small local operators. The most important ones are:

Airborne Express; Multipack (TNT); UPS; Federal Express; Estrella Blanca; Aero Flash; DHL; Estafeta; World Courier; Pegaso Express; CMM; Pakmail; Omnibus de México; Codex; Mensajería Especializada; Trans-Express; Vitesse; Redpack; and OCS. Most of these firms are wholly Mexican owned. Some are 49 per cent owned by multinational companies. Most of them participate both in the market for cargo and courier services.

The national market for courier services—which do not fall under the scope of Public Postal Service—is dominated by a few firms:

<b>Firm</b>	<b>Market Share %</b>
Estafeta	25
DHL	20
Multipack (TNT)	20
FedEx	10
UPS	10
Mexpost (SEPOMEX)	6
Others	9
<b>TOTAL</b>	<b>100</b>

It is important to point out that demand for personal mail has diminished significantly due to competition of fax and e-mail. However, there remains an important and growing market for commercial mail, such as publicity and billing.

### III. Key Competition Issues

According to the Constitution and to the Mexican Competition Law (the Federal Law of Economic Competition, FLEC) public postal services do not constitute a monopoly. Therefore, SEPOMEX's status as the only legal provider of mail services cannot be challenged under the FLEC. However, SEPOMEX is subject to the monopolistic practice prohibition provided in the FLEC.

In the event of either SEPOMEX or a private operator engaging in monopolistic practices, as defined by the FLEC, the Federal Competition Commission (FCC)<sup>6</sup> would be in charge of investigating and sanctioning such behaviour.

The FCC has not yet handled any cases (mergers, monopolistic practices) in the postal sector. Therefore, issues such as market definition have not been treated.

### IV. Effects Of Postal Reform

Since the creation of SEPOMEX in 1986 the provision of Public Postal Services has undergone major changes. Main effects of the reform are the following:

- a) Prices: Although price decisions are not sufficiently flexible to adjust to changing market conditions, a significant improvement resulted from abandoning the previous system of

including tariffs and duties in the federal budget, which is subject to yearly approval by Congress.

- b) New participants: An important number of private firms were allowed to enter the postal sector, fostering competition in most services.
- c) Productivity: The new administrative status of the public operator facilitated the introduction of new technologies and management techniques. Thanks to these developments productivity increased as measured by the number of pieces handled per employee: from 24,108 in 1986 to 43,839 in 1997 (an increase of 82 per cent).
- d) Innovation: New products, such as courier service, and new business marketing, such as discount policies based on consumer preferences and pick-up at home, were introduced.
- e) Profitability: Until 1986, the State's provision of postal services used to run 30 per cent deficits each year. Between 1994 and 1997 there were positive incomes of around 5 per cent, but in 1998 there was a deficit of 9 per cent.

**NOTES**

- 1 Constitución Política de los Estados Unidos Mexicanos. Article 28.
- 2 Ley del Servicio Postal Mexicano.
- 3 The Law, article 1.
- 4 Procuraduría Federal del Consumidor.
- 5 Ley de Entidades Paraestatales.
- 6 Comisión Federal de Competencia.

## NEW ZEALAND

### I. Key Regulatory Issues

There are four key elements to the regulation of postal services in New Zealand, viz.

- (i) *The Postal Services Act 1998* which came into effect on 1 April 1998 permits competition in the standard letter market and governs the registration and activities of postal operators.
- (ii) *The Commerce Act 1986* is New Zealand's general competition statute which governs competition policy across all sectors, including the postal services sector.
- (iii) *The Postal Services (Information Disclosure) Regulations 1998* require New Zealand Post Limited (the incumbent postal operator) to disclose information related to pricing, discounting, access agreements and service quality on a regular basis.
- (iv) *The Deed of Understanding* is an agreement between the Crown and New Zealand Post Limited setting out the company's social obligations, including minimum numbers of delivery points and postal outlets, minimum frequencies of delivery, and the provision of access to other postal operators.

All parts of the New Zealand postal services market are now open to full competition. Competitors are free to engage in any or all segments of the postal pipeline.

100 per cent of New Zealand Post's business is open to full competition. Before the introduction of competition on 1 April 1998, 55 per cent of New Zealand Post's profit was generated from the protected letter market.

There are no 'licensing' requirements as such, although any person or company wishing to carry addressed mail for less than 80 cents (including Goods and Services Tax) must be *registered* with the Ministry of Commerce. In general, no service or quality conditions are imposed on operators. Some service obligations are placed on New Zealand Post, but this is through the Deed of Understanding, rather than as a condition of registration.

The Deed of Understanding between New Zealand Post Limited and the Crown specifies that the company will offer postal operators access to its network on terms and conditions at least as favourable as those offered to equivalent customers. In the event that operators cannot agree on access terms, the matter would be subject to the Commerce Act - New Zealand's general competition statute.

Only New Zealand Post's standard letter price is subject to a transitional price cap. The current price is 40 cents, and the cap is set at 45 cents until February 2001. New Zealand Post is free to determine all other prices as it sees fit. There are no restrictions on the pricing offered by independent postal operators.

There are no specific regulations limiting New Zealand Post's ability to discount or discriminate between different classes of buyer, although clause 17 of the Deed of Understanding between the company and the Crown provides that:

New Zealand Post shall provide access to its postal network to other postal operators on terms and conditions that are no less favourable than those offered to customers in the same circumstances, where the postal operator concerned is able to meet the requirements of the particular service offer. This clause does not preclude New Zealand Post from negotiating particular arrangements with individual customers or postal operators. The terms of access will also be subject to any relevant provisions contained in the Commerce Act or any other relevant legislation.

New Zealand Post's social obligations are set out in the Deed of Understanding between the company and the Crown. It is required to:

- (i) provide six day per week deliveries to more than 95 per cent of delivery points;
- (ii) provide five or six day a week deliveries to more than 99.88 per cent of delivery points;
- (iii) provide one to four day a week deliveries to the remainder of delivery points;
- (iv) maintain at least the following minimum numbers of delivery points:

	Delivery points	6 day a week delivery	5 day a week delivery	1-4 day a week delivery
Residential	1 088 617	1 086 499	2 117	1
Business	51 673	39 654	12 011	8
Farmers' private boxes	6 451	5 175	1 276	0
Businesses'/ individuals' private boxes	168 752	142 609	25 808	335
Counter and community mail boxes	18 387	11 132	6 960	295
Rural delivery points	130 058	118 359	11 140	559
<b>TOTAL:</b>	<b>1 463 938</b>	<b>1 403 428</b>	<b>59 312</b>	<b>1 198</b>

Note: New Zealand has a population of approximately 3.6 million people.

- (v) maintain at least 240 postal outlets (full service 'post offices'); and
- (vi) provide access to its postal network to other postal operators on terms and conditions that are no less favourable than those offered to equivalent customers.



The social obligations were determined by negotiation between the Government and the company and formalised in the Deed of Understanding. The Postal Services (Information Disclosure) Regulations 1998 allow the company's compliance with the Deed of Understanding to be monitored, by requiring the company to disclose the number of delivery points and postal outlets, standard terms and conditions and discounting arrangements.

The cost of the social obligations has not been made explicit. New Zealand Post has agreed to the obligations on the basis that it will be the sole operator designated as a 'postal administration' within the Universal Postal Union for a transitional period of five years. The Government has agreed that if it were to designate a second operator after that transition period, it would review the terms of the Deed.

The costs of the social obligations are met by New Zealand Post.

There are no regulatory restrictions on New Zealand Post's business activities, other than those explicit in the Commerce Act, New Zealand's general competition law. The company is required to disclose separately in its general accounts, its revenues and earnings from the part of its business that was formerly subject to a statutory monopoly, however. There are no restrictions on foreign ownership in the postal sector (although New Zealand Post remains Government owned), nor are there line of business restrictions on the company.

In general, New Zealand Post Limited is subject to the same regulatory treatment as competing operators. The sole exception is that for a transitional period (until 1 April 2003) New Zealand Post Limited has a right to be designated exclusively as New Zealand's operator for Universal Postal Union purposes (although the flow of international mail itself is open to full competition). After 2003, the Government may choose to designate one or more UPU operators instead of, or in addition to, New Zealand Post.

- (a) Any operator may print postage stamps. However, no operator other than a designated UPU operator may use the words 'New Zealand' or any abbreviation of those words, unless the words form part of the company's name.
- (b) The Postal Services Act contains a number of provisions permitting postal operators to open suspicious or undeliverable mail. Where items are found to have been posted illegally, operators are required to pass these to the appropriate government authority. Operators are required to keep records of such items. These provisions apply equally to New Zealand Post Limited and competing operators. The Act also makes it an offence to post dangerous enclosures, objectionable things et al.
- (c) Subject to certain conditions, any postal operator may erect and maintain mail collection boxes in any road, street, reserve or public place. These rights apply equally to New Zealand Post Limited and its competitors.
- (d) Aside from its transitional UPU designation, New Zealand Post has no special rights that are not shared with its competitors.

New Zealand is a member of the Universal Postal Union and the Asian Pacific Postal Union. In addition, New Zealand Post has a number of bilateral arrangements with other postal operators. Competing operators are free to deliver incoming international mail and to despatch outgoing international mail services by bilateral arrangements with overseas postal administrations outside the UPU framework, or using private operators such as TNT.

## II. Regulatory Institutions and Market Structure

The Ministry of Commerce is responsible for administering the Postal Services Act and advising the Minister of Communications on postal policy matters. The Ministry and Minister are fully independent of the incumbent operator.

New Zealand Post Limited, the incumbent operator, is a state-owned enterprise. It is a commercial company incorporated under general company law. While the company is owned by the Crown, the Crown's ownership interests in the company are the responsibility of the Minister of State Owned Enterprises and the Minister of Finance. These ministers are advised by the Crown Company Monitoring Advisory Unit (CCMAU). CCMAU is a government department independent of the Ministry of Commerce. The management of the company is akin to that of a private sector company. Day to day management is the responsibility of the Chief Executive, who reports to the company's Board of Directors. Employees of New Zealand Post Limited are not civil servants: their status is the same as employees in the private sector.

New Zealand Post Limited offers a full range of lettermail, parcel and courier services. It also offers agency services (such as bill payment services, and bank deposit services on behalf of other companies over the counter at its postal outlets). The company does not offer its own financial services.<sup>1</sup> It is free to enter new lines of business. The company is free to set all its own prices, aside from the standard letter price, which is subject to a transitional price cap for a period of three years.

New Zealand Post offers two domestic letter services: *Standard Post* with a next day delivery target across town, or within 2-3 days nationwide, and *Fast Post*, with a next day delivery target nationwide. For letters, pricing is determined by size. Medium Envelopes (120 mm x 235 mm) attract a charge of 40 cents (Standard Post) or 80 cents (Fast Post). Sending an Extra Large Envelope (anything larger than Medium) costs 80 cents (Standard Post) or \$1.20 (Fast Post). Parcel prices are determined by weight.

For the year ended 31 March 1998, the company carried 830 million Standard Post letters and 13.8 million Fast Post letters. It had a turnover of NZD 706 million and employed approximately 8,000 people.

The key private firms operating in the postal sector include:

- (i) Fastway Post: a division of the Hawke's Bay-based Fastway Couriers service. It offers standard letter services (using its own delivery services and those of New Zealand Post) as well as parcel and courier services. It has established around 50 retail outlets and plans to establish around 400 over the next few months.
- (ii) New Zealand Document Exchange: a provider of document exchange services, NZDX has over 10,000 members and claims an overnight on-time delivery rate of over 99 per cent. Since the deregulation of the postal market, DX has expanded into providing street delivery services within business areas in major centres. DX expects to carry around 12 million items during the current financial year.
- (iii) National Mail: plans to roll out a national network of street delivery agents.

(iv) The Freightways Group of companies has extensive interests in the courier market, including New Zealand Couriers, Post Haste Couriers and New Zealand Document Exchange.

(v) Other courier firms, such as DHL, TNT, and Federal Express are also present in New Zealand.

### **III. Key Competition Issues**

New Zealand's competition law is the Commerce Act 1986. It applies to all parts of the postal sector without exception. The Commerce Act is administered by the Commerce Commission, an independent statutory agency (not to be confused with the separate Ministry of Commerce, which administers the Postal Services Act).

No competition cases have yet arisen in the postal sector.

Prior to liberalisation, there were from time to time informal complaints about alleged cross-subsidisation from the reserved area, but no formal complaints were ever lodged and no evidence was ever provided to support the allegations.

Since the complete liberalisation of the postal market, some concern has been expressed over the prices New Zealand Post charges its competitors for access to post office boxes, although no evidence has been brought forward to suggest that the company is misusing its dominant position.

### **IV. Effects of postal reform**

Since competition in postal services was permitted, 19 companies or individuals have registered as postal operators. One operator has subsequently decided not to enter the market and has cancelled his registration. Of the 18 remaining operators, there is a wide variety in those providing services. They range from one person operations in small towns to more substantial regional or national operations. Prices charged by competing operators range between 20-40 cents (New Zealand Post's standard charge is 40 cents). No definitive data on volumes or service standards are available, although New Zealand Document Exchange Limited, the biggest competitor, claims an unaudited overnight delivery standard of more than 99 per cent.

Since the Government announced its intention to permit competition in the standard letter market, New Zealand Post Limited has improved its services in a number of ways, including:

- Post Shops are now open longer hours and on Saturday mornings;
- the company offers special prices on overseas and Christmas mail;
- in conjunction with a local afternoon newspaper, New Zealand Post is trialling a second daily delivery service in a rural delivery area; and
- New Zealand Post is trialling a secure letterbox service.

No data are available on volumes delivered by competing operators, or on employment in the sector as a whole, although employment levels have probably risen overall as a result of competition. As competition has been permitted only since 1 April 1998, it is too early to gauge productivity levels, or the profitability of operators.

## NORWAY

### I. Key Regulatory Issues

#### *Key regulation*

The key legislation in the Norwegian postal sector is Act no. 73 of 29 November 1996 relating to the provision of universal postal services<sup>2</sup>. The Act came into force 1 July 1997. Section 2 of the law states; “The purpose of the Act is to ensure the provision of good-quality, universal services at a reasonable price.” The Act is supplemented with General Regulations (in force 1 July 1997) and the incumbent operator's license (as of 1 October 1997) both set by the Ministry of Transport and Communications.

#### *Regulation of Entry and Licensing*

The reserved postal service is determined by a weight limit of 350 grams and a price limit of five times the public tariff for a closed, addressed letter in the first weight step (20 grams) of the fastest standard category. The reserved area is narrower than the equivalent in Directive 97/67/EC due to the “closed” criterion<sup>3</sup>, which means that distribution of postcards, open direct mail etc in addition to the distribution of all other postal items outside the reserved area are open to competition.

Outside the reserved area, competitors are allowed to engage in collection, sorting, the transportation of and the final delivery of mail. The legislation foresees in principle equal access for all users, including competitors, to the same delivery points in the incumbent's logistical chain as the incumbent's own services (i.e. own services competing in non-reserved postal services).

Competitors have e.g., the same access to post office boxes as other users i.e. ordinary tariffs ought to be paid even if the item is delivered at the same post office as the addressee's post office box. Ordinary mailboxes are the addressees' property and access is therefore in principle decided by the owner. In general all mailboxes outside apartment buildings are open to everybody. Access to mailboxes in apartment buildings is constrained by access to the buildings in question. Such access is decided by the owner. Access to apartment buildings is normally given only to the incumbent postal operator and newspaper distributors. Distributors of un-addressed mail (bulk mail) i.e. different types of advertising material have questioned this practice. Other distributors of addressed mail, e.g., distributors of express mail appear not to experience problems regarding access. Such distributors usually need a signature to prove the delivery of the mail. They must therefore gain access through direct personal contact with the addressee by doorbell, internal phone etc.

Reserved postal services account for approximately 40-60 per cent of the incumbent operator's business depending on how the operators business” is defined. (Figures for the entire postal sector are not available). The Norwegian Post and Telecommunications Authority is responsible for enforcing the prohibition on entry in the area reserved for Norway Post. The regulatory authorities have not been required to take any active steps to enforce the prohibition recently.

There are no licensing requirements for services open to competition. All postal operators must however fulfil the general requirements of the Postal Services Act. They are e.g. obliged to have a system for handling undeliverable mail, cover loss, damage and to some extent delay for registered mail and ensure that requirements of confidentiality are met. Furthermore, it is required that postal operators with economic activities of a certain significance, register with the Norwegian Post and Telecommunications Authority.

#### *Regulation of Access*

For general comments on “interconnection” or “access”, see 1.2. The idea of universal service obligations is to provide all users throughout the country with postal services of a certain minimum standard. The principles of open network provisions (known as ONP from the telecommunications sector) i.e. equal access on conditions which are transparent and non-discriminatory for all users, including competitors, is laid down in legislation specific to the postal sector.

With regard to disputes concerning terms and conditions for access to the postal network, between the incumbent operator and another party, there is a normal complaint procedure. The procedure implies a first step where the Norwegian Post and Telecommunications handles the case and make a decision. This decision may be brought forward either to the Ministry of Transport and Communications or to the Ministry of Labour and Government Administration depending on the question under consideration.

#### *Regulation of prices*

The prices for first class letters (the fastest standard category) are to be approved by the Ministry of Transport and Communications (reserved area). Currently, the rates for some of the letters which for reasons of weight, price or other reasons do not belong to the reserved area, are also approved by the Ministry. The Ministry has recently proposed to limit the system of ministerial approval of prices to those of services within the reserved area. For other postal services, i.e. services which are open to competition, there are no price ceilings or price floors.

The Government has proposed to the Parliament, that the prices for all universal services which are offered by the incumbent operator must be geared to cost. The incumbent operator is on the other hand allowed to set the prices of other services freely. There are no particular sectoral restrictions regarding the pricing policies of other postal operators.

The incumbent operator has historically, e.g., for political reasons, applied a system of nation-wide unified rates. There are however, currently, no formal restrictions concerning geographically differentiated pricing of universal services. The rates for e.g., unaddressed mail and priority mail between 1 kg and 2 kg are geographically differentiated.

The postal regulations enable the incumbent operator to offer individual rebates to customers. Discounts are granted for bulk mail, pre-sorted mail etc. due to the incumbent operator's cost savings by a user's direct delivery at the sorting terminal, different levels of pre-sorting etc. The general principle of equal access for all users to universal services in the postal regulation, implies that the incumbent operator is not allowed to discriminate between users by applying different rates to classes of customers demanding the same service. Therefore, it is irrelevant whether the sender of e.g. bulk mail is a consumer, a private company, the incumbent's own subsidiary or a competitor. The same cost saving activity by the user should give the same discount.

The Norwegian Government is at present undertaking the necessary steps to implement Directive 97/67/EC. The Directive foresees that objective and transparent criteria for equal access to the postal network are to be established. Such criteria are not contained in the current legislative framework. The Norwegian Competition Authority (NCA) considers that the introduction of objective criteria would strengthen and ensure users' rights to equal access to the postal network and promote competition on equal terms.

#### *Non-Commercial Service Obligations*

According to the Postal Services Act and the incumbent operator's license, the operator is subject to provide universal services below cost in some rural areas, to distribute first class mail six days a week, to deliver literature for the blind up to 7 kilograms free of charge and to provide certain postal services related to emergency preparedness. The incumbent operator, Norway Post, is required to report annually to the Norwegian Post and Telecommunications Authority on how the obligations have been met.

The cost of non-commercial service obligations has been calculated since 1993 and different methods for calculation have been developed and used since then. Most recently the "avoidable cost" method has been used. No other companies have so far had the opportunity to compete for being providers of services with such obligations, nor have other companies sought to carry out such obligations or claimed compensation for doing so.

#### *Controls on Ownership, Lines of Business, Etc.*

Non-commercial obligations are financed partly by other customers (profit from the reserved area) and partly by direct financial compensation from the State. Such direct subsidies amounted to MNOK 580 (approx. 67 mill. EUR or 5 per cent of Norway Post's total revenue) last year. According to the Postal Services Act, other operators may be obliged to contribute to financing the provision of universal services. However, this question has so far not been looked into.

Cross-subsidisation from reserved to non-reserved services within Norway Post is explicitly prohibited in the incumbent's license. Certain specific arrangements have been introduced in order to ensure that the prohibition is respected. Specific accounting rules which foresee e.g., separate accounts for respectively reserved and non-reserved services have been imposed on Norway Post. Specific annual reporting obligations towards the the Ministry of Transport and Communications have also been introduced. In order to improve the control on both possible cross-subsidisation and the rule that the tariffs for universal services have to be geared to costs, a more detailed regulation on accounting separation will be introduced in the course of 1999.

Norway Post is owned 100 per cent by the Norwegian State and according to the company's bylaws their purpose is to offer postal services and other activities related to this. In addition the company shall offer different universal services (specified in their licence) and offer basic services on behalf of the Post (Office Savings) Bank<sup>3</sup>.

#### *Miscellaneous Issues*

The general idea behind the postal reform in Norway is to create a level playing field for all postal operators and at the same time ensure the provision of a minimum level of universal services throughout the national territory. With its 350 years history, Norway Post has been the only operator able to fulfil the universal service obligations. Certain rights (generally reserved services and government compensation for non-commercial services) are therefore balanced with these obligations.

- a) Norway Post is the only operator given the right to print stamps that include the name of the country (Postal Services Act section 7).
- b) Paragraph 13 of the Postal Services Act contains provisions on professional secrecy which apply to all operators of postal services.
- c) Due to the universal service obligations, the Ministry of Transport and Communications may oblige different transport companies to convey postal items on behalf of Norway Post (section 16). Norway Post may also when considered necessary to achieve an efficient delivery of mail, require mailboxes to be placed on another person's property (section 14).
- d) The distribution of ordinary mail, i.e. in general the universal services offered by Norway Post are exempted from value added tax.

Other traces of Norway Post's long history as a Government department still exist. The company's status was changed to that of a State limited company on 1 December 1996. The minor differences between the treatment of Norway Post and private companies, are not always economically beneficial for Norway Post, ref. e.g., point 2.2. below. In general the Norwegian postal market outside the reserved area is open without discrimination to both national and foreign postal operators.

The responsibility for fulfilling rights and obligations stemming from the Universal Postal Union's Convention are put on Norway Post as the universal service provider. The authorities are not involved in other postal operators' international exchange of mail. All distribution of cross-border mail must comply with the same rules and regulations that are in effect for national mail, (see 1.4. above). Apart from the Universal Postal Union (UPU), Norway is not a party to any other multilateral or bilateral arrangements for the international exchange of mail. Possible arrangements agreed by the incumbent and other operators have not been reported to the regulatory authorities.

The UPU terminal dues system consists mainly of a fixed rate of 3,427 SDR per kilogram of mail, calculated on the basis of an average of 17,26 items per kilogram. For mail flows in excess of 150 tonnes per year, there is a revision mechanism if the number of items per kilogram is greater than 21 or less than 14.

For bulk mail, defined as more than 1500 items from the same sender over a 2-weeks period, the destination administration may choose between several possibilities.

The UPU terminal dues are far lower than the costs for most industrialised countries and in many cases higher than the costs for developing countries. The principle motivation for developing the bulk mail option (1994) was to reflect better the costs incurred in delivering this mail.

The terminal dues system of UPU is no hindrance for member countries to enter into bilateral or multilateral agreements. 12 European postal operators (from EU/EEA-countries) have signed an agreement ("REIMS II") allowing these operators to increase their terminal dues to a maximum of 80 per cent of domestic tariffs for priority mail, as long as a certain quality is met. Reduced rates apply to other mail. The REIMS II system has in many ways been modelled after an existing agreement between the incumbent operators of the Nordic countries. The aim of REIMS II is to establish a system which reflects the actual costs of delivering mail in Europe more accurately.



The European Commission published a notice in December 1998 stating that it intends to authorise the REIMS II agreement under the Competition rules of the EC Treaty and the European Economic Area (EEA) Agreement.

## **II. Regulatory Institutions and Market Structure**

### *Regulatory Institutions*

The key regulatory and policy-making agency in the postal sector is the Ministry of Transport and Communications. On 1 June 1997 the Norwegian Post and Telecommunications Authority was established as a regulatory authority for the postal sector<sup>4</sup>. Its main task is to supervise the compliance of all postal regulations, and the framework of its activities is laid down in general instructions given by the Ministry. The Ministry also acts as the owner of Norway Post. The Authority is independent of the incumbent operator (and all other operators).

### *Overview of Market Structure*

The incumbent operator changed its legal status from a government department to a 100 per cent state owned company as of 1 December 1996. Norway Post is regulated by a specific act which in certain respects is similar to the act that applies to all private shareholder companies. Norway Post's organisation and management is therefore on one hand, similar to that of a private corporation. On the other hand the legal status of the company's employees is closer to that of a government department.

For detailed information of the range of services provided by Norway Post, revenue, statistics etc. The tariffs are normally differentiated on the basis of weight and to some extent on the basis of distance. During the last few years the price system for parcels has been simplified. The numbers of weight steps have been reduced and larger geographic regions have been introduced. However, this year the uniform tariff for all individual letters was changed. The introduction of a universal service for letters up to 2 kilograms, made it necessary to introduce a local and a national tariff for first class letters between 1 and 2 kilograms<sup>6</sup>.

Due to the broad definition of postal service provision given in the Postal Services Act, almost every company within the transportation sector falls within the scope of the act. There is increasing competition between operators servicing markets in and between most urban areas regarding courier and parcel services. Such services are provided by international courier firms and a whole range of local firms operating partly in co-operation with their international counterparts. Competition in (unaddressed) bulk mail, i.e. the market for distribution of printed advertising material, is also increasing as more private companies and newspaper distributors enter the local markets.

## **III. Key Competition Issues**

### *Application and Enforcement of Competition Law*

The Norwegian Competition Act (Act No 65 of 11 June 1993 relating to Competition in Commercial Activity) applies to any kind of commercial activity. It applies therefore in principle to all economic sectors including postal services. The Act contains a general derogation clause (Section 1-4) referring to that provisions issued pursuant to the Act must not conflict with decisions passed by the Storting (i.e. the Norwegian Parliament). Where a matter covered by the Competition Act also comes

under provisions concerning regulation and supervision in other acts, the King may issue specific provisions for the mutual limitation of jurisdiction of the authorities involved. Such specific provisions have not been issued regarding postal services.

The competition authorities are the King, the Ministry of Labour and Administration and the Norwegian Competition Authority (NCA). The NCA is responsible for the day-to-day supervision in accordance with the Competition Act. The NCA is however administratively subordinate to the Ministry. The Ministry is also appellate body for decisions taken by the NCA.

### ***Market Definition Issues***

The NCA has dealt with issues concerning market definition in a relatively limited number of cases concerning postal services. The product markets in question have concerned un-addressed mail, low priority addressed mail, distribution of newspapers and periodicals, and the distribution of parcels.

The NCA is not aware of any instances where national courts have dealt with such questions.

The circumstances of the cases have not always been such that it has been necessary for the NCA to define the scope of the market in question precisely. Since the NCA has only dealt with a relatively limited number of cases concerning postal services, it would not be correct to draw any general conclusions with reference to the examples presented below.

In certain cases related to the distribution of un-addressed mail and low priority addressed mail, the geographical market has been regarded as nation-wide. In those cases the incumbent operator's activities covered the whole country, while the competitor(s) was (were) active in several local markets simultaneously. In one case related to distribution of newspapers/printed material the geographical market was regarded as local.

Another case concerned a complaint referring to the incumbent's policy of setting one unified nation-wide rate for un-addressed mail. The complainant considered the rate to be higher than the average distribution costs for such mail in the area concerned. The NCA did however not find that it would have been justified to intervene against the incumbent's pricing policy. Among the factors taken into account by the NCA, were the incumbent's high costs associated with serving more sparsely populated areas and the existence of alternative distribution networks for un-addressed mail in more densely populated areas.

In yet another example, the final demand for the products to be distributed was local. Furthermore, alternative local distribution channels, i.e. other suppliers than the incumbent operator were identified.

In an acquisition case where the incumbent operator took over a competing company engaged in the distribution of un-addressed direct mail, the NCA examined the potential competitor's market shares on a nation-wide basis. As a part of the analysis, a distinction was made between market-shares in respectively urban and in sparsely populated areas.

### ***Abuse of Dominance***

The NCA has dealt with several cases concerning alleged abuse of a dominant position. One case of alleged abuse of a dominant position concerning the market for distribution of parcels is currently pending with the EFTA Surveillance Authority.

In cases concerning alleged abuse of a dominant position dealt with by the NCA, there have been issues or allegations related to;

- pricing policy and rebates,
- loyalty provisions and tie-ins,
- cross-subsidies and
- other competitive advantages allegedly favouring the incumbent concerning e.g., tax treatment and priority access to ferries.

The incumbent's concession contains several requirements that have been introduced in order to eliminate possible cross-subsidisation. The concession contains a general prohibition against cross-subsidisation (between reserved and non-reserved activities) and a requirement to prepare separate product based cost accounts. It is also required to present other documentation in order to enable monitoring of the prohibition. Since 1997 the incumbent operator has been required to prepare separate accounts for respectively, reserved and non-reserved activities.

The incumbent, Norway Post, has on one hand been compelled to establish cost-based product accounts. On the other hand, the rules on how such product accounts should be kept for postal services are not very specific. The incumbent operator's existing accounting system is currently under revision. The regulatory authorities foresee that an up-dated accounting system will be similar to the one established for telecommunication services. The regulatory authorities' experience with product based accounting is however still limited. The NCA can therefore not exclude that cross-subsidies may still be a problem of an anti-competitive nature.

#### *Other Competition Enforcement Issues*

The NCA has finalised its examination of one acquisition case related to postal services. The case concerned an acquisition by Norway Post of a competitor engaged in services related to un-addressed mail which was approved on strict conditions. The incumbent, Norway Post, was e.g., disallowed to integrate the acquisition into its existing business. The incumbent was also prohibited from allowing the acquired company to receive specific advantages from its new owner. A relatively detailed market analysis was carried out as part of the NCA's examination. Market information was requested from both the incumbent and from competing operators.

#### **IV. Effects of Postal Reform**

The reforms affecting the postal sector in Norway have taken place relatively recently. The issues involved have, generally speaking, mostly been relevant for the incumbent operator<sup>7</sup>. The implications for the incumbent operator concern first and foremost its possibilities to limit the costs in the network while maintaining the required "service level".

Keeping in mind other restructuring measures taking place, notably plans for closing down more than 60 per cent of the post offices during a period of 3 years, it is a great challenge for the incumbent operator to keep the "service level" i.e. the access to the universal services and maintain the quality of its services. Norway Post has met this challenge by establishing a better coverage of rural delivery routes and several hundred new contract post offices mostly in regions where Norway Post's own offices were closed down. According to the study of the "service report"<sup>8</sup> the Norwegian Post and Telecommunications Authority has not found that the service level *in general* has been reduced, although some of the quality indicators have changed negatively or their values could not be verified.

As mentioned above, reliable statistics for the postal sector as a whole are not available . However, detailed statistics of Norway Post's activities can be found in Norway Post's Annual Report or on its homepage on the internet (<http://www.posten.no>).

## NOTES

- 1 The New Zealand Post Office, the government department which existed prior to the creation of New Zealand Post Limited, provided banking and telecommunications services in addition to postal services. In 1987, the Post Office was split into three separate companies, with the banking and telecommunications companies later being sold to private owners.
- 2 Universal services include the distribution i.e. collection, sorting, transport and delivery of letters, newspapers, subscription magazines up to 1 kg (recently proposed to be increased to 2 kg) and postal parcels up to 25 kilograms (recently proposed to be reduced to 20 kilograms).
- 3 According to Directive 97/67EC books, catalogues, newspapers and periodicals also have to be exempted from the reserved area even if they are wrapped up and sealed, addressed, weigh less than 350 grams and cost less than five times the tariff of an ordinary first class letter.
- 3 The bank is wholly owned directly by the State i.e. not a subsidiary of Norway Post as it was until 1996.
- 4 The Norwegian Telecommunications Authority was established in 1987.
- 6 The uniform tariff is kept for all other individual letters.
- 7 Although the new Postal Services Act led to a more narrow reserved area for the incumbent operator, no new entry has so far been registered due to this change
- 8 Norway Post as the universal service provider, has to forward such a report to the Authority annually.

## POLAND

### I. Key Regulatory Issues

#### *Key Regulations*

(1.1) The postal services sector is governed by the Act on Communication dated 23 November 1990 (1995 Official Journal of Laws No. 117 item 564, the subsequent amendments included). The Act governs the principles related to communication activities - the post and telecommunications. It determines, among other things, the principles of postal services performance, the supervision exercised over the activity, and the entities' responsibility for rendering the services.

In addition to this Act, the scope of the services subject to licensing is determined by the Act on Economic Activities of 23 December 1998 (Official Journal of Laws No. 41 item 324, the subsequent amendments included).

The conditions regulating universal postal services are set forth in another important administrative act, the ordinance of the Minister of Posts and Telecommunications dated 15 March 1996 (Official Journal of Laws No. 40 item 173). The ordinance sets out in detail the principles for rendering those postal services which are defined by the Act on Communication as universal services as well as other principles related to the services such as complaints proceedings, size of letter-post items, exemptions from fees, etc.

A new Postal Law (a draft of which has already been drawn up) is being prepared; the new Act will regulate postal services only.

#### *Regulation of Entry and Licensing*

(1.2) To begin with, it should be pointed out that there is in Poland no division between the addressed unsorted letters market and that of addressed pre-sorted letters.

The substantial concept present in the Polish Law is the one related to universal postal services. The concept denotes, according to the Act on Communication (Art. 2 item 1 section 1), the receipt, transport and delivery of ordinary and registered letters both in the domestic and foreign traffic - these are letters, postcards and printed matter, except for unaddressed printed matter and questionnaires, with weight amounting to 2000g, insured letters of weight no higher than 2000g and postal parcels (the transport of goods through the public operator's network) as well as posting and delivery of postal orders. The other postal services are defined as non-universal services.

The importance of the division is based, first of all, on the fact that the dominant operator is under an obligation to provide universal services, i.e. he cannot refuse rendering them.

The markets for unaddressed printed matter, questionnaires and parcels are unregulated. Competitors may complete all service phases simultaneously; there is no division with respect to the competitors' activity into particular stages of receipt, transport and delivery. The competitors of the

dominant operator have no access to letter-boxes, post-office boxes or letter-boxes in blocks of flats since they are a property of the Polish Post.

A licence is required for the provision of courier services and universal postal services in the domestic and foreign traffic with regard to letters and insured letters the weight of which exceeds 2000 g.

In view of the existing competition (actual and potential), one may distinguish the following postal services markets:

- The market comprising universal services the performance of which has been exclusively reserved for the Polish Post. The reserved services consist in receipt, transport and delivery of letter-post items within the domestic and foreign traffic, except for unaddressed printed matter and questionnaires, no heavier than 2000 g, insured letters up to 2000 g, postal parcels and posting and delivery of postal orders (Art. 3 item 3 of the Act on Communication). The Polish Post is a legal monopoly as far as the provision of these services is concerned.
- The market for universal postal services consisting in receipt, transport and delivery, in the domestic and foreign traffic, of letter-post items weighing over 2000 g and insured letters over 2000 g. The services may be rendered by other entrepreneurs after they have been granted a licence; actually they are provided by the incumbent operator. Similarly, some non-universal services such as e.g. rental of post-office boxes and postal pigeon holes are rendered by the public operator although there are some legal possibilities for other entrepreneurs to provide them.
- The market for services rendered under competitive conditions comprising, on the one hand, non-universal courier express services and consisting in paid, quickened transport and delivery of letter-post items within a guaranteed time-limit and, on the other hand, receipt, transport and delivery of unaddressed printed matter and questionnaires, and the other services of non-universal character, e.g. delivery of press under subscription. Regarding the three groups of services, it is only the courier service that requires a licence.

The type of service is a criterion for determining the limits of the postal market segment open to the competition.

(1.3) The access to the postal market is determined by the Act on Communication dated 23 November 1990. According to the regulations of the Act, the Minister of Posts and Telecommunications grants licences for the provision of postal services that are subject to the licence obligation. The present limitations on the access to postal services have been in place since 6 July 1995.

The fully competitive market without any limitations (without licensing) makes only a small part of the entire market; it is difficult however to present data, percentages, etc. Receipts obtained from the services reserved for the public operator make about 73.3 per cent of receipts from the whole activity of the enterprise.

All limitations of the access to the postal services are imposed by the Parliament based upon acts enacted by it. No limitations have been introduced lately and, what is more, the draft of the Postal Law provides for a larger liberalisation of the postal services provision.

(1.4) Licences are granted by the Minister of Posts and Telecommunications. They are granted with a fixed time-limit, the majority of them being issued for ten years.

No licence is required for the receipt, transport and delivery of unaddressed printed matter and questionnaires.

One should obtain a licence for courier express services and universal postal services rendered in the domestic and foreign traffic in the area of letter-post items the weight of which exceeds 2000g and insured letters exceeding 2000g.

The conditions on licenses are determined by the Act on Communication and are of non-discriminating character. Every entity that can guarantee rendering of a postal service included in the licensing area may apply, according to regulations, for a licence. The principle also applies to foreign entities or entities with a foreign capital participation. The granting of the postal licence does not depend on a property guarantee of third persons' claims. There is no tender procedure either.

#### *Regulation of Access*

(1.5) Under the present conditions, there are no entities on the market the activity of which would be dependant on the dominant postal operator.

The public postal operator the Polish Post is under no obligation to render its network accessible, including access to letter-boxes.

The Act on Communication does not provide for a mediation or arbitration procedure if two parties cannot reach agreement about the market access conditions. The Act does not impose the market access limitations on any entity if it meets the requirements specified by the law. The only criterion of restrictions on the postal services market access is the type of the services rendered (please see section 1.2).

#### *Regulation of Prices*

(1.6) The level and forms of fees for postal services are determined by the Director of the Polish Post (Art. 43 of the Act on Communication). The right bestowed to the Council of Ministers to determine the maximum fees for universal postal services and for the transport of letter-post items performed by carriage firms is a certain form of control. The Council of Ministers have not yet availed themselves of the right. The level of fees for international universal postal services is determined in consultation with the Minister of Posts and Telecommunications.

Price control does not apply to the other operators.

The prices for services rendered by the dominant operator are furthermore subject to control exercised under the competition law. These controls apply only to those services that are rendered in monopolised markets or in such markets where the share of the dominant operator is bigger than 40 per cent.

One form of monopolistic practice is the charging of exorbitant prices. The concept has not been precisely determined in the Act on Counteracting Monopolistic Practices and it is therefore the President of the Office for Competition and Consumer Protection that can consider a price to be an exorbitant one.

The appraisal may be verified by the Antimonopoly Court. Most frequently, the examination of such cases consists in the comparison of prices charged by foreign operators, the analysis of profitability of the given service (the operator's profit), the justification of an increase, and the actual rise in prices.

(1.7) There are no specific regulations (besides the competition law) that would apply to prices used by the dominant operator, discounts granted by it, e.g. for bulk mail, pre-sorted mail, etc., discrimination among various classes of buyers. The public operator is at liberty to determine discounts within its powers in order to determine prices of postal services by himself. There are no price ceilings set forth by Polish legislation with respect to postal services.

#### *Non-Commercial Service Obligations*

(1.8) The public operator is under an obligation to provide universal postal services on the entire territory of the country, the accessibility condition being maintained, irrespective of costs - in practice, it is confined to the requirement to keep unprofitable post offices in rural areas (Art. 3 item 1 section 1 of the Act on Communication; Art. 1 item 1 section 1 of the Act on the State Public Services Enterprise the Polish Post). Regarding the public services rendered, the dominant postal operator is under an obligation to deliver, free of charge, postal parcels including printed matter or other information carriers for the blind (Art. 43 item 3 of the Act on Communication). In particular, such parcels are as follows: Braille books and papers and magnetic tapes with literary output recorded and correspondence (cassettes). The weight of the parcels cannot be higher than 7,000 g. There are also some additional requirements for senders of parcels (the blind or institutions dealing with the production of such carriers, i.e. books and cassettes) and for the proper marking of parcels. The terms and conditions the services are rendered based upon are regulated by legal rules: the Act on Communication and the above-mentioned ordinance of the Minister of Posts and Telecommunications on conditions of using universal postal services.

The public operator is also under an obligation to send, free of charge, some national libraries selected the first so-called library copies since there is a requirement for the libraries to gather the editorial output (Art. 7 of the Act on Obligatory Library Copies dated 7 November 1996 - Official Journal of laws No. 152 item 722).

(1.9) Since the dominant operator has not yet been able to indicate particular costs of rendering its services (unit costs), the cost of providing the above-mentioned services is not known either. The Act on the State Public Services Enterprise the Polish Post dated 30 July 1997 (Official Journal of Laws No. 106 item 675) creates a possibility for the public operator, i.e. the Polish Post, to obtain the subsidy in question from the State Budget in order to cover losses connected with universal postal services rendered. At present, the Polish Post does not avail itself of the right.

The services discussed belong, because of the weight limitations, to the area of services reserved for the public operator.

(1.10) The costs of the service are covered now through internal subsidisation, from the general quota of receipts of the public operator.

There is no subsidiary fund institution in Poland.

Controls On Ownership, Lines of Business



(1.11) At present, there are no other regulations, besides those on the protection of the competition, aimed at restricting the dominant operator's possibilities of subsidising services or making use of its position in order to restrain the competition in the competitive markets. The Minister of Posts and Telecommunications does not only regulate the postal market but he also plays the role of a founder's organ for the State Public Services Enterprise the Polish Post, and exercises supervision over it, including that over capital contributions made to other undertakings. Regarding the administration of the Polish Post's property, the enterprise is bound to observe the regulations of the Act on State Enterprises of 25 September 1981 (Official Journal of Laws of 1991 No. 18, item 80, the subsequent changes included).

The requirement to make a separate calculation of costs for each postal service and to base the prices of particular services on the costs of their rendering is specified by the above-mentioned draft of the Postal Law. Regarding the principle, the lines of business of the dominant operator are not controlled either. The dominant operator may undertake any activity provided it does not limit its basic activities which include the universal postal services, performance of some banking acts, printing the stamps and putting them into circulation (Art. 9 item 4 of the Act on the State Public Services Enterprise the Polish Post).

#### *Miscellaneous Issues*

(1.12) The activities of the dominant operator, i.e. the Polish Post, is governed separately by the Act on the State Public Services Enterprise the Polish Post of 30 July 1997 (Official Journal of Laws No. 106 item 675). The Act on Communication also includes certain regulations ensuring privileges guaranteed for the public operator.

The public operator's privileges are as follows:

- the exclusive right to use the word 'post' in its name and signs with the Emblem of the Republic of Poland;
- the legal protection of employees provided for by the regulations of penal law related to civil servants;
- the exclusive right to issue stamps and put them into circulation and to withdraw them from circulation; the annual issue plan is determined by the Minister of Posts and Telecommunications;
- according to the regulations of the Act on the Polish Post, the public operator shall receive the subsidies from the State Budget if it incurred losses on account of its activities consisting in the performance of the universal postal services. The public operator is also entitled to a subsidy earmarked for financing investments. The Council of Ministers have decided however that the activities conducted by the State Public Services Enterprise the Polish Post ought to be remunerative, i.e. it should bring about positive financial result, while possible subsidies from the State Budget could be earmarked for investments only;
- the statutory right of lien on letter-post items in order to secure dues on account of postal and customs duties, and other expenses of the Post;
- the right to open undeliverable letters in order to know who the addressee or the sender is;

- carriage enterprises dealing with regular land-borne, air and maritime transport are under an obligation to carry the postal consignment in separate compartments and safe-boxes and to ensure at their stations and ports the possibility of using necessary premises and equipment as well as an access to loading and discharge places; in particular, the enterprises are put under an obligation to agree with the public operator on the trains schedules taking into account the needs of the postal service and allow for the free of charge installation of mail-boxes on or inside the means of transport;
- the right to install mail boxes, boxes for the delivery of correspondence on real estate without charge and postal vending machines servicing the customers, whereas there are no special regulations related to the access to roads and footpaths for the purposes of installing mail boxes;
- the responsibility for the non-performance or inadequate performance of a service belonging to the group of universal services is regulated separately from that for the service of non-universal character. The main difference is that the operator is not responsible for the non-performance or inadequate performance of the service resultant from the sender's or addressee's non-observance of rules related to the given service - the damages are agreed upon accordingly;
- receipts related to sending and delivery of letter-post items, payments of insured for postal orders and banking accounts are considered to have the validity of official documents.

The post confidentiality principle stems from the regulations of Art. 49 of the constitutional law providing for the obligation to ensure the protection of the communication secrecy. The repeated principle is reflected in Art. 7 of the Act on the State Public Services Enterprise the Polish Post which imposes on the Polish Post the obligation to ensure the protection of the secrecy of correspondence within the postal turnover and the protection of confidential information about the service being rendered.

There has been no need to regulate by law the issue of safety of the postal turnover.

The public operator is put under an obligation to render universal postal services - it cannot refuse to perform the service. The Polish Post neither enjoys tax preferences nor exemptions in this field. The Polish Post applies the common rules obligatory for conducting an economic activity.

(1.13) The international exchange of mail is organised based upon the principles determined by the acts of the Universal Postal Union (UPU). The dues related to the international mail are also calculated in accordance with the principles of the Universal Postal Convention related to this issue.

## **II. Regulatory Institutions and Market Structure**

(2.1) The Minister of Posts and Telecommunications performs the function of the regulatory body. He decides about, besides the above-mentioned rights to set prices, the granting or withdrawal of licences. The Ministry is a governmental institution and it implements the Government policy in the area of postal market regulation.

Besides the regulatory functions, the Minister of Posts and Telecommunications also plays the part of a founder's body for the incumbent operator that is the State Public Services Enterprise the Polish Post.

The State Postal and Telecommunications Inspection Office is a controlling body of the Minister of Posts and Telecommunications which supervises the postal activities. The draft of the new Postal Law provides for the establishment of an Office for Postal Market Regulation.

### *Overview of Market Structure*

(2.2) The dominant operator is a State public services enterprise. There are some other operators on the postal services market such as commercial partnerships, natural persons. The organisational structure, administration and incentives for the management as well as the level of the managerial staff of the public operator are similar to those of a commercial company. The process of making the organisational structure of a State enterprise closer to that of a commercial partnership has been completed progressively since 1997 when the Act on the State Public Services Enterprise the Polish Post came into force.

(2.3) The basic task of the public operator is the provision of universal postal services (please see the definition above). The public operator also renders other non-universal postal services such as the rental of mail-boxes and the express courier services. It also collects payments to banking accounts (it competes with banks) and delivers subscription press. Regarding the aforementioned sectors, the Polish Post competes in them with other entities.

The prices are set in a uniform manner on the entire territory of the country, except for the dues for the rental of post office boxes, and their amount is differentiated according to the parcel weight. Prices of the mail boxes rental are set by Directors of District Post Offices (about 70).

The principles of delivering letter-post items, including the letter-post items to be delivered with a fixed time-limit, are differentiated according to the distance from the place of sending it (a delivery can be of local or non-local character). The criterion of the rural/urban area does not apply in this case.

The differences in the standard of rural and urban services consist in the service accessibility, i.e. they relate to the number of inhabitants serviced by one postal office, the density of mail boxes arrangement, e.g. according to the data pertaining to the year 1996, the number of inhabitants serviced by one postal office in town amounted to eight thousand while that in rural area to three thousand. The post offices in rural areas are more and more often converted, for economic reasons, into agencies offering a limited, basic scope of postal services.

In 1997, the Polish Post managed to wipe out its deficit since its costs equalled its receipts. It is anticipated that next years the enterprise will be able to generate a profit ranging from 2 to 3 per cent.

According to the data for the year 1997, the Polish Post transported and delivered 1,339,960,200 letter-post items (according to the definition, there were also post cards, printed matter, unaddressed printed matter), 23,370,600 parcels and 863,900 courier express items.

The results were achieved with the employment level of 97,000 employees.

(2.4) There are about 20 entities besides the Polish Post that offer licensed courier services in the postal services market. A part of them has been granted licences for courier services to be rendered in the

local market only or the national market but more than a half obtained licences to render courier services abroad. In the vast majority of cases, they are limited liability companies or natural persons conducting economic activities based upon a non-commercial partnership agreement. It is very often that the companies also render cargo services. The use of courier firms by producers or wholesalers for goods distribution purposes is getting more and more popular.

The companies offering forwarding and transport services are considered to be competitors in the courier services market since the definition of courier services is not too precise because of difficulties with perceiving the difference between a courier express item and a parcel and the wide variety of services offered by the courier firms. It is estimated that 60 per cent of the market of parcel services, the courier ones excluded, is serviced by private operators. On the courier service market, operate simultaneously companies with the entirely Polish capital as well as companies with a partial or whole participation of the foreign capital. There are also some world-famous companies acting there through their representatives or in a direct way such as DHL, TNT, FedEx, UPS. It is a fully competitive market - there is no entity the position of which could be described as a dominant one and even that of the incumbent operator cannot be said to be so. A few companies estimate their market share to be of 20 or 30 per cent.

The market of delivery service related to printed matter and unaddressed questionnaires is also competitive. The entities operating in the market are not subject to licensing obligation and do not have to notify the Ministry of Posts and Telecommunications of their activities.

The competitiveness degree of the subscribed press delivery sector is also similar. The biggest competitors of the Polish Post (the dominant operator) are firms dealing with press distribution, e.g. Ruch S.A.

### **III. Key Competition Issues**

#### *Application and Enforcement of Competition Law*

(3.1) There are neither group or individual exceptions as far as the Polish competition law is concerned. The President of the Office for Competition and Consumer Protection (OCCP) and the Minister of Posts and Telecommunications acting in his capacity of regulator are responsible for the application of the competition law in this sector.

#### *Market Definition Issues*

(3.2) The behaviour of the dominant operator in the following markets have been analysed within the proceedings conducted at the Office for Competition and Consumer Protection:

- the universal postal services market,
- the market for conveyance and delivery of addressed printed matter,
- the mail boxes rental market,
- the market for the receipt of payments to banking accounts.

In all these cases, the territory of Poland has been determined as the relevant geographic market - the dominant operator renders the services on the entire territory of the country.

#### *Abuse of Dominance*

(3.3) The monopolistic practice was ascertained in one case only, i.e. the abuse of dominant position.

The dominant operator is the only one to render the post office boxes rental service (it consists in the delivery of correspondence to post office boxes). Until the year 1997, the fee for the service was determined locally by District Post Offices since there had been no uniform charge.

In March 1997, the dominant operator introduced a uniform fee for the service for the whole country fixing it on a very high level. The decision offered a possibility of granting a discount on the charge without defining its criteria.

The OCCP recognised the fact that due to the differentiated costs of rendering the service by individual post offices the uniform fee should not be used. The fee should be fixed locally, the costs of the service provision being considered. Moreover, the amount of the uniform fee was considered by the OCCP to be exorbitant and the possibility of granting the rebate without any criteria to be a practice leading to discrimination in favour of some customers of the dominant operator. No appeal was made against the Office decision.

(3.4) As already mentioned, there are no separate regulations aimed at the control of the abuse of a dominant position besides the competition law. Regarding the regulations of the competition law, a mention should be made of the regulation according to which the collection of exorbitant prices is considered to be a monopolistic practice. Because of their very general character there are some difficulties with classing particular prices as the exorbitant ones. The greatest difficulty lies however in the fact that there is no regulation imposing on the dominant operator the obligation of separate accounting between the reserved and non-reserved services.

The draft of the New Postal Law includes a regulation which puts the public operator under the obligation of separate accounting between the reserved and non-reserved services. It is anticipated that the relevant regulations are going to come into force two years after the act has come into effect, i.e. in 2002.

#### *Other Competition Enforcement Issues*

(3.5) There were two mergers on the courier services market. In each case, a company rendering postal services (with its headquarters abroad) acquired interests of a courier firm. Granting its consent to the mergers, the OCCP took into account the competitiveness of the courier services market, the small share of the market of the companies, the interests of which were acquired, and the fact that the firms which acquired them had not conducted their activities in Poland. There were no agreements restricting competition.

### **IV. Effects of Postal Reform**

The State monopoly over all postal services was restricted at the beginning of the nineties. It is also planned to further liberalize the market, the granting of the public operator's status to other entities including.

The preliminary works on the draft Postal Law have just been completed. The Law is going to introduce some new regulations into the postal sector that are compatible with the solutions recommended by the Directive 97/67/EC of the European Parliament and the Council of 15 December 1997 and relate to the common rules for the development of the internal postal services market of the EU, and the improvement of quality of service. The act will come into effect no later than the year 2001.

The aim of the draft law is to create conditions for extending access to the postal services as well as further demonopolisation and liberalisation in this sector, having also in mind the protection of consumers' interests and the justified needs of economy and public security.

According to the draft law, the provision of postal services will be subject to registration, which is a general permit to conduct such activity. Moreover, it is expected that any operator will be granted the right to become public operator, provided it meets basic requirements for universal services regarding e.g. confidentiality, security of postal services, quality of universal services and access to these services. Under provisions of the new law the State Public Services Enterprise the Polish Post will become public operator with the obligation to render postal services in international exchange according to the acts of the Universal Postal Union and international agreements binding Poland included.

In the universal services were included: the collection, transportation and delivery of mail with weight amounting to 2000g, including registered mail and insured mail, as well as postal parcels with weight amounting to 20kg, including insured postal items. As universal services will also be treated: the collection, transportation and delivery of postal orders. The criteria which constitute the universality of postal services include: rendering services on the whole country territory, continuously, with given quality and moderate prices.

It is also expected that the number of the reserved services will decrease significantly for public operators. The draft sets forth the weight limit and subject criterion with accordance to the provisions of the mentioned Directive.

An important innovation of the new law is the obligation for public operator to calculate costs separately for every kind of postal service with respect to the division between the reserved and non-reserved services in order to eliminate cross-subsidising.

As far as prices are concerned, the draft law introduces the obligation for the public operator to agree the level of fees for rendering universal services with the regulatory body. It will also be obligatory to demand a uniform fee for rendering universal service on the whole country territory and for all consumers.

According to the new law, different forms of confirming that the fee for the mail item has been paid will be admissible. All postal operators will have right to use their own postal fee signs, registered by the regulatory body upon notification of the specimen. At the same time, the rule that the postage stamps, which are the official valuable signs, can only be used to pay for the services of the Polish Post, will remain in force. The Polish Post will still be granted the exclusive right to issue stamps bearing inscription 'Poland' or 'Republic of Poland', as well as to put them into circulation and to withdraw them from circulation.

In conformity with the mentioned Directive, the draft law provides for an independent regulatory body in postal services to be created, which will be the President of the Office for Postal Market

Regulation. An advisory body to the President of the Office, i.e. the Postal Services Council, will be also created.

Substantial changes, from the point of view of the reform of the postal sector, are going to be also introduced by the new act on economic activities which is planned to come into effect as early as the first half of 1999. The draft of the act stipulates for a significant limitation of the number of services the provision of which requires licensing. The requirement to obtain a licence will also be annulled with respect to courier and postal services, which according to the new act, will be subject to a general authorisation. It should be pointed out that such an authorisation is granted, contrary to a licence, to any entity applying for it provided the entity meets specific requirements. The requirements pertain, first and foremost, to classification and technical issues that are important because of the public order in the full sense of the word.

The authorisation procedure does not therefore affect the free provision of postal services.





## SWEDEN

### I. Introduction

Since the deregulation of postal services in 1993 the former monopolist, Sweden Post, has undergone considerable change. International benchmarking however ranks Sweden Post among the leading post companies in the world in efficiency and quality. There is no compensation for universal service granted to Sweden Post, the company's Letter Division is at the same time quite profitable. This has been possible not despite but because of the fact that Sweden Post has been exposed to competition also in segments of the postal market that still are protected by statutory monopolies in almost every other country in the world. The Swedish example proves that competition should be regarded as a solution and not as a problem.

### II. Key Regulations and Regulatory Institutions

The responsibility for implementing regulations in the context of the postal services rests with independent authorities. It should be noted that in Sweden independent administrative authorities possess competence limited to specific administrative duties mainly guided by means of general norms - laws and decrees. As a rule the exercise of authority can only be subject to scrutiny afterwards by means of appeals against their decisions presented to an administrative court.

The key governing legislation affecting business practices in the postal sector is the Postal Services Act (1993: 1684). The Postal Services Act entered into force on the 1 March 1994 and has since then been amended two times; on January 1, 1997 and July 1, 1998. The main purpose of the legislation is to define what the State's requirements of universal postal services should embrace and how to ensure that they are fulfilled in order to attain the objectives of the postal policy. The Postal Services Act also sets out the general rules for companies carrying out postal business. The regulator, the National Post and Telecom Agency (PTS), is responsible for the enforcement and administration of the Postal Service Act.

PTS may issue the implementation regulations necessary to apply the Postal Services Act as regards delivery of letters, undeliverable letters and supervision - and has other regulatory powers as well.

As an authority with sector responsibilities PTS, has a general obligation to promote the well functioning of the postal market, both from a consumer and from a regional perspective. The tools for this task are given in the Postal Services Act. According to the Act PTS shall supervise compliance with the Act and the regulations and conditions that have been issued under the Act. The Agency is entitled upon request to obtain the information and documents necessary for supervision from the operators and also to have access to areas, premises and other places (dwellings excluded), where operations subject to supervision is conducted.

Decisions related to measures of supervision can be enforced through the enforcement service. The Agency is entitled to issue the orders necessary for compliance with the Postal Services Act and those orders may be issued subject to default fine. If a licence holder does not comply with the regulations the Agency may, as a last resort, revoke the licence.

The Competition Authority is the central government agency for application of the Competition Act (1993:20). The Competition Act is based mainly on the same principles as those applied in the EC. The Authority is as well the competent national authority with regard to the co-operation with the European Commission in competition matters.

The objective of the Competition Authority is to promote effective competition in the private and the public sector to the benefit of the consumers. An important task is surveillance and enforcement of competition legislation. This includes the handling of applications for negative clearance and notifications for exemption, as well as control of notified mergers. The Authority shall also take action against infringements of the prohibitions in the Act. The Competition Act applies to all undertakings. The term “undertaking” refers to every form of activity of an economic or commercial nature, irrespective of whether its purpose is to make profit or not. The Competition Act is applicable within all sectors of the economy, including the postal sector.

The Swedish Competition Act has proven to be an important instrument for dealing with competition problems such as abuse of dominant position by the incumbent former monopolist Sweden Post.

There is a clear division of competence between the Competition Authority and PTS when it comes to monitoring the postal market. Everything that has to do with the Competition Act is under the jurisdiction of the Competition Authority. The role of PTS in this context is to act as a “watch dog”, informing the Competition Authority about any suspected violation of the competition rules that is observed in connection with the supervision activities.

In order to ensure effective supervision of the postal market PTS shall, according to the Postal Service Act, be active as a sector authority. Therefore PTS has been given a co-ordinating and unifying function in relation to the Consumer Protection Agency and the Competition Authority. PTS shall take the initiative for regular liaison meetings between the authorities and also resume responsibility for gathering information and accumulating knowledge concerning developments in the postal sector based on the experiences of all relevant government authorities. There are also regular informal meetings for exchange of information between officials of PTS and the Competition Authority.

### **III. Regulation of Entry and Licensing**

The monopoly on conveyance of letters was abolished in 1993. The old reserved area only covered “individual mail” which means that there is a long tradition of competition in Sweden when it comes to e.g. direct mail and delivery of parcels. These services have never been protected by a statutory monopoly. Today there are no reserved areas whatsoever in Sweden. In this context it is important to notice that the Swedish postal legislation is founded on the notion that the universal service can be provided on a strictly commercial basis.

Since the monopoly was abolished, establishment on the market is free. The right to pursue postal business is however subject to licensing. For the purposes of the Postal Services Act, postal business activity refers to regular conveyance of letters in return for a fee. By letters is understood closed and addressed mail items weighing less than 2 kg. Picture postcards and similar addressed mail are in the same category as letters.

The rather narrow definition of postal business activity means that the law is applicable only to postal companies that deliver letters on a regular basis, e.g. once a day or once or twice a week, in

accordance with some sort of fixed distribution schedule. This excludes, among others, express and courier companies. Regardless whether they are dealing with international mail or just local delivery they are free to operate without any licence. Direct mail companies, only distributing unaddressed items, are excluded as well. Anybody is free to deliver their own mail and can even engage an entrepreneur for that purpose without being regulated by the postal legislation, as long as that entrepreneur does not work for anybody else. The national regulatory body, PTS, grants licences for postal companies.

The responsibility for a nation-wide postal service in Sweden, the universal service obligation (USO), formally rests with the State. To fulfil this responsibility the Government had an agreement with the former Post Office - since 1994 a limited liability company, the 100 per cent state-owned Sweden Post Ltd - by which the universal service obligation was imposed on the company. From 1 July 1998 some of the clauses in the agreement have been replaced by special conditions combined with Sweden Post's licence to pursue postal business.

According to this special licence condition Sweden Post shall provide one clearance and one distribution of postal items up to 20 kg on every non holiday business day from Monday to Friday at all access and distribution points. In practice this means that each household and company irrespective of where in Sweden it is situated - with some minor exceptions - is entitled to postal services once a day five days a week.

The universal service shall provide a postal service of high quality as well as conduct the operations under conditions which ensure reasonable requirements of reliability. The protection for the sender's and addressee's personal integrity shall be maintained as well.

In respect of the postal items which are deposited for overnight delivery, and for which the sender pays the price applicable for overnight delivery, Sweden Post shall ensure, irrespective of where in the country the items are deposited, that at least 85 per cent of such items are delivered on the next working day and that 97 per cent of such items are delivered within three working days

These are minimum requirements stated in the European Community Directive on postal services (Official Journal nr L 15, 21.1.1998, p. 14). In practice Sweden Post, for commercial reasons and without any legal pressure, delivers 97 per cent of all "first class"- letters "over night".

There is a small number, around 1500, of permanent households in very remote areas, on islands in the archipelagos and in the mountain district in the north-west part of Sweden, which only have access to postal service two to four days a week. The number of households with postal service less than five days a week is not allowed to increase.

As in every country with emerging competition in the postal sector there has been a debate in Sweden concerning the costs of the assumed extra burdens imposed by the universal service obligation. A number of investigations have tried to estimate the universal service obligation costs and, since the monopoly was abolished, some sort of compensation mechanism for the universal service has been considered by the Government from time to time.

According to PTS there has never been a need for a compensation system. When it comes to the overall costs for keeping a nation-wide collecting and distribution system, a Governmental investigation already in 1991 noted that the possession of such a system together with the possibility to provide the customers with complete solutions for all their postal demands, constitutes a considerable value. It was stated that Sweden Post, or by then the Post Office, being the only operator capable of offering this kind of complete services had a great competitive advantage in this respect. Since Sweden Post in 1997 used a

loophole in the price cap construction of that time to raise the prices for single letters with roughly 30 per cent, this advantage became even more evident. This is probably the main reason for the Government not finding it necessary to introduce a compensation mechanism for the universal service. However, there are particular subsidies for some social services like free distribution of special postal items for the blind and extended service to elderly and disabled persons in rural areas and also for national defence purposes.

### **III. Regulation of Access**

One of the most important conclusions to be drawn from the Swedish experience of introducing competition in the postal market is the necessity for all postal operators to obtain access to the postal infrastructure on equal terms. Access to post office boxes and a co-ordinated system for changes of addresses and redirection of mail have been proven to be crucial. An impartial administration of the postal code-system is also very important.

By order of the Government an investigation has recently been carried out by PTS with the object to make proposals for administration and a prospective future regulatory framework for the postal infrastructure. In the general outlines for the investigation the Government concluded that the present regime with voluntary agreements between the parties concerned has proved not to be a feasible way of achieving the desired co-utilisation of the infrastructure.

In this context Sweden Post applied to the Swedish Competition Authority for a negative clearance for certain principles under which other postal operators could have access to Sweden Post's post office box system. The Competition Authority stated in its decision that Sweden Post could be regarded as having a market share exceeding 90 per cent of the relevant market for mail in Sweden. In addition, Sweden Post has sole control of the service for the provision of post office boxes, which is a part of the distribution network used for mail. Sweden Post thus has a dominant position on the postal market and its competitors are dependent on access to the post office box system if they are to be able to operate on this market. The Authority, given this background, considered that the post office box system was an essential facility. Accordingly Sweden Post must, in order not to abuse its dominant position, give other postal operators access to their post office box system on reasonable and non-discriminatory conditions that are no less advantageous for its competitors than for Sweden Post's own activities.

The Swedish Government now intends to propose some amendments to the Postal Services Act in line with what has been suggested by PTS in the above mentioned investigation. In brief this means a statutory right for private postal operators to obtain postal codes for their own post office box systems which will enable them to offer their customers post office boxes with a unique post office box address. The right for all postal operators to get access to the other postal operators post office boxes on equal terms will also be enhanced. The new legislation is planned to enter into force on 1 July 1999.

### **IV. Regulation of Prices**

Sweden Post shall provide the universal postal services at prices based on costs. This provision together with the requirement that the tariffs for single letters shall be uniform has a great impact on the preconditions for establishing competition in the postal market as it prevents Sweden Post from cutting prices only in areas where there is a local competitor operating.

Otherwise Sweden Post, with one exception, is free to set its tariffs. The exception is a price-cap on the domestic letter rate for individual mail. The charge for delivery of letters weighing up to 500 grams

may be increased on a yearly basis by a maximum of the average change in the Swedish general net price index<sup>2</sup> over a three-year period.

All other postal operators are without any restrictions free to set their own prices.

### ***Non-Commercial Service Obligations***

Sweden Post shall upon request from PTS, in return for a cost-based compensation, provide postal services for persons with a handicap in a broad sense, e.g. the dispatch of postal items in Braille for the blind as well as extended rural postal service to elderly and disabled. For this purpose the Agency has separate budgetary means financed over the State budget and not, as the administration of the Agency's other activities, through fees paid by the operators.

Sweden Post shall also, in accordance with directives from PTS, plan for the needs of the national defence for postal services in the event of a state of alert. This should be done in return for a cost-based compensation, financed in the same way as the remuneration for the special services for disabled persons.

### ***Controls On Ownership, Lines of Business, Etc.***

Article 14 of the EC Postal Directive gives an important tool to the national regulatory authorities. The Article prescribes that member states shall take the measures necessary to assure that the accounting of the universal service providers is conducted in accordance with the principles in that same Article. In addition, paragraph 3 of Article 14 lays down rather detailed accounting principles. These principles are designed to protect the users and the competitors in order to safeguard that prices are geared to costs as well as to prevent the use of cross-subsidies geographically or otherwise.

According to paragraph 8 of Article 14 the regulatory authority in a member state with no reserved areas may decide not to apply the accounting requirements. Without going into detail it's worth pointing out that in the view of the Swedish legislator the applicability of this possibility is restricted to cases where genuine conditions of open competition exists. However, it is not applicable under circumstances where the universal service provider has retained actual monopoly, or at least a very dominant position in the market, partly due to its former statutory monopoly. As the latter is the situation in Sweden the accounting requirements are applied without restrictions.

## **V. Miscellaneous Issues**

There is no specific legislation in Sweden governing the rights of postal operators to print stamps for national distribution. For outgoing cross-border mail a clause in the Postal Services Act provides that only the stamps of the universal service provider are allowed for such distribution.

Another clause in the Postal Services Act provides that all postal operations shall be conducted under circumstances that satisfy reasonable demands for reliability and so that the protection of the personal integrity of senders and addressees is maintained. There are also specific rules regarding the obligation for postal service employees to observe secrecy regarding knowledge or information they have

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2. CPI less the net of indirect taxes and subsidies in all stages of up-grading.

acquired by handling letters. All provisions regarding privacy and security apply equally to the incumbent and the private operators.

On a national level there are no specific rules governing rights of access to roads and footpaths for the purposes of installing mail collection boxes. However, as this kind of legislation is within the competence of Local Government there might be provisions that differ between the incumbent and competing postal operators.

When the former Postal Administration was transformed into a limited liability company it had to pay VAT which, even by the management of Sweden Post was regarded as an advantage, Sweden Post being treated in the same way as its business-partners. Further on there is no special treatment of the incumbent when it comes to legal rights for the employees and any other practical arrangements.

For the provision of counter services that are not commercially justified Sweden Post receives a subsidy over the State budget of 200 Million SEK a year. This subsidy is lower than the actual cost and can accordingly not be used to cross-subsidise any other activities within Sweden Post.

Sweden Post is the designated bearer of the rights and the obligations within the framework of the UPU-instruments and by that responsible for the international exchange of mail. With the UPU-rules as a basis the incumbent also has signed bilateral agreements with universal service providers and private postal operators in other countries. For example Sweden Post and the Dutch TNT Post Group have a bilateral agreement on terminal dues. But Sweden Post also has been a part in the REIMS-negotiations and has signed the latest draft REIMS-agreement. In Sweden the terminal dues are regarded as a matter for the operator and not the concern of the regulator.

There are no rules against foreign operators making use of other operators than the incumbent for their delivery of mail to Sweden. Royal Mail uses for instance CityMail for the delivery of industrial mail in the areas where CityMail is active. Because of the postal monopolies still in force in almost every other country in world, the freedom of choice for the Swedish postal customers in practice is restricted to the domestic market. For outgoing international mail they have to rely on the incumbent.

## **VI. Overview of Market structure**

The national regulatory body, PTS, grants licences for postal companies. Today there are approximately 80 authorised postal operators in Sweden. The most important operators are the following.

Sweden Post, the former Post Office and the designated universal service provider, since 1994 a limited liability company 100 per cent owned by the State. Sweden Post consists of a group of companies that provides all kinds of postal services and a variety of other services as well including banking services through the subsidiary Postgirot Bank.

Sweden Post had in 1997 a net turnover of 22 685 million SEK (2 850 million USD) and a operating profit of 1 212 million SEK (152 million USD). The corresponding figures for Sweden Post Letter Division was a turnover of 12 662 million SEK (1 585 million USD) and a operating profit of 1 069 million SEK (135 million USD). In 1997 the entire company had an average number of 43 000 employees (in 1990 this figure was 57 400). The average number of employees in the Letter Division in 1997 was 24 800.

CityMail, a postal operator (since mid 1998 a public company, 10 per cent owned by Royal Mail in the UK) specialised in delivering industrial mail or pre-sorted bulk mail to recipients in the three largest cities in Sweden, Stockholm with surroundings, Gothenburg and Malmö and through sub-contractors on the island of Gotland and in the county of Kronoberg. CityMail covers approximately a third of the total amount of all households and companies in Sweden and had in 1997 a turnover of 250 million SEK (31 million USD).

The SDR-Group, a direct mail company that to some extent also distributes addressed postal items to recipients in all of Sweden, partly using Sweden Post. The SDR-Group had in 1997 a total turnover of 400 million SEK (50 million USD). Only a small part of this amount is related to distribution of mail.

The vast majority of the other operators are small companies offering local service collecting and distributing mail. In most cases they use their own stamps and letterboxes and each operator handles volumes between 150 - 2 500 letters a day. Some of the operators are newspaper-delivery companies also distributing addressed postal items and operators that run their business in a region covering the countryside of that area. There are no figures available on how large their shares are of their respective local markets. Sweden Post estimates that about 15 per cent of all mail is local.

## **VII. Application and Enforcement of competition law**

It can be stated that the Competition Act has been fully applied on the postal market after deregulation in accordance with legislative intentions. Experiences show that the Competition Act has in many cases been an important instrument for intervening against anti-competitive practices and has thus increased conditions for competition on the postal market. A limitation of the application of the Act concerns pricing of individual mail, which is still covered by price regulation. In the case where a restriction on competition is "a direct and intended effect of legislation or an unavoidable consequence thereof" (Bill 1992/93:56, p. 70), the Competition Act is not applicable.

Since the entry into force of the Competition Act (1993:20), on 1st July 1993, the Swedish Competition Authority has had more than a hundred cases concerning Sweden Post. These cases have been of various kinds - both complaints from private persons and companies, as well as applications for negative clearance where Sweden Post has wished to clarify whether certain practices were compatible with the Competition Act. A feature common to cases concerning complaints has been that Sweden Post has met competition from companies such as CityMail and SDR by clearly reducing its prices in market segments where it faces competition, as well as applying different types of loyalty clauses in agreements with customers. The Competition Authority has found e.g., that Sweden Post in a number of respects has given customers, who are not using Sweden Post to distribute all their mail, significantly worse conditions than customers who do this.

Until now decisions in the postal area have mainly provided clarification concerning exclusive agreements, loyalty rebates and annual bonuses. The exclusive agreements which Sweden Post earlier concluded with customers- and which made it virtually impossible to do business with competitors of Sweden Post - have now been withdrawn. The same applies to clauses in agreements giving Sweden Post a unilateral right to change prices it has offered during an ongoing contract period. Rebates and annual bonuses may not be constructed in such a way that they are related to the total needs of customers, thereby forcing them to purchase all their services from a single supplier. Finally, the conditions have been clarified under which it is not permissible for Sweden Post to apply geographically differentiated prices to compete. The actions of Sweden Post above are described briefly in the following.

Sweden Post has applied exclusive agreement conditions tying customers into buying all or the majority of their distribution needs from Sweden Post. In addition, Sweden Post has also applied loyalty rebates and annual bonus scales related to customers' expected annual purchasing needs. These practices resulted in mail order companies having little or no opportunity to buy services from the competitors to Sweden Post. The Swedish Competition Authority considered that these practices constituted an abuse of Sweden Post's dominant position. The Stockholm City Court has ordered Sweden Post to pay SEK 3.8 million in competition fines for contravening prohibitions in the Competition Act.

In another case, the Authority found that Sweden Post had applied a "cream skimming" clause allowing it to pick and choose with the effect that customers could anticipate a price increase if they purchased a part of their distributional needs from Sweden Post's competitor CityMail. However, the agreement contained no information on the price consequences if the customer were to take this step. The Swedish Competition Authority found that this clause meant that Sweden Post was applying two different price levels for distribution in Stockholm and elsewhere in the country and that customers in such cases must be able to obtain information from Sweden Post that would allow them to decide which postal operator to use when competition existed, as is in the Stockholm area. The practice of applying "cream skimming" clauses without giving customers any information on the price consequences of not purchasing all their needs from Sweden Post was in the Authority's view a contravention of the Competition Act.

Another case concerned the problem that SDR was both a customer and competitor of Sweden Post. The Swedish Competition Authority ruled that Sweden Post had applied a pricing system where the price for distribution in sparsely populated areas was related to whether a customer had also purchased in densely populated areas a specific volume of distribution services from Sweden Post. Such a link between distribution in sparsely and densely populated areas means e.g., that SDR received worse conditions in comparison to other customers when purchasing mail distribution services in sparsely populated areas. The Competition authority found that Sweden Post's practise in this respect constituted abuse of a dominant position and thus ordered Sweden Post under penalty of a fine to cease the practice.

The issue of where the dividing line lies for a dominant company to apply geographical price differentiation has been the subject of a number of crucial competition cases. The first case concerned zonal price setting, which would apply to Sweden Post's distribution of bulk mail postal services. The pricing structure meant that a lower rate would be applied to distribution in 19 areas, which were then further subdivided into three zones. The lowest rate was in zone 1, which basically covered the three largest urban regions – Stockholm, Göteborg and Malmö. The Authority considered that Sweden Post's pricing did not reflect the way individual customers purchased postal distribution services, and that they were designed to make it more difficult for other companies to compete and were also aimed at eliminating possible competition. For this reason, the practice was considered to constitute an abuse of Sweden Post's dominant position. Sweden Post was thus ordered under penalty of a fine not to apply zonal pricing.

After this, the Swedish Competition Authority then had to consider a new two zone pricing arrangement. This arrangement differed from that mentioned above in that the rebate mentioned above, which only applied to zone 1, was also offered to places in zones 2 and 3. This practice on the part of Sweden Post did not differ in any essential respect from the above-mentioned pricing arrangement, which is why Sweden Post was ordered not to apply the new zonal rebate. The order this time was not issued under penalty of a fine. However, Sweden Post was prohibited from applying other forms of pricing of essentially the same nature as the zonal discount.



Both decisions of the Authority concerning zone related pricing were the subject of appeals, at first to the court of first instance and subsequently to the final instance of appeal (the Market Court). In its judgement of November 11, 1998, the Market Court found that Sweden Post by virtue of its earlier monopoly enjoyed a dominant position on the market and was only encountering competition from CityMail and a number of local distribution companies. According to the Market Court, this must be considered in the context of the very high demands that had been imposed on Sweden Post's competitive behaviour. The Market Court considered in its overall assessment that both the four and two zone pricing arrangements constituted a form of abuse of a dominant position. In addition, the Market Court stated that for the pricing not to be regarded as constituting abuse of a dominant position, Sweden Post had to be able to demonstrate that its prices were justified from a cost viewpoint. The Market Court considered that Sweden Post was able to show that the costs of distribution to the 19 areas were in total lower than costs of distribution elsewhere. For this reason Sweden Post's two zone price list was not considered to constitute abuse. On the other hand, the Court did not consider that Sweden Post had been able to clearly demonstrate through a reliable cost analysis the same for the four zone price list. Application of such a pricing arrangement was thus still considered as constituting abuse of a dominant position.

### **VIII. Effects of postal reform**

Since deregulation, a number of companies have begun to operate postal services and there are at present approximately 70 active operators in the postal market. During the first three years after deregulation, the number of new entrants was relatively small. Apart from the three major companies Sweden Post, SDR and CityMail, only a few companies entered the market over the period 1993 to 1996. During 1997, however, the number of postal operators increased significantly. PTS explains the increase principally as a result of the change in tariffs implemented by Sweden Post in 1997 which led to a price increase for many customer groups and thus increased the scope for new operators. At the same time a decision by the Swedish Competition Authority reduced uncertainty over Sweden Post's right to apply different prices in different parts of the country.

The new companies form a heterogeneous group. The companies' range from one-man companies with modest activities at the local level to large companies with many employees that had earlier been running closely related activities, such as, for example, the SDR Group and local companies distributing newspapers and magazines. Compared to the new players on for example the telecom market, however, all the players are small companies with highly limited financial resources.

As regards individual mail, deregulation has led to an increase in competition mainly on local markets, usually within a municipality. In some cases, however, a number of small postal operators have started to co-operate and thus been able to challenge Sweden Post over a somewhat larger geographical region, such as the county of Skaraborg. In the bulk mail market, Sweden Post meets competition in principle only from CityMail Sweden, even though SDR also operates on a limited basis distribution services for addressed direct mail.

In order to get a better understanding of price changes, PTS decided to carry out a number of case studies. The studies were based on interviews with customers from the two main competitors on the market providing bulk mail services, Sweden Post and CityMail. Without being able to draw any far-reaching general conclusions, PTS stated that developments had been favourable after deregulation for customers on submarkets purchasing bulk mail services. The price level had sunk at the same time as service levels and quality had been raised. Pressure on prices was most noticeable concerning second-class mail in general, and mail to the Stockholm area in particular, i.e. for services where Sweden Post has met competition from CityMail. The PTS study also showed that customers who had been most active in

negotiating prices and shown the greatest flexibility over services were also those who experienced the greatest effects on prices and services after deregulation.

To conclude, many competition problems on deregulated markets can be traced to the former monopolist's control over an infrastructure that competitors need to be able to carry out their activities. If the infrastructure can be regarded as an essential facility, the owner of the infrastructure, also active on secondary markets, has every incentive to exclude competition by refusing access. Failing to do so, the owner of the infrastructure has a strong incentive to minimise the effects of competition by fixing access charges at a level that is as high as possible. The determination of the terms of access cannot therefore be left to the dominant player, the former monopolist. Instead, both the technical and economic conditions for access need to be regulated or at least the sector specific authority has to be given powers to determine these conditions. Competition rules are not necessarily the most appropriate tool for determination of terms of access.

At present, effective competition does not exist within all markets of the Swedish postal sector. If competition forces could play a more important role the need for regulatory measures would be diminished. In view of the competitive conditions prevailing in Sweden it can however be questioned whether regulatory measures have been designed in a way that efficiently have taken care of the present problems on the postal market.

## UNITED STATES

### I. Government Institutions And Market Structure

#### A. Key Statutory Authority

The Postal Reorganization Act (PRA) of 1970<sup>1</sup> created the current system for the provision of postal services in the United States. Prior to its enactment, the Postmaster General was a member of the President's cabinet, and the Congress set postal rates. In addition, many postal officers and employees were selected through patronage. In 1970, however, Congress divested itself of the rate-setting and patronage processes and replaced the Post Office Department with two independent establishments within the executive branch of the Government of the United States: the Postal Service and the Postal Rate Commission (PRC). The Postal Service's basic obligation is to provide postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people. The PRA gives the Postal Service more independence from political pressures and bureaucratic procedures and independence to manage its operations in a professional, businesslike manner. The PRC is responsible for evaluating proposals for changes in rates of postage and mail classifications and making recommendations to the Postal Service's Governors regarding rates and classifications.

#### B. Institutions

The Postal Service and the PRC are the two federal executive branch institutions with governmental responsibilities in the postal sector.

##### *1. Postal Service*

The Postal Service has characteristics of both a governmental agency and a business enterprise. The PRA confers upon the Postal Service authority to provide for the collection, handling, transportation, and delivery of mail matter.<sup>2</sup> The PRA gives the Postal Service broad authority to provide postal, "non-postal," and philatelic services to the public. The Postal Service is directed by an eleven-member Board of Governors, consisting of nine Presidentially-appointed Governors and two postal senior officers, the Postmaster General and the Deputy Postmaster General. Structurally, the Board of Governors is fairly analogous to a corporate board of directors, and the Postmaster General's functions are similar to those of a corporate chief executive. This structure is intended to insulate the Postal Service from political forces.

The Postal Service is a large enterprise, with revenues of \$60 billion. If the U.S. Postal Service were a private company, it would rank as the tenth largest in the country in terms of total revenue. It provides delivery services to virtually all households six days per week. It handles 41 per cent of the world's mail volume, 650 million pieces per day. It provides daily mail delivery and pick-up for over 130 million households and businesses, and serves 7 million retail customers a day through a retail network of more than 38,000 post offices. The Postal Service is the nation's largest civilian employer with almost 800,000 career employees.

The Postal Service bears primary responsibility for the development of postal policy and management of the Postal Service. Postal policy is developed by both management and the Board on

numerous topics, including administration of the Private Express Statutes (PES), labor relations, human resources, rates, mail classifications, mailing requirements, conduct on property, new services, delivery, automation, addressing, postal payment systems, philatelic offerings, stamp subjects, and purchasing. Some policies are developed and implemented independently by Postal Service management, although before instituting changes in policy, the Postal Service often solicits comments from the public through publication of official notices in legal publications. Other policies are implemented by the Postal Service pursuant to legislative or Presidential directives. Labor and human resources policies are set by a combination of sources, including postal management, applicable federal employment laws, and collective bargaining with postal labor unions. Those policies relating to rates and classifications are generally developed through a process that involves the Postal Service, the Presidentially appointed Governors, and the PRC. Briefly, in order to institute proposals for changes in rates and classifications, the Postal Service must first seek recommendations from the PRC, which provides opportunities for the public to participate in rate proceedings. The PRC conducts hearings and issues recommendations to the Governors, who then vote on the recommendations.<sup>3</sup>

## ***2. Postal Rate Commission***

Like the Postal Service, the PRC is also an independent establishment of the executive branch of the federal government.<sup>4</sup> The President appoints the five Commissioners and designates the Chairman. Commissioners are confirmed by the Senate for six-year terms. The PRC operates with a multi-disciplined staff trained in law, economics, statistics, and cost accounting.

The PRC has responsibility for evaluating proposals for changes in postal rates, fees and mail classifications proposed by the Postal Service. It issues recommended decisions to the Governors of the Postal Service. It also acts on postal patrons' appeals from Postal Service decisions to close or consolidate post offices. Further, the PRC investigates complaints of substantial national scope concerning postal rates and services. Complaints can be filed by interested persons, which in the past have included competitors, mailers, mailer associations, and individuals. The PRC also responds to requests of the Postal Service for advisory opinions for nationwide changes in service. Congress occasionally asks it to undertake special studies on postal issues.

The PRA does not intend that the PRC regulate the Postal Service. Rather, the PRA contemplates a system of checks and balances between two "partners."<sup>5</sup> As partners, each agency is to exercise its statutory and constitutional responsibilities without encroaching on the other's functions. As such, the PRC's role in ratemaking and classification cannot interfere with postal management's responsibility to run the Postal Service. Thus, the Governors have challenged PRC recommendations that they consider to intrude upon postal management's responsibilities.

## **C. Overview of Market Structure**

The Postal Service offers in excess of forty domestic product groupings known as "subclasses." Subclasses are distinguished by various characteristics, including service features provided, content, speed, reliability, elasticity of demand, and user and recipient characteristics. Each subclass is defined by a classification schedule. Most subclasses consist of multiple rate categories. Rate categories can account for different characteristics of mail within a subclass, such as shape, weight, distance, worksharing option, and point of entry. Revenues, volumes, and costs are usually reported at the subclass level, and contributions to cover overhead costs are proposed and recommended at this level.

The Postal Service offers three primary products, based on percentage of total revenue: First-Class Mail, Standard Mail (A), and Priority Mail. First-Class Mail, which makes up approximately 57 per cent of revenue, includes personal correspondence, post cards, small parcels, and business transactions. Standard Mail (A), which makes up approximately 23 per cent of revenue, includes bulk entry of advertising letters and flats and bulk small parcels weighing less than one pound (455 grams). Standard Mail (A) typically is less expensive per piece than First-Class or Priority Mail. In order to use this class of mail, mailers must meet specific volume and content requirements. Correspondence and statements of account generally cannot be sent via Standard Mail (A). Priority Mail, which makes up approximately 7 per cent of postal revenues, provides two- to three-day delivery of documents and parcels. The remainder of postal revenues (approximately 14 per cent) is derived from the following classes:

- Periodicals, including subscription magazines, newsletters, and newspapers;
- Standard Mail (B), which includes most standard parcels that travel principally by means of surface transportation;
- Express Mail, a guaranteed next- and second-day EMS service;
- international mail; and
- special services, such as post office box service, money orders, and registered, certified, return receipt, and insured mail services.

Summaries of revenues and volumes, along with rate schedules currently in effect, are available upon request.

Private sector firms offer alternatives to postal and non-postal services provided by the Postal Service. It is difficult to determine the volume and revenue profile of other providers, because alternatives can take many forms. Letter mail, for example, is subject to diversion to other forms of communication, such as electronic mail, automated transfer of funds, electronic data interchange, automated bill payments, and facsimile communications. Letters are also carried by courier and messenger services.

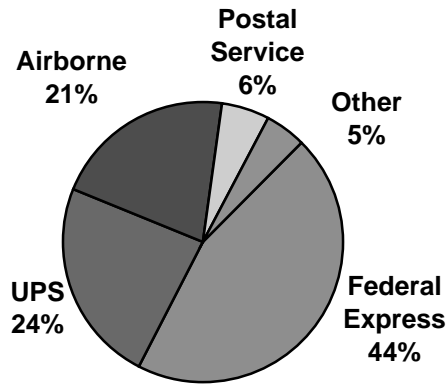
Alternatives to advertising mail include other media, such as newspapers, television, radio, telemarketing, and the internet. High-circulation advertising mail (i.e., advertising that is delivered to all households in a specified geographic area) is susceptible to competition from alternative delivery companies and high circulation newspapers in major urban markets.

The Postal Service's financial services, such as money orders and international electronic money transfers, are subject to competition from banks, retail outlets, and electronic funds transfer.

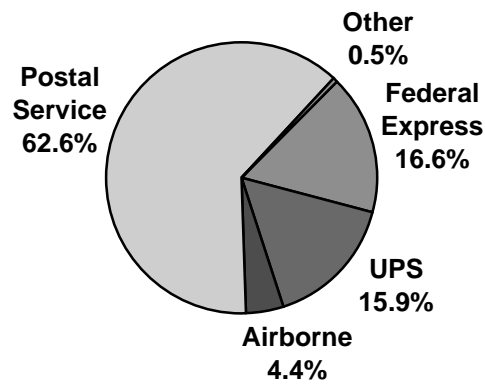
Postal Service expedited and parcel services face competition from numerous private carriers. The largest of these include Federal Express, United Parcel Service (UPS), Airborne Express, Emery, and DHL. These carriers offer multiple delivery options, including overnight delivery of extremely urgent correspondence and parcels, 2- and 3-day document and parcel services, and international expedited and parcel services. Some also offer ground service for parcels. Given the nature of its networks and its universal service obligation, the Postal Service tends to be relatively more successful in the household-to-household and business-to-household segments.

Overall, the Postal Service faces formidable competition from these firms in the expedited, two- and three-day, and ground parcel service markets. Estimates of market share based upon 1997 volumes are presented below.

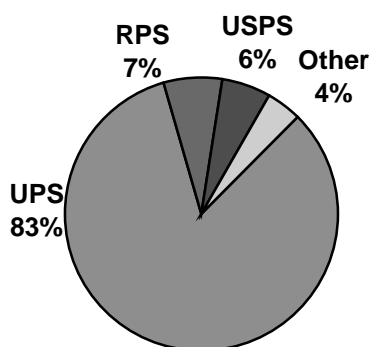
### Overnight Letters And Packages Market



### Second-Day And Three-Day Letters And Packages



## Commercial Carrier Ground Parcels And Parcel Post



## II. Key Regulatory Issues

### A. Private Express

A combination of criminal and civil statutes and Postal Service implementing regulations address private carriage. In general, the Private Express Statutes (PES)<sup>6</sup> make it unlawful for any entity other than the Postal Service to send or carry letters<sup>7</sup> over post routes<sup>8</sup> for compensation *unless* postage on the matter carried by private carrier is paid in an amount equivalent to the applicable postage, or the carriage qualifies for an exception or suspension. Thus, private carriage of letters is not prohibited, although, in most circumstances, the PES make private carriage of non-urgent letters economically disadvantageous. For all items, including those that are not considered letters, such as *merchandise*, *newspapers*, and *periodicals*, private carriers may accept and deliver such items, except that, under a provision known as “the mailbox rule,”<sup>9</sup> delivery must be effected through means that do not involve access to mailboxes or post office boxes in Postal Service retail units.

The Postal Service is authorized to adopt suspensions to the PES where the public interest requires. In 1979, the Postal Service promulgated suspensions to enforcement of the general provisions of the PES for private carriage of “extremely urgent” letters.<sup>10</sup> This suspension opened the expedited document delivery market to private competitors, although private carriage of extremely urgent correspondence is still subject to the mailbox rule. Enforcement of the extremely urgent letter suspension is accomplished by either a simple cost test or a “loss of value” test. Under the former test, if the amount paid for private carriage of the letter is the higher of \$3.00 or twice the applicable postage, it is conclusively presumed that the letter is extremely urgent. Under the latter test, letters can qualify for the “extremely urgent” suspension if the value or usefulness of the letter would be lost or greatly diminished if not delivered within certain time limits.

In 1986, the Postal Service suspended the PES with respect to outbound international mail.<sup>11</sup> This suspension permits uninterrupted private carriage of letters entered from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to a destination not within the United States.

The Postal Service's Rates and Classification Service Centre in Chicago is responsible for administration of the civil enforcement of the PES. The Department of Justice is responsible for criminal enforcement. Criminal prosecutions and civil enforcement actions are rare. Rather, the Postal Service relies primarily upon voluntary compliance. The Postal Service attempts to raise awareness of the PES among mailers and carriers, and assists in bringing them into compliance.

There is no "licensing scheme" for private carriers as their operations relate to the PES. Carriers and mailers with questions of interpretation and administration of the PES may request advisory opinions from the Postal Service. If violations of the PES are brought to the Postal Service's attention, the Postal Service may demand payment of postage for matter carried in violation of the PES. Theoretically, the Postal Service may temporarily revoke the suspensions of the PES for violations by specific mailers or carriers. Demands for postage and administrative suspensions may be enforced through proceedings conducted before an impartial administrative law judge. Neither revocations nor administrative enforcement proceedings have been used in practice.

Because the applicability of the PES depends upon the contents of each piece of mail, the Postal Service is unable to track the proportion of mail that is actually subject to the PES. Using shape of the mail (*i.e.*, letter, flat, and parcel) and class of service as proxies for content, it is estimated that the proportion of the Postal Service's total domestic mail *volume* that is subject to the PES is between 85 and 90 per cent. This accounts for approximately 80 per cent of domestic *revenue*.

## **B. Access**

Access to the postal network can be analyzed in terms of access by carriers to delivery receptacles and partial private carriage between points of origin and destination. Each is addressed separately below.

### ***1. Access to Delivery Receptacles***

The mailbox rule restricts access by private competitors to mail delivery receptacles. As a practical matter, the mailbox rule prohibits private carriers from delivering matter to most types of mail receptacles installed at residences and businesses and post office boxes in Postal Service retail units. The mailbox rule applies regardless of whether the contents are covered by the PES. Despite the mailbox rule, private carriers can resort to alternative means to effect delivery. Private carriers can hang matter on doorknobs, place articles under doors, leave articles in doorways, use receptacles designated for receipt of newspapers or circulars, arrange to have the recipient retrieve articles at a designated retail location, or effect personal delivery on the recipient. In addition, the mailbox rule does not apply to matter addressed to privately-operated commercial receiving agencies that rent individual lock boxes to their customers.

### ***2. Partial Private Carriage***

One notable exception to the PES is the private carriage of letters conducted prior or subsequent to mailing. In general, this exception permits private carriage of letters that enter the mailstream at some point between their origin and their destination. Examples of permissible activities under this exception include pickup and carriage of letters that are delivered to post offices for mailing, the pickup and carriage of letters at post offices for delivery to addressees, and the bulk shipment of individually addressed letters ultimately carried by the Postal Service.<sup>12</sup>



Carriage prior to mailing of certain types of bulk mail, including advertising letters, is not only permissible, but also rewarded in the form of pricing incentives known as “destination entry” discounts. Destination entry discounts reward mailers who are able to pre-sort and deposit bulk mail at Postal Service processing or delivery units proximate to the intended recipients. In general, destination entry discounts pass through to the mailer the costs avoided by the Postal Service for the worksharing activities performed by the mailer in transporting the mail closer to the point of destination. Thus, mailers whose costs of performing these activities are lower than the Postal Service’s costs have an economic incentive to engage in destination entry. Destination entry discounts have evolved considerably over the past few years, and are now available for several categories of bulk mail, including advertising matter, periodicals, and surface parcels. Destination entry discounts vary directly with the depth of entry; thus, the discount is greatest at the delivery unit level, when that option is available. The discounts are established through the ratesetting process discussed in section II.C below. Eligibility requirements for destination entry discounts are generally promulgated by the Postal Service.

### C. Ratesetting Procedures

Prices for domestic *postal* services provided by the Postal Service are established according to a complex procedure specified by the PRA.<sup>13</sup> Every rate for each service denominated as a postal service, regardless of the level of competition, is subject to this process. U.S. courts have interpreted this requirement to apply to all domestic postal services, including experimental services of temporary duration, as well as special services that are ancillary to the collection and delivery of mail, such as postal insurance and registered mail.<sup>14</sup>

The ratesetting process is designed to permit the participation of the public in the establishment of domestic rates. Whenever the Postal Service decides to seek changes in rates for domestic postal services, it must first request the PRC to provide a recommended decision. The PRC is required to prepare recommendations on the Postal Service’s request, after first providing an opportunity for a hearing on the record to members of the public. Typically, sophisticated mailers, mailer associations, labor unions, postal competitors, and individuals participate in these proceedings. Proceedings typically consist of the receipt of written expert testimony and oral and written cross-examination of Postal Service, mailer, and competitor witnesses. A litigation arm of the PRC known as the Office of Consumer Advocate is responsible for representing the interests of the general public in rate and classification proceedings.

After the development of an evidentiary record, the PRC undertakes to prepare detailed recommendations. The PRC must deliver its recommendations to the nine Presidentially-appointed Governors of the Postal Service. The Governors are responsible for establishing postal rates and fees, although their authority to make changes to the Commission’s recommendations is significantly restricted.<sup>15</sup> Upon receipt of a recommended decision from the PRC, the Governors have several options.<sup>16</sup> They may approve it and place it into effect. They may allow it to take effect under protest and either seek judicial review or return it to the PRC for reconsideration. They may also reject it and allow the Postal Service to resubmit a request for further reconsideration. The latter option preserves the *status quo* unless and until further recommendations are made and acted upon.

Price discrimination practices for the Postal Service are more limited than for private sector providers. A provision of the PRA forbids the Postal Service from discriminating unreasonably among mailers or granting “undue” preferences to users of the mails.<sup>17</sup> The PRC has questioned whether proposals to give volume discounts to high volume users of domestic services would be consistent with this provision.<sup>18</sup> In the international context, however, an appellate court concluded that this provision did not prohibit the Postal Service from offering specially-negotiated rates to high volume international

mailers.<sup>19</sup> The court held, however, that the Postal Service must still observe general policies in setting international prices.<sup>20</sup> This issue is discussed further in section II.G. below.

Putting aside the issue of volume and specially negotiated discounts, distinctions in prices and service are permissible. Indeed, sophisticated rate schedules for postal services have evolved over the past two decades.<sup>21</sup> Mail services are classified according to specific criteria specified in the PRA. Differences in demand characteristics, which can be measured in terms of price elasticity, combined with content characteristics, reliability, value, cost of service, speed of delivery, and fairness and equity serve as bases for charging different prices for postal services. Mailers also receive substantial discounts for performing work that would otherwise be performed by the Postal Service. In general, worksharing discounts pass through to the mailer in the form of discounts the cost avoided by the Postal Service for the work performed by the mailer, whether it be presortation, destination entry, or bar-coding of mail matter.

Price caps and rate bands have generally not been employed in postal ratemaking. The U.S. Congress is currently considering legislation that would subject postal prices to price cap regulation.

#### **D. Community Service Obligations**

The PRA imposes several community service obligations upon the Postal Service. Foremost among these are universal service obligations. Several other social policy obligations are also imposed upon the Postal Service. A brief description of these requirements follows.

##### *1. Universal Service*

The PRA requires that the Postal Service “shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.”<sup>22</sup> Congress has also directed that A[t]he Postal Service shall serve as nearly as practicable the entire population of the United States.<sup>23</sup> This is a formidable challenge for the Postal Service, particularly since large portions of the United States are sparsely populated. Some areas, particularly in Alaska, are not even accessible by surface transportation, so that mail charged surface rates of postage is in fact flown in some places.

Further, the Postal Service is obligated to maintain a maximum degree of postal services to “rural areas, communities, and small towns where post offices are not self-sustaining.”<sup>24</sup> To protect small communities from large-scale closings or consolidations of post offices, the Act stipulates that small post offices cannot be closed “solely for operating at a deficit.” If the Postal Service seeks to close an office, it must provide advance notice to customers and its decision to close the office is subject to appeal to the PRC.<sup>25</sup>

The PRA also requires that the Postal Service provide a basic letter service at a uniform rate. In particular, the Postal Service must maintain at least one class of mail for letters for which the rate “shall be uniform” throughout the United States.<sup>26</sup> The Postal Service offers a uniform domestic First-Class Mail rate for all mailable articles, currently \$0.33 USD for the first ounce (approximately 28.4 grams), regardless of distance. Uniform rates for First-Class Mail are available for articles weighing up to 5 pounds (2.27 kg.); for articles weighing in excess of 5 pounds, the rates of First-Class Mail postage become distance-related up through 70 pounds (31.8 kg.). The Postal Service is essentially designed to be a self-sustaining financial operation.<sup>27</sup> The implication of this is that sufficient revenues must be earned on mail services in profitable segments in order to cover the costs of serving higher cost and less affluent areas. The Postal Service is not reimbursed by the government or private carriers for maintenance of universal services; rather, the total revenue of the Postal Service from the various classes of mail is

expected to provide sufficient revenues to cover the total costs of providing universal postal services to the entire nation. This fact has been cited as a reason for continuation of the PES, which are designed to provide the Postal Service with a source of revenue for maintaining universal services. The federal government provides reimbursement for the applicable postage due for specified categories, including postage for designated overseas voting materials, mailings of the blind, mail sent by members of the armed services, and government mail.

There has been some debate whether the Postal Service should continue in its current form, and whether more competition should be permitted in the letter delivery market. This debate has involved discussions on whether the Postal Service should be privatized in whole or in part, and whether the PES should be relaxed or eliminated. Many observers share the view that, whatever form the postal operator takes, and whatever degree of monopoly protections are maintained, a single operator should continue to bear the universal service obligation. The confluence of these policy goals could pose substantial financial challenges for a future postal operator. That is, a privatized operator will have to adopt innovative solutions to deal with competing financial pressures, such as reduced dependence on revenue from reserved services, profit maximization for investors, and revenue generation to cover universal service costs.

## ***2. Other Obligations***

Other obligations imposed upon the Postal Service are designed to achieve social policy objectives. The PRA establishes that the Postal Service must offer qualified non-profit organizations reduced rates for mailing advertising matter, periodicals, and newspapers. Books, educational materials, sound recordings, and films must be carried at uniform rates.<sup>28</sup> Library Mail is also entitled to preferred rates. In addition, the Act entitles blind persons and certain members of the armed forces to mail articles free of charge.<sup>29</sup> The PRA further directs the PRC to consider the educational, cultural, social, and informational value (“ECSI value”) of the mail in setting overhead cost assignments.<sup>30</sup> As a consequence, mail matter having a high “ECSI value”, such as Periodicals Mail, has traditionally received relatively low overhead cost burdens, which have contributed to favorable rates for Periodicals.

Another community service obligation is relatively new. The PRA was recently amended to require the Postal Service to issue a “semipostal” stamp for a two year period.<sup>31</sup> Revenue earned through sale of the stamp that exceeds the value of the regular first-ounce postage is to be given to other governmental institutions for breast cancer research.

## **E. Regulatory Controls**

The Postal Service is subject to numerous regulatory controls, many of which are specified by the PRA. For instance, the Postal Service cannot introduce new products or services without first seeking recommendations from the PRC. Briefly, in order to establish a new mail classification, even a temporary experimental service, the Postal Service must submit a request to the PRC, which holds public hearings on the proposal. This process can take several months to complete, requires public disclosure of the Postal Service’s plans to competitors, and produces uncertain results. The Postal Service has long maintained that this procedure deprives it of the ability to introduce new products that respond to market conditions.

Prices for domestic services are subject to legal requirements that seek to protect against cross-subsidization. Specifically, the PRA establishes a price floor for all domestic postal services provided by the Postal Service. The PRA establishes that whenever rates are changed, rates for each class or type of mail must bear the “attributable” costs of the class or type plus reasonable proportions of the Postal

Service's overhead costs.<sup>32</sup> In general, the rate floor requirement in the PRA seeks to preclude the Postal Service from offering postal services that do not recover, at minimum, their attributable costs.

More complex pricing issues arise in the context of overhead cost assignments. In rate proceedings, after costs are attributed to the various classes, there is considerable debate as to the proportion of overhead costs that should be assigned to the various classes of mail. The PRA specifies a number of factors that the PRC must balance in making recommended assignments of overhead costs. These include fairness and equity; value of service; effect on mailers; effect on competition; availability of alternatives; degree of preparation; simplicity; and the educational, cultural, scientific, and informational value of the class of mail. The PRC exercises discretion in balancing these factors and setting overhead cost assignments. In the past, the PRC has recommended above average overhead cost assignments for regular letter mail and high circulation commercial advertising mail, while periodicals and standard surface parcels have generally received below average overhead cost assignments.

The Postal Service is an independent establishment of the executive branch United States government. The government is the sole owner. The Postal Service is subject to many federal laws that apply to other federal governmental agencies. For example, the Postal Service is subject to the Freedom of Information Act, which gives the public access to many types of records in the Postal Service's custody, and the Privacy Act, which protects certain information about individuals from public disclosure. Postal employees are also subject to many of the laws that apply to other federal governmental employees. For example, Postal Service employees must observe federal governmental ethics requirements. Postal employees are also subject to a federal pay cap, which limits executive salaries to \$151,800.

There are few explicit legal restrictions on the types of business in which the Postal Service can engage, although some business and investment restrictions are specified in the PRA. For example, the Postal Service is prohibited from distributing lists of names or addresses of postal patrons.<sup>33</sup> In addition, the Postal Service cannot invest in securities, such as shares of publicly traded corporations, without first receiving the consent of the Department of Treasury.<sup>34</sup>

The PRA generally confers upon the Postal Service broad authority to provide postal and philatelic services to the public. In addition, the Postal Service is authorized to provide "non-postal services" to the public. The limits of the authority to provide non-postal services have not been definitively determined by the courts or the legislature. Examples of nonpostal offerings include passport application services, photocopy services, and sale of mailing containers and packaging supplies.

Another regulatory control is the PRA requirement that rates be set so that revenues cover total estimated costs. This provision has been interpreted to require that the Postal Service endeavour to break even over time. Over the past four years, a combination of factors, including improved management techniques, automation technology, and a healthy U.S. economy, has resulted in substantial net incomes. These net incomes have allowed the Postal Service to restore a large part of its negative equity from earlier losses.

## **F. Powers, Privileges, and Immunities**

Because of its status as a federal governmental entity, the Postal Service has certain powers, privileges, and immunities that are not shared by other private sector firms. The Postal Service is not subject to federal or state income taxation, and revenue and gross receipts taxes are not imposed upon the operations of the Postal Service. In most contexts, the Postal Service is not liable for state and local sales taxes imposed on the buyer when it purchases goods and services, although the Postal Service's suppliers

may be subject to, and liable for, gross receipts taxes which are imposed on them. This cost to the supplier may ultimately be reflected in the contract price. Items sold through postal outlets are not subject to sales taxes. In general, the Postal Service is not subject to local zoning ordinances. The Postal Service may also acquire real estate and intellectual property through compulsory means, but if it does so, it must provide compensation to the owner. As a federal institution, the Postal Service is immunized from certain types of civil actions. For instance, the Postal Service is not liable for misdelivery or loss of uninsured mail or for various intentional torts, such as libel, slander, misrepresentation, or intentional interference with contractual rights.<sup>35</sup> Some courts have, however, held the Postal Service to commercial standards in specific contexts.<sup>36</sup>

There has been considerable debate concerning the scope and extent of the Postal Service's powers, privileges, and immunities. Some observers have argued in favor of a "level playing field," at least with respect to services provided in competition with the private sector. Despite the powers and advantages of the Postal Service, the Postal Service has responded to these arguments by pointing out that it is subject to many community service obligations and regulatory controls that do not apply to private sector firms, such as those discussed in the previous two sections.

### **G. International Mail**

The source of most law affecting the Postal Service's international activities is the PRA, as most provisions of the Act apply to international activities as well as to domestic. One notable exception is the procedure for establishment of international postage rates. The PRC does not recommend rates for international services. Instead, the PRA authorizes the Postal Service to set international postage rates.<sup>37</sup> Despite the flexibility accorded the Postal Service in the international arena, the PRA contains several general statements of policy, duties, and powers that have been interpreted to serve as limitations on all rates of postage. Thus, one court has held that international mail rates must be established "to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis."<sup>38</sup> In addition, the Postal Service must avoid undue and unreasonable discrimination and not confer undue or unreasonable preferences on mail users in the international context.

The United States is a member of the Universal Postal Union (UPU), a United Nations specialized agency which provides a forum in which national postal administrations can establish a common set of services. Under a recently adopted amendment to the PRA, the Secretary of State now has primary responsibility for formulation, co-ordination, and oversight of policy with respect to United States participation in the Universal Postal Union, including the Universal Postal Convention and other Acts of the Universal Postal Union and all postal treaties and conventions concluded within the framework of the Convention and such Acts.<sup>39</sup> The Acts of the UPU apply only to national postal administrations, which are mandated by their governments to fulfil a nationally defined universal service obligation, and reflect, at a global level, the commitment of its 189 member governments, at a national level, to ensure the provision of a basic set of postal services.

The UPU distinguishes between mandatory international services, which all members are obligated to provide, and other optional international services. Mandatory services include: letters and postcards (known as "LC") and printed papers, literature for the blind, and small packets weighing up to 2 kilograms (known as "AO"). UPU regulations govern the transfer, exchange, inter-administration charges and payment mechanisms for these letter products. Compensation arrangements for LC/AO mail, known as "terminal dues", are currently standardized for all members in the form of a flat charge per kilogram of mail. This rate is based on the global average cost for delivery and the global average number of items in a kilogram of mail. This global average cost system is linked to the concept of universal services at

affordable prices and the requirements of each member country to take all letter post items from any other member. Within the current UPU terminal dues structure, the global average rate may be revised for mailings tendered by a given country of origin when certain volume and weight characteristics are met. That is, if the average number of items in a kilogram of mail deviates by a fixed percentage from the global average number of items in a kilogram of mail, the rate may be revised.

Inter-administration payments for optional services within the UPU, on the other hand, are country-specific and set unilaterally by each national postal administration. These optional services include Express Mail (EMS) and parcel post. The UPU Acts provide that the exchange of EMS is regulated by bilateral agreement. National postal administrations of UPU member countries may opt to pursue bilateral or multilateral arrangements for terminal dues outside of the UPU structure.

The Private Express Statutes (PES) apply to letters of both domestic and foreign origin. In 1986, the Postal Service suspended the PES with respect to outbound international mail. This suspension permits uninterrupted private carriage of letters entered from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to a destination outside the United States. Since this suspension was implemented, several foreign postal administrations and other carriers have established remail operations in the United States to carry outbound international mail to foreign destinations. With respect to inbound international mail, the Postal Service has issued advisory opinions approving of practices involving the private carriage of inbound letters of foreign origin to the United States when such letters are entered as domestic mail upon arrival in the United States.<sup>40</sup> This practice has been found to fall within an exception to the PES for letters carried prior to mailing.

### **III. Key Competition Issues**

#### **A. Application and Enforcement of Competition Law**

The Postal Service is a federal institution, and federal antitrust laws that apply to private sector businesses are not applicable to the Postal Service. The U.S. legislature is currently considering a proposal to extend the antitrust laws to the Postal Service. For the moment, however, competition authorities have expressed their views on postal competition topics in formal proceedings before the PRC and elsewhere. In particular, the Antitrust Division of the Department of Justice and the Federal Trade Commission have expressed their views about postal policy in the form of comments submitted in response to PRC inquiries and expert witness testimony before the PRC during rate proceedings. Competition advocacy of the U.S. antitrust agencies in the past has included the following:

- support for the 1998 legislative amendments transferring responsibility for international postal policy from the USPS to the State Department, and for proposals to expand application of federal antitrust laws to USPS activities falling outside the statutory monopoly and to set appropriate limits on the scope of the postal monopoly, with a simple, bright-line test for identifying products falling within the statutory monopoly;
- comments to the PRC supporting unbundled pricing and suggesting that “reorientation of the mail classification system toward unbundling separable postal functions is an attractive economic proposition” where doing so will not raise costs of other services produced by the USPS (1990)

- comments discussing economic theory developments narrowing the case for a protected government postal monopoly and suggesting that explicit subsidies may be a better method of achieving distributional goals (1989);
- support for a U.S. policy goal of achieving a procompetitive international terminal dues agreement in which all signatories agree to (1) allow private companies to collect international mail and ship it out of the country, (2) accept international mail from private companies, (3) refrain from any discrimination in terms, conditions, or rates, between domestic mail and remail, and (4) refrain from invocation of UPU convention provisions to reject remail from other administrations (1988);
- comments to the PRC recommending rules granting a “zone of discretion” in pricing USPS Express Mail as an “integral part of reducing rate regulation,” so as to allow USPS to set Express Mail rates at any point within the zone established by the PRC without additional extended PRC review; the comments cautioned that although pricing efficiency could lead to greater efficiency, consumers would be harmed if regulatory advantages enjoyed by USPS vis-à-vis private competitors were not simultaneously removed or reduced (1988);
- advocacy expressing a policy “to foster and promote private sector competition in international remail” and opposing proposed USPS rules which would adversely affect the ability of remail services to compete for international mail traffic (1986);
- support for suspending or limiting International Priority Airmail Service by the USPS pending development of a factual record adequate to ensure against anticompetitive cross-subsidization (1986);
- recommendations that the USPS consider the competitive impact of its regulations and repeal regulations treating “data processing materials” as within the scope of the term “letter” (1979); and
- issuance of a DOJ report in 1977 questioning the statutory monopoly, noting there is no evidence of a natural monopoly and suggesting that repeal of the Private Express Statutes would have positive procompetitive effects, similar to those achieved with the liberalization of telecommunications and of fixed commissions on the New York Stock Exchange.

Competition law concepts are applied in the postal ratemaking context. For example, the PRA directs the PRC to recommend rates that equal or exceed attributable costs. The effect of this requirement is intended to protect against cross-subsidization at the subclass level. In making rate recommendations, moreover, one of the factors that the PRC is directed to consider is the effect of rate increases on, among other groups, enterprises in the private sector engaged in the delivery of mail matter other than letters. When considered in isolation, this criterion could be used to justify proportionately higher overhead cost burdens for competitive services; however, the PRC must balance this factor against other considerations, and the latter might influence the PRC to recommend a lower overhead cost burden. For example, despite the presence of substantial competition in the overnight market, the PRC has recommended relatively low overhead cost assignments for the Postal Service’s EMS product. A summary of the overhead cost assignments recommended in the most recent omnibus rate proceeding is available upon request.

## **B. Market Definition Issues**

Many issues related to market definition in the sector are covered above in section I.C; in the absence of enforcement actions in the sector (because of the statutory monopoly), there are few if any legal cases discussing market definition. In general, U.S. postal markets are defined for specific purposes. For example, in order to administer the PES, the Postal Service has promulgated regulations to define various PES concepts, such as the definition of a “letter” and a “post road.” In addition, the Postal Service has undertaken to describe with precision the exceptions and suspensions to the PES. Through issuance of advisory opinions, it has offered interpretations of the PES as they relate to particular fact patterns.

At least implicitly, the PRC undertakes to define postal markets for purposes of ratemaking analysis. Specifically, in making overhead cost assignments, the PRA directs the PRC is to consider, among other factors, the effect on competition and the availability of alternatives. To accomplish this, the PRC must either explicitly or implicitly draw conclusions about the market for purposes of making relevant comparisons.

## **C. Challenges to Pricing and Marketing Practices**

The examples below illustrate how competitors have challenged Postal Service pricing and marketing practices in both domestic and international contexts.

In the course of omnibus rate and classification proceedings before the PRC, mailers and competitors sometimes raise allegations of cross-subsidization. A recent example occurred in 1995, when, during the course of a PRC proceeding, UPS, a competitor of the Postal Service, offered testimony alleging that the revenues derived from small, standard service bulk parcels weighing less than 1 pound (455 grams) were not sufficient to cover the cost of these pieces. These parcels are not a separate subclass; rather, they are merged with a subclass of advertising matter consisting of mostly letter and flat shapes. Despite the fact that, on average, the subclass in which the parcels were classified covered its costs, the PRC was persuaded that the evidence submitted by UPS demonstrated a “serious equity problem.” Nonetheless, the PRC determined not to recommend classification and rate changes at that time due to incomplete information on the revenue and volume effects of taking corrective action.<sup>41</sup> The PRC accordingly determined to defer the matter for a reasonable limited time in order to give the Postal Service the opportunity to complete an analysis of parcel costs and market characteristics. The Postal Service accordingly undertook to prepare detailed cost information confirming that the cost of processing small parcels was higher than the revenues received. The Postal Service then developed a rate proposal to address this revenue and cost imbalance. In 1997, the Postal Service filed a request with the PRC asking that it recommend a surcharge on these parcels. Although the proposal was opposed by users of the service, the PRC recommended the proposed surcharge,<sup>42</sup> which the Governors of the Postal Service recently accepted and implemented.

Competitors have also turned to the federal courts to challenge Postal Service marketing practices. In 1993, UPS filed suit against the Postal Service challenging the Postal Service’s International Customized Mail (ICM) service, which was introduced in July 1992.<sup>43</sup> The ICM service was designed for high-volume international mailers. The Postal Service and customers of the ICM service negotiated individualized service agreements to establish the kind of services to be provided and the rate of postage. In 1993, UPS sought to obtain a court order directing the Postal Service to stop offering the service. The basis of UPS’s objection was that the Postal Service was engaging in marketing practices that were inconsistent with, and not authorized by, the PRA. A lower court agreed with UPS, but this decision was



reversed by an appellate court in 1995. The appellate court ruled that the Postal Service's ICM service was consistent with the PRA.

#### **D. Other Competition Enforcement Issues**

As explained above, the USPS is not subject to the U.S. antitrust laws. As such, there are no antitrust law enforcement issues that relate directly to conduct by the USPS. Moreover, firms operating under the exceptions to the statutory monopoly (e.g., urgent-mail delivery firms) have not been the subjects of antitrust enforcement actions. Markets related to the postal service have been subject to antitrust scrutiny, however. For example, in 1959 the Department of Justice brought an enforcement action against the dominant supplier of postal meters in the United States, charging Pitney Bowes with engaging in monopolistic conduct in violation of U.S. antitrust laws. Pitney Bowes ultimately agreed to be bound by a consent decree, which is still in effect today. The consent decree specifically prohibits Pitney Bowes from entering into foreign or domestic distribution agreements with horizontal competitors.

The USPS does not supply consumers with postal meters. Instead, it licenses private firms that in turn lease meters to customers. Large and medium sized organizations, often use meters rather than stamps to pay for postage. Roughly half of all U.S. postage is paid via postage meters, which generate up to \$21 billion in annual revenue for the USPS.

Currently, only four firms are licensed to lease meters to U.S. customers: Pitney Bowes, Ascom Hasler, Friden Neopost, and Postalia. Pitney Bowes maintains the largest share of the U.S. market. Two new USPS initiatives could make the U.S. meter market more competitive in the near future. First, the USPS has begun the process of ceasing to authorize (or "decertifying") certain older meters (roughly one half of the installed units) in an effort to eliminate postage fraud. Under this phase-out program, no decertified meter may operate after 1999. Second, the USPS is in the process of setting standards for certification of new software-based postage meters (often known as "PC postage evidencing"). In certifying new products, the USPS requires that a manufacturer prove that its system is not susceptible to fraud. To this end, the USPS requires that each new product undergo a series of computer-security tests, including both laboratory and field tests.

The characteristics of the software-based meter market vary somewhat from those of the traditional meter market. At least two types of software-based meters are possible. One will combine software and a secure hardware device (known as a "Postal Security Device") that stores advanced payment. The customer or meter supplier will bring the device to the USPS periodically to add pre-paid postage that the customer can then use. The second consists solely of software operating in conjunction with a communication device, such as a modem or a local area network, to download postage value from a remote computer. Both will print sophisticated postage indicia that will improve the USPS's counterfeit meter detection abilities, improve mail processing, and offer customers value-added services. The USPS will complete a public rulemaking procedure to define the exact requirements of the postage indicia.

The introduction of software-based postage meters might significantly increase the size of the postage meter market. Traditionally, the meter has been too costly to lease for some mailers. Some such mailers might turn to the software-based variety. Although introduction of this new technology may create opportunities for new firms to enter, existing patents in meter technology, along with USPS certification standards, may make entry difficult.

The U.S. antitrust authorities are monitoring the implementation of the two USPS initiatives. They will scrutinize any future horizontal or vertical agreements between players in these markets.

#### **IV. Postal Reform**

Since 1996, the U.S. Congress has been considering a comprehensive revision of the PRA. If enacted, this proposed legislation would result in fundamental changes that relate to ratesetting and competition. Proposals similar to those under consideration have been adopted by some other industrialized nations. A brief summary of the proposed legislation follows.

The proposed legislation would establish a new postal rate-setting process. It would divide postal products into two groupings: “non-competitive” and “competitive” mail categories. Those products in the non-competitive mail category would have rates established using a price cap regimen. Once the cap is established, prices could be adjusted on an annual basis by the Board of the Postal Service. Products contained in the competitive mail category would be priced by the Postal Service’s Board according to market conditions, as long as each of these products is priced to cover costs, and the competitive products collectively make a contribution to the overall overhead of the Postal Service in at least an equal percentage to the contribution made by all non-competitive and competitive products combined. That is, on average, the “mark-up” on services in the competitive category would have to be equal to the systemwide average mark-up for all services. Thus, if the systemwide average mark-up is 60 per cent over attributable costs, then products in the competitive category, when considered collectively, would be subject to a mark-up of 60 per cent.

Under the proposed legislation, the Postal Service would be required to track revenues and expenditures of competitive products by way of a separate new account known as the Postal Service Competitive Products Fund. The fund could be used to finance a private law corporation owned by the Postal Service. The corporation would be authorized to introduce new, unregulated, nonpostal products. From a legal standpoint, the corporation would not be the Postal Service. Funds available to the Corporation would be limited to funds invested from the Competitive Products Fund and loans obtained on the credit of the corporation itself.

For experimental products, the proposed legislation provides that the Postal Service would have a period of two years or three years to market test experimental products and to formulate the data necessary to make decisions on the permanent offering of such products.

Under the proposed legislation, the PRC’s name would be changed to the “Postal Regulatory Commission.” The PRC’s powers would be enhanced by providing it with the ability to subpoena information. The proposed legislation would also require that the Postal Service be audited annually, as well as reviewed, upon complaint, by the PRC to ensure that prices are set in accordance with the law and that delivery and performance standards are being met.

With respect to competition, the proposed legislation would extend the application of antitrust laws both to competitive and non-competitive products not covered by the postal monopoly, and would apply federal prohibitions against fraudulent business practices and trademark infringement to all postal products. The proposed legislation would also amend the PES to provide that a “letter” may be carried out of the mails under the criteria of existing law, or when the amount paid for private carriage is at least six times the price of the single-piece first-ounce (28.4 grams) regular First-Class rate, or when the letter weighs more than 12 ½ ounces (355 grams).

## NOTES

- 1 Pub. L. 91-375, 84 Stat. 719 (1970), as amended. The Act has been codified in Title 39, United States Code, 39 U.S.C. §§ 101 *et seq.*
- 2 39 U.S.C. §§ 101, 401, 403, 404.
- 3 39 U.S.C. § 3625. The Governors' authority to make changes to the Commission's recommendations is significantly restricted.
- 4 39 U.S.C. §§ 3601 *et seq.*
- 5 *See, e.g., Governors of USPS v. United States Postal Rate Comm'n*, 654 F.2d 108, 114-15 (D.C. Cir. 1981).
- 6 18 U.S.C. §§ 1693-1699; 39 U.S.C. §§ 601-606.
- 7 Letters are defined as messages directed to a specific person or address and recorded in or on a tangible object. Tangible objects include items such as paper, recording disks, and magnetic tapes.
- 8 Post routes include public roads, highways, railroads, water routes, air routes and letter-carrier routes within the territorial boundaries of the United States on which mail is carried by the Postal Service.
- 9 18 U.S.C. § 1725.
- 10 39 C.F.R. § 320.6.
- 11 39 C.F.R. § 320.8.
- 12 *See American Postal Workers Union v. React Postal Services, Inc.*, 771 F.2d 1375 (10th Cir. 1985).
- 13 39 U.S.C. §§ 3621 *et seq.*
- 14 *UPS v. U.S. Postal Service*, 455 F. Supp. 857 (E.D. Pa. 1978), *aff'd*, 604 F.2d 1370 (3d Cir. 1979), *cert. denied*, 446 U.S. 957 (1980); *Associated Third Class Mail Users v. U.S. Postal Service*, 405 F. Supp. 1109, 1115-118 (D.D.C. 1975), *aff'd*, *National Assoc. of Greeting Card Publishers v. U.S. Postal Serv.*, 569 F.2d 570, 595-598 (D.C. Cir. 1976), *vacated on other grounds, U.S. Postal Service v. Associated Third Class Mail Users*, 434 U.S. 884 (1977).
- 15 39 U.S.C. § 3621.
- 16 39 U.S.C. § 3625.
- 17 39 U.S.C. § 403(c).
- 18 PRC Op. R90-1 at V-388.

- 19 *UPS Worldwide Forwarding v. United States Postal Serv.*, 66 F.3d 621 (3d Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).
- 20 This includes the requirement that rates must be established “to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.” In addition, the Postal Service must avoid undue and unreasonable discrimination and not confer undue or unreasonable preferences on mail users in the international context. See 39 U.S.C. §§ 101, 403.
- 21 See 39 C.F.R. § 3001.68.
- 22 39 U.S.C. § 101(a).
- 23 39 U.S.C. § 403(a).
- 24 39 U.S.C. § 101(b).
- 25 39 U.S.C. § 404(b).
- 26 39 U.S.C. § 3623(d).
- 27 39 U.S.C. § 3621.
- 28 39 U.S.C. §§ 3626, 3683.
- 29 39 U.S.C. §§ 3401, 3403.
- 30 39 U.S.C. § 3622.
- 31 39 U.S.C. § 414.
- 32 39 U.S.C. § 3622(b)(3).
- 33 39 U.S.C. § 412.
- 34 39 U.S.C. § 2003.
- 35 28 U.S.C. § 2680.
- 36 *E.g., Portmann v. United States*, 674 F.2d 1155 (7th Cir. 1982) (holding the Postal Service to commercial standards for equitable estoppel for claim related to Express Mail).
- 37 39 U.S.C. § 407.
- 38 *UPS Worldwide Forwarding v. United States Postal Serv.*, 66 F.3d 621 (3d Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).
- 39 39 U.S.C. § 407(a).
- 40 PES Op. No. 89-4; PES Op. No. 85-4.

41 PRC Op. MC95-1.

42 PRC Op. R97-1.

43 *UPS Worldwide Forwarding v. United States Postal Serv.*, 66 F.3d 621 (3d Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).



## EUROPEAN COMMISSION

### **Notice From the Commission on the Application of the Competition Rules to The Postal Sector and on the Assessment of Certain State Measures Relating to Postal Services**

*Official Journal C 039 , 06/02/1998 p. 0002 - 0018*

(Text with EEA relevance)

#### **Preface**

Subsequent to the submission by the Commission of a Green Paper on the development of the single market for postal services (1) and of a communication to the European Parliament and the Council, setting out the results of the consultations on the Green Paper and the measures advocated by the Commission (2), a substantial discussion has taken place on the future regulatory environment for the postal sector in the Community. By Resolution of 7 February 1994 on the development of Community postal services (3), the Council invited the Commission to propose measures defining a harmonised universal service and the postal services which could be reserved. In July 1995, the Commission proposed a package of measures concerning postal services which consisted of a proposal for a Directive of the European Parliament and the Council on common rules for the development of Community postal services and the improvement of quality of service (4) and a draft of the present Notice on the application of the competition rules (5).

This notice, which complements the harmonisation measures proposed by the Commission, builds on the results of those discussions in accordance with the principles established in the Resolution of 7 February 1994. It takes account of the comments received during the public consultation on the draft of this notice published in December 1995, of the European Parliament's resolution (6) on this draft adopted on 12 December 1996, as well as of the discussions on the proposed Directive in the European Parliament and in Council.

The Commission considers that because they are an essential vehicle of communication and trade, postal services are vital for all economic and social activities. New postal services are emerging and market certainty is needed to favour investment and the creation of new employment in the sector. As recognized by the Court of Justice of the European Communities, Community law, and in particular the competition rules of the EC Treaty, apply to the post sector (7). The Court stated that "in the case of public undertakings to which Member States grant special or exclusive rights, they are neither to enact nor to maintain in force any measure contrary to the rules contained in the Treaty with regard to competition" and that those rules "must be read in conjunction with Article 90(2) which provides that undertakings entrusted with the operation of services of general economic interest are to be subject to the rules on competition in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them." Questions are therefore frequently put to the Commission on the attitude it intends to take, for purposes of the implementation of the competition rules contained in the Treaty, with regard to the behaviour of postal operators and with regard to State measures relating to public undertakings and undertakings to which the Member States grant special or exclusive rights in the postal sector.

This notice sets out the Commission's interpretation of the relevant Treaty provisions and the guiding principles according to which the Commission intends to apply the competition rules of the Treaty to the postal sector in individual cases, while maintaining the necessary safeguards for the provision of a universal service, and gives to enterprises and Member States clear guidelines so as to avoid infringements of the Treaty. This Notice is without prejudice to any interpretation to be given by the Court of Justice of the European Communities.

Furthermore, this Notice sets out the approach the Commission intends to take when applying the competition rules to the behaviour of postal operators and when assessing the compatibility of State measures restricting the freedom to provide service and/or to compete in the postal markets with the competition rules and other rules of the Treaty. In addition, it addresses the issue of non-discriminatory access to the postal network and the safeguards required to ensure fair competition in the sector.

Especially on account of the development of new postal services by private and public operators, certain Member States have revised, or are revising, their postal legislation in order to restrict the monopoly of their postal organisations to what is considered necessary for the realisation of the public-interest objective. At the same time, the Commission is faced with a growing number of complaints and cases under competition law on which it must take position. At this stage, a notice is therefore the appropriate instrument to provide guidance to Member States and postal operators, including those enjoying special or exclusive rights, to ensure correct implementation of the competition rules. This Notice, although it cannot be exhaustive, aims to provide the necessary guidance for the correct interpretation, in particular, of Articles 59, 85, 86, 90, and 92 of the Treaty in individual cases. By issuing the present notice, the Commission is taking steps to bring transparency and to facilitate investment decisions of all postal operators, in the interest of the users of postal services in the European Union.

As the Commission explained in its communication of 11 September 1996 on "Services of general interest in Europe" (8), solidarity and equal treatment within a market economy are fundamental Community objectives. Those objectives are furthered by services of general interest. Europeans have come to expect high-quality services at affordable prices, and many of them even view services of general interest as social rights.

As regards, in particular, the postal sector, consumers are becoming increasingly assertive in exercising their rights and wishes. Worldwide competition is forcing companies using such services to seek out better price deals comparable to those enjoyed by their competitors. New technologies, such as fax or electronic mail, are putting enormous pressures on the traditional postal services. Those developments have given rise to worries about the future of those services accompanied by concerns over employment and economic and social cohesion. The economic importance of those services is considerable. Hence the importance of modernising and developing services of general interest, since they contribute so much to European competitiveness, social solidarity and quality of life.

The Community's aim is to support the competitiveness of the European economy in an increasingly competitive world and to give consumers more choice, better quality and lower prices, while at the same time helping, through its policies, to strengthen economic and social cohesion between the Member States and to reduce certain inequalities. Postal services have a key role to play here. The Community is committed to promoting their functions of general economic interest, as solemnly confirmed in the new Article 7d, introduced by the Amsterdam Treaty, while improving their efficiency. Market forces produce a better allocation of resources and greater effectiveness in the supply of services, the principal beneficiary being the consumer, who gets better quality at a lower price. However, those mechanisms sometimes have their limits; as a result the potential benefits might not extend to the entire



population and the objective of promoting social and territorial cohesion in the Union may not be attained. The public authority must then ensure that the general interest is taken into account.

The traditional structures of some services of general economic interest, which are organised on the basis of national monopolies, constitute a challenge for European economic integration. This includes postal monopolies, even where they are justified, which may obstruct the smooth functioning of the market, in particular by sealing off a particular market sector.

The real challenge is to ensure smooth interplay between the requirements of the single market in terms of free movement, economic performance and dynamism, free competition, and the general interest objectives. This interplay must benefit individual citizens and society as a whole. This is a difficult balancing act, since the goalposts are constantly moving: the single market is continuing to expand and public services, far from being fixed, are having to adapt to new requirements.

The basic concept of universal service, which was originated by the Commission (9), is to ensure the provision of high-quality service to all prices everyone can afford. Universal service is defined in terms of principles: equality, universality, continuity and adaptability; and in terms of sound practices: openness in management, price-setting and funding and scrutiny by bodies independent of those operating the services. Those criteria are not always all met at national level, but where they have been introduced using the concept of European universal service, there have been positive effects for the development of general interest services. Universal service is the expression in Europe of the requirements and special features of the European model of society in a policy which combines a dynamic market, cohesion and solidarity.

High-quality universal postal services are of great importance for private and business customers alike. In view of the development of electronic commerce their importance will even increase in the very near future. Postal services have a valuable role to play here.

As regards the postal sector, Directive 97/67/EC has been adopted by the European Parliament and the Council (hereinafter referred to as "the Postal Directive"). It aims to introduce common rules for developing the postal sector and improving the quality of service, as well as gradually opening up the markets in a controlled way.

The aim of the Postal Directive is to safeguard the postal service as a universal service in the long term. It imposes on Member States a minimum harmonised standard of universal services including a high-quality service countrywide with regular guaranteed deliveries at prices everyone can afford. This involves the collection, transport, sorting and delivery of letters as well as catalogues and parcels within certain price and weight limits. It also covers registered and insured (*valeur déclarée*) items and applies to both domestic and cross-border deliveries. Due regard is given to considerations of continuity, confidentiality, impartiality and equal treatment as well as adaptability.

To guarantee the funding of the universal service, a sector may be reserved for the operators of this universal service. The scope of the reserved sector has been harmonised in the Postal Directive. According to the Postal Directive, Member States can only grant exclusive rights for the provision of postal services to the extent that this is necessary to guarantee the maintenance of the universal service. Moreover, the Postal Directive establishes the maximum scope that Member States may reserve in order to achieve this objective. Any additional funding which may be required for the universal service may be found by writing certain obligations into commercial operator's franchises; for example, they may be required to make financial contributions to a compensation fund administered for this purpose by a body independent of the beneficiary or beneficiaries, as foreseen in Article 9 of the Postal Directive.

The Postal Directive lays down a minimum common standard of universal services and establishes common rules concerning the reserved area. It therefore increases legal certainty as regards the legality of some exclusive and special rights in the postal sector. There are, however State measures that are not dealt with in it and that can be in conflict with the Treaty rules addressed to Member States. The autonomous behaviour of the postal operators also remains subject to the competition rules in the Treaty.

Article 90(2) of the Treaty provides that suppliers of services of general interest may be exempted from the rules in the Treaty, to the extent that the application of those rules would obstruct the performance of the general interest tasks for which they are responsible. That exemption from the Treaty rules is however subject to the principle of proportionality. That principle is designed to ensure the best match between the duty to provide general interest services and the way in which the services are actually provided, so that the means used are in proportion to the ends pursued. The principle is formulated to allow for a flexible and context-sensitive balance that takes account of the technical and budgetary constraints that may vary from one sector to another. It also makes for the best possible interaction between market efficiency and general interest requirements, by ensuring that the means used to satisfy the requirements do not unduly interfere with the smooth running of the single European market and do not affect trade to an extent that would be contrary to the Community interest (10).

The application of the Treaty rules, including the possible application of the Article 90(2) exemption, as regards both behaviour of undertakings and State measures can only be done on a case-by-case basis. It seems, however, highly desirable, in order to increase legal certainty as regards measures not covered by the Postal Directive, to explain the Commission's interpretation of the Treaty and the approach that it aims to follow in its future application of those rules. In particular, the Commission considers that, subject to the provisions of Article 90(2) in relation to the provision of the universal service, the application of the Treaty rules would promote the competitiveness of the undertakings active in the postal sector, benefit consumers and contribute in a positive way to the objectives of general interest.

The postal sector in the European Union is characterised by areas which Member States have reserved in order to guarantee universal service and which are now being harmonised by the Postal Directive in order to limit distortive effects between Member States. The Commission must, according to the Treaty, ensure that postal monopolies comply with the rules of the Treaty, and in particular the competition rules, in order to ensure maximum benefit and limit any distortive effects for the consumers. In pursuing this objective by applying the competition rules to the sector on a case-by-case-basis, the Commission will ensure that monopoly power is not used for extending a protected dominant position into liberalised activities or for unjustified discrimination in favour of big accounts at the expense of small users. The Commission will also ensure that postal monopolies granted in the area of cross-border services are not used for creating or maintaining illicit price cartels harming the interest of companies and consumers in the European Union.

This notice explains to the players on the market the practical consequences of the applicability of the competition rules to the postal sector, and the possible derogations from the principles. It sets out the position the Commission would adopt, in the context set by the continuing existence of special and exclusive rights as harmonised by the Postal Directive, in assessing individual cases or before the Court of Justice in cases referred to the Court by national courts under Article 177 of the Treaty.

## I. Definitions

In the context of this notice, the following definitions shall apply (11):

“postal services:” services involving the clearance, sorting, transport and delivery of postal items;

“public postal network”: the system of organisation and resources of all kinds used by the universal service provider(s) for the purposes in particular of:

- the clearance of postal items covered by a universal service obligation from access points throughout the territory,
- the routing and handling of those items from the postal network access point to the distribution centre,
- distribution to the addresses shown on items;

“access points”: physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the universal service provider, where postal items may be deposited with the public postal network by customers;

“clearance”: the operation of collecting postal items deposited at access points;

“distribution”: the process from sorting at the distribution centre to delivery of postal items to their addresses;

“postal item”: an item addressed in the final form in which it is to be carried by the universal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value;

“item of correspondence”: a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals shall not be regarded as items of correspondence;

“direct mail”: a communication consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee's name, address and identifying number as well as other modifications which do not alter the nature of the message, which is sent to a significant number of addresses, to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. The National Regulatory Authority should interpret the term “significant number of addressees” within each Member State and publish an appropriate definition. Bills, invoices, financial statements and other non-identical messages should not be regarded as direct mail. A communication combining direct mail with other items within the same wrapping should not be regarded as direct mail. Direct mail includes cross-border as well as domestic direct mail;

“document exchange”: provision of means, including the supply of ad hoc premises as well as transportation by a third party, allowing self-delivery by mutual exchange of postal items between users subscribing to this service;

“express mail service”: a service featuring, in addition to greater speed and reliability in the collection, distribution, and delivery of items, all or some of the following supplementary facilities: guarantee of delivery by a fixed date; collection from point of origin; personal delivery to addressee; possibility of changing the destination and address in transit; confirmation to sender of receipt of the item dispatched; monitoring and tracking of items dispatched; personalised service for customers and provision of an à la carte service, as and when required. Customers are in principle prepared to pay a higher price for this service;

“universal service provider”: the public or private entity providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the Commission;

“exclusive rights”: rights granted by a Member State which reserve the provision of postal services to one undertaking through any legislative, regulatory or administrative instrument and reserve to it the right to provide a postal service, or to undertake an activity, within a given geographical area;

“special rights”: rights granted by a Member State to a limited number of undertakings through any legislative, regulatory or administrative instrument which, within a given geographical area:

- limits, on a discretionary basis, to two or more the number of such undertakings authorised to provide a service or undertake an activity, otherwise than according to objective, proportional and non-discriminatory criteria, or
- designates, otherwise than according to such criteria, several competing undertakings as undertakings authorised to provide a service or undertake an activity, or
- confers on any undertaking or undertakings, otherwise than according to such criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same service or undertake the same activity in the same geographical area under substantially comparable conditions;

“terminal dues”: the remuneration of universal service providers for the distribution of incoming cross-border mail comprising postal items from another Member State or from a third country;

“intermediary”: any economical operator who acts between the sender and the universal service provider, by clearing, routing and/or pre-sorting postal items, before channelling them into the public postal network of the same or of another country;

“national regulatory authority”: the body or bodies, in each Member State, to which the Member State entrusts, inter alia, the regulatory functions falling within the scope of the Postal Directive;

“essential requirements”: general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services (12). These reasons are: the confidentiality of correspondence, security of the network as regards the transport of dangerous goods and, where justified, data protection, environmental protection and regional planning.

Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy.

## II. Marked Definition and Position on the Postal Market

### a) Geographical and product market definition

2.1. Articles 85 and 86 of the Treaty prohibit as incompatible with the common market any conduct by one or more undertakings that may negatively affect trade between Member States which involves the prevention, restriction, or distortion of competition and/or an abuse of a dominant position within the common market or a substantial part of it. The territories of the Member States constitute separate geographical markets with regard to the delivery of domestic mail and also with regard to the domestic delivery of inward cross-border mail, owing primarily to the exclusive rights of the operators referred to in point 4.2 and to the restrictions imposed on the provision of postal services. Each of the geographical markets constitutes a substantial part of the common market. For the determination of "relevant market", the country of origin of inward cross-border mail is immaterial.

2.2. As regards the product markets, the differences in practice between Member States demonstrate that recognition of several distinct markets is necessary in some cases. Separation of different product-markets is relevant, among, other things, to special or exclusive rights granted. In its assessment of individual cases on the basis of the different market and regulatory situations in the Member States and on the basis of a harmonised framework provided by the Postal Directive, the Commission will in principle consider that a number of distinct product markets exist, like the clearance, sorting, transport and delivery of mail, and for example direct mail, and cross-border mail. The Commission will take into account the fact that these markets are wholly or partly liberalised in a number of Member States. The Commission will consider the following markets when assessing individual cases.

2.3. The general letter service concerns the delivery of items of correspondence to the addresses shown on the items.

It does not include self-provision, that is the provision of postal services by the natural or legal person (including a sister or subsidiary organisation) who is the originator of the mail.

Also excluded, in accordance with practice in many Member States, are such postal items as are not considered items of correspondence, since they consist of identical copies of the same written communication and have not been altered by additions, deletions or indications other than the name of the addressee and his address. Such items are magazines, newspapers, printed periodicals catalogues, as well as goods or documents accompanying and relating to such items.

Direct mail is covered by the definition of items of correspondence. However, direct mail items do not contain personalised messages. Direct mail addresses the needs of specific operators for commercial communications services, as a complement to advertising in the media. Moreover, the senders of direct mail do not necessarily require the same short delivery times, priced at first-class letter tariffs, asked for by customers requesting services on the market as referred to above. The fact that both services are not always directly interchangeable indicates the possibility of distinct markets.

2.4. Other distinct markets include, for example, the express mail market, the document exchange market, as well as the market for new services (services quite distinct from conventional services). Activities combining the new telecommunications technologies and some elements of the postal services

may be, but are not necessarily, new services within the meaning of the Postal Directive. Indeed, they may reflect the adaptability of traditional services.

A document exchange differs from the market referred to in point 2.3 since it does not include the collection and the delivery to the addressee of the postal items transported. It involves only means, including the supply of ad hoc premises as well as transportation by a third party, allowing self-delivery by mutual exchange of postal items between users subscribing to this service. The users of a document exchange are members of a closed user group.

The express mail service also differs from the market referred to in point 2.3 owing to the value added by comparison with the basic postal service (13). In addition to faster and more reliable collection, transportation and delivery of the postal items, an express mail service is characterised by the provision of some or all of the following supplementary services: guarantee of delivery by a given date; collection from the sender's address; delivery to the addressee in person; possibility of a change of destination and addressee in transit; conformation to the sender of delivery; tracking and tracing; personalised treatment for customers and the offer of a range of services according to requirements. Customers are in principle prepared to pay a higher price for this service. The reservable services as defined in the Postal Directive may include accelerated delivery of items of domestic correspondence falling within the prescribed price and weight limits.

2.5. Without prejudice to the definition of reservable services given in the Postal Directive, different activities can be recognised, within the general letter service, which meet distinct needs and should in principle be considered as different markets; the markets for the clearance and for the sorting of mail, the market for the transport of mail and, finally, the delivery of mail (domestic or inward cross-border). Different categories of customers must be distinguished in this respect. Private customers demand the distinct products or services as one integrated service. However, business customers, which represent most of the revenues of the operators referred to in point 4.2, actively pursue the possibilities of substituting for distinct components of the final service alternative solutions (with regard to quality of service levels and/or costs incurred) which are in some cases provided by, or sub-contracted to, different operators. Business customers want to balance the advantages and disadvantages of self-provision versus provision by the postal operator. The existing monopolies limit the external supply of those individual services, but they would otherwise limit the external supply of those individual according to market conditions. That market reality supports the opinion that clearance, sorting, transport and delivery of postal items constitute different markets (14). From a competition-law point of view, the distinction between the four markets may be relevant.

That is the case for cross-border mail where the clearance and transport will be done by a postal operator other than the one providing the distribution. This is also the case as regards domestic mail, since most postal operators permit major customers to undertake sorting of bulk traffic in return for discounts, based on their public tariffs. The deposit and collection of mail and method of payment also vary in these circumstances. Mail rooms of larger companies are now often operated by intermediaries, which prepare and pre-sort mail before handing it over to the postal operator for final distribution. Moreover, all postal operators allow some kind of downstream access to distribution. Moreover, all postal operators allow some kind of downstream access to their postal network, for instance by allowing or even demanding (sorted) mail to be deposited at an expediting or sorting centre. This permits in many cases a higher reliability (quality of service) by bypassing any sources of failure in the postal network upstream.

## (b) Dominant position

2.6. Since in most Member States the operator referred to in point 4.2 is, by virtue of the exclusive rights granted to him, the only operator controlling a public postal network covering the whole territory of the Member State, such an operator has a dominant position within the meaning of Article 86 of the Treaty on the national market for the distribution of items of correspondence. Distribution is the service to the user which allows for important economies of scale, and the operator providing this service is in most cases also dominant on the markets for the clearance, sorting and transport of mail. In addition, the enterprise which provides distribution, particularly if it also operates post office premises, has the important advantage of being regarded by the users as the principal postal enterprise, because it is the most conspicuous one, and is therefore the natural first choice. Moreover, this dominant position also includes, in most Member States, services such as registered mail or special delivery services, and/or some sectors of the parcels market.

## (c) Duties of dominant postal operators

2.7. According to point (b) of the second paragraph of Article 86 of the Treaty, an abuse may consist in limiting the performance of the relevant service to the prejudice of its consumers. Where a Member State grants exclusive rights to an operator referred to in point 4.2 for services which it does not offer, or offers in conditions not satisfying the needs of customers in the same way as the services which competitive economic operators would have offered, the Member State induces those operators, by the simple exercise of the exclusive right which has been conferred on them, to limit the supply of the relevant service, as the effective exercise of those activities by private companies is, in this case, impossible. This is particularly the case where measures adopted to protect the postal service restrict the provision of other distinct services on distinct or neighbouring markets such as the express mail market. The Commission has requested several Member States to abolish restrictions resulting from exclusive rights regarding the provision of express mail services by international couriers (15).

Another type of possible abuse involves providing a seriously inefficient service and failing to take advantage of technical developments. This harms customers who are prevented from choosing between alternative suppliers. For instance, a report prepared for the Commission (16) in 1994 showed that, where they have not been subject to competition, the public postal operators in the Member States have not made any significant progress since 1990 in the standardisation of dimensions and weights. The report also showed that some postal operators practised hidden cross-subsidies between reserved and non-reserved services (see points 3.1 and 3.4), which explained, according to that study, most of the price disparities between Member States in 1994, especially penalising residential users who do not qualify for any discounts schemes, since they make use of reserved services that are priced at a higher level than necessary.

The examples given illustrate the possibility that, where they are granted special or exclusive rights, postal operators may let the quality of the service decline (17) and omit to take necessary steps to improve service quality. In such cases, the Commission may be induced to act taking account of the conditions explained in point 8.3.

As regards cross-border postal services, the study referred to above showed that the quality of those services needed to be improved significantly in order to meet the needs of customers, and in particular of residential customers who cannot afford to use the services of courier companies or facsimile transmission instead. Independent measurements carried out in 1995 and 1996 show an improvement of quality of service since 1994. However, those measurements only concern first class mail, and the most recent measurements show that the quality has gone down slightly again.

The majority of Community public postal operators have notified an agreement on terminal dues to the Commission for assessment under the competition rules of the Treaty. The parties to the agreement have explained that their aim is to establish fair compensation for the delivery of cross-border mail reflecting more closely the real costs incurred and to improve the quality of cross-border mail services.

2.8. Unjustified refusal to supply is also an abuse prohibited by Article 86 of the Treaty. Such behaviour would lead to a limitation of services within the meaning of Article 86, second paragraph, (b) and, if applied only to some users, result in discrimination contrary to Article 86, second paragraph, (c), which requires that no dissimilar conditions be applied to equivalent transactions. In most of the Member States, the operators referred to in point 4.2 provide access at various access points of their postal networks to intermediaries. Conditions of access, and in particular the tariffs applied, are however, often confidential and may facilitate the application of discriminatory conditions, Member States should ensure that their postal legislation does not encourage postal operators to differentiate unjustifiably as regards the conditions applied or to exclude certain companies.

2.9. While a dominant firm is entitled to defend its position by competing with rivals, it has a special responsibility not to further diminish the degree of competition remaining on the market. Exclusionary practices may be directed against existing competitors on the market or intended to impede market access by new entrants. Examples of such illegal behaviour include: refusal to deal as a means of eliminating a competitor by a firm which is the sole or dominant source of supply of a product or controls access to an essential technology or infrastructure; predatory pricing and selective price cutting (see section 3; exclusionary dealing agreements; discrimination as part of a wider pattern of monopolizing conduct designed to exclude competitors; and exclusionary rebate schemes.

### **III. Cross-Subsidisation**

#### **(a) Basic principles**

3.1. Cross-subsidisation means that an undertaking bears or allocates all or part of the costs of its activity in one geographical or product market to its activity in another geographical or product market. Under certain circumstances, cross-subsidisation in the postal sector, where nearly all operators provide reserved and non-reserved services, can distort competition and lead to competitors being beaten by offers which are made possible not by efficiency (including economies of scope) and performance but by cross-subsidies. Avoiding cross-subsidisation leading to unfair competition is crucial for the development of the postal sector.

3.2. Cross-subsidisation does not distort competition when the costs of reserved activities are subsidised by the revenue generated by other reserved services since there is no competition possible as to these services. This form of subsidisation may sometimes be necessary, to enable the operators referred to in point 4.2 to perform their obligation to provide a service universally, and on the same conditions to everybody (18). For instance, unprofitable mail delivery in rural areas is subsidised through revenues from profitable mail delivery in urban areas. The same could be said of subsidising the provision of reserved services through revenues generated by activities open to competition. Moreover, cross-subsidisation between non-reserved activities is not in itself abusive.

3.3. By contrast, subsidising activities open to competition by allocating their costs to reserved services is likely to distort competition in breach of Article 86. It could amount to an abuse by an undertaking holding a dominant position within the Community. Moreover, users of activities covered by a monopoly would have to bear costs which are unrelated to the provision of those activities. Nonetheless,



dominant companies too many compete on price, or improve their cash flow and obtain only partial contribution to their fixed (overhead) costs, unless the prices are predatory or go against relevant national or Community regulations.

(b) Consequences

3.4. A reference to cross-subsidisation was made in point 2.7; duties of dominant postal operators. The operators referred to in point 4.2 should not use the income from the reserved area to cross-subsidise activities in areas open to competition. Such a practice could prevent, restrict or distort competition in the non-reserved area. However, in some justified cases, subject to the provisions of Article 90(2), cross-subsidisation can be regarded as lawful, for example for cultural mail (19), as long as it is applied in a non-discriminatory manner, or for particular services to the socially, medically and economically disadvantaged. When necessary, the Commission will indicate what other exemptions the Treaty would allow to be made. In all other cases, taking into account the indications given in point 3.3, the price of competitive services offered by the operator referred to in point 4.2 should, because of the difficulty of allocating common costs, in principle be at least equal to the average total costs of provision. This means covering the direct costs plus an appropriate proportion of the common and overhead costs of the operator. Objective criteria, such as volumes, time (labour) usage, or intensity of usage, should be used to determine the appropriate proportion. When using the turnover generated by the services involved as a criterion in a case of cross-subsidisation, allowance should be made for the fact that in such a scenario the turnover of the relevant activity is being kept artificially low. Demand-influenced factors, such as revenues or profits, are themselves influenced by predation. If services were offered systematically and selectively at a price below average total cost, the Commission would, on a case-by-case basis, investigate the matter under Article 86, or under Article 86 and Article 90(1) or under Article 92.

#### **IV. Public Undertakings and Special or Exclusive Rights**

4.1. The treaty obliges the Member States, in respect of public undertakings and undertakings to which they grant special or exclusive rights, neither to enact nor maintain in force any measures contrary to the Treaty rules (Article 90(1)). The expression “undertaking” includes every person or legal entity exercising an economic activity, irrespective of the legal status of the entity and the way in which it is financed. The clearance, sorting, transportation and distribution of postal items constitute economic activities, and these services are normally supplied for reward.

The term “public undertaking” includes every undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of ownership of it, their financial participation in it or the rules which govern it (20). A dominant influence on the part of the public authorities may in particular be presumed when the public authorities hold, directly or indirectly, the majority of the subscribed capital of the undertaking, control the majority of the voting rights attached to shares issued by the undertaking or can appoint more than half of the members of the administrative, managerial or supervisory body. Bodies which are part of the Member State's administration and which provide in an organised manner postal services for third parties against remuneration are to be regarded as such undertakings. Undertakings to which special or exclusive rights are granted can, according to Article 90(1), be public as well as private.

4.2. National regulations concerning postal operators to which the Member States have granted special or exclusive rights to provide certain postal services are “measures” within the meaning of Article 90(1) of the Treaty and must be assessed under the Treaty provisions to which that Article refers.

In addition to Member States' obligations under Article 90(1), public undertakings and undertakings that have been granted special or exclusive rights are subject to Articles 85 and 86.

4.3. In most Member States, special and exclusive rights apply to services such as the clearance, transportation and distribution of certain postal items, as well as the way in which those services are provided, such as the exclusive right to place letter boxes along the public highway or to issue stamps bearing the name of the country in question.

## **V. Freedom to Provide Services**

### **(a) Basic principles**

5.1. The granting of special or exclusive rights to one or more operators referred to in point 4.2 to carry out the clearance, including public collection, transport and distribution of certain categories of postal items inevitably restricts the provision of such services, both by companies established in other Member States and by undertakings established in the Member State concerned. This restriction has a transborder character when the addresses or the senders of the postal items handled by those undertakings are established in other Member States. In practice, restrictions on the provision of postal services, within the meaning of Article 59 of the Treaty (21), comprise prohibiting the conveyance of certain categories of postal items to other Member States including by intermediaries, as well as the prohibition on distributing cross-border mail. The Postal Directive lays down the justified restrictions on the provision of postal services.

5.2. Article 66, read in conjunction with Article 55 and 56 of the Treaty, sets out exceptions from Article 59. Since they are exceptions to a fundamental principle, they must be interpreted restrictively. As regards postal services, the exception under Article 55 only applies to the conveyance and distribution of a special kind of mail, that is mail generated in the course of judicial or administrative procedures, connected, even occasionally, with the exercise of official authority, in particular notifications in pursuance of any judicial or administrative procedures. The conveyance and distribution of such items on a Member State's territory may therefore be subjected at a licensing requirement (see point 5.5) in order to protect the public interest. The conditions of the other derogations from the Treaty listed in those provisions will not normally be fulfilled in relation to postal services. Such services cannot, in themselves, threaten public policy and cannot affect public health.

5.3. The case-law of the Court of Justice allows, in principle, further derogations on the basis of mandatory requirements, provided that they fulfil non-economic essential requirements in the general interest, are applied without discrimination, and are appropriate and proportionate to the objective to be achieved. As regards postal services, the essential requirements which the Commission would consider as justifying restrictions on the freedom to provide postal services are data protection subject to approximation measures taken in this field, the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, as well as, where justified under the provisions of the Treaty, environmental protection and regional planning. Conversely, the Commission would not consider it justified to impose restrictions on the freedom to provide postal services for reasons of consumer protection since this general interest requirement can be met by the general legislation on fair trade practices and consumer protection. Benefits to consumers are enhanced by the freedom to provide postal services, provided that universal service obligations are well defined on the basis of the Postal Directive and can be fulfilled.

5.4. The Commission therefore considers that the maintenance of any special or exclusive right which limits cross-border provision of postal services needs to be justified in the light of Articles 90 and 59 of the Treaty. At present, the special or exclusive rights whose scope does not go beyond the reserved services as defined in the Postal Directive are *prima facie* justified under Article 90(2). Outward cross-border mail is *de jure* or *de facto* liberalised in some Member States, such as Denmark, the Netherlands, Finland, Sweden, and the United Kingdom.

(b) Consequences

5.5. The adoption of the measures contained in the Postal Directive requires Member States to regulate postal services. Where Member States restrict postal services to ensure the achievement of universal service and essential requirements, the content of such regulation must correspond to the objective pursued. Obligations should, as a general rule, be enforced within the framework of class licences and declaration procedures by which operators of postal services supply their name, legal form, title and address as well as a short description of the services they offer to the public. Individual licensing should only be applied for specific postal services, where it is demonstrated that less restrictive procedures cannot ensure those objectives. Member States may be invited, on a case-by-case basis, to notify the measures they adopt to the Commission to enable it to assess their proportionality.

## **VI. Measures Adopted by Member States**

(a) Basic principles

6.1. Member States have the freedom to define what are general interest services, to grant the special or exclusive rights that are necessary for providing them, to regulate their management and, where appropriate, to fund them. However, under Article 90(1) of the Treaty, Member States must, in the case of public undertakings and undertakings to which they have granted special or exclusive rights, neither enact nor maintain in force any measure contrary to the Treaty rules, and in particular its competition rules.

(b) Consequences

6.2. The operation of a universal clearance and distribution network confers significant advantages on the operator referred to in point 4.2 in offering not only reserved or liberalised services falling within the definition of universal service, but also other (non-universal postal) services. The prohibition under Articles 90(1), read in conjunction with Article 86(b), applies to the use, without objective justification, of a dominant position on one market to obtain market power on related or neighbouring markets which are distinct from the former, at the risk of eliminating competition on those markets. In countries where local delivery of items of correspondence is liberalised, such as Spain, and the monopoly is limited to inter-city transport and delivery, the use of a dominant position to extend the monopoly from the latter market to the former would therefore be incompatible with the Treaty provisions, in the absence of specific justification, if the functioning of services in the general economic interest was not previously endangered. The Commission considers that it would be appropriate for Member States to inform the Commission of any extension of special or exclusive rights and of the justification therefor.

6.3. There is a potential effect on the trade between Member States from restrictions on the provision of postal services, since the postal services offered by operators other than the operators referred to in point 4.2 can cover mailings to or from other Member States, and restrictions may impede cross-border activities of operators in other Member States.

6.4. As explained in point 8(b)(vii), Member States must monitor access conditions and the exercise of special and exclusive rights. They need not necessarily set up new bodies to do this but they should not give to their operator (22) as referred to in point 4.2, or to a body which is related (legally, administratively and structurally) to that operator, the power of supervision of the exclusive rights granted and of the activities of postal operators generally. An enterprise in a dominant position must not be allowed to have such a power over its competitors. The independence, both in theory and in practice, of the supervisory authority from all the enterprise supervised is essential. The system of undistorted competition required by the Treaty can only be ensured if equal opportunities for the different economic operators, including confidentiality of sensitive business information, are guaranteed. To allow an operator to check the declarations of its competitors or to assign to an undertaking the power to supervise the activities of its competitors or to be associated in the granting of licences means that such undertaking is given commercial information about its competitors and thus has the opportunity to influence the activity of those competitors.

## VII. Postal Operators and State Aid

### (a) Principles

While a few operators referred to in point 4.2 are highly profitable, the majority appear to be operating either in financial deficit or at close to break-even in postal operations, although information on underlying financial performance is limited, as relatively few operators publish relevant information of an auditable standard on a regular basis. However, direct financial support in the form of subsidies or indirect support such as tax exemptions is being given to fund some postal services, even if the actual amounts are often not transparent.

The Treaty makes the Commission responsible for enforcing Article 92, which declares State aid that affects trade between Member States of the Community to be incompatible with the common market except in certain circumstances where an exemption is, or may be, granted. Without prejudice to Article 90(2), Articles 92 and 93 are applicable to postal services (23).

Pursuant to Article 93(3), Member States are required to notify to the Commission for approval all plans to grant aid or to alter existing aid arrangements. Moreover, the Commission is required to monitor aid which it has previously authorised or which dates from before the entry into force of the Treaty or before the accession of the Member State concerned.

All universal service providers currently fall within the scope of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (24), as last amended by Directive 93/84/EEC (25). In addition to the general transparency requirement for the accounts of operators referred to in point 4.2 as discussed in point 8(b)(vi), Member States must therefore ensure that financial relations between them and those operators are transparent as required by the Directive, so that the following are clearly shown:

- (a) public funds made available directly, including tax exemptions or reductions;
- (b) public funds made available through other public undertakings or financial institutions;
- (c) the use to which those public funds are actually put.

The Commission regards, in particular, the following as making available public funds:

- (a) the setting-off of operating losses;
  - (b) the provision of capital;
  - (c) non-refundable grants or loans on privileged terms;
  - (d) the granting of financial advantages by forgoing profits or the recovery of sums due;
  - (e) the forgoing of a normal return on public funds used;
  - (f) compensation for financial burdens imposed by the public authorities.
- (b) Application of Articles 90 and 92

The Commission has been called upon to examine a number of tax advantages granted to a postal operator on the basis of Article 92 in connection with Article 90 of the Treaty. The Commission sought to check whether that privileged tax treatment could be used to cross-subsidize that operator's operations in sectors open to competition. At that time, the postal operator did not have an analytical cost-accounting system serving to enable the Commission to distinguish between the reserved activities and the competitive ones. Accordingly, the Commission, on the basis of the findings of studies carried out in that area, assessed the additional costs due to universal-service obligations borne by that postal operator and compared those costs with the tax advantages. The Commission concluded that the costs exceeded those advantages and therefore decided that the tax system under examination could not lead to cross-subsidization of that operator's operations in the competitive areas (26).

It is worth noting that in its decision the Commission invited the Member State concerned to make sure that the postal operator adopted an analytical cost-accounting system and requested an annual report which would allow the monitoring of compliance with Community law.

The Court of First Instance has endorsed the Commission's decision and has stated that the tax advantages to that postal operator are State aid which benefit from an exemption from the prohibition set out in Article 92(1) on the basis of Article 90(2) (27).

### **VIII. Service of General Economic Interest**

#### (a) Basic principles

8.1. Article 90(2) of the Treaty allows an exception from the application of the Treaty rules where the application of those rules obstructs, in law or in fact, the performance of the particular task assigned to the operators referred to in point 4.2 for the provision of a service of general economic interest. Without prejudice to the rights of the Member States to define particular requirements of services of general interest, that task consists primarily in the provision and the maintenance of a universal public postal service, guaranteeing at affordable, cost-effective and transparent tariffs nationwide access to the public postal network within a reasonable distance and during adequate opening hours, including the clearance of postal items from accessible postal boxes or collection points throughout the territory and the timely delivery of such items to the address indicated, as well as associated services entrusted by measures of a regulatory nature to those operators for universal delivery at a specified quality. The universal service is to evolve in response to the social, economical and technical environment and to the demands of users.

The general interest involved requires the availability in the Community of a genuinely integrated public postal network, allowing efficient circulation of information and thereby fostering, on the one hand, the competitiveness of European industry and the development of trade and greater cohesion between the regions and Member States, and on the other, the improvement of social contacts between the citizens of the Union. The definition of the reserved area has to take into account the financial resources necessary for the provision of the service of general economic interest.

8.2. The financial resources for the maintenance and improvement of that public network still derive mainly from the activities referred to in point 2.3. Currently, and in the absence of harmonisation at Community level, most Member States have fixed the limits of the monopoly by reference to the weight of the item. Some Member States apply a combined weight and price limit whereas one Member State applies a price limit only. Information collected by the Commission on the revenues obtained from mail flows in the Member States seems to indicate that the maintenance of special or exclusive rights with regard to this market could, in the absence of exceptional circumstances, be sufficient to guarantee the improvement an maintenance of the public postal network.

The service for which Member States can reserve exclusive or special rights, to the extent necessary to ensure the maintenance of the universal service, is harmonised in the Postal Directive. To the extent to which Member States grant special or exclusive rights for this service, the service is to be considered a separate product-market in the assessment of individual cases in particular with regard to direct mail, the distribution of inward cross-border mail, outward cross-border mail, as well as with regard to the collection, sorting and transport of mail. The Commission will take account of the fact that those markets are wholly or partly liberalised in a number of Member States.

8.3. When applying the competition rules and other relevant Treaty rules to the postal sector, the Commission, acting upon a complaint or upon its own initiative, will take account of the harmonized definition set out in the Postal Directive in assessing whether the scope of the reserved area can be justified under Article 90(2). The point of departure will be a presumption that, to the extent that they fall within the limits of the reserved area as defined in the Postal Directive, the special or exclusive rights will be prima facie justified under Article 90(2). That presumption can, however, be rebutted if the facts in a case show that a restriction does not fulfil the conditions of Article 90(2) (28).

8.4. The direct mail market is still developing at a different pace from one Member State to the other, which makes it difficult for the Commission, at this stage, to specify in a general way the obligations of the Member States regarding that service. The two principal issues in relation to direct mail are potential abuse by customers of its tariffication and of its liberalisation (reserved items being delivered by an alternative operators as if they were non-reserved direct mail items) so as to circumvent the reserved services referred to in point 8.2. Evidence from the Member States which do not restrict direct mail services, such as Spain, Italy, the Netherlands, Austria, Sweden and Finland, is still inconclusive and does not yet allow a definitive general assessment. In view of that uncertainty, it is considered appropriate to proceed temporarily on a case-by-case basis. If particular circumstances make it necessary, and without prejudice to point 8.3, Member States may maintain certain existing restrictions on direct mail services or introduce licensing in order to avoid artificial traffic distortions and substantial destabilization of revenues.

8.5. As regards the distribution of inward cross-border mail, the system of terminal dues received by the postal operator of the Member State of delivery of cross-border mail from the operator of the Member State of origin is currently under revision to adapt terminal dues, which are in many cases too low, to actual costs of delivery.

Without prejudice to point 8.3, Member States may maintain certain existing restrictions on the distribution of inward cross-border mail (29), so as to avoid artificial diversion of traffic, which would inflate the share of cross-border mail in Community traffic. Such restrictions may only concern items falling under the reservable area of services. In assessing the situation in the framework of individual cases, the Commission will take into account the relevant, specific circumstances in the Member States.

8.6. The clearance, sorting and transport of postal items has been or is currently increasingly being opened up to third parties by postal operators in a number of Member States. Given that the revenue effects of such opening up may vary according to the situation in the different Member States, certain Member States may, if particular circumstances make it necessary, and without prejudice to point 8.3, maintain certain existing restrictions on the clearance, sorting and transport of postal items by intermediaries (30), so as to allow for the necessary restructuring of the operator referred to in point 4.2. However, such restrictions should in principle be applied only to postal items covered by the existing monopolies, should not limit what is already accepted in the Member State concerned, and should be compatible with the principle of non-discriminatory access to the postal network as set out in point 8(b)(vii).

(b) Conditions for the application of Article 90(2) to the postal sector

The following conditions should apply with regard to the exception under Article 90(2):

(i) Liberalisation of other postal services

Except for those services for which reservation is necessary, and which the Postal Directive allows to be reserved, Member States should withdraw all special or exclusive rights for the supply of postal services to the extent that the performance of the particular task assigned to the operators referred to in point 4.2 for the provision of a service of a general economic interest is not obstructed in law or in fact, with the exception of mail connected to the exercise of official authority, and they should take all necessary measures to guarantee the right of all economic operators to supply postal services.

This does not prevent Member States from making, where necessary, the supply of such services subject to declaration procedures or class licences and, when necessary, to individual licensing procedures aimed at the enforcement of essential requirements and at safeguarding the universal service. Member States should, in that event, ensure that the conditions set out in those procedures are transparent, objective, and without discriminatory effect, and that there is an efficient procedure of appealing to the courts against any refusal.

(ii) Absence of less restrictive means to ensure the services in the general economic interest

Exclusive rights may be granted or maintained only where they are indispensable for ensuring the functioning of the tasks of general economic interest. In many areas the entry of new companies into the market could, on the basis of their specific skills and expertise, contribute to the realisation of the services of general economic interest.

If the operator referred to in point 4.2 fails to provide satisfactorily all of the elements of the universal service required by the Postal Directive (such as the possibility of every citizen in the Member State concerned, and in particular those living in remote areas, to have access to newspapers, magazines and books), even with the benefit of a universal postal network and of special or exclusive rights, the Member State concerned must take action (31). Instead of extending the rights already granted, Member States should create the possibility that services are provided by competitors and for this purpose may

impose obligations on those competitors in addition to essential requirements. All of those obligations should be objective, non-discriminatory and transparent.

(iii) Proportionality

Member States should moreover ensure that the scope of any special and exclusive rights granted is in proportion to the general economic interest which is pursued through those rights. Prohibiting self-delivery, that is the provision of postal services by the natural or legal person (including a sister or subsidiary organisation) who is the originator of the mail, or collection and transport of such items by a third party acting solely on its behalf, would for example not be proportionate to the objective of guaranteeing adequate resources for the public postal network. Member States must also adjust the scope of those special or exclusive rights, according to changes in the needs and the conditions under which postal services are provided and taking account of any State aid granted to the operator referred to in point 4.2.

(iv) Monitoring by an independent regulatory body

The monitoring of the performance of the public-service tasks of the operators referred to in point 4.2 and of open access to the public postal network and, where applicable, the grant of licences or the control of declarations as well as the observance by economic operators of the special or exclusive rights of operators referred to in point 4.2 should be ensured by a body or bodies independent of the latter (32).

That body should in particular ensure: that contracts for the provision of reserved services are made fully transparent, are separately invoiced and distinguished from non-reserved services, such as printing, labelling and enveloping; that terms and conditions for services which are in part reserved and in part liberalised are separate; and that the reserved element is open to all postal users, irrespective of whether or not the non-reserved component is purchased.

(v) Effective monitoring of reserved services

The tasks excluded from the scope of competition should be effectively monitored by the Member State according to published service targets and performance levels and there should be regular and public reporting on their fulfilment.

(vi) Transparency of accounting

Each operator referred to in point 4.2 uses a single postal network to compete in a variety of markets. Price and service discrimination between or within classes of customers can easily be practised by operators running a universal postal network, given the significant overheads which cannot be fully and precisely assigned to any one service in particular. It is therefore extremely difficult to determine cross-subsidies within them, both between the different stages of the handling of postal items in the public postal network and between the reserved services and the services provided under conditions of competition. Moreover, a number of operators offer preferential tariffs for cultural items which clearly do not cover the average total costs. Member States are obliged by Article 5 and 90 to ensure that Community law is fully complied with. The Commission considers that the most appropriate way of fulfilling that obligation would be for Member States to require operators referred to in point 4.2 to keep separate financial records, identifying separately, inter alia, costs and revenues associated with the provision of the services supplied under their exclusive rights and those provided under competitive conditions, and making it possible to assess fully the conditions applied at the various access points of the



public postal network. Services made up of elements falling within the reserved and competitive services should also distinguish between the costs of each element. Internal accounting systems should operate on the basis of consistently applied and objectively justified cost-accounting principles. The financial accounts should be drawn up, audited by an independent auditor, which may be appointed by the National Regulatory Authority, and be published in accordance with the relevant Community and national legislation applying to commercial organisations.

(vii) Non-discriminatory access to the postal network

Operators should provide the universal postal service by affording non-discriminatory access to customers or intermediaries at appropriate public points of access, in accordance with the needs of those users. Access conditions including contracts (when offered) should be transparent, published in an appropriate manner and offered on a non-discriminatory basis.

Preferential tariffs appear to be offered by some operators to particular groups of customers in a non-transparent fashion. Member States should monitor the access conditions to the network with a view to ensuring that there is no discrimination either in the conditions of use or in the charges payable. It should in particular be ensured that intermediaries, including operators from other Member States, can choose from amongst available access points to the public postal network and obtain access within a reasonable period at price conditions based on costs, that take into account the actual services required.

The obligation to provide non-discriminatory access to the public postal network does not mean that Member States are required to ensure access for items of correspondence from its territory, which were conveyed by commercial companies to another State, in breach of a postal monopoly, to be introduced in the public postal network via a postal operator of that other State, for the sole purpose of taking advantage of lower postal tariffs. Other economic reasons, such as production costs and facilities, added values or the level of service offered in other Member States are not regarded as improper. Fraud can be made subject to penalties by the independent regulatory body.

At present cross-border access to postal networks is occasionally rejected, or only allowed subject to conditions, for postal items whose production process includes cross-border data transmission before those postal items were given physical form. Those cases are usually called non-physical remail. In the present circumstances there may indeed be an economic problem for the postal operator that delivers the mail, due to the level of terminal dues applied between postal operators. The operators seek to resolve this problem by the introduction of an appropriate terminal dues system.

The Commission may request Member States, in accordance with the first paragraph of Article 5 of the Treaty, to inform the Commission of the conditions of access applied and of the reasons for them. The Commission is not to disclose information acquired as a result of such requests to the extent that it is covered by the obligation of professional secrecy.

## **IX. Review**

This notice is adopted at Community level to facilitate the assessment of certain behaviour of undertakings and certain State measures relating to postal services. It is appropriate that after a certain period of development, possibly by the year 2000, the Commission should carry out an evaluation of the postal sector with regard to the Treaty rules, to establish whether modifications of the views set out in this notice are required on the basis of social, economic or technological considerations and on the basis of

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experience with cases in the postal sector. In due time the Commission will carry out a global evaluation of the situation in the postal sector in the light of the aims of this notice.

## NOTES

- 1 COM(91) 476 final.
- 2 “Guidelines for the development of Community postal services” (COM(93) 247 of 2 June 1993).
- 3 OJ C 48, 16.2.1994, p. 3.
- 4 OJ C 322, 2.12.1995, p. 22.
- 5 OJ C 322, 2.12.1995, p. 3.
- 6 OJ C 20, 20.1.1997, p. 159.
- 7 In particular in Joined Cases C-48/90 and C-66/90, Netherlands and Koninklijke PTT Nederland and PTT Post BV v. Commission [1992] ECR I-565 and Case C-320/91 Procureur du Roi V. Paul Corbeau [1993] ECR I-2533.
- 8 COM(96) 443 final.
- 9 See footnote 8.
- 10 See judgment of 23 October 1997 in Cases C-157/94 to C-160/94 “Member State Obligations - Electricity” Commission v. Netherlands (157/94), Italy (158/94), France (154/94), Spain (160/94).
- 11 The definitions will be interpreted in the light of the Postal Directive and any changes resulting from review of that Directive.
- 12 The meaning of this important phrase in the context of Community competition law is explained in paragraph 5.3.
- 13 Commission Decisions 90/16/EEC (OJ L 10, 12.1.1990, p. 47) and 90/456/EEC (OJ L 233, 28.8.1990, p. 19).
- 14 See Commission Notice on the definition of the relevant market for the purpose of the application of Community competition law (OJ C 372, 9.12.1997, p. 5).
- 15 See footnote 13.
- 16 UFC - Que Choisir, Postal services in the European Union, April 1994.
- 17 In many Member States users could, some decades ago, still rely on this service to receive in the afternoon, standard letters posted in the morning. Since then, a continuous decline in the quality of the service has been observed, and in particular of the number of daily rounds of the postmen, which were reduced from five to one (or two in some cities of the European Union). The exclusive rights of the postal organisations favoured a fall in quality, since they prevented other companies from entering the market. As a consequence the postal organisations failed to

compensate for wage increases and reduction of the working hours by introducing modern technology, as was done by enterprises in industries open to competition.

- 18 See these Postal Directive, recitals 16 and 28, and Chapter 5.
- 19 Referred to by UPU as “work of the mind”, comprising books, newspapers, periodicals and journals.
- 20 Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, OJ L 195, 29.7.1980, p. 35.
- 21 For a general explanation of the principles deriving from Article 59, see Commission interpretative communication concerning the free movement of services across frontiers (OJ C 334, 9.12.1993, p. 3).
- 22 See in particular, Case C-18/88 RTT v GB-Inno-BM [1991] ECR I-5981, paragraphs 25 to 28.
- 23 Case C-387/92 Banco de Credito Industrial v. Ayuntamiento Valencia [1994] ECR I-877.
- 24 OJ L 195, 29.7.1980, p. 35.
- 25 OJ L 254, 12.10.1993, p. 16.
- 26 Case NN 135/92, OJ C 262, 7.10.1995, p. 11.
- 27 Case T-106/95 FFSA v. Commission [1997] ECR II-229.
- 28 In relation to the limits on the application of the exception set out in Article 90(2), see the position taken by the Court of Justice in the following cases: Case C-179/90 *Merci convenzionali porto di Genova v. Siderurgica Gabrielli* [1991] ECR I-1979; Case C-41/90 *Klaus Höfner and Fritz Elser v. Macroton* [1991] ECR I-5889.
- 29 This may in particular concern mail from one State which has been conveyed by commercial companies to another State to be introduced in the public postal network via a postal operator of that other State.
- 30 Even in a monopoly situation, senders will have the freedom to make use of particular services provided by an intermediary, such as (pre-)sorting before deposit with the postal operator.
- 31 According to Article 3 of the Postal Directive, Member States are to ensure that users enjoy the right to a universal service.
- 32 See in particular Articles 9 and 22 of the Postal Directive.

## AIDE MEMOIRE OF THE DISCUSSION

### Introduction

The **Chairman** initiated the roundtable noting that postal service liberalization raises familiar questions, such as how competition can be introduced in sectors that have some natural monopoly characteristics. Although in other sectors it is often quite easy to identify where these natural monopoly characteristics exist, it is not clear where, or why, there are monopoly characteristics in postal services. Finally, like telecommunications, there is the problem of non-commercial obligations, usually in the form of a single postage tariff throughout the country independent of the costs of the services that are being provided.

To date, most of the reforms that we have witnessed in the postal sector have focused on giving some discipline to the incumbent postal operator through what is called “enterprise reform”, including moving the postal incumbent to a corporate structure. The reforms have been quite successful but will not be the focus of the discussion.

### Part I: Regulatory Approaches

The **WTO** commenced the first part of the discussion with a very preliminary description of the barriers to trade and competition which are currently perceived to exist in the sector. Amongst these barriers to trade and competition are, of course, direct legal and regulatory restrictions, but some less obvious factors are also noted such as the self-regulatory role of postal monopolies in some countries, membership in international organizations and requirements on the foreign courier companies to use locally-contracted suppliers for pickup, delivery and customs clearance procedures.

**Professor Sidak** from American Enterprise Institute for Public Policy Research (AEI) addressed the issue of whether there is a natural monopoly in postal services. The evidence that exists to date suggests that a natural monopoly, if it exists at all, is confined to local delivery services. The conditions for a natural monopoly (economies of scale and economies of scope) are very much dependent on the definition of the product and quality characteristics of the service. In particular, frequency of mail delivery will have an impact on whether or not we observe economies of scale and scope. The less frequently delivery takes place, the more likely it is that there will be scale and scope economies. As an example, the background paper raised the question why it is that pizza is not delivered by postal authorities. The answer is that the frequency of deliveries required is such as to eliminate any economies of scale or scope.

If there were no natural monopoly in postal services, even in the delivery functions, there would be significant implications for competition and regulation. The experience from the United States suggests that competitive delivery of certain kinds of mail is possible. In the United States until the 1930's, banks, utilities and other companies that bill practically every house on a street, would deliver their own bills rather than use the U.S. Postal Service. Subsequent legislation outlawed this practice. We might expect that certain kinds of highly-focused delivery services would quickly evolve in the absence of statutory prohibitions on delivery. In addition, the electronic payment of bills could siphon off a large share of the stable traffic that postal authorities are currently carrying.

The cost conditions underlying a “natural monopoly” in delivery are likely to vary from country to country depending on conditions such as density and other factors. In addition, economies of scale could vary from urban to rural areas within one country. Delivery should not be considered as a single homogeneous service but as a number of different services with potentially different cost characteristics and different barriers to entry.

**Italy** agreed that the cost conditions may vary from area to area, noting that in Italy the delivery of printed items has been liberalized for more than 60 years. In the large cities there are a number of networks which can provide delivery. But small towns and in rural areas and mountains there are real cost problems associated with establishing new delivery networks.

The **Chairman** acknowledged the important role of the European Commission and its liberalization process which started a number of years ago, culminating in the Council Directive of December 1997.

The **European Commission** has developed a common European postal policy based on certain principles including, importantly, harmonisation of the universal service requirements and the establishment of a maximum reservable area. A universal service is defined as a service which is accessible to everyone no matter where they are located at a defined quality and an affordable price. The directive states that in order to ensure the supply of universal service member states can reserve the collection, transport, sorting and delivery of objects of correspondence up to 350 grams, including postcards. The directive forbids reserving the following services: packages, express mail, unaddressed mail, heavy objects and the delivery of objects which are not a form of communication. The final date for the transposition of this directive into national law was 10 February 1999. A revision of the universal service requirements is due to be undertaken in the year 2000.

The directive also sets out obligations relating to transparency of accounts, consumer protection and the separation of the regulatory functions from the incumbent operator. The object of the accounting disclosure requirements is to ensure both that the tariffs charged are related to the underlying costs and also to avoid possible complaints regarding cross-subsidies, particularly from the reserved to the competitive services.

The **Chairman** noted that a unique feature of the regime in the Netherlands is that the postal incumbent has been entirely privatized. The Chairman took the opportunity to highlight two obstacles to privatization and postal reform more generally. First, postal operators are often large employers and enhancing efficiency may be linked with a reduction in employment. Second, often post offices are perceived as providing a range of services in small towns. The closure of these postal operators is therefore often opposed by local residents.

The **Netherlands** noted that current proposals reduce the monopoly area to postal items of less than 200 grams and three times the basic tariff. In addition, the proposals move to full liberalization in the year 2003, provided that other countries in the European Union are moving in the same direction. The current proposals also liberalise document exchanges (as required in the EU Directive) and outgoing mail. There is also an independent regulator – the Post and Telecommunications Authority, OPTA – and a price-cap regime, linked to movements in the wage index in the Netherlands.

The **BIAC** representative (representing the privatized public postal operator in the Netherlands) responded to the Chairman’s comments about employment effects by noting that, of course, after privatisation, the privatised operator had to become more efficient, both because they were now exposed to market forces and also because the shareholders wanted a certain level of remuneration for their shares.

However, the operator diversified the range of services it offers. The surplus employees were taken up in these services. Overall employment did not diminish but increased. Importantly, the employees are now more motivated because the company can provide shares in the company as a form of compensation.

The **Chairman** noted two peculiarities of the postal system in Italy. The first is that (as in the US), competitors are allowed to operate in the reserved areas, provided they pay to the incumbent the full postage that would be due to the incumbent if the incumbent carried the competing mail itself. The second is that there is a system of franchised operators which operate alongside the incumbent postal operator, carrying out the same tasks, but these franchisees are not allowed to charge less than the incumbent. The incumbent postal operator in Italy also incurs huge losses.

**Italy** acknowledged the losses of the incumbent operator and noted that they are studying what it costs to provide universal service. In Italy, post offices not only provide postal services but also financial services and bill payment services. In small towns there may be no other financial institution. The market share of the postal incumbent in parcel services is very small – only 5 per cent, but its share of the market for printed items is much larger because the tariff it charges is below costs. In attempting to comply with the European Directive, Italy must determine the appropriate size of the reserved area (in relation to the costs of providing universal services) and how to allow competing operators to enter the market.

Introducing Poland, the **Chairman** noted that in Poland, as in the US and Norway, letterboxes in homes and apartments are reserved to the postal operator, creating an important barrier to entry.

**Poland** acknowledged that, at the moment, the Polish Post has an exclusive privilege to install mail boxes for the delivery of correspondence on customers' property. Poland is in the process of adjusting the Polish legislation to the EU Directives. The preliminary work on a draft new postal law has been completed and the new law will come into force no later than 2001. According to the new law, the provision of postal services will be subject to registration. The list of registered operators will be held by a new regulatory authority, the postal market regulation office. The incumbent postal operator, the Polish Post, will become a public operator with an obligation to provide international postal services according to the acts of the Universal Postal Union. The number of reserved services will be reduced and their scope adjusted to be in accordance with the EC Directive. With regard to postal trademarks, all registered postal operators will have the right to use their own trademarks registered by the regulatory body, but the Polish Post will retain the exclusive right to issue stamps bearing the inscription "Poland" or the "Republic of Poland".

One of the unusual features of the regulatory regime for postal services in the US, the **Chairman** noted, is that the boundary between the reserved and non-reserved area is not specified in legislation, but is determined by the U.S. Postal Service itself, through the system of Private Express Statutes exemptions. As in other countries, the incumbent operator is subject to a form of price control, but, unusually, there is some discretion on the part of the Governors of the U.S. Postal Service to accept or reject the price recommended by the postal rate regulator. As with Poland, letter boxes within customers' homes and apartments are reserved.

The **U.S.** responded noting that the Postal Service, is solely owned by the government of United States and the universal service obligations in the US rest entirely with the U.S. Postal Service. With regard to price regulation, there are two relevant federal agencies involved. One is the Postal Service itself and the other is the Postal Rate Commission which is a limited regulator in the areas of pricing and classification of services. The Postal Service may request prices or classification changes, and the Postal Rate Commission makes its recommendation back to the Governors of the United States Postal Service. The Governors have a very limited ability to change the decision of the rate commission and it can only

do so through unanimous vote in a narrowly prescribed set of circumstances. But the final decision rests with the Governors. There is no monopoly in express mail, newspapers and magazines. The Postal Service does control access to the customer's mail box under legislation of the U.S. Congress. This is not a matter within the discretion of the Postal Service. There are issues regarding privacy for postal customers. Competitors have developed alternative delivery systems and there is service competition in the retail area for the Postal Service.

In the area of "unbundling" or "intermediaries", there is extensive involvement by the private sector in the intermediaries area in the US, in collection, transportation, distribution and delivery. In parcel and advertising mail there are "drop-shipped" discounts or "destination-entry" discounts that provide price reductions for mail users who transport the goods to a point of entry in the mail system close to their final destination. There are also price reductions, or what are called "work-sharing" discounts in the preparation of the mail, for either pre-bar-coding or pre-sorting of the mail prior to its entry into the postal network. Work-sharing discounts are recommended by the Postal Rate Commission, although ultimate authority over implementation of rates rests with the Governors of the Postal Service.

There has been some reform activity in United States underway for the last few years. The most recent Bill to be introduced by the legislative reform committee proposes not to change universal service (to keep it with the U.S. Postal Service) but to allow for greater pricing flexibility and to move from an economic cost-of-service pricing concept to a more flexible price-cap based on the rate of inflation less a productivity adjustment. Importantly, the Bill proposes that the USPS Board be permitted to establish a private, for profit corporation that would be authorized to provide postal and non-postal services, acquire shares of individual private companies, and participate in joint ventures with individual private companies. The legislation also attempts to clarify the role of the Postal Service in regard to competitive services and addresses the potential for cross-subsidies.

The **Chairman** drew parallels between the regime in Korea and that in Japan. Both Korea and Japan share a wide definition of the area reserved to the postal operator. In addition, in Korea, as in Japan, there are movements towards corporatisation.

**Korea** acknowledged that the incumbent postal operator, Korea Post currently operates as part of the Ministry of Information and Communications. Korea Post manages the operation of both postal services and postal financial services. As in other countries, Korea Post faces competition in parcels and express services. Current reforms underway include introducing price controls for the reserved area and accounting separation according to service categories. Korea noted that the approach to postal reform that is adopted in some advanced European countries does not necessarily apply in other OECD member countries and that each country should be considered separately. In Korea, regulatory reform in the postal sector will proceed on a step-by-step basis.

In **Mexico**, the Mexican postal law distinguishes public postal services (which are reserved to the state) and other postal services, which are not reserved, including courier, package services and letters outside the size and weight limitations set out in the law. Private mail providers can, to an extent, get around the restrictions on the reserved area, by handling letters in larger envelopes. Public postal services are reserved to the state with the purpose of ensuring the provision of universal services. In the competitive area there is a very strong participation by private undertakings. Competition has led to an overall improvement in efficiency in postal services to the extent that there is no significant difference in quality between the public and private service providers.

The **Chairman** responded that this highlights one of the benefits of competition – that it disciplines the behaviour of the incumbent postal operator. The Chairman then noted that Australia has



made significant moves towards complete liberalisation. In a few years, almost 90 per cent of the revenues of Australia Post will be open to competition. The Australian experience is interesting in that it highlights the role of the National Competition Council and the competition authority, the ACCC, in promoting and implementing regulatory reform. Another important point is that competition was not a threat to the profitability of the incumbent, which indeed improved its profitability with increasing competition.

**Australia** agreed that the reforms to Australia Post have been relatively successful. The reforms started in 1994. Last year, the government decided to go further in the reform process, following a review of Australia Post conducted as part of the wider regulatory reform exercise. The new reforms will be implemented in the year 2000. Broadly speaking they will reduce the reserved area to postal items weighing less than 50 grams and with a price of less than 45 Australian cents (30 US cents, or one third of a Euro). Competitive neutrality problems were addressed by exposing Australia Post to all standard corporate taxes. An access regime was established to the point where roughly one-third of all mail is put through this access regime.

The most recent round of reforms were not as far-reaching as some had advocated. For example, the National Competition Council recommended that all business mail should be completely unreserved, but that proposal was rejected by the government. The reasons related to concerns about the universal service obligation, which are discussed further below.

The competition authority, the ACCC has a role in price regulation, although this has not been an active role since the prices for postage have been fixed since 1992 and will remain fixed until 2003 for standard letters. On the issue of interconnection or access, the ACCC does have some role in determining interconnection rates but, interestingly, Australia Post retains some discretion over access points. They have used that discretion to set interconnection points at particular places that limit the ability of competitors to bypass. Nevertheless approximately one-third of the mail goes through the access regime. It is possible that the existing specific access regime in the postal sector will be replaced by a more developed access regime operating under Australia's competition law.

The **Chairman** pointed to Finland, Sweden and New Zealand as countries which have all completely liberalized the postal sector.

**Finland** noted that the purpose of its postal law is to ensure that "postal services can be sent and received under equal conditions throughout the country". Only standard letter services are to some extent regulated under the postal legislation. Other services, for example, parcels, newspapers, and express deliveries are provided under fully liberalized conditions. There is no reserved area in the postal legislation. Any operator which has obtained an operating license can provide postal services. In March 1997 the Ministry of Transport and Communications granted a second license to a new entrant. The company has not started yet due to the introduction of an Act which entered into force on 1 August 1997, according to which companies engaged in limited postal services are liable to a tax-like charge in order to guarantee postal services in remote areas. This act was passed in order to ensure the provision of postal services in sparsely populated areas. Finland's population density is very low and a large part of the land area is rural. As a result of this levy, which can be up to 20 per cent of revenues, private operators fear that it would not be profitable to start a competing postal business.

Together with Sweden and Argentina, **New Zealand** has since 1 April 1998 a very liberalized postal regime. There are essentially four pillars of the regulation of postal services in New Zealand. The first is the Postal Services Act which is the only sector-specific piece of legislation and which relates to letters under 80 NZ cents (around 44 US cents). The Postal Services Act sets out requirements relating to the handling of suspicious and undeliverable mail and the like. The remaining services, courier, express

and parcel services and letters over 80 NZ cents are completely unregulated. There is active and intense competition in these markets. It is not possible to state how many companies are operating because there is no registration or licensing requirement in the case of these services. The second pillar is the Commerce Act, New Zealand's competition law, which is probably more important to the postal sector than the Postal Services Act. The third pillar is a series of disclosure regulations which require New Zealand Post to disclose accounting data and levels of discounts that it provides to customers. The fourth pillar is the "Deed of Understanding" between New Zealand Post and its owner, the Government. The Deed of Understanding sets out how many delivery points the company will maintain, how often it will deliver to those delivery points and it contains a clause which states that New Zealand Post shall provide to its competitors access to its network on the same terms and conditions as it provides to its own customers.

The universal service obligations are paid in full by New Zealand Post. There is no explicit government payment for these obligations, although the *quid pro quo* for these universal service obligations is an exclusive designation to the Universal Postal Union for a transitional period.

Access is an important issue in New Zealand. Access is negotiated between competing companies and New Zealand Post and is not fixed by the government. Regulatory oversight of these negotiations falls within the scope of the competition law and the Commerce Commission, New Zealand's competition agency. Access to post office boxes is a particularly important issue for competitors in New Zealand. New Zealand Post obviously owns the network of post office boxes throughout the country. Most businesses have a post office box and a large proportion of mail goes from post office box to post office box. This is a barrier to entry for companies which wish to get into that market. As they cannot enter without access to New Zealand Post's network of PO boxes. To date, three interconnection agreements have been reached between New Zealand Post and its competitors.

New Zealand Post is free to set its own prices, with the exception of the transitional price cap on the standard letter. This cap is not linked to inflation, it is set at a fixed nominal level of 45 cents. There is no requirement for a uniform tariff in New Zealand. New Zealand Post retains a uniform tariff because it is in its commercial interests to do so. There is a very minor registration system for postal operators. Virtually anyone can become a postal operator. There is no "fit and proper" person test. There is no economic viability test. 19 competitors have registered to date. Most of these are very small, but there are also four larger companies, three of which are planning to operate on a national basis. Volumes are low currently but they have plans to increase their services. New Zealand Post remains government-owned but does act like a private company and is highly profitable. The company has full freedom to restructure and has done so, restructuring itself very severely in the late 1980s. 400 post offices were closed as a result of that restructuring. However, due to a system of "franchising" of post office services, more services are available now through other outlets than were available through the former post offices.

In response to a question from **Canada** regarding the universal service obligation and the ensuring of service in remote or rural areas, **New Zealand** responded that the universal service obligations have been imposed solely on New Zealand Post. These were voluntarily agreed between the government and the company. New Zealand Post is required to deliver to a minimum number of delivery points a certain number of days per week. 99.8 per cent of delivery points receive a five or six day per week service. This covers most people in New Zealand. There are a few people in rural areas who might receive service three or four days per week. There are no complaints about this as it is essentially a continuation of the regime that has been in place in New Zealand since 1989. The costs of the universal service obligation are covered by New Zealand Post. It is considered that there are marketing incentives for New Zealand Post to retain delivery in high-cost areas because it is the only ubiquitous provider of services.

## General Discussion

The **Secretariat** raised the issue of access to post office boxes, pointing out that although it is somewhat unclear whether or not there is a natural monopoly in final delivery services which would give rise to a need for access regulation, there may be a competition problem in the case of access to post office boxes. These boxes are usually on the premises of the incumbent operator. If a competitor is denied access to these boxes by the incumbent, it will not be able to offer a ubiquitous service which may place it at a marketing disadvantage relative to the incumbent. There are two reasons the competitor will be at a disadvantage, the first is that the competitor would not be able to offer one-stop-shopping – its customers would be forced to sort their outgoing mail and to conduct business with at least two mail providers. In addition, many businesses will be reluctant to change post office box address (due to the costs of notifying their customers) and so the competitor will have difficulty attracting a mail customer's incoming mail business. The same arguments apply in the other direction. When a competitor has attracted a sufficiently large number of post office box customers, the incumbent postal operator would like to have access to those boxes in order to preserve the benefits of offering ubiquity.

There is an analogy with the interconnection of local telephony networks in telecommunications. In each case the value of existing networks can be enhanced through interconnection, increasing the reach of each network. But, in each case the incentives on an individual network to interconnect can be small, especially if refusing to interconnect can prevent the growth of competition. The same sort of solutions that arise in telecommunications could apply in the postal context. In particular, it is acknowledged that access prices should be cost-based. Most of the costs of postal services are in final delivery, but the costs of delivery to a post office box (which does not require physical transportation of the letters) is likely to be very small indeed, so the appropriate interconnection price might be very small. As in the telecommunications context, we might expect two networks of post office boxes to agree to terminate each other's mail at low or no charge (known as "bill and keep" in the context of telecommunications).

The analogy with the telecommunications industry should not, however, be pushed too far. The costs to a mail customer of sorting the outgoing mail and using two different mail providers is less than the cost of maintaining active links to two or more different telecommunications networks. Thus we might expect that some forms of postal competition (such as Document Exchanges) might exist even without interconnection with the incumbent's postal network.

**Japan** responded that interconnection of postal services can be differentiated from the interconnection of telecommunications services for two reasons. The first is that it is much harder to keep track of the mail stream and so to identify who is responsible for any resulting loss or damage. Where identification of the responsible party is impossible, security of the mailstream can only be assured through having one company provide the service. The second is that it is much harder to calculate the cost of services in postal services than in telecommunications, so that it is difficult to determine the appropriate access price.

The **United States** noted that the issue of security has been addressed in the US in the context of "drop-shipped discounts" and pre-sorting and so on. In the US all law-enforcement organizations have worked out arrangements with mailers and other businesses that work with the US Postal Service to try to have a streamlined approach to security issues.

The **Chairman** suggested that issues of the security of the mailstream might be addressed through insurance and that he was inclined to consider that this was not a major obstacle to the introduction of competition in postal services.

The **Secretariat** returned to the issue of the security of the mailstream, emphasising that such issues arise whenever you have an access regime, under which part of the service is provided by a competing firm. An access regime is always a trade-off between the advantages of enhanced competition versus the disadvantages from potential loss of economies of scope. Issues relating to security of the mailstream are a form of economies of scope. It is difficult to say how important these effects are. We may again use an analogy with the telecommunications industry. In the telecommunications sector, if I live in New York and I call Los Angeles my call is picked up by Ameritech, it might be transported by AT&T and handed off to Pacific Bell. If the line is scratchy, to whom should I complain? Is the fault with AT&T, Ameritech or Pacific Bell? Similarly, if my letter goes missing, was it a fault of the incumbent or of the new entrant? These are things which need to be worked out as part of the access regime. These issues do not seem to be more severe in the postal sector.

**New Zealand** noted that, in regard to liability for loss or damage, most countries impose limitations of liability on incumbent postal administrations so that they cannot face action for the loss of a standard letter (although obviously they can contract out of this in the case of registered mail and so on). In New Zealand this limitation of liability was extended to apply equally to private operators.

**Sweden** agreed that the issue of access to postal infrastructure is very important, noting that a provider of post office boxes may be at a marketing disadvantage unless it can receive all of the incoming mail of a customer (rather than just a share of the incoming mail). In Sweden there is new legislation in the pipeline to enhance the position of competing post office box providers. This legislation allows the allocation of post office box ZIP codes to competing providers. In addition, a system will be set up regarding change of address, so that a postal customer need only register a change of address once. In addition, there will be a system of forwarding mail so that customers of a regional operator will be able to have their mail forwarded if they move out of the region.

**Australia** pointed out what it considered to be a deficiency in the existing system in Australia for access. Under the existing access arrangements in Australia, there are discounts for bulk and for pre-sorting, but there are no discounts for transporting the mail close to the point of final delivery. For example, if a letter is being sent from one side of the continent to the other, the same discounts for bulk and pre-sorting apply irrespective of where the letters are lodged with the incumbent operator. This means that there is no incentive for the competitor to haul bulk mail across the continent, even if this could be done more efficiently than the incumbent. This illustrates the importance of correctly basing the access prices on the underlying costs and unbundling access components.

The **Slovak Republic** described its regulatory regime noting that currently the Slovak postal law is under review with the intention of making this law compliant with the European Union directives. The law specifies the scope of the universal service obligation and the reserved services. All other services will be open to competition. A licensing regime will be implemented in as part of the new postal legislation. The incumbent postal operator is the Slovak Post which provides universal postal service. The prices of Slovak Post are controlled. If it wishes to change its prices it must justify the changes on the basis of cost calculations.

**Korea** addressed three questions to Australia: First, who initiated the liberalization and what was the role of the competition authority in the process? Second, were there any objections, such as labor disputes, against the liberalization? Lastly, what have been the effects of the liberalization on prices, service quality, profitability?

**Australia** responded that certainly the most recent round of postal reforms have been closely wrapped up in the overall regulatory reform process, which can be traced back to the National

Competition Policy report, also known as the Hilmer Report. These involved establishing broad agreement to a comprehensive reform process according to a set of competition principles. Having established the principles and the agreement of governments, the process has been rolling along looking at a range of regulatory issues in a number of sectors including telecommunications, energy, transport, and, of course, post. The competition authority has been a strong advocate for a number of these reviews and, in many cases, has made formal submissions. Overall, the competition policy authorities have certainly been active in pushing the reform process.

Regarding labour objections, this was not a serious problem. Employment in Australia Post has increased over time. There has not been, as a result of the reform process, aggregate labor shedding. In fact the opposite has occurred, as the range of services that the liberalized postal entity provides has grown (for example, in financial services) the overall level of employment has increased. When the latest round of reforms was announced, Australia Post as an entity was strongly in favor of the reforms.

In regard to prices and service quality, the price for a standard letter has been held fixed from 1992 and, as part of these reforms, it will continue to be held fixed until 2003. This has led to substantial reductions in real prices. For businesses using the access regime, the reduction in prices have been even larger depending upon the sort of access demanded. In terms of profitability, the profitability of Australia Post has increased very substantially over the reform period, largely due to enterprise reform. It is now corporatised and is earning a rate of return on equity of around 14 per cent. One of the debates in the most recent reform process was whether the price of postage should be reduced.

**New Zealand** also provided evidence of the effect of reform on prices and service quality. In New Zealand, New Zealand Post has been under the active threat of full competition since 1994 when the government first announced it was going to introduce competition. The threat of competition has given New Zealand Post great incentive to improve its service quality and keep its prices low. In fact New Zealand Post reduced its standard letter price in 1995 (possibly the only postal operator in the world to reduce its prices) from 45 cents to 40 cents, in preparation for impending competition. New Zealand Post has also offered “free-mail” days on which any letter with a handwritten address would be posted free of charge. New Zealand Post has not increased its charges to the maximum that it is allowed – it holds prices 5 cents below its current price cap. In part this is because competitors are offering better prices to consumers. A document exchange offers an inter- and intra-city service between the central business districts of New Zealand for 30 cents (10 cents below the price of New Zealand Post). Other operators provide this service for as little as 20 cents. On quality, competitors such as document exchange claim a 99.4 per cent overnight delivery standard. If New Zealand Post does not maintain a high quality of service at a low price it will lose customers and so it has a strong incentive to do so.

## **Part II: Handling Universal Service Obligations**

The **Chairman** initiated the second part of the roundtable noting that in postal services, as in other sectors, universal service obligations are used as a justification for restricting entry. There are various forms of non-commercial obligations, but the most common form of non-commercial obligation is that in certain regions, especially rural areas, the postal operator is obliged to provide postal services at prices which do not cover the cost of providing those services. In other words, prices are capped in high-cost areas to prevent them from rising to cover the cost. These losses must be funded somehow. In the absence of external subsidies they are funded through internal cross-subsidization. As in many other network industries where there is internal cross-subsidisation, incumbent operators claim that if the market is opened up to competition, they would not be able to serve the high-cost areas because competitors would eliminate the profit margins and therefore the source of funds, in low-cost areas.

It is important to be clear on what we mean by cross-subsidization. Cross-subsidisation does not arise simply because joint or common costs are distributed unequally across different services. Cross-subsidisation only arises when a service is provided at a price below the average incremental cost of that service, which is quite rare.

**Sweden** noted that it currently has no explicit compensation mechanism for universal service. In the preparatory work before the abolition of the monopoly on private mail in Sweden, a government investigation concluded that the position of Sweden Post in the nationwide collection and distribution system, together with the ability to provide customers a complete mail-management system constituted a considerable commercial value, providing Sweden Post with a considerable competitive advantage. This has proved to be the case. For instance, in the bulk mail segment where there is a real competition, many customers find it hard to change their routines for mail management to separate the different streams of mail between different competing operators. These advantages are quite important. The Swedish postal legislation, with no reserved areas whatsoever, is founded on the notion that universal service can be provided on a strictly commercial basis.

As regards postal counter services, Sweden Post receives compensation for services where alternatives are lacking or it is not commercially justifiable to operate such services. This compensation is determined by the Parliament in connection with decisions regarding the state budget. In recent years Sweden Post has received 200 million Swedish Krona to cover this deficit in counter services provided by the rural postman. (Compared with a total revenue of 1.69 billion Krona). This subsidy is lower than the actual cost and accordingly cannot be used to subsidize other activities within Sweden Post. A recent government investigation has suggested changes to this system. This investigation recommended that counter services should be treated the same way as all other services provided in rural areas and that the compensation should decrease.

There are also particular subsidies for certain social services such as free distribution for postal items to the blind and extended services to elderly and disabled persons in rural areas and for national defense purposes. Those services are purchased by the posts and telecom agencies at prices based on costs.

In regards access to postal infrastructure, the basic system that was introduced when the postal market was liberalized was that the parties themselves should negotiate and come to an agreement that is acceptable to all parties concerned. This has not proved to be altogether successful and that is why the government now intends to propose new legislation which enhances access to the postal infrastructure on equal terms. It also includes the possibility for private operators to obtain unique zip codes for their post office boxes.

The access problems arose for the same reason as in telecommunications. It is hoped that when the competitors have developed a network of post office boxes these problems would reduce because when the incumbent has to pay private operators for access to the post office boxes of the competitors they would be much more interested in finding a reasonable level for access fees.

In **Japan**, the Ministry of Posts provides universal letter and parcel services, although, according to the postal law, only “correspondence” is reserved to the Ministry. The Japanese Supreme Court has decided that correspondence refers to “documents addressed to specific persons to express an opinion or to notify them of a fact”. The delegate noted that he considered the idea of correspondence is almost the same as that of a letter in other countries. Since the postal service is a government service, it is required to provide non-commercial services to enhance social welfare. Examples of these non-commercial services are lower rates for materials for the blind and educational materials and so on. In regard to the lower rates

for agricultural materials, this system was introduced in 1876 in order to improve the productivity of agriculture by promoting the exchange of these materials. Agricultural material consists of only 1.5 million items amongst a total volume of 25 billion delivered items. The postal service operates on a self-sustaining basis financially. There is no financial support for carrying out the non-commercial services. Japan is planning to partially allow the entry of private operators into the correspondence sector as soon as the specific conditions for entry can be developed which ensure universal postal service and the preservation of the sound financial status of the incumbent postal operator.

The **Chairman** commented that although Australia is a very large country with some very sparsely populated areas, the costs of providing universal service were calculated to be only two per cent of Australia Post's revenue. If this is representative of a very sparsely populated region such as Australia, it might be imagined that for European countries, with much higher population densities, the cost of the universal service obligation would be much lower.

Universal service is a big issue in **Australia**. As the Chairman noted Australia is a large country physically with a low population density. In the some rural areas, the mail is in fact delivered by aircraft. The cost of delivering a standard letter in those regions is very high. During the recent reforms in Australia, the issue of universal service obligations was right at the center. Presently, the universal service obligation is funded by internal cross-subsidization within Australia Post. The National Competition Council recommended, as part of the present reform exercise, that this form of cross-subsidization be removed and that moves be made towards an explicit subsidization arrangement with funding from the central government budget. This recommendation was not accepted by the government. Universal service will continue to be subsidized from within the revenues of Australia Post.

This happened for several reasons. First, when the prospect of direct subsidies for universal service arose it initiated an argument about the size of the universal service obligation. As long as the universal service obligation was funded from within the postal entity, the size did not matter because it was covered up in layers of accounting. But if it is to be paid directly, it must be costed very carefully. Australia Post's estimates of the cost of the USO were much larger than other estimates, but still much less than the profits of Australia Post. Even without any compensation Australia Post could still afford to pay for universal service out of its profits.

Two arguments emerged in the political debate that opposed a move to direct funding of the universal service. The first was that this was too much of a new idea and there were some doubts whether it would work. The second line of opposition came from people who believed that the system would work too well because it would make the costs fully transparent. There was a fear that if these subsidies were transparent, they may not be maintained over time. One way to overcome this latter fear might be to impose some form of mechanism which can guarantee the continuation of the subsidies even after their costs are made transparent.

## **General Discussion**

Initiating the discussion on universal service, **Ms Caffarra** from Lexecon Ltd in Brussels noted that there is still a fundamental lack of clarity as to what exactly is the nature of the non-commercial obligations. The discussion has focused on the geographic dimension of universal service – the problem of providing service in sparsely populated areas below cost. However, in European countries the geographic dimension is not necessarily the most important component of universal service. For example, in Germany there are strict rules regarding the quality of service, including rules regarding the minimum frequency of service, the number of postal street boxes, the distance between the street boxes the number of times per

day for collection, the number of post offices and the minimal distance between post offices and so on. To the extent that these obligations impose a financial burden on the incumbent operator it would be wrong to exclude them from the universal service obligation. We should not conclude that in countries where geographic dispersion is not an issue, there is no universal service obligation.

From an economic perspective, we can say that such impose a burden on the incumbent if they would not be voluntarily undertaken by the incumbent. In other words, if they are “non-commercial” in the sense that the provision of these services imposes an incremental cost larger than the incremental revenue. For example, in the case of six-day delivery, rather than five-day delivery, an operator which is obliged to provide a six day per week delivery is obliged to put in place infrastructure for delivery, so the incremental cost may be quite large. On the other hand, the incremental revenue is possibly quite low, since many people would still deliver mail even if there were no deliveries on Saturday. Simply because the incumbent operator is profitable does not imply that it is not incurring some universal service burden.

**New Zealand** responded that a requirement to deliver six days per week is not necessarily a non-commercial obligation as, in a competitive environment, an incumbent operator might choose to provide a six-day per week delivery for purely commercial reasons, for fear of losing business to the competition. For example, New Zealand Post is currently experimenting with a second daily delivery in some parts of the country, even though its universal service requirement is only to deliver once per day. This raises the question whether such obligations really impose a burden in a competitive environment at all. The existence of a mandatory constraint on a firm does not imply that the constraint is costly.

**BIAC** noted that, at least in the case of the United States, it appears that the primary cost of universal service is not the cost of maintaining service in rural areas. Rather the primary cost of universal service seems to reside in the cost of maintaining the quality of service, on a route by route basis. Analysis from the Postal Rate Commission and the U.S. Postal Service seems to indicate that while most of the mail goes to certain houses, certain houses receive very little mail. It is to those latter houses that the postal operator would cut back service to four or five times per week if it could.

### **Part III: Controlling Anti-Competitive Behaviour**

Moving the discussion to the final session of the roundtable, the **Chairman** noted that in some countries (including the US) the postal service is provided by a public administration which is not subject to the antitrust law, just as the government is not subject to the antitrust law. In other countries the postal service is provided by a private enterprise which is typically subject to antitrust law. Many countries reported cases of abuse of dominance and so-called anti-competitive cross-subsidization.

**Professor Sidak** raised the question whether anti-competitive cross-subsidisation was more likely to arise in the case of state-owned or regulated firms. He pointed out that most of the economic theory of regulation deals with the regulation of profit-maximising privately-owned firms. When we change the focus to enterprises (whether public or private) which engage in objectives other than the maximization of profit, we need to stop and ask whether the lessons that we have learnt from examination of profit maximizing private firms continue to apply. One example arises in proposals for price-cap regulation for private enterprises. For example, it has been proposed that the U.S. Postal Service be subject to price caps. In testimony that Prof. Sidak gave in 1997 before the congressional committee hearing this proposal, it was pointed out that if the Postal Service is not profit maximising or, if it is maximizing some other objective (for example, volume or employment or some measure of size) it is not clear that the incentives that price-cap regulation is designed to induce would necessarily come about.



This same point can be made in relation to issues of predatory pricing. Economists have long argued that profit-maximizing firms would be reluctant to engage in predatory pricing because it would be very hard to recoup the losses that need to be incurred upfront to drive the competitor out of the market. But the possibility of predatory pricing becomes more plausible if you consider a firm which is not maximizing solely profit but some other objective or some weighted average of profit and size or something else. One of the results to emerge from recent research is that if a firm maximizes even a weighted average of profit and outputs you can get the result that it is optimal for the firm to set a price that is below the marginal cost.

In other words, as a theoretical proposition at least, we need to be more concerned about the possibility of predatory strategies in the presence of an enterprise which is not a profit maximizer. This underscores why private ownership (because it ultimately makes managers answerable to shareholders) may produce good results for competition policy. Another implication is that in the transition from public ownership to private ownership it may be very important to ensure that incentives are set up to ensure that managers are maximizing profit and not some other objective.

The **Chairman** noted that in addition to the EC Postal Directive which was outlined earlier, the EC has issued a Notice on competition issues in the postal sector.

The **EC** delegate underlined the complementarity between the Directive and the Notice on the application of competition rules in the postal sector. This notice was necessary to clarify the application of the Treaty's competition rules to this sector which is characterised by the co-existence of both reserved and competitive areas and this co-existence may last for several years to come. The delegate addressed two important areas: proportionality and cross-subsidies.

Proportionality is a primary concern for the EC competition authorities. The concern is to ensure that any exclusive or special rights do not go beyond what is necessary to satisfy the public interest that is being promoted. The Treaty of Rome includes a number of provisions which ensure that the principle of proportionality is respected, particularly in article 90. This article provides that in the case of public enterprises and enterprises to which the member states accord exclusive or special rights, member states cannot legislate or maintain measures contrary to the EC competition rules. This is a unique feature of the EC system of competition rules. Article 90 also provides that if these enterprises benefit from exclusive or special rights, it is under the condition that the objective that is served by the exclusive or special rights could not be accomplished by other means less restrictive of competition.

In regard to cross-subsidies, the concern is to prevent revenues from the reserved areas being used to finance activities open to competition. Under EC law, cross-subsidies can be addressed through two mechanisms – not only via the traditional rules on abuse of a dominant position, but also through the rules concerning state aids. The postal notice sets out a list of measures that are considered state aids. In addition, the commission seeks to assure itself that any fiscal benefits enjoyed by the monopoly activities does not exceed the cost associated with providing universal service obligations.

The **Chairman** noted that Hungary has required a degree of separation between the monopoly activities of the incumbent operator and its other competitive activities. Hungarian Post has been obliged to provide express services through a separate subsidiary.

In **Hungary**, according to the postal law, in force since 1992, exclusive rights exist for the collection, transport and delivery of standard letters and for the issuing of stamps bearing the name of the country. Other services, such as courier and parcel services are liberalised. The incumbent operator also is active in courier services. To minimise cross-subsidies the incumbent operator was obliged to establish a

separate enterprise to provide courier services. Operation through a subsidiary does not eliminate the possibility of cross subsidies, but it is the best solution available at the moment. Until now there have not been any complaints from competitors regarding abuse of a dominant position or predatory pricing.

In **Italy**, the competition authority has had extensive dealings with the postal incumbent. One case was a merger case in the express mail sector in which the postal incumbent acquired a large player, bringing its share of the express mail sector from 4 per cent to 16 per cent. On the normal standards of competition enforcement this would not be a very worrisome development, but in this case there were concerns about cross-subsidies and discrimination, so the Italian competition authority in clearing the merger imposed some conditions on the postal incumbent relating to accounting separation, structural separation of the acquired company and undertakings related to allowing non-discriminatory use of the network to other competitors in that sector.

More recently, the competition authority has been involved in an electronic hybrid mail case. Hybrid electronic mail is mail which starts electronically and finishes with physical delivery. The postal incumbent has been quite successful in developing an efficient system of hybrid electronic mail and provides directly such services. The competition authority investigated cross-subsidy and predatory pricing issues. It was concluded that there was no predatory pricing and no cross-subsidy. However, the Competition Authority considered that the postal operator, by discriminating against new entrants, abused of its dominant position.

The **Chairman** noted that the Danish submission spoke about an extensive set of guidelines issued by the Danish postal regulator and the Danish competition authority covering issues like accounting separation, cross-subsidies, cost allocation, non-discrimination rules and so on.

The incumbent postal operator in **Denmark** was reorganised in 1995 as an independent public company, very similar to a normal limited liability company. This limited liability company has exclusive rights for the conveyance of letters up to 250 grams as a compensation for the universal service obligation. With an exclusive right and a universal service obligation a risk arises of cross-subsidization. It was considered necessary to establish a regime to prevent cross-subsidisation.

Two sets of regulations for this purpose are enclosed with the Danish submission: the accounting disclosure regulations and the competitive guidelines on Post Denmark. The purpose of these guidelines is to prevent cross subsidization through transparency of accounts. The transparency regulations impose on Post Denmark an obligation to divide its accounts between “exclusive rights” and “products open to competition”. The heading “products open to competition” is further split into two separate accounts: “products open to competition including the universal service obligation” and “products open to competition outside the universal service obligation”. These three accounts are published in the annual report of Post Denmark. Below these three accounts there are very detailed product finance statements, which cannot be published because they contain competition-sensitive information.

The other main purpose is to avoid illegal cross-subsidization. Illegal cross-subsidization occurs when Post Denmark cross-subsidizes from the reserved area to the area open to competition without universal service obligations. Post Denmark is allowed to cross-subsidize from the reserved area to the area open to competition including the universal service obligation. Another aspect of these guidelines is that they stipulate that it is illegal for Post Denmark to discriminate when giving discounts. Discounts must be given on a strictly commercial basis and must be given whether the company obtaining the discounts is a customer or a competitor.

**Norway** has had a few competition cases where issues of cross-subsidization have arisen. In particular, in 1997 Norway Post acquired a firm operating in the market for direct mail and unaddressed mail (advertisements). The product market was considered to be unaddressed advertisements together with advertising material that is included with newspapers. The geographic market was considered to be densely populated areas because the acquired firm operated in densely populated areas. The market share in these densely populated areas of Norway Post and the acquired firm would have been about 50 per cent. The acquired firm was an important competitor to Norway Post. There were some possibilities for competitors of Norway Post to increase their capacity which might prevent abuse of market power. The competition authority approved the merger on the condition that certain requirements were met. First of all the acquired firm was to be organized and operated as a separate entity - as an independent limited company. In addition, it was prohibited for Norway Post to discriminate between the acquired firm and other distributors in connection with the distribution of unaddressed mail; it was prohibited to enter into an agreement that Norway Post should be the sole distributor of unaddressed mail; and it was prohibited for Norway Post to tie prices, rebates, and supply terms for unaddressed mail together with other services provided by Norway Post.

In regard to accounting disclosure, as in Denmark, Norway Post must provide accounts for three separate classes of products: universal services (divided into reserved services and services that have been opened to competition) and other postal services. This is done to make it easier to prove that cross subsidization does not exist, to ensure that there is sufficient documentation to be sure that all the services within the universal services area are geared to costs, and as a basis for assessing price change requests and the need for rebalancing of prices.

The **Chairman** pointed out that a problem arises from attempting to define detailed product accounts. It is relatively easy to account for the variable costs related to a product but it is difficult or impossible to find the right way of dividing up the common costs among different products. In principle any cost between incremental cost and stand-alone cost can be economically justified. Accountants come up with systems such as fully distributed cost which are very artificial in nature and do not provide the right answer as to how common costs should be divided between different activities.

**Norway** responded that although it is theoretically not possible to allocate common costs, facing a situation where it has been politically decided to maintain a reserved area, a solution must be found. The perspective of Norway is that the best solution is to have separate accounts based on fully distributed costs. This accounting regime is reviewed by an independent state-authorized accountant.

From the standpoint of the Norwegian competition authority, the best way to prevent cross-subsidization is through ownership separation. Nevertheless separated accounts is better than no controls at all. In addition, if the economies of scope are large then perhaps the solution is a trade-off which might lead to you rely on separated accounts.

**BIAC** took up the issue of whether regulatory policy should care how common costs are allocated, by asserting that regulatory policy should not be indifferent to any price between the incremental cost and the stand-alone cost. In an industry in which overhead costs are a substantial portion of total costs such as in the postal business, it is simply impossible to compete with somebody if his competitive services do not have to cover some share of overhead costs. In fact the distribution of overhead costs is *the* regulatory problem.

In the United States the basic rule is that the Postal Rate Commission recommends an overhead contribution for each of the competitive services in line with a series of statutory principles. The US is thinking about moving to a situation in which they would require an overall contribution from all

competitive services that would be more or less equal to that contribution required for all competitive and non-competitive products collectively, giving the U.S. Postal Service freedom to price within that constraint.

In Germany, Deutsche Post has been buying companies through funds raised by selling real estate that was entrusted to Deutsche Post in order to provide universal service. Deutsche Post maintains a very high-priced universal service and they seem to be able to cover capital as well as operating costs, so they have extra real estate which they have used to buy a number of private companies. Under the American proposed legislation the funds of the USPS would be separated into the competitive and non-competitive areas. The Postal Service could enter new businesses from funds generated on the competitive side or from borrowed funds pledged against money received on the competitive side. They could not use the non-competitive revenues either to buy competitive assets or as collateral.

The **Chairman** introduced Sweden as a country where antitrust enforcement in the postal sector has been particularly active. The submission reports that the competition authority has dealt with more than 100 cases involving Sweden Post, involving exclusivities, loyalty discounts, price discrimination, zonal pricing and so on.

**Sweden** acknowledged that since the deregulation in 1993 the competition authority has dealt with more than 100 cases concerning the incumbent Sweden Post, mostly involving applications for negative clearance by Sweden Post and complaints from the competitors. The more important cases have involved fidelity rebates, annual bonuses, access to post office boxes and geographically differentiated prices. The decisions on fidelity rebates and bonuses have been rather straightforward. A fine was imposed on Sweden Post for abusing its dominant position. Regarding post office boxes, the boxes were considered an essential facility and Sweden Post must give non-discriminatory access at reasonable terms and conditions. As mentioned above there will be an amendment to the postal services act in line with this decision.

The question of geographically-differentiated prices is more controversial. The competition authority has taken decisions with the consequence that Sweden Post is not allowed to reduce prices in parts of the country to meet competition. Such differentiation has been considered to be an abuse of a dominant position. The decisions have been appealed to the market court. In a recent decision by the court, Sweden Post is allowed to reduce prices to meet competition as long as they can show that the prices reflect differences in cost.

In **Finland**, also, the competition authority has dealt with many competition cases concerning the postal sector. Most of these have been allegations of cross-subsidization or under-pricing by Finland Post. In Finland, to prove cross-subsidization it is necessary to show that the resources required have been obtained from the abuse of dominant position and their use in competitive operations has been so extensive and continuous that it has had a significant competitive advantage, that the aim of the arrangement was to obtain a dominant position in the subsidized field or that the arrangement otherwise altered the industrial structure of the field to a major extent leading to a long-term decrease in efficiency. It has been alleged that the Finland Post has used funds generated by its reserved operations to subsidize its transport services. These services include, for instance, cargo transport, charter buses and goods transport for schools. To deem a practice as predatory pricing the competition authority has required that the prices charged undercut the marginal cost or the average variable cost of the operator, or when the prices undercut average total cost when other circumstances indicate a decisive exposure of competitors. The second condition is that the market conditions in the field have changed or are about to change as a result of the arrangements in such a way that as a result of the exclusion of competition it is possible to

raise the price level to the extent that it may compensate the incumbent for the losses it is making on the low pricing.

Most of the allegations of cross-subsidization and under-pricing have not been proven. In those cases where the authority has found a subsidy, they have been small and not long-lasting. The most evident problem has been the misallocation of costs. The Finnish competition authority has drawn attention to the cost not being entirely allocated to the relevant services and has said that this gives rise to price distortions between the different services and customers.

One case involved alleged use of under-pricing in the direct marketing sector. In that case the competition authority found that there were no subsidies and that prices were not below variable costs except in short, exceptional periods. In addition, the competition authority found that this could not be an instance of systematic under-pricing distorting competition because the replacement of income losses with a considerable long-term price increase after an exclusion of competitors would not be possible since entry into the direct marketing services in the sparsely populated regions was unrestricted and higher prices were likely to attract new companies into the field.

In **Canada**, in 1991 after more than a century as a government department, Canada Post became a Crown corporation. It was given the exclusive privilege of supplying postal service to the entire country and it is obligated to serve communities in a like manner. In other words, it was given a universal service obligation. Canada Post has a broad mandate, being authorized to offer all services necessary and incidental to the objective of a nationwide postal service. There is no third-party oversight. The regulatory authority is the government.

In 1993 Canada Post acquired Purolator, one of Canada's largest overnight courier providers. The Competition Bureau conducted an extensive analysis of the potential anticompetitive effects arising from this merger. Included in that process was whether or not there had been any cross-subsidization from Canada Post's monopoly operations to its competitive courier business, which operated under the name of Priority Courier. The merger was allowed to go ahead and no evidence of cross-subsidy was found to exist at that time.

Canada Post's operations and its mandate were most recently reviewed in 1996. At that time the Competition Bureau made a submission to the government's Mandate Review Committee. One of the things that were noted was that technological advances had significantly eroded the traditional markets for Canada Post. The competition bureau stated that the natural monopoly was limited to delivery, but an extensive study was recommended to determine exactly what the costs were and where the natural monopoly conditions might exist. As to recommendations, it was felt that the cost of maintaining a monopoly in postal services could result in very serious costs, misallocation of resources and so on. If the exclusive privilege was kept, it was recommended that alternative means of regulation should be adopted. The review committee recommended third party oversight of traditional rate-based rate-of-return regulation. The submission recommended that they should explore other means, including a price-cap regime.

## **General Discussion**

The **Secretariat** re-emphasised the effect of state-ownership on competition noting that often we hear that ownership is neutral. However, ownership is not necessarily neutral as regards competition. The traditional argument states that a profit-maximizing firm engages in cross-subsidization to exclude or prevent entry with the intention of increasing the price later to recoup any initial losses. The postal sector

is a sector where there are relatively no barriers to entry. Therefore, the ability to recoup losses is limited and therefore the incentive to engage in cross-subsidization low. This suggests that cross subsidization is not a problem to worry about.

But, this argument relies on the assumption that these firms are profit maximizing. In contrast, in most of the OECD, incumbent postal operators are state-owned and may pursue other objectives besides strict profit-maximisation. As was already said , even if a firm has an objective which is partially profit-maximizing and partially some other objective such as output maximization, that can be sufficient to give the firm an incentive to price below cost indefinitely. That may have a very big impact on competition. In particular, it can prevent the entry of firms which are more efficient than the incumbent.

The **Chairman** points out that in practice what we see is not so much cross-subsidies, but a soft budget constraint, a sharing of the rents with the other participants in the market. Most of the time, the beneficiaries of these rents are not the customers, as would be the case with cross-subsidies, but instead the workers and the suppliers of these companies. In this sector, which has long been closed to competition there are very strong unions and high salaries compared with other sectors. Antitrust law is probably not the right solution to these problems, the solution is competition.

### **Chairman's Conclusion**

The **Chairman** concluded the roundtable with some preliminary considerations. The roundtable highlighted some of the difficulties with introducing competition into the postal sector. The biggest difficulty is that incumbent postal corporations are big, both in terms of revenues and in terms of employment. In most countries, post offices are one of the biggest employers outside of public administrations. There is a strong fear that introducing competition will lead to a loss in employment and a loss in the rents that have accrued to the stake-holders due to the lack of competition. Trade unions, in particular, can be strong opponents of change. However, it was pointed out that when competition was introduced employment did not decline. In addition, in many small towns and rural areas the post office is the only government institution and it is not very easy to eliminate the post office, even though it does not earn enough revenue to make it profitable to continue. The solution may be, as in Finland, United Kingdom and other countries for the post office to be combined with a local store. In any case, the sector is certainly ready for liberalization and competition.

Another point is the relationship between postal service quality and new technology. In particular, electronic commerce will not flourish if people have difficulties in finding ways to have their goods delivered quickly and promptly to the homes. In addition, of course, we have the regulatory problems of cross-subsidies and price regulation. One solution to the problem of anti-competitive cross-subsidies that we saw was the privatisation of the post office, as the Netherlands has done.

## AIDE-MÉMOIRE DE LA DISCUSSION

### Introduction

Le **Président** a démarré son tour de table en faisant observer que la libéralisation des services postaux pose des questions bien connues concernant notamment le mode d'introduction de la concurrence dans des secteurs présentant certaines caractéristiques d'un monopole naturel. Bien que dans d'autres secteurs il soit souvent assez facile d'identifier l'existence de ces caractéristiques de monopole naturel, on ne sait pas très bien où ni pourquoi ces caractéristiques de monopole existent dans les services postaux. Enfin, dans les services postaux comme dans les télécommunications, se pose le problème des obligations non commerciales qui prend généralement la forme d'un tarif postal unique imposé pour l'ensemble du pays indépendamment du coût des services fournis.

A ce jour, la plupart des réformes auxquelles nous avons assisté dans le secteur postal se sont attachées à donner une certaine discipline à l'opérateur postal en titre à travers ce que l'on a appelé une "réforme de l'entreprise" et qui a consisté notamment à le faire évoluer vers une structure d'entreprise. Ces réformes ont bien réussi mais elles ne vont pas constituer l'objet central de notre discussion.

### Partie I: Approches de la réglementation

Le **représentant de L'OMC** a démarré la première partie de la discussion par une description très préliminaire des entraves au commerce et à la concurrence dont l'existence est actuellement perçue dans le secteur. Parmi ces entraves figurent, bien entendu, les restrictions légales et réglementaires directes mais également certains facteurs moins évidents comme le rôle d'autoréglementation des monopoles postaux dans certains pays, l'appartenance à des organisations internationales et l'obligation faite aux sociétés étrangères de courrier d'utiliser des fournisseurs locaux sous contrat pour la collecte, la distribution et les procédures de dédouanement.

Le **Professeur Sidak**, American Enterprise Institute for Public Policy Research (AEI), a traité de la question de l'existence ou non d'un monopole naturel dans les services postaux. Les éléments existant à ce jour laissent à penser que s'il existe un monopole naturel, celui-ci se cantonne aux services de la distribution locale. Les conditions d'un monopole naturel (économies d'échelle et économies de gamme) dépendent pour beaucoup de la définition du produit et des caractéristiques de qualité du service. En particulier, la fréquence de la distribution du courrier aura un impact sur le fait que nous observerons ou non des économies d'échelle et de gamme. Moins cette fréquence sera grande, plus il est probable que l'on réalisera des économies d'échelle et de gamme. A titre d'exemple, le rapport général posait la question de savoir pourquoi les pizzas ne sont pas livrées par les services postaux. La réponse est que la fréquence requise des livraisons est telle qu'elle élimine toutes économies d'échelle ou de gamme.

S'il n'existait pas de monopole naturel dans les services postaux, même dans les fonctions de distribution, cela aurait des implications importantes pour la concurrence et la réglementation. L'expérience des Etats-Unis donne à penser que la distribution concurrentielle de certains types de courrier est possible. Aux Etats-Unis, jusque dans les années 30, les banques, les services d'utilité publique et autres entreprises facturant pratiquement chacune des maisons d'une même rue devaient livrer

leurs propres factures plutôt que de recourir aux services de l'USPS (Service postal américain). Une législation ultérieure a proscrit cette pratique. En l'absence d'interdictions statutaires frappant la distribution, on pourrait penser que certains types de services de distribution extrêmement ciblés évolueraient rapidement. En outre, le paiement électronique des factures pourrait supprimer une partie importante du trafic stable que les services postaux acheminent actuellement.

Les conditions de coûts sous-jacentes à un monopole naturel de la distribution varient vraisemblablement d'un pays à l'autre en fonction de la densité de population et de divers autres facteurs. En outre, les économies d'échelle pourraient varier à l'intérieur d'un même pays entre les zones urbaines et les zones rurales. La distribution ne devrait pas être considérée comme un service homogène unique mais comme un multitude de services différents présentant des caractéristiques de coûts potentiellement différentes et des barrières à l'entrée différentes.

L'**Italie** a admis que les conditions de coûts peuvent varier d'une région à l'autre et fait observer qu'en Italie la distribution des imprimés a été libéralisée il y a plus de 60 ans. Dans les grandes villes, il existe de nombreux réseaux qui peuvent assurer la distribution, mais dans les petites villes et en milieu rural et montagneux, des problèmes de coûts réels sont associés à la création de nouveaux réseaux de distribution.

Le **Président** a reconnu le rôle important joué par la Commission européenne et son processus de libéralisation engagé depuis un certain nombre d'années et dont le point culminant a été la Directive du Conseil de décembre 1997.

La **Commission européenne** a développé une politique postale européenne commune sur la base de certains principes qui sont notamment l'harmonisation des exigences de service universel et l'établissement d'une zone "réservable" maximum. Un service universel se définit comme un service accessible à tout un chacun, quel que soit l'endroit où il se trouve, d'un niveau de qualité défini et d'un prix abordable. La directive établit que pour assurer l'offre d'un service universel, les Etats membres peuvent se réserver la levée, le transport, le tri et la distribution des objets de correspondance jusqu'à 350 grammes, y compris les cartes postales. La directive interdit de se réserver les services suivants : les colis, le courrier express, le courrier non adressé, les objets lourds et la livraison d'objets ne constituant pas une forme de communication. La date limite fixée pour la transposition de cette directive dans les législations nationales était le 10 février 1999. Une révision des exigences de service universel doit être entreprise dans le courant de l'année 2000.

La directive énonce également les obligations relatives à la transparence des comptes, à la protection des consommateurs et à la séparation des fonctions réglementaires de l'opérateur en titre. L'objet des exigences relatives à la fourniture d'informations comptables est de faire en sorte que les tarifs facturés soient liés aux coûts sous-jacents mais aussi d'éviter les plaintes éventuelles relatives aux subventions croisées, en particulier entre les services réservés et les services ouverts à la concurrence.

Le **Président** a observé que l'une des spécificités du système néerlandais est d'avoir entièrement privatisé l'opérateur postal en titre. Il en a profité pour souligner deux obstacles à la privatisation et, de manière plus générale, à la réforme du système postal. Le premier est le fait que les opérateurs postaux sont souvent de gros employeurs et qu'une amélioration de leur efficacité pourrait se traduire par une réduction de l'emploi. Le second est que, dans les petites villes, les bureaux de poste sont souvent perçus comme offrant toute une série de services. Les populations locales s'opposent donc bien souvent à leur fermeture.



Les **Pays-Bas** ont fait remarquer que les propositions actuelles réduisent le secteur sous monopole aux envois postaux de moins de 200 grammes et trois fois le tarif de base. En outre, ces propositions vont dans le sens d'une libéralisation totale en 2003, sous réserve que les autres pays de l'Union européenne s'engagent dans la même direction. Les propositions actuelles libéralisent également les échanges de documents (comme l'exige la directive de l'UE) et le courrier au départ. Il existe également aux Pays-Bas un organisme indépendant de réglementation, l'OPTA (Autorité néerlandaise des postes et télécommunications) et un régime de prix plafond indexé sur les salaires.

Le représentant du **BIAC** (qui représente l'opérateur postal public privatisé aux Pays-Bas) a répondu aux observations du Président relatives à l'incidence sur l'emploi en faisant remarquer que, bien entendu, après la privatisation l'opérateur privatisé a dû devenir plus efficace car d'une part il se trouvait désormais exposé aux lois du marché et que d'autre part les actionnaires voulaient obtenir un certain taux de rémunération pour leurs actions. Mais l'opérateur a diversifié la gamme de ses services et les effectifs excédentaires ont été affectés à ces services. Non seulement l'emploi global n'a pas diminué mais il a augmenté. Précision importante, les employés sont désormais plus motivés car l'entreprise peut leur proposer une forme de rémunération par attribution d'actions.

Le **Président** a noté deux particularismes du système postal italien. Le premier est qu'en Italie (comme aux Etats-Unis) les concurrents sont autorisés à opérer dans les secteurs réservés à la condition de verser au en titre l'intégralité de l'affranchissement qui serait dû à ce dernier s'il transportait lui-même le courrier transporté par la concurrence. Le second est l'existence en Italie d'un système d'opérateurs franchisés qui opèrent à côté de l'opérateur en titre et effectuent les mêmes tâches mais ne sont pas autorisés à facturer moins que l'opérateur en titre. En Italie, l'opérateur postal en titre affiche des pertes colossales.

L'**Italie** a reconnu les pertes de son opérateur en titre et fait observer qu'elle procède actuellement à une étude du coût du service universel. En Italie, les bureaux de poste assurent non seulement les services postaux mais également des services financiers et des services de règlement de factures. Dans les petites villes, il arrive qu'il n'y ait pas d'autre établissement financier. La part de marché détenue par l'opérateur en titre pour les services de colis postaux est faible (5 pour cent seulement) mais pour les imprimés elle est beaucoup plus importante car le tarif qu'il facture est inférieur aux coûts. Pour s'efforcer de se mettre en conformité avec la directive européenne, l'Italie doit déterminer la taille appropriée du secteur réservé (par rapport au coût de l'offre d'un service universel) et établir comment autoriser les opérateurs concurrents à entrer sur le marché.

Dans une présentation du marché postal polonais, le **Président** a noté qu'en Pologne, comme aux Etats-Unis et en Norvège, les boîtes à lettres situées dans les maisons et appartements sont du domaine réservé de l'opérateur postal, ce qui constitue une importante barrière à l'entrée sur ce marché.

La **Pologne** a reconnu que, pour le moment, la Poste polonaise détient le privilège exclusif de l'installation chez les clients de boîtes à lettres pour la distribution de la correspondance. Mais le pays procède actuellement à une adaptation de sa législation aux directives européennes. Les travaux préliminaires sur un projet de nouvelle loi postale sont terminés et la nouvelle loi entrera en vigueur au plus tard en 2001. Aux termes de la nouvelle loi, l'offre de services postaux sera soumise à une procédure d'enregistrement. La liste des opérateurs enregistrés sera tenue par une nouvelle autorité réglementaire, l'Office de réglementation du marché postal. L'opérateur en titre, la Poste polonaise, deviendra un opérateur public et aura l'obligation d'offrir des services postaux internationaux conformément aux lois de la Universal Postal Union. Le nombre des services réservés sera réduit et leur domaine adapté pour se conformer à la directive communautaire. En ce qui concerne les marques postales, tous les opérateurs postaux enregistrés auront le droit d'utiliser leur propre marque déposée auprès de l'organisme

réglementaire mais la Poste polonaise conservera le droit exclusif d'émettre des timbres portant la mention "Pologne" ou "République de Pologne".

Le **Président** a noté que l'une des caractéristiques inhabituelles du régime de réglementation des services postaux américains est que la limite entre secteur réservé et secteur non réservé n'est pas spécifiée par la législation mais déterminée par les services postaux américains eux-mêmes, par le biais du système des "Private Express Statutes exemptions". Comme dans d'autres pays, l'opérateur en titre est soumis à une forme de contrôle des prix mais, ce qui est inhabituel, les gouverneurs des services postaux américains ont une certaine liberté d'accepter ou de refuser le prix recommandé par l'organisme de réglementation des tarifs postaux. Comme en Pologne, l'accès aux boîtes à lettres installées dans les maisons et appartements des particuliers est réservé.

Dans leur réponse, les **Etats-Unis** ont fait remarquer que le Postal Service est la propriété exclusive du gouvernement américain et que dans leur pays l'obligation de service universel incombe intégralement au USPS. En ce qui concerne la réglementation des prix, deux agences fédérales pertinentes sont concernées. L'une est le Postal Service lui-même et l'autre la Postal Rate Commission qui est un organisme de réglementation dont les attributions se limitent aux seuls domaines des prix et de classification du service. Le Postal Service peut exiger des modifications de tarif ou de classification et la Postal Rate Commission fait en retour une recommandation aux gouverneurs du Postal Service. Ces gouverneurs n'ont qu'un pouvoir très limité de modifier la décision de la Commission et ils ne peuvent le faire que par un vote à l'unanimité dans un contexte très limité. Mais c'est aux gouverneurs qu'incombe la décision finale. Il n'existe aucun monopole de l'acheminement du courrier express, des journaux et des magazines. Le Postal Service contrôle effectivement l'accès aux boîtes à lettres des particuliers en vertu d'une législation votée par le Congrès américain mais il n'a pas en la matière un pouvoir discrétionnaire. Des problèmes se posent en ce qui concerne le domaine privé des clients de la poste. Les concurrents ont développé des systèmes de distribution alternatifs et le Postal Service est confronté à une certaine concurrence dans le domaine de la distribution de détail.

Dans le domaine du "dégroupage" ou des "intermédiaires", l'implication du secteur privé dans la levée, le transport, la distribution et la livraison est importante aux Etats-Unis. En ce qui concerne les colis et le courrier publicitaire, il existe des remises dites "drop-shipped" ou "destination-entry" en vertu desquelles des réductions de tarifs sont accordées aux utilisateurs qui transportent les envois jusqu'à un point d'entrée dans le système de courrier proche de leur destination finale. Il existe également un système de réductions de tarifs ou de remises dites de "partage du travail" pour intervention dans la préparation du courrier, soit au niveau du précodage barre, soit au niveau du tri préalable du courrier avant son entrée dans le réseau postal. Ces remises de "partage du travail" sont recommandées par la Postal Rate Commission quoique la décision ultime incombe aux gouverneurs.

Un certain nombre de réformes ont été entreprises aux Etats-Unis ces dernières années. Le projet de loi le plus récent que doit présenter le Comité de la réforme législative propose de ne pas modifier le système du service universel (qui reste du ressort de l'USPS) mais d'autoriser une plus grande souplesse au niveau des prix et de passer d'un concept économique de facturation au coût du service à un système plus flexible de plafond de prix établi sur la base du taux d'inflation diminué d'un ajustement pour productivité. Point important, le projet de loi propose que l'USPS soit autorisé à constituer une société commerciale de droit privé qui pourrait assurer des services postaux et non postaux, acquérir des actions de sociétés et prendre part à des "joint venture" avec des entreprises privées. La législation tente également de clarifier le rôle du Postal Service en ce qui concerne les services concurrentiels et s'attaque au problème potentiel des subventions croisées.

Le **Président** a fait un parallèle entre le régime postal de la Corée et celui du Japon. Ces deux pays ont en commun une définition large du domaine réservé à l'opérateur postal. De plus, la Corée, comme le Japon, évolue vers la constitution en société commerciale de ses services postaux.

La **Corée** reconnaît que son opérateur postal en titre, Korea Post, opère actuellement dans le cadre du ministère coréen de l'Information et de la Communication. Korea Post gère les activités de services postaux et de services financiers de la poste. A l'instar de ce qui se passe dans d'autres pays, Korea Post est confrontée à la concurrence dans les services de transport de colis et le transport express. Les réformes actuellement en cours consistent notamment à introduire un système de contrôle des prix pour le secteur réservé et de comptabilisation séparée selon les catégories de services. La Corée a fait observer que l'approche adoptée par certains pays européens évolués ne s'applique pas nécessairement dans d'autres pays Membres de l'OCDE et que chaque pays doit être considéré séparément. En Corée, la réforme de la réglementation du secteur postal s'effectuera par étapes.

Au **Mexique**, la législation postale distingue les services postaux publics (qui sont du domaine réservé de l'Etat) et les autres services postaux qui ne le sont pas, notamment le courrier, les paquets et les lettres dépassant les limites de taille et de poids imposées par la loi. Les prestataires privés peuvent, dans une certaine mesure, contourner les restrictions imposées au secteur réservé en traitant les lettres dans des enveloppes plus grandes. Les services postaux publics sont réservés à l'Etat dans le but de garantir l'offre de service universel. Dans le domaine ouvert à la concurrence, la participation des entreprises privées est très importante. La concurrence a conduit à une amélioration globale de l'efficacité des services postaux à tel point qu'il n'y a pas de différence de qualité importante entre prestataire public et prestataires privés.

Le **Président** a répondu que cela met en lumière l'un des avantages de la concurrence qui est de discipliner le comportement de l'opérateur postal en titre. Il a noté que l'Australie a bien avancé sur la voie d'une libéralisation totale. Dans quelques années, près de 90 pour cent des recettes de Australia Post sera ouvert à la concurrence. L'expérience australienne est intéressante en ce sens qu'elle souligne le rôle du Conseil national de la concurrence et de l'autorité chargée de la concurrence (l'ACCC) dans la promotion et la mise en œuvre de la réforme réglementaires. Un autre point important est que la concurrence n'a pas menacé la rentabilité de l'opérateur en titre qui a assurément amélioré sa rentabilité du fait de l'accroissement de la concurrence.

L'**Australie** a admis que les réformes de ses services postaux engagées en 1994 ont connu un relatif succès. L'an dernier, le gouvernement a décidé d'aller plus avant dans le processus de réforme, à la suite d'une revue de Australia Post effectuée dans le cadre d'un exercice plus vaste de réforme de la réglementation. Les nouvelles réformes seront mises en œuvre en l'an 2000. En gros, elles limiteront le secteur réservé aux lettres de moins de 50 grammes, affranchies à moins de 45 cents australiens (30 cents américains ou un tiers d'euro). Les problèmes de la neutralité concurrentielle ont été réglés en soumettant Australia Post à toutes les taxes standard qui frappent les entreprises. Un régime d'accès a été établi à tel point qu'approximativement un tiers de tout le courrier est soumis à ce régime.

Le dernier train de réformes n'est pas allé aussi loin que prévu. A titre d'exemple, le Conseil australien de la concurrence a recommandé que la totalité du courrier commercial ne fasse l'objet d'aucune réserve, mais cette proposition a été rejetée par le gouvernement pour des raisons liées à l'obligation de service universel. Elles sont discutées plus en détail ci-après.

L'autorité chargée de la concurrence (l'**ACCC**) a un rôle à jouer dans la réglementation des prix, même si ce rôle n'a guère été actif dans la mesure où les tarifs postaux sont fixes depuis 1992 et le resteront jusqu'en 2003 pour les lettres standard. Concernant le problème de l'interconnexion ou de l'accès, l'**ACCC** a effectivement un rôle à jouer dans la détermination des tarifs d'interconnexion mais il est

intéressant de noter que Australia Post conserve une certaine liberté d'action quant aux points d'accès. Elle l'a exploitée pour établir les points d'interconnexion à des endroits particuliers qui limitent la capacité de dérivation des concurrents. Néanmoins, environ un tiers du courrier est soumis au régime d'accès. Il est possible que le régime d'accès spécifique existant sera remplacé par un régime d'accès plus développé opérant conformément à la législation australienne sur la concurrence..

Le **Président** a signalé le cas de la Finlande, de la Suède et de la Nouvelle-Zélande qui ont tous trois entièrement libéralisé leur secteur postal.

La **Finlande** a fait remarquer que l'objectif de sa loi sur la Poste est de faire en sorte que "les services postaux puissent être assurés dans les mêmes conditions dans l'ensemble du pays". Seuls les services relatifs à l'acheminement des lettres standard sont, dans une certaine mesure, réglementés par la législation postale. D'autres prestations, comme la distribution de colis, journaux et envois express par exemple, sont entièrement libéralisées. Il n'existe dans la législation postale aucun domaine réservé. Tout opérateur ayant obtenu une licence d'exploitation peut offrir des services postaux. En mars 1997, le ministère finlandais des Transports et des Communications a accordé une deuxième licence à un nouvel entrant. La société n'a pas encore démarré du fait de l'adoption d'une loi entrée en vigueur le 1er août 1997 et aux termes de laquelle les entreprises offrant des services postaux limités sont assujetties à une sorte de taxe afin de garantir l'offre de services postaux dans les régions éloignées. Cette loi a été prise pour garantir l'offre de services postaux dans les régions d'habitat dispersé. En Finlande, la densité de population est très faible et une grande partie du pays a une vocation rurale. Du fait de cette taxe, qui peut représenter jusqu'à 20 pour cent des recettes, les opérateurs privés craignent qu'il ne soit pas rentable de se lancer dans une activité postale concurrente.

Avec la Suède et l'Argentine, la **Nouvelle-Zélande** a, depuis le 1er avril 1998, un régime postal libéralisé. La réglementation des services postaux néo-zélandais repose essentiellement sur quatre piliers. Le premier est la loi sur les services postaux (Postal Services Act) qui est le seul texte législatif sectoriel et s'applique aux lettres affranchies à moins de 80 cents néo-zélandais (environ 44 cents EU). Cette loi énonce les exigences relatives au traitement du courrier suspect et ne pouvant être livré, et assimilé. Les autres services de courrier, courrier express, colis et lettres affranchis à plus de 80 cents néo-zélandais sont entièrement déréglementés. Sur ces marchés la concurrence est active et acharnée. Il n'est pas possible de dire combien d'entreprises y opèrent car, pour ces services, il n'existe aucune obligation d'enregistrement ou de licence. Le deuxième pilier est le Commerce Act, loi néo-zélandaise sur la concurrence, qui est probablement plus important pour le secteur postal que le Postal Services Act. Le troisième pilier est une série de réglementations relatives à la fourniture d'informations qui imposent aux services postaux néo-zélandais de révéler certaines informations comptables ainsi que les niveaux de remises accordés aux clients. Le quatrième pilier est le "Deed of Understanding", protocole d'accord signé entre New Zealand Post et son propriétaire, le gouvernement néo-zélandais. Ce protocole d'accord établit le nombre de points de distribution que l'entreprise devra maintenir et la fréquence avec laquelle elle devra les livrer ; elle contient une clause qui stipule que New Zealand Post assurera à ses concurrents l'accès à son réseau dans des termes et conditions identiques à ceux qu'elle consent à ses propres clients.

Les obligations de service universel sont acquittées intégralement par New Zealand Post. Aucun paiement explicite n'est effectué par le gouvernement au titre de ces obligations bien que leur contrepartie soit une désignation exclusive à la Universal Postal Union pour une période transitoire.

En Nouvelle-Zélande, l'accès constitue un problème important. A l'heure actuelle, il n'est pas fixé par le gouvernement mais négocié entre les compagnies concurrentes et New Zealand Post. La surveillance réglementaire de ces négociations entre dans le champ de la loi sur la concurrence et de la Commerce Commission (Agence néo-zélandaise de la concurrence). L'accès aux boîtes postales pose aux

concurrents un problème particulièrement important. Bien entendu, le réseau de boîtes postales couvrant l'ensemble du territoire appartient à New Zealand Post. La plupart des entreprises ont une boîte postale et une proportion importante du courrier passe d'une boîte postale à une autre. Il s'agit là d'une barrière à l'entrée importante. En effet, les entreprises qui souhaitent entrer sur ce marché ne peuvent pas le faire si elles n'ont pas accès au réseau de boîtes postales de New Zealand Post. A ce jour, trois accords d'interconnexion ont été signés entre New Zealand Post et ses concurrents.

New Zealand Post est libre de fixer ses propres prix, à l'exception du prix plafond transitoire sur les lettres standard. Ce plafond n'est pas lié à l'inflation ; il est fixé à un niveau nominal de 45 cents. Il n'existe pas en Nouvelle-Zélande d'obligation de tarif uniforme. Si New Zealand Post maintient un tarif uniforme, c'est parce que son intérêt commercial est de le faire. Il existe un système très mineur d'enregistrement pour les opérateurs postaux. Pratiquement tout le monde peut devenir opérateur postal. Il n'y a pas de test d'agrément, ni de test de viabilité économique. A ce jour, 19 concurrents ont été enregistrés. Il s'agit pour la plupart de très petites entreprises mais on trouve également quatre entreprises plus importantes dont trois envisagent d'opérer au niveau national. Leurs volumes d'activité sont actuellement faibles mais elles envisagent d'augmenter leurs services. New Zealand Post reste un service public mais agit comme une entreprise privée et dégage une rentabilité importante. La société est entièrement libre de se restructurer, ce qu'elle a fait dans des proportions très sérieuses à la fin des années 90. 400 bureaux de poste ont été fermés suite à cette restructuration. Mais, grâce à un système de franchisage, le nombre des services de poste proposés désormais est plus important que celui proposé auparavant par les anciens bureaux de poste.

Répondant à une question du **Canada** relative à l'obligation de service universel et au maintien du service dans les régions éloignées ou rurales, la **Nouvelle-Zélande** a répondu que des obligations de service universel ont été imposées à New Zealand Post uniquement. Ces obligations ont fait l'objet d'un accord délibéré entre le gouvernement et l'entreprise. New Zealand Post est tenue de desservir un nombre minimum de points de distribution un certain nombre de jours par semaine. 99.8 pour cent des points de distribution bénéficient d'un service cinq ou six jours par semaine. Cela permet de desservir la plupart des personnes vivant en Nouvelle-Zélande. Un petit nombre de personnes vivant en milieu rural ne bénéficient probablement que d'un service trois ou quatre jours par semaine. Mais cette situation ne suscite aucune plainte, car il s'agit essentiellement d'une continuation du régime mis en place en Nouvelle-Zélande depuis 1989. Les coûts liés à l'obligation de service universel sont assumés par New Zealand Post. On considère que New Zealand Post a certaines incitations commerciales à maintenir la distribution de courrier dans les régions où le coût de cette distribution est élevée car elle est l'unique prestataire de services présent partout.

## **Discussion générale**

Le **Secrétariat** a posé le problème de l'accès aux boîtes postales en soulignant que, bien que l'on ne sache pas très clairement s'il existe dans les services de distribution finale un monopole naturel qui nécessiterait une réglementation de l'accès, il peut se poser un problème de concurrence dans le cas de l'accès aux boîtes postales. Ces boîtes sont généralement situées dans les locaux de l'opérateur en titre. Si l'opérateur refuse l'accès de ces boîtes postales à un concurrent, celui-ci ne sera pas en mesure d'offrir un service omniprésent, ce qui risque d'être pour lui un handicap commercial par rapport à l'opérateur en titre. Deux raisons font que le concurrent sera désavantagé. La première est qu'il ne sera pas à même d'offrir un service de guichet unique car ses clients seront contraints de trier leur courrier sortant et de traiter avec au minimum deux prestataires. En outre, de nombreuses entreprises se montreront réticentes à changer de boîte postale en raison des coûts qu'entraînera pour elles la notification de ce changement d'adresse à ses

clients ; l'entreprise concurrente aura donc quelques difficultés à attirer l'activité de courrier entrant d'un client. Les mêmes arguments valent dans l'autre sens. Lorsqu'un concurrent a attiré un nombre suffisamment important de clients ayant une boîte postale, l'opérateur postal en titre aimerait avoir accès à ces boîtes postales afin de préserver les avantages d'une offre omniprésente.

Il existe une analogie avec l'interconnexion des réseaux de téléphonie locale dans le secteur des télécommunications. Dans chaque cas, l'interconnexion peut accroître la valeur des réseaux existants en augmentant la portée de chacun. Mais, dans chaque cas, les incitations pour chaque réseau à s'interconnecter peuvent être minimales, en particulier si le fait de refuser l'interconnexion peut empêcher le développement de la concurrence. Le même type de solution s'appliquant dans les télécommunications pourrait s'appliquer dans le contexte de la poste. Il est reconnu, en particulier, que le prix de l'accès pourrait être calculé sur la base des coûts. La plupart des coûts des services postaux se produisent au stade de la distribution finale mais le coût de la distribution à une boîte postale (qui ne nécessite aucun transport physique des lettres) est probablement très minime, de sorte que le prix d'interconnexion approprié pourrait être très faible. Comme dans le cas des télécommunications, on pourrait s'attendre à ce que deux réseaux de boîtes postales s'engagent à mettre un terme à leurs envois respectifs de courrier à un prix faible, voire nul (système dit du "bill and keep" dans les télécommunications).

Toutefois, il ne faudrait pas pousser trop loin l'analogie avec le secteur des télécommunications. Le coût pour un client du tri du courrier sortant et de l'utilisation de deux prestataires différents est inférieur au coût du maintien de liaisons actives avec deux réseaux différents de télécommunication, voire davantage. Ainsi, nous pourrions penser qu'il existe certaines formes de concurrence postale (du type Document Exchanges) même sans interconnexion avec le réseau postal de l'opérateur en titre.

Le **Japon** a répondu que l'interconnexion des services postaux peut être différenciée de l'interconnexion des services de télécommunication pour deux raisons. La première est qu'il est beaucoup plus difficile de garder une trace des flux de courrier et, ce faisant, d'identifier qui est responsable de toute perte ou dommage en résultant. Lorsqu'il est impossible d'identifier la partie responsable, la sécurité des flux de courrier ne peut être assurée que si une seule entreprise assure le service. La seconde est qu'il est beaucoup plus difficile de calculer le coût des services dans les services postaux que dans les télécommunications et que de ce fait, il est difficile de déterminer le prix d'accès approprié.

Les **Etats-Unis** ont fait observer qu'ils se sont attaqués au problème de la sécurité dans le contexte des "drop-shipped discounts", du tri préalable, etc.... Aux Etats-Unis, tous les organismes chargés de faire appliquer la loi ont élaboré des accords avec les entreprises de courrier et autres entreprises travaillant avec le US Postal Service pour s'efforcer d'adopter une approche rationalisée des problèmes de sécurité.

Le **Président** a suggéré que l'on pourrait s'attaquer au problème de la sécurité des flux de courrier par un système d'assurance et s'est déclaré enclin à penser qu'il ne s'agit pas là d'un obstacle majeur à l'ouverture à la concurrence dans les services postaux.

Le **Secrétariat** est revenu sur la question de la sécurité des flux de courrier en soulignant que ces problèmes se posent à chaque fois que vous avez un régime d'accès dans lequel une partie du service est fournie par une entreprise concurrente. Un régime d'accès est toujours un compromis entre les avantages d'une concurrence accrue et les inconvénients de la perte potentielle d'économies de gamme. Les problèmes relatifs à la sécurité des flux de courrier sont une forme d'économies de gamme. Il est difficile de dire quelle est l'importance de ces effets. Nous pouvons, là encore, établir une analogie avec le secteur des télécommunications. En effet, si je vis à New York et si j'appelle un numéro à Los Angeles, mon appel est reçu par Ameritech, il pourrait être transporté par AT&T et transmis à Pacific Bell. Si la ligne est

mauvaise, à qui dois-je me plaindre ? Est-ce la faute de AT&T, de Ameritech ou de Pacific Bell ? Il en va de même dans le secteur postal : si ma lettre n'arrive pas, est-ce la faute de l'opérateur en titre ou du nouvel entrant ? Ce sont là des problèmes qu'il faut régler dans le cadre du régime d'accès et qui ne semblent pas être plus graves dans le secteur de la Poste.

La **Nouvelle-Zélande** a fait observer qu'en ce qui concerne la responsabilité pour perte ou dommage, la plupart des pays imposent aux administrations postales en titre des limitations de la responsabilité de sorte qu'elles ne peuvent affronter une action pour perte d'une lettre standard (bien que manifestement, elles puissent y renoncer par contrat dans le cas de courrier recommandé, etc.). En Nouvelle-Zélande, cette limitation de la responsabilité a été étendue également aux opérateurs privés.

La **Suède** a admis que la question de l'accès aux infrastructures postales est très importante, notant qu'un fournisseur de boîtes postales peut être commercialement désavantagé, sauf à pouvoir recevoir l'intégralité du courrier à l'arrivée d'un client (et non pas simplement une partie de ce courrier). En Suède, une nouvelle législation destinée à renforcer la position des fournisseurs concurrents de boîtes postales, sera bientôt terminée. Cette législation permet d'affecter aux fournisseurs concurrents des codes postaux de boîtes postales. En outre, un système sera mis en place en ce qui concerne les changements d'adresse, de telle sorte qu'un client de la poste n'ait besoin de faire enregistrer qu'une seule fois son changement d'adresse. Et un système de réexpédition du courrier permettra aux clients d'un opérateur régional de faire suivre leur courrier s'ils quittent la région.

L'**Australie** a souligné ce qu'elle considère être un défaut du système d'accès existant dans ce pays. En vertu des accords d'accès existants, des remises sont accordées pour volume important et pour tri préalable mais aucune remise n'est accordée pour le fait de transporter le courrier à proximité du point de distribution finale. Par exemple, dans le cas d'une lettre qui est envoyée d'un côté du continent à l'autre, les mêmes remises pour volume important et pour tri préalable seront appliquées quel que soit l'endroit où vous remettez les lettres à l'opérateur en titre. Cela signifie que le concurrent n'est nullement incité à assurer le transport par route du courrier en vrac à travers le continent, même s'il pouvait le faire plus efficacement que l'opérateur en titre. Cela montre combien il est important d'établir correctement le prix de l'accès sur la base des coûts sous-jacents.

La **République slovaque** a décrit son régime réglementaire et fait observer qu'actuellement la législation postale slovaque est analysée afin d'être mise en conformité avec les directives de l'Union européenne. La loi spécifie le champ d'application de l'obligation de service universel et les services réservés. Tous les autres services seront ouverts à la concurrence. Un régime d'octroi de licences sera mis en place dans le cadre de la nouvelle législation postale. L'opérateur en titre est la Poste slovaque qui assure un service postal universel. Ses prix sont contrôlés et si elle désire modifier ses tarifs, elle doit justifier ses raisons sur la base de calculs de coûts.

La **Corée** a posé trois questions à l'Australie : 1) qui a été l'initiateur de la libéralisation et quel a été le rôle dans ce processus de l'autorité chargée de la concurrence? 2) y-a-t-il eu des objections (telles que des conflits sociaux) à la libéralisation ? 3) enfin, quels ont été les effets de la libéralisation sur les prix, la qualité du service, la rentabilité ?

L'**Australie** a répondu qu'assurément le dernier train de réformes des services postaux a été étroitement mêlé au processus global de réforme de la réglementation, comme en témoigne le rapport sur la politique nationale en matière de concurrence, également connu sous le nom de rapport Hilmer. Ces réformes ont comporté l'établissement d'un large accord donné à un processus global de réforme en fonction d'un ensemble de principes de concurrence. Les principes ayant été établis et l'accord des gouvernements acquis, le processus a consisté à examiner une série de problèmes réglementaires dans un

certain nombre de secteurs dont les télécommunications, l'énergie, les transports et, bien entendu, la poste. L'autorité chargée de la concurrence s'est prononcée fermement en faveur d'un grand nombre de ces examens et, dans bon nombre de cas, elle a apporté des contributions formelles. Globalement, les autorités responsables de la politique de la concurrence ont assurément encouragé activement le processus de réforme.

En ce qui concerne les objections relatives au personnel, le problème n'a pas été sérieux. L'emploi chez Australia Post a considérablement augmenté sur la période et le processus de réforme n'a entraîné aucune suppression d'emploi. En fait, c'est l'inverse qui s'est produit car l'éventail des services proposés après la libéralisation ayant augmenté (dans les services financiers, par exemple), le niveau global d'emploi a augmenté. Lorsque le dernier train de réformes a été annoncé, Australia Post en tant qu'entité, s'est montrée très favorable aux réformes.

En ce qui concerne les prix, la qualité du service, etc., nous avons mentionné précédemment que le prix d'une lettre standard est demeuré fixe depuis 1992 et que, dans le cadre de ces réformes, il le restera jusqu'en 2003. Cela a abouti à des réductions substantielles des prix réels. Pour les utilisateurs commerciaux qui utilisent le régime de l'accès, la réduction de prix a été plus importante encore selon le type d'accès demandé. En termes de rentabilité, celle de Australia Post a très fortement augmenté pendant la durée des réformes, du fait essentiellement d'une réforme de l'entreprise. Australia Post est désormais une entreprise privée qui dégage un taux de rendement des capitaux propres d'environ 14 pour cent à tel point que l'un des débats organisés dans le cadre du processus de réforme le plus récent a été de savoir s'il fallait ou non réduire les tarifs postaux.

La **Nouvelle-Zélande** a fourni elle aussi des indications de l'effet de la réforme sur les prix et la qualité du service. New Zealand Post était sérieusement menacée d'une ouverture totale à la concurrence depuis 1994, date de la première annonce par le gouvernement de sa volonté d'ouverture à la concurrence des services postaux. Cette menace a fortement incité New Zealand Post à améliorer la qualité de ses services et à maintenir des prix bas. En fait, en 1995, New Zealand Post a abaissé de 45 à 40 cents l'affranchissement d'une lettre standard pour se préparer à une concurrence imminente, et a été vraisemblablement le seul opérateur postal au monde à réduire ses prix. Il a également proposé des journées "free-mail" pendant lesquelles toute lettre portant une adresse manuscrite est dispensée d'affranchissement. New Zealand Post n'a pas porté ses charges au maximum autorisé et maintient ses prix à cinq cents en-dessous de son prix plafond courant. Cela tient en partie au fait que ses concurrents offrent de meilleurs prix aux usagers. Un opérateur "document exchange" offre un service inter-villes et intra-villes entre les districts centraux de Nouvelle-Zélande pour 30 cents (soit 10 cents en-dessous du prix de New Zealand Post). D'autres opérateurs offrent ce service pour 20 cents seulement. Au niveau de la qualité, les concurrents tels que "document exchange" revendiquent un standard de livraison du jour au lendemain à 99.4 pour cent. Si New Zealand Post ne maintient pas des services d'une qualité élevée pour un prix faible, elle perdra des clients. Elle est donc fortement incitée à le faire.

## **Partie II: Prise en compte d'objectifs de service universel**

Le **Président** a ouvert la deuxième partie de la table ronde en faisant observer que dans les services postaux comme dans d'autres secteurs, l'obligation de service universel sert de justification aux restrictions à l'entrée. Il existe différentes formes d'obligations non commerciales mais la forme la plus courante consiste dans certaines régions, en particulier en milieu rural, à obliger l'opérateur postal à offrir des services postaux à des prix ne couvrant pas le coût de l'offre de ces services. Autrement dit, les prix sont plafonnés dans les régions où les coûts sont élevés afin d'éviter les augmentations de prix destinées à couvrir les coûts. Ces pertes doivent être financées d'une manière ou d'une autre. En l'absence d'aides



extérieures, elles sont financées par un système interne de péréquation tarifaire. Comme dans bon nombre d'autres industries opérant en réseau dans lesquelles il existe un système interne de péréquation tarifaire, les opérateurs en titre prétendent que si le marché est ouvert à la concurrence, ils ne seront plus en mesure de desservir les régions dans lesquelles les coûts sont élevés car la concurrence effacera les marges bénéficiaires et par conséquent les sources de financement dans les régions où les coûts sont faibles.

Il est important d'être clair sur ce que nous entendons par subventions croisées ou péréquation tarifaire. Il n'y a pas péréquation tarifaire simplement lorsque les coûts conjoints ou communs sont répartis de manière inégale entre différents services mais lorsqu'un service est assuré à un prix inférieur au coût marginal moyen de ce service, ce qui est très rare.

La **Suède** a noté qu'il n'existe pas actuellement de mécanisme explicite de compensation du service universel. Dans les travaux préparatoires qui ont précédé l'abolition du monopole sur le courrier privé en Suède, une enquête des pouvoirs publics a conclu que la situation des services postaux suédois dans le système national de collecte et de distribution, et leur capacité à offrir aux usagers un système complet de gestion du courrier représentaient une valeur commerciale considérable leur conférant un avantage concurrentiel énorme. Cela s'est avéré être le cas. Ainsi, dans le secteur du courrier en vrac où il existe une concurrence réelle, de nombreux clients trouvent difficile de modifier leurs programmes de gestion du courrier pour séparer les différents flux de courrier entre différents opérateurs concurrents. Ces avantages sont très importants. La législation postale suédoise, qui ne prévoit aucun secteur réservé d'aucune sorte, se fonde sur la notion qu'un service universel peut être assuré sur une base strictement commerciale.

En ce qui concerne les services de guichet, la Poste suédoise reçoit une compensation pour ces services lorsqu'il n'y a pas d'alternative ou lorsque l'exploitation de ces services ne se justifie pas commercialement. Cette rémunération est déterminée par le Parlement dans le cadre des décisions relatives au budget de l'Etat. Ces dernières années, la Poste suédoise a reçu 200 millions de couronnes pour couvrir le déficit des services de guichet assurés par le facteur en milieu rural. Ce chiffre est à comparer à un montant total de recettes de 1.69 milliard de couronnes. Cette aide est inférieure au coût réel et par conséquent elle ne peut servir à subventionner d'autres activités de la Poste suédoise. Une enquête récente des pouvoirs publics a suggéré d'apporter certaines modifications à ce système. Elle a recommandé de traiter les services de guichet de la même manière que tous les autres services rendus en milieu rural et de réduire la compensation accordée à ce titre.

Il existe également des aides particulières pour certains services sociaux comme la distribution gratuite d'articles postaux aux aveugles et les services étendus aux personnes âgées et aux handicapés en milieu rural ainsi que pour certains services liés à la Défense nationale. Ces services sont achetés par les agences des postes et télécommunications à des prix établis sur la base de leur coût.

En ce qui concerne l'accès aux infrastructures postales, le système de base introduit lors de la libéralisation du marché postal est un système dans lequel les parties elles-mêmes doivent négocier et trouver un accord acceptable pour toutes les parties concernées. Ce système ne s'est pas avéré être une réussite totale ; c'est pourquoi le gouvernement envisage à présent de proposer une nouvelle législation qui améliore l'accès aux infrastructures postales sur un pied d'égalité et comporte également la possibilité pour les opérateurs privés d'obtenir des codes postaux uniques pour leurs boîtes postales.

Les problèmes d'accès se sont posés pour la même raison que dans les télécommunications. On espère que ces problèmes s'atténueront lorsque les concurrents auront développé un réseau de boîtes postales car lorsque l'opérateur en titre devra payer les opérateurs privés pour avoir accès aux boîtes

postales de la concurrence, il aura davantage intérêt à trouver un montant raisonnable pour les droits d'accès.

Au **Japon**, le ministère des Postes assure des services universels de lettres et de colis bien que selon la législation en la matière, seule "la correspondance" soit réservée au ministère. La Cour suprême japonaise a décidé que le terme de correspondance désigne "des documents adressés à des personnes spécifiques pour exprimer une opinion ou leur notifier un fait". Le délégué a noté qu'il considère que l'idée de correspondance est presque la même que celle d'une lettre dans d'autres pays. Dans la mesure où le service postal est un service public, le gouvernement est tenu de fournir des services non commerciaux destinés à améliorer le bien-être social. Ces services sont notamment des tarifs inférieurs pour l'acheminement de matériel destiné aux aveugles, de matériel pédagogique, etc. En ce qui concerne la pratique de tarifs inférieurs pour les articles agricoles, ce système a été introduit en 1876 pour améliorer la productivité de l'agriculture en développant les échanges de ces articles. Les articles agricoles représentent seulement 1.5 million d'articles sur un volume total de 25 milliards d'articles livrés. Les services postaux opèrent sur une base d'autonomie financière et l'offre de services non commerciaux ne bénéficie d'aucun concours financier. Le Japon envisage d'autoriser partiellement l'entrée d'opérateurs privés dans le secteur de la correspondance dès que pourront être développées des conditions spécifiques d'entrée assurant un service postal universel et la préservation de la bonne santé financière de l'opérateur postal en titre.

Le **Président** a fait remarquer que bien que l'Australie soit un immense pays comportant quelques régions à l'habitat très dispersé, on a calculé que le coût de l'offre d'un service universel ne représentait que deux pour cent des recettes de Australia Post. Si ce coût est représentatif d'un territoire à l'habitat très dispersé comme l'Australie, on peut imaginer que dans les pays européens où la densité de population est beaucoup plus élevée, le coût de l'obligation de service universel serait bien moindre.

L'offre d'un service universel est un gros problème en **Australie**. Comme l'a fait observer le Président, l'Australie est un immense pays à faible densité de population. Dans la plupart des zones rurales, le courrier est en fait acheminé par avion. Dans ces régions, le coût de la distribution d'une lettre standard est très élevé. Lors des récentes réformes opérées en Australie, la question de l'obligation de service universel a été au centre des débats. Actuellement, cette obligation est financée par un système de péréquation interne au sein de Australia Post. Le Conseil national de la concurrence recommandait, dans le cadre de la réforme actuelle, d'abolir cette forme de subventions croisées et de se diriger vers un accord explicite de subventionnement financé sur le budget du gouvernement central. Cette recommandation n'a pas été acceptée par le gouvernement. Le service universel continuera donc d'être subventionné en interne par les recettes de Australia Post.

Cela a été dû à plusieurs raisons. La première est que lorsque la perspective de subvention directe du service universel a été évoquée, elle a déclenché un débat sur l'ampleur de l'obligation de service universel. Aussi longtemps que cette obligation est financée en interne par les services postaux, cette ampleur n'a aucune importance car elle se perd dans les méandres de la comptabilité. Mais si elle doit être financée directement, elle doit être chiffrée avec soin. Les estimations de Australia Post étaient bien supérieures aux autres estimations mais néanmoins bien inférieures aux profits réalisés par cette institution. Même sans aucune compensation, Australia Post pourrait encore financer sur ses profits l'obligation de service universel.

Deux arguments ont émergé dans le débat politique déclenché par l'opposition à un financement direct du service universel. Le premier était que l'idée était trop nouvelle et que l'on doutait qu'elle puisse marcher. Le second front d'opposition venait de personnes qui pensaient que le système fonctionnerait trop bien car il rendrait les coûts totalement transparents. Il y a une crainte que si ces subventions sont transparentes, elles ne puissent être maintenues. Une façon de surmonter cette crainte pourrait être

d'imposer une forme de mécanisme qui permette de garantir la poursuite des subventions même après que leur coût soit devenu transparent.

### Discussion générale

Engageant la discussion sur le service universel, **Mme Caffarra**, Lexecon Ltd à Bruxelles, a noté qu'il subsiste un manque de clarté fondamentale concernant la nature exacte des obligations non commerciales. La discussion s'est focalisée sur la dimension géographique du service universel, c'est-à-dire le problème de l'offre de services à un prix inférieur à leur coût dans les régions à faible densité de population. Toutefois, dans les pays européens, la dimension géographique n'est pas nécessairement la composante la plus importante du service universel. En Allemagne, par exemple, il existe des règles strictes concernant la qualité du service, notamment la fréquence minimum du service, le nombre de boîtes à lettres installées dans les rues, la distance entre deux boîtes, le nombre de levées par jour, le nombre de bureaux de poste, la distance minimale entre deux bureaux, etc. Dans la mesure où ces obligations imposent une charge financière à l'opérateur en titre, on aurait tort de les exclure de l'obligation de service universel. Il ne faut donc pas en conclure que dans les pays où la dispersion géographique n'est pas un problème, il n'y a pas d'obligation de service universel.

D'un point de vue économique, nous pouvons dire que ces services imposent une charge à l'opérateur en titre si celui-ci ne les entreprend pas de manière délibérée. Autrement dit, s'il s'agit de services non commerciaux dont l'offre impose un coût marginal supérieur au revenu marginal. Par exemple, dans le cas d'une distribution six jours par semaine au lieu de cinq, l'opérateur est obligé de mettre en place une infrastructure qui fait que le coût marginal peut être considérable. Par ailleurs, le revenu marginal est vraisemblablement assez faible dans la mesure où bon nombre de personnes continueraient à envoyer du courrier même s'il n'y avait pas de distribution le samedi. Le simple fait que l'opérateur en titre réalise des profits n'implique pas qu'il ne supporte pas une certaine charge au titre du service universel.

La **Nouvelle-Zélande** a répondu que le fait d'exiger une distribution six jours par semaine ne constitue pas nécessairement une obligation non commerciale car, dans un environnement concurrentiel, un opérateur en titre pourrait choisir d'assurer la distribution du courrier six jours par semaine pour des raisons purement commerciales, par crainte de perdre le marché au profit de ses concurrents. A titre d'exemple, New Zealand Post expérimente actuellement une deuxième distribution par jour dans certaines parties du pays bien que son obligation de service universel soit uniquement d'assurer une distribution par jour. Cette situation pose la question de savoir si de telles obligations imposent réellement une charge dans un environnement concurrentiel. L'existence d'une contrainte imposée à une entreprise n'implique pas que cette contrainte soit onéreuse.

Le **BIAC** a fait observer qu'il apparaît, du moins dans le cas des Etats-Unis, que le coût principal du service universel n'est pas le coût du maintien du service en milieu rural, mais réside plutôt dans le maintien de la qualité du service d'une tournée à l'autre. L'analyse effectuée par la Commission des tarifs postaux et par l'USPS semble indiquer qu'alors que la plupart du courrier est destinée à certaines maisons, d'autres en reçoivent très peu. C'est pour ces dernières que l'opérateur postal réduirait le service à quatre à cinq distributions par semaine s'il le pouvait.

### **Partie III: Lutte contre les comportements anticoncurrentiels**

Amenant la discussion sur la séance finale de la table ronde, le **Président** a noté que dans certains pays (dont les Etats-Unis), le service postal est assuré par une administration publique qui n'est pas soumise à la législation antitrust, de même que le gouvernement n'est pas soumis à la législation antitrust. Dans d'autres pays, le service postal est assuré par une entreprise privée qui elle est soumise à la législation antitrust. De nombreux pays ont fait état de cas d'abus de position dominante et de péréquation tarifaire anticoncurrentielle.

Le **Professeur Sidak** a posé la question de savoir si la péréquation tarifaire anticoncurrentielle est plus probable dans le cas d'entreprises publiques ou réglementées. Il a fait remarquer que l'essentiel de la théorie économique de la réglementation concerne la réglementation des entreprises privées cherchant à maximiser leurs profits. Lorsque nous nous intéressons à des entreprises (publiques ou privées) dont les objectifs sont autres que la maximisation du profit, nous devons nous demander si les enseignements tirés de l'examen d'entreprises privées cherchant à maximiser leurs profits continuent de s'appliquer. Le cas se pose dans les propositions de réglementation du plafond de prix pour les entreprises privées. Il a été proposé par exemple de soumettre the U.S. Postal Service à des plafonds de prix. Dans la déposition qu'il a faite en 1997 avant l'audition de cette proposition par la Commission du Congrès, le Professeur Sidak a souligné que si les services postaux ne cherchent pas à maximiser le profit ou à maximiser un autre objectif (par exemple le volume d'activité ou l'emploi, ou quelque autre mesure de la taille), il n'est pas évident que les incitations que la réglementation du plafond de prix vise à susciter se produisent nécessairement.

On peut tenir le même raisonnement en ce qui concerne le problème de la fixation de prix d'éviction. Les économistes ont soutenu pendant longtemps que les entreprises recherchant un profit maximum se montreraient réticentes à s'engager dans la fixation de prix d'éviction car il leur serait très difficile de se rattraper des pertes à encourir en amont pour évincer un concurrent du marché. Mais la possibilité de fixation de prix d'éviction devient plus plausible si l'on considère le cas d'une entreprise qui maximise non seulement ses profits mais un autre objectif ou une moyenne pondérée de ses profits et de sa taille ou tout autre élément. L'un des résultats qui ressort de recherches récentes est que si une entreprise maximise même une moyenne pondérée de son profit et de sa production, il peut être optimal pour elle de pratiquer un prix inférieur à son coût marginal.

Autrement dit (en théorie du moins), nous devons nous préoccuper davantage de la possibilité de stratégies d'éviction en présence d'une entreprise qui ne cherche pas la maximisation de ses profits. Cela explique pourquoi la privatisation (qui, au bout du compte, rend les dirigeants responsables devant les actionnaires) peut donner de bons résultats pour une politique de la concurrence. Une autre implication est que dans la transition du public au privé, il peut être très important de faire en sorte que des incitations soient mises en place pour que les dirigeants cherchent à maximiser le profit et non pas quelque autre objectif.

Le **Président** a fait observer qu'en plus de la directive postale évoquée précédemment, la Communauté européenne a publié une notification sur les questions de concurrence dans le secteur postal.

Le délégué de la **Communauté européenne** a souligné la complémentarité de la directive et de la notification sur l'application des règles de la concurrence dans le secteur postal. Cette notification était nécessaire pour clarifier l'application des règles de la concurrence du Traité communautaire à ce secteur qui se caractérise par la coexistence de domaines réservés et de domaines ouverts à la concurrence, coexistence qui pourrait durer plusieurs années encore. Le délégué a traité de deux problèmes importants : celui de la proportionnalité et celui de la péréquation tarifaire.

La proportionnalité est pour les autorités communautaires chargées de la concurrence une préoccupation essentielle. Leur but est de faire en sorte que les droits exclusifs ou spéciaux n'aillent pas au-delà de ce qui est nécessaire pour satisfaire l'intérêt public que l'on cherche à promouvoir. Le Traité de Rome, en particulier dans son article 90, comporte un certain nombre de dispositions visant à faire respecter le principe de la proportionnalité. Cet article stipule que dans le cas d'entreprises publiques et d'entreprises auxquelles les Etats membres accordent des droits exclusifs ou spéciaux, les Etats membres ne peuvent légiférer ou maintenir des mesures contraires aux règles communautaires de la concurrence. Il s'agit là d'une caractéristique spécifique du système communautaire de règles de la concurrence. L'article 90 stipule également que si ces entreprises bénéficient de droits exclusifs ou spéciaux, c'est à la condition que l'objectif servi par ces droits exclusifs ou spéciaux ne puisse être atteint par d'autres moyens moins restrictifs du point de vue de la concurrence.

En ce qui concerne la péréquation tarifaire, la préoccupation est d'éviter que des recettes provenant de domaines réservés servent à financer des activités ouvertes à la concurrence. En vertu de la législation communautaire, on peut s'attaquer au problème de la péréquation tarifaire à l'aide de deux mécanismes qui sont les règles traditionnelles sur l'abus de position dominante mais aussi les règles concernant les aides de l'Etat. La notification postale établit une liste de mesures qui sont considérées être des aides de l'Etat. La Commission cherche, en outre, à s'assurer que les avantages fiscaux dont bénéficient les activités sous monopole n'excèdent pas le coût associé aux obligations du service universel.

Le **Président** a noté que la Hongrie a imposé une certaine séparation entre les activités sous monopole de l'opérateur en titre et ses autres activités ouvertes à la concurrence. La Poste hongroise a été obligée d'offrir ses services express par le biais d'une filiale distincte.

En **Hongrie**, selon la législation postale en vigueur depuis 1992, il existe des droits exclusifs pour la levée, le transport et la distribution des lettres standard ainsi que pour l'émission de timbres portant le nom du pays. D'autres services, tels que les services de messageries et les colis, sont libéralisés. L'opérateur en titre est également actif dans les services de messageries. Afin de minimiser les subventions croisées, l'opérateur en titre a été contraint de constituer une entreprise distincte pour assurer les services de messageries. Le fait d'opérer à travers une filiale n'exclut pas la possibilité d'une péréquation tarifaire mais pour l'instant, c'est la meilleure solution dont nous disposons. Jusqu'à présent, il n'y a pas eu de plainte des concurrents pour abus de position dominante ou fixation de prix d'éviction.

En **Italie**, l'autorité chargée de la concurrence a eu de nombreux démêlés avec l'opérateur postal en titre. Il y a eu notamment une affaire de fusion dans le secteur du courrier express aux termes de laquelle l'opérateur en titre a fait l'acquisition d'un acteur important, portant de 4 à 16 pour cent sa participation dans ce secteur. Dans une stricte application des règles normales de la concurrence, cela n'aurait pas été très préoccupant mais en l'espèce des problèmes de subventions croisées et de discrimination ont suscité des inquiétudes de sorte que lors de l'approbation de la fusion, l'autorité italienne de la concurrence a imposé à l'opérateur en titre certaines conditions de séparation des comptes, de séparation structurelle de la société rachetée et des engagements relatifs à l'autorisation d'une utilisation non discriminatoire du réseau par d'autres concurrents du secteur.

Plus récemment, l'autorité de la concurrence a été impliquée dans un cas de courrier électronique hybride, c'est-à-dire de courrier électronique qui, à l'arrivée, fait l'objet d'une distribution physique. L'opérateur postal en titre a réussi à développer un système efficace de courrier électronique hybride et assure ces services directement. L'autorité de la concurrence a examiné les problèmes de péréquation tarifaire et de fixation de prix d'éviction. Elle en a conclu qu'il n'y avait ni fixation de prix d'éviction ni subventions croisées, mais a considéré qu'en faisant preuve de discrimination à l'égard des nouveaux entrants sur le marché, l'opérateur postal avait abusé de sa position dominante.

Le **Président** a noté que la contribution danoise a fait état d'un ensemble étendu de directives publiées par l'organisme danois de réglementation de la Poste et l'autorité chargée de la concurrence concernant certains problèmes tels que la comptabilisation séparée, la péréquation tarifaire, l'affectation des coûts, les règles de non-discrimination et autres.

Au **Danemark**, l'opérateur postal en titre a été réorganisé en 1995 en une société publique indépendante très analogue à une société à responsabilité limitée. Cette société à responsabilité limitée jouit de droits exclusifs pour l'acheminement des lettres jusqu'à 250 grammes en contrepartie de son obligation de service universel. Avec un droit exclusif et une obligation de service universel, il y a un risque de péréquation tarifaire. On a donc jugé nécessaire d'établir un régime pour l'éviter.

Deux jeux de réglementations prises à cet effet sont joints à la contribution danoise: les réglementations relatives aux informations comptables à fournir et les directives concurrentielles imposées à la Poste danoise. L'objectif de ces directives est d'éviter la péréquation tarifaire par la transparence des comptes. Les réglementations relatives à la transparence imposent à la Poste danoise l'obligation de dissocier ses comptes en "droits exclusifs" et "produits ouverts à la concurrence". Cette dernière rubrique est ensuite subdivisée en deux comptes distincts : les "produits ouverts à la concurrence avec obligation de service universel" et les "produits ouverts à la concurrence sans obligation de service universel". Ces trois comptes sont publiés dans le rapport annuel de la Poste danoise. En dessous de ces trois comptes figurent des états financiers très détaillés qui ne peuvent être publiés car ils contiennent des informations sensibles à ne pas divulguer à la concurrence.

L'autre objectif principal est d'éviter une péréquation tarifaire illégale. Il y a péréquation tarifaire illégale lorsque la Poste danoise procède à une péréquation tarifaire entre le domaine réservé et le domaine ouvert à la concurrence sans qu'il y ait obligation de service universel. En revanche, la Poste danoise est autorisée à opérer cette péréquation tarifaire lorsqu'il y a obligation de service universel. Ces directives stipulent par ailleurs que les pratiques discriminatoires pour l'accord de remises sont illégales. Les remises doivent être accordées sur une base strictement commerciale et indépendamment du fait que la société bénéficiaire est un client ou un concurrent.

La **Norvège** a connu quelques cas de concurrence dans lesquels se sont posés des problèmes de péréquation tarifaire. En 1997, en particulier, la Poste norvégienne a racheté une entreprise opérant sur le marché du publipostage direct et du courrier non adressé (publicités). Le marché du produit était considéré être celui des publicités non adressées et des publicités insérées dans des journaux. Le marché géographique était considéré être celui des régions à forte densité de population car la société rachetée opérait dans ces régions. La part de marché de la Poste norvégienne et de la société rachetée dans ces régions à forte densité de population aurait été d'environ 50 pour cent. La société rachetée était un concurrent important de la Poste norvégienne. Les concurrents de la Poste norvégienne avaient quelques possibilités d'étendre leur capacité, ce qui pouvait empêcher un abus de pouvoir sur le marché. L'autorité de la concurrence a approuvé la fusion à la condition que certaines exigences soient satisfaites. La première de ces exigences était que la société rachetée soit organisée et exploitée comme une entité distincte, en fait comme une société indépendante à responsabilité limitée. En outre, il était interdit à la Poste norvégienne de pratiquer une quelconque discrimination entre la société rachetée et d'autres distributeurs pour la distribution de courrier non adressé ; il lui était interdit de passer un accord aux termes duquel elle serait le distributeur exclusif du courrier non adressé et il lui était interdit de lier les prix, les remises et les modalités de l'offre du courrier non adressé à ceux d'autres services assurés par la Poste norvégienne.

En ce qui concerne l'obligation de fourniture d'informations comptables, la Poste norvégienne doit, de même que la Poste danoise, fournir des comptes pour trois catégories distinctes de produits : les services universels (subdivisés en services réservés et services ouverts à la concurrence) et les autres

services postaux. L'objectif est de permettre de prouver plus facilement qu'il n'y a pas de péréquation tarifaire, de faire en sorte qu'il existe un nombre suffisant de documents pour s'assurer que tous les services entrant dans la catégorie des services universels sont indexés sur les coûts, et de disposer d'une base d'évaluation des demandes de modification des prix et de la nécessité de rééquilibrer les prix.

Le **Président** a souligné qu'un problème se pose lorsqu'on tente de définir des comptes de produits détaillés. Il est relativement facile de prendre en compte les coûts variables liés à un produit mais il est difficile, voire impossible, de trouver le bon moyen de ventiler les coûts communs entre différents produits. En principe, tous les coûts, du coût marginal au coût intrinsèque peuvent se justifier économiquement. Les comptables utilisent des systèmes tels que celui des coûts entièrement répartis qui sont très artificiels et ne fournissent pas une réponse appropriée quant à la manière de répartir les coûts communs entre les différentes activités.

La **Norvège** a répondu que bien que théoriquement il ne soit pas possible d'affecter les coûts communs, dans le cas où le pouvoir politique a décidé de maintenir un secteur réservé, il faut bien trouver une solution. Le point de vue norvégien est que la meilleure solution consiste à avoir des comptes séparés sur la base de coûts intégralement répartis. Ce mode de comptabilisation est contrôlé par un expert-comptable indépendant agréé par l'Etat.

Du point de vue de l'autorité norvégienne chargée de la concurrence, la meilleure façon d'éviter la péréquation tarifaire est de comptabiliser à part la propriété du capital. Néanmoins, la pratique de comptes séparés est préférable à l'absence de tout contrôle. De plus, si les économies de gamme sont importantes, alors la solution passe peut-être par un compromis qui pourrait vous conduire à pratiquer une comptabilisation séparée.

Le **BIAC** s'est attaqué à la question de savoir si la politique réglementaire doit se préoccuper du mode d'affectation des coûts communs en affirmant qu'elle ne doit être indifférente à aucun prix, depuis le coût marginal jusqu'au coût intrinsèque. Dans une industrie où les frais généraux représentent un pourcentage important du coût total, comme cela est le cas des services postaux, il est tout simplement impossible de concurrencer quelqu'un si ses activités concurrentielles ne doivent pas couvrir une partie de ses frais généraux. En fait, l'imputation des frais généraux est *le* problème réglementaire.

Aux Etats-Unis, la règle de base est que la Postal Rate Commission fixe pour chacun des services concurrentiels une contribution aux frais généraux en accord avec une série de principes statutaires. Les Etats-Unis réfléchissent à une formule dans laquelle ils imposeraient à tous les services concurrentiels une contribution globale qui serait plus ou moins égale à celle imposée à tous les produits concurrentiels et non concurrentiels, en accordant à l'USPS toute liberté de fixer ses prix à l'intérieur de cette contrainte.

En Allemagne, Deutsche Post a racheté des entreprises grâce à des fonds provenant de la vente de biens immobiliers lui ayant été confiés pour assurer l'offre d'un service universel. Deutsche Post maintient un service universel dont le prix est très élevé et l'institution semble être à même de couvrir ses coûts d'investissement aussi bien que ses coûts d'exploitation de sorte qu'elle a pu se servir de ses biens mobiliers supplémentaires pour financer l'achat d'un certain nombre d'entreprises privées. En vertu de la législation qui est proposée aux Etats-Unis, les fonds de l'USPS seraient séparés en domaine concurrentiel et domaine non concurrentiel. Le Postal Service américain pourrait se lancer dans de nouvelles activités grâce aux fonds générés par le secteur concurrentiel ou à des fonds empruntés garantis par de l'argent reçu du secteur concurrentiel. Il ne pourrait pas utiliser les recettes des activités non concurrentielles pour acheter des actifs destinés aux activités concurrentielles ou pour donner des garanties.

Le **Président** a présenté la Suède comme un pays où l'application de la législation antitrust dans le secteur postal a été particulièrement active. La contribution suédoise indique que l'autorité de la concurrence a traité plus de 100 affaires impliquant la Poste suédoise dans des problèmes d'exclusivité, de remises de fidélité, de prix discriminatoires, de tarification par zone, etc.

La **Suède** a reconnu que depuis la déréglementation intervenue en 1993, l'autorité chargée de la concurrence a traité plus de 100 affaires impliquant l'opérateur postal en titre et concernant pour la plupart des demandes d'attestation négative de la Poste suédoise et des plaintes des concurrents. Les affaires les plus importants ont concerné des remises de fidélité, des primes annuelles, l'accès aux boîtes postales et des prix différenciés par zone géographique. Les décisions relatives aux primes et remises de fidélité ont été plutôt franches. Une amende a été infligée à la Poste suédoise pour abus de position dominante. En ce qui concerne les boîtes postales, il a été considéré qu'elles constituent une facilité essentielle et que l'accès à ces boîtes selon des modalités et à des conditions raisonnables ne doit pas être discriminatoire. Comme mentionné ci-dessus, la loi sur les services postaux sera amendée conformément à cette décision.

La question de la différenciation géographique des prix est plus controversée. Conséquence des décisions prises par l'autorité chargée de la concurrence, la Poste suédoise n'est pas autorisée à baisser ses prix dans certaines régions du pays pour mieux répondre à la concurrence. Cette différenciation a été considérée constituer un abus de position dominante. La Poste suédoise a fait appel de ces décisions auprès du Tribunal du commerce qui a décidé récemment de l'autoriser à baisser ses prix pour relever le défi de la concurrence dans la mesure où elle peut démontrer que les prix reflètent des différences de coûts.

En **Finlande** aussi l'autorité chargée de la concurrence a traité un grand nombre d'affaires de concurrence concernant le secteur postal. Il s'agissait pour la plupart d'allégations de péréquation tarifaire ou de pratique de prix minorés par la Poste finlandaise. En Finlande, pour prouver une péréquation tarifaire, il faut démontrer que les ressources nécessaires ont été obtenues par un abus de position dominante et que leur affectation à des activités concurrentielles a été si considérable et si continue qu'il en est résulté un avantage concurrentiel important, que le but de l'opération était de s'assurer une position dominante dans le domaine subventionné ou qu'elle a modifié de toute autre façon la structure industrielle du domaine dans des proportions importantes aboutissant à une diminution à long terme de l'efficacité. Il a été allégué que la Poste finlandaise a utilisé des fonds générés par ses activités réservées pour subventionner ses services de transport. Ces services englobent, par exemple, le transport de marchandises, l'affrètement de bus et le transport de produits pour les écoles. Pour qualifier une pratique de fixation de prix d'éviction, l'autorité de la concurrence a exigé que les prix facturés réduisent le coût marginal ou le coût variable moyen de l'opérateur ou que les prix soient inférieurs au coût total moyen lorsque d'autres circonstances indiquent un risque certain de concurrence. La deuxième exigence est que les conditions du marché dans ce domaine aient changé ou qu'elles soient en passe de changer du fait des ententes passées, de telle sorte que l'exclusion de la concurrence permette à l'opérateur en titre de relever le niveau des prix pour se récupérer des pertes subies par suite de la pratique de prix bas.

La plupart des allégations de péréquation tarifaire et de prix trop bas n'ont pu être prouvées. Dans les cas où l'autorité de la concurrence a trouvé une subvention, celle-ci était minime et limitée dans le temps. Le problème le plus évident a été un problème de mauvaise affectation des coûts. L'autorité finlandaise de la concurrence a attiré l'attention sur le fait que le coût n'était pas intégralement imputé aux services pertinents et déclaré qu'il en résultait des distorsions de prix entre les différents services et les différents clients.

L'une des affaires impliquait la prétendue pratique de prix trop bas dans le secteur du marketing direct. En l'espèce, l'autorité de la concurrence a considéré qu'il n'y avait pas subvention et que les prix



n'étaient pas inférieurs aux coûts variables sinon pendant de brèves périodes exceptionnelles. En outre, elle a estimé que cela ne pouvait constituer un exemple de pratique systématique de prix bas ayant un effet de distorsion sur la concurrence car le remplacement du manque à gagner par une augmentation considérable et durable des prix après exclusion des concurrents ne serait pas possible dans la mesure où dans les régions à faible densité de population, l'entrée sur le marché des services de marketing direct n'est pas soumise à restriction et où des prix plus élevés étaient susceptibles d'attirer de nouvelles entreprises dans le domaine.

Au **Canada**, après avoir été pendant plus d'un siècle une agence du gouvernement, Postes Canada est devenue en 1991 une corporation de la Couronne bénéficiant du privilège exclusif d'assurer le service postal sur l'ensemble du pays et tenue de desservir les différentes communautés de manière analogue, autrement dit ayant une obligation de service universel. Postes Canada a un mandat étendu ; la société est autorisée à proposer tous les services nécessaires et annexes à l'objectif de service postal national. Elle n'est pas supervisée par un tiers. L'autorité réglementaire est le gouvernement.

En 1993, Postes Canada a racheté Purolator, qui était l'une des plus grosses sociétés canadiennes de messageries express. Le Bureau de la concurrence a procédé à une analyse approfondie des effets anticoncurrentiels possibles de cette fusion. Il a étudié notamment s'il y avait eu ou non péréquation tarifaire entre les activités pour lesquelles Postes Canada est en situation de monopole et ses activités concurrentielles de messageries exercées sous le nom de Messageries prioritaires. La fusion a été autorisée et à l'époque aucun signe de péréquation tarifaire n'a été constaté.

Les activités et le mandat de Postes Canada ont fait l'objet d'un examen plus récent en 1996. A cette date, le Bureau de la concurrence a soumis un rapport au Comité d'examen des mandats. L'un des éléments consignés dans ce rapport était que le progrès technologique a sérieusement érodé les marchés traditionnels de Postes Canada. Le Bureau de la concurrence a déclaré que son monopole naturel se limite à la distribution, mais une étude approfondie a été recommandée afin de déterminer exactement la nature des coûts et les domaines dans lesquels peuvent exister des conditions de monopole naturel. Pour ce qui est des recommandations, le Bureau de la concurrence a estimé que le coût du maintien d'un monopole dans les services postaux pouvait engendrer des coûts très importants, une mauvaise affectation des ressources, etc. Si le privilège exclusif était maintenu, il était recommandé d'adopter d'autres modes de réglementation. Le Comité d'examen a recommandé la surveillance par les tiers de la réglementation traditionnelle du taux de rendement basé sur les tarifs. Le rapport recommandait l'exploration d'autres voies, notamment d'un régime de plafond de prix.

## **Discussion générale**

Le **Secrétariat** a souligné à nouveau l'impact sur la concurrence de l'appartenance à l'Etat, faisant remarquer que l'on entend dire bien souvent que la propriété du capital est neutre. Or, elle n'est pas nécessairement neutre pour ce qui est de la concurrence. L'argument traditionnel consiste à dire qu'une société soucieuse de maximiser ses profits pratique la péréquation tarifaire pour exclure ou éviter l'entrée sur le marché des concurrents, dans l'intention d'augmenter ensuite ses prix pour se rattraper de ses pertes initiales. Le secteur postal est un secteur dans lequel il n'y a pratiquement pas de barrière à l'entrée. En conséquence, la possibilité de se rattraper de ses pertes est limitée et l'incitation à pratiquer la péréquation tarifaire est faible. Ce qui laisse à penser qu'il ne faut pas se préoccuper de ce problème.

Mais cet argument repose sur l'hypothèse que ces entreprises cherchent à maximiser leurs profits. Or, dans la plupart des pays de l'OCDE, les opérateurs en titre sont des sociétés d'Etat qui peuvent poursuivre d'autres objectifs en dehors de la stricte recherche du profit maximum. Comme nous l'avons

déjà dit, même si une entreprise a partiellement pour objectif de maximiser ses profits et partiellement pour objectif de maximiser un autre objectif comme sa production, cela peut suffire à l'inciter à pratiquer indéfiniment des prix inférieurs à ses prix de revient. Cela peut avoir un impact très important sur la concurrence et, en particulier, éviter l'entrée sur le marché d'entreprises qui sont plus efficaces que l'opérateur en titre.

Le **Président** souligne que dans la pratique, ce que nous observons ce n'est pas tant la pratique des subventions croisées qu'une contrainte budgétaire souple, un partage des rentes avec d'autres intervenants sur le marché. La plupart du temps, les bénéficiaires de ces rentes ne sont pas les clients, comme cela serait le cas avec les subventions croisées mais les travailleurs et les fournisseurs de ces entreprises. Dans ce secteur, qui a été pendant longtemps fermé à la concurrence, les syndicats sont très puissants et les salaires élevés comparés à d'autres secteurs. La législation antitrust n'est probablement pas la solution appropriée à ces problèmes. La solution, c'est l'ouverture à la concurrence.

### **Conclusion du Président**

Le **Président** a conclu la table ronde par quelques considérations préliminaires. La table ronde a mis en évidence quelques-unes des difficultés que pose l'ouverture à la concurrence du secteur postal. La principale difficulté est le fait que les opérateurs postaux en titre sont de grosses entreprises tant en termes de recettes que d'effectifs. En outre, dans la plupart des pays, les bureaux de poste sont l'un des plus gros employeurs en dehors des administrations publiques. On redoute donc que l'ouverture à la concurrence aboutisse à une perte d'emplois et à la perte de rentes dont les parties prenantes ont bénéficié du fait de l'absence de concurrence. Les syndicats en particulier peuvent être fermement opposés au changement. Pourtant, il a été souligné que l'ouverture à la concurrence ne diminuait pas l'emploi. En outre, dans bon nombre de petites villes et de régions rurales, le bureau de poste est souvent la seule institution gouvernementale et il n'est pas très facile de le supprimer, même s'il ne rapporte pas suffisamment pour que la poursuite de son activité soit rentable. La solution consiste peut-être, comme en Finlande, au Royaume-Uni et dans d'autres pays, à fusionner le bureau de poste avec un magasin local. En tout état de cause, le secteur est assurément prêt pour la libéralisation et l'ouverture à la concurrence.

Un autre point à signaler est la relation existant entre la qualité du service postal et les nouvelles technologies. Le commerce électronique, en particulier, ne se développera pas si la livraison rapide des marchandises au domicile des clients pose problème. A cela s'ajoutent bien entendu les problèmes réglementaires de la peréquation tarifaire et de la réglementation des prix. Une solution que nous avons envisagée au problème des subventions croisées anticoncurrentielles est la privatisation de la Poste, comme cela s'est fait aux Pays-Bas.