

## **The full opening of postal services to competition: a fool's bargain?**

The postal sector is not a negligible sector of activity. In 2000, postal revenue in the European Union (EU) stood at around €85,000 billion, or some 1% of EU GDP. The postal market represents 5 million jobs in Europe (<sup>1</sup>), of which 1.71 million are direct jobs and the remainder indirect or ancillary employment (direct marketing, printing, envelopes, transport, and so on). Postal services are a concentrated market. According to the Commission, nearly 88% of mail is business-related (correspondence to customers or to other businesses). By way of illustration, in Belgium the 300 biggest customers represent 35% of turnover (2,500 customers for 70% of turnover). It is therefore tempting for operators which compete with national monopoly-holders to cream off the market by targeting the most profitable customers.

Despite the fact that the postal sector has similarities with other network-based sectors, it is different from highly capital-intensive network operators (telecommunications, for example). The postal sector is not structured around a single physical network (like the railways), but takes the form of many different infrastructures organised around essentially human capital. Postal services are regarded as a very important driver of economic, social and territorial cohesion.

Postal services exist in varying situations. In the European Union the market has followed the move to liberalisation launched at the beginning

---

<sup>1</sup> Eurostat, 'Postal Services in Europe', No.2/2007, 21 March 2007.

of the 1990s. In some countries, such as Sweden, the Netherlands, Finland, Estonia and the United Kingdom, the market has been fully open to competition for a long time (Sweden since 1993; more recently, the United Kingdom in 2006).

### Current status of postal service operators

Managed by the postal authority	Public enterprises 100% owned by the State	Public enterprises more than 50% owned by the State	Public enterprises less than 50% owned by the State
Cyprus	France, Spain, Poland, Greece, Czech Republic, Luxembourg	Denmark (75%) Malta (65%) Austria (51%) Belgium (50% plus one share)	Germany (45%) Netherlands (10%) Sweden (0%)

*Source:* European Network for Public Services, Postal Eurothermometer, 2007 ([http://www.fse-esf.org/IMG/pdf/Postal\\_Eurothermometer.pdf](http://www.fse-esf.org/IMG/pdf/Postal_Eurothermometer.pdf)).

## 1. The stages leading up to the launch of liberalisation

The postal sector came late within the purview of the Community institutions. Postal services are not in fact mentioned in the Treaty of Rome. They form part of the services of general economic interest (SGEI) governed by Article 86(2) of the Treaty <sup>(2)</sup>. The development and transformation of the sector, together with the advent of new competing and higher-value market segments, have increasingly attracted intervention at European level.

---

<sup>2</sup> Article 86(2) of the Treaty provides that: 'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular 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. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community'.

That intervention initially took place in court <sup>(3)</sup>. At the outset it concerned compliance, in the postal sector, with the competition rules laid down by the Treaty on European Union. Following a number of decisions in the 1980s and 1990s, a celebrated judgment of the Court of Justice of the European Communities on the extent of the postal monopoly in Belgium <sup>(4)</sup> held, in 1993, that the treaty provisions on competition enabled 'the Member States to confer on undertakings to which they entrust the operation of services of general economic interest, exclusive rights which may hinder the application of the rules of the Treaty on competition in so far as restrictions on competition, or even the exclusion of all competition, by other economic operators are necessary to ensure the performance of the particular tasks assigned to the undertakings possessed of the exclusive rights'. It is worth noting that for over 30 years the monopoly on postal services was not called into question by either the Community institutions (the Commission, Council or the European Parliament), or the European Court of Justice.

The debate on the opening of postal services to competition was initiated in December 1989 at a meeting of the Council of Post and Telecommunications Ministers in Antibes, under the French presidency. At the meeting the Twelve sought consensus amongst themselves on the main principles which should govern a postal Europe. It was decided to set up a Senior Officials Group for Post (SOGP) to prepare the ground. This group was to play an important role in relations with the European Commission <sup>(5)</sup>.

---

<sup>3</sup> See in particular Decisions 90/16 of 20 December 1989 concerning express delivery services in the Netherlands, 90/456 of 1 August 1990 concerning international express courier services in Spain and the judgment of the ECJ of 12 February 1992 in *Netherlands v Commission*.

<sup>4</sup> ECJ, Case C-320/91, *Paul Corbeau*, judgment of the Court of 19 May 1993.

<sup>5</sup> In October 1989 the SOGP set to work. Four working groups were formed in the following areas: regulation, harmonisation, service quality, terminal dues and tariffs. The aim stated in 1989 was to define a European regulatory framework for postal services.

### 1.1 The 1992 Green Paper on the internal market for postal services

The Commission published a Green Paper on the development of postal services (CEC, 1991) which was adopted on 13 May 1992 and submitted to the Council of Ministers on 5 June 1992. Starting from the premise that ‘the absolute policy fundamental is the need to ensure the continuation of universal service, and thus to ensure that the postal authorities’ public service mission is carried out in good economic and financial conditions’, the Green Paper:

- ruled out both full liberalisation of the sector and maintenance of the *status quo* (synonymous, in the eyes of the Commission, with an absence of European harmonisation and therefore of a single postal market);
- proposed a ‘balanced’ solution combining increased liberalisation of the market with a strengthening of universal service by maintaining a portfolio of monopoly services (the ‘reserved’ services) intended to ensure the financing of universal service. The Commission stated that ‘this option accepts that in order to ensure the universal service it is necessary to have some restriction of the free market. (...) The universal service objective can justify the establishment of a set of reserved services, which would help to ensure the financial viability of the universal service network’;
- raised the banner of quality of service in terms of delivery times and affordable prices.

The crucial element was the appearance, for the first time in Community law, of the concept of ‘universal service’ applied to the postal and telecommunications sector <sup>(6)</sup>. What would later appear as an unequal bargain was to be settled in the following ‘deal’: the opening of the postal

---

<sup>6</sup> Once could say a good deal about this concept, which seems to be both an impoverished form of public service and the quid pro quo for the move to liberalisation. The reader is referred to my article in the 2005 edition of *Social Developments in the European Union 2005* (Van den Abeele, 2006).

sector to competition in return for a strong universal postal service. As we shall see below, we were to get full liberalisation with no real guarantee of a worthwhile universal postal service. Publication of the Green Paper was followed by a consultation process, and it was submitted to the European Parliament and the Council. The ensuing debate about the document at the Council right away revealed marked opposition between two immovable camps – proponents of the immediate, full opening of postal services and supporters of maintaining a strong public service. Against a background of debate between modernists (favouring the ‘natural’ development of postal services) and conservatives (who preferred the status quo), a profound cleavage opened up over arrangements for financing the obligations to be imposed on postal operators. When the opposing views proved impossible to reconcile, a third option would emerge: a phased opening of ‘reserved services’ to competition.

## **1.2 The 1993 Commission communication on guidelines for the development of Community postal services and the resolutions of the European Parliament**

On 22 January 1993 the European Parliament adopted a resolution in which it confirmed the need for a universal postal service and expressed its desire to be closely associated with adoption of the future European regulatory framework. On 2 June 1993 the Commission published guidelines for the development of postal services, scarcely two weeks after the Court had delivered its well-known judgment in *Corbeau* (19 May 1993) (CEC, 1993). That judgment recognised the need for reserved services, dissociable from services of general interest, and that they could be provided in a competitive context, in so far as the opening up of those services did not compromise the economic stability of the service of general economic interest performed by the holder of the exclusive right, in particular as a result of the geographical area in which it was operating.

On 7 February 1994 it was Council’s turn to adopt a resolution on the development of postal services, in which it stated that the primary objectives in developing postal services were to provide a universal service corresponding to a minimum set of high quality services to be provided in each Member State at a reasonable price for all users. The Council

invited the Commission to submit proposals for developing a single market for postal services, to propose a common definition of universal service and the reserved sector, and to define measures to implement a Community policy on postal services.

On 26 July 1995 <sup>(7)</sup> the Commission presented two texts to the Council of European Post and Telecommunications Ministers: a communication on the application of the competition rules to the postal sector and in particular on the assessment of certain State measures relating to postal services (CEC, 1995), and a proposal for a directive on common rules for the development of Community postal services and the improvement of quality of service (European Parliament and Council of the European Union, 1995). At the meeting of the Council of European Post and Telecommunications Ministers (27 November 1995), France, Belgium and Luxembourg fought bitterly for the idea of a high quality universal service very close to the notion of a public service. After long months of seeking agreement, on 27 November 1995 the Council signalled the first stage in the process of adopting the regulatory framework for a postal Europe by producing a compromise embodying the launch of liberalisation of the postal sector in return for a guarantee of a strong universal postal service. Finally, after more than two years of discussions under the co-decision procedure involving active participation by the European Parliament, the first Postal Directive on common rules for the development of the internal market of Community postal services and the improvement of quality of service was adopted on 1 December 1997 (European Parliament and Council of the European Union, 1997).

## **2. The three stages in reaching full liberalisation**

### **2.1 The first Postal Directive: universal service in return for liberalisation**

Directive 97/67/EC laid down a Community framework of general principles and left it for the Member States to determine the procedures

---

<sup>7</sup> The two texts presented on 26 July 1995 were published in the Official Journal of the European Communities on 2 December 1995.

for implementation. The Directive defined the characteristics of the universal postal service to be guaranteed by all Member States and laid down quality standards for cross-border services as well as the principles governing tariffs and accounting transparency.

### *2.1.1 'Gradual controlled' liberalisation*

Member States were required to open to competition the clearance, sorting, transport and distribution of items of domestic correspondence. The common maximum limits for the services which the Member States could reserve to the provider(s) of the universal service were set at 350 grammes and five times the normal tariff for an item in the first weight step. We should point out that those prices and weight limits, above which competition was allowed, represented some 3% of the European postal market. Below those weight/price limits States could reserve postal services for a single provider, as long as they showed this to be necessary for maintenance of the universal postal service, which now had a Community definition.

### *2.1.2 Establishment of a universal postal service (UPS)*

The Directive enshrined the right of European citizens to a universal postal service. Article 3 of the Directive laid down the definition of the UPS<sup>(8)</sup>. The service had to be guaranteed by each Member State: postal services had to be of specified quality, provided throughout the territory and at a price affordable to all users. What is striking about this definition is that it is particularly vague and imprecise. What are 'specified quality' or 'affordable prices'? Who defines them? Who would ensure compliance with them?

Next, the operator was obliged to provide a minimum of one collection and one distribution per day for private homes, at least five days a week. The UPS included the clearance, sorting, transport and distribution of postal items of up to two kilograms and packages of up to 10 kilograms,

---

<sup>8</sup> Article 3: 'Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users'.

as well as registered and insured items. This applied to both domestic and cross-border services. The Directive also stated that all those services should comply with the principles of fair and non-discriminatory treatment of users, continuity of service and adaptability to technical progress and users' timetables. Member States could exclude a service from competition if it was demonstrably necessary in order to maintain the UPS. As regards the free postal service for blind and partially sighted persons, exceptions to the restrictions on weight and prices were permitted. This also applied to cross-border mail.

The UPS would come into being in the form of a compensation fund. The Directive proposed two mechanisms for financing the UPS, which are not mutually exclusive:

- the mechanism under Article 7: to the extent necessary to ensure the maintenance of universal service, some services could be 'reserved' for the universal service provider;
- the mechanism under Article 9: in order to safeguard the universal service, where the service gives rise to an unfair financial burden on the universal service provider, a compensation fund could be set up <sup>(9)</sup>.

Only the universal service providers would be entitled to support from the fund, but in order to benefit they would have to furnish evidence of such a need for funding <sup>(10)</sup>.

---

<sup>9</sup> Several countries (Germany, Belgium, Spain, Finland, Greece and Italy) have already provided in their legislation for the setting up of such a compensation fund, which however has only come into operation in Belgium, Spain and Greece.

<sup>10</sup> Indeed, Article 9(4) of the Directive strictly circumscribed the conditions for setting up the compensation fund. Its existence had to be necessary to ensure that the 'universal service is safeguarded'. The universal service provider would have to incur an 'unfair financial burden', and the principles of transparency, non-discrimination and proportionality were to be applied.

### *2.1.3 Financial transparency*

The Directive required that prices be cost-oriented, transparent and non-discriminatory. Transparency was to be understood as cost accounting in separate accounts for, on the one hand, at least each of the services in the reserved sector and, on the other, for the non-reserved services. Harmonised requirements applied to the allocation of costs between these two categories. The Directive also laid down principles to govern the procedures for authorising the provision of non-reserved postal services, and for the separation of functions between the regulator and operators in the postal sector.

### *2.1.4 Service quality*

There were references to service quality. As well as the obligation on each Member State to publish rules on postal service quality within national territory, the quality standards for intra-Community cross-border mail were set out at Community level by the Parliament and the Council (<sup>11</sup>). Quantitative targets were set in the annex to the Directive: at least 85% of items had to be delivered within  $D + 3$  and 97% within 5 days.

### *2.1.5 Regulation of the postal sector*

The last aspect of the Directive lay in the monitoring of the regulatory framework, reinforced by the appointment by the Member States of national regulatory authorities (NRAs) for the postal sector. These had to be 'legally separate from and operationally independent of the postal

---

<sup>11</sup> The quality standards for intra-Community cross-border mail in each country are to be established in relation to the time limit for routing measured from end to end (end-to-end routing is measured from the access point to the network to the point of delivery to the addressee) for postal items of the fastest standard category according to the formula  $D + n$ , where  $D$  represents the date of deposit and  $n$  the number of working days which elapse between that date and that delivery to the addressee. The standards must be achieved not only for the entirety of intra-Community traffic but also for each of the bilateral flows between two Member States.

operators' (<sup>12</sup>). They had to ensure compliance with the obligations under the Directive and with competition rules in the postal sector. Finally, the first Postal Directive laid down a timetable for implementation of the process of opening up to competition:

- by 31 December 1998 the Commission would table a proposal for the progressive and controlled further liberalisation of the postal market, with a view in particular to liberalising cross-border mail and direct mailing and to review further the price and weight limits;
- the Council and the Parliament had to deliver opinions on that proposal by 1 January 2000;
- the measures decided upon would have to enter into force by 1 January 2003.

## 2.2 The second Postal Directive: Directive 2002/39 (European Parliament and Council of the European Union, 2002a)

In May 2000, slightly behind schedule, the Commission adopted a proposal for a directive amending Directive 97/67 (European Parliament and Council of the European Union, 2000). The initial text provided for complete liberalisation of the market as from 2007. That first target was re-evaluated following the refusal of the Council and the European Parliament (<sup>13</sup>) to embark on too rapid a timeframe. Directive 2002/39/EC is the EU's current legal framework for postal services. It establishes a new timetable for the opening of postal services to competition. From 1 January 2003, only services relating to items of incoming domestic and cross-border mail weighing a maximum of 100 grammes (or up to three times the public tariff applicable to an item of correspondence of the first

---

<sup>12</sup> Indeed, the Commission stated, in the preamble to the proposal for a directive, that the arrangements for the legal and operational separation of regulation is still an issue in the postal sector, although the Commission did not cite any particular Member State.

<sup>13</sup> The proposal was put before the European Parliament and the Council in July 2000.

weight step in the fastest category) have been reserved for universal service providers. From 1 January 2006 the weight limit has been set at 50 grammes (or two and a half times that tariff).

The Commission undertook to carry out a prospective study intended to assess, for each Member State, the impact on universal service of the completion of the internal market in postal services in 2009. On the basis of the results of that study, the Commission would, by 31 December 2006, submit a report to the Parliament and the Council, together with a proposal confirming, if appropriate, the date of 2009 for the completion of the postal internal market or determining any other step. There was a further requirement on the Commission to present a report to the Parliament and the Council every two years 'including the appropriate information about developments in the sector, particularly concerning economic, social, employment and technological aspects, as well as about quality of service'. On 23 March 2005 the Commission, in its second report (CEC, 2005) made three observations on the application of the Postal Directive:

- reform of the postal market had progressed well and it had even been possible to observe considerable improvements in three areas: service quality, business efficiency and separation between regulatory authorities and operators;
- transposition of the Community framework was largely complete. The Commission noted that the reduction in the reserved sector and the concomitant opening to competition by 1 January 2003 had not thrown up any major problems, but the Commission drew attention to a number of more delicate or less well-implemented aspects: separation of accounts for the various services, cost allocation and monitoring of the prices for the universal service;
- national regulatory authorities had become more independent and the regulations more effective, but there was still a high risk, according to the Commission, that inadequate regulation in certain countries could prevent the emergence of the single market in postal services.

The Commission also noted that market conditions were very different from one Member States to another. It highlighted in particular the position of the universal postal service which, in some States, continued to enjoy high profit margins, whereas in others they faced much more difficult conditions due, in the Commission's view, to differences between the types of market interventions, different ownership structures and different price levels set.

A quite different tone was struck by the German MEP Markus Ferber (EPP-ED) who observed, in his parliamentary report, that 'the Commission figures point to these divergences (in relation to the universal service obligation) being significant, thus potentially jeopardising a central objective of the Postal Directive, namely the guaranteeing throughout the EU of a universal service which comprises a minimum level of services of a specified quality at an affordable price (European Parliament, 2005 : 9).

### 2.3 Genesis of the third Postal Directive

#### 2.3.1 *The new proposal*

On 9 November 2006 the Commission tabled a proposal for a Directive amending the second Postal Directive (CEC, 2006), intended to complete the opening of the postal sector to competition. It will be recalled that Directive 2002/39 envisaged 1 January 2009 as the date for actual liberalisation<sup>(14)</sup>. The Commission called on the Parliament and the Council to confirm the date of liberalisation as 2009 or to propose interim steps<sup>(15)</sup>. Two studies<sup>(16)</sup> were carried out at the request of the

---

<sup>14</sup> In the Commission's view, 60% of all letter mail would be completely liberalised by 1 January 2008.

<sup>15</sup> The Commission had proposed that, should no decision be made by the beginning of 2009, the current Directive would lapse. The European provisions on universal service would cease to exist and the Commission would apply Article 86 of the Treaty to examine on a case by case basis whether the provisions laid down by the Member States distorted competition.

<sup>16</sup> These documents are available on the website of DG Internal Market (Unit H: Postal Services) ([http://ec.europa.eu/internal\\_market/post/studies\\_en.htm](http://ec.europa.eu/internal_market/post/studies_en.htm)).

Commission, one on the impact on UPS of full liberalisation of the market in 2009, by Price Waterhouse Coopers (PWC), and the other by WIK Consult on developments in the postal sector between 2004 and 2006. Those studies were used as the basis for the proposed amendment of the Postal Directive presented by the Commission. In support of its proposal, the Commission asserted that the opening of markets had enabled the quality of services to be improved, a high quality universal service at an affordable price to be maintained, and the efficiency and profitability of postal businesses to be improved. According to the Commission, postal operators had changed how they provided a service to customers and how they sold their products and managed customer expectations. The opening to competition had in its view provided incentives to improve performance.

### *2.3.2 The two preliminary impact studies*

The PWC study imagines various scenarios for the opening of markets based on the regulatory environment in the Member States, and on changes of governance and capital structure in the postal operators. Given the disparity of national situations <sup>(17)</sup>, the consultants propose flanking measures <sup>(18)</sup>, to be determined by the Member States after agreement by the Commission. Although the Commission has taken up only the one positive conclusion which suited it, namely the green light to complete liberalisation, a number of aspects of the report should have tempered its enthusiasm. On the one hand, the phenomena of postal operators coming together through mergers and acquisitions and the formation of postal giants are at work here. These trends jeopardise the very objective of

---

<sup>17</sup> In the case of Belgium, PWC finds that there are good opportunities for competition (which could capture the most profitable markets) but that complete liberalisation could jeopardise the viability of the postal operator entrusted with the universal service.

<sup>18</sup> The flanking measures envisaged include abolishing the civil servant status of La Poste employees or the funding of the universal postal service out of the State budget.

greater competition between operators since there is a threat of Europe-wide private monopolies being created over the most profitable parts of European territory. At the same time, the impact on employment has been seriously under-assessed or under-estimated. After all, the objective of 'predatory holding companies' was not the economic, social and territorial cohesion of the European Union, but profit.

In that vein, the most recent study which assessed the impact of liberalisation on employment (PLS Ramboll) concluded in its least pessimistic scenario that a profound change was taking place in working conditions in the postal sector: rapid disappearance of civil service jobs, increased flexibility <sup>(19)</sup>, and widespread use of part-time working <sup>(20)</sup> temporary employment, large-scale outsourcing <sup>(21)</sup> and even of child labour <sup>(22)</sup>. The following table gives a picture of changes in the field of employment.

#### Changes in employment in the postal sector

Operator	Employment downsizing
Deutsche Post (Germany)	20,000 jobs cut in the period 2000-2004
La Poste (France)	35,000 jobs cut in the period 2002-2006
Royal Mail (United Kingdom)	More than 50,000 jobs lost in the period 2000-2005
Poste Italiane (Italy)	128,000 in the period 1993-2002 (of which 153,000 are full-time equivalent jobs)
Posten (Sweden)	17,000 jobs cut between 1991 and 2002

*Source:* European Network for Public Services, Postal Eurothermometer, 2007 ([http://www.fse-esf.org/IMG/pdf/Postal\\_Eurothermometer.pdf](http://www.fse-esf.org/IMG/pdf/Postal_Eurothermometer.pdf)).

---

<sup>19</sup> Correos de España has developed a system where workers are available on demand 24 hours a day through a phone call.

<sup>20</sup> In TNT Netherlands, more than 30% of the workforce is on part-time, for Royal Mail this rate is 20% with the will to reach 40%, and it is 25% at Deutsche Post.

<sup>21</sup> Transport, postal outlets and newspaper and non-addressed mail distribution are the most frequently outsourced activities.

<sup>22</sup> TNT is even hiring children in Germany in 2006 (source: Europress, 27 November 2006) .

### *2.3.3 Analysis of the impact on employment*

On 15 March 2007 the Commission summarised the impact of the opening of the postal market on employment, on the basis of various studies carried out by external consultants. Changes relating to demand, habits or the use of new technologies have had an impact on the structure of the sector but are not changes attributable solely to opening of the postal market. In general, the Commission noted a decline in jobs with universal service providers in the 1990s but stabilisation thereafter (-7.38% between 1990 and 1995, -1.13% between 1995 and 2000, and -0.7% between 2002 and 2004). Universal service providers themselves increased part-time working and flexibility. The sector open to competition represented 461,000 jobs in 1995 and 500,000 in 2002, i.e. an increase of 19.7%. It is estimated that it will represent 720,000 jobs in 2010. The Commission cited the case of Germany, which lost 29,000 jobs in the licensed postal sector but where the losses were to an extent offset by the creation of 29,000 new jobs in the competitive postal sector. Those new jobs are both full and part-time. Part-time working represented 18.2% of jobs in Europe in 2002 and 18.9% in 2004. Workers with civil servant status fell by 10.4% between 2002 and 2004. Operators have recourse to a high level of part-time working in certain countries (the Netherlands, Lithuania) and very little in others (Malta, Latvia, Portugal, Greece, Spain). Universal service providers tend to outsource a certain number of their activities (catering, cleaning, IT and telecommunications, for example), which has given rise to a downsizing in jobs with those operators.

The Commission studied the interactions between the various factors which have a quantitative and qualitative influence on employment: technology, market demand, the regulatory framework and strategic choices by operators. Amongst those drivers, it notes that it is market demand which has the quickest direct impact, whilst the impact of the others is more spread over time. The pressure to restructure, modernise and increase efficiency will continue for postal operators as will the pressure to make substitutions (use of electronic means, for example), which will give rise to job losses potentially offset by jobs created as postal operators diversify services and by the activities of the operators subject to competition.

The Commission examined three liberalisation scenarios and their impact on jobs. In its opinion, complete liberalisation of the postal market in 2009 would result in an 11.71% rise in overall employment (direct, indirect and ancillary jobs), complete liberalisation of the market accompanied by a rapid replacement of postal correspondence by electronic means would give a rise of 3.88%, whilst a market which was not fully competitive in which liberalisation was deferred would experience a 2.10% fall in total jobs. The Commission therefore concluded that employment in the postal sector is a factor in the long-term restructuring of the sector and that it is influenced more by technological change and changes in demand than by the opening of the market which, of itself, would bring new employment opportunities. In the view of the Commission, competitive markets are better able to sustain employment than monopoly markets. It observed that the regulatory framework has not jeopardised employment in the postal sector.

In response to that rose-tinted view, the situation needs to be portrayed more subtly. It has been seen, in Greece for example, that new entrants frequently offered badly-paid jobs and practised social ‘dumping’<sup>(23)</sup> which forced the traditional operators to follow them. Others have pointed out that, on the other hand, part-time jobs were not necessarily poorer quality jobs but were useful and sometimes met the needs of certain workers.

#### *2.3.4 The difficulty of securing sustainable financing for UPS*

A recent study by Oxera Consulting, a UK firm of economic consultants (Oxera, 2007), reveals the complexity of funding the universal postal service. The nine postal operators which commissioned the report (La Poste, De Post-La Poste, Hellenic Post, Poste Italiane, P&T Luxembourg, Correos, Magyar Posta, Cyprus Post, and Poczta Polska) asked for an in-

---

<sup>23</sup> In Denmark, postal workers are parties to the same collective agreement and there is therefore no social dumping by competing operators. In Sweden and Denmark they are covered by the same collective agreement as employees of the traditional operator.

depth study to be made so that the options within each Member State could be sufficiently analysed. The postal operators in Belgium, Cyprus, France, Greece, Italy, Hungary, Luxembourg, Malta and Poland had already signalled in July and October 2006 that the funding methods proposed in the draft third Postal Directive provided no guarantee of funding for UPS and therefore entailed a serious threat to its sustainability.

The study reveals how difficult it is to identify and implement a funding mechanism which ensures the sustainability of the universal service and satisfies requirements such as economic efficiency, competitive neutrality, social equity, compatibility with State aid rules, proportionality and long-term funding security. The Oxera report states: 'If regulatory authorities value certainty above any other consideration, the reserved area is likely to score particularly highly, while mechanisms such as compensation funds funded with profit taxes, uniform access with allowed bypass, and forms of competitive tendering that auction the provision of the universal service obligation on a regional or national basis are likely to receive a low score. Moreover, if predictability is a key consideration of the authorities, the reserved area, access charges and, to a certain extent, state funding could provide an attractive solution' (Oxera, 2007: 95). Given the difficulties of funding UPS, Oxera found that the proposal for a Directive did not provide sufficiently solid responses from an economic and legal perspective. Elimination of the reserved area as a financing mechanism – with no effective alternative means of funding – therefore seemed premature in terms of the very survival of the universal service. Finally, the study noted that the system chosen by the Commission, and confirmed by the co-legislators (Parliament and Council), could create a situation differing from country to country, which would conflict with the objective sought by the Commission, namely Community-wide harmonisation of the postal sector.

## 2.4 The position of the co-legislators

### 2.4.1 *The first-reading vote by the European Parliament*

On 10 July 2007, on the eve of its vote in plenary session, the European Parliament held a debate on the completion of postal liberalisation. The

debate confirmed the positions of the political groups expressed at meetings of the parliamentary Committee on Transport and Tourism. Commissioner Charlie McCreevy restated his position supporting the opening, from 2009, of the last segment of the postal market still capable of being reserved for a public operator, that is to say, the processing of correspondence of under 50 grammes. 'The proposal for a Directive has not been dreamed up in an ivory tower', stated Commissioner McCreevy, recalling the main aspects: opening the last reserved area to competition, maintaining a 'top quality' universal postal service (UPS) 'for all users', a 'broad range of financing mechanisms to meet the burden of the UPS', introduction of increased flexibility enabling prices better to reflect the nature of the service whilst leaving the door open for 'a single tariff'. The Commissioner believed that total opening to competition in the postal sector would be 'good for the whole economy'. In his view, unjustified restrictions on access to the market should also be reduced and 'greater clarity' should be given to the role of the national regulator. Pointing out the need for postal services to adapt to the 'revolution' of the new communications technologies, Commissioner McCreevy stressed the opportunities coming into view: the point was not to divide up the existing cake, but to increase the size of the cake so that all operators could benefit, and to adhere to the Commission's initial position in favour of market opening from 2009, in particular because 'many Member States' have accepted that timetable.

'Parliament has to send out a clear message' is the message sent out in his turn by Markus Ferber (EPP-ED, Germany) so that the challenge laid down is to ensure that postal services are 'determined by demand and not by supply'. He adds: 'today's problems cannot be solved unless there is fair competition – I stress the word fair – which upholds workers' rights but nevertheless allows competition to flourish'. The rapporteur puts the main components of the compromise on the table:

- opening to competition at the end of 2010 with a further two years' grace for Member States which joined the EU after 2004 or which have a small population and land area or which have particularly difficult topography, especially islands;

- inclusion of a reciprocity clause preventing operators responsible for the reserved area from taking over markets in Member States which have already opened their markets. On the latter point Mr Ferber referred to the dozen or so sets of 'infringement proceedings' already brought against Member States in that regard.

As concerns the mechanisms for funding the UPS in a competitive environment, he views as 'adequate' the compromise formula which allows Member States to choose from 'five mechanisms' which could themselves be used in combination. The Parliament's compromise does not alter the funding mechanisms in the Commission's proposal. These include in particular public subsidies, the setting up of national compensation funds financed by operators not subject to public service obligations and/or by users themselves, and the awarding of public tender contracts.

Amongst reactions to the Ferber report, attention should be drawn to that of British Labour MEP Brian Simpson. To him it is not a question of deciding whether or not postal services should be opened to competition but of defining the regulatory instruments which will govern that opening. 'Saying that the monopoly sector should be kept is to live not in the real world', he feels, whilst nevertheless lamenting the weakness of the provisions on the funding of UPS. For the Greens/EFA Group, the Austrian MEP Eva Lichtenberger believes that the last opening of the postal service led to 'a deterioration in services in particular in rural areas'. In her view the creation of compensation funds could work in the large Member States but not in the small ones, because their markets would make it impossible. According to Pierre Jonckheer (Greens/EFA, Belgium), the question is whether or not postal liberalisation allows a relative reduction in prices and, if it does, who benefits. 'In Germany, we had net losses of 29,000 jobs within the Deutsche Post, of which 15,000 have not been compensated for by the creation of jobs by new operators', whilst 'in Sweden, price reductions have been of benefit only to large enterprises, at the expense of individual consumers and small and medium-sized enterprises', he states. He stresses that 'the results have not been up to expectations. That should give us cause for thought'. The

French Communist Francis Wurtz, favours rejection of the Directive; he for his part condemns the ‘liberal dogmatism’ of the Commission ‘that feeds the crisis of legitimacy in the European economic and social model’ and ‘the arrogance that maintains the climate of defiance towards our institutions’. Lastly, Christine de Veyrac (EPP-ED, France), in contrast, expresses her belief that ‘competition is synonymous with improvement in services and in competitiveness for a sector with a turnover that is going down’. She expresses satisfaction that the Parliament compromise includes an option to fund the operator responsible for all or part of the UPS ‘by levies on the activities of its competitors who are not subject to the same obligations’ or ‘public subsidies’, and urges the Commission to publish ‘guidelines for calculating the cost of the universal service’ in order to ascertain what belongs to the universal service and what does not.

#### *2.4.2 The first reading by the European Parliament (July 2007)*

On 11 July the European Parliament adopted its opinion at first reading on the proposal for a directive by a comfortable majority (512 votes for, 156 against and 18 abstentions). However, it imposed a number of conditions on liberalisation, in particular regarding timing and compliance with employees’ working conditions. Complete liberalisation of the postal sector would have to take place as follows:

- keeping unchanged the UPS entailing clearance and distribution of mail at least five times a week for all users;
- complete opening of the last area reserved for a public operator, namely the processing of correspondence below 50 grammes, no later than 1 January 2011;
- grant of a two-year deferral to Member States which joined the EU after 2004 or which have a small population and land area, or which have a difficult topography, in particular a large number of islands;
- insertion of a reciprocity clause preventing holders of monopolies over mail processing from taking over markets in EU countries where the market is fully competitive;

- an option for Member States to fund public service obligations by choosing from a non-exhaustive list of mechanisms (public tendering, a compensation fund endowed by service providers and/or users, direct subsidies etc.);
- the Member States to notify the Commission, before 1 January 2010, of their national plans for funding the UPS; the Commission to draw up guidelines for calculation of the net cost of the public service obligations;
- clarification of the procedure for authorising postal operators;
- Member States to be able to impose conditions on the provision of postal services for general non-economic reasons such as compliance with employment conditions and social security systems.

The amendments adopted by the Parliament include in particular that of the Belgian Socialist Saïd El Khadraoui under which 'each Member State shall ensure that the financing of the universal service is guaranteed at all times in a fully liberalised postal market', and that of the Greens/EFA group allowing Member States to require postal operators 'to fully respect the labour laws to which they are subject', 'the social security legislation' and 'collective agreements concluded between social partners'. The amendment tabled by Olle Schmidt (EPP-ED, Sweden) providing that 'common costs, which are necessary for the provision of both universal services and non-universal services, shall not be entirely allocated to universal services' was also adopted.

The Greens did not support the compromise because they want 'to keep (postal) services in remote regions without needing enormous state aid and to restore fair working conditions for the employees of private postal services', declared Austrian MEP Eva Lichtenberger. Various significant concerns were the object of compromise between the EPP, PES and ALDE groups: the date, requests for clarification from the Commission, financial compensation, the universal service obligation and the approach to outlying regions as well as employment conditions and social security rights. Voting began with the motion to reject the proposal tabled by the EUL group. That motion was supported by 82 MEPs, with 588 against.

The French Socialist MEP Gilles Savary presented a further attempt to overturn the measures proposed by the rapporteur. This sought to reintroduce the option of raising finance by keeping a reserved area. That amendment received 154 votes in favour and 531 against, a large number of which were from the PES delegation (France, Italy, Luxembourg and Belgium), the EUL and the Greens, supported by the Luxembourg EPP MEPs. The plenary session also adopted an amendment providing to keep the option, where needed in order to maintain the universal service, of having a 'reserved sector' relating to direct mailing and outgoing international mail with the same limit of 50 grammes. The provisions on the financing of UPS costs were retained in the version adopted by the parliamentary committee.

The main element of the compromise relates to postponement of complete liberalisation of the market until 31 December 2011 (that is, a postponement by two years) for all Member States. In addition to that postponement there is a further two-year period of grace (until 31 December 2012) for the 12 Member States which joined the Union after 2002 together with two categories of Member States: countries with difficult topography (Greece) and Member States 'with a small population and a limited geographical size', a provision tailor-made for Luxembourg whose MEPs of all parties want to keep the reserved area. The MEPs in plenary session also upheld a reciprocity clause enabling Member States which have liberalised their markets to refuse access to their markets to foreign operators which still have the benefit of a reserved sector in their countries of origin. As regards social issues, we would draw attention to the adoption of a significant amendment (No.81) tabled by the Greens Group and adopted in plenary session by 391 MEPs with 297 against. This provides that 'Member States shall request all operators to fully respect the labour laws to which they are subject' (employment, working, health and safety and industrial relations conditions). The Member States may also require the chosen operator 'to fully respect the social security legislation (...) and collective agreements concluded between social partners'.

Just as with other delicate major dossiers (the 'Services' Directive and the REACH Regulation in particular), the Parliament proposed a compromise in the interests of debate continuing at the Council. The rapporteur Markus Ferber succeeded in reaching out well beyond the EPP Group in order to facilitate a compromise. As with the Services Directive, a minority of MEPs argued for maintenance of the reserved sector, but these remained confined to a few nationalities and did not prevail over Group cleavages save in relation to the Luxembourg MEPs. The vast majority of the Greens and the EUL Group opposed the final compromise, as did the French and Belgian delegations of the PES.

#### *2.4.3 The Council's common position of 1 October 2007*

The TRAN Council reached a broad consensus on the fundamental aspects of the proposal tabled by the Commission and took proper account of the opinion delivered at first reading by the European Parliament <sup>(24)</sup>. Discussion centred on the extent of UPS and the deadlines for complete opening of the market. The text has kept the approach and legal structure proposed by the Commission with a view to adapting the regulation on the postal sector to the new conditions associated with completion of the internal market before the end of 2010.

In the light of the foregoing, clarifications and adjustments were made to the text, particularly in relation to the relevant definitions in the proposal, the guarantees applicable to the provision of universal service, including its financing, arrangements for authorisation, the role of the national authorities and the provision of information by all providers of postal services.

Deadline for complete opening of the market: the Council offered a number of Member States the option of requesting a derogation (applicable until 31 December 2012 at the latest) from the date for

---

<sup>24</sup> The points on which an agreement of principle emerged on the Parliament's amendments are indicated by brackets (amend. x) in the text issued by the presidency.

implementation of the new Directive, to meet the particular structural needs of their national postal markets. Luxembourg and Greece have had recourse to this provision to postpone complete opening of their postal markets.

Provision of a universal service: the common position rests on the principle that provision of universal service is a key element of the completion of the internal market in postal services and plays a crucial role in social and territorial cohesion. Against that background, the Council gives Member States a degree of flexibility as regards designating one or more universal service provider and as regards the terms on which the providers operate, whilst nevertheless ensuring a periodic review of their compliance with the principles set out in the Directive and that the period of the designation is sufficient for a return on investment. The common position also states clearly that the universal service provider or providers must furnish sufficiently detailed and up-to-date information regarding the particular features of the universal service offered, with special reference to the general conditions of access to these services, prices and quality standard levels. Lastly, the common position acknowledges that continued provision of certain free services introduced by the Member States for blind and partially-sighted persons should not be hindered.

Financing of the universal service: the Council endorses in general the mechanisms proposed by the Commission, basing itself on the principles of subsidiarity and the conditions of the national market. Accordingly, Member States can choose an appropriate enabling measure, according to the specific features of their national markets. In response to the concerns expressed by certain Member States as regards calculation of the net cost and in order to provide guidance based on a common indicative methodology, the common position adds a new annex to the Directive based largely on Annex IV of the 'Universal Service' Directive (European Parliament and Council of the European Union, 2002b).

Compliance with employment conditions and social security systems: the common position includes on the list of essential requirements compliance with Community law and national legislation as concerns

employment conditions and social security provisions. Social considerations are also taken into account in the provisions on the requirements for the grant of authorisations, under which authorisation may, where appropriate, be subject to an obligation to comply with the employment conditions laid down by national legislation or may impose compliance with those conditions.

#### *2.4.4 The second-reading vote by the parliamentary committee*

On 18 December 2007 the European Parliament Committee on Transport and Tourism adopted at second reading the Ferber report on liberalisation of the postal sector by 37 votes to 2, with 6 abstentions. As the result of the vote testifies, there was no real debate. Markus Ferber was the first to speak and reiterated the basic tenets of his report. He proposed that the Council's common position should be followed. In procedural terms, he relied on three factors in support of his position. First, all the issues raised at first reading were given a response in the common position. Second, one should not undo what had been done and to jeopardise in any way the Council's compromise would lead to embarking on a hazardous conciliation procedure. Lastly, he called on the committee not to seek conciliation as an end in itself, but only if a clear 'qualitative leap forward' could be achieved. On the substance of the dossier, he asserted that Annex 1 <sup>(25)</sup> to the Directive brought the timetable for liberalisation of the postal sector to life. In the view of the rapporteur, 'the era of monopolies is over and the Member States must agree and adopt identical measures', and for him, Article 9 enabled Member States who so wished to make the grant of authorisations subject in particular to obligations linked to the universal service.

In the ensuing debate, the various political groups spoke sometimes bluntly, often with no surprises, and rarely with any hope of modifying the rapporteur's position. As the first reading vote showed, the Socialists were far from having a unanimous position. Brian Simpson, a British Socialist, was broadly in agreement with Markus Ferber although he

---

<sup>25</sup> Guidance on calculating the net cost, if any, of universal service.

stated that he would have 'preferred the public to keep the service whilst recognising that it is impossible'. He regretted that the universal service was not sufficiently guaranteed and expressed concern at the social consequences of the agreement, whilst conceding that financing of the universal service should be guaranteed. The Belgian Socialist Saïd El Khadraoui did not share his colleague's enthusiasm and sought to table, with French Socialist MEP Gilles Savary, a number of amendments primarily on the issue of financing, based on the position adopted by the Parliament at first reading, namely that 'each Member State, before abolishing exclusive rights, shall ensure that the financing of universal service is guaranteed at all times'. Ines Ayala Sender, a Spanish Socialist, signatory to the amendments, acknowledged that the common position improved on the Commission communication by restoring a degree of room for manoeuvre to Member States. She invited Markus Ferber to agree to the amendments in the interests of preventing legal uncertainty. Lastly, Willy Piecyk, a German Socialist, thought that 'it would be better not to lose conciliation', but that one should call for proper financing of the universal service and give a social commitment to the postal sector by 'requiring new operators to comply with social provisions' in order to avoid problems.

There was less nuance from the Christian Democrats, who unhesitatingly toed the line taken by the rapporteur. Georg Jarzembowski (EPP Germany) announced that the EPP was going to reject all the amendments. 'In 95% of cases, the Council has followed the position of the European Parliament and it would be wishful thinking to believe that conciliation will make things better'.

Luigi Cocilovo, spokesman for the European Liberals on the postal dossier, found positive aspects in the common position and thought that modifying the Council's compromise by a difficult conciliation procedure would be risky. However, he introduced a number of amendments relating to the universal service provider and one amendment which might even have been proposed by the left, in which he asked that 'Member States should require all operators to comply fully with employment legislation (...) and social security legislation including

collective agreements entered into between the social partners'. He was isolated within his group, as witnessed by the contribution from Dirk Sterckx, a Belgian Liberal, who took the view that there could be no better compromise and that Parliament should accept the common position. Arunas Degutis, a Lithuanian Liberal MEP, expressed satisfaction at the direction taken by the Council, but regretted that liberalisation had come too late. He did not wish to 'keep the universal service under identical conditions of use'. One should also note the position of Dutch MEP Jeanine Hennis-Plaaschaert, for whom the compromise reached was no gift to the Liberals. 'I am in favour of rapid liberalisation and regret that the compromise offers Member States too many possibilities to intervene in the postal sector'. The Dutch MEP even tabled an amendment seeking to remove universal service obligations from new operators.

For the Greens, the Austrian MEP Eva Lichtenberger tabled amendments already adopted by the Parliament at first reading to strengthen social provisions in the text of the compromise, in particular the maintenance of social standards, collective agreements and guaranteed access to the same services for all citizens. Lastly, for the EUL Group, Dutch MEP Érik Meijer expressed a hard-line stance inviting Parliament to reject the common position. He noted that for his Group, 'postal services are not commercial undertakings, but public services, and this is a good thing neither for consumers nor for employees'.

#### *2.4.5 The vote in plenary session (31 January 2008) <sup>(26)</sup>*

In the plenary, as expected, a vote supporting the common position was adopted by the EPP-ED, ADLE and PES (mostly) Groups. The EUL continued to oppose the text. The Greens also argued for rejection but some of their number preferred to abstain.

---

<sup>26</sup> Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services was published in OJ L 52 of 27 February 2008, pp.3-20.

#### 2.4.6 Evaluation of the trade-off: UPS for full liberalisation

The text adopted on 31 January 2008 provides for no firming up of the imprecise definition of ‘universal service obligations’ in Article 3 of the 1997 Directive, in exchange for full liberalisation of the sector. On the contrary, tariff equalisation is optional <sup>(27)</sup>. Next, the content of universal service obligations (USOs) is weakened. Admittedly, a number of specific universal service obligations could be added to the list of universal service obligations. However, the text stipulates that accessibility to access points, affordability and uniform tariffs ‘may’ be on the list, which will therefore be left at the discretion of the authorities. As regards calculation of the net cost of UPS, Annex 1 states: ‘National regulatory authorities *are to consider* all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost *efficiently*’ (our emphasis). One can see that the measure is scarcely binding and that the discharge of USOs is subject to the criteria of cost efficiency.

As regards the net costs of universal service obligations, these could be covered or financed by granting compensation to providers in return for services provided under *non-commercial conditions*. Lastly, the text provides that ‘Member States have to ensure that (transfers) are undertaken in an objective, transparent, non-discriminatory and proportionate manner’ and must ‘result as far as possible in the least distortion to competition and to user demand’ <sup>(28)</sup>. Will elimination of the reserved area imperil the UPS and the financial health of public undertakings? This is the burning issue which has been troubling all the Member States whose postal operators are more than 50% State-owned. The question is not

---

<sup>27</sup> Annex 1 inserted by the Council’s common position provides that ‘universal service obligations refer to the obligations (...) placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, *where required*, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially sighted persons’.

<sup>28</sup> Annex 1.

merely theoretical or ideological, as is borne out by several national studies which have posed the question. In Hungary, for example, the impact of removing the reserved area has been put at a net loss of between €8 million and €120 million (a figure forecast by Magyar Posta), that is to say, in the event of complete liberalisation in 2009, in comparison with the net profits returned in recent years (€30 in 2005 and €20 million in 2006 <sup>(29)</sup>).

#### ***2.4.7 The stances taken by the various actors***

##### *The positions of Member States*

Two opposing positions have emerged in the attitudes of Member States to complete liberalisation. In general, reactions have focused on the financing of UPS by means other than the reserved sector. Some Member States (Luxembourg, Slovakia, Cyprus, Greece, Poland, Italy and Belgium) wanted to make the date of full liberalisation of the sector and elimination of the reserved sector conditional on the establishment of guarantees for funding UPS and clear guidelines for calculating the net cost of the universal service. Those Member States argued for guidelines <sup>(30)</sup> on the accounting principles to be used and on calculation of the net cost of universal service. Other Member States, including proponents of rapid liberalisation (the Netherlands, Austria, Sweden and Finland) believed, conversely, that elimination of a reserved sector could serve as an incentive to increasing the efficiency of the service provider

---

<sup>29</sup> Magyar Posta will not be able to bear the burden of eliminating the reserved area, whilst providing a universal service, before 2012. Those five years are the period needed in order sufficiently to increase the productivity of the business, through modernisation, automation, rationalisation of the network and job cuts.

<sup>30</sup> At the insistence of a number of Member States (Belgium in particular but also the United Kingdom), the Commission ultimately agreed to publish guidelines or guidance for calculation of the net cost of UPS, but it drew attention to the difficulty of the exercise if one was to avoid encroaching on subsidiarity and pointed out that the CERP (the postal regulators' committee) had failed to reach agreement on the matter.

which, being more efficient, would not need additional financing in order to provide the UPS.

*The experiences of Member States*

Recent developments concerning the Postal Directive have provoked a number of reactions among European operators in the name of government supervision.

Sweden was the first country to open its postal market fully to competition, in 1993. Until then, Sweden Post was the only operator in the letter carriage market in Sweden. With the appearance of competitors in certain segments of the market, the competitive environment of the new entity, Posten AB, changed appreciably. There are some 30 small postal undertakings, which have a local presence and one big competitor which holds 40% of the bulk mail market in the three major urban areas. Very isolated customers are served by the 'rural postman' which is a form of mobile post office. Where they exist, local operators offer lower prices than Posten AB, since the national operator has to maintain uniform prices which prevent it from competing selectively in specific areas. It would be wrong to believe, however, that deregulation of the postal service in Sweden has been completely smooth. First, the Swedish competition authority has had to arbitrate in a large number of conflicts in the postal sector. Secondly, competition has had an impact on the price of postal services. In the sector of non-urgent consolidated items posted in bulk and pre-sorted for densely-populated areas (which represents more than 70% of the total postal market), the level of prices has, admittedly, fallen by an average of 30% over a ten-year period. However, urgent single-piece mail posted in mail-boxes on the public highway has seen prices rise steeply even though, since 1998, operators have had a duty to keep in line with the Swedish consumer price index. The price differential between the two extremes is more than 2:1. From the outset, UPS has been confined to single-piece mail, posted in small quantities. Today, according to Posten AB statistics, the number of postal product outlets has increased from around 1,800 to more than 4,200. Large supermarkets, service stations and the like now sell stamps and offer local postal services. The opening times of these new postal outlets are an

added attraction. A recent study has shown that 96.2% of mail posted in Sweden arrives within 24 hours. The only remaining problem is that of weak competition in the postal sector. The traditional operator continues to hold a more than 94% market share.

Finland's experience has been similar to that of Sweden. The competitors who entered the market quickly disappeared. However, that description should be qualified: although tariffs for commercial mail have fallen sharply, those for private mail have tended to do the opposite. Finland's full liberalisation would seem rather to have smiled on the big private mailers, and not necessarily on individuals <sup>(31)</sup>, even if the choice of products and services for consumers has increased.

The British postal market has been open only since January 2006 although the regulatory framework for liberalisation was already in place from 2000. 87% of mail is generated by businesses. After one year of liberalisation, Royal Mail remains broadly dominant (96% of the market) and 16 other operators share the remaining 4%. The market has been opened gradually, beginning with liberalisation of bulk mail (30% of the market). The decision to open up completely was made in February 2005 and implemented in January 2006. London believes that service quality has improved but the profit margin of the business is still only 2% and must therefore be improved. Jobs have been cut by 5% without compulsory redundancies and wages have increased by 4%. The trade unions walked out several times during 2007, calling three major strikes against wage freezes and threats to pension schemes planned by Royal Mail. Trials of a 'zonal pricing' scheme began at the start of 2008, with a view to testing the effects of ending the single tariff in certain areas.

---

<sup>31</sup> The Eurobaromètre qualitative survey, published in December 2003, observed in that regard that 'the positive assessment factors are first and foremost the density of the network of post offices – and it is the numerous closures that often cause an outcry among the Swedes, many of whom patently take a dim view of the liberalisation of these services' (European consumers and services of general interest, page 25)  
([http://ec.europa.eu/public\\_opinion/quali/ql\\_sgi\\_report\\_en.pdf](http://ec.europa.eu/public_opinion/quali/ql_sgi_report_en.pdf)).

For the time being there does not seem to be a need to finance the universal service, but it appears that post offices are being used less and less and that further restructuring will undoubtedly have to be considered. In order to 'face up to competition' and ensure the profitability of Post Office Ltd., the subsidiary responsible for the post office network, a broad-based consultation was launched at the end of 2007 under the auspices of the regulator, POSTCOMM. The first stage is aimed at closing 2,500 out of almost 14,000 franchises.

In France the universal postal service decree published on 7 January 2007 guarantees a single stamp price throughout the country. For bulk mail – business mail, for example – La Poste can offer its customers commercial terms to take into account the number of items sent. This decree also leaves it to the discretion of the universal service operator whether or not to distribute items regularly, depending on the geographical conditions and road infrastructure. All tariffs falling within the universal service are monitored by the post and electronic communications regulation authority. The French Government owns 100% of the 'La Poste' post offices, which are present at 17,000 points throughout the territory (12,000 self-managed contact points and 5,000 subcontracted). La Poste is calling for adequate permanent financing arrangements for the universal service so that it can square up to competition on an equal footing. The trade unions also fear tariff de-equalisation which will allow differentiated tariffs to be charged depending on the destination of the mail and the difficulty involved in delivery. According to the trade union Sud-PTT, this sounds the death knell for the single-price stamp and heralds inevitable job losses (the public operator has not been replacing staff who retire since 2003, meaning that 30,000 posts had been lost by the end of 2007).

Italy is one of the countries most critical of the proposal. Its particular concern is not only the size of the country but also the remoteness of certain mountain areas and, of course, the islands. Italy, which wants to keep a high quality universal service throughout its territory, fears that liberalisation of postal services will mean that such a service will no longer be guaranteed. Italy is one of the Member States which have called for the deadline for entry into force to be postponed.

In Germany, the Bundestag passed the minimum wage law <sup>(32)</sup> on 20 December 2007; it came into force at the same time as opening of the German postal market, that is, 1 January 2008. Introduction of the minimum wage poses a fundamental threat to the low-cost economic models of competitors of the German postal operator and represents very high barrier to new entrants. Amongst the competitors of Deutsche Post World Net (DPWN), TNT Post AG is the best equipped to withstand the threat, but has had to downsize its ambitions for growth in the German market by abandoning the proposal to use the 13,500 contact points of Hermes Logistik to distribute mail to individuals, independent professionals and small and medium-sized businesses. Following representations to the Commission by competitors of DPWN, the Commission is likely to look carefully at the minimum wage law to ascertain whether it will give DPWN an unfair advantage <sup>(33)</sup>. Excessively binding legislation in the case of Germany is clearly identified as a barrier to competition in the annexes to the PWC study of May 2006. It could be regarded as a provision aimed at protecting DPWN, especially since the German postal operator has recourse to contracts which can go down as low as €5 per hour at its Dutch subsidiary SELEKTMAIL SANDD. Its main competitor uses the same type of contracts, covering 9,500 distributors, at least half of whom are 'self-employed' with commercial contracts relating to volumes of mail and distribution routes.

In Spain, the Government proposed a decree in 2008 dispensing Correos from the obligation to distribute mail to recipients located more than 250 from a main road.

---

<sup>32</sup> For sorting personnel, the hourly wage will be €8 in the eastern part of Germany and €8.40 in the western part. For delivery personnel, the wage will be €9 in the East and €9.80 in the West. In contrast, delivery personnel of DPWN's competitors - Pin Group and TNT Post - are currently paid much less, between €7 and €7.50 an hour.

<sup>33</sup> At the same time, the Commission will probably take an interest in the VAT exemption enjoyed by DPWN, likewise denounced by competitors of the German postal operator.

In the Netherlands, flanking measures to accompany market liberalisation, which will entail a wage freeze until 2010, have been called into question by threats of compulsory redundancies potentially affect 7,000 jobs (out of roughly 40,000).

*The position of workers' representatives and interest groups*

The public postal operators of twelve Member States, including the eight which commissioned the Oxera study (Austria, Belgium, Cyprus, France, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Poland and Slovakia) noted in a press release the improvements made by the European Parliament which 'significantly' amended the legislation. They welcomed in particular the provisions addressing methods of financing the universal service and the risks of social dumping, the call for deferral of the date for completion of the internal market in postal services and the reference to the role of the postal service in Europe in terms of the economy and territorial cohesion. Stressing however the fact that deferral of the final opening of the market does not amount to a response to the many legal, economic and technical concerns, the twelve postal operators call on the Council to follow the prudent approach adopted by the European Parliament and enrich the proposal for a directive by responding to those issues <sup>(34)</sup>.

As long ago as 8 December 2006, the ETUC Executive Committee adopted a declaration pointing out the dangers inherent in the latest draft of the Directive, especially the requisite guarantees in terms of universal service and the threats to employment. The declaration concludes by pointing out the need for a framework directive on SGEIs.

While the trade union federation UNI-Europa described itself as 'disappointed' by the outcome of the vote and saw a need to put pressure on European governments to include better safeguard provisions in the

---

<sup>34</sup> '12 opérateurs postaux européens prennent acte des améliorations apportées par le Parlement européen au projet de troisième directive postale', *Press Release* by La Poste, 11 July 2007 ([http://www.post.be/site/fr/postgroup/press/releases/2007/20070711\\_poste\\_europe\\_pe.html](http://www.post.be/site/fr/postgroup/press/releases/2007/20070711_poste_europe_pe.html)).

legislation, the Free And Fair Post Initiative (FFPI) movement expressed its disappointment at the extended deadline granted by MEPs for full liberalisation of the postal sector. Lastly, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) for its part was delighted at the vote by Parliament in favour of liberalisation and the strengthening of 'guarantees for the universal service'.

## **Conclusion**

On concluding this contribution, how could one fail to notice striking similarities between this dossier and the Services Directive? The same dramatisation at the outset of negotiations, the same – although less wide-ranging – mobilisation of the actors in support of permanent public service commitments or of greater competitiveness and, what is more, the same hesitancy by the European Parliament at second reading. With the exception of the EUL Group, the Greens and a number of (mainly Belgian and French) PES MEPs, the European Parliament seems to have found its point of balance with this proposal for complete liberalisation of the postal sector, ultimately counterbalanced only the possibility – where circumstances allow – of resorting to a compensation fund for the universal service. Indeed, it should be pointed out that the largely optional nature of such a fund does not augur well for its future activation being on the best of terms.

One difference with the Services Directive, however, lies in the fact that, since the process of postal liberalisation began over ten years ago, the domestic experiences of Member States are accessible, particularly in respect of the impact on jobs and on social and territorial cohesion. These fundamental aspects, lying at the basis of the overarching principles of European integration, have largely been passed over: for instance, the employment statistics date at best from 2004, whereas the Commission's only study (by PLS Ramboll) relies on statistics from 2000.

In the early 1990s the co-legislator held that the 'balanced' solution combined increased market opening with a strengthening of universal service, by means of keeping a portfolio of services (the 'reserved' services) under monopoly. In 2008, the Parliament and Council will implement full liberalisation, while leaving it to the Member States to determine the

content of UPS. The single tariff and the reserved sector, the only existing safeguards for providing and funding equal treatment for all users, are the two options expressly ruled out by the Directive.

We are a long way from Community-wide harmonisation of the postal sector hoped for in the 1990s. In a globalised world, prey to competition by powerful operators, it is to be feared that this notion will not fade away. We shall have to watch carefully how circumstances in the sector evolve, particularly in terms of service quality and quality in work. In May 2006, just a few months before proposing the recently adopted Postal Directive, the European Commission delivered an assessment of social reality in its 'Agenda for European Citizens', which lay down the prerequisites for accessibility and solidarity. This commitment was backed by the European Council in June 2006, which emphasised accessibility and opportunity. A minor semantic difference, perhaps, but hardly insignificant.

## References

CEC (1991), Communication from the Commission 'Green paper on the development of the single market for postal services', COM (91) 476 final of 11 June 1992.

CEC (1993), Communication from the Commission to the Council and the European Parliament 'Guidelines for the development of community postal services', COM (93) 247 final of 2 June 1993.

CEC (1995), Draft notice from the Commission on the application of the competition rules to the postal sector and in particular on the assessment of certain State measures relating to postal services, OJ C 322 of 2 December 1995, pp.3-14.

CEC (2005), Report from the Commission to the Council and the European Parliament on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC), COM (2005) 102 final of 23 March 2005.

CEC (2006), Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services, COM (2006) 594 final of 18 October 2006.

European Parliament (2005), Report on the application of the Postal Directive (Directive 97/67/EC, as amended by Directive 2002/39/EC), Committee on Transport and Tourism, Rapporteur: Markus Ferber, document A6-0390/2005, 5 December 2005.

European Parliament and Council of the European Union (1995), Proposal for a European Parliament and Council directive on common rules for the development of community postal services and the improvement of quality of service, OJ C 322 of 2 December 1995, page 22.

European Parliament and Council of the European Union (1997), 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, OJ L 15 of 21 January 1998, pp.14-25.

European Parliament and Council of the European Union (2000), Proposal for a European Parliament and Council Directive amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ C 337E of 28 November 2000, pp.220-224.

European Parliament and Council of the European Union (2002a), Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176 of 5 July 2002, pp.21-25.

European Parliament and Council of the European Union (2002b), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), OJ L 108 of 24 April 2002, pp.51-77.

Oxera (2007), 'Funding universal service obligations in the postal sector', January 2007 (<http://www.oxera.com/cmsDocuments/Funding%20universal%20services%20obligations%20in%20the%20postal%20sector.pdf>).

Van den Abeele, É. (2006), 'The "better regulation" agenda: a challenge to the Community method?', in Degryse, C. and Pochet, P. (eds.), *Social Developments in the European Union 2005*, ETUI-REHS, Observatoire social européen and Saltsa, pp.151-185.