ERGP REPORT

on “access” to the postal network and elements of postal infrastructure

INDEX

Introduction

Access to the postal network and infrastructure covers different aspects including a variety of operational, legal, technical and economic issues, and could be an important regulatory tool to ensure a level playing field, necessary for competition in the postal sector and the development of the fully liberalized market.

The role of the group is to examine current regulatory practice governing any access actually or potentially granted (and so relations between the incumbent and other operators, bulk senders or mail houses) in order : to ensure a level playing field and the most favourable competitive situation. While for simplicity sake, the report refers to “access”, it should be noted that the main role of the ERGP was to examine non discriminatory access conditions mainly in relation to tariff issues. The role of the group is not to advocate any one particular access regime for all countries, nor to say that access must be obligatory.

Third party access to the postal network and to the infrastructure elements listed in Art. 11a of the Directive 2008/6/EC has rarely been empirically assessed so far. However this situation has changed with the total opening of the European market between end 2010 and end 2012 (in most countries “full market opening” is already in place). Total market opening is the result of the new Postal Directive of the European Community (2008/6/EC of February 2008 amending Directive 97/67/EC), which puts end to the exclusive rights for the letter segment by 31.12.2012. Outside the European Union, Switzerland might open its postal market completely to competition by 2015.

Before assessing the different issues of access regulation in more detail it is worth recalling at least briefly the reasoning and the justification for sector specific regulation in the postal sector. Despite partial or even total market opening, incumbents often maintain market shares of 85 per cent or sometimes above 95 per cent in the letter markets. The difficulty of ensuring competition in network industries is largely due to the economies of scale and scope that characterise these markets – giving rise also to a particular need for the regulator to oversee the emergence of a level playing field for potential competitors. Given the often high market power of the incumbent, new entrants may struggle to establish a foothold in the market and will possibly not benefit from the formal market opening initiated by the new Postal Directive. It is essential for the regulator to promote competitive structures and to oversee the behaviour of the incumbent.

In order to give advice with regard to access regulation it is crucial to carry out an investigation of the current situation in the different countries.

This report will serve as a means of taking stock of the EU legal framework and the different regulatory approaches with regard to access in each of the EU member states (a multi-country case study). These empirical investigations allow the working group to start to delineate competitive and non-discriminatory strategies and (potentially) abusive behaviour. In this context, the group will also explore access to the elements listed in Art. 11a Directive 2008/6/EC.

The end aim is then to give a comprehensive overview of access issues and to start to consider when regulatory intervention may be necessary (regarding postal networks and elements of postal infrastructure listed in Art. 11a Directive 2008/6/EC).

To obtain the relevant information, in 2011 a questionnaire was sent to each NRA. The workgroup received 29 replies. The results of the questionnaire are summarized below as a multi-country case study (Part 1. B.). Unless otherwise indicated, the country specific information regarding access to the postal network and/or to the postal infrastructure corresponds to the situation and practices at the date of the questionnaire[1]..

The report serves as an instrument to develop best practices of consistent access regimes - including issues such as access conditions, interoperability and quality requirements - by considering national circumstances.

The Appendix gives the definitions used in the questionnaire for terms associated with access. While certain definitions may give rise to debate, they are included as being the basis on which respondents answered the questionnaire.

Based on the assessment of the feedback, ERGP elaborated the current practices applied in the Member States on access to postal networks and access to the elements of postal infrastructure listed in Art. 11a Directive 2008/6/EC. The group had in mind that the aim of the project was not to achieve complete uniformity but to discuss in more detail the different approaches regarding the application of an access regime against the background of the EU legal framework.

Also under the economic perspective access to the incumbent's postal network and infrastructure could be a fundamental issue to enable effective and sustainable competition while increasing efficiency in the letters segment and safeguarding the interests of customers. Newcomers' entry on the market for letter services will broaden consumers' choices in terms of prices and service. The essential facilities doctrine is generally central to the (obligatory) access debate (noting again that the group's role is not to say that the postal network or infrastructure is to be regarded as an essential facility and/or that access should or should not be obligatory).

Like other network industries, the postal delivery system can be viewed as a logistical network. Among economists and legal experts the issue of whether and to which extent the postal infrastructure can be classified as an essential facility has given rise to extensive debates. The theoretical concept of essential facility which has its roots in the American anti-trust law is a highly disputed issue in EC competition law. For that reason, the European approach on the concept of "essential facilities" was developed and applied in the context of competition law. The Directive 2008/6/EC does not cover the essential facilities (EFD) doctrine. Nevertheless dealing with access requires reflecting the EFD although not every NRA has competences to apply instruments of competition law. In the absence of sector specific regulation, the EFD may allow access issues to be tackled especially in the case of refusal of access to elements of postal infrastructure.

In principle, an essential facility is described as a facility or infrastructure without access to which competitors cannot provide services to their customers. Alongside the essential facilities definition, a general rule has been introduced, according to which the owner of an essential facility cannot refuse the requesting companies access to that facility without objective justification. The idea behind this concept is that the development of effective competition by alternative network providers will take time and considerable financial means – or simply that duplication of delivery networks is not economically reasonable.

[1] The information about Portugal takes into consideration the new postal law that entered into force in the 27th of April 2012.

As a basic principle sector-specific regulation, as concretised in Art 11 and 12 of the Directive, establishes the framework for a consistent access-regime within the postal sector. As long as such a sector specific mechanism exists within the national postal legislation based on the Directive the concept of EFD plays no role at all. Only in absence of such a sector specific regulation regime the concept of the EFD will be the tool for the assessment and evaluation of access issues within the application of general competition law. In a situation without a respective postal legislation the issue to what extent postal network and elements to the postal infrastructure can be regarded as essential facilities is debatable.

To what extent the concept of EFD applies in the postal sector is debatable. One argument is that postal providers entering the letter market do not always need to make substantial specific investments. They can, and often do, develop low-cost business models focusing on urban areas with high population density. Accordingly, there is no justification for an intervention obliging the incumbent to grant access to its postal facilities. Compelling access would lead to inefficient network structures and weaken the financial basis necessary for restructuring the postal infrastructure to respond to declining mail volumes as a result of intermodal competition.

On the other hand it can be argued that the postal network is to be regarded as an essential facility. To build up nationwide coverage requires large amounts of capital. Accordingly the incumbent`s network cannot be reasonably substituted

The circumstances and commercial conditions for profitably providing delivery services could become more critical in the light of the danger of intermodal competition resulting from substitution by electronic media.

Part 1: Legal framework and outcome of the questionnaire

A. Legal Framework and description of national cases

1. EU Competition Law (Treaty of Lisbon)

The competition rules of the EC Treaty form part of the legal framework for postal activities. The Treaty was most recently revised by the changes introduced in the Treaty of Lisbon, which came into force on 1 December 2009 creating a new Treaty on the Functioning of the European Union (TFEU).

The TFEU prevents anti-competitive agreements and abusive practices. First, agreements between two or more firms that restrict competition are prohibited by Article 101 of the Treaty, subject to certain limited exceptions. An obvious infringement would be a cartel between competitors involving price-fixing or market sharing. Second, Article 102 establishes that firms in a dominant position may not abuse that position, thus prohibiting anti-competitive practices such as predatory pricing.

The Commission is empowered by the Treaty to apply these prohibitions, and as such has a number of investigative powers and the ability to impose fines on undertakings which violate EC antitrust rules.

Since 1 May 2004, all national competition authorities are empowered to apply fully the provisions of the Treaty to ensure that competition is not distorted or restricted.

The Lisbon Treaty introduced only limited changes affecting the above competition rules. First, the old article 3(g) of the European Community Treaty, which made reference to a system ensuring that competition in the internal market is not distorted, was replaced by Article 3(1)(b) TFEU that talks about establishing the competition rules necessary for the functioning of the internal market. However, a new protocol 27 to the treaties states that the member states consider that the internal market includes a system ensuring that competition is not distorted. The net effect is to maintain the previous legal position in this area.

The Lisbon Treaty also introduced minor changes on state aid and Services of General Economic Interest (SGEI) including a new protocol 26, which aims to “emphasise the importance of services of general economic interest”, which contains “interpretative provisions”, and which introduces a co-decision procedure for future EC legislation on the distortion of competition.

Application of competition rules to the postal sector

The 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 (OJ [1998] C-039, pp. 2-18).

The Postal Notice was prepared by DG Competition and published in 1998 as guidance to how the Commission would interpret the competition rules in relation to cases in the postal sector. It aimed to:

- Complement “other harmonisation measures”
- Provide market certainty and create transparency
- Provide a set of guidelines to avoid infringements of the EC Treaty

The notice was an interpretative document prepared by DG-Competition and, while it was due to be reviewed, it was not however revised since its publication since which postal monopolies are disappearing as a mechanism to deliver universal service under the provisions of the 3rd Postal Directive.

The notice defines the relevant markets including the national geographical markets and the relevant product markets including different parts of the postal conveyance chain (clearance, sorting, transport and delivery) and different types of mail (e.g. direct mail, incoming cross-border mail, express mail etc).

It emphasises that dominant postal operators may not:

- restrict the provision of non-monopoly services
- unjustifiably refuse to supply
- discriminate (e.g. on access conditions)

The text further states that dominant postal operators “have a special responsibility not to diminish further the degree of competition remaining in the market”.

Regarding cross-subsidisation, cross-subsidies from monopoly to non-monopoly markets distort competition whereas other forms of cross- subsidy (between monopoly services or from competitive to monopoly services for example) may be acceptable.

Taking into account the full liberalization of the postal sector, the 3rd postal Directive leaves Member States the freedom to decide how best to monitor cross-subsidies (recitals number 40 and 41).

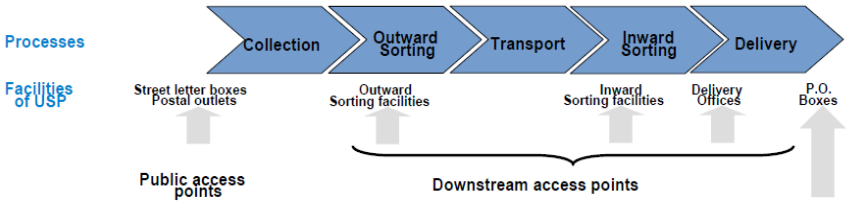
The Postal Notice further emphasises that member states must monitor access conditions and the exercise of special and exclusive rights. For SGEIs, incumbent postal operators must grant non-discriminatory access to customers and intermediaries in accordance with the needs of users. Access conditions should be published.

2. Postal sector specific legal framework

"Access" is a book with many covers. In this report it concerns:

- special tariffs[2];
- access to the postal delivery network, in particular to the sorting and delivery facilities.
- This is the so called "downstream access". Downstream access can take place at different points of the postal supply chain. It can consist of access to inward or outward sorting centres or delivery office. [3]

Figure 1 – Access to the postal supply chain:



WIK, 2006

- access to the postal infrastructure, such as the letterboxes of individual consumers and businesses, P.O. boxes, the address database, the postal code system and the possibility to redirect (wrongly addressed or returned) mail.

Whereas article 12,5 of the Postal directive refers to "special tariffs", article 11 and 11a address access to the network and access to elements of postal infrastructure or services provided within the scope of the universal service.

Access to the postal network

The postal network is defined as "*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."*

[2] Commission staff working document [SEC (2008) 3076] accompanying document to the report from the Commission to the European Parliament and the Council on the application of the Postal Directive {Com (2008) 884 final} refers that (page 20) „The special tariffs mentioned in Article 12, fifth ident, may be considered as applicable to downstream access and the principles of transparency and non-discrimination have been specially enshrined in the Postal Directive

[3] Accompanying document to the Report from the Commission to the European Parliament and the Council on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC) {COM(2008) 884 final}, p. 19-20

Access points are "*physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the postal service provider(s), where postal items may be deposited with the postal network by senders".*

Article 11 of the Postal directive leaves it up to the European Parliament and the Council, on a proposal from the Commission, to adopt harmonisation measures as necessary to ensure that users and postal service providers have access to the postal network under conditions which are transparent and non-discriminatory.

Currently, thus, Member States have the discretionary power to decide how access to the network must be organized, as stipulated in article 11a in fine of the Postal directive: *"(…). This provision shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions."*

Under the current framework and in the absence of harmonisation measures, access to the postal network takes different forms. In some Member States, the NRA has been given explicit powers to mandate access to the USP's postal network in certain conditions. In the UK the Postal Services Act 2011 makes provision for the NRA to impose an access condition on the USP, provided that it is appropriate for certain purposes and that certain factors are taken into account.[4] . In Germany a dominant operator should give in principle access to another operator, unless the functioning and the operational safety of the undertaking is endangered by the access.

This is not the case in all Member States.

Whatever the appropriate policy as regards downstream access from country to country, there is the obligation in the directive (article 12.5) that any special tariffs actually granted by the universal service provider be provided in a non-discriminatory and transparent manner.

Access to the postal infrastructure

Article 11a of the Postal directive obliges Member States to ensure that transparent, non-discriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, whenever this is necessary to protect the interest of users and/or to promote effective competition.

According to recital 34 of the Postal directive, all Member States are required to assess whether some elements of the postal infrastructure or certain services generally provided by Universal service providers should be made accessible to other operators providing similar services, in order to promote effective competition, and/or protect all users by ensuring the overall quality of the postal service.

---

[4] UK postal law: *"38. USP access conditions*
This section has no associated Explanatory Notes
(1)OFCOM may impose a USP access condition on a universal service provider.
(2)A USP access condition is a condition requiring the provider to do either or both of the following—
(a)to give access to its postal network to other postal operators or users of postal services, and
(b)to maintain a separation for accounting purposes between such different matters relating to access (including proposed or potential access) to its postal network as OFCOM may direct.
(3)The provider's "postal network" means the systems and all the resources used by the provider for the purpose of complying with its universal service obligations (and, accordingly, includes arrangements made with others for the provision of any service).
(4)OFCOM may not impose a USP access condition unless it appears to them that the condition is appropriate for each of the following purposes—
(a)promoting efficiency,
(b)promoting effective competition, and
(c)conferring significant benefits on the users of postal services.

3. Description of national cases

a. Example: legal and regulatory framework for access in the UK

The Postal Services Act 2011 ('the Act') makes provision for Ofcom to impose a USP access condition on a universal service provider to give access to its postal network to other operators or users of postal services.

Under the Act, Ofcom may not impose a condition requiring access to the universal service provider's network unless it appears to it that a condition is appropriate for each of the following purposes:

- Promoting efficiency
- Promoting effective competition
- Conferring significant benefits on the users of postal services

Furthermore, in deciding what obligations to impose in a USP access condition, Ofcom must take into account the following five factors:

- The technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary
- The feasibility of giving the proposed access
- The investment made by the universal service provider concerned in relation to the matters in respect of which access is proposed
- The need to ensure effective competition in the long term
- Any rights to intellectual property that are relevant to the proposal

With effect from April 2012, Ofcom established a USP access condition that requires Royal Mail to offer access at the inward mail centre (IMC) for the provision of D+2 and later than D+2 letters and large letters services only. Among others, the condition includes the following requirements:

- To require Royal Mail to offer the terms and conditions of access on a "fair and reasonable" basis.
- To require Royal Mail to provide ten weeks' prior publication and notification of standard price terms (unless otherwise agreed).
- To establish an ex ante margin squeeze control that requires Royal Mail to have a reasonable expectation of recovering relevant upstream costs (broadly Fully Allocated Costs) across a basket of products within the scope of the control and 50% of relevant upstream costs on a price point basis for services within the scope of the control.
- To require Royal Mail not to unduly discriminate against any particular persons or against a description of persons in relation to access matters.
- To adopt the dispute resolution process for access previously established for the communications sector in its Dispute Resolution Guidelines subject to recognising any appropriate differences in legal requirements.

The previous framework (2000-2011)

The Postal Services Act 2000 permitted the introduction of competition to Royal Mail with some safeguards, but largely left it to the regulator as to how and when this should be done.

Postcomm implemented the access regime through Royal Mail's licence. Condition 9 of Royal Mail's licence required it to negotiate with postal operators and users, in good faith, with a view to agreeing terms of access to those of its postal facilities deployed for the purpose of meeting its universal service obligations.

The expectation in 2001 was that the new regulatory regime created as a result would lead to the development of a healthy and competitive postal services sector which would help to ensure a universal postal service and bring choice, innovation and improved standards of service to all users. Condition 9 of the licence was specifically introduced to ensure that all areas of Royal Mail's postal facilities were opened up to the possibility for access to individual operators and users.

In the UK, the first access agreement was established in 2004 between Royal Mail and UK Mail following lengthy negotiations. Under the access agreement, UK Mail agreed to inject mail at Royal Mail's inward mail centres (IMC), thereby using Royal Mail for the 'final mile' of delivery. The IMC was considered as an appropriate point in Royal Mail's network that would balance:

- the avoidance of inefficient extra operational costs from accepting mail at an alternative point in the downstream network other than the IMC; and
- the potential benefits to customers of allowing competition for upstream activities.

Access has subsequently been offered on the same terms to other operators, and to postal users. There are currently three broad types of access contract – Operator, Customer Direct Access (CDA), and Agency. The access operators, or direct wholesale customers, each have individual contracts with Royal Mail Wholesale with standardised terms. All terms and conditions (including prices) were published and were fully transparent to other operators and their customers.

The previous NRA, Postcomm, was not required to mandate access at any point of Royal Mail's network. Where access had been agreed, it had been negotiated between Royal Mail and access operators. However, there have been two occasions where Postcomm is likely to have influenced the terms of access. First, in relation to the original access agreement, Postcomm published a notice of a proposed direction to Royal Mail on downstream access following the failure of UK Mail and Royal Mail to reach agreement on a number of price and operational terms of access.5 Second, Postcomm facilitated an agreement between Royal Mail and access users on the structure of zonal access, which changed the number of zones from 5 to 4, introducing a new and separate zone for London in 2009.[6]

Postcomm had nevertheless sought to ensure that the benefits of access competition would be delivered and in particular to ensure that Royal Mail would not price its access and retail services in an anti-competitive manner. This had been done through two mechanisms:

- A headroom control, which sets a floor on the level of price that Royal Mail could charge for upstream services. This provided a direct constraint on the minimum prices of Royal Mail's pre-sorted services (which were in the scope of the control), and also provided an indirect constraint on other upstream services of Royal Mail.
- A zonal access control, which restricts Royal Mail's ability to change the relative prices for different zones in its zonal access product.

---

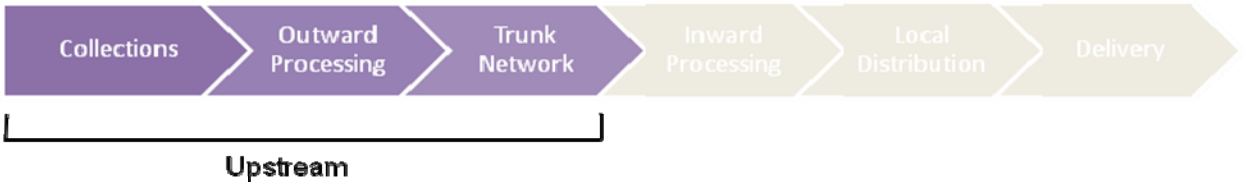
[5] Postcomm, *Notice of a proposed direction to Royal Mail on Downstream Access by UK Mail to Royal Mail's postal facilities*, May 2003. Postcomm did not in the end make a formal determination as the parties reached agreement on the terms of access following the notice.

[6] Postcomm, *Changes to Zonal Access Pricing by Royal Mail- Licence Modifications*, Decision Document, May 2009.

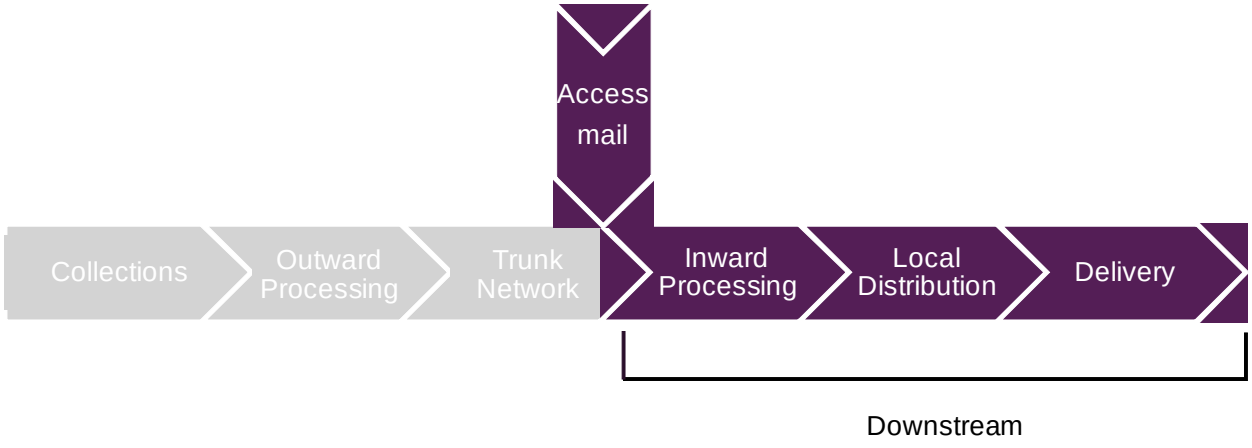
Downstream Access in the UK

The pipeline for mail has six main stages; collection, outward sorting, trunking (or transportation), inward sorting, local distribution and delivery.

In the UK, the first three the stages of the mail pipeline (collection, outward sorting and transportation) are known as ‘upstream activities’ or ‘upstream services’.



There are a number of operators competing in the upstream part of the pipeline. The operators collect mail from customers, sort the mail (outward sort), and then transport the mail before it is injected into Royal Mail’s network at an appropriate mail centre. Royal Mail then undertakes the activities of inward processing, local distribution (transportation of mail between mail centres to delivery offices) and delivery to the recipient. These activities are known as ‘downstream activities’ or ‘downstream services’.



The process whereby operators undertake ‘upstream activities’ before handing the mail over to Royal Mail to undertake ‘downstream activities’ is termed ‘downstream access’.

As noted above, there are currently three broad types of access contract; Operator, Customer Direct Access (CDA) and Agency. Under Operator agreements, the sending customer will have a contract with an operator that has an access agreement with Royal Mail. Under a CDA agreement, the sending customer will have an access agreement directly with Royal Mail; the customer will then typically enter into an agreement with an access operator to provide the various upstream services. An Agency agreement allows the operator to set up their VAT exempt or zero rated VAT posting customers as Agency customers of Royal Mail. This means

that these customers will get their invoices directly from Royal Mail to qualify for VAT free postage.

b. The German Vedat Deniz case (Joined Cases C-287/06 to C-292/06)

The Vedat Deniz case is the subject of a ruling by the European Court of Justice and therefore of great interest.

Operational background

Several "intermediaries" are active in the German postal market. They are private undertakings that hold a license to handle items of correspondence collected from the sender's premises, at its request and in its name, in order to deposit them at the nearest Deutsche Post AG (hereafter referred to as "DPAG") office or at another DPAG office in the area.

The mail handling system of DPAG is organised as follows: the mail deposited by senders in letter boxes and at post offices is collected and then transported to the 'sorting office' closest to the sender, where the mail is first of all pre-sorted by destination and format. It is then transported to the sorting office nearest to the addressee, where detailed sorting takes place and, finally, it is delivered to the addressees.

Procedural background

On 15 September 2000, the German postal regulator (hereafter referred to as "BNA") decided that DPAG must agree to special tariffs for business customers who carry out certain preparatory operations themselves. Following this decision, an intermediary, Vedat Deniz, asked DPAG for an offer for partial services, meaning the deposit of bulk mail collected from various customers, consolidated and pre-sorted at a sorting office in its own name and at the same special rates applicable to business customers. DPAG refused, arguing that the licence did not authorise its holder to provide services forming certain parts of the mail handling chain. The request of Vedat Deniz to BNA to fix the conditions of access was rejected. Vedat Deniz lodged an appeal against this decision of BNA with the Verwaltungsgericht in Cologne.

During this procedure, parallel proceedings took place before the Federal Cartel Office, the Bundeskartellamt. On 11 February 2005, the Bundeskartellamt prohibited DPAG from refusing intermediaries access to partial services to the extent that it granted such access and discounts to bulk mailers. In accordance with the ruling of the Bundeskartellamt, BNA ordered DPAG on 4 October 2005 to grant the intermediaries access to the sorting offices on the general terms and conditions applicable to businesses.

Faced with these different decisions from BNA, the Verwaltungsgericht in Cologne requested a preliminary ruling to the European Court of Justice regarding article 12 and 7 of the Postal directive:

"*Is Article 47(2) EC, in conjunction with Article 95 EC, the fifth indent of Article 12 and Article 7(1) of Directive [97/67], to be interpreted as meaning that, where a universal service provider applies special tariffs for business customers who give postal items to the sorting office pre-sorted for the postal network, that universal service provider is obliged to apply those special tariffs also to undertakings which collect postal items from the sender and give them pre-sorted for the postal network at the same access points and on the same terms and conditions as*

business customers, without the universal service provider being permitted to refuse to do so, having regard to its obligation to provide a universal service?"

Analysis of the Court

The Court ruled that *"The fifth indent of art. 12 of Directive 97/67/EC must be interpreted as precluding refusal to apply to businesses which consolidate, on a commercial basis and in their own name, postal items from various senders the special tariffs which the national universal postal service provider grants, within the scope of its exclusive license, to business customers for the deposit of minimum quantities of pre-sorted mail at its sorting offices. "*

The court pointed out that *"if a USP applies special tariffs, it must, in order to observe the principles of transparency and non-discrimination, apply them equally in particular as between third parties. Whenever a USP applies special tariffs to businesses and/or bulk mailers, consolidators of mail from different customers are entitled to enjoy the same tariffs under the same conditions"* (recital 28).

It argued further that "*that finding cannot be invalidated by the arguments of Deutsche Post and the German Government to the effect that article 12.5 of the Directive 97/67 does not require that the intermediaries concerned and the business customers of the universal postal service provider must be treated equally"* (recital 29).

Implications of the judgement

The European Court of Justice gives in the Vedat Deniz judgement a clear interpretation of the non-discrimination principle, as regards special tariffs for minimum quantities of pre-sorted mail granted to consolidators and business clients: indeed, if a universal service provider applies special tariffs, it must grant the same tariffs and conditions to businesses and to consolidators of mail.

The Court in its judgement of 6 March 2008 doesn't mention any derogation.
Since the aim of a preliminary ruling is to enable national courts to ensure the uniform interpretation and application of that law in all Member States, Member States are obliged to apply the Vedat Deniz ruling. The Vedat Deniz case served as a basis for the decision of the Belgian regulator BIPT of 10 June 2011 regarding the conventional tariffs of bpost for 2010.

c. 2 French cases

aa) European case law: 'access' and allegations of discriminatory treatment of mail houses by the incumbent (SNELPD)

2002/344/EC: Commission decision on the lack of exhaustive and independent scrutiny of the scales of charges and technical conditions applied by La Poste to mail preparation firms for access to its reserved services

On 23 October 2001, the European Commission released the above-mentioned decision, following on from a complaint made on 30 June 1998 by the Syndicat national des entreprises de logistique de publicité directe (SNELPD – a trade association with 62 mail-preparation member companies) against the French state concerning La Poste's mail preparation activities. SNELPD alleged that its members were being treated in a discriminatory manner by La Poste.

Article 86(3) of the EC Treaty entrusts the Commission with a specific surveillance duty "*in the case of public undertakings and undertakings to which Member States grant special or exclusive rights*". The Commission must "*where necessary, address appropriate directives or decisions to Member States*" which enact or "*maintain in force any measure contrary to the rules contained in the Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89*".

SNELPD had complained under Article 86(3) of the Treaty that the perceived conflict of interest within the French ministry (as between its twin roles of protecting all operators and representing the sole shareholder interest in La Poste exercised by the French state) prevented it from properly regulating La Poste's commercial relationships with mailing houses.

SNELPD further alleged that this situation was aggravated by a conflict of interest within La Poste (holder of a monopoly and an unavoidable partner for the mail houses), between treating the complainants fairly and furthering its own commercial interests, leading it – in the absence of independent regulation – to be likely to favour its own subsidiary mailing house activity over comparable activities by competitors.

More specifically, SNELDP claimed "*that La Poste grants discounts to its direct customers and to its own subsidiaries active in the area of mail preparation services which are not generally offered to mail preparation firms […] that La Poste lays down conditions which, although in principle uniformly applicable, are disadvantageous to firms competing with La Poste and its*

subsidiaries" (such as quantity thresholds fixed not based on costs but so as to exclude small mail preparation companies). Moreover, the complainant accused La Poste of being less rigorous as regards scrutiny of adherence to its conditions by its own subsidiaries - that is that "*rules which are not intrinsically discriminatory are applied in a discriminatory fashion*".

The complainant considered, as such, that the French state had infringed articles 10, 82, and 86 of the EC Treaty[7], and so called on the EC to require the French state to:

1. "*guarantee access by mail preparation firms to La Poste's network on conditions consistent with the principle of equality between economic operators, and*
2. *confer on an authority independent of La Poste the power to regulate the conditions of access […]*".

The Commission noted that since 1990, La Poste remunerated mailing house intermediaries, according to volumes posted, for preparatory contracts (making up and placing items in mailbags, sorting by destination and delivering items to specified offices of La Poste). In addition, mailing houses performed activities directly for clients (printing, enveloping or plastic wrapping, labelling, addressing and franking…) and the combined volumes of different customers' mailings gave them to access favourable postal charges from La Poste.

At the same time:

- La Poste had its own mail preparation subsidiaries providing similar upstream and client services, chiefly Datapost, Mikros and Dynapost, which combined were considered to have a share of at least 10% of the mail preparation market.
- Other mail preparation firms had no alternative but to accept the financial and technical conditions laid down by La Poste (who was deemed an unavoidable partner).

With regard to scrutiny of La Poste's contracts with the SNELPD mailing houses, it was considered, by the explanations given by the French authorities, that scrutiny never extended to the technical standards or non-price aspects of relations between La Poste and mail preparation firms. This left La Poste free to lay down whatever technical standards and impose them on mailing houses without any external check or supervision.

The Commission´s legal assessment did not take a direct view on the conditions imposed by La Poste or on the substance of the alleged discriminatory practices. However, it did flag the conflict of interest within la Poste and the lack of neutrality in ministerial supervision of La Poste and, more specifically

- noted that La Poste – holder of a monopoly and unavoidable partner for mail preparation companies – was in the position of being able to impose on the latter parties unilaterally set scales of charges and technical conditions "*despite apparently consulting the partners concerned*".
- decided that "*[certain national laws], are contrary to Article 86(1), read in conjunction with Article 82 of the EC Treaty, to the extent that they allow only limited scrutiny of the non-discriminatory nature of the scales of charges and technical conditions applied by La Poste to mail preparation firms, and to the extent that this partial scrutiny is*

[7] By allowing La Poste (a public operator with a statutory monopoly) to determine the conditions of access by mail preparation firms to its reserved services while it is itself active in that sector, and by granting La Poste exclusive rights the mere exercise of which is liable to involve an abuse of a dominant position, and by not taking action to eliminate the abuses of a dominant position actually committed.

furthermore exercised by a public authority that is insufficiently independent and neutral […]"[8].

- gave examples of potentially discriminatory conduct, pointing out, in particular, changes introduced by La Poste in July 1999 ("*the sudden and significant increase in the annual volume of envelopes delivered to post offices required of mail preparers for access to the preparation contract excluded from this type of contract around half of the mail preparation firms […yet] this decision had no effect on the conditions of operation of the La Poste subsidiaries […]*"; the modification of the terms applied to "*the remuneration "per thousand" granted to mail preparers for certain preparation and sorting work […] leading to a 16 % reduction in the payments made to mail preparation firms*") and underlined the more general risk that "*in applying the technical standards […] La Poste may also be tempted to be less strict with its own subsidiaries and with major originators of mail […]".*
- Underlined, in light of the above risks, the necessity that an independent authority be charged with scrutiny of the conditions imposed by the historical operator on mail houses.

The decision, as noted above, did not lend itself to an examination of the historical operator's conduct at the time of the allegations and, as such, does not allow conclusions to be drawn about the existence or otherwise of abusive behaviour. Rather, and as concerns the work of the European regulators access group, it highlights the more general risk that, in the absence of appropriate scrutiny exercised by an independent authority, the historical operator may be tempted to impose tacit entry barriers or to otherwise disadvantage competitors already present (for example, by fixing conditions that, although apparently applicable equally, aim tacitly to disadvantage competitors, or by enforcing conditions less strictly as regards its own subsidiaries).

A result of the Commission's decision was the setting up of an independent regulatory authority, part of whose role was to ensure that La Poste had sufficient scrutiny and guidance and that all mailing house operators were treated fairly.

bb) Case law: 'access' and allegations of discrimination made by mail houses against the incumbent

La Poste's commercial rebates

On 26 March 2008, the Paris court of appeal released its decision on the ruling first made by the lower-level court, the Paris 'Tribunal de commerce', on 2 December 2005 regarding the exclusion of the appellant mail houses by the incumbent postal operator, La Poste, from the latter's 'contrat commercial' system of commercial rebates (and so an alleged act of discrimination against the mail houses). The contracts in question granted commercial rebates to 'clients' of La Poste: in practice, the rebates were accorded only to bulk senders and not to mail houses.

The mail houses alleged "*violation of the equal treatment of users principle*" as contained in article 1382 of the national civil code, claiming an "*unilateral reinterpretation*" of the notion of clients by La Poste.

[8] Indeed, at the time of the decision : the tariffs of the reserved sector (and, as relevant, the prototype contracts regarding reserved services) were submitted to the minister for approval ; however, La Poste was free to fix its tariffs for services open to competition, which were simply submitted to the minister for information ; for the USO services, the general principal of cost orientation applied, "*but the French rules do not spell out the implications of that principle or the arrangements for checking whether it is complied with*".

In its defence, La Poste, basing its arguments on qualifications contained in European Union law, claimed that the mail houses were not its clients, but simply representatives thereof.

The Tribunal de commerce (first level court) held that the mail houses were indeed 'clients', ruling that they had been disadvantaged by an anticompetitive practice, and awarding them 320,000 €.

However, the court of appeal overturned the ruling "*in all its provisions and, ruling afresh, [judged] admissible but unfounded the requests made by the [appellant mail houses]".*

The court of appeal noted that the original ruling showed that the mail houses did not, essentially, have their own "demand curve", given that they are not originally responsible for deciding what mail will or will not be sent, and outlined rather their inherent nature as intermediaries. As such, if mail houses can be considered users and partners of La Poste, "*they are not, however, clients of La Poste, as regards mail sent on behalf of bulk senders*". In this regard, the decision notes that article L. 2-1 of the national postal and telecommunication law "*distinguishes, in fact, "clients", contracting parties involved in transport, and intermediaries consolidating the mail of several clients*".

For the appeal court, "*as a result, La Poste is not in the wrong having refused to grant to mail houses the tariff-based rebates making up the 'contracts commerciaux' […] which were granted to bulk senders of mail, the latter being the only party, in a legal sense, to the mail sending contract and accountable for the franking charges*". Indeed, "*the appellants cannot claim to have been discriminated against as the litigious rebates are based on the demand of bulk-sender clients who are not legally or in a practical sense in an equivalent situation to that of mail houses*".

In this regard, if article 82 of the treaty establishing the European community deems abusive the practice of "*applying dissimilar conditions to equivalent transactions with other trading parties*" and if article L. 420-2 of the national commercial law lists as a possible case of abuse of a dominant position "*discriminatory conditions of sale*", "*it must be remembered that there can only be discrimination between consumers in equivalent situations, the practice of discrimination consisting precisely in treating differently identical situations or treating identically different situations*". The court of appeal also noted that the non-discrimination principle seeks to ensure equal treatment of competitors, but that mail houses and bulk senders are not in competition with each other.

The dispute was heard also by the Supreme Court (final court of appeal), who ruled on 5 May 2009, confirming the essence of the court of appeal decision.

It must be stressed that the French decision, often misinterpreted, solely concerns rebates "*based specifically on demand*" (a very small proportion of all rebates granted) and not, for example, rebates granted for (costs avoided due to) mail preparation (a very large proportion of rebates).

However, if the French case deems that mail houses and bulk senders are not competitors and are not equivalent parties as regards *demand creation*, it must be noted that mail houses are competitors of La Poste. Indeed, the risk exists that an incumbent providing demand based rebates could try to pass off rebates for mail preparation as demand based rebates, reducing the incentive for bulk senders to use mail houses and potentially (if indirectly) contributing to ousting the latter parties.

d. Belgian case

Background

The commercial policy of the Belgian universal service provider, bpost, is based on three types of tariffs: single piece tariffs, lowered non conventional tariffs (discount according to deposited volume) and conventional tariffs for the deposit of large quantities of mail according to the conditions set in an individual convention. Conventional tariffs take into account quantitative and operational discounts.

The 2009 tariff model for conventional tariffs leaves the possibility for intermediaries to consolidate volumes from various senders. In 2010 bpost modified the tariff model for conventional tariffs preventing intermediaries to group items of correspondence emanating from different senders by calculating the quantitative discounts on an individual basis, “per individual sender”, and not on total volume. The so called “per sender” model is applied for transactional mail and direct mail.

Following complaints from intermediaries, the Belgian regulator, the BIPT, launched a formal enquiry into the 2010 “per sender model”.

The BIPT’s position on legal obligations

The BIPT’s enquiry is based on article 144*ter*,§1er,5° of the Belgian postal law which is the literal transposition of article 12, 5 of the Postal Services Directive:

“Whenever USPs apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and USPs supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions”

This article applies to both operational AND volume discounts.

It precludes the universal service provider from discriminating between consolidators, who bundle together mail from several originators, and bulk mailers who post their own mail. This is confirmed by the judgment of the European Court of 06/03/2008 in joined cases C-287/06 to C-292/06 (Vedat Deniz).

Regarding transparency, article 12.5 Postal directive and article 144ter, §1, 5° of the Belgian postal law obliges the universal service provider to ensure full transparency in relation to all conditions for all groups of users entitled to special tariffs.

The BIPT’s analysis of the infringements

During its analysis, the BIPT charged Wik Consult in collaboration with CRID with an economic and legal analysis of bposts’ 2010 tariff model for conventional tariffs.

Regarding discrimination, the BIPT identified several elements of discrimination in the 2010 tariff model:

- Different discounts for intermediaries and bulk mailers: for an equal service (same volume and same quality of mail preparation), consolidators receive lower discounts than the discounts bpost grants to its own direct client. This is due to the fact that these discounts are calculated for each of their clients on an individual basis.
- Although improvements made by bpost during the investigation, intermediaries, contrary to the direct clients of bpost, had to pre - finance their volume discounts;
- In order to get the most attractive volume discounts, intermediaries had to identify their own clients to bpost.

The BIPT considers that if bpost chooses to apply such discounts, it has to do so in a non-discriminatory and transparent manner and calculate them based on consolidated volumes.

Next to the discrimination problem, the BIPT found that the 2010 tariff model lacked transparency:

- contracts were communicated and signed too late;
- intermediaries were not informed by bpost prior to the communication of the tariffs to bpost's own clients and got incomplete information (not the whole grid).

However, during the procedure bpost committed to improve transparency both to bulk mailers and intermediaries

The BIPT's decision of July 20 2011

In its decision of 20 July 2011 on the conventional tariffs of bpost for the year 2010, the BIPT concluded that bpost violated 144ter, §1, 5° of the Belgian postal (and thus article12.5 Postal directive).

The decision paid special attention to the role of consolidators/intermediaries in the process of liberalisation: Indeed, the BIPT decision refers to a report of the European Commission that points out that consolidators are considered to be potential entrants. Therefore, conditions regarding special/conventional tariffs should stimulate the development of competition in order to allow them to invest progressively in the postal chain and eventual build up their own distribution network:

"Access can help facilitate market entry for upstream consolidators (...). New competitors who want to establish a delivery network can also use access for a transitional period to build up customer relationships and volumes, before being able to compete end to end with the incumbent. Using this model, consolidators and competitors, as well as major business customers can already carry out part of the value chain process before handing mail over to the incumbent"[9].

Other than that, the presence of consolidators facilitates market entry by providingaccess to the mail of many business customers as stated by WIK in its study regarding the role of regulators in a more competitive postal market:

"*Such presence of consolidators facilitated entry because access to one consolidator provided access to the mail of many business customers. The* (…) *market also appeared to be relatively transparent, as* [USP] *prices and rebates were all publicly available, which reduced the risk that* [USP] *could have behaved in a discriminatory manner"*[10].

[9] Report from the Commission of 23 March 2005 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, Annex, p.19.
[10] WIK-Consult, "*The role of regulators in a more competitive postal market*", September 2009, p. 186.

Consolidators can put competitive pressure on the USP: Copenhagen Economics states that consolidators "have the possibility of increasing efficiency and intensifying competition both in downstream (delivery) as well as upstream (sorting) postal operations."[11]

The decision of July 20 2011 imposed a fine on bpost of 2.300.000 euro for infringing the non-discrimination and transparency obligations.

The Belgian law limits the amount of the fine that the BIPT can impose on a postal operator to 5% of the revenues in the sector in the last year of reference. For reasons of proportionality, the decision only took into account the revenues regarding conventional tariffs DM & transactional mail for the calculation of the fine.

Bpost has since taken measures to conform the tariff scheme for conditional tariffs to the BIPT decision, yet an appeal is currently pending against this decision at the Court of appeal of Brussels. The appeal is not suspensive.

e. German Cases

aa) First Mail Düsseldorf GmbH (FM)

In 2011, BNetzA initiated and conducted an ex-post procedure against FM, a subsidiary of Deutsche Post AG and DP AG itself concerning predatory pricing and discrimination of business customers.

FM - formerly a competitor – had been overtaken by DP AG and since only active in those regions where alternative providers successfully entered the letter market. In the regions concerned FM offered rebates exceeding those that DP AG granted for similar letter conveyance services in order to react to these business activities.

Based on investigations, including the assessment of cost structures of FM BNetzA concluded that the prices charged by FM to large customers would substantially be predatory and abusively impair the competitive opportunities of alternative postal operators. FM's tariffs undercut the worksharing tariffs of its parent company. After assessing the cost documents and calculation of FM it was obvious that the charged tariffs do not cover the long-run incremental cost. By applying the AKZO-test, BNetzA could evidence that the pricing strategy aimed at destroying the competition. In particular the implementation and replication of a delivery network in the urban regions with highest density concerned does not make other sense than to infringe and destroy competition.

Furthermore, BNetzA found that the selective offerings targeting business customers in the federal states North-Rhine-Westphalia and Berlin violated the requirements of non-discrimination laid down in the German Postal Act. Based on these conclusions FM had to adjust its prices in accordance with the work-sharing tariffs of DP AG including a surcharge for preparatory works as handling, pre-sorting etc. The activities were found to be discriminatory because it granted bulk mailers or consolidators in areas with high degree of competition higher discounts than in other comparable urban regions.

In the ruling the BNetzA stated that DP AG and its subsidiaries are subject to the same regulatory constraints as the incumbent, because subsidiaries must be viewed as the same

[11] Copenhague Economics, "*Main developments in the postal sector (2008-2010)* ", 29 november 2010, blz. 103-104.

legal and economic entity. The investigations revealed that FM, a 100-percent subsidiary of DP AG ran losses since it had been overtaken by DP AG. The incumbent argued that the low-cost entity was necessary to respond to the emergence of competition. With reference to the ENTEGA judgement and to the Wanadoo case, BNetzA ruled that DP AG is prohibited to charge regional tariffs (using a subsidiary).

Such a pricing strategy is only acceptable if the incumbent enters a new market. Due to the fact that DP AG offered similar nationwide services including the regions FM served as well these practices could not be justified. Finally BNetzA ruled that DP AG cannot undermine the obligation not to discriminate by use of different subsidiaries.

bb) Rebate decision on work-sharing tariffs

Another crucial ruling addressed within this part of the paper and within the capacity of the so called specific control of anticompetitive behaviour was taken by the Bundesnetzagentur on 15th September 2010 dealing with rebates for incidental services granted by the incumbent operator.

On 1st July 2010 DPAG had raised its work-sharing discounts quite considerably when VAT was introduced for these postal services with the aim of compensating non-VAT registered posters for the disadvantages resulting from the amendment to the Turnover Tax Act. For VAT registered posters, the higher discounts potentially mean a considerable decrease in costs. DPAG as the incumbent operator has stated that its higher discounts would cause prices in the postal market to drop, would also benefit competitors and consolidators, and increase network capacity utilisation and make universal services more affordable. In addition, competitors with their own infrastructures would benefit, it claimed, since they injected surplus volumes into DPAG's network under a worksharing agreement.

Competitors responded that the higher discounts prevented the development of alternative end-to-end networks, and that the measure was hence an obstacle to competition for alternative providers. Since they had no comparable volumes, they argued, they were not able to offer postal services at rates that would cover their costs.

Against this background the Bundesnetzagentur conducted an ex-post review of the approved rates to verify whether they involved any abusive discounts that prevented other postal service providers from competing, and whether the increase was in breach of the ban on discrimination. Hereby it found that the work-sharing rates exceeded the cost of efficient service provision and also contributed significantly to covering DPAG's own particular burdens (e.g. staff pensions/non-competitive pay roll). Furthermore the Bundesnetzagentur found that DPAG was not in breach of the ban on discrimination since the discounts were available without restriction to all work-sharing partners, including competitors and consolidators.

However, during the review the Bundesnetzagentur has issued a clear statement that it would not accept an arbitrary distribution of burdens by DPAG, since this would enable anti-competitive practices."

Whereas competitors argued that the increased rebates would lead to the exclusion of alternative "end-to-end" delivery networks leading to a foreclosure of competition, the Bundesnetzagentur came to the conclusion that there was no infringement of the non-discrimination rule as the rebates for partial services were offered to all customers of those services including the competitors.

Against this background the Bundesnetzagentur decided on 15th September 2010 to disclose its proceedings against the incumbent operator DPAG about the issue of rebates granted for incidental services.

In the light of the decision taken by the Bundesnetzagentur to disclose the proceedings against the incumbent operator DPAG about the rebate granted for incidental services some of the competitors decided to question this approach in court. Therefore, they issued a law suit to the responsible administrative law court with the aim to reach a court ruling stating that the Bundesnetzagentur has to review the current rebates for incidental services again. However, the respective court judgement is still pending.

f. Danish case

Danish competition council decision: Post Danmark's rebate system for direct mail
The Danish competition council decision of 24 June 2009 followed on from a complaint made by Citymail on 30 November 2006. The council concluded that Post Danmark's rebates in the direct mail market were loyalty enhancing and an abuse of a dominant position, in violation of article 82 of the EC treaty.

The market was held to be the Danish bulk mail market, and not a broader market for mass marketing. Post Danmark has a dominant position in this market. In addition, Post Danmark was deemed an unavoidable trading partner, having the exclusive right to distribute letters up to 50g and being the only distributor with a nation-wide distribution network. Citymail, the only significant competitor, reaches approximately 40 per cent of Danish homes.

To obtain the rebates in question, clients had to send a minimum number, or a minimum value, of items annually. Post Danmark also applied minimum thresholds for each drop. While the rebate scale was standardized with equal thresholds and criteria for everyone, the rebates increased in steps and, of particular concern, the 'step' obtained by a customer applied to the total quantity of mail sent.

Indeed, such rebates are of particular concern in a context where it is unlikely that a sender would or could (again, Post Denmark has a monopoly for mail up to 50g and is the only nation-wide operator) place all its direct mail with a competitor. In such situations, "*the competitor, in order to match Post Danmark's net price, must offer a rebate […] higher than offered by Post Danmark*" (to replace the rebate lost on the total quantity of mail). Alternatively, only a small amount of mail could be transferred without the customer losing the rebate.

The assessment followed the logic that the incumbent's behaviour should not lead to the exclusion of an equally-efficient competitor, with allowance, in accordance with European guidelines, that the hypothetical competitor may not be of equal efficiency at the moment of entry.

The finding of an abuse was based on an assessment of the likely effects of the rebate on the market concerned. It was found that the rebate was capable of having a foreclosure effect on the market taking into consideration all the relevant facts.

Post Danmark has appealed, and the case is pending before the Danish court at first instance.

g. Greek Case

Background
EETT initiated –following a complaint from ACS SA (private postal service operator holding a general authorization and an individual license in Greece)- and conducted an investigation procedure against ELTA SA (designated Universal Service Provider) and its subsidiary (99,99% participation) TACHYMETAFORES ELTA SA (private postal service operator holding a general authorization) regarding the transparency, non discrimination and equal treatment in the case of access to the public postal network of the USP.

In September 2003 ELTA and TACHYMETAFORES ELTA signed a contract for the provision of access services from the parent company to the subsidiary, which included inward and outward access to the postal network of ELTA.

In September 2008, ACS SA, a private postal service operator holding a general authorization and an individual license in Greece, contacted ELTA in order to ask for access to the USP's postal network for specific services similar to the ones provided to TACHYMETAFORES ELTA.

In late December 2009 ACS filed a complaint to EETT regarding:

a) the lack of transparency for the terms of cooperation between ELTA and its TACHYMETAFORES ELTA, and
b) the discrimination and unequal treatment of ACS as a company requesting access to the Public Postal Network, particularly for the pricing terms, quality of service terms and compensation procedures.

EETT conducted a formal enquiry / investigation, including an analysis of published and confidential financial data from ELTA and TAXHYMETAFORES ELTA, cost data assessment and legal enquiry, and reached a decision in July 2012.

EETT´s decision on July 19 2012
Regarding transparency, non discrimination and equal treatment, the Greek postal law obliges the universal service provider to ensure full transparency in relation to all conditions for all groups of users entitled to special tariffs ("Postal undertakings are required to comply, under equivalent conditions, with the principles of equal treatment and of non discrimination against users").
According to the Greek law, EETT is the National Regulatory Authority, which supervises and regulates the postal services market. EETT's institutional purpose is to promote the development of the sector, to ensure the proper operation of the relevant market in the context of sound competition and to provide for the protection of the interests of the end-users.

Following the provisions of the Greek legislation, EETT decided to:

1. impose to ELTA a fine for the violation of the competition law regarding the excessive utilization of dominant position, and obliged ELTA to refrain from imposing different terms of cooperation for equivalent provisions.
2. address a recommendation to ELTA, to prepare and submit to EETT a study regarding the assessment of the cost structures which concluded to the pricing between ELTA and TACHYMETAFORES ELTA.
3. address a recommendation to ELTA to:
    a. publish within a period of one (1) month, the basic terms and conditions of the contract signed with it's subsidiary, as well as any other postal undertaking, in cases access to the Postal Network is required.

b. notify / communicate to EETT all such contracts (as in par. 3.a.) within a period of ten (10) days after the agreement.

4. address a recommendation to ELTA to follow a specific practice regarding the individual agreements with customers, stating the rules & conditions , determining the characteristics of the services, specifying the cost-defining procedure as well as the pricing procedure, regardless of the obligation to comply with the principles of transparency and equal treatment of all users

B. Status quo of access to the postal network in the different EU countries (multi country case studies)

A key aim of the group's 2011 questionnaire was to evaluate the status quo of 'access' to the postal network: while the replies to the questionnaire sent by the group to member countries do not give a definitive reply, they are a starting point to answering questions relating to the current treatment of business consolidators, bulk mailers, and competitors in the EU member states, whether there are typical access models from country to country, and, importantly, whether there are notable differences in treatment of these parties.

Introduction and hypotheses

Firstly, while for convenience sake the work of the group refers to 'access', this term can be misleading: it refers (at least as regards access to the postal 'network' as opposed to other elements of postal infrastructure), more precisely to the 'special tariffs' that may be offered by the incumbent according to article 12 of the postal directive.

Secondly, it should be noted that the role of the ERGP is not to advocate a particular access regime for all countries, nor to say that access should be obligatory, but to give direction on best regulatory practice governing any access actually or potentially granted – to avoid discriminatory treatment of, for example, mailing houses as opposed to other business clients. An access regime will not necessarily ensure competition, but where access is provided, it should enable fair competition.

While the group received a number of replies to the questionnaire, due to the complexity of the issue, some countries were not able to reply to all questions. Indeed, in some instances (information on volumes…), the information was rather fragmented and cannot lead to concrete conclusions.

That said, the questionnaire yielded many useful insights and is a helpful first step to identifying the status quo and particularly to determining what might be discriminatory practices, and what practices (publication of information…) may help avoid discrimination.

1. The existence of (obligatory or de facto) access in the European Union

Based on the replies to the questionnaire, the group aimed to identify 'typical access models'. Table one, below, organizes the countries of the EU into four principal groups (according to whether access to the postal network is obligatory, whether access exists de facto, whether the related tariffs are verified by the operator or the regulator and whether countries have identified differing treatment of parties seeking access). While the details of the access regimes tend to vary from country to country and there are not, per se, 'typical' models (perhaps due to the emerging nature of competition and so the rather recent nature of access in the European Union), table one indicates that:

- Almost all countries offer access to the postal network, be it obligatory (Germany, UK, Macedonia, Norway…) or simply 'de facto' (France, Sweden, Switzerland, Czech Republic…). In Switzerland however, a new Postal Act mentioning access to the post office boxes and information on addresses (only), should come into force in 2012 (4th quarter).

There is a general practice of the operator offering access. If access is a legal obligation in 17 countries, it is nonetheless offered in at least 22 member states.

- However, it is not necessarily practice for the operator or the regulator to verify the "special tariffs" according to a specific cost-standard: around half the countries indicate that tariffs are verified by the regulator or the operator.

Table 1a: Obligatory and de facto network access regimes in the European Union [12]

	For the countries having obligatory accès (downstream network access)		*For the countries not having obligatory access*	
	Yes	No	Yes	No
*Does your postal services act include a **legal obligation** to grant access to the postal network?*	17 countries Bulgaria, Croatia, Estonia, Finland,Germany, Hungary, Ireland, Lithuania, Luxembourg, Macedonia, Malta, Netherlands, Norway, Portugal, Slovenia, Spain, UK			11 countries Austria, Belgium, Czech Republic, France, Greece, Latvia, Poland, Slovakia, Sweden, Switzerland, Romania
*Is **access available** for certain services? (Actual question : "For which services are special conditions and tarifs available" (countries asked to reply yes/ no for various types of mail).*	14 countries Bulgaria, Croatia, Germany, Hungary, Ireland, Lithuania, Luxembourg, Macedonia, Malta, Norway, Portugal, Slovenia, Spain, UK		8 countries (3 gave no reply) Austria, Belgium, Czech Republic, France, Greece, Latvia, Switzerland, Romania	
*Has the operator or the regulator **verified the special tariffs** on a specific cost standard?*	5 countries, of which 1 reg (Macedonia), 1 op (Lithuania), both (Germany, Ireland, Slovenia)	Croatia, Hungary, Norway, Spain, UK	5 countries, of which 2 op (France, Latvia), 3 both (Austria, Greece, Romania))	Belgium, Czech Republic, Switzerland (no to both)
	These countries have obligatory (and actual) access, and their tariffs are verified by the operator and/ or the regulator	*These countries have obligatory (and actual) access but their tariffs are not verified by the operator and/ or the regulator*	*These countries have access available, but it is not obligatory, and their tariffs are verified by operator and/ or regulator*	*These countries have access available, but it is not obligatory, and their tariffs are not verified by operator or regulator*
*Does the incumbent **treat mailing houses/ consolidators differently** regarding discounts or access conditions?*	Hungary, Slovenia	Croatia, Germany, Ireland, Lithuania, Norway, UK	France, Switzerland	Belgium, Greece, Romania

[12] Please note, not all countries gave replies to all questions. Of the four questions in the table above: Estonia, Finland, Netherlands, Poland, Slovakia, Sweden – no reply to second question ("Is access available […]"); for the third (or a preceding) question : Bulgaria, Estonia (No to both), Finland (Yes, NRA) Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Sweden did not reply; for the fourth (or a preceding) question Austria, Bulgaria, Czech Republic, Estonia, Finland, Latvia, Luxembourg, Macedonia, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden did not reply.

Table 1b: Obligatory and de facto network access regimes in the European Union -

"Model"	No obligatory access (special tariffs) but de facto access		Obligatory access (special tariffs)		Obligatory access (special tariffs) and obligatory access for competitors
Is access available for certain services?	YES	No reply	YES	No reply	YES
Does your postal services act include a legal obligation to grant access to the postal network?	NO	NO	YES	YES	YES
Is access provided to competitors for delivery under their own brand?	NO	No reply	NO	No reply	YES
Countries	**7: Austria, Czech Republic, France, Greece, Latvia, Switzerland, Romania**	**3: Poland, Slovakia, Sweden**	**14: Belgium, Bulgaria, Croatia, Germany, Hungary, Ireland, Lithuania, Luxembourg, Macedonia, Malta, Norway, Portugal, Slovenia, Spain**	**3: Estonia, Finland, Netherlands**	**1: UK**

2. Identification of differing or discriminatory treatment of competitors and bulk mailers in the European Union and of factors potentially affecting the 'level playing field'

The questionnaire gave a preliminary appreciation of the extent to which differing or discriminatory treatment of competitors ('mailing houses/ consolidators') and bulk mailers (a bank sending mail for its own purposes…) by the historical operator exists or has already had an impact in their country (for example, being examined by the regulator, being the subject of a dispute resolution, being the subject of a court case or ruling…).

It also gave an initial idea of what other factors may be a barrier for mail houses and consolidators.

Very few countries positively identified differing or discriminatory practices, yet many countries did not provide a response.

VAT exemptions

The system of VAT exemptions, without surprise, appears on average the key barrier to ensuring a level-playing field (see table 2, below). In the large majority of cases where there is a VAT exemption (for franking) in the postal sector, the mailing house/ consolidator does not benefit from the same exemption.

Operational and commercial discounts

Table 3, below, summarizes countries' replies to the question of whether the incumbent treats mailing houses/ consolidators and bulk senders differently as regards, notably, operational or commercial discounts and volume thresholds. The table indicates that only 5 countries have identified different treatment of bulk mailers and competitors:

- two countries (France and Belgium), have identified certain rebates available to bulk senders and mailing houses/ consolidators, yet for which mailing houses/ consolidators cannot receive the discount based on consolidated volumes. While in France, the rebates concerned relate not to mail preparation but only to demand stimulation (a very small proportion of all rebates, and for which the French courts have determined there is not discrimination as the parties are not in the same circumstances) the rebates in Belgium related to *mail preparation* (the great majority of rebates, a task for which mailing houses and bulk senders are arguably in the same circumstances, and an activity which is then arguably at the heart of the article 12 non-discrimination provisions). The Belgium rebates have been held by the Belgium regulatory authority to be discriminatory and mailing houses/ consolidators now received the discount based on consolidated volumes – noting that the Belgium Post has appealed the decision and the issue is currently before the courts ;
- three other countries (Hungary, Slovenia, and Switzerland) indicate that there may be different rebates for the two parties, but the issue is unclear or still being investigated.

While the practice of such rebates does not appear widespread, and noting that differing conditions are not necessarily discriminatory (the rebates in France were not considered discriminatory, the rebates in Belgium have been), it is worth noting that discriminatory rebates

would be a key barrier to a level playing field and also that a reasonably large number of countries were unable to provide related information.

The contractual status of the mailing house/ consolidator

Slightly less than half the countries having replied indicate that sometimes the mailing house/ consolidator signs the contract for *distribution* directly with the incumbent and sometimes the contract remains between the sender and the incumbent only. One third of replies indicate that the mailing house always or almost always functions as only an outsourcer (the contract for distribution remaining between the sender and the incumbent).

Notice of modification of offers by the incumbent

In the majority of countries having replied (58%), the incumbent is not required to give notice to senders and mailing houses/ consolidators when changing its offers. However, in more than 40% of countries, the incumbent must give notice (ranging from 2 weeks to 3 months).

In conclusion, VAT regimes are seen as the most important element in terms on average of providing a level playing field, but very closely followed by the contractual situation of the mailing house/ consolidator. However, the averages may be misleading, masking certain trends, notably:

- Nine countries indicate that « commercial rebates » are of high or very high importance.
- Eight countries indicate that «contractual situation » is of high or very high importance.
- Only six countries indicate that « VAT issues » are of high or very high importance.

It may also be simply that member states have come to (reluctantly or otherwise) accept the current VAT situation and do not envisage changes in this area in the near future.

Table 2 – Importance of elements in terms of providing a level playing field for mail houses

Aspect	*Importance (average) (scale of 1 to 5, 5 being most important)*	
Contractual situation of mail houses	3.3	(17 countries replied)
Commercial rebates	2.9	(16 countries replied)
VAT regimes	3.4	(16 countries replied)

Only a small number of countries indicate that access related issues have already been the subject of legal cases in their country or at a European level (see Part 1. A. 4.)).

*Table 3: Identical treatment of bulk mailers and competitors (notably in terms of discounts and volume thresholds): that is, no differing or discriminatory treatment of bulk mailers and competitors identified to date **

Country	Obligatory access	Access available	Identical treatment client-consolidator (notably in terms of discounts or volume threshholds)
Austria[13]			
Belgium			
Bulgaria			
Croatia			
Czech Republic			
Estonia			
FYROM			
Finland			
France			
Germany			
Greece			
Hungary			
Ireland			
Latvia			
Lithuania			
Luxemburg			
Malta			
Netherland			
Norway			
Poland			
Portugal			
Romania			
Slovakia			
Slovenia			
Spain			
Sweden			
Switzerland			
United Kingdom			

**Actual question "Does the incumbent treat mailing houses / consolidators and direct customers differently regarding: operational discounts; commercial discounts; volume thresholds; practical access conditions (…); prefinancing/ regularisation' (countries asked to reply yes/ no for each aspect – NB – the question has been inversed to show (green) where no differing or discriminatory practice has been identified; red indicates differing or discriminatory practice has been identified; the relevant box is barred to indicate no answer).*

[13] For the third column Österreichische Post AG indicate that there is no differing or discriminatory treatment. However the Austrian NRA to whom the questionnaire was directed indicated that they were not able to say definitely that there was no differing or discriminatory treatment.

3. Access mail volumes in the European Union

While a small number of countries were able to provide information on total mail and access mail volumes, the majority of countries provided no or limited information. Indeed, the overall rate of reply for the volume information was only 23%, from which it would be risky to draw conclusions. Putting aside the sensitive nature of volume data, the lack of information provided may also, again, reflect the rather recent nature of access – and that member states, as a result, do not have the habit of collecting this data.

It appears that a large number of countries do not collect access volume data.

4. Current practices to avoid discriminatory treatment in the UE member states

Finally, the questionnaire provided an insight into the current practice of member states with regards to transparency and to preventing or resolving issues of non-discrimination.

Obligatory publication of information by the incumbent

Table 4, below, shows the operator is not necessarily obliged to publish information relating to its “special tariffs” (tariffs, related conditions, and operational and commercial discounts): only nine countries indicate that the operator is obliged to publish all or some of this information.

Table 4: Obligatory publication of information on "special tariffs" ('access' tariffs), terms and conditions, and discounts in the EU member states

"Is the incumbent / the designated universal service provider obliged to make known to the general public: the general terms & conditions; the different net tariffs; the operational discounts; if there are any, the commercial discounts (not based on avoided costs)?" (countries asked to reply yes/ no to each aspect)	
Yes to all	Belgium, Germany, Greece, Hungary, Romania, UK
No to all	Ireland, Latvia, Switzerland.
Yes to some	Austria[14], Bulgaria Croatia, Finland, France, Macedonia, Netherlands, Norway, Portugal[15], Spain, Sweden
No reply	Cyprus, Czech Republic, Estonia, Lithuania Luxembourg, Malta, Poland, Slovenia, Slovakia

[14] The Austrian NRA answered "Yes to some" insofar end customer tariffs were concerned because only these tariffs are established in the General Terms and Conditions. The General Terms and Conditions shall be submitted to the National Regulatory Authority upon publication and shall be published by the operator in an appropriate form. Österreichische Post AG stated the answer should be "Yes to all".

[15] Yes to the services of the USP belonging to the US, including tariffs and associated conditions of postal services, namely to businesses, bulk mailers or consolidators of mail from different users. No to the access conditions to the USP postal network.

Part 2: Article 12, 5: Non-discriminatory access conditions to special tariffs

A. Role of Consolidators

a) Activities[16]

Consolidation issues

Consolidators are active in many ERGP countries, but their business activities and success considerably differ across the different European markets. Measured in terms of turnover handled by consolidators the British and French markets are the largest in Europe. Their turnover accounts for about 5 per cent of the total postal sector. More than 200 firms in France offer consolidation services. In the other European countries the role of consolidators is smaller in relation to the size of domestic postal market. In Germany the market for consolidators accounts for 2.5 % of the postal market.

A number of postal operators entering the postal market and engaging in consolidation have complained that they face discrimination. This unequal treatment of consolidators and other postal operators can be viewed as one of the main barriers to market entry. Accordingly this issue has been addressed both at the EU level (e.g. *Vedat Deniz* decision of the ECJ) and at the national level (e.g. Belgium, France, Germany), but no common approach has been reached.

In order to exclude the business activities of consolidators, it has been alleged that the incumbent offers advantageous access conditions to bulk mailers but not to consolidators. Their price strategies - due to potential foreclosure effects on the mail preparation market - have been a source of controversy. In particular, the adoption of preferential tariff schemes to the benefit of large mail senders could have foreclosure effects on mail intermediaries. In the postal sector much attention has been devoted to the issue of whether and to what extent the benefit of such schemes granted to large mailers is not extended to mail intermediaries, such as mail preparers and aggregators.

Consolidators or mailing houses prepare, handle and / or consolidate the mail for senders. By presenting the mail in a "sorted" condition to the postal operators the consolidator effectively handles some of the initial work for the postal operator, leaving the postal operator with less processing to undertake and fewer resources to employ. In return they offer a trade rate to consolidators which reflects this, and which is much cheaper than the general tariff. Also mail consolidators leverage the collective might of all their clients to negotiate with postal operators. Postal operators have a strategic interest in handling very large volumes of mail so some clients alone cannot normally access these services except via a mailing house or consolidator.

Mail consolidators also often have sophisticated data processing, mail fulfilment and sorting capabilities which clients, and their printers, simply do not have. Mail consolidators also have many years of experience and established supplier relationships. Most mail consolidators will offer a range of delivery options and prices, and they can offer a mixture of services for

[16] Text based on a description made by the British Consolidator association (see website www.themaca.org.uk)

delivering direct mail, transactional mail, customer correspondence, catalogues, magazines, journals, packets and parcels etc.
According to the British Mail Consolidators Association, the major benefits of working with a mail consolidator are:

- cheaper prices
- more choice of delivery options
- experience and expertise
- value added services.

b) Market

It is difficult to assess the European market for consolidators, routers and mailing houses at European level as we have no reliable European data.

The market for mail handling services comprises all mail volumes that are handled by mail handlers. In most countries not only mail handlers play a crucial role in this market but also universal service providers themselves or their subsidiaries are active in this market.

In some European countries consolidators play a major role in the development of the postal market.

c) Demand for consolidation/mail handling activities

In most European countries senders of bulk mail come from the following sectors: finance, utilities, public sector, retail, insurance, charities and the distance sellers. This applies to administrative and direct mail but in most cases their key demand is for direct mail.

We notice a general tendency toward outsourcing of printing and preparation of mail to mail handlers rather than producing mail itself. In most cases the reason is that companies are focusing on their key tasks and outsourcing non core activites. Outsourcing s the process of contracting an existing business function or process of an organisation to an independent organisation, which in this case has a know-how regarding printing and sending. As a consequence preparing mail and printing mail is not the core business of most of the customers of the consolidators/mail handlers.

d) Liberalisation

Liberalisation can lead to a more competitive mail market. Due to the threat of competition, the universal service provider will be forced to be more efficient and to provide better and potentially cheaper services. Also, competition on the upstream market may have positive effects on postal customers as they will have more choice regarding insertion of mail and preparation of mail.

At the European level, competition is developing slowly especially end-to-end competition. Some argue that a well-developed upstream market will help new entrants to enter the market (providing a sort of stepping stone). This phenomenon is often called the ladder of investment. Others argue that access could prevent end-to-end competition (making alternatives providers dependant on the incumbent and thus reducing innovation).

Experiences in Germany and UK have shown that there may be a link between end-to-end competition and upstream competition. While it is too soon to draw firm conclusions about any

such link in these or other Member States, as end-to-end competition increases, incumbents may increasingly embrace special tariffs for consolidators on the basis that losing some revenue in the upstream segments is a better alternative than losing the entire volume to an end-to-end competitor.

e) Types of business

We have noticed that mail handlers are mostly active in three key activities:

- mail printing and preparation of direct mail,
- mail printing and preparation of transactional mail,
- consolidation services,

ea) Mail printing and preparation of direct mail

Mail handlers focusing on direct mail carry out the whole production process of a letter, namely printing, enveloping and franking. Before the mail can be printed, it has to be personalised and these letters are commonly printed in sequenced order, franked, and then conditioned in trays and/or containers according to the preparation requirements of the incumbent.

eb) Mail printing and preparation of transactional mail

The printing and preparation of administrative mail requires a more precise, and more complex, treatment. Administrative mail is in most cases of a sensitive nature and neither senders nor receivers want to expose their mail to the risk of being lost in the process of production. Thus, security standards for the handling of administrative mail are generally much higher than for direct mail. Apart from that, production processes for direct mail and administrative mail are very similar. Mail handlers print the mail in sequenced order, so that it can be directly handed over to the incumbent without additional sorting.

ec) Consolidation services

In general, consolidation of mail is possible for both direct and administrative mail. In most cases the price structure of the universal service provider makes it much more attractive to consolidate direct mail, as higher discounts are granted. Also consolidation of small volumes of senders has been common practice by mail handlers in most countries as this avoided the incumbent having to deal with all these transaction costs.

ed) Other activities of mailing houses

In addition to mail handling services, many mailing houses also provide other services that relate to managing the documents output or marketing of their clients. For example, some mail handlers also provide consulting, printing, document management, etc.

B. Description of different pricing models

This chapter, which briefly illustrates price modifications taking the form of rebates and selective price cuts, is based on case law of the EU courts and the decisional practice of the Commission considering the Guidance Paper setting the enforcement priorities of the Commission regarding Article 102 TFEU.

In general each rebate scheme intrinsically entails an element of price discrimination because clients receiving the advantages from rebates pay for the purchase and/or usage of specific services at a lower price than other customers demanding similar services. Such discounts do not automatically violate competition rules and are acceptable as long as they are not discriminatory and do not unfold exclusionary effects impacting the foreclosure of competition.

The following discount schemes are separately discussed even though the rebates for work-sharing and volumes are commonly offered in combination. In general, the volume-based rebates illustrated under section b) are conditioned to specific contractually defined mail preparation. In order to obtain a volume-discount bulk mailers as well as other postal operators have to perform specific mail processing activities. Accordingly, volume-based discount schemes are closely linked with elements attributed to worksharing tariffs. However, for an analytical assessment it is more useful to describe and assess the characteristics of the different price scheme models.

1. Worksharing discounts

The worksharing discounts charged by postal operators can be classified as a price scheme which rewards the cost savings resulting from the preparatory work done by the bulk mailer or other competitor. A typical case is where the customer does a part of the total service, such as collection and sorting activities. For calculating the worksharing discounts the incumbent generally applies the concept of avoided costs generally using a bottom-up model based on the concept of long run incremental cost standard (LRIC) or a top-down approach (retail-minus approach).

a) LRIC model

The LRIC model refers to the incremental costs incurred in the long run which are related to the provision of access and which would be incurred by an incumbent using the most efficient current technology to provide such access. Such a bottom-up model might increase the potential for promoting competition by new entrants in the downstream market. Under LRIC the incumbent receives no compensation for the profits which might be lost if new entrants use its postal facilities to take away some of its customers. It will have high incentives to engage in exclusionary conduct to drive downstream competitors out of the market. Hence the risks that the incumbent will engage in exclusionary behaviour are significant.

b) Retail-minus-model

Under the retail-minus-approach the discounts are based on the prices which the incumbent charges for provided end-user-services subtracting the avoiding costs for parts of the mail processing activities such as the sorting of the letters which will be carried out by clients. A

retail-minus approach which implicitly creates a link between the end-user-price and the rate for the partial service reduces the risk of a price-squeeze as the incumbent charges worksharing tariffs that undercut the end-user prices. However, in the absence of retail price regulation it is not able to bring down excessive wholesale prices to a cost-oriented level. As the wholesale price is calculated as the retail price minus the costs of the incumbent, an excessive retail price will automatically be translated into an excessive wholesale price.

Deutsche Post AG implemented a hybrid pricing model based on a volume discount scheme conditioned to the fulfilment of specific operational requirements such as presortation, franking, numbering a.s.o. and depending on the location for access such as inward sorting or outward sorting (BZA /BZE). In so far as the applied price scheme can be classified as a combined volume-based price model incorporating elements of a work-sharing price model. The models are applied within the segment for transactional mail as well for the direct mail.

2. Quantity rebates

Rebate schemes based on quantities and volumes are commonly proposed features granted by the incumbent to bulk mailers taking into account the mailers` need and willingness to pay for postal services. The rationale behind this scheme and the economic justification is that the economies of scale in the delivery processes resulting from larger volumes shall be passed on to the sender. If the sender delivers higher mail volumes this would improve the utilization of the letter infrastructure and, consequently, reduce the production costs of the operators. With liberalization some incumbents abandon the previously cost-based pricing policies and develop - under pressure from alternative postal operators - demand-based pricing policies.

Depending on the characteristics of the bulk mail and considering the mailers` demand and the substitution risk potential with other media incumbents propose different rebate schemes according to the market specificities and the marginal willingness to pay. Based on the different willingness of clients to pay Deutsche Post applies a rebate scheme for direct and transactional mail.

Bulk mailers have been granted rebates compared to the regular price by defining volume thresholds required for access to bulk mail services. In order to meet the contractual requirements to obtain the volume rebates in question, clients had to deliver a minimum number of letter post items.

Some price innovations of incumbents relate to the threshold for the required minimum volumes. Some incumbents have designed new dedicated products for small and medium sized enterprises notably by lowering the threshold to bulk mail services. Labelled as CleanMail Royal Mail proposed an unsorted mail service available from 250 mail items, granting a maximum discount based on address accuracy and machine-readability.

Quantity based rebates can take many forms based on market segmentation with different discounts for direct and transactional mails, but it must be ensured that there is a link between the extent of economies of scale and the discount scheme. As long as the quantity rebates are cost-oriented and reflect the cost savings achieved and the discount will be granted to all customers in the same way, the price scheme has no negative effect on competition. However, there is no link between the price-scheme and costs, this discount scheme will be viewed an abusive pricing policy with pull effect on bulk mailers.

Nevertheless such price schemes contain an element of (secondary) discrimination with potentially distorting effects on the demand side. They are usually considered acceptable if they are applied equally to all customers without containing hidden fidelity elements. While the discounts are predominantly designed to gain and retain large mailers by passing on economies of scale there is the further aspect of strengthening the incumbent`s dominant position thus leaving little room for new entrants.

Secondly there is the problem that the economy advantage of a discount might disappear if it is granted to large mailers and consolidators alike. The discount, however, could collide with the principle of non-discrimination if incumbents use a "per sender" model that calculates the level of discounts on the basis of the volume of mails posted by each sender, irrespective of whether the latter has used the service of a consolidator (who bundles together mails from several originators) to avoid that consolidators benefit from bigger volume discounts or certain operational discounts such as drop size discounts.

When assessing quantity rebate schemes and its implications on competition it is crucial to differentiate between incremental and retroactive rebates. A retroactive rebate applies to all purchases below and above the threshold once a fixed level is exceeded. In this case the rebates are based and calculated on all mail volumes starting with the first mail unit. In contrast an incremental rebate is a conditional rebate that is available only to the incremental purchases above the threshold set by the dominant seller. Incremental rebates are subject to a modified predation test[17]. As long as the effective price remains above the LRAIC of the dominant undertaking this would normally allow an efficient competitor to compete profitably notwithstanding the rebate. In the second case (retroactive rebates) the pull effect is higher than in the first case. The closer the customer comes to the threshold the greater is the incentive to purchase additional products and the smaller is the motivation to purchase from the competitor. Once the threshold is passed the rebate is calculated on the entire volume. This has the same effect as the purchases above the threshold beingf free: The rebate triggered by exceeding the threshold may equal or even be worth more than the costs of purchasing additional volumes needed to pass the threshold. Such an incentive leaves little room for small competitors.

With the emergence of competition and as a result of a sophisticated market segmentation postal operators offered special tariffs for unsorted SME´s mail volumes. Due to the high price sensitivity of SMEs this specific demand segment is very attractive to new entrants and the incumbents developed innovative price models with purely volume discounts without any requirements in relation to presorting. According to the General Terms and Tariffs of Deutsche Post AG the contracts for partial services BZA/ BZE require specific mail-preparations but an affiliate of Deutsche Post AG specialized in printing and mail processing services for the business segment offers large range of printing and mail optimizing activities and takes over the preparatory work for SMEs. This contractual construction allows the incumbent to attract the price sensitive demand segment primarily targeted by alternative postal operators.

3. Turnover-related rebates

Turnover-related rebates can be classified as those discounts which are conditioned to the achievement of a specific target with the dominant undertaking. These discounts are related to

[17] The predation test establishes that, where the prices charged by a dominant company are below average variable costs, there will be a presumption that such prices are predatory. On the other hand, where the prices charged are above average variable costs but below average total costs, it will be necessary to prove that the prices are part of a plan to eliminate a competitor (cfr. AKZO, Tetra Pak)

the turnover granted on the basis of the turnover either for a single specific product or for the entire turnover for all products of the dominant undertaking.

For obtaining such a discount the client is contractually required to realize a defined amount of revenue (which is specified in advance) within a certain period. Bulk mailers purchasing all products or services from the incumbent achieve a higher total rebate compared to buying a single product. Such rebates tend to have a strong pull effect on the business partners of the dominant undertaking. As the customer qualifies for the discounts after the achievement of an ex-ante specified threshold this induces an incentive for customers to expand their demand above the threshold and to extent purchase products for which they have no preference or no need or which they would buy from other companies. Conversely the motivation for the client to purchase products or use services from other competitors is very low until the targeted value is achieved. Depending on the pre-defined targets the pull effect on large clients and the resulting exclusionary impacts on competition would be significant. A pricing strategy based on fidelity could lead to a complete exclusion of competition. As a consequence the incumbent is able to fortify the dominant position and leverage its market-dominant position into other competitive segments. By such tying the clients to the dominant undertaking competitors can successfully kept out of the relevant market.

4. Fidelity rebates

Typically this type of rebate focuses on the customers` entire demand of product or service and not on a predefined volume. Customers receive a rebate only if they cover their total (or a high share of their total) need with the seller. This has an anti-competitive effect as the rebate ties the customer to the granting company. Furthermore this kind of rebate can have a discriminatory effect. Customers with different needs get the same rebate even though their different volumes cause different economies of scale.

5. Zonal pricing

There are two pricing structures for access in the UK: the national access pricing structure and the zonal access pricing structure.

The national access pricing structure has geographically uniform tariffs. Broadly speaking, customers using the national access pricing structure must ensure that their daily postings are reflective of the geographical mix of Royal Mail's delivered volumes in the UK. This ensures that there is not a disproportionate amount of mail that is for delivery in higher (than average) cost areas.

Zonal pricing was introduced as an alternative pricing structure for access in October 2004. This was introduced to allow access customers to be able to benefit from access without a national posting profile with prices that are reflective of their specific regional posting profile.

Under the zonal access pricing structure, the price of sending an item of mail is dependent on the destination of the item and its zonal classification. Each postcode sector in the UK is allocated to one of four price zones based on the cost of serving that area. The zones are Urban (A), Suburban (B), Rural (C) and London (D).

Ofcom requires Royal Mail to set the terms and conditions of access on a "fair and reasonable" basis. Ofcom has provided an indication of the issues that it might have regard to when

considering whether the terms for zonal access are fair and reasonable. These are that, Royal Mail should:

- take into account the alignment of zonal prices with Royal Mail's costs. Furthermore, in moving geographic areas (e.g. postcode sectors, postcode areas) between zones, Royal Mail should take into account the alignment of prices and costs. Zonal costs should be derived in accordance with Royal Mail's Regulatory Financial Reporting obligations.
- seek to ensure that the weighted average of zonal access prices is broadly comparable to the national access price.
- take into account the frequency of implementing changes to the terms of zonal access (including moving geographic areas between zones and revising the zonal structure) as well as the transactional costs for access users (and customers) of implementing the changes. Regard should be given to minimising such transactional costs for access users.

C. Role of NRA - Resolution, market monitoring, establishing a framework for access, transparency

1. Access dispute resolution

Where third party access is based on negotiation, the ideal solution is a mutually beneficial and commercially viable agreement between the owner of the postal network and the parties seeking access. Where this is not possible, then a possible solution could come from the ability of the NRA to settle disputes when called upon. This could be necessary if, for example, the incumbent is reluctant to offer access and stalls negotiations or if the party seeking access is requesting access to a point of the network which would introduce inefficiencies or inappropriate additional costs.

Ideally, dispute resolution should be a consensual process where the NRA, or other empowered body, consults the parties to the dispute on the nature of the dispute and its key issues. By gathering and assessing evidence, the NRA should then be able to make a decision in both parties' best interests and propose and enforce, if necessary, a mutually beneficial solution.

In our questionnaire, we asked about the provisions for dispute resolution by NRAs in EU member states and have used the responses to outline the general characteristics of dispute resolution procedures in member states. This has then been used to inform a series of desirable criteria to consider when establishing a dispute resolution procedure.

A large number of countries already have dispute resolution practices in place that can be used to resolve access related disputes. Noting that there was some confusion concerning the wording used in the questionnaire (ex post and ex ante used to refer, respectively, to prior to the agreement and to the case of abusive behaviour), the regulator may have the potential to intervene before or only after conclusion of the contract (see table below).

Table 5: Access related dispute resolution by the regulatory in the EU member states

Country	**Possibility for the regulator to intervene in the absence of a successful agreement between the access desiring undertaking and the incumbent (this was termed 'ex ante' in the questionnaire) or only if there is abusive behaviour by the incumbent (this was termed 'ex-post') or both or neither.**
Austria[18]	
Belgium	Pre-agreement
Bulgaria	Pre-agreement
Croatia	Abusive behaviour
Cyprus	
Czech Republic	
Estonia	Pre-agreement
FYROM	Pre-agreement
Finland	Abusive behaviour
France	Both
Germany	Abusive behaviour
Greece	Both
Hungary	Abusive behaviour
Ireland	Pre-agreement
Latvia	Pre-agreement
Lithuania	Abusive behaviour
Luxemburg	
Malta	Pre-agreement
Netherland	Both
Norway	Abusive behaviour
Poland	
Portugal	Pre-agreement
Romania	
Slovakia	
Slovenia	Abusive behaviour
Spain	Pre-agreement
Sweden	
Switzerland	
United Kingdom	Both

[18] Österreichische Post AG stated the regulator can intervene when it concerns postal services provided for in law

General characteristics

In the questionnaire, we asked about the provisions for dispute resolution procedures in the member states. We asked if the regulator has the power to intervene in the absence of a successful agreement (termed ex-ante) or only if there is abusive behaviour by the incumbent following the agreement (termed ex-post). In most cases, NRAs are able to become involved in some capacity in the absence of a successful agreement. Where abusive behaviour following the agreement occurs, this is handled only by those NRAs with powers concurrent with the competition authority in that country. NRAs without concurrent powers are nevertheless able to refer cases to the relevant competition authority.

For those NRAs who are able to intervene pre-agreement, failed negotiations between the two parties are required before a dispute resolution procedure can begin. In some cases, negotiations can only be considered to have failed after a specific amount of time since the beginning of the discussions between the two parties has elapsed.

Time restrictions are likely to be beneficial as they are able to give certainty and stability to the market. The appropriate balance of time should be considered. If the negotiations can be considered to have failed too early in the process, this could result in unnecessary cases being brought to the NRA. If the time period is too long, then it could be a hindrance.

The duration of the dispute resolution period is limited in some member states, although the actual period of time allotted for the process is varied, ranging from a period of 30 days to 25 weeks.

When deciding on a specific time limit for a dispute resolution procedure, it will be important to ensure that there is sufficient time for the NRA to gather and analyse evidence to come a measured and informed conclusion. A defined period of time can give certainty to the participants and make sure that any decisions would still be relevant to address the dispute. However, in more complex cases, being restricted to a certain period of time could prevent the issues from being properly defined, addressed and resolved.

Table 6 outlines the responses from the questionnaire relating to time limits for dispute resolution procedures in member states.

Table 6: Time restrictions on dispute resolution procedures in member states

Country	Time restrictions on dispute resolution procedures
Austria	
Belgium	The NRA has 60 days to make a decision after hearing the views of both parties.
Bulgaria	Not earlier than two months and no later than three months from the date the access seeking party requests the conclusion of the contract. The NRA then has two months from the date of the complaint to make a decision.
Croatia	The dispute resolution procedure is limited to 60 days.
Cyprus	
Czech Republic	
Estonia	No restrictions
FYROM	The dispute resolution procedure is limited to 42 days
Finland	The dispute resolution procedure is limited to four months.
France	The NRA has 4 months to make a decision after hearing the views of both parties.
Germany	There must be three months of failed negotiations before the case can be referred to the NRA The NRA then has 2 months from the date of the complaint to make a decision
Greece	No restrictions
Hungary	The NRA has 30 days to make a decision
Ireland	No restrictions
Latvia	
Lithuania	The NRA has four months to make a decision
Luxemburg	The dispute resolution procedure is limited to 4 months
Malta	The NRA has 4 months from the date of the complaint to make a decision
Netherlands	The NRA has 17 to 25 weeks to make a decision
Norway	
Poland	
Portugal	The NRA has four months maximum from the date of the request to make a decision
Romania	
Slovakia	
Slovenia	The dispute resolution procedure is limited to four months
Spain	There must be two months of failed negotiations before the case can be refrerred to the NRA The NRA has 20-40 days to make a decision after hearing the views of both parties
Sweden	
Switzerland	
United Kingdom	A decision must be made “as soon as reasonably practicable”

In most dispute resolution provisions outlined in responses to the questionnaire, either party that is involved in the negotiations is able to approach the NRA to start the procedure. In Bulgaria and Slovenia, however, only the party seeking access is permitted to approach the NRA. The responses to the questionnaire are outlined Table 7.

Table 7: Can either party to the negotiations ask the NRA's involvement?

Country	**Can either party involved ask the regulatory body if an agreement cannot be reached?**
Austria	Yes
Belgium	Yes
Bulgaria	Only the party seeking access
Croatia	Yes
Cyprus	
Czech Republic	
Estonia	Yes
FYROM	Yes
Finland	Yes
France	Yes
Germany	Yes
Greece	Yes
Hungary	Yes
Ireland	Yes
Latvia	
Lithuania	Yes
Luxemburg	Yes
Malta	Yes
Netherlands	Yes
Norway	
Poland	
Portugal	Yes
Romania	
Slovakia	
Slovenia	Only the party seeking access
Spain	Yes
Sweden	
Switzerland	
United Kingdom	Yes

NRAs in each of the member states have varying roles in dispute resolution, ranging from conciliation and/or mediation between the two parties to the ability of the NRA to issue binding decisions on a range of conditions.

Table 8: Competences of the NRA in dispute resolution in member states

Country	Impose penalties	Issue a decision or direction (including obligation to conclude a contract)	Mediation/ conciliation
Austria			
Belgium			
Bulgaria			
Croatia			
Cyprus			
Czech Republic			
Estonia			
FYROM			
Finland			
France[19]			
Germany			
Greece			
Hungary			
Ireland			
Latvia			
Lithuania			
Luxemburg			
Malta			
Netherlands			
Norway			
Poland			
Portugal			
Romania			
Slovakia			
Slovenia			
Spain			
Sweden			
Switzerland			
United Kingdom			

[19] Note: Where special tariffs are granted in France, they must be provided according to objective and non-discriminatory criteria. Disagreements relating to discrimination and non-objectivity in contracts for special tariffs can be referred to the NRA, who can then conclude or execute the contract. Conciliation by the regulator can be requested by the parties to the contract, but not relating to allegations of discrimination or on-objectivity.

Table 9: Conditions on which NRAs are able to make a ruling

Where the NRA can issue a decision, which conditions can it make a ruling on?[20]	
Technical requirements to be fulfilled by the accessor	**Estonia, FYROM, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, UK**
Point of access	**Estonia, FYROM, Germany, Hungary, Ireland, Latvia, Luxembourg, Portugal, Slovenia, UK**
Timing of access	**Estonia, Germany, Hungary, Ireland, Latvia, Luxembourg, Portugal, Slovenia, Spain, UK**
Presorting	**Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Spain, UK**
Machine readability	**Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Spain, UK**
Volumes	**Estonia, FYROM, Germany, Hungary, Ireland, Latvia, Luxembourg, Portugal, Slovenia, Spain, UK**
Numbering of items	**Estonia, Germany, Hungary, Ireland, Latvia, Luxembourg, Portugal, Slovenia, Spain, UK**
Use of indicia	**Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, UK**
Use of consumables	**Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Spain, UK**
Technical billing procedures	**Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Spain, UK**
Definition and limitation of liability and indemnity	**Estonia, FYROM, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Spain, UK**
Duration and renegotiation	**Estonia, FYROM, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Spain, UK**
Quality issues and measurement / service level agreements	**Estonia, Finland, FYROM, Germany, Hungary, Ireland, Latvia, Luxembourg, Portugal, Slovenia, Spain, UK**
Tariffs	**Belgium, Estonia, Finland, FYROM, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Portugal, Slovenia, Spain, UK**
Any other conditions	**Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Spain, UK**

[20] Netherlands: In case of a dispute between postal service providers OPTA can issue rulings on the conditions and terms of access depending on the case brought forward by parties to the dispute.

2. Dispute resolution in the UK

Ofcom's duties and powers in resolving regulatory disputes are set out in Schedule 3, Part 2 of the Postal Services Act 2011 ('the Act'). Under Schedule 3 of the Act, Ofcom has powers to resolve access disputes where an access condition has been imposed.

In March 2012, Ofcom decided to impose a USP access condition that requires Royal Mail to offer access at the Inward Mail Centre for the provision of D+2 and later than D+2 Letters and Large Letters services. The condition came into effect on 1 April 2012. Accordingly, Ofcom has the power to resolve disputes which relate to access required by virtue of the USP access condition, and any future access conditions that Ofcom imposes.

Ofcom has considerable experience of resolving disputes in the telecommunications sector and has published dispute resolution guidelines21 (the 'Guidelines') which set out how Ofcom handles disputes in that sector.

Ofcom intends to apply its Guidelines to postal disputes, subject to recognising any appropriate differences such as where the Communications Act 2003 imposes different legal requirements to the Postal Services Act 2011. Ofcom has published a supplementary document22 that sets out where Ofcom's application of the Guidelines may differ in relation to postal services.

Transparency

Next to the non-discrimination principle, transparency is one of the pillars of a competitive postal market.

This is expressed in the notice from the Commission on the application of competition rules to the postal sector and on the assessment of certain State measures relating to postal services, stating that *"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 (…) 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."*

Transparency is vital for:

- the NRA: in order to monitor whether all tariff obligations are fulfilled (affordability, cost orientation, non-discrimination and provisions regarding special tariff);
- the customers (direct clients and intermediaries) of the universal service provider: full transparency is necessary to inform them of the conditions of their contract before signing. It enables them to compare different contracts and to draw up the budget taking into account the financial implications of the contract. Transparency is particularly important for intermediaries for whom access to the network is an essential part of their cost structure.

[21] Dispute Resolution Guidelines, published on 7 June 2011: http://stakeholders.ofcom.org.uk/binaries/consultations/dispute-resolution-guidelines/statement/guidelines.pdf
[22] Dispute Resolution for postal disputes, published April 2012: http://stakeholders.ofcom.org.uk/binaries/enforcement/complaints-disputes/Dispute_resolution_april2012.pdf

The strict application of transparency, in the light of full competition, is essential to facilitate the free provision of postal services in the internal market and to prevent distortion of competition between operators.

The questionnaire send to the Member States by the ERGP Access Group shows that most Member States still have a long way to go regarding transparency.

To the question if the incumbent / the designated universal service provider is obliged to make known to the general public the general terms & conditions, different visions came forward:

- terms & conditions are communicated to everyone. This can be done by a publication in an official document (Belgium, “Catalogue” of French la Poste), on the web page of the USP and/or in postal offices (Austria, Bulgaria, Croatia, Estonia, Finland, Greece, Hungary, Norway, Romania, Slovenia for tariffs regarding bulk mailers end mailing houses). In the Netherlands it is up the USP to determine how terms and conditions are communicated. In Portugal the terms and conditions applicable by the USP to services in the scope of the universal service, including those offered for businesses, bulk mailers or consolidators of mail from different users, shall be published in an appropriate manner, namely on the USP’s website (this obligation does not apply to the access conditions to the USP network, but the NRA has since April 2012 competences to impose this obligation). In Spain, terms and conditions for licensed operators seeking access are on the USP’s website.
- others consider this to be only applicable in a context of access negotiations to bulk mailers/consolidators - part of the contract (Hungary, Ireland, Lithuania, Luxemburg, UK wholesale web site of RM).
- in some member states there is no publication: Germany, Latvia, Lithuania and Switzerland.

Regarding the different net tariffs, in many countries such net tariffs are not made public (Bulgaria, Germany, Latvia, Lithuania, Macedonia, The Netherlands, Norway, Portugal and Switzerland). In Croatia, Portugal[23], Bulgaria and Romania, the net tariffs are published (legal obligation). There is also publication in Estonia, Finland and Greece. In the UK, Ofcom is competent to intervene regarding this. In Belgium there is no detailed legal obligation, but the BIPT decided how to fulfil the principle (o.a. precise information on general structure of special tariffs, technical characteristics, modalities etc.). In France, the base offers are made public in the catalogue but La Poste can negotiate other agreements taking into account the principles of non-discrimination and transparency.

Operational discounts are not published in Germany, Latvia, Lithuania and Switzerland. As a part of the general terms & conditions, publication of the operational discounts in Belgium, The Netherlands, Norway and Romania. In the UK publication of the standard terms is an access condition. Legal obligation to publish in Croatia, Greece, Hungary, Portugal[24] and Estonia. In France, basic offer are contained in the “catalogue”, but again La Poste can negotiate other agreements taking into account the principles of non-discrimination and transparency. Decision of the NRA in Macedonia.

[23] In Portugal the publication is made for the tariffs (before discounts) and for the corresponding discounts.This publication refers to the terms and conditions applicable by the USP to services in the scope of the universal service, including those applicable for services within the universal service offered for businesses, bulk mailers or consolidators of mail from different users. This obligation does not apply to the access conditions to the USP network, but the NRA has since April 2012 competences to impose this obligation

[24] Please refer to previous footnote

Commercial discounts (not based on avoided costs) are not published in most countries (Croatia, Finland, France (but publication of opinions of NRA), Germany, Hungary, Latvia, Lithuania, Macedonia, Norway and Switzerland. In Belgium, publication is based on a decision of the regulator. In the UK, Ofcom is competent to impose this requirement. In the Netherlands the publication of the commercial discounts are considered as part of the General Terms & conditions. The commercial discounts are published in Estonia, Greece, Hungary and Portugal[25] but the obligation in Hungary is limited to the tariffs based on annual paid postage.

The obligations of other operators than the universal service provider to make known to the general public the general terms & conditions, the different net tariffs, the operational discounts and the eventual commercial discounts are poorly documented. Participants to the questionnaire gave limited information regarding transparency obligations of other operators. If there is an obligation, it is theoretical.

[25] Please refer to previous footnote

Part 3: Current practices on technical, operational and price aspects of access to the elements listed in Art. 11a Directive 2008/6/EC

A. Requirements for regulatory intervention in regard of Art 11a EC Directive 2008/6/EC

Regarding access to the elements of postal infrastructure or services listed in Art 11 a EC Directive it shall be questioned under what requirements postal service providers are obliged to grant access to these.

Art. 11a EC Directive stipulates that Member states shall ensure (transparent and non-discriminatory) access conditions to the infrastructure elements or services – the enumeration in Art. 11 a EC Directive is not exclusive –

- whenever necessary to protect the interests of users and/or
- whenever necessary to promote effective competition.
- The elements of postal infrastructure/services have to be provided within the scope of the universal service.
- National conditions and legislation have to be taken into consideration.

Primarily Art. 11a EC Directive contains the obligation of member states to assess and if necessary to establish mandatory access to infrastructure elements or services.

Addressed Member States can choose between three options:

Unconditioned obligation to grant access to all enumerated infrastructure elements and services. Regarding Art. 11a EC Directive second sentence which allows an extensive interpretation the obligation has not to fulfil the requirements of sentence 1. (The provision of access shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.) This wide scope therefore is doubtless in line with the EC Directive.

Alternatively the legislator has the option to limit the scope of access to specific infrastructure elements and services. This requires an assessment whether and to which extend the requirements of Art. 11 a EC Directive are met. Only in this case the legislator is obliged to stipulate access.

The transposition of the requirements of Art. 11a EC Directive in the national postal act is the third option. It would be the task of the NRA or national competition authority to assess on request of an access seeking operator whether the requirements for an access obligation were fulfilled.

If an assessment of Art.11a EC Directive is essential the requirements of the rule have to be examined in particular.

First it has to be noted that the elements of postal infrastructure/services have solely to be provided within the scope of the universal service.

The other 3 requirements demand an interpretation as they are so called undefined legal terms. It is a question of each particular case if access is **necessary** to protect the interests of users and/or to promote effective competition. Necessity for sure is a stronger term than usefulness. In this context national conditions and legislation have to be taken into consideration.

Apart from the obligation of transposing the regulation into national legislation Art. 11a EC Directive could constitute a direct claim for access to the postal infrastructure elements or service. The possibilities to enforce this claim – based on the national postal act and its tools or on national competition law – might vary to such an extent that a thoroughly in-depths assessment cannot be performed in this report.

B. Access to Elements of Postal Infrastructure or services listed in Art. 11a Directive 2008/6/EC – examples of current practices in Member States:

Summary

Overall, there is currently no widespread detailed regulation of access to elements of postal infrastructure in Member States. Instead postal laws tend to establish the principles on which access is to be granted while leaving the detailed arrangements to discussion and negotiation between the parties with a disputes resolution procedure in the event of disagreement. In specific instances, such as the issues in France and Austria relating to access to delivery boxes, where problems were experienced by alternative operators trying to provide a mail delivery service, regulatory intervention occurred to correct the situation but that is the exception rather than the rule. Similarly, for redirection services in Malta, a more specific requirement was given to the incumbent following a consultation. For the postcode file, the UK has developed arrangements which while falling short of detailed regulation, established an independently-chaired advisory board to offer detailed advice to Royal Mail in how it fulfils its regulatory obligations and meets the needs of its customers.

1. Postcode system and address database (UK, Netherlands, Malta and Austria)

Introduction

The postcode system is an efficient means of routing mail and ensuring that new addresses are created and introduced into the system so that the area and location of every address is recorded in one database.

Principles

Access to the postcode system is generally required with the NRA able to adjudicate any disputes but in general there appear to have been few disputes with other operators able to access this data.

Potential problems

As each address has a postcode which it shares with other addresses, this information is needed to help locate an address where not all the data for the address is provided. Therefore it is important for all delivery operators to be able to look up an address through consulting a publicly available postcode database to determine the location of a given address.

Legal provisions

We have two groups of countries:
1. Access to the elements specifically mentioned in national law and
2. Access to the elements granted by general competition law

The first group of countries comprises: Austria, Croatia, Estonia, Finland, France, Hungary Ireland*, Lithuania, Luxembourg**, Macedonia, the Netherlands, Portugal, Slovenia, Sweden and UK.

The second group comprises Malta.

*currently no postcode system exists in Ireland but this is due to change
**data is required to be publicly available

a) Case study on the UK

Introduction

In the UK, 'PAF' is Royal Mail's Postcode Address File, a database containing every (postcode) address that can receive mail in the UK (c.28 million records). The file is currently integral to providing postal services (to ensure that mail is sorted and delivered quickly and accurately) but also supports business functions as well as the delivery of a range of non-postal services across the UK's public and private sectors – for example, enabling insurance companies to profile risks and to assist with the development of satellite navigation applications).

Royal Mail currently owns the PAF file. Royal Mail allocates postcodes for new properties based on the address information (street name and number) it receives from local authorities. Royal Mail also updates the file to reflect those addresses which are 'live' for receiving mail – primarily using information which is fed back from postmen/women as part of their delivery rounds[1]. As well as using the data operationally, Royal Mail makes PAF available – directly and indirectly (via service providers) - to other organisations who pay license fees in return.

Regulator's legal powers on PAF

Under section 116 of the Postal Services Act 2000 (the "2000 PSA"):

- Royal Mail must maintain PAF and make it available to any person wishing to use it on reasonable terms;

[1]The main PAF file includes business names.

- The regulator can issue a direction to Royal Mail regarding the terms that may be imposed on those wishing to use PAF;
- The regulator may give a direction to Royal Mail requiring it to issue and comply with a Code of Practice dealing with the making of revisions to PAF;
- The regulator can require Royal Mail to make modifications to that Code of Practice.

In effect the regulator has the power to define what are "reasonable" terms (including price) on which Royal Mail must provide access to PAF.

The current regulatory framework for PAF – set in place by Postcomm

Under the Postal Services Act 2011 (the Act) Ofcom took over responsibility for regulating the postal sector from Postcomm on 1 October 2011. Postcomm conducted previous reviews of PAF in 2007 and a "light" review in 2010/11. Postcomm's 2007 review defined PAF and set in place a 'co-operative' regulatory approach including:

- Creating the independently chaired PAF Advisory Board [PAB] to represent users and influence Royal Mail's behaviour on operational issues;
- Ring-fencing PAF into a distinct 'Address Management Unit' within Royal Mail
- Setting a target profit margin on PAF of 8-10% above operating costs.

Postcomm's 2010/11 'light' review:

- Broadly retained the approach from 2007 including the target profit range – but added that any over achievement of the profit target should be considered cumulatively over 3 years and linked to a three year cycle of agreed investment and/or agreed return of "excess" profits to customers;
- Suggested PAB consider ways in which Royal Mail could improve the efficiency and effectiveness of updating PAF data; and
- Postcomm also intended to review the costs and revenues allocated to the core (and non-core) PAF activities by Royal Mail – but this did not occur due to Postcomm's abolition.

Ofcom's review of PAF over 2012/13

Following a request from the UK Government, Ofcom is taking forward a broad review of PAF and will first consider:

- the data sources that Royal Mail utilise in creating PAF and any data integrity issues associated with these sources;
- how Royal Mail accounts for the costs of creating, maintaining and supplying PAF;
- how PAF is used by its many different users and what substitutes might exist; and
- the current pricing and licensing arrangements and how these affect different groups of users.

Ofcom will then consider how PAF could change and develop, including the following questions:

- Could PAF be maintained and provided more efficiently without comprising quality?
- Could the licensing framework be simplified and would this increase usage?
- Would changing any non-price terms remove barriers to accessing PAF data?
- Is the current profit range arrangement the most appropriate economic approach to regulating PAF and what other potential regulatory options might be considered.

b) Experiences in other countries

Austria

In **Austria**, as in the UK, the USP has the legal obligation to provide access to its address file on non-discriminatory terms. However, in Austria, there is in addition the commitment in the postal law to regulatory intervention if access is not provided by mutual agreement with the operators concerned within a three month period of a "well founded request" for access including cost-orientated reimbursement.

Netherlands

In the **Netherlands**, the Postal Act establishes that any party operating or managing a postcode system has to provide access following negotiations between these parties and other operators requiring access subject to the requirement for the final tariffs to be cost-reflective. Article 58 of the same Act provides for a dispute resolution procedure on this and other elements of postal infrastructure access. To date, there have been no requests for a dispute settlement.

Malta

In **Malta**, the Malta Communications Authority (MCA) – following a consultation - issued a decision notice on 1 December 2009 entitled: "Postal Sector – Managing Common Operational Issues in a Multi-Operator Environment". This document, which was designed to minimise postal operator and consumer confusion in a multi-operator environment, included formalising Malta Post's role as the body responsible for the provision and administration of a nation-wide postcode system with obligations on minimum standards and criteria for access.

The decision maintained the MCA's position that it was not deemed efficient or effective to have more than one operator managing a nation-wide postcode system and that in a liberalised environment access to postcode information might be required by other postal operators to deliver postal services effectively. The MCA settled on a definition and recognised Malta post as the custodian and originator of a nation-wide postcode system who must offer to share the use of the postcode information with other postal operators on "just, reasonable and non-discriminatory terms".

Accordingly the MCA decision in respect of the postcode system included the requirement that: "Malta post must offer to share the use of the postcode information (i.e. the combination of addresses and postcodes) with other licensed postal operators at prices, terms and conditions that are reasonable, objective, justifiable, transparent and non-discriminatory".

2. Access to delivery boxes in blocks of flats (France and Austria)

Introduction

Delivery boxes when outside the home or when replaced by the normal letter box are normally accessible to all deliverers of mail. However, access to boxes of flats can be more problematic

depending on who owns the boxes and/or controls the access and the regulation in each Member State.

Principles

Access to delivery boxes is generally required however particular problems have arisen due to national arrangements which have required specific regulatory interventions, as in France.

Potential problems

For an end to end provider it is essential that they have access to delivery boxes to offer a full service to their customers but it may not be in the interests of the incumbent to ensure that this happens.

Legal provisions

The following countries have access to the elements specifically mentioned in national law: Austria, Croatia, France, Ireland, Latvia, Lithuania, Macedonia, Poland and Slovenia

There is one particular situation in Lithuania, where delivery boxes are owned by home-owners and accordingly access cannot be regulated

Country examples:

France

In **France**, Article L.5-10 of the French postal code (CPCE) states that La Poste and authorised operators have access, with the same conditions, to private letter-boxes.

However in respect of authorised operators it was found that some control systems or standards prevented access to private letter boxes by authorised operators, in particular the “VIGIK” key system to which only La Poste used to have access.

In the last twenty years an increasing number of apartment buildings opted for permanent and secure access control to enhance the security of the residents but this occurred at the same time as improved access was needed by a greater variety of service providers not just related to the delivery of mail but also related to delivery of merchandise or other services requiring home visits.

La Poste was equipping more and more such buildings with the “VIGIK” access control system which also became the default system for new blocks of flats.

The VIGIK system is an electronic identification system developed by La Poste for multi-unit buildings (flats or offices) which presents certain barriers to entry to new entrants seeking access to such buildings as granting additional third party access takes time and costs around 50 euro for each building door.

The French NRA, ARCEP, was able to intervene under the conditions in the postal law which related to equal access for postal operators to mail boxes, as well as newspaper and periodical delivery services, under the conditions inscribed in the postal law.

Following a public consultation, ARCEP determined that:

- access to mail boxes was crucial to the development of end to end competition;
- authorised operators need to be referenced into the VIGIK system;
- this facility needed to be extended to newspaper and home delivery operators; and
- no special treatment should be accorded to La Poste due to its position as the owner of the relevant patent for the VIGIK technology

The results of ARCEP's intervention were:

- agreement that the authorised operators would be able to access the system on the same terms as La Poste;
- that access would only be permitted for authorised activities except if residents decided to open their building to unaddressed mail delivery operators; and
- that good practices should be followed by all stakeholders pending and in anticipation of the relevant secondary legislation.

Austria

In **Austria**, Section 34 of the Postal Market Act (PMG) which came into effect on 1 January 2011 regularised the access to delivery boxes and domestic multi-mailbox installations (so called "Hausbrieffachanlagen". It provides that a delivery box has to be constructed in such a way that every postal service provider is able to use it to deliver postal items without difficulty (with the exception of parcels) and that the postal items are suitably protected from access by third parties. In addition, the addressee has to ensure that a suitable delivery box is available. If there is no delivery box available, the addressee will be excluded from delivery.

In buildings with more than four delivery points which are located on more than two floors, the building owner (not the addressee) has to provide each addressee with a suitable delivery box. This has to be in the form of domestic multi-mailbox installation. If the domestic multi-mailbox installation is not installed on the outside of the building, it has to be as close to the building entrance as possible.

It seems from the wording in the postal law that the building owner needs to ensure accessibility of any internal multi-box installations to alternative postal service providers to the Universal Service Provider (Osterreichische Post AG). Domestic multi-mail box installations which do not comply with the requirements above have to be replaced by the Universal Service Provider by the end of 2012 (based on a replacement concept the universal service provider submits to RTR-GmbH. The owners of the buildings in which these domestic multi-mailbox installations are located are obliged to allow the replacement of the domestic multi-mailbox installations free of charge. After replacement (where needed), ownership of these domestic multi-mailbox installations will be transferred to the building owners.

This replaces a situation before the Postal Market Act when Austria Post had sole access via keys to 30% of delivery boxes i.e. those situated in multi-occupancy buildings and is another way where legislation was used as a means of solving the problems that previously existed.

The Universal Service Provider (Österreichische Post AG) exhibited a complaint against the regulation of the replacement of domestic multi-mailbox installations to the Constitutional Court und applied for the abrogation of the paragraphs 8, 9 and 10 of the Section 34 of the Postal Market Act (PMG). The Constitutional Court (Verfassungsgerichtshof) determined in a verdict (VfGH, 16.03.2012. G97/11) that the obligation of the Österreichische Post AG as Universal Service Provider to replace domestic multi-mailbox installations und bear the costs doesn´t violate property right, freedom of trade, occupation and profession and equality right and that

the appealed regulations of the Postal Market Act (PMG) are in public interest, commensurate and factual justifiable.

3. Sharing Redirections data (Sweden, UK and Malta)

Introduction

Redirections data compromises the information provided by consumers or businesses to universal service providers who typically move from one address to another either permanently or temporarily and who require delivery of their mail to a new address.

Principles

Access to information on change of address in EU countries is generally required of universal service providers however in many countries such access is not provided for in national law and has not become necessary yet due to the slow development of end to end competition to date. Particular arrangements are in place in Sweden where the redirections data is held by a separate company.

Potential problems

As end to end competition develops following the ending of legal monopolies below 50 grams (covering most letter mail) which will be completed in all Member States by 1 January 2013, competitors may require access in order to offer a high quality of service to all their customers. A failure to share this data could be an unfair burden on new entrants – for example it might not be reasonable to expect them to replicate a redirections database since customers expect and normally give their permission for such data to be shared for the purposes of ensuring that all their mail gets delivered correctly and on time.

Legal provisions

We have two groups of countries:
1. Access to the elements specifically mentioned in national law and
2. Access to the elements granted by general competition law

The first group of countries comprises: Austria, Croatia, Estonia, France, Lithuania, Luxembourg, Macedonia, Netherlands, Portugal, Slovenia and Sweden.

The second group comprises Latvia and Malta.

Country examples:

Sweden

For almost twenty years, **Sweden** has had a co-operative system to ensure that data on redirections in place is shared between delivery operators to ensure the most efficient delivery of mail to the advantage of all parties. In 1993, the then Sweden Post and City Mail, the largest private end to end competitor specialising in industrial bulk mail, set up a joint private limited company called Svensk Adressandring AB, SvAAB, based on residents registering their

temporary address or permanent address change details with just one notification to this company, which can be done by phone, by mail or online.

SvAAB is owned by Bring CityMail (15%) and Posten (85%). The National Post and Telecom Agency reports that the information obtained by SvAAB is available to all postal operators that sign an agreement with the company with large and small operators updated according to their wishes and a charging system adapted to the extent and frequency of usage. Bring CityMail reports that its experience is that this introduces a neutral function for collecting address changes and that it has put the focus on improving quality and standardisation of postal addresses and that it has improved the efficiency of the postal market substantially.

SvAAB is jointly owned by Posten (formerly Sweden Post) and Bring CityMail (formerly CityMail). Arrangements were made in terms of Board representation and chairmanship to ensure that no operator would be disadvantaged given the preponderance of mail which continues to be delivered by Posten.

Since SvAAB is not a postal operator, PTS has no legal authority over SvAAB and can thus not request any information concerning internal management or operations.

Nevertheless PTS has recurrent contacts with SvAAB due to its important role on the postal market and quality issues are frequently discussed. Although PTS sometimes receives complaints about redirection of mail, SvAAB appears to play a crucial role in the postal market and to provide valuable services at a good level of quality to its customers.

While the above caveat that the NRA does not intervene in its internal organisation applies, the main principle governing the operations of SvAAB is that the rates it charges are cost based with no profit-making objective for the owners, i.e. Sweden Post and Bring Citymail. The rates appear to be volume based with any surplus returned to postal operators.

PTS has no knowledge of any disputes between the contracting operators but inevitably the redirection services may sometimes go wrong, causing dissatisfaction among customers. For this reason, SvAAB has put in place a customer service department in order to deal with complaints. When mistakes occur, it is usually at delivery offices where the physical redirection operations are carried out. If the complaint is considered justified, the fee will be reimbursed, wholly or partially. However, SvAAB does not appear to compensate customers for any other costs or losses.

Whenever redirections go wrong, the contracting operators shall pay a fee to SvAAB which serves as an incentive for the postal operators continuously to improve their quality of service. Over the years since it was set up, SvAAB itself has widened its scope of services and improved security procedures as well as investing in new IT-solutions.

UK

In the **UK,** the then regulator, Postcomm, consulted twice (in 2006 and 2007) on proposals for sharing redirections data but the need for such information was not at the time seen as an urgent priority for other licensed operators given that competition mainly developed through access to Royal Mail rather than through end to end services. Royal Mail then set up its own paid for service which is available to any operator to deal with any potential future need.

The experiences in **Sweden** and the **UK** point to a market-led solution for the provision of redirections data with regulatory intervention kept in reserve. It is possible that only more extensive end to end competition may lead to requests for access in the other Member States.

Malta

In **Malta**, a different approach was adopted. The MCA initially proposed that all postal operators offering mail redirection services must make available at no cost (as they would be already recovering their costs from their customers) to other licensed operators offering mail redirection, information on the redirected addresses of its customers on request, provided that the necessary customer consent had been given. However, in order to share the redirection information postal operators would have to provide a redirection service for all mail (except for mail exempt from redirection under the legislation). Customers would also have had to be informed of the limitations of the service.

However, in light of consultation responses, the MCA recognised that a system whereby a customer could register for a redirection service with any postal operator offering a redirection service could increase complexity and lead to the creation of different databases containing mail redirection information potentially compromising mail integrity and security.

Accordingly the MCA modified its proposal so that it applied only to Malta post, as the USP obliged to provide a redirection service, who would then be the only postal operator responsible for sharing redirection information with other operators.

The MCA established the obligation for Malta post to make it known to recipients, who have requested its mail direction service, that it was required to share the redirection information with other licensed postal operators which have requested the information for the purpose of redirecting mail. In addition the MCA provided an obligation on all postal operators clearly to inform their customers whether or not they provided a redirection service based on the redirection information provided by Malta post.

4. Access to Post Office Boxes

Introduction

Post office boxes are the installations located in local post offices, delivery offices or other convenient locations. They are designed for users who receive a large number of postal items and who want to receive them at a separate address from their normal business or private address. In some European countries the use of post office boxes is mandatory (or by as recommended by the USP), elsewhere they are only at the request of the user. Post office boxes are usually provided free of charge but sometimes a one-off set up fee may be applied. In principle, the user of a post office box and postal service provider enter into a legal contract governing the use of the post office box.

Post office box users of postal services obtain an "alternative address", which is used to receive all types of postal items. Through delivery to the post office boxes a provider significantly reduces its delivery costs, while users of postal services with a post office box can pick up their mail whenever they want. The mail is available in the early morning and post office boxes are protected against unauthorized access.

Post office boxes might be considered to be essential facilities for access to the user and/or for the possible existence of competition, since they are impossible or extremely difficult to duplicate. Refusal of access to essential facilities may be considered a violation of competition law by a dominant undertaking, especially if you prevent downstream competition in the market (European Commission 2008).

Principles

Universal Service Providers are generally obliged to provide access to post office boxes in European countries. In the Netherlands any party operating post office boxes is obliged to grant access. In Sweden, all licensed operators have this obligation while in Estonia and in Finland the obligation only applies to the Universal Service Provider. The principles of pricing and access conditions are: cost-oriented price, transparent and non-discriminatory access conditions. Prices and conditions of access are usually determined through negotiation between the provider obliged to grant access and competitors. NRAs are generally responsible for dispute management. Malta's NRA is responsible for setting the prices.

Potential problems

Other postal service providers must deliver the postal items to the addressee's address and not to PO Boxes (and thus are unable to take advantage of the reduction in shipping costs to the PO Box) because:

- the universal service provider will not reveal the list of holders of post office boxes;
- request from another postal service provider full postage;
- not be obliged to offer access and does not offer.

Legal provisions

We have two groups of countries:
1. Access to the elements specifically mentioned in national law and
2. Access to the elements granted by general competition law

The first group of countries comprises: Belgium, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Luxembourg, Macedonia, Netherlands, Portugal, Slovenia and Sweden.

The second group comprises Malta.

a) Case study on Sweden

Sweden liberalized the postal market between 1992 and 1994 and one of the milestones of this process was competitors being given access to mailboxes and access to information on the redirection of postal items held by Posten AB. Each operator which possesses a network throughout the territory shall, on reasonable terms, allow access to other operators for: postcodes, change of address information, the return-to-sender service and PO boxes.

Legal framework

The pricing with respect to access to PO Boxes is not regulated in a very detailed manner in Sweden. The Postal Services Act (2010:1045)[26] stipulates the following:

> **Chapter 4. Common provisions concerning postal operations and universal postal service, etc.**
> […]
> **Facilities for mail delivery**
>
> **Section 5**
> A license holder is obliged to make it possible for postal items, weighing at most 2 kg, which have been conveyed by other license holders to reach the facilities for mail delivery to recipients of which the first-mentioned license holder is in possession. *The conditions for this shall be reasonable and competition neutral and also non-discriminatory with respect to the professional activities of the license holder*. [Emphasis added]
> […]
> **Section 15**
> The licensing authority shall when conducting supervision, devote particular attention to make sure that agreements are reached between license holders to ensure:
> 1. that those postal items, weighing at most 2 kg, that the license holders convey reach the other license holders' facilities for mail delivery to the recipients,
>
> […]
> In the event of a dispute about such agreements as referred to in the first paragraph, *the licensing authority shall* without delay inquire into the circumstances and if no special reasons suggest otherwise, *mediate between the parties*. The authority may in such a dispute express an opinion on the request of one of the parties concerned. [Emphasis added]

The working interpretation of 'reasonable and competition neutral' with respect to pricing is, as has been put forward in the relevant legislation (especially in the Government's Proposition 1998/99:95), that prices should be based on the additional cost that the operation in question causes. The Proposition also states that the profit margin (resulting from the price) is not allowed to be larger than what is required for the license holder's own operations.

Mediation between parties

In December 2009, the negotiations between Posten, on one hand, and Bring Citymail and the association of private postal operators (FPF) on the other, on prolonging the existing contractual agreements on the other postal operators' access to Posten's PO Boxes failed. The licensing authority, PTS, started a mediation process to resolve the outstanding issues in January 2010. It was very clear that the main issue was how the term "additional cost" was to be interpreted and calculated. Thus, it was not a negotiation on a given margin, but instead a negotiation on which cost calculation principles were reasonable and applicable in this case. The disagreement did **not** result in Posten withdrawing the possibility for the other operators to access its PO Boxes, but merely that the price for the access service was not settled.

After collecting the parties' views on costing principles and collecting operational data from Posten's operation of PO Boxes, PTS issued a proposal on a new model for calculating price as a function of Posten's cost of operations. An agreement between Posten and Bring Citymail was

[26] http://www.pts.se/upload/Regler/postal_services_act_2010.pdf

finally settled in February, 2012. When it comes to price of the access of FPF operators to Posten's PO Boxes there is, to PTS's knowledge, still no agreement.

PTS found that the pricing should be based on a long range incremental (additional) cost estimate, where only costs that arise specifically from the access service should be included in the calculation. Moreover, PTS found that the relevant costs could be categorized in two types – costs that are related to the number of submissions of letters (to a post office or agreed collection point), and costs that are related to the number of letters submitted. Thus, the price also should be a function of these two parameters (previously there was just a price per item). Schematically, the model can be expressed as:

$$Price(per\ period) = (1 + pm) \times c_t[(n_s \times t_s) + (q \times t_t)]$$

where

$pm = profit\ margin$
$c_t = additional\ cost\ (per\ time\ unit)$
$n_s = number\ of\ submissions\ (per\ period)$
$t_s = operational\ time\ per\ submission$
$q = volume\ (number\ of\ items, per\ period)$
$t_t = operational\ time\ per\ item$

The additional cost per time unit, c_t, is computed as the labour cost per time unit plus a mark-up for relevant common costs.

Other country examples:

Germany

In Germany, there are arrangements by which competitors can access post office boxes of the dominant operator via delivering their postal items to local post office and they are delivered to the post office boxes. The NRA approves access tariffs on the basis of efficient service provision based on the LRAIC cost accounting system. The current price is comprised of two components:

- 0,69 EUR per injection(the cost of handling and invoicing)
- 0,04 EUR per letter

Where a contract between the incumbent and a user desiring partial services or shared use of a PO box facilities or access to information on changes of address fails to come about within a period of three months from the time the user first sought such a contract, the National Regulatory Authority shall, following referral by one of the parties, stipulate within a period of two months the conditions of the contract and confirm its validity.

Slovenia

In Slovenia access to the network of the universal service provider includes a possibility for a competitor to access delivery post with sorted postal items. Access to post office boxes is considered to be the same as access to delivery to the address with a price reduction of 27,72 % for standard letters and 48,37 % for postcards.

5. Access to Information on Change of Address / redirection

Introduction

Information on change of address or redirection is a service where users of postal services notify the local post office of their change of address or the address where they want to receive mail. After the arrival of postal items at the delivery office or during the sortation process the postal operator redirects postal items to the new address.

Principles

Access to information on change of address in EU countries is generally required of universal service providers. In the Netherlands any party operating or managing such a system of data is obliged to grant access. In Sweden, all licensed operators must do so while in Finland this obligation applies only to the universal service provider. The principles of pricing and access conditions are: cost-oriented price and transparent and non-discriminatory access conditions. Prices and conditions of access are usually determined through negotiation between the provider obliged to grant access and its competitors. NRAs are generally responsible for management of any disputes which may occur over the terms of access. In Lithuania the State Enterprise Centre of Registers holds the database and decides on the charges.

Potential problems

Other postal service providers cannot deliver items to a new address, because traditionally the users informed only their local post office of the change of address. Other postal service providers cannot make deliveries to the new address because:

- the USP refuses to share information on change of address;
- the USP is not obliged to offer access and does not offer it.

Legal provisions

We have a group of countries which have access to the elements specifically mentioned in national law. In this group of countries are: Austria, Belgium, Croatia, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Macedonia, Netherlands, Portugal, Slovenia and Sweden.

Country examples:

Sweden

Sweden liberalized the postal market in the nineties and one of the milestones was the competitors' access to mailboxes and access to redirection of postal items by Posten AB. Each operator which possesses a network throughout the territory shall, on reasonable terms to allow access to other operators for: postal codes, change of addresses, return-to-sender service and post office boxes.

Germany

In Germany there are arrangements in which competitors can access information on change of address database of the dominant operator. The current price for such access is 0,12EUR per single address.

Where a contract between the incumbent and a user desiring partial services or shared use of PO box facilities or access to information on changes of address fails to materialise within a period of three months from the time the user first sought such a contract, the National Regulatory Authority shall, following referral by one of the parties, stipulate within a period of two months the conditions of the contract and confirm its validity.

United Kingdom

In the UK is possible to access information on the change of address database of the dominant operator with pre-payment of approximately 30.000 GBP to obtain use of the dominant operator's IT solution. It seems that there is no demand for such access.

Slovenia

In Slovenia is possible to access to information on change of address via daily notifications from the universal service provider. From the beginning of 2013 the universal service provider will offer an IT solution for the access to information on change of address. The postal service provider is obliged to cover costs for sending this information by registered mail.

APPENDIX

Terms

The following terms were only used for the purpose of the questionnaire and are not meant to be official.

Access – allowing other companies operating in the postal market, or other users of postal services, to use the incumbent´s or other operator's facilities for the partial provision of a postal service.
Bulk mailer – a sender of mail who sends high volumes of pre-sorted mail. A bulk mailer would be eligible for special tariffs.
Consolidators – operators which aggregate mail from distinct customers or sources into bulk mail.
Downstream – the activities of inward sortation and delivery.
Downstream access – access to the incumbent's postal network at an inward sortation facility or any point in the postal network after that.
Equivalence – equal treatment (in price and non-price terms) between third parties' and the incumbent's items accessing the incumbent's postal network.
Incumbent – the dominant postal service provider (usually the designated universal service provider).
Mailing houses – operators which print, envelope and otherwise prepare mail to be dispatched into the mail network.
Network access – allowing other companies operating in the postal market, or other users of postal services, to use the incumbent or other operator's network for the partial provision of a postal service.
Non-discrimination – equal treatment (in price and non-price terms) between third parties accessing the incumbent's network.
Pre-sorted – Products or tariffs where the sender has sorted their mailing items to a predetermined level before handing them to the operator.
Transparency – The provision of clear, accountable information regarding the terms and conditions (in price and non-price terms) offered to different customers.

Postcode system – A code of letters and/or digits which is added to the address to help ensure the efficient sortation of the mail.
Address database – A database of delivery points comprising postal addresses including associated postcodes and their geographic location.
Post Office boxes – A delivery point with a unique address situated at a location distinct from the addressee, such as a delivery office or post office.
Delivery boxes – External containers to accept incoming mail. Frequently used near or in buildings with multiple residences, such as apartment buildings or blocks of flats.
Information on change of address – Data collected about addressees who have notified a change of address.
Information on re-direction service – Data collected about addressees who have requested that postal items should be diverted from one delivery point to another.
Information on return to sender service – Data collected about postal items that have been delivered to an address, marked ‘Return to sender’ and then reintroduced to the postal network.