

Subject: Contribution to the draft ERGP Report on VAT as a benefit or a burden

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The European Union took a great leap forward when the third Postal Directive was adopted in 2008. A postal market fully opened for competition could finally be envisaged by European citizens and industries. Learnings from the Swedish deregulation, starting almost two decades ago, show that quality improves and prices diminish when the old monopolies are abolished.

The postal market in Sweden was opened for competition already in 1993. It has been a successful deregulation – in addition to Posten AB (the former postal administration), Bring Citymail has appeared as a major operator, and as one of the pioneers and first challengers to the incumbent operators on the European postal market.

We are now deeply concerned that the good intentions expressed in the third Postal Directive, and the functioning of the Swedish postal market, are seriously threatened by the application and interpretation of the VAT Directive (2006/112/EC). The infringement procedure initiated by the Commission against Sweden (2006/2046) for breaching the VAT Directive will – if continued – lead to serious distortion of the competition on the Swedish postal market and in worst case a reintroduction of a de facto monopoly.

The problem is that if Sweden is forced to introduce a VAT exemption, this would apply only to Posten AB since it is the only operator designated as a universal service provider, i.e. provider of services included in the Universal Service Obligations (USO). For these services certain pricing requirements regarding transparency, non-discrimination and cost orientation apply. It is highly unlikely that Bring Citymail or any other postal operator than Posten AB would be able to cover the whole country and, in turn, be designated as universal service providers, enjoying the benefits of a VAT-exemption. Posten AB would then be able to set lower prices than any of its competitors, including Bring Citymail. This would severely distort

competition on the Swedish market and, thus, hamper the intentions of the third Postal Directive. In other words, this would lead to a reintroduction of a de facto postal monopoly in Sweden. The Commission has itself acknowledged the problems with the VAT legislation and has, without success, proposed that the VAT exemption be removed.

Recent ruling by the ECJ (case C-357/07) has made clear that the VAT exemption should apply to providers of “public postal services” – the latter being equal to the Universal Service Obligations. In Sweden, and other member states, the USO does in principle cover almost all of the services of the incumbent operator – in Sweden, Posten AB.

To ensure that the whole country is adequately covered by postal service, the Swedish Post and Telecom Authority (PTS) has designated Posten AB as a universal service provider. Because of its former status as postal administration Posten AB has the infrastructure to cover the whole country. Posten AB has exploited this advantage on several occasions, and there have been several disputes before the Swedish Competition Authority where Posten AB has been accused of using geographically different prices and of punishing customers that uses alternative operators (by introducing higher tariffs for these customers in areas where only Posten AB operates). Latest example in 2011 at the Swedish market court (2011:14, dnr A 3/10) regarding Posten’s special sorting rebate.

Hence, the competition in the Swedish postal market is utterly fragile, and ordinary enforcement of ex post competition regulation is unlikely to ensure continued competition in the market. In order to preserve competition it is vital that sector specific ex-ante regulation be applied; notably regarding price-regulation, including demands on transparency of rebates and non-discrimination that go beyond the general standards of the competition rules. The best way to ensure sufficient ex-ante sector specific regulation is to preserve a wide definition of the USO, including bulk mail services that presently are subject to competition.

Whereas a narrowing of the scope of the USO to, say, single piece services only, would possibly to a large extent solve the competition challenges stemming from a VAT-exemption, this solution would at the same time abolish the sector regulation that is vital to preserving the competition in the Swedish postal market. A possible solution of introducing Strong Market Power (SMP)-regulation in combination with a narrowly defined USO, would in our opinion at present not be a sufficiently robust solution to tackle the fragile competitive situation in Sweden.

To conclude, if Sweden is forced to introduce a VAT exemption for universal postal services, which only would apply to Posten AB, this would remove the competition on the Swedish postal market. The most successful example of postal market deregulation in Europe – where Bring Citymail has successfully challenged Posten AB with fair conditions – would thus come to an end. This would be a harsh setback for the liberalization of the EU postal market.