

Finland

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ERGP (12)28 – draft Common Position on cost allocation rules

JANTON OY'S CONTRIBUTION TO THE PUBLIC CONSULTATION ON COST ALLOCATION

Janton

Janton Group is active on the Finnish market of unaddressed items. It is the main competitor in the unaddressed mail business to the state-owned incumbent postal operator Itella Oyj. Janton has its own distribution network in densely populated areas and is buying distribution services from Itella in the rest of the country.

Regulatory accounting and competition in the non-regulated markets

Most USPs are national incumbent postal operators that enjoy dominant positions in the respective national markets. The incumbents have a wide portfolio of products and services and they typically operate in several postal markets, often even in more than one member state. At least in some member states, the national postal operator still enjoys political protection, for example in the form of lenient regulation and/or strict licensing requirements placed upon competitive market entrants. In these circumstances, the incumbent can easily engage in predation, price squeeze and other abusive practices in the non-regulated markets.

All the above mentioned circumstances are present in the Finnish postal market. The dominant postal incumbent Itella has been nominated as USP in the national and international addressed letter market as well as in the market for parcels. No competition has emerged in the addressed mail market due to excessive licencing conditions. There is no access regulation in place: competitors do not have full access to post boxes, postal codes or addresses. Access to Itella's distribution network must be negotiated with Itella on a case-by-case basis.

For several years, Itella has been applying a price squeeze and discriminatoy pricing towards Janton. In 2007, Janton filed a case against Itella at the Finnish Competition Authority ("FCA") and urged the FCA to investigate Itella's abusive pricing practices. The investigation is still pending and the FCA has not been able to draw any conclusions in the matter. This is at least partly due to the lack

on sufficiently detailed regulatory accounts that would allow the FCA to verify the cost related arguments put forward by Itella.

Janton understands that the universal service regulation aims at protecting the availability and affordability of the basic postal services for consumers. However, the universal service covers only a minor part of the postal services. Both consumers and business customers are using and even depend on the non-regulated postal services. The most efficient way to ensure the availability of non-regulated services is to promote competition in all the postal market segments.

The promotion of competition should be one of the driving factors in the design of the regulatory accounting rules. USPs have the incentive to exploit the USO and leverage their market power into the competitive markets. The detection and prevention of abusive practices should be one of the main goals in the regulatory accounting.

The regulatory accounting should include the verification of costs as well as revenue from both the regulated and the non-regulated business. As an end result, the Authorities should be able to ascertain that the allocated costs match the revenues cumulated from the regulated and non-regulated business respectively.

The postal NRAs should work in close co-operation with NCAs in case of cases where the postal incumbent is suspected of abusive pricing practices.

#### USO as a cost driver

As a basic rule, the USO should not be accepted as a cost driver. Before the NRA accepts exceptions to this rule, it should make sure that using USO as a cost driver does not distort competition in the non-regulated markets. USO costs should not be over-compensated and the cost allocation should not lead to cross subsidies.

Janton notes, that it should never be allowed to allocate all or most of the network costs to the USO products on the pretext that USO legislation includes minimum standards or other obligations related to the postal network. Network costs should always be allocated to all products that are actually using the network in proportion to the use of resources. In case the NRA accepts any USO-specific network costs, these should cover only the costs of an efficient operator.

## Auditing and publication

Independent auditing and publication of the findings are an important part of the regulatory accounting. The public findings of the regulatory accounts serve as an important checking point for competitors, especially in a situation where the competitor has reasons to suspect that the incumbent postal operator is violating postal or competition legislation.

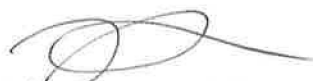
The audit of the regulatory accounts must be made by an entity that is independent of the USP and capable to carry out an impartial assessment. The auditor should not only be independent, but it should also appear independent. Under the Finnish legislation, the auditor is nominated and paid for by the USP. This arrangement may risk the independence and reliability of the auditing. Independence cannot be guaranteed for example in cases where the USP uses the same auditor for its financial and regulatory accounts.

The auditing should cover cost accounts for the USP products as well as non-USO products. The USP should provide separate cost accounts for each of the non-USO services and products it is offering and these accounts should be audited by the independent auditor. The national regulatory authority should in all cases have the legal competence to request cost accounts and auditing of the non-USO products and services, even if these services and products are non-regulated and may fall outside of the national postal legislation.

Audit results should be made public to the greatest extent possible. In the common position it should be clearly stated that the audit results, including all identified matters of non-compliance, cannot be regarded as business secrets.

On behalf of

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