

## **Comments on ERGP (18) 49 Report on developments in the postal sector and implications for regulation**

Dear Mr. Cadete de Matos,

The ERGP working paper is an excellent opportunity for expanding on the topics that are of absolute relevance for postal operators. Poste Italiane is grateful to the ERGP for the opportunity to present its perspective with regard to the evolution of the postal sector developments and implications for regulation.

Poste Italiane acknowledges the situation described in the ERGP report that the Postal Service Directive (“PSD”) is substantially obsolete. This is especially true with regard to the market environment postal operators are facing. However, even though it addresses the new environment postal operators are confronted with, the report appears, in the conclusion, to somehow retain the original scope of the PSD without enlarging it.

It is Poste Italiane’s firm conviction that broadening the market is of the greatest importance when addressing the issue of Relevant Market encompassing electronic communication as substitute, thus the term e-substitution.

We very much welcome the Court’s clarification on the notion of postal and transport services. Following the judgement in Joined Cases C-259/16 and 260/16, there is no room for further ambiguity as to whether express courier operators are postal services providers. Poste Italiane respectfully submits that the ERGP report should unambiguously state that the notion of postal services already encompasses express courier services, and that for all applicable regulatory aspects.

The attached document provides our contribution to some specific sections of the report on developments in the postal sector and implications for regulation for your consideration, having in mind that Poste Italiane is a founding member of PostEurop and has contributed to the position submitted by PostEurop.

Lucia Fioravanti  
Head of Regulation and Authorities Affairs

## Promoting competition

Poste Italiane shares the rationale presented in the background of the paper. **The progressive digitisation of the society has important effects on letter mail volume decline and on parcel volume increase.** Both e-substitution and e-commerce are, as of today, important forces which directly affect the traditional postal operators' business.

It is Poste Italiane's opinion that progressive digitisation should be given appropriate consideration in the context of promoting competition in the market.

**Letter mail has a direct substitute in electronic communication,** which makes an increase of price unworkable in practice. A price increase would cause an even worse reverse effect with a more than proportional decrease in volume, creating a downward spiral effect.

Therefore the stated goals of the PSD for competition in the letter market should be considered more widely. The blurring distinction between postal services and digital communications due to the shift of interpersonal communication to digital modes, as well as the evolution of competition, make it difficult to consider letter mail offering alone, without bearing in mind alternatives, such as electronic communications. These were not relevant at the time the PSD was being prepared in 1992 but are now probably even more widespread than letter mail.

This adds an important element to the market view. Apart from the final question on the existence of two markets, respectively for letter mail and for parcels, we would welcome widening the letter mail market to a letter communication market where electronic communication fits. As stated, the market enlargement is of greater importance when addressing the issue of Relevant Market encompassing electronic communication as substitute. Already in 2012, the UPU amended the Universal Postal Convention introducing electronic postal services (art. 17).

In terms of **labour conditions**, Poste Italiane is very much in favour of enabling a level playing field at least at the national level, where similar conditions call for the application of the same set of rules.

However, competition, as described in the previous point, is only looked at from the perspective of the letter mail market. In the context of letter mail decline, competition seems to force postal operators to compete mainly with non-standard labour contracts and reduced wage salary schemes. The effect is that competition is mainly taking place via deteriorated labour conditions. The postal sector is a labour intensive market where considerable cost optimization cannot be provided otherwise.

**It is Poste Italiane's opinion that a common level playing field requires one and common labour conditions set for all licensed operators, the alternative remaining an unhealthy market structure.**

## **Trends and sustainability**

Competition in the Italian letter market is high considering the number of licensed operators, even without taking into account electronic communications.

Even though competition is in place, in rural areas both letter mail communication and parcel delivery services, when cost-based, should have a much higher price than in urban areas. Operators tend to follow a cherry picking approach on more profitable areas while USP is not entitled to.

## **Regulation**

Specifically analysing letter mail decline, the report states that under the current regulatory framework, while on the one hand tariffs should be cost-oriented – and thus theoretically increase proportionally to counterbalance volume reduction - on the other hand it is necessary to maintain affordable pricing. We understand that somehow this sort of incoherence of the framework should be addressed.

However, pricing shall not be seen standalone. It is the outcome of the more general sustainability of the universal service that should encompass regulated tariffs, market tariffs, State aid and market structure.

## **Calculation and compensation of US net cost**

The compensation of the USO is a crucial issue for Poste Italiane because, as volumes dramatically decrease, the impact on the net cost becomes more and more relevant.

Poste Italiane believes that situations such as the Italian one – where the actual compensation for the USP is significantly lower than the net cost certified by the NRA – should be avoided as this would create a market distortion at the expense of the USP.

In this situation, the real market distortion is not due to the (theoretical) implementation of the Compensation Fund but to the partial funding of the net cost. In other words, where the State budget is not able to ensure full compensation of the Universal Service net cost, the Compensation Fund, far from representing an "obstacle to competition", is a "minimal" essential tool to mitigate the existing distortions of the market.

Poste Italiane believes that the compensation fund is one of the valid solutions for addressing US net cost compensation and firmly disagrees with the statement that qualifies it as “an obstacle to competition”. Under Recital 27 of Directive 2008/6/EC, only undertakings providing substitutes of universal services contribute to the Compensation Fund. The interpretation of this provision has been clarified by the Court in the recent Joint Cases C-259/16 and C-260/16.

The competition issue is that undertakings provide services which from a user's perspective are substitute of universal services subtracting, in this way, revenues from the USP. Moreover these undertakings are not subject to universal service constraints so the level playing field is unbalanced, therefore, the Compensation Fund becomes an instrument that rebalances the level playing field and restores the USP's financial sustainability.

As stated in the trends and development section, demographics is evolving with ageing and concentration in urban areas. To address the specific needs of rural areas and non-digitalised population, additional SGEI obligations could be defined for ensuring additional services resulting in complementary activities that need specific compensation. This should not be considered as a market distortion but as an opportunity to increase services that would not be in place otherwise in rural areas , and to pursue the digital inclusion of all citizens.