



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

TO THE COUNCIL, THE EUROPEAN PARLIAMENT,
THE ECONOMIC AND SOCIAL COMMITTEE
AND THE COMMITTEE OF THE REGIONS

on the public consultation on the draft Notice on the application of the competition rules
to the postal sector and, in particular, on the assessment of certain State measures
relating to postal services

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Annex 1 List of written reactions on the public consultation

1. Introduction

In December 1995, the Commission published its proposed package of measures concerning the development of the postal sector in the Official Journal. The Notice on the application of the competition rules to the postal sector was published as a draft for consultation. This Communication intends to provide information on the results of this public consultation. A speedy finalisation of the codecision procedure on the Commission's proposal for a European Parliament and Council Directive on the development of Community postal services is highly desirable. This Communication may contribute to that process.

Several reactions to the public consultation show that there is uncertainty or misunderstanding on the role and status of the draft Notice, and on the relation between the Directive and the Notice. This Communication goes into these aspects before describing the results of the public consultation. It finishes with further steps the Commission intends to take with regard to the Notice.

2. Background

The Commission submitted a Green Paper on the development of the single market for postal services in June 1992¹, which was followed by an extensive public consultation. This resulted in Guidelines for the Community postal services, issued in June 1993². In its Resolution of 7 February 1994³, the Council invited the Commission to put forward proposals for the harmonisation and gradual liberalisation of the postal sector. Subsequently, after substantial discussion the Commission adopted in July 1995 a package of measures concerning the development of the postal sector, consisting of a proposal for a European Parliament and Council Directive on common rules for the development of Community postal services and the improvement of quality of service⁴, and a draft Commission Notice on the application of the competition rules to the postal sector and, in particular, on the assessment of certain State measures relating to postal services.

¹ COM(91) 476 final

² COM(93) 247 of 2 June 1993

³ OJ No C 48, 16.2.1994

⁴ COM(95) 227 final, Proposal for a European Parliament and Council Directive on common rules for the development of Community postal services and the improvement of quality of service.

Both documents have been published together in the Official Journal in December 1995. The package has been presented to the European Parliament, the Council, the Economic and Social Committee and to the Committee of the Regions. On the basis of the first reactions to the draft Notice it was decided, and announced during the Telecommunications Council in November 1995, to postpone the publication of the final Notice until a decision on the Directive is taken. Nevertheless, such publication will occur not later than the end of 1996 as the sector urgently needs the clarity with regard to competition law which the Notice will bring.

3. Public consultation

Interested parties were invited to submit observations on the draft Notice within two months after its publication in the Official Journal, which took place on 2 December 1995⁵. This period officially ended on 2 February 1996. Since it was decided not to publish the final Notice immediately after the two-month consultation period but only after a decision on the Directive is taken or, at the latest, by the end of the year 1996, it was possible to allow interested parties some additional time to formulate their reactions to the Notice. The consultation period is formally closed with the publication of this Communication. Further reactions will be taken into account to the extent possible during the rest of the procedure.

DG IV received 46 reactions. The organisations which have reacted represent a broad range of different interest groups. Detailed information on the reactions received is set out below. The reactions will be taken into careful consideration during the process of finalising the Notice before its publication in the Official Journal.

In general, the Commission has printed reactions to the public consultations on proposed Notices and Directives and made them available to interested parties upon request. In this case, the parties which have responded to the consultation on the draft postal Notice have often done so in combination with a reaction to the draft postal Directive. Consequently, the reactions to the draft Directive and to the draft Notice will be printed together.

⁵ OJ C 322/03, 1995 Draft Commission Notice on the application of the competition rules to the postal sector and, in particular, on the assessment of certain State measures relating to postal services.

4. Role and Status of the draft Notice

The draft Notice is based on the competition rules in the European Community Treaty, and explains the Commission's views with regard to the application and practical consequences of these principles in the postal sector, and the possible exceptions to these principles. It also sets out the position which the Commission would adopt before the Court of Justice in cases referred to the Court by national Courts under Article 177 EC. The Notice is not a legally binding document and it does not need to be: the competition provisions of the Treaty are already legally binding. The Commission is already faced with an increasing number of complaints and questions about the application of the competition rules to the postal sector. The Commission has to ensure the application of the competition rules set out in the Treaty, and the compatibility of State measures concerning undertakings to which special or exclusive rights have been granted with the rules of the Treaty. The draft Notice publicises the guiding principles, available to all interested parties, of how and why the Commission applies, and intends to apply in the future, the competition rules of the Treaty. The draft Notice should avoid and prevent infringements of the Treaty by increasing clarity, and should enable all interested parties to understand their position.

5. Relationship between Directive and Notice

The Directive and the Notice are intended to address different aspects of the postal sector, but they are intended to operate in parallel. The Directive is intended to create new legal provisions, and specifically to harmonise the rules on postal services. The Notice is limited to explaining the Commission's view on already applicable Treaty provisions and their relevance for the postal sector: primarily this concerns Community competition law. It would not have been appropriate to write Articles into the proposal for a Directive which merely re-stated the existing law. But it was thought useful, and indeed necessary, to explain in a certain amount of detail what the Commission considers to be the implications of the existing competition provisions for postal monopolies and services.

The Directive will impose a series of positive obligations on Member States, primarily to provide a good quality postal service. It also authorises them to impose universal service obligations on postal companies, or to require competing postal operators to contribute to a fund to finance the universal service.

The Notice, on the other hand, being based on competition law, points out that certain kinds of behaviour, either of Member States or of dominant postal operators, are not permitted. Since the Notice is stating the existing law, it has to use the same terms used in the competition rules of the Treaty.

6. Content of the draft Notice

- Chapter 1 of the draft Notice contains a number of definitions which are necessary for the text which follows. Definitions which appear in the Directive and in the draft Notice are intended to be identical.
- Chapter 2 explains the meaning of public undertakings and undertakings to which special or exclusive rights are granted, according to Article 90(1) of the Treaty.
- Chapter 3 explains how the freedom to provide services in the sector, exceptionally, has to be interpreted in the light of Article 59 of the Treaty. This chapter also addresses the issue of licensing.
- Chapter 4 provides a description of the Commission's views with regard to the relevant markets within the postal sector. It explains why the public postal operators are regarded as having dominant positions and touches on potential abuses of these positions vis-à-vis users of postal services and competitors.
- Chapter 5 explains in general what exemptions from the general prohibition of restrictions of competition could be acceptable from a competition law point of view and how, according to the Commission, these could be applied to the postal sector. This includes issues such as transparency of accounting and non-discriminatory access to the postal network.
- Chapter 6 outlines the guiding principles with regard to State aid to postal operators.
- Chapter 7 concerns a review of the Notice in light of case experience, which is foreseen for the year 2000.

7. Results of the public consultation

As a result of the public consultation the Commission has to date received 46 reactions to the draft Notice. This figure does not include the opinions presented by the European Parliament (provisional), the Economic and Social Committee, and the Committee of the Regions. Some of the reactions are very short and only concern one or two issues, others are very detailed and touch on nearly every paragraph of the draft Notice.

It is possible to distinguish several groups of respondents with different interests: public postal operators and private operators, trade unions, user organisations, associations and other organisations, and national regulatory authorities and Member States. The classification of certain respondents within the particular interest groups identified above has not always been self-evident. The overall appreciation of the draft Notice varies per group while remaining quite consistent within most groups.

A majority of the respondents, 60 % (28 out of 46), take a positive attitude towards the contents of the Notice and support the publication of a final version. The main elements of the reactions per group are as follows.

7.1 Public Postal Operators

PostEurop, which is the Association of European Public Postal Operators, and the UPU, the Universal Postal Union, have both been incorporated in this group of respondents. The reactions of PostEurop and the UPU are similar to those expressed by most of the individual public postal operators.

A majority of the public postal operators does not support the contents of the draft Notice in its current form. Their comments point out that in their view the approach and the wording taken in the draft Notice are still different from that taken in the Directive. Although most public operators are in favour of a gradual and controlled opening of the market concern is expressed with regard to the possible effects of the liberalization of direct mail and inward cross-border mail. Most public postal operators fear that liberalization of these markets will lead to abusive distribution by competitors or to abusive diversion of reserved mail. The postal operators from Member States where direct mail has been partially or completely liberalized do not confirm this view. Some public operators state that liberalisation on the basis of contents or origin of the postal items will cause practical problems. A special problem with regard to liberalization of inward cross-border mail is said to exist in Ireland and Luxembourg. In these Member States the proportion of inward cross-border mail is notably higher than the EU average.

The public postal operators in Member States where the postal market is fully liberalized would prefer reciprocal market access. They fear that public postal operators with a protected home market, and who may advocate large reserved areas, will enter their geographical markets to extend their activities.

There is confusion about the issue of "downstream access". Some operators fear that they may be forced to open up (even parts of) their network at every point that customers and competitors would desire. Most public operators recommend that the coordination between the

Directive (in its final form) and the Notice be improved and would prefer them to be published together.

The postal operators who have reacted to the draft Notice in a supportive manner have stated that their experiences with liberalization are positive. These operators stress that substitution by, for example, fax and e-mail is the real threat to the postal market. They advocate liberalization according to a clear and short timetable and they would prefer new regulation to be as limited as possible.

7.2 Private Postal Operators

The reactions from the private postal operators are unanimously positive with regard to the gradual introduction of liberalisation as proposed. These operators appreciate the Commission's interpretation of the competition rules and the clarity which the Notice will bring with regard to the application of the competition rules is warmly welcomed. The private operators look forward to fair competition on the postal market and to an extension of their permitted activities. Concern is expressed with regard to the possibility of continuation of cross-subsidisation from the reserved sector to the non-reserved sector and the Commission's attention is drawn to the issue of the application of VAT.

7.3 Trade Unions

The reactions of the trade unions focus on the possible effects of liberalization on employment. It is feared that measures from postal operators to improve their efficiency and an increase of competition in the postal sector will lead to a substantial limitation of the numbers of jobs. Concern is also expressed on the coordination between the Directive and the Notice. If guidelines are proven to be needed, the trade unions would prefer them to be published after the publication of the Directive.

7.4 User Organisations

The user organisations are unanimously in favour of gradual liberalization of the postal market. They prefer users to have the possibility of choosing from several suppliers of postal services. Some user organisations recommend keeping Direct Mail and inward cross-bordermail outside of the reservable area. It is interesting to note that public postal operators say that they want to protect the quality of service interests of users by maintaining a large reserved area, while the user organisations expect quality of service to improve, and tariffs to decrease, through an increase in competition. The coherence between the Directive and the Notice is regarded as a point of concern.

7.5 Associations and other Organisations

Included in this group is the Joint Committee on postal services. This Committee ensures the dialogue between representatives of employers and employees in the postal sector. The reaction of the Joint Committee on postal services is similar to those expressed by most individual public postal operators (see above). A large majority of associations and other organisations have expressed a positive attitude towards the Notice and welcome the introduction of more competition on the postal market. These organisations placed much emphasis on increased transparency of accounting and on the close monitoring of cross-subsidisation between reserved and non-reserved areas. They want this to be restricted to a minimum level. Quality of service needs to improve and is expected to improve as a result of liberalization and competition. A minority of associations and other organisations express their concerns on the coordination between the Directive and the Notice in its current form. The European Blind Union asks for special provisions for disabled people.

7.6 National Regulatory Authorities and Member States

A clear majority of the national regulatory authorities and Member States which have responded to the consultation support the draft Notice. Included in this group is the European Committee on Postal Regulation (CERP) which in fact represents all postal regulators in the EU.

Only a few national regulatory authorities have responded individually. CERP welcomes the Notice but feels a need for improved consistency between the Directive and the Notice, in order to achieve a higher level of legal certainty. CERP expresses its concerns over the application of an open access principle. Limitation of cross-subsidisation is an important issue for the national regulatory authorities.

The coherence between the Directive and the Notice is an important issue for most of the Member States which have responded individually. One Member State appreciates the Commission's attempt to bring clarity to the postal sector on the application of the competition rules, but strongly opposes liberalization of direct mail and inward cross-border mail because of the presumed risk of "cream-skimming" and the deviation of mail. Another Member State draws special attention to the social consequences of reforms in the postal sector and to the need to improve the quality of cross-border postal services. One Member State has expressed its support for the Notice and the Directive, though it would prefer both documents to be published together. One Member State broadly welcomes the Notice and the guidance it will bring, and urges that the liberalization momentum be maintained. Another Member State confirms the Commission's competence to issue a Notice and welcomes its publication. This Member State emphasises that the Notice makes sufficiently clear what position the

Commission intends to take with regard to the interpretation and application of the competition rules and on the issue of freedom to provide services.

8. Conclusions and follow-up

As stated above, the full comments are available on request. A majority of the reactions supports the draft Notice. It would be extremely difficult to attach different weights to the reactions received, to do this in an objective way, and to determine the overall appreciation of the Notice on that basis. The reactions reflect the specific interests of the different groups. Uncertainty about future developments in the postal sector, which is inevitable taking account of technological developments, even without any liberalization, results in a defensive attitude from public postal operators and trade unions. A number of these respondents have reacted to the Notice on the somewhat formal grounds that it should not be adopted before the Directive and that it is not always using the same terminology as the Directive. These reactions seem to translate concerns among these respondents about maintaining the balance between harmonisation and liberalisation and the impact of a more competitive market environment. Aside from this the consensus about the advantages of introducing or extending competition in the postal sector is widespread. It is clear that the general appreciation of the Notice can be improved considerably by a clearer explanation of its role and legal status. Discussions between the Commission's services and some of the parties have proved to be very useful in this respect. The fear that the ultimate Directive and Notice will not be consistent can be removed by publishing the Notice in a final (adjusted) form. The approach taken to postpone the publication of the Notice until the end of this year was appreciated by many respondents.

The reactions to the public consultation will be further analyzed in the context of the progress with regard to decision making on the postal Directive, and will be taken into consideration during the process of finalising the Notice. The same applies to the opinions presented by the European Parliament, the Social and Economic Committee and the Committee of the Regions. On the basis of the public consultation it has become clear that the text of the Notice can be improved to achieve further clarity on important issues, notably issues such as definitions, the issue of universal service and the relationship between reserved areas and special and exclusive rights, on access principles and on cross-subsidisation. The European Parliament concluded its first reading on the draft postal harmonisation Directive on 9 May 1996. Work on the draft Directive continues in the European Parliament and in the Council. The results achieved by the end of this year with respect to the draft Directive will be taken into account when the Notice will be finalised, with subsequent publication in the Official Journal.

LIST OF WRITTEN REACTIONS ON THE PUBLIC CONSULTATION

Public Postal Operators

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| An Post, Ireland..... | 5 |
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