

Report from the Commission on the application of the Postal Directive

4th Application Report

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Application Reports

- ***First Application Report***, November **2002**, concerning Directive 97/67/EC – COM(2002) 632 final
- ***Second Application Report***, March **2005**, concerning Directives 97/67/EC and 2002/39/EC – COM(2005) 102 final and SEC(2005) 388
- ***Third Application Report***, October **2006**, concerning Directives 97/67/EC and 2002/39/EC – COM (2006) 595 final and SEC(2006) 1293
- ***Fourth Application Report***, December **2008**, concerning Directives 97/67/EC and 2002/39/EC – COM (2008) 884 final and SEC(2008) 3076

Outline

- Regulatory developments during 2006 - 2008
- Implementation of the 3rd Postal Directive
- Market developments and trends
- Conclusions



Regulatory Development (1)

1. Full liberalization has taken place in
 - the UK on 1 January 2006
 - Germany on 1 January 2008
2. Possible evaluation of full market opening in the UK (Hooper Report from 16 December 2008)
3. The Netherlands decided to postpone full market opening
4. Judgement of ECJ in *Vedat Deniz* case – clarification of fifth indent of Article 12 of the Postal Directive
5. Adoption of the 3rd Postal Directive

Regulatory Development (2)

6. All Member States have reduced the reserved area to the maximum threshold in Article 7 of the current Postal Directive
7. The scope of the reserved area should be based on Article 7 of the current Directive and test established by the ECJ in the preliminary ruling in *International Mail Spain* case on 15 November 2007

Obligations under the EU regulatory framework (1)

- **Member States shall ensure the provision of universal postal service** (high quality, cost oriented tariffs, consumer protection etc.)
- Possibility of an exclusive right **only to the extent necessary to safeguard the provision of universal postal service**
- Possibility of a licensing system – **should not prevent or restrict market entry and market participation;**
- The establishment of **independent NRAs**

Obligations under the EU regulatory framework (2)

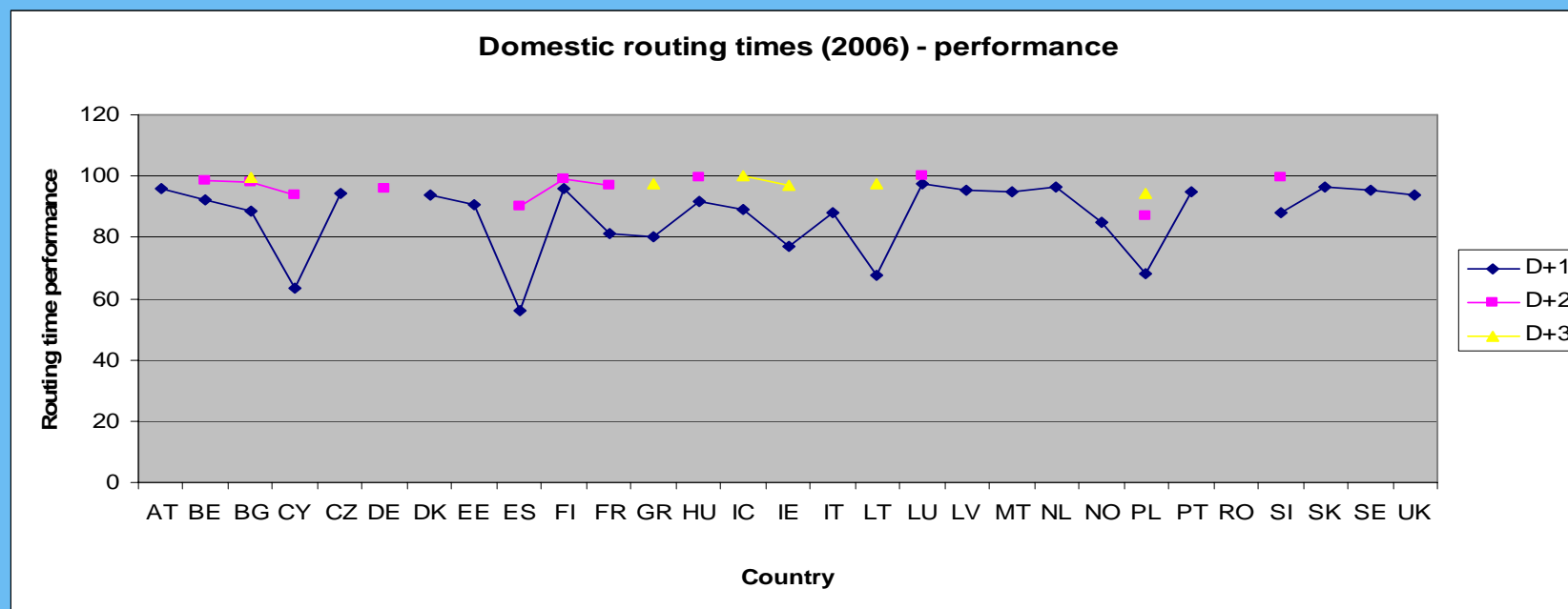
- Obligation for **affordable and cost oriented** universal postal services
- Obligation of universal service providers to **establish separate cost accounts**: (i) reserved services, (ii) universal postal services (without reserved services) and (iii) other services
- Obligation to **deal with complaints**

Transposition of the Postal Directive

- **Has transposition of Directive 97/67/EC and Directive 2002/39/EC been carried out by all Member States?**
- **Transposition (regulatory framework) is not application (in practice by National Regulatory Authorities) (e.g. independent NRAs)**
- **Regulatory framework should be applied in an efficient and non-discriminatory manner**
- **Attention! neither implementation nor application should create barriers to entry**

Universal service obligation (1)

Most of the Member States safeguarded the provision of high quality universal postal service to all citizens (source: ECORYS)

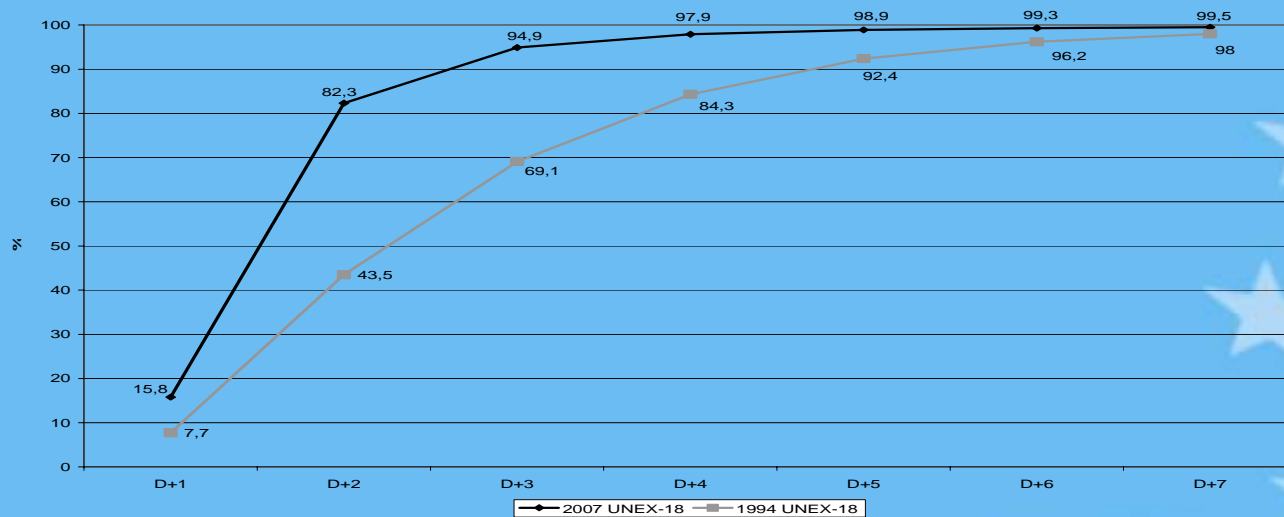


Universal service obligation (2)

- only limited derogations to requirements determined by the Postal Directive (e.g. place of delivery)
- at the moment, a system of designation of universal service provider is used – **exception: Germany** (no formal designation; only as a flanking measure to safeguard the provision of universal postal service)
- **need for improvement (e.g. efficiency, identification of source of “problems” etc.)**

Quality of service

The intra-Community flows
an important objective of EU postal reform
(source: IPC)



Licensing regimes – state of play

Still rather divergent systems of licensing

Type of authorization	Member State
No authorization procedure	CZ, NL
General authorization	AT, DK, IE, SK
Individual licence for some or all letter post services within universal service	DE, FR, PL, SE, UK
Individual licence for all universal services	BE, BG, CY, EE, ES, FI, GR, HU, IT, LT, LU, LV, MT, PT, RO, SI



Licensing regimes – regulatory framework

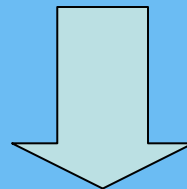
- Licensing regimes a possibility, not an obligation
- The 3rd Postal Directive provides additional clarity in relation to licensing systems that **may be used** by the Member States
 - safeguarding the provision of universal postal service
 - ensure compliance with essential requirements
- **Licensing systems should not present unfair administrative burden and/or introduce regulatory barriers to entry**

Directive 2008/6/EC – licensing regime

- **More specific conditions to avoid barriers to market entry**
 - pay or play
 - clear definition of essential requirements
- **Licence requirements and licence conditions should respect general principles of Community law**
(Article 9 of the Postal Directive, Article 12 of the EC Treaty)
 - *transparency*
 - *Necessity*
 - *proportionality*
 - *objective justification*

ACCESS to the public postal network

- according to the Postal Directive Member States decide upon the system they may apply
- different solutions by Member States – from *ex ante* mandatory access to freely negotiated terms

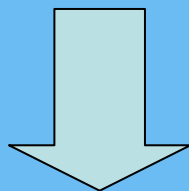


- even if no *ex ante* obligation envisaged by the regulatory framework – application of competition law to market dominant players (e.g. *refusal to deal*)

ACCESS

and the principle of non-discrimination

- judgement of ECJ in *Vedat Deniz* case – clarification of fifth indent of Article 12 of the Postal Directive



application of the principle of non-discrimination

there is no objective justification regarding price arrangements to discriminate between larger mailers and consolidators

Access to the POSTAL INFRASTRUCTURE on equal terms

- Obligations under the current Postal Directive and competition law
- In some cases clear bottleneck effects (e.g. P.O. Boxes, address database etc.) and access necessary to compete on the market
- New Article 11a of the 3rd Postal Directive provides clear legal basis

IMPORTANT

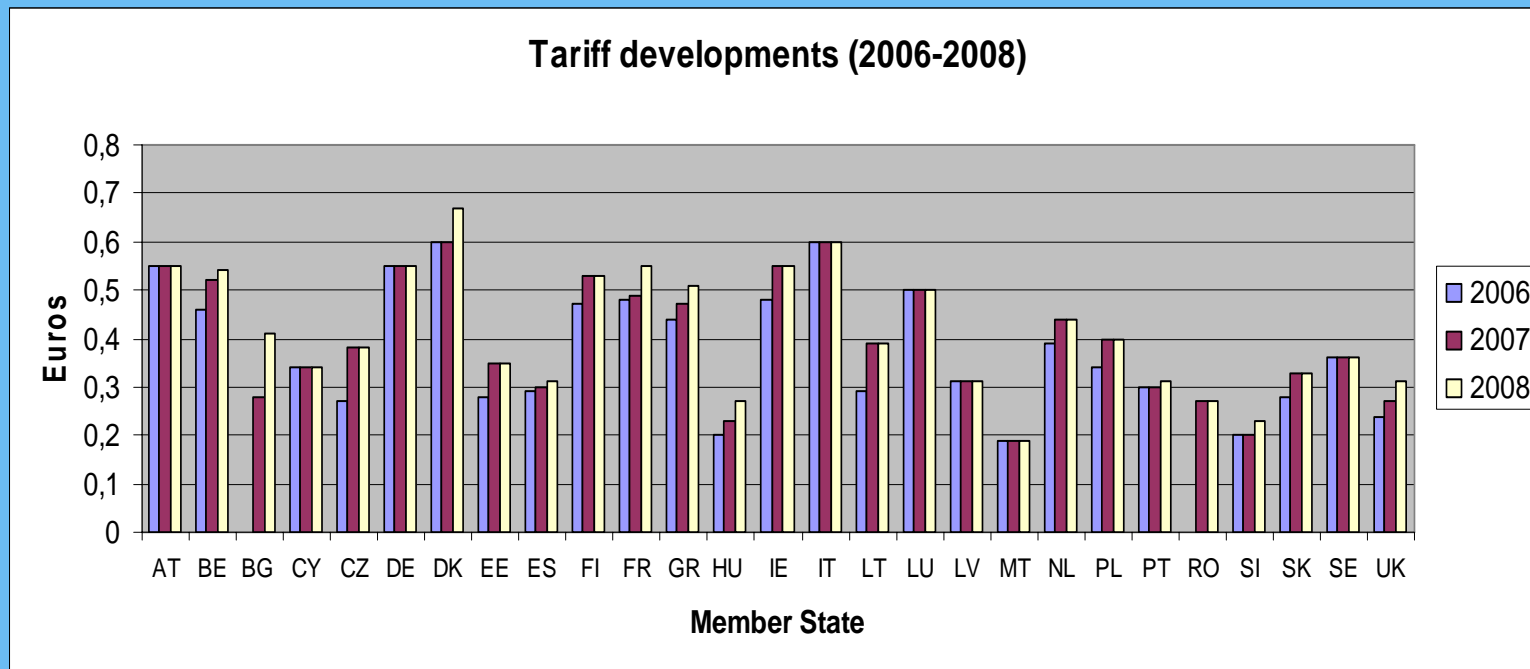
no distortion of competition by dominant player in relation to the access to elements of the postal infrastructure

TARIFFS and COST ACCOUNTING principles


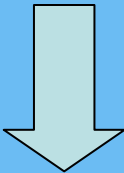
- **Cost-orientation of prices**
- **Possibility of a uniform tariff**
- **Separation inside cost accounting** (Universal Postal Service and other services)
- **Essential is safeguarding affordable and cost orientated universal postal services and to prevent the distortion of competition**

Tariffs of universal postal service

- price developments (source: FFPI)



Terminal dues and VAT Directive

- terminal dues – individual exemption for REIMS II expired  still subject of Article 81(3) of the EC Treaty
- application of the VAT Directive – referral for a preliminary ruling from UK – opinion of AG delivered on 15 January 2009 
- exemption – public postal service = **postal service provider that guarantees universal postal service**

National Regulatory Authorities

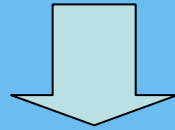
- Independent National Regulatory Authorities envisaged by regulatory frameworks of all Member States
- Mandate, resources and powers differ significantly
- In 2006 statutory changes in Austria – independent NRA as of 1 January 2008

In some Member States we see

- **NRAs with lack of independence in relation to the policy making function**
- **NRAs that are non-operational**

National Regulatory Authorities and market opening

NRAs are essential elements of the EU postal reform



Independent NRAs are *conditio sine qua non* exchange of best practices should be promoted and developed

- Implementation of main obligations under the postal *acquis* will be scrutinized by NRAs - **important to allocate the necessary expertise and resources**
- **New Sector Study in 2009** - *The role of regulators in fully liberalized market* incl. assessment of the current situation, best practices, cooperation between NRAs

Market developments

Continued growth at a moderate pace

- EU12 + 6.5%
- EU15 + 1.5%

with 85% of mail volumes business originated

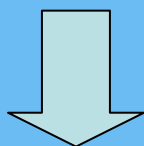
Universal service obligation is a dynamic concept
challenges and opportunities of e-substitution



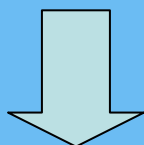
New, more customer oriented and value added services

Development of competition

Different pace in different Member States



Impact of gradual market opening
Impact of different regulatory solutions



D-licence in **Germany**
Mandatory access to the delivery network in the **UK**
Liberalization of hybrid mail in **Bulgaria**

Modernizing universal service providers

- Postal operators across the EU and beyond at different stages of improving efficiency and adapting to market conditions
- Efficient, customer focused postal operators are the key to well-functioning postal markets
- Effects of the global economic downturn make this modernization more critical

Employment and Social aspects

- 1.38 million people were directly employed by Universal Service Providers (2006 according to ECORYS estimation)
- Indirectly, the postal sector employed more than 5 million people
- Competitors employed 219 000 people - 70% in Germany, the Netherlands France and Poland
- **Employment conditions should not be used as a potential or actual barrier to entry** - Article 2(19) of the 3rd Postal Directive; essential requirements

The future of market monitoring and the Application Reports

- long term postal policy is an important element of policy making and market developments
- continuous market monitoring is essential in this regard
- the Commission will continue with providing sector studies and postal markets developments reports also during the implementation phase
- national regulatory frameworks should reflect the evolving postal market developments

Implementation of the 3rd Postal Directive

The Commission

- is committed to assisting Member States at an early stage of implementation
- will closely monitor market and regulatory developments
- will actively act against potential and/or actual barriers to entry as they are not compatible with the internal market

The establishment of an internal postal market is the responsibility of all stakeholders

Conclusions – 4th Application Report

- universal service obligations are not static – they must evolve to reflect customers changing needs
- pace of the development of competition however still rather modest due to: (i) existing exclusive right and (ii) existing and emerging barriers to entry
- role of NRAs in relation to the establishment of an Internal Postal Market is essential
- establishment of an efficient and sound regulatory framework is essential for the prosperity of the postal sector in the EU

Market Opening Agenda

- **full liberalization** of the EU postal sector **is the objective**
- **the Market Opening Agenda** should be targeted on activities to establish an efficient and sound regulatory framework
- **objective** – customer focused, reliable, efficient and good quality postal services for all postal users
- **role of the Commission:** **(i)** assistance to Member States, **(ii)** continuous market monitoring, and **(iii)** formal actions where, and if, necessary
- **role of the Member States:** **(i)** implementation of the parameters of the postal *acquis* (e.g. independent NRAs) and **(ii)** ensuring provision of high quality universal postal service