



# Europe Economics Executive Briefing

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## The French 'non' and the internal market for postal services

*In the second of our Executive Briefs before the next round of EU postal negotiations, we consider whether the French referendum decision will scupper moves towards the internal market for postal services.*

### Introduction

Over the last decade the debate over the next stage of the development of European postal regulation has occurred within a context of a wider confidence in the eventual progress of the internal market. In this sense it has been implicitly assumed by many commentators that, whilst opponents of postal market liberalisation may be able to delay reform, ultimately the introduction of competition and the end of 'the postal exception' were inevitable.

However, recent developments, in particular the French popular rejection of the draft European constitution may have shaken this confidence and raised again doubts over whether some EU Member States (or their populations) will accept competitive market models in the postal sector.

The question then is, is the process of postal reform strong enough to bear any political backlash from this process?

### Background and timing

The European postal sector has undergone profound market and regulatory change over the last decade resulting from the Maastricht Agreement (of the internal market) in 1992.

Following this, and in line with the European Treaty Articles 82 read in conjunction with Article 86, any special rights given to the

former national postal monopolies (USPs) have only been justifiable by the net costs of their universal service provision and within the context of a broader movement towards an internal market for postal services.

The Postal Directive of 97/67 set in place a more detailed legal framework for postal service regulation (or the application of the Treaty in the Member States) and for the application of competition law in the sector.

Its amending Directive 2002/39 achieved greater clarification and harmonisation, with additional reductions in the scope of special rights for the USPs. Perhaps most importantly this also set in place a provisional timetable for the full accomplishment of the internal market by end 2009, subject to a study by the Commission and to another co-decision procedure.

This regulatory change has been accompanied and complemented by rapid market change. Universal Service Providers (USPs) have transformed into corporate profit-hungry businesses, and have moved increasingly to cut costs and increase revenues.

Deutsche Post and TPG have demonstrated that the mail market can be a high volume, high margin business and USPs have benefited from strong growth in the parcels and express markets.



## **The momentum towards reform**

Profitable USPs, a growing market, and more positive regulatory incentives have in turn generated increasing momentum for greater reform and, to some degree, it could be argued that the provisional Community end-date has already been factored into the assumptions of market players.

This momentum can be seen in a number of ways.

### **EU Member States are agreeing to liberalise before the end date**

The Swedish postal market has been fully open since 1993 and the UK is to complete full market opening in 2006. Germany is poised for full market opening by end 2007 and in the Netherlands also, liberalisation has been scheduled for end 2007, although with the condition of reciprocal German and UK liberalisation.

In Slovakia it appears again that 2007 will be the date for liberalisation of end-to-end services.

### **This process has been strengthened by the experience of deregulation.**

In Sweden, which has been fully open since 1993, Sweden Post continues to enjoy a dominant position in the mail market and remains profitable. It also arguably has become one of the most efficient USPs.

In the UK, which is partially open to competition (bulk mailers) Royal Mail has so far flourished in a more competitive market with extra revenues from volume growth outstripping the impact of competition. Competition has been very slow to develop. In practice, many of the new licences granted by Postcomm to competitors have actually been to resolve existing legal

disputes about the scope of the licensing area rather than to introduce new services.

### **The sector has been profitable, with USPs now seen as a potential source of privatisation proceeds.**

The increasing profitability of the postal sector has not gone unnoticed. Certainly, potential private investors have been attracted to the sector, for example, those looking for stable long term utility returns, with CVC Capital Partners buying a 25 per cent stake in Denmark Post.

### **In this context, special rights have become harder to justify.**

Clearly where USPs are becoming successful private businesses it is harder to justify special rights. For example, in Germany, the timetable of market opening by end 2007 now seems more acceptable to market players. Even Dr Zumwinkel, under the spotlight of his shareholders, has gone on record to suggest that Deutsche Post will not be affected adversely by competition in the German market, undercutting protectionist arguments.

## **The process of the negotiations**

From the above it may seem difficult to imagine that the existing movement towards postal liberalisation could be easily now be reversed in the negotiations over the next Postal Directive. However, despite this momentum, the result of these negotiations cannot be assumed.

In fact the process towards an achieved internal market may be quite a fragile one.

In part this is due to the varied nature of the European postal development and the timetable and structure of the negotiations. Whilst some USPs have become profitable and diversified others remain dependent on



mail revenues and at an earlier stage of reform.

These may include USPs in New Member States still adapting to the Community framework or those in older Member States, where there may be fears about the ability of the USP to sustain universal service provision in a competitive environment. In such a context postal reform can appear more as a threat than an opportunity.

The timetable for the current negotiations constrains the period of agreement as the current Postal Directive is scheduled to elapse on 31 December 2008.<sup>1</sup>

The Commission is due to make a proposal by 31 December 2006 on a new Directive. Following this proposal there will then be a 'co-decision procedure' involving the Commission, Council and Parliament, which should all agree the text of a new Directive before end 2008.

No doubt the European Parliament will discuss vigorously postal liberalization and it may be that French MEPs are less enthusiastic about postal liberalization as a result of the referendum.

However, it is in the European Council that the effects of the 'non' may be felt more strongly. Co-decision means that even if the text of a Directive has been agreed by the European Parliament and the European Commission, it can be delayed if a 'blocking minority' is established in the European Council. In the context of these negotiations

such a blocking minority can exercise its power by delaying the agreement of a Directive text threatening to push the negotiations outside the agreed timetable.

A blocking minority could come from a combination of countries which have concerns over the pace of postal liberalisation. However, to be successful in blocking a Directive a minority usually has to include one of the larger Member States, Germany, France or the UK.

### **The importance of the French position**

France, therefore, is particularly important in this respect as it appears likely that the UK and German postal markets will already be open and that they will be unlikely to wish to block a Directive which moves towards the internal market.

Further, France has traditionally been cautious about postal sector reform, delaying transposition and application of the Community framework and incurring the launch and process of infringement proceedings by the Commission.

To avoid reform at home France has to block the Directive. For whilst derogations (or delays/exceptions) in the implementation of the Directives are not unusual in the postal sector, where Poland has delayed the reduction in the reserved area and several Member States continue to reserve outward bound cross border mail, for France to seek a derogation is little short of unthinkable.

### **The French movement towards postal reform**

In this context we can see, therefore, that the French position is vital.

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<sup>1</sup> If a Directive elapses then there is no Community Directive governing the sector, but reliance instead (as stated in Article 26 of the Directive) instead on the Community Treaty, in particular Articles 82 and 86 re competition law enforcement. In one sense it can be argued then that if no new Directive is agreed by end 2008 the sector will be fully opened up to competition except where reservations/special rights can be justified in terms of the Treaty.



At first glance, for example, it may appear that the French government could simply veto postal market reform. Certainly such a political gesture would appear attractive in the context of the referendum result.

However, the referendum result comes just at the time when the French have appeared both to implement the Amended Postal Directive and, perhaps more importantly, to accept the logic of the end date.

The recent French postal reform process has involved implementation of reduced special rights foreseen in the Amended Postal Directive, setting up of a new postal regulator within the new Communications regulator ARCEP (formerly the ART), which takes its powers towards the end of this year, and the establishment of a compensation fund for any net cost of the universal service for La Poste. Further, La Poste has been empowered to act more freely in the French financial services market and is being transformed from the inside, into a leaner and more profit hungry business.

## Conclusions

It can, therefore, be argued that perhaps France has now gone too far down the road of postal reform to move into reverse gear.

Here the timing may in fact be critical. Had the new French postal law enacted on 20<sup>th</sup> May been a month later who knows what would have happened? Certainly the political gesture would have been easier to make. But, whilst the French Minister responsible for post is now changing, it appears unlikely that the policy itself will reverse.

Postal sector liberalisation then looks unlikely to fall victim as a result of current developments. Certainly the debate in the

European Parliament will be intense, but by 2007/8 events may have moved on. As for the 'blocs' in the Council the non by itself may not now affect the national positions.

In the UK, although DTI has moved towards a review of the impact of competition on Royal Mail, any shareholder action against the regulator's decision to open the market would surely be extremely difficult to justify in terms of the Postal Directive and in light of Royal Mail's recent financial success.

As for Germany, Deutsche Post's increasing interests outside its national market and explicit acceptance of market opening make delay increasingly unlikely.

Without France a blocking minority looks unlikely. After the French referendum on the Constitution it may have been difficult for any French negotiator to give way on the postal file. But the recent French legislation solidifies a different approach and will generate a momentum for reform in the French market. It may be then, that after all the years of debate over postal liberalisation, the most vital two weeks took place most recently in May and June 2005.

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