

POSITION PAPER ON THE WIK STUDY FOR THE EUROPEAN COMMISSION ON “THE ROLE OF REGULATORS IN A MORE COMPETITIVE POSTAL MARKET”

Brussels, 18 March 2010

Subject: Position paper on the WIK Study on “The Role of Regulators in a More Competitive Postal Market”

In Summary

As a conclusion of its evaluation of the WIK-Consult report on ‘The Role of Regulators in a More Competitive Postal Market’, identifying 32 best practices and producing a set of recommendations, PostEurop would like to point out that it welcomes the research done by WIK but also feels it is necessary to take issue with certain aspects of this study:

- *A number of considerations on the implementation of the directive and the subsidiary principle*
- *The European paradigm inverted: ex ante approach applied to regulation of dominant position rather than to basic universal service provision*
- *The necessity and desirability of a European Advisory Body for Postal Regulation*

PostEuropⁱ, representing 48 Universal Postal Service providers across Europe, has concluded its review of the WIK-Consult report for the European Commission (DG Markt) entitled: “The role of regulators in a more competitive postal market”ⁱⁱ. Its goals included identifying “*appropriate next steps for the regulators of postal services [...] in light of the evolution of the postal markets, best regulatory practices and the ongoing transposition of the Third Postal Directive*” in a fully liberalised market. Following a review of prime examples of good regulation found in Member States, as well as potential areas of concern, WIK identified 32 “best practices” and produced a set of recommendations.

PostEurop welcomes the significant body of research compiled by WIK on postal regulatory regimes in EU Member States. A discussion on the implementation of the Third Postal Directive and on regulatory experiences across Europe is both timely and important for the future development of the postal market. Nevertheless, PostEurop deems it necessary to take issue with certain aspects of the WIK study.

1. Postal directive & subsidiarity for Member States

- The postal directive was adopted by the European Parliament and the Council of Ministers. Responsibility for its transposition lies with Member States however. Any practice at national level that transposes the Directive in a compliant manner should be deemed to be satisfactory;
- When discussing “best practices”, PostEurop believes that the principle of subsidiarity should be respected while avoiding any subjective judgement. In this way a balance can be struck between market opening and high quality universal service provision at national level. A survey on and analysis of national regulatory practices should determine if this trade-off is compatible with the postal directive. In this respect, the terminology “best practices” can be considered as somewhat inappropriate;
- Furthermore, PostEurop believes that a workable ‘one-size-fits-all’ solution to regulation does not exist. The Postal Directive aims at fulfilling the internal market for postal services and acknowledges at the same time objective differences among Member States. The latter retain some flexibility to transpose it so as to suit their radically different domestic needs. National regulation yields many unique benefits, i.e. maximizing welfare, fulfilling latent users’ needs, ensuring a high quality of service or guaranteeing affordability. The detailed analysis done by WIK does not seem to address these issues in detail.

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2. An inverted European paradigm: *ex ante* approach applied to regulation of dominant position rather than to basic universal service provision

- The reader of the WIK study may conclude that there is an advocacy of an *ex ante* (rather than *ex post*) regulation of a dominant position and an *ex post* (rather than an *ex ante*) regulation of universal service. WIK claims that a comprehensive universal service can be assured by market forces and a minimal service imposed where the market fails. But simultaneously it recommends *ex ante* competition mechanisms through accounting and pricing regulation for the Universal Provider, access service to national postal infrastructure, etc.;
- PostEurop believes that one overriding reason for the Postal Directive is the acknowledgement that market forces may not be sufficient to ensure universal service provision. It therefore allows Member States to *ex ante* designate a universal service provider but the Postal Directive does not demand *ex ante* regulation of a dominant position.

3. A European Advisory Body for Postal Regulation?

- The WIK study recommends closer collaboration among national regulatory authorities (NRAs) through the proposed “European Regulators Group for Postal Services”. It claims that, unlike other regulated industries such as electronic communications, energy and railways, no postal organisation exists to promote cooperation among postal regulators. The consultants cite several reasons for their proposal but primarily a desire for more harmonised regulatory practice among NRAs and the European Commission to achieve effective implementation of the Directiveⁱⁱⁱ. Although PostEurop takes no issue with concertation among NRAs and exchange of practices, it is of the opinion that the Postal Directive’s aims are much more modest and advocate NRA cooperation only as a means to help ensure its “*consistent application*”^{iv}. In contrast to many other industries, the Postal Directive does not mandate a postal regulatory agency, nor does it mandate a full harmonisation of the regulatory framework (cfr the above mentioned subsidiarity principle^v);
- PostEurop believes that only a truly independent NRA can guarantee observance of a national regulatory framework and its members, the postal operators responsible for the Universal Service Provision, continue to see a good working relationship with NRAs as more effective than an institutionalized European grouping of NRAs. Ignoring objective national differences would appear to be contrary to the very principles of best practice from the OECD which WIK recommends^{vi}.

This position paper is supported by the following postal operators:

Österreichische Post AG (Austria), La Poste / De Post (Belgium), Bulgarian Posts Plc (Bulgaria), Department of Postal Services (Cyprus), Česká Pošta (Czech Republic), Eesti Post Ltd (Estonia), Itella Corporation (Finland), La Poste (France), Deutsche Post DHL (Germany), ELTA (Greece), Magyar Posta (Hungary), Iceland Post (Iceland), An Post (Ireland), Poste Italiane (Italy), Latvia Post (Latvia), Lithuania Post (Lithuania), P&T Luxembourg (Luxembourg), Maltapost plc (Malta), Poczta Polska (Poland), CTT - Correios de Portugal S.A. (Portugal), Posta Romana (Romania), Slovenska posta, a. s. (Slovakia), Pošta Slovenije d.o.o. (Slovenia), Sociedad Estatal "Correos y Telégrafos" S.A. (Spain), Royal Mail Group Plc (United Kingdom).

ⁱ PostEurop – Association of European Public Postal Operators

ⁱⁱ Available on http://ec.europa.eu/internal_market/post/doc/studies/2009-wik_regulators.pdf

ⁱⁱⁱ In summary WIK’s reasons for a European regulatory agency are threefold: (1) enhancing quality of regulation and better use of finite resources, (2) ensuring consistent application of the directive and harmonising regulatory practice and (3) effective cross border mail monitoring and, where appropriate, its regulation.

^{iv} Directive 2008/6/EC Recital 50.

^v Subsidiarity – where key postal regulatory policy decisions are to be made by the Member States. In contrast with the sector directives in regulated industries such as electronic communications, the Postal Directive does not confer many tasks directly on the NRA. Rather obligations devolve on the Member States who must ensure a correct transposition of the Directive by delegating some tasks to the NRA. The Directive promotes harmonization in some aspects but stops short of a “one-size-fits-all” approach in recognition of fundamentally different domestic situations.

^{vi} One question on the OECD checklist asks the following “is the distribution of effects across society transparent? To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups”. – OECD ‘Reference Checklist for Regulatory Decision Making’ (1995)



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