The re-regulation of the postal sector in the European Union

by Valentin Petkantchin, Director of Research at the Institut économique Molinari

By January 1st, 2011, the entire postal sector is supposed to become competitive in a majority of European Union (EU) member countries, with the other countries following suit two years later. In principle, the historic monopolies should no longer be explicitly protected. Public authorities at the national level have nonetheless begun a process of re-regulation, to the point of endangering the real opening to competition and its expected benefits for consumers.

On paper, there will certainly be no prohibition on competing with the traditional postal operators. However, the reality is different, with new regulatory obstacles being imposed at the same time on potential new competitors that are seeking to get into the postal market.

These obstacles take diverse and varied forms: hard-to-meet conditions for market entry, compulsory contributions to “compensation funds,” out-of-reach minimum wages, or prohibitive tax measures. In the name of “universal postal service,” these obstacles aim to protect the postal monopolies of the past. They will inevitably harm competition and hinder the proper operation of the postal market.

AN INCOMPLETE OPENING

The opening planned for the start of 2011 is the last phase in a reform begun in 1992, when the European authorities released the “Green Paper on the development of the single market for postal services.”

Looking at the national postal monopolies of that era, regarded as inefficient, they suggested gradually reducing the limits on items of mail (based, among other things, on factors such as weight) that member countries could reserve for their national operators.

Under a directive issued in 1997, the monopolies maintained their rights over items weighing less than 350 grams. In 2002, a second directive lowered this limit to 100 grams for the 2003-2005 period and to 50 grams for 2006-2010. Finally, the latest directive (2008) calls for the opening of all postal services after 2010 for most countries, representing 95% of European mail by volume.

Some countries – Finland (1992), Sweden (1992), the United Kingdom (2006), Germany (2008), the Netherlands and Estonia (2009) – have already opened their entire national markets by law.

However, item weight is not in itself an effective criterion of an opening to competition. The authorities’ insistence on this criterion avoids focusing reform on what would make a market truly competitive, namely removing legal barriers to entry, allowing economic players to provide postal services with no extra hassles, and not having to face systematic government intervention.

Competition gives operators an incentive to innovate, for example in sorting and shipping mail, and to offer an enhanced range of products and services, including longer opening hours, Internet follow-up of mail, etc. Here as elsewhere, competition tends to push suppliers into doing their best and trying to attract consumers.

The opening initiated by Brussels is largely inadequate in this regard.

It fails to remove various sources of distortion that exist in national postal markets. For example, most national postal operators are still under total government control despite the opening initiated by Brussels. They benefit from capital injections and financial assistance that inevitably create distortions in relation to private operators. Price controls are also applied by public authorities, particularly with regard to “universal service,” there again preventing competition from playing its role fully.

Beyond these existing distortions, national public authorities have added an array of new regulations. Like price controls and assistance, this re-regulation of European postal markets has a particularly negative impact on competition and keeps true liberalisation at bay.

3. There exist exceptions, like TNT (Netherlands) and MaltaPost (Malta) that have been totally privatised. The German, Austrian and Belgian postal operators have been partially privatised, with the government still controlling more than half the shares in the two latter cases. Source: “The Evolution of the European Postal Market since 1997,” op. cit., p. XIV.
4. The French national operator has even been declared immune from privatisation under Law No. 2010-123 of 9 February 2010 on the public enterprise La Poste and on postal activities, Article 1, available at: http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021801431&dateTexte=.
5. This includes in particular the concept of a single rate over a country’s entire territory, even though the economic costs of shipping may differ widely. Administered prices set at excessively low levels make services unprofitable in some regions and in actual fact prevent private competitors from supplying them.
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CONDITIONAL ENTRY FOR NEW COMPETITORS

On the one hand, the entry of new competitors can be subjected to conditions that are hard to meet. It may also be accompanied by a “tax” generally used to finance the public operator, limiting the interest that a private operator may have in entering the postal market.

Prohibitive conditions on the issuing of a licence: the case of Finland

Finland was one of the first EU countries to open its postal market officially, in 1991. In theory, monopoly has thus been lifted since then.

In practice, the entry of new operators has been blocked by an obligation to obtain — under specific conditions — a licence to distribute addressed mail. The public authorities require new competitors to provide “universal service”, including mail delivery on every working day. If licence-holders limit their service to certain regions, they also must pay the government a contribution of 5% to 20% of their revenues, based on the density of the region served.

Requirements such as these are real barriers to entry in the postal market, even if monopoly has legally been eliminated. These obstacles are made all the tougher by new competitors not being able to benefit from economies of scale — crucial in the postal sector — unlike the former monopoly operator that covers all of the national territory. It is hardly surprising in this situation that Suomen Suoramainonta Oy (SSM), the only competitor to the Finnish national postal system to have obtained a licence, let it expire in 2003 without even using it.

When regulations do not get in their way, new postal operators have gone first into certain regions, offering mail delivery that is less frequent but also less expensive for users, who get the chance to choose between frequency and cost. Extending service to the rest of the territory, when it occurs, is done only gradually.

In Spain, for example, the competitor Unipost began delivering mail at the local level before considering the creation of a national network that would rely on various local operators. TNT applies a similar strategy in Germany, using existing local operators: while the company is able on its own to cover the needs of 40% of households, this level reaches 90% when the company is associated with local partners. In the Netherlands, the new competitor Sandd began by making use of its postal network. This is what differentiates this type of rival, which is also the best established competitor throughout the territory.

The new operators are having to finance the operations of their main competitor, which is also the best established competitor throughout the territory. And this applies even though the new competitors will never make use of its postal network. This is what differentiates this type of fund from the one that exists in the telecoms sector. In the latter, the various competitors that finance the fund also generally have occasion to use the network of the “universal service” provider, if only to complete their calls in remote areas.

“As the postal market opening approaches, member countries are seeking to toughen entry conditions for new postal competitors. Such re-regulation, though, is harmful for competition and for consumers in terms of price, delivery frequency and choice of postal services.”

Compulsory contributions to “compensation funds”

In authorising new competitors to enter a national market, some governments act at the same time to make them pay a “contribution” (based on revenues, profit, volume of mail delivered, etc.) into a “compensation fund” aimed at financing some of the national operator’s activities. Italy has had such a fund since 1999. In France, the 2010 postal law also aims at creating one.

The justification provided by political authorities for the creation of these funds is to finance the mission of “universal service,” generally entrusted to the former monopoly. In the French case, the precise measures for applying it have not yet been determined, but competitors of La Poste will be obliged — if they wish to operate in the French market — to pay into this fund in proportion to the volume of mail they handle.

Beyond the complexity of establishing such a system and of its true capacity for financing the needs of the provider of “universal service,” it is profoundly anti-competitive.

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13. In Italy, for example, it could cover only 0.04% of these needs in 2005 (see Oxera, op. cit., p. 33).
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This type of system also creates a strong measure of legal insecurity for the new competitors: do their contributions not risk rising if, for example, the fund turns out to be insufficient, thereby endangering their profitability?

As the postal market opening approaches, member countries are seeking to toughen entry conditions for new postal competitors. Such re-regulation, though, is harmful for competition and for consumers in terms of price, delivery frequency and choice of postal services.

THE MINIMUM POSTAL WAGE OBSTACLE: THE GERMAN EXAMPLE

Imposing a minimum wage specific to the postal sector is another way to block competition. This was the means chosen by Germany, where a minimum was adopted in late 2007, shortly before the full opening of the postal sector on January 1st, 2008. The legality of this regulation has been contested: the Berlin administrative tribunal declared it illegal in March 2008, the appeal tribunal suspended it in late 2008 and, in early 2010, the federal administrative court finally rejected it on grounds of technical irregularity. But new attempts by the German government to impose a minimum postal wage cannot be excluded.

The German case should serve as a lesson for countries tempted to follow the same course.

Under the initial legislation, any addressed mail postal operator was legally obliged to pay postal employees a minimum of 9.80 euros an hour, more than 23% higher than the average wage paid by competitors of the former monopoly Deutsche Post (see Table 1).

Table 1

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<th>Impact of the imposition of the minimum postal wage in Germany</th>
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<td>Deutsche Post (former monopoly)</td>
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<td>Postal wage 11.29 euros/h</td>
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Obviously, imposing this type of minimum wage aimed to protect the wage conditions of the public operator, dating back to the era when it enjoyed a protected monopoly. These wage levels were unlikely to have reflected labour productivity in a competitive situation. Competition truly had a major role to play in the opening of the postal market by bringing postal wages into line with productivity in this sector.

In the context of such an opening, Deutsche Post could find itself in difficulty when faced with new competitors that had lower labour costs. Imposing a minimum wage put an end in actual fact to this adjustment process and prevented competition from playing its proper role.

Imposing a minimum postal wage has an especially anti-competitive character.

In effect, the cost of labour weighs heavily in the operating accounts of a postal operator and could amount to as much as 60% of expenses – or even more. Its artificial increase through regulation thus pushes total costs up sharply. According to estimates, Deutsche Post competitors saw their average costs soar by nearly 12% because of the minimum wage.

Even though implementation of a minimum wage was rejected in early 2010, it created great legal insecurity that has affected postal competition in Germany. It contributed to the massive layoffs that took place following its adoption, with the number of employees at Deutsche Post competitors plummeting by nearly 40%, with about 19,000 jobs eliminated16 (see Figure 1).

Figure 1

Number of employees at Deutsche Post competitors before and after imposition of the minimum postal wage

PIN Group, one of the main competitors of Deutsche Post, was pushed into bankruptcy in 2008.16

This regulation is obviously a legal barrier to entry and is having a major anti-competitive impact. It is occurring at the expense of those employed by competitors of the former postal monopoly. By reducing competitive pressure, it is also occurring at the expense of consumers.

UNEQUAL TAXATION: THE CASE OF THE UNITED KINGDOM

Historically, public postal services are exempted from the value added tax (VAT) in EU member countries. In practice, the scope of the exemption varies by country (see Table 2 on page 4).

With the opening of competition, this VAT exemption is also likely to become a source of distortion to competition. For example, in the United Kingdom, all services provided by the historic operator (Royal

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Mail) are exempted, while one of its competitors, TNT Post UK, is obliged to make its customers pay this tax. Some of them, including major institutions such as banks, insurance companies, charitable organisations and public establishments, cannot recuperate the VAT. Straight away, by using the services of a private operator, they have to deal with an additional cost of 17.5% (Britain’s VAT level). TNT Post UK has contested this situation in the courts.

This unequal tax treatment may in effect give the former monopoly a competitive advantage, particularly if the VAT exemption from which it benefits is substantially greater than the irrecoverable VAT applied to its investments (vehicles carrying mail, for example). In the United Kingdom, the postal authority Postcomm estimated that this amounted to an average of 2.5% of the prices charged by Royal Mail, or less than the exempted VAT rate (17.5%).

The situation is changing, however. In an April 2009 ruling, the European Court of Justice specified that only items coming under universal service could be exempted from the VAT and that no individually negotiated service – with business customers, for example – could normally benefit from the exemption. The British authorities, in particular, are in the course of removing it on part of the postal services provided by Royal Mail.

This ruling may, however, be insufficient to end the distortions created by the multi-tier tax system in the European postal market. The products declared to be part of “universal service” and VAT-exempt are also in more or less direct competition with other postal services that do not benefit from the exemption.

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CONCLUSION

The full opening of the postal sector to competition is supposed to affect the great majority of EU countries on January 1st, 2011. Contrary to the hype from public authorities, this in fact is a partial and incomplete liberalisation. On top of existing obstacles, the re-regulation efforts of the various national governments add new legal barriers to entry in the postal field.

These efforts at re-regulation – which could take other forms in the future – are of an anti-competitive nature. There is a need to remain vigilant, because these moves can annihilate the benefits expected from competition in the European postal sector.

Table 2

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<th>VAT exemption for postal services in member countries (2008)</th>
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<tr>
<td>No exemption</td>
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<tr>
<td>Reserved services</td>
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<td>Universal service</td>
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<td>All services supplied by providers of “universal service”</td>
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Source: European Commission.

