

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES**

Postal/Courier: Proposal for a Reference Paper

The following communication, dated 13 January 2005, from the delegation of the European Communities and their Member States is being circulated to the Members of the Council for Trade in Services.

I. INTRODUCTION

1. This communication is a complement to the sectoral proposal S/CSS/W/61 of the European Communities and their Member States on the postal and courier sector, which notably contemplated the possibility of a reference paper for postal and courier services. The EC suggests that the following reference paper proposal on postal and courier services could be a model to be further discussed with Members with a view to insert a final version of the paper in the additional commitments of Members willing to take specific commitments in the postal and courier services sector.

2. The present proposal does not deal with two important issues, which should be discussed further, namely :

- (a) relations between WTO and UPU rules, which the EC considers should not be covered by the reference paper but should be further discussed among Members;
- (b) a list of examples of the anti-competitive practices mentioned in section 1 of the following proposal, as well as a list of practices which should not be considered as anti-competitive *per se*, which the EC considers should in principle be added to the reference paper at some stage.

II. PROPOSAL FOR A REFERENCE PAPER ON THE POSTAL AND COURIER SECTOR

Scope

The following are definitions and principles on the regulatory framework for all postal and courier services.

Definitions

An "individual licence" is an authorisation, granted to an individual supplier by a regulatory authority, which is required before supplying a given service.

Universal service is the permanent provision of a postal service of specified quality at all points in the territory of a Member at affordable prices for all users.

1. Prevention of anti-competitive practices in the postal and courier sector

Appropriate measures will be maintained or introduced for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

2. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

3. Individual licences

An individual licence may only be required for services which are within the scope of the universal service.

Where an individual licence is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

The reasons for the denial of an individual licence will be made known to the applicant upon request and an appeal procedure through an independent body will be established at the Member's level. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

4. Independence of the regulatory body

The regulatory body is legally separate from, and not accountable to, any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body will be impartial with respect to all market participants.

III. EXPLANATORY NOTES

A. WHAT IS A REFERENCE PAPER?

3. In addition to the general commitments imposed by GATS on all the services sectors it covers, Members can take "specific" commitments in the sectors of their choice. The specific commitments are described in the "schedule of commitments" of each Member and divided into market access (Article XVI of GATS), national treatment (Article XVII), and "additional commitments" (Article XVIII).

4. **A reference paper is a list of these "additional commitments" for a given sector**, which Members are invited to inscribe in their schedules of commitments if they wish to do so. Thus, the reference paper only has a legal value inasmuch as it is inscribed in a Member's schedule of commitments. But it can be a useful "reference" for negotiations on the liberalisation of trade in a

given sector. There is to this day one reference paper, on telecommunications, which has been undertaken by a significant number of WTO Members¹.

B. WHY A REFERENCE PAPER IN POSTAL AND COURIER?

5. The postal and courier sector has some specific features :

- (a) importance of **regulation** ;
- (b) **predominance of State-owned operators** ;
- (c) tendency of the postal operators to **diversify their activities** (finance, telecommunications, internet, express).

6. These features mainly characterise the "traditional" activities where a universal service obligation exists, but they can "spill over" in other sub-sectors, such as express delivery (cross-subsidisation, for instance). They might justify specific rules for the postal and courier sector, in order:

- (a) **to avoid that commitments in market access and national treatment are rendered ineffective by other practices** specific to the sector;
- (b) to have a **common view** on the scope of terms commonly used in schedules of commitments (such as universal service) in order to **clarify commitments** or possible restrictions to market access and national treatment which Members might wish to keep in their schedules of commitments.

C. THE POSSIBLE CONTENTS OF THE REFERENCE PAPER

This part describes each paragraph of the proposed reference paper.

1. **Scope**

7. **It is proposed to draft a reference paper for the whole sector (postal and courier),** including express delivery services.

2. **Definitions**

8. The terms of "users" and "essential facilities", defined in the reference paper on telecommunications (hereafter RPT), are not used in the proposal because they do not play the same role in the postal/courier sector.

9. It is proposed to **include a definition of individual licences and universal service**, which did not exist in the RPT, but which seem necessary for the paragraphs dedicated to universal service and licensing procedures. The definition of universal service is consistent with (and inspired by) the definition given at UPU level.

3. **Prevention of anti-competitive practices**

10. **This paragraph aims at preventing dominant players from abusing their market power.** It is substantially inspired by the paragraph of the RPT. However, the subsequent paragraph of the

¹ 75 Members have undertaken the reference paper in its entirety, 5 others have only done so partly.

RPT, which describes examples of such anti-competitive practices, has not been included as a further analysis of the anti-competitive practices specific to the postal and courier sector appears necessary.

4. Universal service

11. **Universal service is a key component of the postal sector for most Members.** The EC believes that this principle should be expressly mentioned in additional commitments rules. In particular, this paragraph confirms the possibility to impose universal services obligations provided they respect certain basic rules, such as transparency, non-discrimination and a neutral administration. It is entirely inspired by the RPT.

5. Licensing criteria

12. **This paragraph aims at giving operators minimal guarantees in the licensing procedures.** The wording of the RPT has been included, but mention of an appeal procedure has been added.

13. In addition, the possibility of imposing an individual licensing procedure on an operator would be restricted to services where a universal service obligation exists. This would answer concerns that some countries might actually feel enticed by the reference paper to add new licensing procedures in activities where such procedures did not exist yet (in express delivery services notably).

6. Independent regulators

14. This paragraph imposes the principle of an independent regulator. The provisions of the RPT have broadly been included.

D. RELATIONS WITH UPU

15. The question of the relation between rules laid down by the UPU and the rules of the WTO will have to be dealt with by Members. One of these possible overlaps is the "terminal dues" system. Terminal dues are the tariffs received by universal services operators for the delivery of international mail. These tariffs are managed as per rules decided in the UPU but the question is whether the system, which draws a distinction between developed and developing countries and is not always related to costs, is consistent with GATS and notably its MFN obligation.

16. **Because of its flexibility, a reference paper does not appear to be the right instrument to deal with this more systemic problem.** However, the question of the relations between UPU rules and GATS should be addressed in the negotiations at some point, in order to support ongoing efforts within the UPU to establish a more cost-oriented terminal dues system.
