

# Study on the External Dimension of the EU Postal Acquis

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The views and opinions expressed in this study are those of the authors and do not necessarily reflect the position of the European Commission.

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## Executive Summary

Since 1997, the European Union (EU) and its Member States have transformed the laws governing postal services. These reforms have responded to advances in communications and transportation technologies that are reshaping the postal sector — a sector (in EU terminology) that includes a wide variety of private delivery services as well as traditional public post offices. Three European directives have been adopted and transposed into national legislation, independent national regulatory authorities have been established, public postal operators have been reorganized, postal monopolies have been reduced or eliminated, and the quality of national postal systems has improved markedly.

During this period, however, relatively little attention has been given to agreements and conventions between the EU and the rest of the world which govern postal services. These international agreements include the Universal Postal Convention, the General Agreement on Trade in Services, bilateral trade agreements, customs laws and agreements, and provisions of aviation agreements.

The primary objectives of this study were (i) to provide recommendations on how to best present the EU postal regulatory framework in international discussions; (ii) to provide a balanced view of EU postal acquis in the different dimensions of international postal relations (UPU, trade negotiations, bilateral discussions) and suggest on how to maximize synergies between them, and (iii) to reflect on the appropriate level of coordination between the Commission and the Member States in relation to obligations under Community law and how to maximize synergies in the approach to international postal discussions.

### EU postal acquis and external relations

The foundations of the EU postal acquis are laid down by the Postal Directive (this study treats the two as functionally equivalent). In the Postal Directive, the term ‘postal services’ refers to all types of collection and delivery, including letter post, parcel delivery services, and express services whether provided by public or private providers of postal services. The essential elements of the EU postal acquis may be distilled into five fundamental legal concepts or ‘pillars’:

- assurance of an efficient, affordable, high quality universal postal service;
- a progressive and regulated opening of postal markets;
- legal protections for users of postal services;
- promotion of fair market conditions with effective competition ensured through sector specific regulation; and

- sector specific regulation by independent national regulatory authorities.

The external relations reviewed in this study are the agreements or autonomous measures of the European Union and the Member States that have a particular effect on the conduct of postal services conducted between countries. Four types of external relations appear especially relevant: (i) trade negotiations relating to postal services (taking place in both the Doha Round of the World Trade Organisation and in relation to bilateral preferential trade agreements), (ii) acts of the Universal Postal Union, (iii) customs laws relating to postal services (primarily at EU level but also taking account of the work of the World Customs Organisation), and (iv) intermodal provisions of the EU-USA aviation agreement.

### **International postal markets**

International postal services are traditionally divided into three categories by the UPU based on differences in operational requirements. The *letter post* is a service for the conveyance of letters and other envelopes, printed matter, and 'small packets' (packages weighing up to 2 kg that be collected and delivered with the other letter post items). The *parcel* service is a service for the conveyance of parcels (packages weighing up to 10 kg or more). The *express* service (also called 'EMS') is service for extra rapid and reliable conveyance of all types of packages (i.e., letters, envelopes, or anything else) with additional attributes such as the ability to track the progress of conveyance, obtain proof of delivery, etc.

International letter post services conveyed about 5.6 billion items and generated about € 6.3 billion in revenues in 2008. The market for international letter post services is only about 2 percent of the market for national letter postal services. International letter post services globally handle roughly the same number of letter post items as the public postal operator in Spain or Italy.

For the EU 30 countries the outbound international letter post conveys about 2.9 billion items annually, about 3.0 percent of all letter post items collected by EU 30 public postal operators. The volume of the inbound international letter post is about 3.3 billion items annually, about 3.4 percent of all letter post items delivered. These figures do not include letter post items that are transferred from country to country by freight or electronic means and tendered as domestic mail or delivered by private operators. Including these items (for which there are no public statistics) would increase the totals.

From these figures, it may be seen that EU 30 countries account for more than half of all international letter post items. This dominance is due primarily to the large volume of intra-EU 30 letter post mail. About three-quarters of EU 30 international letter post items are collected in one EU 30 Member State are delivered in another EU 30 Member State. The intra-EU international letter post market alone accounts for fully 40 percent of

the world total. Extra-EU letter post items account for only about 0.8 percent of all EU letter post mail.

International parcel and express services for lightweight items (less than 2 kg) conveyed about 470 million shipments and generated about € 14.8 billion in 2008. International services account for about 2 percent of the volume and about 11 percent of the revenues of their domestic counterparts. There is no data on the share of the EU in the total market for international parcels and express services. However, a recent study estimates the share of 'Western Europe' to 36 percent of all international shipments weighing less than 2 kg. The EU is therefore a smaller portion of the world market for international parcel and express service than it is in the international letter post market.

The EU is well represented in the global postal market as well as in foreign national and intra-EU postal markets. In the international parcels and express markets, two EU operators, TNT (a Dutch company) and DHL (a subsidiary of German Deutsche Post AG), have established a major global presence. They compete primarily with two American companies, United Parcel Service (UPS) and FedEx. Besides, several EU postal operators are expanding their parcels and express operations, and in some cases freight and logistics operations, in Eastern Europe, the Balkans, the Americas, and Northern Africa. In supplying technology to the postal industry, European manufacturers are among the largest producers in the world. The most important regions for foreign investment by EU undertakings are North America and Asia Pacific.

Overall, we offer the following conclusions on international postal markets:

- International letter post is very important to the EU as the EU sends and/or receives a major share of the World's international letter post: The EU's international letter post traffic is half of all international letter post traffic in the World. 74 percent of all outbound international letter post from EU Member States is addressed to other EU Member States ('intra-EU traffic'). The market for international letter post in Europe is served mostly by EU operators, primarily by the designated operators of the EU Member States.
- International parcel and express services are also important to the EU, but the EU accounts for a smaller share of the World's market for international express and parcels services than for the World's international letter post. 'Western Europe' accounts for approximately 36 percent of the World's international (lightweight) express and parcels traffic. All of Europe, including Switzerland, Russia and many non-EU countries in Eastern Europe, accounts for less than 40 percent of all international express and parcel shipments. EU operators have significant traffic with other regions, and significant business in other regions.

The largest EU operators are TNT and DHL, they primarily compete with North American integrators UPS and FedEx, and with smaller local carriers.

- European manufacturers are among the largest producers of postal technology in the world and have substantial investments outside the EU, most importantly in North America and the Asia Pacific region.

### **Regulation of foreign postal markets**

To provide perspective on postal developments in the EU and the context for the EU's external postal relations, this study examines the regulation of postal markets in ten non-EU countries that are important trading partners for the EU: Australia, Brazil, Canada, China, India, Japan, Russia, Switzerland, Turkey, and the United States. The study highlights similarities and differences between the approach to postal regulation in these countries compared to the EU postal acquis.

In all countries, letter post markets are dominated by the incumbent operators. The level of postal development in the countries we surveyed varies extremely, as does their general economic development. Annual letter post volume per capita in other industrialised countries (Australia, Canada, Japan, Switzerland, USA) are comparable to those in the most developed EU national markets (166 to 567). In the large developing economies (Brazil, China, India, Russia, Turkey), annual letter post volumes are between 5 and 43 items per capita, substantially less than in the EU as a whole.

In these foreign countries, the domestic and international parcel and express markets are significantly more competitive than the letter post markets. In general, there are several important players in these markets, both domestically and internationally. In the USA and Japan, the public postal operators play a relatively small role in the parcels markets. In the USA, FedEx and UPS account for most of the market volume. In Japan, national companies as well as UPS and FedEx serve large parts of the market. Overall, there appears to be more competition in the business-to-business segment, while public postal operators are strong in the growing business-to-consumer parcels segment (notably in Australia, Canada, and Switzerland).

Unlike most EU Member States, few of these ten foreign countries have restructured their public postal operators by corporatisation or privatisation. In most, including the largest developed economies, public operators remain state enterprises or government postal administrations directed by political institutions. However, further corporatisation, and even privatisation, are under discussion in Japan and Switzerland.

There is a similar practice of independent and impartial regulators in Australia and USA but postal regulators in these countries (the PRC in the USA, the ACCC in Australia) are primarily focussed on price regulation and accounting separation. Most other countries, however, have not established an independent institution to regulate postal

markets impartially (at least as those concepts are defined in the Postal Directive). In New Zealand, where postal markets have been liberalised since 1998, there is no specific postal regulator, and postal policy relies solely on general competition law and transparency requirements.

In the 10 countries surveyed, universal service is rarely clearly defined. Only a few countries defined the scope of universal service in a manner comparable to the EU postal acquis, notably Switzerland and Japan. Absence of a well-defined universal service obligation may be due to the fact that foreign postal operators are less separate from government and therefore more subject to direct political influence. But for some Asian jurisdictions, plans have been reported that universal service definitions might be adopted which would include services that are not considered universal services by the EU postal acquis.

Nearly all these countries continue to maintain a reserved area in favour of their public postal operators, although there are differences in definition and extent. In Japan, despite a 2002 law that formally allows competition, no licences have been issued to new entrants, and Japan Post holds a de facto monopoly over the regular conveyance of correspondence weighing up to 250 grams and priced at less than JPY 1,000. Russia Post still controls about 80 percent of the postal market even though the monopoly on postal services was abolished in 1996. While domestic letter post markets are protected by monopolies in most foreign countries, more competition is often allowed for outbound cross-border mail. However, two countries in the Asia-Pacific region have fully liberalised their postal markets: New Zealand and Singapore, and de facto competition in mail delivery exists in many Latin American countries.

Most countries outside the EU have not established a licensing system for postal operators (excepting Switzerland and Japan). Indeed, in some countries, there are indications of an increasing use of 'non-postal' constraints that severely limit the ability of new entrants to establish themselves in the country. A recent example is a new Chinese postal law that requires express operators to be licensed by the State Post Bureau and prohibits foreign businesses from investing in or operating domestic express delivery in China.

Our analysis of the selected foreign postal markets and regulation arrives at the following key conclusions:

- International letter post markets are very diverse. While the top industrialized countries have high per capita volumes that are often above EU levels, the large transition economies have substantially lower volumes than EU Member States (many have significantly less than 50 items per capita/year). In all countries, letter post markets are dominated by the public postal operators.

- International parcels and express markets are more competitive than letter post markets. The 'Big Four' integrators DHL, FedEx, TNT, and UPS are strong in most or all countries internationally and focus largely on business-to-business shipments. Only a few public postal operators have been successful in developing significant parcel operations in the business-to-consumer business, notably Australia Post, Canada Post, and Swiss Post.
- There is a global trend towards corporatising public postal operators but to a lesser extent than in the EU.
- There is no common approach to independent regulators globally. While there are strong regulators in the USA and Australia that are competent, in particular, to regulation of prices and cost accounting, there are no independent regulators in most other countries, or such regulators have very limited competences. In many transition economies, regulators tend to control new entrants more than in EU, but there is less regulation of public postal operators and universal service.
- In most countries outside the EU, there are no clear definitions for universal postal service. Therefore, the EU postal acquis' meaning of 'universal service' may not be easily understood in those countries and regions.
- Very few non-EU countries have liberalised their postal markets. These few exceptions include New Zealand and Singapore.

Some countries outside the EU are increasingly developing trade barriers in the postal sector. The most important trade barriers relate to protectionist conditions for obtaining licences for letter post, parcel, express and/or courier services. The key current example for trade barriers are restrictions on foreign investment in the Chinese postal sector.

### **Trade agreements and international postal services**

International trade agreements provide the general legal framework for the international exchange of goods and services. Trade agreements fall into two broad categories: global agreements like the General Agreement on Tariffs And Trade (GATT) and General Agreement on Trade in Services (GATS) negotiated under the auspices of the World Trade Organization (WTO) and 'preferential trade agreements' (PTAs) pertaining to one or a few specific countries.

In negotiating any agreement, the first step is to define key terms. However, an agreed definition of 'postal services' has proven surprisingly elusive in trade negotiations, so much so that definitional problems have posed real obstacles to agreement. For trade negotiators, the starting point is a sector classification scheme called the Provisional Central Product Classification (CPC). The CPC scheme was developed by the United

Nations and adopted by the WTO in 1991. In brief, the CPC defines *postal service* as collection and delivery services for documents and parcels if provided by the national postal administration and *courier service* as similar services if provided by anyone else. A WTO member country cannot meaningfully commit to liberalise one service without liberalising both, and few member countries wish to liberalise all postal services (i.e., repeal the postal monopoly law and risk the financial viability of the national postal administration).

The EU and other countries have highlighted the need for an alternative scheme for defining and describing 'postal/courier' services in negotiating trade agreements. The most workable approach (we propose) is the traditional terminology of the Universal Postal Union which divides postal services into letter post, parcels, and express services. A great virtue of the UPU terminology is that it distinguishes clearly between letter post services and parcel services. This distinction may permit trade negotiators to discuss commitments for parcel services without arousing the political sensitivities surrounding letter post services. For similar reasons, we believe that in international postal negotiations the term 'postal' should not be used (as in the Postal Directive) to refer to the entire universe of collection and delivery services. In many countries, 'postal' services have been so intimately associated with government authority that a new broader use of the term 'postal' may tend to inhibit agreement on commitments to liberalise portions of the 'postal/courier' market. Indeed, both 'postal' and 'courier' should probably be left out of future trade discussions. Another key EU postal term, 'universal service', cannot be omitted, but it should be employed with care. 'Universal service' is so susceptible to misinterpretation (and the term is used with different meaning in different countries, and in other industries) that EU trade negotiators should ensure that they are understood to be using the term in an EU sense.

The global trade agreement most pertinent to international postal services is the General Agreement on Trade in Services. The GATS obliges member countries of the World Trade Organization to adopt or refrain from adopting certain types of measures affecting trade in services. The GATS applies to international postal services with only minor exceptions (e.g., possibly postal services for the blind). Under the GATS, there are two types of obligations assumed by member countries: general obligations and specific obligations.

- *General obligations* apply to all WTO member countries. The primary general obligation is the 'most-favoured-nation' obligation, an obligation to treat services and service suppliers from all other WTO member countries equally favourably with respect to the supply of like services.
- *Specific obligations* apply only if a country has made a specific commitment to liberalise or maintain liberalisation of a specific service. Specific obligations are more detailed and include obligations to provide foreign services the same

treatment as similar national services (national treatment) and to regulate the market in a reasonable, objective, and impartial manner (domestic regulation).

WTO member countries have been reluctant to make to specific commitments with respect to postal services. This is due in part to obstacles posed by the CPC scheme of 'postal' and 'courier' services. Even where countries have, in fact, liberalised their letter post and parcel post services, they are often unwilling to commit to maintaining liberalisation in trade agreements. And while international express services are accepted in virtually every WTO member country, less than half of all WTO members have made a commitment on express services.

The current level of GATS commitments for postal services is unimpressive. Using the CPC classification scheme, a handful of small countries have committed to liberalise or to maintain liberalisation of some portion of 'postal' services. Nine EU and EEA countries (CZ, EE, LV, LT, PL, SK, SL, NO) and about 43 countries outside the EU 30 area have made specific commitments to liberalise or maintain liberalisation of 'courier' services. Ambiguities of the CPC classification scheme obscure the precise scope of these commitments, but it appears that in most cases, the intention is likely to maintain liberalisation of express services and, in some cases, at least some parcel services.

In 2001, the WTO began a new round of multilateral negotiations, called the Doha Round. The Doha Round seeks agreement on specific commitments that will promote further trade liberalisation. In the Doha Round, the EU (usually in collaboration with other countries) has made several innovative and progressive proposals on postal services: to revise the antiquated UN classification; to solicit commitments with respect to all types of postal services outside the postal monopoly; and to gain acceptance for a specific set of rules promoting impartial and effective regulation of postal services (the 'reference paper'). Little progress has been made, however, due in part to continued reluctance by other countries to make commitments on traditional postal services and in part to larger controversies unrelated to postal services.

In addition, the EU has long used preferential trade agreements (PTAs, also called free trade agreements or FTAs) to supplement global trade agreements. Since 2006, in light of the slow pace of the Doha Round, the EU, like the USA, has placed more emphasis on PTAs. So far, the European Union has concluded three PTAs involving postal services: agreements with Chile (2005), the Cariforum countries of the Caribbean (2008), and South Korea (2009, final approval pending). In each case, the EU has expressed its commitment using the revised definition of 'postal/courier' services that it proposed in the Doha Round. In each case, the EU has limited its commitment to less liberalisation than already exists in fact. For their part, the EU's counter parties have mostly made their commitments using the outdated category of 'courier service' found in the CPC classification schedule. This practice makes it difficult to understand precisely what has been committed and what are the real implications for postal markets



The Cariforum PTA also includes a broad statement of general principles for governing the postal sector. This portion of the agreement is derived from the EU's proposed postal reference paper in the Doha Round. While such a statement of principles is highly desirable in principle, the meaning of the statement in the Cariforum PTA is unclear because it refers only to 'courier' services. For example, the Cariforum PTA commits both parties to establishing regulatory authorities who are impartial and independent of any 'courier' service, yet it is highly unlikely that any private delivery service will be able to exercise undue influence over a regulator. In the EU Postal Directive, the purpose of regulatory independence is to establish the independence of the national regulatory authority from the government and the public postal operator.

In addition to PTAs, the EU has been able to use trade law concepts to strike intergovernmental deals liberalising portions of the postal market in two cases involving the United States and Canada. In each case, the trading partner agreed to liberalise bulk outbound letter post services. However, it appears that the trading partner has retained the right to use measures of the Universal Postal Union to prevent EU postal operators from competing on equal terms with the national postal administration. Hence, the practical value of these agreements may be limited.

The EU is presently negotiating additional PTAs with India, Singapore, Canada, Colombia and Peru, Central American countries, and the Mercosur countries (Argentina, Brazil, Paraguay, and Uruguay).

In sum, with respect to PTAs, we observe that the PTAs concluded to date are unlikely to produce significant new liberalisation because:

- reaching agreement on liberalisation is very difficult using UN CPC categories;
- it will be difficult to convince other countries to use the EU 8-part definition of postal/courier market;<sup>1</sup> and
- making progress in a specific sector like the postal sector is difficult in multi-sector negotiations.

We also observe that liberalisation of 'postal' services appears to be a very sensitive topic. Both the EU and counter parties are reluctant to make commitments even to

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<sup>1</sup> On 22 March 2001, the European Union proposed that the World Trade Organisation consider a wholly new classification scheme for 'postal/courier services', a term the EU used to refer to all types of collection and delivery services without regard to the identity of the provider. In the classification scheme proposed by the EU, the consolidated term 'postal/courier' services would refer to: 'Services relating to the handling [i.e., collection, sorting, transport and delivery] of postal items [items handled by any type of commercial operator, whether public or private], whether for domestic or foreign destinations'. The subsector 'postal/courier' services would have eight sub-subsectors for (1) addressed written communications on any kind of physical medium; (2) addressed parcels and packages; (3) addressed press products; (4) items referred to in (i) to (iii) as registered or insured mail; (5) express delivery services; (6) non-addressed items; (7) document exchanges; and (8) other services not elsewhere specified. See section 5.1.3, below.

maintain existing liberalisations. Therefore a new emphasis on ‘commercial’ parcel and express services may be appropriate. Finally, we are not optimistic about the use of trade agreements on outbound international bulk mail, in part because effective liberalisation may be limited by UPU rules on ETOEs and remail.

### **Universal Postal Union and international postal services**

The Universal Postal Union (UPU) was established in 1874. Today the UPU includes 191 member countries, virtually all countries in the world.

The mission of the UPU has considerably evolved over time. The original goal of the UPU was to create a 'single postal territory for the reciprocal exchange of correspondence between their post-offices'. Although exchange of correspondence has remained its primary function, the UPU — like the national postal administrations — has expanded the scope of its activities to include parcels, postal payment services (e.g., money orders and giro services), express services, logistics, electronic messaging, and other issues.

The 2008 Geneva Congress revised the acts of the UPU by replacing the term 'postal administration' with 'designated operator' (or 'member country' if appropriate). While a designated operator may be a government agency, it may also be a corporatised government entity or private company designated by a member country to fulfill the obligations of the acts of the UPU. Thus, while the UPU remains an intergovernmental organisation, it is now focused on services supplied by a set of designated providers of postal services, undertakings that are increasingly separate from government in the European Union.

Today, the acts of the UPU do not govern the international exchange of all of the estimated 5.6 billion international letter post items and 194 million international parcels. One exception to the ambit of the UPU is created by private carriage. A recent UPU study concludes that non-designated operators convey about 15 percent of international letter post items and about three quarters of light weight (weighing less than 2 kg.) international parcels. Another exception is created by 'direct access', that is, by tendering mail to the designated operator in the destination country as domestic mail rather than as international mail. Perhaps as much as 25 percent or more of postal items exchanged between designated operators is conveyed outside of the regulations of the UPU in this manner. In addition, about 40 percent of international postal services are intra-EU cross border services which are governed primarily by the Postal Directive. Finally, designated operators have about one quarter of the light weight express items and probably a significantly lower share of the overall international express market. In any case, the acts of the UPU play only a limited role in the operation of international express services (called 'EMS') by designated operators.

Legally, the UPU is established and organised by five primary ‘acts’ or intergovernmental agreements. All are binding on UPU member countries unless a member country has filed a reservation to a specific provision. In addition, the UPU has adopted an ‘agreement’ on postal payment services, which is binding only on countries party to the agreement.

The Congress is the supreme authority of the UPU, although since 1994 it has delegated much of its authority to other bodies. Congress consists of representatives of all UPU member countries. It meets every four years to adopt a new Convention and amend the Constitution and General Regulations. Congress also makes appointments to lead the three permanent bodies of the Union — the entities that conduct the business of the Union between Congresses — the Council of Administration, the Postal Operations Council, and the International Bureau. Finally, Congress adopts resolutions to guide the work of the permanent bodies and to decide other policy questions.

In Congress, each member country has one vote. As a result of the unequal distribution of outbound international mail among UPU member countries, 96 member countries accounting for as little as 1 percent of the international letter post market can defeat any normal proposition in Congress. Sixty-four member countries, accounting for less than 0.25 percent of the letter post market, can defeat an amendment to the Constitution requiring a two-thirds majority. Overall, 80 percent of the voting authority in Congress is vested in 153 member countries that account for about 9 percent of the international letter post market.

The geographic distribution of seats on the CA and POC is based on a division of UPU member countries into five world regions. The 27 EU Member States are included in two regions. Nine EU Member States (BG, CZ, EE, HU, LT, LV, PL, RO, SK) are in the Eastern Europe and North Asia region. In this region, there are a total of 27 UPU members potentially competing for 5 CA seats. The other 18 EU Member States and the 3 EEA Member States are in the Western Europe region. In the Western Europe region, there are a total of 25 UPU members potentially competing for 6 CA seats

In general, Member States of the EU are well represented in their individual capacity. Three EU Member States have served the maximum of three terms on the CA (DE, FR, UK). On the POC, 7 designated operators of EU Member States (BE, DE, ES, FR, NL, PT, UK) have served for all four terms since the POC was created in 1994.

The draft overall budget for the UPU in 2011 is about € 36.3 million. The 27 EU Member States pay 316 contribution units or 36.5 percent of the total of 864.5 contribution units. The EEA Member States add another 12 contribution units or 1.4 percent of the total.

This study examines in detail how UPU rules on ‘terminal dues’ — what public postal operators pay each for the delivery of international letter post mail — affect international letter post services. Until 1969, each member country delivered inbound international

mail without charge. This system benefitted postal administrations, usually from industrialised countries, that exported more mail than they imported and penalised those that imported more than they exported, usually those in developing countries. The 1969 Tokyo Congress was unable to agree on a simple, economically sound principle for compensating postal administrations with inbound imbalances, so it adopted an arbitrary 'terminal dues' charge of about SDR 0.16 per kilogram.

In subsequent congresses terminal dues charges were raised many fold until terminal dues rates (arguably, at least) represented a rough average of delivery costs throughout the UPU system. Nonetheless, terminal dues remained unrelated to the actual costs of delivery in specific destination countries. In particular, terminal dues rates were below the actual costs of delivery in high cost industrialised countries. A recent UPU report prepared by Adrenale Corporation described the consequences as follows:

Prior to the turn of the century, the system of average costing and differentiated rates applied, enabled several price arbitraging schemes that allowed intermediaries, competing carriers and other traditionally national postal operators to prosper considerably by offering cross-border services, such as direct injection, re-mailing and hybrid drop-shipping. These and other by-pass methods took advantage of rate de-averaging and pricing loopholes along certain origin-destination routes.

To forestall bypass of the UPU's terminal dues regime, the 1999 Beijing Congress agreed that in principle all countries should adopt a terminal dues system that would 'approach more closely the costs of the services rendered'. In practice, this objective implies aligning terminal dues with domestic postage rates for similar mail tendered in bulk since (i) actual costs are impossible to determine in most countries; (ii) domestic rates are reasonably well aligned with costs overall in most countries; and (iii) it is differences in rates, not the lack of cost-orientation, that creates incentives for bypass. Eventually aligning terminal dues with comparable domestic postage rates will eliminate bypass based on the arbitraging of uneconomic terminal dues rates (bypass may also be motivated by other circumstances such as differences in the service quality offered by different operators). In the meantime, the UPU also empowered postal administrations to limit bypass of UPU terminal dues regimes by treating bypass mail less favourably than regular international mail.

So far the UPU has made only limited progress towards the goal of aligning terminal dues with the domestic bulk postage rates. This study reports the results of a mathematical model that estimates differences between the delivery fees that EU designated operators (DOs) would pay under a reasonable approximation of domestic postage for similar bulk mail and the fees that are charged or would be charged under the UPU's terminal dues system. The results indicate that the net effect of UPU terminal dues is that some DOs would pay less, and some pay more. DOs that benefit from UPU

terminal dues are those that send more mail than they receive (net exporters), and those that have low domestic tariffs. The U.S. Postal Service clearly benefits from this lack of cost orientation, as do the DOs in a few EU Member States, notably the UK, Spain, and Luxembourg. By contrast, DOs who are net importers or who have high domestic tariffs (and costs) provide delivery to foreign DOs at a loss. This category of countries includes the DOs of Germany, Italy, and the Nordic countries.

The primary effect of terminal dues that are not closely related to cost is that some designated postal operators gain higher income at the expense of other postal operators. Overall, the EU as a region loses against other world regions if UPU terminal dues are applied rather than domestic tariffs — because the EU has relatively high tariffs by world standards, and on balance is a mail importing region. Within the EU, some DOs lose and others gain from UPU terminal dues. In principle, input prices that do not equal cost necessarily create economic distortions as prices no longer signal the scarcity of critical resources. Excessive input prices necessarily translate into higher retail tariffs for users, although exactly who pays depend on how the DO chooses to adjust its prices.

The UPU has also continued to support use of legal measures to restrain bypass of the UPU terminal dues regimes. In late 1980s and 1990s, the main target was remail, i.e., the posting of mail in a country other than the country where the sender resides. For example, a bank in the United States might find that it could obtain a better price and improved service by sending statements for European customers to a single European post office for distribution throughout Europe instead of tendering the items directly to the U.S. Postal Service. The majority of UPU members considered such mailing practices to be abusive and unfair. Why? Because the European postal administration that accepted the remail for forwarding to destination post offices throughout Europe would typically charge the mailer only the terminal dues charge — i.e., the postal administration to postal administration charge — plus a small profit. This practice undercut the ability of the U.S. Postal Service (in this example) to charge its customers an outbound postage that was well above the actual costs incurred. To limit the bypass threat posed by remail, the UPU authorised post offices to intercept and return or surcharge remail.

In recent years, some postal operators and the UPU became concerned with a related type of bypass operation, the extraterritorial office of exchange (ETOE). An ETOE is an office of a postal administration established in the territory of another postal administration. For example, an European postal administration might establish an office in the United States and accept mail destined for Europe or some other location. If the European postal administration could make use of the same UPU terminal dues, customs privileges, and documentation as the U.S. Postal Service, then it could compete directly with the U.S. Postal Service for outbound international mail. From the perspective of most UPU members, the ETOE took unfair advantage of terminal dues

that were below the actual cost of delivery in industrialised countries. Consequently, the 2004 Bucharest Congress declared, in essence, that mail sent by ETOEs should be denied access to UPU terminal dues, customs procedures, and documentation unless both the country where the ETOE was located and the postal administration in the destination country allowed the ETOE to make use of these UPU-based legal privileges.

### **Coordination of the positions of Member States at the UPU**

The Treaty Establishing the European Union obliges EU Member States to coordinate their policy positions and support EU policies whenever they participate in an intergovernmental organisation such as the Universal Postal Union. For some categories of international negotiations, a higher degree of coordination is required because institutions of the European Union are vested with 'exclusive competence' to determine, in consultation with the Member States, the position of the EU as a whole.

Since before the 1994 Seoul Congress, the Commission and the Council have urged Member States to coordinate their positions at the UPU in consultation with the Commission. These calls, however, have usually not been issued with sufficient notice or specificity to have much effect. So far, the level of coordination actually achieved has been effectively limited to a common declaration made by all EU Member States at the end of each of the four congresses since 1994. The common declaration notes the superior obligation of EU law. For example, the declaration adopted at the end of the 2008 Geneva Congress stated as follows:

The delegations of the member countries of the European Union declare that their countries will apply the Acts adopted by this Congress in accordance with their obligations pursuant to the Treaty establishing the European Union and the General Agreement on Trade in Services (GATS) of the World Trade Organization.

In preparation for the 2012 Doha Congress, it appears that a more substantial degree of coordination will be required by EU law. First, the Treaty on the European Union imposes on Member States a general duty to 'coordinate their action in international organisations and . . . [to] uphold the Union's positions'. Second, it appears that two legal doctrines provide that, in at least some policy areas, the EU has 'exclusive competence'. The EU's exclusive competence includes all matters addressed in the Postal Directive and other EU legislation (the 'AETR doctrine') and all matters relating to trade in services with non-EU countries (the Common Commercial Policy). Where the EU has exclusive competence, Member States are obliged to present a common position established by the EU in consultation with the Member States.

However, it seems to us that the coordination of Member States' positions required by EU law is implicitly limited to governmental and regulatory issues. In the UPU, most of the issues addressed in the various proposals, acts, and resolutions are operational and

commercial in nature. This study therefore considers how governmental and regulatory issues, on the one hand, can be distinguished from operational and commercial issues, on the other. This distinction is, indeed, already reflected in EU laws such as the Transparency Directive (the distinction between 'public authorities' and 'public undertakings') and the Postal Directive (the principle of regulatory independence). In the UPU, as well, reforms over the last several congresses have sought 'to more clearly define and distinguish between the governmental and operational roles'. The Convention was redrafted in 2004 so that it was limited to 'principles established by governments'. In 2008, the Convention was revised again so that obligations of 'member countries' were expressly distinguished from the obligations of 'designated operators'.

Taking into account such principles and precedents, we suggest a plausible approach to the problem of distinguishing between the governmental or regulatory functions of the acts of the UPU, on the one hand, and the operational or commercial functions, on the other, is offered by the following test:

- *Governmental or regulatory issue or function.* Where a UPU provision addresses an issue or activity that is normally addressed in an intergovernmental agreement (or in the case of the EU supranational legislation) governing commercial activities generally (i.e., whether offered by public or private undertakings) and normally executed by governmental or regulatory officials, then the provision may be considered a governmental or regulatory issue or function.
- *Operational or commercial issue or function.* Where a UPU provision addresses an issue or activity that is normally included in an agreement among commercial undertakings (whether public or private undertakings) and normally carried out by commercial undertakings, then the provision may be considered an operational or commercial issue or function.

Based on this approach, this study offers a tentative list of 11 governmental or regulatory issues raised by the UPU Convention (delegates at the Doha Congress will revise only the Convention, not the Regulations). The issues are:

- the appointment of designated postal operator(s) for international postal services;
- definition of a universal service obligation;
- obligation to provide transit services for postal items;
- ownership of postal items in transit;

- legal standards for postal prices;
- special or exclusive rights of postal operators with respect to postage stamps;
- criminal laws regulating use of or protecting rights of postal operators;
- obligation to ensure access to national postal services;
- liability of postal operators under national customs laws;
- obligation to ensure that postal operators establish quality of service standards;  
and
- obligation imposed on postal users to contribute to developing countries.

We emphasise that this is a tentative list only. We recognise that there will be discussions on how to apply these principles to the provisions of the UPU Convention. On the other hand, while the task of distinguishing governmental/regulatory from operational/commercial issues presents some difficulties, it is not incapable of solution.

If Member States and/or the EU conclude that it is appropriate to dissent from some provisions of the Convention, then it will be necessary to consider an appropriate 'reservation' or declaration. Under the acts of the UPU law, it appears that the only legally binding 'opt out' provision is a reservation. On the other hand, we conclude that a common declaration serves a useful function as well.

In addition, we conclude that the operational issues presented by the agenda of the Doha Congress will also pose some challenges for the EU Member States who are bound by the principles of the Postal Directive. Even though EU Member States are not (we suggest) obliged to coordinate their positions on operational issues, it is not clear how Member States should participate in the operational elements of the Convention, and the Congress as a whole, in a manner consistent with the principle of regulatory independence enshrined in the Postal Directive. The procedures of the UPU provide that plenipotentiaries of the member countries must sign the Convention and that member countries must ensure that their designated operators fulfil the obligations arising from the Convention and its Regulations. These requirements appear to raise some fundamental policy questions for Member States. The three most significant appear to be:

- How can a plenipotentiary of an EU Member State negotiate and conclude an agreement that involves both governmental/regulatory and operational/commercial provisions, consistent with the principle of regulatory independence?
- How can the plenipotentiary of an EU Member State agree to ensure that its designated operator will fulfill the obligations of the Regulations when the



contents of the Regulations are unknown in advance? (the Regulations are approved by the Postal Operations Council after the end of Congress)

- What is the appropriate role of EU postal operators at the Doha Congress given that (i) at the time of the Doha Congress, no Member State will have selected its designated operator(s) for the effective period of the Convention (2014 through 2017) and (ii) under the Postal Directive, the designation or authorisation of a postal operator to qualify for special rights and obligations is a matter to be conducted according to "the principles of transparency, non-discrimination and proportionality"?

Similar issues are presented by resolutions of an operational nature. Each Congress addresses many resolutions which, in sum, establish a commercial strategy for the UPU's designated operators for the next four-year period. It is unclear how plenipotentiary delegates from the Member States should participate in these resolutions in manner consistent with the principle of regulatory independence, especially where these resolutions pertain to intra-EU postal services.

While operational issues should be the province of postal operators (or the Member States acting as public undertakings), the correct application of the principle of regulatory independence is a governmental or regulatory issue. We suggest, therefore, there will be a need for a coordinated approach among EU Member States towards the application of the principle of regulatory independence to the operational issues that will be presented by the Doha Congress.

The need for Member States and the EU to develop a specific mechanism for the coordination of governmental and regulatory positions at the UPU will extend beyond the 2012 Doha Congress. Member States that are elected to the POC and the CA by the Doha Congress will be presented by a similar mixture of governmental/regulatory and operational/commercial issues for decision. The principles for determining which positions of Member States must be coordinated at EU level appear to be similar as well.

### **Conclusions and recommendations**

With respect to the objectives of this study, we offer the following conclusions and recommendations.

*(1) National regulatory authorities should consider how to enforce key provisions of the Postal Directive relating to intra-EU cross-border international postal services.*

National regulatory authorities (NRAs) are entrusted with ensuring compliance with the obligations arising from the Postal Directive. To date, however, most NRAs have largely ignored the application of the Postal Directive to intra-EU cross-border postal services.

A review of the external relations of the EU relating to postal services suggests that NRAs should focus in particular on ensuring the following requirements of the Directive:

- Postage rates for outbound international universal services should be cost-oriented.
- Terminal dues and inward land rates for cross-border universal services should be cost-oriented, transparent, and related to quality of service.
- Access to national universal services should be non-discriminatory for all users including users and postal operators from other Member States.
- Cross-border postal operators should be given access to the postal infrastructure and measures should be developed to protect users of cross-border services in a multi-operator intra-EU environment.
- Designation and authorisation procedures for cross-border postal operators should comply with the requirements of the Directive.

*(2) The EU and Member States should improve coordination in the development of international postal policies.*

We first suggest that Member States and the EU need to work together to develop appropriately coordinated positions in preparation for the 2012 Doha Congress of the UPU. In the negotiation of some issues, it appears that institutions of the EU are by law vested with 'exclusive competence'. In such cases, Member States are obliged by the EU treaties and by the case law of the European courts to present a common EU position; Member States lack competence to address such issues either individually or collectively. For other issues, a lesser degree of coordination (but coordination nonetheless) is appropriate.

On the other hand, in an organization like the UPU, which combines governmental/regulatory and operational/commercial functions, it appears to us that the duty to coordinate Member States' positions should logically be limited to governmental and regulatory issues and not include operational and commercial issues. Hence, the way forward is for the EU and Member States to identify the areas of the EU's exclusive competence and then to develop a list of issues which are governmental or regulatory in nature. Tentatively, we conclude that the number of governmental or regulatory issues that will be raised at the Doha Congress is relatively limited (about a dozen) although some may be difficult to resolve. Moreover, the need to develop a specific mechanism to coordinate the positions of the Member States on governmental and regulatory issues at the UPU will continue after the Doha Congress.

In addition, we suggest that improved coordination is called for across international regulatory regimes. Specifically, EU policies with respect to trade agreements (both at

the World Trade Organization and in bilateral negotiations), the Universal Postal Union, and customs regulations should be consistent and mutually reinforcing. This does not always appear to be the case today.

*(3) The EU should reconsider some aspects of its approach to trade agreements relating to postal services.*

We suggest that EU trade negotiators consider a more ‘international vocabulary’ for describing international postal services. In the Doha Round, the EU has rightly taken the initiative in condemning the unsatisfactory categorisation of ‘postal’ and ‘courier’ services in the UN’s Provisional Central Product Classification (CPC). Nonetheless, the EU’s proposed 8-part segmentation of the ‘postal/courier’ market does not meet the need for a simple and understandable vocabulary for international postal policy, a vocabulary that can translate the insights of EU postal reform into ‘global postal speak’.

In our view, a better starting point is the UPU’s traditional division of postal services into letter post, parcels, and express, while retaining the EU’s basic point that such services can be supplied, and are already effectively supplied in many regions, by a variety of public and private operators. Terms such as ‘postal’ and ‘courier’ now appear so elastic as to be meaningless or worse. And politically sensitive, terms such as ‘universal service’ (used in the EU in the context of regulation of network industries) must be used with care if they are not to be misinterpreted or misused by others.

Our second suggestion is to focus postal-related trade negotiations on ‘commercial parcels’ and express services. It seems evident from trade negotiations so far that most countries are reluctant to make commitments to liberalise or maintain liberalisation within the scope of services traditionally provided by national postal administrations. At the same time, most countries appear to understand that their businesses and consumers need access to global markets. They appear to accept the need for high quality, competitive delivery services for commercial parcels and express items, i.e., for things that businesses buy and sell or depend upon for their activities. Hence, a call for efficient, unfettered commercial parcel and express services may generate greater resonance than a broader appeal for liberalised postal markets. We are less optimistic about the value of trade agreements as a vehicle to liberalise bulk outbound international letter post services despite some past successes, in part because effective liberalisation may be limited by UPU rules on ETOEs and remail.

Finally, we suggest that the EU should include proposals for more specific safeguards on authorisation procedures in future trade negotiations. The EU’s proposed reference paper has made a good start in this direction. Nonetheless, by borrowing more liberally from the policies of the Postal Directive, stronger protections may be fashioned. This is a key topic because restrictive authorisation procedures have been used, and may be

used in the future, to restrict significantly the operations of EU postal operators in international and foreign postal markets.

*(4) The EU should encourage an international regulatory dialogue on the governance of international postal services.*

There is today no regular dialogue among governments on the appropriate international regulatory framework for global postal services — using 'postal services' in the broad EU sense of all types of delivery services. Neither the World Trade Organization (WTO) nor the UPU serve this function; the WTO is focused too broadly (all services) and the UPU too narrowly (postal administrations or 'designated operators' only). While it would be premature to propose either a global regulatory framework or a global organisation for postal services, it is not too early to recognise the importance of the postal sector for the global economy and to suggest that government policy makers in leading countries begin to exchange views on the implications of these trends.

## 1 Introduction

Since 1997, the European Union and its Member States have transformed the laws governing postal services. These reforms have responded to fundamental changes in communications and transportation technologies that reshaping the postal sector — a sector that includes a wide variety of private delivery services as well as traditional public post offices. Three European directives have been adopted, and they have been transposed, or are being transposed, into national legislation, independent national regulatory authorities have been established, public postal operators have been reorganized, postal monopolies have been reduced or eliminated, and the quality of national postal systems has improved markedly.

During this period, however, relatively little attention has been given to international agreements and conventions which govern provision of postal services between the EU Member States and the rest of the world and, in some cases, the cross-border services between Member States. These international agreements include the venerable Universal Postal Convention, the General Agreement on Trade in Services, bilateral trade agreements, customs laws and agreements, and even provisions of aviation agreements.

The primary objectives of this study were (i) to provide recommendations on how to best present the EU postal regulatory framework in international discussions; (ii) to provide a balanced view of EU postal acquis in the different dimensions of international postal relations (UPU, trade negotiations, bilateral discussions) and suggest on how to maximize synergies between them, and (iii) to reflect on the appropriate level of coordination between the Commission and the Member States in relation to obligations under Community law and how to maximize synergies in the approach to international postal discussions.

This study is divided into eight chapters in addition to the present introductory chapter. The next three chapters describe the several starting points for this study. Chapter 2 summarises the present status of the EU postal acquis. This chapter also provides an overview of external relations between the EU and other countries that are most pertinent to the evolution of the EU postal acquis. Chapter 3 describes the evolution of international postal networks and their implications for EU postal providers and suppliers. Chapter 4 reviews the development of postal laws and services in a selection of non-EU countries most relevant to the development of EU international postal policies.

Chapter 5 describes the international trade agreements and they affect international postal services. This chapter describes global agreements developed under the aegis of the World Trade Organisation and prospects in the current round of trade negotiations, the Doha Development Round. The chapter also reviews the recent trend towards

bilateral and regional trade agreements, some of which include provisions relating to postal services.

Chapter 6 describes the legal provisions and decision making procedures of the Universal Postal Union (UPU). The chapter examines in particular the effects of terminal dues on the exchange of letter post services and UPU provisions relating to remail and extra-territorial offices of exchange.

Chapter 7 describes issues relating to coordination of Member States' positions at the Universal Postal Union. The chapter reviews past efforts to achieve coordination and the current obligations in EU law relating to coordination. The chapter concludes by identifying what appear to be the implications for preparation in advance of the 2012 Doha Congress.

A final chapter, Chapter 8, summarises our conclusions and recommendations with respect to the specific objectives of the study.

This study was prepared by Alex Dieke, and Martin Zauner of WIK-Consult and by James I. Campbell Jr. On trade law issues, we consulted extensively with David Luff, a professor of International Trade Law at the University of Liege in Belgium, at the College of Europe, and at the MGIMO University in Moscow and a partner in the Brussels-based law firm, Appleton Luff. Throughout this study we have been advised, encouraged, and guided by the staff of the European Commission, in particular, Kamil Kiljanski, head of the postal markets unit of the Internal Market and Services Directorate General; Hughes de la Motte, manager of this study; Denis Sparas; and Robert Pochmarski. We gratefully acknowledge the assistance of Prof. Luff and Commission staff but hasten to absolve them of all errors and infelicities.

And we are especially most grateful to the many individuals and organisations who provided valuable information for this study in personal interviews and to those who attended the public workshops and offered us their comments. In particular, we express our gratitude to more than 20 experts in international postal management and policy, as well as customs experts that attended the 'experts panels' we organised for this study.

## 2 EU Postal Acquis and External Relations

In the last two decades, the European Union and Member States have taken great strides in developing and modernising the regulatory framework for national and intra-EU postal services. A Postal Directive was adopted in 1997 and has been amended twice, in 2002 and 2008. Centuries-old postal monopolies have been repealed (or scheduled for repeal) and steps are being taken to provide new entrants fair access to the infrastructure of delivery boxes, databases, and postal codes. The level of universal postal service guaranteed by government — the universal service obligation — has been specified clearly in each Member State and for intra-EU postal services. The quality of universal services has improved markedly as quality of service targets have been established and, most significantly, actual performance has been measured and reported publicly. The financial accounts of universal service providers have become more objective and transparent. The competition rules have been applied to several aspects of postal services. Providers of new types of postal services have been encouraged. Rights of users have been better defined and protected. Independent and impartial regulatory authorities for the postal sector have been established in almost all Member States. Collectively, these measures have reshaped what may be termed the EU postal sector.

What has received far less attention to date are the external relations of the European Union that relate to the exchange of postal services with jurisdictions outside the EU. In the postal sector, priority has been given to measures governing national and intra-EU postal services — especially universal postal services — because the primary suppliers of postal services, the public postal operators, have operated mainly at the national level and most postal services are produced and consumed at the local and national levels. Nonetheless, external relations of the EU relating to postal services have a significant effect on the economic and social development of the Community.

### 2.1 Five pillars of the EU postal acquis

While many European laws and legal decisions contribute to the regulatory framework for postal services, the main foundations of the EU postal acquis in the European Union are laid down by the Postal Directive.<sup>2</sup> For the purposes of this study, the term ‘postal

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<sup>2</sup> The current version of the Postal Directive is the original Postal Directive, adopted in 1997, as amended by two later directives, in 2002 and in 2008. Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, OJ L15, 21 Jan 1998, p. 14, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176, 5.7.2002, p. 21, and by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27 Feb 2008, p. 3. In this study, unless otherwise indicated, the term ‘Postal Directive’ refers to the current version of the directive.

acquis' shall be considered as equivalent to the Postal Directive. The essential elements of the Postal Directive may be distilled into five fundamental legal concepts or 'pillars':

- assurance of an efficient, affordable, high quality universal postal service;
- a progressive and regulated opening of postal markets;
- legal protections for users of postal services;
- promotion of fair market conditions with effective competition ensured through sector specific regulation; and
- sector specific regulation by independent national regulatory authorities.

### 2.1.1 First pillar: high quality universal postal service

The first pillar, universal service, refers to 'the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users'. Rates for universal services must be cost-oriented, transparent, and non-discriminatory.<sup>3</sup> Standards for the quality of universal postal services must be established and actual performance monitored.<sup>4</sup> At a minimum, the universal service must provide for collection and delivery of single piece letter post items and single piece parcels weighing up to 10 kg. In principle, universal service must be provided at least five days per week (except for holidays) to every home or business, although exceptions may be permitted by the national regulatory authority (NRA) in exceptional circumstances.<sup>5</sup> Although specialised services for bulk shipments of postal items may be considered part of the universal service, few Member States consider bulk parcel services to be part of the universal service, and half or more regard special services for periodicals and direct mail to be outside the universal service.<sup>6</sup> However, even where specialised services for bulk tenders of postal items are considered outside the universal service obligation, the postal items can always be distributed throughout the national territory by means of the corresponding single piece service so that, in practice, Member States ensure universal delivery for such items.

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<sup>3</sup> Postal Directive, Articles 5, 6, and 12.

<sup>4</sup> Postal Directive, Articles 16 to 18.

<sup>5</sup> See Postal Directive, Article 3. See also See Directive 97/67/EC, recital 11. Express services are considered distinct from the universal service. The term 'express service' refers to a value-added service, where the extra value may take different forms and is reflected in a higher price than charged for basic letter post service. Directive 2008/6/EC, recital 18.

<sup>6</sup> WIK-Consult, *Role of Regulators* (2009), pp. 18-21.



Member States retain considerable discretion to decide how the objectives of the Postal Directive will be achieved after taking into account national needs and conditions.<sup>7</sup> Under the Postal Directive, Member States may rely upon one or a combination of three regulatory mechanisms to ensure universal service: reliance on market forces, designation of one or more universal service providers (USPs), and public procurement of postal services. In selecting from among these mechanisms, Member States are to determine the 'most efficient and appropriate' mechanism or combination of mechanisms for ensuring universal service and must respect 'the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market'.<sup>8</sup> Since reliance on market forces is particularly compatible with the principle of least market distortion and the parallel objective of full market opening, the Postal Directive might be interpreted to establish a preference for reliance on market forces where feasible.<sup>9</sup> Where the Member States chooses to ensure universal service by designation of universal service provider or public procurement, the Postal Directive makes clear that it should proceed in a manner that is transparent, non-discriminatory, and proportional.<sup>10</sup> If a Member State has designated or procured a postal operator to provide universal services, it may compensate the operator for the net cost of the universal service, but not more.<sup>11</sup>

Overall, regulatory reform has significantly improved the provision of postal services in the Union. The Postal Directive and its application by the Member States have led to an improved quality of service and have secured the provision of a universal service accessible to all customers. Provision of a high quality and affordable universal postal

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<sup>7</sup> Flexibility for Member States in implementation of the Postal Directive follows from the principle of subsidiarity as defined in Article 5 of the Treaty on European Union (consolidated version, 2010). In sum, subsidiarity is the principle whereby the Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principles of proportionality and necessity, which require that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaty.

<sup>8</sup> Directive 2008/6/EC, recital 23, summarises this three-pronged approach for ensuring universal service as follows: 'Directive 97/67/EC established a preference for the provision of the universal service through the designation of universal service providers. Member States may require that the universal service be provided throughout the whole of the national territory. Greater competition and choice means that Member States should be given further flexibility to determine the most efficient and appropriate mechanism to guarantee the availability of the universal service, while respecting the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market. Member States may apply one or a combination of the following: the provision of the universal service by market forces, the designation of one or several undertakings to provide different elements of the universal service or to cover different parts of the territory and public procurement of services.' These are the same regulatory principles that are prescribed for ensuring universal service in the electronic communications sector. See Directive 2002/77/EC., OJ L249, 17 Sep 2002, p. 21.

<sup>9</sup> See WIK-Consult, *Role of Regulators* (2009), pp. 283-84.

<sup>10</sup> Postal Directive, Articles 4 and 7(2) (referencing the Utilities Directive, OJ L 134, 30.4.2004, p. 1, as amended). See WIK-Consult, *Role of Regulators* (2009), pp. 285-86.

<sup>11</sup> Postal Directive, Article 7(3) and Annex 1. The calculation of the net cost is to take into account intangible benefits as well as actual costs. In addition, the Member State must demonstrate that the universal service obligation represents an 'unfair' burden on the universal service provider.

service is being provided throughout the European Union at least five times a week, with only limited exceptions due to geographical conditions.<sup>12</sup> Whenever a universal service provider incurs a net cost and an unfair financial burden in fulfilling its duties under the universal service obligation, it may claim compensation from the Member State.<sup>13</sup> Generally, public postal operators have acquired new tools and skills that will allow them to adapt better to the rapidly changing market.

### 2.1.2 Second pillar: customer choice through regulated market opening

The second pillar of the Postal Directive is a progressive and regulated opening of postal markets. The approach of the European Union is that progressive market opening will help to expand the overall size of the postal markets and contribute to maintaining sustainable and quality employment, both within the traditional universal service providers and among new entrants and associated economic sectors.<sup>14</sup> Accordingly, the Postal Directive requires the repeal of postal monopoly laws by the end of 2010 (at the latest) in most Member States and the end of 2012 (at the latest) for remaining eleven Member States (CZ, CY, EL, HU, LT, LV, LU, MT, PL, RO, SK) . In addition, where necessary to permit open competition, Member States are required to ensure that all providers of postal services have transparent and nondiscriminatory access to elements of postal infrastructure, including the postcode system, address databases, information on changes of address, post office boxes, and postal delivery boxes.

Market opening is also protected by prohibiting unduly restrictive authorisation procedures for new entrants. Within the universal service area individual licences may be required for new entrants, but a licensing scheme must not be more restrictive than necessary to guarantee compliance with general, non-economic policy objectives (such as privacy, data protection, environmental protection, respect for terms and conditions of employment) or to safeguard the universal service. Outside the universal service area, the Postal Directive permits only general authorisation procedures, such as a simple registration requirement.<sup>15</sup>

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<sup>12</sup> European Commission. *Report from the Commission to the Council and the European Parliament on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC)*. SEC(2008) 3076 (22 Dec 2008), p. 5.

<sup>13</sup> Postal Directive, Article 7(3).

<sup>14</sup> Directive 2008/6/EC, recital 16.

<sup>15</sup> Postal Directive, Articles 7(1), 9, and 11a.

### 2.1.3 Third pillar: improved protection of users

The third pillar of the European postal acquis is protection of users, that is, both senders and receivers of postal items. In general, user protection requirements apply to all providers of postal services (public and private) and all types of postal services (universal and non-universal). Providers of postal services must adopt transparent, simple and inexpensive procedures for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards. Users should be able to settle disputes fairly and promptly with provision for reimbursement and/or compensation, where warranted. For universal services, additional protections are provided. Providers of universal services must give users detailed and up-to-date information regarding service features, conditions of access, prices, and quality standard levels. Users must be afforded a right to appeal to a competent national authority if satisfaction on complaints is not forthcoming. And providers of universal services must publish an annual report giving the number of complaints and the manner in which they have been dealt with.<sup>16</sup>

### 2.1.4 Fourth pillar: fair and impartial regulation

The fourth pillar of the internal European postal acquis is procedural and may be deemed a 'principle of fair and independent regulation'. This principle ensures that substantive regulatory rules are applied in specific cases by an impartial and independent regulatory authority according to sound principles of administrative law. The principle of independent regulation is established by provisions of the Postal Directive which apply recognised norms of European administrative law.

The national regulatory authority (NRA) bear the primary responsibility for fair and impartial regulation of postal services. Article 22 of the Postal Directive requires that Member States 'designate one or more national regulatory authorities for the postal sector' and that NRAs 'shall have as a particular task ensuring compliance with the obligations arising from this Directive'. To ensure the impartiality of the NRAs,<sup>17</sup> Article 22 requires that NRAs be 'legally separate from and operationally independent of the postal operators'.<sup>18</sup> Where Member States retain ownership or control of postal service

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<sup>16</sup> Postal Directive, Articles 6 and 19.

<sup>17</sup> Recital 47 of Directive 2008/6 declares: 'In accordance with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authorities, thereby ensuring the impartiality of their decisions'.

<sup>18</sup> In an important decision in 2001, the Commission held that Article 22 requires Member States to ensure 'thanks to a proper separation of duties, that the tasks of economic and financial monitoring, on the one hand, and of supervision of [the USP], on the other, are carried out completely independently one of the other'. Commission Decision 2002/344/EC of 23 October 2001, OJ L 120, 7 ay 2002, p. 19, at paragraph 29. Similarly, in 2002, the Commission warned France that it was not consistent with Article 22 to vest in a single minister the responsibility for overseeing the state's property interests in a public postal operator and its economic and financial performance and, at the same time, the responsibility for regulating the postal sector. European Commission, 'Postal services:

providers, they must ensure ‘effective structural separation of the regulatory functions from activities associated with ownership or control’.

It is not sufficient that NRAs are structurally independent. In addition, NRAs are must also follow procedures that are transparent, non-discriminatory, objective, and proportional. Such principles are accepted in European law as the necessary for fair administrative actions. In addition, at several places, the Postal Directive explicitly requires NRAs to follow these principles in taking specific decisions such as the selection and administration of mechanisms to ensure universal service,<sup>19</sup> the designation of one or more universal service providers,<sup>20</sup> the financing of a universal service fund,<sup>21</sup> the use of authorization procedures,<sup>22</sup> and the adoption of rules relating to access to the postal infrastructure.<sup>23</sup>

### 2.1.5 Fifth pillar: fair market conditions ensured by NRA

A fifth pillar of the European postal acquis is established by responsibility of the national regulatory authority to ensure fair market conditions until competition becomes effective. A central tool in this respect is the authority of the NRA to require universal service providers to keep ‘separate and transparent accounts’.<sup>24</sup> In particular, NRAs are responsible for ensuring that postage rates and terminal dues (rates that public postal operators charge each other for the delivery of cross-border items) comply with public policy principles set out in the Postal Directive.

Under the Postal Directive the NRA may be charged with ensuring compliance with competition rules in the postal sector.<sup>25</sup> A recent survey shows that the NRA has a lead or secondary role in enforcing the competition rules in 14 Member States (BE, CY, DE, EE, EL, FI, HU, LT, LV, PL, PT, SK, UK, IS) representing 53 percent of the EU/EEA postal market.<sup>26</sup> At a minimum Member States must ensure appropriate consultation and cooperation between the NRA and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.<sup>27</sup>

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the Commission asks France to reinforce the independence of its national regulatory authority for the postal sector’, IP/02/932 (6 Jun. 2002).

<sup>19</sup> Directive 2008/6, recital 23.

<sup>20</sup> Postal Directive, Article 4(2).

<sup>21</sup> Directive 2008/6, recitals 28 and 29; Postal Directive, Article 7(5) and Annex I(C).

<sup>22</sup> Postal Directive, Article 9(3).

<sup>23</sup> Directive 2008/6, recital 34; Postal Directive, Article 11a.

<sup>24</sup> Directive 2008/6/EC, Recital 41.

<sup>25</sup> Postal Directive, Article 22(2). The competition rules are set in Treaty on the Functioning of the European Union, Articles 101 to 106.

<sup>26</sup> WIK-Consult, *Role of Regulators* (2009), at 243.

<sup>27</sup> Postal Directive, Article 22(1).

## 2.2 External relations: four principal legal frameworks

In roughly parallel manner, the external relations of the EU relating to postal services may be said to rest principally on four international legal regimes: trade, postal, customs, and aviation. These legal regimes include provisions that are particularly relevant to the exchange of postal services. In addition, international postal services, like domestic postal services, are regulated by laws that regulate commerce generally.

### 2.2.1 International trade law: global and bilateral agreements

International trade agreements provide a legal framework for the international exchange of goods and services. International trade agreements form part of the external relations both because trade in postal items and postal services are governed by general rules of trade and because some trade agreements include specific provisions for certain types of postal services. Trade agreements fall into two categories: global agreements, on the one hand, and “preferential trade agreements” pertaining one or a few specific countries, on the other. In general, both types of agreements employ similar legal concepts.

For the postal sector, the major global trade agreements are the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). The GATT regulates trade in goods, while the GATS regulates trade in services. The GATT applies to the exchange of goods by postal services. The GATS applies to postal services per se. The GATT, GATS, and several related agreements are implemented the World Trade Organisation, a permanent intergovernmental organisation that includes 153 member countries.

The European Union has also actively pursued bilateral and regional preferential trade agreements (PTAs). These include agreements with the European Economic Area (Iceland, Liechtenstein, Norway), Switzerland, Mexico, Chile, South Africa, Ivory Coast, Cameroon, and various countries in the Balkans, Mediterranean, and Caribbean. Numerous additional preferential trade agreements are under negotiation. Some of these agreements include specific provisions liberalising express services.

The application of trade law to international postal services is discussed in detail in Chapter 5.

### 2.2.2 Acts of the Universal Postal Union

The international exchange of postal services is also governed in part by the Universal Postal Convention and related acts of the Universal Postal Union. The Universal Postal Union (UPU) is an intergovernmental organisation established in 1874. Intergovernmental agreements arranged under the auspices of the UPU — called ‘acts’ — do not govern directly the exchange of all postal services, but only postal services (and some other services) provided by a class of postal operators called ‘designated operators’.

A ‘designated operator’ is a ‘governmental or non-governmental entity officially designated by the member country to operate postal services and to fulfil the related obligations arising out of the Acts of the Union on its territory’.<sup>28</sup> The acts of the UPU and decisions of member governments thus jointly determine which providers of delivery services may be appointed ‘designated operators’. In the European Union almost all designated operators are corporatised entities although most are owned in whole or in part by government.<sup>29</sup>

In sum, the acts of the UPU regulate international postal, electronic postal services, and logistics services provided by designated operators (but the last two only to a minimal degree<sup>30</sup>). In so doing, the acts of the UPU give special legal rights to designated operators and impose special obligations on them. These acts are binding on member countries. In addition, the UPU develops agreements that are binding only on signatories. The Postal Payment Services Agreement regulates financial services provided by designated operators.

With respect to postal services, acts of the UPU establish detailed rules for the exchange of letter post and parcel post items but a more flexible legal regime for express services. In general, the UPU establishes prices for the delivery of letter post and parcel post items exchanged among designated operators. For the exchange of express services, the acts of the UPU establish only a few minimal standards (e.g., a common logo). The UPU also provides financial, institutional, and other support for the EMS Cooperative,<sup>31</sup> an unincorporated association that was established pursuant to a 1998 resolution of the UPU. Membership in the EMS Cooperative is limited to designated operators.<sup>32</sup>

<sup>28</sup> UPU, Constitution (2008), Article 1bis(6bis).

<sup>29</sup> European Commission. *Report from the Commission to the Council and the European Parliament on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC)*. SEC(2008) 3076 (22 Dec 2008), p. 42.

<sup>30</sup> UPU, Convention (2008), Article 14. This provides only that member countries may agree with each other to participate in electronic mail, EMS, integrated logistics, electronic postal certification mark services, and other services not provided for the acts of the UPU.

<sup>31</sup> UPU, Geneva Congress, Resolution C51/2008, *Letter Post Manual* (2009), p. 61.

<sup>32</sup> EMS Cooperatives, Statutes, Article 1, <http://www.ems.coop/site/Main.php?Oid=209> (April 3, 2010).

The application of the acts of the Universal Postal Union to international postal services is discussed in detail in Chapter 6.

### 2.2.3 Customs law: global agreements and EU provisions

Customs laws form part of the external relations relating to postal services of the European Union because they are particularly relevant to the provision of international postal services and because they include special rules for treatment of some postal items conveyed by some providers of postal services. Overall, customs controls constitute one of the most significant and pervasive legal regimes regulating international postal services. Much of the additional cost and delay associated with international, as opposed to domestic, postal services may be traced to the necessity of complying with customs laws.

There are three overlapping sources of international customs controls applicable to the international postal services serving the European Union: the Kyoto Convention of the World Customs Organisation (WCO), the customs provisions of the Universal Postal Convention and related acts of the UPU, and the customs law of the European Union.

The primary international customs agreement is the International Convention on the Simplification and Harmonization of Customs Procedures (as Amended), known informally as the Kyoto Convention. The Kyoto Convention was developed under the auspices of the World Customs Organisation, a permanent intergovernmental organisation founded in 1952.<sup>33</sup> A revised version of the Kyoto Convention was agreed in 1999 and became effective in 2006. The revised Kyoto Convention has been ratified by 71 countries, including the European Union and all Member States except Romania.<sup>34</sup>

The Kyoto Convention provides a basic set of rules for the customs control of international shipments. These rules emphasise transparency and predictability; standardization and simplification of the goods declaration; maximum use of information technology; minimum necessary control to ensure compliance with regulations; and use of risk management and audit based controls. Most the standards set out in the main body of the Kyoto Convention are mandatory for signatory countries (called “contracting parties”).

The Kyoto Convention applies to the customs clearance of items conveyed by all types of postal services. However, an optional annex, Annex J.2., specifies special

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<sup>33</sup> Today, the WCO includes the customs administrations of 176 countries, including all the European Union and all EU Member States. The WCO was originally called the Customs Cooperation Council.

<sup>34</sup> See WCO, ‘Procedures and Facilitation - Tools and Instrument - Conventions > Contracting parties to the Revised Kyoto Convention and their instruments (as of 15 July 2010)’. [http://www.wcoomd.org/home\\_pfoverviewboxes\\_tools\\_and\\_instruments\\_pfconventions\\_instruments.htm](http://www.wcoomd.org/home_pfoverviewboxes_tools_and_instruments_pfconventions_instruments.htm).

procedures for customs clearance of 'postal items', a term defined as 'letter-post and parcels, as described in the Acts of the Universal Postal Union currently in force, when carried by or for postal services'. In Annex J.2, the term 'postal services' is defined more narrowly than in the EU Postal Directive: 'a public or private body authorised by the government to provide the international services governed by the Acts of the Universal Postal Union currently in force.' Thus, Annex J.2 provides special customs treatment for letter post items and parcels (not express or EMS items) but only when conveyed by what the UPU now calls a 'designated operator'.<sup>35</sup> In Annex J.2, the customs procedures for postal items set out eleven mandatory standards,<sup>36</sup> but the annex is applicable only to contracting parties that have specifically ratified it. Neither the European Union nor any EU Member State has ratified Annex J.2. Annex J.2 has been ratified by only eleven countries. From an EU perspective, the most important signatories are Norway, Australia, and New Zealand.<sup>37</sup>

The acts of the Universal Postal Union also establish a simplified international customs regime for items conveyed by designated operators. The Letter Post Regulations and Parcel Post Regulations require designated operators to use two forms for customs declarations. The CN 22 is a simple form used for letter post items, including small packets (packages weighing up to 2 kg), with a value of not more than 300 SDR (approximately € 350).<sup>38</sup> The more detailed CN 23 form must be used for letter post items valued at more than 300 SDR and all parcels.<sup>39</sup> The CN 22 and CN 23 forms are not customs declarations of the designated operator, but of the shipper. They are shown in Figures 2-1 and 2-2. Although information about actual practice is incomplete, it appears that most, perhaps all, EU 30 Member States allow clearance of letter post, parcel post, and express (EMS) items using UPU customs forms. Similarly, most

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**35** In general, Annex J.2 provides for rapid and simplified clearance of letter post items and postal parcels based on the provisions of the acts of the UPU. Specifically, Annex J.2 requires that the clearance of postal items shall be 'carried out as rapidly as possible', that customs authorities shall not require postal items to be produced to them at exportation in most cases; that customs authorities should not, as a general rule, require non-dutiable letter post items to be produced to them; that in most cases customs authorities shall permit the UPU's customs forms (CN22 or CN23) to serve as the customs declaration when all the required information is available from these forms; that postal items shall not be subject to customs formalities in transit; and that customs authorities 'shall make the simplest possible arrangements for the collection of duties and taxes on the goods contained in postal items'. In the course of drafting the revised Kyoto Convention, the UPU urged the WCO to include express mail (EMS) items in the definition of 'postal items', but the WCO specifically declined to do so.

**36** A 'Standard' is 'a provision the implementation of which is recognised as necessary for the achievement of harmonization and simplification of Customs procedures and practices'. WCO, Kyoto Convention (as amended), Article 1(a). A 'standard' must be implemented by a contracting party within 36 months after entry into force of the relevant portion of the Convention for that contracting party. *Ibid.*, Article 13(1).

**37** Annex J.2 has been ratified by only eleven countries: Algeria, Australia, Egypt, Korea, Madagascar, Malaysia, Mauritius, New Zealand, Norway, Uganda, Zimbabwe.

**38** UPU, Letter Post Regulations (2009), Article RL 152(1) ('Items to be submitted to customs control shall bear on the front a CN 22 customs declaration, or be provided with a tie-on label in the same form'), RL 152(5) ('If the value of the contents declared by the sender exceeds 300 SDR, or if the sender prefers, the items shall also be accompanied by the prescribed number of separate CN 23 customs declarations').

**39** UPU, Parcel Post Regulations (2009), Article RC 122(2) ('A CN 23 customs declaration shall be attached to each parcel, either as a single form or as part of a CP 72 manifold set').



countries outside the EU 30 area allow customs clearance of shipments dispatched by EU designated operators using UPU customs declarations. Other carriers must comply with national customs regulations which vary country by country.

The Universal Postal Convention prohibits designated operators from accepting liability for incorrect customs declarations: 'Member countries and designated operators shall accept no liability for customs declarations in whatever form these are made or for decisions taken by the Customs on examination of items submitted to customs control'.<sup>40</sup> The Letter Post Regulations and Parcel Post Regulations add that 'Completion of customs declarations shall be the responsibility of the sender alone'.<sup>41</sup>

EU customs laws establish the customs regime applicable to international postal services serving the European Union. Currently, the EU customs law is the 1992 Community Customs Code. It permits, but does not require, special customs procedures for 'postal traffic'.<sup>42</sup> However, special customs treatment for certain postal items is prescribed in the implementing provisions adopted by the Commission in 1993. They provide that some postal items (e.g., letters, non-dutiable printed matter) may pass customs without declaration and that other postal items may be declared to customs authorities using the mailer's customs declarations set out in UPU forms CN 22 and CN 23.<sup>43</sup> Since the regulations refer to 'postal authorities' and 'the postal administration', it is evident that these procedures are available only to designated operators.

In 2013, the Modernised Customs Code will replace the Community Customs Code.<sup>44</sup> While the Modernised Customs Code allows for special customs procedures for 'letters, postcards and printed matter and their electronic equivalents held on other media . . . as well as any other traffic of negligible economic importance', it does not refer to special treatment for the UPU's designated operators.<sup>45</sup> Whether or not special customs

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<sup>40</sup> UPU, Convention (2008), Article 22(3).

<sup>41</sup> UPU, Letter Post Regulations (2009), RL 152(10); Parcel Post Regulations (2009), RC 146(1).

<sup>42</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, OJ L 302, 19 Oct 1992, p. 1, as amended, Article 38(4) ('Paragraph 1 (a) shall not preclude implementation of any provisions in force with respect to tourist traffic, frontier traffic, postal traffic or traffic of negligible economic importance, on condition that customs supervision and customs control possibilities are not thereby jeopardized').

<sup>43</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, OJ L 253, 11 Oct 1993, p. 1, as amended, Articles 237 and 238. The implementing provisions declare, inter alia, that (i) letters containing only personal messages or non-dutiable printed matter shall be admitted into the customs territory of the EU for free circulation without presentation to customs; (ii) letter post and parcel post items which are not subject to export duties may be exported without presentation to customs (acceptance by postal authorities being considered as equivalent to presentation to customs authorities); (iii) letter post and parcel post items not listed in (i) or (ii) shall be declared to customs for import or export using the UPU's CN 22 and CN23 customs forms; and (iv) customs authorities may treat the postal administration as the declarant for customs purposes.

<sup>44</sup> Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), OJ L145, 4 Jun 2008, p. 1.

<sup>45</sup> Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), OJ L145, 4 Jun 2008, pp. 1, Article 92(4), p. 34.

procedures for designated operators will be provided in implementing regulations is undecided.

Figure 2-1 UPU customs form for packets valued less than 300 SDR (CN 22)

CUSTOMS DECLARATION		<small>May be opened officially</small> <span style="font-size: 1.2em; font-weight: bold;">CN 22</span>	
Designated operator		<b>Important!</b> <small>See instructions on the back</small>	
<input type="checkbox"/> Gift	<input type="checkbox"/> Commercial sample	<i>Tick one or more boxes</i>	
<input type="checkbox"/> Documents	<input type="checkbox"/> Other		
Quantity and detailed description of contents (1)	Weight (in kg)	Value (3)	
<small>For commercial items only                      If known, HS tariff number (4)                      and country of origin of goods (5)</small>	Total weight (in kg) (6)	Total value (7)	
<small>I, the undersigned, whose name and address are given on the item, certify that the particulars given in this declaration are correct and that this item does not contain any dangerous article or articles prohibited by legislation or by postal or customs regulations                      Date and sender's signature (8)</small>			

Size 74 x 105 mm, white or green

CN 22 (Back)

**Instructions**

To accelerate customs clearance, fill in this form in English, French or in a language accepted by the destination country. If the value of the contents is over 300 SDR, you must use a CN 23 form. You **must** give the sender's full name and address on the front of the item.

(1) Give a detailed description, quantity and unit of measurement for each article, e.g. 2 men's cotton shirts, especially for articles subject to quarantine (plant, animal, food products, etc.).

(2), (3), (6) and (7) Give the weight and value of each article and the total weight and value of the item. Indicate the currency used, e.g. CHF for Swiss francs.

(4) and (5) The HS tariff number (6-digit) must be based on the Harmonized Commodity Description and Coding System developed by the World Customs Organization. Country of origin means the country where the goods originated, e.g. were produced, manufactured or assembled. It is recommended you supply this information and attach an invoice to the outside as this will assist Customs in processing the items.

(8) Your signature and the date confirm your liability for the item.

**Note.** – It is recommended that designated operators indicate the equivalent of 300 SDR in their national currency

Source: UPU, Letter Post Manual (2009), p. 42.

Figure 2-2 UPU customs form for parcels (CN 23)

				CUSTOMS DECLARATION		CN 23	
(Designated operator)				No. of item (barcode, if any)		I May be opened officially	
From		Name		Sender's Customs reference (if any)		Important! See instructions on the back	
		Business					
		Street					
		Postcode City					
		Country					
To		Name		Importer's reference (if any) (tax code/VAT No./importer code) (optional)			
		Business					
		Street		Importer's telephone/fax/e-mail (if known)			
		Postcode City					
		Country					
Detailed description of contents (1)		Quantity (2)	Net weight (in kg) (3)	Value (5)	For commercial items only		
					HS tariff number (7)	Country of origin of goods (8)	
			Total gross weight (4)	Total value (6)	Postal charges/Fees (9)		
Category of item (10)		Commercial sample		Explanation:		Office of origin/Date of posting	
<input type="checkbox"/> Gift		<input type="checkbox"/> Returned goods					
<input type="checkbox"/> Documents		<input type="checkbox"/> Other					
Comments (11) (e.g.: goods subject to quarantine, sanitary/phytosanitary inspection or other restrictions)						I certify that the particulars given in this customs declaration are correct and that this item does not contain any dangerous article or articles prohibited by legislation or by postal or customs regulations	
<input type="checkbox"/> Licence (12) No(s). of licence(s)		<input type="checkbox"/> Certificate (13) No(s). of certificate(s)		<input type="checkbox"/> Invoice (14) No. of invoice		Date and sender's signature (15)	

Size 210 x 148 mm

CN 23 (Back)

**Instructions**

You should attach this Customs declaration and accompanying documents securely to the outside of the item, preferably in an adhesive transparent envelope. If the declaration is not clearly visible on the outside, or if you prefer to enclose it inside the item, you must fix a label to the outside indicating the presence of a customs declaration.

To accelerate customs clearance, complete this declaration in English, French or in a language accepted in the destination country.

To clear your item, the Customs in the country of destination need to know exactly what the contents are. You must therefore complete your declaration fully and legibly; otherwise, delay and inconvenience may result for the addressee. A false or misleading declaration may lead to a fine or to seizure of the item.

Your goods may be subject to restrictions. It is your responsibility to enquire into import and export regulations (prohibitions, restrictions such as quarantine, pharmaceutical restrictions, etc.) and to find out what documents, if any (commercial invoice, certificate of origin, health certificate, licence, authorization for goods subject to quarantine (plant, animal, food products, etc.) are required in the destination country.

Commercial item means any goods exported/imported in the course of a business transaction, whether or not they are sold for money or exchanged.

(1) Give a detailed description of each article in the item, e.g. "men's cotton shirts". General descriptions, e.g. "spare parts", "samples" or "food products" are not permitted.

(2) Give the quantity of each article and the unit of measurement used.

(3) and (4) Give the net weight of each article (in kg). Give the total weight of the item (in kg), including packaging, which corresponds to the weight used to calculate the postage.

(5) and (6) Give the value of each article and the total, indicating the currency used (e.g. CHF for Swiss francs).

(7) and (8) The HS tariff number (6-digit) must be based on the Harmonized Commodity Description and Coding System developed by the World Customs Organization. "Country of origin" means the country where the goods originated, e.g. were produced/manufactured or assembled. Senders of commercial items are advised to supply this information as it will assist Customs in processing the items.

(9) Give the amount of postage paid to the Post for the item. Specify separately any other charges, e.g. insurance.

(10) Tick the box or boxes specifying the category of item.

(11) Provide details if the contents are subject to quarantine (plant, animal, food products, etc.) or other restrictions.

(12), (13) and (14) If your item is accompanied by a licence or a certificate, tick the appropriate box and state the number. You should attach an invoice for all commercial items.

(15) Your signature and the date confirm your liability for the item.

Source: UPU, Letter Post Manual (2009), pp. 43-44.

#### 2.2.4 International aviation law: multimodal operations

Air transportation has a long history as a necessary component of modern long distance postal service. The Universal Postal Convention of 1920 was the first to mention airmail service. The European Airmail Conference of 1938 concluded that air transportation had become the normal means of long distance transportation and ended airmail surcharges on postal exchanges within Europe.<sup>46</sup> Until relatively recently, however, postal services did not need their own aircraft (except to service remote geographic areas). The rise of express companies in the 1980s demonstrated the commercial viability of a postal service based upon a dedicated air transportation system.<sup>47</sup> An increase in the demand for parcel services has also helped to justify the use of dedicated aircraft for postal services. Today, FedEx operates the second largest aircraft fleet in the world; DHL and UPS rank seventh and twelfth, respectively.<sup>48</sup>

Governance of international aviation has been divided between two types of international agreements. In 1944, the leading nations concluded a global intergovernmental agreement, the Chicago Convention, that deals with such issues as sovereignty over air space, aircraft safety, aircraft nationality and registration, and landing and transit rights. However, delegates were unable to agree on rules to govern aviation operations. These were developed in subsequent bilateral aviation agreements. The first bilateral aviation agreements were restrictive. They specified the air carriers to provide services, airports to be served, number of flights to be flown, and other operational details. Prices were fixed by agreement within an association of carriers, the International Air Transport Association, and exempted by governments from the competition rules.

After deregulation of aviation system in USA in 1978, international aviation agreements between the United States and certain European countries gradually became more liberal. These agreements introduced assurances that airlines could, without undue restrictions, collect and deliver air cargo by road transport before and after the flight itself. The culmination of this liberalisation trend was the adoption of an “open skies” agreement between the European Union and the United States in 2007. The agreement allows any EU or US air carrier to provide air transportation services between any point in the EU and any point in the USA. Most significantly from the standpoint of postal services, the EU- USA open skies agreement includes strong protection of ‘multimodal’ operations. It provides that

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<sup>46</sup> Coddington, *Universal Postal Union* (1964), pp. 56-61.

<sup>47</sup> Dedicated cargo airline operations originated after World War II. The U.S. Civil Aeronautics Board first issued certificate to all-cargo airlines 1949. Robert Kane, *Air Transportation* 10-6 to 10-8. The traffic conveyed by these all-cargo airlines were essentially freight rather than postal items.

<sup>48</sup> [[http://en.wikipedia.org/wiki/World%27s\\_largest\\_airlines](http://en.wikipedia.org/wiki/World%27s_largest_airlines)].

Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of the Parties shall be permitted, without restriction, to *employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties, or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond* under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such inter-modal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.<sup>49</sup>

Accordingly, so long as ‘airlines and indirect providers of cargo transportation’ — which could include a provider of postal services such as an express company — is operating ‘in connection with international air transportation’, it may also provide or contract for surface transportation and make use of airport customs facilities. For example, if FedEx carries express items from the USA to Europe by air, it can then clear customs centrally and truck the express items anywhere in Europe without separately applying for trucking authority or other permits that would otherwise be required by Member States. The EU- USA air transportation agreement has overridden potential restrictions on the operation of road vehicles or airport access embedded in local and national regulations to create an ‘end-to-end’ regulatory regime for postal operators that engage in air transportation.

In evaluating the probable effect of this and other provisions of the Open Skies Agreement on the operations of the global express companies serving the EU and USA, the Commission’s consultant, Booz Allen Hamilton, wrote:

An OAA [Open Aviation Area] would create an environment where the four primary integrated carriers in the EU-US market sectors could develop their services based on market demand and free of regulatory impediments that currently add cost and inefficiency to network operations. These carriers would be free to operate their own flights or utilize the most efficient contract flights. Traffic patterns could be efficiently spread over an optimized flight network and network design (e.g. airport selection) would be dictated by economics not the

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<sup>49</sup> European Union, ‘Air Transport Agreement’, OJ L 134, 25 May 2007, p. 4, Article 10(10) (emphasis added).

availability of traffic rights. Finally, air-based restrictions would not limit the flexibility and capabilities of multimodal transportation and logistics companies. The enormous size and impact of this industry on the OAA economies suggests that any marginal improvement to cost or service efficiency could reasonably produce significant direct employment impacts (1,600 to 3,300 direct jobs and 4,500 to 8,900 total jobs). The indirect effect on trade (and employment) related to the sourcing and distribution by air of commodities would further increase these impacts significantly.<sup>50</sup>

According to Booz Allen, the benefits of liberalising EU- USA express services constituted a major benefit from the proposed EU- USA aviation agreement.

With rise of global express companies and the decline of the paper-based communications, the pre-express dividing line between air cargo services and traditional postal services has blurred. In the terminology of freight transportation, postal services — especially express services — are ‘multimodal operators’ because they provide an end-to-end transportation service that includes transportation by several ‘modes’, normally truck transportation from shipper to air terminal, air transportation between air terminals, and truck transportation from air terminal to addressee. In liberalising multimodal air transportation services, open skies air transportation agreements are facilitating development of international postal services, especially international express services.

### 2.2.5 Summary of external relations relating to postal services

Four international legal regimes play an especially important role in the development of international postal services: trade, postal, customs, and aviation. These four categories of external relations have grown in different directions over the last quarter century. Significant steps have been taken to modernise international agreements relating to trade in services, aviation, and customs. The common trend has been to liberalise international services and reduce economic distortions created by national boundaries. Recent developments in trade and aviation agreements have placed particular emphasis on the need to facilitate international services, including, where applicable, international postal services. On the other hand, during the same period, international postal law has focused on the rights and obligations of the traditional national postal operators, now called ‘designated operators’ since many are no longer public administrations or even, in some case, government-owned corporations. The UPU has also created special customs provisions for designated operators, which create legal significant distinctions between designated operators and other international providers of postal services when conveying similar goods.

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<sup>50</sup> Booz, Allen, Hamilton, *The Economic Impacts of an Open Aviation Area Between the EU and the US* (2007) at 75.

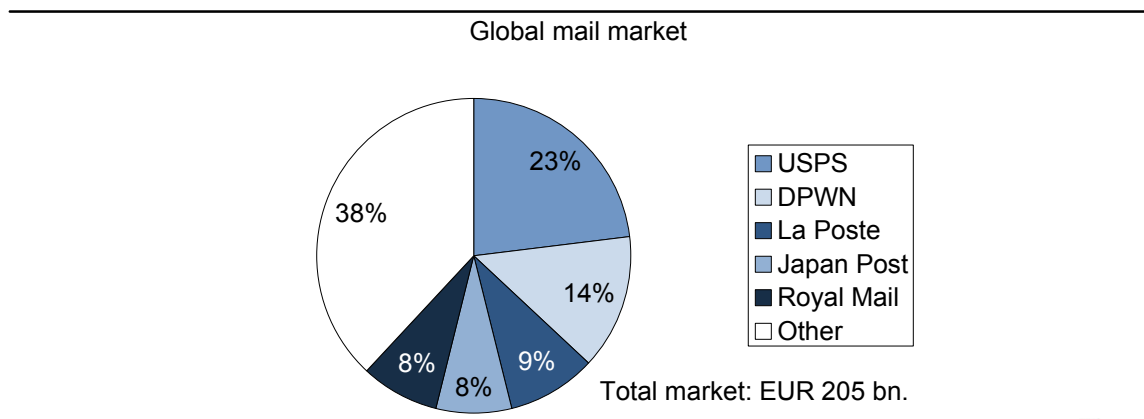
### 3 International Postal Markets

This chapter describes the economic significance of international postal markets. It provides data on the size of the global markets for letter post, parcels, and express markets;<sup>51</sup> on the relative significance of international and domestic markets; and on the role of the EU in international postal services.

#### 3.1 International letter post

In 2008, the global letter post market, including all domestic markets, conveyed 430 billion items and earned total revenues of € 205 billion according to a study by Adrenale.<sup>52</sup> These figure imply an average price of about € 0.48 per letter post item. The five main players in this global mail market hold more than 60 percent of the market.

Figure 3-1 Global mail market and market shares by volume (2008)



Source: Based on Adrenale (2010). USD converted to EUR using average 2008 exchange rates.

Total revenues from international letter post services were approximately € 6.3 billion in 2008, and the volume was 5.6 billion items.<sup>53</sup> The international letter post thus accounts for less than 2 percent of the total letter post volume, or between 3 and 4 percent of total letter post revenues. We estimate that international letter post items represent only 3 to 4 percent of domestic letter post volumes in the EU.<sup>54</sup> The share of international mail varies from country to country, but international letter post is a relatively small

<sup>51</sup> While (deferred) parcels and express services can be seen as conceptually distinct market segments, the boundaries between the two markets are blurring, and these boundaries will be different in each country. No separate data was available on the two market segments for this study.

<sup>52</sup> See Adrenale (2010), p. 13 f.

<sup>53</sup> Calculation based on Adrenale (2010).

<sup>54</sup> WIK estimate based on various postal statistics and interviews.

market segment in all but the smallest Member States. Between 1998 and 2008, the overall volume of international letter post mail decreased slightly in terms at a rate of 0.25 percent per annum. Revenues declined at slightly higher annual rates, indicating overall price reductions for international letter post.

The following table summarises revenues, volumes, and market shares of designated operators (DOs) for international letter post, broken down by world region.

Table 3-1 Cross-border letter post by world regions (2008)

Region	Revenue (mEUR)	Revenue (% of world)	Volume (m items)	Volume (% of world)	Average DO market share
North America	1,655	26.2%	1,316	23.7%	84%
Western Europe	3,783	59.8%	3,063	55.1%	81%
Asia Pacific	489	7.7%	687	12.4%	97%
Latin America	45	0.7%	48	0.9%	68%
Eastern Europe	124	2.0%	144	2.6%	96%
Africa	121	1.9%	123	2.2%	98%
Arabic countries	105	1.7%	178	3.2%	98%
<b>Total World</b>	<b>6,321</b>	<b>100.0%</b>	<b>5,560</b>	<b>100.0%</b>	<b>85%</b>

Source: Based on Adrenale (2010). USD values converted using average exchange rates for 2008.

About 60 percent of revenue and 55 percent of volume in the global market for international letter post comes from Western Europe. Twenty-four percent of all international letters are sent from North America, and 12 percent from the Asia Pacific region. Latin America, Eastern Europe, Africa, and the Arabian Countries each count for less than 5 percent of the world's international mail market. Based on volume information available for this study, we estimate that the total volume of outbound letter post from EU30 countries was 2.858 billion in 2008, or 46.3 percent of the world total.<sup>55</sup>

Designated operators traditionally have very high market shares in cross-border letter post markets. They enjoy legal monopolies for international letter post in many countries. Adrenale reports that the average market share of designated operators decreased from 93 percent in 1998 to 85 percent in 2008, indicating increasing competition. Nevertheless, average DO markets shares are still above 80 percent in all regions except Latin America.<sup>56</sup> While there are a few private operators for international letter post, most of the competition for outbound mail is from designated operators (or their subsidiaries) that collect mail from customers outside their home country.

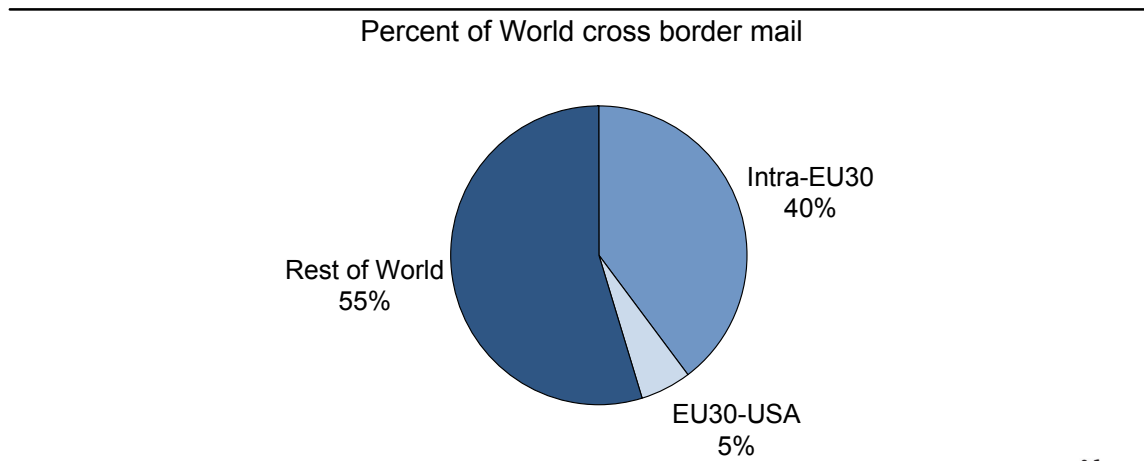
<sup>55</sup> A recent WTO publication, based on balance-of-payment data, highlights that the EU ranks number one in the world as both an exporter and an importer of 'postal and courier services'. However this study (admittedly) overestimated the importance of Europe as no comparable data is available for the USA, and some other countries. See WTO S/C/W/319, August 2010.

<sup>56</sup> See Adrenale (2010), p. 15.



Designated operators have the highest market shares in the Asia Pacific region, Eastern Europe, Africa, and the Arabian Countries while there is somewhat more competition for international mail in North America and Europe. Latin America has the most competitive markets for international mail.

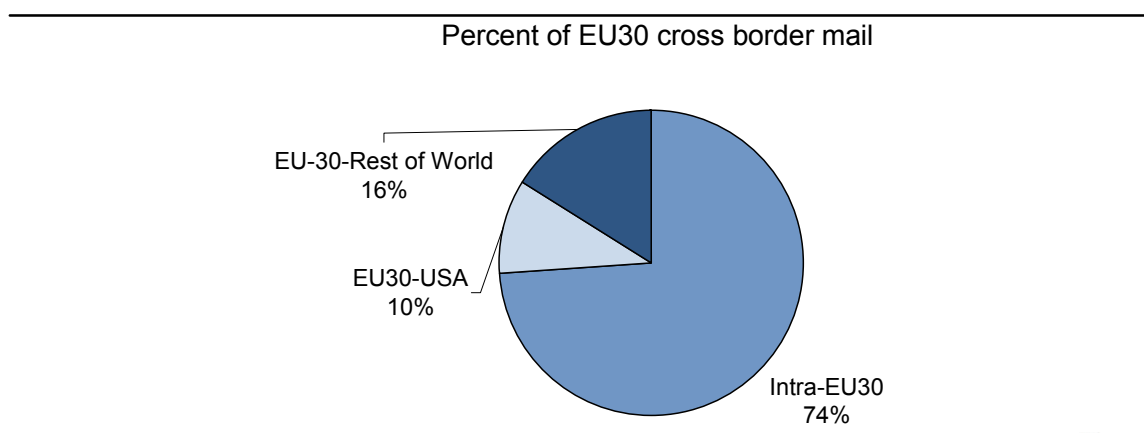
Figure 3-2 Significance of EU30 in world cross-border letter post



Source: WIK estimates based on interviews, postal and trade statistics.

Forty percent, a very substantial share of the world’s international letter post, is both sent and received in the EU30. The large proportion of intra-EU mail is perhaps due to the small average size of EU Member States or to the close economic and cultural ties between neighbouring countries. See figure above.

Figure 3-3 Significance of intra-EU30 mail in the EU30’s total cross-border letter post



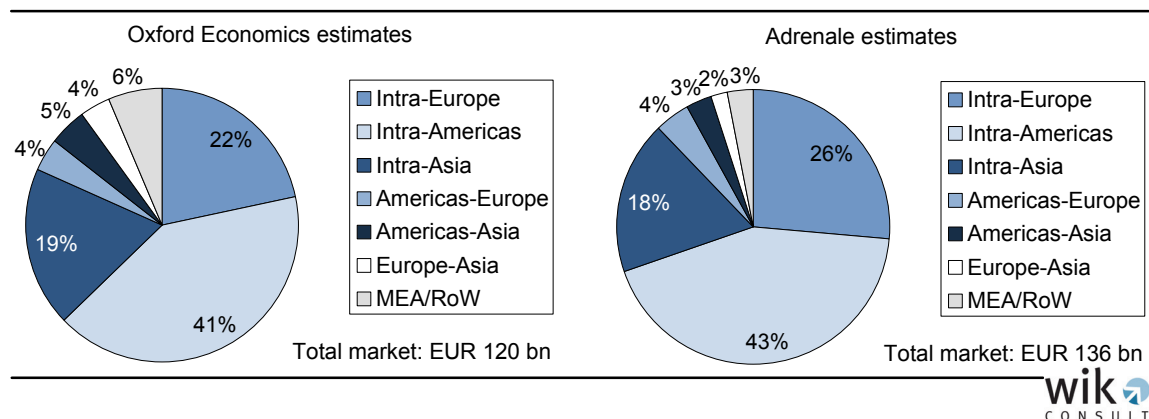
Source: WIK estimates based on interviews, postal and trade statistics.

Just as all countries send more mail to destinations with whom they have close geographic, economic, or cultural ties, Europeans send most of their mail to other Europeans. The figure above shows that in the EU30 almost three in four international letter post items are addressed to other EU30 countries (74 percent). Outside the EU30, the most important postal partners of the EU30 are, by far, the USA and Switzerland.

### 3.2 International parcels and express services

The value of the global express and parcels market (including all domestic deliveries) was estimated by Adrenale to be € 136 billion in 2008 based on an estimated volume of 25 billion shipments. This implies in an average price of € 5.44 per shipment. A different study by Oxford Economics estimated slightly lower revenues of € 120 billion (USD 175 billion) for the world 'express industry'.

Figure 3-4 Global express and parcels markets by world region (2008)



Source: Oxford Economics (2009), Adrenale (2010). USD converted to EUR using average 2008 exchange rates.

The largest portion of all parcels and express shipments remain in the Americas (43 percent), with the domestic US market accounting for the largest part. See figure above. About 12 percent of all express and parcels revenues are from truly global shipments (shipments from one region to another).<sup>57</sup>

The world market for international parcels and express services was estimated by Adrenale to be € 14.8 billion in 2008 based on a total volume of 468 million shipments. The average price for cross-border parcels and express shipments was therefore about € 31. Unlike for letter post, international parcel and express shipments are significantly more expensive than domestic shipments. Possible explanations for the higher cost of international parcel service include the higher share of long-haul transportation in the

<sup>57</sup> Own calculations based on Adrenale (2010), p. 13 f; see also Oxford Economics (2009), p. 7, for comparable figures.

cost structure of international parcel and express networks; the complexity of dealing with customs; lower volumes and thus lower scale economies on cross-border relations; less intense competition; and less market transparency on international relations. In the EU, however, it appears difficult to explain why the price of parcel and express services on short cross border routes (e.g., Maastricht-Liège) should be much higher than on long domestic routes (e.g., Milan-Sicily or Aberdeen-Plymouth). Between 1998 and 2008, the parcels and express market grew at a rate of 4.3 percent per year by volume and 2.4 percent by revenues, indicating overall price decreases.<sup>58</sup>

Express and parcel markets have traditionally been more competitive than letter post markets. According to Adrenale, the market share of designated operators is much lower in parcel and express services than in letter post services. Nevertheless, many designated operators appear to be significant players in their home markets.

Table 3-2 Cross-border express and parcel services by world regions (2008)

Region	Revenue (mEUR)	Revenue (% of world)	Volume (m items)	Volume (% of world)	Average DO market share
North America	6,430	43.5%	178	38.2%	16%
Western Europe	4,817	32.6%	169	36.2%	27%
Asia Pacific	2,711	18.4%	92	19.7%	38%
Latin America	300	2.0%	9	1.8%	25%
Eastern Europe	251	1.7%	9	1.9%	16%
Africa	63	0.4%	2	0.5%	18%
Arabic countries	199	1.3%	8	1.8%	17%
<b>Total World</b>	<b>14,770</b>	<b>100.0%</b>	<b>468</b>	<b>100.0%</b>	<b>24%</b>

Source: Based on Adrenale (2010). USD values converted to EUR using average exchange rate for 2008.

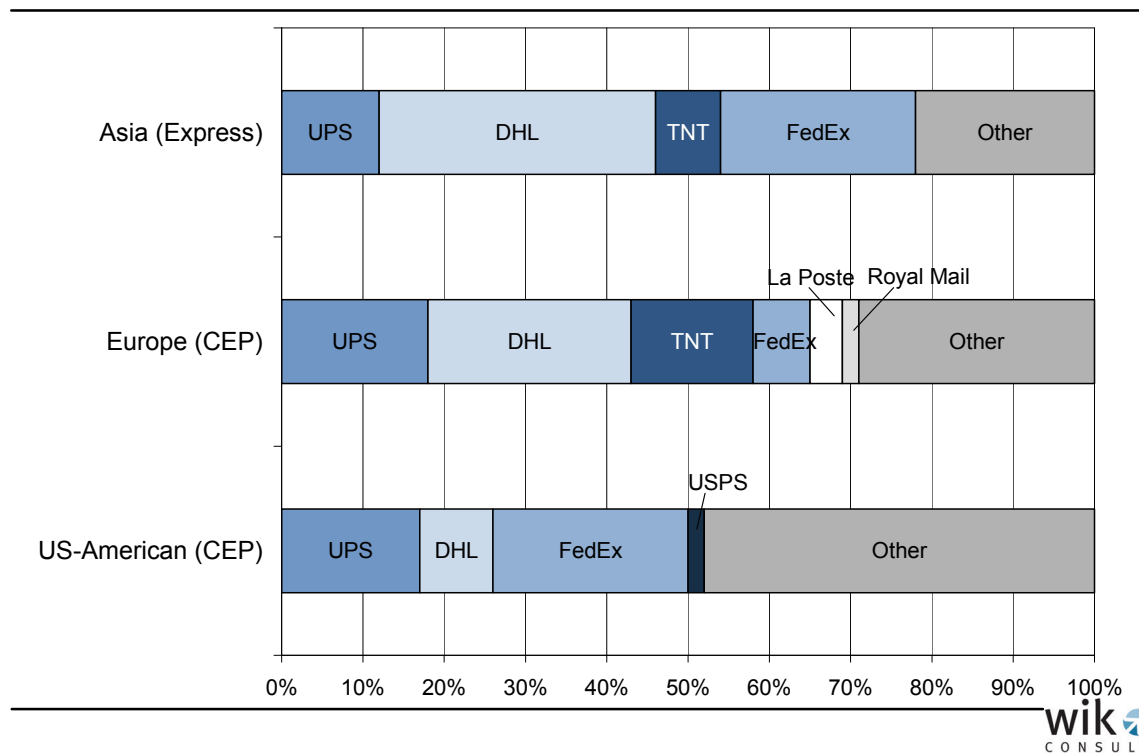
The table above provides a breakdown of the market for international parcels and express services by world regions. Strikingly, North America accounts for 44 percent of total cross-border parcel and express revenues. Western Europe accounts for 33 percent, and Asia Pacific for 18 percent of revenues. Latin America, Eastern Europe, Africa, and the Arabic countries collectively account for only 5 percent of the world market.

It is interesting to note that the share of Europe in international parcel markets (less than 40 percent by volume) is substantially smaller than Europe's share in international letter post markets (more than 50 percent). Relative to Europe, two regions that appear much stronger in international parcel services compared to international letter post services are North America and the Asia-Pacific region. Possible explanations for

<sup>58</sup> Own calculations based on Adrenale (2010), p. 15 and Oxford Economics (2009), p. 5.

Europe’s relative weakness in this respect include the importance of electronic goods and spare parts shipped by parcel express from Asia, and the global importance of US distance sellers (direct marketing companies). In Europe distance selling continues to be largely a national business, and there is not much of an internal market in online sales. These factor may explain the relatively low level cross-border parcels in Europe. A more positive explanation may be that in Europe, more documents and small goods are sent as ‘letter post’ because this service has become significantly more reliable in the last decade. In contrast, more documents and small goods may be sent by express service in world regions where letter post is regarded less reliable.

Figure 3-5 Cross-border CEP-markets (2007)



Source: Deutsche Post World Net (2009), p. 59 ff.

The market for international parcels and express services is dominated by the four integrators: UPS, DHL, TNT, and FedEx. The figure above shows estimated markets shares of the four carriers in the three largest regions: North America, Europe, and Asia Pacific. While all four carriers have a noticeable presence in Europe, TNT and DHL (less so) have very small market shares in the US market. By contrast, DHL and FedEx appear to be the strongest players in the Asian emerging economies.<sup>59</sup>

<sup>59</sup> See Deutsche Post World Net (2009).

### 3.3 Presence of EU postal operators and suppliers in foreign markets

This section summarises the activities of postal operators and producers of postal equipment from EU Member States in foreign domestic markets (outside the EU). In total, we have identified foreign domestic activities of seven (designated) postal operators, and eleven suppliers of postal technology based on analysis of financial reports and desk research.

Overall, EU operators appear to be expanding their business outside the EU at an increasing rate, in particular in express and logistics. Conversely, strong US carriers have long been active in European postal markets. Chief among those foreign carriers in the EU are UPS, which operates in practically all EU Member States, and FedEx. We have not identified any significant operations of Asian or Latin American postal operators in the EU (except offices for accepting international mail).

#### *Incumbent postal operators*

**Austria Post** and its subsidiaries are active in mail distribution in various Eastern European markets including Slovakia, Hungary (EU) and Croatia (non-EU), primarily in the delivery of unaddressed advertising. Austria Post further provides parcel services in Slovakia, Hungary, Belgium, the Netherlands (all EU), and Serbia, Montenegro, Croatia, and Bosnia-Herzegovina (non EU). In addition, Austria Post provides freight/logistic services in domestic markets in Germany, Belgium, Netherlands (EU), Slovakia, Serbia, Montenegro, Croatia, and Bosnia-Herzegovina (non-EU). Austria Post further provides upstream mail services in a number of EU Member States.

**Deutsche Post DHL** offers collection or distribution of letter post or related services in various domestic markets, including the United States, the Netherlands, Great Britain, Spain, and France (limited services). In the express business, Deutsche Post DHL is active in numerous national markets, including India, China and Australia. Deutsche Post DHL had invested in the US domestic express market in the past, but exited this market in 2009. Beyond this, Deutsche Post provides worldwide freight forwarding and logistic services.

**Itella's** foreign activities relate primarily to upstream services. Itella provides electronic invoicing services (automating, digitising, and streamlining incoming and outgoing invoices) in many Northern and Eastern EU Member States (Sweden, Norway, Denmark, Germany, Poland, Estonia, Latvia, Lithuania, Slovakia, Hungary, the Czech Republic, Austria, Romania), and in Russia. In Russia, Itella also provides direct marketing services (customer data analysis, concept creation, creative design, supplier management, and post-analysis) via its subsidiary 'Connexions'. Moreover, Itella is present in the domestic logistics market of the Nordic and Baltic countries and in Russia.

**French La Poste's** subsidiaries GeoPost and DPD provide courier, express, and parcels services in the domestic markets of many EU Member States (UK, Germany, Belgium, Netherlands, Luxembourg, Czech Republic, Ireland, Spain, Portugal, Greece, Poland, Hungary, Romania, Slovenia, Slovakia, Estonia, Latvia, Lithuania) and a number of other countries in Europe (Switzerland, Bosnia, Croatia, Serbia, Ukraine); Asia (Turkey, China, South Korea, UAE, India); Africa (Algeria, Senegal, Cameroon); and the USA. La Poste also provides direct mail services in several EU markets (Spain, Portugal and Romania) and desktop publishing software in Europe and the United States (design, composition and production management of multi-channel customised corporate documents and mail) through its subsidiary Sefas Innovation.

**TNT** operates domestic letter post networks in Belgium, Luxembourg, Germany, the UK, Italy, Austria and several Eastern European countries. In the parcels and express sector, TNT provides services in numerous European and other countries, including the United States, Japan and South Korea, South America, China, India, Southeast Asia, the Middle East and Africa.

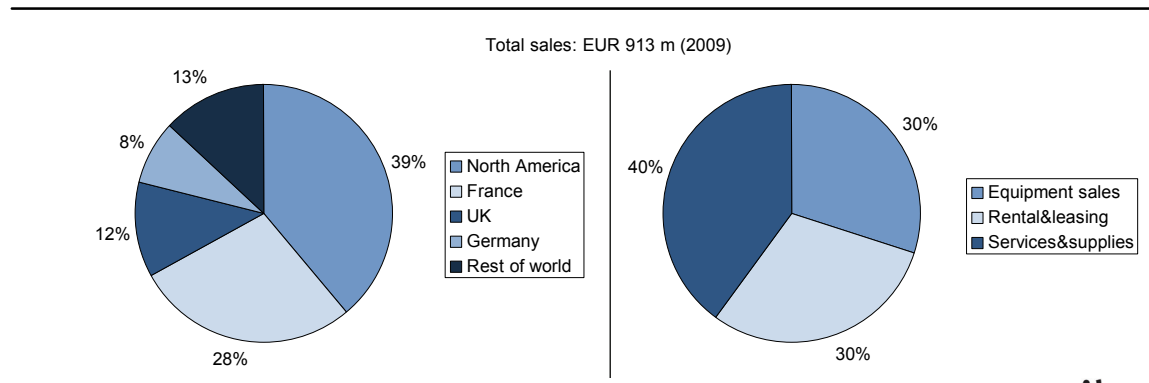
Portuguese **CTT Correios** is active in domestic courier, express and parcels markets in Brazil (in cooperation with the Brazilian Post). In Spain, CTT offers nationwide courier services and express parcels. CTT also provides freight/logistic services in Russia, Turkey and South America.

General Logistics Systems (GLS), a subsidiary of **Royal Mail Group**, a subsidiary of Royal Mail. GLS is active in various European domestic postal markets, primarily in the B2B segment. The GLS network services customers in 36 European countries.

The transformation of the former postal administrations into increasingly commercially oriented companies has been accompanied by significant modernisation of mail and parcel logistics. This development plus emerging competition in letter post and parcel (particularly) markets has promoted the establishment of a diverse supplier industry. This industry focuses not only on postal operators but also on mailers and consolidators and encompasses the development and production of machines for sorting, franking and enveloping, the development and implementation of software solutions for logistical processes, quality measurement systems, the application of geographic information systems, RFID and scanning technologies (e.g. handheld readers) to better organize and control the conveyance chain of letters and parcels. Additionally, there are many suppliers — e.g. for printers and means of transportation (bags, trays, containers, bicycles, mopeds, cars, trucks, etc.) — that provide their products not only to customers located in the postal sector but to business customers of many other industries. Although the majority of suppliers focus on national markets or the European market, we have identified some European suppliers that focus on the postal industry (operators and mailers) in other world regions and significant activities outside Europe.

*Franking machines*

Figure 3-6 Neopost Group: Sales by regions and by business segment (2009)



Source: Neopost Group (homepage), <http://www.neopost.com/corporate/group/key-figures-country.asp> and <http://www.neopost.com/corporate/group/key-figures-business.asp>, accessed on 27 July 2010.

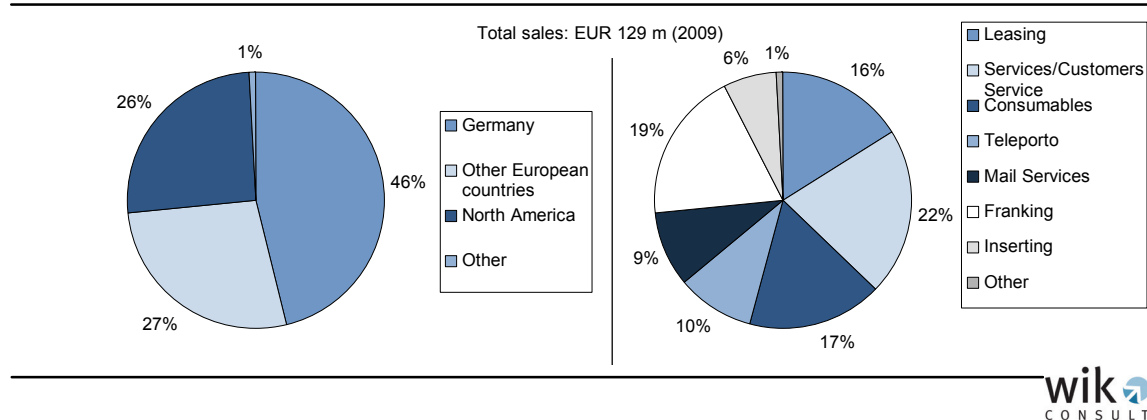
**Neopost**, a French company, manufactures mailroom equipment. The company offers solutions for mailing systems, folders, inserters and addressing, as well as traceability for letters and parcels. Neopost also offers a broad range of services, including consulting, maintenance, financing solutions, and online services. Neopost reported overall revenues of € 913 million in 2009. The company group sells products and services in 90 countries and has subsidiaries in 18 countries. Neopost employs 5,500 employees around the world: 1,200 sales representatives and 300 research and development engineers.<sup>60</sup>

The French company achieved more than two thirds of its total sales in 2008 in foreign markets. Only 28 percent were gained in France whereas 39 percent of the sales were gained in North America, 12 percent in UK, 8 percent in Germany, and 13 percent in the rest of the world. The company estimates that it has a market share of 24 percent worldwide followed by Francotyp Postalia with a market share of 10 percent. Market leader is the US company Pitney Bowes with a market share above 60 percent.<sup>61</sup>

<sup>60</sup> See <http://www.neopost.com/corporate/group/profile.asp>, accessed on 27 July 2010.

<sup>61</sup> See Neopost (2010), Reference Document 2009, p. 6.

Figure 3-7 Francotyp Postalia Group: Sales by regions and by business segment (2009)



Source: Francotyp Postalia Holding AG (2010), p. 1 and 46.

**Francotyp Postalia Group** (Germany) is specialised in the supply of inserter and franking machines. Their main markets are USA, UK, Germany, and the Netherlands. Overall, Francotyp Postalia reports a worldwide market share of 9.9 percent, and is represented by own distributors or dealers in more than 80 countries around the world.<sup>62</sup> In 2009, Francotyp Postalia had revenues of € 129 m. The largest part was gained on the domestic German market (46 percent), followed by other European countries (27 percent). However, 26 percent of revenues were achieved from North America. Francotyp Postalia reports local market shares in the market for franking machines of 4.7 percent in the US, 8.6 percent in the UK, and 45 percent in Germany. See figure above. The company plans to enter fast-growing markets in Asia, in particular India, Singapore, Malaysia and Indonesia.<sup>63</sup>

### *Sorting machines and technology*

**Böwe Systec** is a German company that provides sorting technology for mail operators. The company has its roots in manufacturing cutting machines for continuous documents. As the company grew, modern inserting systems were added. Subsequently systems for dispatching sensitive documents such as insurance policies and plastic cards as well as special software concepts followed. About 3,400 employees are working for the company worldwide. Total sales were € 450 m in 2009. Nearly two thirds (62 percent) of total sales were from North America, 32 percent in Europe and 6 percent in Asia and other regions. Hence, Böwe Systec Group earns the most part of its sales in foreign, extra-EU markets. At the time this report is being drafted, Böwe Systec Group reported insolvency, and future prospects of the firm appear uncertain.

<sup>62</sup> See Francotyp Postalia Holding AG (2010), Annual Report 2009, p. 36.

<sup>63</sup> See Francotyp Postalia Holding AG (2010), Annual Report 2009, p. 37.



**Dematic** (Germany/Luxembourg) provides logistics and materials handling solutions, and disposes of a global network of more than 3,000 logistics professionals. Dematic was originally a part of Mannesmann, between 2001 and 2005 became subsidiary of Siemens, and since 2006 is owned by a private equity company. Dematic has manufacturing plants in the US, Europe, China, and Australia. In total, Dematic has developed and implemented more than 4,000 integrated systems, including sorting machinery for postal operators on several continents.<sup>64</sup> In addition to postal sorting and processing technology, Dematic provides warehousing, storage, packaging or logistical solutions and products for diverse industries such as the food industry or wholesale distribution.

The department 'Postal Automation' of **Siemens** (Germany) develops, produces and implements sorting machines for letters, flats and parcels in combination with software solutions for logistical operations as well as reading and coding. Siemens has provided sorting technology for postal operators outside Europe for example in the United States (ordered by USPS, contract value of around € 160 million), China, and India.<sup>65</sup>

The Dutch company group **Vanderlande Industries** provides automated material handling systems and services. The company is active in the markets for baggage handling at airports, automated logistics processes in distribution centres and parcel sorting solutions in parcel and postal facilities. The company implements material handling systems of all sizes, ranging from local sorting depots, airports and distribution centres to the world's largest facilities. In the financial year 2009/2010 the company has earned nearly 40 percent of its net sales outside Europe (more than half in the United States).<sup>66</sup> Key customers of the business segment 'Parcel & Post' are many European parcel and postal operators as well as UPS and FedEx in the United States.<sup>67</sup>

The business segment "Automation" of the Italian company **Elsag Datamat**, a subsidiary of the group Finmeccanica (Italy), focuses, inter alia, on the development and the production of automatic sorting systems for letters and flats. While the main market is Italy, Elsag Datamat has acquired customers outside the EU for example in Belarus and Russia.<sup>68</sup>

The French-based company **Solystic**, the former Mannesmann Dematic Postal Automation S.A., is a subsidiary of the US company Northrop Grumman (a global

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<sup>64</sup> See Dematic webpage, <http://www.dematic.com/com/About-Us/page31450.htm>, accessed on 29 July 2010.

<sup>65</sup> See Siemens (2010), SILOG News Issue 1/2010, p. 3 and SILOG News Issue 1/2008, p. 8.

<sup>66</sup> See Vanderlande Industries (2010), Annual Report 2010, p. 111.

<sup>67</sup> See Vanderlande Industries webpage <http://www.vanderlande.com/web/Parcel-Postal.htm>

<sup>68</sup> See Elsag Datamat (2008), "Elsag Datamat: postal automation contract in Belarus worth more than Euro 5 million", press release 11.11.2008 and see Elsag Datamat webpage <http://postalautomation.elsagdatamat.com/Russia.htm>

defense and technology company) since 2001<sup>69</sup> and has specialized in the design, development, manufacture and integration of mail-processing systems. It offers a wide range of technical solutions to postal operators, mail consolidators and parcel sorting centres on a global basis. Key customers include the United States Postal Service (USPS).

The German company **ATB Automatentechnik Baumann** is one of the leading manufacturers of parking, public transport and postal vending machines including postal cancelling machines and postal deposit boxes (used as post office boxes). Particularly the stamp cancelling machines are successfully being deployed worldwide.<sup>70</sup>

#### *Other technology*

The Danish company **Lyngsoe Systems** is a provider of solutions for optimizing postal logistics including quality-of-service measurements, process improvements and track-and-trace monitoring of any item or tray (by using RFID technology). The AMQM™ (Automatic Mail Quality Measurements) system developed by Lyngsoe has been used for improving quality of service in the postal business since 1994. Five Scandinavian countries initially implemented the system; since 1996 it has also been used within the IPC (International Post Corporation) member countries to document whether postal operators stay within the agreed delivery times for international mail handling. AMQM forms the basis to determine the terminal dues payments — creating a link between meeting certain quality targets, and the payment for having the next postal service handle/distribute the mail. Their quality measurement solutions for domestic and international mail are currently in use in 55 countries worldwide.<sup>71</sup>

The Italian company **Datalogic** develops and produces bar code readers, data collection mobile computers, RFID and vision systems, and offers innovative solutions for a comprehensive range of applications in the manufacturing, transportation & logistics and retail industries worldwide. The subsidiary Datalogic Scanning is an important supplier for hand held scanners that are used, inter alia, for delivery of postal items (particularly parcels).<sup>72</sup> Datalogic Automation that produces and implements i.a. fixed scanners for the industrial market has provided fixed position scanners to Canada

<sup>69</sup> See Northrop Grumman (2001), “Northrop Grumman Completes Acquisition of Mannesmann Dematic Postal Automation S.A. Business; New Company To Be Called Solystic”, press release of April 24, 2001.

<sup>70</sup> See ATB Automatentechnik Baumann webpage [http://www.atb-online.eu/htdocs\\_eng/index.php?header=pro&footer=1&con=20&bereichID=22](http://www.atb-online.eu/htdocs_eng/index.php?header=pro&footer=1&con=20&bereichID=22) accessed on 6 September 2010.

<sup>71</sup> See Lyngsoe Systems webpage <http://www.lyngsoesystems.com/postal/postal.asp> accessed on 6 September 2010.

<sup>72</sup> See Datalogic webpage <http://www.datalogic.com/page.aspx?id=11> accessed on 6 September 2010.

Post to improve parcel processing.<sup>73</sup> Nearly 50 percent of the group revenues are gained outside Europe.<sup>74</sup>

### **3.4 Conclusions on the relevance of international postal markets to the EU**

In the EU, we estimate that international letter post items represent only three to four percent of domestic letter post volumes. Even though the share of international mail varies from country to country, international letter post is a relatively small market segment in each Member State.

However, compared to other regions, the market for international letter post is very significant for the EU, and the EU is very significant for the world's international letter post: About 45 percent of all international letter post items are from Europe. We estimate that 40 percent of the world's total mail volume is sent and received in EU Member States ('intra-EU' mail). Out of all letter post sent in the EU, 74 percent remain in the EU.

Despite full liberalisation of outbound letter post in the EU, EU markets continue to be served mostly by EU designated operators. While there is noticeable competition among EU operators for outbound mail sent in bulk in most Member States, there are hardly any foreign operators that have entered the EU letter post market permanently.

In the market for parcels and express shipments (including domestic), Europe is among the most significant world regions, second in volume only to North America. About 26 to 30 percent of all parcels and express shipments in the world are from Europe. The vast majority of these shipments are intra-EU shipments (22 to 26 percent of total).

As regards the share in total international parcel and express volumes, the EU accounts for approximately 33 percent; more than one in three international parcel or express shipments in the world.

In the parcels and express markets, two EU operators, TNT and DHL, have established a significant global presence. They compete largely with two US integrators: UPS and FedEx. Besides, several EU postal operators are expanding into parcels and express markets, and sometimes freight logistics, in Eastern Europe, the Balkans, and to former colonies in the Americas and Northern Africa.

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<sup>73</sup> See Datalogic Case Study "Canada Post streamlines parcel processing" (<http://www.datalogic.com/cgi-bin/pdf/case%20studies/eng/Case-Canadian%20Post-eng.pdf>)

<sup>74</sup> See Datalogic (2010), Annual Report 2009, p. 51.

In the markets for manufacturing franking and sorting technology, European manufacturers are among the largest producers in the world. The most important regions for foreign investment are North America and Asia Pacific.

Modernization of European postal operators, technological progress and increasing competition in mail and parcel markets have promoted the establishment of a diverse supply industry. While many suppliers focus on national and European markets some have successfully extended their activities to areas outside Europe. These are notably large providers for franking and sorting technology as well as companies with a focus on traceability of items and quality measurement systems.

Overall, we arrive at the following conclusions on international postal markets:

- International letter post is very important to the EU as the EU sends and/or receives a major share of the World's international letter post: The EU's international letter post traffic is half of all international letter post traffic in the World. 74 percent of all outbound international letter post from EU Member States is addressed to other EU Member States ('intra-EU traffic'). The market for international letter post in Europe is served mostly by EU operators, primarily by the designated operators of the EU Member States.
- International parcel and express services are also important to the EU, but the EU accounts for a smaller share of the World's market for international express and parcels services than for the World's international letter post. 'Western Europe' accounts for approximately 36 percent of the World's international (lightweight) express and parcels traffic. All of Europe, including Switzerland, Russia and many non-EU countries in Eastern Europe, accounts for less than 40 percent of all international express and parcel shipments. EU operators have significant traffic with other regions, and business in other regions. The largest EU operators are TNT and DHL, they primarily compete with North American integrators UPS and FedEx, and with smaller local carriers.
- European manufacturers are among the largest producers of postal technology in the world and have substantial investments outside the EU, most importantly in North America and the Asia Pacific region.

## 4 Regulation of Foreign Postal Markets

### 4.1 Postal regulation in foreign markets and in the EU

This chapter analyses how postal markets are regulated outside the EU and concentrates on ten foreign postal markets that are important partners to the European Union: Australia, Brazil, Canada, China, India, Japan, Russia, Switzerland, Turkey, and the USA.

The objective of this chapter is to put the EU postal acquis into perspective by discussing similarities and differences between the approach to postal regulation in Europe and other countries or regions. This perspective should then inform the study's analysis of international discussions that relate to postal services, in particular in trade policy and discussions at the UPU.

This first section (4.1) presents a high level discussion of market development and postal regulation in foreign markets, in comparison to the EU situation. Section 4.2 presents country profiles for the ten foreign countries.

#### ***Very diverse markets for letter post***

Letter post markets in all reviewed countries are dominated by their public postal operators. In terms of developments, letter post markets in the ten countries are extremely diverse (as are their economies more generally). There are two main groups within the ten countries. In the five industrialised countries (AU, CA, JP, CH, US), letter post volumes are comparable, if at all, only to volumes in the most developed EU postal markets. In the five transition or developing economies we have reviewed (BR, CN, IN, RU, TR), letter post volumes are between 5 and 43 letter items per capita. This differentiation nearly correlates with the number of postal outlets per 10,000 inhabitants. Industrialised countries have between 1.2 (US) and 3.2 (CH) outlets per 10,000 inhabitants, whereas transition or developing countries have between 0.4 and 1.3 postal outlets per 10,000 inhabitants.<sup>75</sup>

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<sup>75</sup> Russia has 3.2 outlets per 10,000 inhabitants and does not fit to the pattern. One explanation may be the importance of banking/financial services of Russian Post for the population for which a higher number of postal outlets is needed.

Table 4-1 Postal and financial indicators

Country	GDP/capita (USD)	Letter post items/capita	Outlets/10,000 inhabitants
AU	45,586	219	2.0
BR	8,220	43	0.6
CA	39,668	203	1.9
CN	3,678	17	0.4
IN	1,031	5	1.3
JP	39,731	166	1.9
RU	8,694	25	2.9
CH	67,562	520	3.2
TR	8,728	15	0.5
US	46,381	567	1.2

Quelle: WIK-Consult.

### ***Parcel and express markets are diverse but generally more competitive***

The domestic and international parcel and express markets are more significantly more competitive than letter post markets. In general, there are a several important players in these markets, both domestically and internationally. In most of the countries reviewed, no precise information is available on market share of individual operators. In most countries under review, we found consistent data only for the public postal operator's parcel post volume (either their reports or UPU statistics).

In the USA and Japan, incumbents play a relatively small part in the parcels markets. In the US, FedEx, and UPS account for the large part of the market volume. In Japan, likewise, national competitors, as well as UPS and FedEx, serve large parts of the market. Generally, there appears to be more competition for B2B volumes, while incumbent operators are increasingly strong in the growing B2C parcels segment (notably Australia, Canada, and Swiss Post).

### ***Transformation of public operators***

In the EU, there has been a clear trend towards transforming public postal operators into corporations, and in 6 of the 27 EU Member States, ownership in public postal operators has been opened to the private sector (TNT, Deutsche Post, Maltapost, Austria Post, Belgian De Post/La Poste, and Post Danmark). By contrast, public postal operators are all fully state-owned in the ten countries reviewed in this chapter. In most countries outside Europe, public operators remain organised 'state enterprises' or 'government agencies' that are directed by political institutions. However, further corporatisation, or even privatisation, is discussed in some of those countries, e.g. in Japan and Switzerland.

As in the EU, a number of foreign public operators are seeking new business opportunities in other sectors or other countries. For example, some public postal operators have substantial revenues from non-core services such as courier and express, logistics, financial and insurance services, or public transportation — in particular Canada Post, Japan Post, and Swiss Post. Other public postal operators limit themselves to core postal services, e.g. Australia Post, the USPS, ECT of Brasil, and the post offices in India and Turkey.

### ***Independent national regulatory authorities***

Independent regulators are a key pillar of postal policy (and other sector policies in network industries) in the EU. There is a similar practice of independent and impartial regulators in Australia and the USA, and in fact, this practice was adopted in both countries much earlier than in the EU. However, the models adopted in the USA and Australia differ substantially. In the USA, the regulator (the 'Postal Rate Commission') used to have a strong role, but was largely limited to reviewing and approving tariffs for postal services. After new legislation was adopted in 2006, the authority was renamed the 'Postal Regulatory Commission', and its mission as a sector-specific regulator was expanded. In Australia, postal services are one of numerous sectors regulated a multi-sector regulator, the ACCC (the Australian Competition and Consumer Commission). Inter alia, the ACCC is responsible for reviewing potential cross-subsidisation by Australia Post, issuing and monitoring compliance with rules for regulatory cost accounting, and reviewing prices for monopoly products. Other sectors regulated by the ACCC include telecommunications, water, petrol, railways, seaports, gas and electricity, and aviation. In most other non-EU countries, however, there are no independent institutions to regulate postal markets impartially. In New Zealand, where postal markets have been effectively liberalised since 1998, there is no specific postal regulator, and postal policy instead relies solely on the general competition authority and transparency regulations.

Generally, it appears that there is not much of a common approach as regards the responsibilities of postal regulators worldwide. While in the USA and Australia, regulators are primarily charged with regulating prices and cost accounting and have some role in monitoring and acting against cross-subsidies (from reserved services to commercial services offered by the incumbent), other regulators seem to be regulating new entrants as well as courier and express operators primarily, through licensing systems. Indeed, in some developing countries, these regulators appear to deal with the (competitive) courier and express segments more than with the traditional postal services.

### ***Definition of universal service***

Unlike in the EU, universal service is generally defined less clearly in other regions of the world. Only a few countries define universal service products clearly, in a manner comparable to the EU postal acquis, notably Switzerland and Japan. A possible explanation may be that foreign postal operators are generally less clearly separated from government. Therefore, politics have a more direct influence on public operators in these countries, and there may be less of a need for clear legal definitions of universal service.

For some emerging jurisdictions, in particular in Asia, plans have been reported that universal service definitions might be extended to services that are not considered universal services according to the EU postal acquis. However, this study could not analyse in detail the exact status of current legislation or draft bills proposed in those countries.

### ***Postal monopolies, authorisations, and market access***

Although there are differences in definition and extent, nearly all incumbents in non-EU markets benefit from extensive reserved areas (AU, BR, CA, CN, IN, CH, TR, US). Despite full market opening in 2002, Japan Post holds a de facto monopoly for correspondence that weighs up to 250 grams and is conveyed for a price up to JPY 1,000. And Russia Post controls about 80 percent of the postal market even though the monopoly on postal services was abolished in 1996. While domestic letter post markets are protected by monopolies in most foreign countries, more competition is allowed for outbound cross-border mail. At least two countries in the Asia-Pacific region have fully liberalised their postal markets: New Zealand and Singapore. Similarly, de facto competition in mail delivery has long existed in many Latin American countries, and the legal validity of postal monopolies appears unclear in some of those countries.

Perhaps because there are monopolies for 'postal services' in most non-EU countries, most of the countries have not established a specific licensing system for postal operators (AU, BR, CA, IN, TR, US). Only Japan (a license for general correspondence delivery; but licensed operator must meet the universal service criteria), China, and Switzerland use a licence system. However, in some countries there are indications of severe 'non-postal' constraints on obtaining licences, permissions, or else a right to establish in the country. A recent example includes the reported prohibition of foreign investments in the Chinese postal market according to the 2009 Chinese postal law. This law not only reserves certain services to China Post, but also regulates express services. Express operators must be licensed by the State Post Bureau, and 'foreign businesses are forbidden to invest in or operate domestic express delivery of letter articles' (Art. 59 of Chinese Postal Law). Other detailed licence requirements are reported to exist, but are unknown to the authors. In New Zealand, that has fully



liberalised postal services in 1998, there are no specific licensing requirements for any postal, courier, or express operators.

In some foreign markets, we report complaints by competitors that the public postal operator cross-subsidises competitive services (e.g. parcels and express services) by revenues from its reserved area or market dominant products (AU, JP, TR). However, we note that such complaints have been made in some EU Member States, too, and we have no evidence to support those allegations for the three countries stated above.

### **Conclusions**

Our analysis of in foreign postal markets and regulation arrives at the following key conclusions:

- International letter post markets are very diverse. While the top industrialized countries have high per capita volumes that are often above EU levels, the large transition economies have substantially lower volumes than the EU Member States (many have significantly less than 50 items per capita/year). In all countries, letter post markets are dominated by the public postal operators.
- International parcels and express markets are more competitive than letter post markets. The 'Big Four' integrators DHL, FedEx, TNT, and UPS are strong in most or all countries internationally and focus largely on business-to-business shipments. Only a few public postal operators have been successful in developing significant parcel operations in the business-to-consumer business, notably Australia Post, Canada Post, and Swiss Post.
- There is a global trend towards corporatising public postal operators but this trend is weaker on a global level than in the EU.
- There is no common approach to independent regulators globally. While there are strong regulators in the USA and Australia that are competent, in particular, to regulation of prices and cost accounting, there are no independent regulators in most other countries, or such regulators have very limited competences. In many transition economies, regulators tend to control new entrants more than in EU, but there is less regulation of public postal operators and universal service.
- In most countries outside the EU, there are no clear definitions for universal postal service. Therefore, the EU postal acquis' meaning of 'universal service' may not be easily understood in those countries and regions.
- Very few non-EU countries have liberalised their postal markets. These few exceptions include New Zealand and Singapore.

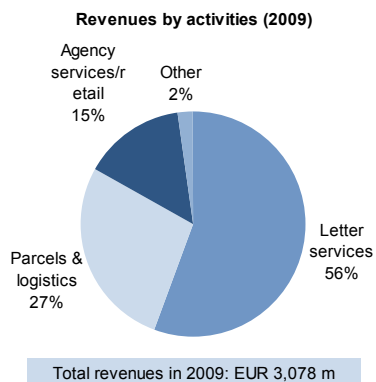
Some countries outside the EU are increasingly developing trade barriers in the postal sector. The most important trade barriers relate to protectionist conditions for obtaining licences for letter post, parcel, express and/or courier services. The key current example for trade barriers are restrictions on foreign investment in the Chinese postal sector.

## 4.2 Country profiles

### 4.2.1 Australia (AU)

#### Incumbent<sup>i,ii</sup>

Name:	Australia Post
Legal status:	Government business enterprise since 1989
Ownership status:	Fully state-owned by the Federal Government



#### National regulatory authority<sup>iii</sup>

Name:	Australian Competition & Consumer Commission (ACCC)
Short description:	Independent statutory authority

#### Universal service<sup>iv</sup>

USP	Australia Post
US products:	<ul style="list-style-type: none"> <li>Australia Post shall supply a domestic letter service (collection and delivery, to which Australia Post has the exclusive right to carry domestic letter post items, and to carry letters between Australia and places outside Australia)</li> <li>No special weight limits for universal services ('community service obligations, CSO)</li> <li>Uniform price for services within Australia</li> </ul>
Postal outlets/10.000 inh. '09	2.0

#### Reserved area<sup>v</sup>

- Correspondence and direct mail up to 250g (since 1994) or 4 times of the standard price
- Outbound cross-border is liberalized

#### Authorisations<sup>vi</sup>

- No specific licence system for postal services
- Australian Postal Corporation Act designates Australia Post to provide the services prescribed in the Act

#### Market access and trade barriers<sup>vii</sup>

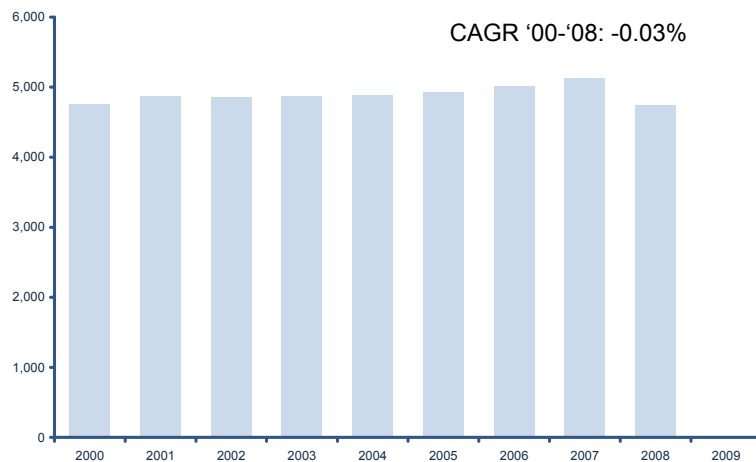
- Sales tax applies to all postal services (Goods and Services Taxes GST at standard rate of 10%). Until 2000, postal services were exempted from GST.
- Customs: lower value threshold for formal screening (customs) for postal items than for express courier items

**General market indicators<sup>viii</sup>**

Population '09:	21.9	m persons
GDP '09 (current prices)	695.7	bn EUR
GDP '09 per capita (cur. pr.)	31,805.6	EUR
GDP growth ('00-'09; CAGR)	10.66	%

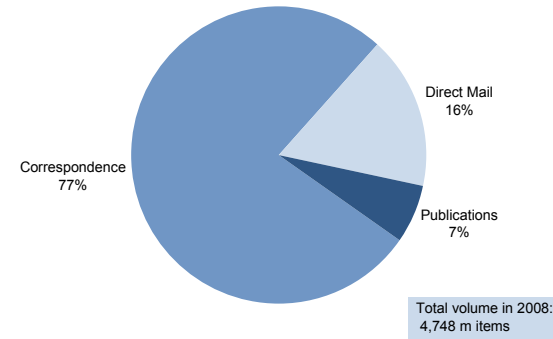
**Letter post market**

Domestic letter post volume (m items):<sup>ix</sup>



Domestic letter post items per capita (2008): 219

Breakdown of domestic letter post volume (2006):<sup>x</sup>

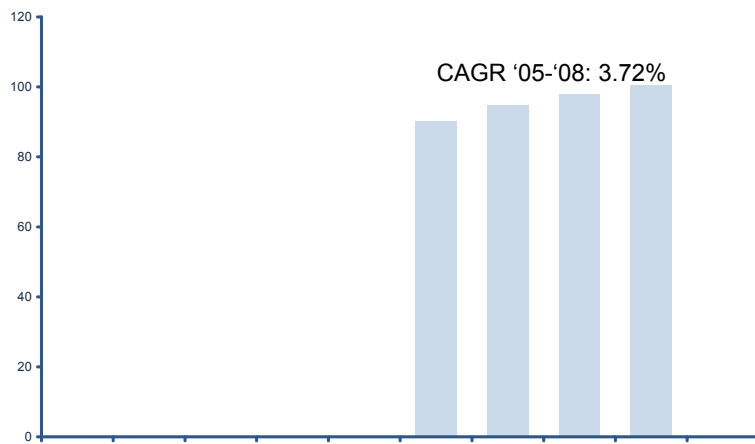


Players and market shares:<sup>xi</sup>

- Domestic letter post: Australia Post holds nearly 100 %
- Outbound cross-border: substantial competition

## Parcel and express market

Domestic parcel post volume (m items):<sup>xii</sup>



Note: Figure reflects volumes of the incumbent, not of the total market necessarily.

Players and market shares:<sup>xiii</sup>

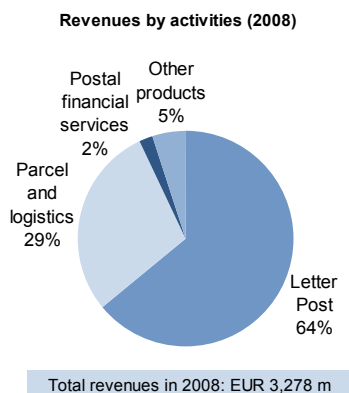
- Main competitors of Australia Post: TNT, DHL, Troll Priority, FedEx, UPS, Allied Express Transport, Couriers Please, Greyhound Freight, Express Couriers Australia (ECA)
- Australia Post is market leader for domestic B2C and C2C parcels.

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- <sup>i</sup> Australia Post website, <http://200years.auspost.com.au/#/story/1985-2000>.
  - <sup>ii</sup> Australia Post, Annual report 2008/2009, p. 92.
  - <sup>iii</sup> ACCC website, <http://www.accc.gov.au/content/index.phtml/itemId/54137>.
  - <sup>iv</sup> Australian Postal Corporation Act 1989, last amended by Act No. 156 of 2007; Australia Post, Annual report 2008/2009, p. 23.
  - <sup>v</sup> Australian Postal Corporation Act 1989, last amended by Act No. 156 of 2007.
  - <sup>vi</sup> Australian Postal Corporation Act 1989, last amended by Act No. 156 of 2007.
  - <sup>vii</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 1; Productivity Commission (2000), Customs treatment of Australia Post.
  - <sup>viii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.
  - <sup>ix</sup> Australia Post, Annual reports; UPU; own calculations.
  - <sup>x</sup> Australia Post, Annual report 2008/2009; UPU; own calculations.
  - <sup>xi</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 2.
  - <sup>xii</sup> UPU. Figure reflects volumes of the incumbent, not of the total market necessarily.
  - <sup>xiii</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 2; Australia Post, Annual report 2008/2009, p. 29.

## 4.2.2 Brazil (BR)

### Incumbent<sup>i,ii</sup>

Name:	Correios e Telégrafos (ECT)
Legal status:	State Enterprise, affiliate to the Ministry of Communications
Ownership status:	Fully state-owned by the Federal Government



### National regulatory authority<sup>iii</sup>

Name:	Ministério das Comunicações (Ministry of Communications), no independent NRA
Short description:	The department for postal services which is part of the Ministry of Communications, regulates ECT since 1997. ECT reports directly to the Minister of Communications.

### Universal service<sup>iv</sup>

USP	Correios e Telégrafos (ECT)
US products:	No specific definition
Postal outlets/ 10.000 inh. '09	0.6

### Reserved area<sup>v</sup>

- Letter mail, postal cards, small parcels, telegrams and mail bags are reserved
- Express mail, packages, printed matter including newspapers and magazines are open to competition

### Authorisations<sup>vi</sup>

- No specific licence system for postal services
- Decreto-lei n° 509 of 1969 designates ECT to provide the services prescribed in the postal law

### Market access and trade barriers

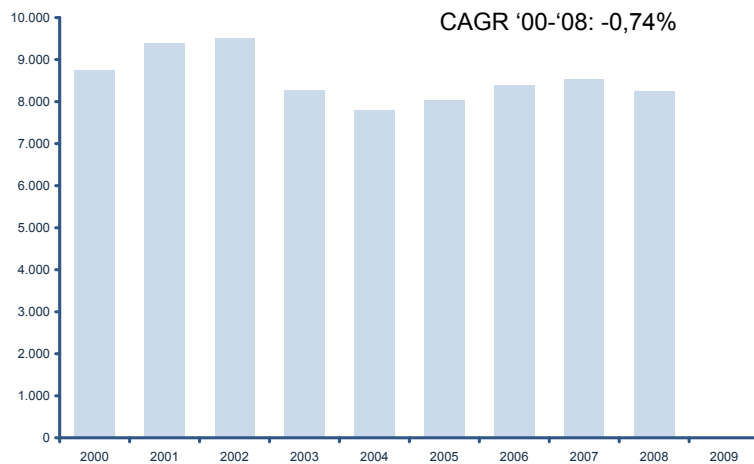
- No competition for letter mail as results of reserved area
- No information on impediments to trade for express carrier
- Reportedly there are periodic difficulties/delays with customs clearance for incoming express shipments (but no evidence available for this report)

**General market indicators<sup>vii</sup>**

Population '09:	191.5	m persons
GDP '09 (current prices)	1,098.2	bn EUR
GDP '09 per capita (cur. pr.)	5,735.3	EUR
GDP growth ('00-'09; CAGR)	10.43	%

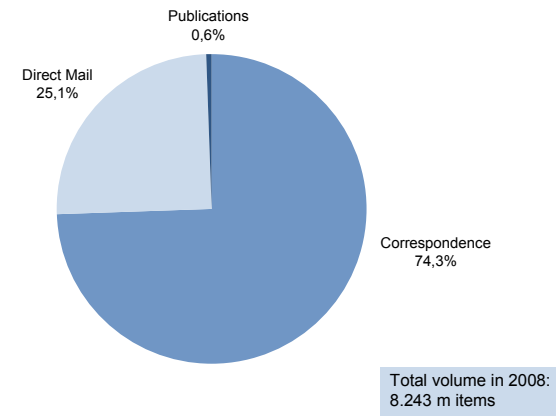
**Letter post market**

Domestic letter post volume (m items):<sup>viii</sup>



Domestic letter post items per capita (2008):<sup>ix</sup> 43

Breakdown of domestic letter post volume (2008):



Players and market shares:<sup>x</sup>

- Domestic letter post: ECT holds 100 % because of its monopoly
- In the early 1980s, ECT sold mail franchises to private investors in major cities for an initial fee under USD 500. Franchise holders could use the Correios logo, and compete with both each other and ECT's own units in selling postal services. These franchises did introduce a certain element of service competition into the system. Some 1,700 franchises were established between 1993 and 1994. Franchise purchasers are owner - managers who are required to purchase services from ECT, and revenues are passed back to ECT after royalty payments, service costs, and a profit.

## Parcel and express market

Domestic parcel post volume (m items): N/A

Players and market shares:<sup>xi</sup>

- Main competitors of ECT: DHL, FedEx, UPS, TNT (by Mercurio) and USPS (by Sky Postal)
- The Brazilian express market is highly fragmented and generally characterised by fierce competition between the major international players, ECT and a large number of relatively small, locally-based express parcel firms

<sup>i</sup> Correios e Telégrafos, Relatório Empresarial e Social da ECT 2008, p. 5; decreto-lei nº 509 of 1969; Consumer Postal Council (2008), Index of Postal Freedom, Brazil - Correios/ECT, p. 2.

<sup>ii</sup> UPU.

<sup>iii</sup> Ministério das Comunicações website, <http://www.mc.gov.br/o-ministerio/o-que-e>.

<sup>iv</sup> Correios e Telégrafos, Relatório Empresarial e Social da ECT 2008, p. 5; Consumer Postal Council (2008), Index of Postal Freedom, Brazil - Correios/ECT, p. 2; UPU: Figures reflects volumes of the incumbent, not of the total market necessarily.

<sup>v</sup> Lei nº 6.538 of 1978, Art. 7, § 1; Consumer Postal Council (2008), Index of Postal Freedom, Brazil - Correios/ECT, p. 3.

<sup>vi</sup> Decreto-lei nº 509 of 1969.

<sup>vii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>viii</sup> UPU. Figures reflects volumes of the incumbent, not of the total market necessarily. No data for addressed direct mail items for the years 2003 and 2006.

<sup>ix</sup> Own calculations.

<sup>x</sup> Consumer Postal Council (2008), Index of Postal Freedom, Brazil - Correios/ECT, p. 2.

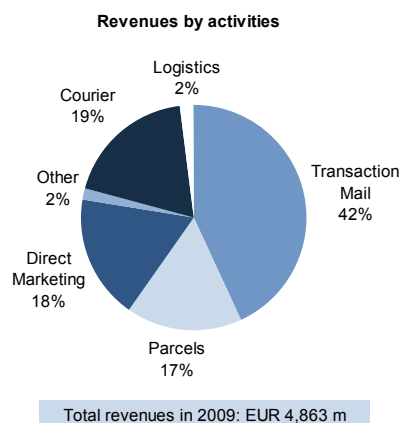
<sup>xi</sup> Snape (2007), Express firms aim for double-digit growth in South America, ITA Logistics; Post and Parcel (2003), Brazilian Express services market heats up, Post and Parcel website: <http://postandparcel.info/9341/companies/brazilian-express-services-market-heats-up/>.



### 4.2.3 Canada (CA)

#### Incumbent<sup>i,ii</sup>

Name:	Canada Post Corporation (CPC)
Legal status:	Crown Corporation
Ownership status:	Fully state-owned by the Federal Government; currently discussions about privatisation of CPC



#### National regulatory authority<sup>iii</sup>

Name:	Ministry of Transportation
Short description:	Although denominated a “corporation” in the law, in practice Canada Post appears to be more of a department or office within the government of Canada

#### Universal service<sup>iv</sup>

USP	The Canada Post Corporation Act (CPCA) establishes a general obligation to provide universal service to Canada Post. The CPCA does not use the term “universal service” or establish a specific “universal service obligation”
US products:	The CPCA declares that the “objects” of Canada Post are: <ul style="list-style-type: none"> <li>to establish and operate a postal service for the collection, transmission and delivery of messages, information, funds and goods both within Canada and between Canada and places outside Canada;</li> <li>to manufacture and provide such products and to provide such services as are, in the opinion of the Corporation, necessary or incidental to the postal service provided by the Corporation</li> </ul>
Postal outlets/ 10.000 inh. '09	1.9

#### Reserved area<sup>v</sup>

- Letters weighing less than 500 grams are reserved for Canada Post
- Magazines and books may be delivered by private firms
- Private companies can deliver "letters of an urgent nature" if they charge at least three times Canada Post's regular rate of postage for a 50-gram package

#### Authorisations

- No specific licence system for postal services
- The postal monopoly in Canada is established by sections 14 and 15 of the Canada Post Corporation Act

**Market access and trade barriers<sup>vi</sup>**

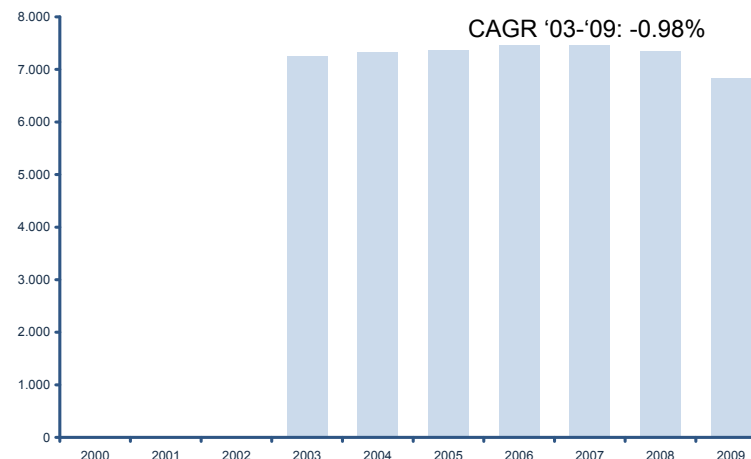
- In 2004 a court ruling determined that outbound international mail was the exclusive privilege of Canada Post. The federal government has been trying to pass a law that would solidify the private companies' right to operate since 2007, but no such law has passed
- Bilateral agreement between United States Postal Service (USPS) and Canada Post on remunerations for international mail; terminal dues are negotiated through this agreement rather than through UPU; the bilateral agreement is classified as a market-dominant product under U.S. law because Canada and USPS both maintain letter-mail monopolies

**General market indicators<sup>vii</sup>**

Population '09:	33.7	m persons
GDP '09 (current prices)	932.4	bn EUR
GDP '09 per capita (cur. pr.)	27,676.6	EUR
GDP growth ('00-'09; CAGR)	7.03	%

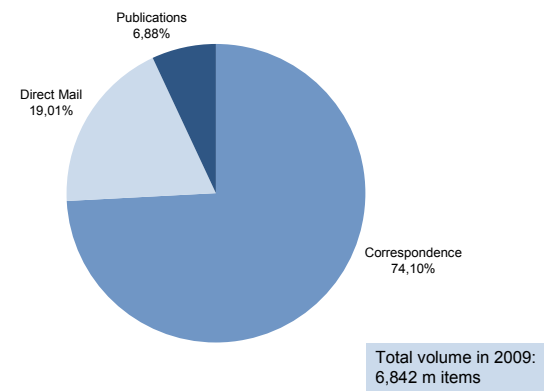
**Letter post market**

Domestic letter post volume (m items):<sup>viii</sup>



Domestic letter post items per capita (2009): 203

Breakdown of domestic letter post volume (2009):

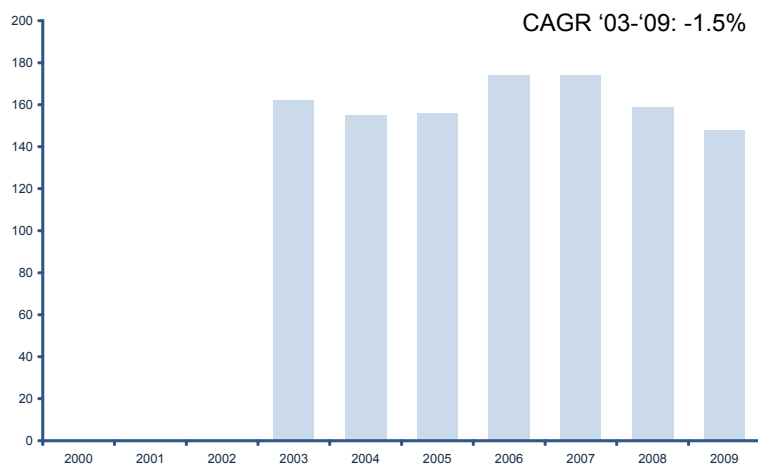


Players and market shares:<sup>ix</sup>

- Domestic letter post: Australia Post holds nearly 100 %
- Outbound cross-border: Despite the 2004 court ruling which determined that outbound international mail was the exclusive privilege of Canada Post, private firms have continued to operate as they did before the decision

**Parcel and express market**

Domestic parcel post volume (m items):<sup>x</sup>



Note: Figure reflects volumes of the incumbent, not of the total market necessarily.

Players and market shares:<sup>xi</sup>

- Canada Post leads the competition in domestic market share within the B2C and the B2B market segments
- Main competitors of Canada Post: UPS, FedEx and DHL

<sup>i</sup> Canada Post Corporation website, <http://www.canadapost.ca/cpo/mc/default.jsf>; Dieke / Niederprüm / Campbell (2008), Study on Universal Postal Service and the Postal Monopoly, Appendix E: Universal Service and Postal Monopoly in Other Countries, p. 96.

<sup>ii</sup> UPU.

<sup>iii</sup> Dieke / Niederprüm / Campbell (2008), Study on Universal Postal Service and the Postal Monopoly, Appendix E: Universal Service and Postal Monopoly in Other Countries, p. 96; Canada Post Corporation website, <http://www.canadapost.ca/cpo/mc/aboutus/corporate/governance/default.jsf>.

<sup>iv</sup> Dieke / Niederprüm / Campbell (2008), Study on Universal Postal Service and the Postal Monopoly, Appendix E: Universal Service and Postal Monopoly in Other Countries, p. 97; Canada Post Corporation, Annual Report 2009.

<sup>v</sup> Canada Post Corporation Act 2010, § 14 and 15; Consumer Postal Council (2009), Index of Postal Freedom, Canada – Canada Post, p. 2.

<sup>vi</sup> Consumer Postal Council (2009), Index of Postal Freedom, Canada – Canada Post, p. 2 and 4; Market Access Data Base, Document: Canada Post monopoly over outbound international mail.

<sup>vii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>viii</sup> UPU. Figures reflects volumes of the incumbent, not of the total market necessarily.

<sup>ix</sup> Consumer Postal Council (2009), Index of Postal Freedom, Canada – Canada Post, p. 4.

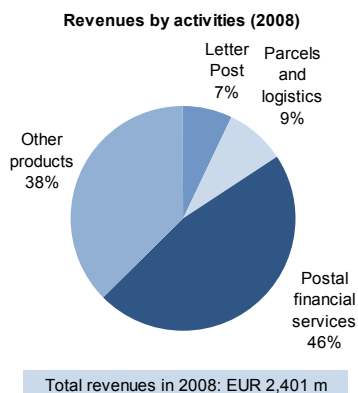
<sup>x</sup> Canada Post Corporation, Annual Report 2009, p. 12, and Annual Report, p. 81. Figure reflects volumes of the incumbent, not of the total market necessarily.

<sup>xi</sup> Canada Post Corporation, Annual Report 2009, p. 37; Canada Post Corporation website: [http://www.canadapost.ca/cpo/mc/aboutus/news/letters/finpost\\_rates.jsf](http://www.canadapost.ca/cpo/mc/aboutus/news/letters/finpost_rates.jsf)

#### 4.2.4 China (CN)

##### Incumbent<sup>i,ii</sup>

Name:	China Post Group
Legal status:	Government agency and public utility enterprise
Ownership status:	Fully state-owned



##### National regulatory authority<sup>iii</sup>

Name:	State Post Bureau (SPB)
Short description:	SPB undertakes supervises and regulates the postal businesses. Until 2005, the SPB was both the regulatory authority on all postal matters and the organization which delivered the mail

##### Universal service<sup>iv</sup>

USP	China Post
US products:	<ul style="list-style-type: none"> <li>Letters and printed matters up to 5 kg</li> <li>Parcels up to 10 kg</li> <li>Delivery of state-specified newspapers and periodicals, confidential communication of the State Party, government and military as well as post-free correspondence for the compulsory servicemen, documents in Braille and legacies of revolutionary martyrs</li> </ul>
Postal outlets/10.000 inh. '09	0.4

##### Reserved area<sup>v</sup>

- 'Correspondence delivery services'

##### Authorisations<sup>vi</sup>

- Licence needed from State Post Bureau to provide any postal, or express services according to 2009 Postal Law

##### Market access and trade barriers<sup>vii</sup>

- Prohibition for foreign investors to invest in domestic express delivery service for correspondence
- Express or other postal operators are prohibited to provide correspondence services or deliver official documents of state organs
- The customs shall supervise and control the international postbags, postal containers and international postal items (inbound as well as outbound)

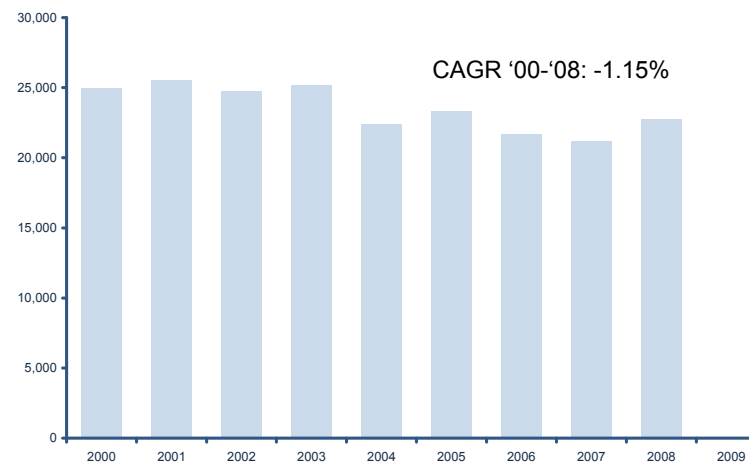
- China Post can check the inside of letter post items
- Quarantine of international mail (inbound/outbound) by the entry-exit inspection and quarantine organs
- Public or national security organs or procuratorial organs may legally inspect and detain mail, and require the relevant postal operator to provide the information on the postal services used by the relevant customers
- International express services under supervision of the postal administrative departments

**General market indicators<sup>viii</sup>**

Population '09:	1,334.7	m persons
GDP '09 (current prices)	3,425.0	bn EUR
GDP '09 per capita (cur. pr.)	2,566.0	EUR
GDP growth ('00-'09; CAGR)	16.96	%

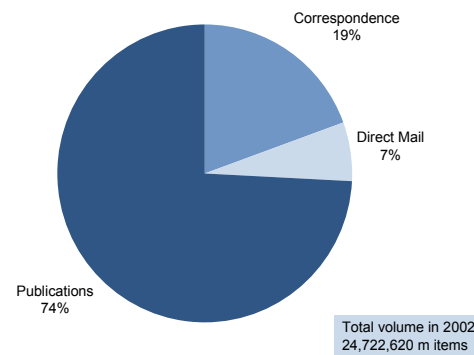
**Letter post market**

Domestic letter post volume (m items):<sup>ix</sup>



Domestic letter post items per capita (2008):<sup>x</sup> 17

Breakdown of domestic letter post volume (2006):<sup>xi</sup>

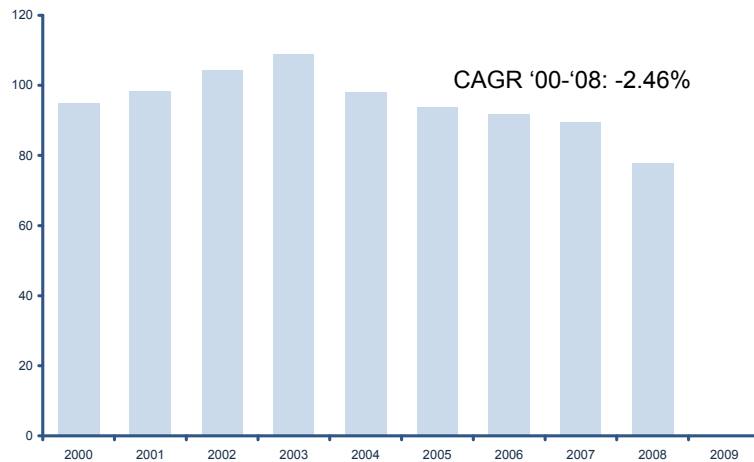


### Players and market shares:

- In the domestic mail market, China Post holds 100%

### Parcel and express market

#### Domestic parcel post volume (m items):<sup>xii</sup>



Note: Figure reflects volumes of the incumbent, not of the total market necessarily.

### Players and market shares:<sup>xiii</sup>

- More than 100,000 foreign and non-state express mail service providers carrying out about 80% of same-city express mail delivery and over 50 percent of trans-province business express mail services
- International integrators (e.g. DHL, UPS, TNT and FedEx) have taken most of the international freight forwarding market; China Post, through a co-operative agreement with Dutch TNT, holds only about 25% of that business.

<sup>i</sup> Consumer Postal Council (2008), Index of Postal Freedom, China - China Post.

<sup>ii</sup> UPU.

<sup>iii</sup> State Post Bureau website, <http://www.chinapost.gov.cn/folder12/2008/10/2008-10-3117985.html>, Consumer Postal Council (2008), Index of Postal Freedom, China - China Post.

<sup>iv</sup> Chinese Postal Law, Art. 15, UPU.

<sup>v</sup> Chinese Postal Law, Art. 5.

<sup>vi</sup> Chinese Postal Law, Art. 51.

<sup>vii</sup> China Daily, Controversial postal law gets green light, 25 April 2009; Chinese Postal Law, Art. 51, Art. 55 and DG Trade, Market Access Database; Chinese Postal Law Art. 30, Art. 25, Art. 31, Art. 36, Art. 57.

<sup>viii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>ix</sup> UPU, own estimations.

<sup>x</sup> Own estimations.

<sup>xix</sup> UPU, own estimations.

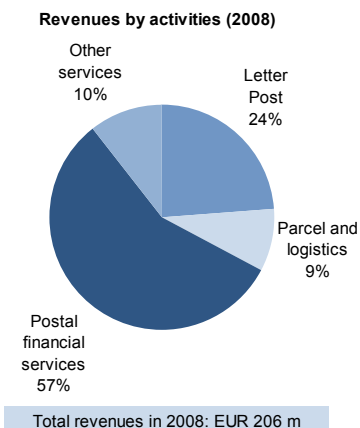
<sup>xii</sup> China Post, Annual reports (2000-2005); UPU (2006-2008). Figure reflects volumes of the incumbent, not of the total market necessarily.

<sup>xiii</sup> Consumer Postal Council (2008), Index of Postal Freedom, China - China Post.

### 4.2.5 India (IN)

#### Incumbent<sup>i,ii</sup>

Name:	India Post
Legal status:	State enterprise
Ownership status:	Fully state-owned by Federal Government



#### National regulatory authority<sup>iii</sup>

Name:	Ministry of Communications and Information Technology, Department of Posts, no independent NRA
Short description:	The Department of Posts under the Ministry of Communications and Information Technology is an department within the government of India and undertakes supervises and regulates India Post

#### Universal service<sup>iv</sup>

USP	The Indian Post Office Act establishes a general obligation to provide universal service. The Indian Post Office Act does not use the term “universal service” or establish a specific “universal service obligation”; India Post receives state subsidies
US products:	No specific definition
Postal outlets/ 10.000 inh. '09	1.3

#### Reserved area<sup>v</sup>

- The postal monopoly in India is established by the Indian Post Office Act of 1898
- Exclusive right for India Post of conveying letters (incl. postcards), but the definition of "letter" is open to interpretation
- The only exceptions to the monopoly are private communications delivered by the writer to the recipient, those sent by messenger, and related notes within parcels of goods
- A new postal law is being prepared at present, possible changes in legislation to be expected shortly

#### Authorisations<sup>vi</sup>

- No specific authorisation regime for postal services (reportedly, licensing may be introduced with new legislation)

#### Market access and trade barriers<sup>vii</sup>

- India Post enjoy immunity from liability charges stemming from failed delivery

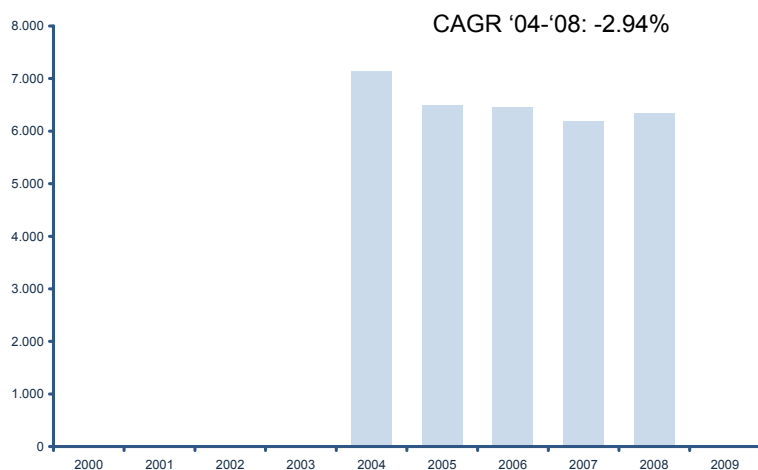
- India has considered the adoption of a new legislation on postal and courier services to replace and reform the 1898 India Post Office Act. While no official proposal has yet been submitted, various proposed elements have been floated and many of these risk significantly affecting the operations of EU express delivery service companies

**General market indicators<sup>viii</sup>**

Population '09:	1,199.1	m persons
GDP '09 (current prices)	862.3	bn EUR
GDP '09 per capita (cur. pr.)	719.2	EUR
GDP growth ('00-'09; CAGR)	11.56	%

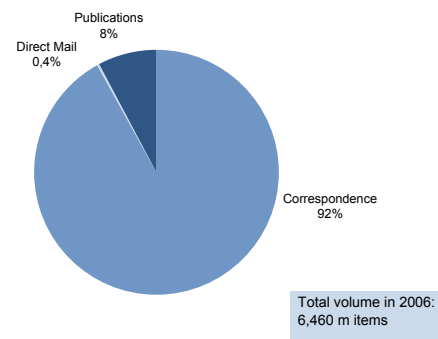
**Letter post market**

Domestic letter post volume (m items):<sup>ix</sup>



Domestic letter post items per capita (2008):<sup>x</sup> 5

Breakdown of domestic letter post volume (2006):



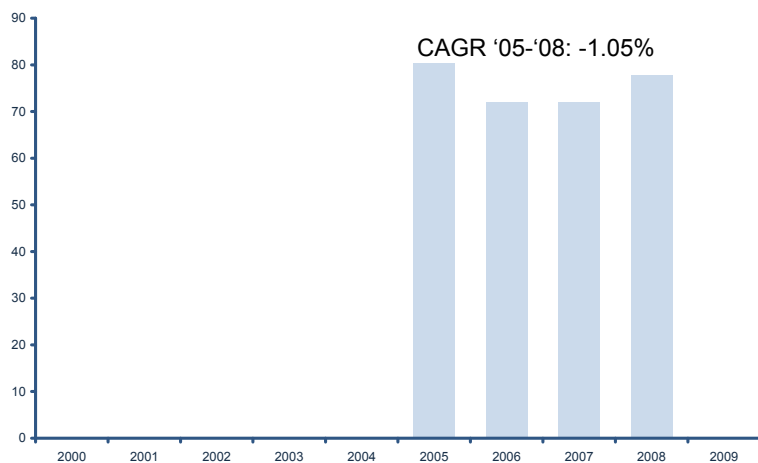
Players and market shares:

- Domestic letter post: India Post holds 100 % because of its monopoly



## Parcel and express market

Domestic parcel post volume (m items):<sup>xi</sup>



Note: Figure reflects volumes of the incumbent, not of the total market necessarily.

Players and market shares:<sup>xii</sup>

- Main competitors of India Post: FedEx, DHL/Blue Dart, UPS and TNT

<sup>i</sup> India Post website, <http://www.indiapost.gov.in/>.

<sup>ii</sup> UPU.

<sup>iii</sup> Ministry of Communications and Information Technology website, <http://www.mit.gov.in/>; India Post, Annual Report 2009-2010, p. 7.

<sup>iv</sup> The Indian Post Office Act (1898); India Post, Annual Report 2009-2010, p. 5.

<sup>v</sup> The Indian Post Office Act of 1898; Consumer Postal Council (2010), Index of Postal Freedom, India Post, p. 1 and 3.

<sup>vi</sup> The Indian Post Office Act (1898).

<sup>vii</sup> Consumer Postal Council (2010), Index of Postal Freedom, India Post, p. 3; Market Access Data Base, Document: Import restrictions on postal and courier services (08/04/2010).

<sup>viii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>ix</sup> India Post, Annual Report 2009-2010, p. 15; Annual Report 2008-2009, p. 19; Annual Report 2007-2008, p. 19; Annual Report 2006-2007, p. 15. Figure reflects volumes of the incumbent, not of the total market necessarily.

<sup>x</sup> Own estimations.

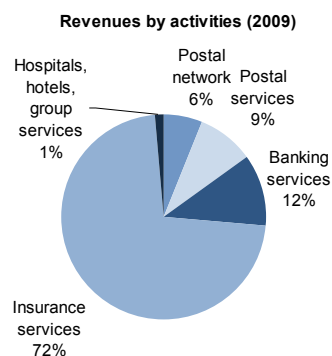
<sup>xi</sup> UPU. Figures reflects volumes of the incumbent, not of the total market necessarily.

<sup>xii</sup> Thornton (2007), The challenges for India Post, Parcel and Post website: <http://postandparcel.info/24543/in-depth/the-challenges-for-india-post/>.

## 4.2.6 Japan (JP)

### Incumbent<sup>i,ii</sup>

Name:	Japan Post
Legal status:	State enterprise
Ownership status:	Fully state-owned (by Ministry of Finance)



Total revenues in 2009: EUR 162.9 bn

### National regulatory authority<sup>iii</sup>

Name:	Ministry of International Affairs and Communications (MIC), no independent NRA
Short description:	MIC with 'management' function to Japan Post. MIC regulates 'correspondence' segments and sets the prices for postal operators in this market

### Universal service products<sup>iv</sup>

USP	Japan Post
US products:	<ul style="list-style-type: none"> <li>Mail up to 6 kg</li> <li>USO: Japan Post should promote public welfare by provision of postal services at the lowest possible charges, on a nationwide scale and in a manner fair to all. Moreover, it requires the operator to provide a ubiquitous six-day delivery at a uniform rate for letters and postcards, and to deliver to each addressee throughout Japan</li> </ul>
Postal outlets/10.000 inh. '09	1.9

### Reserved area<sup>v</sup>

- Parcel and non-correspondence mail markets already liberalized prior to 2002
- Full market opening in 2002, but Japan Post with de facto monopoly for correspondence up to 250 g and prices up to JPY 1,000

### Authorisations<sup>vi</sup>

- MIC grants licence for 'general correspondence delivery' to private operators. Operators must meet universal service criteria, e.g. 100,000 post boxes

### Market access and trade barriers<sup>vii</sup>

- Unequal conditions of competition between Japan Post and US int'l express delivery providers: US objects different customs clearance procedures in favour of Japan Post, cross-subsidization of competitive services by revenues from non-competitive services

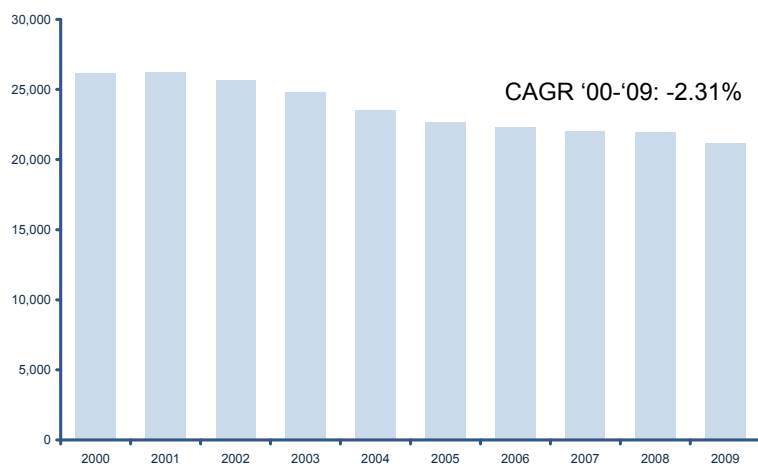
- U.S. and EU expressed that draft postal reform legislation submitted to Japan's Diet does not address U.S. and EU concerns about the preferential treatment that Japan Post currently receives compared to private-sector companies

**General market indicators<sup>viii</sup>**

Population '09:	127.6	m persons
GDP '09 (current prices)	3,536.0	bn EUR
GDP '09 per capita (cur. pr.)	27,720.4	EUR
GDP growth ('00-'09; CAGR)	0.92	%

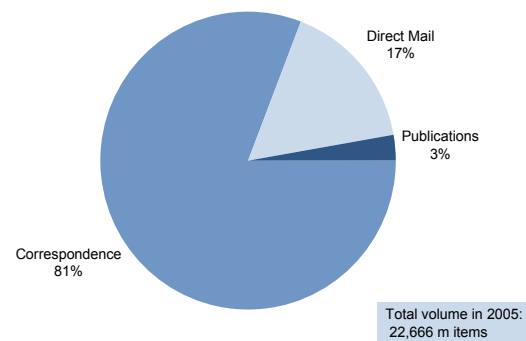
**Letter post market**

Domestic letter post volume (m items):<sup>ix</sup>



Domestic letter post items per capita (2009):<sup>x</sup> 166

Breakdown of domestic letter post volume (2005):<sup>xi</sup>

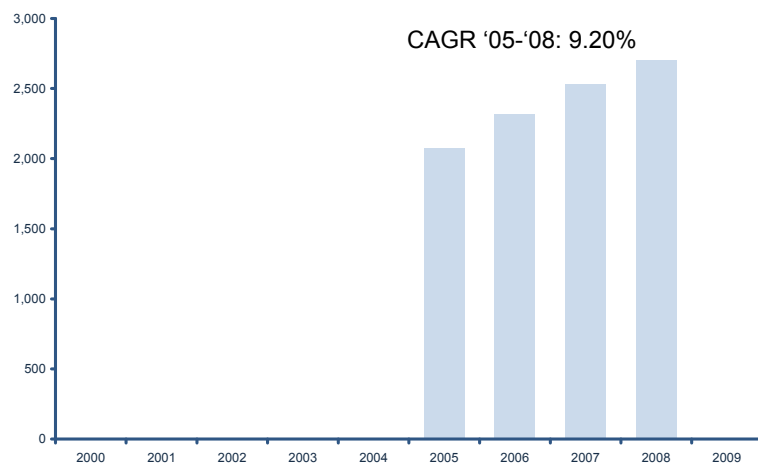


Players and market shares:<sup>xii</sup>

- Domestic correspondence: Japan Post (100%)
- Domestic direct mail (non-correspondence): unclear
- International mail under UPU treatment: Japan Post (100%)
- International express mail (2005): DHL (29%), FedEx (26%), Japan Post (18%), Other, e.g. UPS, TNT (27%)

## Parcel and express market

Domestic parcel post volume (m items):<sup>xiii</sup>



Note: Figure reflects volumes of the incumbent, not of the total market necessarily.

Players and market shares (2008):<sup>xiv</sup>

- Main competitors of Japan Post: Yamato, Sagawa, Nippon Express, Fukuyama, DHL, FedEx, UPS, TNT
- Door-to-door parcel delivery market dominated by Japanese companies (Yamato, Sagawa etc.)
- Express market dominated by international integrators (DHL, FedEx etc.)
- Japan Post's share in parcel market (2008) is about 8%

<sup>i</sup> Japan Post website, <http://www.japanpost.jp/en/corporate/about>.

<sup>ii</sup> Japan Post, Annual report 2009, p. 21ff.

<sup>iii</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 78; Ecorys (2008), Main developments in the postal sector (2006-2008), Country sheet Japan, p. 1053.

<sup>iv</sup> Consumer Postal Council (2010), Index of Postal Freedom, Japan - Japan Post; Ecorys (2008), Main developments in the postal sector (2006-2008), Country sheet Japan, p. 1051; Japan Post, Annual report 2009, p. 10.

<sup>v</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 78; Ecorys (2008), Main developments in the postal sector (2006-2008), Country sheet Japan, p. 1052.

<sup>vi</sup> Ecorys (2008), Main developments in the postal sector (2006-2008), Country sheet Japan, p. 1054.

<sup>vii</sup> Office of the United States Trade Representative (2008), National Trade Estimate Report on Foreign Trade Barriers, p. 297; Reuters, US, EU raise worries over Japan Post, 21 May 2010.

<sup>viii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>ix</sup> Japan Post, Annual reports.

<sup>x</sup> Own calculations.

<sup>xi</sup> UPU; Japan Post, Annual report 2006; own calculations.

<sup>xii</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 789; Japan Fair Trade Commission (2006), Issues Concerning Postal Services and Competition Policy Coinciding with the Enactment of the Law of the Privatization of the Postal Services, p. 17f; Ecorys (2008), Main developments in the postal sector (2006-2008), Country sheet Japan, p. 1061f.

<sup>xiii</sup> UPU. Figure reflects volumes of the incumbent, not of the total market necessarily.

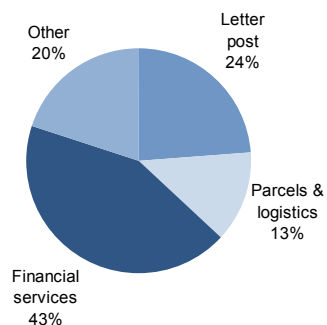
<sup>xiv</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 79.

### 4.2.7 Russia (RU)

#### Incumbent<sup>i,ii</sup>

Name:	Russian Post (Pochta Rossii)
Legal status:	Federal State Unitary Enterprise (FSUE) since 2002 (before: government ministry)
Ownership status:	Fully state-owned (by Ministry of Communications and Information Technology)

Revenues by activities (2008)



Total revenues in 2008: EUR 2,100 bn

#### National regulatory authority<sup>iii</sup>

Name:	Ministry of Communications and Information Technology, no independent NRA
Short description:	Ministry is responsible for ensuring postal services (according to the Federal Postal Law)

#### Universal service<sup>iv</sup>

USP	Russian Post (Pochta Rossii)
US products:	<ul style="list-style-type: none"> <li>Letters, postcards and letter-post items for the blind, up to 100g</li> <li>Small packets, up to 2kg</li> </ul>
Postal outlets/ 10.000 inh. '09	2.9

#### Reserved area<sup>v</sup>

- No formal monopoly on postal services since 1996, but Russian Post controls 80% of the postal market
- Russian Post is obliged to offer universal postal services throughout the country. In return, Russian Post receives state subsidies (in order to offer low fares) and losses are balanced from state budget

#### Authorisations

- n/a

### Market access and trade barriers<sup>vi</sup>

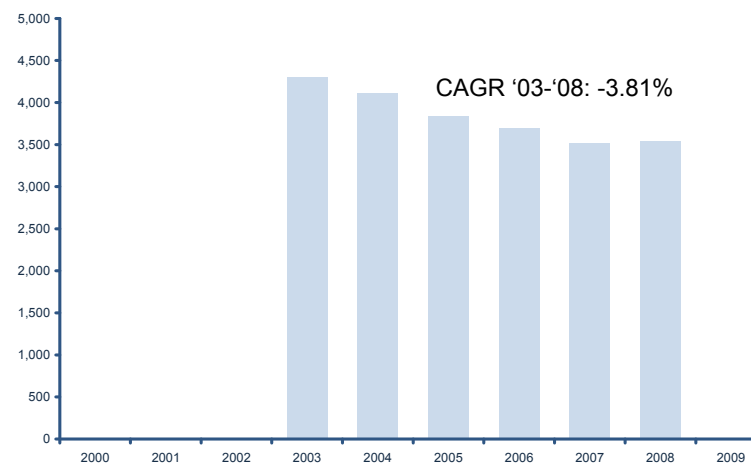
- Changes in customs clearance procedures for express operators and a 64% year-to-year increase of inbound volume have caused delays of four to ten days at Moscow's three airports in spring March 2010. DHL warned that delivery times to Russia could be up to one month because all its inbound parcels have been stored in Germany and Finland
- Russia Post's own national express mail service (EMS) service offers prices that are 20% lower than the prices of competitors; remains unclear if this is the result of cross-subsidization
- Anticompetitive actions of Russia Post by reducing and suspending services for processing international mail of a private operator at the outlets for international postal exchange of the Russian Federation, and proposing terms and conditions of a contract with foreign operators for postal services

### General market indicators<sup>vii</sup>

Population '09:	141.4	m persons
GDP '09 (current prices)	857.6	bn EUR
GDP '09 per capita (cur. pr.)	6,065.7	EUR
GDP growth ('00-'09; CAGR)	18.85	%

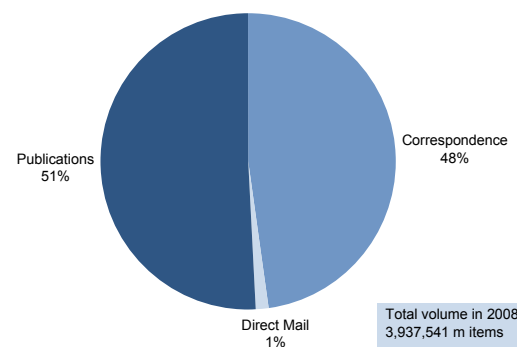
### Letter post market

Domestic letter post volume (m items):<sup>viii</sup>



Domestic letter post items per capita (2008):<sup>ix</sup> 25

Breakdown of domestic letter post volume (2008):<sup>x</sup>

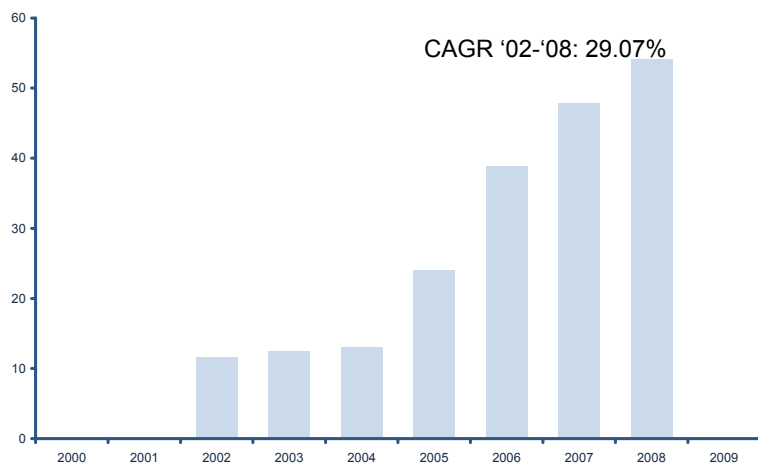


Players and market shares (2008):<sup>xi</sup>

- Russia Post still controls 80% of the postal market
- Competitors are active in niche markets (e.g. press distribution)

**Parcel and express market**

Domestic parcel post volume (m items):<sup>xii</sup>



Note: Figure reflects volumes of the incumbent, not of the total market necessarily.

Players and market shares:<sup>xiii</sup>

- Russia Post still controls 80% of the postal market
- Competitors are active in niche markets (express or courier services between major cities)

<sup>i</sup> Russian Post website, <http://www.russianpost.ru>; Consumer Postal Council (2008), Index of Postal Freedom, Russia - Pochta Rossii; Wikipedia.

<sup>ii</sup> UPU; Russia Post, Annual report 2008.

<sup>iii</sup> Ministry of Communications and Information Technology website, <http://www.minsvyaz.ru/>; Consumer Postal Council (2008), Index of Postal Freedom, Russia - Pochta Rossii.

<sup>iv</sup> Russian Post, Annual report 2005, p. 27 and 29.

<sup>v</sup> Consumer Postal Council (2008), Index of Postal Freedom, Russia - Pochta Rossii; Russland Web website, <http://www.russland-web.de/infrastruktur/telekommunikationundpost/index.php>; Germany Trade & Invest (2007), Russland braucht Milliardeninvestitionen.

<sup>vi</sup> International Post Corporation, Market Flash, Issue 406, 24 March 2010; Consumer Postal Council (2008), Index of Postal Freedom, Russia - Pochta Rossii; Germany Trade & Invest (2007), Russland braucht Milliardeninvestitionen; All Business, Actions of Russian Post Office Federal State Unitary Enterprise could have restricted competition on market of postal services, 26 February 2010.

<sup>vii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>viii</sup> UPU; Russian Post, Annual reports, own calculations.

<sup>ix</sup> Own calculations.

<sup>x</sup> UPU; Russian Post, Annual report 2008, own calculations.

<sup>xi</sup> Consumer Postal Council (2008), Index of Postal Freedom, Russia - Pochta Rossii; Germany Trade & Invest (2007), Russland braucht Milliardeninvestitionen.

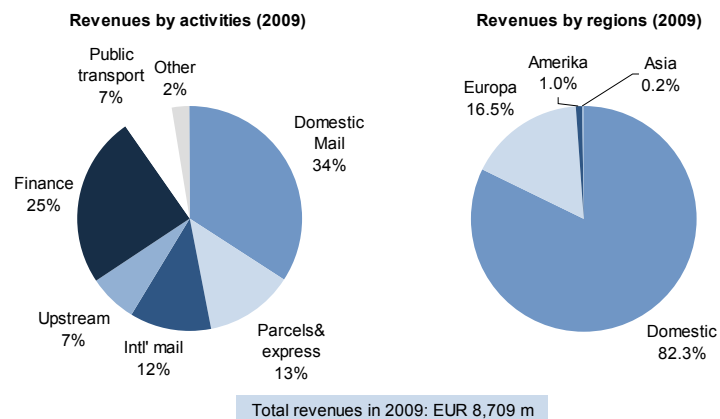
<sup>xii</sup> Russian Post, Annual reports. Figure reflects volumes of the incumbent, not of the total market necessarily.

<sup>xiii</sup> Consumer Postal Council (2008), Index of Postal Freedom, Russia - Pochta Rossii; Germany Trade & Invest (2007), Russland braucht Milliardeninvestitionen.

## 4.2.8 Switzerland (CH)

**Incumbent<sup>i,ii</sup>**

Name:	Swiss Post
Legal status:	Autonomous, incorporated public-law institution (change to incorporated company intended; legislative procedure ongoing)
Ownership status:	Fully state-owned (Ownership function executed by ministry DETEC)

**National regulatory authority<sup>iii</sup>**

Name:	PostReg (Postregulationsbehörde)
Short description:	PostReg is a department within the Ministry (DETEC, Federal Department of the Environment, Transport, Energy and Communications)

**Universal service<sup>iv</sup>**

USP	Swiss Post
US products:	<ul style="list-style-type: none"> <li>Letters up to 1 kg</li> <li>Parcels up to 20 kg</li> <li>Subscribed newspapers, magazines and periodicals</li> </ul>
Postal outlets/ 10.000 inh. '09	3.2

**Reserved area<sup>v</sup>**

- Correspondence and direct mail up to 50g (since 2009/07/01)
- Outbound cross-border is liberalized

**Authorisations<sup>vi</sup>**

- Licence system for postal operators providing non-reserved postal services (include express services)

**Market access and trade barriers<sup>vii</sup>**

- Since July 2009, full VAT is charges for all postal items
- Exclusive exemption for Swiss Post from bans on night-time and Sunday driving (vehicles > 3.5t), but not for other licensed operators.
- Customs clearance: simplified procedure valid since 2007 for all postal licensees (including parcel and express companies)

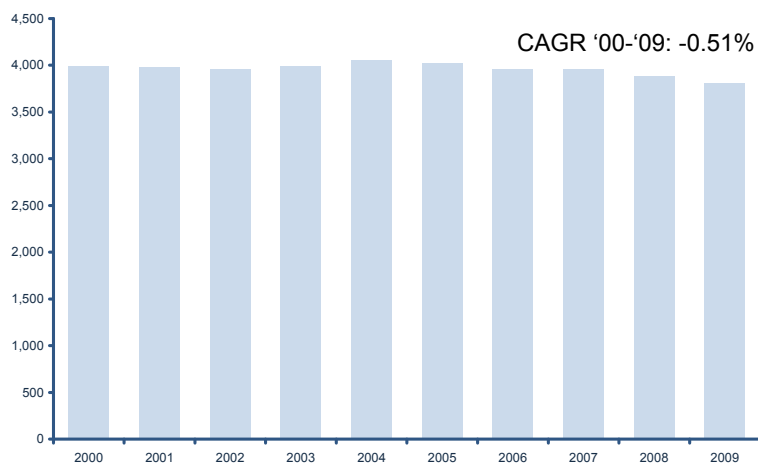


**General market indicators<sup>viii</sup>**

Population '09:	7.3	m persons
GDP '09 (current prices)	345.1	bn EUR
GDP '09 per capita (cur. pr.)	47,138.1	EUR
GDP growth ('00-'09; CAGR)	7.88	%

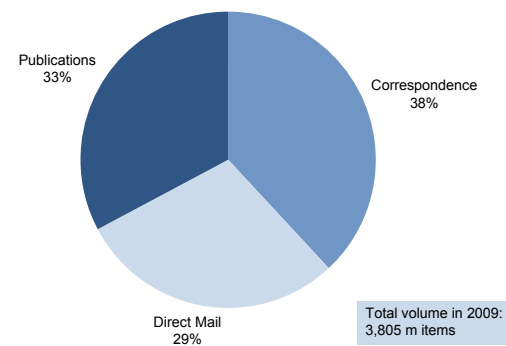
**Letter post market**

Domestic letter post volume (m items):<sup>ix</sup>



Domestic letter post items per capita (2009):<sup>x</sup> 520

Breakdown of domestic letter post volume (2009):<sup>xi</sup>

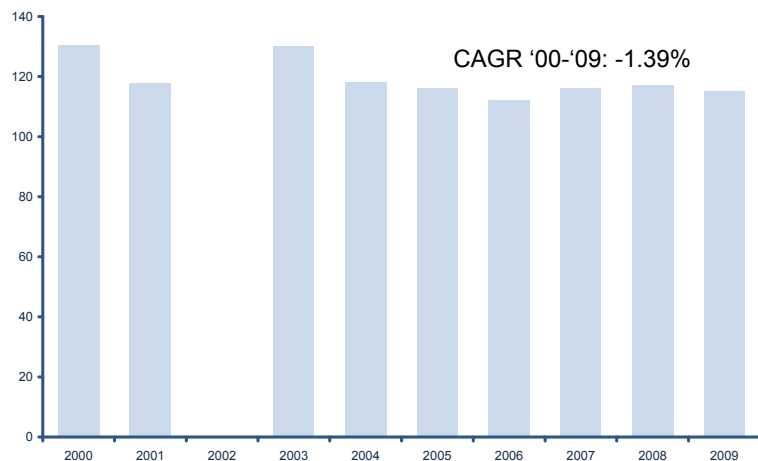


Players and market shares (2009):<sup>xii</sup>

- Domestic letter post: Swiss Post holds nearly 100%
- Outbound cross-border (market volume: over 200 m items): Swiss Post: 57%; Deutsche Post Global Mail (Switzerland) AG and G3 Worldwide Mail (Switzerland): 39%; other: 4%.

## Parcel and express market

Domestic parcel post volume (m items):<sup>xiii</sup>



Note: Figure reflects volumes of the incumbent, not of the total market necessarily.

Players and market shares (2009):<sup>xiv</sup>

- Domestic parcel post: Swiss Post: 81%; DPD (Switzerland) AG, DHL Express (Switzerland) AG: 16%; other: 3%
- Outbound cross-border: Swiss Post: 30%, Deutsche Post Global Mail (Switzerland) AG, DPD (Schweiz) AG, MPC Mail & Packet Company AG: 56%; other: 14%

<sup>i</sup> Swiss Post, Annual report 2009, p. 138.

<sup>ii</sup> Swiss Post, Annual report 2009, p. 166.

<sup>iii</sup> PostReg website, <http://www.postreg.admin.ch/de>.

<sup>iv</sup> Postverordnung VPG 783.01, Art. 1 (as of 1 July 2009); Swiss Post, Annual report 2009, p. 76.

<sup>v</sup> Postverordnung VPG 783.01, Art. 2 (as of 1 July 2009).

<sup>vi</sup> Postverordnung VPG 783.01, Art. 20 (as of 1 July 2009).

<sup>vii</sup> Preisüberwacher, Annual report 2009, p. 483; DG Trade, Market access database; PostReg, Annual report 2008, p. 31.

<sup>viii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>ix</sup> Swiss Post, Annual reports.

<sup>x</sup> Own calculations.

<sup>xi</sup> Swiss Post, Annual report 2009, inlet and p. 67; own calculations.

<sup>xii</sup> PostReg, Annual report 2009, p. 25f.

<sup>xiii</sup> UPU (for 2000 and 2001); PostReg, Annual reports (for 2003 to 2009).

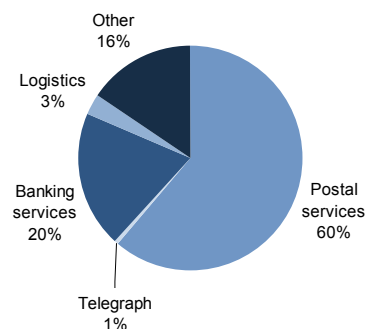
<sup>xiv</sup> PostReg, Annual report 2009, p. 24f.; PostReg, Annual report 2008, p. 25; own calculations.

### 4.2.9 Turkey (TR)

#### Incumbent<sup>i,ii</sup>

Name:	The General Directorate of Post and Telegraph Organization (PTT; based on the former name: Posts Telephone and Telgraph Cooperation)
Legal status:	State Economic Establishment (since 1984), affiliate to the Ministry of Transportation
Ownership status:	Fully state-owned

Revenues by activities (2009)



Total revenues in 2009: EUR 703.7 bn

#### National regulatory authority<sup>iii</sup>

Name:	PTT
Short description:	Regulatory and operational bodies are affiliated to the Ministry of Transportation. No separation between public operator, policy-maker and regulator

#### Universal service<sup>iv</sup>

USP	PTT (although universal postal service is not regulated with current legislation, PTT in effect is the USP)
US products:	No clear definition of products included in the universal service. Service standards for PTT are 5 days collection and delivery in cities, and 1 or 2 days collection and delivery in rural areas and villages.
Postal outlets/ 10.000 inh. '09	0.5

#### Reserved area<sup>v</sup>

- Regardless of weight limits: all sealed, unsealed letters and postcards of correspondence are reserved (not reserved: printed papers, small packages and parcels)

#### Authorisations<sup>vi</sup>

- Licences must be obtained from the Ministry of Transport (according to Law No. 4925 on road transport) for collection, transportation and delivery services out of the reserved area
- More than 70 companies licensed to operate postal services (mostly parcels and courier services)

#### Market access and trade barriers<sup>vii</sup>

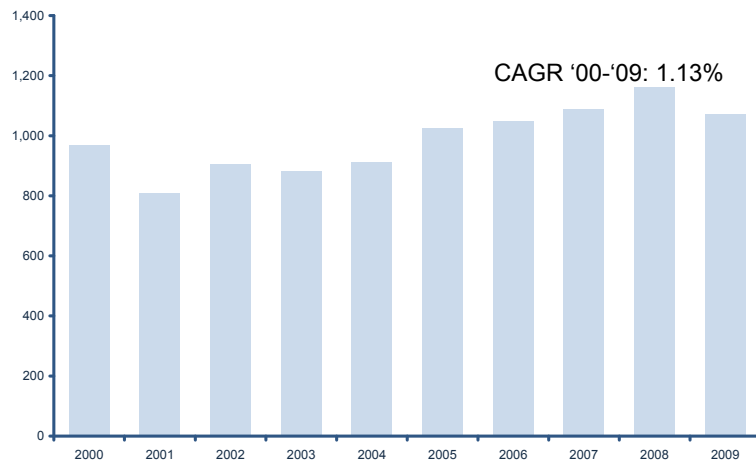
- Postal tariffs are apparently not geared to costs
- No separate accounting system for reserved and non-reserved services by PTT

**General market indicators<sup>viii</sup>**

Population '09:	70.5	m persons
GDP '09 (current prices)	429.3	bn EUR
GDP '09 per capita (cur. pr.)	6,089.3	EUR
GDP growth ('00-'09; CAGR)	9.75	%

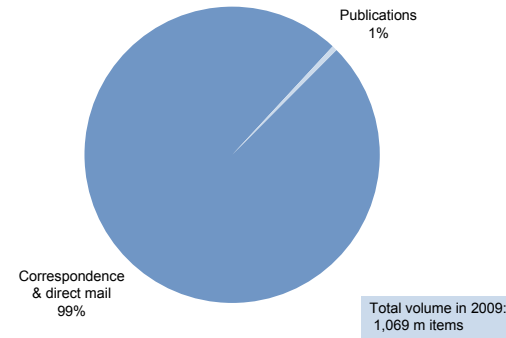
**Letter post market**

Domestic letter post volume (m items):<sup>ix</sup>



Domestic letter post items per capita (2009):<sup>x</sup> 15

Breakdown of domestic letter post volume (2009):<sup>xi</sup>

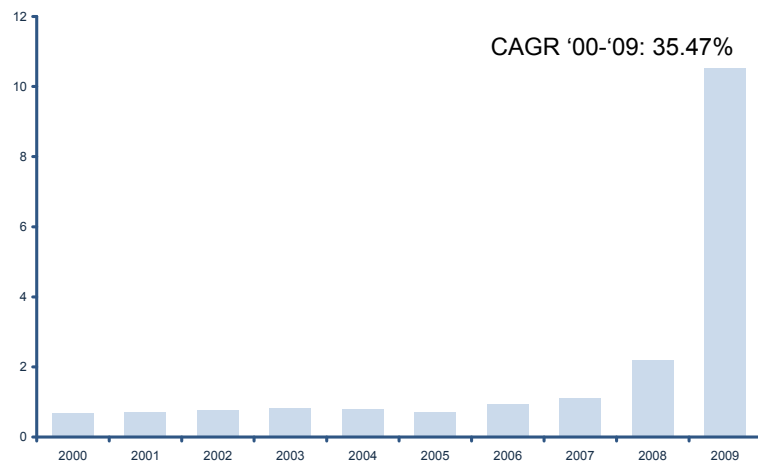


Players and market shares:<sup>xii</sup>

- Dominant Position of PTT

## Parcel and express market

Domestic parcel post volume (m items):<sup>xiii</sup>



Note: Figure reflects volumes of the incumbent, not of the total market necessarily.

Players and market shares:<sup>xiv</sup>

- Besides PTT, there are 23 (17 national and 6 international) private operators providing cargo and courier services (in 2005)

<sup>i</sup> PTT, Annual report 2008, p. 16.

<sup>ii</sup> PTT, Statistics 2009, p. 66.

<sup>iii</sup> Secretariat General for EU Affairs, Agenda II: Postal items services; presentation to a workshop of the Enlargement Directorate-General of the European Commission, 19 December 2005.

<sup>iv</sup> Secretariat General for EU Affairs, Agenda II: Postal items services; presentation to a workshop of the Enlargement Directorate-General of the European Commission, 19 December 2005; PTT, Annual report 2008, p. 23; PTT in correspondence with the authors (October 2010).

<sup>v</sup> Secretariat General for EU Affairs, Agenda II: Postal items services; presentation to a workshop of the Enlargement Directorate-General of the European Commission, 19 December 2005.

<sup>vi</sup> PTT in correspondence with the authors (October 2010).

<sup>vii</sup> Secretariat General for EU Affairs, Agenda II: Postal items services; presentation to a workshop of the Enlargement Directorate-General of the European Commission, 19 December 2005.

<sup>viii</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>ix</sup> PTT, Statistics 2009, p. 3.

<sup>x</sup> Own calculations.

<sup>xi</sup> PTT, Statistics 2009, p. 3.

<sup>xii</sup> Secretariat General for EU Affairs, Agenda II: Postal items services; presentation to a workshop of the Enlargement Directorate-General of the European Commission, 19 December 2005.

<sup>xiii</sup> PTT, Statistics 2009, p. 4. Figure reflects volumes of the incumbent, not of the total market necessarily.

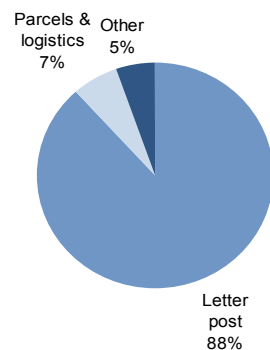
<sup>xiv</sup> Secretariat General for EU Affairs, Agenda II: Postal items services; presentation to a workshop of the Enlargement Directorate-General of the European Commission, 19 December 2005.

## 4.2.10 United States of America (US)

**Incumbent<sup>i</sup>**

Name:	United States Postal Service (USPS)
Legal status:	Independent government agency (special legal status)
Ownership status:	Fully owned by/is part of government

Revenues by activities (2009)



Total revenues in 2009: EUR 47,506 m

**National regulatory authority<sup>ii</sup>**

Name:	Postal Regulatory Commission (PRC, formerly Postal Rate Commission)
Short description:	Independent agency to regulate the Postal Service (in particular postal rates) since its creation by the Postal Reorganization Act of 1970. Mission altered and broadened by 2006 Postal Accountability Enhancement Act.

**Universal service products<sup>iii</sup>**

USP	USPS
US products:	<ul style="list-style-type: none"> <li>Universal service not specifically defined.</li> <li>USPS must provide postal service to all parts of the country, i.e. receive, transmit, and deliver throughout the United States and throughout the world, written and printed matter and parcels. USPS shall serve as nearly as practicable the entire population of the United States.</li> </ul>
Postal outlets/10.000 inh. '09	1.2

**Reserved area<sup>iv</sup>**

- Mailbox monopoly (delivery to recipients' mailboxes reserved for USPS)
- Outbound single piece international letters within reserved area but bulk letters and remail are exempt.
- 'Extremely urgent' items or items > 12.5 ounce or priced by 6 times of the standard price open to competition

**Authorisations**

- There is no specific licensing system for postal services

**Market access and trade barriers<sup>v</sup>**

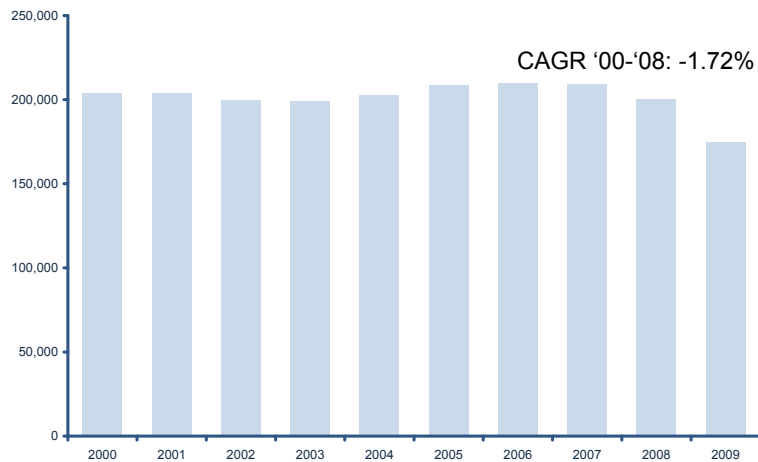
- Postal services provided by USPS are exempted from State sales taxes
- Bilateral agreement between USPS and Canada Post on remunerations for international mail; terminal dues are negotiated through this agreement rather than through UPU; the bilateral agreement is classified as a market-dominant product under U.S. law because Canada and USPS both maintain letter-mail monopolies. Prices of such market-dominant products are reviewed by the PRC

**General indicators<sup>vi</sup>**

Population '09:	307.4	m persons
GDP '09 (current prices)	9,946.6	bn EUR
GDP '09 per capita (cur. pr.)	32,359.9	EUR
GDP growth ('00-'09; CAGR)	4.08	%

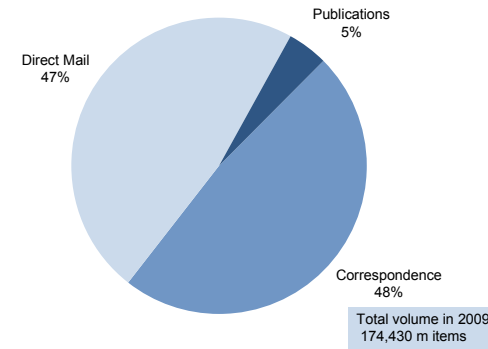
**Letter post market**

Domestic letter post volume (m items):<sup>vii</sup>



Domestic letter post items per capita (2009):<sup>viii</sup> 567

**Breakdown of domestic letter post volume (2009):<sup>ix</sup>**

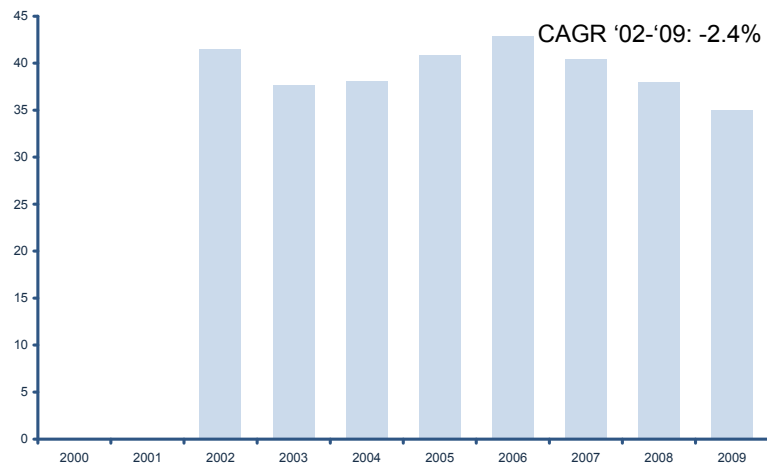


**Players and market shares:<sup>x</sup>**

- Domestic letter post: USPS (100 %)
- Outbound cross-border letter post: USPS (unknown, apparently < 50 %)

## Parcel and express market

Estimated domestic parcel and express revenues (combined revenues of UPS, FedEx, and USPS, in bn EUR):<sup>xi</sup>



Players and market shares:<sup>xii</sup>

- Domestic parcel services (ground): UPS (70%); FedEx (16%); USPS (8%); DHL (3%); other (3%)
- Air express: FedEx (42.2%); UPS (32.9%); DHL (9.1%); USPS (2.8%); BAX Global (2.3%); other (10.7%)

<sup>i</sup> USPS, Annual report 2009; USPS website, <http://www.usps.com>.

<sup>ii</sup> PRC website, <http://www.prc.gov/prc-pages/about/default.aspx>.

<sup>iii</sup> United States Code, Title 39, § 403; USPS, Annual report 2009, p. 33.

<sup>iv</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 156.

<sup>v</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 156; Harrington (2009), Before the Postal Regulatory Commission, Market Dominant Product Prices, Bilateral Negotiated Service Agreement, Docket No. MC2010-12, 9 December 2009; Consumer Postal Council (2010), Index of Postal Freedom, Canada -- Canada Post.

<sup>vi</sup> International Monetary Fund, World Economic Outlook Database, April 2010; own calculations.

<sup>vii</sup> USPS, Annual reports; USPS, Revenue, Pieces & Weight (RPW) Reports.

<sup>viii</sup> Own calculations.

<sup>ix</sup> USPS, Annual reports; USPS, Revenue, Pieces & Weight (RPW) Reports.

<sup>x</sup> ITA-Consulting/WIK-Consult (2009): The Evolution of the European Postal Market since 1997, Country Fiches, p. 156.

<sup>xi</sup> Own calculations based on USPS, Public Cost and Revenue Analysis, various years; and Annual Reports of FedEx, UPS and DHL.

<sup>xii</sup> Consumer Postal Council (2009): Index of Postal Freedom, United States Postal Service.



## 5 Trade Agreements and International Postal Services

International trade agreements provide a general legal framework for the international exchange of goods and services. Trade agreements fall into two broad categories: global agreements negotiated under the auspices of the World Trade Organization (WTO) and 'preferential trade agreements' (PTAs) pertaining one or a few specific countries.

The WTO agreements most relevant to trade in postal services are the General Agreement on Tariffs And Trade (GATT), as re-adopted in 1994, and the General Agreement on Trade in Services (GATS). The GATT defines the obligations of WTO member countries with respect to how they regulate trade in goods conveyed by postal services. The GATS defines obligations governing the regulation of postal services per se. In 2001, the WTO began a new round of negotiations, the Doha Round, to further reduce barriers to trade in goods and services.

Bilateral preferential trade agreements (PTAs, also called 'free trade agreements') supplement the GATT and GATS. To date, the EU has signed three PTAs that specifically address trade in postal services: agreements with Chile (2005), the Cariforum nations of the Caribbean (2008), and South Korea (signed in 2009, final approval pending).

This chapter describes the goals and initiatives of the European Union in these trade negotiations and their current status.

### 5.1 Classification of international postal submarkets

When governments adopt on a legal framework to govern international trade, the first step is to define key terms.<sup>76</sup> Unless parties have a common vocabulary, they, and the general public, may have different understandings and expectations about what constitutes acceptable behaviour. An agreed definition of 'postal services', however, has proven surprisingly elusive. This section reviews ways in which international institutions have approached the definition and classification of postal services.

#### 5.1.1 Universal Postal Union

The Universal Postal Union (UPU) was founded in 1874 to provide for the 'the establishment of a single postal territory for the reciprocal exchange of correspondence'.<sup>77</sup> The postal items specifically mentioned in the convention were

<sup>76</sup> See, e.g., Postal Directive, Article 2; General Agreement on Trade in Services, Article XXVIII; UPU, Convention (2008), Article 1.

<sup>77</sup> Treaty Concerning the Formation of a General Postal Union, Article 1 (1874).

letters, post-cards, books, newspapers and other printed papers, patterns of merchandise, and legal and commercial documents.<sup>78</sup> Subsequent postal conventions continued to equate 'postal service' with the exchange of 'correspondence' through 1957,<sup>79</sup> even though in 1929 the term 'correspondence' was extended to include 'small packets'.<sup>80</sup> In the Universal Postal Convention of 1964, the term 'letter post' was introduced. The letter post included postal services for three main categories of postal items: letters and cards, prints, and small packets.<sup>81</sup> The term 'letter' was defined negatively to mean 'current and personal correspondence'.<sup>82</sup> 'Prints' referred to identical reproductions on paper produced by mechanical or photographic means.<sup>83</sup>

The international 'parcel post' was established in 1880 by means of a separate agreement signed by some but not all members of the UPU.<sup>84</sup> The parcel post remained a separate agreement until it was incorporated into the Universal Postal Convention in 1999. The difference between the small packets of the letter post and the parcel post was that the service for small packets was limited to items within the size and weight limits for letter post items (1 kg in 1929 and later expanded to 2 kg). The parcel post service was intended for parcels weighing up to 10 kg to 20 kg (more than 10 kg was optional). The parcel post was originally provided by railways and steamship companies under contract with the postal administrations. The Convention still provides for this possibility.<sup>85</sup>

The UPU added a new category of international postal service, EMS, in 1994. The term 'EMS' was taken over from postal administrations that used 'EMS' as an acronym for 'express mail service'. EMS is defined as 'the quickest postal service by physical means' and 'the collection, dispatch and delivery in a very short space of time of correspondence, documents or goods'.<sup>86</sup> EMS differed from letter post and parcel post not only by its superior speed but also by the fact that it was established by bilateral agreements between postal administrations and not by the UPU.

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<sup>78</sup> Ibid, Article 2.

<sup>79</sup> UPU, Convention (1957), Article 48.

<sup>80</sup> UPU, Convention (1929), Article 32. Like the parcel post, the exchange of small packets was limited to countries that specifically agreed.

<sup>81</sup> UPU, Convention (1964), Article 15. In addition, the letter post included conveyance of samples of merchandise, matter for the blind, and phonographic matter.

<sup>82</sup> The definition was negative because there was no explicit definition of 'letter', but prints and small packets were defined to exclude 'current and personal correspondence'.

<sup>83</sup> UPU, Convention (1964), Det. Reg., Article 127(1).

<sup>84</sup> Codding, *Universal Postal Union* (1964), p. 42.

<sup>85</sup> UPU, Convention (2008), Article 12(7) ('Any member country whose designated operator does not undertake the conveyance of parcels may arrange for the provisions of the Convention to be implemented by transport companies. It may, at the same time, limit this service to parcels originating in or addressed to places served by these companies').

<sup>86</sup> UPU, Convention (1994), Article 57.

### 5.1.2 EU Postal Directive

The EU Postal Directive and this study use the term ‘postal service’ to refer to all types of collection and delivery services for documents and parcels, regardless of whether the operator is owned by government or private parties. In the Postal Directive, postal service is defined as ‘services involving the clearance, sorting, transport and distribution of postal items’.<sup>87</sup> The term ‘postal items’ includes all types of things addressed in final form, including items of correspondence, books, catalogues, newspapers, periodicals, and postal parcels. The term ‘postal parcels’ is not explicitly defined but seems to refer only to addressed boxes of merchandise since the term is used in distinction to correspondence, book, etc.<sup>88</sup>

The Postal Directive includes several provisions defining or protecting the rights of users.<sup>89</sup> A ‘user’ is a natural or legal person benefiting from universal service as a sender or addressee.<sup>90</sup>

The Postal Directive employs two categories for postal services: universal services and non-universal services. Universal service is defined as a subset of postal services which the Member States are obliged to ensure their citizens. The Directive obliges each Member State to ‘adopt the measures necessary to ensure that the universal service includes the following minimum facilities’: (1) conveyance of postal items weighing up to 2 kilograms and (2) conveyance of postal packages weighing up to 10 kilograms (or 20 kilograms at the discretion of the Member State). In light of UPU classification, it is evident that the Directive combines two types of traditional postal services — letter post service and parcel service — to define universal service. The reference to postal items weighing up to 2 kilograms in the Directive’s definition of universal service refers to what UPU calls a letter post service. Reference to postal packages (‘postal packages’ is also undefined) weighing up to 10 kilograms refers to a distinctly different UPU product, the parcel post. In fact, the Directive’s definition of universal service may leave a gap: a

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<sup>87</sup> Postal Directive, Article 2(1).

<sup>88</sup> Postal Directive, Articles 2(6) (‘*postal item*: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value’); 2(7) (‘item of correspondence: a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals shall not be regarded as items of correspondence’).

<sup>89</sup> Postal Directive, Articles 3(1) (‘Member States shall ensure that users enjoy the right to a universal service’); 3(2) (‘ensure that the density of the points of contact and of the access points takes account of the needs of users’); 5(1) (‘[universal service shall] an identical service to users under comparable conditions . . . [and] evolve in response to the technical, economic and social environment and to the needs of users’); 6 (‘to ensure that users and undertakings providing postal services are regularly given sufficiently detailed and up-to-date information’); 11a (transparent and non-discriminatory access conditions ‘whenever necessary to protect the interest of users’); 12 (‘all users have access’ to universal services); 19 (users’ complaints and right of redress); and 22(3) (users’ right of appeal from decision of NRA).

<sup>90</sup> Postal Directive, Article 2(17).

large envelope of documents weighing 3 kilograms is (seemingly) neither a 'postal item' nor a 'postal package'.

The postal directives also refer to 'express services' In 1997, the first version of the Postal Directive included a recital that stated 'the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay'.<sup>91</sup>

### 5.1.3 Trade law

In trade law agreements, the approach towards defining and categorising postal services is established by the GATS. Service sectors are identified by reference to a 1991 WTO classification scheme for services based on the United Nations' Provisional Central Product Classification (CPC) developed in 1989.<sup>92</sup> Portions of the CPC relevant to postal services (in an EU sense) are reproduced in Table 5-1.

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<sup>91</sup> Directive 97/67, recital 18.

<sup>92</sup> United Nations, *Provisional Central Product Classification* (1991).

Table 5-1 UN CPC classifications for postal and courier services

<p>DIVISION 75 POST AND TELECOMMUNICATIONS SERVICES</p> <p>751 Postal and courier services</p> <p>7511 Postal services</p> <p>75111 Postal services related to letters</p> <p>Services consisting of pick-up, transport and delivery services of letters, newspapers, journals, periodicals, brochures, leaflets and similar printed matters, whether for domestic or foreign destinations, as rendered by the national postal administration.</p> <p>75112 Postal services related to parcels</p> <p>Services consisting of pick-up, transport and delivery services of parcels and packages, whether for domestic or foreign destinations, as rendered by the national postal administration.</p> <p>75113 Post office counter services</p> <p>Services rendered at post office counters, e.g. sales of postage stamps, handling of certified or registered letters and packets, and other post office counter services.</p> <p>75119 Other postal services</p> <p>Mailbox rental services, "poste restante" services, and public postal services not elsewhere classified. Exclusion: Services related to postal giro and postal savings accounts are classified in class 8111 (Services of monetary intermediaries).</p> <p>7512 Courier services</p> <p>75121 Multi-modal courier services</p> <p>Services consisting of pick-up, transport and delivery services, whether for domestic or foreign destinations of letters, parcels and packages, rendered by courier and using one or more modes of transport, other than by the national postal administration. These services can be provided by using either self-owned or public transport media. [Exclusions: Courier services for mail by air are classified in subclass/73210 (Mail transportation by air).]</p> <p>75129 Other courier services</p> <p>Other courier services for goods, not elsewhere classified, e.g./trucking or transfer services without storage, for freight.</p>
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Source: United Nations, Statistical Office, 'Provisional Central Product Classification' (1991).

In the WTO scheme, 'postal services' and 'courier services' are sub-sectors of sector 2, 'communication services', a sector that also includes telecommunications and audiovisual services.<sup>93</sup> Sector 2A, 'postal service', is cross-referenced to CPC 7511, which contains a list of services that are '*rendered by the national postal administrations*'. These 'postal' services are divided into four sub-items: postal services related to letters (75111), postal services related to parcels (75112), postal counter services (75113), and other postal services (75119). Sector 2B, 'courier service', is cross-referenced to CPC 7512. 'Courier' services are divided into two sub-items. Multi-modal courier services (75121) refers to 'services consisting of pick-up, transport and delivery services, whether for domestic or foreign destinations of letters, parcels and packages, rendered by courier and using one or more modes of transport, *other than by*

<sup>93</sup> See WTO, MTN.GNS/W/120 (1991). In this schedule, sector 2 refers to communications services. It is subdivided into several subsectors, including subsector 2A, relating to postal services, and subsector 2B, relating to courier services. Sector 2A is cross-referenced to item 7511 of the provisional United Nations Central Product Classification, which defines postal services. Sector 2B is cross-referenced to item 7512 of the provisional United Nations Central Product Classification, which defines courier services.

*the national postal administration*'.<sup>94</sup> The second sub-item is 'other courier services for goods' (75129).<sup>95</sup> Thus, in the CPC scheme, '*postal service*' and '*courier service*' refer to the same delivery services and are differentiated only in the identity of the provider, i.e., by whether or not the service is provided by a national postal administration.

As studies by the WTO's secretariat in 1998 and 2010 concede, the CPC classification scheme for postal and courier services is plainly out of date.<sup>96</sup> While the term 'postal administration' implies that there is a government ministry providing national postal services, in many countries the postal administration has been converted into a normal corporation. Indeed, in an increasing number of cases the national post office has been sold in whole or in part to private shareholders. Moreover, with reduction or repeal of the postal monopoly law in many countries, private companies often provide delivery services that compete directly with services offered by the postal administration or its corporatised successor.

On 18 December 2000, the United States proposed the addition of a new communications subsector, 'express services', while retaining the subsectors for postal and courier services. The United States explained the definition of the new subsector as follows:

Express delivery services are time-sensitive, utilize advanced technologies for communication, and are integrated or controlled from end-to-end. Express delivery services consist of the expedited collection, transport, and delivery of documents, printed matter, parcels, and/or other goods, while tracking the location of, and maintaining control over, such items throughout the supply of the service. Services provided in connection with express delivery services include, but are not limited to, customs facilitation and logistics management. Customs facilitation consists of practices and procedures used to avoid delay of customs processing or to obtain rapid release of shipments, while satisfying customs requirements. Logistics is the process of planning, implementing, managing, and controlling the flow and storage of goods, services, and related information from the point of origin to the point of consumption. Express delivery services may include one or more value added

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<sup>94</sup> Technically, the Provisional CPC included an explanatory note that stated 'Courier services for mail by air are classified in subclass 73210 (Mail transportation by air)'. The meaning of this statement is unclear. Item 75121 refers to pick-up and delivery as well as transport whereas 73210 refers only to transportation so that the two items seem to be referring to different types of services. In addition 74900, other supporting and auxiliary transport services, includes 'local pick-up and delivery' services. In practice, these additional possible classifications for delivery services do not seem to be used for services similar to or competitive with traditional public postal services.

<sup>95</sup> In full, 'Other courier services for goods, not elsewhere classified, e.g./trucking or transfer services without storage, for freight'.

<sup>96</sup> WTO, Secretariat, 'Postal and Courier Services' (2010), pp. 3-5; 'Postal and Courier Services' (1998), pp. 1-2.

elements, such as collection from an address designated by the sender; release upon signature; guarantee of delivery within a specified time; electronic and/or other advanced technologies; and ability of the sender to confirm delivery.<sup>97</sup>

While the U.S. proposal usefully highlighted the need to reform the WTO classification scheme to accommodate development of modern international express services, it failed to address the overlap between the subsectors for 'postal' and 'courier' services.

On 22 March 2001, the European Union proposed that the WTO consider a wholly new classification scheme for 'postal/courier services', a term the EU used to refer to all types of collection and delivery services without regard to the identity of the provider.<sup>98</sup> The EU suggested that its new approach 'on the one hand would better reflect the current characteristics of the services concerned and on the other hand would be able to accommodate different national approaches and levels of development in the sector'. In the classification scheme proposed by the EU, the consolidated term 'postal/courier' services refers to: 'Services relating to the handling [i.e., collection, sorting, transport and delivery] of postal items [items handled by any type of commercial operator, whether public or private], whether for domestic or foreign destinations'. The subsector 'postal/courier' services would have the following eight sub-subsectors:

- (1) Handling of addressed written communications on any kind of physical medium [e.g. letter, postcards], including hybrid mail services and direct mail
- (2) Handling of addressed parcels and packages [including books and catalogues]
- (3) Handling of addressed press products [journals, newspapers, periodicals]
- (4) Handling of items referred to in (i) to (iii) above as registered or insured mail.
- (5) Express delivery services for items referred to in 1 to 3 above. [Express delivery services may include, in addition to greater speed and reliability, value added elements such as collection from point of origin, personal delivery to addressee, tracing and tracking, possibility of changing the destination and addressee in transit, confirmation of receipt].

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<sup>97</sup> WTO, 'Communication from the United States: Express Delivery Services', S/CSS/W/26 (2000).

<sup>98</sup> WTO, 'Communication from the European Communities and Their Member States: GATS 2000: Postal/Courier Services', S/CSS/W/61 (2001). An informal and non-public version of this document was submitted by the EU in July 1999 as Job. No. 4146.

- (6) Handling of non-addressed items
- (7) Document exchange.
- (8) Other services not elsewhere specified.<sup>99</sup>

The EU proposal prompted positive comments from several other WTO member countries. In May 2001, Switzerland offered strong support for the EU suggestion. Switzerland asked for not only redefinition of 'postal' and 'courier' services but also for consideration of commitments that would liberalise all postal services outside the reserved area and provide adequate regulatory disciplines to ensure undistorted competition.<sup>100</sup> In September 2001, the Mercosur countries (Argentina, Brazil, Paraguay, and Uruguay) and Bolivia likewise applauded the EU proposal: 'It is clear from the above that there is no difference (in nature) between postal services and "courier" services, bearing in mind that the objective of both is "to deliver the consignment to a final, certain and specific address"'.<sup>101</sup> In November 2001, New Zealand, too, lent its support for the proposals of the EU, Switzerland, Mercosur. New Zealand particularly called attention to 'possible inconsistencies between the obligations on WTO Members under the GATS, and the operation of the rules under the UPU' and proposed a detailed discussion of these issues within the WTO.<sup>102</sup>

Despite broad consensus on the problems posed by the definitions of 'postal service' and 'courier service', the WTO did not agree on a new classification scheme for postal services. As a halfway measure, in February 2005, the EU, Hong Kong China, Japan, New Zealand, Switzerland, and the United States jointly called upon member countries to adopt a common approach towards scheduling commitments for postal services.<sup>103</sup> The proposed approach does not endorse any specific scheme for classifying different types of postal services. Instead, the proposal merely highlights the inadequacies of the current CPC-based approach and urges member countries to include careful descriptions of any postal services (in a broad EU sense) included in specific commitments. An official of the WTO has described this approach in the following terms:

The proposed approach suggests that members schedule commitments in the following manner: fully describe the committed activities; clearly distinguish between competitive and reserved services (e.g. with criteria such

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<sup>99</sup> In these quotations from S/CSS/W/61, the text in brackets indicates additional text set out in footnotes.

<sup>100</sup> WTO, 'Communication from Switzerland: GATS 2000: Postal and Courier Services', S/CSS/W/73 (2001).

<sup>101</sup> WTO, 'Communication from Mercosur and Bolivia: Postal Services', S/CSS/W/108 (2001) at par. 9.

<sup>102</sup> WTO, 'Communication from New Zealand: Negotiating Proposal for Postal/Courier Services', S/CSS/W/115 (2001) at paras. 15 and 20.

<sup>103</sup> WTO, 'Communication from the European Communities, Hong Kong China, Japan, New Zealand, Switzerland and the United States: Guidelines for Scheduling Commitments Concerning Postal and Courier Services, Including Express Delivery', TN/S/W/30 17 (2005).



as size, weight, price, speed of delivery, or a combination thereof); use a neutral classification to ensure that commitments on competitive areas apply to all suppliers, including postal entities; and clarify any relationship between these activities and commitments in other sectors (e.g. transport). For the proponents, while this is a second-best approach, it could solve much of the uncertainty concerning the scope and coverage of commitments.<sup>104</sup>

#### 5.1.4 Observations on classification of postal services

Although the UN CPC classification scheme has been used as the basis for most current (pre-Doha) commitments to liberalise postal services pursuant to the GATS, it is so ambiguous as to be meaningless today. According to this classification scheme, the terms ‘postal service’ and ‘courier service’ both refer to the same activities — the collection and delivery services for documents and parcels — with the only difference being that ‘postal service’ is provided by a ‘postal administration’ whereas ‘courier service’ is not. A commitment to liberalise ‘postal’ service is almost self-contradictory, for who can provide collection and delivery services ‘rendered by the national postal administration’ except the national postal administration itself? A commitment to liberalise ‘postal service’ might be interpreted literally to refer only to collection and delivery of documents and parcels provided by the postal administrations of other nations, but such an outcome hardly seems reasonable even if it intended. A commitment to liberalise ‘courier’ service but not ‘postal service’ is likewise ambiguous. It might be interpreted to liberalise all collection and delivery services not ‘rendered by the national postal administration’. Yet, since this interpretation would effectively repeal the postal monopoly law, and it is manifest that this result is not the intention of countries that have liberalised ‘courier’ services.

The classification scheme for postal services proposed by the EU in 2001 represented a positive step forward from the wholly inadequate CPC classification. The greatest strength of the EU proposal is that it focuses on operational submarkets. Nonetheless, the eight categories proposed are far more complicated than the traditional three submarkets recognised by the UPU.

In our view, the simplest approach is the best. The world’s postal community has long recognised the UPU concepts of letter post, parcels, and express. This is the well understood vocabulary of international postal services, and there is no apparent reason not to make use of it in trade negotiations, provided that it is understood (as the EU and others have observed) that these services can be provided by private as well as public undertakings.

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<sup>104</sup> Zhang, ‘Liberalization of Postal and Courier Services’ 391-92.

A great virtue the UPU terminology is that it gives a distinct status to parcel services. Broadly speaking, it is unlikely that international negotiations will affect a nation's decision to allow or forbid competition in the domestic letter post market. International express services, on the other hand, are likely to remain in their current liberalised state. The middle category, international parcels, and perhaps domestic parcels, is the submarket where intergovernmental trade agreements might be able to promote or preserve a level playing field. In almost all countries parcels have been outside the reserved area and provided by private companies as well as, or even instead of, the national postal administration. A 2002 report by the UPU observed that only a 'slight majority' of UPU members considered parcels to be within the universal service obligation.<sup>105</sup> A recent UPU market survey suggests that UPU designated operators account for only about one quarter of the global parcel market. Government control over the parcels submarket is thus less firmly ingrained historically, legally, and practically than in the letter post market.

Finally, although overly rigid, the UN's classification scheme does point to the historical fact that the term 'postal' has traditionally referred to the national postal administration. For many, if not most, countries, the national postal administration has been a basic government service for many decades. At an international level, therefore, use of the term 'postal' to embrace all types of collection and delivery may tend to inhibit agreement on commitments to liberalise portions of the (broadly defined) postal services market.

## 5.2 GATT and postal services

Physical items conveyed by postal services — including items such as letters, postcards, newspapers, magazines, and parcels — are 'goods' within the ambit of the General Agreement on Tariffs and Trade (GATT).<sup>106</sup> Nonetheless, in so far as postal services are concerned, the chief concern under the GATT is not to protect fair trade in postal services but to prevent unfair or distorted trade in items conveyed by postal services. A Canadian program called the 'Publications Assistance Programme' offers an example of how the GATT can apply to postal services. Under this program, publications printed in Canada by publishers owned and controlled by Canadian citizens were entitled to subsidised postage rates while foreign publications were not. A WTO panel concluded that preferential postal tariffs in favour of Canadian publications constituted an unlawful discrimination against foreign publications.<sup>107</sup>

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<sup>105</sup> UPU, International Bureau, *Memorandum on Universal Postal Service Obligations and Standards* (2001), p.17.

<sup>106</sup> For an overview of the GATT as applied to international postal services, see generally, TMC Asser, *The Study* (2004), pp. 25-31; D. Luff, 'International Regulation of Postal Services' (2002), pp. 56-73.

<sup>107</sup> WTO Panel Report, 'Canada – Certain Measures Concerning Periodicals', WT/DS31/R, 14 March 1997, para. 5.37 and 5.38 ('We find that the design, architecture and structure of Canada Post's

In the GATT, the most-favoured-nation (MFN) provision is set out in Article I. It reads as follows:

*With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.*<sup>108</sup>

In other words, a member country contravenes its MFN obligation if it establishes customs duties or other charges that give 'any advantage' to one WTO member country that is not given to all WTO member countries.

The prohibition against non-tariff restrictions on trade in goods is set out in Article XI. It provides as follows:

*No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.*<sup>109</sup>

In essence, member countries are limited to duties and taxes as the only means to control the import or export of goods.

Finally, a 'national treatment' obligation is set out in Article III, primarily sub-sections (2) and (4). Subsection (2) states foreign products 'shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products'. Subsection (4) states that foreign products 'shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements

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different pricing policy on domestic and imported periodicals all point to the effect that the measure is applied so as to afford protection to the domestic production of periodicals').

**108** General Agreement on Tariffs And Trade, Article I(1) (emphasis added).

**109** General Agreement on Tariffs And Trade, Article XI(1) (emphasis added).

affecting their internal sale, offering for sale, purchase, transportation, distribution or use’.

The close fit between these several rules is apparent. Member countries may impose customs duties, and only customs duties, to regulate international trade in goods. They may not impose higher duties to discriminate for or against selected countries. They may not impose additional barriers to trade by imposing non-customs measures at the border or introducing internal taxes or regulations that discriminate against foreign products. A procedure is established to negotiate mutually acceptable reductions in customs duties. The result is a relatively simple, transparent, and non-discriminatory legal framework that opens the door to increasingly free and undistorted international trade in goods.

### 5.3 GATS and postal services

A postal service is a ‘service’ as defined by the GATS.<sup>110</sup> The only provision that might exclude postal services from the obligations of the GATS appears to be an exception for ‘services supplied in the exercise of governmental authority’.<sup>111</sup> This exception applies to a service ‘which is supplied neither on a commercial basis nor in competition with one or more service suppliers’.<sup>112</sup> For the exclusion to apply, both conditions must be met. It is evident, therefore, that the government service exclusion cannot apply to postal services that are conducted in competition with other delivery services — such as parcel services, express services, and bulk letter post services in many countries — since they are provided ‘in competition with one or more service suppliers’.<sup>113</sup>

The only postal services which might be exempt from the GATS are postal services provided by a government operator pursuant to a legal monopoly. The possibility of exclusion comes down to whether such services are provided ‘on a commercial basis’. This term is undefined in the GATS. No adjudications shed further light. Thus, it cannot be determined with certainty whether the GATS applies to reserved postal services. One might reasonably argue, however, that even monopoly postal services are supplied

<sup>110</sup> TMC Asser, *The Study* (2004), pp. 16-17.

<sup>111</sup> General Agreement on Trade in Services, Article I (3)(b).

<sup>112</sup> General Agreement on Trade in Services, Article I(3)(c). The GATS concept of services supplied ‘on a commercial basis nor in competition with one or more service suppliers’ may be seen as similar to the distinction in EU law between ‘services of general economic interest’ and other ‘services of general interest’. In general, in EU law an any activity ‘Any activity consisting in offering goods and/or services on a given market is an economic activity’ is an economic activity’. See European Commission, ‘Frequently asked questions in relation with Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, and of the Community Framework for State aid in the form of public service compensation Accompanying document to the Communication on “Services of general interest, including social services of general interest: a new European commitment”’ SEC(2007) 1516 (20 Nov 2007), at pp. 7-9.

<sup>113</sup> TMC Asser, *The Study* (2004), p. 18.

against payment that is based on costs and that this fact alone is sufficient to classify these services as commercial services covered by the GATS.<sup>114</sup> Moreover, even postal services covered by a monopoly are today facing competition from other means of communications. All in all, it appears reasonably clear that the GATS does apply to monopoly postal services with the possible exception of monopoly services which are provided for free or at rates well below cost.<sup>115</sup>

### 5.3.1 General and specific obligations

Under the GATS, there are two basic types of obligations imposed on members of the WTO. A 'general obligation' applies to all services, including postal services. The primary general obligation is to give 'most-favoured-nation' treatment (MFN) to service providers of other WTO member countries. A 'specific obligation' is the result of a 'specific commitment' by an individual member country. By means of specific commitments, a country grants specific levels of market access to specific service sectors.

### 5.3.2 Modes of supply

In a GATS negotiation, a specific commitment to grant market access is expressed in terms of four standard 'modes of supply' or methods of providing the services. The four modes of supply as described by the WTO are shown in Table 5-1, below. In a commitment, each mode of supply may be subject to conditions. These conditions may limit the (i) number of suppliers; (ii) the total value of transactions or assets employed; (iii) the amount of services sold or number of service operations; (iv) the number persons employed; (v) the legal organisation of the supplier; and/or (vi) the participation of foreign capital.

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**114** The Universal Postal Convention provides that charges for international postal services 'shall in principle be related to the costs of providing these services'. UPU, Convention (2008), Article 7(1). The Postal Directive requires that charges of universal postal services shall be cost-oriented. Postal Directive, Article 12.

**115** In a recent note, the WTO secretariat commented, 'Basic delivery services supplied under monopoly by a designated postal operator would be covered by the GATS as long as they are supplied on a commercial basis, which is usually the case'. WTO, Secretariat, 'Postal and Courier Services', (Aug 2010), p. 5. See also, TMC Asser, *Study* at 18-20. Cf. WTI Advisers, *Implications of the GATS* (2007) ('the universal postal service concept, as set forth by the UPC rules, does not mandate to supply the basic postal services in the exercise of governmental authority. However, these rules may be implemented by a UPU/ WTO member at its domestic level in manner that would lead to these basic postal services being supplied in the exercise of governmental authority') (emphasis original).

Table 5-2 GATS modes of supply

Mode	Supplier Presence	Other Criteria	Postal example
1. Cross-border supply	Service supplier not present within the territory of the Member	Service delivered within the territory of the Member, from the territory of another Member.	Sender in Country C gives letter to Operator C who sends to Operator X for delivery in Country X
2. Consumption abroad		Service delivered outside the territory of the Member, in the territory of another Member, to a service consumer of the Member.	Sender from Country C goes to Country X and posts letter with Operator X
3. Commercial presence	Service supplier present within the territory of the Member	Service delivered outside the territory of the Member, through the commercial presence of the supplier.	Sender in Country C gives letter to agent of Operator X which delivers it in Country X or another country
4. Presence of natural persons		Service delivered within the territory of the Member, with supplier present as a natural person.	Sender in Country C gives letter to office of Operator X which delivers it in Country X or another country

Source: Adapted from WTO, 'Guidelines for the Scheduling of Specific Commitments Under the General Agreement on Trade in Services (GATS) Adopted by the Council for Trade in Services on 23 March 2001', S/L/92 (2001). Column 4 added by authors.

It is hardly obvious, however, how to apply the GATS concept of 'modes of supply' to international postal services.<sup>116</sup> For most services covered by GATS, the service in question is produced in an identifiable location — e.g., banking services or design services or consultancy services. If the buyer of such services is in another country, the output of the service, a report or analysis or design specification, is conveyed by postal service or telecommunications.<sup>117</sup> When postal service is itself the 'service' that is 'traded', the proper approach to classifying services by modes of supply is less straightforward. If a sender residing in country A goes to a postal operator in country A sends a letter or express item to an addressee residing in country B, what mode of supply is involved and who is granting market access?

In our view, the starting point in answering these questions should be the observation that the sender is buying an end-to-end service, not a service that is produced in any one location. To determine the applicable mode of supply, consider first the situation in

<sup>116</sup> Neither of the two most comprehensive analyses of General Agreement on Trade in Services and postal services deals with this issue in a wholly convincing manner. See TMC Asser, *Study* 115-17; World Trade Institute, *Study on GATS Issues* pars. 25 to 30, 156.

<sup>117</sup> See, e.g., WTO, 'Scheduling of Initial Commitments in Trade in Services: Explanatory Note', MTN.GNS/W/164 (1993) at 8 ('Cross-border supply: International transport, the supply of a service through telecommunications or mail, and services embodied in exported goods (e.g. a computer diskette, or drawings) are all examples of cross-border supply, since the service supplier is not present within the territory of the Member where the service is delivered').

which the same postal operator that collects the item in country A also delivers the item in country B by means of, for example, local employees, a franchisee, or joint venture partner. In this case, it seems plausible to conclude that the end-to-end postal service is ‘the supply of a service . . . by a service supplier of one Member, through commercial presence in the territory of any other Member’.<sup>118</sup> By definition, this is mode 3 market access (commercial presence). It appears to be immaterial to this conclusion whether one considers the end-to-end postal operator — for example, a global integrator like DHL or FedEx — to be a service supplier of country A or of country B or of some other country. In any case, a multinational corporation with subsidiaries in most countries can be said to be ‘of’ almost any country. If a global postal operator uses the services of expatriates in either country A or country B, then the end-to-end cross-border postal service could be characterised as mode 4 market access (presence of natural persons), i.e., ‘the supply of a service . . . by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member’.<sup>119</sup>

From this perspective, mode 1 market access (cross-border supply) occurs when a consumer in country A buys a postal service to convey an item from country A to country B, and the service is *not* provided by the same postal operator. In this case, the service must be provided by two or more postal operators acting jointly. Perhaps the postal administration in country A collects the postal items and conveys them to the postal operator in country B for delivery. Or perhaps one or both of the postal operators are private companies. In all of these cases, one can plausibly characterise the resulting joint service as ‘the supply of a service . . . from the territory of one Member into the territory of any other Member’. The postal operator in country A is supplying the collection portion of an end-to-end service supplied ‘into country B’ and the postal operator in country B is providing the delivery portion of the same end-to-end service. In so far as both countries are concerned, the mode of supply is mode 1, cross-border supply.

Since an international postal service is, by its nature, an end-to-end service, either country A or country B can limit market access or block it altogether. Both countries must allow access if the service is to be provided. If, for example, country A grants unlimited, all modes market access for letter post services, but country B reserves inbound and outbound letter post services for its designated postal operator and directs its designated postal operator to partner with the designated operator in country A, then the supply of international letter post services between country A and country B is limited to mode 1 access regardless of the commitment of country A.

In addition to international postal services, domestic postal services can also be provided on a cross-border basis. That is, country A might permit a foreign postal

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<sup>118</sup> General Agreement on Trade in Services, Article I((2)(c).

<sup>119</sup> General Agreement on Trade in Services, Article I((2)(d). Alternatively, one could adopt the narrower view that country A is providing mode 4 access only when the globally integrated operator with offices in country A is employing natural persons in country B who are not citizens of country B.

operator to provide domestic postal services in its country. In such case, according to this above interpretation of the GATS, the mode of supply must be either mode 3 or mode 4. It cannot be considered mode 1.

Finally, mode 2 market access (consumption abroad) is defined in the GATS as ‘the supply of a service . . . in the territory of one Member to the service consumer of any other Member’.<sup>120</sup> Mode 2 was interpreted by the WTO to refer to only the situation in which a WTO member country allows or does not allow its citizens to buy services in other countries.<sup>121</sup> By granting mode 2 market access to postal services, country A agrees to allow its citizens to buy foreign postal services when they are travelling in other countries. Mode 2 access might also be said to occur when a citizen of country A employs an international transport service to tender items on its behalf to a postal service in other country without physically travelling to that country. Allowing travellers to buy postal services is a trivial concession, of course, but the second sort of mode 2 access, called ‘re-mail’ in postal terminology, is not.

### 5.3.3 Additional obligations with specific commitments

Once a member country undertakes specific commitments with respect to a service sector, it is obliged to implement those commitments in accordance with several additional provisions of the GATS. The most important are the following.

First, under Article VI, each member country must implement domestic regulation of services in a ‘reasonable, objective and impartial manner’.<sup>122</sup>

Second, Article VIII provides that, if a member country confers a monopoly on a service provider, then it must ensure that the monopolist does not ‘abuse its monopoly position’<sup>123</sup> when competing with other service providers outside of its monopoly (and within the scope of services covered by specific commitments).

Third, under Article XVI, a member country may not introduce new limitations on ‘market access’ with respect to the supply of committed services unless reserved in its

<sup>120</sup> General Agreement on Trade in Services, Article I((2)(b).

<sup>121</sup> WTO, ‘Scheduling of Initial Commitments in Trade in Services: Explanatory Note’, MTN.GNS/W/164 (1993) at 8 (‘The essential feature of this mode is that the service is delivered outside the territory of the Member making the commitment’).

<sup>122</sup> General Agreement on Trade in Services, Article VI(1). Article VI(5) also prohibits members from introducing new measures relating to qualification requirements and procedures, technical standards, and/or licensing requirements that are not based on objective and transparent criteria, or that are more burdensome than necessary to ensure the quality of a service. The measures concerned are those that nullify or impair specific commitments, i.e. those that could not ‘reasonably have been expected of that Member at the time the specific commitments in those sectors were commitments were made.’ At least one commentator suggests that this exception for ‘reasonably expected’ restrictions renders these limitations on technical and licensing measures virtually unenforceable. Matsushita at al., *The World Trade Organisation* 629-30.

<sup>123</sup> General Agreement on Trade in Services, Article VIII(2). The concept of ‘abuse its monopoly position’ is not further defined in the GATS.



schedule of commitments. This obligation bars a member country from, for example, later introducing a monopoly over a service that it has committed to liberalise.

Fourth, a member country must give 'national treatment' to foreign suppliers (except as provided its schedule of commitments). As set out in Article XVII, 'national treatment' means that the member country must accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers accord to services and service suppliers.<sup>124</sup>

In addition, member countries may make additional commitments which go beyond the explicit requirements of the GATS.<sup>125</sup> In the WTO negotiations that liberalised basic telecommunications services in the mid-1990s, the parties committed themselves to additional standards relating to competitive safeguards, interconnection, universal service, licensing procedures, independent regulators, and frequency allocation.<sup>126</sup> These additional commitments were set out in a 'reference paper' which all countries could incorporate by reference in their specific commitments. The reference paper is thus a flexible way of adapting and extending market liberalisation commitments in a manner than can be tailored to the characteristics of individual sectors.

In January 2005, in the context of the current 'Doha Round' negotiations at the WTO, the European Union proposed such a reference paper for postal services.<sup>127</sup> The proposed reference paper specified four additional regulatory commitments for governmental measures relating to postal services, i.e. for services classified as 'postal' or 'courier' services under the UN CPC system. The four commitments were as follows:

1) *Prevention of anti-competitive practices in the postal and courier sector.* Appropriate measures will be maintained or introduced for the purpose of preventing

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<sup>124</sup> General Agreement on Trade in Services, Article XVII(1).

<sup>125</sup> General Agreement on Trade in Services, Article XVIII.

<sup>126</sup> See WTO, 'Annex on telecommunications', [http://www.wto.org/english/tratop\\_e/serv\\_e/12-tel\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/12-tel_e.htm) (1 Sep 2010). WTO members may adopt the telecommunications reference paper in whole or in part, and by doing so, they commit to maintain appropriate regulatory measures to ensure a competitive marketplace, as well as transparent and fair regulatory procedures. To date, 82 countries have committed to adopting the reference paper. WTO, [http://www.wto.org/english/tratop\\_e/serv\\_e/telecom\\_e/telecom\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm) (1 Sep 2010). A study by the OECD in 2007 focusing on the value of the telecommunications regulatory framework concludes, 'The experience of the telecommunications reference paper can be described as successful as most countries have achieved a high degree of liberalisation in the sector and the implementation of the six disciplines of the paper has gone relatively well. Three case studies (the Dominican Republic, Malaysia and Sri Lanka) illustrate the value of the reference paper in promoting reforms, and point out some of the difficulties encountered by regulators. It was certainly useful for countries to rely on the disciplines set in the reference paper, but the analysis also shows that broad principles have to be translated into laws, regulations and then interpreted and implemented by regulators; the regulatory reform can only be facilitated to a certain extent by internationally agreed principles.' S., E. Pinali and N. Sauter (2007), 'The Impact of Pro-Competitive Reforms on Trade in Developing Countries', p. 6.

<sup>127</sup> WTO, 'Communication from the European Communities and Their Member States: Postal/Courier: Proposal for a Reference Paper', TN/S/W/26 (2005). Other aspects of the Doha Round are discussed in section 5.4, below.

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. <sup>128</sup>

The EU suggested that a reference paper was needed to avoid situations in which specific commitments with respect to market access and national treatment were rendered ineffective by other practices and to ensure a common view on the terms of specific commitments.

The first and fourth proposed commitments are clearly derived from the Postal Directive. A commitment to maintain independence of the regulator is similar to the requirement for an independent regulator in Postal Directive.<sup>129</sup> And, under the Postal Directive, the national regulator authority polices anticompetitive behaviour by universal

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<sup>128</sup> WTO, Communication from the European Communities And Their Member States: Postal/Courier: Proposal for a Reference Paper', Tn/S/W/26 (2005), p. 2.

<sup>129</sup> Postal Directive, Article 22.

service providers, notably by ensuring that prices for universal services are oriented to costs determined by regulated cost accounting systems.<sup>130</sup>

The second commitment appears to declare that a WTO member country may include all types of 'postal/courier' services within its universal service obligation, including delivery services such as heavyweight parcels, express services, and unaddressed items, services which are not considered part of the universal service area under the EU Postal Directive.<sup>131</sup> On the other hand, the second commitment also declares that obligations (presumably here referring to obligations imposed on a postal operator and not the obligation assumed by the state as in the first sentence) must be administered in a transparent, non-discriminatory, and competitively neutral manner, a procedural safeguard that echoes the Postal Directive. All in all, it appears that EU negotiators should seek ensure that the concept of the universal service obligation included in any trade agreement is as consistent as possible with the concept of the universal service obligation in the Postal Directive.

The proposed third commitment would permit a WTO member country to introduce 'individual licenses' for all services within the universal service area. Unless the term 'universal service' is given the same sense as in the Postal Directive, this provision might allow introduction of individual licenses for services where the Postal Directive allows only the more liberal general authorisation procedure (such as heavy parcels and express services).<sup>132</sup> The proposed commitment would require that licensing procedures and criteria be made public, but this falls well short of the safeguards in the Postal Directive, which requires that licensing procedures and criteria must be 'transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, [and] based on objective criteria'. In addition, the Postal Directive includes specific limits on the types of conditions that may be attached to individual licenses and general authorisations, while the proposed commitment in the reference paper does not address

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**130** In the EU, the competition rules also prevent anti-competitive behaviour by universal service providers and other providers of postal services.

**131** In the Postal Directive, delivery services for unaddressed items are not 'postal services' because a 'postal item' is, by definition, limited to an item which is 'addressed in the final form in which it is to be carried by a postal service provider'. Postal Directive, Article 2(6). However, in the UN CPC, 'postal service' includes collection and delivery of 'letters, newspapers, journals, periodicals, brochures, leaflets and similar printed matters' and 'courier' service includes collection and delivery of 'letters, parcels and packages'. Unlike the Postal Directive, therefore, a consolidation of 'postal/courier' service as defined by the UN CPC is not limited to addressed items.

**132** In the EU, even after adoption of Directive 2008/6/EC, the imposition of overbroad universal service obligations on postal operators and special legal privileges for those denominated as universal service providers continues to distort competition. See, European Commission. *Report from the Commission to the Council and the European Parliament on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC)*. SEC(2008) 3076 (22 Dec 2008), p. 5. Yet, in comparison with WTO member countries generally, the EU has a much more highly developed legal framework for postal services including a definite schedule for liberalisation, a definition of the universal service obligation of the state that is not open ended, and relatively strong and independent postal regulators. See also WIK, *Role of Regulators* (2009), pp. 291-92 (best practices and practices of concern with respect to conditions on authorisations of postal operators).

authorisation conditions.<sup>133</sup> The proposed commitment does, however, require countries to provide an appeal procedure if a license is denied and to ensure that the procedure is ‘transparent, non-discriminatory, and based on objective criteria’. In this respect, the proposed commitment parallels the Postal Directive, which also requires an appeal procedure.<sup>134</sup>

In sum, the EU’s proposed reference paper on postal services would allow WTO member countries in the Doha Round to define and qualify specific commitments in the ‘postal/courier’ sector in a more flexible, precise, and standardised manner. The proposed additional commitments would generally support prevention of anticompetitive practices, procedural safeguards for individual licenses, and independent sector specific regulation. It seems, however, that EU trade negotiators may wish to ensure that the concept of universal service is understood in the same sense as in the Postal Directive.

#### 5.3.4 Current commitments with respect to postal services

Using the CPC classification scheme, only 8 non-EU 30 countries seem to have committed to liberalise or to maintain liberalisation of some portion of ‘postal services’<sup>135</sup>. About 43 non-EU countries have apparently made specific commitments to liberalise or maintain liberalisation of ‘courier services’.<sup>136</sup> While the ambiguities of the WTO classification scheme obscure the precise scope of these commitments, it appears likely that in most cases, the intention is likely to maintain liberalisation of express services or possibly express and parcel services.<sup>137</sup> Nine EU 30 countries have made commitments on courier services only.<sup>138</sup>

### 5.4 Doha Round and implications for postal services

Since 2001, members of the WTO have been conducting a new round of negotiations called the Doha Development Agenda or, more simply, the Doha Round. Services negotiations have progressed slowly. Negotiations on services have two fundamental objectives. One objective is to reform the current GATS rules and principles. The

<sup>133</sup> Postal Directive, Article 9(3). As an additional protection to fairness, the Postal Directive also limits the types of conditions that can be attached to authorisations. See generally, WIK, *Role of Regulators* (2009), pp. 106-22.

<sup>134</sup> Postal Directive, Article 22(3).

<sup>135</sup> Albania (parcels), Djibouti (international EMS), FYR Macedonia (non-universal services), Gambia, Israel (above 500 g), Moldova (non-monopoly), Mongolia, and Senegal (international EMS).

<sup>136</sup> Albania, Argentina, Armenia, Barbados, Botswana, Brazil, Cambodia, Canada, China, Chinese Taipei, Croatia, Cuba, Djibouti, Dominica, FYR Macedonia, Gambia, Georgia, Grenada, Hong Kong, Israel, Jordan, Kyrgyz Republic, Lesotho, Mexico, Moldova, Mongolia, Nepal, Oman, Papua New Guinea, Philippines, Qatar, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Tonga, Turkey, United Arab Emirates, Uruguay, USA, Venezuela, and Viet Nam.

<sup>137</sup> For example, the USA has committed to liberalise ‘land-based courier service’ without qualification, but it clearly does not intend to permit services within the scope of the U.S. postal monopoly.

<sup>138</sup> Austria, Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovak Republic, Slovenia, and Norway.

second objective is to persuade member countries to make specific commitments that will open more service sectors to foreign competition.

At the very outset of the Doha Round negotiations, several member countries, including the European Union, pointed out the inadequate definitions of 'postal service' and 'courier service' in the UN's CPC list of services.<sup>139</sup> However, despite broad consensus on the problems raised by out-of-date definitions of 'postal service' and 'courier service', the WTO has been unable to agree on a new classification scheme for postal services.

In June 2003, the EU distributed an initial offer of service trade concessions to other member countries. Since no member country is obliged to describe an offer or commitment in terms of the CPC scheme endorsed by the WTO, the EU side-stepped the definitional problems by referring to 'postal/courier services' and defining subsectors in the manner it proposed in 2001. In this manner, the EU offered to provide unlimited market access for all types of postal and courier services outside the reserved area, subject to two conditions: (i) the possibility of requiring licenses and/or financial contributions for services within the scope of a universal service obligation and (ii) the general applicable restrictions on relocation of foreigners to work in the EU.<sup>140</sup> In contrast, the United States offered commitments only with respect to 'express delivery services' (a term which it defined separately) and 'land-based courier services'.<sup>141</sup> Other than the EU, the only country that proposed significant commitments with respect to non-express postal services was apparently New Zealand.<sup>142</sup> Little progress was made on commitments in the postal sector prior to the near collapse of the Doha Round at the Cancun Ministerial Conference in September 2003 and the subsequent revival of talks in July 2004.

In July 2005, after a round of revised offers, the chairman of the Trade Negotiations Committee reported that 14 offers has been received with respect to postal and courier services, six from industrialised country and eight from developing countries. He summarised the state of negotiations on postal and courier services as follows:

A number of Members characterized postal or courier services as a top priority, however, their focus varied. Some expressed interest in commitments on all postal or courier services no longer subject to monopoly, while others put the emphasis on courier or express delivery services. One delegation suggested that Members commit in all segments not under universal service obligations. Courier services were also a key sector for Members interested in logistics services. In terms of ambitions, one

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<sup>139</sup> See section 5.1.3, above,

<sup>140</sup> WTO, 'Communication from the European Communities and its Member States: Conditional Initial Offer', TN/S/O/EEC (2003) at 77-82.

<sup>141</sup> WTO, 'Communication from the United States: Initial Offer', TN/S/O/US (2003) at 49-50.

<sup>142</sup> Initial and revised offers are available from the WTO's internet site only with the agreement of the member country making the offer.

delegation sought full commitments on modes 1 and 3 from a critical mass of economies for express delivery and courier services. There was also a tendency among *demandeurs* to favour additional regulatory disciplines or other forms of clarification, for example, of the relationship between public and private sector suppliers that both provide services in competition.<sup>143</sup>

Overall, the chairman's assessment was gloomy: 'There is thus no significant change to the pre-existing patterns of sectoral bindings [specific commitments]. . . . [I]t was widely acknowledged that the overall quality of initial and revised offers is unsatisfactory. Few, if any, new commercial opportunities would ensue for service suppliers.'<sup>144</sup>

In March 2006, the European Union joined with Japan, New Zealand, and United States — a group known informally as the 'Friends of Postal Services' group — in another attempt to push forward postal sector negotiations. This group submitted a 'plurilateral request' on postal services to 19 WTO members.<sup>145</sup> The request asked for 'New and improved commitments that reflect meaningful progress toward full market access and national treatment for delivery services in the area of Postal and Courier Services, including Express Delivery'.<sup>146</sup> In particular, the request asked the countries addressed to offer commitments on substantially unrestricted market access and national treatment for all postal services carried out under competitive conditions. In an allusion to the EU's proposed postal reference paper, the plurilateral request also suggested the addressed countries consider additional commitments, where possible, to address unreasonable practices by dominant suppliers, to ensure that licensing requirements are transparent and reasonable, and to guarantee the regulator's independence from any operator. The request also set out a series of objectives with respect to reform of the sectoral classification scheme, including development of a category that would cover all suppliers of competitive services, including postal monopolists when providing competitive services. The plurilateral request further recognised that governmental intervention may be necessary to ensure the universal supply of basic postal services, including by means of government-owned postal operators or designation of universal service providers.

In July 2008, following suspension of the Doha Round in mid-2006 and the restart in early 2007, thirty-one WTO member countries convened a 'signaling conference' on services issues to assess the state of negotiations. This conference indicated that, with the partial exception of express services (already liberalised de facto in almost all

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<sup>143</sup> WTO, 'Special Session of the Council for Trade in Services: Report by the Chairman to the Trade Negotiations Committee', TN/S/20 (Jul. 11, 2005) at 6.

<sup>144</sup> *Ibid.* at 1.

<sup>145</sup> Japan presentation at Asian Pacific Postal Union (APDU), May 2006.

<sup>146</sup> United States, 'Collective Request for Postal and Courier Services, including Express Delivery' (unpub., undated) (submitted on behalf of the EU, Japan, New Zealand, and the USA) (footnote omitted).

countries), there had been little movement with respect to specific commitments on postal services. The chairman reported:

A number of participants indicated their readiness to undertake new commitments in postal and courier services. In several cases, express delivery services were singled out. Most of the signalled improvements involved commitments on commercial presence with higher levels of foreign equity participation. In one case, it was indicated that all foreign equity limitations would be removed. In another, up to 51% foreign equity would be allowed. A few participants expressed willingness to clarify the coverage of their postal monopoly so as to better define the scope of existing commitments. In this connection, one delegation also envisaged undertaking additional commitments related to the independent regulation of the sector.<sup>147</sup>

In March 2010, another conference was convened to take stock of progress since 2008. Again, little forward movement was detected. The chairman soberly declared, 'Virtually all coordinators painted a picture of little or no significant progress made since July 2008'.<sup>148</sup>

In sum, in the Doha Round, the EU has made several innovative and progressive proposals to revise the antiquated UN classification; to solicit special commitments with respect to letter post and parcel post services (as well as express services); and to gain acceptance for a specific set of rules promoting impartial and effective regulation of postal services (the 'reference paper'). Little progress has been made, however, due in part to continued reluctance by other countries to make commitments on traditional postal services and in part to larger controversies in the Doha Round unrelated to postal services. At this point, it appears unlikely that the Doha Round will result in a significant modification of external relations relating to postal services.

## 5.5 Preferential trade agreements and postal services

In principle, it should be easier to persuade a country to liberalise a specific service sector in a preferential trade agreement (PTA) than in a GATS round. Since most PTAs involve only two or a few countries, it is more likely that the parties have compatible views on trade in specific service sectors. In addition, to avoid conflict with the GATS

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<sup>147</sup> WTO, 'Services Signalling Conference: Report by the Chairman of the TNC', JOB(08)/93 at 2.

<sup>148</sup> WTO, 'Negotiations on Trade in Services: Report by the Chairman, Ambassador Fernando de Mateo, to the Trade Negotiations Committee for the Purpose of the TNC Stocktaking Exercise', TN/S/35 (22 Mar. 2010) at 1.

most-favoured-nation obligation, a PTA must eliminate or prevent substantially all discrimination for a substantial range of service sectors.<sup>149</sup>

The European Union has historically used PTAs to supplement the global trade agreements. In 2006, the Commission announced a 'Global Europe' policy which placed additional emphasis on international trade generally and on PTAs in particular.<sup>150</sup> This shift in favour of PTAs was due, at least in part, to lack of progress in the Doha Round and to a perceived need to counter active pursuit of PTAs by the United States.<sup>151</sup> For example, after the United States concluded the North American Free Trade Agreement with Canada and Mexico, the EU quickly sought to strike its own deal with Mexico to avoid losing trade to the United States.

As of September 2010, the European Union had completed three PTAs that include provisions to liberalise or maintain liberalisation of trade in postal services.<sup>152</sup> These are agreements with Chile (2005), the Cariforum States of the Caribbean basin (2008), and Korea (agreed in principle in October 2009 but awaiting final approval by the Council and Parliament).<sup>153</sup>

### 5.5.1 EU-Chile agreement (2005)

In the EU-Chile PTA, agreed in 2005, each party agreed to liberalise or maintain liberalisation of postal services within certain limits.<sup>154</sup> The EU's commitment was expressed by using the approach to sector classification proposed by the EU in the Doha Round in March 2001.<sup>155</sup> Accordingly, the EU's commitment refers to 'services relating to the handling of postal items' where the term 'postal item' is defined as 'items handled by any type of commercial operator, whether public or private' and the sector is divided into eight subsectors. The EU's commitment to Chile fell short of the scope of

<sup>149</sup> General Agreement on Trade in Services, Article V(1). In fact, according to a recent WTO study, many countries have been willing to make commitments on postal and courier services in PTAs even though they have so far been unwilling to make similar commitments in GATS negotiations. And in many cases, PTA commitments are more inclusive than corresponding commitments offered in GATS discussion. R. Zhang, 'The Liberalization of Postal and Courier Services', p. 394.

<sup>150</sup> See European Commission, *Global Europe: Competing in the World*, COM(2006) 567 (4 Oct 2006), pp. 8-12.

<sup>151</sup> S. Woolcock, 'European Union policy towards Free Trade Agreements', ECIPE Working Paper • No. 03/2007 (2007). <http://www.ecipe.org/publications> (June 13, 2010).

<sup>152</sup> This figure does not include the basic agreements that form the European Union and the European Economic Area.

<sup>153</sup> In addition, the EU has completed four other PTAs. The PTA with s (2000) does not address postal services. Three other agreements — with the Former Yugoslav Republic of Macedonia (2009), Croatia (2009), and Albania (2009) — although technically PTAs, are 'stabilisation and association agreements' rather than economic agreements. Such agreements are part of a process intended for foster long-term political and financial commitment and provide a route for progressively closer relationship with the EU. See [http://ec.europa.eu/enlargement/enlargement\\_process/accession\\_process/how\\_does\\_a\\_country\\_join\\_the\\_eu/sap/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/index_en.htm) (June 13, 2010).

<sup>154</sup> European Union, 'Agreement Establishing an Association Between the European Community and its Member States, of the One Part, and the Republic of Chile, of the Other Part', OJ L352, 30 Dec 2002, p. 3 (hereafter 'EU-Chile FTA').

<sup>155</sup> See section 5.1.3, above.



postal services actually liberalised in the EU at the time. The EU did not commit itself to liberalise postal services for conveyance of correspondence and direct mail, even by express service, if the items were within the price and weight limits for postal services which could be reserved under Postal Directive in effect prior to July 2003 (five times the basic public tariff and 350 grams, respectively).<sup>156</sup> In reality, liberalisation of the EU postal sector had already moved beyond this point because: (i) the 2002 amendment to the Postal Directive had reduced the price and weight limits for the reservable area to 100 grams and three times the basic public tariff; (ii) some Member States had not reserved all services that could be reserved and (iii) the Postal Directive had ensured liberalisation of all express services in all Member States. Nor did the EU commit to increase liberalisation as liberalisation proceeded in the EU. For the specified postal services, the EU committed itself to allow Chilean companies to access EU postal service markets by means of cross-border supply (mode 1), consumption abroad (mode 2), and commercial presence (mode 3). The EU made no commitment to allow presence of natural persons in the EU (mode 4), even though as a practical matter there is no barrier other than normal immigration rules to Chilean companies establishing postal services in the EU.

For its part, the Chilean commitment on postal services likewise refers to the description of postal services proposed by the EU, i.e., ‘services relating to the handling of postal items’ where the term ‘postal item’ is defined ‘items handled by any type of commercial operator, whether public or private’. The Chilean commitment likewise divides the sector into eight subsectors but makes no distinction among the eight subsectors. Chile then limits and refines its commitment by (i) excluding conveyance of ‘postal items’ that could be included in a postal monopoly law and associated decree in Chile and (ii) adding a second definition of ‘postal item’ for this purpose.<sup>157</sup> Thus, in defining the market, the Chilean commitment copies the EU’s proposed approach to definition of postal markets into its specific commitment but then disregards the European approach in setting the details of its actual commitment. Nonetheless, by explicitly referencing the postal monopoly as the only limitation on its commitment, Chile seems to have committed to maintaining liberalisation of parcel services (exceeding 1 kg in weight) and other non-reserved services. It is unclear whether this exclusion is limited to postal monopoly law as it existed at the time of the agreement or whether Chile retains the right to expand the postal monopoly.<sup>158</sup>

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<sup>156</sup> EU-Chile FTA, Annex VII, Part A, Sec. 2, Postal and Courier Services, p. 1251 (‘Sub-sectors (i) [addressed written communications including direct mail], (iv) [registered and insured services] and (v) [express delivery services for addressed written communications] may be excluded when they fall into the scope of the services which may be reserved, which is: for items of correspondence the price of which is less than five times the public basic tariff, provided that they weigh less than 350 grams’).

<sup>157</sup> EU-Chile FTA, Annex VII, Part B, Sec. 2, Postal and Courier Services, p. 1285 (‘Postal items shall mean: letters, simple and postage-paid postcard, business papers, newsletters and printed matters of all kinds, including printed matter in Braille, merchandise samples, small packages up to one kilo and special postal service consisting in the recording and delivery of sound messages (fonos postales)’).

<sup>158</sup> The Chilean commitment provides that ‘under Decreto Supremo No5037 of 4 November 1960 of the Ministerio del Interior (Ministry of Internal Affairs) and Decreto con Fuerza de Ley No10 of 30 January

### 5.5.2 EU-Cariforum agreement (2008)

The EU-Cariforum PTA was agreed in 2008. The 13 Cariforum countries are Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher and Nevis, Suriname, Trinidad and Tobago.<sup>159</sup>

In the Cariforum agreement, the EU committed to liberalise or maintain liberalisation of postal services in terms similar to the Chilean PTA. Again, the EU's commitment was expressed by reference to the sector classification proposed by the EU in the Doha Round in March 2001. In the Cariforum PTA, the EU reduced the price and weight limits for postal services excluded from the agreement to two and one half times the basic public tariff and 50 grams, respectively.<sup>160</sup> Again, the commitment of the EU was less liberal than the actual state of the EU postal acquis. Indeed, by the time Cariforum PTA was signed, the EU had amended the Postal Directive to mandate full liberalisation of the postal services market over the next several years. In the Cariforum agreement, the EU divided its commitment into two categories: a commitment on cross-border supply and a commitment on commercial presence. The former seems to correspond to GATS modes 1 (cross-border supply) and 2 (consumption abroad) and the latter to GATS modes 3 (commercial presence) and 4 (presence of natural persons).

For their part, the Cariforum states made commitments only by reference to the outmoded category of 'courier services' in the UN CPC classification scheme. About half of the 13 Cariforum states granted EU companies the right to establish a commercial presence (mode 3) in their countries to provide courier service. Other Cariforum states allowed only 'cross-border supply' (mode 1) access, which amounts to no access at all in the case of courier services since the EU company must work with a local Cariforum company.<sup>161</sup>

In addition to these specific commitments, the Cariforum PTA includes a broad statement of general principles applicable to regulation of 'courier services'.<sup>162</sup> In this context, the term 'courier services' is undefined but presumably refers to the UN CPC, i.e., to the collection and delivery services provided 'other than by the national postal

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1982 of the Ministerio de Transporte y Telecomunicaciones (Ministry of Transports and Telecommunications) or its successors, the State of Chile may exercise, through the Empresa de Correos de Chile, a monopoly on the admission, transport and delivery of postal items (objetos de correspondencia)'.

**159** European Union, 'Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part', OJ L 289, 30 Oct 2008, p. 1/3 (hereafter, 'EU-Cariforum FTA').

**160** EU-Cariforum FTA, Annex IV A (Commercial Presence), Sec. 7.A Postal and Courier Services, p. II/1654, and Annex IV B (Cross Border Supply), Sec. 2.A Postal and Courier Services, p. II/1674 ('Sub-sectors (i), (iv) and (v) are however excluded when they fall into the scope of the services which may be reserved, which is: for items of correspondence the price of which is less than 2,5 times the public basic tariff, provided that they weigh less than 50 grams').

**161** EU-Cariforum FTA, Annex IV F, Sec. 2.B Courier Services, p. II/1740.

**162** EU-Cariforum FTA, Articles 89 to 93, pp. I/34 to I/35.

administration'. The PTA declares that 'This Section sets out the principles of the regulatory framework for all courier services liberalised in accordance with [the PTA]'. This statement of principles closely follows the reference paper proposed by the EU in the Doha Round.

The statement of principles includes a positive commitment to prohibit anticompetitive practices with respect to courier services:

In accordance with the provisions of Chapter 1 of Title IV, appropriate measures shall be maintained or introduced by the EC Party or the Signatory CARIFORUM States 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 courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

This commitment might possibly be interpreted to limit anticompetitive activity by the postal administration as well as by couriers — i.e., '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 courier services' — but this is not spelled out.

The Cariforum PTA then includes a provision declaring the each party has the right 'to define the kind of universal service obligation they wish to maintain'. Furthermore, an individual license may be required for any service within the scope of the universal service.<sup>163</sup> Precisely how these provisions should be interpreted is unclear. Universal postal service is generally provided by the postal administration, yet this provision apparently applies only to courier services. The implication may be that the EU waives in advance any objection to the Cariforum nations including parcel and express services within the scope of the universal service and requiring individual licenses for providers of such services.

Finally, the Cariforum PTA commits both parties to establishing regulatory authorities who are impartial and independent of any courier service.<sup>164</sup> Again, the proper interpretation of this provision is unclear. In the EU postal acquis, the 'independence' most urgently required of an independent regulator is independence from the public postal operator, not from courier services, who are unlikely to wield improper influence over a government regulator.

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<sup>163</sup> EU-Cariforum FTA, Articles 91 and 92, p. I/34 ('The EC Party or any Signatory CARIFORUM State has the right to define the kind of universal service obligation they wish to maintain. Such obligations will not be regarded as anticompetitive 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 as defined by the EC Party and the Signatory CARIFORUM States').

<sup>164</sup> EU-Cariforum FTA, Article 93, p. I/35 ('The regulatory bodies shall be legally separate from, and not accountable to, any supplier of courier services. The decisions of and the procedures used by the regulatory bodies shall be impartial with respect to all market participants').

### 5.5.3 EU-South Korea agreement (final approval pending)

The South Korean agreement is the first of the new generation of PTAs negotiated within the framework of the EU's 2006 Global Europe initiative. The South Korean agreement was finished by the parties in 2009 and is pending final approval by the Council and the Parliament.<sup>165</sup>

In regard to the postal services sector, both parties agree generally to adopt a regulatory framework for postal and courier services within three years.

No later than three years after the entry into force of this Agreement, with a view to ensuring competition in postal and courier services not reserved to a monopoly in each Party, the Trade Committee shall set out the principles of the regulatory framework applicable to those services. Those principles shall aim to address issues such as anti-competitive practices, universal service, individual licenses and nature of the regulatory authority. [Footnote 28: For greater certainty, nothing in this Article shall be interpreted as intending to change the regulatory framework of the existing regulatory body in Korea which regulates private delivery service suppliers upon the entry into force of this Agreement.]

In addition, the PTA includes specific commitments to liberalise or maintain liberalisation of postal services in much the same manner as the Cariforum agreement.

The EU commitment is again expressed in terms of the combined postal-courier category proposed by the EU in the Doha Round in March 2001. In the South Korea agreement, the EU returned to the higher level of excluded services provided in the Chilean agreement: postal services for conveyance of correspondence and direct mail, including by express service, if the items were within the price and weight limits for postal services which could be reserved under Postal Directive prior to July 2003 (five times the basic public tariff and 350 grams, respectively).<sup>166</sup> This is far less liberal than the actual level of liberalisation in 2010. Again, the EU split its commitment into two parts: cross-border supply and commercial presence.

<sup>165</sup> EU Commission, 'Free Trade Agreement between the European Community and its Member States, of the one part, and the Republic of Korea, of the other part' (20 Oct 2009). <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/korea>. 31 Aug 2010 (hereafter 'EU-South Korea PTA'). On 9 April 2010, the Commission sent a proposal to the European Council requesting authorisation to approve the agreement. Commission, *Proposal for a Council Decision authorising the signature and provisional application of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea*, COM(2010) 136 (9 Apr 2010).

<sup>166</sup> EU-South Korea PTA, Annex 7-A-1. EC Party. List of Commitments in Conformity with Article 7.7 (Cross-border Supply of Services), Section 2. Communications Services. A. Postal and Courier Services ('Sub-sectors (i), (iv) and (v) are however excluded when they fall into the scope of the services which may be reserved for items of correspondence the price of which is less than five times the public basic tariff, provided that they weigh less than 350 grams'); EU-South Korea PTA, Annex 7-A-2. EC Party. List of Commitments in Conformity with Article 7.13 (Establishment), Section 2. Communications Services. A. Postal and Courier Services.

For its part, South Korea, like the Cariforum states, expressed its commitment by reference to the outmoded category of 'courier service' in the UN CPC. South Korea agreed to liberalise or maintain liberalisation of 'courier services' but specifically excluded services covered by the Korean postal monopoly.<sup>167</sup> The wording of the South Korean exclusion seems to indicate that South Korea may retain the right to enlarge its postal monopoly by amending the postal law.<sup>168</sup>

However, the South Korean PTA also includes a *non-binding* statement of understanding on the scope and future of the postal monopoly in South Korea. According to this statement, South Korea intends 'to expand gradually the exceptions to the Korean Postal Authority's monopoly to increase the scope of private delivery services that are permitted'. The scope of the postal monopoly will be stated in terms of 'objective standards such as weight, price or a combination thereof'. Korea further expressed its intention to expand the exceptions to the postal monopoly 'to include all international document express delivery services by the effective date of this Agreement'. Most significantly, South Korea declared that all express services are considered outside the postal monopoly: 'For greater certainty, international and domestic express delivery services of all documents are not subject to the postal service monopolies in the Member States of the European Union.'<sup>169</sup>

#### 5.5.4 PTAs in negotiation

The EU is presently negotiating PTAs with India, Singapore, Canada, Colombia and Peru, Central American countries, and Mercosur countries (Argentina, Brazil, Paraguay, and Uruguay). While it is likely that these agreements will address the exchange of postal services, final texts of the agreements are not publicly available.

#### 5.5.5 Other negotiations and understandings

Trade agreements can also provide the basis for other less formal understandings with respect to trade in postal services. Two important examples should be noted, involving the United States and Canada.

In 2007, the United States announced that it had agreed with the European Union to revise its schedule of GATS commitments from the Uruguay Round by adding a new commitment to maintain liberalisation of outbound international letter post services.<sup>170</sup>

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<sup>167</sup> EU-South Korea PTA, Annex 7-A-4. Korea, Schedule of Specific Commitments in Conformity with Articles 7.7, 7.13, 7.18 and 7.19, Section 2. Communications services. B. Courier Services.

<sup>168</sup> The exclusion reads, 'Excluding the services to collect, process, and deliver letters for which exclusive rights are reserved for the Korean Postal Authority (KPA) under the Postal Service Act'.

<sup>169</sup> EU-South Korea PTA, 'Understanding on the Korean postal reform plan'.

<sup>170</sup> U.S. Trade Representative, 'Statement by USTR Spokeswoman Gretchen Hamel on Gambling' (17 Dec 2007). [http://ustraderep.gov/Document\\_Library/Press\\_Releases/2007/Section\\_Index.html](http://ustraderep.gov/Document_Library/Press_Releases/2007/Section_Index.html).

This adjustment resulted from a complaint by Antigua that the USA had failed to permit foreign access to gambling services as promised in its GATS schedule of commitments. When a WTO arbitrator agreed with Antigua, the USA decided to modify its WTO schedule of commitments to limit access to gambling services. To do so, however, it was required by the GATS to seek agreement from trading partners who were entitled to request compensatory changes that would liberalise or maintain liberalisation of other services.

In response to WTO arbitrator's decision, the EU sought a concession from the USA to maintain liberalisation of certain outbound remail services. The USA agreed to add one item to its GATS schedule of specific commitments under a new heading '2. Communications services. A/B Postal/courier services'. The liberalised service was 'delivery of outbound international letters'. The scope of this new item, however, is not entirely self-evident from its text. Obviously, outbound international letters are delivered outside the jurisdiction of the United States so a US commitment to liberalise such services is literally meaningless. This item, however, includes an explanatory footnote that amplifies on the text of the commitment. The footnote states:

For purposes of this Schedule, delivery of outbound international letters means the collection and carriage of letters from the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States. Commitments under this sector are scheduled without prejudice to measures requiring extraterritorial offices of exchange to operate under competitive conditions comparable to private operators.'

In sum, the US commitment refers only to outbound remail ('for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States'), not to all outbound international mail, and does not include a commitment to refrain from resort to provisions of the acts of the UPU that restrain the operations of extra territorial offices of exchange (ETOE). The U.S. commitment was not limited except as indicated in horizontal commitments on commercial presence.

Since prior US law exempted outbound remail from the postal monopoly, the US agreement amounted to a commitment to maintain an existing liberalisation rather than to create a new liberalisation.<sup>171</sup> Nonetheless, this is the first time the USA has adopted the EU practice of referring to 'postal/courier services' collectively. Hence, it is the first US commitment with respect to 'postal' services (in the CPC sense).<sup>172</sup> In addition, the

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<sup>171</sup> I. Wohl, 'The Antigua-United States Online Gambling Dispute' (2009), p. 7.

<sup>172</sup> The text of the commitment is provided in Commission, 'Proposal for a Council Decision on the conclusion of negotiations with the United States of America on the necessary compensatory adjustments resulting from the US intended withdrawal of specific commitments on gambling and betting services pursuant to Article XXI of the General Agreement on Trade in Services (GATS)', SEC(2008) 2023 (11 Jun 2008).

absence of restrictions would seem to commit the USA to giving foreign suppliers the benefit of national treatment, i.e., 'in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers accord to services and service suppliers.'<sup>173</sup>

However, what is given by the one hand appears taken back by the other. The footnote provides that the USA may maintain 'measures requiring extraterritorial offices of exchange to operate under competitive conditions comparable to private operators'. This footnote seems to allow the USA to prevent European public postal operators from competing on equal terms against the U.S. Postal Service in the outbound mail market. If so, the footnote significantly undercuts the commercial value of the commitment. As explained below,<sup>174</sup> under the acts of the Universal Postal Union, an office of an EU public postal operator in the USA would be considered an extra-territorial office of exchange or ETOE. Unless the host country agrees, an ETOE cannot benefit from legal privileges created by the acts of the UPU. It cannot use UPU documentation for air transportation. It cannot use simplified UPU-defined procedures to clear customs. And it cannot obtain delivery from a foreign postal administration at the UPU-established terminal dues rates. Without access to such legal privileges, an ETOE established by an EU public postal operator will not be able to compete for outbound international letter post mail on equal terms with the US Postal Service — indeed, experience suggests, it may be unable to compete at all. Both the USA and the EU have cloaked these negotiations with various levels of classification so the present state of the agreement is unknown, but it seems that this agreement has not yet been implemented.

Canada offers a second example of the EU's use of trade negotiations to induce liberalisation without a formal agreement. It also involves liberalisation of outbound international mail. In Canada, European postal operators have provided collection and forwarding services for bulk outbound international mail. In a series of court cases beginning in 2005, Canada Post successfully challenged these operations as inconsistent with the Canadian postal monopoly law. In 2007, in a dialogue with the European Union, the Canadian government agreed in principle to amend the postal monopoly law to permit competition in outbound international postal services. On 12 July 2010, the amendment was adopted by the Canadian Parliament. Much of the discussion with Canada over liberalisation of outbound international mail has taken place in the larger context of negotiations over a planned EU-Canada PTA.<sup>175</sup> As in the

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<sup>173</sup> General Agreement on Trade in Services, Article XVII

<sup>174</sup> For a discussion of UPU restrictions on extraterritorial offices of exchange or ETOEs, see section 6.5.2, below. On the other hand, US law forbids the conclusion of any agreement that would 'grant an undue or unreasonable preference to the Postal Service' in the provision of competitive products. 39 U.S.C. § 407(b) (2006). All in all, the precise implications of the US commitment are difficult to evaluate.

<sup>175</sup> European Commission, DG Trade, 'Guaranteeing EU companies' access to the Canadian market for outbound international mail', No. 40 (3 Aug 2010). <http://trade.ec.europa.eu/doclib/html/146401.htm> (1 Sep 2010). See Canada, Parliament, Parliamentary Information and Research Service, 'Bill C-44: an Act to Amend the Canada Post Corporation Act' (21 Jul 2009). <http://www2.parl.gc.ca/Content/LOP/LegislativeSummaries/40/2/c44-e.pdf> (1 Sep 2010).

case of the United States, however, it should be noted that nothing in the Canadian decision limits the authority of Canada to prevent EU public postal operators from making use of their status as designated operators of the Universal Postal Union. Hence, Canada can still prevent European public postal operators from competing against Canada Post on equal terms in the outbound mail market.<sup>176</sup>

### 5.5.6 Summary of PTAs and other negotiations

In addition to the global trade agreements, the EU has long relied on bilateral and regional preferential trade agreements. Since 2006, in light of the slow pace of the Doha Round, the EU, like the USA, has placed greater emphasis on PTAs

So far, the European Union has concluded three PTAs that address postal services: agreements with Chile (2005), the Cariforum countries of the Caribbean (2008), and South Korea (2009, final approval pending). In each case, the EU has expressed its commitment using the revised definition of 'postal and courier' services that it proposed in the Doha Round in 2001. In each case, the EU committed itself to maintaining a significantly lower level of liberalisation than it had already implemented in fact. For their part, the counter parties have usually made their commitments using the outdated category of 'courier service' found in the UN CPC classification schedule. As noted above,<sup>177</sup> in the CPC scheme, the terms 'postal service' and 'courier service' both refer to collection and delivery services for documents and parcels, with the only difference being that 'postal service' is 'rendered by the national postal administration'. A commitment to liberalise 'courier service' but not 'postal service' is thus highly ambiguous, at best.

The Cariforum PTA includes a broad statement of general principles for regulating the postal sector. This list of principles closely parallels the additional commitments set out in a 'postal reference paper' proposed by the EU in the Doha Round.<sup>178</sup> Like the reference paper, a statement of good regulatory principles represents an approach that is flexible and desirable in theory. In practice, however, the statement of principles in the Cariforum agreement has the strengths and weaknesses of the reference paper. In addition, the statement of regulatory principles in the Cariforum agreement is rendered more ambiguous by the fact that it refers only to 'courier' services and it is simply unclear what that term means.

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**176** For a discussion of UPU restrictions on ETOEs, see section 6.5.2, below. On the other hand, US law forbids the conclusion of any agreement that would 'grant an undue or unreasonable preference to the Postal Service' in the provision of competitive products. 39 U.S.C. § 407(b) (2006). All in all, the precise implications of the US commitment are difficult to evaluate.

**177** See section 5.1.4, above.

**178** See section 5.3.3, above.



The EU is presently negotiating PTAs with India, Singapore, Canada, Colombia and Peru, Central American countries, and Mercosur countries (Argentina, Brazil, Paraguay, and Uruguay).

In addition to these PTAs, the EU has been able to effectively use trade law concepts to strike intergovernmental deals liberalising portions of the postal market in at least two cases. The two cases involve the United States and Canada. In each case, the trading partner agreed to liberalise outbound letter post services. In each case, however, it appears that the trading partner may have retained the capacity to use the anti-ETOE decisions of the Universal Postal Union (discussed in Chapter 6) to prevent public postal operators of the EU from competing on equal terms with the national postal administration.

It appears that the PTAs concluded to date and bilateral developments related to trade negotiations are unlikely to result in significant new liberalisation. A basic problem is that counter parties have tended to make commitments by reference to the ambiguous UN CPC classification. A definite commitment to liberalise all 'courier' services outside the postal monopoly coupled with a definite commitment not to expand the postal monopoly law might be considered an effective standstill commitment, but uncertainties surrounding the definition of 'courier' service and the possibility of enlarging current postal monopoly laws leaves unclear whether standstill has in fact been achieved. In addition, the EU has introduced into one PTA a statement of regulatory principles (based on its proposed postal reference paper), but the net gain in liberalisation seems unclear, in part because the principles refer only to 'courier' services and in part because, judged by the standards of current EU practice, the statement of regulatory principles allows less liberal practices in some respects even while requiring definite progress in other areas. In two important bilateral trade negotiations, the EU has achieved some success with respect to liberalisation of outbound international mail, but UPU rules limiting extra-territorial offices of exchange (ETOE) and remail will continue to prevent EU public postal operators from competing with the national postal administration on equal terms.

Overall, we believe that achieving significant liberalisation of postal markets using PTAs is likely to prove difficult in the future. PTAs necessarily include a vast range of goods and services. The postal sector is a small fish in a big sea. Even in the context of PTAs, it seems that countries are generally unwilling to use trade negotiations to introduce significant new liberalisation or even to commit to maintaining current levels of liberalisation of postal services. Nonetheless, the EU has had some success in keeping a focus on the postal sector in the past, so the effort should be continued. We believe, however, that PTA negotiations in the future might be more effective in advancing liberalisation if the EU places greater reliance on some concepts borrowed from the UPU and the Postal Directive. These recommendations are taken up in Chapter 9.

In sum, with respect to PTAs, we observe that the PTAs concluded to date are unlikely to produce significant new liberalisation because:

- agreement and liberalisation are very difficult using UN CPC categories;
- it will be difficult to sell EU 8-part definition of postal/courier market; and
- multi-sector negotiations makes progress in the postal sector difficult.

We also observe that liberalisation of 'postal' services appears to be a very sensitive topic. Both the EU and counter parties are reluctant to commit to existing liberalisations. Therefore a new emphasis on 'commercial' services may be appropriate. Finally, we are not optimistic about the use of trade agreements on outbound international bulk mail, in part because effective liberalisation may be limited by rules on ETOEs and remail.

## 6 Universal Postal Union and International Postal Services

The Universal Postal Union (UPU) is an intergovernmental agreement that governs the exchange of documents and parcels among ‘designated operators’, i.e., providers of postal services who have been designated by the governments of member countries to provide the services required by the acts of the UPU. The UPU also establishes rules for certain additional services provided by designated operators, such as postal payment services. This chapter reviews the powers and organisation of the UPU.

### 6.1 Overview of the UPU

The Universal Postal Union was established as the General Postal Union by representatives from 21 countries — 19 European countries, the United States, and Egypt — in an agreement concluded in 1874 in Bern, Switzerland.<sup>179</sup> Sixteen Member States of the EU and EEA were among the founding members: Austria-Hungary, Belgium, Denmark, France, Germany, Greece, Italy, Luxembourg, Netherlands, Norway, Portugal, Romania, Spain, Sweden, and the United Kingdom.<sup>180</sup> Since 1874, the member countries of the UPU have met in a general ‘Congress’ twenty three times to revise and re-enact the agreements establishing the UPU. In 1878 the second Congress renamed the organisation the ‘Universal Postal Union’. The most recent Congress, the twenty-fourth, was held in Geneva in 2008.

The mission of the UPU has evolved over time. The original goal of the UPU was to create a ‘single postal territory for the reciprocal exchange of correspondence’ between national postal administrations.<sup>181</sup> Although exchange of correspondence has remained its primary function, the UPU — like the national postal administrations — has expanded the scope of its activities to include parcels, postal payment services (e.g., money orders and giro services), express services, logistics, electronic messaging, and other services. The 2008 Geneva Congress revised the acts of the UPU by replacing the term ‘postal administration’ with ‘designated operator’ (or ‘member country’ if appropriate).<sup>182</sup> While a designated operator may be a government agency, it may also be a corporatised government entity or private company designated by a member country to fulfil the obligations of the acts of the UPU. Thus, while the UPU remains an intergovernmental organisation, it is now focused on the services supplied by a set of designated providers of postal services.<sup>183</sup>

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<sup>179</sup> UPU, Treaty Concerning the Formation of a General Postal Union (1874).

<sup>180</sup> Austria and Hungary were then joined as one country. See generally, Coddington, *Universal Postal Union* (1964), pp. 25-27, 34.

<sup>181</sup> UPU, Treaty Concerning the Formation of a General Postal Union (1874), Article 1.

<sup>182</sup> UPU, Constitution (2008), Article 1bis(1.6bis).

<sup>183</sup> See generally, Tim Walsh, ‘Globalization, Posts, and the Universal Postal Union’ (2000).

In April 2010, the UPU published an extensive survey of the market for international postal services for lightweight postal items (weighing up to 2 kg). The report, prepared by Adrenale Corporation, was prompted by two resolutions of the 2008 Geneva Congress.<sup>184</sup> One resolution instructed the secretariat and the permanent committees of the UPU ‘to all take active steps, in their respective areas of responsibility, to ensure the development of an integrated, forward-looking overall plan for letter post services within the ambit of the Universal Postal Union, as a critical part of the Union’s strategic planning for the future’. The second resolution focused on remuneration systems for letter post items. It ordered preparation of a ‘study to review the market conditions, including relevant economic studies such as comparative price levels and price elasticities, with special focus on product segmentation’.<sup>185</sup> In 2008, a permanent committee of the UPU, the Postal Operations Council, decided to extend the research scope to include lightweight parcels and express mail services (EMS).

The Adrenale Report makes clear that the acts of the UPU today govern only a portion of international postal services market. The total volume of international letter post items in 2008 is estimated by Adrenale at roughly 5.6 billion items per year. Not all of these letter post items are exchanged by designated operators under the rules of the UPU. Roughly 15 percent are carried by non-designated operators. Perhaps another 25 percent (very rough estimate) is conveyed by designated operators outside the UPU system and tendered directly to the designated operator in the destination country as domestic mail — a practice called ‘direct access’ or ‘direct injection’.<sup>186</sup> Moreover, international letter post items exchanged among the EU 30 Member States account for about 40 percent of total international letter post. Intra-EU postal services are primarily regulated by the EU law (in particular, the Postal Directive) rather than the acts of the UPU.<sup>187</sup> Thus, overall, the total volume of letter post exchanged among the UPU’s designated operators and primarily governed by the rules of the UPU appears to be (again very roughly) about 2.1 billion items annually. For comparison, this is approximately the domestic letter post volume of the universal service provider in Finland or Austria.

<sup>184</sup> UPU, POC Committee 1, ‘Market research on letters and lightweight parcels and EMS items’, C1 2010.1 Doc 3 (22 Mar 2010), paragraph 1.

<sup>185</sup> UPU, 2008 Geneva Congress, Resolution C43/2008 (Future work on remuneration systems for letter-post items exchanged between the designated operators of UPU member countries), Letter Post Manual (2009), pp. 49, 51.

<sup>186</sup> Within the EU, it has been estimated that about one quarter of intra-EU cross-border letter post volume is tendered by ‘direct access’, that is the postal items are tendered directly to the destination postal operator as domestic mail and not transmitted as international mail according to the rules of the UPU. Presentation by B. Bukov at WIK 12<sup>th</sup> Königswinter Postal Seminar, (based on Boston Consulting Group Study, 2010). The Adrenale Report at page 28 reproduces but does not explain a chart by Deutsche Post that shows 40 percent of ‘addressable cross border mail’ is ABB remail, which is equivalent to direct access mail.

<sup>187</sup> As described in section 7.1, below, EU Member States have regularly declared the superiority of their obligations under EU law when signing the acts of the UPU. For purposes of this study, we take this position as established without addressing the possibility of potential conflicts between international laws, a complex area of international law beyond the scope of this study. For a detailed discussion of the law of conflict of laws, see TMC Asser, *The Study* (2004), pp. 46-58. See also the short discussion of reservations to acts of the UPU in section 7.4.1, below.

The total volume of lightweight (less than 2 kg) international parcels in 2008 is estimated by Adrenale at 194 million parcels. Again, not all of these parcels items are exchanged by designated operators under the rules of the UPU. Adrenale estimates that 75 percent of parcels are carried by non-designated operators. Of the 49 million parcels conveyed by the designated operators, an unknown percentage is conveyed outside the UPU system. And, as with letter post items, international parcels exchanged among the EU 30 Member States are governed primarily EU law. Overall, the total volume of parcels exchanged among the UPU's designated operators and primarily governed by the rules of the UPU appears to be on the order of 25 million parcels annually.

With respect to express or 'EMS' services, the UPU exercises less of a regulatory or managerial role than with regard to the letter post and parcel services. The UPU has established the EMS Cooperative as a vehicle for coordination of EMS services of designated operators. The acts of the UPU govern the provision of such services as a default. The total volume of international express items cannot be estimated. The Adrenale Report estimates that the total volume of international express shipments weighing less than 2 kg is about 284 million items. Of this total, designated operators account for about 75 million. Again, a significant (but unknown) portion of this traffic is exchanged between the EU 30 Member States and governed primarily by EU law.

The Kahala Posts Group (KPG) is an association of designated operators that is an outgrowth of the EMS Cooperative. KPG was created in 2007 by 6 postal operators from the Americas and Asia/Pacific. Current members are the U.S. Postal Service, Japan Post, Hongkong Post, China Post Group, Korea Post, Australia Post, Royal Mail, Correos of Spain, Singapore Post, and French La Poste. By establishing an additional set of managerial controls on EMS services coordinated by the EMS Cooperative, KPG members provide a 'date certain' EMS service that is substantially less expensive than private premium express services. KPG's services are marketed to business customers who have between 10 and 100 shipments a month and who require reliability, pick-up options, tracking, and proof of delivery but not the highest possible speed. KPG's services are available in over 150,000 postal outlets. It appears that KPG uses UPU postal customs clearance. KPG's date certain, guaranteed Express Mail international service grew by more than 40 percent per year in the 2005 to 2007 time period and by almost 10 percent in the recessionary environment of 2008-2009. KPG now accounts for over half of the all EMS items handled by UPU designated operators.<sup>188</sup>

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<sup>188</sup> Adrenale Report (2010), p. 10, 43; UPU, POC Committee 4 (Standards and Technology), Standards Board Customs Data Interchange Group (CDIG), 'Draft Report', POC C 4 SB CDIG 2009.3-Draft Report.Rev 1, p. 4.

## 6.2 Legal measures of the UPU

The Universal Postal Union is established and organised by five primary ‘acts’ or intergovernmental agreements adopted according to the rules of the UPU. All are binding on the member countries of the UPU.<sup>189</sup> In addition, the UPU has adopted two ‘agreements’ — the Postal Payment Services Agreements and implementing regulations — that are binding only on member countries party to the agreement.

Table 6-1 Major acts and agreements of the UPU

Act or agreement	Adopted by	Articles/ Pages	Scope
Constitution	Permanent act adopted by Congress in 1964. May be amended by Congress.	33/15	Establishes the Union; defines rules of adopting or modifying acts and their legal effect
General Regulations	Permanent act adopted by Congress in 2004. May be amended by Congress.	35/25	Implements the Constitution; defines composition and duties of UPU bodies
Universal Postal Convention	Congress	37/30	Fundamental rules for exchange of letter post and parcel post items between designated operators
Letter Post Regulations	Postal Operations Council	169/431	Implements the Convention with rules for letter post
Parcel Post Regulations	Postal Operations Council	119/158	Implements the Convention with rules for parcel post
Postal Payment Services Agreement	Congress (only member countries party to Agreement)	28/15	Fundamental rules for financial services provided by designated operators
Regulations of the Postal Payment Services Agreement	Postal Operations Council	87/92	Implements the rules for financial services

The Constitution is the basic act of the Union. The Constitution was adopted in 1964 and is a permanent act which does not expire. The Constitution establishes the Union and its main bodies and defines the legal effect of acts of the Union. The Constitution may be amended only by a new ‘protocol’ approved in Congress by at least two-thirds of the member countries of the Union having the right to vote.<sup>190</sup>

The General Regulations implement the Constitution. The General Regulations were adopted as a permanent act by the 2004 Bucharest Congress. The General Regulations define the composition and authority of the main bodies of the Union and provides for financing of the Union and arbitration of disputes. The General Regulations

<sup>189</sup> UPU, Constitution (2008), Article 22, *Constitution, Etc.* (2010), pp. A19-20.

<sup>190</sup> UPU, Constitution (2008), Article 30(1), *Constitution, Etc.* (2010), p. A25.

may be amended only by a new 'protocol' approved in Congress by at least a majority of all member countries of the Union having the right to vote.<sup>191</sup>

The Universal Postal Convention sets out the primary obligations of member countries and designated postal operators with respect to provision of letter post and parcel services in the member countries. The Convention is prepared and approved by each Congress. To become effective, a Convention must be approved in Congress by at least a majority of member countries present and voting.<sup>192</sup> Each Convention remains in effect until replaced by a subsequent Convention.

The final two primary acts are the Letter Post Regulations and Parcel Post Regulations, collectively called 'the Regulations'. The Regulations contain detailed rules implementing the Universal Postal Convention. These acts are drawn up and approved by the Postal Operations Council (described below).

Although acts of the UPU are binding, a member country may file a 'reservation' to selected provisions in certain circumstances. A reservation is defined in the Constitution as 'an exemption clause whereby a member country purports to exclude or to modify the legal effect of a clause of an Act, other than the Constitution and the General Regulations, in its application to that member country'.<sup>193</sup> The acts of the UPU provide that member countries may not file a reservation to a provision in the Constitution, the General Regulations, or the terminal dues provisions of the Convention.<sup>194</sup> With respect to other provisions of the Convention, member countries may file a reservation at the end of Congress, and the reservation must be approved by Congress. Reservations that are 'incompatible with the object and purpose of the Union' are not permitted.<sup>195</sup> Member countries may also file reservations to some but not all of the provisions in the Letter Post Regulations and Parcel Post Regulations. Such reservations must be approved by a majority of all members of the Postal Operations Council.<sup>196</sup>

Customarily, member countries have also exercised the option of making an official declaration upon signing the Convention. The acts of the UPU do not provide any legal status for such declarations, but member countries have traditionally used declarations to indicate how they intend to administer the acts of the UPU.<sup>197</sup>

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<sup>191</sup> UPU, General Regulations (2008), Article 133, *Constitution, Etc.* (2010), p. B48.

<sup>192</sup> UPU, Rules of Procedure of Congress, Article 21(1)(c), *Constitution, Etc.* (2010), p. C15.

<sup>193</sup> UPU, Constitution (2008), Article 1bis(8).

<sup>194</sup> UPU, Constitution (2008), Article 22; Convention (2008), Articles 28(11), 29(8). Designated operators, however, can escape the terminal dues provisions by agreeing to alternative agreements on a bilateral or multilateral basis. UPU, Convention (2008), Article 27(9).

<sup>195</sup> UPU, Convention (2008), Article 36.

<sup>196</sup> UPU, 'Rules of Procedure of the Postal Operations Council', POC 2009.1–Doc 4.Add 1.Rev 1 (19 Mar. 2009), Article 14.

<sup>197</sup> Since 1994, the EU Member States have filed a common declaration stating their intent to implement the acts of the UPU in accordance with their obligations under EU law. See section 7.1, below.

In addition to the five primary acts, the UPU provides a forum for approval of 'agreements'. An agreement provides for services other than the letter post or parcel post. An agreement is approved in Congress by member countries who are party to the agreement and is binding only on those countries. An agreement is implemented by regulations adopted by the Postal Operations Council. Until it was incorporated into the Convention by the 1999 Beijing Congress, the parcel post was established by an agreement. Today, there is only one agreement of the Union, the Postal Payment Services Agreement.

Finally, the Congress can express its will less formally in the form of decisions, resolutions, recommendations, and opinions. These are numbered and included in the documents of each Congress. Decisions may effectively have the force of law for the parties affected. Resolutions are often instructions to the permanent bodies of the Union to undertake specific studies or activities.

### 6.3 Administration of the UPU

The authority to make decisions relating to the acts and agreements of the UPU is vested in four 'bodies' or institutions established by the Constitution: the Congress, Council of Administration, Postal Operations Council, and International Bureau.<sup>198</sup>

#### 6.3.1 Congress

The Congress is an assembly of plenipotentiary delegates from all member countries of the UPU. The Congress is the supreme authority of the UPU, although since 1994 it has delegated much of its authority to other bodies. Each Congress revises and readopts the Universal Postal Convention. In Congress, member countries who are party to agreements can revise and re-enact such agreements. Congress may also adopt a protocol that amends the Constitution or General Regulations and make other decisions by resolution.<sup>199</sup> Finally, Congress elects the members of the Council of Administration and Postal Operations Council and appoints the Director General and Deputy Director General of the International Bureau. The Congress meets every four years. The most recent congress was held in Geneva in August 2008. The next Congress, the twenty-fifth, will be convened in Doha, Qatar, in October 2012.

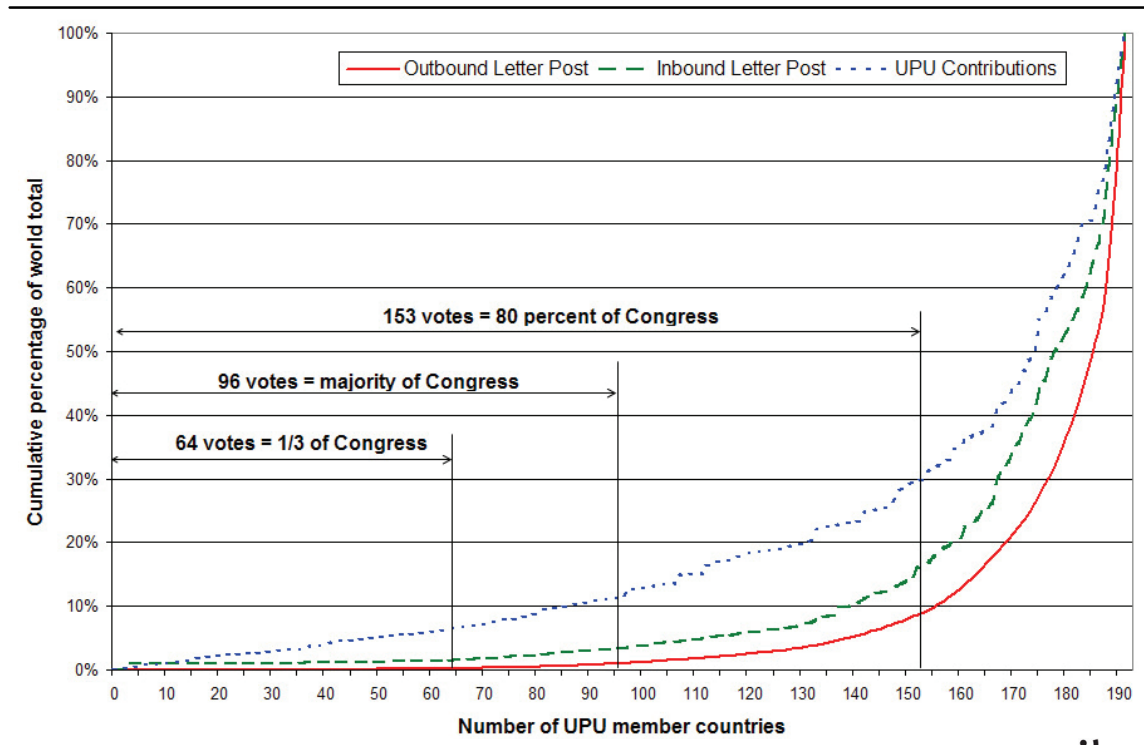
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<sup>198</sup> UPU, Constitution (2008), Article 13, *Constitution, Etc.* (2010), p. A15.

<sup>199</sup> As noted above, Congress has delegated authority over the Letter Post Regulations and Parcel Post Regulations to the Postal Operations Council; it can revoke this delegation only by amending the General Regulations. UPU, Constitution (2008), Article 14, *Constitution, Etc.* (2010), p. A15.



Figure 6-1 UPU members ranked by share of outbound international letter post, 2007



At Congress, each member country has one vote. Proposals relating to the Convention must be approved by a majority of member countries present and voting. Proposals relating to the Constitution require a two-thirds majority.<sup>200</sup> As a result of the unequal distribution of outbound international mail among UPU member countries, 96 member countries accounting for as little as 1 percent of the international letter post market can defeat any normal proposition in Congress. Sixty-four member countries, accounting for less than 0.25 percent of the letter post market, can defeat an amendment to the Constitution. Overall, 80 percent of the voting authority in Congress is vested in 153 member countries that account for about 9 percent of the international letter post market. More than 90 percent of these countries are apparently net receivers rather than net senders international mail.<sup>201</sup> See Figure 6-1.

<sup>200</sup> UPU, Rules of Procedure of Congresses (2008), Article 21. To amend the General Regulations requires approval of a majority of countries represented at Congress, not merely a majority of those casting votes. General Regulations (2008), Article 133.

<sup>201</sup> If 15 very small postal administrations whose outbound volumes are unknown are net receivers of letter post mail, the percentage of net importers would be about 93 percent. Moreover, since there is a substantial discrepancy in the UPU data between the volumes of total outbound and total letter post items, the ratio of outbound to inbound letter post for specific postal administration must be considered unreliable. In reality, since outbound volume must necessarily equal inbound volume overall, either the outbound total is too high or the inbound figure is too low (by roughly 20 percent). Hence, on average, the percentage of net receivers of mail is likely to be higher still.

Such numbers do not tell the whole story, however. For smaller countries and developing countries, international mail often comprises a much larger portion of total mail than for large industrialised countries. A country's dependence on international mail might be estimated by calculating the ratio of the sum of inbound and outbound letter post to the total domestic letter post. For the EU-30 as a whole this 'international mail ratio' is approximately 6 percent. For more than half of the developing countries, the international mail ratio is greater than 50 percent; for more than 40 percent, it is greater than 100 percent. From this perspective, the developing countries have a much greater need to participate in the decision-making of the UPU than the industrialised countries.

Table 6-2 UPU regions

Region	Number of members	Percent of members	Percent of UPU dues	Percent of outbound LP	Number of CA seats
Americas	36	18.8%	18.4%	22.5%	8
Eastern Europe and North Asia	25	13.1%	7.0%	4.4%	5
EU members	9	4.7%	3.1%	2.9%	
Western Europe	28	14.7%	37.6%	49.9%	6
EU members	18	9.4%	33.4%	44.2%	
South Asia and Oceania	49	25.7%	26.9%	16.7%	10
Africa	53	27.7%	10.0%	6.4%	11
UPU total	191	100.0%	100.0%	100.0%	40
EU total	27	14.1%	36.5%	47.1%	

### 6.3.2 Council of Administration

The Council of Administration (CA) is responsible for studying the general principles and policies of the Union, regulation of the Union's financial matters, control of the International Bureau, and guidance of the Postal Operations Council in matters of fundamental principle. The CA is composed of representatives of 41 member countries. The chairman is a representative of the host country for the last Congress. The other 40 members of the CA are elected by Congress. At least half of the membership must be newly elected at each Congress. No member may serve on the CA more than two terms in succession. Each member of the CA is required to appoint as its representative a person who is 'competent in postal matters'.<sup>202</sup>

<sup>202</sup> UPU, General Regulations (2008), Article 102.

According to the General Regulations the elective CA members must be selected 'on the basis of an equitable geographical distribution'.<sup>203</sup> In practice, seats on the CA are allocated to five geographic regions. See Table 6-2. The size of the regions and the number of CA seats allocated per region are fixed so that each individual UPU member country has the same statistical chance of being elected to the CA in any one congress: 1 chance in 5. Since the volume of outbound letter post originated by each region is not proportional to the number of member countries, some regions are over-represented and some are under-represented in terms of their participation in the international postal market. The Western European region accounts for 50 percent of the outbound international letter post volume, yet it has only 6 of the 40 elective seats in the CA. At the other end of the spectrum, the African region accounts for about 6 percent of the outbound international letter post, yet it has 11 seats on the CA.

The 27 EU Member States are included in two UPU regions. Nine EU Member States (BG, CZ, EE, HU, LT, LV, PL, RO, SK) are in the Eastern Europe and North Asia region. In the Eastern Europe region, there are a total of 25 UPU members, so on a purely statistical basis, one would normally expect the 9 EU Member States to claim on average 1.8 of the 5 CA seats allocated to Eastern Europe. The other 18 EU Member States and the 3 EEA Member States are in the Western Europe region. In the Western Europe region, there are a total of 28 UPU members, so, again on a purely statistical basis, one would normally expect that on average the 18 EU Member States should win 3.9 of the 6 CA seats allocated to Western Europe. Given the demands of service on the CA, large countries are more likely than small countries to stand for and win election.

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<sup>203</sup> UPU, General Regulations (2008), Article 102(3).

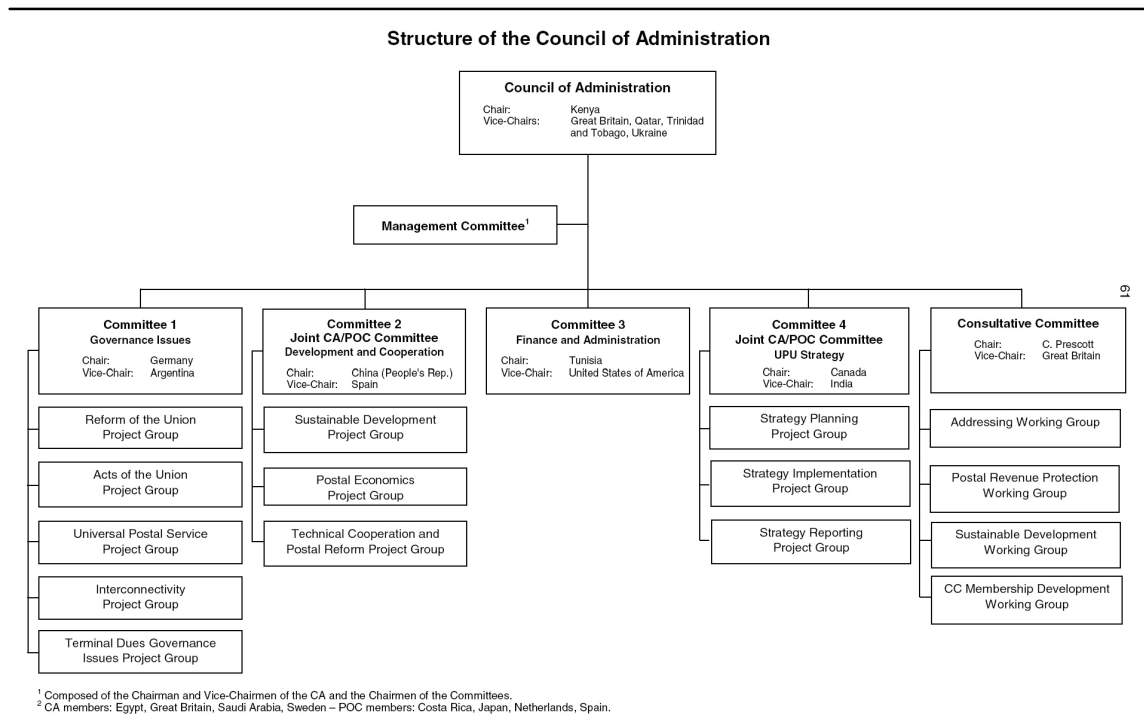
Table 6-3 EU 30 membership in UPU CA and POC, 1994-2008

		POC (40 members)				CA (41 members)			
		1994	1999	2004	2008	1994	1999	2004	2008
BE	Belgium	X	X	X	X			X	X
DE	Germany	X	X	X	X	X		X	X
DK	Denmark				X		X		
ES	Spain	X	X	X	X		X	X	
FI	Finland		X			X			
FR	France	X	X	X	X	X	X		X
GB	United Kingdom	X	X	X	X	X		X	X
GR	Greece	X		X	X				
IE	Ireland		X						
IT	Italy	X	X	X	X	X		X	
NL	Netherlands	X	X	X	X	X	X		
PT	Portugal	X	X	X	X			X	
SE	Sweden			X					X
	West Europe	9	10	10	10	6	4	6	5
BG	Bulgaria		X			X	X		
HU	Hungary	X		X			X	X	
LT	Lithuania								X
PL	Poland		X		X		X	X	
RO	Romania	X		X				X	
SK	Slovakia					X			
	East Europe	2	2	2	1	2	3	3	1
	EU 27	11	12	12	11	8	7	9	6

The service of EU 30 Member States on the CA since 1994 is shown in Table 6-3. In four congresses, the 18 EU Member States in the Western Europe region have won 4, 5, or 6 seats on the CA, an average of 5.25 seats per Congress which is well above their statistical share. Three EU Member States (DE, FR, UK) have served the maximum of three terms on the CA.<sup>204</sup> The 9 EU Member States in the Eastern Europe region have also done well. They have captured 1, 2, or 3 seats, averaging 2.25 seats per Congress compared to their statistical share (1.8 seats). In the 2008 Geneva Congress, Portugal lost its bid to become the sixth EU Member State representing the Western region, although it was re-elected to the POC.

<sup>204</sup> Three is the maximum number of terms because there have been four terms since 1994 and no CA member may serve more than two terms in a row.

Figure 6-2 Organisation of Council of Administration, 2008-2011



Source: UPU, Summary Record of the 2009 CA (2009), p. 60.

The organization of the 2008 CA is shown in Figure 6-2. EU 30 Member States have leading roles in several aspects of the work of the CA. The CA is organized into four committees, two of which are joint committees with the POC.<sup>205</sup> Committee 1 deals with governance issues and is chaired by Germany. In addition to the topics implied by the mission of Committee 1, the CA instructed Committee 1 to establish five project groups to perform tasks set out in resolutions of the Geneva Congress. Perhaps the most important study for the future of the UPU is the study by the Reform of the Union Project Group chaired by Belgium. A key subgroup is, in turn, chaired by Norway. Committee 2, a joint committee with the POC, deals with development and cooperation. It is chaired by China, with Spain serving as vice-chair. France chairs two of the three project groups established within Committee 2: the Sustainable Development Project Group and the Postal Economics Project Group. Committee 3 deals with UPU finances. Committee 4, also a joint committee with the POC, deals with UPU strategy. The CA has established three project groups within Committee 4. One, the Strategy Implementation Project Group, is chaired by Spain. In addition to occupying these leadership positions, many EU Member States are members of most or all of the significant committees and project groups of the CA.

<sup>205</sup> UPU, Council of Administration, 'Summary Record of the 2008 CA (Geneva)' (undated), pp. 9-10; 'Summary Record of the 2008.3 CA' (undated), pp. 28-31.

### 6.3.3 Postal Operations Council

The Postal Operations Council (POC) is responsible for all operational and commercial aspects of the work of the Union. The POC is 'subject to Council of Administration guidance on matters of fundamental policy principle'. The POC is composed of representatives of 40 member countries elected by Congress. Each member of the POC must appoint a designated operator as its representative.<sup>206</sup> Most importantly, the POC is authorised to draw up the Letter Post Regulations and the Parcel Post Regulations (as well as regulations implementing Postal Payment Services Agreement). In adopting or amending the Regulations, the POC exercises considerable authority over such key issues as terminal dues (within limits set by caps and floors established in the Convention), inward land rates, and customs forms and procedures.

Seats in the POC are also allocated according to prescribed rules, but the rules are more complicated than in the case of the CA. In order of priority, they are as follows. First, one-third of current POC members must be newly elected (the 14 incumbents receiving the fewest votes are eliminated). Second, there must be 16 industrialised countries and 24 developing countries in the membership. Third, seats should be allocated on the basis of 'qualified geographical distribution'. This provision has been interpreted to require that each region must have 60 percent of the seats allocated to it in the CA (rounded to the next highest number) with minimum numbers of seats for developing countries reserved in each region.<sup>207</sup> The geographic requirement may result in some countries with more votes being replaced by countries with fewer votes. There is no limit to the number of terms that may be served by a member country.

In sum, these rules have given the POC a high degree of stability. It is difficult to dislodge an incumbent POC member that wishes to be re-elected. Twenty-one of the 40 members of the POC elected by the Geneva Congress of 2008 have been members of the POC since its creation in 1994. See Table 6-22. These 21 countries have also, on average, occupied 12 of the 41 seats on the CA during this period. The designated operators from these countries account for more than 70 percent of the international letter post. In addition to the 21 member countries who have served continuously since 1994, another 9 countries (Argentina, Australia, Greece, Indonesia, Mexico, Pakistan, Singapore, South Korea, Tunisia) have served on the POC for three of the four terms since 1994. These countries have also occupied, on average, 4 of the CA seats.

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**206** UPU, General Regulations (2008), Article 104(3), *Constitution, Etc.* (2010), p. B13 ('Each member of the Postal Operations Council shall appoint its representative, who shall have responsibilities for delivering services mentioned in the Acts of the Union').

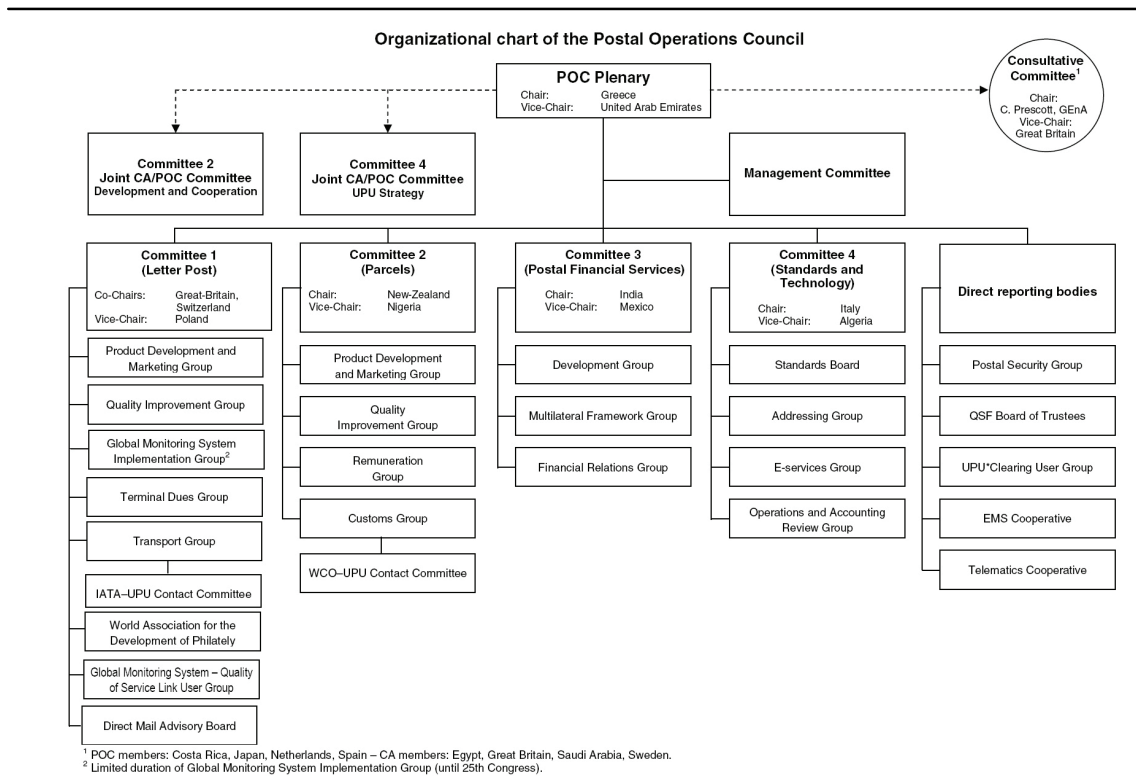
**207** UPU, General Regulations (2008), Art. 104(2), provides, 'The members of the Postal Operations Council shall be elected by Congress on the basis of qualified geographical distribution. Twenty-four seats shall be reserved for developing member countries and sixteen seats for developed member countries. At least one third of the members shall be renewed at each Congress'. A detailed explanation of this procedure is set out in UPU, Geneva Congress (2008), Doc 34a, Annex 1. The word 'renew' appears to be interpreted in a manner that is the opposite of ordinary usage.

The service of EU 30 Member States on the POC since 1994 is also shown in Table 6-3. In four congresses, the 18 EU Member States in the Western Europe region have won 9 or 10 seats on the POC, an average of 9.8 seats, far above their statistical share of 3.9 seats. The 9 EU Member States in the Eastern Europe region have won 1 or 2 seats, average of 1.8 seats per Congress, equal to their statistical share. In the 2008 Geneva Congress, Hungary failed to win membership in the POC. All in all, of the 21 designated operators that have dominated the POC, 8 are Member States of the EU (BE, DE, ES, FR, IT, NL, PT, UK); all are from the Western Europe region.

Table 6-4 POC 4-term members (1994-2011)

	Region	Country	CA terms
1	Americas	Canada	1
1	Americas	Cuba	3
1	Americas	United States	3
2	East Europe	Russia	3
3	West Europe	Belgium	2
3	West Europe	France	3
3	West Europe	Germany	3
3	West Europe	Italy	2
3	West Europe	Netherlands	2
3	West Europe	Portugal	1
3	West Europe	Spain	2
3	West Europe	Switzerland	1
3	West Europe	United Kingdom	3
4	South Asia	China	4
4	South Asia	India	3
4	South Asia	Japan	2
4	South Asia	Korea (South)	3
4	South Asia	New Zealand	0
5	Americas	Brazil	2
5	Africa	Egypt	3
5	Africa	Morocco	2

Figure 6-3 Organisation of Postal Operations Council, 2008-2011



Source: UPU, Summary Record of the 2010 POC (2010), p. 75

The organization of the 2008 POC is shown in Figure 6-3. Designated operators from the EU 30 Member States have leading roles in several aspects of the work of the POC as well. The POC is organized into four committees in addition to the joint committees with CA. Committee 1 deals with issues affecting the letter post issues and is co-chaired by the United Kingdom, while Poland serves as vice-chair. Committee 2 deals with parcels and customs issues. Within Committee 2, Germany serves as the chair of the Customs Group. Committee 3 deals with postal financial services. Committee 4 deals with standards and technology and is chaired by Italy. In addition, POC oversees the work of six more independent bodies: the Postal Security Group, the QSF (quality of service fund) Board, the UPU Clearing User Group, the EMS Cooperative, and the Telematics Cooperative. The two cooperatives are described below.

### 6.3.4 International Bureau

The International Bureau is the secretariat of the Union. The International Bureau is headed by a Director General and Deputy Director General, both elected by Congress. The Director General serves a term of four years and may be re-elected for one



additional term. The International Bureau employs about 144 persons.<sup>208</sup> The International Bureau is located in Bern, Switzerland.

### 6.3.5 Other UPU entities

In addition to these four primary bodies, the UPU includes or is associated with several additional groups. The most significant are the following:

The Consultative Committee is a committee established 'to represent the interests of the wider international postal sector and to provide a framework for effective dialogue between stakeholders'.<sup>209</sup> The Consultative Committee has no specific authority. The Consultative Committee consists of representatives of the Council of Administration, the Postal Operations Council, and organisations representing customers, delivery service providers, employees, and suppliers 'which have an interest in supporting the mission and objectives of the Union'. Non-UPU members must be approved by the Council of Administration.

The EMS Cooperative is an organisation of designated operators which coordinates the provision of its members' international express services (EMS) worldwide. Although the EMS Cooperative is associated with the UPU, it is self-financed and self-governed. It is funded by contributions of its members, not by the UPU. Contributions and voting authority are based on the level of EMS traffic handled.<sup>210</sup> The EMS Cooperative has 153 members. While the EMS Cooperative provides little public information about its activities, it appears to offer an effective mechanism for the coordination of the international EMS services offered by its members.<sup>211</sup>

The Telematics Cooperative is a second self-financed and self-governed organisation associated with the UPU. The function of the Telematics Cooperative is develop of the UPU's telematics activities and operations within the existing UPU structures. The Cooperative also provides consulting services to UPU's members. The Telematics Cooperative now includes 130 member countries.<sup>212</sup>

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**208** UPU, 'Changes to the International Bureau's organisational structures', CA C 3 2009.1 Doc 14. Annexe 2 (employee positions budgeted for 2009-2010, excludes supernumerary posts funded by extrabudgetary funds).

**209** UPU, General Regulations (2008), Article 106(1), *Constitution, Etc.* (2010), p. B19.

**210** EMS Cooperative, 'Statutes of the EMS Cooperative' (Apr. 2007), Article 6. See generally, <http://www.ems.coop>.

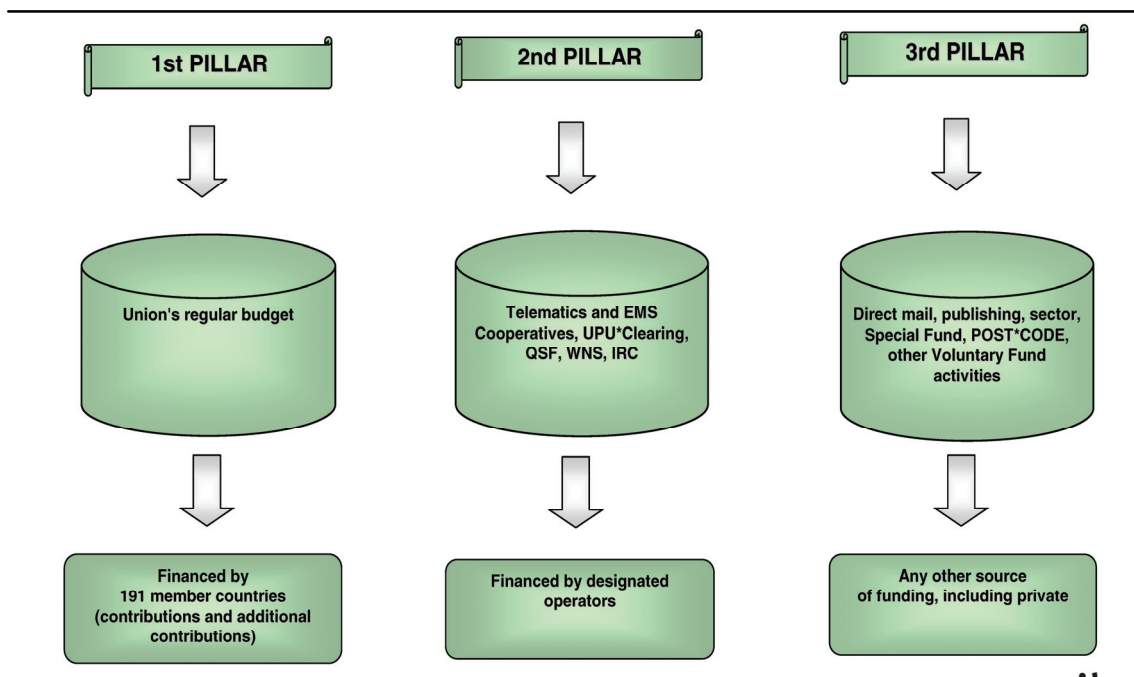
**211** See generally, UPU, 'Report by the Chairman of the EMS Cooperative Board' (21 Apr 2010), POC 2010.1 Doc 16.

**212** See generally, <http://www.ptc.upu.int/tc/over.shtml>.

### 6.3.6 Budget of the UPU

The draft overall budget for the UPU in 2011 is SFR 54.8 million (€ 36.3 million). The UPU has three main sources of income: mandatory contributions, contributions to the EMS Cooperative and the Telematics Cooperatives, and voluntary contributions by outside groups. See Figure 6-4.

Figure 6-4 Funding of the UPU



Source: UPU, POC 2010.1, Doc 12, Annex 4, Item 1 (8 Apr 2010).

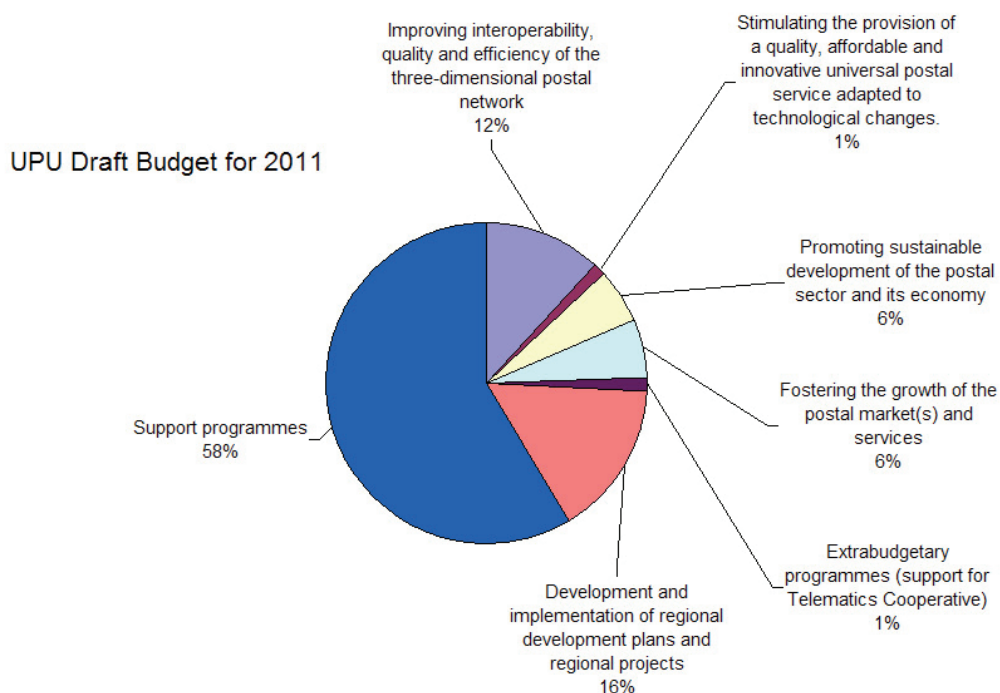
The first source is the mandatory contributions by member countries. Each Congress establishes a ceiling for total mandatory member contributions. This ceiling has increased little since the late 1990s. The draft budget for 2011 projects SFR 37.2 million (€ 24.6 million) in mandatory contributions.<sup>213</sup> As shown in Figure 6-5, most (58 percent) of the 'regular budget' (the part funded by mandatory funds) is spent on support programs such as information technology, logistics, and human resources. The major substantive programs supported by these funds are 'Improving interoperability, quality and efficiency of the three-dimensional postal network' (12 percent),<sup>214</sup> 'promoting sustainable development of the postal sector and its economy' (6 percent),

<sup>213</sup> UPU, 'Union Programme and Budget', POC 2010.1 Doc 12, Annex 1.

<sup>214</sup> The Nairobi Postal Strategy, adopted by the 2008 Geneva Congress, conceives of the international postal network as including three dimensions: physical, electronic, and financial. See UPU, Geneva Congress, Doc 38, approved by Resolution C20/2008, *Letter Post Manual* (2009), p. 23.

'fostering the growth of the postal market(s) and services' (6 percent), and 'development and implementation of regional development plans and regional projects' (16 percent).

Figure 6-5 UPU draft regular budget for 2011



Source: UPU, POC 2010.1, Doc 12, Annex 1 (9 Apr 2010).

Mandatory contributions per country vary in thirteen steps from 0.5 to 50 'contribution units'. Member countries choose which contribution class they will belong to, except that the lowest contribution class is reserved for the least developed countries.<sup>215</sup> Overall, although contributions per member country vary by a factor of 100 to 1, they are more equally distributed than letter post mail volumes. See Figure 6-1. The 27 EU Member States pay 316 contribution units or 36.5 percent of the total of 864.5 contribution units. The EEA Member States add another 12 contribution units or 1.4 percent of the total.<sup>216</sup> In addition, to mandatory contributions, member countries are free to make additional contributions.

The second source of income is contributions by designated operators to bodies associated with the UPU such as the EMS Cooperative and the Telematics Cooperatives. These organisations have their own management bodies and staffs and

<sup>215</sup> UPU, General Regulations (2008), Article 130 and annotations.

<sup>216</sup> See UPU, International Bureau, 'List of member countries of the Universal Postal Union showing their contribution class, geographical group and legal situation with regard to the Acts of the Union Position at 1 January 2009' (2009).

essentially control their own expenditures. The 2011 budget anticipates SFR 12.6 million (€ 8.4 million) in such contributions.

The third source of income is the voluntary contributions from public and private donors. Contributions may be tied to specific projects or not depending on the donors' wishes. Activities currently financed from this fund include programs to develop direct mail, philately, and publishing. The 2011 budget anticipates SFR 4.9 million (€ 3.3 million) in such contributions.

## 6.4 Terminal dues

As noted above, 'terminal dues' is the UPU's term for the fees that one postal administration owes another postal administration for the delivery of international letter post items. Since they were introduced in 1969, terminal dues have become central to the policies and politics of the UPU. This section describes the development of terminal dues.

### 6.4.1 Development of terminal dues

Until 1969, each member country delivered inbound international mail without charge. This system benefited postal administrations that exported more mail than they imported (usually those in industrialised countries) and penalised those that imported more than they exported (usually those in developing countries). The 1969 Tokyo Congress was unable to agree on a simple, economically sound principle for compensating postal administrations with inbound imbalances, so it adopted an arbitrary 'terminal dues' charge of 0.50 gold francs per kilogram.<sup>217</sup> Henceforth, if postal administration A sent postal administration B more kilograms of letter post mail than B sent A, then B could demand compensation of 0.50 gold francs per kilogram for the excess.

The terminal dues system introduced a divisive factor into UPU congresses. Suddenly, real money was at stake, and the number of net beneficiaries of terminal dues far outnumbered the number of net payers. Thanks in part to the addition of new developing countries to the ranks of the UPU after World War II, the terminal dues rate was tripled in the 1974 Lausanne Congress to 1.5 gold francs (about SDR 0.49) and more than tripled in the 1979 Rio de Janeiro Congress to 5.5 gold francs (SDR 1.90). In the 1984 Hamburg Congress, the major postal administrations joined forces to prevent

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<sup>217</sup> At this time, the UPU used the gold franc as its unit of money. A gold franc equaled 0.009334 oz. of pure gold. In 1979, the UPU defined the gold franc to be convertible into Special Drawing Rights (SDRs) at the rate of 3.061 gold francs per 1 SDR. The 1969 terminal dues charge was thus equal to about SDR 0.16. See UPU, Constitution (1979), Art. 7 and annotation, *Acts of the UPU Annotated* (1981), vol. 1, p. 16-17.

a similar increase. In the end, delegates compromised on a 45 percent increase, to SDR 2.641 per kg. The progress of this core terminal dues system is shown in Table 6-5.

Table 6-5 UPU terminal dues: basic rates for developing countries

Congress	Terminal dues (SDR)	Increase
Tokyo, 1969	0.163/kg*	
Lausanne, 1974	0.490/kg*	201%
Rio de Janeiro, 1979	1.797/kg*	267%
Hamburg, 1984	2.614/kg	45%
Washington, 1989	2.940/kg	12%
Seoul, 1994	3.427/kg	17%
Beijing, 1999	3.427/kg	0%
Bucharest, 2004	3.727/kg	9%
Geneva, 2008	3.831/kg to 4.162/kg**	3% to 12%
*Terminal dues have been converted from gold francs.		
**Rate rises each year from 2010 to 2013.		

Starting in 1989, the UPU's approach towards terminal dues began to be shaped by a perceived need to control incentives for remail (see next section). In general, the simple, easily administered system of a relatively low fixed rate per kilogram was continued for letter post items sent to, from, or between developing countries. A substantially higher terminal dues system was introduced for letter post items exchanged between industrialised countries, i.e., those most threatened by remail. The evolution of the higher terminal dues system for industrialised countries is summarised in Table 6-6.

Table 6-6 Summary of UPU terminal dues for industrialised countries

Convention	Terminal dues (SDR)
Washington, 1989	<p>Rule applies to 'high volume' mail flow (more than 150 tonnes/year)</p> <ul style="list-style-type: none"> <li>• Correction mechanism formula, 1.258/kg + 0.143/item, simplified to 8.115/kg (letters); 2.058/kg (printed matter)</li> </ul>
Seoul, 1994	<p>Rule applies to 'high volume' mail flow (more than 150 tonnes/year) sent to industrialised countries</p> <ul style="list-style-type: none"> <li>• Special rates for light or heavyweight mail in quantity; bulk mail; and remail</li> <li>• Remail rate, 1.00/kg + 0.140/item or 80% equivalent domestic rate, if higher.</li> </ul>
Beijing, 1999	<p>Rule applies to 'industrialised countries'</p> <ul style="list-style-type: none"> <li>• Rate based on 60% of domestic 20 g rate.</li> <li>• Cap: 1.684 SDR/kg + 0.158 to 0.215 SDR/item</li> <li>• Floor: 1.491SDR/kg + 0.147 SDR/item.</li> <li>• Developing countries limited to 110% of prior year at base TDs (system harmonisation).</li> <li>• Special rates for light or heavyweight mail in quantity; bulk mail; and remail.</li> </ul>
Bucharest, 2004	<p>Rule applies to 'target system' countries</p> <ul style="list-style-type: none"> <li>• Rate based on 62% to 68% of domestic 20 g rate.</li> <li>• Cap: 0.226 to 0.243 SDR per item + 1.768 to 1.904 SDR/kg.</li> <li>• Floor: 0.151 to 0.161 SDR per item + 1.536 to 1.630 SDR/kg.</li> <li>• Direct access to domestic rates by target system countries.</li> <li>• Developing countries limited to 110% of prior year at base TDs (system harmonisation).</li> <li>• Special rates for light or heavyweight mail in quantity; bulk mail; and remail.</li> </ul>
Geneva, 2008	<p>Rule applies to 'target system' countries</p> <ul style="list-style-type: none"> <li>• Rate based on 70% of domestic 20 g rate.</li> <li>• Cap: 0.253 to 0.285 SDR per item + 1.980 to 2.227 SDR/kg.</li> <li>• Floor: 0.165 to 0.177 SDR per item + 1.669 to 1.792 SDR/kg.</li> <li>• Direct access to domestic rates by target system countries.</li> <li>• Special rates for light or heavyweight mail in quantity; bulk mail; and remail.</li> </ul> <p>Additional rules for 'new target system' countries</p>

The first version of this system, introduced by the 1989 Washington Congress, was triggered by mail volumes rather than developmental status. The higher terminal dues rates applied to flows of more than 150 tonnes of letter post mail per year in one direction. Recipients of such high volume mail flows could 'revise' the terminal dues charged if the mail included a large amount of lightweight letters or bulk mail.

In 1994, the Seoul Congress retained the revision mechanism of 1989 but introduced the concept that the right to claim higher terminal dues should depend on whether the member country that originated the mail was a developing country or not (developing countries could not invoke the revision mechanism for heavyweight items).<sup>218</sup>

<sup>218</sup> UPU, Convention (1994), Article 49(3) (terminal dues, revision mechanism); 'Determination of developing countries and territories in the UPU', Doc. 90. The terminal dues provisions and their successors affect only the international letter post. The UPU have never adopted charges for deliver of parcels or express mail items based on the country of origin.

The 1999 Beijing Congress provided separate terminal dues regimes for industrialised countries and developing countries and added a 7.5 percent surcharge on terminal dues paid on letter post items sent by industrialised countries to developing countries.<sup>219</sup> At the same time, the UPU agreed that in principle all countries should eventually adopt a terminal dues system that will ‘approach more closely the costs of the services rendered’.<sup>220</sup> The Beijing Congress further provided that postal administrations in industrialised countries were required to give other postal administrations access to domestic rates: to ‘make available to other administrations all the rates, terms and conditions offered in its domestic service EU on conditions identical to those proposed to its national customers’.<sup>221</sup>

The 2004 Bucharest Congress renamed the terminal dues regimes to emphasise the long term objective of economically based terminal dues. The terminal dues system for industrialised countries was called the ‘target system’, and the terminal dues system for developing country regime was called the ‘transitional system’.

The 2008 Geneva Congress continued the target and transitional systems and moved further down the path towards a terminal dues system related to domestic postage. Under the current acts, there are six groups of member countries (1.1, 1.2, 2, 3,4, and 5) based on the level of economic and postal development. Groups 1.1 and 1.2 comprise the target system. The rest comprise the transitional system. Group 1.1 consists of the old industrialised country category.<sup>222</sup> Group 1.2, the ‘new target system’ countries, consists of relatively economically developed countries with a high ‘postal development index’ score.<sup>223</sup> For letter post items exchanged within the target system, designated operators must charge each other terminal dues that are, in principle, related to the priority 20-gram domestic postage rate. In fact, actual charges are constrained within a band established by cap and floor provisions, and almost all

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**219** UPU, Convention (1999), Article 50(1)(1)(1). The surcharge on terminal dues was paid into a fund, called the Quality of Service Fund, established by the POC and administered by the International Bureau to assist the postal administrations of selected developing countries. See 1999 Washington Congress, ‘Quality of Service Fund (QSF)’, Doc 37 Add 1.

**220** UPU, 1999 Beijing Congress, Resolution C46/1999 (‘Believing that the financial relations between postal administrations of dispatch and postal administrations of destination must be founded on economic criteria that take account not only of the objectives established in order to approach more closely the costs of the services rendered, but also of the environment in which the Posts operate, particularly with regard to the extent of market liberalization and level of competitive activity . . . instructs the Postal Operations Council . . . [to] determine the relation between domestic tariffs and costs in each industrialized administration to establish the appropriate percentage and mixture of tariffs to apply as terminal dues for each industrialized administration’).

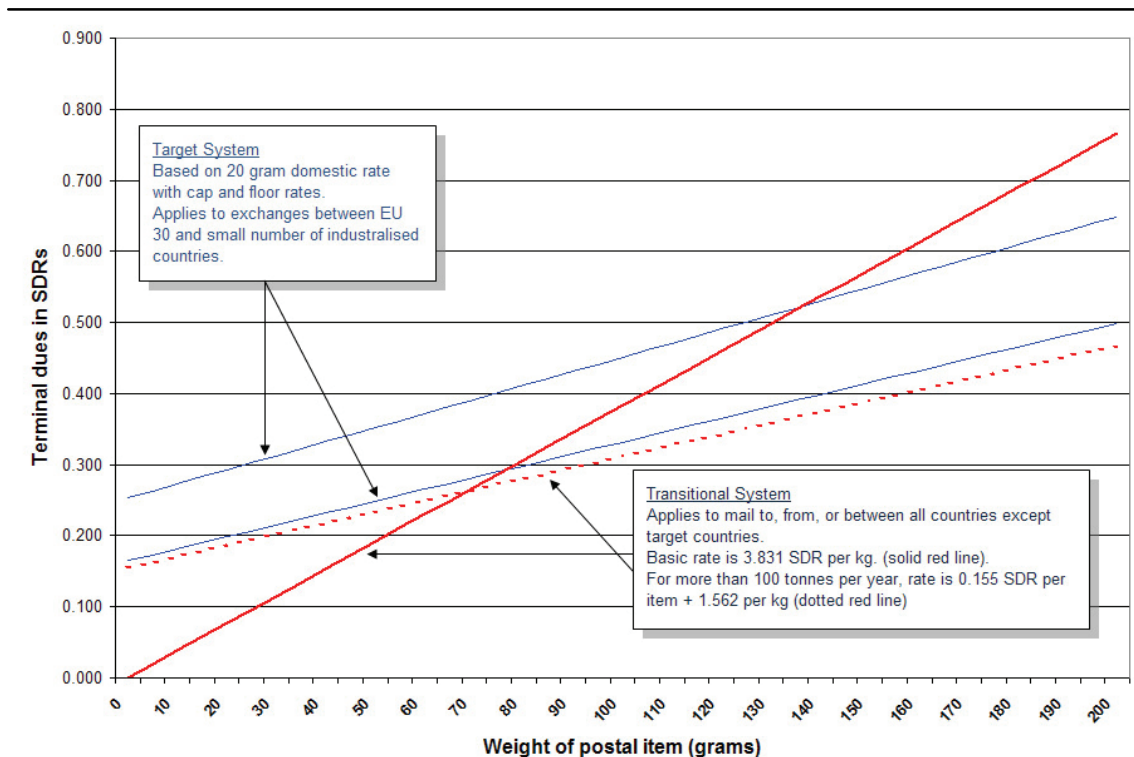
**221** UPU, Convention (1999), Article 47(4). This provision is now Convention (2008), Article 27(4).

**222** Omitting territories that are not UPU members in their own right (e.g., Gibraltar, Norfolk Island), the 28 Group 1.1 UPU members are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom, United States, and the Vatican. Eighteen are members of the EU 30 Member States.

**223** UPU, 2008 Geneva Congress, Resolution C18/2008, *Letter Post Manual* (2009), p. 16. Omitting territories that are not UPU members in their own right (e.g., Hong Kong, Aruba, Bermuda, Hong Kong), the 5 Group 1.2 UPU members are Bahamas, Kuwait, Qatar, Singapore, and Slovenia. United Arab Emirates was originally included in Group 1.2 but later deleted by the CA in 2009.

terminal dues are established by the rate band and not by the link to domestic postage rates. <sup>224</sup> See Figure 6-6 below. Designated operators from target system countries must allow other designated operators 'direct access' to domestic services at domestic rates (new target system countries may opt out).

Figure 6-6 UPU Terminal dues 2010



Source: Calculations based on UPU, Convention (2008), Articles 28 and 29.

Designated operators from countries in Groups 2 to 5 are in the transitional system. Designated operators from Group 2 countries are in the transitional system in the years 2010 and 2011 and in the target system after that. Designated operators from Group 3 countries are in the transitional system until at least 2014. <sup>225</sup> In the transitional system, designated operators generally collect and pay to other designated operators a per kilogram terminal dues charge that results in substantially lower charges for lightweight letter post items. <sup>226</sup> However, where the annual flow of letter post mail to or from a

<sup>224</sup> The relationship is established by complicated formula based on the 20 gram priority letter rate. The relationship to domestic postage varies for old target and new target system countries.

<sup>225</sup> Groups 4 and 5 are differentiated based on their contributions and benefits with respect to the Quality of Service fund.

<sup>226</sup> UPU, Convention (2008), Articles 27 to 29, Letter Post Regulations, Articles RL212 to RL233; 2008 Geneva Congress, Resolution C18/2008 (classification of countries), *Letter Post Manual* (2009), p. 17. In addition to differences in terminal dues levels, designated operators from Groups 1.1, 1.2, 2, 3, and 4 must pay a percentage surcharge on terminal dues payments to designated operators from countries in Groups 2, 3, 4, and 5. The level of the surcharge varies from 2 and 20 percent depending



transitional system country exceeds 100 metric tonnes per year, the Geneva Congress introduced, for the first time, terminal dues rates that include item and weight components (thus better reflecting costs). See Figure 6-6. Finally, the Geneva Congress also instructed the Council of Administration ‘to ensure that, allowing for exceptions, the application of country-specific, cost-based remuneration principles will be universal by 31 December 2017’.<sup>227</sup> This resolution implies that the Convention adopted by the 2012 Doha Congress will adopt a mechanism establishing country-specific cost-oriented terminal dues for all countries since the 2012 Convention will remain in effect until 31 December 2017.

Four of the six 2008 UPU terminal dues categories are applicable within the EU and EEA. Eighteen of the EU 30 Member States are classified as Group 1.1 countries. One Member State, Slovenia, is in Group 1.2. Seven Member States (CY, CZ, EE, HU, MT, PO, SK) are in Group 2, and four Member States (BG, LV, LT, RO) are in Group 3.

Despite long term plans to extend the target system, its effective scope is presently quite limited. Although the target system presently includes 33 designated operators,<sup>228</sup> this number overstates the scope of this terminal dues regime. Nineteen of the designated operators are from EU 30 Member States. For letter post items exchanged between these designated operators, terminal dues should be governed by the Postal Directive, not the target system. In fact, 14 of the 19 DOs appear to be parties to the current REIMS IV agreement, and the remaining DOs appear to have bilateral terminal dues agreements with designated operators within the EU 30.<sup>229</sup> Of the 14 non-EU designated operators covered by the target system, 3 are very small European DOs (Monaco, San Marino, Vatican). As a practical matter, therefore, the UPU target system is an agreement that governs the exchange of letter post items between only 11 significant DOs from outside the EU<sup>230</sup> and a block of 19 DOs from the EU 30. Indeed, of these 11 countries, just 3 — the United States, Switzerland, Japan — appear to account for about 90 percent of the letter post items received by the EU under the target system.<sup>231</sup>

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on the origin-destination group pair and, in some cases, the year. The surcharge is paid into a fund established by the Postal Operations Council to improve the quality of service provided by designated operators in developing countries.

**227** UPU, 2008 Geneva Congress, Resolution C43.

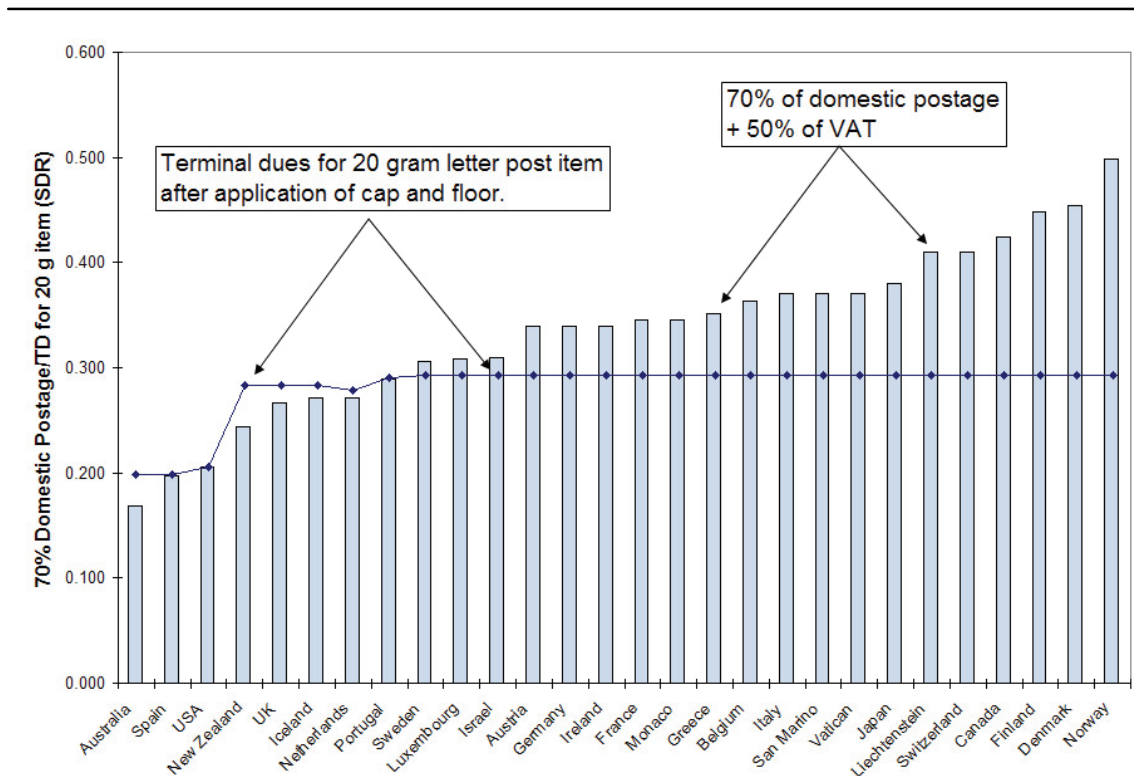
**228** UPU, 2008 Geneva Congress, Resolution C18, *Letter Post Manual* (2008), p. 16. In 2009, the Council of Administration reclassified the United Arab Emirates as a category 2 country.

**229** There appears to be no official public list of Reims IV parties. However, public presentations by some postal officials imply that the following EU target country DOs are parties to Reims IV: AT, BE, DE, DK, EL, FI, FR, IE, IT, LI, LU, NO, SE, SI. See Peter Somers, ‘Need for a Clearer Regulatory Framework for Terminal Dues’, Presentation at European Commission 2nd High Level Conference, Delivery Services for a Digital World, Valencia, Spain 29-30 April 2010, p. 8 (‘All posts except NL, UK, ES and PT’).

**230** The DOs of Australia, Bahamas, Canada, Israel, Japan, Kuwait, New Zealand, Qatar, Singapore, Switzerland, and United States of America.

**231** Estimate by the authors based on the terminal dues model described in Appendix A.

Figure 6-7 UPU target system 2010 versus 20 gram postage rate



Source: UPU, International Bureau, Circular 155 (6 Jul 2009).

Finally, it should be noted that although the UPU's target system offers some protection for industrialised countries against remail competition, it does not truly align terminal dues with domestic postage rates, primarily because of the rate band created by the price caps and floors.<sup>232</sup> Figure 6-7 shows the application of the system in target countries in 2010.<sup>233</sup> The target system established in the 2008 Convention is based on the principle that terminal dues should be aligned with 70 percent of the domestic tariff for a priority letter post item of comparable weight. If the designated operator charges VAT, the domestic tariff used for terminal dues calculations in 2010 includes 50 percent of the VAT charge paid by domestic mailers (Australia, Canada, Finland, Israel, Japan, New Zealand, Norway, Sweden). Since the target system terminal dues formula for each designated operator is based solely on the charge for a 20 gram letter post item, the target system is most closely aligned with 70 percent of the domestic tariff at the rate for a 20 gram letter post item. As Figure 6-7 shows, however, the terminal dues

<sup>232</sup> See generally, J. Campbell, 'Evolution of Terminal Dues', pp. 26-29. For an relatively early example of a scientific discussion paper that recommended terminal dues be related to domestic tariffs see U. Stumpf, 'Terminal Dues Reform: Toward a Domestic Tariff Based System' (1993).

<sup>233</sup> UPU, International Bureau, Circular 155 (6 Jul 2009). This circular shows provisional calculations for 2010 based on expected exchange rates. Final calculations are not yet announced. In the figure calculations for territories are omitted. The circular did not include rates for 'new target system' countries.

charge is actually aligned with the domestic postage rate in only 1 of the 28 target countries, the United States. In 25 countries, the terminal dues is established by in whole or in part by the price cap; in 2 countries by the floor price. The discrepancies between the declared goal of 70 percent of domestic postage (plus 50 of VAT where applicable) and the actual terminal dues rate set by the target system ranges from an overpayment to 17 percent to an underpayment of 41 percent.

A truly non-discriminatory terminal dues system was pioneered by the Nordic postal administrations in 1988. Under the Nordic system, terminal dues were set at 60 percent of retail domestic postage rates. The terminal dues thus approximated the charge for the delivery portion of the end-to-end service represented by the retail price. The Nordic system included penalties for poor quality of service. Most EU postal administrations adopted a similar approach, called the REIMS II agreement, in 1997. The REIMS II agreement was replaced by a REIMS III agreement in 2007 and by a REIMS IV agreement in 2009.

In sum, for decades the UPU has recognised the principle that terminal dues for the delivery of international letter post items should be rationally related to either costs of service or domestic postage rates but has not fully implemented this principle. In 1989, the UPU introduced a two-tiered terminal dues system that had the effect of protecting industrialised countries against remail competition without truly rationalising terminal dues rates. Since 1999, the UPU has begun to move towards terminal dues more closely related to comparable domestic postage rates. In 2008, the UPU set a goal of establishing 'country-specific, cost-based' terminal dues by the end of 2017. So far, however, the UPU terminal dues system still strongly resembles the industrialised country/developing country dichotomy introduced in 1999. Meanwhile, most EU 30 postal administrations, have used alternative terminal dues arrangements among themselves for more than a decade.

#### 6.4.2 Distortions created by UPU terminal dues

Since UPU terminal dues are not based on costs and only somewhat related to domestic postage rates, it is intuitively apparent that UPU terminal dues create economic distortions, i.e., deviations from what a well-functioning market competitive market would produce. Assuming perfect competition with no externalities, in the market equilibrium of supply and demand prices are equal to marginal cost for each firm and product. Any deviation from a market equilibrium can be seen to produce inefficiencies, or 'distortions'. It is, however, not easy to specify precisely what these distortions are or to quantify their effect. The main obstacle to evaluating the effects of terminal dues is the fact that terminal dues do not correspond to an actual market price because terminal dues are not available to all willing buyers. If postal administration X offers to deliver a letter for € 0.400, and this offer is available to the general public, then € 0.400

is the actual cost of delivery for the buyer. Suppose, however, that postal administration X offers to deliver a letter for € 0.400, and this offer is available only to postal administration Y and only on condition that Y also delivers a letter for X for a charge of € 0.400. Then what is the cost to postal administration Y of having its letter delivered by X? Does postal administration Y or postal administration X benefit more in the exchange? Does it make any difference at what level the terminal dues rate is set? What are the effects on mailers? On competitors?

To answer these questions, consider the simplified terminal dues example set out in Table 6-7. In the following discussion, X is the origin postal administration, and Y is the destination postal administration (the term 'postal administration' will not be repeated each time). Also, monetary values can be considered as expressed in euros, but it makes no difference to the example whether the monetary unit is euros, dollars, SDRs, or some other unit.

In column A of Table 6-7, X is a postal administration with average costs for an industrialised country. The domestic postage rate for a typical letter post item is assumed to be 0.75 and cost-oriented. The international postage rate is assumed to be 0.95, that is the domestic rate plus the cost of international transportation for an outbound international letter post item (0.20). If 70 percent of the cost of postal service are incurred in delivery, then X's unit delivery cost is 0.525 (line 10), and its unit collection and forwarding cost is 0.225 (line 4). For the outbound service, X is charging an outbound international mailer the same rate for collecting and delivering a letter post item that it charges a domestic mailer, since the outbound international rate is derived from the domestic rate. The cost of collecting an outbound international letter will be the same as for a domestic letter post item (0.225). The cost of delivering an international letter post item will be the terminal dues fee charged by Y, 0.400 (line 6), instead of the cost incurred by X in delivering a domestic item. Hence, X makes a profit of 0.125 on each outbound letter post item (line 7). On the inbound service, X only charges Y the terminal dues fee of 0.400 for each letter post item received (line 9) but actually incurs a cost of 0.525 in delivering the item (line 10). Hence, X loses 0.125 on each inbound item (line 11). All in all, if the outbound and inbound volumes are equal, the misalignments between terminal dues and actual costs cancel each other, and, since the international postage is derived from the domestic postage rate, X makes neither a profit nor a loss on the international service (line 12).

This accounting, however, does not tell the full story because the terminal dues charge does not reflect the economic value of the delivery services provided. If Y is a low cost postal administration, then X is effectively trading an average value delivery service for a low value delivery service. Assume, for example, that Y's domestic postage rate is 0.60 so the value of its delivery service is 0.420 per item (70 percent of 0.60) (line 15). Then, X loses 0.105 per item on the exchange of services with Y (line 21) since X's delivery service is worth 0.525 per item. On the other hand, if Y is a high cost postal

administration, with a domestic postage rate of 0.90, then X gains 0.105 per item on the exchange since it is trading an average value delivery service for a high value delivery service (line 23).

Table 6-7 A terminal dues example

	A Avg cost adm	B Low cost adm	C High cost adm	D Low cost exporter	E High cost importer
<b>I. Postage</b>					
1 Domestic postage per item	0.750	0.600	0.900	0.600	0.900
2 International postage per item	0.950	0.800	1.100	0.800	1.100
<b>II. Terminal dues regime</b>					
Outbound					
2 Number of outbound items	1	1	1	2,000	1,000
3 Outbound international postage	0.950	0.800	1.100	1,600	1,100
4 Cost of outbound service (30% of cost)	-0.225	-0.180	-0.270	-360	-270
5 Cost of international transport	-0.200	-0.200	-0.200	-400	-200
6 TDs paid adm Y (0.400)	-0.400	-0.400	-0.400	-800	-400
7 Net profit (loss) on outbound	0.125	0.020	0.230	40	230
Inbound					
8 Number of inbound items	1	1	1	1,000	2,000
9 TDs charged by adm X	0.400	0.400	0.400	400	800
10 Cost of inbound service (70% of cost)	-0.525	-0.420	-0.630	-420	-1,260
11 Net profit (loss) on inbound	-0.125	-0.020	-0.230	-20	-460
Total international					
12 Net profit (loss) total	0.000	0.000	0.000	20	-230
13 Net profit (loss) per outbound item	0.000	0.000	0.000	0.010	-0.230
14 Net TD payment	0.000	0.000	0.000	-400	400
<b>III. Real gain/loss on exchange of services</b>					
Value of foreign delivery					
15 Low cost adm Y	0.420	0.420	0.420	840	420
16 Avg cost adm Y	0.525	0.525	0.525	1,050	525
17 High cost adm Y	0.630	0.630	0.630	1,260	630
18 Cost of inward delivery	-0.525	-0.420	-0.630	-420	-1,260
19 Net terminal dues	0.000	0.000	0.000	-400	400
20 Gain/loss on exchange of services					
21 Low cost adm Y	-0.105	0.000	-0.210	20	-440
22 Avg cost adm Y	0.000	0.105	-0.105	230	-335
23 High cost adm Y	0.105	0.210	0.000	440	-230

Columns B and C provide similar analyses for the cases in which X is a low cost or high cost postal administration. In general, setting outbound international postage rates equal to domestic postage (plus the cost of international transportation) and exchanging equal volumes of letter post items for a fixed terminal dues charge per item results in neither a profit nor a loss from a traditional terminal dues perspective. In real economic terms, however, the gain or loss depends on the relative economic value of the services exchanged. Whereas an average cost postal administration gains in an exchange of delivery services with a high cost postal administration, a low cost postal administration gains in an exchange with an average cost postal administration in similar fashion, in this example, by 0.105 per letter post item (column B, line 22). By the same token, a high cost postal administration loses even more in an exchange with a low cost postal administration, 0.210 per letter post item (column C, line 23).

An interesting detail is that a high cost postal administration does not necessarily lose money on international postal services just because it loses economic value in the exchange of delivery services with a low cost postal administration. A high cost postal administration charges high domestic rates to cover its own expensive delivery network. When the high cost postal administration sends letter post items to other postal administrations, it is receiving delivery for significantly less than its own domestic costs. If, however, the high cost postal administration does not reduce its international postage rates to reflect the fact the cost of delivery in other countries is lower than its domestic costs, then the high cost postal administration may reap a large profit on the outbound letter post items, enough to more than offset losses incurring in delivering inbound letter post items. In effect, the high cost postal administration is overcharging outbound mailers and undercharging inbound mailers. This is one type of distortion induced by the UPU terminal dues system.<sup>234</sup>

The last two columns in Table 6-7 show that the relative fortunes of the origin and destination postal administrations are also affected by the proportion of outbound to inbound mail. If a postal administration imports much more letter post items than it exports, then it suffers more of the losses associated with inbound mail and gains less of the profits associated with outbound mail. In Column D of Table 6-7, X is a low cost postal administration which exports twice as much mail as it imports. As may be expected, in such circumstances, X does well financially. In Column E, X is high cost postal administration which imports twice as much mail as it exports. In this case, X loses 335 in economic value for every 1000 letter post items exported to an average cost postal administration (column E, line 22). It also makes an absolute financial loss because the profits on outbound postage services are now insufficient to offset losses incurred in the delivery of a much larger amount of inbound mail (column, line 12).

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<sup>234</sup> In 1999, the UPU adopted a rule that member countries may not charge less for international postal services than for comparable domestic postal services.

These examples illustrate the main source of economic distortions caused by non-cost-oriented terminal dues, the economic gain or loss incurred in the exchange of delivery services. The moral of these examples is straightforward. If postal administrations X and Y agree on a uniform charge for the delivery of each others' letter post items, then it is better to be a low cost postal administration than a high cost postal administration and better to be a net exporter than a net importer.<sup>235</sup> How much each postal administration wins or loses in the exchange of delivery services depends on several factors including their relative cost levels, the imbalance in volumes exchanges, the relation between actual costs and the terminal dues rate, differences in the composition of mail (e.g., distribution of weights and shapes) and preparation levels (degree of sorting, level of bad addresses), etc. For each postal administration, the profitability of international mail depends on the outbound international postage rates charged. A further distortive effect of the UPU terminal dues system is that it makes it very difficult to align postage rates with the actual costs of international postal services.

#### 6.4.3 Economic model to assess effects of different terminal dues rules

The distortions that results from terminal dues that are not aligned to cost, as noted in the previous section, primarily relate to trade between (formerly) public postal operators. All of these operators are either dominant in the delivery markets of their home country, or have exclusive rights in these markets. Whether terminal dues that are not (or hardly) related to cost also create negative effects for final consumers is unclear, and depends on many factors, including pricing strategies of the postal operators, market power, and possibly elasticity of demand. Such analysis is further complicated by the fact that designated operators are also dominant, or have monopolies, in the retail markets for outbound mail. Therefore, it would be hard to tell whether abusive pricing in the retail market is due to deficiencies in terminal dues, or due to abuse of market power in the retail market itself. Anyhow, it appears clear that terminal dues that are not in line with domestic tariffs will harm the transparency and competitiveness of cross border market generally. Input prices that do not equal cost necessarily create economic distortions as prices no longer signal the scarcity of critical resources. However, it is unclear how these distorted input prices translate into retail tariffs, and what exactly is the effect on consumers in Europe.

The straightforward way to reduce distortions in international letter post markets is for each postal administration to pay other postal administrations the domestic postage that would be charged for delivery of similar letter post items. As noted above, there seems to be consensus on this concept in principle, but little success with achieving it in practice. This section presents a summary of the results of an economic model

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<sup>235</sup> UPU terminal dues are uniform in the transition system. For target system countries, UPU terminal dues are related to domestic 20g priority rates. Since they are limited by a narrow band of floor and cap rates, however, terminal dues in the target system are not too different from uniform charges.

developed to quantify the differences in compensation due under the UPU terminal dues system and the compensation that would be due if comparable domestic postage rates were charged for delivery of similar letter post items.<sup>236</sup> Details of the terminal dues model are presented in Appendix A of this report.

Since an origin postal administration has already collected and forwarded inbound international letter post items, the comparable domestic postage rate in the destination country is not the full retail rate but a rate that reflects the cost of delivery only. In an industrialised country, a 'delivery-only' postage rate is roughly 70 to 80 percent of the full retail rate. Our model assumes a 25 percent bulk discount on public priority tariffs. A discounted domestic rate for mail that been tendered in bulk quantities is an example of a 'delivery-only' rate.<sup>237</sup>

To estimate the economic effects implied by UPU terminal dues, we first estimated bilateral letter post flows within a group of 60 countries: the 27 EU Member States, the 3 EEA Member States, and the EU's 30 largest trading partners (based on data for trade in goods and services). The 30 largest trading partners account for about 90 percent of all exports and imports in goods and services and, presumably, a roughly similar level of postal exports and imports. Letter post volume estimates were developed from UPU data for total inbound and outbound letter post volumes for 2007, in some cases adjusted in light of additional information. Since actual bilateral mail flow data is not publicly available, the model distributes total outbound and inbound volumes to individual trading partners using publicly available data on trade in services between countries. For example, the volume of mail sent from country A to country B is calculated by multiplying the total volume of outbound mail in country A by the percent of total services exported by country A to B. Given the important distinction between intra-EU and extra-EU international mail for this study, this distribution was constrained to ensure that the proportion of EU 30 letter post mail destined to other EU 30 countries matches our estimates of the share on intra-EU traffic in total cross-border volume (see table A-3, Appendix).

The model then estimates, for each of these 60 countries, the domestic bulk mail rate that would be charged for the delivery of a typical letter post item in a typical shipment of inbound letter post items received from a foreign postal administration. Domestic bulk

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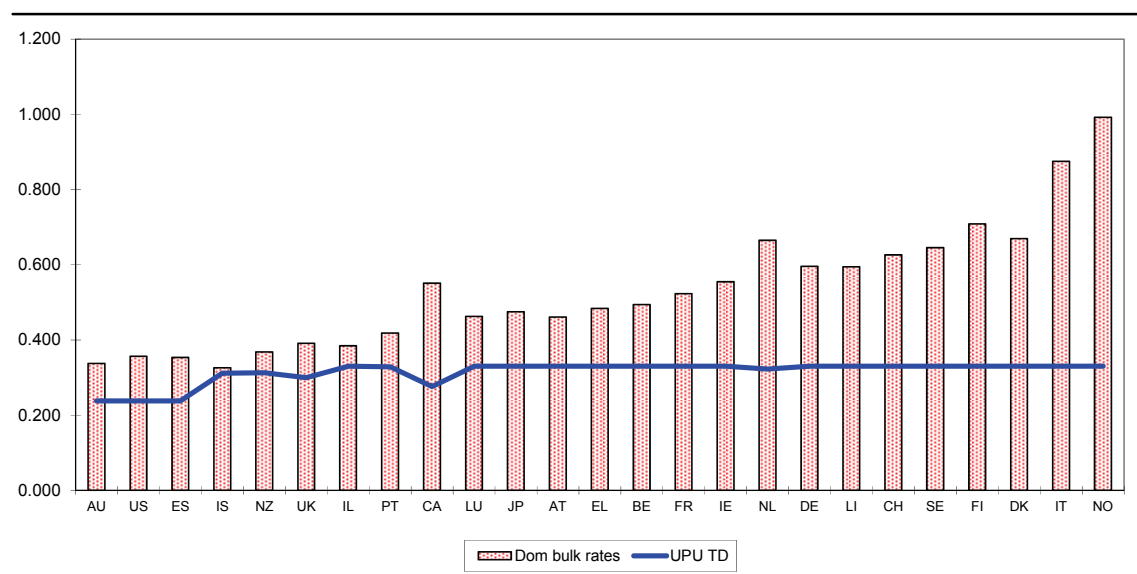
**236** In principle, a similar model is conceivable for other products, e.g. parcels. However, no sufficient data on parcels volumes, prices, and inter-company pricing was available for this study.

**237** From an economic point of view, the proper standard to terminal dues cannot be the full public postage that applies to single piece items because incoming cross-border mail usually comes in large consignments and is usually prepared accordingly. Hence, the terminal dues rate should be a bulk mail rate, i.e. a price that is lower than the price for a full domestic service. This observation is consistent with standards set by the Postal Directive that call for Member States 'to encourage their universal service providers to arrange that in their agreements on terminal dues for intra-Community cross-border mail, the following principles are respected: (i) terminal dues shall be related to the costs of processing and delivering incoming cross-border mail, (ii) levels of remuneration shall be related to the quality of service achieved, (iii) terminal dues shall be transparent and non-discriminatory.' Postal Directive, Article 13.



rates were estimated by using a database of retail priority postage rates for 2008 collected by the UPU. In order to calculate the postage of a hypothetical ‘average letter post item’, it is necessary to know the number and average weight of items in each weight step and shape category (letter, flat, packet). We estimated this distribution based on the letter post profile developed by the International Post Corporation for intra-EU traffic in the 1997 REIMS II agreement, and altered the distribution based on interviews with IPC and several postal operators. Since 1997, it is apparent that the average weight of letter post items increased substantially.<sup>238</sup> We also assumed a division between priority and non-priority letter post, providing a larger discount for non-priority mail (or direct mail). In all cases, we varied these values parametrically to test the sensitivity of our results to variations in assumptions.<sup>239</sup>

Figure 6-8 UPU terminal dues compared to domestic bulk rates, 2008



**238** Weight profiles have an important impact on terminal dues, and postal operators invest substantial energy in assessing the weight structure of their mail. For important bilateral mail flows, the average weight per item — or equivalently, the average number of items per kilogram (IPK) — is determined by regular sampling, and the results are used for billing purposes. According to interviews with DHL Global Mail and Spring, specific IPKs for individual mail flows are developed within REIMS for three stylised products and within the UPU target system for all letter post items combined. According to data of the International Post Corporation from 1997, there were then 27.45 letter post items per kg. A more recent survey by the UPU reports a worldwide average of approximately 15 items per kg. However, based on our interviews, it appears that mail in Europe, on average, is somewhat lighter than the world average. Our model assumes an IPK of 20 and a weight structure based on the 1997 REIMS data but with more flats and packets.

**239** In the results shown in this section, the model uses discounts of 25 percent for priority inbound international mail and 40 percent for non-priority inbound international mail (direct mail) compared to the domestic retail priority letter post rates. The proportion of priority mail is assumed to be 60 percent. These discounts, proportions, and the distribution of weights and shapes in a typical shipment of letter post items are assumed to be uniform for all countries.

Figure 6-8 displays, for all designated operator in the target system, our estimates of the domestic bulk rates and UPU terminal dues charges in 2008 for a typical letter post item. This figure clearly illustrates that for most countries either the floor or the cap rate applies. Table 6-8 displays our estimate of domestic bulk rates for all 60 countries included in the model, and groups the rates into three categories: high, average, and low tariffs.

Table 6-8 Price level and estimated domestic bulk rates for typical letter post item (all countries)

EU30			Non-EU30		
Country	Price level domestic bulk rate	Value (SDR)	Country	Price level domestic bulk rate	Value (SDR)
AT	High	0.461	US	Average	0.357
BE	High	0.494	CH	High	0.626
BG	Low	0.168	RU	Low	0.109
CY	Low	0.246	CN	Low	0.167
CZ	Average	0.331	JP	High	0.475
DE	High	0.596	TR	Average	0.304
DK	High	0.670	CA	High	0.551
EE	Low	0.259	IN	Low	0.042
GR	High	0.484	AE	Low	0.181
ES	Average	0.353	AU	Average	0.338
FI	High	0.709	SG	Low	0.126
FR	High	0.523	KR	Low	0.186
HU	Average	0.354	BR	Low	0.202
IE	High	0.555	SA	Average	0.321
IT	High	0.875	ZA	Low	0.249
LT	Average	0.309	MX	Average	0.306
LU	High	0.463	UA	Low	0.111
LV	Average	0.354	IL	Average	0.385
MT	Low	0.157	HR	Average	0.354
NL	High	0.665	MA	High	0.484
PL	High	0.417	DZ	Low	0.158
PT	High	0.418	EG	Low	0.049
RO	Low	0.106	MY	Low	0.064
SE	High	0.645	IR	Low	0.128
SI	Low	0.243	NG	Average	0.333
SK	Average	0.354	TN	Low	0.183
GB	Average	0.391	TH	Low	0.044
IS	Average	0.326	QA	Low	0.087
LI	High	0.595	AR	Low	0.232
NO	High	0.992	KZ	Low	0.110

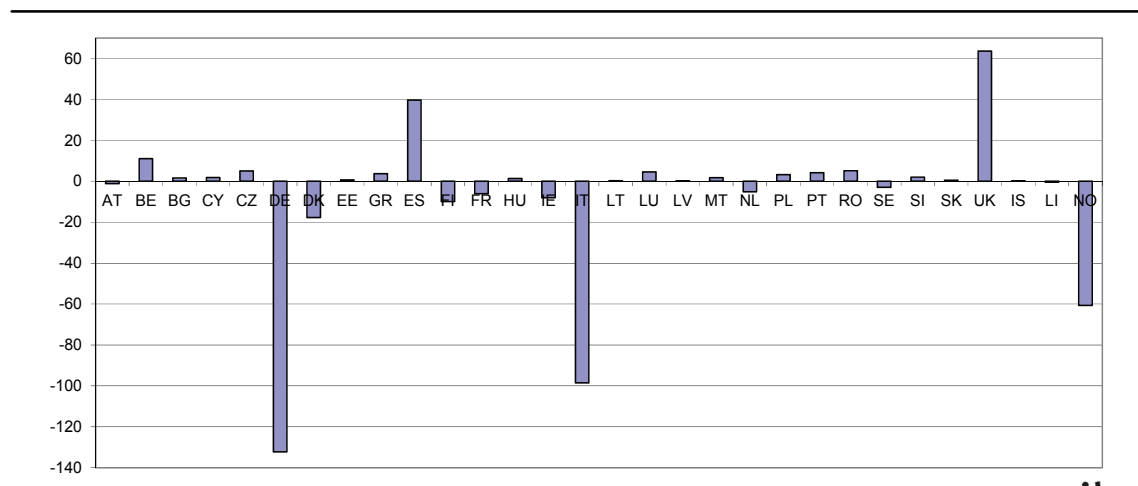
Source: WIK-Consult based on UPU data on national postages as of 30 September 2008, and an estimated weight profile.

Similarly as for domestic bulk rates, the model estimates, for alternative terminal dues systems, the amount of terminal dues that would be charged for a typical letter post item in a typical shipment of inbound letter post items.

The following figures (figures 6-8 to 6-10) show, for each of the EU 30 countries, the estimated gains or losses in millions of SDR using three terminal dues systems as opposed to domestic postage. The three terminal dues systems are:

- *UPU 2008 terminal dues.* The model reflects the charges applicable under the UPU's target and transitional terminal dues regimes in 2008. It takes into account the caps and floor rates included in the target system.
- *UPU 2008 without cap or floor.* Same as above without the caps and floor rates for target system countries.
- *REIMS II.* The model uses the terminal dues rules of the 1997 REIMS II agreement as applied to 2008 postage rates.<sup>240</sup> According to the REIMS II agreement, the percentage of the domestic postage for priority mail is 80 percent, and for non-priority mail, there is an additional discount of 10 percent. In addition, the REIMS II rule provided a floor rate.

Figure 6-9 Estimated gains or losses under UPU 2008 terminal dues, compared to domestic bulk rates



<sup>240</sup> REIMS III agreement (took effect on 1 January 2008) and REIMS IV (took effect on 1 January 2010) replaced the REIMS II agreement which had taken effect in September 1999. However, public information in order to calculate terminal dues is only available for REIMS II by a version which is retyped from the original; see [http://www.jcampbell.com/Reference/eu/199710\\_reims2\\_text.pdf](http://www.jcampbell.com/Reference/eu/199710_reims2_text.pdf).

Figure 6-10 Estimated gains or losses under UPU 2008 terminal dues without cap or floor, compared to domestic bulk rates

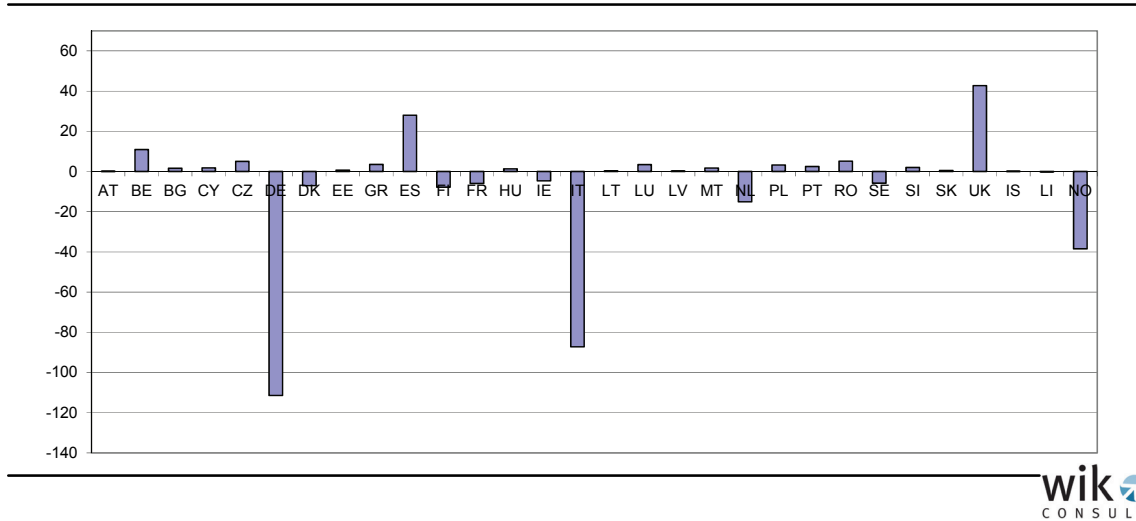
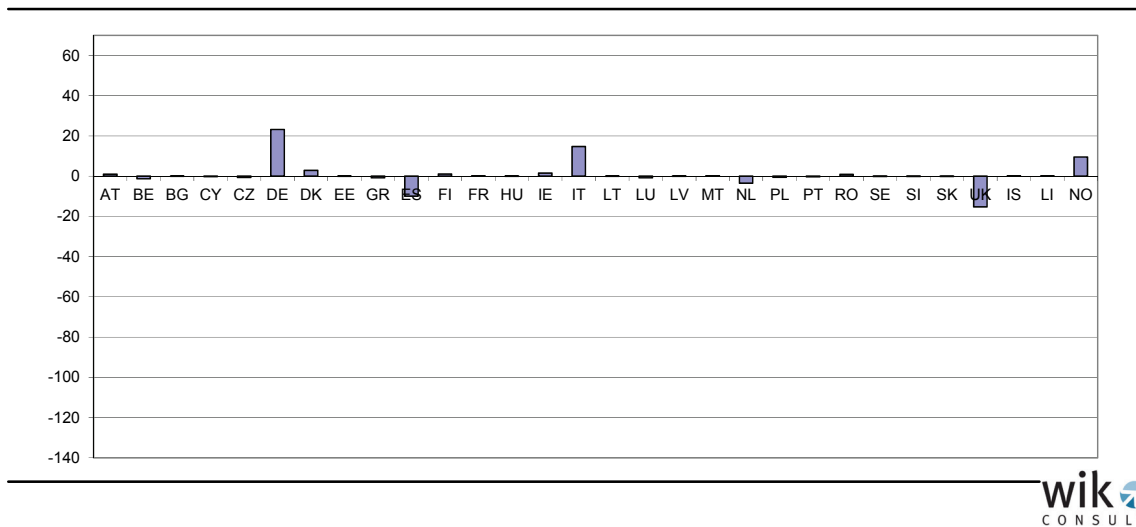


Figure 6-11 Estimated gains or losses due to REIMS II terminal dues, compared to domestic bulk rates



These figures should be interpreted as illustrative of overall trends and not as indications of actual gains or losses. Absence of public available data makes it impossible to calculate reliable estimates of actual values. However, by testing the sensitivity of the results to different inputs, we believe it is possible to conclude that the results presented below are fairly illustrative for the effects produced by different terminal dues regimes.

Overall, Figure 6-9 suggests that Italy, Germany, and Norway suffer most from terminal dues according to the current UPU rules. This negative result is due to their relatively high domestic postage rates and a strong inbound imbalance. On the other hand, net exporters and/or countries with average or low domestic postage benefit from the UPU terminal dues rules. In particular the United Kingdom and Spain appear to benefit. All Member States collectively suffer from traffic with non-EU countries: Under UPU terminal dues, they receive significantly less terminal dues than with domestic bulk rates.

Figure 6-10 suggests that these gains and losses would be slightly reduced by using the UPU terminal dues rules but eliminating the floors and caps on terminal dues rates. However, the general picture does not change much. Figure 6-11 shows that the gains or losses are substantially eliminated by the approach in the REIMS II terminal dues agreement. In our model, and in reality, the REIMS II terminal dues are much closer to domestic bulk rates than UPU terminal dues.

The terminal dues model helps to clarify why some countries have continued to support the UPU terminal dues regime. Countries with low or average domestic tariffs and net outbound imbalances prefer UPU terminal dues over prices rules that are based on domestic postage. On other hand, countries with high domestic postage, for example Italy, Germany or Norway, benefit when they change from the UPU rules to a terminal dues regime that is better aligned with domestic postage. Thus, the model offers a plausible explanation for, for example, the exit of the UK's Royal Mail and Spanish Correos from the REIMS agreement (which is similar to the domestic bulk rate).

Within the EU, the model illustrates that some designated operators lose and others benefit from UPU terminal dues. Overall, the EU as a region loses substantially against other world regions if UPU terminal dues are applied rather than domestic tariffs because the EU has relatively high tariffs by world standards and is, on balance, a mail importing region.

## 6.5 Controlling bypass: remail, ETOEs, and IMPC codes

Where UPU terminal dues are unrelated to the actual costs of delivery, there is an economic incentive for a mailer or the postal administration to bypass the UPU terminal dues regime. If a destination postal administration charges *more* to deliver inbound international mail than equivalent domestic mail, it would pay a foreign mailer to avoid the UPU system and tender the mail directly to the destination postal administration, either by physically taking the mail to the destination country ('direct access' or 'direct injection' or 'ABB remail') or by producing the mail in the destination country ('non-physical remail' or 'distant printing' or 'hybrid drop shipping'). If the destination postal administration charges *less* to deliver inbound international mail than equivalent

domestic mail, then it would pay the mailer to shop around for a postal administration that is willing to forward the mail to the destination postal administration for a charge equal to terminal dues plus a small fee ('ABC remail').

The Adrenale Report described incentives for bypass created by the UPU's terminal dues policies as follows:

Prior to the turn of the century, the system of average costing and differentiated rates applied, enabled [sic] several price arbitraging schemes that allowed intermediaries, competing carriers and other traditionally national postal operators to prosper considerably by offering cross-border services, such as direct injection, re-mailing and hybrid drop-shipping. These and other bypass methods took advantage of rate de-averaging and pricing loopholes along certain origin-destination routes.<sup>241</sup>

As described in the previous section, in the 1999 Beijing Congress endorsed the principle of aligning terminal dues with equivalent domestic postage rates, but the UPU is so far a long way from complete alignment. The threat of bypass remains ever present.<sup>242</sup> The UPU has therefore also adopted measures to limit the threat of bypass. These are described in this section.

### 6.5.1 Remail

Charging different rates for the same delivery service naturally encourages senders and designated operators to 'shop around' for the best place to post international mail. To understand how this works in practice, consider the situation of DO-A, a designated operator in an industrialised country A.<sup>243</sup> Typically, DO-A will postage rates for outbound international letter post so that total revenues earned in the international letter post service (postage rates paid by senders and terminal dues payments received from foreign designated operators) approximately equal total costs incurred (costs incurred dispatching outbound letter post, payments of terminal dues to foreign designated operators, and costs incurred in delivering inbound letter post received from abroad).

<sup>241</sup> Adrenale Report (2010), p. 27. In addition to rate de-averaging and pricing loopholes, bypassing the UPU system gave mailers a choice among providers of international postal services. Choices tended to produce better services at lower costs.

<sup>242</sup> Adrenale Report (2010), p. 3 ('Although the market is competitive, cooperation between market participants and even former rivals has also emerged through a wide array of partnerships and joint ventures that have encouraged service providers to operate with bilateral or multi-lateral arrangements that by-pass the UPU systems of remunerations for letter, flats, packets, parcels and express mail items exchanged internationally').

<sup>243</sup> In this discussion, we refer to countries in the target system as industrialised countries and countries in the transitional system as developing countries. Although the UPU changed its terminology from industrialised/developing to target/transitional in the 2004 Convention, the older terms are easier to follow.

Since, as shown in the previous section, the terminal dues DO-A receives are usually less than the actual cost of delivering inbound letter post items, its outbound postage rates include not only the actual costs of outbound service but also an additional amount to cover losses incurred in delivering inbound letter post mail. So long as there is no competition in the outbound market, this is not a commercial problem. As a monopolist, DO-A can charge its outbound customers whatever international postage rates it needs to make ends meet.<sup>244</sup>

Whether this situation is unfair to the outbound customers of DO-A is unclear. While outbound customers pay a rate that is well above the actual costs of DO-A, they are also receiving a service that is worth significantly more than the costs of DO-A. As explained in section 6.4.2, above, the hidden value is due to the fact that the terminal dues that DO-A pays to foreign designated operators (at least those in industrialised countries) understate the value of the service provided. Just like DO-A, foreign designated operators incur losses in delivering the international letter post items sent by customers of DO-A. There is no way to tell whether the outbound customers of DO-A are being overcharged or undercharged without detailed analysis of the costs of both origin and destination postal operators.<sup>245</sup>

What is clear is that the UPU terminal dues system grants foreign designated operators substantially different, and generally lower tariffs than bulk mailers in the EU can access domestically. As described in the previous section,<sup>246</sup> the net result for any given designated operator depends on whether it is net importer or a net exporter of letter post items and whether its costs are relatively higher or lower than other designated operators. For example, if DO-A is a high cost operator with a large net inflow of mail, then it is losing a lot of money on inbound mail and its customers for outbound services are likely subsidizing foreign mailers who send letter post items to country A. It is also clear that limiting access to terminal dues to designated operators distorts competition between designated operators and non-designated operators. And finally, it is clear that the disconnect between prices and costs leaves customers unable to allocate their mailing resources intelligently.

The accounting of the UPU terminal dues system naturally creates an opportunity for a commercially-minded postal operator. Consider DO-B, a designated operator in country B. DO-B may be able to offer customers of DO-A a better price for outbound international letter post items. For DO-B, customers attracted from DO-A create marginal revenue that DO-B would not normally earn since the customers of DO-A live in country A and not country B. So DO-B can price this new service at marginal cost

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<sup>244</sup> Of course, it may be questioned whether such an approach is consistent with the cost-oriented standards of the Postal Directive since mailers may be, in effect, required to pay for services that they are not buying. See Postal Directive, Articles 12 to 14.

<sup>245</sup> In other words, the arbitrary level of terminal dues fails to state the true costs of delivery incurred by DO-A and its foreign partners.

<sup>246</sup> See section 6.4.2, above.

plus a small profit. Like DO-A, DO-B will have to cover costs incurred in dispatching outbound letter post and payments of terminal dues to foreign designated operators. Unlike DO-A, DO-B will not have to cover losses that result from delivering inbound letter post items for UPU terminal dues since, by attracting DO-A's customers, DO-B is only adding to its outbound volume not to its inbound volume. Indeed, if DO-B is a designated operator from a developing country, then it is entitled to foreign delivery of its letter post items for even lower terminal dues than DO-A (a industrialised country), so DO-B has an even greater competitive advantage.

There are several ways that DO-B can gain customers from DO-A. Customers of DO-A can send their mail in bulk to DO-B by private express (a relatively small cost per letter). Mail which has been posted in a country other than the country where the sender is residing is usually called '*re-mail*'. Or customers of DO-A can produce their mail in a facility in country B and give to DO-B locally. This is called 'nonphysical remail' since it has the same effect as remail but does not involve physical transportation of mail from country A to country B. A third possibility is that DO-B could open an office in country A to serve new customers and dispatch letter post items directly from country A to the destination countries. In this case, DO-B's branch office in country A is called an 'extraterritorial office of exchange' or ETOE. ETOEs are discussed in the next section.

Remail has long been condemned by the UPU. In the 1924 Stockholm Congress, a reservation was added to the Convention that disclaimed the obligation of any postal administration to deliver correspondence taken out of a country and posted back into the same country from abroad. At that time, it must be recalled, there were no terminal dues. It is easy to understand why postal administration A would not accept the practice of postal administration B just over the border offering cheap postal service to addressees in country A when postal administration B was in fact using postal administration A to deliver the mail and postal administration A was doing so free of charge to postal administration B.

This anti-remail reservation was not added to the Convention until 1974.<sup>247</sup> Although extended in some respects since 1924, it was still directed against letter post items that a sender residing in country A posts, or in some way caused to be posted, in country B for delivery to addressees in country A. This version of remail is usually called 'ABA remail'. The 1979 Rio de Janeiro Congress extended the anti-remail article to include letter post items which a sender residing in one country (A) posts or causes to be posted in a second country (B) for delivery in a third country (C), usually called 'ABC remail'.<sup>248</sup> The anti-remail article has been amended often since 1979, mostly in minor respects.

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<sup>247</sup> UPU, Convention (1974), Article 20.

<sup>248</sup> UPU, Convention (1979), Article 23.



In the current Convention (2008), the anti-remail article is Article 26. The full article reads as follows:

Article 26. Posting abroad of letter-post items

1. A designated operator shall not be bound to forward or deliver to the addressee letter-post items which senders residing in the territory of its member country post or cause to be posted in a foreign country *with the object of profiting by the more favourable rate conditions there.*

2. The provisions set out under 1 shall be applied without distinction both to letter-post items made up in the sender's country of residence and then carried across the frontier and to letter-post items made up in a foreign country.

3. The designated operator of destination may claim from the sender and, failing this, from the designated operator of posting, payment of the internal rates. If neither the sender nor the designated operator of posting agrees to pay these rates within a time limit set by the designated operator of destination, the latter may either return the items to the designated operator of posting and shall be entitled to claim reimbursement of the redirection costs, or handle them in accordance with its national legislation.

4. A designated operator shall not be bound to forward or deliver to the addressees letter-post items which senders post or cause to be posted in large quantities in a country other than the country where they reside if the amount of terminal dues to be received is lower than the sum that would have been received if the mail had been posted in the country where the senders reside. The designated operator of destination may claim from the designated operator of posting payment commensurate with the costs incurred and which may not exceed the higher of the following two amounts: either 80% of the domestic tariff for equivalent items, or the rates applicable pursuant to articles 28.3 to 28.7 or 29.7 [terminal dues provisions], as appropriate. If the designated operator of posting does not agree to pay the amount claimed within a time limit set by the designated operator of destination, the designated operator of destination may either return the items to the designated operator of posting and shall be entitled to claim reimbursement of the redirection costs, or handle them in accordance with its national legislation.<sup>249</sup>

In sum, Article 26 provides that the DO in the destination country — the DO that delivers the letter post items and receives the terminal dues — may refuse to deliver or

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<sup>249</sup> UPU, Convention (2008), Article 26.

surcharge remailed items under certain circumstances. If the remail is ABA remail which the sender has posted or caused to be posted in another country ‘with the object of profiting by the more favourable rate conditions there’, then the destination DO may demand that the sender or the forwarding DO pay a surcharge (‘payment of the internal rates’) in addition to whatever postage or terminal dues has already been paid by the sender or the forwarding DO. If the remail is ABC remail which the sender has posted or caused to be posted in another country ‘in large quantities’ and thus caused a reduction the terminal dues which the destination DO can collect from the forwarding DO, then the destination DO may demand from the forwarding DO either 80 percent of the domestic postage or the terminal dues rate applicable to industrialised countries without the cap. This payment will almost necessarily be higher than the terminal dues that the DO would have received if the sender had posted the letter post items with its national DO.

Article 26 affects not only where companies post their mail but where they produce their mail. Suppose a company has offices in several countries but chooses to produce statements of account for all customers in a central location and post the statements from there. In this case, each office of the company may be said to have violated Article 26 except for the office that happens to be located in the country where the mail is produced, because every other office has ‘caused to be posted’ letter post items in a country other than the country where it resides. The destination DO may surcharge or refuse to deliver the statements of account received from the central mail production facility. Each DO may decide for itself where a company ‘resides’ and when it has ‘caused to be posted’ letter post items outside the country where it resides. Indeed, Article 26 may be enforced by any DO forwarding remail as well as by the destination DO that delivers the remail. For this reason, DOs can call upon their colleagues in other DOs to refuse to do business with companies that tender their mail to the ‘wrong’ DO.

As noted above, interception or surcharging remail is discretionary for DOs, not mandatory. Nonetheless, in order to deter remail, it is unnecessary for Article 26 to be enforced more often than occasionally. Bulk mailings are costly and often time-sensitive. Any company that loses the value of a large mailing due to costs or delays associated with remail procedures is likely to think twice about using remail in the future.

Remail, it should be noted, is a legal concept, not a business concept. A multinational company, like a company operating exclusively in one country, would normally organise its mail production wherever it can get the best service for the best price. The methods and siting of mail production — indeed of any corporate activity — would be reviewed from time to time in light of changes in costs and facilities. From a mailer’s perspective, whether or not some of this mail is considered remail by the UPU is unrelated to normal business considerations.

### 6.5.2 Extraterritorial offices of exchange and IMPC codes

The UPU concept of an ETOE — an extraterritorial office of exchange — is an extension of the concept of remail. The UPU uses the term ‘extraterritorial office of exchange’ or ETOE to refer to an office which a designated operator (DO) has established outside of its national territory, i.e., outside of the national territory for which it is the designated operator. Using an ETOE, an enterprising DO can collect postal items in another country without waiting for senders transport the postal items to it. Indeed, unlike with remail, an ETOE does not have to transport the postal items (physically or non-physically) to the DO’s national territory for international posting. An ETOE can forward the postal items directly from the origin country to the destination DO, so ETOE competition can be more efficient than remail competition. Like remail, the UPU concept of an ETOE implies that postal markets are, or should be, divided into national territories. If each DO did not have an assigned national territory, then an office outside that territory could not be labelled ‘extra-territorial’.

Even more than remail, ETOEs raise the prospect of genuine competition in the international postal sector among providers of postal services who are reasonably equally equipped in resources and expertise. Nor is the prospective competition limited to the capabilities of designated operators. Some designated operators would license private delivery services to act as their agents in establishing offices outside their national territory. ETOEs would offer senders of international mail would have a real choice among established public postal operators all with access to the legal privileges of the UPU.

Although not all agreed, in 2004 the majority of UPU members concluded that expansion of ETOEs should be restricted.<sup>250</sup> The Bucharest Congress adopted Resolution C44 which ruled that ETOEs were not entitled to exchange letter post and parcel post items under the terms of the UPU Convention.<sup>251</sup> The principal provisions of the resolution were:

- *Establishment of ETOEs.* The agreement of a UPU member country must be obtained, in accordance with its national legislation, by any other countries or postal administrations seeking to establish ETOEs within that country.

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<sup>250</sup> The UPU policy was developed in the CA’s Management of the Union’s Work Project Team in the period 2000 to 2004. Within the project team, there was substantial disagreement among postal administrations. The UK proposed to amend the Convention allow ETOEs to operate under the acts of the UPU without restriction. The United States and Canada proposed to prohibit ETOEs from acting under the acts of the UPU. See UPU, Council of Administration, Management of the Union’s Work Project Team, ‘Extraterritorial Offices of Exchange (ETOE): Report by Brazil, Working Group Coordinator’, CA MWU PT 2003.2–Doc 4a (Sep. 2003).

<sup>251</sup> UPU, 2004 Bucharest Congress, Resolution C44/2004, *Letter Post Manual* (2005), p. 41. The primary justification cited in this resolution was the fact the terminal dues were not aligned with domestic postage: ‘Considering that the compensation currently received under terminal dues is premised on the mutual exchange of mails in carrying out the universal service obligation, and that this compensation does not necessarily cover the related costs of the delivering administration, particularly in industrialized countries’.

- *Postal treatment of postal items received from ETOEs.* Postal items sent from ETOEs are to be treated as commercial items not subject to the acts of the UPU, unless the destination postal administration has announced a policy agreeing to apply the acts of the UPU to the items it receives from ETOEs. The destination postal administration can decide whether to charge domestic postage or terminal dues for delivery of such items.
- *Customs treatment of postal items received from ETOEs.* Commercial customs clearance procedures of the destination country shall apply to items sent from ETOEs, unless the destination postal administration has agreed to otherwise.
- *Use of UPU documentation:* No documentation provided for under the acts of the UPU may be used for any purposes relating to items sent from ETOEs to the postal administration of the destination country — including for purposes relating to airlines, to Customs, and to other parties — unless the destination postal administration has agreed to apply the acts of the UPU.

To implement this resolution, the Bucharest Congress instructed the Postal Operations Council ‘to adopt procedures enabling the issue and withdrawal’ of codes for international mail processing centres — called ‘IMPC codes’ — for ETOEs. An IMPC code is a six character code that indicates which office has dispatched or should receive an international postal shipment. For example, DEFRAA refers to a country (DE), a location in the country (FRA), and a specific office (A), in this case, the office of the Deutsche Post at Frankfurt Airport, Germany. Since UPU regulations require use of IMPC codes for postal items exchanged between DOs, it is impossible to interact with the international postal system without an IMPC code for the originating office.

The 2008 Geneva Congress, in Resolution C63, reaffirmed the policy of the 2004 Bucharest Congress. Indeed, the Geneva Congress appears to go further by restricting the issuance of IMPC codes to DOs for use in their own national territories and endorsing a suspension of IMPC codes for non-designated operators.<sup>252</sup> These measures will apparently block the establishment of new ETOEs despite the permission of the host country and the destination DO.

Unlike remail restrictions, ETOE restrictions affect competition not only in letter post items but in all types of postal services governed by the UPU. The acts of the UPU govern the letter post and parcel post directly. In addition, UPU documentation and customs privileges are used by many DOs in providing express services.

Again, it should be noted that the idea of an ETOE is a legal concept rather than a business concept. In most service sectors, multinational operations are an accepted part of business strategy. In aviation, telecommunications, express and freight, finance,

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<sup>252</sup> UPU, 2008 Geneva Congress, Resolution C63/2008, *Letter Post Manual* (2009), p. 77.

and consulting — give a few examples, — the largest providers are expanding to serve global markets. Today, mobile phone users in many countries choose between American, British, French, and German networks (among others) without ever considering the ‘nationality’ of the carrier. Indeed, for the largest providers of postal services, as well, a multinational strategy may be a necessary and desirable adaptation to the changing economics of the sector. One large EU designated operator has characterised the emergence of ETOEs as ‘a normal commercial evolution in an increasingly liberalized international postal market’.<sup>253</sup>

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**253** UPU, Council of Administration, Management of the Union’s Work Project Team, ‘Extraterritorial Offices of Exchange (ETOEs): A Consignia viewpoint’, CA MWU PT 2002.2–Doc 4b (Nov. 2002). See also UPU, Council of Administration, Management of the Union’s Work Project Team, ‘Summary of Triangle report on Extraterritorial Offices of Exchange (ETOEs): Paper by Great Britain (Royal Mail), CA MWU PT 2003.1–Doc 4b (Mar. 2003).



## 7 Coordination of the Positions of Member States at the UPU

The Treaty Establishing the European Union obliges EU Member States to coordinate their policy positions and support EU policies whenever they participate in an intergovernmental organisation such as the Universal Postal Union. For some categories of international negotiations, a higher degree of coordination is required because institutions of the European Union are vested with 'exclusive competence' to determine, in consultation with the Member States, the position of the EU as a whole.

This chapter considers the coordination of positions of EU Member States in advance of the 2012 UPU Congress in Doha. It reviews the history of policy coordination in recent UPU Congresses, relevant EU law, and the scope of issues that, we suggest, should be coordinated.

### 7.1 Coordination of EU Member States at prior UPU congresses

All of the Member States of the European Union and the European Economic Area are members of the Universal Postal Union. In the most recent Congress of the UPU, held in Geneva in 2008, representatives from these countries and their postal administrations (they did not become 'designated operators' until after the Geneva Congress) accounted for approximately one-quarter of the 2140 registered delegates. Member States and their postal administrations participated in the Geneva Congress as individual country delegations. At the conclusion of the Congress, however, the 27 Member States of the EU filed a joint declaration stating their common intention to apply the acts of the Geneva Congress in accordance with their obligations under EU laws and the General Agreement on Trade in Services (GATS). Similarly, the 3 Member States of the European Economic Area filed a common declaration indicating their intention to apply the acts of the Geneva Congress in accordance with their obligations under the EEA agreement with the EU and the GATS. For EU Member States, the common declaration has been the most tangible product of a broader effort by the Commission and the Council to foster coordination in recent UPU congresses.

#### 7.1.1 Origin of the common declaration of EU Member States

In the 1992 *Postal Green Paper*, the starting point for modern EU postal policy, the Commission proposed that the Community should be actively involved in future congresses of the UPU to avoid possible tensions between decisions of the UPU and

obligations under European treaties and legislation. The *Postal Green Paper* expressed particular concern about the UPU's policies on terminal dues and remail.<sup>254</sup>

While the *Postal Green Paper* did not lead to major changes in the approach of Member States towards UPU congresses, it did apparently stimulate one common measure. At the end of the 1994 Seoul Congress, the then 12 Member States of European Union issued a joint declaration proclaiming that they would apply the decisions of Congress in accordance with the requirements of EU law:

The delegations of the member countries of the European Community will apply the Acts adopted by this Congress in accordance with their obligations pursuant to the Treaty establishing the European Community.<sup>255</sup>

Similarly, the then 5 Member States of the European Economic Area — Austria, Finland, Iceland, Norway, and Sweden — declared that they would apply the acts of the UPU 'in accordance with their obligations pursuant to the agreement establishing the European Economic Area', which is to say, in accordance with EU law.<sup>256</sup>

In the next UPU Congress, the 1999 Beijing Congress, the then 15 Member States of the European Union expanded upon their joint declaration by adding a reference to their obligations under the 1994 General Agreement on Trade in Services:

The delegations of the member countries of the European Union declare that their countries will apply the Acts adopted by this Congress in accordance with their obligations pursuant to the Treaty establishing the European Union and the General Agreement on Trade in Services (GATS) of the World Trade Organization.<sup>257</sup>

Again, the now 3 EEA Member States — Iceland, Liechtenstein, and Norway — declared that they would apply the acts of the UPU in accordance with their obligations as members of the EEA.<sup>258</sup>

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<sup>254</sup> European Commission, *Green Paper on the Development of the Single Market for Postal Services*, COM(91) 476 (11 Jun 1992), p. 246-47, 251-52.

<sup>255</sup> UPU, 1994 Seoul Congress, Declaration II, *Constitution Etc.* (1995), Vol. 1, p. A29.

<sup>256</sup> UPU, 1994 Seoul Congress, Declaration III, *ibid.*, p. A30.

<sup>257</sup> UPU, 1999 Beijing Congress, Declaration VIII, *Constitution Etc.* (2000), Vol. 1, p. A34.

<sup>258</sup> UPU, 1999 Beijing Congress, Declaration V, *ibid.*, p. A32. Between the 1994 Seoul Congress and the 1999 Beijing Congress, Austria, Finland, and Sweden left the EEA and joined the EU, and Liechtenstein joined the EEA.



### 7.1.2 Coordination of positions of Member States at the 2004 Bucharest Congress

On 27 May 2004, barely three and half months before the twenty-third UPU Congress convened in Bucharest, the Commission sent a communication to the Council summarising key policy issues to be addressed by the Bucharest Congress and urging an appropriate level of policy coordination among the Member States.<sup>259</sup> The communication observed that under EU law, the European Union is vested with exclusive competence to negotiate international agreements in some areas of policy by virtue of the Common Commercial Policy and shares competence with Member States in areas where ‘the subject-matter of the agreement falls within the competence of the Community and in part within that of the Member States’. The communication further noted that in all cases Member States are obliged to coordinate their positions and eliminate incompatibilities between EU law and prior international treaties.<sup>260</sup> The communication highlighted three areas of EU policy that the Commission considered particularly affected by acts of the UPU: the internal market for postal services, competition policy, and trade policy.<sup>261</sup>

The Commission’s 2004 communication then pointed out the need for Member States and the Commission to work collaboratively ‘to ensure that the rules and the positions taken by Member States in the coming UPU Congress are compatible, complementary and coherent with EC Legislation’ and that ‘the principles of the WTO and GATS and EC competition policy should be also reflected during the negotiations in Congress’.<sup>262</sup> Specifically, the Commission called upon Member States to give their collective support for several policy principles or objectives in negotiations at the Bucharest Congress, including the following:

(1) *The principle of independent regulation, which includes a separation between regulatory duties and postal operations in the state functions, both legal and operational.* Furthermore, public ownership of an operator should not conflict with the State duty to regulate the

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**259** In 2004, the Commission well summarised the need for better coordination of Member State policies in advance of the 2004 Bucharest Congress of the UPU See European Commission, *Communication from the Commission to the Council the Universal Postal Union Congress 2004*, COM(2004) 398.

**260** *Ibid.*, paragraphs 15-20. Paragraph 16 of the communication refers to Article 19 of the EU Treaty, the duty of coordination, which is now Article 34 of the Treaty on the European Union. Paragraph 17 of the communication refers to Article 133 of the EC Treaty, the Common Commercial Policy, which is now Article 207 of the Treaty on the Functioning of the European Union. Paragraph 19 of the communication refers to the European Court of Justice, Opinion of the Court of 19 March 1993, [1993] ECR 1061. In that opinion, the Court concluded that some portions of a convention relating the conditions of workers fell within the exclusive competence of the Commission, citing the AETR doctrine (see paragraphs 9 and 26), and some portions fell within the shared competence of the Commission and the Member States (see paragraphs 36 to 39).

**261** European Commission, *Communication from the Commission to the Council the Universal Postal Union Congress 2004*, COM(2004) 398, paragraphs 21-34.

**262** *Ibid.*, paragraphs 40-41 (emphasis added).

provision of universal services and ensure fair competition in the market when this exists.

(2) The UPU framework should mention and *incorporate in its operation the possibility for Members to open to competition the provision of postal services and universal postal services* (including international services).

(3) *The quality of postal services and its improvement*, taking into account the needs of users and the economic provision of the services, should be fundamental to the regulation of international postal services.

(4) The UPU framework should *reflect the market reality where postal services are increasingly being provided by organisations legally separate from the administration*, sometimes on a commercial basis and through commercial organisations.

(5) The principle that *domestic postal tariffs and terminal dues must reflect the cost of provision of the service* and that the levels of remuneration are related to the quality of service achieved and are transparent and non-discriminatory. . . .

(6) *Users must be given an increasing role* in the development of the regulatory framework to develop and ensure the quality provision of universal postal services.

(7) *Standardisation work should accommodate the existence of multiple operators* and the participation of these operators, users and customers in its development, whenever appropriate.<sup>263</sup>

As proposed in the Commission's communication, on 19 July 2004, the Council unanimously adopted a resolution urging Member States to coordinate their positions at the Bucharest Congress with each other and with the Commission in order to ensure compatibility with EU law and the GATS. The Council's resolution declared in part that the Council:

6. *Emphasises that Member States should, in association with the Commission, coordinate among themselves* in preparing the preliminary technical drafts and in agreeing the negotiating procedure of the Congress;

7. *Underlines that Member States should ensure, in association with the Commission, that they do not undertake commitments which would not be compliant with the Community acquis* and that they will apply the Acts adopted by the Congress in accordance with their

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<sup>263</sup> Ibid., paragraph 46 (emphasis added).

obligations pursuant to the Treaty establishing the European Union, and specifically their obligations arising from trade agreements or from existing Community legislation on the free provision of postal services and on competition.<sup>264</sup>

The 2004 Bucharest Congress met from 15 September to 5 October 2004. Despite the Council's resolution, EU Member States participated in the 2004 Bucharest Congress as individual countries with little apparent coordination on the policy issues cited by the Council. Member States offered individual proposals and took individual, and sometimes inconsistent, positions on issues such as the treatment of ETOEs (a major topic in the Bucharest Congress),<sup>265</sup> restrictions on re-mail,<sup>266</sup> the universal service obligation,<sup>267</sup> terminal dues,<sup>268</sup> and quality of service targets.<sup>269</sup> Member States collectively offered no joint proposals to advance EU policies with respect to the key policy issues identified in the Commission's Communication and the Council resolution.

On the other hand, it must be noted that the late date of the Council's resolution made compliance by the Member States extremely difficult. Rules of the Bucharest Congress set a deadline for submission of proposals that was two months before the opening of Congress, i.e., about 15 July 2004.<sup>270</sup> Therefore, individual proposals of the Member States were already submitted by the time the Council adopted its resolution on 19 July 2004. Moreover, in the less than two months between adoption of the Council resolution and opening of the Bucharest Congress, it would be difficult to forge a common position among 25 Member States on many of the policy proposals pending before the Congress. Although the Council's resolution referred broadly to 'the principles of the WTO and GATS and EC competition policy', neither the Commission nor the Council

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**264** The text of the resolution is provided in Council of the European Union, 11082/04 (9 Jul 2004). Adoption of the resolution is announced in Council of the European Union, Press Release 11161/04 (19 Jul 2004), p. 19 (emphasis added).

**265** In the Bucharest Congress, the debate on a policy towards ETOEs came down to two alternative proposals by Canada, Japan, Spain, and USA (Proposal 48) and Belgium, Germany, Netherlands, Sweden, Switzerland (Proposal 49). The latter was generally more pro-competitive and consistent with the EU postal acquis. Greece and Slovenia offered a third approach (Proposal 75). During the debate in Committee 3, it appears that, in addition the sponsors, Portugal supported Proposal 48 and Denmark supported Proposal 49. The final votes of UPU member countries are not recorded in the minutes. See UPU, 2004 Bucharest Congress, C3 Rapp 2, p2; C3 Rapp 4, pp. 1-2.

**266** Proposals relating to the anti-re-mail article terminal dues by EU Member States, sometimes with non-EU co-sponsors, included those offered by Germany (20.23.1 and 20.23.2); Ireland (20.23.4); and the France, Portugal, and the United Kingdom (20.23.5.Rev1). None of these proposal were adopted. See UPU, 2004 Bucharest Congress, C4 Rapp 5, p. 2. Note that, in general, proposals by individual member countries supplement proposals by the Postal Operations Council and/or Council of Administration; member countries which 'win' in the Postal Operations Council or Council of Administration have no need to offer individual amendments.

**267** Proposals relating to the universal service obligation by EU Member States were offered by Romania (20.1.1) and Portugal (20.2.2). The Portuguese amendment was adopted. Romania withdrew its proposal in favour of a proposal by the Council of Administration. UPU, 2004 Bucharest Congress, C3 Rapp 3, pp. 1-2.

**268** Proposals relating to terminal dues by EU Member States were offered by the Netherlands (20.25.2), United Kingdom (20.25.3, 20.25.7, 20.26.4, 20, 26.5, 20.26.9, 20.27.3, 20.28.3, 20.28.91), and Slovenia (20.25.10).

**269** A proposal with respect to quality of service targets were offered by Romania (20.17.1).

**270** Rules of Procedure of Congresses (2004), Article 15(3).

offered specific guidance on the implications of these principles for the acts of the UPU nor proposed amendments or reservations that should be put forward at Congress. The only semi-official legal analysis of these issues, the TMC Asser study prepared for the Commission, was not completed until 30 June 2004. What the Council sought in its resolution on 19 July 2004 was, therefore, difficult to achieve as a practical matter.

Nonetheless, at the end of the 2004 Bucharest Congress, the 25 Member States of the European Union did act collectively on one point. They reiterated their common declaration that they would apply the acts of the UPU in accordance with their obligations under EU law and the GATS. The EEA Member States also reiterated their common declaration and expanded it to include their obligations under the GATS and well as under the EEA treaties.<sup>271</sup>

### 7.1.3 Coordination of positions of Member States at the 2008 Geneva Congress

The twenty-fourth Congress of the UPU was convened in Geneva on 23 July 2008. In advance of the Geneva Congress, the Commission and the Council offered even less guidance than in 2004. The Commission did not issue a communication. The Council was unable to adopt a resolution, in part because the opening of the Geneva Congress was rescheduled for three weeks earlier than previously planned.<sup>272</sup> Instead of a formal resolution, on 15 July 2004, the Council issued a document called a ‘common understanding paper’ that reflected a discussion of postal policy at the Council’s working party on postal services on 10 July 2008. The common understanding paper reiterated some of the points made in the Council’s 2004 resolution. In particular, the common understanding paper

Underlines that Member States should ensure, as coordinated by the Presidency and in association with the Commission, that they do not undertake commitments which would not be compliant with the Community acquis and that they will apply the Acts adopted by the Congress in accordance with their obligations pursuant to the Treaty on the European Union and the EC Treaty and specifically their obligations arising from trade agreements or from

<sup>271</sup> UPU, 2004 Bucharest Congress, Declarations V (EU) and VII (EEA), *Constitution Etc.* (2005), Vol. 1, p. A36. The revised EEA declaration stated, ‘The delegations of Iceland, the Principality of Liechtenstein, and Norway declare that their countries will apply the Acts adopted by this Congress in accordance with their obligations pursuant to the agreement establishing the European Economic Area and the General Agreement on Trade in Services (GATS) of the World Trade Organization’.

<sup>272</sup> The Congress was originally scheduled to be held in Nairobi from 13 August to 3 September 2008. In February 2008, the UPU changed the site and dates of the Congress to Geneva from 23 July to 12 August because of civil unrest in Kenya.

existing Community legislation on the free provision of postal services and on competition.<sup>273</sup>

At the 2008 Geneva Congress, Member States again participated as individual Member States with little visible coordination on major policy issues. Probably the most contentious issue at the Geneva Congress was terminal dues. Leading protagonists included France, the Netherlands, and the United Kingdom.<sup>274</sup> In a dramatic denouement, the major terminal dues proposals of France — supported by several EU Member States while opposed by others — were ruled out of order by a vote of 91 to 29 (23 abstentions) and stricken from the agenda.<sup>275</sup> In essence, France proposed to eliminate the cap on terminal dues for target countries and to raise the percentage of the 20 gram rate used to set terminal dues for target countries from 70 to 75 percent (in stages).<sup>276</sup> As a result, terminal dues would have been substantially more closely aligned with domestic postage in most target countries. Although the minutes do not reveal the identities of countries supporting and opposing the French proposal, it was well known among delegates at the Congress that French reforms were supported by some EU Member States but opposed by others. As in Bucharest, the Member States collectively offered no joint proposals to implement or protect the key policies of the Postal Directive. Again, at the conclusion of the 2008 Geneva Congress, Member States of the EU (now 27 in number) and the EEA repeated their 2004 declarations verbatim.<sup>277</sup>

## 7.2 Legal framework for coordination of positions of Member States

The EU treaties oblige EU institutions and Member States to work together in the presentation of policy positions in international fora and the negotiation of intergovernmental agreements. However, the degree and method of coordination varies according to subject matter. This section describes the legal framework for the coordination of the positions of Member States and/or the EU at intergovernmental organisations such as the Universal Postal Union.

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<sup>273</sup> Council, Document 11860/08 (15 Jul 2008), p. 5.

<sup>274</sup> Proposals relating to terminal dues by EU Member States, sometimes with non-EU co-sponsors, included those offered by the United Kingdom (20.28.3); France (20.28.6, 20.29.8, 20.30.8); Netherlands (20.29.4, 20.30.5); Germany and Romania (20.28.7); Sweden (20.29.2, 20.29.3, 20.30.3, 20.30.4); and Belgium, Finland, France, Germany, United Kingdom, Spain (20.29.10). Note that, in general, proposals by individual member countries supplement proposals by the Postal Operations Council and/or the Council of Administration; member countries which gain the support of the Postal Operations Council or Council of Administration have no need to offer individual amendments.

<sup>275</sup> UPU, 2008 Geneva Congress, C5 Rapp 1, p. 2.

<sup>276</sup> UPU, 2008 Geneva Congress, Proposal 20.29.8.

<sup>277</sup> UPU, 2008 Geneva Congress, Declarations V (EU) and VI (EEA), *Constitution Etc.* (2010), Vol. 1, pp. A34-A35.

### 7.2.1 Duty of coordination

In its 2004 study, TMC Asser concluded that Article 19 of the Treaty on European Union (as it existed in 2004) imposed on Member States a ‘duty of coordination’ in intergovernmental organisations and observed that, under Article 302 of the EC Treaty, coordination with respect to the UPU should be led by the Commission.

Article 19 TEU, although placed in Title V relating to the common foreign and security policy, imposes a general obligation on Member States to coordinate their action within international organisations. Coordination within the UPU structures should be facilitated by the Commission which, under Article 302 EC, has a duty to ensure appropriate relations with the UN and its specialised agencies, of which the UPU is one.<sup>278</sup>

This duty of coordination was continued by amendments to the Treaty on European Union added by the Lisbon Treaty (2007). As modified by the Lisbon Treaty, Article 19 became Article 34 of the revised Treaty on European Union. Article 34 repeats the duty of coordination but appoints the new High Representative of the Union for Foreign Affairs to lead the coordination:

Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union’s positions in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organise this coordination.<sup>279</sup>

Similarly, the Lisbon Treaty transformed former Article 302 of the EC Treaty into Article 220 of the Treaty on the Functioning of the European Union and placed the High Representative in charge of relations with UN agencies such as the UPU.<sup>280</sup> At the same time, however, the Lisbon Treaty maintained the Commission as the initiator of international negotiations which are not exclusively or principally related to the common foreign and security policy.<sup>281</sup>

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<sup>278</sup> TMC Asser, *The Study* (2004), pp. 121.

<sup>279</sup> Treaty on the European Union (2010), Article 34(1).

<sup>280</sup> Treaty on the Functioning of the European Union (2010), Article 220. Article 220 provides: ‘(1) The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development. The Union shall also maintain such relations as are appropriate with other international organisations. (2) The High Representative of the Union for Foreign Affairs and Security Policy and the Commission shall be instructed to implement this Article’.

<sup>281</sup> Treaty on the Functioning of the European Union (2010), Article 207(3). Article 207(3) provides, ‘The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of

In sum, it appears that Member States remain under a general obligation to coordinate their positions at a intergovernmental agreement such as the UPU. In so far as proceedings at the UPU are concerned, it appears that the respective roles of the High Representative and the Commission in the coordination process still need to be defined by appropriate authorities.

### 7.2.2 Common Commercial Policy

The Common Commercial Policy is a uniform approach in trade relations with non-EU countries. A Common Commercial Policy is mandated by several provisions of the Treaty on the Functioning of the European Union. In particular, Article 207 provides, *inter alia*, ‘The common commercial policy shall be based on uniform principles, particularly with regard to . . . tariff and *trade agreements relating to trade in goods and services*’.

EU institutions collectively have *exclusive competence* to negotiate intergovernmental agreements covered by the Common Commercial Policy. Within the EU, specific roles are assigned to the Commission, the High Representative of the Union for Foreign Affairs and Security Policy, the Council, and the European Parliament.<sup>282</sup> Exclusive competence implies that the EU alone is able to determine the position to be put forward, although the common position of the EU could include differences among Member States. Where the EU has exclusive competence, Member States may act only as empowered by the EU.<sup>283</sup> However, even where the EU has exclusive competence, it is bound by principles of subsidiarity and proportionality to work closely with the

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negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team’.

**282** Treaty on the Functioning of the European Union (2010), Articles 3(1)(3) (‘The Union shall have exclusive competence in the following areas: . . . (e) common commercial policy’), 207(1) (scope of the Common Commercial Policy). The procedure for negotiating an intergovernmental agreement pursuant to the Common Commercial Policy is set out in TFEU Articles 207 and 218. In broad terms, the Council authorises the opening of negotiations, the Commission (or another perhaps negotiator appointed by the Council) negotiates the agreement, and the Council and Parliament must approve the agreement. The High Representative rather than the Commission handles negotiations in matters relating to Common Foreign and Security Policy. Specific procedures for implementing the Common Commercial Policy are still under discussion by the EU institutions and the Member States.

**283** The EU may exercise exclusive competence by organising a committee of Member States to develop an unified EU position and relying upon the Member States to transmit the EU position to the UPU. This is, for example, the manner in which the EU exercises its exclusive competence over certain issues at the International Maritime Organisation. Case C-45/07, *Commission v. Greece*, Judgment of 12 Feb. 2009, paragraph 31 (‘Moreover, the fact that the Community is not a member of an international organisation does not prevent its external competence from being in fact exercised, in particular through the Member States acting jointly in the Community's interest’). In the postal sector, the Postal Directive establishes a committee of Member States to assist the Commission in the implementation of the directive. Postal Directive, Article 21. If the position of the EU Member States is coordinated by the Commission, then it appears that the Postal Directive Committee could be used for this purpose. In addition, the Council of the European Union has established Working Party on Postal Services. EU, Council of the European Union, ‘List of Preparatory Bodies’, POLGEN 112, 11602/09 (30 Jun 2009), Annex1, p. 12. If the position of the EU Member States is coordinated by the High Representative of the Union for Foreign Affairs and Security Policy, then it appears that the Working Party on Postal Services might be used for this purpose.

Member States.<sup>284</sup> Moreover, Article 207(3) specifically requires that ‘The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations’.

Do acts of the UPU fall within the scope of the Common Commercial Policy? In 2004, the TMC Asser study concluded that the Common Commercial Policy, as it existed at that time, vested the EU with exclusive competence to negotiate intergovernmental agreements relating to some but not all trade in postal services.<sup>285</sup> TMC Asser’s analysis was based what was then Article 133(5) of the Treaty Establishing the European Community (EC Treaty). Article 133(5) was added in 2003 by the Treaty of Nice. It provided that paragraphs 1 to 4 of former Article 133 — which gave the Commission exclusive competence over trade agreements relating to goods — ‘*shall also apply to the negotiation and conclusion of agreements in the fields of trade in services*’. The amendment to Article 133(5) was based, in turn, on the Opinion 1/94 of the European Court of Justice, rendered in 1994. In that opinion, the Court concluded that the EU’s Common Commercial Policy (as it stood in 1994) gave the Commission exclusive competence over agreements pertaining to trade in services supplied in accordance with GATS mode 1 because such services were traded like goods without movement of the supplier or consumer from one country to the other.

Based on such considerations, TMC Asser concluded Article 133(5) codified the Court’s approach in Opinion 1/94. Consequently, in 2004, TMC determined that the EU’s exclusive competence extended to postal services supplied via GATS mode 1 (cross-border supply), but not to postal services supplied by GATS modes 2, 3, or 4.<sup>286</sup> TMC Asser explained its reasoning as follows:

The drafting history of Article 133(5) and the use of the term ‘trade in services’ suggests that the term services in this provision is linked to the GATS in terms of modes of supply’. This is supported by the structure of Article 133(5) itself, which perpetuates a distinction made by the European Court of Justice in Opinion 1/94 between different modes of supply of services with reference to Article I(2) GATS. The ECJ distinguished between Mode 1 services, which were found to fall within the existing scope of the CCP, and the other three modes of supply which in the Court’s view did not, at the current state of development of the Treaty. The amended version of Article 133(5) provides that paragraphs (1)-(4) shall apply to agreements in the field of trade in services insofar as

<sup>284</sup> Treaty on the European Union, Article 5(1) (‘The use of Union competences is governed by the principles of subsidiarity and proportionality’).

<sup>285</sup> TMC Asser, *The Study* (2004), pp. 113-16.

<sup>286</sup> The GATS modes of supply are explained in section 5.3.2, above.



these are not already covered by those paragraphs. Thus, mode 1 services ('cross-frontier supplies'), which according to the Court of Justice are already covered by paragraphs (1)-(4), are treated separately from modes 2, 3 and 4 ('consumption abroad', 'commercial presence' and 'presence of natural persons').<sup>287</sup>

TMC Asser also opined, although not without some doubt, that almost all postal services covered by the acts of the UPU were traded by GATS mode 1. TMC Asser analysis thus implied that the EU was vested with exclusive competence in respect to the most of the provisions of the UPU Convention.

Since the TMC Asser study, the Common Commercial Policy has been comprehensively revised by the Lisbon Treaty.<sup>288</sup> The revision eliminated the distinction between trade in goods and trade in services created by former Article 133(5) of the EC Treaty. Therefore, the Common Commercial Policy is no longer limited to services that are traded like goods — i.e., according to GATS mode 1 — but now covers all trade in services.<sup>289</sup> Hence, under the TMC Asser analysis, the EU must now be considered to have exclusive competence with respect to all of the issues presented in the next UPU Congress relating to trade in postal services between the EU and non-EU countries.

In our view, the TMC Asser analysis is persuasive in its analysis of the Common Commercial Policy. Thus, EU institutions appear to have exclusive competence with respect to at least some of the policy issues presented by the acts of the UPU in so far as those acts relate to trade in postal services between the EU and non-EU countries.

### 7.2.3 AETR doctrine

A second legal doctrine vesting the EU with exclusive competence in external relations is the *AETR* doctrine.<sup>290</sup> The *AETR* doctrine serves a different purpose from the Common Commercial Policy. It was developed by the Court of Justice to protect the EU's internal legislation from conflicts caused by Member States' participation in international agreements. In brief, the *AETR* doctrine states that the EU has exclusive competence in the negotiation of intergovernmental agreements that 'might affect' implementation of EU legislation. While EU legislation may autonomously regulate

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<sup>287</sup> TMC Asser, *The Study*, p. 114.

<sup>288</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306, 12 Dec 2007, p. 1.

<sup>289</sup> Treaty on the Functioning of the European Union (2010), Article 207. See S. Woolcock, 'The Potential Impact of the Lisbon Treaty on European Union External Trade Policy', p. 1 ('After many years of debate EU competence will therefore be extended to all services trade'). George-Dian Balan, 'The Common Commercial Policy under the Lisbon Treaty', paragraph 16.

<sup>290</sup> The AETR doctrine is reflected in Treaty on the Functioning of the European Union, Article 3(2) ('The Union shall also have exclusive competence for the conclusion of an international agreement . . . may affect common rules or alter their scope').

commerce between the EU and non-EU countries (e.g., the customs regulations), the primary focus of most EU legislation is activities conducted at the Member State level or among the Member States. Hence, intra-EU focus of the *AETR* doctrine complements the extra-EU focus of the Common Commercial Policy.

The *AETR* doctrine originated in a case decided by the European Court of Justice in 1971. According to the Court's decision, Member States are precluded or pre-empted from concluding treaties among themselves or with other countries in areas of law already addressed in Community legislation. The Court declared,

17. In particular, each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules. . . .

22. . . . [T]o the extent to which Community rules are promulgated for the attainment of the objectives of the treaty, the *Member States cannot, outside the framework of the Community institutions, assume obligations which might affect those rules or alter their scope.*<sup>291</sup>

Similarly, in 2002, the Court ruled that Member States could no longer negotiate international aviation agreements because these agreements clashed with Community legislation establishing rules for the conduct of intra-EU aviation services:

107. It must next be determined under what circumstances the scope of the common rules may be affected or distorted by the international commitments at issue and, therefore, under what circumstances the Community acquires an external competence by reason of the exercise of its internal competence.

108. According to the Court's case-law, that is the case where the international commitments fall *within the scope of the common rules* (*AETR* judgment, paragraph 30), *or in any event within an area which is already largely covered by such rules* (Opinion 2/91, paragraph 25). In the latter case, the Court has held that Member States *may not enter into international commitments outside the framework of the Community institutions, even if there is no contradiction* between those commitments and the common rules (Opinion 2/91, paragraphs 25 and 26).<sup>292</sup>

<sup>291</sup> Case C-22/70, Commission v. Council, [1971] ECR 263, paragraphs 17 and 22 (emphasis added). See generally, Nikolaos Lavranos, 'Protecting European Law from International Law', European Foreign Affairs Review, Vol. 15, pp. 265-82 (May 2010).

<sup>292</sup> Case C-476/98, Commission v. Germany, [2002] ECR I-9865, paragraphs 107-108 (emphasis added).

Only last year (2009), the Court emphasised the implications of the *AETR* doctrine for Member States participating in intergovernmental organisations. In *Commission v. Hellenic Republic* case, the question was whether Greece was competent to offer a proposal in the International Maritime Organisation (IMO) that might affect existing EU law. In this case, EU legislation incorporated an IMO convention on maritime safety and obliged Member States to comply with implementing regulations adopted by the IMO. Greece proposed that the IMO consider a change in the implementing regulations, and the Commission objected. The European Court of Justice ruled that Greece acted in contravention of its obligations under the EC Treaties. EU legislation obliged Greece to work within a EU-level committee to develop a common position for all EU Member States. Citing the *AETR* case, the Court declared, ‘to the extent to which Community rules are promulgated for the attainment of the objectives of the Treaty, the Member States cannot, outside the framework of the Community institutions, assume obligations which might affect those rules or alter their scope’.<sup>293</sup> The Court found that Greece contravened this obligation by making a national proposal to the IMO that was not approved by the EU: ‘[S]ince it set in motion such a procedure with the contested proposal, the Hellenic Republic took an initiative likely to affect the provisions of the Regulation, which is an infringement of the obligations under [EU treaties]’.<sup>294</sup>

Moreover, the Court rejected Greece’s argument that it should be permitted to take a national position in the IMO because the EU was not itself a member of the IMO.

The mere fact that the Community is not a member of an international organisation in no way authorises a Member State, acting individually in the context of its participation in an international organisation, to assume obligations likely to affect Community rules promulgated for the attainment of the objectives of the Treaty.<sup>295</sup>

In its 2004 study, TMC Asser did not give full weight to the *AETR* doctrine for reasons that are not entirely clear. TMC Asser first observed that Article 133(5) of the EC Treaty — i.e., the Common Commercial Policy as it existed in 2004 — included a paragraph reserving certain rights to the Member States, ‘This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements’.<sup>296</sup> TMC Asser continues,

At first sight the nonexclusivity of EC competence under Article 133(5) seems clear. The right of Member States to maintain and conclude agreements with third countries and international organisations is not to be affected. However, this right is subject to compliance with

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<sup>293</sup> Case C-45/07, *Commission v. Greece*, [2009] ECR I-701, paragraph 17.

<sup>294</sup> Case C-45/07, *Commission v. Greece*, [2009] ECR I-701, paragraph 23.

<sup>295</sup> Case C-45/07, *Commission v. Greece*, [2009] ECR I-701, paragraph 30.

<sup>296</sup> TMC Asser, *The Study* (2004), pp. 116.

Community law and it has been argued that the reference to Community law here includes the application of the 'AETR doctrine' of exclusivity. If this view is correct, then it will be necessary to apply the *AETR* tests for exclusivity, as explained in the *Open Skies* cases, and as set out below. As in the case of implied powers, exclusivity is dynamic and may grow as Community competence is exercised, internally or externally. *However the better view appears to be that within Article 133(5) compliance with Community law does not entail the possible incremental reduction of Member State competence, but rather puts a constraint upon its exercise based upon Article 10 EC [now Article 4 TEU]. Thus competence in relation to modes 2-4 supply will remain shared.*<sup>297</sup>

Then, after discussing the Common Commercial Policy, TMC Asser returns to the AETR doctrine as follows:

By establishing harmonised criteria for the provision of the universal service, setting common quality of service objectives for intra-Community cross-border mail, establishing common principles for tariff-setting within the universal service and in relation to terminal dues, and the establishment of national regulatory authorities, *certain aspects of the postal services sector may be said to be 'largely covered' by Community rules.*

However, although it may thus be argued that Community competence is exclusive in respect of certain aspects of the (autonomous) regulation of postal services, *it would be difficult to argue that this internal legislation can exclude Member State competence to enter into international agreements, in the light of Article 133(5), subparagraph 4, which expressly preserves that right.*<sup>298</sup>

In sum, the reasoning of the TMC Asser study appears to be as follows:

- (1) Article 133(5) of the Common Commercial Policy gives Member States shared competence in the negotiation of intergovernmental agreements relating to postal services supplied via GATS modes 2, 3, or 4.
- (2) The *AETR* doctrine should not be read to limit the competences of Member States which are expressed reserved by Article 133(5).

<sup>297</sup> TMC Asser, *The Study* (2004), pp. 117 (emphasis added, footnotes omitted).

<sup>298</sup> TMC Asser considered only services such as physical remailing to be covered by modes 2 to 4. TMC Asser, *The Study* (2004), pp. 119.

(3) Therefore, Article 133(5) preserves the authority of Member States to negotiate intergovernmental agreements relating to postal services supplied via GATS modes 2, 3, or 4, regardless of the *AETR* doctrine.

In our view, the analysis of TMC Asser is unpersuasive on this point. In 2004, Article 133(5) of the EC Treaty applied only to agreements relating to *extra-EU* trade in postal services, not to agreements relating to the provision of national and intra-EU postal services. In contrast, the most important implication of the *AETR* doctrine is that Member States lack competence to enter into intergovernmental agreements affecting national and intra-EU postal services. Article 133(5) is thus unrelated to the main thrust of the *AETR* doctrine. Moreover, even with respect to extra-EU postal services, according to TMC Asser, Article 133(5) pertains only to intergovernmental agreements relating to postal services supplied under GATS modes 2, 3, or 4. Yet TMC Asser concedes that virtually all international public postal services are supplied via GATS mode 1, not modes 2, 3, or 4.<sup>299</sup> Hence, Article 133(5) could not limit the *AETR* doctrine insofar as it applied to extra-EU postal services supplied under GATS mode 1. In short, there was (in 2004) almost no overlap between Article 133(5) and the potential application of the *AETR* doctrine. To interpret Article 133(5) to limit the *AETR* doctrine does not appear correct.

In any case, the TMC Asser analysis on this point was superseded by the Lisbon Treaty. As noted in the previous section, since the TMC Asser study was completed, the Lisbon Treaty has repealed Article 133(5) of the EC Treaty and comprehensively revised the Common Commercial Policy.

In sum, according to the *AETR* doctrine, Member States may not, acting individually or collectively, undertake commitments with non-EU countries which might affect or which fall within the scope of common rules established by EU legislation even if there is no contradiction between those commitments and the common rules. The *AETR* doctrine is not limited to policy areas specifically addressed in existing EU legislation but includes, in at least some cases, areas that could be addressed by future EU legislation.<sup>300</sup> In matters falling within the scope of the *AETR* doctrine, the EU has exclusive competence to determine the position of the EU in intergovernmental negotiations whether or not it is formally a party to the negotiations.

Implications of the *AETR* doctrine for the postal sector are apparent. Where the EU has adopted common rules to govern the provision of postal services, Member States may

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<sup>299</sup> See TMC Asser, *The Study* (2004), pp. 115-16.

<sup>300</sup> The European Court of Justice has explained the implications of the *AETR* case as follows, 'the authority of the decision in that case cannot be restricted to instances where the Community has adopted Community rules within the framework of a common policy. In all the areas corresponding to the objectives of the Treaty, Article 5 [now Article 5 TEU] requires Member States to facilitate the achievement of the Community's tasks and to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty.' Opinion of the Court of 19 March 1993, [1993] ECR 1061, paragraph 10.

not enter into intergovernmental agreements which might affect or fall within the scope of the common rules. The primary EU measure dealing with postal services is the Postal Directive. The Postal Directive provides common rules for regulating specified elements of postal services, including the following:

- existence and scope of the universal service obligation (Article 3);
- designation of universal service providers (Article 4);
- provision and transparency of universal services (Articles 5 and 6);
- reserved area and financing of universal services (Article 7);
- letter boxes, postage stamps, registered mail services (Article 8);
- authorisation of providers of postal services (Article 9);
- access to the postal infrastructure (Article 11a);
- tariffs for universal services generally (Article 12);
- terminal dues for intra-EU universal services (Article 13);
- accounting controls for providers of universal services (Article 14);
- quality of service standards for universal services provided at national and intra-EU levels (Articles 16 to 18);
- protection of users of postal services (Article 19);
- harmonisation of technical standards (Article 20); and
- establishment, independence, and powers of national regulatory authorities (Articles 22 and 22a).

Therefore, Member States may not, without coordination with and approval of appropriate EU institutions, enter into intergovernmental agreements, or even propose changes to intergovernmental agreements which could affect the implementation of these rules. The same conclusion would apply to intergovernmental agreements that address issues that come 'within the scope' of the common rules on postal services promulgated in the Postal Directive or in other EU laws relating to postal services.<sup>301</sup>

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**301** The Postal Directive is not the only EU legislation establishing common rules for the provision of postal services in the EU. Other measures include the competition rules, customs regulations, VAT directives, and trade agreements including the GATS.

### 7.3 Scope of coordination: governmental/regulatory versus operational/commercial functions

Where coordination is required, what positions do Member States need to coordinate? It is not self-evident how far the policy coordination required by the EU treaties — whether ‘mere’ coordination or harmonisation through the exercise of the EU’s exclusive competence — should control representations by Member States at an intergovernmental organization like the UPU. Acts of the UPU include both governmental or regulatory functions, on the one hand, and operational or commercial functions, on the other. It seems apparent that the policy coordination required by EU treaties implies coordination of governmental and regulatory policies. Without appropriate coordination of governmental and regulatory positions, Member States may undercut each other or contravene EU policies.

But to what extent are Member States obliged to coordinate their positions with respect to operational and commercial matters at issue at the UPU? We suggest that the answer is ‘not at all’. It would be inappropriate for Member States *acting as public authorities* to coordinate the operational or commercial positions of their designated operators for this would violate the principle of independent regulation, a basic principle of European regulatory law reflected in the requirement for regulatory independence in the Postal Directive. While it is appropriate for Member States *acting as public undertakings* or their designated operators to coordinate their positions on operational or commercial issues, such coordination is essentially an operational matter, not (as we understand it) a concern of the EU treaties. Moreover, such coordination is subject to control by public authorities at EU and Member State levels (e.g., by enforcing the Postal Directive or the competition rules).

This section suggests criteria for distinguishing between governmental or regulatory functions from operational or commercial functions and offers a preliminary list to governmental issue presented by the Universal Postal Convention.

#### 7.3.1 Criteria for distinguishing governmental/regulatory and operational/commercial issues

To determine what issues need to be coordinated by EU Member States at the UPU, it is thus necessary to distinguish between (i) provisions of the UPU that specify operational or commercial relations between governments or their postal administrations and (ii) provisions that govern or regulate the market for postal services. This distinction is not always obvious, but neither is it hopelessly obscure. Laws of both the EU and WTO recognise that governments sometimes act as providers of key commercial services. These laws therefore distinguish between governments as commercial actors and governments as regulators of commercial activities. For

example, in the European Union, the competition rules apply to ‘public undertakings and undertakings to which Member States grant special or exclusive rights’ just as they do to private companies.<sup>302</sup> Similarly, the EU Transparency Directive distinguishes between ‘public authorities’ and ‘public undertakings’ and requires Member States to make clear the financial relations between them.<sup>303</sup> This distinction is carried through into the Postal Directive in the requirement that Member States separate the national regulatory authority from the commercial or ownership interests of undertakings providing postal services.

And, as described in Chapter 5, a similar distinction between governmental or regulatory and operational or commercial functions may be found in the General Agreement on Trade in Services. While the GATS applies to trade in services overall, it draws the line at services which a government provides when acting as a government rather than as a commercial actor. The GATS, therefore, exempts ‘services supplied in the exercise of governmental authority’, that is, services which are supplied neither on a ‘commercial basis’ nor ‘in competition with one or more service suppliers’. In the Doha Round negotiations, the EU has proposed in its reference paper for postal services an additional commitment that would sharpen this distinction. The additional commitment would provide that the postal regulator will be kept ‘legally separate from, and not accountable to, any supplier of postal and courier services’.

The distinction between governmental or regulatory functions, on the one hand, and operational or commercial functions, on the other, has been the subject of study and debate at the UPU as well. The 1999 Beijing Congress established a High Level Group whose mission included recommending reforms ‘*to more clearly define and distinguish between the governmental and operational roles and responsibilities of the bodies of the Union with respect to the provision of international postal services*’.<sup>304</sup> The work of the High Level Group led to a complete revision (or ‘recasting’) of the acts of the UPU by the 2004 Bucharest Congress. The object of this revision was to place the operational provisions in the Regulations and leave only matters of governmental policy in the Convention. A document of the 2008 Geneva Congress explained:

The recast of the Convention and its Regulations [by the Bucharest Congress] was *to ensure greater clarity in distinguishing between the governmental and operational roles of the Union and its bodies*. The principles of the recast were that the *Convention should contain principles*

<sup>302</sup> Treaty on the Functioning of the European Union (2010), Article 101(1). See generally, European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Accompanying the Communication on ‘A Single Market for 21st Century Europe’: Services of General Interest, Including Social Services of General Interest: A New European Commitment*, COM(2007) 725 final (20 Nov 2007).

<sup>303</sup> Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L318, 17 Nov. 2006, p. 17.

<sup>304</sup> UPU, 1999 Beijing Congress, Doc 85.2, Resolution C110.



*established by governments, while the Regulations should contain the operational and commercial rules applied by the designated operators entrusted with fulfilling the obligations arising from the Acts without any changes of substance.*<sup>305</sup>

The 2008 Geneva Congress carried forward this reform by again revising the entire body of acts of the Union so that the antiquated term ‘postal administration’ was replaced by ‘member country’ or ‘designated operator’ as appropriate. These changes reflected the UPU’s recognition that today there are ‘two types of national entities responsible for fulfilling UPU treaty obligations: governmental bodies responsible for overseeing postal affairs, and officially designated operators that provide postal services on their territory’.<sup>306</sup> In 2005, the CA working party that prepared this revision concluded that the term *postal administration* ‘no longer accurately or adequately represented the variety of structures that members had put in place to provide and administer postal services.’ After studying the acts of the UPU, the working party concluded that the term *postal administration* obscured the distinction between ‘service operator’ and ‘government of the member country’:

In the Constitution and the General Regulations, the term ‘postal administration’ is generally used to mean member country, but not in every instance. Throughout the Convention, the term is used to refer to the governments of member countries in general, or to the specific governmental authorities or operators in member countries which are responsible for providing the international postal services agreed on in the Acts. *In the sense of the operator, the term refers to the service provider/operator that has been charged by the government of the member country with fulfilling the obligations arising from the Acts, as distinct from the government of the member country generally, or to other governmental authorities when these authorities have responsibilities under the Acts.*<sup>307</sup>

Accordingly, the 2008 Geneva Congress revised all of the acts of the UPU by replacing ‘postal administration’ with ‘designated operator’ or ‘member country’, or sometimes references to both. Congress also added definitions of *member country* and *designated operator* to the Constitution. A ‘member country’ is defined as ‘a country that fulfils the conditions of article 2 of the Constitution’, meaning a country that has ratified the

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<sup>305</sup> UPU, 2008 Geneva Congress, Doc 17 (‘Use of the term “postal administration” in the Acts of the Union), paragraph 23 (emphasis added).

<sup>306</sup> 2008 Geneva Congress, Doc 17 (‘Use of the term “postal administration” in the Acts of the Union), paragraph 2. The background of the UPU decision to replace the term ‘postal administration’ with ‘designated operator’ and ‘member country’ is recounted in a memorandum by the International Bureau. See UPU, CA Acts of the Union Project Group, ‘Term “postal administration” and its use in the UPU Acts’, CA ACTS PG 2005.2 Doc 4a (4 Apr 2005).

<sup>307</sup> UPU, Acts of the Union Project Group, ‘Term “postal administration” and its use in the UPU Acts’, CA ACTS PG 2005.2–Doc 4a (4 Apr. 2005) (emphasis added).

Constitution. A 'designated operator' is defined as 'any governmental or non-governmental entity officially designated by the member country to operate postal services and to fulfil the related obligations arising out of the Acts of the Union on its territory'.<sup>308</sup>

Taking into account these principles of the EU, WTO, and UPU, it appears possible derive a plausible approach to the problem of distinguishing between the governmental or regulatory functions of the acts of the UPU, on the one hand, and the operational or commercial functions, on the other. For this purpose, we propose the following test:

- *Governmental or regulatory issue or function.* Where a UPU provision addresses an issue or activity that is normally addressed in an intergovernmental agreement (or in the case of the EU supranational legislation) governing commercial activities generally (i.e., whether offered by public or private undertakings) and normally executed by governmental officials, then the provision may be considered a governmental or regulatory issue or function.
- *Operational or commercial issue or function.* Where a UPU provision addresses an issue or activity that is normally included in an agreement among commercial undertakings (whether public or private undertakings) and normally carried out by commercial undertakings, then the provision may be considered an operational or commercial issue or function.

Examples of intergovernmental (or supranational) agreements that are governmental or regulatory in nature would include the Postal Directive, the GATS, the Doha Round negotiations (including the EU's proposed reference paper for postal services), and the Telecommunications Annex of GATS. Examples of intergovernmental agreements, or agreements between public undertakings, that are operational in nature would include the REIMS terminal dues agreement and the operating agreement of the EMS Cooperative.

This approach may be further illustrated by considering a specific issue or function that is central to international postal services: terminal dues. Suppose two governments agree that their respective providers of universal postal services will sell each other delivery services at charges that are cost-oriented and non-discriminatory as adjudged by independent regulatory authorities. This agreement would appear to represent a governmental or regulatory function. It addresses principles that governments normally address (as in the Postal Directive or the GATS) and is normally enforced by governments. On the other hand, suppose the two governments agree that their respective providers of universal postal services will sell each other delivery services for postal items weighing up to 2 kilograms for a charge of € 0.50 per item plus € 1.00 per kilogram, provided this charge is reduced by € 0.10 per item for each day of non-

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<sup>308</sup> UPU, Constitution (2008), Article 1bis(2) and (7).

delivery after the first business following tender to the first postal service provider in the destination country. This second agreement would appear to represent an operational or commercial function. It addresses terms that would normally be included in an agreement among commercial undertakings (whether public or private undertakings) and normally carried out by those commercial undertakings.

Based on this approach, governmental or regulatory topics that are typically included in intergovernmental agreements of a non-commercial nature would include the following: universal service obligation (scope, price and/or service standards, etc.); means of ensuring universal service; prohibitions against discrimination based on nationality; transparency requirements and accounting controls; special and exclusive rights; protection of competition; standards for authorisation regimes; independence of regulators; required administrative procedures; customs controls; rights of ownership; rights of transit across national territory; criminal sanctions; and expenditure of public funds. Not all of these topics are addressed in the acts of the UPU, but those that are may be considered governmental or regulatory functions. On the other hand, topics that appear to be commercial or operational in nature because they are typically included in agreements between undertakings would include the following: products; prices, service targets; methods of payment between production units; rules on allocation of joint costs; security and integrity of operations; limitations on liability; allocation of markets; business development and innovation.

### 7.3.2 Governmental or regulatory issues in the UPU Convention

After several recastings, the 2008 Universal Postal Convention is a fairly short document — 37 articles taking up about 25 pages.<sup>309</sup> As explained above, the principle guiding the UPU in reorganising the Convention and Regulations was that ‘the Convention should contain principles established by governments, while the Regulations should contain the operational and commercial rules applied by the designated operators’. Nonetheless, it appears that the Convention still includes both governmental/ regulatory functions and operational/commercial functions. The Convention refers to member countries (or ‘member country’) 74 times while referring to designated operators (or ‘designated operator’) 153 times.

By applying the approach described in the preceding section, it is possible to distinguish between, on the one hand, governmental or regulatory issues presented in the Convention, and, on the other hand, operational or commercial issues. The basic approach appears fairly clear even though reasonable persons may disagree on specifics. Table 7-1 offers a tentative list of the major governmental or regulatory

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<sup>309</sup> See UPU, 2008 Geneva Congress, ‘Eighth Additional Protocol [Etc.]’, pp. 49-74. Page count excludes table of contents and final protocol. The 2008 Convention refers to member countries (or ‘member country’) 74 times while referring to designated operators (or ‘designated operator’) 153 times.

functions addressed the 2008 Convention. The applicable articles of the Convention are set out in the second column. The third and fourth columns of Table 7-1 list corresponding provisions of the Postal Directive or other EU laws.

Table 7-1 Tentative list of governmental or regulatory functions in the UPU Convention

<b>Governmental or regulatory function</b>	<b>2008 UPU Convention</b>	<b>Postal Dir, etc. Natl/intra-EU</b>	<b>Postal Dir, etc. Extra-EU</b>
1 Obligation to appoint designated postal operator(s) for international postal services	Art. 2	Arts. 4, 7; Public Procurement Rules; Comp. Rules.	Arts. 4, 7; Public Procurement Rules; Comp. Rules
2 Universal service obligation	Art. 3	Arts. 3, 5, 6, 12, 13, Annex I; Comp. Rules	Comp. Rules
3 Obligation to provide transit services for postal items	Arts. 4, 26		GATS Art. II
4 Ownership of postal items in transit	Art. 5		
5 Legal standards for postal prices	Arts. 6(3), 26-33	Arts. 12, 13 Comp. Rules	Arts. 12 Comp. Rules
6 Special or exclusive rights of postal operators with respect to postage stamps	Art. 8.1	Art. 8	Art.8
7 Criminal laws regulating use of or protecting rights of postal operators	Art. 11		
8 Obligation to ensure access to national postal services	Arts. 12(1), 26	Arts. 3(5) (parcels), 13	GATS Art. II
9 Liability of postal operators under national customs laws	Art. 22(3)		Customs Code
10 Obligation to ensure that postal operators establish quality of service standards.	Art. 20	Arts. 16-18, Annex II	
11 Obligation imposed on postal users to contribute to developing countries	Art. 31		

Some examples will help to explain how Table 7-1 was derived.

- Article 2 of the Convention provides that 'Within six months of the end of Congress, member countries shall also provide the International Bureau with the name and address of the operator or operators officially designated to operate postal services and to fulfil the obligations arising from the Acts of the Union on their territory'. This article, in conjunction with other provisions of the acts of the UPU, requires UPU member countries to appoint designated operators to provide the universal and non-universal postal services governed by the

Convention. The authority to appoint a designated operator, however, is the authority to confer certain rights and obligations on some postal operators and not others, creating legal discrimination. In EU law, rules relating to designation of universal service providers (the nearest equivalent to the UPU concept) are set out in Article 4 of the Postal Directive.

- Article 3(1) of the Convention provides that ‘member countries shall ensure that all users/customers enjoy the right to a universal postal service’. In EU law, definition of a universal service obligation is a governmental or regulatory function governed by Article 3 of Postal Directive.
- Article 5(1) of the Convention provides, ‘A postal item shall remain the property of the sender until it is delivered’. Property rights are normally defined by government, not by undertakings, so this is considered a government function.
- Article 6(1) of the Convention provides, ‘The charges for the various international postal and special services shall be set by the member countries or their designated operators, depending on national legislation, in accordance with the principles set out in the Convention and its Regulations.’ Since the setting of rates is normally included in an agreement among commercial undertakings (public or private undertakings) and carried out by commercial undertakings, this obligation is considered a commercial function.
- Article 6(3) of the Convention provides, ‘The charges collected [from senders] shall be at least equal to those collected on internal service items presenting the same characteristics’. Similarly, Articles 26 to 33 establish various rates for services provided by designated operators to other designated operators. In so far as these provisions set prices, they are normal operational functions implemented by operations. However, to the extent that these provisions establish legal standards for lawful prices and require discrimination based on nationality, they appear to be government functions as reflected in Articles 12 and 13 of the Postal Directive and Article II of the GATS.
- Article 11(1)(1) of the Convention provides, ‘Member countries shall undertake to adopt the necessary measures to prevent, prosecute and punish any person found guilty . . . .’ Since the scope of the criminal law is normally defined by government, this obligation is considered a commercial function.
- Article 12(1) of the Convention provides that ‘Member countries shall ensure that their designated operators accept, handle, convey and deliver letter-post items.’ In so far as this provision obliges each member country to ensure that a designated operator accepts inbound international postal items from other designated operators, it is equivalent to an access requirement, a governmental or regulatory function. Article 26 of the Convention excepts remail from the

general duty to deliver inbound international letter post items. In EU law, regulations governing access are governed by Articles 3(2), 5, and 11 of the Postal Directive.

- Article 22(3) of the Convention provides ‘Member countries and designated operators shall accept no liability for customs declarations . . . .’ Since the scope of liability under criminal and tort laws is normally defined by government, this obligation is considered a commercial function.
- Article 30(1) of the Convention provides, ‘Terminal dues payable by all countries and territories to the countries classified by Congress as group 5 countries for terminal dues and the Quality of Service Fund (QSF) . . . shall be increased by 20% of the rates given in article 29 for payment into the Quality of Service Fund (QSF) for improving the quality of service in group 5 countries.’ Other provisions are Article 30 are similar. Where there is a reserved area in the origin country, the provision is, in effect, a tax on postal services since the user has no choice but to use the designated operator. Hence, it would be a governmental or regulatory function. However, since the reserved area will be eliminated in the European Union before the acts of the Doha Congress become effective (1 January 2014), this conclusion appears inapplicable to the EU. In so far as EU designated operators are concerned, this provision appears to be a voluntary commercial agreement to raise rates by a specified amount in order to fund an agreed purpose. Hence, it is an operational or commercial function.

## 7.4 Positions of Member States at the 2012 Doha Congress and after

### 7.4.1 Positions on governmental or regulatory issues at Doha

At the Doha Congress, there will be several types of decisions that might be considered as governmental or regulatory in nature and therefore to require a coordinated position by the Member States. The only specific intergovernmental agreement regulating international postal services which Doha delegates will address is the Universal Postal Convention. In addition, however, delegates will consider protocols amending the two permanent organisational acts of the UPU, the Constitution and the General Regulations. In non-legislative matters, the Doha Congress will adopt resolutions establishing the work program for the Council of Administration and Postal Operations Council over the next four years and deciding other matters. Some of these resolutions might be considered to pose governmental or regulatory issues. The most apparent example is presented by resolutions relating to the establishment of ETOEs. These resolutions purport to decide questions of international postal law even though they have no standing as ‘acts’ of the UPU. Election of members to the Postal Operations

Council might also be considered a governmental or regulatory function if the POC can, in turn, adopt legislation binding on the EU Member States as public authorities. The Doha Congress will not consider the Letter Post Regulations and the Parcel Post Regulations. These Regulations will be approved by the Postal Operations Council after Congress.

For governmental or regulatory issues, the way forward in preparation for the Doha Congress appears clear. First, the EU and Member States should determine which issues presented by the agenda of the Doha Congress should be considered governmental or regulatory in nature. Second, the EU and Member States should determine which of these issues fall within the exclusive competence of the EU — under either the Common Commercial Policy or the *AETR* doctrine — and which issues are subject to the less strict duty of coordination. Member States and the EU should then coordinate positions on these issues as required by EU law.

If a specific provision in the acts of the UPU proposed in the Doha Congress is inconsistent with EU law (including the GATS and other trade agreements subscribed by the EU), then the EU and/or Member States may wish to consider filing a *reservation*. As described in Chapter 6, the only means provided in the acts of the UPU by which a member country may exclude or to modify the legal effect of an act of the UPU is a reservation submitted at the end of Congress. The UPU does not permit member countries to file reservations to all provisions of all acts. Once submitted by a member country, a reservation must be approved by Congress. Examples of reservations to articles of the 2008 Convention filed by EU Member States include the following:

- Article 5. Ownership of postal items or withdrawal from post. Reservations provide for non-application in whole or in part (AT, BE, DE, UK).
- Article 7. Exemption from postal charges. Reservations provide that member countries may collect the charges for special services which are applied to literature for the blind in their internal service (AT, DE, UK).
- Article 12. Basic services. Reservation provides for a lower weight limit for specified mandatory services (UK).
- Article 15. Prohibitions. Reservations provide for non-acceptance of ordinary and registered letters containing articles subject to customs duty (EE, IT, LV).
- Article 26. Posting abroad of letter post items. Reservations provide for the right to apply different or additional charges to remail (AT, DE, EL, UK); to limit payments to other designated operators (UK); and to insist upon full payment notwithstanding reservations by others (AT, CY, DE, FR, DE, EL, IT, LU, PT, NO).

The basic guide as to whether one international commitment takes precedence over another — thus resolving any conflict and eliminating the need for a reservation — is the Vienna Convention on the Law of Treaties.<sup>310</sup> In general, an intergovernmental agreement is binding on the parties involved and must be carried out in good faith except to the extent that a party has expressed reservations to specific provisions at the time of signing.<sup>311</sup> No party may invoke its internal law as justification for failure to abide by a treaty unless its lack of competence to enter into the agreement was ‘objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith’.<sup>312</sup> If parties enter into successive agreements on the same subject matter, priority is generally given to the later or to the more specialised agreement.<sup>313</sup> Based on such considerations, TMC Asser concluded in 2004 that there was no clear hierarchy between the GATS and the acts of the UPU. Both are binding on Member States as a matter of international law.<sup>314</sup>

TMC Asser did, however, conclude that EU law was superior to UPU law where UPU law was inconsistent with EU law. TMC Asser’s conclusion was based on the common *declaration* made by the then 15 EU Member States at the conclusion of the 1999 Beijing Congress. Although the acts of the UPU do not give any legal status to declarations, TMC Asser concluded that the 1999 EU declaration was legally equivalent to a reservation under the terms of the Vienna Convention. TMC Asser’s reasoning was as follows. First, TMC Asser noted that the EU’s common declaration could be interpreted a reservation under the Vienna Convention unless the acts of the UPU precluded such an interpretation. At the time of the TMC Asser study, the UPU Constitution required Member States to list reservations to the Convention and Regulations in final protocols to those acts. This requirement made it impossible to interpret the EU common declaration as a reservation to the Convention or Regulations. But, TMC Asser noted, the Constitution did not include a similar procedure for filing reservations to the Constitution or General Regulations. Hence, TMC Asser concluded that the EU declaration could, arguably, be interpreted as legally equivalent to a reservation to the Constitution and the General Regulations.<sup>315</sup> Based on this chain of reasoning, TMC Asser concluded that, ‘Member States do not have to apply provisions contained in the Acts of the UPU that are not in accordance with their obligations

**310** Vienna Convention on the Law of Treaties (1969), 1155 UNTS 1155. All Member States of the EU 30 have signed the Vienna Convention except France, Iceland, Malta, Norway, and Romania.

**311** Vienna Convention, Articles 21 (effect of reservation), 26 (obligation to carry out agreement) (known as the principle of ‘*pacta sunt servanda*’).

**312** Vienna Convention, Articles 27, 46.

**313** See TMC Asser, *The Study* (2004), pp. 49-52.

**314** TMC Asser, *The Study* (2004), p. 52 (‘we conclude that a hierarchical relation between the UPU framework and the WTO framework cannot be established on the basis of a relation determined in the text of those frameworks or on the basis of application of the rules *lex posterior derogat priori* and *lex specialis derogat generali*’).

**315** TMC Asser, *The Study* (2004), pp. 55-56 (‘However, such a prohibition is not actually contained in the text of Article 22, Constitution of the UPU. Accordingly, it could also be argued that is not required that reservations to the Constitution of the UPU and to the General Regulations be contained in the Final Protocols annexed to the Acts of the UPU’).



pursuant to the Treaty establishing the European Union'.<sup>316</sup> However, this conclusion does not follow from the exposition. Even though TMC Asser refers to 'the Acts of the UPU', its reasoning supports (at most) an interpretation of the EU common declaration as a general reservation to the Constitution and the General Regulations, not to the Convention or the Regulations.

Credible or not, TMC Asser's reasoning has been overtaken by events. As described in Chapter 6, since the TMC Asser study was finished in June 2004, the UPU has adopted new provisions that restrict the right of member countries to adopt reservations to the acts of the UPU. No reservations are permitted to the Constitution and General Regulations and only limited reservations may be taken to the Convention or Regulations. Hence, it appears that, as a matter of international law, the EU common declaration cannot be interpreted as a general reservation to any of the acts of the UPU if it ever could have been so interpreted.

Under these circumstances, it appears that the EU and the Member States may wish to develop, in advance of the Doha Congress, a coordinated position on specific amendments to or reservations from selected provisions in the Convention in order to render the acts of the UPU more compatible with the superior obligations of EU law. How the EU and the Member States approach such issues will naturally depend on both a detailed analysis of the relevant legal provisions and a pragmatic evaluation of political and foreign policy considerations presented by the Doha Congress. Such evaluations go beyond the scope of the present study. Nonetheless, the foregoing review of the EU and UPU laws suggests a preliminary list of issues that may merit fuller consideration:

- The requirement in the Convention that requires designated operators to charge users of international postal services postage rates that are at least as high as comparable domestic postal services does not appear to be justified under EU law.
- The terminal dues and inward land rate provisions of the Convention may be inconsistent in some respects with the requirements of EU law (including obligations under GATS). Justifications for such discrepancies appear to be especially weak with respect to the exchange of postal services with industrialised countries.
- Provisions in the Convention that discourage remail appear to be questionable under EU law, especially when applied to letter post items received from industrialised countries.

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<sup>316</sup> TMC Asser, *The Study* (2004), p. 57.

- Customs provisions of the Convention may not be wholly compatible with customs regulations of the EU or the goals of the Postal Directive.
- Provisions of the Convention establishing a universal service obligation and requirement the appointment of designated operators (possibly for services outside the scope of the universal service obligation in some Member States) may be considered to overlap, or in some respects conflict with, corresponding provisions of the Postal Directive.

In addition, legal technicalities aside, in our view the EU declaration serves a useful purpose and should be renewed at the Doha Congress. The EU declaration makes clear to all UPU member countries and to all agencies within the EU Member States that it is the common position of all EU Member States that the acts of the UPU must be applied in accordance with superior obligations established by the EU treaties and the GATS. Since about 99 percent of EU postal services are supplied entirely within the EU, the regulation of almost all EU postal services is provided by regulators and agencies of the Member States. As a practical matter, the EU declaration would appear to give these regulators and agencies appropriate guidance on the hierarchy of legal obligations. (On the other hand, despite the common EU declaration, NRAs have often failed to make clear the how the Postal Directive should be applied to international postal services. In Chapter 8, we suggest the NRAs adopt a more active approach in this regard.)

Then, too, it appears plausible that EU Member States may use a declaration to register a reservation to a decision by Congress expressed in a resolution. This use of a declaration is, however, unprecedented so the correct approach is unclear. A decision by Congress does not appear to be formal act of the UPU binding on Member States, even though it purports to determine international law. An obvious example is the decision by the 2004 Bucharest Congress on ETOEs. Since a decision is not a formal act of the UPU, the requirements for a formal reservation do not seem to apply. Hence, a declaration upon signing would appear to be sufficient to reserve the rights of the Member States.

#### 7.4.2 Positions on operational or commercial issues at Doha

The operational issues presented by the agenda of the Doha Congress also pose some challenges for the EU Member States under the principles of the Postal Directive. Even though EU Member States are not (we suggest) obliged to coordinate their positions on operational issues, it is unclear how Member States should participate in the operational elements of the Convention, and the Congress as a whole, in a manner consistent with the principle of regulatory independence enshrined in Article 22 of the Postal Directive.

With respect to the Convention, the Constitution provides that, ‘The Acts of the Union arising from the Congress shall be signed *by the plenipotentiaries of the member countries*’.<sup>317</sup> Article 22 of the Constitution states that ‘Member countries shall ensure that their designated operators fulfil the obligations arising from the Convention and its Regulations’. Article 2 of the Convention requires member countries to notify the International Bureau of the UPU within six months of the end of Congress of the names of ‘the operator or operators officially designated to operate postal services and to fulfil the obligations arising from the Acts of the Union on their territory’. These requirements raise some specific policy questions for Member States.

First, for a plenipotentiary representative of an EU Member State to negotiate and conclude an agreement that involves both governmental/regulatory and operational/commercial provisions appears inconsistent with the principle of regulatory independence. Although the acts of the UPU now distinguish between ‘member countries’ and ‘designated operators’, the Constitution continues to require a plenipotentiary representative of each member country to agree to the acts of the UPU on behalf of, in some sense, both the member country and one or more designated operator(s). The solution may be to refer to the EU legal doctrine that Member State governments can act as both a *public authority* and a *public undertaking*. When the signing the acts of the 2012 Doha Congress, therefore, the plenipotentiary of EU Member States might be considered to act in both capacities. Nonetheless, this does not seem to satisfy fully the requirements of EU law. According to the Postal Directive, Member States must maintain ‘*Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.*’ A plenipotentiary who engages a Member State in both governmental and regulatory commitments, on the one hand, and operational and commercial commitments, on the other, appears to be exercising control over postal service providers without structural separation.

Second, the Convention includes commitments to ensure that a designated operator(s) conducts operations pursuant to the Regulations.<sup>318</sup> Indeed, the vast majority of the specific obligations under UPU law are set out in the Regulations, not the Convention. But, at the Doha Congress, the plenipotentiary of an EU Member State cannot know the content of the Regulations. The Regulations are not approved by the Postal Operations Council until after the Congress ends. Nor are the Regulations specifically limited to elaboration of the Convention. Hence, the plenipotentiary cannot know what the operational commitment is that he (or she) is committing the Member State to enforce.

Third, the appropriate role of EU postal operators at the Doha Congress is unclear, especially in light of the principles of the Postal Directive. The Doha Congress will be

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<sup>317</sup> UPU, Constitution (2008), Article 25(1) (emphasis added).

<sup>318</sup> See UPU, Convention (2008), Articles 6 (postage rates) and 27 to 34 (transit fees, terminal dues, inward land rates). In total, the Convention refers to the Regulations 61 times.

establishing the framework for the rights and obligations of designated operators in the period 2014 to 2017. At the time of the Doha Congress, no Member State will have selected its designated operator(s) for this period. Under the 2008 Convention, member countries were required to appoint designated operators within six months after the end of the 2008 Geneva Congress.<sup>319</sup> There was no apparent way for member countries to do so before completion of the Geneva Convention and its implementing Regulations, since member countries could not know in advance what designated operators were being designated to do (or even whether the Congress would accept the idea of designated operators). While there can be no assurance that the 2012 Doha Congress will adopt the same provisions for appointment of designated operators, it is at least clear that member countries cannot appoint designated operators for the 2014 to 2017 period before the 2012 Convention is completed and approved. Moreover, under the Postal Directive, the designation or authorisation of a postal operator to qualify for special rights and obligations is a matter to be conducted, at a minimum, according to 'the principles of transparency, non-discrimination and proportionality'.<sup>320</sup> It hardly seems consistent with the requirements of the Postal Directive for a Member State to rely solely on the previously designated operator(s) to assist in the negotiation of the operational provisions for the Convention in effect from 2014 to 2017. It seems, therefore, that Member States should therefore seek ways to preserve the rights of all *potential* EU designated operators for the 2014 to 2017 period.

Additional issues are presented by resolutions of an operational nature. Each Congress addresses many resolutions which, in sum, establish a commercial strategy for the UPU's designated operators for the next four-year period. It is unclear how plenipotentiary delegates from the Member States should participate in these resolutions in manner consistent with the principle of regulatory independence, especially where these resolutions pertain to intra-EU postal services.

In our view, these observations indicate the need for a coordinated approach among EU Member States towards the application of the principle of regulatory independence to the operational issues that will be presented by the Doha Congress. While there is no need (we suggest) for Member States to coordinate their approaches towards the substance of operational decisions, the combination of duties required of the

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<sup>319</sup> UPU, Convention (2008), Article 2(1) ('Within six months of the end of Congress, member countries shall also provide the International Bureau with the name and address of the operator or operators officially designated to operate postal services and to fulfil the obligations arising from the Acts of the Union on their territory').

<sup>320</sup> These procedural requirements are explicitly required for designation of a postal operator for international postal services within the universal service. Postal Directive, Article 4(2). Although some of the mandatory services required by the Convention may fall outside the definition of the universal service of an EU Member State (e.g., bulk letter post, direct mail, or bulk parcel), the Postal Directive makes no provision for designation of a postal operator to provide postal services outside the universal service. The Postal Directive does permit Member States to establish general authorisation procedures for postal operators outside the universal service, but any obligations or conditions associated with general authorisations must be 'transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria'. Postal Directive, Article 9(3).

plenipotentiary of EU Member State at the Doha Congress raises basic questions about the fair and impartial exercise of governmental and regulatory authority. The Postal Directive has established the relevant policy guidelines, but their application to the conduct of delegations to the Doha Congress is unclear. Since application of the principle of regulatory independence to the operational issues is itself a governmental or regulatory policy, we suggest that EU Member States seek to adopt a consistent and coordinated approach in advance of the Doha Congress.

### 7.4.3 Positions in the POC and CA after Doha

Member States that are elected to the POC and the CA by the Doha Congress will be required to address a similar mixture of governmental and regulatory issues, on the one hand, and operational and commercial issues, on the other. The principles for determining which positions of Member States must be coordinated and which do not require coordination would seem to be similar to those discussed in respect to the Doha Congress. In each council, EU Member States should determine which issues are governmental or regulatory in nature and what level of coordination is required for such issues. For issues which are operational or commercial in nature, Member States should collectively determine how to best give effect to the principle of regulatory independence.



## 8 Conclusions and Recommendations

This chapter presents conclusions and recommendations with respect to several specific issues addressed in this study.

### 8.1 NRAs should consider how to better enforce key provisions of the Postal Directive relating to intra-EU cross-border postal services

National regulatory authorities are entrusted with ensuring compliance with the obligations arising from the Postal Directive.<sup>321</sup> To date, however, application of the Postal Directive to intra-EU cross-border postal services has been largely ignored by NRAs (with the notable exception of the Irish regulator). As a result, there is little understanding of how regulatory concepts that are now familiar in a national context should be adapted to intra-EU cross-border postal services. This section identifies the areas which, as a practical matter, appear to be most in need of attention by NRAs.

#### 8.1.1 Postage rates for outbound international universal services

Article 12 of the Postal Directive requires that tariffs for each of the services forming part of the universal service should be cost-oriented.<sup>322</sup> In the Postal Directive, the concept of universal services includes postal services from or to another Member State or from or to a non-EU country.<sup>323</sup> Therefore, NRAs are obliged to ensure that outbound intra-EU international universal services are cost-oriented.

The UPU's Adrenale Report suggests, however, the postage rates for outbound international letter post services are not cost-oriented. For example, for 20 gram letters, the outbound postage rates of Deutsche Post and La Poste (France) appear to be about 2.5 to 10 times the terminal dues charged by the destination post office.<sup>324</sup> For 100 gram letters, the outbound postage rates of Deutsche Post and La Poste (France) appear to be about 3.5 to 9 times the terminal dues charged by the destination post office. Since the cost of delivery normally accounts for most of the cost of end-to-end

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<sup>321</sup> Postal Directive, Article 22(2).

<sup>322</sup> Postal Directive, Article 12, second indent.

<sup>323</sup> Postal Directive, Article 2(11) (definition of cross-border mail); Article 3(7) (inclusion of cross-border services in universal service).

<sup>324</sup> Adrenale Report (2010), p. 29 (Figure 22). Figure 22 indicates that price for outbound 20 gram letter post items is SDR 0.74 for both Deutsche Post and La Poste (France). The terminal dues charge per item varies from 0.07 (transition countries) to 0.29 (maximum rate for target countries like Germany and France). Thus, although not clearly stated in the figure, it is apparent that the outbound international postage rate is 10.6 to 2.6 times the terminal dues charge. For 100 gram letters, the minimum coverage is the La Poste outbound rate (1.69) divided by the maximum target country terminal dues charge per item (0.44); the maximum coverage is the Deutsche Post outbound rate (3.91) divided by the transition country terminal dues charge per item (0.37). These figures indicate that for 100 gram letters the outbound international postage rate is 8.9 to 3.8 times the terminal dues charge.

postage, a high ratio of prices to terminal dues charges strongly suggests that outbound international letter post rates are not cost-oriented. As the Adrenale Report concluded,

[I]n ICs [industrialised countries] the level of participation of TDs [terminal dues] in the setting of international tariffs, especially with lighter letters, is fairly low. *This produces a large margin at the posting country*; encouraging competing postal operators to offer substantially lower prices and siphon-off considerable cross-border volumes from the DOs [designated operators].

A similar pattern of excessive pricing is indicated for outbound packet and parcel services.<sup>325</sup>

The Adrenale Report does not address intra-EU postal services specifically so its conclusions are no more than suggestive when it comes the application of the Postal Directive. Nonetheless, the Adrenale analysis does imply that NRAs should consider whether universal service providers need to reduce rates for outbound intra-EU universal services to cost-oriented rates. In some cases, it appears reasonable to suppose that cost-oriented rates for outbound intra-EU universal services may be less than postage rates for similar domestic services for the simple reason that terminal dues charges in at least some EU Member States are less than the cost of delivery of similar domestic mail in the country of origin.<sup>326</sup>

### 8.1.2 Terminal dues and inward land rates

Article 13 of the Postal Directive applies a specific category of rates: the rates that universal service providers in the EU charge each other for the delivery of intra-EU letter post items and parcels conveyed in the universal service. In the Postal Directive, these charges are called ‘terminal dues’ (the UPU Convention uses the term ‘inward land rates’ for parcels).<sup>327</sup> Article 13 provides as follows:

1. In order to ensure the cross-border provision of the universal service, Member States shall encourage their universal service providers to arrange that in their agreements on terminal dues for intra-Community cross-border mail, the following principles are respected:

<sup>325</sup> Adrenale Report (2010), p. 29 (Figure 41) (emphasis added).

<sup>326</sup> See section 6.4.2, above.

<sup>327</sup> Postal Directive, Article 2(15) defines ‘terminal dues’ as ‘the remuneration of universal service providers for the distribution of incoming cross-border mail comprising postal items from another Member State or from a third country’. In the Postal Directive, therefore, the term ‘terminal dues’ refers to charges for delivery of both letter post items and parcels, whereas in the UPU Convention the term ‘terminal dues’ refers only to charges for the delivery of letter post items and the term ‘inward land rates’ refers to charges for the delivery of parcels.



— terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,

— levels of remuneration shall be related to the quality of service achieved,

— terminal dues shall be transparent and non-discriminatory.

2. The implementation of these principles may include transitional arrangements designed to avoid undue disruption on postal markets or unfavourable implications for economic operators provided there is agreement between the operators of origin and receipt; such arrangements shall, however, be restricted to the minimum required to achieve these objectives.

Despite the discretionary word ‘encourage’ in the first sentence of Article 13, the gist of this article seems to be that EU 30 Member States are *obliged* to ensure that their universal service providers, after a reasonable transition,<sup>328</sup> apply the pricing principles of the Postal Directive — cost-oriented, non-discriminatory, transparent, etc. — when charging each other for delivery of postal items in the intra-EU universal service. To raise the quality of intra-EU postal services (a particular concern in 1997), Article 13 adds an additional requirement, that delivery charges must be related to quality of service.

In practice, it appears that universal service providers do not charge cost-oriented terminal dues. They appear to charge less than cost-oriented rates for delivery of inbound letter post items. The terminal dues model presented in section 6.4.3 suggests that most universal service providers in the EU charge substantially less than the domestic tariff, and thus less than the actual cost of delivery for inbound letter post items. The Adrenale Report also implies that terminal dues for letter post items are set below cost-oriented rates in many EU countries.<sup>329</sup> On the other hand, the Adrenale Report suggests that terminal dues (or ‘inward land rates’ in UPU terminology) are higher than cost-oriented rates for 2 to 5 kilogram packets and parcels.

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**328** Postal Directive, Article 13(1) requires only that Member States ‘encourage’ their universal service providers to apply the pricing principles of the Postal Directive. However, Article 13(2) also requires Member States to keep any transition period to *the minimum required* to avoid undue disruption on postal markets or unfavourable implications for economic operators. Moreover, it is apparent that the larger goal of full market opening applies to intra-EU postal services as well as national postal services. In our view, Article 13 read as a whole allows Member States a reasonable transition period, not an unlimited delay, in applying the pricing principles of the Postal Directive. In any case, after a reasonable transition period, ‘encourage’ can hardly be interpreted as allowing Member States to sign an intergovernmental agreement that prescribes charges for delivery of inbound mail that deviate significantly from cost-oriented levels.

**329** See Adrenale Report (2010), p. 29 (Figure 22). Figure 22 indicates that for 20 gram letters, terminal dues charged to designated operators from target countries covered 60.4 (Deutsche Post) or 59.2 (La Post, France) percent of retail domestic postage and the terminal dues charged to designated operators from transition countries covered 14.6 (Deutsche Post) or 14.3 (La Post, France) percent of retail domestic postage. For 100 gram letters, the figures are 24.9/37.6 percent and 29.4/31.6 percent, respectively.

In light of these considerations, NRAs should active review terminal dues charges for intra-EU universal services to ensure that they comply with the requirements of Article 13.<sup>330</sup>

### 8.1.3 Non-discriminatory access to universal services

The Postal Directive requires non-discriminatory access to universal services and to services provided by universal service providers. Article 5 of the Postal Directive requires universal service providers to provide universal services that offer ‘an identical service to users under comparable conditions’. Article 12 requires universal service providers to provide non-discriminatory pricing and conditions for special services:

whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.<sup>331</sup>

Article 12 is not limited to universal services but applies all postal services of universal service providers.

The Postal Directive does not limit the principle of non-discriminatory access to national users alone. The concept of universal service specifically includes international as well as domestic postal services. Nor is there any apparent justification for treating users from other Member States — whether designated operators, private providers of postal services, consolidators, or bulk mailers — as different from equivalent domestic mailers.

It is clear from this study, however, that not always true that all EU users are provided equal access to the services of EU universal service providers all of the time. Charges for delivery of inbound postal items may vary depending on the national origin of the items; whether the items are tendered by a UPU designated operator or another entity; whether the designated operator has dispatched the postal from an office in its national territory or from an extra-territorial office of exchange; and/or whether items are

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**330** We would also suggest that it would be both reasonable and lawful for NRAs to require that EU universal service providers charge cost-oriented terminal dues for delivery of international postal items received from designated operators of industrialised countries outside the EU. With respect to developing countries outside the EU, NRAs may need to consider additional issues such as affordability and foreign policy considerations.

**331** Postal Directive, Article 12, fifth indent.

considered remail or not by the destination designated operator. In some cases, universal service providers decline to provide access and return the postal items.

NRAs therefore need to consider carefully whether such unequal access of universal services are discriminatory within the meaning of the Postal Directive. Legal discrimination depends on whether like users are treated in a like manner. A finding of 'likeness' should be based on objective facts and applied in a proportionate manner. A careful application of such principles appears especially necessary if the Postal Directive is to achieve its goal of complete market opening within the entirety of the European Union.<sup>332</sup>

#### 8.1.4 Preparation for a multi-operator international environment

Article 11a of Postal Directive requires Member States to give all postal operators access to 'elements of postal infrastructure' within the universal service area, that is, facilities and information resources used in providing postal services. Article 11a states:

Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions and national legislation, Member States shall ensure that transparent, nondiscriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, such as postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service and return to sender service. This provision shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.

Similarly, Directive 2008/6 emphasised the importance of interoperability among postal operators in a liberalised multi-operator environment:

In an environment where several postal undertakings provide services within the universal service area, it is appropriate to require all Member States to assess whether some elements of the postal infrastructure or certain services generally provided by universal service providers should be made accessible to other operators providing similar services, in order to promote effective competition, and/or protect all users by ensuring the overall quality of the postal service. Where several universal service providers with regional postal networks exist, *Member States should also assess and, where*

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<sup>332</sup> Directive 2008/6/EC, recital 16.

*necessary, ensure their interoperability in order to prevent impediments to the prompt transport of postal items.*<sup>333</sup>

The thrust of these measures is to lay the groundwork for a multi-operator postal market within the EU. All postal operators must have transparent and non-discriminatory access to elements of the postal infrastructure if there is to be effective competition. This will require, in particular, a review of access to the UPU's IMPC codes for use by intra-EU postal services. At the same time, a multi-operator environment implies increased attention to the protector of users, both senders and addressees of postal items.<sup>334</sup>

The need to prepare for a multi-operator international environment is most apparent in respect to the intra-EU postal sector. Complete market opening will bring to all Member States at least the possibility of direct competition between national and non-national postal operators. In a more general sense, however, the multi-operator international environment of the future is not limited to the intra-EU postal markets. Several express companies, some based in the EU, already operate on a global basis. Parcel services are also offered on an increasingly regional, if not global, basis. Similarly remail and ETOEs indicate a potential for greater competition in international letter post services.

In light of such considerations, NRAs should consider how to apply Article 11a of the Postal Directive and other provisions relating to a multi-operator environment to international postal services.

### 8.1.5 Designation and authorisation of postal operators

Within the universal service area, the Postal Directive provides Member States shall ensure universal service by relying upon one or a combination of three regulatory mechanisms: reliance on market forces, designation of one or more universal service providers (USPs), and public procurement of postal services. Recital 23 of Directive 2008/6/EC summarised this three-pronged approach for ensuring universal service as follows:

Directive 97/67/EC established a preference for the provision of the universal service through the designation of universal service providers. Member States may require that the universal service be provided throughout the whole of the national territory. Greater competition and choice means that *Member States should be given further flexibility to determine the most efficient and appropriate mechanism* to guarantee the availability of the universal service, while respecting the principles of objectivity,

<sup>333</sup> Directive 2008/6/EC, recital 34 (emphasis added).

<sup>334</sup> See generally, WIK, *Role of Regulators* (2009), pp. 235-40.

transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market. *Member States may apply one or a combination of the following: the provision of the universal service by market forces, the designation of one or several undertakings to provide different elements of the universal service or to cover different parts of the territory and public procurement of services.* [emphasis added]

Recital 23 also indicates that Member States are to determine the ‘most efficient and appropriate’ mechanism or combination of mechanisms for ensuring universal service. The recital declares that Member States must respect ‘*the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market*’.<sup>335</sup>

Where a Member State chooses to rely in whole or in part on *designation* of one or more USPs, the Postal Directive requires an objective and transparent procedure. Article 4 states that:

Member States may designate one or more undertakings as universal service providers in order that the whole of the national territory can be covered. *Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory.* When they do so, they shall determine in accordance with Community law the obligations and rights assigned to them and shall publish these obligations and rights. In particular, *Member States shall take measures to ensure that the conditions under which universal services are entrusted are based on the principles of transparency, non-discrimination and proportionality*, thereby guaranteeing the continuity of the universal service provision, by taking into account the important role it plays in social and territorial cohesion. [emphasis added]

Recital 23 of Directive 2008/6/EC reiterates and clarifies the need for a transparent and non-discriminatory designation procedure:

In the event that a Member State decides to designate one or more undertakings for the provision of the universal service, or for the provision of the various components of the universal service, *it must be ensured that quality requirements pertaining to the universal service are imposed in a transparent and proportionate manner on the universal service providers.* Where a Member State designates more than one undertaking, it

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<sup>335</sup> See generally, WIK, *Role of Regulators* (2009), pp. 219-24.

should ensure that there is no overlap in the universal service obligations. [emphasis added]

Thus, under the Postal Directive Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory', but they must make such designations based upon 'principles of transparency, non-discrimination and proportionality'. <sup>336</sup>

Within the universal service area, Article 9 of the Postal Directive provides further that Member States may introduce authorisation procedures for all postal operators. Two types of authorisations are permitted: an individual licence and a general authorisation. Only specified types of conditions may be attached to these authorisations. <sup>337</sup>

Outside the universal service area, the Postal Directive does provide for designation of postal operators, only the introduction of a general authorisation. Again, only specified types of conditions may be attached to such authorisations.

In practice, it appears that Member States have not approached the designation and/or authorisation of postal operators for international postal services in a manner fully consistent with these requirements. For example, within the international universal service area, it is unclear — and seemingly unexamined by any NRA — whether there is an objective need to link the designation of a postal operator to provide outbound universal services with the designation to provide inbound services. It may be, for example, that outbound universal services may be ensured by reliance on market forces even if some inbound universal services cannot be ensured in this manner. Outside the universal service area established by some Member States (e.g., in the provision of bulk letter post, bulk parcel services, or express services), it appears that Member States designate certain postal operators to qualify for special legal benefits (right to delivery by designated operators at special rates, right to special customs treatment) even though the Postal Directive does not provide for designation procedures outside the universal service area, only a non-discriminatory general authorisation procedure.

The provisions of the Postal Directive dealing with ensuring universal service, designation of universal service providers, and authorisation of postal operators are fundamental elements of the fairness and efficiency of the regulatory framework established by the Directive, especially in respect to the provision of intra-EU postal services. The appropriate application of these principles to intra-EU postal services is not straightforward. Nonetheless, to ensure the proper implementation of the Postal Directive, NRAs will need to consider the best way to apply the principles of the Postal Directive to designation and/or authorisation of providers of intra-EU cross-border postal services.

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<sup>336</sup> See generally, WIK, *Role of Regulators* (2009), pp. 225-28.

<sup>337</sup> See generally, WIK, *Role of Regulators* (2009), pp. 106-15.

## **8.2 The EU and Member States should improve coordination in the development of international postal policies.**

This study has suggested several ways in which the EU and/or Member States can better coordinate the development and presentation of international postal policies.

### **8.2.1 Coordination of positions of the EU and Member States at the UPU**

As discussed in Chapter 7, it appears that the EU and Member States are obliged by EU law to develop a more closely coordinated position at the 2012 Doha Congress than has been presented in past UPU congresses. Most importantly, it appears that the EU has exclusive competence with respect to at least some, and perhaps all, of the governmental and regulatory issues that will be decided at 2012 Doha Congress. At a minimum, Member States are subject to a general duty to coordinate their participation in an intergovernmental organization such as the UPU. We suggest, however, that in an intergovernmental organization like the UPU which combines governmental/regulatory functions and operational/commercial functions, the duty of coordination should be interpreted as limited to governmental and regulatory issues and not to include operational and commercial issues.

In preparation for the Doha Congress, to be convened in September 2012, the EU and Member States, acting collaboratively, need to address two basic issues. What are the competences of the EU and the Member States with respect to the governmental or regulatory issues to be presented in Doha? Which issues in the agenda of the Doha Congress should be considered governmental or regulatory in nature?

At the Doha Congress of the UPU, delegates will be asked to revise and re-enact only one primary agreement relating to the exchange of international postal services, the Universal Postal Convention. The Convention is now a relatively short agreement (about 25 pages and 37 articles) in which the obligations imposed on member countries and designated operators are already distinguished in some measure. Our preliminary review suggests there are approximately eleven governmental or regulatory issues in the Convention that require a coordinated approach. In addition to the Convention, EU Member States will likely address other governmental or regulatory issues, including proposed amendments to constitutional acts of the UPU and decisions of Congress on policy issues falling outside the Convention. Where the EU and/or Member States consider that acts of the UPU cannot be reconciled with the requirements of EU law, they may need to coordinate their approaches to appropriate reservations or declarations.

In addition, we suggest the EU and Member States should coordinate their approaches to several questions concerning how the principle of regulatory independence is to be

applied to operational issues presented by the Doha Congress. Even though there is no need to coordinate positions on operational issues, the principle of regulatory independence presents several difficult challenges that must be resolved in advance of addressing the operational decisions themselves.

The need for Member States and the EU to develop a specific mechanism for the coordination of governmental and regulatory positions at the UPU will extend beyond the 2012 Doha Congress. Member States that are elected to the POC and the CA by the Doha Congress will face a similar mixture of governmental/regulatory and operational/commercial issues. The principles for determining which positions of Member States must be coordinated at EU level appear to be similar as well.

### 8.2.2 Coordination of positions towards international trade, international postal services, and customs control.

It appears from this study that the policies towards international trade, international postal services, and border control could be better coordinated within the EU. For example, in trade negotiations, the EU has supported liberalisation of outbound bulk letter post because this opens markets for EU-based providers of postal services. At the same time, at the UPU many EU Member States have supported restrictions on remail and ETOEs. These policies pull in opposite directions. Similarly, while the EU supports liberalisation of parcel and express services in trade negotiations and aviation agreements, EU Member States at the UPU have supported the appointment of designated operators in international parcel and express markets. UPU designated operators are assigned special rights and obligations, including in the application of customs law, which appear to work against the unimpeded competition sought in trade agreements. Better coordination of positions, or a more refined synthesis of positions, would appear appropriate.

## 8.3 The EU should reconsider some aspects of its approach to trade agreements relating to postal services

A review of the provisions of trade agreements relating to postal services makes clear how difficult it is to accomplish significant reform of international postal markets using trade agreements. So far, the EU has made little tangible progress in reducing or removing barriers to international trade in postal services. Nonetheless, we believe this effort should be continued because the trade component of the EU's external postal policy is free to pursue the goal of liberalisation agenda unencumbered by legacy constraints. At the same time, we offer two suggestions (in addition to the suggestion of better coordination, above) that may help the EU pursue its goals more efficiently.



### 8.3.1 A more ‘international vocabulary’ for external postal negotiations

The Postal Directive is a great political achievement, but it does not translate easily into other the political vocabulary of other countries. This is unsurprising if one recalls how long the EU has been labouring on postal reform. Twenty years elapsed from the first work on the *Postal Green Paper* to the last work on the Third Postal Directive in 2008. Even now most Member States have not implemented fully the reforms of the Third Postal Directive. In 1985, elements of EU postal policy which are today accepted as normal and appropriate tools of modernisation would have seemed to many in the postal world as economically and politically impossible — e.g., universal service without a reserved area or a designated universal service provider, multiple universal service providers or universal service by reliance on market forces, cost-oriented tariffs based on independently verified accounts, non-discriminatory downstream access, competition and differentiation in bulk postal services, independent postal regulators, and multinational public postal operators.

The long internal debate which forged EU postal reforms has created a specialised vocabulary for EU postal reform that is not always understood in the same way outside the EU. It is not necessarily true that the more terms that can be borrowed from the EU Postal Directive and introduced into multilateral or bilateral trade negotiations, the more liberalised the trade in postal services will be. Concepts drawn from the Postal Directive can be selectively misinterpreted and misapplied to restrain rather than foster trade in postal services.

Some possible terminological ‘rules of thumb’ are set out below to illustrate how, after consideration, the EU might translate EU postal policy more effectively into a more global postal dialect.

- *Embrace the UPU-based division of international collection and delivery services into letter post, parcels, and express.* We suggest that the most feasible alternative to the unsatisfactory UN CPC classification scheme is not an eight-part classification scheme derived from the Postal Directive, but the UPU’s traditional division of the services of postal administrations into letter post (i.e., letters and cards, printed matter, and small packets), parcels, and express. This simple division of the sector is better understood around the world and more closely aligned with historical development and operational constraints than the more complicated scheme proposed by the EU in the Doha Round and subsequent PTAs. While one can argue that the boundaries between letter post, parcel, and express submarkets are not always clear, but they are reasonably clear and reflected in the services provided by private as well as public operators. Perhaps most importantly, the UPU’s tripartite classification usefully gives proper attention to parcels as a distinctly different activity from the letter

post and one for which liberalisation commitments might be solicited without treading upon the political sensitivities raised by the letter post.

- *Avoid use of the term 'postal' as an umbrella term for all types of collection and delivery services.* As a consequence of its shift to liberalised markets, the Postal Directive now uses the term 'postal' to refer to all types of collection and delivery services. For more than a century, however, the UPU has promulgated a standard set of terms for international postal services, and in UPU usage, the term 'postal', when used alone, refers to postal administrations and their activities, not to private operators. Similarly, the UN CPC divides the universe of collection and delivery services into 'postal' and 'courier' services, where 'postal' refers exclusively to services provided by national postal administrations. To many outside the EU, therefore, to refer to private parcel and express services as 'postal' services seems to imply that they are encroaching on the natural birthright of the postal administration and that such services should be licensed by postal regulators and taxed to support universal postal service.

If an umbrella term for all types of collection and delivery services must be used, a more neutral term should be found. In the Doha Round, the EU has suggested the term 'postal/courier' as a consolidation of both the CPC category of 'postal' services and the CPC category for 'courier' services. While 'postal/courier' expresses the right idea, it may be that a less contrived linguistic solution can be found. In any case, it is apparent that no modern set of subcategories for the postal sector (in the broad EU sense) can be subsumed under either of the existing the CPC categories.

- *Avoid use of the UN CPC term 'courier'.* The EU has rightly urged modernisation of the UN CPC's postal/courier dichotomy. At the same time, EU PTAs often rely on the term 'courier' to define key principles. In such cases, it is exceedingly difficult to understand precisely what has actually be agreed. The term 'courier' as used in the UN CPC has become so difficult to understand that it is now effectively meaningless.
- *Ensure the term 'universal service' is used in an EU-sense.* In the EU, 'universal service' is a legal obligation, not a specific type of postal service. The EU concept of the universal service obligation has a definite meaning and is balanced by other regulatory concepts such as a commitment to 'gradual and controlled liberalisation of the market', oversight by an independent regulator, and administrative principles such as the principles of proportionality and objectiveness. Shorn of this context, the term 'universal service' can be misinterpreted to justify broad and arbitrary government support for a national postal administration in conveyance of documents and parcels and even

financial services. EU representatives therefore need to take care that the term 'universal service' is used in an EU sense in trade negotiations.

### 8.3.2 Focus on commercial parcels and express services

In the Doha Round of the WTO, several preferential trade agreements (PTAs), and specialised trade discussions, the EU has sought commitments to liberalise or maintain liberalisation of (i) all postal services outside the reserved area or (ii) outbound bulk international mail. In addition, the EU has proposed a reference paper for postal services that would entail additional commitments to police anti-competitive practices in the postal sector, establish independent postal regulators, and provide some procedural safeguards in licensing procedures.

In the future, we suggest the EU should consider focusing on commitments to liberalise or maintain liberalisation of 'commercial parcels' and express services. Experience seems to indicate that it will be extremely difficult to persuade other countries to make commitments that appear to involve traditional postal services, i.e., collection and delivery services for the letter post and single-piece parcels that are collected and delivered with the letter. Moreover, the letter post is a declining market so that, given the time it takes to negotiate trade agreements, victories in the field of letter post services may appear less significant by the time a deal can be struck. On the other hand, most countries already seem to recognize the growing importance of commercial delivery services to the future of their economies. Their companies need to be able to sell directly to the global market; their customers and companies need to be able to buy directly from the global market. Private international express services are widely accepted. Most countries also appear to rely substantially on private parcel delivery services at least for parcels sent to businesses. A 2002 UPU report observed that only a 'slight majority' of UPU member considered parcels to be within the universal service obligation.<sup>338</sup> The UPU's 2010 Adrenale Report reports that postal administrations convey only about one quarter of all lightweight parcels. At the same time, Adrenale foresees an increased demand for international 'slow-express' or 'improved parcel' services adapted to the needs of direct marketing companies and similar businesses.<sup>339</sup> Hence, it seems to us plausible to place more emphasis on commitments relating to 'commercial parcel' and express delivery services and less emphasis on traditional 'postal' services.<sup>340</sup>

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**338** UPU, International Bureau, *Memorandum on Universal Postal Service Obligations and Standards* (2001), p.17.

**339** Adrenale Report, pp. 62-66.

**340** Of course, this proposal begs the question of how to distinguish between 'commercial parcels' and 'non-commercial parcels'. While it appears unnecessary to offer specific criteria in order to describe the basic concept, we note there are several legal standards might be cited as starting points. UPU regulations already distinguish between commercial and non-commercial shipments (for customs declarations) and between bulk and non-bulk shipments (for terminal dues). Dutch postal law

Despite the EU's recent success in Canada (and, perhaps, the USA), we are less optimistic about value of trade agreements as a vehicle to liberalise bulk outbound international letter post services, for three reasons. First, it appears that international letter post services will be of less economic importance in the future. Second, the most significant impediments to free trade in letter post services appear to be grounded in the regulations of the UPU, not in national legislation. Third, as a practical matter, countries have only a very limited ability to restrict outbound bulk international letter post services because mailers can easily print their letter post items abroad. Hence, winning the right to provide outbound bulk international letter post services may not, standing alone, prove of much economic value. If, nonetheless, EU trade negotiators seek commitments to liberalise outbound bulk international letter post markets, then they should, at the same time, seek assurances that the trade partner will allow public postal operators from the EU to compete for outbound international bulk mail on equal terms with its postal administration. In particular, a specific commitment involving bulk outbound letter post mail should also include commitments not to invoke provisions of the acts of the UPU relating to remail and ETOEs.

### 8.3.3 More specific safeguards on authorisation procedures for postal services

As described in section 5.3.3, the EU has urged trade partners to make specific commitments with respect to the authorisation of postal services. The proposed commitment would allow the introduction of individual licenses for all types of postal services and require that licensing procedures and criteria be made public. The EU proposal is a step in the right direction. Overly restrictive authorisation procedures have been used, and may be used in the future, to restrict significantly the operations of EU postal operators in international and foreign postal markets.

We suggest, however, that future proposals relating to authorisation procedures can be made more specific and pro-competitive by borrowing more liberally from the policies of the Postal Directive. In particular, the Postal Directive requires that licensing procedures and criteria must be 'transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, [and] based on objective criteria'. In addition, the Postal Directive includes specific limits on the types of conditions that may be attached to individual licenses and general authorisations. Finally, the Postal Directive clearly limits the scope of postal services that may be subject to individual licences and requires the use of the more liberal general authorisation procedure for all other types of postal services.<sup>341</sup> The Commission should consider seeking these additional safeguards in provisions of future trade agreements dealing with the authorisation of postal services.

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distinguishes between retail and non-retail parcels (for universal service purposes). German law distinguishes between parcels conveyed jointly with letters and parcels that are conveyed separately (for defining the 'licensed area').

**341** For detailed exposition of authorization procedures under the Postal Directive, see WIK, *Role of Regulators* (2009), pp. 106-22.

#### **8.4 The EU should encourage an international regulatory dialogue on the governance of international postal services.**

There is today no regular international dialogue on the appropriate international regulatory framework for global postal services — using ‘postal services’ in the broad EU sense of all types of delivery services. In the postal sector — as in, for example, the telecommunications, aviation, shipping, and financial sectors — there appears to be a need for an improved dialogue among policymakers.

Neither the WTO nor the UPU can serve this function. While the EU has sought to encourage GATS commitments on ‘postal/courier’ services, trade negotiations cannot take the place of a sector-specific dialogue. In trade negotiations, all services are fungible, so that liberalisation of one may be traded away in return for liberalisation of another. On the other hand, the Universal Postal Union is too narrowly focused. Over the last quarter century, the UPU has become more and more focused on the governance of ‘designated operators’. Less than half, perhaps less than a quarter by some measures, of international postal services are now conducted according to the acts of the UPU.

It would be premature to suggest the need for either a global regulatory framework or a global organisation for postal services. In some ways, benign neglect may be best regulatory solution for now. One cannot, however, discount the potential for a patchwork of national controls as global delivery services become more important to national economies. Hence, it is not too early to recognise the importance of the postal sector for the global economy and suggest that government policy makers in leading countries should begin to exchange views on the implications of these trends. Even such a dialogue may take time to launch. In many non-EU governments, there exists no government office that is responsible for the postal sector as a whole. Nonetheless, development of the global postal sector is so apparent and so significant for the EU that would be appropriate for the EU to initiate periodic discussions and conferences with appropriate officials in other countries.

One possible avenue for governments to explore may be a new type international agreement on postal services. To date, development of international collection and delivery networks has been complicated and delayed by the fact that these networks combine several different services or activities that have been traditionally regulated or licensed separately, such as domestic air transportation, international air transportation, road transportation in multiple countries, water transportation, freight forwarding, warehousing and local cartage services, and customs brokerage. As described in section 2.2.4, the EU-USA aviation agreement pioneers the idea of ‘multi-modal’ air transportation authority. If a carrier has multi-modal authority to move an item from A to B, then it has authority operate whatever combination of aircraft and trucks may be needed to do the job. Generalising slightly, it might be possible to image a ‘multi-modal’

postal services agreement that facilitates the exchange of such services by dealing in a unified manner with all of the major regulatory regimes including, for example, postal, customs law, hazardous materials privacy, aviation, and truck transport.

Such a 'one-stop' regulatory regime for postal services is not as much of an innovation as it may seem at first. In a sense, the Universal Postal Convention was a nineteenth century prototype of such an agreement. It linked public undertakings that were free of most regulatory restraints and dealt directly with the one major restriction that hindered international postal operations, the customs laws. The result was a radical simplification in international commerce compared to what went before. Building on such precedents, governments might some day be able to fashion a twenty-first century postal treaty that is a worthy successor to the Universal Postal Convention.

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## Appendix A: Description and key parameters of the terminal dues model

### Key assumptions of the model

The objective of the model is to estimate the monetary effects of different terminal dues rules for the EU30 countries. The model results are based on a parameterisation of the model which we see as most adequate, based on available information. The key assumptions of the model are as follows:

- The model compares the monetary effects of different terminal dues rules for cross-border letter post (LP) flows at one point of time (comparative static model) for the EU30 countries.
- The model is a static partial analysis, i.e. it does not handle interdependencies between the different terminal dues rules, nor volume effects of different terminal dues rules .
- The model comprises two products: priority letter post and non-priority letter post.
- Partner countries for the letter post flows of the EU30 are the EU30 countries plus the 30 top trading partner (based on overall trade data for goods and services) of the EU30. See Table A 2 for a list of countries included in the model.
- Bilateral letter post flows are estimated based on information on total outbound and inbound letter post per country, and bilateral data for trade in services between any two countries in the model.
- The model calculates both terminal dues for inbound cross-border LP and for outbound cross-border LP for each of the EU30 countries. Terminal dues are calculated based on the relevant terminal dues rules for each scenario, and price data for each country (price information per weight step from UPU).
- All prices and money values in the model are expressed in Standard Drawing Rights (SDR).
- The same weight profile (share of letter post items per weight step) is assumed for all countries.
- The model considers different terminal dues rules. LP volumes (outbound and inbound) are constant, i.e. they do not change as prices/terminal dues change.

- For a selected terminal dues regime, the terminal dues for outbound cross-border LP are the product of the volume that the respective country sends to each of its partner countries and of the specific letter post rate according to the terminal dues rule valid in the partner country. The terminal dues for inbound cross-border LP are the product of the volume that the country receives from each of the partner countries and of terminal dues applicable to inbound traffic from that partner country.

## Terminal dues rules

The model calculates the monetary effects when changing from a base case terminal dues system to alternative terminal dues systems. In principle, the model calculates the respective inbound and outbound volumes for the EU30 countries and multiplies the volumes with the respective prices according to the different terminal dues rules. As a key feature, the model allows price changes between the different terminal dues regimes. Volumes are constant for each of the different terminal dues scenarios/rules, i.e. the model does not consider demand effects of changes in terminal dues (which would require assumptions about how terminal dues changes effect changes in retail prices charged to senders).

For every terminal dues regime, the model calculates an average price per cross-border letter post item (see Table A 8 for further details). The model specifies a base terminal dues system called 'domestic bulk rates'. This base case is assumed to reflect the costs of the services provided by the postal operator in the country of destination. The model then estimates the monetary effects (in m SDR) for the EU30 countries when changing from the base to a selected alternative terminal dues regime.<sup>342</sup>

### **Base case terminal dues rule**

#### *Domestic bulk rates*

Inbound cross-border mail is charged on the base of the domestic postage, as of 2008.<sup>343</sup> The available domestic public tariffs were transferred to SDR by exchange rates of 30 September 2008. For all countries, bulk rates were calculated from public tariffs using a uniform discount of 25 % for priority letter post, and a 40 % discount for non-priority mail. All discounts are applied to public priority tariffs.

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<sup>342</sup> Basically, the base and the alternative terminal dues systems are not fixed by the model's structure, i.e. the UPU rule could also be set as the base terminal dues rule.

<sup>343</sup> The latest available consistent data on national postages was available from the UPU, and is dated 30 September 2008.

### ***Alternative terminal dues rules***

#### *UPU 2008 terminal dues*

Inbound cross-border mail is charged according to the UPU terminal dues valid for 2008. Terminal dues for letter post flows between countries belonging to the UPU target system are calculated on the basis of 66 % of the national charge for a 20 g priority-letter (domestic). However, the calculated values cannot be less than a floor rate of 0.158 SDR per item and 1.598 SDR per kg; and cannot exceed a cap rate of 0.237 SDR per item and 1.858 SDR per kg. Letter post flows to, from and between countries belonging to the transition system are charged at a lump-sum of 3.727 SDR per kg, on the base of a worldwide average of 15.21 items per kg.

#### *UPU 2008 without cap or floor*

There are discussions at the UPU about abolishing of the UPU floor and cap rates. The model therefore includes a modified scenario of the *UPU 2008 terminal dues* rule without floor and cap rates. All other parameters are set according to scenario *UPU 2008 terminal dues*.

#### *REIMS II*

This scenario calculates terminal dues according to the REIMS II agreement of 1997. According to this agreement, the parameters are set as follows: The percentage of the domestic postage for priority mail is 80 %. For non-priority mail, there is an additional discount of 10 %. In addition, the REIMS II rule includes a floor rate which is set to 0.147 SDR per item and 1.491 per kg. Note that in the model, the REIMS II scenario is not very different from the stylised base case. Both scenarios apply a uniform discount on public priority tariffs.

The average prices for letter post items according to the different rules are the key input parameters and influence the results, namely the terminal dues for inbound and outbound mail per country.

In order to obtain average price levels per letter post item, we used prices for all different weight steps, and applied these prices to a standard weight profile (see Table A 7). The resulting average weight per item (in kg) is the result of the volume distribution and the average weight of an item per weight step. Our model assumes the average number of items per kg (IPK) is 20 for all countries.

As regards the breakdown of letter post by product, we assume that the share of non-priority mail is 40 % in all countries.

Average prices per letter post item according to the different terminal dues rules are shown in Table A 8.

## Estimating bilateral mail flows

The letter post volumes per bilateral country pair are used to calculate the terminal dues. This key input parameter for the model is estimated based on bilateral trade data for the EU30 countries and the 30 most important trade partners of the EU 30 as listed in Table A 2. The export volume of the EU30 countries to the selected top 30 trading partners of the EU30 constitute nearly 90 % of the total extra EU30 exports and more than 90 % of the imports.

For each EU-30 country, an input parameter determines the share of cross-border LP that is addressed to other EU-30 countries (see Table A 3).

For each country, total outbound volumes were distributed to destination countries according to the bilateral trade data of the intra EU30. We used bilateral service trade data of Eurostat (for EU27) and OECD (for IS and NO).<sup>344</sup> We take bilateral trade flows as a proxy for bilateral letter post flows. As the total outbound volume should be equal to the total inbound volume within the EU30, the inbound volumes calculated for each of the countries of destination in a first step were adjusted by an iterative process until they matched the available overall data for inbound volumes.

The extra EU30 shares of inbound and outbound volumes were distributed according to the bilateral service trade data of the EU30 and the selected non-EU30 countries (see Table A 5 for outbound mail and Table A 6 for inbound mail).

We emphasise that the estimated bilateral letter post flows (presented in Table A 4 to Table A 6) are illustrative only and will differ from real values. Note that our estimates relate to countries, and not specific operators. Where there is competition for outbound mail in reality, volumes for a country necessarily differ from volumes of the designated operator of that country. Nevertheless, since there is no publicly available data for bilateral mail flows, we believe the estimated mail flows provide a useful basis for quantifying the effects of different terminal dues rules, at least by order of magnitude.

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<sup>344</sup> Eurostat databases: external trade database 'ComExt' (for trade in commodities) and 'International trade in services, geographical breakdown' (bob\_its\_tot) for trade in services. OECD databases: 'International Trade by Commodity Statistics (ITCS)' (SITC Revision 3) for trade in commodities and 'Trade in Services' (Trade in Services by Partner Country) for trade in services. All data refer to the year 2007, the most current year for which a consistent set of data was available.

## Calculation of terminal dues for bilateral mail flows

### Outbound mail

The model estimates for each country (EU30), the total amount of the terminal dues that the country has to pay for the delivery of outbound cross-border mail to its partner countries (EU30 and top 30 trading partners). Terminal dues are calculated according to the following formula:

$$TD_{i_k}^{out} = \sum_{j=1}^{60} [p_{i,j_k} * x_{i,j_k}]$$

<i>i</i>	:=	country 1 to 30 (EU30)
<i>j</i>	:=	partner country 1 to 60 (EU30 plus top 30 trading partners)
<i>k</i>	:=	terminal dues rule (domestic bulk rates, UPU 2008 terminal dues, UPU 2008 without cap or floor, REIMS II)
$TD_{i_k}^{out}$	:=	total terminal dues for outbound letter post of country <i>i</i>
$p_{i,j}$	:=	price for the delivery of outbound letter post item that country <i>i</i> has to pay to country <i>j</i> for the delivery
$x_{i,j}$	:=	cross-border letter post volume that country <i>i</i> sends to country <i>j</i>

### Inbound mail

Terminal dues for inbound cross-border mail are calculated according to the following formula:

$$TD_{i_k}^{in} = \sum_{j=1}^{60} [p_{j,i_k} * x_{j,i_k}]$$

<i>i</i>	:=	country 1 to 30 (EU30)
<i>j</i>	:=	partner country 1 to 60 (EU30 plus top 30 trading partners)
<i>k</i>	:=	terminal dues rule (domestic bulk rates, UPU 2008 terminal dues, UPU 2008 without cap or floor, REIMS II)
$TD_{i_k}^{in}$	:=	Total terminal dues for inbound letter post of country <i>i</i>
$p_{j,i}$	:=	Price for the delivery of inbound letter post item that country <i>j</i> has to pay to country <i>i</i>
$x_{j,i}$	:=	Cross-border letter post volume that country <i>j</i> sends to country <i>i</i>

## Model results

The model estimates the net monetary effects for each of the reporter countries (EU30) when changing from a base terminal dues regime (domestic bulk rates) to a selected alternative terminal dues regime. Results are presented separately for intra EU30 traffic, extra EU30, and in total for all mail exchange of a country (intra and extra EU30).

The base case rule of the model (domestic bulk rates) represents our best guess of the costs of delivery of cross-border mail in each country. Admittedly, a critical assumption is that the discount used to obtain bulk rates (from public tariffs) is assumed to be uniform for all countries.<sup>345</sup> No dataset of country-by-country data on bulk mail tariffs was available to us, but this appears the single most important area for improvement of the model's accuracy.

The alternative terminal dues create trade distortions between the countries by definition. The model estimates the effect of different terminal dues rules for each country. Deviations from the base case can be interpreted as an indication of these distortions: The model results show how much more or less a country would have to pay in terminal dues in each scenario, compared to the base case (domestic bulk rates). Note that no direct conclusions can be drawn from the implications on the cost of input factors (terminal dues) for the extent of distortions in retail (consumer) markets. Second to terminal dues, other factors are likely to have an impact on retail prices for cross border delivery service, e.g. operators' pricing strategies, market power, or elasticity of demand. Table 1 summarises our estimates for the financial impact of different terminal dues rules for each Member State. For more detailed results, including respective payments for inbound and outbound cross-border mail separately, and for intra EU30 and extra EU30 separately, see Table A 10 to Table A 12.

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<sup>345</sup> Similarly, the model assumes a uniform distribution of letter post by weight steps. In practice, some countries will send more heavyweight items (e.g. publications or small merchandise) and other countries will send more lightweight items such as postcards. This weight structure in reality has an impact on the financial impact of different terminal dues rules on an operator. However, no country-specific data on weight profiles was available for this study.



## Tables

Table A 1 Model results: Estimated gains/losses for EU30 countries when moving from base case (domestic bulk rates) to alternative terminal dues rules (m SDR)

Country	UPU 2008 terminal dues	UPU 2008 without cap or floor	REIMS II
AT	-1.2	0.1	1.0
BE	11.0	10.9	-1.3
BG	1.6	1.6	-0.1
CY	1.8	1.8	-0.2
CZ	5.0	5.0	-0.6
DE	-132.2	-111.4	23.2
DK	-17.7	-7.0	2.9
EE	0.7	0.7	-0.1
EL	3.7	3.5	-0.8
ES	39.7	28.0	-10.0
FI	-9.9	-7.7	1.1
FR	-6.1	-5.9	0.1
HU	1.3	1.3	-0.1
IE	-8.1	-4.6	1.6
IT	-98.6	-87.2	14.8
LT	0.3	0.3	0.0
LU	4.6	3.5	-0.8
LV	0.2	0.2	0.0
MT	1.7	1.7	0.2
NL	-5.1	-15.0	-3.5
PL	3.2	3.2	-0.6
PT	4.2	2.5	-0.4
RO	5.1	5.1	0.9
SE	-2.9	-5.8	-0.1
SI	2.1	2.1	-0.2
SK	0.5	0.5	-0.2
UK	63.6	42.7	-15.3
IS	0.3	0.2	0.1
LI	-0.5	-0.1	0.1
NO	-60.7	-38.4	9.5
<b>EU30</b>	<b>-191.9</b>	<b>-168.2</b>	<b>21.0</b>

Source: WIK-Consult.

Table A 2 Countries included in the model

EU30		Non-EU30	
Country code	Country name	Country code	Country name
AT	Austria	US	United States
BE	Belgium	CH	Switzerland
BG	Bulgaria	RU	Russian Federation
CY	Cyprus	CN	China
CZ	Czech Republic	JP	Japan
DE	Germany	TR	Turkey
DK	Denmark	CA	Canada
EE	Estonia	IN	India
GR	Greece	AE	United Arab Emirates
ES	Spain	AU	Australia
FI	Finland	SG	Singapore
FR	France	KR	Korea, Republic Of
HU	Hungary	BR	Brazil
IE	Ireland	SA	Saudi Arabia
IT	Italy	ZA	South Africa
LT	Lithuania	MX	Mexico
LU	Luxembourg	UA	Ukraine
LV	Latvia	IL	Israel
MT	Malta	HR	Croatia
NL	Netherlands	MA	Morocco
PL	Poland	DZ	Algeria
PT	Portugal	EG	Egypt
RO	Romania	MY	Malaysia
SE	Sweden	IR	Iran, Islamic Republic Of
SI	Slovenia	NG	Nigeria
SK	Slovakia	TN	Tunisia
UK	United Kingdom	TH	Thailand
IS	Iceland	QA	Qatar
LI	Liechtenstein	AR	Argentina
NO	Norway	KZ	Kazakhstan

Source: WIK-Consult.

Table A 3 Estimated percentage of intra EU30 letter post flows

Country	Outbound	Inbound
AT	80%	75%
BE	90%	90%
BG	80%	75%
CY	80%	75%
CZ	80%	75%
DE	70%	70%
DK	80%	80%
EE	80%	75%
EL	80%	75%
ES	80%	75%
FI	80%	75%
FR	75%	75%
HU	80%	75%
IE	80%	75%
IT	80%	75%
LT	80%	75%
LU	80%	75%
LV	80%	75%
MT	80%	75%
NL	80%	75%
PL	80%	75%
PT	80%	75%
RO	80%	75%
SE	70%	85%
SI	80%	75%
SK	80%	75%
UK	60%	60%
IS	80%	75%
LI	50%	50%
NO	90%	90%

Source: WIK-Consult.



Table A 7 Standard weight profile

	Letters			Flats					Packets						
Weight step begin (kg)	0.000	0.020	0.050	0.000	0.020	0.050	0.100	0.250	0.000	0.020	0.050	0.100	0.250	0.500	1.000
Weight step end (kg)	0.020	0.050	0.100	0.020	0.050	0.100	0.250	0.500	0.020	0.050	0.100	0.250	0.500	1.000	2.000
Volume distribution	63.1%	11.9%	1.0%	5.1%	4.0%	3.5%	2.9%	0.7%	0.4%	0.6%	1.0%	1.9%	2.2%	1.1%	0.5%
Average wt per wt step (kg)	0.011	0.031	0.073	0.015	0.039	0.077	0.154	0.308	0.010	0.042	0.081	0.185	0.365	0.714	1.358
Average wt per Item (kg)	0.050														
Average items per kg (IPK)	20.00														
Volume of non priority mail	40%														

Source: Estimated by WIK-Consult based on interviews with postal operators and IPC.

Table A 8 Summary of alternative terminal dues rates (SDR)

Country	Dom. bulk rate	UPU target system	UPU		UPU no corridor		REIMS II
			target	transit.	target	transit.	
AT	0.461	x	0.330	0.186	0.389	0.186	0.513
BE	0.494	x	0.330	0.186	0.383	0.186	0.550
BG	0.168		0.186	0.186	0.186	0.186	0.222
CY	0.246		0.186	0.186	0.186	0.186	0.274
CZ	0.331		0.186	0.186	0.186	0.186	0.369
DE	0.596	x	0.330	0.186	0.389	0.186	0.663
DK	0.670	x	0.330	0.186	0.503	0.186	0.745
EE	0.259		0.186	0.186	0.186	0.186	0.288
GR	0.484	x	0.330	0.186	0.383	0.186	0.539
ES	0.353	x	0.238	0.186	0.236	0.186	0.393
FI	0.709	x	0.330	0.186	0.450	0.186	0.789
FR	0.523	x	0.330	0.186	0.377	0.186	0.582
HU	0.354		0.186	0.186	0.186	0.186	0.394
IE	0.555	x	0.330	0.186	0.389	0.186	0.618
IT	0.875	x	0.330	0.186	0.419	0.186	0.974
LT	0.309		0.186	0.186	0.186	0.186	0.344
LU	0.463	x	0.330	0.186	0.359	0.186	0.515
LV	0.354		0.186	0.186	0.186	0.186	0.394
MT	0.157		0.186	0.186	0.186	0.186	0.222
NL	0.665	x	0.322	0.186	0.322	0.186	0.740
PL	0.417		0.186	0.186	0.186	0.186	0.464
PT	0.418	x	0.329	0.186	0.329	0.186	0.466
RO	0.106		0.186	0.186	0.186	0.186	0.222
SE	0.645	x	0.330	0.186	0.399	0.186	0.718
SI	0.243		0.186	0.186	0.186	0.186	0.270
SK	0.354		0.186	0.186	0.186	0.186	0.394
UK	0.391	x	0.300	0.186	0.300	0.186	0.435
IS	0.326	x	0.312	0.186	0.312	0.186	0.363
LI	0.595	x	0.330	0.186	0.438	0.186	0.662
NO	0.992	x	0.330	0.186	0.567	0.186	1.104
US	0.357	x	0.238	0.186	0.220	0.186	0.397
CH	0.626	x	0.330	0.186	0.438	0.186	0.697
RU	0.109		0.186	0.186	0.186	0.186	0.222
CN	0.167		0.186	0.186	0.186	0.186	0.222
JP	0.475	x	0.330	0.186	0.373	0.186	0.529
TR	0.304		0.186	0.186	0.186	0.186	0.339
CA	0.551	x	0.276	0.186	0.276	0.186	0.614
IN	0.042		0.186	0.186	0.186	0.186	0.222
AE	0.181		0.186	0.186	0.186	0.186	0.222
AU	0.338	x	0.238	0.186	0.220	0.186	0.376
SG	0.126		0.186	0.186	0.186	0.186	0.222
KR	0.186		0.186	0.186	0.186	0.186	0.222
BR	0.202		0.186	0.186	0.186	0.186	0.225
SA	0.321		0.186	0.186	0.186	0.186	0.357
ZA	0.249		0.186	0.186	0.186	0.186	0.277
MX	0.306		0.186	0.186	0.186	0.186	0.340
UA	0.111		0.186	0.186	0.186	0.186	0.222
IL	0.385	x	0.330	0.186	0.395	0.186	0.428
HR	0.354		0.186	0.186	0.186	0.186	0.394
MA	0.484		0.186	0.186	0.186	0.186	0.538
DZ	0.158		0.186	0.186	0.186	0.186	0.222
EG	0.049		0.186	0.186	0.186	0.186	0.222
MY	0.064		0.186	0.186	0.186	0.186	0.222
IR	0.128		0.186	0.186	0.186	0.186	0.222
NG	0.333		0.186	0.186	0.186	0.186	0.371
TN	0.183		0.186	0.186	0.186	0.186	0.222
TH	0.044		0.186	0.186	0.186	0.186	0.222
QA	0.087		0.186	0.186	0.186	0.186	0.222
AR	0.232		0.186	0.186	0.186	0.186	0.258
KZ	0.110		0.186	0.186	0.186	0.186	0.222
Avg.	0.346		0.237	0.186	0.260	0.186	0.412

Source: WIK-Consult.

Table A 9 Payments (in m SDR) for base case (Domestic bulk rate)

Country	Intra EU30			Extra EU30			Total (intra+extra EU30)		
	Out	In	Net	Out	In	Net	Out	In	Net
AT	34.4	36.8	2.4	5.1	14.5	9.4	39.5	51.3	11.8
BE	98.9	81.8	-17.1	6.9	15.0	8.1	105.8	96.8	-9.0
BG	2.2	0.5	-1.7	0.2	0.1	-0.1	2.5	0.7	-1.8
CY	3.8	2.2	-1.6	0.5	0.9	0.4	4.3	3.1	-1.2
CZ	20.1	14.5	-5.5	2.6	6.2	3.6	22.7	20.7	-1.9
DE	257.9	360.6	102.7	73.0	202.7	129.8	330.8	563.3	232.5
DK	31.3	48.4	17.1	3.4	14.4	11.0	34.7	62.8	28.1
EE	1.5	0.9	-0.6	0.2	0.4	0.2	1.7	1.3	-0.4
EL	21.7	13.9	-7.8	3.6	5.8	2.1	25.3	19.7	-5.7
ES	114.6	35.5	-79.1	18.7	14.4	-4.3	133.3	49.9	-83.3
FI	16.2	21.3	5.1	1.3	9.3	8.0	17.5	30.6	13.1
FR	158.2	145.2	-13.0	25.5	54.7	29.2	183.7	199.9	16.2
HU	6.7	5.4	-1.3	0.9	2.1	1.2	7.7	7.5	-0.2
IE	35.6	40.1	4.5	5.3	17.9	12.7	40.8	58.0	17.1
IT	39.6	129.3	89.7	6.5	50.1	43.5	46.1	179.4	133.2
LT	1.8	1.6	-0.2	0.1	0.5	0.4	2.0	2.2	0.2
LU	16.1	8.6	-7.5	2.9	3.5	0.7	19.0	12.1	-6.9
LV	1.6	1.2	-0.4	0.2	0.5	0.3	1.8	1.7	-0.1
MT	2.1	0.8	-1.3	0.3	0.3	0.1	2.3	1.1	-1.2
NL	100.1	65.4	-34.7	12.4	26.3	13.9	112.5	91.7	-20.8
PL	20.6	14.9	-5.7	2.6	6.2	3.5	23.2	21.0	-2.1
PT	18.9	13.3	-5.6	2.8	5.4	2.6	21.7	18.7	-3.0
RO	5.4	1.1	-4.3	0.9	0.4	-0.4	6.3	1.5	-4.7
SE	50.8	50.4	-0.5	9.3	13.4	4.1	60.1	63.8	3.7
SI	3.6	1.8	-1.8	0.5	0.6	0.2	4.1	2.5	-1.6
SK	6.5	5.4	-1.1	0.7	2.3	1.6	7.2	7.7	0.5
UK	189.3	89.9	-99.5	67.0	64.5	-2.5	256.4	154.4	-102.0
IS	0.8	1.1	0.3	0.1	0.5	0.4	1.0	1.6	0.7
LI	2.2	3.1	0.9	0.0	0.0	0.0	2.2	3.1	0.9
NO	18.0	85.6	67.7	1.4	17.6	16.3	19.3	103.2	83.9
<b>EU 30</b>	<b>1,280.7</b>	<b>1,280.7</b>	<b>0.0</b>	<b>254.9</b>	<b>550.7</b>	<b>295.9</b>	<b>1,535.5</b>	<b>1,831.4</b>	<b>295.9</b>

Source: WIK Consult.

## Appendix A: Description and key parameters of the terminal dues model

Table A 10 Payments (in m SDR) for alternative TD rule UPU 2008 terminal dues, and change compared to base case

Base TD rule: Domestic bulk rates

Alternative TD rule: UPU

Country	Intra EU30				Extra EU30				Total (intra+extra EU30)			
	Out	In	Net	Change	Out	In	Net	Change	Out	In	Net	Change
AT	18.7	25.0	6.3	3.9	3.3	7.7	4.4	-5.0	22.0	32.7	10.7	-1.2
BE	55.7	53.8	-1.9	15.2	4.5	8.5	3.9	-4.2	60.2	62.3	2.1	11.0
BG	0.8	0.6	-0.2	1.5	0.2	0.2	0.0	0.1	0.9	0.7	-0.2	1.6
CY	1.4	1.7	0.3	1.9	0.3	0.7	0.3	-0.1	1.7	2.3	0.6	1.8
CZ	7.0	8.2	1.2	6.8	1.6	3.5	1.8	-1.8	8.6	11.7	3.1	5.0
DE	145.4	193.0	47.6	-55.1	47.8	100.4	52.6	-77.2	193.2	293.4	100.3	-132.2
DK	16.4	23.4	7.0	-10.1	2.6	5.9	3.3	-7.7	19.0	29.3	10.4	-17.7
EE	0.5	0.7	0.2	0.8	0.1	0.3	0.2	-0.1	0.6	0.9	0.3	0.7
EL	12.3	9.2	-3.1	4.7	2.4	3.5	1.1	-1.0	14.7	12.8	-2.0	3.7
ES	64.8	23.9	-41.0	38.1	11.6	9.0	-2.6	1.7	76.4	32.8	-43.6	39.7
FI	8.5	9.7	1.1	-4.0	1.4	3.4	2.1	-5.9	9.9	13.1	3.2	-9.9
FR	89.1	89.3	0.2	13.2	17.7	27.7	9.9	-19.3	106.9	117.0	10.1	-6.1
HU	2.3	2.8	0.5	1.9	0.5	1.1	0.6	-0.6	2.8	3.9	1.1	1.3
IE	21.0	23.5	2.5	-2.0	3.8	10.5	6.6	-6.0	24.8	33.9	9.1	-8.1
IT	23.7	47.3	23.6	-66.1	4.2	15.3	11.1	-32.5	27.9	62.6	34.7	-98.6
LT	0.7	1.0	0.3	0.5	0.1	0.3	0.2	-0.2	0.8	1.3	0.5	0.3
LU	9.0	6.1	-2.9	4.6	1.7	2.4	0.7	0.0	10.7	8.5	-2.3	4.6
LV	0.6	0.7	0.0	0.4	0.1	0.3	0.1	-0.1	0.8	0.9	0.1	0.2
MT	0.7	1.0	0.3	1.6	0.1	0.4	0.2	0.2	0.8	1.4	0.5	1.7
NL	58.7	31.1	-27.7	7.0	9.1	10.9	1.8	-12.1	67.9	42.0	-25.9	-5.1
PL	6.8	6.6	-0.1	5.5	1.5	2.8	1.2	-2.3	8.3	9.4	1.1	3.2
PT	11.0	10.4	-0.7	5.0	1.8	3.7	1.9	-0.7	12.8	14.0	1.2	4.2
RO	1.9	2.0	0.1	4.4	0.4	0.7	0.3	0.7	2.3	2.7	0.4	5.1
SE	24.3	25.3	1.0	1.5	6.4	6.1	-0.2	-4.3	30.7	31.4	0.8	-2.9
SI	1.2	1.4	0.2	2.0	0.2	0.5	0.3	0.1	1.5	1.9	0.4	2.1
SK	2.4	2.8	0.4	1.5	0.6	1.2	0.6	-0.9	3.0	4.0	1.0	0.5
UK	102.2	67.6	-34.6	64.8	47.0	43.2	-3.8	-1.2	149.2	110.8	-38.4	63.6
IS	0.5	1.1	0.6	0.3	0.1	0.4	0.3	0.0	0.6	1.5	0.9	0.3
LI	1.3	1.7	0.4	-0.5	0.0	0.0	0.0	0.0	1.3	1.7	0.4	-0.5
NO	10.0	28.4	18.4	-49.2	0.9	5.7	4.8	-11.4	10.8	34.1	23.2	-60.7
<b>EU 30</b>	<b>699.0</b>	<b>699.0</b>	<b>0.0</b>	<b>0.0</b>	<b>172.2</b>	<b>276.1</b>	<b>103.9</b>	<b>-191.9</b>	<b>871.2</b>	<b>975.1</b>	<b>103.9</b>	<b>-191.9</b>

Source: WIK-Consult.



Table A 11 Payments (in m SDR) for alternative TD rule UPU 2008 without cap or floor and change to base TD rule

Base TD rule: Domestic bulk rates

Alternative TD rule: UPU no cap or floor

Country	Intra EU30				Extra EU30				Total (intra+extra EU30)			
	Out	In	Net	Change	Out	In	Net	Change	Out	In	Net	Change
AT	22.0	29.2	7.2	4.8	3.8	8.5	4.7	-4.7	25.8	37.6	11.9	0.1
BE	65.0	62.3	-2.6	14.5	4.9	9.5	4.6	-3.6	69.9	71.8	2.0	10.9
BG	0.8	0.6	-0.2	1.5	0.2	0.2	0.0	0.1	0.9	0.7	-0.2	1.6
CY	1.4	1.7	0.3	1.9	0.3	0.7	0.3	-0.1	1.7	2.3	0.6	1.8
CZ	7.0	8.2	1.2	6.8	1.6	3.5	1.8	-1.8	8.6	11.7	3.1	5.0
DE	168.7	226.1	57.4	-45.3	52.1	115.7	63.6	-66.2	220.8	341.8	121.0	-111.4
DK	19.9	35.3	15.5	-1.6	2.6	8.2	5.6	-5.4	22.5	43.6	21.1	-7.0
EE	0.5	0.7	0.2	0.8	0.1	0.3	0.2	-0.1	0.6	0.9	0.3	0.7
EL	14.3	10.7	-3.7	4.1	2.5	4.0	1.6	-0.6	16.8	14.7	-2.1	3.5
ES	74.9	23.7	-51.2	27.8	13.0	8.9	-4.1	0.2	87.9	32.6	-55.3	28.0
FI	10.5	13.1	2.5	-2.6	1.4	4.3	2.9	-5.1	12.0	17.3	5.4	-7.7
FR	103.4	101.7	-1.7	11.3	18.3	30.3	12.0	-17.2	121.7	132.0	10.3	-5.9
HU	2.3	2.8	0.5	1.9	0.5	1.1	0.6	-0.6	2.8	3.9	1.1	1.3
IE	23.4	27.6	4.2	-0.3	3.9	12.3	8.4	-4.3	27.3	39.9	12.6	-4.6
IT	27.2	59.6	32.4	-57.3	4.6	18.2	13.7	-29.9	31.8	77.8	46.0	-87.2
LT	0.7	1.0	0.3	0.5	0.1	0.3	0.2	-0.2	0.8	1.3	0.5	0.3
LU	10.6	6.6	-3.9	3.6	2.0	2.6	0.5	-0.1	12.6	9.2	-3.4	3.5
LV	0.6	0.7	0.0	0.4	0.1	0.3	0.1	-0.1	0.8	0.9	0.1	0.2
MT	0.7	1.0	0.3	1.6	0.1	0.4	0.2	0.2	0.8	1.4	0.5	1.7
NL	68.3	31.1	-37.3	-2.6	9.5	10.9	1.4	-12.4	77.8	42.0	-35.9	-15.0
PL	6.8	6.6	-0.1	5.5	1.5	2.8	1.2	-2.3	8.3	9.4	1.1	3.2
PT	12.6	10.4	-2.2	3.4	1.9	3.7	1.7	-0.9	14.5	14.0	-0.5	2.5
RO	1.9	2.0	0.1	4.4	0.4	0.7	0.3	0.7	2.3	2.7	0.4	5.1
SE	33.2	30.5	-2.7	-2.2	6.6	7.2	0.6	-3.5	39.8	37.7	-2.1	-5.8
SI	1.2	1.4	0.2	2.0	0.2	0.5	0.3	0.1	1.5	1.9	0.4	2.1
SK	2.4	2.8	0.4	1.5	0.6	1.2	0.6	-0.9	3.0	4.0	1.0	0.5
UK	122.4	67.6	-54.8	44.7	47.7	43.2	-4.4	-1.9	170.0	110.8	-59.3	42.7
IS	0.6	1.1	0.5	0.2	0.1	0.4	0.3	0.0	0.7	1.5	0.8	0.2
LI	1.5	2.3	0.7	-0.1	0.0	0.0	0.0	0.0	1.5	2.3	0.7	-0.1
NO	12.0	48.7	36.7	-31.0	0.9	9.6	8.8	-7.5	12.9	58.3	45.5	-38.4
EU 30	816.7	816.7	0.0	0.0	181.7	309.5	127.7	-168.2	998.5	1,126.2	127.7	-168.2

Source: WIK-Consult.

Table A 12 Payments (in m SDR) for alternative TD rule REIMS II and change to base TD rule

Base TD rule: Domestic bulk rates

Alternative TD rule: Reims II

Country	Intra EU30				Extra EU30				Total (intra+extra EU30)			
	Out	In	Net	Change	Out	In	Net	Change	Out	In	Net	Change
AT	38.3	41.0	2.7	0.2	6.0	16.2	10.2	0.8	44.3	57.2	12.8	1.0
BE	110.1	91.0	-19.1	-2.0	7.9	16.7	8.8	0.7	118.0	107.7	-10.3	-1.3
BG	2.5	0.7	-1.8	-0.1	0.3	0.2	-0.1	0.0	2.8	0.9	-1.9	-0.1
CY	4.3	2.5	-1.8	-0.2	0.6	1.0	0.4	0.0	4.9	3.4	-1.4	-0.2
CZ	22.4	16.2	-6.2	-0.6	3.2	6.9	3.6	0.0	25.6	23.1	-2.6	-0.6
DE	287.5	401.3	113.9	11.2	83.8	225.7	141.8	12.1	371.3	627.0	255.7	23.2
DK	34.9	53.9	19.0	1.9	4.1	16.0	12.0	1.0	38.9	69.9	31.0	2.9
EE	1.7	1.0	-0.7	-0.1	0.2	0.4	0.2	0.0	1.9	1.4	-0.5	-0.1
EL	24.2	15.5	-8.7	-1.0	4.1	6.4	2.3	0.2	28.3	21.9	-6.4	-0.8
ES	127.6	39.5	-88.1	-9.0	21.2	16.0	-5.2	-0.9	148.9	55.6	-93.3	-10.0
FI	18.0	23.7	5.7	0.6	1.9	10.4	8.5	0.5	19.9	34.1	14.2	1.1
FR	176.3	161.6	-14.7	-1.7	29.9	60.9	30.9	1.7	206.2	222.5	16.3	0.1
HU	7.5	6.0	-1.5	-0.2	1.1	2.3	1.2	0.1	8.6	8.4	-0.3	-0.1
IE	39.6	44.6	5.0	0.5	6.2	20.0	13.7	1.1	45.9	64.5	18.7	1.6
IT	44.2	143.9	99.7	10.1	7.5	55.7	48.3	4.7	51.6	199.6	148.0	14.8
LT	2.1	1.8	-0.2	0.0	0.2	0.6	0.4	0.0	2.2	2.4	0.2	0.0
LU	18.0	9.6	-8.4	-0.9	3.2	3.9	0.7	0.0	21.2	13.5	-7.7	-0.8
LV	1.8	1.4	-0.4	0.0	0.3	0.6	0.3	0.0	2.1	1.9	-0.1	0.0
MT	2.3	1.2	-1.2	0.1	0.3	0.5	0.2	0.1	2.6	1.6	-1.0	0.2
NL	111.5	72.8	-38.7	-4.0	14.9	29.3	14.4	0.5	126.4	102.0	-24.3	-3.5
PL	22.9	16.6	-6.3	-0.7	3.2	6.9	3.6	0.1	26.1	23.4	-2.7	-0.6
PT	21.0	14.7	-6.3	-0.6	3.2	6.1	2.9	0.3	24.2	20.8	-3.4	-0.4
RO	6.0	2.4	-3.7	0.6	1.0	0.8	-0.1	0.3	7.0	3.2	-3.8	0.9
SE	56.6	56.1	-0.6	-0.1	10.9	14.9	4.1	0.0	67.5	71.0	3.5	-0.1
SI	4.1	2.1	-2.0	-0.2	0.5	0.7	0.2	0.0	4.6	2.8	-1.8	-0.2
SK	7.2	6.0	-1.2	-0.1	1.0	2.6	1.6	0.0	8.2	8.5	0.3	-0.2
UK	210.9	100.0	-110.9	-11.4	78.2	71.8	-6.4	-3.9	289.1	171.8	-117.3	-15.3
IS	0.9	1.3	0.3	0.0	0.2	0.5	0.4	0.0	1.1	1.8	0.7	0.1
LI	2.5	3.4	0.9	0.1	0.0	0.0	0.0	0.0	2.5	3.4	0.9	0.1
NO	20.0	95.3	75.3	7.6	1.5	19.6	18.1	1.8	21.5	114.9	93.4	9.5
<b>EU 30</b>	<b>1,426.9</b>	<b>1,426.9</b>	<b>0.0</b>	<b>0.0</b>	<b>296.7</b>	<b>613.5</b>	<b>316.8</b>	<b>21.0</b>	<b>1,723.5</b>	<b>2,040.4</b>	<b>316.8</b>	<b>21.0</b>

Source: WIK-Consult.