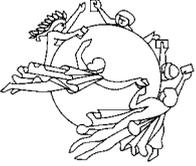


postal regulation

*principles
and orientation*





UNIVERSAL POSTAL UNION

INTERNATIONAL BUREAU

POSTAL REGULATION

PRINCIPLES AND ORIENTATION

BERNE 2004

Foreword

The postal market is undergoing profound changes. Evolving customer needs and the proliferation of operators on the market present new challenges for governments, which must lay down the rules of competition. Governments also have a responsibility to appoint operators that are capable of ensuring the provision of a quality universal postal service for all citizens and for all sectors of the economy.

The financial health of the universal postal service operator – most often State-owned – and of the wider postal sector have begun to influence government decisions owing to national budget constraints and the application of transparent economic policies required by international agreements.

In this global environment, postal sector reform is a high-priority action area. Governments have a crucial role in launching and implementing this reform process. By enacting institutional reform and building on the smooth operation of market mechanisms, governments can stimulate postal sector development.

Reorganizing national postal markets involves meeting very specific needs. Throughout the whole reorganization process, the State must focus on its main objectives, namely protecting the interests of customers, whether individuals or businesses, and creating fair conditions for all market operators. In a regulated postal market, the State therefore has primacy over the operators as a supervisor and regulator of postal activity.

This calls for the creation of an intervention mechanism and instruments that guarantee the postal sector's smooth operation in order to control the effects of market competition and correct any market imperfections. Regulation should make it possible to organize the universal service, competition, market control and compliance with the established rules.

The UPU actively supports the postal reform process. In 2002 and 2003, it organized a series of seminars on postal regulation and the universal postal service. In the course of these seminars, it was noted that many countries felt the need for targeted assistance to enable them to define their regulation policy together with the appropriate instruments and procedures for implementing it. The coexistence of three levels of responsibility, i.e. government, regulator and operator, often translates into a high degree of complexity.

The International Bureau therefore decided to prepare a publication that could provide guidance to Union member countries to help them in this undertaking.

This publication aims to assist governments in defining postal sector policy, adapting legislation on the postal services and ensuring compliance. It will also show them how to oversee the market to ensure that there is fair competition between the operators and that the interests of customers are respected. And it will help governments to take an informed decision when it comes to defining the regulator's main tasks.

The drafting of this publication was made possible through the tireless research of three specialists recruited by the International Bureau: Mr. M. Swapan Chandra Dutta, former Secretary of the Department of Posts and Director General of Posts, Ministry of Communications and Information Technology, India; Mr. Ulrich Mohr, former Head of Division for International Policy of Telecommunications and Posts, Federal Ministry of Economics and Technology, Germany; and Ms. Sylvie Pittaro-Menesson, consultant to the Directorate of Strategy, Piloting and Organization, who analyzes the European postal landscape on behalf of La Poste (France).

Mr. Matthias Finger, Professor of Management of Network Industries at the Swiss Federal Institute of Technology, Lausanne, a specialist in the comparative study of the regulatory systems of the various network-based sectors, advised the International Bureau throughout the preparation of this publication and was responsible for its final drafting.

This team of specialists also benefited from the invaluable opinions, advice and suggestions of the members of the Coordination Committee for the Permanent Bodies of the Union and of the UPU Council of Administration's "Management of the Work of the Union" Project Team.

Within the International Bureau, there was also input from the Economic and Regulatory Affairs and Development Cooperation Directorates.

The International Bureau's Logistics Directorate was responsible for the formatting, graphic layout and production in hard copy and on CD-ROM of this publication.

I would like to thank everybody who has contributed in one way or the other to the preparation of this publication's first edition.

I would also like to draw the reader's attention to the existence of other UPU publications containing information directly linked to postal regulation and the universal postal service, and in particular to "Status and structures of postal administrations" and the "Memorandum on the Universal Postal Service Obligations and Standards". The International Bureau, in close cooperation with, and with the financial support of, the Postal Union of the Americas, Spain and Portugal (PUASP), very recently published Spanish-language "Guide to postal reform in Latin America" for the countries of that region. Taking a highly practical approach, it addresses key issues relating to the postal sector reform process and regulation issues, and the International Bureau is currently studying the possibility of translating and adapting it, with a view to making it accessible to all Union member countries.

As I stressed at the beginning of this preface, we are living in an age of profound and rapid change. This is no less true of the whole postal sector. New information, experiences and approaches are constantly emerging, which is why the International Bureau would appreciate any comments and suggestions that could be used in the preparation of this publication's second edition.

Thomas E. LEAVEY

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Introduction

The purpose of this publication is to offer a thorough and systematic introduction to the issue of regulation in the postal sector. Throughout the world, the postal sector has evolved significantly over the past 20 years, from a heavily monopolistic sector dominated by national public enterprises to a highly competitive one, characterized by globalization and the use of new technologies.

It is as a result of this profound transformation of the sector that regulation has emerged as both a phenomenon and a necessity. Regulation is an empirically observable phenomenon in a growing number of countries, but it is also a necessity and a means for public authorities to regain control over a rapidly evolving sector, especially when it comes to ensuring a universal postal service for the inhabitants of each country.

Consequently, this publication is neither purely descriptive, nor prescriptive. It describes the trend towards regulation of the postal sector, and defines the main key issues that have to be addressed by a country wishing to regulate its postal sector properly, but also shows the various approaches to such regulation. The publication also avoids going too much into the technical details, which vary considerably from country to country. Rather, it surveys the main concepts and tools of postal sector regulation as they apply in all countries of the world at a given stage in the evolution of the sector.

The structure of this publication is logical, following the main steps to be considered when setting up postal regulatory authorities. In the first chapter, it briefly recalls the history of the postal sector and the main trends which have led, in recent years, to a need for regulation of the postal sector. In the second chapter, it presents the main reasons for the existence of regulation in the postal sector. Chapter three then discusses the practice of postal sector regulation, presenting the various systems in use. Chapter four is dedicated to organizational and institutional aspects of postal sector regulation. And finally, chapter five puts postal sector regulation into a historical perspective, indicating the main steps to be followed when putting such regulation in place.

There are also several annexes. These supplement the information provided in the main body of the publication, and deal with various important topics. Annex 1 recalls the precautions to be taken for emergency situations, while Annex 2 deals with issues surrounding the issue of postage stamps. Annex 3 contains a detailed description of one concrete example of postal regulation, as put in place in Portugal, while Annex 3bis contains the postal regulation model adopted by Tanzania (United Rep.). Annex 4 summarizes the results of the UPU's 2003 survey on licensing, while Annex 5 contains an extract from the presentation given by the Director General of the UPU International Bureau to participants in the IPC Annual Shareholders' Meeting in January 2004, on the benchmarking of postal regulator effectiveness. The final annexe contains a list of documentation, sources and references used in this publication.

1 Historical background and trends in the postal sector

Historically, postal services have played a significant role in national and social development. They have, for example, delivered mail, parcels, and sometimes financial services even to remote areas, they have operated networks of offices covering the entire country, and they have provided citizens with access to services ranging from letters, parcels or pensions payments to money transfers, bill payments, and more besides. Posts have played a fundamental role in supporting the national economy by facilitating exchanges of information and goods at affordable prices for customers. All this was mainly achieved through national public postal operators, generally grouped together with the national telecommunications operator (and known as the PTT in many countries).

However, the situation has changed significantly since the late 1980s. From a national monopolistic model, the postal sector has been rapidly evolving into a competitive model. Several factors have contributed to this profound transformation, most notably technological change and liberalization. In technological terms, substitution of traditional mail by electronic services has occurred, leading many experts to predict an exponential decline in mail volumes. While these predictions have not been borne out, at least not to such a dramatic extent, recent experiences show that substitution effects are emerging in the most industrialized countries, where take-up of new technologies is very high. Also, against the background of globalization, governments have started, since the late 1980s, to open up the postal markets and give their national operators more independence. While only very few historical operators were partially privatized at the end of 2003 (e.g. TPG¹, DPWN², Argentina), changes between 1995 and 2000 clearly indicated a process of systematic corporatization and growing independence from the national political authorities.

Therefore, what used to be national postal administrations are gradually being converted into organizations whose focus is profitability, cost efficiency and reductions in costs and workforce. One consequence of this development is that the distinction between "public" and "private" postal operators is becoming increasingly unclear. Postal operations have traditionally been in the hands of one or a few postal operators in each country. However, operations are now increasingly divided up between a larger number of entities. Today's postal operators range from the incumbents, often providing the universal service, to firms that provide only parts of the postal value chain.

Another result of this evolution is that the postal sector needs to be redefined and – especially – enlarged to make room for new players, as well as stakeholders. The current definition of postal services used in the European Union Directive is still based on the traditional postal services. Postal items consist of *"addressed items including items of correspondence (letters and direct mail), books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value"*. The definition of postal services is based on postal items and is thus a combination of the object of postal service provision and the activities underlying postal service provision: *"Standard postal services involve the clearance, sorting, transport and delivery of postal items, as well as the internal functions inherently necessary to organize and support these activities"*. But increasingly, this definition is being enlarged to reflect the ongoing evolution in the provision of postal services. This includes the provision of new electronic services and integrated solutions, i.e. activities that are related to, or dependent upon, the postal value chain from an upstream perspective (e.g. address database services, targeting services, mail production services, etc.), as well as from a downstream perspective (e.g. response handling services, fulfilment services, mail room management services, etc.).

These new developments not only expand postal service provision, but also change the activities and processes required. They can be termed "expanded postal services". This is the case, for example, for financial services, which have long formed part of many historical operators' range of products. But this widening of the postal sector can differ from country to country. For example, in a questionnaire sent out by the UPU to all its members in May 2003, among the 111 replies received, 90% included letter mail, 91% parcels, 89% express and courier, and almost 55% other services such as financial services, direct mail, hybrid mail, newspaper and magazine distribution and philately.

Mainly as a result of substitution, a certain decline in mail volumes has been observed in recent years, as shown in the following table for selected industrialized countries.

¹ Holding company of the Netherlands' Royal TPG Post and TNT.

² Deutsche Post World Net.

Table 1: Evolution of domestic mail from 1998–2001 (cumulative) in selected countries

Finland	Sweden	Norway	Denmark	Canada	USA
-4.3%	-2.7%	-2.4%	-1.0%	-2.0%	-5.0%

Source: Luis Jimenez, Pitney Bowes (presentation in Hamburg, PostExpo 2002)

Mail volumes already vary significantly from country to country, ranging from more than 600 items per inhabitant per year in some industrialized countries to less than one in some developing countries. A UPU survey entitled "Post 2005" noted that, in 1995, the share of physical mail in the world communications market was only about 20%, as compared to 75% for fax and telephone, and approximately 5% for electronic mail.

The historical operators have responded to this evolution by adopting one of the following three general positions³:

- a **competitive** scenario, where the historical operator aggressively attempts to respond to tougher competition through diversification, mergers and alliances, cost cutting, etc. This is, for example, the case of DPWN, TPG, and the Posts of countries in Northern Europe in particular;
- a **defensive** scenario, whereby the historical operator tries to defend its monopoly and home market, combined with attempts at diversification, alliances and restructuring in order to become more efficient. This is, for example, the case of France, Great Britain, Italy, Spain, USPS⁴, and others; and
- a **decline** scenario, characterized by poor defence and poor reactivity, leading to huge losses of market share. This is the case in most countries of the world, and particularly in developing countries. A study led by the World Bank, taking account of the "concentration ratio" of historical postal operators, shows the most "liberalized" countries to be those in which these operators are the least powerful.

Against this background of growing competition, in which the traditional public service offered by the historical operators is also under threat, regulation of the entire postal sector, as opposed to management through ownership, appears to be the means by which governments are seeking to stay in control. This publication will show why and how the postal sector is currently being, and will increasingly need to be, regulated in order to remain sustainable and safeguard the interests of citizens and consumers alike.

³ See UPU "Future Post" Strategy Conference.

⁴ United States Postal Service.

2 Why regulate?

As stated above, regulation becomes a necessity once competition emerges in the postal sector. By definition, regulation also covers the entire sector and not simply the historical operator or the universal service provider. This chapter will explain why regulation is becoming a necessity, and also the different functions of regulation in the postal sector. The chapter will end with a discussion of various specific questions such as the issue of regulation of financial services. But we shall begin by looking at the reform efforts still underway in the postal sector.

2.1 Reforming the operator

Historically, governments have mainly been concerned with reform or modernization of the operator, rather than with the structure of the sector. This focus on the operator continues today not least because governments are concerned with the social and economic role of the historical operator. In other words, postal reform in many countries has been limited to reform of the historical national operators. This has also been the main focus of the World Bank, as well as of the UPU's efforts. The following table shows the main stages of national postal operators' reforms, ranging from the split between posts and telecoms to fully-fledged privatization of the operator.

Table 2: Different stages of reform of the historical postal operators

	Stage 1	Stage 2	Stage 3
Description of the stage	Posts as an autonomous public entity with an autonomous budget, generally separate from Telecom	Corporatized postal operators: Posts as shareholding companies entirely or mainly owned by the State	Privatization with the State as a minority shareholder
Countries	Majority of Posts (European Union and Eastern European countries), USA	Some Posts around the world: Germany, Australia, Canada, Ireland, Italy, Austria, Sweden, Finland	Very few Posts around the world: Netherlands, Germany
Regulatory framework	Generally accompanied by a new postal law	Generally accompanied by an initial regulatory framework	Presence of an independent national regulator and a fully-fledged regulatory framework

Let us look briefly at each of these four stages:

- Stage one is characterized by **the splitting of the postal operator from the telecommunications operator**.⁵ This movement started in the 1980s for the pioneers (Australia), but in most cases in the 1990s with the European Union countries, mainly in order to allow the telecommunications operators to become fit for the market. At present, most countries in the world are at this stage, but the process is still ongoing in some countries. This is true, for example, of many African countries, where this stage has not yet been fully reached. One of the main characteristics of these operators is that they generate deficits and therefore have to be maintained by public subsidies or by the "rich telecommunications brother".

⁵ In a few countries (e.g. Sweden or USA), telecommunications were never linked to postal services.

- Stage two is characterized by **conversion to public companies**. This movement started in the 1990s, and involves conversion of the legal status of the postal operator into that of a public company, with its own budget separate from the State and its own objectives and powers. This has generally gone hand-in-hand with the split from the telecommunications sector, being a "natural" follow-up of the first stage. In tandem with this movement, there is also internal restructuring accompanied by a splitting-up of activities into separate business units (mail, express, financial services, logistics), led by the historical operators.
- Stage three is characterized by **partial privatization**, and results from a government decision to privatize the business. This generally occurs once the postal operator has been restructured in order to make it more attractive, or a set of objectives has been put in place (as in Germany, Ireland or Italy, where the government required the operator, prior to privatization, to improve its profits and quality of service). There have also been cases where the privatization process – or concession process, in some cases – was a prerequisite for upgrading the postal services (in Argentina, Lebanon or South Africa, for example). This movement started in the early nineties and is still continuing in many parts of the world.
- Stage four is characterized by greater or **full privatization**. This stage started in the 1990s in countries such as the Netherlands, where the government now owns only 31% of the incumbent operator.

2.2 *Why regulation is needed*

It was the **European Commission** which first put the issue of reform of the entire postal sector on the table, as opposed to simple reform of the operators. Not surprisingly, then, it was also the European Commission which first came up with ideas and concrete proposals on postal regulation. Consequently, the current definitions and models of sectoral postal regulation have been significantly influenced by the European Commission. The origins of postal sector regulation can be traced back to European Commission Directive 97/67, in which the key principles of postal regulation, as well as the need for a postal regulator, were clearly spelled out. These key principles were the guarantee of a universal service, and the avoidance of cross-subsidies in financing this universal service. Overall, the public policy imperative for such sectoral reform and regulation lies in protecting the interests of consumers as citizens. More specifically, it relates to their ability to access the network, prices, quality of services, and the macro-economic imperative of economic efficiency. Some countries have made more progress than others in defining postal regulation. One example is the United Kingdom, where Postcomm, the postal regulator, also regulates limited access to the network for competitors.

In short, in the postal sector, two or three main regulatory functions can be identified, namely the regulation of universal service provision, the regulation of competition and, to a much lesser extent, the regulation of competitors' access to the network. These two or three functions become necessary once:

- i operators gain increased independence and put commercial interests before public service interests;
- ii competitors risk becoming handicapped as a result of subsidizing the public service provision; and
- iii market or competition creation may become necessary if competition proves insufficient despite total liberalization. This may mean, for example, that the government wants to increase market share of the competitors in order to foster competition.

2.3 *Universal service regulation*

Once competition exists in the postal sector, the regulation of universal service provision clearly becomes the most important function. In a deregulated environment, guaranteeing public services becomes a key necessity. In this context, it is important to recall the definition of what a "universal service" is. A key point of reference is the European Commission's definition of public services, which is intellectually coherent, is about to be applied to all network industries, and is generally accepted by the countries and the operators. More precisely, the Commission distinguishes between universal services and services in the general interest, a distinction which has serious regulatory consequences:

- **Universal services** are viewed from the perspective of the individual consumer. They are defined as concrete services (or products) to which a consumer is entitled no matter where he or she lives in the European Union, i.e., in terms of access to these services, quality and affordability. This means that the accessibility, quality and price of these services is regulated "**ex-ante**"⁶ and imposed upon one operator, generally the incumbent (which then has to fulfil the Universal Service Obligations (USOs). Financing for these universal services comes from the sector itself, i.e., from all operators active in the sector. In the postal sector, there are two models for financing USOs, namely the currently dominant model of monopoly protection, and the model of a Universal Service Fund (see below). This second funding model has not been applied to date, despite its theoretical appeal. However, the European Commission has thus far taken no position on the type of accounting system to be used for calculating the cost of USOs, other than requiring the national regulator to be informed of the type of accounting system chosen (see below), and requiring full cost accounting. It should also be noted that for the European Commission, public service regulation relates solely to USOs and is therefore identical to universal service regulation.
- **Services in the general interest** are viewed from the perspective of a national (or regional, or even local) legislator, which seeks to implement public policy objectives such as economic, regional or social development through the historical operator (e.g. maintaining post offices in sparsely populated areas). Financing of these services in the general interest comes not from the sector, but from public funds. In the Commission's view, services in the general interest are not a regulatory issue, but simply a traditional public policy issue. However, competition regulation comes into play in as much as the incumbent may not cross-subsidize from the funds received for services in the general interest to the various specific sectoral services it provides. Similarly, it might be argued that the incumbent should not be weakened in the face of its competitors because of its obligation to fulfil services in the general interest for which it is not compensated, and we can see this as the more likely option. In short, services in the general interest can be decided freely by each country, and do not fall under postal regulation in the narrow or technical sense. It may, however, be noted that the distinction between universal services and services in the general interest is not always straightforward in the postal sector. This is particularly true of the retail aspect of postal affairs, i.e. in matters of accessibility to the network.

In other words, regulation in the postal sector relates here to universal services only, and is therefore to be seen as a form of customer protection. However, in the view of the Universal Postal Union, universal services also have an international component in addition to the definition given above. In other words, a universal service guarantee cannot be limited to a national territory and its citizens, but must also include a guarantee of international coverage. For this reason, the UPU strives to ensure that the same universal service is to be found between countries and not only within them. At the Vienna Congress in 1964, the UPU's mission was defined as "developing communications between peoples by efficient operation of the postal services". The term "universal service" was introduced only at the UPU's 1984 Hamburg Congress, and even then not in a systematic way. Universal service was more clearly defined at the Union's 1999 Beijing Congress, and now included: access to services; customer satisfaction; speed and reliability; security and treatment of inquiries.

These characteristics are not however identical to the European Commission's definition of universal service which includes (1) accessibility, (2) quality and (3) affordable price.

2.4 *Regulation of competition*

Regulating competition is the second important regulatory function within the postal sector. This is quite logical, given that the postal sector, of all network industries, is probably the one most heavily exposed to competition. It may be recalled that the European Commission, in its Green Paper of 1992, clearly divided the sector into "free or market services", "universal services", and "reserved services". Even where cross-subsidies from one service to other are allowed or even encouraged (see below), the Commission requests that the **accounts** of the three types of services be clearly separated, and overseeing these accounts is generally a primary function of competition regulation. More precisely, regulation of competition in the postal sector focuses mainly on avoiding cross-subsidies

⁶ "Ex-ante" regulation refers to the fact that the regulator defines certain standards in advance (e.g. universal service standards or technical standards), with which the operators must comply.

from monopolistic activities to free or competitive services. Moreover, competition regulation must also ensure that there is no predatory pricing or dumping, as fair competition also means avoiding prices which do not reflect the reality of the costs and which would be aimed only at entering a new market or eliminating a competitor. Finally, regulation of competition seeks to prevent operators taking dominant positions or cartelization, where operators (private or public) agree to fix prices in such a way as to give them market dominance, to the detriment of the consumer.

2.5. Regulation of access

Access to the network of the historical operator at special points, different from those available to the end user, both upstream and, more especially, downstream, is a mechanism which can help to share the benefits of economies of scale among all market players, allowing them to compete with the monopolist in all liberalized segments. Experience in various countries as well as in other network industries shows that monopolies have few incentives to conclude access agreements with newcomers. Access regulation, where it exists at all, therefore relates mainly to competition, or rather to competition creation. The argument goes that – once all other means of creating competition in the sector have failed (e.g. reduction of the monopoly to zero) – the regulator needs to grant access to the various competitors in order for the sector to become more competitive. However, the postal sector does not have an **infrastructure** comparable to other network industries such as the railways or the electricity sector. Therefore, the whole question of regulating access is still controversial and such regulation is only practised by a very few regulators (see below). While some authors claim that the postal infrastructure is comparable to any network infrastructure and that access to it must be regulated accordingly, others argue that there is no infrastructure at all, meaning that there is no need for such technical regulation in the postal sector. In fact, four different positions can be identified here, each with its own particular regulatory consequences:

- The first position argues that the **postal infrastructure is comparable to that of other network industries** (e.g. railways or electricity). This implies that technical and competition regulation is comparable to that of other infrastructure sectors, meaning in particular that (1) the regulator is obliged to push for unbundling of the infrastructures (and hence for a separation of collection, transport, sorting and delivery) and that (2) the regulator will regulate access to the different segments in a heavy-handed "ex-ante" way. This seems not to be a desirable position for any postal operator, and is probably not realistic either, given that the sector is already unbundled.
- The second position regards the postal network not as an integrated infrastructure, but as a **production chain**, in which only certain segments are monopolistic and need to be regulated. This could be compared to the "last mile" in the context of telecom distribution. In the case of postal services, this would probably mean that there are several production chains (mail, parcels and postal financial services), each of which has specific characteristics. Regulation here would not be highly technical, but rather of the competition type, intervening probably only "ex-post", i.e. if the incumbent and the competitor(s) cannot come to an agreement. This position is already practised in the UK by Postcomm.⁷
- The third position sees the postal network as an **"essential infrastructure" (or "essential facility") with a public service or public economy function**, analogous to the local electricity distribution network. In the postal sector, mail delivery may be regarded as an essential infrastructure. This approach is, to a certain extent, taken in the United States (see chapter 3.7 below). Here, however, the argument relates not to competition creation, but rather to public economy, i.e. the fact that it is not considered economical, from a country's point of view, to duplicate a delivery network, for example.
- The fourth position argues that **the postal sector does not have any monopolistic or essential infrastructure**,² meaning that no access regulation is necessary.

2.6 Defining universal service

While there is broad agreement on the main characteristics of universal service – accessibility, quality and affordable price – how this is defined in concrete terms varies from one country to another. Indeed, many countries do not even have a definition of the universal service, although in the member countries of the European Union, this service is defined by the Commission. As a

⁷ Postal Services Commission (national regulatory authority).

matter of fact, less than 50% of the world's countries have defined the universal postal service and less than 30% of countries in Asia and the Pacific, the Arab countries, Latin America and the Caribbean have included a definition of the UPS in their national legislation.⁸ Another issue is whether the universal service should be identical in the developed and the developing countries. Universal service is defined politically, but the issue is inseparable from that of whether a country can afford it.

There is, however, no doubt that the following parameters are commonly associated with the USOs: affordable prices, accessibility to postal services for customers in terms of distance, counter facilities, or collection/delivery points, delivery standards in terms of the number or frequency of deliveries which may differ for urban and rural areas, density of collection points and frequency of collections, and categories of postal items, i.e. letters, parcels etc.

One possible question concerns the extent of the universal service and, consequently, of postal sector regulation. Many Posts around the world also have giro services or even banking services, which prompts the question of whether some of these services should be included in the universal services and regulated accordingly. In fact, some countries have done just that (e.g. money orders, basic financial services in the cases of Dominican Republic, India, Russian Federation, Switzerland, Viet Nam and others).

From the UPU's perspective, the basic services defined in article 10 of the Universal Postal Convention (Beijing Congress, 1999) constitute the minimum range of services that should form part of the legal definition of the universal postal service in its member countries.

For a definition of the universal service in selected countries see table 3 below.

Table 3: Defining universal postal service

	Description	Quality of service targets (domestic)	Accessibility criteria	"Affordable" price/price cap
France	Listed	Urgent mail (J+1 and J+6) Domestic parcels (J+2)	No	Price cap for universal service
Germany	1997 Directive + CRBT, Express delivery	Priority mail: (J+1 and J+3) Parcels: J+3	Yes	Price cap (3 baskets: individual/bulk mail/work-sharing)
Ireland	No precise definition <i>Based on EU 1997 Directive</i>	Priority mail (J+1 and J+3)	No	Ongoing discussions on a price cap implementation
Netherlands	Listed: <i>Items up to 2 kg, domestic bulk mail (except direct mail), domestic parcels up to 10 kg, inter-national parcels up to 20 kg</i>	Priority mail within USO (J+1)	Yes	Price cap (2 baskets: global universal service/private customers and small businesses in universal service)
Portugal	Listed <i>Based on EU 1997 Directive</i>	7 objectives (priority and non-priority mail, parcels, waiting time in PO) for incumbent USO	No	Price cap (no baskets: private/business universal service)
Sweden	Mail and parcels up to 20 kg	Priority mail (J+1 and J+3)	No	Average maximum increase by product
United Kingdom	No precise definition (under discussion): <i>Items up to 20 kg</i>	18 objectives (priority and non-priority mail, parcels, waiting time in PO) for incumbent USO	Yes	Price cap on licensed area

Source: websites and European Commission

⁸ Source: UPU Cotonou seminar on regulatory matters, 2002.

3 How to regulate?

This chapter will address the technicalities of regulation. As such, it will build on the functions of regulation set out above, which will briefly be recalled, and define how these functions can best be performed technically, leading on to a discussion of regulatory bodies in the next chapter. More specifically, it will address the issue of licences and sanctions, "ex-ante" versus "ex-post" regulation, and price caps or rates of return, and will then apply these and other issues to the functions of regulation identified above.

It may be recalled that these functions were: (1) universal service provision; (2) guaranteeing competition; and (3) providing access for competitors to some elements of the postal network if necessary. For each of these three functions, the challenges are quite different. They are briefly recalled here, but will be addressed again in a more systematic manner at the end of this chapter:

- In regulating the **universal service**, the main practical challenges are to define the universal service (see chapter 2), to issue licences and authorizations, to impose sanctions, to set the price for the universal services, to define a mechanism for financing the universal service, and finally to manage customer complaints related to the universal services.
- In regulating **competition**, the main practical challenges involve defining the costs of the universal service, as well as those of the reserved services, so as to prevent or control, cross-subsidization, but also observing the market and its evolution.
- Regarding regulation of **access**, the first question is whether this is even a relevant issue. If it is, the challenge is to decide where there are bottlenecks in the production chain to which access needs to be granted, and then to calculate the costs of allowing competitor access to the network.

3.1 Licences and sanctions

Licences or other forms of authorization become a relevant issue once the sector is addressed as a whole, i.e. once all market players are considered, rather than the historical operator only. In the broadest sense, a "licence" is an authorization to operate in the market. Such authorizations can be justified on the grounds that: (1) the market and/or competition should be regulated; (2) the provision of universal services needs to be legally tied to a political mandate; and (3) money needs to be leveraged in order to finance the universal service (see below). More precisely, one must distinguish here between two types of authorizations or licences, namely:

- The term "**concession**" is generally used in a very restrictive way and exclusively for the universal service provider. In other words, the concession holder – generally only one (or, if the country is subdivided into different geographical regions, one licence holder per geographical region) – is the operator that provides the universal service in a given country or a given geographical area. In other words, the licence is tied to a legal obligation to provide the politically defined universal services. As such, it is not transferable. Up to now, the licence holder or universal service provider has generally been the historical operator, but the principle of concessions would, in theory, allow for the concession holder (and the universal service provider) to be any operator willing to take on this role with the universal service concession put out to tender (see below). The universal service provider is therefore also the operator which will be entitled to funding for the universal services (see below).
- "**Licence**", in contrast, is required by all operators other than the universal service provider. However, there is a wide variation in terms of what this licence actually covers. Generally speaking, a licence is required for all operators active within the universal service area in any given country, but in some countries the requirement for a licence goes far beyond this and includes all operators in the wider postal sector. Depending upon the country, licences may or may not be transferable.

There is also substantial **variation** in the terminology used in different countries, as well as in what the authorization actually covers. In the EU, even though the Directive on this aspect is fairly clear, the 15 EU countries do not apply it the same way and the situation varies according to the contents of the authorization and the number of licences granted. While there are more than one thousand licences in Germany, there are very few in the UK (fewer than 20) or in the other countries where

this system is applied. Table 4 lists the differences that exist within the European Union, even though all the members are bound by the same Directive:

Table 4: Licensing regimes in some EU countries

	Within the universal service	Outside the universal service
EC Directive Provisions	Licence/authorization Compensation fund	Authorization
Italy	Licence	Authorization
Germany	Licence Conveyance of letters and addressed direct mail outside the reserved area	Authorization/licence Document exchange Value-added services Home collection and delivery
Netherlands	Licence	
United Kingdom	Licence Conveyance of letters and addressed direct mail > 100 g Bulk mailing (> 4000 items) Consolidation Defined activities	No authorization/licence

Source: European Commission, DG Competition

There are also significant differences in terms of the periods of **validity** of licences. Concessions and licences may be granted for periods ranging from three to 25 years or even indefinitely, in the case of certain developing countries.

Furthermore, there are significant differences in terms of the **requirements** for obtaining a concession or a licence. Among the criteria required are creditworthiness, good financial standing and reputation, ability to fulfil the universal service obligation, expertise (e.g. relevant practical experience), territorial coverage in some cases (Eastern European or Middle Eastern countries), good business premises and operational resources (vehicles, trained staff, etc.), strategies, and so on.

As we have already seen, with the concession comes the **obligation** to provide the universal services (in terms of quality, accessibility and price), while licence creates much less onerous obligations. These may include the provision of information about traffic and sales for market monitoring and regulatory purposes, or the submission of financial statements and annual results. In some cases, the regulator will even ask for business, investment and human resources plans. At least in theory, there might be an obligation for holders of licences to contribute to the financing of the universal service provision (see below). Table 5 summarizes some of the results of a recent UPU survey of licensing systems in different countries.

Table 5: Overview of licensing systems

	Reserved area	Licensing in		Postal market	Remarks
		Universal service	Non-universal service		
		Concession	Licence		
Bangladesh	Non-liberalized market	N/A	N/A	Letters, parcels, express and courier	No licensing system
China (People's Rep.)	Letters, parcels international mail (inward-outward)	–	–	Letters, parcels, express, courier, financial services subscriptions and delivery of newspapers	Licensing system not yet implemented, only applies to the incumbent USO
Cyprus	No reserved area	Licensing system	Licensing system	Letters, parcels, express, courier unaddressed mail	All postal services have been liberalized
Hong Kong	Non-liberalized market	N/A	N/A	Letters, parcels, express, courier, logistics	No licensing system yet
Malaysia	Non-liberalized market	Statutory exclusive licence for fixed period	Courier business	Letters, parcels, express, courier, financial services	Private operators free to determine their provision within guidelines
Nepal	Non-liberalized market	–	–	Letters, parcels, express, courier	No licensing system, under discussion
Nigeria	The USP has no statutory exclusive rights	–	No, but many private courier companies operate illegally	Letters, parcels, express and courier	Licences are issued by the postal operator
Philippines	No reserved area; USP has no statutory exclusive rights	Yes	No	Letters, parcels, express and courier	Ministry acts as a regulator
Thailand	Non-liberalized market, but USP has no statutory exclusive rights	Yes, for post office service (agencies)	No	Letters, parcels, express and courier, financial services	Ministry (CAT) acts as a regulator. No separation between operations and regulations

Source: licensing survey (August 2003)

N/A = Not available

Any regulator worthy of the name will have a **sanction** system – or a so-called "regulatory ladder" – in place. However, the nature and severity of the sanctions will differ greatly between the concession (where sanctions for failure should be severe) and licences, **where few if any sanctions can be applied**. "Regulatory ladder" also refers to the fact that there is a scale of sanctions ranging from

warnings to fines, and possibly also to withdrawal of the authorization or licence. Chapter 4 explains who is entitled to apply such sanctions.

3.2 "Ex-post" versus "ex-ante" regulation

The distinction between "ex-post" and "ex-ante" regulation refers to the mode of intervention by the regulator, i.e. after or before the occurrence of an event of regulatory importance. Let us briefly discuss this difference:

- **"Ex-ante" regulation** is necessary where the system of regulation needs to define the rules of the game in an anticipatory manner. In the postal sector, this is typically the case for licensing regimes, as the regulator needs to determine under which conditions an operator receives or must give up a licence or an authorization. "Ex-ante" regulation is therefore required by definition in the area of universal services and access. Indeed, the accessibility, the quality and the affordable price must be defined in advance, i.e. prior to the issue of a licence to the potential universal service provider. Typically, calculation methods (but not the calculation itself) for the costs of the universal service must also be decided in advance (see below). In the case of access regulation, proceeding in an "ex-ante" way is also necessary, as both the incumbent (to whose network access is being granted) and the competitor seeking access need to know in advance under what conditions and for what cost access can be obtained or must be granted.
- **"Ex-post" regulation** is appropriate in cases where arbitration is needed and where conditions cannot be defined in advance. This is typically the case in competition regulation, where the regulator must decide after the event whether or not the rules of fair competition have been breached (for example, through dumping or predatory pricing). Similarly, in the case of mergers and acquisitions, the competition regulator will decide after the event whether they will reduce competition. Nevertheless, some essential rules of competition regulation, such as cross-subsidization rules, must be defined in an "ex-ante" manner.

3.3 Regulating tariffs

Tariff regulation relates exclusively to the universal services and to the monopoly (reserved services) which, by definition, are a subset of the universal services. Tariffs must also be set in an "ex-ante" manner. In this respect, tariffs define the politically established price of the universal services. However, tariffs cannot be viewed in isolation from the extent of competition on the postal market. Depending on such competition, which determines whether or not users have sufficient choice, more or less regulation of the universal service provider's tariffs may be needed. If there is no competition or only limited competition, as is currently the case on the postal market in many countries, stringent tariff regulation is necessary. Such regulation aims to protect consumers from excessive tariffs and also protect competitors that are active on the market. Tariff regulation therefore requires proper balancing of the objectives to be achieved. However, in the reserved areas, strict tariff regulation must go hand in hand with control of the quality of the services provided. In practice, tariff policy differs from one country to another, even in Europe, no such policy is imposed by the EU Directive. The Directive simply states that tariffs should be "affordable". One should also note that, in regulating tariffs, some regulators apply different "baskets", i.e. combinations of products differentiated by type of consumers (e.g. private households versus small and medium enterprises).

Price policy provides one of the main roles and justifications for the existence of a regulator. There is an obvious need for the regulator to play an effective role in ensuring that the tariff for the different services is fixed objectively and in accordance with sound principles which will sustain business and not subject the customer to any burdens or inconvenience. In order to perform this role effectively, it will be essential for the regulator to ensure that a detailed accounting framework for all the services (reserved, universal, and free services) is put in place and separate accounting for these different services is diligently observed. In basic terms, three ways of setting tariffs within the postal sector may be identified:

- Firstly, a simple system of **price controls**, in which tariffs for the universal and reserved services are purely political in nature, i.e. defined by considering the social situation of a country, the situation of the market, inflation, and other criteria such as the historical price. This is quite often the case where tariffs are initially set (see also below for calculation methods).

- However, once tariffs have been defined, there is still the question of how they are to be increased over time. Here, the commonest approach by far is the so-called "**price cap**" (or RPI-X) system, where increases in prices may not exceed the inflation rate (RPI = Retail Price Index) plus or minus a productivity factor, called the "X" factor. This way of regulating prices does not restrict the income of the operator. The price cap system is generally considered to be fully in line with the philosophy of the universal services, where prices are not geared towards costs, but rather are politically defined and therefore arbitrarily "capped". Despite being a form of "ex-ante" regulation, the price cap system is also considered to require only a fairly light regulatory touch.
- The "**rate-of-return**" (or ROR) system meanwhile defines prices by identifying the costs and adding to these costs a reasonable margin (rate of return). This system will require much heavier intervention by the regulator, which will need to know the production costs of operators in much greater detail. In conceptual terms, rate-of-return tariffs are more justifiable in the case of heavy monopolistic infrastructures, but even here rate-of-return regulation has quite perverse effects, as it is generally considered to trigger non-necessary investments in infrastructures rather than price reductions for consumers. In the postal sector, this kind of rate of return regulation is extremely rare, but may sometimes be considered as an option for regulating the tariffs of reserved services, or for access regulation.

Table 6: Overview of tariff regulation methods

	Tariffs	
	Reserved services	Other services within universal service
Germany	RPI-X	RPI-X
Netherlands	-	-
Portugal	RPI+X	RPI+X
Spain	Not available	Not available
United Kingdom	RPI-X	RPI-X

Source: European Commission, DG Competition, March 2003.

3.4 Financing the universal service obligations and calculating their costs

Although some experts and regulators (e.g. Postcomm) argue that the universal service obligation is not a burden for the universal service provider, in most parts of the world the costs of providing the universal services do exceed – and in many cases far outstrip – the profits generated by providing them. It is therefore necessary – once the level of universal service has been defined – for any public authority to make sure that the additional costs of providing such services are covered. In this section, the different approaches to covering these costs, as well as the mechanisms whereby these costs are actually calculated, will be discussed. While the level and method of financing the universal services is generally determined by the political authorities, regulators often have the possibility of defining the methods used to calculate the costs of these universal services.

Several approaches to financing the universal service provision do exist, either in theory or in practice, in particular monopoly (reserved services), funds and taxes (public subsidies). Mention should also be made of tendering, as proposed by the World Bank:

- The model most prevalent at present, at least in the industrialized countries, as well as the model put forward by the European Commission, defines a reserved area, also referred to as a **monopoly**. The purpose and sole function of this monopoly is to generate the funds needed to cover the additional costs of providing the universal services. This calls for precise calculation of these additional costs (for methods see below). If the money generated by the monopoly exceeds the additional costs of universal service provision, the monopoly should be reduced, whereas if it does not cover the costs, monopoly protection for the universal service provider could be extended to the point of becoming identical to the universal services. If this is still not sufficient, as is the case in some developing countries, State subsidies may be necessary.

- Another, so far only theoretical model of financing the additional cost of universal services involves compensation **funds**. The idea of such funds stems back to the European Commission's 1997 Postal Directive, which proposed that competitors' licence fees (see above) could be paid into a fund from which the universal service provider would then be compensated for the expense of providing the universal service (calculated by turnover, profit, etc.). Some countries have translated this option into their national legislation (e.g. Switzerland), but this method of financing the additional universal service obligation has never been put into practice as yet.
- A third method of financing the additional costs of universal service provision is direct **subsidization** of the universal service provider, which up to now has been identical to the historical operator. Though this financing mechanism is certainly possible, it does have some drawbacks, contradicting as it does the European Commission's and other competition regulators' concept that the universal services should be paid for out of the (postal) sector itself, i.e. either by setting aside a monopoly area of the postal market or by forcing all players in the market to contribute USO financing. Direct subsidies also have the drawback of verging on state aid, which would, at least in the eyes of competition regulators, distort the market.
- According to a recent World Bank study⁹, alternative supply models for non-profitable segments of the market may also be explored, including the "**lowest subsidy scheme**" used in the telecommunications sector to attract private sector participation. Through this scheme, governments provide a licence to a provider which will operate in a non-profitable area at the lowest possible cost, while still meeting the obligations attached to the licence. To our knowledge, this scheme has not yet been attempted in the postal sector.

One of the biggest and most problematic challenges of postal regulation is to determine the actual costs of providing the universal services. More specifically, the challenge is to determine the difference between the costs of providing the universal services and the income generated by providing them. Basically, the regulator has two different options here: either define a baseline service and add the universal service onto it (a calculation method called "incremental costs"), or take the universal service as the baseline option and deduct revenue made from providing it (a calculation method called "avoided costs"). Up to now, regulators have not settled on a favourite method of calculation, although they appear to favour incremental costs (and various versions thereof), not only in the postal sector but also in other infrastructure sectors. Let us briefly outline these two methods:

- **Incremental Costs (IC)** are the additional costs incurred by producing another type of service or product. They therefore equate to the difference between the total costs incurred when producing the additional service (or quality increment, or group of services) and not producing them. ICs – and especially Long Run Incremental Costs (LRICs), which also include relevant fixed costs – therefore seem an ideal accounting method for costing USOs, particularly from the perspective of the universal service provider.
- **Net Avoided Costs (NAC)**, meanwhile, are not focused on products, but on the use of infrastructures, as NACs determine – per segment of the used infrastructure – the difference between costs and revenue in lucrative and non-lucrative regions. The costs of USOs are then only the additional costs incurred in some segments and some regions minus the revenue generated by providing USOs in other regions. Consequently, the costs for USOs are significantly reduced. Not surprisingly, the NAC method is not favourable to the incumbent. This method has so far been chosen by the Norwegian and British regulators.

3.5 *Complaint management*

As we have already seen, protection of consumers, along with ensuring competition, is one of the two key functions of postal sector regulation. However, such consumer protection is generally limited to the universal services, i.e. to compliance with the universal service obligation. Following the conversion from the former publicly owned post office to a postal company, users of postal services will soon notice changes in the image and behaviour of the postal company vis-à-vis its customers and the general public. This is due not only to a change in approach of the company, which is now a major company active at international level, but also to savings constraints, in particular in personnel matters. As soon as customers learn that a public authority dealing with

⁹ "An Index of Postal Sector Liberalization" (joint survey by IBM Consultancy Service and the World Bank), 2002.

conflicts has been established, they will submit their questions to the postal regulator or any other institution designated by the public authorities. Many questions will be asked if services are cut (through the closure of small offices, for example), or if conveyance times fail to meet the targets. The relevant regulator's office will of course deal with these complaints, as monitoring compliance with quality standards is one of the regulator's functions.

Such complaint management can include activities such as registering complaints, responding to the complaints, or interventions with – or even penalization of – the universal service provider. Complaint management need not fall to the regulator, however there are many institutional systems in which complaint management is handled by a body such as Australia's Postal Services Consultative Council, which serves as an advisory body and provides advice to the Australian Postal Corporation in all matters relating to postal services. In Germany, and to a limited extent also in Norway, an independent postal "watchdog" of consumers performs a similar function. In the United Kingdom, Postwatch acts as the voice of the consumer in all postal matters and campaigns for a better overall postal service for customers, advising the government, the regulator and the public operator on consumer views, demands and needs. In France, there is a mediator (ombudsman) dealing with management of customer complaints.

3.6 *Monitoring the market*

Monitoring the market is not, per se, a regulatory function. However, it is a necessary condition for any regulator seeking to contribute to the development of the market as well as to consumer protection. Effective monitoring of the market will depend on formal measurement of specific indices, both external and internal. The external indices, such as the amount of investment and turnover, will help to show the relative importance of the sector in the economy. Meanwhile, internal factors, such as growth of the consumer base, increase in the number of operators and mail volumes, will make it easier to assess the effectiveness of its various other functions, such as setting quality standards, the terms of licences and parameters for customer satisfaction. In order to be truly effective in its role, the regulator must also ensure that a reliable and exhaustive database is built up in all areas of postal activity. This is essential because the postal sector is generally neglected by the national statistics and data gathering systems. At the same time, the major functions of the regulator and the building-up of its credibility will depend greatly on how impartial, transparent and objective its decisions are, making a reliable database a must.

There are various ways of monitoring the market, but in reality very few regulators perform this real monitoring of the market, which would require systems and experts not normally at regulators' disposal. Many countries that have put in place a regulatory framework perform this kind of monitoring through a licensing system, requesting much vital information from private operators, to enable them to determine the market shares. This is the case, for example, in some Eastern European countries, where the regulator asks licence applicants for the following information each year: financial results and investment plans; business plans; human resources policy; level of infrastructure and proof of good quality of service; and ability to guarantee services.

3.7 *Regulating access*

As described in chapter 2, the postal sector, as a network industry, is not comparable to the other infrastructure sectors. It may nevertheless be desirable to regulate access to segments of the postal network in the two following cases:

- The postal network might be considered to be a **production chain** with some bottlenecks, such as P.O. boxes or address changes. In this case, the regulator may wish to regulate access to these particular bottlenecks. It may do so "ex-post" i.e. acting upon complaints should the incumbent and the competitor(s) be unable to come to an agreement. But it could equally regulate access "ex-ante", whereby access prices would be defined in advance. Such pricing would have to take account of the considerations discussed above (e.g. RPI-X versus ROR), as well as the various cost calculation methods. To create competitive structures in the postal sector, the postal law may oblige the public postal operator to unbundle its service offer. An example is to be found in the German Postal Act, which provides that other operators (competitors) and major users must be given the opportunity to use only parts of the postal service and provide other parts themselves (e.g. collection, pre-sorting and transport to and from sorting centres). The public postal operator must therefore offer parts of its conveyance

service with appropriate discounts. It is obliged to conclude partial service contracts with competitors under certain conditions. If a settlement is not reached and a contract is not concluded within a specific period, the parties concerned may have recourse to the regulator as conciliator. When regulating partial services, the regulator has to mediate between the two parties involved, which it is not obliged to do when performing other regulatory functions (licensing, universal service, rates regulation). If both parties have recourse to the regulator as conciliator, the regulator can make a conciliation attempt. Should no settlement be reached, the regulator must, upon request by one of the parties concerned, determine the conditions of the contract and order compliance with the contract.

- In a second case, some aspects of the postal service might be deemed an essential facility with a public economic function. In other words, it might be judged uneconomical to duplicate a distribution network, for example. This would imply that access to the distribution network would need to be regulated not for competition creation reasons, but for reasons of public economics. Again, such access regulation could be performed "ex-post", i.e. acting upon complaints should the incumbent and the competitor(s) not be able to come to an agreement. But it is more likely that access would be regulated "ex-ante" with access prices defined in advance. Such pricing would have to take account of the considerations discussed above (e.g. RPI-X versus ROR), as well as the various cost calculation methods. However, even though this is the approach chosen by the United States (downstream access), it is not favoured by the European Commission, nor by most postal sector experts.

3.8 Summary

To sum up this chapter, it may be said that the regulator basically has the following two or three functions, implying certain regulatory approaches:

- The most important regulatory function in the postal sector once liberalization has occurred is to guarantee the **universal services** in terms of quality, price, and accessibility. This necessarily entails "ex-ante" regulation, and preferably a price cap. It also means that the additional costs of the universal service provision need to be precisely calculated (according to a method to be determined by the regulator), and that financing of these additional costs must be secured (either through monopoly protection, a compensation fund, public subsidies, or a combination thereof).
- The second regulatory function in the postal sector pertains to **competition** regulation. However, it is necessary to distinguish between two aspects here: firstly, there is the aspect of possible cross-subsidies arising from monopoly protection or subsidization; in this case, regulation will be primarily "ex-ante", based on calculation of additional universal service costs; and secondly there is the aspect of cartelization and other monopolistic behaviour, where the regulator will tend to intervene "ex-post". Often, this second type of intervention will be initiated by the competition, rather than by the postal sector regulator.
- The third and least important regulatory function may relate to **access**, either for reasons of competition creation (e.g. P.O. boxes or address changes) or for reasons of public economic efficiency (e.g. delivery network). Should such regulation be desired, this would imply either "ex-ante" or "ex-post" regulation and involve complex price calculation methods.

4 Who is the regulator?

This chapter will describe institutional and organizational aspects of postal regulation. The functions and the main instruments of postal sector regulation having been identified, it is necessary to identify the player(s), i.e. the regulator which will ultimately implement postal regulation. It is important here to stress the fact that the regulator is only one of the main players involved in structuring and steering the postal sector in any given country. As such, the regulator is embedded in an institutional framework, involving relationships with other players, all of which contribute to the successful operation of the postal sector. These will include: the ministry and the minister normally responsible for postal matters, with which the regulator's relationship will need to be defined; other regulators, in particular the competition regulator, prompting the question of the specific role of the postal regulator as compared to other regulators; and the postal operators, in particular the universal service provider, which raises the question of the independence of the regulator from the owner of the universal service provider. Aside from these aspects, this chapter will also focus on the regulator's resources, and thus ultimately its power.

4.1 The organizational nature of the postal regulator

The postal regulator is generally regarded as an organizational entity with a degree of independence. However, there are numerous possibilities as regards the status of this organizational entity, ranging from a unit within the ministry responsible for Posts to an entirely independent entity under private law (e.g. a limited liability company), but owned by the State. Table 7 provides an overview of the main organizational solutions or models for a postal regulator:

Table 7: Organizational options for the postal regulator

Option	Description
A	A "regulation department" within a ministry established separately from basic policy and ownership functions.
B	A separate or independent regulatory authority reporting to a ministry or office of the Prime Minister, either: <ul style="list-style-type: none"> – only for the postal sector (e.g. United Kingdom); or – for the post and telecommunications sectors (e.g. Germany, France, many Eastern European countries, Tanzania (United Rep.)); or – for the Post and other infrastructure sectors (transport, energy, infrastructure, water management).
C	An independent commission or regulatory authority reporting to parliament or another supervisory body. The term "independent" refers here to its non-subordinate position and to financing.
D	No separate regulatory authority for posts, the postal sector simply being subject to anti-trust, competition and consumer protection regulation, generally under the auspices of the competition authority.

Only a few countries have chosen model A (e.g. Austria, New Zealand), C (e.g. Costa Rica, Greece, Latvia) or D (e.g. Australia), and model B appears to be the most widespread model, especially within the European Union, which recommends the option of an independent postal regulator. However, all these models and others besides may be possible provided that they allow the main regulatory functions to be performed. Once again, these core regulatory functions are:

- to guarantee the provision of a universal service in terms of quality, accessibility and affordable price; and
- to ensure workable competition in the postal market.

Table 8: The main activities of a postal regulator

Core postal regulation tasks	<ul style="list-style-type: none"> - Licensing - Overseeing universal service provision - Regulating competition, including price regulation - Regulating any access to the postal network
Other important tasks	<ul style="list-style-type: none"> - Market oversight - Complaint management - Policy issues - Legal matters - International affairs
Management and administrative tasks	<ul style="list-style-type: none"> - Organization - Staff - Finances - Internal services

4.2 Relationship with, and independence from, the political authorities

Regulators generally have a particular relationship with the political authorities and especially with the ministry and the minister responsible for postal matters. A regulator primarily has an executive function and acts more or less independently on the basis of existing legislation, reporting to the political bodies as defined by the law (which may be the minister, the government, the parliament, or even a special parliamentary commission). The responsible department of the ministry defines long-term objectives and general postal sector policy. This also includes the drafting of primary and secondary legislation.

However, the regulator must often also submit some of its proposals to the minister, or sometimes even to the government, which ultimately decides. Such proposals may include (a) the attribution of the universal service licence, (b) universal service, and especially (c) monopoly prices, amongst others. The autonomy of the regulator is therefore always relative, and so is its political independence.

Independence for the regulator is justified in particular by the fact that the historical operator – which in general will also be the universal service provider – remains publicly owned. Therefore, in order to justify its neutrality and independence vis-à-vis all operators, the regulator must also be independent of the owner, i.e. the government. The reason why it is so important for the regulator to be independent of political influence is because sector-specific regulation and competition are by no means a self-sustaining system. On the contrary, regulation is constantly threatened by particular interests. If politicians, who may be rightly concerned to protect jobs for example, were to put pressure on the regulator to make decisions based on criteria other than those set out in the law, the regulatory system would risk being undermined. Although the ministry will generally shoulder its responsibilities as regards the basic aims of postal regulation and will not normally intervene in the regulator's decisions, difficulties can arise in particular cases when the repercussions of a decision prompt negative reactions within the industry, its staff or the population at large.

The separation of responsibilities between ministries has proven useful in the telecommunications sector, which was the first to be opened up to competition and restructured and has often served as an example for the postal sector. As the state often owns public enterprises in full or in part, it has to safeguard its ownership rights and interests, for example through the supervisory board of the incumbent. In most cases the finance ministry is designated to carry out this function, whereas responsibility for postal and telecommunications services usually lies with another ministry, e.g. the economics or transport ministry or – if it exists – the posts and telecommunications ministry. Government ownership interests often coincide with the interests of the incumbent and are at odds with the objectives of the postal sector's regulatory policy. It is therefore recommended that different ministries be given responsibility for ownership matters and postal policy.

The independence criterion is best served by model C, but also to some extent by models B and D discussed above. Model A is not suitable for this purpose. But the regulator's independence is determined not only by the organizational link to a ministry, etc. but also by its resources and its funding mechanism (see below). Indeed, the regulator must dispose of sufficient budgetary means and independence. It must also have sufficient powers and scope for regulatory action. Rules for its election, period of office, and the removal of top executives or commission members must be clearly spelled out. Finally, there must be sufficient transparency in the decision-making process.

Box 1: Criteria determining the independence of the regulator

- *In its decisions the regulator is guided solely by the criteria of Post-specific and competition legislation.*
- *The regulator's decisions are not subject to political influence.*
- *In making regulatory decisions, the regulator does not take instructions from other parties.*
- *The regulator monitors the entire postal market, not just the public operator. All operators are required to comply with the same rules.*
- *The regulator decides in an impartial, fair and transparent manner, i.e. the process of decision-making is transparent for both operators and customers.*
- *Regulation based on the above principles creates a favourable legal environment, encourages investment and prevents excessive regulation.*

4.3 Sector-specific or trans-sectoral regulators?

As we have already seen, the European Commission recommends one independent regulator for the postal sector. Various options are available, however, such as combining the post and telecoms regulator, including postal regulation in the responsibilities of a broader regulator for infrastructures, or including postal regulation in the responsibilities of a competition regulator. Let us briefly describe the pros and cons of each of these options:

- A separate **regulatory authority for the postal sector only** is certainly the cleanest and simplest solution (e.g. the United Kingdom). However, regulatory functions in the postal sector are quite limited (e.g. only universal service and competition regulation), and so an independent regulatory authority may not be sub-optimal and may not be justified.
- A joint regulatory authority for both the postal and the telecommunications sectors can be found in a number of countries, both industrialized (Belgium, Germany, Netherlands) and non-industrialized (Argentina, Bulgaria (Rep.), Kenya, Tanzania (United Rep.)). Indeed, it is argued that postal regulation legislation is often inspired by telecommunications legislation and requires similar sector-specific implementation. Some experts also refer to the shared past of Post and Telecoms (PTT). Others argue for economies of scale in regulatory activities, as some regulatory activities are quite similar (e.g. market monitoring, cost accounting methods, legal issues). However, it must be recognized that, in a joint post and telecoms regulator, the telecommunications division will always be predominant due to its significance and the scope of its activities.
- A joint **regulatory authority for all infrastructure sectors** is also conceivable. Apart from postal and telecommunications services, this sector would cover public transport, air transportation, power supplies, gas, water and, if applicable, public broadcasting. However, there has been little experience of setting up such infrastructure regulators up to now.

Taking account of the above pros and cons, each country will have to decide for itself whether postal regulation is to be implemented by an authority responsible for numerous sectors or for the postal sector alone.

There is, however, a further factor to be taken into account, namely the relationship between sectoral and **competition regulation**. The general question is whether postal regulation should be integrated into competition regulation and, if not, how the two should relate to each other. Indeed, sector regulation in Posts and all other sectors generally follows on from the establishment of

competition regulation and the competition regulator. While the universal service regulation function is undoubtedly a typical function of the sector regulator, the appropriateness of assigning a competition regulation function to the sector regulator is less clear-cut. Generally, the competition regulator will always remain responsible for anti-trust issues and, by its very nature, will want to be involved in issues relating to predatory pricing and dumping. However, issues of cross-subsidization resulting from monopoly protection will generally fall to the sector regulator, but the border between cross-subsidization, dumping and predatory pricing will always be hazy. A degree of conflict will therefore always exist between the postal sector regulator and the competition regulator. Including postal regulation in the terms of reference of a broader Post and telecoms regulator or even an infrastructure regulator will not solve the issue. Therefore, a postal regulation law should require both authorities to cooperate and reach mutual agreement, in particular on issues of market definition and the establishment of dominance. The conflicts evoked above could probably be avoided or solved more easily if the competition authority were entrusted to be with postal regulation. However, it is to be assumed that the competition regulator will focus primarily on issues relating to competition before dealing with the specific conditions of the postal sector (e.g. provision of universal service).

4.4 Powers of the regulator

The regulator can carry out its functions only if it has sufficient power to do so. Such power depends on a series of factors, and in particular:

- The regulator's power depends on its **legal, organizational, and institutional status** and therefore on its independence both from the political authorities and from the operators it is supposed to regulate (see above).
- Its powers also depend on its **resources** in terms of staffing and budget, as well as in terms of budgetary autonomy and financing (see below).
- It should also be noted that the postal regulatory authority will only be able to perform its functions successfully if it has sufficient **information** on the market situation and its evolution. Such market information can generally only be obtained from the operators themselves, i.e. from the regulated parties, with which there is always asymmetry of information. It is therefore necessary to empower the regulatory authority by law to deliver the required information.
- Lastly, the power of the regulator also depends heavily on its **ability to impose sanctions and fines and to withdraw licences** without the need to refer to the political authorities. The postal regulation law must also lay down the procedures on which the various decisions to be taken are to be based. As a rule, the competent office in the regulatory authority will take regulatory action, e.g. grant an authorization or licence. However, if particularly significant decisions with serious consequences for postal operators need to be taken, formal procedures for rulings should be provided for in the postal regulation law. Special bodies such as ruling chambers or commissions need to be set up for such formal rulings; and they must be created as laid down in the law. Also, the rules governing the formal ruling proceedings to be applied, for example, to the consultation of stakeholders, investigations, enforcement measures and temporary orders and orders delivered at the end of the proceedings must be laid down in the law. Here too, it is advisable to refer to the relevant provisions of the civil and criminal law. It is also possible to employ proceedings similar to the ruling proceedings of the competition authority. In the formal process, special protection must be given to the commercial and corporate secrets of the companies involved. They should be given the opportunity to mark those parts of the documents which in their view contain such secrets, so as to allow relevant decisions to be taken.

4.5 *Financing the regulator*

In essence there are two models for financing the regulator: either directly by the public authorities and tax revenue, or from the regulator's own revenue sources. Let us briefly look at the pros and cons of each of these two models:

- **Direct financing of the regulator by the public authorities** is currently the widespread model. This model is based on the idea that postal regulation, as a task for the state, should be publicly funded. It is an easy model for governments to use, as fluctuations in incomings and outgoings can be offset with the usual public budget instruments. It is particularly suitable in the early stages of postal regulation, where income from licence fees tends to be modest.
- Financing the regulator by means of **independent resources** has seldom been attempted up to now. The underlying assumption here is that postal regulation should basically be funded by the market players. This model gives the regulator greater independence and makes it more difficult for political influence to be exerted on the funding. But it does have the drawback in the years immediately following restructuring that the costs have to be borne almost exclusively by the public postal provider, since the competitors initially have a small market share and comparatively low income levels. This model therefore also carries the danger of so-called "regulatory capture" by the incumbent, or by the operators more generally. It should only be chosen when regular income, from licences in particular, can be expected. Also, this model requires legal underpinning whereby the market players pay annual licence fees, e.g. in line with the income generated.

The main cost factor for any regulator is staffing. Staffing requirements, administrative and other activities included, range from five to 15 full-time staff in the small and medium-sized countries of Europe, around 20 in France – prior to the setting-up of an independent postal regulation body, planned for the end of 2003 – around 38 in the UK, to around 100 in Germany.¹⁰

4.6 *Relationship with legal entities*

The rulings of the regulatory authority are frequently challenged in the courts owing to their economic significance for postal operators. With regard to such rulings, the law concerning the functions and powers of the regulator may lay down special provisions on legal remedies and on the jurisdiction of courts in legal proceedings initiated against the postal regulator. Where specific legal provisions on regulatory action are absent, standard regulations used to supervise public administration activities are applied. This allows examination of whether an authority has exceeded or abused its scope for discretion. For this purpose, a separate administrative jurisdiction with its own administrative provisions has been established in many countries. A postal company taking legal action can bring the regulator's decision before an administrative court and ask it to overturn a regulatory decision. At the complainant's request, the regulator may even be obliged to issue an order reversing negative decisions or remedying cases of failure to act. Legal action usually has a suspensory effect. It is generally preceded by preliminary proceedings. This means that legal action cannot be taken until the complainant has filed a protest against the decision with the regulator, which in turn must have rejected the protest. Regulatory decisions may be delayed considerably for lack of specific provisions resulting from legal proceedings. Court proceedings may drag on for years and block decision-making. Efficient regulation in accordance with the aims laid down in the postal regulation law could thus be impeded or even prevented.

However, there are also other options, such as decisions by government rather than by the judicial authorities. Within the European Union, postal operators may also turn directly to the EU Commission or the European Court of Justice if they feel that European rights have been violated.

4.7 *Relationships with international "regulators"*

So far, postal regulation has been mainly discussed on a national level. The UPU, an international intergovernmental organization bringing together the governments of 190 member countries, plays a major role in effectively regulating the international postal service through the introduction and operation of international postal services among its member countries. Without doubt, this has faci-

¹⁰ Source: CERP Compendium (www.cept-ccrp.org) and estimates.

litated the free flow of international mail quite effectively. Until recently, the UPU was the only organization regulating the international postal services. In recent years, other intergovernmental organizations have begun regulating the international postal services. In addition to the UPU, the European Commission's postal policy and Directives regulate postal services within the European Union. The General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO), adopted on 15 April 1994 in Marrakesh (Morocco) as part of the Final Act of the Uruguay Round of multi-lateral trade negotiations, also has implications for the international postal services. The fact that the WTO and the World Bank have also, in their own ways, begun to take note of the need for postal reform and postal liberalization will add new dimensions to the issues to be tackled. The initiatives taken by the EU indicate a new way of directing regional efforts to organize and regulate the Post in a liberalized environment. It is heartening to note that the UPU has taken on board the general changes in the postal sector and has initiated steps for its own reform, which will ensure its own continued relevance. The issues will be many and complex, and it is to be hoped that suitable solutions will be found before long. As in the national sphere, commercial interests and customer interests will compete for attention internationally, and operators will expect any regulatory exercise by an international body like the UPU to pay due attention to these legitimate interests. Evolution in the bodies that will carry out regulation in the international arena is closely linked to the question of the future role of the UPU. In discussing international regulation in the postal sector, it should be pointed out that, with the global spread of postal connectivity being its single most important strength, the importance of the initiatives taken by the UPU since its inception 130 years ago cannot be overstated.

Efficient international regulation can only be based on the role of the UPU with the support of international and regional intergovernmental organizations that already exist in the world – such as the European Union, the WTO and the World Bank.

However, the governmental and regulatory authority of each UPU member country, like the respective national sovereignty of the members, will continue to be paramount in all such international deliberations. Therefore, solutions for specific problems and situations will depend largely on the understanding of, and cooperation between, the member countries and the governments involved.

A striking example of the regional approach is to be found in the EU countries, as shown in the following box. It is interesting to note that the actual implementation of a common regulatory framework has differed greatly from country to country, even though there was only one Directive. The entry of ten new countries in 2004 will bring even further diversity to the implementation and interpretation of this common Directive.

Box 2: The European Union approach to universal service

One legal requirement...	... and actual implementation
Minimum universal service	Maintain minimum level or higher (e.g. delivery five or six days a week)
Maximum reservable area	From maintaining maximum, to reducing to none
Quality of service requirements	J+3 target for cross-border service J+1 target for domestic service
Principle of tariffs geared to costs	From price control to price cap (reserved services and/or universal service)
Accounting principles, separate accounts	From minimum separation (reserved area, universal, other services) to individual products (using activity-based costing)
Separate regulation/operation	From NRA with minimum responsibility (e.g. enforcement of universal provision, complaints and redress procedures) to proactive role (e.g. facilitating market entry)
Compensation fund	Assessing the need and modalities (compliant with principles of transparency, non-discrimination and proportionality)
Directives 97/67/EC and 2002/39/EC	National legislation and regulatory framework

Source: EC – Paul Waterchoot, March 2003

5 Implementing postal regulation

This concluding chapter briefly summarizes the key elements to be considered when implementing postal regulation. Regulation of the postal sector follows on from a series of transformations undergone by the PTTs, the historical postal operators, and by the sector as a whole. There is a growing need for postal sector regulation once competition has been introduced to the sector. The provision of universal services in particular needs to be regulated at a time when the historical operator is coming under serious pressure and is being transformed into a competitive enterprise. At the same time, the regulation of competition is becoming a necessity. Access regulation, on the other hand, is not so much a necessity as the result of deliberate decisions by the political authorities, often via the regulator.

The following four steps are not meant as recommendations, but rather as logical steps along which the postal sector has evolved in most countries over the past 20 years. While some of these steps can be combined, none of them can be avoided. Moreover, postal sector regulation, which is shown here as the final step, may not mark the end of postal sector evolution, as this evolution may still hold many surprises in store:

- As a first step one generally observes the **separation of the telecommunications operator and the postal operator** (formerly PTT). While this step has been completed in many countries, it may still be on the way in some others, particularly in some developing countries.
- Step two sees the historical operator transforming and adapting to a new competitive environment on its own. This is also the step in which competitors are entering the market, and generally carrying out significant cream-skimming, especially in the express sector and later on in the parcel sector. This transformation of the historical operator is often laid down in a postal law. However, at this stage, the postal law often only relates to the historical operator and the change in its legal status.
- In a third step – which may be defined in the same law – **a clear separation is made between operations and regulation**. As a rule, this separation means that the operational activities of the historical operator become increasingly autonomous, while regulatory responsibilities and activities are clearly reverting back to the State.
- In step four – which again may be defined in the same law or a different one – a postal sector regulator is finally set up. This is the stage at which the universal service is defined, where the mechanisms for financing it are spelled out, where the different functions of postal sector regulation are formulated, and where the financing and the powers of the postal sector regulator are defined. As we have seen, in the case of the European Union member and accession countries, this step is heavily influenced by the European Commission's postal Directive of 1997.

This last step is also the one to which the present regulatory publication relates, and which it is seeking to clarify and help implement.

ANNEXES

Precautions to be taken for emergency situations

The provision of postal services in emergency situations is of special importance. Emergency situations include: natural disasters, particularly serious accidents, states of unrest or conflict, or international obligations arising from cooperation with the UN, other international organizations or other States.

When, in such circumstances, the State wishes to keep certain postal services running, it is primarily dependent upon the public operator also obliged to ensure universal service. In the past, postal acts authorized governments to issue special instructions in such exceptional cases. The imposition of such special instructions on a State postal authority did not raise any issues. With conversion to an independent public or private postal enterprise however, the arrangements for emergency situations call for a higher level of detail in terms of spheres of responsibility and fields of application, and also supplementary provisions relating to payment of costs and enforcement. It should also be possible to impose obligations on other postal operators once the companies have reached a certain size.

The arrangements for emergency situations may be set out in the postal act or in a special act ensuring the provision of Posts. A link to the corresponding arrangements for the telecommunications sector is also conceivable. The act's provisions should be restricted to basic issues. All individual rules should preferably be laid down in subordinate legislation or included in the licence (or authorization) of the operator, preferably the universal service provider.

The act should also mention the authorities identifying an emergency situation and authorized to issue instructions to the postal operators. For the determination of an emergency situation, a ministry must always be specified. The regulatory authority may be named as the body issuing instructions to the operators and overseeing their implementation. In emergency situations, the competent ministry should be able to temporarily revoke the rules relating to licensing and the provision of the universal service for a specific period of time. Instead, the postal operator may be obliged to maintain a minimum set of postal services. Letter and parcel conveyance (possibly up to a certain weight) and postal banking services may be defined as such. In an emergency situation it may also be feasible to restrict or extend the services.

The postal operator may be obliged to classify certain persons or institutions responsible for tasks vital to life or defence as priority users of services. Provision of the priority mail service may also be restricted in terms of item type and weight, with the authorities given top priority. A mode of procedure should be defined for identifying postal customers to whom priority may be granted. The armed forces of a country often have their own postal organization for their national and international deployments, called the field post. In emergency situations the postal operator may be obliged to support the field post from a staffing and equipment viewpoint and to convey field post items. For the steps to be taken in an emergency situation government bodies are dependent on information and data from the postal operator, required for ensuring adequate postal service provision. The postal operator may be obliged to provide information and data, e.g. about the state of the infrastructure and its ability to provide services. Planning for emergency situations, civil defence and military defence in the postal sector may necessitate involving the postal operator in the security measures. To ensure enforcement of the state instructions vis-à-vis the postal operator the act may stipulate coercive measures and penal provisions. The act should also provide for reimbursement of the additional costs incurred by the postal operator through the government's instructions in relation to planning for the emergency situation.

Issue of postage stamps

Up to now, postage stamps have retained their practical usefulness for keeping postal traffic running smoothly, especially in the case of private letter mail and postal items sent by small enterprises. They facilitate payment of postage, and it is possible for the sender to post his letters at any time, for instance in a street letter box. Other methods of advance payment of postage (e.g. franking machines) are also of great importance. Technical developments, such as the printing of postage stamps by way of the Internet, continue. However, it is too early to say which practical solution will prevail in the future¹.

Postage stamps not only serve postal operational purposes but have also developed into collector's items in their own right (philately) which are of considerable economic importance for postal enterprises and for industries related to philately. Charities may also have an interest in postage stamps where surcharged stamps provide them with funds. Postage stamps also reflect various aspects of the social, cultural and other traditions of a nation and are valued documentation for posterity.

Prior to postal reforms, the issue of postage stamps was the sole responsibility of the public postal administration. All aspects related to the issue of postage stamps were regulated in detail in national laws, generally in a postal law. In a number of countries, postal operations were, as a result of postal reforms, conferred on independent non-state enterprises. At the same time, postal services were partly opened up to competition. There are even plans, in the long term, to abolish exclusive rights completely. However, during a longer transitional period, it will first and foremost be the postal enterprise that has become independent which will convey letter mail as part of the universal service and, hence, also continue to issue the official national postage stamps.

When a postal system is restructured, the following questions will have to be answered with regard to postage stamps, and will have to be regulated by a new law:

- Who will, in the future, be authorized to issue the official postage stamps – a state agency or the now independent postal enterprise?
- Will an authorization or licence be required for the use of official postage stamps?
- Can official postage stamps be used by several national postal enterprises?
- Will the use of non-official postage stamps other than the official ones be permitted? If so, under what conditions?

¹ The 23rd Universal Postal Congress in Bucharest in 2004 will examine a number of proposals relating to various aspects of philately and postage stamp issue.

For further discussion of the questions raised it is advisable to distinguish between the terms "issue" and "use" of postage stamps. The two terms are explained in the box below:

<p>The right to issue postage stamps</p>	<p>This right includes all decisions and activities required to put postage stamps on the market. The procedure of issuing postage stamps starts with the decision made with regard to the size and the structure of the programme (permanent series, special stamps, surcharged stamps) and ranges from determination of the subject and design as well as their denomination and number to determination of the date of issue. To complete the issue of a postage stamp, it may also be appropriate to organize the launch of the postage stamp as part of an event.</p>
<p>Use of postage stamps</p>	<p>Use of postage stamps by the postal operator is separate from the aspect of the issue of a postage stamp. The postal operator uses the postage stamp as a financial compensation for the postal service provided (e.g. conveyance of letter mail), and it is for this purpose that it sells the postage stamps to the customers. In many countries, the withdrawal of the state from postal operations will result in a change to the legal status of the distribution of postage stamps. In the past, the purchase of postage stamps was considered the preliminary stage of a subsequent legal relationship subject to public law. Now the purchase of postage stamps means that a purchase contract is entered into as defined by civil law.</p>

Competence for both issue and use of postage stamps is mostly conferred on the public operator (by law, licence or authorization). However, where the issue of postage stamps is considered a task that cannot be delegated and comes under the sole responsibility of the State, the operator is only allowed to make use of these postage stamps. The result is that a number of tasks will continue to be fulfilled by a state agency, namely: marketing for philatelic purposes; control of stamp use; determination of periods of validity, if necessary; collection of fees, if necessary, for the (State) activity and the transfer of the (exclusive) right to use stamps.

Production of postage stamps is a function which lies somewhere between their issue and use. This function is usually conferred on the operator of postal services.

In the UPU Acts, and in the Universal Postal Convention, in particular, the member states of the UPU have entered into agreements on the international letter mail service. Article 6 of the Convention (an international treaty governed by international law) stipulates that only postal administrations have the right to issue postage stamps.

The member states themselves decide which institution in their country will be given the tasks of a postal administration. This provision in resolution C 29/1994 (Seoul Congress) leaves open many possibilities for the member states and does not rule out the possibility of designating several institutions/operators as postal administrations. To date, however, it has been understood, under UPU regulations, that only one operator per country will be given responsibility for the international letter mail service and for the issue of the official postage stamps.

The UPU member states have always worked for the successful development of philately. They have tasked the UPU International Bureau with establishing a strategic forum for postal administrations and philatelic associations in the form of the World Association for the Development of Philately (WADP). The role of the WADP is to develop long-term strategies for the promotion and revival of philately. In particular, it has justified a "Guide to the Development of Philately" which has been made available to those interested in this field.

Particular mention must be made of Beijing Congress recommendation C 70/1999 on the "Philatelic code of ethics for the use of UPU member countries". In this code, postal administrations are asked to apply specific principles to their policy of issuing postage stamps, which, in the opinion of those with an interest in philately, have proven worthwhile.

The legal regulations governing the issue of postage stamps in the individual UPU member states have not yet been studied systematically. Nor does the UPU publication on the "Status and Structures of Postal Administrations" contain any information on who is responsible for the issue of postage stamps in these countries. Some information can be obtained from the websites of the relevant ministries and regulatory bodies.

Initially it must be said that those countries that have liberalized their letter mail service and separated regulatory and operational functions still give the public operator the exclusive right to use postage stamps on which the name of the country is indicated and which may show state symbols, i.e. to produce and distribute the official national postage stamps. As, at the same time, these public operators are designated as postal administrations within the UPU, article 6 of the UPU Convention is also complied with.

There are differences as regards the granting of the exclusive right to issue or use postage stamps: in legislation, partly limited in time; in the special licence for the public operator; in an individual agreement between government and public operator; or in a special authorization.

In practice, nothing has changed in the countries with liberalized postal legislation as regards use of the official postage stamps by the postal administrations. Nevertheless, it must be said that within the framework of the restructuring of the different laws, the situations in the individual countries differ in terms of the rights of governments. In this context, the following models A–D may be identified:

Legal regulations concerning the issue/use of postage stamps

A	Apart from the UPU Convention there are no special rights enjoyed by the government.
B	Authorization by the State is required for the issue of postage stamps.
C	The right to issue/use postage stamps lies with the State which can, wholly or partly, transfer this right.
D	The issue of postage stamps comes under the responsibility of the State. Authorization by the State is required for the issue and use of postage stamps.

An interesting question is to what extent countries that have liberalized their letter mail allow the issue of non-official postage stamps. Some countries allow the issue and use of such non-official postage stamps under the following conditions: no indication of the name of the country; no use for international traffic (within the framework of the UPU Regulations); notification/registration is (partly) required.

Apart from the provisions with regard to the issue of postage stamps, there are often special legal requirements carrying a penalty for misuse of postage stamps. Countries that have restructured their postal system rarely have any other detailed legal requirements governing postage stamps.

It is expected that governments will increasingly confine themselves to ensuring adequate and sufficient services throughout their territory. In the long run – after adequate periods of transition – all postal services are destined to be opened up to competition. This means an opening-up of the postal markets and a limitation of all exclusive rights in the letter mail sector, at the international level too.

In the future, individual member states will designate several postal administrations for the international letter mail service within the framework of UPU agreements. To this end, the UPU agreements will have to be developed further.

These changes will also leave their mark on the traditional concept of official national postage stamps and philately. It is too early to say whether the UPU member states will continue to issue one national series of postage stamps. After all, the exclusive right to use the official postage stamps means a considerable competitive advantage for the national operator which can only be justified by imposing on it the obligation to offer universal service in that country. It is likely that the use of postage stamps will spread among the new postal operators as well.

Uncertainties regarding the future importance of postage stamps also arise from changes in operational processes, which are constantly adapting to the technological possibilities and economic requirements. In the past, industrialized countries saw rapid and sweeping changes to postal operations and to the services provided. As regards the future role played by the State in the issue of postage stamps, different scenarios are under discussion:

- maintaining the status quo;
- one official series of postage stamps issued by the public operator designated by the state;
- issue of different public series of postage stamps by the State, one for each competitor;
- issue of one official series of postage stamps used by several competitors and offsetting of income;
- no State intervention;
- transfer of competence to the private sector.

It is not yet possible to predict how developments with the use of official national postage stamps will continue. In such situations the countries reforming their postal system should aim at implementing solutions that are as easy and flexible as possible. The following discussions and experiences may be useful:

- all issues related to the programme, production, distribution and use of postage stamps are of the utmost importance to postal operators;
- such operators (in contrast to state agencies) have special experience with the issue and use of postage stamps;
- the establishment of new administrative units in an authority for the issue of postage stamps can be avoided;
- it has to be considered whether state intervention can be curtailed (authorization for issue, right to examine and veto the selection of designs);
- a simple solution is to confer the right to issue and the right to the sole use of postage stamps on the operator designated as the postal administration within the framework of the UPU agreements (possibly limited in time, e.g. to five years); in practical terms, this means that the status quo is maintained as far as possible and in the initial phase of restructuring no additional problems are created.
- non-official postage stamps (without the indication of the country name) may be authorized, but they should be used only at the national level and under no circumstances for international traffic within the framework of the UPU agreements;
- the regulations of the postal act governing the issue of postage stamps should be confined to the assignment of responsibility in this regard and should be as concise and clear as possible; all individual regulations – in so far as they are required at all – should be included in secondary legislation.

ICP – National Communications Authority (ANACOM)¹

1 Origins

The Instituto das Comunicações de Portugal or ICP (Communications Institute of Portugal) was created in 1981 as the regulatory body of the communications sector, reporting to the minister responsible for communications.

The ICP began operating in 1989 as a public institute with administrative and financial autonomy for the purpose of:

- providing support to the government in the coordination, supervision and planning of the communications sector;
- representing the communications sector;
- managing the radio spectrum.

Guided by an integrated approach to communications development in Portugal, the ICP was responsible for carrying out three major tasks:

- **advising government** in matters relating to communications policy, the preparation of legislative and technical opinions, representation of the Portuguese State in international organizations and international cooperation;
- **market regulation** with regard to sector organizations, granting and supervising licences and authorizations, price agreements, frequency consignment, quality control, conciliation procedures and consumer protection;
- **technical assignment** in the management of the radio spectrum, inspection, certifications and conformity assessment of communications equipment.

2 Developments

With new statutes coming into effect on 6 January 2002, the Instituto das Comunicações de Portugal took on its new name of "ICP – Autoridade Nacional de Comunicações" (ANACOM). The Decree-Law No. 309/2001 of 7 December 2001 was intended to combine in one legal text a number of responsibilities contained in separate provisions. This was the result of the transposition of "Community patrimony" that had imposed new and additional responsibilities on national regulatory authorities.

ANACOM represents a continuation of the ICP's corporate entity and, with its new statutes, has relinquished its previous legal status as a public institute to become a public corporation endowed with administrative and financial autonomy and its own assets.

From an organic and functional standpoint, the specific nature of ANACOM's independence also derives from a direct relationship with the Assembly (Parliament), which requires the corporation to report on its regulatory activities to the Government and to the Assembly itself. The Chairman of the Board of Directors (Administration) may also be asked by the Assembly to appear at appropriate committee hearings to provide further information on ANACOM's activities.

ANACOM is therefore the regulatory authority for the telecommunications and postal sectors, operating in accordance with the basic laws governing telecommunications and postal services (article 5 of Law No. 91/97 of 1 August 1997 and article 18 of Law No. 102/99 of 26 July 1999).

¹ Contribution prepared and provided by the postal administration of Portugal.

3 Mandate

ANACOM has been given the mandate to regulate, supervise and represent the communications sector. This mandate comprises the following responsibilities:

- i As **market regulator**: to guarantee network access for communications operators under conditions of transparency and equality; to promote competition and development in the communications markets, in the context of converging telecommunications, media and information technologies; to grant rights for the conduct of postal and telecommunications activities; to manage the radio spectrum, ensuring coordination between civil, military and paramilitary communications, and provide numbering management in the communications sector.
- ii As **market overseer**: to enforce and monitor the laws, regulations and technical requirements applicable in the context of its responsibilities, and ensure that communications operators comply with the provisions of licensing or concession agreements; to guarantee the availability of a universal communications service, ensuring that the corresponding obligations are met; to ensure the proper use of spectrum resources and the numbering assigned; to protect the interests of consumers, i.e. users of the universal service, in coordination with the appropriate bodies and by promoting consumer information.
- iii As **representative of the communications sector**: to act as technical representative of the Portuguese State in international counterpart bodies, monitoring the activities of similar regulatory bodies outside Portugal and their experiences in regulating communications and establishing relations with other regulatory bodies; to cooperate with other public and private bodies in promoting scientific research applied to telecommunications, as well as promotion of the sector at national and international level; to promote, in cooperation with other organizations, technical standardization in the communications sector and related fields; to help to formulate civil emergency planning policies for the communications sector, providing technical support to the bodies and services responsible for establishing and operating the integrated emergency communications network; to ensure that studies are carried out in the areas of postal communications and telecommunications; to undertake projects aimed at promoting access to information and knowledge.

In order to fulfil its responsibilities, ANACOM is required to:

- assist the Government, when requested or on its own initiative, in defining strategic guidelines and general policies for the communications sector and the activities of communications operators, suggesting or proposing legislative or policy-related measures to be taken in matters relating to its responsibilities; and to participate in efforts to formulate a comprehensive strategy for communications development, particularly as it relates to convergence, undertaking any studies as are deemed necessary;
- draft regulations, where provided for by law and as necessary to fulfil its responsibilities, that will promote public consultation and the identification of customer needs and interests, particularly with regard to the introduction of new services or technologies;
- assign spectrum and numbering resources;
- coordinate efforts with the appropriate body to apply the law on competition in the communications sector;
- assess the degree to which equipment and materials conform to standards, and determine the requirements needed for marketing such equipment and material;
- arbitrate and resolve disputes that arise in the area of communications.

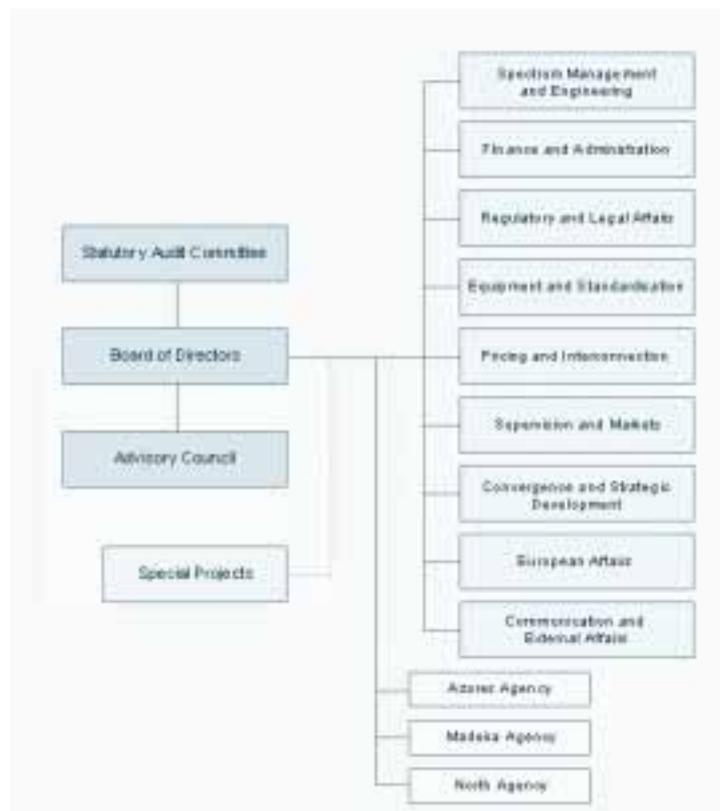
The efficient accomplishment of its responsibilities and the specific nature of the communications sector, together with the constant changes it is undergoing, obviate the need for ANACOM to be granted wide-ranging power in order to be an effective regulatory and supervisory authority for communications. Thus, in addition to issuing individual binding instruments, formulating specific recommendations, initiating and monitoring legal actions and imposing penalties for infractions within its jurisdiction, ensuring compliance with the laws and regulations applicable to the communications sector and monitoring the activity of bodies within its jurisdiction and the functioning of the communications market in general, ANACOM also has the authority to issue any other regulations it deems necessary for carrying out its mandate.

4 Internal structure

ANACOM has retained the ICP's internal structure:

- a **Board of Directors (Administration)** comprising a Chairman and two to four members appointed by the Council of Ministers, on the Supervisory Minister's proposal, for a non-renewable term of five years. The Board is responsible for defining and monitoring ANACOM's operational strategy. Board members are subject to specific rules governing conflict of interest;
- a **Statutory Audit Committee** comprising a Chairman and two members, one of whom is a chartered accountant. The Committee, appointed by the Minister of Finance and the Supervisory Minister for a renewable period of three years, is responsible for the proper management of ANACOM's finances and assets;
- an **Advisory Council** comprising representatives of stakeholders in the telecommunications and postal sectors, including members of the central government and those of the autonomous regions, the National Association of Municipalities, the Competition Council, bodies with universal telecommunications and postal service concessions, representatives of operators and service providers, merchants and installers of telecommunications systems, manufacturers, companies that use communications, and individual consumers. Its members are appointed by the bodies represented for a renewable term of three years.

The Advisory Council is the body serving as an instrument for consultation and support and assists in defining the general guidelines for ANACOM activities.



5 Postal sector

5.1 Legal framework

The postal regulatory framework developed on the basis of Directive 97/67/CE and the revision of that Directive (2002/39/CE).

Thus, the Basic Law for Postal Services (Law No. 102/99 of 26 July 1999) guarantees the existence and availability of a universal service, understood to be the permanent offer of postal services of a specific quality, provided throughout the national territory at prices affordable to all users and

intended to satisfy the communication needs of the population and those of economic and social activities.

As defined in the law, the universal service comprises a service for the transmission of letter-post items, books, catalogues, newspapers and other periodicals weighing up to 2 kg and postal parcels weighing up to 20 kg, as well as a service for registered items and insured items. The universal service provider (USP) is to ensure collection and home delivery at least once a day on all working days.

The universal postal service is provided by CTT–Correios de Portugal SA on the basis of a concession agreement concluded between the Portuguese State and the universal service provider (Decree-Law No. 448/99 of 4 November 1999).

The universal service provider has the exclusive right to provide the following reserved services at national and international level:

- the postal service for letter-post items (correspondence), including direct mail, with or without expedited delivery, whose price is less than three times the public price for sending a letter-post item in the first weight step of the fastest standard category, provided it weighs less than 100 g;
- the postal service for registered items and insured items, including writs of summons and judicial notifications by post, within the same price range and weight limits referred to above;
- the issue and sale of postage stamps and other postal products;
- the issue of money orders;
- the installation of letter boxes in public places for the collection of postal items.

Nevertheless, the reserved services of the universal service and the non-reserved services outside the scope of the universal service have been established within an access regime for the activity of providing postal services in a competitive market, provided for in Decree-Law No. 150/2001 of 7 May 2001. That law stipulates that the provision of non-reserved services within the scope of the universal service is subject to the awarding of an individual licence, and that the provision of non-reserved services outside the scope of the universal service is subject to the granting of an authorization. Both licences and authorizations are granted by ANACOM.

ANACOM has so far granted eleven authorizations and three licences which, in accordance with the access regime governing postal activity, are published and regularly updated on the regulator's website.

The relevant texts of this legislation are available on the Internet at:
<http://www.anacom.pt/template16.jsp?categoryId=1657> (in Portuguese); and
<http://www.anacom.pt/template2.jsp?categoryId=4611> (in English).

5.2 Rates

The rules for setting prices for the services covered by the universal service are contained in a Convention between the Directorate General of Trade and Competition, ANACOM and CTT–Correios de Portugal. This Convention covers reserved and non-reserved postal services that make up the universal service and conforms to the principles of cost orientation, transparency, non-discrimination and price uniformity.

The Convention will remain in effect for three years, with the weighted yearly average variation in prices for non-reserved postal services covered by the universal service reviewed on a yearly basis. The prices for reserved postal services are set in accordance with a weighted average variation specified in the Convention; this price variation depends on compliance with the quality of service levels indicated in the Universal Postal Service Quality Convention.

The text of the Convention and its supplements can be found at:
<http://www.anacom.pt/template15.jsp?categoryId=4614>.

ANACOM annually prepares audits of the PO's cost accounting system, with the most recent one, covering the 2001 accounts, concluding that the system complies with the principles set out in the Directive (see <http://www.anacom.pt/template13.jsp?categoryId=58189>).

5.3 Quality of service

The targets and minimum levels of quality of service relating to the universal postal service provided by CTT are contained in the Quality of Service Convention concluded between CTT–Correios de Portugal for a period of three years.

As indicated earlier, the Convention provides that application of the weighted average variation in the prices for reserved postal services, indicated in the Price Convention, depends on compliance with the quality of service levels stipulated in the Service Quality Convention and which appear in the tables below.

The levels of universal postal service quality are as follows:

- 1 Conveyance times for non-priority mail (J+3), indicated as the average percentage of all letters sent by non-priority mail, which reached their destination within three working days after being posted.

			2001		2002		2003	
No.	Description	RI%	Min	Targ	Min	Targ	Min	Targ
SQI1	Conveyance time for non-priority mail	41.0	95.0	95.8	95.1	95.9	95.2	96.0

- 2 Conveyance times for priority mail (J+1), indicated as the average percentage of all letters sent by priority mail (*Correio Azul*), which reached their destination within one working day after being posted.

			2001		2002		2003	
No.	Description	RI%	Min	Targ	Min	Targ	Min	Targ
SQI2	Conveyance time for priority mail	24.0	92.0	93.0	92.1	93.1	92.2	93.2

- 3 Non-priority mail not delivered within 15 working days, indicated as the number of letters out of one thousand sent by non-priority mail, not returned, which did not reach their destination within 15 working days after being posted.

			2001		2002		2003	
No.	Description	RI%	Min	Targ	Min	Targ	Min	Targ
SQI3	Non-priority mail not delivered within 15 working days (per thousand letters)	5.0	2.9	1.8	2.8	1.7	2.7	1.6

- 4 Priority mail not delivered within ten working days, indicated as the number of letters out of one thousand sent by priority mail, not returned, which did not reach their destination within ten working days after being posted.

			2001		2002		2003	
No.	Description	RI%	Min	Targ	Min	Targ	Min	Targ
SQI4	Priority mail not delivered within ten working days (per thousand letters)	3.0	2.9	1.8	2.8	1.7	2.7	1.6

- 5 Conveyance times for newspapers, books and periodicals (J+3), indicated as the average percentage of all items in the category of newspapers, books and periodicals sent, which reached their destination within three working days after being posted.

			2001		2002		2003	
No.	Description	RI%	Min	Targ	Min	Targ	Min	Targ
SQI5	Conveyance times for newspapers, books and periodicals	16.0	95.0	95.8	95.0	95.9	95.0	96.0

- 6 Conveyance times for non-priority postal parcels (J+3), indicated as the average percentage of all postal parcels sent as non-priority mail, which reached the destination postal facility within three working days after being posted.

			2001		2002		2003	
No.	Description	RI%	Min	Targ	Min	Targ	Min	Targ
SQI6	Conveyance times for non-priority postal parcels	3.0	90.0	91.5	90.0	91.6	90.0	91.7

- 7 Waiting times at post offices, indicated as the average time that a customer waited at the post office, measured from the moment he entered the queue to the moment he was served. This indicator is based on the average time recorded during the office's opening hours (average) and the average time during the day's busiest period (peak period), as regards provision of the services covered by this Convention.

			2001		2002		2003	
No.	Description	RI%	Min	Targ	Min	Targ	Min	Targ
SQI7	Waiting times in queues at post offices (minutes) – Average	4.0	5.00	3.40	5.00	3.35	5.00	3.30
	Waiting times in queues at post offices (minutes) – Peak period	4.0	8.00	4.40	8.00	4.35	8.00	4.30

For further information, see the Service Quality Convention at:
<http://www.anacom.pt/template12.jsp?categoryId=40091>.

ANACOM regularly carries out studies on how customers view the quality of service provided; these studies can be found at:
<http://www.anacom.pt/template15.jsp?categoryId=41522>.

ANACOM also conducts yearly audits of the quality of service and complaints system of the universal service provider (USP). Although the 2001 audit approved the system in general, ANACOM did make a number of recommendations designed to improve the USP's quality of service:
<http://www.anacom.pt/template13.jsp?categoryId=58189>).

5.4 *International participation*

ANACOM plays an active role in the activities of several international organizations.

At the European Union, ANACOM keeps abreast of questions relating to revision of the Postal Directive and its transposition, as well as GATS negotiations with the WTO, discussion of CEN proposed standards and studies developed by the European Commission.

At the UPU, ANACOM takes part in the work of the POC as member and in the work of the CA as active observer, all in an effort to promote the Union's adaptation in line with the postal sector's real needs.

At the PUASP, Portugal participates in the work of the Executive and Consultative Council and its Working Groups; it currently chairs the "Union's future development" Sub-working Group, whose task is to consider the future direction of the PUASP and to submit proposals on future activities to the PUASP Congress in 2005.

At the CERP, ANACOM plays an active role in the organization's four Working Groups ("Regulatory Issues", "UPU Issues", "Economic Issues" and "Standardization"), where important topics of concern to both the European Community and the UPU are discussed.

Finally, at the AICEP and within a multilateral context, ANACOM has supported and participated in initiatives aimed at promoting a common culture and cooperation between Portuguese-speaking countries.

TCRA – Tanzania Communications Regulatory Authority¹

1 Origins

The Tanzania Communications Regulatory Authority (TCRA) came into being on 1 November 2003 following the merger of the Tanzania Communications Commission and the Tanzania Broadcasting Commission. It is the regulatory body for the postal, telecommunications and broadcasting sectors.

Prior to the creation of the TCRA, the Tanzania Communications Commission (TCC) was the postal services regulator since its creation on 1 January 1994. The regulatory law and procedures with regard to postal services as practised under the defunct TCC have been retained intact under the new body i.e. TCRA.

2 Functions

The main functions of the TCRA with regard to the regulation of postal services are as follows:

- a to ensure the provision throughout the United Republic of good and sufficient domestic and international postal services and of such other services on terms the Authority deems expedient;
- b without prejudice to the generality of paragraph (a), to ensure that any person to whom providing any postal services falls is able to provide these services at rates consistent with efficient and continuous service and the need to maintain independent financial viability;
- c to promote the development of postal systems and services in accordance with practicable, recognized international standard practices and public viability;
- d to exercise licensing and regulatory functions in respect of postal systems and service in the United Republic, including the establishment of standards and codes relating to the provision of the same;
- e to regulate the setting of postage rates and other fees or sums to be charged in respect of postal articles sent under this Act;
- f to regulate the fees and commissions on postal financial services;
- g to regulate the performance of postal financial services on behalf of government and non-government agencies;
- h to regulate the issue of postage stamps including definitive, commemorative and special issues of postage stamps and any other philatelic items;
- i to ensure that the terms and conditions stated in a licence granted under sections 9, 10, 11, 12, 13, 14 and 15 are complied with;
- j to promote competition in providing postal services;
- k to ensure that reasonable demands for postal services are satisfied;

¹ Contribution prepared and provided by the postal administration of Tanzania (United Rep.).

- l to promote and encourage the expansion of postal services with a view to enhancing the economic development of the United Republic;
- m to further the advancement of technology relating to postal systems and services;
- n to act internationally as the national body representing the United Republic in respect of postal matters;
- o to advise the government on all postal matters and on matters pertaining to the Authority generally.

3 Organizational structure

The TCRA is an independent regulatory body under the Minister responsible for communications. Following the sectoral reforms introduced in 1994, the Ministry of Communications is responsible for policy issues; the regulator is responsible for ensuring the existence of an environment conducive to the provision of postal services, while the public postal operator is responsible for the provision of basic postal services.

The TCRA has a Board of Directors comprising not more than seven (7) members, with two of them serving as Chairman and Vice-Chairman respectively. One of the Board members is also the Director General and Chief Executive of the organization's secretariat. There is provision for a Consumer Consultative Council comprising of up to ten (10) members, drawn from all walks of life and supported financially by parliament, TCRA and through other sources.

4 Licensing of postal operators

The TCRA has allowed competition in the non-reserved service area (i.e. letters over 500 g and parcels over 10 kg) through licence conditions given to other authorized operators and through subsidiary legislation. The TCRA has designated (by licence) the Tanzania Posts Corporation as the Public Postal Licensee to provide postal services of a specific quality, throughout Tanzania at affordable and uniform prices. The Public Postal Licensee therefore has the exclusive right to provide the following services at national and international level:

- the postal service for letter-post items (correspondence), including direct mail, with or without expedited delivery, whose weight is less than 500 g;
- the postal service for registered items and insured items, including writs or summons and judicial notifications by post, within the same weight limits referred to above;
- the issue and sale of postage stamps and other postal products;
- the issue of money orders;
- the installation of letter boxes in public places for the collection and delivery of postal items.

TCRA has so far licensed 15 other courier operators in different categories in the non-reserved area so as to provide efficient services at prices determined by market forces.

5 Regulation of tariffs

The TCRA regulates the tariffs of the Universal Service provider (i.e. Tanzania Posts Corporation) to ensure the affordability of basic postal services. The methodology is based on the historic costs model with provision for inflation and other exogenous factors.

The TCRA is embarking on a new cost study of postal services provided by TPC with a view to establishing a more predictable "price cap" method for regulating tariffs.

6 Quality of service

The TCRA has laid down parameters governing the general quality of premises from which postal services may be provided as a precondition for the licensing of operators in the competitive non-reserved sector. Regular check-ups are carried out to ensure compliance. As for quality of service "per se", various targets have been established in a performance contract with the Public Postal Licensee (TPC). The contract is renewed after every three years, and a revision of the targets is then carried out. A performance audit to verify compliance is conducted annually.

7 International Relations

The TCRA is the body representative of the Government of the United Republic of Tanzania in all international bodies to which it is a member by treaty or otherwise. The TCRA therefore usually coordinates participation in, and leads delegations to, important meetings of the UPU, the Pan African Postal Union, the Southern African Postal Sectoral Committee (SCOM) of the SADC Protocol on Communications, Transport and Meteorology, the East African Regulatory, Postal and Telecommunications Organization, the Commonwealth Conference of Postal Administrations, and many others.

In the UPU, the TCRA spearheaded Tanzania's participation in the High Level Group on the reform of the UPU which was formed after the Beijing Congress and chaired Sub-Group 3 on "Decision-Making".

The United Republic of Tanzania is host country to the Pan African Postal Union which is based in Arusha.

Summary of the results of the 2003 UPU questionnaire on licensing¹

I. Introduction

In order to implement the reform being pursued by the Universal Postal Union, the Management of the Work of the Union Project Team was set up by the Council of Administration at its 2001 session with the mandate to deal with regulatory issues, the implementation of decisions taken by the High Level Group (HLG) and extraterritorial offices of exchange (ETOE). One of the Project Team's main tasks in the regulatory field has been to examine current practices in the licensing of postal services with a view to advising members on best practices.

II. Survey on the licensing system

In May 2003, the International Bureau sent Union member countries a questionnaire to gather factual information about their practices in the licensing of postal services. Replies were received from 111 postal administrations. A summary of their analysis is given below.

Domestic and international postal market

For most of the postal administrations that replied to the questionnaire, the domestic and international postal market included letter-post services (101)² and parcel services (102), as well as express and courier services (99). The other services mentioned as part of the domestic and international postal market (48) included postal financial services, followed by direct mail, e-mail and hybrid mail, the delivery of newspapers, magazines and periodicals, and philately.

Liberalization of the market

Seventy-one administrations replied that their postal markets had been liberalized. However, the sectors liberalized varied from country to country. The replies showed that most industrialized countries had completely or partly liberalized their markets long ago. Elsewhere, the letter post monopoly still existed.

As regards liberalized sectors, parcels ranked first (68), followed by international outward mail (64) and letter-post services (59). Heading the remaining liberalized sectors were express services or EMS (14), followed by e-mail, registered and insured services, and postal financial services.

Licensing system

Of the 104 administrations that replied to this question, 69 had a licensing or authorization scheme enabling licensees to operate in the postal market. Other management methods were used primarily for registering non-postal operators that provided postal services, concluding a form of agreement with private couriers or granting licences for the purpose of providing a number of services, for example, the universal postal service.

Thirty-five administrations had no licensing system; the reason given most often was the absence of a national postal law on licensing. In some cases, the law was in the process of being adopted; in others, the law was unsuitable.

¹ Extract from the document CA MWU PT 2003.2-Doc 2c.

² The figures appearing in brackets indicate the number of countries concerned.

Scope of licences and licensing methods and procedures

Licences were issued most often in the universal service area for a fixed period. In most cases, the body authorized to grant licences was the regulator (40), though certain postal operators were also authorized to do so.

Requirements for licence applicants

The majority of administrations replied that licence applicants must have good financial standing and reputation (creditworthiness), the ability to fulfil its obligations and the necessary expertise, i.e. qualifications and practical experience. They were required to supply supporting documents proving their ability to provide postal or transport services and, in certain cases, had to provide very detailed documentation.

Sanctions

It appeared from the replies received that most of the administrations (62) provided for sanctions in the form of warning notices, penalties or revocation of licences, depending on whether the non-compliance or infraction was minor or serious.

The results of the survey showed that a large number of countries (71 out of 111, or 64%) had already liberalized their postal markets. These administrations used their licensing system as a mechanism for:

- regulating the market and the activities of private companies providing postal services;
- making the market more attractive and competitive, promoting fair competition between operators, enabling the private sector to work with the public sector and serving the public better by ensuring the fair and impartial provision of postal services and by extending the range of products available to customers;
- offsetting, at least partly, the loss in revenue resulting from the granting of licences to various operators.

Benchmarking postal regulator effectiveness¹

One process critical to the future of the Posts and to the survival of universal service is the reform of the regulatory regimes used to manage postal marketplaces. The topic of postal regulatory reform could occupy many days and numerous presentations. Today, therefore, I will briefly focus on one critical aspect of the reform process, namely, how to evaluate postal regulator effectiveness. I will do this by covering three sub-topics:

- The need for effective postal regulators.
- Benchmarking effectiveness of postal regulators.
- How the UPU can support reform and modernization of postal regulation.

1 The need for effective regulators

Development of postal market liberalization

The current pace of both *de jure* and *de facto* postal market liberalization was unimaginable just five years ago. On a national, regional, and global level, private operators are playing an increasingly important role in the provision of even the most basic postal services. As just one example of this process, in the Latin America region, incumbent universal service providers (or USPs) have a share of the postal marketplace estimated at less than 40%, in spite of benefiting from some of the highest *de jure* protection in the world. At the same time, many USPs have commercialized their operations and some have even started the process of privatization, all the while attempting to provide a politically acceptable level of universal service. On an international level, national barriers to open competition are increasingly blurred due to intense competition among some public postal operators as well as private operators and, to some degree, in response to pressure from regional and World Trade Organization initiatives.

However, postal market regulation has not kept pace with these developments

In the face of this rapidly growing wave of postal market liberalization, it will be difficult to sustain meaningful levels of universal service **and** simultaneously develop competitive postal marketplaces without efficient regulatory regimes managed by effective regulators. In reviewing the progress of postal regulatory reform, however, one fact becomes immediately apparent: the definition of the regulator's role in the modern postal market has not kept pace with developments in the market itself.

Regulators in most developing countries and even some industrialized countries are attempting to regulate with processes more suited to the static, monopoly-based postal industry of the past than to the dynamic, multi-operator, customer-driven market of the future. Moreover, the regulatory frameworks supporting these systems frequently do not provide adequate division of responsibility amongst policy-makers, regulators, and operators themselves. The regulator is often part of the same ministry that acts as the policy-maker and represents the government as owner of the incumbent. While this lack of institutional clarity is at least partially due to the slow pace of postal privatization, it also leads to a disproportionate amount of regulator focus (both favourable and unfavourable) on the USP. As a result, significant portions of the market and large numbers of private operators may receive no attention except when they apply for a licence. There is a simultaneous lack of transparency in decision-making, resulting in lower regulator credibility and effectiveness, and diminished market development.

¹ Extract from the presentation given by the Director General of the UPU International Bureau to participants in the IPC Annual Shareholders' Meeting in January 2004.

The size of this "regulation vs. reality" gap differs from country to country and from region to region. Clearly, the European Union, under the simultaneous guidance and spur of the European Commission's postal directives, has made some notable progress in defining regulator responsibilities and enacting supporting legislative frameworks. In other regions, this progress is more modest. A recent survey showed that while in 31 out of 46 African countries significant USP commercialization had been achieved, in 31 of these countries, the postal regulator was still a government function working in the same ministry.

From an operator's viewpoint, improving the effectiveness of these regulators is an essential element to ensuring the future maintenance of universal service in an increasingly liberalized postal market. Therefore, it is important for operators to understand how to evaluate regulator effectiveness and how to benchmark the performance of any given regulator against international best practices.

2 Benchmarking effectiveness of postal regulators

Evaluating and benchmarking regulator effectiveness requires a standard structure and indicators through which any and all postal regulators can be evaluated. While a wide variety of approaches and elements could be used, a useful point of departure is the benchmarking tools that the World Bank Group and other organizations use to evaluate analogous infrastructures such as telecommunications. The goal is similar, namely to determine whether the regulatory function is appropriately situated and structured to fulfil its role and responsibilities. The basic elements for benchmarking are shown in the following diagram. By "postalizing" each of these, it is possible to identify existing impediments and potential improvements to improve regulatory effectiveness and impact.



Let us look at each element in more detail.

Legislative foundation

The effectiveness of postal regulators depends first on the existence of a sound postal legislative foundation. The basic regulatory elements, from an operator's viewpoint, are relatively standard:

- clear definition of the postal market in terms of postal items and processes;
- a quantifiable USO definition in terms of coverage, access, price, and quality;
- identification of the USP responsible for providing this service and the means for financing it (reserved service, universal service fund, direct subsidy, and "least subsidy" schemes whereby unprofitable portions of the network are put out to tender and awarded to the lowest bidder (e.g. a bus company));
- a strong institutional foundation (e.g. government owned corporation) for the USP;
- clear demarcation of reserved and competitive areas and "rules of game" for participating in each;
- definition of distinct responsibilities and transparent processes for the policy-setting, regulatory and operational activities;
- if liberalization is specified in the legislation, a clear path and milestones to achieving it;
- a commitment to comply with international obligations.

The legislative foundation should be supplemented with a *sector policy* that states the government's strategic decisions and goals concerning market structure, competition, growth, economic contribution, social objectives, etc. This policy should be forward-looking and immune to political changes.

Mandate

Once the basic framework exists, the details of the regulatory function can be provided in supplementary legislation. To start, it is essential that the mandate of the regulator be clear and detailed. Normally, this will focus on:

- overseeing provision of universal service;
- maintaining a fair and competitive postal marketplace;
- protecting new entrants from anti-competitive practices and predatory pricing;
- ensuring access to the universal service network and interconnection at fair and equitable rates;
- coordinating transparent accounting practices and tariff-setting activities;
- representing consumers; and
- monitoring and stimulating overall postal market development.

The balance amongst these somewhat divergent areas should be clear and ongoing and should reflect the regulator's impartiality. As an example, the desire to stimulate competition and guarantee entry and access to the marketplace should not come at the expense of universal service. In fact, ensuring the provision of universal service will typically be the most challenging of the regulator's responsibilities as it involves a large number of individual consumers, political and business interests, and the provision of a basic social obligation in a competitive market. This responsibility will become more challenging as markets grow progressively more liberalized and competitive.

Authority

The regulators' authority to carry out each of these responsibilities should be clear and enforceable. Does the regulator have the authority not only to issue licences to operators (including the incumbent in competitive areas) but also to impose fines and sanctions and, where warranted, revoke licences? To what extent can such decisions be appealed against? Is the regulator empowered to resolve disputes among operators? Can the regulator enforce quality of service standards where these apply? To a great extent, the perception and respect granted to the regulator's authority are as important as its definition in law. Unfortunately, in many countries the reluctance of regulators to

impose fines and revoke licences, along with frequent deference to political pressure, has not strengthened this perception.

Autonomy

Independence and insulation from political and business influences are important elements in making and enforcing difficult regulatory decisions. Two elements are critical here: institutional placement and financing. Does the regulator report to an entity separated from policy-making and operator functions? What are the criteria for nomination and dismissal of regulators and their staff? The more removed the regulator is from operator and policy functions, particularly where the policy maker is still the owner of USP, the more transparent and creditable the regulatory process.

To some extent, overall institutional placement will also be affected by the decision whether to have a *sector-specific* regulator or rather to have the postal regulator function within a *multi-sector* regulatory environment along with other communications or infrastructure industries. There are clear advantages to the latter approach, based on lower administrative costs, greater opportunities for coordinated ICT development, and the potential for sharing common expertise (e.g. legal). If the multi-sector approach is chosen, it is critical that the postal function receive adequate priority and resources.

The other key issue is financing. Financing can come from the government or from the sector itself through licensing fees, fines, and other administrative charges. Again the principles of separation and transparency would recommend the latter approach. In any case, financing should be free from political and commercial influence and its use should be controlled by the regulator with accountability provided through external audits.

Transparency

To a great extent, the regulator's success will depend on its ability to receive and process input from all stakeholders, operators, consumers and policy makers. The regulatory process should be participatory and open. Publishing the regulator's decisions and the rationale behind them on an ongoing and periodic basis (for example with an annual report) can build confidence and credibility in the regulator's role.

There must also be an adequate level of predictability in decision-making, particularly in the area of issuing licences for operators and in enforcing compliance with the terms of these licences. The conditions for receiving a licence must be clear and consistent, and to the greatest extent possible, on terms defined by the regulator itself. While the conditions should be liberal enough to encourage new entrants, the licence should contain obligations with enough "teeth" for the regulator to enforce them. Finally, there should be clarity concerning those roles in which the regulator serves as an *advisor* to the policy maker (e.g. the specific parameters of universal service obligations) versus those where it is the *decision-maker* (issuing licences and sanctions).

Resources and structure

Authority, autonomy and transparency must be backed up with sufficient resources. These resources involve both specific postal expertise and sufficient numbers of staff to complete regulatory responsibilities. Postal regulatory expertise may not require the same level of technical expertise as other sectors (for example, spectrum management in telecommunications). However, because of the very low barriers to entry, postal regulators must deal with a much larger number of operators, perhaps several hundred as opposed to two or three telecommunications operators. This requires a detailed knowledge of the postal market structure and dynamics.

The key resources are data concerning volumes, revenues, product offerings and prices, areas and hours of operation, etc. Some of this information may be commercially sensitive, and therefore the regulator will have to have both the authority to collect this data and adequate procedures to ensure confidentiality. The regulator also needs comprehensive market data to monitor progress on overall sector development and growth. The monitoring of such sector performance indicators (e.g. market expansion, per capita mail volumes, cost of service, level of competition, access to service and quality) also demonstrates the impact which the regulatory regime and the regulator are having on overall economic growth and social development objectives.

The size of the regulator's staff will depend to a certain extent on the size and complexity of the postal market. The executive structure of the regulator can take a number of forms including a Board, Commission, etc., supported by the necessary economic, financial, legal or other technical expertise. The distribution of the responsibilities of this staff should be proportional to the task at hand.

Accountability

In an ideal world, there would be no need for a specific postal regulatory regime and postal operators and the postal market would be subject to the same regulations that governed other commercial entities. However, this is not currently the case and postal regulators must have direct accountability to some higher-level function (legislature, courts, etc.). This accountability can be ensured through review and approval of annual reports, external audits, and other documentation, as well as through the authority of this higher level to appoint and dismiss the head and other senior regulator staff for justified reasons. Furthermore, the regulator's decisions must be capable of being appealed against through some other impartial system.

From all of the foregoing, it should not be assumed that the challenges postal regulators are facing are unique by comparison to their counterparts in analogous infrastructure services. Many telecommunications regulators, for example, face many of the same impediments and constraints in regulating their industries.

3 How the UPU can support reform and modernization of postal regulation

Let me now turn briefly to my final topic, how the UPU can support efforts to improve regulatory performance. Of course, in the area of harmonizing international regulatory frameworks, the UPU contribution is very familiar. Primary among these is the UPU Convention with its regulatory provisions for exchange of international mail along with its terminal dues system which provides the economic framework for reimbursing operators in destination countries for services provided. Another extremely important task is the UPU's effort to promote postal reform by identifying ways in which universal service obligations can be fulfilled in the context of a commercially-oriented business structure. The development of universally acceptable standards, operational procedures and related technical specifications will help lay the foundation for one of the regulator's most basic responsibilities.

A second area is the work that the UPU is doing with its international counterparts, such as the World Bank Group, to develop a series of postal regulatory models and best practice benchmarks. Many of you are involved in analogous efforts as the accession countries work to harmonize their regulatory frameworks with the European Union standards.

The UPU is working to disseminate best practices in these areas through training, seminars, workshops, consultant missions, and development of analytical models. In an increasingly competitive and interconnected environment, developing such evaluative mechanisms will be an important tool for advancing regulatory harmonization.

Finally, the UPU has, and will continue to serve as an open forum for discussing the most pressing issues and pressures confronting regulators in the international postal market. Whether these challenges involve extraterritorial offices of exchange, cost-based terminal dues, WTO commitments and schedules, or the threats and opportunities posed by electronic communications, the UPU will continue to work with both regulators and operators to design solutions that maintain the viability and integrity of the single postal territory concept.

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