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ANACOM'S COMMENTS TO THE SECOND PART OF THE PUBLIC CONSULTATION ON POSTAL SERVICES

MARKET OPENING AND THE UNIVERSAL POSTAL SERVICE

UNIVERSAL SERVICE SCOPE

Q1 In relation to the scope of the universal service:

- **What postal services should the universal service include?**

The universal service is regarded as a permanent provision of postal services of a specified quality, at all points of the national territory and at affordable prices for all users, aiming to satisfy the communication needs of the population as well as economic and social activities.

There is, hence, a direct connection between the scope of the Universal Service and the existence of a segment of the population with no access alternatives, due to the insufficient commercial offer to ensure such access as far as quality and price are concerned.

Without excluding further discussion on which services should integrate the universal service, it should, however, cover clearance, sorting, transport and distribution of at least:

- Priority and non-priority mail;

- Postal parcels;

- Registered items and insured items;

- Newspapers, periodicals, catalogues and books;

on a national and international scope, not exceeding 2 Kgs.

The universal service definition should also enable the redefinition of services covered, taking into account the evolution of users needs and development at technical, economic and social level.

It is believed that the abolishment of the reserved area does not imply the reduction of services comprised within the scope of the universal service. In short, the universal service should be maintained with specifications of quality, universality and price, paying due regard to the needs of users.

- **What steps should be taken by Member States to ensure that the universal services are clearly defined to reflect the needs of customers?**

It is considered that the involvement of users (whether senders or receivers of postal items, companies or individuals) and of representative consumer and operator organisations, for example, by means of a public consultation, could contribute towards the definition of the universal service.

- **Should the scope of universal service products be further harmonised at EU level, or should some elements remain an issue for Member States to determine based on users' needs and market developments?**

Regarding the Community objective of establishing a single market, defining a minimum set of services (integrating the universal service) at Community level is deemed important; simultaneously, Member States (namely the NRA who can better assess the social and competitive reality of the national postal market), based on the subsidiarity principle, should be entitled to define additional services to be comprised in the universal service, having due regard to specificities and needs of users of the Member State.

UNIVERSAL SERVICE OBLIGATIONS

Q2

- **Are the current universal postal service obligations still appropriate? Should universal postal service obligations be applied uniformly?**

Stepping aside the obligations defined at community level, the universal postal service obligations should take under consideration, at the outset, consumer needs and specificities of Member States, without prejudice to obligations defined at Community level.

Eventually, the principles of the electronic communications market may also be adopted. It is up to each Member State to determine the most efficient and appropriate way of ensuring the universal service, while respecting the principles of objectivity, transparency, non-discrimination and proportionality, and to minimise market distortions, particularly the provision of services at prices, or subject to other terms and conditions, which depart from normal commercial conditions whilst safeguarding public interest.

Thus, the possibility of different universal service obligations according to Member States, geographical areas or services should not be discarded at the outset.

THE RESERVED AREA

Q3

- **Is a reserved area necessary to maintain a universal service? What are the risks and opportunities to ensuring a universal service in a competitive environment?**

This matter is currently being analysed. Nevertheless, the issues such as whether there is the need to define a reserved area and the risks and opportunities of the universal service provision are closely connected to the universal service obligations to be defined.

CALCULATING THE COST OF THE UNIVERSAL SERVICE OBLIGATION

Q4

- **Should a common methodology for assessing the cost of universal service be determined (e.g. following the approach taken in telecoms), and if so, who should determine this? <u>In broad terms</u> what <u>elements</u> should be taken into account in this calculation?**

The definition of a common methodology, at European level, for assessing the cost of universal service could contribute towards the definition of a methodology that could be considered a best practise, in conceptual terms. Nevertheless, the definition of a common methodology, in the context of the assessment of the universal service cost, should enable the consideration of specific conditions of each Member State.

As a result, the possible definition of a common methodology for assessing the cost of the universal service should allow the consideration of the level of harmonization of the definition of universal service and associated obligations, as well as the specificities of each Member State.

The definition of a common methodology should be undertaken by a body independent of universal service providers, for example by a group of regulators eventually in articulation with the European Commission.

Although the elements to be considered for purposes of assessment of universal service costs have not yet been identified, the calculation thereof could take into account, where appropriate, the costs of service provision borne by an efficient operator and the benefits (tangible and/or intangible) associated to the universal service provision.

UNIVERSAL SERVICE –SAFEGUARD MECHANISMS

Q5

- **<u>In the absence of a reserved area</u>, what safeguard mechanisms are needed to ensure the continued ability to provide a universal service that would be appropriate in a liberalised market, equitable to citizens (as both users and taxpayers) and competing market participants, as well as practical and cost effective to administer?**

This issue depends on the definition of universal service and associated obligations. Nevertheless, a list of possibilities (non comprehensive) is presented below. This list should however be subject to further analysis as regards the impact of each one on the market (operators and consumers):

- Market financing, for example, through the establishment of a compensation fund to which all operators contribute and through tariff systems;

- State financing.

Related to the financing mechanism, the choice of the service provider responsible for the Universal Service is also relevant. The choice can be made by competition aiming to select, among providers of postal services in the market, the one that fulfilling the level and degree of universal service obligations provides the economically most advantageous conditions.

QUALITY OF SERVICE

Q6

- **Should minimum <u>domestic</u> quality of service levels be further harmonised, to what degree of convergence, for which product types, and how should targets be set?**

It would not be advisable a definition by the European Commission of levels of domestic quality of service levels, as they depend on specificities of each Member State, like the demand, the needs of users, prices, the economic development and geographical characteristics of the country, among other factors.

At most, the European Commission could define parameters of quality and measurement methods, but not the respective levels of quality.

CONSUMER PROTECTION – COMPLAINTS AND REDRESS

Q7

- **Should complaint and redress procedures be strengthened at EU level; if so, what proportionate intervention would be needed, taking into account experience with existing approaches?**

The cross-border mail complaints, where the intervention of more than one operator takes place, may need further research at Community level.

At this level, a clear disclosure of the service provision conditions, including the information on how to make a complaint and on the rights of users and operator liability (including a clear information on the liability of each operator in the process), could contribute towards ensuring better complaint procedures.

On the other hand, as regards sending mail throughout national territory, the definition of procedures for claims and complaints should be left to the scope of action of each State. There is no need of a larger intervention at EU level.

STANDARDISATION

Q8

- **What role should standardisation play in the future postal marketplace?**

Standardisation may play an important role as regards the definition of harmonized methodologies for measurement of quality of service and development of technical rules promoting interoperability between postal operators, both at national and international level.

ENSURING FAIR COMPETITION VS. REGULATORY BURDEN

AUTHORISATION AND LICENSING

Q9

- **Respondents are invited to comment on these options, including, where appropriate the nature of conditions that may be associated with authorisations, (in particular universal service obligations), to whom associated conditions should be applied, and how they are to be enforced.**

Conditions associated with authorisations/licensing must be clear and must contribute towards the development of competition, while safeguarding the protection of users, of essential requirements (inviolability and confidentiality of correspondence, data protection, etc.) and of the provision of the universal service.

ROLE AND RESPONSIBILITY OF NATIONAL REGULATORY AUTHORITIES

Q10

- **Building on the Postal Directive's objectives, are more precise definitions needed concerning the independence, role and responsibilities of NRAs?**

The definitions concerning the independence, role and responsibilities of NRAs is a matter which should be incumbent upon the administrative organization of each Member State. However, some principles of independence promoting the transparency of interventions in the market, namely ensuring the independence between NRAs and operators, may be defined at Community level.

Q11

- **Should the detailed definition of regulatory tasks and the sharing of best practice be facilitated by setting up a European Group of Postal Regulators, or progressed through existing bodies?**

Any action that aims at the simple collection and disclosure of regulatory practises in the various Member States, enabling them to be entirely free as to the use of the information, is welcomed.

Q12

- **Should measures determining the financing of NRAs be prescribed at EU level, or left to Member States to determine?**

The concrete definition of measures determining financing should be left to Member States, given the differences of each national market, the specific intervention/regulation needs and patrimonial allocation demands. However could be defined at Community level the principle that the financing of NRAs activity may be ensured by the market, as far as the postal regulation is concerned.

ACCESS TO POSTAL INFRASTRUCTURE - DOWNSTREAM NETWORK ACCESS

Q13

- **Should the Postal Directive's provisions on downstream access be maintained or is a more detailed mandatory model necessary?**

It is considered that the current provisions defined by the Postal Directive associated to downstream access contribute towards ensuring the provision of the universal service and the promotion of competition, under transparent and non-discriminatory conditions, facilitating the development both of the access to the network of the universal service provider (downstream access) and of alternative networks by the operators. As regards network access, the gradual market opening may demand a stronger NRA intervention as far as network access is concerned, thus it should be conferred effective intervention mechanisms to be implemented at national level.

ACCESS TO POSTAL INFRASTRUCTURE – OTHER FACILITIES

Q14

- **<u>Leaving aside the issue of downstream network access</u> to which elements of the postal infrastructure should equitable access be required, and how should this be remunerated? Which elements, if any, would best be prescribed at EU level?**

In the scope of the postal sector opening process, a growing importance is being conferred to the access by all postal services operators to: PO boxes located at post offices of the universal service provider, postal code database, and address change database. The response given to the preceding question on network access is recalled.

The access to the referred resources should comply with the principle of non-discrimination, regardless whether they are made available free of charge or paid. In the latter case, price should relate to the respective costs.

COST ACCOUNTING AND PRICE CONTROLS

COST COVERAGE AND TERMINAL DUES

Q15

Cost coverage:

- **Cost coverage: should the authorisation for the imposition of uniform tariffs be applicable to all universal service products? How should the decision on uniform tariffs vs. cost coverage be regulated?**

The decision to impose uniform tariffs throughout national territory, to all or some services that integrate the universal service, should be taken by the NRA in order to ensure the provision of the universal service and the promotion of competition.

- **Should the Directive's provisions on terminal dues be maintained?**

Provisions on terminal dues should follow conditions established in the Postal Directive on price application and take under consideration any transitional arrangements designed to avoid undue disruption on postal markets or unfavourable implications for economic operators.

In the framework of EU competition law, should the postal Directive's provisions for achieving non-discrimination in respect of special tariffs be maintained?

The maintenance of the non-discrimination condition should be assessed in the light of the application of competition rules and obligations defined at European level, namely as regards the maintenance of a reserved area.

COST ACCOUNTING RULES

Q16

- **Are the current cost-allocation principles in the Directive unnecessarily rigid? Are the cost accounting rules in the Directive too rigid or too open, or insufficiently clear?**

The cost accounting principles and rules established in the Postal Directive are clear and appropriate, enabling, for example, the separation of costs between services that integrate the universal service and those which are not part it.

- **Should a common cost allocation methodology be made mandatory?**

The application of common cost allocation rules, enabling on the one hand the application of a harmonized methodology between Member States, should not however preclude the application of different rules according to Member States, taking into consideration the specificities of each Member State, namely at the level of market development.

- **What should be the level of public disclosure of regulatory accounts of universal service providers, and would full market opening change the appropriate level of disclosure?**

Independently of future definitions at Community level, the disclosure of regulatory accounts of operators could comprise information of the methodology of cost allocation to products, yet securing the disclosure of data deemed confidential.

PRICE CONTROLS

Q17

- **Should price controls be restricted to postal services provided under conditions of market dominance? If so, in broad terms, how should dominance be assessed, at what level, and by whom?**

In relation to this matter, it should be stressed the following:

a) The potential application of price control rules to services provided under conditions of significant market power should not prevent the application of price control rules to other postal services where deemed necessary or appropriate by the regulator of a particular Member State, taken in account the specific characteristics of that Member State and within the framework of the Postal Directive rules;

b) The potential indiscriminate application of price control rules to services provided under conditions of significant market power could lead to a situation where price control rules are applied to postal services which were not previously subject to such control (for example: postal services that are not part of the universal service);

c) Independently to what might be defined by the European Commission, the assessment of dominance conditions could be carried out considering, for example, the Commission's guidelines on relevant markets in the scope of electronic communications, with the necessary adjustments taking in account the particularities of the postal sector.

MARKET OPENING AND ECONOMIC AND SOCIAL IMPACTS

Q18

- **Do you envisage overall economic growth in the postal sector following full market opening and how might this develop over time? What will be the impact on employment?**

The complete market liberalization may represent a driver for the postal sector development.

For the non-residential segment, postal services may be regarded as intermediary in its relationship with the different stakeholders, and therefore any decrease in the cost of postal services may contribute towards the reinforcement of the productive efficiency, with a special relevance for sectors depending on postal services: financial service providers, utility providers (gas, electricity, electronic communications) or public entities (see WALSH, Tim, "Postal Infrastructure and Economic Development", in "Postal and Delivery Services – Pricing, Productivity, Regulation and Strategy", ed. Michael Crew and Paul Kleindorfer, Kluwer Academic Publishers, 2002). Companies may therefore use postal services for billing/collecting payments and/or to order/receive products.

The complete liberalization of postal services in the sense that it may contribute towards a more diversified and innovative offer, and at more competitive prices, may be used as a driver to different sectors.

On the other hand, also in accordance with the quoted author, Tim Walsh, postal services have the possibility to increase marketing opportunities. In fact, companies may use postal services to reach new markets, which would have been unreachable otherwise due to geographic reasons.

Therefore, bearing in mind the upstream integration, in postal services, of marketing activities such as the aid to market segmentation, described by the Ecorys' study, the services which are object to this consultation could have a reinforced role in the demand of new customers and markets. Also in this perspective, the increased dynamic of the sector resulting from the liberalization results may contribute to increased competition in other sectors.

In relation to the impact on employment, it is difficult to forecast the future evolution of this indicator. However, there are some indicators regarding the past that may be considered in this context.

Subsequently, the elements published in regulation report on the employment evolution from the beginning of the postal liberalization in Portugal (2001) until 2004 are presented below.

Number of employees – Portugal					
	2001	2002	2003	2004	Var 01/04
Total number of providers	19 205	18 203	17 531	16 809	-12,5%
Universal service provider	17 731	17 650	16 406	15 385	-13,2%

Source: ICP-ANACOM; CTT

The trend in terms of the number of employees in Portugal is therefore decreasing since the beginning of liberalization. This trend may be justified by the fact that the universal service provider (CTT) has tried to make its activity more efficient, reducing the cost structure, in particular the fixed costs.

The same downward trend in the number of employees may be verified in the EU countries.

Number of employees – EU 15					
	2001	2002	2003	2004	Var 01/04
Total number of providers	1.534.692	1.580.103	1.555.447	1.527.340	-0,5%

Source: UPU

It may be concluded that since liberalization, the number of employees has been decreasing, which could be, in certain way, related to the fact that postal providers, such as Universal Service providers, may be seeking a lighter cost structure in order to strengthen competitiveness.

Notwithstanding, as referred above, a diversified postal offer at reduced prices may contribute towards competitiveness of other sectors. Therefore, liberalization may have non- negligible impacts in the creation of indirect employment.

According to 2004 data regarding postal traffic, this indicator has stabilized, having remained in the level verified in 2000 (1339 million objects in 2000 and 1341 million objects in 2004).

It is likely that this trend will continue in the next few years, considering that the effects of substitute products such as electronic mail are likely to exceed the growth resulting from the abolition of the postal sector reserved area:

- The results of a recent research carried out by the INE (National Statistic Institute) in collaboration with UMIC (Knowledge Society Agency) demonstrate the positive effect registered in the past few years in the access to electronic mail and Internet, both by the companies and by the families. In 2005, electronic mail was used by 79% of small companies, by 97% of medium-size companies and by all big companies. In relation to former research studies, from 2002, it was on small companies that Internet access has increased at a higher level (in 2002, 67% of small companies had access to this technology).
- Increased access to electronic mail potentially results in the decrease of the use of traditional mail services.
- It was verified that, in spite of the gradual reduction of the reserved area (with the liberalization of mail above 100 grams on 2 June 2003), subsequent licensing requests were not submitted by new entities, as would be expected.

Only two entities, which the financial situation although balanced, confirms its small size, operate in the segment of books and periodicals. Postal operators active in the Express Delivery market and qualified by ANACOM since 2001 do not show interest to operate outside that segment.

As a result, in a situation of complete market liberalization, although it is not expected a strong growth in the sector through the qualification of new companies for the provision of services previously reserved, the companies currently in the market have financial capacity to invest in new business areas. We have information, through articles published in the press, that the opportunity of total market liberalization is interesting for these operators regarding direct mail services.

It is in some way expected that the complete postal market liberalization, at the European Union level, and the resulting price and conditions of access to services improvements, may contribute towards making the direct mail service in a service well-positioned as regards the other means of communication, and may be conducive to the growth of the postal sector.

The Express Delivery service will not be directly affected by the abolition of the reserved area, as it is already liberalized. It should also be highlighted that Express Delivery traffic has been growing since 2001, as well as the alternative operators market share (from 40% in 2002 to 60% in 2004).

It should be stressed that the growing use of electronic mail, both by companies and families, may induce to some growth of postal traffic (until now it stimulated the Express Delivery service) with the physical delivery service of orders placed through the Internet. Note that, according to the mentioned survey, in 2004, the use of electronic mail was adopted by 48% of large companies, 31% of medium-size companies and 25% of small companies, with therefore great expectations of growth to both the parcel segment and for correspondences in the process of liberalization, having regard the fact that electronic mail includes also this type of postal delivery.

The postal sector is a labour intensive activity, requiring the allocation of high number of employees. As a result, the Universal Service Provider (CTT) has a rigid cost structure, however due to the pressure of liberalization it has been decreasing its number of employees, resisting a decrease by 7% in 2003 and by 4% on 2004. The USP staff expenditure decreased by 22% in 2003 and by 7% in 2004, which shows the effort of the operator in this direction.

Alternatively, the sector shows the need to train qualified human resources, as operators of the postal sector are making increasing use of new technologies. The higher qualification need, which was already felt in the provision of express delivery services, is now also required in the provision of services not included in this category and within the future liberalization process.

The consequences for the market and for employment will depend, however, on the strategies to be adopted by postal operators (both by those already active in the market and the potential new entrants) in terms of services to be provided, geographic market target, business model, etc.

For example: new operators will contribute to an employment increase in the sector; mergers or acquisitions may contribute to the maintenance or reduction of employment in the sector.

The economic development of the postal market (including employment evolution) will also be depended on the development of economy as a whole and, in particular, on the development of advertising, communication, logistics and transports sectors, with which the postal sector is closely linked.

Q19

- **What positive or negative social impacts could result from full market opening? How might negative impacts be avoided or limited?**

The total liberalization of the postal sector may have some positive impact, such us:

- Price reduction;
- Increased provision of services;
- Quality improvement resulting from competition pressure;
- Investment of existing postal operators in new business areas;
- Improvement of workforce skills;
- Improvement of the quality of service, in particular related with the offer of services more focused to user's needs;
- Diversified services offer, taking into account technological developments and the referred used needs;
- Users shall have the possibility to choose between different operator/service providers.

Some negative aspects:

- In those cases where operators have full flexibility to manage the network of postal offices and do not have minimum obligations concerning the guarantee of access to postal services of part of the population, the abolition of postal offices in rural or sparsely populated areas could make the access to postal services more difficult, as distances involved may be longer and the access to transport services may be limited;
- The preceding point may also result in a deterioration on the quality of service provided;
- Need to reform the workforce;
- Loss of revenue of the Universal Service Provider (CTT) with the entrance of new market operators. CTT will have to find a path of economic sustainability. The company already shows modernization and adaptation efforts resulting in a positive Net Result in 2004, with approximately 50 million euros, by far exceeding the results of 2003. Anyhow, the negative impact produced by the loss of revenue may be limited with the introduction of new financing measures of universal service.
- Increasing replacement of traditional postal services by electronic mail. This negative impact could be an incentive towards competition development, the increase of quality and the demand of services better adapted to the needs of customers. This negative impact may be limited with the companies' adjustment to new market strategies, namely as distributing companies of requested products through the Internet and with the entrance in new business opportunities such as direct mail.
- The increased offer of services by the providers who do not have universal service obligations requires increased consumer protection. This negative impact may be limited with the introduction by the NRA of some additional rules to those providers, namely at the level of information on the conditions of services provided as well as the users complaints.

The negative impacts may be avoided or limited through the adoption of measures that aim to ensure the existence and accessibility to the universal service in all the territory, with quality and in non-discrimination conditions.

OTHER

Q20

- **Please add any final comments you feel may be helpful to the development of the Commission's 2006 Proposal on Postal Services.**

Having regard to the fact that the objectives of the European Commission include the need to make available modern postal services, it is important to firstly define what is perceived by "modern postal services".

Some studies point towards the fact that the current postal services value chain is substantively different from the traditional value chain. In this context, are particularly relevant the studies carried out upon request of the European Commission.

In the document entitled "Study on the development of competition in the European postal sector" (see http://europa.eu.int/comm/internal_market/post/doc/studies/2005-ecorys-final_en.pdf), Ecorys refers the existence of a “Modern postal value chain". According to the authors of this study, postal services are not any longer limited to a set of traditional operations (clearance, transportation, sorting and distribution), but involve other activities upstream and downstream of the previous referred activities.

Therefore, downstream integration of postal services will occur “through the development of value added services, organising returns of shipments for the mail order and other industries, postal services linked to e-commerce, including fulfilment of web-based service transactions and full integration of postal and financial services”.

The upstream integration is carried out “through the development of databases, using the postal code for market segmentation and improvement of sorting and optimising distribution; content creation in cooperation with the advertising industry and last but not least pre-mailing activities, such as printing and enveloping and the use of hybrid mail services”.

Therefore, it is necessary to clarify, at an initial stage, the concept of postal service. It should be referred that Law no. 102/99, of 26 July, in the wording of Decree-Law no. 116/2003, of 12 June, defines postal services as “the activity which integrates the operations of acceptance, handling, transport and distribution of postal items.”

STAKEHOLDER IDENTIFICATION

Q21

- **Please explain the nature of your interest in the sector (or that of your organisation), and in what capacity you are responding to this consultation. Anonymous contributions to Part 2 are not possible.**

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