

Published as a chapter in R.H. Pedlar and M.P.C.M. Van Schendelen, eds.,
Lobbying the in the European Union (Dartmouth: Aldershot, U.K., 1994)

COURIERS AND THE EUROPEAN POSTAL MONOPOLIES: POLICY CHALLENGES OF A NEWLY EMERGING INDUSTRY

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Summary

Since 1983, private courier companies have been working together to reform postal policy in the European Union. Their goal is a legal regime that allows free, undistorted competition among delivery services operating between Member States and between the Union and the rest of the world. Effecting change in basic Union policy has proved a large and complicated task; ten years later, it remains unfinished. This paper summarizes the efforts of the couriers to put their case for reform of the postal laws to the European Union and key Member States up to the publication of the *Postal Green Paper* in June 1992.

The paper seeks to convey a sense of the major themes and factors which have shaped the couriers' ten-year campaign rather than to recount particular tales and tactics. Such a summary approach relegates public affairs programs that consumed more than a year to a sentence or two, but the long perspective gives a better understanding of the lasting nature of the policy barriers the couriers have tried to surmount. The couriers' experience is offered as an example of the challenges faced by an emerging entrepreneurial industry in seeking fundamental, Union-level policy reforms.

The first section of the paper briefly describes how the couriers organised their collective effort to reform EU postal policy. The seminal event was the formation of the International Express Carriers Conference in 1983 following a letter of inquiry from the European Commission. This section goes on to describe how, after formation of the IECC, rapid corporate evolution of the members strained the ability of the courier industry to maintain a consistent public and legal affairs strategy over the length of time necessary to effect fundamental policy change in the Union.

The second section of this paper summarises the specific policy issues which the couriers strove to win. The fundamental policy issue has been whether couriers should offer unrestricted cross border delivery service or be limited in some manner by the legal privileges of the postal administrations. From a legal standpoint, the crux of the issue was the tension between the Treaty of Rome and national postal monopoly laws. The Treaty of Rome establishes the constitutional framework for the European Union and generally guarantees the "free movement of goods, persons, services and capital" among the twelve Member States of the European Union. On other hand, centuries-old postal monopoly laws in the individual Member States typically reserved to the postal

administration a monopoly over the transport of certain items within the Member State and between the Member State and points outside the Member State. As explained, this basic issue came to be viewed in terms of several sub-issues involving whether private companies could provide "pure express", "re-mail", and/or "inward delivery" services, as well as the extent to which a postal administration could use the postal monopoly to underwrite the costs of competitive services.

Section 3 describes the major participants in the postal policy debate. Among other points, distinctions between postal administrations and the leading user groups are noted.

Section 4 recounts the effort of the couriers to reform postal policy at national level by appeal to national level institutions, the Treaty of Rome, the political interrelationship between the Member States. At national level, the basic strategy of postal administrations was to intimidate and handicap the couriers by administrative means rather than to seek judicial enforcement of the monopoly. In response, the couriers used exhaustive legal research to dissuade prosecution and innovative economic research to demonstrate the benefits of policy reform to user groups and governmental departments. In the end, the right of the couriers to provide pure express service came to be accepted in Germany in 1984 and France in 1985, essentially deciding the first sub-issue for the Union.

As described in section 5, the commercial extension of couriers into "re-mail" services, precipitated by an American policy decision in 1986, quickly escalated the debate to the EU level. The postal administrations agreed to a collective anti-re-mail strategy. The couriers responded with a formal competitive law complaint to the European Commission. The postal administrations countered by encouraging the Commission to prepare a "Green Paper", an overarching policy review that circumscribed the legal arguments of the couriers. The couriers, in turn, sought to develop a persuasive legal, economic, and policy analysis to influence the final version of the *Postal Green Paper*. These efforts are described in section 5, up to the Commission's publication of the *Postal Green Paper* in June 1992.

Section 6 concludes with eight general observations on the problems encountered by the couriers in their long-term effort to reform EU postal policy. These observations, it is suggested, may be relevant to other entrepreneurial industries who, like the couriers, find themselves with the task of simultaneously starting a new industry while trying to reform public policies that tend to inhibit innovation.

Full Paper

Since 1983, private courier companies have been working together to reform postal policy in the European Union. Their goal is a legal regime that allows free, undistorted competition among delivery services operating between Member States and between the Union and the rest of the world. Effecting change in basic Union policy has proved a large and complicated task; ten years later, it remains unfinished. This chapter summarizes the efforts of the couriers to put their case for reform of the postal laws to the European Union and key Member States up to the publication of the *Postal Green Paper* in June 1992.

My purpose in this overview is to convey a sense of the major themes and factors which have

shaped our ten-year campaign rather than to recount particular tales and tactics. Such a summary approach relegates public affairs programs that consumed more than a year to a sentence or two, but the long perspective gives a better understanding of the lasting nature of the policy barriers the couriers have tried to surmount. The couriers' experience in seeking fundamental, Union-level policy reforms may offer insights for other emerging entrepreneurial industries that must tread a similar path.

1 The Couriers

The first top level meeting of courier executives convened in a hotel in Geneva in August 1983. They met to discuss a letter which each company had received two months earlier from the Competition Directorate (DG IV) of the European Commission. The Commission's letters inquired into the relationship between the courier business and the postal monopoly laws in the European Union. As everyone realized, a European policy decision on postal monopoly issues would have a profound effect on the future of the international courier industry throughout the world.

At the time the couriers were immature companies by current standards. Most were still personally managed by highly individualistic founders. The "couriers"¹ originated in the late 1960's in North America, Western Europe, and the Pacific Rim as extra fast and reliable delivery services for urgent documents, such as financial, shipping, and engineering papers. They usually carried items from city to city as airline passenger baggage. Courier traffic rose with the increase in international commerce in the 1970's. Delivering documents and samples worldwide, they invented two descriptive terms which are now commonplace in the language of international commerce: "time-sensitive" and "door-to-door".

The Geneva meeting was called by DHL, by then the largest international courier. DHL was started in 1969 by Larry Hillblom, a young American law student, to provide rapid delivery of shipping and banking documents between the West Coast of the United States and Hawaii. In Geneva, DHL was represented by its CEO, Bill Walden, and myself, head of legal and regulatory affairs. Prior to the arrival of DHL, World Courier's expensive, specialist service had been the paradigm for an international courier. The delegation from World Courier was led by its founder, New Yorker Jim Berger. TNT Skypak, second in size to DHL, was represented by its chairman, Gordon Barton. Skypak originated as a foreign agent of Overseas Courier Service (OCS), an international distribution service for Japanese newspapers. Before purchasing Skypak in 1981, Barton, an Australian, had pioneered express trucking and airfreight operations in Australia and Europe (IPEC) and led a successful fight to deregulate the Australian trucking industry. TNT, another Australian company, acquired a controlling interest in Skypak in 1983 and, in 1991, sold a half interest to a consortium of postal administrations.

Also in attendance in Geneva were the founders of a number of smaller companies that were destined to serve as the courier skeletons for today's integrated carriers. Andrew Walters, an Englishman, was the founder of IML, a courier begun in the early 1970's and originally specialising in service between London and West Africa. IML was later purchased by United Parcel Service.

¹ Courier is an old English word meaning a "running messenger, one sent in haste".

Another English pioneer was Bertie Coxall, an ex-Pan American employee, who had organized Airport Couriers in 1966 to transport urgent documents around Heathrow Airport. Airport Couriers soon grew into one of the first international couriers. The year before the Geneva meeting, Airport Couriers was purchased by a large English armoured car company, Securicor, retaining Coxall as CEO. Purolator, an American armoured car company which had expanded into courier operations, was represented by John Callan. A veteran of DHL and Skypak, Callan had organised his own company, Calico, which ran into financial difficulties before being sold to DHL. Purolator itself was eventually bought by a large American freight forwarder, Emery. Another courier veteran present in Geneva was John Dauernheim, representing Gelco. Dauernheim was a holdover from the days before Gelco had bought Loomis, an early courier based in Seattle. Gelco would itself soon be acquired by Federal Express.

None of these participants knew what to expect from the Geneva meeting. In the fiercely competitive courier industry, the principals rarely spoke and hardly knew each other. Previous industry cooperation had been limited to short, single-issue, national-level policy campaigns. The most important had been in the United States (1976-79) and the United Kingdom (1980-81). Both had been successful, leading to laws excepting courier services from the postal monopoly. A European level public policy effort, however, implied a much higher degree of cooperation over a longer period of time. Indeed, it was tantamount to establishing a mechanism for coordinating key public policies on a more or less worldwide basis. This, in fact, was the proposal of DHL.

After two days, the couriers reluctantly agreed to form a trade group, which they called a "conference" to avoid a sense of permanent association. Temporary articles were approved in a second meeting in New York in November 1983, and Gordon Barton of TNT Skypak was elected chairman. This was the beginning of the International Express Carriers Conference, which became the primary client for the long effort to untangle the restraints of the European postal monopolies.

The courier industry evolved rapidly, forcing corresponding changes in IECC. Although the IECC had achieved a certain permanence as an industry institution by 1987, it was still heavily dependent upon the finances and guidance of its largest member, DHL. In April 1987, TNT and Federal Express agreed to match DHL's contribution, and the enlarged IECC decided to expand its postal policy goals to include the defence of "re-mail" and general deregulation of international postal laws. In 1988, UPS was added as a fourth major member.²

Changing from a one-horse buggy to a four-horse carriage proved difficult. A committee of equals with different corporate priorities and different levels of international experience replaced a committee led by a single dominant member. As the size of couriers grew beyond the capability of personal management, the IECC had to accommodate the shift from entrepreneurs who were personally familiar with all aspects of the business to corporate officers who had sophisticated but specialized skills. For a time, it became impossible to agree on long-term public affairs goals or budgets.

² In addition to the "majors", a number of smaller companies participated in the IECC at various times, including IML Air Services, International Bonded Courier, Overseas Courier Service, Purolator Courier, Securicor Express, Sky International, and XP International Express. Most of these were eventually purchased by one of the four majors.

In late 1988, the IECC recognized that the rising prominence of the European Union demanded the establishment of a European-level courier association that would include regional couriers as well as IECC members. IECC members, however, disagreed on how to form a European-level association. Further dispute arose over the goals of postal policy. DHL urged the IECC to limit its goals to protecting "traditional" express services while the majority wanted to continue to seek reforms across a broader range of postal policy issues, including remail, terminal dues reform, access to postal service, and cross subsidization.

In mid-1989, DHL and Securicor withdrew from the IECC and established a rival European-level courier association, the Association of European Express Carriers (AEEC). Meanwhile, the remaining IECC couriers continued with their plan to form a European-level association, calling it the European Express Organisation (EEO). The resulting division in the industry's façade in Europe considerably complicated the task of presenting the case for reform of European postal laws.

In Europe, the "public affairs department" of the IECC and EEO consisted of a team of talented and energetic European legal and public affairs advisers. The key legal members of this team were French lawyers Dominique Borde, Jean-Marie Duchemin, and Eric Morgan de Rivery; German lawyer Ralf Wojtek; and Italian lawyer Livia Magrone. The major public affairs consultants were Gerta Tschaschel in Germany, Bernard Le Grelle in France, Michael D'Arcy in Ireland and Ian Greer and John Roberts in the U.K.³ From time to time, other lawyers, consultants, and research firms have assisted this core group. In total, however, the basic set of advisers has never exceeded the equivalent of two full-time persons. Throughout the decade, this team was managed by me, working first for DHL and then for the IECC directly.

As the industry has become populated with larger, more sophisticated firms, the public affairs departments of the individual couriers have also become increasingly active in the postal policy reform efforts of the IECC/EEO group. The IECC has turned over management of Union postal policies to the European Express Organisation, led by its chairman, Jaap Mulders of City Courier; secretary general, Anton van der Lande of United Parcel Service; postal committee chairman, Tim Bye of TNT; and lawyer Rick Gerber of Federal Express. Thus, the public affairs work of the industry has grown into a collaborative effort between the original industry advisers and the public affairs and legal experts in the major courier companies, coordinated through the EEO.

2 Issues

Throughout the decade, the fundamental policy issue has been whether couriers should offer unrestricted cross border delivery services or be limited in some manner by the legal privileges of the postal administrations.

From a legal standpoint, the crux of the issue was the tension between the Treaty of Rome and national postal monopoly laws. The Treaty of Rome establishes the constitutional framework for the European Union and generally guarantees the "free movement of goods, persons, services and capital" among the twelve Member States of the European Union. On other hand, centuries-old

³ When AEEC was founded in 1989, Ian Greer and John Roberts shifted to AEEC, and the IECC retained Kevin Bell and Julie Harris of Westminster Strategy.

postal monopoly laws in the individual Member States typically reserved to the postal administration a monopoly over the transport of certain items within the Member State and between the Member State and points outside the Member State.

This basic policy issue has been manifested in several permutations of increasing legal and economic sophistication. As the couriers win, or begin to win, one version of the policy issue, a new variant is pressed by postal administrations. Thus, the fundamental issue of whether or not there should be free competition in cross border postal markets may be viewed in terms of four sub-issues.

a) *Express service: should couriers be permitted to provide express delivery services?* The first issue was one of market entry: whether the couriers should be allowed to operate at all or whether, alternatively, rapid delivery services should be deemed within the exclusive privilege of postal administrations.

b) *Remail: should couriers be permitted to deliver bulk mail to postal administrations in other countries?* By 1987, the policy issue came to be viewed as whether a large mailer could use a courier to tender cross border mail to whichever postal administration would provide the best international distribution at the best price. An American bank in New York, for example, might send statements of account by courier to the Dutch Post Office for postal distribution to customers throughout Europe. This use of courier service offered several advantages over posting with the U.S. Postal Service. The courier would typically offer pick up, sorting, monthly billing, and tracing services not provided by USPS. Compared to USPS, the Dutch Post Office would add less markup to the inter-administration rate for delivery of cross border mail. Both the courier and Dutch Post Office were spurred by competition to provide a faster, cheaper service than provided by USPS; if they did not do so, the courier would find another partner postal administration or the customer would find another courier. Using a courier to forward mail to a foreign postal administration came to be known as "remail".

c) *Cross border liberalisation: should couriers be permitted to deliver bulk cross border mail?* With remail, a large mailer could post his mail "downstream" with a postal administration closer to final destination, but final delivery still depended upon the postal administration in the destination country. In some cases, however, public postal delivery might not meet the needs of the mailer. Postal sorting and delivery operations are necessarily attuned to the needs of the local, not the cross border mail. If an international flight arrives at 8 a.m., the cross border mail cannot be delivered by the postal administration until the next day; a specialized delivery service might provide delivery by noon on the same day. Moreover, it is no secret that some postal administrations do not provide a very good service. As traffic has grown, some couriers have found it better or cheaper to deliver cross border mail themselves in central cities.

In short, the issue has become whether to allow development of international postal systems that can provide integrated collection and delivery of mail across national boundaries. While this possibility has been generated by courier competition, it is not limited to private companies. Large postal administrations, as well, are considering the possibility of arranging for pickup and delivery in foreign cities where they have a large number of customers. This is less remarkable than it may seem at first blush. National airlines have always marketed their services in each others' home territories. More recently, telecommunications administrations are doing the same.

d) *Cross subsidy: should postal administrations be prohibited from using monopoly profits to subsidise competitive services?* Where postal administrations have been unable to prevent competition, they can still use the postal monopoly to restrict the growth of couriers by using the economic benefits of the postal monopoly to subsidise the prices of competitive products. Although postal administrations usually disavow cross subsidisation in principle, definition and enforcement are all-important. The couriers believe that regulation of cross subsidy requires a truly independent regulator applying objective economic criteria to detailed, transparent cost accounts. Postal administrations generally prefer non-public scrutiny by a Ministry of Communications that remains politically responsible for the financial well-being of the postal administration.

3 Participants

While the postal administrations and private couriers have been the major antagonists in the long-running postal policy drama, the dramatis personae would also include business users, consumers, postal unions, and (particularly in the U.K.) policy "think tanks".

The postal administrations, of course, are in the first rank of the economically and politically important public services in Europe. Virtually all have been active in postal policy issues, supported by their unions. In general, postal administrations have opposed the pro-competitive solution to each policy sub-issue as it has arisen. Different administrations have participated in different degrees. The French administration, La Poste, has been the political and intellectual leader of the conservative majority of Union postal administrations, supported by an especially active Irish postal administration, An Post. The British Post Office has led in the development of quantitative and economic analysis, an approach which has sometimes led it to advocate a more liberal position than La Poste. In the last few years, a minority position has developed among administrations, led by the Dutch Post Office, sometimes joined by the Danes, the British, and the Germans. The minority position has been to support alignment of postal prices and charges with costs and liberalisation of cross border and other postal services.

In 1983, the courier industry was composed of small companies without access to the governmental or commercial circles of Europe. Outside of the U.K., the largest courier, DHL, had only thirty or forty staff in any European city, almost all drivers. Most industry executives were former operations supervisors, who were too busy inventing and building a new industry to waste time on subtle policy questions. Few even spoke the language of the countries they were trying to serve. The total traffic in the courier industry in 1983 was about 4 million shipments, compared to 2,200 million *cross border* postal shipments (cross border mail is only about four percent of all mail).

The activity of the user groups tended to reflect the resistance to competition by the local postal administration. The most active, pro-reform, user groups have been the French chapter of the International Chamber of Commerce and the French employers' association, Conseil National du Patronat Français. Similarly, the German chapter of the ICC and the German chamber of commerce, Deutscher Industrie und Handelstag, have been involved in postal reform policy for many years. In Italy, the employers' association, Confindustria, became involved in 1989 when the European Commission confronted the Italian postal administration over its practice of taxing cross border courier shipments. Since about 1989, consumers' needs have been actively championed by the

Bureau Européen des Unions de Consommateurs as well as national level associations. In the last two years, the Fédération Européenne du Direct Marketing has also become a major user participant in the policy debate.

These participants have urged their positions to a loose panel of judges consisting of the European Commission's Competition and Telecommunications Directorates (DG IV and DG XIII, respectively) and the postal and economic ministries of key Member States. In the Member States, the British Department of Trade and Industry, the German Ministry of Economics, and the French Ministry of Posts and Telecommunications have been especially involved in the postal policy debate.

4 Changing national policies in an EU context

The question of whether or not private couriers should be allowed to operate was first fought at the Member State level, although within the framework of Treaty of Rome. In the early 1980's, the United Kingdom was the only Member State that accepted private couriers on any terms. By virtue of a 1981 law, couriers in the U.K. were permitted to operate if they charged more than UK£ 1.00 per shipment. In the rest of the European Union, the position of the postal administrations was that couriers should be prohibited entirely. Outside the U.K., postal administrations acted individually to suppress the couriers within their respective Member States.

4.1 Postal strategy

The basic strategy of postal administrations was to intimidate and handicap the couriers by administrative means rather than to seek judicial enforcement of the monopoly. The most aggressive tactics were adopted by La Poste in France. Couriers were variously warned, on pain of prosecution, to cease operations or to stop advertising or to notify customers of the need to comply with vaguely worded postal monopoly laws that were, in turn, interpreted by postal lawyers. News articles were placed in newspapers questioning the legitimacy of couriers. Speeches by ministers condemned the couriers. Couriers' offices were subject to dramatic raids by postal inspectors, upsetting local employees. Customs officials conducted lengthy searches of courier bags entering the country. Necessary permits and licenses - for example, relating to the right to occupy buildings on airport grounds - were delayed or denied. Major customers were warned off the couriers. Many, but not all, of these tactics were employed in most other Member States as well.

Uniquely in France, beginning in 1980, La Poste also demanded that couriers sign an agreement under which a certain amount of money was to be paid La Poste for each shipment carried by courier. This informal tax did not explicitly exempt couriers from the postal monopoly, nor was it authorized by French legislation. Nonetheless, the couriers felt that they had no choice but to pay it, believing that it gave them at least a moral right to operate. In 1982, La Poste notified the couriers that the agreements would be limited to the Paris area. The rationale of La Poste was apparently that its own express mail service was ready to take over from the couriers in the provinces and would soon be available in Paris.

4.2 Courier strategy

Since the couriers were small, unknown, and largely foreign, we - couriers and advisers - had none of the political tools of an established national industry. We had no ability to approach the

minister, speak out at the chamber of commerce, or generate press stories. From experiences in the U.S. and U.K., however, we knew how to analyze the weaknesses of the legal and economic premises upon which the postal administrations' positions rested. Our strategy was based on this expertise.

Our first concern was to limit the possibility of a prosecution under the postal monopoly law. In the major Member States, we retained lawyers and researched hundreds of years of statutes and judicial decisions, until the evolution of the postal monopoly law and all its concepts were understood thoroughly. Related laws were also examined in depth: competition law, administrative procedure, and the Treaty of Rome. Formerly, administration lawyers claimed an exclusive expertise in this arcane corner of the law, allowing them to pronounce the scope of the monopoly without challenge. In fact, however, as our research demonstrated, the postal monopoly law was often a jumble of contradictory precedents whose application to modern commerce was extremely unclear.

This legal research allowed us to forestall outright prosecution. We knew enough about the deficiencies of the officially proclaimed postal monopoly that administration lawyers were reluctant to put at risk the entire monopoly edifice. While our customers could still be intimidated - they rarely believed us over the postal administration on the finer points of postal law - our most fundamental fear was alleviated.

While legal research was useful as a shield, it would not serve as a sword. The uncertain scope of the postal monopoly, per se, would not convince the legislature to clarify the law over the objections of the postal administration. To make the case for an affirmative exception to the postal monopoly, we retained credible, independent economic consultants to identify the role the couriers fulfilled in the national economy. Placing our case in the hands of truly independent consultants meant the loss of some control over final reports, but we believed that only independent analysis would have currency in a policy debate.

Like the legal research, the economic research proved to be extraordinary; the consultants were asked to analyze an industry that did not exist yet. Businessmen did not then think of the flow of urgent documents and small parcels in distinct, analytical terms. Neither customers nor economists had any accepted way to measure the quality or importance of an express delivery service. What appeared obvious to the couriers was, in fact, not nearly so obvious or easy to explain to an outsider. In the end, these economic reports represented an arduous joint intellectual effort by consultants and couriers. They did finally provide, however, a useful description of the economic role of couriers in terms understandable and credible to established commercial and governmental institutions.⁴

Armed with economic studies, we undertook to explain the idea of courier service to the commercial establishment in key Member States. Our approach was to avoid presenting the "courier issue" as a new policy problem. Rather, we related our problem to policy issues that were already being publicly debated. In Germany, for instance, the courier issue could be best understood as an example of the potential of deregulation. In France, because La Poste had decided in 1982 to ban couriers in the provinces before Paris, the courier issue was more understandable as an element in

⁴ Examples include studies by Professor E. Kaufer in Germany, the Bureau d'Informations et de Prévisions Economiques in France, and Coopers & Lybrand in Ireland.

the national debate over decentralization of power to the provinces. In both countries, we noted the importance of the international couriers to support exports.

In all countries, the educational task was approached broadly to escape being confined to the terms of "postal policy." We tried to avoid a public confrontation with the postal administration for two reasons. First, we believed that, as relatively unknown outsiders, we could not win a public debate over legal or economic technicalities. Second, we believed that postal officials would be more likely to compromise in the end if they were not forced into assuming inflexible public positions.

In addition to the legal shield and the economically honed sword, a third element in the couriers' strategy was introduced by the Commission's June 1983 inquiry. In its first collective action, the IECC responded to the Commission with a candid, detailed report with voluminous appendices. This presentation represented our first involvement with the European Commission, and it set the tone for a cooperative and professional relationship between the Competition Directorate and the couriers.

In our strategic thinking, we envisioned the role of the Competition Directorate as one of a casting vote at the national level. We felt that, if we could demonstrate in a given Member State substantial political support for couriers to offset opposition from the postal administration, the Commission could, if it agreed with our position, tilt the balance in favour of liberalisation. To protect our credibility with the Commission, we were most reluctant to ask the Commission to do the politically impossible. In particular, although we were early aware of the legal feasibility of a formal complaint against the postal administrations under Union law, we did not file such a complaint. We concluded that a formal complaint at that time would unite all the postal administrations against the courier industry before we had a recognized commercial role in the Union economy.⁵

A final aspect of courier strategy in those days related to the timing of political decisions among the Member States. The couriers realized that they enjoyed a fundamental advantage over the postal administrations because they could better coordinate political and legal activities in different national fora. The couriers could, to some degree, delay a decision in an unfavourable forum and advance the date in a relatively more favourable forum. In September 1984, the IECC decided to concentrate on the German government as the major Member State most likely to be responsive to the policy factors favouring the courier industry. Thus, we resisted proffered negotiations in France while pressing ahead in Germany.

4.3 Course of events at national level

The years 1983 and 1984 passed with postal administrations and couriers pursuing their separate strategies. Postal administrations sought to limit the couriers' growth with administrative threats and harassment. The couriers developed their business and the economic case for being allowed to continue. Neither side sought a definitive legal confrontation in court.

⁵ During this period, our legal strategy was affected as well by the appeal of the *British Telecommunications* case pending before the European Court of Justice. In December 1982, the Commission had applied the competition rules of the Treaty of Rome to certain telex activities of the British Post Office. The Commission's decision had been appealed to the European Court of Justice by several conservative PTT ministries, led by Italy. We did not want to launch a massive legal case until the law was clear.

The dénouement to these competing manoeuvres came in Germany at the end of 1984. The opportunity for resolution appeared almost by chance, although it was recognized only because of long preparatory work. It turned out that the Bundespost was offering "on demand" express mail service without proper legal authority. This omission was only a technicality since the Bundespost had obtained proper authority to provide "contract" express mail service. Nonetheless, to extend its contract express service to non-contract customers, the Bundespost was legally required to obtain authority from the Postal Council, a quasi-legislative body comprised of members of several ministries, the parliament, and representatives from business and labour.

The true legal significance of this missing authorization derived from the Bundespost's position on the postal monopoly. The Bundespost insisted that its monopoly precluded courier service on routes where the Bundespost's express mail service was adequate. Hence, before the Postal Council approved new operating authority, it should logically consider the implied extension in the Bundespost's de facto monopoly. This point had never occurred to anyone. By bringing it to the attention of members of the Postal Council who supported courier services, we were able, in effect, to place the Postal Council in a position to review the applicability of the postal monopoly to courier services.

There were two possible outcomes. The Postal Council might decline to review the monopoly implications and simply authorize the extension of express mail service, in which case the couriers would be no worse off than they were already. Alternatively, the Postal Council could consider the postal monopoly issues and require the Bundespost to accept courier competition before granting the ordinance. It was unlikely that the Postal Council could or would use a decision authorizing a new postal service to hinder the couriers. In short, the couriers could force the issue in circumstances in which they could win but could not lose, an ideal place to make a stand.

After much debate, the Postal Council decided to suspend approval of the ordinance until a mutually satisfactory solution to the competition issues could be worked out in a committee composed of representatives of the Bundespost, the Ministry of Economics, and the European Commission. When compelled to address the economic and competition issues, the Bundespost accepted the weight of the arguments and recognized the right of the couriers to operate between Member States in light of the Treaty of Rome.

When Germany accepted the right of couriers to provide cross border express services, it was clear that the next step would be negotiations between the French government and the Competition Directorate.⁶ To solidify its economic arguments, the IECC commissioned Sofres, a leading polling firm, to conduct a survey of French international businessmen on their need for courier services. The IECC also commissioned the Bureau d'Informations et de Prévisions Economiques (BIPE), a research institute jointly funded by industry and government, to prepare a comparison of courier and postal express services. The couriers also presented their ideas for reform at various meetings of users organised by the French Association of Users of International Couriers (AFCUI), led by M.

⁶ The Commission's position was further strengthened in March 1985 when the European Court of Justice finally decided the *British Telecommunications* case. The ECJ upheld the position of the Commission and for the first time applied the competition rules of the Treaty of Rome to postal administrations in the same way as to other undertakings.

André Sacy, president of the French Exporters' Association.

In May 1985, the Competition Directorate and representatives of La Poste and the French government began a series of meetings to review the French postal monopoly policy. Negotiations dragged on through the summer, rapidly shifting, as nearly as we could tell, from optimism to pessimism and back again. On 2 June 1985, La Poste seized courier shipments at Roissy airport, a bad sign from the couriers' view. In September, La Poste struck a still more defiant note by demanding an increase in the level of payments provided in the highly questionable "agreements" that La Poste had coerced the couriers to sign under threat of the postal monopoly.

In response, the couriers precipitated a public confrontation. Armed with highly favourable results from the Sofres and BIPE studies commissioned earlier in the year, on 22 October the couriers and AFUCI held a large rally over lunch at a Parisian hotel. Representatives of over 400 users attended. At this meeting, the couriers dramatically announced that they would refuse the revised postal agreements and place further payments under the existing agreements into escrow. On 14 November, apparently fighting intense pressure from his unions, Deputy Minister Mexandeau personally penned a brief and rather vague note to the Commission accepting the right of couriers to provide cross border express services.

Despite this private concession to the Commission, the courier issue was of such political sensitivity in France that the French government was reluctant to provide public acknowledgement of its position. Negotiations between the couriers, the EEC, and La Poste continued until a formal announcement was provided in November 1986 in an official letter from the Competition Directorate of the European Commission to the French courier association.

Similar, closely related public policy battles were also fought in other Member States over the right to provide cross border services without prosecution, taxation, or other harassment under the postal monopoly, notably in Ireland, Belgium, Italy, Denmark, and the Netherlands. With the agreement of France, however, the main line of defense for the postal administrations moved from prohibiting "pure" express service to blocking "re-mail" and the *modus operandi* shifted from national administrative action to collective postal efforts at supra-national levels.

5 Changing policy at Union level

In October 1986, the Reagan Administration required the U.S. Postal Service to accept the right of couriers to provide international remail service. As a result, European postal administrations were placed in competition with each other for the right to distribute large amounts of American mail transmitted from the U.S. via courier. Some Union postal administrations sought to become central distributors for large European as well as American mailers. The Union postal administrations were determined to stop this growing inter-administration competition induced by courier services.

5.1 Postal strategy

Recognising the advantages that the couriers had enjoyed by coordinating public affairs efforts in different Member States, the postal administrations immediately fixed upon a cooperative approach towards stopping remail. On 22 April 1987, the British Post Office called an emergency meeting of major Union postal administrations. The U.K. Post's letter of invitation noted:

Remailing poses a serious threat to the future relationships of postal administrations. Airmail letter traffic, the traditional preserve of postal administrations, is now being strongly attacked ... *[I]t is vital to consider whether there is a common policy we can adopt to counter the activity of these companies.*

This ad hoc "Remail Conference" met several times over the next six months, fortified by the active participation of the U.S. Postal Service - notwithstanding the United States' official support of competitive remail. The Remail Conference developed a four-part strategy for preventing the extension of courier service into remail.

a) *Increase terminal dues.* Postal administrations agreed to raise substantially the charge which they levied against each other for the delivery of cross border mail. This "terminal dues" charge was applied at the same rate to postal administrations regardless of the actual costs of postal delivery. A large increase in terminal dues would disproportionately affect the couriers since terminal dues between postal administrations exchanging similar quantities of mail largely cancelled each other out, whereas couriers had to pay the full cost of any increase.

b) *Enforce Article 25.* Postal administrations urged each another to refuse to forward or deliver remail. The legal pretext for this was Article 25 of the Universal Postal Convention, the multilateral treaty between governments that, since 1874, had established the basic rules for international postal services.

c) *Boycott couriers.* Since remail depended upon the fact that some postal administrations were willing to accept bulk mail carried from abroad by couriers, postal administrations urged each other to refuse to do business with couriers in the name of postal solidarity.

d) *Lower the price and improve the quality of international postal services.* Recognizing that remail was a response, in some cases, to international postal service that was overpriced and poor in quality, postal administrations resolved to do better.

After months of fruitless discussion, the IECC, in July 1988, filed its first formal complaint with the European Commission against the postal administrations. The complaint suggested that activities of eight European postal administrations were inconsistent with the Treaty of Rome insofar as they purported to fix terminal dues rates for the purposes of limiting competition and encouraging enforcement of Article 25.

Faced with this renewed appeal to the Treaty of Rome in fall 1988, the postal administrations decided to broaden the postal policy debate in the Union by encouraging the Commission to prepare a fundamental analysis of Union postal policy, a *Postal Green Paper*, as it had done in the field of telecommunications. Postal administrations apparently believed that a policy review was likely to be more sympathetic to their views than a legal review conducted in the context of competition law. A policy review would be led by the Telecommunications Directorate (DG XIII) rather than the Competition Directorate (DG IV).

The basic idea of the postal administrations was to seek an agreement on a high level of socially necessary, universal postal service *before* a detailed consideration of Union law. After all, who could disagree with good quality postal service for all citizens? Once a high level of universal service was

agreed, the postal administrations could then use this social goal to justify limitations on the application of the competitive provisions of the Treaty of Rome. Moreover, the postal administrations could argue that the pendency of a major policy review justified a delay in addressing the IECC's complaint.

A final element of postal strategy was to circumscribe the European Union by seeking agreement at the 1989 UPU Congress. The Universal Postal Union meets once every five years and is controlled by postal administrations even though its product is an international treaty among governments. By obtaining UPU ratification of the Remail Conference's anti-remail strategy, the Union postal administrations could lend additional weight to arguments that the Union should attempt to disturb a consensus of the world community.

Thus, in the light of couriers' initial public affairs successes, leading postal administrations concluded that the linchpin of future postal strategy should be a common front among administrations. At international gatherings, postal officials began to speak of the community of postal administrations as if it were a single corporation composed of national divisions.

5.2 Courier strategy

The couriers were surprised by the formation of the Remail Conference in April 1987. Faced with a suddenly united phalanx of postal administrations, the IECC felt that it had no alternative but to prepare a formal complaint against the most clearly anti-competitive aspects of the postal administrations' anti-remail strategy. As noted, this complaint was lodged in July 1988.

Because of the complications arising from restructuring the IECC described above, courier strategy was essentially limited to support of this complaint until mid-June 1989. By this time, the public affairs situation had changed considerably. Union postal administrations were well organized. In the Union, postal officials were working closely with DG XIII on the *Postal Green Paper*. At the world level, the 1989 UPU congress was imminent. And at the national level, both the Bundespost and the Danish Post Office had filed legal cases against couriers claiming that outbound remail operations violated national postal monopoly laws. Meanwhile, the increasingly competitive nature of the courier business translated into sharp reductions in the IECC's legal and public affairs budgets.

Under these conditions, the strategy of IECC and EEO was largely shaped by the need to respond to external events. Legal cases had to be defended, essentially by relying upon the Treaty of Rome, and an industry position on the *Postal Green Paper* had to be prepared. The crucial area for discretion arose in the development and content of a *Postal Green Paper* position.

The basic strategy of the IECC/EEO group was simple enough. The couriers could not hope to compete with the postal administrations in the number of man-hours devoted to working with or influencing the Commission in the preparation of the *Postal Green Paper*. The only road open to us was to make an extraordinarily persuasive case. But first we had to try to dissuade the Commission from adopting a hastily conceived postal policy that reflected only input from postal administrations. For both reasons, we decided to encourage and participate in a series of public and academic discussions of the fundamental public policy issues presented by a *Postal Green Paper*. In trying to educate the Commission, Member State officials, and customers, we also educated ourselves.

From this process, we tried to divine a policy approach that would satisfy a number of criteria:

- meet the present and future commercial needs of the courier industry;
- respect both the Treaty of Rome and substantially different levels of public postal development in different Member States;
- avoid serious financial threat to the majority of postal administrations; and
- further the aims of the European Commission's program to achieve economic integration of the Union by the end of 1992.

Our hope was to produce a well-conceived and well-presented industry position that would be found persuasive to the Commission and consistent with the long-term interests of the more progressive-minded postal administrations. In so doing, we also hoped to minimize the influence of the AEEC which, we felt, would be unable to prepare a comparable position paper.

5.3 Course of events

The couriers' successful use of careful legal analysis seemed to inspire the postal administrations. They responded to the IECC's complaint against the terminal dues agreement and resort to Article 25 by retaining some of the leading law firms in Europe. After several months of trading briefs, however, it became apparent the postal administrations' legal defense was unconvincing. The postal administrations, therefore focused their energies more on organizational and political activities.

By the fall of 1987, the major Union and non-EU postal administrations had reached agreement not only on an increase in terminal dues charges but also on the establishment of a postal airline system called EMS International Postal Corporation. EMS provided air transport of express postal traffic, and like several couriers, used the Zaventem airport in Brussels as its hub. In 1988, the postal administrations, led by U.K. Post, expanded EMS to form a new company, Unipost. In addition to operating the EMS system, Unipost was to provide marketing, research, and consulting services for international mail.⁷ Unipost opened provisional offices in Brussels in late 1988 with an official of La Poste, Guy Meynié, as its chief executive. With the simultaneous initiation of the *Postal Green Paper*, IPC quickly came to act as a common front for public affairs issues as well.

Meanwhile, the Executive Council of the Universal Postal Union, chaired by the Bundespost, pressed for the UPU as a whole to adopt the anti-remail strategy of the Remail Conference. A major conference on terminal dues was convened in April 1989 to lay the groundwork for UPU ratification of some version of the CEPT terminal dues agreement at the UPU congress in fall of the same year.

There was no public announcement to signal the commencement of the *Postal Green Paper*. DG XIII staff apparently began their research with a tour of Union postal administrations in late 1988 and early 1989. Several postal administrations, including La Poste and the British Post Office, seconded a substantial number of staff to DG XIII to assist in preparation of the Green Paper. In

⁷ Unipost was organised by 20 postal administrations, including eleven Union postal administrations and the postal administrations of the United States, Canada, Australia, and Japan.

September 1989, the telecommunications ministers of the European Council met in Antibes under the chairmanship of France and endorsed a six-page outline for the *Postal Green Paper* that emphasized governmental support for postal administrations and largely ignored the benefits of competition and the needs of users.

It was at this point that the couriers actively reentered the game, now under the banner of the European Express Organisation, whom IECC had agreed should manage the public affairs effort. In October 1989, we responded to the Antibes declaration with two short papers, a critique of the Antibes paper and an outline of a pro-competitive Postal Green Paper policy. These papers served as the basis for background briefings of key officials in the Commission and various national governments.

We also filed a second complaint with the European Commission, this time against efforts by the Danish post office to use the postal monopoly to stop outbound courier services. We did not want to make this complaint, but efforts at compromise in Denmark had failed, and we were pessimistic about litigating under the unusually anti-competitive postal law of Denmark. Despite our reluctance to file a complaint, we concluded that a Danish case would serve as a good test case for the legal question of whether the national postal monopoly could be applied against outward cross border courier service. The Danish post office was a shareholder in Unipost and a major participant in remail as well; it was therefore in a weak moral position to claim the protection of the postal monopoly.⁸

We realized, of course, that the *Postal Green Paper* lent a policy dimension to these legal complaints. Just as the postal administrations had tried to use a policy review to slow down and limit the legal process, we now sought to use the legal process to circumscribe the *Postal Green Paper*. In essence, by means of these legal cases, we emphasised to the Commission that whatever the policy recommendations of the *Postal Green Paper* may be, they must remain consistent with the Treaty of Rome. Within the Commission itself, our complaints had the effect of placing certain legal issues that were central to the *Postal Green Paper* under the active jurisdiction of the Competition Directorate (DG IV). Thus, the DG XIII was forced to negotiate with DG IV in the preparation of key portions of the *Postal Green Paper*. Indeed, DG IV gradually became a virtual co-author of the *Postal Green Paper*.

With our legal markers in place, we began to address the policy issues in greater detail. After the UPU congress ended in December 1989, we initiated a series of public seminars in Europe, including conferences in Dusseldorf (February 1990), London (April 1990), Rugby, U.K. (July 1990), Brussels (September 1990), Bonn (October 1990), Amsterdam (November 1990), Brussels (November 1990), and London (April 1991). While time-consuming, we believed that this was the best way to present our view to national governmental officials, postal users, and the "establishment" of the Union. We also briefed a few governmental officials at the national and Union level. Our impression is that this public discussion of the Postal Green Paper was at least useful in persuading the Commission and the Member States of the complexities of the issues involved and the

⁸ The legal cases filed against remail in Germany were successfully defended in German courts under German and Union law.

inappropriateness of the simplistic approach taken in the Antibes declaration.

The seminar in July 1990 in Rugby was especially noteworthy. It was organized by two American professors and was the first seminar jointly sponsored by both postal administrations and couriers. Despite considerable apprehension on both sides, the participants discovered a high level of agreement on many technical issues. The Rugby seminar laid the basis for a collegial dialogue between policy experts from the couriers and postal administrations which has continued through many seminars and informal meetings to the present day. There is no doubt that this dialog has been mutually informative and stimulating, and has encouraged the couriers towards positions which, while protecting their own interests, would not be unduly threatening to the interests of postal administrations.⁹

The culmination of this consultation process came in November 1990 when EEO completed a comprehensive (185-page) discussion of Postal Green Paper issues entitled *Community Delivery Services: A Discussion Paper on the Proposed Green Paper on Postal and Private Delivery Services*. As hoped, *Community Delivery Services* was well received. The paper was mentioned positively in the *Financial Times* and *London Times* and a top official in EU President Delors' office wrote that our paper was "the most interesting document on the industry, both in structure and content". Perhaps the best compliment was paid by the European postal union, CEPT, by establishing a special committee to review and rebut the EEO position. Commission staff referred to it wryly as the "shadow Green Paper".

Community Delivery Services suggested that there are sound legal and economic reasons why cross border delivery services should be completely liberalised. Cross border competition will not materially affect the ability of each national post office to provide universal service to the citizens of its Member State but will, on the other hand, promote better communications among citizens of different Member States. At the national level, however, it was accepted that Member States should be able to adjust local monopolies over local services to suit their needs. Monopolies, however, implied the need for transparent regulation by truly independent regulators.

In December 1990, DG XIII completed a first working draft of a Postal Green Paper called "Document 35". In our view, Document 35 was rather convoluted in its reasoning and timid in its proposals. Document 35 did, however, accept the correctness of the points that we had raised in our 1988 complaint against terminal dues and Article 25 of the Universal Postal Convention. We responded with a detailed critique of Document 35 which we submitted privately to Commission staff and a few governmental officials active at the Member State level. Despite our disappointment in Document 35, we felt that the Commission was indeed trying to grapple with the issues involved

⁹ The proceedings of this seminar are published in Michael A. Crew & Paul R. Kleindorfer, eds. *Competition and Innovation in Postal Services* (Norwell, Mass.: Kluwer, 1991). Proceedings of a second seminar held in the south of France in March 1992 may be found in M.A. Crew & Paul R. Kleindorfer, *Regulation and the Nature of Postal and Delivery Services* (Norwell, Mass.: Kluwer, 1993).

and that a public row over a draft document would be counterproductive.¹⁰

In the summer of 1991, the well-laid plans of both couriers and postal administrations were upset by an announcement that five Unipost postal administrations - those of Germany, France, Sweden, Netherlands, and Canada - would purchase one-half of the courier business of TNT, an IECC member. This announcement threatened the viability of a common public affairs front for both the postal administrations and the couriers. The five post offices in the joint venture constituted half of the EMS traffic and more than half of the European political clout of Unipost. Without them, EMS would have to stop and Unipost would have little political credibility. The UPU called an extraordinary Executive Council meeting in October 1991 to consider how to oppose the joint venture. Meanwhile, if the IECC were unable to accept the TNT joint venture as a member, it would probably have been forced to dissolve. Even the Commission was given pause; the Green Paper analysis would have to be adjusted to fit a world in which postal administrations owned half of a major private courier.

By the end of 1991, the dust began to settle. Under Union competition rules, the joint venture was required to obtain clearance from the Commission. The Commission approved the merger but imposed certain procompetitive conditions, including extracting a promise that the postal administration would not interfere in the joint venture's public affairs work and an admission that the joint venture would have none of the legal privileges of the postal administrations. After several further months of consideration, the couriers gradually accepted these assurances. The postal administrations, however, seemed to pull back from Unipost, placing more reliance on their own individual public affairs efforts.

In September 1991, the postal administrations demonstrated that they were ready to copy yet another lesson from the couriers' play book. The postal administrations of Germany, Netherlands, and Denmark retained a well respected outside consultant to prepare an economic study for public consumption, that supported certain policy points supported by the three administrations. The basic point of the study was that shifting from the CEPT terminal dues agreement to cost-based terminal dues (as demanded by the couriers), while desirable, should also be accompanied by the freedom for postal administrations to adjust intra-Union postage to reflect higher or lower delivery costs depending upon the destination Member State. No one could disagree with the soundness of this economic argument. This study effectively ended further opposition from the more conservative postal administrations that opposed moves towards cost-based terminal dues.

By January 1992, "final" drafts of the policy chapters of the Postal Green Paper began circulating. These drafts indicated a substantially more progressive policy than foreshadowed in Document 35 and an approach that was much more clearly reasoned and carefully documented. Without doubt, many of these improvements were due to DG IV's active participation in the final stages of drafting. Most of the basic points urged by the EEO in *Community Delivery Services* were incorporated in proposals or at least recognised in principle. The Commission's final approval of the

¹⁰ In December 1990, the couriers also filed their third major competition law complaint, this time against La Poste for effectively subsidising its subsidiary, Chronopost, in its competition against couriers in the domestic and international express markets. Chronopost is a private law joint venture between La Poste and a private transport company. This case was filed with both the European Commission and French competition authorities.

Green Paper was then repeatedly delayed, apparently by last-minute efforts by postal administrations to weaken its liberal proposals. In April 1992, the Commission accepted some revisions in the original final drafts, although the basic thrust of the Green Paper remained. The *Postal Green Paper* was finally approved by the May meeting of the European Council and published in June 1992.

Despite some shortcomings, the Green Paper represented the most thorough official analysis of large-scale postal policy since the British Parliament accepted Rowland Hill's reform ideas and revolutionized postal operations in 1840. The 371-page *Postal Green Paper* contained a detailed description of the commercial, economic, legal, and social aspects of the sector and, in chapters 8 and 9, a set of draft policies that, it was suggested, could serve as the framework for future EU legislation. The major suggestions of the Green Paper included the following:

- a Union guarantee of "affordable" universal service throughout the Union;
- liberalisation of cross border and direct advertising delivery services and Union-wide restraints on the remaining postal monopolies;
- establishment of independent regulators to oversee prices and services of postal administrations and prevent cross subsidy of competitive services by monopoly services;
- alignment of charges for delivery of intra-Union mail with domestic postage rates and prohibition against postal use of Article 25 of the Universal Postal Convention.

By its analysis, the *Postal Green Paper* moved the goal posts in the postal policy discussion in a number of respects. First, the argument over whether couriers should be permitted to compete with postal administrations in the collection and forwarding of cross border mail sent to other postal administrations suddenly became yesterday's issue. Likewise, it was no longer possible to argue whether or not postal administrations should be regulated and whether they should be required to keep proper accounts. The major policy goals of the Union postal administrations shifted from stopping outbound "re-mail" competition to preserving an absolute monopoly on delivery of all regular mail, cross border or otherwise, and retaining discretion to subsidise their competitive services from the monopoly rents earned from this monopoly.

The *Postal Green Paper* was prepared as a discussion document, and its publication initiated a year-long public consultation period between the Commission, the Member States, the affected parties in the Union. During this period, most of the postal administrations have devoted themselves to trying to encourage rejection of the policy proposals in the *Postal Green Paper*. Publicly, this opposition is usually expressed as enthusiastic support for the Green Paper except for those few provisions that call for substantial liberalisation. For example, the postal administrations and postal unions successfully urged the European Parliament and the Economic and Social Committee to condemn the Green Paper in early 1993.¹¹ The couriers, of course, have tried to support the *Postal*

¹¹ Within the European Union, the preparation of basic policy options is primarily the province of the Commission rather than the quasi-legislative European Parliament. The role of the Parliament is mainly advisory, as is that of another important EU committee, the Economic and Social Committee. These institutions, therefore, entered the postal policy debate in response to the *Postal Green Paper*, rather than during its preparation. Prior to publication of the Green Paper, the relevant committees of these institutions exhibited little interest in the complexities of postal policy and the couriers,

Green Paper and to encourage users to lend their support. This process is continuing. So far, the Commission has spoken only guardedly about future legislature.

6 Conclusions

In this manner, over the course of a decade, the fundamental postal policy of the European Union has slowly become more receptive to competition in the provision of mail services at the cross border level. The couriers have won the right to provide cross border express services in Europe. They have, apparently, also won the right to extend this express capability to bulk remail. More generally, the European Commission has accepted, on a draft policy level, that couriers should, sooner or later, be allowed to compete freely in the cross border market without restraints grounded in traditional legal privileges accorded the postal administrations.

Despite this progress, the majority of postal administrations are vigorously opposing the policy recommendations of the *Postal Green Paper* and have successfully delayed a Commission decision in three major competition law complaints lodged with the Commission over the last five and a half years. As of November 1993, despite great progress in gaining acceptance for courier operations at cross border level, it remains questionable whether the liberal proposals of the Green Paper will ever be enacted into Union law.

In late 1990, Gerald Harvey, head of Unipost, was kind enough to suggest that these positive policy developments were due, in part at least, to skillful legal and public affairs efforts by the couriers:

the postal industry should understand what it is up against; perhaps the most effective form of competition that exists, and which acts with a dedication and a passion to ensure that the way back for the post office will be severely restricted by the legislative and regulatory process, which the courier industry is busily and continuously trying to influence to its own advantage. To a large extent they are succeeding in creating the perception amongst legislators in Europe, at any rate, that the wings of the post offices should be clipped...¹²

Regardless of where the credit for policy change may lay, the couriers' case may be of interest to others as an example of the difficulties faced by an entrepreneurial industry in trying to manage basic policy changes at Union level. In retrospect, some observations:

Changing public policy in the Union is too difficult. Putting forth a case for changing policy in the European Union is extremely difficult, costly, and frustrating for an entrepreneurial group. Much of the cost arises from the fact that a case for change must be presented at both Union and Member State levels. This means that a small, struggling industry must fund the costs of presenting its case

in turn, lacked the resources to offer to these institutions a broadly conceived exposition of postal issues generally.

¹² "Unipost - A Postal Strategy in a Global Market", a paper by Gerald Harvey, President and Chief Executive Officer, The International Postal Corporation, presented at "The Future of Postal Services in Europe", a seminar organized by the Wissenschaftliches Institute für Kommunikationsdienste and Postdienst Deutsche Bundespost, 24-25 October 1990, Bad Godesberg, Germany.

not only to the Union itself but also in, at a minimum, France, Germany, the U.K. and other Member States in which a major legal challenge is posed. The cost of inducing change is increased further by the difficulty of obtaining compliance with the Treaty of Rome when the application of the law can be delayed for years by political intervention.

It does not seem to me in the interests of the Union that the regulatory system as a whole should be so resistant to the introduction of new commercial ideas. It is easy to imagine that, if the couriers were only slightly less quick afoot, the Union would have little or no courier service. It is also easy to imagine that, if the couriers had been allowed to provide unhindered cross border service after, say, a two- or three-year policy review at Union level, then the Union would today be enjoying a more integrated Single Market with a substantially higher quality of cross border delivery services, public and private.

Commerce changes faster than policy. The couriers' case also illustrates the fact, likely true for any entrepreneurial activity, that there is a fundamental mismatch between the rapid pace of commercial development and the slow pace of Union-wide political decisions. It is very difficult for a businessman, and still more difficult for a coalition of competing businessmen, to plan or commit themselves to a program of action that extends for several years, yet no Union-wide policy change is possible without a sustained effort of such duration.

Incompatibility between commercial and policy processes leads inevitably to the sorts of organisational difficulties experienced by the IECC. In the couriers' case, the couriers ameliorated these problems by retaining a core of outside advisers who maintained a continuity of presentation throughout the entire decade. While other solutions may be imagined, it would be helpful for other new industries to recognize in advance (as the couriers did not) the implications of this mismatch of pace.

For a new industry the first problem in managing Union-wide policy change is scarce resources. This observation is related to the first two. Resources available to an entrepreneurial industry are so minuscule compared to those available to vested institutions like the postal administrations that the main problem is always how to get the most impact for a given expenditure. This is not primarily a matter of finding cheap consultants or working them harder. It is a matter of selecting only those projects, entering only those legal cases, writing only those papers, attending only those seminars, pressing for only those new stories, and seeing only those officials that are most likely to affect the long-term resolution of the issue at hand. Although industry officials and outside consultants will be able to identify many useful legal, lobbying, and public relations activities that would advance the cause, the reality is that, for a small entrepreneurial industry, it is impossible to pay for almost all of them.

There is no substitute for a good plan. Gordon Barton, chairman of the IECC for most of the postal policy effort, used to conclude long planning sessions of courier officers and advisers by observing humorously, "It's a good plan, and it *should* work". Good plans do not always work, but the experience of the couriers suggests that there is no substitute for a good plan. A strategy plan and position should be well conceived; that is, it should derive from a clear understanding of the fundamental economic and other benefits that a change in policy will bring to the Union. It should also incorporate a comprehensive awareness of Union law and how it relates to the proposed

activities. A wisely chosen position is essential to an entrepreneurial industry, if for no other reason than economy. The advocates for the courier industry, for example, have been able to learn thoroughly and make use of one fundamental view of law and economics. Our opponents have been required to master several different positions as the postal administrations have been gradually forced to abandon one ultimately indefensible position after another.

A good position must be not only well conceived but also articulate. It must be readable and literate, not merely short and simplistic, so that it bears up under study by those very few, but critically important, staff people who will do so. As important, the basic position must be expressed in a manner that is sensitive to the economic and political needs of the audience.

While these points may seem obvious, both businessmen and consultants resist the level of preparation that this approach implies. During preparation, there are no tangible products to view, and the field is left unchallenged to the other side. The basic postal position of the couriers, *Community Delivery Services*, took months to produce. Half a dozen full drafts were circulated and marked up by industry members and the core of advisers. Nonetheless, it was worth it. In the end, we had a well-honed position that everyone understood and supported. For a small entrepreneurial industry which, by definition, does not have ready access to many of the other tools of public affairs, the best use of limited resources is, I believe, the development of a solid case and sound strategy.

Nor is there any substitute for demonstrably true truth. In the beginning, almost the only political asset that a new entrepreneurial industry can claim is credibility. It is critically important, therefore, that the industry strive to build its advocacy from the sober, objective, demonstrable truth. When addressing outsiders, the industry must, as far as possible, transcend the peculiar prejudices and assumptions that facilitate any enterprise. The normal tendency to exaggerate must be suppressed, and the truth exposed whole. In the first meeting with DG IV in September 1983, the couriers were unsure of their legal position, yet they resisted the temptation to omit details of legal challenges posed by postal administrations. At many points, the couriers cooperated with independent outside economic and legal studies whose outcome they could not control in hope of gaining a credible public demonstration of the correctness of a given proposition. This tactic would have been impossible without a careful attention to both the correctness and the scope of public positions. Thus, candour has served the couriers well. In contrast, the postal administrations' repeated tendency to exaggerate the difficulties of competition and hide inconvenient facts has considerably complicated their public affairs efforts.

Specialisation is more of an enemy than a friend. Changing policy requires a synthesis of law, economics, politics, and commercial detail. In Europe especially, there is a tradition of respecting traditional boundaries for professional work. Lawyers research law, economists describe markets, public relations consultants organise the press, public affairs consultants chat up parliamentarians and departmental staff, and professors merely profess. Each views the challenge of changing policy primarily as a matter of resorting to his expertise. To change policy economically, tradition should be resisted. In general, lawyers underappreciate the importance of politics and, conversely, public affairs consultants underappreciate the role of law; both underestimate the importance of economics and technology. In seeking to change Union policy in the most economical manner possible, an entrepreneurial industry must view these disciplines as different tools for a single task. Sometimes

one works best, sometimes another; usually, they should be employed in concert.¹³

People in Europe come from different countries. In my view, this is one of those truths that are so obvious that few pause to consider their consequences. The Commission and other Union institutions are staffed by individual men and women who all come from one Member State or another. Most people, naturally, find it easier to exchange thoughts on complicated new ideas with persons from similar backgrounds. Thus, it is highly desirable to be able to put forth a policy position in Europe in multiple languages, rather than in merely English or French or German. To change Union policy, therefore, it is highly desirable to develop a team of different nationalities.

The multinational nature of Europe also affects the internal organisation of public affairs effort. A Union-wide campaign requires the contributions of industry representatives and professional consultants from quite different cultures. Superficial politeness notwithstanding, it is a non-trivial task to develop a sufficient sense of mutual respect and trust among persons of different nationalities so that ideas and genuine assistance can flow across cultural divides.

An example of the subtle role of cultural diversity in Union public affairs arose in the context of a critically important meeting between the Competition Directorate and a postal administration. At this time, we had good contacts with both German and French staff in the Commission and, via German and French members of our core of advisers, called to get a candid assessment of the meeting. Our German adviser reported that his contact felt the meeting was a disaster because the postal administration in question refused to admit the supremacy of the competition rules of the Treaty of Rome. Our French adviser reported that his contact viewed the meeting as a great success because the administration in question had finally indicated a willingness to reconsider certain philosophical points. With the assistance of our German and French advisers, we were able to understand more or less what happened and plan accordingly.

You can do more than almost anyone thinks. At the beginning of virtually every particular public affairs battle that the couriers undertook in Europe, we were told by legal and public affairs experts and local industry officials that the policy change we sought was impossible to achieve. While changing policy is more difficult than it should be, it is also less impossible than generally thought. In the quotation above, Mr. Harvey accused couriers of acting with "a dedication and a passion" to effect policy reform in the Union. He has put his finger on a telling point. For all its political weaknesses, the primary strength of an entrepreneurial industry is dedication and passion. If a new industry attacks the problem of changing policy in the Union with dedication and passion, as well as with intelligence, candour, and a minimum stockpile of resources, it can, I believe, reasonably hope to accomplish much more at the policy level than almost anyone thinks possible.

¹³ A new industry should also be aware that the blinders of specialisation affect the relationship between client and consultant as well. There is a tendency for professional consultants to underappreciate the importance of commercial facts, the business detail underlying any policy argument. There is, as well, a tendency for entrepreneurs to underestimate the importance of professional expertise, particularly in the public affairs area.