
Collected Papers on International Postal Reform

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1

A New Framework for Postal Services in the European Union (1995)*

Today, the term *postal service* may be taken to refer broadly to any transportation service, public or private, that provides collection, sorting, carriage, and delivery of letters, envelopes of various sizes, and other small parcels. In virtually all countries, the dominant postal service is the public postal administration or a legal successor with some degree of governmental involvement. In most countries, however, private postal services also offer specialized services, such as mail preparation, express and parcel services, and international mail-forwarding.

For the last six and half years (1988-1994), the European Commission, the secretariat of the European Union¹ has been striving to develop a new policy framework for postal services in Europe. It will soon unveil the product of these labors in the form of proposed framework legislation.

As in other areas of public policy, the multicultural and multinational nature of Europe has led the Europeans to consider general policy problems often neglected by more homogenous societies. Forward-looking and soundly reasoned European legislation would likely serve as the pattern for reform in countries outside of Europe and even for the global postal system, the Universal Postal Union. Regressive legislation will likely have the opposite effect, reinforcing national divisions of commerce in and out of Europe and hindering modernization of large scale delivery services, public and private.

*Published as "A Review of Efforts to Develop a New Policy Framework for Postal Services in the European Union" in *Commercialization of Postal and Delivery Services*, eds. Michael Crew and Paul Kleindorfer (Boston: Kluwer, 1995).

¹The European Union (EU), formerly known as the European Community, consists of the countries of Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. The supreme legislative authority in the EU is the European Council, a committee consisting of the heads of government of all Member States. The permanent secretariat of the EU is the European Commission.

Almost all of this great European debate appears in government documents and working papers inaccessible to the general reader. For those outside the fray, this chapter attempts to recount briefly the efforts of the European Commission to devise a new policy framework for European postal services.

1. A BRIEF HISTORY OF POSTAL POLICY

In order to understand regulatory reform proposal, it is necessary to appreciate the origin, purpose, and development of the regulatory scheme to be reformed. No serious student of public policy would advocate the regulation or deregulation of telecommunications or aviation industries without first ascertaining the purpose of the current regime and the manner in which changing economic and technological factors may have eroded its original premises. In postal policy, however, the extreme age of basic concepts is often allowed to obscure the need to begin at the beginning.

The original idea of a “postal” system was a series of “posts” or relay stations, housing men and horses. Postal systems were established to provide for the rapid transportation of correspondence and documents. Walking or riding messengers would travel from one post to the next, each handing off the “mail” or pouch to the next messenger. Postal systems are as old as, and probably a necessary attribute of, large scale civilization. Extensive postal systems were developed by the ancient Persians, Romans, and Chinese. These, however, were generally reserved for the use of the government and military; they had little or no direct influence on the development of modern postal systems.

The roots of current postal systems date from thirteenth-century Europe. In this period, the revival of commerce outpaced the reconstruction of large scale government. Between the thirteenth and fifteenth centuries, groups of merchants, universities, and monasteries reinvented the ancient idea of postal systems and developed their own international postal routes.

Between the fifteenth and seventeenth centuries, the French and English crowns incorporated the private postal systems into the government posts and prohibited new private systems. Exclusive control of the posts proved useful as a source of money and political favor and as a means of controlling the plots of rivals for the throne.

In 1840, the expansion of commerce spurred by the Industrial Revolution led England to adopt a thorough revision of the concept of postal service. Series of posts were replaced by railroad and steamship lines. The fundamental function of the postal system shifted from *transporting* mail between post offices located in different cities to *collection and delivery* of letters sent to individual offices and homes, more often than not within the same city. Within a few years, the British Post Office stopped being an expensive service suitable only for the wealthy and the extraordinary; it became a *universal service* suited to the communication of all manner of ordinary commercial and personal messages. The English model was soon

adopted worldwide.²

Development of universal governmental postal service in the mid-nineteenth century increased the demand for international as well as domestic postal service. Since national postal monopolies had cut off evolution of international postal systems, a second-best solution was adopted. In 1874, national postal monopolies agreed to a standard set of rules for exchanging international mail under the supervision of a permanent inter-governmental organization, the Universal Postal Union.

In the late twentieth century, the appearance of inexpensive long-distance telecommunications and air transportation gave rise to a new generation of private postal systems. These private posts thrived where governmental posts were weakest. They specialized in especially rapid and reliable transmission of letters and documents between cities and across national boundaries, and thus, between national postal monopolies. In essence, the new private posts unwittingly reinvented, at a global level, the concept of private international posts pioneered by Italian and French merchants and universities in the thirteenth century. The new private posts soon came into conflict with the national postal monopolies which had been enacted to control their spiritual forbearers.

Increasing use of computers has blurred distinctions which were fundamental to the nineteenth-century policy framework for postal services. Computers could print thousands of similar transactions with individualized information (such as statements of account) in a process more akin to printing than individual correspondence. Computers could also produce the printed and bulk letter mail in sequences sorted for postal delivery, sharply reducing the cost of postal processing. Computerized databases of customer preferences greatly enhanced the effectiveness of advertising by mail. In sum, these developments called into question the basic premise that the single universal postal service for letters can meet the basic needs of society.

At the international level, the evolution of multinational companies has undercut the premise that international postal service can be organized as an exchange of mail between national markets, each of which is reserved for the national post office. Today, it is unclear which national post office can lay claim to the international mail of a large company with operations in many countries. On the other hand, it is quite clear that a large company can escape a too restrictive national postal monopoly by generating and posting its international mail in another country.

Postal administrations responded to these developments with a mixture of

²The seminal paper making the case for reform in England was written by Rowland Hill in 1837. In the United States, postage rates were lowered and the monopoly strengthened in 1845. The United States did adopt most of the other English reforms in 1863, with the introduction of "free city delivery." In China, the extensive government post was opened to private citizens in the fifteenth century. Sophisticated private posts also developed in parallel. Postal development in Japan followed a similar course, although later in time. In the second half of the nineteenth century, however, China and Japan adopted the European model, transforming their postal systems into universal delivery systems provided by a single government monopoly.

conservatism and innovation. Resorting to postal monopoly laws and the market allocation provisions of the UPU Convention, the postal administrations long legal and political battles to block the rise of private postal systems and the transfer of international mail between countries. At the same time, postal administrations have introduced an ever growing array of new services and tariff structures designing to meet the changing needs of users and limit the inroads of competitors.

By 1988, no major government had adopted a new vision of the postal services sector comparable to the English revolution in 1840, but several partial solutions had been tried. Beginning in about 1970, governments began to give post offices greater freedom to introduce new services and respond to the market without truly eliminating governmental involvement in commercial operations. Express services were excepted from the postal monopoly, but the underlying justification for the monopoly was been left unexamined. In United States, Congress gave the post office greater commercial freedom but also required it to submit to regulation by an independent agency. The U.S. Postal Rate Commission was established to review new postal rates to ensure that a undue fraction of fixed costs is not borne by customers captured by the postal monopoly. Postal customers and competitors were given full access to this process. While the resulting rate structure may be considered broadly fair by all parties, the establishment of the Postal Rate Commission has left untouched the most fundamental problems of the U.S. Postal Service.³

2. CHRONOLOGY OF THE COMMISSION'S WORK

With this historical tapestry as background, the European Commission began, in late 1988, a comprehensive review of public policy towards postal services in Europe. The immediate stimulus for this review was the postal administrations' concern with increasing competition from large private international express companies. Postal attempts to suppress competitive entry into Europe had been foiled by European competition laws and intervention by the European Commission. When the express companies began services that competed more directly with traditional international airmail services and sought legal protection for these as well,⁴ the postal administrations appealed to the Commission to undertake a broad review of the purposes and requirements of universal postal service.

The Commission's initial survey of the postal services market took almost four years and resulted, in June 1992, in a 361-page report called the *Green Paper on the*

³The Postal Rate Commission, for example, has no influence on the total revenues collected by the U.S. Postal Service. Nor does it regulate the quality of postal services provided.

⁴The private express companies began to offer "re-mail" service, whereby a large mailer in Country A could post his international airmail in Country B, for delivery in B or forwarding to third countries. This practice undercut the postal monopoly over outward international mail in Country A. In 1987, the major European and non-European post offices devised a counter strategy that involved higher charges between post offices for the delivery of international mail (terminal dues), interception of mail not posted with the mailer's home post office, and improved business services. In July 1988, the private express companies formally complained to the European Commission that some of these practices violated the competition rules of the Treaty of Rome.

Development of the Single Market for Postal Services (“*Green Paper*”). The *Green Paper* set out a factual and economic description of the Community’s postal sector and a proposed policy framework for the Community. The *Green Paper* precipitated a wide-ranging public debate on the future of postal policy in Europe.

During the following year, the Commission received more than two hundred written comments on the *Green Paper*. Commenters included Member State governments, commercial users and consumer groups, postal and private operators, and management consultants. The Commission also organized and consulted a group of senior officials from Member State governments called the Senior Officials Group on Posts (SOGP). A compilation of all written comments on the *Green Paper* was published by the Commission. In June 1993, results of this consultation and proposed next steps were summarized in a communication from the Commission to the European Council called the *Guidelines for the Development of Community Postal Services* (“*Guidelines*”).

In December 1993, the European Council instructed the Commission to draft a proposed legislative framework. In mid-1994, the Commission is scheduled to publish this document, which I shall refer to as the *Proposed Framework*.⁵

In addition to the economic considerations identified in the *Green Paper*, the Commission’s analysis has been influenced by two external factors: law and politics. The Treaty of Rome is the constitutional treaty uniting twelve Member States into the European Union. It provides generally that the European Union shall comprise an area “in which the free movement of goods, persons, services and capital is ensured.” The competition rules of the Treaty prohibit, in particular, agreements between undertakings or actions by dominant undertakings that may result in the “prevention, restriction or distortion of competition” in “trade between Member States.” A public monopoly, such as a postal monopoly, may be tolerated only if full application of the competition rules would render a specific public interest operationally impossible, not merely more difficult or more complicated. Even this slim exception is unavailable if it would prove “contrary to the interests of the Community.” The Treaty thus appeared to constrain the Commission’s options, at least at the cross-border level.

The politics are more complicated. Postal administrations are among the largest commercial organizations in Europe; in 1988, they employed about 1.2 million persons and earned revenues of around \$29 billion (\$26 billion ECU).⁶ The majority of European postal administrations fear competition and have urged the Commission not to reduce the scope of the postal monopolies or the legal duties which are said to justify the monopolies. Different administrations have participated

⁵This document was scheduled to be formally submitted to the Council on 1 July 1994. As of the writing of this chapter (June 1994), the final version of this document has been agreed. More or less complete drafts of this document have been available for several months, however. In this chapter, the term “*Proposed Framework*” refers to the most recent draft of this document available to the author.

⁶*Green Paper*, ch. 4 § 4, p. 74; id., ch. 6 § 3.1, p. 151.

in different degrees,⁷ however, and with different messages; the Dutch Post Office, in particular, has urged liberalization of the monopoly and greater flexibility in legal obligations. Business mailers purchase about 90 percent of postal services and favor greater competition among public and private postal services, especially for the distribution of cross-border mail and bulk mail. Private postal services generally favored greater competition as well. A third political element was presented by consumer groups, whose concern is not so much the existence or absence of a postal monopoly as their desire for a governmental guarantee of a minimal level of universal postal services.

Over the course of this six-year policy gestation, the public debate has centered on three major themes. The first two are *universal service* and the *postal monopoly*, the fundamental concepts imbedded into the idea of postal service during prior centuries. Should the Community ensure a universal service? What should this universal service include? To what extent should the Community accept national postal monopolies, now referred to as “reserved areas”? What role should the new private international postal services play in the commercial development of Europe? The increasingly mixed public/private nature of the postal services sector has added a third theme: *regulation*. Should an independent regulator supervise the conduct of that market? By what standards? We shall consider the treatment of each of these themes through the several stages of policy development.

3. UNIVERSAL SERVICE

The first recommendation of the *Green Paper* was that the Community should define and guarantee a “universal service” that would be available throughout the Community.

A reference definition should be decided for the universal service to be applied throughout the Community. This definition will need to take into account the Community’s social and economic requirements. . . .⁸

The universal service would include collection, transport, and delivery of a range of letters, printed papers, and small parcels up to a certain weight limit, apparently 2 kilograms.

The *Green Paper* also alluded to a narrower, more fundamental concept of universal service, a universal service for *letters*.

Universal provision could be required of different types of service (or different uses made of services). These different types of service will naturally have an order of priority in terms of the importance of ensuring that they are

⁷Some sense of the activity and contributions of the various postal administrations to the European debate may be gleaned from the number of pages taken in the comments in *Liste*: France (15), Germany (16), Ireland (77), Italy (4), Luxembourg (3), Netherlands (13), Spain (8), United Kingdom (79). The postal administrations of Belgium, Denmark, Greece, and Portugal did not submit comments.

⁸*Green Paper*, ch. 9 § 1.1, p. 241.

safeguarded. In this regard, the fundamental imperative is that universal service must be ensured for postal communication items of a personal or individualised nature. . . .⁹

The postal reforms of 1840 had resulted in postage rates for letters that were uniform throughout England, and the practice of uniform national postage rates had been adopted by most European postal administrations. Nonetheless, the *Green Paper* specifically eschewed the uniform national tariff as an element of the Community's universal service guarantee or as a justification for a postal monopoly. Instead, the *Green Paper* proposed that the Community assure universal service at *affordable* postage rates.

In the consultation after publication of the *Green Paper*, virtually no major group disagreed with the abstract proposition that the Community should guarantee the availability of some level of postal service for Community citizens living throughout Europe. Substantial disagreements appeared, however, over the nature and level of service to be guaranteed.

Business users expressed skepticism of a broad universal service definition, citing two major concerns. First, they questioned whether a homogenous, governmentally decreed standard would meet the needs of users. Second, they worried that an expansive universal service definition could be used to justify an inflated postal monopoly. The Union of Industrial and Employers' Confederations of Europe (UNICE) commented:

The *Green Paper* does not examine whether the notion of "basic universal service" really corresponds to a market need. It goes no further than affirming the need for it without giving a precise definition. This affirmation should not be used as an alibi, either for the maintenance of extensive reserved services or to justify existing and/or new cross-subsidization practices between reserved and non-reserved services.¹⁰

The most commercially minded of the European post offices, the Dutch Post, went so far as to question the continued vitality of the traditional concept of universal service:

The interests and needs of users and their circumstances have changed so much that it is impossible to cater to everybody by means of more or less identical services. Universality wrapped up as uniformity gives the public postal organizations too little latitude in the marketplace. It creates friction because the users themselves expect the suppliers of services to be increasingly customer-driven and flexible.¹¹

The U.K. Post Office also opposed a broad universal service definition. It argued a universal service area that is greater than the reserved area could constrain

⁹*Green Paper*, ch. 8 § 3.1, p. 186.

¹⁰1 *Liste* § 7.2, UNICE, p. 3.

¹¹2 *Liste* § 8.1, PTT Nederland, p. 1.

a postal administration from competing with private operators on unequal terms. For a postal administration, services which fall within the universal service area but outside the reserved area could be hamstrung by legal and regulatory requirements not borne by unregulated private competitors. The U.K. Post Office's conclusion was that the reserved area and the universal service area should be more or less coterminous. The private operators substantially agreed.¹²

Most postal administrations, however, agreed with the *Green Paper* and supported a universal service definition broader than the reserved area, including postal items weighing up to at least two kilograms. Consumers' groups and some postal administrations went further, urging that the universal service guarantee be extended to include the delivery of parcels as well as letters.

As noted above, the *Green Paper* declined to enshrine uniform national postal rates into the definition of universal service. Instead, it proposed universal service should be cast in terms of *affordable* universal service. Commenters on the *Green Paper* generally failed to recognize the economic significance of the Commission's approach. A postal administration which is able to vary postage rates within reasonable limits is much better equipped to deal with competition and hence much less in need of legal protection from competition. Even if they missed the economic significance, however, commenters evinced little support for mandatory uniform tariffs. Business groups and consumers generally endorsed "affordable tariffs" as the proper standard.¹³ The Dutch Post Office maintained that reliability of service, rather than the uniform tariff structure, should be regarded as the key element of universal service.¹⁴ The U.K. Post Office noted the uniform tariff was not mandated by United Kingdom policy, but "it is its preferred position, Government policy and the opinion of the majority of our customers."¹⁵ The French post office observed only that the uniform postage is "currently the case."¹⁶

One of the more economically sophisticated commenters, the German research group Wissenschaftliches Institut für Kommunikationsdienste (WIK), argued that, for a postal administration, the introduction of geographic rate variations for large business mailers is the best way to minimize circumvention of the reserved area without lowering the uniform tariff for individual mailers below cost.

¹² *Liste* § 8.1, U.K. Post Office, p. 14.

¹³ The European level business and consumer groups generally endorsed "affordable" tariffs without further elaboration. The British Institute of Directors questioned the need for a uniform tariff guarantee even within the reserved area. 1 *Liste* § 7.2, Institute of Directors, p. 5. The U.K. Consumers Association supported the uniform tariff principle, but weakly. In a poll of United Kingdom consumers, none of whom have ever experienced a non uniform tariff, one-third rated maintaining the uniform tariff as "unimportant." Of the two-thirds who said the uniform tariff was "important," only four percent rated it as the "most important" feature of postal service. 1 *Liste* § 7.1, Consumers Association, p. 28.

¹⁴ *Liste* § 8.1, PTT Nederland, p. 3.

¹⁵ *Liste* § 8.1, U.K. Post Office, p. 43.

¹⁶ *Liste* § 8.1, La Poste, p. 2.

If a postal administration is obliged to offer a geographically uniform tariff and if such a tariff necessitates cross-subsidization of rural areas, the administration can become vulnerable to cream-skimming. . . . Large volume posters should be allowed to geographically differentiate tariffs for large volume [mailings] (large business customers, private operators posting non-reserved mail).¹⁷

The point of guaranteeing affordable “universal service” is to protect affordable service to rural areas; few believe that, absent a Community guarantee, delivery services will suddenly disappear from cities and towns. Nonetheless, the *Green Paper* did not explicitly address standards for rural service.¹⁸ Some commenters, however, emphasized the economic importance of this issue. WIK suggested that specific service standards for rural service was one of the most important matters left unfinished by the *Green Paper*. WIK, however, does not offer any suggestions as to how rural service standards might be derived.¹⁹ The private operators group, European Express Organisation (EEO), proposed universal service standards for rural areas “should be reasonably related to service standards in the nearest urban areas so as to prevent a sense of isolation or remoteness.” Similarly, suggested EEO, the notion of “affordable” universal service in rural areas could be defined as a postage that is reasonably related to, but not necessarily identical to, the rates available in urban areas.²⁰ While few postal administrations commented on service standards for rural areas, the Dutch Post Office, emphasized that the standard of universal service to rural areas must be flexible because, “holding on to uniformity in defining universal service leads to disproportionately high costs, in other words to macro-economic wastage and the tendency to maintain large postal monopolies.”²¹ A British poll suggested substantial flexibility in the expectations of consumers regarding rural service.²²

In summarizing the consultation for the European Council, the Commission’s *Guidelines* stated that:

¹⁷2 *Liste* § 11, WIK, p. 13.

¹⁸In his original proposals for reforming the British Post Office, Rowland Hill suggested that postal policy permit price and service distinctions between urban (“primary”) and rural (“secondary”) areas. A prominent economist, Professor R.H. Coase, commented with the benefit of a century’s hindsight: “There is indeed good reason to deplore the abandonment of the distinction between primary and secondary distribution. It . . . might have led to a rational discussion of price policy and its relation to costs. As it is, the magic word “uniformity” has been substituted for thought.”

¹⁹2 *Liste* § 11, WIK, pp. 2-3.

²⁰2 *Liste* § 8.2, European Express Organisation, pp. 38-41.

²¹2 *Liste* § 8.1, PTT Nederland, pp. 2-3.

²²The survey asked about service modifications that might be necessary to keep down costs or adjust to competition. About half of those who live in rural hamlets or villages, or in detached houses, stated that they would accept the introduction of mailing boxes at the end of drives or gardens. 1 *Liste* § 7.1, Consumers Association, p. 4. This seems a high figure considering that door-to-door delivery has long been provided by the U.K. Post Office as a matter of course.

Most contributors felt that the definition of universal service should be broad and should apply to all mail (some mentioned a 2 kg weight limit). The universal service should be based on a uniform structure of reasonable prices and a universal network. Opinions were divided on the sending of goods by post (parcel post).²³

In an appendix, however, the *Guidelines* noted that the consultation did reveal a basic philosophical disagreement about the scope of items that should be covered by a universal service definition.

On the one hand, there are those who support the idea of an extensive universal service and propose extending this definition to all correspondence (a 2 kg limit would seem acceptable). . . .

On the other hand, there are those who would prefer a more limited definition and suggest the universal services apply essentially to correspondence between individuals, although this could also include the mailing requirements of small businesses.²⁴

After thus summarizing the consultation, the *Guidelines* proposed that universal service be defined to include all letters and packets weighing less than 2 kilograms and all parcels weighing up to 20 kilograms.

The *Proposed Framework* maintains a universal service guarantee covering the collection, transport and delivery of newspapers and periodicals, addressed mail items weighing up to 2 kilograms and addressed postal parcels up to 20 kilograms. In addition, the *Proposed Framework* proposes to include a number of specialized services in the universal service definition: special delivery services, recorded delivery and insured service.

4. POSTAL MONOPOLY

The *Green Paper* endorsed the proposition that “in order to ensure universal service at a price affordable to all, a set of reserved services must be established.”²⁵ The *Green Paper* envisioned the postal monopoly, or “reserved area,” as an economic advantage for the public operator that should be just large enough to enable it to meet the obligations of universal service. Revenues from the reserved area are not intended to support the entire postal network, only to give the public operator just enough of an economic boost so that it can assure provision of universal services, some of which would be provided in competition with private operators. In the view of the *Green Paper*, the reserved area would be as small as possible consistent with the provision of universal service. The *Green Paper* made clear that, in general terms, it believed that such an approach to reserved services is mandated by the principles of the Treaty of Rome.

²³*Guidelines*, § ¶ 2.2.1, p. 6.

²⁴*Guidelines*, Annex 2, § ¶ 3.2.1, p. 10.

²⁵*Green Paper*, ch. 9 § 1.1, p. 241.

Based upon this “principle of proportionality,” the *Green Paper* proposed that the postal monopoly should exclude goods, publications, or express services, since such services were generally outside the postal monopoly already and hence demonstrably unnecessary to support universal service. In addition, the *Green Paper* proposed that the Community should place upper bounds on the weight of postal items and the price of postal services that could be included within the reserved area. It suggested the price limit for the monopoly should be one and half to two times the postage rate for a letter of the maximum weight that could be reserved. The maximum weight, in turn, “should almost certainly be less than 500 grams.”²⁶

In addition, the *Green Paper* proposed two other specific limitations to the monopoly: liberalization of cross-border mail and direct mail. Liberalization of cross-border mail was justified, concluded the *Green Paper*, because:

- The cross-border services of the public postal operators are significantly worse than national services and hence competition by private operators promises to improve Community level service, eliminating a “border effect” and unifying the Community economy.²⁷
- Cross-border services are already substantially competitive in fact.²⁸

Competition will give users greater choice.²⁹

The *Green Paper*’s proposal to liberalize “direct mail” reflected its conclusion that the postal monopoly should be limited to the carriage of “letters.” The essence of a “letter” was found to be a communication prepared for a specific person.

The essential point is that the text in the communication should relate to the business or personal affairs of the addressee (either an individual, an organisation or a position within an organisation) with sufficient individuality that it is clear that the text (excluding the address and any appellation) refers specifically to the addressee.³⁰

The Commission observed that all Member States reserved the carriage of letters. As far as printed papers were concerned, however, the Commission found the situation unsatisfactory:

The view of most Member States is that printed publications should be in the non-reserved area. However, the regulatory view on direct mail is rather different. More than half the Member States seem to consider such mail as reserved. Part of the reason is that, for at least three Member States, no distinction is drawn between letters and direct mail.³¹

²⁶*Green Paper*, ch. 8 § 10.2, p. 208.

²⁷*Green Paper*, ch. 8, § 8.1, p. 195. See also *Green Paper*, Annex 15 §§ 3.2-3.3, pp. 355-56.

²⁸*Green Paper*, Annex 15 § 3.1, p. 355.

²⁹*Green Paper*, Annex 15 § 3.6, p. 357.

³⁰*Green Paper*, ch. 9 § 9.1.2, p. 201.

³¹*Green Paper*, ch. 7 § 4.1.2, p. 173. Moreover, the Commission concluded that the “regulatory view” was not always indicative of commercial reality. The monopoly as enforced may be smaller

A further complication was that “direct mail” was defined differently in different Member States. The confusion arose because, with modern computers, printed papers such as direct mail could be “personalized” for each addressee and thus qualify as “letters” under the law of some Member States and not others.

The *Green Paper* proposed to resolve this uncertain boundary to the postal monopoly by looking to the most fundamental social purpose of the monopoly, which was to ensure the universal service delivery of individualized communications:

Proposals for the regulatory position of printed papers should be formulated by reference to the basic principles of the universal service provision. The absolutely fundamental policy imperative is that postal communications of a personal or individualised nature should be collected and delivered universally. Such mail would include all items where the text is not identical, and would therefore include all personal correspondence and individualised business correspondence. . . It seems appropriate that the set of reserved services that would be established to safeguard the universal service should be based on such items of an individualised nature.³²

On this basis, the *Green Paper* proposed that all non-letters should be considered outside the monopoly. This rule would exclude parcels and printed publications, which were outside the monopoly anyway in most Member States, and it would exclude direct mail, even of the personalized variety. Other sorts of computer-generated bulk mail, such as invoices and statements of accounts, would be retained within the letter monopoly because their essential message is individualized.

The *Green Paper* recognized that direct mail constituted a substantial fraction of all mail and that sudden liberalization might create difficulties. It therefore proposed further study of the possible problems.

In summary, there are strong arguments for placing direct mail in the non-reserved sector. However, it should be recognised that there could be difficulties. Firstly, the increasingly personalised nature of direct mail gives rise to growing difficulty in distinguishing direct mail from ordinary letters. Secondly, direct mail presently generates a significant, and rapidly growing, proportion of postal administrations’ total business, and its economic relevance to the universal service obligation should be analysed in detail.³³

Two other postal monopoly reforms proposed in the *Green Paper* were of considerable importance. The *Green Paper* proposed liberalization of *document exchanges*. A document exchange is a system of offices where companies which communicate frequently with one another can drop off and pick up letters. To provide long distance services, letters can be shifted from office to office within the

than the monopoly on paper.

³²*Green Paper*, ch. 9 § 9.1.3, p. 202.

³³*Green Paper*, ch. 9 § 9.1.3, p. 203.

document exchange before collection by the addressee. The *Green Paper* also proposed liberalization of *mail preparation*, that is, the collecting and sorting of mail, and possibly the transportation of the mail to the post office that will actually deliver it. The effect of liberalization would be to permit small and medium sized companies to consolidate their mail using third party contractors, thereby obtaining the same bulk discount rates as the largest mailers.

In general, business groups and the private express companies applauded the *Green Paper's* proposals to limit the postal monopoly. Postal administrations, with the exception of the Dutch Post Office, opposed. Consumers' groups, whose focus was the availability of service rather than the means of financing it, did not participate extensively in debate over postal monopoly issues.

In endorsing the need for a reserved area and relying upon the principle of proportionality as the ultimate test for the scope of reserved services, the *Green Paper* rested heavily upon the proposition that there is a discoverable economic relationship between the quality or scope of universal service and the existence or extent of reserved services. Indeed, the *Green Paper* declares, "Universal service without any conditions about price can be provided in the competitive (non-reserved) sector."³⁴ However, suggests the *Green Paper*, to reduce unaffordable free market prices to affordable levels, a postal administration needs a reserved area to achieve either greater economies of scale and scope or higher profits on less costly mail than it could otherwise obtain in a competitive market. What, then, is the economic relationship between universal service and reserved service?

A number of commenters questioned whether there is any demonstrable relationship between a reserved area and a given level of universal service. The European Express Organisation argued that even if a postal administration provides some portion of the universal service at a loss,

there is no clear reason why the loss must be paid by means of cross subsidy hidden within the accounts of a postal monopolist. . . . At bottom, the postal monopoly is a mechanism for raising money to pay for certain public policies. Any other source of revenue would serve as well, and almost any other source of revenue would be less restrictive than a nation wide monopoly over a class of delivery services, the great majority of which would be produced competitively if permitted.³⁵

The Dutch Post Office suggests that a reserved area may have a *negative effect* on the supply of universal service.³⁶

³⁴*Green Paper*, ch. 9 § 1, p. 241.

³⁵2 *Liste* § 8.2, European Express Organisation ¶ 124.

³⁶The EEO also offered calculations to show that, under reasonable assumptions, plausible changes in the volume of mail will not significantly affect the affordability of postal tariffs. 2 *Liste* § 8.2, EEO ¶¶ 126-136. The EEO's calculations are not based upon actual postal cost data, but they appear to be consistent with studies by the U.K. Post Office that suggest the loss of even large amounts of mail to private operators will not have a drastic effect on the affordability of postal service. For example, according to a United Kingdom postal study, the loss of 50 percent of local traffic in

The first material reality is that monopolies (extensive in some member states) have not achieved the objective for which they were granted. The Green Paper makes explicit mention of the frequent absence of efficient and reliable services, especially in international mail. Similarly, the monopolies in force in almost all member states have failed to produce postal services with a financial balance between income and expenditure. Yet the Green Paper says a reserved sector is necessary, to attain these objectives. . . .

The member states with the heaviest losses are often those with the largest monopolies. So, exactly the opposite standpoint would seem to be the right one. There are also member states with very small monopolies who more or less break even or obtain a normal return by providing good quality services. In other words, the achievement of a financial balance depends on entirely different factors.³⁷

The U.K. Post Office pointed out, “There is no conclusive evidence on which to establish with confidence the extent of competition which is compatible with a guaranteed provision of a universal service at an affordable price.”³⁸ Nonetheless, the U.K. Post Office argued that a reserved area is necessary to permit universal service *at a uniform tariff*, that is, to prevent selective competition where the uniform rate substantially exceeds actual costs.³⁹

The weight and price limits to the postal monopoly proposed in the *Green Paper* elicited a mixed response. Major business groups, private express groups, and the Dutch Post Office agreed with the concept of weight and price limits; they either agreed with the Commission’s proposed figures or had better alternatives to offer. Generally, these groups felt that liberalization of cross-border and direct mail presented more significant reforms. Most postal administrations supported a weight limit of 1 kilogram. The U.K. Post Office opposed liberalization of cross-border and direct mail but supported more stringent weight and price limits than proposed by the *Green Paper*: a weight limit of 200 grams and a price of \$0.73 (50 pence).

Major business groups supported the *Green Paper*’s proposal to liberalize cross-border mail. For example, the U.K. Institute of Directors, echoing the *Green Paper*’s concerns about cross-border service quality, stated

Cross-border and international mail is the aspect of postal service which appears to be least satisfactory under present arrangements, and where competition between NPAs and other operators might enable the very improvements in services which would help bring about the desirable economic and social goals identified in the *Green Paper*. . . . The IOD believes that *such mail should be non-reserved*, as suggested in the *Green Paper*, but also believes that stronger controls are necessary to prevent the unfair

cities outside of London would apparently cause only an 8 to 10 percent increase in the overall price of postal service (public and private). 2 *Liste* § 8.1, U.K. Post Office, p. 51.

³⁷2 *Liste* § 8.1, PTT Nederland, p. 5.

³⁸2 *Liste* § 8.1, U.K. Post Office, p. 26.

³⁹2 *Liste* § 8.1, U.K. Post Office, p. 49.

protection of NPAs.⁴⁰

The Dutch Post Office likewise supported liberalization of cross-border mail, arguing forcefully that liberalization was required for sound commercial reasons.

PTT Post BV fully endorses the deregulation proposals contained in the Green Paper and the reasoning advanced by the European Commission. We believe deregulation should be introduced as soon as practicable.

In practice, the problem is beginning to centre around the situation where it is impossible for the public postal organization of the country of sending to offer customers a reliable service for which it can accept responsibility. Given this situation, it is understandable that business users who depend on reliability decide to use private carriers.

When one considers the present abominable quality, it is difficult to take seriously the call by some member states to keep this cross-border mail in the reserved sector. The postal laws of the member states have never formulated the monopoly on this mail as a specific and explicit objective. Neither do the UPU regulations contain any arrangements for this matter.

Keeping cross-border mail outside the reserved sector will accelerate the improvement of quality and provide a fresh boost for the postal industry as a whole. As well as traffic growth, it will create new opportunities for service--providing companies to spread their wings within the EEC or beyond. Viewed from this angle, the deregulation proposal would make the market more efficient, more dynamic and more versatile. Viewed from the other angle, it is largely indefensible in legal terms to keep cross-border mail in the reserved sector. The number one consideration, however, is that the entire gamut of users want deregulation because they consider the monopoly to be unjust and a restriction of their freedom of choice.⁴¹

Except for the Dutch Post Office, however, postal administrations opposed liberalization of the cross-border postal services. Their argument was essentially that the provision of universal service requires a reserved area and that any significant reduction in the scope of the reserved area would endanger universal service. Liberalising cross-border would reduce the scope of the reserved area and was therefore inconsistent with the *Green Paper's* primary goal of maintaining universal service.

As the consultation proceeded, postal administrations abandoned the argument that competition in carriage of cross-border mail, only a few percent of all mail, would endanger the provision of universal service. They focused more on the argument that modern mail production technology would permit private cross-border services to compete with *domestic* postal services. For example, the statements of accounts of a bank located in Member State **A** could be printed in Member State **B** and transported back into Member State **A** for delivery by private postal services. The postal administrations did not explain how cross-border service could improve local postal service for local mail. The U.K. Post Office argued that the threat was

⁴⁰1 *Liste* § 7.2, Institute of Directors, p. 2.

⁴¹2 *Liste* § 8.1, PTT Nederland, p. 8.

not from superior service but from lower prices. If a post office maintains a uniform national tariff, it earns an extra profit on urban postal services in order to cross subsidize losses in rural areas. A cross-border postal service delivering bulk domestic mail could concentrate on mail to urban and thus “skim the cream” from the domestic mail market. The private operators countered that this argument depended entirely upon a quantitative demonstration of how much “cream” there was to skim as well as an explanation as to why postal administrations could not introduce more cost-based, non-uniform tariffs for bulk domestic mailers. It was noted that the *Green Paper* has specifically rejected the proposition that merely maintaining the uniform tariff was a legitimate justification for a postal monopoly.⁴²

The possible use of modern computer and telecommunications technology to shift production of mail from one Member State to another was also reflected in the proposal by some postal administrations that *outward* cross-border postal services could be liberalized while retaining the postal monopoly on inward delivery. If a business mailer in Member State **A** can easily produce his cross-border mail in Member State **B**, there is no reason for a postal administration to insist upon a monopoly over the dispatch of mail since it will be impossible to extract monopoly rents from such a service. In any cases, postal administrations recognize that there are few economies of scale associated with the collection and transport phases of postal service.⁴³

The major parties followed a similar, but not quite identical, path in addressing the *Green Paper*'s proposal that direct mail should, *a priori*, be considered outside the reserved area. The business mailers generally favored liberalization of direct mail. The group most directly affected, however, the Fédération Européenne du Direct Marketing (FEDIM), was undecided whether to agree with liberalization of direct mail or press for liberalization of all bulk mail; some FEDIM members were concerned that treating printed commercial mail differently from other bulk mail might stigmatize it as “junk mail.” Private operators agreed on the merits of the *Green Paper* proposal, although they displayed ambivalence over the political wisdom of immediately liberalizing such a large chunk of the postal market.

The strongest arguments in favor of the *Green Paper* proposal were made by some business mailers and by the Dutch Post Office, which contended that a monopoly over direct mail had been rendered unduly burdensome by changing technology.

As well as direct mail, there is a wide range of other means of communication for distributing advertising, so there are ample alternatives. Therefore it would be incorrect and unwise to place direct mail in the reserved sector.⁴⁴

Other postal administrations opposed liberalization of direct mail as a threat

⁴²*Green Paper*, ch. 8 § 3.2, p. 187.

⁴³Tabor, p. 36, in Crew and Kleindorfer (1991).

⁴⁴2 *Liste* § 8.1, PTT Nederland, pp. 6-7.

to the reserved area that sustains universal service and, in particular, a threat to the maintenance of a uniform tariff.⁴⁵

In the general debate, other reforms to the postal monopoly proposed in the *Green Paper* were largely overshadowed by the attention spent on the major issues. The majority of postal administrations opposed *Green Paper* proposals to liberalize document exchanges and mail preparation. The French Post Office, however, broached the idea of liberalizing mail preparation services—i.e., the collection and transport of mail—as an alternative to liberalization of cross-border and direct mail. The private operators, naturally, supported the *Green Paper* proposals.

In the *Guidelines*, the Commission reported a consensus on the need to maintain reserved services:

nearly all contributors considered that a set of reserved services should be maintained provided these included only what is necessary to provide the universal service in accordance with the principle of proportionality.⁴⁶

With respect to the scope of the reserved services, the *Guidelines* stated that there was disagreement on the appropriate weight and price limits and that “most contributors” considered that [direct mail] should be kept in the reserved sector. In regard to the proposed liberalization of cross-border, the Commission noted that “a considerable number of contributors” distinguished between outward and inward cross-border services. Liberalization of outward services was said to be favored by many commenters, while some postal administrations opposed. On liberalization of inward cross-border services, the *Guidelines* reported,

Most operators opposed liberalisation of this stage of the cross-border mail service, chiefly because of the risk of national mail being routed through other countries; most of the companies using the cross-border postal service and private operators mentioned the poor quality of the service and emphasized the advantages of the same operator being responsible for the service from beginning to end.⁴⁷

The *Guidelines* then set out the proposed approach of the Commission. The *Guidelines* confirmed the Commission’s intention to propose specific weight and price limits for the reserved area, but gave no specifics. It suggested, as well, that a Member State might not have to abide by these limits if it “felt the specific liberalisation proposals could prevent it from achieving the objective of providing a universal service.” In regard to the proposed liberalization of cross-border mail, the *Guidelines* called for further study.

The Commission considers that liberalisation of the collection and carriage of outward and transit traffic would not cause serious difficulties. . . . However, the Commission takes the view that it is advisable to continue to study the

⁴⁵2 *Liste* § 8.1, Platform of German and French Post Offices, p. 3.

⁴⁶*Guidelines*, § 2.3.1, p. 7.

⁴⁷*Guidelines*, § 2.3.2, p. 9.

implications of liberalising the delivery of inward traffic and its financial impact, taking into account that this liberalisation would bring improvement in performance quality through a single end to end service, in order to reply to the preoccupations expressed during the consultation about the possible diversion of national mail.⁴⁸

With respect to liberalization of direct mail, the Commission stated that it “has noted the problems identified during the consultation but considers that they are not in the long term insurmountable.” The Commission recommended continued study of this proposal as well.

The *Guidelines* also suggested a wholly new approach towards the postal monopoly also deserved study: the preservation of a monopoly on final delivery of mail while liberalizing upstream operations (collection, transport, sorting), with no distinction between domestic and cross-border mail. The approach was said to exhibit a number of apparent advantages such as guaranteeing the financial viability of postal administrations, compatibility with “the logic” of the Single Market, and controlling the problem of diverting domestic mail into a liberalizing market.

The *Proposed Framework* begins by speaking of “the lasting guarantee of the supply of the universal service, justifying the retention of exclusive or special rights in favor of universal service suppliers.” The *Proposed Framework* confirms that the Commission’s intention set weight and price limits on the reserved area but omits specific figures. Unlike the *Guidelines*, the *Proposed Framework* makes no mention of a Member State being able to exceed these limits. The *Proposed Framework* declares that document exchanges should be considered outside the reserved area but defines the term “document exchange” restrictively to prevent the interconnection of document exchanges.⁴⁹ Liberalization of mail preparation services would be limited because the reserved area could include “roadside collection” and transport of mail. Outward cross-border services, however, would be declared outside the reserved area.

With respect to the two major liberalization proposals of the *Green Paper*, the *Proposed Framework* makes an opaque statement that:

The elements needed to justify the settings of direct mail and incoming cross-border mail in the reserved area are not evident and it should be noted that the answers given [by postal administrations] are not sufficiently convincing in this regard. In this context, delegations are asked to comment on this perspective, giving justifications for their views.

The *Proposed Framework* also confirms the Commission’s intention to study the option of limiting reservation to the area of final mail delivery.

⁴⁸*Guidelines*, § 2.3.2, p. 10.

⁴⁹In the United Kingdom, the interconnection of document exchange offices has been permitted since 1981.

5. REGULATION OF POSTAL SERVICES

In the course of studying the postal services sector, the Commission gradually concluded that some form of independent regulator is necessary to oversee the provision of monopolized postal services and police the boundary between the monopolized and competitive postal service markets. Of the three cardinal points of the *Green Paper*, however, regulation was the least well developed and the least well critiqued during the consultation.

For the *Green Paper*, the starting point in considering the topic of regulation was the principle that commercial and regulatory functions should be strictly separated. To this end, the *Green Paper* proposed that each Member State should establish an impartial regulator to oversee the scope of the reserved area (i.e., to enforce the “principle of proportionality”) and the provision of universal service by the beneficiary of the reserved area. The *Green Paper* emphasized that the regulator must be impartial towards all operators and towards users and consumers.

In order to achieve this impartiality, it is essential that the regulatory body be separated from any operational function [so that] all concerned (the consumers, the reserved service provider(s) and the private operators) are all convinced of the regulatory body’s impartiality. . . .⁵⁰

The *Green Paper* envisioned that regulation should involve oversight of the universal services, not merely reserved services. As noted above, the reserved service was viewed as a subset of the universal services, one that generates sufficient profits to cover losses encountered in reserved and competitive universal services. For the *Green Paper*, the universal service definition thus delineates the jurisdiction of the regulator.

The *Green Paper* gave little guidance on the procedures for regulation but repeatedly relied upon transparency—“vigorously transparent treatment” at one point—as a necessary ingredient of regulation. Thus, the *Green Paper* called for transparency (public disclosure) of access conditions and costs, preferential postage rates, subsidies and cross-subsidies, service targets, and actual service levels achieved.⁵¹

According to the *Green Paper*, regulation would be directed to ensuring that certain principles would be observed in the supply of universal services:

- all persons should have access to similar universal services under similar conditions;
- tariffs for universal services should be related to costs, including the tariffs postal administrations charge for the delivery of cross-border mail; and
- quality of service standards should be set and the actual quality of service monitored.

The second of these purposes, relating prices to costs, led the *Green Paper*

⁵⁰*Green Paper*, ch. 8 § 12.4, p. 212.

⁵¹*Green Paper*, ch. 9, §§ 4.8, 6.2 6.6, 5.5, and 8.1, respectively.

into the economic complexities of *cross-subsidy*. The *Green Paper* proposed that cross-subsidies from reserved services to competitive services should generally be prohibited. However, it also proposed major exceptions to this rule. A cross-subsidy would be permitted to maintain a uniform tariff or to sustain a universal service, where such cross-subsidy is “compatible with the competition rules.” This latter limitation is unclear since almost all cross-subsidies would seem to be incompatible with the competition rules. The *Green Paper* proposed that any price below “average cost” would be considered the object of a cross-subsidy.

With respect to cross-border postal services, the *Green Paper* declared that postal administrations should charge each other for the delivery of mail the same basic prices that they charged their own citizens for the delivery of similar domestic mail. Traditionally, these charges, called “terminal dues,” were set in the Universal Postal Union and bore no relation to the domestic postage rates. Under Article 25 of the Universal Postal Convention, postal administrations are authorized to refuse delivery of mail that is not posted with the mailer’s national post office. Recourse to Article 25 protected postal administrations against circumvention of the uneconomic terminal dues system and effectively allocated the international postal market among the national postal administrations. The *Green Paper* declared that application of Article 25 to intra-Community mail was incompatible with the Treaty of Rome and indeed, that application to external mail could only be justified if invoked by an independent regulator. In keeping with the principle of separation of commercial and regulatory functions, the *Green Paper* also suggested the European Union should have a greater voice in the activities of the Universal Postal Union.

During the 1992-93 consultation, there was unanimous support for the abstract principle of independent regulation of postal services offered by the postal administrations. Business mailers, consumers, and private operators stressed the importance of the regulators’ independence and transparency of regulation. As UNICE declared,

UNICE considers that transparency in the costs of reserved services is a priority. Such transparency is essential to prevent any cross-subsidisation from reserved to competitive services.⁵²

These groups also generally supported the principles of equal access to postal services and the establishment and monitoring of quality of service standards. Although unmentioned in the *Green Paper*, the consultation revealed a consensus among business users and consumers that a postal administration should be required to provide some form of redress for services, at least reserved services, which failed to meet minimum standards set by the regulator.

Aside from the British and Irish post offices, postal administrations offered little comment on regulatory issues beyond broad support for the principle of independent regulation. The British and Irish post offices generally drew a distinction between regulation of reserved services and regulation of universal

⁵²1 *Liste* § 7.2, UNICE, p. 5.

services outside the reserved area. In respect to reserved services, their position was generally supportive of the regulatory principles espoused by the *Green Paper*, although the U.K. Post Office objected to transparency for postal costs. For universal services offered on a competitive basis, these post offices argued that strict regulation and transparency of prices and costs would unfairly restrict their ability to compete. The European Express Organisation agreed with these post offices on the importance of limiting detailed regulation to reserved services, although EEO also pointed to the need to subject other competitive services jointly produced with monopoly services to sufficient control to enforce prohibitions against cross-subsidy of competitive services with revenues from reserved services.⁵³

The regulatory issue which provoked the most comment was cross-subsidy of revenues from reserved services to competitive universal services. The major user groups, business and consumer, unanimously objected to the *Green Paper*'s suggestion that funds from reserved services should be used to cross-subsidize competitive services. UNICE's dictum that "The setting of rates for reserved postal services must be based on the principle of cost recovery, avoiding all cross-subsidies to free services" parallels the U.K. Consumers Association's demand that "there is no public interest justification for the subsidy of non-reserved services from profits made on reserved services."⁵⁴ These views were also supported by the private operators and at least one post office, the U.K. Post Office.⁵⁵ Other major postal administrations, however, supported the possibility of cross-subsidies from the reserved area to support universal services.⁵⁶

Among the more technical comments, there was also broad agreement that the *Green Paper* erred in proposing average cost as the definition of cross-subsidy. The WIK, European Express Organisation, and U.K. Post Office suggested that a less stringent test was appropriate, *viz.*, that postage rates should be deemed free of cross-subsidy if they covered marginal costs plus some additional amount that reflected either the demand for the service or, more generally, a fair contribution towards fixed costs.⁵⁷

Business mailers, private operators, and the Dutch Post Office agreed with the Commission's proposals to base terminal dues on domestic postage and greater EU involvement in the UPU. Among other postal administrations, some agreed in principle, but argued that reform of terminal dues should be delayed until a consensus could be reached at the worldwide (UPU) level before application within the EU. A number of postal administrations argued that any such reforms must be accompanied by long transition periods. There was little support among postal

⁵³2 *Liste* § 8.1, U.K. Post Office, p. 14; *id.*, *An Post*, p. 63; 2 *Liste* § 8.2, EEO ¶ 232.

⁵⁴1 *Liste* § 7.2, UNICE, p. 5; 1 *Liste* § 7.1, Consumers Association, p. 10.

⁵⁵2 *Liste* § 8.2, EEO ¶ 239; *id.*, § 8.1, U.K. Post Office, p. 39.

⁵⁶2 *Liste* § 8.1, Platform of German and French Post Offices, p. 2.

⁵⁷2 *Liste* § 8.1, U.K. Post Office, p. 69; *id.*, § 8.2, EEO ¶ 240; *id.*, § 11, WIK, 20.

administrations for terminating their ability to invoke Article 25 or greater Community involvement in the governmental aspects of the Universal Postal Union.

In the *Guidelines*, the Commission reported unanimous support for the principle of independent regulation and declared that separation of the regulatory powers from the operational functions “should be broadened and deepened.” The Commission observed that a number of different opinions had been put forward on the subject of cross-subsidy, and proposed that “cross-subsidies from the reserved sector would be authorized if they proved necessary to provide a universal service and were compatible with the competition rules.” The *Guidelines* also called for “transparent accounting.” While noting that opinions were divided on the establishment of detailed services standards for universal services outside the reserved area, the *Guidelines* proposed to establish service standards for all universal services. Standards for national services were to be established by national regulators and standards for cross-border service were to be established at Community level.

In regard to the alignment of postage rates for cross-border mail (terminal dues) and domestic postage, the *Guidelines* declared that the consultation had revealed substantial agreement with the principles advocated in the *Green Paper*. The *Guidelines* then stated that

The Commission takes the view that it is not for the Community to take any prime action in this area, which is essentially the responsibility of the operators.

Without mentioning Article 25 of the Universal Postal Convention or a Community role in the UPU, the *Guidelines* called for “compatibility between the international commitments entered into by Member States and Community legislation and policies” and agreed that “ways must be bound and implemented” to prevent the remailing of intra Community mail through external post offices and back into the Community.

The *Proposed Framework* requires that “the regulatory function must be ensured by an entity independent from public or private companies offering services in the postal sector.” The *Proposed Framework* maintains the position in the *Guidelines* that all universal services, not only reserved services, should be subject to regulation, but the principles to be enforced are reduced to general phrases: universality, equality, neutrality, confidentiality, continuity, and adaptability. The *Proposed Framework* makes no mention of transparency for prices or costs of postal services. It states only that the results of quality of service monitoring should be published at least once per year.

The *Proposed Framework* does not define the term “cross-subsidy.” It states, however, that cross-subsidies will be allowed from the reserved area to competitive universal services.

The cross-subsidies from the reserved to the non-reserved area are only permitted when they are proved necessary for the universal service. In all cases, the competition rules will have to be followed.

The *Proposed Framework* makes no mention of a Community role in the governmental aspects of the Universal Postal Union.

6. SUMMARY AND CONCLUSIONS

In the *Green Paper*, the European Commission made a serious effort to address the fundamental principles of postal policy and reconcile centuries-old precepts with the needs of a modern, multi-country region and the requirements of the Treaty of Rome. The *Green Paper* proposed to retain the nineteenth-century imperative of a broadly defined universal service, but to render it more flexible with the standard of affordable tariffs, rather than uniform tariffs. It proposed to allow maintenance of the national postal monopolies but to place upper price and weight limits on the postal monopolies, thus permitting private express services.

Most importantly, the *Green Paper* proposed four key liberalizations to the postal monopoly. Liberalizing direct mail would confine the postal monopolies to their original content, the transmission of individualized letters. Allowing private postal services to again offer the cross-border services which the national postal monopolies are least well equipped to provide would facilitate development of the Single Market. Placing mail preparation outside the monopoly would stimulate new possibilities for computerized mail sorting and processing. Liberalizing document exchanges would facilitate communications between subsets of users with particularly frequent communications needs. To render the remaining national postal monopolies more accountable, the *Green Paper* also proposed clearly defined standards of service and transparency, enforced by an independent regulator.

Publication of the *Green Paper* generated an informed and illuminating public debate. The consultation revealed a broad consensus among business mailers (who account for about 90 percent of mail), private postal operators, consultants, and at least one post office (the Dutch). This group generally favored the liberalizing proposals of the *Green Paper*, offering economic, commercial, and legal considerations to support their views. However, they disagreed with the *Green Paper's* broad definition of universal service and advocated a narrower and more flexible definition of universal service, tighter restrictions on cross-subsidy from the reserved area to the unreserved area, and stronger (but perhaps more narrowly drawn) regulation. Consumers favored a broad definition of universal service as well as strong regulation. Most postal administrations supported the *Green Paper's* broad definition of universal service, opposed any significant reduction of the postal monopoly, opposed transparency of costs and advocated the right to subsidize competitive universal services from postal monopoly revenues. On key points, however, the postal administrations failed to produce quantitative data to support contentions about the deleterious effects of the the *Green Paper's* liberalization proposals.

If analysis of postal policy proved difficult, the political resolution has turned out to be almost impossible. In the *Proposed Framework*, as it now appears, the European Commission will withdraw essentially all of the reform proposals set out in the *Green Paper*. In so doing, the Commission has offered no economic or legal

evidence that would contradict the thrust of its previous analysis. Instead, the Commission appears to making an unprincipled political decision to support the interests of the majority of postal administrations rather than the interests of the major users and private operators. However, to the extent that this may indeed be the thrust of the final version of the *Proposed Framework*, it seems clear this document will not serve as the resolution of this current postal policy debate in Europe. The *Proposed Framework* fails to address important legal considerations which will now be taken to the European Court of Justice by the users and the private operators. Nor does the *Proposed Framework* address the needs of those who pay for the vast majority of postal services. Indeed, while the EU level debate stalls, efforts are well underway at national level to corporatize the postal administrations of the Netherlands, the United Kingdom, and Germany. These efforts are generating new pressures to reform European postal policy.

In public speeches these days, prominent officials from the major European postal administrations freely forecast that the postal monopoly will be gone in a decade. Such predictions imply vast changes from current policy, even from those reforms envisioned by the *Green Paper*. On other hand, the formal legal instruments now under consideration retreat from the reform proposals of the last few years. It seems safe to guess that European postal policy will find a compromise between these two polar positions, but unsafe to predict what that compromise will be.

2

Overview of the International Postal Reform Movement (1998)*

While significant progress in terms of reform has been made in other public service sectors, the postal service is one of the last bastions of the old order.

- World Bank study, 1996¹

At the end of the twentieth century, a wave of technological advances has brought into question the long term viability of the core functions of national post offices. Electronic conduits for written documents are improving rapidly. Physical delivery services are becoming more specialized and better tailored to the needs of specific customers. With modern telecommunications and air transportation, the feasible scale for delivery networks has expanded beyond national boundaries. A monopolistic, government-owned provider of plain vanilla postal services is ill-adapted to thrive in this new environment.

In all developed countries, postal systems are feeling the effects of these climatic changes. Modernization of the postal sector has evolved into a broad international movement. Step by step, political leaders, civil servants, postal officials, leading mailers, and scholars are forging a new approach to national postal policy. Although mixed in different proportions in different countries, the common elements of postal reform are reduction or elimination of the postal monopoly, restructure of the national post office as a normal company, substantial privatization of the ownership of the post office, and diversification of the business of the post

*Paper presented at Cato Institute, *Mail @ the Millennium: The Future of the Postal Service*, December 1998. Published in abbreviated form as "The Global Postal Reform Movement" in *Mail @ the Millennium: Will the Postal Service Go Private?*, ed. Edward L. Hudgins (Washington: Cato Institute, 2000).

¹K. Ranganathan, *Redirecting the Post: International Postal Sector at 1* (Washington, D.C.: The World Bank, 1996). An excellent survey of postal reform strategies and the need for reform, especially in developing countries.

office. While there exist several surveys of postal policies in developed countries,² this paper offers an overview of this movement as a whole in order to clarify how postal reforms in different countries have formed a coherent pattern.

The year 1988 may be conveniently selected as the starting date for this movement because of a confluence of key decisions taken in widely separated parts of the globe. In New Zealand, a government committee recommended the unprecedented step of repeal of the postal monopoly. In Australia, the government decided to transform the national post office into a corporation subject to taxes and duties like any private company. In the European Union, the European Commission began major competition and policy investigations which ultimately catalyzed adoption of a new Postal Services Directive and, more importantly, far reaching reforms in several Member States. Meeting in Canada, the world's top postal officials resolved to establish the International Post Corporation as a new mechanism for coordination of international mail services. Events set in motion by these decisions have influenced each other, and a decade later, continue to reshape postal policy at both the national and international levels.

1. NEW ZEALAND

The first country to address the full implications of new technologies for postal policy was New Zealand. In 1986, New Zealand transformed the New Zealand Post Office into a corporation, New Zealand Post, owned by the Government. At the same time, the Government began a comprehensive review of the case for continuing or abolishing the postal monopoly. Pending completion of this review, in 1987, New Zealand established a *price limit* for the postal monopoly of NZ\$ 1.75 and a *weight limit* of 500 grams (1.1 pounds). In other words, a private operator was allowed to transport a letter out of the mail if its service met either of two conditions. A private operator could carry a letter whenever it charged more than NZ\$ 1.75 per letter, about 4.5 times the stamp price. Alternatively, a private operator could carry a letter weighing more than 500 grams regardless of the price charged. The government review of the postal monopoly resulted, in 1988, in a recommendation of repeal of the postal monopoly after a two-year transition period during which the price limit of the monopoly would be reduced in stages. The government committee noted "there are no precedents for deregulating the letter post" but boldly concluded "this is not a strong argument against deregulation."³

New Zealand Post opposed deregulation of the postal monopoly. It considered

²See Price Waterhouse, *A Strategic Review of Progressive Postal Administrations* (February 1995 & February 1996 update); Australia, National Competition Council, *Review of the Australian Postal Corporation Act 1989*, Volume 2, Appendix 4 (19 February 1998) (survey of postal reform in other countries).

³Report of Officials Committee to the Cabinet State Agencies Committee, Summary paper, paragraph 19 (1988). Repeal of the postal monopoly over three years was the middle ground among three options presented, and the one implicitly endorsed by the committee. The committee considered and rejected out of hand continuation of the postal monopoly without change.

that it was already “exposed to competition from a wide range of substitutes and competing services, such as telephone, telex, fax, electronic mail, and non-regulated services.” New Zealand Post also suggested that deregulation was unnecessary as a stimulus to improved postal service. It pointed to recent service improvements and the low level of postage rates in New Zealand compared to other developed countries. New Zealand Post further warned of jeopardy to universal postal service, “cream skimming” of urban mail by competitors, withdrawal of postal services from rural communities, a threat to the uniform national postage rate, and probable closure of more than 25 percent of post offices.⁴ In the following decade, these same arguments, in virtually identical form, have been repeated again and again by post offices opposed to postal reform.

The New Zealand government was undeterred. It recognized the need to close uneconomical post offices, but rejected New Zealand Post’s other claims. In anticipation of deregulation, in February 1988, New Zealand Post was allowed to close more than one third of its post offices, retaining local shops to take over counter operations. New Zealand Post also substantially increased its annual charge for home delivery in rural areas. In 1990, the government amended the postal law by reducing the weight limit on the postal monopoly from 500 grams to 200 grams (7 ounces) and lowering the price limit to \$0.80 over a two-year period (i.e., by 1 December 1991). At the end of this transition period, the price ceiling for the postal monopoly was less than twice the stamp price. Outbound international mail was also deregulated, and New Zealand Post was required to provide more detailed annual reports on its finances and quality of service.⁵

After the 1990 act, momentum towards full deregulation of the New Zealand postal monopoly stalled temporarily. A public outcry over the rural delivery charge prompted a Parliamentary inquiry, which concluded that rural banking services (which had been provided by the Post Office) were more of a problem than rural postal services. Nonetheless, elections changed the party in power, and the new government decided to postpone abolition of the postal monopoly. Full deregulation came in 1998, when a comprehensive postal reform act, supported by New Zealand Post, abolished the postal monopoly and imposed basic obligations on private operators.⁶

The effect of these reforms on New Zealand Post has been positive. After 1990, New Zealand Post improved efficiency and introduced new services. In 1995, after five consecutive years of 5 percent growth in letter volume, New Zealand Post abolished the rural delivery fee and lowered its first class stamp price from NZ\$ 0.45 to NZ\$ 0.40. New Zealand Post continues to provide universal service under an agreement with the government which limits the maximum stamp price to NZ\$ 0.45 but does not require uniform national rates. New Zealand Post has expanded into a

⁴Id., Full report, paragraphs 40-41.

⁵Postal Services Amendment Act 1990.

⁶Postal Services Act 1998.

number of related businesses including the delivery of unaddressed advertising, electronic mail preparation, express and freight services, and consulting. New Zealand Post has earned a profit every year since 1986. Its declared goal is to be recognized as “the best company in New Zealand.” There are, however, no plans to sell the shares of New Zealand Post to the public.⁷

2. AUSTRALIA

In Australia, postal reform followed a course roughly similar to that in New Zealand, but lagging by two or three years. In 1988, while New Zealand officials were contemplating repeal of the postal monopoly, the Australian government was just getting around to restructuring the post office. In the Australia Post Corporation Act 1989, the national post office became Australia Post, a government-owned corporation subject to taxes and customs duties like a private company. In 1991, the government asked an Industry Commission, a select group of experts, to undertake a serious inquiry into abolishing the postal monopoly. In an unusually scholarly report issued in 1992, the Industry Commission recommended abolition of the postal monopoly after one year. Rather than requiring Australia Post to provide universal service at a uniform postage rate, the Industry Commission proposed to allow variation in stamp prices provided no stamp exceeded a maximum rate equal to the previous uniform rate.⁸ The government, however, was unwilling to go so far as the commission proposed. In the postal act of 1994, the price limit on the postal monopoly was reduced from 10 to four times the stamp price, and the weight limit reduced from 500 grams to 250 grams (8 ounces). The 1994 act also increased Australia Post’s accountability for the quality of its services.⁹

In June 1997, the government launched another major review of postal policy. The National Competition Council, a 5-member commission, was asked to propose practical steps for further improving competition, efficiency, and consumer welfare in the postal services sector while keeping in mind the public service commitments of the government. In February 1998, the NCC issued its final report, again a detailed and thoughtful study. The NCC recommended repeal of the postal monopoly for business mail and other measures to make Australia Post more like a business.¹⁰ Once again, the government considered its review commission’s proposal too

⁷New Zealand Post, *Annual Report 1998*, p. 5. See also E. Toime, “Competitive Strategy for New Zealand Post” in M. Crew and P. Kleindorfer, eds., *Competition and Innovation in Postal Services* (Boston: Kluwer, 1991); E. Toime, “Service Performance in the Postal Business” in M. Crew and P. Kleindorfer, eds., *Regulation and the Nature of Postal and Delivery Services* (Boston: Kluwer, 1993). Mr. Toime is the CEO of New Zealand Post. More recently, growth in letter volume has slowed (to 2.4% in 1998) and on-time delivery has slipped slightly (from 96 percent in 1996 to 94 percent in 1998).

⁸Industry Commission, *Mail, Courier and Parcel Services* (1992).

⁹Australian Postal Corporation Act 1989, as amended.

¹⁰Australia. National Competition Council, *Review of the Australian Postal Corporation Act 1989*. Volume 1 (summary report) 19 February 1998 and Volume 2 (detailed report).

politically daring. However, in July 1998, the government announced support for legislation that would reduce the price limit on the postal monopoly to A\$ 0.45, the current stamp price, and the weight limit to 50 grams (1.8 ounces) as of July 2000.¹¹ After winning reelection in October 1998, the government is expected to introduce legislation to implement these proposals.

Like New Zealand Post, Australia Post has thrived during this period of increasing competition. Postage rates have remained stable for more than 6 years, and Australia Post has earned substantial profits every year since 1987. On-time delivery has increased from 89 percent in 1989 to 94 percent in 1998. Australia Post has diversified into electronic and logistical businesses. In 1998, Australia Post estimates that almost half its revenue and more than two-thirds of its profits are earned in competitive markets.¹²

3. EUROPEAN UNION

In 1988, the European Commission, the secretariat of the European Union, began two interrelated investigations into postal policy. The first was a legal inquiry prompted by private operators who complained that European postal administrations were conspiring to restrict remail competition (U.S. Postal Service was also involved).¹³ The focus of the *Remail Case* was a series of meetings beginning in April 1987, in which post offices agreed on a multi-pronged strategy: adoption of a new schedule of inter-postal charges for the delivery of cross-border mail (the "CEPT Agreement"), interception and discouragement of remail by resort to Article 23 of the 1989 Universal Postal Convention, and exhortation of post offices to refrain from working with those post offices and private operators providing remail services.¹⁴ In response to this complaint, postal administrations persuaded the European Commission to initiate a second inquiry, a broad review of European postal policy. By engaging the policy machinery of the Commission, postal officials hoped to delay competition authorities working on the *Remail Case* and establish a consensus that maintaining universal postal service overshadowed principles of competition law. This policy offensive was supplemented by a commercial gambit. In late 1988, 15 leading European post offices, together with the post offices of the

¹¹Australia Post, "Review Outcome: The Government's Decision and How We'll Meet the Challenge" (July 1998).

¹²Australia Post, *Annual Report 1997-98*, page 10. See also M. Castro, "Deregulation of Australia's Postal Services," in M. Crew and P. Kleindorfer, eds., *Commercialization of Postal and Delivery Services* (Boston: Kluwer, 1995).

¹³"Remail" refers to mail which is produced in one country and transported by non-postal means to a second country where it is entered into the domestic or international mail stream. Via remail, post offices, working with private operators, compete with one another for the distribution of international remail.

¹⁴The history and details of the anti-remail conspiracy are provided in a Statement of Objections (i.e., a preliminary decision) issued by the European Commission in 1993. See Statement of Objections, Case IV/32.791 - Remail Case (5 April 1993).

United States, Canada, Australia, and Japan, resolved to establish a new company to operate an international cargo airline for postal express shipments and to provide marketing and management services for international mail. The company, called International Post Corporation, opened its doors in Brussels in January 1989.

The hopes of postal officials were only partially realized. The European Commission agreed to delay a decision in the *Remail Case*, but it also accepted most of the pro-competitive policy arguments put forward by economists, private operators, and large mailers. The Commission's conclusions and policy proposals were embodied in the *Postal Green Paper* published in June 1992. The *Postal Green Paper* and the Australian *Industry Commission Report*, issued a few month later, constitute the two major governmental policy studies of the early postal reform movement. In the *Postal Green Paper*, the European Commission recommended new limits to European postal monopolies: (i) Europe-wide price and weight limits, (ii) liberalization of international mail, including intra-EU cross-border mail, (iii) adoption of a legal presumption in favor of liberalization of printed advertising mail, and (iv) liberalization of the collection and transportation of mail. In sum, these measures would have left post offices with a monopoly over the major part of their revenues while liberalizing the cross-border services which were most important to integration of the European Union (about 4 percent of all mail) and requiring Member States to follow the "best practices" of their pro-competitive brethren. The *Postal Green Paper* also urged greater regulatory oversight of postal services and transparency of accounts.¹⁵ In the wake of the *Postal Green Paper*, in April 1993, the Commission issued a preliminary decision in the *Remail Case* that upheld the complaint of the private operators on all counts.

Despite the careful political balance struck in the *Postal Green Paper*, postal reform proved far harder than the European Commission imagined. Political opposition from postal administrations and postal unions resulted in further delay and a substantial scaling back of the *Postal Green Paper* proposals. In December 1997, five and half years after publication of the *Green Paper*, the European Council finally adopted a *Postal Services Directive* that did little more than impose a price limit on European postal monopolies of 5 times the stamp price and a weight limit of 350 grams. Other deregulatory measures were postponed for another five years. In the same manner, in the *Remail Case*, the European Commission in 1995 reversed its earlier findings in favor of private operators and declined to condemn the post offices. The Commission's flimsy rationale was that, even though post offices had violated European competition law, they had promised to mend their ways.

Although postal opponents were largely successful in getting the European Commission to scuttle the *Postal Green Paper* and the *Remail Case*, they could not

¹⁵Policy chapters from the *Postal Green Paper* and comments by major parties are provided in the Rowland web site, European Union: Postal reform.

force the genie of postal reform back in the bottle.¹⁶ A long procession of public seminars and scholarly studies had produced a sea change in attitudes among the postal cognoscenti. Two series of scholarly seminars were especially important in the evolution of European postal thought. The first was organized by two American economists, Michael Crew and Paul Kleindorfer, beginning in 1990, the 150th anniversary of the postal innovations launched by the great English reformer, Rowland Hill. A second series was convened annually from 1993 to 1997 by Wissenschaftliches Institute für Kommunikationsdienste (WIK), a German research group.¹⁷ Such seminars provided the medium in which European officials learned from each other and from the more progressive reforms being carried out in New Zealand and Australia.

Postal managers and governmental officials at both European and national levels became convinced of the inevitability of competition as the future norm for the postal sector. By the mid-1990s, the growing threat from electronic substitutes hardened this conviction. The new conventional wisdom gave birth to several developments with far reaching implications. Four deserve particular mention: the TNT joint venture, repeal of the postal monopoly in Sweden, privatization and expansion of the Dutch Post Office, and Postreform III in Germany.

4. TNT JOINT VENTURE

In 1991, the post offices of France, Germany, the Netherlands, and Sweden—joined by Canada Post—shocked the international postal community by purchasing 50 percent of the worldwide express business of TNT, an Australian transportation conglomerate. It was as if Fay Wray had decided to marry King Kong. By creating a joint venture with a private express operator, these post offices gave up on the International Post Corporation. They concluded that IPC would never achieve the level of coordinated end-to-end management necessary to compete with international express services. In applying the competition rules of European law, the European Commission approved the TNT joint venture but imposed certain pro-competitive conditions, notably the requirement that the joint venture could not benefit from legal privileges available to public postal operators.¹⁸ Although there

¹⁶The Commission's decisions have been annulled in part by the European Court of First Instance. It is expected that the judgements of Court of First Instance will be appealed to the European Court of Justice, the European Union's highest court. Details of the Commission's decisions and the judgement of the Court of First Instance may be obtained from the Rowland web site, EU: Remail and terminal dues cases.

¹⁷Papers from the five Crew and Kleindorfer seminars are available in four books: *Competition and Innovation in Postal Services* (1991), *Regulation and the Nature of Postal and Delivery Services* (1993), *Commercialization of Postal and Delivery Services* (1995), and *Managing Change in the Postal and Delivery Service Industries* (1997), all published by Kluwer. A fifth book will be published in early 1999. Papers from some WIK postal seminars may be ordered from WIK's web site, <http://www.wik.org/Eindex.htm>.

¹⁸European Commission, Case No IV/M.102 - TNT / Canada Post, DBP Postdienst, La Poste, PTT Post & Sweden Post, Decision of 2 December 1991.

remained skepticism over its commercial prospects, the joint venture confirmed the view of many governmental officials that the postal sector was being transformed into a competitive and international sector.

5. SWEDEN

In late 1992, Sweden became the first major European country to opt for abolition of its postal monopoly.¹⁹ The government decided to repeal the monopoly as of January 1, 1993, rather than suppress an upstart new entrant, CityMail. CityMail had pioneered a low cost, twice weekly delivery service for computer generated mail in Stockholm, Sweden's largest city. Sweden Post supported termination of its monopoly because it concluded that without deregulation it could not obtain the commercial flexibility necessary to adapt to a changing market. Demonopolization was followed by the Postal Services Act of 1994, which created a new legal framework for delivery services. Sweden Post was transformed into a normal stock company with all shares owned by the government. In the same year, Sweden Post applied value added tax to all its products, like a private company. The government negotiated a 3-year contract with Sweden Post for the provisions of various public services.²⁰

As competition intensified, Sweden Post sought to maintain its customers with an aggressive campaign of exclusivity clauses, tie-in arrangements, discriminatory discounts, and other pricing strategies. These were condemned as anti-competitive by the Swedish Competition Authority (SPK). Nonetheless, the response of SPK was inadequate to protect competition. CityMail sought bankruptcy protection and was taken over by Sweden Post.²¹ Although CityMail subsequently regained independence from Sweden Post with new financial backing, the Swedish experience suggests two lessons for other countries. First, contrary to postal protestations, the postal monopoly may be unnecessary to preserve universal service even in a country with very remote hinterlands. Second, demonopolization must be accompanied by a review and clarification of the role that competition rules will play in regulating the newly competitive market.²²

¹⁹In 1991, Finland became the first European country to abolish its postal monopoly, but this step attracted little attention because of Finland's small size and the absence of new competition.

²⁰See T. Zillen, "Sweden Post: Public Operator on a Deregulated Market" (Euroforum conference, "The Liberalization of the European Postal Services, Amsterdam, 8-9 December 1994); Sweden, National Post and Telecom Agency, "Regulatory Framework for the Postal Market in Sweden" (October 1998) (a compilation of legal texts).

²¹See E. Nerep, "Current competition law issues in regard to the de-(re-) regulation of the Swedish postal services market - especially the problems of defining the relevant market and establishing price discrimination and predatory pricing" (October 1996); Swedish Competition Authority (SPK), "Postal Services: From Monopoly to Competition," Report Series R 1992:9 (October 1992).

²²See M. Plum, "Antitrust or regulation for safeguarding competition in liberalised postal markets?" (June 1997).

6. NETHERLANDS

The Netherlands is the first, and so far the only, developed country to privatize a *majority* interest in its post office. In 1989, the Dutch post and telecommunications administration was transformed into Royal PTT Nederland (KPN), a private law company operating postal and telecommunications services. In 1994, the Netherlands sold 30 percent of KPN to the public. In 1995, the Dutch government sold another 22 percent of stock to the public, bringing the government's share down to 48 percent.

Privatization allowed PTT Post, the postal subsidiary of KPN, to pursue an aggressive and innovative commercial strategy.²³ As noted above, PTT Post participated in the 1991 TNT joint venture. In June 1996, PTT Post bought out its postal partners in the joint venture (except for Sweden Post's small share).²⁴ In August 1996, PTT Post purchased TNT itself, thus acquiring complete control of the joint venture operations.²⁵ In June 1998, KPN "demerged" into two independent companies, KPN and TNT Post Group (TPG).²⁶ TNT Post Group (TPG) is thus an amalgam of the national post office of the Netherlands and a global express company. Although privatized, TPG remains legally obligated to provide universal postal services in the Netherlands and continues to benefit from a legal monopoly over the carriage of letters weighing 500 grams or less and priced below certain limits. TPG has declared its support for termination of the Dutch postal monopoly provided potential competitors such as Deutsche Post are likewise constrained to compete without monopoly support.

7. GERMANY

In December 1997, Germany completed the last phase of a three-stage postal reform program that took almost a decade to enact. In 1989, Postreform I reorganized the Ministry for Posts and Telecommunications by placing postal services, postal banking, and telecommunications in separate departments. Management of Postdienst, provider of postal services, was committed to a new board of directors with members from the private sector. The board introduced private sector management and accounting practices and reorganized operations into

²³See P. Overdijk, "Postal Services: Competition in The Netherlands: Current Situation" (May 1996).

²⁴European Commission, Case No IV/M.787 - PTT Post/TNT - GD Net, Decision of 22 July 1996.

²⁵European Commission, Case No IV/M.843 - PTT Post/TNT/GD Express Worldwide, Decision of 8 November 1996.

²⁶TNT Post Group, *1997 Annual Report*. An especially detailed report because of the demerger.

four business groups: letters, cargo, post offices, and new business segments.²⁷ In 1994, Postreform II transformed Postdienst into Deutsche Post A.G., a normal corporation whose shares are owned by the government. Postreform II also amended the German Constitution to guarantee provision of “appropriate and adequate” universal postal services. Although progress towards additional reform slowed temporarily due to opposition from Deutsche Post and postal unions, in December 1997 the German parliament agreed on Postreform III. Postreform III abolishes the Ministry for Posts and Telecommunications and repeals the postal monopoly as of the end of 2002. Until then, the price limit on the postal monopoly is set to 200 grams for letters and 50 grams for advertising mail.²⁸

Postreform III is arguably the most sophisticated postal reform in the world. The law recognizes universal postal service as an obligation of government, not a requirement imposed on Deutsche Post. Universal service is no longer to be funded by cross-subsidy from overpriced monopoly services. Instead, funds to cover the cost of universal service will be generated by a licensing scheme. Every delivery service that provides carriage of addressed written communications weighing less than 1000 grams (2.2 pounds) must obtain a license. No license is needed for services outside the “licensed area” including carriage of publications, carriage of unaddressed mail, document exchanges, and express services. Any service priced more than 5 times the stamp price is considered an express service. If the market fails to provide universal service within the licensed area, licensees may be required by a Regulatory Authority to provide basic postal service and are entitled to compensation for losses incurred. Compensation is to be paid from a fund composed of contributions from all licensees earning more than one million DM annually. Rates for postal services covered by license are subject to approval by the Regulatory Authority. Rates for carriage of other documents and parcels up to 20 kilograms (44 pounds) are subject to investigation for anti-competitive price discrimination. A licensee with dominant market position must provide unbundled services and post office box services for other licensees at cost-based rates.²⁹

As in other countries where postal reforms have been enacted, Deutsche Post has taken advantage of its commercial freedom to expand into new businesses. In 1997, Deutsche Post purchased 18 percent of the independent Postbank and concluded a close cooperation agreement, thus partially undoing the separation of financial and postal services imposed by Postreform I. Deutsche Post also purchased

²⁷See generally the German chapters in Price Waterhouse and Omega Partners, *A Strategic Review of Progressive Postal Administrations* (Feb. 1995) and Price Waterhouse, *A Strategic Review of Progressive Postal Administrations: February 1996 Update* (Feb. 1996).

²⁸Postal Act (22 December 1997). By June 1997, even economists for Deutsche Post were ready to concede, “In objective terms the present regulatory framework in the postal sector no longer bears close examination from the economic and legal point of view.” P. Knauth and F. Dommermuth, “Reorganisation of the postal sector in Germany,” (June 1997).

²⁹Postreform III grants Deutsche Post an exclusive license, i.e., monopoly, until the end of 2002 for the carriage of letters weighing up to 200 grams and advertising mail weighing up to 50 grams.

parcel businesses in Austria, Poland, Belgium, and (in late 1998), the United Kingdom, establishing what Deutsche Post calls “a solid platform for its pan-European parcel mail business.” In 1998, Deutsche Post purchased 25 percent of DHL, an American-born company that pioneered international express service. Also in 1998, Deutsche Post acquired Global Mail, a major U.S. exporter of international remail. Deutsche Post’s goal is nothing less than “to secure a strong position in the global logistics market.”³⁰

8. FUTURE OF THE POSTAL REFORM MOVEMENT

Where postal reform has started, it appears likely to continue. In the European Union, the European Commission is expected to announce support for new Europe-wide limits on national postal monopoly laws after 2003. In the United Kingdom, after the Post Office has urged privatization for several years,³¹ the Tory government is on the verge of introducing major postal reform legislation, possibly including privatization of a substantial percentage of the ownership. In 2000, the German government is planning to sell 49 percent of the Deutsche Post to the public. As noted above, additional reform legislation is expected in Australia. The postal reform movement is gaining converts as well among some developing countries.³²

Some major countries, however, remain largely untouched by the postal reform movement. Of these, the most important, and perhaps most surprising, is the United States. Since 1995, a committee in Congress has been studying postal reform. In early 1999, this committee is likely to propose a modest reform bill that would establish a price limit on the postal monopoly of 6 times the stamp price and a weight limit of 12.5 ounces (350 g). The Postal Service, a government agency, would be authorized, in its discretion, to establish a private corporation to provide competitive services, currently accounting for only about 10 percent of Postal Service revenues. The corporation could venture into non-traditional services and engage in joint ventures with private companies. Although the private corporation would be 100 percent owned by the Postal Service, it could establish subsidiaries and sell shares to be sold to the public.³³ Despite the limited nature of these reforms by

³⁰Deutsche Post, Annual Report 1997, page 49.

³¹In 1994, after two years of study and public debate, the Conservative government proposed reductions in the monopoly and privatization of 51 percent of the U.K. Post Office. Although supported by the Post Office, this proposal was narrowly defeated by opposition from postal unions and (apparently unfounded) concerns over the future rural service. More recently, the U.K. Post Office’s calls for reform have become increasingly urgent: “The forces of globalization are rendering obsolete the idea of a national postal market.” U.K. Royal Mail, Tim Walsh, Director of International Affairs and Business Strategy, “The Governance of International Postal Networks in a Changing Market Place” (16 September 1997).

³²Examples include Argentina, Chile, Singapore, South Africa, and Tanzania. See generally, K. Ranganathan, *Redirecting the Post: International Postal Sector* (Washington, D.C.: The World Bank, 1996).

³³H.R. 22, the Postal Modernization Act of 1998, introduced in the 105th Congress by Rep. John McHugh, Chairman of the House Postal Service Subcommittee. Just before the 105th Congress

international standards, Congressional approval is uncertain.

Other developed countries where prospects for major postal reform appear dim are France, Canada, and Japan. France led opposition to postal reforms proposed by the European Commission in the Postal Green Paper. In 1997, a Senate committee reiterated French skepticism over privatization and demonopolization.³⁴ In Canada, in 1996, a review commission challenged the tenets of the international postal reform movement; it sharply criticized Canada Post's forays into non-traditional businesses and urged concentration on the delivery of letters while they lasted and dissolution of the post office thereafter.³⁵ These recommendations were rejected by the Canadian government, but a new vision for the Canadian postal sector has not emerged. In Japan, the Ministry of Posts and Telecommunications has vigorously and successfully opposed fundamental postal reform.

The ultimate challenge of the postal reform movement will be to engender a sufficient consensus among countries to permit reform of the global legal framework. The worldwide organization of postal administrations is the Universal Postal Union, founded in 1874. The UPU meets once every five years in general congress to revise the Universal Postal Convention, the convention regulating international postal services. The next UPU congress will be held in August 1999 in Beijing. Although some members of the international postal reform movement have offered reform proposals for the next Congress, acceptance by the UPU is unlikely without support from the United States. In late 1998, the United States transferred authority over international postal policy from the Postal Service to the Department of State. Whether the Department of State will press for postal reforms at the Beijing UPU Congress is an unsettled question.³⁶ Looking beyond the UPU, in 2000, the World Trade Organization will initiate a new round of service liberalization negotiations in the context of the General Agreement on Trade In Services. Officials in and out of the WTO have suggested that postal and express services will be on the agenda. If so, it appears possible that the WTO might eventually effect a general liberalization of delivery services as it did for international telecommunications in 1997. Again, however, success probably hinges on the United States becoming an active member of the international postal reform movement.

adjourned in October 1998, the subcommittee reported favorably on H.R. 22. Soon after the 106th Congress convenes in January 1999, the subcommittee is expected to report favorably on a similar measure, although the new bill will have different number.

³⁴Senator G. Larcher, *Sauver La Poste: Devoir Politique, Impératif Economique*, Senate Rept. No. 42. (1997).

³⁵Canada Post Mandate Review Commission, *The Future of Canada Post Corporation* (1996).

³⁶Private operators have asked the Department of State to develop a formal Statement of Position on key UPU policy issues by means of a public rulemaking. See Air Courier Conference of America, "Petition for a Rulemaking to Develop a Statement of Position of the United States Towards the Universal Postal Union" (November 18, 1998).

3

Modern Postal Reform Laws: A Comparative Survey (2002)*

The national post office has been among the oldest and most enduring creations of modern government. In every nation, the post office is an important part of the commercial infrastructure, the social life of the nation, and the labor market. Nonetheless, a confluence of technological advances—in the fields of telecommunications, transportation, and computers—is causing many countries to rethink the institutional bases of the public postal operator and its role in the larger delivery services market. Major postal reform laws have been adopted in six industrialized countries: Australia (1994), Germany (1997), the Netherlands (1998), New Zealand (1998), Sweden (1998), and the United Kingdom (2000). Although each of these laws is moving in the same general direction, the routes taken differ substantially. This paper offers a comparative summary of different postal reform strategies as realized in modern postal reform laws.¹

1. APPROACHES TO POSTAL REFORM

For centuries, national governments have committed the collection and delivery of letters to national post offices. In the last century, post offices began to

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¹This paper focuses on postal reform laws as an exercise in the craft of legislation by, for example, comparing how different laws define the legal rights and obligations of the post office and the relationships between the post office and other governmental institutions. From this standpoint, whether or not the law as written is subsequently administered correctly or wisely is not an issue except as such administration may be implied in the original law. For a survey of postal reform strategies from the standpoint of political motivation and subsequent administration, see Robert M. Campbell, 2001. For a categorization of postal reform laws from still another perspective see K. Ranganathan, 1996. For an account of various national postal reform laws reflect elements of an interrelated international reform trend, see J.I. Campbell Jr., 2000.

collect and deliver other types of documents and parcels including advertisements, newspapers, periodicals, books, and small parcels. For most post offices, these additional services have remained byproducts. The letter business generates the bulk of revenues necessary to sustain the delivery infrastructure; nonletter services yield substantially less operating profit because of competition from private delivery services and other methods of distribution. Moreover, profits generated from the letter monopoly have allowed post offices to provide “noncommercial” postal services, that is, services for which people were unwilling to pay the full cost of production but grateful at election time. Such services include operation of post offices in remote locations, daily delivery to houses that receive little mail, and below cost postage rates for politically correct publications.

At the start of the twenty-first century, it is apparent that the post office must change fundamentally. Telecommunications has developed the capacity to transmit most types of letters more quickly and cheaply than the post office. As letters migrate to telecommunications, governments must choose between two possible futures for the post office. Either the post office should be scaled back to become a residual government service, i.e., an expensive infrequent delivery service of last resort for parcels and printed products whose carriage is unprofitable for private carriers. Alternatively, the post office should be allowed to reorganize its services and business methods so that it can survive as a normal company in a normally competitive market.

Industrialized countries who have addressed postal reform to date have chosen the second option. In these countries, “postal reform” means taking steps that will ultimately allow and require the post office to operate more like a private company in a commercial environment more like a normal competitive market. Nonetheless, implementation of option two has assumed a different format in each of the six countries in this survey. By way of orientation, three broad approaches to postal reform may be identified. These seem to reflect the predilections of the three types of experts most visible in the postal reform debates: the business executive, the lawyer, and the economist.

One approach to postal reform focuses on commercial flexibility for the post office. To what extent can providers of traditional postal services manage their activities in the same manner as other commercial concerns? Today, post office managers increasingly find themselves in competition with private companies, yet legal restraints prohibit them from conducting business like managers of private companies. Postal managers are frustrated with restrictions on their authority to raise and lower prices; price discriminate among customers; hire, compensate, and fire employees; modify services and close offices; buy and sell assets; raise money through debt or equity financing; and enter new lines of business. “Commercial flexibility” implies greater latitude in such areas.

The obverse of commercial flexibility is the “universal service obligation.” Granting commercial flexibility implies a loosening of service standards for providers of universal postal services. For example, a post office might be permitted to deviate from uniform postage rates provided all rates remain “affordable” or

below a given price ceiling. Rules prohibiting discounts and price discrimination may become less stringent. A post office might be allowed to modify service standards—delivery times or delivery frequencies—within certain parameters. Then, too, a post office could be given more freedom to close post offices and eliminate collection boxes.

A second approach to postal reform emphasizes separation of governmental and commercial functions. The objective is not so much to make the delivery services sector more like a normal market but to ensure that the exercise of governmental power is not infected with commercial interest. To this end, governmental functions and privileges formerly vested in the post office are transferred to one or more regulators, whose decisions are, in theory, uninfluenced by concern for the commercial fortunes of the post office. The regulator is responsible for dispensing legal privileges and obligations to all delivery services in a manner calculated to serve the public interest. Within this framework, the regulator may permit postal operators more or less commercial flexibility. The regulator could, for example, require all postal operators to maintain certain universal services, to comply with accounting and reporting rules, and contribute to a universal service fund.

A third approach to postal reform is privatization of the post office. If commercial flexibility is the businessman's reform, and separation of functions is the lawyer's, then privatization is the economist's. Privatization of the post office is related to, but distinct from, other approaches to reform. A post office may be privatized but not granted the commercial freedom of a normal company. Likewise, one can imagine a privatized post office retaining a degree of governmental authority, such a legal monopoly over the carriage of letters and an obligation to provide universal service.

Compared to other approaches to postal reform, privatization yields two major benefits. First, privatization creates shareholders who are motivated by self interest to ensure that the post office is managed in the most efficient manner. A fundamental weakness of government enterprise is that government officials who do not have money at risk are not as watchful over management as private shareholders. Second, privatization substantially lessens the problem of accounting for inherited governmental privileges. If private shareholders purchase the tangible assets of the post office for a fair price, the fact that those assets were originally purchased with government revenues becomes irrelevant. After privatization, the assets in question will reflect "real money" risked by real shareholders, and they may be sold or converted without regulatory scrutiny. Likewise, privatization allows for burdens of the past. If a post office is handicapped by high wages or inefficient capital investments, these will be reflected in a lower sales price. By taking into account the benefits and burdens of the past, privatization places new owners in a competitively fair starting position vis a vis private competitors. Regulatory controls designed to correct the past will be less necessary (although problems derived from an inherited dominant position remain).

2. POSTAL REFORM LAWS

The postal reform laws of Australia, Germany, Netherlands, New Zealand, Sweden, and the United Kingdom exhibit these approaches to postal reform in different measure.

2.1 AUSTRALIA (1994)

In 1989, the Australian government transformed the national post office into a government corporation, Australia Post. Australia Post was required to earn a reasonable rate of return, payable in part to government, and to fulfil certain “community service obligations.” In 1992, an Industry Commission recommended abolishing the postal monopoly and recasting the obligation to provide a uniform nationwide letter rate into an obligation to respect a maximum rate for letters. The government agreed with the proposed direction of reform but not the extent. The Australian Postal Corporation Act of 1994 amended the postal law by giving Australia Post greater commercial freedom, reducing the scope of the postal monopoly, and increasing Australia Post’s accountability for quality of service.²

Under the 1994 act, Australia Post is authorized to provide any postal or nonpostal service, but its commercial freedom is qualified by a limited obligation to maintain a universal postal service. Specifically, Australia Post must provide a “letter service” for items within the reserved area that is “reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business” and “achieve performance standards [which] reasonably meet the social, industrial and commercial needs of the Australian community.” For “standard postal articles,” the “letter service” must be “available at a single uniform rate of postage for the carriage within Australia.” A “standard postal article” is anything weighing up to 250 grams and enclosed in a standard letter-sized envelope. Delivery and access standards for universal service are set out by the government in the Performance Standards Regulation. The universal service obligation placed on Australia Post is relatively light compared to that of other post offices; in most industrialized countries, the universal service obligation substantially exceeds the range of services covered by the postal monopoly.³

Greater commercial flexibility was balanced by a reduction in commercial privilege. In Australia, the carriage of a letter is reserved for Australia Post only if (i) the price of service is less than or equal to four times the postage for “a standard postal article” and (ii) the weight of the letter is less than or equal to 250 grams.

²Although called a “corporation,” Australia Post is not subject to normal corporate law.

³Australian Postal Corporation Act 1989 as amended (hereafter, “Australia Post Act”), §§ 3 (definitions), 16-19 (functions), 27 (universal service obligation), 29-30 (postal monopoly); Australia Postal Corporation (Performance Standards) Regulation 1998, as amended. *See also* Australian Postal Corporation Regulations of 1996, as amended. A “letter” is defined as “any form of written communication that is directed to a particular person or address”; a “letter” includes any “standard postal article.”

Moreover, there are several significant exceptions to the monopoly and thus to the universal service obligation. The monopoly does not include carriage of outbound international letters, advertising mail (“newspaper, magazine, book, catalogue or leaflet”), or intracompany letters (“the carriage of a letter from an office of the individual or organisation sending the letter to another office of that individual or organisation”). Also exempt from the postal monopoly are upstream services for bulk mail (“the carriage of a letter to an office of Australia Post where it is then lodged for delivery under a bulk interconnection service”) and letters carried within or between document exchange offices.⁴

Australian law provides little separation of governmental and commercial functions. Not only does the law vest Australia Post with the privileges and duties of a government agency, it fails to establish an independent regulator. Government supervises the policies of Australia Post directly. Australia Post is governed by a Board of four to eight Directors, appointed by the Minister, and a Managing Director, appointed by the Board. Directors are named for five-year terms or less and can be dismissed for “unsatisfactory performance.” The Board determines the objectives, strategies, and policies of Australia Post. New postage rates for “standard postal articles” may be disapproved by the Minister, and the Minister may give the Board such written directions (excepting rates and fees) “as appear to the Minister to be necessary in the public interest.” The Minister thus ultimately wields both governmental and commercial authority over Australia Post.⁵

There are two exceptions to the general absence of independent regulation. First, the Australian law provides that a large mailer or private operator may tender bulk mail downstream (i.e., at a post office close to the addressees of mail) at a discount reflecting average transport costs avoided by Australia Post. In case of dispute about the appropriate “bulk interconnection” rate, the Australian Competition and Consumer Commission (ACCC) acts as arbitrator, although the Minister retains discretion whether or not to require Australia Post to adopt a price recommended by ACCC. Second, ACCC has limited authority to scrutinize increases in postage rates for reserved services under the Prices Surveillance Act 1983.⁶

In sum, under Australia postal law, postal reform emphasizes commercial flexibility without separation of commercial and governmental functions. Government regulates provision of basic postal services to a moderate degree and exerts little restraint over Australia Post’s nonpostal activities. The implicit trade off for greater commercial flexibility is less postal monopoly; nonetheless, Australia Post remains an agency of government.⁷

⁴Australia Post Act, §§ 29-30 (postal monopoly).

⁵Australia Post Act, §§ 22-24, 33, 49, 73, 79, and 83. Australia Post is authorized to borrow money from the government “on such terms as the Minister for Finance determines in writing.” § 60.

⁶Australia Post Act, §§ 32A, 32B.

⁷In April 2000, the government proposed a new postal reform bill to limit further the postal monopoly and commercialize Australia Post. In early 2001, the government abandoned this bill in the

2.2 GERMANY (1997)

Germany has reformed its postal market in three legislative stages. In 1989, “Postreform I” created separate departments for postal services, postal banking, and telecommunications within the Ministry for Posts and Telecommunications. A new Board of Directors introduced a greater degree of private sector management and accounting practices. In 1994, “Postreform II” transformed Deutsche Bundespost Postdienst into Deutsche Post A.G., an entity organized under the same corporate law as private companies and having the government as sole shareholder. At the same time, the German Constitution was amended to explicate a governmental obligation to ensure maintenance of “appropriate and adequate” universal postal services offered on a private enterprise basis. The German Postal Act 1997, “Postreform III,” delegated to the telecommunications regulator, RegTP, responsibility for maintenance of universal service and regulation of the postal sector and abolished the postal monopoly after a five-year transition period ending on 31 December 2002. Postreform III is supplemented by two governmental ordinances, one on universal service and one on rate regulation.⁸

In respect to commercial flexibility, German postal law subjects Deutsche Post and other operators to substantial regulatory supervision in providing postal services both within and without the historically monopolized area (the licensed area, defined below). The first purpose of such regulation is to ensure maintenance of universal service. The act defines universal service as “provision throughout the Federal Republic of Germany of basic postal services (universal service) at affordable prices.” Delivery of items outside the licensed area (defined below)—for example, parcels and books—is considered part of the universal service only when “such postal services as can, at least in part, be provided using conveyance means of postal services subject to licence.” The definition of universal service is further refined in the Postal Universal Service Ordinance. The Ordinance specifies, for example, the maximum level of stamp prices (real price on 31 December 1987), minimum quality of service (80 percent of letter post items shall be delivered on day after posting), the minimum of number of post offices (12,000 of which 5,000 shall be operated by company staff), and the rules on letter box location (no more than 1 kilometer from any urban resident), and delivery frequency (once per working day). The Universal Service Ordinance also requires Deutsche Post to maintain a uniform tariff for

face of opposition in parliament. In the unenacted proposal, a key element was creation of an “access regime” under which ACCC would have substantially greater authority to regulate the exchange of mail between competitors.

⁸The reform nature of Postreform III depends heavily on the planned abolition of the postal monopoly at the end of 2002 and reversion of Deutsche Post to the status of a normal delivery services company. As this paper is being prepared, the German government is considering a measure to extend the postal monopoly past 2002.

nonbulk licensed services until the end of 2002.⁹ Outside of the scope of licensed activities, German law seeks primarily to restrain anticompetitive activities by postal operators.

Although all postal laws in this survey permit the post office to enter nonpostal markets, the progress of Deutsche Post in this regard has been remarkable. Deutsche Post has embarked on an aggressive expansion campaign. Deutsche Post has established a Europe-wide parcel service, purchased a controlling interest in DHL (the leading international express company) and, through acquisition of Danzas and AEI, become one of the world's leading freight forwarders. Deutsche Post also has interests in financial services and is developing an e-commerce business.

German postal reform also separates governmental and commercial functions to a significant degree. The law provides that after 2002 Deutsche Post will have neither the privileges nor the burdens of a governmental agency, i.e., neither postal monopoly nor universal service obligation. The German regulator, RegTP, discharges three major governmental functions.¹⁰ First, RegTP issues licenses required to engage in "postal services." Second, RegTP can review rates for postal services in certain circumstances. Third, RegTP is responsible for maintenance of universal postal service and, when necessary, may designate postal operators to supply universal postal service as defined in the Universal Service Ordinance.¹¹

In German postal law, a "licensed area" replaces the postal monopoly after 2002.¹² No company may, without a license issued by RegTP, operate a business for delivery of "letter post items" weighing up to 1 kilogram.¹³ Grant of a license is

⁹German Postal Act 1997 (hereafter, "German Post Act"), §§ 4 (definition), 5 (licensed area), and 11 (universal service).

¹⁰RegTP is an agency within the Ministry of Economics. Its presiding committee is composed of 3 members designated by the government on proposal of the Advisory Council, a committee composed of members of the Bundestag and Bundesrat (Parliament). RegTP may hold hearings and compel production of evidence. German Post Act, §§ 44-48, and Telecommunications Act, Part X.

¹¹RegTP may require providers of postal services to respect specific noneconomic principles: secrecy of postal communications and protection of personal data. German Post Act §§ 39, 41.

¹²Until 31 December 2002, the German Post Act grants Deutsche Post an exclusive license to provide licensed services for letter post items and catalogs which: (i) weigh not more than 200 grams each (50 grams for identical printed items sent in batches of 50 or more); and (ii) cost not more than 5 times the basic stamp price on 31 December 1997. The exclusive license applies only if both conditions are met. In addition, there are other exemptions from the exclusive license. In particular, the exclusive license does not apply to letter post items exchanged within or between offices of a document exchange, §51(1)(2), nor to "services distinct from universal services, having special features and higher quality," §51(1)(4). In return for the exclusive license, the Postal Act provides that RegTP shall impose the obligation to provide universal service on Deutsche Post and only Deutsche Post until the end of 2002. §52. This paper focuses on the permanent legal framework created by the German Postal Act after the exclusive license expires (but see note 8, above).

¹³"Letter post" items are defined to mean "addressed written communications." German Post Act, §5(1). Periodicals, "publications appearing on a recurrent basis such as newspapers and magazines," are declared not to be "written correspondence" and thus not "letter post" items. §4(2). Unaddressed items, "communications not addressed to an individual by name but bearing solely a

substantially automatic (“shall be granted unless there is a reason for denial”). Although RegTP may attach “collateral clauses” to a license to ensure fulfilment of the aims of regulation, including safeguarding the interests of customers and ensuring workable competition, such license conditions do not appear to be a primary tool of regulation.¹⁴

RegTP’s rate review authority is focused on providers of “postal services” with “dominant position” (in the sense given in German competition law) and includes services in both licensed and unlicensed areas. “Postal services” refer to commercial delivery services for letter post items and parcels weighing up to 20 kilograms. Delivery services for books, catalogues, newspapers or magazines are considered to be “postal services” only insofar as these items are delivered by companies providing letter post or addressed parcel services. RegTP exercises rate supervision over “postal services” with “dominant position” in four circumstances:

- Rates for nonbulk mailings in the licensed area are subject to approval *before* they become effective.
- Rates for nonbulk mailings in the licensed area may, after approval, be reviewed and condemned if found unlawfully anticompetitive or preferential.
- Rates for postal services charged, other than described above, may be reviewed and condemned if found to be unlawfully excessive, anticompetitive, or preferential.
- Rates for “incidental services” in the licensed area in response to a demand for downstream access by a delivery service without dominant position, may be determined by RegTP.¹⁵

In reviewing rates, the administrative discretion of RegTP is sharply limited by the act and implementing ordinances. The Postal Rates Regulation Ordinance sets out procedures and documentation to be used by RegTP. The Ordinance specifies the licensee’s obligation to submit documents, the structure of the cost statement the licensee must submit, the authority of RegTP to publish data, and the components and the content of price caps to be employed; the Rates Regulation Ordinance also seems to require RegTP to employ price caps for most nonbulk licensed services. RegTP’s review of rates must be completed in approximately two months, a period

collective indication of place of residence or business,” are declared to be not “addressed” and hence are neither “letter post” items nor “addressed parcels.” §4(2). The licensed area excludes letters carried by “courier service,” i.e., a service that “conveys letter post items in such a way that individual recorded items, in the interest of rapid, reliable conveyance, are accompanied at all times on the journey from sender to addressee by a person who has access to the item at all times and who can make the necessary arrangements.”

¹⁴German Post Act, §§ 5-6. The licensed area also does not include delivery of cargo letters, i.e., “letter post items enclosed with another item and relating solely to the contents of that item” §5(2)(2). The precise scope of RegTP’s authority to attach conditions to a license is unclear.

¹⁵German Post Act 1997, §§4, 24, 25, 28, 31(2). The regulator likewise has authority to determine rates for access to boxes in post offices and address correction data maintained by a licensee with dominant position. §§29, 31(1).

that may be contrasted with the ten months available for rate review by the regulator in the United States. RegTP cannot compel Deutsche Post to produce information necessary for rate analysis.

With respect to provision of universal service, RegTP may order a licensee with dominant position to provide postal services in a given area if it determines that universal services, as defined by the act and Universal Service Ordinance, are not being provided by the market. If no licensee can offer the service profitably, RegTP may contract for service. The cost of universal service contracts is borne by a fund administered by RegTP and composed of contributions from licensees having annual sales in excess of DM 1 million.¹⁶

Thus, although separation of governmental and commercial functions is substantial in German law, it is incomplete. The responsibilities of RegTP are largely ministerial. RegTP has little discretion to define the nature of licensed services, the criteria and content of rate review, or the scope of universal service. Members of RegTP appear to have no statutory protection against dismissal by the government. As a practical matter, policy judgements most important to the financial welfare of Deutsche Post are committed to the government, Deutsche Post's majority owner. Moreover, the extent of Deutsche Post's expenditures on new acquisitions has raised serious questions about whether the government is, in effect, funding Deutsche Post's expansion.

German postal reform has also employed the third approach to postal reform: privatization. On 11 November 2000, the German government sold 31 percent of the ownership of Deutsche Post to the public. Sale of a minority share does not yield all of the policy benefits of full privatization because it does not provide for a complete evaluation of the benefits and burdens of the past. Nonetheless, respect for the rights of minority investors will force Deutsche Post to operate more like a private company (and Deutsche Post has declared support for full privatization).

In sum, in contrast to Australia, Germany has embraced a broader and more fundamental concept of postal reform. While Australia has focused primarily on giving the post office commercial flexibility, the German government has embraced all three approaches to reform: commercial flexibility, separation of governmental and commercial functions, and privatization. After the transition period, Deutsche Post will be a normal company operating in a regulatory framework that treats all delivery services in the same manner. Nonetheless, the German postal reform law has been heavily criticized as unbalanced. The essential flaw in the German approach is incomplete separation of governmental and commercial functions. By virtue of postal ordinances and a long transition period, the German government retains substantial authority to shape the legal framework in a manner favorable to

¹⁶See German Post Act 1997, §§13-16. RegTP's authority to designate operators to provide universal service becomes effective only after expiration of Deutsche Post's exclusive license. Licensed operators, having licensed revenues greater than DM 1 million (US\$ 480,000), may be required to contribute to a universal service fund to compensate licensed providers, if any, obliged by RegTP to provide universal services. §§12, 17.

the Deutsche Post, to protect Deutsche Post from regulatory inquiry, and to fund Deutsche Post's competitive ventures through state assets previously transferred to the post office and uncontrolled by the regulator. Since 1997, it has been the competition directorate of the European Commission, not RegTP, that has sought to control anticompetitive practices of Deutsche Post.

2.3 SWEDEN (1998)

On 1 January 1993, Sweden became the first industrialized country to abolish its postal monopoly. Demonopolization was followed by the Postal Services Act of 1993, effective 1 March 1994. This act created a legal framework for delivery services and established an independent regulator, National Post and Telecom Agency (PTS). At the same time, the post office was transformed into a limited liability company, Sweden Post (Posten A.B.), with all shares owned by the government. An administrative order, the Postal Services Ordinance of 1993, set out details of the legal framework. Pursuant to the 1993 act, the government concluded a three-year contract with Sweden Post for provision of universal postal services until 31 December 1996. A second contract between Sweden Post and the government covered universal services until 30 June 1998.

The 1994 legal framework for postal services in Sweden proved unsatisfactory in some respects. A private delivery services company, CityMail, repeatedly complained to Swedish competition authorities about Sweden Post's commercial tactics. At the same time, the government and Sweden Post found it difficult to agree on a third contract for universal service. In 1998, Swedish postal law was substantially amended to strengthen the regulator's authority to assure universal services. In the new environment, Sweden Post and the government concluded a third contract for universal services for the period 1 July 1998 to 31 December 1999, later extended to 1 April 2001. Provisions of this agreement were attached as conditions to Sweden Post's license to provide "postal operations."¹⁷

Postal reform has resulted in substantially greater commercial flexibility for Sweden Post;¹⁸ nonetheless, in the "licensed area," defined below, Sweden Post and other designated operators, if any, must fulfil a universal service obligation. The act defines universal service in general terms: universal service must be of "good quality," provide delivery for parcels weighing up to 20 kilograms, and offer uniform nationwide rates for single piece mail. The act also mandates a national system of

¹⁷Postal Services Act of 1993, as amended (hereafter, "Sweden Post Act"); Postal Services Ordinance of 1993, as amended (hereafter, "Postal Services Ordinance"); PTS Decision of 1 July 1998, File No. 98-10924/30 (Sweden Post License).

¹⁸Sweden Post supported termination of the postal monopoly because it concluded that it could not otherwise obtain from the government the commercial flexibility necessary to adapt to a changing market. Sweden Post was especially concerned with entry of a private company, CityMail. In 1991, CityMail pioneered a low-priced, twice-per-week delivery service for computer generated mail in Stockholm, Sweden's largest city. Applicability of the postal monopoly law to CityMail was considered unclear.

post offices and uniform postage rates.¹⁹ More specific norms are established in an ordinance, adopted by government, and regulations and license conditions, adopted by PTS. The Postal Services Ordinance prohibits Sweden Post from increasing rates for single piece letters weighing 500 grams or less by more than the rate of inflation. Sweden Post's license obliges it to consult to PTS before implementing basic changes in service levels and access conditions.

In Sweden, postal reform includes separation of governmental and commercial functions. As in Germany, the postal monopoly has been replaced by a licensing scheme. The Swedish law provides that no person may, without a license, engage in "postal operations." "Postal operations" are defined as "regular delivery of letters for a charge." The term "letters" is, in turn, defined as "addressed mail that is enclosed in an envelope or other wrapping weighing at most 2 kilograms."²⁰ As in Germany, the Swedish law vests responsibility for universal service in "the government or an authority appointed by the government" rather than in the post office. To ensure universal service, PTS's primary tool is the ability to attach the obligation to provide universal service to one or more postal licenses.²¹ The most important difference between the Swedish law and the German law is the enhanced authority of the Swedish regulator to fashion and enforce license conditions which, in the judgement of the regulator, are needed to protect universal service. Although Swedish law is not entirely clear, it appears that PTS is authorized to attach detailed conditions only to one or more specific licenses, the licenses of operators required "to make universal postal services available." A license holder obliged to provide universal service shall provide "service at prices that are geared to costs," respect limits on postage rates, provide annual reports, establish public procedures for handling complaints, and abide by other conditions established by PTS. Significantly, PTS may also attach accounting and reporting obligations to a universal service license.²²

In practical effect, Swedish regulation, like German regulation, is thus limited to major providers, primarily the incumbent post office. In Sweden, there are about

¹⁹Sweden Post Act, § 1 ("There shall be a nationwide postal service whereby everybody can receive letters and other addressed mail weighing at most 20 kg. Postal services shall be of good quality and the possibility shall exist for everybody to have such mail delivered at reasonable prices. Furthermore, single items of mail shall be delivered at uniform prices."), § 1a ("nationwide counter service throughout Sweden whereby everyone has a possibility of effecting and receiving payments at uniform prices"); Postal Services Ordinance, §§ 2, 4.

²⁰Sweden Post Act, §§ 2-4. Although not addressed explicitly in the act, the PTS has not considered "postal operations" to include (i) the carriage of letters by express services or (ii) carriage of letters enclosed with and related to parcels or freight (cargo letters).

²¹Sweden Post Act, § 5b; Postal Services Ordinance, §7.

²²Sweden Post Act, §§ 5b, 7a, 7b. Paragraph 5.3 of the Sweden Post license provides, "Upon request by the National Post and Telecom Agency, the universal service provider shall submit reports that are based upon the aforementioned accounting principles for costs, revenues, etc., for postal services. In addition, in the manner which the National Post and Telecom Agency requests, access to the documentation and the basis for the calculation system and calculation shall be afforded to the Agency."

50 licensed providers of “postal operations.” Sweden Post (94.8 percent of the market) and CityMail (4.8 percent) are the only large providers; others are small regional companies. PTS has attached universal service obligations to the license of one provider of postal operations, Sweden Post. The Sweden Post license sets out the universal service requirement in terms similar to but less detailed than the German Universal Service Ordinance. Unlike in Germany, the licensing system for “postal operations” is the only form of postal regulation in Sweden. Providers of other delivery services, including express services and parcels within the universal service area, are neither regulated nor required to register with PTS.²³

In contrast to German law, Swedish law provides for a stronger regulator acting within a more limited scope of activities. The result is a higher degree of separation of governmental and commercial functions. At the same time, Sweden Post and other operators enjoy a greater degree of commercial flexibility.

2.4 NEW ZEALAND (1998)

Postal reform in New Zealand was enacted over a ten-year period. In 1987, the post office was reorganized as a “state-owned enterprise,” New Zealand Post (NZ Post). The 1987 act limited the postal monopoly to letters weighing 500 grams or less and transported for NZ\$ 1.75 or less and terminated the government subsidy for the post office.²⁴ In November 1988, a government committee recommended repeal of the postal monopoly despite strong opposition from NZ Post. In October 1989, the government moved to ensure continuation of public services by means of a contractual agreement with NZ Post called a “Deed of Understanding.” Although a change in government postponed repeal of the postal monopoly, a 1990 postal act further reduced the postal monopoly, lowering the weight limit to 200 grams and reducing the price limit in steps to NZ\$ 0.80—less than twice the stamp price of NZ\$ 0.45—by December 1991. The 1990 act also required NZ Post to provide more public disclosure about the quality and costs of services. The Postal Services Act 1998, a comprehensive postal reform act supported by NZ Post, abolished the postal monopoly and imposed certain obligations on private operators. A new Deed of

²³This limitation of the licensed area was provided in the 1998 amendment to the Postal Services Act. In explaining its rationale for the 1998 amendment, the government stated: “The principal reason for regulation of letter and parcel delivery is to protect senders and addressees against the risk of the contents of the mail being revealed to other parties. As letters are generally considered to be particularly worthy of protection from the viewpoint of integrity, it is important that letter mail is subject to the supervision of a supervisory authority. However, as regards parcels, there are convincing reasons speaking against making parcel services subject to such supervision. The market has so far been virtually unregulated.”

²⁴Faced with an end to its subsidy and a likelihood of new competition, in February 1988, NZ Post closed one-third of its post offices and increased an annual fee for rural delivery (rural addressees unwilling to pay the fee had to collect their mail at the nearest post office) A public outcry followed, but a Parliamentary inquiry concluded the only major problem posed by the closures was difficulty in maintaining rural banking services and recommended nonpostal remedies. After 1990, NZ Post improved efficiency, increased letter volume, developed new services, and produced operating profits. In 1995, NZ Post abolished the rural delivery fee.

Understanding was also concluded between the government and NZ Post.

The New Zealand law provides for minimal restraints on the commercial flexibility of NZ Post and other companies providing postal services. The law neither defines nor imposes a universal service obligation on the sector. The aim of the act is consumer protection. A “postal operator” is defined as a person whose “business consists, wholly or partly, of the carriage of letters.” A “letter” is “any form of written communication, or any other document or article that is addressed to a specific person or a specific address and conveyed other than by electronic means” and delivered for a charge of NZ\$ 0.80 (US\$ 0.37) or less. Thus defined, “postal operators” are required to take special care in handling “postal articles,” i.e., any letter, parcel, or other article carried by a postal operator. Specifically, postal operators must (i) file a simple registration with the Minister; (ii) mark each postal article with that operator’s postal identifier; (iii) respect the privacy of postal communications; (iv) report to the government if a postal article or letter is posted in contravention of law; and (v) keep a record of postal articles detained or opened and notify addressees.²⁵

The only other limitation on NZ Post’s commercial freedom is contractual in nature. Under the “Deed of Understanding” agreed with the government, NZ Post promises, *inter alia*: (i) to provide 6-day per week delivery service to more than 95 percent of delivery points; (ii) to maintain the stamp price below NZ\$ 0.45 (US\$ 0.21); (iii) not to introduce a rural service fee;²⁶ and (iv) to maintain a specified number of post offices (some operated by NZ Post and some franchised to others).²⁷ Terms of the Deed are substantially less onerous than, for example those provided in the German Universal Services Ordinance. Virtually all of these provisions are voluntarily satisfied or exceeded by New Zealand Post.²⁸ Unlike a universal service obligation prescribed by regulation, the Deed appears to give NZ Post greater assurance that terms of universal service will not change within the period specified in the Deed.

Since governmental intervention in the postal services market is minimal, the need to separate governmental and commercial functions is largely obviated. There is no postal monopoly, licensing scheme, or active regulator. New Zealand law does not address directly possible abuse of commercial advantages inherited from NZ

²⁵Postal Services Act 1998, §§ 2 (definitions), 5 (detention of letters), 10 (illegal letters), 12 (records of detentions), 20 (privacy), 26 (postal operator), and 39 (postal identifier). In addition, postal operators shall assist in carrying out the provisions of the Trade in Endangered Species Act and may be obliged to comply with additional regulations adopted by the government “for the purposes of ensuring the orderly efficient operation of the New Zealand postal system.” §60. The term “parcel” does not appear to be defined in the act, leaving the definition of postal article somewhat open-ended.

²⁶See note 24, above.

²⁷The government has agreed that NZ Post shall be the sole designated postal operator authorized to represent at the Universal Postal Union for five years.

²⁸In 1995, NZ Post voluntarily reduced the first class stamp price from NZ\$ 0.45 to NZ\$ 0.40 (US\$ 0.18), the current level.

Post's days as a governmental agency. The only supervision is found in disclosure regulations which appear designed to deter anticompetitive behavior. For example, NZ Post is required to disclose the number of bulk mail contracts at each discount level and the justification such discounts. Periodic strengthening of disclosure requirements imposed on New Zealand Post since 1990 suggests that government initially underestimated the competitive problems posed by deregulation.

Of the six postal reform laws reviewed, the New Zealand law comes the closest to reclassifying the postal sector as an ordinary commercial activity. This approach implies almost complete commercial flexibility and separation of governmental and commercial functions. Nonetheless, because of certain commercial advantages inherited from the past and the persistence of 100 percent governmental ownership, NZ is not quite "just another private company."

2.5 THE NETHERLANDS (1998)

Between 1988 and 2000, the Netherlands government has transformed the Dutch Post Office into a separate, largely privatized, and substantially competitive undertaking. The Postal Act 1988 reorganized the Dutch post and telecommunications administration into Royal PTT Nederland NV (KPN), a private limited liability company. PTT Post, the postal subsidiary of KPN, was obliged by the 1988 act to maintain universal postal service in the Netherlands in return for a monopoly over the carriage of letters weighing up to 500 grams. The act also provided for a price limit on the monopoly: private carriage of a letter was permitted if the price of carriage exceeded an amount set by administrative order.²⁹ In 1994, the Dutch government sold 30 percent of KPN to the public; subsequent sales reduced the holdings of the government to 43 percent. In June 1998, KPN "demerged" into two companies, the new KPN, a telecommunications company, and TNT Post Group (TPG), a post and transportation company. In 1999, the Netherlands adopted an amendment to the Postal Act of 1988 which reduced further the scope of the postal monopoly. Two administrative regulations implementing the act became effective on 1 June 2000.³⁰

Corporatization and partial privatization has allowed the Dutch Post Office to pursue an aggressive and innovative commercial strategy outside the traditional postal sector. In 1991, KPN joined the public postal operators of France, Germany, Sweden, and Canada to form a consortium, GD Net, which bought half of TNT Express Worldwide, a leading private international express company. In July 1996, KPN and Sweden Post bought the shares of the other public postal operators of GD Net, and KPN became the majority shareholder. In October 1996, KPN initiated a purchase of TNT, the Australian company that owned the private portion of TNT

²⁹In 1989, an administrative order set the minimum rate for private carriage at NLG 11.90 (about US\$ 6.00) for letters transported within the Netherlands and to other parts of the European Union and at NLG 17.50 (US\$ 9.00) for letters to countries outside the European Union.

³⁰General Directive for Postal Services (BARP) (Besluit algemene richtlijnen post), 1988, as amended, and Postal Decree (Postbesluit), 2000.

Express. This acquisition gave KPN, or TPG after demerger, majority ownership and complete control of TNT Express.

With respect to traditional postal services, the Postal Act imposes certain restrictions on TPG in the form of a universal service obligation. The act obliges TPG, as the “concessionaire” designated by law, to maintain a universal postal service for letters and printed matter weighing up to 2 kilograms and for parcels weighing up to 10 kilograms. The universal service obligation is limited, however, to “postal items which have been deposited in letter boxes of the public postal operator that are intended for the public or which have been tendered at premises of the public postal operator that are intended for this purpose.” This innovative definition of universal service excludes bulk mail collected at the business premises of the mailer. Much as in Australian law, under Dutch law, postal services for bulk commercial mail are considered commercial services outside the special rules of the postal regime. Unlike in Australia, however, the universal service obligation in the Netherlands substantially exceeds the scope of the postal monopoly. The Minister is further authorized to issue regulations determining the quality and tariffs of universal service.³¹ In these regulations, the Minister has prescribed price caps, delivery standards, and minimum access requirements for the universal service.

Dutch law does not provide strict separation of governmental and commercial functions. As in Australia, the post office enjoys a legal monopoly over a relatively limited portion of the mail. The monopoly covers carriage of a letter if it weighs 100 grams or less and is conveyed at a postal tariff lower than that determined by administrative order.³² The Postal Decree sets the price limit for private carriage at three times the basic stamp price. As in Germany, the Minister exercises both ownership and regulatory authority over the post office, and an independent regulator is charged with the largely ministerial task of enforcing laws and regulations. In addition to determining the details of universal service, the Minister may regulate accounting practices, establish a consultative users group, create a board to resolve certain user complaints, issue guidelines relating to unfair competition, establish limits on increases in basic postage rates, and issue orders on placement and dimensions of letter boxes. The regulator is the Independent Post and Telecommunications Authority (OPTA). OPTA is empowered to enforce compliance with the Postal Act and regulations of the Minister by imposing administrative fines up to NLG 1 million (US\$ 425,000), except that the Minister can enforce directly

³¹The law defines “letters” as “written communications and other documents, whether in envelopes or not, with the exception of those of which a number of identical copies have been produced by means of printing or other duplicating techniques for the purpose of distribution and which have not been altered by additions, deletions or indications other than the address.” Postal Act 1988 as amended (hereafter, “Netherlands Post Act”), §§ 2, 5.

³²Netherlands Post Act, §§ 1-2. The term “letter” does not include direct mail, i.e., identical printed advertisements. The reserved area also excludes: outbound international letters, §2b; cargo letters, §2c(1)(d); and document exchange letters, where “document exchange” is defined in the same manner as in the EU Postal Directive, §2c(2). The public postal operator has the exclusive right to establish letter collection boxes along public highways. §2a(2)(a).

certain extraordinary orders (relating to, *inter alia*, international postal conventions).³³ The public postal operator is required to offer other delivery services access to its post boxes (rental boxes located in post offices) at reasonable fees. OPTA is responsible for resolving disputes about appropriate fees.³⁴

As noted above, the Netherlands government has sold 57 percent of the post office, TPG, to private owners. The Dutch post office is only one in this survey that is more than 50 percent privatized. When acting as regulator of the postal sector, the government must take into consideration the rights of TPG's private shareholders as well as its own proprietary interests. Hence, substantial privatization implies constraints on commingling governmental and commercial functions in addition to the formal constraints set out in the organic arrangements of the act. Nonetheless, rights of private owners are qualified by the Dutch government's retention of a "golden share" that allows it to disapprove certain types of fundamental corporate transactions.

In sum, the postal reform law in the Netherlands is a blend of the approaches of Australia and Germany. As in Australia, the post office in the Netherlands benefits from legal privileges and discharges governmental responsibilities. In both countries, a relatively low postal monopoly threshold is balanced by a flexible definition of the universal service obligation. Like Germany, the Netherlands has established a postal regulator who, although independent, is largely constrained to implement policies established by the act and by government. In addition, the strong emphasis on privatization in the Netherlands contributes an additional dimension to the reform philosophy of the Netherlands.

2.6 UNITED KINGDOM (2000)

In June 2000, the United Kingdom adopted a postal reform law after six years of consideration. In June 1994, the Conservative government published a "green paper" on postal services that proposed reductions in the postal monopoly and privatization of 51 percent of the post office. Although supported by the British Post Office, this proposal was narrowly defeated in Parliament. In July 1999, a new Labor government proposed a modified plan for postal modernization that eschewed privatization. On 28 July 2000, the Postal Services Act 2000 was given final assent by the Queen. The act reorganized the British post office as an ordinary private law company, *Consignia*, and transferred governmental authority to a new regulatory body, the Postal Services Commission or "Postcomm." Postcomm is composed of a chairman and at least three other persons appointed by the Minister for terms

³³OPTA can also levy administrative fines on private operators for violation of the reserved area. §§15a-15b. OPTA is also responsible for regulatory tasks delegated by the Minister or not committed to him. OPTA may investigate violations of law within its jurisdiction and issue orders or impose fines to enforce its decisions. Netherlands Post Act, §§14b, 15-15c.

³⁴Netherlands Post Act, §§ 1, 2d, 5, and 9.

determined by the Minister.³⁵ Consignia is owned by the government and may benefit from certain financial arrangements with government but is in other respects a private delivery service company. The postal monopoly enjoyed by the British post office since 1660 was abolished and replaced by a licensing scheme.

The British postal act envisions substantial limits on the commercial flexibility of the British Post Office and other providers of postal services. No person may operate a business for delivery of “letters” without a license issued by Postcomm unless, for each letter transported, (i) the price of service is at least UKL 1.00 (US\$ 1.50) or (ii) the weight of the letter is at least 350 grams.³⁶ To such licenses, Postcomm is obliged to attach whatever conditions it considers necessary to meet three public policy goals, to be satisfied seriatim. First, Postcomm is directed “to ensure the provision of universal service.” “Universal service” is defined to include at least delivery each working day of “relevant postal packets” to each address in the country except in “exceptional circumstances” as determined by Postcomm. Service must be provided at “affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.” “Relevant postal packets” refer to documents and parcels weighing up to 20 kilograms. Second, to the extent consistent with the first goal, Postcomm is directed to “further the interests of users of postal services, where appropriate by promoting effective competition between postal operators.” Third, to the extent consistent with the first two goals, Postcomm is directed to “promote efficiency and economy on the part of the postal operators” with special attention to disadvantaged users.³⁷

Within these broadly stated criteria, Postcomm may fashion almost any legal regime that it deems appropriate. Although Postcomm has no regulatory jurisdiction over service providers operating wholly outside the licensed area, it may place conditions on services which a licensed operator provides outside the licensed area. On 23 March 2001, Postcomm issued the first postal license to Consignia. Twenty conditions are attached, addressing issues such as prices, universal service obligations, standards of service, complaint handling, free services for the blind, provision of information to users, integrity of mail, access to postal facilities, prohibitions against unfair commercial advantage, mergers, accounting rules, financial resources, and reports to Postcomm. The universal service obligations set

³⁵The Minister must approve the pay and expenses of Postcomm members and may dismiss members for “misbehavior.” Postal Services Act 2000 (hereafter, “U.K. Post Act”), § 1, Sched. 1.

³⁶A “letter” is defined as “any communication in written form on any kind of physical medium to be conveyed and delivered to the address indicated by the sender on the item itself or on its wrapping (excluding any book, catalogue, newspaper or periodical).” U.K. Post Act, § 125(1). In addition to the price and weight limits of the licensed area, the act provides a number of other exemptions from the licensed area, including: outbound international letters, §7(d); cargo letters, “letters concerning, and for delivery with, goods,” §7(g); and document exchange letters, i.e., letters carried within or between offices of a document exchange, §7(n).

³⁷U.K. Post Act, §§ 3-5, 125. The Postcomm is authorized to grant licenses for service in the licensed area, §11, and to attach virtually any type of condition (“such provisions as the Commission considers appropriate; and a provision need not relate to anything authorised by the licence,” §13(1).

out in the Consignia license are detailed. For example, Consignia must make delivery to each address point at least once each working day. It must establish collection boxes so that “in each postcode area where the delivery point density is not less than 200 delivery points per square kilometre not less than 99% of users or potential users of postal services are within 500 metres of a post office letter box.” Consignia is required to maintain a tariff for relevant postal packets that is “a public tariff that is uniform throughout the United Kingdom.” Prices for letter services within the licensed area (about 66 percent of services) may not be increased without approval by Postcomm. Prices for postal services outside the licensed area but lacking effective competition (about 24 percent of services) may not be increased more than inflation. Postcomm has required Consignia to make its address database available to all operators.³⁸

Separation of governmental and commercial functions is thus almost complete in the United Kingdom. Virtually all governmental privileges and burdens are determined and imposed by an independent regulator on all license providers of postal services. In addition to regulation by Postcomm, the Postal Services Act establishes a regulatory role for two other independent bodies: the Consumer Council for Postal Services (Postwatch) and the Competition Commission. Postwatch is a users group appointed by the Minister on terms established by the Minister. Postwatch is authorized to advise the Postcomm, the Minister, and others on postal issues and to investigate complaints. In exercise of its duties, the Postwatch is authorized to use legal process to obtain information. The Competition Commission is a separate regulatory body whose concurrence is required before the Postcomm can modify a license.

In the United Kingdom, the Minister retains some policymaking authority, but this appears minimal compared to the corresponding authority of ministers in Germany and the Netherlands. The Minister is authorized to modify the list of exemptions from the licensed area on recommendation of the Postcomm. The Minister may also designate one or more postal operators as “universal service providers” if they provide all or part of the universal service. Designation as a “universal service provider” gives the designee certain rights, including protection from defacement of post offices and letter collection boxes, protection from obstruction of activities, exemption from tort liability, and authority to require carriage by ship or aircraft.³⁹

The British law provides for 100 percent ownership of Consignia by the government. However, the government has recently intimated that it will seek to privatize Consignia after the next general election.

³⁸In order to enforce conditions attached to a license, the Postcomm may seek a judicial injunction or levy a fine. U.K. Post Act, §§ 29(5), 30.

³⁹U.K. Post Act, § 4 (designation of universal service providers), § 8 (exemptions from postal monopoly), 86-94 (protections for universal service providers). Moreover, the Minister retains authority to issue orders to modify “any enactment, instrument or other document” to give full effect to any provision of the act. § 127.

The British postal reform law is most closely akin that adopted in Sweden in that it relies primarily upon the discretion of the regulator to effect postal policy by attaching conditions to licensees. Nonetheless, the British law extends well beyond the Swedish law in several important areas. First, the British regulator is given greater power to define the universal service obligation; in Sweden, the regulator is bound by the universal service definition promulgated by government and potentially influenced by government’s ownership interest. Second, the British regulator is charged with attaching conditions that safeguard not only universal service but also competition and efficiency. Third, the British regulator is explicitly permitted to place conditions on a licensee’s services outside the licensed area. Fourth, the British regulator is expected to attach conditions to all licences, not only to licenses of operators providing universal service. Overall, the British regulator has far greater authority to develop a flexible and procompetitive postal a services sector. By the same token, the British regulator also has extraordinary authority to abrogate market forces and reshape the postal services market in a manner that it deems more suited to the public interest.

3. CONCLUSIONS

The six postal laws surveyed exhibit significantly different approaches to reform. This paper has suggested that differences in approach may be understood as different mixtures of three philosophical ingredients: commercial flexibility, separation of governmental and commercial functions, and privatization. For the six countries discussed, the weighting of these ingredients might be summarized as follows.

Table 3-2. Attributes of modern postal reforms

	Commercial flexibility	Separation of functions	Privatization
Australia	★★★	★	
Sweden	★★★	★★★★	
Germany	★★★★	★★	★★
New Zealand	★★★★★	★★★★★	
Netherlands	★★★★	★★★	★★★
United Kingdom	★★	★★★★★	

Why do approaches to postal reform differ? To some extent, differences in approach appear to reflect differences in legal and political culture. Anglo American countries rely more heavily on regulation and laissez faire economic policy (yet Australia is an exception); European countries prefer greater governmental control (yet Sweden is an exception). The tendency of countries to learn from precedent also seems to be a factor. Sweden and New Zealand both underestimated the extent to which regulatory authority or public disclosure is needed to balance increased commercial freedom for the post office and amended initial reform laws accordingly

(the German experience could be interpreted to point in the same direction); in the most recent reform law, adopted in the United Kingdom, the authority of the regulator is the most fully defined. Still another factor is likely the uneven distribution of legislative craftsmanship; at any given time and place, some parliaments write more thoughtful laws than others.

Regardless of political philosophy, however, a comparative evaluation of leading postal reform laws reveals policy options that should be considered by any legislator addressing postal reform anew. A broad, politically popular definition of universal service must be weighed against commercial flexibility for the post office. The extent of governmental invention in the market directly affects the need to separate commercial and governmental functions; thus, the minimal regulation required in the New Zealand approach and the maximum reliance on regulation endorsed by the United Kingdom represent quite different public policy choices. The economist appears correct in arguing for more serious attention to privatization; privatization can reinforce, but not supplant entirely, other approaches to reform. In short, in light of the six postal reform laws discussed, the wise legislator will now seek a balance of all three approaches to postal reform.

4

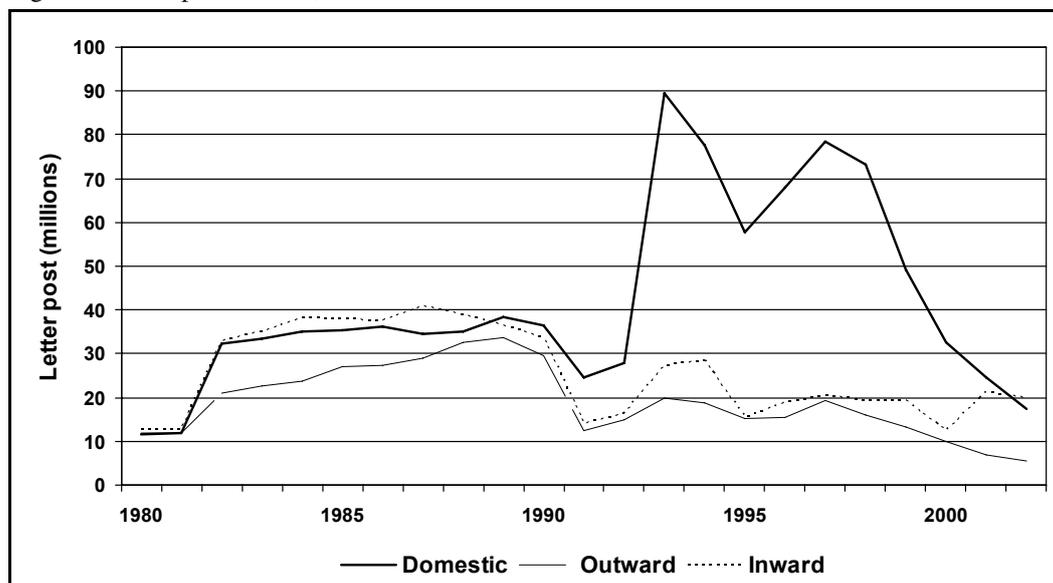
Postal Reform In Jordan (2004)*

In the Kingdom of Jordan, an energetic and economically sophisticated government is trying to promote growth of a modern communications and distribution infrastructure. Jordan seeks not only national development but also a position as a regional center of commerce. Despite successful privatization of the telecommunications sector and the availability of exceptional private delivery services, the government of Jordan has yet to devise a postal law that fully meets the needs of the nation. The Jordanian post office is characterized by inefficiency, poor service, low volumes, and large public subsidies. Although government has conscientiously consulted experts from the most economically advanced countries and thoroughly revised the postal law, at the end of 2003 an exasperated Council of Ministers concluded that the only way to fix the post office was to sell it, most likely to a foreign postal operator.

This article summarizes the background and progress of postal reform in Jordan. The article shows, in particular, how the postal sector in Jordan has been shaped by policies forged in economically advanced countries without attention to the specific needs of Jordan. As an alternative approach, the article suggests that Jordan may be well placed to leapfrog the postal paradigms and reforms of the economically advanced countries and to move directly towards a flexible and competitive delivery services sector suited to the twenty-first century. A traditional "modern postal service" may be as inappropriate for Jordan as a ubiquitous and exclusive network of fixed-line telephone services. Rather than selling Jordan Post Corporation to a foreign postal operator—or even to a Jordanian concern—to build up "universal postal service" while protecting the new owner from local competitors, government might serve the future needs of the nation better by considering more creative solutions consistent with the logic of a truly modern delivery services sector.

*Paper presented at a seminar held by the Wissenschaftliches Institute für Kommunikationsdienste, "Regulating Postal Markets: Harmonised Versus Country-Specific Approaches," 8th Königswinter Seminar, 14-16 February 2004.

Figure 1. Letter post volume, 1980-2002



1. POSTAL AND DELIVERY SERVICES IN JORDAN

Jordan is a young nation created from an ancient land. What is now Jordan has been ruled by Egyptians, Assyrians, Babylonians, Greeks, Romans, Muslims, and for several centuries prior to World War I, Ottoman Turks. After the war, the victorious British and French were given control of most of the Middle East under a mandate from the League of Nations. Each divided its allotted territory into administrative units. "Transjordan" was formed as an emirate by the British and became an independent country in 1946.

Today Jordan is a developing country, but one that is relatively prosperous and strongly committed to modernization of its economy. Located about 40 kilometres east of the eastern edge of the Mediterranean Sea, Jordan is landlocked except for access to the Gulf of Aqaba, the northeastern extension of the Red Sea. Jordan is slightly larger than Portugal in Europe or the state of Maine in the United States. About 3 percent of Jordan is arable compared to 22 percent of Portugal and 2 percent of Maine. About 90 percent of Jordan's estimated 5.3 million citizens live in the northwestern portion of the country bordering Israel and Syria. Amman, the largest city, is home for about one-third of Jordanians. Overall, 80 percent of residents live in cities. Jordan's gross national income (GNI) per capita in 2001 was about US\$ 1,750 (16 percent of Portugal's or 6 percent of Maine's). Measured by GNI per capita, Jordan ranked 108th among 208 countries as reported by the World Bank.¹

The national post office of Jordan was, until corporatization at the start of 2003, the Jordan Postal Administration (JPA). In 2002, JPA employed about 2,300 persons and operated over 400 post offices. Eight major postal routes connect the

¹World Bank, *World Development Indicators 2003* (2003).

network of post offices to a single manual sorting center in Amman. According to official figures, between 1997 and 2002, domestic mail volume dropped 78 percent, from 79 million to 17 million items. Outward international mail experienced comparable declines. Inward international mail volume, however, remained fairly constant so that inward international mail now accounts for a little more than half of all mail delivered by the Jordanian post office (i.e., the domestic mail plus the inward international mail). See figure 1. In 2002, JPA reported delivering about 7.2 postal items per capita in 2002.

As figure 1 indicates, however, official mail volume figures are so volatile as to be inherently incredible. In 2002, a consultant's review of JPA mail volumes suggested that each domestic postal item was being counted twice, once as it left the originating post office and once as it was received by the destination post office. This discovery implied that the official domestic volume figure was 50 percent too high. At the same time, however, the consultant's quick survey of major mailers suggested that the official mail volume figure might be 10 or 15 percent too low. Thus, even a rough estimate of the actual domestic mail volume was deemed impossible.² Volume figures for international mail are likewise unreliable. They are derived from the weight of inbound and outbound mail (international mail must be weighed to prepare accounts for other post offices and international transport companies). Total weight is translated into mail volume using an average weight per item that is little more than a guess. In short, while it is reasonably clear that the volume of mail in Jordan has declined substantially, it unclear by how much or how losses have been distributed among different traffic streams.

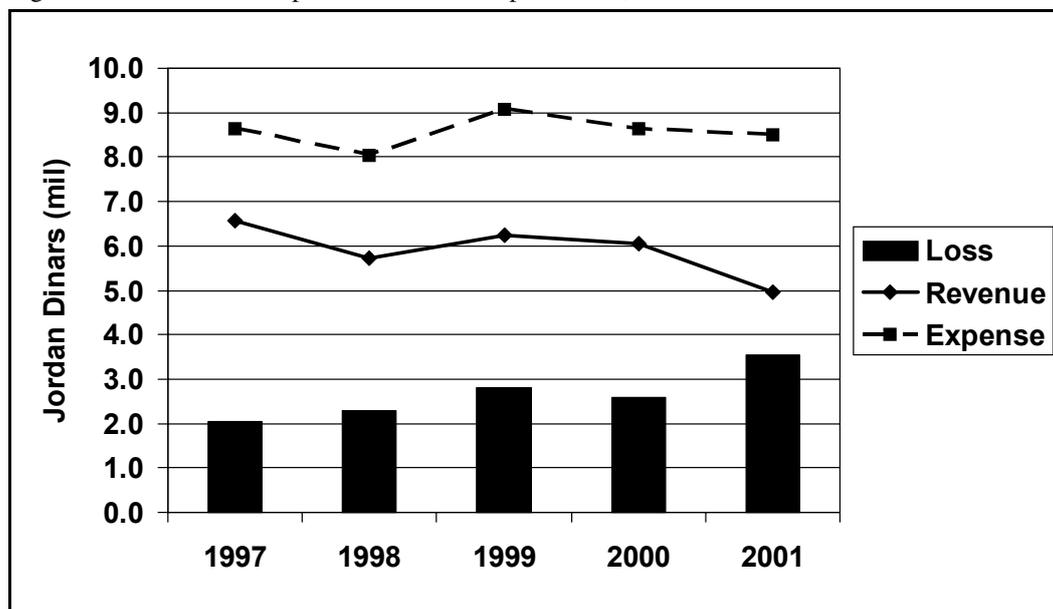
A reduction in mail volume is also implied by a reported decline in the amount of mail being delivered to the door of the addressee. In 2002, only about 10 percent (informal estimates by Jordanian officials) or 20 percent (JPA's official figure) of the mail was delivered to a home or office. Almost all mail is deposited in a box or bin at the local post office for collection by the addressee. According to official figures and anecdotal evidence, the percentage of mail delivered to the door was significantly higher a decade ago. Post office box delivery exacerbates the effects of low volume. Since mail volume is so low, residents check their post office box only rarely, which in turn renders the mail poorly adapted to many types of communications.

Insecurity of the mails is another problem. Almost no one entrusts checks or other valuables to the mail. Utility bills are paid in person, either at the offices of the utility company or at the counter of the local post office.

The financial condition of JPA reflected this dismal record. Between 1997 and 2001, revenues declined from 5.7 to 5.0 million Jordanian dinars (at the end of 2001, one dinar equalled about US \$ 1.40). In the same period, expenses increased from 8.0 to 8.5 million dinars. Thus, in 2002, about 3.5 million dinars, 44 percent of JPA's budget, was government subsidy. See figure 2. Although JPA did not have

²Decision Analysis, *Postal Sector Study*, 2-2 to 2-3.

Figure 2. Revenues and expenses of Jordanian post office, 1997-2001



a balance sheet, as one consultant put it, "The conclusion can be justified that Jordan Post actually is bankrupt".³

Postal service in Jordan is thus qualitatively different from the modern postal service found in economically advanced countries. While the Jordanian post office delivers 7 postal items per capita per year, the U.S. Postal Service delivers 700 postal items per capita and post offices in the European Union average 200 items per capita. The entire postal system in Jordan handles only as much mail as a small town post office in the United States or the post office of a medium sized town in Europe. In reality, the postal system in Jordan is most comparable to postal service in Europe or the United States in the mid-nineteenth century. In United States, for example, in 1850 the U.S. Post Office handled about the same number of items per capita as the post office in Jordan today and likewise required almost all addressees to collect the mail from a local post office.⁴

While public postal services in Jordan have been in decline, private delivery services have thrived. Jordan is one of the rare developing countries to give birth to a significant international courier company, Aramex. Aramex was founded by a young Jordanian, Fadi Ghandour, in the early 1980s to transport urgent documents between New York and Amman. Today (2004), Aramex has 134 offices in 34 countries and provides a range of courier, freight, and logistics services. Within Jordan, Aramex provides nationwide delivery of parcels, newspapers, and telephone

³Nepostal, "Jordan Postal Sector Restructuring", Part F: Financial Scenarios, 6.

⁴The U.S. Post Office did not begin significant door-to-door delivery services for the mail until 1863 when the mail volume was about 20 postal items per person per year. Regular door-to-door delivery of the mail in villages and rural areas did not begin until 1902 and did not reach substantially every address in the U.S. until well after mid-century.

bills. A second major domestic courier is D & C, a Lebanese company that has established an extensive network for delivery of bills for Jordan Telecom. Telephone companies use private couriers to deliver bills because, unlike Jordan Post, the couriers deliver to the door of the addressee. Couriers are also used to collect payments. Both Aramex and D & C deliver more postal items to the door than the Jordanian post office. In addition to these substantial national couriers, Jordan is served by the four global private express companies: DHL (Deutsche Post), FedEx, TPG (Dutch post office), and UPS (United Parcel Service). Finally, Jordan has the usual complement of uncounted taxis, bus companies, messengers, and cartage agents that deliver documents among other things.

2. THE COURSE OF POSTAL REFORM

2.1 EARLY POSTAL LAW OF JORDAN

The Jordanian post office was established in the 1920s while Jordan was still a protectorate of Great Britain.⁵ The postal law consisted of a few sentences that summarily authorized the amir to adopt regulations implementing the Universal Postal Convention and prescribing postage rates. Under this law, government adopted detailed regulations, called "by-laws", that closely followed the provisions of the Universal Postal Convention. Similarly skeletal postal laws remained in effect after independence in 1946,⁶ and by-laws based on the Universal Postal Convention governed the postal service of Jordan as late as 2001.⁷

Prior to 2002, the only other postal laws in Jordan consisted of brief acts allocating governmental authority. In 1975, an act authorized the Ministry of Transport to provide postal services on a monopoly basis.⁸ In 1988, authority to provide postal services and a postal savings fund was transferred to the Ministry of Post and Telecommunications. The 1988 act was derived from the 1975 act and consisted of thirteen articles.⁹ Article 3 established the Jordan Postal Administration (JPA). Article 7 reenacted the postal monopoly but also authorized the Council of Ministers to issue licenses permitting persons to provide additional postal services as needed by society. Using this flexibility, the Council encouraged development of private express and parcel services, both local and international. By 2001, the Council had issued six licenses to private companies to provide a variety of specialized international and domestic postal services. The annual fee for each license was set at 10,000 dinars (about US\$ 14,000).

⁵Law Related to opening post offices (1925); Ratification of the Stockholm Agreement (1926) (refers to the Universal Postal Convention of 1924);

⁶*See, e.g.*, International Postal Treaties, Law No. 13 (1941).

⁷Postal & Postal Parcels, By-Law No 2 (1955).

⁸Postal Services Law, Law No. 26 (1975).

⁹Postal Services Law, Law No. 12 (1988) (amended by the Law No. 23 (1992)).

2.2 FIRST STEPS TOWARDS POSTAL REFORM

In Jordan, reform of the public postal system was approached as one element of a broader plan to modernize the economy by introducing private sector methods and incentives. This "privatization" program was set in motion in 1996. In 1998, public bus services were contracted out to three private companies. In 1998, the management and one-third of the ownership of the state-run cement factory was turned over to a French company. In 1999, management of the public water utility was entrusted to a French company. In 2000, 40 percent of Jordan Telecomm, the public telecommunications monopolist, was sold to France Telecomm. In addition, two competing licenses for mobile telephone services were granted, one to Jordan Telecomm and one to FastLink, a wholly private company.

In June 1999, government decided to restructure the Jordan Postal Administration to raise efficiency and reliability. The first step was to ask a business consultant, Hans Kok of the Netherlands, to assess the condition of the post office. In October 1999, Kok reported unfavourably: "[JPA] is completely embedded in a government administration and culture and needs fundamental restructuring to be of meaning for the socioeconomic development of the country, the development of the transport and distribution infrastructure and the development of the postal market and service to the customers in the Kingdom." He concluded that the JPA wholly lacked the skills and incentives needed to provide modern postal service. "The real problem," he wrote, "is the [poor] qualitative fit of staff both in terms of 'culture/mentality' and 'professional knowledge and skills'". Kok recommended transformation of JPA into a normal company and a management contract with an experienced postal operator with or without sale of a portion of the company to the new manager.¹⁰

Pursuant to Kok's recommendations, and guided by the Council of Ministers, in January 2000, government drafted an informal statement of postal policy to guide a broad review of the postal laws and the institutional organization of JPA. This statement identified the key objectives of postal policy to be: (1) to satisfy the increased demand on postal services; (2) to improve the quality of service and introduce new services; (3) to reduce the sector dependence on government budget; (4) to stimulate private sector investment in the sector and foster competition; and (5) to develop the postal sector to play a pivotal role as a component of the infrastructure that serves the national economy. The informal policy statement also embraced several strategies to achieve these objectives. Governance of the postal sector would be divided among three separate offices: policy maker, regulator, and operator. Private sector participation would be encouraged. And, with respect to organization of JPA, corporatization and retention of an international postal operator to manage the new company were tentatively endorsed.¹¹

¹⁰Kok, "Postal Sector Restructuring", 4.

¹¹Jordan, MoICT, "Postal Sector Policy".

At the same time, government envisioned that the Telecommunications Regulatory Commission (TRC) would be charged with regulating the postal sector "according to the latest developments in the postal market worldwide". The Commission would "guarantee the development and updating of the postal services network and ensure the provision of postal services at acceptable costs and high quality to all beneficiaries". The Commission would, as well, "establish a fair competition environment among all operators in the sector". In particular, the Commission would establish cost-based price caps for universal postal services.

2.3 NEPOSTAL REPORT AND THE POSTAL LAW OF 2001

In December 2000, the government retained Nepostal Postal Affairs to develop a plan for reorganizing the Jordan Postal Administration. Nepostal was the consultancy arm of the Dutch post office, one of the most commercially advanced post offices in the industrialized world. The Arab Jordan Investment Bank and the local law firm of Dajani and Associates assisted Nepostal in preparation of this study. In March 2001, the Nepostal report, *Jordan Postal Sector Restructuring Project*, was completed. The report included a draft postal law and a proposed revision of the postal policy statement.

Like Kok, Nepostal identified two major options for reforming Jordan Post: a multi-year management contract and immediate privatization by sale to a strategic partner. In either case, corporatization would be a necessary first step. Of the two options, Nepostal's first choice was immediate privatization: "Such a privatisation will not bring major positive financial benefits to the Government of Jordan. However it clearly limits the financial risks of the Government of Jordan, compared to engaging into a management contract."¹² In either case, Nepostal recommended granting the new corporation a monopoly over the transport of letters and certain other legal privileges. Nepostal also proposed that the new company be obliged to provide universal postal services as specified in a "Performance Contract" agreed between the company and the government. The Telecommunications Regulatory Commission would be empowered to monitor the company's adherence to the Performance Contract. It would also be authorized to set rates for postal services covered by the postal monopoly and for rent of post office boxes.

In December 2001, the Council of Ministers approved a new temporary postal law pending convocation of parliament by the King.¹³ The main thrust of the new Postal Law was to transform the post office from a ministerial agency into a corporation, Jordan Post Corporation (JPC). All shares of JPC are owned by the government. As recommended by Nepostal, the new law granted JPC a monopoly, provided for a Performance Contract, and established the Telecommunications Regulatory Commission as postal regulator.

Although the Postal Services Law of 2002 was derived from the draft law

¹²Nepostal, "Jordan Postal Sector Restructuring", Part F: Financial Scenarios, 14.

¹³Temporary Law No. 5 (2002), Postal Services Law.

prepared by Nepostal, important changes were introduced before final adoption. In contrast to the Nepostal recommendations, the new law extended the postal monopoly to include small parcels as well as correspondence. The law also raised the price limit for the postal monopoly—i.e., the minimum price that a private operator must charge in order to carry a postal article weighing up to 500 grams outside the mail—so high that existing courier services would have to be curtailed. Moreover, an ambiguous last minute amendment seemed to authorize the Commission to regulate the operations of the licensed, but heretofore essentially unregulated, private operators.

2.4 RECONSIDERATION AND THE DECISION TO PRIVATIZE

In early 2002, Jordan Postal Administration was reorganized as Jordan Post Corporation complete with a board of directors composed of leading citizens.¹⁴ A former official of the ministry was named director general of the new company. Progress was slow, however. The new director general appeared unwilling or unable to put in place an credible management team or develop a viable plan for improvement of postal services (including, it was hoped, substantial enlargement of door-to-door delivery). A basic problem was clearly an excess of employees. Although the new director general estimated that the company could manage with half of the employees of JPA, JPC and government found it difficult to agree on a plan for retrenchment.¹⁵

In the summer of 2002, government retained another consultant, an American company, Decision Analysis, to evaluate possible strategies to privatize JPC. The consultant was also asked to recommend corresponding adjustments to the regulatory framework.

The November 2002 report of Decision Analysis recommended against immediate sale of JPC to a strategic partner, the option under most active consideration by government.¹⁶ Decision Analysis pointed out that the new law had considerably strengthened the monopoly of JPC, not only by changes to the Nepostal proposal but also by following Nepostal's recommendation of eliminating the authority of the Council to create licenses within the area of monopoly. Then, too, Decision Analysis expressed concern about the weak regulatory restraints placed on JPC. Under the new law, JPC's consent was needed to impose a specific universal service obligation in the Performance Contract. Moreover, the ability of the Commission to refine the universal service obligation and to monitor the JPC's activities was relatively limited, both in law and in practice.

¹⁴Jordan Post Company was registered on April 16, 2002. The company did not assume full operational responsibility for the post office until January 1, 2003, the "vesting date" set by the Council.

¹⁵JPC and government ultimately agreed that JPC would keep all employees for 18 months and then return unneeded employees to the government.

¹⁶Decision Analysis, "Postal Sector Study". The author joined with Decision Analysis in this study and provided most of the regulatory analysis.

Under these circumstances, Decision Analysis recommended adoption of a more carefully crafted regulatory structure before transferring control and a substantial portion of the ownership of JPC to a strategic partner, likely a foreign post office. Trading an out-of-control and unresponsive local monopolist for an out-of-control and unresponsive foreign monopolist hardly seemed a step forward. In particular, Decision Analysis proposed amending the law to introduce a system of licensed competition after a defined transition period. With the prospect of competition on the horizon to spur on JPC's new management, Decision Analysis suggested JPC be given a reasonable opportunity to demonstrate the capacity to transform the company because, in light of the success of local Jordanian couriers, foreign expertise did not seem a necessary ingredient to competence in the postal sector.

In 2003, Parliament approved the temporary Postal Law of 2002 with two minor amendments in response to issues raised by Decision Analysis. First, the price limit on the postal monopoly was reduced somewhat.¹⁷ Second, the law clarified the authority of the Commission to regulate private couriers.¹⁸

JPC and government also agreed on the first Performance Contract. In practice, it was impossible to devise a contract that would require a money-losing operation to provide significantly enhanced postal services while reducing the subsidy. The most important discipline in the Performance Contract was a requirement that JPC prepare and commit itself to a long term strategic plan that included operational and budgetary targets. Government was especially concerned to reduce JPC's dependence on government financing.

In September 2003, the Council of Ministers formally adopted a specific, market-oriented statement of government policy towards the postal sector. The statement drew on many of the recommendations of Decision Analysis. In the revised statement government's approach towards the postal sector is summarized as "the creation of a market environment that will further develop existing services and encourage the introduction of new services".¹⁹ The statement embraces three overall goals: (1) to encourage further development of the currently thriving private

¹⁷The price limit was changed from "five times the fees collected by the Public Postal Operator" to "five times the fees collected by the Public Postal Operator *for a standard letter of the lowest weight and similar destination*" Article 13(c). As a result of this amendment, a private operator could, for example, deliver a 50-gram envelope if he charged five times the postage rate for a 20-gram letter ("a standard letter of the lowest weight") rather than five times the postage rate for a 50-gram letter. This amendment lessened but did not eliminate entirely the threat to existing private courier operations.

¹⁸New Article 31 prohibits any person from providing "postal services" without a license from the Telecommunications Regulatory Commission granted in accordance with a by-law issued under Article 9(b). The ambiguous Article 9(b) authorized the Commission to issue licenses for private operators, but no provision in the law specified what activities required a license. Decision Analysis called attention to the ambiguity in the law but urged elimination rather than clarification of Commission authority to regulate private couriers.

¹⁹Jordan MoICT, "Statement of Government Policy On the Postal Sector", sec. 4.5.

postal market; (2) to maintain universal postal service; and (3) to promote investment through increased private participation in the postal area. Overall, the statement endorses the development of "a common process of regulation for public and private postal operators".²⁰ The statement declares that basic universal postal service will be guaranteed but adds, with particular insight, that the terms of universal service should be drawn carefully to establish a "universal service regime . . . targeted only at areas of very specific need, . . . a minimum set of services of specified quality."²¹

With respect to institutional reform, the revised statement of policy requires that JPC "progressively, but rapidly, cease to be reliant on government subsidy and be rendered able to compete fairly in the market". To allow for restructuring of JPC, the statement envisions a transition period of "not less than three years". JPC is to be provided a license "towards the end of the transitory period, thereby enabling fully licensed competition within the postal sector." Ultimately, the statement declares, the government intends to "withdraw from its ownership position in JPC, as market conditions and economic circumstances permit".

In October 2003, JPC submitted to government the strategic plan required by the Performance Contract. In stark contrast to the target of financial self-sufficiency set out in the revised policy statement, however, JPC called for a continuation of large public subsidies for all four years covered by the plan. Government officials were not encouraged by this prospect.

On December 30, 2003, the Council of Ministers decided to press ahead with the sale of a substantial share of JPC to a strategic partner who could take over the management of the company. Although government considered revising the law as proposed by Decision Analysis, in the end it concluded that the resulting political battle in parliament would to cause unacceptable delay in bringing a more commercially minded management team to JPC. As of this writing (October 2004) government is the process of retaining an outside expert body to oversee the sale of JPC to a strategic partner.

3. MISAPPLICATION OF OF WESTERN POSTAL CONCEPTS

As this brief account suggests, concepts of postal policy developed primarily in the industrialized countries of Western Europe and the United States have played a major role in shaping postal policy in Jordan. A closer review is useful, however, to understand just how thoroughly Western postal concepts have influenced the evolution of the postal law in Jordan.

As recounted above, the guiding principles of the Jordanian post office until 2002 were those fashioned by the Universal Postal Union. The UPU was established in 1874 by leading industrialized countries as an intergovernmental organization dedicated to the facilitation of international mail, not the development of domestic

²⁰Ibid. sec. 4.4.

²¹Ibid., sec. 4.2.

postal service. Prior to 1874, postal services in the industrialized countries were overwhelmingly domestic services haphazardly linked by bilateral treaties. The main features of modern postal service—low, uniform postage rates based on weight and prepaid with adhesive stamps—resulted from domestic postal reforms adopted in England in 1840 and quickly copied by other nations. As domestic mail became more usable, the public demanded improvements in the international post as well. The Universal Postal Convention of 1874 replaced the patchwork of bilateral treaties with a single, multilateral agreement.²² Although the UPU standardized the international exchange of mail, it did not require standardization of domestic services. Adjusting domestic postal services to facilitate international mail was impractical since international mail was only a small fraction of domestic mail in the industrialized countries.

The Jordanian post office was thus established as, in effect, a branch office of the post offices of industrialized countries. In Jordan, unlike in the industrialized countries, postal service was shaped by the needs of foreign rather than domestic commerce. Most of the mail handled by the Jordanian post office was either coming from or going to industrialized countries. As Nepostal succinctly observed in 2001, "In practice the UPU Convention, that in itself has no direct relevance to domestic mail, is used as a guideline for postal services within Jordan."²³ While the Jordan Postal Administration may have failed to meet the needs of Jordan, it should be appreciated that it was never specifically designed to do so.

In seeking to establish a new postal system that would meet the needs of Jordan, government reasonably turned to experts knowledgeable about the latest postal developments in the most economically advanced countries. In 1999, the European Union and several of its member countries, as well New Zealand and Australia, were in the forefront of a decade-old international movement to adapt the national post office to the Information Revolution. In the evolution of a new postal law for Jordan, the key analysis was that of Nepostal. One of the strengths of the Nepostal report is that it clearly explains the conceptual basis for its recommendations.

The Nepostal report begins its exposition by declaring that Jordan is obliged by international treaty and the norms of civilized society to provide universal postal service.

Universal postal services are part of the recognition of the right of any individual to have free interchange of information as set out in the Declaration on Human Rights by the United Nations.

Postal services, especially the transmission of written messages, thus form part of a broad gamut of means of communication that every Government that adheres to the Declaration on Human Rights is obliged to facilitate to its

²²Codding, *The Universal Postal Union*, 1-24.

²³Nepostal, "Jordan Postal Sector Restructuring", Part A: Postal Policy, 6.

people.²⁴

Despite the axiomatic tone of this passage, however, what Nepostal is describing is not a longstanding legal principle but the latest intellectual fashion at the UPU. The idea that there should be a legal right to universal postal service was first raised in the UPU congress held in Beijing in September 1999, only 15 months before the start of the Nepostal contract.²⁵ The Beijing Congress, dominated by conservative postal officials, grandly declared that the UPU should consider itself the "guarantor of the right of peoples to communication and information" because the UPU's charter had long dedicated the organization to promotion of social, cultural, and commercial communications.²⁶ In recognition of this newly pronounced "right to communicate", the Beijing Congress added an article to the Universal Postal Convention to oblige member governments to give effect to a "right to universal postal service".²⁷

The public policy justification for this amendment is obscure. The proposal was authored by French postal officials who, at one point during the Beijing Congress, confided to the author that their primary concern was to ensure that a country like Germany, which adopted a liberalized postal law in 1997, would remain legally committed to delivering French mail. The official justification accompanying the proposal stated that the amendment was needed to counteract a tendency towards introduction of "the logic of the market into the postal sector".²⁸ Whatever the true rationale behind this amendment, in describing its strategy for the future, the Beijing Congress implicitly invoked the mantle of the United Nations: "The United Nations has recognized the right to communicate as a fundamental

²⁴Ibid., Part E: Structure of the New Regulatory Regime, 2.

²⁵Delegates from the member countries of the UPU meet every five years in a general congress to revise and re-adopt the Universal Postal Convention. Between congresses, facilitation and coordination of international postal services is provided by permanent agencies of the UPU located in Berne, Switzerland. The work of the UPU is dominated by officials of public postal operators although in recent years there has been a tendency for some industrialized countries to exercise more governmental control over some of the more governmental aspects of the UPU. In the Beijing Congress, the United States and Germany proposed convocation of an extraordinary congress to review the organization of the UPU with the objective of separating governmental and operational functions. This proposal was rejected.

²⁶The "right to communication" was prescribed by as one of the themes for speeches opening the 1999 Beijing Congress. The UPU seems to gotten the idea for such a right from a 1997 speech by the Secretary General of the International Telecommunications Union. See UPU, Beijing Congress, Doc 63 (contribution by Gabon). Unfortunately, however, meeting documents of the UPU are not publicly available.

²⁷Universal Postal Convention (1999), Art. 1. The Convention adopted by the Beijing Congress of 1999 may be found in UPU, *Letter Post Manual*. Article 1 provides, "In order to support the concept of the single postal territory of the Union, member countries shall ensure that all users/customers enjoy *the right to a universal postal service* involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices" (emphasis added).

²⁸UPU, Beijing Congress, Proposal 20.0.91.

human right. The postal service . . . is a primary means of communication for businesses, organizations and people."²⁹

Nepostal's assertion that Jordan is obligated under international law to provide universal postal services is thus grounded in a chain of questionable legal assertions by the UPU barely a year earlier.³⁰ Indeed, Nepostal goes one step further that the UPU by suggesting that the right to universal postal service is a corollary of the UN Declaration on Human Rights. Nepostal overstated the case, however, both morally and legally. When the UPU was established, no industrialized country provided universal postal service. Universal service developed gradually in the economically advanced countries as they became wealthier and completed their transportation infrastructures. England achieved more or less universal postal service by about 1900. In the United States, 15 percent of Americans still collected their mail at the local post office as late as 1950. Why should Jordan be expected to provide universal service so early in its postal development?

Not only is a demand for "universal service" inappropriate for a postal system in Jordan's state of development, but the modern concept of "universal service" is of very recent origin even in the industrialized countries. The notion that each citizen should have access to a specific level of nationwide universal postal service coalesced in the economically advanced countries only in the last two decades. The definition of universal service came about as a consequence of the postal reform movement. As governments loosened the regulatory strings on post offices, they have found it necessary to define the minimum level of services that post offices are still obliged to provide. In general, in the economically advanced countries, "universal service" simply refers to the pattern of basic postal services that evolved over a century and a half of economic development.³¹

Even as a matter of legal technicality, Nepostal overstepped the mark. Although the Beijing Congress declared the "right to universal service", it did not require each developing country to provide the same level of postal service as economically advanced countries. The Convention adopted in Beijing requires only that "member countries shall set forth, within the framework of their national postal legislation or by other customary means, the scope of the postal services offered . . . taking into account both the needs of the population and their national conditions."³² Jordan's legal obligation is thus limited to maintaining postal services

²⁹UPU, Beijing Postal Strategy, 18.

³⁰The 1999 convention did not become legally effective until January 1, 2001, only two months prior to submission of the Nepostal report.

³¹In the "Postal Green Paper", the European Commission wrote: "It is a basic social requirement that all the citizens, businesses and organisations of the Community should have access to means of communication, of which postal services form a part. All citizens, businesses and organisations of the Community therefore have an acquired right to a universal postal service at affordable tariffs" (page 186).

³²Universal Postal Convention (1999), Art. 1.

suiting to the needs of its citizens. Even so, the fact the Beijing Congress implied that developing countries are in some degree morally obligated to work towards a universal postal service similar to that which economically advanced countries have taken a century and half to develop represents an enormous imposition.

Having hitched the Jordanian post office to the yoke of a "universal service obligation", Nepostal maintains that, due to inexorable principles of postal economics, this obligation can be discharged only by establishment of a postal monopoly. A postal monopoly is needed, assures Nepostal, even though the government may be disposed to encourage competition in the sector.

Most of the operational cost[s] are in the area of distribution (around 50-70 %). The main cost driver here is the mail density (number of items to be delivered to one address at the same time). This cost driver is proportional to the population density. In other words the unit cost of a letter increases proportionally to the density of the [mail in the] area where mail has to be delivered. The unit costs in rural areas are far higher than those in major cities. *At the other hand the Universal Services call for equal tariffs all over the country. As this tariff should be affordable it is based upon average cost. As a consequence the profits in the cities offset the losses in the rural areas. . . .*

In other words the high density areas are subsidizing the low density areas thus resulting in a relatively low price overall. Such a system will only work under the condition of no external interference. *If competitors, who do not have a universal service obligation, were allowed to operate, they would undercut the tariffs of the public postal operator in the cities.* Thus leaving the public postal operator with the rural areas. In that case the public postal operator would either have to increase its tariffs or cease to exist altogether. Both options are not in the interest of the population at large in Jordan.

Although this might seem to be a theoretical exercise, in actual practice we see this happen in Jordan. Private courier companies use the services of Jordan Post to deliver consignments in areas, where it is not profitable for these private courier companies to operate themselves.

One of the major objectives of the new Postal Sector Policy is to encourage competition. Setting a reserved area (monopoly) seems to contradict this objective. However *establishing such a monopoly is necessary as shown above to secure the provision of Universal Postal Services.*³³

This economic rationale is no more than an unproven and dubious argument advanced by conservative postal officials in the European postal reform debates of the 1990s.³⁴ Not only would most economists question the economic wisdom of a legal monopoly, at the time Nepostal submitted its report in Jordan, three leading EU member states (Germany, Sweden, and the United Kingdom) had adopted

³³Nepostal, "Jordan Postal Sector Restructuring", Part E: Structure of the New Regulatory Regime, 5-6.

³⁴For a short summary of the European postal debate see Campbell, "New Policy Framework for Postal Services in the European Union". In the EU policy debate, the Dutch Post Office suggested that the postal monopoly may have a *negative* effect of the quality of universal service. Ibid. 13-14.

legislation repealing their postal monopolies.³⁵

Moreover, even if this economic rationale could be considered superficially plausible in Europe, it has relevance to Jordan. In the EU, post offices argued that they could not provide door-to-door delivery of mail in high cost areas at a uniform national tariff without protection from competition. But nothing, certainly not international law, obliges Jordan to provide postal services at uniform tariffs, nor it is economically sensible to do so if costs vary substantially in different regions.³⁶ In any case, the economics of door-to-door delivery are manifestly inapplicable in a country like Jordan where almost all mail is delivered to a post office box.

Having misapplied UPU and EU postal concepts to the situation in Jordan, Nepostal recommended establishment of a postal monopoly in the following terms:

We propose to set a monopoly for letters up to 500 grams of standard size Regarding courier services we propose the simple yardstick applied within the European Union and other countries, by allowing anyone to collect and distribute letters under 500 grams as long as the tariff of those services is at least five times the price of the basic letter service. . . . The aim of the monopoly is no longer to protect the postal company from the outside world, as this would clearly contravene the competitive objective of government. *Its sole purpose is to make the provision of Universal Services self sustaining.*³⁷

Although Nepostal argues the postal monopoly must be adjusted to the minimum level needed to sustain universal service, it proposes a monopoly in Jordan that is identical to the maximum scope of the monopoly in the EU.³⁸ Since the EU has 25 times as much mail per capita as Jordan, the implication that Nepostal's recommendation is economically attuned to the specific needs of Jordan cannot be credited.

The third and final element in the Nepostal recommendation was establishment of an independent regulator for postal services. An independent regulator is especially appropriate, explains Nepostal, where a postal monopoly is

³⁵The postal monopoly in Germany is due to expire at the end of 2007. The postal monopoly in the U.K. will be terminated by the regulator on April 1, 2007. See WIK, *Main Developments in the European Postal Sector*, 4. As this report notes, no EU member state has demonstrated that universal service requires maintenance of a postal monopoly of a given scope even though the EU Postal Directive (Directive 97/67 as amended by Directive 2002/39) requires such an analysis. The government of the Netherlands has recently proclaimed its intention to repeal its monopoly at the same time as Germany and the United Kingdom.

³⁶In the Postal Directive the European Union rejected the idea that uniform national tariffs should be a necessary attribute of universal postal services. The Directive requires only that the tariffs of universal services be "affordable". Postal Directive Art. 12.

³⁷Nepostal, "Jordan Postal Sector Restructuring", Part E: Structure of the New Regulatory Regime, 6 (emphasis added).

³⁸Under the Directive, member states may adopt lower limits on the postal monopoly or repeal the monopoly entirely. Indeed, Member States are permitted to establish postal monopolies no greater than "the extent necessary to ensure the maintenance of universal service".

established.³⁹ This, too, is merely an uncritical repetition of EU postal concepts.⁴⁰ Indeed, Nepostal here advocates a Dutch rather than a British view of a postal regulator. In the United Kingdom, a powerful postal regulator defines the scope of the universal service obligation and the rights and obligations of each operator licensed to provide basic postal services. In the Netherlands, a weak postal regulator monitors compliance with a universal service obligation that has been defined by a minister subject to political pressure. In Jordan, Nepostal proposed a still weaker form of regulation: that the universal service obligation should be determined by a negotiated agreement between the public postal operator and the government.

In this manner, postal policy in Jordan has been shaped by laws and policies unrelated to Jordan. The current law, based on the Nepostal report, essentially replaced UPU-designed postal laws with EU-designed postal laws, or at the least a version of EU postal laws espoused by conservative EU postal officials. In both cases UPU and EU postal concepts were applied to Jordan uncritically, without taking into account in the specific needs of the nation.

4. AN ALTERNATIVE VIEW

In the parallel universe of telecommunications policy, some developing countries have leapfrogged industrialized countries by building flexible, competitive mobile telephone networks *instead of* recreating the all-pervasive fixed line telephone monopolies that were the backbone of the telecommunications industry in most economically advanced countries.⁴¹ In this manner, developing countries have circumvented a portion of the sunk costs, protection of obsolescent technologies, and political inertia that delayed telecommunications development in more industrialized countries.

In the postal sector, it is at least arguable that a similar leapfrogging of paradigms may be available to certain developing countries. Rather than importing postal policies and reform measures designed in economically advanced countries, some developing countries may be able to move directly to a delivery services sector suited to the possibilities of the twenty-first century. To do so, developing countries must take a fresh look not only at what they will need from the delivery services sector in coming decades but also at the hidden premises underlying

³⁹Nepostal, "Jordan Postal Sector Restructuring", Project, Part E: Structure of the New Regulatory Regime, 10. "Good governance require[s] a separation of roles of policy maker and the control on the implementation of these policies, especially where a monopoly is involved. involved. Therefore an independent body should monitor the compliance of the public postal operator with the conditions under the Performance Contract.").

⁴⁰Article 22 of Directive 97/67 declares: "Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators." This article was amended in minor respects in 2002 by Directive 2002/39.

⁴¹This is not to suggest that fixed-line networks do not have a function nor to deny that fixed-line and mobile networks may be complementary in some degree. The basic change is from a public enterprise-based paradigm to a sector-based paradigm.

standard policy prescriptions proclaimed by postal officials from industrialized countries.⁴² Jordan—with its underdeveloped public post, innovative private delivery services, and economically sophisticated government—seems especially well placed to consider such an alternative approach.

The appropriateness of a new approach is immediately implied by realization that the reasons why economically advanced countries built extensive government-run postal monopolies are no longer valid. The great post offices in Western Europe were originally established for reasons of national security, i.e., to allow seventeenth century kings to potential control enemies by monitoring their correspondence. At the end of the eighteenth century, the United States rapidly built up the world's largest post office primarily for the purpose of disseminating news across a geographically vast and still experimental democracy. In the middle of the nineteenth century, postal reforms gradually transformed the post offices in economically advanced countries into a universal medium for the door-to-door transmission of all types of correspondence and, later, parcels.

By the second half of the twentieth century, however, the social importance of the post office in economically advanced countries began to decline. A large portion of vital communications had migrated to the telephone, radio, and television. Increasingly, the post office had become a mere business service for distribution of advertisements and statements of account. It seems evident that no economically advanced country would have created a national postal monopolist after mid-century if one did not already exist. "Were the postal system being started today," wrote an American presidential commission in 1968, "it might well be operated by a privately-owned regulated corporation."⁴³ By the end of the twentieth century, many economically advanced countries had concluded the universal postal monopolist is not only obsolete but a positive hindrance to further development. Postal monopolies are being repealed and government ownership relinquished.

In Jordan, then, it is not at all clear that the government should aspire to create a "modern postal service" as that concept has been understood in economically advanced countries over the last 150 years. It is unlikely that Jordan will ever need an army of uniformed government employees delivering letters, newspapers, magazines, advertisements, and small parcels to the doors of every household and office in the Kingdom each working day. Such a mammoth public undertaking would take many years to build (as it did in the economically advanced countries) and would be obsolete before it could be completed. Moreover, creation of such a public undertaking would leave Jordan subject to the same economic and

⁴²See, e.g., the books and articles in the bibliography by Ianni and Lohmeyer, Ranganathan, and Walsh. Although excellent surveys of postal reforms, these studies share a basic assumption that universal postal service and a financially fit universal service provider are as necessary for the economic development of developing countries as they have been in the development of industrialized countries. As the twenty-first century unfolds, the continuing validity of this premise is questionable.

⁴³United States, President's Commission on Postal Organization, *Towards Postal Excellence*, 2.

political problems which economically advanced countries are now struggling to resolve.

Most programs for postal modernization and reforms emanating from the economically advanced countries are stratagems for overcoming the political inertia and issues of equity associated with dismantling a great public edifice which has outlived its much of its former usefulness. When post offices in the economically advanced countries were at a stage of development comparable to the Jordanian post office, no government burdened its post office with detailed definitions of universal service, complex accounting rules, or the scrutiny of independent regulators. These reforms have become necessary in economically advanced countries because of the incongruity between a rigid, monolithic public post office and the demands of rapidly evolving information technologies and distribution services. Put simply, just as Jordan does not need the disease of "modern postal service", nor does it need the cure.

While Jordan is unlikely to require a "universal postal service", as that term is used in economically advanced countries, it seems evident that efficient distribution of documents and parcels will become increasingly important to the economy of Jordan. Delivery networks in the future, however, will likely feature a variety of services for envelopes, advertisements, parcels, unaddressed mail, express items, time-definite delivery, bulk and non-bulk shipments, and so on. Some delivery services may be closely linked to business services and "internet cafes"; others may be more like traditional freight carriers and logistics suppliers. As in the telecommunications sector, in the postal sector it is obvious that there will be a need for several types of services in the future, but no one can know for sure how these services will interact and complement each other.

The logical alternative to "modern postal service" is manifestly a competitive delivery services sector. Competition is inherently more flexible and innovative than monopoly, a major strength in times of change. It is true that in some developing countries, the private sector may be incapable of providing credible private delivery services, but this is not the case in Jordan. Jordanian companies have proved themselves skilled at developing distribution services that are far superior to those offered by government. Indeed, government policy has actually *hindered* development of still more efficient and reliable private delivery services; private companies are straining against the postal monopoly law to provide door-to-door delivery services that the government post office does not. In the future, it may be argued, Jordan postal policy should rely more on the strengths of the Jordanian economy and less on its weaknesses.

Not only should Jordan reject the investment required to build a soon-to-be obsolete "modern postal service", it should also skip over most of the elements of "postal reform" designed for economically advanced countries. An evolving competitive system of delivery services should not be constrained by an arbitrary definition of universal service, a concept suited (if at all) only to a mature and settled industry. Active government regulation of the sector should be avoided, although basic consumer protection rules may be appropriate to ensure corporate

accountability and confidentiality of correspondence.⁴⁴ If adequate delivery services are unavailable in some part of the country, government should contract for such services directly using the most cost-effective operator available and the accountability of a specific contract.

But what about Jordan Post Corporation and the postal services currently provided by it? According to this alternative view, what government should not do is sell JPC to a public postal operator from an economically advanced country on condition that the new owner develop JPC into a "modern postal service." This would simply be another way of misapplying postal concepts from economically advanced countries. Nor should government compound this error by providing the new owner a period of protection from more efficient Jordanian delivery services by grant of monopoly, government subsidy, or other privileges. Experience in the telecommunications sector suggests that privatization before liberalization is likely to undercut modernization of both the company and the sector.⁴⁵

Instead forcing JPC into the mold of a "modern postal service", government should begin to prepare for a world which is rapidly moving beyond "modern postal service". This will take creative solutions. It might be possible, for example, to identify and spin off one or more commercially viable portions of JPC, using this process to foster development of small businesses. Or the best plan might be to divide the assets of JPC among different local operators. Loss-making activities of JPC might be reorganized into a series of specific contracts concluded with the remnants of JPC or opened to all operators. Local operators might be licensed to provide outbound international mail services in accordance with Jordan's rights under the Universal Postal Convention. Inbound mail services might likewise be provided by licensed operators or they might be committed to a separate company which would contract with local operators.⁴⁶

While there are many possible permutations, the general objective seems apparent: the assets of JPC should be disposed of in a manner that is consistent with a vision of the future of Jordan's delivery services sector that is grounded in the probable needs of the national economy and not in the mystic of public postal service that developed in in times and circumstances having no relevance to Jordan in the twenty-first century.

⁴⁴This is the approach of New Zealand.

⁴⁵See Fink, et. al., "An Assessment of Telecommunications Reform in Developing Countries". The authors report, "Introducing competition after privatizing incumbent operators leads to fewer mainlines per population compared to a simultaneous introduction of the two policies. This result suggests that delays in the introduction of competition – for example due to market exclusivity guarantees granted to newly privatized entities—may adversely affect performance even after competition is eventually introduced". Ibid. 18.

⁴⁶Because of the Universal Postal Convention, inbound international mail admittedly presents a number of complexities. While these do not appear to be insolvable, the basic point of the alternative view of the future of the delivery services presented in the text is that Jordan's delivery services should be based on the needs of Jordan and not on the needs of foreign mailers.

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