

The Role of Regulators in a More Competitive Postal Market

Study for the European Commission, DG MARKT
2nd Public Workshop
Brussels, 4 June 2009

1. Current Regulatory Practices: Implementation of the Second Postal Directive
2. Preparing for Full Market Opening: Preparation for the Third Postal Directive
3. Cooperation Among NRAs
4. Identification of Best Practices

This presentation contains preliminary conclusions.
Research and final assessment in progress

Current Regulatory Practices

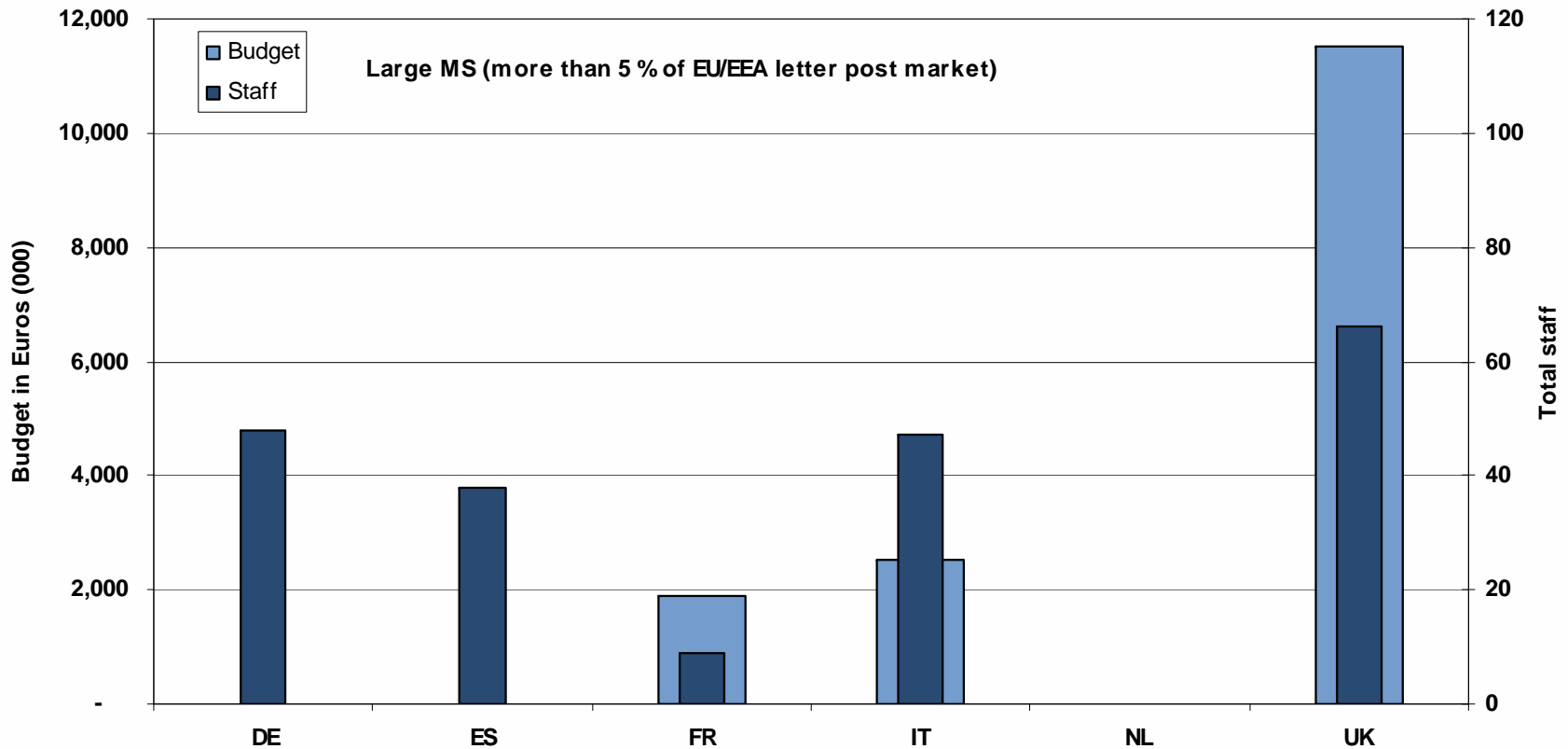
Outline of Chapter 2

1. Regulatory framework
2. National regulatory authorities
3. Universal service obligation
4. Reserved area and special rights
5. Authorisation and licensing
6. Regulation of the accounts of USPs
7. Regulation of prices and terminal dues
8. Protection of users
9. Application of competition law in the postal sector

Presentation includes selected examples of analysis of current regulatory practices

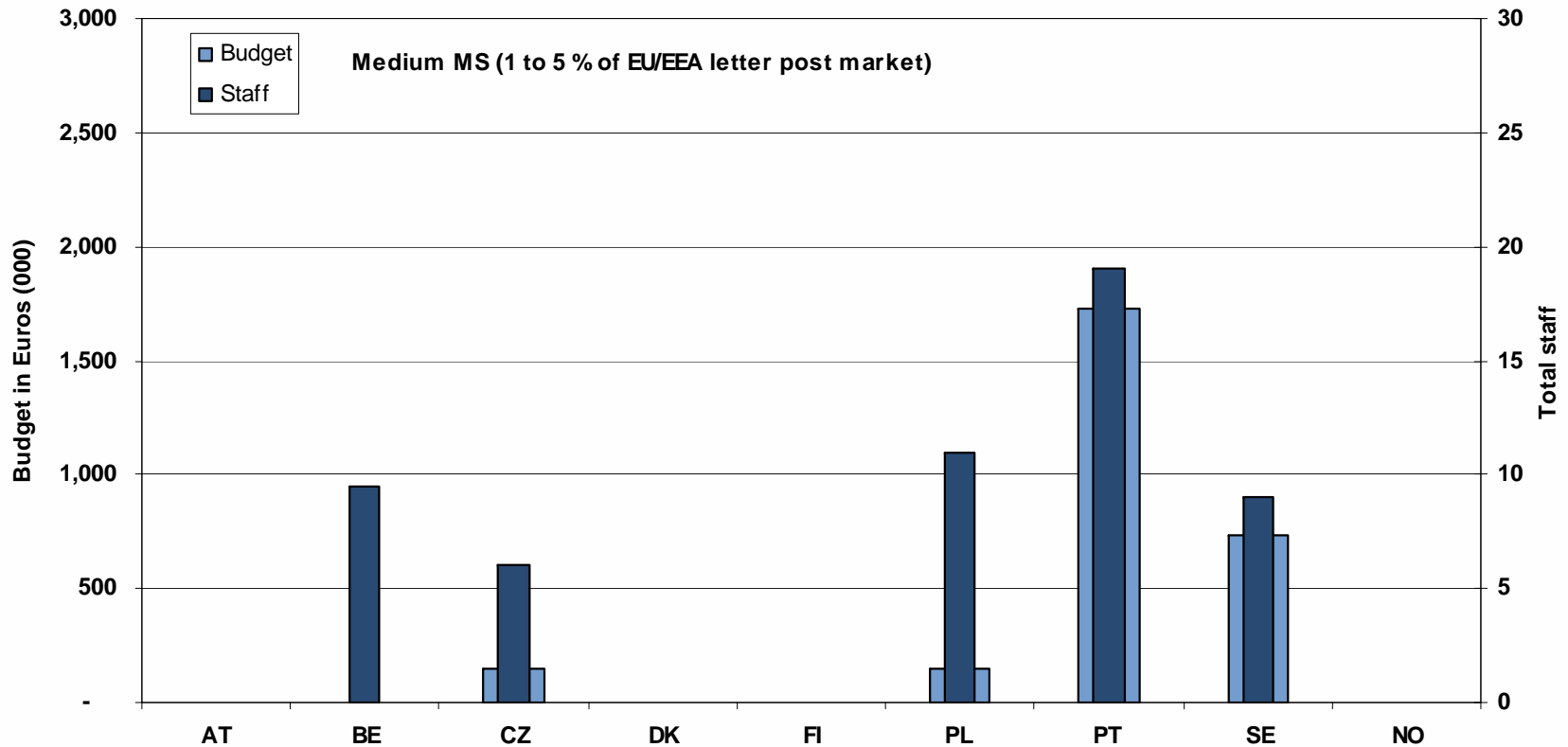
Current Regulatory Practices

NRA Resources: Large Markets



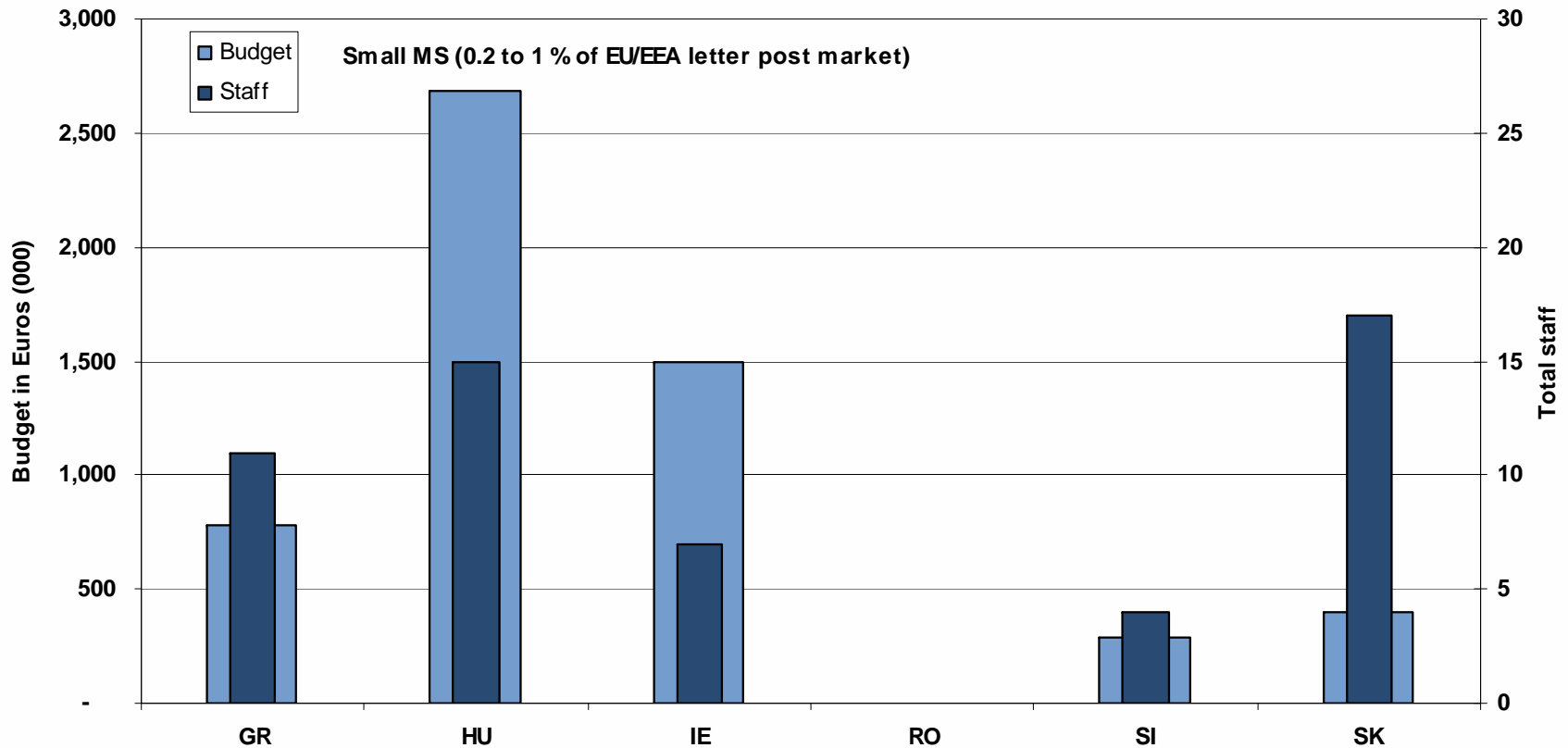
Current Regulatory Practices

NRA Resources: Medium Markets



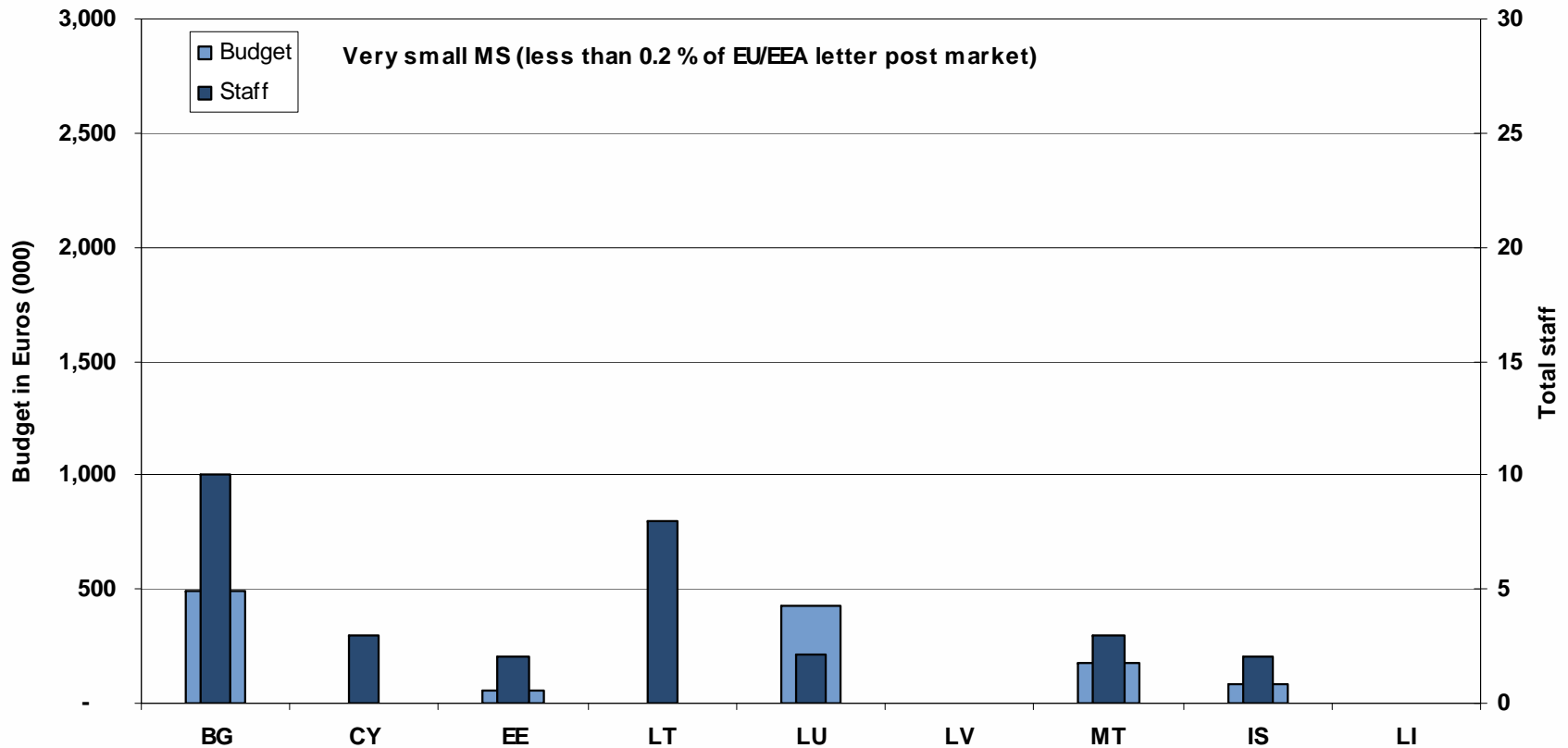
Current Regulatory Practices

NRA Resources: Small Markets



Current Regulatory Practices

NRA Resources: Very Small Markets



Current Regulatory Practices

NRAs: Average Resources per Size Group

Letter Post Market	Budget (Euros 000)	Total staff	Professional staff	Economists	Lawyers	Consultants (% budget)	Average exp per person
Large	5,320	42	-	-	-	11	126,743
Medium	689	11	9	3	3	7	49,451
Small	1,128	11	10	3	1	8	97,477
Very Small	245	4	3	2	1	4	81,290

- Resources vary substantially among NRAs within each group and between groups
- Variation in budget/person may imply variation in level of staff expertise.
- Staff of approx. 10 seems minimum required to regulate postal markets.
- Resource variations imply need for cooperation among NRAs.

Current Regulatory Practices

NRA Independence (1)

- Indicators of independence
 - Independent agency (not within a ministry)
 - 3 or more members of head of NRA
 - Fixed term of 3 years or more
 - Appointed by Council or Parliament (not minister)
 - Minimum qualifications for appointed
 - Restrictions on removal (e.g. only for misconduct or incapacity)
 - Restrictions on post-NRA employment (e.g., not for regulated party)

Current Regulatory Practices

NRA Independence (2)

Indicators of independence	Percent of EU/EEA LP mkt	Number of MS	Member States
5+ categories	47.4%	10	BG, BE, CZ, FR, GR, IE, LV, PT, SK, UK
4 categories	12.8%	8	CY, HU, MT, NL, PL, RO, SE, SI
3 categories	23.7%	6	DE, FI, LT, LU, IS, NO
2 categories	13.3%	3	DK, ES, IT

- Good degree of structural independence has been achieved by many MS.
- Some MS should consider strengthening structural independence.

Current Regulatory Practices

NRA Access to Information

- NRAs report to have adequate authority to require data from USP needed for compliance with Directive
 - Includes authority to determine form and detail of data and order preparation of new data
 - NRAs generally have authority to obtain statistical information for all postal operators (ex BE, FI, FR, IE, LU)
 - 10 NRAs have issued fines for failure to provide data since 2005
- NRAs often appear to have insufficient reliable information to ensure conformity with the Postal Directive?
- Tentative conclusion: NRAs may not always have well developed views on the data required for implementing the Postal Directive

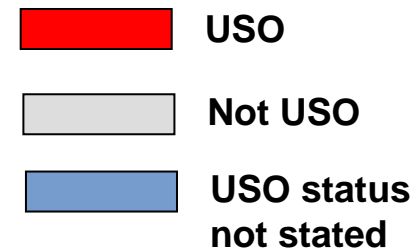
Current Regulatory Practices

USO: Range of Services (1)

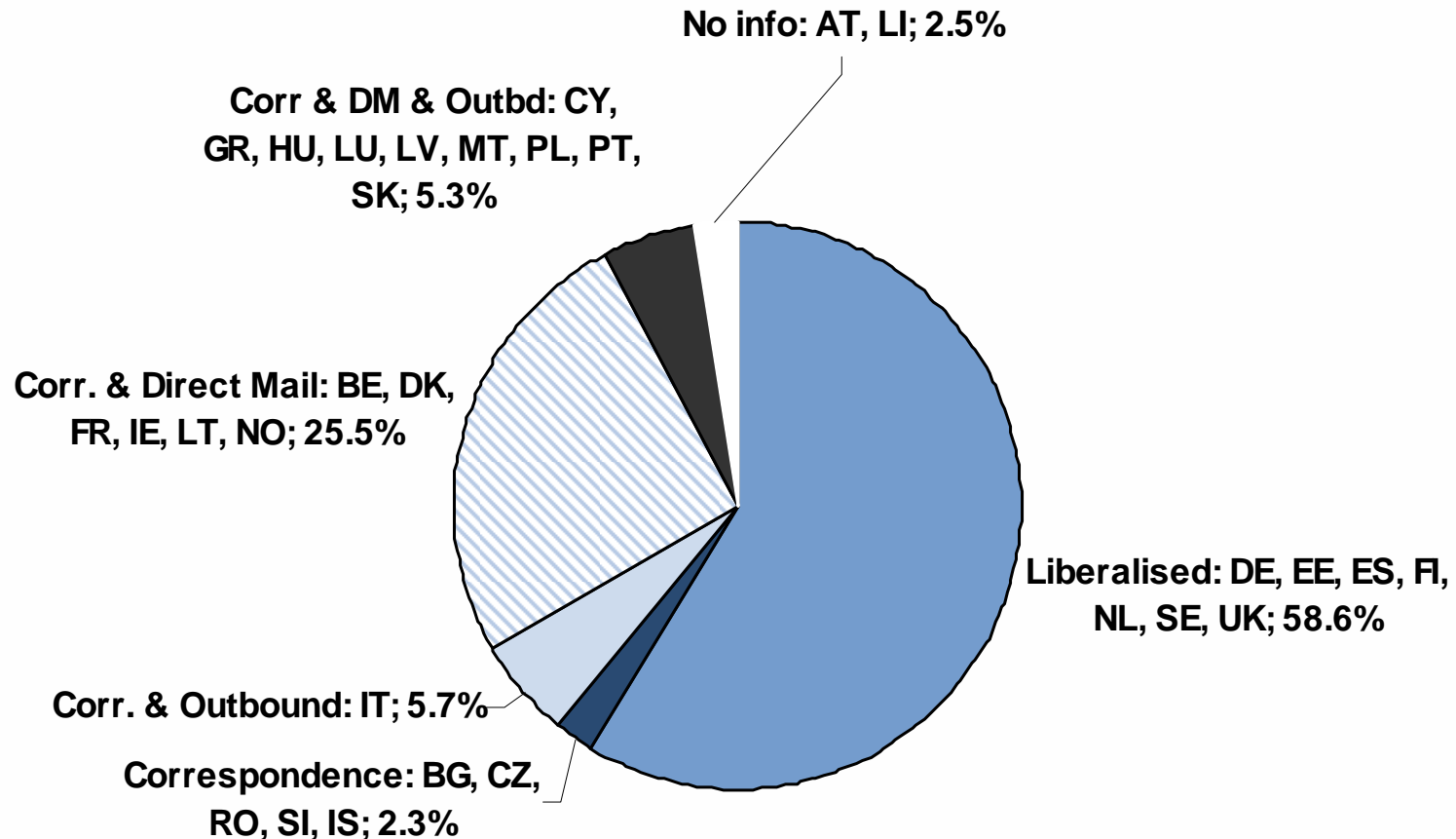
- Categories of possible universal services
 - **FSC**: a 'fastest standard category' of service for letter post items posted singly or in bulk;
 - **Bulk Letters**: a lower priced service for letters (individualised correspondence) posted in bulk;
 - **Direct Mail**: a lower priced service for advertisements (printed direct mail) posted in bulk;
 - **Periodicals**: a lower priced service for newspapers, magazines, and similar periodic publications;
 - **Low Priority**: a lower priced, non-priority service for all types of letter post items;
 - **Parcels**: a service for the delivery of parcels posted singly or in bulk; and
 - **Bulk Parcels**: a lowered priced service for the delivery of parcels posted in bulk.

Postal Services Ensured and Regulated as Universal Services

	FSC	Bulk Letters	Direct Mail	Periodicals	Non-Priority	Parcels	Bulk Parcels
AT							
BE							
BG							
CY							
CZ							
DE							
DK							
EE							
ES							
FI							
FR							
GR							
HU							
IE							
IT							
LT							
LU							
LV							
MT							
NL							
PL							
PT							
RO							
SE							
SI							
SK							
UK							
IS							
LI							
NO							

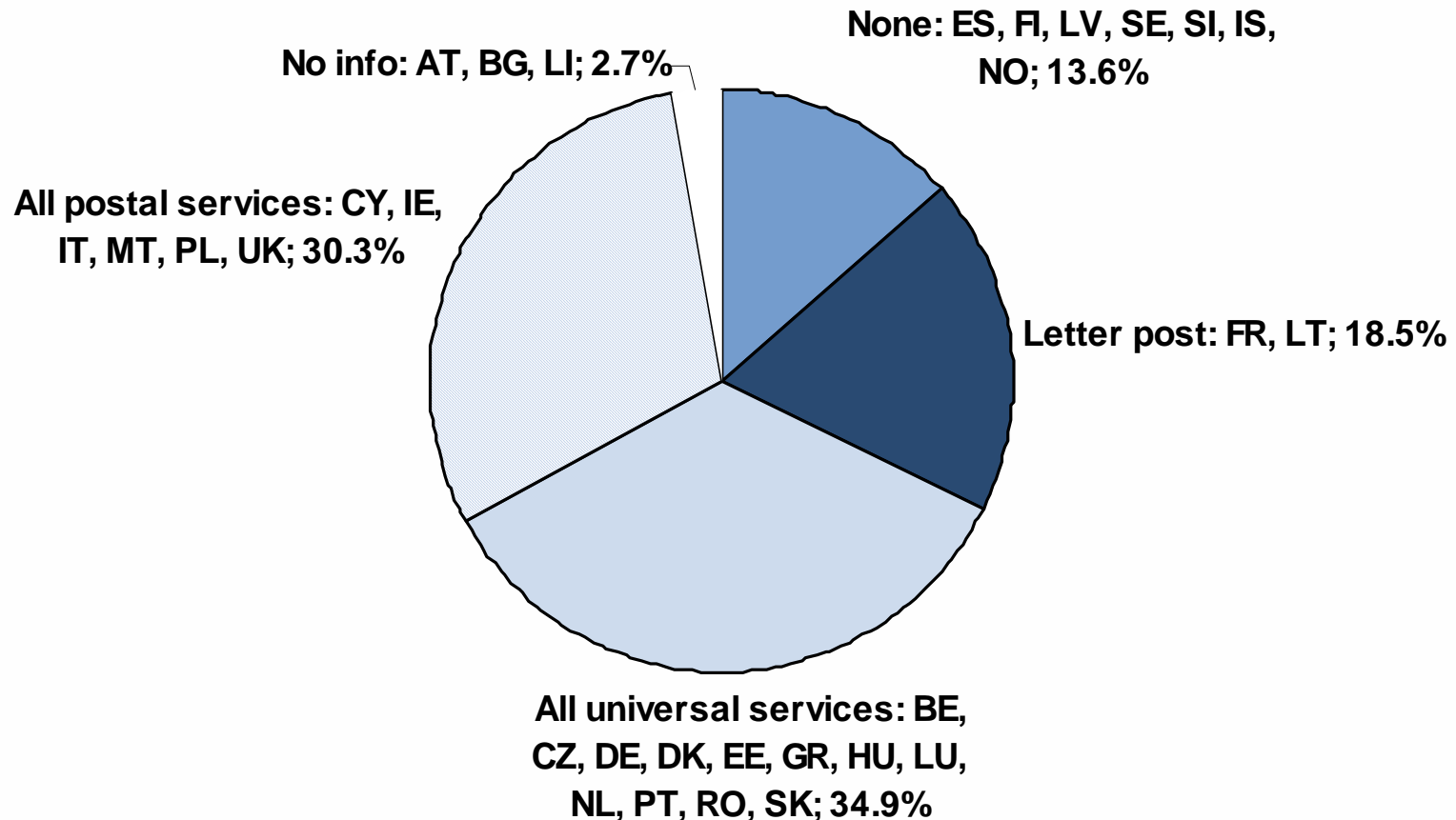


Current Regulatory Practices Reserved Area



Experience implies that high quality universal service is consistent with substantial liberalization.

Current Regulatory Practices Special VAT Rules for USP



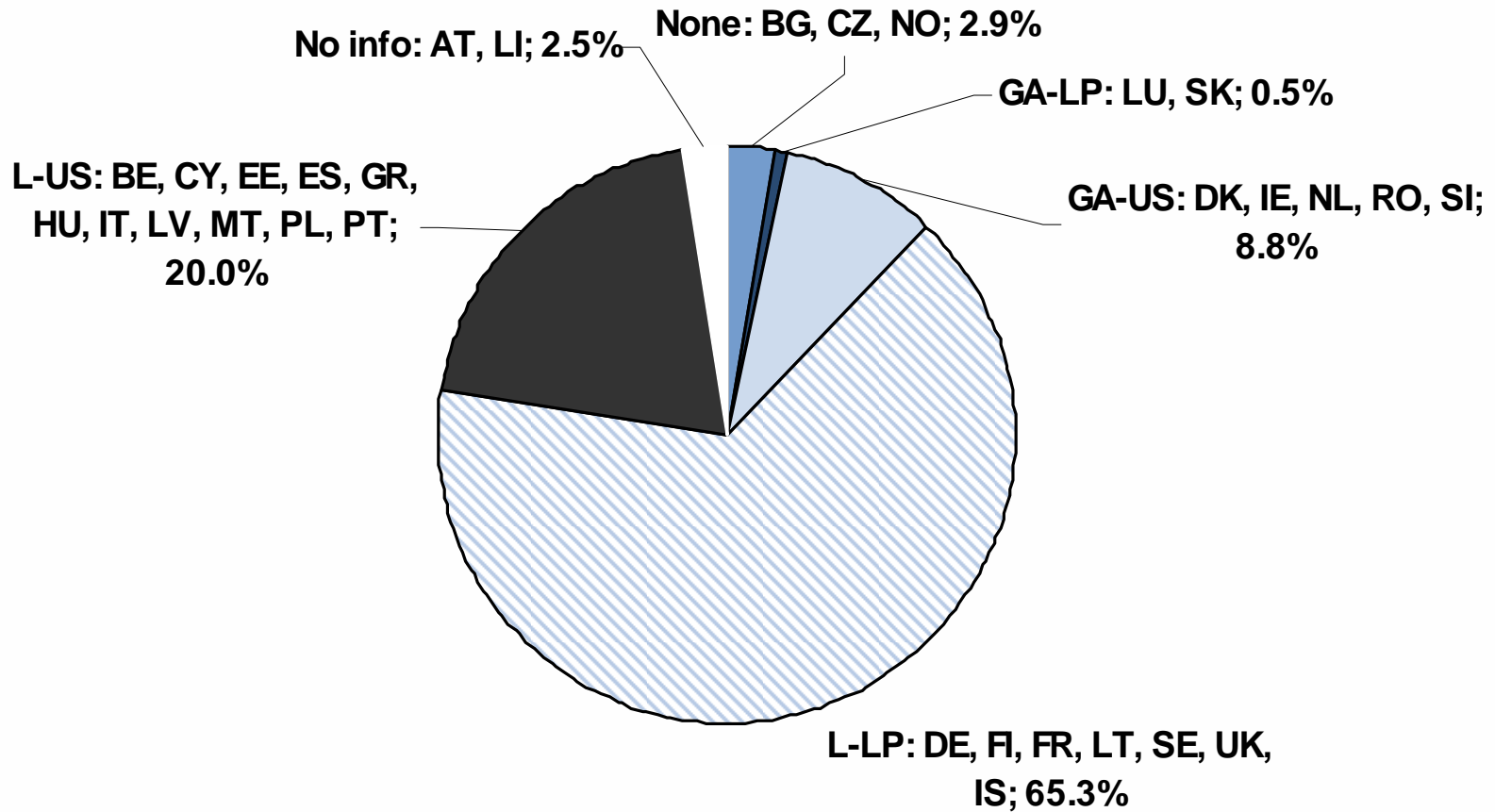
Differences in VAT imply substantial and inconsistent distortions in postal markets.

Current Regulatory Practices

Extent of Liberalisation

- MS may preserve monopolies only “to the extent necessary”.
 - To date, MS appears to have adopted little or no economic justification for scope of reserved area.
- Five MS (DE, ES, NL, SE, UK) have substantially liberalized letter post markets and experienced significant competition in practice.
 - ES has not formally repealed the reserved area.
- SE best approaches ‘full liberalization’ because of attention to other barriers to entry such VAT and equal access to postal infrastructure.
- At least one MS (FI) has eliminated the reserved area but not substantially liberalized or experienced significant competition in practice.

Current Regulatory Practices Authorisations in Universal Service Area



Current Regulatory Practices

Universal Service Area: Licence v. GA

- Why Licence rather than General Authorisation? (NRA quotes)
 - EE: Individual license requires provision of postal services at least at western part or at eastern part of the country or in whole country.
 - FR: Safety of users, staff and the service provider's equipment. Etc.
 - PL: Technical and operational competence, availability of services, quality and performance of services.
 - SE: Gives the NRA authority to make sure that the postal service is reliable. Used to specify requirements on postal operators and specifically on the USP.
- But in support of General Authorisation
 - IE: Easiest way to impose obligations [essential requirements] on service providers - not covered by primary legislation.
- Tentative conclusion: primary justification of licence seems to be need to impose specific USO requirements on one or a few USPs.

Current Regulatory Practices

US Authorisations: Conditions and Procedures

- Conditions must be consistent with text and objectives of Directive
 - Authorisation conditions often include essential requirements already addressed in non-postal laws. (Duplication barred under Third Directive).
 - Conditions are relatively light-handed. Two rare conditions raise questions under Postal Directive: financial guarantees (FI, HU) and technical expertise (BE, DE, FR, HU, PT).
- Procedures must be non-discriminatory and transparent
 - In some MS (BE, ES, GR, IE, IT, LT, LU, MT[?] , PL, PT, RO, SI) authorisation procedures do not apply equally to USP(s) and others.

Current Regulatory Practices

Separation of Accounts of USPs (1)

Separation of accounts required by Directive (Art. 12 and 14)

- Oversight of product accounts needs to be improved in some MS
 - 10 NRAs (DE, DK, LU, LV, PL, PT, RO, SE, UK, IS) did not approve the number and format of USP's product accounts.
- Use and format of product accounts varies widely
 - In some MS (BG, DK, EE) all reserved services form a single account. (In other MS accounts for reserved services were reported in as many as 32 (IE) or even 296 (BE) separate accounts.
- Most NRAs require product accounts for non-reserved US products.
 - 8 NRAs (BE, DE, FR, LV, MT, PL, SE, NO) do not require product accounts for unreserved universal services.

Current Regulatory Practices

Separation of Accounts of USPs (2)

- Bulk products, if USO services, pose special accounting issues.
 - 16 NRAs consider bulk mail as a universal service
 - 10 of the 14 NRAs (BE, DK, FR, GR, HU, IE, LT, SI, SK, IS) report that their USPs make use of special tariffs
 - 5 of the 10 NRAs (FR, GR, IE, LT, SI) have separate accounts for upstream and downstream components
- NRAs generally recognise gaps in accounting separation.
 - ‘To what extent does the separation of accounts provided by the current system of accounts give the NRA sufficient information to ensure conformity with the provisions of, or decisions made in accordance with, the Postal Directive?’ 15 MS answered. Average score 7.2 (out of 10).

Current Regulatory Practices

Allocation of Costs


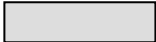

- Relatively few NRAs have mastered Art. 14 cost allocation scheme
 - 9 NRAs (CZ, DE, EE, HU, MT, PL, PT, SE, SK, NO) can distinguish between direct costs, assignable common costs, and unassignable common costs
 - Allocation of delivery costs: One-third of NRAs can estimate percent of costs incurred in delivery (about 50 %). 3 NRAs (CZ, FR, SK) appear able to apply scheme set out in Article 14 to delivery costs.
- NRAs generally recognise gaps in cost allocation, as well.
 - 'To what extent does the allocation of costs provided by the current system of accounts give the NRA sufficient information to ensure conformity with the provisions of, or decisions made in accordance with, the Postal Directive?' 16 MS answered. Average score 7.2 (out of 10).

Current Regulatory Practices Review and Publication of Accounts

- Monitoring of accounts by independent body could be strengthened.
 - 4 MS (CY, EE, SI, IS) report no independent monitoring of accounts
 - In 6 MS (FR, GR, IE, IT, MT, RO) auditor is accounting firm retained by the USP
- The required statement of compliance is not uniformly published.
 - 8 NRAs (CZ, EE, LT, PL, PT, SE, SK, NO) periodically issue the ‘statement of compliance’ required by Article 14(5). At least 15 NRAs do not.
- Other good practices (even if not required by Postal Directive):
 - 6 NRAs publish a summary of regulatory accounts (CY, DK, LT, LV, IS, NO)
 - 7 NRAs (BE, CZ, DK, FR, IE, LV, NO) publish cost allocation methodology.

Regulation of Prices of Universal Services

	FSC	Bulk Letters	Direct Mail	Periodicals	Non-Priority	Parcels	Bulk Parcels
AT							
BE	Y	Y	Y		Y	Y	Y
BG	Y			N	Y	Y	
CY							
CZ	Y					Y	
DE	Y	Y	Y	Y		Y	Y
DK	Y	Y	Y	N	Y	N	N
EE	Y	Y	N	N	N	Y	Y
ES	?	Y	?	N	N	Y	Y
FI	Y	Y	N	N	Y	Y	N
FR	Y	Y	Y	Y	Y	Y	N
GR	Y	Y	Y	Y	Y	Y	
HU	Y	Y	Y	Y	Y	Y	Y
IE	Y	Y	Y	N		Y	
IT	Y	Y	Y	Y		Y	
LT	Y	Y			Y	Y	
LU	Y	Y	N	?		Y	?
LV	Y	N				N	N
MT	Y		Y	Y		Y	
NL		N	N	N	N		N
PL	Y				Y	Y	
PT	Y	Y	Y	Y	Y	Y	Y
RO	Y	Y		Y	Y		
SE	Y	Y	Y	Y	Y	Y	Y
SI	Y	Y	N	Y	N	Y	N
SK	Y	Y	Y	N	Y	Y	
UK							
IS	Y	Y	N	N		N	
LI							
NO	Y	Y	Y	Y	Y	Y	N

	USO
	Not USO
	USO status not stated

Current Regulatory Practices

Price Regulation

- Methods of price regulation (ex ante, etc.) vary widely
 - Consensus that forward-looking price regulation (ex ante or price cap) should be applied to universal service products where there is no significant competition.
 - NRAs differ about merits of ex ante versus price cap methods.
 - NRAs differ on whether forward-looking price regulation is appropriate for universal service products where the USPs faces significant competition.

- Special tariffs

- In USO MS, enforcement of Art. 12 is uneven.
- In non-USO MS, national law may still apply Art. 12 concepts.

Product	Art. 12 applies (# MS)	Art. 12 implemented (# MS)
Bulk letters	12	7
Direct mail	7	5
Bulk parcels	2	1

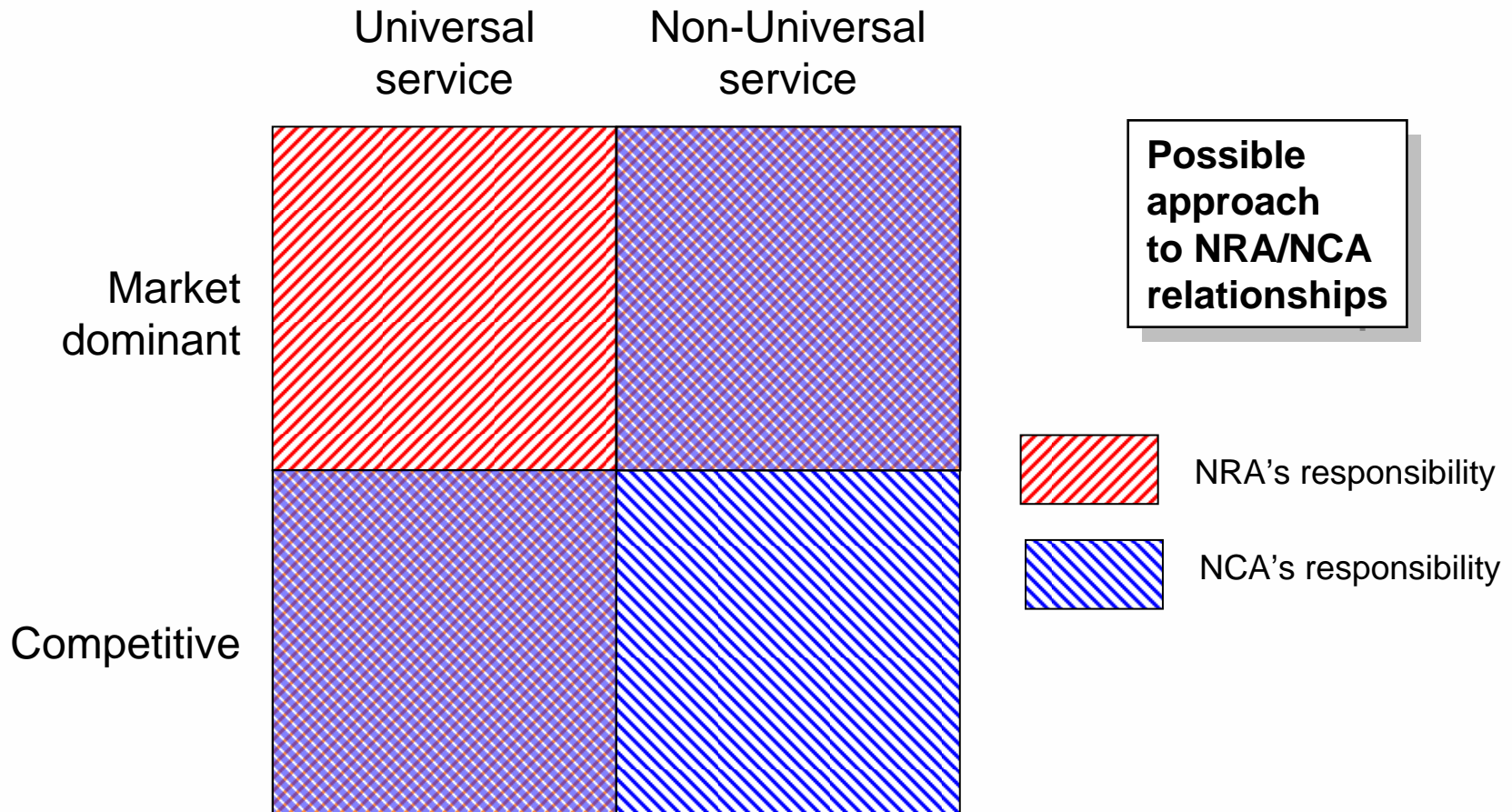
Current Regulatory Practices

Application of Competition Law (1)

- Primary enforcer of Competition Rules?
 - NCA: 19; NRA: 4; Both: 3
- Regular consultation between NRA and NCA?
 - Yes: 12; No: 12.
- NRA obliged to share info with NCA?
 - Yes: 18; No: 7
- Tentative conclusions:
 - In many MS, consultation procedures between NRAs and NCAs should be improved.
 - NRAs and NCAs have different roles.

Current Regulatory Practices

Application of Competition Law (2)



1. Current Regulatory Practices: Implementation of the Second Postal Directive
2. Preparing for Full Market Opening: Preparation for the Third Postal Directive
3. Cooperation Among NRAs
4. Identification of Best Practices

This presentation contains preliminary conclusions.
Research and final assessment in progress

Preparing for Full Market Opening

Outline of Chapter 3

1. Transposition of the Third Postal Directive
2. Reevaluation of services regulated as universal services
3. Ensuring universal service
4. Phasing out the reserved area and other special rights
5. Regulations for a multi-operator market

Presentation includes selected examples of analysis of preparations for full market opening

Preparing for Full Market Opening

Transposition of Third Directive

Plans for transposition of Directive 2008/6

Time period	Percent	Count	Countries
Transposition complete	5.7%	2	EE, NL
2009 - second half	22.3%	3	AT, SI, UK
2010 - first half	42.9%	4	DE, FR, SE, NO
2010 - second half	10.4%	6	BE, BG, IE, IT, RO, IS
2011 or later	6.3%	7	CY, CZ, FI, HU, LT, LU, PL
No information	12.4%	9	DK, ES, GR, LV, MT, PT, SK, LI

Note: LV and SK plan major new postal legislation in 2009, and these acts will not transpose Directive 2008/6

Preparing for Full Market Opening

Reevaluating Range of US Services (1)

- Implementation of new rules in Third Directive and changing market may imply need for reevaluation of range of service ensured and regulated as universal services within framework of Third Directive.
- Demand for universal postal service in the future
 - Ten NRAs (BE, DE, FR, GR, HU, IE, LT, MT[?] PT, SE, UK) have analysed needs of users in last 2 years. SE and UK conduct annual surveys.
- Uniform rate requirements (if any)
 - 21 MS require uniform rates for letter post items. 4 NRAs (ES, FR, IT, UK) have studied, or are studying, how the cost of delivery per postal item varies in different areas of the nation.
 - 17 MS require uniform rates for parcels. 2 NRAs (FR, UK) have studied, or are studying, how the cost of delivery and transport per parcel varies in different areas of the nation.

Preparing for Full Market Opening

Reevaluating Range of US Services (2)

- Uniform rate requirements (cont'd)
 - Only largest NRAs have developed analyses; difficult to predict outcomes
 - MS may wish to reconsider in light of increased competition, changing market, experience of MS without uniform rate requirements, and increased environmental concerns.
- Elements of universal service and/or groups at risk (if any)
 - 'What if' analysis: What elements of universal service or groups of users would not be adequately served if the designated USP could choose for itself what services to offer?
 - 4 NRAs (BE, IE, IT, NO) (11%) could offer a 'considered view' with respect to at least one universal service category.

Preparing for Full Market Opening

Reevaluating Range of US Services (3)

- Net cost of universal service (if any)
 - 2 NRAs (UK, NO) report to have estimated the net cost of universal service in accordance with Annex 1.
 - UK seems to find zero cost if efficiency of USP improves
 - NO estimates 9 percent of cost of US.
- Summary
 - Third Directive raises several issues relating to the appropriate range of services ensured and regulated as universal services.
 - Most MS have not yet carefully analysed such relevant factors the future demand for universal services, the effect of uniform rate requirements (if any), and identification of elements or users at risk in the absence of the USO.

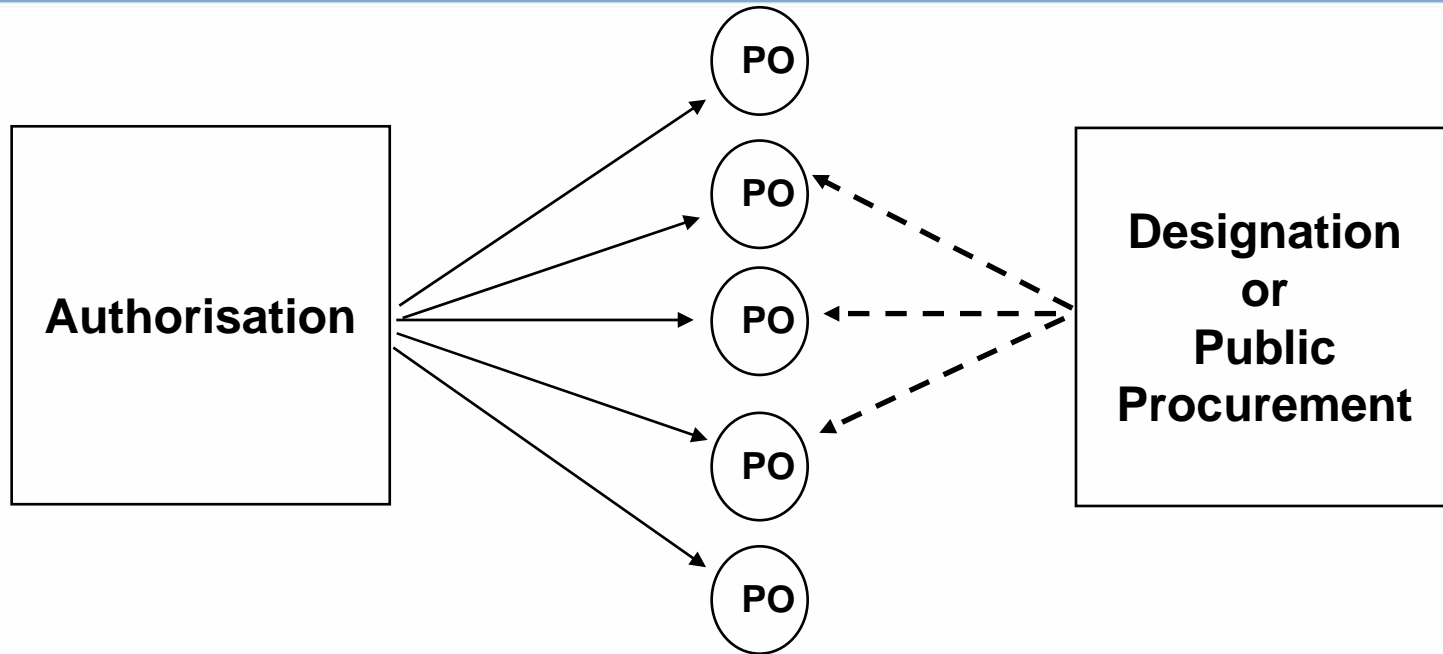
Preparing for Full Market Opening

Ensuring Universal Service (1)

- Three approaches for ensuring universal service:
 - Reliance upon market forces,
 - Designation of one or several undertakings to provide different elements of the universal service or to cover different parts of the territory, and/or
 - Public procurement of universal services.
- ‘The principles of objectivity, transparency, non-discrimination, proportionality and least market distortion’. Directive 2008/6 Recital 23.
 - A reasoned choice among these three approaches.
 - Refrain from designation or public procurement unless market forces cannot be reasonably relied upon.
 - Substantial change from Second Postal Directive.

Preparing for Full Market Opening

Ensuring Universal Service (2)



- **Authorisation:** Under what conditions should operators be permitted to provide postal services?
- **Designation/procurement:** What postal operators, if any, should be selected to provide specific universal services (and compensated for net cost if any)?

Preparing for Full Market Opening

Ensuring Universal Service (3)

- MS must consider whether designation/procurement of a USP for a portion or all of the national territory is a necessary or 'proportional' step in ensuring universal service and whether one postal operator is better suited to this task than another.
 - 'Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory. . . Member States shall take measures *to ensure that the conditions under which universal services are entrusted are based on the principles of transparency, non-discrimination and proportionality*'.
- Designation/procurement of a USP distorts competition by, e.g.:
 - Imposition of USO regulation & possible financing
 - Creating legal basis for unequal application of VAT

Preparing for Full Market Opening

Ensuring Universal Service (4)

- State of current analysis
 - Most MS and NRAs have not focused clearly and analytically on the three approaches to ensuring universal service set out in the Third Postal Directive.
 - 4 MS rely on market forces to some extent: CZ (5 %); IT (1.5 %); PT (20.8 %); Germany (100 %)
 - When asked to identify portions of the universal service for which there was a significant risk of inadequate service by the market forces, most NRAs identified quite limited portions of the market that appeared to be at risk, usually services in remote or sparsely populated areas.
 - Germany is major exception: US is ensured by market forces unless the NRA determines that it is 'not being appropriately or adequately provided or where there is reason to believe that such will be the case'. So far, NRA has not found.

Preparing for Full Market Opening

Phasing out the reserved area (1)

- Under the current Postal Directive,
 - MS may preserve monopolies only “to the extent necessary”
 - In order to phase-out the reserved areas gradually, gradual liberalization steps before FMO appear useful

Principal phase-out approaches

Assessment

- | | | |
|----------------------------------------------------------------|------|-----------------------------------------------------------------------------------------------------------------------------------|
| • Further reductions in weight and price limit | (-) | Insignificant effect on competition and incumbents. |
| • Liberalization of direct mail (as in NL, IT, SI etc.) | (+) | Facilitates competition in one market segment (advertising). Different competition than under FMO |
| • Liberalization of value-added services (German ‘D-licenses’) | (+) | Facilitates competition for some customers (regional mail). Different competition than under FMO |
| • Liberalization of bulk mail (as in UK 2002-2004) | (++) | Specifically aims at opening market segments that entrants will target first. Similar (but more limited) competition as under FMO |

Preparing for Full Market Opening

Phasing out the reserved area (2)

- Use of phasing procedures to abolish reserved area?
 - No recent examples of phase-out approaches
 - One NRA reports to have prepared a study on phase-out strategies (GR)
 - Four NRAs plan to prepare a study on phase-out strategies (CY, GR, LV, IS)
- Examination of other non-postal barriers to entry?

Preparing for Full Market Opening

Regulations for a multi-operator market (1)

- Third Directive requires MS to ensure transparent and nondiscriminatory access to postal infrastructure 'where necessary to protect the interest of users and/or to promote effective competition'.
 - Postcode systems
 - Address databases
 - PO boxes
 - Delivery boxes,
 - Change of address information
 - Re-direction and return to sender services
- Some MS have required USPs to provide downstream access, or to extend existing offers on same terms to all consolidators and operators.

Preparing for Full Market Opening

Regulations for a multi-operator market (2)

Regulated elements of postal infrastructure			
Type of access	Member States	#	% LP market
1. Post codes	BG, CZ, EE, FR, HU, LT, MT, NL, SE, UK	10	51.4%
2. Address database	DE, DK, EE, FR, MT, SE, UK	7	64.8%
3. Post office boxes	DE, EE, FR, HU, IT, LT, MT, SE	8	48.1%
4. Delivery boxes	BE, BG, DK, EE, ES, FR, HU, IE, IT, LT, MT, PL, PT, SE, SK, UK, IS	17	65.5%
5. Change of address db	DE, EE, FR, SE	4	41.3%
6. USP return services	BG, DE, EE, FR, LT	5	38.4%
7. NRA may require downstream access	BE, DE, DK, EE, ES, HU, SI, UK	8	53.9%
8. NRA may equalize downstream access	BE, DE, DK, EE, ES, GR, HU, IE, IT, SI, UK, NO	12	62.6%

Preparing for Full Market Opening

Regulations for a multi-operator market (3)

Regulatory measures to facilitate inter-operability			
Rules on	Member States	#	% LP market
Exchange of universal service items	DE, SE, UK	3	44.7%
Identification of postal carriers	DK, FR, LT, MT, UK	5	41.9%
Complaint procedures	DK, FR, LT, LV, UK	5	42.0%
User inquiries	LT	1	0.1%
Return to sender	DK, ES, SE, UK	4	32.7%

- Relatively few Member states have rules to facilitate inter-operability
- Requirements are typically included - or referred to – in authorizations
- Most comprehensive set of rules is Postcomm’s “common operational procedures code”

Preparing for Full Market Opening

Regulations for a multi-operator market (4)

Challenges for NRAs in more competitive markets

- Ensure access to postal infrastructure – where necessary
 - Less than half of all MS ensure access to some infrastructure
 - Other MS will need to address the issue as markets are liberalized
 - Evaluating technical options and necessity is a complex exercise
- Facilitate inter-operability of different operators
 - Few NRAs have examined and addressed inter-operability thoroughly.
 - Early movers include NRAs of DK, FR and UK
- Carrier identification appears as a pre-requisite for facilitating inter-operability effectively.
 - EU level standardization of identification codes? Combine with IPMC codes?

Preparing for Full Market Opening

Regulations for a multi-operator market (5)

- ‘Regulatory symmetry’ implies that USO regulation should treat the USP in the same manner as other postal operators. For example,
 - Almost half of the MS do not apply authorisation procedures to USPs in the same manner as to other postal operators.
 - Less than one third of MS have adopted the proportional and non-discriminatory designation procedures required by the Third Postal Directive.
 - Many MS provide special rights to the public postal operator with respect to the VAT, customs, etc.
- 3 or 4 (CY, DK, IS, and perhaps NO) indicate that studies of regulatory symmetry were being planned.

1. Current Regulatory Practices: Implementation of the Second Postal Directive
2. Preparing for Full Market Opening: Preparation for the Third Postal Directive
3. Cooperation Among NRAs
4. Identification of Best Practices

This presentation contains preliminary conclusions.
Research and final assessment in progress

Cooperation among NRAs

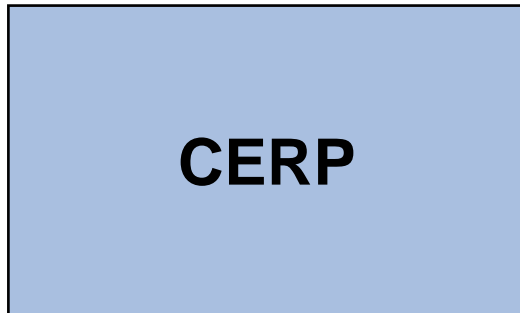
Why Is Enhanced Cooperation Needed?

- Third Directive requires that NRAs ‘shall work in close collaboration and shall provide mutual assistance in order to facilitate’ (Recital 50, Art. 22)
- Cooperation needed in light of resources of NRAs in smaller markets
- To discuss solutions to complex technical/regulatory issues, e.g.
 - Systems/Formats of regulatory accounts, cost allocation rules
 - Scope and standards for price control
 - Access to infrastructure: PO boxes, info on postcodes and change of address
- To coordinate on Community level activities, e.g.
 - Facilitate uniform market statistics
 - Standards for monitoring quality of service for cross-border mail
 - Code of conduct for cross-border mail, e.g. handling of misdelivered mail and returned mail, forwarding of user complaints etc.

Cooperation among NRAs

Current Forms of International Cooperation

**Only Present Forum for
International Cooperation
Among NRAs**



Other forms of cooperation

Informal bilateral
meetings

Postal Directive
Committee (some
NRAs represented)

Twinning Projects
(bilateral)

Cooperation among NRAs

Assessment: CERP as an European Forum of NRAs

- CERP advantages (for cooperation of EU NRAs)
 - CERP activity increased over the last years – reflects strong interest of NRAs in cooperation
 - Traditional focus on UPU issues gradually replaced by current challenges
 - Recent move toward more flexible structure of project teams – gradual separation of policy and NRA project teams
- CERP disadvantages (for cooperation of EU NRAs)
 - Organization of countries/ministries, not independent NRAs
 - Lack of regular high-level representation
 - Lack of relevance to national practice / low impact on NRA decisions
 - No permanent secretariat – burden on chairing member country
 - Membership far beyond EU (48 members)

Cooperation among NRAs

Models for NRA Cooperation in Other Sectors

Electronic communications

- IRG/ERG
 - IRG is an informal group of NRAs since 1997
 - IRG secretariat financed by members
 - ERG is an advisory group to the EC, set up in 2002 by a Commission Decision
 - EC may finance ERG secretariat
 - NRA heads meet 4 x year
 - Cooperation and consultation in implementing e-com framework
 - Mutual advice and technical assistance, and advice to EC
 - Best practice and mutual exchange of information
- EC proposed EU level agency: EECMA / Establishment unclear

Energy

- CEER/EREGG
 - CEER: Informal platform of energy NRAs since 2003 (MoU 2000)
 - ERG is an advisory group to the EC, set up in 2003 by a Commission Decision
 - Joint CEER/EREGG secretariat financed by EC, EC finances travel expense
 - NRA heads meet at joint plenaries
 - Review implementation and application of legislation
 - Mutual advice and advice to EC
 - Best practice, mutual exchange and guidelines
- EC proposed EU level agency ACER / establishment likely

Cooperation among NRAs

Lessons From Other Sectors

- IRG and CEER consider themselves as bodies of independent NRAs
 - Clear rule: No ministries allowed!
 - Limitation to independent NRAs seen as critical factor for success
- Regular high-level representation ensures relevance of work for national regulation (heads of NRAs)
- Benchmarking is relevant: All NRAs today consult international practice before taking decisions (whether mandatory or not)
- Commission decisions to create advisory groups (ERG/ERGEG) added relevance
- EU level agencies: necessary iff community level regulation needed (e.g. in electricity markets)

Cooperation among NRAs

Options of Enhanced NRA Cooperation

- Voluntary group of postal NRAs?
 - Groups should be limited to independent NRAs, not ministries
 - NRA group should involve high-level representatives – Heads of NRAs to determine work programme and approve of results/recommendations on regular basis
 - Should ultimately include NRAs from all EU and EEA countries (and candidates?)
 - Practical matter: Membership overlaps with IRG (all but 5 postal NRAs are IRG members: DK, ES?, IT, SK, UK?)
- Formal advisory group to be established by the Commission?
 - Add relevance to the organization
 - Address more specifically Community level topics (at Commission's initiative)
- EU level agency for postal regulation?
 - Cross-border aspects – but less important than e.g. in energy market

1. Current Regulatory Practices: Implementation of the Second Postal Directive
2. Preparing for Full Market Opening: Preparation for the Third Postal Directive
3. Cooperation Among NRAs
4. Identification of Best Practices

This presentation contains preliminary conclusions.
Research and final assessment in progress

Best Practices

Outline of Chapter 5

1. Definition of “best practice”?
2. Allocation of regulatory authority
3. Functions and independence of NRA
4. Authorizations
5. Regulation of universal service
6. Price control
7. Accounting regulation
8. Preparation for FMO

Presentation includes selected examples of preliminary best practice analysis

Best Practices

What Practice is “Best”?

In light of the requirements and objectives of the Third Postal Directive, good regulatory practice should ...

1. Protect affordable, reliable, and efficient universal postal service
 - Effective protection, adequate to public needs
 - Least market distortion
2. Facilitate effective competition in the postal market
 - Removal of barriers to entry and symmetric, nondiscriminatory regulation of all postal operators
3. Ensure effective administrative procedure, e.g.
 - Transparency, clarity, simplicity, proportionality etc., consistent with recognized standards of good administrative practice

Best Practices

Functions and Independence of NRA

- Best practice
 - Multi-member commission with fixed terms of service. Members are truly independent of both the PPO and general government
 - Commission is assisted by adequate expert staff
 - Transparent procedures
 - Examples: Postcomm (UK), ARCEP (FR), ANACOM (PT)
- Critical examples, in some MS:
 - 'NRA' is a ministry department.
 - NRA head is appointed by the minister responsible for postal policy, and can be dismissed without cause.

- Best practice
 - General authorisations for all postal operators without anti-competitive or burdensome conditions.
 - Separate authorisation from imposition of USO requirements
 - Examples: DE (simple licence almost GA), RO (clear separation of designation and authorisation).
- Good practice
 - Individual licenses limited to narrow class of letter post items may allow significant competition (ES, SE, UK)
 - General authorizations in some MS, e.g. BG, CZ, DK, IE, LU, NL, RO, SI, SK (but procedure usually does not apply to USP)
- Critical examples
 - Licenses for entire universal service and/or with stringent conditions

Best Practices

Range of Universal Services

- Best practice
 - USO limited to the minimum range of services demonstrably required to protect public interest.
 - Examples: NL and SE (single piece items)
- Good practice
 - Different definitions of universal service can be 'best' if supported by clearly defined public interests.
 - Example: UK
- Critical examples
 - Some MS seem to maintain overly broad USOs as a legacy of the past and without systematic review of public needs.

Best Practices

Control of Too High Prices for Captive Customers

- Best/good practices
 - Proportional use of price controls. E.g.,
 - Price control mechanisms suited to the degree of public interest in specific types of postal services (e.g., ex ante or price cap for single piece and ex post for bulk items)
 - Maximum commercial flexibility for USP consistent with protection of public interest (least restrictive solution)
 - Balance between simplicity and effectiveness
 - Decisions based on objective considerations with appropriate public input.
 - Examples: [To be determined]
- Critical examples:
 - Rigid ex-ante control of all prices limits flexibility of USP

Best Practices

Control of Too Low Competitive Prices

- Best/good practices
 - Proportional use of price controls. E.g.,
 - Principled and transparent methodology for determining fair minimum prices for competitive products and/or preventing 'cross subsidy'.
 - Principled allocation of responsibilities between NRA and NCA
 - Maximum commercial flexibility for USP consistent with protection of public interest (least restrictive solution)
 - Balance between simplicity and effectiveness
 - Decisions based on objective considerations with appropriate public input.
 - Examples: [To be determined]
- Critical examples:
 - No control over bulk postal products can allow abusive pricing

Best Practices

Cooperation between NRA and NCA

- Best practice
 - Obligation for mutual assistance and mandatory mutual consultation (as in electronic communications framework)
 - Example: FR, MT
- Good practice
 - [To be determined]
- Critical examples
 - No formal relations between NRA and NCA in some MS, nor cooperation in practice

Best Practices Accounting Regulation

- Best practice
 - Transparent, comprehensive, and published accounting rules and regulatory accounts
 - USA
- Good practice
 - Transparent accounting rules, careful and informed review by NRA
 - Examples: NRAs in FR, NO, SE, IE
- Critical examples
 - Some NRAs appear unable to ensure separate accounts in line with Art. 14,
 - Some NRAs lack resources to tackle this complex matter

Best Practices

Phase-out Strategies for the Reserved Area

- Best practice
 - UK: Thorough and transparent review of costs and benefits of postal monopoly, gradual liberalization of bulk segments
- Good practice
 - DE: Statutory timetable, D-licences
 - Liberalization of direct mail in various countries
- Critical examples
 - Many MS appear not to review necessity of current reserved area

Best Practices

Ensuring Universal Service

- Best practice
 - Reliance on market forces where possible (least restrictive principle) with specific and proportional use of designation and/or procurement as required to protect universal service
 - Example: DE
- Good practice
 - Examples: ? (MS which identify service elements that justify designation/procurement using transparent procedures)
- Critical examples
 - Non-transparent or unjustified continuation of existing designation (risk of burdening designated USP or distorting workable markets unduly)

Best Practices

Preparation for Multi-operator Market

- Best practice
 - UK: Code of conduct for all operators, incl. sharing of address files, treatment of misdelivered mail etc. Code was established following thorough and transparent review of the need for inter-operability
 - New Zealand: Commercially neutral postal law
- Good practice
 - SE: Access to PO boxes, postcode and change of address information
- Critical examples
 - Lack of access to delivery and PO boxes in several MS
 - Difficult access to products for inbound cross-border mail, and lack of transparency in this market (e.g. REIMS 3 third party access)



WIK-Consult GmbH
Postfach 2000
53588 Bad Honnef
Deutschland

Project contact:
Alex Kalevi Dieke
t +49 (0) 2224-9225-36
f +49 (0) 2224-9225-68
e a.dieke@wik-consult.com
www.wik-consult.com