

The External Dimension of the EU Postal Acquis

Study for DG Internal Market

Second Public Workshop

Brussels, 8 June 2010

Objective of Presentation

- To inform interested parties of the current status of the *External Dimensions* study.
- To summarise the current views and preliminary conclusions of the consultants in order to facilitate an exchange of views with interested parties.
- Caveat: *Views set out in this presentation are tentative only.* Our understanding of the issues presented by this study is continuing to evolve with research and reflection.

Report Structure

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

Specific Objectives

1. To provide recommendations on how to best present the EU postal regulatory framework in international discussions.
2. To provide a balanced view of EU postal acquis in the different dimensions of international postal relations (UPU, trade negotiations, bilateral discussions) and suggest on how to maximize synergies between them.
3. To reflect on the appropriate level of co-ordination between the Commission and the Member States in relation to obligations under Community law and how to maximize synergies in the approach to international postal discussions.

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

- Postal acquis
 - Acquis: body of common rights and obligations which bind all the Member States. Includes Treaties, Regulations, Directives, Commission and judicial decisions.
 - Postal Acquis: acquis that especially or particularly affect postal services where 'postal' includes letter post, parcel, and express services
- International relations
 - Intergovernmental agreements and/or discussions between the EU and/or MS, on the one hand, and foreign jurisdictions
 - Agreements that especially affect trade in postal services

Internal Postal Acquis: Five Pillars

- Objective: a simple distillation of internal EU postal acquis for presentation outside the EU.
- ‘Five Pillars’ of EU postal acquis
 - Assurance of efficient universal postal service adapted to the needs of society
 - Improve customer choice through gradual liberalisation
 - Legal protections for users of postal services
 - Safeguards against anticompetitive practices/abuse of market position
 - Fair and impartial regulation of postal services
- Reform of EU postal acquis has improved quality of universal service and customer choice as well as efficiency and flexibility of EU postal operators

International Relations: Four Key Legal Regimes (1)

- Objective: Key international agreements that particularly affect exchange of postal services between countries

1) Trade Agreements

- WTO: GATS, GATT
- Bilateral/regional Preferential Trade Agreements

2) Acts of the UPU

- Applies only to 'designated operators'
- Applies to postal, telecomm, and financial services of designated operators
- Does not govern international postal services generally

International Relations: Four Key Legal Regimes (2)

3) Customs

- Kyoto Convention establishes general rules for all operators
- UPU acts create special rules for designated operators
- EU customs law adopts UPU rules for postal administrations
 - Implementation of Modernised Customs Code not yet decided

4) Aviation Agreements

- Multimodal provisions of Open Skies Agreement facilitate express services
- Lines between freight and express/parcel postal services are blurring

Communities of Interest

- European Economic Area
- EU Candidate Countries
- European Neighbourhood Policy
- Euro-Mediterranean Partnership

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

Classification of Postal Submarkets (1)

- Definition of postal submarkets key for international agreements
- UPU
 - Letter post: letters / printed papers / small packets
 - Parcel Post
 - EMS (1989)
- EU Postal Directive (1997–)
 - Correspondence, direct mail, packages, etc.
 - Express v. non-express
 - Single piece v. bulk mail (upstream/downstream)
 - Regulation: Reserved v. Universal v. Non-universal services

Classification of Postal Submarkets (2)

- Trade law (GATS)
 - Government post v. private courier (UN CPC 1989)
 - Out of date
 - Alternatives
 - US 2000: Add 'express service' to postal and courier
 - EU 2001
 - Written communications, parcels, press, registered/insured
 - Express, unaddressed, document exchange, other

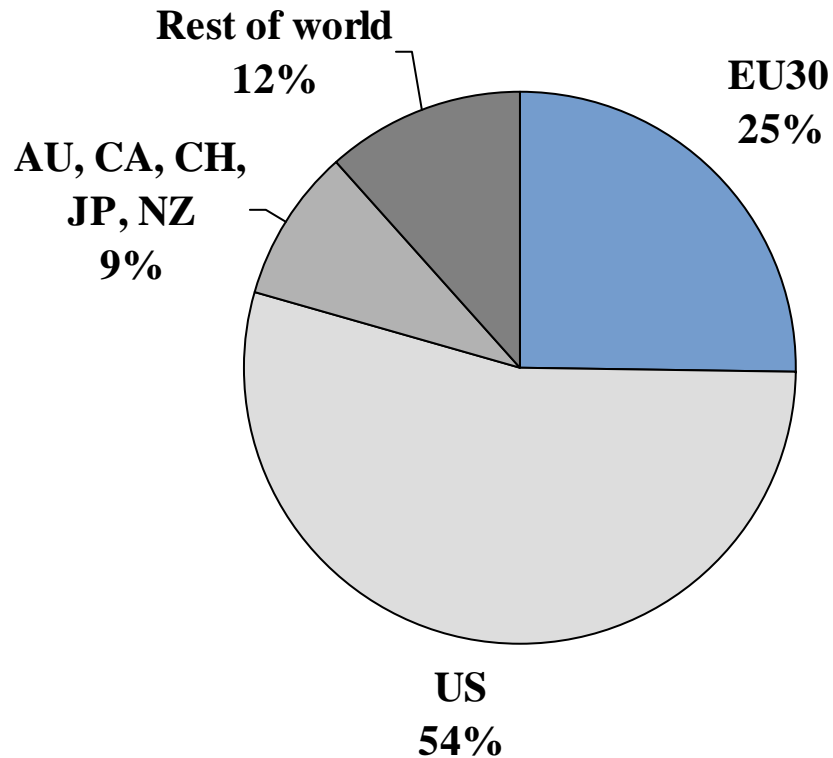
Classification of Postal Submarkets (3)

- Possible elements of an alternative scheme (tentative):
 - ‘Physical delivery networks’ (for example)
 - Items that can be handled by persons without special equipment
 - Collection, transport, delivery using network of sorting centers
 - Avoid arguments over ‘true’ meaning of *postal*.
 - Submarkets based on operational elements
 - E.g., transportation to/from sorting centers (ground hub, air hub); handling at sorting center (letter, flat, parcel); bulk/non-bulk (upstream/downstream)
 - E.g.: Letter post, Parcels, Express
 - Independent of ownership of operator or regulatory categories

State of International Postal Data

- International postal policy is handicapped by absence of standardised data comparable to data available in other sectors
- Description post international postal markets
 - UPU data and reports (esp., Andrenale Report)
 - IPC reports
 - Ad-hoc reports
 - Expert assessments and estimates (interviews)
- Objective: identify portions of international postal markets (1) significant to EU and (2) amendable to feasible reform initiatives

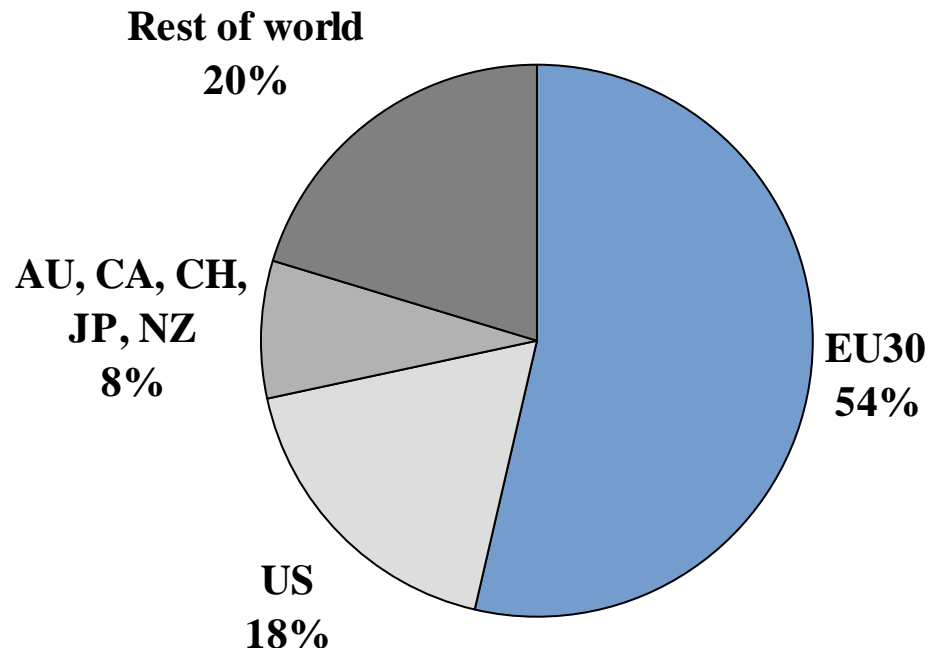
World Domestic Letter Post



Source: Estimate based on UPU Statistics

World Outbound International Letter Post

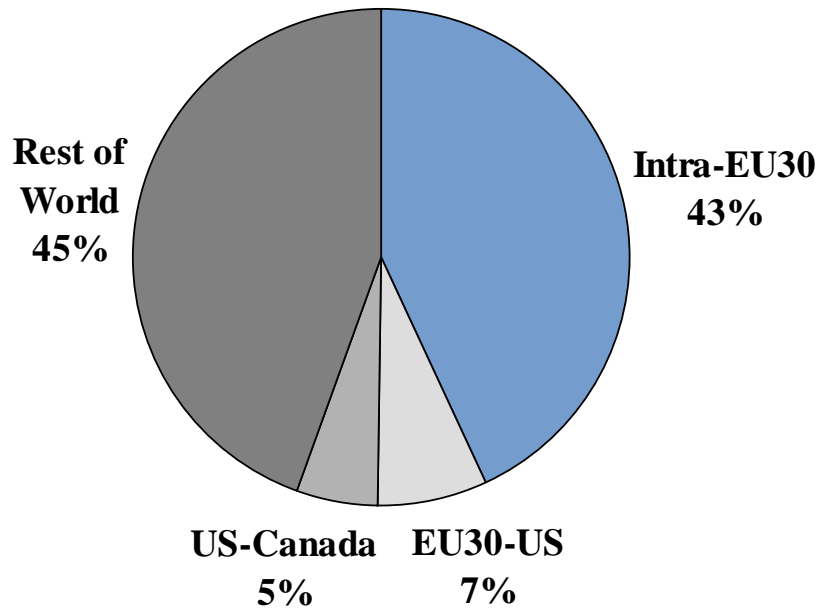
- Total value of World cross border mail market: ~€7 billion
- EU market account for ~54% in items, ~60% in revenues



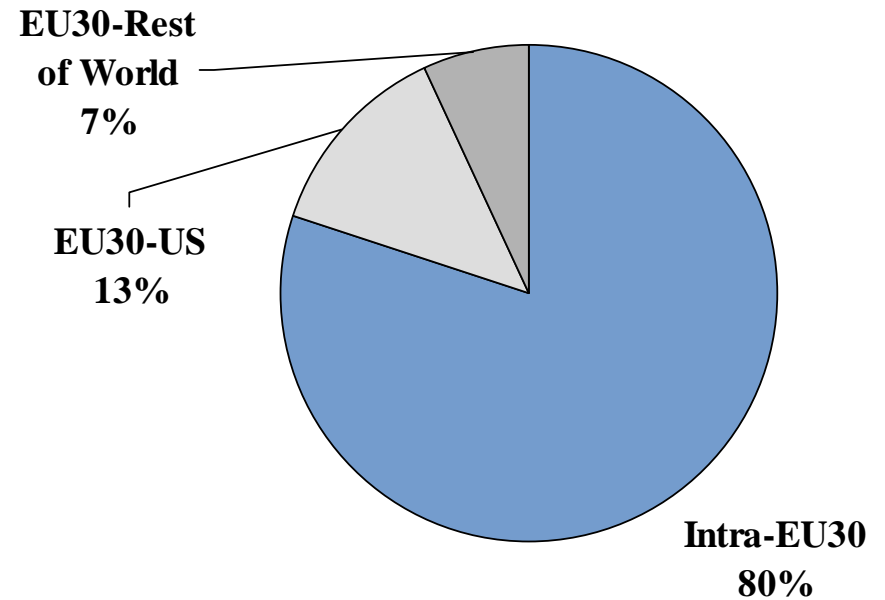
Source: Adrenale, UPU Statistics

“Special Circumstance” International Letter Post

% of World cross-border mail



% of EU cross-border mail



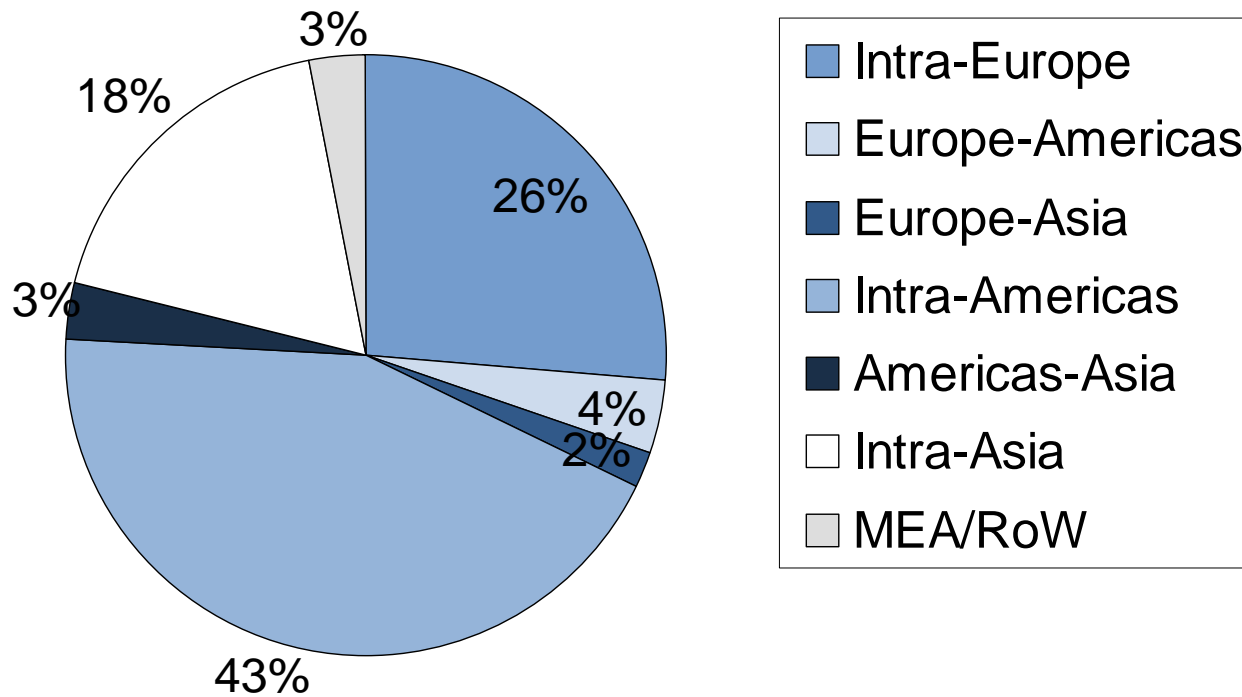
Source: Estimate based on UPU Statistics

International Letter Post: Key players

- Designated operators (DOs) dominate cross-border market
- Most “entrants” are DO subsidiaries, e.g. Spring, BPI, SPI, La Poste International, DHL Global Mail
- Few independent players, e.g. IMX
- Market share of DOs estimated to 85% (Adrenale)

World Express & Parcels Market

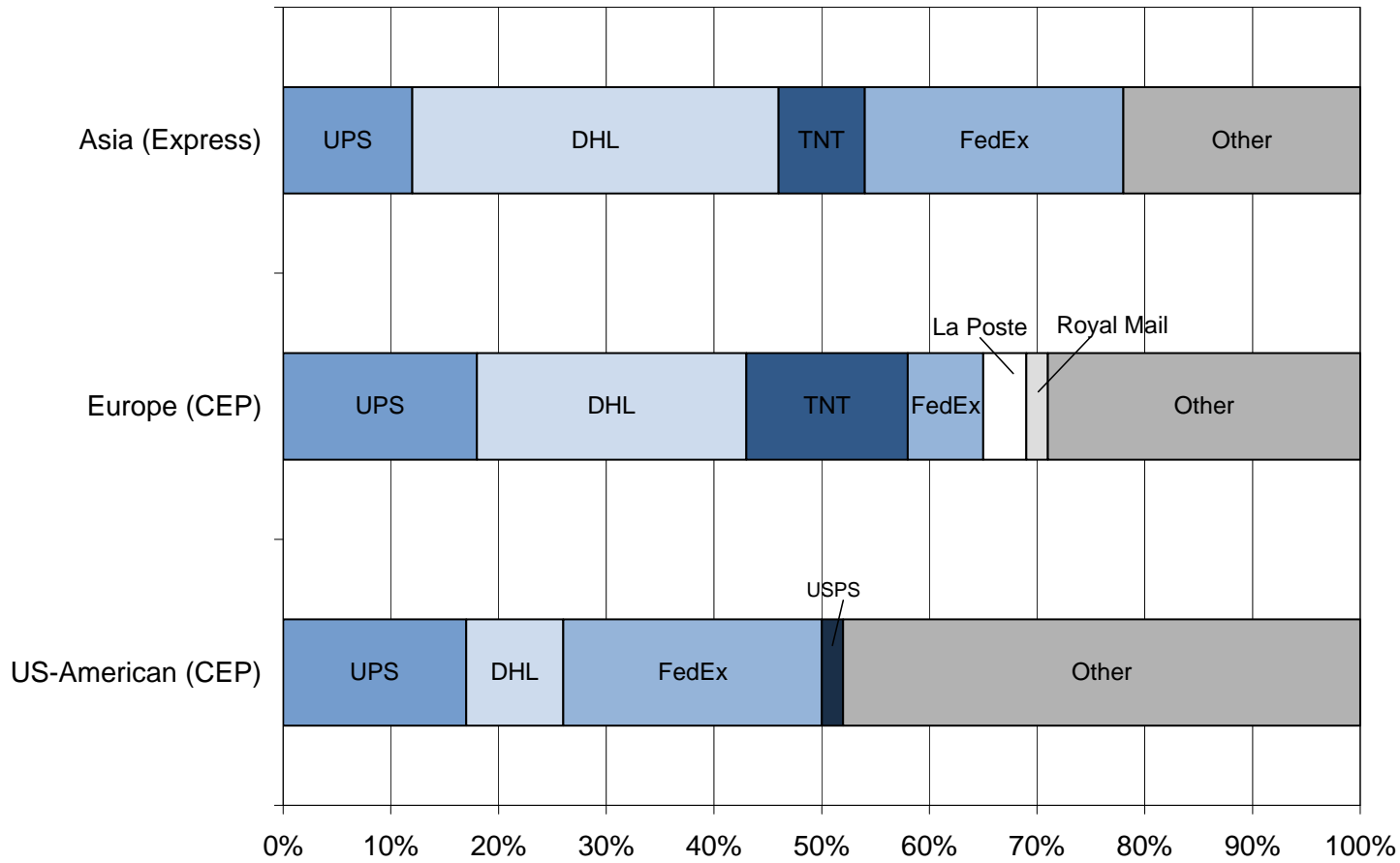
- Total World express & parcels market (including domestic): €136 billion



Source: EEA/Oxford Economics

World Express & Parcels Market: Key Players

- Cross-border express & parcels market: €15-17 billion (various sources)



Source: DPWN

EU Postal Operators in Foreign Markets (1)

Letter post activities outside home country (delivery or upstream)

Operator	EU-30	Non-EU
Austrian Post	CZ, DE, HR, HU, SK	
DP DHL	NL, UK, ES, FR	
Itella		RU
La Poste (FR)	PT, ES, UK, Europe/US	
TNT	AT, BE, CZ, DE, IT, SK, UK,	
Norway Post	DK, FI, SE	

Source: Annual reports for 2008. Incomplete/Work in progress

EU Postal Operators in Foreign Markets (2)

CEP & logistics activities outside home country

Operator	EU-30	Non-EU
Austrian Post	SK, HU, DE, BE, NL, SK	RS, ME, HR, BA
DP DHL	Various countries (World)	
Itella	SE, DK, EE, LV, LT	NO, RU
La Poste	UK, DE, RO, SI	TR, BA, HR, RS, UA
TNT	Various countries (Worldwide)	
CTT Correios	ES	BR, other Latin America, RU, TR
Posten AB	DK, FI, DE, UK, NL	NO
Royal Mail	BE, IT, RO, Eastern Europe	TR, IN
Norway Post	SE, DK, FI, UK	

Source: Annual reports for 2008. Incomplete/Work in progress

International Postal Markets: Conclusions

- Cross-border letter post
 - EU traffic is half of total World cross-border traffic
 - Intra-EU traffic is 80% of all EU traffic
 - Market served mostly by EU operators, primarily incumbents
- Cross-border express & parcels
 - No data on share of EU traffic in World cross-border
 - EU operators have significant traffic with other regions (US, Asia/Pacific)
 - EU operator compete with US integrators, and smaller local carriers

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

Purpose of Analysing Foreign Postal Markets

- Understand similarities and differences in postal policy (EU vs. main trading partners)
- Identify relevant trade/entry barriers (by markets segments)
- Inform conclusions regarding trade policy

Countries Selected For Analysis

- Top 10 trading partners, and Brazil
 1. United States
 2. China
 3. Switzerland
 4. Russia
 5. Turkey
 6. Japan
 7. Canada
 8. India
 9. Australia
 10. Brazil

Template for Country Profiles: Regulatory Indicators

- Independent NRA?
- Legal status of national postal operator
- Universal service products
- Reserved services
- Authorisations
- Market access and trade barriers

Template for Country Profiles: Market indicators

- General indicators (Population, GDP, GDP growth)
- Letter post
 - Volume time series
 - Volume breakdown (correspondence, direct mail, publications, outbound int'l)
 - Players and market shares
- Parcel and express
 - Volume time series
 - Volume by segment (deferred/express, domestic/outbound cross-border)
 - Players and market shares
- PPO: Expansion of business to foreign markets and non-core products

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

- Development of WTO
- GATT: measures affecting trade in products
- GATS: measures affecting trade in postal services
 - Applicability to postal services
 - Most favoured nation (Art. II) and other general obligations
 - Specific commitments
 - Categorisation of postal services and modes of supply
 - Domestic regulation (Art. VI)
 - Monopoly services (Art. VIII)
 - Restrictive business practices (Art. IX)

- Strong initiatives by EU
 - Proposed new definition of 'postal services' and categories for postal submarkets (2001)
 - Proposed reference paper (2005)
 - Plurilateral request (2006)
 - Addressed to 19 countries
 - Seeks 'strong commitments for activities that are carried out under competitive conditions'.
- Status of negotiations
 - Lack of substantial liberalisation to date
 - Prospects for the future

Preferential Trade Agreements

- More promising than GATS
 - Requires agreement of only one or a few trading partners
 - Must provide for 'elimination of substantially all discrimination'.
- Preferential trade agreements
 - Specific initiatives on express
 - Possible consideration of parcels, outbound letter post
- Status and prospects for future

Report Structure

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

Current Legal Order: Legal Structure

- Acts of the UPU
 - Constitution and General Regulations
 - Universal Postal Convention, Letter Post and Parcel Post Regs
 - Postal Payment Services Agreement and Regulations
- Decisions of the UPU
 - Nairobi Postal Strategy, etc.
 - ETOEs and IMPCs
 - Other decisions
- Opt out provisions: reservations from acts of UPU

Current Legal Order: Major Rules

- Legislative authority role of Postal Operations Council
- Special status of designated operations (DOs)
- Universal service obligation
- Terminal dues and inward land rates
- Rules restricting remail and ETOEs
- Customs treatment of items conveyed by DOs

Analysis of Terminal Dues Regimes

- Analysis of overall effects of terminal dues regimes
 - Based on plausible estimates of bilateral mail flows between major countries in and out of EU
 - Base case: terminal dues set equal to domestic postage of similar mail
 - Alternatives: UPU, Reims, etc.
- Objectives:
 - Identify order-of- magnitude effects of UPU terminal dues and alternatives
 - Sensitivity to variation in model inputs
 - Actual costs and benefits cannot be calculated

Report Structure

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

Major UPU Rules: WTO/EU Compatibility

- Review major UPU rules under WTO and EU laws:
 - Commingling of governmental and operational functions
 - Special status of designated operations (DOs)
 - Universal service obligation
 - Terminal dues and inward land rates
 - Remail and ETOEs
 - Customs treatment of items conveyed by DOs
- Specific analysis of major issues rather than exhaustive analysis of all possible issues (e.g., TMC Asser)

Governmental/Operational Functions (1)

First cut analysis only

- *Governmental functions* may be defined to include those functions or means adopted in inter-governmental agreements without operational components, e.g.
 - Postal Directive
 - EU proposals on postal services in Doha Round
 - Basic Telecomm Agreement
 - GATS generally
- Approximately 5% of text (by page count) in UPU acts relates to governmental functions

Governmental functions

- Universal service obligation
- Obligatory services for int'l items
- Means of ensuring universal services
- Limits or rules for licensing of postal service providers
- Obligations re transparency and non-discrimination
- Grant or limit of monopolies
- Competition safeguards
- User protection
- Independent regulator
- Customs rules

Governmental/Operational Functions (2)

First cut analysis only

- *Operational functions* may be defined to include those functions or means adopted in inter-operator agreements without governmental components, e.g.
 - Reims Agreement
 - EMS Cooperative Agreement
 - ITU technical standards (non-binding)
- Approximately 95% of text (by page count) in UPU acts relates to operational functions

Operational functions

- Range of joint products
- Quality of service targets
- Prices of joint products and payment procedures
- Allocation of joint costs among producers
- Security and integrity of operations
- Limitations on liability to customers
- Allocation of markets among producers
- Marketing, new business development

Ways of Resolving Conflicts of Laws

- Review of rules establishing hierarchy among EU, WTO, and UPU laws
 - Resolution by litigation
- Reservations to UPU acts
- Reliance upon EU law as exclusive legal framework for regulation of postal services within MS and between MS of the EU
 - Implies need for effective EU-level mechanisms by Commission and/or coordination among MS NRAs.

Report Structure

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

Mechanisms for Coordination of EU Policies

- EU representation to date
 - Coordination of MS positions by the Commission
 - Representation by Member States at 2008 UPU Congress
 - 511 out of 2140 delegates to Geneva Congress
- Means of coordinating positions of MS at UPU
 - External effects of the EU postal acquis (AETR jurisprudence)
 - Common Commercial Policy (TMC Asser, Lisbon)
 - Alternative models for coordination of MS positions (trade, aviation)

Major Issues for UPU Congress in 2012

- Basic issues
 - How to best present EU postal policy?
 - How to facilitate the international exchange of documents and parcels (within EU and outside EU)?
 - How to promote development of EU postal operators?
- Specific proposals pending before UPU Congress. Will depend on developments between now and 2012, but points of interest include
 - CA Reform of the Union Project Group
 - POC Parcels Group
 - Permanent status of Convention, revisions in Acts

Practical Considerations (1)

- EU internal postal acquis reforms are far ahead of UPU regulation creating substantial differences between internal and external sectors
- MS ministries and NRAs lack expertise and staff to monitor governmental and operational functions of UPU in detail
- In some cases, MS do not effectively control the national postal operator and/or may support as a national champion.
- Representation by 27 MS ministries and NRAs on governmental issues is inefficient use of governmental resources
- International letter post and parcel account for (very roughly) 4 percent of total EU market
 - Roughly 3 percent is intra EU; 1 percent is extra EU

Practical Considerations (2)

- Harmonisation of internal postal policies does not currently extend to MS positions at the UPU
- EU would be stronger at UPU if it negotiates in a coordinated and consistent manner.
- EU does not have expertise or staff to effectively represent Designated Operators in operational issues.
- EU DOs need commercial freedom to deal with FMO of Postal Directive and changing global market.

Report Structure

1. Introduction
2. Postal Acquis and International Relations
3. International Postal Markets
4. Regulation of Foreign Postal Markets
5. Trade Agreements and International Postal Services
6. Universal Postal Union and International Postal Services
7. Relations Between WTO, UPU, and EU Legal Frameworks
8. Coordination of International Postal Policies Within the EU
9. Conclusions and Recommendations

Divergence: Postal Acquis and International Relations

- Relatively little divergence
 - Trade agreements, esp., PTAs and esp. for express services
 - Aviation multi-modal provisions
 - Modernised Customs Code (but MCCIP is unclear)
- Relatively more divergence
 - Acts of the UPU (primarily governmental provisions)
 - Current EU customs provisions implementing UPU 'postal customs' rules (CCIP)

Priorities for EU: Factors

- Size and importance of markets
- Existing legal commitments of the European Union
- Developments in related international fora
- Practical considerations

Recommendations: Clarify Intra/Extra EU Structure

- EU law should assert right to govern intra-EU postal services
 - Enhances legal certainty for intra-EU postal services and resolves potential conflicts between UPU and EU regimes
 - EU may adopt UPU standards into intra-EU services
- Commission and NRAs should develop coherent regulatory approach towards intra-EU postal services
 - Soft regulation (common approach to Art. 13) may be sufficient
 - Competition rules should be clarified and enforced re cross border postal services

Recommendations: Enhance Customs Neutrality

- Commission should adopt a reasoned, practical, and commercially neutral approach towards customs treatment of postal services
 - EU should implement MCC in commercially neutral manner for all providers of postal services
 - EU should work with WCO and UPU to develop standard worldwide customs form for clearance of low value parcels and small packets (UPU CN 23)
 - Simplification and standardisation of customs for letter post for all operators is desirable but not be necessary (UPU CN 22)

Recommendations: Continue Trade Initiatives

- EU should seek PTAs on exchange of postal services
 - Build on principles of GATS and Open Skies Aviation Agreement
 - Best partner may be US; could be open to any other country
 - Consider inclusion of additional postal submarkets (e.g., commercial parcel markets, retail parcels, outbound bulk services)
- The EU should continue to seek Doha commitments and PTAs re postal services, especially in areas of express and parcels
- The EU should initiate a program of periodic regulatory dialogs between EU policy makers and corresponding policy makers in other countries

Recommendations: Clarify Roles of EU UPU Delegates

- EU governmental authorities should negotiate governmental elements of next Universal Postal Convention
 - EU should lead delegation or actively coordinate MS delegations
 - Extension of current common declaration of EU MS
 - Mandate for coordination should be limited to governmental issues and require regular and meaningful consultation with affected parties
- EU postal operators should negotiate operational agreements with other operators or with the UPU itself
 - EU and MS should not second-guess operational decisions
 - EU postal operators should not represent MS or EU
- Principles of Article 22 of Postal Directive