
COMMERCIALIZATION OF POSTAL AND DELIVERY SERVICES: National and International Perspectives

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A REVIEW OF EFFORTS TO DEVELOP A NEW POLICY FRAMEWORK FOR POSTAL SERVICES IN THE EUROPEAN UNION

James I. Campbell Jr.¹

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, 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 Union² 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 a proposed “regulatory framework.”

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.

1 Special Counsel for Postal Affairs to the International Express Carriers Conference and the European Express Organization. The views expressed in this paper represent the personal views of the author only.

2 The 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. Brief History of Postal Policy

In order to understand any 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 ascertaining the purpose of the current regime and the manner in which changing economic and technological factors may have eroded 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 rapid transportation for correspondence and documents. A walking or riding messenger would travel from one post to the next, 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.³

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.

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

At the international level, the evolution of multinational companies has also undercut the premise that international postal service can be organized as an exchange of mail between national markets, each reserved for a 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.

3 The 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 adopted 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, China and Japan adopted the European model, transforming their postal systems into universal delivery systems provided by a single government monopoly.

Postal administrations have responded to these developments with a mixture of conservatism and innovation. Resorting to postal monopoly laws and the market allocation provisions of the UPU Convention, postal administrations have waged 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 designed 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 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 is 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.⁴

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 international private 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,⁵ the

4 The 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.

5 The 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.

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 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 Telecommunications Directorate (DG XIII) released a document, *Proposal for a Regulatory Framework for Postal Services in the EU (Proposed Framework)*, which apparently indicates the direction of still unannounced legislation.⁶

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 fulfillment of 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).⁷ The

6 Although this document has been released by DG XIII, it has not been approved by the full European Commission and could be revised before approval.

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 in the postal policy debate to different degrees,⁸ 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 80 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 a 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. . . .⁹

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.

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

8 Some 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.

9 *Green Paper*, ch. 9 § 1.1, p. 241.

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 safeguarded. In this regard, the fundamental imperative is that universal service must be ensured for postal communication items of a personal or individualized nature....¹⁰

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.¹¹

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

10 *Green Paper*, ch. 8 § 3.1, p. 186.

11 1 *Liste* § 7.2, UNICE, p. 3.

because the users themselves expect the suppliers of services to be increasingly customer-driven and flexible.¹²

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 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.¹³

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.¹⁴ 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.¹⁵ The U.K. Post Office noted the uniform tariff was not mandated by United Kingdom policy, but "it is its preferred position."¹⁶ The French post office observed only that the uniform postage is "currently the case."¹⁷

One of the more economically sophisticated commenters, the German research group Wissenschaftliches Institut für Kommunikationsdienste (WIK), argued that,

12 2 *Liste* § 8.1, PTT Nederland, p. 1.

13 2 *Liste* § 8.1, U.K. Post Office, p. 14.

14 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.

15 2 *Liste* § 8.1, PTT Nederland, p. 3.

16 2 *Liste* § 8.1, U.K. Post Office, p. 43.

17 2 *Liste* § 8.1, La Poste, p. 2.

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.

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).¹⁸

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.¹⁹ 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* but does not offer any suggestions as to how rural service standards might be derived.²⁰ The private operators group, European Express Organization (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.²¹ 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.”²² A British poll suggested substantial flexibility in the expectations of consumers regarding rural service.²³

18 2 *Liste* § 11, WIK, p. 13.

19 In 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.”

20 2 *Liste* § 11, WIK, pp. 2-3.

21 2 *Liste* § 8.2, European Express Organization, pp. 38-41.

22 2 *Liste* § 8.1, PTT Nederland, pp. 2-3.

23 The 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

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

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).²⁴

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.²⁵

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."²⁶ The *Green Paper* envisioned the postal monopoly, or "reserved area," as an economic advantage for the public operator proportional to the obligations of universal service. That is, revenues from the reserved area are not intended to support the entire postal network, only to give the public operator 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

door-to-door delivery has long been provided by the U.K. Post Office as a matter of course.

24 *Guidelines*, § ¶ 2.2.1, p. 6.

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

26 *Green Paper*, ch. 9 § 1.1, p. 241.

reserved area would thus 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.

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.”²⁷

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.²⁸
- Cross-border services are already substantially competitive in fact.²⁹
- Competition will give users greater choice.³⁰

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 organization or a position within an organization) with sufficient individuality that it is clear that the text (excluding the address and any appellation) refers specifically to the addressee.³¹

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

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

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

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

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

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

reserved. Part of the reason is that, for at least three Member States, no distinction is drawn between letters and direct mail.³²

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 qualified as “letters” under the laws 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 individualized 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 individualized 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 individualized nature.³³

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 nonreserved sector. However, it should be recognized that there could be difficulties. Firstly, the increasingly personalized 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 analyzed in detail.³⁴

Two other postal monopoly reforms proposed in the *Green Paper* were of considerable importance. The *Green Paper* proposed liberalization of *document*

32 *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 than the monopoly on paper.

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

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

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 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. Liberalizing mail preparation would 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 the 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."³⁵ 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 Organization 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.³⁶

The Dutch Post Office suggests that a reserved area may have a *negative effect* on the supply of universal service.³⁷

35 *Green Paper*, ch. 9 § 1, p. 241.

36 2 *Liste* § 8.2, European Express Organization ¶ 124.

37 The 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

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.³⁸

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."³⁹ 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.⁴⁰

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 offered alternatives. Most postal administrations supported a postal monopoly over items weighing up to 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

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 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.

38 2 Liste § 8.1, PTT Nederland, p. 5.

39 2 Liste § 8.1, U.K. Post Office, p. 26.

40 2 Liste § 8.1, U.K. Post Office, p. 49.

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 protection of NPAs.⁴¹

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 center 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.⁴²

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. Liberalizing 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 the 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-bor-

41 1 *Liste* § 7.2, Institute of Directors, p. 2.

42 2 *Liste* § 8.1, PTT Nederland, p. 8.

der 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 upon local postal service for local mail. The U.K. Post Office argued that the threat was not so much 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* specifically rejected the proposition that merely maintaining the uniform tariff was a justification for a postal monopoly.⁴³

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 outward dispatch of mail since it will be impossible to extract monopoly rents from such a service. In any case, many postal administrations recognized that there are few economies of scale associated with the collection and transport phases of postal service.⁴⁴

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.

43 *Green Paper*, ch. 8 § 3.2, p. 187.

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

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.⁴⁵

Other postal administrations opposed liberalization of direct mail as a threat to the reserved area that sustains universal service and, in particular, a threat to the maintenance of a uniform tariff.⁴⁶

In the general debate, other reforms to the postal monopoly proposed in the *Green Paper* were largely overshadowed by the attention spent on these 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.⁴⁷

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 liberalization 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.⁴⁸

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

45 2 *Liste* § 8.1, PTT Nederland, pp. 6-7.

46 2 *Liste* § 8.1, Platform of German and French Post Offices, p. 3.

47 *Guidelines*, § 2.3.1, p. 7.

48 *Guidelines*, § 2.3.2, p. 9.

liberalization 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 liberalization 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 implications of liberalizing the delivery of inward traffic and its financial impact, taking into account that this liberalization 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.⁴⁹

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 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 to 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 exchange offices.⁵⁰ 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

49 *Guidelines*, § 2.3.2, p. 10.

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

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.

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. . . .⁵¹

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 delineated 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.⁵²

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

⁵¹ *Green Paper*, ch. 8 § 12.4, p. 212.

⁵² *Green Paper*, ch. 9, §§ 4.8, 6.2 6.6, 5.5, and 8.1, respectively.

- 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* 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 by the Universal Postal Convention 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-subsidization from reserved to competitive services.⁵³

53 1 *Liste* § 7.2, UNICE, p. 5.

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 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 Organization 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.⁵⁴

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, all 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."⁵⁵ These views were also supported by the private operators and at least one post office, the U.K. Post Office.⁵⁶ Other major postal administrations, however, supported the possibility of cross-subsidies from the reserved area to support universal services.⁵⁷

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 Organization, 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

54 2 *Liste* § 8.1, U.K. Post Office, p. 14; *id.*, *An Post*, p. 63; 2 *Liste* § 8.2, EEO ¶ 232.

55 1 *Liste* § 7.2, UNICE, p. 5; 1 *Liste* § 7.1, Consumers Association, p. 10.

56 2 *Liste* § 8.2, EEO ¶ 239; *id.*, § 8.1, U.K. Post Office, p. 39.

57 2 *Liste* § 8.1, Platform of German and French Post Offices, p. 2.

reflected either the demand for the service or, more generally, a fair contribution towards fixed costs.⁵⁸

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 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*

58 2 *Liste* § 8.1, U.K. Post Office, p. 69; id., § 8.2, EEO ¶ 240; id., § 11, WIK, 20.

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 80 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 re-

served 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 *Green Paper's* liberalization proposals.

If analysis of postal policy proved difficult, 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 legislation (which is unclear), it seems certain that such an approach will not resolve the 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 users and 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 hazardous to predict what that compromise will be.

References

Citations to the *Green Paper* and the *Guidelines* are to the section (to assist cross reference to non-English editions) and to the page number of the English edition. Citations to comments included in *Liste* are to the author of the comment cited and to the page number of the original comment as reprinted in *Liste*; the pages of *Liste* is not numbered consecutively. Comments reprinted in *Liste* are in the original language; quotations in the text are presented in unofficial English translation, except for the comments of the Dutch Post Office which were translated by the Dutch Post Office.

- Coase, R.H. 1939. "Rowland Hill and the Penny Post," *Economica*: 423, 435.
- Codding, George A., Jr. 1964. *The Universal Postal Union*. New York: New York University Press.
- Hill, Rowland. 1837. "Post Office Reform."
- Crew, Michael A. & Kleindorfer, Paul R., eds. 1991. *Competition and Innovation in Postal Services*. Norwell, Mass.: Kluwer Academic Publishers.
- Crew, Michael A. & Kleindorfer, Paul R., eds. 1993. *Regulation and the Nature of Postal and Delivery Services*. Norwell, Mass.: Kluwer Academic Publishers.
- European Commission. 1992. *Green Paper on the Development of the Single Market for Postal Services*. COM(91) 476 final. Brussels.
- European Commission. 1993. Guidelines for the Development of Community Postal Services, COM(93) 247 final. Brussels.
- European Commission. 1993. Liste des Contributions Ecrites Transmises à la Commission Lors de La Periode de Consultation sur le Livre Vert Postal. 2 volumes. Brussels.
- European Express Organization. 1990. *Community Delivery Services*. Brussels.
- Scheele, Carl H. 1970. *A Short History of the Mail Service*. Washington: Smithsonian Institution Press.