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# **POSTAL AND DELIVERY SERVICES: Pricing, Productivity, Regulation and Strategy**

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## Chapter 14

### **Modern Postal Reform Laws** *A Comparative Survey*

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

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

## 1. APPROACHES TO POSTAL REFORM

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

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

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

One approach to postal reform focuses on commercial flexibility for the post office. To what extent can providers of traditional postal services manage their activities in the same manner as other commercial concerns? Today, post office managers increasingly find themselves in competition with private companies, yet legal restraints prohibit them from conducting

business like managers of private companies. Postal managers are frustrated with restrictions on their authority to raise and lower prices; price discriminate among customers; hire, compensate, and fire employees; modify services and close offices; buy and sell assets; raise money through debt or equity financing; and enter new lines of business. "Commercial flexibility" implies greater latitude in such areas.

The obverse of commercial flexibility is the "universal service obligation." Granting commercial flexibility implies a loosening of service standards for providers of universal postal services. For example, a post office might be permitted to deviate from uniform postage rates provided all rates remain "affordable" or below a given price ceiling. Rules prohibiting discounts and price discrimination may become less stringent. A post office might be allowed to modify service standards—delivery times or delivery frequencies—within certain parameters. Then, too, a post office could be given more freedom to close post offices and eliminate collection boxes.

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

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

Compared to other approaches to postal reform, privatization yields two major benefits. First, privatization creates shareholders who are motivated by self-interest to ensure that the post office is managed in the most efficient manner. A fundamental weakness of government enterprise is that government officials who do not have money at risk are not as watchful over

management as private shareholders. Second, privatization substantially lessens the problem of accounting for inherited governmental privileges. If private shareholders purchase the tangible assets of the post office for a fair price, the fact that those assets were originally purchased with government revenues becomes irrelevant. After privatization, the assets in question will reflect “real money” risked by real shareholders, and they may be sold or converted without regulatory scrutiny. Likewise, privatization allows for burdens of the past. If a post office is handicapped by high wages or inefficient capital investments, these will be reflected in a lower sales price. By taking into account the benefits and burdens of the past, privatization places new owners in a competitively fair starting position vis a vis private competitors. Regulatory controls designed to correct the past will be less necessary (although problems derived from an inherited dominant position remain).

## 2. POSTAL REFORM LAWS

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

### 2.1 Australia (1994)

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

Under the 1994 act, Australia Post is authorized to provide any postal or nonpostal service, but its commercial freedom is qualified by a limited obligation to maintain a universal postal service. Specifically, Australia Post must provide a “letter service” for items within the reserved area that is

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

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

Greater commercial flexibility was balanced by a reduction in commercial privilege. In Australia, the carriage of a letter is reserved for Australia Post only if (i) the price of service is less than or equal to four times the postage for “a standard postal article” and (ii) the weight of the letter is less than or equal to 250 grams. Moreover, there are several significant exceptions to the monopoly and thus to the universal service obligation. The monopoly does not include carriage of outbound international letters, advertising mail (“newspaper, magazine, book, catalogue or leaflet”), or intracompany letters (“the carriage of a letter from an office of the individual or organisation sending the letter to another office of that individual or organisation”). Also exempt from the postal monopoly are upstream services for bulk mail (“the carriage of a letter to an office of Australia Post where it is then lodged for delivery under a bulk interconnection service”) and letters carried within or between document exchange offices.<sup>4</sup>

Australian law provides little separation of governmental and commercial functions. Not only does the law vest Australia Post with the privileges and duties of a government agency, it fails to establish an independent regulator. Government supervises the policies of Australia Post directly. Australia Post is governed by a Board of four to eight Directors, appointed by the Minister, and a Managing Director, appointed by the Board. Directors are named for five-year terms or less and can be dismissed for “unsatisfactory performance.” The Board determines the objectives, strategies, and policies

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

<sup>4</sup> Australia Post Act, §§ 29-30 (postal monopoly).

of Australia Post. New postage rates for “standard postal articles” may be disapproved by the Minister, and the Minister may give the Board such written directions (excepting rates and fees) “as appear to the Minister to be necessary in the public interest.” The Minister thus ultimately wields both governmental and commercial authority over Australia Post.<sup>5</sup>

There are two exceptions to the general absence of independent regulation. First, the Australian law provides that a large mailer or private operator may tender bulk mail downstream (i.e., at a post office close to the addressees of mail) at a discount reflecting average transport costs avoided by Australia Post. In case of dispute about the appropriate “bulk interconnection” rate, the Australian Competition and Consumer Commission (ACCC) acts as arbitrator, although the Minister retains discretion whether or not to require Australia Post to adopt a price recommended by ACCC. Second, ACCC has limited authority to scrutinize increases in postage rates for reserved services under the Prices Surveillance Act 1983.<sup>6</sup>

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

## 2.2 Germany (1997)

Germany has reformed its postal market in three legislative stages. In 1989, “Postreform I” created separate departments for postal services, postal banking, and telecommunications within the Ministry for Posts and Telecommunications. A new Board of Directors introduced a greater degree of private sector management and accounting practices. In 1994, “Postreform II” transformed Deutsche Bundespost Postdienst into Deutsche Post A.G., an entity organized under the same corporate law as private companies and having the government as sole shareholder. At the same time,

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

<sup>6</sup> Australia Post Act, §§ 32A, 32B.

<sup>7</sup> In April 2000, the government proposed a new postal reform bill to limit further the postal monopoly and commercialize Australia Post. In early 2001, the government abandoned this bill in the face of opposition in parliament. In the unenacted proposal, a key element was creation of an “access regime” under which ACCC would have substantially greater authority to regulate the exchange of mail between competitors.

the German Constitution was amended to explicate a governmental obligation to ensure maintenance of “appropriate and adequate” universal postal services offered on a private enterprise basis. The German Postal Act 1997, “Postreform III,” delegated to the telecommunications regulator, RegTP, responsibility for maintenance of universal service and regulation of the postal sector and abolished the postal monopoly after a five-year transition period ending on 31 December 2002. Postreform III is supplemented by two governmental ordinances, one on universal service and one on rate regulation.<sup>8</sup>

In respect to commercial flexibility, German postal law subjects Deutsche Post and other operators to substantial regulatory supervision in providing postal services both within and without the historically monopolized area (the licensed area, defined below). The first purpose of such regulation is to ensure maintenance of universal service. The act defines universal service as “provision throughout the Federal Republic of Germany of basic postal services (universal service) at affordable prices.” Delivery of items outside the licensed area (defined below)—for example, parcels and books—is considered part of the universal service only when “such postal services as can, at least in part, be provided using conveyance means of postal services subject to licence.” The definition of universal service is further refined in the Postal Universal Service Ordinance. The Ordinance specifies, for example, the maximum level of stamp prices (real price on 31 December 1987), minimum quality of service (80 percent of letter post items shall be delivered on day after posting), the minimum of number of post offices (12,000 of which 5,000 shall be operated by company staff), and the rules on letter box location (no more than 1 kilometer from any urban resident), and delivery frequency (once per working day). The Universal Service Ordinance also requires Deutsche Post to maintain a uniform tariff for nonbulk licensed services until the end of 2002.<sup>9</sup> Outside of the scope of licensed activities, German law seeks primarily to restrain anticompetitive activities by postal operators.

Although all postal laws in this survey permit the post office to enter nonpostal markets, the progress of Deutsche Post in this regard has been remarkable. Deutsche Post has embarked on an aggressive expansion campaign. Deutsche Post has established a Europe-wide parcel service,

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

<sup>9</sup> German Postal Act 1997 (hereafter, “German Post Act”), §§ 4 (definition), 5 (licensed area), and 11 (universal service).

purchased a controlling interest in DHL (the leading international express company) and, through acquisition of Danzas and AEI, become one of the world's leading freight forwarders. Deutsche Post also has interests in financial services and is developing an e-commerce business.

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

In German postal law, a "licensed area" replaces the postal monopoly after 2002.<sup>12</sup> No company may, without a license issued by RegTP, operate a business for delivery of "letter post items" weighing up to 1 kilogram.<sup>13</sup>

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

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

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

<sup>13</sup> "Letter post" items are defined to mean "addressed written communications." German Post Act §5(1). Periodicals, "publications appearing on a recurrent basis such as newspapers and magazines," are declared not to be "written correspondence" and thus not "letter post" items. §4(2). Unaddressed items, "communications not addressed to an individual by name but bearing solely a collective indication of place of residence or business," are declared to be not "addressed" and hence are neither "letter post" items nor "addressed parcels." §4(2). The licensed area excludes letters carried by "courier service,"

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

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

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

In reviewing rates, the administrative discretion of RegTP is sharply limited by the act and implementing ordinances. The Postal Rates Regulation Ordinance sets out procedures and documentation to be used by RegTP. The Ordinance specifies the licensee’s obligation to submit documents, the

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i.e., a service that “conveys letter post items in such a way that individual recorded items, in the interest of rapid, reliable conveyance, are accompanied at all times on the journey from sender to addressee by a person who has access to the item at all times and who can make the necessary arrangements.”

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

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

structure of the cost statement the licensee must submit, the authority of RegTP to publish data, and the components and the content of price caps to be employed; the Rates Regulation Ordinance also seems to require RegTP to employ price caps for most nonbulk licensed services. RegTP's review of rates must be completed in approximately two months, a period that may be contrasted with the ten months available for rate review by the regulator in the United States. RegTP cannot compel Deutsche Post to produce information necessary for rate analysis.

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

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

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

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

In sum, in contrast to Australia, Germany has embraced a broader and more fundamental concept of postal reform. While Australia has focused primarily on giving the post office commercial flexibility, the German government has embraced all three approaches to reform: commercial flexibility, separation of governmental and commercial functions, and privatization. After the transition period, Deutsche Post will be a normal company operating in a regulatory framework that treats all delivery services in the same manner. Nonetheless, the German postal reform law has been heavily criticized as unbalanced. The essential flaw in the German approach is incomplete separation of governmental and commercial functions. By virtue of postal ordinances and a long transition period, the German government retains substantial authority to shape the legal framework in a manner favorable to the Deutsche Post, to protect Deutsche Post from regulatory inquiry, and to fund Deutsche Post's competitive ventures through state assets previously transferred to the post office and uncontrolled by the regulator. Since 1997, it has been the competition directorate of the European Commission, not RegTP, that has sought to control anticompetitive practices of Deutsche Post.

### **2.3 Sweden (1998)**

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

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

extended to 1 April 2001. Provisions of this agreement were attached as conditions to Sweden Post's license to provide "postal operations."<sup>17</sup>

Postal reform has resulted in substantially greater commercial flexibility for Sweden Post;<sup>18</sup> nonetheless, in the "licensed area," defined below, Sweden Post and other designated operators, if any, must fulfil a universal service obligation. The act defines universal service in general terms: universal service must be of "good quality," provide delivery for parcels weighing up to 20 kilograms, and offer uniform nationwide rates for single piece mail. The act also mandates a national system of post offices and uniform postage rates.<sup>19</sup> More specific norms are established in an ordinance, adopted by government, and regulations and license conditions, adopted by PTS. The Postal Services Ordinance prohibits Sweden Post from increasing rates for single piece letters weighing 500 grams or less by more than the rate of inflation. Sweden Post's license obliges it to consult to PTS before implementing basic changes in service levels and access conditions.

In Sweden, postal reform includes separation of governmental and commercial functions. As in Germany, the postal monopoly has been replaced by a licensing scheme. The Swedish law provides that no person may, without a license, engage in "postal operations." "Postal operations" are defined as "regular delivery of letters for a charge." The term "letters" is, in turn, defined as "addressed mail that is enclosed in an envelope or other wrapping weighing at most 2 kilograms."<sup>20</sup> As in Germany, the Swedish law vests responsibility for universal service in "the government or an authority appointed by the government" rather than in the post office. To ensure

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

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

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

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

universal service, PTS's primary tool is the ability to attach the obligation to provide universal service to one or more postal licenses.<sup>21</sup> The most important difference between the Swedish law and the German law is the enhanced authority of the Swedish regulator to fashion and enforce license conditions which, in the judgement of the regulator, are needed to protect universal service. Although Swedish law is not entirely clear, it appears that PTS is authorized to attach detailed conditions only to one or more specific licenses, the licenses of operators required "to make universal postal services available." A license holder obliged to provide universal service shall provide "service at prices that are geared to costs," respect limits on postage rates, provide annual reports, establish public procedures for handling complaints, and abide by other conditions established by PTS. Significantly, PTS may also attach accounting and reporting obligations to a universal service license.<sup>22</sup>

In practical effect, Swedish regulation, like German regulation, is thus limited to major providers, primarily the incumbent post office. In Sweden, there are about 50 licensed providers of "postal operations." Sweden Post (94.8 percent of the market) and CityMail (4.8 percent) are the only large providers; others are small regional companies. PTS has attached universal service obligations to the license of one provider of postal operations, Sweden Post. The Sweden Post license sets out the universal service requirement in terms similar to but less detailed than the German Universal Service Ordinance. Unlike in Germany, the licensing system for "postal operations" is the only form of postal regulation in Sweden. Providers of other delivery services, including express services and parcels within the universal service area, are neither regulated nor required to register with PTS.<sup>23</sup>

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<sup>21</sup> Sweden Post Act, § 5b; Postal Services Ordinance, §7.

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

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

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

## 2.4 New Zealand (1998)

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

The New Zealand law provides for minimal restraints on the commercial flexibility of NZ Post and other companies providing postal services. The law neither defines nor imposes a universal service obligation on the sector. The aim of the act is consumer protection. A “postal operator” is defined as a person whose “business consists, wholly or partly, of the carriage of letters.” A “letter” is “any form of written communication, or any other document or article that is addressed to a specific person or a specific address and conveyed other than by electronic means” and delivered for a charge of

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

NZ\$ 0.80 (US\$ 0.37) or less. Thus defined, “postal operators” are required to take special care in handling “postal articles,” i.e., any letter, parcel, or other article carried by a postal operator. Specifically, postal operators must (i) file a simple registration with the Minister; (ii) mark each postal article with that operator’s postal identifier; (iii) respect the privacy of postal communications; (iv) report to the government if a postal article or letter is posted in contravention of law; and (v) keep a record of postal articles detained or opened and notify addressees.<sup>25</sup>

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

Since governmental intervention in the postal services market is minimal, the need to separate governmental and commercial functions is largely obviated. There is no postal monopoly, licensing scheme, or active regulator. New Zealand law does not address directly possible abuse of commercial advantages inherited from NZ Post’s days as a governmental agency. The only supervision is found in disclosure regulations which appear designed to deter anticompetitive behavior. For example, NZ Post is required to disclose the number of bulk mail contracts at each discount level and the justification such discounts. Periodic strengthening of disclosure requirements imposed

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

<sup>26</sup> See note 24, above.

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

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

on New Zealand Post since 1990 suggests that government initially underestimated the competitive problems posed by deregulation.

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

## 2.5 The Netherlands (1998)

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

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

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

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

the shares of the other public postal operators of GD Net, and KPN became the majority shareholder. In October 1996, KPN initiated a purchase of TNT, the Australian company that owned the private portion of TNT Express. This acquisition gave KPN, or TPG after demerger, majority ownership and complete control of TNT Express.

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

Dutch law does not provide strict separation of governmental and commercial functions. As in Australia, the post office enjoys a legal monopoly over a relatively limited portion of the mail. The monopoly covers carriage of a letter if it weighs 100 grams or less and is conveyed at a postal tariff lower than that determined by administrative order.<sup>32</sup> The Postal Decree sets the price limit for private carriage at three times the basic stamp price. As in Germany, the Minister exercises both ownership and regulatory

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

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

authority over the post office, and an independent regulator is charged with the largely ministerial task of enforcing laws and regulations. In addition to determining the details of universal service, the Minister may regulate accounting practices, establish a consultative users group, create a board to resolve certain user complaints, issue guidelines relating to unfair competition, establish limits on increases in basic postage rates, and issue orders on placement and dimensions of letter boxes. The regulator is the Independent Post and Telecommunications Authority (OPTA). OPTA is empowered to enforce compliance with the Postal Act and regulations of the Minister by imposing administrative fines up to NLG 1 million (US\$ 425,000), except that the Minister can enforce directly certain extraordinary orders (relating to, *inter alia*, international postal conventions).<sup>33</sup> The public postal operator is required to offer other delivery services access to its post boxes (rental boxes located in post offices) at reasonable fees. OPTA is responsible for resolving disputes about appropriate fees.<sup>34</sup>

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

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

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

<sup>34</sup> Netherlands Post Act, §§ 1, 2d, 5, and 9.

## 2.6 United Kingdom (2000)

In June 2000, the United Kingdom adopted a postal reform law after six years of consideration. In June 1994, the Conservative government published a “green paper” on postal services that proposed reductions in the postal monopoly and privatization of 51 percent of the post office. Although supported by the British Post Office, this proposal was narrowly defeated in Parliament. In July 1999, a new Labor government proposed a modified plan for postal modernization that eschewed privatization. On 28 July 2000, the Postal Services Act 2000 was given final assent by the Queen. The act reorganized the British post office as an ordinary private law company, Consignia, and transferred governmental authority to a new regulatory body, the Postal Services Commission or “Postcomm.” Postcomm is composed of a chairman and at least three other persons appointed by the Minister for terms determined by the Minister.<sup>35</sup> Consignia is owned by the government and may benefit from certain financial arrangements with government but is in other respects a private delivery service company. The postal monopoly enjoyed by the British post office since 1660 was abolished and replaced by a licensing scheme.

The British postal act envisions substantial limits on the commercial flexibility of the British Post Office and other providers of postal services. No person may operate a business for delivery of “letters” without a license issued by Postcomm unless, for each letter transported, (i) the price of service is at least UKL 1.00 (US\$ 1.50) or (ii) the weight of the letter is at least 350 grams.<sup>36</sup> To such licenses, Postcomm is obliged to attach whatever conditions it considers necessary to meet three public policy goals, to be satisfied seriatim. First, Postcomm is directed “to ensure the provision of universal service.” “Universal service” is defined to include at least delivery each working day of “relevant postal packets” to each address in the country except in “exceptional circumstances” as determined by Postcomm. Service must be provided at “affordable prices determined in accordance with a

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

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

public tariff which is uniform throughout the United Kingdom.” “Relevant postal packets” refer to documents and parcels weighing up to 20 kilograms. Second, to the extent consistent with the first goal, Postcomm is directed to “further the interests of users of postal services, where appropriate by promoting effective competition between postal operators.” Third, to the extent consistent with the first two goals, Postcomm is directed to “promote efficiency and economy on the part of the postal operators” with special attention to disadvantaged users.<sup>37</sup>

Within these broadly stated criteria, Postcomm may fashion almost any legal regime that it deems appropriate. Although Postcomm has no regulatory jurisdiction over service providers operating wholly outside the licensed area, it may place conditions on services which a licensed operator provides outside the licensed area. On 23 March 2001, Postcomm issued the first postal license to Consignia. Twenty conditions are attached, addressing issues such as prices, universal service obligations, standards of service, complaint handling, free services for the blind, provision of information to users, integrity of mail, access to postal facilities, prohibitions against unfair commercial advantage, mergers, accounting rules, financial resources, and reports to Postcomm. The universal service obligations set out in the Consignia license are detailed. For example, Consignia must make delivery to each address point at least once each working day. It must establish collection boxes so that “in each postcode area where the delivery point density is not less than 200 delivery points per square kilometre not less than 99% of users or potential users of postal services are within 500 metres of a post office letter box.” Consignia is required to maintain a tariff for relevant postal packets that is “a public tariff that is uniform throughout the United Kingdom.” Prices for letter services within the licensed area (about 66 percent of services) may not be increased without approval by Postcomm. Prices for postal services outside the licensed area but lacking effective competition (about 24 percent of services) may not be increased more than inflation. Postcomm has required Consignia to make its address database available to all operators.<sup>38</sup>

Separation of governmental and commercial functions is thus almost complete in the United Kingdom. Virtually all governmental privileges and burdens are determined and imposed by an independent regulator on all

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

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

licenses providers of postal services. In addition to regulation by Postcomm, the Postal Services Act establishes a regulatory role for two other independent bodies: the Consumer Council for Postal Services (Postwatch) and the Competition Commission. Postwatch is a users group appointed by the Minister on terms established by the Minister. Postwatch is authorized to advise the Postcomm, the Minister, and others on postal issues and to investigate complaints. In exercise of its duties, the Postwatch is authorized to use legal process to obtain information. The Competition Commission is a separate regulatory body whose concurrence is required before the Postcomm can modify a license.

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

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

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

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

Overall, the British regulator has far greater authority to develop a flexible and procompetitive postal services sector. By the same token, the British regulator also has extraordinary authority to abrogate market forces and reshape the postal services market in a manner that it deems more suited to the public interest.

### 3. CONCLUSIONS

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

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

Why do approaches to postal reform differ? To some extent, differences in approach appear to reflect differences in legal and political culture. Anglo American countries rely more heavily on regulation and laissez faire economic policy (yet Australia is an exception); European countries prefer greater governmental control (yet Sweden is an exception). The tendency of countries to learn from precedent also seems to be a factor. Sweden and New Zealand both underestimated the extent to which regulatory authority or public disclosure is needed to balance increased commercial freedom for the post office and amended initial reform laws accordingly (the German experience could be interpreted to point in the same direction); in the most recent reform law, adopted in the United Kingdom, the authority of the regulator is the most fully defined. Still another factor is likely the uneven distribution of legislative craftsmanship; at any given time and place, some parliaments write more thoughtful laws than others.

Regardless of political philosophy, however, a comparative evaluation of leading postal reform laws reveals policy options that should be considered by any legislator addressing postal reform anew. A broad, politically popular definition of universal service must be weighed against commercial flexibility for the post office. The extent of governmental invention in the

market directly affects the need to separate commercial and governmental functions; thus, the minimal regulation required in the New Zealand approach and the maximum reliance on regulation endorsed by the United Kingdom represent quite different public policy choices. The economist appears correct in arguing for more serious attention to privatization; privatization can reinforce, but not supplant entirely, other approaches to reform. In short, in light of the six postal reform laws discussed, the wise legislator will now seek a balance of all three approaches to postal reform.

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