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*Green Paper on the Development of
the Single Market for Postal Services*

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CHAPTER 8: DISCUSSION OF POSSIBLE SOLUTIONS

1. Introduction

The previous chapter summarised the problems and challenges to be found in the Community's postal sector. This chapter discusses the possible solutions to the problems identified (and the policies needed to meet the challenges).

2. Why Should the Community be Involved?

The analysis of the existing situation identifies several problems that would seem to justify action at Community level. Many of these problems concern the variability of the quality of universal services. Resolution of such quality related problems is paramount.

Broadly there are five areas of concern for the Community.

2.1 PRESENT LACK OF HARMONISATION

The operations providing universal service in each Member State have evolved independently with the effect that there are now many operational differences between them. This can lead to significant problems for mail passing between Member States; it can also have opportunity costs. Most obviously the universal service is defined differently in different Member States with the effect that customers cannot confidently post similar items in different Member States. But problems of inter-operability are to be found at every level. At a more detailed level, for example, problems are encountered because of lack of harmonised norms for envelopes.

2.2 SINGLE MARKET IMPLICATIONS

Service performance for universal service varies greatly between different postal administrations. There are some Member States where next day delivery performance reaches the generally accepted target of 90%; in others, performance is 15%/16%; in others, performance is between the two (but tending more towards the former). The generally accepted, but not very demanding, service target for cross border mail is delivery within three working days; performance is [184] currently measured at an average of only about 40%, and with large variations between different postal administrations.

Such variations have particular implications for the parts of the Community's commercial and social life that are heavily reliant on postal services. Large senders of mail include the key sectors of publishing, financial services, mail order and advertising. For such sectors variability in performance of universal services can lead to market distortions. For example, it would be much easier to sell insurance services to an individual household in a Member State where the performance is 90% rather than in another Member State where it is 16%. It would be more difficult for a company to market its products by post in another Member State than for a company that was based in that Member State.

For example, it does not appear co-incidental that one of the Member States with very poor service has a mail order sector only one fifth the size of that of other Member States of comparable economic size. This harms the mail order companies' prospects. Significantly, it also reduces the choice of the individual consumer. Those who live in regions disadvantaged by poor postal services - and there are many - are therefore isolated not just from the personal contact that can be achieved through mail, but also from the services that can be provided through the mail.

Such disruptions of the Single Market affect not only senders but also receivers of mail. If a particular region of the Community is thought to have an unreliable universal service, companies (such as mail order) would be less interested in trying to market their products there. The consumers (as potential recipients) would therefore have a reduced choice.

2.3 CROSS-BORDER SERVICE PERFORMANCE

In terms of number of days taken from collection to delivery, a domestic item takes an average of 1.5 to 2.0 working days, whereas a cross-border item within the Community takes an average of 4.0 days. A small part of the gap is explained by operational practicalities. But the larger part of the gap cannot be explained in this way. This quality gap effectively creates a "frontier effect". Expressed in terms of achievement against target, service performance for postal administrations' cross-border letter services within the Community has been measured at an average of 40%. Behind this average lie significant variations. [185]

This level of service probably falls short of user expectations. Indeed, it should be mentioned that expectations are likely to become more demanding as cross-border communication increases. Relative to user demand, static performance would be perceived as worsening. In fact, there appear to have been some improvements, stimulated particularly by the introduction of competition (partly in breach of exclusive rights which were unenforced). However, there is still a large gap between the targets which postal administrations set themselves (either on the basis of customer requirements or operational practicalities) and the reality.

Since effective cross-border communications are essential for the commercial and social life of the Community, it is a matter of concern to the Community that service performance for cross-border services is so unreliable.

2.4 DIVERGENCES

One of the objectives of the Community is to ensure its own cohesion. Clearly, the wide divergences to be found in the postal sector do not help the achievement of this objective. Postal

services provide one way in which messages can be communicated and goods delivered. Any regions having unreliable postal services would therefore be disadvantaged in terms of their communications and goods delivery requirements. Both individuals and businesses in such regions could feel cut off.

This situation of being disadvantaged would not be only by reference to their requirements. It would also be relative to the conditions enjoyed in other parts of the Community where the performance of the universal service was more reliable.

2.5 MARKET DISTORTIONS

In the comments on the single market implications, it was noted that divergences in the service levels of universal services in different regions can contribute to market distortions in other sectors which are reliant on postal services. However, it should be noted that there are potential market distortions within the postal sector itself. These could be caused in the case of the scope of the exclusive rights being larger than was needed to ensure the universal service. In order to prevent such distortions, Member States therefore need to apply the proportionality principle. An example of its application is the transferring by some Member States of direct mail to the non-reserved area. [186]

3. Community Objectives

In order to discuss postal policy, it is necessary first to discuss what are the Community's objectives for its postal sector.

3.1 BASIC PRINCIPLES

It is a basic social requirement that all the citizens, businesses and organisations of the Community should have access to means of communication, of which postal services form a part. All citizens, businesses and organisations of the Community therefore have an acquired right to a universal postal service at affordable tariffs. At the same time, there should be maximum freedom of choice, provided that universal service is safeguarded.

Universal service provides access for all into the postal system through collection facilities which can be readily used. It also provides access for the postal system to all through the provision of deliveries to all addresses in the Community. Accessibility for all also implies low, affordable tariffs.

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 individualised nature (defined in more detail at Paragraph 9.1.2 below).

The description of the universal service also needs to include certain service standards such as the frequency of access to collection and delivery points (also needs to cover standards for speed and reliability as well as for liabilities (including the investigation and answering of complaints),

in order to meet the reasonable customer expectations of a standard letter service. The universal service requirement is therefore based on user needs, which may vary over time.

3.2 IMPLEMENTATION

Universal service causes network costs because of the need to balance out differences in costs of providing services in different areas. Such universal networks have significant costs that do not change with volume - particularly collections and deliveries. [/187]

In order to ensure the viable continued provision of the universal service network protection is needed to ensure that these network "fixed" costs are spread over a sufficiently large number of units that the resulting unit prices are affordable to all. This protection can be given in the form of reserved services, granting special and exclusive rights to a service provider or providers.

It would be very costly if more than one service provider established parallel networks for standard services. (There might also be some diminution of service if service standards were reduced in an effort to save costs.) It should further be noted that operators other than postal administrations do not seem interested in providing a universal service through an independent network. On the other hand, if costs are shared through joint use of a single universal network, for instance by the postal administration providing both reserved and non-reserved services through its one universal network, a smaller reserved area is made possible.

One of the benefits of the granting of exclusive rights is that it can enable the reserved service provider to continue to offer a single unitary tariff (*péréquation tarifaire*). However, this is not itself a justification for establishing a set of reserved services.

It is by no means the case that all items which are distributed through the universal network should be reserved. There will be some items which, although they should mandatorily be provided universally, do not need to have the protection of being reserved.

Further, there are other, more specialised services which, although they may use the universal network, do not provide a justification for it. Such services (such as express services, or certain postal financial services such as *mandats de poste*), all provided in competition, would help to share the costs of the network, and could therefore help to reduce the scope needed for reserved services.

Where different services, reserved and non-reserved, share the same network, proper accountancy controls and systems will be needed. Exactly what such controls would comprise would need to be agreed. [/188]

4. Determining the Reserved Area

The objective is to seek the least restrictive solution that will safeguard the standard service network that provides universal service to all the citizens and organisations of the Community.

The general principle is that there should be Community-defined limits for the scope of the reserved area. However, the reserved area in a Member State could vary from the Community

limits in one of two ways.

Firstly, the regulator and/or the national government of each Member State is obliged (by the Treaty of Rome and, generally, by the national legislation) to define a reserved area directly proportional to the objectives which justified the establishing of reserved services. (This principle of proportionality effectively calls for the greatest level of competition consistent with the achievement of the objectives set.) For some Member States, the application of this principle of proportionality could well indicate that a reserved area smaller than that defined at Community level was appropriate.

Secondly, other Member States, where the application of Community law would obstruct the universal service objective, might benefit from an exception to the application of Community law to the extent provided by Article 90.2.

Standard service refers to the universal service of basic postal items. These include both communications (letters, postcards and printed papers) and goods-bearing items (packets and parcels).

The phases of the standard service can be approximately described as the collection, sorting, transporting and delivery to the addressee (or handing over to another administration for delivery to the addressee). These phases are operationally distinct. The economics of the different phases also vary. Reserved services are justified economically in order to provide sufficient volume over which the fixed cost elements of the network can be spread, in order to achieve low unit costs and thus prices affordable to all. The major fixed cost element of the letter post operation is delivery. Collection from road-side posting boxes also incurs significant fixed costs.

Service levels vary, but service performance is not normally guaranteed (unlike in the case of many express services). For letters, standard service also includes the possibility of registration and of delivery to a *poste restante* address. [189]

Regulators should ensure that such standard service continues to be provided universally up to a certain weight. Part of this service (for instance, for parcels and heavier-weight letters or packets) will be provided in the non-reserved sector. (Such mandatory nonreserved services are discussed in more detail at Paragraph 7 below.)

Although a Community definition of what universal service should be provided obligatorily has not yet been drawn up, it should be emphasised that the scope of the universal services will almost certainly be larger than that of the reserved services. Further, it seems clear that the reserved services should be centred on those items for which universal provision is absolutely essential - that is, on the postal communication items of a personal or individualised nature. (This description requires further clarification - see below at Paragraph 9.1.2.)

The criteria (including those of weight and price) for defining what part of standard postal communication items of a personal or individualised nature should be reserved are discussed in detail below in Paragraph 10. Any kind of service not falling within this definition falls outside the reserved area; if necessary, however, restrictive conditions could apply for these services in justified cases.

The reserved area therefore concerns addressed, standard items not containing printed papers or goods. Although the list below is not comprehensive, the following items are not in the reserved area:

- newspapers, magazines or books (because they are printed papers);
- parcels (because they contain goods);
- express items (because they receive a non-standard service);
- unaddressed items (because they are not addressed).

In order to elucidate the general propositions outlined here, it would be useful to expand upon the principle of posting or delivery by the customer himself (in Paragraph 5), on the concept of mandatory services (in Paragraph 6) and on the regulatory position of new services (Paragraph 7). It is then appropriate to ask whether some cross-border services should be in the reserved area (Paragraph 8). At that point, the definition of the reserved area can then be discussed in more detail. [190]

5. Delivery And Posting By Self

Customers delivering their own mail have rights which prevail over those of the operators. Customers also have certain special rights when posting on their own behalf.

5.1 DELIVERY BY SELF

Mailers ought to be able to deliver their own mail, whether in their own country or in another Member State. The application within the Community of the principle of self-delivery becomes somewhat more complicated in the case of subsidiaries of companies. Again, the application is less clear in the case of sister companies in other countries delivering mail on each other's behalf.

Another interesting case concerns document exchanges. These are buildings where exchange members may hire boxes into which fellow members may deliver their mail directly and from which the mail may be collected. (Of course it would be relatively simple - at least in terms of the extra skills needed if not the extra accommodation - for postal administrations to extend their post office box or "*poste restante*" facilities to offer similar services in competition with private exchanges.)

Member States should therefore permit the functioning of document exchanges as described above. Further, in order to enhance flexibility available to customers, each Member State should permit document exchanges to transfer mail between each other, unless it was convinced that such a step would harm the universal service provision of the postal administration. However, where the items would otherwise meet the criteria of reservation, items may not either be collected from the poster's premises or delivered to the addressee's premises by anyone other than the reserved service provider (presumably the postal administration) or the customer who originated the letter.

5.2 POSTING BY SELF

Regarding the rights of potential users to post their mail, some clarification is needed, in terms of where they may post their mail and for what destinations. It should be emphasised that the discussion here refers to posting (with a postal administration) by the customer himself, with no intermediate operator involved in the country of the customer. [191]

Each Member State accepts that a customer based in its territory can post a reserved item wherever he likes in the national territory, if the item is for delivery within that territory. Each postal administration applies this principle subject, if necessary, to contract conditions. (Contracts normally stipulate the agreed office of posting.)

Regarding mail taken by customers across a border for posting with the postal administration for domestic delivery in that administration's territory, the view taken by Member States and postal administrations has been somewhat inconsistent in the past. As a receiving (or "inward") administration, each postal administration has, in practice, accepted such a practice. However, the administrations in the "outward" country have sometimes considered this practice to be in breach of the monopoly. Now, the practice appears to be accepted by all postal administrations.

In addition, it will be seen that the Green Paper discusses the possibility of placing cross-border services in the non-reserved area (see below at Paragraph 8). The customer would therefore also have the option of giving his cross-border mail to a private operator, rather than posting it himself in another country. Certainly, the regime for a customer posting on his own behalf should not be more restrictive than that for a third party operator providing services in the country of the customer.

For domestic mail for delivery in the same territory in which a customer is based, the customer might wish to have the option of taking the mail to another country and posting it there for delivery back in his own country. It is important that any exclusive rights awarded to the reserved service provider do not impinge on the customer's ability to exercise this option and thereby benefit from the principle of the freedom to provide services.

However, measures must be taken to ensure that such a practice on the part of the customer did not undermine the universal service objective in the customer's country. It must therefore be ensured that the postal administration in the delivery country actually delivers such mail (if it would otherwise meet the criteria for being reserved). Secondly, the tariff paid to the delivery administration for the work that it carries out must properly compensate the delivery administration for its delivery costs. [192]

As stated, this discussion concerning mail posted in a second country for delivery back in the customer's country refers to the rights of the customer posting on his own behalf. Third party operators are in a different juridical position, and this is discussed in more detail below at Paragraph 8.3.

6. Mandatory Services

If a service is obliged to be provided, this can be called a mandatory service. In the postal sector, this concept is usually linked with an obligation of universal service, so that a mandatory service is usually a service which one operator (or several operators together) must provide across the territory.

As discussed at Paragraph 3 above, the fundamental reason for establishing a set of reserved services is the need to provide universal service throughout the territory. From this it follows that all reserved services must be provided universally. Such services are therefore mandatory reserved services.

There are likely to be other services that are mandatory, but non-reserved. Such obligations may be needed in order to meet Community and/or national service objectives. These are discussed separately below. Because such services will operate in the competitive (non-reserved) area, some discussion of their financing is also appropriate.

Reserved services are mandatory, and will imply certain obligations for the reserved service provider. The possible such obligations are discussed below in Paragraphs 13-15. Consideration would need to be given to how much these obligations would also be appropriate for mandatory services. The decision might be dependent on whether the services are mandatory at the Community level or at the national level.

6.1 MANDATORY SERVICES AT COMMUNITY LEVEL

A Community-wide definition of the reserved area will be made. This will be made by reference to a weight limit applying throughout and to a price limit that will be established in each Member State. (This is discussed in more detail below at Paragraph 10.)

Each Member State will have the right to define for its territory a reserved area that is smaller than that defined at Community level. However, it must still ensure [193] that universal service in its territory is provided at least up to the limits that the Community defines.

The full set of reserved services as defined at the Community level therefore forms part of the mandatory services. While Member States can decide to make some of these services non-reserved, they will remain mandatory.

6.2 MANDATORY SERVICES AT NATIONAL LEVEL

A Member State may wish to have universal service ensured beyond the Community limits. Again, this obligation could be placed on a single operator (usually the postal administration) or several operators working collectively to provide universal service.

In deciding whether to have such mandatory non-reserved services, Member States will naturally need to investigate what their national requirements are. They will also need to take account of obligations imposed by the UPU convention. In this regard, Article 20 of the Convention (previously Article 19) appears to oblige all member postal administrations to provide universal

service up to 2 kg, and up to 5 kg for certain printed papers. The Community weight limit for its reserved area will be set clearly below both these weights.

6.3 FINANCING

It is important to consider the financial implications of these obligations. These implications will depend largely on the profitability of the services. The profitability will be affected by, among other things, the tariffs and the proportion of traffic gained.

Correctly priced, there is no reason why non-reserved mandatory services should not be profitable. They will become a financial burden only if the price levels are set below cost as a preferential rate and/or when the potential traffic is creamskimmed where the price offered is on the basis of a *péréquation tarifaire*.

In respect of the second of these possibilities, since these services operate in the non-reserved sector, it does not seem unreasonable to offer volume posters either a differential rate by region or a single country-wide rate but with an enforceable exclusivity clause. [194]

If, despite these points, the non-reserved mandatory services are still not profitable, it will be necessary as a last resort to consider financing from other sources. This would take the form either of an external subsidy (preferably from the body that imposed the obligation) or of a cross-subsidy.

In both cases, it will be necessary to identify where the mandatory services are in loss (rather than simply describing the services as being in overall loss). It should be possible to localise the losses to particular geographical regions and to quantify the revenue and costs associated with the provision of mandatory non-reserved services in those regions. (These would tend to be the regions where the operators not obliged to provide universal service were less interested in competing.) Any subsidy or cross-subsidy could and should therefore be made transparent. (See also at Paragraph 15.2 below.)

7. New Services

The overall objective of achieving universal service at affordable prices has led to the view that some reserved services will provide the protection needed to ensure sufficiently low unit costs. This revenue/volume level should be achieved by present and foreseeable volumes.

It therefore seems to follow that new services which add incremental volume to the postal sector should be outside the reserved area. However, in some cases it may not be clear that the volume is incremental - rather that part of the volume of the new service could be volume that had been attracted away from the "traditional" service.

The juridical view will need to be well defined. It will not be sufficient for a new service to be slightly different from the reserved activity. (It should be noted that some of the mail preparation activities described at Paragraph 9.4 below could meet such a limited criterion.)

It would be necessary instead for a new service to be significantly different before it could be

decided that it should be in the non-reserved area. In this way, a document exchange service appears appropriate to be placed in the non-reserved area, but an ordinary letter for national delivery which involved collection from customers' premises rather than from street boxes would remain reserved.

The regulatory body of each Member State (and possibly the Community) will need to decide the meaning of the word "significantly" on a case-by-case basis. Naturally, any [195] such decisions would need to be taken in accordance obligations under the Treaty of Rome, in particular the principle of freedom to provide services and the competition rules of the Community.

If a new service becomes a necessary element in the achievement of the universal service, it is possible to envisage its integration into the reserved area in line with the criteria established at Paragraph 4 above.

8. Cross-Border Mail

It is necessary to ask whether the reserved area ought to comprehend domestic and cross-border services alike, or whether a distinction ought to be made between them. In the discussion here, intra-Community and international cross-border services are considered separately.

8.1 INTRA-COMMUNITY MAIL

The fundamental reason for establishing a set of reserved services is social - to ensure universal service. This implies an economic reason - protection by exclusive rights to safeguard the universal service network. This economic reason is based on the economic realities of "fixed cost" networks. Significant reductions in volume would increase unit costs, thereby making use of the system less affordable and ultimately putting the network in danger of becoming unviable.

For intra-Community mail, the economics are different because of the high proportion of variable costs. The fixed network elements involved (the road-side collections in the outward country and the deliveries in the inward country) are protected. In terms of economics, the only reason to prevent liberalisation appears to be that the delivery administration may not be properly compensated for its costs (although this problem already occurs under the UPU system). However, the postal administrations have already taken some steps to remedy this, and this paper proposes further reforms.

There do not seem to be significant economic reasons for including intra-Community services in the reserved area, and there are service reasons for not doing so. [196]

The reality in terms of operational performance is that the level of service provided by the postal administrations for cross-border services is less satisfactory than that provided for domestic services. The Community objective is to close this gap (and therefore diminish the "frontier effect"). The regulatory regime chosen must meet this objective. This points to a liberalisation of the market as a means to stimulating service improvements.

There could be certain regulatory concerns about such a liberalisation. In particular, there might be a danger of ordinary domestic mail, to the extent that it meets the criteria for being reserved,

being passed off as cross-border mail in order to circumvent the reserved services. Clearly such circumventing of policy could endanger the economics on which the provision of the universal services is based, and must be prevented.

In summary, the arguments for giving customers the possibility of better service through wider choice are compelling. The placing of intra-Community mail in the non-reserved area would therefore be envisaged. If a Member State is concerned that such a measure might jeopardise its universal service, it might benefit from an exception to the application of Community law to the extent provided by Article 90.2. The concern about regulatory control is recognised, and adequate control systems will be established. The Commission, with Member States' help, will propose the systems needed.

It is accepted that, if it is not presently non-reserved, certain Member States may need an adaptation period to implement the change. The length of the adaptation period would need to be defined in each case.

Although the orientation of the Green Paper is towards placing intra-Community cross-border mail in the non-reserved area, there would still be a universal service obligation for such mail. The postal administration in the outward country would have the obligation to provide universal service in the form of collection facilities for cross-border mail that customers chose to post there. The postal administration in the inward country would still need to provide universal delivery services for mail originating from another Community country if this was required by the customer or the operator or the outward postal administration.

This discussion concerning whether or not intra-Community mail should be placed in the reserved area is expanded upon in Annex 15. [197]

8.2 INTERNATIONAL MAIL

International mail is mail that either originates in the EC for delivery in a country outside the EC or originates outside the EC for delivery in a Member State (respectively "outward" and "inward" international mail). In both cases, it would be envisaged to place these mail flows in the non-reserved area. A Member State that was concerned that placing this mail in the non-reserved area might prejudice its universal service might benefit from an exception to the application of Community law to the extent provided by Article 90.2. The liberalisation of inward international mail could raise similar concerns about regulatory control as might also apply to the liberalisation of intra-Community cross-border mail. Adequate control systems will therefore also need to be established for such mail.

For certain Member States, if this mail is presently reserved, it is possible that some adaptation period may be needed. However, it should be noted that there would probably be less need for such adaptation periods for international mail than for intra-Community cross-border mail.

8.2.1 *Outward*

For outward international mail, the economics are almost the same as for intracommunity mail, with two exceptions. Firstly, the transport costs are likely to be greater (owing to the higher

proportion transported by air, and the greater distances involved); it should be noted that these costs are almost all variable.

Secondly, outward international mail tends to be very profitable, although part of the profits is used by postal administrations to fund the losses incurred on inward cross-border traffic the delivery cost of which tends not to be properly compensated by terminal dues. Of course, the fact of existing cross-subsidies is not a justification for adopting a specific future regulatory position.

While the economics of international mail are similar to those of intra-Community mail, the political position is different. For intra-Community mail, it could be argued that Paris-Marseilles mail should be treated the same as that for Paris-Brussels. However, no such argument can be used for international mail.

It should be added that the argument concerning expertise in air transport (shown at Annex 15, Paragraph 2.3) may be stronger in the case of international mail. Because of the higher proportion transported by air and the potential [198] greater complexity of routing, it is quite possible that private operators, many of whom tend to be specialists in air transport, could achieve a (perhaps significantly) better quality of service than certain postal administrations.

Should the option of using a private operator for international mail be denied to the Community's consumers? Alternatively, it may be the case that some postal administrations have more effective transport arrangements for cross-border mail than others: again, it would seem helpful if potential customers had access to the organisations which had demonstrated superior expertise and service.

In summary, there is a particularly strong argument for outward international mail being placed in the non-reserved area. It would therefore be envisaged to place such mail in the non-reserved area.

8.2.2 *Inward*

The issue of inward international mail also needs to be addressed. Here, large mailers based outside the Community may wish to concentrate their mailings for the EC on one distribution centre within the EC. As with other cross-border mail flows, the placing of this mail in the non-reserved area would be envisaged. However, as discussed for intra-Community traffic, adequate regulatory controls should be established to prevent domestic reserved mail being sent through the international mail system in order to circumvent the reserved service provider's exclusive rights.

It should be noted that, from the perspective of the Member State of final destination, this mail could have the appearance of being intra-Community mail. However, the time scale that is appropriate for outward international mail should also apply to inward international mail.

8.2.3 *GATS*

The implementation of the tariff proposals described at Paragraph 15 below may create an artificial problem whereby, in order to undercut the intra-EC terminal dues to which all the EC

postal administrations could be committed, intra-Community mail could be transported out of the EC for re-mailing back in at UPU rates. (For certain items the UPU rates would be lower than the rates paid between EC postal administrations.) [199]

Such a practice, which added no value but was intended solely to circumvent Community policy, would be unacceptable.

The disciplines and obligations currently envisaged for the GATS would not oblige the Community to allow circumvention of its policy. Possible solutions should be discussed with trading partners if this situation were to change in the future. This tariff/terminal dues issue aside, Member States will need to make whatever adjustments are necessary to meet GATS commitments, especially concerning access to reserved services.

8.3 OTHER ISSUES

In general, of course, there should be freedom to provide services. This general principle also applies in the case of the practice of transporting mail by third party operators out of a country and mailing it in a second country for delivery back in the first country (often called A-B-A remail), particularly if some extra service is provided in the second country that adds substantial value to the whole service.

However, if the items thus transported would otherwise have met the criteria for being reserved items of domestic mail in the first country (Country A), such an activity would infringe the special and exclusive rights of the reserved service provider in that country. This would be because a private operator collecting such mail in Country A would be competing with the postal administration of that country in the reserved area.

This statement refers specifically to the physical movement of such mail items. The situation is different in the case where the first part of the chain (transporting out of the country A) is not physical. Here the transport is "metaphorical": copy is generated in country A and then sent to country B. The material is then converted into direct mail (or into a publication for mailing) through printing and enveloping. The material may then be posted in the country where the printing was carried out for delivery in the country where the original copy was generated.

However, in postal terms, the mail should be treated as items originating in the country of printing. Not to treat the mail in this fashion would be to permit decisions by some postal managers to affect the Community's trade in printing. [200]

A similar point can be made about text, data or images that are transmitted electronically across a border for conversion into hard copy which may then be sent back as a letter to the first country. Here, postal rules must not be allowed to influence trade in information or in telecommunications. (Assessing flows of information can be an important factor in the location strategy of companies.)

Of course, it may be the case that part of the price package that influenced the placing of the print order was the postage price in the country of printing. This possibility re-enforces the point that terminal dues must be closely related to actual delivery costs.

9. Scope Of Reserved Services - Particular Issues

Certain potentially problematic details concerning the scope of the reserved area are discussed below.

9.1 PROBLEMS OF DEFINITION

It was stated above that letters could be possible reserved services, but that parcels and express services should not be. However, in practice, it may not be so simple to distinguish between them. Customers and laymen refer to several items as "letters"; for them it is a general description of a communication that can be sent by different means (including ordinary mail, express or fax). Here, the term "letter" is employed as used by operators - that is, meaning a communication item sent by ordinary mail.

However, this description requires further elucidation.

Postal communication items comprise letters and post cards, but not publications or goods-bearing items. They can be used for personal or business (including organisational) correspondence. A postal item is not sent by telecommunications. However, a communication originally sent by telecommunications can be converted into a postal item by being printed, enveloped and despatched for delivery (see discussion of "electronic transmission" below at Paragraph 9.3).

For legislative purposes, a more precise definition will be required. However, the intention here is not to seek the ultimate definition of a letter or a postal communication item. The definition given above is intended to be more general in nature, in order to indicate the general approach required. In addition, the [201] analysis below highlights certain specific problems met in defining the limits of letters. The discussion emphasises particularly services which are not ordinary letters.

9.1.1 *Letters/Express*

In what way can an express item be easily distinguished from a letter? Its dimension, weight and contents may be the same. Even the speed of delivery may be similar.

The essential difference lies in the value (whatever form it takes) added by express service providers and perceived by customers. The most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay.

9.1.2 *Individualised Communication*

Since the criterion of the individuality of an item is so important from a regulatory point of view, it is necessary to define here what is meant by an "individualised communication". The essential point is that the text in the communication should relate to the business or personal affairs of the addressee (either an individual, an organisation or a position within an organisation) with sufficient individuality that it is clear that the text (excluding the address and any appellation) refers specifically to the addressee.

Direct mail is becoming increasingly "personalised". However, since the same or a similar message is being sent to other addressees, it is clear that it would not pass the test of referring specifically to the affairs of the addressee. However, this trend of personalising direct mail entails that the traditional criterion of determining whether or not the text was identical is probably no longer sufficient.

Invoices and statements have text (the figures used in each item) that vary from copy to copy. It seems to follow that they are usually individualised, according to the definition used above. However, it may be remarked that in some Member States such mail is considered as printed papers, and may be therefore be treated as being non-reserved.

In assessing whether an item is individualised or not, the important criterion is that of the contents, not of the means of production. If an advertiser chooses to send a number of hand-written items with identical text, they cannot be regarded [202] as individualised. Conversely, an invoice containing a number of details specific to the addressee appears to be individualised, whether the figures it contains are printed out by computer or hand-written.

9.1.3 "Printed Papers"

Proposals for the regulatory position of printed papers should be formulated by reference to the basic principles of the universal service provision. The absolutely fundamental policy imperative is that postal communications of a personal or individualised nature should be collected and delivered universally. Such mail would include all items where the text is not identical, and would therefore include all personal correspondence and individualised business correspondence (see above at Paragraph 9.1.2). It seems appropriate that the set of reserved services that would be established to safeguard the universal service should be based on such items of an individualised nature.

A priori, this would exclude all printed papers from the set of possible reserved services. Such a position should certainly not pose problems for publications. The regulatory position for publications (magazines, newspapers and books) in most Member States is that their distribution should be placed in the non-reserved area. The probable *de facto* position in the few Member States whose postal legislation places such publications in the reserved area is that their distribution is no longer carried out exclusively by the postal administration.

In addition, there is a general will to assist the plurality of the press. However, the high discounts often awarded by postal administrations to publications can create a *de facto* monopoly for the administrations over home delivery of publications of certain types or to certain areas. At first sight, such discounts can appear to encourage the widening of readerships.

However, over a longer period, they can serve to discourage other operators from providing services in what is, in most Member States, a non-reserved market. They can therefore have the strategic effect of reducing the options for publishers, and may actually limit readership. In summary, such discounts not only are unhelpful for the economics of the universal network, but also can make a nonreserved service effectively a monopoly, to the possible ultimate detriment of all.

By comparison with publications, the position of direct mail in relation to the economics of the universal service network could be rather different. Direct mail [203] often attracts printed paper discounts - but of a much lower level than those associated with publications. It constitutes an estimated 18.5% of the volume of the Community's postal administrations' domestic mail. If the placing of this category of mail in the non-reserved area were to cause a significant proportion of volume to be lost from the universal service network, it might jeopardise the economics of the network, and put at risk the central objective of achieving an affordable price for the universal service.

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

These issues need to be analysed in order to assess whether the problems noted above - regulatory or economic - would actually occur in practice. In the light of this analysis, the Commission will, with the help of Member States, need to propose specific measures, for example with regard to adequate control mechanisms for preventing ordinary mail being passed off as direct mail. Moreover, if a Member State was concerned that such a measure might jeopardise its universal service, it might benefit from an exception to the application of Community law to the extent provided by Article 90.2.

9.1.4 Small Packets/Parcels

A different problem is posed with parcels. Many definitions of letters in their broadest sense suggest that they range up to 2 kg. Within this definition of a letter falls the "small packet".

What is the distinction between a small packet and a parcel? (In practice, it is made not so much by reference to regulatory criteria, but rather is decided by the customer himself usually on the basis of price.)

The criterion of contents should be applied: if a packet contains goods rather than a communication, it should be treated as non-reserved just as a parcel (because the customer has a choice how to send it). This distinction should be [204] reinforced by the use of a weight limit. (In fact, a low weight limit would reduce the significance of this problem.)

9.2 SLOWER POSTAL STREAMS

A word of clarification is needed concerning what could be included within the reserved services. They include not only the quicker standard streams (LC in some Member States, first class in others), but also streams that are slower.

The latter include printed papers and second class letters (depending on which countries offer a LC/AO split and which a first class/second class split), as well as rebate (a bulk service with a longer delivery standard) and deferred postings.

These are all intentionally slower streams, with advertised slower standards. (The question of poor performance against service standards is therefore entirely separate, and is discussed below at Paragraph 14.3.)

9.3 ELECTRONIC COMMUNICATION

Communications made by electronic means are outside the postal sector. Where they are combined with some form of service provided by postal operators, such communications are usually called postal electronic mail.

One such service provides facilities to the public to send a message from a fax machine provided by an operator, and for the fax to be collected from a distant fax machine by the intended receiver of the faxed message. Such an operation does not involve any mail service, and should clearly be considered non-reserved.

Another form of electronic mail combines electronic mail with mail services. Ordinary electronic mail (facsimile transmission or distance printing of individual or bulk messages) is non-reserved. However, if the hard copy then needs to be delivered to a third party as a separate distribution process, this extra element is arguably a letter delivery service. The letter delivery element might therefore be considered reserved (provided that it met all the other criteria for reservation), while the electronic transmission would be non-reserved.

9.4 MAIL PREPARATION

Certain postal administrations permit "consolidators" to act as intermediaries between the original mailer and themselves. These consolidators act primarily as mail preparers, but also offer other facilities such as credit. [205]

The consolidators compete with each other, although they have certain special rights since it is necessary for them either to be approved by the regulatory body or to enter into a contract with the postal administration. The activities of the consolidators before the mail is actually posted with the postal administration do not make the mail non-reserved. However, it is interesting to note that the permitting by the postal administrations of such activities under contract implies their acceptance that the postal operation is not a seamless process which cannot be viewed in terms of its component parts.

The activities of such "intermediaries" can add flexibility for the customer who originates the mail. They may also save the postal administrations costs, savings which could be reflected in discounts that would benefit both the original customer and the intermediary.

Intermediaries do not compete with the two high fixed cost activities of the postal administrations - either with collections from public posting boxes and post office counters or with deliveries. Their operations are therefore compatible with the objective of maintaining universal service.

There is no reason for this facility not to be available to all users, and all postal administrations therefore ought to make contractual facilities available to all such operators. In view of the

similarity between the operations of the different postal administrations (and therefore of the cost saving work that intermediaries might be able to carry out), there seems scope for establishing a Community minimum set of contract facilities that should be made available. (See below at Paragraph 17.)

It should be emphasised that the postal processes carried out by such intermediary operators are mostly substitutes for similar processes carried out by postal administrations. They do not add value in a way that is significant from a regulatory point of view. Mail preparation services therefore do not usually constitute "new services", as described at Paragraph 7 above.

If the mail handled by such intermediary operators would meet the criteria for being reserved, it would remain reserved in the sense that, following the processes undertaken by the intermediary, the mail would then have to be posted with the postal administration for whatever postal processes remained (including final delivery). Such items therefore could not be transported out of the country [206] by a third party operator for mailing back under an A-B-A remail system (see above at Paragraph 8.3).

10. Proposed Criteria

As stated above (at Paragraph 4), some items cannot be reserved. These include heavier parcels, heavier publications, express items and all unaddressed mail. Some items for which there may be a universal service requirement also cannot be reserved - for example, lighter weight parcels and printed papers.

The possible reserved area is therefore restricted to individual communication items (see Paragraph 9.1). These comprise letters and post cards. In order to exclude goods and publications from the reserved area, it is necessary first to apply a contents criterion.

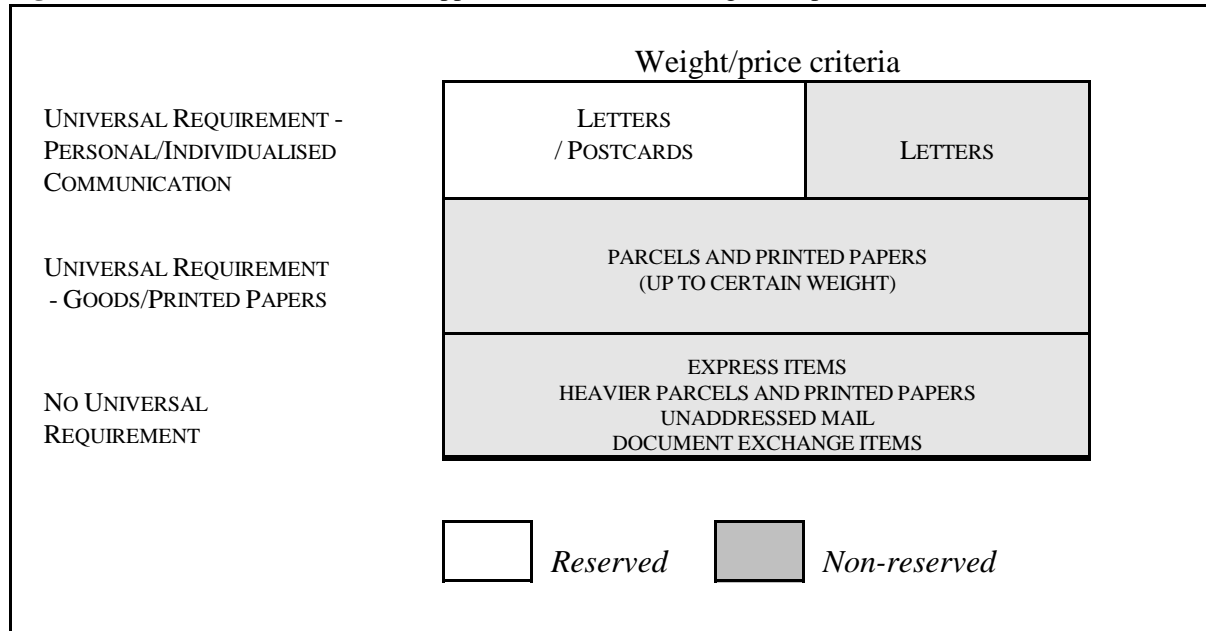
Having identified specifically the communication items of a personal or individualised nature, the scope of the reserved area within these items needs to be defined by using other criteria. The efficacy of the other criteria to be used is discussed in detail in Annex 16. In summary, only the criteria of weight and price will be effective in defining which of the individual communication items that could be reserved should be reserved. Indeed, they need to be applied in combination, with some link between the weight limit (which should be a single upper limit applied across the Community) and the price limit (which would be determined separately in each country by reference to the tariff at the weight limit).

The application first of the contents criterion, and then of the price and weight criteria, is shown diagrammatically in Figure 1 below. Three regulatory categories, based on whether or not there was a universal service obligation, are shown. As noted at Paragraph 9.1.3 above, the placing of addressed direct mail in the non-reserved area would, *a priori*, be envisaged. The issues need to be analysed in order to assess whether this measure would threaten the universal service, either through weakening its financial viability or through the possible abuse of such a liberalising measure if proper regulatory controls were not in place. On the assumption that the status of direct mail as nonreserved was confirmed, it would be included on the second line in the figure.

It should be noted that the intention of the price limit is not simply to ensure that express services

are placed in the non-reserved sector. This would be to view the future market only in terms of the products that are available today. Rather, it is intended to set the price limit at a level that is sufficient to embrace only those services that need to be protected. [207]

Figure 1. Definition of reserved area - application of contents, weight and price criteria.



In this way, other services that may not yet exist but would be priced in mid-range (above the price of the "basic" service, but below the prices associated with express) would definitely be placed in the non-reserved sector. This would make their position clearer rather than through a debate about whether such services were or were not "significantly" different (see Paragraph 7 above). Put graphically, the approach to the price criterion should not be "top-down" (working down from the perspective of express items), but "bottom-up" (working up from the perspective of basic letters).

The proposals here perhaps refer more to the medium term. For the longer term, further liberalisation may well be possible. For the shorter term, work would need to be undertaken to achieve the medium term aim of having a Community-established set of reserved services.

While Community medium and longer term proposals are being developed, the Community's competition rules, based on the principles of free provision of services and of undistorted competition, will continue to be applied throughout to services as they are actually provided. As noted at Paragraph 4 above, each Member State is obliged to seek the least restrictive solution appropriate to its postal sector, and this may imply a reserved area with a smaller scope than that defined by the Community-set limits. (In the other direction, if a Member State considered that application of the Community limits would jeopardise the universal service in its territory, it might benefit from an exception to the application of Community law to the extent provided by Article 90.2.) [208]

Once the criteria to be used have been chosen, detailed studies of the economics of the universal

service network will be necessary in order to develop the actual limits to be applied to delineate the reserved area.

10.1 MEDIUM TERM

A contents criterion should be used to exclude all goods-containing items. Then, a weight criterion should be used, allied to a price criterion. The weight limit should be set Community-wide. The regulatory bodies in individual Member States should set the price limits. In any event, the price should not exceed the standard letter (that is, LC or first class) public tariff equivalent of whatever weight limit is set.

10.2 SHORTER TERM

In the shorter term, there may need to be a transitional period in order to achieve the objective described above. Activities that may be necessary in relation to formulating and implementing Community weight and price limits are described below:

10.2.1 Weight Limit

The Community-wide weight limit would almost certainly be below the existing monopoly weight limits of some Member States. Implementation of such a weight limit should therefore not necessarily be immediate, but after a period to permit time for the administrations concerned to make adjustments (particularly in the tariffs for items which presently fall within the monopoly limits, but would come above the Community limits, and would therefore be non-reserved.

In practice, this may not prove to be too great a problem. Most of these items heavier-weight packets - could presently be sent as parcels. To the extent that the customer has the choice of how to send such items, they are already outside the monopoly. This point also indicates that the weight limit for the reserved area should almost certainly be less than 500g.

10.2.2 Price Limit

The price limit indicated by taking the price equivalent of the weight limit may be a significant reduction on the price limits that are presently in force. Of course, this refers only to those countries that already have such limits: the majority of [209] Member States permit the existence of competitive courier/express services but without a quantitative definition of such services.

It might therefore be difficult to introduce this price Limit immediately. In the interim period, the price limit could be set as a maximum at, for example, 1.5 times or even twice the price equivalent of the weight limit. Thus, for example, if the Community weight limit was x grams and the letter price at that weight was y ECUs, the interim price threshold for non-reserved services would be set at up to 1.5y ECUs or 2y ECUs.

In the longer term, progress towards monetary union may enable a common price limit to be set in ECUs.

10.3 LONGER TERM

In the longer term, Member States would be expected to experiment with introducing more competition, with the objective of gradually reducing the scope of the reserved services. In several years' time, the Community should assess the balance struck between universal service requirements and the need to open up the postal sector to greater competition. This assessment would need to be made in the light of the market or service developments as they occur.

11. Compatibility Of Postal Legislation With Community Treaties and Policies

All Member States' postal legislation and the Community's policy for its postal sector must be fully compatible with the Treaty of Rome. Where this has not been the case in the past, the Commission has found necessary to take appropriate measures, particularly with regard to express services.

However, in addition to national postal legislation, Member States have other obligations under Treaties that have been signed. Notably, all Member States are signatories to the UPU Convention through their membership of the United Nations. The UPU Convention long pre-dates the Treaty of Rome or the General Agreement on Trades and Tariffs. However, it is reviewed by the UPU Congress every five years. Each Convention provides that its articles should remain in force until the activation of the next Convention after the succeeding Congress. This has potential implications in terms of Article 234 of the Treaty of Rome. [210]

From the point of view of competition law, the main concerns in relation to the UPU Convention are the level of terminal dues agreed each five years and, in particular, the use of Article 25 (using the enumeration of the 1989 UPU convention). The use of Article 25 can only be sanctioned if it is in protection of the reserved services of the Member State whose regulatory body is applying the sanction.

(It is said that Article 25 is used in order to gain the correct compensation for the delivery administration. This, however, does not seem correct for two reasons. Firstly Article 25 long predates terminal dues in the UPU rules. Secondly, Article 25 has been applied in the past even when the compensation received by the delivery administration would have been the same, regardless of whether the mail came directly from the administration in the country of origin or indirectly through another administration.)

In terms of competition rules, it seems inappropriate for one postal administration to turn back mail posted by a private operator who is competing with another postal administration, whether the exclusive rights of the latter are being infringed or not. If the exclusive rights of the outward administration are infringed, it is for the regulatory body in that country to take legal action - not to seek assistance from another administration whose exclusive rights are not infringed. The use of Article 25.4 (which refers to A-B-C remail) therefore seems clearly inappropriate.

The intention of Article 25.1 is that it should protect the legitimate domestic monopoly of member countries. However, in terms of compatibility with Community policy and law, there are three problems associated with its use.

Firstly, as Paragraph 12 below makes clear, it is for the regulatory body to take the appropriate final actions against infractions of the special rights. If the postal administration receives mail which it suspects is A-B-A remail, it can choose to provide evidence to the regulatory body. The latter may then authorise the postal administration (that is, of Country A) to return the mail to the administration with which the items were posted (in Country B). In returning the mail in this way, the postal administration may state that it is doing so under Article 25.1.

It is possible that, on one interpretation of Article 25.1, its application would follow the procedure described above. The clause refers to "a member country" not being bound to forward or deliver such mail, and this could be taken to refer to a decision taken by the regulatory body. However, in the past, Article 25 has been applied by postal administrations often without reference to the national regulatory body (if it exists). [211]

The second problem associated with Article 25.1 is that its scope appears to permit a member country to turn back mail items (such as heavier publications) even if these items did not fall within the postal administration's exclusive rights. However, provided that the national regulator is properly involved in any decision on action to be taken to protect special rights, the apparently wider than necessary scope of the Article would be unlikely to be misused.

Thirdly, Article 25.1 would restrict the ability of a customer himself to transport his mail into another country and post it there for delivery back in his own country. As discussed at Paragraph 5.2 above, customers ought to be permitted to do this, provided that the administration in the delivery country received the mail (if the mail met the criteria for being reserved in the customer's country) and was properly compensated for its delivery costs. The use of Article 25.1 should therefore be confined, at most, to A-B-A remail - that is, mail transported out by a third party operator for mailing back - if this mail would normally be covered by the exclusive rights of the postal administration in Country A.

Certainly, if any action were to be taken to turn back mail, such action must be capable of justification under the Community's competition rules. The regulator should also ensure that no mail is turned back if it was printed in the country in which it was mailed, even if the content was in some way formulated before printing in the territory covered by the regulator.

The Community and the regulatory bodies will need to ensure that the GATS is properly applied. At the same time, it may wish to put in place rules that forbid any unfair exploitation of the Community's policy on tariff principles (a possibility discussed at Paragraph 8.2.3). If problems arise, this issue needs to be addressed within the context of the GATS. It is clear that it should also be discussed in a wider context - certainly in the framework of the UPU, but probably also the CEPT.

A key question to be answered concerns whether mail, which originated in a Community country and was then re-mailed through a non-Community administration for mailing back to another Community country for delivery there, should be considered "A-B-A-like" remail.

In this context, it should be noted that postal charges can be an important determination in the location strategy for certain types of operators (such as in mail order, bill processing, printing or direct mail). There could be a danger that the application of the principle of prices related to cost

put posters in the Community at a disadvantage in comparison with [212] those posting outside the Community if the price of the latter was lower simply because they were based on traditional terminal dues set at below delivery costs. This could have the effect of encouraging certain industries that were heavily reliant on postal services to relocate outside the Community, simply to take advantages of the prices that did not reflect the costs of the total operation. This would clearly not be in the Community's interest.

12. The Role Of the Regulatory Body

The postal sector presently comprises both a reserved area and a non-reserved, competitive area. In the future, there will continue to be the two areas, although their scope will probably be different from that at present.

A regulatory body has roles to fulfil in both areas:

- in the reserved area, it will want to ensure that the exclusive rights have the smallest possible scope consistent with the objective of ensuring universal service at an affordable price (in other words, the application of the principle of "proportionality"); it will also need to ensure that the reserved service provider meets its obligations;
- in the non-reserved area, it will need to ensure that the line between reserved and non-reserved areas is clearly identified; it will need to ensure that the reserved service provider does not gain an unfair competitive advantage in the non-reserved area through cross-subsidising from the first to the second.

After ensuring that the dividing line between the two areas is clearly identified, the key role of the regulatory body would be to ensure that the reserved service provider meets its obligations. These obligations are discussed in detail below at Paragraphs 13, 14 and 15.

In order to achieve this impartiality, it is essential that the regulatory body be separated from any operational function. It would seem preferable if the regulatory body was a completely separate institution from the reserved service provider (so that, for example, it was not common for individuals' careers to move frequently from one to the other). However, the more important point is that all concerned (the consumers, the reserved service provider(s) and the private operators) are all convinced of the regulatory body's impartiality. If this is achieved, even if the reserved service operator and the regulatory body both appear to come under the umbrella of a single organisation, there should be few complaints. [213]

Enforcement of special and exclusive rights is also a significant function. It is important that the responsibilities of the regulator and reserved service operator in this regard are clearly defined. The reserved service operator may initiate action, in terms of investigating (within limits defined by national law) possible infractions of its special rights, assembling the evidence and then providing the evidence to the regulator. It is then for the regulator actually to take the appropriate action against the operator that breached the special rights.

It is not thought that there is a problem concerning the protection of the privacy of mail.

However, since this privacy is a basic right of the Community's citizens, it seems desirable that the regulator seeks appropriate undertakings as to its safeguarding by the universal service operator.

13. Universal Service Obligations - Access

There are three basic principles for access to reserved services. Firstly, access conditions should be the same for all, assuming the potential users present their mail in the same way. Secondly, potential users ought to know exactly what they are buying - not just in terms of the posting conditions they must meet and the prices they must pay but also in terms of the service that they will receive. Thirdly, access conditions should try to optimise flexibility for the customer (while ensuring that the reserved services are protected). These principles can be translated into more detailed proposals for access as shown further below.

For mandatory non-reserved services, it appears that the access conditions should be similar to those for reserved services.

13.1 PUBLICATION OF POSTING CONDITIONS

Each administration should publish the conditions of posting into its reserved service network. The conditions should be as simple as possible. Most importantly, they must not unfairly discourage (either by tariffs or other means) potential customers from using the network.

These potential customers may well include private operators, with whom the postal administration (the provider of the reserved service) may be competing in the non-reserved sector. The rule should be that no conditions for access to the reserved services should be set specifically that would disfavour the private operator in the non-reserved sector. [213]

13.2 CONTRACT CONDITIONS FOR LARGE CUSTOMERS

All postal administrations should have contract services available for large customers. There is significant scope for making the main contract conditions (dealing, in particular, with what preparation work needs to be carried out by the customer in order to earn discounts) similar between the different postal administrations. (See below at Paragraph 17.1.)

13.3 MAIL PREPARATION

Several postal administrations already permit private operators to act as intermediaries between the customer who originates the mail and the postal administration who carries out the latter part of the mail process (including delivery).

The availability of such mail preparing services is to be welcomed. It gives greater flexibility and choice to customers, even when the mail is eventually channelled into a reserved service (on the assumption that the mail meets the criteria for being placed in the reserved area). Since the delivery element (the key fixed cost phase of the postal process) is still protected and therefore the volume going through this phase is maintained, the activity of such mail preparation is entirely consistent with the universal service objective. (See also the longer discussion at

Paragraph 9.4 above.)

In the light of these benefits to potential customers, Member States should be expected to authorise such intermediate operators, unless there are compelling reasons to the contrary. To ensure the quality of service provided by such intermediaries before the mail is posted with the postal administration, the latter could licence authorised intermediaries. (Of course, the intermediaries would be in competition with each other.) The rules for obtaining such licences ought to be clearly laid down, to avoid the claim of abuse of dominant position if the postal administration grants a licence to one operator but not to another.

13.4 ACCESS FOR PRIVATE OPERATORS

If a potential user wishes to use the reserved services and can meet the conditions for doing so, then he should be permitted access. This entails that if a private operator chooses to use the reserved service and then add some value to it in order to compete in the non-reserved sector, he should be allowed to do so. [215]

13.5 ACCESS FOR OTHER POSTAL ADMINISTRATIONS

For the ordinary international mail operation involving two postal administrations, it is accepted that there is some element of the relationship between the administrations involved that is different from the ordinary commercial relationship between a postal administration and a large customer. It therefore follows that, for such an operation, postal administrations should continue to have access into each others' delivery operations on special conditions (including the compensation arrangements - see below at Paragraph 15.3).

At the same time, however, outward postal administrations should be able to have access, should they choose, on similar conditions as those on which other large users gain access. In this way, as an example, the expeditors originating the mail in the outward country can have access to the preferential tariffs for delivery in the inward country (if such tariffs are available).

14. Universal Service Obligations - Service Standards

It is insufficient simply to state that universal service must be provided. The quality of the universal service must also be stipulated, using whatever criteria of quality are appropriate. Below are discussed the quality standards that need to be set for the reserved services, the system for monitoring performance against those standards, and the control mechanisms that would be needed in the event of performance falling short of the standards set.

Consideration will need to be given as to how far this quality control system also ought to apply to mandatory non-reserved services. Clearly, such services that were obliged because they were part of the set of reserved services defined at the Community level should have the same service obligations as the reserved services. These obligations would include having the same standards as the reserved services.

Those non-reserved services that were determined by a Member State to be mandatory would also carry the obligation to tell the customer what service standards were applied to them.

However, in the latter case, it is accepted that the standards set would not necessarily be the same as for the reserved services.

Intra-Community mail is a special case. The discussion above (at Paragraph 8.1) concludes that the placing of this mail in the non-reserved area would be envisaged (while at the same time it will be necessary to establish certain safeguards). However, [216] there would be a universal service obligation (placed on the two postal administrations involved) for such mail up to the weight limit used in the Community's definition of the set of reserved services. This universal service obligation implies the same quality of service disciplines as for the domestic services that the Community determines have to be provided mandatorily. Of course, as discussed below, the standards would be different from those set for domestic mail.

14.1 STANDARDS SETTING

All Member States agree that the granting of reserved service rights implies an obligation to perform well. However, uniform standards for good performance have not yet been defined.

There should be minimum Community service standards to be applied within each Member State. (There might be scope for regional flexibility within Member States, reflecting variations between urban concentrations or rural areas.) It should be emphasised that these standards would be the threshold levels for acceptable performance only. For the faster standard services (that is, either LC or first class), the appropriate threshold standard could be 90% delivery by the first working day after posting (known as D+1).

There should also be standards for cross-border items within the Community. In the interim, these could be calculated by aggregating the service standards for the outward (expedition), transport and delivery elements. The interim standard would therefore be 81% delivery by the third working day after posting (known as D+3, and calculated by allowing a 90% achievement of an outward despatch by the day after posting, and 90% delivery in the inward country within two working days of receipt).

Further, there should also be standards for dealing with complaints - both in terms of the maximum time that should be taken to deal with a complaint and in terms of a policy for possible remedies that a customer may claim. (The UPU itself has suggested standards.) The time requirement for dealing with complaints implies time standards for administrations to reply to each other in the case of complaints concerning intra-Community mail. Regulatory bodies must ensure that there are clear procedures laid down for the resolution of disputes. [217]

14.2 PERFORMANCE MONITORING

It is clear that the monitoring system needs to produce results that reflect as closely as possible the customer's experience.

Systems for measuring "operational" performance do not paint the whole picture. These are samples carried out within the operational span (usually from receipt in the outward office to some point before the item is taken out by the delivery postman).

The customer's experience of the postal service is "door-to-door" (or "end-to-end") - that is, from being put in a posting box (or collected from the customer's premises) to being delivered at the destination address. The only effective measuring system which accurately will reflect the consumer's experience is one that also measures end-to-end.

Further, for the sake of impartiality, this should be a system monitored by an outside organisation. Such a system has been adopted by some EC postal administrations, and is being seriously considered by others for introduction. The CEPT has accepted that this system should be used for measuring cross-border quality of service.

It seems clear that some body will be needed to monitor service across the Community. Because this would be for regulatory more than operational reasons, it does not, at first sight, seem appropriate to delegate such a task to the CEPT, which is an operators' group. However, provided that the CEPT employs an impartial independent agency to monitor performance and is willing to publish the results, it seems acceptable to continue with the CEPT system on an experimental basis.

Availability of service performance information to actual or potential customers is essential: it is part of the access obligation that the universal service provider must meet, so that customers know what they are buying. Postal administrations therefore ought to be able readily to provide information on service targets and actual performance for national, intra-Community and international mail.

To make the information as relevant as possible to the requirements of different customers, performance averages should be supplemented by further details - for instance, giving local and regional results for national mail, and information by the main destination countries for cross-border mail. [218]

Further, the regulatory body should guard against using average transit times or percentages as the sole indicator of the effectiveness of the universal service. It therefore seems desirable that each regulatory body should establish a group comprising representatives of users (from the individual consumer to large users) to give the regulator a more "rounded" picture of the service. In addition, the regulatory body of each Member State must ensure that there are clear procedures for claims and compensation, for instance in the case of loss.

14.3 CONTROL

Following the principle of "subsidiarity", control functions should primarily be the responsibility of the national regulatory bodies. The emphasis here should be on encouraging improvements where they are necessary. If the performance indicates a significant shortfall, the regulatory body would probably want to agree with the postal administration a phasing period for improving service, with intermediate targets to be achieved at each phase.

However, what should happen in the case of persistent failure to meet service targets? The ultimate sanction would be for the national regulatory body, perhaps under pressure from the Community, to seek tenders from different operators (both the postal administration and interested private operators) for the provision of the service in this event, tenders would be

invited for provision of the service where performance was particularly poor. However, in the case of absolute network break-down, tenders could be invited for the national service.

It must be stressed that this a pessimistic scenario. However, it should always be remembered that the privilege of exclusive rights carries obligations of service. Service to the customer is paramount.

15. Universal Service Obligations - Tariffs (Including Terminal Dues)

For mandatory non-reserved services prices will be determined by market forces. These forces might lead towards regionalised pricing. However, the postal administrations, or other operators upon which are placed the universal service obligation for these items, may choose to take the marketing decision to offer these services at a single unitary tariff covering the whole of the territory. Alternatively, the regulatory body or the government may take the political decision that there should be a "*péréquation tarifaire*" for such items. [/219]

Even if they (the postal administrations and any other operators with a universal obligation) had the choice and decided not to offer a "*péréquation tarifaire*", they would still want to have a uncomplicated tariff structure in order to aid comprehension on the part of potential customers. At the same time, they would want to guard against the danger of being used simply as the distributor of last resort by organisations that required universal service of parcels up to a certain weight.

It should be mentioned here in parenthesis that postal administrations should be encouraged to use the ECU as much as possible in their activities. Early discussion of the use of the ECU to clear terminal due accounts seems appropriate.

In addition to the discussion below, tariff issues are studied in detail in Annex 14.

15.1 RELATIONSHIP TO COSTS

All Member States agree that tariffs should be based on costs. More detailed analysis is needed to ensure a common understanding of what different costs there are, and to which of them this tariff principle should be applied. The general rule should be that tariffs ought to be based on average costs; tariffs for any service must cover at least the marginal costs associated with that service.

If the standard (public) tariff is to be related to costs, it follows that contract prices should also be thus related. It also follows that discounts should relate to cost savings.

15.2 SUBSIDIES

A view will need to be taken of how subsidies should be paid. At first sight, the preference could be for central subsidies paid to administrations directly related to the volume in the streams to be subsidised. An example of such use would be for preferential tariffs.

The general rule should be that cross-subsidies should be reduced to a minimum. The main

exception would be the "natural" geographic cross-subsidies permitted by a unitary tariff structure. As discussed at Paragraph 7 above, it may, in certain limited circumstances, also be necessary to permit cross-subsidies from the reserved sector to enable mandatory non-reserved services, that have to be available universally, to be provided in loss-making operations in certain localised areas. Such cross-subsidies would need to be the subject of vigorously transparent treatment. [/220]

Of course, profits gained in the non-reserved sector can be used to cross-subsidise the reserved services. However, cross-subsidies from the reserved to the non-reserved areas that are for other purposes than to ensure universal services should be phased out, unless they are compatible with competition rules. At any event, such cross-subsidies that enable predatory pricing in the non-reserved area are illegal.

The minimising of cross-subsidies will become even more important if, as is proposed below, terminal dues are based on inland tariffs.

15.3 TERMINAL DUES

The case for using inland tariffs as a basis for compensatory systems for mail exchanged between postal administrations rests on two principles: firstly the principle of having tariffs related to costs, and secondly the principle of taking action to avoid distortions of competition.

Whether Community mail is considered reserved or not, it will continue to be very difficult to control the international mail activities of private operators (assuming that such control was desirable). Further, it is becoming increasingly difficult to define the border between what are genuine international items and those items (A-B-A remail) which contravene inland monopolies.

Inland tariff based terminal dues would remove most of the financial ill-effects of this lack of distinction.

There should be two objectives. Firstly, cost distortions should be removed. However, genuine competitive differences should not be affected by regulation. Secondly, the operational partner not involved in the competition in the market place in the country where the mail originated - that is, the reserved service provider in the country of delivery - should be taken out of the competitive terrain by having his costs properly compensated. (However, if the delivery reserved service provider chooses to offer preferential tariffs, these should be available to the outward administration using these delivery services.)

There are some arguments against such a system. It would involve an increase in costs for some countries which have a certain profile of traffic and lower tariffs. It would take some time before each administration properly understood each others' charging systems. The greatest long-term problem could be that of costs [/221] differing greatly between different destinations, thus making zonal pricing for the whole of the Community more difficult.

For the longer term, the benefits of using inland tariffs as the basis for terminal dues outweigh the problems. The key tariff principle is that of relating tariffs to costs.

There is no reason why this principle should not be applied to cross-border Community mail. The problems noted above argue for a phasing-in period rather than rejecting the principle of using inland tariffs. This phasing-in period would also allow for the time that will be needed for the transition towards a proper cost basis for inland tariffs. It would also permit time for preparation of the appropriate mechanisms to prevent unfair under-cutting of intra-Community postal prices by remailing through a non-Community country at terminal dues set below the true costs of delivery (see above at Paragraph 11).

16. Non-reserved Services

Mandatory non-reserved services will carry certain obligations for the operators to whom the universal service commitment is entrusted for such services. These obligations were discussed in Paragraphs 13-15.

For non-mandatory services, the policy is simpler. The over-riding principle should be that the laws of the free market should be left to act themselves. It therefore seems unnecessary to introduce licensing in order to guarantee minimum levels of service. If it were to be introduced, administrative systems would need to be established to measure service given.

Licensing therefore does not seem appropriate in the non-reserved sector. Licensing should only be used in the reserved sector if it was decided to introduce more than one operator.

However, a certain level of regulation may be necessary. Below is a short discussion of regulation that could be thought to be appropriate in the non-reserved sector.

16.1 PRICE

If a price limit is used to define the limit of reserved services, it will determine the minimum price that can be charged in the non-reserved sector. [222]

Price is often a reflection of service (however perceived by the customer). A price threshold for non-reserved services should make any service standards unnecessary.

There will need to be a special regulatory interest where the reserved service provider uses its universal network to provide non-reserved services. The regulatory body must insist on sufficient transparency to prevent any cross-subsidies from the reserved to the non-reserved area that permit predatory pricing in the latter.

16.2 OTHER

Naturally, providers of non-reserved services, like all postal operators, must observe Community and national legislation on data protection. Beyond this, there seems no need to impose obligations of privacy on non-reserved service providers. If any operator developed a reputation for not respecting the privacy of contents, he would rapidly lose business.

In addition to this, the providers of non-reserved services operating their own transport services will also have to respect all existing and future Community and national legislation directly

related to the provision of transport services.

17. Possible Areas For Harmonisation

Harmonisation could take place on different levels, between customers and operators or among operators. The important areas to be discussed with reference to possible harmonisation relate particularly to universal services. These are discussed below.

17.1 ACCESS CONDITIONS/CONTRACT TERMS

It has been stated above that moves ought to be made to harmonise access conditions in the Community. This implies that it should be possible to make some movement towards harmonisation of contract terms.

Of course, some contract terms relate to the specific postal operation which will differ in each country. However, in general, postal operations are similar; in principle, therefore, there should be significant scope to harmonise terms.

This would imply that there ought to be some harmonisation of definitions. This would anyway seem desirable from a regulatory perspective. [223]

17.2 QUALITY OF SERVICE

The most important harmonisation actions for quality of service are the setting of Community standards and the implementation of a single Community measuring system (as discussed at Paragraph 14).

There may also be scope for having some shared operational standards in order to improve service. An example here would be the volume of mail that justifies mail being sent directly from an outward office to the delivery office. If the quantities of mail sent to intermediary offices either for additional sorting or transiting was reduced significantly, this could have a dramatic effect to improve quality.

17.3 TARIFF STRUCTURES

Connected with the development of more uniform access conditions, it would be beneficial to analyse the scope for making tariff structures more uniform also. This would become more practical when the proposals for common tariff procedures (as discussed at Paragraph 10.2.2 above) are implemented.

17.4 CUSTOMER INTERFACE

Many innovations relating to the customer "interface" are most easily introduced in co-operation with large customers. By its nature, harmonisation is much more all-embracing - hence making introduction more difficult and results possibly more tenuous.

Examples of such possible forms of harmonisation could be where all 12 Member States:

- have a standard tiering system, using either an LC/AO split or a first/second class split (not some one, some the other);
- have the same standards for envelope sizes;
- have a uniform post code system.

There would have to be significant consumer benefits foreseeable (in either the shorter or longer term) before it would be worth pursuing such possible harmonisations. Any harmonisation of this sort would be difficult to implement. In terms of developing a more integrated Community postal policy, the most [224] valuable of these examples of harmonisation measures could be that of introducing a standard tiering system.

Analysis of possible benefits would need to include the effects of new developments. For example, a uniform post code might seem to have some operational attractions in the short term. However, benefits from its introduction would be significantly reduced in the medium term by the advent of the next generation of optical character reader (OCR) sorting machines, which can read whole addresses, rather than just post codes.

17.5 OPERATIONAL

In general, the Community ought to have less to say about what happens away from the customer interface. Normally, it is for the operators to try to agree operational standards - for instance for mechanisation equipment, where such standards could bring the operators some savings in research and development expenditure.

However, where the standards used may directly affect users beneficially, there is more of a case for a Community role in encouraging harmonisation. Two pertinent examples here are the possible introduction of uniform routing barcodes (which would allow different operators to be involved in the transmission of a single item) and the X-400 standard for electronic mail (which would facilitate international transmission of postal electronic mail).

Uniform routing codes could be part of a strategy for creating inter-operability between operators. More than one operator is involved in cross-border letter mail services. Increasingly, intermediaries are being used for domestic mail (see Paragraph 9.4). The achievement of the Community's objectives on quality of service will therefore be partly reliant on the ability of the systems (whether computer-based or not) of the two different operators involved in each operational relationship to be able to share relevant information.

17.6 EMPLOYMENT

The evolution of the Community's social policy will have effects on the postal sector. This will probably be the greatest stimulus towards making employment and other working conditions more uniform. [225]

The possible need for operational harmonisation mentioned above may make a certain level of co-operation in training necessary. An example could be the need for shared training between

two operators (such as postal administrations that exchange large volumes of mail) who decide to co-operate in an operational management information system covering such exchanges.

18. Community Cohesion

The provision of a reserved service network providing universal service implies the setting of service standards. This necessitates maintenance and improvement of the network, as well as the development of new services.

The present situation varies widely between Member States. The basic infrastructure varies because of external factors such as population density, geographic constraints and economic differences as well as more internal factors such as past investment policy.

One indication of this is the different level of mechanisation in the different Member States. This may suggest that it would be unlikely that the investment required would be made in certain areas. However, it should be noted that there is not necessarily a direct link between investment in mechanised plant and quality of service. Improvements can be achieved through better management systems and the implementation of suitable quality control systems.

If improvements in quality of service generally were not made in such areas, the gap between them and more favoured areas could widen, not only in terms of the quality of postal services, but also in terms of general business activity which good postal services help to stimulate. Therefore, the lack of a postal service up to modern standards in these areas would have an adverse effect, particularly on small and medium enterprises located there.

It should also not be forgotten that there are, in addition, potentially significant social implications. The trends in the postal sector are likely to create some imbalances between its existing and future demand for staff, in terms of both their geographical distribution and their skills.

The consequences of failure to meet the universal service targets in these regions should therefore be considered during the development of the Community's postal policy. [226]

19. Policy Implementation

The Green Paper is intended to discuss policy issues and make proposals for the future of the Community's postal sector. It therefore seems inappropriate here to discuss in more than general terms the possible legal instruments that could be used to implement Community policy as it develops following publication of the Green Paper and after appropriate consultation.

The proposals could be developed into draft directives to be submitted to the Council as harmonisation measures under Article 100 (for unanimous approval) or Article 100a (for approval by qualified majority for measures relating to the achievement of the Single Market). The proposals concerning aspects related to competition or the establishing of the common market could be developed into draft directives to be issued under Article 90.3.

Because of the varying nature of the different actions involved, a combination of these

procedures seems most likely.

20. Postal Financial Services

The sale of services at the counters of postal administrations is, in almost every instance, offered in competition with the sale of the same or similar services elsewhere.

The network of post office counters has different dynamics to the postal network that provides mail services. In the case of the latter, the different parts of the network are completely inter-dependent: a letter collected at one point in the network needs to be delivered in another.

In the case of counter services, the same is not true another location can be added to, or subtracted from, the network without the same need to re-arrange the management of the network. As with mail services, there can be a problem in identifying who are the customers. In the case of counter services, is the customer the service provider whose services are provided through the counter, or is it the users of those services who visit the counters to gain access to those services?

Both networks (mail and counters) have high fixed costs (even where some of the work is sub-contracted). The counters networks are a resource that is important to the whole Community, especially in rural areas. It is therefore in the interest of the Community that the counters network is as financially viable as possible. Here, a comparison of the [227] different services offered by the different postal administrations at their counters shows a remarkable diversity.

Because postal financial services operate in the non-reserved area, there is less need to develop regulatory proposals for them. However, while not being the subject of formal proposals, there are some areas in which the introduction of a greater degree of uniformity may be helpful.

Subject to certain restrictions (such as national law on the sale of lotteries), it seems desirable that postal administrations should be as free as possible to provide the broadest range of services at their counters. (But this statement does not imply the creation of a postbank if it does not already exist.) There seems no reason why the service sold at counters should be restricted, as it is in certain Member States, to services transacted on behalf of public sector organisations. These services would normally be provided in competition, and such a diversity, providing that there was no distortion of competition would help to ensure the financial viability of the network of counters.

There is also some scope for making some services more flexible cross-border. For example, Post-cheques issued in some countries are accepted for encashment in some, but not all, other Member States. Greater flexibility in this respect could provide useful competition to the banks' cross-border encashment facilities. The latter tend to be somewhat expensive, particularly for low values.

In summary, postal financial services are important financially to postal administrations. However, since they operate almost always in competition with the same or similar services available through other means, there is less of a regulatory question to discuss.

For the reader requiring a more detailed discussion of the Community's financial sector, it should be mentioned that the Commission published in September 1990 a discussion paper on "Making Payments in the Internal Market" (reference COM(90)447). Following this discussion paper, the Commission has presented a work programme for improving cross-border payments in the Community (reference SEC(92)621).

21. Other Issues

The views as expressed in a Green Paper are necessarily influenced by the current environment. However, the environment will change, for instance, as a result of monetary union or political union. It is therefore difficult to forecast what would be the [228] implications of such changes in the environment. Below are discussed subjects which of necessity are of a more speculative nature.

21.1 SINGLE POSTAL ADMINISTRATION

It is appropriate to discuss the question of a single postal administration covering the whole of the Community, since the subject has been mentioned by some of the actors in the debate on the present postal sector. Naturally, the discussion here will be somewhat "*a priori*".

The first task in this discussion is to define in more detail the objectives and structure of such a single postal administration. There would appear to be two possibilities - one more short-term (and therefore more "tactical"), and the other more long-term (and more "strategic").

The more tactical version is that of the present postal administrations continuing, with a supplementary body at Community level being used to address operational issues that could not be handled by individual postal administrations acting on their own or in limited cooperation with other administrations. The more strategic version would have a more integrated structure, with a unified central management at Community level.

If a single postal administration were to come about, it would probably at that time be considered to be closely linked to full political union. The second - the more strategic - of the possibilities therefore would seem the more appropriate structure to meet these requirements, and most of the discussion below relates to that version. Before that, however, the format and possible benefits of the more tactical version are discussed.

The tactical version, as described above, would have limited, mostly operational, objectives. It should be noted that such a supplementary body (which would not limit involuntarily the freedom of action of individual postal administrations) could be established now if there was an operational need (and without requiring any political approval on the part of national governments).

To a certain extent, the Unipost company (established by certain CEPT members to provide some central operational management for some cross-border mail services) could be an indicator of how such an organisation could work. Of course, it would be essential that the establishment of such an operational organisation did not cause the regulatory position to change in order to accommodate it. [229]

Such an organisation would be appropriate if the objectives were limited, and of an operational nature only. The more important analysis here seems to concern the more strategic version of a single postal administration.

The first question to be asked is what would be the benefits such a single postal administration. It is not clear how the establishing of a single postal administration would improve quality of service more than could be achieved through the best practice being involved by the existing (or future) operators in the postal sector.

This best practice on the one side takes the form of improved cooperation - for instance between a postal administration and the users of its services (including other postal administrations). On the other side, it takes the form of trying to establish competitive advantage, either through adopting measures used successfully in other organisations (competitors or not) or through innovation.

It is also not clear that a single postal administration would significantly add to a Community spirit within the EC. As discussed below, it would not be possible to introduce a single tariff (even if it was desirable to do so) because of the massive cross-subsidies and accountancy problems that would be involved. In effect, a single postal administration would have to be a supra-national body which would still need to delegate significantly to the national public operators (which presumably would remain very similar to the present postal administrations).

It also seems improbable that the establishing of a single postal administration would lead to savings of costs. Theoretically an integrated single postal administration would be able to make streamlining savings - for instance in avoiding the duplication of administrative functions in the different postal administrations. In practice, it is difficult to see this happening: for example, personnel administration would still need to be carried out in each of the national operators, even though there would be a supplementary personnel department in the central body of the single postal administration.

In effect, therefore, the establishing of a single postal administration would lead to the super-imposing of another layer of administration without apparent cost savings below to compensate. There would be the cost of establishing a single headquarters, the necessary communication links, the changes of the national systems to conform with a single model and the sheer management cost of imposing uniformity. In addition, there would also be the cost to consumers if an [230] attempt to apply a highly uniform Community service led to national operators being less responsive to the requirements of the customers in their territory.

Of course, in any consideration of a single postal administration, it would still be essential to continue to seek the least restrictive option. The concept of a single postal administration therefore definitely does not imply the establishing of a large set of reserved services covering all cross-border movements of letters and printed papers. As stated above, the single postal administration would need to delegate substantially to each national public operator. In recognition of the different conditions, the national regulatory bodies would still have the option of defining a smaller reserved area than the Community norm.

In summary, the benefits of a single postal administration do not, *a priori*, seem substantial, but

the costs to be passed on to customers or tax-payers could be significant.

If a single public postal operator does not seem a feasible option, some Community body to monitor service could still be necessary.

21.2 COMMON TARIFFS

Setting a common tarification in all Member States for some or all classes of mail would meet many problems. These are, frankly, insuperable, at least for the foreseeable future.

Firstly, it would have to overcome the different accounting practices which underlie the existing tariffs set by each postal administration.

Secondly, a common tariff could only be achieved by cross-subsidies on a massive scale. These would be far larger than any cross-subsidies presently made to achieve *péréquation* made within national territories. This would go against one of the main themes running through the Green paper - the need for tariffs to be related closely to costs.

Thirdly, the establishing of common tariffs would have to be preceded by harmonised product classifications and contract conditions. Even if the hope was to have a common tariff only at the first weight step, there would have to be some harmonisation of the service tiering principles used. This is not an argument against (see above at Paragraph 17.3), but rather an indication of the work that would need to come first. [231]

Lastly, and most importantly, the effect on customers would be substantial. It would be extremely difficult to explain to customers in several Member States that their tariffs would have to rise from their traditionally low levels (which might be based on lower costs - for instance of labour), in order to conform with a standard Community price. The alternative to taking an average would be to harmonise on a lower tariff - but this would involve direct subsidies of simply unthinkable proportions.

Common tariffs should only start to be discussed if there was some clear probability of establishing a single postal administration. However, even then, establishing the latter would not imply the former.

21.3 COMMON STAMPS

The introduction of stamps usable in all the countries of the Community seems something that could be realised in the nearer future. As soon as the ECU is used for every day transactions (as it increasingly will, as full monetary union approaches), stamps of national administrations could be sold in ECUs. These would be stamps of the value indicated in national currency, paid at the prevailing ECU exchange rate.

A practical problem here is to ensure that the revenue gained is matched with the costs incurred for the services bought. In fact, there would not appear to be too great a problem since there would be no financial incentives to buy stamps (in ECUs) in one Member State for use in another. It would still be necessary to pay the postal tariff in the country of posting. If, despite

the arguments against, there was a common Community tariff, there would still be no incentive to buy stamps in another Member State.

Operational problems would probably also relate to revenue protection. There would be a need to train sorting office staff in the checking of values in ECUs. This should not be an insuperable problem, certainly within the Community. However, there could be greater difficulty in persuading postal administrations outside the Community to accept stamps with denominations only in ECUs.

In summary, there might be some small displacement between revenue and costs. However, it is possible that there is a market need for such stamps - this would need to be investigated by market research. If there was such a need, the practicality of such common stamps should be determined in more detail. In this regard, the telecard/phonecard, which will be able to be used in different Member [232] States (despite there being a greater possibility of a revenue/cost displacement) could be an instructive example.

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CHAPTER 9: POLICY OPTIONS

Introduction

All the citizens and organisations of the Community should have access to good, reliable postal services. Implementation of these policy options will achieve this. They will create the conditions for the Community's postal sector to satisfy fully and effectively the postal needs of the Community's citizens and organisations. When implemented, they will meet the Community's objectives while giving the user the widest freedom of choice consistent with these objectives.

The cornerstone of the Community's policy for the postal sector should be the universal service. The universal service required throughout the Community needs to be defined. The main concrete meaning of this universal service requirement is that there should continue to be a postal service available throughout the Community, both for national services within a Member State and for cross-border services linking two Member States. This universality implies certain more specific requirements: that the prices for the services should be affordable to all, that the service should be of good quality and it should be readily accessible to all.

It is concluded that this universal service objective can justify the establishment of a set of reserved services (subject to the decision of each Member State individually that this was necessary), which would help to ensure the financial viability of the universal service network. The scope of these reserved services, which could confer some special and exclusive rights on the universal service providers, should be directly proportional to the objective. In this way, the universal service objective would be secured, and there would be as much freedom as possible for potential users.

GENERAL OPTIONS

There are certain general options as means to achieving these broad objectives. (Naturally, the implications of taking no action should also be considered.) In broad terms, there are two paths - that of liberalisation and that of harmonisation.

The sector is already significantly liberalised - about 50% of the revenue generated in the sector relates to non-reserved services. The present position results from a longer-term trend to open the market, and the Green Paper options seek further ways to ease restrictions. By contrast, levels of harmonisation (by reference to possible Community [234] objectives) are rather low. As a

result, the Community has a postal sector with many divergences - not only regulatory, but also in terms of such important customer aspects as access, service provided and tariffs.

Possibilities for reform can be approached by first considering the extreme options of complete liberalisation and of complete harmonisation. These two options are effectively at opposite ends of a spectrum of different possible scenarios. The option of taking no action at all should also be examined. The last option to be discussed is that which seeks an equilibrium combining the benefits of both progressive opening of the market and selective harmonisation. Within this option many variants exist, some of which are discussed below.

Complete liberalisation

The normal market condition is that of the free market. However, complete liberalisation of the postal sector would lead to the loss of the universal service, certainly at prices affordable to all. At the same time, no private operators seem interested in providing a standard letter service to all parts of any national territory.

Complete harmonisation

If it was intended to have a postal sector that was completely harmonised, it would be necessary to have a single operational body that ensured that such harmonisation was implemented. Such an operator - effectively a single postal administration covering all the Community - would have overall responsibility for all aspects of what was considered to be the public administration part of the Community's postal sector.

Total harmonisation would imply the same tariff being applied throughout the Community, as well as the same access conditions and the same levels of service. A single tariff with the same price being applied in all Member States. (for which there appears to be no demand) would cause overwhelming problems. It would also be impractical, demanding cross-subsidies of massive proportions. (Tariffs presently vary by as much as a factor of three.) Central co-ordination of policies, relating to areas such as marketing or personnel would be likely to lead to an over-rigidity which could not respond to local conditions. Further, the implementing body, the Single postal administration, would be a costly additional overhead.

In summary, complete harmonisation would lead to many restrictions, but few benefits. Further, it should be emphasised that nobody is now asking for! the single operational body that would be needed to implement harmonisation at this level. [235]

Status quo

If this theoretical option were to be exercised, the result would be a widening of the gap between already very divergent positions, and make more difficult the proper functioning of the Single Market.. This would lead to a "two-speed" Europe in postal services. In short, the Single Market in postal services would not be achieved, with significant indirect effects on other sectors particularly served by postal services. It would also probably not be the appropriate response to the implications of political and economic union.

Equilibrium: further opening of market/strengthening of universal service

This option accepts that in order to ensure the universal service it is necessary to have some restriction of the free market. This would be in the form of the establishment of a set of reserved services that confer some special and exclusive rights on national postal administrations. However, the scope of the reserved area must be strictly proportional to the universal service objective. At the same time, the regulatory control of part of the market (reserved services granted to ensure universal service) would make possible certain harmonisation measures to ensure that the universal service operates effectively in all twelve Member States.

Each Member State already reserves certain services in order to achieve a universal service objective; but the scope of such reserved services is usually larger - sometimes significantly - than is necessary to meet the objective. Further, the actual objective (including service performance) must be achieved in practice. In addition, there are gains to be obtained from simply clarifying what is reserved and what is not.

It is proposed that there should be a Community definition of the universal service that should be provided throughout the Community. This definition has not yet been drawn up. However, it is possible to indicate how the market should, under this option, be partially liberalised without threatening the universal service objective.

Under this option of seeking equilibrium, certain services should be removed from the reserved area (if, indeed, they presently form part). These are express services and publications. (Parcel services are already liberalised in all twelve Member States.) Based on the analysis that has been made to date, the liberalisation of cross-border letters and, a priori, of direct mail would also be envisaged. In both cases, it will be necessary to ensure that the appropriate regulatory control systems are in place to prevent such liberalising measures leading to circumvention of legitimate exclusive [236] rights of reserved service providers. Particularly in the case of direct mail, it will be necessary fully to analyse the economic implications for the universal service of such a liberalisation measure.

The liberalisation process ought to be implemented in a gradual manner. It should take into account the necessary phases for adaptation in order to maintain the economic and financial balance needed for the provision of the universal services.

For the services which remain as potentially reserved - which would broadly cover personal and business correspondence - it would be possible to establish clear limits that indicated the precise scope of the reserved area. These limits would be defined in terms of weight and price.

It should be emphasised that if any Member State were concerned that specific proposals might harm its universal service objective, it could consider applying a more restrictive solution, provided that it was still proportional to the objective and conformed to Community law.

Turning to the harmonisation measures to be implemented in parallel with these liberalisations, they must spring from the fundamental Community objective that there should be a universal service of sufficient quality and at affordable prices. As mentioned above, there is not yet a Community definition of the universal service required across the Community. It seems clear that

such a definition is needed and that, when drawing it up, potential users - including consumer representatives - should be consulted. However, certain harmonisation requirements are already clear.

Universality implies easy access, and this is currently often not the case everywhere in the Community. Given the present divergences in service performance, some harmonisation would be needed in this respect also. Tariffs appear to be generally affordable; in certain cases, the tariffs do not reflect the costs, and such tariff-setting, as applied by the postal administrations, could, in the long term, jeopardise the economic viability of the universal service network. Further, it is right that the postal administration should be able to use the universal service network to provide nonmandatory services, but at present there are no common rules for this.

These present and future problems indicate that harmonisation measures for universal services are appropriate in the following areas: [237]

access: rules should be the same for all users meeting the same conditions; for the access needs of other service providers (either other postal administrations or private operators), there may need to be specific technical measures to ensure inter-operability;

service: standards should be set for all universal services; performance should be measured by a common system that accurately reflects users' experience of the service; results should be published;

tariffs: prices for each service should be related to the average costs of that service; present differences in tariff structures should be reduced in order to diminish present market distortions.

These harmonisation measures could be implemented, considering that basic customer requirements would be likely to be very similar in each Member State.

PROPOSED SCENARIO

The last option is the preferred scenario since it finds the appropriate balance. It combines gradual opening of the market with the implementation of harmonisation measures to meet Community objectives. It will therefore ensure the universal service under proper conditions, whilst providing optimum freedom of choice for users. It will be noted that there is no single solution, but rather a set of measures which provide the common structure needed. Each proposal is therefore part of a coherent whole; at the same time individual proposals do respond to certain specific problems.

It should be mentioned that some advance comments have been received on recent drafts of the options. On the basis of these comments, it seems that there could be a consensus on the general orientations. However, there appear to be certain points that cause concern to some interested parties. These points seem to relate to the need for adaptation periods and also to certain liberalisation proposals - such as for direct mail (at Proposal 2.7 below), intra-Community cross-border mail (Proposal 2.13) and international mail (Proposal 2.14). The debate during the

consultation period that will follow the publication of the Green Paper may well concentrate on such points. However, the balance of the whole set of policy options presented should be considered.

It should be emphasised that this broad option of further market opening combined with strengthening the universal service could itself be implemented in a number of ways. The [238] intention is that the main remaining choices will be made in the light of the debate that will follow the publication of the Green Paper. More detailed work will thus be needed before implementation. Much of this will involve discussions with user groups in order to identify their requirements in more detail, particularly with regard to the ways in which they may need greater freedom of choice. As mentioned, a Community definition of the universal service is required. Further analysis is also required before the weight and price limits for the reserved area can be defined. Service thresholds for the universal services need to be agreed. More detailed work is also required to implement the principle that tariffs should be related to average costs.

However, even though this more detailed work remains to be undertaken, the set of policy options is presented in the confidence that the common structure proposed, by linking liberalisation and harmonisation, would ensure the universal service and give optimum freedom of choice. [239]

The main objectives for the Community's postal sector are shown in Table 1.

Table 1 *Main objectives for postal sector*

1. TO ESTABLISH A COMMUNITY DEFINITION OF THE UNIVERSAL POSTAL SERVICE REQUIRED; THEN TO ENSURE ITS PROVISION THROUGHOUT THE COMMUNITY AT PRICES AFFORDABLE TO ALL THROUGH THE ESTABLISHING (INASMUCH AS IT WAS NEEDED IN MEMBER STATES INDIVIDUALLY) OF A SET OF RESERVED SERVICES WHICH WOULD CONFER SOME SPECIAL AND EXCLUSIVE RIGHTS, IN ORDER TO MAINTAIN THE RESOURCES NECESSARY FOR THE UNDERTAKING OF THE PUBLIC SERVICE MISSION IN SOUND CONDITIONS; AT THE SAME TIME, CONSISTENT WITH THIS OBJECTIVE, TO HAVE THE LARGEST POSSIBLE PART OF THE SECTOR OPERATING IN FREE COMPETITION.
2. TO HAVE COMMON OBLIGATIONS FOR THE UNIVERSAL SERVICE OPERATORS OF THE COMMUNITY IN RESPECT OF THE SPECIAL AND EXCLUSIVE RIGHTS GRANTED TO THEM BY THE RESERVED SERVICES IN ORDER TO PROVIDE UNIVERSAL SERVICES, IN PARTICULAR WITH REGARD TO THE QUALITY OF SERVICE PROVIDED.
3. TO MAKE ANY NECESSARY EFFORTS TOWARDS COMMUNITY COHESION THROUGH APPROPRIATE HARMONISATION MEASURES.

These main policy objectives therefore treat general regulatory issues, the obligations of the reserved service provider and, thirdly, the subjects of harmonisation and cohesion. Under these three headings, the main policy options break down into the detailed options shown in Table 2

below. [/240]

Table 2 Detailed options

<p>PART I: GENERAL REGULATORY ISSUES</p> <ol style="list-style-type: none">1. ESTABLISH AND ENSURE THE COMMUNITY SET OF UNIVERSAL SERVICES2. DEVELOP THE DEFINITION OF UNIVERSAL AND RESERVED SERVICES3. ENSURE COMPATIBILITY OF OTHER MEMBER STATE COMMITMENTS WITH COMMUNITY LEGISLATION AND POLICIES4. SEPARATE REGULATORY AND OPERATIONAL FUNCTIONS <p>PART II: OBLIGATIONS OF UNIVERSAL SERVICE PROVIDER</p> <ol style="list-style-type: none">5. ACCESS CONDITIONS TO UNIVERSAL SERVICES TO BE SAME FOR ALL6. TARIFFS OF UNIVERSAL SERVICES TO BE RELATED TO COSTS7. INTER-ADMINISTRATION COMPENSATION TO REFLECT DELIVERY COSTS8. SERVICE STANDARDS FOR UNIVERSAL SERVICES TO BE SET AND PERFORMANCE MONITORED <p>PART III: HARMONISATION AND COHESION</p> <ol style="list-style-type: none">9. HARMONISATION APPROPRIATE WHERE BENEFICIAL TO THE CUSTOMERS10. COHESION ASPECTS TO BE TAKEN INTO ACCOUNT

These detailed options can, in turn, be translated into implementation proposals, and these are shown in the succeeding pages. [/241]

PART I. GENERAL REGULATORY ISSUES

1. Establish a Set Of Universal Services

The key social requirement for postal services is the maintenance of the universal service. Universal service without any conditions about price can be provided in the competitive (non-reserved) sector. But, in order for the service to be at a price affordable to all, it is necessary to have sufficient economic returns to scale. These can only be achieved through the granting of some special and exclusive rights - hence the need for reserved services. (Although it is possible for there to be more than one reserved service provider in each Member State, this is unlikely; for the sake of simplicity, all the proposals refer to only one reserved service provider - assumed to be the postal administration - in each Member State.)

- 1.1 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, as well as other commitments, notably

to the Universal Postal Union (UPU). A Member State would still be able to extend the definition to be applied in its own territory, in line with its legitimate public interests.

- 1.2 In order to ensure universal service at a price affordable to all, a set of reserved services must be established. The list of services that could be included in this set of reserved services should be established at Community level.
- 1.3 In accordance with the principle of proportionality, the size of this set of reserved services should be no larger than is needed to secure the universal service objective.
- 1.4 Outside the reserved area, all services will be provided in free competition. The postal administrations could also provide non-reserved services. [242]

2. Develop the Definition Of Universal And Reserved Services

The reserved services must be defined clearly in order to distinguish plainly between what is in the reserved area and what in the non-reserved area. This definition of the set of reserved services requires much more work which should be undertaken in the light of the competition rules as laid out in the Treaty of Rome.

Throughout this analysis, the objective will be to seek the least restrictive solution. Conditions in some Member States may permit the scope of the reserved services there to be less than the set defined at a Community level, but always consistent with the objective of universal service provision, thus ensuring that the public service mission is carried out in sound economic and financial conditions. Conversely, other Member States might possibly find that the Community set of reserved services might not be sufficient to guarantee the universal service; in such a case, the Member State concerned may then consider applying a more restrictive solution that will still be compatible with Community law.

The universal services defined at Community level will have to be provided obligatorily in all Member States. The regulatory body of each Member State, taking account of all commitments, may well decide that universal service should be provided obligatorily beyond the scope of the reserved area. Thus, in addition to reserved universal services which have to be provided mandatorily, there are likely to be some mandatory nonreserved services for which universal service is also required, this obligation being delegated by the regulatory authority to one or more operators.

Some other operators may decide for commercial reasons also to provide universal service. The important distinction is the obligation underlying the provision of the universal service. Throughout these proposals mention of the universal service provider refers to the operator who is obligated to provide the universal service.

Each postal administration will therefore be obliged to provide universal service, as it will be defined at national and Community levels. This obligation should not impose all unfair financial burden on the postal administrations. Proper tariff-setting systems are therefore important (see below at Paragraphs 7 and 8). [243]

Self-delivery and self-posting (delivery and posting of one's own mail by oneself)

- 2.1 Any individual or organisation has the right to deliver his/its own mail himself/itself anywhere in the Community or to transport it himself/itself for posting directly with the postal administration in the country of delivery.
- 2.2 Any individual or any organisation also has the right to post his/its mail with a postal administration of another country for delivery in a third country or back in his/its own country. In the latter case, if the item would otherwise have met the criteria for being reserved in the individual's/organisation's country, the mail must be given to the postal administration for delivery, and its delivery costs must be properly compensated.
- 2.3 To aid the interpretation of the proposals at Paragraphs 2.1-2 above, the Community will need to develop rules regarding the delivery or posting of mail by sister or subsidiary organisations in the same or another Member State.

Non-reserved area

- 2.4 When new services (such as electronic mail) are evolved that are significantly different from the existing reserved standard services, such new services need to be considered as being in the non-reserved sector. However, this may need to be reviewed for particular cases. During the consultation that will follow publication of the Green Paper, the economic and financial effects of this will be analysed.
- 2.5 If a new service subsequently becomes a necessary element in the achievement of the universal service, it is possible to envisage its integration into the reserved area in line with the criteria mentioned at Paragraph 2.16-17 below.
- 2.6 Any service that is not within the reserved area is therefore non-reserved, and should be provided in free competition.

The reserved area

- 2.7 The Community must complete the development of the definition of the set of services that could be considered reserved. The set will cover some standard postal communication items (including letters and postcards) up to certain [244] limits described below. It will not include, for example, publications, goodsbearing items or express (courier) items. The placing of addressed direct mail in the non-reserved area would, *a priori*, be envisaged. The economic implications for the universal service of the liberalisation of direct mail should be analysed (see below at Paragraph 2.9); it will also be necessary to establish appropriate regulatory control systems to prevent possible abuse.
- 2.8 Since the establishment of a set of reserved services is justified by the need to ensure universal service at affordable prices, the definition of the scope of the universal service required across the Community needs to be finalised. (The universal service requirement will be defined in terms of user needs, which may vary over time.) Both the scope of the

universal services and that of the reserved area will need to be subject to regular review.

- 2.9 The Commission, with the help of the Senior Officials' Group on Posts, will establish a working group to analyse in detail: the economics of universal service provision in the Community; the size necessary for the reserved area; and the set of controls needed to protect the reserved area. The working group will also analyse the economic implications for the universal service of each liberalisation measure. The working group should complete its work within one year of the publication of the Green Paper. Its analysis will also lead to orientations concerning the limits of the reserved area defined at Community level. (Proposals for defining these limits are shown below at Paragraphs 2.16 - 2.17.)
- 2.10 The regulatory body of each Member State will wish to define the universal service that must be provided obligatorily in its territory. In doing so, it will need to take account of the universal service obligations defined at Community level.
- 2.11 Member States can decide to have a reserved area smaller than the Community limits, but will still have to ensure universal service up to the Community limits for the universal services. [/245]

Reserved services - additional issues

- 2.12 National (domestic) mail that would come within the scope of the reserved services of a Member State must not be transported out of the Member State by a third party operator for mailing back into the Member State. However, mail that is physically generated in a particular country (for example, through the handling of data or the printing of the contents there), or is in some way subject there to a process that adds substantial value, should be treated as mail originating in that country.
- 2.13 The placing of intra-Community cross-border mail (mail crossing from one Member State to another) in the non reserved area would be envisaged. If a Member State was convinced that such a liberalisation might prejudice the universal service, it could apply a more restrictive solution provided that it was proportional to the objective and compatible with Community law. It will be necessary to establish appropriate regulatory control systems to ensure that domestic mail that would otherwise have been reserved is not fed into the cross-border system through third party operators (see Paragraph 2.12 above). It is accepted that certain Member States may need a certain adaptation period to implement this measure; the need for such an adaptation period and its length (which may vary from Member State to Member State) should be discussed during the consultation period following the publication of the Green Paper.
- 2.14 The placing of international mail (either mail originating in a Member State with a destination outside the Community or originating outside the Community for delivery in a Member State) in the non-reserved area would be envisaged. ~ a Member State was convinced that such a liberalisation might prejudice the universal service, it could apply a more restrictive solution provided that it was proportional to the objective and compatible with Community law. It will be necessary to establish appropriate regulatory control systems to ensure that domestic mail that would otherwise have been reserved is

not fed into the cross-border system through third party operators (see Paragraph 2.12 above). Certain Member States may need a certain adaptation period to implement this measure; the need for such an adaptation period and its length (which may vary from Member State to Member State) [246] should be discussed during the consultation period following the publication of the Green Paper.

- 2.15 The fact that a service is part of the set of reserved services as defined at Community level does not automatically imply that a Member State should integrate the service into its reserved area.

Criteria for definition of limits

- 2.16 Only services with a universal obligation could be considered reserved. However, services providing delivery of goods-bearing items and printed papers (under the reserve of the orientations on direct mail at Paragraph 2.7 above) should not be reserved, even if these services are provided under a universal service obligation. A contents criterion will be needed to ensure that goodsbearing items and printed papers are placed in the non-reserved area.
- 2.17 The items that will remain as items that possibly could be reserved are standard postal communication items. Within these, the criteria to be used for defining the scope of the reserved services will be both weight and price. There will be a link between the two criteria; this link needs to be quantified. (In the medium/longer term, price limits alone may well be sufficient.)

3. Ensure Compatibility of Other Member State Commitments With Community

Legislation and Policies

Naturally, all postal operators (both private and public) providing services in the Community must comply with Community legislation. Of particular importance to the postal sector are (or will be) directives on data protection, indirect taxation and procedures. As with all sectors, efforts need to be made to reduce the possible tensions between, on the one hand, Community law and policies and, on the other, potential obligations arising from other conventions or treaties that Member States may have signed.

To this end, the Community should be involved in the development of legislation and rules that may affect its postal sector. It should therefore apply to both the UPU and the CEPT to gain observer status. The UPU is an agency of the United Nations, and the Community has observer status at the UN. [247]

- 3.1 The Community should be actively involved in future congresses of the UPU, to help to ensure that there are no tensions between congress decisions and obligations under the Treaty of Rome, other Community legislation or the Community's postal policy.
- 3.2 In particular, use of Article 25 of the UPU Convention is not appropriate for use within the Community. It seems necessary to replace it with a less restrictive measure that still makes clear that the physical transport by a third party operator of mail out of a Member

State for mailing back into it is forbidden if the exclusive rights of the postal administration in that Member State are thereby infringed (as stated above at 2.12).

- 3.3 The Community should seek to acquire observer status at the Universal Postal Union (UPU).
- 3.4 The Community will investigate and then propose how to prevent mail being taken out of the Community for mailing back in with the sole intention of circumventing the Community's policies on tariffs and terminal dues (see proposals below at Paragraphs 6 and 7).

4. Separate Regulatory and Operational Functions

In order to ensure that the user's interests are best served through the impartial treatment of all operators, it is essential that regulatory and operational functions should be separated. The independence of the regulatory function will better enable it to achieve the best balance between public and private operators, and between reserved and non-reserved service providers. It will monitor the effectiveness of the reserved services, in terms of the service provider both maintaining a good universal service and meeting its other obligations shown below at Proposals 5, 6 and 8. (It will also need to oversee the obligation of privacy.) If the situation arises it will need to consider what action may be necessary in the case of performance falling short of the obligations.

- 4.1 Each Member State must have a regulatory body that is separated from any operational function.
- 4.2 Regulatory bodies are responsible for the national application of Community policy on postal services, particularly the principle that the reserved service [248] area must be proportional to the universal service objective (as stated at Paragraph 1.2 above).
- 4.3 The regulatory body of each Member State will be responsible for ensuring that national legislation states clearly what services are reserved domestically within the Community set of possible reserved services. All other services should be considered non-reserved.
- 4.4 The regulatory body will ensure that other operators respect the exclusive rights that are defined for the reserved service provider.
- 4.5 The regulatory body will need to ensure that the reserved service provider meets its service obligations, including providing equality of treatment.
- 4.6 The regulatory body should seek firm undertakings from the universal service provider(s) with regard to the privacy of mail.
- 4.7 The regulatory body will need to agree with the universal service provider(s) what commitment the latter must give concerning the quality of service that it will provide. The regulatory body needs to be able to underwrite the reliability of any service performance results that are published.

- 4.8 Appropriate levels of transparency need to be determined, both for access to the network and for the costs underlying the prices for access.
- 4.9 If the reserved service provider is competing in the non-reserved sector, it can, for economic and commercial reasons, provide these services through the universal service network that is also used for the reserved services. The regulatory body must ensure that there is no cross-subsidy from the reserved area to the non-reserved area.
- 4.10 The regulatory body must ensure that private operators (who may be competing with the postal administration in the non-reserved area) have access to reserved services insofar as private operators need such access to provide the non-reserved services that they offer. (See also Paragraph 5.3 below.)
- 4.11 The appropriate authorities, whether at national or Community level, need to ensure that application of general legislation to the postal sector's nonreserved services does not unfairly advantage or disadvantage any operators competing in the non-reserved area. [249]

PART II. OBLIGATIONS OF UNIVERSAL SERVICE PROVIDER

5. Access Conditions to Universal Services to be Same for All

The rule must be equality of treatment of users (customers) of universal services. Within this rule, it is recognised that customers have varying requirements and can co-operate with universal service providers to varying extents. This is partly a function of size, but particularly of the ability to prepare mail in ways that are beneficial to the postal operation of the universal service provider, thus allowing the latter to offer discounts.

- 5.1 Where customers meet the same posting conditions, access conditions for universal services ought to be the same for all.
- 5.2 Each universal service provider should make available contract facilities for large customers. (See also Paragraph 93 below.)
- 5.3 Universal service providers must offer these services equally to all potential customers, even if these customers may be their competitors in the nonreserved sector.
- 5.4 For ordinary cross-border exchanges between postal administrations through the international mail system, it is accepted that there is some element in this relationship that is not purely commercial, so that access conditions for one postal administration posting into another could need to be different from the normal commercial conditions. However, the outward postal administration should also be able to have access as a customer to the domestic universal services of the inward postal administration. This access will be on the same terms as for other similar users.

- 5.5 Posting conditions, tariffs (including standard discounts) and service targets for universal services must all be published.

6. Tariffs of Universal Services to Be Related to Average Costs

The guiding principle should be that tariffs should be related to average costs. The consistent application of this principle is the best guarantee of the financial soundness of the postal services. In order to ensure fair treatment for all, cross-subsidies, whether from [250] one service to another or, because of discounts, from one group of customers to another, should be minimised and phased out. (However, geographical cross-subsidies continue to be permissible.) Policy on discounts is particularly important: in general, they should be linked to cost savings (which may include reductions in unit costs brought about by increases in volume).

- 6.1 Tariffs for universal services ought to be related closely to costs. The objective is for tariffs for each service to be based on average costs for that service. Preferential tariffs need to cover at least marginal costs.
- 6.2 If subsidies are considered necessary, their objectives, their value and their scope should be transparent.
- 6.3 Preferential tariffs, if justified, must be made available in a transparent manner to all users that qualify for them, regardless of the country in which they are located.
- 6.4 Cross-subsidies which are made from reserved services to non-reserved services are, in general, unacceptable. However, cross-subsidies can be permitted across geographic areas in order to allow the péréquation tarifaire (see below at Paragraph 6.5) and from the non-reserved area to the reserved area. There could also be cross-subsidies from the reserved to the nonreserved area if they were necessary to assure the universal service and if they were compatible with competition rules (see below at Paragraph 6.6).
- 6.5 Geographic cross-subsidies are, permissible if needed to achieve a single unitary tariff for a specific service where that is considered desirable.
- 6.6 It is possible that some mandatory non-reserved services can only be provided at a loss in certain geographic areas. In this case, the losses should be isolated to specific areas, and could be funded either by subsidy from outside or by cross-subsidy. Such funding needs to be completely transparent in order to prevent any unfair pricing by the provider of the mandatory non-reserved service.
- 6.7 In the reserved (non-competitive) sector, discounts provided to large customers (usually on account of the mail preparation that they can undertake) must, in general, be related to cost savings which the service provider will derive. Postal administrations must avoid giving customers of universal services discounts [251] which are not related to savings in costs. They must avoid contractual linkage between conditions for using universal services and those for using nonreserved non-mandatory services.
- 6.8 Tariffs set at very preferential or free rates as a result of government decisions (such as

for delivery of press material and books, electoral mail and blind persons' mail) need to be the subject of transparent treatment.

7. Inter-Administration Compensation to Reflect Delivery Costs

Revenue for mail posted is paid to the operator who collects the mail. In the case of crossborder mail collected by one postal administration and delivered by another, it is the outward administration that receives the revenue from the customer. However, a substantial part of the costs involved are incurred by the inward administration in delivering the mail. Some charging system is therefore necessary to provide financial compensation to the delivery administration for its delivery costs.

The existing systems of charging between postal administrations (called terminal dues) is not cost based, leading to significant distortions between remuneration and actual delivery costs incurred. The same principle of basing tariffs on costs should apply to the financial compensation system between postal administrations.

- 7.1 The compensation charges between postal administrations for delivering each other's mail (terminal dues) ought to reflect actual inward costs.
- 7.2 Since inland tariffs will be related to costs, the compensation charges between postal administrations ought to be based on the delivery proportion of the inland tariff, with some supplement for the extra handling necessary and for profit.
- 7.3 A working group should be established to prepare the basis for a revised compensation scheme to be applied within the Community. The group should present its proposals within twelve months of being established.
- 7.4 Efforts should be made to extend the Community's principle of basing inter-administration compensation arrangements on costs to other administrations with whom mail is exchanged. These efforts could be made within the [252] framework of the UPU and the Conference of European Postal and Telecommunications authorities (CEPT).

8. Service Standards For Universal Services to Be Set and Performance Monitored

The justification for establishing a set of reserved services is based on the social requirement for universal service. The actual service performance is therefore crucial in ensuring that the social requirements are met. Standards therefore need to be set, performance monitored and control systems put in place. It is important to note that such standards are only thresholds - universal service providers should still try to have a performance higher than the standards.

- 8.1 Community service standards need to be set for services for which there is a universal service obligation defined at the Community level. Performance, of both national and intra-Community mail, must be monitored and the results published.
- 8.2 Member States will need to decide whether there should be national standards for mail for which there is a universal service obligation defined at the national level (and beyond

the Community definition). If required, any standards established at national level that are different from those established at the Community level should collectively be more exacting than the Community standards.

- 8.3 In order to establish the Community standards, the Commission should set up a working group with Member State representation. The group would need contributions from regulators, reserved service providers, contract users and consumers.
- 8.4 The service performance standards should be stretching, but achievable. They will be based on the Community definition of universal service. This requires collection from all posting boxes and counters at least once in each working day, and delivery coverage of all addresses at least once each working day. Exceptions, if any, to this general requirement should only result from extreme cases, and should be scrutinised very carefully. [253]
- 8.5 The Community must have a single system for monitoring delivery service performance. This system needs to measure "end-to-end" performance because this is the only system that accurately measures customers' experience of the service.
- 8.6 Where existing service falls significantly short of the desired standard, those regulatory bodies responsible for ensuring that the operators meet their obligations will need to set intermediate targets that progress towards the standard.
- 8.7 Each national regulatory body should be assisted by a committee representing users. The committee membership should be drawn from a representative cross-section of users, including consumer representatives.
- 8.8 Community-wide standards are also needed for customer care, in particular the maximum acceptable period for dealing with enquiries or complaints. Different standards may be necessary for national and intra-Community mail.

PART III. HARMONISATION AND COHESION

9. Harmonisation Appropriate Where Beneficial to Customers

The more tangible the benefit for the consumer, the stronger the case for harmonisation. The clearest benefits would seem to be gained from some harmonisation of access conditions and from harmonisation of service standards and performance monitoring (described above at Proposal 8). In the reserved area, if the benefits of harmonisation were sufficiently great, implementation might even have a mandatory force; in the non reserved area, it could only have the force of a recommendation.

- 9.1 The Community must encourage the appropriate level of harmonisation which will improve service and help the potential customer.

- 9.2 Access conditions for using the universal services of the Community's postal administrations should be made as similar as possible.
- 9.3 All the Community's postal administrations should offer contracts for access to universal services by larger users. There should be a minimum set, common to [254] all the postal administrations, of contract conditions available to possible contractual users. This would include discounts for pre-sorting. The scale of the discounts would vary between postal administrations.
- 9.4 Tariff structures need to be investigated with a view to making them more similar.
- 9.5 The Community will investigate whether it would be beneficial to make the service tiering system used more uniform. (At present, some administrations operate a contents-based product split between letters and printed papers, others a speed-based split between first and second class.)
- 9.6 Desirable operational harmonisation relates to the demand for essential interoperability. Agreement on certain technical standards (for instance for postal electronic mail or operational bar-coding systems) is needed in order to improve service.
- 9.7 A working group should be established to analyse what potential harmonisation measures are either necessary or desirable. The working group will need contributions from representatives of users (including those of consumers), private operators and postal administrations.

10. Cohesion Aspects to Be Taken Into Account

It is important always to keep in mind the need to ensure that the Community through-Jut has an effective postal sector that properly meets the postal needs of the whole of the Community. Most of the improvements necessary can be gained through better management. However, some capital investment could be needed, which, particularly in less favoured regions, could entail a significant financial burden.

- 10.1 Further work will determine the exact scale of the economic and financial consequences of the orientations indicated, in terms of reinforcing economic and social cohesion.