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Liberalized Postal Markets – Need for Regulation?

Universal Service – The German Model

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(11) Whereas it is essential to guarantee at Community level a universal postal service encompassing a minimum range of services of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location ...;

Recital 11 of Postal Directive 97/67 EC

Let us – for a moment - imagine Universal Postal Service as an Elephant.

Elephants seemingly are well known and defined. However, ....
The Blind Men and the Elephant

following John Godfrey Saxe’s (1816-1887) version of a famous Indian legend

It was six men of Indostan,
To learning much inclined,
Who went to see the Elephant,
(Though all of them were blind),
That each by observation,
Might satisfy his mind.

The Elephant “felt”

"God bless me! But the Elephant is very like a wall!"
"Tis clear enough – the Elephant is very like a tree!"
"This marvel of an Elephant is very like a fan!"
"I see, ... the Elephant is very like a spear!"
"I see, ... the Elephant is very like a snake!"

Each of the six men approached the elephant and touched one part of it – drawing peculiar conclusions how an Elephant might look like.

http://www.naturalchild.com/jason/blind_men_elephant.html
And so these men of Indostan, disputed loud and long,
Each in his own opinion, exceeding stiff and strong,
Though each was partly in the right, and all were in the wrong!

Moral
So oft in theologic wars, the disputants, I ween,
Rail on in utter ignorance, of what each other mean,
And prate about an Elephant - not one of them has seen!

Note: Similarities with the discussion on the future of Universal Service in a competitive environment are purely coincidental!
The discussion on Regulation and future Universal Service is mostly based on the current regulatory framework (ex ante Regulation, mainly based on anticipation, perception and/or "gestimates").

This regulatory framework mainly resulted in the provision of Universal Service by one designated service provider (USP) protected by a reserved area (monopoly or – more elegant – exclusive rights).

In a fully liberalized market there are no exclusive rights. And there is not only one provider; there are many – and some of them will be or might be interested in providing universal services, too.

This may suggest a new regulatory model for Universal service: Reduction of ex ante regulation combined with establishing a safety net in form of ex post regulation – in case of effective market failures.
Regulation (definition)

Regulation:

Entirety of all rules*, by which the State may intervene into (free) competition

- to correct or adjust market failures, or

- to achieve or put through State aims contra competition.

* Laws, Ordinances, Administrative Acts, administrative provisions, etc.
Present Situation in Germany

The Universal Service provisions in Germany – laid down in legal norms - already cover the following situations:

S 1  Partly liberalized market with still exclusive rights for the incumbent, but without ex ante universal service obligations for a certain provider

S 2  Partly liberalized market with still exclusive rights for the incumbent combined with universal service obligations for the incumbent.

S 3  - Fully liberalized market without ex ante universal service obligations for one or more providers combined with ex post regulation in case of market failures

At present - in Germany - situation S 2 prevails. According to the Postal Act we will proceed to situation S 3 on January 1st, 2008.
In accordance with a federal law, the Federation shall ensure the availability of adequate and appropriate postal ... services throughout the federal territory. Services ... shall be provided as a matter of private enterprise ... .

General definition and scope of Universal Service:
Universal services are a minimum set of postal services, provided in specified quality throughout the Federal Republic of Germany at affordable prices.
Universal services shall only include such services as are generally deemed indispensable.

Neutral definition of Universal Service (not of universal service obligations) ⇒ Geographical coverage, services, quality of service, accessibility, collecting and delivery networks, affordable price, etc.

Legal provisions to ensure or safeguard Universal Service corresponding to the Ordinance – inter alia, in cases of gaps between specified and actual provisioning.
Postal Universal Service Ordinance (PUDLV)

- **Services**
  - conveyance of letter items \( \leq 2 \text{ kg} \) (incl. registered, insured, cash-on-delivery and express delivery items)
  - conveyance of addressed parcels \( \leq 20 \text{ kg} \)
  - conveyance of newspapers and magazines

- **Quality Standards**
  - accessibility (fixed locations („post offices“), letter boxes, mobile postal service)
  - transit times (letters, parcels)
  - delivery (way of delivery, frequency, etc.)

- **Rates**
  - affordable price
  - uniform tariff
Affordable Prices / Uniform Tariff

☐ Conveyance of letter items

Affordable price: A price that does not exceed the real price payable on 31 December 1997 for this service as required on average by a private household.

⇒ in principle: price cap with X-factor = 0

☐ Supplementary letter services

Affordable price: A price that is based on the costs of efficient service provision, unless there is a legal obligation or an objectively justifiable reason for a surcharge.

⇒ in principle: prevailing market price

☐ Conveyance of addressed parcels, newspapers, and magazines

☐ Uniform tariff

Uniform tariff requirement for postal services covered by an exclusive right.
Nature of PUDLV

The PUDLV is neutral.

- It specifies universal services, but not universal service obligations for particular enterprises.
- The PUDLV simply describes, *what* has to be available *how*.
- It doesn‘t matter who provides the services and facilities.
- For instance, it doesn‘t matter if the letterboxes are *yellow*, *red* or *blue* (colours of some operators in Germany).

The PUDLV is a benchmark.
According to the Postal Act, the definition of universal services shall be adapted to technical and social developments in line with demand.

The Bundesnetzagentur (= NRA) has to report on this, *inter alia*, to the legislative bodies every two years.

The NRA has organised a first one day workshop on this matter in October 2005.

Representatives from more than 30 organisations and bodies (users, providers, etc) participated.
Tenor of the *workshop* discussions

- The nature of the PUDLV (neutral !) should not be changed.

- The basic services (letters, parcels) should be maintained; supplementary services and weight limits should be reconsidered.

- Accessibility: The current criteria for fixed facilities („post offices“, letter boxes) should be reconsidered; however, these facilities are essential further on - at least for small users (no demand power!).

- The quality of service targets – eg. for transit times – should be adapted to a competitive environment (minimum targets).

- Preferably no change in delivery; delivery on 6 days – especially on Saturdays - should be maintained.

And (not) surprisingly: There seem to be divers market participants interested in providing universal services!
Ensuring Universal Service - The German Model -

I Assumption, that Universal Service will be ensured by market forces without intervention of NRA (like in other areas - eg. food).

II Permanent monitoring of the market by NRA (benchmark PUDLV - Postal Universal Services Ordinance).

III Mechanism to ensure the provision of a specific universal service, if there is a deficit or the thread of a deficit.

IV If there is such a case, operators with a turnover of more than 500,000 € are legally obliged to contribute to making possible the provision of this specific universal service.
V Imposition of Universal Service Obligations by NRA

1. Announcement by NRA, that there is a deficit.

2. Possibility for an operator to provide the relevant universal service without compensation / subsidies ($\Rightarrow$ price $\leq$ affordable price as defined PUDLV).

3. If there is no such operator: NRA may oblige an operator having a dominant position in the relevant geographical market, to provide the relevant universal service.

4. If this operator furnishes sufficient prima facie evidence that in the case of such obligation it would experience an economic disadvantage and would be able to claim compensation, the NRA invites tenders for the relevant universal service.
VI  Tendering

1. NRA solicits bids for the universal service concerned (however, it may dispense with a solicitation if such solicitation does not appear appropriate).

2. The universal service that is subject of bids solicitation will be awarded to the efficient, reliable bidder with the specialised knowledge who requires the least financial compensation.

(Where a suitable applicant is not found by tendering, the NRA will oblige the company mentioned above (⇒ see V – 2.))
VII Compensation for Universal Service Provision by NRA

1. Where an undertaking is obliged following a tender, the NRA will grant a financial compensation as recognised in the tendering procedure.

2. An undertaking obliged not via a tender procedure may demand compensation from the NRA when it evidences that the long-run incremental costs of providing the relevant service efficiently, inclusive of adequate interest on capital employed, exceed the income from that service. The income will be computed on the basis of the affordable price as laid down in the Universal Service Ordinance (PUDLV).

Compensation will be paid at the end of the calendar year in which a deficit in providing the service was incurred (ex post).
VIII Compensation Levy

1. Where the NRA grants compensation, any licensee having sales exceeding 500,000 Euro is obliged to contribute to the compensation payable by the NRA by means of a compensation levy.

2. The amount of the levy is computed according to the ratio of the licensee’s sales to the total sales of all licensees obliged (see above).

3. Sales within the meaning of this provision shall be solely the sales achieved within the respective licensed sector.
Final remarks

You may call this all a complicated procedure. It is!

However, it will ensure, that universal services are provided at the lowest price respectively with the lowest subsidies. And with intervention into free competition only, where and as far as this is justified ex post by facts (not ex ante by presumptions).

In the telecommunications sector, a comparable procedure applied between 1998 and 2004 and again since 2004 (⇒ „new“ Telecomm.-Act).

Experts there called it a clever complicated procedure.

With a surprising result: Obviously there are no uneconomical regions in Germany, since the incumbent has never tried to constrain his universal services or to claim compensation.

„To be the Universal Service Provider seems not only to entail costs but also benefits, which the USP will not endanger arbitrarily“.
Do we have the solution?! 

Thank you for your attention!