

Implementation of the Press Distribution Concession (SGEI) in Belgium A Recent Experience

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BACKGROUND INFORMATION: PRESS DISTRIBUTION IN BELGIUM



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Belgian Market for press distribution to subscribers

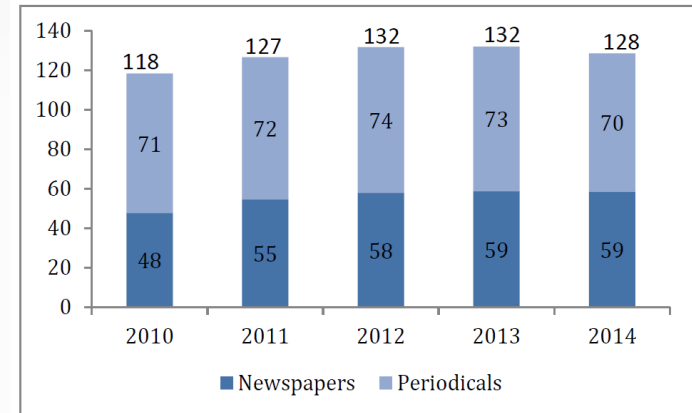
MAIN PLAYERS:

- **BPOST** → FULL GEOGRAPHICAL COVERAGE, SGEI PROVIDER
- **AMP (LAGARDÈRE)** → LEADER DISTRIBUTION IN PRESS SHOPS
- **PPP (BD)** → BRUSSELS, ANTWERP
- **DELTAMEDIA (BPOST)** → DELIVERY FOR ONE MAJOR PRESS EDITOR

OTHER PLAYERS:

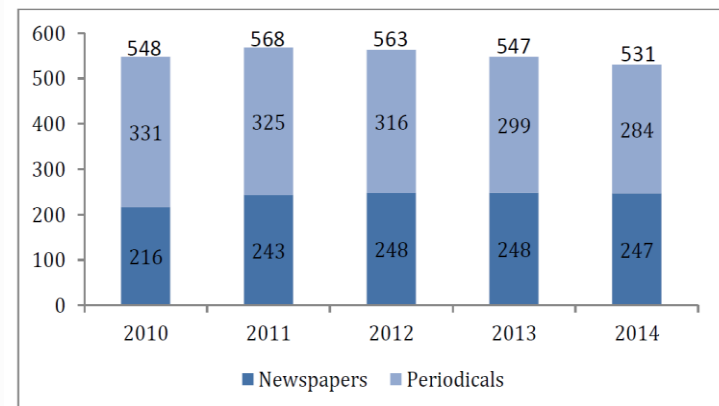
- **ASENDIA**
- **TONDEUR DIFFUSION**
- ...

EVOLUTION OF THE REVENUE WITHIN THE SEGMENT FOR PRESS DISTRIBUTION TO SUBSCRIBERS (IN M EUR)



Source: BIPT

EVOLUTION OF THE VOLUMES WITHIN THE SEGMENT OF THE PRESS DISTRIBUTION TO SUBSCRIBERS (IN M UNITS)



Source: BIPT



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Press Distribution SGEI (1)

The distribution of newspapers and periodicals is considered essential by the Belgian State to safeguard the **freedom of press** as well as **media plurality** and **freedom of opinion**.



Press Distribution SGEI (2)

“**LAST RESORT**” DISTRIBUTION SYSTEM WHICH GUARANTEES EQUAL AND AFFORDABLE ACCESS TO DAILY AND PERIODICAL PRESS FOR EVERY BELGIAN CITIZEN.

HIGHER QUALITY TARGETS THAN US

- DISTRIBUTION OF **NEWSPAPERS**: SIX DAYS A WEEK (EXCEPT ON PUBLIC HOLIDAYS) BEFORE 7.30 AM FROM MONDAY TO FRIDAY, AND BEFORE 10 AM ON SATURDAY.
- DISTRIBUTION OF **PERIODICALS**: FIVE TIMES PER WEEK TO EVERY MAILBOX IN BELGIUM. THIS SGEI ALSO COVERS DISTRIBUTION OF NON-PROFIT PERIODICALS EDITED BY BONA FIDE ORGANISATIONS AND BY NON-PROFIT ORGANISATIONS.
- BOTH SGEIS ARE OFFERED AT REDUCED TARIFFS WHICH APPLY WITHOUT DISTINCTION ACROSS THE ENTIRE TERRITORY OF THE BELGIAN STATE.

- IN MANY EUROPEAN COUNTRIES NEWSPAPERS AND PERIODICALS ARE PART OF THE UNIVERSAL SERVICE
- IN BELGIUM → SGEI

Press
(SGEI)

Universal
service



State Aid Decisions (1)

- **Commission Decision (SA.14588) of 25 January 2012**
 - ordered Belgium to recover €417 million of incompatible aid from bpost
- **Commission State aid Decision SA.31006 (2013/N) – Belgium of 2 May 2013**
 - approved State compensations to bpost for the delivery of public services over 2013-2015 *under certain conditions*



State Aid Decisions (2)

- The Belgian State shall organize a competitive, transparent and non-discriminatory **tendering procedure**.
- A **transitional period for 2013-2015** is allowed to provide the State with sufficient time to proceed with the necessary changes in the law and to organize a proper and meaningful process that can guarantee the continuity of the public services.
- An **interim entrustment** would ensure the continuity of distribution until the successful concessionaire is fully operational and can take over the provision of the Press Distribution SGEI.
- The successful concessionaire would take over the provision of the SGEI as of **1 January 2016**.





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ATTRIBUTION OF THE CONCESSION: STEP BY STEP



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Overview of the procedure

Table 4: Concession award procedure

PHASE	TIME PERIOD (DAYS)
1. Internal preparations	4 - 6 months (120 - 180 days)
2. Publication of a concession notice and invitation to submit candidacies	60
3. Selection phase	60
4. Communication of first concession specifications and request to submit first bids	90
5. Negotiations	90
6. BAFO Phase	60
7. Appointment of a preferred bidder and final contract negotiations	90
8. Award phase	90
9. Standstill and contract closure	30
TOTAL	Preparation 4-6 months Organization: 570 days

Source: Commission Decision SA.31006 (02.05.2013)

- End 2013, the responsibility of implementation of the concession award procedure was assigned to the BIPT (regulator).
- A dedicated steering group with senior staff of the Cabinet of the Minister of Economics, high-level staff of the Ministry of Economics and high-level staff of the BIPT was established.



Phase 1: Internal preparations

- **Need to adapt the legislative framework:**
 - Modification of the Royal Decree which entrusts the Press Distribution SGEIs exclusively and unilaterally to bpost
- **Need to get more insights into the market**
 - Meetings with mains operators
 - Public consultation
 - Visits of editors and operators facilities
- **Need to set up a project team with enough expertise**
 - Recruitment of consultants



Phase 2: Publication of the concession notice and invitation to submit candidacies

April 2014

CONTENT OF THE CONCESSION NOTICE:

- FIRST DESCRIPTION OF THE SGEIS (2 PARCELS)
- LEGAL FRAMEWORK
- CONCESSION DURATION
- MAXIMUM NUMBER OF SELECTED CANDIDATES FOR THE SUBMISSION OF AN OFFER
- EXCLUSION CRITERIA
- SELECTION CRITERIA

SELECTION CRITERIA

1. TECHNICAL SKILLS :

- DEMONSTRATED EXPERTISE IN DELIVERY
- QUALIFIED STAFF AND EXECUTIVE MANAGEMENT

2. ECONOMIC AND FINANCIAL CAPACITY :

- MIN. TURNOVER
- PROVEN SOLVABILITY AND FINANCIAL STABILITY



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Phase 3: Selection process

Three applications for candidacy : bpost, BD, AMP

- Check the compliance with the exclusion and selection criteria

Problem: Elections in May 2014

- Impact on the tendering process as the majority changed resulting in a new Government installation
- New Government fully operational early Nov. 2014
- Selection process delayed as approval by the Council of Ministers was needed

End of the selection process begin 2015

- Three candidacies were ultimately accepted



Phase 4: Communication of concession specifications and request to submit first bids

Concession specifications:

- **Price**
 - Paid by editors: based on existing prices
 - Paid by the State (compensation):
 - which mechanism? Lump sum? Compensation paid by newspaper or periodical?
 - Minimum amount: to be attractive for new players
 - Maximum amount : to safeguard the public expense
- **Quality**
 - Minimum quality criteria fixed based on existing quality criteria (exclusion criteria)
 - If better quality in the offer → higher score (attribution criteria)
- **Employment condition?**
 - Discussion around self-employed
 - Quality vs discrimination



Phase 4: Communication of concession specifications and request to submit first bids

Consultation of the press editors on the concession specifications (quality):

- beneficiaries of the press delivery public service
- best suited to know what is important in order to guarantee the quality of service

Specifications sent to the candidates end February 2015



Phases 5 & 6: negotiations and BAFO

- **May 2015: only one offer (bpost)**
 - Opinion of editors requested on offer as regards quality
 - Offer is baseline for further negotiations
- **Negotiations resulted in better quality in BAFO**
 - Improvements in the complaint procedure and the number of complaints allowed etc.



Phases 7 to 9: Attribution process

- **Final preparation of the contracts**
 - Including results of BAFO
 - 2 concessions
 - 2 distribution contracts
- **Attribution report**
- **Signature by the State and bpost**





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STATE AID NOTIFICATION: THE ALTMARK CASE LAW



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Altmark criteria

For public service compensation to escape qualification as State aid, four cumulative criteria must be satisfied.

First Altmark criterion:

The recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined.

- ✓ Press distribution SGEI = public service obligation
- ✓ Obligations are clearly defined in the Concession Contracts



Altmark criteria

Second Altmark criterion:

The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner.

- ✓ The compensation mechanism as well as the min. and max. compensations were defined in the concession specifications based on objective criteria
- ✓ All candidates were aware of the functioning of the compensation mechanism when making their decision to submit (or not) an offer.



Altmark criteria

Third Altmark criterion:

The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit.

- ✓ The concession contracts include a claw back mechanism.



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Altmark criteria

Fourth Altmark criterion:

Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means to meet the public service obligations, would have incurred, taking into account the relevant receipts and a reasonable profit from discharging the obligations.

- ✓ Attribution of the concession through a public procurement procedure
- ✓ Three candidates for the submission of an offer
- ✓ Only one offer in the end but submitted in competitive circumstances



State Aid notification

In theory, no notification needed if Altmark conform

BUT:

- Threat of complaint against the State's compensation for the press distribution SGEI
 - Distortion of competition by giving preferential treatment to one distribution channel at the expense of another
 - ➔ Notification was filed "to be sure"

EC approval in June 2016 (State aid SA.42366 (2016/N) – Belgium)

Request for annulment of decision filed at EUCJ





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LESSONS LEARNED FROM THE CONCESSION PROCEDURE



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- Find the right balance between independent NRA and State agent during the concession process
- Transparency and collaboration with all the market players (operators, editors, consumers) is essential especially when working on a procedure with strong impacts on a market on which regulator's initial knowledge is limited
- Few consultancy firms have expertise in press distribution network and design of concession for such SGEIs
- Legal, economic, procedural complexity of the project





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THANK YOU FOR YOUR ATTENTION



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