



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.10.2006
SEC(2006) 1291

COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Directive 97/67/EC, concerning the full accomplishment of the internal
market of Community postal services**

IMPACT ASSESSMENT

{COM(2006) 594 final}
{SEC(2006) 1292}

Table of Contents

1.	Introduction.....	4
2.	Procedural Issues and Consultation of Interested Parties	6
2.1.	Organisation and Timing	6
2.2.	Consultation and Expertise	6
3.	State of Play and Challenges in the EU Postal Sector	6
3.1.	Current State of Play in the Sector	6
3.2.	Main Issues	8
3.2.1.	Reserved Area.....	10
3.2.2.	Universal Service Scope	12
3.2.3.	Universal Service Standards	13
3.2.4.	Alternative Financing Mechanisms in the Absence of a Reserved Area.....	14
3.2.5.	Downstream access.....	16
3.2.6.	Access to certain means of the postal infrastructure.....	18
3.2.7.	Other issues identified	19
3.3.	Does the Community have the Right to Act?	19
4.	Objectives	20
5.	Policy Options	21
5.1.	High level policy options.....	21
5.2.	Specific policy options	24
5.2.1.	Policy options related to universal service scope	24
5.2.2.	Policy options related to universal service standards	25
5.2.3.	Policy options related to the reserved area and universal service financing mechanisms...	26
5.2.4.	Policy options related to access to essential means	29
5.2.5.	Policy options related to downstream access.....	30
5.3.	Preliminary assessment of options.....	31
6.	Analysis of impacts of retained options.....	35
7.	Comparing the Options available	40
7.1.	Comparison of remaining options	40
7.2.	Conclusions and recommended options for the proposal	42

8.	Monitoring and Evaluation	44
----	---------------------------------	----

Figures

Figure 1 :	Segmentation of the postal market	7
Figure 2 :	Access to the postal network	16

Tables

Table 1 :	Services reserved for the USP in Member States in 2006	10
Table 2 :	Summary of all options considered	32
Table 3 :	Comparison of high level policy options	33
Table 4 :	First screening of specific policy options	34
Table 5 :	Summary of overall impact of each specific policy option	40
Table 6 :	Enforcement powers of National Regulatory Authorities	47
Table 7 :	Comparison of current / future postal data collection activities under the proposed Article 22 A	50
Table 8 :	Comparison of current / future postal data collection activities under the proposed Article 22 B.....	50
Table 9:	Financial intermediary hourly wage rates, and number of postal sector enterprises.....	52
Table 10	Summary calculation of net administrative cost - activity breakdown.....	53

Annexes

Annex 1:	Details on the public online consultation	45
Annex 2:	Assessment of administrative burden for the collection of sector statistics.....	47
Annex 3	Access to services.....	54
Annex 4	Economic impacts of market opening in the postal sector.....	57

1. INTRODUCTION

In line with the Communication on 'Better Regulation for Jobs and Growth in the European Union', all proposals that feature in the Commission's legislative and workplan are accompanied by an Impact Assessment¹. The purpose of this document is to explain the options considered for the 2006 proposal on postal services. In particular, the document seeks to highlight the economic and social impacts of the different options on users – be they business users, SMEs or individual consumers – and on other stakeholders such as employees, regulators, existing market players or new entrants.

The structure of this document is as follows:

- Section 1 - Introduction and the context for the proposal
- Section 2 - Procedural issues and consultation of interested parties
- Section 3 - State of play and challenges in the EU postal sector
- Section 4 - Objectives
- Section 5 - Policy options
- Section 6 - Analysis of impacts of retained options
- Section 7 - Comparison of options, and recommendations
- Section 8 - Monitoring and evaluation

In the postal sector, the aims of Community rules, as set out in the Commission Green Paper of 1992² and the current Postal Directive, can be summarised as the maintenance and positive evolution of the universal postal service, the improvement in the quality of service and the completion of the internal market for postal services. By providing for balanced harmonisation and the phasing in of competition in a gradual and controlled way, the Directive has initiated regulatory and market reforms in the Member States that are designed to result in a better, more efficient provision of universal postal services.

With the aim of achieving these objectives, and in line with the principles of subsidiarity and proportionality, the 1997 Postal Directive provided for a first phase of harmonisation of EU postal services³. Its provisions included the establishment of independent regulators at national level, the definition of a minimum universal postal service, a gradual reduction of the reserved area, the conditions governing the provision of non-reserved services, tariff principles and the transparency of accounts of incumbent operators, quality of service requirements, customer complaint procedures, and the harmonisation of technical standards.

The 2002 amendments to the Postal Directive provided for reductions to the maximum reservable area in 2003 and 2006, and thus the gradual and controlled opening of the postal market to competition⁴. In the Directive, the EU legislator not only implicitly endorsed the objective of full market opening but also *set a target date of 2009 for the accomplishment of the*

¹ COM (2005) 97

² Green Paper on the development of the single market for postal services, 11.06.1992, COM (91) 476 final, and the Council Resolution of 7 February 1994 (OJ C 48,16.2.1994 p.3).

³ Directive 97/67/EC of the European Parliament and the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service.

⁴ Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services.

internal market for postal services, or an alternative step towards this. Article 7 of the Directive envisages in 2006 a proposal by the Commission to achieve the internal market for postal services, based on a report and the conclusions of a prospective study, which will assess, for each Member State, the impact on universal service of the full accomplishment of the postal internal market in 2009. In 2006 the European Parliament reaffirmed this general direction⁵.

The overall context and suggested starting point for the Community's deliberations on this proposal is as follows:

- according to its "sunset clause" in Article 27, the postal Directive will lapse on 31/12/2008 and without a further Commission proposal adopted by that date, the sector will be primarily subject to EC Treaty rules (in particular Article 86 EC, including individual Commission decisions and/or Commission Directives under Article 86, paragraph 3)⁶;
- the Commission is required under the Directive to submit (according to Article 7) a proposal "for the full accomplishment of the postal internal market or determining any other step in the light of the [prospective] study's conclusions";
- alongside gradual market opening have been improvements in quality of service, and the associated reforms have not undermined the universal service⁷;
- the Commission's Application Report⁸ (on the current postal Directive) and the Prospective Study⁹ on the impact of full market opening on universal service concluded that given certain safeguards, full market opening can be achieved by 2009 for all Member States, thereby confirming the approach signalled 15 years ago by the EU legislator;
- full market opening is already an evolving reality (the latest reduction of the maximum permitted reserved area applies from 01.01.06 - several Member States reducing still further or abolishing altogether before 2009);
- postal operators in the EU are already in rapid development towards rationalisation and readiness for full market opening;
- the Commission is ready to take its responsibility in actively assisting the "construction site" of EU postal reform.

⁵ European Parliament resolution on the application of the Postal Directive (Directive 97/67/EC, as amended by Directive 2002/39/EC) (2005/2086(INI)), February 2006

⁶ Also however the direct applicability particularly of Articles 43, 49 and Article 82 EC Treaty, in relation to the Internal Market has to be taken into account

⁷ See for example Commission staff working document and the "Evaluation of the performance of network industries providing services of general economic interest", 2005 Report SEC(2005)1781), available at: http://ec.europa.eu/internal_market/economic-reports/index_en.htm

⁸ COM(2006) 595.

⁹ COM(2006) 596.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. Organisation and Timing

This proposal relates to the Commission's work plan item 2006/MARKT/006¹⁰.

The main analysis for the Impact Assessment was conducted from January 2006 to September 2006. Given the broad range of potential impacts, a Steering Group composed of different services of the Commission was also established and convened between March and June 2006¹¹.

2.2. Consultation and Expertise

In the light of the Directive's requirement for a proposal in 2006, the Commission undertook a range of consultation activities, including:

- a public consultation, where 2295 replies to a questionnaire and 103 written submissions were received¹²;
- 6 major studies, commissioned between 2004 and 2006, on issues related to future postal policy orientations, in addition to 14 other studies since the first postal Directive¹³;
- 10 public workshops in Brussels on the topics covered by the studies since 2004;
- 25 focus groups on postal services in all EU countries, with a particular aim of understanding the needs and satisfaction of individual postal users, including those in outlying areas;
- the 'Eurobarometer' survey on consumer satisfaction with postal services;
- discussions with Member States, social partners, operators and all other stakeholders including consumers;
- participation in several consumer organisation, economic and social partner conferences focussing on postal issues.

The consultation activity undertaken by the Commission is in conformance with the current standards¹⁴. Sections 3 and 5 highlight how views expressed across the broad range of consultation activities have been taken into account. Further information on the results of the public online consultation is at Annex 1.

3. STATE OF PLAY AND CHALLENGES IN THE EU POSTAL SECTOR

3.1. Current State of Play in the Sector

Postal services in the EU earned about 90 billion EUR in 2004, and continue to make a significant contribution to the EU economy. Direct contribution to EU GDP is estimated at 37

¹⁰ COM(2005) 531 available at http://ec.europa.eu/atwork/programmes/docs/clwp2006_en.pdf

¹¹ Commission Services participation: ENTR/COMP/SecGen/SANCO/Legal Service/EMPL/TAXUD

¹² Summary reports available in all EU languages:

http://ec.europa.eu/internal_market/post/consultations_en.htm

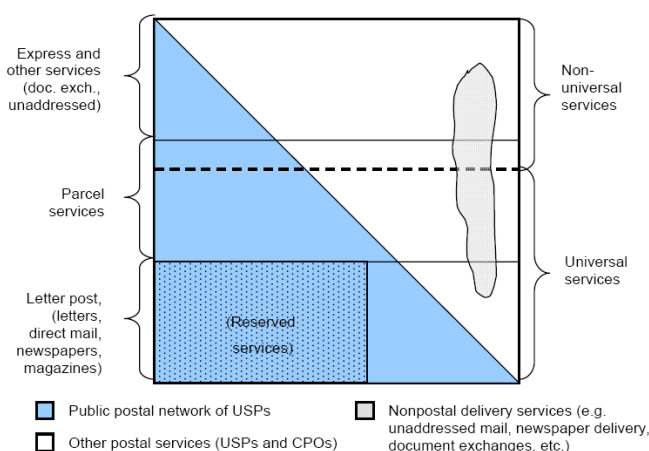
¹³ These studies may be accessed at http://ec.europa.eu/internal_market/post/studies_en.htm

¹⁴ 'Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission' (COM (2002) 704)

billion (0.4%)¹⁵ providing direct employment to 1.7 million citizens. While the national postal operators responsible for physical mail distribution are clearly key players, they are not in themselves the whole industry. Not only is there emerging competition in many national markets, but there are also important 'upstream' and 'downstream' related sectors (e.g. direct mail creation, print and production, collection and consolidation of letters, and mail order returns etc.) that depend on an effective and competitive mail distribution sector for these sectors' own growth and jobs. Estimates of the size of these related sectors are indicative, but account for additional revenues of c. 150 billion EUR, and an additional 3.5m jobs¹⁶. Postal and related services are of manifest significance for economic and social activity in the EU as part of the distribution and communications market, and - given their size - have also an important role to play in the context of the Lisbon agenda. In terms of *users* of the postal services, there are two basic categories: *business/bulk* users who buy postal services wholesale and *individual/social* consumers and many *SMEs* who buy them at the retail level. *Individual/social* users send just over 10% of postal items in most Member States. However these are the same people who receive about 70% of all postal items, mainly due to direct mail¹⁷.

Figure 1 shows a schematic segmentation of the postal market. Public postal operators provide three types of postal services: letter post (letters and cards, small packets, etc.), parcel post (heavier packages) and express and guaranteed services. The grey irregular area represents non-postal items, e.g. unaddressed mail, newspapers. Only letter post, parts of parcel post and non-postal items are treated as *universal postal services* (indicated below the 'dotted line'). This is the main area of focus of this proposal.

Figure 1 : Segmentation of the postal market



*Note: the diagram above is only a schematic presentation of the postal market and it does not illustrate the size, value or importance of each segment presented.
(Source WIK 2004)*

¹⁵ WIK Consult, 'Main Developments in the Postal Sector 2004-2006' p. 117

¹⁶ See for example: Postal Users Group – 'The European Mail Manifesto' (2006); PLS Rambøll 'Employment trends in the European Postal sector' (2002)

¹⁷ WIK Consult, 'Main Developments in the Postal Sector 2004-2006' (2006) p.198

Recent studies¹⁸ suggest that in most Member States, universal service providers continue to be market dominant in the delivery of letter mail items (items of correspondence and direct mail), and that this is linked to the materially defined reserved area. The 'reserved area' constitutes a part of a letter market which is reserved to a postal operator (which may be either public or private) providing universal services within national boundaries. This is also known as the 'monopoly area'. This dominance is less clear in the distribution of parcels, newspapers, periodicals and magazines and in the distribution of unaddressed items.

There is also an emerging trend for liberalisation (removal of the monopolised reserved area) in many EU Member States. Postal services in these countries generally have been characterised by improved efficiency, and sustained improvements in quality of service¹⁹. This tendency looks set to continue: by 2008 when market opening in Germany and the Netherlands is expected, approximately 60% of the total EU market (by volume) will be opened to competition. The process of liberalisation in some Member States will therefore continue its own dynamic, without further intervention from the Community. Moreover, rationalisation of the sector cannot be accounted for entirely by EU-led postal reforms however, since new products and business methods and the availability of substitutes also have had effects on the traditional postal sector²⁰. These developments are also highlighted in the Commission's 2006 Application Report.

High quality of service, affordability, accessibility of postal services is also reflected in the satisfaction levels of the European consumers, with 78% satisfied in 2005²¹.

It is worth mentioning here that the present Postal Directive indicates only the minimum basic obligations on Member States for the provision of universal postal service. However within the framework of the Directive, and in line with the principle of subsidiarity, Member States have considerable freedom to define universal postal service at national level.

3.2. Main Issues

The EU postal sector is currently undergoing significant change. The most important drivers of change have been gradual liberalisation, the rapid growth and falling costs of substitutive media (in particular email, telephony, fax, and internet), new automation technology and increasingly demanding owners/shareholders of postal operators. Together these changes increase the pressure on the sector to become more competitive and efficient. Denying the existence of these forces for change might have negative consequences for employment and the sustainability of services. Meanwhile however, it is crucial to maintain equal, affordable and easy access to

¹⁸ Ecorys (2005), 'Development of competition in the European Postal Sector'; WIK Consult, 'Main Developments in the Postal Sector' Reports 2002-2004' (2004), and (2006) op cit, all available at: http://ec.europa.eu/internal_market/post/studies_en.htm

¹⁹ See for example EU COM staff working paper – "Evaluation of the performance of network industries providing services of general economic interest", 2004 Report (SEC(2004)866) and Commission staff working document 2005 Report SEC(2005)1781), op.cit. available at: http://ec.europa.eu/internal_market/economic-reports/index_en.htm

²⁰ European Parliament Committee on Transport and Tourism, 'Report on the application of the Postal Directive' A6-0390/2005 s 16

²¹ 2005 Report SEC (2005)1781), op.cit. In 2006, following the adoption of a different ("calculated satisfaction") methodology, satisfaction among EU 25 consumers for services of general economic interest (SGEI) is now rated on a score of 1-10; the average score for postal services was 7.42 (the highest network industry was mobile telephony which was rated 7.91).

postal services for citizens. This is an important issue from the point of view of the European social cohesion policy.

Therefore the main issue for the EU postal sector is how to ensure an efficient and competitive EU postal sector that continues to provide affordable and high quality service for European citizens and companies.

The current multi-speed liberalisation trend and the fact that some Member States have gone beyond the minimum obligations indicated in the current Postal Directives has resulted in a different legal and market environment for European operators. The lack of level playing field creates unfair competition in the Internal Market. As an example, where incumbent postal operators still enjoy a monopoly position in their own country, they can cross-subsidise their entry in other liberalised markets. This not only distorts competition, but Member States observing this kind of entry on their national market may also be discouraged from further reforms.

In addition to preventing unfair competition, it is important to permit effective competition in the postal market. In this respect, one can distinguish between the following barriers to operating in the postal market.

- Strategic entry barriers: new market entrants may face inappropriate use of a dominant position by incumbent postal operators in order to limit competition²²;
- Natural barriers: these exist for instance in the problem to compete against competitors that profit from economies of scale due to their higher market share, transaction costs faced by users which consider switching suppliers, or intangible effects such as the reputation of different operators in the market;
- Legal barriers refer to conditions on which the new operators could use the existing postal infrastructure, authorisations and licensing systems.

Concerning the universal services, there are a number of aspects to be considered. A universal service may imply an uneconomic cost in some Member States, but it is vital for the EU citizens and companies to ensure the provision of this universal service in all geographical areas. The present situation is that serving some geographical areas are unprofitable or uneconomic for market operators at current prices. Abolition of a reserved area would encourage competition but it would also mean that new ways of financing any uneconomic parts of universal service are needed. Other issues to consider are the minimum quality standards expected from postal service providers and the range of products to be included in the universal service. These also influence the extent of any uneconomic universal service obligations.

These are not issues that threaten the existence of the postal sector. Rather, these are challenges that should be addressed at this point if the Community is to maintain the

²² The complaints arising from the alleged use of these barriers since 2000 has resulted in several competition cases. Although the current Directive's sector specific legislation and general competition law provisions complement one another, during the public consultation many respondents suggested that maintaining some sector specific ex-ante regulation was needed.

universal postal service and ensure the quality of service alongside the completion of the internal market for postal services.

The following sub-sections describe these issues in detail, analyse how the situation may evolve, who is affected and how. The main identified issues are as follows:

- The abolition of the reserved area
- Scope and standards of universal service obligations
- Financing of universal service in the absence of a reserved area
- Access to infrastructure
- Access to 'essential means'

3.2.1. Reserved Area

Undoubtedly, the largest *legal entry barrier* is the fact that a substantial reserved area still remains in many EU countries. All Member States have limited their reserved areas within the upper limit set by the Postal Directive (*inter alia*, that items above 50g may not be reserved). Three Member States have abolished the reserved area altogether in advance of the 2009 target date (FI, SE and UK). DE and NL apparently intend to abolish their reserved areas by 2008. Meanwhile other Member States have taken out direct mail (which is a substantial part of letter post) from the monopoly area. The overall picture is as follows:

Table 1 : Services reserved for the USP in Member States in 2006

MS	Domestic & inbound Cross Border	Direct mail	Outgoing Cross Border
FI, SE, UK	Liberalised		
AT, CZ, NL, SI EE	Reserved	Liberalised	Liberalised
IT, LV ES	Reserved	Liberalised	Reserved
BE, DE, DK, FR, IE, LT	Reserved	Reserved	Liberalised
CY, GR, HU, LU, MT, PL, PT, SK	Reserved	Reserved	Reserved

Note: in this table, each row represents a higher degree of liberalisation than the row below it.

The reserved area in Spain includes outbound letters but excludes intra-city mail.

Source: WIK 2006 (data verified by Member States)

A reserved area of up to 50g accounts for between 70%-85% of postal items in a Member State; a reduction to a 20g limit for the reserved area would open up an additional 15% of mail approximately, which would fall significantly short of full market opening. The current Postal Directive permits a reserved area only to the extent necessary for the provision of universal service. Estimates of the cost of the universal service differ across Member States, and even

within the Member State according to the methodology used²³ for example regarding whether the cost estimates are based upon pre-or post competitive entry simulations, assumptions about the level of competitive intensity and response of the incumbent, business user propensity to switch provider, the level of demand resulting from universal coverage, and other intangible benefits. A common theme however of all of the approaches is to identify those postal activities which would not be undertaken using normal commercial logic – because they are uneconomic or loss making, but which nevertheless are socially desirable.

By way of illustration, the following estimates of the uneconomic costs of universal service have been observed:

- In Norway, the postal operator receives a small income (equivalent to 2% of the costs) from the government as a proxy for the uneconomic costs;
- In Portugal, a study by the national operator suggested that between 4 and 6 % of the 15.9m EUR losses could be ascribed to the requirements of the universal service obligation;
- In Sweden the obligation was recently estimated at 100 million SKR a year (10.3m EUR) or about 4% of the operator's group-wide revenue.
- In the USA, the Postal Rate Commission estimated that the cost of the universal service obligation represented 5% of revenues

In monopoly postal markets, universal service has historically been funded by internal product cross-subsidies. The problem however is that a monopoly has a significantly broader effect than simply the maintenance of these socially desirable activities; for example market distortion, the prolongation of underlying inefficiencies, and reducing the incentive for innovation and improvement in standards of service to consumers.

The current Directive already signals that the Reserved Area is the main barrier to the internal market. In the light of the findings of the Commission's Prospective Study, and the already achieved and expected impacts of competition in the postal sector, the issue at Community level is whether to confirm the EU legislator's target date of 2009 for the abolition of the Reserved Area.

How can this issue develop?

If the Community does not adopt a market opening proposal, postal markets can be expected to develop their own liberalisation dynamics – with several Member States opening up markets in advance of the Community target date. However the pace and extent of opening is uneven. Under these circumstances – and in the absence of a proposal - the example of market opening in some Member States coupled with the possibility of Commission action under the EC Treaty may not be a sufficient incentive for continued reform, and the absence of a Community approach may lead some of the 'early market openers' to reconsider their decision to open up their national markets to protect themselves from competition in what they would regard as an 'un-level playing field'.

²³ Net Avoided Cost /Long Run Incremental Cost /Entry Pricing etc.

On the other hand, long term the full accomplishment of the Internal Market for postal services could (eventually) create the possibility of sector consolidation. To a limited extent, signals towards this future scenario are occurring already (with operators offering minority stakes to 3rd party investors, others becoming listed companies, and governments progressively divesting themselves of 'golden shares'). However the potential long term risk to the Internal Market that the progressive abolition of national monopolies would be simply replaced by pan-European market dominant oligopolies (consequently with adverse effects for users) would be addressed through the existing well established Community merger control regime.

Who is affected?

If the Community adopts a market opening proposal, the reduction and abolition of the reserved area has potentially broad effects on the following groups of stakeholders:

- businesses - who generate the vast majority of all postal items in most Member States and who depend on an effective postal market for their commercial activity;
- individual consumers - particularly those in remote or disadvantaged regions who have become accustomed to an indirectly subsidised service (as both senders and receivers of mail), and groups such as blind and partially sighted citizens who have often received free postal services;
- direct employees in universal service providers and their social partner representatives - already facing up to the challenges of new technologies and alternative media; abolishing the reserved area will underline the need for continued restructuring;
- indirect employees in 'upstream' and related sectors, where there are c.3.5m jobs.

3.2.2. Universal Service Scope

Within the postal sector, 'universal service' means the permanent and obligatory provision of a range of postal products, at sufficient points within a national boundary so it is easily accessible for users. Such services must also meet specified quality targets and be available at affordable prices. Universal service has two main elements – the product range (scope) of services, and the quality and availability standards they should be provided at. This section addresses the scope of universal postal services.

The existing Directive specifies in general terms the minimum range of postal items that should be provided on a universal basis: letters up to 2kg, parcels up to 10kg or 20kg (to be determined at Member State level), registered and insured services. But it leaves to Member States to determine the full and detailed range of products and ancillary services that should be classified as 'universal services', that is, to be provided at the minimum requirements set by the Community. In principle, National Regulatory Authorities are able to apply these obligations to almost all products to all types of users handled by the universal service provider.

On the other hand, some Member States have taken initial steps to redefine the universal service in a narrower way – in terms of a basic, regulated affordable postal service for non-bulk mail users (typically consumers and SMEs), with lighter obligations on the universal service provider for services to bulk users since in a Member State these users may have alternative

suppliers or substitutes. This development, in principle, would be compatible with the concept of 'least market distortion'.

The nature of the universal service *scope* has a potentially material impact on the financial effects of full market opening on universal service providers. It is due to the fact that the more extensive the obligations, the greater likelihood that the obligations would not normally be provided by market forces on their own, and if so, the greater the balance to finance following market entry.

In the light of this, the issue at Community level is whether to harmonise the universal service definition in all Member States moving in the direction of a narrower scope of application.

How will the Universal Service scope issue evolve and who is affected?

In the absence of the Community's universal service obligations (e.g. through the expiry of the Directive), it seems unlikely in the short term that Member States would seek a significant change to the basic product scope of the universal service – given this is also largely required by international (Universal Postal Union) rules. However these possibilities cannot be excluded. This scenario could have an appreciable impact on consumers as both senders and receivers of mail, reduce the social and economic cohesion particularly in rural or outlying regions, and have potentially a negative (though probably modest) effect on underlying demand for postal services (lower mail volume) to those areas that are experiencing a reduction in universal service.

3.2.3. *Universal Service Standards*

The current Directive places specific service standards on Member States – most explicitly regarding collection and delivery of postal letters and parcels at least 5 working days a week to all points of a Member State territory, and also requiring affordability and accessibility without further specification. All Member States have transposed the Postal Directive's universal service standards, only making limited use of the permitted derogations (for example reducing delivery frequency to very remote regions). Member States, however, have frequently gone beyond the minimum Community levels and used their legislative discretion to codify price uniformity, accessibility requirements, and require 6 days a week delivery frequency.

It is likely that these higher standards reflect - at least to some extent - users' needs. However given only a minority of Member States have undertaken a review of their universal service standards, it cannot be excluded that some 'gold plating' (through adding further rules to the minimum requirements) of the Community's universal service standards exists. Under a monopoly, high universal service standards can be financed through product cross subsidies with business mail (generally higher profit) cross subsidising consumer mail (generally lower profit or loss making). If the standards of service are 'gold plated' with prices that are not related to costs, the monopoly user effectively has no choice - and must pay up.

Where competition exists however, this will create commercial pressure on universal service providers to ensure its products are priced more closely to the costs of the service - otherwise the universal service provider will lose market share to competitors. The Community standards may play a part, but if the standards imposed by Member States on universal service providers for their competitive product types are much higher than what users are willing to pay, when combined with some Member State's characteristics (low volumes and delivery density) this

could create a situation where funds from the users of a particular service under competitive prices are inadequate, and additional sources of revenue are needed.

Given the economics of the sector, one market entrant strategy would be to target high profit/low cost to deliver areas (towns) undercutting the uniform tariff that many universal service providers frequently use to cross subsidise low profit/high cost to deliver areas (rural). This is known as inefficient entry, or 'cream-skimming'. Where such competition is expected to be significant, the incumbent operator may wish to introduce non-uniform tariffs for some or all mail products that are subject to competition. Meanwhile National Regulatory Authorities may decide to monitor or regulate these changes ex ante to avoid price shocks on users, foreclosure effects and other inadvertent anti-competitive behaviour. Regulators will however be mindful that the failure by Member States to grant this pricing freedom, where in future it is shown to be required, could stimulate inefficient market entry and impact on the financial equilibrium of the current universal service providers, potentially to a material extent.

In the light of this, the issue at Community level is whether to harmonise and define more restrictively the universal service standards and preclude 'gold plating', and how to address the potential issue of inefficient entry or 'cream skimming' of uniform tariffs.

How will the Universal Service standards issue evolve and who is affected?

Through their National Regulatory Authorities, some Member States are acquiring a more in-depth understanding of users' needs. The standards imposed at Community level give some opportunity for service modification through exceptions to delivery frequency, and in the definition of accessibility. Even though the Directive requires that universal service should evolve in response to the technical economic and social environment and to the needs of users, Member States have been cautious in making exceptions to the minimum Community rules. Thus Member States' main choice has been with respect to the *scope* of postal products, not with respect to *standards*. Without the Directive it is unlikely that Member States would rescind all national provisions on universal service standards, but it is possible that increasingly divergent provisions could affect social and territorial cohesion of the Community.

Clearly all users of postal services are affected. However, at Community level it is very difficult to distinguish between genuine consumer needs (which would be valued and paid for), a right of citizens (in terms of access to a service of general economic interest) and 'gold plating' which exists either because Member State provisions simply codified accepted practices at the time, or indeed were framed with other considerations in mind (for example, creation of employment).

3.2.4. Alternative Financing Mechanisms in the Absence of a Reserved Area

In many Member States the restrictions on competition for postal items weighing less than 50g (items less than 50g generally constituting 70-85% of a country's letter volume) means that many national postal operators have been operating under a part-monopoly. The historic justification for this is because these operators were also required to provide a universal service to all parts of a territory, parts of which were assumed to be substantially uneconomic²⁴ but at the same time socially desirable – for example collection and delivery to remote areas to ensure social and economic cohesion. With a monopoly, national postal operators were able to

²⁴ i.e. not generating 'normal' profits, or loss making

‘balance’ overall profits across their product range, without the risk of losing business making super-profits on some, to finance others that were priced below their fully allocated costs.

It has been a long standing aim of the Community to facilitate the gradual phasing out of monopolies in services of general economic interest where they are shown not to be required, and this was signalled in the 1997 and 2002 Postal Directives. The abolition of a monopoly does not suddenly turn loss making but socially desirable services into profitable ones – but the contention is that such activities could be financed through means other than a reserved area, which is a blunt financing instrument and difficult to make proportionate.

The extent of any financing mechanism is to be proportionate to the purpose of financing of the universal service, although the Directive does not prescribe a particular calculation methodology, nor specify whether a burden resulting from universal service obligations in excess of the minimum required by the Directive may be considered a justification for a compensation fund. The Postal Directive already authorises the establishment of a compensation fund. Under this fund, all postal operators provide a proportionate contribution to universal service (e.g. an amount per letter) so in fact all operators (and indirectly all users of postal service) share the uneconomic part of the costs. Currently nine Member States have made provision for a universal service fund in their laws, only one has so far deployed it.

With a substantial reserved area still in place, it is not surprising that the actual use of alternative financing mechanisms is so infrequent. Without the reserved area however, it is likely that several Member States may revisit the need for compensation or cost sharing funds, or have done so in advance. Respondents to the public consultation suggest that a compensation fund system may not be appropriate in all Member States, and that complementary or alternative approaches may also be required.

In the absence of a reserved area, the issue at Community level is what alternative financing mechanisms are consistent with an internal market for postal services and how should the scope and extent of obligations on market entrants not providing universal service be defined.

How will the issue evolve and who is affected?

The current Directive requires a proportionality test in order to determine the method and level of financing allowed for the provision of the universal service. It can be done in the following ways: the maintenance of the reserved area, imposing comparable service level obligations on new market entrants or, as an alternative, asking entrants to contribute to the universal service financing. There is a concern that under the current Directive such safeguards could be used in combination and such interventions are very likely to be disproportionate. For example, the authorisation system would impose ex-ante obligations and at the same time a financing mechanism could collect contributions ex-post on the same market player.

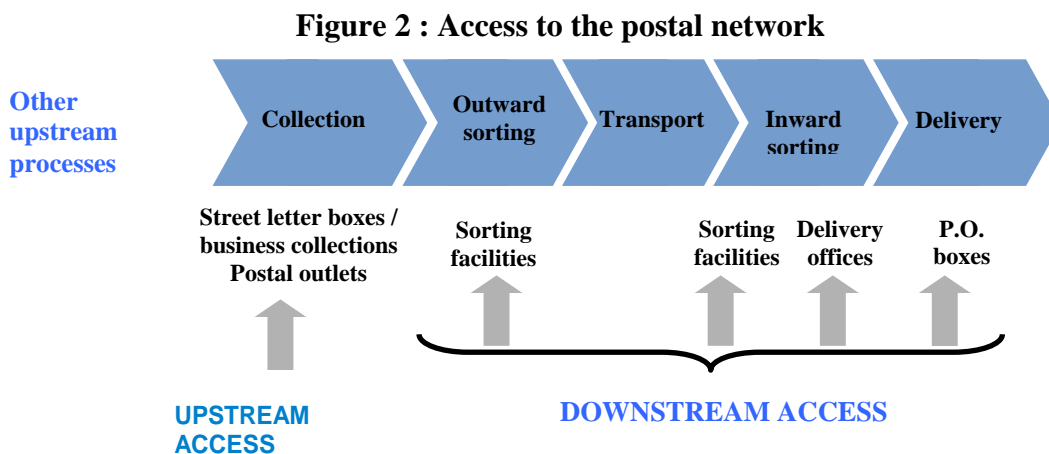
The main affected stakeholders are:

- businesses - who depend on an effective postal market for their commercial activity, but who are denied the benefits of competition through a continuation of a monopoly;

- individual consumers in remote or disadvantaged regions who hitherto have received a subsidised service funded mainly through a monopoly paid for indirectly by other users or the state;
- universal service providers who are faced with providing certain uneconomic obligations, and the challenge of financing these from new sources;
- Member States – who under the current Directive are already required to ensure that the reserved area is proportionate to the need to meet universal service obligations;
- National Regulatory Authorities – who may have to set up and administer any alternative source of financing.

3.2.5. Downstream access

Access to the postal network can occur at multiple stages, it can be either upstream or downstream. Figure 2 shows the elements of both types of access. "Downstream" refers to the delivery network; "upstream" access activities are also commonly referred to as "worksharing" and include activities such as collection, consolidation and mail preparation/franking in advance of handover to the postal operator.



Whilst it is very difficult to make a convincing argument that significant parts of upstream access constitute an 'essential facility'²⁵, as competition is already established in this sub-

²⁵ The term 'essential facility' is a facility or infrastructure which is necessary for reaching customers and/or enabling competitors to carry on their business, and relates to a body of jurisprudence and economic theory frequently cited as the appropriate test for the imposition of downstream access in network industries. A facility is essential if its duplication is impossible or extremely difficult due to physical, geographical, legal or economic constraints. Take for example a national electricity power grid used by various electricity producers to reach the final consumers: since it would not be viable for these producers to build their own distribution network, they depend on access to the existing infrastructure. Denying access to an essential facility may be considered an abuse of a dominant position by the entity controlling it, in particular where it prevents competition in a downstream market. The discussion in the postal sector generally revolves around whether the 'last mile delivery' by the incumbent operator constitutes a monopolistic bottleneck or 'essential facility', and includes analysis of the economics of the sector (sunk costs, economies of scale) and its comparability to other network industries.

market, it could be argued that *downstream access* has at least some of the elements of an essential facility depending on specific market conditions.

Regulation of the access terms under which dominant postal operators offer *upstream* or *downstream access* is already governed by competition law. The Postal Directive currently does not regulate *upstream* or *downstream* access of incumbent postal operators, save indirectly by reference to the general non-discrimination restrictions²⁶. Currently seven Member States²⁷ have granted the National Regulatory Authority the authority to require downstream access to the public postal network under appropriate circumstances while other Member States have not. Three National Regulatory Authorities have used this power to encourage or compel access²⁸. In the public consultation some respondents argued that this is sufficient, and that access should remain essentially unregulated by the Postal Directive, and subject to the normal process of business negotiation (i.e. in practice between a new entrant and an incumbent operator). This is also because (assuming a market is opened to competition) market entrants have the *possibility* to establish their own collection, sorting and delivery networks and therefore engage in 'end to end' forms of competition with the incumbent, *bypassing* his facilities altogether, and thus having no need for access.

Despite the above, some Member States may consider that market intervention for downstream access is appropriate, for a number of reasons:

- possible concerns over anticompetitive behaviour by the market dominant postal operator in price negotiations and associated conditions of access;
- the time to resolve allegations of such anticompetitive behaviour may be protracted;
- the preference for concentrating on the promotion of competition and universal service coverage outside the 'last mile of delivery';
- more pragmatically – to address the scale and unit cost challenge faced by entrants who may find it difficult to replicate nationwide delivery networks for a competitive price.

The issue here is whether the natural development of different models of competition or the active promotion of downstream access by some Member States may continue to co-exist or call for a Community level intervention. The follow-on issue is whether the Community should harmonise and/or strengthen Member State's *ex-ante* role in the monitoring and /or in mandating downstream access.

How will the issue evolve and who is affected?

Access in this sense is primarily relevant only to large mailers, upstream consolidators, and new sector entrants competing directly with the incumbent operators for business. The present Postal Directive does not restrict Member States from requiring access, or conferring the power to the National Regulatory Authority to determinate on this issue. Moreover, operators are not

²⁶ Article 12.5 of the Postal Directive

²⁷ DE, DK, FR, HU, PT, SI and UK

²⁸ DE, DK, PT – and although the Irish National Regulatory Authority lacks the legal authority to compel access it has successfully encouraged the public operator to offer it.

compelled under a European 'essential facilities' framework to offer special forms of access, but where they chose to do so, it has to be on a non-discriminatory basis. In the absence of Member State provisions, allegations of discrimination on this level would continue to be addressed through general competition law.

The absence of a Community framework may lead to the development of divergent forms of competition in Member States ('access based' or 'upstream' competition on the one hand, or 'end to end' competition), or a combination thereof as adapted to the local needs.

3.2.6. *Access to certain means of the postal infrastructure*

An internal postal market would imply the removal of legal restrictions on the use (or 'access') by other market players than the incumbent to the following:

- postal boxes - blocks of delivery boxes inside post offices;
- delivery boxes - inside multiple-occupier housing where customers pick up their mail rather than have it delivered to their door;
- a postcode database - to improve addressing/sorting/delivery accuracy;
- change of address databases - used to improve direct mail quality.

These parts of the postal infrastructure are not '*essential facilities*' or '*bottlenecks*' in the economic sense, but the failure to make these means available to all market players could effectively restrict the development of competition. Additionally if mail quality standards declined as a result this would also undermine users' confidence in the media. In cases where an item of mail is incorrectly delivered, recipients of this mail may give it to the public operator to return to sender. The public operator may however be unwilling to perform this service for its competitors, particularly where it is not remunerated for doing this.

Five Member States have given their National Regulatory Authorities the authorisation to require access to the post office box (DE, FR, NL, PT, SE) and at least two have used this authority (DE, SE). Other Member States have not given this authority, and there is a concern that access to such crucial means would be unfairly restricted. In five Member States, the National Regulatory Authority has been authorised to require the universal service provider to give access to the address and change of address database (DE/DK/FR/MT/UK). In SE the incumbent and a new entrant have set up a jointly owned corporation to maintain a national postcode/address database. To ensure equitable access and cost transparency, in the UK this activity has been 'structurally separated' into a standalone business unit of the universal service provider. In eight Member States the National Regulatory Authority is empowered to define common operational procedures to deal with such return/undelivered mail (CY, DE, FR, IE, LT, PT, SE, UK) while in three others (HU, NL, SE) this is dealt with on a voluntary basis.

The issue at Community level is whether to strengthen Member States' or National Regulatory Authorities' *ex-ante* role in the monitoring and/or in mandating of access to essential means, and in the establishment of procedures that will help assure the reliability of postal services in a multi-operator marketplace.

How will the issue evolve and who is affected?

Given the differences in how postal services are provided, in practice the necessary means differ across Member States, as does their ownership, and the day-to-day management of these issues. It is clear today that the issue may not be a problem in all Member States. In at least 3 Member States, common operational procedures have been freely negotiated already. However the lack of guaranteed (through not necessarily free) access to 'essential means' would be a significant disincentive for operators to enter the market. If however operators did enter the market, without access to these means, it is probable that consumers would receive a poorer standard of service from these operators, and this could serve to undermine users' confidence in new entrants, or the mail service overall.

3.2.7. *Other issues identified*

The issue of VAT has not been addressed in this proposal since the Commission has already adopted a proposal on this that is pending approval by the Council²⁹.

If the Community chose to maintain a role in the sector and retain the current framework, the 2006 proposal for amending the Postal Directive could also be an opportunity to make minor adjustments to the current regulatory framework: for example clarifying the importance of *de facto* independence and tasks of national regulatory authorities; ensuring effective consumer complaints procedures are in place and providing a legal basis for collection of statistics by national regulatory authorities, and underlining the fact that Member States retain the possibility of having a free postal service for blind and partially sighted persons.

3.3. **Does the Community have the Right to Act?**

Legal Basis

In order to attain the accomplishment of the internal market for postal services, in particular the achievement of the freedom of establishment and free provision of services, it is necessary to adopt or amend some measures of the approximation of the provisions laid down by law, regulation or administrative action in Member States. In that context, as for previous Directives, the use of Article 47(2) Article 55 and Article 95 of the EC Treaty appears to be appropriate.

Necessity

The absence of a Community approach to this Service of General Economic Interest could result in cases where Member States would adopt divergent policy directions. These could endanger the effective functioning of the Internal Market, with knock on effects on those sectors dependent on postal services; such directions could as well be potentially prejudicial to

²⁹ Under the Sixth VAT Directive (Directive 77/388/EEC, Article 13, A,1, a) and B, e)), the provision of certain services and goods incidental thereto by public postal services, and the supply at face value of postage stamps for use for postal services, are exempt from VAT. Since the 1997 Postal Directive however the postal VAT exemption has remained in force and is being applied in a variety of ways by Members States. This uneven application of the exemption and the distortions of competition occurring between former monopolies that benefit from the exemption and new operators that do not has led the Commission to adopt a proposal (COM (2003) 234 amended by COM (2004) 468). This proposal seeks to remove the VAT exemption for postal services and stamps, while allowing Member States to apply a reduced rate to a wide range of postal items (addressed postal items up to 10kg). To date, the Commission's proposal has not received the support of the Council.

social and economic cohesion particularly in disadvantaged or outlying regions of the Community.

With respect to improvements in cross border mail, and technical standardisation, compared to a Community approach, Member States have less effective instruments for action. The alternative would be a system of bilateral agreements, which would be difficult to obtain across all Member States.

Subsidiarity is further examined on each of the options considered to address the main issues: namely universal service scope and standards, its financing, and access to infrastructure and essential means to assess whether a particular option for action at Community level is more or less appropriate.

Fundamental rights

Reflecting the spirit of the EC Treaty (Article 16), the EU Charter of Fundamental Rights recognises the values underpinning services of general economic interest - specifically Article 36 reads: "The Union recognises and respects access to services of general economic interest as provided for in national laws and practices in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union."

4. OBJECTIVES

Postal services play an important role in underpinning territorial and social cohesion. Yet it is also because postal services are closely interlinked with general economic activity that a central aim of the Community policy is that all citizens and businesses should enjoy a high level of postal service provision. Market opening, combined with proportionate sector regulation has stimulated reforms for Member States. The aim is to ensure that market opening will secure benefits for all.

Thus, in response to the context of Community policy as outlined in Section 1, and the issues identified in Section 3.2, the Commission has identified the following policy objectives for this specific proposal.

Overall objectives:

To achieve an Internal Market for postal services where the benefits of reform are shared by all EU citizens and businesses:

- To maintain affordable and high quality universal service for citizens and businesses
- To achieve full market opening
- To reduce market distortions / barriers to the Internal Market

More specifically:

- To continue to pursue the reduction and the eventual abolition of the reserved area as the main obstacle to the Internal Market

- To ensure proportionate use of alternative universal service safeguards or financing mechanisms
- To ensure fair access to postal infrastructure

5. POLICY OPTIONS

The policy options are at two levels. The first covers the 'high level' options - which reflect the broad policy choices facing the Community concerning how to act (section 5.1).

The second level (section 5.2) concerns the specific policy options that correspond to the issues described in section 2. The selection of the 'second level' options will in many cases be linked to the high level choice – for example the high level option to let the current Directive expire and not to replace it effectively precludes some of the second level options which assume some form of EU intervention. At the same time, some specific policy options are possible under more than one high level option. At the end of this section a summary table with all options is presented.

5.1. High level policy options

The following four 'high level' policy options have been identified:

Option A - no action by the Commission - this is the so-called 'baseline scenario' which was already described in the issues sections under 'how will this issue evolve'. In this option there would be no legislative proposal. Given the expiry of the current Postal Directive on 31 December 2008 the postal sector would then be governed primarily by EC Treaty rules.

Member States would, under this option, determine universal service and associated quality standards throughout their territories, in accordance with international agreements and international treaties - such as the (more general, less demanding) Universal Postal Union obligations. Member States would be unlikely to quickly lower the current standards and revoke the provisions of the Community framework already transposed, but this possibility cannot be excluded with certainty. A more divergent framework could have negative impacts on social and territorial cohesion, and the probable increase in regulatory asymmetry across Member States would lead to a more 'uneven' playing field and maintain or increase barriers to an Internal Market in this sector.

Postal services are a part of Services of General Economic Interest. The Commission would still retain legal power to act according to Article 86 EC Treaty through Directives or Decisions in order to determine the balance between the Community interest in the development of trade and Member States' interest in the financing of universal services through, for example, reserved areas. A 'case by case' approach could lead to increased EU transaction and monitoring costs, and potential legal uncertainty of Member States and operators.

Option B - substantially new and comprehensive Directive for an open postal market - in line with the current Postal Directive's ambition for the full accomplishment of the postal internal market, a new regulatory framework could be proposed consistent with this.

With the current Directive's target date of 2009 for full market opening as a starting point, this option would provide a substantially modified Community framework anticipating a fully

competitive postal market. It would provide stakeholders with a fully harmonised approach to all sector issues, and prescribe and enforce a 'level playing field'. By starting with an entirely new Directive, this approach would also facilitate legislative simplification, though would require substantial transposition efforts by Member States.

Although there remains some doubt that all provisions of the current Directive are being applied with equal rigour across the Community, there is no evidence that the current Community framework is substantially inadequate. Moreover, national characteristics and differences in users' needs are likely to preclude a universally valid, proportionate, and acceptable solution to Member States.

Option C - prolongation of the existing Postal Directive beyond 2009, the date of the "sunset clause"- in this option the sunset clause ("expiry clause") in Article 27 would be deleted, but all other elements would remain unchanged.

This option would retain the Community minimum universal service standards, and regulatory framework. Yet it would also essentially retreat from the agreed target of a fully open postal market by 2009, since it would continue to explicitly permit monopolies in the sector. The current Postal Directive stipulates that the reserved area is permitted only to the extent necessary to maintain universal service – however, the proportionality test of the current Directive is rather loosely constructed and may trigger infringement proceedings by the Commission and with it legal and commercial uncertainty of operators and employees.

The reduction of Community impetus to market opening is likely to delay important sector restructuring, inhibit dynamic efficiency, limit the development of choice and innovation, and in the longer term could undermine the comparative competitiveness of the postal sector to other communications media and thereby put sector employment at severe risk. A decline in comparative competitiveness of mail could reduce demand by business for mail services. This is an important element as businesses generate almost 90% of mail volumes. It could consequently reduce Member State's ability to provide citizens with access to postal services at affordable prices, in addition to negative impacts on direct and indirect employment. This is sometimes termed the 'cost of no change'.

Option D - adapting the existing Directive to the extent necessary for an open postal market – it implicitly recognises that the maintenance of a high quality universal service and full market opening (i.e. abolition of the reserved area) are compatible and allow the closer attainment of the Community's objectives for the sector.

This option would maintain and build on the existing Directive's framework, which is already transposed and substantially applied, with modifications only where needed given recent and expected market developments, as highlighted in section 3. Full market opening implies that the reserved area existing still in some Member States would be abolished in all Member States from 2009.

The option does not trigger a 'back to basics' review of Community objectives. It does recognise that new technologies have had a differentiated impact across genders, population ages and regions which make postal services still an essential communication service for many citizens. But given rapid change in the broader communications market, this option implicitly recognises the increased risk to the sustainability of postal services by delaying or stopping

altogether market opening, and with it, the associated sector reforms, dynamic efficiency and innovation.

A disadvantage of this option is that, by retaining the ‘enabling framework’ approach that requires interpretation and more detailed codification at Member State level prior to transposition, there is a risk that some Member States may not adapt existing national frameworks appropriately in the first instance, resulting potentially in increased infringements. Also, while this option would be guided by the principles of 'Better Regulation', it would not necessarily result in further substantial legislative simplification at EU level.

The table below examines the high level options specifically from the perspective of consumers and SMEs.

Option A: 'Do nothing' / Directive expires	Option B: 'Substantially new postal Directive' i.e. increased harmonisation of universal service elements and full market opening	Option C: 'Delete sunset clause – retaining all other elements'	Option D: Adapt current Directive to the extent necessary for full market opening; abolition of the Reserved Area
<p>Pros</p> <p>MS full flexibility to choose standards – (minimal supra-national regulation); in the short term no noticeable change to consumers since the current EU universal standards are transposed and already complied with</p>	<p>Pros</p> <p>Complete equivalence of universal service obligations (no consumer in Europe receives different service above or below a specified standard); would ensure equal social cohesion at EU level; also allows for competition in the sector which could bring indirect benefits to consumers (e.g. better quality and more reliable delivery).</p> <p>Increased clarity regarding the service level and funding of public service activities that are entrusted or provided de facto in parallel to the Community universal service obligations by some Member States.</p>	<p>Pros</p> <p>Current universal service standards remain unchanged at EU level; some consumer (non-competitive) services could remain subsidised by other users (e.g. business mail); current scale economies not diluted.</p>	<p>Pros</p> <p>Current universal service standards remain unchanged at EU level; MS can go above (but not below) EU standards in the light of consumer needs.</p> <p>Possibility of uniform tariff for individual consumers and SMEs, and affordability requirement maintained.</p> <p>Increased clarity regarding the service level and funding of public service activities that are entrusted or provided de facto in parallel to the Community universal service obligations by some Member States.</p>
<p>Cons</p> <p>Longer term risk of degradation of standards at national and EU level and more difficult access, given</p> <p>no common EU universal service definition if Member States decide to</p>	<p>Cons</p> <p>Agreement by Member States on the specified standard likely only at a lower level than today – risk of a 'race to the bottom'.</p> <p>Takes away MS ability to define universal service according to consumers' needs, historic and future</p>	<p>Cons</p> <p>Monopoly could stay in place – but given this would cover 70-85% of items, it is likely to limit operators' drive for postal service improvements for consumers, principally as receivers of mail.</p> <p>Medium term, could put at risk the viability of</p>	<p>Cons</p> <p>Financing of the universal service through cross subsidy between business mail and consumer mail gradually reduced, as prices become more cost reflective – may result in price increases for consumers purchasing mail (offset in part by indirect price reductions for consumers receiving mail from</p>

change their national regulations; no immediate incentive on incumbents to become/remain efficient combining with the risk of sustained price rises given no affordability requirement	preferences Imposes a service level and network cost that may result in prices in excess of what consumers are prepared to pay for Increased competition may result in the curtailment of inadequately <u>funded</u> public service activities that are entrusted or provided de facto in parallel to the Community universal service obligations in some Member States	universal service due to the comparative decline in competitiveness and hence demand for the mail sector by business Risk of significantly weaker incentives on operators to innovate and restructure and improve the service to consumers.	businesses). Increased competition may result in the incumbent operator curtailing inadequately <u>funded</u> public service activities that are entrusted or provided de facto in parallel to the Community universal service obligations by some MS, which could in turn have an impact on social and territorial cohesion
---	---	--	---

5.2. Specific policy options

In this section the detailed policy options are presented. For each of the main issues described above in Section 3.2 - namely, scope and standards of universal service, reserved area and financing mechanism, access to essential means and downstream access, a number of options on how to tackle this issue are proposed. Each specific policy option also corresponds to a high level option. Each option starts with a short description, followed by a list of pros and cons listed in order of importance.

5.2.1. Policy options related to universal service scope

Option 1 - no change option – it leaves the provisions of the Directive unchanged – as described in section 3.2.2, only the minimum range of postal items would have to be provided on a universal basis preserving existing flexibility for Member States to define the detailed product scope.

Pros	Cons
<ul style="list-style-type: none"> Existing framework already allows very light touch regulation of universal services to make "service-by-service" adjustments Pace and extent of development of effective competition in national bulk markets differs across Member States – option reflects this Allows for more Member States to carry out a more detailed sub-market / substitute product characteristics, analysis including consultation before taking a decision Allows for taking into account the expectations of those receiving mail in outlying/remote areas 	<ul style="list-style-type: none"> Some legal/commercial uncertainty - present universal service providers remain dependent on Member State or National Regulatory Authority decision regarding scope; new entrants uncertain regarding likely development of competition, and extent of pre-emptory action by incumbent Time lags between changes in the market and deregulation decisions (i.e. if now or in future the market supplies a bulk service adequately, according to the least distortion principle the obligation should be progressively phased out)

Option 2 - scope focussed on consumer / SME products - its main aim would be to limit at EU level the current scope of Universal Service obligations to single piece items only. Under

this option the universal service would be defined in terms of a ‘consumer and SME safety net’, and bulk and direct mail would no longer explicitly be included as part of the universal service. Constraints on bulk mail would therefore be reduced, but affordability requirements would be maintained for the universal service. Member States would by implication retain the authority to require uniform tariffs for single item mail only.

Pros	Cons
<ul style="list-style-type: none"> • In many Member States, for some sub-markets there are alternative providers of bulk mail - competition provides bulk users with choices • Bulk mail senders are often businesses with bargaining power (even SMEs may associate to obtain it) • Restricting universal service scope to single piece focus (and associated public intervention) may be a more proportionate intervention than for all products 	<ul style="list-style-type: none"> • Competition is established but not yet effective (in terms of significant influence on market) in all Member States – and may take several years in lower volume markets • Given this, a harmonised approach may be premature • Does not take into account the expectations of receiving customers in outlying geographies • Interferes in the basic conception of universal service as a last resort service vs. trade enhancing infrastructure

5.2.2. Policy options related to universal service standards

Option 3 - harmonised standards to create harmonised obligations means a re-definition of the universal standards of the Directive (in Art 3) as obligatory and not minimum standards. This harmonisation option would imply a *ceiling* regarding obligations, but also a minimum level based on the current Directive.

Pros	Cons
<ul style="list-style-type: none"> • Creates a 'level playing field' in terms of postal services obligations and associated public intervention across all Member States • Prevents exaggeration of consumers' needs based on other considerations, although difficult to distinguish between genuine and exaggerated needs 	<ul style="list-style-type: none"> • Not practicable at EU level in current framework – the present Directive not specific anyway regarding some standards, e.g. affordability, possibility of uniform tariff, domestic quality of service • Does not allow the universal service to evolve according to consumer needs at national level – users needs not homogenous throughout the EU • For UK/DE/DK/FR/NL and SK in some areas, this could mean a reduction in collection and delivery days per week from 6 to 5 • Harmonisation of standards aims to achieve equality in obligations – but reality is that cost drivers (labour, scale, geographic density) highly significant and not harmonised, nor is the user's willingness to pay for a given service level the same in all Member States– resulting in practice in uneven obligations

Option 4 - no change so current standards remain Community minimum rules - it leaves standards of the Directive as minimum rules e.g. collection and delivery at least 5 working days a week to all points of a Member State territory, requiring affordability and accessibility without further specification.

Pros	Cons
<ul style="list-style-type: none"> • Allows MS sufficient flexibility to adapt to national expectations • Basic services to ensure Community cohesion 	<ul style="list-style-type: none"> • Maintains only weak impetus for ensuring standards at MS level are in line with consumers needs • Does not address some concerns that standards are

retained <ul style="list-style-type: none"> On a general level, majority of stakeholders are content with the EU definition at present 	sometimes 'gold plated' at national level, by Member States laws and/or Regulators
--	--

Option 5 - unchanged standards but uniform tariff permitted for single piece items - it leaves standards of the Directive as minimum rules (collection and delivery at least 5 working days a week to all points of a Member State territory, requiring affordability and accessibility without further specification) but a uniform tariff may only be applied to single piece mail and certain other items.

Pros	Cons
<ul style="list-style-type: none"> The possibility to price bulk mail non-uniformly creates a more 'level playing field', corresponds to the principle of cost-relatedness of prices and will assist an efficient universal service provider to retain sufficient market share in bulk mail markets to continue to finance consumer / SME obligations It allows Member States to apply uniform tariffs for single piece items where they judge it necessary – used particularly by individuals and SMEs The same or similar to already existing policies in several MS (NL, UK, DE, FI, SE, with no requirement in CZ, IE, IT) 	<ul style="list-style-type: none"> Some Member States have addressed the scope of application of uniform tariffs through different user ways (e.g. applying uniform tariffs only to reserved services, or to non bulk correspondence), or by adjusting the product scope of universal services

5.2.3. *Policy options related to the reserved area and universal service financing mechanisms*

Option 6 - no action – it means that the Directive expires at the end of 2008, the reserved area could be maintained, and there is no European sector-specific legislation. Universal service financing would be subject to the EC Treaty that allows in particular the Commission to adopt Decisions and Directives.

Pros	Cons
<ul style="list-style-type: none"> Decisions and Directives may be undertaken by the Commission under Article 86 (3) EC Treaty State aid package has improved legal certainty and monitoring for state aids 	<ul style="list-style-type: none"> Weakened Internal Market benefits if monopoly retained, and possibly lower drive for internal efficiency by protected operators Uncertainty of operators regarding whether they will satisfy the Court's Altmark criteria for state aids to support universal service provision, or that Member States will pre-finance obligations A Commission assessment on a case by case basis of any reserved areas will result in a likely increase in infringement and enforcement activities

Option 7 - harmonised detailed universal service financing conditions in the absence of a reserved area– it would harmonise conditions for financing the universal service to choose one model covering: a) concept of "unfair financial burden", b) calculation method (calculation principles and tendering as an alternative calculation method), c) clarify who can be required to contribute, d) contribution principles.

Pros	Cons
<ul style="list-style-type: none"> • Would increase transparency for society on costs of universal service and allow comparability between Member States and limit disproportionate measures • General contribution principles may be agreed on – done successfully in other sectors (e.g. telecoms) • May limit market distortions (e.g. illegal cross-subsidies) 	<ul style="list-style-type: none"> • Divergent stakeholder views on how to calculate – agreement realistic only at a general level at EU level but insufficient for effective transposition • Unnecessary for all given that for some Member States financing is not an issue • A 'one size fits all' may not be available or appropriate

Option 8 - maintain the current Directive through a deletion of Article 27 (i.e. taking out the expiration date) - it extends the existing Directive beyond 2008, such that universal service financing continues to be permitted through a reserved area proportionate to financing universal service. The imposition of universal service obligations on entrants, the establishment of a compensation fund and state aids under EC Treaty rules are also therefore retained.

Pros	Cons
<ul style="list-style-type: none"> • Minimal legislative intervention (though potentially increased monitoring) • Commission would still retain legal power to determine necessity/extent of reserved areas (86 EC Treaty) on a case by case basis • Maintains a (largely) predictable source of financing for the incumbent operator 	<ul style="list-style-type: none"> • A permanent reserved area would be incompatible with the Community goal of full market opening and would distort competition in postal sector. Substantially less, if any, 'level playing field' and postal internal market, and weakened benefits to postal users at a national level, and the wider EU economy • Would de facto stop EU postal reform and frustrate the evolving dynamics of the market • Proportionality test is not transparently applied currently for the reserved area • Introducing a narrower reserved area through a lower weight step is unlikely to be significantly more proportionate (85% of items of correspondence generally weigh less than 50g, 70% are also under 20g)

Some stakeholders have indicated that a delivery monopoly could be an appropriate intermediary step to full market opening, or indeed an appropriate 'final step' to create a situation analogous (to a limited extent) to the situation in the United States where the US Postal Service retains a delivery monopoly, but has controlled retail and wholesale prices, regulated access and is not permitted to make a surplus. Typically, delivery activities represent approximately 50% of the total universal service provider's costs for delivering letters.

There are a number of complex issues here that mean that a delivery monopoly is not considered to be an appropriate option:

- In some geographic areas (rural deliveries in particular) postal services exhibits some natural (not bottleneck) monopoly characteristics on account of the low economies of density of delivering to these areas. There is therefore an economic welfare case for retaining scale economies in delivery through a monopoly, rather than have them potentially dissipated across several competing delivery providers. However this implicitly (and probably incorrectly) assumes that in the absence of competition the incumbent operator would achieve lower unit costs than what

would be achieved through a combination of competitive pressure, dynamic efficiency and innovation following market opening.

- In practice however, the retention of delivery economies of scale and density can already be achieved by the incumbent through offering efficient but non-discriminatory special tariffs to consolidators, or through a voluntary negotiated access regime or even through mandatory access.
- Given delivery costs represent c.50% of the total costs, a complete monopoly on delivery would seem disproportionate given that the actual uneconomic network costs of providing universal service obligations are significantly lower than 50% of the total costs.
- Given only parts of the postal value chain exhibit natural monopoly characteristics (next day delivery in rural areas) and competition is viable in other areas the application of a monopoly to the entire delivery process seems a disproportionate regulatory intervention.
- Alternative delivery businesses are already established in many markets the introduction of a complete delivery monopoly could potentially infringe property rights.
- The retention of a delivery monopoly for items under 50g would effectively kill off all non-niche competition for addressed mail since the vast majority of items are under 50g, and there would be insufficient available volumes to sustain efficient competition for this sub-market.
- Experience of market opening in other network industries suggests that there is a risk of the abuse of a dominant position in a vertically integrated enterprise where parts of the value chain remain under a de facto monopoly. Any 'last mile' monopoly option would almost certainly require strengthened ex-ante control to regulate this potential for abuse, i.e. in addition to the accounting and financial separation requirements already specified in the Postal Directive. Although ex-ante controls could conceivably be limited to organisational separation (ring fenced management) structural vertical separation (establishment of separate upstream and downstream companies) would be the probable end result. In the United States the risk of abuse is limited by the fact that prices are set by the Postal Rate Commission at a level that allows the operator to cover its costs and normal investment needs, but not to create 'super profits'.

Option 9 - exhaustive financing mechanisms list – under this option, the reserved area is abolished, therefore an exhaustive list of permitted models for financing universal service would be provided. It would include state aids, procurement procedures, internal cross-subsidies, compensation fund, and universal service fees on universal service market players – several of which are already available and/or applied.

Pros	Cons
<ul style="list-style-type: none"> • Leaves Member States initially to determine proportionality of the financing • Highlights Member States' choices and ability to 	<ul style="list-style-type: none"> • Some may oppose judging that these are imperfect or no alternative to monopoly financing. Stakeholders tend often to want other groups (e.g. the state, other users

<p>determine most appropriate mechanism but limits use of disproportionate safeguards, for some Member States no mechanism will be required</p> <ul style="list-style-type: none"> • Limits application of disproportionate safeguards • Leaves Member States significant flexibility to regulate on the basis of national needs and features (subsidiarity). 	<p>etc) to contribute rather than themselves, and are distrustful of internal efficiency efforts of universal service provider to minimise the any financing required</p> <ul style="list-style-type: none"> • Assumes (optimistically) that the availability of financing will not affect rate of ongoing improvements in efficiency by the universal service provider, including gradual alignment of labour costs to market competitive rates • Potentially increases the need for monitoring of proportionality by Commission
---	---

5.2.4. Policy options related to access to essential means

Option 10 - mandatory access to harmonised and exhaustive list of means - it would allow a mandatory access for market operators to the following elements: postcode system, address database, post office boxes, collection and delivery boxes, information on change of address, re-direction service, and return to sender service.

Pros	Cons
<ul style="list-style-type: none"> • Complete achievement of objectives in terms of level playing field and consumer protection: all Member States regulate all issues in an equal way 	<ul style="list-style-type: none"> • May lead to overregulation /intervention–imposing a solution where there may not be a problem – some Member States have resolved without regulatory intervention

Option 11- no change to the current situation – it would leave these issues to the market and to competition rules and essential facilities doctrine

Pros	Cons
<ul style="list-style-type: none"> • Member States may still regulate the issue when and how they consider it a problem (some have e.g. SE, NL, FR, DE) 	<ul style="list-style-type: none"> • May not provide a sufficient signal to tackle the potential problems, leading to uneven EU playing field, lack of competition, insufficient consumer protection in a crucial market opening moment

Option 12 – leave discretion for National Regulatory Authorities - they could identify the essential means, and assess if access is necessary for any of these elements: postcode system, address database, post office boxes, collection and delivery boxes, information on change of address, re-direction service, and return to sender service.

Pros	Cons
<ul style="list-style-type: none"> • Respects subsidiarity: allows Member States flexibility to determine 1) whether access to any particular piece of infrastructure is a problem in its own national context, 2) how to address it • Signal to achieve an even EU playing field with effective competition but provides also consumer protection in a crucial market opening moment • Draws on experience of some Member States (SE, NL, FR, DE) • Provides for certain degree of transparency 	<ul style="list-style-type: none"> • Might be considered as 'unnecessary' due to different Member State situations (e.g. potential for market entry). • Limited harmonisation, inhibiting the application of pan-European competitive business models – possible negative Internal Market effect

5.2.5. Policy options related to access downstream access

Option 13 - mandatory downstream access and harmonised rules

Pros	Cons
<ul style="list-style-type: none"> • EU level playing field by imposing same model in all Member States may (outside the delivery 'last mile') accelerate the development of competition and choice by removing one natural barrier to entry (delivery scale economies) • May stimulate innovation, process reengineering and investment in the upstream processes by consolidators, and reinforce efficiency and restructuring by the incumbent in its upstream processes • Access may protect delivery volumes and hence jobs in the incumbent 	<ul style="list-style-type: none"> • May be perceived as over regulating by imposing a solution instead of a "negotiated" access regime • Probably contrary to the 'essential facilities' test • May not increase quality and innovation /investment in the delivery network • Not all Member States 'need' mandated access for competition to develop (e.g. high delivery density, low efficiency of universal service provider and high prices all make entry possible) • In practical terms, technically difficult for regulator to identify optimal access pricing (i.e. competitively neutral, but which also retains efficiency incentives and a contribution to universal service) • Difficulty exacerbated when end to end competition exists alongside mandatory access. Likely to result in some market distortion • Low access prices may distort the development of end to end competition, and provide a de facto monopoly in delivery

Option 14 – insert an explicit provision allowing MS to identify the need for mandatory access in order to promote competition

Pros	Cons
<ul style="list-style-type: none"> • Recognises that full market opening may not be sufficient for the development of choice in the marketplace in all Member States • Particularly in low volume countries scale economies in delivery are important for maintaining low unit costs that contribute to an affordable universal service 	<ul style="list-style-type: none"> • Only reiterates what is already possible, and therefore may create legal uncertainty • May be considered by some as an incentive to regulate downstream access; in turn this may lead to undesired results /new market distortions since access regulation is difficult to implement in a competitively neutral way

Option 15 - oblige the dominant operator or the operator using a former public network not to refuse downstream access under appropriate conditions

Pros	Cons
<ul style="list-style-type: none"> • Promotes EU level playing field by imposing the same (albeit only general) model in all Member States • Does not over-regulate leaving MS the choice for a "negotiated" access regime or a regulated one 	<ul style="list-style-type: none"> • No demand for it from most Member States • In the main, already covered by general competition law (refusal to supply by dominant operator)

Option 16 - maintain the current Directive rules - non discriminatory access taking into account avoided costs

Pros	Cons
<ul style="list-style-type: none"> • Allows Member States to take decision on the basis of national conditions • Allows "competition" between business models: assumes no single winning model (both have advantages and disadvantages) but that the market will determine this • Harmonisation may take place at a later stage on the basis of Article 11 (if the current framework is maintained) • Competition Law provides a general framework with respect to abuse of dominant position, and non-discrimination 	<ul style="list-style-type: none"> • May lead to diverging national developments with possible implications for internal market – though probably minor • May lead to protection / last mile monopoly of incumbent if Member States decisions are not correct/biased

5.3. Preliminary assessment of options



Table 2 summarises the 16 options covered in the pros/cons section above together with corresponding high policy options. Table 3 reflects an initial evaluation of the 4 'high level' policy options (section 5.1) by assessing how they contribute to the achievements of the EU postal policy objectives.

Table 4 identifies 6 of the 16 policy options that have been 'screened out' at the preliminary stage based on either the evaluation of the pros and cons of the individual option, (lack of) consistency with the high level options, or (lack of) contribution to the overall proposal's objectives.

Section 6 then highlights the impacts of the 10 retained options.

This table summarises all the options considered in section 0, and aligns them to the high level options A/B/C/D from the section 5.1 to assess potential policy coherence.

Table 2 : Summary of all options considered

High level options in  (section 5.1)	Option A 'Do nothing' / Directive expires	Option B 'Substantially new postal Directive'	Option C 'Delete sunset clause – retaining all other elements'	Option D Adapt current Directive to the extent necessary for the full accomplishment of the internal market; abolition of the Reserved Area
 Specific policy options (section 5.2)				
Universal Service Scope (Section 3.2.2)	No EU universal service scope – more general UPU rules apply	Option 1 - no change – existing flexibility'	Option 1 - no change – existing flexibility'	Option 1 - no change – existing flexibility OR Option 2 – scope focussed on consumers /SME products
Universal Service Standards (Section 3.2.3)	No EU Standards – lower UPU rules	Option 3 - harmonised standards and obligations	Option 4 – no change – current EU standards remain minimum rules	Option 4 – no change – current EU standards remain minimum rules OR Option 5 – as option 4 but uniform tariff permitted for single piece items and other items if appropriate
Reserved Area and Financing mechanisms (Section 3.2.4)	Option 6 - no intervention: EC Treaty rules; reserved area potentially allowed	Option 7 - harmonised conditions for financing, including calculation of universal service obligation costs, no reserved area	Option 8 - maintain the current Directive through a deletion of Article 27 therefore reserved areas, obligations on entrants and compensation funds retained	Option 9 – abolition of reserved area; exhaustive list of permitted models – including state aids and compensation funds
Access to essential means (Section 3.2.6)	Option 11 - no change - Subject to general competition law and Member States discretion	Option 10 -mandatory access to harmonised and exhaustive list of 'essential means'	Option 11 - no change - Subject to general competition law and MS discretion	Option 12 - oblige NRAs to identify need for access to essential means

<p>Access to infrastructure / downstream access</p> <p>(Section 3.2.5)</p>	<p>For Member States to determine</p>	<p>Option 13 - impose mandatory downstream access and harmonised rules</p> <p>OR</p> <p>Option 14 - insert provision explicitly allowing MS to identify the need for access to promote competition / retain scale economies in delivery</p>	<p>Option 16 - current Directive's rules: non-discriminatory access, subject to commercial negotiation taking into account avoided costs</p>	<p>Option 15 - oblige dominant operator not to refuse downstream access under appropriate conditions</p> <p>OR</p> <p>Option 16 - current Directive's rules: non-discriminatory access, subject to commercial negotiation taking into account avoided costs</p>
---	---------------------------------------	---	--	---

These high level A/B/C/D options are summarised as follows assessing their contribution to the objectives.

Table 3 : Comparison of high level policy options

Evaluation Criteria Options	Maintains high quality universal service for citizens and businesses	Achieves full market opening	Reduces market distortions / barriers to the internal market	Strong on Subsidiarity
Option A	✘	✘	✘✘	✓✓✓
Option B	✓	✓✓	✓	✘✘
Option C	✓✓✓	✘✘	✘	✓✓
Option D	✓✓✓	✓✓✓	✓✓	✓✓

Key ✓✓✓ (Strong) ✓✓ (Moderate) ✓ (Weak) **positive** contribution to objectives
 ✘✘✘ (Strong) ✘✘ (Moderate) ✘ (Weak) **negative** contribution to objectives

Although **Option A** has the strongest subsidiarity element, the objective of maintaining universal service *and* creating an internal market may be undermined by potentially divergent approaches across the Community, given that the Universal Postal Union rules that would apply are much more general. Full market opening would not be achieved with certainty.

By providing a harmonised approach, **Option B** may fail to take account of national characteristics. It could result in a universal service definition that does not meet the heterogeneous needs of users across the Community, and incorrectly anticipate the level of market competition and appropriate corresponding regulatory framework. High level options A

and B were therefore rejected at the initial screening stage. Conclusions on high level **Options C and D** are made in the light of more detailed analysis of impacts of each retained policy options in section 6.

The following specific policy options were rejected at the initial screening stage.

Table 4 : First screening of specific policy options

Options eliminated	Rationale
Option 3 - harmonised universal service standards and obligations with an EU ceiling	Contrary to subsidiarity
Option 6 - no intervention - EC Treaty rules, reserved area allowed	Contrary to the goal of full market opening; the Prospective Study suggests a greater range of financing mechanisms could be beneficial
Option 7 - harmonised conditions for financing, including calculation of USO, reserved area abolished	Theoretically attractive, but near-impossible to gain detailed agreement on content
Option 10 - mandatory access to harmonised and exhaustive list of 'essential means'	Contrary to subsidiarity; over-regulates where voluntary agreements may suffice; may infringe ownership rights
Option 13 - impose mandatory downstream access and harmonised rules in the Directive	Over-regulates where voluntary agreements may suffice; may infringe ownership rights; current Directive gives guidelines on special tariffs with Art 82 EC providing complementary 'backup'
Option 14 - insert provision explicitly allowing MS to identify the need for access to promote competition / retain scale economies in delivery	Parameters of promoting competition essentially an issue for Member States to consider

6. ANALYSIS OF IMPACTS OF RETAINED OPTIONS

Impacts of options on Scope of Universal Service

Option 1 - no change – existing flexibility - leave the provisions of the current Directive unchanged

Impacts on Users	Impact on sector Employment	Potential Economic Impact
<p>Consumers / SMEs</p> <p>No change to Directive so no change to Consumer / SME senders' access to basic products. However current Directive has subsidiarity element that still allows for Member States to have narrower product definitions – this could still mean that some consumer /SME products are decided by a Member State to be no longer 'universal' e.g. post restante, newspapers.</p> <p>Bulk users</p> <p>Positive or negative impacts linked to how Member States interpret the Directive – potentially negative if scope reduced prematurely (competition is inadequate force on incumbent and limits bulk users' access to choice of products) but any decline in universal service providers' service and choice would provide opportunity for alternative providers.</p>	<p>Essentially depends how flexibility is used – if product scope is already in line with consumer needs then impact is unlikely to be significant.</p> <p>Only where the universal service scope is used as a tool to maintain levels of employment servicing users (business and individuals) beyond what they are prepared to pay for could this have a negative employment effect (essentially this is increasingly unsustainable following market opening).</p>	<p>Positive</p> <p>If scope is allowed to adapt, in the light of market changes this should trigger a closer alignment of prices to costs, and in turn a closer alignment of users needs to willingness to pay. These features will vary by country, and hence a 'subsidiarity' approach may be economically more efficient.</p> <p>Negative</p> <p>Over specified price and service obligations could result in inefficient market intervention and the need for complex supervision / regulation at Member State level.</p>

Option 2 – universal service scope focussed on consumers / SMEs products

Impact on Users	Impact on sector Employment	Potential Economic impact
<p>Consumers / SMEs</p> <p>Consumer / SME senders protected so no change; slight risk that bulk and direct mail volumes to outlying areas would decline, or that rural consumers offered differentiated (higher) prices by business mailers.</p> <p>Bulk users</p> <p>Bulk users – potentially negative if scope reduced prematurely (competition is inadequate force on incumbent).</p> <p>Bulk users are likely to pass on some of the benefit of lower prices to consumers.</p>	<p>Positive</p> <p>Positive impact for sustainable incumbent employment- implies freedom for non-uniform prices for most or all bulk mail, allows incumbent to react to market entry, maintaining a significant market share and hence minimising job reductions.</p> <p>Positive for medium – long term entrants, in terms of <i>sustainable</i> new jobs created.</p> <p>Negative</p> <p>Restricts employment opportunities with 'inefficient'</p>	<p>Positive</p> <p>Progressively reduced cross subsidy between businesses and households - users of products and services would increasingly pay for the products and services they use on to more efficient provision of bulk mail. Reduced likelihood of requiring alternate financing mechanisms.</p> <p>Negative</p> <p>The apportionment of universal service costs between business and individuals is difficult to achieve – if not done correctly however households could end</p>

	entrants i.e. 'cream skimming' business models.	up indirectly <i>subsidising businesses</i> who want to reach them via a universal service.
--	---	---

Impacts of options on universal service standards

Option 4 - no change – current standards remain Community minimum rules

Impacts on Users	Impact on sector employment	Economic impacts
<p>Consumers / SMEs Key product /services retained i.e. neutral impact.</p> <p>Bulk mailers</p> <p>Potentially disparate national regulation of competitive market standards – does not facilitate further proper functioning of the Internal Market.</p>	Neutral	<p>Positive</p> <p>Obligations defined at a minimal level to secure social and economic cohesion.</p> <p>Negative</p> <p>Would not prevent exaggeration of consumers' needs or gold plating based on other considerations – potentially flowing through to license conditions for entrants and/or need for financing.</p>

Option 5 - no change – current standards remain Community minimum rules, but uniform tariff permitted for single items only

Impacts on Users	Impact on sector employment	Economic impacts
<p>Consumers / SMEs – no change; SMEs may associate /use consolidators to gain access to non-uniformly priced postal services if they wish to.</p> <p>Difficult to define 'single items'</p> <p>Slight risk that businesses mailing to users living in destinations with above average costs to deliver would differentiate their prices – passing on savings to some but surcharges to others.</p> <p>Bulk mailers</p> <p>Potentially disparate national regulation of competitive market standards – does not facilitate further proper functioning of the Internal Market.</p>	<p>For universal service provider – the right to apply non-uniform tariffs to bulk mail allows them to fight market entry on a 'level playing field' and – assuming they maximise their scale advantage and improve their efficiency – to retain significant market share and employment levels.</p> <p>Employment creation by new entrants / SMEs based on undercutting the uniform tariff on business mail would be effectively prevented.</p>	<p>Positive</p> <p>May foster efficient market entry</p> <p>Still allows for some internal cross-subsidy of business mail profits to fund consumer area.</p> <p>Negative</p> <p>Authorises ex-ante regulation on one element where the same would probably be achieved through commercial decision making anyway (complexity / transaction costs of multiple tariffs for single item mail) – so in some instances this would be inconsistent with 'least market intervention'.</p>

Impacts of options on reserved area and universal service financing mechanisms

Option 8 - maintain the current Directive through a deletion of Article 27 - reserved areas, also obligations on entrants and compensation funds retained.

Impact on Users	Impact on Sector employment	Economic impacts
<p>Consumers /SMEs –</p> <p>In those countries that retain a reserved area, in the immediate future no significant change at national level – but also no incentive to improve quality /choice/innovation.</p> <p>Bulk users</p> <p>Likelihood of a growing disparity of prices and service between countries that have opened up vs. those that retained a reserved area.</p> <p>Other impacts</p> <p>If service obligations imposed on new entrants are imposed in addition to contribution obligations (i.e. disproportionately) this could effectively kill off any opportunity for market entry – and the development of choice in service provider for users.</p>	<p>Employment</p> <p>In the short term maintenance of the reserved area reduces pressure on incumbent to restructure. May have advantages where a Member State is in a phase of high unemployment, but probably not sustainable long term.</p> <p>Dynamic efficiency and innovation brought about by market opening may provide more sustainable employment.</p> <p>Disproportionate application of safeguards would limit jobs created by new entrants.</p>	<p>May simply delay the restructuring that is necessary because of other exogenous developments (e.g. new technologies /alternative media).</p> <p>Likely to reduce opportunity for dynamic efficiency.</p> <p>However, <u>if</u> the reserved area was genuinely proportionate to the uneconomic activities <u>and</u> the services in the monopoly area were provided <i>efficiently</i> – then the retention of economies of scale by a monopoly provider <i>could be more welfare enhancing</i> than a combination of competition and dynamic efficiency offset by economies of scale dissipated across several providers.</p> <p>Divergent examples of liberalised industries, but preponderance of empirical economic studies suggest that greater welfare gains are achieved without monopolies, not withstanding the (theoretical) attraction of the monopoly provider operating at the efficiency frontier.</p>

Option 9 – a reserved area abolished and therefore an exhaustive financing mechanisms list is proposed, including state aids, procurement procedures, internal cross-subsidies, compensation fund, and universal service fees on universal service market players.

Impact on Users	Impact on Sector employment	Economic impacts
<p>Permits a broad range of financing mechanisms – with the exception of the reserved area, which will ensure the maintenance of universal service and would be complementary to Option 5 preventing inefficient 'cream skimming' entry</p> <p>Allows Member States to also factor in contribution by</p>	<p>No direct impact as different financing <i>mechanisms</i> do not affect levels of employment as such – provided that they are each applied in a proportionate way to any uneconomic obligations.</p> <p>Employment by universal service providers would have to decrease if there was inadequate application /revenue collection of a financing</p>	<p>Positive</p> <p>Universal service retained – direct and indirect contribution to economic cohesion.</p> <p>Increased proportionality of alternative financing measures likely to enhance economic welfare.</p> <p>As shown in many studies, market opening in postal sector has resulted in lower prices and</p>

³⁰ For a fuller discussion on access points please refer to Annex 3

<p>individual users (e.g. through retail price controls), or market players (e.g. through fees).</p> <p>Increased competition may result in the incumbent operator curtailing inadequately <u>funded</u> public service activities that are entrusted or provided de facto in parallel to the Community universal service obligations by some MS, which could in turn have an impact on social and territorial cohesion³⁰</p>	<p>mechanism at Member State level.</p> <p>Disproportionate application of safeguards would limit entry jobs created by new market players.</p>	<p>increased productivity³¹. Lower prices have the biggest impacts on business users as they send majority of postal items.</p> <p>Negative</p> <p>Universal service providers still required to pre-finance their activities – potential cash flow issues to be managed.</p> <p>If balance to finance is significant (because of high levels of efficient market entry) then this may create regulatory costs in the setup and monitoring of alternative mechanisms.</p> <p>New entrants may face investment uncertainty (in case of future universal service contribution obligations) leading to reduced competition in some Member States.</p>
--	---	--

Impacts of options on 'access to essential means'

Option 11 - no change - leaving access issues to the market and to competition rules/essential facilities doctrine

Impact on Users	Impact on Sector employment	Economic impacts
<p>Leaves to Member States the issue of how to protect users' interests in a multi-operator environment; risk that some Member States may only take action once a problem has emerged– and consumer satisfaction already diminished.</p>	<p>No direct effects however legal uncertainty would not facilitate small /regional based entrants (and hence employment) – since only large potential entrants likely to tackle these issues based on a competition law complaint.</p>	<p>Positive</p> <p>Does not risk distorting adjacent sectors (e.g. geographic routing software/address database markets) which allow equitable access in some Member States</p> <p>Negative</p> <p>Could create a distortion to level playing field and development of user choice if access to the same feature is refused in one Member State and granted in another – Internal Market reduced.</p>

Option 12 - oblige National Regulatory Authorities to identify the essential means, to assess if access is necessary for postcode system, address database, post office boxes, collection and delivery boxes, information on change of address, re-direction service, return to sender service

Impact on Users	Impact on Sector employment	Economic impacts
<p>Ensures business and consumer protection - underpins mail quality in a multi-operator environment</p>	<p>No direct effects - but equitable access to means does reduce a</p>	<p>Positive</p> <p>Allows for a check at Member State level on risk</p>

³¹ For detailed information on economic impacts of market opening please refer to Annex 4.

without introducing unnecessary procedures.	barrier to market entry. Legal certainty (when determined at national level) would facilitate market entry decisions by entrants – jobs created would not be unsustainable caused by the lack of access to these means.	of distortion /intervention in adjacent sectors. Ensures the costs of these activities are transparent. Negative May create some consequential incremental costs of opening up these facilities that will need to be shared (by users).
---	--	---

Impacts of options on 'downstream access'

Option 15 - oblige the dominant operator or the operator using a former public network not to refuse downstream access under appropriate conditions

Impact on Users	Impact on employment	Economic impacts
<p>Single piece users – 'appropriate conditions' likely to restrict single piece users from downstream access – transaction costs of providing a special access point would be uneconomic.</p> <p>Competition would focus on the upstream market, offering bulk users a choice of collection and sorting – particularly the largest mailers would be able to access the operators without using an intermediary.</p>	<p>Growth in downstream access volumes would mean more mail bypassed the upstream processes of the universal service provider which – if volumes were significant could mean these parts would need to be restructured – leading to job losses (although upstream processes are less labour intensive). To a large extent delivery jobs would be unaffected.</p>	<p>Positive</p> <p>Appropriate conditions may include an indirect contribution to universal service (through a mark up or avoided cost basis), and the opportunity to limit inefficient access entry (by allowing non-uniform or delivery zone access prices).</p> <p>For individual consumers</p> <p>The small price differentials offered by new entrants likely to trigger substantial overall savings only to higher volume mailers.</p>

Option 16 - no change, i.e., maintain the current rules on non-discriminatory access taking into account avoided costs

Impact on Users	Impact on employment	Economic impacts
<p>Give users the choice.</p> <p>Recent ECJ cases, based on the existing Directive, establish the rights of individual (in practice large) users, and consolidators to access the network. Application of this principle by citizens or low volume users seeking access to downstream networks not explicitly tested yet (but no evidence of demand) and consequential incremental costs of low volume handovers likely to increase the access price above the normal retail price anyhow).</p>	<p>Users have the option to have downstream access already though special tariffs and work sharing – no change therefore to employment levels by keeping the policy as now.</p>	<p>Will allow for the market to determine the appropriate competitive model – access or networks.</p> <p>Downstream access tariffs should not make a full contribution to upstream fixed costs (that are avoided by downstream access).</p> <p>Does not prohibit neither de-averaged access prices nor the correct application of 'Delivery Access Zone' pricing or other zonal pricing variants.</p> <p>The small price differentials offered by new entrants likely to result in substantial overall savings only to higher volume mailers.</p>

7. COMPARING THE OPTIONS AVAILABLE

7.1. Comparison of remaining options

Table 5 : Summary of overall impact of each specific policy option

Issue	Options	Impacts on Users	Impact on sector Employment	Potential Economic Impact
Scope of Universal Service	Option 1 - no change: existing flexibility	😊😊	😊	😊
	Option 2 - scope focussed on consumers / SMEs	😊	😊	😊
Universal service standards	Option 4 - no change: current standards remain Community minimum rules	😊 to 😊	😊	😊 to 😞
	Option 5 - no change: current standards remain Community minimum rules, but uniform tariff permitted for single items only	😊😊	😊😊	😊😊😊
Reserved area and universal service financing mechanisms	Option 8 - maintain the current Directive through a deletion of Article 27 so reserved areas, obligations on entrants and compensation funds retained	😊 to 😞	😊 to 😊	😊 to 😞😞
	Option 9 - a reserved area abolished and an exhaustive financing mechanisms list is proposed, including state aids, procurement procedures, internal cross –subsidies, compensation fund, and universal service levy on universal service market players	😊😊	😊 to 😊	😊 to 😊😊
Access to essential means'	Option 11 - no change: leaving access issues to the market and to competition rules/essential facilities doctrine	😊 to 😞	😊	😊
	Option 12 - oblige NRA to identify the essential means, to assess access is necessary for postal code database, PO boxes, information on change of address and re-direction services, and ensure that access is transparent and non discriminatory	😊😊	😊	😊
Downstream access	Option 15 - oblige the dominant operator/the operator using a former public network not to refuse downstream access under appropriate conditions	😊	😊	😊
	Option 16 - no change: non discriminatory access taking into account avoided costs	😊😊	😊 to 😊	😊

Options 1 and 2 (universal service scope): although a more focussed universal scope of universal service for consumers and SMEs (a 'consumer/SME safety net' concept) has an intuitive 'better regulation' attractiveness in the longer term, and would result in regulation in submarkets only where it is most obviously still required, because competition is likely to

develop at different rates across the EU, such an approach cannot be proposed now to apply to all EU Member States. Member States already retain the flexibility to apply this approach – subject to the basic minimum service scope as currently defined in the Directive. In the medium term therefore this suggests 'no change' has advantages over the 'safety net', and still allows country specific adaptations.

Options 4 and 5 (universal service standards): there is limited demand for a harmonised lowering of the current standards, or for significantly limiting Member States' discretion to apply quality and service standards in excess of the minimum Community level. However following market opening the obligation for uniform tariffs on competitive postal products could create an incentive for inefficient market entry, which in turn could undermine universal service. On the other hand, consumers value tariff uniformity. A pragmatic compromise would be to restrict Member States' freedom to apply tariff uniformity to single item mail only and certain other items. This would also address one of the principal underlying motivations for stakeholders who are advocating the 'consumer safety net' (Option 2).

Options 8 and 9 (reserved area and financing models): assuming a particular Member State had not already opened its market to competition the maintenance of the reserved area in its current form for an indefinite period of time, would permit on average a monopoly on approximately 85% of letter items in a Member State, and 77% of letter revenues. A further intermediate reduction to a 20g reserved area for all items of correspondence would open up approximately an additional 16% but there is no evidence to suggest that this would now be proportionate, i.e. that more than 60% of items need to be reserved to maintain universal service. The exclusion of all direct mail as an alternative intermediate step would result in an additional 20% of all items of correspondence opened up to competition – i.e. the maximum reserved area would reduce from approximately 85% to 65% of letter volumes³². Such intermediate reductions would still clearly be incompatible with the goal of an Internal Market for postal services. Moreover, the Prospective Study indicates that a combination of assisting measures, where appropriate, means that a blanket reserved area is not required beyond 2009.

A key choice for the proposal is between Option 8 (the maintenance of the reserved area) and Option 9 (abolishing the reserved area but still making available to Member States alternative choices for the financing of the uneconomic elements of universal service).

Options 11 and 12 (access to essential means): the Community could leave the access issues to Member States – with the only framework provided by general competition law – this would not limit Member States' room for manoeuvre (option 11). However at the point of market opening, it appears to be both to the advantage of users, existing and potential entrants to ensure that the potential benefits of competition are not diluted on account of avoidable failures between market players to agree on the terms of access to such means issues. Option 12 would explicitly authorise the National Regulatory Authority to intervene, if required, to pre-empt this – as is already the case in many Member States.

³² In the absence of published regulatory accounts for most Member States volume/revenue splits are derived from the EU-15 'Study on the Weight and Price Limits of the Reserved Area in the Postal Sector' available at http://ec.europa.eu/internal_market/post/doc/studies/1998-ctcon2_en.pdf; a more recent, high level, survey (WIK 2006 op cit p.200) suggests that by 2004/05 there had been a shift in the weight profile of postal items – with postal items under 50g representing between 70% and 76% of the total volume of EU 25 Member States.

Options 15 and 16 (downstream access): Because few (if any) elements of the core postal network are an 'essential facility', strengthened provisions or the mandatory imposition of access at Community level has not been suggested. Equally however, it does not seem appropriate for the EU legislator to restrict the development of access competition.

Decisions on mandatory downstream access could still be taken at Member State level, taking into account relevant economic and competitive factors - access may be judged appropriate for some national markets but not in others. Option 16 (retaining the current Postal Directive provisions) ensures that any downstream access tariffs do still need to 'take account' of avoided costs (which is sufficiently flexible to permit 'Delivery Access Pricing' and other efficient access pricing mechanisms).

7.2. Conclusions and recommended options for the proposal

This section summarises the main conclusions on the key themes of the Impact Assessment, and the resulting choices made for the proposal.

Proposal for full market opening: this has been proposed on the basis of the mandate of the current Postal Directive which requires the Commission to confirm, on the basis of a study/review of the situation, the date of 2009 for full market opening or determine any other "relevant alternative step towards it". The 2009 option has been confirmed on the basis of the results of an external study and the Commission's own findings in its Prospective Study³³. *Adapting the existing Directive to the extent necessary for an open postal market is therefore recommended - high level option D.*

Universal service scope: the main obligations concerning the services that must be provided (e.g. letters and packages) should remain unchanged. Member States enjoy already wide discretion to adapt the universal scope to local conditions and market opening - *option 1 recommended.*

Universal service standards: the main obligations concerning the standards of services that must continue to be provided (e.g. 5 working days collection and delivery of postal items) should remain unchanged. Member States enjoy already some discretion to adapt the standards

³³ The Prospective Study (undertaken in parallel to this Impact Assessment) concluded that market opening is compatible with the maintenance of high quality universal service. Market opening and competition are expected to safeguard universal service, rather than to jeopardise it. The Study concludes additionally that given the availability of additional safeguards to the maintenance of universal service, and other complementary and accompanying measures there are no reasons to delay the transition to full market opening beyond 2009. This is not to suggest that full market opening will not call for a response by other stakeholders: an ever increasing commercial outlook of the universal service providers towards its customers; a renewed focus on increasing the levels of mail in the lowest volume per capita countries; increased restructuring and efficiency to anticipate and meet the challenge of competition coupled with the careful management of job reductions; the organisation by social partners of members in new entrant companies; watchful but proportionate regulation at the Member State level to ensure the universal service is maintained. Interventions that would fall within the potential competence of the EU legislator include:

- a) ensuring the ability of universal service providers to price business mail non-uniformly
- b) ensuring the availability of a range of financing mechanisms that would need to be applied proportionately
- c) providing for the possibility of a non-mandatory negotiated downstream access subject only to non-discriminatory requirements
- d) facilitating measures to ensure consumer protection in a multi-operator environment.

to local conditions. However the proposal should restrict the derogation from the principle of cost-relatedness of prices and permit uniform tariffs only to consumer/single-piece tariff and certain other items as appropriate. This amendment has been introduced as one of several measures to ensure the provision of universal service remains viable following market opening - *option 5 recommended*.

Options for the reserved area and financing of the universal service: as shown above, a delay or lack of full market opening will have negative consequences for the sustainability of postal services, sector reforms, dynamic efficiency and innovation. The abolition of the reserved area influences the financing mechanisms. Therefore, a menu of options for Member States to choose from would be prudent to have, for exceptional use, in order to finance the universal service in the absence of a monopoly. Some of these options were introduced by the current Postal Directive and some exist on the basis of the EC Treaty (state aids, public procurement) and they could be mentioned for the sake of completeness. The available financing methods are recommended as follows: public procurement of services (as an indirect source of public financing), state aids, a sector fee and a universal service compensation fund - *option 9 recommended*.

Access to 'essential means': following the example of some Member States, access to certain elements of infrastructure such as access to post office boxes should where necessary be regulated in a light touch way to ensure market access and protect consumer's interest in a competitive environment. Consumer interests would be also addressed by measures to ensure interoperability between operators - *option 12 recommended*.

Downstream access regulation: no changes seem appropriate to the issue of downstream access regulation - *option 16 therefore recommended*.

Other recommended items for consideration in the proposal:

Designation: greater flexibility/clarity to Member States on how to ensure the provision of the service by removing the mandatory ex ante designation of a universal service provider This would reflect the fact that the market may, in many locations, provide a universal service.

Authorisation and licensing: amendments to the current framework should be considered to reduce unjustified barriers to the operation of new entrants.

Control of the incumbent operator: the provisions intended to allow monitoring of the behaviour of the dominant operator should remain unchanged for the most part. This namely implies:

- (1) that the incumbent operator will need to maintain a detailed separation of internal accounts to allow monitoring of illegal-cross subsidies, unfair prices and state aids, and
- (2) that Member States retain their rights on how to exercise this monitoring (through ex-ante regulation/control or ex post competition law).

Such an approach would not therefore attempt detailed harmonised ex-ante regulation recommended in other network industries (e.g. telecommunications).

Greater clarity of powers and independence of National Regulatory Authorities: due to their expected importance in the transition to a competitive environment and in line with other liberalised industries, certain amendments may be necessary to improve clarity in the powers of NRAs, their situation of independence from government interests in the publicly owned operator and their information gathering powers.

8. MONITORING AND EVALUATION

In the light of the proposal to move to full market opening the collection of accurate sector information will be of vital importance to national regulators to ensure the effective discharge of their responsibilities, and to the Commission in its ability to monitor conformance with the standards of the Directive, and market developments.

In recent years the Commission has been obliged to undertake ad-hoc data collection exercises from stakeholders. Moreover, several national regulators have also indicated to the Commission that they lack the legal basis to obtain the necessary market data to discharge their responsibilities under the current Directive. This is also a problem highlighted in recent studies³⁴. This will be exacerbated in the future when the sector is opened to competition, since there will be an increase in operators in a marketplace where the boundaries between postal and non-postal operators are already blurred.

The opportunity has been taken therefore to insert a legal basis for the collection of statistics from enterprises within the postal sector, and to establish provision of basic market information on a more systematic basis³⁵.

The Commission has undertaken implementation ('Application') reports on the Postal Directive in 2002, 2005 and 2006. It is proposed that these reports will continue with a regular frequency.

³⁴ 'Main Developments in the Postal Sector 2004-2006' *op.cit* p.120 *ff*; WIK-Consult, 'Regulatory Model of European Postal Services' (2005), p.126 *ff*

³⁵ An assessment of the potential Administrative Burden is at Annex 2

Annex 1: Details on the public online consultation³⁶

The public online consultation was in two parts. Part 1, using the ‘Interactive Policy Making’ internet based questionnaire tool received 2295 replies, of which over 90% were from individual citizens. Part 2 – a discussion document based around some key themes was again open to the public, but given its more technical nature most of the 101 responses received were from industry stakeholders (operators, social partners, and business and consumer associations).

In general terms, what united contributors was the need to preserve good quality, affordable universal services throughout the EU for both businesses and individuals, and – given the pressures of new technologies and changing users' needs - to ensure the sector remained sufficiently dynamic to contribute to growth and jobs. Yet there remained legitimate clear differences of opinion in how best this might be achieved.

Of the wide range of areas consulted on, three areas are of particular and obvious relevance:

- the timetable for full market opening;
- Universal Service scope and definition at EU level, with any necessary flanking financing measures;
- access to postal infrastructure.

Regarding the target date for market opening

Most respondents gave a clear indication of where they stood with respect to the liberalisation timetable set out in the current Postal Directive.

- Social Partners ranged from organisations that were cautious – building a case for a strong universal service provider and extensive safeguards to ensure the continuation of Universal Service Providers through to organisations that stated they were implacably opposed to further liberalisation steps in part because of the potential impact competition in the sector might have on their members' jobs, and the perceived risk of lower working conditions offered by new entrants.
- Business associations were generally supportive of further market opening, but some were ambivalent about whether business orientated postal services should be deregulated completely - before effective competition and choice had developed more extensively.
- Consumer associations were not generally opposed to further market opening, provided that there were adequate user protection measures – in the form of quality, price, and complaint protection measures.
- Current national postal operators were split between those which felt reasonably advanced in their preparations for liberalisation or whose markets were already liberalised arguing for maintenance of the current timetable. Others indicated they

³⁶ The full results are published at: http://ec.europa.eu/internal_market/post/consultations_en.htm

wanted more time to prepare for competition, with a minority suggesting that a continued monopoly area might in their view be unavoidable.

Regarding the scope and definition of universal service – and the level of intervention from the EU

(a) Scope and standards of universal service

Regarding what *scope* of products and associated quality standards should be guaranteed at EU level a clear majority favoured no further EU intervention – but for somewhat opposing reasons. Some appeared concerned that further clarification would risk triggering an enforced ‘level playing field’ but potentially a reduction of national standards – or even a ‘race to the bottom’. Others, recognising the existing Directive’s flexibility regarding which exact services were in and out of the universal service (and therefore to which any EU regulations applied) preferred to keep the status quo, rather than risk a more concrete EU level definition that could result in their view in an over specified definition potentially resulting in unnecessary market distortion.

(b) Universal service safeguards

Many responses stressed the benefits of uniform tariffs (at least for domestic consumers), but the consultation responses also underline the likelihood of domestic competition triggering a closer alignment of prices to costs – although the levels of competition and hence force of the driver differ between Member States. One safeguard frequently highlighted results from the current incumbent postal operator having sufficient commercial flexibility to do this, and thereby to defend against market entry that is only made possible because the incumbent is forced by a Member State to charge a uniform tariff for competitive products.

The second type of safeguards relate to direct or indirect funding of any uneconomic cost of providing universal service – through for example state aid, compensation funds, fees or comparable universal service obligations on new market entrants. In the absence of a reserved area, responses suggested that a range of options might be necessary. However, there was a significant number who believed funding was a non-issue, given that in their view a universal service obligation created a net benefit rather than a cost for an operator, and thus there was nothing that needed significant special funding. Such views however were generally restricted to specific Member States.

(c) Regarding access

Few respondents advocated a mandatory imposed downstream network access regime based on regulated prices, with most preferring a non-mandatory approach. Some cited legal and economic arguments indicating that the downstream network was not an essential facility (which in their view failed therefore to meet the relevant conditions for imposed access instigated at an EU level). Nevertheless it was also suggested that the possibility to have both access and competing network competition allowed consumer needs and market forces to determine appropriate business models over the short and longer term.

Annex 2: Assessment of administrative burden for the collection of sector statistics

The public consultation, and studies conducted for the Commission³⁷ highlighted the inconsistency of information gathering powers of National Regulatory Authorities (NRAs) as a weakness in the current regulatory framework. The 2006 proposal includes, for the first time, an explicit legal basis for the collection of postal statistics to enable Member States (or NRAs) to verify compliance with the Directive, and for other clearly defined statistical purposes (e.g. monitoring sector employment and the development of competition).

The proposed new text for Article 22 is as follows:

1. Member States shall ensure that undertakings providing postal services provide all the information, including financial information, necessary:

(a) for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive,

(b) for clearly defined statistical purposes.

2. Undertakings shall provide such information promptly on request and within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks. The national regulatory authority shall give the reasons justifying its request for information.

Meanwhile however, most – but not all - NRAs have a legal basis for the collection of statistics at national level – as the following Table 6 shows.

Table 6 : Enforcement powers of National Regulatory Authorities

MS	Information gathering			Basic enforcement			Additional powers		
	Require data from USP	Require acct'g system	Require new data studies	Cancel unlawful rates	Levy fines	Seek judicial order	Set new rates for USP	Require downstream access	Require data from non-USPs
AT	X	X							
BE	X	X			X	X			X
DK	X						X		X
GR		X			X	X		X	
LT	X	X			X	X			X
LU		X				X			X
LV	X		X			X	X		X

³⁷ See for example WIK-Consult, 'Main Developments' 2002-2004' and '2004-2006'

MS	Information gathering			Basic enforcement			Additional powers		
	Require data from USP	Require acct'g system	Require new data studies	Cancel unlawful rates	Levy fines	Seek judicial order	Set new rates for USP	Require downstream access	Require data from non-USPs
CZ	X	X	X	X	X		X		
EE	X	X	X					X	X
ES	X	X	X	X					X
FI	X	X	X		X			X	
FR	X	X	X	X	X			X	X
HU	X	X	X		X	X		X	X
IE	X	X	X	X		X	X		
IT	X	X	X	X	X		X		X
NL	X	X	X		X	X			
PL	X	X	X		X	X			X
PT	X	X	X	X	X			X	X
SE	X	X	X	X		X			X
SI	X	X	X		X		X	X	X
CY	X	X	X	X	X	X			X
DE	X	X	X	X	X	X	X	X	X
MT	X	X	X	X	X	X	X	X	X
SK	X	X	X	X	X	X	X		X
UK	X	X	X	X	X	X	X	X	X

Source WIK-Consult 'Main Developments in the Postal Sector' (2006) p120

Methodology

Put simply, a comparison has been made between an estimate of the future additional data collection that may be triggered by the proposed Directive, and the data collection currently taking place.

To provide an assessment of the administrative burden, the key analytical steps were:

- 1) identify the nature and purposes of the postal data that will be requested

- 2) identify to which stakeholders /enterprises the data request would be sent to
- 3) identify whether comparable information is already being supplied
- 4) where this is not already being supplied, to identify the type and number of enterprises where would be an additional burden
- 5) for these enterprises, to identify the types of actions required to comply with the information request, the cost of those actions, and hence the overall burden

Current burden

In assessing the current burden a number of NRAs were surveyed and asked to list the activities that they are engaged in³⁸. Based on the survey of NRAs it was determined that NRA's generally are engaged in data collection activities with the following main purposes:

Purpose 1. Ensure conformance with national universal service obligations. There is no common way of ensuring the conformance with the universal service obligation among NRA's but the most thorough approach seems to be using consumer satisfaction surveys. The Commission also carries out consumer satisfaction surveys (Eurobarometer) with a view to comparing the satisfaction with different Services of General Economical Interest and also to compare situations in Member States.

Purpose 2. Enable undertaking of tasks under NRAs responsibility: Control of compliance with specific requirements (e.g. account separation) and approvals (e.g. price modifications) of universal service NRAs have largely the same responsibilities with regard to controls and approvals and they have therefore also the same data needs. In reality, however, NRAs often have difficulties in collecting the data needed. It is therefore not uncommon that NRAs spend a considerable time in collecting data for this purpose.

Purpose 3. Monitoring of market trends. Monitoring of market trends is not systematically done in all Member States but an EU Postal Collection was launched in 2005 and several Member States took the opportunity to combine their national collections with the EU collection with a view to having one common collection and as such limit the burden on postal operators. All Member States participated in this collection – although the response rate from private postal operators was varying. Member States already having a national legal basis for the collection of postal statistics obtained answers from all postal operators without having to engage in sending reminders and follow-up closely with respondents.

Future framework – and comparison with current burden

The new legal framework for the collection of data as indicated in the proposal has two purposes:

- for NRA's to ensure conformity with the provision of the Directive, or decisions made in accordance with it,
- for clearly defined statistical purposes.

³⁸ Evaluation uses indications received from DE/FR/DK

Comparing future data collection activities with current activities will enable an assessment of increased burden resulting from the proposed revision of the legislative framework. Current data collection activities of NRA's overlap to a large extent with the proposed activities. Fields in the tables marked with an 'X' indicate current activities and shaded fields indicate future activities. Hence, fields that are at the same time marked with a 'X' and are shaded represent no new information request, hence no additional burden, whereas shaded fields that are not marked with a 'X' represent a potentially new information request, hence the potential for an increased burden.

Table 7 compares current and future data collection activities to enable national regulatory authorities to ensure conformity with the provisions of the Directive, or decisions made in accordance with the Directive (Article 22 a) that corresponds to Purpose 1 ensuring universal service obligations and Purpose 2 e.g. verifying the account separation and approval of price modifications. Table 8 assesses data collection activities required for clearly defined statistical purposes (Article 22 b) that correspond to Purpose 3 e.g. market monitoring. The types of data that would be collected in section B are comparable to the EU data collection exercise that is already underway (on a voluntary basis) to include: Access, Revenue, Volumes, Quality and Prices.

Table 7 : Comparison of current / future postal data collection activities under the proposed Article 22 A

<i>Data for purposes of verifying:</i>	USP(s)	Non-USPs	Users
Universal Service Provision	X		
Cost accounting	X		
Price control	X		
Financing mechanisms	X		
Other USO related issues (cost of USO etc.)	X		
Satisfaction			X

Note: fields in the tables marked with an 'X' indicate current activity and shaded fields indicate future activity

Table 8 : Comparison of current / future postal data collection activities under the proposed Article 22 B

<i>Data e.g. for monitoring trends</i>	NRA's	USP(s)	Non-USP(s)
Employment		X	
Access		X	
Revenue		X	
Volumes		X	
Quality	X		
Prices	X	X	

Note: fields in the tables marked with an 'X' indicate current activity and shaded fields indicate future activity

There is a clear overlap between current and likely future postal data collection activities. Only non-universal service providers (shown above in Table 8) will be potentially faced with a change in activities due to the obligation to report data - in practical terms the new strengthened legal basis implies a quantification of the potential burden only to non-universal service providers. Often, non-universal service providers are asked to provide the data elements described in Table 8 but frequently they decide not to respond because of, *inter alia*, the lack of an explicit legal basis.

It has been assumed (as is practice in several Member States already) that NRAs will conduct data collection excluding 'micro-businesses', i.e. those SMEs with less than 10 employees. According to 'Eurostat' which is the Commission service responsible for the aggregation and analysis of sector structural business statistics, there are 4.187 postal and courier companies (universal and non-universal service providers) with more than 10 employees in the EU25. Given that there is currently one universal service provider per EU Member State, the number of non-universal service providers is estimated to 4.162.

A weighted average wage of 32.82 EUR /hour is estimated using national fully allocated hourly wages for financial intermediaries using the latest (2004) data from Eurostat. The rate represents an average wage for the whole financial intermediation sector. For provision of these types of data requests, envisaged under the current proposal, it is expected that a junior employee will undertake most of the activities. There is thus a risk of overestimation in hourly tariffs, for some Member States, which in some instances the hourly wage of a junior employee could be half that of the national average. The average wage rates and number of potentially affected enterprises is shown on Table 9.

Given the nature of the additional information required from non-universal service providers it is assumed this is readily at hand in the companies affected. It has therefore been estimated that non-universal service providers would need to allocate a financially qualified employee (e.g. a junior accountant) for one working day (7 hours) per year in provision of the requested information.

This 7 hour estimate comprises the following main types of action:

- (3) Familiarising with the information obligation (1.0 hours)
- (4) Retrieving information from existing data (2.5 hours)
- (5) Adjusting existing data (1.5 hours)
- (6) Filling forms (1.0 hours)
- (7) Holding internal meeting to verify submission (1.0 hours)
- (8) Submitting information and filing (0.5 hours)

Summary results and sensitivities

The EU25 total net administrative cost amounts to approximately 956,000 EUR. Detailed activity breakdowns are shown in Table 10.

This estimate may include some 'double count' of non-universal service providers who are already complying voluntarily with some data requests from NRAs.

Putting this burden in the context of a sector turnover of 97bn EUR, it is clear that the additional administrative burden for the collection of postal statistics does not appear significant overall. However at a company level the estimated cost for the businesses affected (i.e. the non-universal service providers) would range between 45 EUR and 350 EUR per affected business – the difference driven by variations in the salary levels across the EU 25.

Table 9: Financial intermediary hourly wage rates, and number of postal sector enterprises

Member State	EUR Tariff/hour	Number of postal sector entities with <10 employees
BE	46	290
CZ	11	16
DK	44	49
DE	37	1.360
EE	9	2
GR	17	106
ES	15	804
FR	43	170
IE	30	39
IT	38	108
CY	17	4
LV	7	8
LT	7	7
LU	50	9
HU	13	171
MT	15	4
NL	43	140
AT	34	33
PL	8	15
PT	21	12
SI	8	5
SK	11	1
FI	35	45
SE	35	31
UK	41	759
Average tariff/hour	25,34	
Average weighted tariff/hour	32,82	
Total EU postal sector enterprises		4.187
Total excluding USPs		4.162

Table 10: Summary calculation of net administrative cost - activity breakdown

CLWP reference 2006/MARKT/006 - Proposal for the full accomplishment of the internal market for postal services - collection of statistics under article 22B						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost (€)	Regulatory origin (%)			
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat	Reg
1	§22		Other data provision -	Familiarisation with obligation	Non-USPs	32,82		1,00		32,8	1	4.162	4.162	136.577		100%		
2	§22		Other data provision -	Retrieve data	Non-USPs	32,82		2,50		82,0	1	4.162	4.162	341.444		100%		
3	§22		Other data provision -	Adjust data	Non-USPs	32,82		1,50		49,2	1	4.162	4.162	204.866		100%		
4	§22		Other data provision -	Filling form	Non-USPs	32,82		1,00		32,8	1	4.162	4.162	136.577		100%		
5	§22		Other data provision -	Internal check / meeting	Non-USPs	32,82		0,50		16,4	1	4.162	4.162	68.289		100%		
5	§22		Other data provision -	Submitting /filing	Non-USPs	32,82		0,50		16,4	1	4.162	4.162	68.289		100%		

Annex 3 Access to services

A vast majority of citizens considers postal services as important in their daily lives³⁹, especially those who do not have access to a computer and/or do not have basic computer skills, for who electronic communications can not substitute post⁴⁰. This is especially true in some Member States and may be even more relevant for the countries in the next accession waves.

One concern regarding market opening is that access to postal services and related services will become more difficult for consumers, for sending and receiving parcels and letters, for purchasing of stamps and related postal services as well as for postal banking products. Reduced accessibility to post offices and postal outlets⁴¹ potentially translates into additional travelling costs for consumers. In addition, the closure of post offices may reduce access to those financial services that are provided for by post offices. Although alternatives exist (e.g. mobile post offices) access is a particular concern for rural areas.

The removal of the monopoly option may generate budgetary constraints in some Member States leading them to reduce the density or the structure/presentation of the post offices/post points network. This may affect or may be perceived to affect negatively consumers' accessibility to the services provided by post offices, whether postal or other services such as financial services, especially in rural areas where there are only few bank branches in bigger villages and for those consumers who do not have a bank account but rely on post offices and postal outlets to provide them with cheap alternative financial services.

The number of traditional post offices in the EU has decreased by 0.9% from 2000 to 2004. The number of postal agencies initially increased during this period but then started decreasing as well. As a result, the total number of postal outlets decreased in the EU from 2000-2004. This general trend however has been different between countries. In particular EU15 Member States saw a net reduction of postal outlets (though with the exception of SE and IT, consumer satisfaction with access to postal services is improving).

From a consumer perspective, since 2002 perceptions on ease of access have changed little such that today approximately 7-8% of surveyed citizens perceive they have difficulties with access to postal services⁴². This should be seen in context with other services of general economic interest for which universal service obligations are commonplace⁴³. The access ratio is however very different among Member States: the percentage of those surveyed who find it difficult or impossible sending mail varies from 1% in Ireland to 23% in Sweden. In Sweden where full market opening has taken place in 1993, the consumers surveyed in a Commission focus group expressed dissatisfaction with the replacement of post offices by alternative post points that do not offer all-inclusive postal services. This contrasts sharply

³⁹ Special Eurobarometer 65, Consumer Opinions on Services of General Interest, 2006 (to be published)

⁴⁰ Commission Staff Working Document, Annex to the Communication European Electronic Communications Regulation and Markets 2005(11th Report), Volume 1, p33; SEC(2006)193; Eurobarometer survey on Services of General Interest (2006)

⁴¹ Postal outlets include post offices operated by a Universal Service Provider and postal agencies operated by third parties (e.g. supermarkets, gas stations, or stationery shops).

⁴² Source: Eurobarometer survey 2002 (only EU15), 2003 (only NMS), 2004, 2006 and Focus Groups 2006.

⁴³ Weighted EU averages - difficult access to electricity (4%) water (4%) fixed telephone (5%)

with Finland, where consumers do not complain about the replacement of post offices by alternative service points.

In 2001 Posten AB (the national operator in Sweden) restructured its service network for mail and packages services, mainly due to the fall in demand for cashier/banking services. Consumer mail and package business is now largely handled via contractors, at outlets such as local supermarkets and petrol stations, but some service centres provide limited services and sell only mail products. Postal agencies represent approximately 80% and traditional post offices the remaining 20% of total postal outlets. Posten's directly owned service centres provide full postal services primarily to SMEs and larger, businesses. Although it is not possible to compare precisely the number of 'old' post offices in Sweden before the reorganisation (which included banking /cashier services) and the current number because they do not provide the same sort of services, it can be observed that the total number of service outlets has increased since market opening, and the opening hours for customers have generally been extended. However, these new service outlets do not generally offer the full range of services that the traditional post offices did.

Consumer satisfaction indicators present a mixed picture. In recent surveys, satisfaction with opening hours and with waiting times were higher in 2006 than in 2001, whereas the satisfaction with the time to reach an access point and with service of postal staff is increasing but still not at the level of 2001. Compared to traditional post offices consumers benefit from longer opening hours. Given the number of postal outlets per head of population in Finland is comparable to Sweden, the comparatively higher satisfaction may be driven by other factors (such as the same core service level offered at all 'post points' and the clarity of information to consumers about the restructuring programme and how services would be provided to consumers in the future).

According to the Swedish NRA, in 1990 1594 households did not receive a daily postal delivery due to their location; by 2002 this figure had dropped to 1187 households in exceptionally remote parts of the country, mountainous regions or in the archipelago. Exceptionally, derogations from the universal service standard are permitted under the current Postal Directive.

In Sweden today there are approximately 30,000 post boxes, of which 17,000 are rural postman boxes (the postman collects the post) throughout Sweden. This would suggest a figure of approximately 33 post boxes per 10,000 inhabitants (against an EU-15 average of 18)⁴⁴.

Some have claimed the Swedish example shows that with high volumes and efficient production it is possible to combine universal service as defined at EU level with market opening. No specific financing mechanism was needed, next day transit time is a reality, quality is around 95%, the collective agreement for all postal workers avoided significant wage competition between operators, and, seen in context, prices for single piece letters have increased but remained affordable.

However it is also claimed that the changes in Sweden following liberalisation have negatively affected consumer satisfaction with the quality of universal service, in particular

⁴⁴ For a fuller discussion on accessibility see 'A broad economic analysis of the effects of liberalising the postal market' Documentation and considerations for the Swedish Postal and Cashier Service Commission (2006) Swedish Institute for Growth Policy Studies

access and cost, given that Swedish consumers are more dissatisfied with access than consumers in the rest of the EU (23% compared to 8% EU average).

Of course Member States have different characteristics to Sweden, and this example is not to suggest that the Swedish experience can be simply extrapolated. Rather it aims to provide information on an often quoted example of the impacts of market opening, where competition has been intensive and prolonged.

Annex 4: Economic impacts of market opening in the postal sector

The results of a recent study carried out for the Commission show that there is evidence that performance improvements in services of general economic interest (including the postal sector) can be attributed to opening markets to competition. In this exercise, the econometric techniques were used to identify and quantify the origin of those effects and impacts due to changes in the regulatory environment between 1990 and 2003⁴⁵.

For the postal sector, it included measures aiming at a gradual reduction of the reserved area introduced by the first Postal Directive in 1997. It imposed a maximum limit for reserved areas of 350g or five times the basic tariff. It also created a framework for further reductions to reserved areas, resulting in the 2002/39/EC Directive that laid down provisions for continued market opening. Market opening first occurred around 1993-1994 when Sweden, Finland and the Netherlands committed themselves to reforms. The implementation of Postal Directive (97/67/EC) led to a second period of market opening from 1998 to 2000.

The econometric analysis concluded that in the postal sector productivity improvements of 28% have been observed (measured as number of letters per employee)⁴⁶. These effects have been calculated as changes compared to the situation without market opening in the EU economy. In this instance therefore, a 28% productivity improvement means that productivity would have been 28% lower if the market opening had not taken place.

Market opening also drives prices more in line with costs, and experience suggests that some price increases may need to occur to ensure consumer mail becomes more cost reflective⁴⁷. This, however, is already occurring in most EU Member States, where public tariffs have increased in nominal terms in 20 countries and in inflation adjusted terms in 15 countries between 2000 and 2005⁴⁸.

A more detailed examination of an open postal market and its effects on prices can be done using the example of Sweden which abolished its reserved area in 1993. Various studies⁴⁹ have indicated that the overall effect of liberalisation of postal services has been positive overall on many metrics. The productivity of Sweden Post rose by 10-20% after the introduction of competition while the average prices have decreased. What has also changed was the price structure: the price of single letters (for individual users) increased but the bulk

⁴⁵ The study done by Copenhagen Economics, Final Report: "Market Opening in the Network Industries", September 2005, covered the old (EU15) Member States, seven network sectors (electricity, natural gas, telecommunications, rail transport, urban transport, air transport, and postal services), over the period from 1990 to 2003. It can be downloaded from the following website:

http://europa.eu.int/comm/internal_market/en/update/economicreform/index.htm#services

⁴⁶ With regard to the impact on prices, the results of the econometric simulation were inconclusive due to poor quality data.

⁴⁷ Ecorys (2005): Development of Competition in the Postal Sector

⁴⁸ WIK (2006): Main development in the postal sector (2004-2006)

⁴⁹ (1) 'Liberalisation and universal service in the postal sector', P. Andersson, Linköping University, in 'Reforming network industries: experiences in Europe and Belgium', highlights of the Conference 'The Lisbon Strategy: a motor for market reforms of the network industries' held on 1-2 June 2005; (2) 'Postmarknad i förändring, Slutbetänkande från Post- och kassaservicetredningen' (2003) States Offentliga Utredningar, available at [Postmarknad i förändring](http://www.regeringen.se/content/1/c6/03/75/87/7fcf6fd6.pdf) <http://www.regeringen.se/content/1/c6/03/75/87/7fcf6fd6.pdf>; (3) 'The impact of Competitive Entry on the Swedish Postal Market (1990-2004), Cohen, R. et al, draft presented at the CRRRI Conference on Postal and Delivery Economics, June 2 2006.

mail prices saw decreases⁵⁰. Other sources indicate that the nominal prices for sending a 50g letter in the early 2000s was at least 30% lower than in the early 1990s. Taking into account inflation, this represents a drop of 50% in price. Regarding the sub-market *single piece letters* (used by individuals and non-bulk business users) the price for overnight delivery increased over the period by 50% (excluding VAT) and by 90% (including VAT) which might seem significant⁵¹. However, today in Sweden after these increases, in the 0-20g fastest standard category of letter, single piece users pay a nominal price of just under EUR 0.60 (c. EUR 0.50 when adjusted for purchasing parity). This still appears to be affordable, and studies suggest that overall household expenditure on postal services remains exceptionally low compared to other services of general economic interest (an EU average of 0.2%).

One of the recent studies⁵² compared the price of consumer and bulk mail across two comparable countries: in Sweden (liberalised) and Norway (which retains a reserved area). In 2002 a basic letter (single piece stamped for items under 20g, expressed in purchasing parity terms) appears to have cost a consumer noticeably more in Norway than in Sweden (4.92 SEK vs 3.60SEK).

Sweden Post Rates Compared with Norway Post Rates (2002)
Rates in SEK per 20 Gram Items, Excluding Value Added Tax (VAT)

Number of Pieces	Single Piece Stamped		List Price Bulk		Key Customer Bulk Price	
	Sweden Post	Norway Post	Sweden Post	Norway Post	Sweden Post	Norway Post
5000-10000	3.60	4.92	2.26	4.05	1.66	4.05
10001-25000	3.60	4.92	2.23	3.98	1.64	3.98
25001-50000	3.60	4.92	2.21	3.92	1.62	3.92
50001-75000	3.60		2.18		1.60	
50000-100000		4.92		3.80		3.80
75001 & Over	3.60		2.16		1.58	
100000 & Over		4.92		3.73		3.73

Purchasing Power Parity (PPP), OECD 2006 : 1 Norwegian Krone (NOK) = 1.22 Swedish Krona (SEK)

Consumers however also pay indirectly for mail– by purchasing services from businesses who send statements and bills, and more indirectly through their existing or potential economic relationship with enterprises that send advertising and promotional direct mail. Such mailings are generally 'bulk mailings' which in Sweden constitute approximately 70% of the total mail volume. Here the price differences between Norway and Sweden are very significant, in particular for the key customers. In Norway, the discounts offered to bulk mailers against the list price to the mailers are rather modest.

This example does clearly suggest consumers in Sweden not only have a lower price for the mail that they send, but they are more likely to be charged a lower price indirectly for the mail that they receive Geographic and service level differences between Norway and Sweden could not account for such a wide disparity between prices. The hypothesis that competition has brought about significantly lower prices in Sweden than would have occurred without it, though not proven by this example, is reasonably secure.

⁵⁰ 'Liberalisation and universal service in the postal sector', P. Andersson, op.cit.

⁵¹ 'Postmarknad i förändring, Slutbetänkande från Post- och kassaservicetredningen' op.cit.

⁵² 'The impact of Competitive Entry on the Swedish Postal Market, Cohen, R op cit

To summarise, market opening is expected to bring substantial productivity improvements and price reductions for mail sent by business to consumers (e.g. bank statements, bills, direct marketing) and other businesses, which may be expected to be, at least in part, passed on to consumers and small companies. Other benefits induced by market opening, through innovative services and business models are also expected to benefit consumers and small companies.