



Report of CERP Working Group Policy Issues: Project team - National Regulatory Authorities Phase Four Report

Introduction

1. The terms of reference for the establishment of the project team on National Regulatory Authorities (NRA) were confirmed at the CERP Plenary in December 2005 (Turkey). The project team was asked to look at a number of common themes on the functioning of NRAs.
2. The Universal Service project team has agreed that the NRA project team will discuss access to common infrastructure. Co-ordination of the teams' work will be secured by participation in both project team meetings by the respective Chairs where relevant.
3. Whilst the issues discussed in this report are directly relevant to Member States currently in the process of transposing Directive 2008/6/EC into national law, they do not constitute formal or official advice and any recommendations or conclusions are non-binding.
4. There have been three previous phases of the project, which has met in the past to discuss enforcement, licensing and other competition issues. The project team met in London for a fourth time on 26 February 2009. The aim was to build on the phase three report with respect to licensing, and to consider how members were approaching the issues relating to access to common infrastructure, as defined by Article 11a of Directive 2008/6/EC. A draft report was presented to the CERP Plenary in Luxembourg in May, with a final report delivered to the Monaco Plenary in November. The outcome of the discussion follows.

Phase Four: Licensing and Access to Common Infrastructure

Summary

5. Whilst the phase three report identified and compared different models in which rights and obligations are placed on the USP, this report focuses on licensing of alternative operators. It is noted that there is a range of licensing regimes which vary in terms of the criteria that need to be fulfilled in order to issue a license.
6. Some member states thought their licensing arrangements were 'heavy touch' whilst one complained that theirs was so liberal it made enforcement difficult. Some Member States presented data which showed how significantly the number of operators in the postal market had increased following a

relaxation of the licensing regime. All member states agreed that onerous licensing regimes could act as a barrier to the development of effective competition.

7. The countries that have reformed their licensing regimes (typically Member States that have had licensing regimes for longer; that have lifted various conditions previously placed on licensees) have seen a striking increase in the number of operators in their markets.
8. The group noted that Article 9 of Directive 2008/6/EC makes no mention of 'conveyance'. Some members agreed that this had led to interpretation issues, with one member state saying it was unclear in their country whether a particular service was a mail conveyance or transportation service. Another noted that transportation must be conveyance, since by its nature it is taking something from one place to another.
9. Article 9 also states that "for services which fall outside the scope of the universal service, Member States may introduce general authorisations to the extent necessary to guarantee compliance with the essential requirements".
10. Directive 2008/6/EC places a stronger obligation on Member States to ensure access to common infrastructure. Recital 34 of Directive 2008/6/EC states that "in an environment where several postal undertakings provide services within the universal service area, it is appropriate to require all Member States to assess whether some elements of the postal infrastructure or certain services generally provided by universal service providers should be made accessible to other operators providing similar services, in order to promote effective competition, and/or protect all users by ensuring the overall quality of the postal service."
11. Article 11a of Directive 2008/6/EC states that "members states shall ensure that transparent, non-discriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, such as postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service and return to sender service".
12. There is considerable variance amongst Member States in terms of how much NRAs are ensuring access to common infrastructure. Some NRAs simply do not have adequate powers – their governments are in the process of transposing Directive 2008/6/EC into law, and nothing has existed in legislation previously. Other NRAs are more advanced, and are having to think about innovative ways to ensure access to redirections data, postcodes, post boxes etc.
13. National characteristics are also an important element for NRAs to consider and there is variance in the types of issues affecting Member States – for example access to private apartment blocks is a big issue for Austria and France but not in the UK, whilst access to postcode data is not applicable to Ireland because there is no postcode system.
14. Implementation of Article 11a is likely to remove or reduce some of the natural barriers to entry that exist in postal networks. Ensuring access to

elements of the incumbent's infrastructure, such as information on change of address, can enable interoperability and improve the service that is provided to customers. Having a central point for customers to change their address details is one example of this.

15. As member states transpose Directive 2008/6/EC, NRAs should be given sufficient authority and independence from the Ministry. As this happens, NRAs should also be given the resources they need in order to fully implement the Directive. For example, effective policy work on the issues identified in this report requires time, research and manpower. The European Commission recognise that not all policy should come from the relevant Ministries, and that NRAs have a responsibility to foster the development of effective competition. If NRAs are not able to meet this responsibility, then future governments will ask why there still exist barriers to entry and why competition has failed.

Licensing

16. Austria

Austria has a notification system for alternative operators, with 12 notifications at present. There is no separate system for USO and non-USO but notifications for universal services must be clearly identified as such. Providers of postal services must establish quality indications and quality standards in the terms and conditions for services of the universal services sector. There is no fee. The power to regulate licensees is located in the postal act, which defines the obligations placed on licensed operators. The Austrian government has drafted a new Postal Act¹ in preparation for full market opening, and some politicians were lobbying for a licensing regime, and some even for an auctioning of licenses. The NRA is opposed to the implementation of a licensing regime because they think it will place an unnecessary administrative burden on operators – the system works well as it is, but the current draft of the new postal act contains a licence regime. The Postal Act is expected to coming into force at December but this has not been confirmed.

17. Belgium

The licensing regime was introduced in 2006. A licence is required for services inside USO area and a declaration is needed to provide services outside USO area. There are 10 operators with a license inside the USO area (up to 10kg nationally or 20kg internationally), and over 219 operating outside of the area (express and courier services) using a declaration². Operators applying for an authorisation need to prove the added value of their services based on a Communication of BIPT (the NRA). The transport sector is not included.

Whenever the law is open to interpretation (e.g. conveyance vs. transportation services, definition of express), the NRA provides more clarity by communicating its vision on the application of the law.

¹ Bill dated 27/7/2009

² September 2009

The most important obligation resulting from licensing and authorisations is the respect for essential requirements and a commitment to contribute to a USO compensation fund, however the fund has never been activated. Today the obligations imposed are well perceived and do not cause any market disruption. The NRA views the financial contribution that licensees have to make to the 'Ombudsdienst' as more of an issue, and they are trying to reduce the amount that operators have to pay.

It takes, on average, two and a half months to issue a license. In future the NRA wants to limit the licensing regime to letter post items only (rather than moving to a registration scheme) and to simplify the process as much as possible. BIPT considers the licensing system as an efficient tool to monitor the market and to collect information from market players.

18. Germany

The overriding issue for the German NRA at present is the sector specific minimum wage. This is the biggest obstacle to the development of effective competition, and the latest ruling by the higher administrative court of Berlin-Brandenburg considers the ordinance on minimum wages in place as unlawful. The responsible Ministry for Labour and Social Affairs has appealed against this ruling to the Federal Administrative court. The decision is still pending. However, the above mentioned Ministry has already drafted a new law which enables the introduction of a minimum wage ordinance also for entities which already concluded collective agreements prior to that ordinance. But there are companies and associations opposing this legislation but it will take some time before it can be challenged in the constitutional court. The issue dominates attempts to liberalise the German postal market.

Around 2,500 licences have been issued since the Postal Act entered into force in 1998, but only 850 of these are active on the market³. The NRA is trying to keep the licensing system flexible and not place too many requirements on operators and the system seems stable. Applicants have to supply a range of documents, including a criminal records check. There are no plans at present to reduce the requirements because the system is still required by the Postal Act. However, there could be a process and possible reduction regarding the requirements similar to German telecoms regulation, which has changed from a license regime to a notification system.

Twenty five full time employees work on licensing, only six based in the head office in Bonn. The other 19 are based around the country and check on the operators on a regular basis. There may be a need to review complaints handling procedures in light of Directive 2008/6/EC.

19. Greece

There are three types of licences: the management contract of the USP, individual licences for companies offering services which are a subset of the USP services (outside of reserved area), and general authorisations for companies offering mainly courier services.

³ August 2009

According to the general authorisation regime, prior to registration with the NRA in the Postal Companies Register, operators should submit a declaration to the NRA with information regarding their infrastructure (i.e. sorting centres, number of vehicles, list of agents co-operating with them etc.), description and price of services provided and a chart of obligations towards consumers. Also they should set up an electronic end-to-end track and trace system. The upper weight limit of Courier Parcel Services which are subject to general authorisations is 35kg.

For transport and distribution of unaddressed items, a license is required only when the items bear certain characteristics of letter-post items, such as an envelope-cover or a similar packing. There is an annual fee which is a proportion (<0.4%) of their annual turnover (minimum €300). However environmental-friendly technologies are encouraged by regulations regarding both individual licenses and general authorisations for providing postal services. As it is stated:

“Any sums which have been directed to anti-polluting technologies’ investments and to environmental friendly means, following an analytical request of the postal services enterprise, they can be excluded from the total turnover which is subject to EETT’s annual Individual Licenses/General Authorizations fee, after EETT’s decision..”

Companies wishing to operate in the US area with an individual license should submit a three year business plan and guarantee that they can offer services with a minimum standard. Finally, they should keep separate accounts for these types of services. There is an annual fee which is a proportion (<0.5%) of their annual turnover (minimum €3.000). The USP operates under a Management Contract, signed between the State and the Hellenic Post S.A. (ELTA) and is subject to offer services of minimum standard described in the relevant Ministerial Decree, with uniform and cost-oriented prices. The number of licensed companies is⁴:

Universal Service Provider (EL.TA. – Hellenic Post S.A.):	1
Companies providing postal service under individual license:	5
Companies providing postal service general authorisation:	409

20. Hungary

The USP is appointed by the Post Act. There are two other types of authorisation: general authorisation and individual licence. A general authorisation requires registration with the NRA and is used for non-reserved services which are outside the scope of USO. An individual licence is granted by the NRA and it is used for non-reserved services which are within the scope of USO.

The NRA feels the rules placed on those seeking a license or authorisation are very strict and heavy. A project has been started to reduce the burdens, but there is no promise of reform before the end of the year. There is much pressure for the licensing system to be reformed and the Ministry recently received a letter from the European Commission’s Postal Unit, reminding them of their obligations to promote competition. Only one person works on licensing and the application fee is less than €8. There is a supervision fee dependent on annual revenue

⁴ 31 December 2008

21. Ireland

Ireland are behind both Austria and the Netherlands in progressing their Postal Act. A general authorisation is required by all postal service providers with a turnover in excess of €500,000, excluding VAT. Postal operators must make a declaration not to infringe the reserved area, to comply with essential requirements and to put a complaints system in place. There is a problem with ensuring that a complaints handling system is in place – some operators assume they don't have to comply with this requirement because their system is so light touch. More generally the powers relating to enforcement are inadequate – ComReg can withdraw licenses, which is completely disproportionate, but their other powers are limited.

There is no requirement for operators to separate postal revenue in their accounts, nor indeed publish their accounts, so it is hard to determine company revenue. There are 38 operators outside the USO area, most in the express and parcels market⁵. There is an issue over the definition of the USO – ComReg have given their interpretation but this could be challenged. Services outside of the USO area are provided entirely on the basis of a contract between two parties – operator and sender. For AnPost there is a three party arrangement – as soon as the letter is placed in the letter box there is an agreement between the operator, sender and addressee. Licensing can therefore provide a legal solution that can protect parties.

22. Malta

In Malta every postal service requires either a licence or a general authorisation. For those operating in the universal service area, the incumbent Maltapost is licensed under a specific license, and a second operator is licensed under a 'generic license'. A further 16 operators in the wider competitive area are covered by a general authorisation. Maltapost, by virtue of its licence is also considered as being authorised to operate in the wider competitive area and therefore does not need to notify.

Licensing is important in order to determine the services to be provided and the conditions under which these services have to be provided. Licensing is also necessary for competition and quality issues. Alternative operators only have to meet requirement on complaint handling and mail integrity. The NRA has reformed licensing to encourage competition and has this year reduced the fees for General Authorisations from €930 to €150. Moreover small operators do not have to pay the annual fee.

The NRA is also currently reviewing national legislation to streamline the licensing process reducing the time for a licence to be granted. It hopes to reduce the time it takes to issue a license from 6 months to 1 month, and to transfer the issuing of licenses from the Ministry to the NRA. Malta is in the process of implementing a new Postal Law which will hopefully address these issues.

23. The Netherlands

⁵ February 2009

The 2009 Dutch Postal Act has introduced a registration scheme for providers of postal services. According to Article 41 of the Dutch Postal Act a Postal Conveyance Company (USO and Non USO services) shall inform the Board of its name, address, place of registration and provide a description of the Postal Conveyance Services it offers.

According to Article 42 OPTA (the NRA) shall register the Postal Conveyance Company after it has received the communication referred to in Article 41, together with the associated details. According to Article 2 Postal Conveyance shall not mean the conveyance of separate registered express mail subject to special agreements concluded between the Sender and the conveyance company regarding the time or time period for delivery, certainty of delivery, and/or liability. So these companies (Article 2) are not registered with OPTA.

24. Norway

There is still a postal monopoly in Norway and the government has yet to decide whether to implement Directive 2008/6/EC. Any postal operator (defined as anyone conveying letters/parcels weighing up to 20 kg) which provides services within the monopoly must obtain a license. There are two licenses for minor operators and about 150 postal operators are registered by the NRA. However, there are potentially around 20 000 providers of postal services due to the wide scope of the Postal Act. The only extra requirement for operators is for complaint handling procedures, all other requirements are in the Act. The annual fee for Norway Post is €575 000 Euro⁶. The annual fee for the two other licensed operators was €125 and €600. There is no fee for registration.

In a future liberalised postal market, the NRA do not see an overall licensing regime as crucial. The USO may be ensured by other means, e.g. by an agreement between the state and the relevant postal provider(s). All other necessary requirements should be in the Postal Act, but a simple registration system is supposed to be useful.

25. Poland

By derogation to Article 2, Poland notified the Commission the intention to postpone the implementation of the Postal Directive until 31 December 2012. It means that the postal services market will be fully liberalized starting from 2013. So far, the obligation of performance of the public operator's tasks has been entrusted to Poczta Polska.

Poland is developing a new Postal Law which will hopefully reform the system, but this is an ambitious challenge. The principles underlying the new Postal Act are expected to be approved by the Polish government by the end of 2009 and it is possible to conclude the legislative works on the Act by the end of 2010.

The NRA described the licensing regime as 'heavy touch'. For example, the operators are obliged to perform the tasks related to defence, security of state or public security and order. As a result, they must have the valid plan of action in situation of special hazards (in case of martial law, state emergency) what is burdensome.

⁶ September 2009

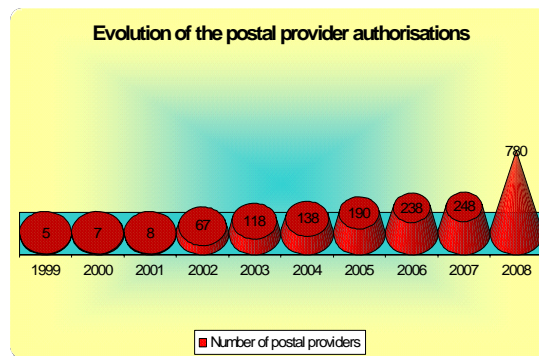
There have been two schemes – licensing and registration. As of 31 June 2009 there were altogether 188 registered and licensed operators (including the incumbent). Three out of them were license holders and two both licensees and registered ones. In fact, not all of those operators provided postal activity. Some of them were inactive – for instance 4 of licensed operators suspended their postal activity. There is an €90 entry fee and €130 license fee.

There is an issue in Poland regarding definition of the USO – distinguishing universal services and courier services, and universal services and transportation services. The current regime is designed to protect customers and provide market certainty but needs reform to reduce the requirements on operators. In practice, one person is directly involved in licensing matters out of a department of twelve.

26. Romania

The system was reformed in 2007 so that all services can be provided using general authorisations – the regime allows the provision of postal services without obtaining an explicit decision from the regulatory authority. The submission of a simple notification to the NRA with intention to provide postal services is sufficient. Other reforms include reducing the amount of paperwork needed for a notification (e.g. removing the need for a legal representative to sign the license), removing the need for license holders to comply with 'essential requirements' and streamlining the notifications system with the authorisations regime for the communications market. The notifications system is free of charge.

These reforms have led to some impressive results, with a dramatic increase in the number of operators, as can be seen in the table below⁷:



27. United Kingdom

There are two types of licence, one for the USP and a standard licence for other postal operators. There are 30 licensees in the UK postal market, which was liberalised in January 2006. All non-USP licensed operators must comply with mail integrity and common operational procedures, deliver mail as agreed with customers and provide information for market monitoring.

⁷ September 2009

Licensing is required by anyone wanting to convey a letter from one place to another, unless:

- He or she is an employee or agent of a licensee
- The letter weighs not less than 350g or costs not less than £1 to send
- An exception is listed in the Postal Services Act 2000, for example:
- It is for conveyance to a licensee for final delivery

It should be noted that from the above that it follows that express, courier and parcel services do not need licenses under the current regime. There is a team of two people who work on licensing, but they also have other duties. There are written procedures for assessing applications, and statutory responsibility to consult on the granting of a licence. Licences are usually granted within eight weeks of the application originally being received.

In 2007 Postcomm consulted on proposals to move to a form of less prescriptive licensing for those seeking to enter the postal services market. The new rules were implemented in 2008, and introduced a number of changes to the application procedure:

- Removing the annual fee for all licensees with a turnover of less than £10 million (licensees with a turnover of more than £10 million pay an annual fee based on their share of the market);
- Reducing the application fee from £1,000 to £50 for all applicants;
- Removing the requirement for applicants to provide, as part of the application process, information on exactly how they would comply with Postcomm's mandatory mail integrity code, and
- Removing the requirement for both existing licensees and future applicants to provide a financial guarantee.

Since 1 January 2008, when the reforms were implemented, there have been thirteen applications for a licence, compared to none during the whole of 2007. Of those thirteen, five were sole traders (one person businesses). Before the licensing reforms were introduced none of the licensees had been sole traders. The sole traders tend to have creative business models, such as being cycle couriers or serving a specific community. As well as helping to develop competition, the reformed licensing process has encourage innovation in the marketplace.

Postcomm thinks that it could be possible to replace the licensing regime with a general authorisations scheme in future, and this would be strongly desirable if it allowed new operators to enter the market. It could also enable the UK to ensure that all postal providers meet the 'essential requirements' and complaints handling procedures as defined by Articles 9 and 19 of Directive 2008/6/EC. Obligations on operators could also be reduced, although there is still a need for common operational procedures. Postcomm has also published complaints handling standards⁸, which currently apply to all licensed operators.

Conclusions

⁸ http://www.psc.gov.uk/postcomm/live/policy-and-consultations/consultations/complaint-handling-standards-for-licensed-postal-operators/2008_09_complaint_regulations_v1.0.pdf

- There is a clear need to have a licensing regime that protects the interests of customers without making unnecessary demands on operators that acts as a barrier to entering the market. There is still a range of systems in place across member states, reflected in part by the fact that members have liberalised at a different pace. The most impressive reports on licensing have come from those countries that began with a licensing regime that imposed various conditions on operators that have since been lifted. The increase in the number of operators that follows reform of licensing is remarkable.
- All countries have developed some form of licensing, authorisation or notification scheme. There is a range of models in place and a range in the numbers of alternative operators between countries. As countries transpose Directive 2008/6/EC, or update their postal legislation, NRAs must ensure that operators have adequate complaints handling systems in place.
- The definition of 'postal service providers' means that some countries will have to extend their licensing or authorisation regimes considerably, so that they include operators in the non-USO as well as the USO area.
- Experience from countries that have had licensing/authorisation regimes the longest shows that these need to be reviewed on a regular basis to ensure that powers are enforceable and proportionate.
- Licensing and authorisation regimes also need to be reviewed as necessary to ensure that they are not hindering the development of effective competition. Similarly they must protect customers and provide market certainty. As markets develop requirements on license holders can be reduced.

Access to common infrastructure

28. Austria

The current Postal Act currently provides regulation for access to household mailboxes – there is currently a major operational issue regarding accessing private mailboxes in apartment blocks using a central key. The law currently says that the owner of the house cannot give exclusive access – he must provide access to other operators and pay for it. However, an Austrian citizen took the government to court over this, and won, so the new Act must address this issue. Austria Post refuse to share their keys with other operators on the grounds of safety and data protection. The draft of the new Postal Act⁹ addresses this issue but there are still some open-end questions and the final rule concerning the mailboxes is still not clear. Hungary noted that it shared this problem with Austria.

29. Belgium

⁹ Bill dated 27/7/2009

There is no real mechanism in place for access to the network, although under legislation Belgium Post needs to provide access to its infrastructure. La Poste grants access to its infrastructure de facto. Fixing the prices, however, causes more difficulties. NRA wants to see greater transparency of access pricing. The NRA hopes for a precise transposition of Article 11a of Directive 2008/6/EC with clear competences for the NRA.

30. Germany

Access to infrastructure is in general a condition laid down in the Postal Act itself, not the license. There is special provision in § 29 of the Postal Act that the licensee which has a dominant position in a market for postal services shall undertake, provided demand exists, to allow in this market other postal service providers against payment of a fee to convey postal items to the PO box facilities it operates unless this is not objectively justified. This provision applies accordingly in respect of access to information on changes of address in the possession of any licensee having a dominant position in the market. All contracts on the shared use of PO Box facilities or access to information on changes of address shall be submitted to the NRA by the dominant provider within one month of concluding the contract. The NRA shall publish in its Official Gazette when and where rates and other conditions for incidental services for the access to PO Box facilities and to information on changes of address can be seen when they are not covered by the General terms.

31. Greece

The USP (Hellenic Post S.A.) is providing upstream and downstream access services to its subsidiary TACHIMETAFORES ELTA i.e. ELTA-COURIER S.A., therefore they are obliged to have cost-oriented prices and offer the same services to any other registered postal enterprise in the private sector under the same terms and conditions.

32. Hungary

If other operators are unable to agree term of access to the incumbent's network the NRA can arbitrate. Still looking for a solution to postcode address file.

33. Ireland

There is nothing in the Act yet because Ireland is in the process of transposing Directive 2008/6/EC. Access to post boxes is not an issue, nor is access to postcodes because they do not exist. Ireland is close to agreeing a national postcode system but AnPost is opposing the idea. The NRA is interested in the Swedish solution to redirections and noted that a company had set up a similar service in Ireland: <http://www.myaddress.ie/>.

34. Malta

Current postal law makes transparent access to incumbent's infrastructure obligatory. The NRA has issued a consultation document¹⁰ concerning:

¹⁰ <http://www.mca.org.mt/infocentre/openarticle.asp?id=1342&pref=16>

- The identification of mail carried by the respective operators
- The access to elements of the postal infrastructure and services
- The timely and efficient extraction and repatriation of mail which has entered the postal facilities of a postal operator which is not the intended operator and
- The redirection of misdirected customer enquiries.

Given that Maltapost is the designated USP, the NRA also intends to require Maltapost to propose a reference offer that would set out the processes and arrangements that the incumbent would commit to adopting in order to address the common inter-operator issues that can possibly arise. The consultation period has just expired and a decision should be made by the end of 2009.

35. The Netherlands

Under current legislation operators can request access to PO boxes in the incumbent's postal offices on reasonable, objective, justified and non-discriminatory conditions and rates. The NRA has the power to make a determination if negotiations between parties break down.

Under the new Postal Act all operators are obliged to contribute to the mutual provision of services such as access to the postcode system, address database, post office boxes, delivery boxes and information on change of address, re-directions service and return to sender service. Also, any operator who has a network at his disposal to deliver items at least five days a week is obliged to deliver this service for other postal service providers under non-discriminatory conditions for other customers and postal service providers. Again, the NRA has the power to make a determinations if negotiations break down.

The emphasis with the Dutch model is on the obligation not to discriminate, rather than an obligation to provide access. It is up to the incumbent to decide where to provide access, and the NRA anticipates this will only be to business delivery (pre-sorted) points of the network.

The NRA believes that providing access is instrumental in effectively promoting competition and stimulating innovation in areas where the incumbent remains dominant. Access is also in the interests of the incumbent because it will maintain mail volumes, maintain volumes and keep the universal service affordable. A proper access obligation will permit competitors to take advantage of the economies of scale of the existing network and this stimulate the incumbent to further increase its efficiency. However, the NRA is not convinced the new Act will ensure effective access agreements. The Ministry contends that these limited powers on access were appropriate because there are already two competitors (Sandd and Selekt Mail) with a national network.

The NRA will issue a report to the Ministry on the effectiveness of the access obligation no later than a year after the implementation of the new Act.

36. Norway

The Norwegian Postal Act as of 1996 has no mechanisms in place to ensure access to common infrastructure, but the NRA thinks the issue is highly important. In a liberalised market it is necessary to give access to ensure that all operators compete on equal terms. It is also crucial to have such mechanisms in place to protect the users of postal services. The provisions to be laid down in a future postal regulatory framework are not yet concluded.

The opinion of the NRA is that as a general principle all operators should be obliged to comply with any reasonable request to enter into an agreement with another operator to forward/return postal items and to give access to post boxes and delivery letter boxes. The services should be offered on transparent and non-discriminatory terms and on the same or equivalent terms as those for one's own business (services).

Access to delivery letter boxes inside apartment buildings is a tricky question in Norway since the incumbent has the keys based on traditions/individual agreements with the house owners. The keys are standard keys, owned by the house owners but specified by Norway Post. A possible solution to this is to oblige the home-owners to give access, combined with a obligation for the USP to give other operators with a permit from the NRA the same access to the letter boxes as they have agreed themselves with the owner of a residence.

A common address database is in the NPT's opinion the best solution to secure equal access to addresses. An address database could be combined with a common database for directory inquiry information (and the national register). The Swedish example of SVAAB is an example of best practise concerning the end-users possibility to access and order redirection services etc.

37. Poland

There are no powers in current act, but this will be addressed in new legislation. Too early to comment on what that might be.

38. Romania

There are no provisions on access to common infrastructure in the Act of postal law, except for the requirements to which letter boxes should correspond, including their location and conditions of access for all the operators. Since August 2008 letter boxes have been made available for all postal operators, which has increased private operators' access to the market. Redirections and return to sender are accessible by USPs. Although the monopoly of the incumbent is being gradually reduced, other elements of postal infrastructure remain inaccessible.

39. United Kingdom

Under Condition 9 of its license, there are requirements for Royal Mail to "negotiate in good faith" to agree terms for access to its "postal facilities". Postal facilities are physical and human resources and systems deployed by Licensee to provide universal service. Access agreements exist with licensed operators (the first was with UK Mail) and with direct customers (Customer Direct Access) such as banks.

Condition 10 of Royal Mail's license prohibits behaviour which leads to "unfair commercial advantage". The Licensee must not allow anyone, including itself, to derive any unfair commercial advantage from the terms on which it provides access. The terms on which the Licensee accesses its own network must also be the same as the terms available to others.

The Postal Services Act and Licence require Royal Mail to maintain a Postcode Address File and make it available to any person on terms that are reasonable. PAF is now ring-fenced within Royal Mail. An independent Advisory Board represents users and advises Royal Mail. Royal Mail's license allows for complaints if any user believes Royal Mail is abusing its position, and a Code of Practice determines the procedures for making changes to the file.

Postcomm proposed (October 2007) a Licence modification to enable Royal Mail to share redirections data which also included:

- a) a diversions product;
- b) allowing other licensed operators to update sending customers with correct address details where appropriate consent has been given;
- c) an ability for sending customer instructions NOT to redirect certain items to be followed; and
- d) an ability for licensed operators to inform sending customers there is a redirection facility at the address.

Royal Mail rejected the proposal stating that Postcomm did not have powers. Royal Mail has introduced a more limited redirections product voluntarily.

Licensed operators are bound by Code of Practice on "Common Operational Procedures". This ensures that misdirected letters are returned to the intended operator. It also covers "Return to Sender" where recipients are no longer at an address. Access to PO Boxes and delivery boxes are not yet issues in the UK.

Conclusions

- Transposition of Directive 2008/6/EC into national law is likely to be only the first step for Member States in meeting Article 11a. There is likely to be a myriad of practical issues surrounding access to common infrastructure, and the various operational challenges relating to this are still very much in their infancy.
- Although there is less unanimity in terms of the specific issues relating to Article 11a, there is much scope for Member States to share information on this subject and find common solutions. An example of this is the Irish redirections system, which is very similar to the Swedish solution
- The Commission has emphasised the important role of NRAs in implementing Directive 2008/6/EC, and have stressed that not all policy should come from the Ministry. NRAs will therefore be held accountable for successful implementation of the Directive and have a responsibility for effective transposition. To meet this challenge, NRAs will need to be supported, and provided with adequate resource with which to ensure that competition

develops effectively. It is therefore important that the group revisit this issue in future, and postal regulators maintain a dialogue with each other.

PT Forward Work Plan

40. It was agreed that the project team would aim to report to the CERP Plenary in May 2009. The report would be co-ordinated via email. Further work on the report may be carried out over the summer as necessary, with a final document circulated to the Project Team, Working Groups and Steering Groups ahead of the Monaco Plenary in November 2009.
41. The EU Postal Unit and consultants reporting to them have been invited to meetings, but have so far been unable to attend. The NRA project team will continue to involve these stakeholders in discussions where appropriate.
42. As well as continuing to monitor access to common infrastructure, it was agreed that ex ante vs. ex post regulation were important subjects for the group to consider in future. A different way of looking at this issues might be "How do you make ex-ante regulation work in a competitive environment?".