



**Report of CERP Working Group Policy Issues:  
Project team - National Regulatory Authorities  
Phase Three 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. During **phase one** of the project, four common themes were examined:
  - clearer definition of the universal service
  - customers unaware of their rights
  - enforcement of decisions with incumbent and other licensed operators
  - lack of clarity in competition roles.
3. The conclusions of the project team's work in phase one was submitted to the CERP Plenary in May 2006. (The report is available on CERP's website at <http://www.cept-cerp.org/cerp/pdf/report%20nra.pdf>)
4. A project team meeting was held on 23 November 2006 (London) for **phase two** looking at **common themes on existing enforcement arrangements**.
  - Legislation
  - Licensing /authorisation
  - Appeals process
  - Gathering information/ investigation
  - Regulation and enforcement in a multi operator liberalised postal market
5. The result of the phase two work was reported to the CERP Plenary in May 2007. The report can be viewed at <http://www.cept-cerp.org/cerp/pdf/NRA%20PT%20Phase%202%20report.pdf>
6. The project team met on 18 March 2008 in London for **phase three on licensing, dealing with competition issues and implementation of the third postal directive**. The results will be reported at the CERP Plenary in May 2008. The outcome of the discussions follows.

## **Phase three: Licensing, competition and the implementation of the Third Postal Directive**

### **Summary**

7. Countries have implemented or followed the current postal directive in different ways. This can be seen from the different types of licensing and authorisation regimes in 13 of the countries represented on the NRA project team and the varying powers to deal with anti-competitive behaviour.
8. Successful implementation of the third postal directive will require continued and pro-active co-operation between NRAs to identify and establish best practice. However the signs are that the current methods of co-operation need to be reviewed to improve the sharing of information and to make the implementation of the directive a reality.

### **Appropriate levels of licensing and authorisation**

9. Following a round table discussion, four distinct means of assigning obligations and rights to the universal service provider(s), as required by Article 4 of the Directive, emerged:
  - designation of the universal service provider in legislation (with obligations and rights set out in legislation also)
  - a special (extended) licence for the USP
  - a common licence for all operators providing services with the universal area
  - a common licence for all operators providing postal services generally.

The following different models can be identified:

- light touch authorisation of all operators other than universal service provider
- licensing for all operators within universal service area, and light touch authorisation of all other operators
- licensing for all operators other than universal service provider.

#### **10. Austria**

The USP is defined in national postal law and a notification system is in place for other postal operators. Politicians are discussing if a licensing regime will be used in future.

#### **11. Belgium**

The licensing and authorisation system was introduced two years ago. The NRA publicised the new requirements through an advertising campaign. There are now 11 operators within the universal area (up to

10kg nationally or 20kg internationally) and 168 operating outside the USO area (express and courier services). Operators applying for an authorisation need to prove the added value (track trace, fast delivery, and proof of delivery) of their services based on a Communication of BIPT. Some taxi companies have an authorisation because they carry and deliver mail.

Operators applying for a licence within the universal service area must give a functional, geographical and commercial description of their services, show a financial plan and pay a fee of €375. For authorisations the fee is €250 and a financial plan is not needed.

The most important obligation resulting from the licence and the authorisations is the respect for essential requirements. These are not considered to hinder operators from entering the market. Recently licensees and authorised operators were asked to contribute financially to the 'Ombudsdienst' which induced more reaction from the postal sector. The future debate will consider the further development of the essential requirements, fees and eventually the creation of a compensation fund.

#### 12. Denmark

The USP, Post Danmark has a licence and a registration scheme is in place for other postal operators up to 2kg. There are 1,500 registered operators (99.9% in the parcels market). Only two operators provide mail services over 50g, Post Danmark and City Mail. Denmark is following the EU postal directive. Full market opening will possibly be in 2010.

#### 13. Estonia

The USP has a licence and there is also a licence and notification system for other operators. A licence is required for delivery of letter post items and parcels. The minimum area where a licence holder can provide services is a county or town with a population over 40,000.

To be granted a licence, the operator must have quality of service (QoS) targets, redress and complaints procedures and standard conditions. The fee is about €150. One licence has been issued for a small provider, who delivers letter post items (ordinary, registered and insured letters). Notifications are free of charge and there are about 40 postal operators registered. A notification is needed for the delivery of courier, express, hybrid post, periodicals and direct mail. Full market opening is planned for 2009. The Ministry will set postal prices and there are plans for a compensation fund.

#### 14. France

Licences are issued for outgoing cross border mail and the delivery of letters only, one for the USP and another for other operators. 20 licences have been issued delivering 35 million items a year in a

market worth €18 billion. Licensees must stipulate how they will operate and they have rights of access including to PO boxes and redirections.

The NRA considers that the licensing regime does not restrict competition but the reserved area (below 50g) does. New operators see having a licence as giving them validity. Not many changes to the postal law are foreseen when implementing the new directive. ARCEP considers that licensing regimes should guarantee a number of rights to the operators, and not only obligations.

#### 15. Germany

Since full market opening in January 2008, there is only one type of licence for all services. Around 2,500 licences have been issued, however 750 of these are actively operating. The (one off) fee is from €350 up to €700 depending on the legal status of the company concerned. Licences have no expiry date. Applicants are required to have postal knowledge and criminal records are judged on a case by case basis.

The NRA has a team of 17 based around Germany that check the activities of licensed postal operators in accordance with the licence and also if there have been complaints. A minimum wage was set for the delivery staff in the postal market at €9.80 in the west of the country and €9.00 in the east and for other workers at €8.40 west/€8.00 east. The tax authorities are responsible for checking if the minimum wage is paid. The NRA has responsibility to consider action if the minimum wage is not paid. A licence can be revoked as the final consequence if the minimum wage is not complied with.

#### 16. Greece

There are three types of licences for postal operators:

- licence for the Universal Service Provider
- individual licence, for companies offering services which are a subset of the USP services (reserved area excluded)
- General Authorisation for companies offering mainly courier services.

The general authorisation regime requires that prior to being registered with the NRA in the Postal Companies Register, the company should submit a declaration to the NRA with information regarding their infrastructure (sorting centres, number of vehicles, list of agents co-operating with them etc), list and price of services provided, a chart of obligations towards consumers and a draft version of the voucher they will be using. They are also required to set up a track and trace system for electronic surveillance of end-to-end delivery. There is a small licence fee (€50) and an annual fee which is a proportion (<0.5%) of their annual turnover (minimum €300).

Companies that want to operate in the US area with an individual licence should submit a detailed three-year business plan plus a guarantee that they can offer services with a minimum standard. Finally, they should keep separate accounts for these services. A licence fee and an annual fee still apply.

The USP operates under a “licence” signed between the Government and USP and is subject to offer services of minimum standard described in the relevant Ministerial Decree, but services should be cost-oriented. The licence regime is currently being revised and the new regulation will soon be in place.

#### 17. 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. There are 147 operators registered for non-USO services that provide courier and express services. An individual licence is granted by the NRA and it is used for non-reserved services which are within the scope of USO. Currently there have been no applications for this licence.

There are geographical limitations in this respect. A licence can only be issued for exactly defined territories of the country (a) one or more towns except cities; b) at least one county except Pest county; c) Pest county plus at least one more county; d) Budapest and at least two more counties except Pest county; e) the whole territory of the country). The heavy licence obligations have resulted in no competition for services inside the USO. The postal law will be reviewed.

#### 18. Ireland

A general authorisation is required by all postal service providers with a turnover in excess of €500,000, excl VAT. Postal operators must make a declaration not to infringe the reserved area and to comply with essential requirements and to put a complaints system in place. The scope of “postal services” is wide and there is a lack of direct competition with USP. The USP has just begun to face competition for C2B/C2C parcels and express items. Some authorisations are sought for “status” reasons.

When considering the implementation of the new directive, an LECG Report for the NRA recommended “licensing scheme” for services within the scope of universal service on the basis that new entrant failure or abuse would damage public confidence in mail generally. There has subsequently been debate about whether licensing is necessary or whether a more detailed authorisation scheme would achieve the objective.

#### 19. Macedonia

The new postal law (January 2008) will lead to the establishment of an NRA by the end of the year. There will be three types of licence. The USP will have an individual licence for a period not longer than 15 years for performing the universal service with reserved services with limited weight as follows:

- up to 31.12.2008, with weight up to 100 grams;
- as of 1 January 2009 to 31 December 2011, up to 50 grams;
- as of 1 January 2012, will be market opening.

A standard licence will be available for operating outside the reserved area but within the scope of universal postal service and authorisation for provision of services performed at the free postal market, outside the USO. Standard licences and authorisations will be issued on a five year basis.

Licensees will be required to have QoS targets and a five year business plan. The fees will be used to pay into a compensation fund (only if Macedonia Post makes losses) and to pay for the NRA.

#### 20. Slovenia

The USP has a five year licence and other operators have declaratory orders/general authorisation. There are 11 postal operators. Postal operators must provide some financial, employment and privacy information. The licensing regime is light and not seen as a barrier to entry.

There is a tariff system which determines yearly payments for all operators. The NRA annually issues a decree for the annual fee for all operators. This is based on the number of points (out of the tariff system) multiplied with the value of the points for the present year (the value is proposed by the NRA and determined by the Government for every year). The fee goes towards the costs of the NRA.

The annual fee for the USP licence for the year 2007 was €489,500. Other operators (declaratory order/general authorisation) paid a minimum of €391 and a maximum of €1,174 for the annual fee.

#### 21. Sweden

There are two types of licence, one for the USP and a standard licence for other postal operators. All companies distributing addressed postal items up to 2kg are liable under the licence regime. Licences are the basis for follow up and inspections of operations. The licence could be revoked if an operator does not meet the requirements, which puts pressure on the operators.

Operations presented by the applicant shall be regarded as postal operations; postal operators applying for a licence need to be in a legal position to start a business (i.e. not subject to a ban on carrying out a business), not in bankruptcy. A very brief assessment of the applicant's ability to carry out operations in line with the legislation is initially made. When a licence has been issued the operator shall be able to carry out operations (redirections, complaints, access to PO boxes). There are no requirements for business plans or QoS. Licences are issued as soon as the basic requirements are met and therefore the NRA does not consider the process a barrier to entry. Some small changes may be required for implementation of the new directive, however there are already requirements concerning complaints procedures and statistical data.

## 22. United Kingdom

There are two types of licence, one for the USP and a standard licence for other postal operators. 18 licence holders are 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.

The licensing framework was recently reviewed and resulted in a reduction of the application fee from £1000 to £50 and an annual fee of £1000 if turnover exceeds £10 million. The review also saw the removal of the need for guarantees, Data Protection Act registration and details of how licensees will comply with mail integrity and common operational procedures.

## **Conclusions**

- **Licensing/authorisation systems provide an important source of information about the market for NRAs, the European Commission and others.**
- **In deciding what approach to take to licensing/authorisation, NRAs consider issues such as the needs for: (i) checks for criminal records; (ii) bank guarantees; (iii) business plans; (iv) levels of application fees; and (v) annual fees.**
- **Some countries are still in the developing stage of a licensing/authorisation system. The experience from countries that have already established licensing/authorisation systems shows that these need to be reviewed on a regular basis to ensure that it is not posing unnecessary obstacles to operators entering the market and to consider market developments.**

- **Licensing seems to give reassurance to the market (and to politicians) at the early stages of market opening, but experience shows that issues such as e.g. approval of the operator's business plan become less important and possibly a block to competition as time goes on.**
- **As markets develop, it is important to make systems less burdensome to help ordinary people (i.e. single person operators) to enter the postal market.**

## **Powers to promote competition and to deal with anti-competitive issues in a liberalising postal market**

23. The discussion at the CERP NRA project team meeting in March 2006 about the lack of clarity in competition roles concluded that the successful establishment of the internal market in the postal service sector can only be achieved where there is clarity in the roles of the NRA, Ministries and Competition Authorities.
24. The different ways in which the current directive had been implemented regarding dealing with anti-competitive issues emerged from the round table discussion on 18 March 2008. These were:
- power sharing between Competition Authority and NRA
  - power with Competition Authority
  - power with NRA
25. In Germany, as in many other countries, some investigations into claims of anti-competitive behaviour are dealt with by the Competition Authority (national or EU law applied) and specific cases by the NRA. A full investigation and a decision must be made before the activity can be ordered to cease. In the area of sector specific postal regulation there have been many cases prior to 2008, where the USP challenged decisions of the NRA concerning the granting of licences for value added services in court.
26. Investigations into complaints of anti-competitive behaviour in Sweden are carried out by the Competition Authority. Currently, the NRA has no explicit role to promote competition and is limited to economic supervision regarding prices. This supervision is undoubtedly linked to competition issues. When other kinds of anti-competitive behaviour are identified the NRA shall inform the Competition Authority. In such cases the NRA provides information and analysis to the Competition Authority.
27. Some NRAs can use Provisional Orders (or similar) to stop a tariff or activity for up to three months whilst they investigate. In the UK this



approach has meant that having the ability to impose this restriction, or the threat of using it can be enough for the possible anti-competitive behaviour to cease. Provisional Orders are used in telecoms regulation in Greece, but not in postal regulation and the NRA has the authority to fully investigate anti-competitive behaviour.

28. In Estonia the Competition Authority and NRA are the same organisation and have had two cases since 2001. Powers are shared between authorities in Denmark. In France the NRA consult the Competition Authority on a case by case basis in telecoms but this has not been tested yet in postal regulation.

29. The UK and Republic of Ireland both have a Memorandum of Understanding with the Competition Authority. In the UK the NRA investigates anti-competitive complaints in the postal market and in Ireland it is the Competition Authority that investigates. In the Irish telecommunications sector the NRA and Competition Authority share responsibility for competition law enforcement.

## **Conclusions**

- **Competition Authorities are better equipped to deal with an established open market with multiple players, rather than those dominated by a monopoly operator.**
- **Postal issues tend to be low down on the priority list for Competition Authorities which have to tackle big cases such as energy, telecoms etc.**
- **NRAs have the knowledge of the market to investigate anti-competitive cases. Where NRAs do not have sufficient powers, this undermines their authority. Most NRAs have encountered difficulties with enforcing operators to provide information. Only some regulators can use 'Provisional Orders' or have the ability to 'freeze' the actions of postal operators before investigation by the regulator.**
- **In the early days of market opening, it is important that there is a clear agreement with the Competition Authority that gives the NRA power to act quickly where necessary to protect customers and give certainty to the market.**

## The EU Postal Services Directive

30. The project team considered which topics it would be useful to exchange experiences and views on for consideration when implementing the new directive. Some of the ways in which co-operation between NRAs could be facilitated were identified.
31. Several topics for further discussion emerged. These were:
- defining the universal service and monitoring how it might change over time
  - how to ensure provision of universal service
  - financing of the USO
  - approaches to licensing/authorisation and whether these can meet the requirements of the next Directive
  - tracking the behaviour of operators who are active in different countries
  - data collection, statistics
  - anti-competitive behaviour and examining comparison cases in similar markets (telecoms, energy, etc)
  - price control, cost accounting, tariff principals, defining affordability
  - establishing NRAs
  - access to the postal network
  - VAT
  - QoS, complaints
32. Face to face meetings were recognized as the most useful way to exchange views, however acknowledging that this could often be costly and time consuming. Other ways of co-operating would therefore need to work alongside meetings.
33. The existing forums for NRAs to meet face-to-face (e.g. CERP plenary and the Postal Directive Committee) could improve co-operation by engaging members to determine and contribute to the agenda. Sufficient time to allow for preparation for meetings was needed, which means that agendas and papers must be circulated well in advance of meetings.
34. The formal nature of some very large Commission and CERP Plenary meetings was restrictive of debate, whereas CERP working group and project meetings were less formal. The less formal nature of CERP working group and project meetings encouraged exchange of views and participants could speak off the record when necessary. In formal EC meetings some NRAs can only speak under instruction from their Ministries.
35. To supplement meetings and for when the exchange of information needs to be quick, the CERP website needs to be improved (the last

update was September 2007). The website could contain agendas, papers, minutes of meetings, laws and regulation by country, case studies would also be useful. It was also suggested that for ease of reference the papers should be available in English.

36. Some NRAs already request and exchange information on a bi-lateral basis or from a small group of countries. This practice could be encouraged throughout CERP's members and the results shared with all members via the website and a chat room. Regulatory asymmetry (i.e. different powers/ different responsibilities) between countries makes co-operation difficult.

### **Conclusions**

- **There is a continued need for NRAs to exchange experience as markets are opened and developed. Several topics have been identified.**
- **Bi-lateral or small meetings of countries with common issues are the most useful in taking forward specific issues and technical matters. More use could be made of the CERP website as a vehicle for exchanging information.**
- **EC studies should be developed with input from NRAs to make them more useful and less burdensome.**
- **Timely preparation for meetings will improve the effectiveness of the deliverables and improve co-operation.**
- **Meetings should be evaluated on a regular basis to see if they justify the time and cost of holding them.**