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# **Presentation of "the Postal Notice"**

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DG Competition**

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# Introductory Remarks

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- ◆ **Presentation of the Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to post services (OJ [1998] C-039, pp. 2-18) – “the Postal Notice”**
- ◆ **Any views expressed are those of the speaker and may not be interpreted as the official view of the Commission**
- ◆ **DG MARKT is responsible for enforcement of the Postal Directive**
- ◆ **DG COMP is responsible for EU competition rules**



# Speech Overview

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- 1. Regulatory environment of Incumbent Postal Operators ("IPOs") in the EU**
- 2. An outline of The Postal Notice**
- 3. Commission enforcement of EU competition rules in postal markets**
- 4. Q & A**



## Regulatory Environment (1.)

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- ◆ **IPOs of the EU face a complex regulatory environment combined with rapid market-driven changes**
- ◆ **Several regulatory regimes which may lack in coherence and sometimes contradict each other**
- ◆ **Result: Legal uncertainty which may have to be solved by regulators and courts**



## Regulatory Environment (2.)

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### ◆ National Regulation

- Varies between MS (e.g. USO, Q-of-S requirements, monopoly size, price regulation, licencing and funding regimes)

### ◆ National Regulatory Authorities

- Vary between MS (e.g. degree of independence, staffing, financing)



## Regulatory Environment (3.)

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- ◆ **Political commitment to change**
  - **Varies between MS (e.g. transformation from "public administrations" to companies operating under private company law, willingness make necessary capital investments and address labour concerns)**
- ◆ **Conflicts of interest: MS control IPOs and should promote competition, IPOs control facilities that should be controlled by NRA**



## Regulatory Environment (4.)

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### IPOs of the EU must comply with:

- ◆ National sector-specific legislation (if compatible with EU law) and national competition rules
- ◆ The Postal Directive
- ◆ EU competition rules - in particular Article 82 (all EU IPOs have dominant positions) – The Postal Notice
- ◆ The UPU-convention – if compatible with EU law



## Regulatory Environment (5.)

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- ◆ **EC Treaty takes precedence over the UPU-Convention (cf. Joint declaration of EU MS at the UPU Congress)**
- ◆ **The UPU-convention is built on the notion that mail is exchanged between public administrations (one in each country) and does not take into account that IPOs compete (i.) with each other and (ii.) with private operators**





# Regulatory Environment (6.)

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## EU COMPETITION RULES

- ◆ "Anti-trust":
  - Article 81 (anti-competitive agreements)
  - Article 82 (abuse of dominant positions)
  - Article 86 (state measures contrary to competition rules, applied in conjunction with Article 82)
- ◆ State aid: Articles 87-89 (state aid which distorts competition )
- ◆ Mergers: Merger Regulation



# The Postal Notice (1.)

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## OBJECTIVES

- ◆ **Complement "other harmonisation measures"**
- ◆ **Provide market certainty and create transparency**
- ◆ **Clarify how the Commission intends to apply the competition rules in the postal sector**
- ◆ **Provide a set of guidelines to avoid infringements of the EC Treaty**



## Postal Notice (2.)

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### Relevant markets

- ◆ **Geographical markets**: national due to postal monopolies, e.g. domestic mail, delivery of incoming X-border mail
- ◆ **Product markets**: different parts of the postal "conveyance chain" (clearance, sorting, transport, delivery), different types of mail (e.g. letter mail, direct mail, X-border mail, express mail, document exchange, "new services")



# Postal Notice (3.)

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## DOMINANT POSITION

- ◆ **Dominant postal operators may not:**
  - **restrict the provision of non-monopoly services**
  - **unjustifiably refuse to supply**
  - **discriminate (e.g. access conditions)**
- ◆ **Dominant postal operators "have a special responsibility not to diminish further the degree of competition remaining in the market"**



# Postal Notice (4.)

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## CROSS-SUBSIDISATION

- ◆ Normal behaviour in "normal" markets
- ◆ May be distortive in monopoly sectors:
  - X-subsidies between competitive markets OK
  - X-subsidies from monopoly market to monopoly market OK and sometimes necessary (e.g. uniform tariff)
  - X-subsidies from competitive market to monopoly market OK
  - X-subsidies from monopoly to non-monopoly market NOT OK – Distorts competition!



## Postal Notice (5.)

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### **SPECIAL OR EXCLUSIVE RIGHTS (art 86)**

- ◆ **As regards undertakings with special or exclusive rights, MS may not enact or maintain in force any measures contrary to the EC Treaty**
- ◆ **IPOs are subject to the competition rules (art 81 & 82)**



## Postal Notice (6.)

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### **FREEDOM TO PROVIDE SERVICES (art 49)**

- ◆ **Postal monopolies obviously restrict this freedom**
- ◆ **Further restrictions to interpreted strictly**  
**Justified: e.g. data protection, correspondence confidentiality, security of the network**  
**Not justified: consumer protection**



# Postal Notice (7.)

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## MEASURES ADOPTED BY MS

- ◆ MS must monitor access conditions and the exercise of special and exclusive rights
- ◆ Essential with an independent regulator
- ◆ The IPO must not be allowed to monitor itself!





# Postal Notice (8.)

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## STATE AID

- ◆ **The state aid rules (art 87 & 88) apply to postal services**
- ◆ **State aid which distorts competition and affects trade between MS is prohibited**
- ◆ **MS must notify to the Commission all plans to grant state aid**
- ◆ **Financial relations between the MS and the IPO must be transparent**



## Postal Notice (9.)

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### SERVICES OF GENERAL ECONOMIC INTEREST

- ◆ **Art 86(2): Undertakings which perform services of general economic interest (SGEI) are subject to the competition rules in so far as their application does not obstruct the performance of the particular tasks assigned to them**
- ◆ **When applying the competition rules, the Commission will assess whether the scope of the monopoly is justified under art 86(2)**



## Postal Notice (10.)

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### **SERVICES OF GENERAL ECONOMIC INTEREST**

- ◆ **If the scope of the monopoly complies with the Postal Directive, the exclusive right will be prima facie justified under art 86(2)**
- ◆ **Except for those services which the Postal Directive allow to be reserved, MS should withdraw all special or exclusive rights and guarantee the right of all operators to supply these services**



# Postal Notice (11.)

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## SERVICES OF GENERAL ECONOMIC INTEREST

- ◆ The scope of any special or exclusive rights must be proportionate to the general economic interest pursued by these rights
- ◆ Independent regulator should monitor the performance of public service tasks (published service targets and performance levels)
- ◆ Cost accounting should be transparent to enable detection of price or service discrimination (in particular separation of monopoly and competitive services) and should be independently audited



## Postal Notice (12.)

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### **SERVICES OF GENERAL ECONOMIC INTEREST**

- ◆ **IPOs must grant non-discriminatory access to customers and intermediaries in accordance with the needs of users. Access conditions should be transparent (published)**



# Postal Notice (13.)

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## REVIEW

- ◆ **Notice: "Possibly in the year 2000", the Commission should evaluate whether modifications to the Notice are required**
- ◆ **A review of the Postal Notice is scheduled for 2006 in tandem with the Commission proposal for a new Postal Directive**



# Anti-trust enforcement (1.)

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- ◆ **Over the last 6 years, the Commission has primarily dealt with 4 “problem areas”:**
  - (1) Monopoly extension**
  - (2) Insufficient national regulation**
  - (3) Predatory pricing, X-subsidies, tying**
  - (4) Disturbance of cross-border mail traffic**



# Anti-trust enforcement (2.)

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## Commission Decisions:

- 1.) The Hybrid Mail Case - 21/12/2000
- 2.) The Deutsche Post I Case - 20/3/2001
- 3.) The Deutsche Post II Case - 25/7/2001
- 4.) The SNELPD Case - 23/10/2001
- 5.) The Hays Case - 5/12/2001
- 6.) REIMS II re-exemption – 23/10/2003
- 7.) The BdKEP Case – 20/10/2004





## Anti-trust enforcement (3.)

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- ◆ **The Commission has taken and will take a tough stance against postal operators and MS that infringe EU competition rules - e.g. by extending postal monopolies, using cross-subsidies to finance predatory pricing and by hindering international mail traffic.**
- ◆ **Its “postal track-record” highlights the Commission’s commitment to safeguard and promote competition in EU postal markets**