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Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Modernisation of the Single Market
Public Interest Services

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Mr Jaromír Novák
Chairman of the Council
Czech Telecommunication Office
[REDACTED]

Dear Mr Novák,

We have taken note of the amendments to the Czech Postal Act that are currently subject to adoption by the Czech Parliament. These amendments as we understand them do *inter alia* remove the obligation of postal operators to contribute to a compensation fund.

This element is of particular importance as Article 9(1) of the Postal Services Directive (Directive 97/67/EC as amended by Directives 2002/39/EC and 2008/6/EC, in the following referred to as the PSD) allows only "essential requirements" to be imposed upon postal operators that provide services outside the scope of the universal service. These requirements must thus have a clear connection to the essential requirements that are listed in Article 2 point 19 of the PSD. Other requirements than the ones listed in this point may not be imposed on operators falling under Article 9(1) PSD, which we notably understand to be express operators. In this context it is apt to recall that the Commission has made a dedicated statement in relation to this issue on the occasion of the adoption of Directive 2008/6/EC in which it confirmed that that in accordance with Recital 18 of Directive 97/67/EC and the consistent case law of the European Court of Justice (e.g. Case C-320/91 [Corbeau]), express and courier services constitute specific services that are characterised by being essentially different from universal postal services¹.

Requirements that may be imposed only on operators falling under Article 9(2) PSD, i.e. those that are active in the universal service scope (and only limited to those part of their activities within this scope), such as the contribution to a compensation fund should also comply with the requirements of Article 9(3) PSD. In particular they shall be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria. Therefore any compensation fund solution must in particular take care that any potential contributors are aware of the size of the contribution in advance (and not at a later stage only). We are of the view that any

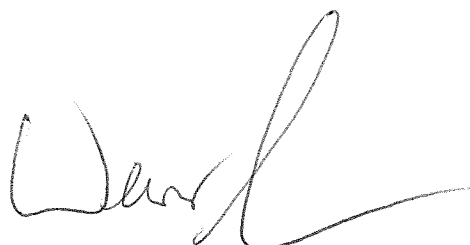
¹ Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251 (2) of the EC Treaty concerning the common position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services. – COM(2007)695 final, 9.11.2007.

retroactive imposition of a contribution where the above elements have not been known in advance might be problematic and inconsistent with the PSD.

Furthermore, we also would like to use this occasion to stress that any financing provided to a designated universal service provider via a compensation fund would normally qualify as State aid and therefore must comply with State aid rules. This might entail, depending notably on the amounts at stake², the obligation to notify the measure to the Commission.

We are very grateful if we could be kept informed about the further steps that are taken by you concerning the above and would also be ready, if deemed appropriate by you, to provide further assistance or discuss the issues at stake.

With my best regards,



Werner Stengg

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c.c.:

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Mr Marc Chovino (DG COMP, F3).

² When the total financing granted to the universal service provider for the delivery of the universal postal service (taking into account the compensation fund as well as other means of financing such as for example subsidies) does not exceed 15 million €, such financing can be exempted from notification provided that it complies with the 2011 SGEI Decision (OJ L 7, 11.01.2012, p. 3). Above 15 million €, such financing has to be notified and has to comply with the 2011 SGEI Framework (OJ C 8, 11.01.2012, p. 15).