

Full liberalization of the postal services sector (From the Volume Editor)

Articles

Artur Salbert, **Conformity of the universal services financing model adopted in Postal law Act with the law of the European Union**

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Summary: In European Union law, as well as in Polish law that implements European solutions, it is an accepted belief that a certain catalogue of postal services should be commonly available. Such services are referred to as a universal service (EU law) or universal services (Polish law). The provision of universal services may not be economically justifiable for postal operators, and thus there is a risk that such services would not be provided in a competitive market. The law thus defines procedures for the imposition of the obligation to provide universal services and the terms and conditions of universal services provision, including price policy restrictions. To refund costs of universal services provision, EU law contains rules on their financing. Models prescribed in European directives should be implemented by EU member states.

Poland's new Postal law entered into force on 1 January 2013 and introduced a different model of universal services financing. Previously, a subsidy from the state budget could be granted to the operator which provided universal services. After the implementation of the legislative changes, costs of universal services provision are to be covered directly by operators providing services within the scope of universal services, provided they achieve a legally specified level of revenue, or from the state budget, if financing by postal operators does not cover all costs.

The purpose of this article is to evaluate the conformity of the model of universal services financing adopted in the new Polish Postal Act with the law of the European Union. The evaluation will be performed in light of postal sector legislation as well as provisions related to staid aid.

Key words: services of general economic interest, universal service, universal services, the Postal law, net cost, subsidy to universal services, loss on universal services.

Maciej Rozbiecki, Wojciech Rosiak, **The net cost of the universal postal service and its financing**

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Summary: EU Member States are obliged to ensure that all EU citizens have access to universal postal services i.e. specific list of services, provided at least five days a week, at affordable prices, with a uniform quality for all users. Member States implement this obligation by appointing a single postal operator to carry out all duties within the scope of the universal postal service obligation. The designated operator bears the costs associated with the fulfillment of its obligations, which may however adversely affect its financial results. The goal of the net cost calculation is to determine whether the financial result achieved by the designated operator is adversely affected by the imposed obligations. The net cost is calculated as a comparison of the actual financial results of the designated operator, with a hypothetical situation where that operator was to be exempt from the universal service obligation and could freely modify the scope and quality of its service provision based on the economic profit criterion only. In case of a positive net cost value, the designated operator is entitled to a payment made out of contributions from all postal operators providing services from within the scope of the universal service. However, due to the fact that most of the services within the scope of the universal service are provided by the designated operator itself, its own contribution to the compensation fund is significantly greater than the sum of the contributions from other operators. As a result, the designated operator is forced to carry the financial burden resulting from the universal service obligation largely by itself. The designated operator can obtain additional funds from the budget only if the contributions made by all other operators participating in the compensation fund reach their maximum allowable ceiling. This situation may thus have a negative impact on competitive balance and the process of liberalization of the postal market.

Key words: universal service obligation; net cost of universal service obligation; third postal directive; net cost funding; indirect benefits; foregone revenues; avoidable costs; unfair financial burden; liberalization of the postal service market.

Piotr Kulczycki, **Determination of postal services price levels in compliance with competition law – the calculation of the long term average incremental cost by way of activity based costing**

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Summary: One of the key compliance issues relating to competition law for the designated postal operator is the pricing of its commercial services, which must not be perceived as predatory. Experience of the European Commission shows that the price will not be predatory if it covers at least the long term average incremental cost (LRAIC) of a given product or service. The article focuses on the application of activity based costing (ABC) to determine the LRAIC for each product. In addition to the analysis of the definition of LRAIC and the principles and objectives of ABC, the article also presents a practical example of the application of the presented approach by the postal operator of Canada (Canada Post).

Keywords: postal services; long-term average incremental cost; LRAIC; activity-based costing; ABC; predatory pricing; designated operator.

Anna Górczyńska, **Choosing the most advantageous tender offer in public procurement of postal services**

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Summary: The paper examines the idea of using a tendering procedure for the supply of postal services in the context of existing Polish legislation on postal services and public procurement. Liberalisation of postal services in EU law imposed an obligation to harmonize national legal systems. Thus, supply of postal services shall fall into the scope of the competitive procedures of public procurement. The efficiency and quality of postal services would be ensured by the conduct of a proper tender procedure in particular by the use of a functional description of the object of the contract and the use of the 'best value for money' rule as the most influential award criterion. The author presents an empirical study analysing whether the existing legislation forms an effective public procurement system for the supply of postal services.

Key words: public procurement, postal services, competition, tendering procedure, description of the subject of the tendering procedure, award criteria

Rafał Szczęsny, **Selected legal issues concerning the service of the so-called 'official correspondence' via postal operators**

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Summary: The article discusses selected issues relevant to the sending (exclusively via postal operators) and serving correspondence from courts and other public institutions (official correspondence), as well as the posting of correspondence to courts and public institutions. While courts and public institutions are entirely free to choose which postal operator they use, procedural parties have full freedom of choice of postal operators only in criminal procedures. In other cases, parties have to send correspondence to courts or public institutions via the designated operator only, in order to ensure that the legally imposed time limit is observed. Such solution raises concerns, also about its consistency with the Constitution. The article considers also the difference between proof of posting and proof of receipt of a postal item and refers to general regulations on delivery provided for in the Postal law and in the executive act which is solely addressed to the designated operator. Pointed out are also differences i.a. between an intended delivery (to the person and at the address specified on the postal item), a substitute service and a notification in relation with delivery in particular proceedings, which in the author's opinion need to be harmonized. Other rules providing an incoherent monopoly for the designated public operator must also be amended (e.g. Art. 17 of the Postal Law).

Key words: service of correspondence, postal activity, postal operator, freedom of economic activity, document of confirmation of receipt – receipt of delivery, document of confirmation of submission, proper delivery, substitute service, notification, posting correspondence to courts and public administration institutions

Legislation and case law reviews

Anna Stolarczyk, **Overview of changes in the national postal law – the 2012/2013 legislative package**

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Summary: This article provides a brief overview of the Polish postal market covering the new legislative package for the national postal sector issued in 2012-2013 which implements the most recent Postal Directive. Presented first is the Postal Law Act, as the source of key changes. Highlighted next are the executive regulations issued under this Act. Finally, noted are the first effects of the new legislation on the postal operators' activity on the liberalized postal market.

Key words: postal law, postal services market, postal services, delivery, competition

Katarzyna Frączak, **Protection of collective consumer interests in postal activity – review of the UOKiK President's decisional practice 2007 – 2013**

Monika Zielińska, **Postal services sector in the jurisprudence of the Court of Justice of the European Union**

Selectively low prices, under the average total costs, charged by the dominant operator comply with EU law

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Duty to apply external procedures for dealing with customer complaints where a postal operator provides postal services outside the scope of universal services

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Case comment to the judgment of the Court of Justice of the European Union of 6 March 2008 in joint cases C-287/06 – C-292/06 *Deutsche Post AG, Magdeburger Dienstleistungs und Verwaltungs GmbH (MDG), Marketing Service Magdeburg GmbH, Vedat Deniz v. Federal Republic of Germany* (Aneta Fijałkowska-Kozerska, Maciej Kozerski)

Book reviews

Main Polish publications concerning the postal sector (Monika Zielińska)

Event reports

The 25th Congress of the Universal Postal Union – Doha, Qatar State, of 24 September–15 October 2012 (Piotr Łukomski)

Report on the postal debate “The liberalization of the postal market – regulatory provisions in the new Postal Law Act” – Office of Electronic Communications, 18 December 2012 (Monika Zielińska)

Report from the conference “Postal Law Act and executive acts as the legal basis for the designated operator to build its services offer” – Warszawa, Adventure Consulting, 26 November 2013 (Monika Zielińska)