

The Postal market in the changing word (from the Volume Editor)

Articles

Mateusz Chołodecki, Bożena Popowska, **Regulatory instruments on the postal market**

Table of contents:

- I. Introduction
- II. Postal regulatory authority – the President of UKE
- III. Classification of legal instruments of the President of UKE
 1. Legal instruments for the universal service
 - 1.1. Designation of the universal service provider
 - 1.2. Impact on the universal service provider
 - 1.3. Financing of the universal service
 2. Legal instrument for competition
- IV. Conclusions

Summary: The main goal of the paper is to analyse regulatory instruments of the President of UKE in his capacity as the postal national regulatory authority. The authors distinguish regulatory instruments according to their purpose for ensuring the universal service or competition. The instruments ensuring the universal service involve: service provider designation, impact of the regulatory authority on the universal service provider, and financing of the universal service. In contrast, third party access to the postal infrastructure is considered as a regulation for competition. The paper shows that Polish Postal law focuses mainly on the universal service obligation, rather than on the competition on the postal market. Consequently, the President of UKE has a stronger regulatory power to ensure the provision of the universal service, rather than creating the conditions for effective competition in the postal sector. Such a situation differs from the Polish regulatory model used on other regulated markets. In conclusions, the authors propose to increase the regulatory power of the President of UKE to stimulate competition on the postal market.

Key words: President of UKE, postal regulatory authority, legal instruments, regulated industries, postal market, postal law.

JEL: K23

Piotr Lissoń, **A universal service and a designated universal service provider – two (in)dispensable pillars of postal law**

Table of contents:

- I. Introduction
- II. A universal postal service in a multi-level legal system
 1. A universal postal service in the provisions of international law
 2. A universal postal service in the provisions of European Union Law
 3. A universal postal service in the provisions of Polish postal law

III. Is an institution of a designated postal services provider necessary?

IV. Conclusions

Summary: The article contains an analysis of legal provisions governing two institutions of postal law that are referred to in its title: a universal service and a designated universal service provider. The question asked is whether, in a situation of changing conditions of the postal market, the application and enforcement of legal regulations providing for an obligatory provision of a universal postal service and the designation, for this purpose, of a specified provider is legitimate. The findings presented in the article make it possible to conclude that the institution of a universal service continues to be an essential and constant element of postal law, both domestic and EU, as well as international law, playing an important role in the contemporary postal market. Somewhat different conclusions are drawn from the analysis of the provisions applicable to the institution of a designated service provider. Firstly, Polish regulations of postal law in this respect seem to be compatible with European Union law, as well as relevant provisions of international law, despite the fact that they also allow for the application of other solutions aimed at providing the universal postal service, other than a designated service provider. Secondly, under the conditions in which the Polish postal market currently operates, the implementation of a solution allowing the provision of the universal service by market forces would be rather impossible. And yet, it will be justified to expect that an entity acting as the designated provider (also termed a designated service operator) adjusts the performance of its activity to a greater extent to the changes currently occurring in the postal services market. In particular, what should be expected, at the age of a dynamic development of electronic trading (or e-commerce), is a much greater activity of the designated provider in the field of satisfying the demand for the transport services of the goods ordered on-line.

Key words: postal law; multi-level legal system; services provided in general economic interest; universal service; letter-post items; parcel-post items; postal services provider; designated provider of postal services.

JEL: K 230, K 400, L500

Zofia Snażyk, **The scope of the [designated] operator's freedom to shape the manner of providing the universal postal service**

Table of contents:

I. Introduction

II. Definition of the universal postal service

III. The influence of the universal service provider on the determination of the universal postal service

IV. Legal forms of the determination of the universal postal service

V. Conclusions

Summary: The article looks at research into the scope of the [designated] operator's freedom to shape the manner of providing the universal postal service. The author indicates first of all the fixed elements of the universal postal service. Presented next is the discretionary power of the EU Member States in shaping the manner of providing these services, as set out by the Postal Directives. The article goes on to present the Polish regulations regarding the parameters of the universal postal service. The author considers the current model of shaping the parameters of the

universal postal service as being unadjusted to market conditions, and is particularly critical of the low involvement of the designated operator in shaping the method of providing these services. According to the author, the proper legal form in which the market regulator operates is through administrative acts, which should be used when setting variable parameters of the universal postal service with the participation of the designated operator. For *de lege ferenda* applications, the author includes the need to provide definitions in the [Polish] Postal Law, in relation to the issue of 'post office' and 'registered post'.

Key words: universal postal services, market regulator, postal operator

JEL: K230

Grzegorz Pawul, **Derogation from the obligation to provide the universal service in postal law**

Table of contents:

- I. Services of general economic interest in European law
- II. Universal service in postal law
- III. Terms of universal service provision
- IV. Premises for establishing a derogation from the provision of the universal service
- V. Request from the designated operator to establish a derogation
- VI. Decision of the President of UKE regarding the establishment of a derogation
- VII Summary

Summary: EU institutions recognize postal services as being of general economic interest (*SGEI – service of general economic interest*) that is, services that are particularly important to citizens due to the public interest. EU Directives state that postal services are essential communication instruments for the public, and play a substantial role in ensuring social, economic and territorial cohesion. A universal service constitutes a significant part of postal services, – selected from the perspective of an enumerated catalogue of services as well as the conditions that it must meet.. In cases specified in the Postal Law Act, it is permissible to introduce a derogation from the obligation to provide the universal service. The article is intended to analyze premises and decision-making procedures of the President of UKE regarding the establishment of a derogation from the requirement to provide the universal service.

Key words: universal service providers, universal services, obligations universal service providers, derogation from the obligation to provide universal services.

JEL: K230

Magdalena Sławińska, **Premises of the appointment of the designated operator**

Table of contents:

- I. Introduction
- II. Statutory selection criteria
 1. Premise of maintaining the continuity of universal service provision
 2. Premise of ensuring the indicators of required routing time of postal delivery and availability of the universal service
 3. Premise of the cost of providing the universal service presented by the postal operator
 4. Premise of maintaining the profitability of universal service provision

5. Premise in the scope of performing the tasks of the designated operator, including those in favour of national defence, state security or public safety and order
6. Premise of the economic and technical capability of the postal operator to provide the universal service

III. Conclusion

Summary: The Postal Law binding from 1 January 2013 introduced an unknown institution on the postal services market – the appointment of the designated operator. This article is devoted to the question of appointment of the designated operator, which is an important element of the procedure to issue an administrative decision on the designation of a postal operator obliged to provide the universal service. The aim of the article is to outline the way of understanding the terms included in Art. 71(3) of the Postal Law as an indication of the choice of the designated operator in correlation with the provisions imposing a series of obligations on the postal operator providing services included in the ambit of services of general economic interest, such as the universal postal service.

Key words: universal service, premises of appointment, premise of maintaining the continuity, premise of ensuring the required routing time indicators, premise of availability, premise of cost, premise of maintaining profitability, premise in the scope of performing the tasks of the designated operator, premise of economic and technical capacity

JEL: K 230, K 400, L500

Wojciech Bożek, **Proceeds from fines regulated in the Act of 23 November 2012 Postal Law – financial and legal analysis of issues**

Table of contents:

- I. Introduction
- II. Fines as a source of revenue of the state budget
- III. Fines in the Postal Law
- IV. Directives on the assessment of fines set out in the Postal Law
- V. The fiscal function of fines regulated in the Postal law – a statistical concept
- VI. Summary

Summary: Proceeds from fines regulated by the Act of 23 November 2012 Postal law constitute revenues of the state budget. The current situation in the public finance sector shows the importance of each source of public revenue in financing public tasks. This prompts an in-depth analysis of fines regulated in the Law of 23 November 2012 Postal Law from a finalized point of view, that is, discussing the financial bases of these public levies, their importance, and their role in the public finance system. The main purpose of the penalties in question is their preventive impact on postal market operators, which undermine the security of this market, and thus the protection of the postal services market against acts that disrupt access to high-quality universal service by postal users. The paper uses a comparative, dogmatic, and analytical research methodology.

Key words: fines, public funds, public income, state budget

JEL: K39

Anna Romejko-Borkowska, **E-administration or the digitalization of public services in Europe and Poland – new role of postal operators?**

Table of contents:

- I. Introduction
- II. The eIDAS Regulation as a regulatory environment for the digitalization of public services
- III. The development of the digitalization of public services in Europe, postal operators' role
- IV. The digitalization of public services in selected European countries – a case study
 1. General remarks
 2. The review of selected European solutions, characteristics
- V. Polish market conditions
 1. A governmental agreement with Poczta Polska
 2. Envelo – Poczta Polska's ready-made tool for use as part of the e-administration programme
- VI. Summary

Summary: The development of e-administration (e-government, e-state, e-office) is a natural stage of facilitating communication between the state and its citizens in the Internet age. Regulation (EU) no 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (the so-called eIDAS Regulation) came into force in mid-2016. It facilitates the process of authenticating and signing electronic documents, in that way opening a path for the development of an efficient system for the circulation of official correspondence in Poland.

In many European states, national postal operators have become the natural partner for public administration in the area of digital mail (or postal operators that originated from state structures). Currently in Poland an increasing tendency of the Polish government has been observed to engage the Polish national postal operator, Poczta Polska S.A., in the process of national digitalization of public administration. The development of that market segment, with the appropriate engagement of the state and the establishment of relevant legal mechanisms, may facilitate the smooth replacement of traditional forms of communication with electronic ones involving modern technologies.

Key words: postal law; postal services; digitalization, e-administration, public administration, national postal operator

JEL: H42, K23, L870, O33

Łukasz Grzejdziak, **Between a relative and an objective advantage. Case T-143/12 Deutsche Post and its consequences**

Table of contents:

- I. Introduction
- II. Facts of the case
- III. European Commission Decision
- IV. Proceedings before the General Court
 1. Pleas put forward by Germany
 2. Assessment of effect of aid on trade and on competition as well as regarding the existence of State intervention
 3. Assessment of the condition of an advantage

4. Analysis of the selectivity of the measure
- V. Assessment of the General Court
 1. General remarks
 2. Incorrect interpretation of the Altmark judgment
 3. The blurring of boundaries between the element of an advantage and of selectivity
 4. Invalid and inconsistent with settled case-law selectivity test
 5. Fragmentary test of compensation of the structural disadvantage

VI. Conclusions

Summary: In July 2016, the General Court issued a judgment in the *Germany v Commission (Deutsche Post)* case. In this judgment, the Court carried out a judicial review of the decision of the European Commission declaring as State aid certain measures granted by the German government to Deutsche Post. Some of them were considered by the Commission as existing aid or as aid compatible with the Internal Market. However, measures intended to cover additional costs related to the special status of German postal officers was considered an illegal aid and thus subject to recovery.

The General Court annulled the Commission decision and held that the measure in question did not constitute State Aid, but merely a compensation for the disadvantageous structural position of Deutsche Post resulting from the obligations imposed on this company. The interpretation of Art. 107 (1) TFEU made by the General Court, regarding the selectivity of the measure, as well as the analogy to the Altmark test, as applied by the General Court, raise questions as to their compliance with well-established case-law regarding public service compensation, as well as the concept of 'unmarketlike' advantage and the notion of State Aid in general. The paper aims to answer the question of the compatibility of the Court's judgment with earlier case-law, as well as to assess potential consequences of a possible application of the approach developed by the Court in the analyzed judgment.

Key words: State Aid; Postal services; Notion of State Aid; Selectivity of Aid; Notion of unmarketlike advantage granted to an undertaking; Financing of social benefits granted to employees

JEL: H25, H55, K23

Anna Stolarczyk, Marek Sylwestrzak, **The postal services market in 2012–2017**

Table of contents:

- I. The postal market in numbers
- II. Fees for selected postal services
- III. Impact of the liberalization of the postal market onto the financial results of the designated operator
- IV. Development directions of the postal market
 1. Collection points for shipments in the context of the delivery of goods purchased in e-shops
 2. Electronic postal services and indicators regarding the development of the postal services market
 3. Differentiated prices for cross-border delivery services
 4. Impact of selected factors on the cross-border price of the postal delivery of parcels in the European Union
 5. Cooperation of state administration with the designated operator

Summary: The postal market is presented here in terms of its basic parameters changes in 2012–2017. Included also are selected postal services' prices and elements of economic analysis. Moreover, with the decrease of the volume of traditional postal services, attention is drawn to the developing cooperation of postal operators in the field of delivery services on the e-commerce market. The cooperation between operators designated by state administration as part of providing e-services to citizens is also highlighted.

Key words: postal services market, postal services, delivery, cross-border prices

JEL: O31

Case law reviews

Tables of judgments of the Voivodship Administrative Court in Warsaw in postal cases from 2015–2017 (Mateusz Chołodecki)

Book reviews

Zofia Snażyk, *Świadczenie pocztowej usługi powszechnej w warunkach liberalizacji rynku [Provision of the universal postal service after market liberalization]*, Wydawnictwo C.H. Beck, Warszawa 2015, ss. 280 (Bartłomiej Nowak)

Main Polish publications concerning the postal sector 2014–2017 (Mateusz Chołodecki)

Event report

Report from the conference 'I National Postal Conference *The Postal market in a changing word*' – Warszawa, CARS, 28 September 2017 (Mateusz Chołodecki)