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*Beyond the USO: reflections on recent decisions on
postal SGEIs*

The 27th Conference on Postal and Delivery Economics
22-25 May 2019
Dublin

- I. Overview of the compatibility conditions under the 2012 SGEI Framework
- II. The recent decision-making practice of the Commission
 - Czeck Post - DBIS
 - La Poste - territorial presence
 - POL - Network and Products SGEIs
- III. Common take-aways on the role of the incumbent postal network / USO operator
- IV. Conclusion

I. Overview of the compatibility conditions for SGEI compensation under the 2012 SGEI Framework

Compatibility conditions in compliance with Art. 106(2) TFUE

1. Existence of a genuine SGEI
2. Entrustment act(s)
3. Duration of the entrustment
4. Compliance with the Transparency Directive
5. Compliance with Union public procurement rules
6. Absence of discrimination
7. Amount of compensation and control of overcompensation
8. Transparency



Compliance with **n. 1** and **n. 5** fairly straightforward in the case of USO compensation

Existence of a genuine SGEI

- Member States' wide margin of discretion in defining a given service as such




Services that are / can be provided satisfactorily and under conditions (price, objective quality characteristics, continuity, access) consistent with public interest defined by the State by undertakings operating under normal market conditions

- Member States to also show that they have given proper consideration to public service needs supported by way of a public consultation or other appropriate instruments
- Commission's competence limited to checking whether the Member State has made a manifest error when defining the services as an SGEI

Compliance with Union public procurement rules

- The entrusting authority has complied - or commits to comply - with applicable EU rules in the area of public procurement
- Including any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary Union law

 Non-complying aid is considered to affect the development of trade to an extent that would be “contrary to the interests of the Union” within the meaning of Article 106(2) TFEU

II. The recent decision-making practice of the Commission

1

The Czech Post case: Data Boxes Information System (DBIS)

- Compensation for the provision of DBIS + certain DBIS development services over 2018-2022
- Advanced e-communication channel for internal communication within the PA and for secured guaranteed communication between the PA and citizens/companies (an e-alternative, in some cases a replacement, of conventional postal services)
- System operated by “*a reliable State-controlled entity*”, service free of charge at the point of use, its use mandatory for the PA
- Specific benefits brought about by the entrustment to Czech Post (natural integration of physical & data communications; post offices to provide support to DBIS users)



SGEI: no manifest error of assessment

- Exemption from public procurement under Art. 11 of Directive 2014/24/EU: award of public contract by a contracting authority to another contracting authority based on exclusive right, pursuant to law/regulation/administrative provisions compatible with the TFEU
 - Czech Post is a contracting authority (“*body governed by public law*” within the meaning of Art. 2(1)(4) Directive 2014/24/EU)
 - Exclusive right to operate the DBIS foreseen in 2 acts + gov. resolution
 - Restrictions to freedom to provide services *ex* Art. 56 TFEU justified as an exception by the exercise of official authority under Art. 51
 - **Appropriate** for achieving objective of streamlining communication
 - **Necessary**, as DBIS is a strategic service for CZ and some critical functions (security, access to DBIS) must be controlled by the State
 - **Proportionate**, as Czech Post would only directly implement most critical functions and contract to an external provider those service elements over which strict State supervision is not needed

2

The La Poste case: territorial presence

- Compensations for the fulfilment of public service mission relating to territorial presence (*aménagement du territoire*) over 2018-2022
- Mission incremental to the universal service with further, different objective of territorial development: maintaining a network of contact points whose density goes above and beyond that required by the USO
- Traditionally considered a genuine SGEI, its continuous responsiveness to the needs of users was proved by FR based on consultations on the draft contract (including network's adaptations to diversified needs, adjustment of schedules to customer expectations, improvement of offer and access to services, via development of IT and digital solutions, ...)



Mission as a genuine SGEI

- Sole provider exemption, i.e. mission entrusted by means of a negotiated procedure without prior publication in accordance with Article 32(2)(b) of Directive 2014/24/EU
 - La Poste currently the only operator capable of carrying out the mission, having a unique logistics & retail network in terms of density and size
 - While some local businesses exceed La Poste in terms of establishments in rural areas, these locations do not form a network → no viable and credible alternative
 - In the best of cases, those operators could possibly perform only some of the services, without being able to carry out all of them



3

The POL case: the Network and Products SGEIs

- Compensation for the obligation to maintain a branch network above its optimum commercial size for the period 2018-2021 (no compensation for the obligation to provide a bundle of services through the branch network)
- UK justified the obligation against various public needs (for a local, accessible and secure serviced office environment, exp. for those who cannot travel independently for long distances or cannot use digital channels; for the possibility of completing multiple over-the-counter transactions in the same space)
- Social policy requirements, with post offices being a key part of the social fabric of communities



SGEI: No manifest error of assessment

- Sole provider exemption , i.e. mission entrusted by means of a negotiated procedure without prior publication in accordance with Article 32(2)(b) of Directive 2014/24/EU
 - POL continued to remain the only operator with the necessary characteristics to provide the Network SGEI (geographic access criteria), with no reasonable alternative / substitute to offer the same bundle of different services like the Products SGEI by means of a single, cohesive network and to perform a social & economic role for local communities across the country
- For the Products SGEI, the Master Distribution Agreement with Royal Mail was covered by the sole provider exemption; the other contracts falling within Directive 24/2104/EU had been tendered by the relevant contracting authority in compliance with EU public procurement rules

III. Common take-aways on the role of the incumbent postal network/USO operator

- The first take-away is the fact that incumbent network/USO operators can play **a relevant role in the public interest** when dealing with service offerings outside the traditional scope of postal services
- The incumbent network/USO operator, be it publicly or privately owned , is a **trustworthy partner for the State** when it comes to providing SGEIs. This legitimacy is the result of a combination of features such as:
 - Ability to ensure the delivery of the service itself
 - Intrinsic reliability
 - Naturally trustworthy capacity in the area of official, but also commercial and private communication

- Confirmation of the incumbent network/USO operator's **capacity to operate in the communication domain**, whether the communications are:
 - Conventionally physical
 - Converted from physical to digital or from digital to physical
 - Digitally native
- Confirmation of its reliability for
 - Handling **digitally native communications**
 - Involving **intrinsically sensitive data**

- The third takeaway is **the pivotal role of the network** offered by the incumbent/USO operator
 - Beyond the universal service and the USO, the postal network is **confirmed as a unique asset** for the purposes of the State's public interest objectives:
 - Enabling the offering of **heterogeneous services**
 - Guaranteeing their **ubiquitous accessibility** throughout the territory
 - An extraordinary nationwide presence but also the ability to organise the ubiquitous provision of services
- ➡ Ensure the appropriate level of services at all places and for all customers, irrespective of their administrative structure

V. Conclusion

- The recent decisions acknowledged the genuine SGEI nature of the services being compensated, which sheds some light on
 - The fundamental changes that are taking place in postal users' preferences (Czech Post case)
 - The role that a local, accessible, secure serviced office environment can play for a wide range of public needs other than postal services (La Poste / POL cases)
- The decisions also recognized, by conceding EU public procurement compliance under the exercise of official authority and “sole provider” exceptions, the unique position of the postal network operator when it comes to the ability to meet geographic access criteria and perform a social / economic role through a single, cohesive and with certain quality characteristics network

Thank you!

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