

Market Regulations and USO in the Revised Swiss Postal Act: Provisions and Authorities

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Swiss Economics Working Paper 0048

August 2014

ISSN 1664-333X

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1. INTRODUCTION

New postal legislation in Switzerland entered into force on October 2012. It encompasses a new Postal Act as well as a new Postal Organization Act. The reform of the Postal Act covers three main areas. The first is market regulation, which applies to all operators symmetrically. It includes the replacement of the former licensing system by compulsory registration and provisions on ex-post regulation of mutual access to PO boxes and address data. Second, it restates the definition of the Universal Service Obligation (USO), with different provisions for services offered to private and business customers and distinguishing between the accessibility of postal and financial services. Third, the new Postal Act defines a new institutional design, i.e. the division of tasks, organization and responsibility of public authorities in the postal sector. The Postal Organization Act governs Swiss Post's range of activity, its corporatization and the spin-off of its financial services branch PostFinance.

This paper focuses on the analysis of the market regulations and USO as defined in the Postal Act as well as their interaction with competition law. Specifically, the paper covers the following aspects of the regulatory framework for the postal sector in Switzerland:

First, it discusses the *scope of the USO*, consisting of provisions on the range of products to be offered and their prices, on the density and accessibility of the postal outlet network as well as the coverage and frequency of delivery.

Second, it analyzes the *financing of the USO*, consisting of provisions on the calculation of the net cost, a residual monopoly for letters up to 50 grams and a regulatory cost allocation mechanism to ensure consistency of price regulation and the financing of the USO. This is discussed in the context of general competition law (Cartel Act and Price Supervision Act).

Third, it presents the relevant *regulatory authorities*, consisting of the allocation of competences and the interfaces between the regulators (PostCom, OFCOM, ComCo, Price Supervisor).

The remainder of this paper is structured as follows: Section 2 presents a short overview of recent legislative changes affecting the Swiss postal sector. Section 3 outlines current regulation with a focus on the scope of the postal USO. Section 4 discusses the financing of the postal USO in the context of Swiss competition law, while Section 5 gives an

overview on the regulatory institutions involved in the postal sector. Section 6 compares the Swiss regulatory framework with EU provisions. Section 7 concludes.

2. A SHORT HISTORY OF SWISS POSTAL LEGISLATION

At the end of the 20th century, technical developments in communication, the simultaneous worldwide liberalization fostered by the World Trade Organization (WTO), and the emergence of a single European market called for structural changes within the Swiss postal and telecommunications network. As a result, in 1997, new postal legislation was enacted in Switzerland. Subsequently, the postal business and telecommunication services were separated into two different enterprises (Swiss Post and Swisscom). Swisscom was given the status of a company with limited liability in 1998. In the same year that Swisscom went public, the postal system was newly regulated through both a technical decree (Postal Act) and an organizational decree (Postal Organization Act).

This legislation transformed Swiss Post from an agency within the government to an autonomous public (state-owned) corporation. In 2002, the Federal Council took stock of this postal reform, which it basically saw as a success. As a consequence, the Federal Council planned to open up the market in two steps. First, the parcel market was to be fully opened by 2004, and second, the same was to be done for the letter market in 2006, with the exception of addressed letters of up to 100 grams.

The Federal Council reserved the right to commission an evaluation of market opening steps that had been taken up to that point before it further opened the postal market for letters. Such an opening also called for regulatory adjustments. Switzerland had previously known no sector-specific regulatory authority for the postal market. With an ordinance amending the Postal Act, the Federal Council created the postal regulatory authority, PostReg, in 2004 (Swiss Federal Council, 2009). Since then, the Postal Act also obligated Swiss Post to operate a countrywide network of post offices (infrastructure mandate), ensuring that universal services are available in all regions to all segments of the population and at affordable prices. A new rule imposed by PostReg called for a network that was accessible by 90% of the population in 20 minutes by public transport or walking.

Prior to further opening the market for addressed letters, a study commissioned by the Swiss Government (WIK Consulting, 2005) concluded that lowering the reserved area for

addressed letters to 100 grams would not put universal services and their funding at risk. Following this recommendation, the Federal Council opened the market for letters weighing more than 100 grams as of 1 April 2006. In 2009, the Federal Council further reduced the postal monopoly for letters from 100 grams to 50 grams by a revision of the Postal Services Ordinance. As an accompanying measure, the Federal Council strengthened the postal regulatory authority. The Federal Council proposed to Parliament to open the market fully as part of the total revision of the postal laws (DETEC, 2009). However, the Parliament did not approve full market opening, so there remains a reserved area for letter mail up to 50 grams.

Revisions from 2010 to 2013 converted Swiss Post into a limited company under special law (the new Postal Organization Act). At the same time, Swiss Post's division for financial services, PostFinance, was hived off and placed under the control of the Swiss Financial Market Supervisory Authority (Finma) as a limited company under private law. Today, Swiss Post is a public corporation, owned entirely by the Swiss Confederation. Its scope of operations is limited by the institutions laid down by the federal legislation. The government (Federal Council) not only determines the scope of postal products, services and prices of universal services as defined in the Postal Act, but also defines the strategic objectives of Swiss Post every four years (IPC, 2011, and the Postal Organization Act).

3. THE SCOPE OF THE SWISS POSTAL USO

The new Swiss Postal Act aims to guarantee sufficient, inexpensive universal services for the entire Swiss population in every part of the country. In addition, the Act is also intended to form the basis for fair competition in the postal sector. The new postal legislation assigns the task of providing universal services directly to Swiss Post. The legislation deliberately omitted applying a tender mechanism, as this would be too complex in terms of administration and, other than Swiss Post, no operator would be in a position anyway to provide universal services in the current form of the USO (cf. Jaag and Trinkner, 2009). Therefore, Swiss Post is obligated to ensure provision of the universal services and to comply with the relevant requirements of the regulatory authorities. Swiss Post has a USO for postal services and payment transaction services. However, it is not required to provide these services independently; it can cooperate with third parties or outsource parts of the mandate to subsidiaries.

Under the new Postal Ordinance, the Federal Council differentiates between the two USO mandates more clearly than in the past, paving the way for a customer-oriented, financially viable service tailored to meet market requirements. The postal USO sets out guidelines concerning the range of services, prices and quality to be provided, recognizing needs of both senders and receivers. High demands are placed on Swiss Post for home delivery regarding both delivery method and nationwide availability. Swiss Post can and will also offer other products in addition to the services within the scope of the USO. Below we shall briefly describe the requirements and the scope postal and payment transaction USO in Switzerland (for an overview of the services within the scope of the USO, see Table 1).

According to the law, Swiss Post is required to operate a nationwide network of post offices and agencies. As a rule, at least 90% of the population must be able to reach this network within 20 minutes by foot or by public transport (30 minutes if a doorstep collection service exists). There must be at least one post office in every region (there are 130 districts or so-called “ARE Raumplanungsregionen”). Post offices, as well as postal agencies, are explicitly regarded as access points. The core services for the USO in these access points continue to include the mail and parcel services Priority (next day delivery) and Economy (delivery on third day after deposit). For posting letters, at least one letterbox must be available in every locality. For bulk mailings, suitable acceptance outlets must exist for the business customers. These do not necessarily need to be accepted in the retail post office network. Individual consignments of the USO (private customer consignments) are offered in traditional post offices and postal agencies operated by third parties. Financial services included in the USO must be accessible by at least 90% of the population within 30 minutes by foot or by public transport. The methodology for measuring accessibility is approved by the relevant regulatory authorities, PostCom for postal services and the Swiss Federal Office of Communications (OFCOM) for transaction services.

The Postal Act sets very high quality requirements of Swiss Post for the delivery times in comparison to international standards; 97 percent of letters and 95 percent of parcels must be delivered on time. The methods for measuring delivery quality must be approved by the regulatory authority. They must comply with internationally recognized standards and correspond to the state-of-the-art. This quality measurement for the above must also be carried out and certified by independent bodies.

The delivery requirements apply to recipients of both single-piece and bulk mail. The Postal Ordinance requires the USP to deliver mail and parcels at least 5 days per week. Press items, such as newspapers and magazines are delivered 6 days per week. Due to economies of scope, Swiss Post also voluntarily offers the delivery of priority mail 6 days per week. Addressed mail must be delivered to all locations in Switzerland inhabited year round. In addition, Swiss Post must also deliver to houses inhabited throughout the year for which the additional journey time by motor vehicle, measured from a location that is inhabited all year round, is not longer than two minutes, corresponding to a distance of approximately one kilometer. If there is no obligation for home delivery, Swiss Post must offer an alternative solution. For example, it can reduce the frequency of delivery or specify another delivery location, such as a post office box or a delivery facility on the way to another location that is inhabited all year round.

Figure 1 briefly summarizes the relevant requirements for the services within the scope of the USO.

	Collection in post offices and agencies (Art. 30)	Delivery location (Art. 31)	Delivery frequency (Art. 32)	90/20-accessibility of the network, incl. home delivery service	90/30-accessibility of the services	Indirect press subsidies (Art. 47)	Uniform prices (Art. 47)
Domestic postal services (Art. 29 Par. 1)							
Letters / parcels "individual"	X	X	X	X			X
Letters / parcels "bulk"		X					
Newspapers		X	X			X	X
Court documents		X					
Payment transaction services (Art. 43)							
Payment transaction services account, electronic transfer							
Cash credit note, cash deposit, cash withdrawal					X		

Figure 1: Differentiation of the USO (the cited Articles refer to the Postal Act).

Press subsidies are also regulated within the context of the USO, motivated by the goal to support the diversity of the press (cf. Hugentobler and Jaag, 2013). The new Postal Act contains a number of modifications concerning indirect press subsidies. Swiss Post is compensated for the mandate to offer reduced rates to titles eligible for subsidies by payments from the Federal government. Swiss Post redistributes the subsidy payment from the government to the press by means of reduced prices for delivery. With annual

subsidies for the delivery of newspapers and magazines totaling CHF 50 million (approx. EUR 40 million), the Federal government continues to contribute to maintaining the diversity of the press and opinions in Switzerland.

Eligibility criteria are in part taken from the previous Postal Act (Article 15) and specified in the Ordinance on the Postal Act. With regard to membership and foundations publications as well as the regional and local press, certain criteria were adapted and/or additional criteria were incorporated. OFCOM rather than Swiss Post determines and grants eligibility. Parties deemed eligible are daily and weekly newspapers on subscription, produced by the regional and local press, which satisfy the criteria in Article 36 of the Ordinance on the new Postal Act. Regional and local press is defined as small newspapers, in particular with a daily print-run of between 1,000 and 40,000 copies on average and which satisfy certain criteria in the Ordinance on the new Postal Act. The regional and/or local nature of the publication is no longer defined by geographic, linguistic or content-related criteria concerning the printed matter.

The USO for payment transactions will continue to include opening an account and making transfers, deposits and withdrawals. As already mentioned above, payment transaction services should be accessible to 90% of the population within 30 minutes on foot or by public transport. Unlike the basic postal service, the payment transaction service is formulated without reference to specific technologies, thereby facilitating the introduction of modern, more customer-friendly services. Those access points that also provide payment transaction services will continue to be operated by Swiss Post itself. Those that only offer logistical services will increasingly be outsourced to agency partners.

4. THE FINANCING OF SWISS POSTAL USO

In line with EU requirements, the net cost of the USO must also be calculated in Switzerland. It results from a comparison of the actual profit of Swiss Post (status quo) with the hypothetical profit of Swiss Post without USO. In 2013 the net cost of the USO amounted to CHF 409 million (approx. EUR 340 million). In contrast to the EU, there is no additional examination of whether the burden is to be considered as unfair (cf. Jaag, 2011). Also, in contrast with the Postal Directive, there is no financing mechanism in Switzerland that envisages state funds or a contribution by competitors to financing the

USO. However, Swiss Post will continue to be permitted a reserved area for letters up to 50 grams (contrary to the Federal Council's initial proposal).

The medium-term sustainability of the USO financed by the residual monopoly is jeopardized by the increasingly intensive competition from electronic means of communication. At the same time, there is strong price regulation for Swiss Post services. For the reserved area, Art. 18 of the Postal Act authorizes the Federal Council to define and approve the adaptation of regulated prices for individual services. Outside of the reserved service, another (non-sector-specific) authority, the Price Supervisor is responsible, provided that the prices are not the result of effective competition. This price regulation is cost-based, which prevents services arising that generate a significant surplus to Swiss Post. However, it also prevents these services from covering losses from unprofitable services due to the USO.

Article 51 of the Ordinance on the new Postal Act resolves this conflict by means of a specific financing instrument, *net cost rebalancing*. Swiss Post is allowed to reallocate the net cost of the USO through transfer payments between its units and subsidiaries. It can charge these costs to the services for which it is able to generate high prices in order to relieve unprofitable services (Jaag 2007, 2011). By shifting costs to the more profitable services, it increases its costs and can therefore also enforce higher prices under price regulation (which is cost-based). Hence, the legislation made cost-based pricing consistent with USO subsidies by allocating USO net costs to profitable services and including that in the "cost" used to set prices. The net cost rebalancing also makes it possible for Swiss Post to separate operational accounting from regulatory accounting. In a first step, it allocates its costs according to regular accounting principles (business accounting); in a second step, it carries out the net cost rebalancing (regulatory accounting). This interplay between the financing of the USO and price regulation makes it possible for Swiss Post to provide universal services without external financing. For a general assessment of the interaction between price regulation and the financing of the USO see Jaag (2013); for an in-depth discussion of net cost rebalancing see Haller et al. (2014).

Figure 2 displays a stylized example for the Swiss net cost rebalancing: Without rebalancing, there is a Product 1 (the "USO-product") with negative profit due to the high cost caused e.g. by daily and ubiquitous delivery. Product 2 is not affected by the USO. It

is highly profitable and thus able to contribute to the financing of the USO. With a very narrow price control mechanism, the price of this second product would be considered excessive and set lower which would question its contribution to the financing of the USO (while overall profit may be deemed appropriate). By means of net cost rebalancing, product 1 is disburdened while product 2 is charged. Since the profit and cost structure after net cost rebalancing is relevant for price regulation, prices are allowed to stay high for product 2 such that it can contribute to the financing of the USO. Product 3 is also disburdened in the example of Figure 2.

	Product 1	Product 2	Product 3	Total
Revenue	200	200	180	580
Cost	220	150	170	540
Profit before net cost rebalancing	-20	50	10	40
Net cost rebalancing	30	-40	10	0
Profit after net cost rebalancing	10	10	20	40

Figure 2: Net cost rebalancing.

With net cost rebalancing Swiss Post allocates cost in two steps. In the first step cost is fully allocated based on activity. The resulting allocation is used for management purposes. Then, in the second step, the net cost is rebalanced. The resulting regulatory accounts are the basis for price control and other regulatory intervention.

5. INSTITUTIONS IN THE SWISS POSTAL SECTOR

The Postal Act creates the new regulatory authority, PostCom, with tasks as specified in the new postal legislation. This was not the case within the old framework, in which the former authority, PostReg, did not have a sound legal basis for its activity. The new legal framework clearly determines what duties Swiss Post and the private providers of postal services have with regard to regulatory authorities. PostCom is allowed to collect information in order to perform its core tasks: (1) monitoring the quality of the USO (including price uniformity) and (2) observing the development of the postal market with the purpose of ensuring the provision of the country with postal services. In addition, PostCom has created an arbitration board for customers and postal enterprises.

Administratively, PostCom is attached to the General Secretariat of the Federal Department of the Environment, Transport, Energy and Communications (DETEC). While PostCom is given new tasks within the new legislation, it no longer has to accomplish its current tasks related to postal policy and international affairs. These tasks are now managed by a specialized unit in OFCOM, which is also responsible for the allocation of subsidies to the press. With OFCOM, a new actor was created, which, in

addition to policy tasks (such as the further development of general regulatory conditions), assumes roles associated with the control of basic postal and payment services. OFCOM also coordinates the participation and distribution of roles in international bodies (e.g., UPU).

Under the old legislation, Swiss Post assumed conflicting roles: On the one hand, it was a provider of delivery services in a competitive market; on the other hand, it was responsible for the execution of the legislator’s press-political directives. Now, OFCOM also assumes press promotion tasks which in the past were the responsibility of Swiss Post. Organizationally, the specialized unit is attached to OFCOM. This institutional separation ensures that regulatory tasks (PostCom), policy tasks (OFCOM) and owner function (General Secretariat DETEC together with the Federal Finance Administration, FAA) are managed by different organizations (see Swiss Federal Council, 2009).

Another player, the Swiss Financial Market Supervisory Authority Finma, pursues its mandate to protect creditors, investors and policy holders and ensure the smooth functioning of the financial markets. It is thereby also interested in universal financial services and their funding. The Federal Office of Transport (FOT) implements and helps design Swiss policy on public transport. Finally, by converting Swiss Post into a limited company, the new legislation subjected Swiss Post to taxation. Consequently, tax authorities will increasingly become stakeholders of Swiss Post (see Swiss Federal Council, 2009).

Figure 3 gives an overview of the regulatory authorities involved in the Swiss postal sector.

	Swiss Post Ltd.		
	Post CH Ltd	PostFinance Ltd	PostBus Switzerland Ltd
Policy	OFCOM		
USO (postal, payments)	PostCom	OFCOM	
Monopoly price control	Federal Council		
Price control	Price Supervisor		
Press subsidies	OFCOM		
Sector-specific market supervision	OFCOM	Finma	FOT
Owner	General Secretariat DETEC / FAA		

Figure 3: Institutions in the Swiss postal sector.

6. COMPARISON WITH EU LAW

Figure 4 compares the scope of the Swiss postal USO (Articles 13-17 of the Postal Act) with the minimum provisions of Articles 3 of the Postal Directive.

Switzerland (Postal Act)	EU (Postal Directive)
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Market opening	Reserved area up to 50 grams	Full market opening
NRA	PostCom as independent regulatory authority	Independent NRAs
Scope of USO		
• Product range	• Bulk and single piece mail and parcels	• Not specified
• Frequency of delivery	• five days (newspapers six)	• five days per week
• Delivery location	• doorstep	• doorstep or appropriate installations
• Prices	• economic principles, uniform, uniform principles	• affordable, cost-oriented, transparent, non-discriminatory
• Infrastructure	• Accessibility (90% in 20min)	• Not specified
Financing of USO	Net cost rebalancing	If net cost represents an unfair burden: compensation from public funds or sharing mechanism

Figure 4: Comparison between Swiss and EU postal regulation.

The comparison reveals that the Swiss USO is compatible with the provisions of the Postal Directive, while its financing through a reserved area is not. In addition to a postal USO, there is also a USO for payment services in Switzerland. The postal accessibility constraint is economically less severe than the constraint on cash payment transactions even though the number of necessary physical access points is lower for payments than for postal services. However, the former need self-run offices which are rather expensive to operate while the latter can also be offered in agencies run by third parties. Both constraints on Swiss Post’s infrastructure together result in one of the densest networks operated by a postal service.

7. SUMMARY AND CONCLUSION

The new Swiss Postal Act entered into force in 2012 and was fully implemented in June 2013. Swiss Post now operates in a quite complex regulatory environment consisting of various laws and regulatory institutions. Consistency of the entire regulatory framework is not a priori clear and will depend on the coordination between the various institutions and their application of the law.

While maintaining a partial monopoly for letter mail weighing less than 50 grams, new legislation brought changes in the definition and the financing of the USO. The USO is now much more differentiated and oriented to the consumers’ needs than it used to be. This differentiation becomes apparent in three dimensions: Firstly, the accessibility of postal services and cash payment transactions is defined separately. According to the Postal Act, financial services have to be accessible by “reasonable means”, while postal services have to be accessible within “reasonable distance”. This differentiation gives rise to different measures of proximity in the Postal Ordinance (see Table 1). Secondly, there is a differentiation between services directed to sending customers (retail network, narrow

range of products with regulated quality) and services to receiving customers (home delivery for a broad range of products). Thirdly, the regulatory framework differentiates between private/retail customers and corporate customers. Services targeted to the former group are much stronger regulated and are considered basic services which serve as a safety net.

The net cost of the USO is not directly compensated. However, Swiss Post is allowed to reallocate its cost which enables it to finance the USO through the revenues of all its products. This necessitates specific rules to coordinate general price regulation and postal regulation.

Three years after the entering into force of the new postal legislation (i.e. by the end of 2015) the Federal Council will have to evaluate the market opening to date and the viability of the postal USO. In the new institutional setting, the number of authorities involved and the complexity of the regulatory framework have increased. It is questionable whether this expansion of regulatory oversight is actually necessary in times of increasing competitive pressure and market dynamics.

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