

## Renewed Notification of an Agreement on Terminal Dues (REIMS II) between Postal Operators

(Caso No IV/36.748 — REIMS II)

(98/C 53/03)

(Text with EEA relevance)

### 1. Introduction

On 31 October 1997, thirteen public postal operators notified to the Commission for examination under the competition rules a new version, called REIMS II and dated 9 July 1997 <sup>(1)</sup>, of the original REIMS I (remuneration of mandatory deliveries of cross-border mails) terminal dues agreement. The purpose of both agreements is to replace the CEPT terminal dues system, as explained under point 4. Terminal dues are the remunerations applied between public postal operators (PPOs) for the delivery of incoming cross-border mail. The earlier version of this agreement, dated 31 December 1995, was notified in December 1995. However, this agreement expired on 30 September 1997 since one of its provisions, that the Spanish postal operator should have acceded to the Agreement by 31 May 1997, was not fulfilled.

### 2. Reasons to change the Agreement

The Parties have changed the terms of the agreement for two principal reasons:

- First, the signatories had assumed that the terminal dues increases would be balanced by the benefits of quality of service improvements, and that a transitional period for (gradual) increases of terminal dues would be acceptable if no radical changes to the existing market situation would occur. This last assumption turned out, according to the Parties, to be unfounded. The low terminal dues that would still be applicable for several years under REIMS I are said to have caused an unexpected development of non-physical ABA-remailing.
- Second, the strict cut-off quality of service thresholds agreed under REIMS I turned out to be counter-productive. Even if considerable quality of service improvement was reached, however, without reaching the agreed quality of service targets, the rules would prevent any terminal dues increase during the transitional period.

### 3. Parties to the Agreement

The parties (13) to the agreement are the following PPOs: Austrian Post, Post Denmark, Finland Post Ltd, La Poste (France), Deutsche Post AG, Hellenic Posts ELTA, Ente Poste Italiane, Entreprise des Postes & Télécommunications (Luxembourg), CTT Correios de Portugal SA, Correos y Telégrafos (Spain), The Post Office (United Kingdom), Norway Post, and Post and Telecom Iceland Ltd.

A number of PPOs (4) of EU Member States who were parties to the earlier REIMS I Agreement, La Poste/De Post (Belgium), Posten AB (Sweden), An Post (Ireland), PTT Post BV (The Netherlands), have not signed the REIMS II Agreement, nor did the Swiss postal operator re-sign the agreement. According to the notification, only the operators of the Netherlands and Switzerland have declared that they are not prepared to enter into negotiations at all.

Public and private operators of a mandatory universal postal delivery service can accede to the agreement, provided they are obliged, or agree, to provide this service to the other Parties.

### 4. Background

In 1993, following a complaint from the International Express Carriers Conference (IECC), the Commission issued a Statement of Objections with regard to the terminal dues agreement which was then in force between PPOs, the 1987 CEPT-agreement. The Statement of Objections was issued because, *inter alia*, the level of remuneration had no relation to the actual costs of providing the international service and it therefore artificially hampered the activities of commercial remailing companies. Stimulated by the Commission's action, EU PPOs (who are also members of IPC, International Post Corporation) first developed the REIMS I terminal dues scheme and now the REIMS II scheme, which, the notification claims, meets the demands of the Commission with regard to the level of remuneration and the effects on quality of service.

### 5. Entering into force

The REIMS II Agreement technically entered into force on 1 October 1997 and it will effectively enter into force on 1 January 1998. The most important articles of the REIMS I Agreement, dealing with the levels of remuneration and with quality of service, continue to apply between the parties until 31 December 1997.

<sup>(1)</sup> As amended by the first amendment agreement of 5 September 1997 and the second amendment agreement of 30 September 1997)

Withdrawal from the agreement will take effect at the end of the first full calendar year following notice of such withdrawal by a Party. A Party may also withdraw by giving six months notice to the end of a calendar month in case of a final decision of a competent EU authority concerning the agreement or affecting cross-border mail that poses, in the opinion of that Party, a threat to its vital interest.

## 6. Aims of the Agreement

According to the Parties, the main aims of the agreement are:

- to provide the Parties with fair compensation for the delivery of cross-border mail, which reflects more closely the real costs of delivery of each Party,
- to improve the quality of the cross-border mail service.

The agreement is based on the Nordic System, which was established in 1989 between the five member countries of the Nordic Postal Union.

## 7. Differences between REIMS I and REIMS II

A main difference between REIMS I and REIMS II is that, according to the Parties, REIMS II leads to a more regular line of increases of terminal dues during the transitional period, thus avoiding a 'jump' at the end of that period (in the year 2001) to reach the ultimate level of 80 % of domestic tariffs (this only concerns Level 1, see point 8). The methodology presented under REIMS I was based on four yearly, fixed percentile (either 15 % or 20 %) increases of terminal dues on top of the current level of terminal dues applied. If the 80 % of domestic tariff level was still not reached after this period, terminal dues would be increased to 80 % in one 'jump'. The principles of REIMS II are explained below. The terminal dues level is subject to a quality of service penalty system that is explained below under point 10. Under REIMS I the yearly increases were strictly conditional to complete achievement of the applicable quality of service targets. The Parties have now, as was announced in the REIMS I Agreement, decided to introduce a non-priority terminal dues level.

## 8. Terminal Dues

The agreement encompasses four levels of remuneration.

- (1) Level 1 remuneration is based on a percentage of the receiving Party's domestic tariff for a single letter item. This percentage will increase during the course of the transitional period; starting from the current CEPT rate, this remuneration will be raised to 55 % of domestic rates in 1998, to 65 % in 1999, to 70 % in 2000, and ultimately, in 2001, to 80 % of the domestic tariff<sup>(2)</sup>. A penalty system is applied when specific quality of service targets are not achieved as agreed.

- (2) Level 2 remuneration consists of possible discounts on the Level 1 remuneration, on the basis that preparation of the mail by the sending Party results in cost-savings for the receiving Party, which must be taken into account. Examples of such work-sharing are: presentation by formats or in trays, segregation to offices of exchange (postal sorting offices which specialise in receiving and sending cross-border mail), segregation of machinable or OCR readable items, of pre-sorted items, etc.

The possible discounts have not yet been finalised. Each Party shall inform IPC of the rates and conditions for rebates by 31 December 1998.

- (3) Parties will have access to all favourable domestic rates, such as bulk rates for direct mail, printed matter or periodicals. Under level 3, the full domestic rates (100 % of discounted rates) will be applied. The Parties intend to relax those conditions which are not related to costs and could bar other Parties from access to domestic rates<sup>(3)</sup>. A data base containing all rates and conditions made available by the Parties to their customers is managed by IPC.
- (4) Special terminal dues apply for non-priority mail. These terminal dues are 10 % less than those for priority mail<sup>(4)</sup>.

<sup>(2)</sup> Ente Poste Italiane, Correos y Telegrafos (Spain), and Hellenic Posts ELTA, are allowed to pay according to lower increases of terminal dues during the transitional period.

<sup>(3)</sup> The notification does not include the conditions of access to this level.

<sup>(4)</sup> An exception is made for Greece, Spain, Luxembourg, and Iceland, who are authorised to treat all incoming mail as priority mail and will receive priority terminal dues. In view of the low domestic rates for priority mail applied by the UK post office the terminal dues payable for non-priority mail delivered by this operator will be reduced by only 5 %.

Changes in a PPO's domestic tariff, unless communicated and applied before 1 September 1997, will not be taken into account for the calculation of terminal dues in 1998 and 1999<sup>(5)</sup>. The agreement does not cover M-bags (an entire bag of mail addressed to one recipient) and parcels.

Special transitional arrangements have been negotiated and agreed that reduce the financial impact of the agreement for some Parties<sup>(6)</sup>. In order to prevent abuse of that situation a so-called 'cap-system' is developed. This system enables application of lower terminal dues to postcards<sup>(7)</sup>, to the other current level of outward volumes of these Parties, and to some foreseen growth, the so-called 'organic growth'. Regular terminal dues are payable for any additional mail sent by these Parties.

The Parties state they are free to deviate bilaterally from the terminal dues set under the agreement. Since terminal dues are just a cost element, the Parties claim that they do not have a direct relationship with the rates applied by the operators. IPC will inform the Parties on new terminal dues levels for the next year before 1 October.

## 9. Transitional Period

The transitional period applies to mail which will be exchanged under level 1 and 2 remuneration conditions and to non-priority mail. The length of this period, as from 1 January 1998, is four years<sup>(8)</sup>.

## 10. Quality of service

Independent third parties will measure the performance of each Party against minimum standards. The standard

to be achieved is the delivery of a specified percentage of incoming cross-border mail within one working day<sup>(9)</sup> of receipt in the office of exchange of the receiving Party. So, for example, a quality standard of 80 %/J+1 means that 80 % of the mail entering a given country will be delivered to its final destination, within one day (J = jour) after the mail has entered that country (for example, receipt before LAT<sup>(10)</sup>) in an office of exchange of that country). The Parties have been divided into three groups, on the basis of geographical conditions and demographic factors<sup>(11)</sup>. Members of a group A are Denmark, Luxembourg, Austria, Finland, Iceland and Norway. Members of a group B are Germany, France, Italy, Portugal and the United Kingdom. Members of Group C are Greece and Spain<sup>(12)</sup>.

Members of group C may be allowed to establish a premium service with a higher tariff than their traditional first class service, in order to achieve the quality of service standard. This tariff will then be used as the domestic tariff for the purpose of calculating terminal dues, and the Party will be placed in group B.

Different quality standards have been set for each group, for 1998 (A-90 %, B-85 %, C-80 %) and for 1999 and 2000 (A-95 %, B-90 %, C-85 %). The grouping and the standards will be reviewed and renegotiated before 1 January 2001, with the aim of improving the quality of service.

The terminal dues payable on the basis of Level 1 and 2 will be subject to specified quality of service penalties according to a penalty curve. If the quality of service standard is not fully met but a Party has achieved over 90 % of the target, the terminal dues are lowered by 1,5 % for each percent quality loss. If a Party

<sup>(5)</sup> Except for increases made by Entreprise des Postes & Télécommunications (Luxembourg) in 1998. Increases made in 1999 will not be taken into account.

<sup>(6)</sup> Such arrangements apply to mail sent from Greece, Spain and Italy to the other Parties. The arrangements do not apply to mail exchanged between these Parties. The arrangements include a slower increase of terminal dues to be paid by Greece, fixed percentile increases of terminal dues (as under REIMS I, with, however, additional arrangements to reward any improvements of quality of service) to be paid by Italy, and fixed percentile increases plus a longer transitional period for Spain. The notification does not explain in detail why a number of Parties have been granted such exceptions.

<sup>(7)</sup> Portugal is, exceptionally, allowed to pay the same lowered remuneration for postcards as allowed to Spain.

<sup>(8)</sup> The transitional period for Hellenic Post — ELTA ends in 2003. For Correos y Telegrafos Spain this period ends in 2006.

<sup>(9)</sup> This includes Saturdays for those Parties that offer regular Saturday delivery.

<sup>(10)</sup> LAT means Latest Arrival Time. The Parties will also set, after consultation with other Parties, Critical Entry Times (CET) and Critical Tag Times (CTT).

<sup>(11)</sup> The notification does not include the conditions and factors applied.

<sup>(12)</sup> Special, lower, quality of service targets and terminal dues levels are set for inbound mail to Greece until 2003. The quality of service standards for Hellenic Posts ELTA are 50 % for 1998, 60 % for 1999, 70 % for 2000, and 80 % for 2001. The terminal dues increases are 7 % in 1998, 10 % in 1999, 15 % in 2000 and 2001, 20 % in 2002, and a final jump to 80 % of domestic tariffs in 2003.

has only achieved between 90 % and 80 % of the target, the terminal dues are lowered by 3,5 % for each percent quality loss. The lowest value could thus be 40 % of the domestic tariff, however, it will not be below the current CEPT rate or below 80 % of the domestic tariff of the receiving Party, if this value (i.e. 80 % of the domestic tariff) is lower than the current CEPT rate. The effect of the penalty curve is that it produces a strong incentive where it is needed most, namely for Parties whose quality of service levels are low.

The Parties will use their best efforts to negotiate quality of service standards for non-priority mail.

#### 11. Linear Tariffs

Level 1 remuneration will be based on domestic tariffs for single letter items. For practical reasons, the tariffs per weight step have been converted into linear tariffs, for 3 distinct formats. Letters up to format C5 and a maximum weight of 100 grams; flats (flat items) up to format C4 and a maximum weight of 500 grams; packets of all shapes up to UPU limits of weight and size.

Changes in the domestic tariffs will be reflected in the linear tariffs to the extent that they have been notified by September of the year preceding application.

The starting point for the linear tariffs is the current CEPT remuneration level. During the transitional period Parties may, subject to application of the penalty curve, increase their terminal dues to 55 % of domestic tariffs in 1998, to 65 % in 1999, to 70 % in 2000, and finally in 2001 to the maximum level of 80 % of the domestic tariff. This is considered to be the best available approximation of costs incurred by receiving postal operators.

The level 1 and 2 tariffs may, under specific conditions, be increased by a certain percentage of domestically applicable VAT. This would currently only apply in Finland.

#### 12. Articles 25 and 49(4) of the UPU Convention

Article 25 of the UPU Convention provides PPOs with guidelines on the treatment of domestic mail posted

abroad (re-mail), once it re-enters a PPO's territory. Article 49(4) concerns the application of terminal dues which are related to domestic tariffs, for incoming bulk mail. The Parties will not apply these articles as between themselves following the transitional period. The agreement does not address the application of these Articles between themselves or with third Parties during the transitional period.

#### 13. Amendment and Governing Law

The REIMS Agreement is of indefinite duration. It may be amended by the Parties at any time. It shall be governed by and construed in accordance with the laws of the Netherlands.

#### 14. Preliminary considerations

After preliminary scrutiny, the Commission considers that the agreement must be examined under the provisions of Council Regulation No 17<sup>(13)</sup>.

#### 15. Observations

The Commission invites interested third parties to send any observations they may have regarding this agreement. In accordance with Article 20 of Regulation No 17, such observations will be protected by professional secrecy. Observations must reach the Commission within 20 days of the date of this notice, quoting the reference: IV/36.748 — REIMS II.

Send observations to:

European Commission  
Directorate-General for Competition (DG IV),  
Directorate for Information, Communication and  
Multimedia,  
Rue de la Loi/Wetstraat 200  
B-1049 Brussels  
fax: (32-2) 296 70 81.

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<sup>(13)</sup> OJ 13, 21.2.1962, p. 204/62.