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**GENERAL NOTICE**

**Independent Communications Authority of South Africa**

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## GENERAL NOTICE

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### NOTICE 104 OF 2009

#### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)

#### DRAFT DISCUSSION PAPER ON THE UNRESERVED POSTAL SERVICES

The Independent Communications Authority of South Africa (ICASA) is in the process of formulating regulations for the postal sector in terms of section 8(1) read with Schedule 2 of the Postal Services Act No. 124 of 1998, as amended ("the Act").

Consequently, ICASA invites the public to make submissions on the draft discussion document attached hereto. Those wishing to make written submissions should do so within 30 working days from the date of publication of this notice. The closing date for submissions is 13 March 2009.

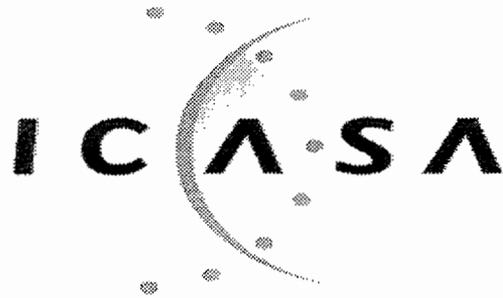
The draft discussion document is also available on ICASA website:  
[http:// www.icasa.org.za](http://www.icasa.org.za) and ICASA Library from Monday to Friday during the following working hours:  
09h30 – 16h30

.....  
**P. MASHILE**  
**CHAIRPERSON**

Written submissions should be sent to:  
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2146

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Sandton  
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Independent Communications Authority of South Africa  
Pinmill Farm, 164 Katherine Street, Sandton  
Private Bag X10002, Sandton, 2146

# Discussion paper on the Regulations relating to Unreserved Postal Services

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## 1. PURPOSE OF THE DISCUSSION PAPER

The purpose of the Discussion Paper is to generate/ elicit comments from all stakeholders on the regulations relating to unreserved postal services in the postal sector in terms of section 8(1) read with Schedule 2 of the Postal Services Act No. 124 of 1998 ( the Act) .

The Discussion Paper's primary objective is to:

- Encourage a public discussion and participation on the development of a regulatory framework for unreserved postal services in South Africa;

The Independent Communications Authority of South Africa (the Authority) hereby invites interested parties to make comments on the issues raised in the discussion paper

Copies of the discussion paper will be available on the Authority's website as well as the library (from 09h30 – 16h00 Monday - Friday)

The Authority invites interested parties to make input in relation hereto. Submissions should be provided to the Authority in both electronic and hard copy formats.

The Authority will post all submissions on its website except where confidentiality has been requested. Interested parties are accordingly requested to indicate the parts they consider to be confidential in their respective submissions.

## 2. INTRODUCTION

This discussion paper is intended to formulate a regulatory regime on unreserved postal services. The information presented is not exhaustive and interested parties are welcome to provide any new information that they may consider relevant.

The first part of the discussion paper provides background information regarding the processes that will lead to the drafting of the regulations.

The body of the discussion paper will deal with the critical issues affecting the unreserved postal services which will be considered during the drafting of the regulations. In this regard, the challenges identified in part 5 will be discussed with the view of proposing an effective regulatory framework. Firstly the concepts of **express** and **courier** will be defined and debated and the international practices cited. The **applicable fees** will then be discussed and international practices will be reviewed.

The discussion will then progress to the issue of **universal service obligation (USO)** and the various associated issues. This includes the various models of USO and an assessment of the practicability of each. USO will be looked at in terms of funding models.

The discussion will then touch on **foreign ownership** and **infrastructure sharing**.

### 3. LEGISLATIVE AND POLICY FRAMEWORK

The primary legislation for the postal sector is the Postal Services Act, 1998 (Act No. 124 of 1998) ("the Act"),

The provisions of section 2 (objectives) of the Act relevant to this discussion are the following:

- 2(a) Promote the universal and affordable provision of postal services
- 2(d) Encourage investment and innovation in the postal Industry
- 2(j) Ensure fair competition within the postal industry
- 2(l) Promote the interest of postal users and consumers
- 2(q) Promote small, medium and micro-enterprises within the postal industry

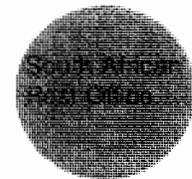
The Authority derives its mandate from the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000)

#### 4. MARKET STRUCTURES OF THE POSTAL SERVICES IN SOUTH AFRICA

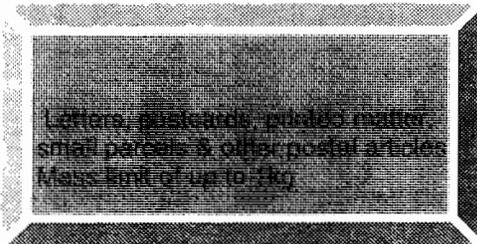
Figure 1.

##### RESERVED SEGMENT

Postal services



Products offered:



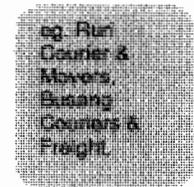
##### UNRESERVED SEGMENT

A

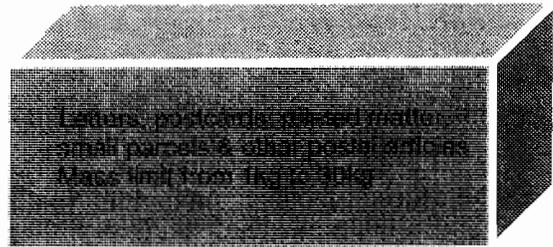
Courier services

Large couriers

Small couriers

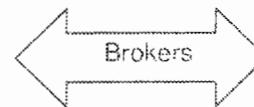
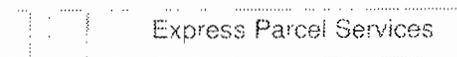


Products offered:



B

Other postal services



Extraterritorial Offices of Exchange

25-year licence  
(Protected monopoly: 1 operator)

1-year registration  
(Open competition: ±300 operator)

As indicated in figure 1. the postal services in South Africa comprises of two categories: the **reserved** and **unreserved postal** services.

Section 22 of the Act provides terms and conditions of operation for the unreserved postal services, and it reads thus:

*“(d) A person may not be registered to provide a courier service in terms of this section unless that person undertakes to-*

- (i) receive, collect and deliver items contemplated in item 1(b) of Schedule 2*
- (ii) track and trace the whereabouts of any item received or collected for delivery by such person’s business undertaking;*
- (iii) deliver items within a definite time, in the case of deliveries across international borders;*
- (iv) deliver items within the Republic at the latest by 13:00 pm on the first working day after receipt thereof; and*
- (v) clear items through customs where applicable. ”*

Schedule 2 of the Act lists items and services that may be provided under the unreserved postal services, including the delivery of all letters, postcards, printed matter, small parcels and other postal articles with a mass up to and including 30kg, and any other postal service falling outside the ambit of the reserved services as set out in Schedule 1 of the Act.

The unreserved sector was regulated for the first time in 2005 and to date approximately 300 unreserved operators have been registered by the Authority whilst the majority of operators are now registered, there are still those that operate illegally. It is the duty of the Authority in this regard to step-up its enforcement and compliance drive.

## 5. CHALLENGES IDENTIFIED

Some of the challenges identified stem from lack of clarity in the policy and legislative framework governing the sector. The following challenges were identified:

- a) Definition of unreserved postal services;
- b) Registration categories/classifications;
- c) Duration of the certificate;
- d) Registration fees;
- e) Pricing;
- f) Ownership and Control; and
- g) Universal Service Obligation (USO).

### 5.1 Definition of unreserved services

The Act requires that every entity operating in the unreserved area should be registered with the Authority. The Act defines “**courier service**” as:

*“a service provided by a person licensed or registered to provide such a service in terms of this Act”.*

This definition does not concisely define a courier service, but rather defines a service provider.

During the registration process with the Authority, it was discovered that some operators were in fact **courier brokers**. Brokers accept parcels on behalf of clients and source the relevant couriers to carry the parcels. The brokers then charge their clients a handling fee plus the courier fees. Other activities involve entities receiving mail or magazines in electronic format. Such mail usually comes from international mailing houses, which are then printed out and sent to SAPO for mailing.

The last activity that entities engage in involves **extraterritorial offices of exchange (ETOE)**. This refers to international mail houses sending mail either

electronically or physically to entities in South Africa. Those entities then deliver this mail to the addressed houses or mail is sent as a consignment to the country of destination. The addressee would then collect this consignment and deliver it to the recipients' homes. The above demonstrates the myriad of services that over time have crept into the unreserved postal services sector and in the process blurred the lines with conventional courier services. The Act fails to differentiate between the different services offered as well as the types of unreserved operators and does not provide a definition of an unreserved courier or unreserved postal operator.

## **5.2 Registration categories**

The Act does not categorise the registrants. This approach is viewed as an anomaly since in most jurisdictions, courier operators are categorized according to their areas of operation and are charged different fees. Section 21 of the Act provides that *“registration with the Authority to operate an unreserved postal service must be in a format and in accordance with the procedure prescribed by the Authority and must be accompanied by a prescribed registration fee”*.

The Authority is of the opinion that Section 21 of the Act confers upon the Authority the power to prescribe the procedure in which an application should be made.

## **5.3 Duration of the registration certificate**

Currently the registration certificate is valid for a period of one year and re-applications must be made on an annual basis. The Authority has an obligation to ensure regulatory certainty in the sector.

## **5.4 Registration Fees**

The registration fee is currently R500.00 (five-hundred rands only). This figure was based on the fact that setting a high registration fee might be a barrier to entry, especially for small-scale operators. However, the fact that the current fee

is applicable to small-scale and large-scale as well as local and international operators, might be an anomaly, more so because in most jurisdictions that regulate the sector there is a clear distinction in the treatment of different types and sizes of operators.

### **5.5 Pricing**

Whereas a large number of operators in the unreserved segment might give the impression of fair competition and that market forces determine prices, presently the Authority has no indication of the level and trend of prices in the sector. As such, the Authority hereby solicits information on the state of competition in unreserved postal services.

### **5.6 Ownership and Control**

In India, for instance, foreign ownership is limited to 49% in the express services sector.

In South Africa, Broad Based Black Economic Empowerment (BBBEE) is a government policy which requires entities to ensure a certain level of empowerment in their respective sectors. It also covers the issue of the Historically Disadvantaged Individuals participating in the mainstream economy of the country. The Act is therefore silent on the issue of ownership and control as well as broad-based black economic empowerment.

### **5.7 Universal service obligations**

The unreserved operators currently do not have universal service obligations. There is a perception by the postal industry that universal service is a responsibility of the public postal operator and that private operators should not be bound by those obligations.

In the electronic communications and broadcasting sectors, operators are expected to pay a levy as a contribution to the promotion of universal service and access. These contributions are administered by Universal Service and Access

Agency of South Africa (USAASA). The postal sector on the other hand does not have such obligations nor such an agency.

## **6. BENCHMARKING**

### **6.1 General Agreement on Trade in Services (GATS)**

Among the types of measures that can hamper the free flow of trade in courier services are customs regulations, the sometimes regulatory role of the postal monopolies or the scope of their privileges, licensing requirements, postal taxes, and concession fees.

The benefits of GATS commitments can also be limited in so far as they may not adequately address operational issues such as customs clearance, self-handling, or, at times, the ability of the foreign supplier to conduct its own pick-up and delivery. Such measures can delay service, add to the cost of service, or limit business opportunities. For example, some countries require foreign couriers to use locally contracted service suppliers for pick-up, delivery, and customs clearance procedures.

As noted earlier, since the courier services often encompass some components of other service industries such as air and road transport, commitments undertaken on courier services may be affected by market access limitations in these other relevant service sectors and by various regulatory requirements relating to the means of transportation they may use. One example may be air transport regulations prohibiting express mail service suppliers to self-handle their own aircraft or rules requiring trans-shipments on an arriving aircraft to be formally imported and re-exported. Other practices can include surcharges on aircraft services or unclear methods of computing airport user fees. Some countries' regulations limit the ability of foreign courier service suppliers to obtain the variety of licenses they may need (e.g. trucking, customs, postal, freight forwarding, brokerage, warehouse) to efficiently provide their services. Some

such licenses may be restricted to nationals or extended only to monopoly concessions.

In the GATS services sectoral classification list, postal and courier services are listed as sub sectors of communication services, a sector which also includes telecommunications and audiovisual services. Courier services, usually parcel delivery or expedited mail services, are supplied by postal monopolies but not reserved to them. Courier services are normally supplied by privately owned companies who compete with one another and with state postal service providers.

However the competitive environment is changing as private service providers have begun to expand into the correspondence market such as business to private bulk mailings. Increasingly this type of service is offered by companies and marks a deviation from the simplistic delivery of parcels.

In the services sectoral classification list sub sector 2B on courier service is cross referenced to item 7512 which contains two sub items:

- a) multi-modal courier services consisting of pick-up, transport and delivery services, whether for domestic or foreign destinations of letters, parcels and packages rendered by courier and using one or more modes of transport; and
- b) other courier services for goods not elsewhere classified e.g. trucking or transfer services without storage for freight.

The industry practice in most countries seems to acknowledge the existence of express services which are parcels delivered locally within twenty four hours. The vast majority of small companies globally specialize in this type of delivery. This is particularly important when one considers that less infrastructure is required to effect this type of delivery.

Most multi-national companies tend to specialize in overnight courier services. Their enhanced infrastructure allows them to capitalize on international

shipments and warehousing. Internationally only a handful of companies meet the demand for 'end to end' delivery. This is a service where one company is responsible for a parcel from pick up to delivery. It is not uncommon for smaller companies to be subcontracted by companies to effect final delivery of parcels.

## **6.2 European Union**

Courier operators commonly gain access to foreign markets through commercial presence, usually in the form of foreign affiliates in the market to be served. In some countries, however, suppliers deliver packages through contractual agreements with locally owned service suppliers, often trucking or air transport operations in the market to be served. In addition to transporting packages within the country in which a commercial presence or other arrangement is maintained and between that country and its country of origin, a service supplier also typically supplies services between countries in the region where it has established a commercial presence and between countries in a region and other, or third-country, destinations abroad. Couriers may establish national and/or regional sortation hubs (distribution centres) at airports and other locations where their products are routed (usually by truck) to sub-hubs for final delivery. A large portion of trade in courier services is carried out by air. Even among contiguous countries, air carriage may predominate and a more limited amount of inter-country trade, e.g. 20 to 25 per cent between the United States and Canada, may be conducted by the use of trucks crossing national boundaries.

## **6.3 Philippines**

Under Philippine law, airfreight forwarders are distinguished primarily by their mode of transport and the type and bulk of items they carry. Freight forwarders are defined as indirect air carriers which assembles consolidates transports and distributes break-bulk items whilst couriers transport goods in smaller quantities and largely for personal consumption. However the words are also used interchangeably.

#### 6.4 India

In order to carry or deliver any postal article, the Indian Post Office Amendment Bill of 2007 requires that every service provider other than the Department of Posts should register with the regulatory authority. The registration is granted for a specific period and is renewable. A service provider who operates within India would have to pay a **once-off registration fee** of Rs 25 000.00 (R4663.05). If it operates both within and outside India it would have to pay Rs 10 lakh (R186 521.30). For **renewal**, a service provider operating within India would have to pay Rs 10 000.00 per annum (R1865.20). A service provider operating within and beyond India will have to pay Rs 5 lakh (R93 260.65).

#### 6.5 Malaysia

In Malaysia, any person who intends to provide postal services, including courier and express services, requires a licence issued by the Minister. The licensees may provide domestic express and dispatch services, international services, and transportation of letters from one place to another. The services include conveying by post all letters from one place to another whether by land, sea or by air and performing all the incidental services of receiving, collecting, sending, dispatching and delivering all letters.

Letter means any form of written communication or other document that is directed to a specific person or a specific address and is to be conveyed other than by electronic means; and includes a packet, package, wrapper or article. The market is open for competition, and is less regulated. The registration fee in Malaysia is the equivalent of R15 000 which is renewed annually.

#### 6.6 Egypt

Private courier and express delivery service suppliers seeking to operate in Egypt must receive special authorization from the Egyptian National Postal Organization (ENPO). In addition although Express delivery services constitute a separate for profit premium delivery market, private express operators are

required to pay ENPO a postal agency fee of ten percent of annual revenue from shipments under twenty kilos. At the end of 2007, the government of Egypt announced its intent to take actions that caused significant concern for private courier and express delivery companies. Those new policies would appear to grant ENPO even more extensive regulatory oversight over the private express delivery sector by increasing considerably the fees paid to ENPO and requiring private express delivery companies to receive prior authorization for their prices and other policies.

ENPO is of course not an independent regulator but a player in the sector as well. Most objections to regulation by operators are based on this fact and not on the actual regulatory issues themselves.

## 6.7 Kenya

Kenya makes provision for six main categories of postal operators.

1. **The public postal operator** is responsible for universal service obligations and has the widest international and domestic coverage. It provides reserved services and competes in the unreserved sector. Licence fees for the operator are currently \$ 50 000.00.
2. **International operators – in bound only.** Those operators are also known as one way operators and receive items from abroad and affect the local delivery component. Licence fees for these operators are \$2000.00.
3. **International operators – outbound only.** These operators deal with international outbound deliveries primarily. They operate on a world wide network but are also able to perform local deliveries. The licence fee for this type of operation is \$10 000.00
4. **Regional operators.** These operators perform most of their business within the East African region. They often have an extensive network and pay licence fees of \$ 2500.00.

5. **Intra-country operators** are able to offer local citizens the option of international delivery. In this respect they are similar to category four as elucidated above but have smaller international volumes and a more limited network of countries to which delivery is provided. The licence fee at \$ 1200.00 is half that for regional operators.
6. **Intracity operators** operate only within a designated city or town. These are often the smallest type of operator and usually represent the entry level for the courier industry. Licence fees currently stand at \$600.00 to operate this type of business.

The Kenyan Communications Commission also recognizes document exchange operators. This allows for the exchange of articles or documents within members of a group. No licence fees are payable by document exchange operators. The authority also requires that a sum of \$127.10 accompany every application. Both the categorizations and licence fees are reviewed periodically by the authority for applicability and relevance.

## 7. PROPOSED REGULATORY FRAMEWORK

### 7.1 Defining courier service

Courier Services are closely related to express service and are in many instances used interchangeably. The Universal Postal Union defines the Express Mail Services (EMS) as an international postal express service for both documents and merchandise, which aims to provide customers with a high quality competitive express mail product at an affordable price on a global basis. In most countries EMS is the only practical means of providing universal access to international express services for the private customers.

EMS is offered in more than 191 countries worldwide as an integral element of the postal offer effectively complementing the traditional range of letter-post and parcel-post services. The international services are regulated by the EMS

cooperative established by the UPU's Postal Operations Council appointed in 1998 to develop and strengthen the EMS service. Membership of the EMS Cooperative is on a voluntary basis, and more than 140 EMS operators are currently members, covering 90% of global EMS traffic. South Africa is also a member. The EMS cooperative provides a range of services to its members and undertakes independent measurement of key performance indicators for all EMS operators through its Audit and Measurement Programme.

The World Trade Organization (WTO) defines courier service as a **system which consists of pick up, transport and delivery services, whether for domestic or foreign destinations of letters, parcels and packages rendered by courier and using one or more modes of transport**. Courier services are dependent on physical means of delivery, particularly air and road transport services.

The industry practice in most countries seems to acknowledge the existence of **express services** which are parcels delivered locally within twenty four hours. The vast majority of small companies globally specialize in this type of delivery. This is particularly important when one considers that less infrastructure is required to effect this type of delivery.

A **courier** on the other hand is a person or company employed to deliver messages, packages and mail. Couriers are distinguished from ordinary mail services by features such as *speed, security, signature, specialization and individualization of services, and committed delivery times*, which are optional for most everyday mail services. As a premium service, couriers are usually more expensive than usual mail services, and their use is typically restricted to packages where one or more of these features are considered important enough to warrant the cost. Different courier services operate on all scales, from within specific towns or cities, to regional, national and global services.

***Q.1 Is differentiation within the unreserved sector registration necessary?***

***Q.2 Given these differing scenarios, is it possible to have a single registration certificate with identical registration conditions for all unreserved operators?***

***Q.3 What other distinctions occur within the industry in South Africa?***

***Q.4 Is there a material difference between courier and express services? If so, please elaborate.***

***Q.5 Is the definition of courier services as suggested adequate? If not, why ?***

## **7.2 Registration categories or classification**

The Authority intends introducing the categories of registration of unreserved postal operators based on the model used in East Africa as follows:

- a) International
- b) Regional
- c) National
- d) Intercity
- e) Intracity

This categorization would be based in terms of Section 21 of the Act.

## **7.3 Fees**

In South Africa, the application fee for registration is R500 and is renewed annually. This amount was based on the fact that at that time, the then Postal Regulator wanted to bring every entity operating in the unreserved sector into the regulatory framework. This amount does not reflect the administrative costs of processing the application form. Based on the above, the Authority intends to propose the following fees, which would be based on the routes of couriers:

- a) International
- b) Regional

- c) National
- d) Intercity
- e) Intracity

***Q.6 Given the above proposition, how should the registration fee be structured and why?***

#### **7.4 Duration of the Registration certificate**

Currently, the registration certificate is valid for a year. This has not only proven to be an administrative burden but also creates uncertainty in the industry. The Authority proposes that the duration for a registration certificate be extended

***Q.7 How long do you think the registration certificate should be valid for?***

#### **7.5 Universal Service Obligation**

Despite the evolving postal sector there is general consensus that the USO remains necessary. The question therefore is how should the USO be achieved? Unreserved postal operators tend to cherry-pick their operations leaving rural areas not being serviced. There is an argument that unreserved postal operators should not be bound to USO. However, there is a general agreement that a basic letter service is necessary. What is not clear is what role should unreserved operators play in ensuring that universal service is achieved and how should or who should fund this public good. Several models are suggested but in order to determine the efficacy of each, we must examine the various criteria.

**Efficiency** – The USO model should minimize the economic inefficiencies such as actual cost of delivering universal service. The universal service provider (USP) should be able to set prices that actually reflect the cost of delivering a service. In addition, the service should be at the lowest possible cost and there should be the ability to innovate.

**Social equity** – This refers to the concept of justice and fairness and relates to whether a funding mechanism allows a similar price to be charged to customers with similar abilities to pay and whether contributions are fair and reasonable.

**Transparency and opposability** – The principles and functioning of the funding mechanism must be clear to all market participants including their roles and responsibilities.

**Practicability** – The complexity of funding schemes and the information required for their administration should be kept to a minimum. Overly complex schemes that are difficult to monitor and tedious to administer are less likely to achieve the desired effect.

**Proportionality** – The scheme should ensure that it generates sufficient revenue to cover the cost of providing the USO.

### 7.5.1 Models for Universal Service Obligations

The most popular models for universal service are compensation funds, revenue taxes, profit taxes, lump sum taxes, unit taxes, state funding, pay or play, access charge uplift and competitive tendering.

#### 7.5.1.1 Compensation funds

This model for USO has often found expression in the telecom and electricity sectors. Two major issues underscore this type of USO scheme, namely, *who* should contribute to the fund and how should contribution rates be determined; and how should the taxable base be defined so that sufficient funds are generated to cover the USO burden whilst minimizing distortion in the market.

On the first point, funds can be obtained through taxes on operators or directly on consumers. Compensation funds funded with the taxes on operators can take a number of forms. A tax rate can be applied to the revenues, profits or number of products or units sold. In practice compensation funds funded with taxes on

operator revenues have been the most widely utilised across all industries and sectors.

Funds may also be sourced from a direct tax on consumers in the form of levies on the units consumed or a lump sum tax. This type of scheme has limited use with postal operations due to the fact that final customers do not pay for access to the network. However all taxes are ultimately borne by the consumer and the degree of the tax burden can vary depending on the structure of demand and other market characteristics. The tax base needs to be carefully determined in order to ensure that sufficient funds are generated. By contrast, the tax base must not be so wide that it overburdens the operator.

A potential solution is provided by only including particular services or geographic areas. The problem with this is that certain services can be undermined by competing services from services outside the postal industry which cannot be taxed by the Postal Regulator. An example is the option of electronic billing.

#### **7.5.1.2 Revenue Taxes**

In terms of the assessment criteria, if the taxable base is defined too narrowly, revenue taxes may be deemed to be efficient and competitively neutral. This is due to the fact that the tax burden is shared and therefore small, resulting in less distortion to operator costs. In addition if there are a sufficient number of operators, sufficient funds should be generated to ensure that the costs of the USO are covered. Regulators do face a problem in terms of monitoring the revenue of operators. This has proved to be the case in Italy where despite the fact that all operators are required to contribute to the fund, monitoring and enforcement has been unable to effectively police the matter.

#### **7.5.1.3 Profit taxes**

As with revenue taxes, if the taxable base is not defined too narrowly, taxes on profits may score highly on a number of criteria including efficiency and competitive neutrality. This tends to be an uncertain model as the use of profit

taxes may lead to difficulties in allocating the funding requirements. In addition, it is not possible to prescribe the accounting policies which may lead to unfair distortions in the implementing of the policy.

#### **7.5.1.4 Lump sum taxes on operators**

A lump sum tax scores highly in terms of efficiency as there is a decreased risk of distortion in terms of revenue and profit. This model seldom takes into consideration changes in the scale of operation which can result in the tax being too high for entry level operators. This can have the effect of discouraging entry into the market. In addition there are currently no countries utilising this model.

#### **7.5.1.5 Unit taxes**

The USO has been funded through unit taxes in a number of cases particularly in the United States energy sector. Practically it involves surcharge per unit of electricity or gas. This is particularly effective as long as a level playing field between operators is maintained. However, it presupposes that precise postal data is available. Again adequate monitoring and enforcement would be critical to the success of this model. This is unlikely to work in countries where the letter volume is extremely low as it would not generate sufficient funds to make the USO fund viable.

#### **7.5.1.6 State Funding**

An alternative funding mechanism is through direct or indirect government transfer. This is useful where the USO burden is high compared with funds that could be raised. In effect, this spreads the tax burden over a wider base. It also reduces distortions since firms do not have to assume the USO burden directly.

The disadvantage of this system is that overcompensation by the State can result in a negative impact on competition as it may permit an operator to subsidise certain services. In addition, government becomes both an investor and supervisory body which raise issues of accountability and conflict of interest.

### **7.5.1.7 Pay-or-play**

This is a variation on the compensation fund but determines who the USP should be as well as how the USO should be funded. In order to ensure affordable delivery to the high cost areas, those who deliver in low cost areas exclusively have to pay compensation to the fund. Alternatively, those who play in the high cost areas have to cover all high cost areas but their contribution to the fund is eliminated. There is no restriction on the number of companies that can 'play' in the high cost area. This then introduces competition into the high cost area, which can have the added benefits of further reducing costs. This method is more sophisticated than the others and again the determination of the tax rate is of paramount importance. Since there is no restriction on the number of USPs this model can be labour intensive to administer but can be useful where the USO area is larger and thus the potential for competition can outweigh the high administrative costs.

### **7.5.1.8. Access charge uplift**

This mechanism imposes a tax on the wholesale access charge that entrants would pay the incumbent for using its network to deliver mail. The access charge is increased or uplifted by an amount or percentage and these proceeds are used to finance the USO costs borne by the USP.

Two distinct forms of the model exist:

1. Bypass of the incumbent's network is prohibited. This access is a form of reserved area for delivery as potential entrants are prevented from providing end-to-end delivery. In other words service involving self provision of mail collection, sortation, transportation and delivery, which would bypass the incumbent's network, is prohibited. The entrants are obliged to use the incumbent's delivery network to provide mail services.
2. Bypass is allowed and competition in delivery is allowed and potential entrants could if they find it profitable to provide end to end services. This

model is simple to implement provided a charge regime is already in place. Where bypass is prohibited an access charge uplift that allows full recovery of the USO cost is implemented. Entrants are then forced to pay the higher access charge or exit the market. This model is again suited to countries which have a limited scope for entry. It must be noted that the restriction is only in terms of delivery and competition is still possible in the upstream market of the segment. This model could encounter problems if the tax base is too small, which can occur when uplifted access charges make end-to-end entry more lucrative.

#### **7.5.1.9 Competitive tendering**

An alternative policy where the designation of the USP is part of the funding mechanism is competitive tendering or franchise bidding. Competitive bidders submit a bid to the Regulator for the subsidy they would require to fulfil the USO with the lowest bid. Alternatively the amount of the subsidy is set and the USO is awarded to the competitor with the most extensive USO provision program for the amount awarded. Provided the process is free and fair this model can be extremely effective as it combines the elements of competition with effective service provision. The problem is that the process can lead to collusion by the competitors, which mean price fixing or unrealistic margins being set. This is particularly so when one considers that a USP would outsource certain areas and certain delivery routes. In addition this model is not a funding mechanism itself and ultimately this raises questions as to the amount of funding that can be guaranteed.

***Q.8 Given the above options, what USO option should be utilised?***

***Q.9 Can any alternative options be suggested?***

***Q.10 Is it possible for USO provision to be a viable business endeavour?***

***Q.11 What other approaches of USO should the Authority be looking at especially in the converged environment?***

***Q.12 In your opinion, should operators in the unreserved area have Universal service obligation? If so, what should those be?***

#### **7.6 Ownership and control and Empowerment**

There is currently no limit to foreign ownership of entities in the courier and express service sector. Many express and courier entities are wholly foreign owned.

***Q.13 what limit, if any, should South Africa allow on foreign ownership of the unreserved services?***

***Q.14 How should the postal sector go about in achieving BBBEE?***

#### **7.7 Price Regulation**

Currently, the unreserved postal sector's pricing is not regulated. In other countries, courier operators delivering small parcels are required to charge a certain amount. For instance, in Kenya, although the Public postal operator has been given rights to deliver a basic letter service of up to 350g, other operators who wish to deliver such letters are required to charge five times more than the Public operator letter rate.

***Q.15 Should the Authority prescribe pricing for all letters, postcards, printed matter, and small parcel and other postal articles that fall outside the ambit of the reserved services?***

## **7.8 Extraterritorial offices of exchange (ETOEes)**

An extraterritorial office of exchange is an exchange office established by a postal operator in the territory of another country (UPU 2001). An ETOE may compete with this USP of the host territory and with private operators in any aspect of mail transport and delivery that is not subject to a monopoly in the host territory. Remailing is one of the biggest problems caused by ETOEs. An ETOE typically competes for outbound mail volumes that originate in its host territory and are destined for a third country. This is known as ABC remail. ETOEs also compete with the USP for domestic mail by collecting mail from the sender's country and placing it into the sender's mail system as inbound cross-border mail. This is referred to as ABA remail. As at March 2004 fifteen postal administrations had publicly registered 112 ETOEs in foreign countries. The stark reality is that countless more are operating without registration.

ETOEes are able to offer rates for cross-border mail that are significantly lower than the rates charged by USPs and private operators. An ETOE can charge less than a USP because it is not subject to the USO into the sender's country and therefore is not obliged to include USO rates in the cross border mail rates. Thus conceivably an ETOE is in a position to underprice private operators because during the outbound leg the costs are almost identical but for the inbound leg the ETOE pays terminal dues but the private operator pays domestic rates. Terminal dues are generally lower than domestic tariffs for lighter mail items.

***Q.16 Given this situation, should ETOEs be treated as commercial operators subject to licensing and fee payment?***

***Q.17 Should they be allowed to operate at all?***

***Q.18 What security concerns do the ETOEs pose?***

***Q.19 In the absence of a policy framework, how should the Authority deal with ETOEs?***

**8. CONCLUSION**

The above discussion brings to the fore the myriad of challenges facing both the industry and the Authority in attempting to realise the objectives of the Act. The responses given will assist the Authority in coming up with an appropriate regulatory framework. It should be borne in mind that the Authority needs to level the playing field within the postal industry, through the promotion of competition and the cultivation of a healthy environment for business enterprise and innovation.

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