

The Postal Agency, acting within the framework of its competences within the meaning of Article line of the The Law on postal services (Official Gazette of RM no. 158/2010, 27/2014, 42/2014, 187/2014, 146/2015, 31/2016 and 190/2016), aiming at precise interpretation and application of the legal framework referring to the reserved service, on 30.12.2016, provides the following

OPINION ON RESERVED POSTAL SERVICES

Reserved area, evaluation of the conditions to be regulated and the reasons thereof

One of the mechanisms for ensuring the universal service sustainability, in the process of gradual liberalization of the postal market, is the existence of the reserved service. Reserved services are set of services (most often the traditional ones, letter-post items, which vary from country to country by class and type, with certain weight), designed and intended exclusively for the designated universal service provider/ the incumbent. The function of the reserved services is to provide a stable source of financing of the universal service obligations in the transitional period, which obligations are assumed burden for the national operator in the process of its adjustment towards market work conditions on a fully liberalized market. There is no reserved service in a fully liberalized market. There is another mechanism of universal service financing, which is the compensation fund managed by the state/regulator, which unlike the historic-traditional foundation of the reserved area, has its basis on proven burden of the national operator obligations, expressed through the universal service net costs.

The nature of the reserved service in the national legislation in the manner of its functioning, dos not differ from the comparative European experiences prior to 2012. It is a matter of price-ring of a certain range of postal services for items weighing up to 50 gr, which serves as kind of barrier for entry and competition growth at these service markets. The private companies, licensed for service provision of letter-post items on the territory of the Republic of Macedonia, must not provide postal services in the domestic traffic for items of correspondence and direct mail weighing up to 50 grams, for a price lower than two and half times than the price set by Macedonian post for items of correspondence in the first weight step of the fastest standard category, i.e. for direct mail.

Although after 2012 one can rarely find comparative experiences on this subject, since almost there is not any European country with reserved area in the postal industry (except Serbia, Albania), focusing on the application of what is legally prescribed, for the range of reserved services (and items), it is inevitable to conclude that there are serious ambiguities in the definitions in the description and content of these services, as a consequence of the imprecision and ambiguities in the definitions of the services and items, prescribed in the Law on postal services. These ambiguities should be surpassed by clear nomenclature of the items and services within the universal service, which is part of the competences of the regulator, in accordance with Article 48 line 1 of the Law on postal services.

The imprecise and insufficient systematics of the groups, types and forms of postal items in the Law on postal services, leads to misinterpretation of the postal services that are part of the reserved area. Thus, first and foremost, in the Law (unjustifiable) the term 'letter-post item' nor 'letter' as a type of letter-post item is not used. Consequently, items within the universal service, unjustifiable and unclear, the general term 'postal items up to 2 kg' is used instead of 'letter-post items up to 2 kg'. It creates confusion and especially inadmissible overlap of that general term, with the term 'parcel' – when it weighs up to 2 kg, since the parcel, by nature also a postal item, weighs from 0,1 to 10 kg.

Consequently, the criteria according to which, items within the reserved area are described and defined are unclear, if it is taken into consideration the item enumeration in the definition in the law for 'postal item'. Namely, that definition without the necessary systematics puts in one place both groups and types of items and types of services. Furthermore, although such list is not complete, it seems as it is final. That is why the reason is unclear why the letter is not included as a type of postal item, but an "insured parcel" is included, which is a type of a postal service. The definition of item of correspondence referred to in Article 4 of the Law on postal services is insufficient and imprecise, and the negative enumeration of books, catalogues, newspapers, magazines and parcels, is completely irrelevant, and especially if the previous definitions of postal item and of parcel are noticed. The definition of direct mail excludes invoices, bills and financial reports, although they as documents and written communication can be only content, which is of a financial nature, and not of an advertising one.

Legal framework

The Law contains provisions of the reserved service which define the term, content and range of the items, as well as validity and application of the provisions that regulate this matter.

Thus, in the definitions in Article 4, paragraph 1 line 10, **reserved postal items** are clearance, sorting, transport and distribution of items of correspondence in domestic postal traffic and items of correspondence incoming in the Republic of Macedonia from international postal traffic, weighing up to 50 gr. Reserved postal services also contain the direct mail within the same weight limit. Further, in Article 41 paragraphs 3 and 4 it is prescribed that (3) Reserved postal services shall be provided by postal service providers at a price which is at least two and a half times higher than the price set by the universal service provider for items of correspondence in the first weight step of the fastest standard category, and that (4) The weight and price restrictions referred to in paragraph (3) of this Article shall apply to the direct mail service as well.

In continuation, paragraph (5) of the same Article does not allow postal service providers to provide items of correspondence and direct mail services referred to in paragraphs (3) and (4) of that Article at prices lower than the prescribed restrictions. Not observing of such prescribed prohibition is sanctioned further along in the law, in the misdemeanour provisions in Article 80 paragraph 1 line 6 and paragraphs 2,3 and 4 and in Article 83 paragraph 1 line 5 and paragraph 4.

Temporality of the reserved area and the exclusive right of the universal service provider to provide reserved postal services can be seen in the provisions in Article 92 where in paragraph 1 the date is prescribed when the existence and the right of reserved postal services ceases to exist.

Goals and solutions

We consider that there is a serious lack of systematics in the groups, types and forms of items that are incorporated in the term 'postal items'. The fact the group letter-post items is not at all mentioned in the law and can be prescribed to insufficient law consistency and represents ambiguity, does not have any consequences on the current Macedonian postal market, which functions with item nomenclature recognizable and traditional historic, and current worldwide.

In this sense, we consider as appropriate to interpret and implement the legal framework within the following systematics:

According to the criterion what is the purpose and function of services provided by that group of items (written communication or delivery of goods), the postal items can be divided in two main groups: 1. letter-post items and 2. parcels.

In the group of letter-post items, according to the form of the written and other material transported in the items, we distinguish two subgroups, each with several types of items. The first containing: letter, postal card, small parcel and the second – printed matter, containing: books, catalogues, newspapers and periodical magazines.

According to the nature of the content of the written material transported with letter, we distinguish: direct mail, item of correspondence, transactional mail and others.

When the written communication in the letter contains advertising and marketing material, then that is Direct mail. When the letter contains written communication of general, personal, business and legally relevant correspondence, that is Item of correspondence, and Transactional mail when the letter contains bills, invoices, financial statements or content that is a document by law and whose sending/delivery causes financial obligations for the recipient.

If the provisions of the reserved service range are interpreted in this manner, reserved services are the postal services for items of correspondence and for direct mail, but transactional mail is not reserved postal service.

The possible acceptance of the arguments given in this analysis, would absolve the services up to 50 grams containing invoices, bills and financial statements out of the range of the reserved area. The transactional mail is usually bulk mail, B2C, class of items that do not require next - day delivery, the clearance is done in sorting centers or distribution centers, they are presorted, subject to price discounts, sent as ordinary letters, meaning without any proof of receipt and delivery, by inserting in home letter box.

The possible decision should also take into consideration the volume of such items and the needs and expectations of the clients – senders of such letters.

Acts that need to be amended

- **Rulebook on general conditions on provision of universal service (Official Gazette of RM no. 146/2011)**

The Rulebook should be amended in the section 1. General provisions, in defining the terms, and in section 2. Types of postal services within the universal service, by systematics appropriate to the nomenclature of the services provided by the universal service provider and services listed in the tariff of Macedonian post.

ATTACHMENT 1:

Extract from the Law on postal services

Definitions

Article 4

Certain terms used in this Law shall have the following meaning:

- **postal item** shall be an item duly addressed which is to be carried by the postal service provider. Postal items shall include items of correspondence, items for blind persons, direct mail, books, catalogues, newspapers, magazines and parcels containing merchandise with or without a marked value;
- **item of correspondence** shall be communication in writing by means of any physical medium which is to be conveyed and delivered by the postal service provider at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers, magazines and parcels shall not be considered items of correspondence;
- **direct mail** shall be communication consisting solely of advertising, marketing or publicity material comprising an identical message, which is sent to a significant number of addressees and is to be delivered at the address indicated by the sender on the item itself or on its wrapping. Bills, invoices and financial statements shall not be considered direct mail. A communication combining advertising material and other items within the same wrapping shall not be considered direct mail;
- **parcel** shall be a postal item with determined dimensions and weight containing merchandise with or without a marked value;
- **registered item** shall be a service which provides flat-rate guarantee against the risk of loss, damage or reduction of the item content, whereby, upon request from the sender, s/he is provided with evidence that the item has been delivered to the addressee;
- **insured item** shall be a service ensuring a postal item to the value marked by the sender for the eventuality of loss, damage or reduction of the item content;