

Legislative Developments in the Postal Sector in 2008

by

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In 2008, a fundamental change in the legal status of the State-owned Public Utility Enterprise “Polish Post” (PPUP Poczta Polska) occurred as a result of progressive liberalization process of the postal services market in Poland. Polish Post was given the status of a joint-stock company on the basis of the Act of 5 September 2008, which defined the conditions of the commercialization of state-owned public utility enterprises¹. Polish Post is the largest employer among state-owned companies (nearly 100.000 staff) in the country. For years, it constituted a fossilized structure shaped under the conditions of a state monopoly. It found its doctrinal justification in the claim that monopolisation enables the state to ensure the privacy of correspondence, which is guaranteed by the Polish Constitution. Monopolisation was also said to allow customers to take full advantage of the existing network of postal offices and agencies. These essentially archaic arguments were typical for a centrally planned, state controlled economy and cannot be applied to current market conditions.

Long-lasting monopolisation of postal services resulted in a mismatch between their prices and their actual costs. At the same time, the overwhelming position of Polish Post deterred potential quality improvements, price reductions or a differentiation of postal services.

The privileged position of Polish Post was in conflict with the principle of equal status of entrepreneurs (firms) formulated in the Act of 2 July 2004², implementing the principles of free market economy. Poland’s accession to the EU and the implementation of the rules of its postal directives, guaranteed

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¹ Act of 5 September 2008 on commercialization of the State-owned Public Utility Enterprise “Polish Post” (Journal of Laws 2008 No. 180, item 1109).

² Act of 2 July 2004 on Freedom of Economic Activity (consolidated text: Journal of Laws 2007 No. 155, item 1095, with subsequent amendments).

a gradual opening of the domestic postal sector to competitive operators (to be completed in 2012). The national operator, which until then functioned as a state-owned enterprise, found itself under threat of losing its financial fluidity. As a result, a classic cost-saving procedure was implemented: staff reductions, holding back of investments and price increases. The situation was further aggravated by pay rise demands formulated by as many as 40 trade unions. All this made it necessary to commercialize the state-owned enterprise to make it able to face the market – it was granted the status of a joint-stock company, with the Treasury as its sole shareholder.

The Act of the commercialization of the State-owned Enterprise Polish Post refers to the rules contained in the former commercialization and privatization Act of 30 August 1996³. The principle of universal succession became the basic rule of the newly created joint-stock company allowing it take over all of the legal relationships formerly held by the state-owned enterprise. Moreover, the new company gained the exclusive right to use the word “Post” in its name and registered trademark. It was given the exclusive right to use – providing public postal services – a trademark showing the Polish national emblem and official stamps containing the picture of a white eagle with crown when. By lifting the principle of special protection against bankruptcy, formulated in Article 6(4) of the Bankruptcy and Remedy Act of 28 February 2003⁴, the company was made equal in the eyes of the law with other enterprises in that respect.

The decision to commercialize Polish Post was made by the minister responsible for communications on behalf of the Treasury. The decision established the following:

- 1) company’s statute,
- 2) company’s initial capital,
- 3) names of the members of the company’s authorities for the first term in office,
- 4) persons authorized to submit the company’s registration in the register of companies, if other than the managerial board.

For as long as the Treasury remains its sole shareholder, the company’s board comprises the following members:

- 1) one representative of the minister responsible for communications,
- 2) one representative of the Treasury,
- 3) one representative of the minister of finance,
- 4) two representatives of the company’s employees.

Candidates from among employees for the first managerial board are selected on the basis of indirect, general and confidential elections. The

³ Act of 30 August 1996 on Commercialization and Privatization of State-Owned Enterprises (consolidated text: Journal of Laws 2002 No. 171, item 1397, with subsequent amendments).

⁴ Consolidated text: Journal of Laws 2009 No. 175, item 1361.

result is determined by the majority of valid votes. The result itself is valid provided that a minimum of 50% of the employees submit their votes. If the first board has not been elected in due course, staff representatives will be appointed by trade unions (in 30 days from the summons of the minister of communications).

The law guarantees the new joint-stock company the right to form, by the decision of its general assembly, other joint-stock companies or limited liability companies in order to achieve common economic goals. Consent of the general assembly is also required to implement take-over, purchase or sell-out of shares procedures.

The area of the company's economic activity is defined broadly and encompasses:

- 1) provision of postal services including those of a general character,
- 2) issue, introduction and withdrawal from circulation of postage stamps, postcards and envelopes with a postage charge print,
- 3) rendering of other services exploiting the company's technical resources and personnel including subscription and distribution of newspapers, magazines, other publications, and philately,
- 4) provision of financial services and managing activities connected with them,
- 5) mediation in the provision of financial services including banking services,
- 6) provision of logistic support to customers, in particular in the domains of transportation, packaging and storage of goods.

Activities described in points 1 and 2 are carried out in accordance with the conditions of the Act of 12 June 2003 Postal Law⁵ and rules specified on its basis. The list of the company's economic activities is open-ended since the law allows the company to conduct other types of business activities, provided they do not affect the scope and quality of its primary activities. The company's business profile has been greatly enhanced by extending its offer of financial services, as a result of which, it has gained the status of a para-banking institution through the options listed below:

- 1) services connected to money transfers within and across the country's borders,
- 2) issue of debit cards and servicing of operations involving their use,
- 3) servicing operations involving cheques and bills of exchange,
- 4) purchase and sale of liabilities as well as operating relevant transactions,

⁵ Consolidated text: Journal of Laws 2008 No. 189, item 1159.

- 5) offering money loans from the company's own assets including consumer credit,
- 6) provision of bonds and guarantees as well as making financial commitments excluded from the financial balance,
- 7) sale of treasury securities and local authority bonds, conducting commissioned operations involving bonds in line with the rules and conditions stated separately for these type of activities,
- 8) services involving the conversion, sorting and storing of currencies,
- 9) storage of valuables and securities and the provision of safety deposit boxes,
- 10) transportation of cash, including securities and banking documents,
- 11) provision of information technology and data processing services to the general public as well as to financial institutions and banks.

The conditions of the provision of financial services must be made explicit in the rules available to the general public. Moreover, having signed an appropriate agreement with a bank, the company can perform some of the activities identified in the Banking Law. If the company controls more than 50% votes in the general assembly of a given bank, it may, when authorized by that bank, conduct banking operations on its behalf. However, it can do so only under the condition that it obtains an appropriate permission from the Financial Supervisory Commission. Such permission is subject to the evaluation by the Commission of the effects which the aforementioned operations might have on managing the bank and its internal control mechanisms.

The changes of the legal status of the former state-owned monopoly led to corresponding amendments in the Polish Postal Law. As a result of these adjustments, the old monopoly was replaced by a new company – Polish Post Joint-Stock Company (Poczta Polska S.A), which has gained the rights of a statutory public operator, obliged to provide general postal services and entitled to receive a state subsidy if its operations incur financial losses.

According to the Commercialization and Privatization Act of 30 August 1996, the employees have gained the right to obtain 15% of the shares of the new company free of charge, while the rest remains in the possession of the Treasury.

Another adjustment, based on criminal law, working to the advantage of the employees is the right to personal protection given to civil servants who, in this case, are obliged by law to carry out general postal services.