



New postal legislation

A balanced bill for the further development of the Swiss postal market

Background

The Swiss Federal Council has published its Message on the new postal legislation. This new legislation comprises two separate decrees. While the Postal Act governs the market, the Postal Organisation Act is effectively a company law. One year after the new Postal Act comes into force, the Swiss Federal Council intends to submit a separate Federal Decision to Parliament to fully liberalize the postal market. A good, modern basic service will be enshrined in law for both postal services and payment transfer services, and a framework established for fair terms of employment in the postal sector. Fit to face competition, Swiss Post views the postal legislation submitted to Parliament as an appropriate basis for ensuring nationwide basic service which Swiss Post is able to finance drawing on its own resources.

However, if public service is to remain financially viable in the long term, and if Swiss Post is to successfully develop further, the new postal legislation must allow PostFinance to operate as a retail bank granting loans and mortgages to its customers. At the same time, the legal framework must not hinder Swiss Post in leveraging national and international growth opportunities in the logistics, communications and public passenger transportation markets. Swiss Post must imperatively be able to also invest in high-yield sectors which go beyond its traditional field of activity.

The new Postal Act

The new Postal Act will abolish the remaining monopoly in the postal market. As a result, the market will be fully liberalised. The Swiss Federal Council aims to enshrine in law a good, modern basic service for both postal services and payment transfer services. In addition to the carriage of letters and parcels, the provision of basic postal service by Swiss Post is also to encompass an infrastructure mandate. As well as continuing to maintain a nationwide network of access points, Swiss Post will newly be required to operate a nationwide network of post boxes. Furthermore, with full deregulation, and unlike developments in the EU, all services falling within the remit of basic service provision will automatically be subject to value added tax. Moreover, the Act requires postal service providers to comply with industry-standard terms of employment and conduct negotiations on collective labour agreements. All postal service providers will also have to ensure transparency of prices and services. In addition, the Postal Act grants competitors legally regulated access to Swiss Post's P.O. box facilities and change of address data.

As a basic principle, Swiss Post must provide basic postal service without financial assistance. If it incurs any uncovered costs, it may ask for their compensation. This compensation is to be financed by way of a fund to which all postal service providers would have to contribute – including Swiss Post as basic service provider.

A new administrative and supervisory organisation is to allow legislative tasks, market regulation and supervisory functions to be separated. Furthermore, market participants will be able to avail themselves of legal remedies against decisions of the regulatory authority.

Following a one-year transition period after the Postal Act's coming into force, Swiss Post is expected to be able to provide basic service in the field of payment transfers relying solely on its own resources.

The new Postal Organisation Act

Upon promulgation of the new Postal Organisation Act – which is comparable to a corporation's articles of association – Swiss Post is to be turned into a public company under special law, owned by the Swiss Confederation. At the same time, PostFinance will be spun off into a public company majority-owned by Swiss Post, so it can be placed under the supervision of the ordinary Financial Market Supervisory Authority. In terms of tax legislation, Swiss Post is to be treated on a par with private providers and its state guarantee will be abolished. Terms of employment for Swiss Post staff employed by the parent company will newly be governed by private law. At the same time, the future Swiss Post AG will be required to conduct negotiations on collective labour agreements. The Postal Organisation Act also defines Swiss Post's company purpose. However, it fails to provide a legal basis allowing PostFinance to independently offer mortgages and loans and thus enter the lending business.

The position of Swiss Post

Providing high-quality public service as regards postal services and payment transfer services is and will remain Swiss Post's "Raison d'être". Swiss Post is committed to good basic service and intends to ensure its provision to the satisfaction of citizens and the business community, even as the framework within which it operates is changing. Swiss Post has put its time to good use, preparing to face increased competition. It has positioned itself very successfully as a financial service provider and holds a strong position in the postal and logistics markets. It has established the entrepreneurial and commercial premises required for success in a freely competitive environment. However, it must be granted the same legal premises as its mostly international competitors. If this level playing field is established by the Postal and Postal Organisation Acts, Swiss Post, operating as a modern and competitive company, will be able to provide quality and inexpensive services, continue to offer its employees attractive jobs and meet its owner's expectations by delivering strong financial results.

If this is to remain possible, the framework set for the postal and financial sectors must meet the following requirements.



Required framework for the postal and logistics markets

Full postal market liberalisation by means of a separate Federal Resolution

Swiss Post acknowledges the Swiss Federal Council's determination to fully liberalise the postal market in a few years' time. It urges to proceed with caution and therefore views as appropriate a transition period of three years from the time the new postal legislation takes effect. The option of a referendum on market deregulation will make it possible to incorporate the views citizens take on this far-reaching decision.

A modern definition of basic service

The definition of basic postal service, so-called universal service, is a central element of legislation. The universal service provided for in the draft Postal Act guarantees the Swiss population high-quality public service. At the same time, the bill ensures that Swiss Post is able to continue adapting basic service provision to evolving customer requirements and technology.

Swiss Post accepts the infrastructure mandate stipulated in the bill. It pledges to maintain a modern and dense network of postal access points over the long term. Swiss Post is satisfied with the degree of entrepreneurial and commercial flexibility the Act allows for basic service provision. It therefore hopes to be able to keep providing basic service without the need for any compensation. However, this presupposes that Swiss Post's commercial development not be hindered by demands and conditions.

Fair terms of employment in the postal sector

Swiss Post intends to continue acting in a socially responsible manner, retaining its position as an employer offering above-average terms of employment in the different sectors in which it operates.

If a fair and level playing field is to be established in the context of a fully liberalised postal market, Swiss Post views it as imperative to subject all its employees to the Swiss Code of Obligations rather than the Federal Personnel Act. It therefore welcomes the Swiss Federal Council's decision to transfer employees to private-law employment contracts governed by the Swiss Code of Obligations.



Swiss Post also supports the Swiss Federal Council's intention to require all providers in the postal market to conduct collective labour agreement negotiations. It should be possible to declare such negotiated sectoral collective labour agreements generally binding and applying to the respective activities in the postal sector. This would ensure that future competition in this labour-intensive industry be based on quality rather than wage dumping. However, the Postal Organisation Act must not overshoot the mark. The Swiss Federal Council intends to require Swiss Post to negotiate collective labour agreements in every sector in which it operates. For example, Swiss Post would thus also be required to negotiate collective labour agreements in the financial market. This would constitute a discriminatory regulation to the detriment of Swiss Post. Swiss Post demands a level playing field for all competitors in all sectors.

No unnecessary regulation of partial network access

As a matter of principle, in a free postal market companies should be left to devise their own business model. This applies both to Swiss Post's pricing of products and services for business customers and, more specifically, to its competitors. It is therefore to be welcomed that the Swiss Federal Council should abstain from legally guaranteeing providers in the postal market access to Swiss Post's infrastructure. This would inhibit innovation in the postal sector and hinder competition.



The new Postal Act thus only grants competitors access to Swiss Post's P.O. box facilities and change of address data. Swiss Post views this regulation of technical access as the upper limit of regulated network access. In this context, Swiss Post supports the Swiss Federal Council's chosen approach of ex-post regulation.

In the interest of a functioning market, and in the event that Swiss Post should be unable to reach an agreement with its competitors, it is right to grant the future PostCom clearly defined powers to set prices for change of address data and P.O. box facilities.

As confirmed by the DETEC-commissioned PLAUT-Frontier study, the comprehensive, legally stipulated opening-up of postal infrastructure (so-called regulated partial network access) would threaten Swiss Post's ability to finance basic service. National and international competitors would be allowed to leave Swiss Post to handle unattractive shipments and consignments, themselves only delivering items which meet their criteria for profit. While such cherry-picking would initially provide large foreign enterprises with a springboard to rapid growth in Switzerland, over the long term it would distort the market structure. Swiss Post stresses that it is granted no such advantages by other EU countries when competing internationally.

Required framework for the retail banking market

The new Postal Act is suitable for opening the postal market to full competition. The new Postal Organisation Act, on the other hand, severely limits Swiss Post's leeway in the financial market. Swiss Post deplores the Swiss Federal Council's decision not to allow PostFinance to offer its customers loans and mortgages. It views this as a lost opportunity for the Swiss economy and for Swiss Post Group's long-term strength. Swiss Post calls upon Parliament to amend the purpose clause accordingly.

PostFinance's entrepreneurial freedom

PostFinance is Switzerland's fifth-largest financial institution, numbering over two million private customers and over 300,000 business customers. PostFinance now manages some 70 billion Swiss francs in customer deposits and is a stable mainstay of Switzerland's financial



centre. PostFinance must be allowed to enter the lending business. The point is not to grant PostFinance a full banking licence, but to allow it to offer a clearly defined range of products, including overdraft facilities for small and medium-sized enterprises, commercial mortgages, credits and loans to rated companies, participation in syndicated loans, and residential mortgages. Within three years, PostFinance could thus invest some ten billion Swiss francs with 30,000 customers in the mortgage and credit markets. The Postal Organisation Act's purpose clause must be amended accordingly. As regards ownership structure, Swiss Post must imperatively retain a clear majority in the future PostFinance AG, as scheduled by the Swiss Federal Council.

"The future PostFinance AG must remain in Swiss Post's majority ownership and – under FINMA's supervision – in future also be able to offer loans and mortgages."

Claude Béglé, Chairman of the Board of Directors

Modern payment transfer services

The Swiss Federal Council intends to regulate postal and payment transfer services by separate legislation in order to accommodate differing market characteristics. This presupposes that Swiss Post remains able to finance the provision of basic payment transfer service.

A modern definition of basic service is just as important in the field of payment transfers as it is in the postal market. The Swiss Federal Council is suggesting that basic service newly also include card payments. This implies a significant modernisation of the basic service mandate. Given the ability to adapt payment transfer service locations and the development of payment methods to evolving customer behaviour and technological change, Swiss Post should in all likelihood manage to ensure the funding of payment transfer services with its own resources.

Summary

Providing high-quality public service as regards postal services and payment transfer services is and will remain Swiss Post's "Raison d'être". Swiss Post is committed to good basic service and intends to ensure its provision to the satisfaction of citizens and the business community, even as the framework within which it operates is changing. Swiss Post is a modern, competitive company. It operates in the communications market as a leading provider of postal services, has successfully positioned itself as a financial services provider, holds a strong position in the logistics market and is a valued public transport operator. It has established the entrepreneurial and commercial premises necessary to successfully master its competitive environment.

Swiss Post views the proposed bills as an appropriate basis to ensure nationwide basic service it is able to finance relying on its own resources. Fundamentally, they offer the opportunity for a modern, competitive Swiss Post, provided the framework is right and the entrepreneurial and commercial freedom Swiss Post so urgently requires is extended accordingly.

1. Full postal market liberalisation by means of a separate Federal Resolution

Swiss Post accepts the Swiss Federal Council's decision to fully liberalise the postal market. However, there should be a transition period of three years from the moment the new postal legislation comes into force.

2. A modern definition of basic service

The Swiss Federal Council's proposed regulation of basic service ensures a good level of consumer protection and should allow postal services to be

provided without financial assistance. At the same time, the bill ensures that Swiss Post can continue to adapt basic service to evolving customer requirements and technology.

3. Expanded purpose clause needed

The purpose clause in the Postal Organisation Act must be amended. PostFinance must be allowed to independently offer mortgages and loans.

4. Fair terms of employment in the postal sector

Swiss Post views it as imperative for its entire staff to be employed on a private-law basis governed by the Swiss Code of Obligations. It supports the Swiss Federal Council's intention to require all market participants to conduct collective labour agreement negotiations. Swiss Post believes a negotiated collective labour agreement should be declared generally binding and apply to all activities in the postal sector. Swiss Post demands to be legally bound only in those markets in which its competitors are bound by the same obligation.

5. No unnecessary regulation of partial network access

As a matter of principle, in a free postal market companies should be left to devise their own business model. However, in the event that Swiss Post should be unable to reach an agreement with its competitors, in the interest of a functioning market Swiss Post advocates granting the future PostCom clearly defined powers to set prices when regulating change of address data and P.O. box facilities.

Further information is available at www.swisspost.ch/politics