

FEDERAL LAW GAZETTE

FOR THE REPUBLIC OF AUSTRIA

Year 2009	Issued on 4 December 2009	Part I
123rd Federal Act:	Postal Market Act (Postmarktgesetz, PMG) and Amendment to the KommAustria Act (KommAustria-Gesetz, KOG) (National Council: Legislative Period XXIV, Government Bill 319, Committee Report 459, p. 45. Federal Council: Committee Report 8203, p. 778.) [CELEX No: 32008L0006]	

123rd Federal Act, issuing a postal market act and amending the KommAustria Act

The National Council has resolved the following:

Article 1

Federal Act on the Regulation of the Postal Market (Postal Market Act)

Chapter 1

General Provisions

- Section 1 Objective
- Section 2 Scope of application
- Section 3 Definition of terms
- Section 4 Evaluation
- Section 5 Postal secrecy

Chapter 2

Universal service

- Section 6 Definition and scope
- Section 7 Postal service points
- Section 8 Hours of operation, minimum range of services
- Section 9 Letterboxes
- Section 10 Deliveries
- Section 11 Transit times
- Section 12 Universal service provider
- Section 13 Financial compensation
- Section 14 Compensation fund
- Section 15 Calculation of cost to provide universal service

Chapter 3

Obligations of the universal service provider

Section 16 Missing persons tracing service, mail for the blind
Section 17 Service of official documents
Section 18 Universal Postal Convention, postage stamps
Section 19 Obligation to contract
Section 20 General Terms and Conditions of the universal service provider
Section 21 Tariff regulation
Section 22 Single-piece tariffs for services in the universal service sector
Section 23 Cost accounting system

Chapter 4

Postal Services

Section 24 General requirements
Section 25 Obligation to notify
Section 26 Postal Services subject to licensing
Section 27 Granting of license
Section 28 Requirements
Section 29 License transfer and amendment
Section 30 Termination of license
Section 31 General Terms and Conditions for services in the universal service sector
Section 32 Obligations of postal service providers
Section 33 Quality control
Section 34 Delivery boxes and domestic multi-mailbox installations (Hausbrieffachanlagen)
Section 35 Access to rural delivery boxes and address information
Section 36 Postal codes

Chapter 5

Postal Authorities, Supervision

Section 37 Postal authorities, National Regulatory Authority
Section 38 Responsibilities of the Austrian Regulatory Authority for Broadcasting and Telecommunications (NRA)
Section 39 Post Control Commission (PCK)
Section 40 Responsibilities of the Post Control Commission
Section 41 Structure of the Post Control Commission
Section 42 Chair, Rules of Procedure of the Post Control Commission
Section 43 Postal Service Point Advisory Board
Section 44 Rules of Procedure, official channels
Section 45 Transparency
Section 46 Information through National Regulatory Authority
Section 47 Treatment of trade and business secrets
Section 48 Cooperation with other authorities
Section 49 Obligations to inform
Section 50 Supervisory measures
Section 51 Supervisory procedures
Section 52 Order and execution of statistical surveys
Section 53 Mediation of disputes
Section 54 Universal service complaints

Chapter 6

Penal Provisions

Section 55 Administrative penal provisions

Section 56 Withdrawal of enrichment

Section 57 Violation of postal secrecy

Chapter 7

Transitional and Final Provisions

Section 58 Structure of regulatory authorities

Section 59 Transitional provisions

Section 60 References

Section 61 Linguistic equality

Section 62 Enforcement

Section 63 Abrogation of legal provisions

Section 64 Entry into force

Chapter 1

General Provisions

Objective

Section 1. (1) This Federal Act is to ensure that the public and the business sector are provided with diverse, affordable and high-quality postal services. It is specifically to

- a) ensure an nationwide adequate and affordable supply of basic postal services (universal service) and
- b) enable fair competition in the provision of postal services.

(2) This Federal Act implements Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service, OJ L 15 of 21.1.1998, p.14, last amended by Directive 2008/6/EC for the amendment of Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52 of 27.2.2008, p. 3.

Scope of application

Section 2. (1) This Federal Act regulates the commercial provision of postal services.

(2) This Federal Act also applies to cross-border mail exchange unless international treaties and the laws passed for their implementation specify otherwise.

(3) This Federal Act does not apply to the transport and delivery of newspapers and periodicals to addressees by media owners or publishers as long as these

- a) are carried out by media owners or publishers or
- b) are carried by a company exclusively owned by media owners or publishers and whose purpose is the transport and delivery of newspapers or periodicals to addressees.

Definition of terms

Section 3. As defined by this Federal Act:

1. "Austrian Post" means the Österreichische Post Aktiengesellschaft (a public limited company under Austrian law);
2. "Postal services" means services involving the clearance, sorting, transport and delivery of postal items;
3. "Postal service provider" means undertakings which provide one or more postal services;
4. "Universal service provider" means one or more designated universal service providers pursuant to Section 12, paragraph 1 or one or more designated postal service providers pursuant to Section 12, paragraph 2;
5. "Postal network" means the entirety of the organisation and resources of any kind employed by the universal service provider or providers for the specific purpose of providing the following services:
 - the clearance of postal items covered under the universal service obligation from access points throughout the Federal Territory;
 - the routing and handling of these postal items from the postal network access point to the delivery centre;
 - delivery to the address on the postal item in question;
6. "Access points" means facilities where senders can deposit their postal items into the postal network; these include street letterboxes designated for the general

public in public places or postal service points as well as alternative supply solutions (such as “mobile post offices” or “rural postmen”); distribution centres are not considered access points;

7. “Postal service point” means a stationary facility operated by the employees of the universal service provider or one of its affiliated companies pursuant to Section 228 of the Austrian Business Enterprise Code (Unternehmensgesetzbuch, UGB) (“company- operated”) or by a third party on the basis a contractual agreement with the universal service provider (“third-party operated”) and at which users can take advantage of the universal service;
8. “Clearance” means the collection of postal items by a postal service provider;
9. “Delivery” means the process from sorting at the delivery centres to physically transferring the postal items to their addressees;
10. “Postal item” means an item addressed in the final form in which is collected by a postal service provider in Austria. In addition to letter mail items, such items include books, catalogues, newspapers and periodicals as well as postal parcels containing goods with or without commercial value;
11. “Letter mail item” means a communication in written form on any physical medium which is conveyed and delivered to the address indicated by the sender on the item itself or on its wrapping; books, catalogues, newspapers and periodicals are not considered letter mail items;
12. “Registered postal item” means a postal item which is insured for a flat rate by the postal service provider against loss, theft or damage and for which the sender, at his or her request, is provided confirmation of postal item’s receipt and/or delivery to the addressee;
13. “Insured postal item” means a postal item which is insured by the postal service provider against loss, theft or damage for the value indicated by the sender;
14. “Sender” means the natural or legal person who is the originator of the postal items;
15. “User” means a natural or legal person who benefits from a postal service as a sender or addressee;
16. “Direct mail item” means a postal item consisting solely of advertising, marketing or publicity material and, apart from the addressee’s name, address and identification number as well as other modifications which do not alter the nature of the message, is an identical message to at least 100 addressees.

Evaluation

Section 4. The Federal Minister for Transport, Innovation and Technology shall periodically review the expediency and economic efficiency as well as the quality of supply of the universal service and report on it to the Federal Government every two years. The Federal Government shall subsequently present the report to the National Council. It may commission the National Regulatory Authority with this review.

Postal secrecy

Section 5. (1) Persons providing postal services shall refrain during and after termination of their employment from divulging information of any kind to parties other than the sender or addressee, unless federal law expressly dictates otherwise.

(2) The obligation to maintain secrecy may not preclude the reporting of actions that are liable to prosecution.

(3) Unless otherwise expressly stipulated by law, postal items whose consignment is to be confirmed by the addressee may be delivered to persons present at the point of delivery indicated on the postal item if this is the only way delivery of the item is possible and this delivery option has not been excluded by either the sender or the addressee. Postal items may also be delivered to these persons at a collection point.

(4) If no person entitled to accept the postal item is present at the indicated point of delivery, parcels intended for a natural person may also be delivered to persons in neighbouring flats or houses if this delivery option has not been excluded by either the sender or addressee; the addressee shall be notified in writing thereof.

(5) Sealed postal items whose delivery to the addressee or sender is not possible or permissible may be opened by a postal service provider in order to determine the sender or addressee and to prevent damage.

(6) Postal items in the custody of a postal service provider during rendering of the postal service may not be subject to enforcement or other official compulsory measures unless otherwise expressly stipulated by law. The provisions of the Code of Criminal Procedure (Strafprozessordnung 1975, StPO), Federal Law Gazette (Bundesgesetzblatt, BGBl) No. 631/1975, regarding the search and confiscation of documents and the confiscation and opening of correspondence and other postal items shall remain without prejudice.

Chapter 2

Universal service

Definition and scope

Section 6. (1) The universal service is a minimum range of postal services which are viewed as necessary for the maintenance of a basic user service, are offered throughout the federal territory and are accessible to all users at an affordable price. There is no obligation to render the universal service if general emergencies prevent the transport of mail.

(2) The universal service shall include the following services:

1. Clearance, sorting, transport and delivery of postal items weighing up to 2 kg.
2. Clearance, sorting, transport and delivery of postal parcels weighing up to 10 kg.
3. Services for registered and insured postal items.

3) The universal service shall include services, both domestic as well as cross-border, which are necessary for the maintenance of a basic range of postal services for users. These shall encompass services for which the underlying agreements are concluded on the postal services to be rendered by consignment of postal items at letterboxes or different access points. The universal service shall include postal services relating to newspapers and periodicals.

(4) The universal service may not include return parcel items; these are parcel items which, on the basis of an agreement between the sender and postal service provider, may be returned by the addressee to the sender free of charge to the addressee. .

(5) In the scope of the universal service, the operator shall ensure that users are provided continual access to postal services irrespective of geographical location at universally affordable prices and of such quality that user needs are met through the adequate density of points of collection and access points as well as an adequate level of clearance and delivery frequency. If there are comparable conditions, users shall be provided with equal services. The provision of the universal service shall take technological developments, macroeconomic, regional and social aspects as well as user demand into account.

(6) The packaging, texture and dimensions of the postal items to be conveyed in the scope of the universal service shall comply with the provisions of the Universal Postal Convention and other agreements of the Universal Postal Union. The provisions of the Universal Postal Convention and the other agreements of the Universal Postal Union shall remain without prejudice.

(7) The universal service provider shall report the following statistics for the previous calendar year to the National Regulatory Authority in writing and in electronic form:

1. Transit times for letter mail items
2. Transit times for parcel items
3. Delivery frequency
4. Number of and changes concerning postal service points
5. Number of and changes concerning letterboxes
6. Number of queries

This information shall be provided every year by 1 March of the subsequent year.

(8) The universal service provider shall be obligated to develop the universal service with user needs in mind and, through adequate measures and proposals, to help ensure the provision of postal services and further development of the universal service. In this regard longer hours of operation, better access and every opportunity to ensure competitiveness, particularly through third party-operated postal service points, are to be considered.

(9) The Federal Minister for Transport, Innovation and Technology may adopt, by ordinance, more detailed provisions for the universal service such as the reporting obligation to the National Regulatory Authority and further development of the universal service.

Postal service points

Section 7. (1) Comprehensive provision of postal service points pursuant to Section 6 shall be deemed given as long as there are at least 1,650 postal service points available to users throughout the Federal Territory. In communities of more than 10,000 residents and in all district capitals for at least 90% of the population access to a postal service point shall be ensured at a maximum distance of 2,000 metres, or in all other areas at a maximum distance of 10,000 metres

(2) Postal service points shall also include third party-operated postal service points which at the time this regulation enters into force are opened fewer than 20 hours per week or 5 working days per week, or do not offer all of the services which enable users to benefit from universal service, or those which are third party-operated by a municipal office open fewer than 20 hours per week or 5 working days per week. The total number of postal service points pursuant to this paragraph shall not exceed 165.

(3) A postal service point by the universal service provider may only be closed if

1. cost-efficient operation of the company-operated postal service point is precluded in the long term;
2. provision of the universal Service is ensured by another postal service point operated by the universal service provider or by a third party-operated postal service point.

(4) The universal service provider shall provide evidence of the long-term preclusion of cost-effective management for a postal service point operated by the universal service provider as defined by paragraph 3 on the basis of the financial statement resulting from the universal service provider's cost-accounting system pertaining to this postal service point, divided according to revenue categories and types of costs.

(5) Prior to the intended closing of a company-operated postal service point, the universal service provider shall inform in a timely manner the municipalities heretofore supplied by the respective postal service point and cooperate on good terms with the municipalities affected in order to seek alternative solutions, within a period of three months, in an attempt to preserve the location. During this process particular attention shall be paid to regional conditions. The universal service provider shall provide the municipalities with all relevant documents which demonstrate the conditions pursuant to paragraph 3. Irrespective of any proposals from the municipalities, the universal service provider shall also submit concrete proposals to the municipality on preserving the quality of supply.

(6) Prior to the intended closing of a postal service point operated by the universal service provider, the universal service provider shall provide the National Regulatory Authority with documentation establishing compliance with the provision pursuant to paragraph 3, number 1 and the invitation on the part of the universal service provider of the municipalities concerned to discuss and seek alternative solutions, and do so in paper or electronic form for the purpose of review. The National Regulatory Authority shall be entitled to have this documentation reviewed by an expert (auditor). Upon submission in accordance with the first sentence of the documentation on which the review is based, closure of the postal service point operated by the universal service provider shall be temporarily prohibited. Should the National Regulatory Authority establish that the conditions of Section 7 paragraph 3 do not exist, the National Regulatory Authority shall, by decision, conclusively prohibit the closure of the postal service point operated by the universal service provider concerned. Otherwise, it shall close the review proceedings. If three months within submission of the documentation in accordance with the first sentence the Administrative Authority has neither halted the review process nor irrevocably prohibited closure by decision, closure of the postal service point operated by the universal service provider may not be deemed prohibited.

(7) If provision of services by a third party-operated postal service point is no longer possible, the universal service shall be ensured in any case. As long as the guidelines pursuant to paragraphs 1 and 2 are met, this may also occur through alternative supply solutions.

Hours of operation, minimum range of services

Section 8. (1) As a rule, postal service points shall be opened daily on at least 5 working days per week, with the exception of postal service points run externally by a municipal office and open at least a total of 15 hours on three work days per week. Postal service points' hours of operation shall take user needs at the respective location into account; they may also be extended to include Saturdays, Sundays and holidays or evening hours. Based on a 5-day week, the weekly hours of operation may not be fewer than 20 hours; this

shall not apply to the postal service points which were open fewer than 20 hours upon this Federal Act's entry into force.

(2) Every postal service point shall offer all postal services which provide users with access to the Universal Service, except for the postal service points that did not already offer all of these services upon this Act's entry into force. These include in particular the sale of postage stamps or other indicia.

Letterboxes

Section 9. (1) The universal service provider shall be obligated to ensure an adequate, comprehensive supply of letterboxes and other installations for collecting postal items. User needs may not be impaired by a decline in the number of letterboxes (Section 6). Compliance with transit time guidelines shall be ensured pursuant to Section 11. In densely settled residential areas there shall be sufficient letterboxes available so that, as a rule, users are able to access a letterbox within a maximum of 1,000 metres of their residence. The installation of new letterboxes shall also take the needs of mobility-restricted persons into account.

(2) Letterboxes shall be emptied at least once daily from Monday to Friday. Emptying times shall take into account the transit time guidelines pursuant to Section 11. The letterboxes shall indicate the emptying time enabling deliveries on the next working day excluding Saturday.

Deliveries

Section 10. (1) The universal service provider shall be obligated to deliver letter mail items and parcel items to be conveyed in the scope of the universal service as a rule on five working days per week, excluding Saturday, to the indicated residential or business address as long as no other agreement has been made with the addressee. Daily newspapers shall also be delivered on Saturday.

(2) Delivery via rural letterboxes shall be permitted. An extension of delivery via rural delivery boxes in sparsely settled residential areas beyond the scope in existence at the time this Act entered into force shall only be permitted in agreement with the addressees concerned.

(3) If the addressee's residential or business address is only accessible with unusual difficulty, if an easily accessible installation for delivery of letter mail items is not available, or if delivery is unusually difficult or involves danger for the deliverer, the addressee may be excluded from delivery. The addressee shall be informed of this in advance and provided the opportunity to fulfil the lacking prerequisites for delivery. If the universal service provider retains undeliverable postal items in a postal service point for the addressee to collect, the operator shall be entitled to charge a reasonable tariff for their retention.

Transit times

Section 11. (1) Domestic letter items to be delivered in the scope of the universal service and submitted (consigned) by closing time on a working day, excluding Saturday, shall be delivered on an annual average of at least 95% on the first working day following the day of consignment, excluding Saturday, and 98% on the second working day following the day of consignment, excluding Saturday; the remaining letter mail items shall be delivered

within four working days of the day of consignment. This may not apply to direct mail items. Closing times shall be made public at every postal service point.

(2) Domestic postal parcel items to be delivered in the scope of the universal service and submitted (consigned) before closing time on a working day, excluding Saturday, shall be delivered on an annual average of at least 90% on the second working day following the day of consignment, excluding Saturday. The remaining parcels shall be delivered within one week of the day of consignment. Closing times shall be made public at every postal service point.

(3) Inbound cross-border intra-Community priority letter mail items and postal parcel items to be conveyed in the scope of the Universal Service and arriving on a working day, excluding Saturday, shall be delivered on an annual average of at least 85% at the latest on the third working day following consignment, excluding Saturday, and of 97% at the latest on the fifth working day following the day of consignment, excluding Saturday. This shall not apply to letter mail items and postal parcel items that must be presented to customs.

(4) Outbound cross-border intra-Community priority letter mail items and postal parcel items consigned in the scope of the Universal Service before closing time in accordance with paragraph 1 or paragraph 2 on a working day, excluding Saturday, shall be delivered on an annual average of at least 85% at the latest on the third and at least 97% at the latest on the fifth working day following the day of consignment, excluding Saturday. This may not apply to letter mail items and postal parcel items that must be presented to customs.

(5) Outbound cross-border extra-Community priority letter mail items and postal parcel items consigned in the scope of the Universal Service before closing in accordance with paragraph 1 or paragraph 2 on a working day, excluding Saturday, shall be transported to the point of exchange and handed over for immediate transport to the country of destination on an annual average of at least 90% at the latest on the third working day following the day of consignment, excluding Saturday.

(6) Inbound cross-border extra-Community priority letter mail items and postal parcel items to be conveyed in the scope of the Universal Service on a workday, excluding Saturday, shall be delivered on annual average of at least 90% at the latest on the third working day following consignment, excluding Saturday, at least 87% at the latest on the fifth working day following consignment, excluding Saturday; the day of consignment is the day on which the items to be sent are handed over at the point of exchange before the final collection. This may not apply to letter mail items and postal parcel items that must be presented to customs.

Universal service provider

Section 12. (1) Upon this Federal Act's entry into force, Austrian Post shall be designated as universal service provider. Five years following this Federal Act's entry into force, the National Regulatory Authority shall review whether there are also other postal service providers able to provide a nationwide universal service. Should this be the case, the National Regulatory Authority shall issue a public call to tender for the nationwide universal service, and, after carrying out a transparent and non-discriminatory tendering process, shall award the contract to the best-suited postal service provider. To the extent a reduction in the overall universal service costs is anticipated, the National Regulatory Authority may also entrust several postal service providers with the provision of the universal service for specific regions or services of the universal service. The universal service shall be transferred by

decision to these postal service providers and Austrian Post shall be released by decision from its obligation to provide the universal service. The decision for transfer shall specify which of the rights and obligations with respect to Austrian Post in this Federal Act also apply to this operator. In a maximum of another five years the review shall be repeated or the universal service retendered.

(2) If Austrian Post is partly or entirely unable to ensure proper provision of the universal service any longer, the National Regulatory Authority shall take the appropriate supervisory measures to restore or ensure the universal service. If these are not successful, the National Regulatory Authority shall determine the most suitable postal service provider by way of a tender pursuant to the principles of paragraph 1. The universal service shall be partly or entirely transferred to this postal service provider by decision, and, by decision, Austrian Post shall be released in equal measures from its obligation to provide the universal service. The decision for transfer shall specify which of the rights and obligations with respect to Austrian Post in this Federal Act also apply to this operator.

(3) Without prejudice to obligations governed by other legal institutions, in accordance with this Federal Act the Universal service provider shall be entitled at no charge and without special approval to use public property such as streets, walkways, public spaces and the above airspace for the installation and maintenance of letterboxes as well as for other smaller structures of up to 2m² necessary for the provision of an efficient comprehensive universal service which serves the collection, provisional storage, conveyance or delivery of postal items. No charge in accordance with this provision means that no payments may be collected by the state or on a contractual basis. Should this entitlement be availed, the safety of individuals and property may not be endangered.

Financial compensation

Section 13. (1) The verifiable net cost for the universal service which, taking account of Section 15, paragraph 1, cannot be compensated despite efficient management and which represent an unreasonable financial burden on the universal service provider shall be reimbursed at the universal service provider's request. The universal service's net cost shall be deemed an unreasonable financial burden if they exceed 2% of the universal service provider's overall cost. In this case, the net cost calculated in accordance with Section 15 shall be reimbursed in the amount by which they exceed the value of 2% of the overall cost. The overall cost of the Universal service provider shall be understood as the sum of the expense items reported on the universal service provider's individual annual financial statement pursuant to Section 231, paragraph 2, numbers 5 to 8 of the Austrian Commercial Code (using the total cost method) or Section 231, paragraph 3, numbers 2, 5, 6 and 7 of the Austrian Commercial Code (using the cost of sales method).

(2) The application for compensation shall be made to the National Regulatory Authority within one year after the year in question has passed. Appropriate documentation enabling the National Regulatory Authority to review the information concerning the net costs claimed shall be submitted with the application.

Compensation fund

Section 14. (1) If a request is made pursuant to Section 13, paragraph 2, the National Regulatory Authority shall establish and administer a compensation fund. The fund shall finance the universal service. The National Regulatory Authority shall publish a report on the

administrative activity showing the verifiable net cost incurred and amounts attributable to specific liable contributors.

(2) Operators of licensed postal services with annual turnover of more than one million euro in the area of activity falling under the license application shall contribute to the compensation fund's financing and administration proportionate to their market share. The turnover of licensed postal service operators under uniform management of a partnership or a natural or legal person pursuant to Section 15 of the Austrian Stock Corporation Act (Aktiengesetz, AktG) is to be calculated together. The relevant market share shall be based on the relationship of the respective turnover to the sum of the turnover of all liable contributors in the relevant market of licensed postal services in this Federal Act's scope of application, disregarding the universal service provider's turnover in the universal service sector.

(3) After examination of the criteria pursuant to Section 13 and paragraph 2, the National Regulatory Authority shall stipulate, by decision, the amount for those liable to contribution and report it to those concerned.

(4) If a party liable to contribution is more than four weeks in arrears with the payment, the National Regulatory Authority shall specify, by decision, the outstanding contribution attributed to the party and collect the arrears pursuant to the provisions of the Administration Enforcement Act 1991 (Verwaltungsvollstreckungsgesetz 1991, VVG), Federal Law Gazette No. 53/1991.

Calculation of costs for the universal service

Section 15 (1) The net cost of the universal service obligations is any cost related to and necessary for the operation of the universal service provision. The net cost of universal service obligations is to be calculated, as the difference between the net cost for a designated universal provider of operating with the universal service obligations and the same universal service provider operation without the universal service obligations. In this regard, cost which incur due to inefficient management due to legal requirements shall to be specifically taken into account. These also include cost which result from obligations established outside of this Act and which do not concern any company subject other than the universal service provider.

(2) The calculation of the net cost shall take into account all other relevant elements including any intangible and market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.

(3) Cost that the universal service provider would have avoided had there been no universal service obligations or which result from obligations established outside of this Act and which do not concern any company subject other than the universal service provider shall be duly calculated. The calculations is to be based on the costs attributable to:

1. Elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.
2. Specific users or groups of users who, taking into account the cost of providing the specified services and the revenue generated, can only be served at a loss or under cost conditions falling outside normal commercial standards. This category includes those users or groups of users that would not be served by a commercial operator without an obligation to provide universal service.

(4) The calculation of the net cost of specific aspects of universal service obligations shall be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any designated universal service provider shall be calculated as the sum of the net cost arising from the specific components of universal service obligations, taking account of any intangible benefits.

Chapter 3

Obligations of the universal service provider

Missing persons tracing service, deliveries for the blind

Section 16. In the same scope provided through 1 May 1996, the universal service provider shall allow exemption from postal charges granted at the time this law entered into force by the Republic of Austria on the basis of the Geneva Convention on the Protection of the Victims of War of 12 August 1949 (Federal Law Gazette No. 155/1953) for the missing persons tracing service operated by the Austrian Red Cross and its national associations as well as the other exemptions from postal charges under the provisions of the Geneva Convention and the free conveyance of postal items for the blind – except for any airmail surcharges. The universal service provider shall be compensated by the Federal Government for the loss of income resulting from this obligation within 12 months of asserting a claim.

Delivery of official documents

Section 17. (1) The service of official documents from the courts and administrative authorities pursuant to the second chapter of the Service of Documents Act (Zustellgesetz, ZG), Federal Law Gazette No. 200/1982, shall be a service to be rendered in the scope of the universal service.

(2) The Federal Government, states, municipalities, other statutory entities under public law and social security institutions shall be liable pursuant to the Public Liability Act (Amtshaftungsgesetz, AHG), Federal Law Gazette No. 20/1949, for damage to property or person culpably incurred through the universal service provider or authorised delivery organ in the fulfilment of this Federal Act as a result of unlawful conduct emanating directly from the process of delivery; the universal service provider and process server may not be liable to the injured party. The simple presumption of a delivery of court or administrative documents is not sufficient to justify such a claim.

(3) The universal service provider shall be liable to the legal entities designated in paragraph 2 for damage compensation pursuant to paragraph 2 as long as the damage was deliberate or a result of gross negligence.

(4) The Public Liability Act shall apply for the assertion of claims pursuant to paragraphs 2 and 3.

(5) The delivery organ authorised with carrying out the delivery shall be liable to the universal service provider for damages pursuant to paragraph 3 as long as the damage was deliberate or a result of gross negligence. The provisions of the Employees' Liability Act (Dienstnehmerhaftpflichtgesetz, DHG), Federal Law Gazette No. 80/1965, shall remain without prejudice.

(6) The provisions of paragraphs 2 through 5 shall also apply to cases in which official documents are served by a licensed postal service provider other than the universal service provider.

Universal Postal Convention, postage stamps

Section 18. (1) For the Republic of Austria the universal service provider shall observe all rights and obligations that result from the relationship of a designated operator with users and other designated operators under the provisions of the Universal Postal Convention and other Universal Postal Union agreements.

(2) The right to produce and issue postage stamps signifying the payment of charges for postal services and on which “Austria” or the “Republic of Austria” appears shall be reserved for the postal service provider pursuant to paragraph 1.

Obligation to contract

Section 19. The Universal service provider shall be obliged to enter into contract for participation in the universal service with anyone in compliance with the General Terms and Conditions at access points pursuant to Section 6, paragraphs 2 and 3.

General Terms and Conditions of the universal service provider

Section 20. (1) The universal service provider shall establish General Terms and Conditions for services in the universal service sector in accordance with the provisions of this Act and the regulations passed on the basis of this Act. These shall regulate the services offered and establish the tariffs. The General Terms and Conditions shall be submitted to the National Regulatory Authority upon publication.

(2) The General Terms and Conditions shall be published by the operator in an appropriate form. They shall also regulate when they are to enter into force. Amendments to and newly adopted General Terms and Conditions which are not exclusively favourable to users shall enter into force no earlier than two months following publication.

(3) The National Regulatory Authority shall be entitled to request information concerning all circumstances required for review of the General Terms and Conditions and remuneration for the services of the Universal Service pursuant to Section 21. Its organs or authorised representatives shall be entitled to inspect the operator’s business records for this purpose. Section 49, paragraph 3 shall apply analogously.

(4) The National Regulatory Authority can raise an objection to the General Terms and Conditions reported in accordance with paragraph 1 within two months if they are in violation of this Federal Act or ordinances issued on the basis of this Act or of Sections 879 and 864a of the General Civil Code (Josephinisches Gesetzbuch, JGB), No. 946/1811 or Sections 6 and 9 of the Austrian Consumer Protection Act (Konsumentenschutzgesetz, KSchG), Federal Law Gazette No. 140/1979. The reported General Terms and Conditions herewith become ineffective. The competencies for inspection of the General Terms and Conditions based on other legal provisions shall remain without prejudice.

Tariff regulation

Section 21. (1) The tariffs for the Universal Service shall be established in such a way that they are generally affordable, cost-oriented, transparent and non-discriminatory.

(2) The tariffs for the Universal Service shall be applied to all users identically.

(3) The application of a uniform tariff for the Universal Service shall not exclude the right of the operator to conclude individual price agreements with users. With the exception of newspapers and periodicals, the criteria for such individual price agreements and special tariffs including the amount of the price reductions granted for such individual price agreements shall be reported to the National Regulatory Authority and published in a suitable form; they shall be equally applied to all users and comply with the principle of non-discrimination.

(4) If facts become known to the National Regulatory Authority which justify the assumption that the Universal service provider's tariffs for services in the universal service sector (Section 6 paragraphs 2 and 3) are not in compliance with the standards of paragraphs 1 to 3, a review of the tariffs shall be initiated and reported to the universal service provider. The report shall indicate the reasons justifying the National Regulatory Authority's assumption and grant the universal service provider the opportunity to make a statement on the National Regulatory Authority's intentions within a period of at least one month.

(5) If in the scope of a procedure pursuant to paragraph 4 the National Regulatory Authority establishes that the tariffs for services in the universal service sector (Section 6, paragraphs 2 and 3) fail to comply with the standards of paragraphs 1 to 3, it shall request, by decision, that the universal service provider immediately adapt its tariffs to the indicated standards. This request shall be published on the website of the National Regulatory Authority.

(6) If the adaptation requested pursuant to paragraph 5 is not carried out within two weeks, the National Regulatory Authority shall prohibit the objectionable conduct by decision and declare the tariffs for invalid.

Single-piece tariffs for services in the universal service sector

Section 22. (1) The single-piece tariffs of the universal service provider for domestic letter mail items weighing up to 50 g shall be reported to the National Regulatory Authority at least two months prior to the intended publication.

(2) Publication shall be prohibited by decision within two months of announcement if the single-piece tariffs fail to comply with the requirements of Section 21, paragraphs 1 to 3; otherwise the tariffs may be published.

(3) The National Regulatory Authority shall be entitled to request information concerning all circumstances required for the prohibition of single-piece tariffs pursuant to paragraph 2. Its institutions or authorised representatives shall be entitled to inspect the operator's business records for this purpose. Section 49, paragraph 3 shall apply analogously.

Cost accounting system

Section 23. (1) In its internal accounting system the universal service provider shall keep separate accounts for services which are a part of the universal service and for those which are not. The internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

(2) Other cost accounting system may be applied if they are in compliance with paragraph 1.

(3) The Federal Minister for Transport, Innovation and Technology may specify by ordinance more detailed rules concerning the structure of the accounting systems for universal service cost pursuant to paragraph 1 and reporting obligations to the National Regulatory Authority.

(4) The universal service provider shall submit the annual financial statements to an independent auditor and publish them.

Chapter 4

Postal Services

General requirements

Section 24. (1) Anyone shall be entitled to offer and render postal services pursuant to the requirements of this Federal Act.

(2) The Austrian Industrial Code of 1994 (Gewerbeordnung 1994, GewO), Federal Law Gazette No. 194/1994 shall not apply to the provision of postal services.

Obligation to notify

Section 25. (1) Postal service providers shall report the intended provision of a postal service as well as changes in and the discontinuation of the service to the National Regulatory Authority prior before the measures are taken. Such decision shall be made in writing, stating the type of service as well as the technical and commercial characteristics.

2) The list of reported postal services including the name of the postal service provider shall be published in the internet by the National Regulatory Authority.

Postal services subject to licensing

Section 26. (1) A license shall be required for the conveyance of letter mail items of up to 50 g for third parties.

2) The universal service provider shall not require a license; it shall be considered the operator of a licensed postal service.

(3) A license pursuant to paragraph 1 is not required by anyone who

1. conveys only outbound cross-border mail items

2. conveys letter mail items enclosed with another postal item and relating solely to the contents of that item

3. conveys items of correspondence in such a way that in the interest of rapid and

reliable conveyance individual verifiable postal items are accompanied at all times on the journey from the sender to the addressee and the accompanying person can access the individual postal item at any time and make the necessary arrangements, such as courier services.

4. conveys direct mail items, but only direct mail items which are sent as unwrapped and unsealed personally addressed postal items, which is clearly identifiable as such and which contains no individual specifications apart from the address field.

Granting of license

Section 27. (1) The license shall be granted by the National Regulatory Authority upon written request. The request shall contain information concerning the type of service, the supply region as well as organisational, financial and technical requirements for operation by the applicant. The National Regulatory Authority shall decide on the request within six weeks. The decision period shall begin when the applicant has provided all of the required documentation and proof required for the granting of a license.

(2) The license shall be granted if the applicant

1. possesses the required efficiency, reliability and expertise to carry out a licensed service and
2. complies with the working conditions including remuneration which apply in Austria for the employment of staff. The working conditions including remuneration stipulated in the applicable collective bargaining agreement shall be deemed appropriate.

(3) The license may be granted under collateral clauses, particularly under conditions and sanctions for the safeguarding of legal regulations.

(4) The list of licensed postal services including the designation of postal service provider shall be published in the internet by the National Regulatory Authority.

Requirements

Section 28. (1) Anyone who can verify availability of the means of production and adequate capital resources required for the provision of postal services shall be deemed to possess the required capabilities (Section 27, paragraph 2, number 1). As verification of the required capabilities, the National Regulatory Authority can request presentation of the following documents as long as this is justified by the business objective of the postal services:

1. an appropriate bank report (creditworthiness related information)
2. Proof of relevant liability insurance
3. Presentation of balance sheets or parts of balance sheets to the extent their disclosure is lawful in the service provider's country of origin as well as statements on capital resources and investment assets
4. A declaration concerning total turnover and turnover for the area of activity falling under the license application for the last three business years or for a shorter period of activity if the service provider has not been in existence that long
5. Information on the number of employed staff and available means of production

(2) The required capabilities (Section 27, paragraph 2, number 1) shall be deemed non-existent, particularly when

1. Bankruptcy or insolvency proceedings, composition proceedings, settlement proceedings or compulsory settlement have been opened or the opening of insolvency proceedings has been rejected on account of insufficient assets;
2. The service provider is in liquidation or is in the process of suspending or has suspended activity;
3. A final judgment for an offence which calls the applicant's professional conduct into question has been handed down against the service provider – as long as a legal person or registered partnership is concerned – or a physical person who is active in management;
4. The service provider has failed to fulfil his obligation to pay social insurance contributions or taxes and levies in Austria or in accordance with the regulations of the country in which he or she resides; or
5. The service provider is guilty of having made considerable false declarations in the provision of information to the National Regulatory Authority or failing to provide the information at all.

(3) Anyone able to verify that in the provision of postal services those in a managerial function possess the required expertise, experience and skills shall be deemed to possess the required expertise (Section 27, paragraph 2, number 1).

License transfer and amendment

Section 29. (1) The license may only be transferred upon prior approval of the National Regulatory Authority. Approval may only be withheld upon failure to provide the reasons stated in Section 27, paragraph 2.

(2) The National Regulatory Authority may amend specific provisions of the license prior to expiration if the change is required to preserve important public interests. Furthermore, upon the license holder's request the license may be amended retroactively if proper compliance with the decision for the license, particularly the collateral clauses, is no longer reasonable due to changed circumstances. This shall apply if and to the extent it does not adversely affect the Authority's interests or fair competition.

(3) Amendments to the license shall take the protection of the economic and business interests of the license holder into consideration.

Termination of the license

Section 30. (1) The license shall be terminated by

1. Waiver
2. Withdrawal
3. Expiration of the period for which it was granted
4. Death or forfeiture of the license owner, but not in the case of universal succession.

(2) In the event of the death of the license holder, the heirs may assert this right until distribution of the estate; however, the representative of the estate shall report this to the National Regulatory Authority immediately.

(3) The license shall be revoked by the National Regulatory Authority if the conditions for granting it no longer exist. It may be revoked if the license holder grossly neglects or repeatedly violates his duties or fails to exercise the license in more than one year. The license holder shall be granted the opportunity to make a statement prior to withdrawal.

(4) The license shall be revoked if insolvency proceedings are opened on the assets of the license holder or an application to open insolvency proceedings has been rejected due to insufficient assets for covering the costs of the said proceedings. The National Regulatory Authority can refrain from withdrawal if continued operation is largely in the interest of creditors.

(5) Injunctions pursuant to paragraphs 3 or 4 may not justify a claim for damages. Public liability claims remain without prejudice.

General Terms and Conditions for services in the universal service sector

Section 31. (1) Postal service providers shall establish General Terms and Conditions for services in the universal service sector, define the services on offer and specify the intended tariffs for them. The measures shall be published in an appropriate form.

(2) The General Terms and Conditions for services in the universal service sector shall be submitted to the National Regulatory Authority upon publication; Section 20, paragraphs 3 and 4 shall apply analogously.

(3) Amendments to and newly adopted General Terms and Conditions for services in the universal service sector that are not exclusively favourable to users shall enter into force at the earliest two months following publication.

(4) Anyone shall be entitled to take advantage of the services in the universal service sector of all postal service providers under the conditions of the published General Terms and Conditions and tariffs.

Obligations of postal service providers

Section 32. (1) Postal service providers shall ensure in appropriate form that delivery service staff members may be allocated to their enterprise. They shall also ensure that the postal items they deliver can be allocated to their enterprise.

(2) Postal service providers shall ensure that postal items for personal consignment and parcels which cannot be delivered to the addressee are deposited for collection by the addressee. The place of deposit shall be located within reasonable distance from the recipient's address. Postal service providers shall also provide for adequate hours of operation; as a rule, the weekly hours of operation shall not fall short of 20 hours on at least five working days per week. The density of a provider's deposit locations shall correspond to user needs.

(3) Postal service providers shall establish a complaint management system to enable users to bring forward complaints and cases of dispute.

(4) Postal service providers shall establish quality standards and norms in the universal service sector in the General Terms and Conditions . They shall keep in mind the following transit time guidelines:

1. Domestic letter mail items in the universal service sector handed over (consigned) for delivery before closing on a working day, excluding Saturday, shall be delivered on an annual average of at least 90% on the second working day following the day of consignment, excluding Saturday; the remaining letters shall be delivered within 6 working days of the day they were posted. This shall not apply to direct mail.
2. Domestic parcel items in the universal service sector handed over (consigned) for delivery before closing on a working day, excluding Saturday, shall be delivered on an annual average of at least 85% on the third working day following the day of consignment, excluding Saturday. The remaining parcels shall be delivered within 8 working days.

Closing times shall be made public in an appropriate manner.

(5) Postal service providers shall regulate the forwarding of postal items, the return of undeliverable items and the notification in the event of a failed delivery attempt. Users shall be appropriately informed of the measures required in the scope of paragraphs 2 to 4.

(6) At least once per year postal service providers shall publish comparable, appropriate and current information on the quality of their services, particularly the transit times of conveyed postal items based on the methods stipulated by ÖNORM EN 13850 and report to the National Regulatory Authority prior to publication in paper and electronic form at the authority's request.

Quality control

Section 33. The National Regulatory Authority shall commission an institution independent of postal service providers to measure the average transit times for items of correspondence at all providers at least once per year on the basis of the method specified in ÖNORM EN 13850 and the average transit times for parcels of all providers on the basis of real-time data, whereby the authorised institution shall apply the identical or comparable methods of measurement available. The National Regulatory Authority shall publish the results of these measurements in an appropriate manner. The cost of the measurements shall be borne by the respective postal service provider.

Delivery boxes, domestic multi-mailbox installations (Hausbrieffachanlagen)

Section 34. (1) Letter mail items shall be delivered by dropping them into a defined installation or by personal consignment to the addressee or a substitute addressee. The addressee shall ensure that a suitable and accessible installation for the delivery of letter mail items (delivery box) is available.

(2) The delivery box shall be constructed in such a way that

1. the postal service provider is able to deliver postal items (Section 3, number 10) except for postal parcel items without any difficulties.
2. and postal items are suitably protected from access by third parties

(3) If no delivery box is available, the addressee may be excluded from delivery. In this case the postal items shall be deposited for collection within an appropriate period of time

in return for a charge. The addressee shall be informed of this in advance and given the opportunity to fulfil the lacking prerequisites for delivery.

(4) In buildings with more than four delivery points which are located on more than two floors, the building owner shall provide every addressee with a delivery box. This shall be in the form of a domestic multi-mailbox installation (Hausbrieffachanlage). If the domestic multi-mailbox installation is not installed on the outside of the building, it shall be as close to the building entrance as possible. In selection of the location, the proper use of the building and proper delivery of uncertified mail shall be taken into account.

(5) The domestic multi-mailbox installation shall contain as many delivery boxes as the number of delivery points in the building. The individual delivery boxes shall be assigned to an individual delivery point in the building and labelled with the door number or another unambiguous alphanumeric designation indicating the delivery point concerned. The delivery box shall feature an option for variable designation with the name of the respective delivery holder.

(6) With the construction of a new building compliance with the requirements pursuant to paragraph 2 regarding delivery boxes and to paragraphs 2, 4 and 5 regarding domestic multi-mailbox installations shall be ensured.

(7) With the replacement of a delivery box compliance with the requirements pursuant to paragraph 2 shall be ensured. With the replacement of a domestic multi-mailbox installation compliance with the requirements pursuant to paragraphs 2, 4 and 5 shall be ensured.

(8) Domestic multi-mailbox installations which do not comply with the requirements pursuant to paragraphs 2, 4 and 5 shall be replaced by the universal service provider by 31 December 2012 based on a replacement concept the universal service provider submits to the National Regulatory Authority. The owners of the building in which these domestic multi-mailbox installations are located shall be obligated to allow the replacement of the domestic multi-mailbox installations free of charge. After replacement, these domestic multi-mailbox installations shall be transferred to the property of the building owners.

(9) Non-prorated cost for the replacement of domestic multi-mailbox installations pursuant to paragraph 8 which do not meet the specifications under paragraphs 2, 4 and 5, market-based cost of finance and the cost for replacement by the universal service provider shall be reimbursed to the universal service provider at the operator's request. Licensed postal service providers including the universal service provider with an annual turnover of more than one million euro in the area of activity falling under the license application shall contribute to the reimbursement of these costs in the state or state capital in which its supply region is located according to the following scale: 90 out of 100 of these costs are to be divided among the required contributors proportionate their market share in the state or state capital in which the supply region is located based on the calculation modalities pursuant to Section 14, paragraph 2; 10 out of 100 of these costs are to be distributed among the required contributors according to the number of market players in the federal province or provincial capital in which the supply region is located. The turnover of licensed postal service operators under uniform management of a partnership or a natural or legal person pursuant to Section 15 of Austrian Stock Corporation Act are to be calculated together.

(10) The universal service provider shall report the cost to the National Regulatory Authority pursuant to paragraph 9 by 30 June of the subsequent year, verifying them by including the relevant evidence in paper and electronic form. The National Regulatory Authority shall be responsible for handling the reimbursement of cost pursuant to paragraph 9. Reimbursement shall be distributed in equal measure over five years and recalculated every year upon this Federal Act's entry into force.

Access to rural delivery boxes and address information

Section 35. (1) For rural delivery boxes (Landabgabekästen) the regulation of Section 34 shall apply analogously.

(2) If postal service providers utilise address information for the forwarding or return of postal items, they shall grant other postal service providers access to this address information in a transparent and non-discriminating manner. Postal service providers may use this information solely for these purposes.

(3) The conditions shall be regulated in an agreement between the postal service providers involved.

(4) If an agreement is not made within three months between the postal service providers involved, the National Regulatory Authority may be summoned. The Authority shall decide on the summoning party's well-founded request within a period of three months. The conditions including cost-oriented reimbursement shall be established in this decision.

Postal codes

Section 36. (1) The universal service provider shall permit other postal service providers the use of its postal codes free of charge.

(2) The postal codes used by the universal service provider and the changes to them shall be communicated to the National Regulatory Authority in paper and electronic form and published by the Authority on the internet.

Chapter 5

Postal Authorities, Supervision

Postal authorities, National Regulatory Authority

Section 37. (1) The postal authorities are the Federal Minister for Transport, Innovation and Technology as the supreme postal authority and the Postal Bureau subordinate to it as postal authority of first instance. The Postal Bureau has its headquarters in Vienna.

(2) The National Regulatory Authority pursuant to this Act and the Directive of the European Parliament and Council on common rules for the development of the internal market of Community postal services and the improvement of quality of service shall be the Post Control Commission with respect to all tasks under Section 40 and the Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) for all other tasks.

(3) The supreme postal authority and postal authority of first instance's geographic area of jurisdiction shall encompass the entire Federal Territory.

(4) The postal authority of first instance shall be responsible for carrying out administrative penalty procedures pursuant to this Federal Act. The independent administrative senate in Vienna shall rule on appeals pursuant to Section 51 of the Administrative Penal Act (Verwaltungsstrafgesetz, VStG).

Responsibilities of the National Regulatory Authority for Broadcasting and Telecommunications

Section 38. (1) The Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) established pursuant to Section 5 of the KommAustria Act, Federal Law Gazette I No. 32/2001, shall carry out every task assigned by this Federal Act and the regulations of the National Regulatory Authority passed on the basis of this Act, unless they fall within the competence of the Post Control Commission (Section 40).

(2) RTR-GmbH shall operate as the administrative unit of the Post Control Commission in postal affairs under the direction of the managing director responsible for telecommunications and postal services. Section 6 of the KommAustria Act shall apply provided that the Federal Minister for Transport, Innovation and Technology is responsible for supervision RTR-GmbH's activities in the postal sector.

(3) RTR-GmbH may be summoned to negotiations concerning differences of opinion resulting from this Federal Act based on the criteria to be published by RTR-GmbH. A request in this regard shall be made to RTR-GmbH by all parties to the dispute in written form. The summoning of RTR-GmbH shall not preclude the initiation of administrative proceedings pursuant to the provisions of this Federal Act. Legal effects resulting from agreements in accordance with this section made in the presence of RTR-GmbH shall be binding solely upon the parties to the agreement. Enforcement shall only be possible through civil legal channels.

Post Control Commission

Section 39. (1) The Post Control Commission is established for fulfilment of the responsibilities designated in Section 40.

(2) RTR-GmbH shall be responsible for management of the Post Control Commission. In the scope of its activity for the Post Control Commission RTR GmbH personnel shall be bound by the instructions of the chair or member indicated in the Rules of Procedure.

(3) Pursuant to Article 20, paragraph 2, number 5 of the Federal Constitutional Act, the members of the Post Control Commission shall not be bound by the instructions of superior authorities.

Responsibilities of the Post Control Commission

Section 40. The Post Control Commission shall be assigned the following duties:

1. Measures regarding the Universal service provider pursuant to Section 12, paragraphs 1 and 2,

2. Measures regarding company-operated postal service points pursuant to Section 7, paragraph 7,
3. Specifying contributions to the financing of the compensation fund pursuant to Section 14,
4. Measures relating to the General Terms and Conditions of the Universal service provider pursuant to Section 20, paragraphs 3 and 4,
5. Measures in the area of tariff regulation pursuant to Section 21, paragraphs 4 to 6,
6. Issue, transfer, amendments and withdrawal of licenses pursuant to Sections 27, 28 and 29,
7. Exercise of right of withdrawal pursuant to Section 30, paragraphs 3 and 4,
8. Measures relating to the General Terms and Conditions pursuant to Section 31, paragraph 2,
9. Specification of cost reimbursements pursuant to Section 34, paragraphs 9 and 10 and Section 35, paragraph 1,
10. Measures pursuant to Section 35, paragraph 4 and
11. Taking supervisory measures pursuant to Section 50.

Structure of the Post Control Commission

Section 41. (1) The Post Control Commission consists of three members.

(2) Section 118, paragraphs 1 to 6 of the Austrian Telecommunications Act 2003 (Telekommunikationsgesetz 2003, TKG 2003), Federal Law Gazette 1 No. 70/2003 shall also apply to the Post Control Commission analogously, subject to the following conditions:

1. The judicial member of the Telekom Control Commission and the member of the Telekom Control Commission with legal and economic expertise shall also carry out this function as members of the Post Control Commission as long as they are office-holders on the Telekom Control Commission. The substitute members of the Telekom Control Commission appointed for these two members pursuant to Section 118 paragraph 2 of the Austrian Telecommunications Act 2003 shall also act as substitute members on the Post Control Commission.
2. Apart from the members designated in number 1, the Post Control Commission shall include one member and a substitute member with expertise in postal affairs. The member and substitute member shall be appointed by the Federal Government at the recommendation of the Federal Minister for Transport, Innovation and Technology.

(3). The members of the Post Control Commission shall be eligible for the reimbursement of reasonable travel costs according to the provisions of the travel tariff regulation and cash expenditures as well as of for attendance fees, which are to be specified through ordinance by the Federal Minister for Transport, Innovation and Technology in agreement with the Federal Minister for Finance taking into account the importance and scope of the responsibilities attended to by the Post Control Commission.

Chair, Rules of Procedures of the Post Control Commission

Section 42. (1) The judicial member shall be the chair of the Post Control Commission.

(2) The Post Control Commission shall establish Rules of Procedure in which one of its members is entrusted with the management of ongoing business.

(3) Unanimity shall be required for a valid Post Control Commission decision. Withholding of votes is unlawful.

Postal Service Point Advisory Board

Section 43. (1) To advise the National Regulatory Authority in matters related to ensuring a comprehensive post office supply, a Postal Service Point Advisory Board shall be established at RTR-GmbH. It shall be consulted on supervisory measures and particularly on National Regulatory Authority decisions concerning postal service points and shall issue an opinion in this regard. The opinion shall be subject to the discretion of the National Regulatory Authority.

(2) A representative of each of the following organisations shall be despatched to the Advisory Board:

1. Austrian Association of Municipalities (Gemeindebund)
2. Austrian Association of Cities and Towns (Städtebund)
3. Liaison Office of the States (Verbindungsstelle der Bundesländer)

A substitute member shall be appointed for every representative. The activity shall be an unpaid honorary office.

(3) The Advisory Board shall adopt Rules of Procedure. It shall elect a chair on an annual basis. It shall take decisions on the basis of a simple majority. Meetings shall be closed to the public.

(4) RTR-GmbH shall operate as an administrative apparatus of the Advisory Board. For this purpose a member of RTR-GmbH shall also attend the meetings of the Advisory Board as a non-voting member.

(5) The Advisory Board shall be entitled through the National Regulatory Authority to request information from the universal service provider concerning everything necessary for fulfilment of its responsibilities. This applies in particular to information on the details concerning the cost-covering management of a postal service point. The RTR-GmbH representative shall also be entitled to inspect the financial and business records and to entrust experts with such an inspection. The information passed on to the Advisory Board by RTR-GmbH may not violate trade or business secrets. Representatives of the universal service provider can be summoned to meetings of the Advisory Board for provision of further information.

Rules of Procedure, Stages of Appeal

Section 44. (1) Unless otherwise stated by this Federal Act, the Post Control Commission shall apply the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz, AVG).

(2) Section 39 paragraph 3 of the General Administrative Procedure Act shall apply provided there is a prohibition on the introduction of new evidence following the close of mediation proceedings.

(3) The Post Control Commission shall decide in the last instance. Its decisions may not be subject to repeal or amendment in administrative channels. Complaints against the decisions of the Post Control Commission can be appealed in the Administrative Court.

Transparency

Section 45. (1) Decisions taken by RTR-GmbH and the Post Control Commission shall be published in an appropriate manner, taking the provisions of the Data Protection Act into due account.

(2) Taking Section 47 into account, the National Regulatory Authority shall publish information that contributes to an open, competitive market.

(3) The report on the activity of the RTR-GmbH pursuant to Section 7 of the KommAustria Act shall also encompass the area of postal regulation.

Information through the National Regulatory Authority

Section 46. At the well-grounded written request of the European Commission, the National Regulatory Authority shall provide the Commission with the information it requires for the fulfilment of its tasks. If the information to be provided to the European Commission refers to data provided by postal service providers, the National Regulatory Authority shall inform these providers of the communication of this information.

Treatment of trade and business secrets

Section 47. (1) Trade and business secrets revealed to the National Regulatory Authority shall be protected, specifically in accordance with the Data Protection Act 2000.

(2) The decision concerning whether to classify a fact as a trade or business secret shall be the responsibility of the National Regulatory Authority, which, in the process, shall exercise consideration toward the interests of the party entitled to secrecy as well as toward third parties in disclosure.

(3) If the National Regulatory Authority has justifiable doubt concerning the merit of protecting the secrecy of a fact, it shall inform the party entitled to secrecy and request credible proof of that party's economic interest in secrecy.

Cooperation with other authorities

Section 48. (1) To the extent necessary for the performance of the duties assigned to it, the National Regulatory Authority shall be entitled to communicate the information to the European Commission and regulatory authorities of other Member States and provide them with documentation required to carry out their functions in matters of common interest. The Authority is entitled and obliged to provide administrative assistance with respect to the Cartel Court, the Higher Cartel Court, the Federal Prosecutor in Cartel Affairs and the Federal Competition Authority.

(2) The National Regulatory Authority shall ensure confidentiality if it receives from the European Commission or the regulatory authorities of other member states information which the informing party characterises as confidential.

Obligations to inform

Section 49. (1) Upon written request, postal service providers shall provide the Federal Minister for Transport, Innovation and Technology and National Regulatory Authority with the information necessary for these institutions to implement this Act and the relevant international regulations in paper and electronic form.

(2) This information shall be presented within the specified time frame and in the requested detail. The requested information shall be deemed necessary for observation of the statutorily assigned tasks. The request shall be justified and the purpose for which the information provided is to be used reported to the parties concerned. The National Regulatory Authority or an authorised representative shall also be entitled to inspect the business records for this purpose.

(3) If the information is not provided, the Federal Minister for Transport, Innovation and Technology or National Regulatory Authority shall arrange for it by decision. .

Supervisory measures

Section 50. (1) The following supervisory measures shall be considered:

1. Surveys and studies for review of the Universal Service;
2. Mandates issued, by decision, to remedy performance deficits which interfere with the provision of the universals as a whole or in particular cases; such mandates may relate specifically to the territorial coverage of the service, the density of points of clearance and access as well as to the level of frequency of clearance and delivery; moreover, they may only be issued with respect to specific universal services (products); a reasonable time frame shall be specified for remedying such deficits;
3. The prohibition, by decision, of planned or executed measures as a whole or in particular cases if it is feared the provision of a universal service shall be put in jeopardy;
4. The temporary prohibition of planned measures, by decision, if there is reason to assume that compliance with the obligations set forth in this Federal Act or an ordinance enacted on the basis of it cannot be ensured;
5. The prohibition of a postal service, by decision, if, despite a request by the Authority, compliance with the obligations set forth in this Federal Act or an decision issued on the basis of it cannot be ensured.

(2) In carrying out the measures pursuant to paragraph 1, the Authority shall consider the appropriateness of the measure with respect to its economic impact on the postal service provider.

Supervisory procedures

Section 51. (1) If the National Regulatory Authority has evidence that a postal service provider has violated the provisions of this Federal Act, the provisions of an ordinance issued on the basis of this Act or a decision issued on the basis of this Act, it shall notify the undertaking thereof while simultaneously granting the opportunity to make a statement on the allegations or to remedy the deficits within a reasonable time frame following receipt of decision.

(2) The National Regulatory Authority may request the submission of documentation in paper or electronic form as proof of compliance with the regulations indicated in paragraph 1 and have it inspected by experts.

(3) If the regulator authority establishes that upon the passing of the deadline the violations for which the supervisory procedures were initiated have not been remedied, it shall order, by decision, the appropriate, reasonable measures to ensure compliance with the violated provisions and specify a time frame within which compliance with the measure shall be established.

(4) The National Regulatory Authority shall specify the form of noncompliance by decision. In the event a violation pursuant to paragraph 1 has already been remedied, this shall also be specified by decision..

(5) The party in this procedure shall be the postal service provider to which the supervisory measures pursuant to paragraphs 1 to 3 refer.

Order and execution of surveys

Section 52. (1) For observation and surveillance of the market and competition development in the postal sector, the Federal Minister for Transport, Innovation and Technology shall be authorised to order the provision of statistics.

(2) Surveys shall be ordered by ordinance of the Minister for Transport, Innovation and Technology. In addition to the order for statistical surveys, the ordinance shall specifically include:

1. the survey population
2. the statistical units
3. the type of survey
4. the characteristics of the survey
5. the frequency and intervals of the collection of data
6. the specification of the population obliged to provide information
7. whether and to what extent the results of the statistical surveys shall be published, whereby the regulations of Section 19, paragraph 2 of the Federal Statistics Act 2000 (Bundesstatistikgesetz 2000) , Federal Law Gazette 1 No. 163/1999 shall be observed.

(3) Individual data may be forwarded to the federal agency “Statistics Austria” for the purpose of federal statistics.

(4) The provision of statistics shall take place under analogous application of the provisions of the Federal Statistics Act 2000

Mediation of disputes

Section 53. (1) Without prejudice to the jurisdiction of ordinary courts, postal service providers, users and interest groups shall be entitled to lodge disputes or complaints not satisfactorily resolved with the postal service provider to the National Regulatory Authority. The National Regulatory Authority shall find a solution acceptable to both parties or report its opinion on the case lodged to the parties. The postal service providers shall be obligated to cooperate in such a procedure and to provide any information or documentation needed to assess the facts of the case.

(2) The National Regulatory Authority shall specify guidelines for the implementation of the procedure stipulated in paragraph 1 and set, in particular, reasonable time frames within which the procedure shall be ended. The guidelines shall be published in an appropriate form.

Universal service complaints

Section 54. (1) Complaints concerning deficits in performance related to the provision of the universal service as a whole or in specific cases may be lodged with the National Regulatory Authority by federal provinces and municipalities as well as by statutory interest groups.

(2) RTR-GmbH shall review the complaints. If the review provides reason to assume the universal Service could be impaired, the complaint shall be forwarded to the Post Control Commission with no undue delay. The Post Control Commission shall initiate the relevant supervisory measures. The complainant shall be informed of the result of the review.

Chapter 6

Penal Provisions

Administrative penal provisions

Section 55. (1) An administrative offence shall be deemed committed and punished with a fine of up to 30,000 euro by anyone who

1. contrary to Sections 6, 7, 8, 9, 10 or 11, fails to provide the proper Universal Service;
2. contrary to Section 20, paragraph 1 and Section 31, paragraph 1, fails to adopt General Terms and Conditions, to specify the services or define the intended remuneration;
3. contrary to Section 20, paragraph 1 and Section 31, paragraph 2, fails to communicate the General Terms and Conditions to the National Regulatory Authority;
4. contrary to Section 20, paragraph 2, fails to publish the General Terms and Conditions in appropriate form;
5. contrary to Section 20, paragraph 3 and Section 22, paragraph 3, fails to grant inspection to the National Regulatory Authority or an authorised representative;
6. contrary to Section 21, paragraph 3, fails to report price-fixing criteria to the National Regulatory Authority, fails to publish them or to apply them to all users in equal measure;
7. contrary to Section 25, paragraph 1, fails to report service in part or in full;
8. contrary to Section 32, paragraph 1, fails to ensure that employees in the delivery service or the postal items conveyed can be allocated to the undertaking;
9. contrary to Section 32, paragraph 2, fails to ensure that the designated postal items can be deposited;
10. contrary to Section 32, paragraph 3, fails to establish a complaint management system;
11. contrary to Section 32, paragraph 4, fails to include the intended criteria in the General Terms and Conditions, to inform users or to submit their specifications to the National Regulatory Authority;
12. contrary to Section 32, paragraph 6, fails to provide comparable, reasonable and current information on quality or to notify the National Regulatory Authority at its request prior to publication;

13. contrary to Section 34, paragraphs 6 and 7, as a building owner fails to ensure that upon refurbishment of a building or replacement of a letterbox facility the letterboxes or letterbox installations meet the standards pursuant to Section 34, paragraphs 2, 4 and 5, or contrary to Section 34, paragraph 8, as a building owner fails to allow the installation or exchange of letterbox facilities, or contrary to Sections 8 and 9 or Section 35, paragraph 1, as a Universal service provider fails to finance the replacement or ensure that an existing letterbox installation meets the standards pursuant to Section 34, paragraphs 2,4 and 5;
14. fails to fulfil mandates pursuant to Section 49, paragraph 1 within the specified deadline;
15. contrary to Section 49, paragraph 1, fails to provide the information requested by the Federal Minister of Transport, Innovation and Technology or by the National Regulatory Authority;
16. contrary to Section 7, paragraph 6, Section 32, paragraph 6, Section 3434, paragraph 10, Section 36, paragraph 2, Section 49, paragraph 1 and Section 51, paragraph 2, fails to provide the National Regulatory Authority the requested documentation in paper and in electronic form;
17. violates an ordinance or decision enacted on the basis of this Federal Act.

(2) If the action in question constitutes a criminal act which falls under the jurisdiction of the courts or is subject to stricter punishment under other administrative penal provisions, the action may not be deemed to constitute an administrative transgression as defined in paragraph 1.

(3) The authority can request that obliged parties who violate their obligations under this Federal Act redress the unlawful circumstance within a reasonable time frame specified by the authority if there are reasons to assume that compliance will be restored in accordance with the law, even without a penal order. In this regard the Authority shall indicate the legal consequences emanating from such a request.

(4) Obligated parties committing an administrative offence as defined by Section 55, paragraph 1 may not be punished if they restore the lawful condition within the period specified by the authority.

(5) In a penal order evidence with which the punishable act was committed can be declared forfeited to the Federal Government.

(6) The Federal Government shall be entitled to the fines imposed under this federal law .

Withdrawal of enrichment

Section 56. (1) If the National Regulatory Authority establishes that an undertaking has obtained an economic advantage as a result of an unlawful act in violation of this Federal Act, of the provisions of an ordinance issued on the basis of this Federal Act or of a decision issued on the basis of this Federal Act, the National Regulatory Authority can file a motion with the Cartel Court to determine an amount and declare it for withdrawn. The Cartel Court shall be bound by the National Regulatory Authority which establishes the existence of an unlawful act. The amount to be withdrawn shall depend on the extent of the economic advantage and can be set by the Cartel Court at up to 10% of the undertaking's turnover the preceding year. The National Regulatory Authority shall be party to these proceedings.

(2) The amount withdrawn shall be used to finance RTR-GmbH.

Violation of postal secrecy

Section 57. (1) Anyone who divulges or exploits facts falling under the sphere of postal secrecy (Section 5) in order to gain an economic advantage over or to inflict a disadvantage on another party shall be punished by the court with of up to one year or with a fine of up to 360 times the daily rate.

(2) The perpetrator shall only be prosecuted on request of the party in whose interest the secrecy exists.

Chapter 7

Transitional and Final Provisions

Structure of National Regulatory Authority

Section 58. The senate for postal regulation pursuant to Section 25a, paragraph 2 of the Postal Services Act 1997 incumbent at the time of this Federal Act's entry into force shall remain in office until the end of its term. It is designated the Post Control Commission.

Transitional provisions

Section 59. (1) The approved charges pursuant to Section 10 of the Postal Service Act 1997 shall apply as public individual postal item charges pursuant to Section 22.

(2) The National Regulatory Authority for the supervisory measures indicated in Section 7, paragraph 6 of this Federal Act and the duties indicated in Section 6, paragraph 7 and Section 43, paragraphs 1 and 5 of this Federal Act shall be the Telekom Control Commission pursuant to Section 25a, paragraph 5 of the Postal Services Act 1997 from the time these provisions (Section 64, paragraph 2) enter into force.

(3) The Post Office Advisory Board to be established pursuant to Section 43 shall be constituted no later than two months after this provision (Section 64, paragraph 2) enters into force. The appointments to be made pursuant to Section 43, paragraph 2 shall take place in such a time frame that the establishment of the Post Office Advisory Board is ensured within this time frame.

(4) Complaints concerning performance deficits related to the provision of the Universal Service as a whole or in specific cases can be lodged by federal provinces and municipalities as well as by statutory interest groups with the Telekom Control Commission pursuant to Section 25a, paragraph 5 of the Postal Services Act 1997. RTR-GmbH shall review the complaints. If the review provides reason to assume the Universal Service could be impaired, the complaint shall be forwarded to the Telekom Control Commission without unnecessary delay. The Commission shall initiative the relevant supervisory measures. The complainant shall be informed of the result of the review.

(5) Section 34, paragraph 8 may not apply to letterbox installations in existence at the time this provision (Section 64, paragraph 1) enters into force if they fail only to exhibit the quality

of adequate protection from intrusion prescribed in Section 34, paragraph 2, number 2, but otherwise comply with the requirements pursuant to Section 34, paragraphs 2, 4 and 5.

References

Section 60. To the extent this Federal Act refers to provisions of other federal laws, the said provisions shall apply in their respective latest version.

Linguistic Equality

Section 61. All functional designations and expressions referring to persons used in this Federal Act shall be understood as gender-neutral.

Enforcement

Section 62. (1) The Federal Ministry for Transport, Innovation and Technology shall be entrusted with the enforcement of this Federal Act, with the exception of Section 57.

(2) The Federal Minister of Justice shall be entrusted with the enforcement of Section 57.

Abrogation of Legal Provisions

Section 63. (1) Upon this Federal Act's entry into force, the Postal Services Act 1997, Federal Law Gazette I No. 18/1998, last amended by the Federal Law Gazette I No. 67/2007, shall become ineffective.

(2) Section 2, number 3b and Section 4, paragraph 5 of the Postal Services Act 1997 shall become ineffective on the day following announcement of this Federal Act.

(3) Section 59, paragraphs 2 and 4 of this Federal Act shall become ineffective at the end of 31 December 2010.

(4) The ordinance of the Federal Minister for Transport, Innovation and Technology with which the detailed provisions on letterbox installations are enacted (Ordinance on Letterbox Installations), Federal Law Gazette II No. 77/2004, shall become ineffective on the day following announcement of this Federal Act.

(5) The Postal Service Cost Accounting Ordinance of the Federal Minister for Transport, Innovation and Technology for postal services in the Universal Service (Post-Kostenrechnungsverordnung), Federal Law Gazette II No. 71/2000, shall become ineffective at the end of 31 December 2010.

(6) The Postal Universal Service Ordinance of the Federal Minister for Transport, Innovation and Technology on the Universal Service for postal services (Post-Kostenrechnungsverordnung), Federal Law Gazette II No. 100/2002 in the Federal Law Gazette II No. 446/2008 version shall become ineffective at the end of 31 December 2010.

Entry into force

Section 64. (1) This Federal Act shall enter into force on 1 January 2011.

(2) Section 3, numbers 6 and 7, Section 6, paragraph 7, Section 7, Section 43, Section 58 and Section 59, paragraphs 2 to 5 shall enter into force on the day following announcement of this Federal Act.

(3) Ordinances on the basis of this Federal Act may be enacted on the day following the Act's announcement; however, they may enter into force at the earliest when this Federal Act enters into force.

Article 2

Amendment to the KommAustria Act

The KommAustria Act, Federal Law Gazette I No. 32/2001, last amended by the Federal Law Gazette I No. 52/2007, shall be amended as follows:

1. Section 5, paragraph 1 shall read as follows:

“(1) In order to provide support to KommAustria, the Telekom Control Commission and the Post Control Commission as well as to fulfil all other statutory tasks, a company shall be established by the name of “Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)”. The seat of the company shall be Vienna. The company shall be a non-profit company. The company shall have two managing directors, one for the broadcasting and one for the telecommunication and postal sector. The managing director of the broadcasting sector shall be appointed by the Federal Chancellor and the managing director of the telecommunication and postal sectors by the Federal Minister for Transport, Innovation and Technology. In matters specific to these respective areas the respective managing director shall bear the sole responsibility, in remaining matters both of the managers together. Any capital increases shall be carried out in agreement between the Federal Chancellor, the Federal Minister for Transport, Innovation and Technology and the Federal Minister of Finance. 100% of the stakes in the company shall be reserved for the Federal Government. The administration of the federal portfolio shall be the task of the Federal Chancellor in agreement with the Federal Minister for Transport, Innovation and Technology.”

2. After Section 5a, paragraph 2, paragraph 2a shall be inserted. Paragraphs 2a to 4 shall read as follows:

“(2a) RTR-GmbH shall form the administrative apparatus of the Post Control Commission, supporting it under its technical management in the fulfilment and accomplishment of the responsibilities mandated to it (Section 40, Postal Market Act) as well as through provision of administrative as well as professional support in economic and legal matters in the procedures the Post Control Commission is to pursue. RTR-GmbH shall also be responsible for public information concerning the activity of the Post Control Commission and RTR-GmbH in postal affairs.

(3) Under the responsibility of the managing director for the telecommunication and postal sector, RTR GmbH shall also be obliged to carry out its assigned tasks in accordance with the Austrian Telecommunications Act 2003, the

Postal Market Act, Section 7 of the E-Commerce Act (E-Commerce Gesetz, ECG) and the Cartel Act (Kartellgesetz, KartellG).

4) Under the responsibility of the managing director for the telecommunication and postal sector, RTR GmbH shall also be obliged to carry out its assigned tasks in accordance with the Federal Electronic Signature Act (Signaturgesetz, SigG).

3. *The heading of Section 10 shall read as follows:*

“Financing and administration of financial resources for the telecommunication and postal sector, telecommunications industry”

4. *Section 10 paragraph 1, the first sentence shall read as follows:*

“Financing contributions as well as and financial resources from the federal budget shall serve to finance RTR-GmbH’s expenditures arising in fulfilment of the tasks pursuant to Section 5a, paragraphs 2 and 3 and paragraph 6 concerning the telecommunication industry.

5. *After Section 10a the following Section 10b including heading shall be added:*

“Financing and administration of financial resources for the telecommunication and postal sector, postal industry”

Section 10b. (1) Financing contributions as well as and financial resources from the federal budget shall serve to finance RTR-GmbH’s expenditures arising in fulfilment of the tasks pursuant to Section 5a, paragraphs 2a and 3. The 200,000 euro annual allowance from the federal budget shall be transferred to RTR-GmbH in two equal instalments as of 30 January and 30 June. RTR-GmbH shall report on the use of these resources to the Federal Minister for Transport, Innovation and Technology every year by 30 April of the following year and present a financial statement. RTR-GmbH’s remaining expenditures to be paid through financing contributions may total a maximum of 550,000 euro per year. From 2011 the indicated sums shall be reduced or increased to the same extent as the change in the Consumer Price Index 2000 published by the federal agency “Statistics Austria” or a substitute index from the previous year.

(2) The financing contributions shall be paid by the postal industry. The postal industry shall encompass the postal service providers who are obliged to notify pursuant to Section 25 of the Postal Market Act or who possess a licence pursuant to Section 26 of the Postal Market Act.

(3) Section 10, paragraphs 3 to 14 shall apply analogously, whereby the Post Control Commission shall replace the Telekom Control Commission stated in Section 10, paragraph 14.”

6. *The following paragraph 11 shall be added to Section 17:*

“(11) The provisions of Section 5 paragraph 1, Section 5a paragraphs 2a to 4, Section 10 paragraph 1 and Section 10b including the heading and the heading to Section 10 shall enter into force on 1 January 2011.”

Fischer

Faymann