



## SADC Postal & Courier Services Sector Forum

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### Postal Reform, Trade in Services and Effective Access: Considering Policy Options for Mutual Reinforcement

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#### BACKGROUND NOTE

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## Session 1: The SADC Trade in Services Protocol and the Negotiations on the Liberalization of Services in the Region

### Trading Services: The Mechanics Recalled

Services are traded across borders just as goods are. Service suppliers in one country provide services to clients in other countries, and are paid for it in return. The transaction, just as any export of goods, results in value addition abroad and income at home, improving the national trade balance in the exporting country. In the importing country the services imported improve the supply of such services. As a result competition increases, which usually improves quality and quantity of supply and reduces prices. Domestic providers of such services, of course, will feel the impact of such increased competition. Pressure on prices and increased supply in the market may reduce their margins, at least initially. On the positive side their home market may grow, their own efficiency may increase, know-how and best practices may be transferred to them and hence their ability to supply the home market as well as foreign markets may increase.

However, while goods are sent in physical, usually visible form across physical borders where they are usually monitored, assessed, managed and taxed by customs and other authorities, services are traded in more complex forms – the four so-called “Modes of Supply:”

- **Mode 1 - Cross border:** supply from the territory of one Member into the territory of any other Member (only the service travels, neither the supplier nor the consumer move)
- **Mode 2 - Consumption abroad:** supply in the territory of one Member to the service consumer of any other Member (the consumer or her/his assets move to where the supplier is, receive the service, and return)
- **Mode 3 - Commercial presence:** supply by service supplier of one Member, through commercial presence in the territory of any other Member (the supplier establishes itself commercially in another Member and supplies customers - usually locals - from there)
- **Mode 4 - Presence of natural persons:** by a service supplier of one Member, through the presence of a natural person of a Member in the territory of any other Member (the service provider or her/his personnel travel to another Member, provide the service there, and return home)

## **The SADC Protocol on Trade in Services: Main Concepts**

The SADC Protocol on Trade in Services has been modelled in large part on the WTO General Agreement on Trade in Services (GATS). It aims at reducing and removing barriers to trade in services through a process of progressive liberalization, with the final objective of creating an integrated market for trade in services.

It is important not to confound liberalization of trade in services with the de-regulation of services sectors. The Trade in Services Protocol recognizes the right of Member States to regulate their services sectors in accordance to national policy objectives, and focuses only on the reduction and elimination of specific types of barriers to trade. In particular, the Protocol concentrates on the reduction of numerical (quota-type) barriers to the supply of services, such as numerical quotas on the number of suppliers in a market, limitations on the maximum value of transactions, or assets of a supplier; limitations on the number of persons that can be employed by a supplier, mandatory joint venture requirements, and maximum ceilings of foreign shareholding in a services supplier. The Protocol also aims at reducing all limitations that alter the conditions of competition in favour of local suppliers compared to foreign suppliers. It is important to note that while the Protocol aims at the reduction of such measures, Member States remain free to maintain such restrictions, by inscribing them in their schedules of commitments. In addition, any other non-discriminatory regulatory measures taken by Member States remain the sovereign right of each Member State.

The SADC Trade in Services Protocol also provides for most –favourite nation status among SADC State Parties of the Protocol: in other words, each SADC Member State grants the best treatment that it grants to any country, to any other SADC State Party. There are however numerous exceptions to this general principle, allowing two or more SADC State Parties to integrate deeper and faster with each other, or to maintain preferential agreements with third parties without being obliged to extend the preferences granted therein automatically to other SADC State Parties.

## **The SADC Negotiations on Trade in Services**

The SADC Trade in Services Protocol was signed by Heads of State in August 2012. Negotiations on the liberalization of six priority sectors had commenced already in April 2012, focussing in the initial phase on Communication Services (including Postal/Courier Services), Construction; Energy-related; Financial, Transport, and Tourism Services). The negotiations are to be completed within three years (i.e. by March 2015), and aim at improvements to existing WTO commitments for each sector under negotiation. Member States are negotiating by requesting each other to reduce or remove barriers in sectors of export interest to them, and are making “offers” to each other by setting out in a draft schedule in which sectors they are suggesting to remove barriers to trade. At present, Member States are consulting with sector Ministries and regulators, as well as the business community in their countries on these requests and offers. To date, four Member States have submitted initial requests, with offers still being worked upon.

## **Postal/Courier Services under the TCM and TIS Protocols: Differences, Interfaces & Overlaps**

While Postal/Courier Services are priority sectors under SADC’s trade liberalization agenda, the focus on postal services under the Protocol on Transport, Communications and Meteorology (“TCM Protocol”) is the realisation of optimal infrastructure and operations for the communications

(telecommunications and postal) and transport (comprising road; maritime and inland waterway; civil aviation transport) sectors.

Specifically for Postal Services, the TCM Protocol focuses on efficiency, affordability, and quality in the provision of postal services. State Parties have undertaken to develop harmonised policies on issues including: institutional reform, regulation and operation, and restructuring of the sector. State Parties have also accepted to “endeavour” to adopt harmonised operating regulations, procedures and standards based on Universal Postal Union norms with regard to, *inter alia*, international postal services and financial services (which includes money order services).

Proposals for reform of Chapter 11 recognize the role of the private sector, and require Member States to establish equitable frameworks to accommodate the provision of unreserved services by private sector services providers. Member States shall further develop legislation that promotes the autonomy and commercialization of the designated Postal Operators and, based on a regionally harmonized position, address separation of unreserved and reserved postal activities and separation of accounting for these activities.

## **Session 2: Mapping the Issues: Infrastructural Upgrade, Postal Reform, Universal Service, Competition and Trade**

### **The Post, Postal Services and Courier Services**

The idea and practice of trade in postal/courier services generally and within SADC stands in the immediate context of the post’s role as a traditional and central element of states’ core *infrastructure* – their communication infrastructure. The importance of postal services in the history of modern societies and states can hardly be overstated – emblematic examples such as that of the “Pony Express” speak to their far-reaching role.

Postal services have thus been traditionally seen as a key obligation (and often prerogative) of the state – a fundamentally public service. The very early establishment of the Universal Postal Union (UPU) in 1874 – one of the first international organizations – reflects the need for national postal administrations, or operators, to coordinate their operations in order to be able to offer postal services beyond their national borders. The UPU, thus, is a logical extension of the national infrastructural function of the national post.

At the same time privately operated courier services have at all times coexisted with the national postal infrastructure, and arguably pre-date the latter’s advent. Similarly, cross-border provision of courier services, whether directly by one provider or through the cooperation of providers on both sides of the border, has logically always been part of the story. Alongside postal structures courier services have thus always been part of communications infrastructures, national and international.

Drawing a clear line of distinction between postal and courier services has traditionally been a challenge. This is because the core service – handling of letters and parcels – is *a priori* identical. Three main groups of characteristics have traditionally been used to distinguish the two:

- *The role of the state.* The national post was traditionally part of the national administration, and in most countries still is owned by the state, even if meanwhile corporatized. The assumption that the national post must be state-owned or -operated has in recent years

been questioned and disproven. While the number of completely privatized postal operators is still small (in most countries the state still holds majority ownership), they do exist.

- *Universal service.* While the national post is traditionally called upon to provide universal service (usually defined as a general basic level of services provided to all citizens throughout the national territory at affordable, usually uniform rates), courier providers may limit their operation to segments of the market. This notion (and obligation) of universal service is at the core of the UPU framework and perhaps its most prominent function.
- *Normal v. value-added services.* The national post traditionally provides regular level services to everyone on a large societal scale, while courier operators provide individualized, often value-added services such as time-bound conveyance of letters and/or elements such as delivery guarantees, tracking and tracing, etc. This goes along with the understanding that postal services are usually moderately priced while courier services are expensive.

Arguably somewhat oddly it is (at least apparently) only the first element which has been used in traditional definitions used in the WTO and many other trade *fora*.<sup>1</sup> These distinguish the *services* by the type of *operator* – national postal operator or courier – which may be useful in some contexts but is not helpful when the purpose is to actually describe the services themselves (which may be identical). Because this is in principle the case in the context of trade in services agreements such as the GATS and the SADC Protocol on Trade in Services, the definitional question has often raised concerns in the context of negotiations on such agreements (see below).

### **The Post's Infrastructural Role: Beyond (Mere) Communication**

The post, thus, is traditionally a centrepiece of the national *communications* infrastructure. The combination of postal and telecommunications services in one national authority/provider – now abandoned in most countries – long appeared as a logical extension of that function. While operators have been separated, the role of the post in providing telecommunications services has recently seen a certain revival, including within SADC where post offices now often provide access to the internet.

Equally traditionally, however, the post's infrastructural role has long gone beyond mere communication. In many countries the post office acted or acts, for example, as the central conveyor of basic *financial services*, such as the distribution of pensions and other social benefits or the payment of utility fees and/or taxes. Other functions often found include *transportation*, from the traditional post carriage to today's post buses in some countries.

### **Addressing: A Postal Function?**

It is in this context that a major infrastructural challenge for many developing countries, including many SADC Member States, arises: the need for individual addresses. Without addresses delivery of letters and parcels directly to houses and offices is difficult and often impossible on a mass basis. This has far-reaching implications for many other matters, including the administration of other infrastructural services, such as utilities or banking. Without addresses, some argue, a true universal service cannot be provided.

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<sup>1</sup> See Annex 2.

Addressing, however, is arguably a general national infrastructural task, rather than a function of the post. This question has operational and financial implications: Should the post be left alone with the task? Should it be financed out of the postal budget?

## **Postal Reform and Modernisation**

Postal policy makers and postal operators in SADC Member States and around the world have been facing, and continue to face, the challenge of reforming the postal sector.

What such reforms should achieve, however, does not follow directly from current difficulties of the post office, such as weak infrastructure, quality of service challenges or under-financing, but rather follows from the functions the post is to provide, or the roles it is to play, in the *future*: What is it that we want the post to do and achieve *from here onwards*? This, in turn, relates to the question whether there are functions that can and perhaps should be performed by other providers, concurrently or *in lieu of* the national postal operator. It is in this context that local and foreign private providers, and hence also international trade in the relevant services, can play a role. In other words: It is not only (narrowly) the postal *operator* but the postal (and courier) *sector* as a whole (as well as possibly other, related sectors) which must be considered as part of such reforms.

Virtually all SADC Members, mindful of this holistic challenge, have either undergone, or are currently undergoing, major reforms of the postal sector, including prominently the national postal operator. Key reform steps usually include *inter alia*

- the separation of postal and telecommunications functions
- the separation of operator and regulator
- the corporatization, reorganization and financing of the national post
- the definition and financing of universal service and/or universal access and
- the regulation of private providers (usually courier).

Importantly, thus, the reform of the national operator – from organizational matters to financing, and from the definition of functions and tasks to the question of exclusive rights – stands in the logical context of all other reform steps, and again raises the fundamental question: What role do we want the postal operator to play in the future?

## **Universal Service/Access: Idea, Scope and Financing Mechanisms**

The idea of universal service is fundamentally one of availability, or access: All citizens, businesses and bodies should be put in a position to effectively communicate with one another. This implies sufficient proximity and capacity of access points, consistency and permanence, a certain range of services covering basic needs, and their affordability for all or most.

As indicated, guaranteeing universal service is one of the basic tenets of the UPU system. UPU members are under an obligation to ensure “that all users / customers enjoy the right to a universal postal service”.<sup>2</sup> Art. 1 (1) of the Universal Postal Convention defines universal postal service as “the permanent provision of quality basic postal services at all points in a member country’s territory, for all customers, at affordable prices”.

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<sup>2</sup> Art. 3 (1) of the Universal Postal Convention.

While the UPU thus interestingly foresees a “right” of individual customers to enjoy universal service, the underlying function of this guarantee in the UPU system of international cooperation is – arguably – to ensure mutual delivery of cross-border conveyances. This function explains why the UPC in Article 3(3) foresees further that UPU members ensure that service offer and quality standards are achieved by “operators responsible for providing the universal postal service” – the Designated Postal Operators (DPOs). (There is, however, no obligation to require *only* the DPO to provide universal service, nor for the DPO to be state-owned or –controlled.)

### *Financing*

The obligation on any operator to provide universal service, however, implies that such service provision is properly financed. This may or may not be possible through normal commercial activity of the provider (DPO and/or other). Often it is not, because remoteness, sparse population, weak transportation infrastructure and/or other factors make it economically non-viable. Sometimes it is possible to provide such services without further financing, however, by cross-subsidizing them from proceeds (profits) from other services, such as financial services or other products. Several DPOs, including within SADC, appear to succeed in doing that.

Where additional financing is required to make universal service provision possible there are three “classical” ways of providing it:

- *Postal monopoly/reserved services.* The provider charged with a universal service obligation (USO) is granted exclusive rights to provide certain services. Monopoly rents collected in profitable subsections of the market, for example by charging standard rates for letters conveyed at minimal costs within urban centres, it can thus cross-finance genuinely unprofitable services in other parts of the market. This means that some customers (e.g. urban clients who would otherwise have used cheaper local services) finance the provision of services to others (e.g. rural clients who would not be able to afford the actual cost of the service).
- *Direct Financial Support.* This can come in particular from two sources.
  - *Universal Service/Access Fund (USF).* The provider and/or its customers receive funds from a USF to finance the provision or acquisition of services. Such USFs are usually fed through contributions provided by market participants, i.e. (in the case of postal USFs) postal and courier operators. In the case, thus, the cross-financing comes again from one segment of the market (courier providers, i.e. courier users, and possibly postal providers, i.e. postal users) and is provided for the benefit of another (e.g. rural customers of the universal service provider). This is thus very similar to the postal monopoly/reserved services mechanism, but may avoid the risk of inefficiencies which monopoly structures can cause.
  - *Subsidies.* Like in the case of USF financing the provider and/or its customers receive subsidies to finance the provision or acquisition of services, but the financing comes from the taxpayer rather than other market participants.

While all three mechanisms have the same aim – to finance universal service – they imply different burdens, risks and implementation requirements, and thus raise related questions such as:

- Who should pay for universal service? The community as a whole or the market participants (which)?
- For whose benefit is universal service provided? The community as a whole or certain market participants (which)?
- Which mechanism is the least costly/most efficient overall? Which risks does each mechanism carry? Which costs does each mechanism carry? In particular: Are there hidden costs (e.g. efficiency losses) which may be overlooked?

All three, however, in order to be targeted and effective should ideally be based on separate accounting which identifies the actual (additional) cost of universal service. This in itself is a significant challenge.

*In Particular: Postal Monopoly/Reserved Services – Understanding Function, Benefits, Temptations, Risks and Costs*

A postal monopoly in the form of reserved services is thus not a natural attribute of the national post but a financing mechanism. This means that the scope of the reserved space need not be identical with the scope of universal services (in fact, it is conceptually unrelated to these, even though traditionally overlapping).

By providing cross-financing directly within the universal service provider (who channels monopoly rents into non-profitable parts of its business) the mechanism does not require formal transfers of payments. This has the benefit of simplicity, avoids certain administrative costs and reduces the risk of (direct) corruption, but – like any monopoly – causes inefficiencies and creates rent-seeking opportunities which, in turn, may result in (indirect) corruption.

The risk of inefficiencies is particularly worrisome if and when reserved services are among those which the universal service obligation is meant to cover. In that case actual access to quality services may ironically be reduced – in comparison to other mechanisms – by the very mechanism that is meant to secure it. This is a trap in which some postal providers may find themselves.

## **Competition and Trade in Postal/Courier Services**

Where several operators provide a service in competition this usually leads to efficiency, including availability and low prices. International trade (in the relevant sector, here in postal/courier) increases such competition. However, competition alone may not be able to cope with challenges such as geography, population distribution, population structure – hence the need for regulatory intervention, of which a universal service obligation and/or financing mechanisms can be elements, alongside price controls and others.

Competition has always been an element of the postal/courier sector, including in the form of trade in postal/courier services. The most important limiting factor to both has been the postal monopoly, i.e. a general restriction on (domestic and international) competition rather than more specific limitations on (international) trade.

As indicated, however, defining the sector and its services has been a challenge, including in the context of trade negotiations. This is partly a reflection of the specific features and needs of the sector – including the multiple infrastructural functions of the post office, the need for universal



service and its financing -, partly of history, tradition and related structures, and partly of the evolution of the market itself, which includes the advent of express delivery services and their proximity to and overlap with logistics services. The legal structure of the GATS and other trade agreements, which are commonly understood to require services sectors not to overlap, further contributes to the complication.

In the context of the GATS negotiations which have been ongoing since 2000 (since 2001 as part of the Doha Development Agenda – DDA) WTO Members have therefore made multiple efforts to adjust, refine and/or expand definitions to better capture market reality and needs and thereby allow for more targeted and meaningful commitments. These include proposals to merge postal and courier services, to describe them more accurately and/or create of a separate sub-sector of “express delivery services.”

Importantly, however, this classification debate in itself does not and should not detract from the underlying, arguably simpler challenge for WTO Members as well as SADC Member States, namely to identify which services they can and may wish to liberalize on the WTO or SADC level. The ideas exchanged at the WTO, however, may assist them in transforming their conclusions into practice in the form of commitments. The Seychelles, for example, have already done so in their GATS offer submitted to WTO Members in the course of WTO accession negotiations. In that offer the Seychelles propose to merge postal and courier services, exempting a clearly delineated segment of reserved monopoly services from the coverage.

### **Session 3: *Status quo* and Outlook in SADC Member States: Trade in Postal/Courier Services in SADC**

#### **Reforming and strengthening the national post: Recent, current and planned postal reform efforts in SADC Member States**

Virtually all SADC Member States have over the past decade or so engaged in significant postal reforms. These involve in most cases all of the elements outlined above, in particular:

- The **separation of postal and telecommunications functions**, i.e. the splitting of the national incumbent operator into a telecommunications and a postal operator. Only in some cases, for example Swaziland (SPTC), are the operators still united, or combined, but usually efforts are under way to proceed to separation.
- The **separation of operator and regulator** and the creation of regulatory agencies, also foreseen by Article 11.2 of the TCM Protocol. Where this has happened the regulators usually combine the functions of telecoms and postal/courier regulator. Most regulators within SADC cooperate through CRASA, the recently merged association of the region’s telecommunications and postal regulators. In most cases the regulators enjoy a significant degree of independence from the responsible ministries of communication, even though legally and politically the role of ministries often appears to remain non-negligible. The mandate of regulators varies, but usually their functions include the licensing of operators, the collection of licensing fees where applicable, and the supervision of the sector. The level of competencies and powers vary as well, as does the degree to which regulators are engaged in managing competition between operators. Their function does usually include (explicitly or implicitly) the enforcement of the postal monopoly (reserved services), where

applicable. Some SADC Members – e.g. Botswana, Swaziland – are still in the process of completing the process of creating and empowering a regulatory agency, with ministries acting as regulators in the meantime.

- The **corporatization and reorganization of the national post**, foreseen not least by Article 11.4 of the TCM Protocol, in most cases has been completed, at least in principle. In some Member States, for example Mauritius, the national postal operator is by now a fully-fledged, healthy commercial entity with balanced books. Often, however, the operators still require explicit or implicit financing from the state (by way of shareholder contributions, subsidies or otherwise). Financing overall remains a major challenge. Weak, ageing infrastructure coupled with significant needs to upgrade (quality) and expand (coverage), coupled in turn with diminishing volumes of letter post which faces strong competition from electronic mail and other forms of messaging, is putting many of the region's postal operators on the financial and operational defensive. At the same time, while corporatized in principle and required (politically, legally) to act as commercial entities, they are often not entirely free in practice to take reasonable commercial decisions which truly commercial entities would take in their position. For example, postal operators, while endowed with real estate, are often not free (legally or politically) to liquidate such assets in order to finance their development.

In all SADC Member States the national post is owned entirely by the state and acts as the Designated Postal Operator for purposes of UPU obligations. With the exception of Seychelles Post the postal operators of the SADC Member States cooperate through SAPOA, SADC's postal operators' association established under the TCM Protocol.

A major concern in many SADC Members is **addressing**. The national post is in most cases involved in the related efforts, facing targets and plans set at the political level while financing may not always follow suit, leaving the postal operators exposed.

### **Universal service, universal access and financing mechanisms in SADC Members**

Not least as UPU members SADC Member States remain committed to the notion that a basic universal service is to be provided, in principle with the underlying understanding that this to be done (provided) by the Members themselves (Article 11.1 of the TCM Protocol). In most cases this goes hand in hand with the understanding that the universal service obligation is on the Designated Postal Operator (equally reflected in Article 11.1 of the TCM protocol).

Some Member States, however, in their newer postal laws imply that other operators as well may assume a universal service obligation (Mauritius' Postal Services Act 2002, for example, foresees that *all* postal and courier operators have to provide universal service).

Some postal laws foresee an automatic designation of the incumbent operator as the DPO and the (only or main) universal service provider, sometimes coupled with an automatic license or the exemption from the licensing requirement, while others remain neutral on their face and also require the incumbent to undergo the same licensing procedure as other providers.

SADC Members' reformed postal legislation continues to provide for a space of reserved services as a way to finance universal service. Several postal laws foresee in addition the operation of a universal service fund (USF), which, however, only in very few cases is already operational.

## **Reserved Postal Services: Present Situation and Trends**

As just mentioned, postal legislation in SADC Member States continues to provide for a space where the DPO enjoys a monopoly. The size of that space, however, varies significantly. Weight limits, for example, differ widely (e.g. 350g in Malawi, 1000g in South Africa, 2000g in Mauritius, the latter, however, coupled with an apparent *de facto* exemption of value-added courier services). The range of services covered also varies significantly, from letters only to broad ranges of services including mailbox rental, roadside mailboxes, etc.

Following global developments there is a discernible trend, however, to gradually reduce the postal monopoly. Some Members contemplate eliminating it in the longer term, replacing it entirely by USF financing.

Importantly, however, even today the actual enforcement of the monopoly over reserved services is very limited in practice, in some Members reportedly virtually non-existent. Even in Member States with strong institutional frameworks enforcement remains limited. Virtually all across SADC courier providers are *de facto* free to handle items below the weight thresholds. While in some cases that is more or less clearly allowed by the law (e.g. where value-addition criteria such as time guarantees, track & trace, insurance, pick-up etc. apply), in others it appears to be simply tolerated in practice, under a tacit assumption shared by market participants (and the authorities) apparently based on similar criteria. It seems fair to say that in most if not all SADC Members courier service providers are *de facto* largely unhindered by the postal monopoly, at least as long as they keep a certain distance to the general postal business model.

But even that is not always the case. In South Africa, for example, PostNet, a private provider, not only carries the word “post” in its (long-standing) trademark, but it also operates outlets (with the “look and feel” of post offices) throughout the country, often conveniently located in shopping malls, and therein rents out mailboxes – notwithstanding the fact that mailbox rental is explicitly reserved by law to SAPO, the DPO. PostNet closely cooperates with SAPO, however, for which it is a good (bulk mail) customer. PostNet also arguably increases postal coverage, with its mailboxes (and other services) fulfilling an important complementary function to the mailboxes operated by SAPO. The situation, *de facto* – even if somewhat reluctantly – tolerated by the regulator (ICASA), thus appears to reflect and react to the needs and preferences of the market, gradually abandoning the rigidity of the law. This *de facto* tolerance for market desires and practices appears to be an important feature in the reality of postal/courier regulation throughout many SADC Member States.

## **Competition in non-reserved (and reserved) postal/courier services: *Status quo* and trends**

Competition throughout SADC Member States in non-reserved services as well as – see above – many reserved services appears to be healthy and developed. The major international operators, from market leader DHL to FedEx, UPS and TNT, are present in all SADC markets, partly through wholly or partly owned subsidiaries (in particular DHL), partly through local agents. The choice of format appears to be driven more by business considerations than by regulatory or legal concerns.

There are several regional operators which cover several markets in Southern Africa, some – for example Spring Courier of Botswana – commanding significant respect in terms of their quality

and/or capacity. Some act as regional agents for global operators (e.g. Berco for Aramex). There are further a great number of local operators.

An interesting trend is the increased cooperation between courier and postal operators. In Mauritius, for example, DHL – like in some other countries – cooperates closely with the DPO, Mauritius Post. Following cooperation in international mail and express which began in 2009 both parties since 2011 collaborate in the form of a retail partnership, and in 2012 launched a co-branded service called “Mauritius Post Express,” combining the services of Mauritius Post’s post offices with DHL’s international express services.

### **Regulatory Challenges: Issues and Non-Issues for SADC Member States**

Postal regulators in SADC Member States face thus an in multiple ways evolving market, and as such the many regulatory challenges that entails, from licensing via interconnection to abuse control.

That said, there are a number of “classical” issues which gained prominence elsewhere, for example during market liberalization in Europe, which may less of a concern within SADC. For example, cross-subsidization with DPOs from reserved to non-reserved services does not appear to be an actual problem, possibly due to the overall weakness of most postal operators and the limited enforcement of their monopoly, if any. The European scenario where Deutsche Post or La Poste, some may say, vigorously defended and exploited their gradually diminishing monopoly in an effort to accumulate a significant “war chest” from monopoly rents which would give them a powerful start into the fully competitive age does not seem to raise parallel concerns within SADC.

### **Session 4: What Role for Trade in Postal / Courier Services? Imaginable scenarios for the negotiations on trade in postal/courier services**

#### **Existing commitments & offers (GATS, EAC etc.)**

SADC Members have so far made only a few commitments in postal/courier services under the GATS. Just three Members – Botswana, Lesotho and South Africa have made (full) commitments in courier services, no Member has made commitments in postal services.

The Seychelles has included in its revised GATS offer (not yet a commitment, pending accession) significant commitments in a merged postal/courier sector, interestingly following the classification proposed/supported in the GATS classification debates by the EU, Switzerland and others.

Tanzania has made a commitment on courier services within the EAC, albeit with a significant (35%) limit on foreign ownership in mode 3 (“commercial presence”).

Several SADC Members, however, have advanced offers in the context of other RTA negotiations, notably COMESA. To the extent these are known at the time of drafting this note, one finds that Swaziland goes furthest by offering full commitments on courier services in all modes (with the usual limitations in mode 4 (“presence of natural persons”)). Malawi equally offers full commitments on courier services, but exempts “mail items weighing less than 350g” (the threshold of its postal monopoly) from coverage in mode 3. The DRC offers commitments in both postal and courier services, but excludes (“unbound”) entirely mode 3, the most important mode of supply.

Existing commitments and offers made (to the extent known) are reflected in detail in [Annex 3](#).

## **Current openness and trends**

As described, the actual openness in most SADC Members is significant and goes beyond the letter of the law, in view of limited enforcement of the postal monopoly. There appears to be virtually no discrimination between foreign and local operators (National Treatment) or between foreign operators of different nationality (MFN), with the notable exception of foreign ownership restrictions which apply in particular under the empowerment / indigenization legislations in Zimbabwe and South Africa and are reportedly being contemplated in Malawi. These ownership restrictions appear to run counter to the otherwise liberalizing trend in the region.

## **Possible commitment scenarios for SADC Members**

The significant current openness of the sector *de jure* and *de facto* – would suggest that most if not all Member States may feel comfortable making (in principle: full) commitments at least in courier services, scheduling restrictions such as ownership thresholds as needed.

It appears thinkable that Member States may go one step further and give up the unhelpful distinction between postal and courier services altogether, merge the sectors (as “postal/courier services” or similar) and rather schedule their respective “reserved services” as specific carve-outs, much as the Seychelles have done in their revised GATS offer. For some Member States this would require (or at least suggest) to proceed first by clarifying the scope of reserved services.

A significant harvest, in other words, appears imaginable, without changing any current practice. Whether or not Member States wish to proceed in this direction, of course, remains a matter for negotiation between sovereign governments.

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## Annex 1: Discussion Groups

### **Group 1: Universal service and universal access in the SADC region: Ideal(s), reality(ies) and outlook(s) – Can/does trade help?**

The idea of universal service is old and cherished, yet the practice/reality often fails to deliver. There is, in fact, very little effective universal service of postal services in many SADC countries, and there are voices which suggest that securing actual universal access to key services, especially in poor countries, requires mechanisms other than (or in addition to) a universal service obligation imposed on one or several providers, possibly including competition and (international) trade.

### **Group 2: Financing Universal Service/Access in SADC countries: Reserved services, Universal Service/Access Funds and other mechanisms, and their relationship to trade**

Universal service obligations and/or universal access guarantees may require financing which pure market mechanisms cannot deliver. (In some countries, such as the UK and New Zealand, it has been found that no such financing is in fact needed.) While the postal monopoly on reserved services has traditionally been used to finance universal service, there are other mechanisms which may deliver the same or better results, such as Universal Service Funds or Universal Access Funds funded through industry contributions such as licensing fees, or direct financing through taxes. This discussion will focus on how these mechanisms affect trade in postal/courier services, and whether and how trade in postal/courier services can be harnessed to reinforce them (e.g. through taxes, licensing fees, reduced need for services to be financed).

### **Group 3: The role of the National Post in the 21<sup>st</sup> century**

The National Post's role in the 21<sup>st</sup> century may go well beyond the provision of postal services. In fact, in many places – including within SADC – the Post's potential is seen more in providing a range of other services (including, for example, financial services and/or internet access points) and less in providing classical postal services, many of which may be also less needed due to technological developments (e.g. email replacing mail communication). National Posts are further used as conduits to provide infrastructural services which arguably go beyond their core remit, such as addressing.

Many countries, including several SADC Member States, are engaged in this process of re-inventing the National Post, which may affect traditional views on matters such as reserved services and competition in postal/courier, and include new perspectives on complementarity and cooperation in postal, courier and other services between the National Post and other providers.

### **Group 4: Trading non-reserved postal/courier services: The business perspective**

Trade in postal/courier services in SADC is a long-standing reality. Both global and regional providers are present in Member States' markets. It seems useful and instructive to explore the perspective of private postal/courier providers with a view to identifying their challenges and needs, from market access to regulatory issues.

**Group 5:       Regulating for complementarity**

Regulators have been established, or are being established, to manage service provision, access, competition and trade in the area of postal/courier services. Their challenge is to ensure an optimal balance with the aim of securing the best possible level of services, now and in the future. This must include considerations of sustainability and openness to future developments, and the harnessing of all available potentials – and their interfaces.

## Annex 2: Classification of Postal/Courier Services in the WTO

*From WTO Secretariat, Postal and Courier Services, Background Note, WTO Doc. S/C/W/319 (11 August 2010):*

5. Generally speaking, postal and courier services comprise the basic and express delivery of such items as parcels, packages, documents, letters, and printed material. In the Services Sectoral Classification List (MTN.GNS/W/120), postal services are listed under 2.A and courier services under 2.B, within Communication Services (Sector 2). The scope of both postal and courier services is further defined through references to the CPC Prov. These CPC categories are reproduced in Table 1.

**Table 1 : Definitions for Postal and Courier Services under the CPC Provisional**

<i>CPC Prov. code</i>	<i>Explanatory note</i>
<b>7511 - Postal Services</b>	<i>Services consisting of pick-up, transport and delivery services of letters, newspapers, journals, periodicals, brochures, leaflets and similar printed matters, whether for domestic or foreign destinations, as rendered by the national postal administration.</i>
<ul style="list-style-type: none"> <li>• <a href="#">75111</a> - Postal services related to letters</li> </ul>	<i>Services consisting of pick-up, transport and delivery services of parcels and packages, whether for domestic or foreign destinations, as rendered by the national postal administration.</i>
<ul style="list-style-type: none"> <li>• <a href="#">75112</a> - Postal services related to parcels</li> </ul>	<i>Services rendered at post office counters, e.g. sales of postage stamps, handling of certified or registered letters and packets, and other post office counter services.</i>
<ul style="list-style-type: none"> <li>• <a href="#">75113</a> - Post office counter services</li> </ul>	<i>Mailbox rental services, "poste restante" services, and public postal services not elsewhere classified.</i>
<ul style="list-style-type: none"> <li>• <a href="#">75119</a> - Other postal services</li> </ul>	<i>Exclusion: Services related to postal giro and postal savings accounts are classified in class 8111 (Services of monetary intermediaries).</i>
<b>7512 - Courier Services</b>	
<ul style="list-style-type: none"> <li>• <a href="#">75121</a> - Multi-modal courier services</li> </ul>	<i>Services consisting of pick-up, transport and delivery services, whether for domestic or foreign destinations of letters, parcels and packages, rendered by courier and using one or more modes of transport, other than by the national postal administration. These services can be provided by using either self-owned or public transport media.</i>
	<i>Exclusions: Courier services for mail by air are classified in subclass 73210 (Mail transportation by air).</i>
<ul style="list-style-type: none"> <li>• <a href="#">75129</a> - Other courier services</li> </ul>	<i>Other courier services for goods, not elsewhere classified, e.g./trucking or transfer services without storage, for freight.</i>



6. As often noted, the particularity of this sectoral classification is that it distinguishes between postal and courier services on the basis of the nature of the service providers rather than that of the services provided. Indeed, the key characteristic of postal services when compared to courier services in this classification is that they are rendered by national postal administrations. As noted in JOB(06)/10, Members' negotiating proposals in the sector highlight the inadequacy of such classification, often underscoring the resulting uncertainty concerning commitments' coverage of identical services that are supplied on a competitive basis by both public and private companies. Indeed, the distinction in the classification based on the status of the designated postal operator appears increasingly out of step with commercial and regulatory realities (see next section): both private companies and traditional postal operators now tend to offer a wide array of services, and the vast majority of public postal operators compete with private companies in most services.<sup>3</sup>

7. Accordingly, some proposals have been made for improved classifications, including in the plurilateral request in this sector. These proposals, despite differences, generally advocate covering all relevant competitive delivery services, notwithstanding the nature of the supplier. They thus seek to ensure that activities of the designated postal operators (DPOs) outside their reserved areas can be subjected to commitments. The proposals also tend to focus on the nature of the services provided, cover explicitly express delivery or high-value services – which are sometimes defined for precision –, and suggest that schedules should specify with clarity any reserved areas.

8. The CPC and the W/120 do not expressly spell out the dividing line between postal-courier services on the one hand and transport services on the other hand. Definitions of postal and courier services in CPC 7511 and 7512 refer to the transport of such items as letters and mail. CPC 7512 explicitly excludes mail transportation by air (CPC 73210)<sup>4</sup>, but does not provide such exclusions for other specific transport services categories. Further, CPC 75121 specifies that courier services "can be provided by using either self-owned or public transport media".

9. While it is understood that in principle there is no duplication among CPC categories, a number of CPC transport categories refer to the transport of mail. In the transport services categories of the CPC prov., CPC 71129 (falling under 11.E.b - freight transportation by rail (CPC 712) in the W/120) includes mail transportation by railway. CPC 71235 (under 11.F.b - freight transportation by road) covers mail transportation by any other land mode of transport other than railway.<sup>5</sup>

10. While CPC 7511 and 7512 include such "auxiliary services" as mailbox rental services or post office counter services, financial or telecommunication services rendered by postal operators would be governed by relevant commitments in these areas, namely sectors 2.C and 7 of the W/120, and not postal-courier services. Accordingly, these other services provided by postal operators are not discussed in this Note, even if these often form an important part of the operators' overall activities.

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<sup>3</sup> CPC ver. 1 and CPC ver. 1.1 also distinguish between postal and courier services on the basis of whether the services are provided by the national postal administration or not. The CPC ver. 2 distinguishes between postal and courier on the basis of whether the services are rendered under a universal service obligation.

<sup>4</sup> Naturally, even if the CPC Prov. mentions air transport services, air transport of freight does not fall within the scope of the GATS, as per the Annex on Air Transport Services.

<sup>5</sup> No mention is made of mail transportation in CPC categories pertaining to water transport, but these CPC categories do not feature exclusions relating to such items as mail or letter deliveries.

11. Finally, as indicated in the previous Secretariat Background Note, basic delivery services supplied under monopoly by a designated postal operator would be covered by the GATS as long as they are supplied on a commercial basis, which is usually the case.

### Annex 3: Current Commitments and Offers under GATS and RTAs

**Note:** This table reflects present GATS commitments of SADC Member States in Postal and Courier Services, as well as offers made in the WTO and in the context of RTAs (EAC, COMESA) to the extent that these could be obtained. Offers made do not amount to commitments, nor do offers (or commitments) made in one forum necessarily imply that the same offer will be made in another forum, for example SADC. The list below thus serves purely illustrative purposes and does not imply any commitment SADC Member States may or may not make in SADC negotiations.

Sector/Agreement	Market Access Restrictions	National Treatment Restrictions	Add'l Commitments	MFN Exemptions
<b>Angola</b>				
<b>GATS</b>				
N/A				N/A
<b>Botswana</b>				
<b>GATS</b>				
B <u>Courier services</u> Commercial courier services, including by public transport or self-owned transport (CPC 75121)	1) None 2) None 3) The service should be supplied through commercial presence. 4) Unbound except as indicated in the Horizontal Commitments.	1) None 2) None 3) The service supplier should meet all residency requirements. 4) Unbound except as indicated in the Horizontal Commitments.		N/A
<b>Dem. Rep. of Congo (DRC)</b>				
<b>GATS</b>				
N/A (but telecoms – voice)				N/A
<b>COMESA “Matrice actualisée”</b>	<b>(Status to be clarified)</b>			
A. Services postaux (CPC 7511)	1) Néant 2) Néant 3) Non consolidé 4) Non Consolidé sauf comme indiqué dans la Partie I	1) Néant 2) Néant 3) Non consolidé 4) Non Consolidé sauf comme indiqué dans la Partie I		
B. Services de Courrier (CPC 7512)	1) Néant 2) Néant	1) Néant 2) Néant		

Sector/Agreement	Market Access Restrictions	National Treatment Restrictions	Add'l Commitments	MFN Exemptions
	3) Non consolidé 4) Non Consolidé sauf comme indiqué dans la Partie I	3) Non consolidé 4) Non Consolidé sauf comme indiqué dans la Partie I		
<b>Lesotho</b>				
<b>GATS</b>				
B. <u>Courier Services</u> (CPC 7512)	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section		N/A
<b>Madagascar</b>				
<b>GATS</b>				
N/A (also no telecoms)				N/A
<b>Malawi</b>				
<b>GATS</b>				
N/A (also no telecoms)				N/A
<b>COMESA Initial Offer</b>				
B) Courier services (CPC 7512)	1) None 2) None 3) None except for mail items weighing less than 350 grams 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None except for mail items weighing less than 350 grams 4) Unbound except as indicated in the horizontal section		
<b>Mauritius</b>				
<b>GATS</b>				
N/A (but extensive telecoms incl. (unclear) RP reference)				N/A
<b>COMESA Initial Offer</b>				

Sector/Agreement	Market Access Restrictions	National Treatment Restrictions	Add'l Commitments	MFN Exemptions
N/A (but extensive telecoms)				
<b>Mozambique</b>				
<i>GATS</i>				
N/A (also no telecoms)				N/A
<b>Namibia</b>				
<i>GATS</i>				
N/A (also no telecoms)				N/A
<b>Seychelles</b>				
<i>GATS Initial Offer (Accession)</i>				
<b>A. and B. Postal and Courier Services (including express delivery services)<sup>6</sup></b>				
<p>Services relating to the handling<sup>7</sup> of items in accordance with the following list of sub-sectors, whether for domestic or foreign destinations.</p> <p>The sub-sectors below are excluded when they fall into the scope of the services which are reserved for the Seychelles Post Office, which are: simple letters weighting less than 500 grams, postcards.</p> <p>(i) Handling of addressed written communication on any kind of physical medium<sup>8</sup>, including:</p> <ul style="list-style-type: none"> <li>- Hybrid mail service</li> <li>- Direct mail</li> </ul> <p>(ii) Handling of addressed parcels and packages<sup>9</sup></p> <p>(iii) Handling of addressed press products<sup>10</sup></p> <p>(iv) Handling of items referred to in (i) to (iii) above</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal commitments.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal commitments.</p>		

<sup>6</sup> The commitment on postal and courier services and express delivery services applies to commercial operators of all forms of ownership, both private and State.

<sup>7</sup> "Handling" should be taken to include clearance, sorting, transport and delivery.

<sup>8</sup> E.g. letter, postcards.

<sup>9</sup> Books and catalogues are included in this sub-sector.

<sup>10</sup> Magazines, newspapers and periodicals.

Sector/Agreement	Market Access Restrictions	National Treatment Restrictions	Add'l Commitments	MFN Exemptions
as registered or insured mail (v) Express delivery services <sup>11</sup> for items referred to in (i) to (iii) above (vi) Handling of non-addressed items (vii) Document exchange <sup>12</sup> (viii) Other services not elsewhere specified.				
<b>South Africa</b>				
<b>GATS</b>				
B. <u>Courier Services</u> (CPC 7512)	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section		N/A
(also telecoms incl. RP)				
<b>Swaziland</b>				
<b>GATS</b>				
N/A (also no telecoms)				N/A
<b>COMESA Initial Offer</b>				
B. Courier Services (CPC 7512)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		

<sup>11</sup> Express delivery services are defined as the collection, transport, and delivery of documents, printed matter, parcels, goods or other items on an expedited basis while tracking and maintaining control of these items throughout the supply of the service.

<sup>12</sup> Provision of means, including the supply of ad hoc premises as well as transportation by a third party, allowing self-delivery by mutual exchange of postal items between users subscribing to this service. Postal item refers to items handled by any type of commercial operator, whether public or private.

Sector/Agreement	Market Access Restrictions	National Treatment Restrictions	Add'l Commitments	MFN Exemptions
Multi-modal Courier services (CPC 75122)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		
<b>Tanzania</b>				
<b>GATS</b>				
N/A (also no telecoms)				N/A
<b>EAC</b>				
Courier Services (CPC 7512)	(1) None (2) None (3) 35% local shareholders (4) In accordance with the Schedule on the Free Movement of Workers  <i>Elimination Date: "2015 subject to Harmonized national shareholding requirement for local shareholding among EAC Partner States"</i>	(1) None (2) None (3) 35% local shareholders (4) In accordance with the Schedule on the Free Movement of Workers  <i>Elimination Date: "2015 subject to Harmonized national shareholding requirement for local shareholding among EAC Partner States"</i>		
<b>Zambia</b>				
<b>GATS</b>				
N/A (also no telecoms)				N/A
<b>Zimbabwe</b>				
<b>GATS</b>				
N/A (but some telecoms, esp. value-added; no RP)				N/A