

<https://doi.org/10.37528/FTTE/9788673954165/POSTEL.2022.011>

## **ANALYSIS OF ACCESS TO THE POSTAL NETWORK OF THE UNIVERSAL SERVICE PROVIDER**

Andrej Sardelić, Stjepan Paler  
Croatian Regulatory Authority for Network Industries,  
andrej.sardelic@hakom.hr, stjepan.paler@hakom.hr

**Summary:** *Access to the postal network is one of the obligations of the universal service provider in the open market, defined by the EU Postal Services Directive. The situation in the postal services market in the Republic of Croatia has shown the need to redefine the existing model of access to the postal network, which resulted in an analysis of the access to the postal network. The paper presents the conducted analysis, which has identified the specific obstacles and barriers to a larger use of the service of access to the postal network as well as proposals and implemented regulatory measures for the adjustment of the existing model and the conditions of access, in order for them to be clear, transparent and provide incentives for access users, and, consequently, for the development of competition in the field of postal services in the Republic of Croatia.*

**Keywords:** *access to the postal network, postal services market, analysis*

### **1 Introduction**

In 2020, the Croatian Regulatory Authority for Network Industries as the national regulatory authority for the performance of regulatory and other tasks in the field of postal services, defined by the Postal Services Act, launched the project of the analysis of access to the postal network of the universal service provider, HP-Croatian post Inc., The main purpose of the project was to analyse the current situation of access to the postal network of HP-Croatian post Inc., identify any potential obstacles and/or limitations in the use of the existing postal network, prepare measures and activities to eliminate the established obstacles and/or limitations and, consequently, create preconditions to strengthen the competitiveness of all stakeholders in the postal services market. As a result, the introduction of measures and activities was aimed at planning further incentives to the growth and development of the postal services market, in particular in the segment of the items of correspondence, the entry of new stakeholders in the market with fair competition and the continuation of implementation of a high level of the protection of the rights of postal service users in the Republic of Croatia.

## **2 Overview of the established situation in the postal services market in the field of access and the assessment of technological aspects**

The Croatian Regulatory Authority for Network Industries (hereinafter: HAKOM), pursuant to the provisions of the Postal Services Act (hereinafter: PSA), collects, analyses and processes information on the status in the postal services market in the Republic of Croatia (hereinafter: HR). According to the obtained information and the conducted analysis of access to the postal network in the HR, the previous period saw a trend of a significant decline in the use of the services of access to the postal network of HP-Croatian post Inc., (hereinafter: HP), as the provider of the universal service. The decline is primarily reflected in the decrease in the quantity of postal items. It results from the above that in the observed period, access to the postal network relative to the total volume of postal items in the HR, was *de facto* insignificant, or practically irrelevant. This is particularly emphasised because, according to the opinion of postal experts, access to the postal network should be one of the main drivers of a further liberalisation and development of the postal services market. As an illustration of the importance of access to the postal network of the universal service provider, the model under which the liberalisation of the electronic communications market has been achieved in the HR serves as a positive and stimulating example.

If access to the postal network of the universal service provider is analysed from the technological and organisational standpoints, that is, from the standpoint of the postal expertise, access to the postal network should in principle be enabled in the same manner as HP uses its postal network for its needs to provide postal services. In this specific case it means that all access users should access postal means and facilities and share decisions as HP shares them, because in this manner the single technological process of the transfer of postal items is least hindered. Therefore, in technological terms, access to the network should be the same one that HP requests from its postal centres and offices on the occasion of exchange, that is, that items be sorted according to the same criteria in the conclusions, for instance, according to the destination of postal centres or offices as well as according to the delivery areas and P.O. boxes of specific postal offices. The only difference may be in the HP's administrative documents (maps and conclusions), i.e. the list of the number of items according to types that are mutually exchanged in a conclusion.

### **2.1 Analysis of the legislative and regulative framework**

The regulatory framework is the area governing the scope of the analysis at the level of laws and ordinances in the HR and partially of the applicable *acquis*, relating to applicable directives and regulations and the current practice of the CJEU – the Court of Justice of the European Union. The HR is an integral part of the single European market of postal services. The postal services market at the level of the European Union (hereinafter: EU), is established and governed by the sole directive of 1997, which had two amendments, in 2002 and 2008 (hereinafter: the EU Postal Directive), with the aim of harmonising the postal services market.

In order to better understand the existing legislative framework, it should be clarified that the EU Postal Directive is legally binding on EU member states, but only with regard to the overall objective defined in it, which means that it is not directly applicable (the principle of direct effect); instead, these are guidelines/principles/regulation and terms

of procedure the member states are bound to implement into their national law. The HR has implemented the EU Postal Directive into its national law, so that the applicable PSA is fully aligned with it.

The legislative framework for the provision of postal services in the HR is defined by the PSA and subordinate legislation, the adoption of which falls within the competence of the Ministry of the Sea, Transport and Infrastructure of the Government of the HR and HAKOM as the national regulatory authority in the field of postal services. The subordinate legislation used in the analysis include the Ordinance on the universal service provision (hereinafter: Ordinance) and the Standard offer of HP for access to the postal network from December 2016 (hereinafter: HP Standard Offer).

The EU Postal Directive defines the basic purpose of the universal service through the simple access to the postal network for all users, in particular by ensuring a sufficient number of access points to the postal network and satisfactory conditions with regard to the frequency of collections and deliveries of items. In addition, it also defines the obligation of the universal service providers in EU member states to ensure access to their postal network under conditions that are transparent and non-discriminatory for all users and postal service providers as well as consolidators<sup>1</sup>. The legislator at the national level has been granted discretionary right to decide on the scope of access to certain elements of the postal network and services, in addition to ensuring access to the network. The national regulatory authority of a member state must take special care that the universal service provider does not use its leading position with the aim of discriminating competition and "squeezing it out" of the market. In addition, it should assess, either independently or at the request of an access user (other postal service providers, consolidators or service users) whether all preconditions for access are met.

The EU case-law regarding the implementation of access to the postal network was also taken into consideration in the analysis. This is because, since the entry into force of the EU Postal Directive, in several EU member states litigations concerning the domicile implementation of access to the postal network have been initiated before the Court of Justice of the European Union (hereinafter: CJEU). By the CJEU judgments, depending on the specificities of each case, individual provisions of the EU Postal Directive defining the principles of access to the postal network have been amended/supplemented to a larger or smaller extent or repealed. The HR, as a fully-fledged EU member state, has the obligation to implement the mentioned judgments directly, according to the principle of the applicability and implementation of the *acquis*.

The applicable cases used in the analysis include the individual CJEU judgment resolving the litigation in the Vedat Deniz case (connected cases C-287/06 to C-292/06) and the subject matter of the judgment C-340/13. In the first case, the CJEU took the stand that when the universal service provider applies special tariffs to business users or bulk mail senders, it must apply the same to the consolidators of consignments of different senders. With regard to the practical application of the above case-law, which refers to access to the postal network and discounts granted in this regard, it is a general opinion that the EU Postal Directive only allows for the possibility that the universal service provider grants discounts, i.e. it may grant discounts, but does not have to do so. If the universal service provider decides to grant discounts, then it must take into account the

---

<sup>1</sup> Consolidator: a legal or natural person other than the postal service provider, which based on a contract collects postal items from senders for the purpose of consigning them to the postal service provider.

principle of transparency and non-discrimination, i.e. the principle of equal treatment (to act in the same manner in comparable situations). In the second case, no access conditions were directly determined, but the criteria for granting discounts on quantity "by sender" or "grouping of quantity discounts" were determined. It is the CJEU's opinion that although senders and consolidators may find themselves in a comparable situation with regard to operational discounts, this is not necessary in the case of discounts on quantity. It results from the judgment that "grouping" is not justified or permitted, i.e. it is not justified or permitted to consume quantity discounts of several senders by the consolidators themselves. Instead, the principle of granting discounts "by sender" is to be applied on them as a special user category, by which consolidators, as a special user category, are in a comparable position with other users (including bulk mail senders).

The legal framework regarding access to the postal network in the HR is prescribed by the PSA, in such a way that HP as the designated universal service provider in the HR has the obligation to enable access to its postal network for the segment of postal items within the scope of the universal service to all users, consolidators and postal services providers. In addition to access to the network, HP also has the obligation to enable access users to access the system of postal identifiers, the database for the sorting of items, information on the change of address, the services of redirecting postal items and the services of return of items to the sender. Although the PSA is, in both nominal and normative terms, fully aligned with the provisions of the EU Postal Directive, access to the postal network is enabled only for services falling within the scope of the field of universal service, which, as such, are not subject to the application of exemption from the application of the value added tax (hereinafter: VAT) liability. As described, in nominal terms, the service of access to the postal network is more expensive for the end user by the VAT amount (25%) than the service falling within the scope of the universal service.

Furthermore, the PSA prescribes that the conditions of access to the network must be publicly available, known in advance and must be applied equally to all access users that are accessing the network for the same type and quantity of items. When pricing access to the network, it is necessary to recognise the costs of actions carried out prior to accessing the network for access users as avoided expense of the universal service provider.

Under the provisions of the PSA, access to the network is only enabled to the providers of interchangeable postal services<sup>2</sup> and not to the providers of other postal services providing the services beyond the scope of the universal service to which it is not allowed. By the above, figuratively speaking, restricted use, the providers of other postal services were de facto allowed to determine and organise their own postal network autonomously, both through their own capacities and through the capacities of the contractual business partners, mostly small transport and logistics entrepreneurs. Therefore, it may be concluded that some PSA provisions have not been sufficiently elaborated. However, as the legislator has amended the PSA on three occasions since 2012, none of which amended the provisions related to access to the network, it is not realistic to expect any potential amendments to the PSA provisions, including any amendments to the provisions on access to the postal network, in the forthcoming period.

---

<sup>2</sup> Interchangeable postal services are part of the services falling within the scope of the universal service that may diverge from the conditions of the universal service, such as the obligation of daily delivery or the provision of the service in the entire territory of the country, but which from the user's standpoint can be deemed to be the services within the scope of the universal service because they are replaceable by the universal service to a sufficient extent.

HAKOM's ordinance prescribes in detail the locations and conditions of access to the postal network, the content of the request and the contract, the principles of pricing the access to the network and other matters concerning access to the network (request for access, contract on access, obligations of the universal service provider and access user). Thus, two access points were prescribed:

1 in postal network elements in which the concentration of items received from different parts of the network is carried out – for all items (ACCESS I),

2 in postal network elements in which items are prepared for shipment towards postal network elements in which the delivery is organised – for items that are grouped according to destinations or addresses of recipients in the manner required by the universal service provider (ACCESS II).

In addition, provisions were also prescribed on pricing access to the postal network, the price of access being determined according to the percentage of the price amount for the relevant service from the universal service provider's price list, with the price reduced by the costs of the part of operations carried out by the user of access to the postal network. Access users that accessed the postal network with a minimum of 5,000 items in a single month had the right to the price, with HP required to provide HAKOM with the calculation of the reference value of the costs of performance of the individual phases during the service provision. The above provisions seemed to be rather rigid, so that it was concluded that, as such, they represented certain obstacles in access to the network.

HP determined certain access conditions more precisely in its reference offer, so that, as later shown by the analysis, it was one of the regulations that de facto hindered a more extensive use of the services of access to the postal network in the HR under its provisions. The HP's reference offer, among other things, determined certain types of postal items, points of access to the postal network, access to information, procedures/rules on the submission of requests for access and other access conditions. The analysis of the provisions of HP's reference offer led to the conclusion that they were inflexible and non-stimulating with regard to potential users, that they completely exclude natural persons as potential users, that they hinder the use for potential business entities with several barriers (obstacles), such as the conditioning of the price and volume of services, a small number of access points (9), the inadequate rebate policy, the absence of the possibility to use additional services, calculation and collection, the rigid instruments of payment insurance (significant funds through guarantees), unnecessarily imposed obligation on access user to notify HP in writing about any of its changes in the status and, finally, too broad space left for autonomous decision-making and HP's discretion to reject requests for the use of services of access to the postal network.

In addition, when conditions of access to the postal network are compared with conditions of use of the HP's universal service and the rebate policy applied, it is evident that services from the scope of the universal service are accessible as such to all categories of postal service users under more favourable criteria/conditions of use and, consequently, privileged for use when compared with the services of access to the postal network.

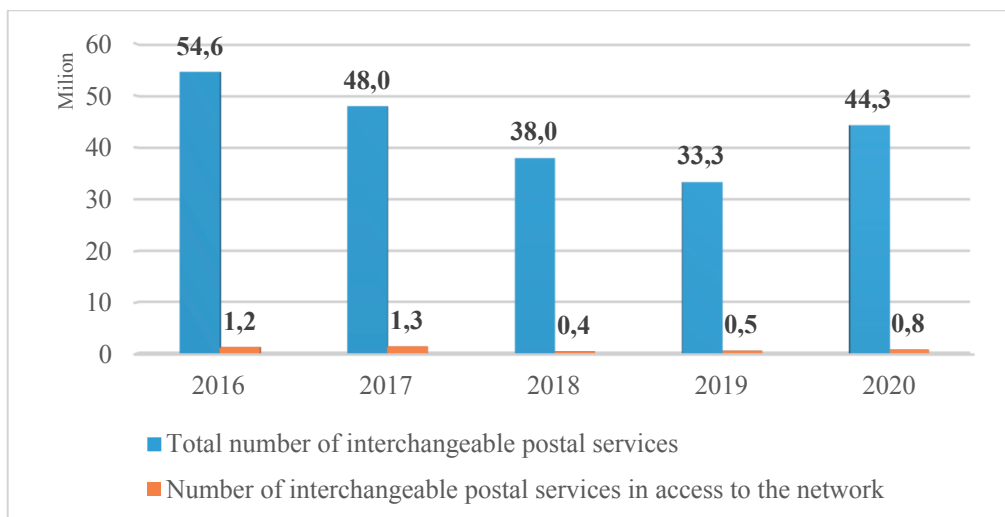
Taking into account all of the above and the established situation as well as the fact that the PSA provisions stipulate HAKOM's authority to adopt the Ordinance, the analysis leads to the logical conclusion that in the forthcoming period it is necessary to focus HAKOM's regulatory and legislative activities on amending HAKOM's Ordinance in the provisions determining the access to and use of the postal network. This will consequently have an impact on redefining the existing, rigid access to the postal network

and the modification of the HP's reference offer for the services of access to the postal network.

## 2.2 Analysis of economic indicators

In the postal services market in the HR, in the previous period, three postal service providers and one consolidator used the service of access to the postal network of HP. Two providers started using access to the network in 2018, while the provider that first started using access to the network stopped using the service in the course of 2017. Developments in the number of interchangeable postal services providers, which can also use access to the network, show that only a small number of them used this possibility, while the majority used their own network.

Access to the HP postal network was enabled only for items from the segment of interchangeable postal services (correspondence items of up to 2 kg, registered mail and insured items and parcels of up to 10 kg). For the above types of services, additional services could not be used, which are usually used for the universal service (e.g. return receipt, cash-on-delivery/*remboursement*). In addition to other providers, HP is also the provider of interchangeable postal services.

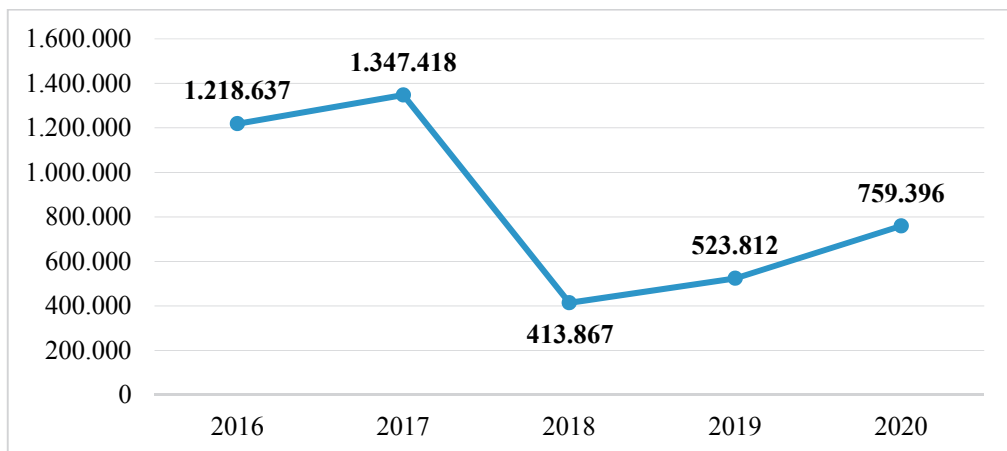


*Graph 1 Number of interchangeable postal services*

In the period from 2016 to 2020, the number of interchangeable postal services decreased by 18%. The share of interchangeable postal services in access to the network ranged from 1.1% in 2018 to 2.8% in 2017. If the share of services through access to the network rendered by other providers (excluding HP), their share in interchangeable postal services ranged from 7.4% in 2016 to 27% in 2020.

The shown trend in the number of services in access to the HP network indicates that the number of services increased moderately over the past two years, although it fell by about 38% relative to 2016. Of the total number of services rendered through access to

the network in 2020, providers accounted for 68.5%, while the items of consolidators accounted for the remaining percentage.



*Graph 2 Number of services provided through access to the HP network*

All of the above data indicate a weak demand for the service of access to the postal network in the postal services market in the manner provided/offered by HP.

A further analysis also referred to the existing HP's rebate policy (discounts) in relation to access to the network, which has also proved to be one of the limiting factors in the use of access. The existing rebate policy was based on the model that included data on the distribution of costs of operating activities and unit quantities of letters of up to 50 grams in the internal traffic according to the HP's ABC model from 2011. The discount amount depended on access points, type of items, the degree of processing and activities that the activities the access users performed instead of HP. The analysis has established that the applicable rebate policy does not correspond to the current situation in the postal services market, primarily due to the use of outdated information, as the data used dated back to 2011, although there are new and revised data. In addition, discounts are not based on actually generated and potential additional savings and they are not equally valued in access to the network and the universal service, so that universal service users have much larger discounts for the same structure of operating costs than access users. There are also no discounts on quantity, as a result of which access users do not have equal opportunities as universal service users. As a result of the above, it was necessary to make a correction of the existing model with the objective of eliminating certain limitations and creating equal conditions for users.

Finally, the prices of access to the network were also analysed, which were based on the corresponding prices for universal service items reduced by the discount plus VAT in the amount of 25%. According to certain data, it was evident that network access users with their prices were not at all competitive in the postal services market, that is, they did not have a sufficient economic space in order to compete with HP. In other words, it is more affordable to a network access user to use the full end-to-end service from HP than to use the service of access to the network. Thus, it was concluded that such HP's pricing

policy represents a significant obstacle to the use and strengthening of demand for the service of access to the postal network in the Republic of Croatia.

### **3 Follow-up activities and measures**

The analysis has undoubtedly identified technological and administrative as well as economic barriers in the current model of access to the HP's postal network, which, consequently, represent a significant obstacle to a larger use of the above services as well as its future development and, overall, a further development of the services in this specific segment of the postal services market in the HR.

Having in mind the analysed provisions of legislative provisions and the provisions of subordinate legislation, as well as the competences arising from the above regulations, HAKOM had a limited space to act directly with regard to access to the network, i.e. in one of the following ways:

- use the opportunity to adopt a HAKOM's regulatory decision on access to the network;
- in the form of an Ordinance, take a decision to amend or terminate the prices of access to the postal network in entirety or partially;
- intensify business cooperation with the national competition authority (Croatian Competition Agency, CCA);
- request and/or implement an intervention in the existing legislative and regulatory framework.

In 2021, in the period after the conducted analysis, based on the powers and competences stipulated by the PSA, HAKOM opted for a limited intervention into the regulatory framework through the procedure of adoption of amendments to the Ordinance. The decision was made, in addition to other things, because it is not realistic to expect any amendments to be made to the provisions of the PSA due to the circumstances anticipated in the forthcoming period, including the amendments to the provisions of access to the postal network. This procedure will enable amendments to be made to or even cancel certain provisions and conditions for access to the HP's postal network by amending them and expanding the offer of services enabling access to the postal network and the use of additional services so that they are also used in the universal service. In this way, most of the identified obstacles/barriers would be de facto removed and, as a result, access to the postal network would be made more attractive and affordable for use to a larger number of users. It would also have an effect on the increase in demand for the services of access to the postal network.

In the process of defining the necessary amendments to the Ordinance, the applicable legislation and the current case-law defining the area of postal services in the EU member states were studied, with emphasis to the postal network. A number of working meetings and consultations were held with HP representatives and existing access users. Two public consultations were also held, which resulted in the drafting of the final text of the Ordinance on amendments to the Ordinance on the provision of universal service.

In the Ordinance on amendments to the Ordinance on the provision of universal service, in the part regulating access to the postal network, the regulatory and mediatory role of HAKOM has been strengthened, the current access points and the models/modes of



the use of access points have been redefined, as well as the principle of pricing for the service of access to the postal network and the rights and obligations of HP as the giver and provider of services of access to the postal network, including any potential reasons for the rejection of access. In addition, other conditions of use of the service of access have been amended, such as the option to use additional services in access to the network.

Acting according to the amendments to the Ordinance, after its entry into force at the end of September 2021, HP completely changed the existing Reference Offer for access to the postal network by adopting new Terms and Conditions for access to the postal network, in which it determined new access points, changed the existing rebate policy and the pricing for the service of access to the postal network. In the offer of its services, HP enabled the use of additional services for which there are in place technical and technological possibilities and it adjusted the administrative conditions for the use of the above services.

#### **4 Conclusion**

In 2020, HAKOM launched a project to analyse access to the postal network of HP, the universal service provider, with an aim to establish any potential obstacles and/or limitations in the use of the existing HP's postal network and to prepare proposals and activities to eliminate the identified obstacles and/or limitations and, consequently, to provide incentives for a further development of the postal services market in the segment of items of correspondence and an overall strengthening of competition of all stakeholders.

The conducted analysis has indicated specific problems in the use of the services of access to the postal network, which, as established, represented a significant obstacle to a more extensive use of the mentioned service and also resulted in an insufficient/unsatisfactory interest of users for its use. In addition, the analysis has shown that there is a considerable space for improvement of the manner, model and capacity for the use of the mentioned services. In order to address them, specific measures and activities are proposed to be taken by HAKOM as the national regulatory authority with regard to HP as the provider of the universal service, providing the service of access to the postal network, with the goal to increase the use of the service, its overall competitiveness and, consequently, a further development of competition in the field of postal services.

As the final result of the analysis, in the third quarter of 2021, HAKOM partially amended the regulatory framework by the adoption of amendments to the Ordinance on the provision of universal service, following which, HP adopted the new Terms and Conditions for access to the HP postal network and the accompanying price list in December 2021.

#### **References**

- [1] Croatian Parliament *Postal Services Act*. Zagreb: Official Gazette 144/12, 153/13, 78/15, 110/19
- [2] Croatian Parliament *Ordinance on the provision of universal service*. Zagreb: Official Gazette 41/13, 103/21
- [3] European Parliament (1998) *Directive 97/67/EC of the European Parliament and of the Council on common rules for the development of the internal market of Community postal services and the improvement of quality of service*. Strasbourg: OJ L 15/14

- [4] European Parliament (2002) *Directive 2002/39/EC of the European Parliament and of the Council on amending Directive 97/67/EC with regard to the further opening to competition of Community postal services*. Strasbourg: OJ L 176
- [5] European Parliament (2008) *Directive 2008/6/EC of the European Parliament and of the Council amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services*. Strasbourg: OJ L 52
- [6] European Commission (2012) *Report on "access" to the postal network and elements of postal infrastructure*. Bruxelles: ERGP
- [7] [https://www.hakom.hr/UserDocsImages/2013/propisi\\_pravilnici\\_zakoni/Pravilnik%20o%20obavljanju%20univerzalne%20usluge%20NN%2041\\_13.pdf?vel=13316](https://www.hakom.hr/UserDocsImages/2013/propisi_pravilnici_zakoni/Pravilnik%20o%20obavljanju%20univerzalne%20usluge%20NN%2041_13.pdf?vel=13316)
- [8] <https://www.hakom.hr/hr/godisnji-podaci/9444>
- [9] [https://www.posta.hr/UserDocsImages/hp/glavne-kategorije/postanske-usluge/poslovni/Pristup\\_mrezi/STANDARDNA-PONUDA-HP-HRVATSKE-POSTE-D-D-20170101.pdf](https://www.posta.hr/UserDocsImages/hp/glavne-kategorije/postanske-usluge/poslovni/Pristup_mrezi/STANDARDNA-PONUDA-HP-HRVATSKE-POSTE-D-D-20170101.pdf)
- [10] <https://www.posta.hr/pristup-postanskoj-mrezi-242/242>

**Sažetak:** *Pristup poštanskoj mreži jedna je od obveza davatelja univerzalne usluga na otvorenom tržištu, a određena je Poštanskom direktivom EU-a. Stanje na tržištu poštanskih usluga u Republici Hrvatskoj pokazalo je potrebu za redefiniranjem postojećeg modela pristupa poštanskoj mreži što je rezultiralo analizom pristupa poštanskoj mreži. U članku je prikazana provedena analiza kojom su utvrđene konkretne prepreke i barijere za veće korištenje usluge pristupa poštanskoj mreži te prijedlozi i provedene regulatorne mjere za prilagodbu postojećeg modela i uvjeta pristupa, a sve s ciljem da isti budu jasni, transparentni i poticajni za korisnike pristupa te posljedično i razvoja tržišnog natjecanja u području poštanskih usluga u Republici Hrvatskoj.*

**Ključne riječi:** *pristup poštanskoj mreži, tržište poštanskih usluga, analiza*

## **ANALIZA PRISTUPA POŠTANSKOJ MREŽI DAVATELJA UNIVERZALNE USLUGE**

Andrej Sardelić, Stjepan Paler