

PostEurop position paper on the Commission's proposal for a Regulation of cross- border parcel delivery

Brussels, 16 January 2017

In many Member States the delivery sector is extremely competitive, in others competition is growing, incl. cross-border delivery services. There are lots of players on the market: pan-European operators, integrators and local or regional competitors. Big e-retailers like Amazon are entering the delivery market and disruptive players like Uber are creating completely new challenges for the sector. PostEurop's members welcome competition and respond to competition by investing into new services and innovative solutions to best serve their customers.

As part of this, PostEurop supports the Commission's work to develop the European digital single market and to foster e-commerce. In a European-wide initiative, PostEurop's members have made significant investments to improve cross-border parcel delivery in response to the concerns addressed by the European Commission in the 2012 Green Paper ("An integrated parcel delivery market for the growth of e-commerce in the EU", COM (2012) 689). These improvements include for instance alternative delivery options like parcel lockers and easy solutions for returning cross-border shipments. The European Commission and the European Parliament have welcomed the progress PostEurop's members have made and the Parliament noted "that the European postal operators have invested in up-grading network interconnectivity and introduced innovative, user-friendly services to consumers and SME e-retailers" (Report on the application of the Postal Services Directive (2016/2010)).

In this scenario, any new disproportionate regulation not supported by sound economic evidence would threaten the sector's development and discourage operators' investments instead of promoting competition.

According to the Commission, complementary measures are necessary to improve price transparency and enhance regulatory oversight. PostEurop can agree on more consistent market monitoring, so that regulatory authorities have a better understanding of market developments. PostEurop can also agree to more price transparency, understood as the publication of public list prices.

However PostEurop and its members are opposed to providing terminal rates, highly confidential and commercially sensitive business data, and the requirement for national regulators to assess the affordability of the posts' prices, independently of the local situation. Moreover, PostEurop is opposed to the unconditional third party access to USPs' multilateral agreements. These measures are disproportionate and fail to reflect the competitive nature of the market, they also increase costs and red tape.

Article 3 – PostEurop supports the information requirements

PostEurop's members have no objection to collecting market data for the purpose of market monitoring. However, it needs to be ensured that the effort and expense involved for the parcel delivery service providers is proportionate. Providers should not be required to report data they do not have or are not legally responsible for (e.g. on subcontractors) and only small-scale operators should be exempt. Finally, confidential treatment of data must be assured given the sensitive nature of the information involved.

Article 4 – the posts have a history of price transparency

PostEurop can support price transparency, understood as publishing and comparing public list prices for domestic and cross-border services across Europe, the posts already publish their public list prices under the Postal Services Directive. However, PostEurop does not have a common position on whether price transparency should apply to all operators active in the market or only to universal service providers.

Article 4 – the posts are opposed to provide the regulator with their terminal rates

There is no justification for unconditionally requiring the posts to provide their regulator with their terminal rates, the payments they charge each other for final delivery. Under no circumstances should these be shared with other regulators because they are highly confidential and commercially sensitive.

Under the Commission's proposal, universal service providers (PostEurop's members) are required to make terminal rates annually available to the Commission and the 28 national regulatory authorities. Terminal rates are highly sensitive business data. In our days an effective protection of sensitive data cannot be ensured. In such a situation, terminal rates should be required only where actually needed.

The Commission acknowledges that the rates are only required for the affordability assessment but affordability relates more to what the consumer is able to pay, less to the underlying costs, and the annual affordability assessment on all prices goes too far. Moreover, the terminal rates a USP charges and receives from another USP for final delivery are retrievable from its internal accounts, therefore there is no need to communicate such information in advance, or to other national regulatory authorities and the Commission.

Article 5 – the affordability assessment should focus only on problem prices

The Commission's proposal requires national regulatory authorities to conduct affordability assessments on an annual basis, irrespective of the local situation and absence of any indication that tariffs might not be affordable. This is contrary to the guidelines set out in the Joint BEREK-ERGP opinion of 3 December 2015 on price transparency that concludes "appropriate identification of evidence of problem and its analysis together with a clear impact assessment would be needed prior to the introduction of any of the discussed measures."

The affordability assessment as proposed by the Commission involves significant resources and costs for the universal service providers as well as for the national authorities. It also undermines the posts' pricing strategies, thereby restricting their ability to compete in what is a highly competitive market. As drafted, the assessment is also entirely disproportionate because, as repeatedly stated, the Commission expects only 5 to 10 % of the tariffs to fail the affordability assessment.

Therefore, the national regulatory authorities should decide, based on their market knowledge, whether an affordability assessment is needed. For instance, where tariffs are already subject to regulation such as price caps, further affordability assessments appear redundant (the “once only” principle). The same applies where competition exists. It is for the national regulator to determine what affordability means in the national context.

As a second step, if the national regulator finds tariffs are unaffordable, it may require further information or justification for the level of the respective tariffs. That way, unnecessary costs and red tape will be avoided while problems where they might exist are made transparent.

Finally, PostEurop would suggest that only non-confidential versions of assessments should be shared with the Commission and the other national regulatory authorities to protect the information contained within (see above).

Article 6 – there is no need to mandate access to multilateral agreements

The Commission’s proposal mandates universal service providers to grant third party access to their multilateral agreements on terminal rates and to publish a reference offer subject to approval by the national regulatory authorities.

Cross-border delivery is provided through a variety of networks and agreements. Many players are on the market, including cross-border service providers. In many countries the market is highly competitive, characterized by low barriers to entry, and we are seeing a number of new entrants looking to increase market share. National posts, besides co-operating with their counterparts across the border, partner with other operators and networks.

In this context, PostEurop does not see any justification for a sector-specific provision on third party access to its members’ multilateral agreements. In a free market like the delivery market, agreements and access to agreements are and should be part of normal commercial negotiations. No market failure has been demonstrated. Furthermore, general competition law already provides for access to multilateral agreements under certain conditions.

Conclusion

Better regulation implies acting only where necessary and in a way that does not go beyond what is needed to resolve the problem. Given the highly competitive situation of the European parcel delivery markets, PostEurop demands a more proportionate approach.

PostEurop can agree on greater market monitoring, allowing national regulatory authorities to have a better overview of the market and developments, and to the publication of public list prices. However there is absolutely no need to provide and share highly confidential and commercially sensitive data. There is also no need for universal service providers to commit significant resources and costs to justify their prices every year, or for sector-specific regulations to mandate access to multilateral agreements.

In short, PostEurop asks for a more proportionate and more targeted approach that better reflects market conditions. This will enable the posts to better serve their customers, including consumers and small businesses.

This position paper is supported by the following PostEurop Members:

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Austria	Österreichische Post AG
Belgium	bpost
Bulgaria	Bulgarian Posts plc
Croatia	Hrvatska pošta d.d.
Czechia	Česká Pošta
Cyprus	Cyprus Post
Denmark	Post Danmark A/S
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Hungary	Magyar Posta
Iceland	Iceland Post
Ireland	An Post
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Sweden	Posten AB
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For further information and action please contact:

Ms Katja Kollmeier
Chair of the PostEurop E-Commerce Green Paper Working Group
E: k.kollmeier@dphl.com

Association of European Public Postal Operators AISBL

Association des Opérateurs Postaux Publics Européens AISBL

PostEurop is the association which represents the interest of 52 European public postal operators. Committed to supporting and developing a sustainable and competitive European postal communication market accessible to all customers and ensuring a modern and affordable universal service, PostEurop promotes cooperation and innovation bringing added value to the European postal industry. Its members represent 2.1 million employees across Europe and serve to 800 million customers daily through over 175,000 counters. PostEurop is also an officially recognised Restricted Union of the Universal Postal Union (UPU).