



ERGP (12) 36 Annex – synthesis of the public consultation

**Synthesis of the public consultation
on the draft ERGP report on “access” to the postal network and elements of
postal infrastructure**

August/ September 2012

The ERGP held a public consultation on its draft report on “access” to the postal network and elements of postal infrastructure from 16 August to 11 September 2012.

The ERGP received replies from the Communication Workers Union (CWU), the Free and Fair Post Initiative (FFPI), La Poste, Österreichische Post AG, the Postal Users Group (PUG), Post Danmark A/S, PostNL and UNI Europa Post & Logistics.

These responses are synthesized in this document; the final version of the report¹ takes into account the suggestions made to the ERGP regarding access to the postal network and elements of postal infrastructure. These responses are available at the following hyperlink: http://ec.europa.eu/internal_market/ergp/documentation/consultations_en.htm.

The ERGP appreciates all comments given and has integrated them into the report where appropriate. Nevertheless, some comments refer to issues not related to the group’s mandate, particularly noting that the group’s work is at ‘stocktaking’ stage and not, for the large part, the stage of forming recommendations.

The comments received

1.

Post Danmark A/S and Österreichische Post AG asked for precisions of statements relating to their current specific situation. After consultation with the Danish regulator the change requested by Post Danmark has been incorporated with slightly modified wording. The changes requested by Österreichische Post relate to replies to the questionnaire sent to the Austrian regulator. After checking these changes with the regulator, where the view of Österreichische Post differs, this has been indicated in a footnote.

2.

La Poste agreed that the aim of the group’s work should not be to advocate one access regime for all countries but to generally identify elements of best practice. However, La Poste felt that the draft report unfairly criticised the French mail house market, which La Poste sees as one of the most successful European models, due notably to the large number of companies and to the fact that access is provided on a voluntary basis. Although the group notes that the number of companies and the voluntary nature of access could, but do not necessarily create a more effective upstream market, the aim of the group was not to evaluate the success of the models currently in place.

Secondly, for La Poste, the report sometimes erroneously implies (and contrary to the Vedat Deniz case) that commercial discounts would be “special tariffs” as provided for by the directive (the latter being, rather, operational discounts based on avoided cost). La Poste

¹ http://ec.europa.eu/internal_market/ergp/docs/documentation/2012/121130_ergp-12-36-access-postal-network-report_en.pdf.



ERGP (12) 36 Annex – synthesis of the public consultation

also stressed, contrary to one statement in the report, that an operator could not, in practice, pass off rebates for mail preparation as commercial rebates. These comments refer simply to two paragraphs, which the group has lightly amended.

Finally, La Poste stressed that the postal infrastructure has been overwhelmingly considered not to be an essential facility. Indeed, La Poste argues that sunk cost are necessarily low since labour represents the majority of costs and, as such, most analysts have considered that entry barriers in the postal sector do not prevent the creation of new delivery networks. La Poste notes that economies of scale alone do not create an essential facility. La Poste cites a number of studies a certain case law justifying this view. The group recognises that there are different views on this point, but notes that it was not its role to resolve this issue.

3.

PostNL stresses (noting, however, that the current report aims to ‘stocktake’ the different approaches in the European Union) that examining the compatibility of these approaches with the Directive and the Vedat Deniz case would be a necessary step before a policy discussion on access regulation could be started.

4.

The CWU believes that there is potential value in the work of ERGP but considers that the report paints an incomplete picture. The CWU comments criticise the access regime existing at the national level in the UK. Firstly, the CWU considers that the regime forced Royal Mail to operate at a loss, and so undermined provision of the universal service. Indeed, for the CWU, the regulator’s assessment of costs led to prices being fixed below marginal cost. The consequences of this pricing, again in the CWU’s view, were a loss of business for Royal Mail and the subsidising of competitors’ operations., the group’s work was not to examine the effect of the UK regime, or of any national regime, on the universal service. On this same point, the group notes that Royal Mail used an avoided cost concept, which is that generally used in a context of universal service provision. Finally, the group notes that the directive, in the context of a competitive market with possible access provision, establishes clear mechanisms for ensuring the safeguarding of the universal service.

5.

The FFPI stressed that the REIMS agreements were not in line with European competition law. The group did not examine cross-border mail delivery. Indeed, the current report is limited to issues of access to the national postal network and infrastructure in a non-discriminatory and transparent manner.

6.

PUG underlines the necessity of ensuring reasonable access to, for example, postcode systems, delivery boxes and redirections data and to ensuring that this access is non-discriminatory and transparent in nature. PUG makes two specific comments regarding dispute resolution and volume information. As regards dispute resolution, PUG stresses that the decision period should not last more than 3 months. As regards volume information, to which the group had limited access, PUG encourages a system to allow NRAs to receive comprehensive volume data from operators. Noting that postal volumes are in decline, PUG underlines that social arguments nevertheless should not be used to prevent fair competition. Finally, PUG argues for a strict limitation of VAT exemptions to universal service products.

7.



ERGP (12) 36 Annex – synthesis of the public consultation

UNI Europa Post & Logistics (UNI) criticises an access regime forcing incumbents to open up their network without sufficient incentives for new postal operators to create their own network. They feel that the report lacks comment on the perspective of residential customers and their access to postal services, for example via the number of access points. UNI stresses that access must, in all cases, maintain satisfactory working conditions and service quality. UNI also considers that all postal operators in the market should publish all special prices, including discounts and conditions or rebates, for all big customers, intermediaries, consolidators, and residential customers.

Both PUG and UNI make a number of general principles that are broadly in line with the group's work. As regards the comment made by UNI concerning residential customers, the group notes the importance of access by the general public to postal services of quality but stresses that its role was to consider access by business customers and other operators. Secondly as regards UNI's comment on working conditions, application of the concept of avoided costs should ensure that the labour costs are met.