



FFPI Contribution to the consultation on the ERGP Report on “Access” to the postal network and elements of postal infrastructure

- I. The Free and Fair Post Initiative (FFPI) welcomes the [report](#) published by the European Regulators Group for Postal Services (ERGP) on the “access” to the postal network and elements of postal infrastructure.

The report outlines the current EU legal framework and the different regulatory approaches as regards the access to the postal infrastructure in each of the EU Member States, with the view to act as an instrument to develop best practices of consistent access regimes.

- II. Given the importance of the aforesaid exercise, the FFPI members welcome the launch of a [consultation](#) on this report and thus the opportunity to highlight and raise concerns on any non-competitive strategy and potentially abusive behaviour which impact the “access” to the postal facilities.

In this context, the FFPI wishes to provide the following comments mainly addressing the application of the competition rules to the postal sector and in particular by referring to the section entitled “**Part 1: Legal framework and outcome of the questionnaire**” of the ERGP report.

❖ Application of competition rules to the postal sector: the REIMS Agreement

- III. As mentioned above, the ERGP report is the result of the Group’s assessment of the current regulatory practice concerning any “access” to the postal network and infrastructure in its different aspects (operational, legal, technical, etc.). Such regulatory tool is of essential importance when the need to ensure a fair level playing field and the most favourable competitive environment is at stake.
- IV. The promotion and safeguard of effective competition in the postal services sector is one of the core tasks of the European Commission and in particular of the Directorate General on Competition (DG COMP). In parallel with the liberalisation of the postal market, the Commission assesses the anti-competitive behaviour in the postal services markets, monitors State aid to the postal services sector, and contributes to the development of State aid policy in this field.
- V. Two are the central rules set out by the Treaty on the Functioning of the EU (TFEU) that the European Commission is empowered to apply with the aim to protect and encourage competition across the EU: Article 101 and Article 102.

As highlighted in the ERGP report, **Article 101** prohibits agreements between two or more independent market operators that restrict competition, e.g. a cartel between competitors which may involve price-fixing and/or market sharing. This provision covers both horizontal agreements (between actual or potential competitors operating at the same level of the supply chain) and vertical agreements (between firms operating at different levels, i.e. agreement between a manufacturer and its distributor). **Article 102**, instead, prohibits firms holding a dominant position on a determined market to abuse that position, for example by charging unfair prices, by limiting production, or by refusing to innovate to the prejudice of consumers.



VI. Although the ERGP report does not have the objective to focus on the enforcement of the competition rules, the FFPI members stress that the description of the current legal framework as well as of the *status quo* of issues like access conditions, interoperability and quality requirements in the different EU countries, cannot be carried out without taking into consideration the nature and implications of the **REIMS Agreement** (the Remuneration of Mandatory Deliveries of Cross-Border Mails). If one of the objectives of the ERGP exercise is to start considering when regulatory intervention is necessary, specific attention must be devoted to the **cross-border mail delivery sector**, from which direct benefits may derive for consumers, postal operators and the Single Market as a whole.

VII. Legally speaking, a system such as the REIMS Agreement establishing a common level of Terminal Dues (TDs) - i.e. the remuneration that Public Postal Operators (PPOs) pay each other for the delivery of incoming cross-border mail in the country of destination - falls under the cartel prohibition of Article 101 of TFEU. Although the absolute amounts of TDs are not fixed, the automatic fixation of the TDs as a percentage of the tariff for the domestic delivery reduces the signatories' freedom to set the prices for the delivery of incoming cross-border mail.

On two occasions, however, the European Commission decided to exempt terminal dues from the prohibition on cartels in the light of the improvements produced by the REIMS Agreement in terms of higher quality cross-border mail services and a closer alignment of the remuneration toward the actual cost of mail delivery, thus reducing the cross-subsidises previously necessary to cover losses incurred in delivery of cross-border mail.

VIII. In October 2003, the European Commission adopted a decision in Case [COMP/C/38.170](#) - REIMS II re-notification - prolonging for an additional **five years** the exemption of the REIMS II Agreement by which seventeen European Public Postal Operators collectively determined the terminal dues.

In September 1999 the Commission had already exempted the REIMS II Agreement for a period of two years expiring in December 2001.

IX. In 2003, the decision to renovate the exemption from the prohibition of cartels pursuant to **Article 101(3) TFEU** (ex Article 81(3)) was based on two main elements: (i) the acknowledgment of the effective benefits for consumers as a result of the implementation of the agreement, and (ii) the strict requirements imposed on the parties in the decision, **notably the decision to condition the exemption to the awarding to third parties of a non-discriminatory access to REIMS II delivery terms and conditions**. The aim was furthermore to ensure that new entrants on the liberalised markets for outgoing cross-border mail could be able to enjoy the same terms for the delivery of incoming cross border mail as the REIMS II parties. **A condition that is not respected in practice**.

X. All market players in the postal sector need to have a direct, transparent, non-discriminatory access to the international postal exchange rates. In order to drive the future growth of postal services, a fair level playing field between the incumbents and the relevant competitors needs to be in place. In order to release the true potential of a postal Single Market, market operators should be able to offer services like the collection of mails/parcels, the international transaction's processing and the service returns' management in a seamless and fully integrated manner. High-performance and innovative online and postal services have a unique capacity to stimulate growth and employment in Europe and European consumers will be the first benefiting from them in terms of increased choice and better quality services.



The FFPI members are active in all of the areas encompassed in the definition of postal services, i.e. from letters to parcels to value-added services, and despite the efforts made to reduce the number of barriers to the access to the postal infrastructures and networks, the FFPI members still face anticompetitive behaviours limiting the growth and European consumer choice.

- XI.** A concrete example in this context is the case of the delivery of **light weight parcels** between 0,5 - 2 kg, for which major postal EU operators benefit from a preferential treatment practice by taking advantage of the letter post remuneration structure under the REIMS, while, in most cases, (even light weight) parcels are processed in parcel networks. **As a result, postal incumbents, thanks to their “cartel” agreement, are able to provide parcel services to each other for a letter price.** Most of the postal alternatives operators do not have access to the same price and are therefore discriminated.

In the light of the above consideration, the FFPI asks the ERGP to take into account in its report the challenges faced by third-party operators private companies that are not postal incumbents in their **access to the cross-border mail sector**. In its evaluation exercise of the current EU legal framework and of the different regulatory approaches on “access” in each EU Member State, the Group should carefully assess and **include** in its report the elements of the postal infrastructure that those operators need to have access to when acting as “consolidators”, thus to be able to compete at international level.

To this end, the FFPI members call for a detailed assessment of the conditions set out by the REIMS Agreement, and in particular of the cross-border shipments, the cost structures, the remuneration schemes and the real cost levels of international (return) parcel shipments. Such an assessment could serve as a basis for any investigation that the European Commission may decide to carry out to determine whether the REIMS Agreement is still compatible with the EU competition rules.

- XII.** The FFPI members will of course remain available in case any further clarifications is needed. In addition, the FFPI members welcome any other opportunity to provide the ERGP with further detailed information, given that, due the short deadline of the consultation, at this time, they were not in the position to submit a more comprehensive response.

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