



ERGP (14) 26, Opinion parcel delivery

## **European cross-border e-commerce parcels delivery**

### **2014 ERGP opinion to the European Commission**

#### **On a better understanding of European cross-border e-commerce parcels delivery markets and the functioning of competition on these markets**

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## INTRODUCTION

The aim of the ERGP was to help the European Commission (EC) implement the regulatory aspects of its 2013 roadmap<sup>1</sup> for completing the single market for parcels delivery by providing advice on: (i) the general functioning of European cross-border parcels delivery markets (competitive situation, consumer conditions, possible market failures); (ii) the form (features, feasibility and necessity of different possibilities) that a framework for collecting statistical information on domestic and cross border parcels delivery might take; and (iii) other aspects of the roadmap that concern national regulatory authorities, notably a high-level analysis of consumer complaints related to European cross-border parcels delivery.

As background, the EC is working on building consumer trust in the e-commerce environment, which comprises several aspects (including payment, parcel delivery, transparency, consumer protection and information). The Digital Agenda for Europe<sup>2</sup>, of which the overall aim is to deliver sustainable economic and social benefits from a digital single market based on fast and ultra-fast internet and interoperable applications, fixes thirteen key performance targets, of which one is that 20% of the population will buy online cross-border by 2015<sup>3</sup>.

The EC has released several related documents (January 2012 e-commerce communication on building consumer trust<sup>4</sup>, November 2012 green paper on an integrated parcels delivery market addressing issues specific to delivery to help facilitate e-commerce<sup>5</sup>, December 2013 roadmap for completing the single market for parcel delivery<sup>6</sup>). The current request to the ERGP stems broadly from the same overall aim of creating trust in the single digital market for e-commerce and online services and relates specifically to the role of delivery services in this context. It is based on the actions pertinent for regulators in the roadmap. The EC has highlighted that, while e-commerce is fast growing in all areas, only a limited proportion of online buying is cross-border. It reports, in the Digital Agenda Progress Report, that, on an EU average, cross-border online purchases were made by only 12% of citizens in 2013, noting that smaller member states have higher rates of cross-border shopping and higher growth in this rate.<sup>7</sup>

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<sup>1</sup> Communication from the Commission (COM(2013) 886 final) of 16 December 2013, *A roadmap for completing the single market for parcel delivery. Build trust in delivery services and encourage online sales.*

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (COM(2010) 245 final/2) of 26 August 2010, *A Digital Agenda for Europe* : <http://ec.europa.eu/digital-agenda/about-our-goals> and <http://ec.europa.eu/digital-agenda/digital-agenda-europe>.

<sup>3</sup> Baseline: In 2009, 8 % of individuals aged 16-74 had ordered goods or services from sellers from other EU countries in the last 12 months.

<sup>4</sup> [http://europa.eu/rapid/press-release\\_IP-12-10\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-10_en.htm?locale=en). In its 2012 communication, the EC indicates obstacles concerning transparency, payment, delivery, consumer protection, dispute resolution, illegal content and legal cross-border supply. It sees opportunities in addressing these issues for employment, growth, and cohesion (better access to goods for geographically isolated or vulnerable people).

<sup>5</sup> [http://ec.europa.eu/internal\\_market/consultations/docs/2012/parcel-delivery/121129\\_green-paper-parcel-delivery\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2012/parcel-delivery/121129_green-paper-parcel-delivery_en.pdf)

<sup>6</sup> See footnote 1 above. The ERGP notes that the European Economic and Social Committee issued an opinion on the EC's roadmap for completing the single market for parcel delivery on 10 July 2014 (<https://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=https%3A%2F%2Foad.eesc.europa.eu%2Fviewdoc.aspx%3Fdoc%3Dces%2Fint%2Fint727%2Fen%2Feesc-2014-00759-00-00-ac-tra-en.doc&ei=pqVPVOu1GdLaasWxgvAF&usq=AFQjCNElBobEpp40M8GAqEkjZILSYBYrQ&bvm=bv.77880786,d.d2s&cad=rja>). The opinion is not detailed or analysed in the current report, but could, as relevant, be taken into account for future ERGP work.

<sup>7</sup> Digital Agenda Progress Report 2014 : <https://ec.europa.eu/digital-agenda/en/news/scoreboard-2014-progress-report-digital-agenda-targets-2014>

The aim of the ERGP was not to collect detailed market data (which, as noted in the 2013 report, countries do not generally have for parcel delivery) or to recommend which entity may be best placed to do so, but to provide advice to the Commission on markets and the form its data collection framework could take. The aim was also not to undertake a fully-fledged market analysis of cross-border parcels delivery markets in a competition law sense.

In 2013, the ERGP noted that, at this stage, it had no indication of a specific competition problem on European cross-border e-commerce parcels delivery markets that may be best dealt with by ex-ante regulation. However, it was generally accepted that the market(s) concerned were not well known and that it could be useful to look further (in a limited fashion) at them to better understand them and to ensure they do develop effectively of their own accord.

To assist its consideration, the ERGP sent a questionnaire to its member and observer national regulatory authorities (NRAs) in March 2014, receiving 31 replies. The current report is based on analysis of the replies to the questionnaire and feedback from internal meetings, supplemented by information in certain publically available documents, notably those relating to legal cases or studies on e-commerce and parcel delivery in Europe.

The report focuses on delivery of e-commerce parcels sent by businesses to individuals. It considers markets from a competition law perspective (substitutable offers) and thus is not limited to universal service products or postal market definitions where they are not based on substitutes in a competition law or market analysis sense. If the report looks at markets from a market analysis (substitutes) viewpoint, it remains however a report from the perspective of ex-ante (not ex-post) regulators. The group looks at markets from a European-wide perspective, forms hypothesis and, even in the context of these hypothesis, notes that individual members states may see national specificities in their markets that may lead to different conclusions at a national level. As noted in the 2013 report, it is important to note that the group is looking at European cross border e-commerce parcels *delivery* markets (for which the buyer of the delivery service is generally the online seller) and not at e-commerce markets per se<sup>8</sup>.

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<sup>8</sup> For a discussion of this issue, see *ERGP opinion requested by the European Commission: European cross-border e-commerce parcels delivery and questions related to market analysis*, ERGP, 2013, P13: [http://ec.europa.eu/internal\\_market/ergp/docs/documentation/2013/131129\\_cross-border-parcel\\_en.pdf](http://ec.europa.eu/internal_market/ergp/docs/documentation/2013/131129_cross-border-parcel_en.pdf).

## *I. THE GENERAL FUNCTIONING OF COMPETITION ON EUROPEAN CROSS-BORDER PARCELS DELIVERY MARKETS*

This section is descriptive, based on NRAs' replies to the 2014 questionnaire supported by information from literature and case law. It aims to identify the characteristics of the markets that cross-border parcel delivery belongs to (what these markets broadly are and what form competition broadly takes on them). As expected, few NRAs have detailed information on these markets, which are generally not the focus of their responsibilities, but an analysis of the replies has allowed the ERGP to form certain hypotheses. As in the 2013 work, there is no clear indication at this stage of a specific competition problem on European cross-border e-commerce parcels delivery markets that may be best dealt with by ex-ante regulation throughout the EU<sup>9</sup>.

### **a. The form markets broadly take (possible market boundaries)**

Understanding the competitive situation on cross-border parcels delivery markets requires having a common understanding of the characteristics (boundaries) of these markets. Many NRAs have a limited mandate to monitor the cross-border parcels segment, and full market analysis is rarely used by postal regulators<sup>10</sup>. However, as noted above, their replies do allow certain hypotheses to be drawn. The group asked several questions to better understand what the boundaries of cross-border parcels delivery markets may be (that is, what offers may be seen as substitutable by parcels delivery buyers (online sellers))<sup>11</sup>. The replies are indicative of the market situation only. In the absence of formal analysis, NRAs were asked to indicate if they generally agreed. In particular, two questions related to whether express parcels delivery offers would be a substitute for standard (or "deferred") delivery (which could result in a much broader market definition) or not and whether parcels delivery offers sent individually, including those sent individually by small businesses, and offers sent in bulk would be two separate markets.

#### *Express offers as a substitute for standard delivery*

As in 2013, there is a fairly strong view that express parcels delivery (delivery in 1 day or less) is unlikely to be a substitute for standard delivery (in 2 to 3 days) and that, in general, standard delivery is likely to be sufficient for e-commerce parcels delivery buyers (online sellers), whose clients (online buyers) do not need the parcel to arrive very quickly and are not prepared to pay for quicker delivery. Of the 31 replies received from NRAs to the 2014 questionnaire, 18 agreed, two disagreed, eight were unable or did not wish to reply, and three indicated that their reply would depend on, for example, the prices of the services or the results of formal market analysis.

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<sup>9</sup> The ERGP is, with all similar phrases in the report, referring to uniform (throughout the EU) regulation of cross-border parcels delivery markets as a whole (markets as defined by formal market definition). Current ex-regulation in the postal sector includes a basic parcels offer via the USO.

<sup>10</sup> Again, formal market analysis is generally not used for regulation in the postal sector and, although its work is broadly based on principles of market analysis, the ERGP has not carried out formal market analysis.

<sup>11</sup> See notably question 12 of the group's 2014 questionnaire.

It was, however, also mentioned that the substitutability of express offers and standard parcels delivery could be different for domestic and cross-border parcels delivery. Indeed, as an example only, it may be that standard and express offers are substitutes at a cross-border level but not at a domestic level.

*Table 1:*

<b>What cross-border parcels delivery offers may be seen as substitutable by parcels delivery buyers (that is online sellers) and what the discriminating features are for their choice: <i>Express parcels delivery (delivery in 1 day or less) is likely not a substitute for standard delivery (in 2 to 3 days). In general, 2-3 day delivery is likely sufficient for parcels delivery buyers (online sellers), whose clients (online buyers) do not need the parcel to arrive more quickly and are not prepared to pay for quicker delivery .</i></b>				
<b>Yes</b>	<b>No</b>	<b>Depends</b>	<b>No reply, NA, unable to answer</b>	<b>Total</b>
BG, CY, DE, EE, FI, FR, HR, HU, LT, LU, MK, MT, NL, PL, RO, RS, SI, SK	CZ, LV	BE, DK, PT	AT, CH, ES, IE, IT, NO, SE, UK	
<b>18</b>	<b>2</b>	<b>3</b>	<b>8</b>	<b>31</b>
<b><u>Caveat</u></b> : countries were asked to indicate if they generally agreed - again, results aim only to indicate what the market situation may be.				

Finally, however, the definition of “express” needs to be clarified before a response can be given. Indeed, it may be that (traditionally called) express operators provide an offer that is perhaps a bit faster than the norm (and perhaps commonly referred to as an express service) but that would still fall into a standard parcel delivery market (and not an express delivery market) for market definition purposes. An EC merger case (see box below) indicates that express in the EEA consists in the capacity to deliver parcels in the EEA the next day, which is a particularly challenging task. The limited information available on the case indicates that, with this definition, express would be a separate market and one essentially used by businesses for very time sensitive articles. Again, in this context, any other type of (commonly called) “express” services (2 day delivery or parcels simply faster than economy service offers but not guaranteed next day delivery etc.) may fall into a standard market for parcel delivery.

*EC merger case M.6570 TNT/UPS (MEMO 13/48) – the proposed acquisition of TNT Express by UPS*

Apart from the ERGP’s own questionnaire to its members, relevant information on market structure is contained in the EC’s decision of 30 January 2013 to finally prohibit the proposed acquisition of TNT Express by UPS. Although the decision itself is not published yet, the EC has made public some of its considerations concerning relevant markets and market structures.

The EC analysis showed, for the purpose of the merger analysis, that intra-EEA express services and deferred services were separate markets, noting that many express customers would have limited ability to switch to standard services in

the event of a price increase and, equally, that networks used for deferred services would require substantial adaptations to be able to be used for express.

The EC states in its memo related to the case that *“Express services are those for which a provider commits to delivering small packages on the day following pick-up (sometimes before noon or even earlier in the morning). For international deliveries in the European Economic Area (EEA), it is very challenging to meet such a commitment. It requires networks which are specifically organised for this type of very fast deliveries, very finely tuned processes, sophisticated IT systems”* and, particularly, control of air transport to meet the time commitments. The EC notes that *“Demand for Intra-EEA express services comes predominantly from business users. They need these services to ship sensitive – and sometimes high-value - items, such as time-critical documents, spare parts, critical machinery components, samples sent for testing or approval, healthcare devices or products etc”*.

In terms of the geographical scope of the market for intra-EEA express deliveries, the EC notes that *“Most customers negotiate their contracts for intra-EEA express services on a national basis. A supplier cannot easily gain new customers and volumes in a given country without having already a market presence in that country. Therefore, the Commission considered that these markets were national in scope. The market for intra-EEA express services of a given country includes all intra-EEA express deliveries performed for customers located in that country, irrespective of the destination of the shipments”*.

The EC notes that integrators (of which there are only four in Europe – UPS, TNT Express, DHL and FedEx) *control* extensive aircraft fleets (non-integrators may use air-transport but simply by buying related capacity, without controlling the air services). Non-integrators were not held to exert significant competitive constraint on the parties to the proposed merger. The EC notes that *“Non-integrators mainly focus on domestic and international deferred services, rather than international express. This is the case even for large postal operators such as La Poste and Royal Mail, which offer cross-border small package delivery services in a number of countries through subsidiaries such as DPD, Chronopost and Secur (for La Poste), GLS and Parcelforce (for Royal Mail). Their offering of intra-EEA express services is limited. In most countries, these services are offered on the basis of road transport. In these cases, intra-EEA express deliveries usually cannot be performed for destinations located beyond neighbouring countries. By contrast, from any given EEA country, UPS and TNT Express can reach nearly all other EEA countries on the next day thanks to their air network (...). In addition, customers often perceive non-integrators' services as being of lower quality than integrators' services, notably in terms of reliability and track-and-trace”*.

Of course, the case examined by the EC looks at the ability of non-integrators to exercise competitive constraint on integrators, and not vice versa, but provides interesting insight into elements of market definition and competition on adjacent markets. To be noted, the term “standard” is interchangeable with the term “deferred” when referring to parcel delivery.

*Discussion:*

The replies to the questionnaire present a paradox of sorts: NRAs indicate general agreement that cross-border express delivery may not be a substitute for cross-border standard delivery (question 12, as noted above) yet, when asked to indicate the number of operators providing an outgoing cross-border bulk<sup>12</sup> and individually-sent<sup>13</sup> parcels delivery service that could be used by online sellers, the replies (noting that several NRAs did not reply) tend to mix express and standard offers, without comment that they would not be competing offers. Noting that NRAs were asked to indicate the number of operators providing outgoing cross-border bulk and individually-sent parcels delivery service (they were not asked directly to indicate if the offers were substitutes), it may be that NRAs were not applying competition law principles (thinking in a market analysis, substitutes based logic)<sup>14</sup>, that the question was interpreted differently by different NRAs or that NRAs' replies refer more to the domestic market, which they are likely to know better. Whatever the case, it seems premature to state categorically that express offers do not belong to the same market as standard offers, although if express is defined as one day delivery in the EEA, as per the above-mentioned EC merger case, it appears they may not (noting again that other commonly called "express" offers may fall into the standard parcels delivery market).

*Delimitation of standard parcel delivery into individually-sent offers and bulk offers*

As per the 2013 questionnaire, of the NRAs replying, there tends to be agreement that parcels sent individually (by, for example, small online sellers using a post office) and bulk parcels (used by larger online sellers) are unlikely to belong to the same market<sup>15</sup> (that is, that the two types of offers – bulk and individually-sent parcels delivery - would not be substitutes) and the two groups of respective senders would have different needs<sup>16</sup>. Of the 31 replies, 14 were unable or chose not to reply. Of those replying (17), 16 agreed and one did not agree. Belgium noted that, for example, the transportation means, rebates and stocking spaces would be different and France indicated that small businesses sending parcels individually would likely have similar practices and needs to private individual consumers whereas large bulk-sending businesses would have different needs (and probably quite different options available to them).

Individually-sent and bulk offers are available to different groups of senders and appear to vary in terms of conditions and prices. For instance, in the context of online shopping, individually negotiated bulk services are probably more readily available to large e-commerce sellers (such as Amazon, Zalando or IKEA), which can guarantee large sending volumes to the distributors and not feasibly able to be used by smaller SME sellers who rely on individually-sent services that have standardized terms and conditions.

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<sup>12</sup> See question 9 of the group's questionnaire.

<sup>13</sup> See question 10 of the group's questionnaire.

<sup>14</sup> Again, substitute-based market analysis for regulation is rare in the postal sector.

<sup>15</sup> To note, individually sent cross border parcels services delivery services and bulk cross border parcels delivery services are often respectively referred to as C2C and B2X, yet the latter terms, as noted in the 2013 report, are rather imprecise: in particular, the C2C market may contain parcels sent by (small) businesses ("Bs"). In this report, the terms individually sent (single piece) and bulk are used.

<sup>16</sup> See question 12 of the group's questionnaire.



*Table 2:*

<p><b>What cross-border parcels delivery offers may be seen as substitutable by parcels delivery buyers (that is online sellers) and what the discriminating features are for their choice: <u>as per the 2013 questionnaire, small online sellers sending parcels individually (generally in a post office) and larger online sellers sending bulk parcels would not be one and the same market (the two types of offers – bulk and individually sent parcels delivery - would not be substitutes in a competition law sense) and these two groups would have different needs.</u></b></p>			
Yes	No	No reply, NA, unable to answer	Total
BE, CY, DE, EE, FR, MK, HR, HU, LT, LU, NL, PL, PT, RO, RS, SK	LV	AT, BG, CH, CZ, DK, ES, FI, IE, IT, MT, NO, SI, SE, UK	
<b>16</b>	<b>1</b>	<b>14</b>	<b>31</b>
<p><b><u>Caveat</u></b> : countries were asked to indicate if they generally agreed - again, results aim only to indicate what the market situation may be.</p>			

The ERGP tends to believe that further distinction is not required on the basis of criteria such as an items' weight (other than upper limits distinguishing parcels from freight for example – see below) or size, USO versus non-USO delivery, or return options. These criteria may not satisfy different needs or require different networks. It therefore may be likely that in the view of buyers of e-commerce parcels delivery (online sellers), the offers with these criteria are interchangeable with the offers that do not comprise them. While features such as track and trace may not, *per se*, justify determining separate markets they may indicate the provision of a value-added service<sup>17</sup>.

*Delivery to the home and delivery to small shops being substitutes*

Interestingly, NRAs tended to agree (18 yes, three no, and 10 unable or not choosing to reply) with the statement that delivery to the home and delivery to small shops or parcels lockers were likely substitutable (that is, that the online seller buying parcels delivery could indifferently pick one or the other or a mix). For instance, Belgium indicated that the price is often identical, and France noted that a decision by the domestic competition authority concerning domestic parcels indicates delivery to the home and delivery to small shops are one and the same market.

<sup>17</sup> See for example recital 18 of the postal service directive (PSD) 97/67/EC (“whereas, in view of the fact that the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and

### *Parcels as opposed to freight*

The ERGP questionnaire did not consider the differentiation between freight, parcels and letters<sup>18</sup> but certain publicly available documents (such as the EC merger case M.6570 TNT/UPS (MEMO 13/48)) do help identify the distinction, notably between freight and parcels.

Distinguishing a parcel from a letter item is not easy. Indeed, e-commerce goods, if light enough (usually up to 2kg) and not bulky (such as a CD or a SD card), are often sent by letter post. Operators tend to have maximum limits for letters (generally not heavier than 2-3kg or larger than H+W+L = 1000mm, with no side larger than 600mm) but do not tend to have minimum weights or sizes, which means that the final decision to send an item as a letter or a parcel rests with the sender. In practice, identifying and counting letters with merchandise in them could be complicated.

On the other hand, it seems to be less complicated to distinguish a parcel from freight or cargo. The maximum weight of a parcel is generally 20- 30 kg in Europe<sup>19</sup>. For example, DHL offers international parcels up to 31.5 kg while Royal Mail and La Poste both ship abroad parcels up to 30 kg. This limit reflects the maximum weight that can be handled in many jurisdictions by one man under labour security regulations. Also, the EC considered in its merger decision M.6570 TNT/UPS merger (MEMO 13/48) that a small package differs from a freight unit in that a single person can handle it without specific equipment such as a forklift.

### *Domestic parcels delivery as opposed to cross-border parcels delivery*

It could be argued that domestic parcels delivery and cross-border parcels delivery are distinct markets: they serve different needs of the consumer, also anecdotally, prices seem to be higher (relative to costs) on the cross-border segment, and while one operator could carry out the entire delivery operation at a national level, this may not be the case internationally, particularly if a parcel is not processed by an integrator with its own international parcels delivery network. That said, this does not necessarily mean that the (product) markets for cross-border delivery would be European-wide. They could, for example, be point-to-point (country A to country B) or, particularly, national.

### *The geographical scope of cross-border parcels delivery*

As noted in the 2013 report, the conditions for competition (such as offered parcels delivery services, delivery operators and prices for parcels delivery) seem to vary from country to country, which may indicate separate domestic markets, be

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perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay”).

18 The ERGP did ask (question 6 of the 2014 questionnaire) whether NRAs, whatever their type of information collection, believed that certain offers (such as letters with merchandise, or small packets) were excluded despite being able to be classed as parcels: 10 NRAs said yes, citing various types of articles (notably letters with merchandise or small packets).

19 See *Intra-community cross-border parcel delivery: A study for the European Commission from FTI Consulting*, [http://ec.europa.eu/internal\\_market/post/doc/studies/2011-parcel-delivery-study\\_en.pdf](http://ec.europa.eu/internal_market/post/doc/studies/2011-parcel-delivery-study_en.pdf). In one country, the weight limit is 15kg; in nine countries, 20kg; in 10 countries, 30kg; in five countries, 31.5kg; and in two countries, 20 or 30kg depending on the destination.

they for domestic or cross-border delivery. As an analogy, in case M.6570 TNT/UPS, the EC defined a market for intra-EEA express and considered its geographic scope to be *national* because most customers would negotiate their contracts for *intra-EEA* express services on a national basis and a supplier could not easily gain new customers and volumes in a given country without already having a market presence in that country. The EC's arguments for a national market scope for intra-EEA express services seem to be applicable for standard cross-border parcels delivery markets too, noting that the ERGP has not looked in depth at this question.

#### *Types of operators*

Asked for the types of operators providing cross-border parcel delivery services, NRAs identified universal service providers; alternative standard parcel delivery operators; express delivery operators (noting that express operators may provide a standard service); and in-house operators (such as an operator that a distance seller has set up itself). Some NRAs noted that their respective USP offers express and standard delivery services.

The EC gives a similar description of operators in the context of its merger case M.6570 TNT/UPS (MEMO 13/48). The EC, concerning this case relating to intra-EEA express services, notes that the main service providers are “*so-called "integrators", followed by national postal operators, freight forwarders (who in general resell small package delivery services effectively provided by other companies), as well as a myriad of local small delivery companies, some of which cooperate within international partner networks*”.

Concerning the “integrator” model, the EC explains that this (usually) comprises of the control, but not necessarily ownership, of an international integrated air and ground small package delivery network. This allows them to move small packages quickly over long distances. Furthermore their control of ground networks made up of road vehicles and sorting centres allow them in particular to move small packages within a given country to and from their air gateways. For home delivery, integrators often co-operate with smaller local delivery companies. According to the EC, in Europe, there are four integrators: UPS, TNT Express, DHL and FedEx.

Non-integrator (domestic or Europe-wide) operators control ground-based small package delivery networks made up of road vehicles and sorting centres, which allow them to move small packages within a given country to and from their air gateways. Some have built up road-based, pan-European or regional networks for providing domestic and cross-border parcel services in specific countries. These operators sometimes also organise cross-border parcels delivery services by international agreements such as UPU agreements, or other organisations such as the E-Parcel Group, a cooperation of 29 generally historical operators. Smaller or newer alternative operators may seek to co-operate between themselves or with larger operators.

#### **a. The state of competition on cross-border parcels delivery markets**

##### *A note on market analysis and understanding the state of competition on a market*

As already set out above, the definition of the relevant markets is necessary to assess the competitive conditions on markets. The market definition in both its product and geographic dimension establishes a framework for the market analysis and identifying those undertakings that are capable of constraining each other's behaviour and are preventing themselves mutually from behaving independently of effective competitive constraints. Market definition is required to understand market power, one vector of which is market shares.

Neither the ERGP nor NRAs (with the exception of Malta) have pursued market definition for cross border parcels delivery. This is not problematic *per se* as market definition exercises are usually carried out for markets where ex-ante regulation is held to be necessary or in the context of an ex-post investigation of anti-competitive behaviour by the competent authority. In the absence of formal market definition, the ERGP puts forward in this report a preliminary assessment of the competitive situation only, based on its regulatory experience and NRAs' answers to the ERGP's questionnaire.

##### *The number of operators as one indicator of the state of competition*

The ERGP distinguished in its questionnaire<sup>20</sup> between operators that provide outgoing cross-border *bulk* parcels delivery service and operators that provide outgoing *individually sent* parcels delivery services. While noting that reliable statements on the conditions of competition in cross-border parcels delivery markets would require a full market analysis, which has not been conducted, for those NRAs that replied, the replies seem to indicate that, generally, the sub-segments of cross-border parcels delivery markets may be relatively competitive<sup>21</sup>. When asked how many operators provide an outgoing cross-border individually-sent parcels delivery service that could be used by (individually sending) online sellers, six NRAs have less than five operators (but all indicated they have at least three), six have at least five but less than 10, and five NRAs indicated they have 10 or more operators (14 NRAs were unable to reply). When asked how many operators provide an outgoing cross-border bulk parcels delivery service that could be used by (bulk sending) online sellers, the group has slightly less information (19 NRAs were unable to reply), but the replies available still indicate a reasonable amount of competition: four NRAs have less than five operators (but all indicated they have at least three), five have at least five but less than 10, and three countries indicated they have 10 or more operators.

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<sup>20</sup> Questions 9 and 10 of the 2014 questionnaire.

<sup>21</sup> The group is looking notably at cross-border *standard* parcels delivery in Europe. As noted in the text of the report, while no definitive answer can be given, it appears that express delivery, particularly when defined as guaranteed one day delivery in the EEA, would not belong to the same market as standard offers and would be largely used for business-business delivery. Express delivery is less relevant for this report. To note, it is important to distinguish the offer from the operator: it may be that commonly called "express" operators provide, in some cases, services that fall into a standard market from a market analysis point of view.

These results are indicative only: NRAs were asked to estimate the number of operators, the offers may not all be substitutable, certain NRAs did not reply and at least ten NRAs (CH, CY, CZ, HR, HU, IT, MT, PL, SI and SK) were not able to distinguish bulk and individually-sent offers. Four NRAs (IE, MK, SR, EE) indicated that they have the same number of operators for bulk and individually sent offers. Finally, the lists provided may not be exhaustive and it should be noted that the number of competing operators is only one factor in determining market power (very few NRAs were able to provide information on market shares, and the information they had often related to different parameters).

Very few NRAs had information on recent or expected market entry, but three did report such entry in the last three years and, when asked whether market entry was expected in one year's time or so, five NRAs confirmed such expectations<sup>22</sup>.

#### *Markets or segments with more or less competition*

Based on NRAs' replies to the 2014 questionnaire, the above-mentioned EC merger case, and general anecdotal information, cross-border *express* services generally appear competitive. Indeed, several express operators are active in many countries. This assertion is, again, anecdotal and express services, often significantly higher priced than standard services and with particularly tight delivery times are, in any case arguably less important for the e-commerce buyer and not the focus of this report.

For e-commerce cross-border *bulk standard* parcels delivery to individual consumers, the above information on number of competing operators present in NRAs' countries seems to indicate a reasonable degree of competition from alternative and express operators, including the four European integrators (UPS, TNT Express, DHL and FedEx) whose presence in national markets has been indicated by many ERGP members in their replies to the questionnaire. It appears also logical that bulk senders, by definition, will be bigger than those sending parcels individually and that the higher volumes they send may provide them with greater bargaining power in their interactions with operators.

For e-commerce cross-border *individually-sent standard* parcel delivery, following on from the above analysis, senders (who could be businesses or individuals) may have less bargaining power in their interactions with operators than that of senders using bulk services. Equally, it could be that it is more attractive for operators to provide a bulk delivery service, in which case users of single piece services may have less choice than their bulk-sending counterparts. NRAs tended to indicate that they had several individually-sent parcels operators although, in some member states, only when including express players (the ERGP cannot formally say that the latter provide offers belonging to the same standard market (or not)). Whatever the state of choice on the individually-sent segment, the ERGP has, as in 2013, no indication

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Additionally, the ERGP, again, is looking principally at cross-border delivery from a *European-wide* perspective – individual member states may see national specificities in their markets that may lead to a different appraisal of the competitive situation at national level.

<sup>22</sup> See question 11 of the group's 2014 questionnaire.

that competition law alone would not suffice for solving any market failure that could arise and so no indication that ex-ante regulation would be required<sup>23</sup>.

### *Potential barriers to market entry*

The 2013 report, drawing on questions from the 2013 questionnaire, discussed possible problems regarding European cross-border parcel delivery markets, including possible market failures. It also discussed which of the issues cited, if held to be present, might relate to parcel *delivery* (and not to e-commerce in general) and may be relevant for the work of an ex-ante regulator<sup>24</sup>.

A number of issues concerned online buying and transparency more generally (for example, the information provided by the online seller to the online buyer on its website or the harmonisation of consumer legislation at a European level) and not delivery *per se*. Others related to more cultural factors (such as buyers not yet tending to buy online or linguistic issues).

There was no readily identifiable factor indicating that ex-ante regulation of parcels delivery (or full market analysis) was required at this stage. However, the report did note that the sector has links to another sector (traditional mail markets) dominated by historical operators and subject to ex-ante regulation, that regulators in certain countries had received indication that cross-border prices for European parcels delivery may be higher than what would be justified by cost differences relative to domestic prices, and there was perhaps limited innovation in parcels delivery at the European cross-border level.

According to article 7(1)1 of the postal service directive (PSD)<sup>25</sup>, member states shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal services. Market entry into the cross border parcels delivery market is therefore for everybody open, provided there is compliance with administrative procedures in national law.

However, according to article 9(1) and (2) of the PSD, member states may introduce general authorizations for parcel services that fall outside the scope of the universal service, to the extent necessary to guarantee compliance with the essential requirements as defined by article 2 of the PSD, or, for parcel services inside the scope of the universal service, authorisation procedures, including individual licenses, to the extent necessary to guarantee compliance with the same essential requirements and to ensure the provision of the universal service. In line with these provisions, many jurisdictions foresee an individual licensing system for the universal service area and sometimes also a general

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<sup>23</sup> As a note for all the report, the ERGP mission, again, was not to examine whether ex-ante regulation was required and, by such similar phrases, it indicates simply that it has not come across a particular issue indicating that ex-ante regulation would be required at this stage and such an issue has not been brought to its attention by NRAs or other parties with which it has worked.

<sup>24</sup> [http://ec.europa.eu/internal\\_market/ergp/docs/documentation/2013/131129\\_cross-border-parcel\\_en.pdf](http://ec.europa.eu/internal_market/ergp/docs/documentation/2013/131129_cross-border-parcel_en.pdf)

<sup>25</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, OJ L 15, 21.1.1998, p. 14 as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, OJ L 52, 27.2.2008, p.3, PSD.

authorization for services which fall outside the scope of the universal service.<sup>26</sup> At the same time, domestic and cross-border clearance, sorting, transport and distribution of postal packages up to 10 kg fall into the minimum requirements of the universal service and member states can increase this weight limit to 20 kg (articles 3(4),(5) and (7) of the PSD).

A sector specific authorization requirement for entering the (cross-border) parcels delivery services market could restrain, to some extent, competition by making market entry more difficult to newcomers. The effect depends on the design and length of the appraisal procedure. The ERGP has however no information to indicate that authorisation or license regimes create any unnecessary barrier to entry.

Potential new market entrants into the (cross-border) parcels delivery services market are exposed to further potential market entry barriers. Such a barrier could, potentially, be created by the exemption of universal service from VAT, which is possible under EU law. Such VAT exemptions could provide universal service providers (USPs), who are often incumbent operators, with an advantage in the fields that are within the scope of USO. As regards parcels delivery, however, the ERGP has no information to indicate this is the case and an earlier ERGP report tends to indicate that it may not be<sup>27</sup>. Other factors, such as national characteristics, USO fees, special legal requirements or the effectiveness of competition law enforcement, could play a role in the decision to enter a parcels market or not.

In summary, the ERGP considers that new entrants should face a level playing field allowing them to compete with already established operators. The ERGP has no information to indicate that this is not the case but it is always useful for regulators and member states to generally review their procedures to ensure that, while achieving their aims, they create the least burden possible on actual and potential operators.

#### *Potential market failures*

Like any other sector, parcels delivery, domestic or cross-border, is susceptible to violations of competition law. In this sense the EC notes in its 2013 roadmap<sup>28</sup> that “*competition concerns could for example arise with regard to abuses of market power, such as illegal cross-subsidies, unjustifiably high prices (i.e. in violation of the principles of Article 14(3)(b)(iv) of the PSD), predatory tariffs for (cross-border) parcel delivery or unjustified refusal of access to delivery networks or their key elements (e.g. address database).*” However, the ERGP has no information that the sector would be any more subject to competition law breaches than another sector and has no knowledge of particular

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<sup>26</sup> For an overview on authorisation procedures within the universal service area see WIK-Consult, Main Developments in the Postal Sector 2010-2013, Bad Honnef, 2013.

<sup>27</sup> ERGP (12) 29 – *ERGP Report on net cost of USO – VAT exemption as a benefit or a burden* notes that, for large packet and parcel customers, “*In most countries there is significant competition for the delivery of packets and parcels, where the benefits of scale are lower and there are lower barriers to entry. Here the VAT exemption is of limited benefit to the USP, more likely to be a burden, as most large customers of packets and parcels are able to reclaim input VAT, and it is more likely that the costs of ‘hidden VAT’ may offset or exceed any benefit from the exemption.*”

<sup>28</sup> Communication from the EC of 16 December 2013, *A roadmap for completing the single market for parcel delivery - Build trust in delivery services and encourage online sales.*

competition law issues at European level, other than the cases of which the EC will already be aware that are underway at NRA or national competition authority level<sup>29</sup>.

Some anecdotal information indicates that prices for, perhaps particularly individually-sent, cross-border parcel delivery could be higher than domestic prices, without necessarily having corresponding cost-related justifications (for example, it is argued that higher prices could not necessarily be justified in border regions)<sup>30</sup>. As noted in the 2013 report, the pertinent price is that paid by the parcel delivery buyer (the online seller) and not the price paid for a delivered good by the online buyer (the latter price may simply be a marketing tool and does not necessarily reflect the delivery price). Higher prices paid by the sender could, however, result in higher prices for the end consumer.

One possible cause for high prices is ineffective competition, although the ERGP has no information to indicate that this is the case in parcels delivery markets. Another cause could be that parcels delivery for e-commerce purposes is fairly new (parcel delivery for distance buying is not new but e-commerce online buying and delivery in this context are), that competition is still developing on parcels delivery markets, and that consumers are still in the process of taking up online buying (as demand and supply (and therefore volumes) increase, prices tend to fall).

Indeed, existing price levels for cross border parcels delivery might diminish over time (delivery operators may reduce cross-border delivery prices in reaction to increasing sending volumes and to increasing competition), SMEs may grow or join forces to build up countervailing power, and consumers' demand for online buying seems to be increasing). ERGP also takes note of anecdotal information that some retailers have reacted to the existing price levels for individually sent parcels by making their internal logistics services available to other retailers in order to create higher sending volumes, which presumably allows the participating SMEs to request lower priced bulk services.

While higher prices, particularly in the absence of market dominance, do not, of themselves, indicate a structural competition problem, it is important that competition does develop fully and that consumers are aware of, and able to take advantage of, the possibility to buy online. Indeed, online buying has the potential to bring greater choice to consumers at competitive prices. SMEs, as noted above, may be the group of online sellers (parcel delivery buyers) that have less power when faced with delivery operators. The work already engaged by the EC – to improve supply by working with delivery operators, to improve the information provided by sellers, and to increase consumers' awareness when buying online – seems adapted to ensuring the development of quality offers and strong demand.

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<sup>29</sup> A list on national competition cases concerning postal service operators in the period from 2009 to 2013 can be found in the report by WIK consulting, *Main Developments in the Postal Sector 2010-2013*, p. 68. To note, the current report takes the perspective of *ex-ante* regulators and regulation. The ERGP may make mention of *ex-post* regulation, but this is not the focus of its report and, although there are exceptions, *ex-ante* regulators are not uniformly or even generally charged with *ex-post* missions.

To note, the current report takes the perspective of *ex-ante* regulators and regulation. The ERGP may make mention of *ex-post* regulation, but this is not the focus of its report and, although there are exceptions, *ex-ante* regulators are not uniformly or even generally charged with *ex-post* missions.

<sup>30</sup> European Parliament. *Discrimination of Consumers in the Digital Single Market*, Brussels, 2013, p. 21.



In its questionnaire<sup>31</sup>, the ERGP asked NRAs whether they considered the quality of service for cross-border parcel delivery in their country to be sufficient. Of the 31 replies, 19 NRAs replied either yes or no: 14 said yes and five said no. The remaining 12 NRAs gave no reply. Some provided comment. France noted anecdotal evidence that parcels delivery internationally may be (relatively) quite expensive, but also indicated that this could come from many factors, such as demand (lower international buying and so high prices). Sweden indicated that it had not carried out any analysis and so was unable to answer but that the complaints it had received did not indicate significant quality discrepancies in relation to the customers' needs.

#### **b. Summary and general comment**

As noted above, it seems important to distinguish between individually-sent and bulk offers, which may belong to two separate markets: the first comprising offers sent in small numbers over the counter in a post office or point of presence and the second comprising relatively large number of parcels handed over to the delivery operator at, for example, a delivery platform, as part of a regular delivery contract and for which a discount may be given. It seems logical to assume that, the larger the sender and the greater the number of parcels they send, the more bargaining power they will have in relation to the delivery operator. It also may be the case that, given for example, economies of scale, it may be easier for a delivery operator to launch a bulk service and so this segment may be better served and have more fluid competition. On the other hand, those sending parcels individually in a post office may have less choice and bargaining power.

This does not indicate a competition issue *per se*, but certain regulators, depending on the responsibilities attributed to them and the needs they see in their markets, may decide to carry out market monitoring to better understand the requirements of online sellers and buyers in the context of e-commerce and to communicate this information to interested parties. Such work should, of course, ensure non-discriminatory treatment of operators (avoid privileging, for example, the historical operator to the detriment of other actual or potential parcels delivery operators).

In the same context – essentially a question of the *quality* of offers in what is a developing segment - the ERGP takes note of the work of the EC to improve the availability and the quality of parcels delivery in Europe, by working with a large range of stakeholders.

#### *General vigilance to competition issues*

The ERGP does not, as noted above and noting again that it has not formally examined this question, have information to indicate a particular competition issue requiring ex-ante regulation at this stage and cannot point to particular ex-post competition issues, other than those of which the EC will already be aware that are underway at NRA or national

competition authority level (possible issues appear to relate rather to the quality and choice of offers as the market develops).

Certain NRAs may, however, see particular competition issues<sup>32</sup> and may expect, for example, to need to provide information to and co-operate with the competition authority in case of an allegation of anti-competitive behaviour. Depending on their responsibilities, they may wish to follow the sector at its early stages. Again, the work by the EC in conjunction with regulators and other parties sends a message to all stakeholders on the importance of parcel delivery markets to consumers, operators and the broader economy and of effective competition on these markets.

#### *Ensuring the coherence of legislation relating to parcels delivery*

Current European postal regulation was set up principally to oversee letter mail services in a broad sense and related players and market structures are fairly homogeneous. Parcels delivery market structures and operators, perhaps less homogeneous, may be subject to European and/ or national provisions in, for example, postal, transport or freight law. While this is not, in itself, problematic, given the strong growth in e-commerce, it may be useful to consider whether there are situations (possibly concerning consumer protection or time limits for signalling damage to a parcel or its content for example) in which a parcels delivery operator may be subject to European or national provisions that another parcels delivery operator avoids or vice versa for what is essentially the same service or offer<sup>33</sup>. The aim would be neither to increase nor to reduce relevant provisions, but to identify any aspects of inconsistency (different regimes applying to like services), redundancy or possible questions of primacy between different regimes in what is a fairly new and growing segment. The ERGP proposes that any work in 2015 could focus on this issue.

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<sup>31</sup> Question 19 of the 2014 questionnaire.

<sup>32</sup> See footnote 29.

<sup>33</sup> Focussing on domestic and cross-border standard parcels delivery.

## II. THE FEATURES, FEASIBILITY AND NECESSITY OF DIFFERENT MEANS FOR COLLECTING STATISTICAL OR OTHER INFORMATION ON DOMESTIC AND CROSS BORDER PARCELS DELIVERY

The current section discusses the data collection models that countries currently have in place, with particular emphasis on those models (or other aspects of regulation) that are based on substitutes in a competition law market analysis sense, noting that substitutes-based regulation is rare in the postal sector. It then goes on to consider different means for obtaining information on parcel delivery markets, in response to the EC considerations in this area, looking at their advantages and disadvantages.

### a. Context

*The request from the European Commission*

In its 2013 document, *A roadmap for completing the single market for parcel delivery: Build trust in delivery services and encourage online sales* (COM/2013/0886 final)<sup>34</sup>, the EC requested that member states “*build on ongoing ERGP work to define a statistical framework for collection of relevant market data on domestic and cross-border parcel delivery from all postal service providers*”. More specifically, member states were asked, “*based on preparatory methodological work already being carried out by the ERGP, [to] define a clear statistical framework, on the basis of Art. 22a of the PSD, enabling national regulatory authorities to collect relevant market data on domestic and cross-border parcel flows from all postal service providers active on the B2C and B2B parcel markets, including intermediaries, consolidators and alternative operators. Data to be collected should include at least volumes, tariffs, terminal payments, services offered, general conditions of access to the services and quality standard levels*”.

#### Article 22a of the PSD 97/67/EC

“1. Member States shall ensure that postal service providers provide all the information, in particular to the national regulatory authorities, including financial information and information concerning the provision of the universal service, namely for the following purposes:

- (a) for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with this Directive,
- (b) for clearly defined statistical purposes.

2. Postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks. The national regulatory authority shall give the reasons justifying its request for information.

3. Member States shall ensure that national regulatory authorities provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive.

4. Where information is considered confidential by a national regulatory authority, in accordance with Community and national business confidentiality rules, the Commission and the national regulatory authorities concerned shall preserve such confidentiality”.

### *The use of article 22a of the PSD and the definition of postal service providers*

Article 22a concerns the collection of information, including information concerning the universal service, by NRAs to ensure conformity with the PSD or for clearly defined statistical purposes. It is currently used by NRAs (see above) to collect information from *postal*<sup>35</sup> service providers, which is consistent with the request of the EC. That said, and noting that the ERGP has not undertaken a legal interpretation of its scope, the article was developed with a focus on the universal service (centred on letter mail and less so on parcels, being limited to a basic parcels offer) and letter mail more generally, and this (the evolution of the sector) may need to be taken into account in any future data collection exercise for parcels delivery. Indeed, the transposition of article 22a into national legislation results in a fairly homogeneous collection of data on letter mail, and letter mail providers tend to be fairly homogeneous yet this is not the case for parcels delivery or for parcels delivery providers and identifying all parcels delivery operators could be time consuming. Below are certain examples of differences:

- Express parcels delivery is considered a postal service in some countries but not in others.
- In-house delivery is excluded in some countries but not in others.
- If letter mail was, and remains predominantly, delivered by domestic historical operators collaborating between themselves, readily identifiable, and directly under the control of regulators, this is not necessarily the case for parcels delivery operators. The latter tend to be a more diverse group (historical operators, express operators, in-house delivery, alternative operators, intermediaries, large international operators that may be based overseas, direct injection players...).

Article 22a could, however, be a useful basis to ensure that NRAs collect certain fundamental information from postal service providers (noting that these providers' offers, particularly depending on the scope given to the term "postal" services in individual member states, may not comprise a market in a competition law sense) and may help to verify that a basic parcels offer of quality is available to those sending single piece parcels. It could be useful, as a starting point, to examine more in detail what countries collect what information and from what type of providers as regards parcels delivery.

### *Reasons for collecting data on domestic and cross border parcels delivery*

Before deciding what information it may be useful to collect and on what scale, several NRAs (such as Sweden<sup>36</sup> and the UK) have indicated the need to examine the reasons for collecting data. Any data collection exercise would need to fall within the missions attributed to NRAs and be necessary and proportionate.

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<sup>34</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013DC0886>

<sup>35</sup> It should be noted that the term "postal" refers in some countries to a broader range of services and operators than in others.

<sup>36</sup> The Swedish regulator notes that its "*plans are to undertake a common study (PTS and Trafikanalys) in order to check if and how the information needs outlined by the Commission can be met within the legal framework in Sweden. But our conclusion so far is that all necessary information can be collected. The required statistical information is extensive and further analysis has to be made to assess the proportionality of this task as data requirements are a heavy administrative burden to the operators*".

In letter mail markets, NRAs are charged with a mission of ex-ante regulation and comprehensive data has been necessary to follow the development of competition and, particularly where competition remains low, to ensure the designated US operator, generally the dominant historical operator, provides basic services throughout the territory while maintaining high quality standards. The benefits of collecting information were considered high (necessary to carry out ex-ante regulatory missions) and, again as letter mail providers are fairly readily identifiable, the costs of collecting information were not deemed excessive.

For parcels delivery, the ERGP is not aware of any specific issue that would justify ex-ante regulation at the present time<sup>37</sup> and there are signs that competition is developing. There could be ex-post issues on parcel delivery markets, that could concern historical operators that are dominant in (declining) letter mail markets, but the ERGP cannot affirm, at this stage, that there is a greater risk of anti-competitive behavior than in other sectors. In this context, the ERGP is of the view that regular collection of (very detailed) information on all (substitutable) offers (implying full market analysis) in the relevant markets (which is usually required where ex-ante regulation is held to be necessary or in the context of an ex-post case (and noting that entities charged with ex-post regulation generally already have strong information collection powers)) is not uniformly necessary<sup>38</sup>. The ERGP notes that NRAs have generally transposed the data collection requirements of article 22a of the PSD into national law. As such, there is already a basic collection of information on parcels delivery, noting however that related information collection frameworks vary and so may not yield comparable information.

The section below gives more detail on the above points and discusses what, as required, might be appropriate steps between the two above points (full market analysis and the current situation).

Putting aside questions of competition, there may be issues of “quality and choice”, given markets are in a development phase (if distance buying and parcels delivery in this context are not new, the growth of online buying due to e-commerce, and related parcels delivery, are fairly new and operators and consumers are likely still adjusting to these trends). The ERGP is of the view that such issues (which concern many aspects (confidence, consumer law, delivery, linguistic issues, consumer needs etc.)) do not require uniform full market definition and collection of information by NRAs. As noted above, the EC is working with a broad base of stakeholders on such questions.

Certain countries may of course wish or be required by the appropriate authorities in their country to investigate related (ex-post, ex-ante, general quality or other) issues at an individual level.

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<sup>37</sup> The report is, again, referring to ex-ante regulation of parcels markets generally, as determined by market definition. The ERGP notes that the current universal service and so current regulation includes a basic parcels offer. Again, the ERGP mission was not focussed on assessing a need or not for ex-ante regulation.

<sup>38</sup> Some countries may of course see a need for this, particularly those with ex-post powers in the presence of an ex-post allegation or depending on the state of competition in their country.

## **b. The information already collected by countries**

Unsurprisingly, NRAs' current data collection models are centred on what could be termed 'postal'<sup>39</sup> markets. The term 'postal' is used loosely to indicate that data collection is generally, although not always, centred on historical, alternative and sometimes express operators of predominantly letter mail, rather than parcels, services and not on groups of substitutable products in a competition law sense. Indeed, data collection models are focussed on entities that regulators have power over and not markets in a competition sense. Regulators' powers tend, moreover, to be centred on the universal service, (which only contains a small proportion of parcels), but are not always confined to this subset of services. The group notes that some countries have broad data collection powers, based on 'fulfilling their missions', but these countries (such as the UK<sup>40</sup>) do not generally collect detailed or specific parcels data.

When asked<sup>41</sup> (question 1 of the 2014 questionnaire) to indicate the actors and offers for which the NRA has the legal power to collect information as regards cross-border parcels delivery, the majority of NRAs indicated that their legal powers relate to USO parcels or parcels of the USO provider or to all parcels of postal operators only (22 replies out of 31 replies in total)<sup>42</sup>.

The definition of 'postal operator' generally tends to be based on provision of 'postal services', which in turn tend to be defined based on the provisions of the PSD. Again, definitions are not based on market analysis or determination of all substitutable offers. Rather, they tend to refer to aspects such as the 'clearance, sorting, transportation and distribution' of postal items. Postal items tend to include parcels and refer often to an item 'addressed' in the 'final form in which it is to be distributed'. This definition appears less readily applicable to parcels for e-commerce purposes which, for example, may be shipped partly in consignment form before being broken down into individually addressed items. Also, despite having a common base in the directive's definitions, there is no standard definition in member states of the 'postal' market and no standard collection model. As an example, of the 19 NRAs replying to the related question (part of question 1), 14 indicate that express offers are included in their legal powers to collect information and five indicate that they are not.

Only three NRAs indicate that they have the legal power to collect data on all substitutable parcels delivery offers, as determined by regular, formal, competition law type market analysis, regardless of the provider. The NRAs are those of Finland, Germany and Malta.

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<sup>39</sup> It should be noted that the term "postal" markets refers in some countries to a broader range of services and operators than in others.

<sup>40</sup> Ofcom has broad powers but can only exercise them in fulfilling its duties under national postal law (the Postal Services Act), the prime purpose of which is securing the universal service.

<sup>41</sup> See question 1 of the group's 2014 questionnaire.

<sup>42</sup> Of the remaining 9 NRAs, one indicated it had powers regarding some substitutable offers, three indicated that they had powers regarding all substitutable offers pursuant to regular formal market analysis and, of the remaining five NRAs, two have broad powers based on fulfilling their missions but do not use them to collect detailed parcels data, and three have no express mandate to collect such data. See also table page 23.

*Table 3:*

Actors and offers for which NRA has the legal power to collect information as regards cross-border parcels delivery						
USO parcels or all parcels of USO provider only	All parcels of all "postal operators" only	All parcels of all "postal operators" <u>plus</u> substitute offers of other operators	All substitutable parcels delivery offers, as determined by regular, formal (competition law type) market analysis and regardless of the provider	Powers to collect all data necessary to fulfill its duties, does <u>not</u> actually collect detailed parcels data	Other (no express legal power to collect parcels data...)	Total
DK	AT, BE*, BG, CH, CY, CZ, EE, ES, HR, HU, IE, IT, LV**, LT, LU, MK, PL, PT, RO, RS, SK	SI	DE, FI, MT	NL, UK	FR, NO, SE	
<b>1</b>	<b>21</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>31</b>
<p>* BE: broad definition of "postal" services (registered postal operators, those that do not need to register, online sellers with in-house delivery etc), noting that the NRA makes the list based on its own trolling of registers such as the yellow pages etc. Express is included.  **LV: study on USO substitutes.</p>						

Models (of data collection or of regulation) based on substitutes in a competition law sense

The ERGP has sought information from the German and Maltese regulators, who indicated in their replies to the 2014 questionnaire that they have the legal power to collect data on all substitutable parcels delivery offers, as determined by regular, formal, competition law type market analysis, regardless of the provider<sup>43</sup>. As explained further on, these powers were not put in place for the purposes of data collection but in the context of ex-post powers (Germany) and in a move to market-analysis based regulation (Malta).

*Powers to collect information and market definition in Germany*

BNetzA (the German NRA) has two main types of data collection. Its annual collection of aggregated market revenue and volume based data for the annual report in line with the reporting requirements laid down in the German Postal Act, as for most member states, is not based on a definition of markets or substitutable offers. Rather, information is collected (as concerns parcels) from players having notified their activity (there is a requirement to notify parcels delivery activity up to 20kg in Germany but not to have a license) and the collection is based on German postal legislation.

The second main type of data collection relates to ex-post cases. Indeed, the German NRA has ex-post regulatory powers for postal markets (in parallel with the German competition authority), whereas these functions remain with the competition authority in many other member states. Based on definition of markets and so delimitation of substitutable offers, the data collection, which is pursued case by case, is detailed (business plans, strategies, production and logistic

<sup>43</sup> The Finnish regulator, who gave the same reply, was not available to speak with the ERGP.

processes, costs, revenues and volumes etc) and can be supported by a benchmarking exercise. BNetzA's powers, for ex-post purposes, are similar to those of a competition authority and can involve unannounced searches, seizures and coercive action in case of non-compliance. However, again, these powers are specific legal provisions supporting ex-post regulation of the parcels segment<sup>44</sup>.

As regards market definition more generally, BNetzA has carried out a study on parcels delivery, defining separate markets for express (offers having a time guarantee) and standard parcels delivery. Although both express and standard parcels are deemed postal for the purposes of German regulation, BNetzA's focus is on standard parcels, simply as the express market is seen as more competitive<sup>45</sup>. The standard parcels market is further divided into C2C (generally in a post office) and B2X offers.

#### *Powers to collection information and market definition in Malta*

In 2013, the MCA (Maltese regulator) changed its approach to regulation in the postal sector, carrying out a market analysis exercise to define relevant markets from a competition law type perspective. This model was judged the best method to determine whether, when and how to rollback regulation in a fully liberalised market environment. It should be noted that the model discussed was not put in place to facilitate data collection - the legal basis used to collect data from operators remains national provisions based on the PSD – but it may provide some useful elements for the EC on market definition.

The MCA has defined 8 markets, two of which are parcels markets (domestic and outbound parcel post markets up to 20 kg)<sup>46</sup>. All of the markets are limited to services within the scope of the universal service. The MCA considered that express parcels delivery services were not part of standard parcels delivery markets and only standard parcels delivery markets (i.e. those markets within the scope of the universal service) are subject to full market analysis, express markets being deemed sufficiently competitive and not subject to ex-ante regulation<sup>47</sup>. Express is distinguished from the standard service in that it consists of faster and more reliable acceptance/collection, handling, transportation and distribution when compared to that of the fastest standard category of the standard service. In addition, an express service has a

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<sup>44</sup> The same legal provisions are also applicable for the exercise of BNetzA's ex-ante regulatory powers in letter mail markets. To note, BNetzA is currently pursuing an ex-post case that relates to an allegation by an alternative parcels delivery operator against the historical operator that its price discounts are a form of cross-subsidisation. The case may be a source of useful information on market definition once a ruling is made.

<sup>45</sup> The main players on the standard bulk business to business market are UPS, DHL, GLS and DPD. The main standard bulk (to consumer) players are Hermes, DHL and DPD. The main types of operators in Germany are the historical operator, integrators (international or pan-European) and subsidiaries of mail order companies, such as Otto. There are smaller regional players, but they have limited market share and are not always captured in annual data collection.

<sup>46</sup> See [https://www.mca.org.mt/sites/default/files/attachments/decisions/2013/131030%20Postal%20Market%20Review%20-%20Letter%20Mail%20Markets\\_%20Final%20Decision.pdf](https://www.mca.org.mt/sites/default/files/attachments/decisions/2013/131030%20Postal%20Market%20Review%20-%20Letter%20Mail%20Markets_%20Final%20Decision.pdf) and <https://www.mca.org.mt/sites/default/files/attachments/decisions/2014/postal-market-review-parcel-post-markets-final-decision.pdf>

<sup>47</sup> [https://www.mca.org.mt/sites/default/files/attachments/decisions/2013/131030%20Postal%20Market%20Review%20-%20Letter%20Mail%20Markets\\_%20Final%20Decision.pdf](https://www.mca.org.mt/sites/default/files/attachments/decisions/2013/131030%20Postal%20Market%20Review%20-%20Letter%20Mail%20Markets_%20Final%20Decision.pdf) – “Conclusively, the market review procedure shall only be carried out to assess the state of competition in postal markets providing standard mail services. Having said this, the MCA shall nonetheless take utmost account in the market analysis procedure of any indirect constraints imposed by express services on the standard mail service markets”.



guaranteed pre-set delivery time and it is generally more expensive. Malta does not distinguish between bulk and individually-sent 'single piece' parcels.

MCA has not had particular problems in requiring data from express operators and has historically collected data from them anyway. Problems concerning express operators relate more in the classification of services:

- Some express operators exploit the grey zone between an express and a standard parcel post service given that express delivery is subject to notification only while standard parcels delivery requires a licence.
- Some operators indicate that they are only responsible for the delivery of the local leg as instructed by the foreign postal operator, and not aware of whether the parcel originated from the sender as an express parcel or standard parcel.
- More generally, it is noted that small packets could be captured in letter mail streams and so not in parcels streams.

*The legal foundation used by NRAs to collect data on parcels delivery markets and the use of article 22a of the PSD*

Most NRAs (26 ERGP members) reported in their replies to the questionnaire that they have an express power to collect information on at least some segments of parcels delivery<sup>48</sup>, with 25 having the power to collect information on incoming and outgoing parcels<sup>49</sup>. Their powers appear to generally be based on article 22a of the PSD and WIK Consult notes in its report on main developments in the postal sector (2010-2013) that, at the time of writing, "*overall EU /EEA Member States reported substantially complete implementation of Article 22a PSD*"<sup>50</sup>.

Article 22a (see above) is not limited to the universal service nor to designated universal service providers. It refers more generally to "postal service providers". The EC sets out in its roadmap that this article obliges member states "*to ensure that postal service providers provide "all the information, in particular to the national regulatory authorities, including financial information and information concerning the provision of the universal service to ensure conformity with the Directive and for (...) clearly defined statistical purposes"*.

The collection carried out by most NRAs and based on article 22a of the PSD can be compared with the collection of information and the legal foundation used by those two countries having a substitute-based regulation or data collection model. Malta has put in place a form of regulation that is based on market analysis and accordingly amended its general postal regulations to provide for this model. That said, the model was not put in place for data collection *per se* and its general data collection still remains based on the provisions of the directive. The German regulator's powers relate to its missions, which in the parcels sector comprise *ex-post* competencies, which in many member states remain exclusively with the competition authority. These powers do not concern its general data collection exercise.

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<sup>48</sup> See question 1 of the group's 2014 questionnaire.

<sup>49</sup> See question 2 of the group's 2014 questionnaire.

<sup>50</sup> WIK, *Report on main developments in the postal sector (2010-2013)*, p. 28.

**c. Analysis: comment on a reasoned, appropriate, and proportionate means for collecting information on parcels delivery markets**

Any new data collection exercise would need to fall within the scope of existing missions and be necessary and proportionate or, for example, result from a need identified by the appropriate bodies (such as the EC and/ or member states) to extend NRAs' current missions (with the data collection still remaining proportionate). As noted above, the ERGP has no information of a specific problem in European parcels delivery markets that could be best solved by ex-ante regulation and, in this context, is not convinced of the necessity for ex-ante regulators of the postal sector to develop a (new, all encompassing) statistical framework to collect data on all parcels delivery markets (as defined by formal market definition), which could be particularly resource heavy. Other means of information collection, particularly those building on existing missions and/ or data collection tools, could be more appropriate and they are explored in this section. Certain NRAs may see particular competition issues and may expect, for example, to need to collect detailed data on national parcels delivery markets to fulfil their missions or to provide information to and cooperate with the competition authority in case of an allegation of anti-competitive behaviour. Other appropriate bodies, including the EC, may decide to look further into parcels delivery markets.

As regards issues more of quality (than of competition) on parcels delivery markets, the ERGP takes note of current EC initiatives aiming, broadly, to support the development of a range of quality parcels delivery offers by working with all stakeholders. In particular, in its 2013 roadmap, the EC addressed a number of recommendations to industry that could lead to market-driven improvements to parcels delivery for e-commerce purposes in Europe.

*The different forms a collection of information could take*

There are several possible ways to obtain information on cross-border parcels delivery and various types of information that could be obtained. Each means needs to be evaluated in the context of the reasons for collecting data. The main reason seems to be ensuring that the market does develop (of its own accord) and provide a choice of quality offers. Some countries may, individually, have particular concerns as regards a possible increase in *ex-post* issues.

*A basic collection of statistical information based on article 22a of the PSD*

A basic collection of information on parcels delivery offers is currently in place in member states. Although it has the disadvantages of not reflecting the entire market (in a competition law sense) and of not being homogeneous from country to country, it could be useful to generally monitor the availability and quality of, for example, basic single-piece parcels delivery offers that are currently provided under the universal service regime pursuant to the PSD and national law. As noted above, the EC may wish to examine precisely what is collected in what countries and how, if necessary, this might be more standardised or improved (how the current tools could provide more comparable and consistent data, as required). Such data could be useful to give a general idea of at least basic standard parcels delivery offers, of new

operators on the market and of the evolution of different operators. It could be limited to volume and revenue information.

*A detailed collection of statistical information based on the development of a new article in the PSD and possible definition of relevant markets*

Having detailed information on parcel delivery - all actors concerned, all substitutable offers, volumes, revenues and so market shares – would be very useful for understanding the development of competition on parcel delivery markets and, should the need arise, for a regulator to pursue ex-ante regulation or for the appropriate authority (NRA or competition authority) to pursue ex-post interventions as well as to provide information to the competition authority. That said, as noted above, due to the heterogeneous nature of parcels delivery offers and actors, it would likely be particularly time-consuming and costly to identify all actors and offers concerned (all substitutes in a competition law type perspective). In addition, such a detailed collection in all member states would likely need a revised legal basis designed specifically for parcel delivery for e-commerce purposes and based on market analysis (to identify the offers and actors concerned and the sectors on which an operator may be dominant and on which competition may not be effective). In the absence of an identified need for ex-ante regulation, with entities charged with ex-post regulation generally already having robust information collection powers, and with a start to competition on the markets concerned, it needs to be demonstrated that the results of such an exercise justify the resources involved, particularly in a recurrent fashion.

Of the two NRAs that do carry out market analysis work in the parcels delivery sector, it should be noted that, in the first (BNetzA in Germany), the regulator does so on a case by case basis in exercise of *ex-post* powers in the presence of a specific ex-post regulatory case. In the second (Malta), the markets subject to analysis, where it has been determined that there is a dominant operator and competition is not effective, are limited to offers within the scope of the universal service. In both countries, the standard parcels market currently is the focus, with express being considered (relatively) competitive.

As noted above, the ERGP is not convinced that full market analysis and regular collection of information on all related (substitutable) offers is uniformly required at the present time for parcel delivery (albeit, certain NRAs may see the need to do so depending on their missions and the state of competition in their country).

*Studies at a domestic level to better understand market structures and competition and/ or collect more detailed statistical information and/ or better understand quality issues*

The EC may see a need to encourage, or NRAs could decide to carry out, studies on parcel delivery at a domestic level (which could also refer to cross-border parcels delivery). They could be aimed at better defining and understanding the structure and functioning of markets in competition law sense. This may particularly be useful for any countries that see particular competition concerns or a need to report to the competition authority. The studies could look at designing a more appropriate collection of statistical information if required. This possibility has the advantage of better

understanding markets at a likely reasonable cost. If not an obligatory exercise in all countries, it could help generate a reasonable picture of competition on parcel delivery markets, identify possible problems or more problematic sectors and prevent abuses as the markets develop.

In the absence of formal definition of markets and a collection of information from all actors concerned, which as noted above could be very time-consuming, studies could focus on collecting information from a sample of actors (alternatively sellers, buyers, or delivery operators). Rather than, or in addition to, having a competition focus, they could also focus more qualitatively on consumers' needs and quality issues.

*Work carried out by the European Commission with all stakeholders*

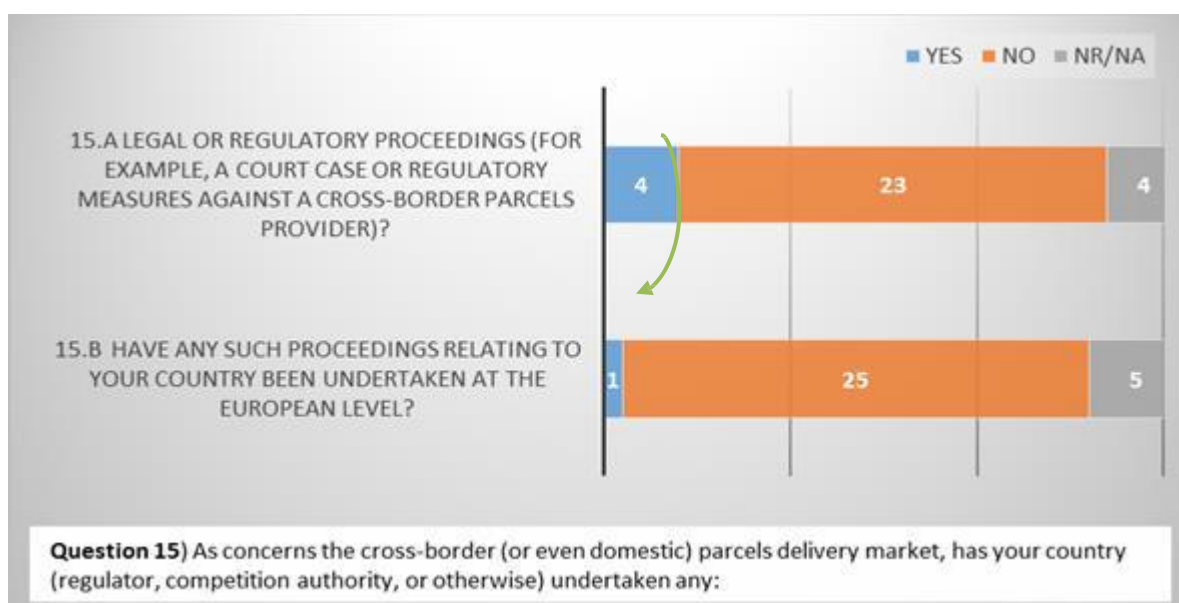
The EC is currently undertaking an 18 month initiative with stakeholders to ensure the availability and quality of parcels delivery offers improves. The work, an oversight initiative, does not involve collecting precise data on all offers, but sends a strong message to industry about the importance of parcels delivery for e-commerce purposes and seems well-aligned with the aim of improving quality in the segments concerned. The initiatives aim to support e-commerce development by creating greater delivery choice at competitive prices and helping consumers gain confidence in buying online.

**III. OTHER GENERAL ASPECTS, INCLUDING THOSE RELATING TO THE ROADMAP THAT CONCERN NRAs AND HIGH-LEVEL ANALYSIS OF CONSUMER COMPLAINTS RELATED TO EUROPEAN CROSS-BORDER PARCELS DELIVERY**

*Legal or regulatory proceedings and possible analysis or studies*

Asked whether there had been any legal or regulatory proceedings concerning the cross-border (or even domestic) parcels delivery market, the large majority of the NRAs (23 out of 31) answered no. Four NRAs noted a total of eight legal or regulatory proceedings (see below) which had been started concerning the cross border parcels delivery market. Only in the case of DHL NV vs. BIPT were the proceedings undertaken at the European level<sup>51</sup>.

*Table 4:*



The Czech Republic mentioned a decision on whether a service of cross border parcels providers would be considered postal or not. France reported a case taken to the competition authority in which La Poste was accused, by an alternative parcels operator (Kiala), of abusing a position of dominance. The interim decision has been released and, as regards market definition, indicates that home delivery and delivery to small shops are likely to be in the same market. The final decision has not been issued yet.

Malta provided information on two legal proceedings: MCA versus DHL, regarding the need for a license to deliver incoming standard parcels<sup>52</sup>. The appeals board decided in favour of the MCA, i.e. that a licence for carrying out the

<sup>51</sup> See question 15 of the group’s 2014 questionnaire.

<sup>52</sup> According to the Maltese NRA, in Malta, “operators providing services within the scope of the universal postal service require a license. Operators operating outside the scope of the universal postal service require a general authorization. The USP, MaltaPost, is required to deliver all incoming parcels to all addresses in Malta as part of its USO. DHL applied for a license to delivery incoming standard parcels originating from Deutsche Post in Germany. Following the issuance of a license by the MCA,

service in question was required; MCA vs. Global Parcel Limited (GPL), regarding the potential delivery of standard parcels under the umbrella of express services by GPL.<sup>53</sup> In the latter case the appeals board decided in favour of GPL on the basis that there was no conclusive evidence to prove the contrary.

Belgium mentioned four legal proceedings, concerning the obligation to communicate financial information to calculate the contribution fee for the ombudsman services and the payment of the contribution fee for ombudsman services<sup>54</sup>.

As regards future analysis or studies on the parcels delivery market, only three NRAs<sup>55</sup> mentioned having plans to carry out an analysis or studies. Of the four NRAs mentioned above as having had legal or regulatory proceedings undertaken concerning cross-border parcels delivery in their country, only France may undertake a study. It is likely to concern whether the current parcels delivery offer meets the needs of smaller business export senders (business senders of individual parcels using post offices), but could also look at certain aspects of competition or market structure.

#### *Dispute resolution procedures provided for by the PSD*

NRAs are fulfilling their responsibilities under the PSD for dealing with consumer complaints. The great majority of the NRAs (twenty seven) noted having put in place procedures in accordance with article 19(1) and article 19(2) of the PSD<sup>56</sup>. Of these, all except two responded that the procedures apply to all cross-border (postal) parcels provided by a postal operator. The Finnish and Macedonian NRAs reported that their complaints procedures only apply to the US provider's cross-border parcels. Two NRAs<sup>57</sup>, which are not EU member states, had not put in place such procedures.

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*DHL contested the requirement for a license, claiming that although the service originates as standard parcel in Germany, the delivery in Malta is carried out in an express manner.*

<sup>53</sup> According to the Maltese NRA, "MaltaPost complained that GPL was delivering standard parcels under the umbrella of express services. GPL only has a general authorization to operate outside the scope of the universal postal service. Any postal operator wishing to offer standard parcel services must apply for a licence".

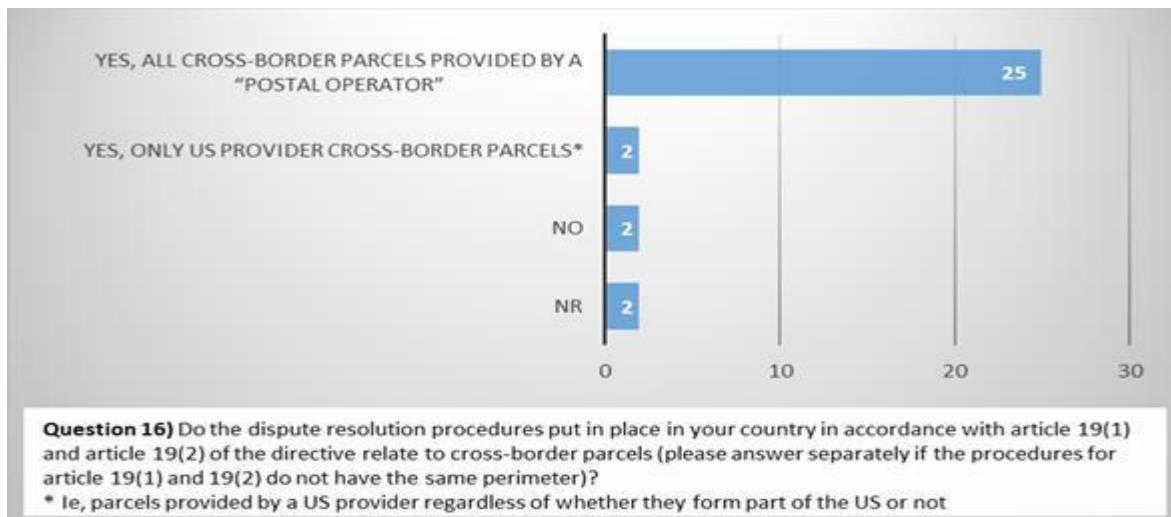
<sup>54</sup> Decision of the BIPT council of 13 November 2008. Art. 43ter Belgian law of 21 March 1991 regarding certain economic public undertakings. The judgment of the Court of Appeal was on the 19 June 2013, 2010/AR/177. Decision of the BIPT council of 19 April 2010. Art. 43ter Belgian law of 21 March 1991 regarding certain economic public undertakings. The interim judgment of the Court of Appeal was on the 17 November 2010, 2010/AR/1719. Decision of the BIPT council of 19 April 2010. Art. 43ter Belgian law of 21 March 1991 regarding certain economic public undertakings. The interim judgment of the Court of Appeal was on the 17 November 2010, 2010/AR/1718. Decision of the BIPT council of 19 April 2010. Art. 43ter Belgian law of 21 March 1991 regarding certain economic public undertakings. The interim judgment of the Court of Appeal was on the 17 November 2010, 2010/AR/1717.

<sup>55</sup> France, Macedonia and Romania.

<sup>56</sup> See question 16 of the group's 2014 questionnaire.

<sup>57</sup> Switzerland and Norway.

*Table 5:*



Quantitative or qualitative information on the number of parcels complaints in 2013 was presented by nineteen NRAs<sup>58</sup>. This information was, however, heterogeneous. Only five NRAs were we able to calculate the proportion of complaints that resulted from the total volume of articles (mail and parcels) that could give rise to a complaint – the results were less than 1% of complaints, across all types. The main subjects for complaints were loss and damage (mentioned by eight countries<sup>59</sup>, both in the case of national or international deliveries). One NRA also mentioned delivery delays. Again, this information is very fragmented and indicative only.

Twelve NRAs reported no particular difficulties in dealing with cross-border delivery complaints although most (16) did not respond to this question<sup>60</sup>. Three NRAs<sup>61</sup> mentioned specific difficulties in treating complaints concerning cross-border delivery. These difficulties were related to identifying who was responsible for the loss or damage, filing a complaint and asking for potential compensation, and differentiating between services of conveyance and ordinary postal services and communication difficulties.

As noted above, the ERGP asked NRAs whether they considered the quality of service for cross-border parcel delivery in their country to be sufficient<sup>62</sup>. Of the 31 replies, 14 considered quality to be sufficient, three considered it to be insufficient and the remaining 14 NRAs gave no reply.

In summary, only a small number of legal proceedings relating to European cross-border parcels delivery markets have arisen, one of which was undertaken at European level. NRAs appear generally satisfied with the quality of service of cross-border parcels delivery, and are fulfilling their responsibilities under the PSD for dealing with consumer complaints. Most NRAs reported no particular difficulties in dealing with cross-border delivery complaints.

58 See question 17 of the group's 2014 questionnaire.

59 Austria, Estonia, France, Hungary, Lithuania, Serbia, Slovakia and Romania.

60 See question 18 of the group's 2014 questionnaire.

61 Belgium, Lithuania and Slovakia

62 See question 19 of the group's 2014 questionnaire.

## *CONCLUSIONS AND RECOMMENDATIONS*

E-commerce appears to be increasingly valued by consumers. It has the potential to bring greater choice and quality to consumers at competitive prices. Delivery is only one aspect of e-commerce. Although many aspects, such as delivery, payment, transparency of information and consumer protection, could be improved, it is important to signal that there are also many encouraging developments. As regards delivery, particularly cross-border standard parcels delivery for e-commerce purposes in Europe, which is the focus of the group's work, the information available to the group indicates a start to competition, which is a positive sign.

As in 2013, noting again that this was not the focus of its work, the ERGP is not aware of any factor that would make ex-ante regulation of the markets to which European cross-border e-commerce parcels delivery belongs uniformly necessary at this stage. These markets could, as is the case in any sector, give rise to ex-post competition issues, but the ERGP cannot affirm that there is currently a greater risk than in other sectors.

To the extent that specific issues are present, they appear to relate more to issues of quality, in what is in a way a developing segment (parcels delivery and distance buying are not new, but the rapid take-off of online buying and delivery in this context are). In terms of the quality of offers available, the ERGP takes positive note of the work of the EC to improve the availability and the quality of parcels delivery in Europe, by working with a large range of stakeholders and by generally remaining vigilant regarding parcels delivery markets. It also notes that current universal service requirements in the PSD generally provide for a basic parcels delivery offer of quality.

Whether considering competition or more general quality issues (the latter could, but by no means necessarily would, indicate a competition issue), there appears a need to distinguish between individually-sent and bulk offers. Both types may contain business senders of parcels but, in the first case (individually-sent parcels delivery), they would be likely to be SMEs with relatively weaker bargaining power and, in the second (bulk parcels delivery), larger bulk senders with relatively greater bargaining power and perhaps more choice between competing offers.

As a general statement, the ERGP underlines the importance of effective competition on European cross-border e-commerce parcels delivery markets and, moreover, on all markets related to e-commerce. Indeed, it is important that buyers, be they on delivery or on e-commerce markets, are able to benefit from a range of quality offers at competitive prices and that they are informed of this possibility by transparent means.

### ***Recommendations and summary:***

1. The ERGP does not currently see a need to uniformly proceed to full market analysis or to collection of information based on full formal definition of markets, which is usually reserved to markets where ex-ante regulation is held to be necessary or in the context of ex-post investigations of anti-competitive behaviour (by the entity charged with enforcing sector specific regulatory or competition law). It notes that there is already a



general collection of information on basic parcels delivery offers in most countries based on article 22a of the PSD. The EC may wish to explore how precisely this article is currently used and, if necessary, how its use might be improved upon (how it might provide for more comparable data, as required) in the context of the objectives of current regulatory missions.

2. Certain NRAs may see particular competition issues and may expect, for example, to need to collect detailed data on national parcels delivery markets to fulfil their mission or to provide information to and co-operate with the competition authority in case of an allegation of anti-competitive behaviour. Depending on their responsibilities, they may wish to review the parcels delivery sector. The sector is of growing importance to users and, again depending on individual responsibilities and needs, NRAs may wish to carry out studies in their markets, focussing on, for example, competition issues, information collection, or consumer needs and quality issues (particularly as involves individually-sent offers and smaller senders such as SMEs).
3. Current European postal regulation was principally set up to oversee letter mail services in a broad sense. Parcels delivery is somewhat different (in terms of, for example, market structures and types of operators) and perhaps less homogeneous. Delivery operators may be subject to European or national provisions in, for example, postal, transport or freight law. While this is not problematic *per se*, given the strong growth in e-commerce, it may be useful to consider whether there are situations (possibly concerning consumer protection or time limits for signalling damage to a parcel or its content for example) in which a parcels delivery operator may be subject to European or national provisions that another parcels delivery operator avoids (or vice versa) for what is essentially the same service or offer. The aim would be neither to increase nor to reduce relevant provisions (the ERGP is not a legislative body), but to identify any aspects of inconsistency (different regimes applying to like services), redundancy or possible questions of primacy between different regimes. The ERGP proposes that its work in 2015, if required, focus on this issue.