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FFPI Contribution to the Consultation on the ERGP Report on the implementation of the Universal Service in the postal sector in view of the market developments

I. The **Free and Fair Post Initiative (FFPI)** very much welcomes the decision of the European Postal Regulators Group (ERGP) to include in its work programme for 2014[1] a reflection on the implementation of the Universal Service Obligation (USO) in the postal sector in view of the market developments.

II. The FFPI is of the opinion that this represents the first, important step to be taken before moving to a broader evaluation of the signs of the changes in the postal sector. There is a general feeling among industry participants that the postal market, and especially the USO as currently defined, is facing a **multitude of pressures** that require a **positive response** to ensure the industry meets the needs of its customers. The FFPI therefore appreciates the opportunity given by this consultation process to express its own views.

III. Over the last six years – i.e. since the adoption of the Third Postal Directive (2008/06/EC)[2] – the postal industry has indeed shown some significant shifts. In 2008, the Directive was adopted to complete the process aimed at setting the regulatory framework at Community level for postal services to ensure that efficient, reliable and good-quality postal services are available throughout the European Union to all its citizens at affordable prices. To achieve this broad purpose, a number of **specific objectives for action** at Community level have been identified including:

- **The definition at Community level of a universal postal service**, conceived as a right of access to postal services for users, encompassing a minimum range of services of specified quality which must be provided in all Member States at affordable prices for the benefit of all users, irrespective of their geographical location;

- A common maximum limit to the extent of the **postal reserved areas** which each Member State may grant to its provider(s) of the universal service, in order to ensure the economic and financial viability of the provision of the universal service;

- The development of a process of gradual and controlled market **opening to competition** while giving the Member States means to ensure that the provision of universal service is guaranteed on a lasting basis.

I. Since 2008, the Third Postal Directive has gradually liberalised the market but has **not progressed at same pace in the creation of a true competitive market**.

II. As highlighted by the **WIK report on the main developments in the postal sector** (2010-2013)[3], the reasons for this vary. Between 2007 and 2011, revenues in the European postal sector declined from € 94 billion to € 91 billion. While parcel and express revenues have grown, demand for letter post services has declined substantially since the start of the financial crisis 2007.

[1] http://ec.europa.eu/internal_market/ergp/docs/documentation/2014/2014_ergp-work-programme_en.pdf
[2] http://ec.europa.eu/internal_market/post/doc/legislation/2008-06_en.pdf
[3] http://ec.europa.eu/internal_market/post/doc/studies/20130821_wik_md2013-final-report_en.pdf

III. In the meantime, technology has increasingly started to play a crucial role in the way the business is operated and e-Commerce has created a fresh stream of revenues from parcel volumes that has the potential to grow faster than email ever did. And while the product mix continues to being reinvented and new ownership models are being established, the differences in the implementation of the USO scope have inevitably increased the incidences of distortion of competition between private and national operators.

IV. Reviewing the USO in light of the recent market developments and, primarily, of the consumers' needs is of essential importance to ensure the creation of a competitive landscape and to allow the postal industry to continue its transformation journey in a sustainable way.

V. Competition provides significant benefits to consumers, in terms of incentivising the incumbent postal operator to become more efficient and improve its quality of service. There is no evidence that the introduction of competition has put the viability of delivering the universal service at risk, at least directly. With this respect, it is important to note that already in 2006 the European Commission held the view that while competition was taking time to develop, competition had the potential to deliver real benefits to consumers: '*Competition is not an end in itself, but a means to promote innovation, investment and consumer welfare*.'[4]

VI. The **Free and Fair Post Initiative (FFPI)** is an independent European initiative whose purpose is to **encourage the creation of a fair and competitive environment in the postal sector**, in order to allow users and consumers to take advantage of increased choice, better quality of service and affordable tariffs. The FFPI represents **innovative operators** in the market that seek new profitable ways to establish networks and services, independently, without any political vantage, but with a commercial focus and high deliver delivery performance. A **level playing field** is vital for their business growth, for their responsiveness to market's changes and for consumers' benefits.

VII. With this in mind, the FFPI calls on the ERGP to take of utmost importance of the possible existence of risks that the USO results in, such as effect of a **barrier to market entry** for more efficient operators and placing an **unjustified financial burden** on the sector and thus on users.

VIII. In order to help the ERGP in its reflection process, the FFPI members would like to share their own thoughts having in mind the following objectives:

A. **Re-assessing the universal postal service definition and removing the USO or at least reducing its scope as much as possible** focusing on a very limited products' range and on the quality of service (*what is the role covered now by the postal service and what is the service level that is relevant for customers in the digital age*);

B. **Unbundling the services that remain included in the universal service definition**, to introduce some flexibility in the sector and to favour the entrance of multiple business organisations into the market to provide the universal service.

C. Launching the process for the creation of a **European regulatory body/agency** on postal services while increasing the role and powers of the national regulatory authorities in relation to the universal service, as better re-defined. Such an approach would facilitate the way towards an harmonization at EU level and a better integrated postal market.

[4] Report from the Commission to the Council and the European Parliament on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC): http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0595&from=EN

A. Re-assessing the universal service definition and reducing the scope of the USO

IX. The European Commission had developed an original concept to protect the consumers, should the liberalization of the network industries in general and the liberalization of the postal sector in particular leave out particular individuals or groups.

X. As mentioned above, at EU level, the **universal service** is a minimum set of services of specified quality, available to all users independent of their geographic location and, in light of specific national conditions, at an affordable (or reasonable) price. **Universal Service Obligations** are hence the obligations placed on designated service providers to meet this universal service requirement. As regards to the postal sector, the Universal Postal Service Obligation, in its essence then, is a **safety net**, which aims to guarantee, across the EU, accessibility, quality, and affordability of the Universal Postal Service.

XI. The FFPI members believe that the concept of universal service in the postal sector is good in principle, but the changes occurred in the market has led to the need to review its definition as well as the relevant set of obligations in order to favour increased flexibility and pragmatism for the universal postal service to remain valid in the future. The FFPI members would like to recall that when defining the universal service in its 1997 Framework Directive, many countries and the European Commission basically took over the previously existing **national public service practices of the incumbents**, in line of which they adopted an operational perspective in setting the universal service's standards (e.g. by setting and making compulsory the frequency by which the postal service needs to be performed).

XII. Over the past fifteen years, **consumers' behaviours, needs and demands in communications matters** – also driven by an increasing number of EU policies aimed at designing the way for a digital transformation of Europe – have evolved greatly, thus affecting postal matters, be it parcels or letters.

XIII. What do the consumers want nowadays from the postal sector? Consumers want postal products and services that are innovative, that take advantage of the opportunities offered by the digital market, affordable, reliable and high quality, and that meet their individual needs. Something that is not new, but that in a financial-economic crisis time include specifically **an advantage in terms of cost savings due to consumers' higher price sensitivity**.

XIV. The FFPI members believe that the universal service is most likely to be financially viable over the long term in a **fully competitive postal market**. In the long run, it is the choice of customers and consumers to use the universal service network, and to purchase postal services more generally which will safeguard the financing of the universal service and this positive choice will be most likely to continue under competitive market conditions. Customers and consumers benefit from the additional choice under a competitive environment and the wider economy benefits from the lower prices it generates.
The challenge of competition in markets is a spur to innovation and efficiency and without these incentives it is possible that (certain) incumbent operators will gradually become out of step with the wider economy, and that postal services may be bypassed as a delivery mode of choice.

XV. So, what does this mean for the USO? The implications are clear. Firstly, **the urgency and speed of mail delivery** can somewhat be relaxed. Secondly, **flexibility** has to be introduced to make active use of the ICTs when providing the universal service. Thirdly, **pragmatism is necessary** to adapt the provision of the universal service to the changing consumer needs, demands, and

behaviours in communication matters and to open up the market to independent alternative operators.

XVI. The way to approach this would include two phases. At a first stage, a reflection upon the current universal service definition (preferably to be carried out not only in relation to the postal sector) to take into account the challenges and opportunities offered by the development of the electronic communications and more broadly by the internet. The objective would be to better determine what needs to be regulated – either at EU and national level – and what should be left instead left to the market forces.

XVII. And if, on the one hand, there is the fear – highlighted in the academic literature – that with abolishing the current reserved area, the door would be opened up to `cherry-picking`, whereby operators would focus on providing more lucrative postal services and would not be interested in covering less lucrative aspects. On the other, it is important to stress that risks of causing harm to consumers in terms of the insufficient provision of universal services are not specific to whether the reserved area is maintained or not. **Maintaining a reserved area in the absence of good regulatory practice can be detrimental to consumers.** A reserved area should not be used to protect incumbents from competition and to guarantee them a comfortable leverage to compete in the liberalized markets (e.g. through cross-subsidization, price discrimination, etc.).

XVIII. Consequently, the FFPI members call to **reduce the scope of the USO (if it cannot be removed)** in relation to the products' range covered and to the frequency of delivery by exploiting the opportunities given by the existing digital alternatives.

XIX. In line with the conclusions of the WIK study[5], the FFPI members are of the opinion that the definition of universal service must move away from the "one-size-fits-all-and-always-will" approach. The FFPI members feel the need for an **harmonized, clear European definition of universal service based on general principles** (ubiquity, affordability, accessibility, etc.) that is able to provide a solid framework that Member States can further adapt to national circumstances.

XX. More in details the FFPI suggests to **establish by law (only) the maximum number of deliveries per week,** in order to give the operators the possibility to adapt the USO performance to the local digital development.

XXI. More in details, the FFPI propose to define the universal service and reduce the USO scope in terms of **transit times needed by customers for a basic mail service rather than in terms of delivery/collection frequencies**. The FFPI calls for a reduction of the number of deliveries per week (1 or 2 for example) in all areas where the digital infrastructure is firmly in place and functioning while upholding the current level, where necessary or keeping it close to it, in those areas where it is still not the case.

XXII. The Digital Agenda for Europe calls for all citizens to have access to broadband internet. Significant efforts have been made by European institutions and industry to deploy satellite broadband solutions to offer ubiquitous broadband, especially in rural areas, at subscription prices and with performances comparable to ADSL. In mid-October 2013, the European Commission announced that every EU household was now able to have a basic broadband connection, given the pan-European availability of satellite broadband. This might explain why consumers, including elderly people, tend to find easier to Skype or to send a message through electronic post rather than to walk to the post-box.

[5] See supra note 3, page XV.

XXIII. The FFPI members recall in this context the New Zealand example provided in the ERGP consultation paper (page 5), where the New Zealand Post has negotiated – given the decline in mail volumes – a new USO (to be applicable as of July 2015) for a basic postal delivery service not less than three days per week in urban centres and not less than five days per week to PO boxes and in rural areas.

B. Unbundling the universal service

XXIV. As said, in re-defining the universal service and the USO scope of the future, it is not possible any longer to ignore the role of competitors. Although incumbent operators still maintain significant political constraints with national governments, the new technology at the horizon have shown the potential to disrupt existing practices and networks. A potential that could be fully exploited if certain elements of the universal service are unbundled.

XXV. In line with the current postal framework, Member States may employ one or a combination of three legal mechanisms to ensure provision of the universal service: (i) reliance on market forces, (ii) designation of one or more universal service providers, or public procurement of universal services. However, as reported by the WIK study, most Member States have designated the public postal operator as the universal service provider for the entire national territory without the objective, proportional, and non-discriminatory consideration of alternatives required by the Postal Directive.

XXVI. The main reason being that reliance on market forces would risk loss of universal service in only relatively few, isolated portions of national territory. But **this is not any longer sustainable**, especially given the high number of professional operators existing in the market. For example there are many retail organisations that could successfully provide the services of post organisations in any given regions which would be happy to take care of letter and parcel deliveries in such region. Moreover, operating and emptying letterboxes could also represent a separate business to be assigned to a third party.

XXVII. Therefore, the current approach **cannot be justified** as it simply prevents to expose the old monopoly industry to competitive pressures, providing the incentive to become more efficient, innovative and customer focused.

XXVIII. This explains why the **FFPI members call for stronger, independent regulatory authorities** that are entitled to unbundle and tender out any postal services which are part of the universal service to various businesses, and able to monitor the related performance and to intervene in the event of market failures. The regulatory authority for example could allocate certain operators to serve specific remote regions (e.g. Sicily and Sardinia in Italy, Lapland in Finland where even a local taxi driver could be assigned to perform two deliveries per week).

XXIX. Such an approach would also provide a solution to the VAT problem. The FFPI members support the introduction of a **single standard reduced VAT rate for all operators and all services**. This would favour the creation of a level playing field for competition whilst protecting social users and VAT-exempt customers from substantial price rises. This means that should certain services included in the universal service definition be unbundled, the VAT exemption in the public interest – which currently constitutes an advantage for incumbent operators – would lose its legitimacy and all the organisations involved will benefit from the same VAT regime.

XXX. The FFPI recalls that such a proposal requires the definition of a EU solid framework, which includes clear provisions on national regulatory authorities' accountability, independency, impartiality and transparency and an effective mechanism to ensure that any user or postal service provider affected by a decision of the regulatory authority has the right to appeal against such a decision.

C. The need for a European agency on Postal Services

XXXI. It is continuously proven that very high quality postal services are being maintained by market actors in most parts of the EU. And although it is also true that some remote and undeveloped areas still exist, the FFPI members believe that to fill the gap where liberalization has not lead to provide postal services there, it would be for **a regulatory authority to intervene**.

XXXII. Under the current Postal Directive, the national regulatory authorities have the particular task of ensuring compliance with the obligations arising from the Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service.

XXXIII. The FFPI members propose to strengthen their roles and to have them taking over the responsibility for the universal service (as highlighted above on the unbundling of the universal service). This is with the view to reduce to zero any kind of political constraints with the governments and to eliminate monopoly situations in the universal service provision.

XXXIV. In any case, there should be distinction between universal service specification via a regulator and any supply of other services by universal service operators. The role for the regulators would be to monitor the national market, to collect information from all the stakeholders e.g. on the trends, market developments, and to intervene only where there is a proven failure of the market to supply.

XXXV. To provide for an "umbrella framework" to the actions undertaken by the regulatory authorities at national level, the FFPI sees an evolution of the role of the ERGP towards the creation of a **European regulatory body/agency** with coordination powers (e.g. through the adoption of guidelines) and the power to lead the process towards a review and definition of the universal service at European level for **intra-Europe postal services** rather than for intra-country service levels.

XXXVI. The FFPI members believe that it is of fundamental relevance to achieve true effective harmonization of the regulatory principles across the EU on the USO. The FFPI members are of the opinion that rather than opting for a minimum harmonization approach, as the one followed by the postal Directives, Member States should be prevented from the establishment of USO definitions that exceed the EU standard.

XXXVII. The FFPI believes in the full potential of the postal sector, which can however be released only if a true Single Market exists, which allows for a level playing field for all the postal operators across the EU and a fair competition game that benefits consumers and the society as a whole in terms of lower tariffs, increased innovation and jobs growth.

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About FFPI

*The **Free and Fair Post Initiative (FFPI)** is a voluntary, independent, not-for-profit, European initiative, which has the aim to foster competition in the European postal market and in the parcel business sector, to support the e-commerce growth, to remove all constraints and barriers, and to call for a proper law enforcement, at both national and European level, for the establishment of a level playing field for all postal operators. Our Members include **Cycleon, Inpost, Janton, Nexive, PostCon, The Mail Competition Forum**.*