

Bonn, 22 June 2016

**Response of Deutsche Post DHL Group to the public consultation of the
European Regulators Group for Postal Services on the Discussion Paper
for the ERGP Medium Term Strategy 2017-2019**

The European Regulators Group for Postal Services (ERGP) has published a ‘Discussion paper on the ERGP Medium Term Strategy 2017-2019. The Medium Term Strategy will identify the core areas of focus for ERGP’s work. It will take into account the challenges the postal sector is facing as a result of changes in consumers’ needs due to electronic substitution and should take into consideration the initiatives in the Digital Single Market (DSM) concerning e-commerce. DPDHL appreciates the opportunity to contribute to this consultation.

Q 1.1 Do you consider that there is a need to redefine the minimum US scope and / or obligations taking into consideration the evolution of postal consumers’ needs? What are the main reason(s) for your view?

Q 1.2 If yes (to Q 1.1), how do you suggest that the EU US scope should be legally redefined?

Q 1.3 If no, why do you consider that the current legal framework provides Members States and NRAs with sufficient flexibility to keep up with the evolution of consumer needs?

DPDHL is of the opinion that the Postal Services Directive provides Member States with sufficient flexibility to define and adapt universal service in accordance to the local needs and their evolution. There is no doubt that Member States at present have no alternative than to use this flexibility in order to respond to the challenges of the on-going upheaval of communication behaviour. Notwithstanding the heterogeneity of the European mail markets, for instance regarding the level of competition, service standards and prices, e-substitution of physical mail is a general trend across Europe. Electronic substitution exists for all types of mail such as transactional mail and government-to-citizen communication, marketing communication (direct mail) and social communication.

The Postal Services Directive, in our view, allows for adjusting universal services to these changing conditions. It defines a “minimum” universal service, provides for exemptions and requires Member States to take steps to ensure that the universal service evolves in response to the technical, economic and social environment. As the existing universal service standards may overly serve actual needs and, in order to ensure a sustainable universal service provision and control costs, standards need to be adjusted. This flexibility is as well reflected in the great variety of universal service definitions across the Member States.

In a next step, a review of the Postal Services Directive may be necessary in order to take the postal regulatory framework to the next level of deregulation.

Q 1.4 To what extent is innovation in the European postal sector advancing sufficiently quickly to keep up with evolving consumer needs? Please provide evidence to support your response.

The European postal markets are fully open to competition. Mail monopolies have been removed and though post-on-post competition remains limited to a few Member States, mail everywhere competes with electronic media. Substitution does not imply that there is no innovation in mail delivery as evidenced by, for instance, hybrid solutions. The parcel markets are highly competitive and innovative, boosted by e-commerce. The European postal operators have made significant investments in infrastructure, new services and solutions, including, for instance alternative delivery options like parcel lockers or easy return and new tracking solutions or electronic notifications. With the Industry Initiative supported by IPC's Interconnect Programme, the European postal operators specifically took care of improving cross-border delivery services.

In this context, DPDHL reminds that the concept of universal service is not on replacing or developing markets and driving innovation, but on ensuring access to services that are deemed to be indispensable and that are not or insufficiently offered by the market.

Q 1.5 To what extent will Europeans' basic right to communicate be fulfilled by digital communications or increased efficiency in the postal sector or both? If gaps remain, what would be the best alternatives to deal with them (adjustment of the scope of the US, others)?

The European citizens' right to communicate are and will continue to be served by both, physical mail and digital communication. If gaps remain, and the markets do not or insufficiently offer services deemed indispensable, adjusting the universal service appears the best alternative.

1.6 Should the European USO rules on post and electronic communications be merged to take account of e-substitution and, if so, in what way?

No. Merging European (or national) USO rules on post and electronic communications is neither needed nor justified to respond to e-substitution in an effective way. Given the heterogeneity in terms of digitalisation, digital infrastructure, habits and skills etc., a "one size fits all" approach would be inappropriate. Member States are best placed to determine what is locally needed as postal and electronic communication universal service according to the specific conditions and local circumstances.

Q 2.1 Do you consider that the Postal Directive provides all the instruments needed to promote end-to-end and access competition in the evolving postal market (letter and parcel)? Please explain your answer providing examples where appropriate. Do any of these regulatory instruments need to be adapted to the reflect market developments and trends and, if so, in what way?

The European postal markets are fully open to competition. Mail monopolies have been removed. Competition, both end-to-end and access competition exists in some Member States like, for instance in Germany, where the markets have been opened up well ahead of Europe. In

other Member States market opening may have come too late to attract competition (market decline). The Postal Services Directive does not request access to the postal network, but confirms Member States right to adopt respective measures. In DPDHL's view artificially forcing competition appears unreasonable in a shrinking market.

Parcels have never been under a monopoly, competition is high in many Member States, in others competition is growing. Beside the national posts, pan-European express and parcel delivery operators and regional or local operators are active in the market. Big e-retailers like Amazon are entering the delivery market and disruptive players like Uber are creating completely new challenges. There is no need for giving a helping hand to competition, as suggested by the Commission. The Commission proposal for a Regulation on cross-border parcel delivery requires universal services providers to give access to third party operators to multilateral agreements on terminal rates and publish reference offers that are subject to approval by the national regulatory authority. EU competition law already provides the means to require third party access under specific circumstances as a result of rules related to market dominance. Going beyond this only implies costs and red tape.

Q 2.2 Do you consider that the current terminal dues system (UPU, IRA) is fit for purpose in an e-commerce market?

Q 2.3 Is the current overall level of price transparency along with the measures proposed in the Regulation [COM (2016) 285 of 25 May 2016] sufficient to resolve price transparency problems or would it be necessary to have additional measures/solutions to address market developments? If not, please provide suggestions on how price transparency could be improved and which role ERGP should have in terms of enforcing the above EU regulation regarding price transparency measures?

Postal prices are generally transparent. Lists of public tariffs are accessible off- and on-line, and price comparison webs-sites are widely available. The Postal Services Directive requires that prices for universal services are affordable and cost-oriented, transparent and non-discriminatory. Additionally, the (draft) Regulation will oblige universal service providers to annually communicate the price list for a set of domestic and cross-border mail and parcel services to the national regulatory authority. The price list will be forwarded to the Commission and published on a dedicated web-site. DPDHL does not have concerns to increase price transparency by publishing public list prices on a dedicated web-site by the Commission allowing a comparison of cross-border prices across Europe.

However, there are concerns with respect to the annual affordability assessments by the national regulatory authorities. The affordability assessments are mandatory and independent of the actual market situation, including prices in the individual Member States.

The European parcel delivery markets are quite divers in terms of competition, price levels and the ratio of domestic and cross-border prices. According to the Commission SMEs generally rely on the national posts because competitors focus on bigger e-retailers. This is not the case all over Europe. An example is Germany where competition, e.g. through Hermes or DPD, prevails including the C2X segment. The Commission also points to the fact that in the EU average cross-border prices are 5 times higher than domestic prices, but in reality the multiple varies

from about 1,5 to 22 across the EU countries. Therefore, DPDHL takes the position that a “one-size-fits-all” approach is disproportionate. Affordability assessments should only be made where prices are uncontrolled by competition or in case of apparent price anomalies. Anything else will imply significant costs and red tape.

The (draft) Regulation does not, and according to DPDHL for good reasons, allocate specific tasks to the ERGP in enforcing price transparency. The national regulatory authorities are the competent bodies to undertake affordability assessments where appropriate.

Q 3.1 Do you consider that the provisions of the Postal Services Directive, namely Article 19, are sufficient and future-proof in terms of consumer protection and empowerment? If not, please explain why and propose any associated changes.

Q 3.2 Do you consider that the current regulatory framework, including horizontal consumer protection rules, is sufficient to protect consumers in the area of postal services? Please provide evidence to support your answer.

Q 3.3 Are the generic rules on consumer protection and complaint handling sufficient to address the latest market developments, or do we need sector-specific consumer protection rules, notably covering the increased relevance of deferred and express parcel delivery services? If so, please provide examples.

DPDHL is of the opinion that the measures provided by the Postal Services Directive and the existing horizontal consumer protection rules suffices. We do not see a need for further sector specific rules.

Q 3.4 Do you consider it is important that the ERGP monitors postal indicators that are relevant for the protection of postal service consumers? Which indicators do you consider to be essential to collect and analyze?

Q 3.5 Which indicators should be collected (and reported) as a minimum by NRAs or the EC and how frequently should this be undertaken?

National regulatory authorities are collecting and monitoring several indicators that are relevant for consumer protection, including affordability, accessibility or quality of service. This appears sufficient to protect consumers and supervise markets.

Q 3.6 Are the additional powers proposed by the Commission in the Regulation [COM(2016) 285 of 25 May 2016] sufficient or which additional powers should NRAs have in order to collect the required information from providers?

The Postal Services Directive (Article 22a) gives powers to the national regulatory authorities and corresponding information obligations to the postal operators. According to Art 3 of the (draft) Regulation, parcel delivery operators have to provide the NRA annually with a defined set of data. The NRAs have thereby the power that is required for an efficient and consistent market

monitoring. No further powers are needed. Important will be to ensure that new reporting requirements are proportionate to the objective (oversight on the market) and, in order to avoid red tape, will replace locally existing requirements.

Confidentiality needs to be ensured as well in connection with the commercial sensitive data that universal service providers may be requested to deliver in the context of affordability assessments.

Q 3.7 Do you consider that the measures proposed in the Regulation [COM(2016) 285 of 25 May 2016] will ensure that there is sufficient regulatory oversight in relation to the issues identified by the EC in its DSM initiative regarding the cross border parcels delivery market? If not, in what respects would you favour their amendments?

The measures foreseen by (draft) Regulation (Article 3) ensure an appropriate level of regulatory oversight and market monitoring. The measures need to be pragmatic and functional and avoid unnecessary bureaucracy.

Furthermore, the provisions regarding affordability assessments under Article 5 and access to multilateral agreements under Article 6 are in DPDHL's view disproportionate (see our answers to Q. 2.3 and Q. 2.1).

Q 4.1 Are you satisfied with the quality of ERGP documents and with their publication? Please provide evidence to support your answer. Please provide recommendations and suggestions to improve the process.

Q 4.2 Are you satisfied with the current public consultation process? Please provide evidence to support your answer. Please provide recommendations and suggestions to improve the process.

Q 4.3 Do you think that external ERGP workshops have added value for stakeholders? Should we keep external workshops? Please provide evidence to support your answer. Please provide recommendations and suggestions to improve the process

DPDHL believes that a dialogue, workshops or consultations are a good approach in order to exchange and discuss with stakeholders.

Q 4.4 Do you agree with the proposed axes (see point 42), which could increase ERGP internal and external efficiency.

Q 4.5 Do you have any other suggestions to improve ERGP efficiency in general or more specifically?

More regular contacts with the postal industry, e.g. under the umbrella of PostEurop may be considered in order to deepen the dialogue and provide input from the industry and the market.

Focussing efforts and works on the more pressing regulatory topics appears a reasonable approach to increase efficiency of ERGP as an advisory body.

Q 4.6 Do you think that ERGP should continue to be a group which advises and supports the European Commission or should evolve to other structure? Please provide evidence to support your answer.

ERGP should remain to be an advisory body. Given the heterogeneity of the markets in the European Member States, there are no “one-size-fits-all” solutions. The enforcement of European legislation (e.g. the Regulation under preparation) should remain within the competency and responsibility of the national regulatory authorities.

Q 4.7 Do you consider that the convergency trends between the postal sector and electronic communications suggests closer co-operation between ERGP and BEREC?

No. DPDHL does not share the idea of a convergence trend between the postal sector and electronic communications. The postal sector and electronic communications exhibit substantial differences (e.g. labour vs. capital intensity, cost differences etc.) that will stay, and require different regulatory approaches or concepts (if any). The joint BEREC-ERGP opinion of Dec. 2015 correctly pointed to key differences between the sectors.

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