



We would like to thank the ERGP for the opportunity to provide input on their 2019 work program and we would also like to congratulate you on the excellent stakeholder forum that took place last week in Brussels. The forum provided a great opportunity for external parties like UPS to get a better understanding of the goals and objectives of your work and the workgroups (WGs) that are set up to prepare reports on the main priorities.

Below you will find a summary of our feedback on the main topics covered in the draft 2019 work program as discussed during the stakeholder forum on September 20<sup>th</sup>.

## 1 - Review of the regulatory framework for postal services:

**General:** UPS welcomes the thorough review of the current regulatory framework for postal services. We would like this review to go beyond the basic review of the conditions and requirements related to the current scope of universal service. We propose that the ERGP also evaluates the more fundamental need for having a broadly defined universal service obligation that includes both letter mail and parcels, looking at a future proof framework that limits the scope of the universal service obligation to the specific market segments that are unlikely to be functioning in a normal market based approach. In our view such a review needs to make a clear distinction between the letter mail market, dedicated to the exchange of items of correspondence, and the parcel market, dedicated to the delivery of goods.

**Letter Mail:** The recently issued Main Developments<sup>1</sup> study provides the necessary evidence that the letter mail market continues to decline, creating challenges to a sustainable provision of service under the current USO conditions. This also results in a continued market concentration in the letter mail market with a dominant market share for the traditional incumbents.

**Parcels:** The same study confirms that there is continued growth in parcel and express volume amongst USPs. Various reports and studies confirm that this trend is strongly linked to the growth created by ecommerce transactions in goods. USPs continue to be a significant market player in this parcel segment, specifically in their home markets. The revenues generated by the parcel segment also help to offset the reduced letter mail volume revenue.

**Letters versus Goods:** The current postal market data is flawed as a result of the inclusion of smaller shipments of goods (packets) in the letter mail volumes. This is the result of an outdated definition of postal products whereby small parcels that weigh less than 2kgs are included in the letter mail flows and statistics.

**Other legislation governing postal and delivery services:** A review of the current regulatory framework should also take stock of other legislation that applies to postal and parcel delivery activities in the area of road transportation, aviation and aviation security, customs and taxation, consumer protection, data protection and cybersecurity and labor standards. This review can assist in identifying areas where specific privileges for USPs are still applied as a result of exemptions granted for the provision of universal service such as VAT on postal services, customs procedures, driving and resting times. The review will also provide a better overview of legislation already in place to govern general business

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<sup>1</sup> Copenhagen Economics 2018, Main Developments in the Postal Sector (2013-2016)



practices applicable to the broader delivery and transportation sector such as labor rules and consumer protection. If general rules are in place there is no need for introducing regulation as specific postal sector regulation. It would also help to identify areas where better enforcement of existing regulations on USPs is required.

**UPS recommendation:** We would encourage a thorough review of the regulatory framework, separating the broader postal sector between the communications (letter mail) and transportation (goods) market, considering a reduction of the scope of the universal service obligation to the provision of letter mail services (as in items of written correspondence) only. The collection, sorting, transportation and delivery of goods might not require a universal service obligation due to the fact that there is a well-functioning market and supporting legislation in the form of the Cross Border Parcel Regulation. This scenario should be specifically considered for parcel delivery resulting from B2X or X2B transactions that result from broader commercial and ecommerce practices. The review should also address the competitive distortion resulting from difference in treatment between USPs and commercial delivery companies in the areas of VAT, Customs and Transportation legislation. We strongly support a review of the definition of letter mail to exclude goods below 2kgs, introducing a clearer distinction between items of written correspondence and goods within the regulatory framework.

## **2 - Cross Border Parcel Regulation:**

**General:** UPS has been actively involved in the consultations that have resulted in the current Regulation. During these consultations we have highlighted the significant growth rate of cross border deliveries in our pan-European network and the introduction of innovative consumer oriented solutions such as UPS Access Points, UPS MyChoice and alternative tariffs structures for SMEs to support intra-European ecommerce. We have advocated for additional solutions related to payment systems, VAT procedures and consumer protection to simplify cross border ecommerce and have called for a review of the distortion caused by UPU supported international ecommerce imports benefitting from subsidized mail rates and non-compliant customs and tax procedures<sup>2</sup>.

**Implementation phase:** As a non-USP, UPS can be required to provide data under articles 4 and 5 of the Cross Border Parcel Regulation. UPS is not subject to the provisions of article 6 (USPs only) and article 7 (traders only). Given the fact that UPS – unlike most Postal operators – is active in all 28 EU Member States, we will have to comply with requests from NRAs in all Member States regarding the provision of information and tariffs. For this reason we welcome the development of a standardized template that will be used by all EU NRAs. The use of a standardized template will not only limit the administrative burden for operators and NRAs, it will also allow for better comparability of market data between countries and across borders. We suggest that a similar approach is taken in the collection of tariff data under article 5.

**UPS recommendation:** We encourage the ERGP WG to consider introducing a highly standardized, centralized and digitalized method of data collection resulting from articles 4 and 5, allowing companies like UPS that operate in a multi-country set up to provide our data in a centralized data system that can be accessed by the individual NRAs to download their respective country data. We caution against detailed, country specific surveys. These would significantly reduce the ability to consolidate market data at EU level and would limit the possibility to compare markets with each other on cross border parcel delivery growth.

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<sup>2</sup> European Commission/Copenhagen Economics, 2018, Main Developments in the Postal Sector (2013-2016)



### 3- Access to the postal network

**General:** The traditional discussion on access, last mile delivery and related pricing remains relevant for the letter mail and parcel market. The CE Main Developments study correctly extends this issue to access to parcel delivery infrastructure. The need for efficient delivery of growing parcel volume in a sustainable way merits further review of access to alternative delivery locations for parcel delivery. Parcel delivery requires innovative solutions for delivery in the absence of the consignee. Current restrictions on access to buildings and delivery infrastructure for non-USPs need to be revisited. Forward looking solutions include multi-operator access to parcel lockers, parcel boxes and collection points.

**UPS Recommendation:** Multi-operator access to delivery related infrastructure such as parcel boxes, mail boxes and parcel lockers should be available in cases where the current delivery infrastructure and building access is controlled by the traditional incumbent. Multi-operator use of delivery solutions will increase consumer satisfaction and delivery efficiency and avoid competitive distortion. We would welcome efforts by the ERGP to identify current access restrictions amongst USPs and propose measures to remove these restrictions in order to improve delivery efficiency and consumer satisfaction.

### 4- Tariff Regulation

**General:** UPS agrees on the critical importance of this work-stream as the basis upon which the non-discrimination obligation and the cost orientation requirement are based. UPS is also under no illusions as to the difficulties which regulators face in seeking to untangle costs and to allocate them appropriately across service lines.

In the absence of such an exercise being conducted effectively, however, a postal incumbent has very significant scope to leverage its market power across both USO and non-USO services, and especially with non-USO services, given the unique customer-facing position that they enjoy with respect to the delivery of postal services. This can be seen in the wide range of new services that operators are seeking to offer to customers such as return services, time-specific delivery, transport of specialized items including pharmaceutical products and other bespoke services related to the horizontal integration of the supply and fulfillment process (to name but a few and the most obvious). The potential for postal operators to use such leverage is vast.

The risks are that, in the absence of properly allocated costs, there will always be residual concerns regarding issues such as: revenues spilling over between licensed and non-licensed activities of incumbent postal operators; domestic package transportation services falling outside the USO often being offered at very low prices (often by affiliated undertakings); some portion of revenues received to perform the USO being used in commercial markets; or where the absence of proper cost allocation between universal and non-universal activities generates an unfair competitive advantage in favor of the postal incumbent.

**UPS recommendation:** In order to facilitate a competitive market environment, it is crucial that regulators strictly enforce separate accounting obligation that prevents over-compensation for the provision of the (in reality) ever-shrinking USO.

Moreover, the implementation of formal accounting rules alone cannot be completely effective in an environment characterized by so many common costs – especially as regards the use of personnel in the



delivery and sorting function – unless a regulator has effective enforcement tools. It is therefore proposed that the sector have access to economic modelling which would develop hypothetical costs associated with efficient operators.

Finally, stricter regulatory requirements should be mandated for the approval of prices for individual services (as opposed to a basket of services) falling within the USO bundle and regulators should ensure the structural separation of such service provision from other activities (*e.g.*, *ex ante* tariff approval, functional or even legal unbundling, more far-reaching rights of the regulator to gather and evaluate cost data, and the ability of the regulator to cross-check the data against the market more broadly by reference to a “top-down” accounting model rather than the usual “bottom up” approach usually implemented by postal incumbents and submitted to regulators). As reviewing the operating costs of competitive operators is unlikely to yield anything meaningful to assist National Regulatory Authorities in this task, benchmarking costs against those incurred by competitive national postal incumbents is likely to prove more revealing.

## 5- Quality of service and Consumer Protection:

**General:** Competition remains the best guarantee for quality of service and adequate complaints handling in a well-functioning market. In markets with sufficient competition and innovation – such as the parcel delivery market – there is no need for proactive service quality measurement or control. UPS customers have access to detailed performance measurement indicators based on the actual performance of our delivery services and these performance indicators are often included in the contractual agreement between UPS and its customers. In markets where competition is limited, *e.g.* the letter mail market, quality of service can be included as an element of attention for the regulator.

**2011 CRD:** More general measures such as the 2011 Consumer Rights Directive provide safeguards for end-consumers engaged in distant selling practices and govern the contractual relationship between the consumer and seller. Given UPS’s indirect relationship with the consumer, adding a more formal legal obligation between the delivery operator and recipient of the delivery would make consumer redress actually more complicated.

**UPS Recommendations:** While UPS does not see fault in the outline of the end-user protective measures identified by the ERGP, it believes that two distinct issues need to be considered:

First, care must be taken not to expand the obligations of all operators *vis a vis* consumers in a way which imposes regulatory burdens on that part of the market that has been competitive from the outset and which is driven by consumer satisfaction. In other words, the encroachment of consumer protection regulatory obligations on an operator such as UPS should not impose a disproportionate burden on it in terms of compliance costs *compared to* postal incumbents, whose commercial relationship with their core postal services client base is very different to the core customers served by UPS.

Second, as in the case of overly expensive USO regimes which render competitive operators vulnerable to the unnecessary cost advantages enjoyed by postal incumbents, the use of symmetric consumer protection obligations should be kept to a minimum. Both sets of measures at either end of the postal services spectrum have the potential to raise rivals’ costs unnecessarily, ultimately to the detriment of consumers and always to the disadvantage of competitors in the short to medium term.



## 6- International Agreements and Third Country Imports:

**General:** Growing ecommerce imports from non-EU origins, specifically Asia, have highlighted the vulnerability of the traditional international postal delivery channel as a conduit for competitive distortion and non-compliance in the area of customs procedures and taxation. This vulnerability can be attributed to the existing international postal agreements under the UPU.

**Terminal Dues:** The compensation mechanisms set up to facilitate traditional international mail and packet flows now result in delivery of ecommerce purchases below cost and at the expense of the postal operators in the receiving countries and unfair competition with delivery operators that work at normal commercial tariffs. The existence of UPU Terminal Dues agreements that set the level of compensation paid by the receiving post to the origin post provides an additional incentive to ship items at low postal rates. The losses accrued by Western European Postal Operators who cannot charge the full delivery cost to the origin post is estimated at over **1 billion Euro**<sup>3</sup> per year for delivery of items originating from Asia-Pacific.

**Customs Procedures:** The UPU customs procedures resulting in lack of adequate customs documentation and systems necessary to support 21<sup>st</sup> century trade compliance processes continue to support rapidly growing commercial flows that largely escape from compliance with customs and taxation requirements.

**UPS Recommendation:** The competitive distortion resulting from the UPU compensation schemes can be largely adjusted if regulatory agencies would ensure that delivery compensation charged by EU postal operators for foreign imports is covering the actual cost of the delivery. Identifying the actual subsidization taking place as a result of the existing Terminal dues system would be an important first step.

Customs and tax compliance will require better enforcement and controls on postal imports. The long term solution is to eliminate the special exemptions granted to postal operators in customs related processes related to low value shipments, import controls systems and transit systems used by customs authorities in order to address concerns related to customs fraud.

UPS would appreciate it if these comments can be shared with the different working groups at the ERGP. We also look forward to discuss our concerns and recommendations more in detail with the ERGP WG Chairs and Co-Chairs if needed.

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<sup>3</sup> European Commission/Copenhagen Economics, 2018, Main Developments in the Postal Sector (2013-2016), page 232