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## Position Paper on Digital Services Act package

### Context

PostEurop members welcome the focus of the EU Commission on digital issues with the publication of the new Digital services Act package.

As European postal delivery providers, we do not fall within the scope of the DSA Nevertheless, we want to take the opportunity of the debate to provide our side on a matter that is changing all the sectors, including ours.

The main parts of DSA deal with platform regulation including ex-ante rules for “gatekeepers”.

It is worth noting that we are the delivery side of the coin, as we practically bring goods that are ordered online through online marketplaces or other types of platforms. As such, we can refer ourselves as “business partners” of these platforms. In some cases, however, through increased vertical integration, the platforms also developed as parcel service providers into the adjacent market of parcel delivery services. They became competitors with a dual role: as marketplaces with significant buying power and as delivery service providers for themselves and e-retailers.

In that perspective, we believe that our contribution to the debate is important and might bring this theme in another light.

Indeed, our position in the value chain makes us as potentially vulnerable to the so-called “gatekeepers” as the other interested parties (business and end-users).

Big online marketplaces/platforms (irrespective of their model: BtoBtoC or BtoBtoB) generate big parcel flows through their own selling activities and especially by the selling activities of their third-party sellers (e-retailers).

Despite the positive impact on postal operators’ volumes and the development of e-commerce, this might create for some traditional postal operators a situation of economic dependence, which puts them at risk as they have less and less bargaining power and cannot afford to not do business with certain marketplaces /platforms.

Yet, more importantly, some strategies implemented by these players legitimately raise concerns beyond competition law. They may foreclose access to their market, accentuate the relations of dependence of suppliers or create situations where users are locked-in. In particular, gatekeeper platforms may leverage their advantages, such as their access to large amounts of data, from one area of their activity to improve or develop new services in adjacent markets. Ultimately, this increases the risk of these adjacent markets tipping in favour of these platforms to the detriment of innovation and consumer choice.

Partly the European Commission and other competition authorities around the world have already raised those issues in ongoing investigations, for example with regard to the platforms’ dual role and the market power these platforms can exert due to unprecedented access to consumer and market data, as a marketplace and as a retailer on their marketplace at the same time.

Similar are the concerns of the postal industry regarding the vertical integration strategy of certain global online marketplaces, which are at the same time online marketplaces and parcel delivery service providers. They play a dual role as intermediary for a service and as provider of the parcel service at the same time. This allows them to gather vast amounts of data from their platform ecosystem which they can use to develop new services and enter into adjacent markets. As such, they can easily interfere in the free play of competition for parcel delivery services by favouring the e-retailers who make use of their (of the marketplaces) logistic services (e.g. invisible rankings, bad ratings for third party sellers, which do not make use of their logistic services).

These large online platforms exercise control over whole platform ecosystems that are essentially impossible to contest by existing or new market operators, irrespective of how innovative and efficient they may be.

We, therefore, support the Commission's work on ex-ante rules for gatekeepers and would like to take part in the debate as one of the stakeholders.

## PostEurop Recommendations

If ex-ante regulation were to be put in place, it would have to be proportionate, flexible and limited only to digital economy players in the position of "gatekeepers" whose practices are able to weaken the competitive game in the long term, without being apprehended by current competition law.

The aim is also to avoid any side-effects and over-regulation of players whose practices are already correctly covered by competition law and, for some, by specific sectoral laws. In this respect, a clear set of criteria has to be established at EU level to identify the so-called "gatekeepers".

Among other criteria, we believe the most important to be considered are the ability of the so-called gatekeepers to collect and have access to a huge amount of data and the ability to use them to improve or develop new services. Besides, they can benefit from significant network effects which lead to imbalances in the bargaining power between them and their users and rivals. To identify gatekeepers, all these criteria need to be fulfilled.

Ex-ante rules – in our opinion – need to be flexible enough to be future-proof and to cover the different competitive concerns. For that aim, the option 3 proposed by the Commission seems to be the best solution using the two sub-options in a complementary way, with the ability to: under 3a, establish obligations to avoid clear and well assessed unfair practices ("blacklisted" practices); and under 3b, impose, only where considered necessary and justified following a prior assessment, tailor-made remedies. All of them have to be applied only to gatekeepers (well and clearly pre-defined). Blacklisted practices should refer to competition concerns and could include: the prohibition of self-preference of their own services (included the parcel delivery services) or the prohibition of the use of specific data sets for leveraging in adjacent markets.

With reference to the New Competition Tool, we suggest that the Commission wait for and assess the results from the proposed ex-ante regulation for large online gatekeeper platforms before deciding anything on that. Considering that the gatekeepers with their power over data are at the core of the challenges identified for the European Competition Law and Competition Policy, it would be worthwhile to consider the ongoing revision of the current competition tools such as the update of the market definition notice.

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## Association of European Public Postal Operators AISBL Association des Opérateurs Postaux Publics Européens AISBL

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