

Ms Merete Clausen
Director for Investment, European
Commission / DG GROW
Avenue des Nerviens 105
BE-1040 Etterbeek

Brussels, 28 November 2024

Ref: EFR,BS/024/26/mm

PostEurop's comments related to the ERGP Report on access to the infrastructure for the delivery of parcels (PL I (24) 11).

Dear Ms Clausen,

We are writing to you regarding the [ERGP Report on access to the infrastructure for the delivery of parcels \(PL I \(24\) 11\)](#), published on 25 June 2024. The "evidence" collected in the report is meant to feed into up-coming works of the ERGP regarding a future EU postal regulatory framework. We note that the report does not draw direct conclusions but leaves it to "*further analysis ... [which] might be appropriate to verify possible amendments*" to the Postal Service Directive and/or the cross-border parcel Regulation, if additional powers are needed for the national regulatory authorities on out-of-home (OOH) parcel delivery services. Looked at more closely, however, the presented analysis as well as the line of argument the reports pursues, seem to be biased in favour of the need for more regulatory powers and sector-specific regulation with respect to both competition and consumer protection in the parcel delivery sector. In our view, the argument builds upon an artificial view on the market separating OOH services from parcel delivery and completely skips over the question why the application of general competition law or general consumer law would not suffice to address potential problems in case they should materialize. In the following, we would like to share with you our respective comments and observations in more detail.

The EU parcel market is subject to intense competition. On the supply side, a great number of larger and small parcel service providers offer both domestic and cross-border parcel services. The competition among the companies, the growth of the e-commerce market and the related increase in parcel volumes leads to affordable, competitive prices for customers. There is also significant market power on the demand side, with e-commerce platforms setting up EU-wide logistics operations and even offering not only fulfilment, but also delivery services with their own networks, in competition to established parcel delivery service providers. The ERGP report confirms the competitiveness of the market and its good performance: The report states that the market "*does not appear to suffer from either market failure or lack of competition as several actors are entering the market and investing to install OOH networks*". Furthermore, it notes the absence of any major problem ("*NRAs, as a matter of fact, haven't experienced so far competition issues on parcel locker/PUDO deployment and management. Collective evidence shows no major competition case filed on OOH services across Europe ...*"). Since there is no market failure or lack of competition, one would conclude that there is no case whatsoever for regulation.

The report however does not stop here, but continues by identifying potential problems: "*However, potential competition issues and market failures may emerge in case a PO/PDSP would have a Significant Market Power (SMP) in the relevant market for parcel delivery ... A potential competition issue might be represented by access denial if, and only if, the infrastructure would become an essential facility*". Other potential issues mentioned are the offering access to 3rd parties at excessive or discriminatory prices, different quality levels or unreasonably bundled to parcel delivery. The point of departure appears to be a consideration of OOH services as "*ancillary services, complementary to parcel delivery*"; they are part of parcel delivery but "*need to be considered as separated from parcel delivery ... in order to assess potential competition issues that may emerge ...*".

We believe this to be an arbitrary view and note that the report does not provide any justification for separating OOH services from parcel delivery. In fact, in Scandinavian countries, OOH delivery traditionally is the primary delivery mode for parcels. More generally, there are simply many substitutes

PostEurop^o

for OOH services to deliver parcels: at home, to a neighbour or in a safe place, parcel shops, post offices, retailer shops, dedicated pick-up stores or parcel lockers, the office/workplace etc. Consequently, there is no essential facility in parcel delivery. Interestingly, the report itself notes *“no evidence emerged to this respect in the survey”* and fails to provide any further reasons why OOH services might evolve into an essential facility. Therefore, in our view, the *“potential competition issues”* identified by the report appear construed.

In a further step, the report investigates possible regulatory instruments to address potential problems, such as mandatory access to OOH delivery facilities, non-discrimination and transparency rules and price regulation. It then notes that NRAs may not have these instruments available and recommends a further analysis on the appropriateness empower NRAs to regulate access to OOH services. To corroborate the report's findings, *“From the NRAs' answers and explanations, it emerges that they do not know exactly, since this is outside their competences”* the use of OOH services is one of the city logistics actions being implemented by European cities to reduce CO₂ and this is already subject to local or regional regulation.

PostEurop wishes to point out that potentially emerging competition problems do not justify the introduction of sector-specific regulation and respective regulatory powers, especially if the emergence of competition problems appears unlikely. More fundamentally, the report leaves out the decisive question why the application of general competition law will not suffice to solve the problem if they materialize. Other than the report seems to suggest, the presence of market failure and/or general competition law cannot maintain effective competition is needed to justify regulation. The report concludes that no market failure or lack of competition appears, which makes the line of argument suggestive.

In contrast to general competition law, sector-specific regulation is more intrusive as it applies without abusive market behaviour and, thus, it is an instrument of last resort. Therefore, a proper analysis of the need for a sector-specific regulation and related regulatory powers requires convincing reasoning why there is a market failure and/or why the application of general competition law is insufficient. We note that the report fails to do this.

This also applies to regulatory powers regarding consumer protection. Here, the report takes a similar approach: *“few user complaints”* related to OOH services were received from consumers, however potential issues may occur such as a lack of information (re location, prices pick-up conditions etc.) or disservices and inconveniences (for example short pick-up time, malfunctioning, damages as boxes are too small etc.) and unsatisfied end-user demand mostly accounted in rural areas. Thus, transparency rules and quality controls are identified as potentially appropriate regulatory instruments. The report, however, nowhere explains why these potential problems should suddenly arise in a competitive market to an extent and scope that would require a solution on the European level and leaves out the question why general law will not suffice to solve the problem.

We would be very grateful if our remarks were taken into account by the Commission services in the discussion on the need for revision of the EU postal regulatory framework. We remain at your disposal to further elaborate our argumentation in a personal meeting.

Yours sincerely,

Kind regards,



Ms Elena Fernández-Rodríguez
Chairwoman



Mr Botond Szébeny
Secretary General

In copy to:

Ms Christelle Defaye-Geneste, La Poste, Chair of PostEurop European Union Affairs Committee
Mr Achim Schröder, Deutsche Post DHL, Chair of PostEurop E-Commerce Working Group