

WORK PROGRAMME OF ERGP FOR 2011-2012

In order to ensure that the issues treated by the ERGP will be offered the needed time for a proper delivery, ERGP has decided to design a multiannual work programme, subject to an annual review, offering the needed level of both continuity and flexibility.

I. Regulatory Accounting / Price regulation

1. Allocation of common costs by a multi-product postal operator

- Background: as in many network industries, where we are faced with multi-product operators the share of common costs is substantial in the postal sector. Thus the appropriate allocation of these costs to different services has a material effect on many fundamental regulatory decisions (e.g. price regulation, US net cost calculation) and influences market outcomes strongly.
- Legal framework: application of Article 14 of the Postal Services Directive which pursues two aims (i) ensuring universal service provision and (ii) preventing, directly or indirectly, the abuse of market power by postal market operators.
- Substantive focus: ensure cost oriented tariffs in order to prevent exclusionary behaviour through cross-subsidies, predatory discounting and margin squeeze.

The work would be organized in 2 steps:

Step 1 - Stocktaking (e.g. identifying common costs, notably in delivery and current cost allocation methods used by NRAs and or incumbents in order to reduce the amount/scope of non attributable costs, incl. case studies).

Deliverable (1)¹: ERGP Report on applied methodologies of allocating common costs, including appreciation of those methods and defining issue to be looked upon more closely in step 2;

Step 2 - Analysis (theory) and comparison of cost allocation methods with the purpose of developing best regulatory cost allocation models (bearing in mind the changes over time and the differences across Member States) – final deliverable would be an ERG Position on a competitive neutral methodology of allocating common costs.

Final Deliverable (2): **ERGP position on a competitive neutral methodology of allocating common costs.**

II. Net costs of USO – VAT as a benefit/burden

- Background: The provision of the universal service (US) shall be ensured in the most cost-effective manner and the financing of net costs – if any – should be competitive neutral (“the least market distortive” concept). Therefore the ‘unfair’ financial burden of having to provide the US needs to be calculated by also taking into account the

¹ The numbering of the deliverables doesn't predetermine the order of their delivery.

benefits, such as allegedly the VAT privilege to compensate for the burden. As the later provides for one of the main remaining distortive effects of the market it would be important, if technically possible, to evaluate its net effects (advantage / disadvantage) in view of net cost calculation.

- **Legal framework:** application of Annex I of the Postal Services Directive and ECJ ruling of 23/04/09.
- **Substantive focus:** VAT exemption is regarded as important barrier to entry and cited by most stakeholders as a highly distortive element. In the absence of a legislative VAT solution assess the scope of market distortion and – if viable – incorporate it into net cost calculation methodology. If it is not possible, propose alternative solution.
- **Deliverable (3): ERGP opinion on the USO net cost calculation including the issue of VAT as a benefit / burden.**

The work item would take as starting point the definition of the US of the Postal Directive (minimum requirement) and would be organized in two steps:

Step 1 - Net cost calculation and determination of financial burden – intermediary result would be an ERGP Report on net cost calculation;

Step 2 - Possibility to address VAT distortion within the calculations of net costs of USO – final deliverable would be an ERGP Opinion on VAT treatment in the USO net cost calculation.

The work item does not aim at solving the VAT issue, but looks at it in relation to the USO net cost calculation and its implications for postal market competition (how to prevent that the financing of the US net costs is used in an unfair manner with the necessary flexibility to take account of national circumstances).

III. End user satisfaction and monitoring of market outcomes

1. Quality of service and end user satisfaction

- ERGP will continuously monitor the effects of postal liberalisation through appropriate indicators like benchmarking the quality of postal services and its development over time and assessing end user complaints procedures to ensure that consumers are protected according to the provisions of the Directive.
- Possible deliverable (4): ERGP report on QoS and end user satisfaction

2. Market developments and effect of regulation

Substantive Focus: Report on the methodology and indicators (including looking at starting points in order to determine the “base-line” or default situation) to measure market developments after full market opening with a view of benchmarking effectiveness of regulation to promote competition.

Possible deliverable (5): ERGP report on methodologies and indicators to measure the effect of regulation on market outcomes

This work item would aim at establishing a sound and consistent minimum methodology in order to be able to collect the necessary data for a European benchmark of the market development linked back to regulatory measures. For those Member States that will fully

open their markets only later, it is useful to know the criteria for such an information gathering in order to prepare their data collection procedures and systems ahead of full market opening.

IV. Cross-border issues (products and tariffs/terminal dues)

- **Background:** The EC requests some input on cross-border issues in order to develop the internal market. The growth of electronic communications has had two opposing impacts on the demand and supply for postal services: (i) *e-substitution*, often resulting in decreased letter mail volumes and (ii) *e-commerce*, resulting in an increased demand for sending and receiving parcels, which is particularly relevant with regard to the internal market. The existing price differences across Europe and between the domestic and cross-border prices within Member States cannot be explained by cost differences alone.
- **Legal framework:** application of Articles 13 and 14 of the Postal Services Directive in the provision of cross-border delivery services, with emphasis on delivery of parcels/items.
- **Substantive focus:** on the basis of principles set out in Deliverable 1 ensure cost-based pricing of cross-border letter-mail and parcel products.
- **Deliverable (6): Internal ERGP report to the Commission on cost elements of cross-border delivery products.**

This work item could serve as a starting point for the Commission to establish a data base of cost elements and prices of cross-border delivery products in order to have the necessary information available for an assessment of international tariffs versus national ones (taking on board independent analysis, market players views etc.). To this end, the ERGP will assist the Commission in identifying the relevant cost data needed in order to have a full oversight.

V. Access regulation

1. Wholesale access conditions and consolidation

- **Background:** Access to the postal network and infrastructure has different aspects. Therefore the work will focus only on 2 aspects (see below). Generally speaking mandatory access is one of the most important regulatory tools to ensure a level playing field necessary for setting the scene towards a competitive development of the fully liberalised market. The discriminatory treatment of consolidators has been raised by many new market entrants as one of the main barriers to market entry. This issue has to date been addressed both at the EU level (e.g. *Vedat Deniz* decision of the ECJ) and at the national level (e.g. Belgium, France, Germany), but no common approach was established. In view of full market opening it becomes essential to assess the treatment of consolidators in comparison to big mailers and define the sound and non-discriminatory regulatory approach to (potentially) abusive behaviour.
- **Legal framework:** application of Articles 11a and fifth indent of Article 12 of the Postal Services Directive on non-discriminatory access to postal network and infrastructure.

- Substantive focus: Tackle alleged unequal treatment of big mailers, consolidators and entrants relying on wholesale access. On the basis of principles set out in Deliverables 1&2 ensure non-discriminatory infrastructure access conditions for all market player and look at Art 11a elements.
- Deliverable (7): **ERGP opinion on non-discriminatory treatment of business consolidators, bulk mailers and competitors relying on wholesale access.**

The following 2 aspects regarding access to infrastructure will be looked at in more detail:

1st aspect - Non discrimination between mailers and consolidators (current situation in Europe, e.g. French case) (Deliverable 3a);

2nd aspect - Best practices on technical and price aspects of access to elements listed in Art. 11a Directive 2008/6/EC (Deliverable 3b).

The programme will be assessed at the end of 2011, on the basis of the progress achieved on the work items in order to ensure that the WP deliverables will be completed in due time.