

**Price transparency and regulatory  
oversight of cross-border parcels delivery,  
taking into account possible regulatory  
insights from the electronic  
communications sector**

**Joint BEREC-ERGP Opinion**

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## 1. INTRODUCTION

The proper functioning of the e-commerce sector is instrumental for the European Union (EU) economic growth, in particular considering its potential to decrease retail prices, widen consumer choices, reduce transaction costs and, hence, contribute towards the deepening of the internal market.

In 2013, e-commerce in Europe resulted in a total turnover of 352 billion euros, representing an annual growth rate of 17%. Europe is the world's leading market, holding a market share of 33%, just above the Asian-Pacific region that has a market share of 32% (EMOTA, 2014). More recent data, but pertaining solely to the Business-To-Consumer (B2C) segment, show that e-commerce represents an overall turnover of around 424 billion euros, of which circa 369 billion euros in the EU. According to the IPC (2014), expanding cross-border e-commerce activity is driving growth in international parcels and express volumes and, on average, international parcels accounted for 19% of postal operators' volumes in 2013<sup>1</sup>. The highest yearly growth rates in e-commerce have been registered in small sized countries or with language affinity to their neighbouring countries, such as Luxembourg, Austria, Malta, Finland and Denmark (E-commerce Foundation, 2015). The e-commerce importance is particularly visible in the EU in categories like payment of hotel stays, purchase of on-line tickets, electronic goods, "CD/DVD/Games/Books" or clothing and footwear (EC, 2015d; SIBS, 2015).

Growing parcel and express volumes due to the expanding e-commerce sector provide prospects not only for established postal operators but also for new players in the market. On the delivery side, e-commerce offers operators the opportunity to diversify their portfolio (e.g. fresh deliveries), establish new business models (e.g. same day and or environmentally friendly shipping), implement quality initiatives (e.g. live parcel tracking) and establish new infrastructures (e.g. parcel lockers). E-commerce offers a dynamic setting for a wide variety of operators, including the historic operators, already established competitors as well as new market entrants.<sup>2</sup>

The delivery of goods bought online is not necessarily linked to postal services. Not only postal services according to Article 2(1) of the Postal Directive are used for delivery, but also other services are used, such as transport services, which may be or maybe not substitutes from the end-user perspective. In addition, it shall be noted that the exact scope of postal services may differ between EU Member-States. In this context, when the term "delivery operator" is used in this document it may refer not only to the delivery of parcels by "postal operators" pursuant Article 2(1a) but to the delivery of parcels by other entities.

Albeit in the EU a proportion of cross-border parcels is delivered by national universal postal service providers under intra-EU terminal dues agreements with other national universal postal service providers, only four delivery operators can be categorized as international integrators, namely DHL, FedEx, UPS and TNT Express (WIK-Consult, 2014). Their

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<sup>1</sup> The IPC estimate covers 45 postal operators worldwide along with major integrators.

<sup>2</sup> The competitive setting of parcel and express delivery has been elaborated in detail in WIK (2014).

international network is able to provide cross-border deliveries under full operational control of one operator.

Other operators have to enter contractual agreements for offering cross-border deliveries. One group in this field has been classified as pan-European road-based parcel networks (WIK-Consult, 2014). That group includes Geopost/DPD (La Poste) and GLS (Royal Mail) and offers cross-border deliveries, partly by bringing in contracted partners. Other groups consist of regional parcel and logistics networks (like Posten Logistik or PostNL, that operate on a regional scale in neighbouring countries) and of national postal operators, that organise cross-border deliveries with resort to international agreements (WIK-Consult, 2014).

Further groups of operators increasingly engage in cross-border activities as well. These groups include small and medium-sized delivery operators, delivery companies linked to large mail order companies or retailers (e.g. Yodel, Hermes, Mondial Relay as well as Amazon partners), competing mail operators (e.g. Unipost in Spain, PIN in Germany, Sandd in the Netherlands and InPost in Poland) and cross-border specialists allied with national postal operators like Spring Global Mail or Asendia (WIK-Consult, 2014). They often organise cross-border deliveries by establishing contractual partnerships or by involving subsidiaries, sister companies or cooperation partners. Finally, due to growing e-commerce volumes, intermediaries (e.g. Borderlinx, wnDirect, B2C Europe or Metapack) and start-ups like Shippo provide solutions for facilitating and managing cross-border delivery for operators, retailers and/or customers (WIK-Consult, 2014).

According to the Digital Agenda Progress Report 2015, 44% of citizens shop online nationally, while only 15% cross a border to another Member State when doing so<sup>3</sup>. Moreover, the performance target that the Digital Agenda for Europe establishes for e-commerce (e.g. at least 20% of the population should buy online cross-border by 2015) is far from being achieved in the generality of the EU Member States (EC, 2015b).<sup>4</sup>

The European Commission (EC) identified as reasons for this behaviour ignorance and lack of confidence in foreign brands, the price of delivery and the lack of available information (EC, 2015a). A recent Flash Eurobarometer survey (EC, 2015c)<sup>5</sup> on EU companies suggests that the most common difficulty those companies encounter when selling online to other EU Member States are related to delivery costs which are perceived as too high (by 51% of the surveyed companies<sup>6</sup>). Too high delivery costs were reported to be also a top difficulty

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<sup>3</sup> It should be noted, however, that the proportion of cross-border e-commerce with regard to overall e-commerce is likely to be understated, since frequently consumers are not aware that they are purchasing from another EU Member-State, since the language of the website often corresponds to the consumer's Member State of residence rather than to the actual seller location (EC, 2015d).

<sup>4</sup> According to the EC (2015b), *"cross-border online shopping is advancing regularly, adding six and a half percentage points in four years to reach nearly 15% in 2014, but the target of 20% will most likely be missed"*.

<sup>5</sup> The survey covered all the EU Member States, except Malta and Cyprus, due the relatively small number of companies in these countries, which did not allow a sample size compatible with robust statistical analysis. Some of the issues identified in the results of the survey may also be considered more relevant in some countries than in other countries.

<sup>6</sup> 27% of the surveyed companies considered it a major problem and 24% considered it a minor problem, whilst for 36% of the surveyed companies it was not considered a problem at all.

perceived by companies which were not selling online.<sup>7</sup> Other important concerns that, according to the Consumer Conditions Scoreboard, are perceived by consumers are long delivery times or failure to deliver the purchased product (EC, 2015d). Notwithstanding, ERGP (2014a) has found, *id temporis*, no clear indication of specific problems on cross-border e-commerce parcels delivery markets that may be best dealt with by ex-ante regulation throughout the EU.

Hence, the previously mentioned sources suggests that a number of barriers related to public and regulatory policy as well as to commercial conduct of companies may be hindering the functioning of this sector.<sup>8</sup>

With regard to public policy issues, the EC's Digital Single Market (DSM) Strategy has proposed several actions to ensure well-functioning cross-border delivery. The EC envisages in this respect to launch measures to improve price transparency for European deliveries, including for prices of small shipments and to enhance regulatory oversight of the cross-border parcel markets. To this end, the European Commission noted in a recent report (EC, 2015e) that "given the decline in letter volumes and growing number of parcels driven by e-commerce sales, stronger regulatory oversight of and more comprehensive data on the parcel market is needed to gain a full and accurate picture of the overall postal and parcel markets and to develop the full potential of the Digital Single Market."

The EC had already established, following the public consultation on the "Green paper on an integrated parcel delivery market for the growth of e-commerce in the EU" (EC, 2012), a roadmap for completing the single market for parcel delivery, building trust in delivery services and encouraging online sales (EC, 2013a), especially regarding B2C transactions. More recently, the EC opened a public consultation on the "Initiative to enhance the affordability, quality and convenience of cross-border parcel delivery", focusing on the main issues and possible areas of improvement for cross-border delivery services when sending packets and parcels across the EU. At the end of September 2015, the EC also launched a public consultation on modernising VAT for cross-border e-commerce<sup>9</sup>.

With regard to the commercial conduct of companies, the EC launched an antitrust inquiry on e-commerce on May 2015, with a preliminary report for consultation expected by mid-2016 and a final report by the first quarter of 2017.<sup>10</sup> A previous study from the EC (2013b)

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<sup>7</sup> This was perceived as an obstacle by 62% of the companies that were not selling online, but were currently trying to do so and by 57% of the companies that were not selling on line overall. In general, companies whose turnover has fallen since 2012 were more likely to say that delivery costs is a problem and the companies operating in the information and communication sector were the least likely to say that high delivery costs were a problem. There was also some variability between the responses of companies in each Member state, but Slovenia, Denmark and the Czech Republic were the only countries where fewer than half of the surveyed companies reported too high cross-border delivery costs as a problem.

<sup>8</sup> Due to the limited time the Joint BEREC-ERGP EWG had to draft this opinion, it is based on the assumption that the problems identified by the EC do in effect occur. Some of the NRAs recognise the suggested problems, while other NRAs do not. The Joint BEREC-ERGP EWG particularly has not conducted an extensive market analysis to identify the causes of the possible problems. Therefore, further detailed analysis may be needed in view of the sheer complexity of this subject.

<sup>9</sup> <https://ec.europa.eu/eusurvey/runner/ModernisingVATcrossborderecommerce>.

<sup>10</sup> The aim of this sector inquiry is to allow the Commission to gather data on the functioning of e-commerce markets so as to identify possible competition concerns. It will focus particularly on potential barriers erected

identified three common practices in e-commerce that were detrimental to consumers and contrary to the development of the internal market, namely simple refusal to sell, automatic rerouting and unjustified diversifying of sale conditions.

In this context, the Chairs of the Body of European Regulators for Electronic Communications (BEREC) and of the European Regulators Group for Postal Services (ERGP), agreed to work together to provide advice to the EC by the end of 2015 on related policy areas identified in the DSM, aiming at analysing whether regulatory insights from the electronic communications sector can be transferred to the cross-border parcels sector.

These policy areas concern:

- a) Identifying adequate means to monitor the cross-border parcels delivery, especially with regard to prices;
- b) Identifying adequate means to intervene concerning certain problems regarding cross-border parcels delivery, if deemed necessary and proportionate, particularly regarding price transparency;
- c) Outlining specific measures/policy options to be created by the EC to tackle eventual problems identified concerning price transparency for European cross-border deliveries, including namely for prices of small shipments.

To this effect, an Ad-Hoc Joint BEREC-ERGP Expert Working Group on e-Commerce and Cross-Border Parcels Delivery was established with the following tasks:

- a) To draft a discussion paper for a joint BEREC-ERGP workshop related to price transparency and regulatory oversight of cross-border parcels delivery, taking into account possible regulatory insights from the electronic communications sector;
- b) To organize an workshop on price transparency and regulatory oversight of the cross-border parcels markets, taking into account regulatory insights from the electronic communications sector to be held on 30.09.2015;
- c) To deliver by the end of 2015, an "Opinion on price transparency and regulatory oversight of the cross-border parcels markets, taking into account possible regulatory insights from the electronic communications sector".

The above mentioned workshop took place with the participation of a significant number of Chairs and experts of NRAs overseeing the electronic communications sector and or postal sector, besides representatives of the EC. The results of the workshop are of utmost relevance, in particular with regard to the questions put forward in the above mentioned discussion paper<sup>11</sup> and are considered as an input for this document.

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by companies to cross-border online trade in goods and services where e-commerce is most widespread (e.g. electronics, clothing and shoes), as well as in digital content. It will initially cover all EU Member States. More information about the EC's sector inquiry into e-commerce is available at [http://ec.europa.eu/competition/antitrust/sector\\_inquiries\\_e\\_commerce.html](http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html).

<sup>11</sup> Question 1: What would you see as the key similarities and differences between the electronic communications and the postal sectors and how would these impact on the applicability of the relevant regulatory tools used for electronic communications services to domestic and cross-border parcels services (i.e. in respect of price transparency and regulatory oversight)?

Following this introduction, the document identifies, in section 2, possible issues affecting cross-border parcels delivery. Potential measures, regarding price transparency and regulatory oversight, to address those issues are discussed in section 3, in particular with regard to price transparency and regulatory oversight. Finally, in case that problems should be positively identified, conclusions on possible improvements concerning the regulatory oversight by NRAs and, possible transparency measures are distilled in section 4.

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Question 2: Do you see monitoring of cross-border parcels delivery, especially with regard to prices, as proportionate and necessary?

Question 3: Do you concur with the view that the issues identified in section 2 are the most relevant problems affecting e-commerce cross-border parcel delivery and why? If not, are there issues that you would consider real problems and why?

Question 4: Would you consider it important that the EC ensures that legal framework supports data collection and monitoring of cross-border parcels delivery at EU level?

Question 5: Do you consider any of the regulatory oversight measures discussed in section 3.1 to be proportionate and directed to the problems identified and why? In addition, if other potential measures are perceived to achieve expectably better results, please identify those other measures and explain what factors would render those other potential measures more effective in practice.

Question 6: Do you consider the transparency measures described in section 3.2 to be necessary and proportionate to the nature of the problems indicated in section 2 and why. In addition, if other potential measures are perceived to be adequate means to intervene concerning problems regarding cross-border parcels delivery, please identify those other measures and explain what factors would render those other potential measures (more) necessary and proportionate.

Question 7: What would be your recommended course of action with regard to the powers that NRAs must have to monitor and intervene regarding price transparency and promote regulatory oversight on cross-border parcels delivery?

Question 8: What would be your recommended course of action with regard to outlining specific measures/policy options to be created by the EC to tackle the problems on the cross-border parcels delivery market?

## 2. POSSIBLE ISSUES AFFECTING E-COMMERCE AND CROSS-BORDER PARCELS DELIVERY

E-commerce customers are said, according to some studies, to pay particular attention to low delivery prices, delivery modalities in the residence, ease of access to location services and convenient return options. These studies claim that the main categories of failures in the delivery process orders from e-commerce, relate to information asymmetry, to service and quality issues and to problems in delivery (Copenhagen Economics, 2013).

According, namely, to a survey conducted on behalf of the IPC (2013), some of the main needs of end-users in relation to e-commerce are:

- a) Constant visibility of the delivery process through parcel tracking systems;
- b) Easy solutions for the return of objects;
- c) Time-windows for the delivery;
- d) Ability to select the place of delivery (home, retail or post office box).

The possible problems affecting e-commerce can be classified into five distinct subject areas:

- a) Contractual terms and conditions;
- b) Taxation;
- c) Transports and logistics;
- d) Issues related to the electronic communications sector;
- e) Issues related to the postal sector.

Issues related to contractual terms and conditions, to taxation and to transports and logistics are, however, largely outside the scope of the NRAs competencies. The core of this document hence focuses on issues related to the postal sector and on issues related to the electronic communications sector. Notwithstanding, although issues related to contractual terms and conditions, to taxation and to transports and logistics are largely outside the scope of the NRAs competencies, taking into account its overall importance (which may even be more significant for the promotion of e-commerce than the issues related to sector specific regulation) and their interrelationships with postal and electronic communications sector' areas, those issues may be punctually addressed in this document.

The issues related to **contractual terms and conditions** have a significant effect on consumer confidence and may be at least partially dealt with by the antitrust inquiry launched by the EC on e-commerce on May 2015. Therefore, even if some of those conditions could be encompassed within the realm of postal and or electronic communications regulation, it would be inappropriate and untimely to address those issues at length in the current document, in particular given the current absence of updated, reliable and complete information on the actual terms and conditions that might be eventually acting as a deterrent to cross-border e-commerce adoption and growth.

Notwithstanding, it is fair to say that, frequently, information made available at the e-retailers websites (for instance related to the identification of the postal operators that will deliver the order, the price of the delivery, the time of the delivery, track and trace, complaints procedures and return policies) can be considered suboptimal. In particular, end-users may

frequently be faced, in the initial steps of the purchasing process, with considerable lack of information and or confusing information about the goods' total delivery cost (VAT, customs costs and other additional non explicit costs).

Considering **taxation**, another aspect that could be considered as an obstacle to the growth of e-commerce is the level of port and airport taxes applicable to the products delivered with resort to parcels and the level and nature of provisions of Valued Added Tax (VAT)<sup>12</sup>. The Committee on the Internal Market and Consumer Protection (2014), highlighted that *“complicated provisions concerning VAT are a significant obstacle to small businesses trading across-borders”*, therefore asking the EC to propose the introduction of a uniform VAT declaration as soon as possible.

As for **transport and logistics**, the structural problems with an impact on e-commerce are well known and were identified in the designated “Monti Report” (Monti, 2010). It is worth noticing, *inter alia*, the need to improve programs that provide information on roadmaps and the state of traffic on major roads; the necessity to harmonize and to increase the interoperability of payment systems; issues arising from fragmentation of networks of railways and harmonize gauges; the complete inexistence of a single market for maritime transport; and the lack of harmonization of toll payments.

Looking at the **electronic communications sector**, issues that may be hindering e-commerce development can be found with regard to machine-to-machine (M2M) communications, geo-blocking practices that may impede cross-border acquisition, cybersecurity including “design” of privacy and personal data protection, observance of accessibility standards for disabled end-users and current penetration levels of access to broadband services.

With regard in particular to cross border parcel delivery, it is expected that a speedier implementation of M2M communication systems would contribute towards a more efficient fleet management, with a visible reduction in the accident rate, decrease and reduction of fuel consumption, resulting in lower delivery costs of parcels and in a swifter delivery to end-users.

It could also be important that the retailer's website publish visibly a statement on the policy pursued by the retailer as it relates to the protection of privacy and personal data, important point for a growing fraction of consumers, helping to increase level of consumer confidence, particularly in relation to concerns felt with the use of “cookies”.

In addition to the type of information available on the retailer's website, it is equally important to determine how to release this information, including respect for accessibility standards that facilitate use by citizens with special needs.

It is also recognised that Internet take up, especially with regard to rural areas, albeit increasing, has not yet reached optimal levels and that the increase of Internet take up could contribute also towards a more intensive resort to e-commerce by end-users. It is worthwhile

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<sup>12</sup> An interesting analysis of the process and benefits associated to simplified VAT procedures for small and medium-sized companies in the framework of e-commerce and free-trade areas (in particular in the North American Free Trade Area) is presented in Gessner and Snodgrass (2015).

mentioning that BEREC (2012), identified a number of demand-side and supply-side measures to promote broadband adoption and usage, analysing also the role of the different public policy and regulatory mechanisms/tools as means of promoting broadband adoption and identified action points for public policy makers on their own role regarding the different mechanisms/tools.

The WIK study on the main developments in the Postal Sector (WIK, 2013) presents a brief overview on the competition in parcel and express markets in the European Union. The four international integrators (DHL, FedEx, UPS and TNT Express) operate on a global scale and have full ownership or, at least, full operational control on all transportation assets, including an air network and an integrated IT networks. The integrators are able to provide international end-to-end deliveries within their own network and can provide highly reliable, time definite cross-border delivery services.

The second group consists of national postal operators that have built up a road-based, pan-European parcel network as Geopost (under the DPD branding and a subsidiary of La Poste) and GLS (a subsidiary of Royal Mail).

The third group consists of national postal operators that have launched regional networks for providing domestic and cross-border parcel services in specific countries (e.g. Austrian Post, PostNord, Norway Post, PostNL and CTT Correios).

A fourth group consists of national postal operators with more a focus on the domestic market.

Of course, the national postal operators have also the opportunity to organize cross-border parcel services through voluntary cooperation as the IPC and by international agreements as the UPU agreements.

Additionally, there are freight forwarders who also provide parcel and express services in more than one country, as e.g. DB Schenker in the Nordic countries.

In addition to the four integrators and national postal operators there are still many small and medium-sized parcel, express and courier companies with focus on domestic B2B and also more B2C shipments. Moreover, in some countries competing mail operators (e.g. Unipost in Spain) have recognized the growth potential of e-commerce driven deliveries and extend their operations to B2C deliveries. This can also be observed in the cross-border mail business where operators like Spring and Asendia, also focus on B2C deliveries.

According to some research (FTI, 2011; WIK-Consult, 2014) problems with delivery of cross-border parcels could be related to:

- a) Higher cost of cross-border parcels delivery in particular when compared to the costs of delivery of national parcels;<sup>13</sup>
- b) Non integration of distribution networks (especially in value-added services);

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<sup>13</sup> Some NRAs may consider that price differences may be related to the costs arising from highly differentiated geographic conditions, longer transport distance, different minimum pay structures (as postal sector is labour intensive) or from terminal dues agreements.

- c) Lack of transparency in the distribution process, both for e-retailers and for consumers;
- d) Quality of service (namely in terms of delivery times, delays, damaged or lost items);
- e) Scarcity of information regarding aspects such as different addressing rules in the Member States, contractual procedures, consumer rights and complaints procedures.

Finally, as underlined by the ERGP in its 2013 and 2014 reports on e-commerce parcels delivery, it is important to distinguish between e-commerce selling markets (seller-buyer contract) and parcels delivery markets for e-commerce purposes (generally a seller-delivery operator contract), and particularly between the prices on these two markets. Indeed, postal regulators' focus would, as required, be the price charged by the delivery operator for parcels delivery services. This is the price contracted for generally between the delivery operator and the online seller - and not with the consumer. The price charged by the seller on its website, while important, would generally not fall under the missions of, or be directly relevant for NRAs: the latter price may or may not reflect the price charged by the delivery operator, and would generally be the result of commercial considerations (for example, "free" delivery offered by the seller would be an incentive for the buyer to purchase but would be unlikely to mean that the seller received a free delivery service from the delivery operator).

### 3. POSSIBLE MEASURES ADDRESSING ISSUES REGARDING E-COMMERCE AND CROSS-BORDER PARCELS DELIVERY

When considering possible measures concerning price transparency and regulatory oversight of cross-border parcels delivery (if evidenced and warranted), taking into account possible regulatory insights from the electronic communications sector, it is important also to acknowledge, *ab initio*, some differences between the postal sector and the electronic communications sector.

To begin with, looking at the cost structure of the industry, the postal sector is much more labour-intensive than the electronic communications sector, which is more capital intensive.<sup>14</sup> Moreover, wider cost differences may be expected between parcel delivery operators, which could be explained by different national and regional geographic conditions, volumes *per capita*, labour costs, terminal dues costs, collection, delivery and to a lesser extent transit costs. It is also relevant to notice that especially with regard to parcels, marginal costs are sensibly higher than those estimated for the electronic communications sector.<sup>15</sup>

In addition, product market definitions are, in general, more clearly defined in the European regulatory framework for electronic communications in comparison to the postal sector, where NRAs often have no authority to delineate product markets based on competition law principles, particularly with regard to the parcels delivery<sup>16</sup>, and instead it is related to service categories such as traditional postal services, express services and transport services, whose boundaries are often itself unclear. Moreover, these services may be substitutes from a consumer viewpoint. That is why there is a need to identify the services being involved in the e-commerce cross-border parcels delivery business. Physical delivery is a critical element of distribution and the area of possible regulatory oversight needs to be precisely defined.<sup>17</sup> In these circumstances, a major problem is lack of an adequate definition of the postal service<sup>18</sup> that would fit into the present format of the cross-border e-commerce

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<sup>14</sup> This is without prejudice to the fact that the postal sector is becoming itself more capital intensive overtime with the increase of capital expenditures in, for instance, information and communication technologies enabling namely “track and trace” systems and in the postal fleet’s trucks and airplanes.

<sup>15</sup> In particular where the implementation of next generation networks has resulted in visible idle network capacity.

<sup>16</sup> Since there seem to be no precise boundary between letter items, small packets and postal parcels.

<sup>17</sup> ERGP developed work in the field of postal definitions, namely on the ERGP (12) 32 Report on indicators for postal market, available at

[http://ec.europa.eu/internal\\_market/ergp/docs/documentation/2012/121130\\_ergp-12-32-indicators-postal-market-report\\_en.pdf](http://ec.europa.eu/internal_market/ergp/docs/documentation/2012/121130_ergp-12-32-indicators-postal-market-report_en.pdf).

<sup>18</sup> Postal services are defined pursuant to article 2(1) of the Postal Directive as “services involving the clearance, sorting, transport and distribution of postal items” and a postal item is defined pursuant to Article 2(6) of the Postal Directive as “an item addressed in the final form in which it is to be carried by a postal service provider”. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial

delivery, as well as the lack of a formal definition for “e-commerce cross-border parcel delivery”.

Furthermore, whereas an electronic communications service is immediately delivered, a postal service takes time and there may be also a certain level of uncertainty over how and exactly when a cross-border parcel will be delivered to its recipient.

Another factor to consider is that while in electronic communications market with a cross-border scope, such as the international roaming market, individual consumer pressure against high perceived retail prices was fairly limited, in the case of cross-border parcel delivery, large e-retailers are able to exert significant pressure. These large e-retailers usually manage to conclude bilateral contracts with parcels delivery operators for undisclosed, yet expectably better than standard, conditions.

Finally, unlike what happens in electronic communications, where an international call can be originated in any given country and terminated also in any other given country, in the field of e-commerce and cross-border parcel delivery, a number of e-retailers decide not to sell to some countries or regions. Furthermore, parcel delivery companies may decide not to deliver some or any products to some countries or regions. However, if the e-retailer offers the service in certain countries, it might hire the distribution with a postal operator which provides the service in these various countries and then makes contracts with different postal operators, according to the EU member states where these operators distribute the postal items. It can be also noted that, without questioning that not all postal operators in the EU provide all and the same services and that do not make the distribution by themselves in all EU countries, there is a minimum set of postal services, including parcels, which are provided in all EU countries, by which from any European country in Europe can be sent postal items (including parcels) for distribution in any other EU country. Even if distributed by other postal operators than the home country operator.

### **3.1 COMPARISONS WITH INTERNATIONAL MOBILE ROAMING**

In relation to international mobile roaming, historically there were large differences, nationally and by operator, between the prices paid by users in their home countries for domestic services (for voice calls, text messages and data) and the prices paid for equivalent services when consumed by those same customers while roaming in other EU Member States.

The EC was instrumental in making proposals in this area over the last decade aimed at reducing and eventually eliminating the differences between domestic and roaming tariffs in light of the high roaming charges in most Member States, of the perceived importance of lowering roaming charges for the development of the Internal Market and of the fact that this was a cross-border issue beyond the powers of national regulators. Such initiatives had strong support in the European Parliament and European Council.

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value. Article 2(7) defines what is an item of correspondence and Article 2(1a) of the Postal Directive defines a postal service provider as an “undertaking that provides one or more postal services”.

The EC's initiatives in this area resulted in four regulations on international roaming (2007, 2009, 2012 and 2015<sup>19</sup>) which introduced progressively lower maximum retail and wholesale price caps for voice, SMS and data while introducing transparency and anti-bill shock requirements and structural competition into the market to enable roaming services to be sold separately from but in conjunction with a consumer's domestic mobile contract. The latest regulation, recently agreed by the European Parliament in October 2015, provides for the ending of roaming surcharges by June 2017 subject to parallel introduction of satisfactory wholesale measures, fair use criteria and the possibility of surcharges if operators are unable to recover their roaming costs.

Regarding possible parallels between international roaming and cross-border parcels delivery, one similarity is that the costs differ, to some extent, as between domestic and international services but that historically the differences in price have been in some cases substantially greater than those cost differences. For example, the most recently published BEREC benchmark report on roaming data shows an average data wholesale charge across the EU of 1.9 euro cents per Mb compared with a wholesale cap of 5 cents per Mb and a retail cap currently set at 15 cents per Mb.<sup>20</sup>

In addition, changes to roaming surcharges in one country can have cross-border effects, as can also be observed in parcels where senders may move across-borders to save costs. Finally, for both sets of services, price transparency can be important and has been inhibited by the pricing complexity observed. But equally, substantial differences can be observed:

First, most consumers sign their mobile phone contracts based on factors other than international roaming charges as for most roaming customers their use of roaming is limited to a Summer holiday or other shorter trips abroad. By contrast, where a sender needs a cross-border parcels service, they would purchase such a service directly without reference to the equivalent domestic service or price. Senders of domestic or cross-border parcels are therefore buying a specific service rather than a pay as you go phone with associated costs for its use or a contract package of domestic and international voice, SMS and data services which may also be attached to provision of a particular handset.

Nevertheless, without doubt, a small minority of roaming customers, who are frequent roamers, may well take roaming offers into account when choosing their mobile phone supplier. Increasingly such frequent roamers, as well as infrequent roamers, have been targeted with specific roaming offers either added on or integral to their main package of services.

Second, as already seen, overall, the differences in costs for postal services are significantly greater than for telecommunications services due to the higher impact of geography, population density, labour, delivery and transit costs on postal services as compared with international roaming. Pricing is also complex and countries may be grouped into wider delivery zones masking large cost differences between and within delivery country destinations. So there is perhaps less reason to be concerned where wide difference in price arise where compared with international roaming.

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<sup>19</sup> See [http://europa.eu/rapid/press-release\\_IP-15-5927\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5927_en.htm).

<sup>20</sup> See page 61 of the International Roaming BEREC Benchmark Data Report, October 2014 to March 2015.

Third, the market for international roaming services historically was far less competitive than cross-border parcel services with weaker consumer pressure and to some extent this remains the case. In recent years, partly prompted by the changes in various roaming regulations including the prospect of a mandatory ending of international roaming surcharges, some operators have recently – as noted above - chosen to compete more on their roaming offers.

Fourth, as already seen, the powers of regulators are less clearly defined in relation to parcels services, with different definitions of postal services and different regulatory powers existing in different Member States whereas in telecommunications, the definitions of what is regulated and the associated powers are clearer. However, there is also a similarity with regard to the fact that neither in roaming nor in cross border parcel delivery NRAs have an interest to intervene in cross border cases as it may not benefit their own consumers, in other words cross border problems require regulators' cooperation.

Finally, whereas the contract for an international roaming service is between the consumer which originates a call/SMS or uses data and their mobile service provider, the contract for an intra-EU cross-border parcels service is between the online retailer or sender of the parcel and the parcel delivery operator. Hence, in the latter case, the consumer who gets the final benefit from delivery of the parcel, in the case of an e-commerce purchase, does not directly contract the delivery of the parcel with the parcel delivery operator. Drawing on the above similarities and differences, it is clear that should any competition issues become evident or are suspected in the parcels sector, including cross-border parcels, NRAs need the appropriate regulatory powers to intervene and that such powers do not seem to be present in all Member States mainly due to the differences in interpretation of what is or is not a postal service under the Postal Directive. Proportionate and objectively justified transparency requirements can also provide advantages to the users of cross-border parcels service, as for international roaming services, where competing offers are not easily available or accessible. However, care needs to be exercised in a dynamic and competitive market such as parcels where the senders, especially larger e-retailers sending out large volumes of parcels, can already negotiate better terms. Voluntary measures need also to be considered and indeed, in the case of international roaming, lower prices going beyond the safeguard retail and wholesale caps established by the Roaming Regulation have arisen from some operators developing commercial offerings on international roaming that are ahead of, and go beyond, the regulatory requirements.

### **3.2 POSSIBLE REGULATORY OVERSIGHT MEASURES**

If issues are identified and evidenced at national level, some questions would have to be formulated that seemed to be important in this context to assess if and what regulatory oversight is warranted:

- a) Is additionally monitoring of cross-border parcels delivery considered to be necessary?
- b) Is monitoring a sufficient tool to ensure accessible cross-border prices? Would regulatory intervention be a more appropriate measure taking into account the complexity of the e-commerce delivery market?

- c) Should regulatory oversight include all delivery operators (universal service providers, alternative postal operators, courier/express operators and transport services operators) or only universal service providers?
- d) Should the oversight cover all types of mail with merchandise (parcels, small packets and letters) or only parcels?
- e) Should the oversight cover both intra-EU/ European Economic Area (EEA) and extra-EU/EEA postal services?
- f) What would be the exact scope of the regulatory oversight – methods of price calculation (elements of calculation, additional costs), unit costs, bilateral mail flows, geographical distribution?
- g) What would be the ratio between costs and benefits regarding additional oversight and the likely relevant benefits?

Only after identification of the relevant services, identification of the market players and identification of the information on the relevant service (of which a considerable proportion is currently missing), it would be possible to analyse all the relevant data in order to establish who in fact is involved in the e-commerce delivery business and to respond clearly to the above mentioned questions to confirm if any issues are identified.

Notwithstanding, it is still a core mission of NRAs to ensure compliance with the obligations enshrined in the Postal Directive 97/67/EC (as amended by Directive 2008/6/EC), namely by establishing monitoring and regulatory procedures to follow the evolution of the respective postal markets and by collecting the information deemed necessary for the effective performance of the regulatory role.

The relevance conceded by the Postal Directive to data collection and regulatory oversight is explained by the fact that in a fully liberalized environment it is of the utmost importance to safeguard consumer interests and to promote effective competition.

Similarly, data collection efforts were highly valued by NRAs preceding the full liberalization of the electronic communications markets and are still considered absolutely instrumental to the development of proper market analysis procedures and to the effective monitoring of those markets. At international, European and Member State levels, there are plenty instances of statistical collection that are deemed as major references for an adequate perception of market structure, entry and exit barriers, price levels, penetration levels, geographic coverage, behavioural patterns of market agents, possible unfair commercial practices or market trends in general.

Examples, at international and European levels, of these important data collection references focusing in the electronic communications sector include namely the OECD Broadband Portal, the EC's Digital Agenda Scoreboard, the EC's reports on Implementation of the EU regulatory framework for electronic communications or the International Roaming BEREC Benchmark Data Reports (which commenced in the second quarter of 2007, just before the Roaming Regulation was about to enter into force).

The latter example seems to be of particular interest in this precise context. In both cases - cross-border parcels delivery and International Roaming (in this case prior to the BEREC data collection exercise) there was also a lack of information that was necessary to a proper oversight of the market.

Notwithstanding the sheer importance of data collection exercises, on 08.03.2013, the EC's services informed the ERGP that Eurostat would stop collecting postal data, proposing to discuss the operational details on the further cooperation between both entities, with a special focus on the collection. This happened in a particularly critical scenario, where full market opening in the postal sector was being fulfilled throughout the EU, which advised that the collection and analysis of data was more essential than ever to understand the actual evolution of the European postal market.<sup>21</sup>

It was in this context – but not ultimately envisioning to take the EC's role in the collection of postal data – that the ERGP first published, in 2012, a Report on market data on indicators (ERGP, 2012), followed by an update in 2014 (ERGP, 2014)<sup>22</sup>. These reports provide information on the powers of NRAs to collect data, on the scope of services classified as postal services and as universal services and provide also a clear general overview on the authorisation system implemented. Furthermore, ERGP (2014b, 2012) presented a reasonably comprehensive set of key core market indicators, covering areas such as market outcomes, market structure, revenues and volumes, employment, postal network and investment.

In this framework, ERGP (2014) concluded that *“most NRAs have the power to collect data from the postal operators and that some NRAs have seen the scope of their powers to collect data expanded”*. Moreover, between 2013 and 2014, all the NRAs that have responded to an ERGP questionnaire stated to have now powers to collect data about the universal service provision not only from the historic postal service provider but also from other postal service providers. Another interesting finding was that *“only a few NRAs do not have powers to collect statistical data about services outside the scope of the universal service”* (being clear that only a small part of cross-border parcel delivery is performed within the scope of the universal service, namely because e-commerce parcel delivery is becoming a multi-channel stream of mail and goods, where the postal chain is only one of the distribution solutions). Regarding specific indicators, ERGP found, *inter alia*, that the shipments of international parcels are growing but the volumes remain rather low.

However the remit of many NRAs does currently not expand to all substitutable products and services in the parcels sector but is often limited to postal services as defined by the Postal Directive<sup>23</sup>. Therefore, many NRAs do not have full oversight over a wider spectrum of e-commerce cross-border parcels which may be provided by operators that are not postal service providers in certain jurisdictions. To this end it can be noted that in the scope of the Postal Directive, postal services are defined pursuant to article 2(1) of the Postal Directive as *“services involving the clearance, sorting, transport and distribution of postal items”* and a postal item is defined pursuant to Article 2(6) of the Postal Directive as *“an item addressed in the final form in which it is to be carried by a postal service provider”*. Finally, Article 2(1a) of the Postal Directive defines, in somewhat circular fashion, a postal service operator as an *“undertaking that provides one or more postal services”*.

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<sup>21</sup> In 2014, the EC (DG MARKT in the previous EC design, currently DG for Internal Market, Industry, Entrepreneurship and SMEs) started collecting data for the postal sector, and exercises for 2012, 2013 and 2014 have been performed. Nevertheless, until now, no data has been published by the EC.

<sup>22</sup> A new ERGP report on core indicators for monitoring the European postal market is expected to be approved by 3 December 2015.

<sup>23</sup> See namely articles 2 and 3 of the Postal Directive.

Article 22a of the Postal Directive concedes NRAs the power to request, from postal service providers, all the information, including financial information and information concerning the provision of the universal service, namely for the following purposes: (a) for NRAs to ensure conformity with the provisions of, or decisions made in accordance with the Postal Directive; (b) for clearly defined statistical purposes. Moreover, the postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the NRA. In this context, the information requested by the NRAs shall be proportionate to the performance of its tasks and the reasons justifying its request for information shall be clearly presented. In addition, Member States shall ensure that NRAs provide the EC, upon request, with appropriate and relevant information necessary for it to carry out its tasks under the Postal Directive.<sup>24</sup>

Hence, it can be established that the NRAs powers to collect information on domestic and cross-border parcels vary. The legal powers of many NRAs only cover universal service obligations (USO) parcels or parcels of the USO provider or to all parcels of (only) postal operators. As an example for these limitations, express delivery offers are sometimes not included in the present oversight powers of the NRAs. Moreover, even in the group of Member States where NRAs have the power to collect market data, some countries do not even have a notification procedure for parcel delivery (e.g. Finland and Sweden). Therefore, in those cases it cannot be ensured that the NRA is aware of all entities involved in the cross-border delivery of parcels and of the full extent of the activities developed by those market agents.

When considering the adequacy and the implementation of regulatory oversight measures, it should be kept in mind that, as detailed previously, the scope of cross-border parcels delivery exceeds the postal service and, concomitantly, of postal regulation and that the boundaries between the delivery of postal parcels and the delivery of other goods are frequently blurred.

In this framework, the following possible measures to monitor cross-border parcels delivery could be envisaged:

- a) As the scope of postal law in the Member States (including legal monitoring powers) varies significantly with regard to the parcels markets common definitions of e-commerce parcels, principles or guidelines could improve existing and prospective benchmarking and monitoring exercises in this field and define a common understanding on the monitoring of the cross-border parcels delivery;
- b) The EC could define a clear statistical framework and, if needed, to provide a legal basis to enable NRAs to collect relevant market data on domestic and cross-border parcel flows from all postal service providers and/or other providers being active on the B2C and Business-To-Business (B2B) parcel markets;
- c) Similar to the EC's commissioning of a series of studies on broadband performance studies, covering at least the more relevant operators in terms of market shares, could be envisioned regarding the benchmarking of quality of service indicators that are core to the delivery of cross-border parcels, such as, for instance, those related to cross-border parcels delivery times, the number of end-user complaints

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<sup>24</sup> Where information is considered confidential by a NRA, in accordance with Community and national business confidentiality rules, the Commission and the NRAs concerned shall preserve such confidentiality.

segregated by each category of cross-border parcel (both as an absolute value and as a proportion of the corresponding cross-border parcel category overall value), customer satisfaction indexes or effectiveness of return policies;

- d) Reinforcement of cooperation between the EC, NRAs, competition authorities, consumer protection bodies, e-retailers and all operators involved in cross-border delivery should be encouraged, aiming at, if needed, identifying and periodically updating the core indicators that are more appropriate to the monitoring of the cross-border parcel delivery at EU level.

Naturally, given the current state of competition of cross-border parcels delivery, albeit to varying degrees, and the low margins for a significant proportion of this traffic, care needs to be taken to ensure that possible “regulatory burdens” to operators, arising from the measures previously identified, are proportionate and duly justified.

### 3.3 POSSIBLE PRICE TRANSPARENCY MEASURES

One of the more important issues considered both in the scope of the design of regulatory and public policies and of the commercial conduct of companies has to do with price transparency.

In markets not affected by collusion among sellers or by price skimming strategies<sup>25</sup> (Dean, 1976), the augmentation of price transparency levels is usually expected to increase overall welfare, namely because it betters the price-tracking ability of sellers (conducive to higher market efficiency) and because it helps buyers to make better decisions in terms of choice of products (increasing value for money)<sup>26</sup>, besides contributing towards the lowering of transaction costs. In the particular case of online markets, it is of the utmost importance to aggregate buyers and sellers across Europe reducing information asymmetry typical of traditional markets (Hansen et al., 2001).

Both Copenhagen Economics (2013) and WIK-Consult (2014)<sup>27</sup> examined the situation of e-commerce in the EU and proposed a number of initiatives to develop and improve the functioning of parcel distribution network in Europe especially in cross-border transactions, especially with regard to<sup>28</sup>:

- a) Increasing consumer and supplier information and awareness;

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<sup>25</sup> Price skimming strategies are frequently followed in innovative services and are characterized by relatively high prices accompanied with high promotional expenditures in the early stages of market development (and lower prices at subsequent stages), taking advantage, namely, of low levels of demand elasticity.

<sup>26</sup> Consumers are estimated to be willing to spend only 20% of the cost of the objects with the distribution process. Simplification of providers of fee schedule could boost the development of cross-border e-commerce (IPC, 2012).

<sup>27</sup> Although the WIK (2014) study focused on the specific case of four Member States (Germany, Greece, Ireland and Poland), it can be reasonably assumed that the suggested proposals would be also effective in the other EU Member States.

<sup>28</sup> Other measures relevant in the context of cross-border e-commerce but not necessarily related to price transparency have to do with the launching of EU-wide “trusted brands”, to improving parcel services in rural areas; to enhancing the interoperability of cross-border delivery operations and to the establishment of reliable methods for measuring transit times.

- b) Developing a scoreboard on the performance of prices and delivery quality in e-commerce.

Measures a) and b) above may relate directly to the transparency of retail prices *per se* and hence should be discussed further, whilst it is also clear that the remaining measures mentioned above impact upon the quality of service patterns of cross-border delivery of parcels, hence contributing towards the formation of hedonic prices.<sup>29</sup>

With regard to **increasing consumer and supplier information and awareness**, potential measures to be pondered could be:

- a) On the supply side (parcels delivery provider) - The creation of platforms for distribution services;
- b) On the demand side (e-retailer) - The launch of price comparison websites ;
- c) Initiatives to the benefit of online-buyers - Provision of incentives for the improvement of “track and trace” systems and or other initiatives to promote consumer awareness regarding prices.

An information platform for distribution services operated by the parcels delivery providers could be particularly important to promote transparency, especially with regard to small e-retailers, which to a large extent do not possess enough information on the available delivery services.

Possibly the role of these platforms could also be extended to facilitate the negotiation between small e-retailers and parcel delivery operators, in order to reduce transaction costs for e-retailers and to render more effective the possibility that even small e-retailers offer their customers the possibility to choose between different parcel delivery operators, when receiving their orders.

These types of platforms could, in particular, improve the transparency of information on existing parcel delivery solutions particularly for cross-border delivery, and thus facilitate cross-border shipping through the creation of a web information platform presenting and comparing the different solutions available for parcel delivery. The platform would act as a one-stop information point for e-retailers wishing to fulfil shipment across European borders.<sup>30</sup>

A typical solution found in the electronic communications sector to increase information and awareness regarding prices and other characteristics of the service is the creation of price comparison websites. To be effective, this instrument would require the possibility of end-users to choose directly among different parcel delivery providers. According to a recent study (ECME Consortium, 2015), based on the results of an online survey, nearly ¾ of the EU citizens that used some sort of comparison tool used price comparison websites and apps over the past year, but a significant proportion of those users also reported problems

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<sup>29</sup> Hedonic prices refer to a pricing methodology that is formatted by the principle that the price of a given good or service is impacted by a number of environmental or perceptual factors that can raise or lower the "base" price of that good or service. For an analysis of the implications of hedonic prices in the postal sector see, for instance, Fenster et al (2006).

<sup>30</sup> It is worthwhile mentioning that the EC has recently launched a call for proposals regarding an information platform on parcel delivery services.

related to those tools, for instance incorrect prices or biased product information, which suggests that important ameliorations could be developed in these domains.<sup>31</sup>

E-retailer information could be also improved by a benchmark data report on cross-border parcels prices and quality similar or a monitoring exercise concerning parcels delivery similar to the Communications Committee monitoring of coverage and take-up of broadband access in the EU.

In parallel, it seems also important to incentivise improvements to the benefit of online buyers, which could for instance relate to track and trace systems, since end-users may be faced with an overwhelming information gap when cross-border parcel distributors have not implemented “track and trace” systems that permit the end-user to accompany the transport flow of the parcel, once the parcel leaves the country of origin. In this context interoperability and the standardisation of processes in cross-border parcel delivery plays a significant role.

Track and trace solutions in a cross-border context require a standardised exchange of data and a common definition of processes. Open standards and transparent interface definitions contribute to enhanced interoperability. Consequently the European Committee for Standardisation (CEN) has been mandated by the EC to pay particular attention to interoperability in cross-border parcel delivery including the broadest possible range of interested actors in this field. Other relevant initiatives in this domain like the International Postal System of the UPU, which provides end-to-end tracking of items, receptacles and dispatches as well as automated processing of dispatches, track and trace and Electronic Data Interchange (EDI) messaging<sup>32</sup>, and the programme “E-Commerce Interconnect” developed by the International Post Corporation (IPC) have limited the scope of their solutions to their respective members. In this e-Commerce Interconnect Programme (eCIP) some postal operators are working together on developing a common service specification for e-commerce delivery in order to fulfil the industry promise to address current e-commerce delivery issues.<sup>33</sup>

With regard to the promotion of consumer awareness regarding prices, given that the e-retailer usually selects the parcel delivery operator or a pre-set of parcel delivery operators from where the consumer can choose, frequently the e-retailer alone has the right to complain about the service, but equally the contract between the e-retailer and the end-user needs to be clearly defined so that the recipient knows what process to follow in the event of a problem with the delivery in general or with price issues in particular. As mentioned above in the context of price comparison websites in order to be effective this would require a possibility of the end-user to choose the parcel delivery provider. Theoretically this can be compared to the “local break out” option of roaming or the option to choose a local roaming operator different from the home operator. Price awareness would have a beneficial effect on competition.

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<sup>31</sup> This measure would be considered particularly important for small and medium sized companies.

<sup>32</sup> <http://www.upu.int/en/the-upu/postal-technology-centre/about-ptc.html>.

<sup>33</sup> IPC and PostEurop website.

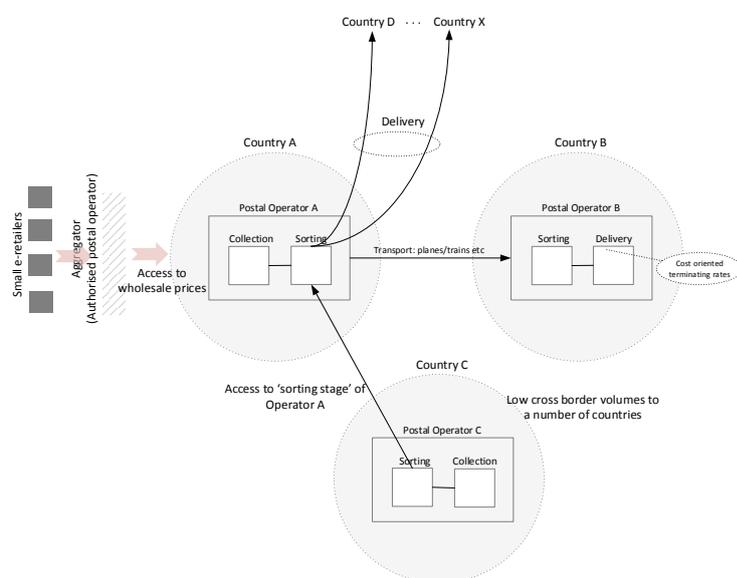
Also the implementation of the Directive on Consumer Alternative Dispute Resolution<sup>34</sup> and of the Regulation on Consumer Online Dispute Resolution<sup>35</sup> into national law, could contribute to solving possible non-transparent and adverse impacts arising from lack of information on the consumer side.

Considering a **scoreboard on the performance of prices and delivery quality in e-commerce**, it is fair to say that the Digital Agenda Scoreboard (EC, 2015a), already offers valuable insights into the proportion of population resorting to e-commerce in each Member State (both from national retailers and from retailers from other EU Member States), reasons for shopping online, enterprises using any computer network for sales, barriers to selling online, cross-border e-commerce by companies and how to get companies to sell cross-border. It seems reasonable to expect that the EC could soon expand this benchmarking exercise to the performance of prices and delivery quality in e-commerce, in particular taking into account that the EC's roadmap for completing the single market for parcel delivery (EC, 2013a) foresaw that the EC would establish a scoreboard on delivery performance.

### 3.4 OTHER POSSIBLE MEASURES

The previously identified transparency and regulatory oversight measures could be necessary but still not sufficient to address all possible issue for both e-sellers and e-buyers. Therefore, additional measures to be assessed by involved NRAs – to be assessed at national level - could be required, to address competition problems on the whole of the cross-border parcel delivery chain (see Figure 1).

Figure 1 Cross-Border parcel delivery chain



<sup>34</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

<sup>35</sup> Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

The e-commerce market is evolving quickly and is increasingly demanding both in terms of innovative business solutions and of consumers expectations. The delivery related needs of the sector are increasingly diverse, which can be illustrated by the growing number of product segments covered (such as books, clothing, and electronics) with different value, different weights and size of packages. The viability and success of e-retailers businesses depends also on the ability of the logistic sector to deliver at low cost and in a convenient manner. This applies in particular to smaller players on the e-commerce market, which neither have the bargaining power to obtain substantial discounts from postal operators, nor the capacity to invest in a logistic network of their own<sup>36</sup>. Individually-sent and bulk offers are available to different groups of senders and appear to vary in terms of conditions and prices. For instance, in the context of online shopping, individually negotiated bulk services are probably more readily available to large e-commerce sellers which can guarantee large sending volumes to the distributors and not feasibly able to be used by smaller SME sellers who rely on individually-sent services that have standardized terms and conditions.

As per the key findings of Eurobarometer 413 (EC, 2015c) carried out on behalf of the EC from the sellers side “the most common difficulties companies encounter when selling online are related to cost – concerns that delivery costs are too high (51%), that guarantees and returns are too expensive (42%)” which are both directly related to the parcel delivery cost. Similarly, in the same study, for the companies that bought goods and or services online from another EU country in 2014, as well as those that either used to do so or tried to do so, they cited as the number one impeding factor delivery costs that are too high (57%). Furthermore 62% of the companies that do not sell online but are trying to do so, stated that delivery costs are too high and thus discouraging the increase of more players into e-commerce activities.

Shipping cost is a key driver for the growth of the e-commerce and in general of any commercial activity between the EU Member States. Undoubtedly there is lack of interoperability between the delivery networks of various postal operators from different EU member states. Hence, it is not easy or efficient for SMEs to compare the available shipping services. This demotivates shipping between the EU Member States, which of course conflicts with the Europe 2020 Strategy.

The following incentives could be provided to the e-sellers and other entities in order to reduce the shipping costs:

- a) Access of small e-sellers to bulk shipments by cooperating with a local postal operator. The grouping of requests with similar attributes (i.e. date, origin, destination, type, etc.) and negotiate with postal operators for an improved price. In this way all three parties may win. Postal operators will be able to receive massive / bulk sales whereas e-commerce end-customers will get a much better shipping rate compared to what they would have received individually;

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<sup>36</sup> Large e-sellers are starting to build their own delivery network in highly populated cities.

- b) Access of small e-sellers to bulk shipments by cooperating with a postal operator active in another country, in cases where the local postal operator, due to low volumes of cross-border, does not provide cost efficient bulk shipments<sup>37;38</sup>
- c) Due to the fact that the terminal dues is a part of the shipment costs, application of efficient cost orientated terminal dues for shipments collected and delivered within the EU Member states.

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<sup>37</sup> It should be taken into account whether there are rules within the UPU aimed at eliminating or reducing the "re-mailing" and thus limit possible positive effects of this measure. In any case, as the UPU measures apply to the designated operators, eventually the UPU has to change these measures to face competition from non (UPU) designated postal operators to distribute the items delivered by e-sellers in the mentioned mode.

<sup>38</sup> To this end the Finnish NRA FICORA points out that the legislation in Finland would set limitations regarding this proposal. The Finnish Postal Act Section 36(3) stipulates that:

*"(...) a designated operator is not obliged to convey or deliver to the receiver items of correspondence that senders post or have posted elsewhere than in Finland for the purpose of benefiting from lower fees applied in another country. A designated operator may collect the domestic fees from the sender or, if the sender refuses to pay, from the designated operator of the country of origin. If these refuse to pay by the deadline, the designated operator may return the items to the designated operator of the country of origin and claim reimbursement of the costs incurred in sending the items".*

## 4. CONCLUSION

The development of cross-border parcels delivery and the facilitation of the postal operators' internationalization process will be decisive for the growth of the B2C segment, associated with e-commerce.

Based upon the analysis presented in this document, it is possible to identify a number of possible measures that could address the possible problems of price transparency and improve the performance of e-commerce markets.

Since high cross-border parcels delivery tariffs have been identified as problematic by several studies it is worth comparing cross-border parcels delivery with international roaming. In this regard, while some similarities and some discrepancies have been identified, it seems clear that should any competition issues become evident or are suspected in the parcels sector, including cross-border parcels, NRAs need the appropriate regulatory powers to intervene and such powers do not seem to be present in all Member States. However, care needs to be exercised in a dynamic and competitive market such as parcels where the senders, especially larger e-retailers sending out large volumes of parcels, can already negotiate better terms. Voluntary measures need also to be considered and indeed, in the case of international roaming, the positive developments in lower prices going beyond the safeguard retail and wholesale caps have arisen from operators developing commercial offerings on international roaming that are ahead of, and go beyond, the regulatory requirements.

Furthermore, when looking into these suggested measures, it is also worth taking into account at least the following considerations:

- a) To begin with, even if the possible issues related to e-commerce which can be dealt with by postal and electronic communications NRAs are properly solved, a number of other relevant problems still persist that hinder the development of e-commerce - namely with regard to taxation, security of on-line transactions<sup>39</sup> and consumer confidence – which will render difficult anyway to meet the e-commerce targets prescribed in the Digital Agenda for Europe. These problems are outside the remit of postal and electronic communications NRAs and will need to be addressed separately;
- b) Secondly, the measures suggested are advisable essentially in a market not adversely affected by collusion, since in markets with collusive behaviour, an increase of transparency levels might compound the problem, instead of contributing towards its solution;
- c) In a fully liberalized market, it is expected that ex-post regulatory intervention is increasingly more relevant. This could require a deepening of the cooperation between specific sector regulators, “horizontal” regulators in charge of competition and, naturally, public bodies and associations in charge of consumer protection;

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<sup>39</sup> Related, for instance, to payment systems and to the protection of personal data.

- d) The variety of players active in the cross-border parcels delivery segment is the result of the dynamic environment triggered by growing e-commerce volumes. Regulatory oversight and price transparency measures might affect the undertakings active in this sector to a different degree. While those offering integrated solutions for the whole cross-border delivery process might be able to comply with regulatory measures more easily, others that only started to build up a cross-border network through agreements and partnerships might experience more difficulties in meeting obligations in the field of price transparency and regulatory oversight. The latter business models often include several undertakings being dependent on their respective logistics and operational set-up. Consequently, the balance between the burden and the outcomes associated with regulatory interventions play an important role when discussing measures in the field of regulatory oversight and price transparency, namely in the light of the proportionality principle. In any case, interoperability and open standards are important means to reduce burdens and barriers in cross-border deliveries as they allow for interconnectivity and exchange of information.
- e) Using the electronic communications framework as a reference for possible regulatory intervention in the e-commerce parcels delivery market has some intrinsic limitations. For instance, besides wide differences in the industry cost structure, in the cross-border delivery of parcels generated by e-commerce it is the e-retailer who contracts with the service provider, as opposed to the electronic communications markets where typically the contractual relation is established directly between the service provider and the end-user;
- f) It is also important to avoid an overabundance of information that may not be relevant to the decision making process of the end-user, which may hinder its ability to take the best possible option and or lead the end-user to follow a “bounded rationality” approach (Simon, 1957).

If problems are identified and evidenced, the following measures to **monitor cross-border parcels delivery** could be envisaged:

- a) As the scope of postal law in the Member States (including legal monitoring powers) varies significantly with regard to the parcels markets, a harmonized approach to the legal framework could improve existing and prospective benchmarking and monitoring exercises in this field; to define a common understanding of the monitoring of the cross-border parcels delivery could be done , and legislative act;
- b) The EC could define a clear statistical framework (based on harmonized and clear definition of cross-border parcels) and, if needed, provide a legal basis to enable NRAs to collect relevant market data on domestic and cross-border parcel flows from all postal service providers and/or other providers being active on the B2C and Business-To-Business (B2B) parcel markets;
- c) Similar to the EC’s commissioning of a series of studies on broadband performance other studies (covering at least the more relevant operators in terms of market shares), could be envisioned regarding the benchmarking of quality of service indicators that are core to the delivery of cross-border parcels, such as, for instance, those related to cross-border parcels delivery times, the number of end-user complaints segregated by each category of cross-border parcel (both as an absolute

value and as a proportion of the corresponding cross-border parcel category overall value), customer satisfaction indexes or effectiveness of return policies;

- d) The reinforcement of cooperation between the EC, NRAs, competition authorities, consumer protection bodies, e-retailers and all operators involved in cross-border delivery should be sought, aiming at, if needed, identifying and periodically updating the core indicators that are more appropriate to the monitoring of the cross-border parcel delivery at EU level.

With regard to possible **price transparency** measures, a number of actions could be considered such as the creation of platforms for distribution services operated by parcel delivery providers, the launch of price comparison websites or a scoreboard on the performance of prices and delivery quality in e-commerce, which requires the possibility of the end-user to choose the parcel delivery provider directly. Online buyers might also welcome improvements concerning the availability of added facilities such as “track and trace” systems and other actions to reduce the prices paid by retailers can be envisaged (access of small senders to bulk shipment prices). In any event, it is evident that appropriate identification of robust evidence of problems and its analysis together with a clear impact assessment would be needed prior to the introduction of any of the discussed measures.

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## **GLOSSARY**

ACEPI - Associação do Comércio Eletrónico e da Publicidade Interativa (Association of Electronic and Interactive Advertising Trade - Portugal).

BEREC - Body of European Regulators for Electronic Communications.

B2B – Business-To-Business.

B2C – Business-To-Consumer.

CERP - Conférence Européenne des Administrations des Postes et Télécommunications.

EC – European Commission.

EDI – Electronic Data Interchange.

EEA – European Economic Area.

EU – European Union.

ERGP - European Regulators Group for Postal Services.

IPC – International Post Corporation.

M2M – Machine-To-Machine.

Mb – Megabyte.

NRAs – National Regulatory Authorities.

SMS – Short Message Service.

SME – Small and Medium Enterprises.

VAT – Valued Added Tax.