POSTAL USERS GROUP (PUG)

♦ An ad hoc alliance of Europe's major users of postal services

Postal Users Group (PUG) comments to Green Paper: An integrated parcel delivery market for the growth of e-commerce in the EU (COM (2012) 698 final)

Brussels 22 February 2013,

General comments:

PUG, the Postal User's Group, established in 1997 as an informal coalition of all industries using postal services (list of members on page 11), welcomes the European Commission's commitment to identify solutions to the challenges currently faced by those using postal services in order to deliver their products and services. Consequently, PUG welcomes this Green Paper and this global debate on the notion of delivery even if we draw your attention to the importance of market forces. PUG upholds competition as we consider it provides better services at better prices, which is what we are all striving for to develop e-commerce. Indeed, competition is a combination of services, development and prices. So it is important not to isolate one aspect but to look for solutions in the whole chain.

In this context we would summarize our contribution in four main statements:

1 Legally, the liberalization process is nearly completed. However market realities are still very different across the 27 Member States especially concerning competition and legal fragmentation. Without a good level of competition on the national markets there cannot be a high level of competition in the cross-border segment. National authorities have to redouble efforts to promote competition and cooperation between USO operators, private operators and sellers in order to help these stakeholders to identify the necessary solutions.

2 The Green Paper reflects many of the expectations of consumers, sellers, postal operators and policy makers. Many of these issues should be carefully analyzed in detail in order to ensure that the numerous factors (distances, costs, technical issues, taxation) and market differences are correctly taken into account for the promotion of competition and choice.

3 Considering the difficult economic context, the implementation of the current rules and the potential drafting of new rules should reflect the need to promote competition and the development of new businesses, including SMEs. Overly specific rules would reduce the level of business development in Europe leading to less choice, higher prices and lower quality for the consumers.

4 Business associations gathering users of postal services should be given a more prominent role in the process of identifying potential solutions to the current challenges as many of the issues raised by the Green Paper refer to business and competition. SMEs can obtain information on market conditions and best practices as well as guidance from their industry associations. In addition, and as a measure to boost confidence for consumers, some of the industry associations offer trustmarks and consumer complaint services. Consumers can also obtain information on their rights and safeguards from consumer associations as well as industry bodies in case of problems with their orders.

Detailed answers:

Questions: the regulatory and institutional framework for the EU parcel delivery market

Q1) For the purpose of this Green Paper, 'parcel' is defined in the broadest sense and includes all items weighing up to 30 kg. Are there particular elements which in you view are of crucial relevance for the qualification as 'parcel' in the context of the ambition to achieve a more integrated, well-performing parcel delivery market in the EU?

A broad definition is the correct approach in the context of this Green Paper. Usually companies use the same reference for parcels of up to 30KG as above this weight other transport services are used. This should include the "letter" categories, which qualify as parcels and fit in the mail boxes. However, this broad definition needs to take into consideration specific categories of products which benefit from special delivery rules (i.e. press products) in order to avoid unintentional consequences on these products.

Q2) Is, and if so to what extent, the existing framework an obstacle to the creation of a truly integrated European parcel delivery market that meets the needs and expectations of e-retailers, consumers and workers in the sector?

From a retailer perspective, this is a very complex question. There are many issues which are already mentioned in the Green Paper, but which do not necessarily result from the postal legal framework such as the differences in taxation thresholds for e-commerce, consumer protection rules, the variety in languages, cultural aspects and many more.

Q3) What are the top three challenges posed by the regulatory framework? What could be done to help you respond, in the short and long term, to these challenges?

We agree with the top challenges already mentioned in the Green Paper: the multitude of legal barriers, not only in the field of post, mostly resulting from the lack of harmonisation and enforcement across the 27 Member States.

Q4) Do you consider there are regulatory gaps or a need for additional measures/regulation? If so, please specify.

The current legislative framework should be sufficient if enforced correctly, with the aim to further develop the Single Market. The risk to create a burdensome and uncompetitive, legislative environment for companies is always greater if new legislation is proposed but Member States fail to ensure proper enforcement resources.

Questions: improving consumer experience and convenience-more transparency

Q5) Information on delivery options and modalities a) Which information should be made available to consumers on the e-retailer's website (name and contact details of the delivery operator(s), the delivery price, the time and place of delivery, information about complaint handling, track and trace options, return options)?

The current consumer protection rules, and the changes brought by the new Consumer Rights Directive (2011/83/EU) offer consumers extensive information on contracts and services, including information on delivery and total costs. It's not essential to inform the consumer beforehand which operator is used. However if this is an obligation it could hamper the free choice of the trader. But for the consumer it is important to know at a certain time which operator he can expect for delivery. For delivery questions, the consumer should always first contact the retailer, unless arranged differently.

If the order was not processed yet or there was an error in the retailer's system, the postal operator *will not be able to help the consumer. Furthermore, the liability for the product is with the retailer until the retailer has proof that the product was delivered. If a product was not delivered within a certain period, either that declared by the retailer or the maximum legal period, the retailer has to take the appropriate steps and inform the consumer of the possibilities to rectify the problem.*

Track and trace, returns, complaint handling and even time and place of delivery will depend on the type of service offered by the retailer as it is the retailer who negotiates the conditions of delivery with the postal operator. This also depends on the market itself. In a developed market a 2 day delivery can be standard while in a developing market a 5 day or even longer delivery period can be considered standard, and without track and trace.

b) Taking into account the risk of information overload, what could be done to provide consumers at the right moment with clear, transparent and comparable information on delivery?

The current information requirements, and including those that will result from the transposition of the before-mentioned Consumer Rights Directive, provide consumers with sufficient information and they also determine precisely when this information should be provided. No further specifications are necessary or we risk creating a very confusing environment for both consumers and companies.

Q6) Information on the quality/performance of delivery a) Performance indicators relate, for instance, to the speed of delivery, the geographic coverage of the delivery operator, delays, damaged or lost items. How can such performance-related information be measured and gathered? Would publishing the results of such performance indicators create added value for consumers? Is there a need to develop standards to monitor such performance levels?

There are already quality standards that are used by many companies to monitor performance levels. Sometimes these standards will measure different aspects but in general the sellers will keep track of the issues resulting from the services offered by the postal operators and take the appropriate action.

The service levels are quite similar if compared in regions (e.g. Western Europe and Easter Europe) and such indicators could be quite complex for consumers. For example, the consumer would have to first find the products, find out which operator will deliver (and this might differ depending on the products, region) and then also check the quality information of the delivery company. This would make the process extremely complex considering that many consumers are still unaware about the general information they can find on a company's website and the relevance of this information for the quality of their online purchase experience. Another aspect is that a retailer has to choose a service which fits to his business model, and in some case a "premium" delivery service will not be adequate for certain low price items.

b) Would trust labels (e.g. a certificate given by an industry association that the delivery process of an operator can be trusted as they meet requirements based on best practice) offer a more efficient way to increase consumers' confidence?

Should a delivery not take place or take place incorrectly, the only contractual relationship the consumer has is with the retailer. A trustmark will only play a formal role between the trader and the operator. But, there are already many trustmarks that companies, including delivery companies, display to show consumers and users that they are audited for various aspects, from CO2 emissions to their customer care. Some of these trustmarks are offered by industry associations or even consumer protection groups. A trust label can only be effective if there is a proper enforcement mechanism, such as an industry association.

c) Would ISO certification of a quality process aiming at efficient delivery be an appropriate tool to increase consumers' confidence?

ISO certifications for the various processes are implemented, including for quality, by many operators. However, consumers might not be able to understand the different aspects of an ISO auditing process or its results.

Q7) Independent supervision: Who should take the lead to monitor performance: an industry organisation, an independent body, a regulator?

Performance and quality should be monitored by the regulator for the areas described by the laws, such as the Postal Directives, or general competition law. For any other areas which are competition driven, and where additional services beyond those covered by the laws are offered, performance should be checked by industry organisations. Actually, they do offer certification schemes and trustmarks.

Questions: increasing consumer experience and convenience – better services and more safeguards

Q8) Possible need and scope of a universal delivery service for parcels: a) Is there a need for a new universal service obligation to address the ubiquity, affordability and quality of parcel delivery services?

The current postal framework is relatively recent and is yet to be enforced in all aspects across the 27 Member States. Sectors such as e-commerce, press and marketing often are included in the USO area which ensures that they remain accessible to the consumers. Any modifications to the framework cannot ignore these aspects or the important differences in services between the different regions of the EU. In some areas a next day delivery has become a standard offer while in other areas three or four days would be normal. Such differences are explained by the numerous factors linked to the level of development of that particular market, such as number of companies selling online or at a distance in that market, the level of comfort the consumer has with this sale channel, the availability of payment channels, the level of competition in general and geographical differences (mountains, sea, islands), concentration of population. Therefore it would be almost impossible to name a common denominator which would be appropriate in terms of conditions and costs for all markets. Regulatory Authorities should be able to check pricing, coverage and quality levels for those areas covered by the USO in case there are concerns that the tariffs are not cost oriented in the case of the USO area, or in breach of competition rules elsewhere.

b) If so, what could be the main characteristics of this 'new' universal service (in terms of service levels, convenience and affordability)?

N/A

c) From a delivery operator perspective, do you think a universal (parcel) service would be feasible in terms of cost/profitability? If so, at what level?

N/A

d) What would be the best tools to implement such a concept (e.g. guidelines; revision of the Postal Directive; new regulatory instrument with enhanced powers of the national regulatory authorities)?

N/A

Q9) Improving consumer experience a) Taking into account the existing set of consumer rights, how could consumer concerns and complaints about delivery be addressed most effectively?

Overall, legally and from a consumer perspective, the liability for lost and undelivered items rests with the seller, who will settle the issue with the postal operator if the postal operator is the cause. In the unlikely case that the seller refuses to take any action when the contract is not fulfilled, authorities or consumer protection bodies should be able to intervene (such as the ECC-Net). In any case, consumers should first contact their sellers as until the parcel has reached them, the responsibility lies with the seller. In order to simplify complaints procedures and make information on the delivery more easily available to consumers, the cooperation between the delivery company and the e-commerce company could be improved in some instances, i.e. regarding the sharing of information on the delivery process.

If the question refers to pricing or coverage issues, this should be left to the market if it is not of the competence of the Regulatory Authority or Authorities to intervene. Which would, for instance, be the case regarding unfair commercial practices or discrimination based on the nationality of the buyer.

b) Do you have any concerns about liability regimes in the event of lost or damaged parcels? What could be done to improve the situation?

With the exception of certain difficult periods (e.g. weather conditions), it is very unlikely that a high level of lost or damaged parcels occurs without a clear responsibility. However, if a significant level of lost or damaged parcels is observed, then the seller will first try to solve the issues with the operator or seek compensation along the lines set by the delivery contract. The concept of "lost" should be clearly defined as the recurrence of this term seems to possibly indicate that it might have different meanings to different stakeholders. In the case of online sellers an item would be considered as lost if it disappears within the system of the postal operator. The offering of insured sending, at some extra cost, would also be an opportunity. Maybe a harmonized system of value and the offering of a kind of insurance could improve this.

c) Could the e-commerce industry and delivery operators come up with more proactive solutions to better respond to consumers? What actions could be taken quickly to improve the situation in the short term? Which medium to long term solutions could be envisaged?

There are certain aspects which are difficult to predict, such as delivery delays caused by unfavorable weather conditions or social movements. However, it is considered already best practice for a company to openly and transparently communicate any issues which affect consumers. In a cross-border context this is more complex as a parcel might be delayed by weather conditions in the UK, while it is expected for delivery in Poland or vice-versa. The Polish or British consumer might not be able to understand the information notifying the delays or other issues. A track and trace system cross-border could be envisaged as a solution, although in the absence of a good data exchange between the various postal operators, this would also entail certain limitations and would resume to offering very basic information which could prove of little use to a consumer in case of significant delays. One possibility put forward would be in such cases to improve communication with consumers to better respond to their demand in a media compatible manner.

Questions: more cost effective and competitive delivery solutions-controlling costs

Q10) Different options could be envisaged to control costs: a) Are there any outstanding examples of, or best practices for alternative delivery solutions allowing for a reduction of costs?

There are many examples of alternative delivery practices which increase efficiency and lower cost. However, these are not accessible to all companies as some will not have the necessary volumes or resources allowing them to negotiate. Internal pre-sorting, splitting volumes between operators, precise labeling according to the operator's demands or country standards and even delivering the parcels in the company trucks across borders (also known as direct injection) are all solutions which depend on the company's resources but which allow for a reduction of costs.

b) Are there any outstanding examples of best practices to increase efficiency?

Depending on the contract, postal operators sometimes organize the logistics for a company as this increases volumes for the operator.

c) What type of technology can or could reduce the cost of delivery?

All technologies have their advantages and disadvantages, it should be left up to the markets to develop and identify the most efficient technologies.

d) What could be done, in your view, to remove or alleviate current regulatory constraints without putting the attainment of their underlying objectives at risk?

Because the current legislative framework is relatively recent, the accent should be put on enforcement rather than revision. Revision needs to be driven by clear business and consumer needs, or else this generates legal uncertainty. Therefore we would suggest the following areas of focus:

-Better enforcement and information on the market from the Regulatory Authorities.
-Standardization of address formats, sorting schemes, track and trace.

Questions: competitive but sustainable prices – sustainability and transparency of tariffs

Q11) Sustainability of tariffs: a) Do you think that the current level of tariffs charged to consumers for home delivery is sustainable in the medium and long term? If not, what should be done to mitigate this?

PUG cannot comment on the tariffs charged to individual consumers by postal operators. Concerning the e-commerce activities the prices reflect volumes, market development, preparation work done by the seller. The prices offered for delivery to the consumer by the seller are part of the marketing strategy of the seller and this is an area for companies to compete ("free delivery", "next day delivery", "free returns"). From an e-commerce perspective the markets should be allowed to offer a maximum of flexibility in order for sellers to be able to choose the delivery product that meets their needs.

b) Should the actual cost of delivery incurred by e-retailers be made more transparent to consumers? If so why?

This is a competition issue and should be left to the market. Ultimately the consumer makes the choice based on the final price offered by the seller. Having such information would make no difference for the consumer. Different sellers will be able to offer different prices depending on their processes, volumes, resources and marketing. However, if there are any suspicions of illegal behavior, Regulatory Authorities should investigate.

c) Should the true costs of delivery to the society at large be made more transparent? If so why? And how?

This is a competition issue. The true costs of delivery (CO2, social, economic and labor costs) cannot be realistically calculated because of the many factors and actors involved that are valued differently across the EU. Companies should and do compete in these areas which signals an intention to increase awareness while making a positive contribution to society.

Questions: competitive but sustainable prices -more competitive delivery markets

Q12) Level of competition in delivery markets: a) In which markets, or market segments would more competition be essential?

The cross-border parcel delivery segment, where volumes are lower than at the national level, will show lower levels of competition. Cross-border has become a different concept in the recent years as many companies will deliver their products to the respective national postal operator directly, even across the border (direct injection). At the national level the parcel delivery markets are very different, even from one region to the other within one Member State. This requires in many instances a case by case assessment in order to identify the causes for the lack of competition, if any. Some areas will not have enough customers to ensure a feasible constant delivery infrastructure and other solutions will apply. As a principle, competition should be a priority in all Member States where the dominant market player does not have at least one or more competitors controlling approximately a third of the market volumes.

b) Publishing price comparisons would provide more clarity to consumers and SMEs. How could this be done? What would be the pro and cons?

At national level, this would not help consumers in the e-commerce context, as they do not choose the operators a seller will use and sellers don't choose operators solely by comparing prices. Another challenge is that price comparison would only be possible for comparable services. In the cross border context such comparisons would not be relevant for the individual consumers because of various elements that influence prices, including taxation, social contributions and fuel prices.

Q13) Oversight and regulation: Ex ante regulatory measures (such as transparency obligations, obligations to provide access to delivery networks, and obligation for tariffs to be cost oriented, etc.) imposed on delivery operators with significant market power can lead to more competitive markets. a) Which would be the relevant markets to consider in this respect?

The market conditions are very different from Member State to Member State and from region to region. At the same time issues such as transparency, cost oriented tariffs, access to networks are in principle covered by the Postal Directive. This means that the European Commission has to see that the Member States give national regulators the necessary resources as to ensure a good overview of their market and the ability to take the necessary actions where they observe the market failures.

b) What are the specificities of cross-border operations which could justify cost constraints? Please specify.

N/A

c) Should the regulator have more information on cost accounting data of operators to better assess the cost-price structure of packets and parcels?

Regulators should have access to the necessary information needed to accomplish their role and to the resources to assess the market information.

d) Should regulators and/or competition authorities play a more active role in overseeing the national markets or market segments concerned?

Certainly in those Member States where problems are identified the relevant authorities should play a more active role.

Questions: competitive but sustainable prices -more competitive prices for cross border delivery services

Q14) How can more competitive and transparent cross-border tariffs be ensured? a) Should it be left to market forces to provide the tariff levels and levels of transparency that are demanded by e-retailers and consumers?

As any additional layer of obligations creates additional costs, it is important to ensure that there is a clear need for these additional obligations, either for traders or for consumers.. It is always preferable to allow markets (operators in combination with traders) to develop products and services which answer to the needs of users. For the individual consumer, the current legislative framework ensures a high level of transparency regarding the cost of delivery in the context of distance selling/ e-commerce.

In a more broader context, not specially for operators and traders, both also 'suffer' (as other industries) from differences in VAT (except for exemptions applying to cultural products such as media or press), social obligations and so on.

b) Would more regulatory supervision contribute to achieving sustainable prices for consumers?

Same as above.

c) Do you think that applying some type of price cap for single piece cross border packets and parcels would be a feasible and effective option to address the needs of e-retailers and consumers? What would be the impact of such a price cap on market offer and competition?

From a business perspective, a price cap is not a feasible and effective tool as it does not allow any form of customization limiting innovation and competition. Prices also differ from country to country so a price cap could result in significant market distortions. A price cap should always be the last resort in those cases where the market fails, as applying a price cap in the wrong context can result in greater negative results.

Questions: improving interoperability -investing in technology

Q15) Levels of investment required: a) To what extent is it possible to evaluate both at micro and macro level, the approximate cost of a generalized track and trace system for parcels? Which would be the most relevant parameters to take into account?

N/A

b) What specific pilot projects for delivery of e-commerce products could be promoted, possibly within broader programmers aimed at fostering investment in information and communication technologies?

In general innovation should be promoted by broader research programmes, even possibly by the European Commission in partnership with the industries. The use of Radio Frequency Identification (RFID), Near Field Communication (NFC), and standardization of formats, letter boxes, quality standards, technical specifications and many others are essential for a complex market of 27 Member States.

On the other hand one could also look in issues like hybrid delivery, where the trader is a member state A, the customer is in member state B and the operator in member state B, is warehousing for the trader in B and the trader will mail the paperwork to the operator in state B, that will do the final packaging and delivery.

Questions: improving interoperability -enhanced partnerships

Q16) Partnerships and cooperation: a) Is better co-operation between e-retailers and delivery operators likely to increase the interoperability of operations? If yes, what specifically could retailers and operators do to build new or improve existing partnerships?

This is a market and competition issue and partnerships are developed according to the needs of the markets and consumers. Industry associations can play an important role in helping smaller companies find the information needed to improve their services.

b) Should contingency capacities be jointly developed to deal with peak periods? If yes, how could this be done?

This is current best practice. Sellers and operators have to share information and plan together for peak periods.

c) Would you need the services of facilitators and third party logistics providers? How can those – new or existing-services develop, become better known and more visible?

Industry associations are often the best gateway for such companies to promote their services.

Questions: **improving interoperability -interconnection**

Q17) Better interconnection: a) Could logistics platforms for groups of operators better meet the needs of e-retailers? If yes how?

Logistic platforms already exist but this is a question of whether the seller has the resources and the volumes necessary to invest in such structures, or to have access.

b) Could an industry task force contribute to promoting innovation and increasing the use of new technologies to facilitate greater level of interconnection? If so how?

Any structure that promotes innovation is very welcome and e-sellers should be part of these, on equal footing. Many of the industry associations actively promote new solutions that improve efficiency and reduce costs.

c) Should the processes used to return goods (both domestically and cross border) be improved? If so, how?

It is in the commercial interest of operators and sellers to constantly invest in the improvement of the return processes and it is also a question of competition and business practices. For sellers this is an important matter. As market differences are still important, in some cases it can mean that a seller has to refund a consumer without having received back the product, because of the long distances and the different types of services across the 27 Member States which means that in some countries the D+2 is the normal standard but in others its D+4 or even 5. However, this is a business issue and markets should be allowed to develop adequate solutions and new services.

d) Are interoperability requirements and the promotion of new technologies difficult for SMEs operating in the delivery chain? What actions could help mitigate such difficulties?

Any additional requirements are likely to make SMEs less competitive and less profitable. For example, very often SMEs will not have the resources necessary to customize their own IT platforms or even the resources necessary to interact with the IT platforms of larger companies, as is often noted in the case of digital signatures. Standardization could be a solution where it does not hamper innovation and development.

e) What are (if any) the main three actions which could improve interoperability across EU borders for moving goods ordered on line? What could be done to improve the situation in the short term, what initiatives could be taken in the medium to long term? Also what needs to be done to improve interoperability at the international level?

A definition of "cross-border", "lost", "delivery" and many other elements mentioned in the Green Paper would be necessary so as to have a better understanding of the issues. Standardization for the parcel business for e.g. track and trace systems, labeling, addressing or VAT thresholds for the sale of products cross border (not applicable in the case of media/news or cultural products)would be a good start to significantly improving operability across borders. However, for these improvements to be fully effective, we recommend strong enforcement of laws, especially in the area of competition.

Questions: governance

Q18) Are there areas which could be effectively tackled by the industry to address the issues identified in this Green Paper? How could this be promoted? How to involve both ecommerce and delivery industry associations?

The industry is a partner in developing standards and identifying new areas for innovation and development. However, support for this is needed from the policy makers and regulators as such activities have proven to be extremely costly and time consuming especially in a context where these developments are at different stages from country to country. Ideally, the work would be carried by experts based on the input of the relevant sector stakeholders.

Q19) How should current governance aspects of standardization and interoperability be addressed? Is there a need to increase involvement of representatives of e-commerce, notably SMEs, and consumers?

Industry associations are the ideal partners as they will collect the feedback from all players in the most effective way. Indeed, SMEs have important resource constraints and are often unable to participate actively in such platforms. Secondly, the perspective taken by an SME can often be less comprehensive than that of a larger retailer.

Alfred Köbe

Chair of PUG

About the Postal Users Group (PUG):

The Postal Users Group (PUG) is an ad hoc platform of major EU postal users and their representative organisations. Since its formation in 1996 PUG has been actively promoting the creation of an Internal Market for postal services. Throughout we have worked closely with DG Internal Market.

The PUG membership includes representatives from the major bulk mailing business sectors such as the Federation of European Direct and Interactive Marketing (FEDMA), the European Multi-Channel and Online Trade Association (EMOTA), the European Publishers Council (EPC), the European Magazine Media Association (EMMA), the European Newspaper Publishers Association (ENPA), the Federation des Editeurs Europeens (FEP-FEE), European Express Association (EEA), Confederation of European Paper Industries (CEPI), the European Federation of Envelope Manufacturers in Europe (FEPE) and the Dutch Postal Users' Group (VGP).