



Key points for a revision of the Postal Act

1 August 2019

Since the Postal Act was adopted in 1997, the postal markets have changed considerably. Advancing digitalisation is affecting both supply and demand for postal services as well as value chains. The markets for letter post communications have come under a lot of pressure from increasing online communications. Whilst other European countries have already seen drastic falls in the quantities of mail, the decline in Germany is still moderate. In contrast, the parcel markets have been registering high growth rates for years, primarily due to eCommerce.

Further to this, the objectives of the Postal Act have been achieved to different degrees. Whilst nation-wide coverage with appropriate and adequate postal services has not been at risk in recent years, the development of functioning competition offering equal opportunities on the postal markets has not been satisfactory. It is true that the non-incumbents on the parcel markets have been able to maintain combined market shares totalling more than 50%. But on the letter markets, the non-incumbents' share is still well below 20%, and has failed to match expectations. At the same time, the quality of the service provided is a target of growing criticism, as is shown by the substantial rise in complaints from consumers received each year by the Postal Consumer Advice Service at the Bundesnetzagentur (Federal Network Agency). The changed market conditions, the ongoing unsatisfactory competition situation, and the not always satisfactory quality of the services demand a reorientation of the regulations contained in the Postal Act.

The aim has to be to deliver good-quality postal services, to ensure a positive development in competition, and to remove unnecessary regulations. In order to initiate a broad-based discussion about how best to achieve these goals, the Federal Ministry for Economic Affairs and Energy has drawn up the following key elements for a revision of postal legislation. These cover the main points to be addressed in the course of a revision. The discussion of these key elements will feed directly into a draft of a new Postal Act.

I. Requirement for a licence

At present, a company must obtain a licence in order to transport letters which weigh up to 1,000 grams. The largely standardised licensing procedure covers reliability, performance and expertise of the companies. In contrast, parcel delivery firms merely need to notify the Bundesnetzagentur about their operations. There is no longer any apparent justification for this different treatment. Also, the issuing of licences by the state has become obsolete in the postal sector.

Rather, it would seem sensible to simplify the administration and introduce a single registration system which applies to both letter and parcel delivery companies.

- We want to merge the licensing and notification requirements to form a uniform registration requirement. In future, letter and parcel delivery service providers will have to inform the Bundesnetzagentur about the envisaged commencement, alteration or termination of their operation. In the course of this, the postal service provider must present a valid business registration. This ensures that the companies are already known to the relevant authorities.
- We intend to replace the possibility currently envisaged in the Postal Act of withdrawing a licence from providers where they violate postal legislation with an effective sanction provision. Possible sanctions must be proportionate, but can extend to a ban on providing postal services.
- Where it is necessary to be able to verify subjective preconditions for special services (e.g. the formal service of documents), this can be regulated in the context of the specific service.
- In the current Postal Act, a large number of rules are connected to the holding of a licence or the categorisation of a service as a postal service requiring a licence. Following the removal of the licensing requirement, this link will no longer be available for statutory differentiations. We will therefore examine whether a distinction between delivery services for letters of up to 1,000 grams, which is currently subject to a licence, and other postal services is still necessary, or whether other distinctions – e.g. between letter and parcel delivery services – are useful and sufficient for the definition of obligations under postal legislation.

II. Universal service

Germany will continue to need a high-quality universal service in future. Postal services must be easily accessible for everyone, no matter whether they live in a city or in the country. It is therefore necessary to maintain a nation-wide network of branches and post-boxes which is oriented to the needs of the customers. Whilst parcel services are already provided in rural areas by various providers using their own infrastructures, in the letter sector only Deutsche Post AG has its own nation-wide services and infrastructure.

- We wish to maintain universal service at a high level – not only in urban areas, but particularly in the countryside. To this end, we will give more intensive consideration in future to how a basic local service can be ensured.
- If the Bundesnetzagentur finds from its own review that universal service is not being maintained, or not at a sufficient level, it must have effective instruments at its disposal in order to quickly remedy the identified problems. This will be ensured by introducing regular reporting requirements and enforceable powers for the authorities to issue instructions and impose fines.
- With regard to the specific design of universal service, the current quality standards are at least to be maintained. This is particularly true of the density of the network of branches and post-boxes, and of quality of transit times. At the same time, it may be appropriate to give consideration to efficiency gains from the use of modern technology, e.g. when it comes to emptying post-boxes.
- We wish to review the frequency of deliveries. Whilst European law requires universal service to offer delivery five days a week, national law exceeds this, by requiring six delivery days. Whilst giving consideration to the requirements of the administration and of court procedures, we will study whether delivery on six days a week remains necessary.
- We attach importance to good quality not only for universal service, but for all postal services offered in Germany. We will therefore anchor quality requirements and customer rights in the Postal Act which are addressed to all providers (cf. section III.).

III. Quality and customer rights

The Bundesnetzagentur's Postal Consumer Advice Service has been registering a clear rise in the number of complaints about inadequate postal services in recent years. Even if only a small proportion of the items delivered in Germany each year are affected, we still wish to place more of a focus on the interests of the users in future. It is therefore important that the users have effective rights in their relations with all postal service providers. In this context, we also wish to examine the extent to which recipients of postal deliveries can be granted better rights. For example, in the mail order business, the only contracting party of the parcel delivery company is usually the sender, but in most cases it is the recipient who is affected by problems with the delivery.

- We will strengthen the position of the Bundesnetzagentur as a consumer watchdog in the postal sector.
- In order to safeguard effective consumer rights, we wish to create greater transparency in future so that both sender and recipient can clearly understand what scope and quality of service they can expect when they use certain products. If quality standards are not complied with, the users must be able to assert their rights effectively. This requires not only substantive consumer rights, but also effective procedures.
- With regard to complaints about postal services, we believe that the primary responsibility for providing an effective redress procedure rests with the postal services providers themselves. This is because problems can usually be addressed most quickly and most simply between the customer and the provider. To the necessary extent, we intend to pre-structure the basic features of this procedure in law.
- Where no agreement is reached with the postal service provider, it is already possible to hold arbitration proceedings at the Bundesnetzagentur. However, a number of postal service providers are refusing to participate in what is basically a voluntary process. Since the damages suffered by the customers tend to be too low to justify recourse to the courts, an effective arbitration procedure is generally the only way to assert a claim without incurring the risk of considerable costs. We are therefore considering introducing an obligation for postal service providers to take part in arbitration proceedings.
- We will implement the sanctions under Regulation (EU) 2018/644 on cross-border parcel delivery services in national law.

IV. Market regulation

More than ten years after full liberalisation, competition has developed better on Germany's postal markets than in many other European countries. In comparison to Deutsche Post AG, which is however still dominant in many areas, the non-incumbents' market shares are still small. For this reason, there can be no question mark over the fundamental need for sector-specific market regulation. However, if functioning competition is to be able to develop on the postal markets, the sector-specific regulation needs to be revisited and adapted.

1. Postal markets in need of regulation

At present, the need to regulate postal markets is examined when the need arises. The Bundesnetzagentur only examines whether a company has a dominant position on a relevant product market as part of a procedure to approve charges or as part of an abuse procedure.

Rather than just having this case-based consideration of the market, we want also to have an ongoing analysis of the postal markets which is better equipped to identify the developments and shifts on the markets:

- The Bundesnetzagentur should conduct regular studies of the need to regulate the markets without prescribed deadlines, as part of a market definition and analysis process.
- The assessment of the product markets should take place on the basis of the three-criteria test and in agreement with the Bundeskartellamt (Federal Cartel Office). There is a potential need to regulate postal markets where they are characterised by substantial and ongoing structural or statutory market access barriers, do not tend towards effective competition in the longer term, and where the application of general competition law alone is not sufficient to counteract the relevant market failure.
- If the Bundesnetzagentur – together with the Bundeskartellamt, as in the past – finds that there is no effective competition on a market which may need to be regulated because one or several companies dispose(s) of considerable market power, it can impose regulatory measures on these companies.
- The Bundesnetzagentur is granted rights to obtain information so that it can undertake an appropriate investigation of the postal markets. Where necessary for the assessment of the postal markets, this investigation can also cover neighbouring markets.

2. Regulation of charges/control of abuse

We will examine how the regulation of charges under postal law needs to be adapted to the current market situation. The focus is to be placed on effective fostering of competition. In particular, we want to examine how the control of charges can be designed more effectively.

- We will examine whether ex-ante regulation is still required for the charges imposed on the sending of single piece letters, or whether this form of regulation can be restricted to the access services which are of particular relevance to competition. In this context, we will also review the benchmark of the costs of efficient service provision.
- At the same time, we will examine how the ex-post control can be rendered more effective. In particular, it is important to ensure a functioning control of minimum prices for competition to develop.
- If ex-post controls are to be effective, there must be sufficient transparency. For this reason, the regulated company must firstly present a regular overview of costs, both in general and segment-related, in order to enable the Bundesnetzagentur to take the interrelationships between different products into consideration when examining charges for products; this is intended to ensure consistent regulation. Secondly, the Bundesnetzagentur must be given sufficiently early notice of price changes. It should be ensured that intervention can take place in time before charges that manifestly violate postal law can be applied.
- In order to enable a more effective control of charges to take place, we are considering the introduction of assumptions that low charges represent abuse of a dominant position, as is found in telecommunications law. For example, it might be possible to apply a price-cost squeeze examination and a requirement to impose consistent charges in order to ensure that the wholesale charges, which are of importance to competition, can be placed in the correct relationship to retail charges. These measures could go hand in hand with the granting of greater flexibility via an adjustment to the cost benchmark.
- In order to be able to prosecute anti-competitive behaviour within the scope of its remit, the Bundesnetzagentur should be granted wider-ranging investigative powers, also with respect to customers of postal services; there is a need to examine whether – as in telecommunications law – non-incumbents should be granted a right to request an investigation.

3. Access regulation

Access regulation is of considerable significance for competition on the postal markets. In particular, access to certain services of the dominant provider is of outstanding importance. It is true that letter delivery companies have cooperated on building up their own delivery networks. However, they are still reliant on delivery services provided by the dominant company in order to cover the entire country. Also, the upstream competition between mail consolidators is based on access to partial services. Cooperative solutions lend themselves to the parcels sector, in particular against the background of increasing inner-city traffic.

- The access rights under the Postal Act have in principle proven their worth. In particular, the right of access to partial services provided by the dominant company is an important support for competition. We want to examine whether access to partial services should be extended or modified.
- Access to change of address information and PO box facilities is still necessary to ensure nation-wide delivery by non-incumbents.
- In the past, it has become clear that the transparency required under European law and necessary for an effective control of anti-competitive practices in the area of access products was not fully ensured. We therefore want to revise the statutory provisions on the submission and publication of access contracts.
- Although possible under European law, national law does not provide for rights of access to parcel infrastructures or services. In view of the competition situation in the parcels sector, we stand by this decision.
- In light of the steady rise in parcel volumes, the question of cooperation between parcel service providers will increasingly be raised in future. Even today, spaces for micro-depots or alternative delivery facilities, for example, are being jointly offered and/or used by different service providers. Such cooperation can help to relieve inner-city traffic, reduce the costs of delivery in rural areas and protect the environment. We will examine the extent to which such models can be supported by the authorities – always provided that they comply with the applicable statutory provisions and are within the limits permitted by competition law.

V. Further need for revision

There is a need for further revisions to the Postal Act. In many cases, provisions need to be updated. In other cases, provisions are no longer required:

- We intend to thoroughly revise the provisions of the Act on fines. Many violations of the Act are not subject to fines, or only to inadequate fines. Some of the fines which can be imposed are far too low. We will adapt the fines to the new substantive provisions, particularly in the field of consumer rights.
- We intend to relax the rules on the formal service of written documents. Irrespective of whether a review of subjective preconditions (reliability, performance, expertise) is still required in this area, we intend to review the regulation of charges for corresponding services, including the requirement to approve the charges for the service of documents by non-dominant providers.
- The references in the Postal Act to the Telecommunications Act of 25 July 1996 have been irrelevant since 2004. We intend to include in the Postal Act those provisions which have been declared applicable via reference to the Telecommunications Act, and to bring them into line with current law.
- We intend to revoke provisions in the Postal Act which refer to the statutory exclusive licence.

- We will also examine whether provisions which apply specifically to the postal service should continue to be contained in other ordinances or should be moved into the Postal Act.
- We also want to consider provisions which are not contained in the Postal Act or in ordinances adopted on the basis of the Postal Act. We will particularly look into provisions in VAT and road traffic law with a view to fostering equal opportunities and functioning competition on the postal markets.