



Update on chairmanship to ERGP WG on end-to-end competition and access regulation

Lina Rainienė

Ugnė Galuška

Communications Regulatory Authority of the
Republic of Lithuania (RRT)

ERGP & ERGP WG on end-to-end competition and access regulation



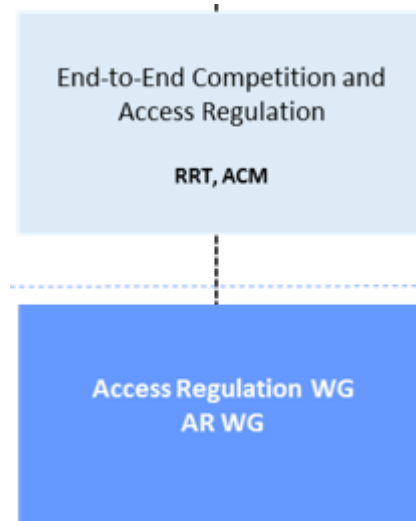
- ❑ The European Regulators Group for Postal Services (**ERGP**) was established by European Commission (EC) Decision of 10 August 2010 (2010/C 217/07) and its main tasks, as outlined in Article 2 of that Decision, are to advise and assist the EC on any matter within its competence and in consolidating the internal market for postal services, as well as on the consistent application in all Member-States (MS) of the regulatory framework for postal services. One of the main role of the ERGP is to examine non discriminatory access conditions.
- ❑ The role of the **ERGP work group** on end-to-end competition and access regulation is to examine current regulatory practice governing any access actually or potentially granted (and so relations between the incumbent and other operators, bulk senders or mail houses) in order: to ensure a level playing field and the most favourable competitive situation.
- ❑ **WG co-chairs** Lina Rainienė, RRT & Peter Rampertaap, ACM.
- ❑ **Commitment** of 6 drafters (OCECPER, RRT, ACM, ANACOM, AKOS, BNetzA) and 17 active members.

ERGP & ERGP WG on end-to-end competition and access regulation: changes



New ERGP Logo in 2019:

New name of WG in 2019:



Activities of WG 2018



- Commitments – January 2018.
- ERGP Steering Group I Meeting – 25th January 2018, Bruxelles.
- Questionnaire – 5th February 2018 (28 responses received).
- ERGP WG members & drafters I meeting – 6-7th March 2018, The Hague.
- ERGP WG members & drafters II meeting – 10th April 2018, Vilnius.
- ERGP Steering Group II Meeting – 12th April 2018, The Hague.
- ERGP Contact Network I meeting – 15th May 2018, Lisbon.
- ERGP Plenary I Meeting – 29th June 2018, Oslo.

Deliverables for 2012-2017



- ❑ The previous work of the WG in **2013-2014** already described the market situation for alternative operators (consolidators and end-to-end competitors) in detail. While the **2012** report comprehensively elaborated on the regulatory framework for access to the postal network, the **2014** report provided a detailed analysis of the competition developments in MS, covering both access regimes and end-to-end competition.
- ❑ In **2016**, an ERGP report on the development of end-to-end-competition and access regulation across the MS in the light of recent jurisprudence concerning discount regimes in the postal sector was elaborated. This report elaborated on the business models of consolidators, hybrid operators, end to end competitors and on the impact of recent ECJ judgements on those business models.
- ❑ ERGP report **2017** provided a number of recommendations but concluded that, given the market situations and regulatory state of play in the MS and the experiences of the NRAs so far, it was too early to try to identify best practices at that moment.

Deliverables for 2018

- ❑ **Deliverables for 2018:** ERGP report on the application in access regulation of the principles of transparency, non-discrimination, proportionality as incorporated in the Postal Services Directive
 - **Legal framework:** Articles 11, 11a, 12 of the Postal Services Directive.
 - **No definitions or guidelines** regarding the practical application - it is appropriate to identify how these principles are implemented in practice and to share know-how in this field.
- ❑ **Challenges:** Time squeeze → adoption and approval of report for publication Plenary I Meeting, June 2018

❑ **Publication** →



ERGP website <https://ec.europa.eu/docsroom/documents/30521>

The result of WG 2018



Report, that:

- Examine **how** principles of transparency, non-discrimination and proportionality are **described in national legislation**;
- Examine how these principles are applied **in practice**;
- Examine **what problems** Member States have faced, how these problems were dealt with and what practical **experience** has been gained.

Main findings of the report (1)

- ❑ **Most MS have implemented** in their national law:
 - Regulation of access to the infrastructure and access to the postal network of the incumbent.
 - In most MS access is granted within the scope of the USO.
 - Explicitly obligations of non-discrimination and transparency.
 - Proportionality is included in a half of the MS, but different interpretations exist.
- ❑ Only a few MS have **additional measures** in their national legislation.
- ❑ A majority of MS have negotiated access in their national legislation with **dispute resolution** for NRA. However, only **a few NRAs have applied** this competence in practice.

Main findings of the report (2)

- ❑ **Judiciary decisions** of the provisions regarding the principles in Belgium, Germany, and the Netherlands.
- ❑ **The majority** of the NRA's state that they **haven't faced** any specific **problems** while applying the principles.
- ❑ No undesirable side effects are seen.
- ❑ **Effects on competition:**

**Most NRAs
think the
principles
are
sufficient**



**Small
market
shares of
competitors
in most MS**



**Remarkable
since
competition in
the postal
markets seems
not fully to be
developed**

Application of the principle of transparency



The
principle
of
transpare
ncy

- Applied by less than half of the NRAs (13 of 28 Member States).
- Tariffs are transparent in most MS (In 15 of 28 Member States access tariffs are publicly available; in 6 Member States access tariffs are partially published).

Application of the principle of non-discrimination



The principle of non-discrimination

- Applied by almost half of the NRAs.
- A few MS indicated that the non-discrimination principle can be interpreted in different ways.
- In 6 MS the incumbent introduced a ***per sender*** model.

Application of the principle of proportionality



The principle of proportionality

- Applied by 10 NRAs.
- Specific in postal law and in general administrative law:
 - ✓ The first, basically common, approach throughout Member States is to transpose the principle of proportionality in national legislation under the provisions of general administrative law or under the provisions of sector specific postal law applying the principle of proportionality in both cases to the NRAs.
 - ✓ The second approach, complementary to the first approach, is to apply the principle of proportionality as an obligation to the USP on the basis of national sector specific postal legislation.

Next steps – deliverables for 2019



- ❑ Deliverable according to draft WP **2019**: Report on the development of postal networks and access practices regarding infrastructure related to the parcel market

ERGP public consultation of ERGP Draft Work Programme 2019 →

<https://ec.europa.eu/docsroom/documents/31061>

- This report should analyze the **evolution of postal networks**, identifying ways in which operators have been reacting to market developments (namely in terms of altering their networks) and also possible trends on coverage, and if/how this has affected access by alternative operators to infrastructures used for delivery to end users.
- A particular focus – on the infrastructure related to the parcel market (**parcel lockers**) and access practices in this regard, given its relevance in recent developments in the postal sector.

Next steps – deliverables for 2019 (2)



- ❑ **Legal framework:** Articles 11, 11a and 12 of the Postal Services Directive.
- ❑ **Challenges:**
 - Time squeeze → Adoption Plenary I Meeting, 2019;
 - Statistical data.
- ❑ WG is expecting to **start work earlier** (commitments of NRA's in November/December, questionnaire in December/ January 2019, problematic issues analysis).



Thank you!



Lina Rainienė

e-mail: lina.rainiene@rrt.lt

Ugnė Galuška

e-mail: ugne.galuska@rrt.lt