Rethinking Boundaries: Challenging the Status Quo of EU's Parcel Market Regulation

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1. Introduction

The Parcel Market in the EU is a rapidly growing industry that requires careful and balanced regulations to ensure efficiency and fair competition. Therefore, it is crucial to assess the regulatory path for this market to guarantee the best outcomes for both consumers and businesses. By implementing effective and balanced regulations, we can safeguard the interests of all stakeholders while promoting innovation, investment and growth in the parcel market.

The paper critically examines the regulatory landscape of the European Union's (EU) parcel market, focusing on the interplay between traditional postal services and the Courier, Express, and Parcel (CEP) sector. The discussion revolves around the stark contrast in the regulatory frameworks governing the two segments of the EU postal market. Traditional postal services are under stringent regulations, marked by universal service obligations (USO), while the CEP sector thrives in a more deregulated environment, primarily driven by the surge in e-commerce and digital communication trends.

A key aspect of the analysis is the logistical infrastructure of the EU postal services, highlighting the essential role of physical components in parcel delivery. The emergence of Automated Parcel Machines (APMs) and other out-of-home delivery (OOH) solutions is examined in the context of their operation outside conventional regulatory frameworks. The article delves into the challenges posed by the current dichotomous regulation system, considering the rapid changes in market dynamics and consumer preferences. It calls for revaluating the existing regulatory approaches and advocating for adaptive frameworks to better accommodate the evolving landscape of postal and parcel services in the digital era.

This exploration aims to foster a deeper understanding among policymakers, industry stakeholders, and academic researchers about the complexities and future directions of

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regulatory policies in the EU parcel market, encouraging a proactive approach to embrace the challenges and opportunities presented by digital transformation.

Section 2 presents the regulatory landscape of the EU postal market. Section 3 focuses on the dichotomy of the postal market containing traditional and CEP segments. Section 4 presents stakeholders of the postal market in the EU. Section 5 discusses the postal market's regulatory framework from different legal levels: international (UPU), EU and national. Sections 6 and 7 discuss possible solutions for regulating the CEP segment, including e-commerce platforms. Finally, section 8 concludes the paper.

2. Current Landscape of the EU Postal Regulation

The postal service has historically been a cornerstone of societal infrastructure, indispensable in facilitating communication and commerce. Rooted deeply within the public administration, postal operators were not just carriers of letters and parcels but were also entrusted with critical public duties, acting as a vital conduit between governments and citizens, as well as serving the business-to-business (B2B) sector etc. This intimate relationship with the state highlighted the unique position of state-owned postal operators within postal legislation, emphasizing their special duties, obligations, and exclusive rights. Many postal operators have been given a legal monopoly over the postal market.

As the landscape of postal services began to evolve across Europe, a pressing need emerged to reconsider the legal frameworks that had long governed these monopolized markets. This reassessment was propelled into the forefront of policy discussions with the European Commission's (EC) presentation of a Green Paper on the development of the single market for postal services on June 11, 1992, followed by a Communication on the development guidelines for Community postal services on June 2, 1993². These pivotal document set the stage for a shift towards liberalization, with countries such as Sweden pioneering the complete opening of their postal markets as early as 1993, well ahead of their EU counterparts.

The watershed moment in this evolution came with the enactment of the Postal Services Directive 97/67/EC on December 15, 1997³, which laid down the first EU-wide regulatory

² Towards A Dynamic European Economy, Green Paper on the Development of a Common Market for Telecommunications Service and Equipment; COM (1987) 290 final.

³ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, OJ L 15, 21.1.1998, p. 14–25.

framework for postal services. This Directive underscored the EU's commitment to liberalizing the market while ensuring the provision of universal service obligations (USO). Further amendments through Directive 2002/39/EC⁴ and Directive 2008/6/EC⁵, often referred to as the 3rd Postal Directive, solidified the legal groundwork for realizing an internal market for postal services. By 2008, the Directive's mandates had mainly been incorporated into national laws across most EU member states, prompting significant transformations in the structure of their postal markets (Hearn, 2020).

Despite successfully attaining the directives' objectives, particularly regarding market liberalization and the protection of USO, the continually shifting dynamics of the postal market call for a fresh examination of the existing regulatory frameworks. This reevaluation is crucial for addressing the burgeoning parcel market, integrating innovative delivery solutions like parcel lockers into the postal infrastructure, and other evolving factors reshaping the postal landscape (Chołodecki, 2024).

At the heart of the regulatory discourse is the aim to dismantle legal barriers to market entry while ensuring the USP viability. This endeavour has led to the emergence of two sharply defined market segments: the traditional postal services managed by incumbent operators and the CEP sector, primarily driven by e-commerce and recommerce⁶ and marked by vigorous competition. Although the CEP market thrives under a regime of robust competition, the broader postal market is conspicuously absent of sector-specific, procompetitive regulation (A. Pera, A. Pezza, 2016). The NRAs do not have any regulatory tools tailored to this new market reality, especially for the CEP segment.

The bifurcated regulatory approach, distinguishing between traditional postal services and the competitive dynamics of the CEP segment, mirrors a nuanced comprehension of the postal market's unique challenges. These include the imperative to sustain universal service amidst declining mail volumes, the rapid pace of digitalization, and the explosive growth of ecommerce and recommerce. As the EU strides forward, it is incumbent upon regulators and stakeholders alike to adapt and innovate within this regulatory framework, ensuring that it remains fit for purpose in an increasingly digital and interconnected world.

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⁴ Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176, 5.7.2002, p. 21–25.

⁵ Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27.2.2008, p. 3–20.

⁶ The second-hand e-commerce, sometimes referred to as recommerce, or resale e-commerce operate by such platforms like Vinted or OLX.

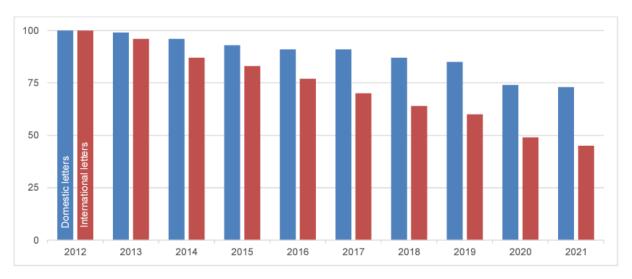
3. The Dual Segments of the EU Postal Market: Traditional and Alternative

The EU's postal market is split into two principal segments that distinctly define its operational landscape: the traditional postal services sector and the burgeoning alternative sector, led by the dynamic CEP services. This delineation reflects the diversity of services and operational models within the market and underscores the varying degrees of regulatory oversight and market-driven innovation characterizing each segment. Very often, these segments have different players.

The traditional postal segment is deeply rooted in the provision of mail services, standing as a testament to the historical essence of postal systems. Central to this segment is the USP role, which is mandated to uphold the USO. In the EU Green paper, universal service is defined as guaranteeing access for everyone, whatever the economic, social or geographic situation, to a service of a specified quality at an affordable price. The USO ensures that essential postal services are universally accessible, maintaining a critical societal and economic function. The Postal Directive defines a universal postal service as the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users (Article 3, point 1). This segment operates under a highly regulated framework, where NRAs oversight is pivotal. Postal Directive sets out detail elements of the USO. The stringent regulations and oversight mechanisms are instrumental in preserving the fundamental values of accessibility, affordability, and reliability. Member States are responsible for guaranteeing the provision of a universal postal service. Thus, the EU does not mandate the specific designation of the USP (Article 4, point 2).

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⁷ Green paper on services of general interest COM (2003) 270 final, p 4.



Source: UPU Postal Statistics, 2022.

Figure 1: Evolution of global letter-post volumes (2012–2021).

In stark contrast, the alternative CEP services sector thrives in a relatively deregulated landscape, energized by fierce competition and minimal regulatory intervention. This segment's vitality stems from the explosive growth in e-commerce and digital communication trends, which have reshaped consumer expectations and delivery service models. The CEP sector is characterized by a vibrant ecosystem of operators ranging from established couriers to innovative startups, all competing for a market share. This competitive environment fosters a hotbed of innovation, driving efficiencies and creating novel delivery solutions tailored to the digital age's demands.

E-sales and turnover from e-sales, EU, 2012 to 2022 (% of enterprises, % of total turnover)

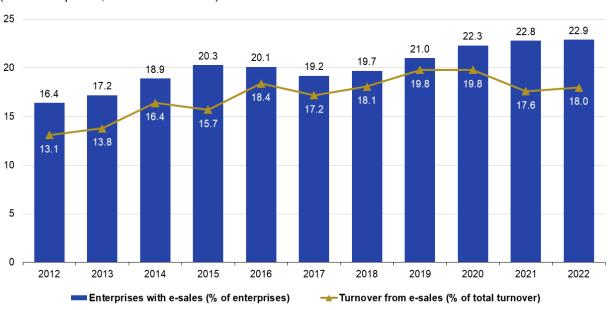


Figure 2: E-sales and turnover from e-sales, EU (2012-2022).

Beyond the traditional regulatory frameworks, two transformative trends—digitalization and platformization—are redefining the postal market's contours. Digitalization, with the e-substitution of public services and the exponential rise of e-commerce, has precipitated a significant decline in traditional letter volumes while simultaneously spurring the growth of the parcel delivery market. Platformization introduces a radical shift in business models, where integrated digital marketplaces bypass traditional postal channels, connecting consumers directly with products and services. Platforms act as intermediaries that set up and oversee the rules and systems for different market participants to interact. They connect groups from at least two sides of a market, managing how these groups engage with each other and often using digital tools to make these connections more effective. Platforms facilitate and optimize interactions between users who retain control over their contributions to the platform.

These trends herald a pivotal challenge to the incumbent operators, underscoring the urgency for regulatory bodies (NRA) to adapt. The advent of digital alternatives and the reconfiguration of delivery models through platformization demand a recalibration of the regulatory framework. This recalibration is essential to address the emerging challenges head-on, ensuring that legal institutions like the USO evolve to remain relevant and effective in a rapidly transforming postal ecosystem.

The impact of digitalization and platformization on the EU postal market necessitates a forward-looking approach to regulatory adaptation. The various reports advocate for a nuanced recalibration of the regulatory frameworks to accommodate these shifts better, ensuring that the postal market remains competitive, innovative, and capable of meeting contemporary societal and economic needs⁸. Such regulatory evolution will be pivotal in fostering a balanced ecosystem where traditional services and alternative delivery models coexist and thrive, bolstered by equitable oversight and a commitment to service excellence and universal access.

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⁸ See the documents prepared by the European Regulators Group for Postal Services (ERGP): Response to the Public Consultation on the PSD Evaluation, ERGP PL (20) 27 (2020); ERGP Response to the Digital Services Act (DSA) Public consultation, ERGP (20) 16 (2020); ERGP Report on Postal Definitions, ERGP PL II (20) 7 (2020); ERGP Report on Key Consumer Issues, ERGP PL II (20) 8 (2020; ERGP Opinion on the review of the regulatory framework for postal services, ERGP PL I (19) 12 (2019).

4. The EU Postal Market stakeholders

The EU postal market is a multifaceted landscape featuring a variety of stakeholders, each of whom plays an essential role in shaping the industry's dynamics. Within this ecosystem, entities can be broadly categorized into three primary types, each with distinct characteristics and contributions to the market.

Traditional Postal Operators. The traditional postal operators lie at the foundation of the postal services market, exemplified by institutions such as La Poste in France, Poczta Polska in Poland and Royal Mail in the United Kingdom. These operators are the bedrock of the postal system, offering a wide range of services that include mail collection, sorting, and delivery. Historically, these entities have operated within highly regulated frameworks, entrusted with delivering public postal services and fulfilling the USO. Traditionally and by legal requirements from USO, their operations are integral to maintaining the societal and economic fabric, ensuring that postal services are accessible to all population segments.

Courier Operators. The courier segment within the EU postal market is further divided into two main sub-categories. Subsidiaries: Firms like DHL (a subsidiary of Deutsche Post) or Geopost/DPD (a part of La Poste Group) represent this segment. These subsidiaries leverage their parent traditional postal operators' robust infrastructure and operational expertise to offer specialized courier services. Their offerings are often tailored to meet the demands of a rapidly growing e-commerce sector, including express delivery and enhanced tracking capabilities. Most of these subsidiaries run their own Extraterritorial Offices of Exchange (ETOEs). Tim Walsh has indicated that "ETOEs are a significant part of the market, with some 150 facilities competing against national posts and other carriers in major outbound ecommerce delivery markets. While such competition supports efficiency and quality improvement in cross-border e-commerce, some ETOEs surreptitiously access favourable TD rates, rather than the inbound post's domestic delivery rates, thus amplifying distortions." (Walsh, 2020, p. 193). The unique value proposition of an ETOE lies in its strategic positioning. Operating within the proximity of the host member country's postal administration offers an added advantage in terms of convenience and efficiency in mail exchange processes. This close association enables an ETOE to enhance the postal service capabilities within its operational domain, contributing to a more interconnected and efficient global postal network.

Independent Operators: Typifying this category are companies such as UPS, FedEx or InPost, which operate independently of traditional postal operators. Thriving in a competitive,

deregulated market, these entities specialize in parcel delivery services that cater primarily to e-commerce. Their success hinges on innovation, efficiency, and the ability to adapt swiftly to market demands and consumer expectations.

Platforms: E-commerce platforms represent a distinct yet increasingly influential category within the postal market ecosystem. Entities like Amazon or Allegro exemplify this category, operating as integrated business ecosystems offering digital marketplaces for various products and services. The model of platformization marks a significant evolution in how goods are sold and delivered, often bypassing traditional postal and courier operators by utilizing proprietary distribution channels. A critical challenge arises from how goods are delivered directly to customers through these e-commerce platforms' distribution channels, often bypassing the traditional postal and courier service operators. This mode of operation falls outside the conventional purview of postal regulations primarily because it does not conform to the traditional definitions of postal services (EU and national). This is significant because, in 2023, Amazon became the largest delivery company in the United States, surpassing both UPS and FedEx in parcel volumes⁹. This loophole poses significant implications for market competition, regulatory oversight, and the equitable provision of delivery services.

The emergence of these direct distribution channels underscores the need to reevaluate the existing regulatory frameworks. It highlights the necessity to adapt and evolve regulatory approaches to ensure that all postal and parcel delivery entities are subject to fair competition and oversight. Addressing this challenge is crucial for maintaining a balanced and competitive market that serves the interests of all stakeholders, including consumers, traditional postal operators, courier services, and e-commerce platforms.

5. Postal market regulatory framework

The regulatory framework governing the EU's postal market is an intricate mosaic of international, European, and national laws designed to ensure the provision of efficient, accessible, and high-quality postal services across the spectrum of stakeholders. However, as the market continues to evolve with technological advancements and shifting consumer behaviours, the existing regulations, particularly concerning the CEP sector, traditional postal

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⁹ WSJ, The Biggest Delivery Business in the U.S. Is No Longer UPS or FedEx. Access: https://www.wsj.com/business/amazon-vans-outnumber-ups-fedex-750f3c04

operators, and digital platforms, increasingly appear outdated and need profound reconsideration. However, future reforms in the postal market cannot take place only at the EU level. It must cover all levels of postal regulations.

a) Regulating the CEP Market and Traditional Postal Operators

At the heart of the postal services regulatory framework are the traditional postal operators, whose operations are scrutinized and regulated at all three levels of governance: international, European, and national. The Universal Postal Union (UPU) sets global standards, promoting a universal postal network that fosters the free flow of mail worldwide. European regulations, primarily through the Postal Directive, seek to harmonize postal services across the EU, balancing market liberalization with the universal service obligation. National laws further tailor these directives to fit local market structures and service standards. The UPU acknowledges the importance of e-commerce for traditional postal operators' highlighting that "to succeed in the competitive field of e-commerce, Posts need to rapidly establish an integrated cross-border e-commerce ecosystem, which is to be provided by postal operators through physical e-commerce hubs interfaced with online e-commerce platforms. With e-commerce growth set to continue over the coming years, Posts should continue to play a vital role in the e-commerce market by leveraging their core competencies" (UPU, 2020, p. 24).

In contrast, the regulation of subsidiary and independent couriers within the CEP market predominantly falls under national jurisdiction, with these entities often advocating for broader international regulation to integrate seamlessly into the global postal ecosystem. Though extensive, the current EU regulatory framework offers limited sector-specific tools for NRAs to promote competition within this rapidly growing segment effectively.

b) Platforms and the Postal Regulatory Framework

E-commerce platforms, driving the platformization of the postal and parcel delivery market, primarily operate outside the traditional postal regulatory framework. As defined by the EU postal directive, the scope of regulated postal services is narrowly focused on the clearance, sorting, transport, and distribution of postal items, leaving significant aspects of modern delivery services, such as those offered by digital platforms, unaddressed. This limitation poses challenges to ensuring fair competition and highlights the Directive's outdated nature in the face of evolving market dynamics.

c) The Need for Regulatory Evolution

While instituting accounting and cost allocation measures to prevent anti-competitive cross-subsidization by incumbent providers, the existing EU postal directive falls short in offering comprehensive tools for NRAs to foster a competitive environment. Although in harmony with UPU regulations, this Directive's definition of postal services and postal items emphasizes the logistical components of postal delivery but fails to fully encompass the complexities of today's CEP sector and the digital marketplace.

Key infrastructural elements of the CEP sector, such as APMs and micro-hubs, are part of the OOH and exemplify the innovative approaches to parcel delivery that fall outside the current regulatory scope. These developments underscore the pressing need for a regulatory framework that is both adaptive and inclusive, capable of accommodating the diverse and evolving landscape of postal and parcel delivery services.

6. Adapting Postal Infrastructure to Meet Evolving Goals

In light of the objectives and challenges discussed in the preceding parts of the papers, it is clear that the postal infrastructure within the EU needs a forward-looking adaptation to align with the contemporary demands of the market. The constant evolution of the CEP sector, alongside the rise of e-commerce and digital platforms, has fundamentally transformed the landscape of postal and parcel delivery services. This transformation necessitates a regulatory framework and infrastructure that are both adaptive and inclusive, capable of embracing the innovative approaches emerging within the sector.

Key infrastructural elements of the CEP sector, such as APMs and microhubs, stand at the forefront of this innovation. APMs offer a flexible, efficient, and consumer-friendly solution for parcel delivery and collection, catering to the increasing demand for 24/7 accessibility. Similarly, microhubs facilitate the rapid sorting and distribution of parcels, especially in urban areas, enhancing the efficiency of last-mile delivery. These innovations represent a departure from traditional postal infrastructure, pointing to a future where technology-driven solutions dominate the landscape. However, such innovative infrastructural elements currently fall outside the scope of the existing regulatory framework. The Postal Directive grants non-discriminatory access to elements of postal infrastructure or services provided only within the scope of the universal service. This access is limited to 1) the postcode system, 2) the address database, 3) post office boxes, 4) delivery boxes, 5) information on change of address, 6) re-

direction service, and 7) return to sender service (Article 11a Postal Directive). This access is devoted exclusively to the USO. Therefore, such access cannot be seen as an effective procompetitive tool for the CEP segment of the market. This gap challenges the incorporation of these innovations into the broader postal ecosystem and highlights the necessity for regulatory evolution.

The pressing need for a regulatory framework that is both adaptive and inclusive cannot be overstated. An adaptive regulatory approach would allow for the seamless integration of emerging technologies and operational models into the postal and parcel delivery services sector. This entails recognizing and incorporating infrastructural innovations like APMs and microhubs as essential components of the postal service ecosystem. Moreover, an inclusive framework would ensure that all stakeholders, from traditional postal operators to independent couriers and e-commerce platforms, operate under a coherent set of guidelines that reflect the realities of the digital age.

7. The Need for Regulation

As the EU postal market landscape evolves, the regulatory framework must adapt to ensure the integration and alignment of the CEP sector. The current EU postal regulations, encompassing the parcel market within the broader scope of postal services, are proving inadequate for the modern landscape. This inadequacy stems from significant developments such as APMs and microhubs that, while instrumental to the CEP sector's operations, fall outside the existing regulatory parameters.

The need for regulation in the CEP market is grounded in achieving several objectives, each vital to the market's condition:

- Fair Competition: Regulation ensures a level playing field where no entity has an undue advantage, fostering an environment where traditional operators and new entrants can thrive.
- Consumer Protection: Regulatory measures are essential to safeguard consumer rights, ensuring transparency, privacy, security, and redressal against service failures or malpractices.
- Environmental Preservation: The growing concern for sustainability necessitates regulations to minimize the environmental impact of CEP activities, promoting green logistics and reduced emissions.

- Economic Stability: By mitigating monopolistic practices and ensuring service continuity, regulation supports economic stability and prevents market monopolies from forming.
- Social Welfare: Regulations can ensure that the benefits of the CEP market, such as job creation and access to services, contribute to the broader social welfare.

In considering the regulatory needs of the infrastructure components within the CEP market, the doctrine of 'essential facilities' is critical. Heitzler (2009) characterizes essential facilities as indispensable inputs required to deliver specific goods or services, which cannot be feasibly replicated or circumvented due to high costs or other barriers. Additionally, for a facility to be considered 'essential,' there should be no adequate substitute on the demand side for the service it provides. In essence, an essential facility is irreplaceable and indispensable for the provision of a particular service.

Regarding essential facilities, Areeda (1990) suggests restrictive principles for applying the concept, noting that compulsory access to such facilities should be a rarity. Facilities owned by a firm are deemed essential only if they are crucial to another firm's ability to compete effectively and if this competition is necessary for the market.

The scholarly discourse often disagrees on whether Automated Parcel Machines (APMs) are an essential facility, noting that there are no insurmountable technical, legal, or economic barriers to duplicating APM networks (Rozman, 2020). Nonetheless, the construction of parallel networks could also be considered inefficient in terms of public space utilization. For instance, the Swedish National Regulatory Authority has expressed that the creation of parallel infrastructures is likely unsustainable (Zurel et al. 2018).

Furthermore, the case for pre-emptive regulation of access to APMs is supported by market conditions in certain countries. For example, in Poland, Inpost commands the largest APM network, holding a substantial market share within the CEP sector. While there is an argument for the benefits of shared access to parcel lockers, sector-specific pre-emptive economic regulation is not absolutely necessary to realize these benefits. If operators are financially interested in sharing access to parcel lockers, such as recoup investments, they are inherently motivated to do so. Hence, imposing a mandate for access to parcel lockers may be unnecessary in scenarios where economic drivers exist, as contractual freedom and market forces might suffice to reach the desired outcome.

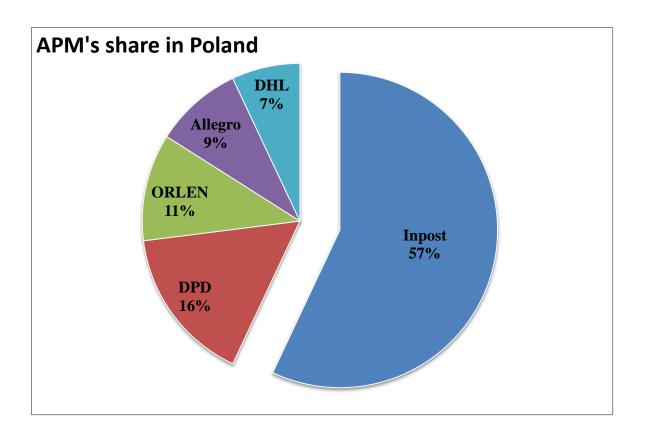


Figure 3. Percentage sharers in APMs in Poland. Source: own research.

Given the significance of the CEP market, leaving it entirely without regulation could lead to market dominance by a few, stifling competition and neglecting public goods and externalities. Conversely, overregulation could hinder the sector's innovation and growth. Therefore, the EU's approach must strike a balance, crafting regulations that safeguard public interest while allowing market forces to drive efficiency and innovation. The evolving nature of the CEP sector, highlighted by the growth of APMs and micro-hubs, necessitates a regulatory framework that is not just reactive but proactive—anticipating changes and shaping the market in a way that continues to serve the needs of all stakeholders effectively. The EU must consider both the imperatives of regulation and the potential benefits of deregulation to ensure the CEP market's sustainable and equitable growth.

8. Conclusions

The EU postal market stands at a pivotal juncture, requiring substantive reforms to align with the rapid evolution of communication and commerce modalities. As Baldwin, R., Cave, M., and Lodge, M. (2012) indicate, regulatory interventions should be approached with a

meticulous balance, minimizing the limitations on market freedom while addressing the intricacies of the market's current state.

For a regulatory reform to be effective, it must start with a clear and open definition of the postal market. With its complex interplay of traditional services and digital platform innovations, the burgeoning CEP market calls for a revised definition that captures the essence of modern postal activities. APMs and other OOH delivery solutions are a testament to the sector's innovative direction and must be recognized as vital components of postal infrastructure in this new definition.

Expanding NRAs roles is crucial to endow them with competitive, regulatory tools that cater to the diverse needs of a multifaceted market. These tools should bolster the NRAs' capacity to promote fair competition and robust consumer protection while equipping them to manage the nuances of platformization within the postal market effectively. Whether NRAs should be granted more preemptive regulatory powers remains an open question that requires further contemplation.

The phenomenon of platformization has significantly transformed the traditional postal market, forging new avenues of connection between consumers, businesses, and governments. Recognizing the delivery channels operated by e-commerce platforms as part of postal activities addresses the longstanding ambiguity in the definition of postal services. It acknowledges the necessity for postal service delivery to evolve in response to contemporary consumer demands and market trends.

Redefining the postal service involves acknowledging its fundamental role as a connector, facilitating essential social interactions. This perspective is instrumental in guiding the reevaluation of postal services, considering the potential for e-commerce platforms to overtake traditional roles within the market.

The wide-ranging implications of these trends extend beyond incumbent operators; they represent a global transformation that affects every entity within the postal ecosystem. Incorporating these changes into the future EU regulatory framework is beneficial and essential.

In summation, the postal industry is confronted with changes of an unprecedented scale, demanding a regulatory framework as adaptable and forward-looking as the market it governs. Such a framework should be capable of accommodating global trends, embracing the

entry of new market participants, and reflecting the evolving requirements of consumers and businesses. By reconceptualizing the postal market, empowering NRAs with an expanded scope of authority, and acknowledging the rise of platform-based services, the EU can safeguard a postal market that is not only competitive and vibrant but also serves as a cornerstone for economic prosperity and social interconnectivity in the increasingly digital world we inhabit.

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