

What regulation for e-commerce?

E-commerce is an important growth area for postal operators. In view of the traditional regulation of the postal sector, this contribution highlights the risks and opportunities associated with maintaining or even extending regulation to e-commerce.

Over the last decade, e-commerce has fundamentally changed the face of the retail sector, helping companies to expand into new markets and engage more efficiently with customers. From the perspective of postal operators, e-commerce is a unique opportunity and one of their rare growth areas. The postal operators' role in e-commerce may go beyond the traditional postal value chain. Many operators do not confine themselves to just delivering parcels, which were purchased online: They also offer electronic identification and authentication systems or secure payment channels. The dynamics of this new kind of commerce and the specific role of postal operators have a significant bearing on the adequate regulatory framework.

Current and future regulation

The cornerstone of postal regulation in the European Union is the Postal Directive, which ensures universal service, full market opening and consumer protection. The Directive allows for some flexibility regarding the delivery frequency. Another element of flexibility allows national governments to evaluate whether an ex-ante designation of a universal service provider is necessary. Other regulatory tools related to e-commerce are consumer rights and the four freedoms guaranteed by EU law which forbid the discrimination of access to a service based on nationality or place of residence of the recipient. In addition, there are other EU initiatives, on the supranational level, the UPU rules, with respect to e-

commerce particularly in the area of interoperability.

The European Commission recently published a Green Paper on cross-border parcel delivery which emerged from the 2012 E-commerce Communication and aims for convenience, costs, and interoperability. The overall aim of the Commission's initiatives is to grow commerce over the internet, which is expected to also allow for stronger economic growth and an increase in jobs. The Commission considers cross-border delivery to be a major obstacle to e-commerce. Especially SMEs (e-retailers) and consumers have little choice and face difficult access to different transport channels; yet they expect flexible, innovative delivery and return options at affordable prices. Consequently, there is a strong legislative and regulatory dynamic to get a grip on e-commerce to support these groups in their interests.

Economic rationale for regulation

From an economic point of view, regulatory intervention in a market can be justified by redistribution motives, if they reduce transaction costs or correct market failures. Market failures may result from incomplete markets (i.e. presence of externalities), market power or asymmetric information. These justifications point to the potential benefits of regulation. Regulatory instruments may be of different intensity. Firstly, there are the rules of the game guaranteeing transparency. They are symmetric, enabling market participants to trade at their own commercial terms and are least intrusive. Secondly, there are output-oriented asymmetric obligations to intervene in case the first set of regulatory measures does not result in socially acceptable results. These obligations address 'what' should be provided (e.g. through universal service obliga-

tions) and may affect the prices and qualities or quantities of the traded goods. Thirdly, and most intrusive, input-oriented asymmetric regulations prescribe 'how' these obligations should be fulfilled, e.g. by defining the technology to be utilized.

The choice of appropriate regulatory institutions and instruments not only depends on their potential benefits, but also their costs. These are due to the unintended consequences of regulation potentially resulting from (1) 'inertia', meaning that regulation may come too late – i.e. once the damage of market failure is irreversible – or (2) 'persistence', meaning that it leaves too late, once the market equilibrium already represents a socially desirable outcome. Hence, not only the scope of regulation needs consideration, but also its timing. Especially in dynamic contexts, there is a high risk of regulatory failure, which requires a repeated re-evaluation of the costs and benefits of regulation.

Conclusion

E-commerce is not an end in itself, but a means for trading linked to the need of consumers, and ultimately a potential source for growth. The different services needed for a functioning e-commerce ecosystem – and the various roles postal operators play – make the adjustment of regulation to changes difficult. Regulating the individual components of the e-service creates inefficiencies and the risk of distorting the entire ecosystem. Today, regulation is asymmetric with historic operators being heavily regulated, often through input-

oriented universal service obligations, compared to new entrants offering just few services and being only lightly regulated.

Given the diverse (potential) roles of postal operators in the highly dynamic e-commerce business, the sector and its regulation should be analyzed in a similar way as other infrastructure industries; i.e. by layers (passive infrastructure, active infrastructure, services) rather than along the traditional postal value chain (collection, sorting, transport, delivery). Such an analysis has implications on the appropriateness of traditional and potential regulatory interventions: Basic infrastructures for delivery (streets) are not post-specific and cannot be considered monopolistic bottlenecks, which foreclose competition. Hence, there is no need for specific regulation in excess of existing access and market power regulation to protect competition and customers. Neither is there an economic motivation for an extensive universal service obligation in e-commerce. However, regulation may be needed in technical standards to ensure inter-operability, in guaranteeing transparency to reduce transaction costs, and in data protection to enhance consumer confidence.

The state and its regulation plays a key role for the future development of e-commerce. Since the entire industry is very dynamic, there is an inherent risk of regulatory failure. Therefore, the role of state intervention should be to enable, not to patronize, suggesting that regulation be handled with prudence to avoid unintended consequences.

Your contact at Swiss Economics

Swiss Economics SE AG
Stampfenbachstrasse 142
CH-8006 Zürich
+41 44 500 56 26
www.swiss-economics.ch

Dr. Christian Jaag
christian.jaag@swiss-economics.ch