

Third ERGP Stakeholders Forum 2022

**Session II - Scope and limits of the Postal Sector.
Neighbouring markets: transport and logistics**

Brussels, 30 September 2022

Alessandra Fratini

I. Transport

Directive 97/67/EC as amended

Article 2

1. postal services: services involving the clearance, sorting, **transport** and distribution of postal items

(+ 6. **postal item:** an item addressed in the final form in which it is to be carried by a postal service provider)

Rec. 17 (dir. 2008/06):
Transport alone should not be considered as a postal service (...)

Regulation 2018/644

Article 2

2. 'parcel delivery services': services involving the clearance, sorting, **transport** and distribution of parcels

(+1. **parcel:** a postal item containing goods with or without commercial value, other than an item of correspondence, with a weight not exceeding **31,5 kg**)

Rec. 17: Clearance, sorting and distribution, including pick-up services, should be considered parcel delivery services (...), in line with current practice. **Transport alone that is not undertaken in conjunction with one of those steps should fall outside the scope of parcel delivery services**, including when it is carried out by subcontractors, either in the context of alternative business models or not, **as it should in that case be assumed that this activity is part of the transport sector**, unless the undertaking concerned, or one of its subsidiaries or linked undertakings, otherwise falls within the scope of this Regulation

Court of Justice, C-259/16+C-260/16, *Confetra* (31 May 2018)

34: (...) an undertaking must be classified as a ‘postal service provider’ within the meaning of Article 2(1a) of Directive 97/67 where it provides **at least one of the services** set out in Article 2(1) of the directive **OR THE SERVICE OR SERVICES THUS PROVIDED RELATE TO A POSTAL ITEM, although its business cannot consist merely in the provision of transport services**. It follows that haulage and freight-forwarding enterprises offering, as their principal business, a service entailing the transport of postal items and, as an ancillary activity, services entailing the clearance, sorting, and distribution of postal items **does not fall outside the scope** of the directive.

35. Moreover, as the AG observed in point 43 of his Opinion, if it were to be accepted that haulage or freight-forwarding undertakings were excluded from the scope of Directive 97/67, on the sole ground that they engage in the activities of collecting, sorting and distributing postal items **only on an ancillary basis**, that would give rise to numerous difficulties in interpreting the directive. Indeed, it would be necessary, in order to determine the legal rules applicable, to assess, on a case-by-case basis, the greater or lesser proportion of services provided on an ancillary basis in relation to the main transport service provided (...).

M.7630, *FedEx/TNT EXPRESS*, 8 January 2016

5.1. Cargo transport

(14) The freight market has historically been divided into **cargo transport services**, whereby cargo companies **sell space on** their assets (such as trucks or aircraft), **and freight forwarders which construct a "virtual" network consisting of third party assets (transportation capacity) on the basis of customers' requirements.** Within cargo, the Commission has historically distinguished between intra-European and intercontinental cargo.

(15) Concerning the intra-European cargo market, the Commission has previously established that the **relevant product market includes all modes of transport such as air, road and rail.** Within intercontinental cargo, the Commission has left open whether the product market should include **transport by both air and sea.**

II Logistics

M.3496, *TNT FORWARDING HOLDING / WILSON LOGISTICS*, 2 August 2004

(ii) General contract logistic services

10. The Commission has previously defined general contract logistics services as the part of *“the supply chain process that plans, implement and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers’ requirements”*.

According to these decisions, **general contract logistics services constitute a distinct market from express parcel delivery services, freight forwarding and financial management; as the focal point of logistic services is in the management of goods for customers (...)**.

M.6570, *UPS-TNT EXPRESS*, 30 January 2013

5.2. Freight forwarding

(26) In earlier decisions the Commission defined **freight forwarding** as **“the organisation of transportation of items [...] on behalf of customers according to their needs”**. Freight forwarders do, contrary to **cargo transport**, therefore not own any part of the network they use, but they normally hire transportation capacity from third parties for the transportation of shipments. (...)

5.3. Contract logistics

(31) Contract logistics services is the part of the supply chain process that **plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers’ requirements** . This part of the supply chain has as its focal point **the provision of warehousing and management of the flow of goods for customers.**

M.9824, XPO LOGISTICS/KUEHNE+NAGEL DRINKFLOW LOGISTICS HOLD, 17 September 2020

(19) The Commission has identified **contract logistics as a distinct product market from other elements of the supply chain such as bare transportation, freight forwarding or warehousing services**. (...) contract logistics ought to be regarded as a **separate relevant product market**, because the focal point in contract logistics is the **management of the flow of goods for customers**

(20) In previous cases, the Commission has considered **different possible segmentations** of the overall market for contract logistics services, in particular between cross border and domestic logistics services. The Commission has also examined the possibility of **segmenting the market by the type of goods handled or the industry sector concerned**, e.g., food retail, drinks, consumer pharmaceuticals and high-tech. Ultimately, the Commission has left the relevant product market definition open.

M.7630, FedEx/TNT EXPRESS, 8 January 2016

6.6. Bundling and multi-sourcing

(62) Depending on their size, needs and preferences, small package delivery customers may prefer a one-stop shop, and so bundling may be important for them or they may multi-source. The 'full bundle' refers to the ability of the service provider to offer a suite of services across the full range of a customer's needs from domestic express, intra-EEA and extra-EEA express and deferred and **other services** (such as **freight transportation, freight forwarding and contract logistics**).

M.6570, UPS-TNT EXPRESS, 30 January 2013

6.1.1. Notion of *small package* and *small package transport infrastructures*

(36) A “small package” is commonly defined according to **weight**. **This allows for differentiation of small package delivery services from freight on the basis of weight limits.** Although there is no clear definition of what constitutes a small package, the upper weight limit is in general terms determined by the weight a single person can handle without specific equipment. Therefore, all palletised volume is excluded from the small package market as such volume requires specific handling equipment (forklift) and special vans/trucks for pick-up and delivery.

(37) The upper weight limit commonly used in the small package market is **31.5 kg** (70 imperial pounds) per package which is an estimate of the max weight that can be handled by one man . Similarly, in the airline industry, the max baggage weight is 32 kg – considered to be the maximum limit at which a baggage handler can carry luggage and cargo without back injury . The vast majority of international consignments weigh less than 30 kg.

(38) At the lower end of small packages, **there used to be** a separate category of “**parcels**”. A parcel has normally a weight limit of **2kg**. The notion of a parcel is still used in the framework of universal postal service obligations. However, since not only postal operators but also all small package delivery companies transport parcels, the distinction between parcels and packages has become blurred, and the term small packages as used for this decision includes also parcels.

[Directive 2004/17/EC]

Article 6 - Postal services

2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:

(...)

(c) "**other services than postal services**": means services provided in the following areas:

- **logistics services (services combining physical delivery and/or warehousing with other non-postal functions)**,

(...)

Directive 2014/25/EU

Article 13 - Postal services

2. For the purpose of this Article and without prejudice to Dir. 97/67/EC (...):

(a) 'postal item' means an item addressed in the final form in which it is to be carried, **irrespective of weight**. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, **irrespective of weight**;

(c) 'other services than postal services' means services provided in the following areas:

- (i) mail service management services (...);
- (ii) services concerning postal items not included in point (a), such as direct mail **bearing no address**.

Thank you!

Alessandra Fratini
a.fratini@fratinivergano.eu
www.fratinivergano.eu