



Bundesnetzagentur

Regulatory challenges in the German postal market

**WIK, 12th Königswinter Seminar
24th February 2010**

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Content

- NRA and aims of Postal Regulation in Germany
- Regulatory strategy and role of BNetzA in opening the German postal market
- Ex-ante and ex-post mechanisms to achieve the aims of the Postal Act (regulatory instruments)
- Postal Regulation in Germany after full market opening
- Results of Postal Regulation in figures – the story so far...
- Challenges in the German postal market
- Conclusions

Role of NRA and aims of Postal Regulation in Germany (1)

- “Regulatory Authority within the meaning of this Act shall be the authority established on the basis of the Telecommunications Act.” (§ 44 Postal Act)
- **Telecoms sector regulation as role model for postal regulation!**
- Legislative purpose
“The purpose of this Act is, through regulation of the postal sector, to promote **competition** and to guarantee appropriate and adequate services throughout the Federal Republic of Germany.”
(§ 1 Postal Act)





Role of NRA and aims of Postal Regulation in Germany (2)

➤ **Aims of Regulation (§ 2 Postal Act)**

- To safeguard the interests of customers and to maintain postal secrecy.
- To ensure equal-opportunity and workable competition, in rural as well as urban areas, in postal markets.
- To ensure provision throughout the Federal Republic of Germany of basic postal services (universal service) at affordable prices.
- To safeguard public safety interests.
- To meet social requirements.

Role of NRA and aims of Postal Regulation in Germany (3)

➤ Regulation strategy

- Even when monopolies are abolished, competition does not develop automatically (economies of scale and scope, network effects).
- Without sector-specific regulation, new entrants will barely have a chance against the established dominant provider (incumbent) and not be able to make use of formal market opening.
- To promote competitive structures, the regulation of the behaviour of the incumbent is necessary.
- Crucial that appeals against decisions of the NRA are not having suspensive effect.

➤ Regulatory concept of end-to-end competition!



Challenges in the German postal market (1)

- Improve general framework - legislator
- Adjust to technological development- operators
- Will the decline of postal services be stopped with hybrid mail or will electronic mail take over?
- Take account of full market opening in Europe
- Apply all instruments of the Postal Act („toolbox“) to ensure a level playing field for effective competition delivering benefits to the consumers - regulator



Mechanisms to achieve the aims of the Postal Act (1)

➤ Rates Regulation (§ 19 Postal Act)

- All rates charged by a licensee in a market for postal services subject to licence shall require approval by the NRA, provided the licensee has a dominant position in the relevant market.
- Based on the cost of efficient service provision and may not contain surcharges, any discounts, discriminatory pricing unless a legal obligation or another justifiable reason can be evidenced.



Mechanisms to achieve the aims of the Postal Act (2)

➤ **Forms and procedure for rates approval**

The NRA shall approve rates ex-ante:

1. on the basis of the costs of efficient service provision apportioned to the particular service (Single-Price-Procedure) or
2. on the basis of productivity calculations it prescribes the average rate of change for the prices of a basket of combined services (Price-Cap-Procedure).



Mechanisms to achieve the aims of the Postal Act (3)

➤ **Access to Network (§ 28 Postal Act)**

Licensee with dominant position in a market for postal services subject to licence shall, given demand, provide parts of its overall conveyance offering separately, if this is economically reasonable.

➤ **Access to PO Box Facilities and to Information on Changes of Address (§ 29 Postal Act)**

Licensee with dominant position in a market for postal services subject to licence shall undertake, provided demand exists, to allow in this market other postal service providers, against payment of a fee, to convey postal items to the PO box facilities it operates unless this is not objectively justified.



Mechanisms to achieve the aims of the Postal Act (4)

➤ **Requirement to Submit Contracts (§ 30 Postal Act)**

All contracts on incidental services and all contracts on the shared use of PO box facilities or access to information on changes shall be submitted to the Regulatory Authority by the dominant provider within a period of one month of concluding the contract.

This transparency obligation ensures non-discrimination



Mechanisms to achieve the aims of the Postal Act (5)

➤ **Special Control of Anti-Competitive Practices (§ 32 Postal Act) – ex post mechanism**

- Regulatory Authority shall call upon the company to discontinue the anti-competitive practices objected to.
- If not successful: Regulatory Authority may impose certain practices or prohibit anti-competitive practices and declare contracts wholly or partially null and void.
- The decision hereby is under “restriction of proportionality”, which means it has to be the mildest of effectual intervention.



Postal Regulation in Germany after full market opening (1)

- **Universal Service – the German way for market forces**
- **No designated US operator as of 1 Jan 2008**
- Fully liberalised market without ex-ante universal service obligations for one or more providers combined (market-based solution) with ex-post regulation in case of market failures.
- Safety system in place:
Permanent monitoring of the market by NRA and mechanisms to ensure the provision of universal service, if there is a deficit present or imminent.

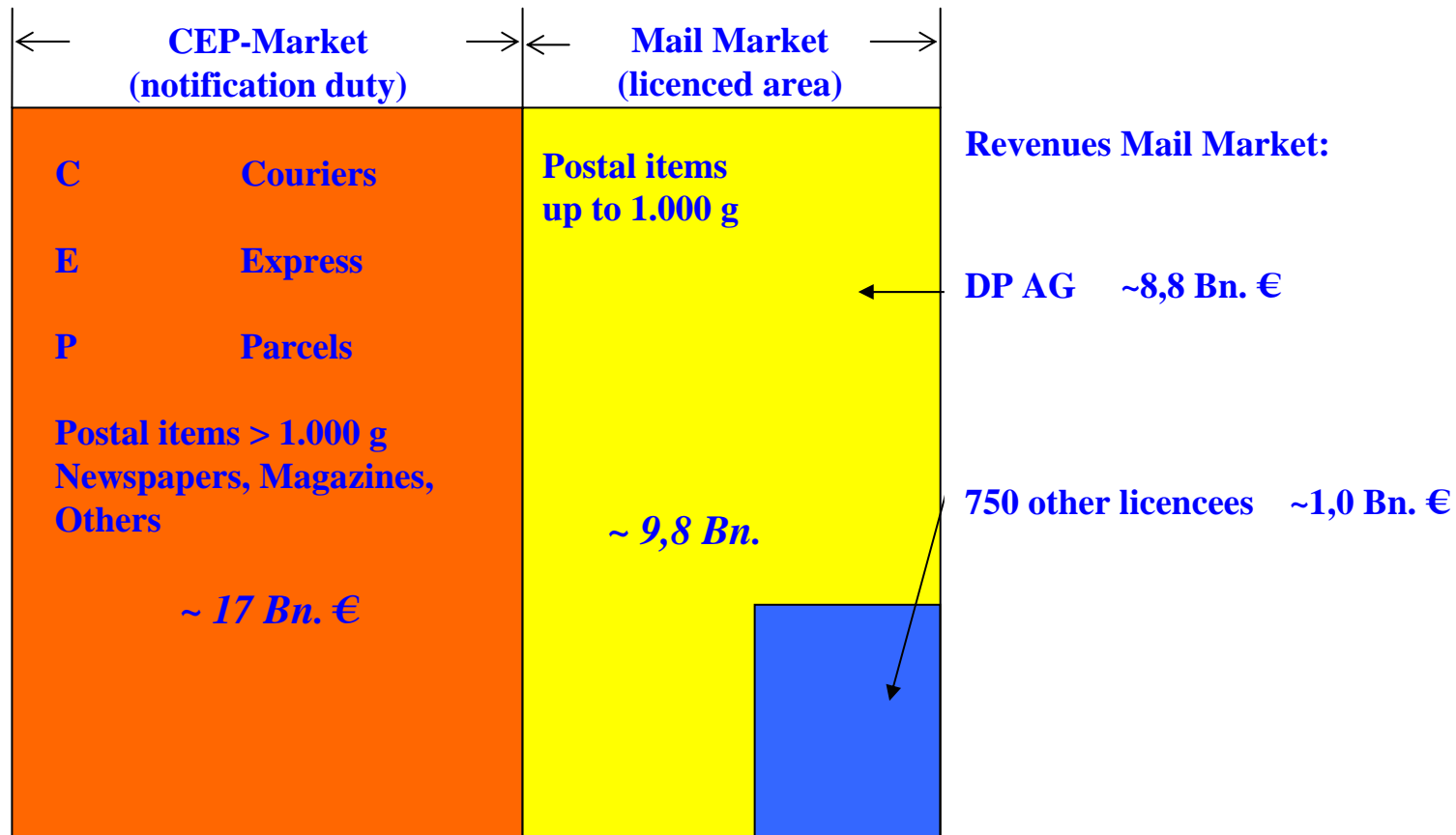


Postal Regulation in Germany after full market opening (2)

- As of 1 January 2008, the exclusive rights of DPAG were lifted and the market fully opened
- Change within the system of rates approval – according to § 19 Postal Act no approval of rates payable for conveyance services involving a minimum mailing volume of 50 letter post items.
- Special control of anti-competitive practices crucial and plays key role due to more ex- post regulation mechanisms.

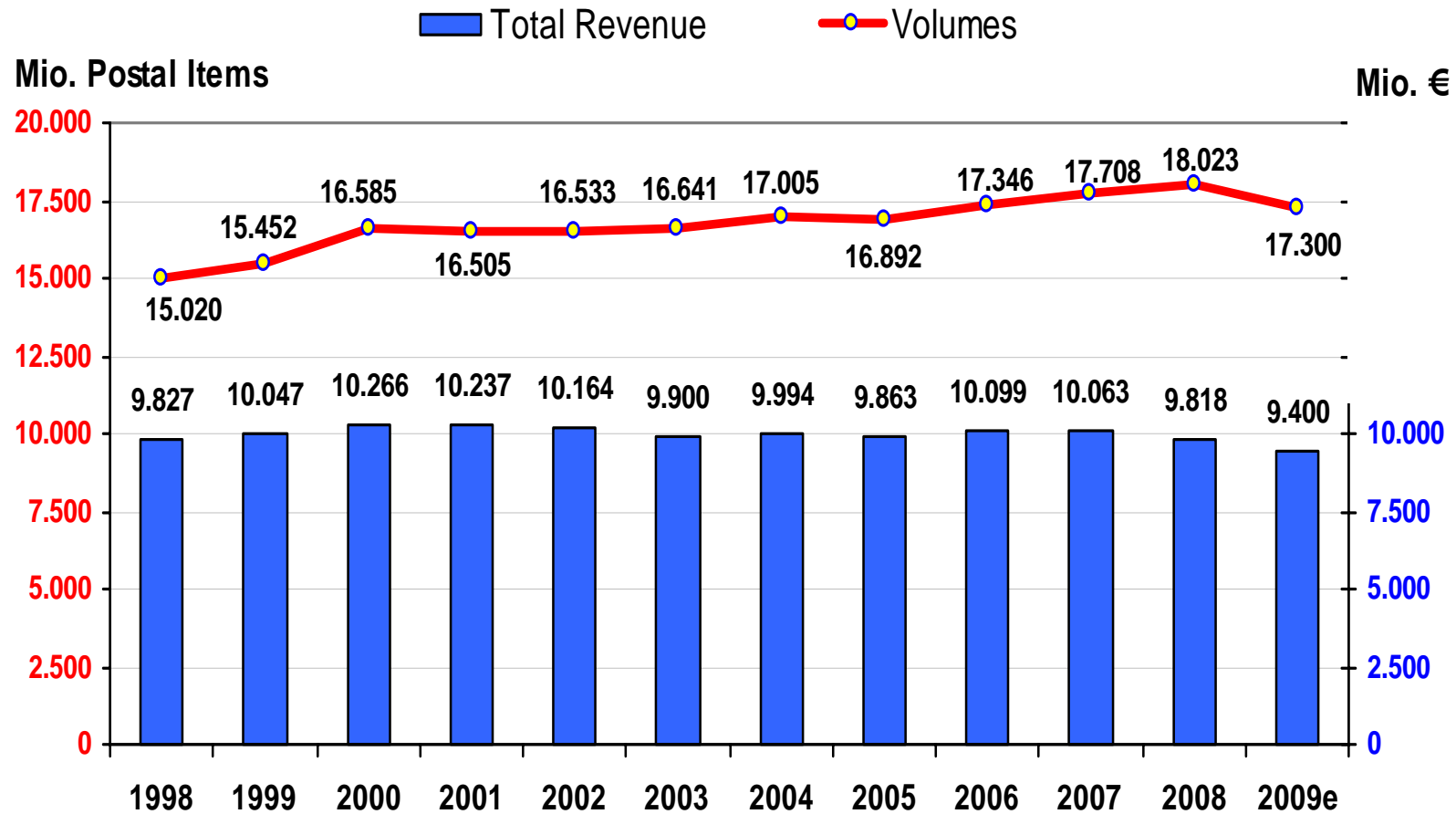


Results of Postal Regulation (1)



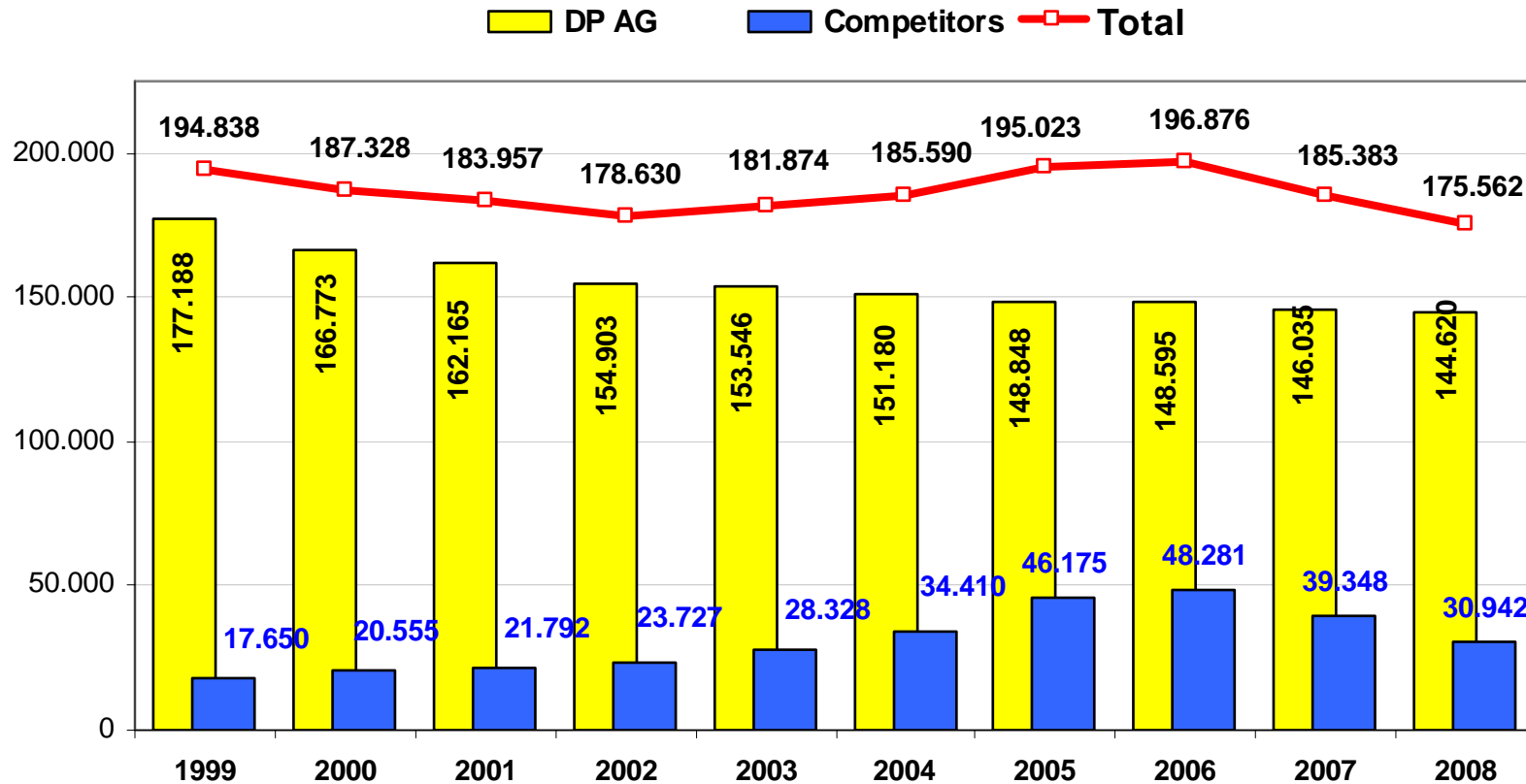


Results of Postal Regulation (2)





Results of Postal Regulation (3) number of employees





Results of Postal Regulation in figures (4)

Market shares Licensed area according to turnover

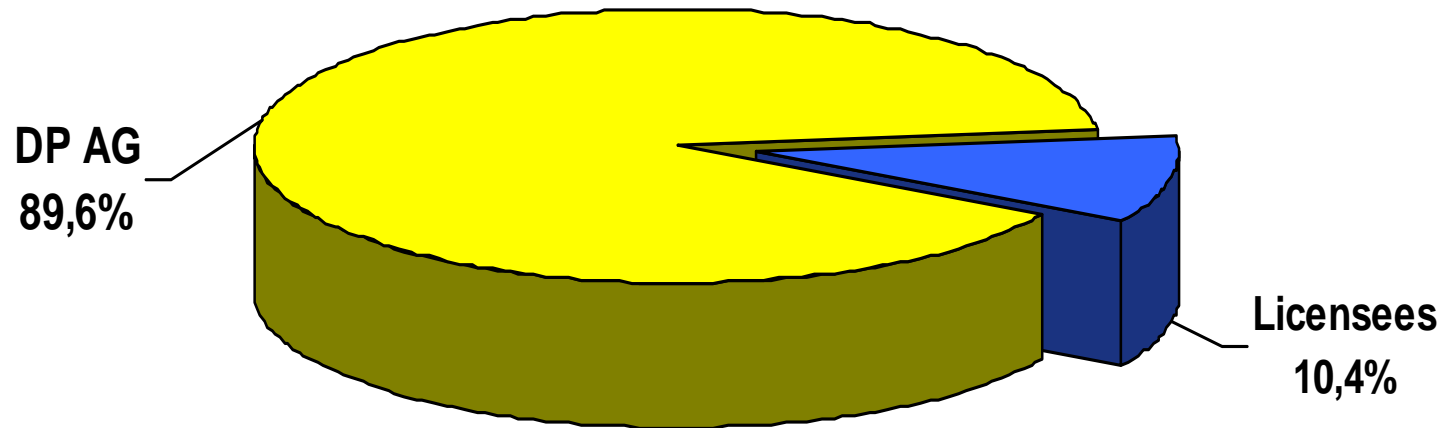
	2003	2004	2005	2006	2007	2008	2009e*
Market in total (Mio. €)	9.900	9.994	9.863	10.099	10.063	9.818	~9.400
Turnover licencees (without DP AG) (Mio. €)	388	532	745	1.081	1.133	1.016	~1113
Market share License-holders	3,9 %	5,3 %	7,6 %	10,7 %	11,3 %	10,4 %	11,8 %
Markt share DP AG	96,1 %	94,7 %	92,4 %	89,3 %	88,7 %	89,6 %	88,2 %

2009e: Estimated



Results of Postal Regulation (5)

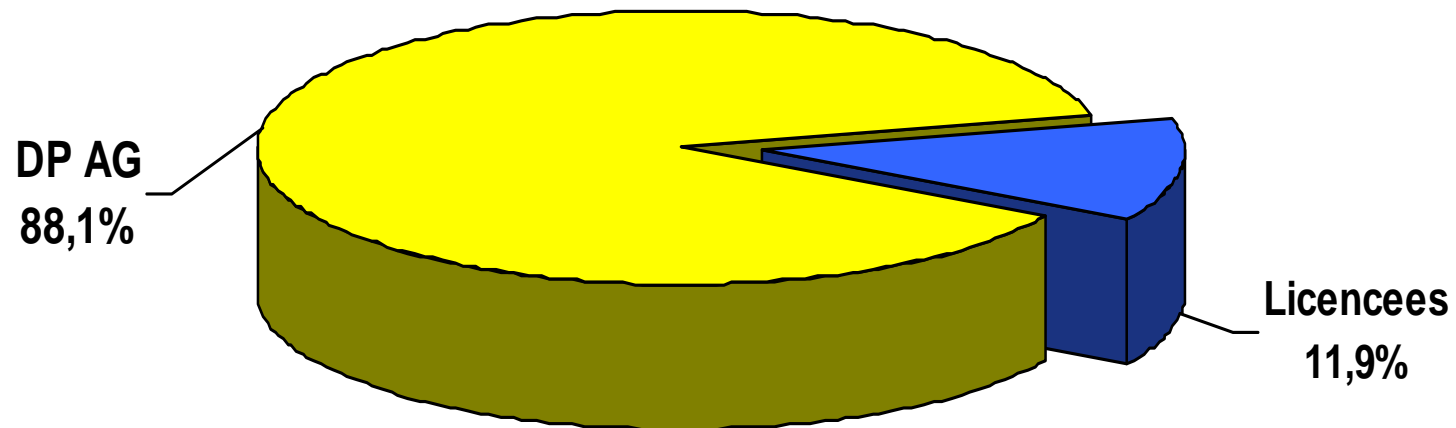
Market Shares 2008 relating to total revenue





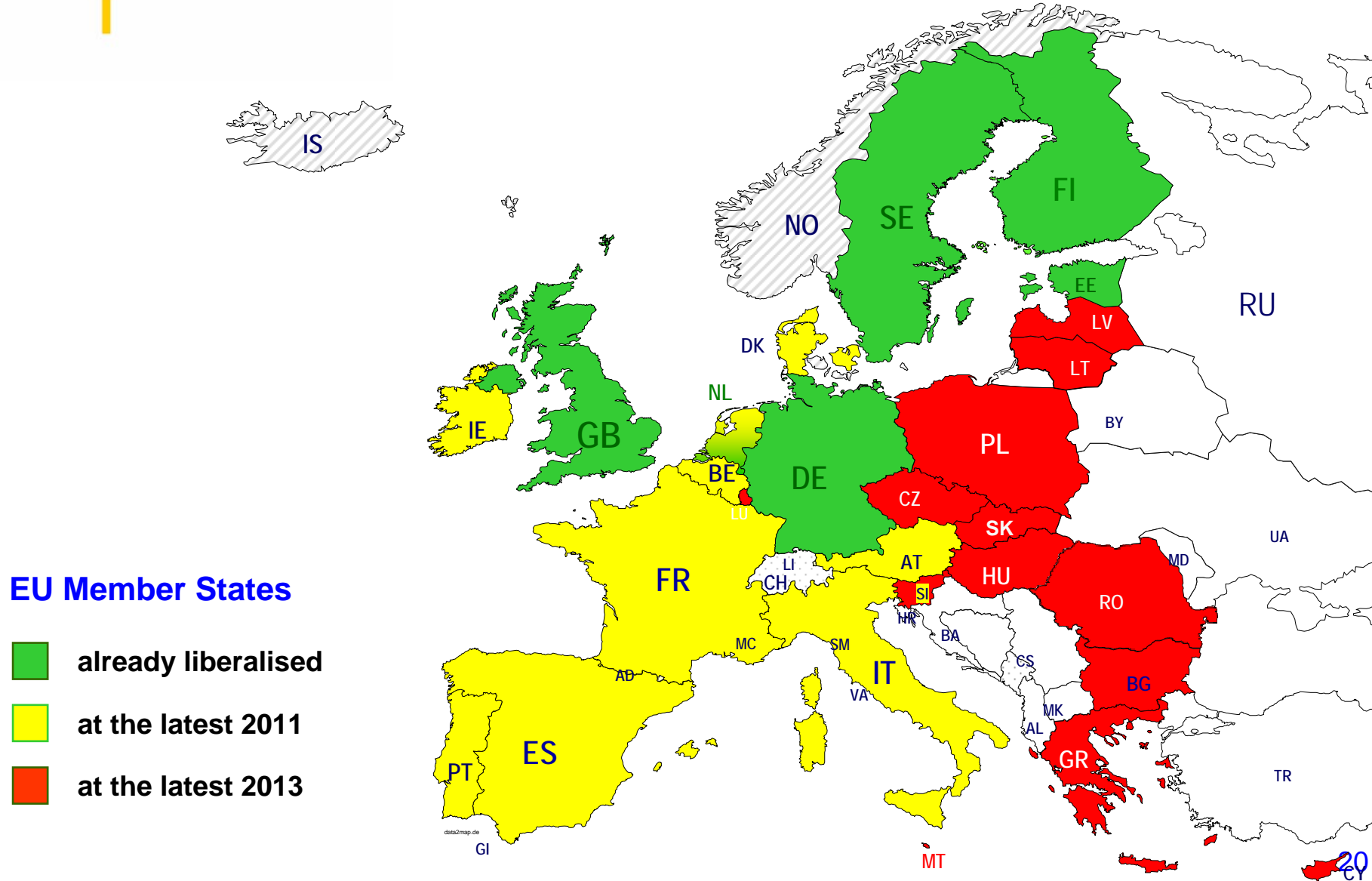
Results of Postal Regulation (6)

**Market shares 2009 relating to total revenues
(estimated)**





Time limit for monopolies in the mail market in Europe





International Comparison (1)

Netherlands

- Full Market Opening on 01.04.2009
- End-to-End-Competition
- No network access obligation
- Market Share Competitors: 12,8 % in 2008



International Comparison (2)

Sweden

- Full Market Opening in 1993
- End-to-end-Competition
- No network access obligation
- Market Share Competitors: 11% in 2008



International Comparison (3)

UK

- Full Market Opening in 2006
- Network Access obligation
- End-to-End-Competition
- Market Share Competitors within End-to-End-Competition: 0,12 % in 2008



International Comparison (4)

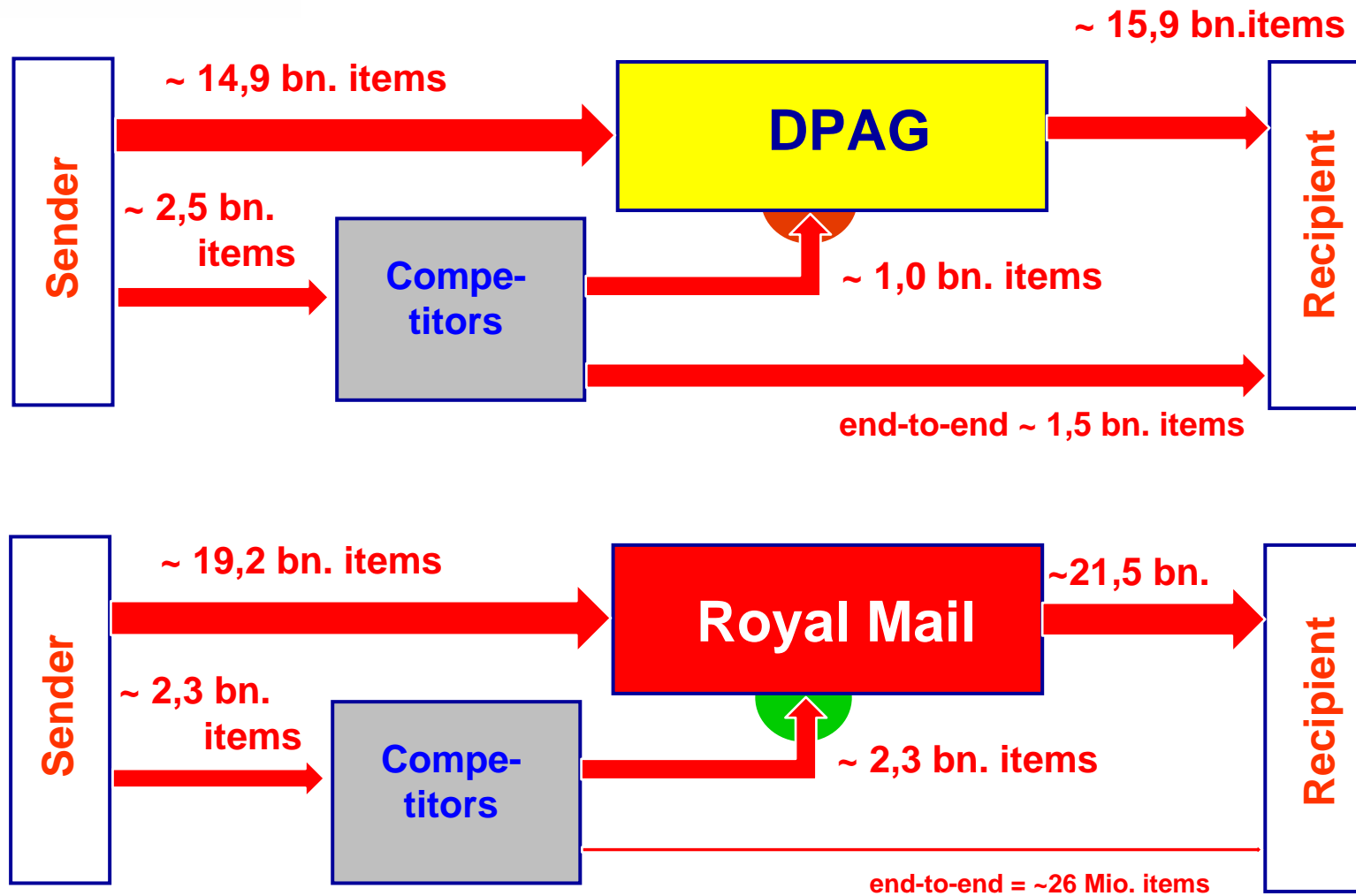
Germany

- Full Market Opening 01.01.2008
- End-to-end-Competition
- Network Access obligation
- Market Share Competitors: 10,4 % in 2008



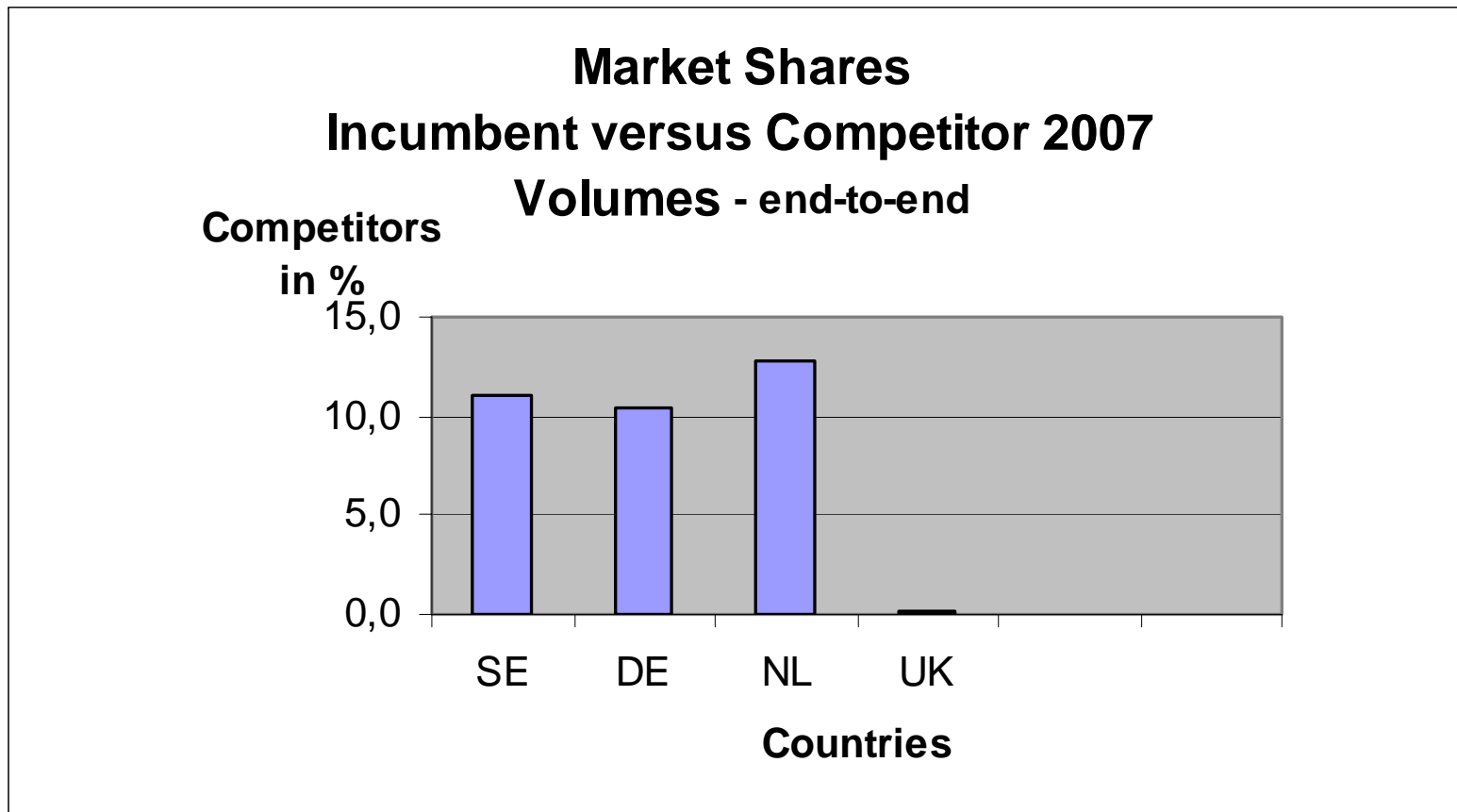
Mail flows: Comparison D 2008 – UK 2007/2008

International Comparison (5)



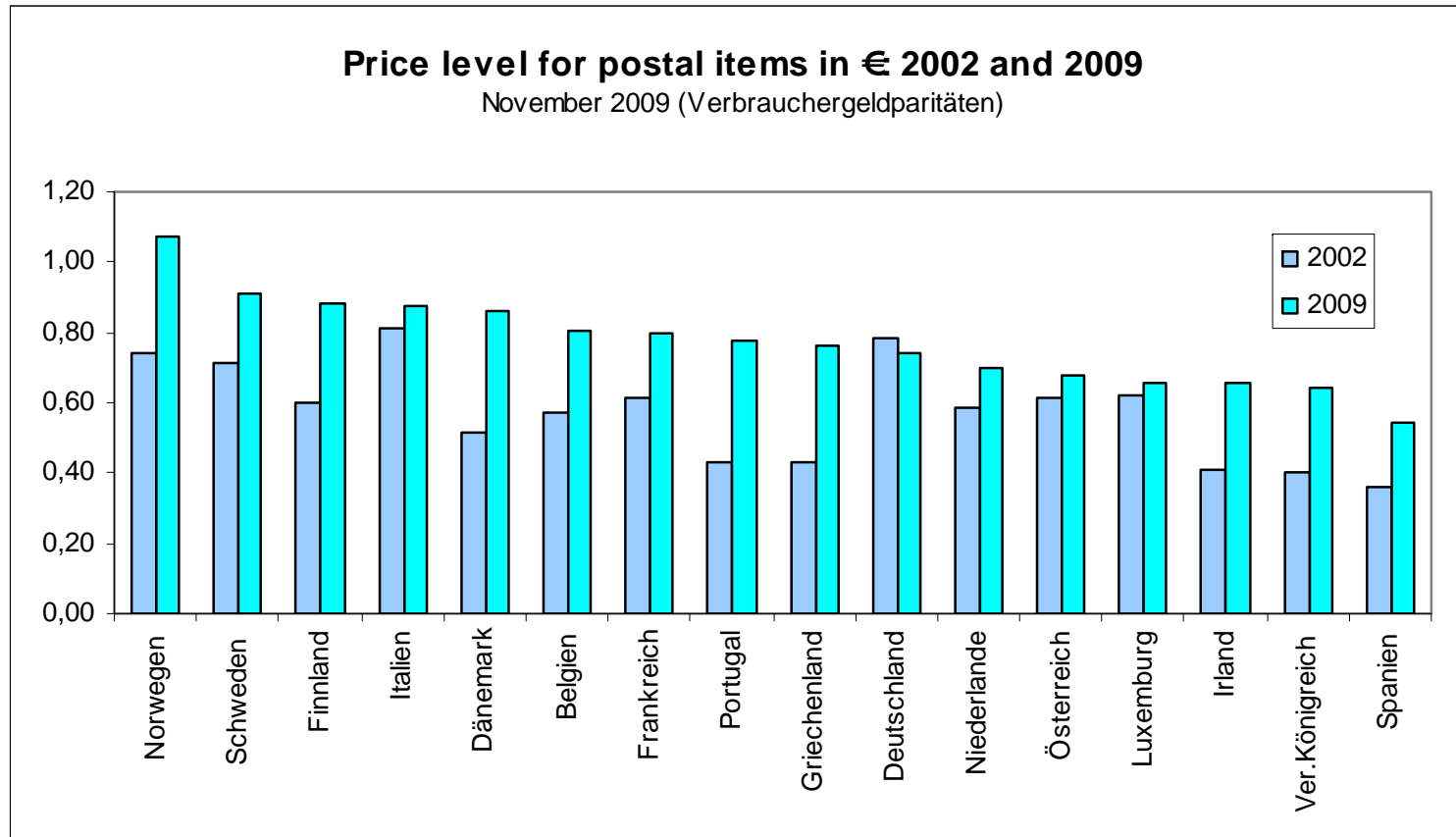


International Comparison (6)





International Comparison (7)





Challenges in the German postal market (2)

- Enforce level playing field to intensify competition also in the single piece mail segment
- Monitor development of the market developments with regard to hybrid mail and other innovative services
- Take account of new business models and changing market definitions to stop market decline
- New market players likely to enter the market, but prevent leverage of dominance to hybrid and other mail services by the dominant operator



Conclusions and perspectives

- NRAs play crucial role in implementation of the Directives – sectorspecific regulation is necessary to create competition
- Essential importance that NRAs are **independent** and provided with the necessary resources to carry out their tasks.
- Against the background of full market opening co-operation and exchange of experiences between NRAs more and more important.
- Need for consistent regulation to promote competition and to create a level playing field both nationally and across Europe to develop the Internal market as well as legal certainty for postal operators.
- How could the necessary cooperation between NRAs look like in the future?
- Examples from the telecoms and the energy sector



Comparative Overview

Telecoms

Energy

Informal NRA-platform /
formal non-profit associat.

IRG
1997 / May-2008

CEER
2000 / Juni-2003

Official Commission
advisory group (decisions)

ERG
2002

ERGEG
November 2003

Own proposals reg. future
development of a
strengthened group:
bottom-up approach

Enhanced ERG
Letter Nov. 2006
Answ. 27-02-07
Pro: pan-European services

ERGEGplus
CEER comm. 06
2nd comm. 08-02-07
Pro: European grid +
cross-bord. problem

Commision's proposals
European Agency:
top-down approach

EECMA (13-11-07)
European Electronic Comm.
Market Authority

ACER (19-09-07)
Agency for t. Cooperat.
of Energy Regulators

New EU framework
EC Regulations adopted
by Council and EP

BEREC (26-10-09)
2-tier model consisting of
Board of Regulators / Office

ACER (25-06-09)
Agency solution
EC-Reg. 713/2009



Cooperation between National Regulators

Independent Regulators Group (**IRG**)

- Informal Group of Telecoms NRAs founded 1997 in Paris
- to share experience and information
- to develop common approaches
- to discuss national implementation measures
- with the aim of harmonising regulatory practice across Europe and to ensure a consistent application of the European legislation by issuing so called Principles of Implementation and Best Practice (PIBs), publication on <http://www.irg.eu>
- as horizontal coordination on a voluntary basis
- deciding by consensus
- Since 2007 IRG has 34 members who meet regularly back to back with ERG, ComReg is 2010 Chair IRG (and ERG)
- **IRG** continues to exist and is since May 2008 a formally established legal entity under Belgian law



What is the ERG?

European Regulators Group: set up by Commission's Decision 2002/627/EC (as amended by 2004/641/EC and 2007/804/EC) as an advisory group to the European Commission (not a comitology committee)

The ERG is comprised of National Regulatory Authorities from 34 European Countries:

- 27 EU Member States;**
- 4 EFTA Members (Iceland, Liechtenstein, Norway, Switzerland), as “observers”**
- 3 EU Candidate Countries (Croatia, FYROM, Turkey) as “observers”.**

The Commission takes part to ERG meetings (no voting rights) and participates also in the Project Teams and Working Groups

All documents of ERG are published on <http://erg.ec.europa.eu>



Role and Establishment of ERG

Establishment of ERG:

- European Regulators Group (ERG) established to facilitate the required harmonization based on close co-operation between NRAs
- Created as advisory group by a Decision of the EC of 29 July 2002, amended November 2004 and December 2007:
 - To “advise and assist the EC in consolidating the internal market”
 - “...to contribute to the consistent application in all Member States of the regulatory framework.”

Role of ERG:

- ECNS regulatory framework places much weight on NRAs
 - Demand for **consistent** and harmonized application of ECNS RF
 - Art. 7 FD directly addresses NRAs
 - ECNS RF specifies tasks for NRAs and specific procedures to ensure harmonized application



What does the ERG do?

ERG objectives, pursuant to Article 3 of the ERG Decision, are:

- to advise and assist the Commission in developing the Internal Market;
- to ensure the consistent application of the European regulatory framework

ERG enables cooperation amongst NRAs, share of experiences on implementing the framework and on responding to market and technological developments

Development and dissemination of best practice approaches

Expressing publicly the NRAs' views on regulatory issues, acting as "technical advisor" to the Commission, but also called by EP (e.g. on Roaming Regulation)

ERG activities based on an annual Work Programme and delivered in several formats (Common Positions, Opinions, Reports...)

ERG seeks to ensure maximum transparency (Annual Report submitted to the European Commission and published; consultations and public hearings; publication of all decisions; constant contacts with stakeholders..).



Role of NRA's set out in the 3rd Postal Directive

- „...Ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. ...“ (Art. 22 (2))
- „Member States should guarantee the **independence** of the NRA, thereby ensuring impartiality of their decisions.“ (Recital 47)
- „NRAs should be provided with all necessary resources, in terms of staffing, expertise and financial means, for the performance of their tasks.“ (Recital 47)
- Cooperation with NRAs of Member States where necessary for consistent regulation. (Recital 51)



Thank you very much for your attention!

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