# European Express Association (EEA)
# Comments on the European Commission's State Aid Action Plan
**Less and better targeted state aid: a roadmap for state aid reform 2005 – 2009**

**September 26 2005**

The European Express Association (EEA), which represents express carriers/integrators such as DHL, FedEx, TNT and UPS, welcomes this opportunity to provide feedback on the Commission's State Aid Action Plan with specific reference to the package on financing services of general economic interest.

## I The express delivery industry in context

The express delivery industry provides a unique, door-to-door, fully traceable, high-speed, standardised global service. Unlike other transport businesses, the express industry sets no restrictions on the size, shape, frequency or destination of the shipments it carries. It also has at its disposal virtually all means of transport and is at liberty to choose the most appropriate model/s for each individual shipment.

Express delivery services were originally developed in the competitive market during the 1970s to meet the specific needs of its customers. With the progressive reduction of trade barriers in Europe and across the world the express delivery industry has become one of the fastest growing sectors in recent years, contributing to both economic growth and job creation in the EU (See OEF Economic Impact Study).

Due to the consolidation that took place in the broader European delivery market during the 1990s, express delivery services are now part of the service portfolio offered by a variety of operators in the market, including traditional postal operators charged with a universal service obligation. At the same time the Postal Directive (2002/39/EC) has seen the gradual opening of the basic letter mail and parcel delivery market with full market opening foreseen in 2009.

As such the European delivery market comprises companies, which carry out activities falling both inside and outside the universal service obligation i.e. in addition to being charged with a universal service obligation are also active in commercial markets. While universal service providers are eligible for state aid funding in order to uphold the general interest, providers of express delivery services, which are not part of the universal service obligation and which are provided under conditions of full competition, are as such neither granted exclusive rights nor eligible to receive state funding.

## II General principles governing the allocation of state aid to SGEI

Given the context of the broader European delivery market described above, the EEA welcomes the Commission's commitment to state aid reform. A coherent framework for the application of state aid rules is critical to guaranteeing a level playing field and legal certainty for service providers in the European delivery market.

With regard to services of general economic interest, the EEA supports the statement made in the Commission's State Aid Action Plan, that high quality SGEI are a key component of the European welfare state and can also contribute to the competitiveness of the European economy.

The EEA supports the general principles guiding the regulation of services of general economic interest, in that the regulatory framework should guarantee certain essential services should the market fail to provide them. Provided that the nature of the services and the cost associated with their provision are well defined, the EEA would support regulatory intervention and, if necessary, state funding to fill this gap.

As such the EEA welcomes a number of basic principles, which are reinforced in the State Aid Action Plan (SAAP), the Decision on the application of Article 86(2) of the Treaty to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, the Community Framework for state aid in the form of public service compensation, and the Commission Directive amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings.

The EEA welcomes the Commission's overall approach to the application of state aid rules, which recognises the potential risk for competitive distortion for aid in excess of 30 million euro granted to undertakings with an annual turnover of more than 100 million euro, thereby maintaining prior notification for compensation not covered by the Decision.

There are a number of issues, however, the EEA would like to raise with regard to the practical implementation of the measures outlined in the package. These have been outlined in more detail below.

**Definition of public service obligation**

With regard to the allocation of compensation, a clear definition of the scope of the public service obligation is critical to guarantee legal certainty for all operators in the market. As such the EEA welcomes the provision in the Community Framework that each Member State shall determine in an official act:

***"...the precise nature and duration of the public service obligations"*** (Paragraph 10)

While the basic principle is clear, the EEA would like to highlight a fundamental challenge with regard to the definition of the public service obligation on the one hand and those services within the obligation that are eligible for compensation. The current European postal legal framework introduces minimum standards for the universal service but does not provide a clear definition. If a basic principal of state aid funding is to balance the common interest while ensuring that market distortion is kept to a minimum, a first step prior to defining the scope and tendering the service, should logically be to determine the extent of **'market failure'** i.e. the extent to which the market cannot guarantee service provision.

In the specific context of the postal directive 2002/39/EC many of the services offered under the umbrella of the universal service obligation are provided in the competitive market, that is to say market failure is not an issue. In this case the concept of a universal service obligation is not necessarily equivalent to market failure. It follows therefore that state aid should not be made available where the market is already functioning.

Whereas it has been planned to liberalise the market to its full extent in 2009, direct state funding should be considered as a means to finance any specific service obligation in the postal sector for as far as it is not provided by the market. Using direct funding only for well defined areas of services of general economic interest provides an alternative for the current monopoly regime and will also encourage development of competition in the broader postal sector – resulting in a broader range of quality services available to the public.

**Calculating the amount of compensation**

The need to clearly identify market failure in defining those services in the public service mission eligible for compensation is also fundamental to determining the amount of compensation necessary.

Again the EEA welcomes the basic principle that: ***"In order to avoid unjustified distortions of competition, Article 86(2) requires that compensation does not exceed what is necessary to cover the costs incurred by the undertaking in discharging the public service obligation".*** (Paragraph 12)

However, in order to avoid over-compensation, the extent of market failure and the amount of compensation needed to cover the cost of guaranteeing the service need to be calculated as a first step.

It follows that if an undertaking applies for state aid, it must be able to clearly demonstrate the cost of providing the service in question. This will help meet the objective of ensuring the most efficient allocation of resources.

**Transparency/Separation of Accounts**
The EEA welcomes the Commission Directive amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, making separate accounts a legal requirement where undertakings receive public service compensation but also carry out activities outside the scope of the service of general economic interest.

Separation of accounts is necessary to ensure that public service compensation awarded to undertakings is not used to cross-subsidise services in the commercial market, such as express delivery services in the broader delivery market. As stated in the Community Framework:

***"Public service compensation granted for the functioning of a SGEI, but actually used to operate on other markets is not justified, and consequently constitute incompatible state aid".*** (Paragraph 12)

Separation of accounts is already a requirement according to the postal directive 2002/39/EC. However there are a number of Member States, which have yet to enforce this requirement.

**Enforcement**
A challenge common to all the issues raised above is one of enforcement. Strict enforcement is critical if market distortion is to be avoided and the block exemption for state aid to SGEI as outlined in the Commission Decision is to work in practice. Concerning the establishment of independent authorities at Member Sate level as recommended for review in the Commission State Aid Action plan, the EEA would ask the European Commission to consider that the Postal Directive has already entrusted National Regulatory Authorities with similar tasks such as enforcing clear separation of accounts. Effective state aid control must also continue to be guaranteed at the EU level to ensure coherent application of state aid rules in each member state and thus a level European 'playing field'.

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