



Bundesnetzagentur

Evolution of postal service and its regulatory framework – Comparison of 3 sectors (energy, telecoms, post)

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Postal & Delivery at the Crossroad of Nations & Industries:

Session 2, Copenhagen – 3 May 2019



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- Changes in regulated markets
- Digital transformation of network sectors
- Changes in postal and telecoms markets
 - Letter market
 - Parcel market
 - Telecoms market
 - Convergence of markets
- Postal regulatory framework in Germany
- Comparison of the postal and the telecommunications regulatory frameworks
- Way forward
- Conclusions



From state monopoly to open markets...

1989 Postreform I
Separation of responsibilities of public administration & company activities



■ ■ ■ T Deutsche Telekom
1994 Postreform II
Privatization

1998
Postreform III
Gradual opening of the market



mailalliance
2008
complete opening of the market

before 1989
Federal Post



1992 Green Paper KOM
„European Market“



1997 PostG



2001
Prolongation of some monopoly rights



- Overall approach: **pro-competitive regulation** as competition delivers benefits for consumers and results in competitiveness as well as driving efficient investment in infrastructure
- No micromanagement, but setting conditions prevailing in a **competitive market** in order **to incentivise** rational (undistorted) economic decisions of market players, i.e. simulate competition to stimulate competition, it is up to the operators to decide on investments, technology ultimately **bearing the risk** acc. to their business models towards which the regulator must be **neutral**
- Process of **liberalisation** was initiated by the European directives in order to open up markets for competition while the state influence was restricted to regulation in order to promote competition.
- Process of legal market opening (liberalisation) will not work without **economic regulation** to ensure new entrants (competitors) can make use of new possibilities and compete **effectively**: ex-ante regulation guarantees a **level playing field!**
- **Economic regulation** aims to initiate market processes towards the competitive equilibrium ensuring **efficient outcomes**
- This implies **accepting market outcomes**, i.e. no corrections, no interference



- **Competition** as a means to create economic welfare and in particular consumer benefit (lower prices, better quality and more choice, i.e. a better value proposition for the user)
- **Competition** is the best driver for efficient investment and consumer benefits, but in network industries it can only be achieved with strict access and price control regulation applied ex-ante
- **Regulation** as a means to promote sustainable competition via opening markets in network industries a. creating a level playing field with non-discrimination, access and price regulation
- Fundamental principles: **predictability**, forward looking and long term commitment (**credibility**) and a principle based approach to ensure confidence of investors for long-term investment decisions
- While the regulatory framework must be **predictable** it must also be **dynamic** in order to deal with **changing** markets
- **Network industries** are characterised by market entry barriers resulting from substantial economies of scale + scope as well as network effects requiring sector specific regulation to overcome structural **market entry barriers**



- During the period of market opening in the late 90ties initiated by the European directives the market situation was relatively stable in all three sectors: energy, telecommunications, post.
- But early on the situation started to develop with different speeds: in telecommunications the technological progress was fast and the market was growing rapidly which facilitated market entry
- In the postal market new players focused mainly on business customers and started to enter the market only slowly also because the growth potential was deemed to be limited
- In the energy markets the process was very slow as vertical integration made downstream market entry difficult and consumers were afraid of switching, which required the regulator to set standardized switching processes



- Around 2010 major changes occurred in all three sectors:
- The changes in the **energy sector** are policy driven, i.e. promoting the integration of renewables, ICT technologies play a role in flexibilizing the grid: smart grids/meters, but it is important that the regulator also regulates smartly, i.e. sets conditions towards a **smart market** to enable new players such as aggregators to drive the market and thus enable consumers to benefit
- In the **telecommunications market** the changes are mainly technology driven (Internet protocol) allowing new market players to enter the market more easily: the so-called Over-The-Top players driving demand. The regulator needs to ensure a level playing field between traditional telco operators and the „new kids in town“. Evolution towards a **digitilized economy** with the communications sector at the core of this development increases the importance of the sector for the whole econ.



- In June 2017 BNetzA published a report looking at the impact of **digitalization** as one of the major drivers of change in the different sectors, one of them being the postal sector
- The **postal sector** is affected in two ways – negatively in the letter market where we see a reduction in the volume of letters due to **E-substitution** and
- Positively in the parcel markets where due to **E-commerce** (-platforms) we see an increase in the amount of parcels being sent
- The report is available online:
https://www.bundesnetzagentur.de/SharedDocs/Downloads/EN/BNetzA/PressSection/ReportsPublications/2017/DigitalTransformationNetworkSectors.pdf?__blob=publicationFile&v=2



- In the **postal sector** we see electronic substitution, i.e. cross-sectoral competition and the arrival of new players such as Amazon etc. changing the value chain considerably and bringing „fresh winds“ (*e-commerce*).
- Again, the regulator needs to ensure **fair competition** for old and new players and take account of the changes in the value chain going beyond purely postal markets
- Demand is shifting from traditional to electronic services which requires rethinking the definition of „universal service“ and „**modernizing**“ regulation
- In all three areas, the market boundaries are changing and converging as we see more **cross-sectoral components** which would need to be reflected in regulation as well: alignment of regulation to avoid regulatory distortions
- The role of the regulator is changing: market entry is happening, thus the regulator needs to focus on ensuring a level playing field and allowing the higher **market dynamic** to carry on with a flexible and timely implementation



Decreasing turnover and volumes since 2007

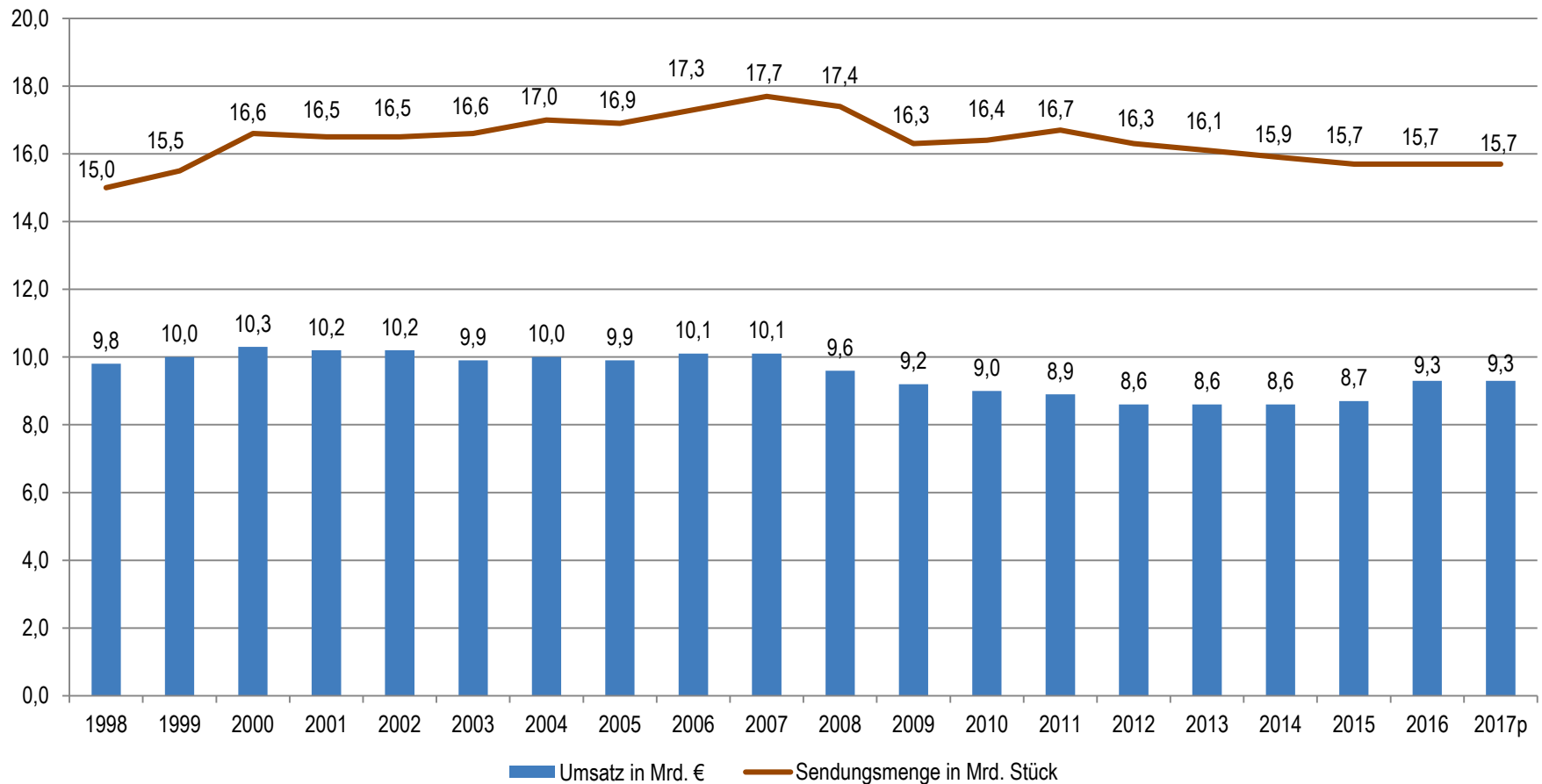


Diagram 1: Development of turnover and volumes 1998 – 2017p



Market shares of the competitors are growing slowly, but DPAG remains dominant

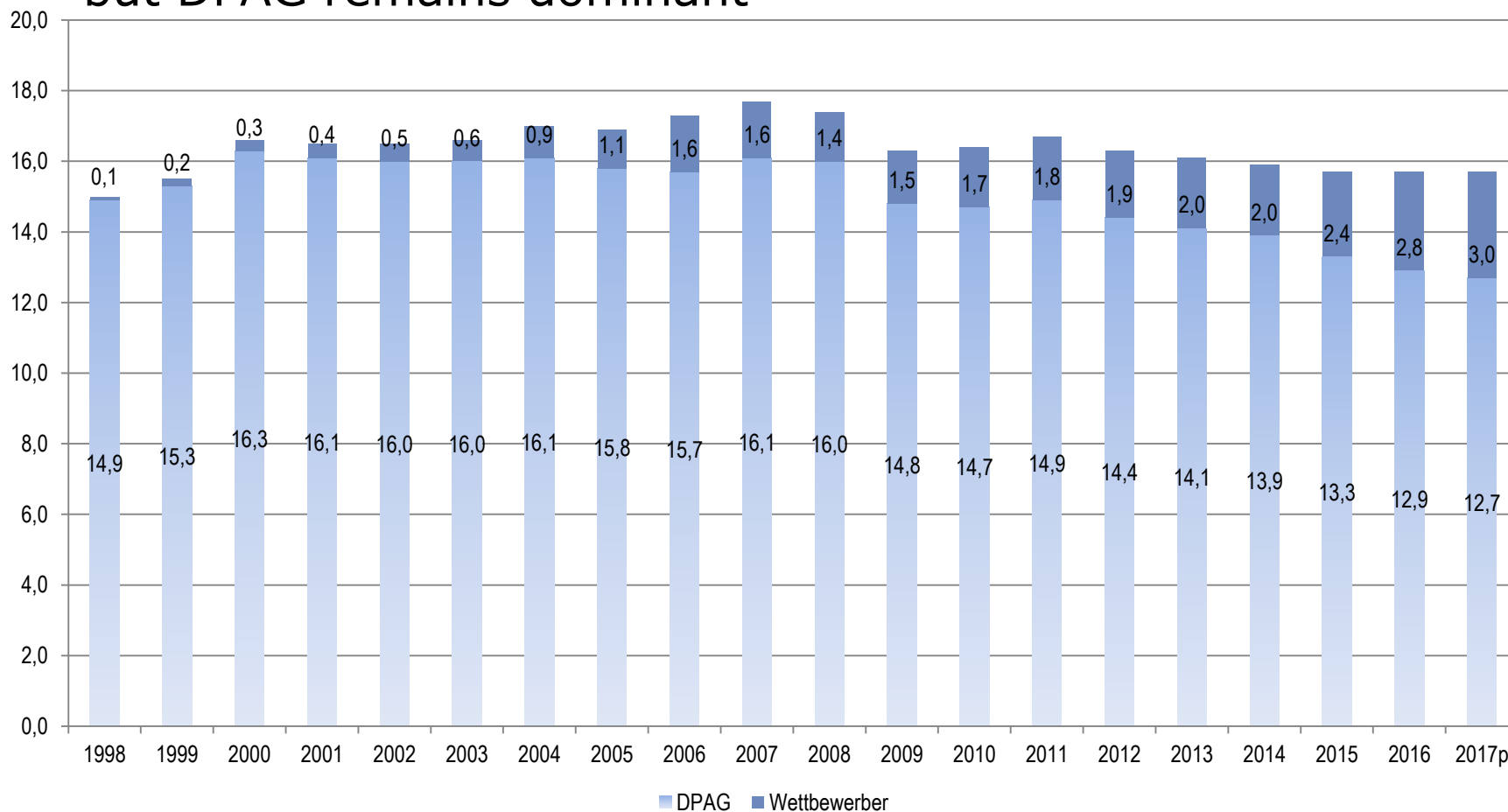
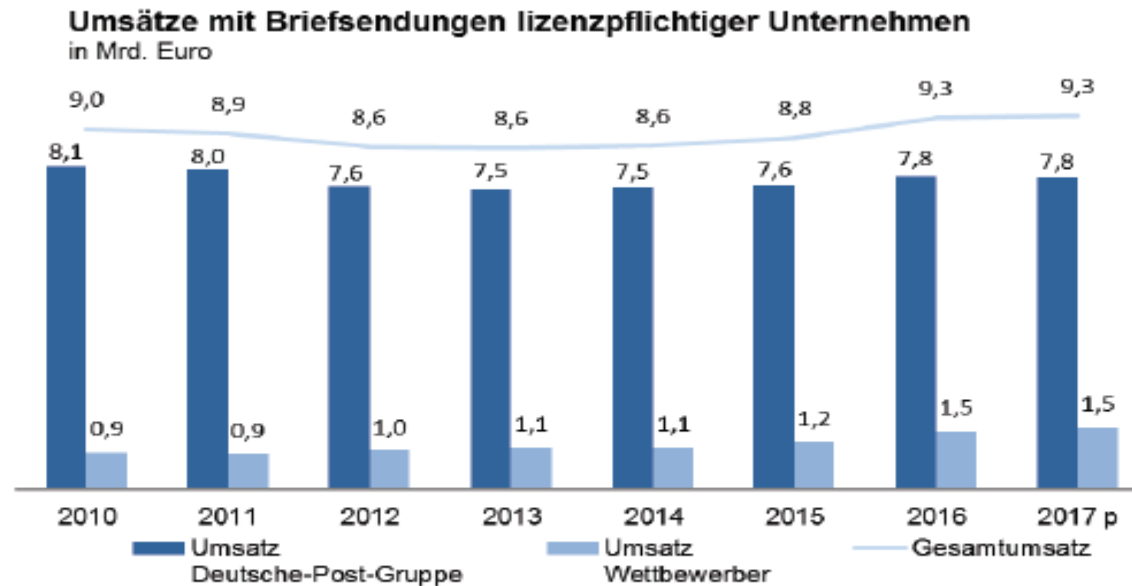


Diagram 2: Development of volumes 1998 - 2017p (DPAG and Competitors)



■ Turnover market shares in %

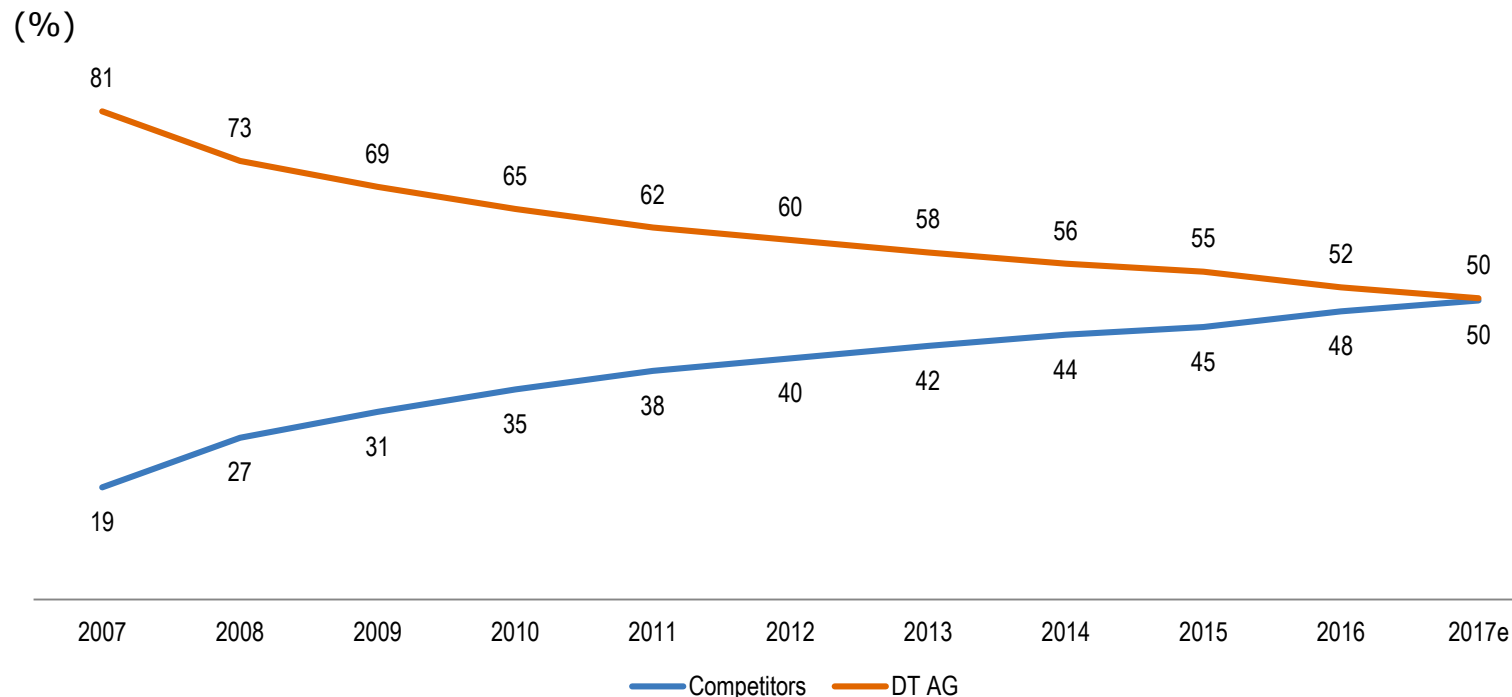
Year	2010	2011	2012	2013	2014	2015	2016	2017p
DPAG	89.6%	90.0%	88.5%	87.7%	87.8%	86.1%	84.3%	83.5%
Comp.	10.4%	10.0%	11.5%	12.3%	12.2%	13.9%	15.7%	16.5%





■ 1. Voice telephony

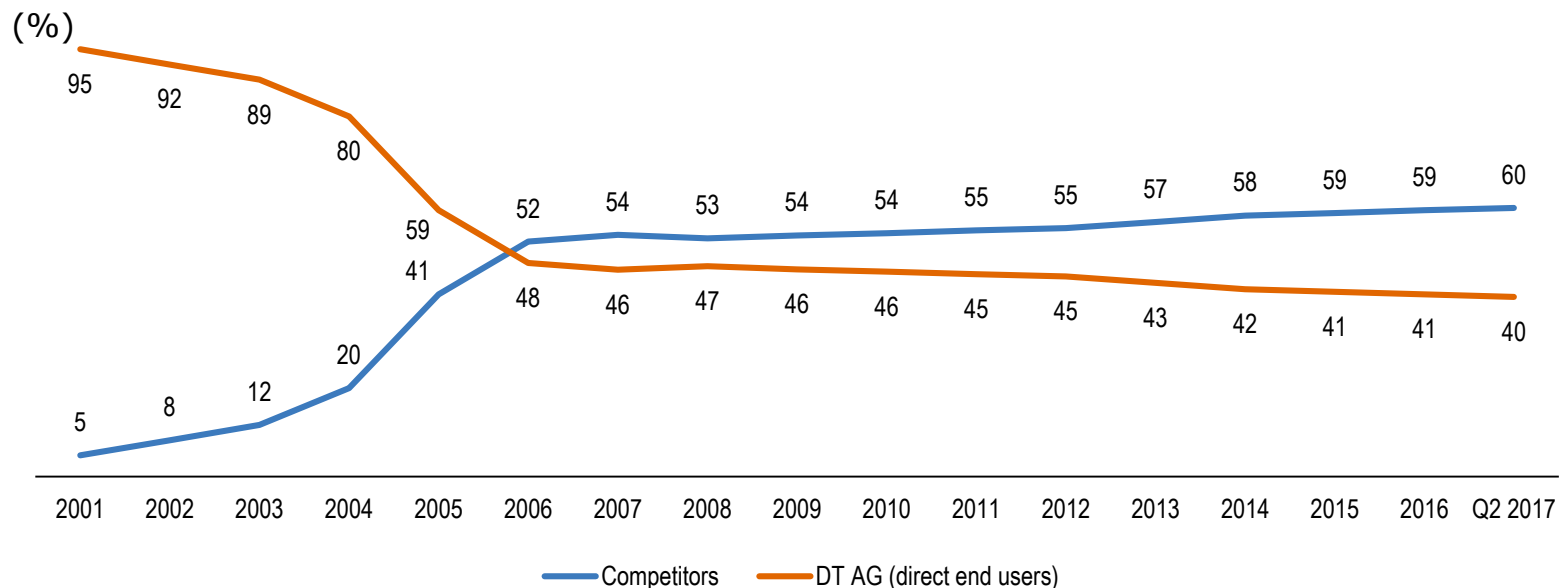
- Market share of Deutsche Telekom decreases while total number of access lines stays at a constant level (38.5 mn in 2017)





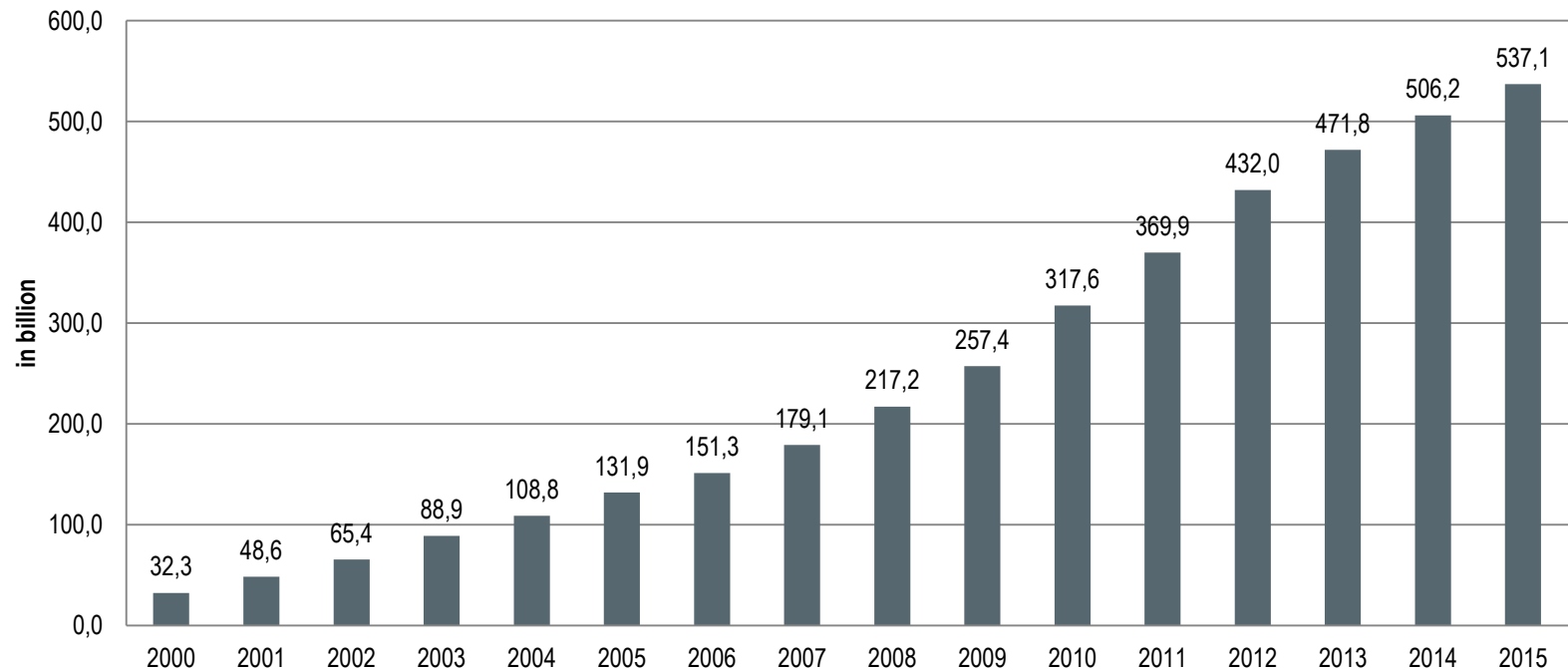
■ 2. Broadband Connections

- Market share of Deutsche Telekom became increasingly smaller over the years
- But: Strongly increasing demand for broadband connections since the early 2000s





■ The way of communication changes: E-mail-usage increases strongly



Quelle: ARD, ZDF, Bitkom, web.de, gmx, Statista

Diagram 3: Development of e-mails (Germany) 2000 - 2015



→ Digitalisation leads to decreasing letter volumes

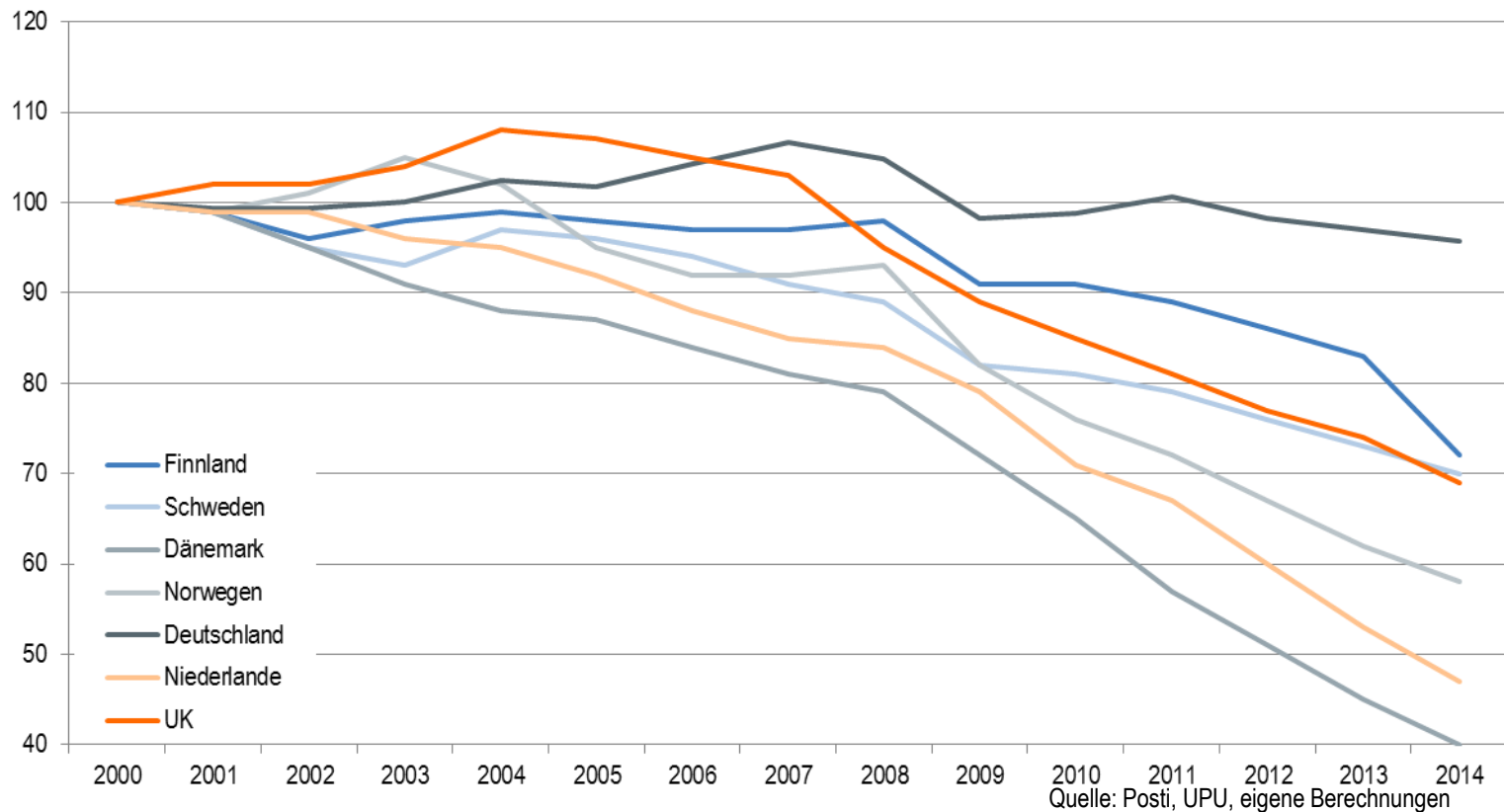
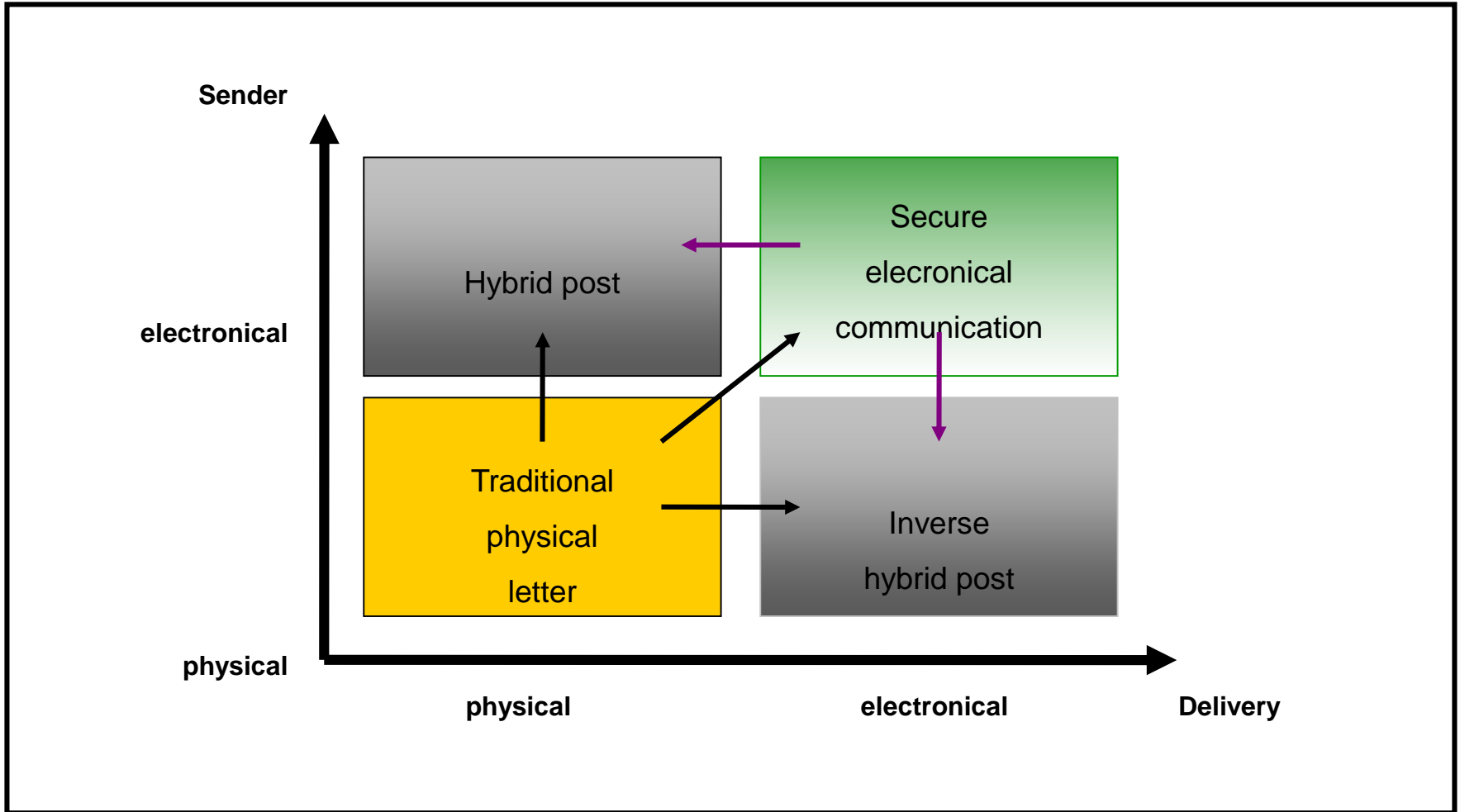


Diagram 4: Development of letter volumes in selected countries 2000 - 2014





- In the **letter market** and in particular in the developing market for secure e-mails new players enter the market
- Strong market players from the telecommunications side such as DTAG and other portals with DE-Mail
- Chance for a more competitive market
- Regulation must prevent leveraging of market power from the traditional „monopoly“ postal area and create a level playing field for all operators
- Regulation needs to be aligned with the telecommunications regulation in order to avoid regulatory distortions in converging markets, i.e. the changes in markets as well as in the value chain (more capital-intensive production) require an adjusted regulatory framework



→ **Digitalisation/E-commerce leads to a significant growth of the parcel market since 2000**

Turnover

Quantity

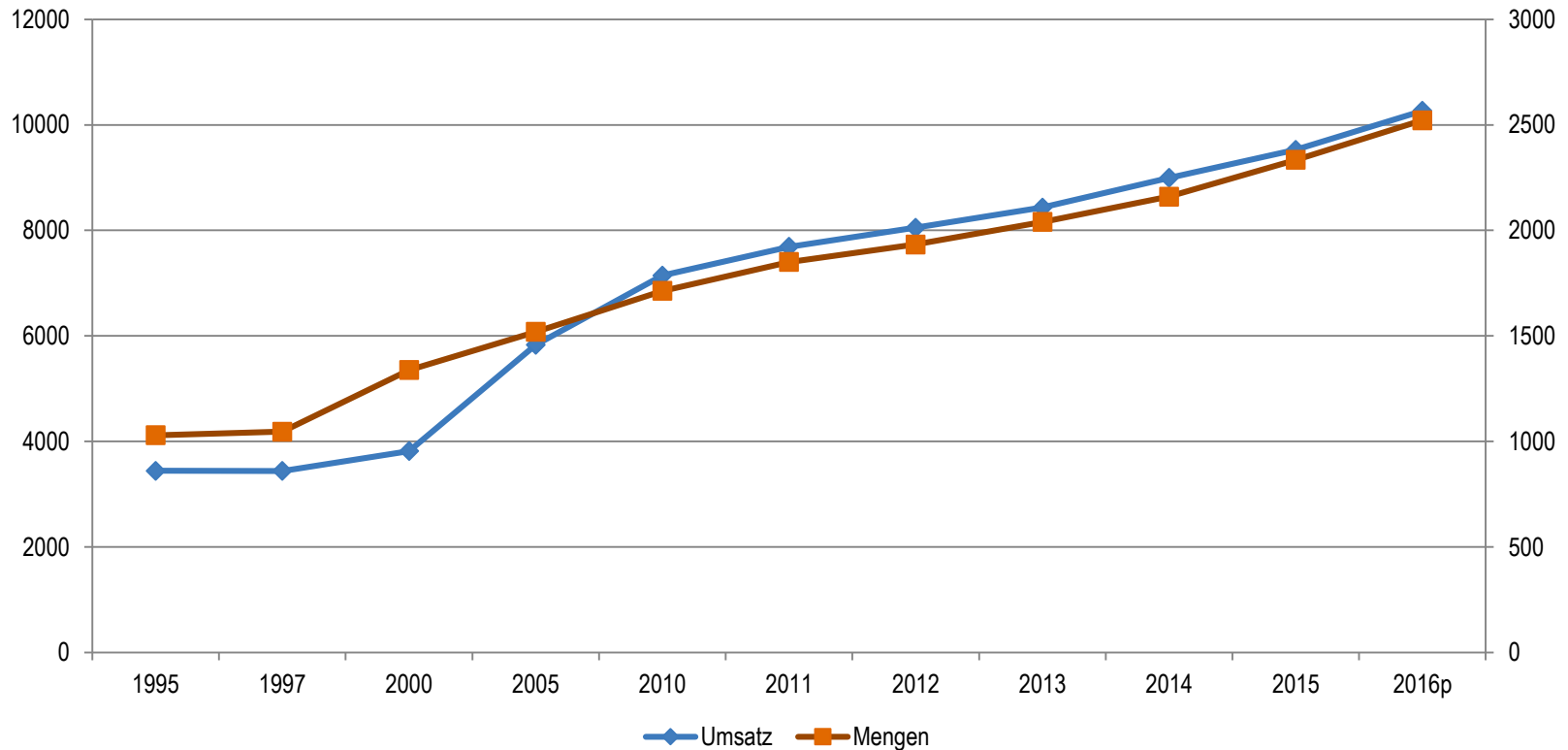
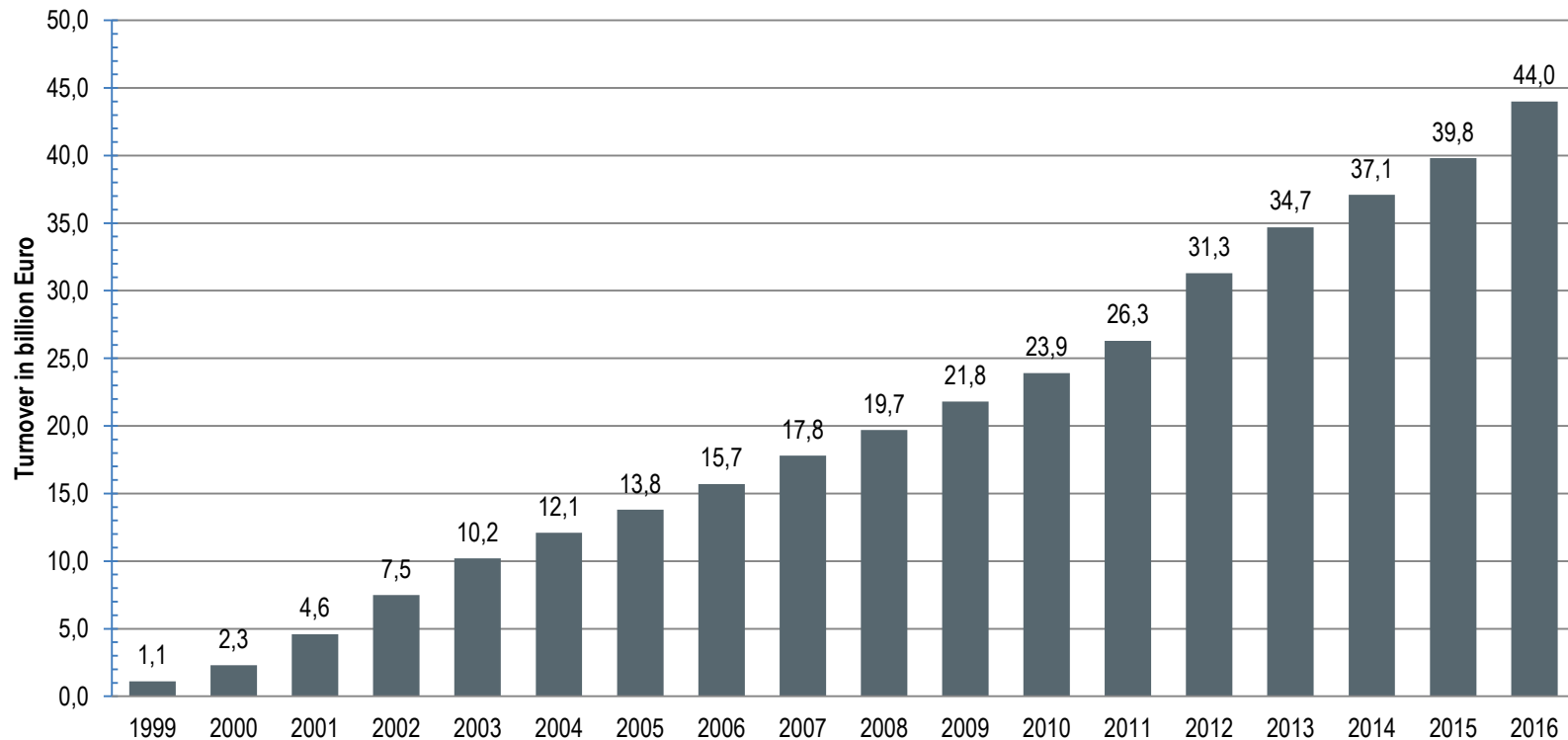


Diagram 5: Development of turnover and volumes 1995 – 2016p



- **Consumer behaviour is changing: Because of e-commerce,**
- **the parcels market is growing constantly, but no change of market structure („big five“) yet**



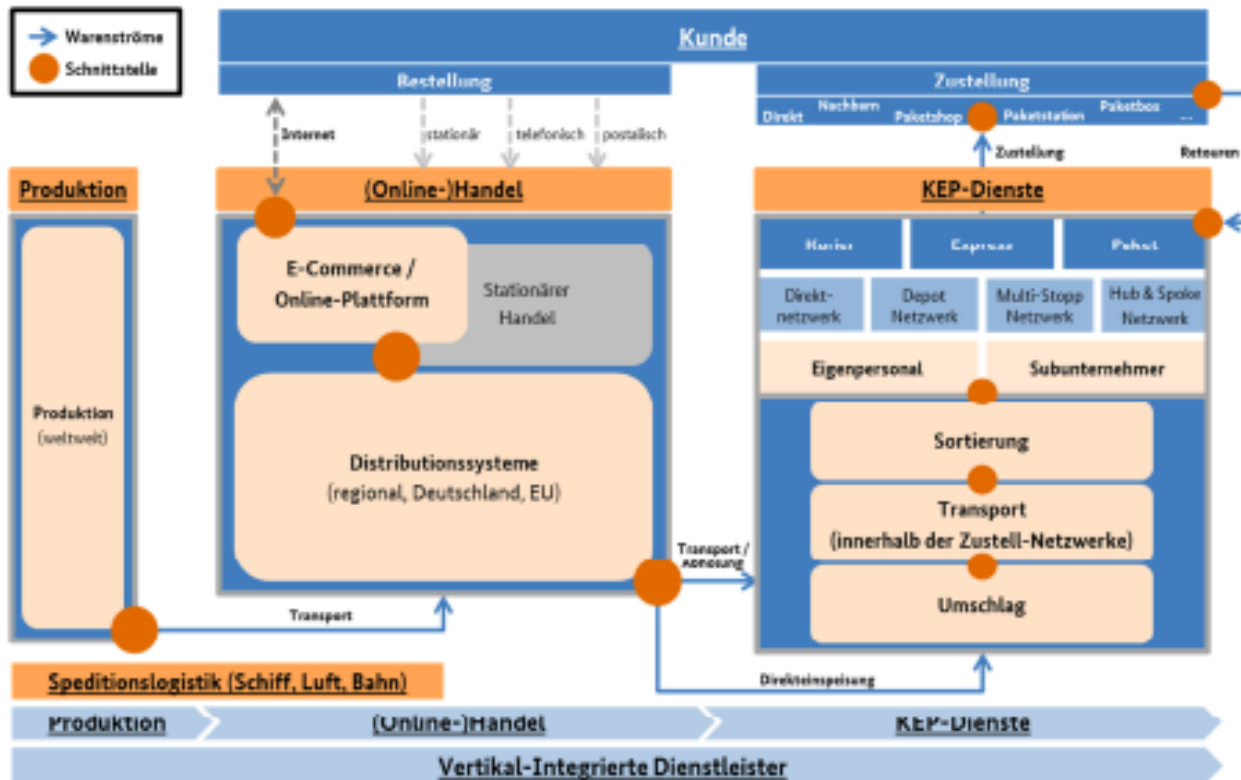
Quelle: GfK, HDE

Diagram 6: Revenues of B2C-Online retail market 1999 - 2016



- Change in the structure of the goods sent: more small items that need to be delivered fast
- Change in the logistics/processes: more and more the processes are broken down in steps improving the reliability and reducing costs
- Change in storage, i.e. more parts needed for the production are ordered just-in-time
- Change from the industrial economy to the service economy increasing the need to exchange more documents
- Digitalization increases the possibilities for transactions and enables more direct transactions between business and customers as orders can be placed around the clock and provides more transparency with regard to prices and product information
- As the next slides shows, new providers enter the postal market and the distinction between logistics/retailers and postal service providers is blurred more and more and we see competition between more providers and the creation of new business models
- More dynamic markets exist and markets change

Value chains in e-commerce



„Hersteller/Produzent → E-Commerce-Plattform → Postlogistik-/KEP-Dienstleister → Endkunde.“

integration

Source: BNetzA Report

Traditional value chains change and we see new business models emerge, we also see some vertically integrated providers such as Amazon or DP-DHL



- **Parcel market:** growth of the market makes market more dynamic and „more cross-border“
- New market structure: strong online retailers (buying power), postal operators and consumers
- Consumer protection: how to ensure consumer rights are maintained when ordering online?
- Relationships between online retailers – postal operators and online retailers – consumers as well as postal operators – consumers change
- With online retailers integrating vertically and establishing their own delivery service, markets are converging and competition is likely to intensify



■ Postal Markets today

Letter	Parcel
DPAG, Postcon, PIN and 1000 smaller competitors	„Big 5“ and ar. 17,000 others
Consolidation of the market	New entrants with financial power
Decreasing volumes	Dynamic growth of the market
Advertising mail becomes more important	Convergence of the markets (boundaries are blurring between Express & Parcel)
Trend to hybrid services	„Megatrend“ e-commerce
Price competition	Intense competition of prices and services

Postal Markets are

changing



New challenges

Changes of
consumer
behaviour

Express /
Courier

Changes of ways of
buying

Parcels

Letters

Changes of ways of
communication

Digitalization
changing value chains and
business models

Postal Markets are

changing



New challenges

Changes of
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Express /
Courier

Parcels

Letters

E-mails/
communications
market

Digitalization
changing value chains
and business models

(Postal) Markets are

converging



New chances

Changes of
consumer
behaviour

Changes of ways of
buying

Express /
Courier

Parcels

Letters

hybrid
services

Emails/
communications
market

Digitalization

changing value chains and
converging markets

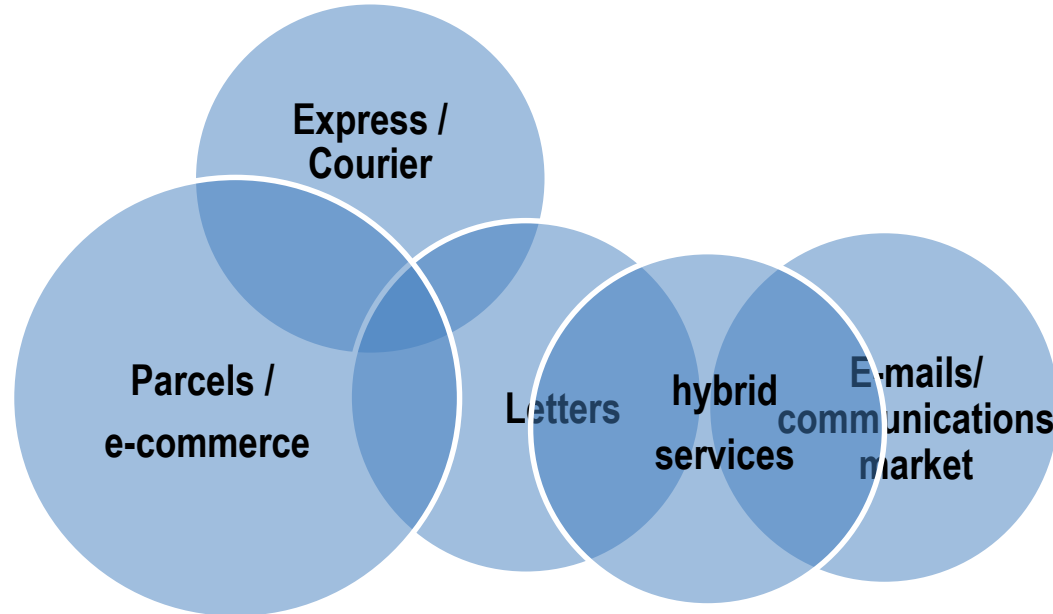
(Postal) Markets are

covering



New challenges

Changes of
consumer
behaviour



Digitalization
changing value chains
new business models

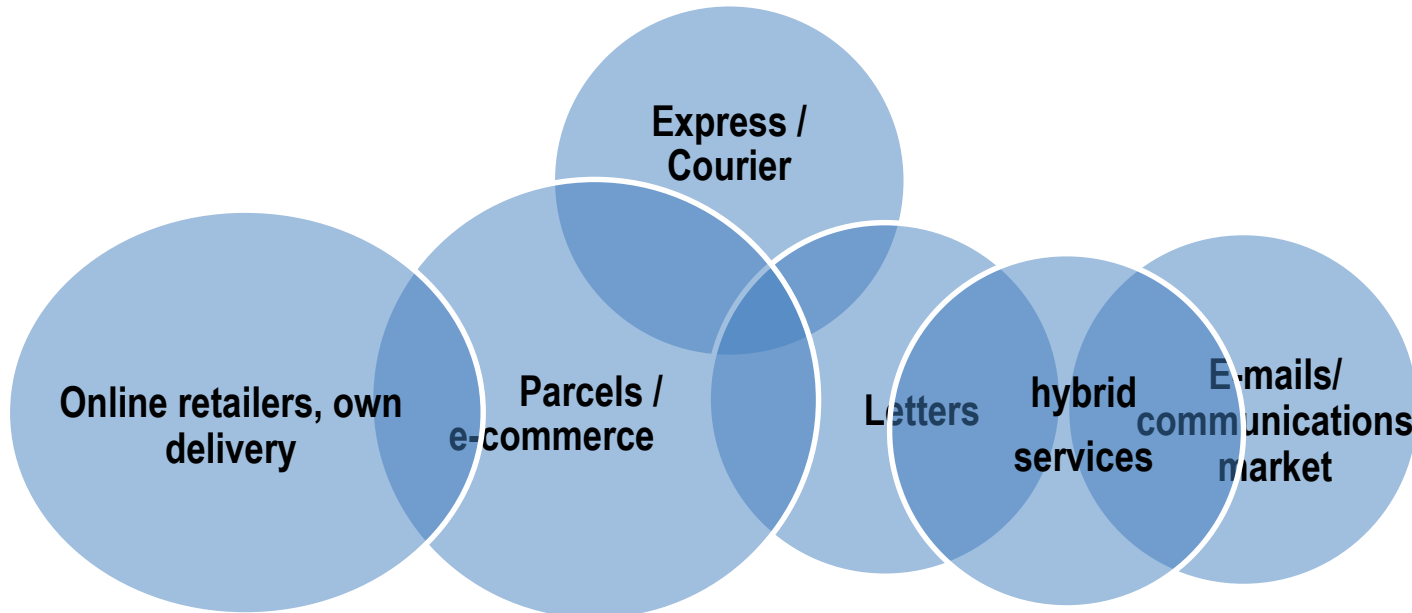
(Postal) Markets are

converging



New changes

Changes of
consumer
behaviour



Digitalization

changing value chains and
converging markets



- “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)





➤ **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.



➤ Regulatory strategy

- Even when monopolies are abolished, competition does not develop automatically (due to 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.
- Regulatory concept of end-to-end and access based competition – comparable to the ladder-of-investment concept in telecommunications regulation



- **Trigger for regulatory intervention: finding of dominance as in the telecoms law:** the legal consequence is the imposition of regulatory obligations: rates regulation, access regulation, other obligations.
- **End-to-End:**
Ensure the whole value chain of collecting postal items from the sender to the receiver
- **Network Access:**
Use parts of the postal infrastructure (the network) of the dominant operator (usually the incumbent) by using third party access, i.e. incidental services (consolidators).



Sector-specific regulation of the dominant provider/s comprises :

- Rates regulation: key pillar of postal regulation
 - ex-ante
 - ex-post
- Access to the network of the dominant operator
- Control of anti-competitive practices



➤ 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.



➤ 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-service 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).



1. Review of approved rates, if the NRA becomes aware of facts warranting the assumption that the rates are abusive (e.g. margin squeeze)
 - NRA may request operator to adjust rates without undue delay and, in event of non-compliance, prohibit the practices to which objection was made and declare the rates invalid.
2. Review of allegedly abusive rates not subject to approval, charged by a provider in a market for postal services that holds a dominant position in the relevant market
 - NRA may request operator to adjust rates without undue delay and, in event of non-compliance, prohibit the practices to which objection was made and declare the rates invalid



- Rates may not
 - contain any surcharges prevailing solely as a result of the provider's dominant position in the market (abusive pricing);
 - contain any discounts prejudicing in anti-competitive manner the competitive opportunities of other companies in a postal services market (predatory pricing and margin squeeze);
 - create any advantages for individual users in relation to other users of postal services of the same type (undue discrimination)

unless a legal obligation or another objectively justifiable reason can be evidenced.



- Identification of unlawful deduction/discounts
 - Prices of “First Mail” (subsidiary of DP AG) are below the prices of DP AG for comparable services
 - Prices of “First Mail” are not covering its costs
- DP AG and its subsidiaries are subject to the same regulatory constraints, because they belong to the same legal and economic entity
- Selective offerings targeting business customers in specific areas of Germany only violate the requirement of non-discrimination
- Requirements laid down in the ENTEGA judgment for regional price differentiation were not met
- Prices of First Mail were considered discriminatory and predatory, therefore DPAG/FM was ordered to adjust prices; DPAG ultimately closed down FM
- Decision confirmed by Court in Cologne on 26/03/19



- BNetzA conducted an ex-post review of the discounts charged for incidental services after increase in 2011
 - Potentially abusive: preventing other postal operators from competing
 - Potentially discriminatory
- Result of assessment:
 - Worksharing tariffs exceed cost of efficient service provision and also significantly contribute to covering DPAG's own particular burdens
 - No breach of the non-discrimination obligation, discounts were allowed, albeit "warning" was issued that allocation keys would be scrutinized in the next Price Cap procedure to prevent cross subsidisation



- **Ex-ante control:** Paving and shapening the future way for price regulation/price cap regime
- Providing regulated company at the same time with consistency and flexibility for reactions to possible volume developments in times of electronic competition
- Main aim: Not to regulate quality/performance but to acknowledge potential expenses for efforts to improve process/product innovation
- **Ex-post control** decisions clarified scope of non-discrimination rule, predatory pricing, unfavourable differentiation (= discrimination)
- Necessity for legislative adaptation of the current regulatory framework and possible (further) alignment with telecommunications sector? Still „work in progress“



➤ Access to the 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.



➤ 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 of address 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



- In telecoms it was shortly discussed whether and to which extent network access services and related services („annex services“ such as „collocation“) are covered by the ex-ante rates obligation – as they are strictly speaking not telecoms services, but it was decided that all services necessary to make effective use of the network access right (incl. services realized via the network) are covered as otherwise this right of the alternative operators could be undermined (comprehensive understanding)
- In the postal sector the Postal Act foresees in section 28 that access to the postal network must be granted by the dominant operator (so-called „incidental services“/work sharing agreements), but compared to telecoms, the access is designed rather restrictively and in particular no distinction is made between business customers and consolidators (alternative operators), furthermore partly the price is regulated only „ex-post“ (since 2008)



- Case in the postal sector: in 1999 BNetzA ordered Deutsche Post AG to submit **all contracts** regarding different incidental services to BNetzA for checking (acc. to section 30 Postal Act), but Deutsche Post did not comply (arguing that these are not all incidental contracts), thus a lengthy court case followed which was finally decided by a ruling of the **BVerwG** on **20 May 2009** confirming the **obligation** of Deutsche Post **to submit all contracts** to BNetzA.
- The Court defined the term „**incidental service**“ and also stated that in order to promote competition it is necessary that **all parts of the postal value chain between sender and receiver** can be accessed as incidental services and that BNetzA has the right to check the contracts in order to prevent discriminatory conditions. For a complete overview it is necessary for BNetzA to have **all** contracts.
- Thus as in the previously mentioned ruling, the reason for confirming BNetzA's view was t. goal of promoting competit.



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

- Regulatory Authority shall call upon a dominant op. 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 effective intervention.



- **Full liberalisation since 1 January 2008**, German market open since 1st January 1998, but at this time Deutsche Post still had exclusive rights for letter post: stepwise liberalisation (instead of „big-bang“ scenario in telecoms)
- As of 1 January 2008, the exclusive rights of DPAG were lifted and the market fully opened (2008/6/EC PSD)
- Change within the system of rates regulation – according to § 19 Postal Act no ex-ante approval of rates payable for conveyance services involving a minimum mailing volume of 50 letter post items (e.g. incidental services), only ex-post.
- Special control of anti-competitive practices crucial and plays key role due to more ex- post regulation mechanisms.



➤ Universal Service – the German way: using 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: imposition of an USO on the dominant operator, tendering procedure

- „Market forces model“ allows „smooth(er)“ adjustment of the universal service concept to technological, societal and economic changes by adapting „naturally“ to new situation (**dynamic concept** to allow for changes in users' needs)



- Even though the postal regulation followed the telecoms regulation and used an approach promoting competition and based its regulatory intervention on finding a dominant operator and imposing regulatory obligations, the letter market did not develop as much as the telecoms markets did.
- So what are the reasons for a less competitive letter market?
 - the postal market was opened only *gradually* whereas the telecoms market was opened in a „*big-bang*“ scenario
 - the letter market was limited in growth/declining
 - the regulatory instruments were less stringently designed, in particular the access regulation faced more difficulties and access prices were regulated only ex-post after 2008
- So what are the changes caused by electronic substitution in the letter market and e-commerce in the parcel market?
 - Both lead to converging markets, strong players entering the postal markets which requires an adjusted postal framework to ensure a level playing field and realizing the benefits for the users of more competition with a pro-competitive regulation



- Given the increasing interaction with electronic communications markets and e-commerce, there is hope that the dynamic of telecommunications markets can be transferred into the postal markets as the new players entering postal markets have a strong position in telecoms, e.g. telecom operators providing secure e-mail services or from other areas such as online retailers (considering to offer own parcel delivery services)
- Along the same lines, it is important to (continue to) transfer the successfully implemented regulatory approach of the telecommunications sector also in the postal sector for a pro-competitive regulation of the postal markets in order to realize the full potential of the postal markets through competition and avoid „regulatory distortions“
- Traditional postal operators should use the chances and innovate their business models, further they should make use of cooperations both with traditional players, but even more with new operators (e.g. for hybrid services).
- „New competitors such as portal providers can seize their chances by playing on their core competences and transfer them into the emerging markets



- Enforce level playing field to intensify competition also in the single piece mail segment
- Monitor market developments with regard to hybrid mail and other innovative services
- Take account of new business models and changing market definitions and conditions 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
- Take account of changing market dynamics in both the letter market (hybrid/innovative services) and the parcel market (e-commerce)



In the **postal sector** the digital transformation requires a more intensive market monitoring. In particular, there is a need to observe and analyse the individual market behaviour of new players. As a consequence this creates new challenges in defining the markets. Digital changes that have an effect on costs should be taken more into account in the procedure for determining postal charges. A functioning and viable universal service regime should be adapted to meet the changes in the technical and social framework conditions.

In order to suitably observe and analyse the dynamic developments described, it is recommended **to flexibly adapt market monitoring** and in this context to extend its coverage where appropriate. It is decisive that the Bundesnetzagentur is able to oblige all relevant market players to provide information. This especially applies if the regulatory objectives in the network sectors are affected by the dynamic changes in the market. If necessary, the market monitoring responsibilities should include both the upstream and downstream markets as well as adjacent markets of other sectors.

Given that markets are more dynamic and that we see cross-market and cross-sectoral providers and new business models, it is important to make an integrated analysis taking into account the effects and impacts from other markets and other sectors. Overall data becomes more important and this raises questions regarding data protection and data security. Digitalization has a positive effect on competition, in order to ensure this effect will actually work out it is important to promote open standards and interoperability.

Comparison of postal and telecoms regulatory frameworks in Germany (2)



Regulation	Telecoms	Letter	Parcel	External factors
Market Opening	Big bang scenario, full opening: 1998	Gradual opening, full opening: 2008	Full opening: 1998	
Regulation	SMP approach, mainly wholesale access/price reg.	SMP approach, retail price focus, less access reg., acc. price: ex-post	SMP approach, but no SMP operator	
	Positive, due to technological progress, innovation	Limited growth, competi. focussing on business custo.	Steady, „Big 5“ providers competing	Market Growth
	Arrival of new providers/services: OTT, business mod., positive effect on competition	Electronic substit., new competitors from the telecoms sector, new business models, positive eff.	E-commerce, market growth exploding, new competitors/busi. mod., positive eff.	Digitalization Business mode., competition effe.
Future Regulation (proposals)	Converging markets, Alignment of regul. framework/implementation with telecoms pro-competitive approach to avoid regulatory distortions		Parcel Regulation, widening of scope of regulation	



- We see for all 3 sectors that market entry is taking place, thus the opening of the markets was successful
- However, the opening was only the necessary condition, not in itself sufficient, other factors played their part:
- The market entry was policy driven (energy), technology driven (telecommunications), and driven by cross-sectoral competition and arrival of new players in the postal sector
- Market dynamics are increasing overall and market boundaries are becoming more fluid with convergence of business models enabled by technological changes.
- The regulator has to adapt to ensure this market dynamic will bring benefits to consumers and is not constraint by outdated regulation, i.e. regulation has to factor in changes
- The task of the regulator remains to keep pace with the dynamic process with a pro-competitive regulation bearing in mind that markets are increasingly interconnected



- With full market opening since 2011 in most of the EU Member States, new chances for an intensifying competition in the internal postal market opened up.
- In order to ensure a „*regulatory level playing field*“ across Europe, ERG-Post was created and will contribute to ensuring a consistent application of the Postal Directive.
- A reform of the Postal Service Directive which was last changed in 2008 is needed to take account of changing markets as well as users' needs
- A reform of the Postal Act should enlarge the instruments to ensure BNetzA can cope with new challenges
- Until then the regulator should use its instruments in a flexible way adjusting them to the market dynamics to ensure that all efficient business models can be realized and that the potential for competition and growth in postal markets is realized to the maximum extent.
- In any case BNetzA will continue to use all available regulatory tools to promote competition and fair access on an equal basis for all market players



Thank you for your attention

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