

Regulatory environment



Sydney aquarium

Mail regulation and concession

INTERNATIONAL POSTAL REGULATION

Universal Postal Union

The Universal Postal Union is a specialised agency within the United Nations framework. It is responsible for the regulation of cross border postal services. Practically all nations are members of the UPU. The UPU's agreement for cross border postal services are laid down in the Universal Postal Convention. In the Universal Postal Convention, the UPU established an international system for mutual payments for the delivery of cross border letter mail, known as the terminal dues system. The purpose is to compensate the destination country's public postal operator for delivering international letter post. A different compensation scheme with similar purposes exists for parcel mail.

The UPU's current terminal dues system is effective until 31 December 2005. It contains different remuneration levels for industrialised countries and developing countries, recognising the different distribution cost levels that exist between those two categories of countries. However, the system does not adequately reflect the costs of delivery, as it is partly based on a fixed rate per kilogramme, while these costs are essentially a function of the number of postal items per kilogramme.

From 1 January 2006 a new terminal dues system will apply. Under the new system industrialised countries will pay each other country-specific rates linked to domestic post charges. Developing countries will continue to pay each other and industrialised countries according to a per item and per kilogramme formula based on world average costs. Developing countries are expected to move towards the industrialised system before 2014, at which time all exchanges will be based on country-specific compensation.

Most European postal operators, including us, view the UPU terminal dues system as inadequate for these purposes. As a consequence, a significant majority, of European postal operators are party to a separate, multi literal "REIMS II" agreement where terminal dues are related to a percentage of domestic tariffs.

The European Commission has exempted this agreement for a period up to 31 December 2006. During this period terminal dues may gradually be increased up to 78.5% of domestic first-class rates for single items. The Commission has insisted upon access to the REIMS II agreement for third party operators on the same terms as REIMS II parties apply among themselves.

We did not enter into the REIMS II agreement because we feel that it does not contain a strong incentive/penalty system that would guarantee improvement of the quality of service. Instead, we have concluded commercially oriented bilateral agreements with most of the European postal operators. Negotiations are ongoing with the remaining European operators to strike a proper balance between costs and quality of service.

European Union postal regulation

The current European Union Postal Directive 2002/ 39 EC sets out a harmonised set of minimum obligations for the universal postal service (mandatory postal services) regarding service levels, rates, and cost and revenue accounting principles, as well

as quality of service standards, with which all member states, including the Netherlands, must comply.

The Postal Directive also defines the maximum scope of postal services the European Union member states are permitted to reserve for national public postal operators (reserved postal services). Member states are permitted to reserve postal services for domestic and cross border mail. This reservation is limited to a weight of 100 grammes per item of correspondence at a price of less than three times the public rate for correspondence weighing no more than 20 grammes. Outgoing cross-border correspondence and direct mail may not be reserved.

The Postal Directive delays full liberalisation of the EU postal market until at least 2009, depending on the results of a study on the effects of liberalisation that is to be finalised by 2006, and contains only the following steps:

From 1 January 2006 the reserved postal service will be limited to correspondence of up to 50 grammes at a price of less than two-and-a-half times the basic rate.

POSTAL REGULATION IN THE NETHERLANDS

Because of the importance of postal services to society, regulation is a significant factor in our mail business. The mandatory undertaking of certain postal activities in the Netherlands, some of which are exclusive to us, has been assigned to us in the Dutch Postal Act.

In the Netherlands the key legislation regulating our mail activities is the Postal Act. The Postal Act requires TPG to perform the mandatory postal services in the Netherlands, and it confers to us exclusive rights for some of these services, the reserved postal services.

In connection with the Postal Act there is a parliamentary Postal Decree, which specifies the services that are part of the mandatory postal services and defines the scope of the reserved postal services. The combination of these mandates and exclusive rights are commonly called the "Postal Concession". The Postal Concession is performed by our subsidiary Royal TPG Post B.V.

Furthermore, there is a General Postal Regulations Decree, which specifies our obligations regarding the performance of mandatory postal services and the transparency of the financial accounting of these services.

The responsibility for supervising our performance of the mandatory postal services lies with an independent Supervisory Authority for Post and Telecommunications established by the government, which is commonly called by its Dutch acronym OPTA. The Ministry of Economic Affairs is responsible for postal regulation and policy.

On 16 December 2004 the Minister of Economic Affairs discussed his vision for the Dutch postal market with parliament. During this meeting parliament gave its support to the vision, which contains the following key elements:

- Full liberalisation of the Dutch postal market in 2007 (conditional on full market liberalisation in the UK and Germany). There is an “emergency brake” procedure that allows for the date of the introduction of liberalisation to be shifted to a later stage should delayed liberalisation of the German and UK postal markets call for this.
- The price of a stamp for consumers will remain at 39 euro cents in 2005 and 2006. We may introduce a one-off price increase in 2006 for services to business customers. This price increase will be subject to the price control system discussed below and will be kept below the rate of wage inflation for 2004 and 2005.
- From 2007, rates for services provided under the universal service obligation will be regulated using a price cap system linked to inflation.
- Non-discrimination is applicable to our mail services. We must treat competitors and customers to be treated equally in terms of rates and conditions.
- There is a clearer distinction between general and sector-specific competition monitoring. The Dutch regulator OPTA is charged with monitoring universal service and non-discrimination requirements.
- A reduction, yet to be fully defined, in the scope of the mandatory postal services.
- From 2007, the Minister of Economic Affairs will assess whether our obligation to deliver bulk mail letters up to 50 grammes will remain mandatory for an undefined transitional period, without any rights for us to offset this obligation.

The next step will be the conversion and further detailing of the Postal Vision into a proposal to amend the postal laws. The Postal Vision is now officially adopted governmental policy.

We recognise that the postal vision provides clarity on the most important aspects of postal regulation and gives a long-term framework for the development of the postal market in the Netherlands. In particular, we are pleased that the policy regarding liberalisation is conditional on the future de facto liberalisation in the UK and Germany, where liberalisation is also scheduled to take place in 2007.

THE POSTAL CONCESSION

Mandatory postal services

The domestic mandatory postal services mainly consist of the conveyance against payment of standard single rates of the following postal items:

- items of correspondence (including reply items) and printed matter with a maximum weight of two kilogrammes,
- postal parcels with a maximum individual weight of 10 kilogrammes, and
- registered, registered insured and registered value declared items.

In addition, bulk mail of items of correspondence up to an individual weight of 100 grammes, which are conveyed against separately agreed rates, are part of the mandatory postal services.

For international inbound and outbound mail, based on the Postal Act and in accordance with the rules of the UPU, mandatory postal services comprise conveyance against payment of both postal items at standard single rates and of bulk mail items at

separately agreed rates with a maximum individual weight of two kilogrammes and of postal parcels with a maximum individual weight of 20 kilogrammes. In addition, mandatory postal services cover the postal services regulated by the UPU.

We are not required to provide the delivery of bulk printed matter such as advertising, magazines and newspapers, the delivery of bulk letters of correspondence with an individual weight above 100 grammes and unaddressed mail items.

REGULATORY CONDITIONS FOR THE PROVISION OF MANDATORY POSTAL SERVICES

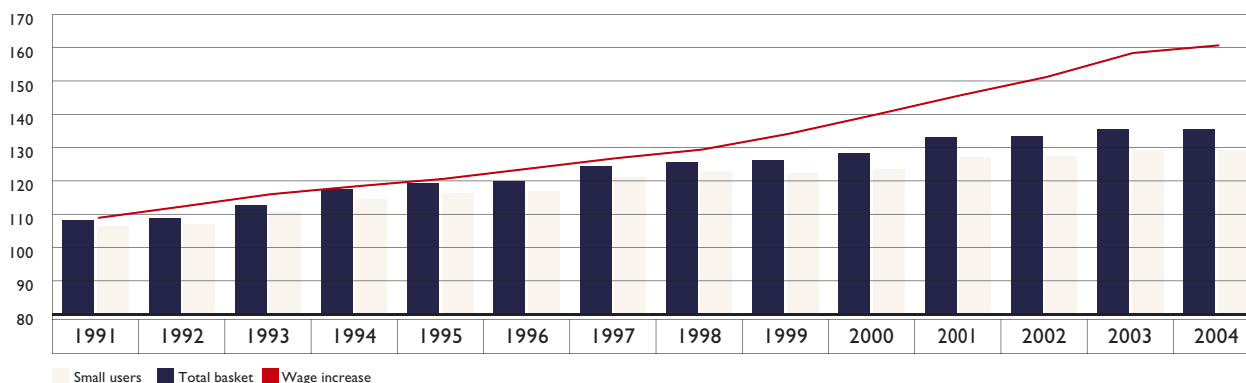
Regarding mandatory postal services the General Postal Regulations Decree imposes various regulatory conditions on us with respect to service provision, tariffs, cost and revenue accounting, financial administration and reporting. Other than the mandatory postal services, none of our postal services is subject to governmental control.

With respect to service levels, the General Postal Regulations Decree requires us to provide a level of service that complies with modern standards, to provide nation-wide services and to perform a delivery round every day, except for Sundays and public holidays. We are required to deliver not less than 95% of all domestic items of correspondence the day after the day of posting, not including Sundays and public holidays. We are required to maintain a network of service points (post offices, agents) for the access of the general public to the services. With respect to rates, we are required to set rates that are transparent, non-discriminatory and uniform. However, we may grant volume discounts for items of correspondence and negotiate specific prices and conditions with high-volume users. We are required to submit proposed rate changes to OPTA, which has to evaluate whether the proposed changes are in accordance with the price cap system.

The price cap system measures tariff developments in two different baskets of services, a “total basket” and a “small users basket”. The total basket comprises domestic mandatory postal services provided to all customers. The small users basket comprises a selection of the total basket of domestic mandatory postal services that is representative for consumers and small business users.

The price cap system uses a weighting factor for each service in these baskets. The levels of the indices for both baskets are not to exceed the official national index of wages for employees in the market sector.

The development of the indices from the base year of 1991 is illustrated below.



The price cap system was evaluated in 2002. On 18 November 2002, the Ministry of Economic Affairs decided that tariffs controlled by the current price cap system should be frozen until the end of 2006. The Ministry of Economic Affairs indicated that in the event postal services became subject to value added tax between 1 January 2003 and 1 January 2007, a change of the frozen tariffs corresponding with the resulting tax burden would be allowed. On 19 June 2003, when the tariff freeze was discussed in parliament, the duration of the freeze was limited to 1 January 2005, awaiting the vision of the Minister on the future regulation of the postal sector. The Minister proposed in his Postal Vision sent to Parliament on 1 April 2004 that the temporary tariff freeze would be extended until year-end 2006.

On 17 November 2003 we lodged an appeal against the administrative decision to freeze the tariffs. Following the grant of the formal appeal, the temporary tariff freeze decision was declared void in June 2004 and we remained able to amend the individual rates for mandatory postal services, subject to the provisions of the tariff control system.

However, in view of the wider importance of the adoption of an integral and balanced vision for the postal market as submitted to Parliament, we announced our intention not to increase the price of a stamp for consumers from the present level of 39 euro cents for the years 2004, 2005 and 2006. We are considering an amendment in 2006 to the prices for mandatory postal services to business customers that are covered by the price control system, but this will be kept below the rate of wage inflation for 2004 and 2005.

Reserved postal services

Under the Postal Act and the Postal Decree, the reserved postal services include the following exclusive rights:

- The conveyance of domestic and inbound international items of correspondence with a maximum weight of 100 grammes at a rate of less than three times the standard single rate for the lowest weight class of 20 grammes (currently, three times €0.39 = €1.17).
- The exclusive right to place letter boxes intended for the public alongside or on public roads.

- The exclusive right to issue postal stamps and imprinted stamps bearing the effigy of the monarch and/or the word "Nederland".

These exclusive rights do not extend to courier services or services where the letters are delivered at the rate of more than three times the basic rate of €0.39. The exclusive rights also do not extend to the conveyance of parcels, letters weighing in excess of 100 grammes and printed materials such as advertising, newspapers and magazines. In addition, the exclusive rights do not extend to the conveyance of letters by a business to its own customers.

Accounting and other financial obligations

Our obligations on reporting include the establishment of an annual report on our performance of the mandatory postal services, providing, among other things, an overview of the financial results related to the mandatory postal services. This report must be reviewed by an independent auditor appointed by OPTA.

Our financial accounting obligations require us to maintain separate financial accounts within our internal financial administration for mandatory postal services. This separate accounting must be broken down into reserved postal services and other mandatory postal services and must be separated from the accounting of our other activities. Every year, we must submit to OPTA a declaration of an independent auditor, appointed by OPTA that our financial accounting system complies with these obligations.

Underlying this accounting system and the financial reports to OPTA is a revised system for allocating costs and revenues to the different types of services. This revised system must comply with the accounting rules laid down in the Postal Directive and submitted to OPTA for approval. OPTA approved this system, but stipulated in its approval decision certain additional obligations, which, in our opinion, exceeded the competence of OPTA. After a formal complaint procedure and an appeal to the competent court, the District Court in Rotterdam on 20 March 2004 set aside some of the more important additional obligations imposed by OPTA and ordered OPTA to revise their additional obligations accordingly.

Both OPTA and we appealed to the relevant court of appeal (College van Beroep voor het Bedrijfsleven). In its decision of 18 July 2003 the court of appeal confirmed the decision of the District Court of 20 March 2002, annulled the remaining disputed conditions and ordered OPTA to revise the additional obligations accordingly.

OPTA revised its additional obligations on 16 September 2003, which we fulfilled on 28 May 2004. On 14 July 2004 OPTA formally approved the allocation system for the period ending 31 December 2006. The full text of the description of the allocation system was published by OPTA on their website, www.opta.nl.

Value added tax on postal services

At present, we are not allowed to charge value added tax on postal items forming part of the mandatory postal services. The flip side of this is that for mandatory postal services we cannot deduct the VAT amounts paid on our purchases of services and goods. We are required to charge VAT on items carried in competition with other operators. Competitors are required to charge VAT on those items as well. Therefore, there is a level playing field for competitors and our company on these services.

Public procurement

Public procurement is the purchase of goods, services and public works by governments and public utilities and is in principle subject to EU and international rules. Under these rules public sector procurement must follow transparent, open procedures ensuring fair conditions of competition for suppliers. At this moment we have no obligation to tender resulting from any public procurement regulation.

On 2 February 2004, the European Union adopted a package of amendments to simplify and modernise its public procurement directives. Those directives impose EU-wide competitive tendering for public contracts above a certain value and transparency and equal treatment for all tenders to ensure that the contract is awarded to the tender offering best value for money. The new directive co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors also applies to certain postal and non-postal activities that are not exposed to competition. However, the directive leaves to the Member States the possibility of postponing implementation until 1 January 2009. The Netherlands intends to exercise this option. We will not be subject to the directive in the Netherlands until the directive is implemented.

COMPETITION LAW

European competition law

Our businesses are subject to competition rules in the jurisdictions in which they operate. The Court of Justice of the European Community has explicitly confirmed that the rules of EU competition law also apply to the national mandatory postal services of the EU member states. The European Community published a notice in 1998 describing the application of competition rules to the postal sector and on the assessment of certain state measures. In particular, we are subject to the competition rules contained in Articles 81 and 82 of the EC Treaty and to preventative control of mergers and acquisitions as regulated in the EC Merger Control Regulation. Article 81 prohibits collusion between competitors that may affect trade

between member states and which has the object or effect of restricting competition within the EC. Article 82 prohibits any abuse of a dominant position within a substantial part of the EC that may affect trade between Member States. Since 1 May 2004, national competition authorities and national courts have been empowered to apply articles 81 and 82 in full, in close operation with the European Commission in order to ensure the effective and uniform enforcement of these competition rules.

We are also subject to the competition rules in the Agreement on the European Economic Area, which corresponds to the rules of EU competition law. The EEA rules for competition are enforced by the European Commission and the EFTA Surveillance Authority. See chapter 10 – “Risk factors”.

Dutch competition law

The services we provide in the Netherlands, including the mandatory postal services, fall within the scope of the Dutch Competition Act.

The Dutch Competition Act stipulates a similar structure and set of rules as the rules of EU competition law on the prohibition of cartels, the prohibition of abuse of a dominant position and the preventive control on mergers and acquisitions. Compliance with the Dutch Competition Act is monitored by the Netherlands Competition Authority, a separate agency of the Ministry of Economic Affairs.