

REGULATORY ENVIRONMENT

Due to the importance of postal services to society, regulation is a significant factor in TNT's Mail business. Although to a lesser extent, TNT's Express business is also affected by regulation.

Mail services

International postal regulation

Universal Postal Union

The Universal Postal Union (UPU) 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 common rules applicable to cross-border postal services are laid down in the UPU Convention and its regulations. In the Convention, the UPU has 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.

Since 1 January 2006 a terminal dues system applies under which "target" countries (mostly industrialised countries) pay each other country-specific rates linked to domestic postal tariffs. Over the subsequent four years the percentage of the domestic 20 grammes tariff paid is gradually being increased from 60% to 68% in 2009. "Transition" countries (mostly developing countries) will continue to pay each other and target countries a fixed kilogramme rate according to a per item and per kilogramme formula based on world average costs and on a world average weight. Transition countries are expected to move towards the target system before 2014, at which time all exchanges will be based on country-specific compensation.

The possible changes to the 2006 system have been extensively discussed in many regional postal meetings worldwide. The UPU terminal dues system has been further elaborated and decided upon by the 2008 UPU Congress. The result is satisfactory with moderate increases of terminal dues over the next four year cycle.

Reims

Most European postal operators view the UPU target terminal dues system as inadequate for its purposes. As a consequence a significant majority of them are party to the separate, multilateral "REIMS II" agreement where terminal dues are related to a higher percentage of domestic tariffs and to a certain extent to service quality as well. TNT has neither entered into the REIMS II agreement, nor into the REIMS III agreement that entered into force on 1 January 2008. TNT feels that the agreements do not contain a strong incentive/penalty system that would guarantee improvement of the quality of service, and furthermore that REIMS III does not allow TNT to compete successfully in the current competitive environment in its home market. Instead, TNT has concluded commercially oriented bilateral agreements with most of the major European postal operators. TNT will continue its policy of negotiating bilateral agreements with European postal operators. Royal Mail (United Kingdom), Correos (Spain), and Correios (Portugal) have taken a similar position.

The REIMS parties are about to commission a study into the changes that would be necessary to make the REIMS agreement survive in a competitive environment.

EU postal regulation

On the level of the European Union the current regulatory framework is set by the EU Postal Directive 2002/39/EC, amending Directive 97/67/EC with regard to the further opening to competition of the community postal services (EU Postal Directive). It includes a harmonised set of minimum obligations for the universal postal service (mandatory postal services), such as 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 EU Postal Directive also defines the maximum scope of postal services the EU 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. As of 1 January 2006 this reservation is limited to a weight of up to 50 grammes per item of correspondence or a price of less or equal to two and a half times the public tariff for an item of correspondence in the first weight step of the fastest category. To the extent necessary to ensure the provision of the universal service, outgoing cross-border mail and direct mail may continue to be reserved within the same weight and price limits.

On 20 February 2008 the EU published a new Postal Directive 2008/6/EC to amend Directive 97/67/EC as amended by Directive 2002/39/EC. This latest Directive confirms liberalisation as of January 2011. Derogation is given to 11 Member States to open up their market as of January 2013. The reserved area as a financing mechanism for mandatory postal services is abolished, while allowing for a wide variety of other methods, such as tendering, public funds and compensation funds. The new Directive also leaves the Member States the discretionary powers to decide upon the scope of the mandatory postal services, as long as the defined minimum scope is assured.

Postal regulation in the Netherlands

Proposed legislation

On 5 June 2007 the Dutch Second Chamber of Parliament adopted a new Dutch Postal Act. This Act foresees the full liberalisation of the Dutch postal market ahead of the EU timetable. To ensure that the mandatory postal services are provided, it is intended to assign Koninklijke TNT Post B.V. the Universal Postal Service. The Postal Act will have to be approved by the Dutch First Chamber of Parliament before it enters into force. The enactment date is dependent on the condition of a level playing field in real terms at the postal markets of Germany and the United Kingdom, as well as on acceptable employment conditions at the new postal operators in the Netherlands.

In December 2007, May 2008, and November 2008, the Dutch junior Minister of Economic Affairs made use of the so-called 'emergency-brake procedure' when liberalisation was postponed. The Minister based his decisions on two arguments. Firstly, the lack of clarity about the level playing field in Germany and secondly, the ongoing discussion in the Netherlands on labour conditions.

The effects of the introduction of a high and generally binding minimum wage in the German postal sector are considered undesirable by the *Bundesnetzagentur*, the German postal regulator. Furthermore, the exemption Deutsche Post enjoys with regard to VAT remains a barrier to competition that is still subject to debate in German politics (see also below under Value added tax on postal services). TNT challenged the German government regarding the minimum wage, as it

considered this minimum wage unconstitutional. In its judgement of 7 March 2008, the administrative court in first instance (*Verwaltungsgericht*) held that the mandatory €9.80 minimum wage is invalid. The German government filed an appeal against that decision with the administrative court in second instance (*Oberverwaltungsgericht*). On 18 December 2008, the *Oberverwaltungsgericht* confirmed the decision of the court in first instance. However, the court also ruled that TNT's claim, being one of three claimants, was not admissible and referred TNT's claim to the labour courts. It is likely that TNT will file an appeal against the inadmissibility of its claim, because the decision of the court on TNT's inadmissibility is not in line with recent jurisprudence as to claims of this nature.

The German government filed a further appeal (*Revision*) against the decision to the Federal Administrative Court (*Bundesverwaltungsgericht*) in Leipzig.

As a result, these minimum wages are still generally binding. Moreover, the German Labour Ministry is in the process of preparing changes in social legislation to simplify declaring generally binding minimum wages. On 26 March 2008, TNT lodged a complaint at the European Commission against the German government for infringement of fundamental rules of the European Treaty on competition and freedom of establishment.

The discussion in the Netherlands on labour conditions is still ongoing. Although the new postal operators and the unions reached a collective labour agreement in November 2008, the unions have asked for political support for compliance with this agreement. Therefore, the Dutch Cabinet started talks with employers and unions. An intended new date for liberalisation has not been set yet.

The Dutch First Chamber of Parliament is expected to vote on the Dutch Postal Act only if the conditions are satisfactorily met. A new Dutch Postal Decree, being lower legislation and dealing amongst others with damages and the limitation of the scope of mandatory services, has passed the Dutch Second Chamber of Parliament, while a new Dutch Postal Regulation still has to be published. This Postal Regulation deals amongst others with tariff and reporting requirements.

Current legislation

In the Netherlands, the key legislation regulating TNT's mail activities is the Dutch Postal Act. This Act requires TNT to perform the mandatory postal services in the Netherlands, some of which are exclusive to TNT (the reserved postal services). In connection with the Dutch Postal Act there is the parliamentary Postal Decree, which specifies the services that constitute the mandatory postal services and defines the scope of the reserved postal services. The combination of these mandates and exclusive rights is commonly called the "Postal Concession". The Postal Concession is performed by TNT's subsidiary Koninklijke TNT Post B.V.

Furthermore, there is a General Postal Guidelines Decree, which specifies TNT's obligations regarding the performance of mandatory postal services and the transparency of the financial accounting of these services according to the EU Postal Directive.

OPTA, the independent Supervisory Authority for Post and Telecommunications established by the government, supervises TNT's performance of the mandatory postal services. The responsibility for postal policy remains under the authority of the Minister of Economic Affairs.

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: letters (including reply items) and printed matter with a maximum individual 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 letters up to an individual weight of 50 grammes, which are conveyed against other than standard single rates, are part of the mandatory postal services. Mandatory postal services also cover rental of P.O. boxes.

The Postal Act does not require TNT to provide the delivery of bulk printed matter such as advertising, magazines and newspapers, the delivery of bulk letters with an individual weight above 50 grammes or unaddressed mail items.

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

Regulatory conditions for the provision of mandatory postal services

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

According to section 2d of the Dutch Postal Act, TNT is obliged to give its competitors entrance to its P.O. boxes. This service has to be delivered against reasonable, objectively justifiable and non-discriminatory conditions and remunerations. To date these conditions and remunerations are negotiated results between parties. A similar, voluntary arrangement is made with TNT's competitors with regard to return-to-sender items of competitors that enter TNT's processes through the collection boxes.

With respect to service levels, the General Postal Guidelines Decree requires TNT to provide a level of service that complies with modern standards, to provide nationwide services and to perform a delivery round every day, except for Sundays and public holidays. TNT is required to deliver not less than 95% of all domestic letters the day after the day of posting, not including Sundays and public holidays. TNT is required to maintain a network of service points (letter boxes, post offices and agents) for the access of the general public to the services. With respect to rates and conditions, TNT is required to set rates and associated conditions that are transparent, non-discriminatory and uniform. However, TNT may grant volume discounts for items of correspondence and negotiate specific prices and conditions with high volume users. TNT is further required to submit proposed rate changes to OPTA, which has to assess 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 the same services in mutual relations which are representative for consumers and small business users.

The price cap system uses a weighing factor for each service in these baskets. Up to 2008 the levels of the indices for both baskets were not to exceed the official national index of wages for employees in the market sector.

Reserved postal services

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

- the conveyance of domestic and inbound international letters with a maximum individual weight of 50 grammes at a rate of less than two and a half times the standard single rate (currently €0.44),
- the exclusive right to place letter boxes intended for the public alongside or on public roads, and
- the exclusive right to issue postal stamps and imprinted stamps bearing the likeness of the monarch and/or the word "Nederland".

These exclusive rights do not extend to courier services. The exclusive rights also do not extend to the conveyance of parcels, letters weighing in excess of 50 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

TNT's obligations on reporting include the establishment of an annual report on TNT's performance of the mandatory postal services. TNT's financial accounting obligations require TNT to maintain separate financial accounts within its 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 TNT's other activities. Every year, TNT must submit to OPTA a declaration of an independent auditor, appointed by OPTA, that its financial accounting system complies with these obligations. This declaration has to be published by OPTA in the "*Staatscourant*".

Underlying this accounting system and the financial reports to OPTA is a system for allocating cost and revenues to the different types of services. This system complies with the accounting rules laid down in the EU Postal Directive.

Value added tax on postal services

At present, TNT is not allowed to charge value added tax (VAT) on postal items forming part of the mandatory postal services. The flip side of this is that for mandatory postal services TNT cannot deduct the VAT amounts paid on its purchases of services and goods related to the mandatory services. TNT is required to charge VAT on all services not included in the mandatory services, i.e. the services in competition with other operators. Competitors are required to charge VAT on those items as well. Therefore, in the Netherlands there is a level playing field for competitors and TNT on these services. In most other Member States of the EU the scope of mandatory services is very large. Hence a VAT exemption is given to national postal operators over a considerable part of the postal market in these countries, including for services with individually negotiable prices. According to the European Commission, this distorts the functioning of the Internal Market for postal services. It has launched an

infringement procedure against Sweden, Germany and the United Kingdom on this VAT issue in order to resolve it.

TNT initiated a procedure in the United Kingdom. The competent Court has asked the European Court of Justice some pre-judicial questions. The Advocate General advised on 15 January 2009 that only the universal services provided in the public interest are exempt from VAT and that the exemption can not, in any event, apply where items are carried at individually negotiated prices. This advice and the answers of the European Court of Justice will be of interest to the European Commission in the infringement procedures.

In Germany, new VAT-legislation is under construction. It seems that in practice Deutsche Post will be able to maintain its exemption.

Express services

Express continues to deal with several regulatory developments that need to be managed properly in order to secure TNT's entrepreneurial freedom in the execution of the Focus on Networks strategy for Express.

Governments and postal administrations around the world are redesigning postal policies. In the EU, political concerns over the financial sustainability of the Universal Postal Service and employment levels in a changing postal sector increasingly threaten to influence the regulatory environment of express delivery services. The European Commission's declaration emphasising the differences between express and universal postal services will considerably reduce the risk that express delivery services may have to contribute directly into future compensation schemes financing the Universal Postal Service in Europe when EU Member States start implementing the requirements of the EU Postal Directive 2008/6/EC. In several Asian countries, among which China and India, work on the reform of the postal regulatory framework has continued. TNT closely monitors these developments to secure a level playing field for competitive express delivery services in these markets.

The increased attention to the impact of road and air transport on air quality levels and the process of global warming continues to shape the regulatory environment for Express. Policy makers have been responding by a wide variety of regulatory initiatives, like the inclusion of aviation in the EU's Emission Trading Scheme as of 2012. Another example is the introduction by local authorities throughout the world of tax and other schemes managing the access of Express vehicles used for pick-up and delivery in city centres. In addition to closely monitoring these developments, TNT is responding proactively, amongst others in the framework of its Planet Me initiative.

Customs regulation

Effective as of 1 January 2008, the EU's Authorised Economic Operator (AEO) programme increased border control, with the aim of securing the international supply chain and modernise customs procedures within the EU. The AEO status recognises safe, secure and customs compliant business partners in international trade. On 16 April 2008, the AEO status was granted to TNT Post, being the first EU postal operator with the AEO status.

TNT also received its accreditation for the AEO status for its customs related Express services operations in five EU countries. TNT is monitoring AEO

certification programmes in other parts of the world under TNT's Global Customs Programme with a view to further global accreditations. TNT is also involved in the exploitation of World Customs Organisation mutual recognition to create longer term 'green lanes' for strategic major trade routes.

TNT Fashion Group received its accreditation for the AEO status in the Netherlands.

Public procurement

Public procurement is the purchase of goods, services and public works by governments. Public sector procurement must follow transparent, open procedures ensuring fair conditions of competition for suppliers. Currently, TNT does not have an obligation to tender resulting from any public procurement regulation.

On 2 February 2004, the EU 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 the best value for money. The new Directive 2004/17/EC of 31 March 2004, coordinating 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, this Directive left the Member States the possibility of postponing the application of the Directive on postal services until 1 January 2009. The Netherlands exercised this option. TNT was therefore not subjected to the Directive in the Netherlands until 1 January 2009.

Competition law

TNT is subject to competition rules in the jurisdictions in which it operates. The most relevant rules stem from:

European competition law

The European Court of Justice has explicitly confirmed that the rules of EU competition law also apply to the national mandatory postal services of the Member States. The EU 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, TNT is 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 objective of restricting competition within the EU. Article 82 prohibits any abuse of a dominant position within a substantial part of the EU that may affect trade between Member States. 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.

TNT is also subject to the competition rules laid down in the Agreement of the European Economic Area (EEA), 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.

Dutch competition law

The services TNT provides in the Netherlands, including the mandatory postal services, fall within the scope of the Dutch Competition Act. This 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 Dutch Competition Authority, which is commonly called by its Dutch acronym NMa.