

His practical experience and good sense helped to resolve serious process issues at a customer's warehouse.

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# REGULATORY

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# ENVIRONMENT

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## POSTAL REGULATION AND CONCESSION

### 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 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 new terminal dues system applies. Under the new system "Target" countries (previously "Industrialised Countries") will pay each other country-specific rates linked to domestic post charges. Over the next years the current percentage of the domestic 20 grammes tariff, 60%, will be increased gradually to 68% in 2009. "Transition" countries (previously "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.

Most European postal operators view the UPU target terminal dues system as inadequate for these 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. We did not enter into the REIMS II agreement because we felt that it did not contain a strong incentive/penalty system that would guarantee improvement of the quality of service. Instead, we concluded commercially oriented bilateral agreements with most of the European postal operators.

Most of the 10 countries who joined the EU on 1 May 2004 have entered into a REIMS East Agreement with the REIMS II parties. This agreement allows the new EU public postal operators to use a transitional period to get accustomed to terminal dues that are based on domestic tariffs. We decided to become a member of the REIMS East agreement as of 1 January 2005. In this way we avoid lengthy bilateral negotiations and create considerable goodwill that will support our position in future terminal dues negotiations. The financial effects of this decision are limited due to low volumes exchanged between Royal TPG Post B.V. and postal operators of the accession countries.

### EU postal regulation

The current EU Postal Directive 2002/39/EC, amending Directive 97/67/EC (EU Postal Directive) with regard to the further opening to competition of community postal services, 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 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 50 grammes per item of correspondence at a price of less than two and a half times the public tariff for an item of correspondence in the first weight step of the fastest category, i.e. items of correspondence weighing no more than 20 grammes. To the extent necessary to ensure the provision of universal service, outgoing cross-border mail and direct mail may continue to be reserved within the same weight and price limits.

The EU 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 31 December 2006.

### POSTAL REGULATION IN THE NETHERLANDS

Due to 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 Dutch Postal Act. The Dutch Postal Act requires TNT to perform the mandatory postal services in the Netherlands and it grants us exclusive rights to provide some of these services, 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 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 according to the EU Postal Directive.

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 Minister 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 United Kingdom and Germany, i.e. the condition of a level playing field). The vision foresees the possibility of an “emergency brake” procedure that allows for the date of the introduction of liberalisation to be shifted to a later stage should delayed factual liberalisation of the German and UK postal markets call for this,
- the intention to maintain the price of a stamp for consumers at €0.39 in 2004, 2005 and 2006, 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. Competitors and customers must be treated equally in terms of rates and conditions,
- there is a clearer distinction between general and sector specific competition monitoring. The 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, and
- 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 postal vision, as the officially adopted governmental policy, is the basis for the development of new postal legislation. Based on the postal vision, a new Dutch Postal Act was drafted in 2005. As part of the normal process of drafting an act, the Minister of Economic Affairs in December 2005 has sent this draft to the Counsel of State to advise on this. Further discussions in parliament will take place in 2006.

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 United Kingdom and Germany, where further liberalisation is also scheduled to take place in 2006 and 2007 respectively. In 2005, the Dutch government commissioned a study to investigate this issue. This study is expected to be repeated in 2006 to see if any changes in the market situation have taken place since the first study.

## 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 (100 grammes prior to 1 January 2006), which are conveyed against separately agreed rates, are part of the mandatory postal services. Mandatory postal services also cover rental of P.O. boxes.

We are not required 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 (100 grammes prior to 1 January 2006) and 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 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.

### 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.

According to the Dutch Postal Act, article 2d, we are obliged to give our competitors entrance to our 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 the negotiated results between parties.

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 nationwide 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 letters the day after the day of posting, not including Sundays and public holidays. We are required

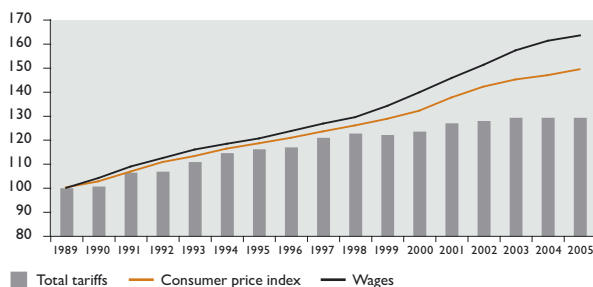
to maintain a network of service points (post offices and agents) for the access of the general public to the services. With respect to rates and conditions, we are required to set rates and associated conditions that are transparent, non-discriminatory and uniform. However, we may grant volume discounts 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 weighing 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 1989 is illustrated below:

**Development of tariffs, price index and wages**



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 of Economic Affairs on the future regulation of the postal sector. The Minister of Economic Affairs 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 €0.39 for the years 2004, 2005 and 2006. The prices for mandatory postal services to business customers that are covered by the price control system will increase in 2006, but the increase will be kept below the rate of wage inflation for 2004 and 2005.

### 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 (100 grammes prior to 1 January 2006) at a rate of less than two and a half times (three times prior to 1 January 2006) the standard single rate (€0.39) for the lowest weight class of 20 grammes,
- 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 or services where the letters are delivered at the rate of more than two and a half times the standard single rate. 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

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. 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 costs and revenues to the different types of services. This system complies with the accounting rules laid down in the EU Postal Directive and is approved by OPTA for the period ending 31 December 2006. The approval of OPTA was officially published in the "Staatscourant" on 14 July 2004. The full text of the description of the allocation system is published in Dutch by OPTA on their website, [www.opta.nl](http://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 related to the mandatory services. We are 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, 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. 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 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 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, the directive leaves to the European member states the possibility of postponing the application of the directive on postal services until 1 January 2009. The Netherlands has exercised this option. We will therefore not be subject to the directive in the Netherlands until 1 January 2009.

### **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 EU. Article 82 prohibits any abuse of a dominant position within a substantial part of the EU 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.

#### **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 Dutch Competition Authority.