

Master thesis International and European Labour Law

The Dutch approach towards working conditions for postal deliverers and mailmen in the liberalised postal market

Tilburg University

Name: K.C. Duynisveld

Anr: 259024

Examination committee: Prof.dr. A.T.J.M. Jacobs
Mr.dr. W.G.M. Plessen

November 2011

Preface

This thesis could not have been written without the support and help of many.

The following are warmly thanked:

Prof. dr. Jacobs, for the inspiring conversations and his coaching;

Mr. dr. Plessen, for taking part in the examination committee;

Frank van der Linden (Sandd), Andries Feijen (TNT), Paul Jekkers (BVPP), Egon Groen (FNV Bondgenoten), Sharon Gesthuizen (Socialist Party), Kees Verhoeven (D66), Paul van Straaten (VanStraatenPost), Hans-Jacob Schultz (Postkom), Esther Bares (UniGlobalUnion), Gabi Stouthart (Advokatenkollektief) and WPN Postverspreiders, for taking the time to inform me on their view of the postal market;

My friends, especially Annemarie Middelburg, for listening, understanding and cups of coffee;

My parents and brothers, for their support;

Bart, for being who he is.

Kim Duynisveld
Tilburg, 18 November 2011

Contents

Preface	2
List of abbreviations	6
Introduction	7
Chapter 1 Opening up the European postal market.....	10
Paragraph 1 European Postal Liberalisation	10
Paragraph 1.1 Green paper	10
Paragraph 1.2 Postal Directive 1997/67/EC.....	12
Paragraph 1.3 Directive 2002/39/EC.....	15
Paragraph 1.4 Directive 2008/6/EC.....	17
Paragraph 2 Dealing with postal issues in different countries.	19
Paragraph 2.1 Belgium	19
Paragraph 2.2 Germany.....	21
Paragraph 2.3 The Netherlands	23
Paragraph 2.4 New Zealand	25
Paragraph 2.5 Norway.....	26
Paragraph 2.6 Sweden	28
Paragraph 2.7 The United Kingdom	29
Chapter summary	30
Chapter 2 General overview of developments in the Dutch postal market.....	32
Paragraph 2.1 State enterprise for postal services	32
Paragraph 2.2 Autonomous status for the PTT.	33
Paragraph 2.3 The separation of PTT Post and PTT Telecom.....	36
Paragraph 2.4 Gradually opening the postal market	38
Paragraph 2.5 Full liberalisation of the postal market	39
Paragraph 2.5.1 Barriers to liberalisation.....	39
Paragraph 2.5.2 Consequences of liberalisation for TNT	42

Paragraph 2.6 CHEAP&GOOD! Did it get any better?.....	44
Chapter summary	45
Chapter 3 The consequences of different labour relations in the Dutch Postal Market.....	47
Paragraph 3.1 Used labour relations in the Dutch postal market	47
Paragraph 3.1.1 General information on labour relations	47
Paragraph 3.1.2 Reactions on the use of the contract for services	49
Paragraph 3.2 Defining the used labour relation.....	51
Paragraph 3.3 What are the consequences of working with a contract for services?.....	55
Paragraph 3.4 Minimum wage inquiry.....	57
Paragraph 3.5 Better conditions of employment for postal deliverers.....	60
Paragraph 3.5.1 Trading early liberalisation for better conditions of employment ...	60
Paragraph 3.5.2 Collective agreement and AMvB.....	61
Paragraph 3.6 The outcome of the collective agreement	62
Paragraph 3.6.1 Realised contracts of employment	63
Paragraph 3.6.2 The assumptions of March 2009	64
Paragraph 3.7 A deadlock in the negotiations.....	65
Paragraph 3.8 Ready, set, go?!.....	68
Chapter summary	70
Conclusion.....	72
Liberalisation of the European Postal market	72
Consequences of liberalisation for working conditions in the postal market	72
The situation in the Netherlands.....	74
The approach of the government.....	75
The approach of trade unions	77
The approach of postal companies	78
The future of the Dutch postal market	79
Final Conclusion	80

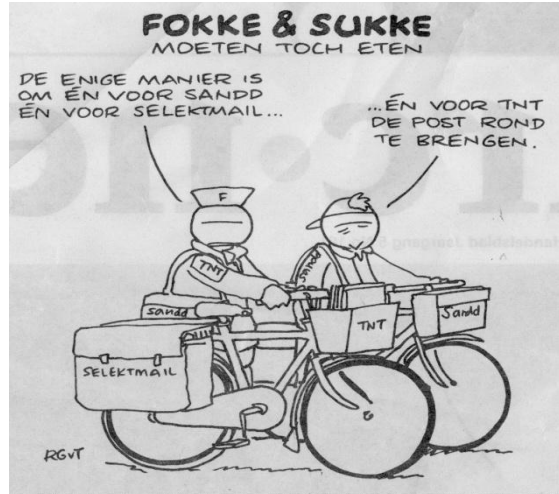
References	81
Books.....	81
Articles/studies	82
Legislation.....	83
Kamerstukken.....	84
European Union documents	84
Case-law	85
Websites	85
Interviews	86
Miscellaneous.....	86

List of abbreviations

BIPT	Belgian Institute for postal services and telecommunication
BV	<i>Besloten vennootschap</i> , a legal body which carries on an enterprise and of which the shares are non-transferable on the stock market
BVPP	<i>Bond van Personeel PTT-Nederland</i> , Dutch trade union
BW	<i>Burgerlijk Wetboek</i> , Dutch Civil Code
CAO	<i>Collectieve arbeidsovereenkomst</i> , Collective agreement
FNV	<i>Federatie Nederlandse Vakbeweging</i> , Dutch trade union
KPN	<i>Koninklijke PTT Nederland</i> , Royal PTT the Netherlands
NV	<i>Naamloze vennootschap</i> , Public limited company, a legal body which carries on an enterprise and of which the share are transferable on the stock market
PTT	<i>Staatsbedrijf der Posterijen, Telegrafie en Telefonie</i> , State Enterprise for Postal, Telegraph and Telephone Services
SEO	<i>Stichting Economisch Onderzoek</i> , Foundation for Economic Research
TNT	Thomas Nationwide Transport
TPG	TNT Post Group
VAT	Value-added tax

Introduction

On 29 October 2010 a 'Fokke & Sukke' cartoon appeared in the Dutch newspaper NRC Handelsblad:¹



The cartoon nicely expresses the situation in the Dutch postal market. At the end of the 1980's the incumbent postal operator PTT (later TNT and since this year PostNL) had been privatised and was no longer a state enterprise. Then, step by step, the postal market was opened up and the government allowed other postal companies (for example Sandd and Selektmail) to enter that market.²

As a result of new technologies and the competition that came with liberalisation, the incumbent postal operator started to reorganise its workforce. This drew a lot of attention from the media as many of the mailmen would become compulsory redundant due to the reorganisation plans. Plans of TNT to decrease the wages in order to secure the jobs for a period of three years were not accepted by the trade unions. Mailmen who had worked for over 40 years for the postal company were laid off and they did not feel likely to find another (as well paid) job.

At the same time it appeared that the working conditions at the new postal companies were poor. The deliverers did not work with a contract of employment (the most common labour relation in the Netherlands), but with a contract for services.³ In 2008, an investigation of the State Secretary of Economic Affairs and the State Secretary of Social Affairs showed that a significant number of deliverers did not receive the minimum wage.

¹ Reid, Geleïnse & Tol, WWW: <<http://www.foksuk.nl>> Translation: "Fokke and Sukke must eat nevertheless. The only way is to deliver the mail for as well Sandd, Selektmail as TNT."

² On 8 April 2011 Sandd took over SelektMail.

³ An 'overeenkomst van opdracht'.

The bogeyman of these problems arising from liberalisation seems to be the European Union. As the European Union had set a date for full liberalisation of the European postal market, the additional hazard of that policy might be poor working conditions in the postal sector at a national level.

The **aim of this study** is therefore to examine the effects on working conditions in the postal market of the Netherlands since liberalisation. The approach of the European Union and the Dutch government, trade unions and postal companies towards employment problems in the postal market is thereby essential. In consequence, the question arises if from a legal perspective the Dutch approach has been adequate and proper and effective.

The **field of study** therefore will be the postal market of the European Union and specifically the Dutch postal market. This study is limited to the working conditions of postal deliverers.⁴ The study will for example not focus upon the economic consequences of liberalisation or the social policy of the European Union.

The **main research question** of this thesis is the following:

'To what extent was the Dutch approach towards liberalisation of the postal market an adequate, proper and effective approach with regard to working conditions for postal deliverers and mailmen, while taking into account the demands of the European Union?'

This main question will be unfolded in six sub-questions, being the following: (1) Why and how did the European Union decide to liberalise the postal market? (2) How did the European Union consider employment in the postal market while liberalising? (3) How have states dealt with employment problems that came with liberalisation? (4) What was the approach of the government, trade unions and postal companies in the Netherlands towards liberalisation of the postal market? (5) How did the government, trade unions and postal companies in the Netherlands deal with employment problems that came with liberalisation? (6) Is the European approach towards liberalisation an obstacle for an adequate, proper and effective approach with regard to working conditions for postal deliverers and mailmen in the Netherlands?

⁴ The term 'postal deliver' will be used for deliverers of mail with a contract for services at the new postal companies and for part-time deliverers of mail at PostNL with a contract of employment. The term 'mailman' will be used for the full-time deliverers of PostNL.

In order to find an answer to the above mentioned questions, the following **research method** has been used. Legal publications on (labour) law and publications on privatisation and liberalisation of the postal market have been consulted. Also, articles and studies that have been published by the press, independent organisations, trade unions and postal companies and documentation of the European Union have formed part of the study. Legislation of the European Union and the Netherlands, working papers of the European Union, various Dutch parliamentary papers and court decisions have been looked at as well.

However, there is a lack of independent research on working conditions in the postal market. Available data gives an overview of the general situation after liberalisation, but not specifically for the working conditions of postal deliverers and mailmen. Therefore, in order to draw a complete picture of the postal market, interviews were taken. In the end, it turned out those interviews were of crucial importance. Interviews have been held with the following persons: Frank van der Linden (new entrant Sandd), Andries Feijen (incumbent postal operator TNT Post), WPN Postverspreiders, Paul van Straaten (new entrant VanStraatenPost), Paul Jekkers (postal trade union BVPP), Egon Groen (trade union FNV Bondgenoten), Hans-Jacob Schultz (Norwegian trade union Postkom), Esther Bares (UniGlobalUnion), Sharon Gesthuizen (Member of Parliament Socialist Party) and Kees Verhoeven (Member of Parliament D66).

The **structure of the study** is as follows. The first chapter of this thesis will describe the changes that were made in the European Union in order to achieve full liberalisation of the postal market. The chapter is divided into two paragraphs: The first paragraph will give an overview of the adopted Directives and the second paragraph will describe the approach towards liberalisation of five Member States of the European Union and Norway and New Zealand. The second chapter will describe the developments in the Dutch postal market from privatisation until the situation after the full liberalisation. The third chapter will in the first place give an explanation of the differences in employment relations in the Dutch postal market and the consequences of those differences for postal deliverers. In the second place, the approach of government, trade unions and postal companies in the Netherlands towards liberalisation of the postal market will be discussed in the third chapter. The fourth chapter will be a concluding chapter, where the answer to the main research question will be given.

Chapter 1 Opening up the European postal market

In this chapter the changes will be described that have taken place in the European postal market since 1992. The chapter is divided into two paragraphs: the first paragraph will give an overview of the legislative developments in the European Union. The second paragraph will specifically discuss the approach towards liberalisation in five European Union Member States, in Norway (which is part of the European Economic Area), and in New Zealand (a country that is not directly linked to the European Union, and opened up its postal market already in 1998).

Paragraph 1 European Postal Liberalisation

In this paragraph, an overview will be given of the developments in the legislation of the European Union concerning the postal market, starting in 1992 when the commission of the European Communities issued a Green paper on the development of a single market for postal services.

Paragraph 1.1 Green paper

The commission of the European Communities issued a Green paper on the development of the single market for postal services in 1992.⁵ The Green paper stated that there were five areas of concern for the Community:

1. The first concern was a lack of harmonisation. The operational differences between Member States could lead to significant problems when mail goes through several Member States. Also, the universal service was defined in a different manner in the Member States and as a result, customers could not “confidently post similar items in different Member States”.
2. The second concern, were the single market implications. There was a great difference between the performances of the universal service in the Member States. In some states it was normal to have a target of 90% for next day delivery, while others could only reach 16%. This could contribute to distortions in sectors which are reliant on the postal sector.

⁵ COM (91) 476

3. The third concern was the cross-border service performance. The target for cross-border delivery of mail was three working days, but only in 40% of the deliveries that target was reached. The green paper stated that “effective cross-border communication was essential for the commercial and social life of the Community”, and the unreliability in the service was a great concern.
4. The fourth concern, were the divergences in the postal sector, as they did not contribute to the Community's objective to ensure its own cohesion.
5. The fifth and final concern, were market distortions in the postal sector. The granting of exclusive rights should therefore not be larger than to ensure the universal service.⁶

Chapter 6 of the Green paper gives attention to social aspects of the postal sector. It firstly takes the perspective of customers: for instance the social importance of postal services for customers in remote areas. It secondly takes the perspective of postal operators and their employees. The Green paper stated that the employees in the postal sector represented 1% of the Community's total workforce. Furthermore, the sector is highly labour intensive and therefore approximately 70% of the total costs of postal operators are payroll costs.

The Green paper discusses the employment conditions at public operators, where the wages tended to be above industry average and full-time employment with protection of jobs was customary. The employment conditions at private operators tended to be at the lowest level of employee protection, with part-time employment of unskilled staff with a high turnover. The Green paper expected that the employment conditions at private and public operators two would move closer together.

The Green paper expected that postal volumes would increase and that technical changes would partially take over the work of employees. However, the sector would remain highly labour-intensive and as a consequence of the increasing postal volume, the total employment demand would remain stable. If volumes would not increase, new skills of employees would be necessary due to technical changes. As the Green paper anticipated that postal operators would likely prefer to retain the existing staff and train them, it was expected that even then

⁶ COM (91) 476, p. 3 - 4

total employment would remain stable. The Green paper does not present specific options regarding employment aspects for the implication of the Community's policy.⁷

The Green paper set three objectives for the Community's postal sector, which starts with a Community definition of the universal postal service, and to ensure the provision of the universal service throughout the Community, and to have free competition in the largest possible part of the sector. The second objective concerns common obligations for postal operators within the community. The third objective is to take harmonisation measures in order to achieve Community cohesion.⁸ The Green paper does not give any options with regard to employment aspects when the Member States try to reach these objectives.

After the Green paper, the Council of the European Union accepted the Council Resolution of 7 February 1994 on the development of Community postal services. The resolution states several objectives, one of them being the following: when the sector is regulated, "the interests of postal sector employees as well as the contribution of the postal sector to economic cultural and social development in the community" will have to be taken into account.⁹

In order to reach the three objectives set out by the Green paper, the European Community has three formal legally binding choices for the development of Community policy: regulations, directives and decisions.¹⁰ For the liberalisation of the postal market the European Community chose to adopt directives.

Paragraph 1.2 Postal Directive 1997/67/EC

On 15 December 1997, the European Parliament and the Council of the European Union adopted the 'Directive on common rules for the development of the internal market of Community postal services and the improvement of quality of service'. The aim of the Directive was to establish a single postal market. This must be seen in the light of article 7a of

⁷ COM (91) 476, p. 145 - 159

⁸ Ibid., p. 239

⁹ Council resolution 94/C 48/02, C 048, 16/02/1994 P. 0003 - 0004

¹⁰ A regulation has general application, is binding in its entirety and directly applicable in all Member States. A directive is binding, as to the result to be achieved, upon the Member States to which it is addressed but it leaves the choice of form and methods to the national authorities. This gives the Community a necessary flexibility, as due to the substantially different legal systems of the Member States it is often not achievable to adopt a (directly applicable and therefore much discussed) regulation. A decision is binding in its entirety upon those to whom it is addressed.

Craig & De Búrca 2008, p. 82-85 and article 288 of the Treaty on the functioning of the European Union

the Treaty establishing the European Community, which envisaged “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured”.¹¹ The reason given in recital 2 for regulating the postal services on a European level was that the quality of the performance of the universal postal service was very unequal amongst Member States. At the same time, the performance of the cross-border postal service was unsatisfactory. The Directive accentuates that postal services are essential for communication and trade. Therefore, the establishment of an internal market in the postal sector was “of proven importance for economic and social cohesion of the Community”.¹²

Chapter 2 of the Directive handles the universal service. Article 3 states that the “Member States shall ensure that users can enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.” Universal service provider(s) must guarantee, and not less than five days a week (except in rare circumstances) one clearance, and one delivery to the home or premises of every natural or legal person or to appropriate installations.

Furthermore, the Directive obliges Member States to ensure minimum facilities that have to be provided for by the universal service. These facilities consist of the clearance, sorting, transport and distribution of postal items and postal packages.¹³ A postal item is defined by the Directive as “an item addressed in the final form in which it is to be carried by the universal service provider.” Examples are items of correspondence, but as well books, catalogues, newspapers and periodicals. Postal packages also fall under the scope of a postal item, but contain merchandise with or without commercial value.¹⁴

The Directive limits the handling of aforementioned postal items and packages. The universal service must ensure the handling of postal items up to 2 kilograms and the handling of postal packages up to 10 kilograms. This weight limit could be increased by the national regulatory authorities for packages not exceeding 20 kilograms.¹⁵

The Directive states that each Member State may reserve the clearance, sorting, transport and delivery of items of domestic correspondence weighing less than 350 grams and with a price less than five times the public tariff for an item of correspondence for the universal service

¹¹ Directive 97/67/EC, Recital 1

¹² Ibid., Recital 2

¹³ Ibid., Art. 3 sub 4

¹⁴ Ibid., Art. 2 sub 6

¹⁵ Ibid., Art. 3 sub 4 and 5

provider(s).¹⁶ Items of correspondence are defined as “communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals shall not be regarded as items of correspondence.”¹⁷ However, cross-border mail and direct mail (communication consisting solely of advertising, marketing or publicity material and comprising an identical message except for the addressee's name) may also be reserved within the price and weight limits as mentioned above.¹⁸

The Directive also pays attention to further liberalisation of the postal market. It obliges the European Parliament and the Council to take into account economic, social and technological developments when deciding on the completion of the internal market.¹⁹ The Directive sets January 2000 as date for the adoption of a second Postal Directive, but by April 1999 the European Parliament decided that this deadline no longer applied as the Directive still had to be implemented into national law in a great number of Member States.²⁰

Article 23 of the Directive states that the Commission had to present a report to the European Parliament and the Council on the application of the Directive, three years after the date of its entry into force. The report had to include information on developments in the sector, and particularly economic, social, employment and technological aspects. The first report from the Commission was delivered on 25 November 2002. Even though at this moment in time Directive 2002/39/EC was already adopted, it had not yet come into effect in the Member States, and therefore the report only covers Directive 97/67/EC.²¹

The report mentioned that 1.7 million jobs are employed by postal operators and that more than 5 million jobs were dependent on, closely related to, or induced by the postal sector in total (for example jobs in distance selling). The report showed that between 1995 and 2002 employment in the European postal sector decreased by -1.13% in total. The main positive employment driver was an increased demand for postal services, next to market opening and the development of new services. Increased automation and business development strategies

¹⁶ Directive 97/67/EC, Art. 7 sub 1

¹⁷ Ibid., Art. 2 sub 7

¹⁸ Ibid., Art. 7 sub 2

¹⁹ Ibid., Art. 7 sub 3

²⁰ Official Journal, C 104, 14 April 1999, P. 0134

²¹ COM (2002) 632, p.2

constituted negative employment drivers. However, the report predicted that postal employment would grow.²²

The report also showed that the quality of services had substantially improved. In 1996 only 69.1% of Community cross-border mail was delivered within three days after deposit. In 2001 this percentage ameliorated up to 92.3 %.²³ The report indicates that technological changes affect the postal market in two ways: traditional mail is substituted, but for instance sorting automation provides opportunities.²⁴

Paragraph 1.3 Directive 2002/39/EC

The Economic and Social Committee issued an opinion on the ‘Proposal for a European Parliament and Council Directive amending Directive 97/67/EC with regard to the further opening to competition of Community postal services’ on 20 April 2001. The opinion emphasised on the belief of the Committee that liberalisation must be gradual and controlled. It also attended to postal service employment: a reduction of about 8.4% of employment in the postal sector in total was estimated, independent of further liberalisation. The Committee believed that the introduction of competition was likely to have less impact on employment compared to the other drivers of change in the sector, being: customer demand, electronic substitution, organisational change and automation/new technologies.²⁵

The Committee concluded that liberalisation of the postal services had to proceed cautiously. Consequently, they advised the Commission not to liberalise too swiftly without conducting a study “on the implications of the limits for universal service and its quality, in order to objectively assess their social and economic impact, e.g. on employment and cohesion, prior to any new measures being taken.”²⁶ The conclusion of the opinion of the Economic and Social Committee highlights four aspects that have to be taken into account when striving for a Single Market, one of them being “employment considerations, in general, and for postal workers in particular”.²⁷

²² COM (2002) 632, p. 36-38

²³ Ibid., p. 4

²⁴ Ibid., p. 6

²⁵ OJ C 116, 20.4.2001, p. 99, para. 4.3.2 and 4.3.3

²⁶ Ibid., para. 3.3.2

²⁷ Ibid., para. 6.1

On 10 June 2002, Directive 2002/39/EC (also: the second Postal Directive) was adopted by the European Parliament and the Council of the European Union and it amended Directive 97/67/EC with regard to the further opening to competition of Community postal services. The Directive altered the weight limits of items that were allowed to be reserved to the universal service: from 1 January 2003 the weight limit would be 100 grams, and from 1 January 2006 the weight limit would be 50 grams.

The Directive mentions in recital 7 that the European Council had set out two decisions in Lisbon in March 2000, which applied to postal services. In the first place to set out a strategy for the removal of barriers to postal sectors. In the second place “to speed up liberalisation in areas such as postal services in order to achieve a fully operational market in such services”. Recital 8 states that the European Council “considered it essential that, in the framework of the internal market, and all the knowledge-based economy, full account is taken of the Treaty provisions relating to Services of General Economic Interest and to the undertakings entrusted with operating such services”.

As required by Directive 97/67/EC and Directive 2002/39/EC, the Commission issued a second report in 2005. The report stated that the reform of the postal sector was on track, but there were still some problems such as regulatory asymmetries like different tax liabilities for incumbents and new entrants to the postal market. The report unfortunately does not mention employment aspects, but only economic and quality of service aspects. The commission staff working paper, which is summarised by the report, did assess the employment aspects in the sector. However, the working paper is not publicly available and, as pointed out above, the results concerning employment aspects are unfortunately not in the main report.²⁸

A third report was issued by the Commission in 2006. The report emphasises on the importance of effective and high quality Services of General Economic Interest, which also covers postal services. The report stated that postal reform was advancing well: quality of services, customer orientation, business efficiency and separation of regulators from operators had ameliorated. Furthermore, monopolies had been reduced, competition had grown, and universal service providers had restructured and were able to adapt successfully to regulatory and market developments.²⁹

²⁸ COM (2005) 102

²⁹ COM (2006) 595

Paragraph 1.4 Directive 2008/6/EC

The fourth Commission report was issued in 2008, after the adoption of Directive 2008/6/EC. However, the report does not yet cover the application of this Directive completely. The report stated that all Member States had implemented the second Postal Directive. Also, four countries had already liberalised their postal markets, being: Germany, Finland, Sweden, and the United Kingdom. The Netherlands slowed down the liberalisation process. A legitimate justification from article 7 of the Directive lacked, as the article only allows reservation of certain services to the universal service provider when it is necessary to ensure the maintenance of the universal service. The report also stated that a distortive effect on competition of VAT exemptions remained and that in some countries competitor postal operators have no access to letterboxes. The procedures to obtain authorisation or a license and related conditions differed from somewhat restrictive to prohibitive to competition.³⁰ The report called on the responsibility of Member States, the Commission and all stakeholders to remove existing legal and strategic market barriers.³¹

Directive 2008/6/EC was adopted on 20 February 2008. The Directive amends the first two Postal Directives³² in order to fully accomplish the internal market of community postal services. It replaces article 7, which allowed Member States to reserve a certain area of the postal market, with a new article 7, which states that “Member States shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal services.” However, authorisation procedures for services which fall within the scope of universal services are allowed to be set into place under certain conditions. The Member States had to comply with the Directive by 31 December 2010 at the latest, but Czech Republic, Greece, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Poland, Romania and Slovakia are allowed to postpone implementation of the Directive until 31 December 2012.³³

Recital 16 of Directive 2008/6/EC states that complete market opening “will contribute to maintaining sustainable and quality employment within universal service providers as well as facilitate the creation of new jobs in other operators, new entrants and associated economic

³⁰ Member States are allowed to regulate the provision of postal services by authorisation procedures. The authorisation can be regulated as a general authorisation (for instance registration) or individual licences. Directive 97/67/EC, recital 22 and art. 2 (14)

³¹ COM (2008) 884

³² Directive 97/67/EC and Directive 2002/39/EC

³³ Directive 2008/6/EC, art. 2 and 3

sectors”. It also highlights that the Directive “is without prejudice to the competence of Member States to regulate employment conditions in the postal services sector, which should not, however, lead to unfair competition.” It also stresses that social considerations should be taken into account when the opening of the postal market is prepared.

Additionally, recital 53 of the third postal Directive states that “the Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law, which is in conformity with Community law.” Nonetheless, it allows Member States to reflect working conditions in their authorisation procedures if necessary.

In 2009 ITA Consult and WIK Consult formulated a report for the Commission. The report assessed the market trends in the postal market during the reform process between 1997 and 2009. The researchers estimated that the overall EU postal sector earned total revenues 94 billion euro in 2007: approximately 0.7% of the gross domestic product (GDP) of all 27 EU Member States together. However, the EU domestic letter post volumes grew only 0.4% a year between 1998 and 2007. The report stated that basic postal tariffs are affordable for consumers and that business customers had benefited from price discounts. The quality and reliability of postal services had substantially improved: in two-thirds of the national markets more than 90% of the fastest standard category of letters was delivered the working day after the deposit.³⁴ In 1992, the Green paper stated that in some Member States the performance was more or less the acceptable 90 %, but that there were also Member States with only 16% of the letters being delivered the working day after the deposit, while other were in between the two.³⁵ Also in cross-border postal services a substantial improvement can be noticed: in 2008, 94.6% was delivered within three days after the deposit in contrast with the 69.1% in 1996 and the mere 40% in 1992.³⁶

³⁴ WIK Consult, August 2009, p. XI-XXIV

³⁵ COM (91) 476, p. 2

³⁶ WIK Consult, August 2009, p. XXIV and COM (2002) 632, p. 4. The percentage of 2008 also includes the new EU Member States, the original 15 EU Member States achieved a percentage of 96.3 %.

Paragraph 2 Dealing with postal issues in different countries.

In this paragraph, the approach towards liberalisation in seven countries will be reviewed in order to provide a quick overview of possible approaches existing in the world. Extensive research with basic facts on the postal market is available for a broad overview of all the Member States of the European Union.³⁷ However, due to the limited scope of this thesis, a selection has been made of the changes in employment in the postal market of countries that are interesting to the Dutch Postal market.

Of those seven countries, five are Member States of the European Union. An overview of Germany, Sweden, the United Kingdom and the Netherlands will be given, because these countries liberalised their markets more quickly than required by the Postal Directives. Furthermore, interesting to see is that the Dutch national postal operator TNT has been fully privatised since 1989. The German national postal operator Deutsche Post and Sweden's Posten AB have been partially privatised. The national postal operator Royal Mail of the United Kingdom is in the possession of the government.³⁸ The fifth Member State of the European Union that will be discussed is Belgium where the postal market was liberalised on January 2011. Belgium has a strict entrance policy for new postal operators. Furthermore, Norway will be discussed as it is part of the European Economic Area and has implemented the first two Postal Directives, but has chosen not to implement the third. Finally, New Zealand will also be discussed as it has also liberalised its postal market, without a link to the European Union.

Paragraph 2.1 Belgium

The postal market

The incumbent postal operator of Belgium is called Bpost (formerly De Post/La Poste), a public limited company since 2000. The state owns 50% +1 share. The Belgian postal market was liberalised on 1 January 2011 and there is no longer a reserved area³⁹. Basic letter post, bulk letters, direct mail, periodicals, non-priority letter post, basic parcel post and bulk parcels

³⁷ Research by WIK Consult (Evolution of the European postal market since 1997) and by Copenhagen economics (Main developments in the postal sector, 2008-2010)

³⁸ WIK Consult, August 2009, p. XIII- XIV

³⁹ With the reserved area is meant that the deliverance of correspondence up to a certain weight could be reserved to the universal service provider to ensure the maintenance of the universal service. See for instance article 7 of Directive 97/67/EC

are defined as universal service. Bpost is under the universal service obligation until 31 December 2018.⁴⁰ All services under the universal service obligation are exempt from VAT.⁴¹ Postal operators wanting to provide basic letter post up to 2 kg are subject to an individual licence. After authorisation, the licensee is, among other things, obliged to distribute twice a week after two years of activity and also must reach a nationwide coverage of 80% after five years of activity.⁴²

Quality of services & customer appreciation

The deliverance frequency in Belgium is five days per week. The performance of next day delivery has improved significantly. In 1998 the target was set at 90%, and actually reached only 74%.⁴³ In 2010, the target was set at 95% and reached 95.3%.⁴⁴ In 2009, the target for the transit time of cross border mail (deposit plus three days for delivery) was set at 97%, but actually reached 98.7%.⁴⁵ Public postal tariffs however also increased with almost 30% in total since 2002. The customer satisfaction level of consumers increased, but the satisfaction level of business customers needed to increase.⁴⁶

Employment

Bpost employed 10.417 fulltime equivalent employees in 2009.⁴⁷ The annual survey on job satisfaction amongst employees of Bpost shows that the motivation of their employees was 81% in 2010, in comparison with less than 70% in 2007.⁴⁸ Bpost expects that the total postal volume will decrease in the coming years, but stresses there will be no compulsory redundancies amongst employees.⁴⁹

Furthermore, the Belgian postal act obliges postal operators with a licence to ensure the regularity and reliability of the provision of the postal services. Amongst others, it states that the postal operator must employ enough persons in order to be able to comply with the

⁴⁰ Website BIPT, via: WWW <http://www.bipt.be>, last accessed 17 November 2011

⁴¹ Copenhagen economics, *Part B: country fiches appendix*, 2010, p. 18

⁴² Website BIPT, via: WWW <http://www.bipt.be>, last accessed 17 November 2011

⁴³ WIK Consult, *Annex Country Fiches*, August 2009, p. 14-15

⁴⁴ Website Bpost, via: WWW <http://www.bpost2.be/blog/nl/2011/04/05/jaarcijfers-bpost-2010/>, last accessed 17 November 2011

⁴⁵ Copenhagen economics, *Part B: country fiches appendix*, 2010, p. 27

⁴⁶ WIK Consult, *Annex Country Fiches*, August 2009, p. 14-15

⁴⁷ Copenhagen economics, *Part B: country fiches appendix*, 2010, p. 14

⁴⁸ Website Bpost, via WWW: <http://www.bpost2.be/blog/nl/2011/04/05/jaarcijfers-bpost-2010/>, last accessed 17 November 2011

⁴⁹ Website Bpost, via: WWW <http://www.depostlaposte.be/blog/nl/>, last accessed 17 November 2011

obligations accompanying the licence.⁵⁰ This is done to prevent wage dumping of new postal operators, as they are in this way obliged to offer the postmen contracts of employment and are therefore subject to social benefits.

Paragraph 2.2 Germany

The postal market

The German incumbent postal operator is Deutsche Post DHL, with 166.120 employees in the letter market in 2008. The German state has an interest of 30.5% of the shares. The German postal market was fully opened up on 31 December 2007 and the main competitor for Deutsche Post is TNT. The PIN Group also was a large competitor until 2008, but the company no longer exists.⁵¹ The market share of Deutsche Post in the domestic letter segment is 91.6%.⁵²

The universal services are mostly exempted from VAT. There is no reserved area, and postal operators are required to obtain an individual licence for the deliverance of letters up to one kilogram. From that weight limit on, postal services are subject to general authorisation: this being a notification.⁵³ Interesting to see is that there is no postal operator placed under the universal service obligation, as this obligation ended for Deutsche Post when the market was fully opened up.⁵⁴ All postal operators provide the universal service, and in the case where a universal service is not provided for in an appropriate or adequate manner, the national regulatory authority can oblige a market-dominating licence holder to provide that service.⁵⁵

Quality of services & customer appreciation

The deliverance frequency in Germany is six days a week. The performance of next day delivery in 1998 was targeted at 80%, and actually reached 94.4%. In 2007, the target remained 80%, but reached 95.6%.⁵⁶ The target for the transit time of cross border mail

⁵⁰ Website BIPT, via: WWW <http://www.bipt.be/nl/34/ShowContent/1598/Regulering/Vergunning.aspx>, last accessed 17 November 2011

⁵¹ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 88-98

⁵² WIK Consult, *Annex Country Fiches*, August 2009 p. 50

⁵³ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 88-98

⁵⁴ WIK Consult, *Annex Country Fiches*, August 2009 p. 21

⁵⁵ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 88

⁵⁶ WIK Consult, *Annex Country Fiches*, August 2009, p. 52-53

(deposit plus three days for delivery) was set at 85% in 2009, but actually reached 96 %.⁵⁷ The basic tariff has declined for letter post, but heavier correspondence is relatively expensive. The satisfaction level of consumers is 91%, and there is an increasing use of postal services. There is a very high satisfaction level amongst business customers: 91% is very or extremely satisfied with the service of Deutsche Post.⁵⁸

Employment

The amount of full-time jobs at Deutsche Post dropped from 114 343 in 1999 to 92 913 in 2006 and the amount of part-time jobs dropped from a 62 507 to 50 116. The competitors created 48000 jobs up to 2006. Nevertheless, 27 928 persons were employed by the competitors in a so-called mini/marginal job. These employees are not subject to social security contributions. The employees at the main competitors earned on average 40% less than their colleagues at Deutsche Post.⁵⁹ In comparison with other employees in similar sectors, the employees at the competitors earned an average wage.⁶⁰

Deutsche Post started a new employer's organisation with its sub-contractors, and concluded a collective agreement with trade union Ver.di. The collective agreement included minimum hourly wages between 8 and 9.80 Euro. The competitors also concluded a collective agreement with a new trade union, which included the alternative minimum wage between 6.50 and 7.50 Euro.⁶¹

German legislation makes it possible to conclude a collective agreement and make it applicable to the whole sector if this is beneficiary for the majority of employees in the sector. The German government declared the collective agreement between Deutsche Post and Ver.di generally binding to the sector before complete market opening, and thus forcing the competitors to pay higher wages. The competitors decided to file a complaint at the Berlin Administrative Court, which decided that the minimum hourly wage was invalid. The German government brought the case in appeal at the Federal Administrative Court, which ruled in January 2010 that the rights of the competitors had been infringed as they were not heard during the procedure that had led to adopting the minimum wage, and therefore were deprived

⁵⁷ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 98

⁵⁸ WIK Consult, *Annex Country Fiches*, August 2009, p. 52-53

⁵⁹ UNI global union, *What has postal liberalisation delivered? The case of Germany*, August 2009 via: WWW <http://www.uniglobalunion.org/Apps/UNINews.nsf/Germany%20case%20study.pdf> , last accessed 17 November 2011

⁶⁰ Copenhagen economics, *Final report*, November 2010, p.173

⁶¹ Copenhagen economics, *Final report*, November 2010, p. 173- 174

of the right to participate in the social dialogue. Consequently, the newcomers were no longer under the obligation to pay the minimum wages set by the collective agreement between Deutsche Post and Ver.di.⁶²

Paragraph 2.3 The Netherlands

The postal market⁶³

The Dutch incumbent postal operator is PostNL (formerly TNT), a public limited company since 1989. The state no longer owns shares in the company since 21 November 2006. The full opening of the market was already envisaged for 2008. However, the government decided to slow down liberalisation because of two reasons. In the first place, because of a discussion about the labour conditions at the main competitors of TNT. In the second place, because there was no level playing field for Dutch postal operators in the rest of Europe (the above mentioned adoption of a minimum hourly wage specific for the German postal market and VAT exemptions in the United Kingdom and Germany for the incumbent). Nevertheless, the slowing down of liberalisation was only allowed by article 7 of the Postal Directives in case the provision of the universal service could not be ensured.⁶⁴ The postal market of the Netherlands was liberalised as of April 2009. PostNL is the universal service provider. Its main competitors were Sandd and SelektMail (owned by Deutsche Post) and there are more or less 25 other smaller postal operators active. In April 2011, Sandd received permission of the National Competition Authority for the acquisition of SelektMail. There is no reserved area, and only single letters are exempted from VAT. Postal operators do not have to apply for an individual licence, but are all obliged to register.⁶⁵

Quality of services & customer appreciation

The deliverance frequency by the universal service provider in the Netherlands is six days a week. There was not yet a target for next day delivery in 1998, but 94% of the postal items was delivered the day after sending it. The performance of next day delivery in 2008 was

⁶² Copenhagen economics, *Final report*, November 2010, p. 173- 174

⁶³ The postal market of the Netherlands will also be described extensive in Chapter 2 and 3.

⁶⁴ COM (2008) 884, 22 December 2008, p. 5

⁶⁵ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 182

targeted at 95% and also reached this target. The target for the transit time of cross border mail (deposit plus three days for delivery) was set at 85% in 2009, but actually reached 96.1%.⁶⁶ The customer satisfaction level of consumers increased. However, business customers were not very satisfied. Public tariffs have been fairly stable.⁶⁷

Employment

The wages of PostNL were before liberalisation much higher than those in other sectors with the same skill level.⁶⁸ PostNL has started to restructure their organisation in order to remain profitable by, amongst others, simplifying the tasks for postmen. Since 2002, PostNL has only recruited part-time deliverers and no fulltime working mailmen. Due to the restructuring, 11 000 jobs would disappear. As the natural labour turnover of 6 600 employees was not sufficient, the company decided to discharge 4 400 employees. After industrial action of the trade unions in November 2010, the amount of compulsory discharges was lowered to 2 300 employees.⁶⁹

The competitors of PostNL use a much discussed form of labour relation, a contract for services, with their postal deliverers. They are, very roughly speaking, being paid per delivered postal item and do not receive other benefits such as holiday or illness allowances nor dismissal protection. A governmental investigation showed that the deliverers often did not earn the minimum wage.⁷⁰ Albeit the contract for services for deliverers has been much discussed, it is a legitimate form of labour contract.⁷¹

The trade unions concluded a collective bargaining agreement with the new postal operators in order to achieve a staff that consisted of 80% employees with a contract of employment and a flexible staff of 20 % that have a contract for services by October 2012. The trade unions asked the government to ensure the enforcement of the establishment of the aforementioned percentage of contracts of employment, which they did by adopting a temporary order. As the postal operators could not fulfil the requirements of the collective

⁶⁶ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 188

⁶⁷ WIK Consult, *Annex Country Fiches*, August 2009, p. 105-106

⁶⁸ Copenhagen economics, *Wages and employment conditions in liberalised postal markets: report for the Norwegian Ministry of transport and communications*, August 2010, p. 23

⁶⁹ Interview Andries Feijen, public advisor TNT, 2 November 2010 and WWW:

http://www.bvpp.nl/index.php?option=com_content&view=article&id=189:nieuwsflits-vakbonden-sluiten-principeakkoord-met-tnt&catid=34:tnt&Itemid=82, last accessed 12 November 2011

⁷⁰ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 79. Unfortunately, for confidential reasons, the report is not available for the public

⁷¹ See chapter 3, paragraph 2

bargaining, the trade unions terminated the collective agreement. The government did not stick to the AMvB. New negotiations started in January 2011, a new collective agreement was agreed upon in April 2011 and was signed in September 2011.

Paragraph 2.4 New Zealand

The postal market

The New Zealand postal market is fully liberalised since 1998. The incumbent postal operator is state enterprise New Zealand Post Ltd. The organisation of New Zealand Post was restructured in 1987, in order to create a state-owned company that would be managed as a commercial company. Therefore, the company was already before liberalisation highly efficient. New Zealand Post has concluded a “Deed of Understanding” with the government, which contains requirements for the universal service provision, and it also forbids extra fees for recipients in case of rural delivery.⁷² Postal services are not exempt from VAT. New Zealand Post has a market share of approximately 80% of the total postal market; the other 25 postal operators have a market share of 20%.⁷³ Nonetheless, only two other postal operators have their own delivery network.⁷⁴

Quality of services

The deliverance frequency by New Zealand Post is six days a week, apart from exceptions allowed by the “Deed of Understanding”. The deliverance of postal items is not bound by transit time targets. Nevertheless, New Zealand Post sets itself internal targets (deliverance after 2/3 workdays) which have been met for 95% of the standard letters. Tariffs have remained more or less stable.⁷⁵

Employment

New Zealand Post cut off 43% of full-time equivalents from the restructuring in 1987 up to liberalisation in 1998. However, the wages are still 15 to 38 percent higher than they are in

⁷² Copenhagen economics, *Wages and employment conditions in liberalised postal markets: report for the Norwegian Ministry of transport and communications*, August 2010, p. 26-29

⁷³ WIK Consult, *Annex Country Fiches*, August 2009, p. 107-110

⁷⁴ Copenhagen economics, *Wages and employment conditions in liberalised postal markets: report for the Norwegian Ministry of transport and communications*, August 2010, p. 26-29

⁷⁵ WIK Consult, *Annex Country Fiches*, August 2009, p. 107-110

similar skill level occupations, and as a result of the former civil servants status of the employees fringe benefits have been favourable. Postal deliverers at the main competitor of New Zealand Post, DX mail, only earn the statutory minimum wage and pension benefits and other fringe benefits are at a minimum. DX Mail has stated that they pay wages above the statutory minimum wage, but has not supported this statement with documents.⁷⁶

Paragraph 2.5 Norway

The postal market

Norway is not a member state of the European Union. Norway does take part in the Agreement on the European Economic Area (EEA), which results in the possibility to participate in European Union programmes. The country has no EU-voting rights.⁷⁷ Norway has implemented the first and second Postal Directive, and as a result has opened its postal market up to the delivery of letters above 50 grams.⁷⁸ The incumbent postal operator of Norway is Posten Norge, a public limited company since 2002 which is owned entirely by the state. Postal operators must make a simple registration, however, Posten Norge as universal service provider has been granted an individual licence.⁷⁹ Postal services are not exempted from VAT.⁸⁰

Norway's postal trade union called Postkom is convinced that the implementation of the third Directive would lead to expensive postal services, poor quality of service and poor conditions of employment for employees in the sector. They also believe liberalisation is a threat to the provision of such a fundamental public service. Postkom interacted highly with the press, radio and television in order to win over the public opinion. Postkom also tried to obtain the support of politicians.⁸¹

In April 2011, the Norwegian government decided not to implement the third Postal Directive into Norwegian law. The government expected that the quality and efficiency of the postal services in a liberalised market in a country as Norway, which is sparsely populated, would

⁷⁶ WIK Consult, *Annex Country Fiches*, August 2009, p. 107-110

⁷⁷ WWW: http://eeas.europa.eu/norway/index_en.htm, last accessed 12 November 2011

⁷⁸ Copenhagen economics, *Wages and employment conditions in liberalised postal markets: report for the Norwegian Ministry of transport and communications*, August 2010, p.5

⁷⁹ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 284

⁸⁰ WIK Consult, *Annex Country Fiches*, August 2009, p. 111

⁸¹ According to Hans-Jacob Schultz, Information Officer at Postkom, August 2011

deteriorate. Furthermore, the government considered the effects of liberalisation in Member States of the European Union and foresaw a negative influence on wages and conditions of employment in the sector.⁸²

Quality of services & customer appreciation

The deliverance frequency by Posten Norge is six days a week. The performance of next day delivery in 1998 was targeted at 93%, but only reached 76.9%. In 2008, the target was reduced to 85%, but actually reached 87.1%.⁸³ The target for the transit time of cross border mail (deposit plus three days for delivery) was set at 85% in 2009, but actually reached 94.3%.⁸⁴ Tariffs have increased considerably by 6.3%.⁸⁵

Employment

The total corporate group of Posten Norge employed 24 163 fulltime equivalent employees in 2009 and 14 105 FTE's in postal deliverance.⁸⁶ Employment in the sector has decreased as a result of a long term reorganisation scheme in order to improve the efficiency of administrative processes and to cut costs on staff.⁸⁷ Wages in the postal sector are similar to those in comparable sectors. Trade unions have concluded collective agreements with Posten Norge for the postal employees. The government has decided not to implement the third Postal Directive because of, amongst others, the possibility that new postal operators would compete by poor conditions of employment for postal workers.⁸⁸

⁸² WWW: http://www.regjeringen.no/nb/dep/ud/aktuelt/taler_artikler/utenriksministeren/2011/norsk-holdning-postdirektivet.html?id=644021# and WWW: http://www.regjeringen.no/en/dep/ud/Whats-new/Speeches-and-articles/speeches_foreign/2011/address_storting_eu_eea_matters.html?id=643648, last accessed 12 November 2011.

⁸³ WIK Consult, *Annex Country Fiches*, August 2009, p. 114

⁸⁴ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 291

⁸⁵ WIK Consult, *Annex Country Fiches*, August 2009, p. 114

⁸⁶ Copenhagen economics, *Main developments in the postal sector (2008-2010); Part B: country fiches appendix*, November 2010, p. 282

⁸⁷ Andersen & Mjørlund, *Working paper nr. 3/09; Rapport: Effekter ved en liberalisering av det norske postmarkedet*, p. ix, via: www.postkom.org, last accessed 12 November 2011

⁸⁸ Andersen & Mjørlund, *Working paper nr. 23/09; Tilleggsutredning: Liberalisering av postmarkedet i Norge – en utdyping av enkelte problemstillinger*, p. 7-9, via: www.postkom.org, last accessed 12 November 2011

Paragraph 2.6 Sweden

The postal market

The incumbent postal operator of Sweden is Posten AB, a public limited company with a total employment rate of almost 27 000 FTE in 2009. The company merged with the Danish postal operator, and 40% of the shares of that company are held by the Danish state and 60% of the shares are held by the Swedish state. The Swedish postal market is fully liberalised since January 1993: there is no reserved area. The provision of universal services must rely on market forces. The universal services subject to an individual licence are addressed items weighing less than 2 kg. No licensing or authorisation is necessary for general services. The market share for the incumbent is 88%, its main competitor CityMail has a market share of 11%, and the remaining 1% represents all other postal operators. There is no VAT exemption for postal services.⁸⁹

Quality of services & customer appreciation

The deliverance frequency in Sweden is five days a week. The performance of next day delivery targeted in 1998 was 85%, but reached almost 95%. These performance percentages remained the same in 2009.⁹⁰ In that year, the target for the transit time of cross border mail (deposit plus three days for delivery) was set at 85%, but actually reached 95.8 %.⁹¹ Basic postal tariffs remained stable, while business tariffs declined. The satisfaction level of consumers was slightly improving between 1998 and 2008.⁹²

Employment

Between 1996 and 2007, the level of full-time equivalents employed at postal operators decreased by 30% in total, due to an increase in productivity. However, the amount of postmen at Posten AB has remained practically the same, an approximate 16 000. Another 15 000 employees work for the other postal operators.⁹³ The working conditions between Posten AB and CityMail are not very different from each other, as the Swedish trade union SEKO concluded collective agreements with both companies: the first collective agreement

⁸⁹ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 248-256

⁹⁰ WIK Consult, *Annex Country Fiches*, August 2009, p. 149

⁹¹ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 256

⁹² WIK Consult, *Annex Country Fiches*, August 2009, p. 149

⁹³ UNI global union, *What has postal liberalisation delivered? The case of Sweden*, August 2009 via: <http://www.uniglobalunion.org/Apps/UNINews.nsf/Sweden%20case%20study.pdf>, last accessed 12 November 2011

with CityMail was concluded one year after liberalisation. Trade unions have a very strong position in Sweden: they have the right to take industrial action in order to oblige the employer to sign an agreement. If the employer does not sign, the trade union can organise a strike at the company or a boycott of the company in case they are no union members within the company. This prevents wage dumping of new companies. There is no competition based on wages in the postal market of Sweden. The wages in the sector are market-based and similar to those in other sectors.⁹⁴

Paragraph 2.7 The United Kingdom

The postal market

The United Kingdom liberalised its postal market by 1 January 2006. The incumbent postal operator of the United Kingdom is Royal Mail Group Ltd, a limited company subsidiary of Royal Mail Holdings plc, and it is owned entirely by the state. Postal operators are obliged to apply for an individual licence for the deliverance of basic letter post, bulk letters, direct mail, non-priority letter post and basic parcel post.⁹⁵ Basic letter post (provided for by Royal Mail) is exempt from VAT; postal services provided for by the new entrants are not.⁹⁶ Approximately 40% of the larger postal consumers are not entitled to deduct VAT from taxes (financial services providers, government institution and charities), and therefore will not have their post delivered by the new entrants.⁹⁷ Royal Mail furthermore fines other postal operators when they partially give the “final mile” to Royal Mail (meaning that the other postal operator collects and sorts the mail, and then delivers it at the final sorting centre of Royal Mail, so that Royal Mail postmen will distribute the mail from house to house) and partially deliver the mail from house to house themselves. As a consequence, 99% of all competitive post is finally delivered by Royal Mail.⁹⁸

⁹⁴ Copenhagen economics, *Wages and employment conditions in liberalised postal markets: report for the Norwegian Ministry of transport and communications*, August 2010, p. 10-15

⁹⁵ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 257-260

⁹⁶ Copenhagen economics, *Wages and employment conditions in liberalised postal markets: report for the Norwegian Ministry of transport and communications*, August 2010, p. 31

⁹⁷ TNT Post Public Affairs Department, *Our face in Europe*, p. 6-7

⁹⁸ Interview Andries Feijen, public advisor TNT, 2 November 2010

Quality of services & customer appreciation

The deliverance frequency in the United Kingdom is six days a week. The performance of next day delivery in 1998 was targeted at 92.5%, but only reached 91.5%. The target was raised up to 93%, but reached only 85.2% due to industrial action.⁹⁹ In 2009, the target for the transit time of cross border mail (deposit plus three days for delivery) was set at 85%, but actually reached 93.2%.¹⁰⁰ Basic postal tariffs have increased with 3% a year since 1998 but are however relatively low in comparison with other Western European countries. The satisfaction of consumers and business customers is very high.¹⁰¹

Employment

As Royal Mail already started to restructure its organisation in 1981, wages were already fairly similar to those in other low skill sectors at the time of full opening of the postal market. Yet, fringe benefits are more favourable than the statutory minimum, probably as a result of the former civil servants status of the postal workers. The only competitor with its own delivery network, TNT Post, applies a lower wage level than Royal Mail. An explanation for this can be found in the fact that TNT employs young, unskilled and inexperienced part-time employees in comparison to Royal Mail, which employs more experienced and older, full-time working, employees. Royal Mail has not been able to cut back on staff or freeze wages in order to cope with losses and in this way remain competitive, as trade unions then immediately take industrial action.¹⁰²

Chapter summary

Already in 1992, a Green paper on the development of the single market for postal services was issued by the Commission of the European Communities. The paper set objectives for the postal sector in order to achieve free competition in the largest possible part of the sector. The objectives were translated into a Postal Directive in 1997. The aim of the Directives was to

⁹⁹ WIK Consult, *Annex Country Fiches*, August 2009, p. 153-154

¹⁰⁰ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 266

¹⁰¹ WIK Consult, *Annex Country Fiches*, August 2009, p. 153-154

¹⁰² Copenhagen economics, *Wages and employment conditions in liberalised postal markets: report for the Norwegian Ministry of transport and communications*, August 2010, p. 30-33

establish a single postal market and to improve the quality of service.¹⁰³ The first Directive was amended by other Postal Directives in 2002 and 2008.

As regards to the aim of the Directives, they have been implemented in a different pace by the Member States, but the opening of the postal market is now almost complete. The quality of cross-border services has substantially improved. In 1996 only 69.1% of post was delivered within 3 days after deposit in comparison to 94.6% in 2008.¹⁰⁴ The Green paper even stated that in 1992 the average was just 40 %.¹⁰⁵

The Directives do not pay much attention to employment changes for mailmen and postal deliverers in the postal market. The opening of the market is seen as of less importance for those changes in the market in respect to other drivers of change.

Before liberalisation, wages of employees at postal companies tended to be higher than those in comparable skill sectors. In order to remain profitable in the current market, postal companies had to reorganise their structure. Wages of those incumbent postal companies have become more market-based. Working conditions are in general poorer at new entrants to the postal market. Strong trade union action prevents deterioration of working conditions. Overall, employment and working conditions have decreased since the adoption of the first Directive.

¹⁰³ COM (91) 476, p. 3

¹⁰⁴ WIK Consult, *Evolution of the European postal market since 1997*, August 2009, p. XXIV and COM (2002) 632, p. 4

¹⁰⁵ COM (91) 476, p. 3

Chapter 2 General overview of developments in the Dutch postal market

In this chapter the Dutch postal market will be described, starting with an explanation of the formation and structure of a state owned postal company. The government of the Netherlands considered it necessary to change the structure of this state owned company into a public limited company. Subsequently, the postal market was partially opened up, which led to the entry of new postal companies. Finally, the situation on the Dutch postal market after full liberalisation will be described.

Paragraph 2.1 State enterprise for postal services

The Dutch postal services were formed out of several local services. They merged into a national service in 1799, (during the French domination) and followed the French example. The first Postal Act of 1850 regulated the collection, transportation and delivery of post and defined the monopoly position of the national service,¹⁰⁶ while stating that the general interest was most important. This resulted in a diminishing of the tariffs for sending post by one-third.¹⁰⁷ In 1915, the national service was changed into a state enterprise, which means that it was part of the government but conducted its accountancy in a commercial way.¹⁰⁸ The official name of the service was given in 1928: Staatsbedrijf der Posterijen, Telegrafie en Telefonie (State enterprise for Postal, Telegraph and Telephone Services), abbreviated PTT.¹⁰⁹

In the beginning of the 1980s the PTT was still a state enterprise and part of the Ministerie van Verkeer en Waterstaat (Ministry of Transport, Public Works and Water Management), which made rules for conditions of work for civil servants applicable to the employees of PTT. The state enterprise had to ask the Ministry for approval of the budget and was dependent on the Ministry for all financing. It could not lent money on the capital market as it had no independent legal status.¹¹⁰

¹⁰⁶ Davids 1999, p. 107

¹⁰⁷ Website TNT , via: WWW <http://www.tntpost.nl/overtntpost/bedrijf/geschiedenis/>, last accessed 12 November 2011

¹⁰⁸ Davids 1999, p. 14

¹⁰⁹ Website TNT, via: WWW <http://www.tntpost.nl/overtntpost/bedrijf/geschiedenis/>, last accessed 12 November 2011

¹¹⁰ Davids 1999, p. 127

In those days, the PTT provided several services (such as the Postbank for money services) and was the sole supplier of postal, telegraph and telephone services. However, even though the services were offered by the company under a shared name, the nature of the postal and telephone services started to differ more and more and the need for the two services to exist under a shared organisation diminished. The postal services were and remain for the major part labour-intensive, whereas the telecom services needed complicated technical infrastructures and a variety of transmitting, switch and receiving equipment. The telecom services therefore were and became more capital-intensive and technically orientated. The structure of the organisation showed a distinction between the postal services and the telecom services and each service had appointed a general manager.¹¹¹

Paragraph 2.2 Autonomous status for the PTT.

The rapid technical developments made it obvious for the government that the PTT needed to be able to act “decisive and flexible”.¹¹² In 1981, the Swarttouw Committee (named after its chairman) was established to advise the Minister of Transport, Public Works and Water Management on the possible role of the PTT, considering the technical developments which were to be expected and the possible pressure points. The committee finished its research in March 1982 and reported to the Second Chamber.¹¹³

One of the recommendations of the Swarttouw Committee was that “the PTT needed to function as an autonomous organisation with an increased distance to the government, including the management and control framework that is suitable for such an organisation, with access to the capital markets”.¹¹⁴

In the beginning of the 1980s, the term privatisation was used in the Netherlands for either withdrawing governmental activities from governmental influence or putting them under indirect governmental influence. This could be achieved by outsourcing, divestiture or the granting of autonomous status.¹¹⁵

¹¹¹ Davids 1999, p. 128

¹¹² Tweede Kamer, vergaderjaar 1983-1984, 17 370, nr. 2, p. 2

¹¹³ The Second Chamber is the Dutch House of Representatives

¹¹⁴ Tweede Kamer, vergaderjaar 1983-1984, 17 370, nrs. 2-3, p. 5, in Dutch: “De PTT moet gaan functioneren als een zelfstandige organisatie met grotere afstand tot de overheid, inclusief een daarop afgestemde beheers- en verantwoordingsstructuur, met de mogelijkheid tot het lenen op de kapitaalmarkt.”

¹¹⁵ Davids 1999, p. 14

The cabinet issued a document that expressed their point of view on the committee's report and directly ordered the State's Secretary of Transport, Public Works and Water Management to research the "for the future desired status, structure, regulatory task and supervision by and on the PTT-company."¹¹⁶ The document mentioned that it was not so much the functioning of the PTT at that time, which was satisfying, but more the probable upcoming (international) developments that made them decide to further analyse the possibilities of changing the structure of the company.¹¹⁷

Wim Dik, the top executive of PTT between 1988 and 2000, stated in the newspaper NRC Handelsblad that each and every investment that the PTT wanted to make had to be approved by the government, but the technical developments in the telecom services were so fast that the need for large investments rapidly increased. Furthermore, he stated that profits came for two-thirds of the telecom services and for one-thirds of postal services. In order to keep the postal services profitable, the telecom department shifted its profits to the postal department. The two simplest ways to make the postal services more profitable were to reorganise the workforce or to increase the price of the postage stamps. According to Wim Dik, the government did not want to choose for either, and the only other option was to turn the PTT into a large international company.¹¹⁸

The Steenbergen Committee, consisting of experts and assisted by a firm of consultants, was given the order to conduct the research on the possibilities of changing the structure of the company. The committee was installed on the 8th of June in 1984 and finished the research a year later in July. The Steenbergen Committee advised to change the PTT into a 'Naamloze Vennootschap (NV)', a public limited company. The cabinet made their point of view clear in a document that was issued in December 1985.¹¹⁹ They adopted the proposal made by the commission, because:¹²⁰

1. the international and national rapid developments required different functioning of the PTT;

¹¹⁶ Tweede Kamer, vergaderjaar 1983-1984, 17 370, nrs. 2-3, p. 15, 21

¹¹⁷ Ibid., nrs. 2-3, p. 16

¹¹⁸ NRC Handelsblad 21 mei 2011, *Privatiseren, concurreren, splitsen: 'Onder vleugels van de Staat waren TNT en KPN marginale bedrijven gebleven'*, Economie p. 7

¹¹⁹ Tweede Kamer, vergaderjaar 1985-1986, 17 370, nrs. 30-32

¹²⁰ Ibid., p. 12-13.

2. the PTT would be easier recognisable as an independent organisation when it is a ‘Naamloze Vennootschap’ than if it would be a ‘rechtspersoon sui-generis’;¹²¹
3. the transformation of the PTT into a ‘Naamloze Vennootschap’ could be done rather quickly, as the NV is a commonly used type of structure and was therefore highly regulated in law;
4. the government was already trying to hand over as many of its private tasks as possible. The public tasks of the PTT could also be exercised by the Ministry of Transport, Public Works and Water Management.

The PTT itself actually preferred at the beginning the status of a legal body ‘sui-generis’ for the PTT. In the years before, the parties¹²² concluded during the negotiations that the transformation of a state enterprise to a NV would probably cause too many cultural differences. However, among others, the ‘civil servants’- status for PTT employees became less important to the trade unions compared to the times of the previous negotiations.¹²³ The PTT and its council agreed on the change to a NV, as the State would become the sole shareholder of the NV. The selling of any shares was to be approved by both Parliament¹²⁴ and the Board of Directors of the PTT.¹²⁵ The date of transformation of state enterprise PTT into a NV was set at 1 January 1989.¹²⁶

The trade unions with union members at the PTT took the positions of those employees in hand during the negotiations. They realised a status change for the PTT was necessary and that privatisation offered good prospects.¹²⁷ They argued that the position of the incumbent employees should not deteriorate if the status of the PTT was altered. The Steenbergen Committee also wanted to guarantee this and the government was of the same opinion. They stated that the conditions of employment at the PTT NV, which were to be negotiated through collective bargaining, would have to correspond with those common in the rest of the national market. But in all, the conditions of employment for the incumbent employees should not

¹²¹ A “rechtspersoon sui-generis” was the other option for a new status of the PTT. It has a public nature and is established by a law which exactly describes its tasks, responsibilities and the relation with the government.

– Davids 1999, p. 128.

¹²² Being: government, trade unions and Board of Directors of the PTT.

¹²³ Davids 1999, p. 154.

¹²⁴ “Staten-Generaal”: Dutch Parliament, consisting of both the Second Chamber (House of Representatives) and the First Chamber (Senate).

¹²⁵ Davids 1999, p. 155.

¹²⁶ Tweede Kamer, vergaderjaar 1985-1986, 17 370, nrs. 30-32, p. 4.

¹²⁷ Interview Egon Groen, Union Leader FNV Bondgenoten, 31 August 2010

become less favourable as the ones they were having.¹²⁸ However, a more favourable position for the incumbent employees could be discriminatory with regard to newly hired PTT NV employees who did not fall under the transitional collective bargaining, and was therefore only a temporary solution.¹²⁹

The collective bargaining started in April 1988.¹³⁰ The proposition for a collective agreement by the PTT was more or less accepted by the trade unions, but the parties were unable to reach agreement on certain financial implications. Both the Ministry of Finance and the PTT did not want to be the one who paid the complete bill for the privatisation. In the end, the employees received good conditions of employment and measures were taken to assure compensation for possible disadvantages as a result of the transitional period. In addition, because the employees could not stay with the State Employees' Pension Scheme (ABP), they eventually could join a pension scheme that was comparable to the ABP.¹³¹

By law of 26 October 1988, the Minister of Transport, Public Works and Water Management was allowed to change the status of the PTT into a NV.¹³² On the first of January 1989, the State enterprise for Postal, Telegraph and Telephone Services was changed into '*NV Koninklijke PTT Nederland*' (NV Royal PTT the Netherlands), abbreviated KPN.¹³³

Paragraph 2.3 The separation of PTT Post and PTT Telecom

The two most important subsidiaries of the KPN were PTT Post BV and PTT Telecom BV.¹³⁴ KPN was assigned two exclusive concessions under the universal service obligation in the Postal Act. The first concession obliged KPN to transport packages and mail up to 10 kilograms home and abroad. The second concession gave KPN the exclusive right to handle the transport of post up to 500 grams. In 1994 and 1995, the State sold in total 55% of its

¹²⁸ Tweede Kamer, vergaderjaar 1985-1986, 17 370, nrs. 30-32, p. 19

¹²⁹ Davids 1999, p. 267

¹³⁰ Ibid., p. 265

¹³¹ Ibid., p. 276

¹³² Machtigingswet PTT Nederland NV, Stb. 521

¹³³ WWW: http://www.tntpost.nl/overntpost/bedrijf/handigeinformatie/twee_eeuwen/, last accessed 12 November 2011

¹³⁴ A BV is a legal body which carries on an enterprise and of which the shares are non-transferable on the stock market: Mendel & Oostwouder 2007, p.1

KPN shares on the stock market, but kept a golden share.¹³⁵ In 1996 KPN purchased the Australian company Thomas Nationwide Transport, shortly TNT.¹³⁶

In 1997, KPN expressed their wish to split up KPN into two new companies: one for logistics and distribution (post) and one for telecommunication. According to KPN, the two branches had grown further apart since the privatisation in 1989 and were in essence already operating as economically and organisationally separated companies. A separation would make it easier for the companies to present themselves, which would lead to better chances on the (stock) market. Independence in future developments would be beneficial for both branches. Furthermore, the valuation of the shares would become more transparent.¹³⁷

Because the state still owned 45% of the shares of KPN at that time, the wishes of the company were discussed in Parliament. The Minister of Transport, Public Works and Water Management and the Minister of Finance stated that both guaranteeing the public interest and the financial interest of the State as shareholder were of importance. As the division would not lead to derogation of the power of control of the State in the company, the public interest would be guaranteed. As the division would lead to better market chances, the interest for the State as shareholder was also secured.¹³⁸

At approximately the same time that the postal and telecom department were split up, the monopoly of KPN on the telecom services ended: the telecom market was liberalised and other companies could enter the market.^{139 140}

¹³⁵ SEO Economisch onderzoek, *Van OVO naar CAO op de geliberaliseerde postmarkt*, Amsterdam 2009, p. 1

¹³⁶ Website TNT Post, WWW: http://www.tntpost.nl/overtntpost/bedrijf/handigeinformatie/twee_eeuwen/, last accessed 12 November 2011

¹³⁷ Tweede Kamer, vergaderjaar 1997-1998, 25 862, nr. 3

¹³⁸ Ibid.

¹³⁹ Website KPN, WWW: <http://www.kpn.com/corporate/overkpn/Bedrijfsprofiel/het-bedrijf/Geschiedenis-1.htm>, last accessed 12 November 2011

¹⁴⁰ The scope of this thesis does not allow to also discuss the liberalisation of the telecom market. Briefly worded, KPN Telecom got into a 23 thousand million debt after the burst of the Internet bubble.¹⁴⁰ The company had to make 10.000 compulsory redundancies between 2005 and 2010, and has announced another 4000 to 5000 compulsory redundancies up to 2015. Website journal AD:

<http://www.ad.nl/ad/nl/1004/Economie/article/detail/579857/2011/04/21/Duizenden-ontslagen-bij-KPN-Vervelende-maatregel-hoort-erbij.dhtml>, last accessed 12 November 2011

Paragraph 2.4 Gradually opening the postal market

After the division of post and telecom, PTT Post continued together with TNT as a part of the TNT Post Group (TPG) while using this name up from 2002. The exclusive right to handle the transport of post was reduced to letters up to 100 grams in 2000.¹⁴¹ This led to the entry of the company Sandd on the Dutch postal market in 2001¹⁴² and to the entry of the company SelektMail (DHL) on the Dutch postal market a year later.¹⁴³

The European Union decided in 2002 that the internal market for postal services had to be liberalised by the end of 2009. Directive 2002/39/EC allowed the Member States to reserve ordinary correspondence to the universal service providers, but only correspondence up to 100 grams in 2003 and further reducing, up to 50 grams in 2006.¹⁴⁴ TPG changed its name to TNT in 2006 and in that same year the exclusive right to handle the transport of post was reduced to letters up to 50 grams, as required by the Directive. This led to the entry of Netwerk VSP, a subsidiary of TNT, to the market. There are also other, smaller, companies present on the postal market (which do not have nationwide coverage). Due to their market share Sandd, SelektMail and Netwerk VSP are known as the main newcomers.¹⁴⁵

At the time Sandd entered the market, the company started with enormously fluctuating post volumes and therefore wanted to be extremely flexible, also in personnel management. Furthermore, as Sandd only delivered the mail two days a week, it seemed impossible to offer the mail deliverers a fulltime employment contract. As newspaper deliverers worked under a contract for services (*overeenkomst van opdracht*), Sandd borrowed the idea and decided to apply this form of contract to their deliverers.¹⁴⁶ The differences between a contract for services and a contract of employment will be explained in chapter 3, paragraph 1 and 3.

SEO¹⁴⁷ issued a report in 2004, which concluded that liberalisation of the Dutch postal market would lead to better market forces of the postal market. They also stated that TPG would remain the most dominant player in the market because of scale advantages and that therefore

¹⁴¹ Website TNT Post, WWW: http://www.tntpost.nl/overtntpost/bedrijf/handigeinformatie/twee_eeuwen/, last accessed 1 November 2011 and SEO Economisch onderzoek, *Van OVO naar CAO op de geliberaliseerde postmarkt*, Amsterdam 2009, p. 1

¹⁴² Website Sandd, WWW: <http://www.sandd.nl/page.php?page=1929&menu=3>, last accessed 1 November 2011

¹⁴³ SEO Economisch onderzoek, *Van OVO naar CAO op de geliberaliseerde postmarkt*, Amsterdam 2009, p. 1

¹⁴⁴ Directive 2002/39/EC

¹⁴⁵ SEO Economisch onderzoek, *Van OVO naar CAO op de geliberaliseerde postmarkt*, Amsterdam 2009, p. 1

¹⁴⁶ Interview Frank van der Linden, HR-Manager Sandd, 3 September 2010

¹⁴⁷ SEO is an independent economical research foundation for the government and companies and is related to the University of Amsterdam. WWW: <http://www.seo.nl/home>, last accessed 13 November 2011

the universal service obligation would not be threatened by liberalisation. In their opinion, the prices would reduce especially on the business market, and as a result provide a more favourable position for customers than before.¹⁴⁸

The business model that the newcomers used was aimed at the not time critical business postal market.¹⁴⁹ The companies deliver two days a week, in comparison to TNT Post which delivers the day after the deposit. The newcomers did not offer their workers full time employment as they could only work two days a week. The companies were focussed on flexibility due to large volume variations. The government did not extend the obligations of TNT to the newcomers, such as six day delivery and the collective agreement that was concluded between TNT and the trade unions. The used business model of the newcomers was already very different and therefore the government did not want to require them to work exactly the same as TNT.

In a study on liberalisation of April 2004, researchers concluded that the Members of the European Union liberalised their postal markets in a different pace, in a different way, interpreting the European agreements differently and that there were also other obstructions on the European market. They stated that Member States which set liberalisation as a goal itself would disadvantage their own economies, if they would not take the behaviour of the other member states into account. The researchers recommended the Dutch government to set the raising of the prosperity in the Netherlands as their explicit goal. The pace and the way in which the Dutch postal market had to be liberalised, “had to be synchronised with the position of the Dutch economy in the context of the European economy.”¹⁵⁰

Paragraph 2.5 Full liberalisation of the postal market

Paragraph 2.5.1 Barriers to liberalisation

From the moment it became clear that the Dutch postal market had to be opened up, it was discussed by Members of Parliament. A new Postal Act had to be prepared and since 2004, the conditions of employment in the postal market were brought up in the parliamentary

¹⁴⁸ SEO Economisch onderzoek, *Tante Pos krijgt concurrentie: Effecten van de liberalisering in Nederland*, Amsterdam 2003, p. 68-69

¹⁴⁹ Not time critical post is post that does not require to be delivered the day after deposit. For instance, a TV guide has to be delivered before start of a new week, but whether that is on Thursday or Friday does not matter for the sender.

¹⁵⁰ Strikwerda & Rijnders 2004, p. 73

debate and also in the permanent committee of economic affairs. The State Secretary of Economic Affairs informed the Members of Parliament by letter of 2 April 2007 on the conditions of employment at the postal companies, which said that TNT had concluded three separate collective bargaining agreements for postal deliverers, mailmen and postal deliverers who only work on Saturdays. All the TNT workers are included in the collective bargaining agreement and have a contract of employment with TNT.

The new companies Sandd and Selektmail use a different model for delivering their mail, the so-called '*overeenkomst van opdracht*' (a contract for services). The companies see the delivering of mail as a sideline job, and the deliverers are paid on the basis of the items they have delivered, and the allowance is partially fixed and partially variable. The companies stated that the deliverers earned on average just above the minimum hourly wage.¹⁵¹

The State Secretary of Economic Affairs examined together with the State Secretary of Social Affairs in 2007 whether or not the social protection of postal deliverers working with a contract for services was sufficient.¹⁵² The research showed that deliverers could not rely on dismissal protection, the Working Times Act and Working Conditions Act and employees insurance¹⁵³, while persons working with a contract of employment can.¹⁵⁴ The Labour Inspectorate held an inquiry in 2008 upon instructions from the government to find out if the postal deliverers actually received the legal minimum wage, even though the Minimum Wage Act might not be applicable to the used contracts for services. The inquiry showed that a significant number of deliverers between the age of 23 and 65 did not receive the minimum wage.¹⁵⁵ The inquiry and the criticism on the inquiry of the postal companies will be discussed in chapter 3, paragraph 4.

The government checked several times whether it was possible to open up the Dutch postal market sooner as prescribed by the European Union. This should be seen in the light of the Netherlands trying to persuade other countries to open their markets as well: trade is

¹⁵¹ Tweede Kamer, vergaderjaar 2006-2007, 29 502 , nr. 12

¹⁵² Ibid., 30 536, nr. 48

Handelingen TK 2006-2007, nr. 60, 3337-3360

Ibid., nr. 61, p. 3397-3412

Ibid., nr. 64, p. 3592-3650

¹⁵³ BBA 1945, Arbeidstijdenwet & Arbeidsomstandighedenwet, Besluit aanwijzing gevallen waarin arbeidsverhouding als dienstbetrekking wordt beschouwd.

¹⁵⁴ Tweede Kamer, vergaderjaar 2006-2007, 30 536, nr. 48

¹⁵⁵ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 79. Unfortunately, for confidential reasons, the report is not available for the public.

extremely important for the Netherlands and therefore also the opening of markets in whatever kind of sector.¹⁵⁶

Because of the results from the enquiry on the social protection of postal deliverers by the Labour Inspectorate, the government decided it would be not wise to liberalise the complete Dutch postal market already by January 2008. A second reason for delaying an early full liberalisation were the problems that TNT encountered in especially Germany: there was no such thing as a level playing field in the European Union.¹⁵⁷ Kees Verhoeven of the parliamentary party D66 stated that on the longer term it would be desirable if all postal deliverers (at TNT and the new companies) could have approximately the same conditions of employment. This would also create a level playing field on a national level, and companies would not compete on the basis of conditions of employment.¹⁵⁸

The delay of a possible earlier liberalisation by the Dutch government was criticised by the fourth report from the Commission to the Council and European parliament on the application of the second Postal Directive. Article 7 of the Directive only allows reservation of certain services to the universal service provider, when it is necessary to ensure the maintenance of the universal service.¹⁵⁹

It was clear that most member states of the European Union, including the Netherlands, had to liberalise their postal markets by December 31, 2010.¹⁶⁰ The trade unions informed the government that in their opinion there was no reason to postpone open access to the market until then. In this way, they had the opportunity to intervene in the market and to demand socially acceptable conditions of employment for deliverers at the new postal companies.¹⁶¹ The market was fully opened as of April 2009 by the Postal Act.

The new postal companies concluded a collective bargaining agreement with the trade unions in order to provide postal deliverers with contracts of employment. The trade unions asked the government to support the agreement with legal measures in case the postal companies would

¹⁵⁶ Interview Paul Jekkers, trade union leader BVPP, 6 July 2010

¹⁵⁷ Eerste Kamer, vergaderjaar 2007-2008, 30 536, O

¹⁵⁸ Interview Kees Verhoeven, Member of Parliament for D66, 5 January 2011

¹⁵⁹ COM (2008) 884, p. 5

¹⁶⁰ Directive 2008/6/EC

¹⁶¹ Interview Paul Jekkers, trade union leader BVPP, 6 July 2010

not follow the collective bargaining agreement.¹⁶² The collective agreement and the action taken by the government will be discussed in chapter 3, paragraph 5 and further.

Paragraph 2.5.2 Consequences of liberalisation for TNT

The main consequence of the liberalisation of the Dutch postal market for TNT was that their market share declined by the entrance into the market of new postal companies. They furthermore proclaim that the postal volumes are diminishing extremely fast in the last years. Sandd has also made this statement. The Minister of Economic Affairs has performed a quick scan at the request of a Member of Parliament in the beginning of 2008. The quick scan shows that in 2001 the total volume of the three main companies was 5.6 thousand million, which declined to 5.3 thousand million in 2008. This means that the total volume has declined 5.3% in 8 years. The total volume of TNT has declined in this period by 17.7%.¹⁶³ The reason given for the decline in general is the augmented use of electronic communication, the extra decline for TNT can be attributed to the entrance of the new postal companies.

TNT noticed that the postal market altered due to a changing demand of clients, growing competition, substitution of mail by e-mail and restrictive legislation. In consequence, prices were reduced while the volume decreased, and the costs per postal item increased. Therefore TNT also wanted to further reorganise the postal division in order to remain making profit.¹⁶⁴ TNT for instance already had the possibility to completely sort the mail on beforehand by machine for over ten years, but considered it socially not desirable to use it.¹⁶⁵

Andries Feijen, public advisor at TNT, claims that approximately 65% of their costs exist of labour costs. The total payroll costs for a mailman of TNT is 24 Euros per hour, divided into 15 Euros for the mailman and 9 Euros of expenses for the company. Furthermore, 92% of the total post volume is coming from the business sector and for them three deliver and collect days are enough, although the postal act obliges TNT to deliver the post six days a week. As a result of re-organising the logistics of the company and offering discounts to the business sector if they hand over their mail on set days, the amount of work would decline, labour costs

¹⁶² Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 90

¹⁶³ Tweede Kamer, vergaderjaar 2009-2010, 30 536 nr. 117

¹⁶⁴ PowerPoint presentation of TNT of the 16th of September 2010 by Harry Koorstra, Gerard Aben and Ger Jacobs, slide 6.

¹⁶⁵ Tweede Kamer, vergaderjaar 2009-2010, 30 536 nr. 124, p. 19 and Interview Andries Feijen, public advisor TNT, 2 November 2010

would decrease, due to centralisation and standardisation a higher efficiency could be reached, the workforce could be flexible and quality could be higher.¹⁶⁶

TNT had offered the mailmen in April the possibility of a wage reduction of 15 % and as compensation an employment guarantee for three years, which they declined. As a result of the following reorganisation, TNT announced in July 2009 that 11.000 jobs would disappear in 2 years time.¹⁶⁷ TNT already started to hire only part-time deliverers since 2002, and offers a mobility project to employees who want to accept a job at another company. However, TNT still expected that 40% of the 11.000 employees would become compulsory redundant as the natural labour turnover did not go fast enough.¹⁶⁸

For the mailmen who fall out of work it was extremely unpleasant to see that the company is actively recruiting postal deliverers. After a strike in November 2010, which was organised by the trade unions, the number of employees who will become compulsory redundant as a result of the reorganisation was reduced from 4400 to 2300 employees.¹⁶⁹

After a period of expectations from financial analysts, TNT also announced that the company was considering to separate the 'Express' (for parcels) and the 'Post' department in April 2010. Furthermore, at the General Meeting the shareholders voted against sticking to the same structure of the company. The 'old' structure let the Board of Commissioners appoint the Board of Directors and the shareholders wanted more power of control. The company committed to propose a new structure in the General Meeting of 2011.¹⁷⁰ On 25 May 2011, the General Meeting approved the proposal for separation. As of 31 May 2011, the Express division would go further under the name TNT Express and the Post division would go further as PostNL.¹⁷¹ PostNL kept an interest of 30 % in TNT Express, which defines 59% of the value of the PostNL shares.¹⁷²

¹⁶⁶ Interview Andries Feijen, public advisor TNT, 2 November 2010 and PowerPoint presentation of TNT of the 16th of September 2010 by Harry Koorstra, Gerard Aben and Ger Jacobs, slide 6.

¹⁶⁷ WWW: <http://www.analist.nl/berichten/2009/07/03/3745/Analisten+verwachten+felle+reacties+TNT>, last accessed 12 November 2011.

¹⁶⁸ PowerPoint presentation of TNT of the 16th of September 2010 by Harry Koorstra, Gerard Aben and Ger Jacobs

¹⁶⁹ WWW: http://www.bvpp.nl/index.php?option=com_content&view=article&id=189:nieuwsflits-vakbonden-sluiten-principeakkoord-met-tnt&catid=34:tnt&Itemid=82, last accessed 12 November 2011

¹⁷⁰ WWW: <http://www.analist.nl/berichten/2010/04/09/5982/Meningen+verdeeld+over+opsplitsing+TNT>, and <http://www.analist.nl/berichten/2010/04/12/5996/Reuring+bij+TNT>, last accessed 12 November 2011

¹⁷¹ WWW: <http://www.postnl.com/nl/over/historische-informatie/index.aspx>, last accessed 12 November 2011

¹⁷² WWW: <http://www.analist.nl/berichten/2011/06/08/9437/UBS+geeft+houdadvies+voor+TNT+Express%2C+verhoogd+PostNL+naar+%91kopen%92>, last accessed 12 November 2011

Paragraph 2.6 CHEAP&GOOD! Did it get any better?

During the liberalisation, the justification given from the government for the changes in the postal sector were that due to liberalisation and subsequently market forces, postal services would become cheaper for consumers and the quality of the services would improve.

The price for regular stamps for letters up to 20 grams were in 2002 € 0.39 and the government decided that prices would remain at this level until 2007.¹⁷³ In 2011, the price for letters up to 20 grams is € 0.46.¹⁷⁴ Inflation in the Netherlands over the period between 2002 and 2011 was 17.3 %.¹⁷⁵ Hence, prices for letters up to 20 grams have been initially low, and in the period between 2007 and 2011 were allowed to catch up on the inflation rate since 2002. Prices have not become cheaper for regular customers. Business customers on the other hand have benefited from liberalisation in the postal market. SEO researched the prices that were used by the postal operators and noticed that in March 2010 prices for post up to 50 grams were 9.2 cents cheaper and prices for post over 50 grams were 3.7 cents cheaper than they had anticipated on in 2009.¹⁷⁶

The quality of services can be measured by the delivery time after the deposit of postal items. In 1998, PTT Post delivered 94% of the postal items the day after their sending.¹⁷⁷ In 2010, TNT Post delivered 95.3 % of the postal items the day after the deposit.¹⁷⁸ So, the quality of services of the incumbent postal operator has improved since liberalisation.

Furthermore, the Association of Large Customers of Postal Services (VGP) made an enquiry at the end of 2010 amongst the largest postal operators. The enquiry checked in how far delivery took place at a prearranged date. The results of the enquiry are shown in the following table:

¹⁷³ WWW: <http://financieel-management.nl/content/view/3485/prijs-postzegel-blijft-tot-2007-gelijk>, last accessed 12 November 2011 and WWW: <http://www.nieuwsbank.nl/inp/2002/04/25/E019.htm>, last accessed 12 November 2011

¹⁷⁴ WWW: http://www.postnl.nl/voorthuis/images/Tarievenkaart_tcm213-534380.pdf, last accessed 12 November 2011

¹⁷⁵ WWW: <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=71905NED&D1=a&D2=0,10,20,30,40,50,60,63,70,80,90,100-I&HD=090706-1012&HDR=T&STB=G1>, last accessed 12 November 2011

¹⁷⁶ SEO Economisch onderzoek, evaluatie ingroeimodel maart 2010

¹⁷⁷ Copenhagen economics, *Part B: country fiches appendix*, November 2010, p. 188

¹⁷⁸ WWW: <http://www.tntpost.nl/overtntpost/nieuwspers/persberichten/2011/04/TNT-Post-scoort-over-eerste-kwartaal-2011-hoog-op-kwaliteit-van-de-postbezorging.aspx>, last accessed 12 November 2011

Postal operator	Delivery on time
TNT Post 24-hour	95.9%
TNT Post 48-hour	98.6%
TNT Post 72-hour / BASIC	99.2%
Sandd Tuesday	91.9%
Sandd Friday	92.5%
DHL / Selektmail Tuesday	87.2%
DHL / Selektmail Friday	93.4%

Source: <http://www.tntpost.nl/overntntpost/nieuwspers/persberichten/2010/11/kwaliteitscijfers.aspx>

The table shows that the delivery on time by the newcomers is not up to the standards of the incumbent postal operator, and not even to the standards before the liberalisation.

Chapter summary

The postal market has seen many changes: the Netherlands started with a sole state enterprise for postal services, which was privatised after mature consideration in 1989. The government did not want to cut in staff nor raise the prices of postal stamps, and therefore the only option left was to turn the company into a large international enterprise. The state was in the beginning the only shareholder of the new public limited company. The State sold their shares over time, the last remaining in 2006. The exclusive right to handle the transport of post was reduced to letters up to 100 grams in 2000.¹⁷⁹ This led to the entry of new postal companies to the market, the largest being Sandd and Selektmail.

The newcomers use a much-discussed form of labour relation with their deliverers. This was even one of the main reasons for the government not to completely open the postal market earlier than prescribed, because they were of the opinion that the conditions of employment were not satisfactory. However, this exception was not in line with Directive 2002/39/EC. In the end, the trade unions concluded a collective agreement with the new companies, and the government allowed open access to the postal market as of April 2009.

Liberalisation, the electronic substitution by email and new technologies changed a lot for the formerly state owned PostNL. The company decided to reorganise its structure in order to remain profitable, which resulted in the compulsory redundancy of many employees.

¹⁷⁹ WWW: http://www.tntpost.nl/overntntpost/bedrijf/handigeinformatie/twee_eeuwen/, last accessed 12 November 2011 and SEO Economisch onderzoek, *Van OVO naar CAO op de geliberaliseerde postmarkt*, 2009, p. 1

As regards to the reduction of postal prices in the Netherlands, prices for consumers have remained stable. Prices for business consumers on the other hand have become much cheaper. As for quality of services, the measuring standard is the deposit plus one day for delivery. In comparison with 1998, PostNL has improved their percentage of on time delivered mail. The new companies in the market handle mostly non time critical mail which they deliver on Tuesdays or Fridays. The companies still reach quite a high percentage, though it is lower than that of PostNL, even before liberalisation.

Chapter 3 The consequences of different labour relations in the Dutch Postal Market

There have been many discussions about working conditions at the new postal companies. In this chapter, these issues will be explained. The form of contract that is used for postal deliverers at the new postal companies is not a contract of employment, but a contract for services (*'overeenkomst van opdracht'*). The differences between a contract of employment and a contract for services will be reviewed, as well as the debate on whether or not postal deliverers at the new companies earned the minimum wage. After the trade unions concluded a collective agreement with the new postal companies in order to convert the contracts for services of 80% of the deliverers into contracts of employment, it appeared that the companies could not fulfil the conditions of the collective agreement. As a result, the trade unions terminated the collective agreement. This process and further developments will be discussed in this chapter.

Paragraph 3.1 Used labour relations in the Dutch postal market

Paragraph 3.1.1 General information on labour relations

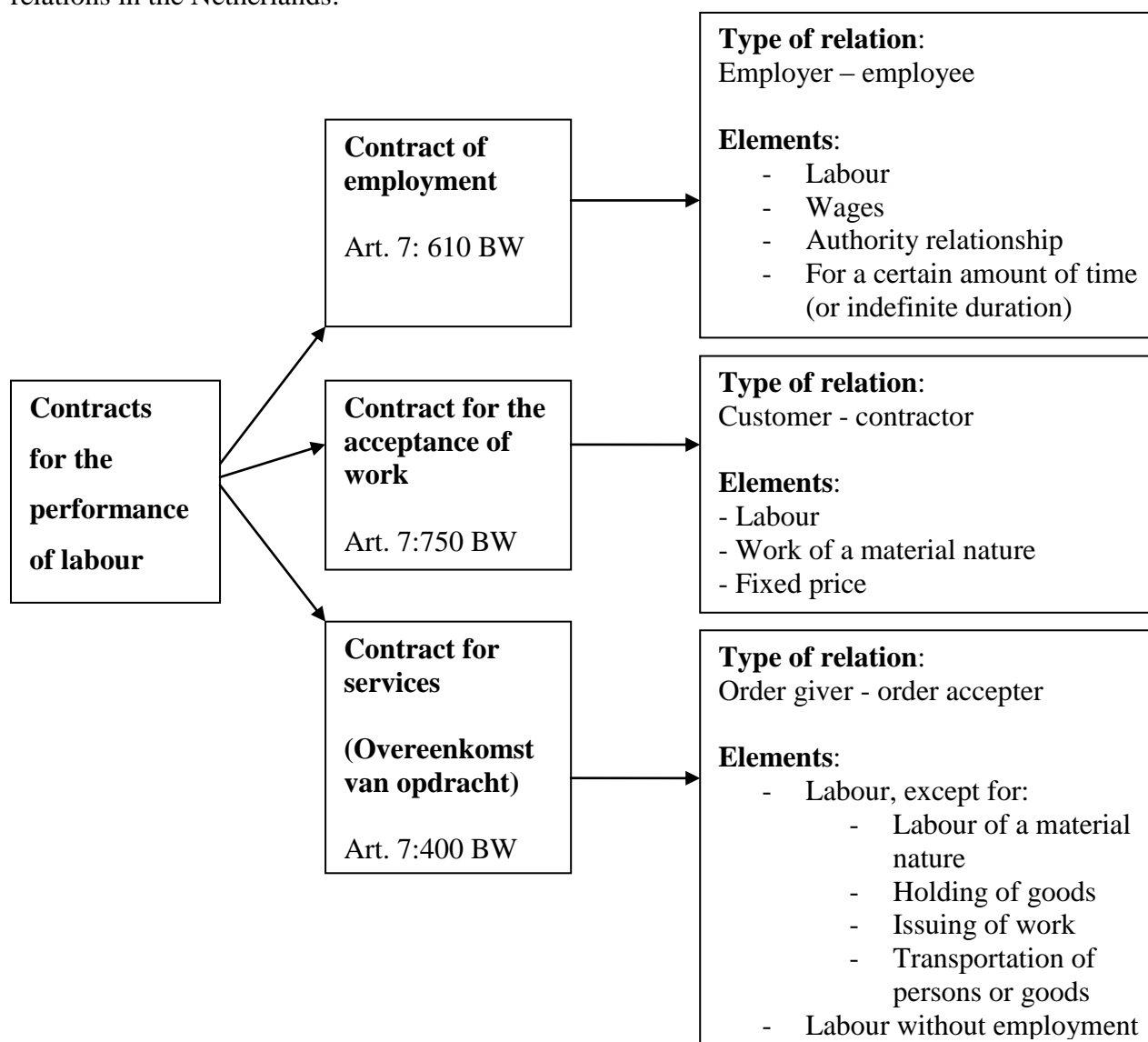
The most striking difference between the original mailmen of PostNL and the postal deliverers of the newcomers is the way in which their labour relation to the company is organised. The most commonly used form of a labour relation in the Netherlands is the contract of employment, which is defined by article 7: 610 of the Dutch civil code: “the contract of employment is a contract whereby one party, the employee, undertakes to perform work in the service of the other party, the employer, for remuneration during a given period.”¹⁸⁰ This requires the fulfilment of five criteria for the existence of a contract of employment: there has to be 1) work 2) during a given period 3) for remuneration 4) in service of the other party. The fifth criteria can be found in article 7: 659 Dutch civil code: the labour has to be done in one's own person. Whether or not a contract of employment exists, must be seen within all facts and circumstances of the case.¹⁸¹

¹⁸⁰ Art. 7:610 BW: “De arbeidsovereenkomst is de overeenkomst waarbij de ene partij, de werknemer, zich verbindt in dienst van de andere partij, de werkgever, tegen loon gedurende zekere tijd arbeid te verrichten.” Translation by Jacobs in *Labour Law in the Netherlands* 2004, p. 46.

¹⁸¹ Plessen & Massuger 2009, p. 44-46.

A contract of employment in the Netherlands is generally of indefinite duration and ends if the employee dies,¹⁸² reaches the retirement age or if it is terminated by one of the contracting parties. However, this termination is far more difficult for the employer than it is for the employee.¹⁸³ Furthermore, except from the above mentioned dismissal protection, this type of employee is also insured for sickness, disability and unemployment benefits, is entitled to vacation with continued pay and a vacation supplement.¹⁸⁴

Van Drongelen¹⁸⁵ has made a clearly structured scheme on the possible forms of labour relations in the Netherlands:¹⁸⁶



¹⁸² Art 7:674 BW

¹⁸³ Jacobs 2004, p. 51

¹⁸⁴ Art.7:629 BW & Art. 7:634 BW, and FNV Bondgenoten, Black paper postal market, Stichting FNV Pers December 2007

¹⁸⁵ Mr. dr. Van Drongelen is associate professor at Tilburg University

¹⁸⁶ Van Drongelen 2009, p. 31

A contract for services is defined by article 7:400 of the Dutch Civil Code, as “an agreement whereby one party, the order acceptor, commits to the other party, the order giver, to perform a task, other than work pursuant a contract of employment, which exists of something else than the creation of a work of material nature, the holding of goods, the issuing of work or the transportation of persons or goods”.¹⁸⁷ A contract for services is commonly used by for instance lawyers, accountants, notaries, hairdressers, veterinarians, real estate agents and architects.¹⁸⁸ Newspaper deliverers also work with a contract for services. Between the order giver and order taker is no authority relationship as there is between an employer and employee with a contract of employment. Because of the great variety of possible services, the statutory provisions have to be interpreted in a flexible manner.¹⁸⁹

Paragraph 3.1.2 Reactions on the use of the contract for services

The use of the contract for services for postal deliverers by the new companies attracted the attention of Members of Parliament. In the parliamentary debate several Members of Parliament highlighted the poor working conditions of these postal deliverers.¹⁹⁰

Some Members of Parliament were of the opinion that working conditions are a discussion point between employers and employees and that the government should not interfere. The State Secretary of Economic Affairs stated for instance that working conditions are the responsibility of employers and trade unions, where it is the responsibility of the government to monitor that the legal requirements are upheld.¹⁹¹ However, as he declared that the government wanted decent and fair working conditions, he proposed to examine together with

¹⁸⁷ Art. 7:400 BW: “De overeenkomst van opdracht is de overeenkomst waarbij de ene partij, de opdrachtnemer, zich jegens de andere partij, de opdrachtgever, verbindt anders dan op grond van een arbeidsovereenkomst werkzaamheden te verrichten die in iets anders bestaan dan het tot stand brengen van een werk van stoffelijke aard, het bewaren van zaken, het uitgeven van werken of het vervoeren of doen vervoeren van personen of zaken.”

¹⁸⁸ T&C Arbeidsrecht, comments on art. 7:400 BW

¹⁸⁹ Tweede Kamer, vergaderjaar 1982-1983, 17 779, nr. 3, p. 3

¹⁹⁰ Tweede Kamer, vergaderjaar 2006-2007, 30 536, nr. 48
Handelingen TK 2006-2007, nr. 60, 3337-3360

Ibid., nr. 61, p. 3397-3412

Ibid., nr. 64, p. 3592-3650

¹⁹¹ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 55, p. 1

the State Secretary of Social Affairs in 2007 whether or not the social protection of postal deliverers working with a contract for services was sufficient.¹⁹²

Sharon Gesthuizen, Member of Parliament for the Socialist party (SP), stated that the work the deliverers do is very similar to work that is normally done with a contract of employment. The deliverers continuously walk the same route in the same area in company clothing and have to report when they have finished their route and when items are undeliverable. She points out that the contract for services is therefore not suitable for work in the postal sector.¹⁹³ Paul Jekkers of the trade union BVPP accuses the new postal companies of shoving aside all Dutch rules and rights concerning contracts of employment, by using the contract for services and attracting people on the bottom of the labour market.¹⁹⁴ Egon Groen of the trade union FNV Bondgenoten said that it was a brilliant but horrible move of Sandd. He emphasised on the fact that normally regulations for sickness, unemployment and disability benefits are obligatory because if they were not, many would think it was not their risk to bare.¹⁹⁵

FNV Bondgenoten, one of the largest trade unions in the Netherlands, issued a black paper about the reality of postal deliverers in the Netherlands in December of 2007. FNV held a survey amongst 120 deliverers, who claimed to earn less than 6 to 8 Euros per hour. As the companies do not have to pay other expenses such as insurances, the payroll costs come down to the same amount as the deliverers receive. Payroll costs for a mailman of TNT are around 23 Euros per hour.¹⁹⁶ However, some of the interviewed deliverers seemed not to be aware of the fact that they were working under a contract for services, or did not know what it meant. The main concern of FNV is that the deliverers are not entitled to unemployment, disability and healthcare insurance. In a broader view, they criticise the transformation of the fulltime job of the mailman into a job on the side for post deliverers. They state that the companies are out to make a profit by not having to pay for the usual mandatory insurances for employees.¹⁹⁷

¹⁹² Tweede Kamer, vergaderjaar 2006-2007, 30 536, nr. 48 and
Handelingen TK 2006-2007, nr. 60, 3337-3360
Ibid., nr. 61, p. 3397-3412
Ibid., nr. 64, p. 3592-3650

¹⁹³ Interview Sharon Gesthuizen, Member of Parliament for the SP, 26 November 2010

¹⁹⁴ Interview Paul Jekkers, trade union leader BVPP, 6 July 2010

¹⁹⁵ Interview Egon Groen, trade union leader FNV Bondgenoten, 31 August 2010

¹⁹⁶ Interview Andries Feijen, public advisor TNT, 2 November 2010

¹⁹⁷ FNV Bondgenoten, Black paper postal market, Stichting FNV Pers December 2007

Paragraph 3.2 Defining the used labour relation

The difference between a contract for services and a contract of employment is not always very clear since parties have quite some freedom in establishing their legal relation when they choose to use a contract for services. As stated above by FNV Bondgenoten: some of the deliverers think that they have signed a contract of employment while they have in fact signed a contract for services. As a contract of employment would provide more social security for a worker, it is essential to consider if the contract for services of postal deliverers can be declared a contract of employment.

Article 7:610a of the Dutch civil code states that ‘he who performs work on behalf of someone else for remuneration during three consecutive months, weekly or for at least twenty hours monthly, is presumed to perform the work by virtue of a contract of employment.’¹⁹⁸ The presumption is rebuttable by the ‘employer’. Within the case law of the Dutch courts the article has been clarified. Prof. mr. Loonstra and Prof. mr. Zondag have developed four reference points for educational use after the ‘Groen/Schoevers’¹⁹⁹ judgement of the Supreme Court.²⁰⁰

The ‘AMRO/Mahli’ judgement made clear that it is first of all important to decide if any kind of contract exists. Decisive is whether parties have committed themselves towards each other. In order to do so, the criterion that has been developed in the Haviltex-judgement has to be taken into account: ‘the meaning which parties in the given circumstances mutually reasonably could give and to what they reasonably could expect from each other’.²⁰¹ In the case of the postal deliverers, parties have concluded a contract in order to establish a labour relation and thereby have committed themselves towards each other.

If parties have committed themselves towards each other, the first step in the scheme of Loonstra and Zondag is to discuss the intent of parties at the time of concluding the contract and the factual implementation of the contract. The intent of the postal companies is obvious: the contracts for services that are used for the deliverers very clearly state that the contract that is to be concluded is a contract for services. Furthermore, the contracts state that the

¹⁹⁸ ‘Hij die ten behoeve van een ander tegen beloning door die ander gedurende drie opeenvolgende maanden, wekelijks dan wel gedurende ten minste twintig uren per maand arbeid verricht, wordt vermoed deze arbeid te verrichten krachtens arbeidsovereenkomst.’

¹⁹⁹ HR 14 November 1997, *NJ* 1998, 149

²⁰⁰ Loonstra & Zondag 2010, p. 102-108

²⁰¹ HR 13 March 1981, *NJ* 1981, 635

parties explicitly do not want to conclude a contract of employment or that they do not want to establish an employment relationship.²⁰² The intent of the postal deliverers as contracting party is less evident. For the Black Paper of trade union FNV Bondgenoten, 120 deliverers were asked if they knew what sort of contract they had signed. 57% did know they were working with a contract for services, but many of them did not know what that exactly meant. 37% did not understand what sort of contract they had, and 6 % thought they had a contract of employment.²⁰³ Thus, the intent of the postal companies is clear. The intent of the postal deliverer on the other hand can only be seen in their own particular case. Moreover, as the knowledge, experience and expertise of the parties differ, the factual implementation of the contract becomes more important.²⁰⁴ The factual implementation of the contracts is clarified in the second step.

The second step of Loonstra and Zondag is to discuss the whole legal relation.²⁰⁵ There are no Court decisions available on the question when a postal deliverer working under a contract for services is actually an employee with an employment contract. The political party SP paid for the lawyer of a deliverer who was willing to challenge her contract for services in front of a judge, in order to converse it into a contract of employment. Unfortunately, the judge persuaded the deliverer to settle the dispute with Sandd, so a court judgment is still not available.²⁰⁶

On behalf of FNV, lawyer mr. Stouthart has defined several references out of relevant case law that point into the direction of either a contract for services or a contract of employment. Mr. Stouthart linked these references to information based on a questionnaire that was answered by three postal deliverers and on the information that was provided by the postal companies, such as standard agreements and deliverance booklets.

With regard to the existence of a contract of employment, her research concluded that workers were not obliged to perform the labour personally and the postal operator does not demand to be able to supervise the way in which the work has to be performed. The payment they receive is dependent on the amount of delivered mail items and the deliverers do not receive any vacation allowance or bonuses. The deliverers cannot participate in any company

²⁰² Example bezorgovereenkomst Sandd, example Overeenkomst van Opdracht Van Straaten Post

²⁰³ FNV Bondgenoten, Black paper postal market, Stichting FNV Pers December 2007

²⁰⁴ Loonstra & Zondag 2010, p. 103

²⁰⁵ Ibid., p. 104

²⁰⁶ Interview Sharon Gesthuizen, Member of Parliament for the SP, 26 November 2010

arrangements such as childcare facilities. There are no job evaluation conversations. The deliverers do not receive payment when they are sick or when there is no (or not enough) work. The deliverers are not involved in the organisation, they have never been asked for any type of contribution except to deliver the mail. The companies do not give the deliverers instructions whatsoever, only “good advice”. Furthermore, the companies are not liable for damages caused by the deliverer. Finally, it differs per deliverer if they are financially completely dependent of the delivering work. As the earnings from the work are not high, it is unlikely that deliverers are financially completely dependent of this work.²⁰⁷

Concerning the existence of a contract for services, her research concluded that in the agreements the usual clauses of a contract of employment are explicitly excluded, which indicates that the agreement is a contract for services. The deliverers are furthermore allowed to work for others companies than the company they have concluded the agreement with. The agreements also allow the postal deliverers to substitute themselves by someone else. If they cannot find anyone, the company usually takes care of this. The deliverers can refuse offered work. The deliverers can, within a certain period of time, decide for themselves how and when to perform the work. They have to use their own bicycle, but the bags in which they carry the mail are given to the deliverers. The companies do not pay insurance premiums.²⁰⁸

After taking the whole legal relationship into account, it can be concluded that the agreement of postal deliverers is not a contract of employment. However, in their third step Loonstra and Zondag state that if there is a specified authority relationship, the agreement can nevertheless be a contract of employment.²⁰⁹ This can be the case when the nature of the authority relationship makes that the employer has the right to give extensive instructions on the job content of the worker. The existence of a mere possibility to give instructions does not lead to the conclusion that the agreement is a contract of employment, as article 7:402 of the Civil Code allows the order giver to give instructions, after which the order taker can refuse the work.

Sharon Gesthuizen of the SP is of the opinion that the relationship between the postal companies and their deliverers has to be seen as such a specified authority relationship. The postal companies however, neither have by contract nor take the authority to issue orders. Article 7:402 of the Civil Code also allows the order givers to give instructions to a certain

²⁰⁷ G. Stouthart, *Onderzoek naar Overeenkomst van Opdracht*, p. 26- 27

²⁰⁸ *Ibid.*, p. 27-28

²⁰⁹ Loonstra & Zondag 2010, p. 104

extent. The instructions are comparable to the instructions that are given to for instance newspaper deliverers. Thus, the relationship between the deliverer and the postal companies can in my opinion not be seen as such an authority relationship.

Nonetheless, Loonstra and Zondag state that the fourth step is to take into account the social situation of the worker in question. Important are the level of education of the worker and his social-economic position in the society.

The postal deliverers can, roughly speaking, be divided into three groups:

1. Students over 16 years of age
2. Housewives and pensioners
3. Persons at the bottom of the labour market / at a distance of the labour market

The recruitment of the postal companies target people, who are not primarily dependent on the deliverance work: the first and second group. The people in these groups like the freedom that a contract for services provides them. Advertisements for the recruitment of postal deliverers emphasize that delivering mail is the “ideal way to stay busy and to exercise while getting paid.”²¹⁰ The people in the first two groups are likely to be able to oversee the consequences of the fact that they work with a contract for services.

The focus of the trade unions is to protect the third group. Some deliverers cannot find any other job because they have disabilities or a form of mental retardation. They can be in a position that they are entitled to welfare benefits and try to make some extra money with the deliverance work. These persons are the most vulnerable of the labour society. The protection that has been provided for through regulations around contracts of employment is pushed aside by the possibility of using a contract for services. For this group, the other steps mentioned above also need to be seen in another perspective. It is very well possible that these deliverers have no clue about the consequences of their work under a contract for services, (if they even understand what a contract for services is). The low social status of the worker in itself has however never been given independent significance by the Supreme Court.²¹¹ It is therefore not plausible that a judge will decide that the contract for services of such a postal deliverer is a contract of employment.

²¹⁰ WWW: www.wordpostbezorger.nl, last accessed 11 November 2011

²¹¹ Loonstra & Zondag 2010, p. 106

Taking the reference points by Loonstra and Zondag into account and merging the outcomes, the conclusion can be drawn that the contract for services of postal deliverers is not a contract of employment. The trade union BVPP also concluded that starting legal proceedings in order to enforce the presumption of article 7:610a of the Civil Code would not be successful.²¹² The main reason for FNV Bondgenoten to not start legal proceedings was that they were in consultation with the postal companies and the government in order to gradually eliminate the use of contracts for services in the postal market, and therefore considered it to be not the appropriate moment. At the same time they considered that even if they would win, due to the possibility of appeals the proceedings could take long before a final judgment would be there and therefore did not provide the solution they were looking for.²¹³

In order to see what the consequences in social protection were for postal deliverers with a contract for services, the State Secretary of Economic Affairs and the State Secretary of Social Affairs researched the common regulations that are applicable in most labour relations.

Paragraph 3.3 What are the consequences of working with a contract for services?

The research²¹⁴ on the social protection of postal deliverers working with a contract for services of the State Secretary of Economic Affairs together with the State Secretary of Social Affairs in 2007 showed that the use of a contract for services by the postal companies was a legitimate form of contract within the limits of contract law. The researchers also checked whether deliverers could rely on dismissal protection, the Working Times Act and Working Conditions Act and employee insurances and the Minimum Wage and Minimum Vacation Supplement Act.²¹⁵

Dismissal protection is regulated by the '*Buitengewoon Besluit Arbeidsverhoudingen*' (BBA 1945), in English: Extraordinary Order on Labour Relations of 1945. The BBA 1945 requires the employer to ask for permission of the Social Security Administration (UWV) in order to terminate the labour relation.²¹⁶ The BBA 1945 uses a broad interpretation of the term

²¹² Paul Jekkers, trade union leader BVPP, 8 November 2011

²¹³ Egon Groen, trade union leader FNV Bondgenoten, 8 November 2011

²¹⁴ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 55

²¹⁵ BBA 1945, Arbeidstijdenwet & Arbeidsomstandighedenwet, Besluit aanwijzing gevallen waarin arbeidsverhouding als dienstbetrekking wordt beschouwd.

²¹⁶ An employer can also ask a judge to terminate a contract of employment in case of 'serious reasons'.

employer: each natural person or legal entity, for whom or which personal labour is done.²¹⁷ Therefore, it is possible that labour relations which are not defined as a contract of employment fall within the scope of the BBA 1945. In order to apply the BBA 1945, it is necessary that the labour is done personally. This was the subject of proceedings before the Supreme Court in 1969, as the agreement in question stated that the worker was allowed to substitute himself by someone else, but he had never done so. The worker claimed therefore that the BBA 1945 was applicable. The Court decided that the contractual agreement prevails, even when the labour was in fact only done personally and the worker never substituted himself by someone else.²¹⁸ The Supreme Court upheld this decision in 2000.²¹⁹ The contracts for services of postal deliverers and postal companies explicitly state that it is not necessary to do the work personally and therefore the BBA 1945 is not applicable.

The report also discusses the Working Times Act and Working Conditions Act. Both Acts state in their first article that their provisions are applicable on employees and employers who have a contract of employment or on temporary workers. The Working Times Act can also be declared applicable upon those who are not employees and employers in the sense of the Act, in case the work they perform may cause danger to public safety or health. Both Acts are furthermore applicable in case an authority relationship exists. An authority relationship is presumed when the employer is allowed to supervise, to direct and to give instructions or commands to the employee²²⁰ and that the employee is obliged to accept it.²²¹ Under a contract for services, instructions can also be given based on article 7:402 of the Civil Code. As the contract for services used by the postal operators explicitly state, that the postal deliverer will do his work independently and that the company can only give non binding instructions to the deliverers, no authority relationship exists between the operator and the deliverer. Therefore, the Working Times Act and the Working Conditions Act are not applicable to postal deliverers with a contract for services.

Employee insurances in the meaning of the Disability Insurance Act, Sickness Act and Unemployment Act can be applicable on postal deliverers, but only if they in fact do the work personally and at least two days a week, for a period of at least 30 consecutive days, and if

²¹⁷ BBA 1945, art. 6 and 1

²¹⁸ HR 21 March 1969, *NJ* 1969, 321

²¹⁹ HR 10 November 2000, *NJ* 2001, 250

²²⁰ In Dutch: “toezicht uit te oefenen, leiding te geven en aanwijzingen of instructies aan de werknemer te geven”

²²¹ HR 16 september 1994, *JAR* 1994, 214

they earn per week at least 40% of the minimum week wages.²²² The research of the State Secretary expected that very few postal deliverers would fulfil the requirement of earning at least 40% of the minimum weekly wages, as the amount of work in the contracts is limited and the postal deliverers do not work enough hours to be able to attain the 40% threshold.²²³

In principle, the labour relation of the postal deliverers does not fall under the scope of the Minimum Wage and Minimum Vacation Supplement Act, but article 3 of the Act offers the possibility to extend the scope of the law by adjusting the definition of employment. The scope has been extended to those who perform contracted labour for pay and for maximum two other order givers, while the labour is performed personally or with help from spouse or relatives who live in the same house, and the duration of the labour relation is at least three months and at least five hours a week.²²⁴ The requirement of performing the labour personally is not as strict as with the BBA 1945 that is mentioned above: if the labour is factually done personally the requirement is fulfilled. To sum up, if the deliverer fulfils all requirements, the Minimum Wage and Minimum Vacation Supplement Act is applicable. The research stated that the Minimum Wage and Minimum Vacation Supplement Act was applicable to most deliverers, but that the earnings they received were often lower than the statutory minimum wage.²²⁵

Paragraph 3.4 Minimum wage inquiry

The Labour Inspectorate held an inquiry in 2008 because the government wanted to know if the postal deliverers received the statutory minimum wage. The inquiry was carried out by the company Heliview. They checked if the minimum wage was received when the postal deliverers worked according to the time limit of the companies. If so, the earnings were around the minimum wage. Furthermore, they carried out a random sample amongst 357 postal deliverers. Inspectors from the labour inspectorate accompanied eleven deliverers during their rounds to check earnings. This showed that below the age of 23, the earnings were on or above the minimum (youth) wage. Nonetheless, a significant number of deliverers

²²² Besluit aanwijzing gevallen waarin arbeidsverhouding als dienstbetrekking wordt beschouwd, 24 december 1986, *Stb.* 655

²²³ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 55

²²⁴ Besluit van 2 september 1996, *Stb.* 1996, 481

²²⁵ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 55

between the age of 23 and 65 did not receive the minimum wage.²²⁶ Sharon Gesthuizen states that the new postal companies are scandalously evading the minimum wage.²²⁷

The postal companies did not agree with the way in which the research was done. Their remarks have led to an adjustment of the findings in the final report, but still the postal companies disagreed.²²⁸ Sandd, setting to work 13.000 postal deliverers, asked the research and consultancy company MarketResponse to evaluate the set-up and the realisation of the research performed by Heliview. Their final conclusion is that the research does not live up to the demands for responsible and careful research. MarketResponse questions if the sample is representative. They criticise the diary that the deliverers had to fill out and the instructions that were given to the deliverers. Apparently, the report of Heliview even mentions that this was a known problem. MarketResponse also points out that the deliverers who filled out the form were acting out of self-interest, as due to media attention the deliverers knew why the random sample was carried out and therefore could expect higher future payments if they filled out the form more negatively.²²⁹

Prof. dr. A. van der Zwan, emeritus senior lecturer Market Analysis and Corporate Statistics, also condemned the way in which the research was carried out by Heliview. The method of research showed flaws as almost half of the deliverers who participated in the sample dropped out, the time registration method used was not validated and the deliverers participating were acquainted with the reason of the research and were therefore biased when they filled out their time registration form.²³⁰

Sandd also points out that it is practically impossible to compare the hours in which work is done under a contract for services and the hours in which work is done under an employment contract. Sandd takes into account the amount of kilometres the deliverer has to cycle, the amount of kilograms the deliverer has to carry with her/him and how many seconds it would take to walk to a letterbox, and this provides the basis for the earnings the deliverer receives. While working under a contract for services, it is completely up to the deliverers how they wish to spend their time in a day, as long as all mail is delivered between 8.00 and 18.00 on

²²⁶ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 79. Unfortunately, for confidential reasons, the report is not available for the public.

²²⁷ Interview Sharon Gesthuizen, member of Parliament for the SP, 26 November 2010

²²⁸ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 79

²²⁹ Marketresponse Research&Consultancy, *Memo Beloningsonderzoek postbezorgers*, 6 juni 2008

²³⁰ Contra-expertise Prof. Dr. van der Zwan, 26 June 2008. Prof. Dr. van der Zwan did not receive any form of recompense for the contra-expertise in order to remain neutral.

the prescribed day. Sometimes they will want to finish quickly and therefore walk faster, and sometimes they might just enjoy the sun and go for a stroll while delivering the mail, causing the earnings per hour to turn out lower. There is also a difference between deliverers, as youngsters who deliver mail as a side job are likely to walk faster than 67 year old persons who deliver the mail to earn some extra pocket money. Sandd states that the research did not take these biases into account.²³¹

The complaint of DHL Selektmail on the research also focuses on the difference between an “ideal deliverer” as they call it and their target group, existing of mainly deliverers who are by definition slower. They accept the inefficiency and give the target group a possibility for a job, which they supposedly would not have if their inefficiency would be taken into account. They also state that their other deliverers are largely younger than 23 years, and therefore should only earn minimum youth wage, which is lower than the normal minimum wage. The Heliview-research did not take this into account.²³²

Netwerk VSP does not agree with the Heliview report either. Their main concern is in the first place the used method of research, which does not take into account the way in which deliverers working under a contract for services tend to work. In the second place they state that the research can only give a restricted random indication and does not lead to a representative outcome. In the third place they state that the volume was lower than average in the period when the research was performed.²³³

The response of the State Secretary of Economic Affairs on the abovementioned critique was that the postal companies have had the opportunity to express their opinions before, during, and after the research and that their opinions have been taken into account in the final report. He states that Prof. dr. van der Zwan commented on an “uncorrected concept of the rapport” which still contained an error on the drop out percentage of deliverers, as that was only a normal 25 percent instead of 50 percent. In addition he states that the companies themselves were also biased when looking at the results. Another argument he put forth is that the deliverers filled out that they took a lot of breaks, which they would not have done if they wanted to manipulate the results in their own benefit.²³⁴

²³¹ Interview Frank van der Linden, HR Manager Sandd, 3 September 2010

²³² Letter of 26 June 2008 concerning “*Onderzoek beloning postbezorgers*” by John Kuiper of Selekt Mail to the Labour Inspectorate

²³³ Letter of 25 June 2008 concerning “*Rapport arbeidsinspectie beloningsniveau postbezorgers*” by Frank van Os of Netwerk VSP to the Labour Inspectorate

²³⁴ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 80

Paragraph 3.5 Better conditions of employment for postal deliverers

Paragraph 3.5.1 Trading early liberalisation for better conditions of employment

Following the result of the inquiries, the Dutch government decided that they did not want to open up the market completely if the deliverers of the postal companies did not receive better conditions of employment. The Dutch trade unions also wanted to ensure better conditions of employment for the deliverers, even though there are very few union members amongst postal deliverers at the new postal operators. According to Egon Groen of trade union FNV Bondgenoten there are not many union members because the turnover of the delivering staff is very high, and for most deliverers it is a small job with low income and not of such big importance as a full time job. It is also not as easy as it normally is for the trade unions to speak to all deliverers at the same time at the working area, as the companies bring the mail to the home of the deliverer.

The interference of the trade unions can be seen as an act of paternalism: the trade unions want to protect the individual workers against the powerful companies, even if the workers are not union members.²³⁵ And what is more: the trade unions do have many members at PostNL. Due to, amongst others, the competition of the newcomers in the market, PostNL (at that time TNT) already announced that the company would start to reorganise their structure, which would lead to compulsory redundancies of mailmen. If the postal deliverers at the newcomers would receive better conditions of employment, their payroll costs would increase and the new companies would no longer be able to compete on the basis of very cheap staff. Consequently, the reorganisation of PostNL could take a slower pace. Due to the fact that the Act on Collective Bargaining²³⁶ does not require the trade unions to have a certain percentage of union members amongst the workers they represent, the odd situation arose where the trade unions were able to represent the postal deliverers in the negotiations with the new companies.

The unions realised that the government would open up the postal market anyhow by 31 December 2010 as a result of Directive 2008/6/EC. The new postal companies were very interested in an earlier full opening of the postal market, because this would enlarge their market. If the trade unions reached an agreement with the new companies on the improvement

²³⁵ Interview Paul Jekkers, trade union leader BVPP, 6 July 2010

²³⁶ ‘Wet op de Collectieve Arbeidsovereenkomst’

of conditions of employment of the postal deliverers, the government would open up the postal market sooner than prescribed. The trade unions feared that their negotiation position would be weaker after December 2010. Because of the eagerness of the postal companies they were now able to trade faster liberalisation for better conditions of employment. The government had promised to back up the outcome of the negotiations.²³⁷

Paragraph 3.5.2 Collective agreement and AMvB

The newcomers reached an agreement through collective bargaining with the trade unions, in which they committed themselves to have provided 80% of their postal deliverers with a contract of employment after 3.5 years from the opening of the market. It hence allows 20% of the workforce to remain working flexible with a contract for services. The agreement worked with a model that indicated at which point the newcomers are financially able to provide a certain percentage of contracts of employment to their workers. The model stated that it would be possible to have 14% of the deliverers at the new postal companies working with a contract of employment in April 2010, and 40% of them in April 2011, 74% of them in April 2012 and a minimum of 80% in October 2012.²³⁸

The concluding parties also agreed to let SEO perform a check-up every year, in order to adjust the percentage if necessary. Yet, the final goal of 80 % of contracts of employment after 3.5 years was fixed.²³⁹ The trade unions asked the government to provide for a guarantee, in case the new postal companies would not live up to their obligations under the collective bargaining agreement. Article 8 of the Postal Act 2009 allows the government to draft a temporary order, an ‘*algemene maatregel van bestuur*’ (AMvB)²⁴⁰, in case:

- a. “the conditions of employment are socially unacceptable,
- b. a temporary problem exists in just the postal market, and
- c. the problem cannot be solved by changing regulatory requirements or in an agreement between the employer concerns and representatives of employee organisations.”²⁴¹

²³⁷ Interview Paul Jekkers, trade union leader BVPP, 6 July 2010

²³⁸ Collectieve arbeidsovereenkomst Postverspreiders 2009-2012

²³⁹ SEO Economisch onderzoek, *Van OVO naar CAO op de geliberaliseerde postmarkt* 2009, p. 2

²⁴⁰ This is governmental legislation that can be tested on constitutionality by a judge

²⁴¹ Postwet 2009, Art. 8

The government used the competence that was given by the Postal Act and thereby met the wishes of the trade unions by making an AMvB concerning contracts of employment in the postal sector, called '*Tijdelijk besluit arbeidsovereenkomst post*'. The AMvB states that postal companies are only allowed to have postal deliverers working for them under a contract of employment, unless the postal company is committed to the collective bargaining agreement and consequently provides the arranged percentage of their deliverers with contracts of employment at the fixed moments in time.²⁴² Furthermore, it makes clear that if the agreement is terminated before the appointed time of expiry, within six months and two weeks after that termination all postal deliverers must be accorded a contract of employment.²⁴³

The newcomers²⁴⁴ decided to challenge the AMvB in proceedings with all due dispatch before a court, the '*voorzieningenrechter van de rechtbank*'. To put it briefly, the court decided that as WPN (Employers Organisation for Postal Service Providers) concluded a collective agreement with the trade unions that can be declared universally binding and because no problem existed that could not be solved between the contracting parties, the Postal Act does not allow the government to take supplemental action in the form of an AMvB.²⁴⁵

As the State did not agree with the judgment of the court, the State took the case to an appeal court, the '*Gerechtshof*'. This court stated first of all that when it has to review legality of an AMvB, it must do so in a restrictive manner. The court furthermore decided that the collective agreement complies with all the demands the AMvB requires and the requests of WPN did not need proceedings with all due dispatch as a consequence. Therefore, the AMvB could come into force in case the collective agreement was terminated.²⁴⁶

Paragraph 3.6 The outcome of the collective agreement

In April of 2010, the newcomers were expected to have 14% of their workers working with a contract of employment. On March 31, 2010 SEO presented their first evaluation of the

²⁴² Tijdelijk besluit arbeidsovereenkomst post, Art. 2 sub 1 & 2

²⁴³ Ibid., Art. 2 sub 3

²⁴⁴ Sandd, Selektmail and WPN (Employers Organisation for Postal Service Providers)

²⁴⁵ V.zr. Rb. 's-Gravenhage, 31 december 2009, *LJN* BK8075

²⁴⁶ Hof 's-Gravenhage, 13 april 2010, *LJN* BM0859

compliance by the companies of the collective agreement. The researchers asked two main questions²⁴⁷:

- What is the truly realised percentage of contracts of employment from the first of April 2010 on?²⁴⁸
- Are the assumptions of March 2009 still valid? And if they were not: how would another course to adopt be influenced by changing the assumptions?²⁴⁹

Paragraph 3.6.1 Realised contracts of employment

The first question asked by the researchers of SEO was what the truly realised percentage of contracts of employment was from the first of April 2010 on. The newcomers did offer a contract of employment to 14% of their postal deliverers, but only 3.2% of them accepted that offer by April 2010, which results into a total amount of just 0.5% of all postal deliverers.²⁵⁰ The trade union FNV Bondgenoten issued a second Black paper a little while after the report of SEO. The foreword started with the Dutch phrase '*Belofte maakt schuld*' which means that what is promised should be done. FNV Bondgenoten asked 111 deliverers why they declined the offered contract of employment and the Black book gave five main reasons why they did so:²⁵¹

1. The earnings were too low with such a contract. (36%)
2. Employers announced that they could change working hours and said that the deliverers could be forced to work more hours or days (64%)
3. Employers announced that they could change the normal area in which the deliverers walk their route. (64%)
4. Deliverers were not allowed to work for another postal company that also took part in the collective bargaining. (43%)
5. The loss of flexibility. (39%)

²⁴⁷ SEO Economisch onderzoek, *evaluatie ingroeimodel maart 2010*

²⁴⁸ See paragraph 3.6.1.

²⁴⁹ See paragraph 3.6.2

²⁵⁰ SEO Economisch onderzoek, *evaluatie ingroeimodel maart 2010*

²⁵¹ FNV Bondgenoten, *Zwartboek Postmarkt, tot op heden alleen verliezers*, April 2010

The Black paper criticises the way in which the postal companies offered the contracts of employment as the companies emphasise the obligations that follow out of the contract while there is no need to do so.²⁵²

Sharon Gesthuizen also berates the way in which the postal companies offered contracts of employment up till now and the conditions of employment which are part of those contracts. She states for example that sometimes the deliverers have to ask for a day off two months in advance, which causes people to think they are better off without a contract of employment.²⁵³

Sandd stated that they did offer a contract of employment to 14% of their postal deliverers as the collective agreement prescribes, but that 73% of them refused the contract of employment, because it would interfere too much with the flexibility and freedom they have with a contract for services. The HR manager of Sandd said that the major part of their target group of postal deliverers is not primarily dependent on the money earned with the work for Sandd. This group exists of people with retirement benefits, students and housewives. He recognized that there are people who do depend partially on the Sandd income, but this is a small part (also because the delivering of Sandd material only takes place two days a week). According to the HR manager, the delivering takes only six hours a day.²⁵⁴

Paragraph 3.6.2 The assumptions of March 2009

The assumption that followed out of the research of SEO in 2009 was that it would be possible to have 14% of the postal deliverers at the new postal companies working with a contract of employment in April 2010, and 40% of them in April 2011, 74% of them in April 2012 and a minimum of 80% in October 2012. Those percentages were for the postal market as a whole, and so not specifically for each company. The second question the researchers of SEO asked was whether or not these assumptions of March 2009 were still valid. And if they were not: how would another course to adopt be influenced by changing the assumptions?²⁵⁵

SEO stated that it was necessary to adjust the assumptions of March 2009, based on information that was provided by the postal companies. They reported that the total volume

²⁵² FNV Bondgenoten, *Zwartboek Postmarkt, tot op heden alleen verliezers*, April 2010

²⁵³ Interview Sharon Gesthuizen, Member of Parliament for the SP, 26 November 2010

²⁵⁴ Interview Frank van der Linden, HR Manager Sandd, 3 September 2010

²⁵⁵ SEO Economisch onderzoek, *evaluatie ingroeimodel maart 2010*, slide 4

had declined strongly and the tariffs were much lower than in the used model. SEO calculated that even if the tariffs would recover between 2010 and 2013, it would not be possible to achieve 80% of deliverers with a contract of employment after 3.5 years without any other adjustments. SEO concluded that given the current situation on the market, it was not profitable possible to follow the original path.²⁵⁶

Paragraph 3.7 A deadlock in the negotiations

The above led to new negotiations between the postal companies and trade unions. According to Paul Jekkers of trade union BVPP, the postal companies made a few fake propositions which were not accepted by the trade unions.²⁵⁷ By the end of June 2010, the trade unions decided to terminate the collective agreement. As the AMvB was not set aside by the judge, it would come into force on the first of January 2011. The trade unions and the postal companies entered into new negotiations and tried to conclude a new collective agreement.

The negotiations reached a deadlock, and subsequently an emergency parliamentary debate was held. During the debate, several possibilities were brought up to improve the situation in the postal market.²⁵⁸ For instance, a price control measure was put forward given that SEO stated in their evaluation that the tariffs in the postal market were too low and the postal companies could not offer contracts of employment without going bankrupt. However, as swiftly as it came up it went down, because such measures are only allowed in case of an unexpected emergency in the national economy combined with a rapid inflation.²⁵⁹ Members of Parliament Verhoeven (D66) and Schaart (VVD) proposed “that the government would take steps so the social partners²⁶⁰ could appoint someone to explore the situation on the postal market.”²⁶¹ The proposition was accepted by the Parliament, but as the positions of the social partners were too far apart in this conflict, they could not reach agreement over the appointment of an expert. Subsequently, the State Secretary of Economic Affairs and the Minister of Social Affairs found dr. R. Vreeman willing to accept a broad assignment:

²⁵⁶ SEO Economisch onderzoek, *evaluatie ingroei-model maart 2010*, slides 9-10, 28, 38-41

²⁵⁷ Interview Paul Jekkers, trade union leader BVPP, 6 July 2010

²⁵⁸ Handelingen TK 2010-2011, nr. 9, p. 47-56, 7 October 2010

²⁵⁹ Ibid.

²⁶⁰ ‘Social partners’ means both employers (organisations) and trade unions.

²⁶¹ Tweede Kamer, vergaderjaar 2010-2011, 29 502, nr. 40

“objectively researching the situation and possibilities in order to find a way out of the deadlock.”²⁶²

Vreeman started his research on 25 November 2010 and he discussed the situation with several stakeholders and experts. On 9 December 2010, he send a letter to the State Secretary, stating that he had discussed the market and situation with several stakeholders, and that he would start to write his advice but needed more time as the AMvB obliged the postal companies to have all postal deliverers working with a contract of employment by 1 January 2011.

The Cabinet agreed to the proposition of the State Secretary of Economic Affairs, Agriculture and Innovation and the State Secretary of Social Affairs and Employment to postpone the obligation that resulted from the AMvB until the 15th of January 2011 in order to give Vreeman, the postal companies and the trade unions more time to search for a solution out of the deadlock.²⁶³

On 11 January 2011, Vreeman delivered his opinion to Parliament. He stated that the current situation on the postal market was not desirable and that competition should be based on quality and efficiency, and not on working conditions. To reach a stable and healthy postal market, social partners would have to come to a plan which described the amount of possible contract of employment at set dates, the companies would need to reserve enough financial limits for that plan and the government would have to create the conditions.²⁶⁴ Vreeman wanted to give the trade unions and postal companies until 1 April 2011 to conclude a new collective agreement. He stated that as the goals in the previous collective agreement were not reached due to financial problems, this had to be prevented in the new collective agreement.

On 14 January 2011 the Cabinet once again agreed to the proposition of State Secretary of Economic Affairs, Agriculture and Innovation and the State Secretary of Social Affairs and Employment to postpone the obligation of postal companies to have all postal deliverers working under a contract of employment until 1 April 2011.²⁶⁵

²⁶²Tweede Kamer, vergaderjaar 2010-2011, 29 502 nr. 41

²⁶³WWW: <http://www.rijksoverheid.nl/onderwerpen/postmarkt/documenten-en-publicaties/persberichten/2010/12/17/uitstel-verplichting-postbedrijven-om-arbeidsovereenkomst-aan-te-bieden.html>, last accessed 12 November 2011

²⁶⁴Advies Vreeman betreffende de Postmarkt, p. 9

²⁶⁵WWW: <http://www.rijksoverheid.nl/onderwerpen/postmarkt/nieuws/2011/01/14/uitstel-verplichting-postbedrijven-om-arbeidsovereenkomst-aan-te-bieden.html>, last accessed 12 November 2011

Vreeman's solution is the establishment of a so-called "Contracts of Employment Fund". The postal companies, including TNT, would deposit a certain amount of money into the Fund and this deposit would be based on the difference in the percentage of contracts of employment in the agreed model and the actual realised percentage of contracts of employment in the postal company. If necessary, an amount has to be added to the deposit in advance to ensure enough liquidity reserves. Also, the Fund would compensate the difference in cost between a contract of employment and a contract for services. At the same time, it could contribute to the mobility program of TNT. If the postal companies meet up to the requirements made in the model, they regain their deposit. If they do not, they would only regain their deposit proportionally up to the concluded contracts of employment. This would mean that the deposit has to be large enough so it will not be in the benefit of the company to still ignore the collective agreement. At the same time, Vreeman advised to sanction when a postal company does not deposit the agreed amount.

The Fund will have to be under the charge of the social partners, who jointly decide who will be the independent chairman. In order to oblige newcomers to join the Fund, parties must strive to a decision rendering the Fund compulsory. The amount that has to be deposited can increase each year simultaneously with the realised percentage of contracts of employment. Finally, when the agreed percentage of contracts of employment is reached, the temporary Fund will cease to exist.²⁶⁶ Vreeman advised that in case the parties do not reach a collective agreement, the government will have to oblige the postal companies to use contracts of employment, by changing the Postal Act and the AMvB.

The day after the publication of the report, Sandd announced that they were intending to take over the activities of SelektMail in the Netherlands. The take-over was submitted for approval by, amongst others, the Dutch competition authority.²⁶⁷ On 8 April 2011, the competition authority approved of the take-over because Deutsche Post wanted to withdraw SelektMail from the Dutch market regardless of the take-over, and therefore the restriction on competition would be minimal.²⁶⁸ The final take-over took place on 2 May 2011.²⁶⁹

²⁶⁶ Advies Vreeman betreffende de Postmarkt, p. 10-11

²⁶⁷ Press release Sandd, via WWW:

<http://www.sandd.nl/docs/uploads/Sandd%20voornemens%20om%20SelektMail%20over%20te%20nemen.pdf> , last accessed 12 November 2011.

²⁶⁸ WWW:

http://www.nma.nl/documenten_en_publicaties/archiefpagina_nieuwsberichten/nieuwsberichten/2011/17_11_nma_sandd_mag_selekt_mail_overnemen.aspx, last accessed 12 November 2011

The government announced after the report by Vreeman that they were going to investigate the use of contracts for services at the bottom of the labour market. This research would consider the legal meaning of a contract for services and would also investigate the use of the contracts for services in practice. The research is supposed to be finished by the end of 2011.²⁷⁰

Paragraph 3.8 Ready, set, go?!

Employer organisation WPN and the trade unions started new negotiations after the publication of the report of Vreeman. At the same time, the government prepared a new AMvB. SEO investigated upon instruction of WPN the possibility of a Contracts of Employment Fund as was proposed by Vreeman. The researchers concluded that the implementation of a Fund as proposed by Vreeman was prohibited by competition law.²⁷¹ They therefore proposed that the government would impose a charge of tax on so-called bulk mailing in the entire postal market. The proceeds of these levies would go to a Fund which was to be managed by the social partners.²⁷²

On 31 March 2011, the trade unions announced that they had reached agreement on the text of a collective agreement, but still needed to discuss the implementation of the provisions. The parties agreed that by 30 September 2013, 80% of all postal deliverers would be working with a contract of employment. The new AMvB was published on 1 April 2011 and provoked many reactions, as it required the postal companies to have 80% of the postal deliverers working with a contract of employment by 1 January 2014 and did not regulate anything else up to that date. The trade unions stated that the AMvB undermined the text of the collective agreement between them and the postal companies.²⁷³

²⁶⁹ WWW: <http://www.sandd.nl/docs/uploads/2011-05-02%20Definitieve%20overnamedatum%20Selekt%20Mail%20Nederland%20door%20Sandd%20bekend.pdf>, last accessed 11 November 2011

²⁷⁰ Tweede Kamer, vergaderjaar 2010-2011, 29 502 nr. 61

²⁷¹The researchers brought up that the companies were not able to pay for the contracts of employment immediately themselves. Therefore, it would also not be possible for the companies to pay the necessary amount to the Fund. Other possibilities were that the government would give a subsidy (which could be considered as unauthorised State Aid) or that the companies which add an additional fee to their tariffs (of which the calculation of the necessary tariffs could lead to the creation of cartels).

²⁷² SEO Economisch Onderzoek, *Uitwerking arbeidsovereenkomstenfonds op de postmarkt*, March 2011

²⁷³ WWW: http://www.fnvbondgenoten.nl/site/branches/zakelijke_diensten/postbezorgers/downloadblokken/brief_bleker_050411, last accessed 11 November 2011

After the parliamentary debate that followed the parliamentary committee meeting with members of government, the Second Chamber accepted a resolution to put the requirement of contracts of employment in the Postal Act, as the AMvB was temporary. The State Secretary of Social Affairs and Employment also stated that he would change the AMvB according to the percentages that would be agreed upon by the trade unions and postal companies.²⁷⁴

In the beginning of September 2011, postal companies with a turnover of less than 2 million euro were excluded from the requirement of converting contracts for services to contracts of employment.²⁷⁵

On 15 September 2011, the trade unions and WPN agreed and signed the new collective agreement. Because PostNL would not participate in a Fund and Sandd took over SelektMail, the necessity of a Fund had declined since its proposal and was therefore not included in the collective agreement.²⁷⁶ The collective agreement set new standards for the percentages of postal deliverers with a contract of employment. The percentages and dates are set on 25% on 30 June 2012, 40% on December 2012, 60% on 30 June 2013 and 80% on 30 September 2013.²⁷⁷

Only four of the more or less 130 registered postal companies in the Netherlands generated more than 2 million euro turnover in 2009.²⁷⁸ Sandd took over SelektMail in May 2011. Netwerk VSP announced on 14 November 2011, that they would stop their activities in the addressed postal market, because “the current postal market and economic situation did not offer enough perspective to make those activities profitable enough at short notice.”²⁷⁹ This means that there are now only two companies obliged to offer their deliverers contracts of employment, but these companies do represent 98% of the postal companies that work with contracts for services.²⁸⁰

²⁷⁴ Tweede Kamer, vergaderjaar 2010-2011, 29 502, nrs. 71,72,73

²⁷⁵ WWW: http://www.bvpp.nl/index.php?option=com_content&view=article&id=283:cao-postverspreiders-toch-niet-helemaal-klaar-&catid=43:sandd&Itemid=85, last accessed 12 November 2011.

Only 3% of all postal deliverers are working for postal companies with a turnover of less than 2 million euro. These companies often do not only operate in the Netherlands. The exception makes it easier to enforce the AMvB and collective agreement. Tweede Kamer, vergaderjaar 2010-2011, 29 502, nr. 73

²⁷⁶ Egon Groen, trade union leader FNV Bondgenoten, 17 November 2011.

²⁷⁷ Collectieve arbeidsovereenkomst postverspreiders, 1 April 2011 until 31 September 2013

²⁷⁸ Tweede Kamer, vergaderjaar 2010-2011, 32 722, nr. 6

²⁷⁹ Website Netwerk VSP, WWW <http://www.netwerkvsp.nl>, accessed 14 November 2011

²⁸⁰ Tweede Kamer, vergaderjaar 2010-2011, 32 722, nr. 6

Egon Groen of trade union FNV Bondgenoten is confident that Sandd (now due to above developments by far the largest postal company that uses contracts for services) will be able to meet the requirements of the collective agreement. He has noticed that Sandd has started with the implementation of contracts of employment.²⁸¹

Chapter summary

The new postal companies use a contract for services with their postal deliverers. The minister of Economic Affairs has stated several times that conditions of employment were a matter between employers and employees. However, since many questions were asked by Members of Parliament and trade unions whether or not the use of such a contract for services was allowed in the postal market, the government started to investigate whether the contracts for services were legitimate in the postal sector. The contracts for services were considered to be legitimate, but the deliverers could not rely on dismissal protection, not rely on the Working Times Act and Working Conditions Act and not rely on employees insurance, and could only rely on minimum wage and a minimum vacation supplement when certain circumstances were met. As a reaction, the government started to investigate whether the postal deliverers working with a contract for services received the minimum wage, and concluded that they often did not receive the minimum wage. The companies did not agree with the way in which the research was performed.

In order to fully open the postal market earlier than prescribed by the European Union, the postal companies concluded a collective agreement with the trade unions. The agreement consisted of a model that allowed the companies to gradually start using contracts of employment. By April 2010, 14% of all deliverers had to work with a contract of employment. The companies offered 14% of their deliverers a contract of employment, but only 0.5 % of all the deliverers accepted one. The trade unions therefore terminated the collective agreement.

It became an actual risk for the postal companies that the AMvB would come into force. This would mean that all the deliverers would have to start working with a contract of employment, immediately by 1 January 2011. The government assigned dr. Vreeman with the job to research the possibilities to find a way out of the deadlock that existed between the

²⁸¹ Egon Groen, trade union leader FNV Bondgenoten, 17 November 2011

postal companies and the trade unions. His solution was a Contracts of Employment Fund in which all postal companies would invest, and which would make it possible for the postal companies to provide their postal deliverers with contracts of employment. The peculiarities of the fund would have to be decided on by the parties to the collective agreement. Therefore, negotiations started once again after 16 January 2011.

A new collective agreement was agreed upon in April 2011, but only signed in September 2011. The Fund that was proposed by Vreeman did not make it into the collective agreement. A new model was made and 25% on 30 June 2012, 40% on December 2012, 60% on 30 June 2013 and 80% on 30 September 2013 of the postal deliverers have to be working with a contract of employment.

Conclusion

Liberalisation of the European Postal market

The European Community issued a Green paper on the postal market in 1992. It stated that there were five areas of concern in the European postal market. An improvement of (national and cross-border) quality of services, harmonisation of operational differences and the elimination of divergences and market distortions between Member States were necessary.

One of the objectives that were formulated by the European Community in the Green Paper to tackle the concerns, requested to have free competition in the largest possible part of the sector. The choice of opening up the postal market in order to solve the concerns of the Community is questionable.²⁸² But nevertheless, the European Community decided to do so.

Consequences of liberalisation for working conditions in the postal market

A significant problem that accompanied the opening of the postal market, were the consequences for the working conditions of mailmen and postal deliverers. The European Community decided to open the postal market and chose to do so through directives. The directives are very restrictive in their approach towards labour and working conditions for existing workers in the postal sector, even though the postal sector is very labour-intensive. The effects of liberalisation on the postal sector were believed to be of less important than other drivers of change, such as technical developments.

However, in my opinion, it has been a mistake to expect that at the moment the postal market was opened up and existing companies had to become lean in order to compete with new companies, employment and working conditions were not going to be negatively affected by that liberalisation. The effects of the transformation of the postal sector on employment and working conditions needed special attention in the legislation of the European Community and European Union at the moment the postal market was being opened up.

²⁸² Instead of opening up the postal market, the European Community could for example also have defined the 'universal service' and set standards with which national postal markets would have to comply. Collaboration between postal operators could also ensure an improvement of quality of services and harmonisation between Member States.

More attention to employment and working conditions in the directives would have helped the Member States as they have all struggled with the handling of employment issues and specifically working conditions in the postal market.

Only the third Postal Directive stated in a Recital that regulation of employment conditions was a competence of the Member States, but it should not lead to unfair competition in the postal sector.²⁸³ If this important sentence had been mentioned in the previous directives, Member States would have been more focused on the possibility that problems with working conditions could arise during and after the liberalisation of the postal market. The Member States could prepare for the possible problems in order to ensure decent working conditions for all workers in the postal market, at existing and new postal companies.

Unfortunately, the focus of the European Union remained at the economic benefits of free competition in the market. The employment aspects were to be handled by the Member States themselves.

The European Community expected in the Green paper that the working conditions at private and public postal operators would move closer together after liberalisation. However, this has not been the case. After the opening of the postal market, new postal companies entered the market. In Sweden, for example, working conditions are fairly similar at the two main postal operators due to collective agreements that were concluded. In other states, the newly entered postal companies offer minimum wage jobs with poor working conditions. At the same time the incumbent postal operators of Germany, the Netherlands, Norway, New Zealand and Sweden have made radical cuts in their staff in the last 10 years. Well-paid jobs with good fringe benefits at the incumbent postal operators are at risk.

The changes in the working conditions in the postal market cannot be solely attributed to liberalisation. Technical developments for instance, have decreased the labour-intensiveness of the postal sector but have also caused to have less post sent. However, by meddling in this labour-intensive sector, I am of the opinion that the European Community/European Union was under the obligation to take possible distortions of the presumption, that working conditions would not be negatively affected much, better into account.

²⁸³ Directive 2008/6/EC, recital 16

The situation in the Netherlands

The directives have been implemented differently and liberalisation took place in a different pace in the Member States of the European Union. In parliamentary debates in the Netherlands it is sometimes stated that the Dutch postal market developed in the way it did because of the requirements of the directives. It then may seem as if the European Union is to blame for the difficulties with working conditions in the Dutch postal market.

The Netherlands planned to turn the postal operator PTT into an international company. The postal operator was ineffective and inefficient before liberalisation. PTT had many opportunities to enhance their effectiveness and become more efficient.²⁸⁴ Because the company was a monopolist and there were so many employees involved, who would lose their jobs if the company would restructure, the Board of Directors considered it to be “socially undesirable” to restructure.²⁸⁵

In New Zealand however, the government chose to restructure the state enterprise before the postal market was liberalised. The incumbent postal company already anticipated on the future. They decided to reduce their staff by 43% and implemented new technologies. After this, liberalisation of the postal market was the next step to keep the company efficient and competitive. This approach led to an improvement of the postal market with healthy working conditions for deliverers.

The Dutch government had three options of increasing revenue: compulsory redundancies, raising the prices of stamps and expanding into the international market.²⁸⁶ The Dutch government wanted to avoid the first two options, because they predicted that it would not have been accepted by the public society and trade unions. The government was keen on liberalisation, but only if the other Member States of the European Union would also liberalise their postal markets. If other Member States would liberalise their postal markets, PTT could expand. However, the decision of turning PTT into a large international company, by expanding their activities abroad, only moved the problem of too expensive staff to the

²⁸⁴ For instance, the postal operator already was in the possession of a sorting machine that was able to sort mail in the same way as mailmen did: by house numbers and route. TNT waited 10 years before they start using the machine. Andries Feijen, public advisor TNT, 2 November 2010

²⁸⁵ Andries Feijen, public advisor TNT, 2 November 2010

²⁸⁶ NRC Handelsblad 21 mei 2011, *Privatiseren, concurreren, splitsen: ‘Onder vleugels van de Staat waren TNT en KPN marginale bedrijven gebleven’*, Economie p. 7

future. After liberalisation, and driven by competition and the dropping of volume, the company still started its restructuring.

At the same time, the labour relations of postal deliverers with the newly entered postal companies were contracts for services and not contracts of employment as the mailmen and postal deliverers at the incumbent, which is nowadays called PostNL. Because the companies only offered contracts for services, the postal deliverers could not rely on dismissal protection, not rely on the Working Times Act and Working Conditions Act and not rely on employees insurance. They could only rely on minimum wage and a minimum vacation supplement when certain circumstances were met. They often did not receive the minimum wage. A study of trade union FNV Bondgenoten showed that many postal deliverers did not understand what the consequences were of working with a contract for services instead of a contract of employment.

Consequence is that mailmen and especially postal deliverers are the victims of the Dutch approach to liberalisation.

Trade unions have tried to improve the working conditions of postal deliverers. The first collective agreement that was concluded between the new postal companies and trade unions was terminated by the trade unions, because the postal companies could not live up to the standards set by the collective agreement. A new collective agreement has been signed on 15 September 2011 by the new postal companies and trade unions. The new postal companies with a turnover of more than 2 million euro are excluded, but the largest two (representing 98% of the postal deliverers) are expected to have 10% of their postal deliverers working with a contract of employment by December 2011.

The approach of the government

The government often states that PostNL is no longer a state-owned company and that the other postal companies are private companies as well. The State Secretary of Economic Affairs stated that conditions of employment are the responsibility of employers and trade unions, where it is the responsibility of the government to monitor that the legal requirements are upheld.²⁸⁷ However, the new postal companies used contracts for services for their deliverers. The contracts for services are a legitimate form of labour relation. Boot already

²⁸⁷ Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 55, p. 1

warned in his doctoral thesis that “weaker parties would have to accept contracts that excluded large parts of labour law protection” and he stated that such “a complete liberal system would be fundamentally in contravention with the protection of labour law.”²⁸⁸

By allowing companies to use contracts for services for people who hardly understand that the contract does not protect them in the way the established social system should, the government is turning its back on those who need it the most. The responsibility of the Dutch government is to protect the postal deliverers (at the bottom of the labour market) against the strong and powerful postal companies. It took the government nonetheless until March 2011 before they started an investigation on the use of the contracts for services at the bottom of the labour market. The investigation will be finished by the end of 2011. The government should have taken a more proactive role, because far before March 2011 there were signs of possible misuse or abuse of contracts for services.

The postal companies did not live up to the standards of the first collective agreement, because the required amount of postal deliverers did not sign a contract of employment. The government did not stick rigidly to the AMvB, because the AMvB obliged the postal companies to have all their postal deliverers working with a contract of employment. The government did not enforce the AMvB, but appointed dr. Vreeman to find a way out of the deadlock in negotiations between the postal companies and trade unions. By not enforcing the AMvB, that was explicitly adopted as a guarantee to ensure the percentages that were set in the collective agreement, the government did not provide the trade unions a strong position in the new negotiations.

The approach in Belgium has been the complete opposite of the approach in the Netherlands. The Belgian government lobbied so that the third Postal Directive would contain a sentence that allowed the Member States to regulate working conditions in the postal sector.²⁸⁹ Belgium has included in their authorisation procedure that every worker that works for an

²⁸⁸ Boot 2005, p. 69-70, via WWW: <https://openaccess.leidenuniv.nl/bitstream/handle/1887/602/thesis.pdf?sequence=1>, last accessed 16 November 2011

²⁸⁹ WWW: <http://www.websaid.be/pers/ontslagen-bij-concurrent-deutsche-post-les-voor-eu-liberalisering-post>, last accessed 16 November 2011

authorised postal operator, can only work with a contract of employment.²⁹⁰ This shows that the directives can also be interpreted in a different way than the Dutch government did.

The approach of trade unions

The Dutch trade unions seem to have underestimated the consequences that would come with liberalisation, in apparently the same way as the European Union did. Trade unions have not (been able to) mobilise(d) mailmen, in order to stop the competition on the basis of working conditions by the new postal companies. Many mailmen are trade union members, but postal deliverers are not. The trade unions try to explain to the mailmen that the unions also work for the interests of the postal deliverers, because this is also beneficial for the mailmen. Because: the prices of competitors will go up when they use contracts of employment for their postal deliverers, as contracts of employment are more expensive. This will result in higher prices at the incumbent, which makes it easier to keep their staff.

Respect for the job of the mailman has been decreasing dramatically in the Netherlands over the past years. Also, due to the high Internet coverage, the necessity of receiving physical mail has become less important. In newspaper “De Pers”, the following cartoon was printed which illustrates the above-mentioned:²⁹¹



The lack of public support makes it harder for the trade unions to take accepted industrial action.

²⁹⁰ WWW: <http://www.bipt.be/nl/34/ShowContent/1598/Regulering/Vergunning.aspx>, last accessed 16 November 2011

²⁹¹ Cartoon by Maarten Pathuis, published in De Pers on 26 November 2010, p. 6. Translation: Bas is switching jobs. Son: “Garbage collector? I thought you were a mailman?” Father: “Daddy wants a job were people do mind when one goes on strike.”

The influence of trade unions in for instance Sweden, Norway and United Kingdom is stronger. Trade unions in the United Kingdom have prevented the incumbent to cut in staff. However, working conditions at competitors of the incumbent in the United Kingdom are also low. A nice example of a liberalised market is Sweden: trade unions managed to effect that working conditions at the two largest postal operators are more or less the same.

The approach of postal companies

The contracts for services of newspaper deliverers served as an example for the contracts for services for postal deliverers that are used by the new postal companies. The idea of using contracts for services came from Sandd. Wages of mailmen at TNT were very high, and no longer representative for the skill level that was needed for the deliverance of mail. Bluntly speaking, being able to ride a bicycle, walk, read and be trustworthy is all you need to be a postal deliverer. Because the postal sector is a highly labour-intensive sector and Sandd needed a flexible staff due to fluctuating postal volumes, Sandd searched for a cheap solution and found it in contracts for services. As has been discussed, the contracts for services are a legitimate form of labour relation. The postal companies that entered the market after Sandd also started to use contracts for services.

However, such a widespread use of contracts for services was not intended by the legislator. Companies also have a social responsibility within the society. The form of contracts the postal companies used, deny established basic labour rights for postal deliverers. In my opinion, the new postal companies used the leaps in the Dutch labour law to their own benefit and they neglected their social responsibility to provide decent work.

The new postal companies concluded a collective agreement with the trade unions and agreed to have 10% of their postal deliverers working with a contract of employment by April 2010. Because of price competition (that the postal companies started), prices dropped and the postal companies were not able to live up to the percentages set in the collective agreement. This could have turned out wrong for the postal companies. If the government would have enforced the AMvB the postal companies would have been obliged to immediately transfer all contracts for services into contracts of employment. But because the postal companies were not able finance contracts of employment for all deliverers, they would have gone bankrupt.

The postal companies calculated their chances correctly; they were saved by the Dutch government.

TNT incorporated Netwerk VSP to compete with the new postal companies. One and a half month after the signing of the new collective agreement, PostNL announced in November 2011 that Netwerk VSP would stop the deliverance of addressed postal items. This strongly suggests that Netwerk VSP only existed to also compete on the basis of working conditions with the other postal companies.

The future of the Dutch postal market

Many things have changed since the start of liberalisation of the postal market in the Netherlands. When looking at working conditions, mailmen have seen a deterioration of their conditions of employment, while the working conditions of postal deliverers did not improve. In December 2011, it will become clear whether the new postal companies are able to meet the agreed percentage of the collective agreement: 10% of their postal deliverers must be working with contracts of employment. When the new postal companies meet these targets and the following: 25% on 30 June 2012, 40% on December 2012, 60% on 30 June 2013 and 80% on 30 September 2013, are we already there?²⁹²

I would like to quote Condoleezza Rice: “What you know today can affect what you do tomorrow, but what you know today cannot affect what you did yesterday.”²⁹³

Looking at what has been discussed in this thesis; I would strongly recommend further research on how to prevent the use of contracts for services at the bottom of the labour market. I recommend the legal academic scholars to further research the developments in the postal market and the use of contracts for services. To my mind, there is a considerable lack of interest in the area. I would also recommend the government to take the necessary steps to prevent the use of contracts for services at the bottom of the labour market. In my opinion, the developments in the postal market should be taken as a warning for the possible hollowing out of contracts of employment by the use of contracts for services without the protection of labour law. There is a risk that workers in similar sectors (transportation, metal industry, cleaning, etc.) will have to face the same issues in their protection of labour rights. The Dutch

²⁹² For reflection, the original targets were 14% in April 2010, 40% in April 2011, 74% in April 2012 and a minimum of 80% in October 2012

²⁹³ Condoleezza Rice, former Secretary of State of the United States of America

government should learn from what has happened in the postal market and prevent similar situations from happening in the future.

Final Conclusion

The main research question of this thesis was the following: *“To what extent was the Dutch approach towards liberalisation of the postal market an adequate, proper and effective approach with regard to working conditions for postal deliverers and mailmen, while taking into account the demands of the European Union?”* Taking into account all the arguments explained above, I would like to conclude that Dutch approach was to my mind, not an adequate, proper and effective approach. Although there are remarks to be made about the behaviour of postal companies and trade unions, in my mind the Dutch government is the most responsible for the problems that arose after and during liberalisation.

References

Books

Boot 2005

Boot, *Arbeidsrechtelijke bescherming (diss. Leiden)*, Leiden 2005: Sdu Uitgevers

Craig & De Búrca 2008

Craig & De Búrca, *EU Law: Text, cases, and materials*, Oxford 2008: Oxford University press

Davids 1999

Davids, *De weg naar zelfstandigheid: de voorgeschiedenis van de verzelfstandiging van de PTT in 1989*, Hilversum 1999: Uitgeverij Verloren

Van Drongelen 2009

Van Drongelen, *Individueel Arbeidsrecht, de overeenkomsten tot het verrichten van arbeid*, Zutphen 2009: Uitgeverij Paris BV

Jacobs 2004

A.T.J.M. Jacobs, *Labour Law in The Netherlands*, Den Haag 2004: Kluwer Law International

Loonstra & Zondag 2010

Loonstra & Zondag, *Arbeidsrechtelijke themata*, Den Haag 2010: Boom Juridische Uitgevers

Mendel & Oostwouder 2007

Mendel & Oostwouder, *Hoofdzaken NV en BV*, Deventer 2007: Kluwer

Plessen & Massuger 2009

Plessen & Massuger, *Arbeidsovereenkomsten en sociaalzekerheidsrecht*, Groningen/Houten 2009: Noordhoff

Strikwerda & Rijnders 2004

Strikwerda & Rijnders, *Macchiavelli in Europa: Effecten van Asymmetrische Liberalisatie in de Europese Postmarkt*: Utrecht 2004: Nolan Norton Institute

Articles/studies

Andersen & Mjørnlund

Andersen & Mjørnlund, *Working paper nr. 3/09; Rapport: Effekter ved en liberalisering av det norske postmarkedet*

Andersen & Mjørnlund, *Working paper nr. 23/09; Tilleggsutredning: Liberalisering av postmarkedet i Norge – en utdyping av enkelte problemstillinger*

Copenhagen economics

Main developments in the postal sector, Final Report (2008-2010), November 2010

Main developments in the postal sector (2008-2010), Part B: country fiches appendix, November 2010

Wages and employment conditions in liberalised postal markets: report for the Norwegian Ministry of transport and communications, August 2010

FNV Bondgenoten,

Zwartboek Postmarkt, tot op heden alleen verliezers, April 2010: Stichting FNV Pers

Black paper postal market, December 2007: Stichting FNV Pers

Marketresponse Research & Consultancy

Memo Beloningsonderzoek postbezorgers, 6 June 2008

NRC Handelsblad

NRC Handelsblad 21 mei 2011, *Privatiseren, concurreren, splitsen: 'Onder vleugels van de Staat waren TNT en KPN marginale bedrijven gebleven'*, Economie p. 7

SEO Economisch Onderzoek

Uitwerking arbeidsovereenkomstenfonds op de postmarkt, Amsterdam March 2011

Evaluatie ingroeimodel Maart 2010 Amsterdam March 2010

Van OVO naar CAO op de geliberaliseerde postmarkt, Amsterdam 2009

Tante Pos krijgt concurrentie: Effecten van de liberalisering in Nederland, Amsterdam 2003

Stouthart

G. Stouthart, *Onderzoek naar Overeenkomst van Opdracht 2006*

UNI global union

What has postal liberalisation delivered? The case of Germany, August 2009

What has postal liberalisation delivered? The case of Sweden, August 2009

TNT

PowerPoint presentation of TNT of 16 September 2010 by Harry Koorstra, Gerard Aben and Ger Jacobs

TNT Post Public Affairs Department: *Our face in Europe*

WIK Consult

WIK Consult, *Evolution of the European postal market since 1997, August 2009*

WIK Consult, *Evolution of the European postal market since 1997, Annex Country Fiches August 2009*

Legislation

Treaty on the functioning of the European Union

Directive 97/69/EC

Directive 2002/39/EC L176/21

Directive 2008/6/EC

Council resolution 94/C 48/02, C048

Arbeidstijdenwet

Arbeidsomstandighedenwet

Besluit aanwijzing gevallen waarin arbeidsverhouding als dienstbetrekking wordt beschouwd

Besluit van 2 september 1996, houdende aanwijzing van een aantal arbeidsverhoudingen die als dienstbetrekking als bedoeld in artikel 2 van de Wet minimumloon en minimumvakantiebijslag worden beschouwd

Burgerlijk Wetboek

BBA 1945

Postwet

Wet op de collectieve arbeidsovereenkomst

Tijdelijk besluit arbeidsovereenkomst post

Machtigingswet PTT Nederland NV, Stb. 521

Kamerstukken

Eerste Kamer, vergaderjaar 2007-2008, 30 536, O

Tweede Kamer, vergaderjaar 2010-2011, 32 722, nr. 6

Tweede Kamer, vergaderjaar 2010-2011, 29 502, nrs. 40, 41, 61, 71, 72, 73

Tweede Kamer, vergaderjaar 2010-2011, 29 502, nr 49, Bijlage, Advies Vreeman betreffende de postmarkt

Tweede Kamer, vergaderjaar 2009-2010, 30 536, nrs. 117, 124

Tweede Kamer, vergaderjaar 2007-2008, 30 536, nr. 55, 79, 90

Tweede Kamer, vergaderjaar 2006-2007, 30 536, nr. 48

Tweede Kamer, vergaderjaar 2006-2007, 29 502, nr. 12

Tweede Kamer, vergaderjaar 1997-1998, 25 862, nr. 3

Tweede Kamer, vergaderjaar 1985-1986, 17 370, nrs. 30, 31, 32

Tweede Kamer, vergaderjaar 1983-1984, 17 370, nrs. 2, 3

Tweede Kamer, vergaderjaar 1982-1983, 17 779, nr. 3

Handelingen Tweede Kamer, 2010-2011, nr. 9, p. 47-56

Handelingen Tweede Kamer, 2006-2007, nr. 60, p. 3337-3360

Handelingen Tweede Kamer, 2006-2007, nr. 61, p. 3397-3412

Handelingen Tweede Kamer, 2006-2007, nr. 64, p. 3592-3650

European Union documents

COM (91) 476

COM (2002) 632

COM (2005) 102

COM (2006) 595

COM (2008) 884

OJ C 116, 20 April 2001 P. 0003-0004

OJ C 104, 14 April 1999, P. 0134

Case-law

Hof 's-Gravenhage, 13 April 2010, *LJN* BM0859
Vzr. Rb. 's-Gravenhage, 31 December 2009, *LJN* BK8075
HR 10 November 2000, *NJ* 2001, 250
HR 14 November 1997, *NJ* 1998, 149
HR 16 September 1994, *JAR* 1994/214
HR 13 March 1981, *NJ* 1981, 635
HR 21 March 1969, *NJ* 1969, 321

Websites

www.ad.nl
www.analist.nl
www.bpost.be
www.bipt.be
www.bvpp.nl
www.financieel-management.nl
www.kpn.nl
www.nieuwsbank.nl
www.nma.nl
www.tnt.nl
www.tntpost.nl
www.regjeringen.no
www.postnl.nl
www.postkom.org
www.sandd.nl
www.statline.cbs.nl
www.szw.nl
www.uniglobalunion.org
www.websaid.be
www.wordpostbezorger.nl

Interviews

Frank van der Linden

Andries Feijen

Paul Jekkers

Egon Groen

Sharon Gesthuizen

Kees Verhoeven

Hans-Jacob Schultz

Miscellaneous

CAO Postverspreiders 2009-2012

CAO Postverspreiders 2011-2013

Examples of the contracts for services used by Sandd and Van Straaten Post

Letter of 26 June 2008 concerning “*Onderzoek beloning postbezorgers*” by John Kuiper of Selekt Mail to the Labour Inspectorate

Letter of 25 June 2008 concerning “*Rapport arbeidsinspectie beloningsniveau postbezorgers*” by Frank van Os of Netwerk VSP to the Labour Inspectorate

Cartoon by Maarten Pathuis

Cartoon by Reid, Geleijnse & Tol