

> Return address Postbus 20401 2500 EK The Hague

Chair of the Second Chamber of the States-General  
Binnenhof 4  
2513 AA THE HAGUE

Directorate-General of Energy,  
Telecommunications &  
Competition

Board Competition and  
Consumers

**Address**

Bezuidehouthoutseweg 73  
2594 AC The Hague

**Postal address**

Postbus 20401  
2500 EK The Hague

**Government organisation  
identification number**

00000001003214369000

T 070 379 8911 (general line)

F 070 378 6100 (general line)  
[www.rijksoverheid.nl/ezk](http://www.rijksoverheid.nl/ezk)

Date 15 June 2018  
Re Future of the postal market Dear Chair,

## An affordable postal letter in a digital society

### 1 Introduction

Due to the many alternatives available on various markets, ordinary mail is losing its unique position as a means of communication. Changing communication needs and technological developments have resulted in a steep decline, whereby new (digital) services are taking over from ordinary mail. On the other hand, adjoining markets driven by e-commerce are growing, especially in the parcels market and the broader delivery services market. The ordinary mail market may eventually be incorporated into this broader delivery services market, possibly becoming a market for the delivery of products or services, such as letters, parcels, and weekly meal boxes or an even wider logistics services market. The smart combining of logistic flows may also contribute to resolving the sustainability and mobility issues which local authorities have to address. These developments may pose threats, but also provide opportunities. The affordability of postal services - in their current form - is under pressure because of the declining market, but at the same time electronic communication is really taking off, and digital and other technological alternatives provide a new way of safeguarding public interests.

**Our reference**

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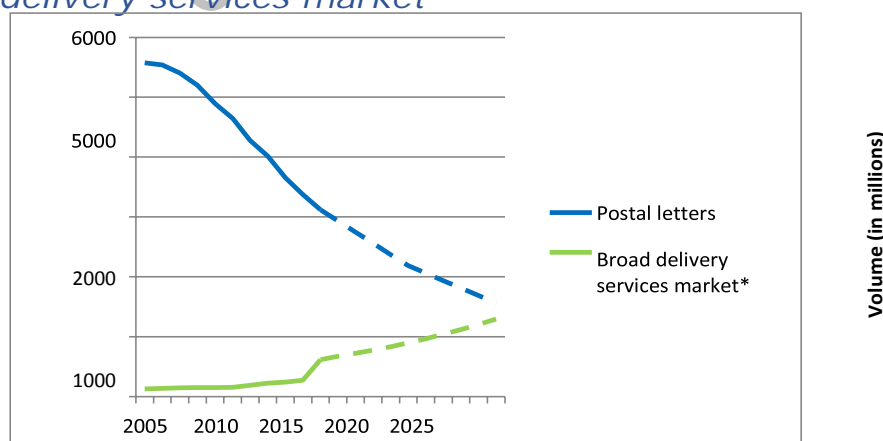
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**Enclosure(s)**

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*Figure 1. Postal market will be incorporated into a broader delivery services market*



\* In this figure, the broad delivery services market is based on parcel and meal delivery.

The decline is inevitable, but in the transition phase the rate at which it declines, the market value, and the extent to which public interests are protected are all unclear. In the final picture, the rationale for an extensive sector-specific postal delivery service is limited. Furthermore, it is necessary to continue to safeguard the interests in a broader delivery services market. It is important to create a careful transition path in order to allow for a smooth transition, while taking into account all the interests in the sector.

In this letter I present the role of the government, both as it is in the current transition phase and as it will be in the final picture, as well as the adjustments that are to be made to the current legislation and regulations. The Cabinet intends to shape this transition phase in a responsible manner and provide a range of helpful instruments. The underlying principle is to make the legislation as flexible and future-proof as possible in order to enable a smooth transition. In this transition phase it is important to take into account the public interest, legal certainty, and the equality of rights. In this letter I will explain how this can be achieved and what the underlying principles are. I have been able to use the final recommendations from the Post Dialogue, held during the past few months by Ms M.J. Oudeman. I am very grateful to her for all her work.

*Figure 2: Changing scope of regulations*

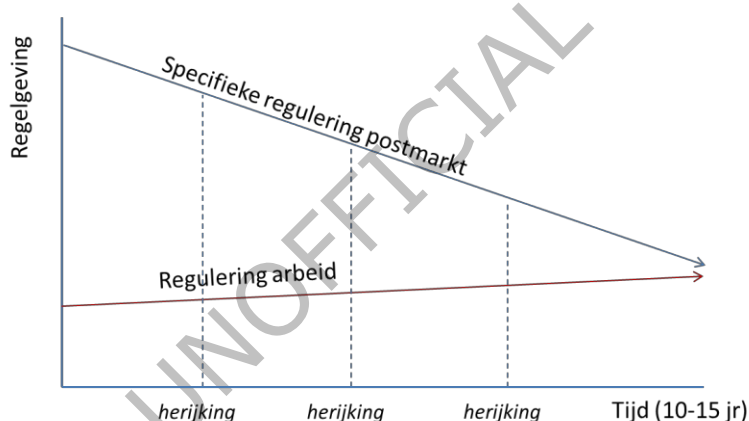


Figure 2 shows that sector-specific regulations for the postal market can be phased out gradually, while regulations for other markets - such as the broader delivery services market probably should be expanded. Particular attention should be paid to the regulations concerning employment. Regulations regarding quality and reliability of service should also be looked at, especially if socio-economic interests are at stake.

## 2 Market picture

During the past decade, the Netherlands has been able to benefit from the dynamics brought about by the liberalisation of the postal market in 2009. PostNL has managed to transform itself from a loss-making state-owned company to an efficient logistics service provider due to the introduction of competition. Dutch postal services are known for their quality and - compared to other European countries - are reasonably priced, despite the fact that the decline of the postal service in the Netherlands is taking place at a faster rate than in most other EU member states. The postal services in the Netherlands nevertheless survive without any help from government subsidies, whereas in other countries they cannot<sup>1</sup>. Large senders benefit from the freedom of choice and an excellent price/quality ratio. These factors have contributed to an efficient provision of services and the preservation of the value of postal services for society. This idea is confirmed by the *Postal Developments Report 2018*<sup>2</sup> of the Universal Post Union, which shows how countries score on reliability, connectivity, quality, and resilience of their postal services. The Netherlands is second to Switzerland only.

The Future Postal Market Analysis (hereafter: Future Analysis) which you received<sup>3</sup> in July 2017, shows that the picture is changing. Because of the persistent decline, the affordability of the Universal Service Obligation (USO) is under pressure, and reform in the postal market is urgently needed. This picture has remained the same since then. Meanwhile, the number of 5 billion postal items sent in 2009 has since been halved. This trend is expected to continue. In 2017 and in the first quarter of 2018, the annual decline in volume continued with 10%.

One of the important conclusions from the Future Analysis was that the limited measures applied within the current regulating frameworks are no longer sufficient to safeguard an affordable USO in the long run: more fundamental interventions are needed. The Future Analysis subsequently indicates that this reflection on the problem requires a national dialogue in order to give answers to the following three questions distilled from the analysis:

1. What is the value of letter post for the public interest in the future and what does this imply for the regulations that currently safeguard this public interest?
2. How do the changes in the postal market affect its current rules?
3. Which interests are currently under pressure from the transition and what additional measures are needed to ensure a gradual and sound transition?

In view of the importance of ultimately having a sufficient level of support for the answers to these questions, I asked Ms Oudeman to hold discussions with all the relevant organisations and persons, in the form of the so-called Post Dialogue. The final recommendations of this Post Dialogue are listed in the attachment to this letter. I will single out the key points below.

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<sup>1</sup> In various EU-member states, the Universal Service Obligation (USO) is subsidised by the government with millions of euros, WIK 2012 and Copenhagen Economics 2018

<sup>2</sup>[Http://www.upu.int/uploads/tx\\_sbdownloader/postalDevelopmentReport2018En.pdf](http://www.upu.int/uploads/tx_sbdownloader/postalDevelopmentReport2018En.pdf)

<sup>3</sup> Parliamentary Paper 29 502, no. 140

## 3 Key results from the Post Dialogue

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Ms Oudeman started the Post Dialogue in January 2018 on my request. A total of 55 various parties were invited to take part in the dialogue, of which around 40 have provided their written or oral input.

Oudeman's recommendations contain the following items: In the next few years, the current service level of the USO should be maintained. According to Oudeman, there is a clear need for services that are included in the USO. Furthermore, it should be prevented that other postal operators are allowed or able to cherry-pick any of the profitable parts of the postal market. This undermines the affordability of the USO. Within this context, Oudeman recommends that the entry regulation is evaluated once again and adjusted where necessary. Oudeman notes that there is an increase in collaboration between small postal operators. As large postal operators feel restricted in their possibilities to collaborate, she advises that the regulations are adjusted so as to remove any impediments.

Oudeman also observes that the only option for safeguarding the affordability of the USO in the coming years is to consolidate the national networks of the two large postal companies in the Netherlands. She recommends that these postal companies should be supported by the government where possible, should they wish to consolidate. Oudeman also stresses the importance of keeping the regulations relevant, and to adjust them accordingly to changing consumer needs. Finally, Oudeman advises that we need to look at creating a level playing-field with regard to employment conditions in a broader postal delivery market. For the time being, Oudeman deems it sensible to maintain the 80% facility.

I have included Oudeman's recommendations in my policy and legislation agenda, which I will discuss later in this letter. First of all, however, I will outline why the government pays special attention to this sector.

## 4 Particular characteristics of the postal market

### *4.1 Objectives of the government*

As stated in the introduction, the regular mail will eventually disappear or be incorporated into broader markets as a niche product. However, we have not arrived there yet, and the current regulations are still based on the situation dating a few years back. The Postal Act 2009 came into being between 2005 and 2009. At the time, there was no or hardly any decline at all. More than 5 billion postal items were sent annually; today this is less than 2,5 billion. This trend will continue, and the question arises as to what this means for the regulations for the postal market. In order to understand where we want to go, it is good to find out where we came from.

Part of the objectives the government is trying to achieve on the postal market are in effect no different from their objectives concerning other markets, i.e. ensuring a good price/quality ratio for products and services provided for end consumers and

the protection of employees. But at the same time, there is the belief that postal letters contribute to social inclusion, which means ensuring a basic level of provisions at uniform prices for certain groups of users who are vulnerable or who would otherwise be left behind. In particular, this concerns the USO user, so for example, the individual consumer pays the same price for sending a letter and receiving the same quality of service in Simpelveld as for sending a letter in Rotterdam. Another important measure is to assure the reliability and availability of medical post or to remove any financial obstacles for the visually handicapped to communicate via the post. The costs for this are to be covered by the larger whole of the postal users.

In order to achieve these objectives, it is important to distinguish between groups of users. For certain vulnerable groups, a basic level of provisions is laid down in statute. These basic provisions at uniform prices must be offered on the basis of legal cost allocation rules and with a certain quality level, using sector-specific regulations. The USO, ensuing from the European Postal Directive, already operates on this basis. Furthermore, competition is to be allowed in order to encourage postal services to become cost-efficient and offer high quality. By safeguarding competition, general competition rules will help to strengthen the position of large business customers in relation to the providers. Also, a sector-specific form of protection will help those working in the postal sector, because many of them are in a vulnerable position in the labour market.

On the basis of the above, the following three government objectives can be distinguished:

1. A proper price/quality ratio for postal delivery services;
2. A postal provision that is affordable and accessible to everyone in the Netherlands;
3. Protection of employment conditions for people in a weaker position in the labour market.

#### *4.2 Characteristics of the postal market are unique*

As the postal market has a combination of (unique) characteristics, one cannot assume that the objectives as described above will automatically be achieved.

One of the main characteristics of the postal market is the economies of scale in the network. The more postal items a service provider processes, the lower the costs are per item. The network of the postal service is often compared to other regulated networks, such as that of telecom or energy providers. An important difference, however, is that the postal network consists mainly of people, whereas the networks of telecom or energy providers consist mostly of a physical infrastructure, which means that they have considerable sunk costs<sup>4</sup>. Entry barriers for newcomers to the postal market are therefore much lower and of a different kind than those in the energy or telecom sector. The costs for the postal process mostly consist of labour costs (which explains why postal companies are often relatively major employers). The customers in the postal market are also very diverse. This means that there is a large, fragmented group that sends post

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<sup>4</sup> Sunk costs are costs that can never be recovered, if the activity for which the costs have been incurred is cancelled

occasionally, for example, the birthday card to grandmother Annie, but there are also major purchasers of postal services who have large market shares on the demand side, who are able to exercise a reasonable amount of purchasing power, such as insurance companies and banks. These major business customers are the ones who have benefited in particular from the competition in the market because of the enormous volume of their contracts. Central government is also a large business customer, tendering huge volumes in contracts to postal companies. At the same time, these different groups of users are served by and large via the same network. The postman or woman carries both business and consumer post to the delivery addresses in the same bag.

Because of its history and because even a teenage grandson enjoys receiving a birthday card from his granny even though he wouldn't admit it, post represents a certain emotional value to this very day. For business customers, physical post still has a commercial value. Furthermore, a large number of obligations have been laid down in UN treaties concerning postal services in order to process international post in the best possible way and to ensure countries all over the world are effectively connected to the postal traffic. An example of an international obligation to which the Netherlands as a country is bound, is the obligation to offer visually handicapped people the service of sending braille post for free.

Another characteristic is that the post used to be delivered by a state monopoly. The 'old' national postal company, even though it has by now undergone an extreme transformation, still has market shares in the liberalised market of more than 60% in various postal segments, but, as a listed company, also feels the pressure of shareholders and digital substitution nowadays.

Last but not least, all these characteristics are overshadowed by the biggest trend seen in the last few years, namely that of strongly declining volumes. This decline is caused by the fact that we increasingly tend to communicate via electronic channels. After Denmark, the Netherlands has the highest decline in postal volumes within the EU<sup>5</sup>. It is precisely this decline that puts current interests under pressure.

In view of all these characteristics of the postal market and because the social objectives will not be achieved automatically, the government has decided to devote more than average attention to this market. And in the future it may be even harder to realise these objectives if they are not adjusted to the changing needs and user patterns in society.

## 5 Modifications in legislation and regulations

The developments in the postal market give cause to consider whether the current legislation and regulations are still appropriate and necessary to realise the above-mentioned three policy objectives. I will examine these objectives one by one to see to what extent it is desirable to modify the legislation and regulations. The examination of the first policy objective (a good price-quality ratio for postal

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<sup>5</sup> Copenhagen Economics, Main developments in the postal sector, 2018

service) is broken down into two parts: *competition where possible and cooperation where necessary*. With each part I included the relevant policy options examined in the Postal Dialogue and advice provided by Oudeman.

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## 5.1 Competition where possible

In the Future Analysis, the adage “competition where possible, cooperation where necessary” has been introduced to examine where there is room for competition and where cooperation is required in the market. This in order to obtain an the best possible mix of competition and cooperation which will ultimately contribute to a good price-quality ratio for the postal services in general and to an affordable universal service obligation (USO) in particular.

This section will explain which modifications to legislation and regulations are necessary with regard to the protection of competition.

### Current situation

In general, a good price–quality ratio can best be achieved through the functioning of the market. Sector-specific rules have been introduced to stimulate and protect competition because of the specific characteristics of the postal market. This was in the period that liberalisation had been introduced and the volume still was many times higher than today. The assumption was that competition after the liberalisation would not be achieved automatically, because of the dominant position of the former state-owned company on the market and the economies of scale of the existing network. This was why an extensive form of ex ante supervision was introduced in the Netherlands, the so-called significant market power regime. This regime is intended to prevent potential abuse of market power by the dominant player on the market beforehand and give competitors access to the existing network, so that these parties also have the opportunity to gradually build up a network of their own. However, the benefits of competitive networks are increasingly reduced because of the decline in demand. And a declining market is, in general, less attractive for newcomers. Moreover, newcomers will have less scope to recover their investments in a nation-wide network in view of the economies of scale that can be achieved with such a network. In a market with a large or growing volume there still may be sufficient scope to build up an alternative competitive network, despite the economies of scale of a network. However, in a rapidly declining market these economies of scale will increasingly be constrictive and the scope for several tenderers will be limited.

A second factor that is specifically important in the postal market is that stronger large-scale competition on this market will be at the expense of the protection of (vulnerable) consumers, because business post and USO post are transported via the same network by the USO provider. A declining volume on the integrated postal network will result in cost increases for USO products.

This will put a severe strain on the affordability and quality of the USO.

### Future situation

In the future, the classic postal market will probably partly survive. In any case there are many alternatives for post. Power positions may change with a broader market definition - which also includes other delivery services. The threat of

(digital) substitution is an important incentive for postal operators to not abuse power positions, even when they have a large market share. Finally, the Competitive Trading Act will also offer generic protection in the future against abuse of economic power positions.

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### From the current situation to the future

The decline and related transition from a strongly regulated sector to a broader market is not a daily occurrence. In this uncertain situation it is important that the market can follow its own natural adaptation process as much as possible and is hereby afforded maximum scope to innovate, seek synergy gains, and converge with other markets (such as logistics and electronic communication). This means that it should always be critically assessed whether the sector-specific rules regarding the functioning of the market are still required or that these rules may block the integration process into broader markets. This applies in particular to regulations which focus on a certain market result or market structure, such as the application of the so-called significant market power instrument (smp instrument), through which PostNL can be obliged to offer competitors access to its network. The aim of applying the smp instrument is often to provide newcomers with the opportunity to gradually invest in building up their own network infrastructure, which is largely characterised by sunk costs, by granting these newcomers access to the network of the former state-owned company (the so-called 'ladder of investment' theory). However, as remarked before in this letter, the economic characteristics of the postal market differ fundamentally from other network sectors in various aspects, so that a regulation aimed at a gradual roll-out of a network by newcomers cannot automatically be applied to the postal market. It hereby applies that because of the strong decline in the market, stimulating network competition through regulation may pose a risk for the affordability and quality of the USO. The question is to what extent the smp instrument is still desirable in the current market.

This does not alter the fact that competitors can continue to play a role in parts of the postal market. Regional newcomers can still continue to develop business models which create public value in new ways or can smartly respond to the changing needs of consumers. After all, the pressure of competitors means that major players on the market remain focussed, and it may result in efficient and innovative alternatives in parts of the value chain. Moreover, a number of minor players in the country offer protected work to employees with a vulnerable position on the labour market. I want to retain this form of employment. And it may be that these companies partly depend on the PostNL network for offering their services. This is why a form of entry regulation is still required. However, it can be implemented in a lighter, more appropriate manner than is currently the case.

In the first place, I want to clarify the objective of entry regulation: it must in particular stimulate entry where this leads to an optimum prosperity. This means that a newcomer introduces efficiency benefits, under the precondition that a (selective) entry will not undermine public interests, including the viability of the USO. This is why the entry regulation must not be at the expense of the affordability of the USO. As there are no significant entry barriers and because the



network can be scaled up and down relatively easily<sup>6</sup>, this means that the smp instrument does not have to be applied for crossing entry thresholds and hence effectuating the lowest price on the market.

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In the new entry regulation, the initiative for a reasonable offer for access to the network will initially have to come from postal operators. This will create more scope for efficient business operations that can adjust to circumstances. In principle, I assume that a postal operator also has an incentive itself to offer others access to its network when this access is also profitable for the company itself. However, it may be that a postal operator with a strong power position will frustrate the access, also for efficient newcomers, for example because of an anti-competitive attitude.

I therefore think that the supervision of the Netherlands Authority for Consumers & Markets (hereinafter referred to as: ACM) will still play an important role, in addition to the generic competition regulation, for example by testing an entry offer. Nevertheless, I think it is desirable that more policy frameworks are offered to both the regulated postal operator and the ACM, so that these frameworks are taken into account in the interpretation and application of instruments.

The effect of the entry regulation must be that efficient postal service providers get a place on the postal market when this increases prosperity; this contributes to the affordability of the postal facilities in general and to the USO in particular. In order to elaborate this objective, it is recommended to examine the principles and design of regulated entry rates in detail and adjust them, for example to match them optimally with the characteristics of the postal market<sup>7</sup>. This will also reduce the risk that newcomers will only focus on offering the lowest prices for the most attractive clients or regions and, by doing this, put the USO under pressure. I will include the exact elaboration when the Postal Act is modified (see section 6).

Finally, because the postal market has an increasing number of digital alternatives, the question is whether we should only examine the postal market when determining the proportionality of applying regulation, or a broader market as well. The digitisation of society changes the risk of abuse of market power, because alternatives are available for consumers. We therefore ask the ACM to define the market again periodically and consider the above-mentioned aspects. For example, it can be tested periodically whether the applied regulation on the postal market is still proportional.

## 5.2 Cooperation where necessary

This part deals with the second part of the adage, that is to say "cooperation where necessary". In order to understand this better, various studies on possibilities of cooperation between postal transport operators have been carried out, and these possibilities were also discussed in the Postal Dialogue as a possible problem-

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<sup>6</sup> For example, the postal market is completely different there than in other sectors, see, for example, Okholm et al. (2015), De Bijl (2003), De Bijl (2006), Hetizler (2009), Jaag & Trinkner (2009) .

<sup>7</sup> For a further elaboration, see, for example, Gerardin (2015), "Is mandatory access to the postal network desirable and if so, at what terms?" European Competition Journal 11:2-3, 520-556.

solving approach.

### Current situation

At present, there is only a limited cooperation between postal transport operators. Various postal transport operators are still also active in less densely populated areas, and several postmen or women serve these areas. Postal transport operators only work together on a smaller scale, particularly regional postal transport operators.

### Future situation

In the future, the postal market will become part of a broader delivery market. The logistic processes in this broader delivery market are optimised through cooperation. For example, parcels, letters, and shopping are delivered in the same door-to-door delivery. In this case, the limits of cooperation are determined by the Competitive Trading Act.

### From the current situation to the future

First of all, research agency Rebel examined the possible benefits of cooperation on the last kilometre in rural areas. Consolidation on the last kilometre in only the five most sparsely populated provinces provides an annual cost saving of about € 5 -15 million for the entire market. This is because several postmen (or women) in these areas have half-empty bags when working. When postal operators cooperate, it is likely that only one postman is needed, who then can go around with a full bag. It is expected that consolidation of the last kilometre in densely populated areas will result in less savings than in sparsely populated areas. The bags of the various postmen are fuller in densely populated areas. Cooperation in these areas will not automatically result in less postmen. Another reason why cost savings are limited is that consolidation merely on the last kilometre also creates costs. This is because it is accompanied by so-called vertical disintegration: parts of the network have to be pulled apart, there are extra sorting activities, and operational processes have to be linked again between various parties.<sup>8</sup>

Oudeman advises that possible legal obstacles to cooperation should be removed. This specifically concerns the restriction on cooperation that is experienced because of the SMP instrument and the limits of the Competitive Trading Act. As explained in section 5.1, I intend to focus on a lighter form of entry regulation. When working this out in more detail, I want to see whether and how entry regulation may result in obstacles to cooperation and remove any obstacles.

Furthermore, I note that many forms of cooperation are already possible under the Competitive Trading Act, provided that their efficiency benefits sufficiently benefit the end user<sup>9</sup>. And that should also be the viewpoint of cooperation on the postal market. Article 6, third paragraph of the Competitive Trading Act states the conditions for an exemption from the ban on cartels. There are a few examples in other sectors where companies cooperate and hereby do not act in violation of the

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<sup>8</sup> Rebel, "Consolidation on the last kilometre of postal delivery", study commissioned by the Ministry of Economic Affairs, May 2018

<sup>9</sup> In addition, there is also the de minimis exemption, which includes conditions if the ban on cartels does not apply. It is particularly relevant for minor collaborations.

Competitive Trading Act. For example, banks have agreed that they will jointly count and sort banknotes and jointly purchase money transport. The efficiency benefits, which will also benefit consumers, outweigh the restriction of competition. Factors that play a role in this respect include the market shares of the parties, whether competition will still remain after the cooperation, and the amount and relative interest of the costs that the parties share.

I understand that small postal operators have indicated that they are prepared to cooperate on a regional level with each other or with large postal operators if, by doing so, they will be able to make an effective contribution to keeping the USO affordable. At the same time, Oudeman notes that a far-reaching form of cooperation or consolidation is the only option that will generate enough to ensure an affordable USO for the future. Oudeman states that there should be room for parties if they would like to explore this route. This would concern consolidation of the entire chain and therefore goes further than merely cooperation on the last kilometre. Such far-reaching forms of cooperation would create more synergy. It concerns possible synergy benefits that could be a factor five to ten greater than cooperation on the last kilometre. Synergy benefits with such a scope can seriously contribute to the affordability of the USO in the transition phase to a broader delivery market, unlike other measures that were investigated.

I note that the current Postal Act does not contain any obstacles for such a consolidation. However, there is a merger control on the basis of the Competitive Trading Act. The ACM assesses individual mergers.

### *5.3 Direct protection for consumers and vulnerable groups*

#### Current situation

At present, the interest of affordable and accessible postal facilities in the Netherlands is guaranteed for vulnerable consumers, including SMEs, because of the rules regarding the USO. The EU Postal Directive is the basis for these rules. In the Postal Directive, a number of minimum requirements are stated with regard to the level of service: collection and delivery at least five days a week, the density of the number of service points (postal locations) and access points (letterboxes) must meet the needs of users, the services in question must be affordable, and 85% of the postal items must be delivered within three days after dispatch (D+3). Because these are minimum requirements, each member state is free to set additional requirements with regard to the USO on a national level, depending on the needs of users in that country. For a number of parts of the postal service, the current Dutch quality requirements are higher than the minimum requirements. At the same time, the scope of the USO in the Netherlands is much smaller than in many other European countries. In Denmark, Belgium, France, and the United Kingdom, for example, the domestic bulk mail is also part of the USO, while this is not the case in the Netherlands<sup>10</sup>. And in Belgium, France, and Italy, the delivery of magazines and newspapers also falls under the USO<sup>11</sup>.

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<sup>10</sup> Kwink/Rebel 2017

<sup>11</sup> Postal market analysis 2017

### Future situation

It is expected that the digitisation of communication will continue. This means that the requirements with regard to post will also change. Certain forms of post have a high attention value which may also still be valued in the future by companies and consumers. The public interest of such post will be less in the future, because there are digital or delivery alternatives which companies or consumers can or want to choose. The public interest of accessible and affordable communication options will then be guaranteed by these alternatives. However, in the future it will still be in the public interest to guarantee the affordability and availability of those postal services which cannot be digitised or are difficult to digitise, for example, sending heel pricks (a form of medical post).

### From the current situation to the future

With a more limited public interest of affordable and accessible postal facilities for consumers and vulnerable groups in the future, fewer rules will be necessary to safeguard this interest. Because reducing the service level (less delivery days, longer transmission time, fewer letterboxes) of the USO could contribute to affordable postal facilities in the long term, I carried out a study on making the USO future-proof through modifications in the service framework. This was also discussed during the Postal Dialogue.

In the Postal Dialogue, it was noted that there is little support at present for introducing a lower service level. Moreover, the government has agreed in the Coalition Agreement that it wants to anchor the USO on the current quality level in rural areas and in shrinking regions.

In order to get an idea of the possible cost effects of reducing the USO, I commissioned a study on this issue. This study shows that the direct effect of reducing the number of delivery days to four or three days in the five most sparsely populated provinces in the Netherlands would result in cost savings of € 4 million to € 11 million per year<sup>12</sup>.

These amounts are higher when this reduction is applied to the whole of the Netherlands. On the other hand, the 24-hour postal service still represents value in the current market. The Postal Dialogue showed that the corporate sector thinks that the 24-hour postal service is very important, for example for the customer service of service companies and for their operational business operations. This does not have to be a reason in itself to refrain from modifications in the USO. However, reducing the USO will only lead to cost savings if delivery days are actually cancelled, also for business customers. It is expected that business customers will accelerate the transition to digital alternatives, such as e-invoicing, in this scenario.

Although it is difficult to predict which volume effects will exactly occur in the Netherlands as a result of a reduction of the USO, the situation in Denmark may be taken as an example. There the reduction of the USO resulted in an accelerated

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<sup>12</sup> Rebel 2018

substitution with consumers (the 24-hour postal service decreased from 50 to 20 million items between 2015 and 2017), and the costs of the USO increased rapidly in a short time. As a result of this, the Danish government obtained European approval at the end of May for state aid amounting to € 160 million over two years for the implementation of the USO. A reduction of the USO may mean that a part of the cost savings is wiped out by the loss of volume.

This picture will change in the future. The social need for post will probably continue to decrease<sup>13</sup>. Moreover, the possibilities for cost savings through reduction will be greater in the future than is currently the case. Because of the autonomous process of digital substitution, the risk of an accelerated loss of volume due to reduction will be less in the long term; after all, there will be less volume to lose in the long run. The network can then be scaled back in line with the reduction in demand and changing social needs or evolve into a form that is in line with the new market situation<sup>14</sup>. This is also necessary to prevent the price of stamps increasing in the coming years at an accelerated rate. It may well be imagined that the price development of stamps of the past ten years (a doubling) will occur once again in the coming ten years in the event of unchanged policies. In that case, the price of a stamp could then well exceed € 1.50.

The Dutch legal framework needs to be able to evolve with these changes and must also allow scope for technological developments. If users do not mind that a postcard takes three days to be delivered or if they want their letters to be scanned and 'delivered' in an app, the regulations governing the postal market should not be an obstacle. The legal framework must therefore be flexible and technology-neutral. There is a broader-based call for this, as is also evidenced by the proposal presented by the Dutch Minister of the Interior and Kingdom Relations to make the privacy of correspondence technology-neutral and to modernise the Dutch constitution in this respect<sup>15</sup>. In order to also make this flexibility to modernise the legal framework possible for the postal market, regular reviews will be incorporated in the Dutch Postal Act. During each of these reviews, the level of support for lowering the service level and the potential cost savings versus the accelerated loss of volume will be assessed. In addition, the legal requirements will be embedded in secondary regulations wherever possible. If the reviews give cause for introducing changes in the USO, these changes can then be implemented quickly, without requiring a lengthy legislative process. This allows for the sector-specific regulations to be phased out in a controlled manner, as society's needs evolve, while taking into account the situation in regions where the population is shrinking and leaving scope for technological developments. This makes it easier for the legal framework to keep up with the rapid changes in the requirements as well as in terms of technology, without compromising legitimate public interests, legal certainty, and equality of rights.

In addition to the Dutch legal framework, the European legal framework is an

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<sup>13</sup> GfK/Intomart 2017, Copenhagen Economics 2017. These studies show that the social need for fast physical communication decreases in favour of (faster) digital means.

<sup>14</sup> For example, PostNL reported that the average number of letters per letter box (19,000) was still 73 in 2004, while only 31 letters were collected from 16,000 letterboxes in 2017.

<sup>15</sup> Legislative proposal 33.989 was adopted by the Second and First Chamber of the Dutch parliament in first reading (2017).

important consideration. Within the existing European framework, the possibilities for scaling back the USO primarily consist of relinquishing the minimum quality level of delivery within 24 hours and reducing the required availability of letterboxes and postal locations.

Fundamental changes in the basic service level in the Netherlands require modification of the European framework. The new European Commission, which will take office in 2019, is expected to take action with regard to amending the European Postal Directive. During these upcoming negotiations, my aim will be to ensure that these changes will focus as much as possible on making the Postal Directive future-proof, leaving room for the evolving needs of the users and technological developments in the field of communication.

It is essential that the Postal Directive should offer flexibility. I expect that the Netherlands is not alone in this. Other member states are already exploring the boundaries of the existing Postal Directive as they aim to reduce the basic service level under the USO, but in some cases this requires vague grounds for exception contained in the EU Postal Directive to be invoked<sup>16</sup> (see figure 3). Furthermore, the EU prohibition on granting exclusive rights to the USO should be reviewed. The studies that I have carried out indicate that the effectiveness of future policy directions may be reinforced when flexibility is provided with regard to this exclusive right.

### Figure 3: Lowering of service levels in various European countries

This may, for instance, prevent competitors from focussing only on the most profitable elements of the USO, while this does not appear desirable from a policy perspective.

For international mail, the obligations ensuing from the agreements made within the Universal Postal Union must also be taken into account<sup>17</sup>. These are global agreements about mutual service provision that the Netherlands has entered into with other countries. For instance, countries have agreed that Braille mail items shall be delivered free of charge and that incoming and outgoing international mail must be handled subject to certain conditions. The existing and potential future obligations with respect to international mail transport may limit the flexibility of the provider of the USO. Within the Universal Postal Union I endeavour to make international regulations suit the Dutch situation as well as possible.

### *Legislative proposal for USO assurance*

In the motion put forward in the Dutch Second Chamber<sup>18</sup>, the government was called upon to take steps to ensure that the USO will be safeguarded and will be

<sup>16</sup> Copenhagen Economics 2017 and 2018, GfK/Intomart 2016. Parties may only diverge from the minimum USO requirements contained in the Directive if this is considered necessary in the light of "circumstances or geographical conditions deemed exceptional". Particularly the phrase "conditions deemed exceptional" is open to more than one interpretation.

<sup>17</sup> In addition to the European framework, the Netherlands must also observe the obligations with regard to mail carriage to and from regions outside the Netherlands that ensue from the instruments of the Universal Postal Union. This is important, because half the USO volume consists of international (incoming and outgoing) mail. This entails costs, but also generates income for the party that executes these obligations.

<sup>18</sup> Motion put forward by Vos c.s., Parliamentary Paper 29502, no. 131.

provided by a party that may be called to account directly by the Dutch government and regulators. This motion was presented when it was found that in case of a takeover by a foreign party, the continuity of the USO might not be guaranteed in all circumstances. The legislative proposal that I am currently preparing will change the Postal Act 2009 and will include additional requirements for the provider of the USO aimed at safeguarding the quality of the services provided under the USO. These include requirements with regard to the minimum credit rating and the relevant party being established in the Netherlands.

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#### *Parcels*

While for many Dutch citizens letters are slowly disappearing from daily life and the public importance of mail is diminishing, this is slowly but surely being replaced by parcels. This raises the question whether parcel delivery may eventually become a matter of public interest. Although effective and affordable parcel delivery in all of the Netherlands is becoming increasingly important, I note that this market is thus far developing by itself. Therefore, there is no need to take action at the moment. The European Commission recognises the growing importance of parcel delivery. Consequently, on 22 May 2018, the European Parcel Regulation came into effect. This regulation was motivated by the hard-to-explain price differences for cross-border parcel delivery services, the limited availability of parcel delivery services in remote areas of some member countries, and the lack of information for regulatory supervision of the cross-border market for parcel delivery services. We do not have these problems in the Netherlands. The Dutch parcel market is currently developing naturally and the outcomes serve society's interests, even without the government intervening. Although this may change in the future, I currently do not see any problems that lead me to propose sector-specific regulation for the parcel market.

#### **Box 1: Study of the alternatives for market organisation: tendering & provision of the USO by the state**

In accordance with the instruction included in the coalition agreement, I have also studied the option of tendering (parts) of the USO in order to generate economies of scale. During the study that was carried out by research agency Ecorys, it was found that there are a number of significant risks that could prevent successful and effective tendering of the USO. The main condition for successful tendering of the USO is the existence of effective competition. Without effective competition, tendering becomes a hollow procedure and may disrupt the playing field. When tendering an entire nationwide USO, only those parties that already have a national network in place or have the ambition of developing such a network are likely to be interested. If there are only two interested parties, that constitutes a very small number and effective competition is very limited. A declining market may further affect the success rate of tendering if such decline reduces the number of providers. When tendering a USO with national coverage this is a serious risk. A disadvantage of tendering is that efficiency is reduced if tendering results in separating the USO from the business network. Furthermore, it seems likely that the current market constellation will be maintained, because granting exclusive rights for the USO is not allowed under European law. In other words: winning the tender does not mean that the winning party obtains the exclusive right. As a result, the losing party can always continue to offer the most profitable USO

services beside the winning party. This makes it less attractive to put in a competitive bid. In line with the outcome of the study, the majority of the participants in the Postal Dialogue has a negative view on tendering of the USO. Ecorys has also reviewed the pros and cons of the state providing the USO and came to the conclusion that provision by the state ('deprivatisation') is a less attractive option for ensuring the fundability of the USO. State-owned companies are generally less efficient than private-sector companies, which results in higher prices. This inefficiency would be even more significant for the postal market, because due to European legislation the state cannot have the exclusive right to the performance of these activities. Execution of the USO by the state would also have a negative effect on innovation. Given the outlook for the broader delivery market, this would appear problematic. During earlier studies (Ecorys, 2011) it was calculated that if the USO were to be provided by a state-owned company, prices would rise by 20% (even without taking into account reduced efficiency). The researchers also concluded that this is an activity that lends itself well to being provided by private-sector companies. This is confirmed when PostNL looks back on the period during which it evolved from a state-owned company into an efficient private-sector party. PostNL is currently one of the most efficient USO providers in the world. Finally, the transition to deprivatisation would be very costly for the government. Buying up the shares would cost the treasury hundreds of millions of euros.

## 5.4 Safeguarding employment conditions

### Current situation

Labour is an important cost item in the postal market (representing approximately 70% of total costs). Consequently, the employment conditions of mail delivery staff have been an area of attention for some time and sector-specific regulations have been introduced. The Temporary Decree on Mail Delivery Staff (*Tijdelijk Besluit Postbezorgers - TBP*) is aimed at protecting the position of mail delivery staff and preventing competition on employment conditions. According to the TBP, at least 80% of the staff must have an employment contract with the postal operator. As from 1 January 2018, all postal operators with a certain level of turnover must meet this requirement without reservation. In order to ensure that scope remains for creating jobs for people who are disadvantaged on the employment market (sheltered workshops, persons with an occupational impairment), the revised TBP that will shortly be submitted for approval to the Second Chamber provides that, as an exception, staff belonging to the target group covered by the job agreement that the government has concluded with employer and employee organisations (*banenafspraak*), may also be taken into consideration when determining whether the threshold of 80% employment contracts has been reached<sup>19</sup>.

### Future situation

E-commerce and the growing demand from consumers for convenience services result in various logistic concepts that 'come to the front door' using various means

<sup>19</sup> In doing so I am complying with your Chamber's request of 4 December 2017 to ensure a level playing field in terms of employment conditions that protects persons with an occupational impairment.



of transport. As is the case for other elements of postal market regulation, the need for sector-specific regulation aimed exclusively at mail delivery staff is diminishing and the need for generic employment protection for delivery staff in general is growing. General regulations may facilitate the integration of the various markets. This may involve allowing for differences in job profiles, but within the same regulatory framework. This would enhance flexibility and employability within this segment of the labour market and would also ensure a level playing field in different sectors of the delivery market.

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#### From the current situation to the future

The integration of the postal market within a broader delivery market therefore requires more generic regulations, so that sectors with similar labour characteristics are subject to the same regulatory framework and competition on employment conditions can be prevented. In the existing delivery market we see a trend towards minimising labour costs, which results in intense competition on employment conditions. This cannot be considered separate from the Cabinet's proposals aimed at providing better protection for workers at the lower end of the labour market. The Cabinet is currently developing these proposals. This is primarily the responsibility of the Minister of Social Affairs and Employment. In the light of the notions regarding this area that are incorporated in the coalition agreement, I want to support the Minister by investigating whether the manner in which this protection is currently organised in the postal sector could also offer a solution for protecting jobs in the parcel sector and possibly the broader delivery market. As long as there is no alternative regulation in place or as long as the challenge has not yet been taken up by the trade unions, employers, and employees in the broader delivery sector, I believe it is advisable to maintain the current protection offered by the TBP 2009.

In addition, the Postal Dialogue has demonstrated that at least the trade unions and the Dutch Transport Operators Association (*Transport en Logistiek Nederland*) are in favour of a broad collective labour agreement for the delivery market as a whole. This is the responsibility of the sector and is in principle unrelated to the horizontal regulation of the delivery market. A sector-wide collective labour agreement would, however, simplify supervision of the sector and would also promote a level playing field.

## 6. Policy and legislative agenda and commitment within the EU

In conclusion, I note that the decline of the postal market will eventually cause it to be incorporated into the broader delivery market. How quickly this decline will further diminish the social and economic importance that is still attached to physical mail is harder to predict. For this reason, I will for the time being adhere to the legal level of protection of the current public interest, but I do want to create room for a more flexible and technology-neutral adjustment of the requirements that the USO provider must meet. A more robust business case and preserving jobs at the current postal operators would benefit from possibilities for responding quickly to new consumer requirements and for diversifying the range of communication and logistics services. The ability to apply new technological

developments and easier access to new sources of funding are required to facilitate this trend. The definition of the USO will evolve over time. I therefore believe that periodic reviews of this definition and the related requirements are advisable. In Brussels I will endeavour to ensure that this is not hampered by the European Postal Directive.

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Due to ongoing decline as well as intensifying competition, the fundability of the USO is coming under pressure. I will ensure that this is taken into account within the context of the sector-specific market regulations. Legislative processes are lengthy affairs; should market trends require this, I will in the meantime investigate whether there is any need for supportive policies. Furthermore, cooperation or consolidation of networks could offer a solution, because 'condensing' postal flows would reduce the costs per mail item. It is up to the ACM to assess any requests to that effect, but in my view the impact of cooperation on the public interests, including the financial sustainability of the USO, should be the main consideration.

In this letter I have described a wide range of proposed changes to the Postal Act and the Postal Directive. A summary of the proposed changes is given in table 1 in appendix 1. I would like to discuss these proposals with your Chamber before the legislative procedures are set in motion.

Kind regards,  
M.C.G. Keijzer  
State Secretary for Economic Affairs and Climate

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