Study on Universal Postal Service and the Postal Monopoly

Appendix E

Universal Service and Postal Monopoly in Other Countries

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1 Summary

1. European Union

In late 1980s, the European Commission began a survey of the delivery services sector in the European Union (EU). The result was the 1992 "Postal Green Paper," which found that postal services varied widely in quality and efficiency among EU countries, that postal administrations were often handicapped by unnecessarily extensive public sector monopolies, and that most postal administrations produced significant losses. The European Union adopted Directive 97/67/EC, the Directive on Postal Services, in 1997 and amended it in 2002 and 2008. The main objectives of EU postal policy became to improve the quality of service and to facilitate the internal market for postal services.

The Postal Directive established a minimum definition of universal postal services and a maximum scope for the postal monopoly in all EU countries. The Directive obliges the governments of Member States, not specific postal operators, to ensure universal service. Imposing a "universal service obligation" (USO) on postal operators is but one option to this end. Other options include relying on competition to provide universal service without state interference and public contracts. The maximum monopoly permissible for EU countries (the "reservable area") was defined using weight and price thresholds. The 2002 and 2006 amendatory directives reduced these threshold three times before requiring an end to all remaining postal monopolies at the end of 2010 (with some minor exceptions). The Directive also sought to harmonize regulatory practice in EU countries with respect to authorization of postal operators, access to the postal network, tariff principles and the transparency of accounts, quality of service, and harmonization of technical standards.

In most areas, the Postal Directive established a unified Community framework for postal services which left Member States considerable discretion to adapt national postal law to different national circumstances. Consequently, approaches to liberalize postal markets and effects on universal service differ among EU countries. While the overall effect of postal reform in the EU was clearly positive, it is difficult to identify the exact role of liberalization as compared to other elements of postal reform (e.g. performance targets, enhanced transparency, corporatization and privatization). Elaborating on the

impact of market opening, the European Commission noted: "Meaningful competition in the letter post market has yet to develop. ... However, the mere prospect of market opening has created considerable momentum within the postal sector and is likely to further generate changes (e.g. operationally and customer focused). There seems to be broad agreement that postal services do not constitute natural monopolies. Competition is not an end in itself, but a means to promote innovation, investment and consumer welfare."

In only one area does the Postal Directive directly set out quality standards for universal service: routing time targets for international mail between EU countries. For such mail, the Postal Directive further requires that terminal dues should be transparent and non-discriminatory as well as cost-oriented and related to the quality of service achieved. This has forced EU postal operators to depart from the UPU terminal dues in favor of multilateral agreements that are better aligned with the cost of delivering incoming mail and adjusted for the delivery times achieved in the destination country. Since adoption of the first Postal Directive in 1997, routing time performance has improved dramatically for both international and domestic mail.

2. United Kingdom

The current Postal Services Act in Great Britain was enacted in 2000. The Postal Services Act dissolved the British Post Office and transferred its assets to a new company, Royal Mail Group plc, organized under normal corporation law but with all shares owned by Government.

The Postal Services Act created the Postal Services Commission (Postcomm) as a regulator for the postal services sector. Postcomm was granted broad regulatory powers that include authority to set detailed standards for universal service and to determine the scope of liberalization. According to the statute, Postcomm's objectives are, in order of priority, (i) to ensure the provision of universal service, (ii) to further the interests of users of postal services by promoting effective competition, and (iii) to promote efficiency and economy on the part of the postal operators.

Postcomm has ensured universal service by attaching a USO and specific standards for universal services to Royal Mail's license. Service standards include routing time

requirements and the obligation to deliver and collect mail every day. A uniform tariff is required for single piece mail, but Royal Mail may charge non-uniform tariffs for most bulk mail products.

As of 2003, Postcomm liberalized the bulk mail segment by granting licenses to several operators to provide delivery of bulk mail while Royal Mail retained a monopoly to deliver non-bulk letters. In addition, Postcomm requested Royal Mail to grant downstream access at substantial discounts, an approach similar to the US worksharing model. Following introduction of downstream access in 2004, consolidators captured a significant market share and processed approximately ten percent of total UK mail volume in fiscal year 2006/07. The market was fully liberalized as of January 2006. Despite full liberalization in 2006, end-to-end competition is virtually nonexistent. In 2006/07, alternative end-to-end operators delivered less than 0.2 percent of total mail volume.

In late 2007, the British government charged an "independent review panel" with a comprehensive review of the postal services sector. In its preliminary conclusions, this panel noted overall positive effects of competition. Royal Mail's quality performance is "at record levels." Large businesses "have seen clear benefits from liberalization: choice, lower prices and more assurance about the quality of the mail service." However, the panel also found no significant benefits from liberalization for smaller businesses and domestic consumers and considered that universal service was endangered by the weak performance of Royal Mail. These problems, it appeared to the panel, were not due primarily to liberalization but resulted from a failure of Royal Mail to "modernize" in the face of structural changes in the market and declining volumes. The panel expressed concern that Royal Mail "is less efficient than its competitors and many of its European counterparts". It is expected that changes to the governance and commercial flexibility of Royal Mail will be at the heart of the recommendations of the independent review.

3. Germany

In reforming the postal sector, Germany has pursued two important strategies. First, in 1994, the postal administration was corporatized into a joint stock company (Deutsche Post AG) organized under the same corporate law as a private company. The German

government has gradually reduced public ownership in Deutsche Post to 31 percent (as of 2008) and has announced plans to further reduce its ownership in the near future. Second, in 1997, a new regulatory framework for postal services was adopted. The telecommunications regulator was given responsibility for the postal sector, and the postal monopoly was replaced by a licensing requirement for letter mail. The postal regulator was made responsible for ensuring universal service and regulating postage rates by appropriate orders. As a transitional measure, the new law granted Deutsche Post an "exclusive license" for the carriage of lightweight letters. This exclusive license ended at the end of 2007.

German postal law does not impose an obligation to provide universal service on a specific operator. The legislation assumes that universal service will generally be provided by all operators in the market jointly. The law also provides a procedure to ensure the universal service by regulatory intervention in cases where universal service is not provided by the market. In such case, the regulator can ensure universal service either by issuing orders directed to a dominant postal operator or by contracting with postal operators through a public tendering procedure. To determine when intervention will be necessary, the regulator closely monitors compliance of the market with legal standards for the universal service. Standards for universal service are determined by an ordinance issued by the government with the approval of Parliament. These standards relate to the minimum number of retail outlets, daily collection and delivery, and routing time targets for non-bulk mail. Up to the present, the regulator considers that universal service has been provided adequately by the market and has not deemed it necessary to take any action to ensure the universal service.

Since 1998, several hundred private operators have entered the German mail market to compete with Deutsche Post. This was possible because the regulator granted special licenses for value-added services, e.g. for guaranteed overnight delivery. Most entrants operated only locally, as they were able to meet the license requirements only within a small area of operations. Since repeal of the remaining monopoly at the end of 2007, some private operators have expanded their operations, and many local operators cooperate with local operators of other areas to achieve full national coverage. In 2007, competitors had achieved a combined market share of 10.4 percent of volume.

Market opening in Germany appears to have had a positive impact on the universal service. German mail volumes have continued to grow. Routing time performance of the incumbent has been consistently high and above regulatory targets. The size of the incumbent's retail network has remained relatively constant, but about 80 percent of post offices were transformed into contract agencies since the mid 1990s. Starting from a high level in the 1990s, prices have decreased slightly for private customers and more substantially for business customers. Following privatization, Deutsche Post has enjoyed substantial commercial flexibility and has been able to cut costs considerably while achieving a high level of profit. The incumbent's universal service was the most profitable area of its business. The German regulator monitors universal service permanently. It has found no indications that the universal service was at risk at any time and no need for external funding to maintain universal service.

4. Sweden

In 1993 Sweden became the first country in the world to abolish the postal monopoly entirely. In 1994, the postal administration (Sweden Post) was corporatized as a joint stock company but remained state-owned. In the same year the postal regulator, the Swedish Post and Telecom Agency (PTS), was established.

The incumbent Sweden Post is obliged to provide universal services. This obligation included the license granted to Sweden Post. The Swedish Postal Services Act sets out a broad definition of the universal service which includes, inter alia, a routing time target for first class letters, a requirement to collect and deliver five days a week, and a requirement to maintain a public retail network for postal services. Uniform tariffs are required only for single piece items.

Fifteen years after full market opening, Sweden Post still dominates the Swedish postal market. In 2007, about 90 percent of total mail volume was delivered by Sweden Post. The only important competitor, CityMail, started operations in 1991. Today, CityMail is owned by Norway Post, the public operator of Norway. CityMail is specialized in delivering computer-generated (i.e. pre-sorted) bulk mail to recipients located in Sweden's largest cities, delivering to a little over 40 percent of all Swedish households.

CityMail delivers mail only two times a week. It thus competes with the economy bulk mail service offered by Sweden Post but not with first class mail.

After liberalization the incumbent Sweden Post had continued to provide universal service. Routing time performance improved considerably in the 1990s and has remained at high levels since. Sweden Post has transformed the post office network by replacing more than 80 percent of traditional post offices with contract agencies. These changes were perceived very negatively by customers during a transition period, but customer satisfaction with the access to postal services improved in subsequent years, as customers have recognized benefits from the longer office hours of contract agencies. In the first years following liberalization, Sweden Post increased retail tariffs significantly while introducing price reductions for business customers. A regulatory price cap was introduced to prevent further increases in public tariffs. For bulk mail customers, prices have dropped considerably and quality has improved, in particular for mail to areas served by CityMail. After a period of mediocre profitability in the 1990s, and despite falling mail volume in the new millennium, Sweden Post has reported solid profits margins of around five percent in the last five years.

In summarizing the Swedish experience with postal liberalization, the regulator PTS has concluded: “full competition in the letter market has not affected the universal service provider’s ability to provide a profitable nation-wide postal service at reasonable prices.” At the contrary, “competition has furthered improvements in quality and efficiency.”

5. The Netherlands

The Netherlands were the first European country to privatize its postal administration. In 1989, the Dutch postal and telecommunications administration was transformed into a private company organized under normal corporate law, Koninklijke PTT Nederland (KPN), that was owned 100 percent by the government. In 1994, KPN was listed on the Amsterdam Stock Exchange, and the government sold 30 percent of its shares. In 1995, the Dutch state sold a further 25 per cent of KPN. In 1996, KPN acquired the Australian express company TNT. The postal activities, including TNT, were separated from KPN in 1998 in a “demerger,” and the new postal company was named TNT Post Groep N.V. (TPG). TPG was listed on the stock exchanges in Amsterdam, London, Frankfurt, and

New York. In 2006, TPG was fully privatized when the Dutch government sold the last of its shares, and the company was renamed TNT N.V.

In 1997, the regulator, Independent Post and Telecommunications Authority (OPTA) was established. OPTA's responsibilities in the postal sector are limited to monitoring whether the TNT's provision of universal services meets the legal requirements. The competent ministry, not the regulator, has set a price cap for the public tariff for non-bulk letters. This ministry has also issued a license to TNT that includes an obligation to provide universal service. Specific USO standards in the Netherlands relate to a minimum set of letter and parcel services that must be offered, the operation of a public retail network, a routing time target, and the obligation to collect and deliver mail six days a week. A uniform tariff requirement relates only to single piece mail; non-uniform tariffs may be charged for bulk mail.

In 2000, delivery of direct mail (addressed advertising) was opened to competition, but a monopoly on correspondence was maintained. Subsequently, competition has evolved in the direct mail market. Two entrants have built up nationwide delivery networks and deliver direct mail twice a week. OPTA estimates that in 2007 entrants delivered about 14 percent of all addressed mail. Full market opening was announced by the Dutch government for 2008, but has been postponed. At present, the timing for the final step of liberalization is uncertain (but must occur before the end of 2010 according to the EU Postal Directive).

Following privatization and gradual liberalization, TNT has improved and maintained very high service levels. The post office network has been restructured by introducing contract agencies. TNT's retail prices have increased largely in line with consumer prices, but prices for bulk mail have declined slightly as a result of competition. For business customers, competition in the direct mail market has led to increased choice. TNT and its competitors today offer a wider range of services, e.g. different routing times from overnight to a cheap six-day service. The incumbent TNT operates very profitably in the competitive environment. There are no indications that competition has had any negative impact on service levels or on the financial viability of TNT.

6. Australia

Australia Post was corporatized with the Australian Postal Corporation Act of 1989. The postal administration was transformed into the "Australian Postal Corporation," a government business or "state enterprise," with the government as its sole shareholder. The Australian Competition and Consumer Commission (ACCC), an independent statutory authority under the Trade Practices Act, has some regulatory functions in the postal sector, particularly with regards to tariff regulation, transparency of regulatory accounts, and monitoring undue cross-subsidy between competitive and reserved services.

By statute, Australia Post is charged with two missions: (i) an obligation to perform its functions, as far as practicable, "in a manner consistent with sound commercial practice" and (ii) a mission to abide by a "community service obligation," a notion similar to the concept of universal service in other countries. Australia Post's commercial mission implies an obligation to make profits and pay dividends to the public owner. In the last ten years, annual dividends paid by Australia Post to the government have amounted to more than five percent of annual revenues. Specific standards for the community service obligation include a minimum set of services that must be offered, rules for the public retail network, universality of service, a routing time target, and an obligation for daily delivery. Australia Post is required to charge uniform tariffs for all universal services .

In the early 1990s, there were political discussions about introducing competition into the postal sector, but the idea was not pursued. (Similar discussions took place at the same time in New Zealand where they led to a complete repeal of the postal monopoly.) In 1994, the reserved area was reduced to include only letters weighing less than 250 grams and charged less than four times the basic stamp price. Intracorporate mail and outbound international mail are liberalized.

Reduction of the monopoly weight and price limits in 1994 has not led to noticeable competition in mail delivery. Therefore, no immediate impact of market opening on the universal service can be identified. Australia Post has been operating very profitably for many years, and there are no indications that the commercial objectives of Australia Post have had a negative impact on the universal service. By contrast, the coverage of home

delivery was increased, routing time is constantly at high levels, and prices have increased less than the consumer prices index.

7. New Zealand

More than any other industrialized country, New Zealand treats the collection and delivery of documents and small parcels as a normal commercial activity. The Postal Services Act 1998 repealed the postal monopoly and imposed common carrier-like obligations on all postal operators, including New Zealand Post. A "postal operator" is any person in the business of transporting "any form of written communication, or any other document or article" for less than NZ$ 0.80 (US$ 0.61) per item. Each postal operator must file a basic registration form with government. New Zealand Post does not receive a public subsidy or payments from a universal service fund. There is no postal regulator although postal operators are subject to normal business regulation. New Zealand is a member of the Universal Postal Union and signatory to the Universal Postal Convention.

Statutory obligations imposed on postal operators are designed to protect the rights of senders and receivers. For example, each postal operator must identify items that it carries by means of a "postal identifier," an indicator like a traditional postmark. Postal operators are forbidden from opening postal items or divulging their contents "without reasonable excuse." Postal operators must notify addressees if a postal article is opened and explain the reasons for doing so. Undeliverable items must be returned to the sender.

The Postal Services Act does not require either New Zealand Post or postal operators generally to maintain a "universal service." Nonetheless, the government, as owner, obliges New Zealand Post to provide universal service in accordance with a contract, called a "Deed of Understanding." In the Deed, New Zealand Post has agreed to provide a specified minimum level of national services. There are no rate standards, price caps, or accounting regulations. New Zealand Post is required to publish a quarterly report giving limited information about discounted or non-standard contracts.

Postal reform in New Zealand has been highly successful by most measures, but not wholly free of difficulty. After government's 1988 decision to corporatize the Post Office and terminate the public service subsidy, New Zealand Post closed one-third of its post

offices. Despite public outcry, Parliament concluded that provision of postal services by agencies such as bookshops and dairies was acceptable. In 1995, New Zealand Post abolished a longstanding charge for home delivery of mail in rural areas and lowered its first class stamp price. Since 1990, New Zealand Post has substantially increased volumes and productivity. It has been profitable every year with revenues exceeding expenses by an average of 10 percent. New Zealand Post has met, and often substantially bettered, the minimum service criteria set in the Deed of Understanding.

8. Canada

The postal law in Canada is the Canada Post Corporation Act of 1981 (CPCA). The CPCA established Canada Post Corporation (Canada Post). Although denominated a "corporation," Canada Post is essentially a department within the government of Canada. There is no independent postal regulator in Canada. Canada is a member of the Universal Postal Union and signatory to the Universal Postal Convention.

The universal service obligation established by the CPCA is set out in general terms. The CPCA does not use the term "universal service." It declares that one of the objects of Canada Post is to "operate a postal service for the collection, transmission and delivery of messages, information, funds and goods." The CPCA declares that Canada Post shall "have regard to" several factors in maintaining "basic customary postal service" including "the desirability of improving and extending its products and services"; the need to provide "a standard of service that will meet the needs of the people of Canada and that is similar with respect to communities of the same size"; and the security of mail. Canada Post is obliged to charge rates that are "fair and reasonable and consistent so far as possible with providing a revenue . . . sufficient to defray the costs". In December 1998, the government approved a "policy framework" which established overall financial objectives for Canada Post and capped increases in the basic postage rate at two-thirds of the Consumer Price Index.

The CPCA grants Canada Post a monopoly over “the collecting, transmitting and delivering letters.” The most important exception is for urgent letters, defined as letters transmitted for a fee equal to or greater than three times the regular rate for a domestic 50 gram letter. Canada Post, with the approval of government, has defined the term “letter”

to mean "one or more messages or information in any form, the total mass of which, if any, does not exceed 500 g, whether or not enclosed in an envelope, that is intended for collection or for transmission or delivery to any addressee as one item." The regulation excludes from this definition several types of items and letters carried under certain conditions.

In April 2008, government established an independent Advisory Panel to conduct a strategic review of Canada Post. The terms of reference established four principles which limit the scope of the review: (1) Canada Post will not be privatized and will remain a Crown corporation; (2) Canada Post must maintain a universal, effective and economically viable postal service; (3) Canada Post is to continue to act as an instrument of public policy through provision of postal services; and (4) Canada Post is to continue to operate in a commercial environment and is expected to attain a reasonable rate of return on equity. Public comments were submitted in September 2008. The Advisory Panel's report is due in December 2008.

2 Introduction

This Appendix has two goals. First, it describes the policies of other countries concerning universal postal service and the postal monopoly. Second, for those countries that have abolished the postal monopoly, it evaluates the effectiveness of eliminating the legal monopoly in terms of meeting the USO.[1] In terms of selecting countries to be included in this review, the initial guideline was that the review should not be limited to European countries and should include at least the United Kingdom, Sweden, and Finland.

Clearly, a survey of the universal service and postal monopoly policies of all countries in the world or even all industrialized countries would be extremely expensive and require more time than allotted for this study. The study team therefore decided to review the postal policies of eight jurisdictions. In addition to the United Kingdom, Sweden, and the Netherlands (replacing Finland since it is deemed more instructive), we included five jurisdictions which, in our judgment, offer potential lessons for the United States because of their size, economic development, and/or similar legal tradition: Australia, Canada, New Zealand, Germany, and the European Union.

The following text comprehensively presents the collected facts on postal monopolies, USOs, and universal services in those seven surveyed countries, plus the European Union.

[1] A third task specified in the RFP was to provide an account of other countries' experience with a mailbox monopoly and its relation to universal service. However, none of the countries surveyed has (or ever had) a mailbox monopoly. Anybody may access household mailboxes.

3 European Union

3.1 Introduction to postal policy in the European Union

The legislator of the European Union consists of two bodies: the Council – that represents the member states' governments – and the European Parliament. In order to harmonize postal policies across Europe, the legislator adopts 'Directives'. These Directives have no immediate effect but must be implemented into national law by national parliaments. The process of implementation enables Member States to adopt different approaches, within the limits permitted by a Directive. This section (European Union) deals with postal policy at the EU level.[2]

In late 1980ies, the European Commission began a comprehensive survey of the delivery services sector. The result was the "Postal Green Paper" adopted in June 1992.[3] The Postal Green Paper found that postal services varied widely in quality and efficiency among Member States and were too often handicapped by unnecessarily extensive public sector monopolies. Losses produced by some postal administrations were an additional important concern. Differences and poor coordination among national post offices produced a "frontier effect" that tended to impede progress towards a single market. The Postal Green Paper proposed a minimum Community-wide definition of universal postal service, a maximum Community-wide limit to the postal monopoly, liberalization of cross-border postal services and direct mail, establishment of an independent postal regulator in each Member State, and imposition of quality of service standards on universal postal services.

In December 1997, after five years of consultation and debate, the European Union adopted the Directive 97/67/EC, the Directive on Postal Services.[4] This Directive was

[2] Note that the four European countries discussed in this report (the United Kingdom, Germany, the Netherlands, and Sweden) are members of the European Union, and their postal policies are therefore strongly influenced by EU policy.

[3] European Commission (1992): Green Paper on the development of the single market for postal services, COM(91) 476 final.

[4] Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service.

amended in 2002 and 2008.[5] Under the Directive, the main objectives of Community postal policy became to improve the quality of service and to facilitate the internal market for postal services. Respecting the legal principle of subsidiarity, the Postal Directive required limited harmonization of Community postal services. Regulatory provisions included a minimum definition of the universal postal services that must be guaranteed by government and a maximum definition of the scope of postal services that could be reserved to the national post office. The end of all remaining postal monopolies ("reserved areas") was envisaged for the end of 2009 in the 2002 amendment to the Directive, and determined to the end of 2010 in the 2008 amendment.[6] The Directive included criteria relating to non-reserved postal services, access to the postal network, tariff principles and the transparency of accounts, quality of service, and harmonization of technical standards.

In sum, the Postal Directive established a unified Community framework for postal services which left Member States considerable discretion to adapt national postal law to different national circumstances. While relatively more relevance was given to the first objective (improving quality of service) in the original 1997 Directive, more attention was given to liberalizing postal markets in the two amendments. Full market opening is now determined for the end of 2010.

It should be noted that corporatization and privatization formed important elements of the postal policy in most European countries. However, there was no coordinated EU policy regarding corporatization – and EU institutions have no legal competence to interfere in the Member States' management of public property.

3.2 Universal service policies

The Postal Directive seeks to harmonize and enhance universal postal service for all citizens of the Community while accepting the authority of member states to shape

[5] Directive 2002/39/EC amending Directive 97/67/EC with regard to the **further opening to competition** of Community postal services; and Directive 2008/6/EC amending Directive 97/67/EC with regard to the **full accomplishment of the internal market** of Community postal services [emphasis added].

[6] By derogation, ten EU countries were allowed to maintain existing monopolies two years longer, until the end of 2012. These ten countries account for only five percent of all EU mail volume.

universal service to meet country-specific requirements. Accordingly, the Directive defines minimum requirements with respect to the scope of universal services, delivery requirements, access conditions, and quality of service. These minimum criteria imply considerable freedom for a member state government in designing its national universal service obligation.

3.2.1 Universal service obligation

Historically, the former postal administrations were responsible for the provision of universal postal service. In most European countries the postal administrations were corporatized and some have been privatized (at least partly). For this reason, the identity of the "universal service provider" it is no more obvious, and the "universal service obligation" need not necessarily be imposed on the incumbent postal administration.

The Postal Directive therefore imposes an obligation to ensure universal service on the Member States. The Member States may in turn impose a USO on one or several operators. However, Member States need not impose a USO on any operator:

> "Each Member State shall ensure that the provision of the universal service is guaranteed […]" (Postal Directive, Article 4, para. 1)
>
> "Member States may designate one or more undertakings as universal service providers in order that the whole of the national territory can be covered." (Postal Directive, Article 4, para. 2)

The notion of the Directive makes clear that a formal designation of a universal service provider is not compulsory, and that Member States may well decide to rely upon a competitive market to supply universal service – and impose no USO on any operator.

3.2.2 Scope of universal services

Article 3 of the Postal Directive declares, "All Member States shall ensure that users 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." According to the Directive, universal service relates to national and cross-border postal services and comprises

- the clearance, sorting, transport, and distribution of domestic postal items weighing up to 10 kilograms (which may be extended to no more than 20 kilograms by member states); and
- the delivery of incoming cross-border postal packages weighing up to 20 kilograms.

Postal items are defined to include all types of addressed things, including items of correspondence, books, catalogues, newspapers, periodicals, and postal packages.

3.2.3 Uniform tariff requirements

The Postal Directive permits Member States to require uniform tariffs only if this is strictly necessary to further public interest. Article 11 of the Directive stipulates that

> "[P]rices shall be cost-oriented and give incentives for an efficient universal service provision. Whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff shall be applied, throughout their national territory and/or cross-border, to services provided at single piece tariff and to other postal items."

Recital 38 of the Postal Directive (2008/6/EC) makes clear that imposing uniform tariff requirements should be avoided wherever unnecessary, and that uniform tariffs should not be required for all postal services, but only for those where public interest so requires (e.g. for single piece mail):

> "In a fully competitive environment, it is important, both for the financial equilibrium of the universal service as well as for limiting market distortions, that the principle that prices reflect normal commercial conditions and costs is only departed from in order to protect public interests. This objective should be achieved by continuing to allow Member States to maintain uniform tariffs for single piece tariff mail, the service most frequently used by consumers, including small and medium-sized enterprises. […]"

3.2.4 Access requirements

The Postal Directive requires that the availability of access points to the public postal network should meet the needs of users. Access points include street mail boxes and postal outlets. Postal outlets can be post offices operated by employees of a postal operator or postal agencies operated by contractors.

As regards the access network, the requirements of the Postal Directive are very general and reflect the principle of subsidiarity. This principle allows the Member States to decide on more specific requirements in order to take their national peculiarities into account.

3.2.5 Delivery requirements

The Postal Directive requires Member States to ensure at least one delivery each working day, not less than five days a week, at all points in the national territory save in "in circumstances or geographical conditions deemed exceptional by the national regulatory authorities". National regulatory authorities must approve exceptions from nationwide coverage.

3.2.6 Quality of service

The Postal Directive stresses the need to improve the quality of universal service in general. However, the Directive determines no minimum routing time performance for all Member States. Article 16 requires that routing time targets for domestic universal postal services shall be established and monitored in all EU countries, and that routing time performance shall be published.

The Directive itself establishes routing time targets for cross-border postal services of the fastest standard category.

3.3 Monopoly policies

The 1997 Directive limited the permissible scope of the mail monopoly by defining maximum weight and price thresholds of postal services that may be reserved for the national universal service provider. Directive 97/67/EC determined that

> "To the extent necessary to ensure the maintenance of universal service, the services which may be reserved by each Member State for the universal service provider(s) shall be the clearance, sorting, transport and delivery of items of domestic correspondence, whether by accelerated delivery or not, the price of which is less than five times the public tariff for an item of correspondence in the first weight step of the fastest standard category where such category exists, provided that they weigh less than 350 grams." (Article 7, 1 Directive 97/67/EC)

In June 2002, the Council and Parliament amended the Postal Directive by adopting Directive 2002/39. Under Directive 2002/39, the maximum definition of the reserved service was reduced to mail (correspondence and direct mail) weighing less than 100 grams or costing less than three times the basic tariff. The 2002 amendment further determined a reduction of the weight and price limits to become effective in 2006: to 50 grams or 2.5 times the basic tariff. Finally, the Directive encouraged liberalization of outgoing cross-border mail (while permitting some exceptions) and set January 1, 2009, as a possible date for the full accomplishment of the Internal Market for postal services.

In February 2008 the Council and Parliament further amended the Postal Directive by adopting Directive 2008/6/EC. Under this Directive, the date for full market opening is determined to January 1, 2011. By way of derogation, ten EU Member States are allowed to postpone the implementation of the Directive to January 1, 2013. These ten countries account for about five percent of total EU mail volume.

3.4 Effectiveness of eliminating the legal monopoly

3.4.1 Universal service provision

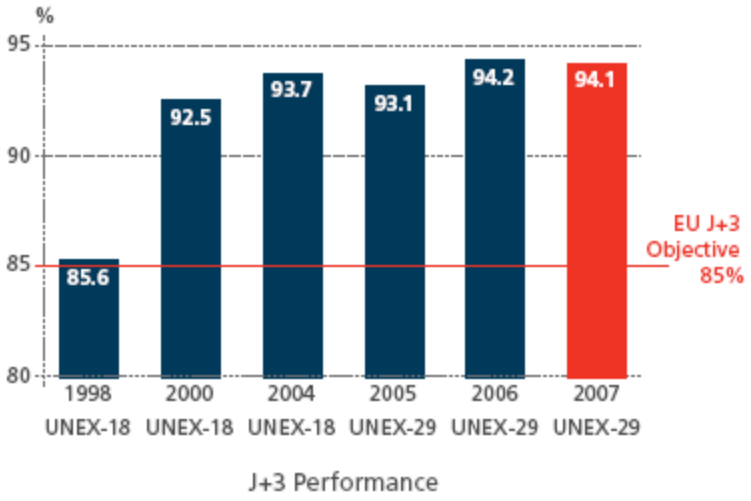
The Postal Directive makes direct service requirements only in one area: The Postal Directive explicitly defines the quality of service target for the transit time of cross-border mail within the European Union. It requires that at least 85% of the cross-border items must be delivered on the third working day (J+3) and 97% on the fifth working day after posting.

For EU Member States and several other European countries, routing time performance for cross border mail is measured by the International Post Corporation (IPC) in a system called "UNEX". Results published by IPC make clear that the performance of cross-border mail improved substantially since 1998 and that the Directive's target has, on average, been met for several years.[7] Note that the number of

[7] However, the Directive requires the performance targets (e.g. 85% J+3) be met for each bilateral flow between two Member States. It is unclear whether the requirements are met for all countries.

countries included in the UNEX measurement increased from 2004 to 2005, following an increase in the number of EU Member States from 15 to 25 in 2004.

Figure E1: UNEX Full-year results, 2007



Source: IPC, UNEX Full year results 2007, p. 1

3.4.2 Competition

The Postal Directive has established a timetable for gradual market opening. This gradual approach left the majority of total mail volume in the area that can be reserved: The share of all letter mail that weighs less than 50 gram is estimated to 72 percent.[8] The gradual approach to liberalization, the use of weight and price limits, has consequently opened a tiny part of the market to competition and has not led to any significant market entry.

Several Member States went beyond what was required by the EU: In 2006, the United Kingdom fully opened its postal market, joining Sweden and Finland, the other two Member States that had already opened their postal sectors to competition earlier. Germany abolished the postal monopoly at the end of 2007. In Spain, the reserved area applies only to inter-city mail and allows competitors to carry local mail. This opens a

[8] See WIK-Consult (2006): Main developments in the European postal sector. Study prepared for the European Commission.

substantial part of the market to competition.[9] While only a minority of EU Member States has fully opened their postal markets yet (five out of 27), these countries account for 54 percent of total EU mail volume.

Even in those countries where postal markets were liberalized, little actual competition has developed and incumbent operators have clearly remained dominant. In a report published in 2006, the European Commission confirmed this assessment:

> "Meaningful competition in the letter post market has yet to develop. Objective analysis of market shares of competitors as well as subjective perception of key players both confirm that even in cases where the monopoly has been completely abolished or substantively reduced, real competition is only emerging. […] Between 2000 and 2005 there seems to have been no significant growth in competition in this segment of postal services and this must be seen as giving rise to some concern." (European Commission, Application Report, COM(2006) 595 final)

3.4.3 Impact of market opening on universal service

Before the Postal Directive gradually introduced competition into the postal market, the European Commission was very concerned about the poor quality of service, inefficient operations, and losses produced by the state monopolies that required public subsidies. In 2002, the European Commission stated:

> "Prior to the Postal Directive [i.e. before 1997, the author], postal services in the Member States varied widely across Member States. However, they could be characterized as being primarily delivered through loss-making and sometimes inefficient public sector monopolies providing standard commodity services of a widely variable quality and efficiency." (European Commission, COM (2002) 632 final, p. 3)

In 2006, ten years after the introduction of gradual market opening, the European Commission noted that the situation had improved considerably. EU postal reform – which included market opening as a core element – has clearly had an overall positive impact on the universal service:

> "Recent analysis indicates that there has been a satisfactory level of development of universal postal services in Europe: universal service is of

[9] The Netherlands have confirmed plans to proceed faster with liberalization than required by the Postal Directive (but no date is set yet).

> high quality, prices are affordable, access to services is easy, and many operators make substantial profits. […] The current picture also shows a radically different postal service as compared with the traditional one: postal operators are now complex modern industry operators competing with other communication media in a dynamic environment. More than 87.5% of the mail is originating from business. In addition, recent technological developments are impacting the way postal service is provided and are also challenging its core activity. […]
>
> Some Member States have already introduced full or significant postal competition in advance of the EU agenda, or have firm plans to do so, to the extent that around 60% of EU letter post volumes are expected to be completely open to competition by 2008. In these countries, despite the absence of a reserved area, universal service requirements have been retained and met. Examples in Sweden, Finland, and the United Kingdom show that the efficiency and reliability of postal services have been improved and meet the needs of citizens and businesses. Perception from consumers of access to postal services is very different per national market.
>
> The analysis of the detailed provision of universal service requirements (affordable prices, specified quality, ubiquity of network of post office) as well as changes in the working environment changes demonstrates that operators and customers are feeling the impact of changes in the sector, irrespective of market opening. Key drivers such as demand, technological developments, organisational changes and regulatory regimes are impacting the way universal service is provided. A new dynamic has evolved, with increasing professionalisation in the provision of universal service, improved services and more value delivered to customers." (European Commission, COM 2006) 596 final, p. 4)

While the overall effect of postal reform in the EU was clearly positive, it is difficult to identify the exact role of liberalization as compared to other elements of postal reform such as performance targets, enhanced transparency, and corporatization and privatization of (formerly) public operators. Elaborating more precisely on the impact of market opening, and the European Commission notes:

> "Meaningful competition in the letter post market has yet to develop. […] However, the mere prospect of market opening has created considerable momentum within the postal sector and is likely to further generate changes (e.g. operationally and customer focused). There seems to be broad agreement that postal services do not constitute natural monopolies. Competition is not an end in itself, but a means to promote innovation, investment and consumer welfare." (European Commission, COM (2006) 595 final, p. 6)

4 United Kingdom

4.1 Introduction to postal policy in the United Kingdom

Postal reform in the United Kingdom dates from 1994, when, after two years of study and public debate, the Conservative government published a "green paper" on postal services that proposed reductions in the monopoly and privatization of 51 percent of the Post Office. Although supported by the Post Office, this proposal was narrowly defeated by opposition from postal unions and concerns over the future of rural services. Progress stalled until 1999, when, in response to the 1997 EU Postal Directive, a new Labor government published a "white paper" announcing a modified plan for postal modernization. New regulations implementing the Postal Directive were put into place the same year.

In January 2000, the government announced draft legislation to implement the white paper. On July 28, 2000, the Postal Services Act 2000 was given final assent by the Queen. The Postal Services Act dissolved the British Post Office and transferred its assets to a new company, Royal Mail Group plc ("Royal Mail"),[10] organized under normal corporation law but with all shares owned by Government.

Postcomm (the Postal Services Commission), created by the Postal Services Act 2000, regulates the postal services sector. Postcomm is directed by statute to exercise broad regulatory powers to achieve three objectives. The objectives are ordered in terms of priority by the statute. First, Postcomm must act "in a manner which it considers best calculated to ensure the provision of universal service." Postcomm may, for example, require a license holder to provide "a universal postal service or part of such a service." Second, subject to this primary duty, Postcomm is directed to "further the interests of users of postal services, where appropriate by promoting effective competition between postal operators" with special attention to disadvantaged users. Third, subject to the two

[10] In January 2001, the original corporation, The Post Office, changed its corporate name to "Consignia." In June 2002, Consignia changed its corporate name to "Royal Mail Group." In this chapter, all of these companies will be referred to as "Royal Mail."

prior duties, Postcomm is required "to promote efficiency and economy on the part of the postal operators."[11]

4.2 Universal service policies

4.2.1 Responsibility to ensure universal service

The Postal Services Act charges Postcomm with responsibility for ensuring universal postal service by attaching appropriate conditions to licenses. To this end, Postcomm has attached an obligation to provide universal service to the license of Royal Mail. In addition, Postcomm has developed two codes of behavior applicable to all postal operators: "Protecting the integrity of mail" and "Common operational procedures – Code of practice". These two codes address challenges evolving in a multi-operator environment.

4.2.2 Scope of universal services

The Postal Services Act requires maintenance of a uniformly priced, universal postal service for "relevant postal packets": letters, parcels, and other articles transmittable by post and weighing up to 20 kilograms. The precise scope of universal service is defined by conditions attached to the license granted to Royal Mail.[12]

Postcomm has concluded that not all postal services that transmit relevant postal packets are "universal services." Postcomm has defined universal service to include the following services: domestic postal services for non-bulk letters and packets (priority and non-priority) weighing up to 2 kilos; domestic postal services for non-bulk letters and packets that meet certain minimal preparation requirements; a non-priority domestic postal service for parcels weighing up to 20 kilos; a registered and insured service and other ancillary services that ensure the security and integrity of the mail (e.g., redirection, certificate of posting, etc.); and international outbound service. Bulk mail services which

[11] Postal Services Act 2000, Arts. 3(1), 3(2), 5(1), and 5(3).

[12] Postcomm, "Amended Licence Granted to Royal Mail Group plc" (May 2006), Part 2.

meet more detailed preparation requirements (accommodating about three-quarters of all bulk mail) are not considered universal services.

4.2.3 Uniform tariff requirements

Tariffs charged fro univbersal services are required to be uniform but the uniform tariff requirement does not apply to non-universal services provided by Royal Mail. Uniform tariffs are not prescribed for most bulk mail products (see section 4.2.2 above). For these products, Royal Mail may introduce different rates for delivery to different areas of the country

4.2.4 Access requirements

Royal Mail's license defines the density of access points which Royal Mail must maintain. For example, "in each postcode area where the delivery point density is not less than 200 delivery points per square kilometre" at least 99 percent of potential mailers must have access to a post office or letter box within 500 meters. In every postcode area, at least 95 percent of mailers must have access to a place for posting parcels within 10 kilometers.[13]

In 2007, the British government has announced plans to introduce a new framework of minimum criteria for the national network of post offices:

> "Nationally, 99% of the UK population to be within 3 miles and 90% of the population to be within 1 mile of their nearest post office outlet.
>
> 99% of the total population in deprived urban areas across the UK to be within 1 mile of their nearest post office outlet.
>
> 95% of the total urban population across the UK to be within 1 mile of their nearest post office outlet.
>
> 95% of the total rural population across the UK to be within 3 miles of their nearest post office outlet.

[13] Postcomm, "Amended Licence Granted to Royal Mail Group plc" (May 2006), Schedule 2, Condition 3.

> 95% of the population of the postcode district to be within 6 miles of their nearest post office outlet."[14]

4.2.5 Delivery requirements

Pursuant to the Postal Services Act, Postcomm has committed Royal Mail to provide at least one delivery of postal packets every working day to every personal or business address. Royal Mail is obliged to prepare and submit to Postcomm a plan to maintain delivery in case of strike, emergency, or natural disaster.[15] Exemptions from delivery at the premises of the addressee and from 6-day delivery are possible.

4.2.6 Quality of service

Royal Mail is required by its license to establish standards of service for a range of products and use all reasonable efforts to meet those standards. These standards must comply with minimums set by Postcomm. Royal Mail is also required to measure service quality in a manner approved by Postcomm and submit reports to Postcomm on a quarterly basis.[16]

Pursuant to this requirement, Royal Mail and Postcomm have established both national standards and local standards. National standards provide, for example, that on an annual basis at least 93 percent of first class mail must be delivered by the first business day after mailing. A mailer is entitled to compensation if he receives service quality of less than 92 percent. Postcomm will consider investigation if service quality falls below 88 percent. Similar tripartite service standards have been established for each universal service, including retail second class, bulk first class, bulk second class, bulk third class, standard parcels, European international delivery, and special delivery. In addition, for first class mail, Royal Mail must comply with service standards for each of the 121 postcode areas.

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[14] Department of Trade and Industry (2007): The Post Office Network. Government response to public consultation. May 2007.

[15] Postcomm, "Amended Licence Granted to Royal Mail Group plc" (May 2006), Part 2, Condition 2 and 3.

[16] Postcomm, "Amended Licence Granted to Royal Mail Group plc" (May 2006), Part 2, Condition 4.

Postcomm can enforce quality of service standards by fines. In April 2006, Postcomm fined Royal Mail £271,000 (about US$499,000)[17] for failure to meet postcode level service standards in three postcode areas of London.

Royal Mail is required by its license to establish procedures for compensation of mailers in case of loss, theft, damage, or delay. Royal Mail is also required to submit annual reports on the operation of its compensation system and disposition of user complaints.

4.3 Monopoly policies

4.3.1 Termination of the postal monopoly

The British postal monopoly was abolished by the Postal Services Act of 2000. In place of the monopoly, the 2000 act required postal operators to obtain a license from Postcomm before providing services formerly within the scope of the monopoly.[18] The new law directed Postcomm to grant and condition licenses in a manner calculated to achieve three statutory objectives ranked in order of priority: protection of universal service, promotion of competition, and promotion of efficiency.

Postcomm introduced competition into the licensed area cautiously. Given the primacy of protecting universal service, Postcomm granted a single license to Royal Mail—temporarily recreating the postal monopoly by regulation—and began an extended review of the potential for granting additional licenses while ensuring universal service. In January 2002, following a two-year period of intense debate and public consultation, Postcomm published an initial plan for opening the postal services market. The plan envisioned a four-year transition to complete liberalization, beginning in April 2002 and ending in March 2006. During the transition, licenses for competing services would be granted in two stages which corresponded to the probable course of new entry. The first licenses would be granted to services for large bulk mailings, for upstream services, and

[17] Postcomm, "Royal Mail's Quality of Service Performance: Final Decision on Investigation by Postcomm into performance in seven Postcode Areas" (Apr. 2006). In March 2007, the High Court (district court) rejected Royal Mail's appeal against this fine. www.postcomm.gov.uk (Royal Mail - quality of service).

[18] See Postal Services Act 2000, Arts. 3(1), 3(2), 5(1), and 5(3).

for specialized delivery services. Later licences would be granted for delivery of smaller bulk mailings.[19] After further public comment and concerns expressed by Royal Mail, Postcomm decided in May 2002 to delay the introduction of liberalization by nine months. The transition period was set to begin in January 2003 and end on the last day of March 2007.[20] In February 2005, Postcomm concluded that the risks of competition for universal service were less than originally estimated and advanced the date for full market opening to January 1, 2006.[21]

4.3.2 Introduction of upstream competition

Postcomm further decided to introduce competition in the market for upstream services. Condition 9 of the Royal Mail's original license required it to negotiate in good faith with any postal operator or user seeking downstream access, i.e., acceptance of postal items at a mail processing facility and transportation from there to final addressees for an appropriately rate. Development of downstream access began with efforts of a private postal company, UK Mail, to make use of Condition 9. In 2003, after the beginning of the transition to liberalization, UK Mail was unable to come to terms with Royal Mail. In May 2003, Postcomm proposed principles for downstream access to the parties.[22] The key observation of Postcomm was that the price for downstream services should reflect a level of overhead costs proportional to its share of attributable costs:

> "Those costs that could not directly be attributed to upstream or downstream activities were allocated proportionately. This meant that if, for example, downstream activities accounted for 50% of total directly attributable costs, then they should also bear 50% of the joint costs." (Postcomm 2004, para 2.4)[23]

In February 2004, Royal Mail and UK Mail agreed on terms. While Postcomm found the final deal acceptable, it regretted the need for time-consuming negotiations and urged

[19] Postcomm, "Postcomm's Proposals for Promoting Effective Competition in UK Postal Services" (Jan. 2002).

[20] Postcomm, "Promoting Effective Competition in UK Postal Services" (May 2002).

[21] Postcomm, "Giving Customers Choice: a Fully Open Postal Services Market" (Feb. 18, 2005).

[22] Postcomm, "Notice of a Proposed Direction to Royal Mail on Downstream Access, by UK Mail, to Royal Mail's Postal Facilities" (May 2003).

[23] Postcomm, "Promoting Effective Competition in UK Postal Services Through Downstream Access" (Mar. 2004), para. 2.4.

Royal Mail to adopt a public tariff for downstream access. Royal Mail decided to continue with individual access agreements. Agreements with TNT and Deutsche Post followed in April 2004. All three agreements were national in nature; that is, they required the user to supply mail with a geographic distribution similar to that for all national mail.

In October 2004, Royal Mail and a mail facilities company in Northern Ireland signed a "zonal" access agreement, that is, an agreement providing downstream services for mail with atypical geographic distribution at rates that had been geographically de-averaged. Royal Mail went on conclude additional zonal access agreements with several large customers and postal operators. Some postal operators charged that Royal Mail was using this program to engage in unfair competition. In negotiating with postal operators, Royal Mail allegedly gained information about large mailers which it used to solicit the large mailers directly. In September 2006, Postcomm agreed that Royal Mail had failed to maintain sufficient safeguards against unfair competition and thus violated its license. Postcomm fined Royal Mail £1m, but the fine was quashed by a court on procedural grounds.[24]

In May 2006, Postcomm concluded that Royal Mail was discouraging entry into the upstream market by requiring individual access agreements (rather than adopting a public tariff). Postcomm modified Royal Mail's license to require Royal Mail to publish guidelines for downstream access and that the guidelines must be approved by Postcomm.[25] In October 2006, Postcomm approved Royal Mail's access guidelines.[26]

4.4 Effectiveness of eliminating the legal monopoly

In order to evaluate the effectiveness of postal reform in the UK, this section summarizes the development of the postal sector in four areas: (1) level and quality of universal

[24] See Postcomm, "A Complaint about Royal Mail's Offer 69 of Zonal Downstream Access" (Feb. 2006).

[25] Postcomm, "Royal Mail's Price and Service Quality Review 2006-2010" (Jun. 2006).

[26] Postcomm, "Condition 9 – Guidelines: Guidelines for Customers Requesting Access to Royal Mail's Postal Facilities" (Oct. 2006).

services; (2) actual competition in the postal market; (3) prices of postal services; and (4) the profitability of the (formerly) public operator.

4.4.1 Universal service provision

4.4.1.1 Access conditions

Post Offices Ltd. (POL) is a sister company of Royal Mail plc organized under the same holding (Royal Mail Holding plc). POL is responsible for the operation of postal outlets, subject to the regulatory requirements. The number of postal outlets has decreased from about 19,000 in 1998 to 14,200 in 2007. Most of the postal outlets (97 per cent) are organized as postal agencies. This share remained largely stable over time. POL does not operate profitably despite receiving public subsidies. In financial year 2006/07, Post Office Ltd made an operating loss of £99m (US$ 198m).

In May 2007, the Secretary of State announced the Government's decision on the future of the Post Office network. This decision includes the continuation of a public subsidy of £1.7bn (US$ 3.4bn) until 2011. Between 1999 and 2007, the Government has made an investment in the Post Office network of more than £2bn (US$ 4bn) to help it adapt to the changing needs of customers and to the marketplace in which it operates. This included investments to bring modern computer systems into every post office in the country for the first time - enabling POL to launch a range of new products and to open its counters to potentially over 20 million bank customers. It also includes the support of the rural network for five years from 2003 to 2008.[27]

In October 2007 Royal Mail discontinued Sunday collections from street letter boxes.[28]

4.4.1.2 Delivery conditions

In 2003/04, Royal Mail reduced the number of daily deliveries from two to one. (Royal Mail had previously operated separate morning and afternoon deliveries in urban areas.)

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[27] DTI, Government sets out proposals to preserve national post office network. P/2006/272 (Dec. 14, 2006).

[28] Independent Review Panel: The challenges and opportunities facing UK postal services (May 2008), p. 24.

Consequently, delivery times were changed: In 2003, Royal Mail had aimed at completing the first delivery by 9.30 am. The company now aims at delivering mail before 2.00 pm for most households, and before 3.00 pm in remote areas of the country.

There are very few exemptions from nationwide delivery: in 2007, 0.2 per cent of population received their mail less than 6 days per week (essentially on islands not connected by daily ferry service). In seldom cases, it is not possible for Royal Mail to deliver mail right up to the door. If that is the case, Royal Mail must give a good reason to Postcomm for making an "exception" to its universal service obligation. The UK has approximately 27.5 million addresses and, of these, 2,812 are exempted (0.01% of addresses).[29] This figure is relatively stable over time and has not changed after market opening.

4.4.1.3 Quality of service

Postcomm has set eight different targets for Royal Mail's routing time performance for eight different product groups. For example, Royal Mail must deliver 93 percent of "Retail First Class" mail on the next working day.

For all classes of mail, Royal Mail's routing time performance has improved during since 2001 (Postcomm's first full year of operation). For example, routing time performance for "Retail First Class" improved from 89.9 in 2001 per cent to 94 per cent in the business year 2006/07.

Due to industrial action, quality of service was below regulatory targets in 2007/08, but targets were met or over-achieved again in the first quarter of 2008/09 (the latest information that was available for this report).[30]

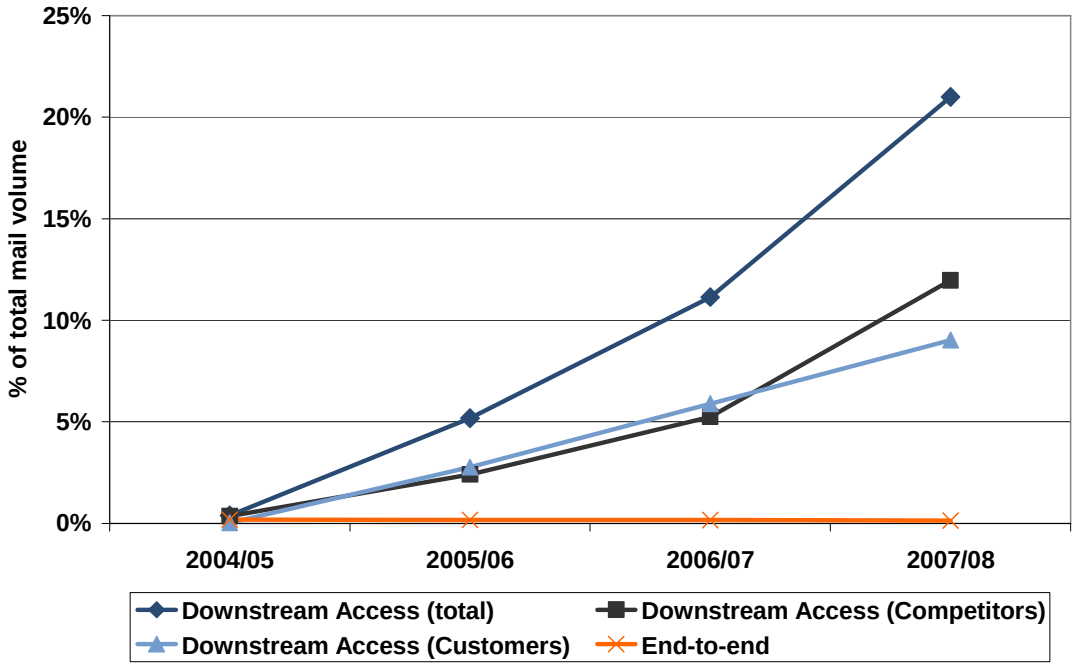
4.4.2 Competition

[29] See http://www.psc.gov.uk/universal-service/delivery-exceptions.html (accessed on 4 October 2008).

[30] Failure to comply with routing time targets normally triggers fines imposed by Postcomm. However, acknowledging a limited responsibility of Royal Mail for the industrial action, Postcomm approved Royal Mail's request to suspend – until the end of the financial year – the payment of compensation to bulk mail customers, and losses in revenue allowances in the price control (due to the 'C factor' in the price cap formula). See Postcomm "Royal Mail submits its case on quality of service failures in 2007/08" (May 1, 2008).

First interim licenses were issued by Postcomm from April 2001 on.[31] As of September 2008, there were 21 licensed postal operators in addition to Royal Mail. Mail consolidation is the major business of these licensed competitors. However, barely any competition has emerged for end-to-end ("bypass") delivery and virtually all competitors use Royal Mail for final delivery.

Figure E2: Development of competition in the UK mail market



Source: WIK-Consult, based on Postcomm's Competitive Market Review reports.

Since the first agreement of downstream access ("DA") between Royal Mail and UK Mail "DA" mail volume increased quickly: In financial year 2007/2008, just over 20 percent of total mail volume were posted under access contracts, almost double the share of access mail in the previous year.[32] These data, however, relate to all mail posted under access contracts, and include volume posted by bulk mailers directly ("customer direct access). In financial year 2007/08, just about half of the 21 percent "access mail" were

[31] Postcomm "The UK Letters Market 2000-2003" (January, 2004).

[32] Postcomm "Competitve Market Review 2008" (Oct. 2008), p. 7.

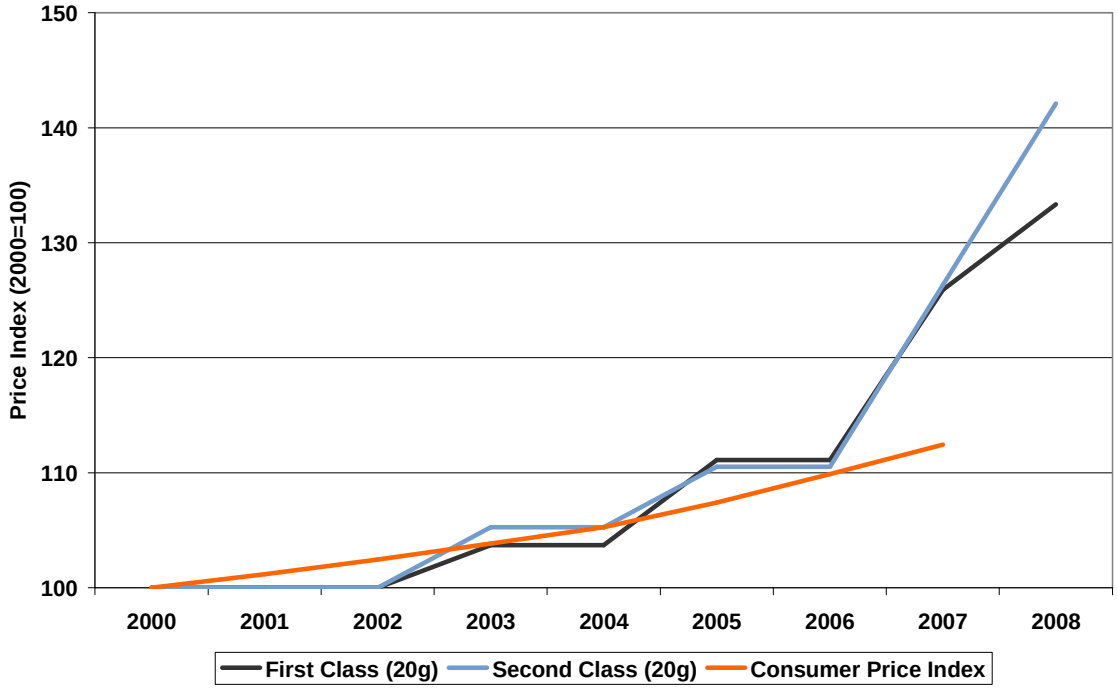
posted by competitors (consolidators), and the remainder was posted by customers directly.

End-to-end competition does virtually not exist: In 2006/07, alternative end-to-end operators delivered only about 34.8 million items, or 0.16 percent of total mail volume within the licensed area. The number of items delivered declined to 26 million items in 2007/08. The most important end-to-end operator is DX Network Services. DX mainly operates a traditional document exchange service for B2B delivery services.

4.4.3 Tariffs

A major change in Royal Mail's pricing strategy occurred in 2006: Royal Mail introduced a schedule that prices letters according to a combination of size and weight of the letter while Royal Mail previously had had no format requirements. This change was called "Pricing in Proportion" (PiP) and was launched on 21 August 2006.

Figure E3: Development of Royal Mail prices, price of first and second class retail mail in relation to the consumer price index



Source: WIK-Consult, based on Royal Mail price lists and Eurostat.

As the figure above shows, tariffs for retail postal services in the UK grew stronger than consumer prices generally. In particular, there was a noticeable price increase in 2006. This price increase was approved by Postcomm citing a decline in forecasted volumes and rising pension costs as the major reason.

However, large businesses have benefited from lower prices. On average, Royal Mail's prices for second and third class bulk mail products went down by 1% and 3% respectively since between 2005 and 2008. Across the market as a whole, an independent consultant estimates that prices are 5% lower than they would have been without competition.[33]

Downstream access products are relatively cheap compared to Royal Mail's bulk mail products. The access tariff is less than half of the first class retail tariff.

Royal Mail applies "zonal tariffs", i.e. tariffs that are not geographically uniform for its downstream access products. Royal Mail has proposed to introduce zonal tariffs for other (non-worksharing) bulk mail products as well, but this has not been approved by Postcomm to date.[34]

4.4.4 Profitability of the public postal operator

The former postal administration Post Office was corporatized in 2000. The legal successor is the Royal Mail Holdings plc which is fully owned by the Government and is the ultimate parent company of the Group. The group consist of four companies:

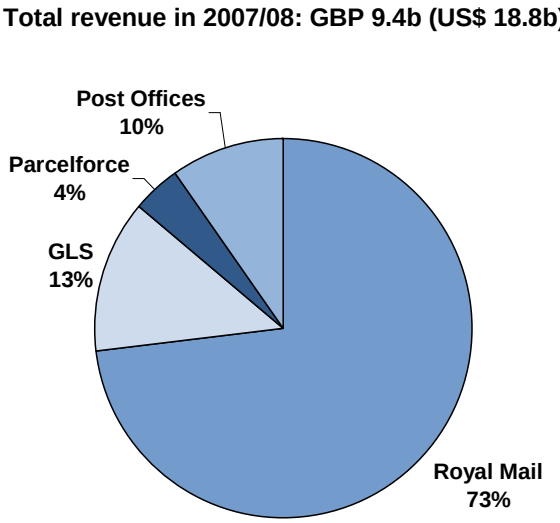
- Post Offices Ltd.,
- Royal Mail plc,
- Parcelforce Worldwide, and
- General Logistics Systems B.V..

[33] "The challenges and opportunities facing UK postal services" (May 2008), p. 22

[34] Postcomm "Royal Mail's Retail Zonal Pricing Application for Non-Universal Service Bulk Mail Products: Postcomm's decision" (January 2008).

The Group primarily operates within the United Kingdom, having a number of subsidiaries, joint ventures, and associates, but also has presence in most European countries, mainly through General Logistics Systems B.V.. Royal Mail plc is responsible for the provision of letter post services and is obliged to provide the postal universal service by licence. General Logistics Systems B.V. (GLS) is a pan-European company providing parcel services, logistics and express services throughout Europe. Parcelforce Worldwide is a provider of collection and delivery services for urgent packages and parcels within the UK. Post Office Ltd. is responsible for the nationwide network of branches providing services and information in postal services, financial services, travel, banking, telephony, bill payments, Government information, retail and the secure transportation of cash.

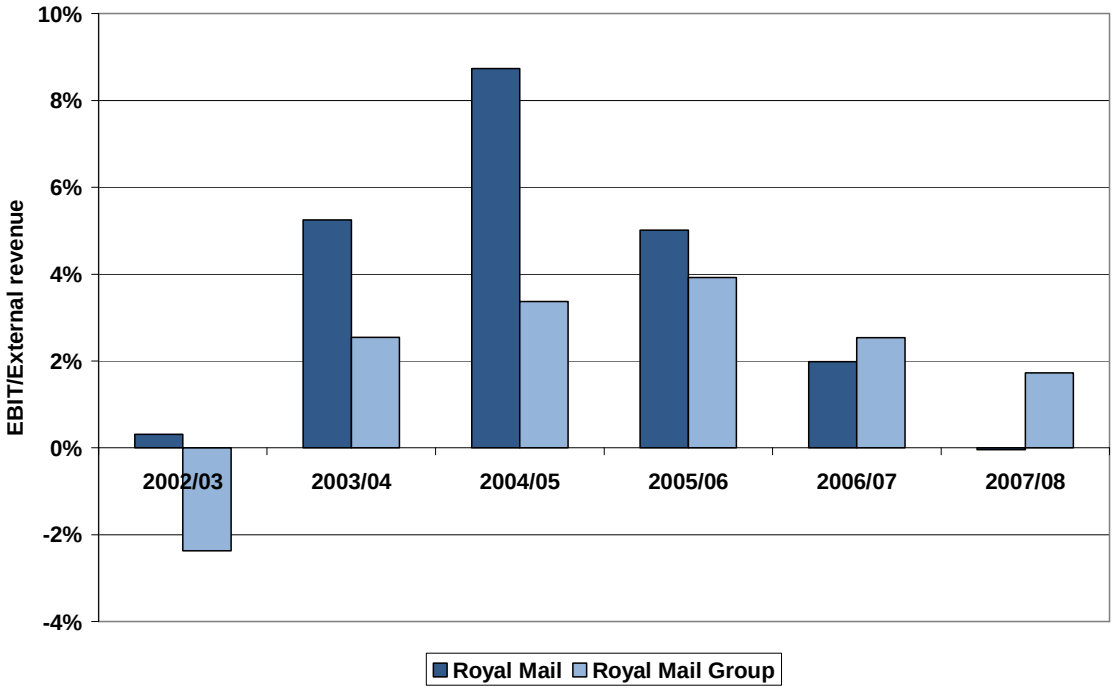
Figure E4: Revenue of Royal Mail Group per segment



Source: WIK-Consult, based on annual reports of Royal Mail Group.

The letter business of Royal Mail accounts for about three quarters of total revenues of Royal Mail Group in the financial year 2007/08. Royal Mail Group generated 13 percent of total revenues outside the UK (GLS business).

Figure E5: Profitability of Royal Mail Group and Royal Mail plc



Source: WIK-Consult, based on annual reports of Royal Mail Group.

The figure above shows profit margins for Royal Mail Group and Royal Mail (i.e. the UK mail operations). Profit margins are measured as EBIT over total (external) revenues.

The European parcel business subsidiary, GLS, is the most profitable unit of the Royal Mail Group. Its profit margin has been around 10 percent since 2005/06 (EBIT/revenue) while the profit margin of the mail business (Royal Mail plc) increased in 2003/04 and 2005/06, but has been eroding after 2004/05.

Between financial years 2002/03 and 2007/08, the number of UK employees (average annual headcount) of Royal Mail Group was reduced from 216 thousand to 182 thousand (minus 16 percent).

4.4.5 Impact of market opening on universal service

The development of universal service, competition, and the financial performance of Royal Mail was intensely studied by the British postal regulator Postcomm. In late 2007, the government (represented by the Department for Business, Enterprise & Regulatory

Reform) charged an "independent review panel" with a comprehensive review of developments in the postal services market since its liberalization in 2006.

This review can be expected to provide an authoritative assessment of the impact market opening has had on the postal market, including on the universal service. At the time this report is written, the review panel's report is not available (the final report is expected for late November 2007). This section therefore relies predominantly on two documents: an interim report presented by the review panel[35] and a submission by Postcomm to the panel.[36]

In the submission to the independent review panel, Postcomm summarizes its perception of the impact of market opening on universal service.[37] According to Postcomm, competition has (in the short period since full market opening in 2006) already delivered significant benefits for large business in terms of choice and price. Quality of service has improved for all users including residential users. The universality of postal services increased, i.e. the number of addresses excepted from regular service has fallen. Small and medium sized businesses, however, were only beginning to benefit from competition. A negative development was that stamp prices have increased above inflation.

Postcomm is concerned with the recent weak financial performance of Royal Mail: Postcomm considered that a combination of market change (volume declines), the Royal Mail's current governance model, and its slow pace of transformation seriously endanger the provision of a universal service. Royal Mail's preliminary results for 2007-08 state that it lost some £100m on the universal service products. However, Postcomm holds the view that competition – and the threat of competition – provides strong incentives for all mail operators, including Royal Mail, to innovate and to become more customer-focused and more efficient. According to Postcomm,

[35] Independent Review Panel: "The challenges and opportunities facing UK postal services. An initial response to evidence", May 2008.

[36] Postcomm: "The independent review of the postal services sector. Second submission by Postcomm, the industry regulator", May 2008.

> "the fact that the universal service has become loss making does not negate this view. If Royal Mail had not been stimulated by competition to make the efficiency savings that it has made in the last few years it would be facing even more severe financial difficulties than it now does." (Postcomm's second submission to the review panel, May 2008, p. 25)

The interim results of the Independent Review Panel arrive at similar conclusions: Positive effects of competition are that Royal Mail's quality performance is "at record levels", and large businesses "have seen clear benefits from liberalization: choice, lower prices and more assurance about the quality of the mail service." However, no significant benefits from liberalization were seen for smaller businesses and domestic consumers, and the universal service is endangered by the weak performance of Royal Mail. According the panel's interim conclusions, these problems are not linked primarily to liberalization, but result from a failure of Royal Mail to "modernize" in the face of structural changes in the market and declining volumes. The panel is further concerned with the finding that Royal Mail "is less efficient than its competitors and many of its European counterparts".[38]

The panel confirms that "the situation in the postal services sector in the UK is untenable" and that "there is a strong rationale for policy change".[39] Judging from the available interim results of the panel, however, it seems very unlikely that liberalization will be identified as a cause of danger to the universal service. Rather, it is expected that changes to the governance and commercial flexibility of Royal Mail will be at the heart of the recommendations of the independent review.

[37] See Postcomm "The independent review of the postal services sector Second submission by Postcomm, the industry regulator", May 2008, p. 15.

[38] Quotes are from the Independent Review Panel's interim report (May 2008).

[39] Speech by Richard Hooper at the Postcomm Forum, 2 October 2008, http://www.berr.gov.uk/whatwedo/-sectors/postalservices/Review/page48279.html (accessed on 4 October 2008).

5 Germany

5.1 Introduction to postal policy in Germany

Germany has reformed its postal law in three legislative stages.

- In 1989, "Postreform I" separated the postal and telecommunications administration (Deutsche Bundespost) into three departments for postal services, postal banking, and telecommunications. The three departments remained within the Ministry for Posts and Telecommunications.
- In 1994, "Postreform II" corporatized the "postal department" (Deutsche Bundespost Postdienst) into a joint stock company: Deutsche Post AG.[40] As of 1995, Deutsche Post AG is a company organized under the same corporate law as a private company. The German government remained the sole shareholder but privatized the company gradually. In 2000, the government sold 29 percent of share in an initial public offering and shares were listed at the stock exchange. Since 2002, the government gradually reduced its ownership in Deutsche Post AG to 31 percent in 2008. The government has announced plans to further reduce this stake in the near future.
- In 1997, "Postreform III" adopted a new regulatory framework for postal services. The telecommunications regulator was designated as the postal regulator. The postal monopoly over the carriage of "written communications or other communications from person to person" was replaced by a licensing requirement. Henceforth postal operators transporting correspondence or addressed advertising mail weighing 1000 grams or less must obtain a license from the postal regulator. The postal regulator also was given authority to ensure universal service and regulate postage rates by appropriate orders. As a transitional measure, the new law granted Deutsche Post an "exclusive license" for five years, i.e., until the end of 2002. In 2002, following a change in the government coalition, the government

[40] The postal banking and the telecommunications branches were equally corporatized and privatized.

extended Deutsche Post's exclusive license for another five years, until the end of 2007.

5.2 Universal service policies

5.2.1 Responsibility to ensure universal service

The German state is responsible for safeguarding the provision of nationwide universal services. The postal law does not impose an obligation to provide universal service on any operator.[41] Legislation assumes the universal service is provided by all operators in the market jointly and establishes a procedure to ensure the universal service only for cases where the universal service is not provided by the market.

The German Postal Act vests the postal regulator, the "Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway" (Bundesnetzagentur) with responsibility to ensure universal service. The regulator can ensure universal service either by issuing orders directed to postal operators or by contracting with postal operators through a public tendering procedure.[42] Only market dominant operators can be ordered to provide universal service. Until present, the universal service in Germany is provided voluntarily by Deutsche Post and other operators jointly.

The Postal Act requires dominant operators to inform the regulatory authority six months in advance if this operator intends to reduce service provision under the level required for the universal service. If Bundesnetzagentur is notified that postal operators intend to reduce or stop providing parts of the universal service (of if the regulator receives other evidence that universal service requirements are not met by the market), the regulator has to make a public announcement, and call for other operators in the market to provide universal service without compensation. Unless a company comes forward voluntarily within one month to "fill the gap", Bundesnetzagentur must impose

[41] Between 2002 and 2007, Deutsche Post AG was transitorily obliged to provide the postal universal service, for as long as it maintained a statutory monopoly.

[42] See German Postal Act (Postgesetz) of 1997. Last amended 31 October 2006, §§12-15.

an obligation on a postal operator that is dominant in the same or in an geographically adjacent market to provide the necessary postal services.

If a postal operator who is obliged to provide universal service can prove to lose money as a result of the obligation, it may claim compensation from Bundesnetzagentur. The amount of compensation is the net long-run incremental cost of providing the required universal service in an efficient manner. As an alternative to compensating the operator that has been obliged to provide universal service, Bundesnetzagentur may solicit bids from other postal operators to provide the same services. In these bids, postal operators must quote an amount of compensation. The operator who quotes the least compensation is awarded the contract.

In the event of compensations paid by Bundesnetzagentur, the regulator is authorized to establish a universal service fund and impose contributions to this fund on all licensed postal operators.

Until present, the regulator considers the universal service to be provided adequately by the market, and has not deemed necessary any action to ensure the universal service.

5.2.2 Scope of universal services

The scope of the universal service is defined in the Universal Postal Service Ordinance (1999).[43] The universal postal service comprises the collection, transport, and delivery of letter post items weighing up to 2kg and parcels weighing up to 20kg. The distribution of books, catalogs, newspapers, and magazines is considered a "postal service" only if provided in conjunction with a letter post or parcel post. In Germany, all single piece and bulk mail services are considered part of the universal postal service.

5.2.3 Uniform tariff requirements

There is no requirement to provide universal services at a uniform price.

The Postal Act merely requires that tariffs for universal services must be affordable. At present, tariffs are defined to be affordable if the price of a set of universal services

[43] Original German title of this ordinance: "Post-Universaldienstleistungsverordnung".

purchased by an average household does not exceed the price paid for this set of services at the end of 1997 (plus inflation).[44]

5.2.4 Access requirements

The Universal Postal Service Ordinance sets out minimum access requirements: The postal market is required to provide at least 12,000 postal outlets. The ordinance further requires that there is at least one post office in every town of 2,000 or more inhabitants. In towns with 4,000 or more inhabitants, a post office must be within 2,000 meters of every mailer (that lives in a "built-up area"). In rural areas, there must be at least one post office per 80 square kilometers (31 square miles).[45]

Street letter boxes (mail collection boxes) must, as a general rule, be available within 1,000 meters of every mailer that lives in a "built-up area".[46]

5.2.5 Delivery requirements

The Universal Postal Service Ordinance requires that all types of universal service items must be delivered each working day, i.e. six days per week and at the premises of the recipient. Exceptions from home delivery are permissible if delivery to this location would create "undue difficulty".[47]

5.2.6 Quality of service

The Universal Postal Service Ordinance defines minimum service standards with regards to routing time:[48]

- Eighty percent of domestic letter post items must be delivered on the first working day after posting.

[44] Universal Postal Service Ordinance, § 6 para 3.

[45] Universal Postal Service Ordinance, § 2 para 1 no. 1.

[46] Universal Postal Service Ordinance, § 2 para 1 no. 2.

[47] Universal Postal Service Ordinance, § 2 para 1 no. 4.

[48] Universal Postal Service Ordinance, § 2 para 1 no. 3 and § 3.

- Ninety-five percent of letter post items must be delivered by the second working day after posting.
- At least 80 percent of parcels must be delivered by the second working day after posting.

Routing time targets relate only to single piece items. There are no regulatory targets for routing time of bulk mail items (mailings of more than 50 items).

5.3 Monopoly policies

The postal monopoly in Germany ended on December 31, 2007, after a transition period of ten years.

Prior to 1998, the law gave the national post office a monopoly over carriage of correspondence weighing up to 1,000g and addressed direct mail weighing up to 100g. As a transitional measure, the 1997 act granted Deutsche Post a legal monopoly via an "exclusive license" for 5 years. In 2002, the exclusive license was modified and extended for five more years, until December 31, 2007.

The exclusive license was a legal device for phasing out the postal monopoly. The key limits to the exclusive license were expressed as weight and price limits, an approach similar to that adopted in the EU Postal Directive. The services covered by the exclusive license comprised the collection, transport, and delivery of correspondence weighing up to 200g (7.1 oz) or priced at more than five times the price of an ordinary first class stamp and of addressed direct mail weighing up to 50g. When the exclusive license was extended in 2002, the price and weight limits were reduced to 100 grams (3.6 oz.) or 3 times the basic stamp price. In 2006 the limits were further reduced to 50g or 2.5 times the basic stamp price.

There were other exemptions to the exclusive license. In particular, the exclusive license did not apply to "services distinct from universal services, having special features and higher quality". These standards for such service feature were determined by the regulator. For example, guaranteed overnight delivery, or guaranteed delivery in the early morning were determined to be such features. Licenses for such value-added services (called "D-licenses") were used intensely by entrants in the postal market.

The German Postal Act requires market dominant postal operators to provide downstream access to services within the licensed area upon reasonable demand. In 2005, decisions by the European Commission, a regional court in Germany, and the Federal Cartel Office (the German competition authority) opened the way for competition in the upstream market by requiring Deutsche Post to give downstream access to postal operators who consolidate letter post items from multiple mailers. Bundesnetzagentur subsequently granted licenses to postal operators desiring downstream access.

The tariffs for downstream access were determined by the regulator Bundesnetzagentur. However, downstream access has had little impact on the postal market, and has been used by relatively few operators. Reasons for the relative unimportance of downstream access in Germany include relatively high prices for downstream access, and the existence of alternative end-to-end delivery firms.

5.4 Effectiveness of eliminating the legal monopoly

In order to evaluate the effectiveness of postal reform in Germany, this section summarizes the development of the postal sector in four areas: (1) level and quality of universal services; (2) actual competition in the postal market; (3) prices of postal services; and (4) the profitability of the formerly public operator.

5.4.1 Universal service provision

5.4.1.1 Access conditions

Between 1998 and 2007, Deutsche Post has reduced the number of postal outlets gradually from about 14.5 thousand to 12.6 thousand. Deutsche Post has extensively transformed traditional postal offices to contract agencies. In 2008, about 80 percent of all postal outlets of Deutsche Post are operated by third parties (contract agencies).

Following the gradual reduction of the access network until 2007, Deutsche Post has recently started to increase the network by establishing additional access points that offer a limited set of postal services. In 2008, Deutsche Post has rolled out approx. 1,000

automated machines for posting parcels, and has increased the number of offices for business customers from 200 to 1,000.[49]

Other operators in the parcel market have established parallel networks of access points. Hermes, the second largest parcel service provider in the C-to-C and B-to-C segments, operates a national network of approximately 13,000 access points for parcels in Germany, and GLS, a subsidiary of British Royal Mail, operates approximately 4,750 access point in Germany.

In the letters market, several local operators have established street letter boxes to collect mail from private customers, but to date, there are no alternative nationwide access networks for letters.

5.4.1.2 Delivery conditions

Deutsche Post delivers letters and parcels six days per week. Deutsche Post has publicly committed itself to maintaining universal daily delivery.

Most alternative operators in Germany equally deliver every working day.

5.4.1.3 Quality of service

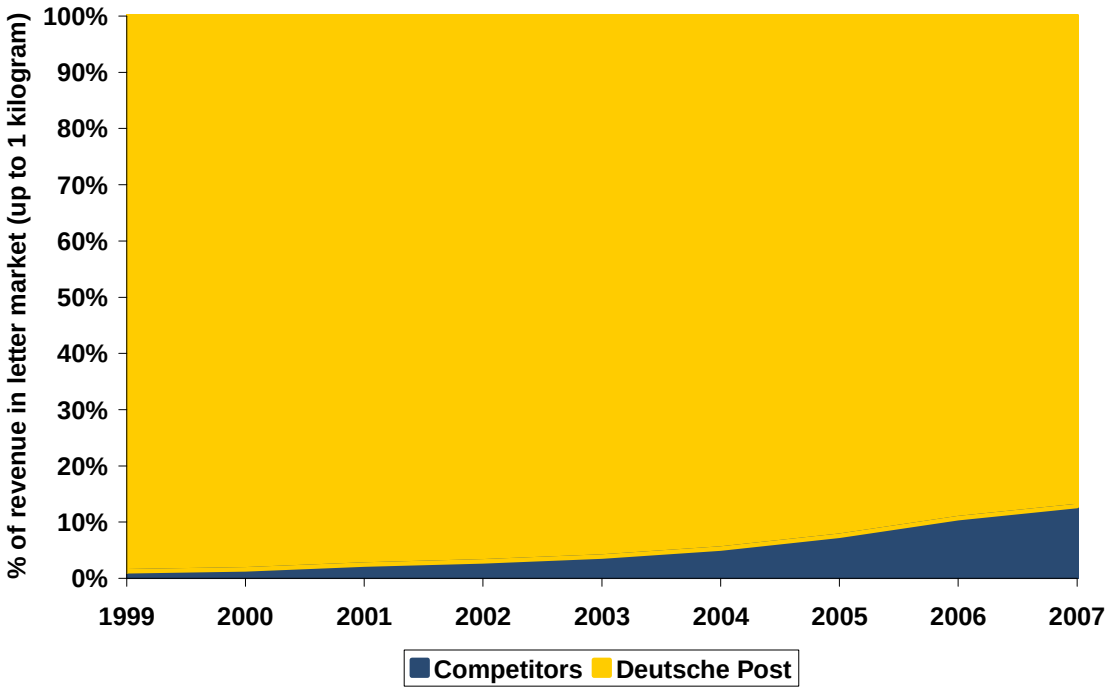
Deutsche Post regularly publishes the routing time performance of first class letters. Since 1998, routing time performance was around 95 percent, i.e. 95 percent of single-piece items, on average, were delivered the next working day.

5.4.2 Competition

At the end of 2007, 845 companies were licensed to provide postal services in Germany. About 600 of these firms actually provide postal services.

[49] See Deutsche Post: "Deutsche Post continues its service offensive", press note dated Bonn, 17 March 2008. http://www.dpwn.de/dpwn?tab=1&skin=hi&check=yes&lang=de_EN&xmlFile=2009773 (accessed on 4 October 2008)

Figure E6: Development of market shares in the German mail market



Source: WIK-Consult, based on market reports by Bundesnetzagentur.

By 2007, after 10 years of gradual market opening, all competitors in total had achieved a combined market share of 12.9 percent by revenue (10.4 percent of volume).[50] Deutsche Post retained its dominant position in the letter market.

Most competitors operate locally, and have very small revenues, generally less than € 10m. Two operators aim at achieving a national coverage: TNT Post, a subsidiary of the Dutch incumbent, and PIN Group, a network of predominantly local delivery firms owned by local newspaper publishers. In sum 22 licensees had revenues above € 10m in 2007, thereof 4 above € 50m.[51] Deutsche Post's revenue in the licensed area is about € 8.7b. Since 1998, total mail volume (in the licensed area) has increased from 15b to 17.5b mail items while total revenues have remained relatively stable (around € 10b).

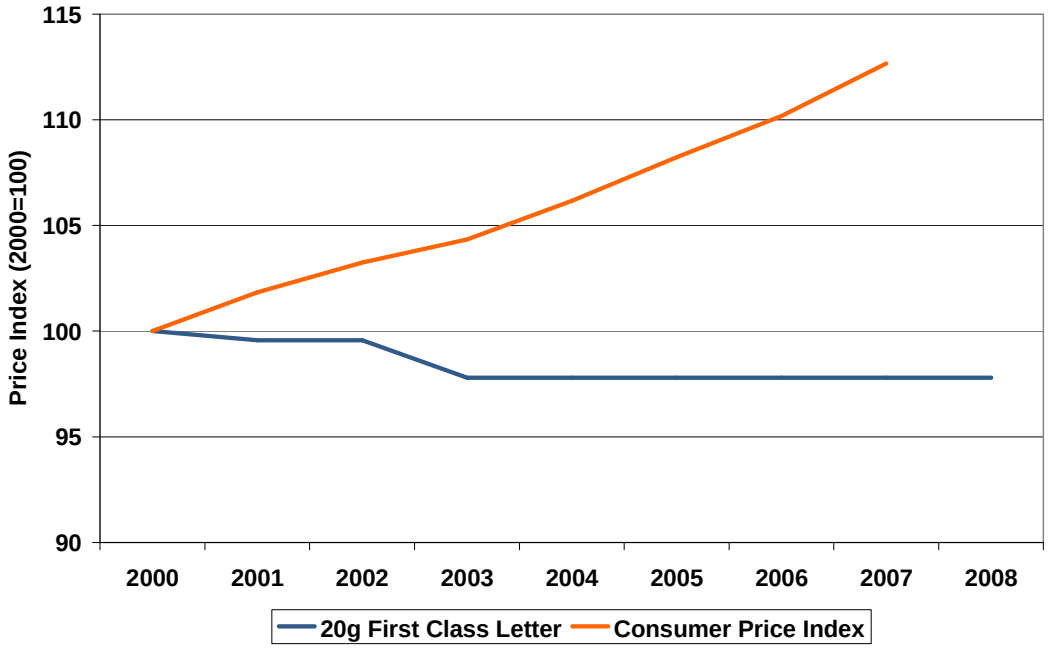
[50] Bundesnetzagentur, Annual Report 2007, p. 131.

[51] Bundesnetzagentur, Annual Report 2007, p. 131.

5.4.3 Tariffs

The public tariffs of Deutsche Post AG are subject a price cap (RPI minus X). The first price cap decision, which became effective in 2002, obliged Deutsche Post to reduce the tariffs of the monopoly services on average by RPI minus 7.2 percent (i.e. by 4.7 percent in real terms). After 2002, the X factor was set to 1.8 such that, at the inflation in this period, prices remained almost constant in nominal terms. For example the tariff of the 20g first class letter was reduced from €0.56 to €0.55 as of January 2003, and has not been changed since.

Figure E7: Development of the public tariff for first class letters of Deutsche Post compared to the consumer price index



Source: WIK-Consult, based on Deutsche Post price lists and Eurostat CPI data.

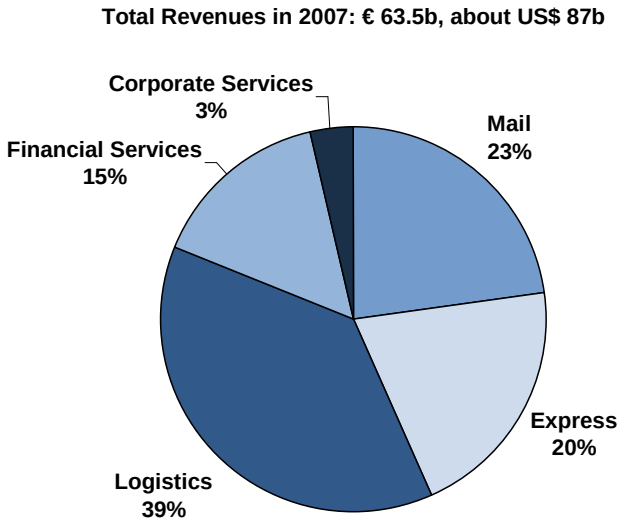
The tariffs of competitors have usually been slightly lower than those of Deutsche Post AG even though competitors have to charge value added tax (19 per cent) on letter prices, and Deutsche Post's letters are exempted from value added tax.

5.4.4 Profitability of the formerly public postal operator

Deutsche Post AG has extensively expanded its operations into other logistics markets, mainly by acquiring other companies. Between 1997 and 2007, Deutsche Post spent several billions to acquire express carriers, air cargo companies, and freight forwarders. The largest deal was the takeover in early 1999 of the Swiss logistics concern Danzas. In 2000, Deutsche Post bought a large American freight forwarder, AEI, and merged it with Danzas, producing the world's largest air freight forwarder.

In the 90ies, Deutsche Post had focused on the modernization of its national business. It had established an efficient logistical network for mail and parcel services. Simultaneously, it reduced the number of postal outlets and replaced post offices by postal agencies. After 2000, Deutsche Post continued to expand by acquisition. In 2002, it completed the purchase of DHL, a leading international express company. In the same year, Deutsche Post bought Global Mail, an American international remail company. In 2003, Deutsche Post bought Airborne, an American freight and express company. In 2005, Deutsche Post bought Excel, a large British logistics company, making Deutsche Post the world's largest logistics company. In 2006, Deutsche Post acquired Williams Lea, a leading provider of business services relating to mail and shipping. Due to pressure from financial markets, Deutsche Post was forced continuously to focus on becoming more cost-efficient.

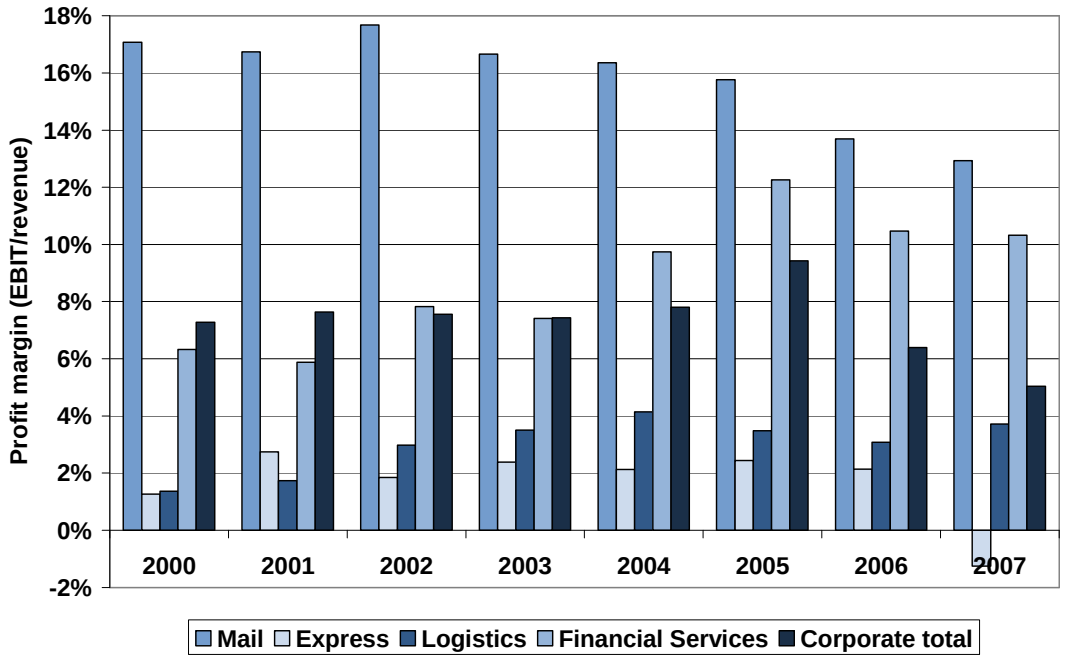
Figure E8: Revenue structure of Deutsche Post group in 2007



Source: WIK-Consult, based on annual reports of Deutsche Post World Net.

In 2007 the Deutsche Post group (called "Deutsche Post World Net") earned € 63.5 billion (US$ 87 billion) of which the mail division contributed less than one quarter. Less than one third of total revenues were generated in Germany. Thus, the German "public postal operator" is in essence a global express and freight company.

Figure E9: Profitability of Deutsche Post group (2000-2007)



Source: WIK-Consult, based on annual reports of Deutsche Post World Net.

The German incumbent Deutsche Post has been profitable since the late 1990ies. The mail segment of Deutsche Post – which predominantly includes the traditional postal operations in Germany – is the most profitable segment of the group (see figure above). Mail contributed more than 60 per cent to group profit in 2007.[52] The financial segment of Deutsche Post, essentially represented by the subsidiary Postbank AG, is also very successful while express and logistics generate considerably lower profits.

[52] The profit margins of the mail segment slightly declined in 2006 and 2007 because the domestic parcel business was transferred from the express to the mail segment. Due to fierce competition the profit margin of the domestic parcel business was very low which reduced the overall profit margin of the mail segment.

5.4.5 Impact of market opening on universal service

Market opening in Germany appears to have had a positive impact on the universal service: Unlike in other countries, the German mail market continued to grow (slightly) after the beginning of the millennium, albeit, in terms of volume per capita, at a lower level than, for example, the USA, Sweden, or the UK.

Routing time performance of the incumbent was constantly high, and above regulatory targets. The size of the incumbent's retail network remained relatively constant, but the retail operations underwent considerable change. In particular, about 80 percent of post offices were transformed to contract agencies since the mid 1990ies. In the parcels market, several alternative operators have established nationwide retails networks, including for private customers.

Business customers have benefited from competition: The have the choice of providers, and have seen prices fall. Prices for private customers fell slightly (in real terms), but competitive choice for private senders of letters is largely unavailable.

The regulator monitors universal service permanently and found not indications that the universal service was at risk at any time, and no external funding was necessary to maintain the universal service.

Finally, the incumbent Deutsche Post was granted large commercial flexibilities. In this setting, Deutsche Post was able to cut cost, and employment, considerably and maintained a high level of profit. The incumbent's universal service was the most profitable area of business.

6 Sweden

6.1 Introduction to postal policy in Sweden

Sweden was the first country in the world which has a completely liberalized its postal market: The postal monopoly was abolished in 1993. In 1994, the national postal operator Posten AB (Sweden Post) was corporatized but remained a state-owned company. In the same year the national postal regulator Post & Telestyrelsen (PTS) was established.

The first Postal Act was revised three times since 1994. In the first revision of 1 January 1997, the scope of the universal service was extended and new operators were required a license instead of a notification to the regulator. In the second revision of 1 July 1998, price regulation was reformed and legislation adjusted to the new EU Directive. The third revision of 1 July 1999 concerned only the access to the postal infrastructure. The contract between the State of Sweden and Sweden Post has been renewed twice and since 2001, the requirements on Sweden Post concerning among other things the universal service obligation are included in its license conditions set by the national regulatory authority PTS.[53]

6.2 Universal service policies

6.2.1 Responsibility to ensure universal service

The Postal Services Act generally defines the scope and some contents of the postal universal service. After 1993, Sweden Post was obliged to provide the postal service via a contract with the Government. This contract was prolonged two times. Since 2001, a general universal service obligation, and more specific requirements with regard to service provision, became part of Sweden Post's license issued by the regulator PTS.[54]

[53] Andersson, Peter (2007), "The liberalisation of postal services in Sweden – goals, results and lessons for other countries", p. 10.

[54] PTS (2007), "The liberalized Swedish postal market: the situation 14 years after the abolition of the monopoly".

Postal legislation in Sweden does not foresee a compensation fund for externally funding the USO.

6.2.2 Scope of universal services

Section 1 of the Swedish Postal Act generally defines the scope of universal service. It comprises the provision of postal services for addressed items weighing up to 20kg.

Sweden Post was additionally obliged to provide basic counter services (financial services). This requirement is strictly separated from universal postal service. While the obligation to provide basic counter services will be phased out at the end of 2008,[55] significant changes in the scope and definition of the universal service obligation are not foreseen by the Government.[56]

6.2.3 Uniform tariff requirements

Uniform tariffs are required for single piece items provided by Sweden Post.

6.2.4 Access requirements

The Postal Ordinance requires that the density of access points shall "take account of the needs of users". Until 2006, the closure of access points had to be approved by PTS. PTS has not defined any further density requirements with regard to postal outlets in Sweden Post's license. The regulator annually publishes a report which assesses the utilization of the postal outlets (based on representative surveys).[57]

[55] Sweden Post, Annual Report 2007, p. 30. In 2009, PTS shall procure the provision of basic financial services in (rural) areas where the market does not provide the service.

[56] Andersson, Peter (2007), "The liberalisation of postal services in Sweden – goals, results and lessons for other countries", p. 57, based on Swedish report of a Government Commission published in 2005 (Postmarknad i förändring, SOU 2005:5).

[57] PTS / Investigo (2008), "Undersökning av befolkningens post- och kassavanor 2008".

6.2.5 Delivery requirements

The Swedish Postal Act requires that postal items should be delivered five days a week.[58] Exemptions of the five day delivery are possible and must be approved by the postal regulator PTS. Sweden Post had published guidelines for the location of recipient's letter boxes. These guidelines were replaced by a general advice of PTS on the delivery of postal items in 2005. For this reason households in rural areas have their mail delivered to grouped letter boxes located between 200 and 1,000m from their premises.[59]

6.2.6 Quality of service

At least 85 per cent of domestic first class letters shall be delivered the next working day (Section 8 of the Postal Act). 97 per cent shall be delivered within three working days. Sweden Post is not allowed to substantially change the latest collection time without approval of PTS.

6.3 Monopoly policies

In Sweden the postal monopoly was abolished in 1993. In 1994, a postal regulator was established. The 1990ies were characterized by numerous competition cases between Sweden Post and its most important competitor CityMail. They were resolved by the national competition authority in long lasting proceedings.

The postal regulatory framework does not foresee any specific regulation of downstream access. Sweden Post is required not to discriminate between customers.

In 1999, access to the postal infrastructure has been regulated. Postal infrastructure essentially means access to the postal code system which was established by Sweden Post in 1968 and access to Sweden Post's P.O. Boxes.[60] In case of changes in the postal code system Sweden Post was obliged to consult involved organizations and to provide postal

[58] The Saturday delivery was discontinued in the late 1960s (PTS (2008), "Service and competition 2008", p. 27).

[59] PTS (2008), "Service and competition 2008", p. 27.

[60] Andersson, Peter (2007), "The liberalisation of postal services in Sweden – goals, results and lessons for other countries", p. 22.

codes to other postal operators (e.g. for P.O. boxes operated by competitors). Additionally, the access to Sweden Post's P.O. boxes should be organized at reasonable and non-discriminatory terms. Finally, an address file company owned by licensed postal operators (i.a. Sweden Post and its largest competitor CityMail) was established and conditions for forwarding of mail were agreed on between the postal operators (with the regulator PTS as mediator).

6.4 Effectiveness of eliminating the legal monopoly

In order to evaluate the effectiveness of postal reform in Sweden, this section summarizes the development of the postal sector in four areas: (1) level and quality of universal services; (2) actual competition in the postal market; (3) prices of postal services; and (4) the profitability of the public operator.

6.4.1 Universal service provision

6.4.1.1 Access conditions

The number of post offices was reduced from around 4,000 in the 1970s to around 1,300 in 2000. The majority of closed post offices were replaced by a rural delivery service ("mobile post offices"). In 2001 and 2002, Sweden Post completely revised its organization of retail outlets. It replaced most traditional post offices (operated by own personnel) by contract agencies (postal outlets operated by third parties e.g. groceries). This revision resulted in a significant increase of retail outlets combined with an extension of the opening hours. In 2006, Sweden Post had more than 2,000 outlets, thereof about 80 per cent organized as postal agencies.[61]

Sweden Post is also obliged to provide basic financial services. These services are offered in a completely separated retail network for cashier services. In 2007 the Swedish Parliament decided that after 2009 the society's need for essential financial transaction services may be procured by the Swedish National Post and Telecoms Agency (PTS) in those rural areas where the provision is not financially viable. It also means that the

[61] PTS (2008), "Service and competition 2008", p. 28.

payment services now provided by Sweden Post's Cashier Service will be carried out in other forms (e.g. by co-operations between the Cashier Service and banks). Posten submitted a closure plan for the Cashier Service to the Swedish Post and Telecoms Agency on October 1, 2007, according to which, the remaining parts of the business would be closed by December 31, 2008.[62] Additional to postal outlets, rural carriers serve as small mobile post offices and provide about 730,000 households (about 9 per cent of total households) and 14,000 other recipients located at 2,250 rural mail carrier routes with universal postal services.[63]

6.4.1.2 Delivery conditions

Generally, Sweden Post delivers postal items to recipients on five days per week with exceptions in very sparsely populated areas (in the northern parts of Sweden). In these areas mail is delivered two to four days a week e.g. in the form of a special postbag service. In 2005, 1,118 households were exempted from daily delivery. In 2007, this number had fallen to 969 households.[64] In rural areas the letter boxes are sometimes not located at the property line; in a survey about 4 per cent of households estimated that there are distances of about 200m and 1,000m between the location of the letter box and the property line.[65]

6.4.1.3 Quality of service

Sweden Post is legally required to deliver 85 per cent of their first class letters the next working day. The postal operator regularly achieves performances around 95 per cent. In 2007, 94.5 per cent of first class single piece items were delivered the next working day. The performance is even better when bulk mail is included.[66]

6.4.2 Competition

[62] Sweden Post, Annual Report 2007, p. 8.

[63] PTS (2008), "Service and competition 2008", p. 26.

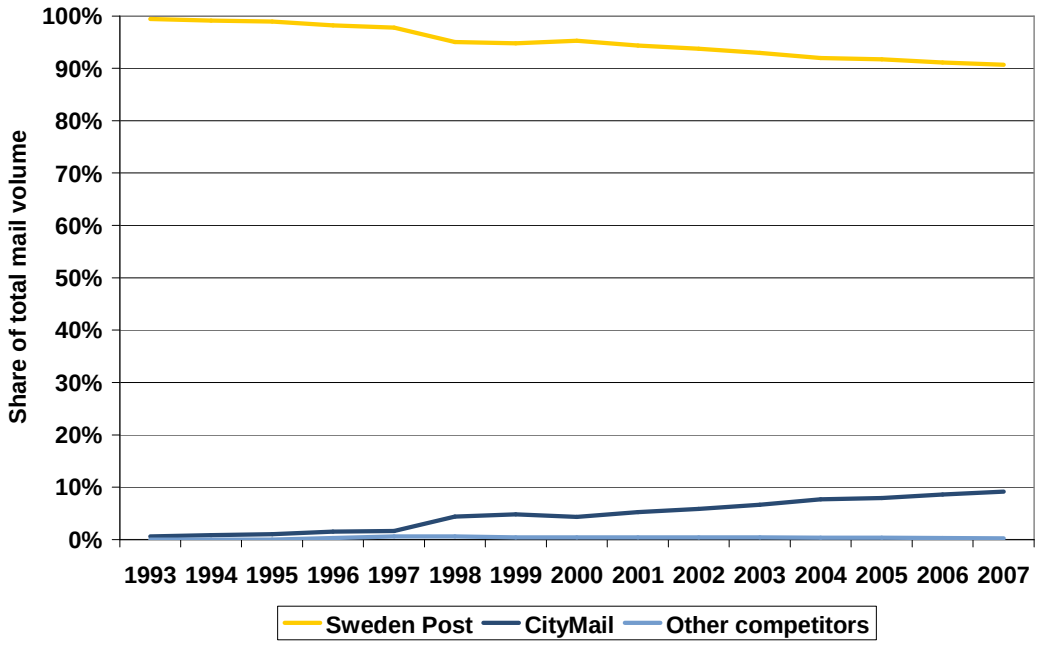
[64] PTS (2008), "Service and competition 2008", p. 26.

[65] PTS (2008), "Service and competition 2008", p. 27.

[66] PTS (2008), "Service and competition 2008", p. 29.

Fifteen years after full market opening, Sweden Post still dominates the Swedish postal market. In 2007, about 90 per cent of total mail volume was delivered by Sweden Post. The largest competitor is CityMail that started operations in 1991 in central Stockholm. Since June 1998, CityMail has been listed at the stock exchange and a joint venture company was formed, CityMail Sweden AB, controlled by the British national postal operator Royal Mail. Royal Mail sold its 67 per cent share back to the founders of CityMail in 2001. In 2002, the Norwegian Post bought 57% of CityMail and acquired the rest of the company in 2006.

Figure E10: Development of competition in the Swedish letter post market



Source: WIK-Consult, based on PTS (2008).

CityMail is specialized in delivering computer-generated (i.e. pre-sorted) bulk mail to recipients located in Sweden's largest cities with rural surroundings such as Stockholm, Gothenburg and Malmö, and the island of Gotland. In 2006, CityMail covered more than 40% of the total number of households and companies in Sweden. The firm intends to increase coverage to more than 50 percent of households in 2008.[67] CityMail's business

[67] Norway Post, Annual Report 2007, p. 33.

model –to deliver mail only in the more densely populated southern areas of the country – reflects the geographical peculiarity of Sweden: Sweden is a large and sparsely populated country.[68] CityMail's mail volume increased from 149m in 2000 to 287m in 2007 (compared to 2.9b addressed items delivered by Sweden Post). CityMail delivers mail only two times a week. For this reason, the operator essentially competes with the economy bulk mail service offered by Sweden Post (delivery at the third working day after posting).

Apart from Sweden Post and CityMail the other postal operators are small companies that only provide local postal services. These small operators essentially compete with the first class mail products (including single piece items) offered by Sweden Post. CityMail's market share in terms of mail volume was approximately 13% with regard to bulk mail and 8.6% of the total letter volume in 2006.[69] In 2007 this share increased to 9.1%. However, CityMail made losses until 2004, and became profitable for the first time in 2005.[70]

6.4.3 Tariffs

Sweden Post offers first class mail products (delivery at the next working day) and economy mail products (delivery at the third wording day after posting). In contrast to most other European countries postal universal services are not exempted from VAT; the tariffs include a VAT of 25 per cent. The public tariffs for single piece mail are subject to a price cap. The price cap allows for price increases (average of services included in the basket) in line with the development of the consumer price index. The last price increase of stamped first class letters was in 2003.

[68] Sweden measures over 2,000 kilometers from north to south, and it is one of the most sparsely populated countries in Europe with 20 inhabitants per square kilometer.

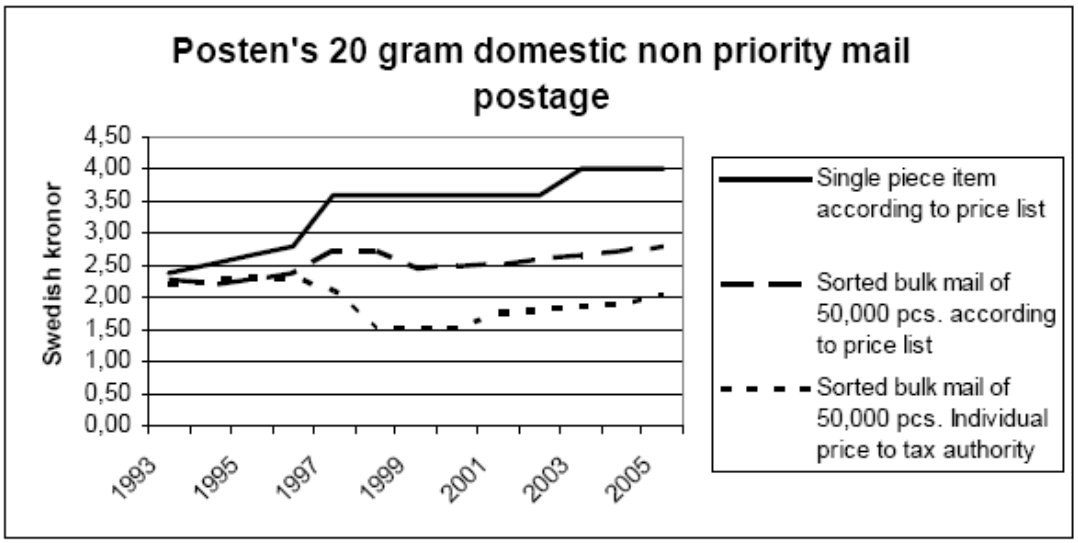
[69] PTS (2007), "The liberalized Swedish postal market: the situation 14 years after the abolition of the monopoly", p. 4.

[70] CityMail even went bankrupt twice: in 1992 and 1995 but re-entered into business both times (the second time with support of Sweden Post). (see Andersson, Peter (2007), "The liberalisation of postal services in Sweden – goals, results and lessons for other countries", p. 33 and PTS (2008), "Service and competition 2008", p. 16).

In 2007, Sweden Post had the possibility to increase the tariffs for single piece items (because the tariffs fell below the CPI ceiling). Consequently, Sweden Post asked for an increase of about 9 per cent for a stamped first class letter of the lowest weight category (20g). PTS refused this specific request because the envisioned tariff increase exceeded the change in the consumer price index but allowed for more moderate tariff increases e.g. for franked mail.[71]

In contrast to single piece tariffs, Sweden Post's bulk mail tariffs (based on individual agreements) decreased overtime (see figure below). In response to the competition from by CityMail in the urban areas, Sweden Post additionally introduced zonal tariffs which further decreased postal tariffs for mail delivered in these areas.[72]

Figure E11: Tariff developments of economy single piece and bulk mail letters (20g)



Source: Jonsson, Per and Sten Selander, (2005) "The "Real" Graveyard Spiral – Experiences from the liberalized Swedish Postal Market", p. 6.

The stepwise introduction of the VAT on postal tariffs resulted in price increases in 1994 and 1997. In 1997, the tariff for single piece letters was increased by around 30

[71] PTS (2008), Service and Competition 2008, p. 21

[72] The introduction of zonal tariffs by Sweden Post resulted in a number of competition cases. Finally, Sweden Post was allowed to apply zonal tariffs as long as the tariff structure correctly reflects differences in delivery costs (see PTS (2008), "Service and competition 2008", p. 16).

percent. This was possible because of a loophole in the construction of the price cap before 1998, and made the government change the price cap mechanisms subsequently.[73]

Small postal operators competing with Sweden Post at a local level offer considerably cheaper first class services than Sweden Post: local competitors deliver a 20g stamped first class letter about 15 up to 45 per cent cheaper than Sweden Post.[74]

6.4.4 Profitability of the public postal operator

In 1994, the national postal operator Post Office was corporatized and renamed to Posten AB (AB is the Swedish equivalent of "Inc."). It continues to be a state-owned company. In the same year, the national postal regulator Post & Telestyrelsen (PTS) was established. On April 1, 2008 the Swedish Ministry of Enterprise, Energy & Communications, the Danish Ministry of Transport, and CVC Capital Partners[75], a private equity company, have signed a letter of intent regarding a merger between Posten AB and Post Danmark A/S. This would be the first merger between two important national postal operators in Europe.[76]

Sweden Post offers mail, parcel, and information logistics services in Sweden and the Scandinavian countries via three business segments: Posten Messaging (domestic and cross-border mail business), Posten Logistics (parcel and freight business), and Stralfors (information logistics). The business segment "Cashier Services" which fulfils the obligation to provide basic financial services nationwide is expected to be dissolved as the obligation expires in the end of 2008.

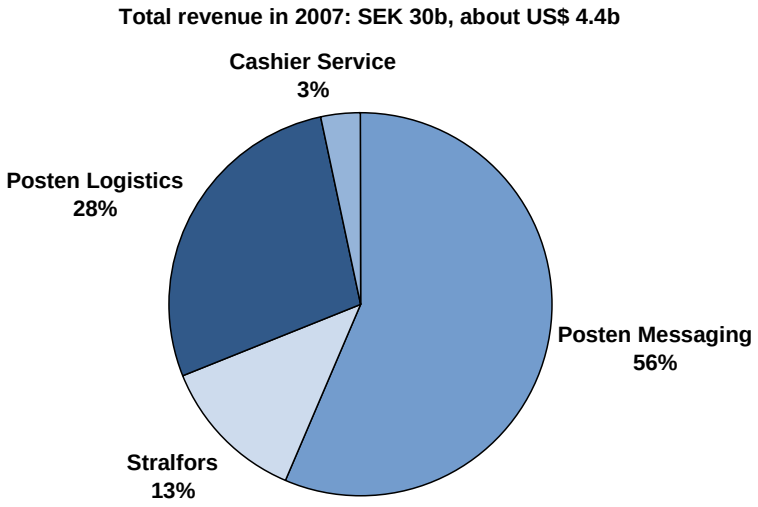
[73] PTS (2007), "The liberalized Swedish postal market: the situation 14 years after the abolition of the monopoly", p. 8.

[74] PTS (2008), Service and competition 2008, p. 23.

[75] Since 2005 CVC has got 22% of Post Danmark's shares.

[76] In 2005 the Danish government decided to sell a 22% stake to the British capital investment company CVC. In the same year Post Danmark and CVC acquired the 49% stake of the Belgian USP.

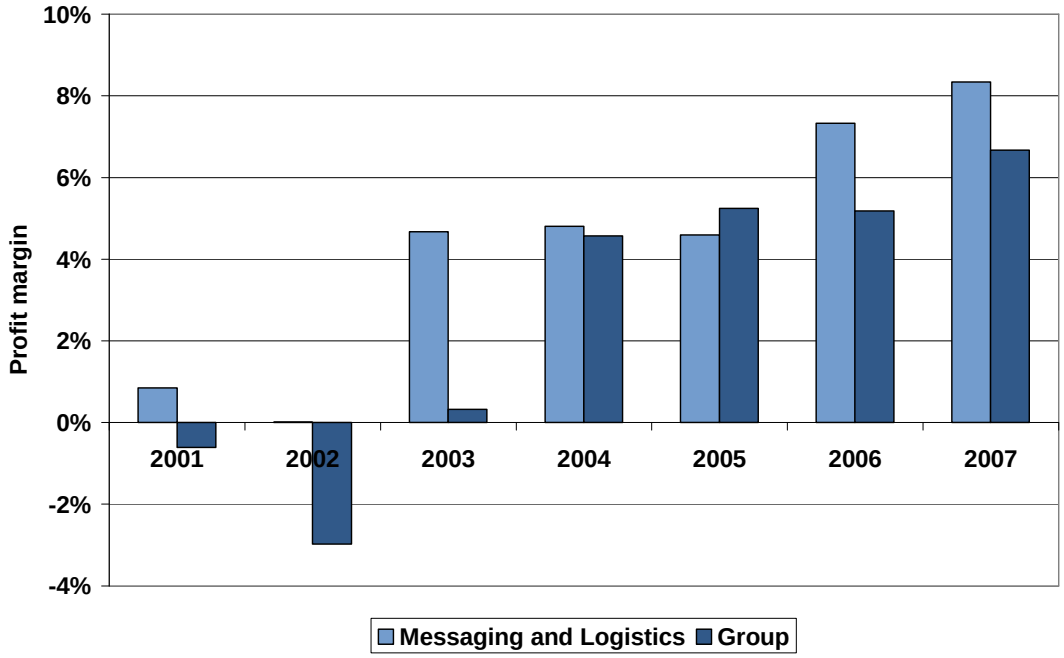
Figure E12: Revenue structure of Sweden Post (2007)



Source: Sweden Post, Annual Report 2007.

In 2007, Sweden Post generated total revenues of SEK 30b (US$ 4.4b) of which one fifth was generated abroad, mostly in other Scandinavian countries. The letter business contributes more than half to total revenues.

Figure E13: Development of profit margins of Sweden Post



Source: Sweden Post, Annual Reports.

After facing financial problems between 2001 and 2003, Sweden Post considerably improved its profitability. Sweden Post was able to improve performance despite decreasing mail volumes in this period. Mail volumes delivered by Sweden Post fell from 3.27b in 2000 to 2.86b in 2007; a decrease of more than 12 per cent. During the same period, the mail volume in the postal market decreased by about 9 per cent.[77]

The financial problems in 2001/2002 resulted in restructuring and further reductions in employment (within Sweden). Between 2001 and 2007, the average number of employees (headcount) decreased by about 25%: from about 40 thousand in 2001 to 30 thousand in 2007.

6.4.5 Impact of market opening on universal service

In Sweden, the incumbent had continued to provide universal service after liberalization, and was obliged to do so. Routing time performance has improved considerably in the 1990ies and remained at high levels since. According to the regulator PTS, “the most

important reason for this outstanding transit time performance is that Posten AB for a long time has been used to competition in segments of the postal market that in most other countries has been protected by statutory monopolies. As a result of the liberalisation of the letter market as well, the growing competition has furthered improvement in quality and efficiency."[78]

The necessity of Sweden Post to control cost has led to a radical transformation of the post office network: More than 80 percent of traditional post offices were replaced by contract agencies. PTS reports that these changes were perceived very negatively by customers during the period when changes took place. This was in part attributed to poor communication with the public. However, customer satisfaction with the access to postal services improved in the following years as customer became aware of the benefits of the re-structured access network, most importantly longer office hours of the contract agencies.[79]

In the first year following liberalization, Sweden Post increased retail tariffs significantly, at the benefit of price reductions for business customer. Responding to these developments, a regulatory price cap was introduced, and refined later on. PTS notes that for bulk mail customers, "the price level has gone down at the same time as service and quality had improved. Pressure on prices is most noticeable for second-class mail in general and in particular for mail to the areas where Posten AB has met competition from CityMail."[80]

Summarizing the Swedish experience with postal liberalization, the regulator PTS concludes that "full competition in the letter market has not affected the universal service provider's ability to provide a profitable nation-wide postal service at reasonable prices."

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[77] PTS (2008), "Service and competition 2008", p. 14.

[78] PTS: "The liberalised Swedish postal market. The situation 14 years after the abolition of the monopoly. March 2007, p. 7.

[79] See PTS: „Presentation of Posten AB's new service network". 2007.

[80] PTS: "The liberalised Swedish postal market. The situation 14 years after the abolition of the monopoly. March 2007, p. 9.

7 The Netherlands

7.1 Introduction to postal policy in the Netherlands

In 1989, PTT Nederland, the Dutch postal and telecommunications administration, was transformed into a private, but completely state-owned company. PTT Nederland acted as a holding company for the two legally separated subsidiaries PTT Telecom and PTT Post, which were responsible for the provision of telecommunications and postal services respectively.

At the same time, the regulatory framework was revised. The Ministry for Transport, Public Work, and Water Management was responsible for regulation. A joint venture between PTT Nederland N.V. and the Postbank, founded in 1993, and named Postkantoren B.V., was responsible for the operation of post offices. The State of the Netherlands sold 30 per cent of its shares in PTT Nederland NV in June 1994. Under its new name of "Koninklijke PTT Nederland" (KPN), the holding company was listed at the Amsterdam Stock Exchange. In 1995, the Dutch state sold further 25 per cent of the shares. In 1996, KPN acquired the Australian express company TNT. The postal activities, PTT Post including TNT, were separated from KPN in 1998 and renamed to TNT Post Groep N.V. (TPG). The new group has been listed from the outset on the stock exchanges in Amsterdam, London, Frankfurt, and New York. At that time, the Dutch state owned 44 per cent of TPG's ordinary shares plus a so-called golden share which provided the state with specific voting and controlling rights. In 2006, TPG was fully privatized and the golden share was changed into an ordinary share.[81] In the same year TPG was renamed to TNT N.V.

The national regulatory authority ("Onafhankelijke Post en Telecommunicatie Authoriteit", OPTA) was established on 1 August 1997 as successor to the Networks and Services Board (TND) of the Ministry of Transport, Public Works and Water Management. OPTA has very limited responsibilities in postal regulation. So far, the regulator essentially monitors whether the TNT's provision of the postal universal service

[81] Niederprüm, Antonia (2007), "Business strategies of European postal operators".

is in line with the legal requirements. The Ministry of Economic Affairs is responsible for price regulation and the future postal policy (including postal legislation). The Netherlands implemented the EU Postal Directive in the new Postal Act of October 20, 1999. This Postal Act became effective on January 1, 2000.

A new Postal Act, which will provide for full liberalization, has been debated in the Netherlands for several years. It was originally expected to be passed in 2007, but was postponed. The further timing of postal reform in the Netherlands is unclear at present.

7.2 Universal service policies

7.2.1 Responsibility to ensure universal service

TNT (former TPG) is obliged to provide the postal universal service by a license issued by the Dutch Ministry of Transport, Public Services and Water Management. This obligation is expected to persist after full market opening.

7.2.2 Scope of universal services

The Dutch postal universal service comprises letters and printed matter up to 2kg and (domestic) parcels up to 10kg. The obligation also comprises the provision of registered and insured postal services as well as the operation of P.O. Boxes.

In the Netherlands, the universal service obligation is exceptional in that it legally excludes bulk mail (outside the postal monopoly). For non-reserved items outside the scope of the monopoly, the Postal Law limits the definition of "mandatory services" to items posted at single-piece rates. The Dutch government believes that competition is sufficient to ensure that bulk mailers are adequately served outside the scope of the monopoly. Price and quality controls are restricted to postal items within the universal service area, i.e. to single-piece mail.

According to a draft postal act that was debated in Parliament in 2008, all bulk mail would no longer be part of the universal service.

7.2.3 Uniform tariff requirements

Postal universal services in the Netherlands must be provided at uniform tariffs. However, the universal service excludes bulk mail unless it is within the monopoly. At present, therefore only heavy-weight bulk mail (> 50 gram) is excluded from the universal services, and from the uniform tariff requirement.

It is expected that after full liberalization, all bulk mail products will be considered non-universal services, and will therefore not be subject to the uniform tariff requirement. As the Dutch authorities argue, competitive pressure has effected that bulk mailers are served adequately by the market and governmental intervention has therefore become superfluous in the liberalized part of the bulk mail market.[82]

7.2.4 Access requirements

The access requirements to the postal universal service are defined by decree (general postal guidelines, BARP). The postal legislation distinguishes between postal outlets that offer the complete set of postal universal service products, and outlets with a limited offer. The minimum number of postal outlets in total is 2,000. The minimum number of outlets with a full assortment is 902. Additionally, the guidelines define criteria which concern the distribution of postal outlets with full assortment within the Netherlands:

- 95 per cent of the population should have a postal outlet within a distance of 5km;
- in residential areas with more than 5,000 inhabitants, at least 85 per cent should have a postal outlet within a distance of 5km;
- in urban areas with more than 50,000 inhabitants, at least one outlet should be operated per 50,000 inhabitants (i.e. a city with 160,000 inhabitants should have at least three postal outlets).

7.2.5 Delivery requirements

[82] See Netherlands, Ministry of Economic Affairs, Postal Services Policy Memorandum (22 Jan 2004) (English version).

TNT is required by license to deliver postal items at six days per week.

7.2.6 Quality of service

The postal legislation requires that 95 per cent of the correspondence (single piece items paid at the public tariff and bulk mail weighing up to 50g) must be delivered the next working day.

7.3 Monopoly policies

Before 2000, the monopoly services had comprised items of correspondence weighing up to 500g. Printed matter (addressed and unaddressed advertising) had traditionally not been part of the monopoly. In 2000, the reserved area was limited to items of correspondence weighing up to 100g and three times the tariff of an ordinary stamped letter. The delivery of direct mail (addressed advertising) has not been part of the reserved area (and is not part of the postal universal service). Following the market opening timetable of the European Postal Directive, the weight and price thresholds for reserved items of correspondence was reduced to 50g and 2.5 times the standard tariff in 2006.

Downstream access is not separately regulated; customers and competitors shall be treated in non-discriminatory way.

Full market opening had been announced for 2008, but it was postponed. While the Dutch government appears committed to full liberalization in general, the timing for the final step of liberalization is uncertain.

7.4 Effectiveness of eliminating the legal monopoly

In order to evaluate the effectiveness of postal reform in the Netherlands, this section summarizes the development of the postal sector in four areas: (1) level and quality of universal services; (2) actual competition in the postal market; (3) prices of postal services; and (4) the profitability of the formerly public operator.

7.4.1 Universal service provision

7.4.1.1 Access conditions

The postal legislation requires a minimum number of 2,000 outlets. In 2006, postal services are provided in 2,110 outlets; of which about 1,100 offer a full assortment.[83] The joint venture Postkantoren B.V. established by TNT and Postbank (which was acquired by ING, an important Dutch financial company) operates 900 outlets, 70 percent are operated by third parties as postal agencies. Both postal and financial services are offered in these outlets. TNT offers postal services to the public in 1,300 postal outlets that are operated by third parties (TNT Post Servicepoints). In addition, TNT operates more than 200 outlets that offer services for business customers. These latter outlets are not included in the figure published by the Dutch regulatory authority OPTA. The total number of TNT's postal outlets has been stable since 2000.

7.4.1.2 Delivery conditions

TNT delivers mail items at six days per week without exception.[84]

7.4.1.3 Quality of service

TNT modernized its letter operations in the 1990s. This process was characterized by a reduction of sorting facilities, optimization of transport relations and delivery routes and has positively affected quality of service (routing time). Since 2001, more than 95 percent of correspondence has been delivered at the next working day.

7.4.2 Competition

TNT is still dominant in the Dutch mail market. Some considerable competition has evolved in the direct mail market. The development of competition has been promoted by two factors: First, the direct mail market was fully liberalized. Second, the Netherlands is a plain, densely and evenly populated country.

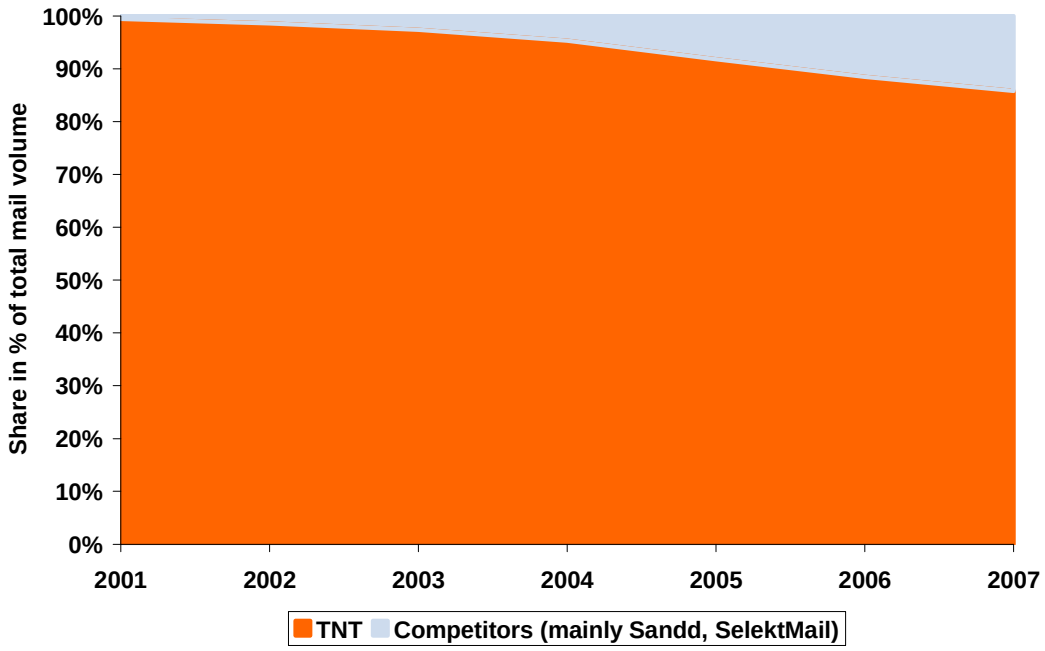
TNT's two main competitors in the addressed direct mail market are Sandd B.V. and Selekt Mail. Tthe latter is owned by Deutsche Post and Dutch publisher Koninklijke

[83] OPTA, Annual Report 2007, p. 20. TNT, Concessierapportage 2006, p. 15.

[84] WIK-Consult (2006), "Main developments in the European postal sector 2004-2006", p. 51.

Wegener N.V.. Both competitors have built their own nationwide delivery organizations based on a delivery frequency of twice a week. TNT estimates that its competitors have delivered a total of around 800 million addressed postal items in 2007. TNT further expects that these competitors will continue to grow.[85] The Dutch regulator OPTA estimates that the competitors had a combined market share of about 14 percent (in terms of volume) in 2007.[86]

Figure E14: Development of market shares in the Dutch mail market



Source: WIK-Consult, based on annual reports of OPTA.

To respond to competition, TNT has introduced a cheap mail service for addressed delivery. TNT's subsidiary 'Netwerk VSP' was originally a distributor of unaddressed advertising. Netwerk VSP offers a cheaper delivery service by delivering only once per week.[87]

7.4.3 Tariffs

[85] TNT, Annual Report 2007, p. 12.

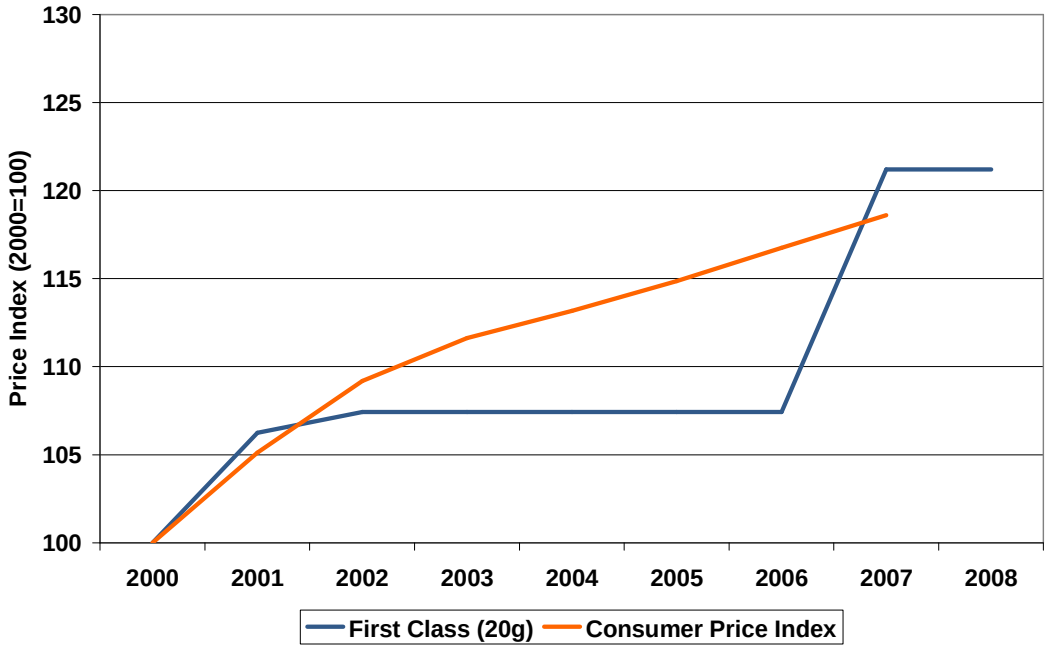
[86] OPTA, Annual Report 2007, p. 80.

[87] TNT, Annual Report 2007, p. 33.

TNT's tariffs for postal universal services have been subject to a price cap regulation: Tariffs may increase no more than an index of labor cost. However, at the end of 2002—following two years of tariff increases (see figure below)—the Ministry of Economic Affairs decided that tariffs controlled by the current price cap system should be frozen until the end of 2006.

In November 2003, TNT lodged an appeal against the administrative decision to freeze the tariffs. Following the grant of the formal appeal, the temporary tariff freeze decision was revoked in June 2004. However, TNT has not increased the price of a stamped 20g first class letter until 2006.

Figure E15: Development of TNT's public tariff for ordinary first class letters (20g) compared to the consumer price index



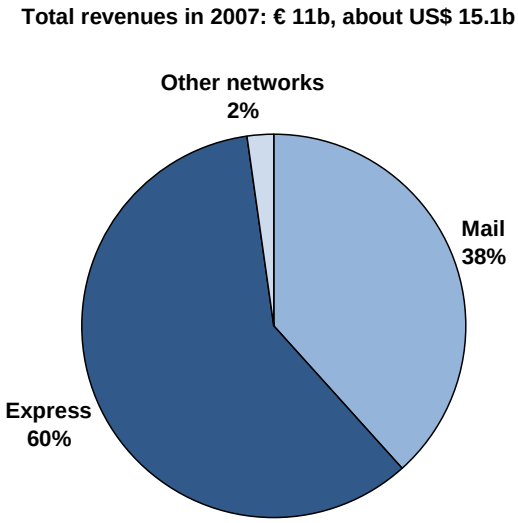
Source: WIK-Consult, based on TNT price lists and Eurostat.

More detailed information on tariffs—especially on the development of bulk mail tariffs—is not public available.

7.4.4 Profitability of the formerly public postal operator

TNT provides mail and express services worldwide. The Dutch business only accounts for about one third of TNT's total revenues.

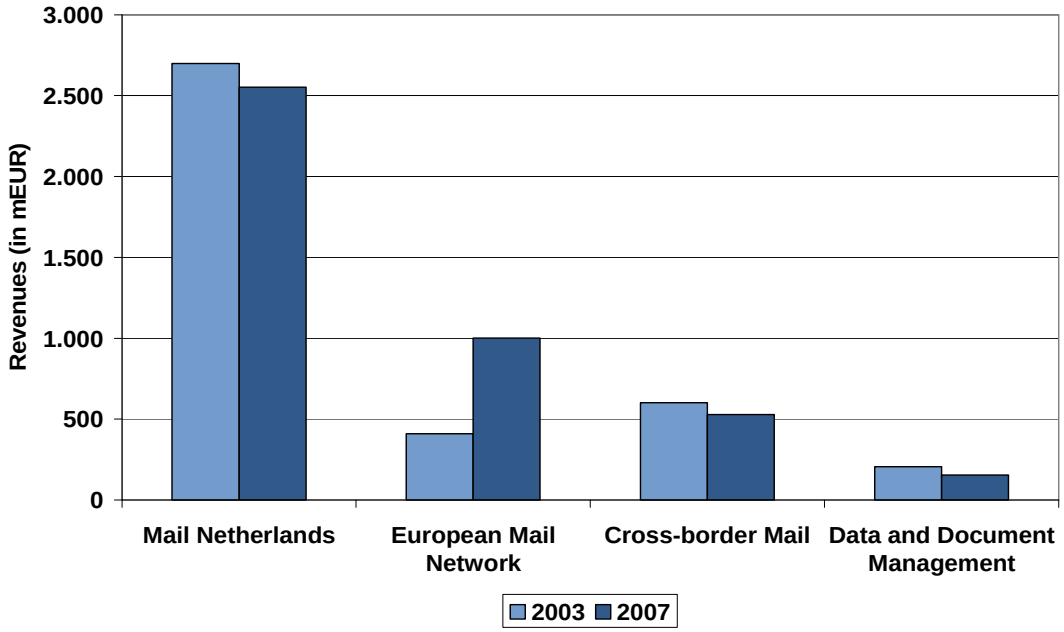
Figure E16: Revenue structure of TNT group (2007)



Source: TNT, Annual Report 2007.

The express business accounts for 60 per cent of total revenues while the mail business accounts for less than 40 per cent. However, the mail business contributes more than 50 per cent to the group profit.

Figure E17: Revenue structure of TNT's mail business

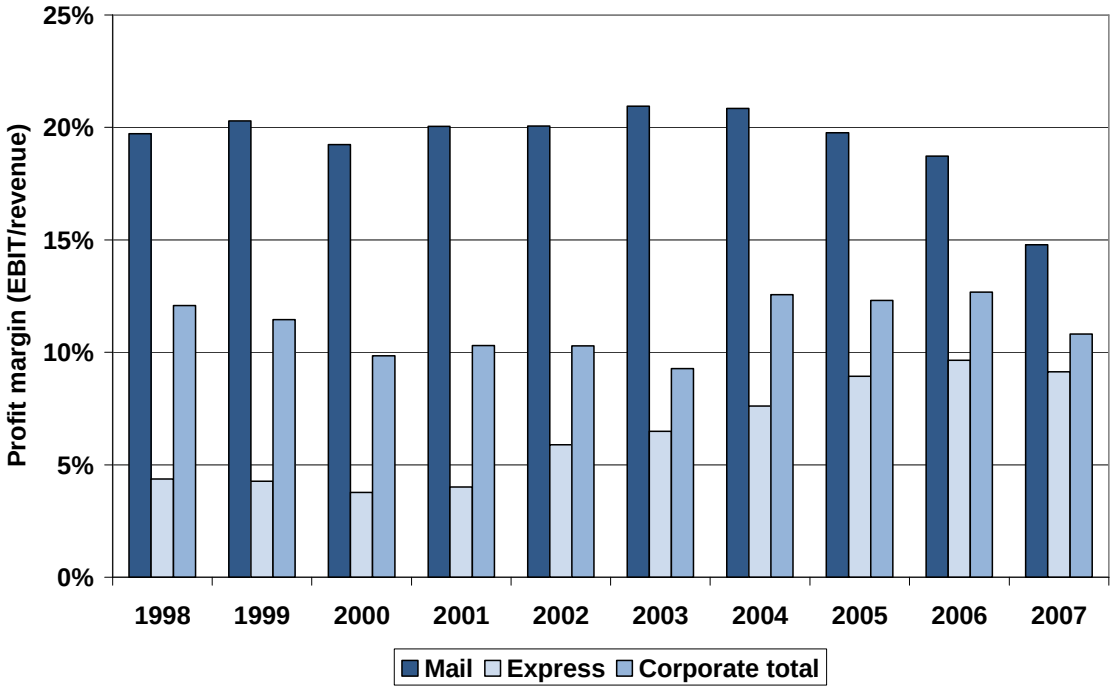


Source: WIK-Consult, based on annual reports of TNT.

TNT has entered the national mail markets in the United Kingdom, Germany, and Italy. In these markets, TNT has become one of the most important competitors of the respective national postal operators (i.e. Royal Mail, Deutsche Post, and Poste Italiane). The revenues of TNT's mail operation (named "European Mail Network") abroad increased from about € 400m in 2003 to € 1b in 2007, see figure above.

The business unit "Mail Netherlands" provides domestic postal universal services. The reduction of revenue in this segment (see figure above) is largely a result of a loss of market share, not overall volume declines: Between 2001 and 2007, TNT's domestic volume decreased from 5.56b to 4.7b items, or about 15 percent. However, total market volume declined only by 2 percent.

Figure E18: Development of profit margins of TNT by segment



Source: WIK-Consult, based on TNT annual reports.

TNT operates very profitably, in particular in the mail business (see figure above). Profit margins for mail were around 20 percent between 1998 and 2006. The mail segment's drop in profit in 2007 (down to 15 percent) was mainly due to loss-making operations in other European mail markets (UK and Germany), where TNT invested in a network roll-out.[88]

Over the past decade, TNT has continuously improved the profitability of the Dutch mail business by implementing further cost saving programs.

7.5 Impact of market opening on universal service

TNT was the first postal administration to be privatized. Following privatization and gradual liberalization, TNT has improved, and maintained very high service levels. The post office network was re-structured gradually in favor of contract agencies. TNT's retail prices have increased largely in line with consumer prices. Bulk mail prices are

[88] See TNT, Annual Report 2007, p. 34. For example, TNT's letter business in Germany made an operational loss of €31m, a profit margin of minus 13 per cent.

likely to have dropped as a consequence of increased competition (but no data on bulk mail prices is available).

For business customers, competition in the direct mail market has led to increased choice: TNT and its competitors today offer a wider range of services, e.g. different routing times from overnight to a cheap 6 day service.

TNT operates very profitably.

It seems that the Dutch mail market is adapting flexibly to changes in mail demand. There are no indications that competition has had a negative impact on service levels, or on the financial performance of TNT.

8 Australia

8.1 Introduction to postal policy in Australia

The history of Australia Post dates almost 200 years: The first representative was the postmaster to the colony of New South Wales in 1809. In those early days, each of the colonies had its own separate postal service but by 1849 they had all agreed to a set of standardized inter-colony postal rates. With Federation in 1901, the colonial mail systems merged and became known as the Postmaster General's Department (PMG), which was in charge of telegraph, telephone and mail operations. In 1975, the PMG became the Australian Postal Commission (trading as Australia Post) and the Australian Telecommunications Commission (trading then as Telecom Australia, now as Telstra).

Australia Post was corporatized with the Australian Postal Corporation Act of 1989: The Australian Postal Commission became the Australian Postal Corporation – a government business (state) enterprise, with the Commonwealth Government as its sole shareholder.[89] The board of Directors is appointed by the Governor-General at nomination of the competent minister, and may be dismissed by this minister.[90]

Australia Post is charged with two key missions by the Australian Postal Corporation Act: (i) an obligation to perform its functions, as far as practicable, "in a manner consistent with sound commercial practice" (Article 26) and (ii) a mission to abide by a "community service obligation", a notion similar to the notion of universal service in other countries. The commercial mission is reflected by a requirement for Australia Post to be profitable and pay out dividends to the public owner: the Act specifies that Australia Post's financial targets must, inter alia, "earn a reasonable rate of return on Australia Post's assets", and "pay a reasonable dividend". In the last ten years, annual dividends paid by Australia Post to the government were upwards of five percent of Australia Post's annual revenues.

[89] Australia Post, Annual Report 2007, p. 2.

[90] Australia Post Corporation Act, Articles 73, 79, and 83.

The Australian Competition and Consumer Commission (ACCC) has some regulatory functions in the postal sector, particularly with regards to tariff regulation. The ACCC is an independent statutory authority and was formed in 1995 to administer the Trade Practices Act 1974 and other acts (including the Australian Postal Corporation Act). In 2004, the Australian Postal Corporation Act Amendment expanded the powers for ACCC to inquire into disputes about the terms and conditions relating to bulk mail interconnection arrangements; to cost Australia Post's CSOs and to report on its quality of service and compliance with service standards. Additionally, the amended Act introduced requirements with regard to accounting transparency for Australia Post (by giving the ACCC the power to determine record-keeping rules for Australia Post) to assure competitors that it is not unfairly competing by cross-subsidizing its competitive services with revenues from reserved services.[91]

8.2 Universal service policies

8.2.1 Responsibility to ensure universal service

Australia Post is obliged to provide the postal universal service by the Australian Postal Corporation Act of 1989. Part 3 Division 1 defines this "Community Service Obligation" (CSO).

8.2.2 Scope of universal services

Article 27 of the Australian Postal Corporation Act of 1989 requires that

> (1) Australia Post shall supply a letter service.
>
> (2) The principal purpose of the letter service is, by physical means:
> (a) to carry, within Australia, letters that Australia Post has the exclusive right to carry; and
> (b) to carry letters between Australia and places outside Australia.

[91] National Competition Council (2003), "Assessment of governments' progress in implementing the National Competition Policy and related reforms: 2003 - Volume two: Legislation review and reform", chapter 11, p. 10. The first Postal Services Legislation Amendment Bill 2000 had originally foreseen a reduction of the monopoly to letter items weighing up to 50g and a corporatization of Australia Post. The Government withdrew the Bill in March 2001, however, in the face of opposition in the Senate. It informed the Council in May 2003 that it is not intending to reintroduce the withdrawn legislation.

> (3) Australia Post shall make the letter service available at a single uniform rate of postage for the carriage within Australia, by ordinary post, of letters that are standard postal articles.
>
> (4) Australia Post shall ensure:
> (a) that, in view of the social importance of the letter service, the service is reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
> (b) that the performance standards (including delivery times) for the letter service reasonably meet the social, industrial and commercial needs of the Australian community.

Specific performance standards (number and density of retail outlets, delivery frequency, and routing time targets) are defined in the Australian Postal Corporation Regulations 1998. Before that date Australia Post had determined the minimum standards for the USO.[92]

8.2.3 Uniform tariff requirements

Australia Post is required to provide all letter services at a single uniform rate of postage for the carriage within Australia. The uniform tariff requirement relates to "standard postal articles" of "ordinary post". This includes bulk mail, but excludes, for example, express mail and value-added services.

8.2.4 Access requirements

The minimum requirements with regard to access to the postal universal service are defined in the Australian Postal Corporation (Performance Standards) Regulations 1998, Part 3, Art. 9. Australia Post has to operate at least 10,000 street letter boxes and at least 4,000 retail outlets. At least 2,500 outlets must be located in areas classified as rural or remote. In metropolitan areas; at least 90% of residences in the area shall be located within 2.5 kilometers of a retail outlet; and in non metropolitan zones, at least 85% of residences in the area shall be located within 7.5 kilometers of a retail outlet.

8.2.5 Delivery requirements

[92] National Competition Council (1998), "Review of the Australian Postal Corporation Act", Vol. 1, p.8.

Part 2 of the Australian Postal Corporation (Performance Standards) Regulations 1998 requires that Australia Post provides delivery services five days a week for at least 98 per cent of all delivery points. 99.7 per cent of all delivery points shall be served at least 2 days a week. A delivery point is a mail address that, taking account of accessibility, delivery cost and general volume of mail for the address, it is practicable and reasonable to service frequently. Examples for delivery points are street and roadside letter delivery boxes, post office private boxes, locked bags, private and community bags.

8.2.6 Quality of service

According to Article 6 of the Australian Postal Corporation (Performance Standards) Regulations 1998, routing time targets do not apply to all universal services, but only to reserved services (letters below 250 gram). Australia Post must deliver 94 per cent of reserved service letters on time. The delivery standard (number of days after posting) varies with the posting and delivery location as listed below:

Table E1: Australia Post's routing time standards

Address of letter	Delivery time
Letters for delivery intraState:	
(a) within metropolitan area of capital city of lodgment	Next business day after day of posting
(b) within any other city or town of lodgment, or within adjacent town	Next business day after day of posting
(c) outside city or town of lodgment and adjacent towns	2 business days after day of posting
Letters for delivery interState:	
(a) within capital city metro-politan area if lodged in capital city metropolitan area of another State	2 business days after day of posting
(b) within capital city metro-politan area if lodged outside capital city metro-politan area of another State	3 business days after day of posting
(c) outside capital city metro-politan area if lodged in capital city metro-politan area of another State	3 business days after day of posting
(d) outside capital city metro-politan area if lodged outside capital city metropolitan area of another State	4 business days after day of posting

Source: Australian Postal Corporation (Performance Standards) Regulations 1998, Article 6.

8.3 Monopoly policies

Until 1994, the postal monopoly had comprised postal items (including document exchange service and the delivery of periodicals, books, and catalogues) weighing up to 500 grams and priced up to 10 times the standard tariff. In 1994, the Government passed the Australian Postal Corporation Amendment Act which implemented a number of the reforms recommended by the Industry Commission. The amendments provided for greater competition in the letter market by reducing the reserved services from ten times the standard rate to four times the standard rate as well as reducing the weight limit to 250 grams. Also, additional exemptions were given from the reserved services. The new exemptions included the operation of document exchanges, the carriage of letters within organizations, and the carriage of newspapers, magazines, books and catalogues. Additionally, the outgoing international mail was deregulated (Article 29 para. 2).

The reforms also introduced bulk interconnection arrangements: The size of the discount for posting of bulk mail shall be based on Australia Post's avoided costs. The "bulk interconnection arrangements" comprise downstream access services which could be used by customers and third parties (e.g. consolidators). Services provided by customers/third parties comprise transport and pre-sorting activities (see Art. 32A of the Postal Corporation Act of 1989). ACCC has the right to inquire into disputes about bulk mail services (see Art. 32B of the Postal Corporation Act of 1989).

8.4 Effectiveness of eliminating the legal monopoly

In order to evaluate the effectiveness of postal reform in Australia, this section summarizes the development of the postal sector in four areas: (1) level and quality of universal services; (2) actual competition in the postal market; (3) prices of postal services; and (4) the profitability of the public operator.

8.4.1 Universal service provision

8.4.1.1 Access conditions

Postal legislation requires a minimum number of 4,000 outlets nationwide and at least 2,500 located in rural and remote areas. In 2007, postal services were provided by

Australia Post in 4,449 outlets: 846 corporate offices (operated by Australia Post), 2,969 licensed post offices (contract agencies), and 634 Community postal agencies (postal outlets operated by Community administration). 2,553 of all postal outlets were located in rural or remote areas.[93] The number of retail outlets has not been changed significantly since 2000: Australia Post had 4,495 postal outlets in that year.[94] The density requirements in metropolitan and non-metropolitan areas were also met.

8.4.1.2 Delivery conditions

Australia is a large and sparsely populated country. The population concentrates on the South Eastern part of Australia. Against this background, delivery does not take place five days a week nationwide. In remote areas, more than 5 percent of mail addresses were served less than five days a week in the financial year 2006/07 (see table below).

Table E2: Australia Post's routing time standards

Delivery frequency	Metropolitan area	Rural area	Remote area	Total
One per week	0.0%	0.0%	0.4%	0.0%
Two to four	0.1%	4.0%	5.3%	1.3%
Five or more	99.9%	96.0%	94.3%	98.7%

Source: Australia Post, Annual Report 2006/07, Statistical Summary, Table 8.

The delivery quality has improved since 2000/01. In that year, nearly 7 percent of mail addresses were served less than five times per week.[95]

8.4.1.3 Quality of service

In the financial year 2006/07 Australia Post delivered more than 96 per cent of reserved services letters in time. Since 2000 Australia Post met the target every year.[96]

8.4.2 Competition

[93] Australia Post, Annual Report 2006/07, Statistical Summary.

[94] Australia Post, Annual Report 2000/01, Statistical Summary.

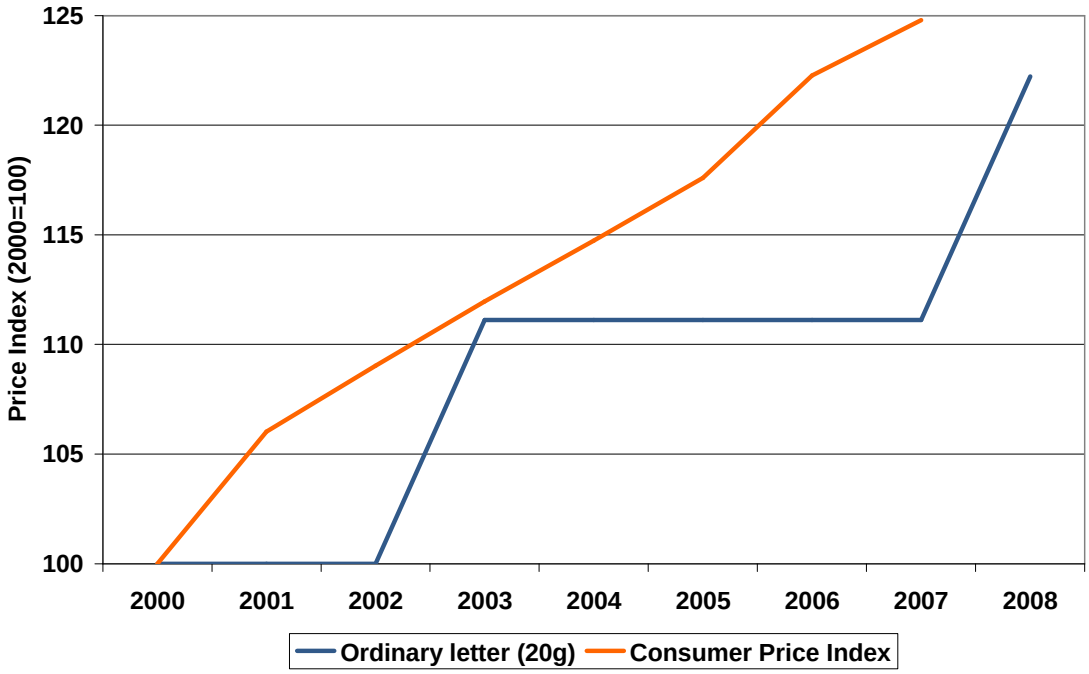
[95] Australia Post, Annual Report 2000/01, Statistical Summary, Table 8.

[96] Australia Post, Annual Reports of 2000/01, 2003/04 and 2006/07, Statistical Summaries.

Australia Post competes with other operators in the market for express documents and parcels. Despite market opening of heavy-weight letters (with more than 250 gram), there is no noticeable competition in the area of universal services.

8.4.3 Tariffs

Figure E19: Development of Australia Post's public tariffs for ordinary letters (20g) compared to the consumer price index



Source: Australia Post, Annual Reports, Statistical Summary.

The public tariff for ordinary 20 gram small letters was last changed in 2002, and another price increase was approved in 2008. As the figure above illustrates, postal tariffs have increased less than overall consumer prices.

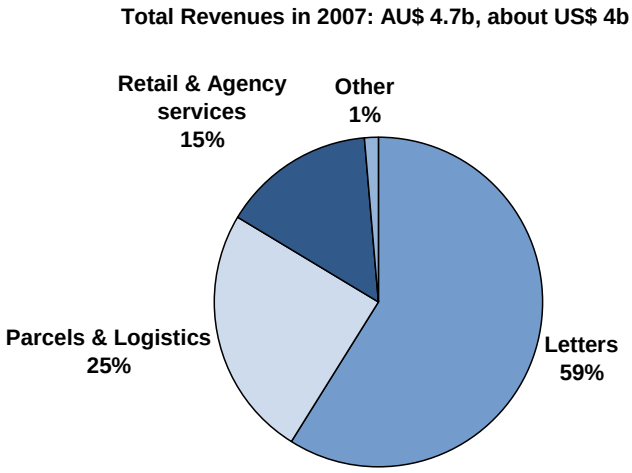
No information is available on the development of bulk mail tariffs or downstream access products.

8.4.4 Profitability of the public postal operator

In 2006/07, Australia Post generated total revenues of AU$ 4.7b (around US$ 4b). Australia Post has earned considerable profits since 1999: The profit margins were

relatively stable, around 10 percent between 1999/00 and 2006/07. Profits have slightly increased in this period.

Figure E20: Revenue structure of Australia Post, FY 2006/07



Source: WIK-Consult, based on Australia Post annual reports.

Letter services account for about 60 per cent of total business. The group has no significant operations outside Australia.

8.4.5 Impact of market opening on universal service

The reduction of the reserved in 1994, from 500 to 250 grams, has not led to any noticeable competition. Therefore, no immediate impact of market opening on the universal service can be identified.

Australia Post appears to operate in a very commercial manner and has expanded its operations cautiously into other products: e.g. express mail and freight logistics. The corporation is expected to deliver regular dividends to the state budget and has been operating very profitably for many years.

There are no indications that the commercial objectives of Australia Post have had a negative impact on the universal service. By contrast, the coverage of home delivery was increased, routing time is constantly at high levels, and prices have increased less than the consumer prices index.

9 New Zealand

9.1 Introduction to postal policy in New Zealand

The postal law of New Zealand is the Postal Services Act 1998. The act abolished the postal monopoly and imposed a minimal set of obligations on all postal operators, including New Zealand Post. New Zealand Post is organized as "state-owned enterprise", i.e., a corporation organized under normal company law but owned by government in accordance with the State-Owned Enterprises Act of 1986. The Minister of Finance and the Minister for State-Owned Enterprises are the only shareholders of New Zealand Post. New Zealand Post has a board of directors appointed by these ministers.[97]

9.2 Universal service policies

9.2.1 Responsibility to ensure universal service

The Postal Services Act establishes a regulatory framework for postal operators. It provides that no person may carry on a business as "postal operator" unless he or she is registered with the Ministry of Economic Development. A "postal operator" is defined as follows: "a person carries on business as a postal operator if that person's business consists, wholly or partly, of the carriage of letters."[98] A "letter" is defined as "any form of written communication, or any other document or article" conveyed for not more than NZ$ 0.80 (US$ 0.61).[99] The term "letter" thus encompasses not only typical documents but also small "articles" of similar size. To register, the applicant must complete short forms issued by the Ministry for Economic Development. These forms require each applicant to identify the persons making the application and their place of business and to describe planned activities in a few sentences. The applicant is also required to submit a

[97]Ministry of Economic Development, "Postal Services in New Zealand" (May 1998, last reviewed May 15, 2006). http://www.med.govt.nz/templates/Page____1441.aspx (accessed, Oct. 1, 2008).

[98]Postal Services Act 1998, Art. 26(1).

[99]Postal Services Act 1988, Art. 2(1). Exchange rate as of July 1, 2008 (Federal Reserve Bank of New York). Registration is essentially automatic except for applicants with criminal records.

copy of his "postal identifier" (see below). The Ministry publishes basic information about each postal operator and a copy of registered postal identifiers on the internet.[100]

The Postal Services Act does not require either New Zealand Post or postal operators generally to maintain a "universal service." The act does not use the terms "universal service" or "universal service obligation." The principal focus of the act is protection of senders and receivers of "letters." A regulation issued under the act, the Information Disclosure Regulation (1998), requires New Zealand Post to give public notice of information about certain activities that could have anticompetitive effects.[101]

In addition to the requirements of the Postal Services Act, the government, as the owner of New Zealand Post, obliges New Zealand Post to provide universal service in accordance with a "Deed of Understanding."[102] The current Deed was agreed in 1998 in conjunction with adoption of the Postal Services Act. In form, the Deed is a contract agreed voluntarily by both parties, although it may be questioned whether New Zealand Post is wholly free to decline a proposed Deed given its ownership by government. In the 1998 Deed of Understanding, New Zealand Post agreed to provide a specified minimum level of universal services (see next sections). In return, Government agreed that, until 2004, New Zealand Post would be the sole designated postal administration for New Zealand for the purposes of participation in the Universal Postal Union and have the sole right to issue stamps bearing the words "New Zealand."[103] There is no time limit to the Deed, but the terms of the Deed can be changed by mutual agreement. The Deed is strictly an agreement between government and New Zealand Post and "does not create any right or obligation enforceable at the suit of any other person."[104] New Zealand Post has not received a public subsidy or payments from a universal service fund.

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[100]*See* http://www.med.govt.nz/templates/Page____1189.aspx (accessed, Oct. 1, 2008).

[101]Postal Services (Information Disclosure) Regulations 1998 (SR 1998/87). The regulation, as of Sep. 3, 2007, may be found at http://www.legislation.govt.nz/default.aspx (access, Oct. 1, 2008).

[102]"Deed of Understanding Between New Zealand Post Limited and the Government" (Feb. 17, 1998) (hereafter "1998 Deed of Understanding"). A copy made be found at http://www.med.govt.nz/templates/Page____1387.aspx (access, Oct. 1, 2008).

[103]1998 Deed of Understanding, Recital D.

[104]*See* 1998 Deed of Understanding, pars. 19-21.

New Zealand is a member of the Universal Postal Union. Under the Universal Postal Convention New Zealand is obliged to provide universal postal service within New Zealand and to deliver inbound internationl mail. The 2004 Universal Postal Convention requires all UPU member countries to "ensure that all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices" and to "ensure that the offers of postal services and quality standards will be achieved by the operators responsible for providing the universal postal service."[105] This obligation may be qualified by other international commitments of New Zealand. In signing the Convention, New Zealand declared:

> New Zealand will apply the Acts and other decisions adopted by this Congress insofar as they are consistent with its other international rights and obligations and, in particular, the General Agreement on Trade in Services.[106]

9.2.2 Scope of universal services

The Postal Services Act 1998 does not specific a geographic scope for postal services. In the Deed of Understanding, New Zealand Post has agreed to "maintain at least the total number of delivery points" listed in the Deed, i.e., the number of delivery points in 1998. Neither does it specify a range of postal services that must be offered universally. In the Deed of Understanding, New Zealand Post has agreed to provide delivery services for "letters," as defined in the act, but the Deed does not refer to other types of postal articles.

9.2.3 Uniform tariff requirements

There is no regulatory standard for the lawfulness of postage rates or regulation of postage rates in New Zealand. There is no requirement that rates for universal services must be uniform throughout New Zealand, and New Zealand Post has not agreed to maintain uniform rates (although letter rates are uniform in practice). New Zealand law does not require New Zealand Post or other postal operators to maintain separate

[105]Universal Postal Convention 2004, art. 3. The 2004 Convention will be replaced by the 2008 Convention on January 1, 2010. Article 3 is unchanged in the 2008 Convention.

[106]Universal Postal Union, *Constitution, General Regulations, Resolutions and Decisions, Rules of Procedure, Legal Status of the UPU* at A37 (2005).

accounts for regulatory purposes. New Zealand Post is required to maintain and publish financial accounts in the same manner as other public companies. In the Deed of Understanding, New Zealand Post has agreed not to re-introduce an annual fee formerly levied on rural households to compensate for the high cost of household delivery in rural areas.[107]

The Postal Services Act does not restrict use of contract rates by New Zealand Post or other postal operators. The Information Disclosure Regulation requires New Zealand Post (but not other postal operators) to report to the Ministry and to publish on its internet site a quarterly report giving limited information about (1) provision of standard services at a discount of more than 20 percent and (2) provision of postal services under non-standard terms and conditions. The pertinent provision of Information Disclosure Regulation states:

> (3) If during the quarter the carriage of letters was supplied on a set of standard terms and conditions, but at a discount, the Corporation must—
>
> (a) Identify the set of standard terms and conditions in respect of which the discount was given; and
>
> (b) Disclose the principles or guidelines applied in giving the discount; and
>
> (c) Disclose the discount given, expressed as a percentage of the price usually charged for the carriage of letters on the set of standard terms and conditions.
>
> (4) For the purposes of subclause (3), the carriage of letters is supplied at a discount if the price charged is equal to or less than 80 percent of the price usually charged for the carriage of letters on the set of standard terms and conditions.
>
> (5) The Corporation must disclose each set of nonstandard terms and conditions, together with the price charged for the carriage of letters on that set of terms and conditions.[108]

Pursuant to this requirement, New Zealand Post discloses a limited amount of

[107]1998 Deed of Understanding, paragraph 11. The rural delivery fee originated in the 1920s; it was ended voluntarily by New Zealand Post on April 1, 1995. *See* Vivienne Smith, *Reining In the Dinosaur: The Story Behind the Remarkable Turnaround of New Zealand Post* 115 (Wellington: GP Print, 1997). In the Deed of Understanding, New Zealand Post also agreed not to raise the postage rate for standard service for medium letter above NZ$ 0.45 before 2002. Deed of Understanding, paragraph 10.

[108]Postal Services (Information Disclosure) Regulations 1998 (SR 1998/87) at § 4.

information about its contracts to the Ministry and on the internet. For contracts that provide discounts off standard terms and conditions, New Zealand Post discloses, for each standard service, the number of contracts providing a specific discount and the amount of the discount from the standard rate. For contracts providing for non-standard terms and conditions, New Zealand Post provides a summary description and the number of customers involved. For example, the following passage describes a non-standard variation of normal postal service called "cross-town" provided to two business mailers:

> Cross-town – Certain customers in selected geographical areas were able to have items delivered at a reduced rate where those items were addressed within the same geographic area. The two current offers (in different geographic areas) are:
> – 45 cents for medium size and 95 cents for extra large;
> – 45 cents for medium size Postage Included envelopes.[109]

Other non-standard contracts provide for volume-incentive discounts, discounts for presorted mail, permission for late tender of mail, and exceptions for weight or dimension requirements.

There is no regulation of rates for downstream access in New Zealand. The Information Disclosure Regulation requires New Zealand Post (but not other postal operators) to report to the Ministry and to publish on its internet site all agreements between New Zealand Post and other postal operators which give the postal operators access to the network of New Zealand Post. This information must be provided within 15 working days of the conclusion of the agreement.

9.2.4 Access requirements

The Postal Services Act 1998 does not require a specific level of access to postal services. In the Deed of Understanding, New Zealand Post has agreed to maintain at least 880 postal counters of which at least 240 shall be "postal outlets." The remainder may be "post centers." A "post center" is an outlet that offers "over the counter postal services to

[109]Information to be disclosed pursuant to regulation 4 by New Zealand Post Limited ("the Corporation") in respect of the quarter ending 30 June 2008—Part C: Disclosure of non-standard terms and conditions upon which carriage of letters were supplied, together with the price charged for carriage of letters on that set of terms and conditions – regulation 4(5)." http://www.nzpost.co.nz/NR/rdonlyres/97903B0E-04E9-4A45-A9FF-A30A3DC394FD/0/Disclosure31Jul2008PartC.pdf (accessed, Oct. 1, 2008).

the public, including, but not limited to, the purchase of stamps and the postage of postal articles, pursuant to an agreement with New Zealand Post." A "postal outlet" is "an outlet that offers "the services offered by a post centre, plus agency and/or other services." A postal outlet may be operated by New Zealand Post or by a person other than New Zealand Post under an agreement with New Zealand Post.[110] The Information Disclosure Regulation requires New Zealand Post to report in its annual report the number of postal counters operated.[111]

The Postal Services Act 1998 does not require downstream access to be offered by New Zealand Post or other postal operators. However, in the Deed of Understanding, New Zealand Post has agreed to provide access to its network to other postal operators on terms and conditions no less favorable than offered other users in the same circumstances.[112] The Information Disclosure Regulation requires New Zealand Post to report to the ministry and publish a copy of each access agreement between New Zealand Post and another postal operator on the internet within 15 working days of the date of agreement.[113]

9.2.5 Delivery requirements

The Postal Services Act 1998 does not prescribe the frequency or mode of delivery services. In the Deed of Understanding, New Zealand Post has agreed to provide delivery six days per week to more than 95 percent of delivery points and five or six day per week delivery to 99.88 percent of delivery points. The remainder is to be served 1 to 4 days per week. The term "delivery point" is defined in the Postal Services Act as "a point within New Zealand that is a rural address, a private box or private bag (whether rural or other), a counter mail box or community mail box, any other business address, or any other residential address." New Zealand Post has generally agreed not to reduce frequency of

[110]1998 Deed of Understanding, pars. 13-16.

[111]Postal Services (Information Disclosure) Regulations 1998, Art. 3. In 2007, New Zealand Post operated 986 counters of which 324 were postal outlets. New Zealand Post, *Group Annual Report 2007* at 79.

[112]1998 Deed of Understanding, paragraph 17.

[113]Postal Services (Information Disclosure) Regulations 1998 Arts. 6, 7.

service without the consent of the addressees.[114] The Information Disclosure Regulation requires New Zealand Post to report in its annual report the percentages of delivery points accorded each level of delivery.[115]

9.2.6 Quality of service

Neither the Postal Services Act 1998 nor the Deed of Understanding sets quality of service standards, i.e., transit time deadlines, which must be attained by universal services offered by New Zealand Post or by postal operators generally. The Information Disclosure Regulation requires New Zealand Post to report in its annual report the results of an independent survey showing the percentage of letters delivered within advertised deadlines, within 3days of advertised deadlines, and not delivered within 3 days of advertised deadlines.[116]

The Postal Services Act requires each postal operator to comply with certain measures which allow senders and receivers of “letters” to protect their rights. Each postal operator must identify envelopes and other items that it carries by means of a unique "postal identifier" that is affixed to, impressed, or printed on, each article.[117] The typical postal identifier is similar to traditional “postmark” used by post offices to cancel stamps. Each postal operator must keep of copy of its “postal identifiers” on file with the Ministry for Economic Development. The Postal Services Act 1998 does not prohibit the opening of postal items, but it assures privacy by requiring that each postal operator to notify addressees that a postal article will be, or has been opened, and the reasons for the opening of the article.[118] In addition, each postal operator must keep a record of all postal

[114]1998 Deed of Understanding, paragraphs 4-6. Paragraph 5 provides that New Zealand Post will not make more than 1.5 percent of deliveries to counters or community mail boxes. In 2007, about 0.7 percent of deliveries were made to counters or community mail boxes. *See* New Zealand Post, *Group Annual Report 2007* at 79.

[115]Postal Services (Information Disclosure) Regulations 1998, Art. 3.

[116]Postal Services (Information Disclosure) Regulations 1998, Art. 3(d). For 2007, the respective percentages were 95.5 percent, 99.7 percent, and 0.3 percent. New Zealand Post, *Group Annual Report 2007* at 80.

[117]Postal Services Act 1998, Art. 39.

[118]Postal Services Act 1998, Art. 15 (notice must be delayed where a postal operator believes that the giving notice may interfere with law enforcement investigations).

articles detained or opened and give the Ministry of Economic Development access to its records.[119] The Postal Services Act further requires that each postal operator keep safe valuable articles.[120] If a postal operator goes out of business, it must notify the Ministry for Economic Development, deliver all postal articles in his possession, and remove or disable all public letter boxes.[121]

Neither the Postal Services Act nor the Deed of Understanding sets standards for the handling of user complaints. However, the Information Disclosure Regulation requires New Zealand Post (but not other postal operators) to report to the Ministry and to publish on its internet site on a quarterly basis the terms and conditions of its standard services. Section 4(2) of the Information Disclosure Regulation requires: "The Corporation must disclose each set of standard terms and conditions, together with the price usually charged for the carriage of letters on that set of terms and conditions." Pursuant to this requirement, New Zealand Post quarterly reports the terms and conditions of its two standard services: postal service for the public and postal service for businesses.

9.3 Monopoly policies

The postal monopoly was repealed by the Postal Services Act 1998 as of April 1, 1998. There are no plans under consideration to change the existing postal policy.

9.4 Effectiveness of eliminating the legal monopoly

In New Zealand, universal service was most affected by reform measures preceding repeal of the postal monopoly rather than by the repeal of the monopoly itself. After the government's decision to corporatize the Post Office and terminate the public service subsidy, New Zealand Post concluded that its only option was to close unprofitable post offices and postal agencies. In February 1988, New Zealand Post closed 432 of its 1,200

[119]Postal Services Act 1998, Art. 12.

[120]Postal Services Act 1998, Art. 11.

[121]Postal Services Act 1998, Arts. 46, 47. Article 10 of the Postal Services Act 1998 also requires each postal operator must contact the appropriate Government authority where it is discovered that a postal article or letter has been posted in contravention of any law, such as laws related to misuse of drugs, endangered species, biosecurity, and customs and excise. The obligations appear to be more a matter of public interest than universal service.

post offices and postal agencies. A tremendous public outcry ensued, but Parliament decided to wait six months before beginning its investigation. In the end, the Parliamentary committee concluded that New Zealand Post had done a good job of arranging for the provision of postal services by agencies such as bookshops and dairies. It also appeared that the major problems in rural areas were caused not by the loss of post offices per se but by the rural banking services of Postbank, a separate company with whom New Zealand Post shared facilities.[122]

In November 1988, a committee of senior government officials recommended repeal of the postal monopoly despite strong opposition from New Zealand Post. In October 1989, the Government sought to ensure continuation of public services by means of a contractual agreement with New Zealand Post called a "Deed of Understanding." A change in the party in power postponed repeal of the postal monopoly. Instead, an amendment 1990 further reduced the price limit on the postal monopoly[123] and required New Zealand Post to provide more public disclosure about the quality and costs of services.

After 1990, New Zealand Post adopted new management techniques, increased letter volume, developed new services, and produced operating profits. In 1995, New Zealand Post abolished the rural delivery fee (a longstanding charge for home delivery of mail in rural areas) and lowered its first class stamp price from NZ$ 0.45 to NZ$ 0.40. In 1997, a well-written history of New Zealand summed up the first decade of the corporatized post office by citing the following figures: volumes increased 64 percent; real cost decreased 34 percent; personnel cost dropped from 73 to 51 percent of operating costs; productivity increased 121 percent; paid NZ$ 561 million in taxes and dividends; reduced prices to major customers in two of the past three years.[124]

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[122]Vivienne Smith, *Reining In the Dinosaur: The Story Behind the Remarkable Turnaround of New Zealand Post* 94-97 (Wellington: GP Print, 1997).

[123]The postal law was amended to lower the weight limit for the postal monopoly from 500g to 200g and reduce the price limit to NZ$ 1.25. Further reductions in the price limit were scheduled: to NZ$ 1.00 in December 1990 and NZ$ 0.80 in December 1991, less than 2 times the stamp price of NZ$ 0.45.

[124]Vivienne Smith, *Reining In the Dinosaur: The Story Behind the Remarkable Turnaround of New Zealand Post* 11 (Wellington: GP Print, 1997).

In 1998, the Postal Services Act was accompanied by a new Deed of Understanding to ensure maintenance of universal service. According to the 1998 Deed, New Zealand Post was required to maintain at least 1.46 million delivery points; to provide delivery to no more than 1.5 percent of these delivery points by way of counters and community mailboxes; to maintain six-day delivery to at least 95 percent of delivery points; and to maintain at least 880 postal outlets of which at least 240 must be post offices owned or franchised by New Zealand Post. In fiscal 2007, New Zealand Post delivered to 26 percent more delivery points than required and operated 12 percent more postal outlets than required (35 percent more corporate post offices than required). About 96.6 percent of delivery points received 6-day service, and 99.8 percent of residential delivery points received 6-day service. An independent auditor for New Zealand Post estimated that the company delivered 95.5 percent of Fast Post and Standard Post items (priority and regular speed letter services) within published service standards.[125] In 2004, after ten years, New Zealand Post raised the standard letter price back to NZ$ 0.45 . In March 2008, New Zealand Post raised the standard stamp rate to NZ$ 0.50 (about US$ 0.38) because, it explained, the volume of letters is declining at 3 to 5 percent per year due primarily to electronic diversion.[126]

Since 1998, New Zealand Post has also continued to enjoy commercial success. New Zealand Post has been profitable in each year since 1998. Between 1999 and 2007, New Zealand Post's operating revenues have grown by 55 percent and exceeded operating expenses by an average of 7.9 percent.[127] New Zealand Post has expanded into airline operations, banking, courier services, and postal consulting services.[128]

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[125]New Zealand Post Annual Report 2007 at 79-80.

[126]Chris Daniels, "Fighting to Keep Posties on Their Rounds," *New Zealand Herald* (Mar. 30, 2008). http://www.nzherald.co.nz/ (accessed, Oct. 1, 2008).

[127]New Zealand Post Annual Report 2007 at 40; New Zealand Post Annual Report 2002 at 13.

[128]For a summary of recent history, see New Zealand Post, "Our Recent History- 1987 to Today" at http://www.nzpost.co.nz/Cultures/en-NZ/AboutUs/OurHistory/OurRecentHistory/OurRecentHistory.htm (accessed Oct. 1, 2008).

10 Canada

10.1 Introduction to postal policy in Canada

The postal law in Canada is the Canada Post Corporation Act of 1981 (CPCA). The CPCA established Canada Post Corporation (Canada Post).[129] Although denominated a "corporation" in the law, in practice Canada Post appears to be more of a department or office within the government of Canada.[130] Eight of the nine members of Canada Post's board of directors are appointed by the Minister responsible for Canada Post[131] and serve at his pleasure. The ninth, the chairman of the board, is appointed by the Governor in Council and serves as his (or her) pleasure, as does the president of Canada Post.[132] Canada Post's regulations for managing the business (roughly equivalent to the Domestic Mail Manual of the Postal Service) must be approved by the Governor in Council. Similarly, Canada Post is required to implement any directives issued by the Minister.[133] Thus, unlike the U.S. Postal Service, Canada Post is not insulated from direct government control by either an independent board or an independent regulator. Legally, Canada Post is an agent of "Her Majesty in right of Canada", i.e., an agent of the government.[134]

The lack of institutional separation between the Canadian government and Canada Post calls into question whether directives and policies of government can impose a universal service obligation on Canada Post. If the ultimate manager of Canada Post is the

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[129]Canada Post Corporation Act, R.S.C, c. C-10 (1985). The 1981 act was codified in the 1985 Revised Statutes. The statute as amended to Sep. 11, 2008 may be found at http://laws.justice.gc.ca/en/showtdm/cs/C-10 (access Oct. 1, 2008) (hereafter "Canada Post Corporation Act").

[130]Canada Post Corporation Act § 23.

[131]The Minister of Transport, Infrastructure and Communities is currently the minister responsible for Canada Post. SI/2006-28, Order Designating the Minister of Transport as Minister for Purposes of the Act (Feb. 6, 2006).

[132]Canada Post Corporation Act §§ 6-8. The "Governor in Council" is, in principle, the representative of the Queen in Canada. In practice, the Governor in Council is a symbolic role and governmental decisions are taken by the Prime Minister and the cabinet.

[133]Canada Post Corporation Act §§ 10, 19(1), 22. The Minister, in concert with the Minister of Finance, may loan such money to or subsidize Canada Post as he (or she) deems appropriate. Id. §§ 29-32 (total loans are limited to CA$ 500 million).

[134]Canada Post Corporation Act § 23.

government, then directives and policies adopted by government are equivalent to internal management policies adopted by the Postal Service. They cannot be characterized as legal obligations imposed on the managers of Canada Post. The only obligations which bear on government with respect to universal service by external authority appear to be the requirements of the CPCA and the 2004 Universal Postal Convention.

10.2 Universal service policies

The CPCA establishes a general obligation to provide universal service.[135] The CPCA does not use the term "universal service" or establish a specific "universal service obligation." The CPCA declares that the "objects" of Canada Post are:

> (a) to establish and operate *a postal service for the collection, transmission and delivery of messages, information, funds and goods both within Canada and between Canada and places outside Canada*;
>
> (b) to manufacture and provide such products and to provide such services as are, in the opinion of the Corporation, necessary or incidental to the postal service provided by the Corporation; [and provide other appropriate governmental services][136]

With respect to the provision of a universal postal service, the CPCA declares that Canada Post shall "have regard to" several factors in maintaining "basic customary postal service":

> (2) While maintaining basic customary postal service, the Corporation, in carrying out its objects, shall *have regard to*
>
> (a) *the desirability of improving and extending its products and services* in the light of developments in the field of communications;
>
> (b) the need to conduct its operations on *a self sustaining financial basis*

[135]See generally, General Accounting Office, "Postal Reform in Canada: Canada Post Corporation's Universal Service and Ratemaking" (March 1997); George Radwanski, The Future of Canada Post Corporation: Canada Post Manate Review (1996); Robert M. Campbell, *The Politics of Postal Transformation: Modernizing Postal Systems in the Electronic an Global World* 271-329 (Montreal: McGill-Queen's University Press, 2002).

[136]Canada Post Corporation Act § 5(1) (emphasis added).

> while providing *a standard of service that will meet the needs of the people* of Canada and that is similar with respect to communities of the same size;
>
> (c) the need to conduct its operations in such manner as will best provide for the *security of mail*;. . . .[137]

The obligation of Canada Post with regard to postage rates in the CPCA is expressed as follows: "The rates of postage . . . shall be *fair and reasonable and consistent so far as possible with providing a revenue, together with any revenue from other sources, sufficient to defray the costs* incurred by the Corporation in the conduct of its operations under this Act."[138]

In December 1998, the government approved a "policy framework" which established ongoing financial, service, and pricing objectives for Canada Post. The framework was prepared by Canada Post in collaboration with officials from several government ministries.[139] The legal status of the policy framework is unclear. The policy framework defines "delivery standards" of 2, 3, and 4 business days for delivery of mail within the same center, between two centers in the same province, and between centers in different provinces, respectively. The term "center" is undefined. With respect to rural retail services, the policy framework defines "rural retail service standards" which state that Canada Post is "to negotiate with the local community to better reflect community requirements" and "rural moratorium continues in place, although amalgamations are allowed." The policy framework further defines a price cap formula under which increases in "the basic postal rate" are to be held below two-thirds of the increase in the Consumer Price Index and states that this requirement should be added to the Letter Mail Regulations, i.e., incorporated in a regulation issued by Canada Post with the approval of the Governor in Council.[140]

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[137]Canada Post Corporation Act § 5(2) (emphasis added).

[138]Canada Post Corporation Act § 19(2) (emphasis added).

[139]See C. Gaz. Part I, Vol. 134, No. 5, 311 (Jan. 29, 2000) (proposed Regulations Amending the Letter Mail Regulations).

[140]See Advisory Panel, "Consultation Guidance Document" (May 2008) at Appendix B, Annex A. As explained below, the Advisory Panel was established by the Minister in 2008. The annex cited is a one-page document entitled "Multi-Year Policy and Financial Framework (est. 1998)." The annex does not indicate whether this is a complete statement of the 1998 policy framework. The legal status of the

All together Canada Post has, with the approval of the Governor in Council, adopted sixteen "regulations" relating the national postal service.[141] In general, the regulations are directions addressed to mailers similar to the Domestic Mail Manual and International Mail Manual of the Postal Service. None of the regulations uses the term "universal service."

Canada is a member of the Universal Postal Union. Under the Universal Postal Convention Canada is obliged to provide universal postal service within Canada and to deliver inbound international mail. The 2004 Universal Postal Convention requires all UPU member countries to "ensure that all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices" and to "ensure that the offers of postal services and quality standards will be achieved by the operators responsible for providing the universal postal service."[142]

10.3 Monopoly policies

The postal monopoly in Canada is established by sections 14 and 15 of the CPCA. Section 14 establishes the basic monopoly as follows:

> 14. (1) Subject to section 15, the Corporation has the *sole and exclusive privilege of collecting, transmitting and delivering letters to the addressee thereof within*

document does not appear from the document itself. The Letter Mail Regulations were amended as indicated in the policy framework. See C. Gaz. Part I, Vol. 134, No. 5, 311 (Jan. 29, 2000) (proposed Regulations Amending the Letter Mail Regulations); C. Gaz. Part II, Vol. 134, No. 13, SOR 2000-221 (Jun. 21, 2000) (final regulation).

[141]For a complete set of postal regulations, I have relied upon the government's internet site at http://laws.justice.gc.ca/en/C-10. Some of these regulations are cited in Counter-Memorial para. 85.

[142]Universal Postal Convention 2004, art. 3. The 2004 Convention will be replaced by the 2008 Convention on January 1, 2010. Article 3 is unchanged in the 2008 Convention. In an arbitration proceedings initiated by United Parcel Service under the North American Free Trade Agreement, Canada argued, inter alia, that its actions were justified by the universal service obligation imposed on Canada by the Universal Postal Convention. This argument may have carried some weight with the majority of the arbitration panel, which sided with Canada. The arbitration certificate observed, "Canada is not the only state to recognise the importance of universal and accessible postal service. It was the recognition by governments around the world of the primary importance of universal postal service that led to the creation in 1874 of the UPU. By coordinating the application of the concept of universal postal service internationally, and *by enshrining the universal service obligation as a treaty obligation*, the member nations of the UPU created and have

Canada.

(2) Nothing in this Act shall be construed as requiring any person to transmit by post any newspaper, magazine, book, catalogue or goods.

The term "letters" is undefined in the act.

Section 15 provides several exceptions to the postal monopoly. It includes traditional exceptions for legal documents, cargo letters, letters of the carrier. The most important exception is for urgent letters, defined as letters transmitted for a fee "at least equal to an amount that is three times the regular rate of postage payable for delivery in Canada of similarly addressed letters weighing fifty grams." Current postage for a 50 g letter in Canada is CA$ 0.96 (US$ 0.94), so a letter is deemed outside the postal monopoly if the private operator charges at least CA$ 2.88 (US$ 2.82) per letter.[143] Section 15 provides in full

15. (1) The exclusive privilege referred to in subsection 14(1) does not apply to

(a) letters carried incidentally and delivered to the addressee thereof by a friend of the sender or addressee;

(b) commissions, affidavits, writs, processes or proceedings issued by a court of justice;

(c) letters lawfully brought into Canada and forthwith posted thereafter;

(d) letters concerning goods for delivery therewith, carried by a common carrier without pay, reward, advantage or profit for so doing;

(e) letters of an urgent nature that are transmitted by a messenger for a fee at least equal to an amount that is three times the regular rate of postage payable for delivery in Canada of similarly addressed letters weighing fifty grams;

(f) letters of any merchant or owner of a cargo vessel or the cargo therein that are carried by such vessel or by any employee of such merchant or owner and delivered to the addressee thereof without pay, reward, advantage or profit for so doing;

(g) letters concerning the affairs of an organization that are transmitted between offices of that organization by an employee thereof;

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maintained a seamless international postal regime." United Parcel Service of America v. Government of Canada, par. 141 (ICSID, Jun. 11, 2007) (emphasis added).

[143]Exchange rate as of July 1, 2008 (Federal Reserve Bank of New York).

> (h) letters in the course of transmission by any electronic or optical means; and
>
> (i) letters transmitted by any naval, army or air forces of any foreign country that are in Canada with the consent of the Government of Canada.
>
> (2) Nothing in subsection (1) shall be construed as authorizing any person to collect or receive any letters for the purpose of transmitting or delivering them as described in that subsection.

For purposes of further specifying the scope of the postal monopoly, Canada Post, with the approval of the Governor in Council, adopted the "Letter Definition Regulation" in 1983. This regulation defines the term "letter" to mean "one or more messages or information in any form, the total mass of which, if any, does not exceed 500 g, whether or not enclosed in an envelope, that is intended for collection or for transmission or delivery to any addressee as one item."[144] The regulation declares that this definition does not include several types of items or the carriage of a "letter" under certain conditions. Exceptions include messages addressed to "occupant" (or the like); checks and money orders; message recorded by electronic or optical means; newspapers, magazines, books, and catalogs; bills of exchange, etc. when sent between financial institutions; and securities when sent between securities firms and clearing houses.

10.4 Prospective policies under consideration

On April 21, 2008, the Minister of Transport, Infrastructure and Communities, Lawrence Cannon, established an external, independent Advisory Panel to conduct a strategic review of Canada Post.[145] The purpose of the review is "to examine Canada Post's public policy objectives, its ability to remain financially self-sustaining, and the continued relevancy of the Corporation's Multi-Year Policy and Financial Framework, established by the government in 1998."[146] The terms of reference establish four principles to guide and limit the scope of the review:

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[144]Letter Definition Regulations, SOR 83-481, at § 2.

[145]The Advisory Panel has established an internet site at http://www.cpcstrategicreview-examenstrategiquescp.gc.ca/index-eng.html (accessed, Oct. 1, 2008).

[146]Advisory Panel, "Consultation Guidance Document" (May 2008) at 4.

- Canada Post will not be privatized and will remain a Crown corporation;
- Canada Post must maintain a universal, effective and economically viable postal service;
- Canada Post is to continue to act as an instrument of public policy through the provision of postal services to Canadians; and
- Canada Post is to continue to operate in a commercial environment and is expected to attain a reasonable rate of return on equity.

With respect to universal services, the Minister's terms of reference particularly requested advice on the following issues:

- What are the costs of the universal service obligation and to what extent do revenues generated by Canada Post's exclusive mail collection and delivery privilege offset these costs? How are those costs and revenues expected to evolve in the future?
- What have been the financial impacts of public policy obligations placed on Canada Post? How are the costs of public policy obligations funded?
- What are the social impacts of the universal service obligation?
- To what extent do all of the public policy obligations imposed on Canada Post meet the needs of Canadians?

In May 2008, the Advisory Panel requested public comment on issues raised by the terms of reference. Comments were due September 2, 2008. The report of the Advisory Panel is to be submitted to the Minister in December 2008.

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