

Review of the postal market three years after full market opening on 1 January 2011

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Bad Honnef, 27 February 2015

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Note: Chapter 3 of this report was drafted in French. The translation to English of this chapter was prepared by the BIPT.

1 Introduction

The Belgian postal market has been fully opened to competition at the beginning of 2011. Now, more than three years after liberalisation, it is time for a review of what has been achieved by this step. Before full market opening, there had been fears that the postal market might be flooded by competitors with low quality and poor social standards, who would ‘cherry pick’ on the most profitable areas and do not contribute to ensuring universal service for the whole territory. This study describes the Belgian postal market today as well as the regulatory framework for postal services, and analyses their evolution since 2011. The study compares the market situation in 2014 to what was expected before full market opening. It develops recommendations for further developing postal legislation and regulations in the context of current and future challenges.

The study contains four major elements. First, the study analyses the Belgian postal market and its evolution since 2011 and gives an outlook on future market development and challenges. Second, it presents a legal analysis of the postal market. Third, both market performance and regulation of postal services are compared to ten other European countries. The study then draws conclusions on the market evolutions since 2011, and develops recommendations for modifying the regulatory framework, based on the legal and economic analysis as well as the international benchmark.

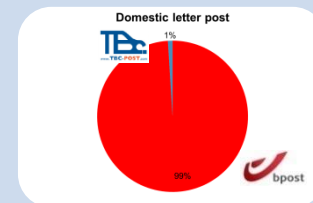
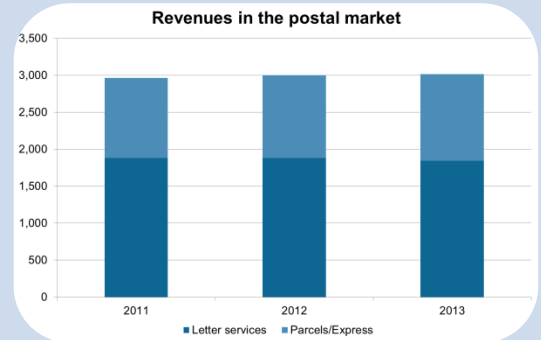
The study’s methodology is based on two pillars: We undertook extensive research in (publicly) available documentation on the Belgian postal market, e.g. market surveys, decisions and other documents issued by BIPT, annual reports of service operators, press articles, and publications of associations relevant to the postal market. In addition, we interviewed stakeholders in the postal market: letter post and parcel / express operators as well as associations relevant to the postal market. All in all, we interviewed eight operators and associations. We are most grateful to all interviewees for their cooperation and contribution to this study.

2 Economic analysis of the Belgian postal market

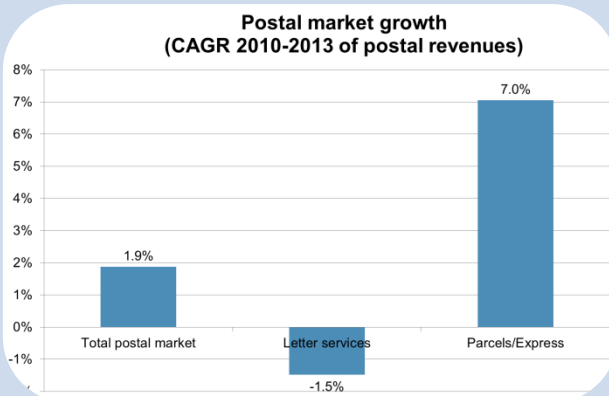
2.1 Overview on postal market

Postal market facts and figures

- Postal market value in 2013: 3,041 million €
- Majority of market revenues generated by letter services (60% in 2013), but share declining
- More than 32,000 people employed in the postal sector
- Very low level of competition in the letter market (bpost market share >99%)
- Parcel services are competitive with many players in B2B and B2C delivery



→ bpost: dominant operator in domestic letter post



Postal market trends

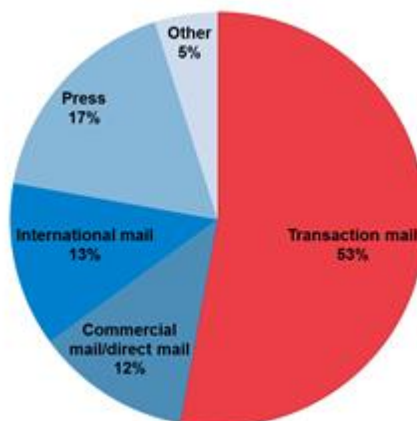
- Addressed mail volumes decline (2,5% p.a. from 2008-2012), so do revenues
- Digitalisation and e-substitution main reasons for decline
- Growing parcel market due to e-commerce boom
- Strong e-commerce growth expected to continue

2.2 Letter post market

Half of letter mail revenues stem from transaction mail

In the letter post market, more than half of letter mail revenues are generated by transaction mail (Figure 1). Transaction mail consists of e.g. invoices, bank statements as well as daily mail by business and public senders. The majority of letters is sent by only few large senders. According to bpost, nearly half of all revenues (47%) are generated by its 100 biggest customers.¹ On the contrary, only a small share of transaction mail is sent by consumers. Bulk mail (i.e. mail in volumes of over 500 pieces) represents the vast majority of international, commercial and transactional mail.

Figure 1 Distribution of types of mail (revenues)



Source: BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013

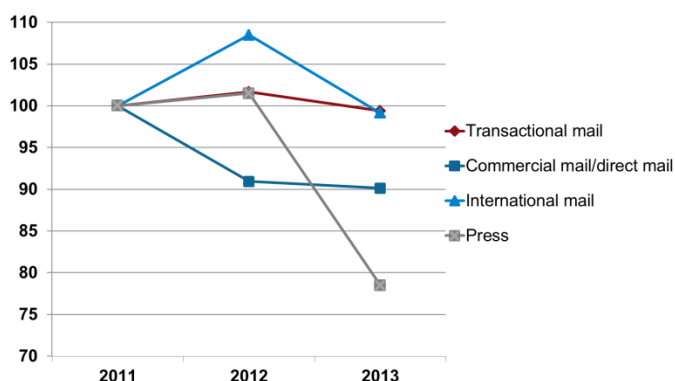
Strong decline of press revenues

The different types of letter post showed unanimous revenue development in the past (see Figure 2).² Revenues declined strongest for press services which fell by more than 19% since 2010, but his decline is largely due to changes in compensation received by bpost from the State for press delivery rather than changes in volume. Direct mail revenues also declined (13.4%) while transaction and international mail revenues stayed stable.

¹ Compare bpost (2013), IPO prospectus, p. 23.

² Compare BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013.

Figure 2 Revenue decline for types of letter mail 2011-2013 (indexed)



Source: BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013

These revenue developments are in line with volume trends reported by bpost. Volumes of direct mail declined strongest (more than 5% decline both in 2011 and 2012) while losses of transactional mail seemed to vary with the general economy (between 0.5% and 4%): in years with weak economic development, losses were greater than in years with economic growth.³ On the contrary, volumes of press items increased slightly from 627 million in 2011 to 635 million in 2013.⁴ The volume development is, according to bpost and other market participants, heavily influenced by e-substitution. This is supported by Eurostat data showing that Belgians increasingly use digital channels for various purposes, among them also rather complex ones like internet banking and shopping online.⁵ Newspaper volumes, on the contrary, have increased slightly, by 0.6% on average between 2011 and 2013.

Almost no competition in letter market

It has been only recently that a competitor for letter post services has entered the Belgian market. Contrary to expectations before full market opening,⁶ there has been no market entry at all between 2011 and May 2013. The new entrant TBC Post is currently the only licensee on the domestic Belgian letter post market and provides letter post services with a focus on business senders.

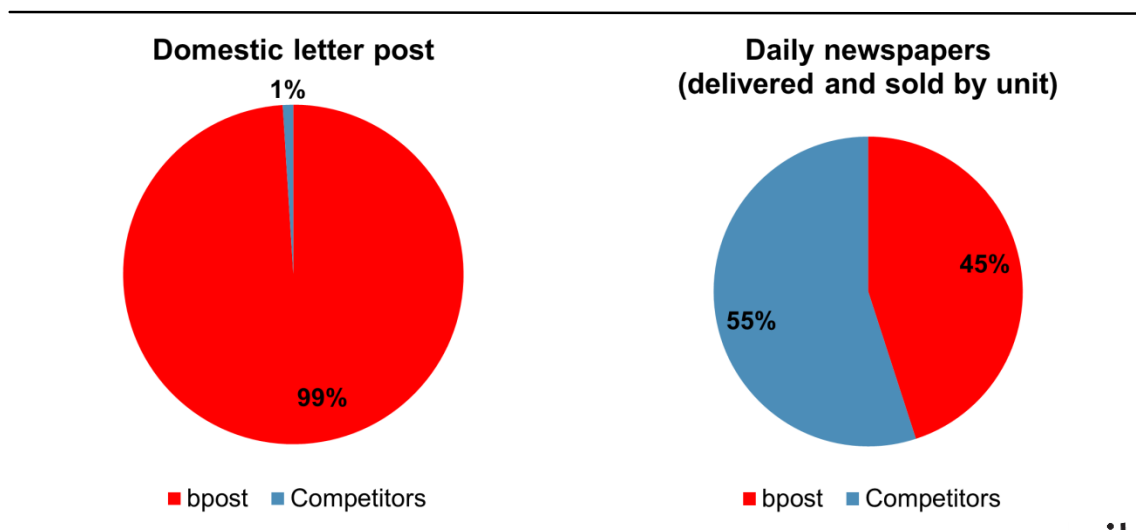
³ Compare Eurostat data on Belgian GDP and bpost (2013), IPO prospectus, p. 5.

⁴ Compare BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013, p. 15.

⁵ Compare Eurostat data for Belgium.

⁶ Compare Price Waterhouse Coopers, The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009, Study for the European Commission, May 2006; and KPMG, Analyse de la méthode de calcul des coûts du service universel, Study for the BIPT, February 2009.

Figure 3 Estimated market shares in letter post market segments (2012)



Source: based on bpost (2013), IPO prospectus, p. 53 f.

Note: Daily newspapers in this figure include subscriptions delivered to the home as well as newspapers sold in shops.

Even though the market entry of TBC Post might be seen as a step towards a more competitive Belgian market, it remains to be seen whether TBC will be successful in complying with its licence conditions, especially those on expanding geographical

Key facts on TBC Post
<ul style="list-style-type: none"> • Licence to provide letter post (correspondence) services within the universal service area • TBC reported having covered 40% of the territory in 2014 • Own delivery network for transaction mail and registered mail • ~125 contact points in e.g. bookshops • ~150 letter boxes
Source: Interview with TBC Post

coverage. At the end of 2014, TBC Post's volumes remained quite low and are estimated at less than 1 % of the letter post market.⁷ Breakdown on letter market segments shows that the competitive situation is different for single segments. In the domestic letter market, competition is very weak with not more than 1% of revenues generated by bpost's only competitor TBC Post (see Figure 3). In delivery of daily newspapers, bpost's market position is less strong. bpost reports a market share of 45% compared

to all newspapers (delivered to homes and sold in shops). Compared to all newspapers delivered to the home, therefore, bpost's market share must be significantly higher. The major competitor in the segment for home delivery is Belgische Distributiedienst NV/Belgique Diffusion SA who delivers daily newspapers in early morning rounds in

⁷ Compare bpost's estimation of market shares in 2012 in bpost (2013), IPO prospectus, and interview statements of TBC Post.

Brussels and Antwerp. There is also competition from publishers with own delivery organisations.⁸

In international mail, bpost faces competition from three other operators in Belgium: Spring Global Mail, Asendia, and DHL International Mail, all operators owned by other national postal operators. bpost estimates its market share on the global international letter market at about 2%.⁹

For outbound cross-border mail from Belgium to other countries alone, bpost's market share will be higher but in no way similar to its position on the domestic Belgian letter post market. In recent years, there have been hints that competition for the cross-border mail might lose intensity. Some of the cross-border operators have reduced their activities, namely through merging international mail activities of French La Post and Swiss Post to Asendia. Besides, DHL Mail International seems also to have reduced its activities in Belgium.

Substantial price increases in Belgium since 2008

Table 1 Prices for single stamps (standard letter, 20g)

	Price 2014	CAGR before FMO (2008-)	CAGR after FMO (-2014)
bpost	0.77 €	9.6%	2.7%
TBC-Post	0.7 €	n.a.	n.a.

Note: FMO = Full market opening; CAGR = Compound annual growth rate

Prices for single piece letters have increased substantially since 2008, from a level of 0.54 € to 0.77 € (2014) for a single stamp.¹⁰ The price increases have been stronger before market opening than after, as table 1 shows. This corresponds to a price increase of more than 42% nominally and 32% in real terms between 2008 and 2014. TBC Post, the only licensee in Belgium, offers single piece letters at a rate approximately 10% below bpost's tariff.¹¹

2.3 Parcel and express market

e-commerce stimulates parcel market growth

The parcel and express market accounts for more than 1.2 billion €. Revenues with these services have developed positively in the past and grown at a yearly average rate

⁸ However, the extent of competition by publishers is unknown.

⁹ bpost (2013), IPO prospectus, p. 57.

¹⁰ bpost offers a discount for a purchase of ten stamps, reducing the price for one letter to 0.70 €.

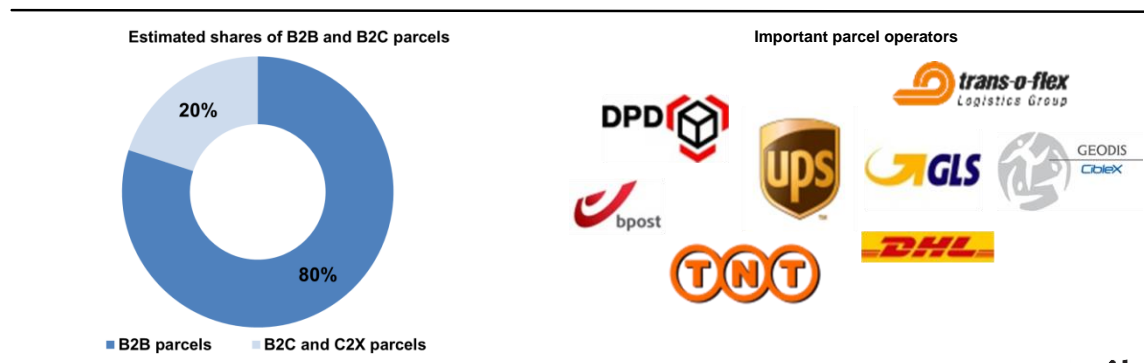
¹¹ Compare TBC-Post's price list, TBC-Post (2014), Priority Mail Tariff, 01/01/2014.

of 7% since 2010.¹² Note that growth was highest in 2010, and only 4% on average between 2011 and 2013. The main driver of this market has been the boom of online purchases. E-commerce has grown considerably with a double-digit growth of 18.4% in 2013 and was expected to continue on this path in 2014.¹³

Substantial differences between B2B and B2C parcel services

Parcel and express services are provided in a very competitive environment. However, there are substantial differences between parcels delivered from business customers to other businesses (B2B), and to or from private consumers (B2C and C2X). The B2B segment accounts for the large majority of the whole parcel and express market (see Figure 4), with revenues in this segment estimated (in 2013) to 750-800 million €, based on revenues for 2012.¹⁴ According to estimates published by BIPT, five operators have markets shares of more than 15% each in the parcel and express market: bpost, TNT Express, UPS, Federal Express, and DHL. Additional parcel delivery operators include DPD, Geodis-Ciblex, and PostNL.¹⁵

Figure 4 Belgian parcel market



Source: based on bpost (2013), IPO prospectus

Source: Company websites

The two segments are characterised by different structures, products and also prices. Whereas B2B-senders traditionally choose fast and high-cost parcel or express services for time-critical goods, B2C-senders are distance sellers and e-retailers whose customers did not expect express service levels in the past. This, however, tends to change with online purchasers expecting fast delivery of their orders. C2X-senders, who account for a minority share in this segment, are even more price sensitive.

¹² Based on BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013, p. 7.
¹³ Compare be commerce (2014) Communiqué de presse 31 janvier 2014, E-commerce en Belgique - Perspectives de croissance et nouveautés pour 2014.
¹⁴ Estimation by bpost in 2013. Compare bpost (2013), IPO prospectus, p. 57.
¹⁵ Compare BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013, p. 14.

The parcel and express operators have different market positions in the B2B and B2C/C2X segment, according to their service level, price and product structure. Operators like e.g. FedEx, UPS and Ciblex focus on the B2B segment which is more competitive than the B2C segment by absence of a market-dominant operator. There are several important operators in the parcel and express market, their company logos are shown in Figure 4.

The position of bpost differs by segment:¹⁶ bpost has a significant market share in the B2C/C2X segment with about 50% of the revenues generated in this segment, albeit much less than in the letter post market. In 2013, bpost estimated its current market share for the B2B segment to about 5% (apparently based on 2012 data).¹⁷ The reason for this relatively small market share lies in the difference in service levels between bpost and traditional express operators.¹⁸ bpost has reported plans to improve its standing in B2B services.¹⁹

In the B2C/C2X segment, bpost has an advantage as it is delivering daily at every household and offers easy access for private customers who want to send single parcels or return their online purchases. Overall growth in the parcel market was mainly driven by growth in the B2C/C2X segment as an effect of e-commerce sales.²⁰

Price increases for single parcels slowed down

Similar to the letter post market, prices for single-piece parcels of bpost have quite strongly increased in recent years. Customers pay for a parcel of up to 2 kg in 2014 30% more than in 2008. The crucial factor for this increase did not seem to be the full market opening in the letter post market, as the average annual price increase slowed down after 2008 (see Table 2). Contrary to letter prices, bpost has not increased its single piece parcel prices at the beginning of 2015.²¹

Table 2 bpost's prices for single piece parcels

	Price 2014	CAGR before FMO (2008-)	CAGR after FMO (-2014)
Packet, 2 kg	6.50 €	6%	3.3%
Parcel, 5 kg	8.80 €	4.4%	3.7%

FMO = Full market opening; CAGR = Compound annual growth rate

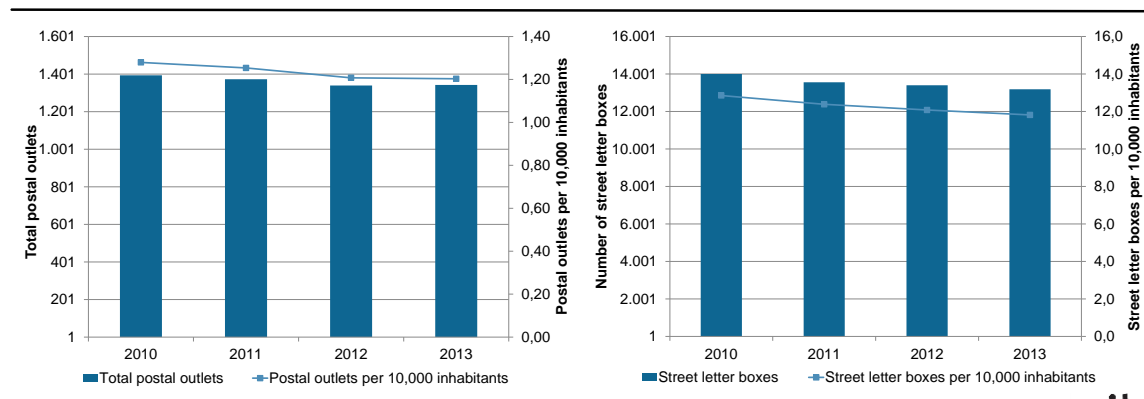
¹⁶ For figures on market shares, compare bpost (2013), IPO prospectus, p. 55.
¹⁷ Compare bpost (2013), IPO prospectus, p. 68.
¹⁸ According to statements from stakeholders interviewed for this study.
¹⁹ bpost (2013), IPO prospectus, p. 68.
²⁰ Statements from stakeholders interviewed for this study.
²¹ See bpost (2015), Guide pratique 2015 pour les envois du particulier.

2.4 Access to universal services and quality of service

bpost has largely maintained network of postal contact points since 2008

bpost ran more than 1,300 post offices and postal agencies in 2013. This number approximately corresponds to the number of postal contact points in 2008, and has only slightly fallen during the last few years. bpost reports having one postal contact point for each municipality and more than 1,300 post offices in total.

Figure 5 Postal outlets and street letter boxes



Source: BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013

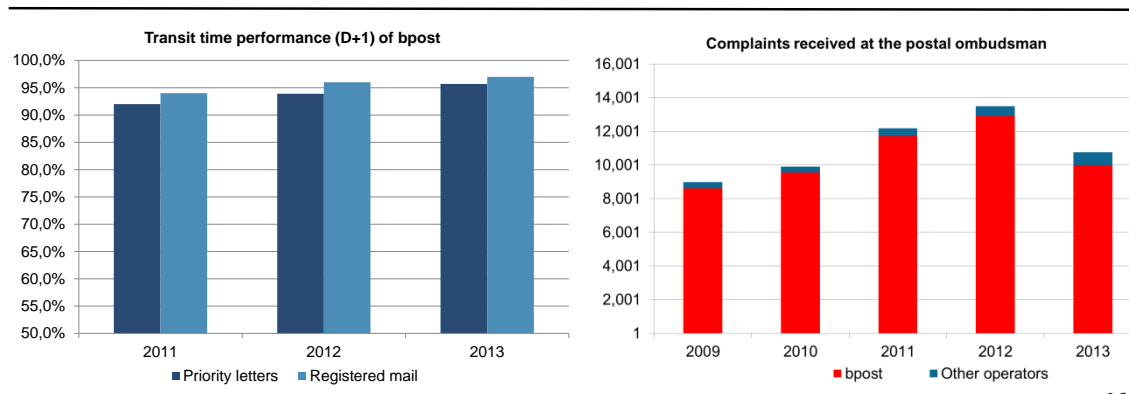
New competitor TBC Post has installed postal contact points

Accessibility to postal services has recently been enhanced slightly by additional postal contact points run by the new entrant TBC Post. This postal operator runs about 150 postal contact points in 2014 which are organised as agencies in e.g. supermarkets and bookshops.

bpost also employs postal agencies but is restricted by its Management Contract. About half of bpost's network consists of self-employed post offices. Postal agencies, so called 'Points Poste', offer basic postal and financial services. Customers may buy stamps, send and receive letters and parcels as well as registered items, and receive payments of up to 500 €. To enhance accessibility for online shoppers who want to receive or return e-commerce parcels independently from post offices' opening hours, bpost has recently introduced self-service parcel stations, the 'bpost 24/7'. At the end of 2013, there were 85 of such stations in Belgium.

Quality of service at high level

Figure 6 Quality of service



Source: BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013

Source: based on Service de médiation pour le secteur postal, Rapports annuels

bpost achieved its transit time goals in 2013 (see Figure 6). Since 2011, there has been a slight improvement of transit time performance. But even before full market opening, bpost has achieved very good transit time results with scores of more than 93% D+1-delivery of priority letters. In spite of good transit time performance and compliance of bpost with its legal obligations on post offices, the ombudsman for the postal sector has registered an increase in the number of complaints by postal customers until 2012. In 2012, the ombudsman received an all-time high with about 45% more complaints than in 2009, the majority of which related to bpost (see Figure 6). A substantial part of the increase was related to parcels whose numbers had grown considerably.

However, the silver lining on the horizon is that the number of complaints received at the postal ombudsman has fallen in 2013. This corresponds to the improvement of customer satisfaction stated by bpost in 2013.²²

2.5 Employment and investments of postal operators

Total sector employment decreases

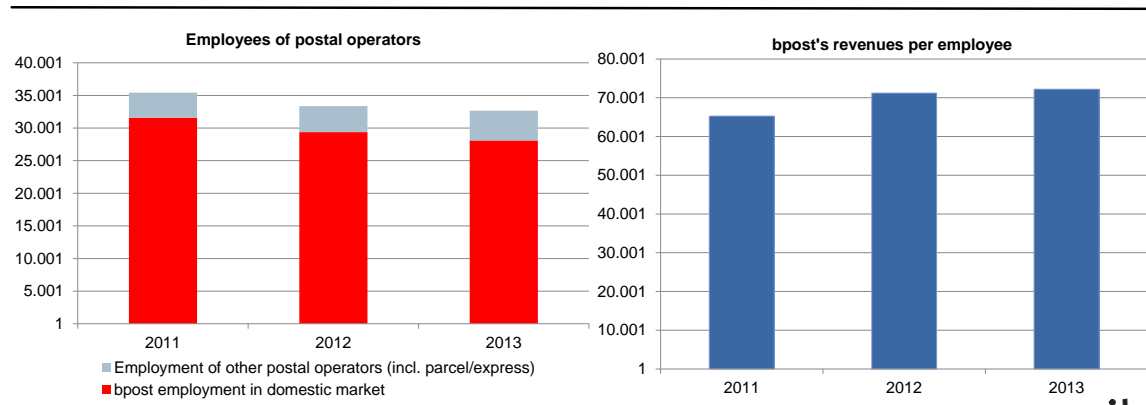
The postal sector as a whole, including letter post as well as parcel and express operators, employed 32,655 people in 2013.²³ Their number has decreased year after

²² bpost (2014), Annual report 2013, p. 47. Note that customer satisfaction data stated by BIPT do not show the same level of satisfaction. Results reported for customer satisfaction by bpost and BIPT are not directly comparable due to methodological differences.

²³ Figures provided by BIPT.

year by 15% between 2009 and 2013 (see Figure 7). bpost has reduced its staff base by even more than market average (16.4% less employees in 2013).

Figure 7 Employment in the postal market



Source: Data provided by BIPT

Source: based on BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013 and employment data provided by BIPT

Despite a legal obligation to employ statutory employees, bpost has reduced the number of employment contracts with statutory status during the last years. Whereas there had been more than 21,000 statutory employees in 2010, statutory personnel has been reduced to 15,234 in 2013 (~53% of bpost's workforce).²⁴

Competitors of bpost employed 4,543 people in 2013, to the large majority at parcel and express operators. Competitors had been hit by the financial and economic crisis, therefore reducing employment by about 20% (2009-2011). With economic recovery starting in 2009/2010, they also increased their staff base by 18.5% since 2011.

Productivity enhancements by employment reductions

In consequence of employment reductions, bpost considerably increased its productivity as expressed by revenues per employee (see Figure 7). bpost's good financial results, as described in section 4.2, are thus partly the effect of reduced staff and adaptations in employment conditions. bpost has also started to employ new mail delivery staff with lower wages than existing staff on the basis that new staff are 'auxiliary' mailmen.

²⁴ bpost (2014), annual report 2013, p. 111 and bpost (2011), annual report 2010, p. 67.

Growing investments in the postal sector

Operators in the postal sector, including parcel and delivery operators, have invested 152 million € in 2013.²⁵ This corresponds to a 15% increase of investments since 2011. On average, operators invested 5% of their revenues. There are single operators who invested significantly more, e.g. market entrant in the letter post market TBC Post which reported investing about 10% of their revenues in new sorting facilities, delivery vehicle fleet, and IT.²⁶

A substantial part of investments stems from bpost, being the largest operator in the market. bpost has recently invested in improving efficiency, along with re-designing its network structure and parcel sorting. These investments are part of bpost's *Vision 2020* which also includes increased automated sorting to walking sequence, centralising and restructuring mail preparation, replacing operational platforms by 60 mail centres, building a new parcel sorting centre (Brussels X) and enlarge others.

2.6 Outlook on future market developments

Declining volumes: a challenge for letter service providers

Future developments in the letter post market are characterised by overall volume and thus revenue decline. Postal operators expect digital substitution, which has already taken place on the market, to further accelerate in the future.²⁷ But letter service providers may also benefit from the success of digital channels when citizens are increasingly shopping online. Goods which are relatively small and of low value can be sent easily as heavy letters, reducing e-tailers' (and the customers') costs of shipping. Thus, volumes of heavy letters and packets are expected to increase. The future challenge for bpost as the incumbent in the letter post market will be to restructure its sorting and delivery networks in order to cope with volume declines. Letter service providers will also have to explore new business fields to compensate losses in letter post revenues, e.g. products focussing on e-tailers, or hybrid mailing services.

Stakeholders in the letter post market do not expect further entry in the market. The only existing licence holder TBC-Post might have difficulties in the next years to acquire customers and volumes. This largely depends on customers' willingness to switch to other operators and will also have an effect on the financial stability of the operator. This

²⁵ BIPT (2014), Communication of the BIPT Council of 11 December 2014 about the Belgian Postal Services Observatory for the years 2010 to 2013.

²⁶ Statement made in an interview with TBC Post made for this study.

²⁷ This, however, depends on practical implementation of e-government initiatives, as have been announced in the digital agency of the current Belgian government. Compare Chambre des Représentantes de Belgique (2014), Note de politique général du vice-premier ministre et ministre de la Coopération au développement, de l'Agenda numérique, des Télécommunications et de la Poste, Doc 54 0020/016.

stickiness of customers can be seen as an “economic barrier to entry”. A key challenge for TBC-Post will be to acquire enough volumes to be able to cope with its licence conditions, especially to increase geographical coverage to 80% of the Belgian territory in the three regions. bpost, on the other hand, seems well-prepared for the future, having worked hard on its efficiency in the past and achieving very good financial results in the last years. But still, bpost will have to continue its efficiency efforts to fight the competitive threat by substitution and TBC-Post.

Figure 8 Future outlook and main challenges in the letter and parcel markets

	Volumes, revenues	Trends, innovations	Competition	Financial situation of operators
Future outlook	<ul style="list-style-type: none"> Overall: positive impact of e-commerce Letters: Decline expected Parcels: Growth expected 	<ul style="list-style-type: none"> Overall: e-commerce drives new services and delivery solutions Letters: Hybrid mail, Parcels: Alternatives for door delivery, real time tracking, re-direction 	<ul style="list-style-type: none"> Letters: no entry expected Parcels: (Price) competition in B2B will further intensify as volumes stagnate 	<ul style="list-style-type: none"> bpost well prepared TBC-Post will have to acquire customers Investments and delivery restructuring needed for B2C business
Challenge	<ul style="list-style-type: none"> Letters: Restructure network, explore new business fields Parcels: Reorganise delivery for B2C, manage costs 	<ul style="list-style-type: none"> Letters: Develop products for e-tailers Parcels: Find delivery solutions that customers value 	<ul style="list-style-type: none"> Letters: Competitors: comply with license conditions, acquire volumes Parcels: Acquire / stabilise market shares in B2C segment 	<ul style="list-style-type: none"> TBC-Post: acquire customers bpost: well prepared for B2C-business Parcel operators need to invest further in B2C delivery

Competition of delivery solutions will determine parcel market

The Belgian parcel market is and will be strongly influenced by e-commerce. Especially the B2C segment will grow as e-commerce continues to boom. On the contrary, stakeholders expect rather stagnating B2B volumes. In the B2C delivery, delivery is far more costly than in B2B services because private receivers are rarely at home during the day. Currently, there are many solutions for customers to receive their parcels, e.g. 24/7 automated stations, shop delivery, or re-direction of parcels when the receiver is absent.

The main challenge will be for all parcel operators to participate from the trend in e-commerce while keeping delivery costs under control. Operators will have to develop alternatives to door-delivery that customers value and are ready to pay for. The competition for delivery solutions will determine which operators will be able to increase their market shares in the B2C segment. Even though it seems that bpost is rather well-prepared due to its awareness among social customers, all operators in the market need to further invest in B2C delivery structures in order to meet growing demand. For

example, DHL has reported plans in January 2015 to roll out a network of 1,600 parcel shops in Belgium (more than bpost's current post offices). At the end of the day, their ability to be successful in the B2C segment will determine their future position and profitability in the parcel market.

3 Legal analysis of the Belgian postal market

This chapter analyses the Belgian postal regulatory framework and the possible barriers to entry it entails. The first section details the regulatory framework by successively studying the rules on market entry and operation, the access rules to the postal network and infrastructure, the rules related to the universal service and other services of general economic interest. The second section aims at identifying the regulatory barriers to entry that reduce entry incentives as well as the rules that give the existing operator an advantage over the new entrants.

3.1 Analysis of the regulatory framework

3.1.1 The Belgian regulatory framework

The Belgian postal regulatory framework is mainly made up of²⁸:

- The Act of 21 March 1991 on the reform of certain economic public companies, in particular Title IV on the reform of the Postal Authority (Articles 129 to 154ter). This Act has been amended several times, most recently by the Act of 19 April 2014. The Act of 13 December 2010 which aimed at transposing the third Postal Directive and adapting the Belgian regulatory framework to the full liberalisation of the sector was a most significant amendment;
- The Act of 6 July 1971 creating bpost and certain postal services. On the one hand, this Act addresses certain activities and privileges of bpost as well as its retirement plan, and, on the other hand, certain obligations applying to all postal services providers, in particular in the field of civil liability in case of loss or damage to postal items and in the field of criminal liability in case of violation of the secrecy of correspondence;
- The Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors. This Act organises the functioning, roles and powers of BIPT;
- The Act of 17 January 2003 on legal remedies and the conciliation of differences with reference to the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors;
- The Royal Decree of 24 April 2014 on the regulation of the postal service. This Decree specifies certain conditions related to the handling and distribution of postal items, the universal postal service and other public service missions;
- The Royal Decree of 29 May 2013 regarding the approval of the fifth management contract concluded between the State and bpost for the 2013-2015

²⁸ The regulatory framework is also made up of other less important instruments, e.g. the Ministerial Order of 20 April 2007 on the regulation of the private letterboxes.

period. The management contract specifies the universal service obligations as well as the other services of general economic interest at bpost's expenses;

- The Royal Decree of 11 January 2006 implementing title IV of the Act of 21 March 1991, as amended by the Royal Decree of 19 April 2014. This Decree determines the procedure and licence conditions for the services included in the universal service, the tariff regulation of the universal postal service (price cap), the contents and requirements of the universal postal service as well as the designation procedure of the universal service provider;
- The Royal Decree of 11 January 2006 implementing Articles 142, §4, 144quater, §3, 148sexies, §1, 1° and 148septies of the Act of 21 March 1991 on the reform of certain economic public companies and determining the caps for any damages due by postal services providers in case of extra-contractual liability for loss, theft, damage and/or delay in distributing a postal item in the course of executing a postal service provided within the framework of a public service, as amended by the Royal Decree of 19 April 2014. This Decree specifies certain elements regarding the grant of the postal licence, sanction possibilities if certain quality standards are not met and determines a cap for damages in case of loss, theft, damage and/or delay in distributing a postal item;
- The Royal Decree of 12 January 1970 on the regulation of the postal service. Most of this Decree's provisions have been abrogated and replaced by the provisions of the Royal Decree of 24 April 2014 of the same name, but some provisions regarding the public service missions of bpost relating to financial matters still exist.

3.1.2 Regulation organisation in Belgium

(a) Rules on market entry and operation

The provision of a service of items of correspondence within the scope of the universal service is subject to the obtaining of an *individual licence*²⁹. The licence is granted for 10 years by BIPT, according to a transparent, non-discriminatory, proportionate and objective procedure³⁰. This licence is subject to *many conditions* regarding delivery and tariffs. More specifically, licence holders shall commit to covering a territory

²⁹ Art. 148sexies, §1 and §4 of the Act of 21 March 1991. An item of correspondence is defined in Art. 131, §8 of the Act of 1991 as a *communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals shall not be regarded as items of correspondence.* The universal service activities are defined in Art. 142 of the Act of 21 March 1991: collection, sorting, transport and delivery at least 5 days a week of postal items up to 2 kg and of postal parcels up to 10 kg, delivery of postal parcels from other Member States up to 20 kg, services relating to registered postal items and postal items with insured values. It is worth noting that the universal postal service comprises national services as well as cross-border services and that the transport and routing activities are not subject to the obtaining of a licence.

³⁰ Art. 148sexies, §2 of the Act of 21 March 1991, Art. 2 to 7 of the RD of 2006 implementing Title IV, Art. 10 to 19 of the RD of 2006 implementing Art. 142, §4, 144quater, §3, 148sexies, §1, 1° and 148septies of the Act of 21 March 1991 on the reform of certain economic public companies and determining damages caps.

corresponding to 80% of each of the three country regions after 5 years of activity, ensuring a delivery at least twice a week after 2 years of activity, practising a uniform tariff by client in their coverage areas, ensuring a liable service and having a minimal well-staffed infrastructure, and an adequate operational process³¹. For now, only one operator (TBC Post) has obtained a licence, since 1 January 2011³².

Besides, the collection, sorting and delivery of items of correspondence, except for postal items outside the scope of the universal service, the service limited to transport and routing activities, shall be carried out and be *irrebuttably presumed to be carried out by workers* with an employment contract and not by freelance workers³³.

Finally, the universal service provider and the postal licence holders shall pay a *regulation fee* theoretically corresponding to 0.1% of their turnover for the postal services within the scope of the universal service (if exceeding €500,000) in order to finance the postal activities of BIPT³⁴.

The provision of the other postal services³⁵ is not subject to the obtaining of a licence or authorization, but has to meet the essential requirements that are conditions imposed by the State for reasons of general non-economic interest as well as obligations in the field of appeals and complaints handling process³⁶. Besides, the postal services undertakings against which at least 12 admissible complaints have been lodged and having a turnover of at least € 500,000 shall pay a *mediation fee* to finance the activities of the postal ombudsman³⁷.

(b) Access rules to the postal network and infrastructure

Postal services providers shall give access to *services within the scope of the universal service and elements of the postal infrastructure* needed to develop postal activities. It includes inter alia letterboxes rented from a postal operator, information on change of address, re-direction service and return to sender service³⁸. The granting of this access has to be transparent and non-discriminatory and may be subject to a control or an intervention of BIPT in case of failure of the trade negotiations³⁹.

Besides, bpost shall grant access to the *post offices* that are maintained in the context of the network SGEI and essential to its competitors under fair and non-discriminatory conditions⁴⁰.

³¹ Art. 148sexies, §1 of the Act of 21 March 1991 et Art. 35 of the RD of 2006 implementing Title IV.

³² Communication of the BIPT Council of 7 May 2014 on the list of the postal operators who have been granted an individual licence for the provision of a service within the universal service scope.

³³ Art. 148decies of the Act of 21 March 1991.

³⁴ Art. 148septies/1 of the Act of 21 March 1991.

³⁵ As defined in Art. 131, 1° of the Act of 21 March 1991, postal services are services involving the collection, sorting, transport and delivery of postal items (item addressed in the final form in which it is to be carried) except for the postal services by the natural or legal person who is the originator of the mail.

³⁶ Art. 148bis of the Act of 1991 and Art. 21 of RD 2014 on the regulation of the postal service.

³⁷ Art. 45ter of the Act of 21 March 1991.

³⁸ See the preparatory work for the Act of 13 December 2010, Comments of the Articles, *Doc. Ch. 53-202/1*, p. 27.

³⁹ Art. 148ter of the Act of 21 March 1991.

⁴⁰ Art. 25 of the 5th management contract.

Besides, especially when universal service providers apply *special tariffs*, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions⁴¹.

(c) Universal service

The universal service comprises *several services*: collection, sorting, transport and delivery at least 5 days a week of postal items up to 2 kg and of postal parcels up to 10 kg, delivery of postal parcels from other Member States up to 20 kg, services relating to registered postal items and postal items with insured values as well as international obligations derived from the relevant acts of the Universal Postal Union or from other norms or agreements, universal service including cross-border services. Besides, it also comprises the *maintenance of a retail network*: the 589 Belgian municipalities shall have an access point, there shall be at least one collection, one sending and one delivery at least 5 days a week and the delivery of postal items shall cover all the houses of the country provided with a regulatory mailbox⁴².

The universal service activities present certain *characteristics*:

- These activities shall comply with the essential requirements, be available without discrimination and not be interrupted except in case of absolute necessity⁴³;
- Their *tariffs* shall be affordable and respect the price cap based on the services of a small-user basket⁴⁴ and controlled *ex ante* by BIPT, be cost-oriented, identical for the entire territory, transparent and non-discriminatory⁴⁵;
- They must meet *quality standards*, in particular regarding sending duration, regularity and reliability⁴⁶;
- Besides, the universal service provider shall make available to users a *consumer charter* including extensive information on the characteristics and

⁴¹ Art. 144ter, 5° of the Act of 21 March 1991. BIPT condemned bpost for having disregarded this Article in its pricing practices towards consolidators in 2010 (BIPT Council Decision of 20 July 2011 on bpost's conventional tariffs for the year 2010). However, this Decision has been appealed to the Brussels Court of Appeal, that has referred to the European Court of Justice for a preliminary ruling a question on the case C-340/13 bpost v. BIPT on the interpretation of Article 12 of Directive 97/67. On 11 February 2015, the Court of Justice of the European Union issued a judgement ruling that "the principle of non-discrimination in tariffs set out in Article 12 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 must be interpreted as not precluding a system of quantity discounts per sender, such as that at issue in the main proceedings."

⁴² Art. 142, §§1-2 of the Act of 21 March 1991 and Art. 8-9 of the 5th management contract.

⁴³ Art 142, §3 of the Act of 21 March 1991.

⁴⁴ By virtue of Art. 144ter, §1, 1°, this basket includes: priority and non-priority domestic items of a weight not exceeding 2 kg, outgoing priority and non-priority cross-border mail of a weight not exceeding 2 kg, outgoing cross-border and domestic postal parcels up to 10 kg and outgoing cross-border and domestic registered items and insured items.

⁴⁵ Art. 144ter of the Act of 21 March 1991, Art. 28 to 32 of the RD of 2006 implementing Title IV, Art. 7 of the 5th management contract. Concerning the implementation of the price cap for 2015, see the Decision of the BIPT Council of 8 October 2014 on the analysis of bpost's tariff proposal for full tariffs per piece for the year 2015.

⁴⁶ Art. 144quater of the Act of 21 March 1991, Art. 34 of the RD of 2006 implementing Title IV, Articles 5-6 of the 5th management contract.

tariffs of the services⁴⁷. It also shall inform BIPT so that it can perform its regulatory missions⁴⁸.

The universal service provider (bpost) has been designated by law until December 2018⁴⁹. After that, it shall be designated according to an open mechanism for a 10-year period⁵⁰.

The net cost of the universal service is to be calculated by the universal service provider and verified by BIPT, in accordance with the net avoided cost methodology (as the difference between the existence of universal service obligations and the absence of these obligations) and taking into account all other relevant elements, including any intangible benefits⁵¹. In order to make this calculation possible, the universal service provider shall have a cost accounting system which clearly distinguishes between the different services comprised in the universal service, in SGEIs and other postal services, and uses the fully distributed costing (FDC) method to which the ABC (Activity-Based Costing) principle is applied⁵². This internal accounting shall be verified under the supervision of BIPT⁵³.

If the net cost exceeds 3% of the turnover of the universal service provider in the universal service segment, it constitutes an unfair burden that has to be compensated for by the State budget⁵⁴. For now the universal service has not yet been financially compensated.

(d) The other general economic interest services (SGEIs) or public service missions⁵⁵

Besides the universal service, the scope of which is laid down at the European level, the Belgian legislation also provides for additional public service missions (services of general economic interest in the European terminology)⁵⁶. These missions, which often have to be specified in a deepening agreement concluded between the State, bpost and possible stakeholders, can be classified into several categories.

⁴⁷ Art 144 and 144bis of the Act of 21 March 1991.

⁴⁸ Art. 36 RD of 2006 implementing Title IV.

⁴⁹ Art. 144octies, §1 of the Act of 21 March 1991 and Art. 4 of the 5th management contract.

⁵⁰ Art. 144octies, §§ 2-4 of the Act of 21 March 1991 et Articles 38-45 of the RD of 2006 implementing Title IV.

⁵¹ Art. 144undecies, §1 of the Act of 21 March 1991. Regarding the methodology to verify the calculation of the universal service net cost that will be used by BIPT, see the Communication of the BIPT Council of 21 May 2014 on the verification of the calculation of the universal postal service net cost in Belgium.

⁵² It is worth noting that accounting separation also allows to verify if the principles relating to terminal dues are observed.

⁵³ Art. 144quinquies to 144septies of the Act of 21 March 1991. See the Communication of the BIPT Council of 20 February 2014 regarding the compliance statement of the cost accounting system for bpost for 2012 based on the reports made by the College of Commissioners at bpost.

⁵⁴ Art. 144undecies, §2 and Art. 144novies of the Act of 21 March 1991.

⁵⁵ Besides these SGEIs, Belgian law also provides for the possibility of items of administrative correspondence admitted to transport against deferred payment (Art. 52-53 of RD of 2014 on the regulation of the postal service) and another particular payment system for items of correspondence addressed to soldiers (Art. 60-61 of the RD of 2014 on the regulation of the postal service).

⁵⁶ Art. 141 of the Act of 21 March 1991, Articles 39 to 61 of the RD of 2014 on postal regulation, Articles 10 to 50 of the 5th management contract.

First, the network SGEI:

- Maintenance of a *postal retail network* which is denser than the network required by the universal service or a commercially optimal network. The network shall consist of at least 1,300 postal service points and at least 650 post offices (while guaranteeing at least one post office in each of the 589 Belgian municipalities). Besides, postal services points with minimum service range must be accessible by road for a minimum of 95% of the population within 5 kilometres and for a minimum of 98% within 10 kilometres at the most⁵⁷. This network shall respect the quality standards, in particular in terms of waiting time for customers, accessibility and non-discrimination⁵⁸.

Secondly, the day to day SGEIs comprising services proposed to customers at a certain frequency:

- Delivery of *newspapers and periodicals* acknowledged by virtue of the criteria of the Royal Decree of 2014⁵⁹ in accordance with stringent performance requirements (among others, delivery before 7:30 during the week) and a specific pricing fixed in tripartite negotiations (Belgian State, bpost and publishers) and inferior to the cost⁶⁰;
- Postal *financial services*, among others a universal bank account⁶¹;
- Home payment of *pensions*⁶².

Thirdly, the *ad hoc SGEIs* that include services proposed without any recurrence. Certain ad hoc SGEIs entail a net cost and lead to a compensation payment:

- The *social role of the postman*, among others passing time with the persons who live alone and the least privileged and assisting them with electronic payments⁶³;
- Delivery of addressed or unaddressed *election printed items* at reduced prices⁶⁴;
- Delivery of items of *correspondence sent by associations* (non-profit associations, foundations) at reduced prices⁶⁵;
- Delivery of *postal items that fall within the freepost system* originating from certain public authorities⁶⁶;
- Printing, sale, reimbursement, replacement and exchange of *fishing permits*⁶⁷.

⁵⁷ Art. 144, §1A of the Act of 21 March 1991 and Art. 16 of the 5th management contract.

⁵⁸ Articles 17-25 of the 5th management contract.

⁵⁹ Articles 40 to 47 of the RD of 2014 on postal regulation.

⁶⁰ Art. 144, §1bis of the Act of 21 March 1991 and Art. 27-38 of the 5th management contract.

⁶¹ Art. 144, §1B of the Act of 21 March 1991 and Art. 39-43 of the 5th management contract.

⁶² Art. 144, §1C of the Act of 21 March 1991 and Art. 44-48 of the 5th management contract.

⁶³ Art. 144, §1D of the Act of 21 March 1991 and Art. 49(a) of the 5th management contract.

⁶⁴ Art. 144sexies, 1° of the Act of 21 March 1991 and Art. 49(e) of the 5th management contract. Election printed matter shall be acknowledged in accordance with the criteria of Art. 48 of the RD of 2014 on the regulation of postal service.

⁶⁵ Art. 144, §1F of the Act of 21 March 1991 and Art. 49(f) of the 5th management contract.

⁶⁶ Art. 144, §1G of the Act of 21 March 1991 and Art. 49(g) of the 5th management contract. Postal items that fall within the freepost system are defined in Articles 49-51 of the RD of 2014 on the regulation of postal service.

Other ad hoc SGEIs do not entail a net cost and, hence, do not lead to a financial compensation:

- “*Please Postman*” service in order to lend assistance to the elderly and the least privileged citizens⁶⁸;
- Dissemination of *information to the public* at the State's request⁶⁹;
- Cooperation with regard to the delivery of *voting paper packages* weighing more than 10 kg⁷⁰;
- Payment of *attendance fees during elections*⁷¹;
- Financial and administrative processing of *finances*⁷²;
- Sale of *stamps* and other postal values⁷³.

The provider of these other public service missions (bpost) has been designated by law until December 2015⁷⁴. These services are dealt with in the 5th management contract due to end at the end of 2015. As regards press distribution, a competitive, transparent and non-discriminatory tendering procedure has been launched with a view to designate the provider of this service, in principle from January 2016 for a five-year period⁷⁵.

The net cost of these SGEIs has been provisionally assessed by the Belgian State in accordance with the net avoided cost methodology adjusted by a bonus-malus system based on efficiency and quality⁷⁶. This methodology has been validated by the European Commission in the context of its control of the State aids⁷⁷. Only SGEIs entailing an avoidable net cost lead to a maximal financial compensation decreasing over time as a result of the efficiency gains and set at:

- for 2013: € 303,720,300,
- for 2014: € 304,389,328 (the elections of May 2014 explain why the compensation is expected to be higher),
- for 2015: € 294,285,260⁷⁸.

⁶⁷ Art. 49(j) of the 5th management contract.

⁶⁸ Art. 144, §1D of the Act of 21 March 1991 and Art. 49(b) of the 5th management contract.

⁶⁹ Art. 144, §1E of the Act of 21 March 1991 and Art. 49(c) of the 5th management contract.

⁷⁰ Art. 49(d) of the 5th management contract.

⁷¹ Art. 49(h) of the 5th management contract.

⁷² Art. 49(i) of the 5th management contract.

⁷³ Art. 49(k) of the 5th management contract.

⁷⁴ Art. 141quinquies of the Act of 21 March 1991.

⁷⁵ Art 141, §1bis of the Act of 21 March 1991. See the call for tenders of BIPT of 9 April 2014 on the service concession for the distribution of recognised newspapers (lot 1) and the distribution of recognised periodicals (lot 2).

⁷⁶ Art. 141ter of the Act of 21 March 1991, Art. 22 of the 5th management contract for the network SGEI, Art. 28-32 and 35-37 for the press SGEIs, Art. 40-43 for the financial SGEIs, Art. 45-47 for the retirement SGEI, Art. 50-51 for the ad hoc SGEIs.

⁷⁷ Points 176-178 of the Decision of the European Commission of 2 May 2013.

⁷⁸ Art. 12 of the 5th management contract.

This provisional calculation of the net cost is verified *ex post* by a College of Commissioners made up of two members designated by the general assembly of bpost among the members of the Institute of auditors and two other members designated by the Court of Auditors. If the prediction turns out to be too generous, the financial compensation will be reduced accordingly⁷⁹.

The net cost of these public service missions is *compensated* for by the State budget⁸⁰.

3.2 Regulatory barriers and the lack of level-playing field

After having described the Belgian regulatory system, this section aims at identifying, based on the legal and economic assessments of the European institutions, interviews with stakeholders and practices of other Member States that will also be developed in the rest of this report, the main obstacles to market entry as well as the regulatory instruments that could create a competition gap between the different operators. Each barrier has a restrictive effect on the entry but the combined effect of all these barriers further reinforces the barriers to entry.

3.2.1 Licence conditions: a major barrier to entry economically and legally questioned

Justification of the licence conditions in the Act of 13 December 2010

One of the main barriers to entry consists of the very restrictive licence conditions in terms of coverage, frequency and distribution tariffs. When adopted in 2010, it was recognized by the Minister responsible for the postal sector as a barrier to entry but was justified as a way to avoid 'cherry picking' by the new entrants of the most profitable segments of the market, and, in conjunction therewith, an increase of the universal service cost that could no longer be compensated for by the most profitable segments of the market⁸¹.

According to the PwC⁸² study carried out for the European Commission and the PREMO model established by bpost and audited by KPMG⁸³, Belgium presented characteristics that made it particularly vulnerable to this skimming effect: a dense population, an income concentration among some major sending clients and important labour costs differentials between employees and freelance workers.

⁷⁹ Art. 13 of the 5th management contract.

⁸⁰ Art. 141ter of the Act of 21 March 1991.

⁸¹ See the preparatory work for the Act of 13 December 2010, Explanatory memorandum and comments of the Articles, *Doc. Ch. 53-202/1*, pp. 7-11, p. 7.

⁸² Price Waterhouse Coopers, *The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009*, Report for the European Commission, May 2006.

⁸³ KPMG, *Analysis of the calculation method of the costs of the universal service*, Report made for BIPT in February 2009.

According to the PREMO model, if limits were not established by licence conditions and if the possibility to resort to freelance workers was largely offered, the universal service net cost would amount to €300 million⁸⁴. According to the Minister, the licence conditions and the obligation to resort to employees allowed a balance between the guarantee of a universal service at an affordable cost in the long term on the one hand and the possibility for competitors to develop on the other hand.

Economic questioning in the context of the European semester

However, the relevance of this barrier to entry was economically questioned in the context of the European semester. In its recommendations addressed to Belgium in July 2013, the European Council had recommended the removal of the remaining regulatory barriers in the postal sector, in particular the *licensing conditions*⁸⁵. In this regard, the Commission had pointed out that mandatory geographical and daily coverage and a uniform tariff for licensed services raised major concerns⁸⁶.

As an answer to these recommendations, Belgium has justified in its National reform programme of April 2014 the licence conditions with the arguments presented when the Act was adopted in 2010. Thus, Belgium points out that⁸⁷:

Article 29 of the Act of 13 December 2010 (amending Article 148sexies of the Act of 21 March 1991) imposes an obligation on service providers who plan to offer postal services falling under the universal service to apply to the BIPT for the purpose of obtaining an individual permit. To qualify, they must meet certain requirements. The legal requirements for obtaining a permit are justified since they prevent newcomers from skimming the market and consequently causing the prices for universal postal services (UPS) to surge. These rules are based on a thorough analysis of the European postal market carried out by the European Commission in 2006. The Committee argued that the Belgian market would be exposed to the risk of "cherry picking", an assumption that was also confirmed with the application of the Postal Regulatory Model for the evaluation of the consequences of the different legislative options for guaranteeing the universal services.

As far as the application of a uniform rate for the entire territory as envisaged by the permit is concerned, the granting of the permit depends on the commitment of the applicant to apply a uniform rate to the part of the national territory that is covered by the permit (and not to the entire territory). This requirement for the application of a uniform rate implies that the holders (or candidate-holders) of a permit are obligated to charge all customers a uniform rate throughout the entire territory to which the

⁸⁴ See the preparatory work for the Act of 13 December 2010, Explanatory memorandum and comments of the Articles, *Doc. Ch. 53-202/1*, pp. 7-11, pp. 28-33.

⁸⁵ Recommendation n°4 *in fine* and recital 13 of the Council recommendation of 9 July 2013 on the National Reform Programme 2013 of Belgium and delivering a Council opinion on the Stability Programme of Belgium, 2012-2016, OJ C 217 of 30.7.2013, p. 5.

⁸⁶ European Commission staff working document of 29 May 2013, Assessment of the 2013 national reform programme and stability programme for BELGIUM, SWD(2013) 351, p. 33.

⁸⁷ National reform programme 2014 presented by Belgium on 25 April 2014, pp. 15-16.

obligation applies, irrespective of the collection and distribution locations in the territory. The obligation for permit holders of charging a uniform rate should not be confused with the obligation imposed on the designated supplier of the universal services.

Examining this Reform Programme, the European Commission was not convinced by the justification given by Belgium and considers there was: *'No progress on removing remaining regulatory barriers in the postal sector. Persisting regulatory barriers (i.e. excessive licensing requirements, notably mandatory geographical and daily coverage and a uniform tariff for licensed services) reduce consumer choice and hinder the development of licensed postal markets.'*⁸⁸ However, the Commission no longer suggested the adoption of a recommendation on this matter to the Council at the end of the 2014 semester.

Infringement procedure of European law

The Commission also legally challenged the legality of this barrier to entry in view of the European law. On 26 November 2014, the Commission opened an infringement proceeding against Belgium on the basis of Article 258 TFEU and sent it a letter of formal notice to which Belgium is asked to respond within two months⁸⁹. According to the Commission, *the licence conditions laid down in Article 148sexies of the Act of 21 March 1991 violate the Postal Directive (among others its Article 9, §2) because these conditions are neither necessary nor justified.*

The Commission considers that the arguments of Belgium justifying the licence conditions as a way to avoid the risk of 'cherry picking' and the related increase of the universal service cost had not been proven by facts or actual evidence. Besides, this argumentation now seems contradicted by the experience of other Member States that present similar geographic and demographic characteristics (such as the Netherlands, Slovenia or Estonia) and where the universal service costs did not considerably increase with less restrictive licence conditions. Moreover, the fact that only one operator has applied for a licence shows the deterrent effect of the licence conditions. The Commission also points out that the uniform tariff condition could not be interpreted as being covered by Article 12 of the Postal Directive, as supported by Belgium⁹⁰.

The argumentation of the Commission is closely akin to the argumentation adopted by the legislation department of the Council of State in its Opinion of February 2010 on what was going to become the Act of 13 December 2010⁹¹. The Council of State had pointed out that the necessity and proportionality of the conditions in terms of coverage

⁸⁸ European Commission staff working document of 2 June 2014, Assessment of the 2014 national reform programme and stability programme for BELGIUM, SWD(2014) 402, p. 37.

⁸⁹ Decision of the European Commission of 26 November 2014, *Infraction n° 2014/2254*, C(2014) 8669.

⁹⁰ In this regard, see the preparatory work for the Act of 13 December 2010, Comments of the Articles, *Doc. Ch. 53-202/1*, p. 31.

⁹¹ Opinion of the Council of State n° 47 625/4 of 22 February 2010 mentioned in the preparatory work for the Act, *Doc. Ch. 53, 202/1*, pp. 68-110.

and delivery were not sufficiently justified and that the statement that neither the sector nor the public authorities could compensate for the additional costs of the universal service that would result from the arrival of new entrants on whom no conditions in terms of delivery, coverage or tariff uniformity would be imposed, should be supported by concrete, tangible and precise elements⁹². As also stated by the Commission, the Council of State pointed out that the tariff uniformity obligation could not be justified by Article 12 of the Postal Directive⁹³.

3.2.2 Other barriers to entry

Conditions of market operation: contract of employment rules

Another major barrier to entry consists of the requirement to resort to employees and the correlative interdiction to resort to freelance workers in order to carry out the collection, sorting and delivery of items of correspondence (it should be recalled that books, catalogues, newspapers and periodicals are not included) except for the postal items that do not fall within the scope of the universal service, the service limited to transport and routing activities. This requirement increases the operational costs of several postal services and, hence, decreases the entry incentives.

It had been justified as a way to fight against the resort to false freelance workers, in view of the possibly important differential (up to 40%) between the labour costs of employees and freelance workers, to protect the postal sector workers - a jeopardized category without negotiation power against postal operators - and to guarantee the universal service quality⁹⁴.

However, the proportionality of this rule, among others the irrebuttability of presumption, had been questioned by the Council of State in its opinion on the Act of 2010⁹⁵.

Access rules to the postal network and infrastructure

In order to allow the market entry and ensure a level playing field between all postal operators, it is important that the access to postal infrastructure and distribution network should be guaranteed in a clear and efficient manner by the regulation and regulator. The Belgian law provides for an access to the elements of the postal infrastructure that are necessary to develop postal activities and to the services that fall within the scope of the universal service as well as a transparency and non-discrimination obligation regarding tariffs among others.

⁹² *Ibidem*, p. 89.

⁹³ *Ibidem*, p. 90.

⁹⁴ Comments on the Articles, mentioned in the preparatory work for the Act, *Doc. Ch. 53 202/1*, pp. 36-37.

⁹⁵ Opinion of the Council of State n° 47 625/4 of 22 February 2010 mentioned in the preparatory work for the Act, *Doc. Ch. 53, 202/1*, p. 104.

However, the exact scope of these provisions and the access categories they cover has not been clarified by the jurisprudence, which creates a regulatory uncertainty that can be harmful to market entry. Besides, in terms of access to infrastructure and services that fall within the scope of the universal service, BIPT can only intervene after the failure of the trade negotiations that can only be noted six months after the beginning of these negotiations, which can reduce the efficiency of its action.

Organisation of the universal service and other general economic interest services

The Belgian law provides for universal service obligations and additional SGEI obligations, the scope and contents of which can also constitute barriers to entry.

The scope of the universal service is larger than in other Member States, which can, *ceteris paribus*, increase the net cost of this service. As the fear of a high cost led Belgium to impose major restrictions to entry, the large scope of the universal service can be seen as an indirect barrier to entry.

Besides, there are many SGEI obligations, and, to this day, they all have been granted to bpost without call for tenders. Most of these SGEIs lead to a financial compensation calculated ex ante by the State and verified ex post by a College of Commissioners. As the scope of the SGEI obligations is larger than in most of the Member States, the financial compensation is also considerably higher than in most Member States. Therefore, it is particularly important that this compensation should be limited to the net cost of the SGEIs and that the calculation of this net cost should be carried out by a skilled independent authority.

The lack of legal clarity and regulatory uncertainty

The regulatory framework is particularly complex because it comes on top of the Act of 21 March 1991 and its management contracts system. This legal architecture created at the time of the monopoly no longer suits the liberalisation of the markets, and the regulatory complexity resulting therefrom constitutes a barrier to entry. Besides, as it has already been mentioned about the access regulation, the interpretation of certain legal provisions has not been clarified yet, which increases the regulatory uncertainty and the barriers to entry.

Terminal dues

Certain agreements relating to terminal dues paid in Belgium, among others concluded in the context of the Universal Postal Union, can constitute a barrier to entry if these terminal dues are inferior to their costs.

3.2.3 A lack of level-playing field between postal operators

In the postal law

Because of its size effect, allowing it substantial economies of scale and of scope, bpost enjoys a more favourable competitive position on certain postal services or services associated therewith, such as franking machines⁹⁶. This size effect is partly due to the fact that, in the past, bpost was in a monopoly position, and that it is now the universal service provider responsible for many (other) SGEIs.

This size effect must not be neglected in the regulation and its application in order to ensure a true equality of opportunities among all postal operators as well as an efficient competition benefiting consumers, which is the major goal of the full liberalisation of the sector.

Outside the postal law

Finally, certain legal provisions that do not fall within the postal law date from the monopoly period and have not been adapted yet to the new context of the full liberalisation, which gives bpost (or at least the universal service provider) an advantage over its competitors.

It concerns in particular the fiscal and customs legislations. These include:

- the privileges of bpost in tax matters⁹⁷;
- the legislations on property tax and local tax⁹⁸;
- the customs procedures and right that are in certain cases more favourable to items handled by former monopolists compared to those of other postal operators;
- the VAT Code⁹⁹, in particular its Article 44, §3, 14° that exempts from VAT *“the supply of services and the supply of goods incidental thereto by the postal services providers who undertake to provide all or part of the universal postal service, when this supply of services concerns universal postal services as defined in Article 142 of the Act of 21 March 1991 on the reform of certain economic public companies”*. This provision gives the universal service provider an advantage over other postal operators.

⁹⁶ Franking machines can be approved by all postal operators (Art. 16 of the Act of 6 July 1971 creating bpost and certain postal services) and the machines used for the items that fall within the scope of the universal service shall be approved by the universal service provider (Art. 22-24 of the RD of 2014 on the regulation of the postal service).

⁹⁷ Article 7, al. 1 of the Act of 1971 creating bpost and certain postal services stipulates that bpost is assimilated to the State with regard to the application of laws on duties, fees, charges and taxes for the benefit of the State, the provinces and the local authorities.

⁹⁸ bpost enjoys certain property tax and local tax exemptions considered by the Commission as existing State aids: Point 393 of the European Commission Decision of 25 January 2012, SA 14 588, *Aid to bpost*, OJ L 170 of 29/06/2012, p. 1.

⁹⁹ See Article 44, §3, 12° that exempts from VAT *“the supply at face value of postage stamps valid for use for postal services within the territory of the country, fiscal stamps, and other similar stamps.”*

It is also the case of other legislations. In this way, postal transport carried out in the context of a universal service system does not fall within the scope of the Act of 15 July 2013 on the road freight transport and the obligations it entails¹⁰⁰.

BIPT has the power to identify these specific rights or privileges and to make recommendations to the Minister responsible for the postal sector¹⁰¹, in order among others to ensure a better competitive balance between all postal operators.

100 See Article 3, f of the Act of 15 July 2013 on the road freight transport.

101 Art. 136 of the Act of 21 March 1991.

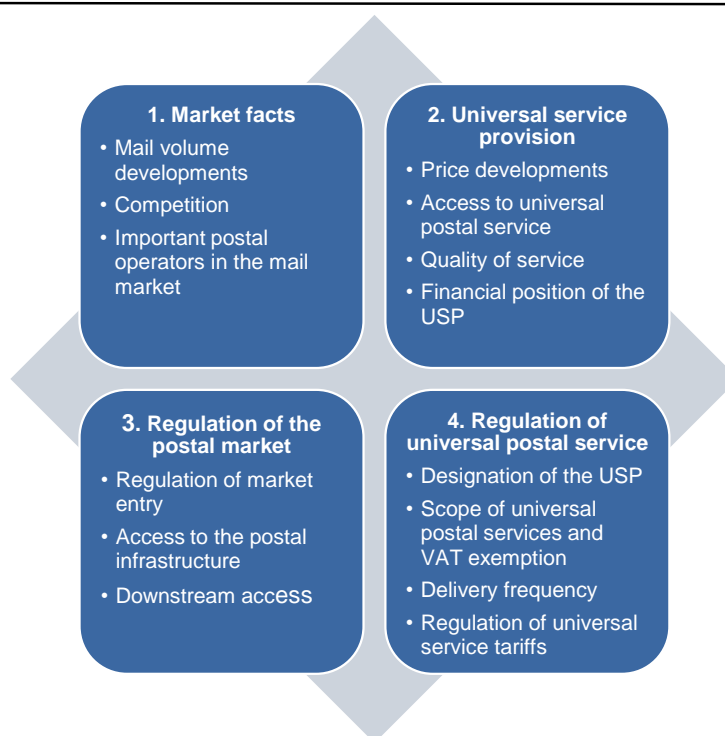
4 International benchmark

4.1 Overview of countries and topics

This section of the study presents an international benchmark that compares the current economic and regulatory situation on postal markets as well as developments since 2011, the year of full market opening in Belgium. The benchmark aims at evaluating the situation on the Belgian postal market, and identifying challenges for Belgian postal legislation.

The benchmark addresses four aspects shown in Figure 9.

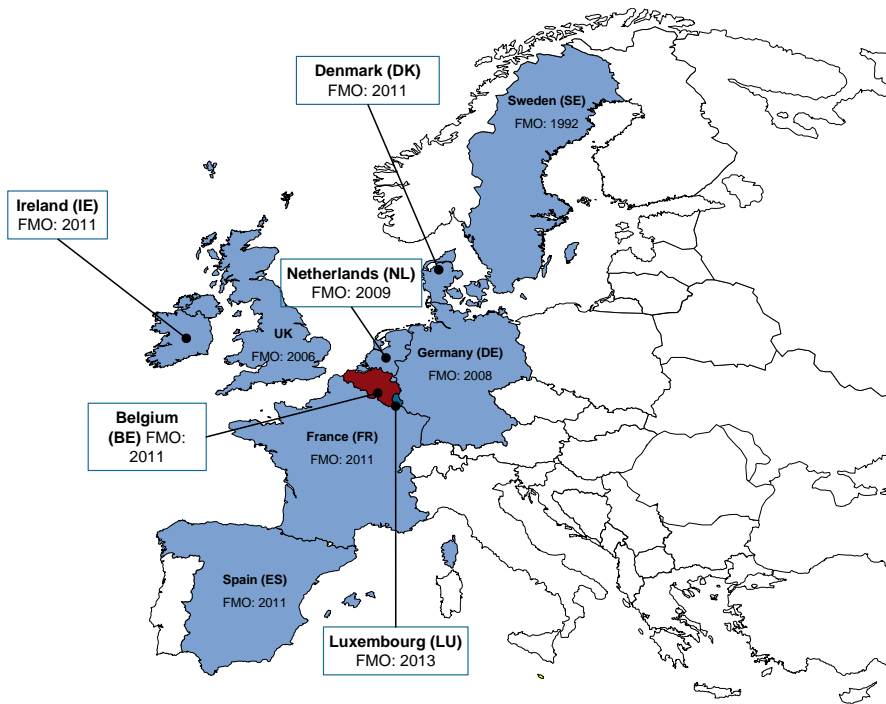
Figure 9 Key aspects of international benchmark



The international benchmark in this study compares market developments and postal regulation in ten countries (see Figure 10):

- | | |
|-----------|------------------|
| - Belgium | - Luxembourg |
| - Denmark | - Netherlands |
| - France | - Spain |
| - Germany | - Sweden |
| - Ireland | - United Kingdom |

Figure 10 Countries included in the benchmark



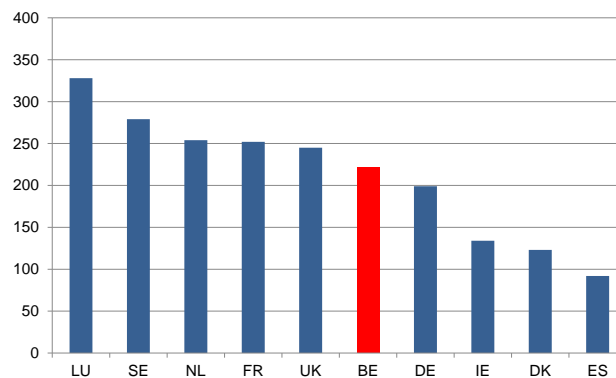
The postal markets in this benchmark have been opened to competition at different points in time. Half of them have fully liberalised postal markets in 2011 as foreseen by Postal Directive 2008/06/EC, four have opened earlier than that date, and one country (Luxembourg) has accomplished market opening in 2013.

4.2 Evolution of letter post markets since full market opening

Letter post volumes are under pressure

The postal markets in this benchmark are characterised by different levels of letter post items per capita (see Figure 11). In most countries, including Belgium, more than 200 letter post items are delivered per inhabitant, including Belgium. Spain, the country with the lowest per-capita-volumes, only recently dropped below 100 letter post items. Luxembourg is the only country with more than 300 items per capita, mainly due to its large amount of cross-border mail.

Figure 11 Letter post items per capita (2012)



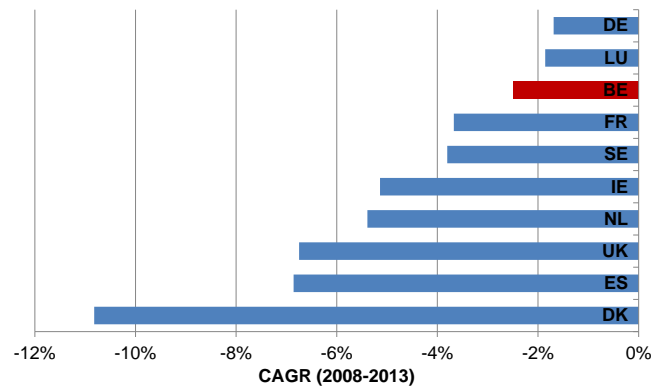
Source: based on market surveys of postal regulators

Figure 12 shows that letter post volumes are declining in all countries in our benchmark. Belgium is one of the three markets that has been least affected with modest losses of on average 2.5% per year. It appears that the general change in communication behaviour (“electronic substitution”) affected the postal demand less than in other countries (e.g. in the Netherlands and in Denmark). Other factors that may explain why volumes did not decline much in Belgium include improved service by bpost, competitive pricing to large senders, complex federal government structures that make it difficult to introduce e-government quickly, or conservative communication patterns of Belgian citizens in general.

The country with the strongest volume decline has been Denmark where the government had implemented an e-government strategy more than ten years earlier and which in recent years has resulted in heavy losses of letter volumes. Denmark is the first European country that will make electronic communication between the State and its citizens mandatory in 2015. Since 1 November 2014, citizens have to have a digital post box.¹⁰²

¹⁰² See Danish Government (2011), The digital path to future welfare, eGovernment Strategy 2011-2015, August 2011.

Figure 12 Development in market volumes



Source: based on market surveys of postal regulators





There are other factors except electronic substitution which impact volume development, such as economic and population growth as well as price development, but also rather soft factors such as cultural habits of a society, age structure and level of education. However, the impact of these factors on volumes differ in each country, depending on their strengths and the structure of letter post.

Level of end-to-end competition very low in most countries

Incumbents still dominate the national letter post markets in all countries. Even in those countries where competitors were more successful than in other countries, the level of end-to-end competition remains low. Table 3 lists the four countries where end-to-end competition with a market share of more than 1 or 2 % of the letter post market has evolved. All these countries had opened considerable parts of their markets before 2011.¹⁰³ It is noteworthy that even despite the long period in which competition could evolve freely; competitors have not acquired substantial parts of the market. In the other six countries of this benchmark (Belgium, Denmark, France, Ireland, Luxembourg and UK), the national postal operators have market shares of 98% or even more.

¹⁰³ In Spain, intracity mail services had been open to competition before 2011.

Table 3 Overview on end-to-end competition

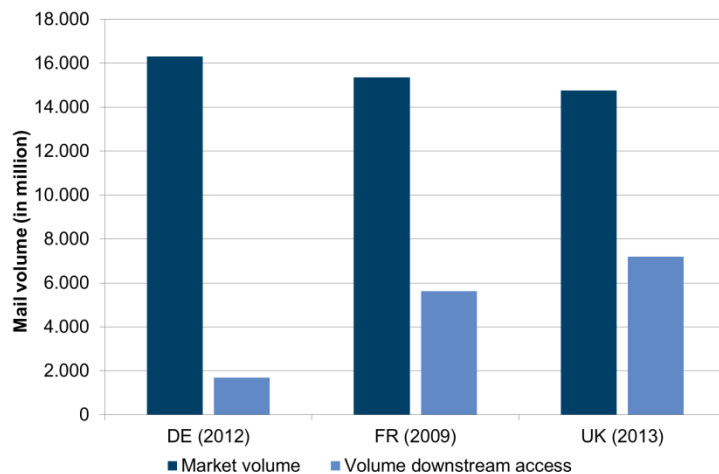
Country	Year of full market opening	Market share of competitors (revenues)	Major competitor
Germany 	2008	11.5%	Postcon (~3%)
Netherlands 	2009	~20%	Sandd (~18%)
Spain 	2011	~10%	Unipost (~6%)
Sweden 	1992	8.4%	Bring Citymail (6.3%)

Note: market shares refer to 2013 except in Germany (2012)

Source: based on market surveys of postal regulators

There are three countries in this benchmark in which access competition has developed considerably: France, Germany and UK. Access competitors are mainly consolidators who collect letters from different customers, sort them according to the pre-sorting requirements of the national postal operator, and transport them to a point of access, usually a sorting centre. The operators then pay a lower price for delivery of the pre-sorted items by the incumbent. In France and UK, access competition has developed as an alternative to end-to-end competition, while in Germany it is used by end-to-end competitors for delivery of letters outside the scope of their delivery network.

Figure 13 Downstream access volumes in France, Germany, UK (annual volumes)



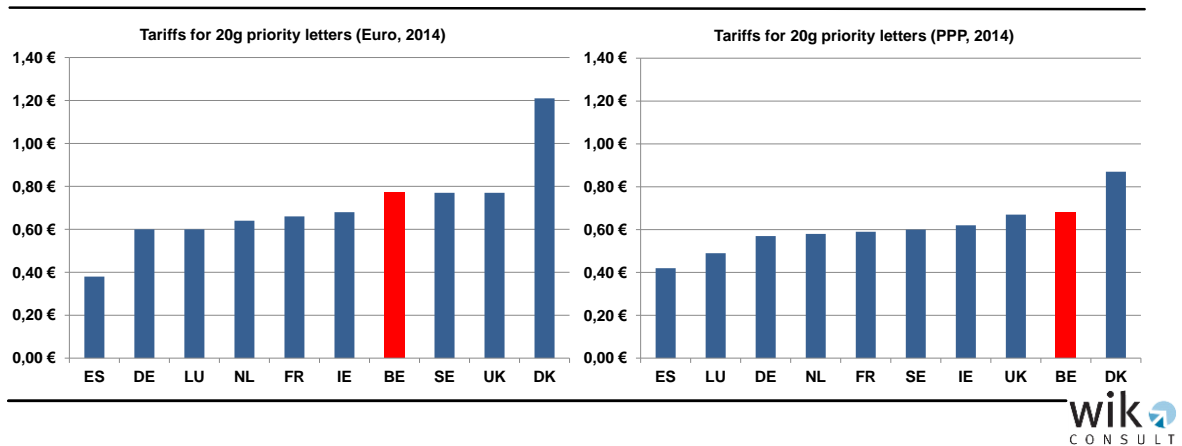
Source: Market surveys of national regulators

As displayed in Figure 13, access volumes vary substantially. Whereas in UK, access amounted to nearly half of letter post volumes (including both access from consolidators and “direct customer access”), while access volumes in Germany accounted for only 10% of the market (but without access volumes from “direct customers”).

Letter prices in Belgium among highest in benchmark

The price for a standardised letter of 20g (priority) in Belgium is 0.77 €¹⁰⁴ for a single stamp (2014).¹⁰⁵ This is the fourth-highest price in this benchmark in Euro, and the second-highest price if purchasing power standard is taken into account (see Figure 14).

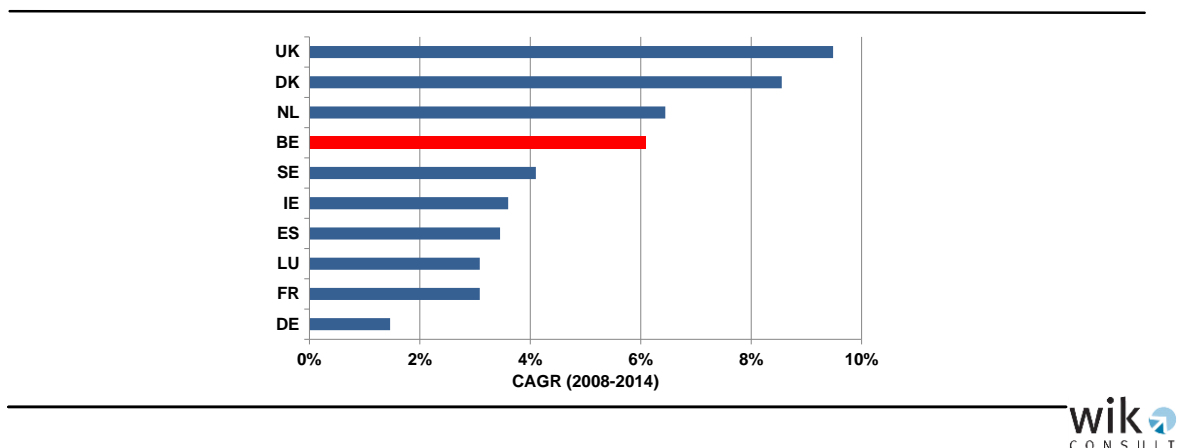
Figure 14 Tariffs for 20g letter in 2014 in € and purchasing power standard



Source: based on price lists of national postal operators, Eurostat data

A non-priority service for sending letters at a lower rate is not available for social users in Belgium, but it is available for example in Denmark, France, Sweden and UK.

Figure 15 Development of postal tariffs (2010-2014) (20g priority letter)



Source: based on price lists of national postal operators

¹⁰⁴ In Belgium the lowest weight category of letters ranges from 0 to 50g. In price benchmarks, we usually refer to 20g prices because more than two-thirds of letters fall in this weight category (see WIK-Consult (2006), Main Developments in the Postal Sector (2004-2006)).

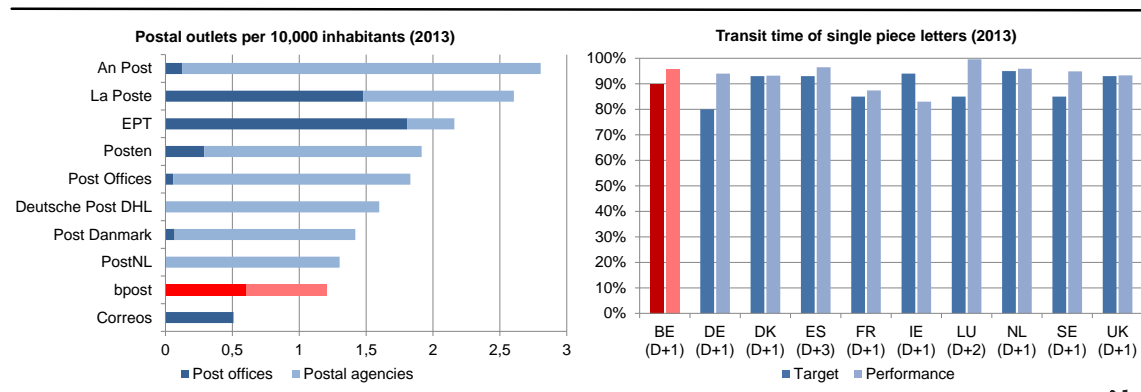
¹⁰⁵ bpost offers a discount if ten stamps are purchased, reducing the price for a single stamp to 0.70 € (in 2014).

Letter prices in Belgium have increased only modestly during the last few years compared to other countries. Before the market was fully opened, however, prices have increased substantially. On average, the price for a Belgian 50g standard letter has increased by 6.1% per year since 2008, the fourth-highest increase in this benchmark (see Figure 15).

Access to universal services acceptable but could be better

Belgium is the country with the second-lowest density of the postal network in terms of postal outlets per 10,000 inhabitants (see Figure 16). Similar to the Netherlands, population density is high in Belgium and both countries are relatively small. In terms of postal outlets per 100 km² bpost is in the midfield. It is noteworthy that bpost has one of the highest proportions of self-managed post offices. Six out of ten operators have reduced self-managed post offices close to zero or even abolished them completely.¹⁰⁶ Some of those operators have increased (or plan to do so) the number of their postal agencies substantially in order to improve accessibility for e-commerce customers, e.g. Deutsche Post and PostNL.

Figure 16 Access to universal services and quality



Source: based on market surveys of postal regulators and annual reports of operators

Figure 16 shows that both transit time performance and targets are high in Belgium, and bpost's achieved the second-highest performance of the national postal operators.

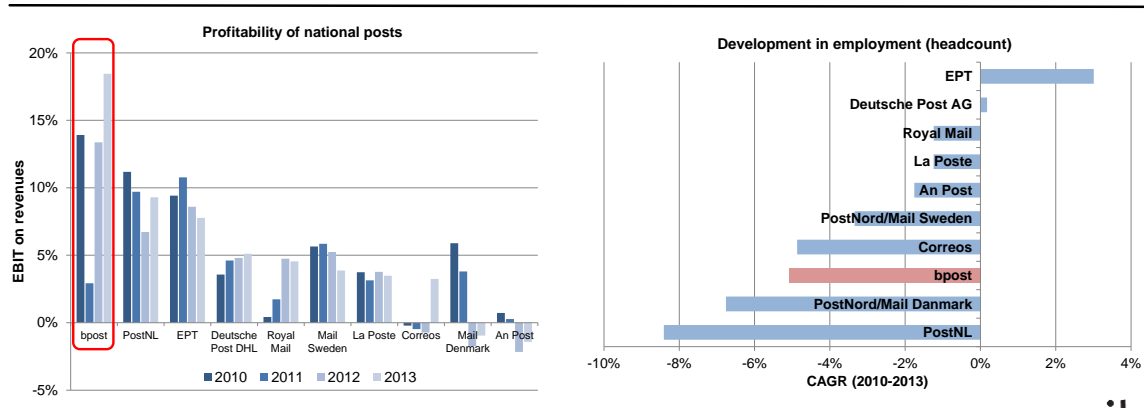
bpost is the most profitable postal operator in this benchmark

bpost is the most profitable postal operator in this benchmark (see Figure 17). Its EBIT-drop in 2011 was caused by a reimbursement of excessively granted State aid of 299 million €. ¹⁰⁷ The losses of An Post and Post Denmark in recent years are explained by

¹⁰⁶ Some of the postal operators that rely on agencies offer financial service, like bpost, while others do not.
¹⁰⁷ bpost (2012), Annual report 2011, p. 118.

restrictive price regulation in the case of An Post, and huge volume losses in the case of Post Denmark.

Figure 17 Profitability and employment of postal operators



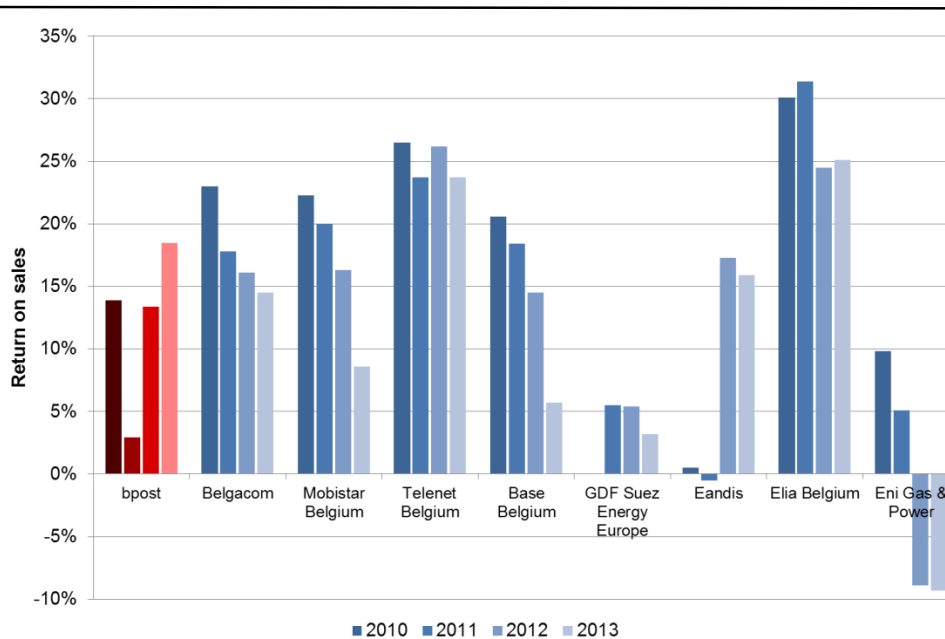
Source: based on annual reports of postal service providers

Notes: Figures of EPT, the Luxembourg universal service provider, include also profits and employees of telecommunication services. EBIT and employment are on group level except for Mail Sweden and Denmark, which are both part of Post Nord Group

The good financial situation of bpost has also been due to reductions in employment, as also shown in the figure above. However, employment reductions of bpost are in line with other postal operators in this benchmark. Employment figures of Deutsche Post are positive since 2010, but Deutsche Post had significantly reduced its labour force since 1998.¹⁰⁸ When comparing bpost's profitability with other regulated industries, it should be considered that the postal sector is less capital intensive than the telecom and electricity sectors.

¹⁰⁸ Employment figures of EPT include also staff employed in telecommunication services and are therefore not meaningful for postal employment.

Figure 18 Profitability of regulated industries in Belgium (Return on Sales)



Source: based on annual reports

Figure 18 illustrates profit margins (EBIT divided by total sales) achieved by some companies operating in regulated industries in Belgium. It shows that bpost delivers similar or even better profits as companies in other regulated industries, e.g. in electronic communications.

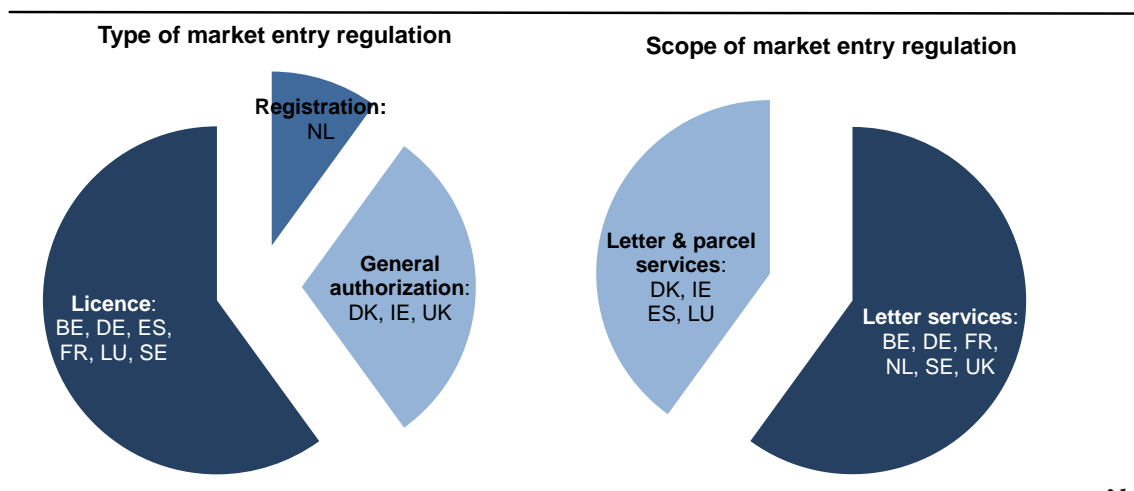
4.3 Regulation of postal markets

The authorisation regimes of most benchmark countries do not require market entrants to meet universal service conditions and/or sector-specific labour conditions

Article 9 of the Postal Directive¹⁰⁹ stipulates that for services that are ‘within the scope of the universal service’, Member States may introduce ‘authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to safeguard the universal service’. The Directive provides for two types of authorisations: a general authorisation and an individual licence. The essential difference is that an individual licence requires the operator to obtain specific approval from regulatory authorities before starting operations whereas a general authorisation does not.

¹⁰⁹ See Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 and by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008.

Figure 19 Type and scope of market entry regulation



Source: WIK-Consult (2013), Main Developments in the Postal Sector (2010-2013) and WIK research.

The majority of the benchmark countries apply a licensing regime to regulate market entry in the national letter post markets, including Belgium. Four countries rely on the more light-handed approach of the general authorization or the registration.

In six of the ten countries only postal operators that provide letter services are subject to sector-specific market entry regulation. In four countries, operators who delivery letters and parcels are subject to a general authorisation (in Denmark and Ireland) or a licence (Luxembourg and Spain). The weight limits for letter services can deviate from the usually applied 2kg limit: 1kg in Germany and 350g in the UK.

In Belgium, the licencing regime requires a provider of postal services, inter alia, (1) to ensure distribution twice a week after two years of operation; (2) to service all three regions of Belgium (Flanders, Wallonia and Brussels) after 5 years following the commencement of operations according to the following progression: first year: 10 %, 2nd year 20 %, 3rd year 40 %, 4th year: 60 % and after 5 years: 80 %; and (3) to apply a uniform rate per contract throughout the territory. These extensive quality and performance requirements are most unusual (compared to other EU Member States). While licences and general authorisations in other EU member States often require, for example, proof of correct handing of dangerous items, procedures for customer complaints and data protection, or criminal records for management (to prevent fraud), they do not require daily delivery or specific coverage of national territories.¹¹⁰

¹¹⁰ Compare WIK-Consult, Main developments in the postal sector (2010-2013), p. 38-41. Second to Belgium, the only Member State that has licence conditions that protect the universal service provider to a similar extent is Finland. As a consequence, there is practically no competition in the Finnish letters market. But even in Finland, operators are not required to meet coverage targets to keep their licence, but are 'only' required to contribute to a compensation fund if they do not operate nationwide.

Sector-specific requirements related to the labour conditions in the postal sector are defined in two countries (apart from Belgium): in Germany licensees have to comply with the basic working conditions common in the licensed sector – e.g. wage levels, weekly working hours and holidays. In the Netherlands, the law allows for sector-specific labour regulation if the postal operators do not implement a collective labour agreement for deliverers (limited to letter services).

Access to specific elements of the postal infrastructure is required by postal legislation in all benchmark countries

Article 11a of the Postal Directive, requires Member States to give all postal operators access to ‘elements of postal infrastructure’ — facilities and information resources used in providing postal services — ‘[w]hen necessary to protect the interest of users and/or to promote effective competition’. Access to postal codes, P.O. Boxes and address databases (including redirection information) is ensured by the postal legislation in all benchmark countries. However, depending whether there is competition in the letter market or not there is a discrepancy between existing legal requirements and the de facto implementation of access to the postal infrastructure. Generally, it appears that the competitor (if there is one) has to ask the universal service provider for access to a specific element of the postal infrastructure first and, if negotiations fail, the regulator can be asked for support by one of the parties (dispute resolution by the regulator).

Access to postal codes seems to be a less critical issue.¹¹¹ In all benchmark countries, excluding Ireland, postal codes are publicly accessible. Ireland is the only country within the EU without such a postal code.¹¹²

Access to P.O. boxes and to address databases is foreseen in the postal legislation of most countries. It is practically implemented only in those countries with noticeable end-to-end competition and where competitors have successfully demanded for access, for example in Germany and Sweden. In both countries the regulators were involved in decision finding with regard to access to P.O. Boxes. In Germany, BNetzA regulates the prices for access to P.O. Boxes.¹¹³ In both countries the access tariffs are two-tier tariffs consisting of a price per consignment and a price per item.¹¹⁴

There are also some examples how to implement access to address databases and redirection services.

¹¹¹ See ERGP (2012), ERGP Report on “access” to the postal network and elements of postal infrastructure.

¹¹² The Irish government announced plans to rollout a new seven-character national postcode system across the country by Spring 2015 (see <http://www.thejournal.ie/postcode-system-spring-2015-1119677-Oct2013/>).

¹¹³ See Bundesnetzagentur (2013), Beschluss In dem Verwaltungsverfahren BK5b-13/053 (28 November 2013).

¹¹⁴ See ERGP (2012), ERGP Report on “access” to the postal network and elements of postal infrastructure, p. 63 et seq.

In Germany, Deutsche Post is obliged to grant access to address changes. While Deutsche Post AG is responsible for the contractual management, a subsidiary (Deutsche Post Direkt GmbH) operates the address database and provides the technical solutions for address matching. The national regulatory authority, BNetzA, regulates the tariffs to access the address database. The tariffs are based on costs of efficient service provision. Competitors have to pay a fixed price per hit.¹¹⁵

In Sweden, Swedish Posten and Bring City Mail (formerly City Mail) set up a jointly owned private limited company called Svensk Adressandring AB more than 20 years ago. Individuals can notify their permanent and temporary addresses as well as address changes to this company (by phone, by mail or online). The address data base is accessible for all postal operators by agreement. The rates for postal operators (use of updated addresses) and individuals (notifications of address changes) are not regulated by PTS but appear to be cost-based because the company does not intend to generate any profits.¹¹⁶

In the UK, the Postcode Address File (PAF) contains addresses for each postal code, totalling more than 28 million addresses. It is owned and updated by Royal Mail who provides access to the PAF to other postal operators and businesses for a licence fee. The PAF data are used by businesses from a wide range of branches for services such as insurances, database management, identification, marketing, or mapping. The goal of Ofcom's consultation was to ensure that PAF data are made easily accessible to users on reasonable terms and with light-touch licensing terms as well as to incentivise a wider use of PAF data and ensure it is efficiently maintained. Following Ofcom's statement published in July 2013 Royal Mail developed a new simplified Postcode Address File licence which come into effect in April 2015.¹¹⁷

Downstream access is usually organized as non-discriminatory access to USP's special tariffs in the benchmark countries

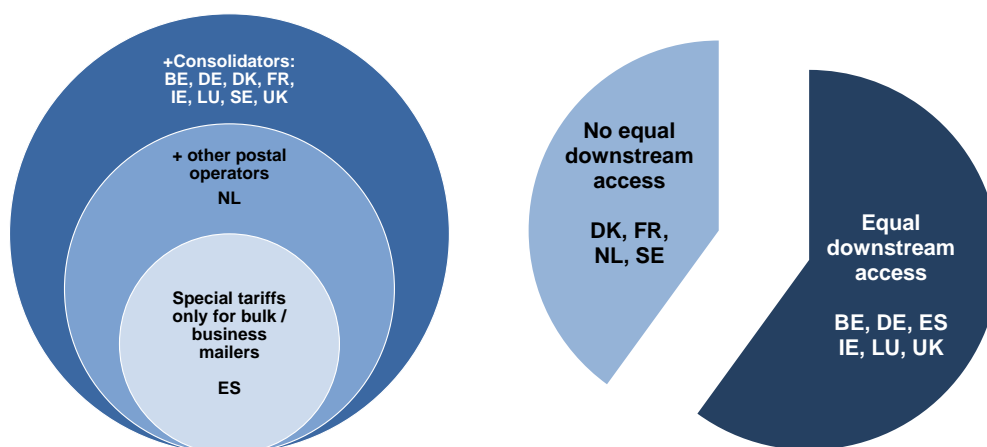
Article 12, indent 5, of the Postal Directive establishes regulatory criteria for access to 'special tariffs' provided within the scope of the universal service. Special tariffs are discounted rates which usually require at least some mail preparation (e.g. pre-sorting) and handing over at a sorting centre or a specific bulk mail access point. Where universal service providers grant access to downstream services within the universal service (whether regulated or voluntarily), conditions of access should be transparent and non-discriminatory for businesses, bulk mailers, and consolidators.

¹¹⁵ Competitors have to pay EUR 0.18 per hit. See Bundesnetzagentur (2013), Beschluss In dem Verwaltungsverfahren BK5b-13/052 (28 November 2013).

¹¹⁶ See ERGP (2012), ERGP Report on "access" to the postal network and elements of postal infrastructure, p. 60 et seq.

¹¹⁷ See Royal Mail (2014), Royal Mail publishes new simplified Postcode Address File licence, press notice of 9 April 2014 (<http://www.royalmailgroup.com/royal-mail-publishes-new-simplified-postcode-address-file-licence>).

Figure 20 Access to special tariffs and downstream access



Source: WIK-Consult (2013), Main Developments in the Postal Sector (2010-2013) and ERGP (2012), ERGP REPORT on “access” to the postal network and elements of postal infrastructure.

All national postal operators of the benchmark countries offer special tariffs for bulk mail to their customers. Transparent and non-discriminatory access to special tariffs is available to consolidators and other postal operators in most countries with some exceptions. In the Netherlands consolidators do not have access to special tariffs at all.¹¹⁸ In Belgium, bpost granted non-discriminatory access only after an explicit decision of BIPT (‘per-sender-case’).¹¹⁹ In Spain, the secondary legislation is still pending i.e. access to special tariffs is not yet implemented by legislation. In the UK, consolidators and large bulk mailers use downstream access products which are different from Royal Mail’s bulk mail products for business customers.

Moreover, access to special tariffs does not necessarily mean that consolidators and bulk mailers have access at the same conditions. In France, for example, consolidators do not have access to the same rebates as bulk mailers.¹²⁰ ‘Equal downstream access’ refers to authority to require the national postal operator to provide equal access to all parties if he has granted downstream access to one party. In most countries, including Belgium, regulators have the authority to require equal access to all parties for existing bulk mail services. In two countries, Germany and UK, the regulators have even stipulated downstream access (“mandatory downstream access”) that is used by both, consolidators and bulk mailers.

¹¹⁸ Reportedly, the Dutch regulator ACM considers introducing such access in the future (see ACM (2014), ACM wishes to impose an obligation on Dutch postal company PostNL to accept mail of competitors, press notice of 19 December 2014).

¹¹⁹ IBPT (2011), Decision du Conseil de l’IBPT du 20 juillet 2011 concernant les tarifs conventionnels de bpost pour l’Année 2010.

¹²⁰ ERGP (2012), ERGP REPORT on “access” to the postal network and elements of postal infrastructure, p. 18 et seq.

Recent case law of the European Court of Justice¹²¹ about the interpretation of the non-discrimination principle contained in Article 12 of the Postal Directive might create some legal uncertainty about how to apply this rule in practice. In countries that use exactly the Directive's language on "special tariffs" (such as Belgium), this legal uncertainty might call for adopting additional mandatory access regulations at national level (e.g. access price regulation). In other countries (such as Germany and the UK), non-discrimination measures in national legislation had always been defined more general (and do not rely on the Directive's notion of "special tariffs").

Nine of ten benchmark countries designate the universal service provider by law

In all benchmark countries, excluding Germany, the universal service provider is designated by postal legislation. In these countries the national postal operator is obliged to provide nationwide postal services at affordable tariffs at five or six days per week.

At present, Germany is the only Member State in the European Union where postal legislation relies on market forces to provide universal service and introduces public procurement as a mechanism to ensure universal service where the market fails to deliver.¹²² Since full opening of the postal market on 1 January 2008, there is no obligation on any postal service operator. At present, the incumbent Deutsche Post provides universal service voluntarily. Any dominant operators (at present: Deutsche Post) that intends to discontinue provision of universal service or to provide such services on less favourable terms than specified in the postal act, must notify BNetzA six months prior to cutting down the universal service. If the universal service is not being adequately provided or if there is reason to believe that such will be the case, BNetzA, as a first step, has to publish a statement in its Official Gazette. As a second step, dominant postal service operators can be obliged by BNetzA within one month to provide the specified universal service gap, provided that no postal operator volunteers to provide the gap without compensation. If a postal operator that is to be obliged to provide the universal service gap provides sufficient evidence that it would suffer financial losses as a result of this obligation, this operator could require compensation. In this case, BNetzA shall call for tenders to provide the universal service gap as a third step. However, BNetzA may abstain from public procurement if it does not appear appropriate. In a public procurement, the most efficient and reliable bidder that requests the least financial compensation should be selected.

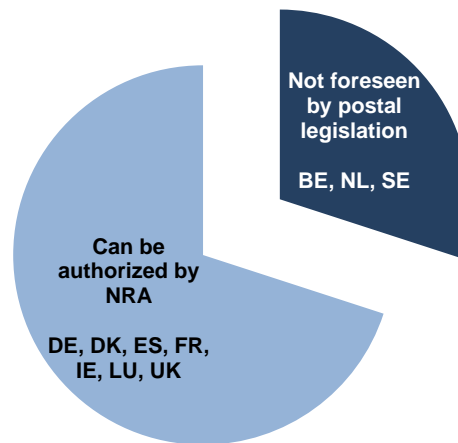
¹²¹ See ECJ, Preliminary ruling decision of 11 February 2015 in Case C-340/13 *bpost* /BIPT.

¹²² See WIK-Consult (2009), *The Role of Regulators in a More Competitive Postal Market*.

Compensation funds for USO financing can be authorized by the NRA in many benchmark countries but are not implemented in any of them

There are two potential sources to compensate for the net cost of the universal service obligation: Public funds and/or a compensation fund financed by contributions of postal operators or postal users (including the universal service provider).

Figure 21 Compensation fund for USO financing



Source: WIK-Consult (2013), Main Developments in the Postal Sector (2010-2013).

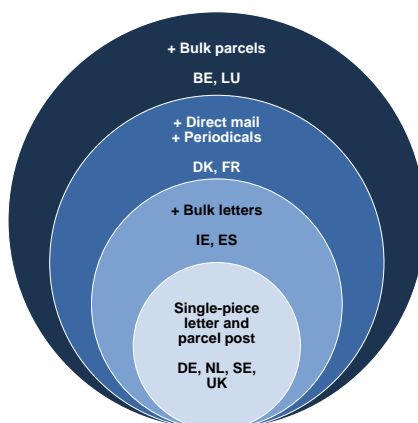
The postal legislation in seven of the ten benchmark countries stipulates that the NRA can authorize a compensation fund. In none of these countries a compensation fund was implemented in practice. Actually, the Spanish universal service provider Correos receives public funds (EUR 140 million in 2013) to provide the universal service, but a compensation fund has not been established so far.¹²³ In three countries (including Belgium) the postal legislation does not foresee a compensation fund. In these countries potential net cost of the universal service obligation (if requested and if considered as unfair burden) can be financed by public funds.

¹²³ See Correos, Annual Report 2013.

Extensive scope of USO in Belgium (in terms of services included)

Belgium and Luxembourg are the countries in this international benchmark with the most extensive scope of services included in the USO. All postal services (excluding the distribution of unaddressed advertising) are considered as universal postal service. In four of the ten benchmark countries the universal postal services are limited to the collection and delivery of single-piece letter and parcel post services.

Figure 22 Services included in the USO



Source: WIK-Consult (2013), Main Developments in the Postal Sector (2010-2013).

Note: In Belgium some periodicals are not part of the USO (in strict technical terms) but are considered as services of general economic interest.

In combination with a VAT exemption for universal services, an extensive scope of services in the USO can create substantial distortions in competition. Generally, those services included in the universal service obligation are also VAT exempted. In four countries there are deviating VAT exemptions: Germany (periodicals are not universal services but exempt from VAT), UK (all letter services provided by Royal Mail are VAT exempted), Ireland (direct mail and periodicals) and Sweden (no universal services are VAT exempted). In addition, an extensive scope of services included in the USO tends to create more extensive regulatory intervention more generally.

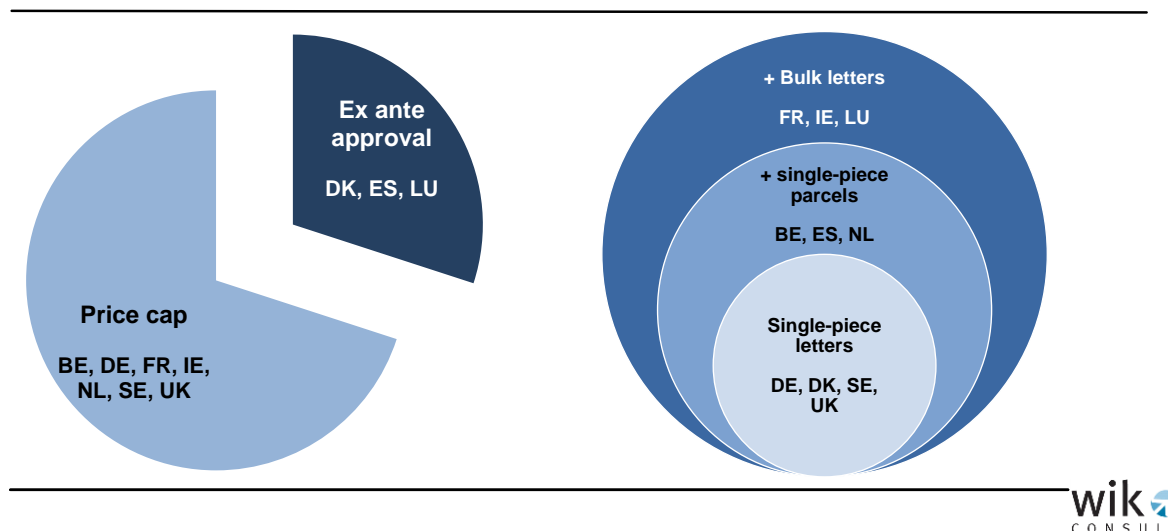
With regard to net costs of universal services, ceteris paribus, an extensive USO increases the higher need for compensation (if any) since more fixed costs are allocated to the USO.

Ex ante price regulation is limited to single-piece items in many benchmark countries

Compared to the scope of universal postal services the scope of services subject to ex ante price regulation is even more limited in most benchmark countries. In four countries the tariffs for single-piece letters are subject either to ex ante approval

(Denmark) or a price cap regime (Germany, Sweden and UK). In Denmark and UK the scope is even more limited: in both countries only tariffs of economy letters are subject to ex ante price regulation.

Figure 23 Type and scope of ex ante price regulation



Source: WIK-Consult (2013), Main Developments in the Postal Sector (2010-2013).

The French regulator ARCEP has implemented a price cap regime that comprises both single-piece and most bulk mail services provided by La Poste.¹²⁴ The Irish regulator ComReg decided to include some bulk mail products into the price cap regime.¹²⁵

Seven (including Belgium) of the ten benchmark countries regulate postal tariffs by price cap. In the Netherlands the final decision on the price cap is postponed to 2015.¹²⁶ In all other cases the price cap formula includes at least an indicator for the inflation rate (usually the consumer price index). In three countries the regulators decided to apply a non-zero X-factor (France, Germany and Ireland). In the French case ARCEP decides to introduce a positive X-factor (i.e. they allow for price cap increases above the inflation rate) because the regulator assumes a substantial mail volume decline.¹²⁷ In none of the benchmark countries except for Belgium the regulator takes a quality factor in the price cap formula into account.

¹²⁴ See ARCEP (2014), Décision n° 2014-0841 de l'Autorité de régulation des communications électroniques et des postes en date du 22 juillet 2014 sur les caractéristiques d'encadrement pluriannuel des tarifs des prestations du service universel postal.

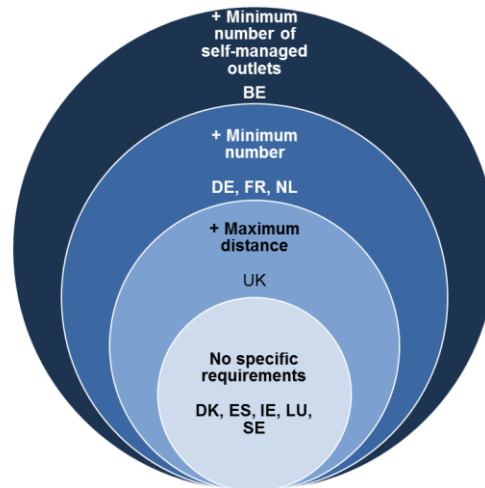
¹²⁵ See ComReg (2014), Response to Consultation and Decision on price cap control for universal postal services, ComReg 14/59 and D05/14, 18 June 2014.

¹²⁶ See ACM (2014), Dutch postal company PostNL is allowed to raise stamp rate to 69 cents, press notice of 7 October 2014 (<https://www.acm.nl/en/publications/publication/13396/Dutch-postal-company-PostNL-is-allowed-to-raise-stamp-rate-to-69-cents/>).

¹²⁷ ARCEP assumes that mail volume will decline by 6.3% per year and decided to set the X-factor at 3.5%. See ARCEP (2014), Décision n° 2014-0841 de l'Autorité de régulation des communications électroniques et des postes en date du 22 juillet 2014 sur les caractéristiques d'encadrement pluriannuel des tarifs des prestations du service universel postal.

Belgium is the only country in this benchmark that requires a minimum number of self-managed post offices

Figure 24 Regulatory requirements for access to universal service (postal outlets)

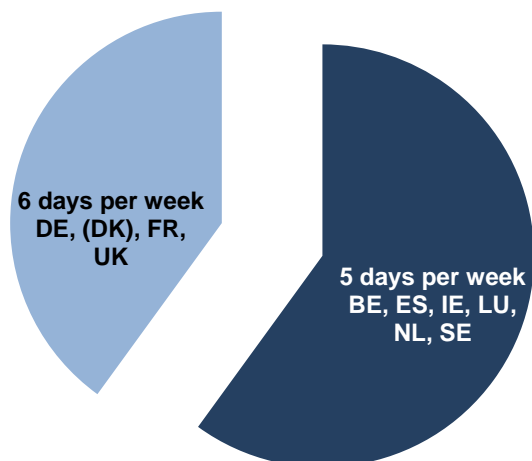


Source: WIK-Consult (2013), Main Developments in the Postal Sector (2010-2013) and WIK research.

Half of the benchmark countries have not defined specific requirements to the density and the organisation of postal outlets. The others rely on rules based on maximum distance for a specific proportion of the population or within populated areas and four countries (including Belgium) on a minimum number of postal outlets. In none of the countries except for Belgium the universal service provider (or the market in case of Germany) is obliged to provide a minimum number of self-managed postal outlets (former post offices).

France, Germany and UK require letter delivery on six days per week, five weekly deliveries in other countries

Figure 25 Delivery frequency



Source: WIK-Consult (2013), Main Developments in the Postal Sector (2010-2013) and WIK research.

The Postal Directive requires that postal items are delivered at least five working days per week. In the European Union the wide majority of countries have implemented this minimum requirement. Among the benchmark countries the Netherlands reduced the delivery frequency from six to five days by law in 2014 (delivery from Tuesday to Saturday). Since June 2014 Post Danmark is allowed to reduce the delivery frequency to individuals to five days per week (Tuesday to Saturday) and to introduce a more expensive “Monday letter”.¹²⁸ Only France, Germany and the UK require letter delivery on six days per week.

¹²⁸ “From 1 June 2014, Post Danmark may introduce a reduced delivery week subsequently to which delivery to private individuals and recreational dwellings will be provided Tuesday of priority letters (A) posted on a Saturday or Sunday. In the case of introduction of a reduced delivery week, Post Danmark shall offer a new domestic product falling within the scope of the universal service obligation – a “Monday Letter” – which will secure delivery of the letter on this weekday to private individuals in connection with the distribution of parcels although at a higher price than charged for priority letters (A) in general.” Unofficial translation of the individual licence granted to Post Danmark A/S, p. 2 (<https://www.postdanmark.dk/da/Documents/Om%20os/Engelsk/individual-licence.pdf>).

5 Conclusions

No effect of full market opening

The postal market in Belgium has hardly been affected by full market opening, if at all. This view has been taken by all postal operators interviewed for this study, both mail¹²⁹ and parcel service providers. For the parcel market, this is unsurprising since it had been open to competition before 2011. The parcel market has been competitive for a long time, and opening of the letter market to competition did not influence it. Interviews with parcel operator GLS and their association (Belgian Courier Association) confirmed this.

On the letter post market, full market opening did not have the effect expected before 2011: there was no immediate market entry (only in 2013), there were hardly any volumes lost by bpost to competitors. bpost is still dominating the market and expected to remain that dominant. In 2014, there was one single competitor with a very small market share, and no further entry can be expected as long as market entry regulations stay as they are. Volume declines in the market have not been caused by full market opening but can be explained by e-substitution. Indeed, some European postal operators have referred to e-substitution as their strongest competitor, more than competition from other operators. Also from the view of consumers, full market opening has no effect: alternatives for consumers are barely available (only TBC-Post), and only locally where TBC-Post is active.

In light of declining volumes, the market is becoming less attractive for investors such that we expect new entry to be less likely in the future.

Restrictions on competition appear unbalanced

Prior to full market opening, it was expected that competition would quickly gain market share and thus tackle bpost's revenue base and reduce bpost's ability to provide universal service. Price Waterhouse Coopers, in a study for the European Commission, expressed the concern that:

“[...] it appears that Belgium is likely to offer good opportunities to new entrants, who would likely capture significant shares of the most profitable markets in this dense, highly urbanized country [...].”¹³⁰

This expectation served as the main reason for constraining the free evolution of competition by a licensing system with very strong obligations on competitors. It was

¹²⁹ Even TBC-Post supported this view. Full market opening indeed enabled them to offer also delivery service for light-weight letters but apart from that has not resulted in a significant increase of TBC-Post's delivered volumes.

¹³⁰ Price Waterhouse Coopers, The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009, Rapport pour la Commission européenne, mai 2006.

meant to ensure continuity and financial sustainability of the universal service, by limiting potential attempts to ‘cherry pick’ the most profitable delivery routes in Belgium. Yet its impact was, for more than two years, to restrict competition completely. Today, the only competitor in the Belgian letter post market has less than 1% market share of a market that was supposed to be highly interesting for competitors.

In other European postal markets that have been opened to competition for a much longer period of time without such restrictive license conditions (e.g. Germany, Spain, Sweden, UK), competition has not limited the incumbent operator’s ability to provide universal services. With hindsight, the restrictions on competition in Belgium appear unbalanced.

Geographical coverage and employment conditions are barriers to entry

The Belgian licensing system for letter service operators is unique in Europe in the sense that it poses the most restrictive obligations on licence holders. License holders have to cover a defined, and increasing, share of the three regions for each year after entering the market. After five years of business activities, licence holders have to deliver in 80% of each of the three regions.¹³¹ Additionally, employment regulation in the postal law obliges licence holders to employ staff with a labour contract. The condition on coverage forces competitors to invest substantially into their delivery network. This has effectively served as a barrier to entry. The only license holder in Belgium, TBC-Post, stated in an interview that the employment regulation was a major problem for them. Another potential entrant said that the restrictive license conditions were the reason for not entering the market.

The employment condition creates special protection for workers of licence holders in postal markets. However, it is not clear to us why postal workers should need more protection or to be more vulnerable than workers in other sectors similar to the postal sector (e.g. logistics and transportation markets). Labour issues that affect many economic sectors should better be resolved with general labour legislation, not sector-specific regulation. In practice, the current conditions have effected that no additional employment was created so that the special protection has not provided benefits to any workers at new entrants.

Post office density in Belgium is low by international standards

Despite the high density of population in Belgium, bpost’s post office network has a low density compared to other universal service the providers in Europe, as shown in Section 4.2. Even in considerably less densely populated countries like Sweden and Denmark, universal service providers run denser networks. The post office network

¹³¹ Other conditions on competitors require them to deliver at least twice per week and apply for each client a uniform tariff (that is identical in the whole territory covered by the competitor).

provided by bpost appears to comply with the obligations in postal law and bpost's Management Contract, but does not go beyond the mandatory density. Incumbent postal operators in a number of other European countries have increased (or plan to increase) voluntarily the number of access points far beyond the level legally prescribed, e.g. in Germany, the Netherlands, and Denmark. The aim of the operators is to improve access, especially for e-commerce customers wanting to receive or return parcels conveniently.

Unnecessary strict regulation of postal outlet network

bpost has to comply with several criteria on the density of its postal outlet network, e.g. the obligation to run a postal outlet in each municipality and to provide a certain density of the network so that citizens can reach postal outlets within a defined distance – see also section 3.1.1. Compared to regulation of the post office network in other European countries, these regulations are restricting heavily bpost's decision on where exactly to place a postal outlet. In addition to density criteria, bpost is also restricted in its decision whether to operate a self-managed post office or an agency in a local business store. bpost stated in an interview conducted for this study that regulations on the density of the postal offices network leave little room for increasing efficiency and that bpost would adapt the network if regulations were changed. Other postal operators in Europe are less restricted in their commercial freedom to efficiently organise their service network. There are a number of operators who run their postal outlet network wholly or to a great majority as postal agencies – to the satisfaction of customers, and improving nationwide universal service at the same time. The Belgian regulation of the postal outlet network therefore seems unnecessarily strict on bpost, and seems to prevent the creation of additional outlets.

Letter and parcel markets develop at different paces

In Belgium, as in other European countries, letter and parcel markets develop differently. The parcel market is influenced by a growing e-commerce market and is expected to continue its positive path. bpost, parcel operators and an association (GLS, Belgian Courier Association) confirmed this view in interviews for this study. Volumes of letter post have declined in the last few years. However, letter volume declines in Belgium have been very modest compared to other countries in this benchmark. Factors that may explain why volumes did not decline much in Belgium include improved service by bpost, competitive pricing, complex federal government structures, and cultural factors. The most important reason for decline is substitution by digital channels. While some volume decline is expected to continue, the speed will depend on future e-government initiatives and their acceptance by users. The current "Agenda numérique" of the Belgian government will contribute to this development.

E-commerce offers business potential for both parcel and letter operators

Although e-commerce offers growth potentials mainly for parcel operators, also letter service providers can benefit. Relatively small goods which are of limited economic value are often sent by letter post. Senders/Merchants can save costs and offer their online customers a high and reliable service for sending their orders. It will be important for letter service operators to develop intelligent services that meet the needs of e-tailers, e.g. letters with some tracking or insurance features.

High stamp prices in Belgium

Prices for single stamps in Belgium are among the highest in the benchmark group even though volume losses have been modest compared to other countries. Similar stamp prices can be found only in countries where volume declines have been much stronger than in Belgium. Quality (e.g. transit time performance) in Belgium is good, but in line with those in other benchmark countries.

The main reason for price increases in the past is the existence of a quality bonus in the price cap which allows bpost to increase prices above the relevant price index (inflation based on 'health index'). This combination of price regulation and quality incentives is very unusual in international comparison. International experience shows that it may be sufficient to incentivise incumbent postal operators to provide good quality effectively by other means alone: e.g. quality targets and obligations to publish quality performance. In the first line, it should be in their commercial interest, and beneficial for their reputation, to provide good quality.

bpost well-prepared for competition

The letter market is characterised by volume declines on the one hand, and by regulatory constraints on the other hand. Despite this difficult market environment, bpost has managed to increase its efficiency during the last years and is performing remarkably well. bpost is the universal service provider with the highest profits in our benchmark. In an interview conducted for this study, bpost stated that, as a privatized operator, listed on the stock exchange, it is under constant pressure to manage costs effectively and try and improve its efficiency to the extent possible under the currently applicable regulatory framework in Belgium.¹³² We consider bpost to be very well prepared for the future and have no concern that bpost will be able to operate profitably even if volumes should decline stronger and if competition should increase in the letter market.

¹³² Statement made during an interview with bpost.

Non-discriminatory downstream access consistent with international practice

Downstream access to the delivery network of incumbent postal operators takes place at a node in the network, usually a sorting centre. Access seeking parties usually hand over their pre-sorted bulk letters at the outward or inward sorting centre. In Belgium, like in other relatively small countries, there is only access to one level of sorting centres (outward sorting centres).

Today, access to bpost's delivery network is possible on the basis of non-discriminatory access to special tariffs for business-senders, competitors, and consolidators. This became practice only after a decision of BIPT in 2012 which forced bpost to offer their existing discounts to all customer groups under the same conditions. This is in line with international practice, as long as access is granted to all parties in a non-discriminatory manner, including consolidators. At the time this report is drafted, it is not clear how the current practice will evolve in light of the ECJ's recent case law interpreting article 12 of the Postal Directive. This uncertainty could be removed by introducing a clearer legal basis for downstream access.

Scope of postal universal service is very broad in Belgium

Compared to other countries, the scope of universal service in Belgium is very broad. Except Luxembourg, all other benchmark countries have defined a smaller scope of universal postal services, with single piece letters and parcels used by consumers being the core of universal service. Business customers use bulk services in large quantities, and have sufficient market power to enforce their interests without universal service regulation. Leaving bulk services out of universal services enhances operators' flexibility to adapt these products to the needs of customers and technology changes, or to stop loss-making products. It also reduces the scope of the VAT exemption and thus limits competitive distortions.

Designation of universal service provider is common practice but might be unnecessary

In Belgium, as in most other countries in the benchmark, the historical operator is designated to provide universal postal services. While this is common practice in many countries, it would be more appropriate to analyse first whether a designation of a provider is necessary, and for which postal services. A designation should only be undertaken if one (or several) postal operators would not provide the service without obligation – that is, under market conditions.

Public funding of universal service net costs better than compensation fund

For the financing of (potential) net costs of the universal service, there are two general options: public funding or a compensation fund financed by all relevant service

providers. Compensation funds have not been applied in any of the benchmark countries to date. Such funding mechanisms would be very costly, because of the difficulties in determining the correct revenue basis for calculation of contributions of each player, and create a huge administrative burden for market players as well as the executing authority. Public funding by the State therefore appears to be the most appropriate solution, as foreseen by Belgian postal legislation today.¹³³

133 Until 2010, postal law in Belgium included the option to establish a compensation fund but this was replaced by direct State funding in the course of transposition of Directive 2008/6/EC in 2010.

6 Recommendations

This final chapter of the report sets out the authors' recommendations for future policy and regulation in the postal sector in Belgium. The recommendations were developed based on the specific findings on the postal market in Belgium and international practice, as summarized in this report.

The recommendations have been developed to promote the objectives of postal policy in Belgium as well as general principles of good governance and legislation. In doing so, they refer broadly to seven 'sound regulatory principles' that were compiled by WIK-Consult in a report to the European Commission in 2005, based on various EU legislative and policy documents: 1) specific purpose; 2) policy coherence; 3) necessity and proportionality; 4) transparency and least market distortion; 5) administrative fairness; 6) competency; and 7) legal certainty.¹³⁴

The two major objectives for postal policy in Belgium, as in Europe, are 1) to ensure a level playing field for fair competition in the postal market; and 2) to ensure an efficient, affordable universal service throughout Belgium. During a Parliamentary hearing for the adoption of the 2010 postal law, the Federal government clearly confirmed these objectives:

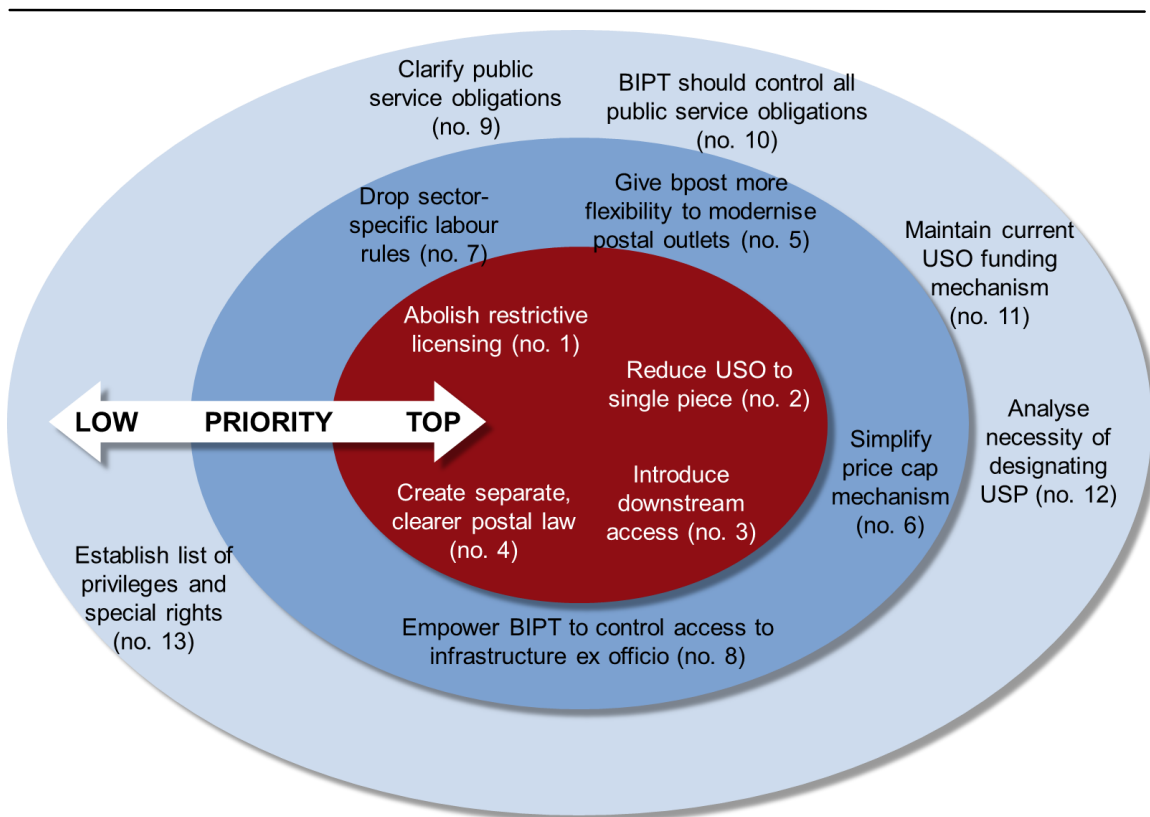
'Le défi de la libéralisation consiste donc à trouver un juste équilibre de sorte que d'une part, la concurrence puisse se développer sur le marché belge et que d'autre part, le service universel soit finançable. La pérennité du service universel doit également être garantie'.¹³⁵

Figure 26 below summaries our recommendations and priorities. They represent our expert assessment, based on the findings on this report, and our discussions with various stakeholders and the BIPT.

¹³⁴ See WIK-Consult: The evolution of the regulatory model for European postal services. Study for the European Commission, DG Internal Market, July 2005, and Baldwin R., Cave, M, and M. Lodge (2012), *Understanding Regulation: Theory, Strategy and Practice*, 2nd ed, Oxford University Press.

¹³⁵ See travaux préparatoires de la loi du 13 décembre 2010, Exposé des motifs et commentaires des articles, Doc. Ch. 53-202/1, p. 7.

Figure 26 Recommendations and priorities



Source: WIK-Consult.

Recommendation no. 1

Abolish licensing system with restrictive obligations for universal services and introduce general authorisations for all postal operators, including bpost. This recommendation relates to Art. 148sexies of the law of 1991.

Challenge:

The current licensing system creates major barriers to entry, and has effectively prevented market entry in the letters market. Those obligations violate EU law according to the European Commission and were not adequately justified according to the Belgian Council of State. In the context of the European semester¹³⁶, the Council of Ministers of the European Union has also recommended to remove remaining postal regulatory barriers, in particular regarding licensing conditions.¹³⁷ Moreover, in light of the difficulties of new entrants in letter markets in Belgium and abroad, and in light of

¹³⁶ The European semester is a half-year term, starting in November each year, in which the European Commission analyses economic reform policies of the Member States and recommends adaptations.
¹³⁷ See section 3.2.1. of this report.

the strong position of bpost, this restriction of competition does not seem necessary to protect universal service.

What the recommendation will improve:

The Belgian licensing system imposes restrictive conditions on letter service operators. A company reported during this study that it was planning to compete with bpost in the market for delivery of addressed letters, but it is not clear whether it will be able to meet these conditions, and enter the market successfully. The licensing system prohibits further entry in the market. It limits positive effects of competition because customers are not given a choice between operators.

By contrast, the financing of universal service does not seem endangered by more competition. bpost is well-prepared for more competition due to its excellent financial situation and efficiency improvements during the last years. International experience shows that even in the most competitive letter post markets, competitors of incumbent postal operators have not achieved substantial market shares, even without specific licence obligations.

In the UK, postal regulator Ofcom has recently investigated in great detail the impact of end-to-end competition on universal service. Like in Belgium, there is hardly any end-to-end competition in the British letter market, but there is relatively more “downstream access” (consolidation) than in Belgium. With London as the major metropolitan area and very rural geographies at the periphery, the UK appears more diverse geographically than Belgium, and therefore at least as vulnerable to “cherry picking”. Royal Mail had claimed Ofcom should take regulatory action in relation to end-to-end competition (i.e. impose licence conditions on entrants) because otherwise Royal Mail’s ability to finance the universal service would be undermined. In the UK, Whistl, a subsidiary of Dutch PostNL has published an ambitious plan to introduce delivery in many areas of the UK, and Ofcom has analysed Whistl’s business plans in detail. Nevertheless, Ofcom has concluded that they “do not consider that the provision of the universal postal service is under threat”.¹³⁸ Similarly, the European Commission has found that “cherry picking” did not prove a threat to universal service in Estonia, the Netherlands, and Slovenia, three countries that the Commission found most similar to Belgium based on various postal markets and geo-demographic indicators.¹³⁹

The expectations (from years before 2010) that competitors would be able to “pick cherries”, i.e. enter the most profitable markets segments of geographic regions quickly, has not come true in Belgium or in any other country after FMO. The level of competition that can be expected for a letter post market without a licensing system is

¹³⁸ See Ofcom, Review of end-to-end competition in the postal sector, 2 December 2014.

¹³⁹ See Décision de la Commission européenne du 26 novembre 2014, Infraction n° 2014/2254, C(2014) 8669.

not going to harm bpost but will provide beneficial pressure to further improve services and efficiency.

A less rigid system of general authorisations (as is commonly used in telecommunications), will reduce barriers to entry. Under the Postal Directive, conditions that can be attached to such general authorisations largely relate to 'essential requirements', and in practice include, for example: rules for confidentiality of correspondence, security of the network, data protection, or respect for the terms and conditions of employment, social security schemes.

Recommendation no. 2

Reduce scope of universal service to single piece items.

This recommendation relates to Article 142 of the law of 1991 and Articles 4-6 of bpost management contract.

Challenge:

The scope of the universal service obligation of bpost is substantially larger than the USOs in most other EU Member States, thus reducing bpost's commercial flexibility to respond to a changing market environment.

What the recommendation will improve:

Single piece letters and parcels are the core of universal service. They are socially the most relevant products as they are used by consumers, and they represent a fall-back solution for business customers. By contrast, targeted products are offered to business senders and are referred to, for example, as bulk mail, direct mail, or admin mail. These commercial products have evolved over time, and should continue to evolve in line with advances in technology and changing customer needs. Products for 'bulk mail' are increasingly not considered as universal services in many EU Member States.¹⁴⁰

In our view, a broad definition of the USO has several disadvantages:

- Most importantly, it makes it more difficult for bpost to change products, introduce new products, and discontinue products that are not successful.
- Higher administrative cost for BIPT to monitor an extensive USO, and higher regulatory burden on bpost.
- Increased risk of creating a universal service burden (net cost).
- Larger scope of VAT exemption for postal services, resulting in market distortions.

¹⁴⁰ See WIK, Main developments in the postal sector (2010-2013), August 2013, p.127ff.

We recommend that the USO should include only services that are considered essential by policy-makers and citizens in Belgium, and set targets for quality of service that reflect public needs, not current service levels or technical possibilities. The USO should therefore be limited to single-piece letters and parcels and, perhaps, specific products for SME customers.

Quality of service targets could be reduced, reflecting the increased availability of electronic communication for urgent messages. In any case, universal service regulation should not hinder bpost to develop products for business customers that offer lower routing times (at lower prices).

Recommendation no. 3

Introduce legal basis for downstream access.

This recommendation proposes additions to current legislation.

Challenge:

There is currently a very low level of end-to-end competition in Belgium, and this report concludes that it is unlikely that effective competition will develop in the future. Existing models of consolidators in the market create some choice for customers, but current legislation does not offer sufficient legal certainty for consolidators. We expect that the recent ECJ decision on volume discounts for 'special tariffs'¹⁴¹ will negatively affect consolidators and further reduce competitive pressure in the market.

What the recommendation will improve:

Even if legal barriers to entry in the postal market were removed in the future, we do not expect that effective end-to-end competition will develop in Belgium. With declining volumes, entry is becoming less attractive to investors, and the delivery market will continue to be dominated by bpost. In absence of end-to-end competition, a clear framework for downstream access can mitigate (partly) the effect of absent competition, and thus give more choice to customers at a retail level.

Rather than relying on the concept of 'special tariffs' from Article 12(5) Postal Directive, we recommend that a specific legal basis for downstream access should be introduced. In developing this legal basis, international models for specifically regulating downstream access could be considered, including legislation for downstream access in Germany (§ 28 of 1998 Postal Act), legal provisions in the UK (section 38 of 2011 Postal Service Act and USP access condition issued by Ofcom¹⁴²), and in the

¹⁴¹ ECJ, Preliminary ruling decision of 11 February 2015 in Case C-340/13 bpost /BIPT.

¹⁴² Ofcom, USP Access Condition, March 2012, consolidated version published on http://stakeholders.ofcom.org.uk/binaries/post120713/USP_Access.pdf.

Netherlands (Article 13e of Postal Act 2009, and access obligations on PostNL proposed recently by ACM).¹⁴³

Recommendation no. 4

Create a separate postal law which will codify the existing provisions in a clearer way and present them in logical order. As long as substance of legislations is not touched, a postal law may be created by Royal Decree.

This recommendation relates to Art. 54 of the law of 13 December 2010.

Challenge:

Having been established in a legal monopoly context and then evolved over a long time, current postal legislation now appears poorly structured and thus creates substantial complexity and potentially even legal uncertainty.

What the recommendation will improve:

The current legislation on postal services is one of several components in the general law on public undertakings of 1991. It has been amended several times since then, and is not in a logical order. A separate postal law would be easier to understand by all interested parties, and provide enhanced clarity. The new postal law should follow a logical order such as: 1) definition, 2) general principles and objectives, 3) entry regulation, 4) access regulation to ensure fair competition, 5) universal service and service of general economic interest, 6) consumer protection. The different titles of the Telecom law may serve as an example. As long as the substance of legislation is not touched, a new postal law could be created by a Royal Decree (as set out in Art. 54, Law of 13 December 2010). In view of the other recommendations however we do recommend substantive changes to the applicable legislation.

Recommendation no. 5

bpost should have more flexibility in designing its postal outlet network. The minimum number of postal outlets should be maintained, but all other criteria seem unnecessarily restrictive and not needed to ensure universal service.

This recommendation relates to Article 141, §1A of the law of 1991 and Articles 15-20 of bpost's management contract.

Challenge:

Current regulation of the density is overly restrictive on bpost, and customers in Belgium suffer from a lower density of postal outlets compared to other countries, despite high population density.

¹⁴³ ACM. Marktanalyse postsector, 19 december 2014, 84f.

What the recommendation will improve:

Even though Belgium is a country with a high density of population, bpost runs a postal outlet network with a relatively lower density (by international standards). The current heavy regulation of the postal outlet network of bpost appears to have the effect that bpost provides the level required by regulation but does not, out of commercial interest, provide more postal points, e.g. for e-commerce customers, in the most attractive locations.

Regulation of postal outlet network should restrict bpost only to the extent necessary for ensuring universal and public services but leave enough commercial freedom for bpost to react to demands of users. It will be in bpost's own commercial interest to distribute postal outlets reasonably across the territory even without detailed density requirements. Restrictions on the number of postal agencies (as compared to postal office with own bpost staff) seems counterproductive as many postal operators across Europe successfully run agencies to the satisfaction of customers.

Recommendation no. 6

The price cap mechanism should be simplified and more effective, and should continue to control only prices for single piece letters. The price cap should include an efficiency factor ('X-factor') but quality of service should be addressed outside price regulation.

This recommendation relates to Art. 144ter of the law of 1991 and Articles 28-32 of the Royal Decree of 2006.

Challenge:

Current price cap regulation has not been effective in limiting price increases.

What the recommendation will improve:

Although bpost has achieved great efficiency improvements in the past which would have allowed offering stable prices, stamp prices have increased way above general price increases (inflation). This development was enabled by a price cap allowing for larger increases due to a quality bonus. Even though incentives for good quality are reasonable, they should not be mingled with price regulation.

A more effective mechanism is needed to limit price increases to the extent necessary to comply with postal policy objectives. Services provided under competition should not be included in the price cap (e.g. parcels). Likewise, senders of bulk mail have more bargaining power than individual senders, and need less protection if there is real competition. Therefore, price cap regulation should continue to be limited to single piece items, in line with international practice. An efficiency factor would further limit the room

for price increases while at the same time setting incentives for bpost to become more efficient than it is expected to be.¹⁴⁴

Recommendation no. 7

Special labour conditions for postal workers of bpost and its competitors do not seem necessary. Articles 29 and 148decies should be dropped.

This recommendation relates to Articles 29 and 148decies of the law of 1991.

Challenge:

Current employment conditions for licence holders create a barrier to entry and new employment, but do not offer benefits to current postal employees. Moreover the proportionality of imposing those conditions has been questioned by the Belgian Council of State.¹⁴⁵

What the recommendation will improve:

The employment condition for licence holders mingles labour regulation with regulation of market entry and competition. This creates a significant barrier to entry for potential competitors, and stops new entrants from creating jobs. For those new jobs, it is not clear why labour rules should be different from other economic sectors and why general labour law should not be sufficient to protect workers' rights. The justifications given during the parliamentary debates for that provision, i.e. the fight against 'false self-employed persons' and the weak bargaining power of postal workers against their employers, are not problems which are specific to the postal sector. They apply to several sectors of the economy and need horizontal instruments to be remedied such as enhanced control by the social security administration.

Likewise, special rules for employment at bpost (obligation for statutory employment) do not appear compatible with a competitive market. While we in no way call for ending statutory employment at bpost, we recommend that labour agreements should be left to social partners and not be imposed on bpost by postal legislation.

¹⁴⁴ An efficiency factor also allows to take volume declines into account. Volume declines result in increases in average costs, and may thus be a financial challenge for operators. If volume declines outweigh possible efficiency gains, then the X-factor may create room for price increases according to the extent of decline.

¹⁴⁵ See section 3.2.2. of this report.

Recommendation no. 8

BIPT should ensure access to postal infrastructure in case competitors require it to do so, and if preconditions for intervention are met. Authority for BIPT to impose access obligations *ex officio* should be considered.

This recommendation relates to Article 148ter of the law of 1991.

Challenge:

Access to infrastructure is key to create a level playing field and stimulate competition but is insufficiently realised in practice. The exact coverage of the access provision is not clear enough and BIPT has difficulty to intervene because it is competent only if negotiations between operators have failed.¹⁴⁶

What the recommendation will improve:

Belgian postal legislation ensures access to the postal infrastructure. Until the end of 2014, there has not been access to any infrastructure elements in practice. If postal service providers require access to infrastructure and preconditions for BIPT's intervention are met, BIPT can impose access obligations. However, postal operators have to prove that negotiations with bpost have failed: a difficult and timely endeavour.

Ensuring access to postal infrastructure would be more effective if BIPT had authority to investigate and intervene *ex officio* without the requirement of evidenced failure of negotiations (even if BIPT should take this into account).

Recommendation no. 9

Clarify public service obligations. Avoid overlaps between management contract of bpost and postal law.

This recommendation relates to Articles 141 to 142 of the law of 1991 and Articles 4-51 of bpost's management contract 2013-2015.

Challenge:

There are currently two public service requirements for bpost: universal service and SGEI, and there are two different mechanisms to compensate the cost of those obligations. Both public service requirements are referred to in different legal instruments: Article 142 of postal law and Articles 4-9 of bpost management contract for universal service and Article 141 of the postal law and Articles 10-51 of bpost's management contract.¹⁴⁷ Those substantive and formal overlaps create legal uncertainty and risk of leading to incorrect compensation for the net cost of those public service requirements.

¹⁴⁶ See section 3.2.2. of this report.

¹⁴⁷ See section 3.1.2 of the report.

What the recommendation will improve:

These overlaps create legal uncertainty and administrative cost – not only for bpost, but also for supervisory bodies and other market players interested in tendering for universal service procurements. Since the management contract of bpost also defines compensation for public services, the overlaps make it unclear to which element this compensation refers. The straightforward solution would be to combine all public service obligations (universal service and SGEI) in one single legal instrument: in the postal law.

Recommendation no. 10

All mechanisms for compensating public service obligations should be controlled by independent regulator BIPT.

This recommendation relates to Articles 141ter, 144novies-144undecies of the law of 1991 and bpost's management contract.

Challenge:

There are currently two different mechanisms for compensating “USO net costs” and “public services” with slightly different conditions and different monitoring mechanisms, controlled by different public bodies. This creates additional administrative cost, reduces market transparency, and involves a risk for the State to overcompensate bpost.

What the recommendation will improve:

There are currently two mechanisms for compensating net costs of bpost: in postal law for universal services, in the management contract for public services, with different conditions. An inherent risk for the Belgian State is to pay twice, and more than necessary for ensuring universal service and SGEI.

The two parallel systems for compensating “public services” and “universal services” are administered by different bodies: by the BIPT for USO net cost and by the College of Commissioners (appointed by bpost shareholders' general assembly and by the Court of Auditors) for the management contract. Both compensations schemes are further controlled by the European Commission's state aid control. Involving too many government offices creates regulatory complexity. As controlling ownership rights and compensating public service obligations in the (same) management contract may involve conflicts of interest, we recommend that the independent regulator BIPT should be in charge of controlling all compensations for universal/public service obligations.

Recommendation no. 11

Maintain current funding mechanism for universal service net costs.
This recommendation relates to Article 144novies of the law of 1991.

Challenge:

USO net cost can be funded from general public funds in Belgium today. As an alternative, a compensation fund financed by all providers (or users) of postal services has been suggested, and is mentioned in the Postal Directive, but it is not clear that such compensation funds would offer any benefits over the current method for funding universal service net costs.

What the recommendation will improve:

Until now, universal service net costs in Belgium have not been claimed by bpost. However, this may occur in the future, particularly if volumes should decline more rapidly than anticipated, and if the scope of universal service is not reduced (as we recommend). In this case, financing these costs from public funds (as foreseen by Belgian postal law) would create fewer distortions, and be less costly than a market fund borne by all relevant operators (including bpost). There are no good examples of compensation mechanisms in the postal sector in other countries. Evidence suggests that such funds create substantial market distortion and administrative burden, but do not raise sufficient funds to compensate net costs.

Recommendation no. 12

Analyse necessity of designating a universal service provider, and use public procurement for elements of universal service only where necessary.
This recommendation relates to Art. 144octies of the law of 1991.

Challenge:

Designating a universal service provider restricts commercial flexibility for the operators that are obliged to provide universal service, creates administrative burden, and potentially causes state subsidies. All in all, designating a universal service provider therefore creates substantial cost to society. In order to make sure that government budget is used effectively, the necessity of designating a universal service provider should be analysed thoroughly.

What the recommendation will improve:

The designation of a universal service provider is a mechanism with heavy impact on the market, as it creates strong obligations and leaves little room for flexibility for a long period of time. It seems therefore reasonable to analyse before whether a designation is needed to ensure universal and public service provision for all elements, to all

customers and areas, or whether a mechanism with lower impact on the market may be used - e.g. market forces. Public procurement should only be used to secure universal service where market forces would not provide it. For large parts of the market (or perhaps all of the market), imposing an obligation on bpost may not be necessary since bpost is serving the market out of commercial interest.

Where a designation is not needed, the market should be monitored by the BIPT in order to identify any potential shortcomings in time. Additionally, an obligation could be imposed on a market-dominant operator to announce in advance when he plans to end the service. In that case, the BIPT should have the power to designate a universal service provider.

Recommendation no. 13

Establish a list of privileges and special rights enjoyed by public postal operators, and suggest relevant recommendations.

This recommendation relates to Article 136 of the law of 1991.

Challenge:

The postal sector had traditionally been a state monopoly, and certain privileges were created for bpost or for the universal service providers in postal law as well as in other legislations, in particular tax (e.g. VAT exemption) and transport laws. These special rights cannot be justified anymore in a competitive market. They can create competitive advantages for the former monopolist.

What the recommendation will improve:

The postal law of 1991 gives legal competence to BIPT to consult the postal sector on the issue of potential privileges and special rights granted to providers of postal services, to publish the results of this consultation, and to give recommendations to the Ministry responsible for the postal sector. BIPT should develop recommendations with a view towards improving the regulatory level playing field between postal operators, and thus improving effective competition between them.

Imprint

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Registered at Amtsgericht Siegburg, HRB 7043

Tax No. 222/5751/0926

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