



The Netherlands: Privatization of the State Postal, Telegraph, and Telephone services

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THE NETHERLANDS

PRIVATIZATION OF THE STATE POSTAL, TELEGRAPH, AND TELEPHONE SERVICES

After much debate the State Postal, Telegraph and Telephone services were privatized as of January 1, 1989. Initially the newly formed joint stock company would remain completely government owned but by 1996 the state no longer had a majority interest in the company. This report outlines legislation leading to and dealing with the privatization, with a short overview of European Union Law, the regulatory framework guaranteeing universal service for certain postal services, the supervision of compliance, and the position of employees affected by the privatization.

Introduction

In the early part of the 18th century, cities owned the principal postal services. The cities gradually relinquished their roles as postmasters to Stadhouder Willem IV. Subsequently the "states" obtained the right to operate postal services. This resulted in 1752 in the establishment of Statenpost, which secured inland monopolies. This postal institution enjoyed a strong position in dealings with foreign postal organizations. In 1799, the Dutch postal services were reorganized into a single national enterprise based on the French model. This formed the basis of PTT Post.

During the 1970s and 1980s, the European Community showed a growing interest in the privatizing of state enterprises of its member countries such as mail and postal services and the telecommunication sector. The monopolistic services of these national postal and telecommunication services were seen as an obstacle to the narrowing of the gap between the European Community and its major competitors. The Dutch government decided to install several consultative committees to pave the way for a reform. This resulted in a government decision to denationalize the Postal, Telegraph and Telephone (PTT) services and to grant the PTT an exclusive concession for public utilities in the fields of telecommunication and postal services. A new law reorganized the Dutch post and telecommunications administration and on January 1, 1989, the PTT Netherlands NV (PTT), a joint stock company, was born. PTT Post, the postal subsidiary, was obliged to maintain universal postal service in the Netherlands.

Initially PTT would remain completely government owned with the government as the sole shareholder. In June 1994, the State of the Netherlands sold 30 percent of its shares in PTT Netherlands NV. Under its new name of Royal PTT Nederland NV (KPN), the combined postal/telecommunications company obtained a listing on the Amsterdam Stock Exchange. In 1996, after selling another 25 percent of its shares, the State had no

longer a controlling interest in KPN. In 1996, KPN completed a takeover of Thomas Nationwide Transport (TNT) an Australian company. In 1998, KPN merged into two companies, KPN, a telecommunications company and TNT Post Group (TPG), a post and transportation company. The postal activities of TPG are performed under the name PTT Post. PTT Post's name will shortly be changed to Royal TPG Post.¹

European Union Law

Since the 1980's, the privatization of telecommunication and postal service has been seen as an important means that would enhance the economic unification of the European Union. In most European countries the fast growing telecommunication services were still provided by national postal services. In 1987, a Green Paper on Telecommunications was published.² This paper marked the beginning of more systematic European Union legislation in the area of telecommunication aimed at increasing competition. From that moment, binding directives were adopted that were to be implemented in the national legislation of the Member States. The paper also underwrote antitrust policy within the European Union as further reflected in the very important Article 90 of the Treaty of Rome which provides that Member States must also respect the competition rules when granting special or exclusive rights to public or private undertakings such as utilities.³ Following a Council request in the autumn of 1989 to draft measures for a Community postal service policy, the Commission produced, in mid-1992, the Green Paper on the development of the single market for postal services.⁴ The Commission's analysis concluded that in determining future action for the postal sector:

the guiding principle must be the maintenance and, if appropriate, the development of a universal postal service which would provide collection and delivery facilities throughout the Community, at prices affordable to all and with a satisfactory quality of service. Then, provided that the universal service is secured, there should be as much freedom of choice as possible.

The Green Paper sets out policy objectives, identifies key regulatory issues, and sets out obligations for providers of universal service. The Paper also sets out criteria in connection with harmonization and cohesion to ensure that the postal services sufficiently meet the postal needs of the whole Community. The Green paper on postal services has had a determining influence on the preparation of further texts by the

¹About TPG- History at <http://www.tntpost.com>.

²June 30, 1987, COM (87) 290 final.

³Treaty Establishing the European Economic Community, Rome, 25 March, 1957.

⁴June 11, 1992, COM [91] 476 final.

Commission and continues to be a key reference document.⁵

After much debate and consultation, five years after the publication of the Green Paper on Postal Services, the European Union adopted, in 1997, a Postal Directive (the Postal Directive), designated as a harmonization measure to harmonize the rules relating to postal services within the Union.⁶ The Directive sets common rules on universal postal service provision; criteria for defining reserved services; access to the postal network; prices; terminal dues; the fixing of quality service standards; the harmonization of technical standards; and the establishment of independent national regulatory bodies.

On July 14, 2000, the Commission of the European Union submitted a proposal for a European Parliament and Council Directive amending the Postal Directive.⁷ The Council of Telecommunications Ministers agreed on October 15, 2001, to further liberalize the internal market for postal services. This agreement will be submitted to the European Parliament for its second reading. Member States will be required to open up a substantial additional market share to competition from 2003 and a further share from 2006. The March 2001 Stockholm European Council called for a new postal Directive to be agreed before the end of 2001. In 2007, the European Commission will make a proposal confirming the accomplishment of the internal market in postal services from 2009 unless there were adverse effects on the provision of a universal service.⁸

The Legal Framework

The Postal Law of 1988 (hereafter the Law) provides the framework of the new postal legislation in the Netherlands and transformed the Dutch post from a state enterprise into a public company as of January 1, 1989.⁹ In order to implement the European Postal Directive¹⁰ of 1997, the Postal Law was substantially amended and a new Postal Decree¹¹ and a General Postal Guidelines Decree¹² became effective on June 1, 2000. The Postal

⁵Francoise Blum and Anne Logue, *State Monopolies under EC Law*, John Wiley & Sons, Chichester, England, 1998, at 320.

⁶Directive 97/67/ EC of the European Parliament and of the Council of December 15, 1997, OJ L15, 21.1.1998, p14.on common rules for the development of the internal market of Community postal services and the improvement of quality of service,

⁷Com(2000) 319 final-2000/0139(COD).

⁸EC, Press Release IP/01/1420, 16 October, 2001.

⁹Law of October 26, 1988, Staatsblad [official law gazette of the Netherlands, Stb.]522, as amended.

¹⁰*Supra* 6.

¹¹Decree of April 28, 2000, Stb. 200, as amended.

¹²Decree of May 24, 2000, Stb.226.

Decree regulates, among others, the scope of the universal service, and the General Postal Guidelines Decree regulates among others the quality of service, tariffs, and accounting rules.

Under the Law, in order to guarantee the provision of a good postal service, a single public postal operator, called a "Concessionaire," to the exclusion of others will be designated by law in return for a concession. This Concessionaire obtains in return for the concession, revenues from reserved areas. The concession was granted to PTT Netherlands NV by law.¹³ PTT Post, the Postal subsidiary, was obliged to maintain universal postal service. The Concessionaire is obliged to perform on behalf of any person in the Netherlands the transport of mail of a certain size within the Netherlands and from or to areas outside the Netherlands, insofar as this transport of mail relates to postal items which have been deposited in letter boxes of the Concessionaire that are intended for the public or which have been handed in at the premises of the Concessionaire that are intended for this purpose.¹⁴

The Law further provides that, in order to guarantee the provision of a good postal service in the Netherlands, only the Concessionaire may transport items of correspondence (broadly letters) which weigh not more than 100 grams and that are conveyed at a postal tariff lower than that determined by a special Order on Council. This applies to the transportation of mail within the Netherlands and from areas outside the Netherlands. An item of correspondence is defined as: "documents and written communications, whether or not in envelopes, with the exception of those of which a number of identical copies have been produced by means of printing or other duplication techniques for the purpose of distribution and to which, except for the address, no enclosures, deletions or markings have been added."¹⁵ This means that bulk mail and direct mail are not included in the definition of items of correspondence and are generally not under the responsibility of the Concessionaire. Also the exclusive right of the Concessionaire does not apply to the transport of certain enumerated forms of transport of items of correspondence.¹⁶

This includes, for example, the mailing of correspondence from the Netherlands to other countries, correspondence that relates exclusively to objects by which they are carried or which serve as receipts and bills of exchange or other negotiable instruments that are carried in connection with amounts of money to be collected or paid on them, and the transportation of items of correspondence for the purpose of performing a document exchange service. A document exchange service means a service consisting of the provision of means, including the supply of ad hoc premises as well as transport by a third party, for self-delivery by the mutual exchange of postal items between users subscribing to this service.

¹³Authorization Law on Royal PTT Netherlands NV, Law of October 26, 1988, 521, as amended.

¹⁴ *Supra* 9, Art. 2, section 1.

¹⁵ *Id.* Art. 1 and Art. 2a section 1.

¹⁶ *Id.* Art. 2c.

The concessionaire is further granted, to the exclusion of others, a concession for the siting on the public highway of letter boxes intended for the public and the exclusive issue of postage stamps and franking marks that depict the Sovereign or bear the word “Nederland.”¹⁷ The Concessionaire may allow, under certain conditions, that his exclusively granted rights under the concession be partly or fully fulfilled by another legal entity if certain enumerated conditions are met. The Concessionaire is obliged to grant other postal service providers access to its post office boxes under conditions and for fees which are reasonable, objectively fair, and non-discriminatory. The conditions and fees shall be determined in consultation.¹⁸ The Minister lays down general guidelines for the Concessionaire, which apply to the maintenance of a good postal service, a postal tariff structure, and the determination and publication of postal tariffs. They contain basic principles and criteria for the way in which and extent to which service shall be provided, the security of the transport of mail, confidentiality in relation to postal items, and the protection of privacy in relation to postal items.¹⁹

Regulatory Law, Supervision of Compliance and Administrative Enforcement

One of the core tasks of the Ministry of Transport, Public Works and Water Management is guaranteeing a safe, versatile and reliable accessibility to postal and communication services. The Ministry consists of several Directorates. The main task of the Directorate-General Telecommunications and Post is to provide high-quality and socially responsible telecommunication, telematics, and postal facilities. The two most important goals are: the strengthening of the Netherlands’ competitive position in the field of telecommunications, telematics and postal services; and making sure that these facilities remain available to citizens and companies.

Regulatory authority, supervision of compliance, and administrative enforcement is divided between the Ministry and a specially established Independent Post and Telecommunications Authority (the OPTA Commission). The Minister determines in regulations the details of the universal service provided by the Concessionaire. Some of the other duties included are the regulating of accounting practices, the issuing of guidelines relating to unfair competition, the establishing of limits on increases in postal rates, and the issuing of orders on placement and dimensions of letter boxes.

The OPTA Commission, an independent authority, was established in legislation introduced on July 5, 1997.²⁰ The Commission has legal personality. It consists of at

¹⁷ *Id.* Art. 2a, section 2.

¹⁸ *Id.* Art. 2d.

¹⁹ *Id.* Art.5

²⁰ Law on Independent Post and Telecommunications Authority, Stb. 1997, 320, as amended.

least three and at most five permanent members appointed by the Minister for a period of four years.²¹ The relationship between the OPTA Commission and the Minister is largely regulated in the Law.²² The tasks of the Commission with respect to postal services are to exercise supervision of the compliance with the provisions in the Postal Law insofar as this task has been assigned to the Commission by the Law. It further renders decisions on registrations, allocations (designations), approval, setting times and dates (of terms), exemptions, settling disputes, imposition of fees, as well as attaching regulations and restrictions pursuant to the Postal Law.²³ The Commission may investigate violations of the Law within its jurisdiction and issue orders or impose fines to enforce its decisions. It can further levy administrative fines on private operators for violation of certain reserved areas.²⁴ Decisions made by the Commission are subject to review by the administrative courts.

Employees Rights

The transfer of a State enterprise into a joint stock company meant that the employees could not maintain their civil service status but would obtain a labor agreement to which the provisions on labor law of the Civil Law would apply. As a state enterprise, the hiring of personnel had to be in conformation with civil service laws, which made it difficult to attract highly qualified *technical* and economic experts. Traditionally, civil servants, compared with their colleagues in the private sector, had always enjoyed better labor conditions with respect to sickness, disability, unemployment, and dismissal. However, starting in the seventies the difference in labor conditions for the public and private sector became smaller. Higher scaled civil servants would, in similar positions in the private sector be in a more favorable market situation and even make higher salaries. The unions of these higher scaled civil servants were more favorable to the privatization than the unions of the lower scaled employees. The Government had taken the position that, as a starting point, at the negotiations that the level of benefits of the new labor conditions had to remain equal²⁵. The labor conditions had to be negotiated with the labor unions and be embedded in collective labor agreements. After long negotiations, the civil servants no longer opposed the conversion into a joint stock company and the trade unions managed to counter a deterioration of the position of the former state employees. On January 1, 1989, one new collective labor agreement came into existence.

²¹ *Id.* Art. 3.

²² *Id.* Arts 17-25.

²³ *Id.* Art. 15.

²⁴ *Supra* 9, Art. 15 a and b.

²⁵ Mila Davis, *De weg naar zelfstandigheid, De voorgeschiedenis van de ver zelfstandiging van de PTT in 1989*, Verloren, Hilversum, 1999, at 262.

In a new Personnel Law, rules were laid down for the personnel with respect to the transfer from a State company to a private enterprise.²⁶

On January 1, 1989, the date of denationalization, all personnel were according to the law, honorably discharged. At the same time they were offered a labor agreement based on Civil Law.²⁷ The employees could object to the labor agreement offered when there were discrepancies in the new agreement. For example, a civil servant that was previously full time employed could not be offered a new part time agreement. Objections could be made to the new positions. The new position that was offered had to correspond as much as possible with the previous position of the employee. Objections could be made about the new positions to a special committee which was formed to advise the Minister with respect to interpretation problems with regard to the new positions. Pension rights that former civil servants had built up had to stay in existence after the privatization. All in all it appeared that the implications of the privatization for the former civil servants with respect to labor conditions and pensions were rather good.²⁸ For newly hired employees of PTT Post the labor conditions would not be the same as for the ex civil servants.

Conclusion

In the 1970's and 1980's, the monopolistic position of state postal and telecommunication services was seen as an obstacle to expansion, competition, and economic unification in Europe. The Government installed several consultative committees who paved the way to the reform which led to the privatization of postal and communication services in January 1989. It was felt important that a service oriented industry such as postal services guarantees universal service, such as quality and accessibility of service for everyone on an equal basis in the Netherlands. In order to guarantee that these services could be continued to be maintained at the same level, the PTT was given a concession with the obligation to offer certain postal and telecommunication services according to certain standards on the date of the privatization. Initially the Government would remain the sole shareholder; however, since 1996 when 55 percent of its shares were sold, the state no longer had a controlling interest in what was then called KPN, the combined postal and telecommunication company. The remaining 45 percent of the outstanding shares were sold on the stock exchange to raise funds to expand and modernize operations.

In 1996, after the State of the Netherlands had no longer a controlling interest in KPN and after obtaining a listing on the Amsterdam Stock Exchange in 1994, the company

²⁶Law of October 26, 1988, Stb. 519, as amended.

²⁷*Id.* Art.2, section 1.

²⁸*Supra* 25, at 276.

obtained a listing on the New York Stock Exchange, followed by listings in Frankfurt and London. Several acquisitions were made including the TNT Group, a private international mail firm, in 1996. In December 1998, TPG, the holding company of PTTPost and TNT, acquired the express company Jet Services S.A. in France. Jet Services provides express services in France, Germany, Belgium, the Netherlands, Great Britain, Hungary and Switzerland. Less than a year later, the Italian logistics and mail company TechnoLogistica was acquired. Several joint ventures and cooperationships have been formed with postal and express delivery companies outside the Netherlands. Recent talks between TPG, the parent company of PTTPost and the British post operator, Consignia, over a possible merger of its mail operations were aborted.²⁹

The strategy of the Dutch postal service since moving in the private sector has been to reduce costs, increase quality and internationalize its business by introducing new products and services and by making acquisitions.³⁰ An aggressive commercial strategy was also pursued outside the traditional postal sector. At the heart of PTTPost's operations is an ultramodern infrastructure for sorting and distributing postal items. Some 57,000 postal delivery and sorting employees ensure that approximately 23 million items are delivered daily to more than 7 million addresses in the Netherlands. The Dutch mail company has become an international leader in the mail delivery business and has the second-lowest first class domestic mail prices in Europe since its privatization in 1989.³¹ Some authors have called the secret of the success of the privatization of the postal service its gradual and methodical transition from government agency to private business.³²

Prepared by Karel Wennink
Senior Legal Specialist
Western Law Division
Directorate of Legal Research
Law Library of Congress
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²⁹Consignia merger hope with TPG fails, Rosie Murray-West, April 1, 2002, at www.telegraph.co.uk.

³⁰Press Release, TNT/PTT Post Group Prepares for Flotation, January 19, 1998, at <http://www.tnt.com/about/press>.

³¹*Supra* 29.

³²What Works, The Privatization of the Dutch Post Office, January, 2000, Nigel Ashford at all, Lexington Institute at <http://www.lexingtoninstitute.org/>.