

Market analysis decision regarding 24-hour business mail – Summary

Background

The Netherlands Authority for Consumers and Markets (ACM) regulates the Dutch postal sector. Considering the vulnerable competitive situation on the postal market, the Dutch legislature in 2014 charged ACM with the task to analyze this market, and to impose obligations in case of anticompetitive problems. The objective of these obligations is to have a better price-quality ratio for users of postal services by promoting effective competition between postal operators.

In a public consultation, ACM asked market participants about potential problems in the postal sector. One of the problems was about access with regard to the delivery of 24-hour bulk mail. Delivery of 24-hour bulk mail entails next-day delivery of mail to addressees within the Netherlands. These services are almost exclusively offered to business senders. Competition problems occur because postal operators other than PostNL lack a nationwide delivery network. In order to deliver mail outside their own delivery areas, these postal operators rely on PostNL's network. Without access to PostNL's network, these postal operators would not be able to serve a substantial number of business senders. In this market analysis decision, ACM analyzed the transport of 24-hour bulk mail.

PostNL has significant market power

ACM has assessed whether effective competition for 24-hour bulk mail services exists. By analyzing the competitive landscape, ACM can determine the degree to which an undertaking has significant market power, and whether or not there is a need for imposing obligations to deal with the potential anticompetitive problems.

ACM has found that, on the relevant markets for the transport of bulk mail, PostNL has significant market power. PostNL is able to behave to an appreciable extent independently of competitors, potential entrants, and business senders. These competitors (potential or actual) are partially dependent on access to PostNL's delivery network in order to be able to deliver 24-hour bulk mail in the entire country.

Necessity for access regulation

In this market analysis decision, ACM imposes obligations on PostNL as an undertaking with significant market power. By granting other postal operators access to PostNL's delivery network under competitive conditions, ACM facilitates competition on the postal market over the next couple of years. By using PostNL's network, postal operators are able to offer 24-hour bulk mail services at a national level, and, as such, are able to compete with PostNL. This results in freedom of choice between different postal operators for business senders of 24-hour bulk mail services. Competition

stimulates postal operators to continue to set themselves apart in terms of price and quality. Competition thus promotes innovation and improvements in efficiency.

It is essential to impose obligations, because, without them, PostNL will have the incentive and the ability to *de facto* refuse postal operators access to its network.

Imposed obligations and their effects

In this market analysis decision, ACM imposes on PostNL obligations with regard to access, tariffs, and transparency. These obligations apply to 24-hour bulk mail on the small, medium, and large business relevant markets. The imposed obligations collectively constitute the wholesale access offer. These are the least far-reaching obligations that are necessary to eliminate the identified potential anticompetitive problems.

Mail volumes are declining. Despite this decline, postal operators with multiple delivery networks exist alongside each other in a large part of the country. In ACM's opinion, infrastructure-based competition is the best way to promote effective and sustainable competition. With the obligations, a wholesale offer is created that only targets postal operators that also have their own networks. This offer thus does not target consolidators or administrative resellers. These are companies that combine mail from various senders for the sole purpose of obtaining a larger volume discount from PostNL.

The access obligation regulates the drop-off method, the drop-off location, and the drop-off time for the 24-hour bulk mail that PostNL delivers on behalf of postal operators. The access obligation fits in with the way in which PostNL currently offers services to business customers and postal operators. The conditions for the regulated offer to postal operators differ on a limited number of points from the conditions that PostNL currently applies. For example, postal operators are allowed to consolidate mail from different senders in a single batch too, and drop it off before 9 p.m. Without these changes, the obligations would not eliminate the competition problems.

The tariff obligation stipulates the maximum wholesale tariffs that PostNL is allowed to charge postal operators for this service. The tariffs that postal operators pay are cost-oriented. This means that these tariffs enable PostNL to recover the costs that it incurs for delivering mail of the postal operators, and to add a pre-determined reasonable return. In addition, ACM takes into account the declining mail volumes, when determining the tariffs.

The transparency obligation ensures that PostNL treats all postal operators equally, and that this can also be checked by them and by ACM.

The effect of the imposed obligations is that business senders that send mail are better off compared with the situation without regulation. They have more choice, more competitive prices, and better service. Efficiently operating postal operators, too, will benefit from the obligations as they are able to

maintain or strengthen their positions on the market.

If compared with the situation without regulation, the obligations obviously have an impact on PostNL. However, the fact is that, until August 1, 2017, Section 9 of the 2009 Dutch Postal Act had been in effect. That section, too, regulated access for postal operators, but then on all postal segments (not just 24-hour bulk mail, but also 48-hour and 72+-hour bulk mail). With this market analysis decision, access to 24-hour bulk mail will be safeguarded *after* August 1, 2017 as well.

Even though the effect of this market analysis decision works out unfavorably for PostNL compared with the situation without obligations (so the situation without this decision, but also without Section 9 of the Dutch Postal Act), the effect of this market analysis decision actually works out favorably compared with the situation where only Section 9 of the Dutch Postal Act would be in effect. Apart from the fact that this section applied to all postal markets, this section mandated that PostNL had to offer postal operators, too, the best available offer in the market.¹ One key difference between Section 9 of the Dutch Postal Act and this market analysis decision is therefore that this market analysis decision offers PostNL more latitude in its pricing strategy vis-à-vis business senders. The Minister's repeal of Section 9 of the Dutch Postal Act as of August 1, 2017 should thus be seen in light of the fact that this market analysis has come into effect now.

The obligations are proportionate and take into account as much as possible the various, sometimes conflicting interests. First of all, the negative effect of the obligations in this market analysis decision imposed on PostNL compared with the situation without regulation is limited to over EUR 20 million per year. This does not result in financial instability at PostNL. In addition, the benefits for business senders offset the drawbacks for PostNL. Moreover, the regulatory regime has been designed in such a way that it fits well with PostNL's existing operational processes. As already mentioned, the regulation enables PostNL to recover its costs because the access tariffs are based on the costs for 24-hour bulk mail plus a pre-determined standard return. Finally, the imposed regulations do not have any significant consequences for the affordability and viability of the universal service obligation (USO). The decreases in volume within the USO have a larger impact thereon than do the obligations in this market analysis decision. The increased competition does stimulate PostNL to improve its service and to make it more efficient.

Conclusion of this market analysis decision

With this market analysis decision, ACM ensures that postal operators are able to continue to compete on 24-hour bulk mail. With the obligations, these companies are able to drop off their 24-hour bulk mail at PostNL under reasonable conditions, as a result of which they are able to offer their business customers 24-hour bulk mail services for addresses in the entire country. That enables them to compete effectively with PostNL. ACM expects that the regulation of 24-hour bulk mail will lead to an improvement in competition. This prevents excessive prices, and results in quality improvements and in more options for business senders that seek 24-hour bulk mail services.

¹ [Confidential: ..]