

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

**Study for the Belgian Institute for Postal  
Services and Telecommunications**

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# Agenda

1. Introduction to the study
2. Conclusions
3. Recommendations

# 1 / Background and goals of the study

## Expectations before 2011

- Entrants will capture significant market shares in areas with lowest delivery costs
- Financial risk for bpost
- Financing of universal service in danger
- „The market is expected to be extremely competitive under FMO” (PwC)
- **Have expectations come true?**

## Goals of the study

- Analyse market development in Belgium
- Analyse legal framework
- Compare Belgian market development to other European countries
- Recommend adaptations to Belgian postal legislation

## Interviews with stakeholders

### Postal operators,

bpost, Belgique Diffusion, GLS Belgium, Spring Global Mail, TBC-Post

### Business associations,

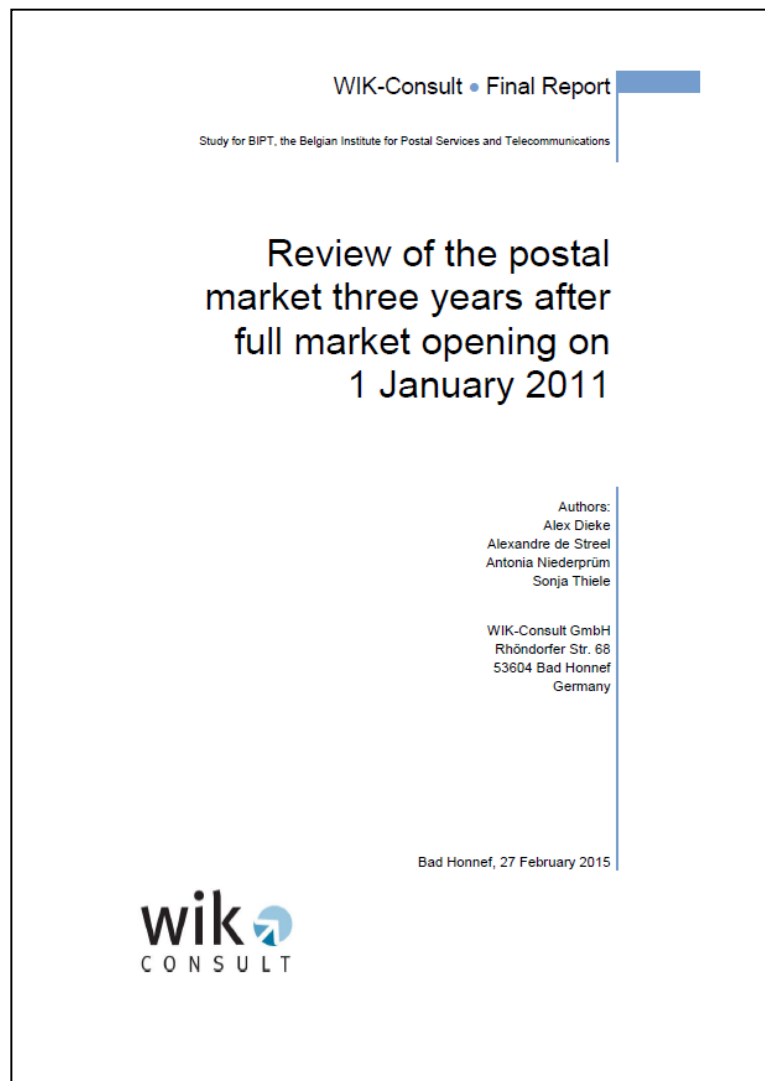
BCA, BMUA

### Consumer associations,

Test-Achat

## Desk research

# 1 / Contents of the report



65 pages

- 1 Introduction**
- 2 Economic analysis of the Belgian postal market**
  - 2.1 Overview on postal market
  - 2.2 Letter post market
  - 2.3 Parcel and express market
  - 2.4 Access to universal services and quality of service
  - 2.5 Employment and investments of postal operators
  - 2.6 Outlook on future market developments
- 3 Legal analysis of the Belgian postal market**
  - 3.1 Analysis of the regulatory framework
    - 3.1.1 The Belgian regulatory framework
    - 3.1.2 Regulation organisation in Belgium
  - 3.2 Regulatory barriers and the lack of level-playing field
    - 3.2.1 Licence conditions: a major barrier to entry economically and legally questioned
    - 3.2.2 Other barriers to entry
    - 3.2.3 A lack of level-playing field between postal operators
- 4 International benchmark**
  - 4.1 Overview of countries and topics
  - 4.2 Evolution of letter post markets since full market opening
  - 4.3 Regulation of postal markets
- 5 Conclusions**
- 6 Recommendations**

# 2 / Conclusions

## Statements from stakeholders

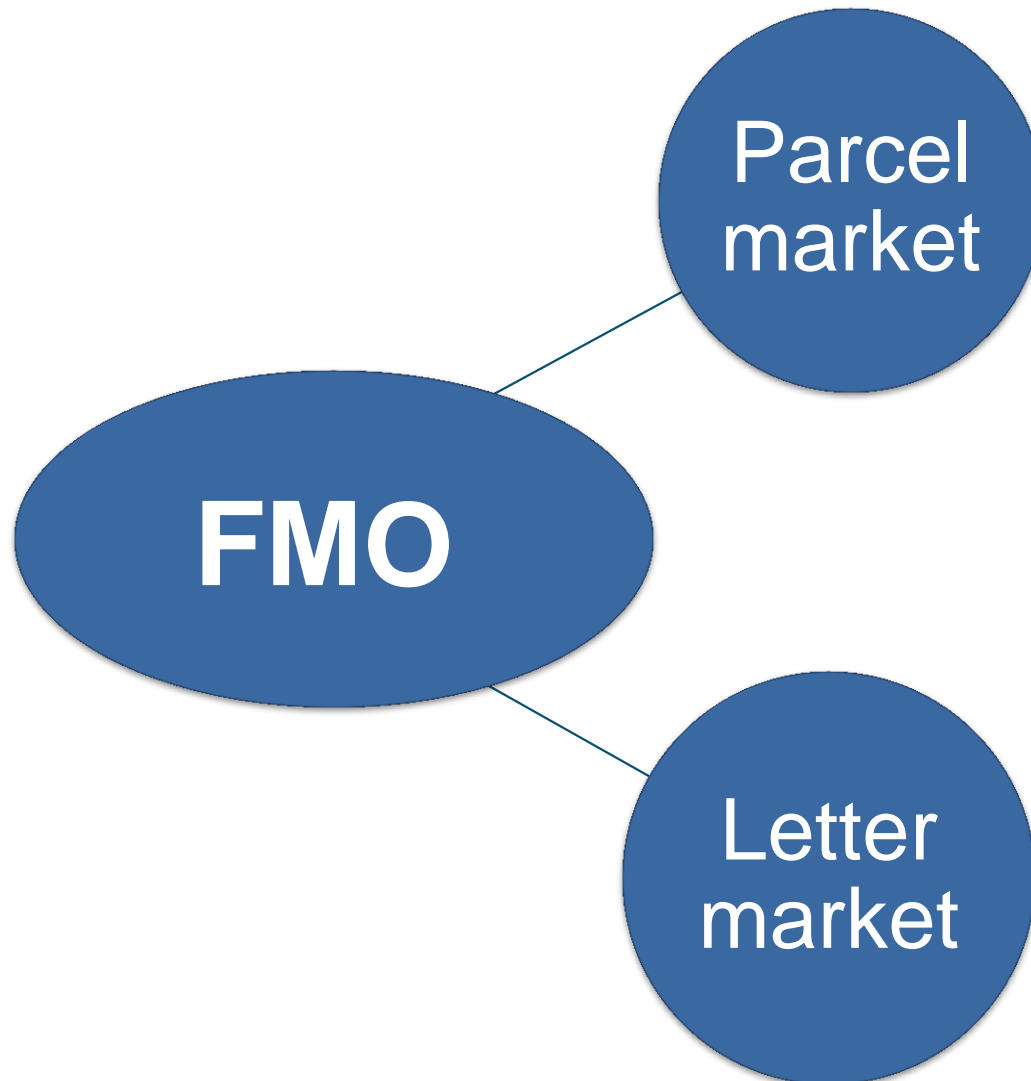
***Full market opening did not affect our business.***  
(All interviewed postal operators and associations)

***The most important volume drivers have been e-commerce and e-substitution.***  
(Several postal operators)

***Licensing conditions on coverage and employment conditions are a barrier to entry.***  
(Several postal operators)

## 2 / Conclusions

No effect of full market opening




- Competition even before 2011
- Has been and still is a very competitive market
- Volume increases due to e-commerce, not FMO

- No entry until 2013
- One single competitor
- Competition remains marginal (~1% market share and low volumes)
- No further entry expected
- Volume declines due to e-substitution, not FMO

## 2 / Conclusions

Restrictions on competition appear unbalanced

Expectation that competition would evolve rapidly main reason for licensing system in Belgium



License conditions unusual in international practice; Belgium applies most restrictive conditions



Competition has developed slowly even in countries that opened postal markets before 2011



In Belgium, licence conditions restrict competition

## 2 / Conclusions

Geographical coverage and employment conditions are barriers to entry

### Licence conditions create barriers to entry

#### Geographical coverage

Obligation to cover defined share of territory in all three regions (80% after five years)



Major problem for potential competitors

#### Employment conditions

Employ postal workers with a labour contract only



Special protection for workers of licence holders in postal markets – workers in e.g. logistics market not covered

## 2 / Conclusions

Post office density in Belgium is low by international standards



Low density network in Belgium

bpost's access network complies with legal obligations and management contract – but not more

Other EU operators have increased number of access points for e-commerce customers

## 2 / Conclusions

### Unnecessary strict regulation of postal outlet network

- Regulation of density of postal outlet network unusually strict in Belgium compared to benchmark countries
  - Postal service point in each municipality
  - Within defined distance
  - Restrictions on whether to operate self-managed outlets or agencies
- Difficult for bpost to react to changing demand, esp. switching to postal agencies
- Other European operators are less restricted and rely more on agencies

## 2 / Conclusions

Letter and parcel market develop at different paces



### Parcel market grows

Main driver: e-commerce

e-commerce grows substantially (+18% in 2013) and is expected to continue this path



### Letter market declines

Modest decline in the past compared to other EU countries

Future declines expected

Decline may even accelerate as digital substitution progresses (e.g. new digital agenda of Belgian government, communication behaviour changing, younger generations reaching adulthood)

Main driver: digital substitution

## 2 / Conclusions

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



e-commerce  
boosts B2C  
parcels

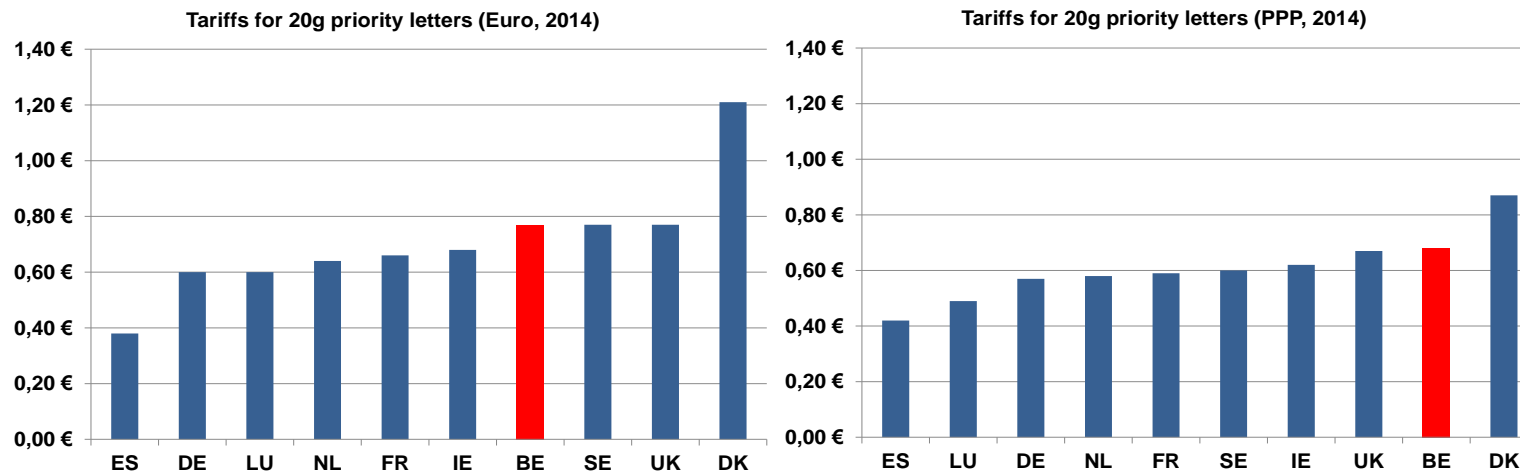
Needs of  
online  
purchasers  
Operators need  
to respond to  
their needs (e.g.  
return network,  
tracking...)

Opportunity  
for letter  
service  
providers  
Deliver heavy  
letters with  
small goods

# 2 / Conclusions

## High stamp prices in Belgium

- Prices for single stamps in Belgium are among the highest in the benchmark group in spite of modest volume losses
- Similar stamp prices only in countries with much stronger declines



- Main reason for strong price increases of bpost in the past: quality bonus in price cap

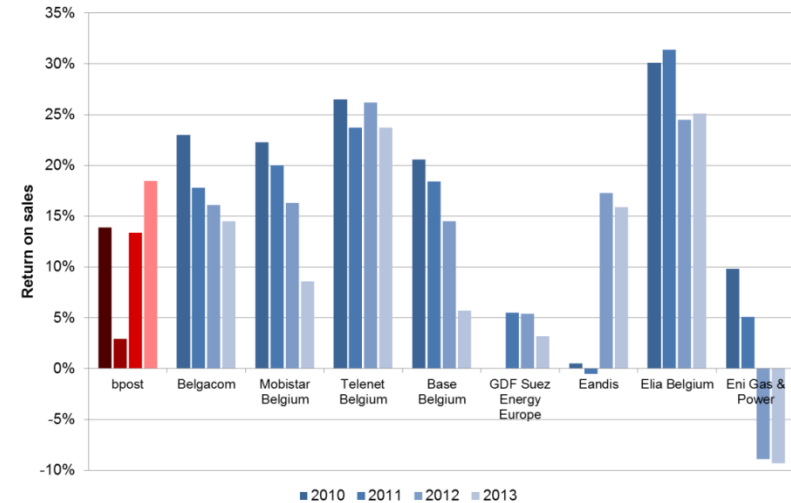
# 2 / Conclusions

bpost well-prepared for competition

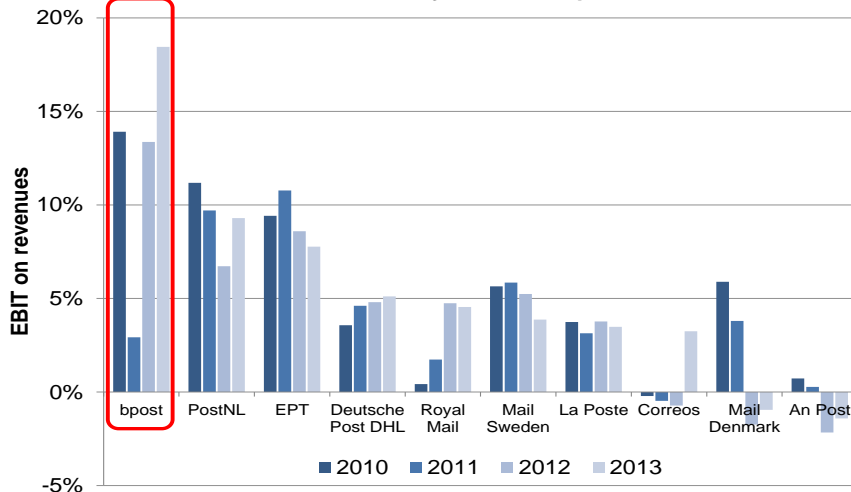
Regulated market and e-substitution

Excellent performance of bpost

Profitability of regulated industries in Belgium (Return on Sales)



Profitability of national posts



- Difficult market environment
- But bpost performs well compared to other European postal operators and other sectors
- bpost well prepared for competition

## 2 / Conclusions

### Non-discriminatory downstream access consistent with int'l practice

- Downstream access in most benchmark countries ensured through non-discriminatory special tariffs
- In 2012, BIPT forced bpost to offer their existing discounts to all customer groups under the same conditions ('per-sender-decision')
- Belgian special tariff regulation and (current) application ('per-sender-decision') in line with EU Postal Directive and regulatory practice in benchmark countries
- Not clear how 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.

## 2 / Conclusions

Scope of postal universal service is very broad in Belgium

### International experience

- Belgian scope of universal service among the broadest in benchmark
- 4 out of 10 countries define only single piece services as universal services

### Reasons to leave bulk mail out of universal services

- Bulk mail users may enforce their interest without regulation
- Increases flexibility for USP
- Reduces scope of VAT exemption and thus competitive distortions

## 2 / Conclusions

Designation of USP is common practice but might be unnecessary

International practice is to designate USP

But not in line with best regulatory practice

Analyse first whether designation is necessary

Designation only if postal operator(s) would not provide without obligation

## 2 / Conclusions

Public funding of USO net costs better than compensation fund

Compensation fund has not yet been installed in benchmark countries

- Legal option exists in some countries

Very costly, administrative burden

- For postal operators and for regulatory authority

Less distortions if tax funding is applied

- As foreseen by Belgian postal legislation today

# 3 / Recommendations

## Objectives and methodology

- **Recommendations to advance postal policy objectives**

- **Level playing field for fair competition**
- **Efficient, affordable universal service throughout Belgium**

- Recommendations based on

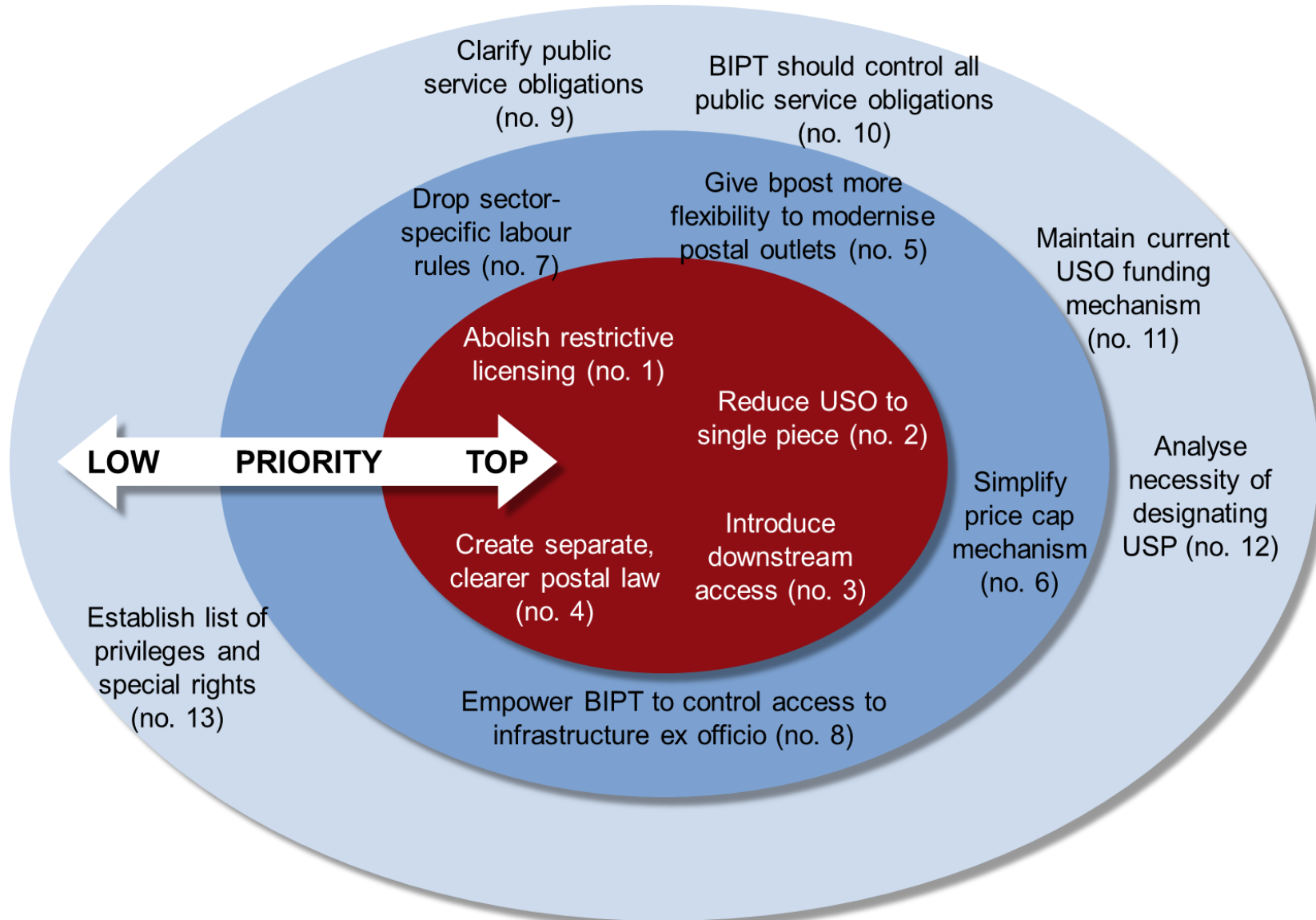
- Specifics of postal market in Belgium
- International practice
- WIK expert assessment

- Principles of good governance and legislation ('sound regulatory principles')

- Specific purpose
- Policy coherence
- Necessity and proportionality
- Transparency and least market distortion
- Administrative fairness
- Competency
- Legal certainty

# 3 / Recommendations

## Thirteen recommendations and priorities



# 3 / Recommendations

## Abolish restrictive licensing system (no.1 )

**No. 1: Abolish licensing system with restrictive obligations for universal services and introduce general authorisations for all postal operators, including bpost.**



Relates to Art. 148sexies of the law of 1991.

### Challenge

- Current licensing system creates major barriers to entry
- Current licensing system has effectively prevented market entry for letters
- Obligations violate EU law according to COM
- Restriction of competition does not seem necessary to protect universal service in light of bpost's strong position

### What the recommendation will improve

- More choice for customers
- Competition (or threat of competition) will provide pressure to improve services and efficiency for all operators, including bpost
- Expectations (before 2010) that competitors would be able to “pick cherries”, has not come true in Belgium or in any other country, even without restrictive licensing
- General authorisations less rigid, reduces barriers to entry. Common in telecoms
- UK regulator Ofcom recently investigated the impact of competition on universal service: *“do not consider that the provision of the universal postal service is under threat”*
- Eur. Commission found that “cherry picking” did not prove a threat to universal service in Estonia, the Netherlands, and Slovenia, three countries found similar to Belgium

# 3 / Recommendations

## Reduce USO to single piece (no. 2)

### No. 2: Reduce scope of universal service to single piece items.



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

#### Challenge

- Scope of the universal service obligation of bpost is substantially larger than in most other EU Member States
- More difficult for bpost to change products, introduce new products, or drop products
- Higher administrative cost for BIPT
- Higher regulatory burden on bpost
- Higher risk of creating a universal service burden (net cost)
- Larger scope of VAT exemption for postal services, resulting in market distortions

#### What the recommendation will improve

- Single piece letters and parcels are the core of universal service, socially most relevant products, used by consumers
- Products for business senders (e.g. 'bulk mail', 'direct mail', or 'admin mail') not considered as universal services in many EU Member States
- USO should include only services considered essential by policy-makers and citizens. Limit USO to single-piece letters and parcels (and perhaps SME products?)
- Set targets for quality of service that reflect public needs, not current service levels or technical possibilities. Quality of service targets should reflect the increased availability of electronic communication for urgent messages. In any case, bpost should be allowed to develop products with lower routing times (at lower prices)

# 3 / Recommendations

## Introduce downstream access (no. 3)

### No. 3: Introduce legal basis for downstream access.



This recommendation proposes additions to current legislation.

#### Challenge

- Very low level of end-to-end competition
- Unlikely that effective competition will develop in Belgian letters market. With declining volumes, entry becomes less attractive to investors.
- Existing models of consolidators create some choice for customers (in absence of end-to-end competition) but current legislation does not offer legal certainty
- Recent ECJ decision expected to have negative effect on consolidators, and further reduce competitive pressure

#### What the recommendation will improve

- Absent end-to-end competition, downstream access can mitigate (partly) the effect of competition, and create choice for customers
- Relying on the concept of 'special tariffs' from Postal Directive is ineffective to create downstream access. Specific obligations for downstream access in other countries
- Specific legal basis for downstream access should be introduced, and could consider international models
  - legislation for downstream access in Germany (§ 28 of 1998 Postal Act)
  - legal provisions in the UK (section 38 of 2011 PSA and USP access condition)
  - legal provisions in the Netherlands (Article 13e of Postal Act 2009, and access obligations on PostNL proposed recently by ACM).

# 3 / Recommendations

## Create separate, clearer postal law (no. 4)

**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.**



Relates to Art. 54 of the law of 13 December 2010.

### Challenge

- Current postal legislation had been established in a legal monopoly context and then evolved over a long time, and is not in a logical order.
- Current postal legislation now appears poorly structured and thus creates complexity and legal uncertainty.

### What the recommendation will improve

- Separate postal law would be easier to understand by all interested parties, and provide enhanced clarity
- New postal law should have logical order, e.g.
  - 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
- Titles of the Telecom law may be example
- As long as the substance is not touched, a new postal law could be created by a Royal Decree

# 3 / Recommendations

## Give bpost more flexibility to modernise postal outlets (no. 5)

**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.**



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

### Challenge

- Current regulation of the post office density is overly restrictive on bpost
- Customers in Belgium have access to fewer postal outlets than in other countries, despite high population density in Belgium

### What the recommendation will improve

- Belgium has high population density but bpost's postal outlet network offers relatively low density (by international standards).
- Heavy regulation of the bpost's postal outlets appears to prevent changes in postal outlets, e.g. for e-commerce customers
- Regulation of postal outlet network should ensure 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. Many postal operators across Europe successfully run agencies to the satisfaction of customers.

# 3 / Recommendations

## Simplify price cap mechanism (no. 6)

**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.**



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
- Complex price cap formula and procedure

### What the recommendation will improve

- bpost has achieved great efficiency improvements but stamp prices have increased more than inflation
- Price cap allowed large price increases due to a quality bonus.
- Price cap regulation should be simplified to a RPI-X system, and (continue to be) limited to single piece items, in line with international practice.

# 3 / Recommendations

## Drop sector-specific labour rules (no. 7)

**No. 7: Special labour conditions for postal workers of bpost and its competitors do not seem necessary. Articles 29 and 148decies should be dropped.**



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
- Licence conditions offer no benefits to current postal employees
- Proportionality of conditions questionable

### What the recommendation will improve

- Remove barrier to entry for potential competitors, and enable new entrants to create jobs
- Separate labour regulation from regulation of market entry and competition
- For new jobs, it is not clear why labour rules should be different from other economic sectors. General labour law sufficient to protect workers' rights. Fight against 'false self-employed persons' is not a problem specific to the postal sector, and needs horizontal instruments
- Special rules for employment at bpost (obligation for statutory employment) do not appear compatible with a competitive market. (We do not call for ending statutory employment at bpost, but recommend that labour agreements should be left to social partners.)

# 3 / Recommendations

## Empower BIPT to control access to infrastructure ex officio (no. 8)

**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.**

### What the recommendation will improve

- 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



Relates to Article 148ter of the law of 1991.

### Challenge

- Access to infrastructure support creation of a level playing field but is insufficiently realised in practice
- Exact coverage of the access provision is not clear enough and BIPT has difficulty to intervene (competent only if negotiations between operators have failed)
- No access obligations to date

# 3 / Recommendations

## Clarify public service obligations (no. 9)

**No. 9: Clarify public service obligations. Avoid overlaps between management contract of bpost and postal law.**



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

### Challenge

- Two public service requirements for bpost, and two mechanisms for compensation:
  - universal service
  - SGEI
- Substantive and formal overlaps create legal uncertainty
- Risk of incorrect compensation for the net cost of those public service requirements

### What the recommendation will improve

- Remove legal uncertainty and administrative cost that results from overlaps (for bpost, for supervisory bodies, and other market players)
- Straightforward solution would be to combine all public service obligations (universal service and SGEI) in one single legal instrument: in the postal law

# 3 / Recommendations

## BIPT should control all public service obligations (no. 10)

**No. 10: All mechanisms for compensating public service obligations should be controlled by independent regulator BIPT.**



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

### Challenge

- Two mechanisms for compensating “USO net costs” and “public services”
- Controlled by different public bodies: BIPT for USO net cost, College of Commissioners (appointed by bpost shareholders' general assembly and Court of Auditors) for the management contract. Both subject to EU state aid rules
- Creates administrative cost, reduces market transparency, and involves risk for to overcompensate bpost


### What the recommendation will improve

- Involving too many government offices creates regulatory complexity. Remove complexity
- Reduce administrative cost and enhance transparency
- Avoid risk of double compensation
- Independent regulator BIPT should be in charge of controlling all compensations for universal/public service obligations

# 3 / Recommendations

## Maintain current USO funding mechanism (no. 11)

### No. 11: Maintain current funding mechanism for universal service net costs.

 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, compensation funds have been suggested, and are mentioned in the Postal Directive, but alternative proved impractical in other countries

#### What the recommendation will improve

- Until now, universal service net costs in Belgium have not been claimed by bpost. Future?
- Avoid replicating other countries' mistakes: Funds create substantial market distortion and administrative burden, but do not raise sufficient funds to compensate net costs

# 3 / Recommendations

## Analyse necessity of designating USP (no. 12)

**No. 12: Analyse necessity of designating a universal service provider, and use public procurement for elements of universal service only where necessary.**



Relates to Art. 144octies of the law of 1991.

### Challenge

- Designation restricts commercial flexibility for the designated operators
- USO designation creates administrative burden, and potentially causes state subsidies

### What the recommendation will improve

- Designation of a universal service provider has a heavy impact on the market. It seems reasonable to analyse in advance whether a designation is needed and exactly for what elements of universal service
- Market forces may provide adequate service, at least in most of the country. Public procurement should only be used to secure universal service where market forces would not provide it
- Market should be monitored by the BIPT in order to identify any potential shortcomings in time. In that case, the BIPT should have the power to designate a universal service provider

# 3 / Recommendations

## Establish list of privileges and special rights (no. 13)

**No. 13: Establish a list of privileges and special rights enjoyed by public postal operators, and suggest relevant recommendations.**



Relates to Article 136 of the law of 1991.

### Challenge

- Postal sector had traditionally been a state monopoly, and certain privileges were created for bpost in postal law and other legislations, e.g. in tax and transport laws
- These special rights seem outdated in a competitive market, and can create competitive advantages for bpost

### 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 and thus improving effective competition between them



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