

# TNT

## Overview of controversial business practices in 2008

Tim Steinweg

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## Colophon

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## Introduction

This company briefing has been prepared by SOMO (Centre for Research on Multinational Corporations). It provides an overview of business practices that could be considered as unsustainable or irresponsible which occurred (or might have been addressed) in 2008. In addition, it may describe developments on some issues identified in a similar overview for 2006, which was also prepared by SOMO.

The overview below describes only controversial practices that were identified and not the positive achievements of a company in the same year, except for positive developments related to some of the practices from the overview for 2006. Information on positive achievements can usually be found in a company's annual and/or sustainability report and on the company's website. The purpose of this report is to provide additional information to shareholders and other stakeholders of a company on controversies that might or might not be detected and reported by the company itself.

This report does not contain an analysis of a company's corporate responsibility policies, operational aspects of corporate responsibility management, implementation systems, reporting and transparency, or total performance on any issue. For some controversies, it is indicated which standards or policies may have been violated and a brief analysis is presented. Apart from this, the report is mainly descriptive.

The range of sustainability and corporate responsibility issues eligible for inclusion in this overview is relatively broad. The assessment is mainly based on issues and principles as outlined in the OECD Guidelines for Multinational Enterprises. These Guidelines are used as a general frame of reference in addition to company-specific standards.

Sources of information are mentioned in footnotes throughout the report. The main sources were obtained through SOMO's global network of civil society organisations, including reports, other documents, and unpublished information. Media and company information databases and information available via the Internet are used as secondary sources where necessary. TNT has been informed about the research project in advance and was given two weeks to review the report and provide corrections of any factual errors in the draft version.

The overview of controversial practices in this report is not intended to be exhaustive. Instead, it focuses on a limited number of issues and cases that might merit further attention or reflection. Where information about the latest developments, either positive or negative, was unavailable, it is possible that situations described in the overview have recently changed. Taking into account these limitations, SOMO believes that the briefing can be used to address areas that need improvement and for a more informed assessment of a company's corporate responsibility performance.

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## Cases

### Minimum wage in Germany

On 18 December 2008, TNT issued a press release in which it expressed its satisfaction in the outcome of a court case regarding the payment of minimum wage to German postal workers.<sup>1</sup> According to the press release, “TNT has always been in favour of fair minimum wage arrangements” and “TNT continues to apply the labour conditions, including a fair minimum wage, as agreed with the Christian Postal Services and Telecommunication Union (CGTP)”. The case that the press release refers to has been going on throughout 2008, and deals with the payment of minimum wage to postal workers in Germany. TNT has been criticized by German, Dutch and international trade unions for its conduct in this case.

#### Background

First talks between ver.di, the largest union in the German postal sector, and TNT Post Germany took place in January 2007, when they discussed the need for a uniform minimum wage to create a level playing field. In a joint press release, ver.di and TNT Germany stated that it was “no longer acceptable that the competition in the German post sector takes place at the expense of the employees”.<sup>2</sup> However, no further negotiations took place between the two parties.<sup>3</sup>

In November 2007, the German government established a legal minimum wage for the entire postal sector. The level of the minimum wage was agreed between ver.di, and the Employers' Association of Postal Services (*Arbeitgeberverband Postdienste*).<sup>4</sup> The latter most prominently represents the interest of the Deutsche Post, the largest player in the German postal sector. TNT was not involved in these negotiations. The collective agreement set the hourly minimum wage at € 9.80 for postal workers and € 8.40 for letter sorters in western Germany, and € 9.00 and € 8.00, respectively, in eastern Germany.

The German government regarded the establishment of a legal minimum wage as a prerequisite to the liberalisation of its postal market.<sup>5</sup> First of all, it was intended as a measure to avoid social dumping and to keep new players from lowering wages for competitive reasons. Secondly, statistics showed that 46,175 workers worked for competitors of Deutsche Post. 59.4% of these workers had so-called “mini-jobs” (*Geringfügig Beschäftige*), which is a form of subsidized employment. These workers do not earn a living wage with their employment and thus receive an additional income from the government. It was feared that the liberalisation would increase the number of these workers, and that the scheme would in effect become a form of subsidy for the international postal companies.

<sup>1</sup> TNT press release, “Appeal court: minimum wage German postal sector void”, 18-12-08, <<http://group.tnt.com/press/419626/pressrelease.aspx>> (10-03-09).

<sup>2</sup> Ver.di press release „ Auch TNT Post geen Lohn- und Sozialdumping”, 31 January 2007 <<http://presse.verdi.de/pressemitteilungen/showNews?id=bb202196-b122-11db-6def-000e0c66dc60>> (25-03-09) & TNT Post press release TNT Post geen Lohn- und Sozialdumping”, 31 January 2007 <[http://www.tntpost.de/Startseite|PresseCenter|Pressemitteilungen|TNTPostgegenLohn-undSozialdumping.19.1.press\\_releases.22.html](http://www.tntpost.de/Startseite|PresseCenter|Pressemitteilungen|TNTPostgegenLohn-undSozialdumping.19.1.press_releases.22.html)> (25-03-09).

<sup>3</sup> In a response to a draft version of this report, TNT Post says that ver.di refused to join further negotiations with TNT Post Germany. The scope of this research did not allow for a reaction by ver.di to this statement

<sup>4</sup> Eironline website, 2007, 12, “Minimum wage for mail delivery workers”, 08-01-08, <<http://www.eurofound.europa.eu/eiro/2007/12/articles/de0712039i.htm>> (10-03-09).

<sup>5</sup> S. Teuscher, Division leader of Tariff, Officials and Social Politics, Ver.di, 10-03-08, telephone call with T. Steinweg

The established minimum wage came into effect on 1 January 2008, and was binding for all companies active in the sector.

### ***TNT's refusal to pay the minimum wage***

Following the announcement of the German government's decision, TNT announced its plans to not extend its current services in Germany to private consumers.<sup>6</sup> This would be too expensive due to the increased wage costs. TNT later decided to file a law suit to be exempt from paying the minimum wage. It argued that the German Labour Ministry violated the constitutional freedom of contract by imposing the minimum wage on the whole sector, including parties who had already concluded their own CLA.<sup>7</sup> The company stated that it would not be able to sustain its business in Germany, which was a loss-making operation at the time, if it was forced to pay €9.80 an hour to its workers.<sup>8</sup>

The German context is such that there is no general minimum wage, but different minimum wages are applied to different sectors. The average minimum wage set in the postal sector is around the average for all sectors.<sup>9</sup> It should be noted that this minimum wage is lower than the wages paid by TNT in the Netherlands that were agreed upon in a collective bargaining agreement with the Dutch unions.<sup>10</sup> It is also lower than the wage levels of most postal workers employed by Deutsche Post at the time.

In March 2008, the Berlin administrative court ruled in favour of TNT and other national and international operators, deciding that the binding collective agreement did not conform to German law.<sup>11</sup> TNT responded by saying that this ruling was the first step towards a "level playing field", which it deemed imperative for the liberalisation of the postal markets in Western Europe.<sup>12</sup> The German trade union ver.di issued an immediate response, calling the verdict "completely incomprehensible".<sup>13</sup> The verdict was appealed at a higher court.

In March 2008, more than 40 representatives of UNI Post & Logistics delivered a letter protesting against TNT's decision not to pay minimum wage.<sup>14</sup> In this letter, UNI accused TNT of "social dumping" and called for TNT to obey the laws and regulations and pay its workers the legal minimum wage, as established by the German government.

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<sup>6</sup> Spiegel website, International, Business, "Minimum Wage Threatens Postal Market Liberalization", 04-12-07, <<http://www.spiegel.de/international/business/0,1518,521247,00.html>> (10-03-09).

<sup>7</sup> TNT response to a draft version of this report, email received 23-03-09.

<sup>8</sup> Financial Times website, UK, "TNT threatens to leave Germany if wage challenge fails", 19-02-08, <[http://www.ft.com/cms/s/0/f4f94c40-de90-11dc-9de3-0000779fd2ac.html?nclick\\_check=1](http://www.ft.com/cms/s/0/f4f94c40-de90-11dc-9de3-0000779fd2ac.html?nclick_check=1)> (10-03-09).

<sup>9</sup> S. Teuscher, "Minimum Wage within the liberalized Postal Market in Germany", presentation at UNI Postal – Liberalisation workshop, Luxembourg, November 26<sup>th</sup>, 2008. In a written response to a draft version of this report, TNT Post indicates that "ver.di and DGB ("Deutsche Gewerkschaft Bund" of which ver.di is member) opted for a general minimum wage of €7,50". Within the scope of this research, this claim could not be verified by ver.di.

<sup>10</sup> P. Wiechmann, union director, ABVAKABO, 10-03-09, telephone conversation with T. Steinweg.

<sup>11</sup> Euractiv website, Social Europe, "Germany's minimum postal wage ruled illegal", 10-03-08, <<http://www.euractiv.com/en/social/europe/germany-minimum-postal-wage-ruled-illegal/article-170857>> (10-03-09).

<sup>12</sup> TNT press release, "Berlin Administrative Court confirms: minimum wage not binding for TNT Post", 07-03-08, <[http://group.tnt.com/press/400678/Berlin\\_Administrative\\_Court\\_confirms\\_minimum\\_wage\\_not\\_binding\\_for\\_TNT\\_Post.aspx](http://group.tnt.com/press/400678/Berlin_Administrative_Court_confirms_minimum_wage_not_binding_for_TNT_Post.aspx)> (10-03-09).

<sup>13</sup> Ver.di press release, "Landesverwaltungsgericht entscheidet "völlig unverständlich" gegen Postmindestlohn", 07-03-08, <<http://presse.verdi.de/pressemitteilungen/showNews?id=77d79f8a-ec7a-11dc-6696-0019b9e321e1>> (10-03-09).

<sup>14</sup> UNI Post & Logistics global union, open letter to Mr Philip Van Gijssel, Branch Manager, TNT Luxembourg, 18-03-08, <[http://www.uniglobalunion.org/Apps/UNINews.nsf/b677df401323603cc125753800471514/db5603358c1a6639c12575450032044d/\\$FILE/L%20Mr%20Philip%20Van%20Gijssel%20TNT%20Lux%2018-03-08%20E.pdf](http://www.uniglobalunion.org/Apps/UNINews.nsf/b677df401323603cc125753800471514/db5603358c1a6639c12575450032044d/$FILE/L%20Mr%20Philip%20Van%20Gijssel%20TNT%20Lux%2018-03-08%20E.pdf)> (10-03-09).

On 26 March 2008, representatives from UNI Post & Logistics, ver.di and the Dutch trade unions ABVAKABO and FNV Bondgenoten met with TNT management in Amsterdam.<sup>15</sup> During this meeting, the unions stressed that TNT was obliged to follow the minimum wage decrees, as they had the status of German rule of law. TNT indicated that they did not intend to abide by the agreement, and would continue to pay its own agreed wages during the entirety of the legal proceedings, which could take years. TNT Management also stated that in the event that TNT would lose the case, back to a January 2008 all employees would receive the wage at the level of the EURO 9.80 minimum.<sup>16</sup> On 20 April, ver.di, ABVAKABO and FNV Bondgenoten protested at the German-Dutch border, again calling for TNT to pay the agreed minimum wage.

In December 2008, the appeal court in Berlin decided that the German Labour Ministry had exceeded its legal authority by imposing the minimum wage on the whole sector.<sup>17</sup> In ver.di's opinion, this ruling was based on procedural grounds, and the verdict did not say anything about the minimum wage itself. The German government said it would appeal against the court ruling. Ver.di believes that the minimum wage is binding as long as appeals are still in process.<sup>18</sup>

In a telephone reaction to this case, Dutch union ABVAKABO points out that the legal framework in Germany should be considered as having established a level playing field. In the Netherlands, TNT has advocated a regulated level playing field as a condition for liberalisation of the Dutch postal market. At the same time, it uses legal proceedings in Germany to circumvent wage regulations in order to strengthen its own market position in that country. While it is acknowledged that the case is complicated, the standpoint of ABVAKABO and the international unions is that a legally established minimum wage should be respected at all times, by all employers.<sup>19</sup>

### ***TNT's use of 'ghost' unions***

An issue related to TNT's legal objections to the minimum wage in Germany's postal sector is the criticism it received for negotiating with a union that was financed by its management.

In March 2008, a few days after the first court's decision on the minimum wage issue (see above), ver.di called for an investigation into the use of a so-called "ghost" union by TNT and PIN Group, another international postal company. According to UNI Post & Logistics, TNT claims to have an agreement with a different trade union, the GNBZ, that sets a wage level below the minimum wage established by the Germany government. TNT has used this agreement as an argument in court to be exempt from paying the minimum wage. UNI raised serious doubts about the legal status of the GNBZ union, which is not an affiliate of any of the global unions.<sup>20</sup>

<sup>15</sup> UNI Post & Logistics, Global Bulletin, Edition 2008, No.2, no date, <<http://www.google.com/url?sa=t&source=web&ct=res&cd=1&url=http%3A%2F%2Fwww.union-network.org%2FUNIPostal.nsf%2F9b25257f6c21eca4c1257145004d7e2f%2Fc925835593586f5ac125744400405384%2F%24FILE%2FUNI%2520Post%2520%26%2520Logistics%2520Global%2520Bulletin%25202008-02-En.pdf&ei=Pqe2SZCrFtvN-Qb-8qH7Cq&usq=AFQjCNHf2Jy3sUYK-m-OVYyD1Ho1z3jktMw&sig2=2VvzBmB2ppN5jOXNtYKpYg>>(10-03-09).

<sup>16</sup> TNT response to a draft version of this report, email received 23-03-09.

<sup>17</sup> International Herald Tribune website, "FedEx cutting expenses as economy worsens ", 18-12-08, <<http://www.ihf.com/articles/2008/12/18/business/fedex.php>> (10-03-09).

<sup>18</sup> S. Teuscher, Division leader of Tariff, Officials and Social Politics, Ver.di, 10-03-08, telephone call with T. Steinweg

<sup>19</sup> P. Wiechmann, union director, ABVAKABO, 10-03-09, telephone conversation with T. Steinweg.

<sup>20</sup> Uni Global Union press release, "There should be an investigation into the legality of the TNT "ghost" union GNBZ", 12-03-08, <<http://www.union-network.org/unipostal.nsf/4fe7c562be09acf3c1256da5004960d0/8148e6d6df01a00c125740a005c7b00?OpenDocument>> (10-03-09).

In November 2008, the labour court in Cologne ruled that the GNBZ is not a union in legal terms, and is therefore not able to negotiate or sign collective agreements.<sup>21</sup> At this moment, a public prosecutor is investigating a possible breach of trust by TNT for the use of unofficial unions.<sup>22</sup> This investigation is similar to an investigation into the dealings of Siemens in 2007; this investigation, which was based on allegations by IG Metall that Siemens may have helped finance a rival union in order to undermine IG Metall's power within the workforce, resulted in the company receiving a fine.<sup>23</sup>

In August 2008, a different union, the Christian Postal Services and Telecommunication Union (CGTP), signed a collective agreement with TNT that established wage levels below the legal minimum wage, although it did include a number of employee benefits.<sup>24</sup> CGTP's membership of around 300, is significantly smaller than ver.di's.<sup>25</sup> Neil Anderson, Head of UNI Post & Logistics, responded to the agreement, noting, "UNI Post & Logistics Global Union condemns this action by the union to undermine an agreed minimum wage and to negotiate an agreement which doesn't even reach minimum legal standards, this union should be ashamed to have done this scandalous deal".<sup>26</sup>

## The privatisation of Royal Mail

On 16 December 2008, it was announced that Royal Mail, the largest public mail company in the UK, would be privatised "as part of a range of measures to protect its long-term future".<sup>27</sup> On that day, a report was published by the Hooper Commission on the future of Royal Mail, giving three recommendations. One of these recommendations was that Royal Mail should form a "strategic minority partnership" with a private company. Lord Mandelson, Business Secretary of the UK government, announced that it had received an expression of interest from TNT.

In its 2008 annual report, TNT confirms these developments, noting:

*"In December, TNT expressed its interest to explore a strategic partnership with Royal Mail. Our interest was triggered by the publication of the Hooper Commission report, which recommends a strategic partnership with a private sector company and sets out a number of critical requirements for a sustainable future for Royal Mail. We believe that a strategic partnership with Royal Mail could make a lot of sense for both our companies".<sup>28</sup>*

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<sup>21</sup> S. Teuscher, "Minimum Wage within the liberalized Postal Market in Germany", presentation at UNI Postal – Liberalisation workshop, Luxembourg, 26 November 2008.

<sup>22</sup> S. Teuscher, Division leader of Tariff, Officials and Social Politics, Ver.di, 10-03-08, telephone call with T. Steinweg. In a written response to a draft version of this report, TNT states: "A public investigator who looked into possible breach of trust by TNT found no proof for any doubtful role of TNT", indicating that the investigation is already concluded. Within the scope of this research, this could not be verified by other sources.

<sup>23</sup> Deutsche Welle website, "German Trade Union Sues Siemens Over Bribe Allegations", 02-04-07, <<http://www.dw-world.de/dw/article/0,2144,2429758,00.html>> (10-03-09).

<sup>24</sup> TNT response to a draft version of this report, email received 23-03-09

<sup>25</sup> S. Teuscher, Division leader of Tariff, Officials and Social Politics, Ver.di, 10-03-08, telephone call with T. Steinweg

<sup>26</sup> UNI Global Union press release, "UNI shocked at the bad deal done by German Christian postal union", 12-08-08, <<http://www.union-network.org/unipostal.nsf/4fe7c562be09acf3c1256da5004960d0/c2c1f5960c54b2afc12574a3005e3c77?OpenDocument>> (10-03-09).

<sup>27</sup> Guardian website, "Royal Mail to be part-privatised", 16-12-08, <<http://www.guardian.co.uk/politics/2008/dec/16/royal-mail-post-office>> (10-03-09).

<sup>28</sup> TNT annual report 2008, <<http://group.tnt.com/annualreports/annualreport08/index.html#annualreport2008>> (10-03-09).



The planned privatisation of Royal Mail has stirred up significant controversy in the UK, as trade unions have spoken out against such plans and called for Royal Mail to remain in public ownership. On the day of the announcement by Mandelson, the Communication Workers Union (CWU) expressed its dismay. Its deputy general secretary stated, "There is no need to seek private funding from outside companies in a joint venture. This would open the floodgates for full-blown, damaging privatisation. Post is a key public and business service which must retain the protection and guidance of Government for sustainable success".<sup>29</sup>

### ***Developments in 2009***

Although the following information is not related to TNT's business activities in 2008, it is still worth mentioning some of the developments that occurred in 2009, as they relate to the growing resistance against the privatisation of Royal Mail and the role of TNT in this process. To this date, TNT has not publicly commented on this growing resistance.

- ❑ In January 2009, the Labour party put down the Early Day Motion, calling for a modern Royal Mail, but rejecting the recommendation to sell of a minority stake to a private operator.<sup>30</sup>
- ❑ A public opinion poll, commissioned by the CWU, showed that the majority of the British public would reject the privatisation of Royal Mail. 89% opposes the move if it entails ownership by a foreign entity.<sup>31</sup>
- ❑ Royal Mail's chief executive, Adam Crozier, has accused TNT of 'poaching' customers away from Royal Mail's subsidiary in Poland, using the argument that TNT would soon buy Royal Mail and its polish subsidiary.<sup>32</sup> News reports in the UK indicate that this might frustrate future negotiations between Royal Mail and TNT. TNT has denied these allegations.

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<sup>29</sup> CWU press release, "CWU Responds to Mandelson", 16-12-08, <<http://www.cwu.org/cwu-responds-to-mandelson.html>> (10-03-09).

<sup>30</sup> Geraldine Smith, Early Day Motion, EDM 428, "Royal Mail", 13-01-09, <<http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=37448&SESSION=899>> (10-03-09).

<sup>31</sup> CWU press release, "Nine out of Ten Oppose Royal Mail Privatisation", 09-02-09, <<http://www.cwu.org/nine-out-of-ten-oppose-royal-mail-privatisation.html>> (10-03-09).

<sup>32</sup> Guardian website, "Royal Mail boss attacks TNT for 'poaching'", 09-03-09, <<http://www.guardian.co.uk/uk/2009/mar/09/royal-mail-tnt>> (10-03-09).