EUROPEAN COMMISSION

Brussels, 26/09/2006

C (2006) 4207 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].	**PUBLIC VERSION** **WORKING LANGUAGE** **This document is made available for information purposes only.**

Subject: **State aid C42/2006 (ex NN52/2006) – Italy**
Poste Italiane - BancoPosta
Remuneration of current accounts deposited with the Treasury

Sir, /Madam

The Commission wishes to inform Italy that, having examined the information supplied by your authorities on the aid measures referred to above, it has decided on the one hand to consider some of these measures compatible with the EC Treaty, and on the other hand, to initiate the procedure laid down in Article 88(2) of the EC Treaty on the measures applicable as of 2005.

1. Procedure

(1) On 30 December 2005, *Associazione Bancaria Italiana* (ABI) complained to the Commission about various measures benefiting to banking activities of *Poste Italiane SpA* (PI)[1]. These activities are operated through a fully integrated division of PI, called *BancoPosta*.

(2) From a State aid point of view, ABI raises three main issues:

- Funds collected in BancoPosta customer current accounts are deposited with the Italian Ministry of Economy and Finance. This deposit would bear an interest for PI of around 4%, while current accounts are remunerated at a rate of around 1% by BancoPosta. The spread between the deposits/loan rates would be higher than the relevant "market" spread, thus constituting a State aid.

[1] In the present decision, PI qualifies Poste Italiane SpA and, when relevant, its predecessor (Ente Posta Italiane, the public postal service…).

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- PI would be entrusted with an alleged monopoly distribution of two financial products (*Buoni fruttiferi postali*, and *Libretti postali*) on behalf of *Cassa Depositi e Prestiti* (CDP). The remuneration paid by CDP for the distribution would contain overcompensate PI. A second advantage would consist in the monopoly distribution of the two products, which would distract clients from similar financial products distributed by private banks.
- BancoPosta would benefit from cross-subsidies because of some overcompensation of the costs incurred for discharging the postal public service obligations. This cross-subsidization would result notably from an inappropriate accounting split between commercial activities and activities operated by PI under public service obligations.

(3) The present decision only addresses the issue of the remuneration for the funds collected on current accounts and deposited with the State. It is without prejudice to the assessment of the two other items raised by ABI, which are dealt with separately by the Commission.

(4) By letter dated 7 February 2006, the Commission services raised questions to the Italian authorities, relating notably to the remunerations paid on postal current accounts. Following a request for a prolongation of the reply deadline, Italy replied to the questions by letter dated 21 April 2006, registered on 24 April 2006.

(5) A meeting took place with the Italian authorities and representatives of PI on 30 March 2006.

2. Activities of Poste Italiane and BancoPosta – Affected markets

(6) PI is the universal postal service provider in Italy, which fulfils the universal postal service obligation[1] according to the amended Postal Act[2] and the regulations on the universal postal service. Financial services are presently not included within the remit of the service of general economic interest PI is entrusted with.

(7) Besides providing core postal services, PI offers integrated products, as well as communication, logistic and financial services all over Italy. The main figures are the following (2004)[3].

Total employees (annual average)	151,463
Post Offices	13,855
Delivery Staff	41,294
Counter Staff	65,220
POSTAL SECTOR	
Products and services	**quantity**
Mail (ordinary mail, priority mail, registered mail, insured mail, judicial acts, other registered mail)	3,683,589,000
Commercial Post (Postatarget, catalogues, unaddressed mail, etc.)	1,722,102,000
Perodicals (stamps, gadgets, books, etc.)	1,252,531,000
Mail from abroad	196,642,000
Electronics Communications (telegrams, telefaxes, telexes)	18,350,000
Express mail (Poste Italiane and SDA)	41,429,000
Packages	22,883,000
POSTAL SAVINGS	
Total deposits in savings accounts, bonds and post office current accounts	251,167 Millions of euros
Life insurance: underwritten amounts	4,698 Millions of euros
BancoPosta accounts: number of active accounts	4,201,584 current accounts

1 The universal service comprises the conveyance of items of correspondence and addressed printed matter weighing up to 2 kg and postal packages of up to 20 kg; as well as a service of registered items and service of insured items.

2 Law decree 261/1999 published in G.U. 182 of 5.08.1999 and decree of the Ministry of Communication of 17.04.2000, published in G.U. 102 of 4.05.2000.

3 Source: PI's web site; January 2006.

(8) The financial services activity of PI represented 42% of its total revenue in 2004 (the highest percentage in Europe)[4].

(9) Before December 2003, PI was 100% owned by the Italian State. Since December 2003, CDP received 35% of the share capital of PI from the State.

(10) CDP was a State administration until it was transformed into a limited company in late 2003. Since, even if 30% of CDP share capital has been transferred to 65 banking foundations[5], CDP has remained controlled by the State.

(11) PI is controlled by the State.

2.1. Postal services

(12) According to a recent study[6], the Italian postal market was relatively open before the implementation of the first Postal Directive[7]. Operators other than PI could already perform the distribution of addressed direct mail and hybrid mail. In addition, local mail operators were active in the distribution of letter mail, as part of a subcontracting relationship with PI. After implementation of the Postal Directive 1997/67, the transport and delivery of hybrid mail was put under the reserved area and the subcontracting relationships were disconnected. Outgoing and incoming international mail is completely under the reserved area of PI. Since 1 January 2003, the second postal directive[8], which envisages the full opening of the EU postal market to competition by 1 January 2009, has been implemented in Italian legislation, limiting the reserved area to the weight limit of 100 gram for letter mail and three times the basic tariff of priority mail. In addition, upstream services and the conveyance of bulk mail remains under the reserved area. The postal market is now *de jure* relatively open to competition since the delivery of direct mail is liberalised. Entry regulations are not regarded as severe[9].

2.2. Financial services

(13) Presidential Decree 144 of 14 March 2001 lays down the rules for the banking and financial services to be provided by PI, constituting the activity of BancoPosta. These activities comprise: collecting savings from the public in all forms; provision of payment services; foreign exchange intermediation; promotion and placement of loans by banks and other authorized intermediaries; performance of some investment services (trading on account of third parties and placement and collection of orders, thus

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4 See study by PriceWaterhouseCoopers “The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009, Final Report May 2006”.

5 According to Article 5 of Law Decree Nr 269 of 30.09.2003 and the Conversion Law Nr 326 of 24.11.2003, CDP shares are assigned to the State. Moreover, bank foundations and other public or private entities can only hold, in aggregate, minority shares of CDP capital.

6 Development of competition in the European postal sector, ECORYS-NEI, July 2005.

7 Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

8 Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ L 176, 5.7.2002, p. 21).

9 Development of competition in the European postal sector, ECORYS-NEI, July 2005.

excluding trading on own account and individual portfolio management). It is explicitly precluded that PI can engage in financing.

(14) BancoPosta, which is an integrated business division of PI, can be considered as a deposit institution and a financial intermediary. While it does not hold a bank license, it uses PI's numerous post-office outlets to operate and provide banking and financial products.

(15) The 13855 counters, at least one per municipality on average, and thus the biggest banking retail network in Italy, could be considered as an asset more than as a liability. Their cost is regarded as mostly supported by these financial services, and would not represent a burden for the universal service provider[10].

(16) The rating Agency Fitch notes in a report published in 2004 that PI/BancoPosta has "a capacity to reach the overall (*Italian*) population that cannot be matched by domestic banks for the foreseeable future"[11]. Moreover, Fitch considers that PI has put "the development of financial services at the heart of (*its*) strategy".

(17) PI/BancoPosta offers a wide range of products, which can be regarded as similar to products and services proposed notably by banks:
- services of direct and indirect collection of savings and lending;
- payment services;
- placement of financial and investment products.

(18) For the present decision, the most relevant element relates to the fund-raising instruments, and mainly the "direct" deposit-taking via current accounts.

(19) PI outlets raise funds directly in the form of postal current accounts. The balance on these accounts at 31 December 2004 amounted to EUR 35 billion. According to ABI, this amount was up by 94% over 1999. In the retail segment only, at the end of 2004 PI/BancoPosta had 4.2 million current accounts.

(20) ABI indicates that PI's direct fund-raising has increased faster than that of its immediate banking counterpart. Between 1999 and 2004, direct bank fund-raising increased by 36%, against 94% for postal current accounts. ABI argues that the growth of direct deposit-taking by PI/BancoPosta significantly impede on banks' fund-raising: in 1999, postal accounts represented 2.2% of the direct fund-raising of banks and post office combined; by 2004 its share had risen to 3.1%. ABI considers that this growth is notably due to the more attractive terms PI/BancoPosta offers in comparison with banks, for equal services. For instance, the average deposit rate for bank current account is somewhere between 0.6% and 0.7%, while PI/BancoPosta offers 1% in early 2005[12].

(21) In addition to direct fund-raising via current accounts, PI/BancoPosta also carries on an activity of indirect fund-raising via the placement of postal savings certificates and savings books on account and in the name of CDP (see paragraph 2 above).

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[10] See study by PriceWaterhouseCoopers "The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009, Final Report May 2006".

[11] FitchRatings, special report: "The European Regulated Mail Sector: Tomorrow's Deliveries", 09.07.2004.

[12] In 2004 the rate was 1.25%.

(22) Moreover, in the past few years, PI/BancoPosta has significantly broadened the range of its payment services to customers, adding to the traditional postal instruments (current account deposit receipts and postal money orders) a series of instruments that were formerly proposed only by banks (debit and credit cards, credit transfers, standing debit orders for utility bills)[13].

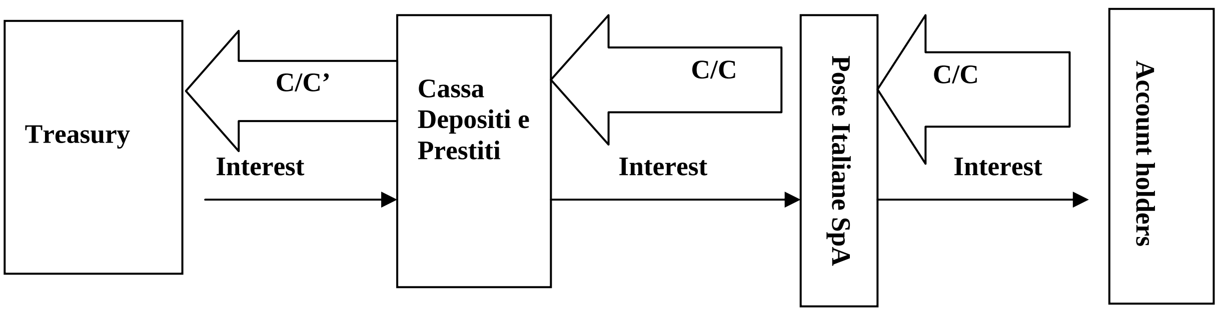
(23) Finally, PI/BancoPosta provides placement services for:
- structured bonds issued by banks;
- insurance policies, notably via Poste Vita[14];
- investment funds management by the asset management company Banco Posta Fondi SGR[15];
- loans for third parties. Personal loans and mortgages are sold on account of banks.

3. The measures under assessment

(24) The measures under assessment in the present decision are the annual remunerations for the funds deposited with the Ministry of Economy and Finance (Treasury), and CDP, and the deposits/loan rate spread[16].

(25) Funds collected on BancoPosta’s customer current accounts must be deposited with the Ministry of Economy and Finance (Treasury) and CDP.

(26) The chart hereunder illustrates the dealings between the various entities until December 2003.



(27) Following a decree of 5 December 2003[17], the Treasury has taken the place of CDP in the relationships deriving from the postal current account service. The following chart illustrates the new relations between PI and the Treasury:

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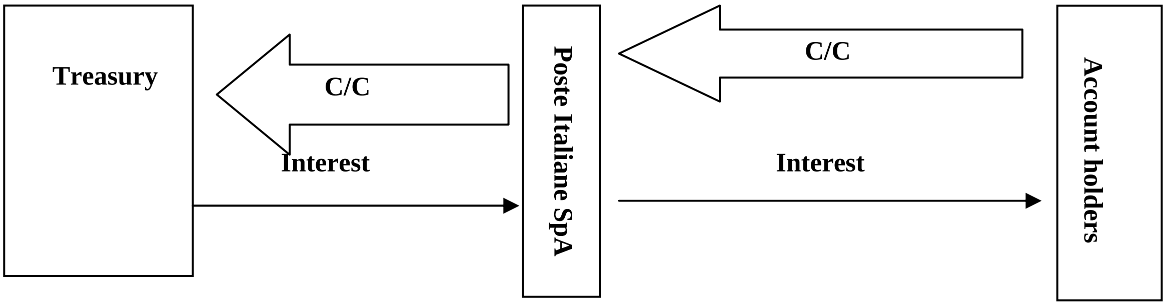
13 In some cases, like debit cards and standing debit orders, the service is provided by BancoPosta itself. In other cases, BancoPosta distributes third-party products (for instance credit cards distributed on behalf of banks).

14 Poste Vita SpA is a fully owned subsidiary of PI.

15 Banco Posta Fondi SpA SGR is a 99% owned subsidiary of PI.

16 The loan is here the money transferred to the Treasury/CDP; the deposit refers to the money deposited by BancoPosta’s customers on current accounts.

17 Published in *G.U.* 288 of 12.12.2003.



(28) In its letter of 21 April 2006, Italy recalls that the postal current account service has been essentially governed by a law of 1917[18], modified by Decree 822 of 22 November 1945[19]. The law established notably that the funds collected on PI/BancoPosta's customer current accounts should be deposited on an account bearing an interest rate equal to the rate received by CDP on its financing activity less 15 hundredths of a percentage point.

(29) According to Italy, notably for accounting purposes, one part of the funds collected on PI/BancoPosta's customer current accounts are deposited on a Treasury account (treasury financing – sight account) and the remaining part are deposited on three other accounts linked to CDP's financing of public entities (blocked accounts).

(30) The ministerial decrees of 25 February 1985, 9 December 1988, and 14 December 1993 set the interest rates applicable to the account deposited with the Treasury (sight account). The interest rates on the funds deposited on the blocked accounts had been set according to the duration and type of CDP's financings.

(31) For the period from 1999 until 2004, the remuneration of the funds collected on PI/BancoPosta's customer current accounts was therefore the following:

	Account Treasury (sight account)	Account CDP 1 (blocked account)	Account CP 2 (blocked account)	Account CDP 3 (blocked account)	Weighted average interest rate	Interests
Interest rates	4.35%	[…]*	[…]	[…]		
Average deposits 1999	[…]	[…]	[…]	[…]	[…]	554
Average deposits 2000	[…]	[…]	[…]	[…]	[…]	711
Average deposits 2001	[…]	[…]	[…]	[…]	[…]	653
Average deposits 2002	[…]	[…]	[…]	[…]	[…]	1000
Average deposits 2003	[…]	[…]	[…]	[…]	[…]	1113
Average deposits 2004	[…]	[…]	[…]	[…]	[…]	1356

(32) Italy is of the view that the interest rates paid on the current accounts have been, on average, lower than market rates. Over the last ten years, Italy states that the average rates of 30-year and 10 year Treasury bills would have been respectively 6% and 5.5%, while ordinary 12-month Treasury bills would have borne an interest rate of 4.10% on average.

[18] Published in *G.U.* 219 of 6.09.1917.
[19] Published in *G.U.* 12 of 15.01.1946, p. 12.

** Business secret*

(33) Italy considers that these elements demonstrate that the measure at stake had not been a State aid, which would have had to be notified.

(34) Since 2005, the remuneration of the account[20] is ruled by Law Nr 266 of 23 December 2005[21]. The latter provides that the financial interests paid to PI/BancoPosta are defined between the Ministry of Economy and Finance and PI/BancoPosta according to market parameters. The law established also that, for 2005, the interest cost for the Ministry should be reduced at least by EUR 150 million in comparison with the previous year.

(35) Subsequently, a convention was passed between the Ministry and PI/BancoPosta on 23 February 2006, defining the concrete mechanisms for establishing the interest rates for a three-year period starting in 2005. The rate is now essentially calculated as the weighted average of the yield of government securities at 30 years (80%), and 10 years (10%), and of 12-month Treasury bonds (10%). The rates of the government securities and of Treasury bonds used for the calculation are revised fortnightly. Furthermore, in case of significant changes in the rates curve (for instance a change in the relation between long and short term rates, PI has the possibility to revise the calculation scheme.

(36) The 2005 rate is around 3.9%. The interests paid amount to EUR 1.3 billion.

(37) A ministerial decree of 3 April 2006 has approved the implementation of the convention.

(38) According to Italy, the structure of the rate computation is intended to reflect the fact that the use of the collected funds is essentially of a long term nature. If the State were to replace this financing tool, it would have recourse to long-term obligations. Moreover, as PI has an open-ended legal obligation to deposit the amounts collected on its current accounts to the Treasury, the situation is essentially comparable to an open-ended, that is to say long term, loan to the Treasury. Furthermore, Italy recalls that PI has no other (possibly more rewarding) possibility than the Treasury current account for the use of the money collected from its customers' current accounts.

(39) Italy considers that the increase over time of the funds collected on the current accounts of PI/BancoPosta's customers confirms the stability of the resources for the Treasury. Italy notes that the deposit system is not only connected to Treasury needs but constitutes also a prudential mechanism.

(40) Italy notes that if the Treasury had to use an alternative source of financing, replacing the money transferred from PI/BancoPosta, the most likely tool would be long term obligations.

(41) Finally, two letters to PI, one from a consultant and one from a bank, were transmitted by Italy, in order to confirm the qualification of the rate fixing methodology as market oriented:

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[20] The accounts deposited directly with CDP have been closed.

[21] Published in *GU* 302 of 29.12.2005, "*supplemento ordinario*" 211. This law has a retroactive effect as of 01.01.2005.

- First, notably on the basis of the long term growth of the deposits with the Treasury made by PI/BancoPosta, the consultancy firm is of the view that these deposits are similar to long term resources. It also considers that the Treasury would have recourse to long term instruments if it were to replace the deposits, because of the costs of the substitution.

- Secondly, the bank is of the view that PI/BancoPosta could have been able to obtain for the liquidity deposited with the Treasury a return of 4% in 2005, comparable to the result achieved by Ramo I, a subsidiary of Poste Vita, for funds of EUR 6 billion[22]. This 4% result is similar to the 3.9% applicable to PI/BancoPosta according to the convention with the Ministry of Economy and Finance.

(42) The interests paid by PI/BancoPosta to the current account holders have been the following:

Period (since)	**Interest rate** **(in %)**
08/1998	2.00
07/2003	1.50
01/2004	1.25
01/2005	1.00
09/2005	0.75
01/2006	0.50

(43) Italy remarks that, while the rate remunerating the current account holders had been set at 1.5% by a law of 1934, the 1997 budgetary law[23] has for the first time given to PI/BancoPosta the possibility to fix the rate in an autonomous manner. This possibility has been fully applied as of 1997.

(44) The interest income represents around a third of BancoPosta's total income from services.

4. Assessment of the measure

(45) In order to ascertain whether a measure constitutes aid within the meaning of Article 87(1), the Commission has to assess whether the scheme:
- is granted by the State or through state resources;
- provides an economic advantage;
- is capable of distorting competition by selectively favouring certain undertakings or the production of certain goods;
- affects trade between Member States.

(46) The case makes it necessary to split the assessment in two parts: the measures applicable until 2004 and the measures applicable as of 2005. This split reflects the changing conditions of the way the economic advantage is granted to PI/BancoPosta, and their consequences. However, the analyses regarding the three other criteria can be conducted in common for the two time periods.

[22] The funds were invested in a portfolio of Euro-area Government bonds (60%) with minimum rating equal to that of Italy, and of corporate bonds (40%) with an average rating of AA-.

[23] Law Nr. 662 of 23.12.1996, published in *GU* of 28.12.1996.

4.1. Use of State Resources

(47) In order to be qualified as State aid, advantages must be imputable to the State and granted directly or indirectly by means of state resources.

(48) The interests have been paid by the Ministry of Economy and Finance/Treasury, and by CDP, which is a State-controlled operator. Specific laws and decrees, applicable to PI, have been the bases for the granting of these interests.

(49) Therefore, the two above-mentioned cumulative conditions are met in the present case. The interests paid to PI/BancoPosta are State resources.

4.2. Selectivity

(50) Article 87(1) EC prohibits aid which ‘favours certain undertakings or the production of certain goods’, that is to say, selective aid.

(51) The possibility of benefiting from the remunerated current accounts deposited with the Treasury and CDP does not apply to all companies, which could in theory take advantage of it considering the nature and the economy of the system. In any case, Italy has not demonstrated that the very limited number of operators benefiting from such accounts is justified by the nature and the economy of the system.

(52) As a conclusion, the loan rates offered to PI/BancoPosta are selective.

4.3. The effect on trade between Member States and distortion of competition

(53) Article 87(1) EC prohibits aid which affects trade between Member States and which distorts or threatens to distort competition.

(54) In its assessment of those two conditions, the Commission is required not to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition[24]. When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid.

(55) It is not necessary that PI itself be involved in intra-Community trade. Aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned. Furthermore, the strengthening of an undertaking which, until then, was not involved in intra-Community trade may place that undertaking in a position which enables it to penetrate the market of another Member State.

(56) As described in details in section 2 “Activities of Poste Italiane and BancoPosta – Affected markets” of the present decision, there has been some competition in the postal

[24] See for instance judgment of the Court in case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 44.

sector in Italy even before the gradual liberalisation promoted by Community legislation.

(57) It is acknowledged that the main challenges of the EU public postal operators have been increasing competitive pressure in all market segments—letter post, parcels and express services. While the parcel and express markets have been open for competition for decades, in the letter post segment legal monopolies have strongly impeded development of competition. In the perception of national regulatory authorities and public postal operators, competition in the parcel and express segments has been substantial at national as well as at international levels while in the letter post segment competition is still emerging[25].

(58) In particular, express mail services, parcel services dedicated to business customers and logistical services have been developed in Italy by private undertakings, some of which, like TNT and DHL, are based in other Member States. A report published in 2004 by the Commission[26] highlights that several postal operators (Royal Mail / UK , TPG / The Netherlands, Deutsche Post / Germany, and La Poste / France) have acquired businesses located in Italy in postal services.

(59) Regarding financial services, the Commission recalls that the banking sector has been open to competition for many years. Progressive liberalization has enhanced the competition that may already have resulted from the free movement of capital provided for in the EC Treaty.

(60) Moreover, as already explained in the previous State aid case relating to Ente Poste Italiane/PI[27], PI competes with banks and financial operators offering products which can to a large extent be substituted for PI's products. Notably, the post office current accounts are in competition with bank current accounts, where both banks and PI have outlets. Additionally, over the recent years, BancoPosta has significantly broadened the range of its payment services to customers, adding to the traditional postal instruments, like current account deposit receipts, a series of instruments that were formerly the province of banks (debit and credit cards, credit transfers, standing debit orders for utility bills). In some cases (debit cards and standing debit orders) the service is provided by BancoPosta itself; in others BancoPosta distributes third-party products (banks, in the case of credit cards). These evolutions have increased the substitutability of the financial services offered by PI with those offered by banks.

(61) Banks from different Member States operate in Italy, either directly through branches or representative offices, or indirectly by controlling Italian-based banks and financial institutions. Recent cross border capital operations involving Italian banks (like *Antonveneta* and BNL) confirm this situation.

(62) The Commission is also of the view that the measure makes it more difficult for undertakings established in other Member States to penetrate the Italian market.

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25 Report "The Evolution of the Regulatory Model for European Postal Services", by WIK Consult, July 2005.

26 Report "Main Developments in the European Postal Sector", by WIK Consult, July 2004. See Table 5.1.6 "Geographical distribution and business focus of companies acquired by the "Big four" (1998 and before until June 2004)".

27 Decision of 12.03.2002 in case C 47/98 (OJ C 282 of 19.10.2002, p.29).

(63) To conclude, there is trade between Member States in the postal and financial services sectors. The loan rate strengthens the position of PI in relation to postal and banks undertakings competing in intra-Community trade. Therefore, the measure is liable to affect such trade and distort competition.

4.4. Existence of an economic advantage

(64) To constitute a State aid, a measure must confer on recipients an advantage.

(65) The analysis of the elements constituting the spread between the loan/deposits rates is of relevance when assessing whether an advantage exists in favour of PI/BancoPosta.

(66) The Commission notes that a market spread may contain State aid elements under certain circumstances, notably when the loan and deposit rates individually are off market[28]. This is not the case in the present case.

(67) The Commission considers the deposit rate offered on final consumer's current accounts is not constitutive of a State aid in favour of PI/BancoPosta. Notably, the setting of this rate does not include a transfer of State resource to PI/BancoPosta. Moreover, the rates offered over the period concerned appear to be within a market range, when comparing with interest rates offered by banks for similar products. Finally, the beneficiaries of the deposit rate are individuals.

(68) Therefore, at that stage, when examining the spread, the Commission comes to the conclusion that, in the present case, an advantage could only derive from the loan rates.

(69) The loan rate paid by the State gives an economic advantage if it were higher than the rate which would have been paid to PI/BancoPosta, under market circumstances, by a private borrower for the deposited funds, according to their nature and amount.

4.4.1. From 2005 onwards

(70) As of 2005, the money collected on PI/BancoPosta customers' current accounts is deposited only with the Treasury. Moreover, according to Italy, the loan rate is now defined according to market parameters, by reference to the weighted average of the yield of government securities at 30 years (80%), and 10 years (10%), and of 12-month Treasury bonds (10%).

(71) The high weight of long term instruments would be justified according to Italy because the collected funds are essentially of a long term nature (see section 3). As a consequence, Italy considers that there would be no advantage in favour of PI/BancoPosta in the loan rate. For 2005, the interests paid to PI/BancoPosta may even be less favorable than market conditions because the interest cost for the State should be reduced at least by EUR 150 million.

(72) On the other hand, ABI compares the loan rate offered to PI/BancoPosta to rates applied to short term Treasury bonds. The latter would be lower than the former.

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[28] For instance, assuming that a market spread at a given period is 2%, while market deposit rate is 1%, a spread stemming from a loan rate of 10% and a deposit rate of 8% could include some elements of State aid.

(73) By comparison, according to ABI, CDP has an interest-bearing current account with the State Treasury on which it deposits its liquidity. According to the Decree of the Minister for the Economy and Finance of 5 December 2003, interest on the funds is paid half-yearly at a floating six-monthly rate equal to the simple arithmetic average of the gross yield on 6-month Treasury bills and the monthly *Rendistato* index[29].

(74) The Commission notes that the market rate has normally to be established considering what rate a private borrower would be ready to pay to PI as interest for the deposited funds according to their nature and amount.

(75) The Commission considers at this stage that the deposit of PI/BancoPosta with the Treasury is made on a current account. The Treasury, and not PI, covers the liquidity risk associated with the deposited funds. Moreover, during the meeting on 30 March 2006, the Italian authorities confirmed that the money collected on the Treasury current account is now used to finance ordinary budget needs.

(76) It is not clear enough whether the alternative financing tool which would be used by Italy if it had to replace the money made available from PI/BancoPosta would be essentially long term obligations.

(77) Furthermore, while Italy insists on the recent increase of the funds collected on the current accounts of PI/BancoPosta's customers, as a confirmation of the stability of the resources for the Treasury, the Commission notes that the level of the funds made available to CDP and the Treasury has actually encountered very significant changes over the years:

	Account with the Treasury (sight account)	Accounts with CDP (blocked accounts)	Total
Average deposits 1995	[…]	[…]	[…]
Average deposits 1996	[…]	[…]	[…]
Average deposits 1999	[…]	[…]	[…]
Average deposits 2000	[…]	[…]	[…]
Average deposits 2003	[…]	[…]	[…]
Average deposits 2004	[…]	[…]	[…]

Source: Annex of letter from Italy of 21.04.2006.

(78) In addition, it cannot be excluded that, because of the specificities of PI/BancoPosta, which is obliged by law to deposit with the State the money collected on its customers' current accounts, no market comparator could be established. Under such circumstances, the Commission would have to establish the cost of operating this account for PI/BancoPosta (which should be possible with an efficient analytical accountancy system) and add a reasonable margin. This sum would indicate an *ad hoc* "market" rate. Such an approach would also be justified if the Commission were to consider that PI acts merely as a conduit to collect funds for the States through the widely-spread postal offices.

29 See CDP report and financial statements at 31.12.2004, p.85.

(79) As a conclusion, there are doubts in the relevant manner of determining an appropriate market reference for the interest rate to be paid by the Treasury to PI/BancoPosta.

(80) If the interest fixing scheme applicable as of 2005 engendered State aids, these aids:

- would have to be assessed as a new aid. Indeed, the Commission is of the view that the overhaul of the legal framework applicable to the setting of the loan rate, as resulting from Law 266 of 23 December 2005, has introduced significant changes to the previously applicable legislation.
- would be unlawful as the relevant law and convention have been implemented by a ministerial decree in breach of Article 88(3) of the Treaty.
- would not appear to be compatible with the EC Treaty at this stage. First, the Commission is of the view that none of the exceptions provided for in Article 87(2) and 87(3) would be applicable. Secondly, Article 86(2) would neither be applicable as PI is not entrusted with a service of general economic interest by the Italian authorities for the financial activity at stake.

4.4.2. The period before 2005

(81) The Commission will demonstrate that until 2004 included, the scheme applicable to the fixing of the loan rates would be an existing aid, if at all a State aid.

(82) The Commission notes that the interest rates granted by the State for the funds transferred from current accounts of PI/BancoPosta customers have been essentially fixed until late 2004 according to a law originating in 1917, modified in 1945.

(83) ABI shares the same opinion.

(84) The amendments to this law and the ministerial decrees adapting the level of the interest rates, which are linked to the law as amended, have not affected in a material way the law concerned. Notably, the variation in the figure of the interest rate does not correspond to a material change of the mechanism presiding over the definition of the rate value. In substance, until 2004, the loan rate paid to PI/BancoPosta had remained equal to the rate received by CDP on its financing activity less 15 hundredths of a percentage point.

(85) The scheme was adopted before Italy's accession. Moreover, the progressive liberalization of the financial activities offered by PI/BancoPosta started before the entry into force of the procedural regulation[30].

(86) Consequently, the Commission concludes that the measure applied until late 2004, if it were an aid, would have to be qualified as existing aid according to Article 1(b), (i), (iv) and (v), of the procedural regulation.

(87) The measure came to an end at the latest as of 31 December 2004 as a (retroactive) consequence of Law 266 of 23.12.2005. There is therefore no point in proposing appropriate measure in the meaning of Article 18 of the procedural regulation.

[30] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Art.88) of the EC Treaty (OJ L 83 of 27.03.1999, p. 1).

5. Conclusion

On the basis of the foregoing assessment, the Commission has decided to consider that the interests paid by the State to PI/BancoPosta are existing aid, if aid at all, until 2004. As the measure came to an end in 2004, there is no point in proposing appropriate measure in the meaning of Article 18 of the procedural regulation.

Regarding the scheme defining the interest rate to be applied to the funds deposited with the Treasury as of 2005, in the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests Italy to submit its comments and to provide all such information as may help to assess the aid/measure, within one month of the date of receipt of this letter.

For the assessment, notably in order to determine the relevant market rates (if any), applicable to the above-mentioned deposits, the following information is required:

- the definition of a comparable financing instrument for the State, taking into account the duration, the level of guarantee and the liquidity of the deposit, and the use of the funds deposited;
- the definition of the interest rate to be offered by a private investor and accepted by a private lender for such a comparable instrument;
- the alternative financing tool(s) Italy would use if it had to replace the money transferred from PI/BancoPosta;
- the values of the market rates to be used in 2005 and 2006. The specific rates of the possible individual components (short, medium, long term…) of the aggregate market rate are required.
- the description of the annual costs relating to the collection and deposit of funds stemming from the current accounts of PI/BancoPosta customers. Precise data from the analytical accounting system should be used for the year 2005 (real) and 2006 (budget).
- an estimate of a reasonable margin for the conduction of the abovementioned activity.

The Commission requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Italy that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Italy that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the

Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Director-General for Competition
Directorate State Aid II
State Aid Greffe
B-1049 Brussels
Fax No: +322 296 95 80

Yours faithfully,

For the Commission

Neelie Kroes

Member of the Commission