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Brussels, 02.05.2013

C(2013) 1909 final

<p>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 [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid SA.31006 (2013/N) – Belgium

State compensations to bpost for the delivery of public services over 2013-2015

Sir,

1. PROCEDURE

- (1) On 7 March 2013, after pre-notification contacts with the Commission, Belgium notified State measures in favour of Belgian Post (formerly 'DPLP', now and hereinafter 'bpost') for the period 1 January 2013 to 31 December 2015.
- (2) Previous measures by the Belgian State in favour of bpost for the period 1992-2010 were the subject of Commission Decision (SA.14588) of 25 January 2012 (hereinafter "the 2012 Decision"). The Commission approved a pension relief of €3.8 billion from which bpost benefited through the Belgian pension reform of 1997, but ordered Belgium to recover €17 million of incompatible aid from bpost, since the yearly compensations received in the period 1992-2010 for public service missions resulted in overcompensation.
- (3) The present notification concerns State measures to finance a series of public service obligations which are entrusted to bpost over the period 2013-2015.
- (4) For the sake of urgency, Belgium has exceptionally accepted the decision to be adopted in the English language.

His Excellency Mr Didier REYNDERS
Minister for Foreign Affairs
Rue des Petits Carmes 15
B - 1000 Brussels

2. DESCRIPTION

2.1. The beneficiary

- (5) The sole beneficiary of the measure is bpost which is the leading postal operator in Belgium. bpost's core business is collecting, sorting, transporting and delivering letters and parcels. On 1 September 2010, the name of the Belgian Post was changed from "De Post/La Poste" ("DPLP") to "bpost".
- (6) bpost was a State agency until 1992, when it was incorporated as a separate legal entity ("entreprise publique autonome"). In 2000, its legal status changed to "société anonyme de droit public". bpost is currently a limited-liability company under public law.
- (7) Since the end of 2010, the postal market in Belgium is fully liberalised and the last remaining reserved area has been abolished. bpost therefore no longer holds monopoly rights in the postal market.
- (8) At the end of 2011, bpost had 31 588 employees and its operating income for 2011 was €2364.6 million (compared to €2317.8 million in 2010), with a net loss of €7.4 million (compared to a net profit of €209.6 million in 2010) due to a provision of €91 million set up for the recovery ordered by the 2012 Decision.¹
- (9) Since 1 January 2008, bpost is organized in three commercial divisions: bpost business (large customers), residential market and maSS channels (individuals and small businesses) and bpost international (cross-border deliveries). In addition, bpost has several subsidiaries, including La Banque de la Poste.
- (10) Since 2006, the private investor CVC Capital Partners holds 50% minus 1 share in bpost, while the Belgian State remains a majority shareholder (50% plus 1 share).

2.2. Public service missions of bpost

2.2.1. *Public service obligations set out in Belgian law and management contracts*

- (11) As a limited liability company under public law, bpost is governed by the Belgian Law of 21 March 1991 on the reform of certain economic public companies (hereinafter "the Law of 1991"). This law defines in general terms the public service missions that the Belgian State has entrusted to bpost, including the Universal Service Obligation ("USO") within the meaning of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and by Directive 2008/6/EC).
- (12) The exact contents and modalities of the public service missions are specified in management contracts (Contrats de Gestion) that are signed by the State and bpost. The management contracts also specify the economic relationship between bpost and the State, that is to say the parameters of compensation applicable in respect of those missions, the rules of conduct with regard to users and the compensation for the net costs of services of general economic interest (SGEIs) entrusted to bpost.

¹ See bpost's 2011 annual report, available at:
http://www.bpost.be/site/fr/docs/postgroup/annual_reports/Annual_Report_2011.pdf.

- (13) Since its incorporation in 1992, bpost has signed four management contracts with the Belgian State, covering the following periods:
- 1st contract: 14.9.1992-31.12.1996;
 - 2nd contract: 1.1.1997-23.9.2002;
 - 3rd contract: 24.9.2002-23.9.2005;
 - 4th contract: 24.9.2005-31.12.2012².
- (14) Each contract provides for the payment by the State of annual compensation for discharging the public service missions set out in that contract.
- (15) The Commission has already investigated State compensation under the first three contracts as well as under the 4th Management Contract for the period 24 September 2005 to 31 December 2010, which resulted in the 2012 Decision.
- (16) As regards the prolongation of the 4th Management Contract over 2011-2012, the Belgian authorities informed the Commission that bpost had received SGEI compensations of EUR 320,688,725 for 2011 and EUR 321,693,344 for 2012. The Belgian authorities found that, on the basis of the methodology established in the 2012 decision, bpost had been overcompensated in this period. In their notification, the Belgian authorities have therefore formally committed to recover the overcompensation, amounting to €123 million, which arose from the prolongation of the 4th Management Contract in line with the methodology established in the 2012 Decision, before the 15 May 2013.
- (17) The present decision concerns the 5th Management Contract covering the period 2013-2015.

2.2.2. SGEIs entrusted to bpost under the 5th Management Contract

- (18) The Law of 1991 had entrusted several SGEIs to bpost with an unlimited duration. In their notification, the Belgian authorities submitted a draft amended version of the Law of 1991 which would limit the entrustment of bpost with the same SGEIs until 31.12.2015. This draft amended version of the Law of 1991 (hereinafter "the Amended Law of 1991") is one of the SGEI entrustment acts for bpost notified by the Belgian authorities.
- (19) The other entrustment act notified by the Belgian authorities is the 5th Management Contract which covers the period 1 January 2013 until 31 December 2015. The 5th Management Contract details the content of the SGEIs entrusted to bpost, the precise nature and the duration of the public service obligations; the territory concerned; the parameters for calculating, controlling and reviewing the compensation as well as the arrangements for avoiding and repaying any overcompensation. The Management Contract only enters into force after being approved by a Royal Decree.³

² The 4th Management Contract was initially signed until 31.12.2010 and was prolonged until 31.12.2012 pending the entry into force of the 5th Management Contract.

³ Article 4, §3 of the Amended Law of 1991.

2.2.2.1. Public service obligations entrusted to bpost under the 5th Management Contract

- (20) The 5th Management Contract deals separately with bpost's universal service obligations (part 2) and the SGEIs entrusted to bpost (part 3).
- (21) The SGEI missions defined by the Belgian State in part 3 of the 5th Management Contract are as follows:

Network SGEI

- 1. Maintenance of the 'Retail Network'

Day to day SGEIs

- 2. Press distribution
 - i. Distribution of daily newspapers
 - ii. Distribution of periodicals
- 3. Home payment of retirement and survivors' pensions and disabled persons' allowances
- 4. Cash at counter services
 - i. Accept cash deposits on postal current accounts and make payments to or from these accounts;
 - ii. Accept cash deposits crediting a postal current account or an account with another financial institution;
 - iii. Issue and pay domestic postal money orders (mandates).

Ad hoc SGEIs

- 5. Social role of the postman
 - 6. Delivery of addressed or unaddressed election printed items
 - 7. Delivery at a special price of postal items sent by associations
 - 8. Delivery of letter post items that fall within the freepost system
 - 9. Printing, sale, reimbursement, replacement and exchange of fishing permits
 - 10. Delivery of postal items falling within the free post system
 - 11. Please Postman service
 - 12. Dissemination of information to the public
 - 13. Cooperation with regard to the delivery of voting paper packages
 - 14. Payment of attendance fees during elections
 - 15. Financial and administrative processing of fines
 - 16. Sale of stamps and other postal values
- (22) bpost is compensated under the 5th Management Contract for some of the SGEIs above while others do not give right to compensation from the Belgian State. bpost does not receive any compensation for the delivery of the universal service.

2.2.3. SGEIs for which bpost is compensated

The Network SGEI

(23) Article 15 of the 5th Management Contract entrusts bpost with the Retail Network SGEI. The conditions with which bpost must comply are further detailed in Articles 15 to 20 of the 5th Management Contract. According to these provisions, the Belgian State requires bpost to maintain a retail network which is denser and geographically more widespread than what would be commercially viable or than what is required by the needs of the USO and other public service tasks (“Product SGEIs⁴”). This is the purpose of the Network SGEI which is entrusted to bpost.

(24) bpost’s retail network is composed of different kinds of postal service points (“PSP”):

Post offices, which are directly managed, owned, and run by bpost and provide at least a complete range of services⁵ to the customer.

Postal shops which are run by third parties, in which such third parties carry out public service tasks in the name and for the account of bpost. Third parties can be private or public partners.

Postal halts which are PSP or other contact points for the customer, where at least the minimum service⁶ is offered by the personnel of bpost during a limited number of hours. These may be installed inside a postal shop. Currently, there are no postal halts in the network.

(25) The total retail network shall be structured as a proximity network for customers aiming at the fulfilment of territorial and social cohesion in Belgium. According to the 5th Management Contract, for the duration covered by the Contract, the retail network established by bpost shall consist of:

1. At least 1300 PSP offering at least the minimum service, PSP with minimum service range must be accessible by road for a minimum of 95% of the population within 5 kilometres and for a minimum of 98% within 10 kilometres.

2. At least 650 Post Offices, while:

⁴ Product SGEIs refer to the Day to Day SGEIs and Ad hoc SGEIs

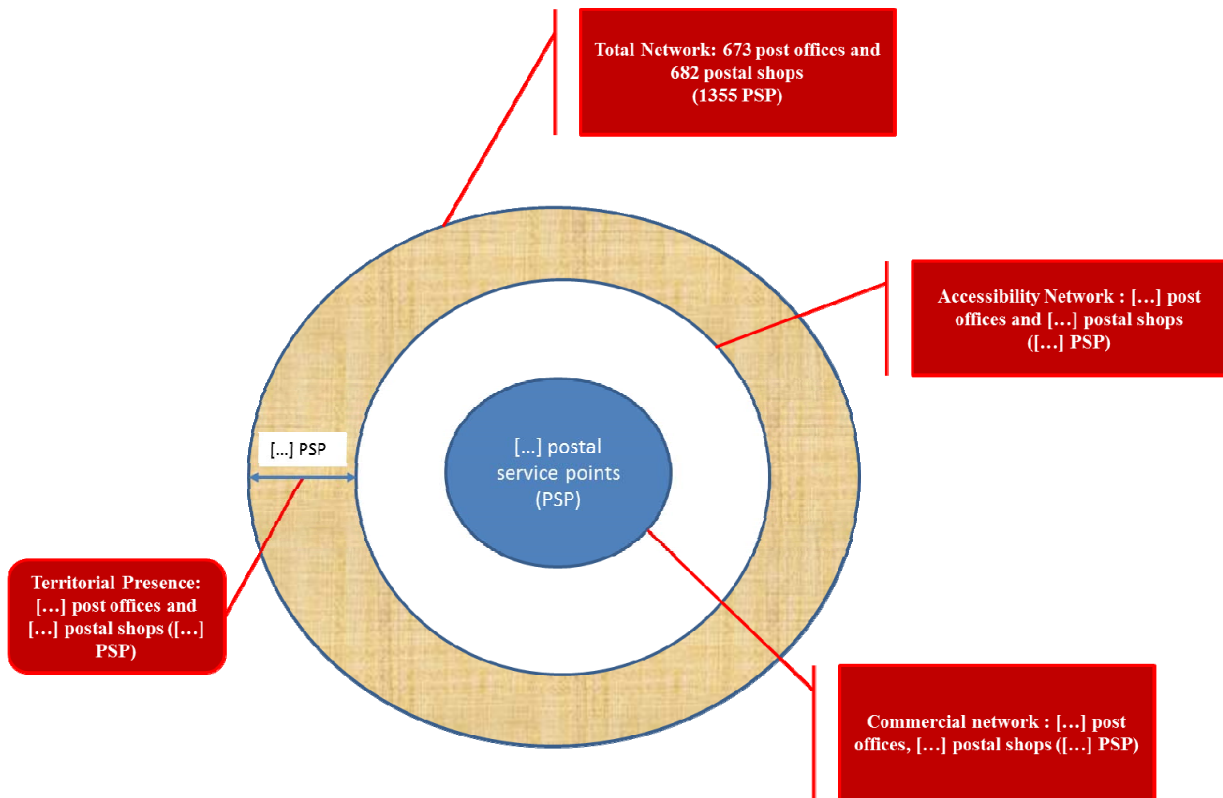
⁵ The “complete range of services” entails at least the following public services: (a) the minimum service range (see below footnote 6); (b) the execution of operations of basic banking services as defined in the Law of 24 March 2003 on basic banking services; (c) the payment of inland postal money orders; (d) the sale, reimbursement, replacement, and exchange of fishing permits; (e) the acceptance of “cash deposits at counter” of more than EUR 500 to accounts held by bpost or other financial institutions; (f) cash withdrawal from an account, irrespective of the proposed method; (g) payments of “assignment P”; (h) collection of payment order forms for payments from own account.

⁶ The minimum service range entails the following public services: (a) the collection of letter postal items and postal parcels related to USO, (b) the storage and distribution of registered mail and postal parcels that form part of the USO for which a notice was left (unsuccessful delivery at home); (c) the sale of post stamps; (d) the acceptance of “cash deposits at counter” of maximum EUR 500 to accounts held by bpost or other financial institutions; (e) as far as possible, a minimum range of packaging shall be made available for sale.

- guaranteeing at least one Post Office in each of the 589 municipalities of the country;
 - maintaining more than one Post Office in some municipalities (to be determined by bpost), taking into account the social role of bpost.
- (26) The total retail network of bpost consists of 673 Post Offices and 682 Postal shops (1355 PSP). It can be subdivided into different segments:
- The **commercial network**: this is the part that bpost would maintain, even if it were not entrusted with any public service mission. It is defined on the basis of two commercial principles: profit maximization and optimization of customer satisfaction (through optimal territory coverage) with the fewest number of PSP possible. The Belgian State submits that this part of the retail network consists of [...] * Post Offices and [...] Postal Shops ([...] PSP).
 - The **accessibility network**: this is the part that is necessary to appropriately provide the USO and other public service tasks (“Product SGEIs”). According to Article 142, §2 of the Amended Law of 1991, to discharge the USO, bpost must maintain one access point per municipality. In each access point, users must be able to drop all types of postal items falling within the USO (including universal service parcels) and collect postal items that were unsuccessfully delivered at home (including registered mail). Hence, the access point in each municipality must be at least a Postal Shop. The accessibility network fully incorporates the commercial network plus [...] additional Postal Shops in order to reach the density requirements. It consists of [...] PSP.
 - The **territorial presence network**: this is the part that is necessary to ensure proximity and full territorial presence within Belgium. It goes beyond the accessibility network (and hence, also beyond the commercial network). The maintenance of the territorial presence network is incremental to the accessibility network that is linked to the USO and the Product SGEIs. This part of the retail network consists of [...] Post Offices and [...] Postal Shops ([...] PSP).
- (27) The Network SGEI consists in the obligation to maintain the territorial presence network. It can also be defined as the difference between the total network and the accessibility network (see figure 1):

* Business secret.

Figure 1: Network SGEI



Day-to-day SGEIs

- (28) Day-to-day SGEIs include public service missions that are provided to users with some measure of recurrence (for example every day, every month). They consist of (i) press distribution (including two SGEIs: the early delivery of newspapers and the distribution of periodicals), (ii) the deposits of cash at the counter (“cash at counter services”), and (iii) the home delivery of pensions.
- (29) **Press Distribution:** Although press distribution can generally be part of the USO according to the Postal Services Directive, the Belgian State has defined it as a separate public mission in Laws, Royal Decrees and the 5th Management Contract. The criteria clearly distinguishing the SGEI press distribution mission from the USO are the following:
- Objectives of the mission: the Belgian State considers it particularly important to ensure a wide distribution of the written press throughout Belgium in order to enhance the level of information and diversity of opinion, and to foster public participation in the political debate.
 - Specific operational conditions are set out in the Management Contract: the specific press distribution public mission imposed on bpost goes beyond the conventional distribution service included in the USO. It is subject to a set of stringent quality and performance requirements in terms of time of delivery (e.g., before 07:30), frequency, delivery options for publishers, flexibility for publishers as regards volume, and continuity of service (including a narrow definition of force majeure).
 - Specific pricing: the tariffs of newspapers and periodicals distribution are fixed in tripartite negotiations (i.e., Belgian State, bpost and publishers) and, unlike

the USO tariffs, do not require the approval of the national regulatory Services and Telecommunications – BIPT). While the USO tariffs are geared to costs, the tariffs for newspapers and periodicals distribution are much lower, so that the specific objectives mentioned above can be attained.

- (30) As explained above, the Press Distribution SGEI includes the early delivery of newspapers and the distribution of periodicals.

Early Delivery of Newspapers

- (31) Article 2 of the Law of 1971 and Article 141, §1 of the Amended Law of 1991 entrust bpost with the early distribution of newspapers mission. The basic conditions with which bpost must comply are described in Articles 21 to 28 of the Royal Decree of 27 April 2007. These conditions are further detailed in Article 27 of the 5th Management Contract.
- (32) bpost must guarantee the distribution of newspapers six days a week (except on public holidays) before 7.30 am from Monday to Friday, and before 10 am on Saturday. The SGEI is offered at reduced prices, which are agreed upon with the publishers and approved by the Belgian State. The tariffs apply without distinction across the entire territory of the Belgian State.
- (33) Put simply, the Belgian State requires bpost to operate a “last resort” distribution system for newspapers, which guarantees equal and affordable access to newspapers for every Belgian citizen. However, publishers remain free to create or make use of other distribution systems.

Distribution of periodicals

- (34) The distribution of periodicals is also entrusted to bpost by Article 2 of the Law of 1971 and Article 141, §1 of the Amended Law of 1991. The basic conditions with which bpost must comply are described in the Royal Decree of 27 April 2007. They are further detailed in Article 34 of the 5th Management Contract and in the special agreement of 30 April 2007 concluded between bpost and the Belgian State.
- (35) The Belgian State requires distribution of periodicals five times per week to every mailbox in Belgium. This SGEI also covers distribution of non-profit periodicals edited by bona fide organisations and by non-profit organisations. The SGEI is offered at reduced tariffs that are specified in the special agreement of 30 April 2007.
- (36) **Cash at counter services:** The Law of 6 July 1971 on bpost and the Royal Decree of 12 January 1970 on the regulation of the postal service as well as the Amended Law of 1991 entrust bpost with the execution of certain financial services. These services are further detailed in Article 39 of the 5th Management Contract which provides that bpost must:
- Accept cash deposits on postal current accounts and make payments to or from these accounts;
 - Accept cash deposits crediting a postal current account or an account with another financial institution;
 - Issue and pay domestic postal money orders (mandates).

- (37) The Belgian State requires bpost to offer these financial services universally, including to persons who are not served by banks, for instance because they are heavily indebted and financially vulnerable. Despite the high costs involved in cash handling, the service is offered at reduced tariffs, in order to be affordable to all the citizens in the country.
- (38) **Home delivery of pensions:** Article 128 of the Royal Decree of 12 January 1970 as well as the Amended Law of 1991 entrust bpost with the execution of the service of doorstep payment of old age and surviving dependents' pensions and benefits for people with limited moving capabilities. This SGEI is further detailed in Article 44 of the 5th Management Contract.
- (39) The home delivery of pensions is by essence a service of a social nature in that it allows people with limited moving capabilities and old people to receive their benefits and pensions at home. This service is offered over the entire territory of the country and at no additional charge.

Ad hoc SGEIs

- (40) The category of ad hoc SGEIs includes public service missions which, by nature, are provided without any recurrence.
- (41) **Social Role of the Postman:** The Amended Law of 1991 as well as Article 49(a) of the 5th Management Contract assign to bpost the duty to ensure the social role of the postman. This includes services to be provided to persons who live alone and the least privileged, including but not limited to:
- Passing time with them, in terms of simple conversations and contacts;
 - Assisting them with electronic transactions and payments (e.g., with the use of handheld payment terminals and electronic ID cards).

Time measurements indicate that this service amounts to on average [...] per postman and per delivery round. This service is provided for free of charge to the users. Through this SGEI, the Belgian State aims to improve social cohesion and, in particular, offer protection for persons living alone and underprivileged citizens at their residence.

- (42) **Delivery of addressed or unaddressed election printed items:** Article 49(e) of the 5th Management Contract entrusts bpost with the duty to deliver during the election period relevant materials at reduced prices. Through this SGEI, the Belgian State seeks to guarantee a more open and democratic election process by facilitating the dissemination of information by all candidates and political parties.
- (43) **Delivery at a special price of postal items sent by associations:** Article 49(f) of the 5th Management Contract entrusts bpost with the duty to deliver at reduced prices postal items sent by associations to stimulate the social web. Conditions, accession criteria, and the reduced tariffs for these postal items are determined in a special agreement between bpost and the State. Through this SGEI, the Belgian State aims to strengthen the role of associations in the society, facilitating the dissemination of information on their part.

- (44) **Delivery of letter post items that fall within the freepost system:** Article 49(g) of the 5th Management Contract entrusts bpost with the duty to deliver free of charge postal items originating from or addressed to the King, correspondence between Members of the Parliament, correspondence between certain public services and institutions, etc.
- (45) A detailed description of the postal items falling within the scope of this SGEI is included in Article 33 of the Royal Decree of 27 April 2007, Article 57 of the Law of 18 July 1991 on the regulation of supervision of the police and intelligence services, and Article 18 of the Law of 22 March 1995 on the creation of the federal ombudsmen. Through this SGEI, the Belgian State aims to facilitate the horizontal communications among various entities of the State and also the contacts between citizens and State bodies.
- (46) **Printing, sale, reimbursement, replacement and exchange of fishing permits:** Article 49(j) of the 5th Management Contract entrusts bpost with the duty to print, sell, reimburse, replace and exchange fishing permits. The Belgian State seeks to assign those services as an SGEI to monitor more easily and effectively how they are provided in practice.

2.2.4. SGEIs for which bpost is not compensated under the 5th Management Contract

Universal Service Obligation and Related Obligations

- (47) Pursuant to Article 141 of the Amended Law of 1991, the universal service obligation (“USO”) was entrusted to bpost in 2010 for a period of 8 years ending on 31 December 2018. After 2018, the Belgian State will attribute the provision of USO to bpost and/or another postal service provider for periods of 10 years. Article 142, §1 of the same law specifies the specific tasks that USO comprises. The entrustment of USO to bpost is further detailed in Part 2 of the 5th Management Contract.
- (48) The USO entrusted to bpost includes the provision of the following services:
- Clearance, sorting, transport, and distribution of postal items up to 2 kg ;
 - Clearance, sorting, transport, and distribution of postal parcels up to 10 kg ;
 - Distribution of postal parcels received from other Member States and weighing up to 20 kg;
 - Services for registered items and insured items.
- (49) In providing the USO, bpost must comply with the following obligations :
- One access point must be available in each municipality to receive mail and postal parcels that fall within the scope of the universal service;
 - One collection, one dispatch, and one distribution of mail and postal parcels per day must take place per municipality at least 5 days per week;
 - Distribution of mail must be made to all homes that have a mailbox in Belgium. Parcels that cannot be delivered to the recipient shall be kept in a place located in the municipality of the recipient.

- (50) As the provider of the USO, bpost must meet the following requirements:
- Comply with the essential requirements defined in Article 142, §§2 and 3 of the Amended Law of 1991;
 - Offer an identical service to similarly situated users;
 - Offer the service without discrimination;
 - Offer the service continuously without interruption, except in case of force majeure; and
 - Adapt the service to the technical, economic and social environment, as well as to the needs of users.
- (51) Pursuant to Article 8 of the 5th Management Contract, bpost is also responsible, in its capacity as operator designated by the State, for the operation of the international letter postal service and the operation of the international *postcolli* service in accordance with the relevant acts of the Universal Postal Union.

Ad hoc SGEIs

- (52) The 5th Management Contract foresees that certain Ad hoc SGEIs are not compensated.
- (53) **Please Postman service:** Article 49(b) of the 5th Management Contract entrusts to bpost the duty to provide the “please postman” service. Through this SGEI, the Belgian State enables elderly and the least privileged citizens to request from postmen various types of postal services. Through this SGEI, the Belgian State aims to improve social cohesion and offer help for the elderly and underprivileged citizens at their residence.
- (54) **Dissemination of information to the public:** Article 49(c) of the 5th Management Contract entrusts to bpost the duty to offer information to the public, upon a specific request from the Belgian State. The dissemination of information can take place, among other ways, through the Post Offices of bpost’s Retail Network. Through this SGEI, the Belgian State aims to reinforce social and territorial cohesion, by establishing a direct channel of communication with the citizens, especially for important issues and campaigns.
- (55) **Cooperation with regard to the delivery of voting paper packages:** Article 49(d) of the 5th Management Contract entrusts to bpost the duty to distribute the voting paper packages (weighing more than 10 kg), through special rounds of the postmen. Through this SGEI, the Belgian State aims to make the election procedure more efficient and transparent and also ensures consistency in the administrative details of the different election procedures (for example at the federal or regional level).
- (56) **Payment of attendance fees during elections:** Article 49(h) of the 5th Management Contract entrusts to bpost the duty of managing the payment of attendance fees during elections. bpost issues the invoices and then requests the entity where elections took place to disburse the attendance fees. Through this SGEI, the Belgian State aims at making the election procedure more efficient and transparent and also ensures consistency in the administrative details of the different election procedures (for example at the federal or regional level).

- (57) **Financial and administrative processing of fines:** Article 49(i) of the 5th Management Contract entrusts bpost with the duty to manage the payment of fines. This includes not only accepting the payment, but also taking other administrative actions leading to the payment (e.g., sending invitations to pay to infringers, reminders, etc.). This SGEI allows the Belgian State to easily monitor the financial and administrative processing of fines and ensure that it takes place efficiently and in line with fundamental human rights and the general principles of good administration.
- (58) **Sale of stamps and other postal values:** Article 141, §1(B) of the Amended Law of 1991 and Article 49(k) of the 5th Management Contract entrust bpost with the duty to sell post stamps and other postal values. On the basis of transparency criteria, bpost may allow third parties to sell post stamps and other postal values, taking into account that the postal value of such post stamps constitutes the sale price to the end consumer, except in the case of sales for philately purposes. Through this SGEI, the Belgian State aims to ensure that citizens will have easy access to post stamps and other postal values (at least) through bpost's retail network. It also guarantees horizontal pricing of stamps and other postal values throughout the country's territory, by requiring that their postal value equals the sale price to the end-consumer, except in the case of sales for philately.

2.2.5. State compensations granted to bpost under the 5th Management Contract

- (59) Under the 5th Management Contract, the Belgian State undertakes to compensate bpost for the provision of the Retail Network SGEI, the day-to-day SGEIs and several ad hoc SGEIs (as described under section 2.2.3) for the financial years 2013-2015.

Advance payment

- (60) In anticipation of the ex-post calculated compensation amount, bpost receives advance funding from the State. This advance funding is set at the following amounts:
- i) For the period from 1 January 2013 to 31 December 2013: EUR 303,720,300;
 - ii) For the period from 1 January 2014 to 31 December 2014: EUR 304,389,328;
 - iii) For the period from 1 January 2015 to 31 December 2015: EUR 294,285,260.
- (61) These advance payment amounts represent the total forecasted net cost related to the provision of all SGEIs referred to under recital (59) above, calculated on the basis of the Net Avoided Cost Methodology ("NAC") and on the assumption of a maximal inflation rate of 2.2% per annum. The compensation and therefore the advance payments should tend to decrease over time as a result of the efficiency gains achieved by bpost which are partially shared with the Belgian State (see recital (65)). The elections that will take place in 2014 explain however why the necessary compensation is expected to be higher in this year. Generally, the amounts above also represent a cap for the ex-post control described below.

Ex post verification

- (62) At the end of each calendar year, ex post verification of bpost's financial accounts will take place by the Board of Auditors, which will assess the exact compensation required to discharge the SGEIs on the basis of the calculation method described in recitals (65)-(66) ('the calculated compensation amount') and ensure that there is no overcompensation.
- (63) If the calculated compensation amount is lower than the advance payments for a specific year, then the difference will be reimbursed by bpost to the State within 30 days of the determination of this difference.
- (64) If the calculated compensation amount is higher than the advance payments for a specific year, bpost will not normally be allowed any additional payment from the State unless the inflation rate in this year is above 2.2% which is the rate that has been used to calculate the total forecasted net cost related to the provision of all SGEIs. In such case, an additional compensation will be granted to account for the higher inflation rate.

Calculation of the compensation for the SGEIs

- (65) **Network and day-to-day SGEIs:** for the Network and day-to-day SGEIs, compensation is equal to:
 - a) The NAC which already includes a reasonable profit;
 - b) Increased by a 67% share of efficiency gains or decreased by a 67% share of efficiency losses (see section 3.2.2.8);
 - c) Decreased by a special penalty mechanism evaluating bpost's performance against several quality targets:
 - (i) For early distribution of newspapers, bpost commits to ensure that the net number of complaints in relation to this SGEI shall remain below 11 for every 10,000 deliveries;
 - (ii) For the distribution of periodicals, bpost commits to ensure that at least 95% of periodicals have to be distributed on time (i.e., within the delivery times determined in a special agreement between the State and bpost). Also, bpost commits to ensure that at least 97% of periodicals have to be distributed within the delivery times determined in a special agreement between the State and bpost, increased by one day;
 - (iii) For cash at counter services, bpost commits to ensure that 95% of all transactions shall be executed on time. Transactions relating to bpost bank accounts shall be executed within D+1. For all other accounts, transactions shall be executed within D+2;
 - (iv) For the home delivery of pensions, bpost commits to ensure that the net number of complaints in relation to this SGEI received in writing by bpost shall remain below 50 for every 10,000 deliveries;
 - (v) For the retail network SGEI, bpost commits to ensure that between 80% and 90% of all customers are served within five minutes in post

offices; in addition, it commits to ensure that the application level of the Goolda/Brasma⁷ standard is between 80% and 90%.

- (vi) If the quality targets described in (i) to (iv) are not met and bpost incurs efficiency losses, the share of losses borne by bpost shall be increased from 67% to 100%. If the quality targets described in (i) to (iv) are not met and bpost achieves efficiency gains, the share of gains obtained by bpost shall be reduced from 67% to 33%. If the quality target described in (v) is not met, compensation can be reduced by up to 10% on the basis of a specific formula, set out in Article 24 of the 5th Management Contract.

- (66) **Ad hoc SGEIs:** For ad hoc SGEIs, the compensation amount is calculated on the basis of the NAC methodology, which already includes a reasonable profit.

3. ASSESSMENT

3.1. Presence of aid under Article 107(1) TFEU

- (67) According to Article 107(1) TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*".
- (68) It follows that, in order for a financial measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative conditions have to be met: i) it has to be imputable to the Member State and granted out of State resources, ii) it has to confer an economic advantage to undertakings, iii) the advantage has to be selective, and iv) the measure distorts or threatens to distort competition and affect trade between Member States.

3.1.1. Aid imputable to the State and out of State resources

- (69) In order to be qualified as State aid, a financial measure must be imputable to the State and granted directly or indirectly by means of State resources.
- (70) The annual SGEI compensation is financed from the State budget, as specified in the 5th Management Contract between bpost and the Belgian State.
- (71) Therefore, the compensation granted to bpost for discharging its public service obligations is imputable to the State and is given through State resources.

3.1.2. Economic advantage to undertakings

- (72) The Commission recalls that SGEI compensations granted to a company may not constitute an economic advantage under certain strictly defined conditions.

⁷ Quality criteria based on the GOOLDA/BRASMA welcome model (greet, make eye contact, help/offer solutions, smile, thank, say goodbye).

- (73) In particular, in its *Altmark* judgment⁸, the Court of Justice held that where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 107(1) TFEU.
- (74) However, the Court also made clear that for such public service compensation to escape qualification as State aid in a particular case, the four cumulative criteria ('Altmark criteria') summarized below must be satisfied:
1. The recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined.
 2. The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner.
 3. The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit.
 4. Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means to meet the public service obligations, would have incurred, taking into account the relevant receipts and a reasonable profit from discharging the obligations (hereinafter a "typical undertaking").
- (75) In the present case, the Commission finds that the first three Altmark criteria are fulfilled for the reasons set out in the following points of this decision:
1. First Altmark criterion: see sections 3.2.2.1-3.2.2.2;
 2. Second Altmark criterion: see section 2.2.5;
 3. Third Altmark criterion: see section 3.2.2.9.
- (76) As regards the fourth Altmark criterion, although the Belgian authorities recognize that the public service obligations have not been entrusted to bpost through an open tender, they argue that the level of compensation was determined on the basis of an analysis of the costs of a typical undertaking.
- (77) In order to support this argument, the Belgian authorities have compared bpost with other Western European postal operators⁹ in terms of costs, productivity and quality

⁸ Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*. See also paragraphs 42 et seq. of the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest Official Journal C8, 11.01.2012, p. 4-14.

⁹ Correos (Spain), Posten Norge, Posten (Sweden), CTT Correios (Portugal), Swiss Post, Austrian Post, La Poste (France), Deutsche Post, TNT (Netherlands), Poste Italiane.

of service. This comparison would show that bpost always ranks among the best operators.

- (78) However, the Commission observes that, depending on the indicators selected, the comparison only covers periods and/or years preceding the current measure (2002-2009, 2003-2008, 2008, 2009). Even in this respect, it should be noted that the Commission has already in its 2012 Decision concluded that bpost could not be considered as a typical undertaking over this period (see recital 38 of the 2012 Decision).
- (79) The Commission also notes that the sample of companies used for the comparison with bpost includes other national universal service providers which are not necessarily typical undertakings. In fact, with regard to several of these operators the Commission has in the past adopted State aid decisions¹⁰ where it concluded that they could not be considered as typical undertaking. Even if it could be accepted that bpost was more efficient than these other universal service providers, this would not suffice to prove that bpost satisfies the fourth Altmark criterion.
- (80) Considering the above, the Commission considers that the fulfilment of the fourth Altmark criterion has not been demonstrated. Therefore, the Commission considers that the compensation granted under the 5th Management Contract give to bpost an advantage it would not have received under normal market conditions.

3.1.3. Selectivity

- (81) In order to be qualified as State aid, a financial measure must be selective.
- (82) Since the annual compensation under the 5th Management Contract benefits only one undertaking (bpost) and provides additional funds to that undertaking, the measure confers a selective advantage on bpost.

3.1.4. Affection of trade and distortion of competition

- (83) In order to be qualified as State aid, a financial measure must distort or threaten to distort competition and affect trade between Member States.
- (84) When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing within the internal market, the latter must be regarded as affected by that aid. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.¹¹
- (85) The SGEI compensations granted to bpost strengthen its economic situation and therefore threaten to distort competition and are capable of affecting trade between Member States, given that bpost operates in sectors that are open to competition,

¹⁰ E.g. La Poste, Poste Italiane.

¹¹ Case C-730/79, judgment of 17 September 1980, Philip Morris / Commission, [1980] ECR, p. 2671, paragraphs 11 and 12, and judgment of 30 April 1998, Het Vlaamse Gewest / Commission, case T-214/95 [1998] ECR, p. II-717, paragraphs 48 to 50. Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, Mauro Alzetta and others v Commission [2000] ECR II-2319, paragraphs 143-147.

such as postal services, which are fully liberalised since the end of 2010 and where there is significant cross-border trading. In particular, the parcel market, bpost faces competition from undertakings with activities in other Member States, such as DPD, GLS and also global integrators such as UPS, FedEx and TNT Express¹². bpost also operates in the press distribution market, a market in which companies from other Member States are active or can become active.

- (86) bpost is also active in the financial services sector (post office current and savings accounts and payment services), where it competes with operators offering financial products, such as banks and financial operators. The post office current and savings accounts, which are used for both payment and savings purposes, are in competition with bank current accounts and savings products. The banking sector is open to competition and is characterised by extensive trade between Member States, with banks from different Member States operating in Belgium for many years.¹³
- (87) In the light of the foregoing it is clear that any State measure conferring on bpost an economic advantage may distort competition within the internal market and affect trade between Member States.

3.1.5. Conclusion

- (88) Based on the above, the Commission considers that the state compensation under the 5th Management Contract for the delivery of the public services by bpost constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Assessment of the compatibility of the aid

3.2.1. Legal basis

- (89) Under certain conditions, Article 106 (2) TFEU allows the Commission to declare compensation for SGEIs compatible with the internal market. The revised Framework for State aid in the form of public service compensation (hereinafter "the 2012 SGEI Framework")¹⁴ sets out guidelines for assessing the compatibility of SGEI compensation.

3.2.2. Compatibility assessment

- (90) According to the 2012 SGEI Framework, the following compatibility criteria apply:

3.2.2.1. Genuine service of general economic interest as referred to in Article 106 TFEU and public consultation

¹² Case C-320/91 Corbeau [1993] ECR I-2533

¹³ Cf. 'The competitiveness of financial institutions and centres in Europe', Donald E. Fair, Robert Raymond, Société universitaire européenne de recherches financières, 1994, Kluwer Economic Publishers.

¹⁴ Communication from the Commission: European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.

Genuine SGEI

- (91) **Network SGEI:** the Belgian State considers that the Network SGEI is a genuine public service for the following reasons:
- bpost's retail network performs an important social and economic role which goes beyond the accessibility to the universal service and other SGEIs. The retail network ensures proximity and allows access throughout the country to a range of public (postal and non-postal) services for all citizens, including those living in rural areas and the elderly, disabled and socially disadvantaged, that cannot be provided through the internet or over the phone.
 - PSPs (especially in rural areas) act as focal points for the local communities and are used by citizens as sources of information and assistance on public services.
- (92) Based on the information provided, the Commission considers that the Network SGEI does indeed constitute a genuine SGEI and that the Belgian authorities have not committed a manifest error in its definition.
- (93) The qualification of the other services entrusted to bpost as SGEIs is justified by the Belgian authorities on the basis of the elements below.
- (94) **Distribution of newspapers:** this service is considered essential by the Belgian State to safeguard the freedom of press guaranteed by Article 25 of Belgian Constitution as well as media plurality and freedom of opinion guaranteed by Article 19 of the Belgian Constitution.
- (95) **Distribution of periodicals:** this service is considered essential by the Belgian State to safeguard the freedom of press guaranteed by Article 25 of Belgian Constitution as well as media plurality and freedom of opinion guaranteed by Article 19 of the Belgian Constitution.
- (96) **Cash at counter services:** Through this service, the Belgian State aims to improve social cohesion since it consists in offering these financial services universally, including to persons who are not served by banks, for instance because they are heavily indebted and financially vulnerable. Despite the high costs involved in cash handling, the service is offered at reduced tariffs, in order to be affordable to all the citizens in the country.
- (97) **Home delivery of pensions:** Through this service, the Belgian State aims to improve social cohesion since it allows people with limited moving capabilities and old people to receive their benefits and pensions at home.
- (98) **Social role of the postman:** Through this service, the Belgian State aims to improve social cohesion and, in particular, offer protection for persons living alone and underprivileged citizens at their residence.
- (99) **Delivery of addressed or unaddressed election printed items:** Through this service, the Belgian State seeks to guarantee a more open and democratic election process.

- (100) **Delivery at a special price of postal items sent by associations:** Through this service, the Belgian State aims to strengthen the role of associations in the society, facilitating the dissemination of information on their part.
- (101) **Delivery of letter post items that fall within the freepost system:** Through this SGEI, the Belgian State aims to facilitate the horizontal communications among various entities of the State and also the contacts between citizens and State bodies.
- (102) **Printing, sale, reimbursement, replacement and exchange of fishing permits:** the Belgian State considers that this service is essential to guarantee that the strict legislative framework on fishing is well implemented.
- (103) It can be noted that the SGEIs above were already entrusted to bpost under the previous management contracts and the Commission already accepted their qualification as genuine SGEIs in the 2012 Decision¹⁵. Indeed, besides their importance for citizens, considering the stringent conditions imposed by the Belgian State for their delivery, these services could not be delivered under normal market conditions.
- (104) In addition, according to paragraph 14 of the 2012 SGEI Framework, “*Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account*”.
- (105) To this end, the Belgian State organized, in December 2012, a public consultation for the entrustment of the SGEIs to bpost, covering all compensated SGEIs regrouped according to the following themes :

Press freedom and right to information

- Delivery of newspapers;
- Delivery of periodicals.

Social and territorial proximity

- Network SGEI;
- Social role of the postman;
- Delivery of addressed or unaddressed election printed items;
- Delivery at a special price of postal items sent by associations;
- Delivery of letter post items that fall within the freepost system;
- Cash at the counter services such as cash deposits;
- Home delivery of pensions and social allowances

Information of the public and daily life

- Information services for the public;

¹⁵ See for example recital 33 of the 2012 Decision

- Printing, sale, reimbursement, replacement and exchange of fishing permits;
 - Financial and administrative processing of fines.
- (106) This public consultation sought to verify whether users and providers share the Belgian State's views on the necessity and socio-economic importance of these services.
- (107) The Belgian State reached out to public service users and providers by surveying a representative sample over the phone through a questionnaire. The public consultation demonstrated that the SGEIs entrusted to bpost have an important social and economic role and meet the needs and expectations of the Belgian population. The SGEIs considered to be the most important by the Belgian population are:
- The Network SGEI: 90% of the Belgian population consider it as being very or rather important;
 - Home delivery of pensions which is very important or at least important for 64% of the Belgian population;
 - The Press distribution SGEI: 59% of the Belgian population consider it as being very important or at least important.
- (108) In light of the foregoing, the Commission is satisfied that the requirement of paragraph 14 of the 2012 SGEI Framework has been fulfilled, and that all SGEIs entrusted to bpost under the 5th Management Contract are genuine SGEI's.
- 3.2.2.2. Need for an entrustment act specifying the public service obligations and the methods for calculating compensation
- (109) As regards the SGEIs listed above, entrustment of bpost is by the Amended Law of 1991 and the 5th Management Contract. In addition, depending on the SGEI in question, additional legal acts can also be part of the entrustment (see below the entrustment acts for each SGEI).

Table 1: Entrustment acts

SGEIs	Entrustment legal acts
Network SGEI	Articles 15 to 20 of the 5 th Management Contract.
Early Delivery of Newspapers	Article 2 of the Law of 1971, Article 141, §1 of the Amended Law of 1991, Articles 21 to 28 of the Royal Decree of 27 April 2007, Article 27 of the 5 th Management Contract.
Distribution of periodicals	Article 2 of the Law of 1971, Article 141, §1 of the Amended Law of 1991, Royal Decree of 27 April 2007, Special agreement of 30 April 2007, Article 34 of the 5 th Management Contract.
Cash at counter services	Law of 6 July 1971 on bpost, Royal Decree of 12 January 1970 on the regulation of the postal service, Amended Law of 1991, Article 39 of the 5 th Management Contract.

Home delivery of pensions	Article 128 of the Royal Decree of 12 January 1970, Amended Law of 1991, Article 44 of the 5 th Management Contract.
Social Role of the Postman	Amended Law of 1991, Article 49(a) of the 5 th Management Contract.
Delivery of addressed or unaddressed election printed items	Article 49(e) of the 5 th Management Contract.
Delivery at a special price of postal items sent by associations	Article 49(f) of the 5 th Management Contract.
Delivery of letter post items that fall within the freepost system	Article 49(g) of the 5 th Management Contract.
Printing, sale, reimbursement, replacement and exchange of fishing permits	Article 49(j) of the 5 th Management Contract.

(110) Together, the documents above clearly define and entrust bpost with the delivery of the SGEIs listed in the 5th Management Contract. The 5th Management Contract defines in particular clearly the compensation mechanism of the net cost of these SGEIs as well as the arrangements to avoid overcompensation in line with paragraph 16 of the 2012 SGEI Framework.

3.2.2.3. Duration of the period of entrustment

(111) According to paragraph 17 of the 2012 SGEI Framework, the duration of the entrustment period should be justified by reference to objective criteria, and in principle should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI.

(112) bpost is entrusted with the SGEIs listed in the 5th Management Contract for a duration of 3 years.

(113) To deliver these SGEIs, bpost possesses several important groups of assets. The most important ones are the retail network buildings (used for example for the Retail Network, Cash at Counter and Managing of Fishing Permits SGEIs) and sorting centres (used for example for the Distribution of Periodicals SGEI, Distribution of Election Material SGEI, etc). The depreciation period for these assets is 30 years, as shown in Table 2 below.

(114) Furthermore, the duration of entrustment also corresponds to the time frame necessary to organise, in accordance with the intention of the Belgian State on point 130 of the present decision, the tendering of the Newspapers and Periodicals SGEIs (economically the most important SGEIs¹⁶) in view of the award of this SGEI as a service concession and compensation is granted to bpost over that period to ensure the continuity of these SGEIs during the tendering procedure.

¹⁶ Around 70% of the SGEI compensation (+/- EUR 200 million) will be paid for these two public services.

- (115) As a consequence, the Commission considers that the duration of the 5th Management Contract does not exceed the period required for the depreciation of the most significant assets needed to provide the SGEIs.

Table 2: Amortization time of main assets

Main assets	Amortization time	Relevance for Periodicals SGEI	Relevance for Newspapers SGEI	Relevance for Territorial presence SGEI
Central building	30	x	x	x
Sorting center buildings	30	x	x	
Retail network buildings	30			x
Warehouses	30	x	x	
Forklifts, cranes	10	x	x	
Sorting machines	10	x	x	
Office automation and small equipments	10	x	x	x
Central IT hardware & software	5	x	x	x
Cars, vans and trucks	5	x	x	
Retail IT (workstations printers)	5	x		x
Bicycles and motorcycles	4	x	x	

3.2.2.4. Compliance with the Directive 2006/111/EC

- (116) According to paragraph 18 of the 2012 SGEI Framework, “aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings¹⁷”.
- (117) For its cost accounting, bpost uses an activity-based costing (ABC) methodology which allocates all operational costs, up to the level of earnings before interest and tax (EBIT), to the various products, in line with the Fully Distributed Costing (FDC) method.
- (118) The scope of the cost accounting includes all operating costs and all organisational units of bpost. The cost accounting methodology relates to three layers: resources, activities and products. The aim is to calculate the appropriate share of costs of each product.
- (119) The costs of the resources are allocated to activities depending on their nature: "direct resources" are directly linked to a specific activity, while "indirect resources" contribute to several activities and need to be allocated using allocation keys that reflect the degree of usage of the resource by each activity. For example, transport costs (e.g. for fuel consumption) are directly associated with activities

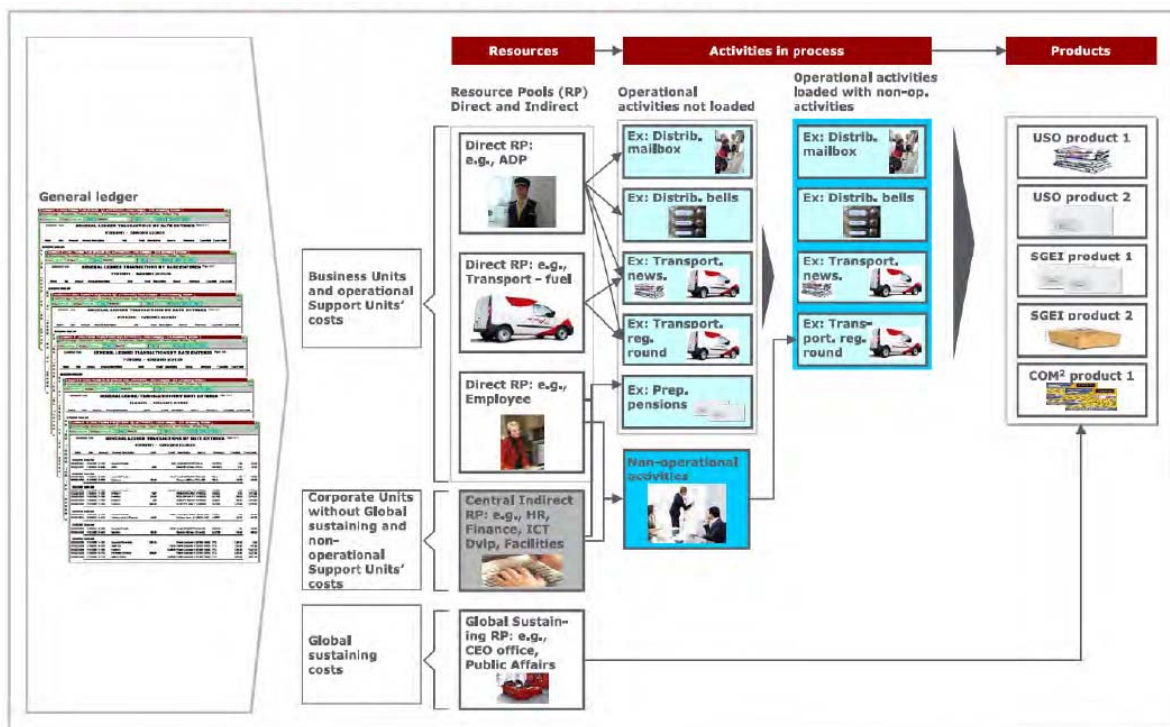
¹⁷ OJ L 318 17.11.2006, p.17.

such as the transport of newspapers, while IT costs (e.g. for the renting of hardware and software) are allocated to several activities such as sorting of letters, preparation of pension payments and management and supervision in post offices.

- (120) The different activities constitute the building blocks of the value chain of each product. For example, the transport of newspapers is related to the Press distribution SGEI. The costs of operational activities (such as the transport of newspapers) are allocated to products based on the extent to which the activity is used for each product. Costs of non-operational activities (such as the management and supervision in post offices) are allocated to the operational activities they contribute to, which are in turn allocated to products.
- (121) At the last step of the procedure, the costs of the operational activities are finally allocated to each product in accordance with an allocation key, which is typically based on volume. All products that rely on an activity carry a share of the costs of that activity which is proportional to their volume of reliance on that activity.

(122) Figure 2 below illustrates the accounting methodology implemented by bpost:

Figure 2: Cost accounting methodology



Source: bpost

- (123) The Commission considers that the cost accounting method currently used by bpost is sound as it correctly allocates all costs with a sufficient level of adequacy.
- (124) The Commission therefore considers that bpost complies with Directive 2006/111/EC.

3.2.2.5. Compliance with EU Public Procurement Rules

- (125) According to paragraph 19 of the 2012 SGEI Framework, "*aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary EU legislation. Aid that does not comply with such rules and requirements is considered to affect the development of trade to an extent that would be contrary to the interests of the Union within the meaning of Article 106(2) of the Treaty.*"
- (126) Regarding the compliance of bpost's entrustment with public procurement rules, the Belgian authorities have provided different arguments for the different SGEIs bpost is entrusted with.

Argumentation of the Belgian authorities

- (127) The Belgian authorities consider first that according to the Amended Law of 1991 and its acts of implementation, several SGEIs are entrusted unilaterally by the Belgian state to bpost:
- Retail Network SGEI;
 - Cash at counter services;
 - Home delivery of pensions;
 - Social role of the postman;
 - Delivery at a special price of postal items sent by associations;
 - Delivery of letter post items that fall within the freepost system.
- (128) Since the entrustment of bpost with these SGEIs would therefore not be contract-based, the Belgian authorities claim on the basis of the *Correos* judgment¹⁸ of the Court of Justice that public procurement rules do not apply to these SGEIs. In this respect, the Belgian authorities further explain that the 5th Management Contract does not change the reality of a unilateral entrustment, because this Contract would merely detail the fundamental service elements imposed by the unilateral acts of the Belgian State.
- (129) The Belgian authorities also claim with respect to the same SGEIs that at present, bpost would be the only operator whose network, infrastructure and personnel could actually satisfy the requirements for the provision of these SGEIs, as described in the entrustment acts. In particular:

¹⁸ Case C-220/06, *Correos* [2007] ECR I-12175, paragraph 54, which reads: "It is only if the agreement between [the service provider] and the [State] were in actual fact a unilateral administrative measure solely creating obligations for [the service provider] – and as such a measure departing significantly from the normal conditions of a commercial offer made by that company [...] – it would have to be held that there is no contract [...]"

- As regards the Network SGEI, other operators do not actually possess a network of the same density, size and quality which could serve the objectives of social and territorial cohesion. Although it cannot be excluded that competitors will develop such a network in the future, currently, bpost is the only provider that can offer this SGEI reliably over the period 2013-2015.
- The Cash at Counter SGEI is provided through the Retail Network. The reasons why bpost is the only operator which can provide the Retail Network SGEI also explain why bpost is the only operator that can currently offer the Cash at Counter service in line with the characteristics and the requirements of the entrustment acts.
- To provide the Home Delivery of Pensions SGEI, an operator needs to have a dense distribution network and a robust retail network (for collection of unsuccessfully delivered items). Both must be combined with high security guarantees. Other operators do not possess such capabilities, which are necessary to provide the SGEI in line with the Belgian State's requirements. Moreover, no other operator would be able to develop this capability prior to the period 2013-2015.

(130) As regards Press distribution, in order to comply with public procurement rules, the Belgian State are organising a competitive, transparent and non-discriminatory tendering procedure, with a view to award a service concession at national level as soon as possible to an operator that would take over the provision of this SGEI as of 1 January 2016.

(131) While not claiming that the newspapers and periodicals SGEIs could *in all circumstances* only be provided by bpost, the Belgian authorities argue that, for the period 2013-2015, they will have to be temporarily entrusted to bpost given that it would *currently* be the only operator that can provide these two SGEIs in line with the requirements of the 5th Management Contract (that is to say national coverage and affordable and horizontal tariffs).

(132) This interim entrustment for 2013-2015 would be necessary to provide the State with sufficient time to proceed with the necessary changes in the law (Laws and Royal Decrees which entrust the Press Distribution SGEIs exclusively and unilaterally to bpost) and to organize a proper and meaningful process that can guarantee the continuity of the public services to all citizens, by defining the right qualitative and operational criteria (including the provision of these services at national level). What is more, the interim entrustment during this transitional period would ensure the continuity of distribution which is an essential public service for Belgian citizens until the successful concessionaire is fully operational and can take over the provision of the Press Distribution SGEI.

Assessment of the Commission

(133) The Commission considers that the "unilateral imposition" argument on the basis of the *Correos* jurisprudence does not apply to the present case. The exact contents and modalities of bpost's public service missions are set out in the 5th Management Contract (see above paragraphs (12), (19)) which is signed by the State and Board of Directors of bpost and which, according to Article 3, §5, of the Amended Law of

1991, "[...] *does not constitute an act or regulation as referred to in Article 14 of the Laws on the Council of State, coordinated on 12 January 1973*¹⁹. All its clauses are deemed to be contractual."

- (134) Furthermore, Article 4 §1 and 4 §2 of the Amended Law of 1991 refer explicitly to a negotiation process between the State and the company to determine the terms of the Management Contract :
- Article 4 §1 reads as follows: *"During the negotiation and conclusion of the management contract, the State is represented by the Minister competent for the public company."*
 - Article 4 §2 reads as follows: *"During the negotiation of the management contract, the public company is represented by its Management Committee. The management contract is subject to approval by the Board of Directors, deciding by a two-thirds majority of the votes cast. The draft of the management contract or draft modifications to the management contract are submitted for discussion to the Joint Committee. The Joint Committee is periodically invited by its chairman to give its opinion, stating the reasons on which it is based, about the progress of the negotiations."*
- (135) Neither do the entrustment acts, and in particular the 5th Management Contract, solely create obligations for bpost, but also imposes strict obligations on the Belgian State. For example, Article 63.1 of the 5th Management Contract reads as follows: *"When one of the parties to the Contract fails to comply with the clauses herein (except for non-compliance with mail delivery times in Art. 5.2 to 5.6 and Art. 6 and for non-compliance with Art. 23, Art. 24, Art. 31, Art. 37, Art. 42 and Art. 47), the other party is authorized to claim indemnification in respect of direct loss..."*
- (136) On the basis of the above, the Commission considers that there is a contractual relationship between the Belgian State and bpost and therefore it cannot be argued that public procurement rules do not apply to the SGEIs in question because they would be unilaterally imposed on bpost.
- (137) At the same time, the Commission does recognize that bpost holds a unique logistic and retail network in terms of density and size which makes it the sole possible provider for the Network SGEI and for other SGEIs (Cash at counter services, Home delivery of pensions, Social role of the postman, Delivery of addressed or unaddressed election printed items, Delivery at a special price of postal items sent by associations, Delivery of letter post items that fall within the freepost system, Printing sale reimbursement replacement and exchange of fishing permits) which need such networks in order to meet the requirements of the 5th Management Contract.
- (138) More specifically, the network SGEI which consists in the maintenance of an incremental network beyond the accessibility network as defined in recital ((26)-(27)), can only be provided, for practical reasons, by bpost which already holds the accessibility network. This incremental network can indeed hardly be technically managed independently from the accessibility network that it complements and

¹⁹ This article identifies all acts and regulations that can be subject of an appeal before the Council of State.

bpost benefits from economies of scale and synergies when managing the accessibility network and territorial presence network that any other operator managing only the territorial presence network would not benefit from, thereby rendering the cost of the service much higher than for bpost. This also entails that in all likelihood the compensation provided to bpost for the Network SGEI would not suffice to allow a third operator to provide that service.

- (139) As regards, the other SGEIs (Cash at counter services, Home delivery of pensions, Social role of the postman, Delivery of addressed or unaddressed election printed items, Delivery at a special price of postal items sent by associations, Delivery of letter post items that fall within the freepost system, Printing-sale-reimbursement-replacement and exchange of fishing permits) delivered through the retail and logistic network of bpost as a whole, the Belgian authorities have examined existing retail networks of retailers, petrol stations and telecommunication service providers and concluded that no other company had a sufficient coverage of the Belgian territory. Moreover, it can be observed that most of this unique network is related to the USO (accessibility network as defined in recital (26)) and is therefore self-financed since bpost does not receive any compensation for the delivery of the USO (see above recitals (47) to (51)). The compensation which is received by bpost for the Network SGEI contributes only marginally to the maintenance of the overall network, and would not as such suffice to enable a competitor to set up a logistic and retail network which would be comparable to bpost's total network.
- (140) The Commission considers that all compensated SGEIs delivered through the postal distribution and retail networks (Network SGEI, Cash at counter services, Home delivery of pensions, Social role of the postman, Delivery of addressed or unaddressed election printed items, Delivery at a special price of postal items sent by associations, Delivery of letter post items that fall within the freepost system, Printing-sale-reimbursement-replacement and exchange of fishing permits) can therefore be covered by the sole provider exemption and be entrusted through a negotiated procedure without prior publication according to Article 31 (1) (b) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.²⁰
- (141) On the contrary, as regards the Press Distribution SGEI, which is not delivered through this unique logistic and retail network, the Belgian authorities committed to organize a competitive, transparent and non-discriminatory tendering procedure (which has started in 2013 with the preparation of the adaptation of the legislation²¹) with a view to award a service concession at national level by end of 2014 to the selected operator that will take over the provision of press distribution SGEI as of 1 January 2016.

- (142) This competitive process will be organized as follows:

²⁰ OJ L 134, 30.04.2004, p. 114.

²¹ Current Laws and Royal Decrees entrust the press distribution SGEIs exclusively to bpost.

(143) The **regulatory framework** applicable to the provision of the press distribution SGEIs will be amended, since as, currently, this framework explicitly and exclusively entrusts the provision of the SGEIs to bpost. This process will take about 360-435 days (**1-1.5 years**).

- i. First Phase - Drafting proposals for amendment of the applicable legal framework / Organisation of a public consultation: The Laws and Royal Decree mentioned above will have to be amended in order to allow other economic operators to provide the SGEIs. The time needed to reconsider the framework by organizing a public consultation and to draft proposals for amendment is **120 days**.
- ii. Second Phase - Obtaining political consensus within the Belgian Government: such reconsideration of the applicable rules, translated into proposals for amendment, will have to be supported by political consensus within the Belgian Government. This consensus will be obtained in a number of meetings with representatives from the competent Ministers, in the Committee of Vice-Prime Ministers and, eventually, in the Council of Ministers. The estimated timeframe to achieve consensus is **60 days**.
- iii. Third phase - Prior Advice from the Council of State: Both the relevant legislation and the Royal Decrees need to be submitted to the Belgian Council of State for advice. A minimum of **30 days** is needed to obtain such advice.
- iv. Fourth Phase - Adoption by the Belgian Parliament: The relevant legislative amendments have to be approved and adopted by the Belgian Parliament: Such a procedure usually requires **90 days** (plus an additional 75 days if the draft bill is, according to Article 78 of the Constitution, evocated by the Belgian Senate).
- v. Fifth phase – Adoption of a Royal Decree: Only after the relevant legislation is adopted and has entered into force will the Belgian Government be authorized to adopt the Royal Decrees. It will require an additional period of **up to 30 days** to formally adopt this Royal Decree.
- vi. Sixth Phase - Publication in the Official Gazette: a period of **up to 30 days** will, eventually, be needed to ensure publication of the new package in the Official Gazette

Table 3: Amendment of the regulatory framework

PHASE	TIME PERIOD (DAYS)
1. Drafting proposals for amendment of the applicable framework / Organisation of a public consultation	120
2. Obtaining political consensus within the Belgian Government	60
3. Council of State's prior advice	30
4. Adoption by the Belgian Parliament	90 (165 if evocated)
5. Adoption of Royal Decrees	30
6. Publication in the Official Gazette	30
TOTAL	360 (435 if evocated)

(144) A **concession award procedure**, which will lead to the appointment of the distributor(s), has to be prepared and organised. This will take an additional time period of about **570 days (1.6 years)**.

- i. First Phase - internal preparations: It will require about **4 to 6 months** to internally prepare the public concession and the exact scope of the concession, with the assistance of economic and legal consultants/advisors. This entails the drafting of the concession notice and request to submit candidacies and the drafting of the concession specifications, which entail technical specifications, contract performance conditions and award criteria. One important aspect in these preparations is the need to determine the tariffs to be charged to the distributors. This will require a redefined and predetermined format. With regard to the Newspapers SGEI, this will also require negotiations with the newspaper publishers.
- ii. Second Phase - Publication of a concession notice and invitation to submit candidacies: once the project is entirely prepared, the Belgian State will publish a concession notice and invite interested distributors to submit a request to participate. The novelty of the project and the value at stake require the Belgian State to allow the interested bidders sufficient time to duly analyse such concession notice and submit candidacy proposal that evidences, amongst others, due distribution experience and availability of a sufficiently large, experienced and reliable workforce. Therefore, the Belgian State aims to allow the interested bidders a period of **60 days** to submit their requests to participate.
- iii. Third Phase - Selection Phase: the Belgian State will assess the bidders' reliability and capability to provide the SGEI. On the basis of such assessment, a decision will be drafted that selects the bidders that meet the determined reliability and capability requirements. If more than 5 bidders meet these requirements, only 5 bidders may be selected and thus the least capable bidders will be excluded from the process. It will require about **60 days** to analyse the submitted candidacies and draft a Decision. This decision will then have to be approved internally by the competent Minister.
- iv. Fourth Phase - Communication of first concession specifications and request to submit first bids: in a next phase, the selected bidders will be invited to submit a first bid on the basis of the concession specifications and the conditions and award criteria set out therein. The novelty of organizing a public concession requires the Belgian State to allow the selected bidders sufficient time to duly analyse the concession specifications and prepare realistic bids. Therefore, the Belgian State aims to allow the selected bidders a period of **90 days** to submit their applications.
- v. Fifth Phase - Consultations: the Belgian State will invite every bidder to take part in consultations with a view to fine-tuning the first bids in light of the first concession specifications and the Belgian State's needs. The Belgian State estimates that negotiations will last up to **90 days**.
- vi. Sixth Phase - BAFO Phase: on the basis of the consultations just mentioned, every bidder will be invited to submit a Best and Final Offer (BAFO). The Belgian State aims to allow them a period of **60 days** to submit their BAFOs.
- vii. Seventh Phase - Appointment of a preferred bidder and final contract negotiations: the Belgian State will assess the regularity of the submitted BAFOs and analyse them in light of the defined award criteria. On the

basis of such analysis, a preferred bidder will be appointed. The Belgian State estimates that this process will take up to **60 days**. Consequently, final contract negotiations will be held with the preferred bidder. This will take up to **30 days**.

- viii. Eighth Phase - Award Phase: Once final contract negotiations have led to a satisfying result, an award decision, setting out the reasons for awarding the SGEI to a specific distributor, will be prepared. This will take **30 days**. The award decision will then have to be approved internally by the competent Minister (which requires up to **2 weeks of time**) and additionally by the Inspectorate of Finance (which requires up to **2 months of time**). After approval, the bidders will be informed of the Decision.
- ix. Final Phase - Standstill period and contract closure: it is a legal requirement to allow unsuccessful bidders to challenge the award decision. To this extent, the Belgian State is legally required to respect a standstill period of 15 days before it can sign the contract. Once this standstill period has passed, and if the award decision is not appealed, the contract can be signed with the appointed distributor and the distributor will be allowed sufficient times to prepare a take-over of the SGEI from bpost. This will require an additional **15 days**.

Table 4: Concession award procedure

PHASE	TIME PERIOD (DAYS)
1. Internal preparations	4 - 6 months (120 - 180 days)
2. Publication of a concession notice and invitation to submit candidacies	60
3. Selection phase	60
4. Communication of first concession specifications and request to submit first bids	90
5. Negotiations	90
6. BAFO Phase	60
7. Appointment of a preferred bidder and final contract negotiations	90
8. Award phase	90
9. Standstill and contract closure	30
TOTAL	Preparation 4-6 months Organization: 570 days

(145) As regards the overall duration of the concession award procedure, the Commission considers important to take into account the fact that it will be organized for the first time by the Belgian authorities after a long period where the Press distribution SGEI was delivered by bpost. In such circumstances, sufficient time would be necessary for effective competition to be possible. Effective competition to materialise would indeed necessitate some existing competitors to team up or allow the emergence of new competitors. Therefore, it is required for potentially interested bidders to be given a sufficient period of time to prepare for this bidding scenario. In the hypothesis that a concession award procedure would be immediately organized, it is unlikely that bidders will be capable of submitting a sufficiently competitive bid. The required period for the amendment of the regulatory framework can therefore additionally serve the purpose of allowing competitors to properly prepare a competitive bid.

(146) The Commission also notes that the Belgian authorities already made quite significant efforts to run certain tasks in parallel: the amendment of the regulatory framework (1-1.5 years) and the concession award procedure (1.6 years) will indeed be completed in 2 years.

- (147) The finally appointed distributor will also need time to properly establish a distribution network. The mere setting up of this network requires time and effort: it is necessary to invest in a qualitative infrastructure and distribution network that meet the quality requirements of the press distribution SGEIs. This requires significant investments in transport equipment and personnel. The Belgian State therefore aims to allow the selected bidder 12 months (1 year) to prepare for the taking over of the SGEI(s) which appears appropriate.
- (148) Considering the above and the specific characteristics of the Press Distribution SGEI (national coverage, high quality standards of the SGEI, necessary workforce), the Commission finds the duration of 3 years foreseen by the Belgian authorities to complete the concession award procedure and to allow the chosen operator to take over the provision of the Press Distribution SGEI not to be excessive.
- (149) The 2012 SGEI Framework which conditions the State aid compatibility assessment to compliance with public procurement rules entered into force only on 31 January 2012, so one year before the adoption of the current decision. In these circumstances, and taking into account the need to ensure the uninterrupted provision of that public service during the period necessary to organise the selection process as well as the need to ensure that potential tenderers put in place the organisational and financial arrangements to be capable of providing that service in the future, the Commission considers it acceptable that bpost receives a compensation to ensure the continuity of this essential public service over the duration of the overall procedure.
- (150) The alternative solution would have been to interrupt the delivery of the Press Distribution SGEI, until the completion of the tendering procedure. The Commission considers that discontinuing the delivery of this essential public service would be in contrast with the principles of the Treaty relating to the essential roles of SGEI in the European Union and notably with article 14 of the TFUE which provides for the Union to take care that SGEIs operate on the basis of principles and conditions which enables them to fulfil their mission.

3.2.2.6. Absence of discrimination

- (151) According to paragraph 20 of the 2012 SGEI Framework, "*[w]here an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking*".
- (152) The SGEIs entrusted under the 5th Management Contract (or substantially identical SGEIs) are not assigned to "several undertakings", but only to bpost. Therefore, the Commission considers that there cannot be a question of discrimination in the sense of paragraph 20 of the 2012 SGEI Framework.

3.2.2.7. Calculation of the net cost of the universal postal service

- (153) According to paragraph 21 of the 2012 SGEI Framework, "*[t]he amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit.*" In this

respect, paragraph 24 of the 2012 SGEI Framework foresees that "[t]he net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible."

- (154) According to paragraph 25 of the 2012 SGEI Framework, " Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation."

Principles for the implementation of the NAC methodology by the Belgian authorities

- (155) In their notification, the Belgian authorities provided the Commission with a detailed description of their implementation of the NAC methodology which relies on the following fundamental principles:

- A. An alternative commercial strategy is developed for each SGEI;
- B. The counterfactual is the commercially optimal strategy that bpost would follow once SGEI constraints are lifted;
- C. The commercially optimal counterfactuals for each SGEI are grounded in bpost's business reality;
- D. The methodology is built step-by-step and takes into account all cross-effects;
- E. Calculations are based on bpost's granular accounting system;
- F. Costs remain allocated to specific SGEI products and variability per cost category is assessed line-by-line on the basis of fact-based drivers;
- G. Validity tests are performed to ensure that bpost can realistically perform and operate under the commercially optimal counterfactual.

- (156) **A: An alternative commercial strategy is developed for each SGEI:** for the Network SGEI and each Product SGEI imposed by the 5th Management Contract an alternative commercial strategy has been defined. Due care was taken to avoid double counting between the Network and the Product SGEIs delivered through the Retail Network. Indeed, while the products SGEIs such as Home delivery of pensions are in practice delivered across the whole territory (including in the part of the network associated with the Network SGEI), it is important to clearly distinguish the net cost of these product SGEIs from the net cost arising from the Network SGEI obligation.

- (157) **B: The counterfactual is the commercial optimal strategy that bpost would follow once SGEI constraints are lifted:**

- (158) Three possible options for the commercially optimal business model for each SGEI have been tested by the Belgian authorities, and the one delivering the best commercial and economic results while remaining grounded in bpost's business reality was selected (see recital (159)):

- Option 1: bpost could provide the same service level and adjust the price;

- Option 2: bpost could adjust the service level and adjust the price;
- Option 3: bpost could discontinue the service if not economically viable.

(159) **C: The commercially optimal counterfactuals for each SGEI are grounded in bpost’s business reality:**

- If the Network SGEI constraints were to be lifted, the corresponding public service would be terminated and bpost would ideally adopt the commercially optimal network, i.e. a network with the minimal density that would still allow to satisfy the maximum number of citizens and to optimize profitability. Using a gravity model²², the Belgian authorities have determined that such network would count [...] post offices and [...] postal shops. However, since bpost would still have to maintain its USO and Product SGEI obligations, the network in the counterfactual would have to be extended to accommodate USO and Product SGEIs requirements. As a result, the network would count [...] post offices and [...] postal shops (see recital (26)).
- If the Newspaper SGEI constraints were to be lifted, both the service characteristics and the price would be adjusted. The distribution would take place through existing regular delivery rounds, rather than dedicated separate early rounds, as it is currently the case. Including newspapers in the regular rounds would lead to significant cost savings. In the counterfactual, bpost would also apply higher prices on editors to reflect the real value of the service. Both changes result in a decline in demand.
- If the Periodical SGEI constraints were lifted, bpost would not change the delivery model in itself. However, it would increase the delivery prices to better reflect the real value of the service to editors and readers.
- If the Cash at the Counter SGEI constraints were lifted, bpost would still continue to offer the service while charging a higher price to reflect the real value of service to the clients. As Cash at Counter services are offered through the Retail Network, the network’s reduced density in the counterfactual means that a decreased volume of the Cash at Counter service can be expected (example of a cross-effect taken into consideration in the NAC methodology).
- If any other Product SGEI (Pensions and other cash doorstep payments, social role of postmen, delivery of printed election items, distribution of fishing permits and the delivery of “freepost” letter post items) constraints were lifted, the corresponding SGEI would be discontinued since it is not likely that the end-consumers of these services would be willing to pay the real cost of these services given their social nature.

(160) **D: The methodology is built step-by-step and takes into account all cross-effects on revenues and costs:** The step-by-step approach removes sequentially the SGEI-induced constraints that the operator faces, that is to say, it assumes the adoption of an alternative business model for one SGEI at a time. It is only when

²² The gravity model predicts the behaviour of customers when the network is reduced by the closure of some postal service points. The main element used to predict this behaviour is the distance from the next postal service point.

the full impact (including direct, cross- and collateral effects) of a particular step is computed that the analysis continues and the constraints linked to another SGEI are lifted.

(161) The following order is followed to lift SGEI-induced constraints:

1. Network SGEI;
2. Newspapers;
3. Periodicals;
4. Cash at Counter;
5. Pensions and other cash doorstep payments, other Product SGEIs.

(162) For each SGEI above, the full impact of lifting the SGEI constraints has been determined in four steps:

1. Step 1: an alternative commercial strategy is defined following the approach described in recital (158) leading to the counterfactuals described in recital (159).
2. Step 2: if relevant, the pricing of the service in the counterfactual is optimized by setting the price at the optimal level to balance the negative volume effects of a price increase with positive revenue effects. It is then benchmarked against reference prices of similar products in the market²³. The price optimization phase is not relevant for the Network SGEI²⁴ as the lifted constraints are related to the territorial presence obligation, not to price.
3. Step 3: the impact on volumes and revenues is estimated by taking into account the effects on revenues for the specific SGEI (i.e. the direct impact of an SGEI's counterfactual on the product/service under consideration), the cross-effects on revenues of other SGEIs (i.e. the impact of the SGEI's counterfactual on other SGEIs) as well as the collateral effect on revenues of USO and Commercial products.
4. Step 4: the impact on costs, related for example to a decrease in volumes, is determined by taking into account the effects on costs for the specific SGEI, the cross-effects on costs of other SGEIs as well as the collateral effect on costs of USO and Commercial products.

(163) For example, for the Press distribution SGEI, if the constraints are lifted, newspapers would be delivered in regular rounds (except on Saturdays) and prices would be increased to reflect the real value of the service to editors. As a result, volumes would decrease. Significant cost savings would result from the use of regular rounds as well as from the lower volumes.

²³ E.g., the tariff for Newspaper distribution was set at a level such as to balance the effect of increased revenues per newspaper (due to price increases) with the reduced newspaper volume resulting from this increase. The optimized tariff was well in line with the pricing of other products or other players in the market (e.g., price of delivery of periodicals or administrative mail in Belgium, price of delivery of newspapers and periodicals in Denmark). For the reader, this would increase the weekday newspaper price from an average EUR [...] to EUR [...] per edition if delivered at home.

²⁴ It is also not relevant for the Product SGEIs that would be discontinued.

- (164) It can be noted that the main collateral effects result from the lifting of the Network SGEI constraints. Indeed, the reduced size of the Retail Network would lead to a reduction of the volumes of USO and Commercial products.
- (165) **E: Calculations are based on bpost's accounting system:** The Belgian State developed the NAC methodology using as much as possible information from bpost's existing and audited accounting system. Therefore, the fundamental data used for the NAC calculations derive from the operational reality of the operator.
- (166) **F: Costs remain allocated to specific SGEI products and variability per cost category is assessed line-by-line on the basis of fact-based drivers:** Variable and fixed costs allocated to a product may be lower in the commercially optimal counterfactual for this product. Indeed, the level of fixed costs can change due to the new business model when constraints are lifted (for example Human Resources department costs decline if the number of employees decreases). The variability of each cost category is assessed line-by-line on the basis of fact-based drivers. The three main drivers for the variability assessment are the following:
- **Variability due to avoided activity:** for example, the mail sequencing time linked to Periodical distribution in the post office before the delivery round is fully driven by the retained volume (100% variability), while the driving time between 2 mailboxes is completely fixed (0% variability);
 - **Variability due to the SGEI-dedicated nature of specific resources:** for example, if all SGEIs were to be discontinued, the costs of maintaining a SGEI costing team ([...]) would be saved;
 - **Variability linked to other drivers:** for example, headquarter building costs and ICT costs related to workstation support are fully variable²⁵ because they depend on the number of FTEs in the headquarters.
- (167) **G: Validity tests are performed to ensure that bpost can realistically perform and operate under the commercially optimal counterfactual**
- (168) The Belgian authorities test whether, under the counterfactual, bpost could realistically continue to operate and perform well. These tests focus on two main indicators:
- **Profitability:** In the counterfactual, when the SGEI constraints are lifted, the Belgian authorities check that the profitability of bpost for the commercially optimized services did not exceed an average market return²⁶, and that the change in bpost's profitability as regards USO and Commercial products was limited.
 - **Operational sustainability:** Finally, the Belgian State analyses whether in the counterfactual scenario bpost would have sufficient resources available to

²⁵ Building costs can be made variable by relinquishing square meters of office space. Indeed, while this space may not be variable for each individual FTE saved, it is possible to rent out, sell, or stop renting the area that is freed up when the total FTE reduction reduces the required office space.

²⁶ The benchmark of 7.4 % ROS considered adequate for both mail delivery and press distribution in the period 2006-2010 in the 2012 Decision was used in this respect.

sustain its operations. This assessment is based on efficiency and productivity metrics for the operations and support functions using as benchmarks the current performances of bpost.

Results of the implementation of the NAC methodology by the Belgian authorities

(169) The Belgian authorities have first implemented the NAC methodology with the actual data of 2011 leading to the results presented in table 5.

(170) **Calculation of the 2011 NAC:** Based on 2011 accounting data, the methodology calculates the net avoided cost of the different public services entrusted to bpost at € [...] million, without taking into account efficiency incentives.

Table 5: NAC of the different public services entrusted to bpost in 2011

DESCRIPTION OF COUNTERFACTUAL 2011	REVENUE IMPACT (million €)	AVOIDED COST (million €)	NAC (million €)
Optimize retail network size	[...]	[...]	[...]
Revise newspaper distribution and price	[...]	[...]	[...]
Implement new periodical pricing	[...]	[...]	[...]
Implement new cash at the counter pricing	[...]	[...]	[...]
Stop distribution of pensions	[...]	[...]	[...]
Stop other product SGEIs	[...]	[...]	[...]
Collateral effects	[...]	[...]	[...]
TOTAL	[...]	[...]	[...]

(171) This includes €[...] million of collateral effects (in particular demand effects²⁷) of the counterfactual scenarios on the demand for USO and Commercial products.

(172) **Extrapolation of 2011 NAC:** The results obtained for 2011 are then extrapolated for the period 2013-2015 on the basis of efficiency gains trends measured in 2012 in order to determine the NAC for this period (see table 6 below).

Table 6: NAC for period 2013-2015

EXTRAPOLATED TRENDS	2013 (F=forecast) (million €)	2014 (F) (million €)	2015 (F) (million €)
1. Baseline: For 2013: 2011 NAC For 2014: 2013 NAC For 2015: 2014 NAC	[...]	[...]	[...]
Efficiency gains and revenue increase in the retail network	[...]	[...]	[...]
Efficiency gains, volume and cost increase for newspapers	[...]	[...]	[...]
Organization of elections	[...]	[...]	[...]
Other effects (e.g. volume decrease for some SGEIs)	[...]	[...]	[...]
EXTRAPOLATED NAC	[...]	[...]	[...]

(173) Table 7 below presents a breakdown by SGEI of the NAC calculated above.

²⁷ The demand for USO and Commercial products would for example be influenced by the reduction in size of the network.

Table 7: Breakdown of the NAC by SGEI for the period 2013-2015

		2013 (F) (million €)	2014 (F) (million €)	2015 (F) (million €)
NETWORK SGEI	Network SGEI	[...]	[...]	[...]
	TOTAL	[...]	[...]	[...]
PRODUCT SGEIs	Of which newspapers	[...]	[...]	[...]
	Of which periodicals	[...]	[...]	[...]
	Of which cash at counter	[...]	[...]	[...]
	Of which home delivery of pensions	[...]	[...]	[...]
	Of which other ²⁸	[...]	[...]	[...]
	TOTAL	[...]	[...]	[...]
COLLATERAL EFFECT	Collateral effects	[...]	[...]	[...]
TOTAL	TOTAL	[...]	[...]	[...]

(174) **Validity checks:** the Belgian authorities have verified the profit level of the counterfactual scenarios in 2013, 2014 and 2015 (see table 8).

Table 8: Profit level of the counterfactual for the period 2013-2015

COUNTERFACTUAL SCENARIOS	2013 (F) (million €)	2014 (F) (million €)	2015 (F) (million €)
REVENUE	[...]	[...]	[...]
COST	[...]	[...]	[...]
MARGIN	[...]	[...]	[...]
ROS (%)	[...] %	[...] %	[...] %

(175) The Belgian authorities also compared the net accounting cost of the different public services with the NAC (see table 9):

Table 9: Net accounting cost vs Net avoided cost

YEAR	2013 (F) (million €)	2014 (F) (million €)	2015 (F) (million €)
NET AVOIDED COST	[...]	[...]	[...]
NET ACCOUNTING COST	[...]	[...]	[...]

Conclusion by the Commission on the application of the NAC methodology for the calculation of the net cost of the universal postal service

(176) The Commission considers that the principles established by the Belgian authorities for the implementation of the NAC methodology are sound. In particular, the adopted methodology ensures that the counterfactual scenario corresponds to the optimal commercial strategy that bpost would follow if the SGEI constraints were lifted. In addition, the stepwise approach ensures that there is no double counting and allows to take into account all the cross-effects and collateral effects of the counterfactual scenario.

(177) Moreover, the Commission considers that the Belgian authorities have provided satisfactory evidence that the counterfactual scenario represents a credible picture of

²⁸ Includes elections in 2014.

a counterfactual company that would be able to credibly operate the activities that would be kept by bpost in the absence of SGEI obligations. The Commission notes in particular that :

- The NAC methodology leads to a lower net cost than the accounting methodology (see table 9) which has been the basis used by the Commission to accept SGEI compensations under the previous SGEI Framework;
- The profit level of the counterfactual scenario in each year 2013, 2014 and 2015 (see table 8) is in line with the 2012 Decision on bpost²⁹ and can therefore be considered reasonable. Indeed, the 5th Management Contract can be considered to be at least comparable to the 4th Management Contract in terms of risk: the key elements considered by the Commission in the 2012 Decision to assess the risk level of the 4th Management Contract and determine the appropriate reasonable profit level were the fact that the tariffs of the press distribution could not increase more quickly than the health index and the fact that the compensation for press distribution and other services was based on ex-ante parameters (see recital 323-325 of the 2012 Decision). The compensation in the 5th Management Contract is also based on ex-ante parameters and according to Article 14.2 of the 5th Management Contract, the tariffs of all SGEIs cannot increase more quickly than the consumer price index. It can also be observed that the efficiency and quality constraints are more clearly expressed in the 5th Management Contract than they were in the 4th Management Contract and the level of the compensation is made dependent on the achievements of efficiency/quality objectives making the 5th Management Contract potentially riskier than the 4th Management Contract. Consequently, a profit level which would be below the benchmark established for the 4th Management Contract seems also reasonable for the 5th Management Contract.
- The overall productivity level of the company remained comparable in the counterfactual to its actual level for commercial activities.

(178) Based on the above, the Commission considers that the NAC methodology has been correctly implemented by the Belgian authorities.

3.2.2.8. Efficiency Incentives

(179) Paragraph 41 of the 2012 SGEI Framework reads: *"Member States can define productive efficiency targets in the entrustment act whereby the level of compensation is made dependent upon the extent to which the targets have been met. If the undertaking does not meet the objectives, the compensation should be reduced following a calculation method specified in the entrustment act. In contrast, if the undertaking exceeds the objectives, the compensation should be increased following a method specified in the entrustment act. Rewards linked to productive efficiency gains are to be set at a level such as to allow balanced sharing of those gains between the undertaking and the Member State and/or the users"*.

²⁹ A rate of 7.4 % ROS was considered adequate for both mail delivery and press distribution for the period 2006-2010.

- (180) Paragraph 43 of the 2012 SGEI Framework also reads: "*Efficiency gains should be achieved without prejudice to the quality of the service provided and should meet the standards laid down in Union legislation.*"
- (181) It must be understood that since the NAC is equal to the difference between the net costs of the counterfactual scenario and the actual one, efficiency gains made by the operator which lower the net cost of the actual scenario tend to lower the NAC.
- (182) The calculation of the NAC of the public services entrusted to bpost provided in table 5 includes the expected efficiency gains over the period 2013-2015. These expected efficiency gains reduce the NAC as compared to a situation where bpost would not reduce its cost base since they reduce the net costs of the actual scenario.
- (183) The 5th Management Contract introduces both quality incentives and efficiency incentives as described in section 2.2.5. An efficiency sharing mechanism is introduced which foresees that, provided that very precise quality targets are met, 67% of the realized efficiency gains can be kept by bpost and therefore that the corresponding costs may be compensated by the Belgian State.
- (184) The Belgian authorities have calculated that 67% of the expected cost reductions over the period 2013-2015 due to expected efficiency gains will amount to €[...] million for 2013, €[...] million for 2014 and €[...] million for 2015. Taking into account the efficiency incentives, the compensable amount for each year amounts to €303.7 million in 2013, €304.4 million in 2014 and €294.3 million in 2015 (see table 10 below).

Table 10: Compensable amounts taking into account efficiency incentives

CALCULATION OF THE NAC TAKING INTO ACCOUNT EFFICIENCY INCENTIVES	2013 (F) (million €)	2014 (F) (million €)	2015 (F) (million €)
NAC BEFORE EFFICIENCY INCENTIVES	[...]	[...]	[...]
EFFICIENCY INCENTIVES	[...]	[...]	[...]
TOTAL	303.7	304.4	294.3

- (185) The Commission considers that the quality incentives and efficiency incentives set out in a transparent manner in the 5th Management Contract and in particular the fact that efficiency gains are shared between the State and bpost as well as the fact that efficiency gains will not be achieved at the detriment of quality are well in line with the 2012 SGEI Framework.

3.2.2.9. Amount of compensation and verification of the absence of overcompensation

- (186) According to paragraph 21 of the 2012 SGEI Framework, "*the amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit.*"
- (187) As described in section 2.2.5,
1. bpost will be granted ex-ante an amount corresponding to the compensable amount calculated in recital (184): €303.7 million in 2013, €304.4 million in 2014 and €294.3 million in 2015.

2. At the end of each calendar year, an ex-post calculation of the compensable amount for the period will be performed:

- If the compensable amount calculated ex-post is lower than the compensation granted ex-ante, bpost will repay the excess compensation;
- If the compensable amount calculated ex-post is higher than the compensation granted ex-ante then bpost will in general not receive extra-compensation.

(188) The Commission considers that the mechanism above ensures that bpost will not be over-compensated since the ex-ante payment does not exceed the sum of the NAC of the public services plus the efficiency incentives and since in addition an ex-post check will be performed which can further reduce the compensation level.

(189) Considering the above, the Commission finds that, if the compensation mechanism above is implemented, bpost will not be overcompensated over the period 2013-2015.

3.2.2.10. Transparency

(190) Paragraph 60 of the 2012 SGEI Framework states that: *“For each SGEI compensation falling within the scope of this Communication, the Member State concerned must publish the following information on the internet or by other appropriate means:*

- (a) the results of the public consultation or other appropriate instruments referred to in paragraph 14;*
- (b) the content and duration of the public service obligations;*
- (c) the undertaking and, where applicable, the territory concerned;*
- (d) the amounts of aid granted to the undertaking on a yearly basis”.*

(191) In their notification, the Belgian State has committed to publish all the above information on the internet.

3.2.2.11. Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union

(192) Paragraph 58 of the new SGEI Framework states that: *“[t]he Commission will also pay attention to situations where the aid allows the undertaking to finance the creation or use of an infrastructure that is not replicable and enables it to foreclose the market where the SGEI is provided or related relevant markets. Where this is the case, it may be appropriate to require that competitors are given fair and non-discriminatory access to the infrastructure under appropriate conditions.”*

(193) Compensations are granted to bpost for the Network SGEI, allowing the postal operator to maintain a network of 673 post offices and 682 postal shops while only [...] post offices and [...] postal shops would be necessary to deliver the USO and the other public services (see recital (159)). The additional share of the network ([...] post offices and [...] postal shops) required by the Network SGEI cannot be easily replicated and is used exclusively by bpost.

- (194) While in most of the Belgian territory, bpost's competitors can find alternative solutions to deliver their services, that situation could potentially have a distortive effect on competition in certain areas where the postal network is the only contact point. This is particularly important concerning the parcel delivery market which is one of the key axes of development in the postal sector in the future due in particular to the development of electronic commerce. It is also important that bpost's competitors are able to access the postal network in areas where it constitutes the only contact point for delivering a public service that was rendered by bpost and that has to be taken over following a public procurement procedure.
- (195) With their notification, the Belgian authorities informed the Commission that bpost's contracts with third parties for the franchising of postal shops do not contain any clauses that restrict the freedom of the third parties to distribute, on their premises, products or services of other postal operators.
- (196) In addition, Article 25 (1) of the 5th Management Contract provides the following: *“[u]pon written request, bpost shall grant a competing postal service provider access to the post offices that are maintained to discharge the Retail Network SGEI when these post offices are located in municipalities where the provider demonstrates that no other contact point can be used by customers to collect parcels five days per week, except for Sundays and official holidays or [where] no other contact point can be used to provide a service of general economic interest that was rendered by bpost in post offices and is taken over by the competing postal service provider following a public procurement procedure.”* Article 25(2) sets out the conditions under which bpost will be providing access and clarifies that these must always be non-discriminatory and transparent.
- (197) The Commission considers that the clarifications above ensure that the exceptional circumstances that would require additional conditions are not present.

4. bpost overcompensation over the period 2011-2012

- (198) Over the period 2011-2012 bpost received SGEI compensations on the basis of the prolongation of the 4th Management Contract. The Belgian authorities found that, on the basis of the methodology established in the 2012 decision, bpost had been overcompensated in this period. In their notification, the Belgian authorities have therefore formally committed to recover, before May 15, 2013, the overcompensation, amounting to €123 million³⁰, which arose from the prolongation of the 4th Management Contract in line with the methodology established in the 2012 Decision.
- (199) When the Commission examines the compatibility of a State aid with the common market it must take all the relevant factors into account, including, where appropriate, the circumstances already considered in a prior decision and the obligations which that decision may have imposed on a Member State³¹.

³⁰ This amount includes recovery interests.

³¹ Case C-355/95, Deggendorf [1997] ECR I-2549, point 26.

- (200) Even if it has not taken any position on the compatibility with State aid rules of the compensation granted for the years 2011 and 2012, yet, the Commission considers that in all likelihood bpost has benefitted from overcompensation during 2011 and 2012 as the SGEI compensations in those years were based on the provisions of the 4th Management contract (which produced overcompensation in the previous years).
- (201) Given the commitment entered into by the Belgian authorities, the Commission considers that that overcompensation will be removed and therefore it will not have any impact on the compatibility assessment of the SGEI compensations provided for under the 5th Management Contract.

5. CONCLUSION

- (202) The Commission has accordingly decided to consider the aid to be compatible with the internal market on the basis of Article 106(2) of the Treaty on the Functioning of the European Union and to raise no objections to the notified measure.
- (203) The Commission notes that for the sake of urgency, Belgium exceptionally accepts the adoption of the Decision in the English language.

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Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
J-70 3/232
1049 Brussels
Belgium
Fax No: +32 2 296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president