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In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]	PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid SA.38869 (2014/N) – Poland
Compensation of Poczta Polska for the net cost of USO 2013-2015

Sir,

1. PROCEDURE

(1) On 10 June 2014, Poland notified a mechanism for establishing the compensation of Poczta Polska S.A. (hereinafter: "PP"), the universal postal service provider for the delivery of the universal service obligation (hereinafter: "USO") over the entire Polish territory for the period 2013-2026.

(2) By letter of 5 January 2015, the Polish authorities agreed to limit the duration of the notified measure so that it only covers the compensation of PP for the period 2013-2015.

2. DESCRIPTION

2.1. The beneficiary

(3) PP is a wholly state-owned company, with the Polish Treasury (hereinafter: "the Treasury") as sole shareholder. PP's share capital, with a nominal value of PLN 774,14 million (approx. € 186,35 million[1]), is divided into 77 414 000 shares, each with a nominal

[1] All conversions in this decision use the ECB reference rate on 31 December 2013 of €1 = PLN 4,1543.

Jego Ekscelencja
Witold Waszczykowski
Minister Spraw Zagranicznych
Al. J. Ch. Szucha 23
00-580 Warszawa
POLSKA

value of PLN 10. The Treasury is represented at the general meeting of shareholders by the Minister responsible for Administration and Digitisation.

(4) PP operates within the Capital Group Poczta Polska. It offers postal services, including universal services, courier services and other postal services; magazine subscription, distribution of press and publications services, philately; financial services and associated activities, including banking operations; and logistic services, particularly carriage of goods and their packaging and storage. In 2013, PP had a turnover of approx. PLN 5,82 billion (i.e. approx. €1,4 billion) and employed […][*] staff (at the end of the year).

(5) PP is the largest provider of postal services in Poland, with 7 871 postal points of contact at the end of 2013. Pursuant to Article 178(1) of the Polish Postal Law (hereinafter: "the Postal Law")[2] transposing the third Postal Directive[3] and fully liberalising the postal market in Poland on 1 January 2013, PP has been designated the Universal Service Provider (hereinafter: "USP") for the entire national territory of Poland for a period of 3 years following the entry of the Postal Law into force, i.e. until 31 December 2015[4].

(6) PP was already the USP for Poland in the past, but has never received so far aid to finance the delivery of the universal service obligation[5]. However, as of 2003, PP received aid for the provision of services which are statutorily exempted from postage fees (i.e. items for the blind, obligatory copies of books for libraries and polling packets and returnable envelopes concerning voting by correspondence)[6].

2.2. The universal postal service entrusted to PP and inter-changeable services

(7) Pursuant to Article 45 of the Postal Law, universal postal services comprise domestic and cross-border:

1. clearance, sorting, transport and delivery of:
   a. letter items, including registered and insured items up to 2 000 g and with specified dimensions,
   b. items for the blind,
   c. postal parcels, including insured ones, up to 10 000 g and with specified dimensions;
2. sorting, transport and delivery of postal parcels up to 20 000 g and with specified dimensions sent from abroad.

(8) Pursuant to Article 46(2) of the Postal Law, universal postal services should be provided:

- in a uniform manner under comparable circumstances;
- ensuring that the following shall be deployed throughout the entire national territory:
  - postal points of contact in accordance with the provisions of Article 47(3) and
  - mail boxes in a number adequate to the demand in a given area;
- observing the transit time indicators of postal items;

* Business secret

2 Postal Law Act 1529 of 23 November 2012 published in the Journal of Laws 2012 of 29 December 2012.

3 Directive 97/67/EC as amended by Directive 2002/39/EC and by Directive 2008/6/EC.

4 According to chapter 6 of the Postal Law, as of 1 January 2016, the provision of universal services will be entrusted for a period of 10 years to a service provider selected through a tender.

5 Although the Commission adopted on 15 December 2009 a decision for compensation of the USO provision by PP (C 21/2005), this decision was partially based on forecasted results of PP. However, as PP did not incur any actual losses for the provision of the USO over the period 1998-2011, it has never actually received any State compensation under this scheme.

6 Decisions C(2004) 4321/2 of 3 November 2004, C(2008) 8863 of 18 December 2008, C(2010) 7682 of 4 November 2010, C(2011) 6458 of 12 September 2011 and C(2013) 3396 of 31 May 2013 (with corrigendum C(2013) 8232 of 18 November 2013). In its latest decision, the Commission approved approx. €1,56 million of aid to PP for 2013-2015 (SA.36124).

- at affordable prices[7];
- at a frequency ensuring at least one clearance of mail boxes and delivery of postal items on every working day and at least five days a week, excluding public holidays; and
- in a manner enabling the sender to obtain a document confirming the reception of a registered item.

These are the main components of the USO, which form the basis for calculation of the net cost of the USO (see section 2.4.1).

(9) The above conditions are further detailed in the Regulation on the conditions for providing universal postal services by the designated operator[8], issued on 29 April 2013 by the Minister for Administration and Digitization.

(10) The Postal Law also defines the "services comprising universal postal services" (hereinafter referred to as "inter-changeable services"). According to Article 3(30) of the Postal Law, these services include "*letter items and postal parcels with weight and dimensions defined for universal services and items for the blind, not provided by the operator designated to provide universal services subject to the obligation to provide universal services*"[9]. The inter-changeable services do not comprise postal services consisting in the clearance, sorting, transport and delivery of courier items.

(11) The Polish authorities confirm that these services are inter-changeable with universal services according to recital 27 of the third Postal Directive, which reads: "*In order to determine which undertakings may be required to contribute to a compensation fund, Member States should consider whether the services provided by such undertakings may, from a user's perspective, be regarded as services falling within the scope of the universal service, as they display inter-changeability to a sufficient degree with the universal service, taking into account the characteristics of the services, including added value features, as well as the intended use and the pricing. These services do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage.*"

2.3. The notified measure

(12) For the compensation of PP's net cost incurred in relation to the fulfilment of its obligations as USP, the Polish authorities intend to establish a three-year compensation fund mechanism from 2013 to 2015[10]. This will allow the compensation of PP through contributions from providers of postal services (including PP) active on the market of universal postal services and services that are inter-changeable with the universal service. If necessary, this can be complemented by direct grants from the State budget.

(13) The possibility to establish such mechanism is provided for by Article 7(3)(b) of the third Postal Directive[11]: "*Where a Member State determines that the universal service obligations […] entail a net cost […] and represent an unfair financial burden on the universal service provider(s), it may introduce […] b) a mechanism for the sharing of the*

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7 According to Article 55(1) of the Postal Law, the President of the UKE shall determine, by way of decision, the maximum annual level of the fees for the universal services for three-year periods, being guided by the costs of the provision of the universal services, by ensuring the price affordability of those services and by the market and economic circumstances.

8 Regulation 545 of 29 April 2013 published in the Journal of Laws of 9 May 2013.

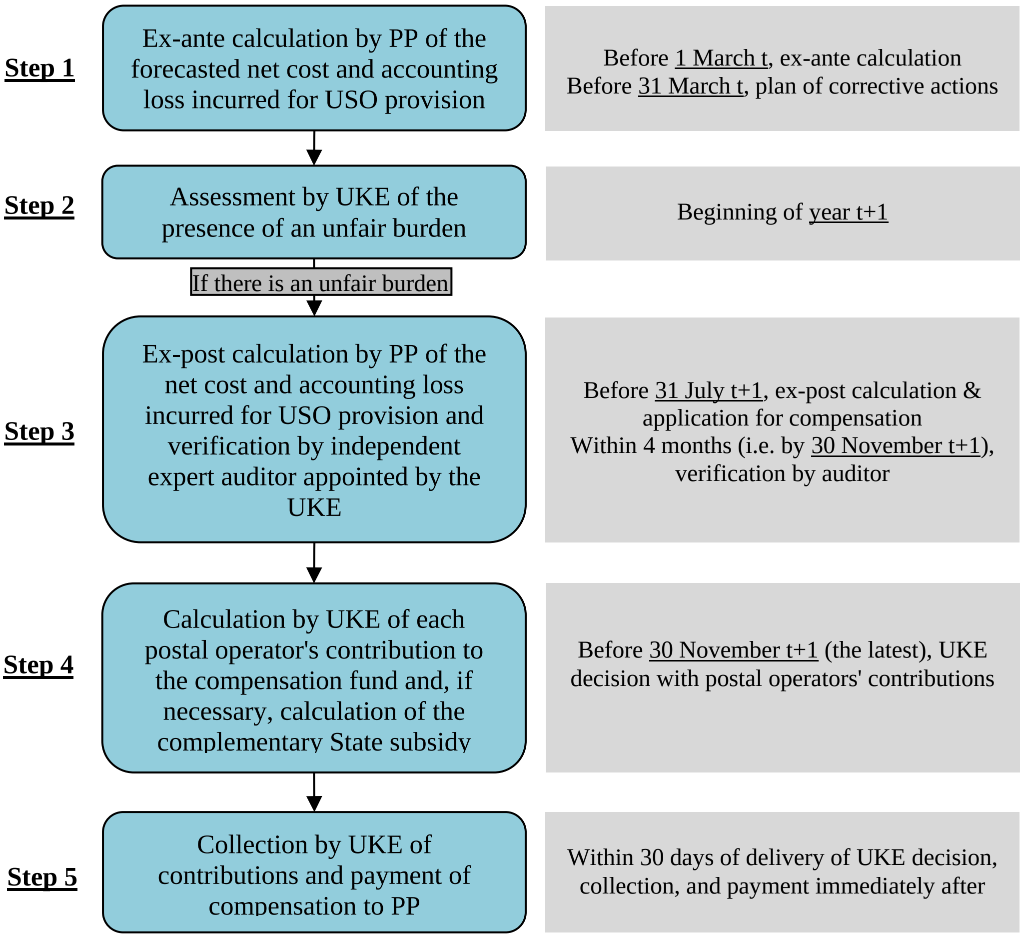
9 The USP (i.e. PP) can also provide, aside from the universal services, postal services that are regarded as inter-changeable to the universal services.

10 While the legal bases and the entrustment act are prior to the period of entrustment, the actual compensation will only be granted ex-post, as the notified compensation fund mechanism is not yet functional since it is pending the Commission's approval.

11 See Article 1(8) of Directive 2008/6/EC of the European Parliament and the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27.2.2008, p. 3.

net cost of the universal service obligations between providers of postal services (and/or users)".

(14) Chapter 10 (Articles 106 to 120) of the Postal Law describes the detailed rules governing the setting up and functioning of the compensation fund mechanism, which will be established according to the following process:



Note: "t" is the reference year, for which the amount of compensation is calculated
UKE refers to the Polish postal regulator, i.e. the Office of Electronic Communications

Step 1: PP calculates the forecasted compensation amount

(15) PP calculates the forecasted net cost of the USO on the basis of the Net Avoided Cost methodology, as described in section 2.4.1 below. PP also calculates the accounting loss it expects to incur in the provision of the USO, since according to Article 109(2) of the Postal Law the net cost is financed only up to the amount of accounting losses incurred in the provision of universal services. PP submits these estimations along with the relevant justifications to the President of the Polish postal regulator, i.e. the Office of Electronic Communications (hereinafter: "UKE") before 1 March of the reference year. PP is also obliged to submit, by 31 March of the reference year, a plan of corrective actions to avoid the emergence of the estimated losses on universal services (or at least to minimise them)[12].

[12] The plan of corrective actions includes various measures to increase the efficiency of business activities. For example, as one of the key cost drivers for the USO is the network of post offices, new regulations on access to universal services were implemented as of 23 May 2013, leading to a reduction of the density of the network.

Step 2: Assessment of the presence of an unfair burden

(16) As described in more detail in section 2.5 below, the UKE considers that the occurrence of a loss on universal services, understood as a negative accounting result on sales revenues of these services, is a confirmation of an unreasonable financial burden on the designated operator caused by the provision of the USO. Therefore, the financing of the net cost shall be launched only if the provision of the USO in the reference year resulted in an accounting loss.

Step 3: PP calculates the actual compensation amount, which is then verified by an independent expert auditor appointed by the UKE

(17) If at the end of the reference year PP incurred accounting losses on the USO, PP submits to the President of UKE, within seven months, the calculation of the net cost and accounting loss incurred, together with the supporting documents and an application for compensation.

(18) According to Article 112 of the Postal Law, the President of the UKE appoints an independent expert auditor to verify the submitted documents and, within four months, issues a decision specifying the verified amount of net cost and accounting loss incurred in the provision of the USO and the compensation amount to be granted to PP.

Step 4: The UKE calculates the contribution of each operator and, if necessary, the State subsidy

(19) The President of UKE estimates, by way of decision, the amount of contribution to the fund of a postal operator required to make such a contribution and sets a thirty-day time limit for payment, counted from the date on which the decision is served.

(20) According to Article 108(2) of the Postal Law, those postal operators providing universal services and/or inter-changeable services are obliged to contribute to the compensation fund if their revenues from these services in the reference year exceeded PLN 1 million (i.e. approx. €240 000). In 2013, there were 71 alternative postal operators active in the segment of inter-changeable services, with a total market share[13] of 4,9% in terms of revenues and 15,4% in terms of volume. However, only 10 postal operators (including PP, two operators belonging to one group and one operator acting as a subcontractor of another operator) fulfilled the criterion on the revenue threshold and would therefore be liable to contribute to the fund.

(21) The amount of contributions from each postal service operator is determined by the product of a uniform percentage indicator (capped at 2%) and each operator's relevant revenues in the reference year. The relevant revenues are the revenues stemming from the provision of universal services (in the case of the designated operator) and inter-changeable services (in the case of both the designated operator and the other operators liable to contribute to the compensation fund).

(22) The uniform percentage indicator is determined as the ratio between the amount of compensation to be received by the designated operator and the total relevant revenues of all providers obliged to contribute to the compensation fund, earned in the relevant financial year. If the uniform percentage indicator obtained is larger than 2%, the contribution due by each operator is calculated as 2% (the cap) of the relevant revenue of the service provider. To that end, according to Articles 97 and 108 of the Postal Law, the designated service provider is obliged to keep regulatory accounting, and the providers of inter-changeable services are obliged to keep accounts so as to ensure separate records for the inter-changeable services, other postal services as well as other economic activities.

(23) According to Article 114 of the Postal Law, the President of UKE informs the Minister for Administration and Digitization of the amount of postal operators' contributions to the fund immediately after this is fixed. This allows establishing the potential need to release

[13] The market share refers to the sum of universal services (provided by PP) and inter-changeable services (provided by PP and its competitors).

budgetary means to supplement the postal operators' contributions in order to cover the entire compensation amount previously determined. In such case, the Minister for Administration and Digitization applies to the Minister of Finance for budgetary means included in a dedicated reserve established in the State budget for the given year. Subject to the decision of the Minister of Finance, those means are handed over to the Minister responsible for the given budgetary part, who then transfers them to PP as an earmarked subsidy. This process is carried out in accordance with the Polish Public Finance Act[14].

Step 5: The UKE collects the contributions and pays the compensation amount to PP

(24) Within 30 days from the delivery of the UKE's decision, the postal service providers transfer their contributions to a separate bank account of the UKE.

(25) After being credited to the UKE bank account, the amount paid is immediately distributed by the President of UKE to the designated service provider. Interest on the funds deposited on the account referred to above increases the amount of the funds collected. According to Article 115 of the Postal Law, the amount of the designated service provider's contribution determined under the decision of the President of UKE remains at the disposal of that service provider, in order to avoid double transfer of funds (transfer of funds to the UKE bank account and a return transfer to the designated service provider's bank account).

(26) If the amount from contributions does not cover the total amount of compensation, the Polish State will cover the remaining amount from its budget, as described in paragraph (23).

(27) Although the Postal Law setting up the compensation fund mechanism has already been adopted in 2012, the actual granting of the compensation through the fund mechanism entails the issuance of several decisions by the President of the UKE[15]. However, not all of these decisions have been issued to date, and the compensation fund mechanism is not yet functional, since it is pending the Commission's approval.

2.4. Calculation by PP of the compensation amount

2.4.1. Calculation of the net cost of the USO using the net avoided cost methodology

2.4.1.1. The methodology

(28) The general methodology for the net cost calculation is specified in the Regulation of the Minister for Administration and Digitization on the calculation of the net cost of the universal service obligation[16].

(29) The total net cost of the USO is defined as the difference between the justified net cost of the designated service provider operating with the obligation and including efficiency incentives (i.e. the factual scenario) and the net cost of the postal service provider operating without the universal service obligation (i.e. the counterfactual scenario), minus indirect benefits related to the provision of universal services and benefits resulting from special or exclusive rights granted to the designated service provider. According to Article 106(6) of the Postal Law, the net cost calculation shall also include the designated operator's right to a reasonable profit on the basis of rate of return on capital employed, referred to in Article 100 of the Postal Law.

(30) The provision of postal services statutorily exempted from postage fees, to the extent that they relate to the USO, shall not be included in the net cost calculation to avoid double

[14] Polish Public Finance Act of 27 August 2009, published in the Journal of Laws 2013, item 885 with amendments.

[15] For example, after the verification of the net cost calculation and losses on universal services submitted by PP, Article 113(1) of the Postal Law stipulates that the President of UKE shall estimate, by way of decision, the amount of contribution to the fund of a postal operator required to make such a contribution and shall set a thirty-day time limit for payment, counted from the date on which the decision is served.

[16] Regulation 544 of 30 April 2013 published in the Journal of Laws of 9 May 2013.

compensation for the same services, since these services are already compensated under another scheme, as mentioned in paragraph (6).

(31) The total net cost calculation takes into account, inter alia, the net costs calculated separately for each component of the universal service obligation, when the public operator justifies that this is provided at a loss[17]. The main components of the obligation are those outlined in paragraph (8) above. The Polish authorities developed the net avoided cost methodology for the following components:

- one delivery throughout the whole national territory, at least five working days a week; and
- one clearance (as such related to the obligation to maintain a specific number of post offices, i.e. a minimum network).

(32) More specific details on the estimation of the different elements included in the net cost calculation are outlined in the Description of the net cost calculation of PP for 2013, approved by the President of the UKE on 30 June 2014, and explained in the following steps 1-7.

Step 1: Defining the Factual Scenario:

(33) The factual scenario derives from the situation in which the designated operator, PP, is obliged to provide the universal service on the principles specified in the current legal framework, involving obligations as well as possible benefits, such as indirect benefits and benefits flowing from the special or exclusive rights granted to the designated operator.

(34) Furthermore, the factual scenario includes efficiency adjustments, by taking into account the activities of the designated operator only to the extent to which these activities are efficient. More specifically, three types of efficiency adjustments are foreseen in the methodology:

- Excluding from the net cost calculation the most unprofitable ’n’ post offices, where ’n’ represents the difference between the actual number of PP’s post offices and the minimum number of post offices required to meet the "access to universal service" index[18];
- Efficiency adjustments for the component related to the number of offices, based on cost savings from the planned reduction of employment of PP between 2013 and 2017 and the value of average remuneration in 2013[19];
- Efficiency adjustments for the component related to the frequency of deliveries, through cost savings on the number of postmen employed, if this number could be reduced while still fulfilling the requirements of the USO[20].

[17] The net cost calculation adopted by the Polish authorities is obligation-based and not service-based. Given the high share of fixed costs in total costs, potential withdrawal of unprofitable services would not necessarily result in any cost reduction. From a business point of view, terminating a service is justified only if the variable unit cost of such service, and not the fully allocated cost, is higher than the price of the service, which is not the case for PP. Therefore, the difference between the counterfactual and the factual scenarios consists in lowering a certain obligation rather than terminating the provision of certain services.

[18] In reality, PP has a number of post offices in addition to those required for the USO provision. In order to ensure that the USO is correctly fulfilled in the factual scenario, the most unprofitable post offices excluded from the net cost calculation cannot include offices which are needed for the fulfilment of the USO, e.g. the only post office in a given municipality.

[19] According to PP, […] employees will be laid off across the entire enterprise between 2013 and 2017 and the corresponding planned savings show the value of excessive costs in all organisational entities of PP. This efficiency adjustment is applied proportionally to the cost structure of post offices, in order to reflect only those savings associated with the component related to the number of post offices in the factual scenario. For example, the number of the postmen employed is excluded in order to avoid double counting in the factual scenario, as potential cost savings related to the inefficiency of postmen would be accounted for in the costs of the component related to frequency of deliveries.

Step 2: Defining the Counterfactual Scenario:

(35) The counterfactual scenario is a purely hypothetical scenario reflecting the possible business strategy of the designated operator assuming there in no USO; in this case, it reflects what would actually happen if (a) particular component(s) of the obligation was (were) withdrawn.

(36) In the counterfactual scenario, PP would attempt to maximise its income, by modifying or cancelling those components of the obligation that affect the company's financial result negatively. PP's strategy in the counterfactual scenario assumes:

(a) **Lower number of delivery days in rural areas** based on an analysis of the workload of postmen in rural and urban areas. An analysis of the number of letters and parcels delivered in villages and towns/cities shows that the workload of a postman in a rural area is lower than the workload of a postman in an urban area. Therefore, in the counterfactual (given the lack of obligation of at least one emptying of post boxes), the number of employees working in deliveries would be adapted to the optimum workload of an urban postman. Consequently, PP would limit the number of delivery days in those rural areas where deliveries five times a week are not justified, since reducing the frequency of deliveries would allow for a cost reduction higher than the potential corresponding loss in revenue.

(b) **Lower number of post offices**, as unprofitable post offices would be closed. The selection of post offices to be liquidated in the counterfactual scenario is done according to the following algorithm:

- Determination of the financial result of each post office, based on directly recorded revenues and costs, without taking into account revenues and costs related to deliveries[21].
- Determination of whether the post office is the only office in a given municipality or performs a particularly important function in the postal network (e.g. sorting and unloading points, responsible for supporting shipment and representing the middle-link in the distribution process). As such offices are located in optimum locations, they would be kept in the counterfactual scenario even if found unprofitable.
- Determination of post offices employing a substantial number of postmen, which are also kept in the counterfactual scenario regardless of their profitability, as postmen should be employed at conveniently located post offices.

(37) It is assumed that the other components of the obligation (including price) would not change in comparison with the factual scenario and therefore would not affect the net avoided cost. In order for this assumption to hold, the net cost calculation has to be done step-by-step, as the counterfactual scenario needs to be created in such a way that a change of one component (e.g. frequency of deliveries) does not result in an obligation specified within any another component of those in paragraph (8) not being performed[22].

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[20] This efficiency adjustment takes into account the workload of postmen in urban and rural areas (separately) and potential cost savings related to those postmen that are more inefficient than the average postman in the same type of area (urban or rural).

[21] Revenues and costs related to deliveries are not taken into account in order to avoid double counting, as these revenues and costs impact the component of the obligation related to frequency of deliveries rather than the one related to the number of post offices. It is assumed that the size of the delivery personnel and thus the cost of deliveries do not depend on the number of post offices maintained (i.e. the number of postmen does not depend on the number of delivery points located in a given area).

[22] For example, a change of the frequency of deliveries affects the transport times for letters and parcels. Even if this concerns only some of the rural areas, it can affect transport times in such a way that the relevant indexes for transport times for letters and parcels are not maintained. However, PP is obliged to deliver a percentage of the letters/parcels in Poland in a given time, counted from the day of sending to the day of delivery. Therefore, the net cost calculation needs to ensure that all other components of the obligation are performed if the frequency of deliveries in rural areas is changed.

(38) In the counterfactual scenario, PP will continue to provide all the services currently provided, with one exception: in the rural areas, part of the first-class services (delivered in D+1) would be replaced by second class services (e.g. priority letters would be replaced by economy letters). In addition, there is an impact on non-USO activities, as the sale of merchandise, financial services and other services will also cease in the liquidated offices.

Step 3: Identifying Avoidable costs

(39) This step involves the estimation of cost savings that PP would achieve for each of the two components of the obligation that would be modified in the counterfactual scenario.

(40) First, a lower number of delivery days in rural areas will lead to postmen-related cost reduction, proportionally to the decrease of delivery days, which is assessed in accordance with the methodology described in paragraph (36) above.

(41) Second, a lower number of post offices will lead to avoiding all costs recorded directly for the post offices and those costs recorded indirectly that could be avoided if the post offices were liquidated in the counterfactual scenario (including the cost of purchase of goods and materials). These costs do not include delivery costs, as these are dependent on the frequency of deliveries rather than the number of post offices, despite being registered in the books at the level of the post office (as postmen need to be attributed to cost centres).

(42) The approach adopted by the Polish authorities prevents from double counting of costs in the net cost calculation, since costs incurred due to the existence of the two components of the obligation (frequency of deliveries and number of post offices) are recognised separately. More specifically, the costs of a certain component are not included in the calculation of the net cost for the other component of the obligation, as exemplified above for delivery costs.

Step 4: Estimating foregone revenue

(43) This step involves the estimation of the foregone revenue resulting from PP’s business strategy in the counterfactual scenario.

(44) First, a lower number of delivery days in the rural areas will lead to lower revenue from the replacement of first class services (i.e. priority items) with second class services (i.e. economy items) in the areas affected by the reduction of frequency of deliveries. This is calculated as the product of the price difference between priority items and economy items and the decrease in volume of priority items, which is proportionate to the reduction of the number of delivery days in rural areas.

(45) Second, a lower number of post offices will lead to a loss of directly and indirectly recorded revenues in those post offices that would be closed in the counterfactual scenario, i.e. all revenues from the sale of goods and materials, all revenues from financial services and other services, and a share of the revenues from postal services (as determined on the basis of market research), assuming that some of the clients from the area covered by the closed post office would not start using another post office of PP located in the direct proximity of the closed post office.

(46) Other indirect revenue effects related to the reduced frequency of delivery are considered immaterial in this case[23]. Furthermore, no cross-effects between the two components of the obligation have been identified[24].

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[23] For example: (i) for the decrease in volume of priority items in the rural areas, there will be a corresponding increase in the volume of economy items (i.e. all priority items will become economy items), as deliveries in rural areas are either not provided by other operators at all, or are performed less frequently than by PP (e.g. once a week); moreover, possible migration of customers to courier services is limited significantly by the price difference (courier services are much more expensive), as price is a decisive factor when selecting a postal services provider; (ii) while distribution of daily press and publications could be impacted, this is in fact not at all provided by PP; (iii) revenues from postal money orders are not affected, as this service is provided in rural areas only by PP, and in any case these revenues are registered in the urban post offices where these orders are initiated.

Step 5: Accounting for intangible and other market benefits

(47) The counterfactual scenario also assumes that PP would lose the intangible and other market benefits, such as those resulting from special or exclusive rights granted to it in its quality of designated USP. As these benefits will be foregone in the counterfactual scenario, their value reduces the net avoided cost.

(48) The intangible benefits taken into account in the net cost calculation are brand recognition and additional opportunities in advertising.

(49) **Brand recognition:** PP, as operator designated with the provision of the USO, may be positively perceived by senders due to its status, social role, many years of presence on the market, or the experience in providing services on a large scale for all inhabitants of Poland. This could lead to additional sales revenues when senders, while having the possibility of choosing any postal operator offering comparable postal services, consciously decide to use the designated operator's services due to the fact this operator is carrying out the USO. This benefit is estimated on the basis of the share of PP's clients declaring that they use PP's services because the operator carries out the USO, which will be determined through market research (e.g. direct interviews with a representative sample of PP's clients).

(50) **Additional opportunities for advertising** of PP as designated USP stem from: (i) benefits in terms of third party advertising, since PP obtains revenue from renting advertising space in the post offices network; therefore, in the counterfactual scenario, PP would lose the revenue generated by advertising devices located in post offices that would be closed, as well as some revenue generated on account of national advertising campaigns of third parties, as their interest in such marketing is assumed to decrease to a certain extent if PP lost its USP status; (ii) benefits in terms of self-advertising, which are measured using the additional costs incurred by PP if it wanted to achieve, among senders using post offices closed in the counterfactual, a level of recognisability of services comparable to the existing level.

(51) The benefits related to special or exclusive rights granted to the designated operator are the following:

(52) **VAT exemption for the USO** leads to a lower price of universal services paid by PP's clients, which translates into a higher demand from clients that are VAT exempt and cannot claim back VAT. The demand from the clients that are VAT payers is non-sensitive in this respect since they can deduct input VAT, meaning that this is not a cost for these clients as they can claim it back from the tax office. Despite a higher demand from clients that are VAT exempt, this exemption also leads to lower gross revenues, since prices are lower by the VAT rate of 23%. On the other hand, PP's input VAT resulting from deliveries related to the provision of universal services is not subject to settlement with the tax office (thus representing an additional cost for PP), while this would be possible in the counterfactual. More specifically, in the counterfactual scenario, while PP would have to charge output VAT on all services (to be then paid to the State), it could also deduct input VAT (to be recovered from the State); if the output VAT is higher than the input VAT, PP would then need to pay the difference to the State; if the opposite is true, it would have to recover the difference from the State. Therefore, depending on which situation would occur, the VAT exemption for the USO in the factual scenario represents either a benefit or a burden to PP. The net benefit/burden from the VAT exemption is calculated as the difference between the revenues that PP would lose in the absence of the exemption and the costs that it would not incur because of the possibility of deducting input VAT.

[24] For example, in the case of registered items that cannot be delivered because of a recipient's absence from home at the time of delivery, it is assumed that the recipient will have to overcome a greater distance to the nearest post office, as other postal operators are not interested in the provision of postal services in those rural areas where PP's unprofitable post offices would be closed in the counterfactual.

(53) **Status of an official document attributed to the confirmation of dispatch** of registered mail items at the moment of issuance of such confirmation by a post office of the USP (also referred to as "the official power of postal stamp")**:** under the provisions of the Postal Law, a confirmation of sending a registered item, as issued by a post office of the USP, has the power of an official document. Granting official power only to confirmations issued by the USP is not only intended to guarantee certainty of postal operations in terms of registered letters, but also means that a delivery made within a legally prescribed time limit may affect the recipient's legal situation. The indirect benefits on account of the official power of postal stamp become apparent when the sender of a registered item chooses the services of PP because of this aspect, while (s)he would choose another operator if all operators had this right. The benefit is estimated on the basis of market research for individual and institutional clients, and its value takes into account: the percentage of clients for whom the official power of postal stamp is the major reason for choosing PP, the index of volumes lost due to some senders moving to alternative operators in the absence of this right for PP, and the mark-up on registered items.

(54) **Demand for complementary services:** understood as the additional benefits resulting from the fact that for some registered letters sent due to the official power of postal stamp, senders also purchase a confirmation of receipt. In the counterfactual scenario, the mark-up may be lost not only with respect to registered letters (as measured by the benefit above, stemming from the official power of postal stamp), but also with respect to the service of confirmation of receipt that is purchased for some of the registered letters send via PP. The value of this benefit is estimated similarly to the one related to the official power of postal stamp, but refers to the mark-up on the confirmation of receipt that PP would lose if the status of an official document attributed to a confirmation of sending a registered item was granted to confirmations of receipt issued by all operators.

(55) **Postal money orders:** the USP is authorised to accept postal orders with respect to social insurance benefits (incl. retirement pensions, disability pensions and social assistance benefits) directed to both rural and urban areas, as well as any other postal money orders directed to rural areas[25]. In the counterfactual, it is assumed that all operators would have the right to provide this service, so some of the postal orders in rural areas could also be offered by postal operators other than PP. The value of this benefit takes into account: the share of lost volume of accepted postal money orders for rural areas and the mark-up on these postal money orders.

(56) **Right to place post boxes free of charge** in the premises belonging to or managed by public finance institutions**:** the value of this benefit is estimated on the basis of the number of such post boxes and the average annual cost of leasing the area where these post boxes are installed.

Step 6: Calculating the reasonable profit

(57) This step refers to the net cost component associated with the designated operator's right to a reasonable profit, calculated as the difference in the cost of capital employed in the factual scenario and the counterfactual scenario. The cost of capital employed is calculated for each scenario as the product of the capital employed and the Weighted Average Cost of Capital (WACC).

(58) As regards the capital employed in the factual scenario as opposed to the counterfactual scenario, this entails an extra capital investment in Fixed Assets which are required by the

[25] Delivery of postal money orders with social security benefits both from the Social Insurance Institution and from the Farmers' Social Security Fund is provided on market conditions, on the basis of Public Procurement Law. The Postal Law only enables PP to perform its duty to supply social security benefits and to ensure the delivery of financial services to rural areas in situations of market failure.

USO and which would not have been made absent the obligation[26]. Therefore, the reasonable profit reflects the compensation for this extra capital investment.

(59) As regards the WACC, since the capital structure could be rather different in the factual scenario and in the counterfactual scenario, two different scenario-specific WACC rates need to be calculated.

Step 7: Calculating the net cost

(60) The total net cost is the sum of the net cost for each component of the obligation that is provided at a loss and would therefore be discontinued in the counterfactual scenario, from which the value of the intangible and other market benefits is subtracted. The net cost for a component of the obligation is the difference between the USP's profit level in the factual and the counterfactual scenarios (which after simplification is basically the difference between the avoidable costs and the foregone revenue), to which the right to reasonable profit is added.

2.4.1.2. Example: implementation of the method for 2013

Factual scenario

(61) While the entire network maintained by PP in 2013 counted 8429 post offices until 23 May 2013 and 7871 post offices until 31 December 2013, the minimum number of offices with which PP can fulfil the access requirements of the USO laid down in the binding provisions was 8240 post offices until 23 May 2013 and 6920 post offices in the subsequent period[27].

(62) As explained in paragraph (34), only the minimum number of post offices needed for the provision of the USO is included in the factual scenario for the net cost calculation. To achieve this, the most unprofitable offices representing the difference between the actual number of post offices and the number required for the USO provision (i.e. […] before 23 May 2013 and […] after this date) were excluded, unless these post offices were needed for the fulfilment of the USO. Therefore, this efficiency adjustment is in-built in the factual scenario.

(63) An additional efficiency adjustment is done for the post offices, on the basis of planned staff reductions, as explained in paragraph (34). This amounts to total cost savings of approximately PLN […] million (i.e. approx. €[…] million).

(64) As the factual scenario is the one in which PP still has the USO, the component of the obligation regarding the frequency of deliveries five working days a week throughout the entire national territory comprising both urban and rural areas is maintained. However, the corresponding efficiency adjustment outlined in paragraph (34) is not applied in 2013, since the number of postmen and consequently the postmen labour costs are already efficient[28].

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[26] It is important to note that in the counterfactual scenario these Fixed Assets related to the unprofitable provision of the USO, and the corresponding amount of Debt and Equity raised for the financing of these assets, do not exist in the first place, thus the capital structure could be quite different in the two scenarios.

[27] This is because the requirements for maintaining a certain number of post offices changed with the entry into force on 23 May 2013 of the Regulation on the conditions for providing universal postal services by the designated operator. The new Regulation specifies the indexes for locating the designated operator's post offices in accordance with certain principles, which has led to a lower number of post offices needed for the USO provision after this date.

[28] This is confirmed by the average number of rural postmen for each delivery area in 2013 (less than one), which also resulted in that additional postmen were seasonally required during the periods of increased demand for postal services, such as traditional holidays. Urban postmen were not taken into account in the net cost calculation, therefore possible inefficiencies within that group of postmen were not analysed.

(65) In the factual scenario for 2013, the total revenues of PP as an efficient USP are estimated at PLN 5 820 million (i.e. approx. €1 400,96 million), while its total costs, taking into account the efficiency adjustments above, are estimated at PLN 5 793,15 million (i.e. approx. €1 394,49 million).

Counterfactual scenario

(66) **Lower number of delivery days in rural areas**: on the basis of an analysis as described in paragraph (36)(a), PP concluded that in the counterfactual it would maintain a frequency of deliveries of five working days a week throughout urban areas, while this would be reduced to approximately two working days a week in rural areas. The impact of such a change has been estimated by PP to be the following in 2013:

- Decrease in personnel costs for postmen, with a total estimated saving of PLN […] million (i.e. approx. €[…] million);
- Lost revenue from the replacement of priority items with economy items in the rural areas, amounting to PLN […] million (i.e. approx. €[…] million) for letters and PLN […] million (i.e. approx. €[…] million) for parcels, based on the assumption that […]% of priority items volume would be replaced by economy items in the affected areas[29].

(67) **Lower number of post offices**: on the basis of an analysis as described in paragraph (36)(b), PP concluded that in the counterfactual it would maintain […] offices until 23 May 2013 and […] offices until 31 December 2013. The impact of such a change has been estimated by PP to be the following in 2013:

- Decrease in directly- and, if avoidable, indirectly- recorded costs, estimated at PLN […] million (i.e. approx. €[…] million);
- Lost revenue from the closure of the offices ([…]% of revenues from the non-postal activities, such as the sale of goods and materials, financial services etc. and 12% of revenues from the provision of postal services[30]), amounting to PLN […] million (i.e. approx. €[…] million).

(68) Taking into account the above estimations of the lost revenues and avoidable costs in the counterfactual scenario for 2013, PP would obtain (absent the USO) total revenues of PLN 5 745,23 million (i.e. approx. €1 382,96 million) and total costs of PLN 5 396,08 million (i.e. approx. €1 298,91 million).

Intangible and other market benefits

(69) **Brand recognition:** According to a 2010 market survey of PP customers, […]% have access to the services of an alternative postal operator, and […]% of these indicated that the USO status is the main factor for their decision to use PP's services. On the basis of these shares and the postal services revenue which is not foregone in the counterfactual, the brand recognition was estimated at PLN […] million (i.e. approx. €[…] million).

(70) **Additional opportunities for advertising** of PP as designated USP were estimated in 2013 at PLN […] million (i.e. approx. €[…] million), of which the biggest share related to self-advertising, calculated on the basis of the costs PP would incur if it wanted to achieve,

[29] This is proportionate to the reduction of postmen in the rural areas and the consequent reduction of the number of delivery days, which would impact the delivery of priority items. The Polish authorities argue that PP customers would not choose another operator for the delivery of priority items in rural areas, as deliveries in these areas are not provided at all by other operators, or they are performed even less frequently (e.g. once a week). Therefore, the lost revenue would stem from the fact that these customers would instead replace the priority items with economy items.

[30] The foregone revenue index of 12% was derived from the 2009 study of the UK National Audit Office, "Oversight of the Post Office Network Change Programme" (see paragraph 12 on page 7 of http://www.nao.org.uk/wp-content/uploads/2009/06/0809558.pdf). The Polish authorities explained that this is the only available report that presents the impact of closing post offices on demand, measured with the share of customers who would still use the same postal operator although the nearest post office was closed.

among senders using closed post offices, a level of recognisability comparable to the existing level.

(71) **VAT exemption for the USO:** given a price elasticity of demand of -0,49[31], a VAT rate of 23%, and a share in terms of revenues of […]% non-VAT payers in total clients of PP to which the VAT exemption is applied, PP would lose […]% of its clients in the absence of the VAT exemption. However, the gain from adding VAT to its prices would outweigh this loss, which means that PP has PLN […] million (i.e. approx. €[…] million) less revenues in the factual scenario (i.e. with the VAT exemption for the USO) than in the counterfactual. From a cost perspective, although PP would be able to recover input VAT in the absence of the VAT exemption, the output VAT that PP would need to pay to the State would be higher, with a net result of PLN […] million (i.e. approx. €[…] million) due VAT, which represents an avoidable cost for PP in the factual scenario (i.e. with the VAT exemption). In this context, while the exemption means foregone revenue for PP in the factual scenario, it also means avoidable costs (the level of which is higher), resulting in a net benefit amounting to PLN […] million (i.e. approx. €[…] million).

(72) **Status of an official document attributed to the confirmation of dispatch** of registered mail items at the moment of issuance of such confirmation by a post office of the USP: with […]% of individual customers and […]% of institutional customers being affected by this benefit according to a 2013 market survey, and taking into account the different mark-ups by type of customer, the value of this benefit was estimated at almost PLN […] million (i.e. approx. €[…] million).

(73) **Demand for complementary services:** following a similar calculation as that of the previous benefit, but taking into account the mark-up on the confirmation of receipt, as well as the share of volume of confirmation of receipt in the total volume of registered items, this benefit was estimated at PLN […] million (i.e. approx. €[…] million).

(74) **Postal money orders:** on the basis of the calculation described in paragraph (55), this benefit was estimated at PLN […] million (i.e. approx. €[…] million).

(75) **Right to place post boxes free of charge** in the premises belonging to or managed by public finance institutions**:** on the basis of the calculation described in paragraph (56), this benefit was estimated at almost PLN […] million (i.e. approx. €[…] million).

(76) Intangible and market benefits are estimated in 2013 at a total of PLN 182,8 million (i.e. approx. €44,01 million), and will be deducted from the net cost of the counterfactual scenario.

Reasonable profit

(77) As explained in paragraphs (57)-(59), the calculation of the reasonable would imply a quantification of the physical Capital Employed in the factual and counterfactual scenarios, as well as a quantification of the WACC rates in the two scenarios. This quantification is however not performed in Polish Post's implementation of the proposed methodology for 2013, because the cost of performing this complex exercise is believed to be too high, while the difference in the cost of capital across the two scenarios is not expected to be material. Moreover, the Polish authorities note that the amount of compensation is limited to the level of the accounting loss (as explained in paragraph (15)), which for 2013 is in any case lower than the net cost excluding the reasonable profit.

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[31] The price elasticity of demand shows the responsiveness, or elasticity, of the quantity demanded of a good or service to a change in its price, ceteris paribus (i.e. holding constant all the other determinants of demand, such as income); it gives the percentage change in quantity demanded in response to a one percent change in price. The estimation of the indicator at -0,49 was done by the Polish authorities on the basis of a study by Pitney Bows "A review of price elasticity models for postal products" (2007), as the average of 42 results of research on price elasticity of demand for postal services, carried out in different countries in 1991-2005.

Synthetic results

(78) The table below presents the results of the calculation of PP for 2013, based on the methodology above.

Table 1. Net cost estimation for 2013

	Million PLN		Million €	
	Factual scenario	**Counterfactual scenario**	**Factual scenario**	**Counterfactual scenario**
Revenues	5 820,00	5 745,23	1 400,96	1 382,96
Costs	5 793,15	5 396,08	1 394,49	1 298,91
Intangible and market benefits	-	182,82	-	44,01
Profit/loss	**26,85**	**166,33**	**6,46**	**40,04**
Net cost	**139,48**		**33,58**	

2.4.2. Calculation of the accounting loss of the USO

(79) The calculation of the accounting loss corresponds to the methodology based on cost allocation, which is an alternative method for calculating the net cost necessary to discharge the public service obligations. This calculation corresponds to the subtraction of the incurred costs of PP in discharging the USO from the earned revenues in discharging the USO. The calculation is carried out on the basis of the revenues and costs actually incurred by PP. Such calculation is rendered possible by the separation of accounts implemented in PP's cost accounting (see paragraph (132)).

(80) The accounting loss of the USO for 2013 is presented in the table below:

Table 2. Accounting loss of the USO for 2013

2013	Million PLN	Million €
USO Revenues	3 252,34	782,89
USO Costs	3 347,41	805,77
Accounting loss	**95,07**	**22,88**

2.4.3. Determination of the compensation amount

(81) According to Article 109(2) of the Postal Law, compensation applies to the net cost of the USO, but only up to the amount of the actual accounting loss incurred as a result of such services being provided.

(82) More precisely, if the loss occurs and the net cost of the USO (calculated in accordance with the net avoided cost methodology) is lower than the actual accounting losses incurred as a result of the universal service provision, the entire net cost is compensated. On the contrary, if the net cost is greater than the loss, it is not fully financed and the designated provider only receives compensation covering the loss. It can therefore be concluded that the compensation amount will correspond to the minimum between the two:

Compensation amount = Min (net cost, accounting loss)

(83) The table below presents the calculation of the compensation amount for 2013.

Table 3. Compensation amount for 2013

2013	Million PLN	Million €
Net cost	139,48	33,58
Accounting loss	95,07	22,88
Compensation amount	**95,07**	**22,88**

2.5. Assessment of the unfair burden by the UKE

(84) PP can only be entitled to the notified measure if UKE finds that the USO represents an unfair financial burden for PP (see paragraph (16)). The Polish authorities have introduced this step in the compensation process to comply with the requirements of the third Postal Directive[32].

(85) In this respect, the Polish authorities indicated that, according to Article 109(1) of the Postal Law, financing of the net cost of the designated operator is only possible when the provision of universal services results in a loss, understood as a negative result on sales of such services.

(86) The Polish authorities also indicated that such assessment of the unfair financial burden is in line with the principles underlying the third Postal Directive, because it is objective, transparent and accurate, as the appropriate allocation of revenues and costs necessary to determine the loss is guaranteed by an obligation of the designated operator to have regulatory accounting. According to Article 101(5) of the Postal Law, the annual report of the designated operator's regulatory accounting, including in particular the results of the unit cost calculation of universal services and the opinion of the independent expert auditor, shall be published on the website of the UKE.

(87) An unfair burden threshold based on the absolute level of USP's profits is also one of the criteria previously used in the literature[33]. For example, the European Regulator Group for Postal Services mentions that one of the factors that NRAs should analyse in order to make an assessment of the unfair financial burden is the financial position of the USP (i.e. if positive net cost significantly affects a USP's profitability and ability to earn a fair rate of return on capital employed)[34].

3. EXISTENCE OF AID

(88) 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*".

(89) 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 through State resources, ii) it has to confer an economic advantage to undertakings, iii) the advantage has to be selective, and

[32] Article 7(3) of the third Postal Directive: "*Where a Member State determines that the universal service obligations [...] entail a net cost [...] and represent an unfair financial burden on the universal service provider(s), it may introduce (a) a mechanism to compensate the undertaking(s) concerned from public funds; or (b) a mechanism for the sharing of the net cost of the universal service obligations between providers of postal services (and/or users)*".

[33] See report prepared by frontier economics for the Commission: "Study on the principles used to calculate the net costs of the postal USO" (http://ec.europa.eu/internal_market/post/doc/studies/2012-net-costs-uso-postal_en.pdf, section 9.3.1., pp. 126-127 and 129).

[34] ERGP (2012): "Net Cost Calculation and Evaluation of a Reference Scenario" (http://ec.europa.eu/internal_market/ergp/docs/documentation/ergp-11-17-rev-1_en.pdf).

iv) the measure distorts or threatens to distort competition and affect trade between Member States.

3.1. Aid imputable to the State and granted through State resources

(90) For a measure to constitute State aid within the meaning of Article 107(1) TFEU, it must be granted by the State or through State resources. State resources include all resources of the public sector[35], including resources of intra-State entities (decentralised, federated, regional or other).[36]

(91) The compensation for the provision of the USO for the years 2013 to 2015 is financed from a compensation fund which can be complemented if necessary with direct subsidies from the Polish State.

(92) The part of the compensation that may be paid directly from the State budget is clearly imputable to the State and granted through State resources.

(93) For the part of the compensation that is paid from the compensation fund, the main question that arises is whether such funding, which originally comes from private resources, constitutes a transfer of State resources imputable to the State.

(94) It follows from the case-law of the Court of Justice that Article 107(1) TFEU covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector; indeed, the fact that these means remain constantly under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources[37]. Similarly, the originally private nature of the resources does not prevent them from being regarded as State resources within the meaning of Article 107(1) TFEU[38].

(95) Conversely, the Court of Justice has refused to categorise as State resources contributions to a fund which have never been made available to the national authorities and which were only used to finance actions taken at the private initiative of the operators who financed them and benefitted from them[39].

(96) As clarified by the General Court[40], the relevant criterion in order to assess whether the resources are public, whatever their initial origin, is that of the degree of intervention of the public authority in the definition of the measures in question and their methods of financing.

(97) In the present case, it must be noted that:

- The Polish State appointed PP as the USP and decided to set up a compensation fund to finance (at least partially) the net cost of the USO;
- The Polish State decides whether the provision of the USO entails an unfair financial burden, which triggers the payment of the contributions to the fund by the postal operators and the payment from the fund to PP;
- A public authority, UKE, calculates the compulsory contributions to be paid by postal operators, on the basis of criteria set in the Postal Law, collects the funds into a bank account which it administers, therefore controlling the fund’s resources, and finally pays out the total contributions to PP.

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[35] Case T-358/94 *Compagnie nationale Air France v Commission of the European Communities* [1996] ECR II-2109, paragraph 56.

[36] Case 248/84 *Federal Republic of Germany v Commission of the European Communities* [1987] ECR 4013, paragraph 17 and Joined Cases T-92/00 and T-103/00 *Territorio Histórico de Álava - Diputación Foral de Álava (T-92/00), Ramondín, SA and Ramondín Cápsulas, SA (T-103/00) v Commission of the European Communities* [2002] ECR II-1385, paragraph 57.

[37] See, to that effect, Case C-83/98 *P France v Ladbroke Racing and Commission* [2000] ECR I-3271, paragraph 50, and Case C-482/99 *France v Commission*, paragraph 37.

[38] See, to that effect, Case T-358/94 *Air France v Commission* [1996] ECR II-2109, paragraphs 63 to 65.

[39] See, to that effect, Case C-345/02 *Pearle and Others*, paragraphs 36 to 39.

[40] See court case T-139-09, T-243-09, T-328-09 *France v. Commission Contingency Plans*.

(98) Consequently, it appears that the resources of the fund are under public control, as the State, through legislation, decides who has to contribute to the fund, how their level of contribution should be calculated, who benefits from these contributions and administers the fund. The Commission therefore considers that the compensation in favour of PP for the provision of the USO for the years 2013 to 2015, which will be financed from a compensation fund, involves a transfer of State resources imputable to the State.

(99) Accordingly, both the compensation payments financed through the compensation fund and any additional subsidies directly from the State budget constitute State resources and are imputable to the State.

3.2. Economic advantage to undertakings

3.2.1. The notion of undertaking

(100) Public funding granted to an entity can only qualify as State aid if that entity is an "undertaking" within the meaning of Article 107(1) TFEU. The Court of Justice has consistently defined undertakings as entities engaged in an economic activity.[41] An activity is considered to be economic in nature where it consists in offering goods and services on a market.[42] The qualification of an entity as an undertaking thus depends on the nature of its activity, with no regard to the entity's legal status or the way in which it is financed.[43]

(101) In the present case, PP offers postal services against remuneration on the Polish market and in competition with other providers. Offering postal services thus amounts to an economic activity. The measure under assessment is designed to compensate PP for the provision of certain of these postal services, which amount to an economic activity. Accordingly, with respect to the activities financed by the measure in question, PP must be qualified as an undertaking.

3.2.2. Advantage

(102) An advantage for the purposes of Article 107(1) TFEU is any economic benefit which an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention.[44] Only the effect of the measure on the undertaking is relevant, neither the cause nor the objective of the State intervention.[45] Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present.

(103) The measure under assessment is designed to cover all or part of the net cost incurred by PP in performing the USO. Without State intervention, PP would have to bear these costs itself. The measure under assessment relieves PP of some of the costs of its economic activities and thus improves PP's financial situation. In consequence, and without prejudice to the question of whether the measure complies with the conditions set by the Altmark judgment, the measure under assessment *prima facie* grants PP an advantage.

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[41] Joined Cases C-180/98 to C-184/98 *Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten* [2000] ECR I-6451, paragraph 74.

[42] Case C-118/85 *Commission of the European Communities v Italian Republic* [1987] ECR 2599, paragraph 7.

[43] Case C-41/90 *Höfner & Fritz Elser v Macrotron GmbH* [2000] ECR 1991 I-1979, paragraph 21 and Joined Cases C-180/98 to C-184/98 *Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten* [2000] ECR I-6451, paragraph 74.

[44] Case C-39/94 *Syndicat français de l'Express international (SFEI) and others v La Poste and others* [1996] ECR I-3547, paragraph 60 and Case C-342/96 *Kingdom of Spain v Commission of the European Communities* [1999] ECR I-2459, paragraph 41.

[45] Case 173/73 *Italian Republic v Commission of the European Communities* [1974] ECR 709, paragraph 13.

3.2.3. Altmark

(104) The Commission recalls that where the four cumulative Altmark conditions[46] are met, SGEI compensations granted to a company is deemed not to grant any economic advantage and thus does not constitute State aid.

(105) The four Altmark conditions are the following:

1. The recipient undertaking must actually have public service obligations to discharge, and the 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 public service obligations, taking into account the relevant receipts and a reasonable profit;
4. Where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure, 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 necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

(106) The Polish authorities acknowledged that the fourth Altmark criterion is not fulfilled. The Commission agrees with this statement, since the public service was not awarded as a result of an open tendering procedure, nor have the Polish authorities argued that PP is compensated according to the costs of a typical well run undertaking.

(107) As one of the four cumulative Altmark conditions is thus not fulfilled, it can be concluded that the compensation ought to be considered as conferring an advantage to PP, which can be qualified as an economic advantage granted to an undertaking within the meaning of Article 107(1) TFEU.

3.3. Selectivity

(108) To fall within the scope of Article 107(1) TFEU, a State measure must favour "certain undertakings or the production of certain goods". Hence, only those measures favouring undertakings which grant an advantage in a selective way fall under the notion of aid.

(109) Since the compensation for the provision of the USO for the period 2013-2015 benefits only one undertaking (PP) and provides additional funds to that undertaking, the measure confers a selective advantage to PP.

3.4. Distortion of competition and effect on trade

(110) Public support to undertakings only amounts to State aid in the sense of Article 107(1) TFEU if it "distorts or threatens to distort competition" and only insofar as it "affects trade between Member States".

3.4.1. Distortion of competition

(111) A measure granted by a State is considered to distort or to threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes.[47] For all practical purposes, a distortion of competition is thus assumed as soon as a State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition.

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[46] Judgment of the Court of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, case C-280/00 ECR [2003] page I-07747.

[47] Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 267, paragraph 11 and Joined cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta Mauro and others v Commission of the European Communities* [2000] ECR II-2325, paragraph 80.

(112) The public support which would be granted to PP would strengthen the position of the company in relation to postal and financial undertakings established in Poland or other Member States which, as a consequence, might have more difficulties to enter or to remain in the Polish market. Therefore, the measure is liable to distort competition pursuant to Article 107(1) TFEU.

3.4.2. Effect on trade

(113) Public support to undertakings is prohibited under Article 107(1) TFEU if it "distorts or threatens to distort competition" and only insofar as it "affects trade between Member States". In that respect, the Union courts have ruled that "where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid".[48]

(114) Public support can be considered capable of having an effect on intra-Union trade even if the recipient is not directly involved in cross-border trade. For instance, the subsidy may make it more difficult for operators in other Member States to enter the market by maintaining or increasing local supply[49], or to exercise their right of establishment.

(115) PP operates in the postal, financial and logistical sectors, where there is competition and intra-Union trade. In particular, there is significant competition in express mail, parcels and logistical services. Some of PP's competitors are operating across several EU Member States.

(116) Accordingly, the measure under assessment is both liable to distort competition and to affect trade between Member States.

3.5. Conclusion

(117) The compensation for the provision of the USO for the years 2013 to 2015 in favour of PP amounts to State aid within the meaning of Article 107(1) TFEU.

4. COMPATIBILITY ASSESSMENT

(118) Under certain conditions, Article 106(2) TFEU allows the Commission to declare compensation for SGEIs compatible with the internal market. The Commission has laid down the precise conditions according to which it applies Article 106(2) in a series of instruments, most recently, inter alia, the 2012 SGEI Decision[50] and the 2012 SGEI Framework[51]. Any aid measure that complies with the criteria laid down in the 2012 SGEI Decision is considered compatible with the internal market and exempted from notification to the Commission. Aid measures which do not fall within the scope of application of the 2012 SGEI Decision are to be assessed according to the 2012 SGEI Framework upon notification.

(119) In the present case, the measure under assessment does not fall within the scope of the 2012 SGEI Decision, as set out in Article 2(1)(a) thereof. Notably, the notified SGEI compensation amount is above €15 million per year. The measure must thus be assessed pursuant to the 2012 SGEI Framework, according to which the following compatibility criteria apply:

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48 Case T-288/97 *Regione autonoma Friuli-Venezia Giulia* v *Commission* ECLI:EU:T:1999:125, paragraph 41.

49 See for instance Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* ECLI:EU:C:2003:415, paragraph 78; Joined Cases C-197/11 and C-203/11 *Libert and Others* ECLI:EU:C:2013:288, paragraph 78; and Case C-518/13 *Eventech* ECLI:EU:C:2015:9, paragraph 67.

50 Commission Decision of 20 December 2011 on the application of Article 106(2) TFEU on State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of SGEI, OJ L 7, 11.1.2012, p. 3-10.

51 Communication from the Commission: European Framework for State aid in the form of public service compensation, OJ C 8, 11.1.2012, p. 15-22.

4.1. Genuine service of general economic interest as referred to in Article 106 TFEU

(120) Pursuant to paragraph 12 of the 2012 SGEI Framework, aid must be granted for a genuine and correctly defined service of general economic interest as referred to in Article 106(2) of the Treaty. The Court of Justice has established that SGEIs are services that exhibit special characteristics as compared with those of other economic activities.[52]

(121) The public service obligation entrusted to PP is the universal postal service which qualifies as an SGEI within the meaning of Article 106(2) TFEU and whose minimum requirements are laid down in Article 3 of the third Postal Directive. As outlined in that provision, Member States shall ensure that the USO is provided in their territories according to minimum quality standard. Therefore, the USO is a genuine SGEI[53]. The USO entrusted to PP described in paragraphs (7)-(8) corresponds to the minimum requirements outlined in the third Postal Directive. The Commission is thus satisfied that the public service obligation entrusted to PP constitutes a genuine and correctly defined SGEI.

(122) The Commission furthermore notes that paragraph 14 of the 2012 SGEI Framework provides that "*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*." Nevertheless, as the public service obligation entrusted to PP corresponds to the requirements stipulated in the third Postal Directive, the Commission considers that Poland does not have to prove that it has given consideration to public service needs by way of a public consultation or other appropriate instruments. In any event, the Polish authorities have carried out a public consultation on the Postal Law and the corresponding implementing regulations.

(123) In light of the above, the Commission considers that Poland has complied with the conditions established in paragraphs 12 - 14 of the 2012 SGEI Framework.

4.2. Need for an entrustment act specifying the public service obligations and the methods for calculating compensation

(124) As indicated in Section 2.3 of the 2012 SGEI Framework, and in particular in paragraph 16(a)-(e) thereof, the provision of the SGEI for the purposes of Article 106(2) TFEU must be entrusted to the undertaking in question by way of one or more official acts. These acts must specify, in particular:

- The precise nature of the public service obligation and its duration;
- The undertaking and territory concerned (the whole national territory);
- The nature of the exclusive rights assigned to PP;
- The description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation;
- The arrangements for avoiding and repaying any overcompensation.

(125) The Postal Law[54] and Regulation 545 of 29 April 2013 on *the conditions for providing universal postal services by the designated operator* clearly define and entrust to PP the universal postal service obligation for a period of 3 years (from 1 January 2013 until 31 December 2015), to be provided on the whole territory of Poland.

(126) The Postal Law[55] and Regulation 544 of 30 April 2013 on *the calculation of the net cost of the universal service obligation* define the compensation mechanism and the methodology

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[52] Cases C-179/90 *Merci convenzionali porto di Genova* [1991] ECR I-5889, paragraph 27; Case C-242/95 *GT-Link A/S* [1997] ECR I-4449, paragraph 53; and Case C-266/96, *Corsica Ferries France SA* [1998] ECR I-3949, paragraph 45.

[53] For example, Article 3(1) of the third Postal Directive stipulates that "*Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.*"

[54] Articles 3.7 and 4 in conjunction with Article 12 of the Universal Postal Convention, Article 45 and Article 178.

[55] Chapter 10 Net cost calculation and funding the obligation of providing universal services, Articles 106-120.

used to calculate the compensation. As the compensation is calculated and reviewed by the UKE ex-post, there is no risk of overcompensation, thus dispensing with the need to lay down additional arrangements for avoiding and repaying any overcompensation.

(127) In conclusion, the Commission considers that PP's entrustment for the period 2013-2015 is in line with the 2012 SGEI Framework requirements.

4.3. Duration of the period of entrustment

(128) According to paragraph 17 of the SGEI Framework, the period of entrustment should "*be justified by reference to objective criteria such as the need to amortise non-transferable fixed-assets [and] should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI*".

(129) Under the entrustment, PP is the USO provider for a period of 3 years. This duration is significantly shorter than under entrustments in other Member States[56]. Moreover, the important groups of assets needed by PP for the provision of the USO have particularly long depreciation periods (see for example table 4 below concerning PP's assets).

Table 4. Depreciation period of main fixed assets of PP

Tangible and intangible fixed assets	**Depreciation period (in years)**
Central building	40
Sorting centre buildings	40
Retail network buildings	40
Warehouses	40
Forklifts	7
Sorting machines	10
Office automation and small equipment	5-10
Central IT hardware and software	5-10
Cars, vans and trucks	5-8
Retail IT (workstations, printers)	3-10
Motorcycles	8

(130) The Commission therefore considers that the duration of PP's entrustment is not excessive.

4.4. Compliance with the Directive 2006/111/EC

(131) 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 undertakings*[57]".

(132) The applicable provisions of law ensure that the net cost calculation is accurate and that the calculation takes account of net costs for each component of the USO exclusively at the level that is necessary to discharge the USO under specific market conditions. The correctness of assigning revenue and costs of the designated service provider for the purposes of calculating the net cost of universal services is ensured by the obligation to keep regulatory accounting that Article 97 of the Postal Law imposes on the designated

[56] For example, in France (La Poste), Italy (Poste Italiane), Spain (Correos) and Greece (ELTA), the period of entrustment is up to 15 years.

[57] OJ L 318 17.11.2006, p.17.

service provider[58]. The objective of regulatory accounting is to keep separate records allowing the assignment of the service provider's revenue and costs to each universal service and to services falling within the scope of universal services, other postal services and other economic activities, as well as to clearance, sorting, transport and delivery of postal items. As further detailed in Regulation 542 of 6 May 2013 on *regulatory accounting and the calculation of costs of the universal service obligation*[59], the regulatory accounting is kept on the basis of consistently applied and objectively justified principles of revenue and cost accounting so as to allow verification of internal transfers.

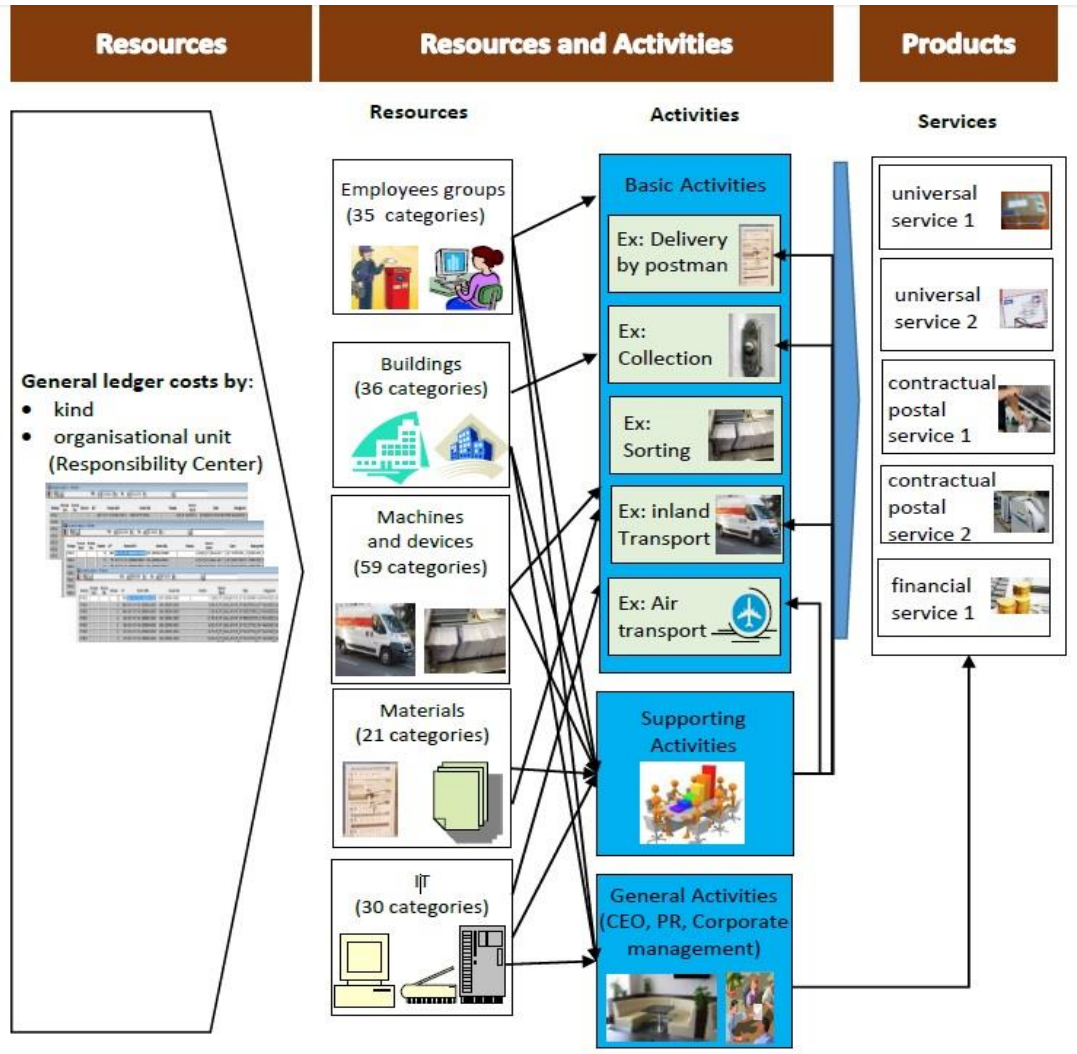
(133) For its cost accounting, PP uses an activity-based costing (ABC) methodology, which allocates all operational costs to the various products, in line with the Fully Distributed Costing (FDC) method. All operating costs and all organisational units of PP are included in the cost accounting model, which is built with three layers (resources, activities and products), in order to measure the appropriate share of costs of each product:

- The costs of resources are allocated to activities depending on the consumption of resources by activities, using keys to reflect the degree of usage. For example, transport related cost (e.g. for fuel consumption) is allocated to resources (car categories) which are then allocated to activities, while others costs (e.g. repair services) are allocated to resources (machines and devices) which are then allocated to several activities such as sorting of letters, mail material preparation (weighting, stamping).
- Basic activity costs are allocated to products in accordance with various keys, which are typically based on labour effort or volumes. General activity costs are allocated to products according to previously allocated costs.
- The cost of each product consists of basic and general costs, which include supporting costs of resources and activities. For example, cost of delivery of a letter consists of postman delivery cost (basic activity), management cost (general activity) and technical support cost (supporting activity).

[58] According to Article 108(3) of the Postal Law, postal service providers that provide services falling within the scope of universal services are also obliged to keep clear accounts, so as to ensure separate records for the services falling within the scope of universal services, other postal services and other economic activities, in order to determine their revenue constituting the basis for determining their contribution to the compensation fund.

[59] Published in the Journal of Laws of 9 May 2013.

(134) The figure below illustrates the accounting methodology implemented by PP:



(135) The Commission therefore considers that PP's accounting and cost allocation system allows for an allocation of costs and revenues between activities with a sufficient level of adequacy. The Commission therefore considers that PP complies with Directive 2006/111/EC.

4.5. Compliance with EU Public Procurement Rules

(136) 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.*"

(137) Pursuant to article 7(2) of the third Postal Directive[60], Member States have the discretion to designate by law the postal USO operator and are not obliged to organise a tendering procedure for its selection.

(138) The Commission considers that it is only in the case that Member States decide to organise a tendering procedure for the selection of the postal USO operator that public procurement

[60] Directive 97/67/EC as amended by Directive 2002/39/EC and by Directive 2008/6/EC.

rules would be applicable and that, therefore, the compatibility of the USO financing with the internal market would depend on whether the said rules have indeed been observed.

(139) In the present case, the Polish authorities have opted for the direct entrustment by law to PP, in conformity with the third Postal Directive. It follows that public procurement rules are not applicable and that the direct entrustment of PP as the USO provider can be considered to be in line with paragraph 19 of the 2012 SGEI framework.

4.6. Absence of discrimination

(140) 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*".

(141) The USO is only assigned to PP. Therefore, the Commission considers that paragraph 20 of the 2012 SGEI Framework is not applicable to the case at stake.

4.7. Amount of compensation

Calculation of the net cost of the universal postal service

(142) 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*."

(143) In their notification, the Polish authorities provided the Commission with a detailed description of their methodology to calculate the net avoided cost of the USO as well as the corresponding calculation for 2013 (see section 2.4 above).

(144) The methodology used to calculate the net avoided cost of the USO relies on the net avoided cost methodology which is foreseen in paragraph 25 of the 2012 SGEI Framework which provides that "*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*." Finally, as detailed in section 2.4.3, the compensation amount is limited to the minimum between the net cost of the USO (calculated in accordance with the Net Avoided Cost methodology) and the level of the actual accounting losses incurred as a result of the universal service provision; therefore, the methodology used by the Polish authorities is in fact more restrictive than the general net avoided cost methodology referred to in the 2012 SGEI Framework.

(145) The net cost methodology is based on sound principles; in particular, it ensures that the counterfactual scenario corresponds to the commercial strategy that PP would follow in absence of USO constraints. In addition, the approach of calculating the net cost separately per component of the obligation, while taking into account only the revenues and costs related to each component, ensures that there is no double counting[61]. The model also ensures that indirect revenue effects are immaterial, and no cross-effects between the two components of the obligation have been identified, in particular due to the market circumstances (as explained in paragraph (46)).

(146) It is also noticeable that the implementation of this methodology is verified every year by the UKE and that the Polish authorities have decided to compensate the net cost only up to the amount of the actual accounting losses of the USO which implies that PP will not

[61] As explained in footnote 23, revenues and costs related to deliveries are not taken into account for the calculation on the component of the obligation related to the number of post offices, as these revenues and costs rather impact the component related to frequency of deliveries.

obtain more with this model based on the net avoided cost methodology than what it could have obtained under the accounting method.

(147) The counterfactual scenario used in the calculation provided for 2013 represents a credible picture of a counterfactual company operating the activities that would be kept by PP in the absence of the USO. In particular, the profit level of the counterfactual scenario in 2013 is of 2.9% in terms of Return on Sales[62], and seems reasonable in light of previous estimations used by the Commission on well-established postal markets, such as the Belgian market[63].

Reasonable profit

(148) The reasonable profit calculation detailed in in paragraphs (57)-(59) is also in line with the 2012 SGEI Framework[64]. The reasonable profit calculation is based on the capital employed in the factual scenario in the form of Fixed Assets required by the USO (investment which would not have been made absent the obligation). The valuation and attribution of assets between different services, necessary for this capital-based benchmark, can be a difficult exercise. Therefore, as explained in paragraph (77), this quantification is not performed in PP's implementation of the net cost methodology for 2013, because the cost of performing this complex exercise is believed to be too high, while the difference in the cost of capital across the two scenarios is not expected to be material. The Polish authorities also note that the amount of compensation is limited to the level of the accounting loss, which for 2013 is in any case lower than the net cost excluding the reasonable profit.

(149) It is important to note that the methodology for calculating the reasonable profit outlined in the Description of the net cost calculation of PP for 2013, approved by the President of the UKE on 30 June 2014, also included a second element pertaining to additional capital in the form of retained earnings. The Polish authorities explained that the underlying assumption was reinvestment of the additional profits into the postal business, and that the relevant rate to be applied is the WACC, as calculated by the regulator. However, following exchanges with the Commission, the Polish authorities declared by letter of 22 May 2015 that they would remove altogether from the calculation this element of the reasonable profit related to retained earnings, for the entire entrustment period 2013-2015. The Commission therefore does not have to assess this element of the reasonable profit in detail.

Efficiency Incentives

(150) Paragraph 39 of the 2012 SGEI Framework reads: "*In devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI of a high standard, unless they can duly justify that it is not feasible or appropriate to do so.*"

(151) There are two different types of efficiency incentives included in the methodology adopted by the Polish authorities for the compensation of the designated provider of the USO:

(a) As described in paragraph (15), although the Polish authorities adopted an ex-post approach for the calculation of the actual compensation amount, PP has to submit first an ex-ante calculation on the basis of forecasts, followed by a plan of corrective

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[62] The Return on Sales is a profitability measure, also known as operating profit margin. It is calculated as the ratio between net income (before interest and tax) and sales revenues. More precisely, net income is the difference between revenues and costs at operational level.

[63] See for example Commission Decision of 25 January 2012 in Case SA.14588 (C 20/2009) implemented by Belgium in favour of De Post-La Poste (now bpost), OJ L/170, 29.6.2012, p.1.

[64] Paragraph 34 of the 2012 SGEI Framework foresees that "*[w]here duly justified, profit level indicators other than the rate of return on capital can be used to determine what the reasonable profit should be, such as the average return on equity over the entrustment period, the return on capital employed, the return on assets or the return on sales.*"

actions in order to avoid the emergence of losses in the provision of the universal service;

(b) As explained in paragraph (34), the factual scenario is not a simple extrapolation of PP's current situation, but already embeds cost savings due to increased efficiency, in the form of cost savings from: the closure of additional offices not needed for the provision of the USO, personnel reductions planned for 2013-2017 and, if possible without affecting the provision of the USO, reduction of the number of postmen employed. In this way, the factual scenario takes into account the figures of PP as an efficient provider.

(152) Considering the above, the methodology used by the Polish authorities to calculate the compensation amount is in line with the requirements of the 2012 SGEI Framework. It can be observed that it is also in line with the third Postal Directive as PP will only receive compensation if the USO entails a net cost (calculated using the net avoided cost methodology) and represents an unfair burden (see paragraph (16)).

Verification of the absence of overcompensation

(153) Paragraph 49 of the 2012 SGEI Framework reads: "*Member States must ensure that the compensation granted for operating the SGEI meets the requirements set out in this Communication and in particular that undertakings are not receiving compensation in excess of the amount determined in accordance with this the requirements set out in this section. They must provide evidence upon request from the Commission. They must carry out regular checks, or ensure that such checks are carried out, at the end of the period of entrustment and, in any event, at intervals of not more than three years. For aid granted by means other than a public procurement procedure with publication, checks should normally be made at least every two years.*"

(154) As each year the compensation will be calculated ex-post on the basis of an appropriate methodology and reviewed by the UKE (following verification by a statutory auditor of the documents submitted by PP), there is no risk of overcompensation and therefore the requirements of paragraph 49 of the 2012 SGEI Framework are complied with.

(155) In any event, as regards the part of the compensation covered from the State budget, the Public Finances Act of 27 August 2009[65] (in particular Article 169) provides for the applicable procedure in the case of subsidies that were granted unduly, in an excessive amount or that were misused by the beneficiary, as well as for the special rules on interest applicable to (the part of) the subsidy to be reimbursed.

Conclusion on the amount of compensation

(156) For the above-mentioned reasons, the Commission considers that the measure under assessment complies with the requirements under section 2.8 of the 2012 SGEI Framework.

4.8. Transparency

(157) 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".

(158) The entrustment of PP as the designated USP for the entire national territory of Poland for the period 2013-2015 is laid out in Article 178(1) of the Postal Law, which was published in the Polish Journal of Laws.

65 Journal of Laws of 2013, item 885, as amended.

(159) Under Article 119 of the Postal Law, the President of UKE is also required to publish on the website of the UKE the reports containing the final results of findings concerning:

- the net cost and loss incurred in the provision of universal services;
- verification of the documents submitted by the designated operator on the calculation of the net cost and loss of the USO, bills and other supporting documents;
- the amounts of compensation and the corresponding share of contributions of the service providers;
- the amount of compensation transferred to the designated service operator;
- estimation of indirect benefits of the designated service provider arising from the provision of universal services;
- estimation of benefits arising from special or exclusive rights granted to the designated service provider.

(160) Accordingly, the Commission concludes that the transparency condition is fulfilled.

4.9. 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

(161) As explained in paragraph 51 of the 2012 SGEI Framework, "*The requirements set out in sections 2.1 to 2.8 are usually sufficient to ensure that aid does not distort competition in a way that is contrary to the interests of the Union*."

(162) According to paragraph 52 of the 2012 SGEI Framework, "*[i]t is conceivable, however, that in some exceptional circumstances, serious competition distortions in the internal market could remain unaddressed and the aid could affect trade to such an extent as would be contrary to the interest of the Union*."

(163) In the case at hand, the financing of the USO is done (partly) through a compensation fund, to which the USP (i.e. PP) and other postal operators contribute. Although this is in principle acceptable and foreseen by the third Postal Directive, the characteristics of a compensation fund need to be analysed more closely to ensure that it does not raise specific issues concerning the development of intra-Union trade. More specifically, setting an appropriate (i.e. proportionate and non-discriminatory) level of contributions from postal operators is particularly important, since the right balance must be found between a too high level of contributions, which would lead to a foreclosure of the postal market, and a too low level, which would not contribute significantly to the financing of the USO.

Compensation fund – level of contribution

(164) As explained in paragraphs (21)-(22), the amount of contributions from each postal service operator is determined by the product of a uniform percentage indicator (capped at 2%) and each operator's relevant revenues in the reference year. The relevant revenues are the revenues stemming from the provision of universal services (in the case of the designated operator) and inter-changeable services (in the case of both the designated operator and the other operators liable to contribute to the compensation fund).

(165) The uniform percentage indicator is determined as the ratio between the amount of compensation to be received by the designated operator and the total relevant revenues of all providers obliged to contribute to the compensation fund, earned in the relevant financial year.

(166) If the uniform percentage indicator obtained is larger than 2%, the contribution due by each operator is calculated as 2% (the cap) of the relevant revenue of each service provider liable to contribute. Since this percentage indicator applies uniformly to all market participants, each operator contributes the same proportion of revenues in the segment of universal services and inter-changeable service. As such, the contribution required from each operator can be considered non-discriminatory.

(167) The Polish authorities explained that the cap of 2% of revenue for the uniform percentage indicator was set on the basis of a market analysis and preliminary projections of the net cost during UKE's work on the draft Postal Law. This choice balances the need for proportionality and the objective of at least partially financing the net cost of the USO

from market forces. They also argued that, according to estimations using this 2% ceiling, this contribution level would not be a significant barrier to the development of postal operators in the relevant market area.

(168) As regards proportionality, the Commission assessed the level of contribution against the average Return on Sales in the universal service perimeter, since this indicator is: (i) calculated with reference to revenues, making it comparable to the level of contributions defined as a percentage of revenues; and (ii) a profitability indicator which can be used to assess the level of operating profit that contributors to the compensation fund could still achieve after paying their contributions. While granular data is not available on the Return on Sales achieved by the postal operators liable to contribute to the compensation fund, the Return on Sales of PP in the area of services inter-changeable to the USO was 5,5% in 2013.[66,67] In this context, the level of contributions established by the Polish authorities at 2% of the relevant revenues can be considered as proportional, since it is capped at a level which represents only a fraction (in fact, even less than half) of the Return on Sales of PP in the area of services inter-changeable to the USO. The Commission expects that competitors could also achieve such profitability[68], so it can be reasonably concluded that this level of contribution would not drive or keep efficient competitors out of the market.

(169) Finally, it should be noted that the appropriateness of the 2% cap should be regarded strictly in the circumstances of the case at hand. Whether a different level of the contribution could be considered reasonable (not excessive and not distortive) would need to be assessed on a case-by-case basis in line with all the evidence available.

Compensation fund – revenue threshold

(170) As explained in paragraph (20), the Polish authorities also exempted postal operators with (relevant) revenues below PLN 1 million (i.e. approx. €240 000) in the universal services perimeter from contributing to the compensation fund. The issue of the revenue threshold was analysed in light of similar solutions for telecom operators, where the threshold had been set up at PLN 4 million (i.e. approx. €960 000) due to the higher profitability of the industry and higher total revenues in the market (PLN 41,7 billion in 2012). Maintaining the same proportion for the postal market, with total revenues of PLN 6.3 billion in 2012, would result in a revenue threshold of approx. PLN 0,6 million. A slightly more advantageous revenue threshold of PLN 1 million was finally adopted for the postal sector in order not discourage the development of postal activity in the universal service perimeter. Moreover, the President of the UKE carried out, on the basis of reporting data available during the work on the draft Postal Law, an assessment of the structure of the Polish postal market, and in particular of the providers of inter-changeable services liable to contribute to the compensation fund. It was estimated that only a small number of the

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66 The Return on Sales achieved by the incumbent (PP) in the interchangeable services' segment, used as a benchmark for the Return on Sales achieved by other postal operators in the USO perimeter, can be seen as an imperfect measure: on one hand, entrants / alternative postal operators do no benefit from the same economies of scale as the incumbent and have to make some initial investments or use part of the infrastructure of the incumbent which would entail additional variable costs for them; on the other hand, these operators are potentially more efficient, have a more flexible business model and can cherry-pick the most profitable parts of the USO perimeter (as they do not have the public service obligation and provide only services inter-changeable with the universal service). However, in light of these opposing effects and the absence of further information, the profitability of the incumbent in the interchangeable services' segment is used here as a benchmark for the profitability of competitors.

67 In previous benchmarking studies and according to the Commission's case-practice (e.g. opening Commission decision of 1 August 2014 in Case SA.35608 on ELTA and the final Commission Decision of 25 January 2012 in Case SA.14588 on bpost), postal incumbents across Europe achieve a Return on Sales in the USO area between 5,4% and 7,4%.

68 According to Integer.pl Group's 2013 Annual Report, their overall Return on Sales (before interest and tax) was approx.7,6% (https://www.integer.pl/report-show/26). The Group consists of 8 companies operating in the postal, courier and distribution market, of which 2 compete directly with PP in the USO perimeter.

entities, i.e. apart from PP only 6 out of 100 active operators in 2008, achieved a revenue from inter-changeable services above PLN 1 million. Finally, according to more recent data from 2013, only 10 postal operators (including PP, two operators belonging to one group and one operator acting as a subcontractor of another operator) would be liable to contribute to the fund, and increasing the revenue threshold to PLN 1,5 million or 2 million would not decrease the number of contributors.

(171) The Commission considers that such revenue threshold could be assimilated to a grace period equal to the time needed by a postal operator to achieve the set level of revenues, so that small entrants in the market would benefit from a delay for contributing to the fund. This is regarded as a positive feature of the fund, strengthening the proportionality aspect. Furthermore, it does not discourage market entry in a newly liberalised sector.

(172) The Polish authorities furthermore committed to initiate a legislative proposal with a view to modifying the Postal Law for the future, so that the first PLN 1 million of revenue would be exempted from the contribution for all postal operators (rather than acting as a mere criterion of whether an operator has to contribute or not).

(173) The Commission considers that the modification envisaged by the Polish authorities will further improve the design of the compensation fund. This modification is aimed at avoiding that small operators choose their business development strategies in order to remain below the PLN 1 million threshold and thus not be liable to contribute to the compensation fund. The Commission regards this refinement as a characteristic of a well-designed compensation fund and it considers that the current design without this refinement is acceptable only in light of the current circumstances of the notification for 2013-2015. In particular, it can be argued that at this stage the impact on competition is limited, given the low amounts involved by this threshold and the limited duration in time. This element will be considered for the compatibility assessment of the future entrustment period, as it could have an impact on the future decisions of contributors to the fund regarding their business development strategies.

(174) In addition to the assessment of the characteristics of the compensation fund mentioned above, the Commission notes that the development stage of the Polish postal market is sufficient to ensure that the introduction of this compensation fund mechanism does not constitute a significant barrier to entry. In this respect, it is worth noting that:

- In 2013, PP had a market share (in terms of revenues) of 81.6% in the segment of services inter-changeable with the USO and of 95.1% in the total USO perimeter, comprising the universal services and inter-changeable services.
- Contributions collected for 2013 from competitors will amount to approx. €1 million out of the total compensation amount of approx. €22,9 million, while PP's share would be of approx. €20,4 million. The remaining €1,5 million would be covered from the State budget, since the contributions to the fund would not be sufficient to cover the entire amount of compensation.

(175) Given the novelty of the issue of compensation funds in the postal sector, and the fact that there is no available data for the assessment of the appropriateness of the level of contributions to the fund, the Polish authorities committed to introduce a review clause for the compensation fund mechanism for the following entrustment period starting in 2016. This would entail regularly (i.e. every 3-5 years) carrying out a market analysis and a public consultation to assess and inquire the appropriateness of the percentage cap for the level of contribution and the revenue threshold. If these indicators have to be changed in the future following such consultation and in order to reflect new market developments, the new levels would be notified to the Commission. The next review will be carried out by the Polish authorities in 2018-2019.

(176) Finally, the design of the compensation fund mechanism can be considered transparent since it has been published in advance in the Postal Law. It is important to note that, according to the Polish authorities, no postal operator (other than PP) submitted any comments on the compensation fund mechanism (nor any substantive evidence of its

distortive nature) in the framework of the public consultation carried out by the Polish authorities on the Postal Law and its implementing regulations, prior to November 2012.

(177) In light of the above, the Commission considers that the solution proposed by the Polish authorities ensures that no serious distortion of competition is induced by the introduction of the compensation fund mechanism and is therefore in line with State aid rules.

4.10. Conclusion on compatibility

(178) For the foregoing reasons, the Commission concludes that the measure under assessment complies with all the applicable compatibility criteria laid out in the 2012 SGEI Framework, and thus constitutes State aid compatible with the internal market pursuant to Article 106(2) TFEU.

5. CONCLUSION

(179) The Commission has accordingly decided not to raise objections to the notified aid measure on the grounds that it is compatible with the internal market pursuant to Article 106(2) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission