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C(2018) 561 final

<p>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 [...]</p>		<p style="text-align: center;"><b>PUBLIC VERSION</b></p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.47293 (2017/N) Czech Republic - State compensations granted to Czech Post for the provision of the Data Boxes Information System over the period 2018-2022**

Sir,

**1. THE PROCEDURE**

- (1) On 16 January 2017, the Czech authorities pre-notified the compensation granted to Česká pošta s.p. ("Czech Post") for the provision of the data boxes information system ("DBIS") during the period 2018-2022.
- (2) On 30 January 2017, the Commission held a meeting with the Czech authorities in which the Czech authorities presented the pre-notified measure.
- (3) On 13 February 2017, the Commission provided the Czech authorities with its preliminary assessment of the pre-notified measure. In particular, the Commission indicated that, provided the *ex-ante* estimated annual amount of compensation exceeded EUR 15 million, the measure would have to comply with the conditions

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set out in the 2012 SGEI Framework and it requested more information on the compliance of certain of those criteria.

- (4) On 26 May 2017, the Czech authorities provided more information on the compliance of the pre-notified measure with the 2012 SGEI Framework.
- (5) On 14 July 2017, the Commission provided the Czech authorities with feedback on the pre-notified measure.
- (6) On 14 December 2017, the Czech authorities notified the compensations granted to Czech Post for the provision of the DBIS during the period 2018-2022.

## 2. DESCRIPTION

### 2.1. THE BENEFICIARY AND ITS ACTIVITIES

- (7) The sole beneficiary of the measure is Czech Post. Czech Post, which is the main postal operator in the Czech Republic, is wholly-owned by the Czech State.
- (8) In 2016, Czech Post achieved a turnover of CZK 19,450 million (EUR 719,464,378).<sup>1</sup>
- (9) The company's mission is to be a trustworthy provider of quality services in the area of mediating information, payments and goods both via traditional and electronic means.
- (10) Pursuant to the implementation into Czech law of the European Third Postal Directive<sup>2</sup>, the Czech postal market was fully liberalised on 1 January 2013. As of 2013, Czech Post has been entrusted to provide the universal postal service obligation ("USO") in the whole territory of the Czech Republic. Besides the USO, Czech Post also provides a number of other postal and non-postal services. An overview of the services provided by Czech Post can be found in Table 1 below:

**Table 1: Czech Post's activities**

Postal Network	
	<p><b>Basic services (USO/SGEI)</b></p> <ul style="list-style-type: none"> <li>• Basic service domestic letters and parcels</li> <li>• Letters/Consignments abroad</li> <li>• Letters/Consignments from abroad</li> <li>• Vouchers</li> </ul> <p><b>Other postal services</b></p> <ul style="list-style-type: none"> <li>• Express parcels</li> <li>• Direct mail</li> <li>• EMS</li> </ul>

<sup>1</sup> According to the ECB average exchange rate for 2016, EUR 1 equals CZK 27.034.

<sup>2</sup> Directive 2008/6/EC of the European Parliament and of 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. 3–20.

	<ul style="list-style-type: none"> <li>• EPG parcels</li> </ul> <p><b>Services for state institutions</b></p> <ul style="list-style-type: none"> <li>• Sale of duty stamps and highway toll stickers</li> <li>• Distribution of pensions</li> <li>• Facilitating payments of Radio and Television charges</li> <li>• CzechPoint</li> </ul> <p><b>Other services in the postal network</b></p> <ul style="list-style-type: none"> <li>• Services for financial partners and lottery companies</li> <li>• Sale of goods</li> <li>• Distribution of promotion materials (other than direct mail)</li> <li>• Distribution of press</li> </ul>
<b>Other Services outside the Postal Network</b>	
	<p><b>Services for state institutions</b></p> <ul style="list-style-type: none"> <li>• Branch ITC Services</li> </ul> <p><b>SGEI</b></p> <ul style="list-style-type: none"> <li>• Data boxes information system (DBIS)</li> </ul> <p><b>Other services</b></p> <ul style="list-style-type: none"> <li>• Electronic Services (including PostSignum – electronic signatures, certificates, and time stamps)</li> <li>• Service PostServis (packaging)</li> <li>• Leasing of buildings and recreations</li> </ul>

## 2.2. THE DATA BOXES INFORMATION SYSTEM ENTRUSTED TO CZECH POST

*DBIS is an electronic communication system*

- (11) The Czech authorities have entrusted Czech Post as the sole operator of the DBIS in the Czech Republic.
- (12) Section 14(1) of Act No. 300/2008<sup>3</sup> (the "2008 Act") defines the DBIS as a public administration information service. According to the Czech authorities, the DBIS is an advanced electronic communication channel for internal communication within the public administration and for secured guaranteed communication between the public administration and citizens and companies.
- (13) According to the Czech authorities, Czech Post acts as a system integrator, who secures, prepares and operates an IT system (and related infrastructure), which enables users to securely and conclusively create, send, receive, store and convert messages to physical form with a certification of authenticity. The system furthermore ensures guaranteed identification of the sender/addressee of the message and provides exact and guaranteed timestamps of sending and receipt of messages.
- (14) Therefore, the Czech authorities note that the DBIS service guarantees the delivery of messages with a high level of security and integrity by applying

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<sup>3</sup> Act No. 300/2008 as amended, on electronic transactions and authorised conversion of documents.

electronic signature and timestamps technology to the sent messages. Data messages sent via DBIS are secured, both in terms of content and of time of delivery.

- (15) The Czech authorities explain that the service is an electronic alternative and in some cases a replacement of conventional postal services, e.g. registered mail, although the logistics and operating costs are different from those of the registered postal service.
- (16) The DBIS was initially conceived as part of a wider Czech eState initiative that pursued greater efficiency of the State. In this context, DBIS was included as one of the key pillars of the development of the eGovernment in the Czech Republic. According to the Czech authorities, the DBIS system would reduce the administrative costs of the public administration, contributing to the increased efficiency and transparency of public administration processes. The system replaces conventional communication by paper giving equal legal effects to documents sent via physical means or electronically.
- (17) Subject to certain exceptions laid down by law, public authorities in the Czech Republic must use the DBIS to send information and documents to other public authorities or to citizens and are obliged to accept documents and information that citizens sent via DBIS.<sup>4</sup>
- (18) The use of the DBIS service is free of charge for public administrations and for citizens that communicate to the public authorities in this way.<sup>5</sup>
- (19) Citizens and companies can also use the service for their private communications. This service, which only amounts to 1% of the overall traffic, is voluntary and subject to the payment of commercial fees.

*Czech Post will be the DBIS operator in the period 2018-2022*

- (20) Pursuant to Article 14(2) of the 2008 Act,<sup>6</sup> together with Article 2(4) of Act No. 221/2012 amending Act No. 29/2000 on postal services,<sup>7</sup> and on the basis of Government Resolution No. 676 of 27 July 2016, Czech Post will operate the DBIS system for the years 2018-2022.<sup>8</sup>
- (21) In addition to the legal acts above, the content of the entrustment of Czech Post is further laid down in the agreement that will be signed by the Czech Government and Czech Post ("the Agreement"). The Czech authorities have declared that the Agreement will be signed -as notified- upon the approval of the measure by the Commission.

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<sup>4</sup> According to Section 17(1) of the 2008 Act, public authorities are for example not obliged to use data boxes to communicate decisions which are delivered by public announcement.

<sup>5</sup> See, Sections 3 to 6 of Act No. 300/2008, cited above.

<sup>6</sup> Pursuant to Section 14(2) of Act No. 300/2008, cited above, "*the operator of the Data Box Information System is the postal licence holder*".

<sup>7</sup> Article 2(4) of Act No. 221/2012 states: "*Where special legal regulations for the purpose of ensuring other activities than the provision of postal services determine a postal license holder as the obligated entity, this is understood to mean Czech Post, or its legal successor.*"

<sup>8</sup> This decision concerns the entrustment of Czech Post as the operator of DBIS for the period 2018-2022 only.

- (22) Czech Post will subcontract some technological services to a third party (o2 IT services, s.r.o.) for the duration of the entrustment.<sup>9</sup>

### **3. THE NOTIFIED MEASURE: THE PUBLIC SERVICE MISSION ENTRUSTED TO CZECH POST**

#### **3.1. SCOPE OF THE NOTIFICATION**

- (23) The notification of the Czech authorities concerns the public compensation to Czech Post for the provision of the DBIS including the related operational support services, and the provision of certain development services over the period 2018-2022.
- (24) The Czech authorities consider the DBIS is a service of general economic interest (SGEI) and envisage to compensate Czech Post for the provision of the service.
- (25) According to Section 6 and Annex 3 of the Agreement with Czech Post, the compensation for the net costs of Czech Post for the provision of the DBIS service for the period 2018-2022 will be paid via direct grants from the State budget.
- (26) The measure does not concern the provision of DBIS services for voluntary communications between private parties. This activity, which constitutes less than 1% of the traffic within the DBIS, is paid directly by the users. No State compensation is connected with this activity.

#### **3.2. PROCEDURE FOR DETERMINING THE COMPENSATION**

- (27) Pursuant to Annex 3 to the Agreement with Czech Post, the compensation for the operation of the DBIS will be a combination of a fixed flat fee and a variable payment per data message handled. This is described in Table 3 below:

**Table 2: Compensation for the operation of the DBIS**

<b>Operation of DBIS</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Fixed annual amount (in thousand CZK)	174 424	194 976	189 621	207 506	211 349
per data message amount (in CZK)	2.5	2.1187	1.9279	1.6197	1.4564

- (28) The Czech authorities have made some estimation about the number of data messages which Czech Post could handle every year. The estimated number of data messages is based first on the expert report by Grant Thornton Valuations of June 2016 and second on some adjustments made in November 2016. The Czech authorities have noted that the forecast does not take into account any possible future legislative change that might significantly limit or expand the free and mandatory use of the system.

<sup>9</sup> Pursuant to Section 7.4 of the Agreement with Czech Post, Czech Post will be able to subcontract the implementation of some of the contractual obligations to a third party.

- (29) In addition, pursuant to the Section 4, Section 6 and Annex 3 of the Agreement the Czech authorities will also compensate Czech Post for the activities regarding the "development" of the DBIS service.<sup>10</sup> A price of CZK 12,000 (ca. EUR 472) per man-day will apply to development work by in-house developers of Czech Post and a price of CZK 15,000 (ca. EUR 590) per man-day will apply to development work carried out by the subcontractor. The options will be chosen according to the technical abilities and time capacities (urgency of the task) and work will be allocated to the employees of Czech Post or subcontractor accordingly.
- (30) On the basis of the above, the estimated annual compensation for Czech Post for the provision of the DBIS will be as follows:

**Table 3: Estimated annual compensation**

In thousand CZK	2018	2019	2020	2021	2022
Estimated annual compensation for DBIS	467 130	464 564	453 816	446 545	441 026

- (31) The Czech authorities have explained that, given the variable component of the compensation mechanism (fee per message), it could not be excluded that the compensation could exceed the estimated amount.
- (32) For the purpose of the remuneration, according to Section 6 of the Agreement, the services will be remunerated monthly. For that purpose, by the day 15 of the following calendar month, Czech Post will issue an invoice for the services rendered on the prior month.

#### **4. EXISTENCE OF AID**

- (33) According to Article 107(1) Treaty for the Functioning of the European Union ("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"*.
- (34) 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 four cumulative conditions have to be met: i) the measure must be imputable to the Member State and granted out of State resources; ii) the measure must confer an economic advantage to undertakings; iii) the advantage must be selective; and iv) the measure must distort or threaten to distort competition and affect trade between Member States.

##### **4.1. AID IMPUTABLE TO THE STATE AND GRANTED THROUGH STATE RESOURCES**

- (35) In order to be qualified as State aid, a measure must be imputable to the State and granted directly or indirectly by means of State resources.

<sup>10</sup> Section 4.3 of the Agreement provides for a list of the development services that Czech Post agrees to provide.

- (36) The compensations for the provision of the DBIS services in the period 2018-2022 will be paid from the State budget as per the procedure described in Section 3 above.
- (37) Therefore, the compensations granted to Czech Post for providing the DBIS services are imputable to the State and are given through State resources.

## 4.2. ECONOMIC ADVANTAGE GRANTED TO UNDERTAKINGS

### 4.2.1. *The Notion Of Undertaking*

- (38) 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.
- (39) The Court of Justice of the European Union ("Court of Justice") has consistently defined undertakings as entities engaged in an economic activity.<sup>11</sup> 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.<sup>12</sup>
- (40) An activity must generally be considered to be economic in nature where it consists in offering goods and services on a market.<sup>13</sup> An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former.<sup>14</sup> The mere fact that an entity does not pursue a profit does not necessarily mean that its operations are not of an economic nature.<sup>15</sup>
- (41) In the present case, Czech Post will be offering to public entities and citizens an electronic communication service in competition, at least potentially, with other providers. The envisaged compensation will remunerate Czech Post for the provision of the DBIS service and therefore, will compensate an economic activity. Accordingly, with respect to the activities financed by the measure in question, Czech Post must be qualified as an undertaking.

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<sup>11</sup> Judgment of 12 September 2000, *Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten*, Joined Cases C-180/98 to C-184/98, EU:C:2000:428, paragraph 74.

<sup>12</sup> Judgment of 23 April 1991, *Höfner & Fritz Elser v Macrotron GmbH*, Case C-41/90 EU:C:1991:161, paragraph 21 and *Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten*, cited above, paragraph 74.

<sup>13</sup> Judgment of 16 June 1987, *Commission v Italian Republic*, Case C-118/85 EU:C:1987:283, paragraph 7.

<sup>14</sup> Judgment of 24 October 2002, *Aéroports de Paris v Commission*, Case C-82/01 P, EU:C:2002:617, paragraph 74; and judgment of 1 July 2008, *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio*, Case C-49/07, EU:C:2008:376, paragraph 25.

See also Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ 2012/C 8/02), paragraph 9.

<sup>15</sup> Judgment in *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio*, cited above, paragraph 27; and judgment of 16 November 1995, *Fédération Française des Sociétés d'Assurance, Société Paternelle-Vie, Union des Assurances de Paris-Vie and Caisse d'Assurance et de Prévoyance Mutuelle des Agriculteurs v Ministère de l'Agriculture et de la Pêche*, Case C-244/94, EU:C:1995:392, paragraph 21.

#### 4.2.2. Advantage

- (42) For the purposes of Article 107(1) TFEU, an advantage consists in any economic benefit that an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention.<sup>16</sup>
- (43) For this assessment, it is only relevant the effect of the measure on the undertaking. The cause or the objective of the State intervention are not relevant.<sup>17</sup> Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present.
- (44) The notified measure is designed to cover all or part of the net cost incurred by Czech Post in providing the DBIS services. Without State intervention, Czech Post would have to bear these costs itself. The measure under assessment relieves Czech Post of some of the costs of its economic activities and thus improves Czech Post's financial situation.
- (45) 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 Czech Post an advantage.

#### 4.2.3. Compliance with the Altmark criteria

- (46) Public service compensations granted to an undertaking do not constitute an economic advantage if certain conditions, strictly defined in the *Altmark* judgment of the Court of Justice, are met.<sup>18</sup>
- (47) Those four cumulative criteria are the following:
1. *First, the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined (...).*
  2. *Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner (...).*
  3. *Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public services obligation, taking into account the relevant receipts and a reasonable profit (...).*
  4. *Fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant a public procurement procedure, which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs, which a typical undertaking, well-run and adequately provided within*

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<sup>16</sup> Judgment of 11 July 1996, *Syndicat français de l'Express international (SFEI) and others v La Poste and others*, Case C-39/94, EU:C:1996:285, paragraph 60; and judgment of 29 April 1999, *Kingdom of Spain v Commission*, Case C-342/96, EU:C:1999:210, paragraph 41.

<sup>17</sup> Judgment of 2 July 1974, *Italian Republic v Commission*, Case C-173/73, EU:C:1974:71, paragraph 13.

<sup>18</sup> Judgment of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, Case C-280/00, EU:C:2003:415, p. 4-14.



*the same sector would incur, taking into account the receipts and a reasonable profit from discharging the obligations.'*

- (48) The Czech authorities have not submitted any information or evidence that would demonstrate that the public compensation for the provision of the DBIS services by Czech Post respects the *Altmark* conditions and in particular the fourth *Altmark* condition.
- (49) In this context, the Commission therefore concludes that the notified measure must be considered as conferring to Czech Post an economic advantage within the meaning of Article 107(1) TFEU.

#### **4.3. SELECTIVITY**

- (50) 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 that grant an advantage in a selective manner fall under the notion of aid.
- (51) The compensation for the provision of the DBIS services benefit only one undertaking, Czech Post. Therefore, the measure is selective.

#### **4.4. DISTORTION OF COMPETITION AND EFFECT ON TRADE**

- (52) In order to be qualified as State aid, a measure must affect trade between Member States, and distort or threaten to distort competition.
- (53) 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.<sup>19</sup>
- (54) 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 there could be competition.
- (55) As regards the measure's effect on trade, it is not necessary to establish that the aid has an actual effect on trade between Member States.<sup>20</sup> In particular, 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*".<sup>21</sup>

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<sup>19</sup> Judgment of 17 September 1980, *Philip Morris Holland BV v Commission*, Case 730/79, EU:C:1980:209, paragraph 11; and judgment of 15 June 2000, *Alzetta Mauro and Others v Commission*, 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, EU:T:2000:151, paragraph 80.

<sup>20</sup> Judgment of 14 January 2015, *Eventech*, Case C-518/13, EU:C:2015:9, paragraph 65; judgment of 8 May 2013, *Libert and others*, Cases C-197/11 and C-203/11, EU:C:2013:288, paragraph 76.

<sup>21</sup> Judgment in *Eventech*, cited above paragraph 66; judgment in *Libert and others*, Cases C-197/11 and C-203/11, cited above, paragraph 77; and judgment of 4 April 2001, *Friulia Venezia Giulia*, Case T-288/97, EU:T:2001:115, paragraph 41.

- (56) The SGEI compensation to be granted to Czech Post for the DBIS will strengthen its economic situation and, therefore, threatens to distort competition and is capable of affecting trade between Member States.
- (57) In particular, the Czech authorities have indicated that the DBIS service will replace the physical delivery of certain paper-based letters but also that the service equals that of a secure email with guaranteed electronic signature with an addition of a guaranteed electronic confirmation of deliver. Therefore, the DBIS service is capable of distorting competition not only in the Czech postal market, but also in the market for the provision of electronic communication services.
- (58) In addition, the service faces actual or potential competition from national and European providers, and thus is capable to affect intra-Union trade. In this regard, the Czech authorities have also indicated that similar services exist in other Member States, and that, in many cases, those services are also provided by the national postal operators, because of synergies deriving from the provision of both physical postal and electronic communication services, and because in postal offices citizen can obtain certain technical support (e.g. secure password recovery, conversion of electronic documents to paper documents, etc.).
- (59) Therefore, the SGEI compensations for the provision of the DBIS service are liable to distort competition within the internal market and affect trade between Member States.

#### **4.5. CONCLUSION**

- (60) Based on the above, the Commission concludes that the compensation granted to Czech Post for the provision of the DBIS service over the period 2018-2022 would amount to State aid within the meaning of Article 107(1) of the TFEU.

### **5. COMPATIBILITY ASSESSMENT**

#### **5.1. LEGAL BASIS**

- (61) Insofar as the compensation that Czech Post will receive for the provision of the DBIS service will amount to State aid within the meaning of Article 107(1) TFEU, its compatibility with the internal market needs to be assessed.
- (62) The Czech authorities consider the DBIS compensations to be granted to Czech Post amount to compensations for the provision of a service of general economic interest ("SGEI"). Therefore, the compatibility of those compensations with the internal market will need to be assessed on the basis of Article 106(2) TFEU.
- (63) Article 106(2) TFEU provides that:

*"undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union."*

- (64) In accordance with Article 106(2) TFEU, the Commission may declare compensation for SGEIs compatible with the internal market, provided that certain conditions are met. The Commission has laid down the conditions according to which it applies Article 106(2) TFEU in a series of instruments: the 2012 SGEI Framework<sup>22</sup> and the 2012 SGEI Decision<sup>23</sup> (hereinafter together: "the 2012 SGEI package").
- (65) Since it is estimated that the annual DBIS compensation (see Table 3 above<sup>24</sup>), would exceed the threshold of EUR 15 million per year, those compensations would fall out of the scope of the 2012 SGEI Decision.<sup>25</sup>
- (66) State aid falling outside the scope of the 2012 SGEI Decision may be declared compatible under Article 106(2) TFEU if it is necessary to the operation of the SGEI concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union.<sup>26</sup>

## **5.2. COMPATIBILITY OF THE SGEI COMPENSATION UNDER THE 2012 SGEI FRAMEWORK**

- (67) The 2012 SGEI Framework sets out the guidelines for assessing the compatibility of SGEI compensation.
- (68) Under the 2012 SGEI Framework, public service compensation can be compatible under Article 106(2) TFEU if the following conditions are met:

### *5.2.1. Genuine service of general economic interest as referred to in Article 106 of the Treaty and public consultation*

- (69) Pursuant to paragraphs 12 and 13 of the 2012 SGEI Framework, compensation for the provision of SGEI requires as a pre-requisite a genuine and correctly defined SGEI.
- (70) The Commission recalls that, in the absence of specific Union rules defining the scope for the existence of an SGEI, Member States have a wide margin of discretion in defining a given service as an SGEI.<sup>27</sup> The Commission's

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<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> The calculation has been made on the basis of the ECB average exchange rate for November 2017 of EUR 1 equals CZK 25.538.

<sup>25</sup> See, Article 2 of SGEI Decision.

<sup>26</sup> 2012 SGEI Framework, paragraph 11.

<sup>27</sup> See, Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, OJ C8, 11.01.2012, p. 4-14, paragraph 46.

competence is limited to checking whether the Member State has made a manifest error when defining the services as an SGEI.<sup>28</sup>

- (71) The Czech authorities have submitted that the DBIS is a service operated in the public interest, in order to provide a free, guaranteed, secure, efficient and accessible system for electronic communication between individuals and the public administration with a proof of delivery of the messages. For that reason, in their opinion, the DBIS service cannot be implemented without the intervention of the State establishing a centralised system
- (72) For the Czech authorities, the benefits of the DBIS system also depend on the system being operated by a reliable state-controlled entity, on the service being free of charge at the point of use, and on its mandatory use by the public administration bodies. In their view, a privately operated system would not ensure those benefits.
- (73) In particular, the Czech authorities are of the view that a free of charge, voluntary paying private system would not be commercially viable so no operator would be interested in providing the service, might compromise the secret and confidential nature of some communications (e.g. administrative decisions or court judgments, etc.), and would not guarantee a sufficient level of security of the communications which is very high. Moreover, the system would also risk not achieving sufficient economies of scale to ensure its maintenance in the long-term. These concerns would put at risk the implementation of the Czech eGovernment policy and would undermine the success of a strategic means of communication of the public administration.
- (74) In addition to the strategic purpose, the entrustment of the DBIS service to Czech Post brings practical benefits in the form of a natural integration of physical and data communications resulting from the dense network of physical post offices operated by Czech Post in the Czech Republic.
- (75) The physical post offices play a key role in the success and optimal operation of the DBIS service since these offices provide support to the DBIS users (i.e. citizens) that may require assistance in the form of secure password recovery or conversion of electronic documents with confirmation of authenticity.
- (76) The Czech authorities have also indicated that in those countries where similar systems exist, the operation of the data boxes system has been entrusted mostly to the national incumbent postal operator as the naturally trustworthy entity in the area of official, commercial and private communication.
- (77) In the present case, the Commission considers that the Czech authorities have sufficiently demonstrated that the definition of the DBIS service as an SGEI is not vitiated by a manifest error.
- (78) Moreover, paragraph 14 of the 2012 SGEI Framework requests Member States to show that they have "given proper consideration to the public service needs by

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<sup>28</sup> Judgment of 12 February 2008, *BUPA and Others v Commission*, Case T-289/03, EU:T:2008:29, paragraphs 166-169 and 172; Judgment of 15 June 2005, *Fred Olsen*, Case T-17/02, EU:T:2005:218, paragraph 216.

means of a public consultation" to take the interests of users and providers into account.

- (79) To take account of those interests, on 26 April 2017, the Czech authorities held a consultation open to the public at the premises of the Ministry of Interior. The consultation was publicised by posting the relevant information on the website of the Ministry of Interior.<sup>29</sup> In addition, relevant stakeholders such as enterprises, government bodies as well as legal professionals who have a mandatory professional data box were invited personally to attend the consultation in advance.<sup>30</sup>
- (80) In order to evaluate the need for the DBIS as a SGEI, the Czech authorities consulted the public on their prior experience with the DBIS service and presented a plan for the operation and further development of the DBIS in the period 2018-2022.
- (81) Both the public administration and private companies (including representatives of companies, attorneys and tax advisors) and citizens (including representatives of small entrepreneurs, natural persons and NGOs) were represented in the consultation. Half of the attendees represented the public administration, while private companies represented 34% and citizens 16% of the participants.
- (82) The input obtained from the participants showed that the DBIS service is responding to a perceived need of the users. According to the users, the DBIS service ensures and facilitates fast, secured and registered communications between the public administration bodies and between the public administration and its citizens. An important element of the system seems also to be connected with the possibility to maintain and send communications from any place in the world. In addition, the service is not physically bound to an office or location. This latter characteristic is also important for handicapped people or people suffering from illnesses or disabilities.
- (83) Therefore, the information submitted by the Czech authorities suggests that the public consultation led to evidence of an actual public need for the DBIS service.

*5.2.2. Need for an entrustment act specifying the public service obligations and the methods of calculating compensation*

- (84) As indicated in section 2.3, paragraph 15, of the 2012 SGEI Framework, the concept of service of general economic interest within the meaning of Article 106(2) TFEU means that the undertaking in question has been entrusted with the operation of the service of general economic interest by way of one or more official acts.

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<sup>29</sup> <http://www.mvcr.cz/clanek/verejna-konzultace-k-informacnimu-systemu-datovych-schranek.aspx>

<sup>30</sup> A month in advance, on 30 March 2017, the deputy to the Minister of Interior, Dr Jaroslav Strouhal, sent letters containing an invitation to the public consultation to those organisations that were invited individually (e.g., unions, associations, companies, etc.).

- (85) Pursuant to paragraph 16 of the 2012 SGEI Framework, these acts must specify, in particular:
- The content and duration of the public service obligations;
  - The undertaking and, where applicable, the territory concerned;
  - The nature of the exclusive rights assigned to the undertaking by the granting authority;
  - The description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation;
  - The arrangements for avoiding and recovering any overcompensation.
- (86) As indicated in Section 2 above, Czech Post has been entrusted to provide the measure pursuant to Article 14(2) of the 2008 Act,<sup>31</sup> Article 2(4) of Act No. 221/2012 amending Act No. 29/2000 on postal services<sup>32</sup>, and Government Resolution No. 676 of 27 July 2016, as well as on the basis of an agreement to be signed with Czech Post.
- (87) The entrustment acts fulfil the requirements of paragraph 16 of the 2012 SGEI Framework.
- (88) First, according to the legal provisions cited above, and Sections 2, 3 and 16 of the Agreement with Czech Post, the latter has been entrusted with the obligation to provide the DBIS service in the whole Czech Republic for a period of five years, 2018-2022 (until 31.12.2022).
- (89) Second, the specific implementing rights and obligations for Czech Post are described in detail in the Agreement and its Annexes.<sup>33</sup> In particular, Section 4 of the Agreement specifies the content of the public service obligation, describing the service to be provided and referring for further details to Annex 1 to the Agreement on the detailed description of the Service and Annex 2 to the Agreement on the quality parameters.
- (90) Moreover, Sections 6.3 and 6.4. of the Agreement and Section 1 of Annex 3 to the Agreement provide for a mechanism to calculate the compensation amount. On this basis, the Czech Authorities will pay Czech Post for the operation of the DBIS service and for certain DBIS development services.
- (91) Pursuant to Section 1.2 of Annex 3 to the Agreement with Czech Post, the compensation for the operation of the DBIS service will be the combination of a fixed flat fee and a variable payment per data messages handled (See Table 2 above). The compensation will be paid monthly.
- (92) As described above, Czech Post will also be compensated for the provision of services of "development" of the DBIS service. According to Section 1.3 of Annex 3 to the Agreement, the monthly remuneration will be the result of

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<sup>31</sup> Act No. 300/2008, cited above.

<sup>32</sup> Act No. 221/2012, cited above.

<sup>33</sup> See in particular, Annex 1 Requirements for the DBIS; Annex 2 Service Level Agreement; and Annex 3 Price of Services and Overcompensation;

multiplying the performance of Czech Post expressed in man-days by the relevant unit prices. The unit prices will amount to CZK 12,000 (ca. EUR 472) per-man day for development work developed in-house by Czech Post, and at a price of CZK 15,000 (ca. EUR 590) per man-day for development work carried out by the subcontractor.

- (93) For the purpose of the remuneration, according to Section 6 of the Agreement, the services will be remunerated monthly. For that purpose, by the day 15 of the following calendar month, Czech Post will issue an invoice for the services rendered on the prior month. Czech Post will also provide a monthly report on the operation of the service.
- (94) Third, Section 6 of the Agreement and Section 2.3 of Annex 3 to the Agreement, provide that the net avoid cost methodology will be used to calculate the net cost necessary to discharge the public service obligation.
- (95) Fourth, according to Section 6.5 of the Agreement, at the end of each calendar year, an evaluation of the compensation paid to avoid overcompensation will be carried out. In particular, pursuant to Section 2.1 and 2.2 of Annex 3 to the Agreement, Czech Post must control, at the end of each calendar year, that the compensation granted for the operation of the DBIS service does not exceed the amount necessary to cover the net cost of discharging the public service obligation.
- (96) Furthermore, pursuant to Section 7.11 of the Agreement and Section 2.1. of Annex 3 to the Agreement, for the purpose of control of any possible overcompensation, Czech Post is obliged to keep separate accounts and must report to the Ministry of Interior separately all the costs and revenues associated with the provision of the DBIS system, including documentary evidence.
- (97) Fourth, Section 6.15 of the Agreement and Section 2.10 of Annex 3 to the Agreement describe the mechanism for recovery of any potential overcompensation.
- (98) On the basis of the above, The Commission concludes that the entrustment of Czech Post for the provision of the DBIS service for the period 2018-2022 is in line with the requirements of the 2012 SGEI Framework.

### 5.2.3. *Duration of the period of entrustment*

- (99) As indicated in section 2.4 of the 2012 SGEI Framework, "*the duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI.*"
- (100) Czech Post has been entrusted for the period 2018-2022. The Czech authorities argue that the five-year duration is justified by the investment necessary to develop the capacities to provide the technology services of DBIS.
- (101) The period of five years was therefore chosen to facilitate re-payment of investment into the technology services of DBIS operation for the period. The Commission considers that an entrustment for a period of five years is justified.

#### 5.2.4. Compliance with the Directive 2006/111/EC

- (102) 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*".<sup>34</sup>
- (103) Furthermore, paragraph 44 of the 2012 SGEI Framework requires that: "*Where an undertaking carries out activities falling both inside and outside the scope of the SGEI, the internal accounts must show separately the costs and revenues associated with the SGEI and those of the other services in line with the principles set out in paragraph 31*".
- (104) According to paragraph 31, in such scenario "*the costs to be taken into consideration may cover all the direct costs necessary to discharge the public service obligations, and appropriate contribution to the indirect costs common to both the SGEI and other activities*".
- (105) As regards the accounting separation, the Czech authorities note that under Act No 29/2000 on postal services, Czech Post is obliged to keep separate accounts in relation to the provision of the postal universal service obligations. The Czech authorities submit that to comply with this obligation, Czech Post must keep separate the costs of all services provided, including the costs of non-postal services such as the DBIS.
- (106) Moreover, Czech Post must keep separate accounts for DBIS because, pursuant to Section 7.11 of the Agreement, it has an obligation to report to the Czech Ministry of Interior separately all the costs and revenues associated with the provision of the DBIS system including documentation evidence.
- (107) In addition, under Section 2 of Annex 3 to the Agreement with Czech Post for the provision of the DBIS service, Czech Post is obliged to maintain separate accounts for the DBIS service in order to comply with the obligation to report all costs and revenues for the provision of the DBIS service separately to the Ministry of Interior.
- (108) On the basis of the above, the Commission concludes that Czech Post complies with Directive 2006/111/EC and with paragraph 44 of the 2012 SGEI Framework.

#### 5.2.5. Compliance with Union public procurement rules

- (109) 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*

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<sup>34</sup> OJ L 318 17.11.2006, p.17.



*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."*

- (110) Directive 2014/24/EU sets out the rules on the use of public contracts to provide works, supplies and services.<sup>35</sup> Under Directive 2014/24/EU, public contracts above a certain value should be awarded to the most economically advantageous tender. However, Article 11 of Directive 2014/24/EU provides for an exception stating that "*the Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provisions which is compatible with the TFEU*".
- (111) According to Article 2(1)(1) of Directive 2014/24/EU "*contracting authorities*" means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.
- (112) Article 2(1)(4) of Directive 2014/24/EU defines "*bodies governed by public law*" as bodies that have all the following characteristics: (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; (b) they have legal personality; and (c) they are financed for the most part by the state [...] or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.
- (113) In this context, the award of a public contract by contracting authority to another contracting authority on the basis of an exclusive right would be exempted from the application of Directive 2014/24/EU on public procurement rules provided the awarding act is compatible with the principles set out in the TFEU.
- (114) In this regard, it is pointed out that Article 56 of the TFEU prohibits restrictions to the freedom to provide services. As an exception, restrictions can be justified, by, inter alia, the exercise of official authority under Article 51 of the TFEU<sup>36</sup> provided that the restriction (i) is appropriate for achieving the objective it pursues, (ii) is necessary to achieve the objective, and (iii) does not go beyond what is necessary.
- (115) According to the Czech authorities, the exclusive right to Czech Post to operate the DBIS has been foreseen in Article 14(2) of the 2008 Act, together with Article 2(4) of the Act No. 221/2012, and Government Resolution No 676 of 27 July 2016.

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<sup>35</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing directive 2004/18/EC, OJ L9, 28.3.2014, p. 65.

<sup>36</sup> Article 51 TFEU states that "*The provisions [...] shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority*".

- (116) The Czech authorities have submitted that Czech Post must be considered a contracting authority within the meaning of Article 2(1)(4) of Directive 2014/24/EU. The Czech authorities also submit that the act awarding the contract respects the principles set out in the TFEU. Therefore, according to the Czech authorities, the exclusive and direct award of the provision of the DBIS to Czech Post would be compatible with Article 106(2) TFEU.
- (117) First, in relation to the question of whether Czech Post can be considered a contracting authority, the Commission notes that, according to the Czech authorities, Czech Post, is wholly-owned by the Czech State, has legal personality and is subject to managerial supervision by the Ministry of Interior of the Czech Republic. In particular, The Ministry of Interior has the power to modify the activities of the Czech Post and the power to appoint and dismiss Czech Post's director general as well as ten out of 15 members of its Supervisory Board.
- (118) In addition, the Czech authorities submit that Czech Post was established for the specific purpose of meeting needs in the general interest, not having an industrial and commercial character. In this regard, it is noted that Czech Post is the current provider of the postal Universal Service Obligation. It also provides specific services for the Czech State, such as administration of cash pension payments, CzechPoint services, collection of payments for the Czech public television, and radio licence fees.
- (119) Second, as to the question of whether the direct award of the provision of the DBIS to Czech Post can be considered to be the exercise of official authority under Article 51 of the TFEU, the Commission notes, first, that the restriction seems appropriate to achieve the objectives pursued. According to the information provided by the Czech authorities, the grant of an exclusive right to operate the DBIS is appropriate to achieve the objective of streamlining the communication between the public authorities with each other, and with the citizens, in the sense of increasing the efficiency of the communication, and enabling the conversion of paper-based documents into electronic form with the same legal effects of a certified copy so that all communications delivered by means of DBIS are granted the same legal value as acts delivered in writing. Therefore, it seems that the DBIS service contract appears to be appropriate for achieving the objective of increasing the efficiency of the exercise of official authority.
- (120) Third, the grant of the exclusive right to Czech Post, which is wholly-owned by the Czech Republic, seems necessary because, as described in detail in recitals 71 to 73 above, the DBIS is a strategic service for the Czech State and certain critical functions of the system, such as security and access to DBIS, must be controlled by the State.
- (121) Fourth, in order to comply with the requirement of not going beyond what is necessary, the Czech authorities indicate that Czech Post will be directly responsible for the implementation of the most critical functions, such as, for instance, system integration, security audit, website management, second and third level Service Desk, etc. but will contract the elements of the service over which there is no need to exercise strict State supervision, via a tender procedure, to an external provider.
- (122) Based on the above, it appears that the DBIS service contract can be awarded by the Ministry of Interior of the Czech Republic on the basis of an exclusive right

under Article 11 of Directive 2014/24/EU and that this exclusive right in the circumstances described above would be compatible with the TFEU.

#### 5.2.6. *Absence of discrimination*

- (123) 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".
- (124) Since the DBIS service is only entrusted to Czech Post, the Commission considers that the requirement of paragraph 20 of the 2012 SGEI Framework is not applicable.

#### 5.2.7. *Amount of compensation*

- (125) 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."
- (126) According to paragraph 25 of the 2012 SGEI Framework, "Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation".
- (127) Section 2 of Annex 3 to the Agreement with Czech Post stipulates that the net avoid cost ("NAC") methodology will be used to calculate the net cost of providing the DBIS service and provides the parameters to be used in the calculation.

##### 5.2.7.1. Calculation of the net cost of the DBIS using the net avoided cost methodology

- (128) The NAC methodology used by the Czech authorities to calculate the net cost of the DBIS service comprises two main steps:
1. Definition of the factual and counterfactual scenarios
  2. Calculation of the net cost of the DBIS (difference in expected profit or loss of Czech Post between the 2 scenarios)

#### ***Step 1: Definition of the factual and counterfactual scenarios***

##### *Factual scenario*

- (129) The factual scenario represents the situation in which Czech Post provides the DBIS. In this scenario, Czech Post's annual revenues and costs are estimated over the period 2018-2022. In essence, it is a projection of (i) all revenues of Czech

Post deriving from its activities, and (ii) all the costs of Czech Post deriving from the provision of all its activities, DBIS included.

- (130) The Czech authorities have confirmed that the projection does not include the notified compensation for the provision of the DBIS. The projection does also not include any possible compensation to be granted for any other service for which Czech Post might receive public funding (e.g. USO). This is reasonable, as no such compensation has been granted for the period 2018-2022.

*Counterfactual scenario*

- (131) The counterfactual scenario represents what the company would do (and look like) if it were not entrusted with the provision of the DBIS. Czech Post has evaluated the possibilities of business optimisation and submits that, absent an entrustment and a compensation from the State, the provision of the DBIS service would be economically unfavourable and loss making for the company for the following two reasons:

- (132) First, the commercial revenues of the DBIS, which constitutes less than 1% of the traffic within the DBIS, are very low compared to the cost of providing the DBIS service. These costs would be avoided if Czech Post did not have to provide the DBIS service.

- (133) Second, absent the obligation to provide the DBIS service, Czech Post's traditional postal activities would be expected to recover an amount of traditional mail volume. This higher traditional mail volume would subsequently translate in higher revenues. This additional revenue is, however, not present in the factual scenario due to the "cannibalization" of services effect, i.e. Czech Post's clients use the DBIS that is (for the most part) free of charge, instead of recurring to the traditional mail service that is not free. This cannibalized revenue would be recovered in the counterfactual scenario and so the revenues of Czech Post would increase. The costs of Czech Post would also increase, but they would do so to a lesser extent, and, thus, the overall result would be additional profit for Czech Post.

- (134) Therefore, in the absence of the entrustment of the DBIS service and eventual compensation, Czech Post would not provide the DBIS service.

***Step 2: Calculation of the Net Cost***

- (135) Within the logic of the counterfactual scenario, the calculation of the net cost quantifies the estimated financial impact for Czech Post deriving from the decision not to provide the DBIS service.

- (136) This impact would be the difference in the revenues and costs of Czech Post between the factual and counterfactual scenarios. The tables below illustrate the expected revenues and costs of Czech Post under the two scenarios (with and without the obligation or factual and counterfactual) and the resulting net cost (difference in result) of the DBIS.

**Table 4: Difference in Czech Post's revenues and costs between the factual and counterfactual scenarios**

In thousand CZK	2018		
	Factual	Counterfactual	Difference
<b>Revenues</b>	[...] <sup>37</sup>	[...]	[...]
<b>Costs</b>	[...]	[...]	[...]
<b>Net Cost of DBIS</b>			[...]

In thousand CZK	2019		
	Factual	Counterfactual	Difference
<b>Revenues</b>	[...]	[...]	[...]
<b>Costs</b>	[...]	[...]	[...]
<b>Net Cost of DBIS</b>			[...]

In thousand CZK	2020		
	Factual	Counterfactual	Difference
<b>Revenues</b>	[...]	[...]	[...]
<b>Costs</b>	[...]	[...]	[...]
<b>Net Cost of DBIS</b>			[...]

In thousand CZK	2021		
	Factual	Counterfactual	Difference
<b>Revenues</b>	[...]	[...]	[...]
<b>Costs</b>	[...]	[...]	[...]
<b>Net Cost of DBIS</b>			[...]

In thousand CZK	2022		
	Factual	Counterfactual	Difference
<b>Revenues</b>	[...]	[...]	[...]
<b>Costs</b>	[...]	[...]	[...]
<b>Net Cost of DBIS</b>			[...]

(137) In practice, the net cost amounts of the DBIS indicated above are driven by two elements of the counterfactual scenario: absence of the revenues and costs of DBIS and the cannibalisation effect resulting from the DBIS.

(138) These two elements are broken down into the following four components:

(1) Difference in DBIS revenues (lost commercial revenue),

<sup>37</sup> Covered by the obligation of professional secrecy (See: Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C297, 9.12.2003, p.6-9).

- (2) Difference in DBIS costs (avoided costs resulting from the non-provision of DBIS),
  - (3) Difference in postal activities revenues (cannibalized postal volume / revenue recovered), and
  - (4) Difference in postal activities costs (additional costs incurred due to the recovered volume/revenue).
- (139) The estimate of the financial impact is further explained below, and is based on the Activity Based Costing system and the income records of Czech Post. This internal structure comprises three main cost centre divisions, this is: a) main postal and trade activity, b) non-postal activities to which the DBIS belongs, and c) overheads (e.g., management, accounting, human resources, etc.).

First Component: Difference in DBIS revenues between the factual and the counterfactual scenarios

- (140) If Czech Post were not entrusted with the provision of the DBIS service, the revenues expected under the factual scenario for the provision of the DBIS commercial activities would be lost. The Table below provides an estimate of the expected DBIS commercial revenues.
- (141) The estimated amounts take into account and are consistent with past trends in the DBIS commercial revenues.

**Table 5: Difference in DBIS revenues between the factual and counterfactual scenarios**

<b>DBIS Revenues</b> (in thousand CZK)	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Factual scenario</b>	[...]	[...]	[...]	[...]	[...]
<b>Counterfactual scenario</b>	[...]	[...]	[...]	[...]	[...]
<b>Difference (A)</b>	[...]	[...]	[...]	[...]	[...]

Second Component: Difference in DBIS costs between the factual and the counterfactual scenarios

- (142) It is expected that all the costs associated with the provision of the DBIS service would not be incurred in the counterfactual scenario because the DBIS is operationally and technologically separated from the activities in the traditional postal network.
- (143) No processes are shared between the DBIS and the postal and other processes implemented in the post offices, transport networks or delivery points. The operation of the DBIS service leads to the implementation of additional processes with incremental/avoidable costs on IT infrastructure and related costs of the IT department (i.e., auxiliary activities of the Activity Based Costing system). Incremental (avoidable) costs of the DBIS are maintained in the accounting of Czech Post in two cost centres within the IT division.

**Table 6: Difference in DBIS costs between the factual and counterfactual scenario**

<b>DBIS Costs</b> (in thousand CZK)	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Factual scenario</b>	[...]	[...]	[...]	[...]	[...]
<b>Counterfactual scenario</b>	[...]	[...]	[...]	[...]	[...]
<b>Difference (B)</b>	[...]	[...]	[...]	[...]	[...]

(144) A breakdown of these expected costs as provided by the Czech authorities is provided below:

**Table 7: Breakdown of DBIS costs (expected to be avoided in the counterfactual scenario)**

(in thousand CZK)	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Variable costs of the DBIS maintenance – subcontractor	[...]	[...]	[...]	[...]	[...]
Variable costs of the DBIS development – subcontractor	[...]	[...]	[...]	[...]	[...]
Fixed costs – subcontractor	[...]	[...]	[...]	[...]	[...]
Fixed costs (audit, insurance, consultancy services)	[...]	[...]	[...]	[...]	[...]
Fixed costs – Czech Post's costs of takeover of parts of the DBIS (cost of change)	[...]	[...]	[...]	[...]	[...]
Fixed costs – Call centre	[...]	[...]	[...]	[...]	[...]
Fixed costs – the DBIS development – Czech Post's employees	[...]	[...]	[...]	[...]	[...]
Fixed costs – Czech Post's operating costs	[...]	[...]	[...]	[...]	[...]
Fixed costs – Establishment of access to data boxes	[...]	[...]	[...]	[...]	[...]
Fixed costs – Time stamps	[...]	[...]	[...]	[...]	[...]
Fixed costs – Marketing costs	[...]	[...]	[...]	[...]	[...]
Fixed costs – Contribution to the indirect and overhead costs	[...]	[...]	[...]	[...]	[...]
<b>Total costs</b>	[...]	[...]	[...]	[...]	[...]

(145) Approximately 85% of the total costs of the DBIS service correspond to charges from the subcontractor; therefore rely on the agreement between Czech Post and the subcontractor and the estimated DBIS volume activity.

Third Component: Difference in postal activities revenues between the factual and the counterfactual scenarios

(146) Apart from the financial impact on the costs and revenues incurred by Czech Post in relation to the provision of the DBIS service, in the counterfactual scenario, the

non-provision of the DBIS would also have an impact on the traditional postal revenues and costs of Czech Post.

- (147) As explained above, in the counterfactual scenario, Czech Post would be expected to recover an amount of traditional mail, and therefore, recover revenue which is lost ("cannibalised") in the factual scenario due to the provision of the DBIS.
- (148) The Czech authorities have explained that registered mail is, in most instances, the alternative to the DBIS. Approximately 80% of the DBIS use relate to data messages sent between the public authorities and/or sent by public authorities to the public (companies and citizens). In the absence of the DBIS service, public authorities would be required by law to communicate with each other and the public by means of registered mail.
- (149) In relation to the quantification of the "cannibalisation" effect, the Czech authorities have explained that the databases of Czech Post contain historical data on the structure and volume of its contractual clients' postal dispatches. Therefore, it can analyse the long-term behaviour of persons sending data messages (through the DBIS) prior to and following to its introduction.
- (150) Cannibalisation is not calculated as an absolute decrease in the sending of mail by these clients as this decrease is also due to other reasons. It is calculated as the difference of the decreasing trend (regardless of the DBIS, measured in the period 2007-2010 where the DBIS did not exist) and the factual situation following introduction of the DBIS, where the decrease of the traditional mailing is significant.
- (151) This analysis has been ongoing since 2010 on a monthly basis. The procedure is as follows: first, Czech Post analyses [...]; second, Czech Post identifies whether [...]. Based on this data Czech Post applies the following algorithms: [...]
- (152) The mail volume calculated based on the above, is then multiplied by the average price per physical mail item to obtain the cannibalised revenues. The data on volumes are also used in the calculation of the costs in the Fourth Component of the net cost.



**Table 8: Mail Volume**

Mail Volume (in thousand items)		2018	2019	2020	2021	2022
<b>Factual scenario(a)</b>						
	<b>Regular mail</b>	[...]	[...]	[...]	[...]	[...]
	<b>Registered mail</b>	[...]	[...]	[...]	[...]	[...]
<b>PLUS Cannibalized (b)</b>						
	<b>Regular mail</b>	[...]	[...]	[...]	[...]	[...]
	<b>Registered mail</b>	[...]	[...]	[...]	[...]	[...]
<b>Counterfactual scenario (a)+(b)</b>						
	<b>Regular mail</b>	[...]	[...]	[...]	[...]	[...]
	<b>Registered mail</b>	[...]	[...]	[...]	[...]	[...]

**Table 9: Difference in postal revenues between the factual and counterfactual scenarios (revenue "cannibalisation")**

Revenues (in thousand CZK)	2018	2019	2020	2021	2022
<b>Factual scenario</b>	[...]	[...]	[...]	[...]	[...]
<b>Counterfactual scenario</b>	[...]	[...]	[...]	[...]	[...]
<b>Difference (C)</b>	[...]	[...]	[...]	[...]	[...]

(153) The Czech authorities have provided further information showing the split of the difference (C) between regular and registered mail. This is reflected below:

**Table 10: Breakdown of difference in postal revenues between the factual and counterfactual scenarios (revenue "cannibalisation")**

Difference in postal revenues (in thousand CZK)	2018	2019	2020	2021	2022
<b>Regular mail</b>	[...]	[...]	[...]	[...]	[...]
<b>Registered mail</b>	[...]	[...]	[...]	[...]	[...]
<b>Total</b>	[...]	[...]	[...]	[...]	[...]

Fourth Component: difference in the costs of postal activities between factual and counterfactual scenario

- (154) The Czech authorities have acknowledged that, given the volume of postal activities lost due to the cannibalisation from the provision of the DBIS service, Czech Post will also have cost savings. Those cost savings are incorporated into the factual scenario.
- (155) The amount of cost savings would not be achieved in the counterfactual scenario, this is, in case the DBIS service was not operated and the volume of traditional postal services increased. As explained above, the estimated volume of traditional postal services which that be recovered, is used as a driver for the estimation of the additional costs it would trigger.
- (156) In order to estimate this impact on cost, the Activity Based Costing method is used (i.e. calculation based on data from internal separate accounts). Costs are allocated to individual processes based on the time spent in relation to specific products during the relevant processes. The time spent is estimated based on production volumes and time norms (i.e. volume multiplied with time norm).
- (157) In relation to the processes depicted in the tables below, increased activity is expected in the counterfactual scenario due to the increased volume of traditional mail. Therefore, increased time spent and eventually increased costs are also expected. These estimated costs at defined processes are considered as additional costs for the counterfactual scenario.
- (158) The estimation of these costs amounts per process is depicted below. Further analysis is provided at the level of ordinary and registered letters.

**Table 11: Difference in postal activities' costs between the factual and counterfactual scenarios.**

Costs (in thousand CZK)	2018	2019	2020	2021	2022
<b>Factual scenario</b>	[...]	[...]	[...]	[...]	[...]
<b>Counterfactual scenario</b>	[...]	[...]	[...]	[...]	[...]
<b>Difference (D)</b>	[...]	[...]	[...]	[...]	[...]

- (159) The Czech authorities have provided the breakdown of the processes identified and the associated costs per process for both ordinary and registered letters. In the tables below, the "costs in the factual scenario" relate to the estimated costs for the volume of mail expected under the factual scenario. The column "additional costs" relate to the additional costs expected to be incurred for the increased mail volume under the counterfactual scenario (this is, in addition to the costs of the process under the factual scenario).

**Table 12: Additional postal activities' costs in the counterfactual scenario – Ordinary Letters**

(in thousand CZK)		2018		2019		2020		2021		2022	
	Description - process structure of avoided/incremental costs	Costs in the factual scenario	Additional costs	Costs in the factual scenario	Additional costs	Costs in the factual scenario	Additional costs	Costs in the factual scenario	Additional costs	Costs in the factual scenario	Additional costs
Counters	Personnel costs at bulk mail posting points	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Back office	Personnel costs - outward mail	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Distribution	None	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sorting	Personnel costs at sorting centres	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Mail Preparation	Personnel pre-walk sort	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Walk	Personnel - manipulation/handling with addressee	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VAT	increase VAT in costs in counterfactual scenario	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Overheads	avoidable identified overheads	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	<b>Total</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

**Table 13: Additional postal activities' costs in the counterfactual scenario – Registered Letters**

<b>(in thousand CZK)</b>		<b>2018</b>		<b>2019</b>		<b>2020</b>		<b>2021</b>		<b>2022</b>	
	<b>Description - process structure of avoided/incremental costs</b>	<b>Costs in the factual scenario</b>	<b>Additional costs</b>	<b>Costs in the factual scenario</b>	<b>Additional costs</b>	<b>Costs in the factual scenario</b>	<b>Additional costs</b>	<b>Costs in the factual scenario</b>	<b>Additional costs</b>	<b>Costs in the factual scenario</b>	<b>Additional costs</b>
Counters	Personnel costs at bulk mail posting points, P BOX, issuing	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Back office	Personnel costs - outward mail	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Distribution	None	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sorting	Personnel costs at sorting centres	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Mail Preparation	Personnel pre-walk sort	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Walk	Personnel - manipulation/handling with addressee	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VAT	increase VAT in costs in counterfactual scenario	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Overheads	avoidable identified overheads	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	<b>Total</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

**Table 14: Additional postal activities' costs in the counterfactual scenario – Total Ordinary Letters + Registered Letters**

(in thousand CZK)		2018		2019		2020		2021		2022	
	Description - process structure of avoided/incremental costs	Costs in the factual scenario	Additional costs	Costs in the factual scenario	Additional costs	Costs in the factual scenario	Additional costs	Costs in the factual scenario	Additional costs	Costs in the factual scenario	Additional costs
Counters	Personnel costs at bulk mail posting points, P BOX, issuing	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Back office	Personnel costs - outward mail	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Distribution	None	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sorting	Personnel costs at sorting centres	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Mail Preparation	Personnel pre-walk sort	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Walk	Personnel - manipulation/handling with addressee	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VAT	increase VAT in costs in counterfactual scenario	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Overheads	avoidable identified overheads	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
	<b>Total</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

5.2.7.2. Identifying and calculating the intangible and market benefits

(160) The Czech authorities have considered the possibility that Czech Post would have intangible benefits (like indirect advertising effects) from the provision of the DBIS, and have concluded that no such potential benefits will occur. In fact, the operation of the DBIS brings some minor commercial revenues to Czech Post (i.e. for the services between citizens), which have been already considered under the factual scenario. The Commission believes that the Czech authorities have assessed the potential intangible benefits to Czech Post in compliance with paragraph 25 of the 2012 SGEI Framework.

5.2.7.3. Conclusion of the net cost calculation

(161) **Table 15** below provides an overview of the various elements of the net cost calculation and the total net cost per year over the period 2018-2022 as explained above (recitals 140-158). The total net cost per year corresponds to the sum of the differences between the factual and counterfactual scenarios in **Tables 5, 6, 9 & 11** above.

**Table 15: Summary of Net Cost Calculation**

<b>In thousand CZK</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Difference in DBIS costs (B)</b>	[...]	[...]	[...]	[...]	[...]
<b>minus difference in DBIS revenues (A)</b>	[...]	[...]	[...]	[...]	[...]
<i>Net cost from DBIS abolishment (subtotal)</i>	[...]	[...]	[...]	[...]	[...]
<b>plus difference in postal revenues (C)</b>	[...]	[...]	[...]	[...]	[...]
<b>minus difference in postal costs (D)</b>	[...]	[...]	[...]	[...]	[...]
<i>Net cost from postal activities cannibalisation (subtotal)</i>	[...]	[...]	[...]	[...]	[...]
<b>Total Net Cost (A+B+C+D)</b>	<b>971 681</b>	<b>994 768</b>	<b>1 026 668</b>	<b>1 060 375</b>	<b>1 096 628</b>

5.2.7.4. Reasonable profit

(162) According to paragraph 21 of the 2012 SGEI Framework, a reasonable profit can be included in the net cost of providing a SGEI. The Czech authorities have indicated that the net cost of providing the DBIS service as estimated with the NAC methodology is already significantly higher than the estimated compensation amount, before adding a reasonable profit. For this reason, the Czech authorities do not include a reasonable profit amount in the net cost calculation.

### *Credibility of the NAC methodology proposed by the Czech authorities*

- (163) The Commission considers that the net avoided cost methodology proposed by the Czech authorities is a valid implementation of the net avoided cost methodology, thus compliant with paragraph 25 of the 2012 SGEI Framework and appropriate to determine the net cost incurred by Czech Post for the delivery of the DBIS services.
- (164) The method proposed by the Czech authorities defines the commercial strategy absent the public service obligation (i.e. non-provision of the DBIS), which is credible and realistic, and then estimates the expected difference in the profit or loss of the company between the two scenarios by quantifying the financial impact of the commercial strategy.
- (165) As explained above, the financial impact of the counterfactual scenario is based on Czech Post relevant experiences (since the introduction of DBIS) and data on revenues and cost drivers from its accounting system.

### *5.2.8. Efficiency Incentives*

- (166) 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.*"
- (167) The Czech authorities have explained that efficiency incentives are present in the compensation mechanism by means of the structure of the pricing under the Agreement with Czech Post for the operation of the DBIS service. In particular, according to Section 1 of Annex 3 to the Agreement the compensation model includes two types of fees: first, a flat-rate price per month; second, a "transaction" fee or price per data message sent. This transaction fee will be decreasing year-on-year during the period of the entrustment (from 2.5 in 2018 to 1.45 in 2022), irrespective of the volume of messages.
- (168) The decreasing price per message over 2018-2022 has the effect of decreasing the compensation amount. This is considered an incentive for Czech Post to provide the service more efficiently.
- (169) Furthermore, the Commission believes that the fact that the expected compensation amount is lower than the net cost means that Czech Post would have to cover the remaining net cost arising from the provision of the DBIS that is not compensated by the Czech authorities.
- (170) In this context, the Commission considers that the compensation model introduces efficiency incentives in compliance with paragraph 39 of the 2012 SGEI Framework.

### *5.2.9. Verification of the absence of overcompensation using the NAC methodology*

- (171) As indicated above, the measure does not include a maximum compensation amount to be paid to Czech Post for the provision of the DBIS service.

Nevertheless, based on the information available, the Commission has no reason to believe that there would be a risk of overcompensation.

- (172) First, the Czech authorities have provided an estimated compensation amount that would be clearly below the estimate net avoided cost for the provision of the DBIS service. **Table 16** below shows the estimated net avoided cost of the DBIS service and compares it to the estimated amount of public service compensation that the Czech authorities expect to pay Czech Post for the period 2018-2022. Both the estimated net cost and compensation amount are based on the estimated activity volume over 2018-2022.

**Table 16: Absence of overcompensation in relation to the amount of compensation for the net costs of DBIS service based on net avoided cost methodology**

In thousand CZK	2018	2019	2020	2021	2022
<b>Estimated net avoided cost</b>	<b>971 681</b>	<b>997 768</b>	<b>1 026 668</b>	<b>1 060 375</b>	<b>1 096 628</b>
<b>Estimated compensation amount</b>	<b>467 130</b>	<b>464 564</b>	<b>453 816</b>	<b>446 545</b>	<b>441 026</b>

- (173) Second, the Commission recalls that, according to Section 6.5 of the Agreement and Section 2.1 and 2.2 of Annex 3 to the Agreement, at the end of each calendar year, a control to verify that the compensation granted for the operation of the DBIS service does not exceed the amount necessary to cover the net cost of discharging the public service obligation will be carried out.
- (174) Finally, a mechanism for recovery of any potential overcompensation is foreseen in Section 6.15 of the Agreement and Section 2.11 of Annex 3 to the Agreement.

*5.2.10. 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*

- (175) 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.*" The Commission considers that in the case at hand there are no reasons to require conditions or to request commitments from the Member State.

*5.2.11. Transparency*

- (176) 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".*

- (177) In their notification, the Czech authorities have committed to comply with the requirements of paragraph 60 for the compensation over the period 2018-2022. In particular, the Czech authorities have explained that transparency of the content, duration, beneficiary concerned, territory and amount of compensation will be ensured through the publication of the complete Agreement with Czech Post. The contract will be published at the public register within three months of its signature and will be accessible at <https://smlouvy.gov.cz/smlouva/>
- (178) Moreover, the conclusions resulting from the public consultation held by the Czech Authorities regarding the provision of the DBIS service have already been published and are accessible at <http://www.mvcr.cz/clanek/verejna-konzultace-k-informacnimu-systemu-datovych-schranek.aspx>.
- (179) On this basis, the Commission is confident that the transparency requirements deriving from paragraph 60 of the 2012 SGEI Framework will be complied with.

#### *5.2.12. Conclusion*

- (180) Based on the above, the Commission concludes that the public service compensation to be granted to Czech Post over the period 2018-2022 constitutes State aid under Article 107(1) TFEU that is compatible under Article 106(2) of the TFEU.

### **6. DECISION**

- (181) The Commission is pleased to inform the Czech Republic that, having examined the information supplied by your authorities on the measures referred to above, the State compensations to be granted to Czech Post for the delivery of the data boxes information system over the period 2018-2022 constitute State aid compatible with the internal market under the 2012 SGEI Framework, which lays down the conditions that should be met by aid to be compatible pursuant to Article 106(2) of the TFEU.
- (182) The Commission notes that, for the sake of urgency, the Czech Republic exceptionally accepts the adoption and the notification of the Decision in the English language.

(183) 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](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission