



Brussels, 28.5.2018
C(2018) 3169 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;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
---	---

Subject: State Aid SA.47707 (2018/N) – State compensations granted to PostNord for the provision of the universal postal service – Denmark

Sir,

1. PROCEDURE

- (1) On 3 November 2017, the Danish authorities pre-notified an aid measure amounting to SEK 1.533 billion (approximately DKK 1.086 billion / EUR 146 million)¹ to be provided by the Danish State to Post Danmark A/S (hereinafter "Post Danmark"). The amount will be paid to PostNord AB (hereinafter 'PostNord') and then channelled to its subsidiary Post Danmark. PostNord is co-owned by Denmark and Sweden. The pre-notified measure is part of an agreement concluded between the same two States on 20 October 2017 (hereinafter 'the Agreement') to support a transformation plan for Post Danmark.²
- (2) On 27 November 2017, the Commission received a complaint from *Brancheorganisationen for den danske vejgodstransport* (hereinafter 'ITD')³ regarding some measures allegedly granted to Post Danmark in the past or to be granted to Post Danmark in the future by Denmark and Sweden, in the framework of the Agreement. The complaint includes the measure pre-notified by Denmark on 3 November 2017.
- (3) On 30 November 2017, the complaint was forwarded to the Danish and Swedish authorities.

¹ The notified amount is fixed in SEK. Exchange rates: SEK 1 = EUR 0.09508, DKK 1 = EUR 0.13423, SEK 1 = DKK 0.70833, taken on 15 May 2018 from http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/index_en.cfm.

² Agreement between the Kingdom of Sweden and the Kingdom of Denmark regarding PostNord AB, (20 October 2017).

³ The Association for the Danish road transport of commercial goods.

Udenrigsminister Anders SAMUELSEN
Asiatisk Plads 2
DK-1448 København K

- (4) On 20 December 2017, the Danish and Swedish authorities provided a joint reply to some of the claims of ITD's complaint. On 21 December 2017, Denmark provided a reply to the remaining claims of the complaint.
- (5) On 2 February 2018, ITD provided additional clarification on the claims made in their complaint of 27 November 2018.
- (6) On 5 February 2018, the Commission requested some clarifications to the Danish authorities regarding ITD's submission of 2 February 2018.
- (7) On 8 February 2018, following pre-notification discussions with the Commission's services, Denmark notified a SEK 1.533 billion aid measure as compensation for the Universal Service Obligation (hereinafter "USO") for the delivery of the universal postal service by Post Danmark over 2017-2019.
- (8) On 13 February 2018, Denmark provided additional information regarding ITD's submission of 2 February 2018.
- (9) By letter dated 22 March 2018 the Danish authorities granted a language waiver to the Commission, agreeing to have the decision adopted and notified in English.
- (10) On 7 May 2018, Denmark amended the aid amount from a fixed amount of SEK 1.533 billion to a maximum amount of SEK 1.683 billion.

2. DESCRIPTION

2.1. The beneficiary

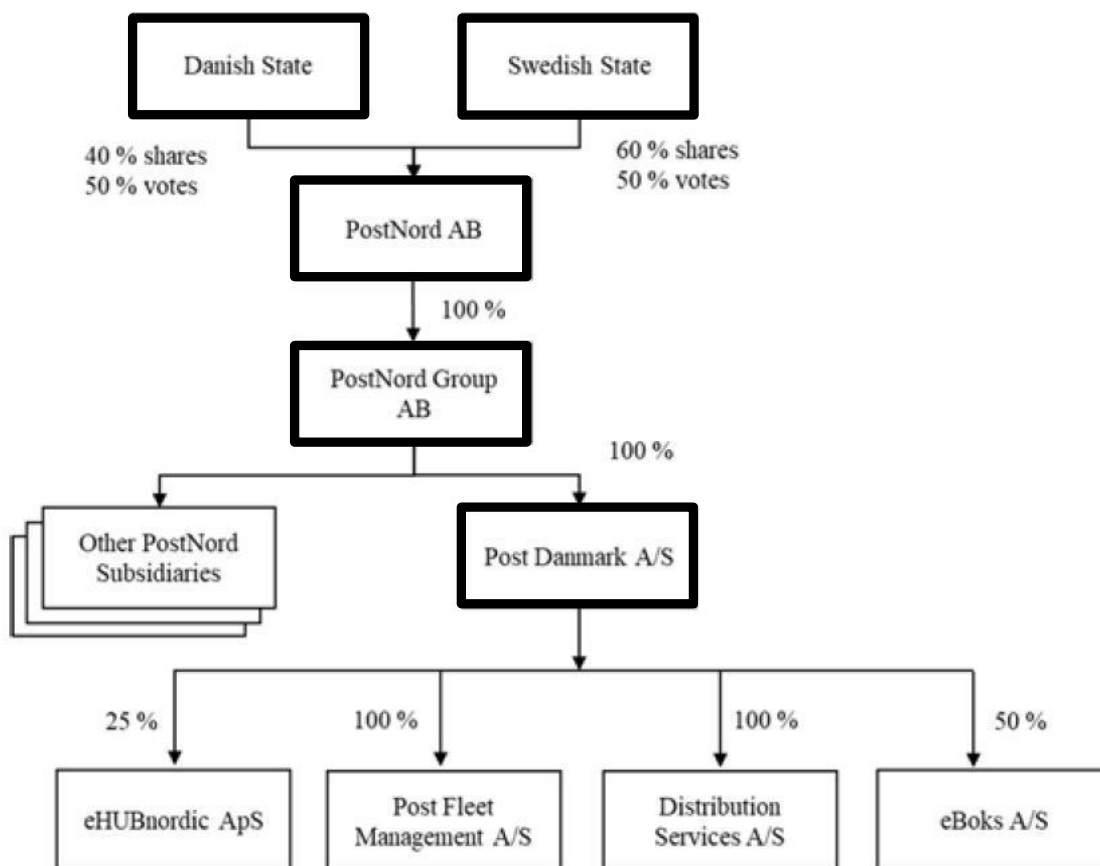
- (11) The beneficiary of the measure is Post Danmark, the subsidiary of PostNord.

2.1.1. PostNord

- (12) PostNord was created through a merger between Post Danmark and Posten AB in 2009.⁴ The intention behind the merger was to establish a more robust undertaking and to meet increasing pressure on the companies' core product, i.e. the distribution of letters. In the years prior to the merger, letter volume had declined by 3-4% per year. It was expected that the merger would entail significantly reduced costs due to the sharing of IT and logistics infrastructure. The structure of PostNord is shown in **figure 1** below.

⁴ The legal basis for the merger was in Denmark provided by: Lov om ændring af lov om Post Danmark A/S, LOV nr 542 of 17 June 2008, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=120348>.

Figure 1: structure of PostNord



- (13) PostNord is active on the Danish, Swedish, Norwegian and Finnish markets of postal services. PostNord also provides courier, cargo and logistics solutions in the Nordic region and in Europe.

2.1.2. Post Danmark

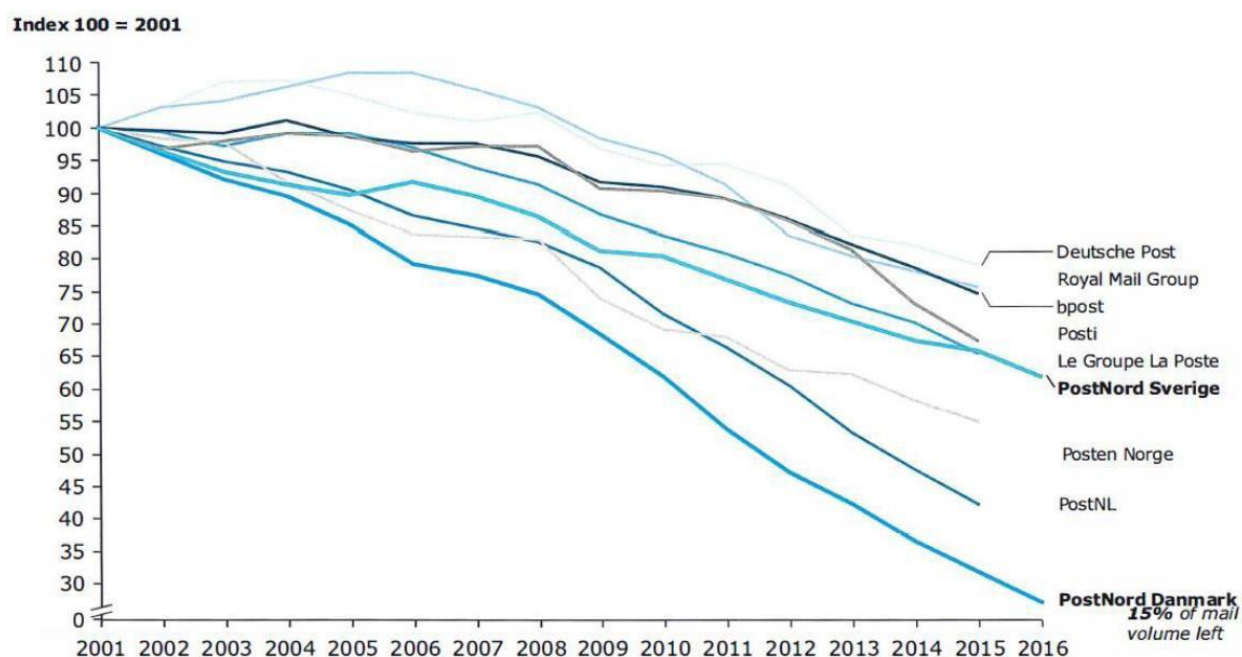
- (14) Since 2011, the Danish postal service market has been liberalised in accordance with the Postal Directive,⁵ and while Post Danmark emanates from the public administration, it now operates in full competition with other relevant postal service providers, especially with regard to the parcel market and the market for the distribution of newspapers and magazine mail.
- (15) Post Danmark is entrusted with the USO (the delivery of the universal postal service) on the territory of Denmark, as provided in the *Postloven* (hereinafter "Postal Act") of 2010.⁶ The general ambition of the Danish State has been and remains that the USO should be provided as much as possible without operational aid from the Danish State. This aim has been pursued through successive attempts at normalising the operational costs of the USO provider (Post Danmark), reducing service levels, increasing prices and establishing an alternative market-based compensation mechanism.

⁵ 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 52/3, ELI: <http://data.europa.eu/eli/dir/2008/6/oj>.

⁶ Postloven, LOV nr 1536 of 21 December 2010, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=135208> The law has been amended several times.

- (16) General digitisation trends and specific circumstances in Denmark⁷ have led to a rapid decline in the number of letters handled by Post Danmark: letter volume has declined drastically since the early 2000s, at a higher rate than that of other comparable countries – a development which continued after the merger. During 2016, the decline in letter volume handled by Post Danmark accelerated even further. The year as a whole saw a decline in volume of 19%, which means that – compared to the years 2000-2001 – annual letter volume has decreased by 73%. The development in letter volumes handled by Post Danmark compared to other European postal service operators is illustrated in **figure 2** below.

Figure 2: Development in mail volumes in European postal service operators



Notes: Royal Mail Group includes international and downstream access volumes. Le Groupe La Poste includes limited competitor volumes

Source: Annual reports, IPC, UPU, ARCEP, PostNord analysis

- (17) The consequence of that accelerated digitisation has been a fall in revenues. In the 2009-2016 period, Post Danmark's revenue decreased by 38%, in large part due to lower revenues from the letter market, and from 2012 onwards the company generated annual deficits. As a consequence, there was a decrease in Post Danmark's equity, which by the end of 2016 amounted to DKK 108 million. Until the end of 2016, the company had not received any additional equity funding from PostNord. To prevent equity in Post Danmark from turning negative, the company received a capital injection of DKK 1 billion from its parent company PostNord on 23 February 2017, following a decision from the Board of Directors of PostNord.

⁷ For example, in 2013-2014 public authorities in Denmark were obliged to use electronic communication in exchanges with citizens and undertakings, according to Lov om Offentlig Digital Post, LOV nr 528 of 11 June 2012, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=142234>.

- (18) Post Danmark has taken action to address the impact of e-substitution. Between the merger in 2009 and the end of 2016, approximately 8,000 full-time equivalent employees (FTEs) left Post Danmark through various extraordinary measures. The Danish and Swedish authorities agree that the new production model developed by the Board of Directors of PostNord (see section 2.2) is necessary for the Danish business in Post Danmark to be economically viable.
- (19) Transforming Post Danmark's business model is however made particularly difficult by the high costs associated with dismissing former civil servants benefiting from “special terms”. These terms were imposed by law and entail, inter alia, that the employee is entitled to three years of salary payments (“redundancy payments”) if the company is re-organised and the employee is thereby made redundant. At the end of 2016 Post Danmark employed approximately 3,200 former civil servants on “special terms”. Addressing these legacy costs is essential in the implementation of the new production model in order to allow the undertaking to function on market terms.

2.2. The new production model of Post Danmark and its financing

- (20) In light of the current challenges facing Post Danmark, the new production model reduces costs and increases efficiency in mainly three ways: (i) the delivery of quick letters and other day-to-day mail items is to be based on the logistics delivery network (i.e. delivered together with parcels) to save costs by avoiding parallel distribution networks; (ii) postal items are to be distributed directly from a hub or postal service outlet without the need for separate facilities except letter sorting centres; and (iii) ordinary letters and magazine mail are to be delivered in a so-called flower model, replacing the current distribution method and entailing a significant reduction in the number of daily routes. The new production model will lead to lower personnel costs (reduction of approximately [...] * FTEs during the 2017-2019 period) and reduce the need for mail depots.
- (21) The total transformation costs, including a deficit run by Post Danmark during the transformation period, have been estimated at approximately SEK 5 billion. The transformation will be financed by the following three measures which will benefit Post Danmark and/or PostNord:
- (i) a compensation of maximum SEK 1.683 billion to Post Danmark, through PostNord, for the delivery of the universal postal service over 2017-2019 (the notified measure);
 - (ii) a capital injection of SEK 667 million on market terms to PostNord from the two shareholder states in proportion to their ownership of shares (SEK 400 million from Sweden and SEK 267 million from Denmark); and
 - (iii) an internal contribution of PostNord to Post Danmark of approximately DKK 2.3 billion.
- (22) According to the Swedish and Danish authorities, capital injections from the owners and the own-contribution by PostNord (measures (ii) and (iii)) are to be made on market terms provided that the Danish aid (measure (i)) is approved by the Commission.
- (23) The measures also have different aims. The capital injections by the owners

* Confidential information

(measure (ii)) and the own-contribution of PostNord (measure (iii)) will be made with the aim of facilitating implementation of the new production model, in order to increase shareholder value while at the same time maintaining an investment grade rating for PostNord. The amount of maximum SEK 1.683 billion (measure (i)) is compensation for carrying out the universal postal service. It will be used to finance a share of the extra costs concerning employees on "special terms".

2.3. Universal service compensations to be granted to Post Danmark

2.3.1. Universal postal service entrusted to Post Danmark

- (24) Post Danmark has performed the Danish USO as provided in the Danish postal legislation - currently the Postal Act, previously the Act on Postal Carriage (*lov om postbefordring*⁸) and the Act on Postal Services (*lov om postvirksomhed*⁹) - since its establishment as an independent public enterprise (*selvstændig offentlig virksomhed – "SOV"*) in 1995.
- (25) Post Danmark is the designated USO provider for the period 1 July 2016 - 31 December 2019 and was appointed in accordance with Article 4(2) of the Postal Directive. The terms of the USO are fixed in the company's individual license of 30 May 2016.¹⁰
- (26) The individual license includes provisions for service level, quality and prices and specifies e.g. that Post Danmark shall distribute products covered by the delivery obligation for at least 5 working days a week.
- (27) Products covered by the distribution obligation are addressed letters; addressed periodicals (daily, weekly and monthly) and other addressed items with standardised printed content (e.g. catalogues) weighing up to 2 kilos; addressed parcels weighing up to 20 kilos (with the exception of B2B parcels governed by contractual terms); and items for the blind weighing up to 7 kilos (delivered free of postage charges). Furthermore, Denmark has opted to impose uniform tariffs on single-piece items in accordance with Article 12 of the Postal Directive.
- (28) The provision of services under the USO is subject to quality standards laid down in Post Danmark's individual license in accordance with Article 17 of the Postal Directive. Those quality standards require that 93% of all ordinary intra-national letters and parcels must be distributed within respectively five and one working days. The quality standard for intra-Community cross-border express mail is that 85% of such postal items must be delivered within three working days of submission and 97% must be delivered within five working days from submission. The quality standard for addressed shipments of periodicals, magazines, journals, catalogues etc. is fixed by Post Danmark itself.
- (29) Prices for services provided under the delivery obligation must be cost-based, transparent and non-discriminatory. Only single-piece items are required to be offered at uniform prices throughout the country. Single-piece items include

⁸ Lov om postbefordring, LOV nr 472 of 9 June 2004, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=22298>.

⁹ Lov om postvirksomhed, Lov nr 89 of 8 February 1995, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=51242>.

¹⁰ Danish Transport and Construction Agency, *Ny individuel tilladelse til Post Danmark A/S*, 2 June 2016, available at: <https://www.trafikstyrelsen.dk/DA/Presse/Nyhedsarkiv/Erhvervstransport/2016/06/Ny-individuel-tilladelse-til-Post-Danmark-AS.aspx>

stamped letters and parcels not covered by a contract with Post Danmark. The Danish Transport, Construction and Housing Agency approves the price for domestic ordinary letters weighing up to 50 grams sent as single-piece items. Post Danmark sets the price of other mail items.

- (30) Post Danmark shall maintain a nationwide service network of postal service points able to perform all services covered by the delivery obligation.

2.3.2. Financing of the universal postal service

- (31) The position of the Danish authorities has in general been that Post Danmark should finance the USO by itself. However, in 2010 the postal legislation was changed to facilitate full liberalisation of the Danish postal market, and a legal basis¹¹ was provided for the Minister for Transport to adopt a statutory order establishing a compensation fund for the sharing of the net cost of the USO between providers of postal services in accordance with Article 7(3)(b) of the Postal Directive. Post Danmark applied for compensation through this fund for the years 2014-2016 and was awarded an estimated amount of DKK 4.3 million for 2014, later adjusted to DKK 2.55 million and paid out in June 2017. Post Danmark's application for 2015 is still being processed, but the compensation has previously been estimated to amount to DKK 12.4 million. However, this estimate was based on competing postal operators' mail volumes in 2015, which have decreased since then. The amount that Post Danmark will eventually receive is therefore expected to be lower. The compensation for 2016 has been estimated to amount to DKK 8.1 million. By amendment of the Postal Act in 2016, this compensation fund was discontinued.¹²
- (32) The current notification of State compensation for the delivery of the universal postal service over 2017-2019 does not constitute a reversal of the general approach to the USO of the Danish authorities. The Danish government still pursues the objective of delivering the USO on market terms in the medium term. The USO compensation for 2017-2019 will support the transformation process of Post Danmark and the corresponding amounts are specifically earmarked for the financing of redundancies related to the dismissal of former "special term" employees (see recital (19)) by Post Danmark, which is an essential element of the transformation plan.

2.3.3. 2017-2019 USO compensation

Amount and period of compensation

- (33) The current notification relates to a subsidy of a maximum of SEK 1.683 billion to be granted by the Danish State to PostNord and then channelled to its subsidiary Post Danmark as compensation for the USO over the years 2017-2019.
- (34) The subsidy will be granted upfront for the three years (2017-2019) and no additional payment will be made for the delivery of the universal postal service in this period to Post Danmark.

Ex post verification

¹¹ Postlov, LOV nr 1536 of 21 December 2010, § 18, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=135208#Not1>.

¹² Lov om ændring af postloven, LOV nr 1560 of 13 December 2016, § 3, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=185634>.

- (35) As soon as all the necessary financial information is available, the audit and consultancy firm Deloitte will monitor on behalf of the Danish State yearly as well as verify at the end of the entrustment period in 2020 that no overcompensation has occurred for the period 2017-2019.
- (36) Should there have been overcompensation for the USO according to EU State aid rules, the amount of the overcompensation will be refunded immediately by Post Danmark.

3. THE COMPLAINT OF ITD

- (37) On 27 November 2017 the Commission received a complaint from ITD concerning the alleged granting of unlawful aid by Denmark and Sweden to Post Danmark. ITD is an association with over 810 members active in the road transport and logistics sector. ITD's headquarter is based in Padborg (Denmark), but it also operates offices in Copenhagen and Brussels.
- (38) In addition to the measure notified by the Danish authorities, ITD brings forth a number of measures that have been implemented by Denmark and/or Sweden in favour of Post Danmark in the past, or are to be implemented in the future. ITD alleges that both the past and the future measures constitute illegal State aid.
- (39) For all the measures raised in the complaint, ITD considers that they constitute State aid under Article 107(1) TFEU. ITD puts forward that the measures are selective, since they only benefit Post Danmark, and that they distort competition and affect trade between Member States, because Post Danmark competes with companies established in other Member States active in the Danish postal market (the Danish postal market has been fully liberalised since 2011, see recital (14)).
- (40) The other State aid criteria (advantage, state resources and imputability) are discussed for each of the measures separately.

3.1. Measures already granted

3.1.1. State guarantees

- (41) ITD explains that Section 9(5) of the Post Danmark Act¹³ provides that if Post Danmark is declared bankrupt, the State guarantees that it would pay the costs of redundancy payments for former civil servants. The guarantees were offered to Post Danmark through the Post Danmark Act and, according to ITD, without any payment or other consideration in return. The guarantees are of an unlimited duration and are still in place.
- (42) According to ITD, the guarantees involve State resources because by not asking Post Danmark to pay a premium for them, Denmark foregoes revenues.
- (43) ITD alleges further that creditors may take into account Post Danmark's increased creditworthiness resulting from the guarantees and offer it better financing terms. According to ITD, because labour costs are costs that an undertaking normally would have to bear itself, the payment by the State of such costs relieves Post Danmark of its financial obligations related to labour costs and therefore confers an economic advantage on Post Danmark.

¹³ <https://www.retsinformation.dk/Forms/R0710.aspx?id=22132>.

- (44) According to ITD, as the other State aid criteria are fulfilled, the measure therefore constitutes State aid.¹⁴

3.1.2. VAT Exemption

- (45) ITD alleges that by way of a Decision and an Administrative Regulation,¹⁵ the Danish tax authorities have clarified that the *momsloven* (hereinafter "VAT Act") permits mail order companies to exempt their customers from paying VAT on transport services purchased from Post Danmark.¹⁶
- (46) Post Danmark does not impose VAT when mail order companies purchase a transport service falling within the USO area, while other transport providers would have to impose VAT for the provision of a similar service. ITD understands this as normal practice and emphasised in their submission of 2 February 2018 that this is not the subject-matter of the complaint.
- (47) According to ITD, however, the practice described in the VAT Act made it possible for mail order companies to pass on the VAT exemption, which they received when buying transport services from Post Danmark, to their own customers. If the transport service would have been purchased from any provider other than Post Danmark, the mail order companies would have had to calculate VAT on the transport service when billing this transport service to their customers.
- (48) ITD considers that the practice of passing on the VAT exemption by mail order companies to their customers is based upon a misinterpretation of Section 27(3) of the VAT Act, which states that no VAT should be calculated on a payment that has been made on behalf of a customer. The misinterpretation, according to ITD, is based on the false assumption that a mail order company purchases the transport service from Post Danmark on behalf of its customer. ITD considers that there is no contract and therefore no legal relationship between the customer of the mail order company and Post Danmark. Consequently, ITD considers that the VAT Act wrongly implements the EU VAT Directive.¹⁷
- (49) The VAT exemption mechanism was in place from 1990 until 1 January 2017, when the exemption was abolished.¹⁸
- (50) ITD considers that the VAT exemption has been introduced by the State and resulted in a decrease in the State's revenue. Consequently, the measure is imputable to the State and involves State resources.
- (51) ITD alleges further that Post Danmark was in a more favourable position than its competitors as a result of this practice, since the passing on of Post

¹⁴ See recital (39).

¹⁵ Decision No. 1306/90 and Administrative Regulation TfS2000 F 6742/90.

¹⁶ Bekendtgørelse af lov om merværdiafgift (momsloven), LBK nr 760 of 21 June 2016, § 27(3)(3), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=180133>.

¹⁷ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L347/1 of 11 December 2006, ELI: <http://data.europa.eu/eli/dir/2006/112/oj>.

¹⁸ Pursuant to Moms - Ophævelse af de særlige retningslinjer for e-handelsvirksomheders (postordrevirksomheders) anvendelse af udlægsreglerne – styresignal, SKM2016.306.SKAT of 30 June 2016, available at: <http://skat.dk/skat.aspx?oid=2232366>.

Danmark's VAT exemption allowed mail order companies not to charge VAT to their customers. In order to benefit from this VAT exemption, mail order companies had to purchase their transport services from Post Danmark. According to ITD, the VAT exemption therefore confers an economic advantage on Post Danmark.

- (52) According to ITD, as the other State aid criteria are fulfilled, the measure therefore constitutes State aid.¹⁹

3.1.3. Alleged misallocation of costs and cross-subsidisation

- (53) ITD argues that the accounting system applicable to Post Danmark for the 2006-2013 period (laid down in the 2006 and 2011 Accounting regulations²⁰) did not properly allocate common costs between USO and non-USO services. Under the 2006 Regulation, there allegedly weren't any provisions regulating how common costs should be allocated. In the 2011 Accounting Regulation, according to ITD, Article 4(3)(c) stipulates that the "*costs necessary to provide the USO must be allocated to each of the services covered by the USO or to a group of the services covered by the USO*", thereby allegedly infringing Article 14(3)(b)(iv) of the Postal Directive, which requires that costs which are necessary for both USO and non-USO services shall be allocated appropriately, using the same cost drivers for USO and non-USO services.
- (54) According to ITD, section 4(3)(f) of the 2011 Accounting Regulation provided that "*the common costs which are necessary in order to provide both the services which are covered by the universal service obligation and services which are not covered by the universal service obligation (referred to as non-attributable costs), must be distributed between the two in an appropriate manner. The same cost drivers must be applied to both universal services and non-universal services*". ITD considers that section 4(3)(f) has been limited to concern only non-attributable costs, while Article 14(3)(b)(iv) of the Postal Directive concerns all common costs.
- (55) As a result, according to ITD, Post Danmark allocated all common costs to the USO in the 2006-2013 period, thereby artificially inflating the costs of the USO and artificially reducing the costs of non-universal services. This wrongful allocation of costs allegedly led to the cross-subsidisation of commercial services by the USO.
- (56) According to ITD, the cross-subsidisation involves State resources because Denmark is capable of instructing on and directing the use of the resources available to Post Danmark.²¹ ITD considers that the measure is imputable to the State because of the ownership structure of Post Danmark and the degree of supervision that Denmark and Sweden exercise over its management,²² and

¹⁹ See recital (39).

²⁰ Regnskabreglement for Post Danmark A/S ("the 2006 Accounting Regulation"); Regnskabsreglement for Post Danmark A/S (29. August 2011) ("the 2011 Accounting Regulation").

²¹ ITD refers to the following judgments in support of this argument: Case C-482/99, *France v Commission (Stardust)*, EU:C:2002:294, paragraph 38; Case C-278/00, *Greece v Commission*, EU:C:2004:239, paragraphs 53-54; and joined cases C-328/99 and C-399/00, *Italy and SIM 2 Multimedia SpA v Commission*, EU:C:2003:252, paragraphs 33-34.

²² In support of this argument, ITD refers to Case C-482/99, *France v Commission (Stardust)*, EU:C:2002:294, paragraphs 55-56.

because the Swedish and Danish authorities "specifically incited and endorsed" Post Danmark's cost allocation between USO and non-USO activities through the 2006 and 2011 Accounting regulations.

- (57) ITD alleges further that Post Danmark's allocation of all common costs to the universal service account is not in line with the behaviour of a market investor. ITD considers that no private investor would accept reducing the costs (and thus prices) of its commercial services on a permanent basis in this way as this would destroy any chances for obtaining an appropriate level of revenue and thus a sufficient rate of return on investment. ITD considers that Post Danmark benefits from selling its commercial services at prices below cost level, and thereby receives an economic advantage.
- (58) According to ITD, as the other State aid criteria are fulfilled, the measure therefore constitutes State aid.²³

3.1.4. Capital injection of 23 February 2017

- (59) ITD explains that on 23 February 2017 PostNord injected DKK 1 billion into Post Danmark in order to provide the company with sufficient liquidity to implement business adjustments and ensure profitable operations.
- (60) ITD further states in its complaint that the capital injection of 23 February 2017 preceded the current measure as well as future capital injections (see sections 3.2-3.3) and forms an integral part of the measures foreseen in the Agreement. For that reason, according to ITD, the capital injection of 23 February 2017 is ultimately financed by the national budgets of Denmark and Sweden and therefore involves State resources. Moreover, because PostNord is wholly owned by the Swedish and Danish States and governed by a Board of Directors whose members are jointly nominated by its owners, ITD considers the measure to be imputable to the Danish and Swedish State.
- (61) ITD considers that no private market investor would have invested in Post Danmark, whose equity was allegedly close to zero, and that the measure was therefore not enacted in line with the market economy operator principle. The measure therefore allegedly confers an advantage on Post Danmark.
- (62) According to ITD, as the other State aid criteria are fulfilled, the measure therefore constitutes State aid.²⁴

3.2. The notified measure

- (63) According to ITD, Denmark agreed to inject capital into PostNord amounting to approximately SEK 1.533 billion in order to cover the costs of redundancy payments to be made to around 1500 "special term" employees of Post Danmark.
- (64) Since the capital injection is made by Denmark, ITD considers that it involves State resources and is imputable to the Danish State. Since the payment relieves Post Danmark of its financial obligations related to its labour costs which are costs that the undertaking would normally have to bear itself, ITD considers that the capital injection confers an advantage on Post Danmark.

²³ See recital (39).

²⁴ Ibid.

- (65) According to ITD, as the other State aid criteria are fulfilled, the measure therefore constitutes State aid.²⁵

3.3. Measures to be granted in the future: capital injections by the Danish State, the Swedish State and PostNord

- (66) According to ITD, Post Danmark will be provided with capital amounting to SEK 3 billion, SEK 400 million of which will be granted by Sweden, SEK 267 million by Denmark, and the rest by PostNord. ITD considers these capital injections to already be granted since they are part of the Agreement, which it considers to be a legally binding act by which the authorities undertake to grant the aid.²⁶ According to ITD, the capital injections are earmarked for ex-post USO compensations and to cover the current deficit of Post Danmark which has arisen as a result of its provision of universal postal services.
- (67) As regards the capital injections to be made by PostNord, for the reasons set out in recital (60) and because the Agreement explicitly endorses the PostNord capital injection, ITD alleges that the measure involves State resources and is imputable to the States of Denmark and Sweden. Since the other capital injections are to be made by Denmark and Sweden, ITD considers that they involve State resources and are imputable to those States.
- (68) In line with the reasoning described in recital (61), ITD also considers the capital injection to confer an advantage on Post Danmark.
- (69) ITD argues further that these capital injections cannot be justified on the basis of the approval of other aid measures by the Commission. According to ITD, these other aid measures and the capital injections would be so closely linked to each other, especially having regard to their chronology, their purpose and the circumstances of the undertaking at the time of those interventions that they would be inseparable and should therefore, for the purposes of Article 107(1) TFEU, be regarded as a single intervention.²⁷
- (70) According to ITD, as the other State aid criteria are fulfilled, the measure therefore constitutes State aid.²⁸

3.4. Compatibility

- (71) ITD considers that there are no compatibility grounds for the measures described above.

4. SCOPE OF THE PRESENT DECISION

- (72) The current decision deals with the notified USO compensation and the following grounds of the complaint: (i) State guarantees; (ii) VAT exemption;

²⁵ Ibid.

²⁶ ITD refers in this context to: Case T-109/01, *Fleuren Compost v Commission*, EU:T:2004:4, paragraph 74; Case T-362/05 and T-363/05, *Nuova Agricast v Commission*, EU:T:2008:541, paragraph 80; and Case T-427/04 and T-17/05, *France and France Télécom v Commission*, EU:T:2009:474, paragraph 321.

²⁷ In support of its argument, ITD refers to joined cases C-399/10 P and C-401/10 P, *Bouygues and Bouygues Télécom v Commission and Others*, EU:C:2013:175, paragraph 104; joined Cases T-415/05, T-416/05 and T-423/05, *Greece and Others v Commission*, EU:T:2010:386, paragraph 177; Case T-11/95, *BP Chemicals v Commission*, EU:T:1998:199, paragraphs 170-171.

²⁸ See recital (39).

(iii) alleged cross-subsidisation; and (iv) the capital injection of 23 February 2017 (see sections 3.1.1 - 3.1.4).

- (73) The Decision does not address the claims of the complaint regarding the capital injections that form part of the Agreement (see section 3.3). These capital injections will be assessed in a separate decision.
- (74) Assessing the capital injections that form part of the Agreement in a separate decision allows the Commission not to delay the adoption of the USO compensation. The Commission considers that this approach is justified under the current circumstances for several reasons, described below.
- (75) First, contrary to ITD's assertions (see recital (66)), the Commission does not consider that the future capital injections mentioned in the Agreement are legally granted at this stage.²⁹ Indeed, the Agreement only stipulates that "it is hereby in principle agreed" (emphasis added) between Denmark and Sweden to make these capital injections. The Agreement does not give any rights to PostNord and it explicitly makes the future capital injections contingent upon the approval of the notified measure (see Section 7), which is itself not a granted measure. It can be noted that besides the approval of the notified measure, further additional legal steps are necessary before any amounts can be granted. In particular, the future State capital injections require the consent of the government and parliament of both the Danish and Swedish States.
- (76) Further, the Commission does not consider, contrary to ITD's assertions (see recital (69)) that the future capital injections and the notified measure constitute a single intervention. The notified measure compensates Post Danmark for the delivery of the universal postal service, while the capital injections by the owners and the own contribution from Post Nord will be made with the more general aim of facilitating implementation of the new production model (see recital (23)).
- (77) As explained further in section 7.2.2.7, the Commission also considers that a robust assessment of the compatibility of the USO compensations is possible without having to decide on the compatibility of the future capital injections.

5. DENMARK'S AND SWEDEN'S JOINT REPLY TO ITD'S COMPLAINT

- (78) Denmark and Sweden's joint reply addresses the capital injection of 23 February 2017 (see section 3.1.4), the notified measure (see section 3.2), and the capital injections to be made by the Danish State, the Swedish State and PostNord (see section 3.3).

5.1. Measures already granted: capital injection of 23 February 2017

- (79) The internal transfer of DKK 1 billion from PostNord to Post Danmark is not considered to be State aid by the Danish and Swedish authorities. They consider it to be imputable to neither the Danish nor the Swedish State, since

²⁹ In this respect, it can be noted that according to the jurisprudence, an aid measure qualifies as illegal aid if it has not been notified before the legally binding act by which the competent [national] authorities undertake to grant aid is adopted (Case T-109/01, *Fleuren Compost v Commission*, EU:T:2004:4, paragraph 74 and joined cases T-362/05 and T-363/05, *Nuova Agricast v Commission*, EU:T:2008:541, paragraph 80, and joined cases T-427/04 and T-17/05, *France and France Télécom v Commission*, EU:T:2009:474, paragraph 321). The aid/non-aid character of the capital injections still has to be established but it remains that no legally binding act vis-à-vis PostNord has been adopted at this stage.

neither was involved in the transfer and since they were only informed by PostNord afterwards, in their capacity as owners.

- (80) In any event Sweden and Denmark consider the internal transfer to be the result of normal market behaviour. According to a board memo from PostNord cited in the joint reply, the alternative to making this internal transfer of DKK 1 billion would have been to let Post Danmark enter into bankruptcy, with a number of adverse effects:
- The credit and capitals markets', customers', suppliers', property owners', employees' and other stakeholders' trust in the whole PostNord group would be seriously damaged.
 - A bankruptcy of Post Danmark would constitute grounds for termination of existing financing agreements for the group and would make it difficult for the group to refinance overdue financing and to raise capital.
 - The terms and conditions under which PostNord can rent property and suppliers are willing to supply would worsen; so would the requirements for various forms of parent company guarantees.
 - There would be serious consequences from a market perspective, since the vast majority of PostNord's customers are Nordic with operations in several countries. A bankruptcy would result in losing assignments in Denmark and outside of Denmark for the remaining Danish part of the group. Losing these assignments would have major economic consequences, jeopardising PostNord's position in the Nordic logistic markets and affecting the name the company has in a negative way.
 - Adverse financial affects for the PostNord group would consist of a write down in book value of DKK [...], non-repayment and write down of DKK [...] in loans to the internal bank, repayment of property credits of DKK [...] in order not to trigger cross-default for the group's other loans, a possible discharge of parent company guarantees of DKK [...] for properties and completion of duties and tax of DKK [...], as well as a risk of recovery of dividends from July 2015 worth DKK [...] to the bankruptcy estate. In total, this would mean a negative cash flow effect of DKK [...] and a book loss of DKK [...].
- (81) The Swedish and Danish States consider therefore that it is reasonable to assume that a purely private group, in the same situation as PostNord, would also have supported its subsidiary. The Danish and Swedish States consider that the capital injection has been made on market terms, and therefore does not entail any advantage for Post Danmark.
- (82) Since not all State aid criteria are fulfilled, the Danish and Swedish State considers that the measure does not constitute State aid.

5.2. The notified measure

- (83) The capital injection of a maximum of SEK 1.683 billion is notified by the Danish authorities as USO compensation under the SGEI Framework.³⁰ This measure is assessed in section 7.

5.3. Measures to be granted in the future: capital injections by the Danish State, the Swedish State and PostNord

- (84) As explained in Section 4, this decision does not assess the capital injections by the Danish State, the Swedish State and PostNord.
- (85) The positions of the Swedish and Danish authorities regarding these measures and the complaint will be discussed in a separate decision.

6. DENMARK'S REPLY TO ITD'S COMPLAINT

- (86) Denmark's reply concerns the measures not addressed in the joint reply with Sweden (the State guarantees, VAT exemption, and alleged cross-subsidisation – see sections 3.1.1-3.1.3).

6.1. State guarantees

- (87) According to the Danish authorities, the allegation from ITD that the State guarantees constitute State aid is based on factual misunderstandings. According to the Danish authorities, the guarantees in question were granted by the Danish State to now former civil servants of Post Danmark as part of the process whereby it was transformed from an Independent Public Enterprise (SOV) to a limited liability company. The process involved negotiations between the Danish State, Post Danmark and the relevant labour unions. Throughout this process, the now former civil servants largely retained their special employment terms, including in particular their right to three years' redundancy pay (see recital (19))³¹. As part of the incentive for former civil servants to agree to the change in employment terms, the State decided to guarantee their entitlement to redundancy payments.
- (88) According to the Danish authorities, in the event of Post Danmark's bankruptcy the State would make a claim to the bankruptcy estate of Post Danmark before paying out the guarantees, in line with section 9(5) of the Post Danmark act of 2002.³² The Danish authorities consider that the guarantees therefore do not benefit either Post Danmark or its creditors, and that they rather entailed a disadvantage for Post Danmark since they were offered in return for the obligation of Post Danmark to employ civil servants and thereby endure labour costs, pension costs and redundancy costs (in case of dismissal unrelated to a possible bankruptcy of Post Danmark) which exceeded market standards.
- (89) Assuming the guarantees would constitute aid, Denmark in any event considers the measure to be existing aid pursuant to Article 1(b)(iv) and Article 17 of the

³⁰ 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.

³¹ The only change to the terms of civil servants renouncing their status was in the way the obligation to reassign position associated with the redundancy payments was administered: in case of dismissal, former civil servants are now obligated to accept any position to which they are qualified, as opposed to any position that corresponded to their previous position.

³² See Forslag til Lov om Post Danmark A/S, 2001/2 LSF 185 of 4 April 2002, Til § 9 last paragraph, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=90616>.

Procedural Regulation³³ and the judgment in *France Télécom*.³⁴ The guarantees were granted in 2002 and thus more than 10 years ago. According to the Danish authorities, the guarantees only concern those civil servants employed at the time when they were granted and which agreed to transfer to employment on collective agreement terms. Since the guarantees do not cover any measures adopted by Post Danmark after that date, including new employees hired after 2002, all the measures covered by the guarantees would now be existing aid.

6.2. VAT exemption

- (90) According to the Danish authorities, pursuant to section 27(3)(3) of the Danish VAT act,³⁵ mail order companies were allowed to sell postal services without VAT to their customers, because these expenses were considered to be incurred by consumers directly. This administrative practice was made available to all mail order companies.
- (91) By allowing mail order companies to sell postal services without VAT to their customers, the cost of sending parcels was reduced for mail order companies. The Danish authorities consider that the main effect of the measure was to favour consumers, and that it may have indirectly benefitted all mail order companies in a non-selective way.
- (92) According to the Danish authorities, any effects on Post Danmark resulting from the administrative practice would have been purely incidental and too indirect to constitute State aid.

6.3. Alleged misallocation of costs and cross-subsidisation

- (93) The Danish authorities consider that even if there had been a misallocation of costs, it is questionable whether a public undertaking's separation of accounts can entail State aid to itself. Post Danmark is one legal entity and therefore the only potential recipient of State aid could be the customers of the services that allegedly were cross-subsidised.
- (94) The Danish authorities argue further that Post Danmark's separation of accounts and pricing decisions towards its customers are not imputable to the Danish State. According to the Danish authorities, even though the Danish authorities have adopted Accountancy Regulations applicable to Post Danmark, the setting of prices for non-USO services has been decided solely by Post Danmark.
- (95) In any event, in the Danish authorities' view the accounting systems applicable to Post Danmark A/S for the period 2006-2013 are fully in line with the cost allocation required by Article 14(3) of the Postal Directive. In Denmark's view, the complainant has misunderstood some elements. In particular, section 4(3)(c) of the 2011 Accounting Regulation did not lead Post Danmark to generally allocate "all common costs as universal service costs, irrespective of

³³ 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 (codification)

³⁴ Case C-81/10 P, *France Télécom v Commission*, C-81/10 P, EU:C:2011:811, par. 80.

³⁵ Bekendtgørelse af lov om merværdiafgift (momsloven), LBK nr 106 of 23 January 2013, §27(3)(3), available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=145054>.

the share which would have been attributable to non-universal services". According to the Danish authorities, section 4(3)(c) of the 2011 Accounting Regulation merely explains that common costs which are necessary because of the USO, are attributed to the relevant USO service or group of services, in line with Article 14(3)(b)(i) of the Postal Directive. In addition, contrary to ITD's assertions, the Danish authorities consider that section 4(3)(f) of the 2011 Accounting Regulation implemented Article 14(3)(b)(iv) of the Postal Directive, and that Post Danmark allocated a proportionate part of non-attributable costs to non-USO services.

- (96) The Danish authorities explain that to ensure adherence to the Accountancy Regulations, a State-authorised public accountant has to declare each year whether Post Danmark has complied with the cost allocation principles and methods in the Accounting Regulation and whether the regulatory accounts are correctly calculated.
- (97) According to the Danish authorities, Post Danmark, in turn, is required to send the statements from the State-authorised public accountant(s), together with the regulatory accounts, to the Danish Transport, Construction and Housing Agency (hereinafter, in the context of the Accounting Regulations, referred to as "the Regulator") for monitoring compliance with the Accounting Regulations.
- (98) In 2014, at the request of the Regulator, the audit and consultancy firm PwC conducted an independent, thorough review of Post Danmark's accounting and cost-allocation practices and confirmed that they were reasonable and sensible and in accordance with the rules governing Post Danmark's regulatory accounts. PwC concluded that "*there is well-founded reasoning for [...] the basis for the choice of allocation keys.*"³⁶

7. ASSESSMENT OF THE COMPENSATIONS GRANTED TO POST DANMARK FOR THE DELIVERY OF THE UNIVERSAL POSTAL SERVICE OVER 2017-2019

7.1. Existence of aid

- (99) 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*".
- (100) A measure qualifies as State aid if the following cumulative conditions are met: (i) the measure is granted by Member States through State resources, (ii) it confers a selective economic advantage to certain undertakings or the production of certain goods, (iii) the advantage distorts or threatens to distort competition, and (iv) the measure affects intra-EU trade.

7.1.1. State resources

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

³⁶ PwC, Trafikstyrelsen – Gennemgang af produktøkonomi for tjenester, der er omfattet af befordringspligten for Post Danmark A/S, 4. december 2014.

- (102) The compensations for the delivery of the USO are paid by the State from its own budget and are granted on the basis of State legislation (see section 7.2.2.2).
- (103) Therefore, the compensations granted to Post Danmark for discharging its universal postal service obligations are imputable to the State and are given through State resources.

7.1.2. Economic advantage to undertakings

- (104) 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.³⁷ Only the effect of the measure on the undertaking is relevant, neither the cause nor the objective of the State intervention.³⁸ Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present.
- (105) However, SGEI 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.³⁹ Those four cumulative criteria are the following:
- (i) *First, the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined [...].*
 - (ii) *Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner [...].*
 - (iii) *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 [...].*
 - (iv) *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 [...] would have incurred in discharging those obligations, taking into account the receipts and a reasonable profit from discharging the obligations.*
- (106) Due to the cumulative nature of the four Altmark criteria, if any of these criteria are not fulfilled, the compensation will be deemed to constitute an advantage in the meaning of Article 107(1) of the TFEU.

³⁷ Case C-39/94 *Syndicat français de l'Express international (SFEI) and others v La Poste and others* EU:C:1996:285, paragraph 60; and Case C-342/96 *Kingdom of Spain v Commission of the European Communities* EU:C:1999:210, paragraph 41.

³⁸ Case C-173/73 *Italian Republic v Commission of the European Communities* EU:C:1974:71, paragraph 13.

³⁹ Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* EU:C:2003:415, paragraphs 89-93.

- (107) In the present case, the USO was not awarded through a public procurement procedure, and the compensation was also not determined on the basis of the analysis of the costs of a typical well-run undertaking. The Danish authorities have confirmed that the notified USO compensation to Post Danmark does not comply with the 4th Altmark criterion.
- (108) The notified measure therefore confers an advantage on Post Danmark.

7.1.3. Selectivity

- (109) Article 107(1) TFEU requires that a measure, in order to be defined as State aid, favours "certain undertakings or the production of certain goods". The Commission notes that the USO compensation will be granted to Post Danmark only. Given that the present case concerns an individual aid measure, the identification of the economic advantage (see recitals (104) to (108)) is sufficient to support the presumption that it is selective.⁴⁰ In any event, it does not appear that other undertakings in the same or other sectors in a comparable factual and legal situation benefit from the same advantage. Hence, the measure is selective within the meaning of Article 107 (1) TFEU.

7.1.4. Distortion of competition and effect on trade

- (110) In order to be qualified as State aid, a measure must distort or threaten to distort competition and affect trade between Member States.
- (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.⁴¹ 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. 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.⁴² 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.*"⁴³
- (112) Post Danmark provides postal services in the Danish territory as well as cross-border. The Danish postal services market has been liberalised as of 1 January 2011. According to the Danish authorities, in 2016 Post Danmark had a market share of approximately [...] % in the distribution of letters, [...] % in the distribution of business-to-business and business-to-consumer parcels, and [...] % in the distribution of newspapers and magazine mail.

⁴⁰ See cases C-15/14 P, *Commission v MOL*, EU:C:2015:362, paragraph 60; C-270/15 P *Belgium v Commission*, EU:C:2016:489, paragraph 49; T-314/15 *Greece v Commission*, EU:T:2017:903, paragraph 79.

⁴¹ Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* EU:C:1980:209, 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* EU:T:2000:151, paragraph 80.

⁴² Case C 518/13 *Eventech* EU:C:2015:9, paragraph 65. Cases C 197/11 and C 203/11 *Libert and others* EU:C:2013:288, paragraph 76.

⁴³ Case C 518/13 *Eventech* EU:C:2015:9, paragraph 66. Cases C 197/11 and C 203/11 *Libert and others* EU:C:2013:288, paragraph 77. Case T-288/97 *Friulia Venezia Giulia*, EU:T:2001:115, paragraph 41.

- (113) According to the Danish Transport, Construction and Housing Authority, 9 undertakings currently hold a permission to conduct professional postal services. A number of additional market actors provide parcel services. These undertakings are in direct competition with PostNord, and several, such as UPS and GLS, are active in other Member States.
- (114) The public service compensation granted to Post Danmark strengthens its position vis-à-vis other postal undertakings competing in intra-Union trade. Accordingly, the compensation for the delivery of the universal service is liable to affect trade and distort competition.

7.1.5. Conclusion

- (115) Based on the above, the Commission considers that the compensation granted to Post Danmark for the delivery of the universal postal service constitutes State aid within the meaning of Article 107(1) TFEU.
- (116) Furthermore, the Commission points out that, in their notification, the Danish authorities agreed that the USO compensation over the period 2017-2019 qualifies as State aid in the meaning of Article 107(1) TFEU.

7.2. Assessment of the compatibility of the aid

7.2.1. Legal basis

- (117) The Danish authorities claim that the aid granted to Post Danmark constitutes compensation for delivering the universal postal service, which is to be assessed for compatibility on the basis of Article 106(2) TFEU.
- (118) Article 106(2) TFEU reads: "*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.*"
- (119) In accordance with that provision, 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 the 2012 SGEI Decision⁴⁴ and the 2012 SGEI Framework.⁴⁵
- (120) Since the amount of the SGEI compensations granted to Post Danmark are above EUR 15 million per year, those compensations do not fall within the scope of the 2012 SGEI Decision, as set out in Article 2 thereof.
- (121) State aid falling outside the scope of the 2012 SGEI Decision may be declared compatible with Article 106(2) TFEU if it is necessary for 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.⁴⁶ In this regard, the 2012 SGEI

⁴⁴ 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.

⁴⁵ See footnote 30.

⁴⁶ 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., recital 11.

Framework sets out the guidelines for assessing the compatibility of SGEI compensation.

7.2.2. Compatibility assessment under the 2012 SGEI Framework

(122) The conditions to be met for the compatibility of the compensation are listed below.

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

(123) As indicated in recital 46 of the Commission's SGEI Communication, Member States have a wide margin of discretion regarding the nature of services that could be classified as being services of general economic interest.⁴⁷ The Commission's competence is limited to checking that the margin of discretion is applied without manifest error as regards the definition of service of general economic interest and to assessing any State aid involved in the compensation. Recital 56 of the 2012 SGEI Framework confirms Member States' wide margin of discretion to define services of general economic interest.

(124) Recital 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.*"

(125) The USO as defined in the Postal Directive is recognised by the European Union as a genuine SGEI.⁴⁸ The Danish authorities have confirmed that the USO entrusted to Post Danmark corresponds to the minimum requirements outlined in the Postal Services Directive, with the exception of an increase in the weight limit of universal service coverage for postal parcels to 20 kilograms, as provided for by Article 3(5) of the Postal Directive, and the imposition of uniform tariffs for single-piece items (letters and parcels) and the delivery of items to the blind for free, which are both provided for by article 12 of the Postal Directive. The Commission considers that Denmark therefore does not have to prove by way of a public consultation or other appropriate instruments that it has given consideration to public service needs.

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

(126) As indicated in recital 15 of the 2012 SGEI Framework, the concept of service of general economic interest within the meaning of Article 106 of the Treaty 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 acts.

(127) As required by recital 16 of the 2012 SGEI Framework these entrustment acts specify, in particular:

- (i) The precise nature of the public service obligation and its duration;
- (ii) The undertaking and territory concerned;

⁴⁷ 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. (2012/C 8/02), OJ C 8/4.

⁴⁸ For example, Article 3(1) of the Postal Services Directive (as amended) reads: "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." See also recitals 4 and 8.

- (iii) The nature of the exclusive rights assigned to Post Danmark;
 - (iv) The description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and
 - (v) The arrangements for avoiding and repaying any overcompensation.
- (128) In the case at hand, the entrustment of Post Danmark will be composed of three different legal acts:
- (i) The USO is imposed on Post Danmark through the individual license issued to Post Danmark in May 2016 and covers the period of 1 July 2016 – 31 December 2019 (see recital (25)). This text describes notably the content of the USO;
 - (ii) The compensation mechanism (i.e. upfront payment) will be described in a decree submitted by the Ministry of Transport, Construction and Housing to the Financial Committee of the Danish Parliament, covering the 2017-2019 period; and
 - (iii) As regards detailed principles for monitoring and reporting, including an ex post control mechanism for the purpose of verifying that Post Danmark has not been overcompensated, these will be described in an agreement between the Danish State and PostNord. This agreement will make explicit reference to the envisaged Commission decision in this case.
- (129) The Danish authorities confirm that all the legal texts of the entrustment will be adopted and in force before the notified compensation is paid to Post Danmark.
- (130) Considering the above, the Commission considers that the entrustment of Post Danmark for the period 2017-2019 is in line with the relevant requirements of the 2012 SGEI Framework.

7.2.2.3. *Duration of the period of entrustment*

- (131) As indicated in recital 17 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."*⁴⁹
- (132) As described in recital (128), Post Danmark's USO licence covers a 3 to 3.5-year period. While the Danish authorities have not provided any specific data on the depreciation period of the most significant assets used in the delivery of the USO, the Commission considers, with reference to the practice in other Member States, that an entrustment period of 3 to 3.5 years can be accepted.⁵⁰

7.2.2.4. *Compliance with Directive 2006/111/EC*

- (133) According to recital 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*

⁴⁹ 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.

⁵⁰ For example, in France (La Poste), Italy (Poste Italiane), Spain (Correos) and Greece (ELTA), the period of entrustment is up to 15 years.

*States and public undertakings as well as on financial transparency within certain undertakings”.*⁵¹

- (134) Under sections 14(1) and 18(7) of the Postal Act as well as recital 10 of Post Danmark’s individual license, Post Danmark is subject to an Accounting Regulation that requires it to separate its accounts in line with Directive 2006/111/EC. The Accounting Regulation also adheres to Article 14(3) of the Postal Directive. Post Danmark is required to ensure detailed registration of data; have a clear separation of accounts between the USO and other services; and apply uniform and objective criteria in order to allocate costs.
- (135) The Danish authorities have clarified that costs are allocated in the following manner:
- (i) costs which can be directly assigned to a particular service or product shall be so assigned;
 - (ii) common costs, that is costs which cannot be directly assigned to a particular service or product, shall be assigned as follows:
 - a. whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;
 - b. when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;
 - c. when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the universal services and, on the other hand, to the other services;
 - d. common costs, which are necessary for the provision of both universal services and non-universal services, shall be allocated appropriately; the same cost drivers must be applied to both universal services and non-universal services.
- (136) Post Danmark may only use other cost allocation methods if it obtains the consent of the Regulator. The Regulator also assesses whether the accountancy code is adhered to, and that the accounts are verified by an authorised public accountant.
- (137) As already put forward by the Danish authorities in recital (98), a review by PwC in 2014 concluded that there is well-founded reasoning behind the choice of allocation keys.

⁵¹ Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings.

- (138) On the basis of the above, the Commission concludes that the accounting split between commercial (i.e. non-USO) activities and USO activities operated by Post Danmark is appropriate. The Commission therefore considers that Post Danmark complies with Directive 2006/111/EC.

7.2.2.5. *Compliance with EU Public Procurement Rules*

- (139) According to recital 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."*
- (140) Pursuant to Article 4(2) of the Postal Directive, 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.
- (141) The Commission considers that it is only if Member States decide to organise a tendering procedure for the selection of the postal USO operator that public procurement rules would be applicable.
- (142) In the present case, the Danish authorities have opted for the direct entrustment of Post Danmark, in conformity with the Postal Directive. It follows that public procurement rules are not applicable and that the direct entrustment of Post Danmark as the USO provider can be considered to be in line with recital 19 of the 2012 SGEI framework.

7.2.2.6. *Absence of discrimination*

- (143) According to recital 20 of the 2012 SGEI Framework, *"Where 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."*
- (144) In accordance with section 14 of the Postal Act, the USO is only entrusted to Post Danmark. The Commission therefore considers that the requirement of recital 20 of the 2012 SGEI Framework is not applicable.

7.2.2.7. *Calculation of the net cost of the Universal Postal Service over 2017-2019*

- (145) According to recital 21 of the 2012 SGEI Framework, *"The amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit."* In this respect, recital 24 of the 2012 SGEI Framework foresees that *"The 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."*
- (146) According to recital 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."

- (147) The Danish authorities have calculated the net cost necessary to discharge the public service by using the Net Avoided Cost (NAC) methodology.

The factual scenario

- (148) The factual scenario is based on projected costs and revenues for 2017 to 2019 on the basis of Post Danmark's financial accounts (for the first 10 months of 2017), on projections (for the last two months of 2017) and on Post Danmark's business plan (for 2018 and 2019).
- (149) Post Danmark has made the following market assumptions for the 2017-2019 period:
- (i) Substantial growth in the business-to-consumer market due to increased e-commerce;
 - (ii) Continuing decreases in letter volumes following increased digitisation;
 - (iii) Significant decreases in mail volumes for newspapers and magazines, e.g. as a result of digital offerings; and
 - (iv) The implementation of a new production model involving in particular the lay-off of about [...] FTEs (see section 2.2).

- (150) The Commission notes that the impact of the future measures described in section 3.3 have been taken into account in the factual scenario of Post Danmark's NAC calculations. While the compatibility of these measures has not been established and will be assessed in a separate decision (see section 4), the Commission notes that these measures can only have the effect of improving the profitability of the factual scenario and therefore everything being equal of reducing the NAC. Without prejudging the compatibility of these future measures, the Commission considers that taking them into account in the NAC calculation therefore allows for a robust economic assessment.

The counterfactual scenario

- (151) The counterfactual scenario is based on estimated costs and revenues of Post Danmark's business activity in a scenario where it was not entrusted with the USO. Post Danmark's business model is changed in the following ways:
- (i) Several activities would be discontinued, since they are assumed to be unprofitable or to have an overall negative impact on Post Danmark's business (e.g. the delivery of newspaper and magazine mail, the delivery of international letter and parcel post items, and the delivery of non-addressed items)
 - (ii) The business letter service would be optimised by offering home delivery only in larger cities and, as a result of the reduced volume, by closing down [...] letter sorting centres and reducing the number of distribution hubs from [...] to [...].
 - (iii) Home delivery for parcels would be discontinued in certain rural areas with very low volume (e.g. certain small islands).

- (iv) The number of postal service outlets would be reduced from [...] to [...].

Process of calculating the net avoided cost

- (152) The NAC corresponds to the avoided costs minus the foregone revenues of the counterfactual scenario, correcting for intangible market benefits.

Avoided Costs

- (153) Avoided costs include in particular (see also recital (149)):
- (i) The costs of maintaining the nationwide network of mailboxes and the production of stamps, due to the discontinuation of single-piece letters;
 - (ii) Cost savings associated with closing down the international mail and parcel centre in Copenhagen, due to the discontinuation of international letter post and parcel post items;
 - (iii) Costs savings associated with the optimisation of the business letter service, in particular the closing down of [...] letter sorting centres and a reduction in the number of distribution hubs from [...] to [...] (leading e.g. to reduced rent and utilities);
 - (iv) Cost savings associated with the discontinuation of home delivery in rural areas (e.g. reducing personnel costs); and
 - (v) Cost savings associated with a reduction in postal outlets from [...] to [...].
- (154) Over half of cost savings would result from the reduction in personnel, from an average number of [...] FTEs in the factual scenario to an average number of [...] FTEs in the counterfactual scenario in the 2017-2019 period.

Foregone revenues

- (155) Foregone revenues include in particular the loss of business following the discontinuation of services such as:
- (i) The delivery of international letter post and parcel post items;
 - (ii) The distribution of single-piece parcels; and
 - (iii) Home delivery of business letters and parcels in certain geographical areas.
- (156) Post Danmark has estimated the foregone revenues resulting from the optimisation of business services by using its experience with previous changes in prices and product offerings. Post Danmark has continuously monitored customers' behaviour in relation to price changes, in particular, and has predicted customer behaviour using price elasticities and customer surveys.

Intangible benefits

- (157) Intangible and market benefits are benefits entailing an improvement in profitability that a postal operator enjoys due to its status as the USO provider. In the counterfactual scenario, these benefits cannot be taken into account. Typically such benefits include economies of scale and scope, advertising effects from intellectual property, demand effects due to the VAT exemption, universal coverage advantages, bargaining power and better customer acquisition.

(158) The following intangible and market benefits have been taken into account:

- (i) Post Danmark benefits from a 25% VAT exemption that applies to postal services encompassed by the USO, which gives it a competitive advantage with regard to customers who cannot deduct VAT (e.g. private citizens). Post Danmark has calculated this effect on the assumption that VAT will be charged on top of current prices, i.e. on the basis that the benefit of the VAT exemption derives from increased demand. On the other hand, the VAT exemption reduces the possibility for Post Danmark to reclaim VAT included in its input purchases. The calculation of the VAT exemption is shown in **table 1** below.

Table 1: calculation of the VAT exemption, million DKK

Year	2017	2018	2019	Total
Post Danmark enjoys VAT exemption (factual scenario)				
Revenue from customers that can deduct VAT (A)	[...]	[...]	[...]	[...]
Revenue from customers that can't deduct VAT (B)	[...]	[...]	[...]	[...]
Deduction of VAT paid for purchases related to the provision of VAT-exempt services (USO) (C)	[...]	[...]	[...]	[...]
Post Danmark does not enjoy VAT exemption (counterfactual scenario)				
Revenue from customers that can deduct VAT (D)	[...]	[...]	[...]	[...]
Revenue from customers that can't deduct VAT (E)	[...]	[...]	[...]	[...]
Deduction of VAT paid for purchases related to the provision of VAT-exempt services (USO) (F)	[...]	[...]	[...]	[...]
Valuation of VAT exemption				
Reduction in costs (G) = (F) – (C)	[...]	[...]	[...]	[...]
Loss of revenues (H) = (A) + (B) – (D) – (E)	[...]	[...]	[...]	[...]
Value of VAT exemption: (H) – (G)	[...]	[...]	[...]	[...]

Note: Numbers may not add up due to rounding

- (ii) Intellectual property assets related to the USO, in particular resulting from the publicity benefits of visible contact points, such as mail boxes and installations for customers' self-service collection of parcels.

(159) Various other benefits have not been taken into account:

- (i) The Danish authorities consider that Post Danmark does not benefit from economies of scale in the factual scenario as, in the context of the rapid decline in mail volume of letters, the size of Post Danmark has rather presented a significant challenge as it has not been possible to adjust operations to face market developments;
- (ii) The Danish authorities note that as concerns suppliers, Post Danmark is subject to the Utilities Directive⁵², and that all contracts with suppliers are therefore subject to competition and the principles of equal treatment and transparency. On balance, the

⁵² Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal sectors and repealing Directive 2004/17/EC.

Danish authorities consider that Post Danmark does not enjoy bargaining power beyond that of other large companies;

(iii) The Danish authorities note that the market for the distribution of magazine mail shows that business customers are very willing to use distributors that do not offer universal coverage, and Post Danmark therefore does not enjoy an advantage in this area.

Results of the NAC calculation

(160) The total NAC over 2017-2019 is estimated at DKK 2.571 billion (see **table 2**), considerably higher than the compensation of DKK 1.192 billion.

Table 2: calculation of the NAC

Category	2017	2018	2019	Total
AVOIDED COSTS (million DKK)				
Discontinuation of single-piece letters	[...]	[...]	[...]	[...]
Abolishment of registered and insured items	[...]	[...]	[...]	[...]
Discontinuation of the free service for the blind	[...]	[...]	[...]	[...]
Discontinuation of distribution of newspapers and magazine mail	[...]	[...]	[...]	[...]
Discontinuation of international letter post and parcel post items	[...]	[...]	[...]	[...]
Discontinuation of single-piece parcels	[...]	[...]	[...]	[...]
Optimising the business letter service	[...]	[...]	[...]	[...]
Optimising delivery costs for parcels to certain rural areas	[...]	[...]	[...]	[...]
Optimising the number of postal service outlets	[...]	[...]	[...]	[...]
Closing down non-addressed items	[...]	[...]	[...]	[...]
Employees on "special terms"	[...]	[...]	[...]	[...]
FOREGONE REVENUES (million DKK)				
Discontinuation of single-piece letters	[...]	[...]	[...]	[...]
Abolishment of registered and insured items	[...]	[...]	[...]	[...]
Discontinuation of the free service for the blind	[...]	[...]	[...]	[...]
Discontinuation of distribution of newspapers and magazine mail	[...]	[...]	[...]	[...]
Discontinuation of international letter post and parcel post items	[...]	[...]	[...]	[...]
Discontinuation of single-piece parcels	[...]	[...]	[...]	[...]
Optimising the business letter service	[...]	[...]	[...]	[...]
Optimising delivery costs for parcels to certain rural areas	[...]	[...]	[...]	[...]
Optimising the number of postal service outlets	[...]	[...]	[...]	[...]
Total avoided costs (A)	[...]	[...]	[...]	[...]
Total foregone revenues (B)	[...]	[...]	[...]	[...]
Intangible Benefits - VAT Exemption (C)	[...]	[...]	[...]	[...]
Intangible Benefits - Intellectual Property (D)	[...]	[...]	[...]	[...]
Net Avoided Cost (NAC): (A) – (B) – (C) – (D)	[...]	[...]	[...]	<u>2571</u>

Reliability of the net avoided cost calculation

- (161) According to Post Danmark's calculations, it would achieve an average EBIT (earnings before interest and taxes) margin of 2.5% and average labour productivity of 0.78 DKK million in the counterfactual scenario.
- (162) To assess whether the calculated indicators are realistic, Post Danmark has compared the key indicators in the counterfactual scenario with corresponding key indicators for three other companies in the postal and transport industry: Danske Fragtmænd A/S, Posten Norge AS and Deutsche Post DHL Group. The latter two were chosen because they still distribute a lot of letters, the former because it is one of the larger players on the Danish market for freight and parcel distribution.
- (163) Post Danmark calculated EBIT margins and labour productivity for the three benchmark operators for the years 2014-2016. A comparison of the results to the ones calculated in Post Danmark's counterfactual scenario (for the years 2017-2019) is shown in the tables below.

Table 3: Benchmarking Post Danmark's EBIT

Year	2014	2015	2016	Average
Danske Fragtmænd A/S	0.8%	1.2%	1.0%	1.0%
Posten Norge AS	3.5%	1.0%	0.7%	1.7%
Deutsche Post DHL Group	5.2%	4.1%	6.1%	5.1%

Year	2017	2018	2019	Average
Post Danmark A/S (counterfactual scenario)	[...]	[...]	[...]	2.5%

Table 4: Benchmarking Post Danmark's labour productivity (million DKK/FTE)

Year	2014	2015	2016	Average
Danske Fragtmænd A/S	3.09	3.23	3.41	3.24
Posten Norge AS	0.98	1.01	1.04	1.01
Deutsche Post DHL Group	0.86	0.89	0.84	0.86

Year	2017	2018	2019	Average
Post Danmark A/S (counterfactual scenario)	[...]	[...]	[...]	0.78

- (164) From the above data, it is apparent that Post Danmark's estimations for EBIT and labour productivity are relatively conservative and well within the average figures seen within the sector. These figures confirm the reliability of the assumptions incorporated in the counterfactual scenario.⁵³

⁵³ Danske Fragtmænd A/S's labour productivity is something of an outlier. This can be explained by the fact that Danske Fragtmænd A/S is a transport and logistics company, which transports goods and offers warehouse facilities to customers. Delivery costs and the average price of goods are significantly higher than delivery costs and average prices on letters and parcels.

7.2.2.8. *Efficiency incentives*

- (165) Recital 39 of the 2012 SGEI Framework states that: *"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."*
- (166) The provision of the services under the USO is subject to the quality standards laid down in Post Danmark's individual license in accordance with article 17 of the Postal Directive (see recital (28)).
- (167) Post Danmark is required to appoint an independent external market analyst to monitor the fulfilment of the quality standards on domestic letters and to report the results to the Regulator every month. If Post Danmark fails to live up to the quality standards, a penance is imposed.
- (168) The Danish State will pay a fixed, upfront USO compensation to Post Danmark of at most SEK 1.683 billion / DKK 1.192 billion. The net cost of discharging the public service obligations has been calculated at DKK 2.571 billion (see Table 2). The maximum compensation to be paid to Post Danmark amounts to only 46% of the NAC of the USO. As long as it does not lead to overcompensation, Post Danmark is allowed to absorb all the efficiency gains achieved which constitutes a strong incentive for efficiency. The Commission also notes that due to the quality standards and penance system described above, these efficiency gains should not prejudice the quality of the service provided.
- (169) Considering the above, the Commission considers that Denmark has introduced sufficient incentives for the efficient provision of the USO.

7.2.2.9. *Transparency*

- (170) Recital 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 recital 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".*
- (171) Recital 60 (a) does not apply, as no public consultation has been carried out (see recital (124)). The Danish authorities already publish the content, duration and identity of the undertaking on the internet.⁵⁴ They have committed to publishing the amount of aid granted to Post Danmark on the internet as well.

7.2.2.10. *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*

- (172) Recital 52 of the SGEI Framework states that, even when the requirements of the framework are met, *"in some exceptional circumstances, serious*

⁵⁴ See footnote 10.

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."

- (173) In such exceptional circumstances, the Commission may require additional conditions or request additional commitments from the Member States to mitigate serious distortions of competition, as stated in recital 53 of the SGEI Framework.
- (174) Recital 54 of the SGEI Framework further states that: "*Serious competition distortions such as to be contrary to the interests of the Union are only expected to occur in exceptional circumstances. The Commission will restrict its attention to those distortions where the aid has significant adverse effects on other Member States and the functioning of the internal market, for example, because they deny undertakings in important sectors of the economy the possibility to achieve the scale of operations necessary to operate efficiently.*"
- (175) ITD is of the opinion that should the Commission approve USO compensation to Post Danmark, it should at a minimum take into account the current market situation by requiring that: (i) the public service obligation be reduced to mandatory USO activities; (ii) the public service obligation be split up and tendered out; and/or (iii) access to Post Danmark's network be provided.
- (176) First, the Commission recalls that additional requirements are only considered in exceptional circumstances of serious distortions of competitions which remain unaddressed by the other requirements of the 2012 SGEI Framework. In particular, as recalled above, the Commission restricts its attention to distortions where the aid has significant adverse effects on other Member States and the functioning of the internal market.
- (177) In the case at hand, the Commission notes that the notified USO compensation is unlikely to distort competition to such an extent that additional requirements are necessary. Indeed, the USO compensations relieve Post Danmark of a share of the USO burden which is only entrusted to Post Danmark. The magnitude of the related burden originates in e-substitution which is particularly important in Denmark and impacts mainly the provision of letters.
- (178) As regards the specific requests of ITD as described in recital (175)):
- (i) The Commission considers that the USO entrusted to Post Danmark is already reduced to the minimum requirements outlined in the Postal Services Directive, the only exceptions being explicitly provided for by the Postal Directive (see recital (125)).
 - (ii) Pursuant to Article 4(2) of the Postal Directive, "*Member States may designate one or more undertakings as universal service providers in order that the whole of the national territory can be covered.*" A Member State therefore cannot be obliged to split up or tender out the universal service.
 - (iii) The complainant has not explained what kind of additional access would be necessary, what issues this would address and how. The conditions governing access to the network are defined in Article 11 of the Postal Directive and the Commission has no indication that the Postal Directive has been infringed in this respect.

7.2.2.11. Conclusion

- (179) Based on the above, the Commission concludes that the criteria of the 2012 SGEI Framework are fulfilled. For the sake of completeness, the Commission also analyses the elements of the complaint related to USO compensation below.

7.3. Specific claims of the complainant regarding USO compensation

- (180) ITD considers that any aid granted as USO compensation must be affected in the following manner:

- (i) the compensation received by the compensation fund must be deducted, and the Commission should examine whether it has been calculated on the basis of properly allocated costs;
- (ii) any USO compensation must reflect the fact that the scope of the USO has been reduced;
- (iii) the capital injection of DKK 1 billion of 23 February 2017 must be deducted;
- (iv) the Commission must deduct those profits which exceed a reasonable profit;
- (v) the reasonable profit for any USO compensation must be based on a rate of return that reflects the low level of risk faced by Post Danmark;
- (vi) the Commission should ensure that the compensation methodology provides for efficiency incentives; and
- (vii) the Commission should investigate all similar measures granted by the Member States concerned to Post Danmark.

- (181) The Commission notes that:

- (i) the compensation fund was abolished in 2016 (see recital (31)) and therefore has no impact on the current measure. In addition, the Commission considers that Post Danmark's accounts do allocate costs properly (see section 7.2.2.4);
- (ii) the NAC of the USO has been calculated based on factual and counterfactual scenarios including the business services and business model operated by Post Danmark (see Section 7.2.2.7) in the relevant period. It is therefore in line with the current and expected scope of the USO.
- (iii) the Commission considers that the capital injection of 23 February 2017 does not constitute State aid (see section 8.4). In any case, the impact of that measure is necessarily factored into the factual scenario so it does indirectly reduce the maximum amount possible of USO compensation (by increasing the level of profit achieved in the factual scenario).
- (iv) any possible overcompensation will be recovered (see recitals (35)-(36));
- (v) no reasonable profit is included in the NAC calculation.
- (vi) By defining upfront a fixed compensation considerably below the NAC of the USO and by maintaining the quality standards

established in Post Danmark's individual license, the Commission considers that the USO compensation provides for efficiency incentives (see section 7.2.2.8); and

(vii) the Commission will assess the actually foreseen future measures that may be granted to Post Danmark (see section 3.3).

(182) Considering the above, the Commission considers that none of the points raised by the complainant regarding USO compensations prevents the 2017-2019 USO compensations from being declared compatible.

7.4. Conclusion

(183) Based on the above, the Commission concludes that the public service compensation to be granted to Post Danmark over the 2017-2019 period constitutes State aid under Article 107(1) TFEU which is compatible under Article 106(2) of the TFEU.

8. ASSESSMENT OF THE OTHER MEASURES RAISED IN THE COMPLAINT OF ITD

8.1. State guarantees

(184) The State guarantees were granted in 2002 after negotiations between the Danish State, Post Danmark and labour unions in the transformation of Post Danmark from an Independent Public Enterprise (SOV) to a limited liability company (see section 6.1.). In the process of foregoing their civil servant status and moving to employment on collective terms, former civil servants kept their previous payment and pension rights. The State guarantees covered the redundancy payments that former civil servants were entitled to receive from Post Danmark, and would be applied only in the event of Post Danmark's bankruptcy.

8.1.1. Imputability and State resources

(185) The guarantees are imputable to the Danish State because they were granted by it directly. Because Post Danmark did not pay any consideration for the indirect advantage granted by the guarantees (see recital (188)), it can be argued that the Danish State was foregoing resources.

8.1.2. Selectivity

(186) Since the guarantees were granted to the then-employees of Post Danmark only, and thereby only benefit Post Danmark (indirectly), the State guarantees are also selective.

8.1.3. Advantage

(187) As a result of the guarantees being granted, affected employees may have been more likely to want to transfer employment to Post Danmark in 2002. On the other hand, the Commission considers that neither Post Danmark nor its creditors derive any direct benefit from the guarantees, since in the event of Post Danmark's bankruptcy the State would anyway lay claim on Post Danmark's bankruptcy estate before covering the redundancy costs (see paragraph (88)). Any advantage resulting from the measure in favour of Post Danmark would therefore seem to be very limited and indirect, although its existence cannot be excluded.

8.1.4. Distortion of competition and effect on trade

(188) Although the Danish postal market was fully liberalised only in 2011 (see recital (14)), the Commission considers that there was some competition in the

market at the time the State guarantees were granted. DHL and UPS, for example, entered the Danish market in 1987 and 1988 respectively. These companies were also active in other EU Member States at the time the State guarantees were granted. The State guarantees may therefore potentially have distorted competition and affected trade.

8.1.5. Conclusion on the existence of aid

- (189) Although the magnitude of a potential advantage is very difficult to value, it cannot be excluded that the State guarantees constituted State aid at the moment of granting.

8.1.6. Existing aid

In any event, Article 1(b)(iv) and Article 17(1) of the Procedural Regulation lay down that the power of the Commission to recover aid is subject to a limitation period of ten years and that aid granted more than ten years before the Commission took action is deemed to be existing aid.

- (190) The State guarantees were granted in 2002 and applied only to those employees renouncing their status at that time. The Commission was only informed of the measure on 27 November 2017 with the complaint of ITD.
- (191) Therefore, even if the guarantees attached to the transfer were to constitute State aid at the moment when they were granted, the recovery of this aid is no longer possible as the limitation period of ten years is exceeded by this measure.

8.1.7. Conclusion

- (192) The Commission therefore considers that this measure is to be considered to be existing aid.

8.2. VAT Exemption

8.2.1. Advantage

- (193) The Danish authorities have confirmed the functioning of the VAT exemption as described in recital (47). While the measure primarily benefitted consumers and mail order companies themselves, the Commission considers that because mail order companies would benefit from not having to charge VAT on their to consumers transport services only by using Post Danmark's services, Post Danmark is likely to have benefitted indirectly from an increase in demand.

8.2.2. Imputability

- (194) However, this indirect advantage to Post Danmark derives primarily from the existence of the mandatory VAT exemption on USO postal services which is laid down in Article 132(1)(a) of the EU VAT Directive.⁵⁵ Post Danmark benefits from a similar advantage regarding final consumers and all other VAT exempted customers such as banks and insurance companies. To the extent that the USO VAT exemption has never been considered to involve State aid by the Commission as it is not imputable to any Member State, the VAT exemption granted to mail order companies, which only indirectly benefits Post Danmark due to that USO VAT exemption, can also not be considered to be imputable to the Danish State.

⁵⁵ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

8.2.3. Conclusion

(195) The Commission therefore considers that this measure does not constitute State aid.

8.3. Alleged misallocation of costs and cross-subsidisation

(196) According to the Danish authorities, ITD's assertions rest on factual misunderstandings (see recital (95)). Following clarifications from the Danish authorities, the Commission considers that Post Danmark's accounting system establishes an adequate separation of accounts (see section 7.2.2.4).

(197) In addition, throughout the entire period (2006-2013), Post Danmark's regulatory accounts were audited annually by various accounting firms. A State-authorized public accountant declares each year whether Post Danmark has complied with the cost allocation principles of the Accounting Regulation. The Regulator also monitors compliance with the Accounting Regulation. In 2014, at the request of the Regulator, PwC conducted a review of Post Danmark's accounting and cost-allocation practices and found that there is well-founded reasoning behind the choice of allocation keys (see recital (98)).

8.3.1. Imputability and State resources

(198) In any event, the alleged misallocation of costs from non-USO accounts to USO accounts does not seem to involve the transfer of any State resources. As regards the alleged imputability of the measure to the Danish State, the fact that Post Danmark as part of the PostNord group is a public company is not sufficient to demonstrate imputability.⁵⁶ The Danish authorities need to be involved, in one way or another, in adopting the measure.⁵⁷ It is true that the Danish authorities adopted the accounting regulations applicable to Post Danmark; however the complainant has not demonstrated that the Danish authorities were involved in Post Danmark's setting of prices for non-USO services. Lastly, the alleged cross-subsidisation of Post Danmark's commercial services with the USO does not seem to have conferred on it any advantage, in particular because Post Danmark has not received any USO compensation based on such cost allocation in the past.

8.3.2. Conclusion

(199) The Commission therefore considers that this measure does not constitute State aid.

8.4. Capital injection of 23 February 2017

8.4.1. Imputability

(200) For a measure to constitute State Aid under Article 107(1) TFEU it needs to be imputable to the State. Imputability is less evident if the advantage is granted through public undertakings. The Court of Justice held in the Stardust case that:

"Even if the State is in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that

⁵⁶ Case C-482/99, *France v Commission (Stardust)*, ECLI:EU:C:2002:294, paragraph 52; Case T-442/03, *SIC v Commission*, ECLI:EU:T:2008:228, paragraphs 93-100.

⁵⁷ Case C-482/99, *France v Commission (Stardust)*, ECLI:EU:C:2002:294, paragraph 52.

*control in a particular case cannot be automatically presumed. A public undertaking may act with more or less independence, according to the degree of autonomy left to it by the State. [...] Therefore, the mere fact that a public undertaking is under State control is not sufficient for measures taken by that undertaking [...] to be imputed to the State. It is also necessary to examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of those measures."*⁵⁸

- (201) The ownership structure and way of appointing the Board of Directors show that Sweden and Denmark might be in a position to control and have a dominant influence over PostNord. However, they do not show that Sweden and Denmark had actual control when the capital injection of 23 February 2017 took place. Nor does it show that the public authorities were involved, in one way or another, in the adoption of the capital injection.
- (202) The capital injection of 23 February 2017 was granted by PostNord to Post Danmark. The complainant has provided no information that demonstrates that this action is imputable to the Danish or Swedish State.

8.4.2. Advantage

- (203) Moreover, the Commission considers that a private investor in PostNord's circumstances would have most likely made a similar capital injection instead of letting its subsidiary go bankrupt. First, based on the available information, there is little doubt that Post Danmark would have gone bankrupt absent the intervention of PostNord group. At the time of the capital injection, Post Danmark's equity had gone down to DKK 108 million from DKK 1.29 billion at the end of 2015, with a further forecast loss for 2017 of DKK [...]. As the complainant has also stated, *"it is an acknowledged fact that currently Post Danmark only survives through means granted by PostNord."* Second, as the Danish and Swedish authorities have explained in section 5.1, not making the investment and accepting the bankruptcy of Post Danmark, would have had a much higher cost for PostNord group than making it.

8.4.3. Conclusion

- (204) The Commission therefore considers that this measure does not constitute State aid.

9. CONCLUSION

- (205) The Commission has accordingly decided to consider the notified aid measure for USO compensation over the 2017-2019 period to be compatible with the internal market on the basis of Article 106(2) TFEU and to raise no objections to these measures.
- (206) The Commission has decided further that:
- (i) The State guarantees are existing aid;
 - (ii) The VAT exemption does not constitute State aid;
 - (iii) The cross-subsidisation of commercial services is not factually confirmed and in any event does not constitute State aid; and

⁵⁸ Ibid.

(iv) The capital injection of DKK 1 billion of 23 February 2017 does not constitute State aid.

(207) The Commission notes that for the sake of urgency, Denmark exceptionally accepts the adoption and notification of the Decision in the English language.

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