Services of general economic interest: UK Post Office Ltd

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Decision taken under Article 106 TFEU (ex Article 86(2) EC)

On 23 March 2011 the European Commission authorised public assistance to the UK Post Office Ltd (POL), for a period of one year starting on 1 April 2011, for the funding of its network of post offices and the continuation of existing loan facilities funding the provision of cash services at post office counters. (2) The Commission concluded that the aid is compatible with EU rules because it does not overcompensate the net costs of the important public service tasks entrusted to POL and thus does not give POL any unfair competitive advantage.

POL is a limited company incorporated under UK private commercial law in 2001 and a subsidiary company of the Royal Mail Group plc. It operates a nationwide network of around 11 500 post office counter outlets. These outlets provide over-the-counter access to social benefit payments, basic banking services and other services in the UK, and therefore act as focal points for the communities they serve. The proposed measures would prolong by one year a ‘Network Subsidy Payment’ of £180 m (€211 m) to keep open unprofitable offices, in rural areas for example, and a ‘Working Capital Facility’ up to a ceiling of £1 150 million (€1 348 million), which enables POL to hold enough cash to carry out its public service obligations. The current authorisation for these measures expires on 31 March 2011. The one-year extension is necessary for POL to continue carrying out the services of general economic interest entrusted to it by the UK Government.

The UK authorities also notified the terms of the Post Office Card Account (POCA) contract signed between POL and the Department of Work and Pensions (DWP) on 5 March 2009. The POCA is a basic current account run by POL on behalf of DWP which is used for paying social benefits to people who do not have any other bank account.

In line with the jurisprudence of the European Court of Justice, in particular the Altmark ruling, (3) the Commission concluded that the measure constitutes State aid. However, such aid can be compatible with the Single Market provided it satisfies the conditions laid down in the EU Framework on State aid in the form of public service compensation. (4) In particular, the public service must be clearly defined and entrusted by the public authorities, and public support may not overcompensate the service providers.

In addition, in view of the arrangements between Royal Mail and POL the Commission was not able to exclude the possibility that the measures in question (and in particular the network subsidy payment) fall within the scope of Directive 97/67/EC of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service as amended in 2008. (5) Therefore, in order to cover all eventualities and take into account the de facto role of POL, and without taking a position on whether POL should be classified as a postal service provider, the Commission also carried out the assessment of the aid measures under the Postal Directive and, in particular, under its Annex I.

According to Annex I the net cost of universal postal service obligations has to be calculated as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations. Moreover, recital 26 in the preamble to Directive 2008/6/EC establishes that an unfair burden must be found to exist before any compensation is paid. An unfair burden is a burden which is excessive in relation to the undertaking’s ability to bear it, account being taken of all the undertaking’s own characteristics, in particular the quality of its equipment, its economic and financial situation and its market share. (6)

The Commission concluded that the continuation of the Network Subsidy Payment and the Working Capital Facility, as well as any aid contained in the terms of the POCA contract is, until 31 March 2012, compatible with the EU’s Internal Market (Article 106(2) of the Treaty on the Functioning of the European Union (TFEU). The aid did not

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the views expressed lies entirely with the authors.

(2) S.A.31156 (N508/2010).

(3) C.280/00.
exceed the cost of fulfilling the services liable to be compensated under the framework and, in view of POL’s overall precarious financial situation and, in particular, POL’s cumulated losses originating in the provision of universal services and other services of general economic interest (SGEIs), the net cost for providing access to universal postal services for Royal Mail did constitute an ‘unfair financial burden’ for POL within the meaning of Annex I of the Postal Directive.