



EUROPEAN COMMISSION

Brussels, 20.11.2012  
C(2012) 8230 final

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**Subject: State aid SA.33989 (2012/NN) – Italy**  
**State compensations for the delivery of the universal service over 2009-2011**  
**State compensations for reduced tariffs offered to publishers, not-for-profit organisations and electoral candidates over 2009-2011**

Sir,

The Commission is pleased to inform Italy that, having examined the information supplied by your authorities on the measures referred to above, the State compensations granted to Poste Italiane SpA (PI) for the delivery of the universal service over 2009-2011 as well as the State compensations granted to the same operator for reduced tariffs offered over the same period to publishers, not-for-profit organisations and electoral candidates constitute State aid compatible with the Internal market under the Community Framework for State aid in the form of public service compensation<sup>1</sup> (hereinafter "the 2012 SGEI Framework"), which lays down the conditions that should be met by aid to be compatible pursuant to Article 106 (2) of the TFEU.

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<sup>1</sup> OJ C 8 of 11.01.2012

S.E Giulio Terzi di Sant'Agata  
Ministero degli Affari Esteri  
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## 1. THE PROCEDURE

- (1) By electronic notification dated 22 June 2012, Italy notified under article 108 (3) of the TFEU the compensation the Italian authorities will pay to Poste Italiane SpA (PI) for discharging the universal postal service obligation for the period 2009-2011.
- (2) In the same notification, Italy also informed the Commission of the reduced tariffs PI offered, over the same period (2009-2011), to publishers, not-for-profit organizations and electoral candidates.
- (3) The Commission asked complementary information on 16 July 2012 and on 19 October 2012. Italy replied by letter of 29 August 2012 and 6 November 2012.
- (4) Italy has accepted exceptionally that the decision be adopted in English, for reasons of urgency.

## 2. DESCRIPTION

### 2.1. The beneficiary

- (5) PI, main postal operator in Italy, had 146,014 employees, 14,005 post offices and a turnover of €9,572 million in 2010<sup>2</sup>. Besides providing core postal services, PI offers integrated products, as well as communication, logistic and financial services all over Italy.
- (6) The main services delivered by PI as well as the corresponding turnover for 2009, 2010 and 2011 are presented in Table 1 below:

Table 1: PI's activities and revenues

Activities	Description	PI Revenues (million €)		
		2009	2010	2011
Postal Services	<ul style="list-style-type: none"><li>• Unregistered mail</li><li>• Registered mail</li><li>• Services for Publishers</li><li>• Parcels and Express Courier</li></ul>	4,709	4,505	3,884
Financial Services	<ul style="list-style-type: none"><li>• Current accounts</li><li>• Saving, financing and investment products</li></ul>	5,039	4,962	5,265
Other revenues	Other revenues	93	105	110
<b>Total revenues</b>		<b>9,841</b>	<b>9,572</b>	<b>9,259</b>

- (7) Most of the postal services delivered by PI are part of the universal postal service which has been entrusted to PI since 1999.

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<sup>2</sup> PI's Annual Report 2010.

## **2.2. The universal postal service entrusted to PI**

- (8) Through the Law Decree n° 261/1999 of 22.07.1999 amended to transpose the Postal Services Directive 97/67/EC<sup>3</sup>, the Decree of Ministry of Communications of 17.04.2000, the Guidelines on postal sector regulation approved by CIPE's decision n°77 of 29.09.2003, the Programme Contract of 5 November 2010 between the Ministry of Communications in agreement with the Ministry of Economy and Finance and PI covering the period 2009-2011<sup>4</sup> (hereinafter " the 2009-2011 Programme Contract"), PI has been entrusted with the universal postal service obligation.
- (9) The universal postal service includes:
- The clearance, sorting, transport and distribution of postal items up to 2 kg;
  - The clearance, sorting, transport and distribution of postal packages up to 20 kg;
  - Services for registered items and insured items.
- (10) The universal postal service obligation ensures that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in the territory at affordable prices for all users.
- (11) According to the entrustment acts, PI, as universal postal provider, guarantees every working day and not less than five days a week, one clearance and one delivery to the home or premises of every natural or legal person.
- (12) Until expiry of the date of the implementation of the 3<sup>rd</sup> Postal Services Directive by Italy (31 December 2010), which was transposed by Italy after the implementation deadline in March 2011<sup>5</sup> and to the extent necessary to ensure the maintenance of the universal service, certain services were reserved by the Italian authorities for PI: the clearance, sorting, transport and delivery of items of domestic and cross-border correspondence, whether by accelerated delivery or not, within the double threshold of weight/price up to 50 grams/2.5 times the basic tariff of priority mail of €1.5.

## **2.3. The obligation to offer reduced tariffs to publishers, not-for-profit organisations and electoral candidates**

- (13) The reduced tariff system for publishers and not-for-profit organisations was entrusted to PI by Law n°662/1996. Law n°46/2004 further specified the press products that could not benefit from the reduced tariffs and introduced the compensation mechanism by the State. The reduced tariff system for publishers and not-for-profit organisations was terminated in March 2010.
- (14) The system as specified by Law n°46/2004 concerned:
- Publishers of newspapers and periodicals registered in the Registry of the Operators of Communication ("ROC");
  - Book publishers;

<sup>3</sup> Directive 97/67/EC, as amended by Directives 2002/39/EC and 2008/6/EC.

<sup>4</sup> Contratto di programma 2009-2011 tra il Ministero dello Sviluppo Economico e Poste Italiane

<sup>5</sup> Legislative Decree n° 58 of 31.03.2011

- Not-for-profit associations and organisations whose publications have a political character recognised from the relevant Parliament's groups.
- (15) It is worth noting that the postal items targeted by the measure fall normally in the universal service remit: books; newspapers, magazines published by subjects registered in the ROC; informative publications from institutions, local administrations, associations and other not-for-profit organisations.
- (16) The system also sets two tariffs, a reference tariff (the relevant universal service tariff) and a reduced one. Publishers and not-for-profit organisations belonging to ROC and whose products fulfilled the requirements prescribed by the law were paying PI the reduced tariff for each item they sent, while the State would pay the difference between the reference tariff and the reduced one.
- (17) The system remained in force until 31 March 2010. Following the Ministerial Decree of 30 March 2010, the reduced tariffs were abolished and PI applied the full tariffs to publishers and not-for-profit organisations.
- (18) The legal framework for the compensation of reduced tariff for political candidates that send election material to potential voters can be found in article 17 of Law n° 515/1993: according to the law, candidates enjoy the right to send postal items at a set rate of 70 ITL (0.04€) per item during the thirty days before any election, and with a maximum number of items equal to the number of potential voters. The State covers the difference between the full tariff and the reduced tariff for candidates.
- (19) The reduced tariff for political candidates is still in place.

#### **2.4. Classification of the different public service missions**

- (20) The Italian authorities consider that, along the same line that was accepted by the Commission in the Belgian Post decision<sup>6</sup> and the French la Poste decision<sup>7</sup> of 25 January 2012, although newspapers, periodicals, and electoral material are universal service items, the reduced tariffs define a mission which is distinct from the universal postal service because:
- The public service mission pursues distinct objectives from the universal postal service: e.g. maintenance of the pluralism, which is connected with freedom of expression;
  - As compared to the universal postal service which is universal by definition and therefore offered to any citizen or company, the public service mission is discriminatory by definition: only subjects belonging to the Registry of the Operators of Communication (ROC) or officially recognized as not-for-profit organizations or political candidates can access such a regime;

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<sup>6</sup> OJ L170 of 29.06.2012

<sup>7</sup> OJ C77 of 16.03.2012

- The compensations are granted and paid by an authority<sup>8</sup> which is different from the authority<sup>9</sup> granting the compensations for the delivery of the universal service.
- (21) The Commission agrees that the entrustment of PI for the reduced tariffs offered to publishers, not-for-profit organisations and electoral candidates is sufficiently clear to distinguish neatly the objectives and modalities of this mission from the objectives and modalities of the universal postal service and therefore accepts that the reduced tariffs constitute a different public service mission<sup>10</sup> than the universal service.

## 2.5. The measures under assessment

### 2.5.1. State compensations for the delivery of the universal postal service

- (22) On the basis of the 2009-2011 Programme Contract, Italy compensates PI for discharging the obligation to provide the universal postal service on the Italian territory during the period 2009-2011.
- (23) According to the Agreement, the total amount of compensation €1,093.541 million is broken down as follows:
- €371.977 million for 2009;
  - €364.463 million for 2010;
  - €357.101 million for 2011.
- (24) While the amounts above have not yet been paid to PI, they have already been engaged in the Italian State budget and the compensations have been registered in the annual accounts of PI.
- (25) The Italian authorities indicated that the measure was notified for the sole purpose of legal certainty, since they consider that it does not constitute State aid in the sense of Article 107 (1) TFEU, as it would not confer an advantage to PI on the basis of the *Altmark* jurisprudence<sup>11</sup> (see section 3.1.1.4).
- (26) It should be noted that the Commission already assessed the compatibility with the internal market of the State compensations granted to PI for the delivery of the universal postal service:
- over 2000-2005 in its decision of 26.09.2006 concerning the State aid case NN51/06<sup>12</sup> (hereinafter "the 2006 decision");
  - over 2006- 2008 in its decision of 30.04.2008 concerning the State aid case NN24/08<sup>13</sup> (hereinafter "the 2008 decision").

<sup>8</sup> Dipartimento per l'Informazione e l'Editoria, Presidenza del Consiglio dei Ministri

<sup>9</sup> Ministero dell'Economia e delle Finanze

<sup>10</sup> See also chapter 3.3.1 for the discussion of the genuine service of general economic interest character of the different missions entrusted to PI

<sup>11</sup> Judgment of the Court of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, case C-280/00 ECR [2003] page I-07747

<sup>12</sup> OJ C291 of 30.11.2006: State aid n. NN 51/06 – Italy Poste Italiane SpA - State compensation for universal postal service obligations 2000-2005

<sup>13</sup> OJ C145 of 11.06.2008: State aid n. NN 24/08 – Italy Poste Italiane SpA - State compensation for universal postal service obligations 2006-2008

2.5.2. *Reduced tariffs for publishers, not-for-profit organisations and electoral candidates*

- (27) The public service compensation granted to PI for the period 2009-2011 amounts to €457.876 million, divided as follows:
- €10.014 million for 2009;
  - €24.558 million for 2010;
  - €23.304 million for 2011.
- (28) Out of total of €457.876 million, the compensation for the reduced tariffs offered to publishers and not-for-profit organizations amounted to €300.337 million over 2009-2010 out of which €60.476 million have been paid.
- (29) The compensation for the reduced tariffs offered to electoral candidates, amounted to €157.539 million over 2009-2011 and have not yet been paid.
- (30) The Italian authorities explain that the measure was not notified at the time before its implementation because:
- i. it would not grant PI any advantage and therefore would not constitute State aid (see recital (61))
  - ii. Should the Commission consider that the measures constitute State aid, the Italian authorities consider that they constitute existing aid (see recital (67))

### **3. ASSESSMENT**

#### **3.1. Qualification of the measures as State aid**

##### *3.1.1. Compensations for the delivery of the universal postal service*

###### 3.1.1.1. Existence of State resources

- (31) 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.
- (32) The compensation for the delivery of the universal postal service is paid by the State from its own budget. Specific decrees and agreements between the State and PI are the bases for the granting of this compensation.
- (33) Therefore, the compensation granted to PI for discharging its universal postal service obligations is imputable to the State and is given through State resources.

###### 3.1.1.2. Selectivity

- (34) In order to be qualified as State aid, a financial measure must be selective.
- (35) The compensation for the delivery of the universal postal service is granted exclusively to PI, thus it is selective.

### 3.1.1.3. Affectation of trade and distortion of competition

- (36) In order to be qualified as State aid, a financial measure must affect trade between Member States and distort or threaten to distort competition.
- (37) In its assessment of those two conditions, the Commission is not required to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition<sup>14</sup>. When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid.
- (38) It appears from a report published in 2010 by the Commission<sup>15</sup> that the Italian mail market is subject to competition between postal operators as described in the table below:

**Table 2: Mail market segmentation**

Segment	Percentage opened to competition		Subject to licence / authorisation? (Yes/No)	No. of significant competitors	Names of significant competitors
	Under national law	Actual			
Addressed items					
Letters					
Correspondence	reserved area 50g	unchanged	Yes	1	TNT
Direct mail			Yes	1	TNT
Publications			Yes	1	TNT
Unaddressed items					TNT
Cross-border out-bound	reserved area 50g	unchanged		1	TNT
Express			Yes	6	DHL, TNT, Bartolini, UPS, GLS, Fedex
Parcels			Yes	6	See above
Total					

*Source: NRA*

- (39) Furthermore, express mail services as well as parcel services dedicated to business customers and logistical services have been developed in Italy by private undertakings, some of which, like TNT, DHL, GLS are based in other Member States.
- (40) Therefore, there appears to be trade between Member States in the postal sector and the public service compensation granted to PI strengthens its position vis-à-vis postal undertakings competing in intra Community trade.

<sup>14</sup> See for instance judgment of the Court in case C-372/97 *Italy v Commission* [2004] ECR I-3679, paragraph 44.

<sup>15</sup> Report “Main Developments in the European Postal Sector (2008-2010)”, by WIK Consult, November 2010 (see Country fiche appendix)

(41) Accordingly, the compensation for the delivery of the universal service is liable to affect trade and distort competition.

#### 3.1.1.4. Financial advantage

(42) To constitute State aid, a measure must confer on recipients a financial advantage.

(43) It is apparent from the case-law of the Court of Justice of the European Communities that public service compensation does not constitute State aid within the meaning of article 107 (1) TFEU if it fulfils certain conditions<sup>16</sup>. However, if public service compensation does not meet these conditions and if the general criteria for the applicability of article 107(1) TFEU are satisfied, such compensation constitutes State aid.

(44) In its judgment in *Altmark*, the Court laid down the conditions under which public service compensation does not constitute State aid as follows:

- (...) *First, the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined (...).*
- (...) *Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner (...).*
- (...) *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 (...).*
- (...) *Fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant a public procurement procedure, which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs, which a typical undertaking, well run and adequately provided within the same sector would incur, taking into account the receipts and a reasonable profit from discharging the obligations.'*

(45) Where these four criteria are met, public service compensation does not constitute State aid because it does not grant an economic advantage to the beneficiary and Articles 107 (1) and 108 TFEU do not apply. If the Member States do not respect these criteria and if the general criteria for the applicability of article 107 (1) TFEU are met, public service compensation constitutes State aid, which must be notified pursuant to article 108 (3) TFEU.

(46) The Italian authorities have argued that the granting of State compensations to PI for the delivery of the universal postal service over 2009-2011 fulfils all four *Altmark* criteria.

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<sup>16</sup> Judgements in Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* (2003) ECR I-7747 and Joined Cases C-34/01 to C-38/01 *Enirisorse SpA v Ministero delle Finanze* (2003) ECR I-14243.



- (47) They argue in particular that, even though PI has not been chosen through a public procurement procedure, the 4<sup>th</sup> *Altmark* criterion has been fulfilled for the following reasons:
- i. The compensation would be significantly lower than the universal service's burden and would be decreasing over time (of about 3.62% per year) in view of the expected efficiency gains.  
  
Italy considers that it would be unreasonable to believe that a "typical undertaking" could incur costs which would be lower than the granted compensation for the delivery of the universal service over 2009-2011 in particular since it was built upon the compensation granted for the delivery of the universal service in 2008 as approved by the Commission in the 2008 decision, adjusted by a decreasing factor which takes into account efficiency gains.
  - ii. Two economic studies<sup>17</sup> would demonstrate that PI's USO costs would correspond to the costs of an efficient operator.
- (48) The Commission considers however that the arguments of the Italian authorities cannot be accepted.
- (49) Firstly, it can be observed that the second *Altmark* criterion requires that the parameters for compensations are defined in advance. Since the management contract which defines these parameters for the yearly compensations for 2009, 2010 and 2011 was only signed in November 2010, this criterion is clearly not fulfilled.
- (50) Secondly, the studies referred to by the Italian authorities rely entirely on models estimating the average costs of a postal services provider in function of mail volumes and population. The Italian authorities argue that the universal service costs of PI are lower than the ones which are predicted by these models, therefore that PI is comparably more efficient than the average of the other postal operators. However, the models were built upon information concerning other national universal service providers which are not necessarily efficient (and the studies do not examine the level of efficiency of these operators). The Commission has even taken several State aid decisions concerning several of these operators<sup>18</sup> where it concluded that they could not be considered as being efficient operators. Even if it could be accepted that PI was more efficient than the average of these providers, this would not suffice to prove that PI is an efficient operator and satisfies the 4<sup>th</sup> *Altmark* criterion. Solid and specific evidence should have been provided for that purpose, for instance, by demonstrating that for each cost category of a postal operator (labour cost, procurement cost...), PI's costs would be in line with the market.
- (51) Therefore, the Commission considers that the Italian authorities have not provided sufficient evidence substantiating that PI is being compensated according to the costs of a typical undertaking within the sector.

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<sup>17</sup> by NERA and Cohen

<sup>18</sup> e.g. French La Poste decisions

- (52) On the basis of the above considerations, it can be concluded that the selective measure in point ought to be considered as conferring an advantage to PI, which can be qualified as economic advantage within the meaning of article 107 (1) TFEU.

#### 3.1.1.5. Conclusion

- (53) The compensations granted to PI for the delivery of the universal postal service over the period 2009-2011 constitute State aid within the meaning of article 107 (1) of the TFEU.

#### 3.1.2. *Compensations for reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates*

##### 3.1.2.1. Existence of State resources

- (54) The compensation for the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates are paid by the State from its own budget according to specific laws.
- (55) Therefore this compensation is imputable to the State and is given through State resources.

##### 3.1.2.2. Selectivity

- (56) The compensation for the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates is granted exclusively to PI, thus it is selective.

##### 3.1.2.3. Affectation of trade and distortion of competition

- (57) The Italian authorities argue that the compensations for reduced tariffs offered to publishers, not-for-profit organisations and electoral candidates are not likely to affect trade and distort competition because they concern items in the Italian language (e.g. press) and/or destined for the Italian public.
- (58) However, it can be observed that all public service compensations granted to PI for the delivery of postal items are liable to affect trade and distort competition for the reasons developed in section 3.1.1.3.
- (59) Furthermore, it is clear that the reduced tariffs render more difficult for any other postal operator than the one that receives the compensation to distribute the targeted postal items. The measure is therefore likely to prevent market entry in this particular segment of the market.
- (60) As a conclusion, the compensations for reduced tariffs offered to publishers, not-for-profit organisations and electoral candidates are liable to affect trade and distort competition.

#### 3.1.2.4. Advantage

- (61) The Italian authorities have argued that the measure could not provide an economic advantage to PI as PI only received as payment the difference between the reference tariffs and the reduced tariffs. According to Italy, if the measures would involve any economic advantage, it would be for the publishers, not-for-profit organizations or electoral candidates.
- (62) The Commission considers however that the argument of the Italian authorities cannot be accepted. The measure covers costs effectively incurred by PI that other undertakings competing with PI should also incur. Furthermore, even if the compensation only corresponds to the difference between the reference tariffs and the reduced tariffs, there is no indication that the ordinary tariffs do not cover inefficiencies within the meaning of the Altmark jurisprudence (see above). By covering the difference between a tariff potentially higher than the efficient one and the reduced tariff, the measure might still procure an economic advantage to PI covering possible inefficiencies of the operator.
- (63) It can also be noted that the measure is very comparable to schemes implemented by French Post<sup>19</sup> and Belgian Post<sup>20</sup>. In both cases, the Commission concluded that such measures provided an economic advantage to the concerned postal operator and constituted State aid.

#### 3.1.2.5. Conclusion

- (64) The compensations granted to PI for the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates over the period 2009-2011 constitute State aid within the meaning of Article 107(1) of the TFEU.

### **3.2. Illegality of the aid measures submitted to the Commission**

#### *3.2.1. Compensations for the delivery of the universal postal service for the years 2009-2011*

- (65) Since the 2009-2011 Programme Contract, which constitutes the legally binding act by which the Italian State undertakes to grant the aid, was signed by PI and the Italian State on 5 November 2010, the Commission considers that the compensations for the delivery of the universal service, even though they are not yet paid, constitute illegal aid<sup>21</sup>. It is worth noting that while Italy disputes the aid character of the measure, it also agrees that should the measure constitute State aid, it would then have been illegally granted.

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<sup>19</sup> Décision C(2012) 152 - Aide d'État n° SA.34027 (2011/N) – France - Abattement fiscal en faveur de LA POSTE pour le financement de la présence territoriale xx

<sup>20</sup> Decision C(2012) 178 - SA.14588 (C 20/2009) implemented by Belgium in favour of De Post-La Poste (now bpost)

<sup>21</sup> 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 BV [2004] ECR II-127, paragraph 74 and joined cases T-362/05 and T-363/05 Nuova Agricast v Commission, judgement of 2.12.2008, not yet published, at paragraph 80, and joined cases T-427/04 et T-17/05, France and France Télécom v Commission, judgment of 30 November 2009, not yet published in the ECR, paragraph 321)

- (66) The fact that the amounts of compensations have been engaged in the Italian budget confirms that the Italian State had taken the legal steps to grant the aid.
- 3.2.2. *Compensations for reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates for the years 2009-2011*
- (67) The Italian authorities claim that should the compensations for reduced tariffs be aid, they would constitute existing aid, and therefore did not need to be notified, since the legal system which introduced these reduced postal rates for publishers would date back from the foundation of Italy as an independent country. More particularly, Law n° 604/1862 and Law n° 6151/1889 would already provide for a system of reduced tariffs for publishers, and Law n° 501/1899 would contain all the elements that constitute the foundation of the tariff system for publishers that remained in force until 31 March 2010.
- (68) It can first be observed that the arguments of the Italian authorities only concern the potential existing aid character of the reduced tariffs for publishers. No specific argument was provided as regards the reduced tariffs for the not-for-profit organizations or for electoral candidates in question.
- (69) Anyway, the measure under assessment in this decision concerns the compensation by the State of the reduced tariffs for years 2009-2011. In this respect, Italy has acknowledged that no compensation for reduced tariffs could be traced back before the creation of PI as a distinct entity from the Italian State in 1993. As regards the compensation for reduced tariffs offered to publishers, Italy provided the information that the modalities of the compensation from the State were put in place by Law n° 662/1996 and Law n°46/2004.
- (70) Consequently, it cannot be established that the compensation for reduced tariffs granted to publishers, not-for-profit organisations and electoral candidates pre-existed to the entry into force of the Treaty in 1958. Furthermore, the measure was never notified to the Commission or approved by it or the Council before its implementation. Accordingly, the Commission concludes that the claim that the reduced tariffs constitute existing aid cannot be accepted.
- (71) The compensations for 2009-2011 which have been submitted to the Commission and are being assessed in this decision constitute however illegal aid. Indeed, they derive directly from Law n° 662/1996 and Law n° 46/2004 (as regards the reduced tariffs for publishers and not-for-profit organizations) and from Law 515/1993 (as regards the reduced tariffs for electoral candidates) and were not notified before their implementation. It must be stressed that even if the exact determination of the amount to be paid is done yearly on an ex-post basis, this constitutes merely an accounting exercise which does not put in question the granting of the aid.

- (72) These compensations were also recorded and certified in PI's annual accounts for the years 2009, 2010 and 2011. The Commission therefore takes the view that the compensations for reduced tariffs both for publishers, not-for-profit organizations and electoral candidates constitute illegal aid.

### **3.3. Assessment of compatibility of the aid**

- (73) On the basis of paragraph 11 of the 2012 SGEI Framework, the Commission considers that, *“At the current stage of development of the internal market, State aid falling outside the scope of Decision 2012/21/EU may be declared compatible with Article 106(2) of the Treaty if it is necessary for the operation of the service of general economic interest concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union.”*

- (74) The 2012 SGEI Framework describes the conditions to be met to achieve such balance. However, since both the compensations for the delivery of the universal service and the compensations for reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates constitute illegal State aid, their compatibility should be assessed only under a limited number of the 2012 SGEI Framework provisions, excluding the retro-active application of paragraphs 14, 19, 20, 24, 39 and 60, which do not apply to illegal aid:

- Paragraph 14: give proper consideration to public service needs when entrusting the provider with a particular SGEI;
- Paragraph 19: compliance with EU public procurement rules when entrusting an SGEI;
- Paragraph 20: absence of discrimination;
- Paragraph 24 (and onwards): Application of net avoided cost methodology to calculate the net cost;
- Paragraph 39 (and onwards): efficiency incentives;
- Paragraph 60: transparency.

- (75) The conditions to be met for the compatibility of the measures are listed below.

#### *3.3.1. Genuine service of general economic interest as referred to in Article 106 of the Treaty*

- (76) As indicated in paragraph 56 of the 2012 SGEI Framework, Member States have a wide margin of discretion regarding the nature of services that could be classified as being services of general economic interest. The Commission's task is to ensure that the margin of discretion is applied without manifest error as regards the definition of service of general economic interest.

##### **3.3.1.1. Compensations for the delivery of the universal postal service**

- (77) The main public service obligation entrusted to PI is the universal postal service which qualifies as service of general economic interest within the meaning of Article 106 (2) TFEU and whose minimum requirements are laid down in Article 3 of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and by Directive 2008/6/EC).

3.3.1.2. Compensations for the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates

(78) The reduced tariffs aim at favouring the pluralism of press, promoting democracy, and supporting officially recognized not-for-profit organisations which are objectives of general interest. The mission is also very similar to other services of general economic interest already recognized by the Commission in the Belgian Post and French La Poste decisions.

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

(79) As indicated in the section 2.3 of the 2012 SGEI Framework, the concept of service 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 official acts.

(80) These acts must specify, in particular:

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

3.3.2.1. Compensations for the delivery of the universal postal service

(81) Law Decree n° 261/1999 of 22.07.1999 amended to transpose the Postal Services Directive 97/67/EC<sup>22</sup>, the Decree of Ministry of Communications of 17.04.2000, the Guidelines on postal sector regulation approved by CIPE's decision n. 77 of 29.09.2003, the Programme Contract of 5 November 2010 between the Ministry of Communications in agreement with the Ministry of Economy and Finance and PI covering the period 2009-2011 clearly define and entrust to PI the service of general economic interest represented by the universal postal service.

3.3.2.2. Compensations for the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates

(82) Law n° 662/1996, Law n°46/2004 and Law n° 515/1993 clearly define and entrust to PI the service of general economic interest represented by the reduced tariffs offered to publishers, not-for-profit organisations and electoral candidates.

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<sup>22</sup> Directive 97/67/EC, as amended by Directives 2002/39/EC and 2008/6/EC.

### 3.3.3. Duration of the period of entrustment

- (83) As indicated in section 2.4 of the 2012 SGEI Framework, "*the duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI.*"
- (84) Furthermore, this principle is also enshrined in Article 4(2) of the Postal Services Directive which stipulates that for the period of the designation of a universal service provider provides for a sufficient period for return on investments.

#### 3.3.3.1. Compensations for the delivery of the universal postal service

- (85) At the moment when the aid was granted, the duration of the entrustment period as established by the Concession Confirmation Act<sup>23</sup> was 15 years, starting in August 1999. Later, in March 2011 (before the entry into force of the 2012 SGEI Framework), the duration of the entrustment was reduced to 5 years renewable up to a maximum of two times<sup>24</sup>.
- (86) The Italian authorities explained that the initial duration of PI's entrustment was justified by reference to the depreciation period of the most significant assets required to provide the universal service. The investments made by PI in fixed assets in order to ensure the provision of the universal service mainly relate to real estate, real estate refurbishment, plants and facilities, and have accounting amortization periods varying in a wide range of up to 33 years. The Italian authorities also argued that the duration of the period of entrustment appears to be consistent with the practice in other Member States, where the universal service has been entrusted for 15 years or equivalent periods.<sup>25</sup>
- (87) Considering the above, the Commission considers that the initial duration of the entrustment period of PI was justified since it did not exceed the period required for the depreciation of the assets requested for the delivery of the universal service. The duration of the entrustment have been reduced to 5 years already before the entry into force of the 2012 SGEI Framework.

#### 3.3.3.2. Compensations for the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates

- (88) According to the Italian authorities, the entrustment of PI for the reduced tariffs was not limited in time when the aid was granted.

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<sup>23</sup> Ministerial Decree of 17 April 2000, "Confirmation of the concession of the universal postal service to the company Poste Italiane S.p.A.", in Official Gazette of the Italian Republic No 102 of 4 May 2000.

<sup>24</sup> Legislative Decree n° 58 of 31 March 2011.

<sup>25</sup> See for example *La Poste* (France): 15 years; *Correos* (Spain): 15 years, with a review mechanism after the first 5 years; *TNT* (The Netherlands): entrustment not limited in time.

- (89) However, first it can be observed that the most significant part of the mission (the reduced tariffs for publishers and not-for-profit organisations) was terminated in 2010 (before the entry into force of the 2012 SGEI Framework). Such termination corresponds de facto to a limitation of the duration of the entrustment.
- (90) Secondly, as regards the reduced tariffs for electoral candidates, the Commission does not consider that the unlimited duration of the entrustment constitutes an obstacle for the validation of the aid granted for the period 2009-2011 (before the entry into force of the 2012 SGEI Framework). Indeed, the objectives of the limited duration provision included in the 2012 SGEI Framework are to ensure that the State reviews the market situation regularly to verify that maintaining a public service is still justified and to allow competition for the granting of this public service through the application of public procurement rules. Such objectives cannot be pursued for the past aid granted over 2009-2011. However, if aid is still given after the entry into force of the 2012 SGEI Framework, Italy would have to limit the duration of PI's entrustment to fulfil all the compatibility conditions of the 2012 SGEI Framework.

#### 3.3.4. Amount of compensation

- (91) Paragraph 21 of the 2012 SGEI Framework states that *'(...) the amount of the compensation must not exceed what is necessary to cover the cost of discharging the public service obligations, including a reasonable profit'*. It also indicates that *'(...) Where the undertaking also carries out activities falling outside the scope of the SGEI, the costs to be taken into consideration may cover all the direct costs necessary to discharge the public service obligations and an appropriate contribution to the indirect costs common to both the SGEI and other activities. The costs linked to any activities outside the scope of the SGEI must include all the direct costs and an appropriate contribution to the common costs.'*
- (92) It is therefore necessary in this case to quantify the extra costs of the public service obligations imposed on PI by the entrustment acts and then compare these extra costs with the advantages granted to PI by the Italian State.
- (93) It can be noted that the Postal Services Directive and in particular its article 7(3) imposes a specific methodology for the determination of the acceptable maximum amount of compensation that can be granted for the delivery of the universal service which implies in particular the use of the net avoided cost methodology to calculate the net cost of the universal service as well as the demonstration that such net cost represents an unfair financial burden for the universal service provider.



- (94) However, in the case at hand, since the compensations of the universal service constitute illegal aid granted before its entry into force, the 2012 SGEI Framework specifically provides that, for the purpose of the State aid assessment, the use of the net avoided cost methodology is not required (see recital (74)). As a consequence, the Commission considers that the conditions established in paragraph 21 of the 2012 SGEI Framework suffice to verify the absence of overcompensation for the application of the justification provided for by Article 106 (2) TFEU to the State aid in question.

#### 3.3.4.1. Compensations for the delivery of the universal postal service

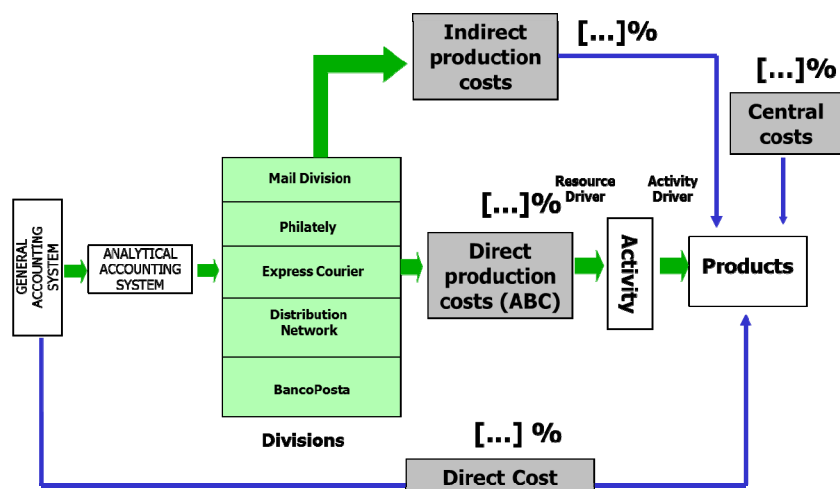
##### *Costs of the public service obligation/cost accounting*

- (95) Article 7§2 of Law Decree n° 261/1999 imposes separate accounts within the internal accounting system of the universal service providers. Article 7§3 of the Law Decree provides that the auditing firm responsible for certifying the accounts of the universal service provider must also check that the accounts comply with the abovementioned rules on separate accounting.
- (96) In order to comply with the obligation of separate accounts contained in the provisions foreseen in article 7§2 and 7§3 of Law Decree n. 261/1999, PI adopted an accounting system based on the cost accounting methodology called activity-based costing. The activity-based costing, which is a particular method of fully distributed cost allocation method, complies with the applicable provisions of the 2012 SGEI Framework and is in line with the sector specific requirements laid down in Article 14 of the Postal Services Directive.
- (97) Already in the 2006 and 2008 decisions, the Commission concluded that the methodology used by PI to separate accounts between costs and revenues of the services of general economic interest and costs and revenues of commercial activities reflected a correct allocation of PI costs among its different activities. Therefore, this methodology was found to be suitable for assessing the costs and revenues from the various services provided by PI as well as for determining the extra costs of the universal postal service entrusted to it.
- (98) Moreover, the independent auditor's reports for the years 2009-2011 certified that PI's internal accounting was based on generally accepted accounting principles and thus suitable for quantifying the net costs of the universal postal service entrusted to it.
- (99) Finally, on the basis of PI internal accounting for 2010, the Commission reviewed the methodology of accounting separation of PI. The result of this review is described here below.

- (100) The integrated accounting system of PI consists of:
- The general accounting system: costs and revenues are recorded in function of their nature (PI's chart of accounts is made of about [...] accounts);
  - Analytical accounting system: the above costs are attributed to cost centres (about [...]);
  - ABC system: the costs of the cost centres are attributed to the activities ([...] in 2010); the costs of the activities are attributed to products ([...] products in 2010).

- (101) PI's analytical accounting divides costs into:
- Direct costs: these are the costs relating to components used specifically to obtain a given product/service. They are entirely 'directed' towards the products in question via a detailed analysis of the General Accounting Plan of entries. In 2010, they represented [...] % of PI's total operating costs in 2010.
  - Direct production costs: these are the costs of divisional production structures whose activity contributes to the delivery of products/services. In 2010, they represented [...] % of PI's total operating costs.
  - Indirect production costs: these are the costs of the non-operational divisional structures, such as general Division and territorial area Division structures, which have the task of developing production strategies for the post, financial and telecommunication business and of implementing them in full. In 2010, they represented [...] % of PI's total operating costs.
  - Central costs: these are central support, orientation and control activity costs incurred for the purpose of insuring operational consistency of the activities carried out by the Divisions with central policies and strategies. In 2010, they represented [...] % of PI's total operating costs.

*PI's accounting model (2010)*



\* Business secret.

*Costs of products*

(102) PI's 149 products are grouped in 3 macro-categories: postal products, financial products and other products.

(103) The breakdown of 2010 operating costs among PI's 3 main product categories is the following:

**Table 3: Breakdown of 2010 PI's costs in million €**

Million €	Universal Service	Non Universal Service	Postal products	Financial Products	Other products	Total Costs	% Total Costs
<b>Direct production costs</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]%
<b>Direct costs</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]%
<b>Indirect costs</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]%
<b>Central costs</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]%
<b>Total operating costs</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]%
<b>Non-operating costs</b>	[...]	[...]	[...]	[...]	[...]	[...]	
<b>TOTAL COSTS</b>	[...]	[...]	[...]	[...]	[...]	[...]	

(104) On the basis of the above, the Commission concludes that the accounting split between commercial activities and activities operated by PI under public service obligations is appropriate. This accounting split is therefore suitable for quantifying the costs of the universal postal service entrusted to PI.

(105) PI's costs of discharging the public service obligation cover all the variable costs in operating the universal postal service and an appropriate contribution to PI's fixed costs common both to the universal postal service and the commercial services, as foreseen by the 2012 SGEI Framework and Article 14(3)(b)(iv) of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and by Directive 2008/6/EC).

(106) The costs attributed to the universal postal service for the period 2009-2011 are the following:

**Table 4: Costs attributed to the universal service for 2009-2011**

Million €	2009	2010	2011
Labour	[...]	[...]	[...]
Costs of goods and services	[...]	[...]	[...]
Depreciation	[...]	[...]	[...]
Other operating costs	[...]	[...]	[...]
<b>Operating costs of the public service obligation</b>	[...]	[...]	[...]
Non-operating costs	[...]	[...]	[...]
<b>TOTAL COSTS</b>	[...]	[...]	[...]

### *Revenues of the universal service*

- (107) As foreseen by the 2012 SGEI Framework, the revenues of the public service obligation include the entire revenue earned from the universal postal service.
- (108) The revenues attributed to the universal postal service for the period 2009-2011 are the following:

**Table 5: Revenues of the universal service**

Million €	2009	2010	2011
Revenue of the universal service (based on the universal service tariffs)	[...]	[...]	[...]

- (109) It is important to note that the revenues above are based on the normal universal tariffs. Indeed, the loss of revenues of the universal service due to the other mission (reduced tariffs for publishers, not-for-profit organisations and electoral candidates) is to be attributed to that mission and not to the universal service.

### *Compensation granted to PI*

- (110) The public service compensation granted to PI for the period 2009-2011 amounts to €1,093.541 million, divided as follows:
- €71.977 million for 2009;
  - €64.463 million for 2010;
  - €57.101 million for 2011.
- (111) The above amounts are determined in function of a subsidy capping mechanism, which anticipates planned efficiency gains (average yearly efficiency gains of 3.62%) and accounts also for inflation.
- (112) This mechanism allows for calculation of the compensation as follows:  
 $S_n = S_{n-1}(1+X-Y)$  where:  
     $S_n$ : is the compensation for the year n  
     $S_{n-1}$  is the compensation for the previous year  
    X is the planned inflation rate for the year n  
    Y is the planned efficiency gain resulting from PI business plan
- (113) The compensation is thus not only identified and connected to the specific extra costs of the universal service obligation, but it is also capped in a manner that encourages innovation and improvements by the universal postal provider over time.
- (114) The table below shows the net cost of the universal service obligation and compares it to public service compensation granted to PI over the period 2009-2011:

**Table 6: Absence of overcompensation in relation to the compensation of the net costs of the universal service**

	Million €	2009	2010	2011
(a)	Revenues (based on USO prices)	[...]	[...]	[...]
(b)	Costs	[...]	[...]	[...]
(c=b-a)	Net cost	[...]	[...]	[...]
(d)	Yearly compensation	<b>372</b>	<b>364.5</b>	<b>357</b>

(115) Over the relevant period, the net costs of the universal postal service obligation exceed the financial support granted to PI without taking into account any reasonable profit. For example, in 2010, the net cost of the USO amounted to €89 million while the yearly compensation amounted to €364.5 million.

(116) As a consequence, the Commission concludes that the measure under examination has not led to overcompensation of the net costs of the universal postal service entrusted to PI.

(117) Accordingly, the public service compensation granted to PI over the period 2009-2011 constitutes aid under Article 107 (1) TFEU which is compatible under Article 106 (2) of the TFEU.

#### 3.3.4.2. Compensations for the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates

##### *Extra costs of the service*

(118) The extra costs of the reduced tariffs mission correspond to the losses of the universal service revenues induced by the mission. These costs are presented below:

**Table 7: Net costs of the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates**

	Million €	2009	2010	2011
(a)	USO revenues based on normal USO tariffs	[...]	[...]	[...]
(b)	USO revenues taking into account the reduced tariffs	[...]	[...]	[...]
(a-b)	Revenue loss due to reduced tariffs	<b>310</b>	<b>124.6</b>	<b>23.3</b>

##### *Compensation granted to PI*

(119) The public service compensation granted to PI for the period 2009-2011 amounts to €457.876 million, divided as follows:

- €10.014 million for 2009;
- €124.558 million for 2010;
- €23.304 million for 2011.

(120) The table below shows the extra cost of the reduced tariffs and compares it to public service compensation granted to PI over the period 2009-2011:

**Table 8: Absence of overcompensation in relation with reduced tariff compensations**

Million €	2009	2010	2011
Revenue loss due to reduced tariffs	310	124.6	23.3
Compensations for the reduced tariffs	310	124.6	23.3

(121) Over the relevant period, the extra costs of the reduced tariffs corresponded exactly to the financial support granted to PI without taking into account any reasonable profit.

(122) Consequently, DG COMP considers that there is no overcompensation of PI for the compensation of the reduced tariffs.

#### **4. CONCLUSION**

(123) In view of the above, the Commission concludes that the State compensations for the delivery of the universal service over 2009-2011 as well as the State compensations for the reduced tariffs offered to publishers, not-for-profit organizations and electoral candidates over the same period constitute illegal State aid.

(124) However, the Commission finds that these two State aid measures are compatible with the TFEU under Article 106 (2) TFEU, as they meet all the applicable conditions of the 2012 SGEI Framework.

#### **5. DECISION**

(125) The Commission regrets that Italy put the measures in question into effect, in breach of Article 108 (3) of the TFEU.

(126) However, the Commission has decided that the measures are compatible with the internal market pursuant to Article 106 (2) TFEU.

(127) The Commission notes that for the sake of urgency, Italy exceptionally accepts the adoption of the Decision in the English language.

(128) 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 by registered letter or fax to:

European Commission  
Directorate-General for Competition  
Directorate F  
State Aid Greffe  
1049 Brussels  
Belgium  
Fax No: +32 2 296 12 42

We would ask you to state the case name and number in all correspondence.

Yours faithfully,  
For the Commission

Joaquín ALMUNIA  
Vice-President