



EUROPEAN COMMISSION

Brussels, 3.6.2016  
C(2016) 3338 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>
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**Subject: State aid SA.42366 (2016/N) – Belgium**  
**State compensations to bpost for the delivery of public services over 2016-2020**

Sir,

## 1. PROCEDURE

- (1) On 1 September 2015, Belgium pre-notified the compensations it intended to grant Belgian Post (hereinafter 'bpost') for the provision of several alleged services of general economic interest (hereinafter: “SGEI”) over the period 2016-2020: the press distribution SGEI awarded to bpost following a tendering procedure;<sup>1</sup> the retail network SGEI, day-to-day SGEIs, and ad hoc SGEIs<sup>2</sup> entrusted to bpost by the 6<sup>th</sup> Management Contract.
- (2) On 17 June 2015, the Commission received a complaint from the Vlaamse Federatie van Persverkoopers, an association that represents the interests of stakeholders active in the

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<sup>1</sup> See section 2.3: Press distribution SGEI

<sup>2</sup> See section 2.4: SGEIs entrusted to bpost under the 6<sup>th</sup> Management Contract

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sector of the press distribution. The complainant claims that the compensations granted to bpost for the press distribution constitute incompatible State aid<sup>3</sup>.

- (3) On 18 November 2015, a meeting took place between the Belgian authorities and the Commission regarding the 6<sup>th</sup> Management Contract and the press distribution SGEI.
- (4) On 24 November 2015 and 14 January 2016, the Commission requested further information from the Belgian authorities. The Belgian authorities replied by letter of 21 December 2015 and 5 February 2016.
- (5) On 25 March 2016, Belgium notified the 6<sup>th</sup> Management Contract which covers the delivery by bpost of the retail network SGEI, day-to-day SGEIs and ad hoc SGEIs over 2016 – 2020. On 14 April 2016, Belgium notified the awarding contract for the press distribution SGEI over 2016-2020. In the notification letters, Belgium indicated its agreement that the Commission adopts its decision on the notified compensations in English.

## 2. DESCRIPTION

### 2.1. The beneficiary

- (6) The sole beneficiary of the measure is bpost, which is the leading postal operator in Belgium. bpost's core business consists in collecting, sorting, transporting and delivering letters and parcels.
- (7) bpost was a State Agency until 1992, when it was incorporated as a separate legal entity ("entreprise publique autonome"). In 2000, its legal status changed to a limited liability company under public law "société anonyme de droit public/naamloze vennootschap van publiek recht". On 1 September 2010, the name of the Belgian Post was changed from "De Post/La Poste" ("DPLP") to "bpost".
- (8) Since the end of 2010, the postal market in Belgium is fully liberalised and the reserved area has thus been completely abolished. bpost therefore no longer holds monopoly rights in the postal market.
- (9) From 2000 to 2005, bpost was wholly owned by the Belgian State. On 16 January 2006, the State sold 50% of the shares minus one share to Post Invest Europe Sarl, a company that was at the time jointly controlled by CVC and Post Danmark A/S. Since 21 June 2013, bpost shares are listed on Euronext Brussels stock market. On the date of this Decision, 51.04% of the shares are owned by the Belgian State through SFPI/FPIM<sup>4</sup>. 48.96% of the shares are free float.
- (10) On 5 February 2016, bpost announced its acquisition of the activities of Lagardère Travel Retail in Belgium. Lagardère Travel Retail is active in the proximity retail sector through its kiosk brands "Relay" and "Press Shop". It also owns the company Agence et Messagerie de la Presse (hereafter AMP), which is the main distributor of periodicals and newspapers to kiosks and bookshops in Belgium.<sup>5</sup> This acquisition still has to be approved by the Belgian Competition authorities.

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<sup>3</sup> See section 3: The complaint of the Vlaamse Federatie Van Persverkopers (VFP)

<sup>4</sup> The Société Fédérale de Participations et d'Investissement/ Federale Participatie- en Investeringsmaatschappij manages the federal government's shareholdings.

<sup>5</sup> It distributes almost 6,300 titles to 5,800 sales outlets

## 2.2. Public service missions of bpost

### 2.2.1. Public service obligations entrusted to bpost until 2016

- (11) As a limited liability company under public law, bpost is governed by the Belgian Law of 21 March 1991 on the reform of certain economic public companies (hereinafter "the Law of 1991"). This law defines in general terms the public service missions that the Belgian State has entrusted to bpost, including the Universal Service Obligation ("USO") within the meaning of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and by Directive 2008/6/EC).
- (12) The exact contents and modalities of the services of general economic interest (SGEIs) entrusted to bpost are specified in Management Contracts<sup>6</sup> that are signed by the State and bpost. The Management Contracts also specify the general rules of conduct with regard to users and the parameters of compensation for the net costs of the SGEIs entrusted to bpost.
- (13) From its incorporation in 1992 to the end 2015, bpost has signed five Management Contracts with the Belgian State, covering the following periods:
  - 1st contract: 14.9.1992-31.12.1996;
  - 2nd contract: 1.1.1997-23.9.2002;
  - 3rd contract: 24.9.2002-23.9.2005;
  - 4th contract: 24.9.2005-31.12.2012<sup>7</sup>.
  - 5th contract: 01.01.2013 – 31.12.2015
- (14) Each contract provides for the payment by the State of annual compensations for discharging the SGEIs set out in that contract. While the set of SGEIs entrusted to bpost was subject to some evolutions over time, the main component of all five Management Contracts in terms of SGEI compensations have always been the press distribution SGEI.
- (15) The Commission investigated State compensation under the first four Management Contracts in the 2012 bpost Decision<sup>8</sup>. In that Decision, the Commission approved a pension relief of EUR 3.8 billion from which bpost benefited through the Belgian pension reform of 1997, but ordered Belgium to recover EUR 417 million of overcompensation that arose from the yearly compensations received by bpost for the delivery of SGEIs in the period 1992-2010.
- (16) The Commission assessed the compensations under the 5<sup>th</sup> Management Contract in the 2013 bpost Decision<sup>9</sup>. In that Decision, the Commission concluded that the State compensations granted under the 5<sup>th</sup> Management Contract constituted compatible State aid. The Commission took into account in its assessment the commitment of the Belgian authorities to organise a competitive transparent and non-discriminatory tender procedure for the press distribution SGEI for the period 2016-2020 as well as the commitment to recover EUR 123 million in overcompensation which arose from the prolongation of the 4<sup>th</sup> Management Contract over 2011-2012<sup>10</sup>.

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<sup>6</sup> Contrats de Gestion

<sup>7</sup> The 4th Management Contract was initially signed until 31.12.2010 and was prolonged until 31.12.2012 pending the entry into force of the 5th Management Contract.

<sup>8</sup> Commission Decision of 25 January 2012 in Case SA.14588 (C 20/2009) implemented by Belgium in favour of De Post-La Poste (now bpost), OJ L/170, 29.06.2012, p. 1. ("The 2012 bpost Decision")

<sup>9</sup> Commission Decision of 2.05.2013 on State compensations to bpost for the delivery of public services over 2013-2015, (case SA.31006 (2013/N)), OJ C 279, 27.09.2013, p.1 ("The 2013 bpost Decision")

<sup>10</sup> The overcompensation was repaid on 7 June 2013.

### **2.2.2. SGEIs entrusted to bpost from 2016 to 2020: scope of the present decision**

- (17) Over 2016-2020, bpost will be entrusted with public service missions by means of the Law of 1991 and the following additional entrustment acts:
1. the service concession agreements<sup>11</sup> for the press distribution SGEI over 2016-2020 concluded between bpost and the Belgian State following a tender procedure;
  2. the 6<sup>th</sup> Management Contract<sup>12</sup> which covers the period 2016-2020.
- (18) As already stated in recital (16), the Belgian authorities had committed in the framework of the 2013 Decision to organise a competitive transparent and non-discriminatory tender procedure for the press distribution SGEI for the period 2016-2020. This tender was organised as committed by the Belgian authorities and comprised two different lots: (1) the distribution of recognised newspapers; and (2) the distribution of recognised periodicals. Following this procedure, two separate service concession agreements (the “service concession agreement for the distribution of recognised newspapers” and the “service concession agreement for the distribution of recognised periodicals”) were concluded between the Belgian State and bpost on 12 November 2015 for the period 2016-2020. These concession agreements specify the content and modalities of the Press Distribution SGEI (regarding for example the time of delivery, the frequency, the volume and continuity of service and the amount of the State compensation).
- (19) The 6<sup>th</sup> Management Contract specifies the content of several SGEIs entrusted to bpost, the nature and the duration of the public service obligations; the territory concerned; the parameters for calculating, controlling and reviewing the compensation as well as the arrangements for avoiding and repaying any overcompensation. The Management Contract only enters into force after being approved by a Royal Decree<sup>13</sup>, which will only be published and enter into force after a Decision of the Commission approving the compensation at stake.
- (20) The present Decision concerns both the 6<sup>th</sup> Management Contract covering the period 2016-2020, and the service concession agreements for the press distribution SGEI concluded between bpost and the Belgian State for the period 2016-2020.

### **2.3. Press Distribution SGEI entrusted to bpost**

#### **2.3.1. Scope of the Press Distribution SGEI: distribution of recognised newspapers and recognised periodicals**

##### **2.3.1.1. Definition of recognised newspapers and recognised periodicals**

- (21) The press distribution SGEI consists in the early distribution of **recognised newspapers** and the distribution of **recognised periodicals**.
- (22) This means that only the newspapers and periodicals which are recognised and thus in compliance with certain predetermined conditions and criteria can be subject of the Press Distribution SGEI. The basic conditions and criteria defining recognised newspapers and periodicals can be found in Article 40 of the Royal Decree of 24 April 2014 concerning the regulation of the postal service<sup>14</sup>.

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<sup>11</sup> Service concession agreement for the distribution of recognized newspapers and service concession agreement for the distribution of recognized periodicals

<sup>12</sup> 6ème Contrat de Gestion/ 6de Beheerscontract

<sup>13</sup> Article 4, §3 of the Amended Law of 1991.

<sup>14</sup> Belgian Gazette, 9 July 2014, p.52198.

- (23) The qualification as a recognised newspaper or as a recognised periodical depends on the frequency of publication and on the content of the publications.
- (24) For the newspapers, the Royal Decree determines that they must be published at least 5 times a week. In order to be considered as recognised periodicals, their publication must be foreseen for an indefinite period with regular intervals which should not exceed a period of 3 months.
- (25) Furthermore, it is foreseen that only newspapers and periodicals including several articles of general interest (covering at least 30% of their surface) fall within the scope of the recognised publications, and therefore within the SGEI. Article 40, §3 of the Royal Decree defines an article of general interest as “*articles of informative, cultural, educational, scientific, technical, political, historical, philosophical or recreational nature with exclusion of all forms of publicity*”. Moreover, if the publication contains advertisements, they must emanate from at least three different organisms, excluding the editor or the printer.

#### **2.3.1.2. Control on the qualification of the recognised newspapers and recognised periodicals**

- (26) bpost, as the provider of the SGEI, must verify on a case-by-case basis whether the abovementioned conditions are met. Article 43 of the Royal Decree 2014 determines that a publisher who wants to make use of the SGEI provider for the distribution of its publications must submit an application to the service provider, de facto bpost. The latter will verify whether or not the conditions are met. If so, bpost will grant the publisher a certificate of recognition of the newspaper or periodical.
- (27) Furthermore, bpost must verify, at least once a year, whether the conditions included in Article 40 of the Royal Decree 2014 are still met. According to the Belgian authorities, bpost rejects on a regular basis requests from publishers whose publications do not meet the criteria contained in Article 40.
- (28) In turn, bpost is subject to control by the Belgian State, through the intervention of the Minister for Labour, Economy and Consumers, which verifies whether bpost complies with its obligations as included in the concession agreements. This is foreseen in Articles 5.4.1, points 2 to 4 and 11 of these concession agreements.

#### **2.3.2. Quality requirements included in the concession agreements**

- (29) The content and modalities of the Press Distribution SGEI (regarding for example the time of delivery, the frequency, the volume and continuity of service and the amount of the State compensation) can be found in the concession service agreements, which are based on the concession specifications used in the tender proceedings.
- (30) The SGEI specifications impose minimum quality requirements. These can be summarised as follows:

For newspapers:

1. 100% of the newspapers must have reached the newspaper subscriber’s home before 7:30 am on Mondays to Fridays and before 10:00 am on Saturdays. The distribution hours must be stable for each subscriber. Contractual sanctions and administrative sanctions will be applied in case of non-compliance.
2. The SGEI provider must have at its disposal and under its control a network of (central, regional and local) warehouses where publishers deliver the newspapers at agreed times in the night in view to warrant the effective delivery to the subscribers on the next day.
3. The SGEI provider must offer an efficient ICT system compatible with the Publisher’s ICT system in order to manage the logistical processes, the claims and the subscription contracts between the subscribers and the publishers.

4. A claims management system must be in place, enabling the SGEI provider to reach an objective of maximum 7 claims per 10 000 deliveries and report periodically about these results.
5. A risk management system must be put in place.

Similar minimal quality requirements are requested for periodicals:

1. 95% of all periodicals must be distributed at the subscriber's home at Day+1 for weekly periodicals and at Day + 2 for non-weekly periodicals; 97% of all periodicals must be distributed maximum one day later.
2. The SGEI provider must have at its disposal and under its control a network of (central, regional and local) warehouses where publishers deliver big volumes of periodicals at agreed times at night in view of warranting the effective delivery to the subscribers within the above mentioned deadlines.
3. The SGEI provider must offer an efficient ICT system compatible with the Publisher's ICT system in view to manage the logistical processes, the claims and the subscription contracts between the subscribers /addressees and the publishers.
4. A claims management system must be in place, enabling the SGEI provider to reach the objective of 95% or 97% mentioned under 1°above.
5. A risk management system must be put in place.

### **2.3.3. SGEIs are set up as 'last resort' services:**

- (31) Both the SGEI for the distribution of recognised newspapers and the SGEI for the distribution of recognised periodicals are set up as a "last resort" service, i.e., publishers remain free to set up their own or make use of other distribution systems.
- (32) Article 3.3 of the service concession agreements stipulates that *"the SGEI for the distribution of recognised newspapers and the SGEI for the distribution of recognised periodicals aim at allowing, as a last resort service, the home distribution of the newspapers and of the periodicals at uniform (on the whole territory) and affordable rates. The last resort system means that the SGEI provider fulfils its mission of public service as a back-up provider, which intervenes in the case where, and insofar the editor did not find, or does not want to call on another operator for the distribution of its newspapers/periodicals. The execution of the last resort service does not therefore create exclusivity for the SGEI provider. Each editor remains free to call on another service provider than the SGEI provider, for the whole or a part of the Belgian territory"*<sup>15</sup>.
- (33) In practice, the SGEI provider has to offer the service to the publishers on the whole Belgian territory, but each publisher may choose another distribution channel for the whole Belgian territory or part of it and may also cancel at any time the distribution agreement with the SGEI provider in part or in total, with a six months prior notice, if it so wishes.
- (34) In this regard, it is worth noting that most publishers use another distributor (e.g. BD<sup>16</sup>) to distribute their newspapers to the subscribers' homes in Brussels and in Antwerp.

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<sup>15</sup> Le SIEG relatif à la Distribution de Périodiques a pour objectif de permettre, en tant que dernier ressort, la livraison à domicile de Périodiques à des tarifs uniformes (sur tout le territoire) et abordables. Le système de dernier ressort signifie que le Concessionnaire remplit sa mission de service public en tant que fournisseur de secours, qui intervient au cas et dans la mesure où l'Éditeur n'a pas trouvé ou ne souhaite pas faire appel à un autre opérateur pour la distribution de ses Périodiques. L'exécution du service de dernier ressort ne crée donc pas d'exclusivité pour le Concessionnaire. Chaque Éditeur reste libre de faire appel à un autre prestataire de services que le Concessionnaire, pour l'ensemble ou une partie du territoire belge.

<sup>16</sup> Indeed, according to a report recently issued by the Belgian postal regulator, Belgische Distributiedienst (BD), which is now owned by Société pour la Distribution de Périodiques, Presse et Publicité (PPP), had in

Nevertheless, under the terms of the concession, the SGEI provider must be able to offer the SGEI services also in these two cities.

#### **2.3.4. Tender procedure organised by the Belgian State for the award of the concessions for distribution of recognised newspapers and periodicals.**

- (35) The 2013 Decision recorded the commitment of the Belgian authorities to organise a competitive, transparent and non-discriminatory tendering procedure for the award of service concessions for the distribution of recognised newspapers and periodicals. The Decision foresaw that the total duration of the concession award process would not take more than 3 years and that the selected provider would take over the provision of the press distribution SGEI as of 1 January 2016. The Belgian authorities provided in their notification the following description of the tender procedure that was implemented.
- (36) In order to comply with the 2013 Decision, the BIPT/IBPT<sup>17</sup> was mandated by decision of the Council of Ministers of 29 November 2013 to organise, in name and on behalf of the Belgian State, a tender procedure for the Press Distribution SGEI.
- (37) At the end of 2013, a public consultation was organised prior to the publication of the concession notice. The concession notice and the invitation to submit candidacies of 9 April 2014 were published in the "Bulletin for tenders"<sup>18</sup> and in the Official Journal of the European Union<sup>19</sup> on 12 April 2014. Interested bidders were asked to submit their request to participate before 11 June 2014.
- (38) Three candidates submitted a request to participate: bpost (the incumbent provider of the Press Distribution SGEI), BD, and Agence et Messagerie de la Presse ("AMP"<sup>20</sup>).
- (39) After having asked some further clarifications from the interested bidders, the Council of Ministers selected all three bidders to continue the award procedure on 6 February 2015. At the same time, the concession specifications (cahier des charges) were communicated to the selected bidders and the latter had until 18 May 2015 to submit their first bid.
- (40) During the period between 6 February 2015 and 18 May 2015, the BIPT/IBPT responded to questions from interested bidders (i.e., bpost and AMP) regarding the exact scope of the concession specifications. Both the questions as well as the responses were published on the website of the BIPT/IBPT on 10 and on 30 April 2015, respectively.
- (41) In the meantime, on 14 April 2015, BD indicated its intention to no longer participate in the tender procedure after agreeing to a management buy-out of its PPP division which is responsible for press distribution. On 15 May 2015, three days before the deadline, bpost submitted its offer. Subsequently, on 18 May 2015 (i.e., the last day of the deadline), AMP announced that it no longer wished to submit an offer.

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2015 "a little less than 10% of the market shares of newspaper delivery" in Belgium. This report also outlined that BD/PPP's activities were centred on Antwerp and Brussels. Based on its very limited presence in Antwerp and Brussels, bpost extrapolated that PPP could probably be delivering up to 95% of the newspapers in Antwerp and Brussels.

<sup>17</sup> Belgian Institute for Postal services and Telecommunications

<sup>18</sup> Bulletin der Aanbestedingen/Bulletin des Adjudications

<sup>19</sup> Under reference 2014S/ 073-125979

<sup>20</sup> AMP is a Belgian subsidiary of the French Lagardère Group, a global leader in content production and distribution, including press distribution, whose head office is in France. According to Lagardère website, AMP is the Belgian leading distributor of national and international magazines and newspapers. It distributes almost 6,300 titles to 5,800 sales outlets. AMP was acquired by bpost on 5 February 2016.

- (42) Following this procedure, the BIPT/IBPT analysed bpost's offer and asked additional questions and requested further clarifications on certain issues (in the course of June 2015). During the month of July 2015, a clarification session and several negotiation sessions took place between bpost, on the one hand, and the representatives of the Belgian State on the other, with a view to improving the initial offer submitted by bpost. As a result of the aforementioned negotiation sessions, the draft concession service agreements as well as the draft distribution agreements were amended on several points.
- (43) On 3 August 2015, bpost submitted its best and final offer (BAFO). It was agreed with bpost that this BAFO would integrate all clarifications requested by the BIPT/IBPT after its analysis of the first offer, as well as the outcome of the aforementioned negotiations between bpost and the Belgian State. The publishers of newspapers and periodicals were allowed to comment on the action plan suggested by bpost and this, before the 18<sup>th</sup> of August.
- (44) The final service concession agreements between the Belgian State and bpost were concluded on 12 November 2015.

### 2.3.5. State compensations granted to bpost for the provision of the Press distribution SGEI

#### Formula for the calculation of the yearly amount of compensation

- (45) Under both concession agreements, the Belgian authorities grant an annual compensation to bpost, which depends on the number of periodicals/newspapers effectively distributed during that year and is calculated according to the following formula:

$$C_{n/p} = F_{n/p} + V_{n/p} * N_{n/p} ,$$

where:

$C_{n/p}$  = Amount of the yearly compensation for the distribution of newspapers/ periodicals (euro in the year t);

$F_{n/p}$  = Fixed amount for the distribution of newspapers/ periodicals, which is the same for every year of the entrustment and is equal to [...] for the distribution of recognized newspapers and to [...] for the distribution of recognized periodicals;

$V_{n/p}$  = Amount of compensation per newspaper/ periodical distributed in conformity with quality requirements during year t

$N_{n/p}$  = Number of newspapers/ periodicals distributed in accordance with the additional quality requirements set out in the concession agreement.

- (46) As shown in the formula above, the compensation is divided into two parts. First, there is a fixed contribution ( $F_{n/p}$ ) of [...] /year for the newspapers and [...] /year for the periodicals. Second, there is a variable component based on the number of distributed items ( $V_{n/p} \times N_{n/p}$ ). The total amount of compensation is obtained by adding the fixed contribution to the variable component.
- (47) The amounts of compensation per newspaper/ periodical ( $V_{n/p}$ ) for each year of the concession period were proposed by bpost in its BAFO. They are the following:

**Table 1: Amounts of compensation per newspaper/ periodical**

Year	Amount of compensation per newspaper (€)	Amount of compensation per periodical (€)
2016	[...]	[...]
2017	[...]	[...]
2018	[...]	[...]
2019	[...]	[...]



- (53) Based on the above<sup>21</sup>, the Belgian authorities have made a forecast of the annual amount of compensation that will be granted to bpost for the period 2016-2020 for the early distribution of recognised newspapers and for the distribution of recognised newspapers. The result of this exercise is shown in the tables below:

**Table 3: Total estimated annual compensation for the early distribution of recognized newspapers**

Year	Number of newspapers	Unit price	Fixed contribution	Amount of compensation before ceiling	Expenditure Ceiling	Estimated amount of compensation with ceiling
2016	[100,000,000-250,000,000]	[...]	[...]	[...]	125,000,000	122,846,708
2017	[100,000,000-250,000,000]	[...]	[...]	[...]	121,875,000	121,875,000
2018	[100,000,000-250,000,000]	[...]	[...]	[...]	121,498,364	118,750,000
2019	[100,000,000-250,000,000]	[...]	[...]	[...]	120,663,380	115,625,000
2020	[100,000,000-250,000,000]	[...]	[...]	[...]	119,588,756	112,500,000

**Table 4: Total estimated annual compensation for the early distribution of recognized periodicals**

Year	Number of periodicals	Unit price	Fixed contribution	Amount of compensation before ceiling	Expenditure Ceiling	Estimated amount of compensation with ceiling
2016	[100,000,000 - 300,000,000]	[...]	[...]	[...]	75,000,000	50,791,861
2017	[100,000,000 - 300,000,000]	[...]	[...]	[...]	71,875,000	53,915,251
2018	[100,000,000 - 300,000,000]	[...]	[...]	[...]	68,750,000	54,159,718
2019	[100,000,000 - 300,000,000]	[...]	[...]	[...]	65,625,000	54,255,329
2020	[100,000,000 - 300,000,000]	[...]	[...]	[...]	62,500,000	54,040,514

*Ex post verification*

- (54) On a 12-monthly basis, bpost will have to provide information to the Belgian State demonstrating that no overcompensation has occurred. When there has been

<sup>21</sup> In particular, the expected volume of newspapers/ periodicals to be distributed by bpost is based on the assumptions explained in recital (50).

overcompensation, the exceeding amount will have to be refunded immediately or will be deducted from the compensation due in the following year. If the actual cost exceeds the compensation, no additional compensation can be requested.

## **2.4. SGEIs entrusted to bpost under the 6<sup>th</sup> Management Contract**

- (55) The SGEI missions defined by the Belgian State in the 6<sup>th</sup> Management Contract are as follows:

### **Retail Network SGEI**

1. Maintenance of the 'Retail Network'

### **Day to day SGEIs**

2. Home payment of retirement and survivors' pensions and disabled persons' allowances
3. Cash at counter services
  - i. Accept cash deposits crediting a postal current account or an account with another financial institution;
  - ii. Issue and pay domestic postal money orders (mandates).

### **Ad hoc SGEIs**

4. Social role of the postman
  5. Delivery of addressed or unaddressed election printed items
  6. Delivery at a special price of postal items sent by associations
  7. Delivery of letter post items that fall within the freepost system
  8. Printing, sale, reimbursement, replacement and exchange of fishing permits
  9. Please Postman service
  10. Dissemination of information to the public
  11. Cooperation with regard to the delivery of voting paper packages
  12. Payment of attendance fees during elections
  13. Financial and administrative processing of fines
  14. Sale of stamps and other postal values
- (56) bpost is compensated under the 6<sup>th</sup> Management Contract for some of the SGEIs mentioned above while others do not give right to compensation from the Belgian State. bpost does not receive any compensation for the delivery of the universal service obligation (hereinafter USO).

### **2.4.1. SGEIs for which bpost is compensated**

#### ***The Retail Network SGEI***

- (57) Article 9 of the 6<sup>th</sup> Management Contract entrusts bpost with the Retail Network SGEI. The conditions with which bpost must comply are laid down in Articles 9 to 14 of the 6<sup>th</sup> Management Contract. According to these provisions, the Belgian State requires bpost to maintain a retail network which is denser and geographically more widespread than what would be commercially viable or than what is required for the delivery of the USO and other public service tasks ("Product SGEIs<sup>22</sup>"). This is the purpose of the Retail Network SGEI which is entrusted to bpost.
- (58) bpost's retail network is composed of different kinds of postal service points ("PSP"):

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<sup>22</sup> Product SGEIs refer to the Day to Day SGEIs and Ad hoc SGEIs

- a) *Post offices*, which are directly managed, owned, and run by bpost and provide at least a complete range of services<sup>23</sup> to the customer.
  - b) *Postal shops* which are run by third parties and in which such third parties carry out public service tasks in the name and for the account of bpost. Third parties can be private or public partners. bpost's contracts with third parties for the franchising of postal shops do not contain any clauses that restrict the freedom of the third parties to distribute, on their premises, products or services of other postal operators in any manner that does not create any confusion in the eyes of the customers.
  - c) *Postal halts* or other contact points for the customer, where at least the minimum service<sup>24</sup> is offered by the personnel of bpost during a limited number of hours. These may be installed inside a postal shop. Currently, there are no postal halts in the network.
- (59) The entrustment of the Retail Network SGEI provides for specific requirements in terms of size, composition and density in order to ensure proximity and full territorial presence within Belgium:
1. The retail network must have at least 1300 PSP offering at least the minimum service. PSP with minimum service range must be accessible by road for a minimum of 95% of the population within 5 kilometres (by road) and for a minimum of 98% within 10 kilometres (by road).
  2. The retail network must have at least 650 Post Offices, while:
    - guaranteeing at least one Post Office in each of the 589 municipalities of the country;
    - maintaining more than one Post Office in some municipalities (to be determined by bpost, taking into account the social role of bpost).
- (60) The total retail network of bpost consists of 669 Post Offices and 675 Postal shops (1344 PSP). It can be subdivided into different segments:
1. The **commercial optimal retail network**: this is the part of the retail network that bpost would maintain, even if it were not entrusted with any SGEI. It is defined on the basis of two commercial principles: profit maximisation and optimisation of customer satisfaction (through optimal territory coverage) with the fewest number of PSP possible. The Belgian authorities submit that the commercial optimal retail network consists of [...] Post Offices and [...] Postal Shops.
  2. The **accessibility network**: this is the part of the retail network that is necessary to appropriately provide the USO and other public service tasks ("Product SGEIs"). According to Article 142, §2 of the Amended Law of 1991, to discharge the USO,

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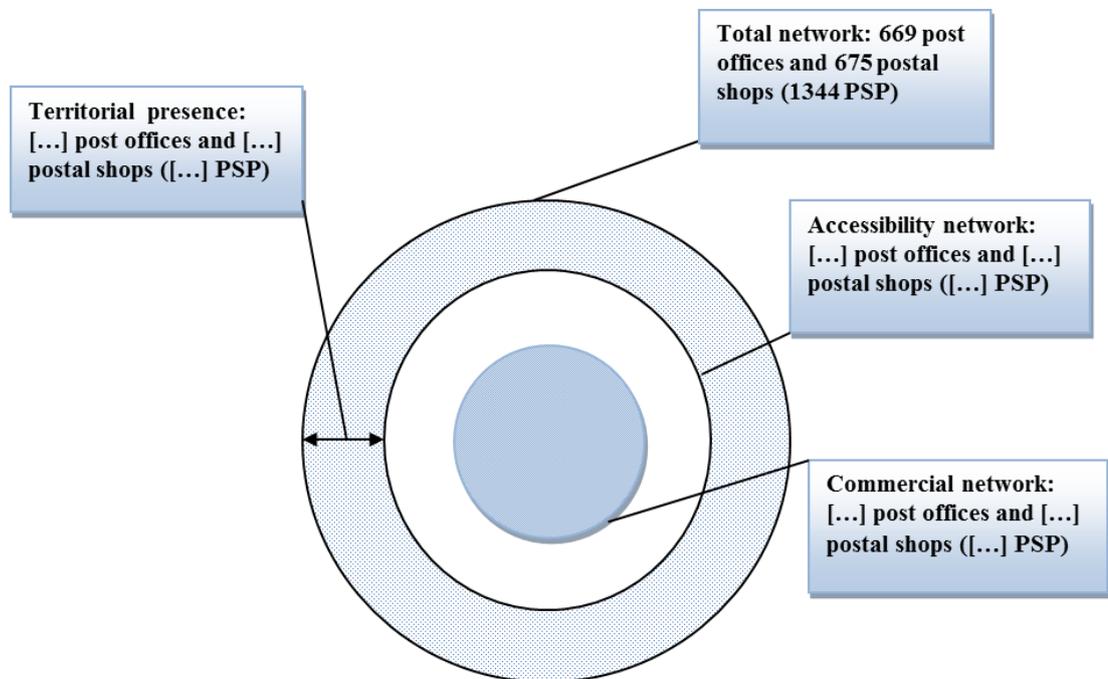
<sup>23</sup> The "complete range of services" entails at least the following public services: (a) the minimum service range (see below footnote 6); (b) the execution of operations of basic banking services as defined in the Code of Economic Law of 23 February 2013; (c) the payment of inland postal money orders; (d) the sale, reimbursement, replacement, and exchange of fishing permits; (e) the acceptance of "cash deposits at counter" to accounts held by bpost or other financial institutions; (f) cash withdrawal from an account, irrespective of the proposed method; (g) payments of "assignment P"; (h) collection of payment order forms for payments from own account.

<sup>24</sup> The minimum service range entails the following public services: (a) the collection of letter postal items and postal parcels related to USO, except for items with an insured value; (b) the storage and distribution of registered mail and postal parcels that form part of the USO for which a notice was left (unsuccessful delivery at home); (c) the sale of post stamps; (d) the acceptance of "cash deposits at counter" of maximum EUR 500 to accounts held by bpost or other financial institutions. Cash deposits at counter are provided via a structured notice; (e) as far as possible, a minimum range of packaging shall be made available for sale.

bpost must maintain one access point per municipality. In each access point, users must be able to drop all types of postal items falling within the USO (including parcels) and collect postal items that were unsuccessfully delivered at home (including registered mail). Hence, the access point in each municipality must be at least a postal shop. The accessibility network fully incorporates the commercial optimal retail network plus [...] additional postal shops in order to reach the density requirements.

3. The **territorial presence network**: this is the part of the retail network that is necessary to ensure proximity and full territorial presence within Belgium. It goes beyond the accessibility network (and therefore, also beyond the commercial optimal retail network). The territorial presence network consists of [...] post offices and [...] postal shops.
- (61) The Retail Network SGEI consists in the obligation to maintain the territorial presence network. It can also be defined as the difference between the total network and the accessibility network (see figure 1):

**Figure 1: Network SGEI**



Day-to-day SGEIs

- (62) Day-to-day SGEIs include public services that are provided to users with some measure of recurrence (for example, every day, every month...). They consist of (i) the deposits of cash at the counter (“cash at counter services”), and (ii) the home delivery of pensions.
- (63) **Cash at counter services**: The Law of 6 July 1971 on bpost and the Royal Decree of 12 January 1970 on the regulation of the postal service entrust bpost with the execution of certain financial services. These services are further detailed in Article 21 of the 6<sup>th</sup> Management Contract, which provides that bpost must:
  - Accept cash deposits crediting a postal current account or an account with another financial institution;
  - Issue and pay domestic postal money orders (mandates).

- (64) The Belgian State requires bpost to offer these financial services universally, including to persons who are not served by banks, for instance because they are heavily indebted and financially vulnerable. Moreover, the service is offered at reduced tariffs, in order to be affordable to all the citizens in the country.
- (65) **Home delivery of pensions:** Article 141 §1 C) of the Law of 1991 entrusts bpost with the execution of the service of doorstep payment of old age and surviving dependents' pensions and benefits for people with limited moving capabilities. This SGEI is further detailed in Article 28 of the 6<sup>th</sup> Management Contract.
- (66) The home delivery of pensions allows people with limited moving capabilities and old people to receive their benefits and pensions at home. This service is offered over the entire territory of the country at no additional charge.

Ad hoc SGEIs

- (67) The category of ad hoc SGEIs includes public service missions which, by nature, are provided without any recurrence.
- (68) **Social Role of the Postman:** Article 35(a) of the 6<sup>th</sup> Management Contract assigns to bpost the duty to ensure the social role of the postman. This includes services to be provided to persons who live alone and the least privileged, including but not limited to:
- Passing time with them, in terms of simple conversations and contacts;
  - Assisting them with electronic transactions and payments (e.g., with the use of handheld payment terminals and electronic ID cards).
- (69) Time measurements indicate that this service amounts to 2 minutes on average per postman and per delivery round. This service is provided free of charge to the users. Through this SGEI, the Belgian State aims to improve social cohesion and, in particular, offer protection for the people living alone and underprivileged citizens at their residence.
- (70) **Delivery of addressed or unaddressed election printed items:** Article 35(e) of the 6<sup>th</sup> Management Contract entrusts bpost with the duty to deliver during the election period relevant materials at reduced prices. Through this SGEI, the Belgian State seeks to guarantee a more open and democratic election process by facilitating the dissemination of information by all candidates and political parties.
- (71) **Delivery at a special price of postal items sent by associations:** Article 35(f) of the 6<sup>th</sup> Management Contract entrusts bpost with the duty to deliver at reduced prices postal items sent by associations to stimulate the social web. Conditions, accession criteria, and the reduced tariffs for these postal items are determined in a special agreement between bpost and the State. Through this SGEI, the Belgian State aims to strengthen the role of associations in the society, facilitating the dissemination of information on their part.
- (72) **Delivery of letter post items that fall within the freepost system:** Article 35(g) of the 6<sup>th</sup> Management Contract entrusts bpost with the duty to deliver free of charge postal items originating from or addressed to the King, correspondence between Members of the Parliament, correspondence between certain public services and institutions, etc.
- (73) A detailed description of the postal items falling within the scope of this SGEI is included in Article 49 of the Royal Decree of 24 April 2014, Article 57 of the Law of 18 July 1991 on the regulation of supervision of the police and intelligence services, and Article 18 of the Law of 22 March 1995 on the creation of the federal ombudsmen. Through this SGEI, the Belgian State aims to facilitate the horizontal communications among various entities of the State and also the contacts between citizens and State bodies.
- (74) **Printing, sale, reimbursement, replacement and exchange of fishing permits:** Article 35(j) of the 6<sup>th</sup> Management Contract entrusts bpost with the duty to print, sell, reimburse, replace and exchange fishing permits. The Belgian State realised that the strict legislative framework on fishing would become ineffective if the services of issuing permits would be

left to the market. In that case, market players would have an interest to issue a high number of permits in order to maximise profits. The Belgian State seeks to assign those services as an SGEI to monitor more easily and effectively how they are issued in practice.

#### **2.4.2. SGEIs for which bpost is not compensated under the 6<sup>th</sup> Management Contract**

##### Universal Service Obligation and Related Obligations

- (75) Pursuant to Article 144octies §1 of the Law of 1991, the universal service obligation (“USO”) was entrusted to bpost in 2010 for a period of 8 years ending on 31 December 2018. After 2018, the Belgian State will attribute the provision of USO to bpost and/or another postal service provider for periods of 10 years.
- (76) Article 142, §1 of the Law of 1991 specifies the specific tasks that USO comprises. The entrustment of USO to bpost is detailed in Part 2 of the 5<sup>th</sup> Management Contract. Article 1.1 of the 6<sup>th</sup> Management Contract establishes that the provisions regarding USO contained in the 5<sup>th</sup> Management Contract will remain in force for the remainder of the period in which bpost is designated to provide the universal service, i.e. until 31 December 2018.
- (77) The USO entrusted to bpost includes the provision of the following services:
- Clearance, sorting, transport, and distribution of postal items up to 2 kg ;
  - Clearance, sorting, transport, and distribution of postal parcels up to 10 kg ;
  - Distribution of postal parcels received from other Member States and weighing up to 20 kg;
  - Services for registered items and insured items.
- (78) In providing the USO, bpost must comply with the following obligations :
- One access point must be available in each municipality to receive mail and postal parcels that fall within the scope of the USO;
  - One collection, one dispatch, and one distribution of mail and postal parcels per day must take place per municipality at least 5 days per week;
  - Distribution of mail must be made to all homes that have a mailbox in Belgium. Parcels that cannot be delivered to the recipient shall be kept in a place located in the municipality of the recipient.
- (79) As the provider of the USO, bpost must meet the following requirements:
- Comply with the essential requirements defined in Article 142, §§2 and 3 of the Law of 1991;
  - Offer an identical service to similarly situated users;
  - Offer the service without discrimination;
  - Offer the service continuously without interruption, except in case of *force majeure*; and
  - Adapt the service to the technical, economic and social environment, as well as to the needs of users.
- (80) Pursuant to Article 8 of the 5<sup>th</sup> Management Contract, which remains valid until 31 December 2018, bpost is also responsible, in its capacity as operator designated by the State, for the operation of the international letter postal service and the operation of the international *postcolli* service in accordance with the relevant acts of the Universal Postal Union.

##### Ad hoc SGEIs

- (81) Certain Ad hoc SGEIs do not fall within the compensation system established in the 6<sup>th</sup> Management Contract:
- (82) **Please Postman service:** Article 35(b) of the 6<sup>th</sup> Management Contract entrusts to bpost the duty to provide the “please postman” service. Through this SGEI, the Belgian State enables the elderly and the least privileged citizens to request from postmen various types of postal services. Through this SGEI, the Belgian State aims to improve social cohesion and offer help for the elderly and underprivileged citizens at their residence.
- (83) **Dissemination of information to the public:** Article 35(c) of the 6<sup>th</sup> Management Contract entrusts to bpost the duty to offer information to the public, upon a specific request from the Belgian State. The dissemination of information can take place, among other ways, through the post offices of bpost’s retail network. Through this SGEI, the Belgian State aims to reinforce social and territorial cohesion, by establishing a direct channel of communication with the citizens, especially for important issues and campaigns.
- (84) **Cooperation with regard to the delivery of voting paper packages:** Article 35(d) of the 6<sup>th</sup> Management Contract entrusts to bpost the duty to distribute the voting paper packages (weighing more than 10 kg), through special rounds of the postmen. Through this SGEI, the Belgian State aims to make the election procedure more efficient and transparent and also ensures consistency in the administrative details of the different election procedures (for example at the federal or regional level).
- (85) **Payment of attendance fees during elections:** Article 35(h) of the 6<sup>th</sup> Management Contract entrusts to bpost the duty of managing the payment of attendance fees during elections. bpost issues the invoices and then requests the entity where elections took place to disburse the attendance fees. Through this SGEI, the Belgian State aims at making the election procedure more efficient and transparent and also ensures consistency in the administrative details of the different election procedures (for example at the federal or regional level).
- (86) **Financial and administrative processing of fines:** Article 35(i) of the 6<sup>th</sup> Management Contract entrusts bpost with the duty to manage the payment of fines. This includes not only accepting the payment, but also taking other administrative actions leading to the payment (e.g., sending invitations to pay to infringers, reminders, etc.). This SGEI allows the Belgian State to easily monitor the financial and administrative processing of fines and ensures that it takes place efficiently and in line with fundamental human rights and the general principles of good administration.
- (87) **Sale of stamps and other postal values:** Article 131 4<sup>o</sup> *sexies* of the Law of 1991 and Article 35(k) of the 6<sup>th</sup> Management Contract entrust bpost with the duty to sell post stamps and other postal values. On the basis of transparency criteria, bpost may allow third parties to sell post stamps and other postal values, taking into account that the postal value of such post stamps constitutes the sale price to the end consumer, except in the case of sales for philately purposes. Through this SGEI, the Belgian State aims to ensure that citizens will have easy access to post stamps and other postal values (at least) through bpost’s retail network. It also guarantees horizontal pricing of stamps and other postal values throughout the country’s territory, by requiring that their postal value equals the sale price to the end-consumer, except in the case of sales for philately.

#### 2.4.3. *State compensations granted to bpost under the 6<sup>th</sup> Management Contract*

- (88) Under the 6<sup>th</sup> Management Contract, the Belgian State undertakes to compensate bpost for the provision of the Retail Network SGEI, the day-to-day SGEIs and several ad hoc SGEIs for the financial years 2016-2020.
- (89) bpost receives advanced payments for these SGEIs and the Belgian authorities have explained that these advance payment amounts are calculated on the basis of the Net Avoided Cost Methodology (hereinafter "NAC") pursuant to a methodology that was approved by the Commission in the 2013 Decision. Moreover, at the end of each calendar

year, there will be an ex post verification of bpost's financial accounts in order to ensure that there is no overcompensation. Furthermore, the exact compensation amounts are subject to a cap similar to the one already approved by the Commission in the 2013 Decision.

#### Advance payment

- (90) In anticipation of the ex-post calculated compensation amount, bpost receives advance funding from the State. This advance funding is set at the following amounts:
- i. For the period from 1 January 2016 to 31 December 2016: EUR 90,068,119.18;
  - ii. For the period from 1 January 2017 to 31 December 2017: EUR 90,473,767.31;
  - iii. For the period from 1 January 2018 to 31 December 2018: EUR 92,773,016.69;
  - iv. For the period from 1 January 2019 to 31 December 2019: EUR 93,228,165.65;
  - v. For the period from 1 January 2020 to 31 December 2020; EUR 91,808,947.40.
- (91) These advance payment amounts are calculated on the basis of the NAC Methodology. They represent the total forecasted net cost related to the provision of SGEIs.<sup>25</sup>
- (92) To guarantee the continuity with previous Management Contracts, the advance payment for each specific year will be disbursed in two instalments.
- i. A first advance payment in January of each specific year (Y) for 266/365 of the amount mentioned above in relation to that specific year (Y); and
  - ii. A second advance payment in January of following year (Y+1) for 99/365 of the amount mentioned above for the specific year (Y).
- (93) As a result, the actual advance payments made by the Belgian State to bpost will be the following:
1. EUR 65,638,684.12 to be made by 15 January 2016 (i.e. 266/365 of the 2016 advance payment amount). This amount does not include the amount of EUR 79,819,838 which shall remain a receivable of bpost vis-à-vis the Belgian State and corresponds to the payment to be made under the 5<sup>th</sup> Management Contract in relation to the 99/365 of the 2015 advance payment amount.
  2. EUR 90,363,742.20 to be made on 15 January 2017 (i.e. 266/365 of the 2017 advance payment amount and 99/365 of the 2016 advance payment amount).
  3. EUR 92,149,384.66 to be made on 15 January 2018 (i.e. 266/365 of the 2018 advance payment amount and 99/365 of the 2017 advance payment amount).
  4. EUR 93,104,714.28 to be made on 15 January 2019 (i.e. 266/365 of the 2019 advance payment amount and 99/365 of the 2018 advance payment amount).
  5. EUR 92,193,886.05 to be made on 15 January 2020 (i.e. 266/365 of the 2020 advance payment amount and 99/365 of the 2019 advance payment amount).
  6. EUR 24,901,604.91 to be made on 15 January 2021 (i.e. 99/365 of the 2020 advance payment amount). This amount will remain a claim of bpost on the Belgian State after the Contract's expiration.

#### Calculation of the compensation for the SGEIs

- (94) **Retail Network and day-to-day SGEIs:** for the Retail Network and day-to-day SGEIs, compensation is equal to:

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<sup>25</sup> The advance payments do not take into account the expected inflation.

1. The net avoided cost (NAC) of bpost for the provision of the SGEI, which already includes a reasonable profit;
2. Increased by a 67% share of efficiency gains or decreased by a 67% share of efficiency losses<sup>26</sup>;
3. Decreased by a special penalty mechanism evaluating bpost's performance against several quality targets:
  - (i) For cash at counter services, bpost commits to ensure that 95% of all transactions shall be executed on time. Deposits relating to bpost bank accounts shall be executed within D+1. For all other accounts, transactions shall be executed within D+2;
  - (ii) For the home delivery of pensions, bpost commits to ensure that the net number of complaints in relation to this SGEI received in writing by bpost shall remain below 50 for every 10,000 deliveries;
  - (iii) For the retail network SGEI, bpost commits to ensure that between 80% and 90% of all customers are served within five minutes in post offices; in addition, it commits to ensure that the application level of the *Goolda/Brasma*<sup>27</sup> standard is between 80% and 90%.
  - (iv) If the quality targets described in (i) to (ii) are not met and bpost incurs efficiency losses, the share of losses borne by bpost shall be increased from 67% to 100%. If the quality targets described in (i) to (ii) are not met and bpost achieves efficiency gains, the share of gains obtained by bpost shall be reduced from 67% to 33%. If the quality target described in (iii) is not met, compensation can be reduced by up to 10% on the basis of a specific formula, set out in Article 18 of the 6<sup>th</sup> Management Contract.

(95) **Ad hoc SGEIs:** For ad hoc SGEIs, the compensation amount is calculated on the basis of the NAC methodology, which already includes a reasonable profit.

*Ex post verification*

- (96) At the end of each calendar year, the *ex post* verification of bpost's financial accounts will be performed by the Board of Auditors, which will ensure that there is no overcompensation. The compensation amounts are subject to a cap, as described in Article 7.3 of the 6<sup>th</sup> Management Contract.
- (97) If the compensation amount (calculated on the basis of the *ex post* verification and taking into account the cap) is lower than the advance payments for a specific year, then the difference will be reimbursed by bpost to the State within 30 days of the determination of this difference.
- (98) If the compensation amount (calculated on the basis of the *ex post* verification and taking into account the cap) is higher than the advance payments for a specific year, then the difference will be paid by the State to bpost within 30 days of the determination of this difference.

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<sup>26</sup> Efficiency gains are calculated as the actual reduction of bpost's total costs compared to the costs incurred in the previous year when providing the SGEI, after neutralizing the effect of all parameters not related to bpost's performance (e.g., volume changes). Similarly, efficiency losses are calculated as the actual increase of bpost's total costs compared to the costs incurred in the previous year when providing the SGEI, after neutralizing the effect of all parameters not related to bpost's performance.

<sup>27</sup> Quality criteria based on the GOOLDA/BRASMA welcome model (greet, make eye contact, help/offer solutions, smile, thank, say goodbye).

### Compensation cap

- (99) According to Article 7.3 of the 6<sup>th</sup> Management Contract, the final compensation amount per calendar year is subject to the following cap:
1. For the period from 1 January 2016 to 31 December 2016: EUR 90,068,119.18;
  2. For the period from 1 January 2017 to 31 December 2017: EUR 90,473,767.31;
  3. For the period from 1 January 2018 to 31 December 2018: EUR 92,773,016.69;
  4. For the period from 1 January 2019 to 31 December 2019: EUR 93,228,165.65;
  5. For the period from 1 January 2020 to 31 December 2020; EUR 91,808,947.40.
- (100) For each year, the cap shall be adjusted to reflect the evolution of the consumer price index, which is calculated by the Ministry for Economy, SMEs, Self-Employed and Energy. This adjustment will be done in accordance with the mechanism described in Article 7.4 of the 6<sup>th</sup> Management Contract.
- (101) According to Article 7.3 of the 6<sup>th</sup> Management Contract, if the cap (always after application of the adjustment mechanism) is lower than the compensation amount, calculated according to recitals (94) and (95) above, the cap amount becomes the final compensation. If the compensation amount is lower than the cap (always after application of the adjustment mechanism), then the cap does not apply and the final compensation amount is the compensation amount calculated according to recitals (94) and (95).

### **3. THE COMPLAINT OF THE VLAAMSE FEDERATIE VAN PERSVERKOPERS (VFP)**

- (102) On 17 July 2015, the Vlaamse Federatie van Persvekopers (VFP) submitted a complaint to the Commission regarding the concessions agreement to be concluded between the Belgian authorities and bpost for the distribution of recognised newspapers and recognised periodicals. The grounds of its complaint can be summarised as follows.
- (103) First, VFP argues that the compensations granted to bpost for the provision of press distribution services create an unjustified distortion of competition between bpost and other press distributors (in particular small independent press distributors). According to VFP, the measures at stake allow bpost to offer substantially reduced tariffs to publishers. The latter would therefore be encouraged to distribute their newspapers and periodicals via bpost rather than via other distributors.
- (104) Second, VFP claims that the compensations granted to bpost for the provision of press distribution services do not meet the requirements of the 2012 SGEI Framework<sup>28</sup>.
- (105) In particular, VFP argues that press distribution services do not qualify as genuine SGEI. According to VFP, these services are provided under the same conditions by the owners of kiosks and press shops who operate under market conditions. The owners of kiosks and press shops would also offer home delivery of newspapers and periodicals and this 6 days a week before 7.30 in the morning. VFP also argues that the Press distribution SGEI would in fact not be used by publishers as a last resort service, as more than half of all press articles sold (by number and by abonnement) and 97% of press articles sold by abonnement would be distributed by bpost. Lastly, VFP argues that the measure would in reality have detrimental effects on press diversity and on the citizen's access to information, i.e. its alleged objectives of general interest, because it would encourage readers to subscribe to an abonnement and therefore to one newspaper/ periodical.

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<sup>28</sup> Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011) Official Journal C8, 11.01.2012, p. 15-22

- (106) Moreover, according to VFP, bpost would be overcompensated for the provision of the Press distribution SGEI. This allegation is based on a comparison made by VFP of the alleged cost per newspaper and periodical of the distribution via bpost (as roughly estimated by VFP<sup>29</sup>) and the cost of distribution of these items by small independent distributors. This comparison would show that the cost of distribution by bpost is much higher than the cost of distribution by small independent publishers. VFP therefore considers that bpost is overcompensated.

#### 4. BELGIUM'S COMMENTS ON THE COMPLAINT OF THE VFP

##### 4.1. Genuine SGEI

- (107) The Belgian authorities argue that the distribution of recognised newspapers and of recognised periodicals is a genuine SGEI on the basis of the following arguments:
- (108) **First, the Press distribution is entrusted through acts of the public authority.** The operation of the Press Distribution SGEI is entrusted to bpost by several legal acts and service concession agreements concluded between the Belgian State and bpost.
- (109) **Second, the Press distribution has a universal nature.** Article 3.2 of the service concession agreements, relating to the territorial scope of the concession, stipulates that the concession is applicable on the whole Belgian territory. bpost therefore has to deliver any and all recognised newspapers and periodicals to every Belgian citizen, wherever his/her location on the territory.
- (110) **Third, the Press distribution has a compulsory nature.** Based on the service concession agreements, and subject to penalties, bpost is obliged to deliver the recognised newspapers and periodicals to every citizen in Belgium, under very strict quality requirements (see recital (30)).
- (111) **Fourth, the Press distribution SGEI has been set up in the general interest and without it, press distribution would not be assumed to the same extent and under the same conditions.** When establishing the press distribution as an SGEI, the Belgian State aims at ensuring an equal and affordable access to recognised newspapers and periodicals for every Belgian citizen, wherever his/her location on the territory, in order to safeguard the freedom of press, media plurality and freedom of opinion guaranteed by the Belgian Constitution. Without the Press Distribution SGEI, such considerations of general interest would not be taken into account by undertakings performing the services at stake on the market, which would only/mainly be acting pursuant to their economic interest.
- (112) In this respect, even if it is not contested by the Belgian State that some members of the VFP could offer services in competition with those offered by bpost within the framework of the Press distribution SGEI for certain limited geographic areas, the VFP would not demonstrate that its members ensure services comparable to those provided by bpost in terms of price, objective quality characteristics, continuity and access to the service on a national level, ensuring efficient drop off of newspapers/ periodicals at warehouses, etc.
- (113) One of the differences between both networks resides in the fact that within the framework of the press distribution, the recognized newspapers and periodicals are directly delivered to the consumers' home, everywhere in Belgium before 7:30 am on Mondays to Fridays and before 10:00 am on Saturdays. The Belgian State is of the view that these qualitative requirements would not be adequately met by commercial operators because no operator has a commercial distribution network that covers the entire Belgian territory. If the Belgian State were not to support a Press distribution SGEI, many rural and less dense areas would face a risk of not being serviced, or users would have to pay a higher price for

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<sup>29</sup> VFP did not have precise data on the costs and revenues of bpost for the Press distribution SGEI.

receiving press at home. This would run counter to the fundamental objectives of affordability and accessibility for every citizen living in Belgium.

- (114) The Belgian authorities analyse the alternatives to the Press distribution SGEI for providing a home delivery service for press subscriptions and they identify 2 main alternatives: PPP and the delivery at home by press shop owners.
- (115) As regards PPP, the Belgian authorities consider that from an economic perspective, this alternative is only viable in densely populated areas, i.e. in the Brussels and Antwerp Regions (sole areas where PPP is currently active) and that in the absence of the Press distribution SGEI, PPP would not offer an acceptable alternative in terms of accessibility to the whole population.
- (116) As regards delivery at home by press shop owners, the Belgian authorities also consider that the service is only viable in densely populated areas, and therefore does not guarantee accessibility to the whole population. The continuity of the service depends on the local press shop, and could suffer anytime a press shop closes (even temporarily), or decides not to provide home delivery, because of the poor economics of such an activity (see recital(122)). Moreover, it is much more difficult for a local press shop to guarantee that a replacement can be found anytime in case the person in charge of a distribution round would be sick or would decide to stop.
- (117) Finally, the Belgian authorities explain that a large number of publications which are recognized and therefore benefit from the Press distribution SGEI are not sold in the press shops (in particular periodicals edited by non-profit associations, which would not be delivered by undertakings pursuing their own commercial interest).

#### **4.2. Distortion of Competition**

- (118) In response to VFP's claim that the Press distribution SGEI create an unjustified distortion of competition between bpost and other press distributors (in particular small independent press distributors), the Belgian authorities have provided an assessment of the impact of the Press distribution SGEI on users and, publishers benefiting from the Press distribution SGEI as well as on the non-subsidized distribution network (i.e other press distributors such as the members of VFP).
- (119) **As regards users**, the Belgian authorities consider that if no affordable distribution were available, prices for press would increase. bpost for example could deliver the service on a commercial basis in these areas, but it would certainly become more costly. Publishers would have to pay more to maintain distribution, resulting in significant price increases for consumers located in those areas and price disparities.
- (120) **As regards publishers**, the Belgian authorities consider that if the SGEIs were not provided, this would affect the survival of the printed press, which would subsequently affect freedom of speech, pluralism and democracy. The Belgian authorities explain (based on an IBPT<sup>30</sup> survey) that the press industry faces significant pressure by constant volume decreases due to e-substitution, which means that they have very limited margin for price increases. As a consequence, in absence of the Press distribution SGEI, small and medium-sized publishers could disappear because they do not have the means to maintain a distribution mechanism that would reach all of their readers. Moreover, many non-commercial or non-profit organisations that distribute periodicals for free for purposes of obtaining funding or of creating awareness would no longer be able to do so and their existence would be threatened.

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<sup>30</sup> Belgian Institute for Postal services and Telecommunications

- (121) **As regards the non-subsidized distribution network**, the Belgian authorities consider that the presence or absence of the Press distribution SGEI has little to no impact on the non-subsidized distribution network and more particularly on the activities of kiosks and shops, as publishers remain free to choose other distributors. This would occur in practice as, as indicated above, PPP (ex-BD) is active in Brussels and Antwerp (the two largest cities and most densely populated areas in Belgium).
- (122) The Belgian authorities explain that the undeniable decline of kiosks and shops is unrelated to the Press distribution SGEI and is due to the combination of a number of other factors:
- The sales of newspapers by piece has decreased as publishers try to maximize the number of subscribers (newspapers subscriptions are typically 30-40% cheaper than the prices of newspapers based on a by piece basis). Indeed, unlike sales per piece, subscriptions guarantee them a stable source of income throughout the year and also allow them to boost their advertising sales. Consumers increasingly enjoy the comfort of having products, including newspapers, delivered at home, especially in rural areas where kiosks are few and far between.
  - Consumers have fewer reasons to visit kiosks and shops on a regular basis as many of the products sold in kiosks are now available online and more and more people choose to read online newspapers and magazines. This is not only the case of newspapers and magazines, but also of lottery products and telephone prepaid cards, the sales of which are constantly declining.
  - With the number of smokers decreasing (or switching to electronic cigarettes), kiosks have also partly lost another product that drew consumers (tobacco products typically representing approximately 50% of the shops turnover) to their shops.
  - Rental fees in shopping streets and malls has known an impressive increase over the last years in Belgium; small retail stores, and especially those proposing goods with low margins, have not been able to overcome this.

## **5. ASSESSMENT OF THE COMPENSATIONS GRANTED TO BPOST FOR THE PRESS DISTRIBUTION SGEI**

### **5.1. Presence of aid under Article 107(1) TFEU**

- (123) 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*".
- (124) It follows that, in order for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative conditions have to be met: i) it has to be imputable to the Member State and granted from State resources, ii) it has to confer an economic advantage to undertakings, iii) that advantage has to be selective, and iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (125) It must be noted that although they notified the compensations for the Press distribution SGEI, the Belgian authorities have explained that they did not consider the measure to constitute State aid for reasons developed in section 5.1.2. below

#### **5.1.1. Aid imputable to the State and out of State resources**

- (126) 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.
- (127) The SGEI compensation is financed from the State budget, as specified in the concession agreements for the early distribution of recognised newspapers and the distribution of recognised periodicals concluded between bpost and the Belgian State.

(128) Therefore, the compensation granted to bpost for discharging its public service obligations is imputable to the State and constitutes State resources.

### 5.1.2. *Economic advantage to undertakings*

(129) 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.<sup>31</sup> Only the effect of the measure on the undertaking is relevant, neither the cause nor the objective of the State intervention.<sup>32</sup> Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present.

(130) However, SGEI compensations granted to an undertaking do not constitute an economic advantage if certain conditions, strictly defined in the *Altmark* judgment<sup>33</sup> of the Court of Justice, are met. Those four cumulative criteria are the following:

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

(131) Due to the cumulative nature of the four *Altmark* criteria, if any of these criteria is not fulfilled, the compensation will be deemed to constitute an advantage in the meaning of Article 107(1) of the TFEU.

(132) In the present case, the Commission considers that the fourth *Altmark* criterion cannot be considered fulfilled, contrary to the claim of the Belgian authorities on which they base their position that the compensations for the Press distribution SGEI do not involve State aid.

(133) In this regard, the Commission recalls that a public procurement procedure only excludes the existence of State aid where it allows for the selection of the tenderer capable of providing the service at the least cost to the community<sup>34</sup>. Whether a public procurement procedure allows for the selection of the tenderer capable of providing the service at the

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<sup>31</sup> 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.

<sup>32</sup> Case C-173/73 *Italian Republic v Commission of the European Communities* EU:C:1974:71, paragraph 13.

<sup>33</sup> Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* EU:C:2003:415, p. 4-14.

<sup>34</sup> Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest; OJ C8, 11.01.2012, p. 4-14, §65

least cost to the community depends on the characteristics of this public procurement procedure and on the actual circumstances under which it took place.

- (134) As regards the characteristics of the tender procedure, the Commission has explained in recital 66 of its 2012 SGEI Communication<sup>35</sup> that "*a competitive dialogue or a negotiated procedure with prior publication confer a wide discretion upon the adjudicating authority and may restrict the participation of interested operators. Therefore, they can only be deemed sufficient to satisfy the fourth Altmark criterion in exceptional cases.*"
- (135) In the present instance, the Commission notes that the tender procedure organized by the Belgian authorities was a negotiated procedure<sup>36</sup> based on the on the award criterion of the most economically advantageous tender. Such procedure can only be deemed sufficient to satisfy the fourth *Altmark* criterion in exceptional cases.
- (136) Moreover, as regards the circumstances in which the tender procedure took place, the Commission has explained in recital 68 of its 2012 SGEI Communication<sup>37</sup> that "*there can be circumstances where a procurement procedure cannot allow for the least cost to the community as it does not give rise to a sufficient open and genuine competition. This could be the case, for example, due to the particularities of the service in question, existing intellectual property rights or necessary infrastructure owned by a particular service provider. Similarly, in the case of procedures where only one bid is submitted, the tender cannot be deemed sufficient to ensure that the procedure leads to the least cost for the community*".(emphasis added).
- (137) Accordingly, given that only bpost submitted a bid in the tender procedure for the Press distribution SGEI, such tender would therefore normally not seem sufficient to ensure the absence of an advantage to the winner.
- (138) The Belgian authorities nevertheless argue in their notification that the Commission has nuanced the position expressed in recital 68 of its 2012 SGEI Communication in its SGEI Guide<sup>38</sup> (a staff working document prepared by the Commission's services<sup>39</sup>). They refer in particular to the response to question 68 "*If only one bid is submitted, is that tender never deemed sufficient to ensure the provision of the service at the least cost to the community or can there also be cases where the tender may still be sufficient?*"
- (139) In response to question 68, the SGEI guide provides the following reply "*The*

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<sup>35</sup> Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest; OJ C8, 11.01.2012, p. 4-14, §66

<sup>36</sup> Article 30 of Directive 2004/18/EC, Article 1(9)(a) of Directive 2004/17/EC.

<sup>37</sup> Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest; OJ C8, 11.01.2012, p. 4-14, §68

<sup>38</sup> Commission Staff working document: Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest, p.50 reply to question 68

<sup>39</sup> As recalled in its introduction, the SGEI guide provides technical explanations, in particular on the basis of concise and sometimes simplified summaries of the legislation and case law on state aid, public procurement and the internal market and, in relation to state aid, of Commission decisions on SGEIs and in particular SSGIs. This document is not binding on the European Commission as an institution.

*Communication (para. 68) sets out the general principle that a procedure where only one bid is submitted is, in principle, insufficient to ensure compliance with the first alternative of the fourth Altmark criterion. However, it does not mean that there cannot be cases where, due to particularly strong safeguards in the design of the procedure, also a procedure where one bid is submitted can be sufficient to ensure the provision of the service at ‘the least cost to the community’. In these situations, however, Member States are advised to notify the measure, if the measure is not exempted under the Decision”.* (emphasis added).

- (140) On the basis of that response of the SGEI Guide, the Belgian authorities argue that, in the present instance, the tender procedure organised for the attribution of the Press distribution concessions described in section 2.3.4 of this Decision contained particularly strong safeguards to ensure effective competition that would enable it to be *Altmark* compliant despite the fact that only one bid was submitted. According to the Belgian authorities, these strong safeguards would be the following:
- The implemented tender procedure corresponds to the one described in the 2013 Decision;
  - The concession for Press distribution was divided into two different lots (one for newspapers and one for periodicals) to allow the participation to the tender of smaller undertakings;
  - The selection criteria have been set at a level which allowed for other undertakings than the incumbent to participate to the tender<sup>40</sup>;
  - The qualitative and technical requirements in the concession specifications have been set in an objective manner in order to avoid that the service description be a copy of the services currently offered by bpost;
  - The relative weight attached to the qualitative and quantitative award criteria is equal, which would provide an incentive for offering the most cost effective proposal.
- (141) Moreover, the Belgian authorities argue that genuine competition has effectively taken place during the tender procedure. They explain that when bpost submitted its first bid, AMP had not announced that it would not submit an offer and that the concession specifications stated that the contracting authority could decide to award the concessions directly after the first round of offers. They therefore consider that bpost was under real and significant competitive pressure of AMP when it submitted its bid and that it therefore had an incentive to submit its best offer. According to the Belgian authorities, such competitive pressure would be further evidenced by the reduction of the level of compensation that will be granted to bpost for the Press distribution SGEI over 2016-2020. Indeed, the Belgian authorities have estimated that, overall, the prices in the submitted bid are significantly lower (i.e. by EUR [0.000 to 1.000] per unit newspapers and by EUR [0.000 to 1.000] per unit periodicals) which would amount in total to a EUR [50 to 200] million reduction on the overall period compared to the compensations bpost obtained in 2014, while at the same time better quality will be delivered and a more rigorous quality control process will be implemented which can lead to more severe sanctions.

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<sup>40</sup> The Belgian authorities argued that, for example, they have set the turnover level such that all undertakings that were active on the market of press distribution could participate, even though the value of the contract largely exceeds the required level of turnover. They also explained that, the first selection criterion, referring to the technical competence of the candidate, required that the candidate has a useful experience and appropriate competences in the creation and the management of a distribution network. It was not a prerequisite that such experience and competences be related to the distribution of post or press items, or that such experience should have been acquired on the Belgian territory.

- (142) In response, the Commission recalls, at the outset, that the SGEI guide is a staff working document published by the Commission at services level, whereas the 2012 SGEI Communication is an official document of the Commission, adopted by the College of Commissioners and published in the Official Journal of the European Union. The Commission further notes, in this regard, that the SGEI guide contains the following disclaimer: *“This document is a working paper prepared by the Commission's services. It provides technical explanations, in particular on the basis of concise and sometimes simplified summaries of the legislation and case law on state aid, public procurement and the internal market and, in relation to state aid, of Commission decisions on SGEIs and in particular SSGIs. This document is not binding on the European Commission as an institution.”*
- (143) In any event, the Commission does not consider the factors listed by Belgium and summarised in recital (140) to constitute *“particularly strong safeguards in the design of the procedure”* allowing for the conclusion that a procedure where only one bid is submitted is sufficient to ensure the provision of the service at *“the least cost to the community”*.
- (144) First, the tender procedure described in the 2013 Decision reflected the commitment of the Belgian authorities to organise a competitive, transparent and non-discriminatory tendering procedure for the award of service concessions for the distribution of recognised newspapers and periodicals, in order to comply with public procurement rules.<sup>41</sup> While the Commission acknowledges that Belgium abided by its commitment to organise the tender procedure described in the 2013 Decision in order to comply with public procurement rules, the Commission notes that the tender procedure did not unravel exactly as envisaged in the 2013 Decision. Indeed, as bpost was the only undertaking to submit a bid during the first offer phase and therefore to be selected for the next phases of the procedure, the best and final offer phase was not competitive but was negotiated between Belgium and bpost. This circumstance was not envisaged in the 2013 Decision. Furthermore, the Commission did not express the view in its 2013 Decision that the design of the tender procedure envisaged by Belgium contained particularly strong safeguards which would allow for the selection of the provider capable of providing the service at the least cost to the community, even if only one bid was submitted. Indeed, as reflected in recital 130 of the 2013 Decision, the purpose of the organisation of the tender procedure described in that Decision was to comply with Union rules on public procurement, as required by paragraph 19 of the 2012 SGEI Framework, not to ensure the fulfilment of the fourth Altmark criterion.
- (145) Second, while the Commission acknowledges that dividing the Press distribution SGEI into two separate lots could encourage smaller undertakings to participate in the tender procedure, the Commission does not see how this factor constitutes a *“particularly strong safeguard”* in the design of the procedure. It merely has the effect of potentially widening the pool of interested bidders. In that regard, it could also be argued that some form of geographical subdivision (instead of a national coverage) could have been even more effective in encouraging smaller undertakings to participate, since competition has so far been predominantly local in nature and observed mainly in certain big cities (Brussels and Antwerp). In any event, no other undertaking than bpost submitted a bid for the Press distribution SGEI despite the presence of this factor.
- (146) Third, while the selection criteria did allow for more than one participant, this is a normal requirement for a competitive, transparent and non-discriminatory tendering procedure, not a *“particularly strong safeguard”* in the design of the procedure. In any event, the fact remains that only bpost submitted a bid. It is therefore not possible to extrapolate on the effective possibility for the two other competitors to deliver the Press distribution SGEI and

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<sup>41</sup> See recital 130 of the 2013 decision

therefore on the real competitive pressure that they could exert on bpost.

- (147) Fourth, the fact that the qualitative and technical requirements in the concession specifications have been set in an objective manner so as to avoid that the service description be a copy of the services currently offered by bpost is a normal requirement to ensure the tender procedure is genuinely competitive and non-discriminatory. It does not constitute a “particularly strong safeguard” in the design of the procedure. In any event, in the presence of only one bid from the incumbent, it is not possible to extrapolate on the exact impact of the qualitative and technical requirements included in the technical specifications on the competitiveness of the tender.
- (148) Fifth, the Commission observes that the weight associated with the qualitative criteria and in particular to the proven capacity of the provider to be ready in time to start the provision of the SGEI is very significant (50%). While the importance given to these qualitative criteria is unproblematic in itself, it could be argued that it rather tends to make it easier for the incumbent to propose a competitive offer than contenders given the extent of the experience accumulated by this incumbent in delivering if not exactly the same service but a very similar one.
- (149) Finally, the Commission considers that the fact that bpost submitted its first offer before AMP withdrew from the tender procedure does not imply that it provides the press distribution SGEI at the least cost to the community. That first offer was not final and there was no guarantee that bpost would not have made a better offer during the final bidding phase. The fact that the concession specifications stated that the contracting authority could decide to award the concessions directly after the first round of offers is not sufficient to allay that doubt. Indeed, the Commission understands that this possibility would have only been used in case of a substantial difference between the best first offer and the other offers and in any case was only a possibility for the contracting authority. In any event, the Commission observes that due to efficiency gains, the cost of the SGEI should in general decrease over time.
- (150) In light of the above, the Commission does not consider the tender procedure implemented for the award of the Press distribution SGEI ensures that that SGEI is delivered at "the least cost to community".
- (151) The Commission also notes that the Belgian authorities have not provided an analysis of the costs which a typical and well-run postal undertaking would incur in providing the Press distribution SGEI, taking into account the receipts and a reasonable profit from discharging the obligations.
- (152) Consequently, the Commission considers that the fulfilment of the fourth *Altmark* criterion has not been demonstrated by the Belgian authorities and that it cannot be excluded that the compensations granted under the concession agreements for the Press distribution SGEI confer an advantage on bpost that it would not have received under normal market conditions.

### **5.1.3. Selectivity**

- (153) In order to be qualified as State aid, a financial measure must be selective insofar as it favours certain undertakings or the production of certain goods.
- (154) Since the annual compensation granted under the concession agreements for the Press distribution SGEI benefits only one undertaking (bpost), the measure is selective.

### **5.1.4. Distortion of competition and effect on trade**

- (155) In order to be qualified as State aid, a measure must distort or threaten to distort competition and affect trade between Member States.
- (156) A measure granted by a State is considered to distort or to threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other

undertakings with which it competes.<sup>42</sup> 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.<sup>43</sup> In particular, the Union courts have ruled that “where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid.”<sup>44</sup>

- (157) The SGEI compensations granted to bpost strengthen its economic position. bpost operates in the postal sector, which is open to competition since its full liberalisation at the end of 2010 and where there is significant cross-border trading. In particular, as regards the parcel market, bpost faces competition from undertakings with activities in other Member States, such as DPD, GLS and also global postal operators such as UPS, FedEx and TNT Express.<sup>45</sup>
- (158) bpost is also active in the financial services sector (post office current and savings accounts and payment services), where it competes with operators offering financial products, such as banks and financial operators. The post office current and savings accounts, which are used for both payment and savings purposes, are in competition with bank current accounts and savings products. The banking sector is open to competition and is characterised by extensive trade between Member States, with banks from different Member States operating in Belgium for many years.
- (159) In the light of the foregoing it is clear that any economic advantage conferred on bpost by the Belgian State distorts or threatens to distort competition on the markets on which it operates and affects trade between Member States.

#### **5.1.5. Conclusion**

- (160) Based on the above, the Commission considers that the compensation granted to bpost by Belgium for the provision of the Press distribution SGEI constitutes State aid within the meaning of Article 107(1) TFEU.

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

#### **5.2.1. Legal basis**

- (161) The Belgian authorities claim that the compensations granted to bpost under the concession agreements for press distribution constitute compensations for carrying out an SGEI, which is to be assessed for compatibility on the basis of Article 106(2) TFEU.
- (162) Article 106(2) TFEU reads as follows: *"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*

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<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> 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.

<sup>45</sup> Case C-320/91 *Corbeau* [1993] ECR I-2533

*not be affected to such an extent as would be contrary to the interests of the Union."*

- (163) 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 a series of instruments: the 2012 SGEI Framework<sup>46</sup> and the 2012 SGEI Decision<sup>47</sup> (hereinafter together: "the 2012 SGEI package").
- (164) Since the amount of the SGEI compensations granted to bpost under the concessions agreement for the distribution of recognised newspapers and recognised periodicals 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.
- (165) 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.<sup>48</sup> In this regard, the 2012 SGEI Framework sets out the guidelines for assessing the compatibility of SGEI compensation.

### **5.2.2. Compatibility assessment under the 2012 SGEI Framework**

- (166) According to the 2012 SGEI Framework, the following compatibility criteria apply:

#### **5.2.2.1. Genuine service of general economic interest as referred to in Article 106 TFEU and public consultation**

- (167) The Commission recalls that, in the absence of specific Union rules defining the scope for the existence of an SGEI, Member States have a wide margin of discretion in defining a given service as an SGEI<sup>49</sup>. The Commission's competence in this respect is limited to checking whether the Member States has made a manifest error when defining the services as an SGEI<sup>50</sup>.
- (168) In that regard, the Union Courts have ruled that there are certain minimum criteria common to every SGEI and that the inability of a Member State to demonstrate that a particular service fulfils those criteria constitutes a manifest error in defining this mission as an SGEI<sup>51</sup>. According to the Union Courts, those criteria are the presence of an act of the public authority entrusting the operators in question with an SGEI and the universal and compulsory nature of that service<sup>52</sup>.
- (169) The Commission has further explained in its 2012 SGEI Communication that it considers it inappropriate to attach specific public service obligations to an activity which is already

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<sup>46</sup> Communication from the Commission: European Framework for State aid in the form of public service compensation, OJ C 8, 11.1.2012, p. 15-22.

<sup>47</sup> Commission Decision of 20 December 2011 on the application of Article 106(2) TFEU on State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of SGEI, OJ L 7, 11.1.2012, p. 3-10.

<sup>48</sup> 2012 SGEI Framework, paragraph 11.

<sup>49</sup> 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 Official Journal C8, 11.01.2012, p. 4-14, §46

<sup>50</sup> Case T-289/03 BUPA and Others v Commission [2008] ECR II-81, paragraphs 166-169 and 172; Case T-17/02 Fred Olsen [2005] ECR II-2031, paragraph 216.

<sup>51</sup> Case T-289/03 BUPA and Others v Commission, *ibidem.*, §172

<sup>52</sup> Case T-289/03 BUPA and Others v Commission, *ibidem.*, §172

provided or can be provided for satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions<sup>53</sup>. The Commission's assessment in this regard is also limited to checking that the Member State has not made a manifest error.

- (170) In the present case, the Commission considers the Belgian authorities to have sufficiently demonstrated that their designation of the distribution of recognised newspapers and periodicals as an SGEI is not vitiated by a manifest error.
- (171) First, the Belgian authorities explained that the Press distribution SGEI meets the minimum requirements identified in the case law of the Union Courts to be qualified as a genuine SGEI. In particular, that SGEI has been entrusted to bpost by acts of public authority, namely Article 42 of the Royal Decree of 24 April 2014 and the concession agreements for the distribution of recognised newspapers and periodicals. In addition, the service has a universal nature, as it covers the whole Belgian territory and ensures an access to the press to any Belgian citizen, including the ones living in areas with a low population density. Finally, the service is compulsory, as bpost is obliged to deliver the recognised newspapers and periodicals to every citizen in Belgium under strict quality requirement.
- (172) Second, the Press distribution SGEI does not appear to be a service that could be provided by undertakings operating under normal market conditions. This conclusion is notably supported by the fact that bpost was the only undertaking to submit a bid in the tender for the award of the press distribution SGEIs. Indeed, if undertakings operating under market conditions were able to provide the services at stake under the same conditions as bpost, it could be expected that there would have been more interest for providing these services under the concession agreements against a significant financial compensation.
- (173) As regards, in particular, independent kiosks and press shops, which provide home delivery of newspapers and periodicals, the Commission considers the argument of the Belgian authorities – that they cannot ensure the universality and continuity of the service to the same extent than bpost – convincing, in light of the usual geographical scope of their services (in densely populated areas) and of their often limited and precarious financial status,<sup>54</sup> which entails a risk that they could stop operating on the market with the consequence that the delivery of newspapers and periodicals would no longer be ensured (even for a limited duration) for a particular area.
- (174) The Belgian State has also organized at the end of 2013 a public consultation for the entrustment of the press distribution to a provider. 13 contributions from actors of the press market were received during the public consultation, among which 11 from publishers. It appears from the contributions of the publishers that they wish to maintain the Press distribution SGEI, as their activity would greatly suffer from the suppression of this SGEI. In particular, publishers of non-commercial periodicals consider that the distribution of their periodicals would be unpayable without the SGEI. The publishers of commercial content consider that an increase in the price of abonnement due to an increase in the cost of distribution would lead to a significant decrease of subscriptions. In general, all publishers consider it essential to maintain a Press distribution SGEI with low price and high quality requirements (in terms of frequency and timing of delivery, handling of complaints) such as the Press distribution SGEI which is the object of the present Decision.

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<sup>53</sup> 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 Official Journal C8, 11.01.2012, p. 4-14, §48

<sup>54</sup> According to the complainant, since 2000, 1500 independent press distributors stopped their activities, i.e. 30% of the Belgian independent press distributors.

(175) The Commission takes account of this public consultation organised by the Belgian State, which revealed that the Press distribution SGEI is considered as important by publishers, since its suppression would negatively impact their activity.

(176) Based on the above, the Commission considers that the Belgian State has not made a manifest error in qualifying the distribution of recognised newspapers and of recognised periodicals as a SGEI.

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

(177) Article 42 of the Royal Decree of 24 April 2014 concerning the regulation of the Postal service, provides that the distribution of recognised newspapers and periodicals is operated pursuant to an agreement concluded between the Belgian State and a service provider.

(178) The distribution of recognised newspapers and of recognised periodicals has been entrusted to bpost through the conclusion of two concession agreements of 13 November 2015. These acts clearly specify the public service obligations of bpost, the method for calculating the compensation and the arrangements to avoid overcompensation.

(179) The Commission therefore considers that this requirement of the 2012 SGEI Framework is fulfilled.

**5.2.2.3. Duration of the period of entrustment**

(180) According to paragraph 17 of the 2012 SGEI Framework, "[t]he duration of the entrustment period should be justified by reference to objective criteria, and in principle should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI."

(181) bpost is entrusted with the distribution of recognised newspapers and periodicals for a duration of 5 years (1<sup>st</sup> of January 2016 – 31 December 2020).

(182) To perform this SGEI, bpost possesses several important groups of assets. The most important ones for press distribution are the sorting centres and the warehouses. The depreciation period for these assets is 30 years, as shown in Table 5 below.

(183) As a consequence, the Commission considers that the duration of the concession agreements for the distribution of recognised newspapers and periodicals does not exceed the period required for the depreciation of the most significant assets needed to provide the SGEI.

**Table 5: Amortization of main assets**

Main assets	Amortization time	Relevance for Periodicals SGEI	Relevance for Newspapers SGEI
Central building	30	x	x
Sorting center buildings	30	x	x
Warehouses	30	x	x
Forklifts, cranes	10	x	x
Sorting machines	10	x	x
Office automation and small equipments	10	x	x
Central IT hardware & software	5	x	x
Cars, vans and trucks	5	x	x
Retail IT (workstations printers)	5	x	

(\*): Confidential information

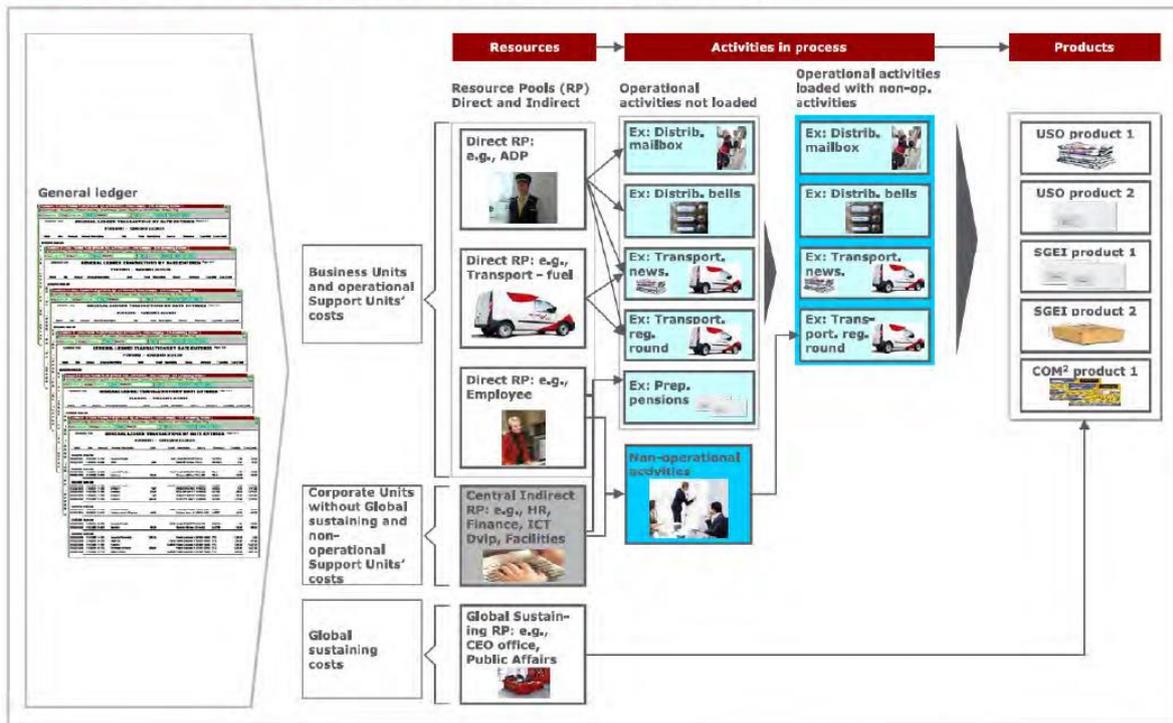
Bicycles and motorcycles	4	x	x
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#### 5.2.2.4. Compliance with Directive 2006/111/EC

- (184) According to paragraph 18 of the 2012 SGEI Framework, “[aid] will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings<sup>55</sup>”.
- (185) For its cost accounting, bpost uses an activity-based costing (ABC) methodology which allocates all operational costs, up to the level of earnings before interest and tax (EBIT), to the various products.
- (186) The scope of the cost accounting includes all operating costs and all organisational units of bpost. The cost accounting methodology relates to three layers: resources, activities and products. The aim is to calculate the appropriate share of costs of each product.
- (187) The costs of the resources are allocated to activities depending on their nature: "direct resources" are directly linked to a specific activity, while "indirect resources" contribute to several activities and need to be allocated using allocation keys that reflect the degree of usage of the resource by each activity. For example, IT costs (e.g. for the renting of hardware and software) are allocated to several activities such as sorting of letters, preparation of pension payments and management and supervision in post offices.
- (188) The different activities constitute the building blocks of the value chain of each product. The costs of operational activities (such as the sorting of letters) are allocated to products based on the extent to which the activity is used for each product. Costs of non-operational activities (such as the management and supervision in post offices) are allocated to the operational activities they contribute to, which are in turn allocated to products.
- (189) At the last step of the procedure, the costs of the operational activities are finally allocated to each product in accordance with an allocation key, which is typically based on volume. All products that rely on an activity carry a share of the costs of that activity which is proportional to their volume of reliance on that activity.
- (190) Figure 2 below illustrates the accounting methodology implemented by bpost:

#### **Figure 2: Cost accounting methodology**

<sup>55</sup> OJ L 318 17.11.2006, p.17.



Source: bpost

(191) The Commission considers that the cost accounting method currently used by bpost is sound as it correctly allocates all costs with a sufficient level of adequacy.

(192) The Commission therefore considers that bpost complies with Directive 2006/111/EC.

#### 5.2.2.5. Compliance with EU Public Procurement Rules

(193) According to paragraph 19 of the 2012 SGEI Framework, "[a]id 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."

(194) The 2013 Decision recorded the Belgian authorities' commitment to organise a competitive, transparent and non-discriminatory tender procedure for the award of the concessions for the distribution of recognised newspapers and periodicals. This procedure was described in recital 144 of that Decision and it was foreseen that it would lead to the selection of a provider for the press distribution SGEIs, who could take over the provision of the SGEI by 1 January 2016.

(195) The Commission notes that the Belgian authorities have respected their commitment and have organised the tender procedure to which they had committed. As described in section 2.3.4 above, the public procurement procedure organised by the Belgian authorities was a negotiated procedure based on the award criterion of the most economically advantageous tender. The call for tender was published in the Belgian Bulletin for tenders and the Official Journal of the European Union and all the undertakings which had expressed their interest to participate in the tender were selected for the bidding phase.

(196) The Commission therefore considers that bpost has complied with the public procurement rules when entrusting bpost with the Press distribution SGEI.

#### **5.2.2.6. Absence of discrimination**

- (197) According to paragraph 20 of the 2012 SGEI Framework, "[w]here an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking".
- (198) The distribution of the recognised newspapers and periodicals is not assigned to "several undertakings", but only to bpost. Therefore, the Commission considers that there cannot be a question of discriminatory compensation between SGEI providers within the meaning of paragraph 20 of the 2012 SGEI Framework.

#### **5.2.2.7. Calculation of the net cost of the Press distribution SGEI**

- (199) According to paragraph 21 of the 2012 SGEI Framework, "[t]he amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit." In this respect, paragraph 24 of the 2012 SGEI Framework states that "[t]he net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible."
- (200) According to paragraph 25 of the 2012 SGEI Framework, " Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation.".
- (201) The Belgian authorities have explained that the compensation granted to bpost is based on the NAC methodology, calculated as the difference between the net cost for bpost of operating with the public service obligation and the net cost of operating without these obligations.

##### Description of the NAC methodology by the Belgian authorities

- (202) While the Belgian authorities notified two distinct sets of measures – the service concession agreements for the press distribution SGEI and the 6<sup>th</sup> Management Contract – they have developed an overall NAC approach for all SGEIs to avoid any double counting in the NAC calculations.
- (203) The NAC methodology used by the Belgian authorities is built step-by-step and takes into account all cross-effects on revenues and costs. The step-by-step approach sequentially removes the SGEI-induced constraints that the operator faces, that is to say, it assumes the adoption of an alternative business model for one SGEI at a time. It is only when the full impact (including direct, cross- and collateral effects)<sup>56</sup> of a particular step is computed that the analysis continues and the constraints linked to another SGEI are lifted.
- (204) The following order is followed to lift SGEI-induced constraints:
1. Newspapers;
  2. Periodicals;
  3. Network SGEI;
  4. Cash at Counter;

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<sup>56</sup> The Belgian authorities have explained that the SGEIs entrusted to bpost do not create significant additional intangible benefits (e.g. brand effects) for bpost beyond the ones already linked to the provision of the USO, for which it does not receive any compensation. Accordingly, the NAC calculations do not integrate intangible benefits.

## 5. Pensions and other cash doorstep payments, other Product SGEIs.

- (205) The methodology starts from the current profit and loss statement of bpost. In the first step, the constraints related to the newspapers SGEI are lifted by applying the counterfactual scenario described in recitals (210) to (213), in which the volumes, prices and impacts on operations and support activities are reassessed based on a new situation under which the constraints imposed by the newspapers SGEI are lifted. Based on that assessment, each revenue line and each cost line of the whole bpost profit and loss statement (P&L) is reviewed to incorporate the volume, price, and operational changes implied by the counterfactual scenario. The output of that step is a counterfactual profit and loss statement for bpost corresponding to the scenario in which only the newspaper SGEI constraints are lifted.
- (206) In the second step, a new counterfactual scenario is defined, in which this time both the newspapers distribution and the periodicals distribution SGEIs are lifted (i.e., the constraints of one additional SGEI are “lifted”). Then, following the same logic as in step 1, the algorithm starts from the counterfactual P&L for bpost obtained at the end of step 1, and computes the impact of lifting the constraints of another SGEI (i.e., the periodicals SGEI) on that counterfactual P&L. Since the computation algorithm is applied to the counterfactual P&L at the end of step 1, there is no possibility of double counting, since that P&L has already been “cleaned up” of any impact from the newspaper SGEI. At the end of that step, a second counterfactual P&L is obtained and the process goes on for each SGEI successively until the constraints related to the last SGEI have been lifted.
- (207) According to the Belgian authorities, the sequential character of the computation guarantees that the same cost item or revenue item cannot be eliminated twice and therefore cannot be double counted.
- (208) The two first steps of this calculation which relate to the Press distribution SGEI are described in the section below. The last three steps of the NAC calculation are described in section 6.2.2.7.
- (209) As regards the reasonable profit, the Belgian authorities have explained that they chose to maintain that profit as a Return on Sale of 7.4%, as had been accepted in the 2012 and 2013 Commission bpost Decisions.

### *Counterfactual scenario for the Press distribution SGEI*

- (210) To calculate the NAC for the distribution of recognised newspapers and recognised periodicals, the Belgian State established the following counterfactual scenario, in which the constraints of these SGEIs are lifted:
- (211) For the distribution of recognised newspapers, if the SGEI constraints were lifted, both the service characteristics and the price would have to be adjusted. The distribution would take place through existing regular delivery rounds, rather than dedicated separate early rounds, as is currently the case. Including newspapers in the regular rounds would lead to significant cost savings. In the counterfactual, bpost would also apply higher prices on publishers to reflect the real value of the service. Both changes would result in a decline in demand.
- (212) For the distribution of the recognised periodicals, if the SGEI constraints were lifted, bpost would not change the delivery model in itself. However, it would increase the delivery prices to better reflect the real value of the service to publishers and readers. As a consequence, lower volumes would be expected.
- (213) The counterfactual takes account of the volume, revenue and cost effects. In particular, the price increase and change in quality and product specifications (delivery of newspapers in regular rounds instead of early morning rounds) lead to a volume loss of [...] % and [...] % for newspapers and periodicals respectively. The net revenue impact results from the

combination of these two effects (volume and price), while the cost impact is computed taking account of the changes in operating model and volume.

NAC calculation for the Press distribution SGEI

- (214) The Belgian authorities first implemented the NAC methodology for 2014. For 2014, the NAC for the Press distribution SGEI amounted to EUR [...], as illustrated in the table below.

**Table 6: NAC calculation for the Press distribution SGEI for 2014**

DESCRIPTION OF COUNTERFACTUAL 2014	REVENUE IMPACT (million €)	AVOIDED COST (million €)	NAC (million €)	COMMENTS
Revise Newspaper distribution & price	[...]	[...]	[...]	Volume reduced by [...]
Implement new periodical pricing	[...]	[...]	[..]	Volume reduced by [...]
<b>TOTAL</b>	[...]	[...]	[...]	

- (215) The results obtained for 2014 are then extrapolated on the basis of trends identified in 2014 and 2015, such as the volume trends already defined in the tender submission. The table below shows how the NAC for newspapers and periodicals would evolve over time, in line with volume and revenue trends, cost inflation and efficiency gains:

**Table 7: NAC for the Press distribution SGEI for 2016-2020**

EXTRAPOLATED TRENDS	2016 (F) (million €)	2017 (F) (million €)	2018 (F) (million €)	2019 (F) (million €)	2020 (F) (million €)
Newspapers	[...]	[...]	[...]	[...]	[...]
<b>PERIODICALS</b>	[...]	[...]	[...]	[...]	[...]
<b>EXTRAPOLATED NAC</b>	[...]	[...]	[...]	[...]	[...]

Conclusion

- (216) The Commission considers that the sequential approach of the Belgian authorities (which was already implemented in the 2013 Decision) is sound. The counterfactual scenario defined for the Press distribution SGEI also seems realistic. In this respect, it can be noted that the calculations of the Belgian authorities do not (yet) take into account the very recent acquisition of AMP. The Commission considers that to the extent that synergies between AMPs and bpost's networks could be realised, this acquisition could possibly impact the NAC of the press distribution SGEI but accepts that at this stage it is not really possible to properly assess such potential effect. The Belgian authorities have argued in that regard that synergies between the logistical networks for press distribution of AMP and bpost are rather limited and should not impact the NAC calculations. However, they have committed to adjust the NAC calculations (notably during the ex-post verification) if and when the NAC would be impacted by synergies between the scope of the SGEIs activities and the acquired activities of Lagardère Travel Retail.
- (217) Considering that commitment, and the additional overall validity tests of the NAC described in recitals (308) to (312), the Commission considers that the calculations of the NAC for the Press distribution SGEI complies with the 2012 SGEI Framework.

**5.2.2.8. Efficiency Incentives for the Press distribution SGEI**

- (218) Paragraph 39 of the 2012 SGEI Framework reads: "In devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI

(\*): Confidential information

*of a high standard, unless they can duly justify that it is not feasible or appropriate to do so.”*

- (219) Paragraph 41 of the 2012 SGEI Framework also reads: *"Member States can define productive efficiency targets in the entrustment act whereby the level of compensation is made dependent upon the extent to which the targets have been met. If the undertaking does not meet the objectives, the compensation should be reduced following a calculation method specified in the entrustment act. In contrast, if the undertaking exceeds the objectives, the compensation should be increased following a method specified in the entrustment act. Rewards linked to productive efficiency gains are to be set at a level such as to allow balanced sharing of those gains between the undertaking and the Member State and/or the users"*.
- (220) Finally, paragraph 43 of the 2012 SGEI Framework also reads: *"Efficiency gains should be achieved without prejudice to the quality of the service provided and should meet the standards laid down in Union legislation."*
- (221) The Belgian authorities have explained that, for the control of overcompensation, a comparison is made between the net cost of the provision of the press distribution SGEI as calculated *ex ante* and *ex post*. If, due to an efficient provision of the SGEI by bpost the net cost calculated *ex post* is lower than net cost calculated *ex ante*, bpost will keep 33% of the savings made and refund the remaining 67% to the Belgian authorities.
- (222) Moreover, the concession agreements set stringent quality requirements<sup>57</sup> for the distribution of the recognised newspapers and periodicals in terms of timing and quality of delivery. As shown in the formula for the calculation of the compensation explained in recital (45) above, bpost only receives compensation for the newspapers and periodicals distributed in the respect of these quality requirements.
- (223) The Commission considers that the quality incentives and efficiency incentives are set out in a transparent manner in the concession agreements for the distribution of recognised newspapers and recognised periodicals. In particular, the Commission considers bpost's commitment to refund two thirds of the efficiency gains to the Belgian State, as well as the fact that efficiency gains will not be achieved at the detriment of quality, to be in line with the 2012 SGEI Framework.

#### **5.2.2.9. Amount of compensation and verification of the absence of overcompensation**

- (224) According to paragraph 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."*

##### Total NAC including efficiency incentives

- (225) As explained in recital (221), bpost will keep 33% of the efficiency gains that it will make in providing the press distribution SGEIs. The Belgian authorities have calculated that 33% of the expected cost reductions over the period 2016-2020 due to expected efficiency gains will amount to EUR [...] million for 2016, EUR [...] million for 2017, EUR [...] million for 2018, EUR [...]million for 2019 and EUR [...] million for 2020.
- (226) Taking into account the efficiency incentives, the compensable amount for each year amounts to EUR 187 million in 2016, EUR 186.6 million in 2017, EUR 181.7 in 2018, EUR 178.3 in 2019 and EUR 174 million in 2020 (see table 8 below).

#### **Table 8: NAC for the Press distribution SGEI for 2016-2020 including efficiency incentives**

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<sup>57</sup> As regards newspapers, they must be delivered to the right address before 7.30 am during weekdays and before 10.00 am on Saturdays and on holydays. As regards periodicals, 95% of them must be delivered to the right address on Day +1 and 97% of them must be delivered to the right address on Day +2.

EXTRAPOLATED NAC		2016 (F)	2017 (F)	2018 (F)	2019 (F)	2020 (F)
		(million €)				
	NAC	[...]	[...]	[...]	[...]	[...]
	<i>Of which newspapers</i>	[...]	[...]	[...]	[...]	[...]
	<i>Of which periodicals</i>	[...]	[...]	[...]	[...]	[...]
<b>PRESS</b>	Efficiency incentives	[...]	[...]	[...]	[...]	[...]
	<i>Of which newspapers</i>	[...]	[...]	[...]	[...]	[...]
	<i>Of which periodicals</i>	[...]	[...]	[...]	[...]	[...]
<b>NAC with efficiency incentives</b>		187	186.6	181.7	178.3	174

Comparison between the estimated amount of compensation and the NAC including efficiency incentives

- (227) As described in section 2.3.5, bpost will be granted annual compensations which are calculated according to the formula described in recital (45) and capped at the amounts mentioned in recital (51). As explained in recital (53), the Belgian authorities have estimated, based on the expected volumes of newspapers and periodicals to be distributed by bpost, that bpost will receive the compensation mentioned in tables 3 and 4.
- (228) As shown below in tables 9 and 10, the estimated amounts of compensation that will be granted to bpost for the distribution of recognised newspapers and recognised periodicals are lower than the NAC of these SGEIs plus the efficiency incentives.

**Table 9: Comparison between the estimated amount of compensation for the distribution of recognised newspapers and the NAC (including efficiency incentives)**

	2016	2017	2018	2019	2020
NAC with efficiency incentives	125.2	126.5	124.3	121.9	119.6
Estimated compensation (with ceiling)	122.8	121.9	118.8	115.6	112.5
Delta	2.3	4.6	5.5	6.3	7.1

**Table 10: Comparison between the estimated amount of compensation for the distribution of recognised periodicals and the NAC (including efficiency incentives)**

	2016	2017	2018	2019	2020
NAC with efficiency incentives	61.9	60.1	57.4	56.4	54.3
Estimated compensation	50.8	53.9	54.2	54.3	54.0

(with ceiling)					
Delta	11.1	6.2	3.3	2.1	0.3

Ex post control of overcompensation

- (229) As explained in recital (54), at the end of each calendar year, an *ex-post* calculation of the compensable amount (NAC *ex-post*) for the period will be performed:
- If the compensable amount calculated *ex-post* is lower than the compensation granted for that year, the amount of excess compensation will be deducted from the amount of compensation to be granted the following year;
  - If the compensable amount calculated *ex-post* is higher than the compensation granted *ex-ante* then bpost will not receive extra-compensation.

Conclusion

- (230) The Commission considers that the mechanism above ensures that bpost will not be overcompensated since the annual compensation does not exceed the NAC of the public services (including efficiency incentives) and since, in addition, an *ex-post* check will be performed which can further reduce the compensation level.
- (231) In light of the above, the Commission considers that, if the compensation mechanism above is implemented, bpost will not be overcompensated over the period 2016-2020.

**5.2.2.10. Transparency**

- (232) Paragraph 60 of the 2012 SGEI Framework states that: "*For each SGEI compensation falling within the scope of this Communication, the Member State concerned must publish the following information on the internet or by other appropriate means:*
- (a) *the results of the public consultation or other appropriate instruments referred to in paragraph 14;*
  - (b) *the content and duration of the public service obligations;*
  - (c) *the undertaking and, where applicable, the territory concerned;*
  - (d) *the amounts of aid granted to the undertaking on a yearly basis*".
- (233) In its notification, the Belgian State has committed to publish all the above information on the internet.

**5.2.2.11. 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**

- (234) Paragraph 52 of the new SGEI Framework states that, even when the requirements of the framework recalled above are met, "*in some exceptional circumstances, serious competition distortions in the internal market could remain unaddressed and the aid could affect trade to such an extent as would be contrary to the interest of the Union.*"
- (235) 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 paragraph 53 of the SGEI Framework.
- (236) Paragraph 54 of the new 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.*"

- (237) As regards VFP's claim that the Press distribution SGEI create an unjustified distortion of competition between bpost and other press distributors (in particular small independent press distributors), 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 in recital (236), 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.
- (238) In the case at hand, it is to be noted, first, that the tender procedure organised by the Belgian State for the award of the concession agreements for press distribution which was advertised in the Official Journal of the European Union is an important step to limit potential competition distortions. Competitors were indeed given the opportunity to obtain the Press distribution concessions and the fact that only bpost finally submitted a bid could be a sign of limited interest in particular from main operators from other Member States for this SGEI contract.
- (239) Second, as regards possible foreclosure of the press distribution market because of the SGEI, the Belgian authorities have explained that in big cities such as Brussels and Antwerp, most publishers use the distribution services of other providers than bpost. This indicates that the Belgian market for the press distribution is at present not foreclosed as a result of the execution of the press distribution SGEI.
- (240) Third, the Commission understands that there are different causes for the difficulties of kiosks and shops selling newspapers (including the very significant phenomenon of e-substitution) and it does not necessarily appear that the Press distribution SGEI would be as such a decisive factor in such difficulties.
- (241) Based on the above, the Commission considers that in the present instance, there are no indications that exceptional circumstances would justify requiring additional conditions or requesting additional commitments from the Belgian authorities in order to remedy serious distortions of competition.

### **5.2.3. Conclusion on the compatibility of the Press distribution SGEI**

- (242) In light of the foregoing observations, the Commission considers the compensation granted by Belgium to bpost for the Press distribution SGEI to be compatible with the internal market on the basis of Article 106(2) TFEU.

## **6. ASSESSMENT OF THE MEASURES GRANTED TO BPOST UNDER THE 6<sup>TH</sup> MANAGEMENT CONTRACT**

### **6.1. Presence of aid under Article 107(1) TFEU**

- (243) The criteria for the presence of aid have already been introduced and described in section 5.1, therefore they are not repeated below and only the assessment of the Commission is presented.

#### **6.1.1. State resources**

- (244) The annual SGEI compensation is financed from the State budget, as specified in the 6<sup>th</sup> Management Contract between bpost and the Belgian State.
- (245) Therefore, the compensation granted to bpost for discharging its public service obligations is imputable to the State and constitutes State resources.

#### **6.1.2. Economic advantage to undertakings**

- (246) The Commission considers that the annual compensations under the 6<sup>th</sup> Management Contract confer an advantage to bpost, as the financial situation of the operator is improved thanks to these compensations which, moreover, cannot be considered to satisfy the four cumulative *Altmark* criteria.

- (247) In particular, as regards the fourth *Altmark* criterion, the Belgian authorities confirmed that the public service obligations have not been entrusted to bpost through an open, non-discriminatory and competitive tender. Moreover, they have not provided information to demonstrate that the level of compensation for bpost has been determined on the basis of an analysis of the costs incurred by a typical and well-run undertaking of the postal sector taking into account the revenues and a reasonable profit from discharging the public service obligations.
- (248) In light of the above, the Commission considers that the fulfilment of the fourth *Altmark* criterion has not been demonstrated by the Belgian authorities.
- (249) Consequently, the Commission considers that the compensation granted under the 6<sup>th</sup> Management Contract confers an advantage on bpost that it would not have received under normal market conditions.

### **6.1.3. Selectivity**

- (250) Since the annual compensations under the 6<sup>th</sup> Management Contract benefit only one undertaking (bpost) and provide additional funds to that undertaking, the measure is selective.

### **6.1.4. Distortion of competition and effect on trade**

- (251) For the same reasons given in section 5.1.4, the annual compensations under the 6<sup>th</sup> Management Contract distort or threaten to distort competition and affect trade between Member States.

### **6.1.5. Conclusion**

- (252) Based on the above, the Commission considers that the state compensation under the 6<sup>th</sup> Management Contract for the delivery of public services by bpost constitutes State aid within the meaning of Article 107(1) TFEU.

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

### **6.2.1. Legal basis**

- (253) The amounts of the SGEI compensations granted to bpost under the 6<sup>th</sup> Management Contract are above EUR 15 million per year, therefore those compensations do not fall within the scope of the 2012 SGEI Decision, as set out in Article 2 thereof but have to be assessed under the 2012 SGEI Framework.
- (254) The criteria for the compatibility of aid under the SGEI Framework have already been introduced and described in section 5.2.2, therefore only the assessment of the Commission is presented below

### **6.2.2. Compatibility assessment**

#### **6.2.2.1. Genuine service of general economic interest as referred to in Article 106 TFEU and public consultation**

- (255) The Belgian authorities consider the public services which are entrusted to bpost and compensated under the 6<sup>th</sup> Management Contract to constitute genuine SGEIs. In particular, they argue that the Commission already accepted the SGEI nature of the public services described below in the 2013 Decision concerning the 5<sup>th</sup> Management Contract. The Belgian authorities consider that the same conclusion should be reached for the services contained in the 6<sup>th</sup> Management Contract.
- (256) **Maintenance of the Retail Network SGEI:** the Belgian State considers that the Network SGEI is a genuine public service for the following reasons:
- bpost's retail network performs an important social and economic role which goes beyond the accessibility to the universal service and other SGEIs. The retail network ensures proximity and allows access throughout the country to a range of public (postal

and non-postal) services for all citizens, including those living in rural areas and the elderly, disabled and socially disadvantaged, that cannot be provided through the internet or over the phone.

- PSPs (especially in rural areas) act as focal points for the local communities and are used by citizens as sources of information and assistance on public services.
- (257) **Cash at counter services:** Through this service, the Belgian State aims to improve social cohesion since it consists in offering these financial services universally, including to persons who are not served by banks, for instance because they are heavily indebted and financially vulnerable. Despite the high costs involved in cash handling, the service is offered at reduced tariffs, in order to be affordable to all the citizens in the country.
- (258) **Home delivery of pensions:** Through this service, the Belgian State aims to improve social cohesion since it allows people with limited moving capabilities and old people to receive their benefits and pensions at home.
- (259) **Social role of the postman:** Through this service, the Belgian State aims to improve social cohesion and, in particular, offer protection for persons living alone and underprivileged citizens at their residence.
- (260) **Delivery of addressed or unaddressed election printed items:** Through this service, the Belgian State seeks to guarantee a more open and democratic election process.
- (261) **Delivery at a special price of postal items sent by associations:** Through this service, the Belgian State aims to strengthen the role of associations in the society, facilitating the dissemination of information on their part.
- (262) **Delivery of letter post items that fall within the freepost system:** Through this SGEI, the Belgian State aims to facilitate the horizontal communications among various entities of the State and also the contacts between citizens and State bodies.
- (263) **Printing, sale, reimbursement, replacement and exchange of fishing permits:** the Belgian State considers that this service is essential to guarantee that the strict legislative framework on fishing is well implemented.
- (264) It can be noted that the SGEIs above were already entrusted to bpost under the previous Management Contracts and the Commission already accepted their qualification as genuine SGEIs in the 2012 Decision<sup>58</sup>. The Commission considers that the market has not evolved in a way that would alter the genuine nature of the SGEIs described above. Indeed, besides their importance for citizens, considering the stringent conditions imposed by the Belgian State for their delivery, these services could not be delivered under normal market conditions.
- (265) Based on the information provided, the Commission considers that the abovementioned services can indeed constitute genuine SGEIs and that the Belgian authorities have not committed a manifest error in their definition as such.
- (266) In addition, the Belgian State organised a public consultation for the entrustment of the SGEIs to bpost in May 2015, covering all compensated SGEIs regrouped according to the following themes :
- Maintenance of the Retail Network SGEI
  - Day to Day SGEIs
    - Cash at the counter services such as cash deposits;

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<sup>58</sup> See for example recital 33 of the 2012 Decision or recital 108 of the 2013 Decision

- Home payment of retirement and survivors' pensions and disabled persons' allowance
- Ad hoc SGEIs
  - Social role of the postman;
  - The delivery of addressed and unaddressed election printed items;
  - Delivery at special price of postal items sent by associations;
  - Delivery of letter post items that fall within the freepost system
  - Printing, sale, reimbursement, replacement and exchange of fishing permits;

(267) This public consultation sought to verify whether users and providers share the Belgian State's views on the necessity and socio-economic importance of these services.

(268) The Belgian State reached out to public service users and providers by surveying a representative sample of 2 000 citizens over the phone through a questionnaire. The public consultation demonstrated that the SGEIs entrusted to bpost have an important social and economic role and meet the needs and expectations of the Belgian population. The SGEIs considered to be the most important by the Belgian population are:

- The Network SGEI: 85% of the Belgian population consider it as being very or fairly important;
- Home payment of retirement and survivors' pensions and disabled persons' allowance: 68% of the Belgian population consider it as being very or fairly important;
- To offer delivery at a reduced price for postal items sent by associations: 58% of the Belgian population consider it as being very or fairly important;
- Cash at counter services: 48% of the Belgian population consider it as being very or fairly important

(269) In light of the foregoing, the Commission considers that the requirement of paragraph 14 of the 2012 SGEI Framework has been fulfilled, and that all SGEIs entrusted to bpost under the 6<sup>th</sup> Management Contract are genuine SGEI's.

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

(270) As regards the SGEIs listed above, entrustment of bpost is by the Amended Law of 1991 and the 6<sup>th</sup> Management Contract. In addition, depending on the SGEI in question, additional legal acts can also be part of the entrustment (see below the entrustment acts for each SGEI).

**Table 11: Entrustment acts**

<b>SGEIs</b>	<b>Entrustment legal acts</b>
<b>Network SGEI</b>	Articles 9 to 14 of the 6 <sup>th</sup> Management Contract Art 141§1 A) of the Law of 1991
<b>Cash at counter services</b>	Article 21 of the 6 <sup>th</sup> Management Contract Art 2(2) a) and c), Art 2(4) Law of 6 July 1971 Royal Decree of 12 January 1970 on the regulation of the postal service Article 131, 22°, Article 140, c) and Article 141, §1, B), 2° and 3° of the Law of 1991
<b>Home delivery of pensions</b>	Article 28 of the 6 <sup>th</sup> Management Contract Art 140 c), Art 141§1 C) of Law of 1991 Art 31 of the Royal Decree 24 October 1967

(\*): Confidential information

	Art 137 of the Royal Decree 22 December 1967
<b>Social Role of the Postman</b>	Art 35 a) of the 6 <sup>th</sup> Management Contract Art 141§1 D) of the Law of 1991
<b>Delivery of addressed or unaddressed election printed items</b>	Article 35(e) of the 6 <sup>th</sup> Management Contract Art 141 <i>sexies</i> , 1° of Law of 1991 Art 48 of Royal Decree of 2014
<b>Delivery at a special price of postal items sent by associations</b>	Article 35(f) of the 6 <sup>th</sup> Management Contract Art 141§1 F) of the Law of 1991
<b>Delivery of letter post items that fall within the freepost system</b>	Article 35(g) of the 6 <sup>th</sup> Management Contract Art 141§1 G) of the Law of 1991 Art 1 §2 2° and Art 49-51 of the Royal Decree of 2014 Art 57 of Law of 18 July 1991 Art 18 of Law 22 March 1995 Art 7.3 of the Universal Postal Convention
<b>Printing, sale, reimbursement, replacement and exchange of fishing permits</b>	Article 35 (j) of the 6 <sup>th</sup> Management Contract Art 131, 4°ter and Art 141§1 <i>bis</i> of the Law of 1991 Agreements for the delivery of fishing permits: (i) Agreement of 22 December 1999 concluded between La poste and the Walloon Region ; (ii) Agreement concluded between La Poste and the Region Brussels-Capital; (iii) Agreement of 15 October 1998 concluded between De Post and the Flemish Region

(271) The legal documents above clearly define and entrust bpost with the delivery of the SGEIs listed in the 6<sup>th</sup> Management Contract. In addition, the 6<sup>th</sup> Management Contract clearly defines the compensation mechanism of the net cost of these SGEIs as well as the arrangements to avoid overcompensation in line with paragraph 16 of the 2012 SGEI Framework.

### 6.2.2.3. Duration of the period of entrustment

(272) bpost is entrusted with the SGEIs listed in the 6<sup>th</sup> Management Contract for a duration of 5 years (1<sup>st</sup> of January 2016 – 31 December 2020).

(273) To deliver these SGEIs, bpost possesses several important groups of assets. The most important ones are the retail network buildings (used for example for the Retail Network, Cash at Counter and Managing of Fishing Permits SGEIs) and sorting centres (used for example for the Distribution of Election Material SGEI). The depreciation period for these assets ranges between 4 to 30 years, as shown in Table 2 below.

(274) As a consequence, the Commission considers that the duration of the 6<sup>th</sup> Management Contract does not exceed the period required for the depreciation of the most significant assets needed to provide the SGEIs.

**Table 12: Amortization time of main assets**

Main assets	Amortization time	Relevance for Product SGEIs	Relevance for Territorial presence SGEI
Central building	30	x	x
Sorting center buildings	25	x	
Retail network buildings	30		x
Warehouses	30	x	
Forklifts, cranes	10	x	
Sorting machines	10	x	

(\*): Confidential information

Office automation and small equipments	10	x	x
Central IT hardware & software	5	x	x
Cars, vans and trucks	5	x	
Retail IT (workstations printers)	5	x	x
Bicycles and motorcycles	4	x	

#### 6.2.2.4. *Compliance with the Directive 2006/111/EC*

- (275) As explained in section 5.2.2.4 above, the Commission considers that the activity-based costing (ABC) methodology used by bpost for its cost accounting is sound and that bpost complies with Directive 2006/111/EC.

#### 6.2.2.5. *Compliance with EU Public Procurement Rules*

- (276) Regarding the compliance of bpost's entrustment with public procurement rules, the Belgian authorities have provided different arguments for the different SGEIs bpost is entrusted with.

##### Argumentation of the Belgian authorities

- (277) The Belgian authorities consider that bpost holds a unique logistic retail network in terms of density and size which makes it the sole possible provider for the Network SGEI and other SGEIs.
- (278) The Belgian authorities also claim that bpost would be the only operator whose network, infrastructure and personnel could actually satisfy the requirements for the provision of these SGEIs, as described in the entrustment acts.
- (279) As regards the **Retail Network SGEI**, other operators do not actually possess a network of the same density, size and quality which could serve the objectives of social and territorial cohesion. Although it cannot be excluded that competitors will develop such a network in the future, currently, bpost is the only provider that can offer this SGEI reliably over the period 2016-2020.
- (280) The Belgian authorities confirm that the requirements in terms of size, composition and density to ensure proximity and full territorial presence within Belgium have been maintained:
- The network must have a minimum of 1,300 postal service points, offering at least the minimum service range.
  - Postal service points with a minimum service range have to be accessible for minimum 95% of the population, within five kilometres (by road) and for minimum 98% of the population, within ten kilometres (by road)
  - The retail network must have at least 650 post offices, while: (i) guaranteeing at least one post office in each of the 589 municipalities; (ii) maintaining more than one post office in some municipalities. bpost is free to determine in which municipalities it shall maintain more than one post office, taking into account the social role of bpost.
- (281) The Belgian authorities explain that the Retail Network SGEI can hardly be technically managed independently from the accessibility network which it complements. bpost benefits from economies of scale and synergies that any other operator managing only the territorial presence network could not benefit from, therefore rendering the cost of the service much higher than for bpost.

- (282) In addition, the Belgian authorities claim that the retail networks of retailers, petrol stations and telecommunication service providers (i.e. the most dense networks beyond the one operated by bpost) still have an insufficient coverage of the Belgian territory.

**Table 13: Number of points of other providers with the densest networks in Belgium**

Company	Number of points (2012)	Number of points (2015)	Delta 2012- 2015
BNP Parisbas Fortis (incl. Fintro)	1248	1118	-130
ING (incl. Record bank)	1444	1376	-68
KBC (incl. CBC)	800	798	-2
Belfius	796	730	-66
Total	497	514	+17
Q8	374	412	+38
Carrefour	615	745	+130
Delhaize	612	693	+81
Press shop	165	163	-2
Mobistar	165	151	-14
Proximus	124	74	-50
The Phone House	82	39	-43
Base	71	110	+39

- (283) The **Cash at Counter SGEI** is provided through the Retail Network. As bpost is the only operator which can provide the Retail Network SGEI, it is also the only operator that can currently offer the Cash at Counter services in line with the characteristics and the requirements of the entrustment acts.
- (284) To provide the **Home Delivery of Pensions SGEI**, an operator needs to have a dense distribution network and a robust retail network. Both must be combined with high security guarantees. Other operators do not possess such elements, which are necessary to provide the SGEI in line with the Belgian State's requirements. Moreover, no other operator would be able to develop this capability prior to the period 2016-2020.
- (285) The Belgian State considers that the sole provider exemption should be applicable in the present case. They argue that the same factors that led the Commission to consider that the abovementioned SGEIs entrusted to bpost were covered by the "sole provider exemption" are still valid today. The Belgian authorities believe that, for this reason, the compensation for the provision of these public services in in line with the requirement contained in paragraph 19 of the SGEI Framework.

Assessment of the Commission

- (286) The Commission recognises that bpost still holds a unique logistic and retail network in terms of density and size which makes it the sole possible provider for the Network SGEI and for other SGEIs (cash at counter services, Home delivery of pensions, social role of the postman, delivery of addressed or unaddressed election printed items, delivery at a special price of postal items sent by associations, delivery of letter post items that fall within the freepost system, printing sale reimbursement replacement and exchange of fishing permits) which need such networks in order to meet the requirements of the 6th Management Contract.
- (287) In addition, it must be noted that the network SGEI consists in the maintenance of an incremental network beyond the accessibility network. Such incremental network can hardly be technically managed independently from the accessibility network that it complements and bpost benefits from economies of scale and synergies when managing the accessibility network and territorial presence network that any other operator managing only the territorial presence network would not benefit from, thereby rendering the cost of the service much higher than for bpost. This also entails that in all likelihood the

compensation provided to bpost for the Network SGEI would not suffice to allow a third operator to provide that service.

- (288) As regards, the other SGEIs (Cash at counter services, Home delivery of pensions, Social role of the postman, Delivery of addressed or unaddressed election printed items, Delivery at a special price of postal items sent by associations, Delivery of letter post items that fall within the freepost system, Printing-sale-reimbursement-replacement and exchange of fishing permits) delivered through the retail and logistic network of bpost as a whole, the Belgian authorities have examined existing retail networks of retailers, petrol stations and telecommunication service providers and concluded that no other company had a sufficient coverage of the Belgian territory. Moreover, it can be observed that most of this unique network is related to the USO (accessibility network as defined in recital (60)) and is therefore self-financed since bpost does not receive any compensation for the delivery of the USO (see above recitals (75) to (80)). The compensation which is received by bpost for the Network SGEI contributes only marginally to the maintenance of the overall network, and would not as such suffice to enable a competitor to set up a logistic and retail network which would be comparable to bpost's total network.
- (289) The Commission considers that all compensated SGEIs delivered through the postal distribution and retail networks (Retail Network SGEI, cash at counter services, home delivery of pensions, social role of the postman, delivery of addressed or unaddressed election printed items, delivery at a special price of postal items sent by associations, delivery of letter post items that fall within the freepost system, printing-sale-reimbursement-replacement and exchange of fishing permits) can therefore be covered by the sole provider exemption and be entrusted through a negotiated procedure without prior publication according to Article 32 (2) b) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement.<sup>59</sup>

#### **6.2.2.6. *Absence of discrimination***

- (290) The SGEIs entrusted under the 6<sup>th</sup> Management Contract are not assigned to “several undertakings”, but only to bpost. Therefore, the Commission considers that there cannot be a question of discriminatory compensation between SGEI providers within the meaning of paragraph 20 of the 2012 SGEI Framework.

#### **6.2.2.7. *Calculation of the net cost of the 6<sup>th</sup> Management Contract***

- (291) As explained in recital (202), there is one integrated process for the calculation of the net avoided cost of the SGEIs. The first two steps of this process related to the Press distribution SGEI are described in section 5.2.2.7.
- (292) The steps of the process related to the 6<sup>th</sup> Management Contract are described below. The starting point of that second part of the process is the counterfactual scenario established when the constraints associated with the Press distribution SGEI are relaxed.

#### **Description of the NAC methodology by the Belgian authorities**

- (293) To define bpost's net cost of operating without the SGEIs, the Belgian authorities have determined the commercially optimal strategy that bpost would adopt for each service, should the SGEI constraints be lifted.
- (294) The following order is followed to lift SGEI-induced constraints:
1. Network SGEI;
  2. Cash at Counter;

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<sup>59</sup> OJ L 94, 28.3.2014, p. 65–242

3. Pensions and other cash doorstep payments;
  4. Other Product SGEIs.
- (295) For each SGEI, the following approach has been followed to determine the impact of the alternative commercial strategy:
- A. Definition of an alternative commercial strategy;
  - B. Optimization of pricing and network size ;
  - C. Estimation of impact on volumes and revenues;
  - D. Estimation of impact on costs;
  - E. Estimation of cross and collateral effects.
- (296) These steps are further described below:
- (297) **A. Definition of an alternative commercial strategy:** Realistic, commercially optimal and viable counterfactual strategy for the same operator is developed for each SGEI.
- (298) The commercial optimal counterfactuals for each SGEI are grounded in the business reality:
- Network SGEI: The network would be reduced to the commercially optimal network extended to maintain bpost's USO obligations.
  - Cash at counter services: Price would be adjusted and service would be offered in reduced retail network. Lower volumes ([...] % estimated loss for 2014) can be expected following price increase.
  - Pensions and other cash doorstep payments and other product SGEIs: these would be discontinued as they are not economically viable. It would be unrealistic to assume willingness of end users to pay for the real cost of the service.
  - No alternative commercial strategy developed for USO and Commercial services as no constraints are lifted in their regards. However, cross-effects from SGEI counterfactuals on USO and Commercial services are included (see recital (302)).
- (299) **B. Optimisation of pricing and network size:** The price is set at an optimal level balancing negative volume effects and positive revenues effect. The price level is benchmarked against, for instance, the price of similar products. The Retail Network size is set as commercial optimum, while maintaining the USO constraint.
- (300) **C. Estimation of impact on volumes and revenues:** Volume effects are determined in function of stress-tested price and service elasticity. In this case, the impact on revenue of other products is included.
- (301) **D. Estimation of impact on costs:** The variability per cost category is assessed in function of fact-based drivers. The remaining costs stay allocated to product. The impact on costs of other products is also included.
- (302) **E. Estimation of cross and collateral effects:** cross-effects on other SGEIs are estimated including net cost impact and additional avoided costs due to a combination of counterfactual scenarios of several SGEIs. Collateral effects on revenues and costs of USO and commercial products are also assessed.
- (303) Once all effects have been incorporated, the next counterfactual and its impact are integrated in the model.
- (304) At the end of this process for all SGEIs, some validity tests are run to ensure that the counterfactual entity can realistically perform and operate. These tests touch upon the following points:

- Profitability: it checks that only a reasonable profit level is achieved for SGEIs and that there are no significant changes in bpost's profitability outside SGEIs.
- Cost variability: check that the cost variability remains reasonable compared to volume/commercial strategy changes, cost effects on USO and Commercial products verified
- Operational sustainability: check that sufficient resources are left for remaining entity to operate

*NAC calculation for the 6<sup>th</sup> Management Contract*

- (305) The Belgian authorities first implemented the NAC methodology with the actual data of 2014 leading to the results presented in table 14.
- (306) **Calculation of the 2014 NAC:** Based on 2014 accounting data, the methodology calculates the net avoided cost of the different public services entrusted to bpost at EUR [...] million, without taking into account efficiency incentives.

**Table 14: NAC of the different public services entrusted to bpost in 2014**

DESCRIPTION OF COUNTERFACTUAL 2014	REVENUE IMPACT (million €)	AVOIDED COST (million €)	NAC (million €)	COMMENTS
Optimize retail network size	[...]	[...]	[...]	The resulting network would contain [...] postal service points in total ([...] Post Offices and [...]Postal Points)
Implement new cash at the counter pricing	[...]	[...]	[...]	[...] % volume loss due to higher price
Stop distribution of pensions	[...]	[...]	[...]	Total interruption
Stop other product SGEIs	[...]	[...]	[...]	Total interruption
<b>TOTAL without collateral effects</b>	[...]	[...]	[...]	
Collateral effects retail network	[...]	[...]	[...]	Volume loss for USO and Commercial products in retail network, partially recuperated in alternative channels
Collateral effects Cash at counter	[...]	[...]	[...]	Loss of profitable traffic in Retail network due to decreased Cash at counter volumes
Collateral effects Pensions	[...]	[...]	[...]	Loss of profitable traffic in Retail network due to decreased avisage1 for Pensions
<b>TOTAL with collateral effects</b>	[...]	[...]	[...]	

- (307) **Extrapolation of 2014 NAC:** The results obtained for 2014 are then extrapolated for the period 2016-2020 on the basis of efficiency gains trends measured in 2013-2015 in order to determine the NAC for this period (see table 15 below).

**Table 15: NAC for period 2016-2020**

<b>EXTRAPOLATED TRENDS</b>	<b>2016 (F=forecast) (million €)</b>	<b>2017 (F) (million €)</b>	<b>2018 (F) (million €)</b>	<b>2019(F) (million €)</b>	<b>2020 (F) (million €)</b>
Baseline	[...]	[...]	[...]	[...]	[...]
Efficiency gains and revenue increase in the retail network	[...]	[...]	[...]	[...]	[...]
Organization of elections	[...]	[...]	[...]	[...]	[...]
Other effects (e.g. volume decrease for some SGEIs)	[...]	[...]	[...]	[...]	[...]
<b>EXTRAPOLATED NAC</b>	[...]	[...]	[...]	[...]	[...]

Validity testing of the whole NAC methodology

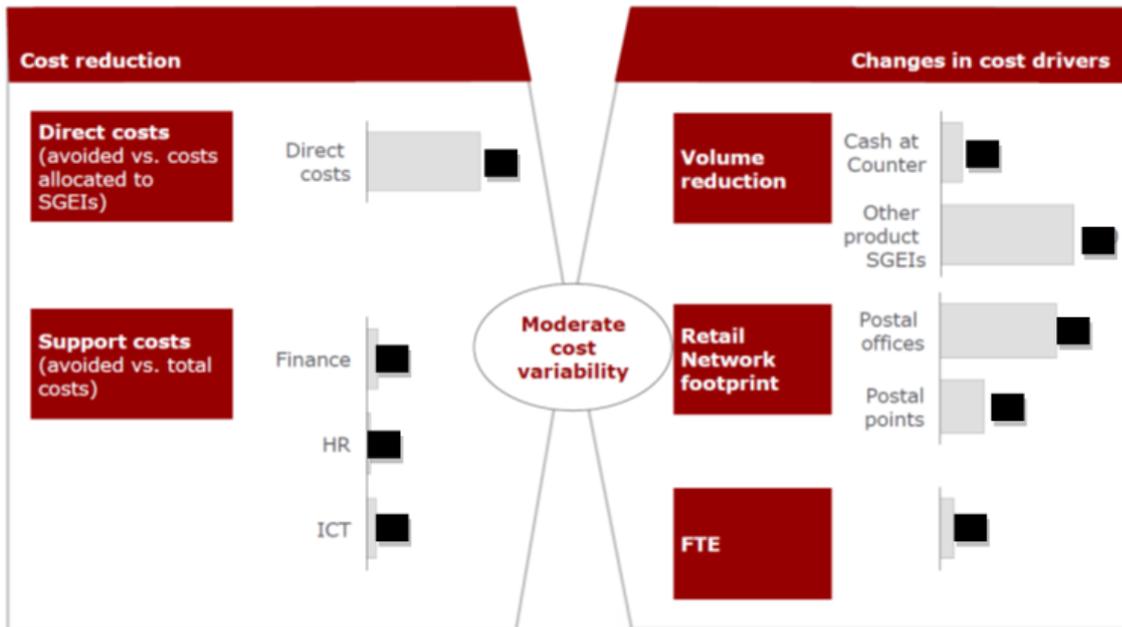
- (308) The Belgian authorities have provided a certain number of analyses aiming at checking the reliability of the overall NAC calculation (covering both the Press distribution SGEI and the 6<sup>th</sup> Management Contract).
- (309) **Profit level of the counterfactual scenario:** the Belgian authorities have checked the profit level of the counterfactual scenarios in 2016, 2017, 2018, 2019 and 2020:

**Table 16: Profit level of the counterfactual (in absence of all SGEIs) for the period 2016-2020**

<b>OVERALL COUNTERFACTUAL SCENARIO</b>	<b>2016 (F) (million €)</b>	<b>2017 (F) (million €)</b>	<b>2018 (F) (million €)</b>	<b>2019 (F) (million €)</b>	<b>2020 (F) (million €)</b>
<b>REVENUE</b>	[...]	[...]	[...]	[...]	[...]
<b>COST</b>	[...]	[...]	[...]	[...]	[...]
<b>EBIT</b>	[...]	[...]	[...]	[...]	[...]
<b>ROS (%)</b>	[...]	[...]	[...]	[...]	[...]

- (310) **Cost variability:** the Belgian authorities have checked that the cost variability (in %) in the factual scenario remains reasonable (see figure 3 below) as compared to the counterfactual scenario (e.g. [...] % of the direct costs allocated to SGEI are avoided while a very small share of support costs [...] % are).

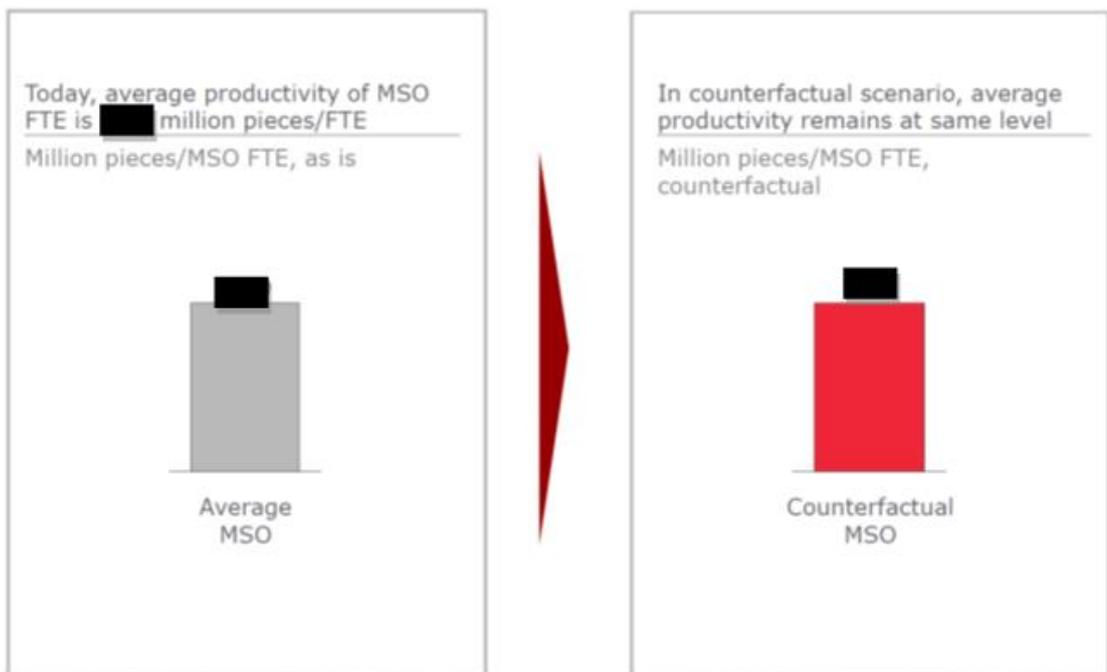
Figure 3: Cost variability



Source: bpost

- (311) **Efficiency of operations in the counterfactual scenario:** the Belgian authorities have checked the efficiency of the counterfactual scenario (see figure 4 below) in comparison with the factual scenario in terms of number of pieces sent by FTE.

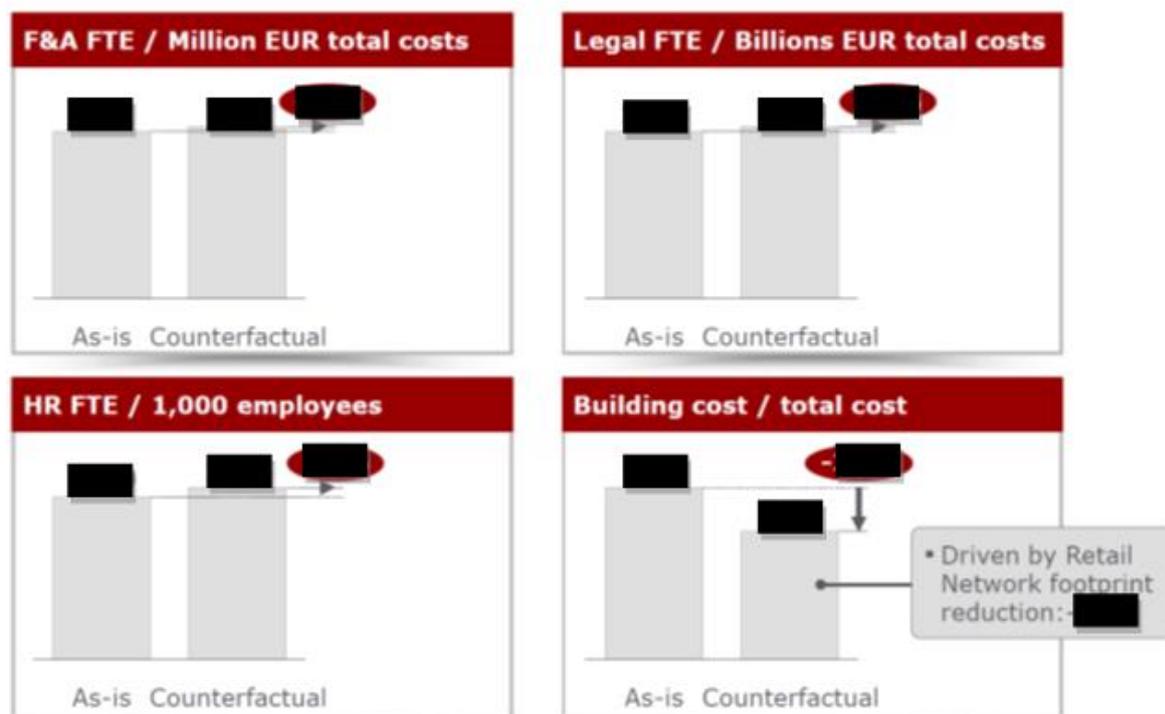
**Figure 4: Efficiency of operations**



Source: bpost

- (312) **Productivity level of the counterfactual scenario:** the Belgian authorities have checked the productivity level of the counterfactual scenario through various productivity ratios related to support functions.

**Figure 5: Productivity level of the counterfactual scenario**



Source: bpost

Conclusion by the Commission on the application of the NAC methodology for the calculation of the net cost of the different SGEIs

- (313) The Commission considers that the principles established by the Belgian authorities for the implementation of the NAC methodology are sound. In particular, the adopted methodology ensures that the counterfactual scenario corresponds to the optimal commercial strategy that bpost would follow if the SGEI constraints were lifted. In addition, the stepwise approach ensures that there is no double counting and allows to take into account all the cross-effects and collateral effects of the counterfactual scenario.
- (314) Moreover, the Commission considers that the Belgian authorities have provided satisfactory evidence that the counterfactual scenario represents a credible picture of a counterfactual company that would be able to credibly operate the activities that would be kept by bpost in the absence of SGEI obligations. The Commission notes in particular that :
- The profit level of the counterfactual scenario in each year 2016, 2017 and 2018, 2019, 2020 (see table 7) is in line with the 2012 and 2013 Decision on bpost<sup>60</sup> and can therefore be considered reasonable. Moreover, overall, the profitability of the counterfactual scenario is [...] % ROS which is significantly below the benchmark while the 6<sup>th</sup> Management Contract cannot be considered less risky than the 5<sup>th</sup>

<sup>60</sup> A rate of 7.4% ROS was considered adequate for both mail delivery and press distribution for the period 2006-2010.

Management Contract: the key elements considered by the Commission in the 2013 Decision to assess the risk level of the 5<sup>th</sup> Management Contract are still present: the compensation is also based on *ex-ante* parameters both for the Press distribution SGEI and the 6<sup>th</sup> Management Contract. Efficiency and quality constraints are clearly expressed both in the concessions for the Press distribution SGEI and the 6<sup>th</sup> Management Contract and the level of the compensation is made dependent on the achievements of efficiency/quality objectives. Consequently, a profit level which would be below the benchmark accepted for the 5<sup>th</sup> Management Contract seems also reasonable for the 6<sup>th</sup> Management Contract.

- The cost variability between factual and counterfactual scenarios remain reasonable and the avoided costs are essentially direct SGEI costs clearly avoidable if SGEI constraints are lifted.
- Efficiency and productivity levels of the company remained comparable in the counterfactual to its actual level.

(315) Based on the above, the Commission considers that the NAC methodology has been correctly implemented by the Belgian authorities for both measures.

#### 6.2.2.8. *Efficiency Incentives for the 6<sup>th</sup> Management Contract*

(316) The Belgian authorities have explained that the NAC methodology takes into account the efficiency gains that bpost makes during the period 2016-2020. The methodology ensures that bpost's efficiency gains are clearly distinguished from other parameters which influence the net cost of SGEIs provision, but do not necessarily relate to the performance of bpost. Such parameters include (i) variations in revenue; (ii) inflation; (iii) volume variations affecting variable and common fixed costs. These parameters are therefore excluded from the calculation of bpost's efficiency gains.

(317) The Belgian authorities have explained that, in order to ensure that bpost achieves its efficiency gains without prejudice to quality, the 6<sup>th</sup> Management Contract introduces quality targets. An efficiency sharing mechanism is introduced in order to incentivize bpost. It consists of 67% of the realized efficiency gains which can be kept by bpost, provided that precise quality targets are met.

(318) The Commission considers that the quality incentives and efficiency incentives are set out in a transparent manner in the 6<sup>th</sup> Management Contract. In particular, the Commission considers the fact that efficiency gains are shared between the State and bpost as well as the fact that efficiency gains will not be achieved at the detriment of quality to be in line with the 2012 SGEI Framework.

#### 6.2.2.9. *Amount of compensation and verification of the absence of overcompensation*

(319) The Belgian authorities have calculated that 67% of the expected cost reductions over the period 2016-2020 due to expected efficiency gains will amount to EUR [...] million for 2016, EUR [...] million for 2017, EUR [...] million for 2018, EUR [...]million for 2019 and EUR [...] million for 2020. Taking into account the efficiency incentives, the compensable amount for each year amounts to EUR 91.7 million in 2016, EUR 93.8 million in 2017, EUR 97.9 million in 2018, EUR 100.1 million in 2019 and EUR 100.4 million in 2020 (see table 13 below).

**Table 17: Compensable amounts taking into account efficiency incentives**

		2016 (F) (million €)	2017 (F) (million €)	2018 (F) (million €)	2019 (F) (million €)	2020 (F) (million €)
<b>RETAIL</b>	NAC	[...]	[...]	[...]	[...]	[...]
<b>NETWORK</b>	Collateral effects	[...]	[...]	[...]	[...]	[...]

(\*): Confidential information

	Cross Effects	[...]	[...]	[...]	[...]	[...]
	Efficiency incentives	[...]	[...]	[...]	[...]	[...]
	<b>TOTAL</b>	[...]	[...]	[...]	[...]	[...]
	NAC	[...]	[...]	[...]	[...]	[...]
	<i>Of which cash at counter</i>	[...]	[...]	[...]	[...]	[...]
	<i>Of which other</i>	[...]	[...]	[...]	[...]	[...]
<b>PRODUCT SGEIs</b>	Efficiency incentives	[...]	[...]	[...]	[...]	[...]
	<i>Of which cash at counter</i>	[...]	[...]	[...]	[...]	[...]
	<i>Of which other</i>	[...]	[...]	[...]	[...]	[...]
	<b>TOTAL</b>	[...]	[...]	[...]	[...]	[...]
<b>TOTAL</b>		<b>91.7</b>	<b>93.8</b>	<b>97.9</b>	<b>100.1</b>	<b>100.4</b>
<b>TOTAL EXCL. INFLATION (2015)</b>		<b>90.1</b>	<b>90.5</b>	<b>92.8</b>	<b>93.2</b>	<b>91.8</b>

(320) The amounts above correspond precisely to the cap used for the compensation (see recital (99)).

(321) As the compensation cannot exceed the cap, the Commission can therefore conclude that bpost is not overcompensated from an *ex-ante* perspective since the compensation, even after *ex-post* control will not exceed the *ex-ante* NAC (including efficiency incentives).

(322) In light of the above, the Commission considers that, if the compensation mechanism above is implemented, bpost will not be overcompensated over the period 2016-2020.

#### 6.2.2.10. Transparency

(323) In its notification, the Belgian State has committed to publish all the information mentioned in paragraph 60 of the 2012 SGEI Framework on the internet.

#### 6.2.2.11. 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

(324) The potential necessity of additional requirements for the 6<sup>th</sup> Management Contract is to be analysed in light of paragraph 58 of the 2012 SGEI Framework which reads as follows “*The Commission will also pay attention to situations where the aid allows the undertaking to finance the creation or use of an infrastructure that is not replicable and enables it to foreclose the market where the SGEI is provided or related relevant markets. Where this is the case, it may be appropriate to require that competitors are given fair and non-discriminatory access to the infrastructure under appropriate conditions.*”

(325) Compensations are granted to bpost for the Network SGEI, allowing the postal operator to maintain a network of 669 post offices and 675 postal shops while only [...] post offices and [...] postal shops would be necessary to deliver the USO and the other public services (see recital (60)). The additional share of the network [...] post offices and [...] postal shops required by the Network SGEI cannot be easily replicated and is used exclusively by bpost.

(326) While in most of the Belgian territory, bpost's competitors can find alternative solutions to deliver their services, that situation could potentially have a distortive effect on competition in certain areas where the postal network is the only contact point. This is particularly important concerning the parcel delivery market which is one of the key axes of development in the postal sector in the future due in particular to the development of electronic commerce. It is also important that bpost's competitors are able to access the

postal network in areas where it constitutes the only contact point for delivering a public service that was rendered by bpost and that has to be taken over following a public procurement procedure.

- (327) With their notification, the Belgian authorities informed the Commission that bpost's contracts with third parties for the franchising of postal shops do not contain any clauses that restrict the freedom of the third parties to distribute, on their premises, products or services of other postal operators.
- (328) In addition, Article 25(1) of the 6<sup>th</sup> Management Contract provides the following: “[u]pon written request, bpost shall grant a competing postal service provider access to the post offices that are maintained to discharge the Retail Network SGEI when these post offices are located in municipalities where the provider demonstrates that no other contact point can be used by customers to collect parcels five days per week, except for Sundays and official holidays or [where] no other contact point can be used to provide a service of general economic interest that was rendered by bpost in post offices and is taken over by the competing postal service provider following a public procurement procedure.” Article 19(2) sets out the conditions under which bpost will be providing access and clarifies that these must always be non-discriminatory and transparent.
- (329) The Commission considers that the clarifications above ensure that the exceptional circumstances that would require additional conditions are not present.

### **6.2.3. Conclusion on the compatibility of the SGEIs entrusted to bpost under the 6<sup>th</sup> Management Contract**

- (330) In light of the foregoing observations, the Commission considers the compensation granted by Belgium to bpost for the SGEIs entrusted to it under the 6<sup>th</sup> Management Contract to be compatible with the internal market on the basis of Article 106(2) TFEU.

## **7. CONCLUSION**

- (331) The Commission has accordingly decided to consider the notified aid measures to be compatible with the internal market on the basis of Article 106(2) TFEU and to raise no objections to these measures.
- (332) The Commission notes that for the sake of urgency, Belgium exceptionally accepts the adoption 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>

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Yours faithfully,

For the Commission

Margrethe VESTAGER  
Member of the Commission