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C(2019) 4268 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.49668 (2017/FC) – Denmark
State aid SA.53403 (2017/FC) – Sweden
Alleged State aid to Post Danmark

Sir, Madam

The Commission wishes to inform Denmark and Sweden that, having examined the information supplied by your authorities on the measures referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

1. PROCEDURE

- (1) On 27 November 2017, *Brancheorganisation for den danske vejgodstransport* (“ITD”) sent a complaint¹ (“the 2017 complaint”) to the

¹ The complaint was registered as SA.49668 for Denmark and SA.53403 for Sweden.

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Commission on alleged unlawful State aid granted by Denmark and Sweden to Post Danmark.

- (2) On 28 May 2018, the Commission adopted a decision in case SA.47707² (“the 2018 Decision”). The 2018 decision addresses several alleged aid measures raised in the complaint, though not all. It was announced in the 2018 Decision that the Commission would adopt a separate decision on the remaining measures, which are the subject of the present decision:
 - (i) a capital injection from PostNord into Post Danmark;
 - (ii) a capital injection from Denmark into PostNord; and
 - (iii) a capital injection from Sweden into PostNord.
- (3) On 20 December 2017, the Danish and Swedish authorities provided a joint reply to the allegations raised in the 2017 complaint related to the above-mentioned capital injections.
- (4) ITD submitted additional information on 2 February 2018, 9 October 2018, 20 November 2018, 18 January 2019, and 11 March 2019. On 10 December 2018, the Commission held a meeting with the complainant in Brussels.
- (5) On 10 January 2018, the Commission sent additional questions to Denmark and Sweden. On 12 March 2018, on behalf of both Denmark and Sweden, Denmark submitted a note from Post Nord on the capital injection by PostNord. Two missing annexes were submitted on 13 March 2018.
- (6) On 20 March, 18 April, and 22, 26, 29 and 31 May 2018, the Commission asked for clarifications following the note submitted on 12 March 2018. On 6 April, 15, 26, 28 and 30 May, and 1 June 2018, the Danish authorities provided the clarifications requested on behalf of both Sweden and Denmark.
- (7) On 28 March 2018, Denmark submitted more information on its own capital injection following the questions asked by the Commission on 10 January 2018. Following this submission from Denmark, the Commission asked additional questions on 18 April 2018 (to Denmark) and 27 June 2018 (to Denmark and Sweden). Denmark replied to these questions on 26 April 2018 and 9 October 2018 respectively.
- (8) On 3 April 2018, Sweden submitted more information on its own capital injection following the questions asked by the Commission on 10 January 2018. Following this submission from Sweden, the Commission asked additional questions on 18 April 2018 (to Sweden) and 27 June 2018 (to Denmark and Sweden, see recital (7)). Sweden replied to these questions by letters dated 8 May 2018 (sent on 13 June 2018) and 26 September 2018 (sent on 9 October 2018).

² Commission Decision SA.47707(2018/N) – State compensations granted to PostNord for the provision of the universal postal service – Denmark

- (9) On 21 June 2018, the Commission held a teleconference with the Danish and Swedish authorities. On 7 November 2018, the Commission held a meeting with Denmark and Sweden in Brussels.
- (10) On 6 December 2018, the Commission asked Denmark questions on the exact timeline of the internal capital injection by PostNord, to which Denmark replied on 10 December 2018. On 11 February 2019, the Commission sent a request for information to Denmark and Sweden separately and asked them on the precise status of all three capital injections.
- (11) On 6 March 2019, Sweden submitted its reply to the request for information of 11 February 2019. Denmark did so on 13 March 2019.
- (12) By letter dated 09 April 2019, the Swedish authorities granted a language waiver to the Commission, agreeing to have the decision adopted and notified in English.
- (13) By letter dated 15 April 2019, the Danish authorities granted a language waiver to the Commission, agreeing to have the decision adopted and notified in English.

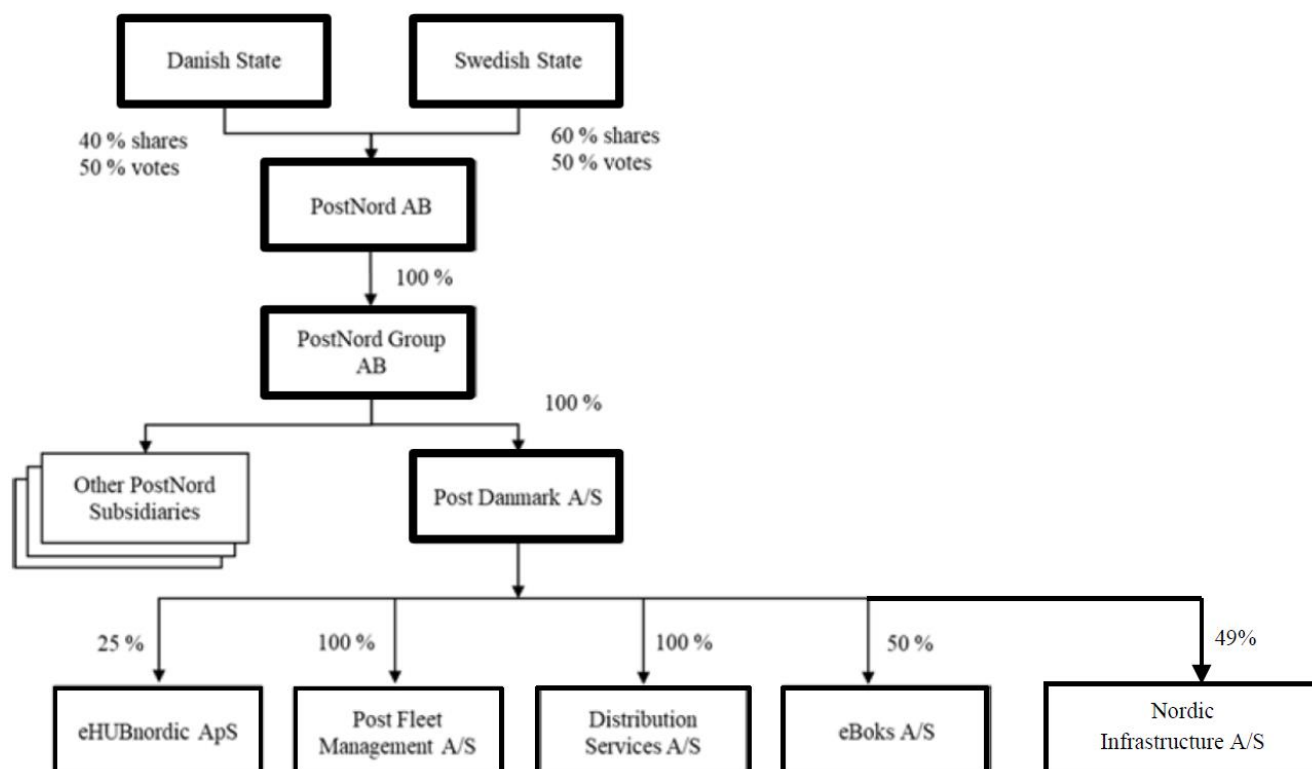
2. DESCRIPTION

2.1. Beneficiary

2.1.1. PostNord

- (14) PostNord AB was created through a merger between Post Danmark and Posten AB in 2009. The intention behind the merger was to establish a more robust undertaking and to meet increasing pressure on the companies' core product, i.e. the distribution of letters. PostNord AB is co-owned by Denmark (40%) and Sweden (60%) while voting rights are shared 50-50, and is the 100% owner of PostNord Group AB ("PostNord"). The structure of PostNord is shown in **figure 1** below.

Figure 1: Structure of PostNord



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

2.1.2. *Post Danmark*

- (16) Post Danmark is a wholly owned subsidiary of PostNord, and has been operating in full competition with other postal operators since the liberalisation of the Danish postal market in 2011, in accordance with the Postal Directive.³ Post Danmark is entrusted with the delivery of the universal postal service⁴ (“USO”), involving in particular the delivery and distribution of letters across the territory of Denmark, and faces competition especially in the parcel market and the market for the distribution of newspapers and magazine mail.

³ Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52/3, ELI: <http://data.europa.eu/eli/dir/2008/6/oj>.

⁴ See Postloven, LOV nr 1536 of 21 December 2010, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=135208>. The law has been amended several times.

(17) Following the 2018 Decision, Post Danmark has received SEK 1.533 billion (approximately EUR 143.4 million)⁵ for the delivery of the USO over 2017-2019 (see recital (25)).

2.2. The measures under assessment

(18) The scope of this Decision is the three capital injections listed in recital (2), more specifically:

(i) DKK 2.339 billion (approximately EUR 313.2 million)⁶ paid by PostNord to Post Danmark on 4 April 2018 (DKK 150 million), 18 June 2018 (DKK 1.45 billion) and 4 February 2019 (DKK 739 million);

(ii) SEK 267 million (approximately EUR 25.0 million) paid by the Danish authorities to PostNord on 10 December 2018; and

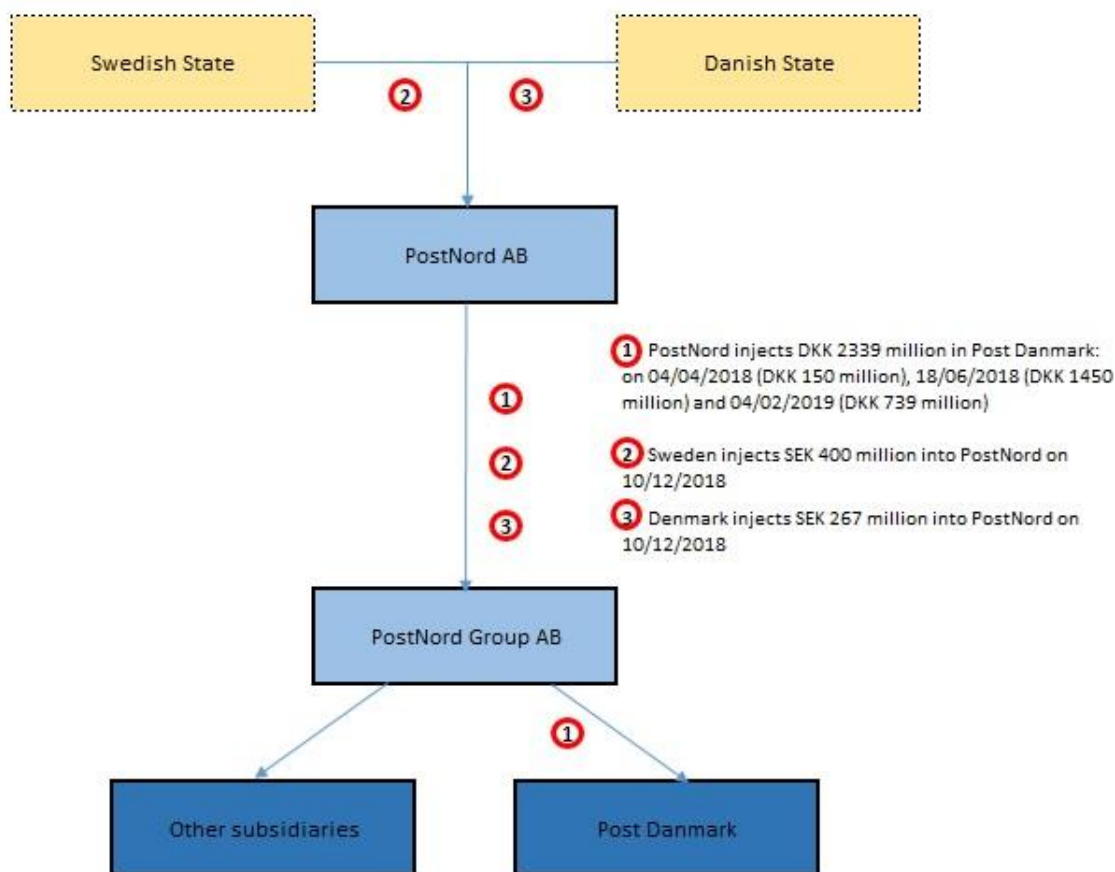
(iii) SEK 400 million (approximately EUR 37.4 million) paid by the Swedish authorities to PostNord on 10 December 2018.

(19) The measures are visualised in **figure 2** below.

⁵ Exchange rate: SEK 1 = EUR 0.09358, taken on 3 June 2019 from <http://ec.europa.eu/budget/graphs/inforeuro.html>.

⁶ Exchange rate: DKK 1 = EUR 0.13389, taken on 3 June 2019 from <http://ec.europa.eu/budget/graphs/inforeuro.html>.

Figure 2: Capital injections



3. BACKGROUND

3.1. Transformation model

- (20) General digitisation trends and specific circumstances in Denmark⁷ have led to a rapid decline in the number of letters handled by Post Danmark: letter volume has declined by nearly 75% since 2001, a rate considerably higher than that of comparable postal operators in other member states. As a result of the drastic reduction in letter volume and the many former civil servants still employed on generous contracts, Post Danmark has been loss-making since 2012.
- (21) Post Danmark took measures to improve its financial situation and between 2009 and 2016, 8000 FTE employees left the company. These measures were however insufficient and Post Danmark could only avoid bankruptcy in [...] thanks to a capital injection from PostNord of DKK 1 billion on 23 February 2017 (addressed in the 2018 Decision).

⁷ For example, in 2013-2014 public authorities in Denmark were obliged to use electronic communication in exchanges with citizens and undertakings.

- (22) In order to make Post Danmark economically viable again, the Board of Directors of PostNord developed a new production model⁸ which aims to increase efficiency in mainly three ways:
- (i) The delivery of quick letters and other day-to-day mail items is to be based on the logistics delivery network (i.e. delivered together with parcels) to save costs by avoiding parallel distribution networks.
 - (ii) Postal items are to be distributed directly from a hub or postal service outlet without the need for separate facilities except letter sorting centres.
 - (iii) Ordinary letters and magazine mail are to be delivered in a so-called flower model, replacing the current distribution method and entailing a significant reduction in the number of daily routes.
- (23) This plan entails high costs, in particular related to the (planned) dismissal of more than 4000 employees, including an estimated 3200 former civil servants.

3.2. October Agreement

- (24) Against this background, Sweden and Denmark signed a bilateral agreement ("The October Agreement") on 23 October 2017 that describes several measures in favour of Post Danmark, and estimates the funding needed for the implementation of the new production model at approximately SEK [...]. According to the October Agreement, this amount is to be financed by a capital injection of SEK 400 million from Sweden, a capital injection of SEK 267 million from Denmark and an internal contribution of PostNord to Post Danmark of approximately SEK 2.3 billion. The State capital injections have since been paid, while PostNord has since injected capital for an amount of DKK 2.34 billion (see Figure 2 above).
- (25) In addition, the October Agreement states that the Danish State will provide SEK 1.533 billion to Post Danmark to finance certain legacy costs. This amount was finally notified as USO compensation and approved as compatible aid in the 2018 Decision.
- (26) The October Agreement notes that the agreement of the States on the capital injections is subject to "*the consent of the Danish Government, the Danish Parliament, the Swedish Government, the Swedish Parliament and, as regards the state aid elements, approval from the European Commission*".

3.3. ITD complaint

- (27) On 27 November 2017, the Commission received a complaint from ITD, an association with over 810 members active in the road transport and logistics sector. ITD's headquarters are based in Padborg (Denmark), but it also

⁸ The viability of the transformation model has been verified in a report by Mckinsey.

operates offices in Copenhagen and Brussels. The complaint concerns the following issues:

- (i) a total of four different measures (all assessed in the 2018 Decision)⁹;
 - (ii) the USO compensation (assessed in the 2018 Decision); and
 - (iii) the three capital injections referred to in the October Agreement, which are the subject of the present procedure.
- (28) According to the complaint, Post Danmark has been provided with capital amounting to SEK 3 billion, SEK 400 million of which has been granted by Sweden, SEK 267 million by Denmark, and the rest by PostNord (i.e., the measures described in the October Agreement). In addition, ITD brings forward that the capital injections are earmarked for ex-post USO compensations and cover the current deficit of Post Danmark, which has arisen as a result of its provision of universal postal services.

3.4. The 2018 Decision

- (29) On 28 May 2018, the Commission adopted the 2018 Decision¹⁰ in which it concluded that the four measures raised in the 2017 complaint (see recital (27)) that had already been granted constituted either no aid or existing aid, and that USO compensation of SEK 1.683 billion was compatible aid under the SGEI Framework¹¹ (an amount of only SEK 1.533 billion has been paid).
- (30) In the 2018 Decision, the Commission also announced that the three capital injections that form part of the October Agreement would be assessed separately.
- (31) On 20 September 2018, ITD and Danske Fragtmænd A/S, a transport company, appealed the 2018 Decision on the procedural grounds that the Commission unduly failed to open the formal investigation procedure. The case has been registered by the General Court under reference T-561/18 and is still pending.

⁹ The measures are: (i) an internal transfer from PostNord to Post Danmark of DKK 1 billion on 23 February 2017; (ii) a guarantee granted in 2002 by the Danish State to former civil servants for liabilities regarding redundancy payments in case of Post Danmark's bankruptcy; (iii) the alleged incorrect separation of Post Danmark's accounts and the alleged cross-subsidisation of commercial services by USO activities in the 2006-2013 period; and (iv) a VAT exemption related to e-commerce companies, in effect from 1990 to 1 January 2017.

¹⁰ Decision of 28 May 2018 in case SA.47707.

¹¹ Communication from the Commission: European Union framework for State aid in the form of public service compensation (2011) (2012/C 8/03).

4. POSITION OF THE PARTIES ON THE MEASURES UNDER ASSESSMENT

4.1. Position of ITD

4.1.1. *One single measure*

- (32) ITD considers that all three capital injections that fall under the scope of this Decision should be considered as one single measure in favour of Post Danmark, as the purpose of the measures according to the October Agreement is to finance its transformation model.
- (33) According to ITD, it is settled case law that several consecutive measures of State intervention should, for the purposes of Article 107(1) TFEU, be regarded as a single intervention, where these consecutive interventions are so closely linked to each other, especially having regard to their chronology, their purpose and the circumstances of the undertaking at the time of those interventions, that they are inseparable.¹² ITD considers these conditions to be fulfilled, since all three capital injections form part of the October Agreement. Consequently, ITD provides one single assessment for all measures.
- (34) ITD considers moreover that the USO compensation approved by the 2018 Decision should be part of the Market Economy Operator Principle (“MEOP”) assessment, as it was also part of the October Agreement.

4.1.2. *Date of granting*

- (35) According to ITD, all the capital injections, forming one single measure, have been granted as of the adoption of the October Agreement in 2017.
- (36) ITD argues that EU Courts have held that State aid is considered to be granted with the adoption of the underlying measure giving rise to State aid.¹³ ITD adds that the EU Courts have consistently held that “[t]he case-law is to the effect that an aid measure may be considered granted, even if it has not yet been paid to the recipient.”¹⁴
- (37) In light of the cited case law, ITD argues that there are three conditions for determining whether a measure has been granted:
- (i) the measure has been adopted by the national authorities;
 - (ii) the measure is unconditional, or it is conditional and the conditions have been met; and

¹² Joined cases C-399/10 P and C-401/10 P, *Bouygues and Bouygues Télécom v Commission and Others*, EU:C:2013:175, paragraph 104; Joined cases T-415/05, T-416/05 and T-423/05, *Greece and Others v Commission*, EU:T:2010:386, paragraph 177; case T-11/95, *BP Chemicals v Commission*, EU:T:1998:199, paragraphs 170-171.

¹³ Case T-818/14, *BSCA v Commission*, EU:T:2018:33, paragraph 72 and the case law cited.

¹⁴ Case T-62/08, *ThyssenKrupp Acciai Speciali Terni SpA v European Commission*, EU:T:2010:268, paragraph 234.

- (iii) the recipient can be identified.
- (38) According to ITD, all three conditions have been fulfilled by the adoption of the October Agreement. ITD also argues that the Commission has considered similar intergovernmental agreements to constitute State aid in past Commission Decisions.¹⁵ ITD further argues that the condition noted in the Agreement - that the measures are subject to the Commission's approval of the State aid elements (see recital (26)) - does not amount to a condition which has an impact on whether the aid should be considered to have been granted. In this regard, ITD points out that PostNord anyway already injected capital into Post Danmark in April 2018, pre-dating the Commission's 2018 Decision.

4.1.3. *Existence of aid*

- (39) ITD puts forward that all capital injections are ultimately financed through State resources, since PostNord is wholly owned by the Danish and Swedish States. ITD further argues that the capital injections are selective, since they only benefit Post Danmark, and that they distort competition and affect trade between Member States, because Post Danmark competes with companies active in the Danish postal market that have been established in other Member States.
- (40) ITD raises specific arguments in particular with regard to the criteria of imputability and advantage.
- (41) ITD argues that all three capital injections are imputable to the Danish and Swedish States for several reasons, including notably that the October Agreement is imputable to the States, but also that PostNord is wholly owned by the Danish and Swedish States and that they appoint all eight members of its Board of Directors.
- (42) According to ITD, the capital injections, forming one measure, confer an advantage on Post Danmark because they have not been carried out in line with the market economy operator principle. ITD considers that it is "inconceivable" that a market economy investor shareholder would grant capital to Post Danmark. More specifically, ITD considers that:
- (i) Post Danmark would still be heavily loss-making even after the transformation plan is implemented.
 - (ii) There is no indication of any public statements by the Swedish and/or Danish authorities that the capital injections are granted to safeguard their interests as shareholders.
 - (iii) There is a "manifest and absolute" lack of "concomitance" (co-investment) from private investors.

¹⁵ Commission Decision in case SA.36558 (2014/NN) and SA.38371 (2014/NN) – Denmark, SA.36662 (2014/NN) – Sweden, aid granted to Øresundsbro Konsortiet, paragraph 32. Commission Decision in case SA.39078 (2014/N) – Denmark – financing of the Fehmarn Belt Fixed Link project.

- (iv) PostNord would not achieve a positive return on its investment, whereas this is a necessary condition for a private investor.¹⁶

4.2. Position of Denmark

4.2.1. Introduction

- (43) Denmark has provided a justification for the capital injection of PostNord jointly with Sweden as well as a separate justification for its own capital injection.

4.2.2. Capital injection of PostNord

4.2.2.1. Date of granting

- (44) According to the Danish authorities, the capital injection by PostNord was granted on 11 June 2018 through the adoption of an agreement between Denmark and PostNord on the principles of implementing the capital injection.
- (45) This implementing agreement was signed following the 2018 Decision to declare USO compensation in favour of Post Danmark to be compatible aid, a condition stipulated in the October Agreement.

4.2.2.2. Existence of aid

- (46) Regarding the State aid character of the measure, the Danish authorities bring forward argumentation in particular as regards the criterion of advantage.
- (47) According to the Danish authorities, the capital injection would have the effect of (i) avoiding the bankruptcy of Post Danmark, which would occur otherwise by [...] ¹⁷; and (ii) permitting Post Danmark to implement its transformation model, which would return it to profitability starting from [...].
- (48) PostNord carried out a financial evaluation in March 2018 by means of a discounted cash flow (DCF) model, which calculates the value of Post Danmark to PostNord by discounting all future cash flows, both resulting from Post Danmark's possible bankruptcy and from Post Danmark's supposed future operational profits. According to this evaluation, finalised on 1 June 2018, the combination of avoiding costs resulting from Post Danmark's bankruptcy and the benefit of Post Danmark's future cash flows would create a net present value of Post Danmark for PostNord of

¹⁶ ITD's assessment is supported by a report from consultancy firm BDO, which finds that all three capital injections combined would generate a return of SEK 0.9 billion for PostNord, while costing SEK 3 billion in total.

¹⁷ By avoiding the bankruptcy of Post Danmark, PostNord as shareholder would avoid direct adverse effects such as having to pay off loans that Post Danmark would not be able to repay, as well as indirect adverse effects such as the loss of synergies and scale to its Nordic operations.

DKK [...], considerably greater than the required investment of DKK 2.34 billion.

- (49) The model distinguishes between direct effects of Post Danmark's bankruptcy (e.g. real estate mortgage debt that would have to be paid off by PostNord) and indirect effects (such as higher borrowing costs and the loss of Nordic revenues, i.e. the loss to PostNord of being able to offer comprehensive Nordic logistics solutions). The model further distinguishes between the 2018-2026 period (based on a business model) and all subsequent years (based on a more simplistic assumption of the relevant parameters).
- (50) Key variables underlying the estimation of Post Danmark's future operational profits are the assumed growth rates of the letter market (-[...] annually, in perpetuity) and the general logistics market, including parcels ([...]), combining for a total growth rate of [...]. These growth rates are based on the growth rates over the past few years and take account of projected inflation and population growth.
- (51) Key variables underlying the estimation of the adverse effects of Post Danmark's bankruptcy are the assumed increase in borrowing costs of [...] and the expected revenue loss of [...] of PostNord's own Nordic operations.
- (52) A key variable underlying the calculations as a whole is Post Danmark's cost of equity capital, which is calculated using the Capital Asset Pricing Model (CAPM). Using an estimated cost of debt of [...], in line with its peers with a similar credit rating, and an equity ratio of [...], based on PostNord's target capital structure, the Danish authorities calculate a weighted average capital cost (WACC) for Post Danmark of [...]. According to the Danish authorities, during 2017 and the start of 2018 this WACC was higher than that of its peers such as Bpost (8.2%), Poste Italiane (8.4%), Royal Mail (8.5%) and Deutsche Post (7.5%)¹⁸.
- (53) The model is summarised in **table 1** below.

Table 1: Net present value of PostNord's capital injection

Numbers in DKK million	Net present value
Capital injection (A)	2300
Direct effects bankruptcy (B)	[...]
Indirect effects bankruptcy (C)	[...]
Post Danmark cash flow (2018-2026) (D)	[...]
Post Danmark cash flow (2027 - terminal year) (E)	[...]
Total equity value (F) = (E) + (D) - (C) - (B)	[...]
Total equity value net of capital injection (G) = (F) - (A)	[...]

¹⁸ According to the Rothschild report referred to in footnote 20.

- (54) In light of the above, the Danish authorities consider that the group capital injection has been carried out in line with the MEOP and therefore does not confer any advantage on Post Danmark.

4.2.3. *Capital injection of Denmark*

4.2.3.1. *Date of granting*

- (55) According to the Danish authorities, the decision to invest was made on 17 May 2018, when the Finance Committee endorsed a Ministerial Decree allowing the Danish authorities to inject capital into PostNord, subject to three conditions being met. The three conditions are (i) the Commission's approval of USO compensation to Post Danmark; (ii) the transfer of capital from PostNord to Post Danmark, necessary for the implementation of the transformation plan; and (iii) the pro rata investment from the Swedish authorities of SEK 400 million.
- (56) The Danish authorities have indicated that the measure targets primarily not Post Danmark, but rather PostNord, as it is paid to PostNord; moreover, the capital injection will not be transferred to Post Danmark since it aims at preserving the [...] credit rating of the PostNord group.

4.2.3.2. *Existence of aid*

- (57) Regarding the State aid character of the measure, the Danish authorities bring forward argumentation in particular as regards the criterion of advantage.
- (58) The Danish authorities argue that it would be economically rational to invest SEK 267 million into PostNord if the conditions laid down in the Ministerial Decree are fulfilled.
- (59) The Danish authorities argue in particular that due to the costs related to Post Danmark's transformation model, including the financial impact of PostNord's capital injection of DKK 2.34 billion, PostNord would risk losing its [...] credit rating in the absence of the State capital injections. In that case PostNord's access to bond markets and financing conditions from financial institutions or suppliers would be negatively affected. The capital injections also ensure that, in the face of possible financial adversity, the transformation model can be implemented.
- (60) According to the Danish authorities, the implementation of Post Danmark's transformation model and the associated costs would, in the absence of the State capital injections, lead to its 'net debt to EBITDA'¹⁹ ratio exceeding [...], a standard level that in financial markets serves as a threshold between [...] and [...]. The loss of PostNord's [...] credit rating would amount to an increase in borrowing costs of [...], resulting in a decrease of PostNord's net present enterprise value of around SEK [...]. Given the Danish authorities'

¹⁹ Earnings before interest, taxes, depreciation and amortisation.

40% stake in PostNord, this translates into a decrease in the net present value of the shareholding of SEK [...], considerably greater than the investment of SEK 267 million necessary to avoid this decrease.²⁰

- (61) In light of the above, the Danish authorities consider that the Danish State capital injection has been carried out in line with the MEOP and therefore cannot confer any advantage on PostNord or Post Danmark.

4.3. Position of Sweden

4.3.1. Introduction

- (62) The assessment regarding PostNord capital injection's MEOP compliance has been submitted by Denmark on behalf of both Denmark and Sweden. The Swedish authorities therefore consider that the group capital injection does not confer any advantage on Post Danmark and therefore does not constitute State aid (see recitals (47)-(48)).
- (63) Sweden has also provided an independent assessment of its own capital injection.

4.3.2. Capital injection of Sweden

4.3.2.1. Date of granting

- (64) The Swedish authorities have stated that the approval in the 2018 Decision of the USO compensation and the subsequent transfer by the Danish authorities of these funds were a critical condition for upholding the October Agreement. The final decision to execute the investment was made by the Swedish government on 29 November 2018.

4.3.2.2. Existence of aid

- (65) Based on a DCF calculation, the Swedish authorities considered that the USO compensation as well as the State capital injections would automatically increase PostNord's total equity value by approximately SEK [...]. Given the Swedish authorities' 60% stake in PostNord, this translates into an increase in the net present value of its shareholding of SEK [...], considerably greater than the cost of its own investment of SEK 400 million.²¹
- (66) The Swedish authorities also consider that the State capital injections of SEK 667 million in total would significantly reduce the risk of PostNord's credit rating falling below [...]. The Swedish authorities also argue that the State capital injections would enable the implementation of the transformation model even in the event of a negative financial deviation.

²⁰ The Danish authorities' assessment is supported by a report from the financial advisory group Rothschild, sent to the Commission on 28 March 2018.

²¹ The Swedish authorities' assessment is supported by a report from the Nordic financial services group SEB, sent to the Commission on 3 April 2018.

- (67) According to the Swedish authorities, PostNord would maintain its [...] rating, but would be closer to [...] and further away from a drop in credit rating to [...]. The Swedish authorities consider that PostNord's borrowing costs would increase with an estimated [...] if it dropped into the [...] category. Avoiding this drop in rating would result in annual savings of SEK [...]. The Swedish authorities conclude that the net present value of the additional financing cost resulting from losing the [...] credit rating is greater than the cost of its capital injection.
- (68) In light of the above, the Swedish authorities consider that the State capital injection has been carried out in line with the MEOP and therefore cannot confer any advantage on PostNord or Post Danmark. Consequently, the Swedish State's capital injection allegedly does not constitute State aid.

5. ASSESSMENT

5.1. Link between the measures

- (69) ITD claims that all capital injections should be considered as one measure (see section 4.1.1). The Commission however considers at this stage that the three capital injections that are the subject of the present decision are three separate measures each requiring their own proper assessment.
- (70) The case law cited by ITD in support of its argument (see recital (36)) is irrelevant. First of all, in *Greece and Others v Commission*,²² the General Court found in paragraph 177 that “*even where the measure in question follows measures of the same nature classed as State aid, that fact does not rule out, a priori, that the said measure satisfies the market economy private investor test*”. This assertion by the General Court rather runs counter to the argument that ITD makes.
- (71) As regards *Bouygues and Bouygues Télécom v Commission and Others*²³ and *BP Chemicals v Commission*²⁴, the Commission notes that the facts of these cases are different from those of the present case, as in the present case there are different grantors, each requiring its own assessment. The pertinence of this difference is illustrated by the *BP Chemicals* judgment (to which *Bouygues and Bouygues v Télécom v Commission* refers), where the General Court found that the Commission must determine whether the measures are severable “*in a case such as this, which concerns three capital injections made by the same investor [...]*”.
- (72) PostNord, Denmark and Sweden are not the same investors. As is clear from sections 4.2.2.2, 4.2.3.2 and 4.3.2.2 respectively, the logic and the process for carrying out the capital injections are different for each of the investors concerned. It is simply not feasible to assess the market conformity of these

²² Joined cases T-415/05, T-416/05 and T-423/05, *Greece and Others v Commission*, EU:T:2010:386.

²³ Joined cases C-399/10 P and C-401/10 P, *Bouygues and Bouygues Télécom v Commission and Others*, EU:C:2013:175.

²⁴ Case T-11/95, *BP Chemicals v Commission*, EU:T:1998:199.

measures as a single measure – Sweden, Denmark and PostNord each have their own distinct financing cost and each require their own proper return on investment. They also have distinct decisional processes involving completely independent actors, at least as far as the Danish and Swedish authorities are concerned. With respect to their capacity as shareholders of PostNord, Sweden and Denmark are also in different financial situations from each other and from PostNord.

- (73) It can also be noted that the capital injections do not have the same beneficiaries or purpose. PostNord's capital injection is paid to Post Danmark, and has the explicit purpose of permitting it to implement its transformation model. The State capital injections are paid to PostNord, and as explained by Denmark and Sweden, should not flow to Post Danmark. The primary objective of the State capital injections relates to the preservation of the [...] rating of PostNord. The Commission considers that these measures, explicitly foreseen in the 2017 October Agreement as supporting the transformation plan, can certainly also indirectly benefit Post Danmark, by protecting PostNord and securing the transformation plan. This benefit is however much more indirect than the PostNord group capital injection, and it is secondary to the benefit received by PostNord.
- (74) The Commission moreover considers that the October Agreement is not the only act by which all three capital injections falling under the scope of this decision have been granted. Indeed, the granting of the measures required subsequent implementation agreements as explained by the Danish authorities (see recitals (44) and (55)).
- (75) The Commission finally considers that the USO compensation should be considered distinct from the capital injections as it was granted to compensate Post Danmark for the net cost incurred under its USO obligation. The USO compensation was considered in the 2018 Decision to be State aid compatible with the internal market under the SGEI Framework. The mere fact that the USO compensation will obviously contribute improving the financial position of Post Danmark during the transformation period should not be considered as meaning that the measure is pursuing that purpose. Several member States grant USO compensations, for example due to e-substitution, without any particular transformation project of the beneficiary.
- (76) The Commission however agrees with the view of ITD that the USO compensation should be considered in the assessment of the market conformity of the capital injections. The granting of USO compensation to Post Danmark is clearly an element that any investor would take into account when assessing the opportunity to invest in its capital or in the capital of its owner.

5.2. Capital injection of PostNord

5.2.1. Date of granting

- (77) If the granting of a measure depends on certain conditions being met, it cannot be considered to be granted unless and until those conditions are met.²⁵ This view is supported by the complainant (see recital (37) above). One of the conditions in the October Agreement is that: “*The shareholders agree to the following subject to [...] as regards the state aid elements, approval from the European Commission*”. The capital injection of PostNord could therefore at the earliest be considered to be granted as of 28 May 2018, the day that the 2018 Decision was adopted.
- (78) The complainant’s argument that this approval is not a condition affecting the date of granting of the measure since PostNord partially implemented a capital injection pre-dating this approval (see recital (38)) is not convincing.
- (79) Indeed, the relatively insignificant and partial April transfer²⁶ seems in line with what the October Agreement states in paragraph 6: “*Awaiting [approval from the Commission on the state aid elements of the Agreement], [PostNord] may provide the funding necessary for Post Danmark A/S in order for the company to run the day to day business.*” PostNord has therefore acted entirely in line with the October Agreement, and was at the time of its capital injection in April 2018 still bound by the conditions imposed therein.
- (80) According to the Agreement, if the Commission had not approved the USO compensation by its 2018 Decision, the three capital injections that are the subject of this decision could simply not take place. The timing of the payment of the capital injections is coherent with that condition.
- (81) Moreover, the group capital injection was anyway subject to a further implementation agreement (see recital (44)). It is only by this agreement that PostNord’s obligation to inject capital into Post Danmark became “unconditional and legally binding”, the criterion applied by the Courts.²⁷
- (82) In light of the above, the Commission considers that the group capital injection has been granted as of 11 June 2018.

5.2.2. Existence of aid

- (83) 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*

²⁵ See e.g. Judgment of 21 March 2013, *Magdeburger Mühlenwerke*, C-129/12, EU:C:2013:200, paras. 40,41.

²⁶ On 4 April 2018 PostNord transferred capital for an amount of DKK 150 million into Post Danmark, 6.4% of the value of the group capital injection.

²⁷ Case T-818/14, *BSCA v Commission*, EU:T:2018:33, paragraph 72 and the case law cited.

certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”.

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

5.2.2.1. Imputability and State resources

- (85) To assess whether a measure granted through public undertakings is imputable to the State, it is necessary to determine whether the public authorities can be regarded as having been involved, in one way or another, in adopting the measure.²⁸
- (86) State resources include all resources of the public sector,²⁹ including resources of public undertakings.³⁰ It is irrelevant whether an institution within the public sector is autonomous or not.³¹
- (87) In light of the fact that the group capital injection was part of the October Agreement, which was approved by the Danish and Swedish parliaments, the Commission considers that this measure is imputable to the Danish and Swedish States. Since Post Danmark is wholly owned by PostNord, which in turn is wholly owned by the Danish and Swedish States, the measure also constitutes State resources.

5.2.2.2. Advantage

- (88) An advantage for the purposes of Article 107(1) TFEU is any economic benefit that an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention.³² Only the effect of the measure on the undertaking is relevant, not the cause or the objective of the State intervention.³³ Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present.

²⁸ Case C-482/99, *France v Commission*, ECLI:EU:C:2002:294, paragraph 52.

²⁹ Case T-358/94, *Air France v Commission*, ECLI:EU:T:1996:194, paragraph 56.

³⁰ Case C-482/99, *France v Commission*, ECLI:EU:C:2002:294, paragraph 38. See also Case C-278/00, *Greece v Commission*, ECLI:EU:C:2004:239, paragraphs 53 and 54, and Joined Cases C-328/99 and C-399/00, *Italy and SIM 2 Multimedia SpA v Commission*, ECLI:EU:C:2003:252, paragraphs 33 and 34.

³¹ Case T-358/94, *Air France v Commission*, ECLI:EU:T:1996:194, paragraphs 58 to 62.

³² 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.

³³ Case C-173/73, *Italian Republic v Commission of the European Communities*, EU:C:1974:71, paragraph 13.

- (89) Economic transactions carried out by public bodies do not confer an advantage, and therefore do not constitute aid, if they are carried out in line with normal market conditions.³⁴ To that effect, the behaviour of public bodies should be compared to that of similar private economic operators under normal market conditions. Whether a State intervention is in line with market conditions should be examined on an ex-ante basis, having regard to the information available at the time the intervention was decided upon.³⁵
- (90) The Commission considers that the DCF model presented by the Danish authorities (see recital (48)) is well in line, from a methodological viewpoint, with acceptable practice for assessing the market conformity of an investment. The net present value of the future cash flows of a company (adjusted for debt) is a commonly used way to evaluate equity investment decisions. As noted, the model considers two cash flows: one resulting from the bankruptcy of Post Danmark (negative cash flows, which would be avoided), and the other from Post Danmark's future operational profits (positive cash flows).
- (91) As regards the calculation of Post Danmark's future operational profits, the Commission has doubts regarding the growth rates assumed for the letter and logistics market (see recital (50)), in view of the fact that Post Danmark's net sales decreased by nearly 10% in 2017. As regards the calculation of the adverse effects of Post Danmark's bankruptcy (see recital (51)), the Commission considers that the quantification is poorly substantiated.
- (92) The CAPM (see recital (52)) can be considered to be market practice and provides that the cost of capital of a company should be equal to the risk free rate plus the general market risk premium multiplied by a beta coefficient (representing the sensitivity to market risk for the company). As the WACC determines the return that the investment should at least make, the fact that it is higher than PostNord's peers seems to be a conservative assumption.
- (93) The Commission notes that the model is relatively sensitive to the assumptions applied. The investment would no longer pass the MEOP test if, for example, the WACC was [...] and annual total projected sales growth was [...].
- (94) As a conclusion, while the model used by the Danish authorities is appropriate, the Commission retains certain doubts as to the market conformity of the group capital injection and may consider at this stage that an advantage has been present.
- (95) The Commission would notably welcome information from third parties on the value of the key parameters used in this calculation.

³⁴ Case C-39/94, *SFEI and others*, ECLI:EU:C:1996:285, paragraphs 60-61.

³⁵ Case C 124/10 P, *Commission v EDF*, ECLI:EU:C:2012:318, paragraphs 83-85 and 105; case C-482/99, *France v Commission*, ECLI:EU:C:2002:294, paragraphs 71-72; case T-16/96, *Cityflyer Express v Commission*, ECLI:EU:T:1998:78, paragraph 76.

5.2.2.3. *Selectivity*

- (96) To fall within the scope of Article 107(1) TFEU, a State measure must favour certain undertakings or the production of certain goods. Hence, only those measures which grant an advantage in a selective way to certain undertakings fall under the notion of aid.
- (97) The capital injection carried out by PostNord is an individual measure targeting Post Danmark specifically. The measure is therefore clearly selective.

5.2.2.4. *Distortion of competition and effect on trade*

- (98) In order to be qualified as State aid, a measure must distort or threaten to distort competition and affect trade between Member States.
- (99) 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.³⁶ 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.
- (100) 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.³⁷ 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.*”³⁸
- (101) Post Danmark provides postal services in the Danish territory as well as abroad. The Danish postal services market has been liberalised as of 1 January 2011. According to the Danish authorities, in 2016 Post Danmark had a market share of approximately [...] in the distribution of letters, [...] in the distribution of business-to-business and business-to-consumer parcels, and [...] in the distribution of newspapers and magazine mail.
- (102) There are several undertakings that hold a permission to conduct professional postal services on the territory of Denmark. A number of additional market actors provide parcel services. These undertakings are in direct competition with Post Danmark, and several, such as UPS and GLS, are also active in other Member States.

³⁶ 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.

³⁷ 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.

³⁸ 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.

- (103) Accordingly, the Commission considers that the compensation for the delivery of the universal service is liable to affect trade and distort competition.

5.2.2.5. Conclusion

- (104) In light of recitals (85)-(103), the Commission considers that the capital injection from PostNord in favour of Post Danmark constitutes State resources imputable to the Danish and Swedish States, that it is granted selectively to Post Danmark and that it is liable to distort competition and affect trade between Member States.
- (105) In addition, the Commission retains some doubts that the measure may confer an advantage on Post Danmark. The Commission therefore retains certain doubts that the capital injection granted by PostNord to Post Danmark may constitute State aid.

5.3. Capital injection of Denmark

5.3.1. Date of granting

- (106) Similarly to the capital injection of PostNord (see recitals (77)-(82)), an Act subsequent to the October Agreement was necessary for Denmark to carry out its capital injection. In particular, the Ministry of Transport, Building and Housing needed the approval of the Finance Committee of the Danish Parliament. The October Agreement clearly states that the consent of the Danish Government is required for the implementation of the agreement (see recital (26)).
- (107) The consent of the Danish Government was acquired through the approval of the Finance Committee of Denmark's capital injection, as laid down in a Ministerial Decree that was signed on 17 May 2018 (see recital (55)). Denmark considers that this is the date of granting of its capital injection.
- (108) However, in line with its argumentation regarding the capital injection of PostNord as set out in recitals (77)-(82), the Commission considers that the capital injection is not granted as of the date of signature of the implementing agreement, but as of the date by which the conditions stipulated therein (see recital (55)) are fulfilled. The Commission therefore considers that the capital injection of Denmark was granted as of 11 June 2018, by which time the USO compensation as well as the capital injection of PostNord had been granted.

5.3.2. Existence of aid

5.3.2.1. Imputability and State resources

- (109) Since this measure is granted by the Danish authorities directly it is by definition imputable to the State. Moreover, as noted in recital (85), State resources include all resources of the public sector. As the capital injection is granted by the Danish authorities directly, the Commission considers that this condition is also fulfilled.

5.3.2.2. *Advantage*

- (110) The Commission considers that the Danish authorities have failed to demonstrate so-far that the latter's behaviour can be compared to that of similar private economic operators under normal market conditions. In particular, the Danish authorities consider neither the probability of PostNord losing [...] in the absence of the State capital injections, nor the probability of PostNord losing [...] anyway, even if the State capital injections are granted. It seems very difficult in these circumstances to assess properly the relevance of such capital injections.
- (111) Furthermore, the Commission notes that the Danish authorities consider neither the maturity of the loans to be re-financed nor the period during which it is assumed that PostNord's credit rating is maintained strictly because of the State capital injections – in view of Post Danmark's operational transformation, it could be expected that PostNord's creditworthiness may anyway gradually improve. Both elements would have to be considered to properly discount the number of years for which savings in financing costs should be expected, assuming that they would be established.
- (112) In light of the above, the Commission has doubts regarding the market conformity of the Danish authorities' capital injection.

5.3.2.3. *Selectivity*

- (113) As the capital injection is an individual measure targeting PostNord and indirectly targeting Post Danmark, the argumentation set out in recitals (96)-(97) applies *mutatis mutandis*.

5.3.2.4. *Distortion of competition and effect on trade*

- (114) To the extent that the capital injection aims at securing Post Danmark's transformation model, the argumentation concerning Post Danmark as set out in recitals (98)-(103) also applies.
- (115) To the extent that the measure will benefit PostNord by preserving its [...] credit rating, it can also distort competition and have an effect on trade, as PostNord is present in several internationally competitive markets through Post Danmark and its other subsidiaries such as PostNord Sverige. PostNord Sverige is active on the Swedish postal market, which has been liberalised since 1993.

5.3.2.5. *Conclusion*

- (116) In light of recitals (109)-(114), the Commission considers that the capital injection from Denmark constitutes State resources imputable to the Danish State, that it is granted selectively to PostNord and that it is liable to distort competition and affect trade between Member States. In addition, the Commission has doubts that the measure may confer an advantage on PostNord and/or Post Danmark. The Commission therefore has doubts that the capital injection granted by Denmark may constitute State aid.

5.4. Capital injection of Sweden

5.4.1. Date of granting

- (117) The Commission notes that the Swedish authorities have argued that the critical measure for upholding the October Agreement was the Commission's approval of the USO compensation in the 2018 Decision (see recital (64)). The Swedish Parliament had provided its consent, based on that condition being fulfilled, on 12 December 2017.
- (118) The Commission therefore considers that the capital injection of Sweden was granted as of 28 May 2018, by the adoption of the 2018 Decision.

5.4.2. Existence of aid

5.4.2.1. Imputability and State resources

- (119) The argumentation set out in recital (109) applies *mutatis mutandis*.

5.4.2.2. Advantage

- (120) The argumentation presented in recitals (110)-(112) applies equally to the assessment presented by the Swedish authorities. Furthermore, the Commission considers that the Swedish authorities have not demonstrated that annual savings on borrowing costs of SEK [...] (see recital (66)), assuming they would be achieved, would provide the Swedish authorities a market conform return as a shareholder of PostNord of their capital injection of SEK 400 million.
- (121) The Commission notes that the Swedish authorities have also acknowledged themselves that there are several uncertainties included in the credit rating analysis, in particular the fact that PostNord does not have a public credit rating and the underlying assumption that all current debt is re-financed and that PostNord will be able to acquire SEK [...] additionally in debt from the market. Such unquantified uncertainties seem difficult to reconcile with a proper private investor approach.
- (122) In light of the above, the Commission has doubts regarding the market conformity of the Swedish authorities' capital injection.

5.4.2.3. Selectivity

- (123) The argumentation set out in recital (113) applies *mutatis mutandis*.

5.4.2.4. Distortion of competition and effect on trade

- (124) The argumentation set out in recitals (114) - (115) applies *mutatis mutandis*.

5.4.2.5. Conclusion

- (125) In light of recitals (119)-(124), the Commission considers that the capital injection from Sweden constitutes State resources imputable to the Swedish State, that it is granted selectively to PostNord and that it is liable to distort competition and affect trade between Member States. In addition, the

Commission has doubts that the measure may confer an advantage on PostNord and/or Post Danmark.

- (126) The Commission therefore has doubts that the capital injection granted by Sweden may constitute State aid.

5.5. Compatibility

- (127) To the extent that the measures assessed in the present decision imply the possible existence of State aid within the meaning of Article 107(1) TFEU, it is necessary to assess whether the measures can be considered compatible with the internal market.

- (128) According to the case law of the Court, it is up to the Member State to invoke possible grounds of compatibility, and to demonstrate that the conditions for such compatibility are met.³⁹ The Danish and Swedish authorities have however not invoked any arguments that would demonstrate the compatibility of the measures in question.

- (129) In light of the above, to the extent that the measures assessed in the present decision would constitute State aid, the Commission has doubts that they could be compatible with the internal market.

6. CONCLUSION

In light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Denmark and Sweden to submit their comments and to provide all such information as may help to assess the aid/measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission warns Denmark and Sweden that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

The Commission notes that Denmark and Sweden exceptionally accept the adoption and notification of the Decision in the English language.

³⁹ See Case C-364/90, Italian Republic v Commission of the European Communities, ECLI:EU:C:1993:157, para. 20.

If this letter contains confidential information which should not be published, 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 publication of the full text of this letter.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission