Brussels, 14.5.2020
C(2020) 3108 final

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 […]

PUBLIC VERSION
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Subject: State Aid SA.50872 (2020/NN) – Spain
USO compensation to Correos, 2011-2020

Excellency,

1. PROCEDURE

(1) On 18 July 2018, the Spanish authorities pre-notified compensation for the Universal Service Obligation (hereinafter “USO”) to be granted to Correos for the 2011-2020 period.

(2) On 18 January 2019, in the course of the ongoing pre-notification discussions, the Spanish authorities submitted a revised approach for the net avoided cost (hereinafter “NAC”) calculation, covering the year 2011 only.

(3) On 22 March 2019, the Commission received a joint complaint from ‘UNO’ (Organización Empresarial de Logística y Transporte) and ‘ASEMPRE’ (Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia) concerning the alleged granting of unlawful aid by Spain to Correos as compensation for its USO for the 2011-2020 period.

(4) On 4 June 2019, the Commission forwarded the complaint from UNO and ASEMPRE to the Spanish authorities for comment. They replied by letter of 11 July 2019.

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On 2 October 2019, the Spanish authorities submitted a full NAC calculation of the USO over the 2011-2020 period. On 27 November 2019, the pre-notification was closed.

On 17 December 2019, following the end of the pre-notification discussions, the Spanish authorities submitted a partial notification for USO compensation of an amount of EUR 1.280 billion to be granted to Correos for the 2011-2020 period. This partial notification was complemented by submissions of 27 December 2019 and 10 January 2020.

On 21 February 2020, the Commission’s services sent a request for information to the Spanish authorities, to which they replied on 26 February 2020.

On 16 April 2020, the Commission’s services received an addition to the complaint from UNO and ASEMPRE. On 20 April 2020 the Commission’s services sent a request for information regarding this submission to the Spanish authorities, to which they replied on 22 April 2020.

2. DESCRIPTION

2.1. Beneficiary

‘Sociedad Estatal Correos y Telégrafos, S.A., S.M.E.’ (hereinafter “Correos”), a fully State-owned public limited company, is the parent company of Correos Group, consisting of Correos itself and its subsidiaries Correos Express, Nexea and Correos Telecom.

Prior to Spain’s accession to the European Economic Community (hereinafter “EEC”) the activities of Correos were carried out by the General State Administration through a ministerial department (until 1990), a public autonomous body (from 1990 to 1997) and a public business entity (from 1997 to 2001). Under Law 14/2000 of December 2000 on Fiscal, Administrative and Social Order Measures, the legal framework governing Correos changed it into a State-owned company subject to private law.

On 5 June 2012, the ownership of Correos was transferred to Sociedad Estatal de Participaciones Industriales (hereinafter “SEPI”), a public-law entity, which owns State shareholdings in various companies. Relations between SEPI and its investee companies are regulated by private law. SEPI’s purpose is to ‘obtain maximum returns from the shares and shareholdings assigned to it’.

Correos provides postal services, including the universal service, parcel delivery, courier services and other services (e.g. money orders and money transfers, telecommunications-related services). In addition, Correos performs the public postal function in electoral processes, including distribution of electoral material.

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1 Correos was established as a public business entity in 2002 under Law 53/2002 of 30 December 2002 on Tax, Administrative and Social Measures.

2 The public deed of incorporation of Correos entered in the Corporate Registry on 3 July 2001, the company being formally set up on that date.
In 2018, the turnover of the Correos Group was EUR 2.04 billion. It handled approximately 2.7 billion consignments (including parcels) and had a workforce of 53 605 employees at the end of the year, 52 259 of which corresponded to the parent company Correos. It also served the public at 8 581 customer service points.

2.2. Spanish postal market

Prior to Spain's accession to the EEC in 1986, Decree 1113/1960 of 19 May 1960 on the Postal Order, implemented by the Postal Services Regulation, defined the postal service in Spain and entrusted its provision to the Directorate General of “Correos y Telégrafos”. The adoption of the Postal Order and its implementing regulation marked the start of the liberalisation of the Spanish postal market. At the time, Correos was restricted to interurban and international letters and postcards while urban mail and parcel services were fully liberalised. In the 1970s, the first large private operators entered the Spanish postal market.

Following Spain's accession to the EEC, there was a gradual liberalisation of postal services between 1998 and 2010 based on the European Union Postal Directives.

More specifically, Directive 97/67/EC (the first Postal Directive) was transposed into national law in 1998 by means of Law 24/1998 of 13 July 1998 on the Universal Postal Service and the Liberalisation of Postal Services (hereinafter the “1998 Postal Law”), which for the first time entrusted Correos with the USO. The law provided for a list of USO services to remain reserved for Correos as USO provider (reserved services), all other postal services being liberalised (non-reserved services).

The liberalisation of postal services in Spain continued with the transposition into Spanish law of Directive 2002/39/EC (the second Postal Directive) through Law 53/2002 of 30 December 2002 on Tax, Administrative and Social Measures, which amended the aforementioned 1998 Postal Law and reduced the scope of the reserved services.

In 2010, the postal sector was fully liberalised by Law 43/2010 of 30 December 2010 on the Universal Postal Service, users' rights and the postal market (hereinafter the “2010 Postal Law”) which transposed into Spanish law Directive 2008/6/EC (hereinafter “the Postal Directive”). The 2010 Postal Law redefined the scope of the USO and abolished the reserved services.

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3 The Postal Services Regulation was adopted by means of Decree No 1653/1964 of 14 May 1964.
6 Official Gazette: 31 December 2010, Number 318.
In 2018, the traditional postal services segment in Spain represented 27% of the postal market while the parcel and courier services segment represented 73% of the market. During that year, Correos was the largest provider of traditional postal services with 96% market share. In addition, the Correos Group (Correos and Correos Express) market share during that year was 34.9% of overall deliveries in the parcels segment.\(^8\)

The Spanish traditional postal services segment is in decline due to competition from the various forms of electronic communication which provide alternative means of exchange of personal messages and other types of mail and documentation.

Until 2017, Unipost S.A. was the main competitor of Correos in the Spanish postal market, however the company underwent financial difficulties and entered into liquidation on 19 February 2018. Currently, a number of European postal operators are present in Spain (e.g. Deutsche Post, GeoPost-La Poste, CTT Correios Portugal).

The national postal regulator lays down the conditions for access to Correos’s universal postal network by other operators. When utilising Correos’s postal network, these operators are responsible for the collection of their customers’ postal items, Correos undertaking the rest of delivery tasks on their behalf.

### 2.3. Universal Service Obligation

In 1998, Correos was entrusted with the USO by the 1998 Postal Law. As compensation for delivering the USO, Correos received public funding from 1998 to 2010. Subsequently, the 2010 Postal Law entrusted Correos with the provision of the USO for a period of 15 years starting on 1 January 2011.\(^9\)

Article 20 of the 2010 Postal law provides that the “universal service is understood to be the set of postal services […] provided on a regular and permanent basis throughout the national territory and at an affordable price for all users.”

Article 21 of the 2010 Postal law includes within the scope of the USO “the activities of clearance and distribution of national and cross-border postal items on a regular basis of:

- Letters and postcards containing communications written on any type of medium up to two kilograms in weight;

- Postal parcels, with or without commercial value, of up to 20 kilograms in weight;

- Registered and declared-value services.

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\(^9\) First Additional Provision of the 2010 Postal Law.
National and cross-border direct advertising, books, catalogues, periodical publications and other postal items are included within the scope of the USO provided that they are sent in one of the ways listed above.

(26) Article 22, paragraph 1, of the 2010 Postal law provides that the public service obligations entrusted to Correos must be carried out in compliance with "the principles of equity, non-discrimination, continuity, good faith and adaptation to users’ needs".

(27) Article 22, paragraph 3, of the 2010 Postal Law stipulates that the USO is to be provided in compliance with the legally established provisions and those contained in the Plan for the Provision of the Universal Postal Service (Plan de Prestación del Servicio Postal Universal, hereinafter “Plan de Prestación”) approved by the Government. As mentioned in recital (35) below, the current notification includes the new Plan de Prestación, which covers the 2011-2020 period and establishes the detailed technical criteria and the detailed procedure for the provision and financing of the universal postal service.

(28) The provision of services under the USO is subject to quality standards, in particular in terms of delivery time targets, the security of postal items, and customer service, including a procedure for the fast handling of queries, claims and complaints. The Plan de Prestación establishes penalties in the event of a deviation from the set objectives and states that the National Commission on Markets and Competition (hereinafter the “CNMC”) is the national competition authority which acts as the regulatory body for the postal service.

(29) Correos shall maintain an extensive postal network10 and guarantee adequate coverage of distribution and delivery services throughout the country, on all working days, except in specified exceptional circumstances. Article 22, paragraph 5, of the 2010 Postal Law provides that “the Government may impose on the universal service provider some other public-service obligations, when required to do so for reasons of general interest or social or territorial cohesion, the improvement in the quality of education and civil protection, or when they are necessary to safeguard the electoral process, in accordance with the rules of the general electoral system. […] The impositions of additional public-service obligations must be the object of compensation.”

(30) Articles 23 to 25 of the 2010 Postal Law provide the conditions for the collection, clearance, distribution and delivery of postal items and the time limit for these activities.

(31) In particular, they establish that postal items are to be collected at the access points on every working day, from Monday to Friday, ‘irrespective of the population density, and including in rural areas’. The operator also has the obligation to provide adequate coverage throughout the national territory, ensuring a specific access point density. Deliveries must be made at least on every working day from Monday to Friday, except in special or exceptional

10 According to the Plan de Prestación the network shall consist of multiple access points via post boxes and post offices, establishing a minimum number based on population and distance, with the aim of ensuring adequate access to the handling and collection service for all citizens throughout the country.
circumstances. The designated operator must also meet certain delivery time limit targets, and comply with the penalties for non-compliance.

**Financing of the USO**

(32) Article 28 of the 2010 Postal Law provides that the financial burden of Correos for the provision of the USO must be determined and that the amount of this burden will be financed pursuant to the conditions laid down in Article 29 of that same Law.

(33) Articles 29 and 30 of the 2010 Postal Law provide for the creation of a USO financing fund (hereinafter the “Fund”) which aims at administering the funding to offset the financial burden of Correos. The Fund, which will not become operational before the new *Plan de Prestación* is implemented, will be financed through the following contributions:

- Transfers in favour of the Fund assigned in the State’s general budget;
- Public economic benefits made available for this purpose;
- Donations or bequests by any natural or legal person who wishes to assist in the financing of the USO;
- Yields from the deposits in which the Fund’s assets are held.

(34) Article 27 of the 2010 Postal Law and the *Plan de Prestación* set out the criteria for determining the financial burden of Correos. More specifically, the financial burden is determined by applying the NAC methodology in accordance with paragraphs 25 and 27 of the Communication from the Commission on the European Union framework for State aid in the form of public service compensation (2011) (hereinafter the “2012 SGEI Framework”).

2.4. **Notified measure**

(35) The current notification relates to the Spanish compensation scheme for the USO, covering the financial years from 2011-2020 and amounting to EUR 1.280 billion. The scheme is governed by:

- the 2010 Postal Law, defining the USO and laying down the conditions for the provision of the universal postal service which must be met by Correos (see recitals (24) - (31) above); and
- the *Plan de Prestación*, establishing the detailed technical criteria and the detailed procedure for the provision and financing of the universal postal service.

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11 Article 29 of the 2010 Postal Law is implemented in the Plan de Prestación.
12 The NAC methodology is contained in the Plan de Prestación and in its Methodological Annex.
14 The Spanish authorities commit to notify the scheme governing the period 2021-2025 in due time (see section 3.2 of the present decision).
The Plan de Prestación states that the NAC is the difference between the net cost for the designated operator subject to the USO (base or factual scenario), and its net cost if it is not subject to these obligations (counterfactual scenario). The NAC is based on the difference between the avoided costs, or cost savings, and the foregone revenues, or loss of revenues, resulting from comparison of the counterfactual scenario with the factual scenario. Furthermore, the Plan de Prestación provides that the USO compensation for Correos includes adjustments to neutralise the intangible and market benefits associated with the nature of the universal service provided, a reasonable profit for the designated operator, and efficiency incentives.

The methodology for the calculation of NAC and the determination of Correos’s financial burden is described in the Plan de Prestación. Correos has received payments for the USO compensation by the Ministry of Public Works between 2011 and 2019, as shown in the below table.

### Table 1: Payments granted to Correos, 2011-2019, EUR thousand

<table>
<thead>
<tr>
<th>Year</th>
<th>Payment</th>
<th>Cumulative payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>42 000</td>
<td>42 000</td>
</tr>
<tr>
<td>2012</td>
<td>0</td>
<td>42 000</td>
</tr>
<tr>
<td>2013</td>
<td>0</td>
<td>42 000</td>
</tr>
<tr>
<td>2014</td>
<td>518 000</td>
<td>560 000</td>
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<td>2015</td>
<td>180 000</td>
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<tr>
<td>2017</td>
<td>59 000</td>
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<tr>
<td>2018</td>
<td>120 000</td>
<td>1 099 000</td>
</tr>
<tr>
<td>2019</td>
<td>120 000</td>
<td>1 219 000</td>
</tr>
</tbody>
</table>

3. ADDITIONAL BACKGROUND

3.1. Previous decisions

The Commission adopted two decisions in relation to the USO compensation granted to Correos by Spain.

By decision dated 11 February 2016 (hereinafter, the “2016 opening decision”), the Commission informed Spain that it had decided to initiate the formal investigation procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union (hereinafter the “TFEU”) because of its serious doubts regarding the compatibility of several measures granted to Correos since 2004. The Commission notably expressed doubts on:

a) the level of compensation received by Correos for the delivery of the USO between 2004 and 2010;

b) the compatibility or existing aid character of tax exemptions from the real estate tax (IBI) and from the tax on economic activities (IAE);

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c) the compliance of capital injections granted in 2004, 2005 and 2006 with the market economy investor principle; and

d) the compatibility or existing aid character of compensation granted to Correos for the distribution of electoral material.

(40) In addition, the Commission concluded in the 2016 opening decision that Correos not having to pay pension contributions for its civil servants constituted existing aid.

(41) The Commission concluded the formal investigation by Decision of 10 July 2018 (hereinafter, the “2018 final decision”). The Commission found that the USO compensation granted to Correos under the 1998 Postal Law constituted incompatible aid pursuant to Article 106(2) of the TFEU, to the extent that Correos was overcompensated. In addition, the Commission found that the tax exemptions from the real estate tax (IBI) and the tax on economic activities (IAE) constituted incompatible aid. The Commission also concluded that the capital injections granted in 2004, 2005 and 2006 can be regarded as complying with the market economy investor principle and therefore did not constitute State aid. As regards the compensation granted to Correos for the distribution of electoral material sent out by political candidates, the Commission found that it constituted existing aid.

3.2. Commitments of the Spanish authorities

(42) The Spanish authorities committed to notify the USO compensation measure governing the period 2021-2025 in 2020.

(43) Moreover, this notification will include in the USO compensation the economic advantage associated with the funding by the State of pensions for the civil servants employed by Correos. This will conclude the cooperation procedure on this existing aid measure.

(44) Lastly, the Spanish authorities commit to continue their cooperation with the Commission as regards the distribution of electoral material sent out by political candidates through Correos.

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17 Recital 341 of the 2018 final decision.

18 Recital 342 of the 2018 final decision.

19 Recital 322 of the 2018 final decision.

20 Recital 343 of the 2018 final decision.

21 Pursuant to recital (206) of the 2016 opening decision, “the absence of payment of pension contributions by Correos for its civil servants qualifies as existing aid within the meaning of Article 1(b) of [Regulation (EU) 2015/1589]”.

22 Pursuant to recitals (337) and (343) of the 2018 final decision, “the compensation granted to Correos for the distribution of electoral material sent out by political candidates constitutes existing aid and will be dealt with separately in accordance with Articles 17, 18 and 19 of Council Regulation (EC) No 659/1999”.
4. THE COMPLAINT OF UNO AND ASEMPRE

(45) On 22 March 2019, the Commission received a complaint from ‘UNO’ and ‘ASEMPRE’ concerning the alleged granting of unlawful State aid by Spain to Correos as compensation for its USO for the 2011-2020 period. UNO is a logistics and transport business organisation, some of whose members compete with Correos in the parcel delivery segment. ASEMPRE is a professional association of companies dealing with mail distribution and handling. Both UNO’s and ASEMPRE’s headquarters are in Madrid (Spain).

(46) The complainants assert that the complaint is a reiteration of two previous complaints submitted to the Commission in 2013 and 2014, by ASEMPRE and UNO respectively. The claims made by UNO and ASEMPRE are summarised below.

4.1. Absence of legal basis for USO compensation

(47) UNO and ASEMPRE explain that, in accordance with Article 22, paragraph 3, and Article 27, paragraph 2b, of the 2010 Postal Law, a methodology for the calculation of the NAC of the USO should be developed in a Services Plan (the “Plan de Prestación”, see recital (27)). However, no such methodology has been established by Spain since the end of validity of the previous Plan de Prestación in 2011.

4.2. Use of non-market conform discounts and NAC methodology

(48) UNO and ASEMPRE claim that Correos has been granting non-market-conform discounts to several large customers (entities in the public administration, banks, utility companies) which are allegedly financed through USO compensation and have led to an increase in the NAC.

(49) UNO and ASEMPRE consider that these discounts form part of individually negotiated contracts and, as such, they should not be compensated under the USO.

(50) UNO and ASEMPRE further consider that the post-discount prices of Correos in certain services, particularly in the parcel segment, are not cost-based. They claim that this pricing strategy is in contravention of the Spanish Postal Law transposing the Postal Directive and has resulted in net losses for Correos of EUR 110 million in 2015 and EUR 93 million in 2016.

(51) UNO and ASEMPRE further argue, by reference to the Commission’s bpost decision, that return on sales for a postal operator with limited risks should be between 3.6% and 4.8%, whereas the return for a postal operator with significant

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24 According to UNO and ASEMPRE, revenues from 805 large customers accounted for 72% of Correos’s turnover in 2016, with the 20 biggest of these customers representing 54% of its 2016 turnover.
25 The parcel segment is part of the USO for packages up to 20 kg.
risks should be between 5.4% and 7.4%. The complainants consider therefore that the return on sales for Correos should be at most 5.5%, based on a weighted average between its USO (limited risks) and non-USO (significant risks) services. On that basis, the complainants conclude that the USO compensation of Correos for the period 2011-2020 should have been EUR 39 million per year instead of EUR 194 million, which the complainants consider was the amount transferred annually to Correos during that period. In other words, the complainants consider that Correos has been overcompensated for an amount of EUR 155 million per year.

(52) In their complaint, UNO and ASEMPRE propose a method for a fair, in their view, assessment of USO compensation as regards, in particular, (i) the calculation of the counterfactual scenario, showing how Correos would behave if not required to comply with the USO and (ii) the rules for attributing costs to the various products and services in the calculation of the NAC. For example, they argue that Correos considers several categories of costs to be fixed costs, when they are in fact variable. Examples are assets used for production such as vehicles and machinery. The complainants consider that with a lower level of activity Correos could sell off these assets.

4.3. Undue VAT exemption

(53) According to UNO and ASEMPRE, all contracts concluded by Correos with large customers and entities in the public administration are individually negotiated and are therefore not subject to the requirements of the USO. UNO and ASEMPRE argue that only services that are subject to the requirements of the USO and are provided in the public interest should be exempted from Value-Added Tax (‘VAT’), as opposed to services provided on individually negotiated terms.

(54) In support of their argument, UNO and ASEMPRE refer to Case C-357/07, TNT Post UK,27 by stating that for the services not subject to the obligations applicable to the universal service, Correos should find itself in the same position as any other provider of postal services.

4.4. Misallocation of costs and cross-subsidisation of commercial services

(55) UNO and ASEMPRE claim that the general pricing policy of Correos does not cover the costs of the postal services it provides, and that the deficit is financed from USO compensation.

(56) UNO and ASEMPRE allege that pricing below costs is particularly prevalent in the prices offered to large customers, when discounts are accounted for, and in the parcel market, where Correos’s prices are claimed to be “far removed from the costs of the service.” In UNO and ASEMPRE’s view, this alleged underpricing generates an artificial increase in the NAC, and in that way subsidises commercial activities and distorts competition.

27 Case C-357/07, TNT Post UK, ECLI:EU:C:2009:248, paragraphs 76, 80, 81, 83 and 89.
4.5. Infringement of national public procurement law

(57) UNO and ASEMPRE consider that Correos has failed to comply with two sanctions imposed by the national competition authority and confirmed by the Spanish Supreme Court. According to UNO and ASEMPRE, Spanish public procurement law therefore precludes Correos from entering into any contract with the Spanish authorities, and thus any contract between Correos and Spain is illegal and should be considered as granting to Correos privileged access to public funds.

4.6. Non-quantified exclusive and immaterial rights

(58) UNO and ASEMPRE assert that Correos has benefited from “non-quantified exclusive and immaterial” rights and “prohibited special rights”. UNO and ASEMPRE argue that special and exclusive rights are set out in the 1998 Postal law, in the form of State guarantees granted to Correos for the provision of USO services. According to UNO and ASEMPRE these rights are the following: (i) Correos allegedly benefits from a privileged relationship with the public authorities, giving it a significant advantage over other operators in procurement procedures; (ii) Correos allegedly benefited from the transfer of ownership of all elements comprising the public postal network when it became a public limited company; (iii) Correos allegedly benefits from the intangible right of its designation as the sole USO provider without the organisation of a public tendering process; (iv) Correos allegedly gains a competitive advantage for being the only postal service operator entrusted with the USO; (v) Correos allegedly gains a competitive advantage from having access to the public domain on favourable terms; (vi) Correos allegedly benefits from the right to the use of spaces dedicated to the provision of USO services; (vii) Correos allegedly benefits from the intangible right relating to the use of the brand “España”, “Correos” and the respective symbols and (viii) Correos allegedly gains a commercial advantage from having access to personal data of customers.

(59) According to the complainants, these rights should be quantified and deducted from the USO compensation.

4.7. Social security contributions for Correos officials

(60) UNO and ASEMPRE assert that Correos receives State aid through savings in social security contributions for Correos officials.

4.8. Tax exemptions granted to Correos

(61) UNO and ASEMPRE assert that Correos has received State aid through tax exemptions since 2011, which were not investigated by the Commission.

4.9. Compensation for election campaigns

(62) UNO and ASEMPRE assert that Correos receives State aid through compensation for election campaigns.
4.10. Alleged overcompensation resulting from the alleged undue classification of administrative notification services as USO services

(63) UNO and ASEMPre assert that during the years 2011-2019 Correos unduly classified administrative notification services as USO services, which they consider to be a “serious accounting irregularity”. Administrative notification services consist of the delivery of preparatory acts and final decisions to interested parties in the context of administrative and judicial procedures.

(64) According to the complainants, Correos obtained financing for these services from the Spanish State as they were categorised as USO services. In this regard, the complainants refer to a resolution from the CNMC\(^28\) which, they claim, calls into question the calculation of Correos’s net cost over the notified period. The complainants estimate that the accounting practice has resulted in Correos being overcompensated for an amount of between EUR 12.6 million and EUR 27.0 million per year over the 2011-2019 period.

5. ASSSESSMENT OF THE NOTIFIED MEASURE

5.1. Existence of aid

5.1.1. State aid within the meaning of Article 107(1) TFEU

(65) According to Article 107(1) TFEU\(^29\) “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”.

(66) It follows that, in order for a financial measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative conditions have to be met: i) the measure must be imputable to the Member State and granted through State resources, ii) it must confer a selective economic advantage to undertakings, iii) the measure must distort or threaten to distort competition, and iv) the measure must be liable to affect trade between Member States.

5.1.1.1. Measure imputable to the State and granted through State resources

(67) For a measure to constitute State aid within the meaning of Article 107(1) TFEU, it must be granted by the State or through State resources. State resources include

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all resources of the public sector\textsuperscript{30} including resources of intra-State entities (decentralised, federated, regional or other).\textsuperscript{31}

(68) The compensation for the provision of the USO under the 2010 Postal Law, in combination with implementing provisions of the \textit{Plan de Prestación}, is paid directly from the State General Budget and is hence clearly imputable to the State and granted through State resources.

5.1.1.2. Selective economic advantage to an undertaking

A. The notion of undertaking

(69) Public funding granted to an entity can only qualify as State aid if that entity is an "undertaking" within the meaning of Article 107(1) TFEU. The Court of Justice of the European Union (hereinafter, the "Court of Justice") has consistently defined undertakings as entities engaged in economic activity.\textsuperscript{32} The qualification of an entity as an undertaking thus depends on the nature of its activity, with no regard to the entity's legal status or the way in which it is financed.\textsuperscript{33} An activity must generally be considered to be economic in nature where it consists in offering goods and services on a market.\textsuperscript{34}

(70) In the present case, Correos offers postal services against remuneration on the Spanish market and in competition with other providers. Offering postal services on this market thus amounts to an economic activity. The USO compensation compensates Correos for the provision of certain of these postal services and hence compensates an economic activity. Accordingly, with respect to the activities financed by the measures in question, Correos must be qualified as an undertaking.

B. Economic advantage

(71) 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.\textsuperscript{35} Only the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State

\textsuperscript{31} Case C-248/84, \textit{Federal Republic of Germany v Commission of the European Communities}, EU:C:1987:437, paragraph 17; and Joined Cases T-92/00 and T-103/00, \textit{Territorio Histórico de Álava - Diputación Foral de Álava (T-92/00), Ramondín, SA and Ramondín Cápsulas, SA (T-103/00) v Commission of the European Communities}, EU:T:2002:61, paragraph 57.
\textsuperscript{34} Case C-118/85, \textit{Commission of the European Communities v Italian Republic}, EU:C:1987:283, paragraph 7.
\textsuperscript{35} Case C-39/94, \textit{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, \textit{Kingdom of Spain v Commission of the European Communities}, EU:C:1999:210, paragraph 41.
intervention. Whenever the financial situation of the undertaking is improved as a result of State intervention on terms differing from normal market conditions, an advantage is present.

(72) However, compensation granted to an undertaking for services of general economic interest (hereinafter “SGEI”) does not constitute an economic advantage if the following cumulative conditions, strictly defined in the Altmark judgment of the Court of Justice, are met:

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 to 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 with the relevant means, would incur, taking into account the receipts and a reasonable profit from discharging the obligations.

(73) This jurisprudence has been codified and further explained in the Commission’s Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (hereinafter "the SGEI Communication"). The Commission will assess below whether the compensation granted to Correos complies with the conditions established in the Altmark judgment. As the conditions set out in the Altmark judgment are cumulative, failure to comply with any one of the four conditions leads to the conclusion that the financing measures under review grant an economic advantage within the meaning of Article 107(1) TFEU.

a) First sub-criterion of the fourth Altmark criterion: Appropriate public procurement procedure

(74) The Commission notes that Correos was not selected through a public procurement procedure responding to the standards of the Altmark rules as laid down in paragraphs 63 to 68 of the SGEI Communication.

39 Paras. 63-68 of the SGEI Communication.
b) Second sub-criterion of the fourth Altmark criterion: Comparison with typical, well-run undertaking

(75) According to paragraph 75 of the SGEI Communication "If the Member State can show that the cost structure of the undertaking entrusted with the operation of the SGEI corresponds to the average cost structure of efficient and comparable undertakings in the sector under consideration, the amount of compensation that will allow the undertaking to cover its costs, including a reasonable profit, is deemed to comply with the fourth Altmark criterion".

(76) The Spanish authorities did not provide any information to the Commission as to whether the compensation was determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with means to meet the public service obligations, would have incurred, taking into account the relevant receipts and a reasonable profit from discharging the obligations. The Commission therefore concludes that the fourth Altmark criterion is not complied with in this case.

(77) In conclusion, considering the above, the measure confers an economic advantage to Correos.

C. Selectivity

(78) 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 favouring undertakings which grant an advantage in a selective manner fall under the notion of aid.

(79) In the present case, the USO compensations are clearly selective as they benefit only one undertaking: Correos.

5.1.1.3. Distortion of competition and effect on trade

(80) Public support to undertakings only amounts to State aid within the meaning of Article 107(1) TFEU if it "distorts or threatens to distort competition" and only insofar as it "affects trade between Member States".

(81) Concerning the principle of distortion of competition, 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. For all practical purposes, 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. Concerning the principle of effect on trade, the case law of the Court of Justice has established that any grant of aid to an undertaking exercising its activities in

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40 Paras. 69-77 of the SGEI Communication.
the internal market can be liable to affect trade between Member States. In the field of State aid rules, an effect on trade is not a priori precluded by the local or regional character of the service provided. While there is no strict threshold or percentage below which it may be considered that trade between Member States is not affected, the limited scope of the economic activity, as may be evidenced by a very low turnover, renders the presence of an effect on trade less likely.

(82) As regards the present case and as described in section 2.2 above, the Commission observes that Correos has been active on the markets for postal items and parcels which are characterised by intense competition with other providers from different Member States (i.e. Deutsche Post, TNT, La Poste, UPS, CTT Correios Portugal and Royal Mail). As a consequence, there is no doubt that any measure benefiting Correos is liable to distort competition and affect trade between Member States.

5.1.2. Conclusion

(83) For the reasons set out above, the Commission concludes that the compensation to Correos for the delivery of the USO compensation over the period 2011-2020 constitutes State aid within the meaning of Article 107(1) TFEU.

5.1.3. Lawfulness of the aid measure notified to the Commission

(84) The notified measure amounts to EUR 1.280 billion (see recital (6)). An amount of EUR 1.22 billion has already been paid to Correos over the 2011-2019 period for the delivery of the USO (see table 1), prior to the notification. The Spanish authorities have qualified these payments as provisional, to be considered definitively granted only as of Commission approval of the notified measure.

(85) However, the Commission considers that these payments, even on a provisional basis, have provided Correos with a significant amount of money and for a very significant amount of time. By the payments, therefore, Correos has been granted an advantage, financed by State resources, which has had an impact on competition and trade, given the magnitude and the period concerned by the payments. For that reason, the Commission considers that the standstill clause under Article 108(3) TFEU has not been respected and that Correos has received unlawful aid.

5.1.4. Conclusion on the lawfulness of the aid measure

(86) On that basis the Commission considers that the standstill obligation under Article 108(3) TFEU has not been respected by Spain.

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5.2. Compatibility

5.2.1. Legal basis

(87) Insofar as the USO compensation benefiting Correos amounts to State aid within the meaning of Article 107(1) TFEU, its compatibility with the internal market needs to be assessed. The grounds on which a State aid measure can or must be declared compatible with the internal market are listed in Articles 106(2), 107(2), and 107(3) TFEU.

(88) The Spanish authorities claim that the aid to Correos constitutes compensation for delivering an SGEI, in particular, the USO, which is to be assessed for compatibility on the basis of Article 106(2) TFEU.

(89) Article 106(2) TFEU provides that "undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union."

(90) In accordance with that provision, the Commission may declare compensation for SGEIs compatible with the internal market, provided that certain conditions are met. The Commission has laid down the conditions according to which it applies Article 106(2) TFEU in the 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 (hereafter “the 2012 SGEI Decision”)43 and the 2012 SGEI Framework44.

(91) Since the amount of the SGEI compensation to Correos is above EUR 15 million per year, the compensation does not fall within the scope of the 2012 SGEI Decision, as set out in Article 2 thereof.

(92) 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.45 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

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

44 See footnote 13.
45 Paragraph 11 of the 2012 SGEI Framework.
5.2.2.1. Genuine service of general economic interest as referred to in Article 106 TFEU

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

The USO as defined in the Postal Directive is recognised by the European Union as a genuine SGEI. The USO entrusted to Correos, as described in section 2.3, corresponds to Articles 3-6 of the Postal Directive (as amended), which define the USO in detail.

According to the complainants, Correos has unduly included administrative notification services as USO services (see recital (63)).

The Spanish authorities have explained that the Spanish legal framework encourages the use of electronic notifications and imposes that way of conveying notification in many cases, for instance in the field of corporate tax or VAT. However, the protection of individual rights requires that notification to individuals, for instance in the field of income tax, should be forwarded by mail to their fiscal address. The Spanish authorities consider that ensuring the delivery of administrative notifications across the territory of Spain is essential for preserving legal certainty and the rule of law.

The Spanish authorities have explained that the diverging views between the General Administration and the CNMC on how to classify administrative notification services stems from the fact that the service consists of two phases. If the administrative notification mailing fails to be received by the addressee upon the initial delivery, a second delivery attempt should be undertaken within the following three working days. While the Spanish authorities have qualified the first delivery as part of the USO, the second delivery which goes beyond ordinary registered letters is not considered part of the USO and Correos does not provide access to its network for this service under Article 45 of the 2010 Postal Law. A national court has held that the distinction between the two phases is relevant and that the second phase should fall outside of the USO, a view that was upheld by the Supreme Court. However, in its 2020 decision (see footnote 28), the CNMC considers that the service as a whole, including both phases, should fall outside of the USO.

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46 For example, Article 3(1) of the Postal Services Directive (as amended) reads: "Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users."

47 National High Court, Administrative Chamber, SAN 3692/2015 of 30 September 2015.

48 Judgment of the Supreme Court, Administrative Chamber, Third Division, No 766/2018 of 10 May 2018.
(99) Article 3(4) of the Postal Directive explicitly allows for registered letters to be included in the scope of the USO, and the Commission considers that this is indeed common practice. Administrative notification services can also be considered registered letters because they require an acknowledgement of receipt stating the date and hour of delivery, the identity and signature of the person collecting the notification, and any other requirement imposed by the administrative or judiciary body concerned.

(100) The Commission considers administrative notification services upon initial delivery to be registered letters of a particular importance and urgency, and to classify them as part of the USO therefore does not seem to constitute a manifest error, especially taking account of the recognised margin of discretion of Member States in the field of SGEIs.

(101) The Commission therefore considers that the notified measure constitutes a genuine SGEI and that Spain does not have to prove by way of a public consultation or other appropriate instruments that it has given consideration to public service needs, contrary to what is requested by paragraph 14 of the 2012 SGEI Framework.

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

(102) As indicated in paragraph 15 of the 2012 SGEI Framework, the concept of SGEI within the meaning of Article 106 TFEU means that the undertaking in question has been entrusted with the operation of the SGEI by way of one or more acts.

(103) As required by paragraph 16 of the 2012 SGEI Framework these entrustment acts must specify, in particular:

(i) The precise nature of the public service obligation and its duration;

(ii) The undertaking and territory concerned;

(iii) The nature of the exclusive rights assigned;

(iv) The description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and

(v) The arrangements for avoiding and repaying any overcompensation.

(104) The 2010 Postal Law clearly entrusts Correos with the USO and defines its precise nature (see recitals (23)-(31)). The territory concerned is the whole national territory of Spain.

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49 Article 3(4) reads as follows:

*Each Member State shall adopt the measures necessary to ensure that the universal service includes the following minimum facilities:
- the clearance, sorting, transport and distribution of postal items up to two kilograms,
- the clearance, sorting, transport and distribution of postal packages up to 10 kilograms,
- services for registered items and insured items.*
The 2010 Spanish Postal Law further indicates, in its Article 33, the exclusive rights assigned to Correos. Those rights include, for instance, the use of the brand “España”, the word “Correos”\textsuperscript{50} and the occupation of the public domain through the instalment and use of mailboxes.

Article 27 of the 2010 Postal Law says that the verification of the net cost is subject to the provisions of the \textit{Plan de Prestación, which sets out the methodology for calculating the net cost of the USO (the Spanish methodology – see section 5.2.2.7 for the Commission’s assessment). It also stipulates that the CNMC monitors the calculation of the net cost. The compensation mechanism and the parameters for calculating the compensation can therefore be considered defined. In addition, the Commission has verified the absence of overcompensation of the notified measure (see section 5.2.2.7).

The Commission therefore considers that the entrustment of Correos is in compliance with paragraph 16 of the 2012 SGEI Framework.

5.2.2.3. Duration of the period of entrustment

As indicated in paragraph 17 of the 2012 SGEI Framework, "the duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI."

As noted in recital (23), Correos has been entrusted with the USO for a period of 15 years, from 2011 to 2025. According to the Spanish authorities, the most significant assets operated by Correos have acceptable depreciation periods, pursuant to Spanish corporate tax law\textsuperscript{51}, in excess of 15 years. An overview is provided in the below table.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|}
\hline
Type of asset & Maximum depreciation period (years) \\
\hline
Commercial, administrative and service buildings & 100 \\
Machinery & 18 \\
Internal transport & 20 \\
External transport & 14 \\
Furniture & 20 \\
IT hardware & 8 \\
\hline
\end{tabular}
\caption{most significant assets operated by Correos}
\end{table}

The Commission therefore considers that the notified measure complies with paragraph 17 of the 2012 SGEI Framework.

\textsuperscript{50} Correos is Spanish for “Post” or “Post office”.

5.2.2.4. Compliance with Directive 2006/111/EC

(111) 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”.\(^{52}\)

National legal framework

(112) Article 26 of the 2010 Postal Law imposes separate accounts within the internal accounting system of the universal service provider. This obligation is notably implemented through Order FOM/2447/2004 of 12 July on "analytical accounting and separation of accounts". The Plan de Prestación also stipulates that the separation of accounts must be based on duly audited financial accounts.

(113) The Spanish authorities have noted that the obligation of account separation has also been confirmed by decisions of the Spanish postal regulator on the verification of Correos’s accounts\(^{53}\) and by audit reports\(^{54}\) in which the application of the regulations on analytical accounting and separation of accounts is reviewed.

Description of the cost accounting methodology

(114) The Correos cost accounting system is based on the cost accounting methodology called activity-based costing. The activity-based costing system is a particular method of the fully distributed cost allocation method, which complies with the applicable provisions of the 2012 SGEI Framework and is also in line with the sector specific requirements on separate accounting laid down in Article 14 of the Postal Services Directive. The accounting system is illustrated in the below figure.

**Figure 1: cost allocation system of Correos**

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\(^{52}\) Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings.

\(^{53}\) The Spanish authorities refer to the Resolution of the Regulatory Supervision Chamber of 15 December 2015 in case STP/DTSP/006/15.

\(^{54}\) The Spanish authorities refer to the Audit Report on the Cost Model of the State Company, Correos y Telégrafos, S.A., for the year ended 31 December 2014, pp. 45 and 77.
Attribution of costs

To determine the costs, several steps are followed. First, the costs to be imputed from the Profit & Loss account are determined: in 2018, the imputable costs amounted to approximately EUR [1.9-2.1] billion.

Second, costs are attributed to cost centres: the bulk of the imputable costs ([85-90]%- EUR [1.7-1.8] billion) is attributed to cost centres (CeCos); a small percentage of the costs ([10-12]%- approx. EUR [200-250] million in 2018) is attributed directly to final products.

The cost centres (there were [3600-3750] in 2018) are the basic units of the analytical accounting system. They are defined as units of consumption of resources which are relevant from a cost accounting viewpoint. The analytical accounting system of Correos distinguishes between:

(a) Operational cost centres: CeCos that consume resources directly related to the final products and services (e.g. post office). There were [3500-3600] operational cost centres in 2018 and an amount of EUR [1.5-1.6] billion was attributed to them.

(b) Structural cost centres: CeCos that concentrate the structural costs which are not directly related to final products and services. These correspond notably to the support, administration, human resources management, and IT functions. There were [100-150] structural cost centres in 2018 and an amount of EUR [150-250] million was attributed to them.

Third, the costs attributed to structural cost centres are distributed to operational cost centres based on a causality relationship between them, on the basis of “activities”. Activities are groups of homogeneous tasks aimed at providing final services or at supporting their provision (e.g. manual sorting, automatic sorting, transport). 21 activities are distinguished in the analytical accounting system of Correos in 2018.

The costs attributed to operational cost centres are distributed to activities based on their consumption of resources.
Lastly, the costs of activities are attributed to final products and services based on a causal link.

**Attribution of revenues**

To determine the revenues, several steps are followed. First, the amount of revenues to be attributed are determined from the Profit & Loss account: In 2018, the attributable revenues amounted to approximately EUR 1.80 billion.

Most of these revenues ([94-97%] - EUR [1.6-1.8] billion in 2018) correspond to direct sales registered in the billing system of Correos and can be attributed directly to final products and services.

The rest of the revenues ([3-6]% - EUR [70-90] million in 2018), which have different origins, are allocated to final products and services on the basis of a table of percentages derived from studies made by Correos on the causality link between the registered revenues and the products and services that have generated these revenues.

Result of account separation

The total costs and revenues allocated to USO and non-USO services over 2011-2020 are illustrated in the below table.
Table 3: Correos’s account separation

<table>
<thead>
<tr>
<th>Year</th>
<th>In € thousand</th>
<th>USO services</th>
<th>Non-USO services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Operating revenues</td>
<td>Operating costs</td>
<td>Operating revenues</td>
</tr>
<tr>
<td>2011</td>
<td>1 515 100</td>
<td>1 576 300</td>
<td>[...]</td>
</tr>
<tr>
<td>2012</td>
<td>1 327 700</td>
<td>1 334 900</td>
<td>[...]</td>
</tr>
<tr>
<td>2013</td>
<td>1 235 700</td>
<td>1 393 000</td>
<td>[...]</td>
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<tr>
<td>2014</td>
<td>1 215 400</td>
<td>1 369 900</td>
<td>[...]</td>
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<tr>
<td>2015</td>
<td>1 150 300</td>
<td>1 298 300</td>
<td>[...]</td>
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<tr>
<td>2016</td>
<td>1 057 700</td>
<td>1 207 600</td>
<td>[...]</td>
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<tr>
<td>2017</td>
<td>1 041 100</td>
<td>1 205 700</td>
<td>[...]</td>
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<tr>
<td>2018</td>
<td>1 094 200</td>
<td>1 181 500</td>
<td>[...]</td>
</tr>
<tr>
<td>2019 (*)</td>
<td>1 083 600</td>
<td>1 230 000</td>
<td>[...]</td>
</tr>
<tr>
<td>2020 (*)</td>
<td>1 045 800</td>
<td>1 166 300</td>
<td>[...]</td>
</tr>
</tbody>
</table>

* Forecast

Administrative notification services

(125) According to the complainants, Correos’s inclusion of administrative notification services as USO services constitutes a serious accounting irregularity (see recital (63)). The Commission notes however that the CNMC decision, to which the complainants refer, concludes that Correos’s account separation is in line with the requirements of the 2010 Postal Law, as laid down in the implementing legislation (see recital (111)), with the exception of the cost allocation of the administrative notification services.

(126) The CNMC requires Correos to introduce a separate account on these services, which up to now were allocated in the accounts for registered letters, and to allocate them to the non-USO account. Correos must also submit the figures on administrative notification services for each year going back to 2016 to the CNMC, which will then proceed to verify their conformity. The deadline for the submission of this information has been suspended, pending the cessation of the State of alarm caused by the Coronavirus crisis.

(127) Correos has already prepared the necessary figures in response to the regulator’s request (see below table) which will be submitted to the CNMC in due course.
### Table 4: Administrative notification services, 2011-2020 (EUR thousand)

<table>
<thead>
<tr>
<th>Year</th>
<th>Operating revenues</th>
<th>Operating costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>[…]</td>
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<td>2018</td>
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<td>[…]</td>
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<td>2019 (*)</td>
<td>[…]</td>
<td>[…]</td>
</tr>
<tr>
<td>2020 (**)</td>
<td>[…]</td>
<td>[…]</td>
</tr>
</tbody>
</table>

* Pending notification to and approval by the CNMC  
** Estimate

### Conclusion

(128) As explained in recitals (99)-(100), the Commission does not identify a manifest error in the categorisation of administrative notifications as USO services by the Spanish authorities; in any event, in light of the above, the Commission concludes that the analytical accounting system put in place allows for a proper separation of accounts by Correos and complies with Directive 2006/111/EC.

5.2.2.5. Compliance with EU Public Procurement Rules

(129) According to paragraph 19 of the 2012 SGEI Framework, "Aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary EU legislation. Aid that does not comply with such rules and requirements is considered to affect the development of trade to an extent that would be contrary to the interests of the Union within the meaning of Article 106(2) of the Treaty."

(130) Pursuant to Article 4(2) of the Postal Directive, Member States have the discretion to designate by law the postal USO operator and are not obliged to organise a tendering procedure for its selection. The Commission considers that it is only if Member States decide to organise a tendering procedure for the selection of the postal USO operator under Article 7(2) of the Postal Directive that public procurement rules would be applicable.

(131) In the present case, the Spanish authorities have opted for the direct entrustment of Correos (see recital (23)), in conformity with the Postal Directive. It follows that public procurement rules are not applicable and that the direct entrustment of Correos as the USO provider can be considered to be in line with paragraph 19 of the 2012 SGEI framework.
5.2.2.6. Absence of discrimination

(132) According to paragraph 20 of the 2012 SGEI Framework, "Where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking."

(133) Pursuant to the first additional provision of the 2010 Postal Law, the USO is only entrusted to Correos. The Commission therefore considers that the requirement of paragraph 20 of the 2012 SGEI Framework is not applicable.

5.2.2.7. Calculation of the net cost of the Universal Postal Service over 2011-2020

(134) 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." In this respect, paragraph 24 of the 2012 SGEI Framework stipulates 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."

(135) 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."

(136) As further explained below, the USO compensation to be granted to Correos is based on the NAC methodology, calculated as the difference between the net cost or profit for the beneficiary of operating with the public service obligation and the net cost or profit of operating without this obligation.

(137) The NAC methodology requires on the one hand the design of a counterfactual scenario in which the operator concerned rationally conducts its economic activity and where it aims to maximise profits without being subject to the public service obligations imposed by its entrustment. On the other hand, the NAC methodology requires an estimation of the costs and revenues of that operator in this counterfactual scenario.

(a) Design of the counterfactual scenario

(138) According to the Spanish authorities, absent the USO, Correos would modify the range of services it offers on the market in the following way:

i. the delivery frequency of non-priority ordinary and registered letters would be reduced from five days to three, whereas priority letters would no longer be delivered at all;

ii. loss-making post offices would be closed;

(139) At the same time, Correos would lose:
iii. the VAT exemption on USO services;

iv. a number of intangible benefits: part of its brand value, the exclusive right to distribute stamps, and advertising space.

(140) Correos has constructed its counterfactual scenario under the general assumption that its prices would be the same as in the factual scenario. Prices in the factual scenario have been corrected by Correos to remove the loss-making discounts it offered to large costumers (see recitals (170) - (171)). These corrected prices without discounts have therefore been assumed for both the factual and the counterfactual scenarios.

(141) The different components of the counterfactual scenario and the related assumptions, based on the appraisal of an independent expert firm, are shortly described hereafter.

Reduction in delivery frequency

(142) Ordinary and registered letters delivered within three days (non-priority) represent about 80% of all items (letters + parcels) delivered by Correos. For this category of letters, Correos would reduce the delivery frequency from five days per week to three in the counterfactual scenario. As a result, Correos would no longer be able to guarantee on-time delivery of priority letters (delivery within two days of posting), and would cease providing this service altogether. Priority letters represent less than 1% of all items delivered by Correos.

(143) Reducing the number of days where postal workers have to deliver letters has two main consequences:

- It reduces the amount of personnel required to deliver letters as the distribution is concentrated on fewer days (postal workers would have to deliver more letters per day of delivery) and creates increased efficiency and economies of scale;

- On the other hand, this reduction can lead to delays in letter deliveries for customers which may in turn have a negative impact on demand.

(144) Delivery conditions for parcels would remain unchanged. In 2017, parcels accounted for around 1% of all items delivered by Correos, while representing 9% of the corresponding revenues.

Closure of loss-making post offices

(145) The closure of post offices permits cost savings in personnel and infrastructure. On the other hand, the closure of post offices can lead to customers stopping or reducing their use of postal services. It is assumed that some demand from closed post offices would be lost while the rest would be diverted to nearby post offices. Post offices that would be closed in the counterfactual scenario are selected based on their profitability, taking into account the share of demand that would be diverted to other post offices.

VAT exemption

(146) In the counterfactual scenario, without the USO, Correos’s USO services would not be VAT exempted. This would increase the cost of its services for individual
customers as well as VAT-exempted legal persons, thereby decreasing their demand. On the other hand, it would allow Correos to deduct VAT from its purchases of goods and services.

*Intangible benefits*

(147) Part of the value of Correos’s brand derives from the fact that it is the universal service provider. Moreover, as the universal service provider, Correos has the exclusive right to distribute stamps. Lastly, the closure of post offices would reduce the amount of advertising space available to Correos in the counterfactual scenario. All three elements would reduce Correos’s revenues.

(b) Quantification of the counterfactual scenario

(148) For the calculation of the NAC, the above elements have to be quantified. They impact the NAC in mainly two ways: first there is a demand effect, with a corresponding decrease in volumes and revenues. Second, from the total demand effect and reduction in volumes, adjustments in costs are calculated by reference to the delivery personnel and infrastructure required to deliver the adjusted demand under the conditions defined in the counterfactual. Cost adjustments for activities other than delivery (e.g. sorting, collecting) are not considered.

(149) Given the significant reductions in demand, costs are adjusted almost exclusively downwards. There are two exceptions: the delivery of parcels and storage boxes. As noted in recital (144), Correos does not change its delivery conditions for parcels in the counterfactual scenario. Thus, the net avoided cost for distribution is reduced by the necessary costs for maintaining the current frequency in parcel delivery.

(150) The second exception is storage boxes. In the factual scenario, there are routes where the volumes to be delivered exceed the capacity of a delivery worker and his vehicle (such as a trolley or a bike). Excess letters are directly sent to storage boxes placed along these routes, where postal workers can then reload their trolley (or other vehicle). These are used by postal workers to manage additional volumes on certain routes. In the counterfactual scenario, volumes per route per day of delivery increase, as explained in recital (143). Additional storage boxes would be required, leading to annual extra costs (EUR 2.1 million in 2018).

(151) In addition to the above, the Spanish authorities have accounted for a reasonable profit and efficiency incentives for Correos, in line with paragraphs 21 and 40 of the 2012 SGEI Framework respectively.

(152) The impact of the different components of the counterfactual scenario is described hereafter. When specific numbers are used, they apply to the year 2018, the latest year for which the factual scenario is based on actual figures.

*Reduction in delivery frequency*

(153) The Spanish authorities consider that as a result of the reduced delivery, letter deliveries would suffer delays of between one and three days in the counterfactual scenario on the basis of (i) the destination (one day of delay for deliveries outside of the province/local area), (ii) the time of pick-up (one day of delay for letters collected in the afternoon), and (iii) the day of pick-up (one day of delay for letters that cannot be delivered the next day because there will be no deliveries at all). On this basis, the Spanish authorities estimate that 23.3% of letters would not
suffer from any delays, 49.4% of letters would suffer a delay of one day, 26.7% would suffer a delay of two days, and the remaining 0.6% would suffer from three days of delay.

(154) To estimate the demand response to delivery delays the Spanish authorities based themselves on a survey by an independent expert of 51 large customers of Correos (customers who have a contract with Correos) carried out in February-March 2019. Large customers represent around 80% of the letters delivered by Correos. The survey asked the respondents whether and to what extent they would reduce their demand for Correos’s services if letter deliveries suffered from one, two or three days of delay. According to the survey, the average demand reduction of large customers due to one, two or three days of delay would be respectively 13.6%, 31.8% and 50.8%. This results in a weighted average demand reduction (“quality elasticity of demand”) of 15.5%, which is applied for the whole period.

(155) To estimate the demand reductions from smaller customers (individuals or small and medium-size enterprises), the Spanish authorities make a downwards adjustment from the elasticity estimated in the survey, arguing that these customers, due to their low volumes, would have less recourse to alternative providers. The Spanish authorities also apply a downwards adjustment for registered letters (5% of the volumes affected by the reduction in delivery frequency), arguing that the demand for these letters depends more on the certified proof of sending them than on speed, hence the demand for this service is significantly less sensitive to delivery delays.

(156) The total average weighted quality elasticity of demand for ordinary letters, taking into account the annual share of volume and revenues for each category of customers, was 13.59% in volume and 11.90% in revenues for year 2018, compared to 6.04% and 5.36% for registered letters respectively, leading to a total loss in volumes across all categories of delivered items of 8.9% and a loss in revenues of EUR 79.4 million.

Closure of post offices

(157) To be able to provide postal services across the territory of Spain, as required by the USO, Correos operates several loss-making post offices. In the counterfactual scenario, such post offices would be closed, permitting savings e.g. in personnel costs and infrastructure costs. The profitability of each post office is assessed based on the real data from Correos’s accounting system for the year 2010, including an allocation at post office level of all relevant costs and revenues.

(158) Demand from a post office to be closed would be partially diverted to the nearest post office, reducing the loss of demand but partially offsetting savings in personnel costs, to the extent that diverted items would require more delivery postal workers than otherwise would be the case. The share of demand diverted to the nearest post office is estimated based on the distance to that post office, using an exponential function.\(^55\) According to that function, no demand is lost so long

\[^{55}\text{The function is of the form } \alpha = 0.75^x, \text{ where } \alpha \text{ is the demand diversion and } x \text{ is the distance to the nearest post office expressed in kilometres.}\]
as the nearest post office is within 750 metres of a post office to be closed. Beyond a distance of five kilometres, in contrast, all demand would be lost.\textsuperscript{56}

(159) The result is that Correos would close 334 of its 2274 full-fledged post offices, or 14.7%. These closures would remain unchanged for the whole period.

\textit{VAT exemption}

(160) The Spanish authorities apply a demand reduction to customers who are unable to deduct VAT they are charged: individual customers as well as companies active in financial services, education, health or insurance\textsuperscript{57}. For these customers, the price in the counterfactual scenario of both ordinary and registered letters increases by the VAT rate (18% in 2011, 19% in 2012 and 21% for 2012-2020).

(161) Customers unable to deduct VAT accounted for [40-45]\% of Correos’s volumes in 2018. The impact of the price increase on volumes is calculated by use of a constant elasticity demand function, a function that is commonly used in economics.\textsuperscript{58} The price elasticity of demand used is -1.1, based on the findings of a number of surveys and studies carried out for postal services in other countries. Pursuant to those same studies and surveys, an elasticity of -0.5 is used to model the demand of individual customers, considering their markedly lower demand response.

(162) In 2018, the price increase due to the absence of the VAT exemption lead to a total decrease in volumes across all categories of 5.3\%, or a total loss in revenues of EUR 49.7 million.

(163) A compensating effect of Correos’s USO services not being VAT-exempted in the counterfactual scenario is that it can deduct VAT borne on purchases of goods and services that currently cannot be deducted. The Spanish authorities calculate the amount of VAT costs saved this way by taking the difference between the total VAT borne and the amount of VAT deducted in the factual scenario. As a result, Correos would save EUR [40-45] million in VAT costs in 2018.

\textit{Intangible benefits}

(164) By comparison to private operators, the Spanish authorities have estimated Correos’s brand to be worth EUR 218.4 million in total. On the basis of market research, the Spanish authorities consider that 16.5\% of this brand value or EUR 36 million is specifically due to the USO. For the purposes of the NAC calculation, the Spanish authorities estimate an equivalent annual income of this total value by multiplying it with Correos’s weighted average capital cost (WACC), which is 8.2\%. The total annual increase in revenues due to Correos’s

\textsuperscript{56} Applying the formula for a distance of 5 kilometres would result in a demand diversion of $0.75^5 = 23.7\%$. Because the exponential function is asymptotic and would technically never result in a 100\% demand loss, the Spanish authorities impose a maximum distance of 5 kilometres.

\textsuperscript{57} Awarding authorities and entities are not included as their contracting decisions are based on bids whose price excludes VAT according to public procurement provisions.

\textsuperscript{58} The function is of the form $Q_2 = Q_1 (P_2/P_1)^{-1.1}$, with $Q_2$ = the quantity demanded after the price increase, $Q_1$ the quantity demanded before the price increase, $P_2/P_1$ the price increase, and -1.1 the price elasticity of demand. The volume loss is $Q_2$ minus $Q_1$ while the revenue loss amounts to the loss in volume multiplied by the higher figure between unit price and unit cost.
USO-related brand value is then EUR 218.4 million * 0.165 * 0.082 = EUR 3.0 million.

(165) The advantage of the exclusive right to distribute stamps is calculated as the estimated loss of Correos’s market share in this market segment multiplied by its profit margin on this service. According to the Spanish authorities, the loss of this exclusive right would amount to a net loss in revenues of EUR 2.1 million per year.

(166) Correos would not be able to use spaces of closed post offices for advertising purposes. The loss of this benefit is calculated as the number of post offices closed multiplied by the market price that Correos would have to pay for the available advertising space for similar locations. The value of the advertising space is differentiated between offices based on their location. In total, the Spanish authorities estimate that the value of this advertising for Correos space amounts to EUR 282 000 per year.

Reasonable profit

(167) The Spanish authorities have added a reasonable profit to Correos’s NAC calculation, in line with paragraph 21 of the 2012 SGEI Framework. The reasonable profit is determined as Correos’s WACC multiplied by the net change in capital employed, including fixed assets and floating capital, when switching from the factual to the counterfactual (capital employed in the factual minus the capital employed in the counterfactual). As this difference confines itself to the closed post offices, the change in capital employed amounts to the net accounting value of these offices.

(168) The Spanish authorities have calculated that the reasonable profit amounts to EUR 3.6 million in 2018.

Efficiency incentives

(169) In line with paragraph 40 of the 2012 SGEI Framework, the Spanish authorities have incorporated efficiency gains into the NAC calculation. Essentially, the Spanish authorities impose annual efficiency gains of 1.7% by reducing the NAC by this amount each year. In 2018, the efficiency gains reduced the NAC by EUR 1.6 million.

Neutralisation of excessive discounts

(170) As noted by the complainants (see section 4.2) and confirmed by the CNMC59, in the 2011-2020 period Correos has granted loss making price discounts on letter deliveries from corporate customers who order in bulk.

(171) The Spanish authorities have also taken into account that, in a number of instances, the discounts granted by Correos have resulted in the delivery of letters below cost, thus affecting the net cost. The Spanish authorities have proposed the following correction of this impact.

(172) In order to offset the losses generated by Correos’s discounts, the Spanish authorities have proposed to replace, in the factual scenario, the prices of any USO product that generated losses for Correos by the fully allocated unit cost

covering both variable and fixed costs), as derived from Correos’s accounting system. The increase in price of these services or products leads to a significant demand reduction of 33.9% in 2018, modelled using the constant elasticity demand function and a price elasticity of demand of -1.1, as for the VAT exemption (see recitals (160) - (163)). Because the higher prices largely offset the reduction in volumes, revenues in the adjusted factual scenario decrease far less than costs, reducing losses and leading to higher profitability in the adjusted factual scenario.

(173) Since the NAC consists of the difference in profitability of the counterfactual and factual scenarios, increased profitability of the adjusted factual scenario due to the discount neutralisation has the effect, all other things being equal, of decreasing significantly the NAC.

(174) Following the approach above, the Spanish authorities have estimated that the discounts increased Correos’s losses by more than EUR 75 million per year over the 2011-2020 period. These losses due to the unprofitable discounts are subtracted from the NAC calculation.

Results of the NAC calculation

(175) The result of the NAC calculation is shown in table 5 below.

Table 5 – NAC results, 2011-2020 (EUR thousand)

<table>
<thead>
<tr>
<th>Year</th>
<th>NAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>170 434</td>
</tr>
<tr>
<td>2012</td>
<td>130 678</td>
</tr>
<tr>
<td>2013</td>
<td>145 591</td>
</tr>
<tr>
<td>2014</td>
<td>143 044</td>
</tr>
<tr>
<td>2015</td>
<td>144 291</td>
</tr>
<tr>
<td>2016</td>
<td>163 431</td>
</tr>
<tr>
<td>2017</td>
<td>128 720</td>
</tr>
<tr>
<td>2018</td>
<td>98 828</td>
</tr>
<tr>
<td>2019*</td>
<td>72 049</td>
</tr>
<tr>
<td>2020*</td>
<td>85 712</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1 282 761</strong></td>
</tr>
</tbody>
</table>

* Estimates applying observed data and forecast trends to the 2018 results

(c) Assessment of the NAC methodology implemented by Spain

Reliability of the methodology (assumptions/calculations)

(176) The two ways in which Correos’s counterfactual scenario improves profitability by design are the reduction in delivery frequency and the closure of loss-making post offices. These are factors that are typical in NAC calculations pertaining to USO compensation, as it is precisely because of the USO that entrusted operators have to deliver across the territory of the country – requiring a vast infrastructure – five days per week. It is typical that these two constraints, the most burdensome of the USO, are relaxed in the counterfactual scenario.

(177) In the counterfactual scenario, Correos’s prices are assumed to be the same as the corrected prices in the factual scenario (see recital (140)). This assumption
significantly simplifies the quantification of the counterfactual scenario, while being conservative as it can be assumed that this is probably not the optimal pricing strategy that Correos could consider in the counterfactual scenario.

(178) The Spanish authorities have furthermore quantified the effects of the VAT exemption and certain intangible benefits that Correos would lose in the counterfactual scenario, to ensure that the NAC is accurate.

(179) An independent survey of a sample of 51 big customers was carried out to estimate the demand reduction that would follow from a reduction in the frequency of delivery, and corresponding delivery delays. The Commission considers that it is appropriate that these demand effects have been based on the specific circumstances of Correos and its main customers.

(180) Demand reactions in response to increases in price used have been estimated on the basis of a constant demand elasticity function. This function is commonly used in economics, and has the characteristics of being especially robust (i.e. reliably applicable for small or significant changes in prices). The Commission considers that the constant demand elasticity function is appropriate to use.

(181) The Commission further considers that the closure of post offices is based on reasonable assumptions on the diversion of demand, as described in recitals (157) - (159). By reference to its case practice, the Commission considers that the closure of 14.7% of existing post offices in the counterfactual scenario is rather low and therefore conservative.

(182) The reduction in delivery frequency, the closure of post offices, and the absence of a VAT exemption all have the effect of reducing volumes. As explained in recital (148), the model used for the NAC incorporates cost savings for the total change in volumes in the form of reduced personnel costs. The impact of reduced volumes on the amount of work to be incurred by postal workers was modelled up to the detail of the number of hours necessary to complete each task, and the number of hours available to each delivery worker. The number of hours incurred for specific tasks are based on the real, factual information coming from Correos’s accounting system.

(183) The Commission received full access to the model, which shows that the personnel available in the counterfactual scenario is sufficient to handle the remaining volumes of letters and parcels. Moreover, savings on personnel costs were considered only for delivery workers (see recital (148)), whereas other processes such as sorting and collecting letters would also see reduced volumes. Not quantifying cost savings in these processes leads to fewer avoided costs and a lower NAC, and is therefore a conservative approach.

(184) The quantification of the intangible benefits, as described in recitals (164) - (166), is based on relevant studies and market data from the sector. The complainants consider that Correos has in addition benefited from certain non-quantified exclusive and immaterial rights (see section 4.6). The Commission has reviewed each of the alleged rights and considers that no additional adjustment of the NAC calculations is necessary (see section 6.6).

(185) In light of the above, the Commission therefore considers that the results of the NAC calculations are appropriate and in line with its case practice.
Treatment of discounts

(186) While discounts can in principle be granted even for USO products, the Postal Directive stipulates in Article 12 that prices should be cost-oriented which is not the case when loss-making discounts are granted. The Commission also considers that a proper implementation of the 2012 SGEI Framework requires that Correos only receives USO compensation for net costs that are caused by the USO and not for costs that may result from Correos’s own commercial choices. The Commission therefore considered essential that the NAC be adjusted to ensure that Correos’s discounts are not financed by USO compensation.

(187) The Commission notes that the impact of the discounts on the NAC is especially significant, amounting to a reduction of the NAC of over EUR 75 million per year.

(188) The Commission considers that the approach proposed by the Spanish authorities to neutralise the impact of the discounts (see recital (172)) is satisfactory. Indeed, the Commission considers that it would clearly be in line with Article 12 of the Postal Directive if Correos charged a cost-oriented price for all its USO products.

Reliability of results

(189) The Commission considers that the methodology used by Spain and Correos is sound and based on reliable parameters. It notes in particular that the operating profit of Correos after receiving compensation is estimated at 0.7%, as further illustrated in table 6 in section 6.2, which is very reasonable.

(190) Moreover, the Commission notes that the current NAC shows a clear downward trend. This trend is coherent with the fact that Correos’s parcel business is growing, increasingly making use of the spare capacities of the USO, as illustrated in the below figure.

Figure 2: NAC of Correos, 2011-2020

(191) Given that the letter segment continues to decline and that Correos would continue to develop its parcel activity in both the factual and the counterfactual scenario, there is less and less scope for reducing infrastructure in that counterfactual scenario, because employees are increasingly moving from delivering letters to parcels (and are therefore needed also in the counterfactual scenario).
All these elements as set out above lead the Commission to conclude that the NAC methodology developed by Spain and Correos is reliable and that its results can be accepted.

Conclusion

In light of the above, the Commission is satisfied that the NAC calculations present a reliable, conservative estimation of the burden incurred by Correos in carrying out the USO.

5.2.2.8. Efficiency incentives

Paragraph 39 of the 2012 SGEI Framework states: "In devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI of a high standard, unless they can duly justify that it is not feasible or appropriate to do so."

As explained in an Annex to the draft Plan de Prestación, an independent expert estimated, based on Correos’s prospects in 2010, that its annual productivity would have increased by 1.7% over the notified period. On that basis, the annual net cost of Correos is reduced by 1.7% each year. This ensures that the compensation granted to Correos takes efficiency gains into account.

The Commission therefore considers that this condition of the 2012 SGEI Framework is met.

5.2.2.9. Transparency

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”.

Paragraph 60 (a) of the 2012 SGEI Framework does not apply, as no public consultation was carried out (see recital (101)). The Spanish authorities have committed to publish on the website of the Ministry of Public Works the information required by paragraph 60 (b), (c) and (d).

The Commission therefore considers that the transparency requirements of the 2012 SGEI Framework are met.
5.2.2.10. Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union

(200) Paragraph 52 of the 2012 SGEI Framework states that, even when the requirements of the framework 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."

(201) In such exceptional circumstances, the Commission may require additional conditions or request additional commitments from the relevant Member State to mitigate serious distortions of competition, as stated in paragraph 53 of the 2012 SGEI Framework.

(202) Paragraph 54 of the 2012 SGEI Framework further states: "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."

(203) The Commission recalls that additional requirements are only considered in exceptional circumstances of serious distortions of competition which remain unaddressed by the other requirements of the 2012 SGEI Framework. In particular, 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.

(204) In the case at hand, the Commission notes that the notified USO compensation is unlikely to distort competition to such an extent that additional requirements are necessary.

5.2.2.11. Conclusion

(205) Based on the above, the Commission concludes that the criteria of the 2012 SGEI Framework are fulfilled.

5.3. Conclusion

(206) Based on the above, the Commission concludes that the public service compensation to Correos over the 2011-2020 period constitutes illegal State aid under Article 107(1) TFEU which is however compatible under Article 106(2) TFEU.

6. ASSESSMENT OF THE COMPLAINT OF UNO AND ASEMPRE

6.1. Absence of legal basis for USO compensation

(207) Correos has been entrusted with the USO pursuant to the 2010 Postal Law until 2025 (see recital (23)), which constitutes the legal basis for the payments received (see section 5.2.2.2). Moreover, the draft Plan de Prestación has been developed
and submitted to the Commission, and on this basis the Commission has verified the absence of overcompensation (see recital 5.2.2.7).

(208) The Commission therefore considers that this claim is not justified.

6.2. Use of non-market conform discounts and NAC methodology

(209) The Commission considers that the complainants are correct to assert that discounts applied by Correos can have the impact of increasing the NAC. As extensively described in section 5.2.2.7, however, this impact has been taken into account in its entirety in the Commission’s assessment.

(210) The complainants are wrong to assert however that Correos has received compensation of EUR 194 million per year (see recital (51)) over the 2011-2020 period. In reality, Correos has received payments averaging EUR 135.5 million, and not 194 million, annually (see table 1). According to the Spanish authorities, the complainants have wrongly taken into account EUR 318.1 million appropriations allocated in the General State Budget of 2013 earmarked for the payment of pending compensation for 2008-2010.

(211) Moreover, according to Correos’s accounting figures (see table 3), it would achieve an average return on sales, including NAC compensation, of only 0.7% over the notified period. This is illustrated in the below table.

**Table 6: Return on sales of Correos’s USO services (amounts in EUR thousand)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Operating revenues (A)</th>
<th>Operating costs (B)</th>
<th>NAC (C)</th>
<th>Return on sales (D = (A-B+C)/A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>1 515 100</td>
<td>1 576 300</td>
<td>170 434</td>
<td>7.2%</td>
</tr>
<tr>
<td>2012</td>
<td>1 327 700</td>
<td>1 334 900</td>
<td>130 678</td>
<td>9.3%</td>
</tr>
<tr>
<td>2013</td>
<td>1 235 700</td>
<td>1 393 000</td>
<td>145 591</td>
<td>-0.9%</td>
</tr>
<tr>
<td>2014</td>
<td>1 215 400</td>
<td>1 369 900</td>
<td>143 044</td>
<td>-0.9%</td>
</tr>
<tr>
<td>2015</td>
<td>1 150 300</td>
<td>1 298 300</td>
<td>144 291</td>
<td>-0.3%</td>
</tr>
<tr>
<td>2016</td>
<td>1 057 700</td>
<td>1 207 600</td>
<td>163 431</td>
<td>1.3%</td>
</tr>
<tr>
<td>2017</td>
<td>1 041 100</td>
<td>1 205 700</td>
<td>128 720</td>
<td>-3.4%</td>
</tr>
<tr>
<td>2018</td>
<td>1 094 200</td>
<td>1 181 500</td>
<td>98 828</td>
<td>1.1%</td>
</tr>
<tr>
<td>2019</td>
<td>1 083 600</td>
<td>1 230 000</td>
<td>72 049</td>
<td>-6.9%</td>
</tr>
<tr>
<td>2020</td>
<td>1 045 800</td>
<td>1 166 300</td>
<td>85 712</td>
<td>-3.3%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>11 766 600</strong></td>
<td><strong>12 963 500</strong></td>
<td><strong>1 282 778</strong></td>
<td><strong>0.7%</strong></td>
</tr>
</tbody>
</table>

(212) Correos would have required average annual compensation of EUR 184 million to achieve a return on sales on USO services of 5.5% over the 2011-2020 period. A return on sales of 3.6%, lower bound considered for USO services by the complainants (see recital (51)), would have required average annual compensation of EUR 162 million. Both numbers are significantly higher than the NAC.

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60 This profitability would be even lower if administrative notifications were removed from the scope of the USO (see paragraph (247))
The Commission considers that the alleged use of non-market-conform discounts and its impact on the NAC has been fully addressed, and that therefore this claim is not justified.

6.3. Undue VAT exemption

Pursuant to Article 12 of the Postal Directive, “whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and associated conditions.”

The Spanish authorities have explained that Correos’s discounts are calculated on the basis of the volume deposited by each user, taking into account the cost savings resulting from the generation of economies of scale. The final amount of the discount is adjusted according to the cost savings or additional costs entailed by the specific conditions of admission, classification, transport or distribution.

The Commission considers that Correos’s discounts are determined on a transparent and non-discriminatory basis and that they therefore comply with Article 12 of the Postal Directive. As a result, they are not such as to put into question the nature of the corresponding services as USO services.

The Spanish authorities have also explained that the VAT exemption is subject to permanent supervision by the national tax authorities and is not left to the discretion of the designated supplier (in this case, Correos). In this regard, the Spanish authorities refer to the conclusion of the Spanish tax authorities which, in the framework of a binding consultation in 2014\(^61\), considered that the practice of discounts does not affect the VAT exemption, provided that these discounts are predetermined and applied in a non-discriminatory manner. According to the Spanish authorities, this conclusion was in accordance with the relevant Union case law.\(^62\)

Moreover, the CNMC found that discounted services are included in the USO. It is precisely because they were included in the USO that the CNMC was competent to find that the prices of these services were not adapted to their costs, as required by Article 34 of the 2010 Postal Law for the USO. The CNMC’s being competent in that respect was confirmed by the Supreme Court.\(^63\)

Considering the above, the Commission considers that Correos has applied a VAT exemption only to genuine USO services, and that therefore this claim is not justified.

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\(^61\) Consultation number V 1164-13 of 8 April 2014, whose findings were included in a report of the Directorate-General for Taxation of the Ministry of Finance of Spain, published on the official website https://petete.minhafp.gob.es/consultas/.


\(^63\) Judgment of the Spanish Supreme Court, Administrative Chamber, Third Division, No 1812/2018 of 19 December 2018, and published by the CNMC on 18 March 2019.
6.4. Misallocation of costs and cross-subsidisation of commercial services

(220) As extensively described in section 5.2.2.4, the Commission considers that Correos’s accounts are in line with the Transparency Directive and allow for an adequate allocation of costs between USO and non-USO services.

(221) It is true however that Correos’s use of discounts has led to instances of pricing below cost. This impact has been fully taken into account in the calculation of the NAC, ensuring that overcompensation is avoided (see section 5.2.2.7). The absence of overcompensation ensures the absence of cross-subsidisation.

(222) In light of the above, the Commission considers that this claim is not justified.

6.5. Infringement of national procurement law

(223) As explained in section 5.2, the Commission assesses the compatibility of the notified measure under Article 106(2) of the Treaty, as laid down in the 2012 SGEI Decision and the 2012 SGEI Framework. The alleged breach of national law is unrelated to State aid rules and would have to be established by a national court. The Commission is not aware of any pertinent judgment to that effect, and the complainants have not brought it forward.

(224) In light of the above, the Commission considers that this claim is not justified.

6.6. Non-quantified exclusive and immaterial rights

6.6.1. The right to truthfulness and preferable access to the public domain

(225) First, the right to truthfulness – right i) – refers to a public procurement issue and is therefore outside of the scope of this State aid decision.

(226) Second, to the extent that Correos does benefit from the right to truthfulness and preferable access to the public domain (right v)), this could only have an impact on the NAC if it could be demonstrated that (i) Correos was able to benefit from an advantage (e.g. a profitable procurement contract); (ii) the advantage was realised specifically and only due to the USO; and (iii) Correos continues to benefit from the advantage in the counterfactual scenario. The third condition is necessary because if the alleged advantage is lost in the counterfactual scenario (e.g. because a certain asset that Correos was able to acquire on favourable terms is considered not to be part of its infrastructure) the alleged benefit is anyway accounted for in the NAC calculations.

(227) The above rights could therefore only lead to an overestimated NAC in very specific circumstances. The complainants have not identified the existence of any individual measures (e.g. instances of favourable access to the public domain), let alone the conditions under which they were granted. There is therefore no basis for deducting any amounts from the compensation.
6.6.2. **The right to the transfer of ownership of all elements comprising the public postal network**

(228) The Commission notes that the complainants did not provide any substantiation to this claim. In any case, Correos became a public limited company in 2001 (see recital (10)). According to Article 17(3) of Council Regulation (EU) 2015/1589\(^\text{64}\), aid for which a limitation period of 10 years has expired shall be deemed to be existing aid.

(229) To the extent that any transfer of assets would have taken place in 2001, and even if this transfer of assets constituted State aid, it would therefore be existing aid.

6.6.3. **The right of being the only USO provider, the right to the use of spaces dedicated to the provision of USO services, and access to personal data of customers**

(230) The “intangible right” of being the only USO provider (rights iii and iv), the right to the use of spaces dedicated to the provision of USO services (right vi), and the access to the personal data of customers (right viii) are an inherent part of being entrusted with the USO, the compatibility of which (including as regards the eligible compensation) is assessed in section 5.2.2.

6.6.4. **The right to use the brand “Correos”**

(231) The intangible right related to the brand Correos (right vii) is taken into account in the NAC (see section 5.2.2.7).

6.6.5. **Conclusion**

(232) In light of the above, the Commission considers that this claim is not justified.

6.7. **Social security contributions for Correos officials**

(233) In its 2016 opening decision, the Commission identified two aid measures related to the social security contribution regime. The first measure concerns a specific pension regime for civil servants employed by Correos. The second measure concerns other social welfare benefits for civil servants employed by Correos.

(234) As it concluded in section 3.5 of the 2016 opening decision, the Commission considers that the pension regime applicable to civil servants employed by Correos constitutes existing aid. The Commission initiated the cooperation procedure with Spain by letter of 12 September 2017 (case SA.48100). This procedure is ongoing and the Spanish authorities have made specific commitments in this respect (see recital (43)).

(235) As concluded in section 3.6 of the 2016 opening decision, the Commission considers that the specific regime as regards social welfare benefits does not constitute State aid.

The Commission therefore considers that as regards the social security contributions, this claim is not justified, whereas as regards the pension regime, the commitments of the Spanish authorities should address this claim.

6.8. Tax exemptions granted to Correos

Contrary to the complainants’ assertions, the Commission did investigate the tax exemptions in favour of Correos, both in the 2016 opening and in the 2018 final decision.

In particular, the Commission assessed:

- the Real Estate Tax (IBI), namely, refunds on the value of real estate granted to Correos by certain local administrations and national courts; and
- the Tax on Economic Activities (IAE) exemption granted to Correos by Spain.

The Commission concluded in section 7.2 of its 2018 final decision that both the IBI and the IAE tax exemptions constituted incompatible State aid and, since 2018, the Spanish authorities have recovered the incompatible aid amounts and have taken all the necessary measures to abolish the above-mentioned tax exemptions.

In light of the above, the Commission considers that this claim is without object.

6.9. Compensation for election campaigns

The Spanish authorities have reiterated their view that most of the activities carried out by Correos in connection with electoral procedures form part of the essential functions of the State, without such activities being of an economic nature and without their financing constituting State aid.

As concluded in section 7.4 of its 2018 final decision, the Commission considers that compensation granted to Correos for services rendered in regard to election campaigns constitutes State aid only as far as it concerns the postal handling of electoral material sent out by political candidates. By letter of 10 October 2018, the Commission initiated the co-operation procedure with Spain. This procedure is ongoing and the Spanish authorities have made specific commitments in this respect (see recital (44)).

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65 2016 opening decision, recitals 28-38, and 134-169.
67 An objective direct local tax imposed on the value of property. Following Correos’s request for IBI exemption, several Administrations and local courts ruled in favour of Correos and granted tax refunds to Correos.
68 A tax levied upon the performance of an economic activity and linked to the provision of the USO. Correos was partially exempted from the IAE tax as it was only paying 50% of the normal tax amount.
69 See recital 326 of the 2018 final decision.
The Commission therefore considers that the commitments of the Spanish authorities are sufficient to address this claim.

6.10. Alleged overcompensation resulting from the alleged undue classification of administrative notification services as USO services

As explained above, the Commission does not identify a manifest error in considering administrative notification services to be part of the USO (see recitals (99)-(100)).

It should also be noted that the compensation awarded to Correos is based on the NAC which compares the situation of the whole company with and without obligation, and not on the cost allocation, as described in section 5.2.2.7. As such, a modification of the cost allocation of a given service (e.g. if administrative notifications were taken out of the USO remit) does not have any impact on the calculation of the net cost using the NAC methodology. The important point under the NAC methodology is only to know how the service would be impacted in the counterfactual scenario in comparison to the factual scenario.

In the model provided by the Spanish authorities, Correos provides administrative notification services both in the factual and in the counterfactual scenario (which is coherent with the fact that these services are deemed to be profitable – see table 4). The notification services suffer from a decrease in demand in the counterfactual scenario due to the decrease in delivery frequency (see recital (155)) which reduces their profitability in the counterfactual scenario. These considerations are completely independent from the classification of these services as USO or not and so is the result of the NAC. The claim that a potential misqualification of the notification services could result in overcompensation is therefore entirely unfounded.

Lastly, the Commission notes that even if the compensation were based on the cost allocation method (which is not the recommended method by the SGEI Framework (see paragraph (134)), which indeed requires to only consider the USO account when granting compensation, removing the administrative notification services from this USO account would only have the result of increasing the USO net losses since these notification services are deemed to be profitable. This would in turn increase the eligible compensation amount, and therefore the fact that the administrative notification services have not been removed from the USO account would not have led to any overcompensation under that method either.

In light of the above, the Commission considers that this claim is not justified.

7. CONCLUSION

The Commission regrets that Spain put the compensation granted to Correos for the delivery of the USO over the 2011-2020 period into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, it has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 106(2) of the Treaty on the Functioning of the European Union.
The Commission has decided further that:

(i) The alleged undue VAT exemption does not constitute State aid;

(ii) The alleged misallocation of costs and cross-subsidisation of commercial services does not constitute State aid;

(iii) The alleged infringement of national procurement law does not constitute State aid.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President