

DECISIONS

COMMISSION DECISION

of 15 December 2009

on State aid C 21/05 (ex PL 45/04) which Poland plans to implement for Poczta Polska as compensation of universal postal service obligations

(notified under document C(2009) 9962)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2010/815/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU) ⁽¹⁾, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions ⁽²⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By e-mail dated 30 April 2004, the Polish authorities notified two aid schemes in favour of the Polish postal operator Państwowe Przedsiębiorstwo Użyteczności Publicznej Poczta Polska (hereinafter 'PP'), under the 'interim mechanism procedure', provided for in Annex IV.3 of the Act of Accession, which forms part of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union.

(2) The two aid schemes were registered under the following numbers: PL 45/04: Compensation to PP for carrying out universal postal services and PL 49/04: Aid to PP for investment related to the provision of universal postal services.

(3) On 26 July 2004, 26 November 2004 and 7 February 2005, the Commission requested additional information. The Polish authorities submitted additional information by letters dated: 10 September 2004, 27 October 2004, 3 December 2004 and 29 March 2005.

(4) Two meetings between the Polish authorities and the Commission's services were held on 25 October 2004 and on 31 January 2005. On 20 June 2005, the Commission received additional information from the Polish authorities.

(5) By letter dated 29 June 2005, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the two aid schemes. The two aid schemes were registered under the following numbers: C 21/05: Compensation to PP for carrying out universal postal services and C 22/05: Aid to PP for investments related to the provision of universal postal services.

(6) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission called on interested parties to submit their comments.

(7) The Commission received no comments from other interested parties.

(8) Poland submitted its comments by letter of 9 August 2005. A meeting between the Polish authorities and the Commission was held on 10 January 2006. The Commission required additional information by letter dated 24 January 2006.

⁽¹⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

⁽²⁾ OJ C 274, 5.11.2005, p. 14.

⁽³⁾ See footnote 2.

- (9) By letter of 10 February 2006, the Polish authorities informed the Commission of their intention to withdraw the notification of the aid scheme C 22/05: Aid to PP for investments related to the provision of universal postal services. Following the request of the Commission of 27 February 2006, the Polish authorities indicated by letter of 13 March 2006 that they will not proceed with the aid project covered by the above notification and changed the legal framework of the scheme in order to remove the possibility to grant investment aid ⁽⁴⁾.
- (10) By decision of 27 April 2006, the Commission decided to terminate the proceedings under Article 88(2) of the EC Treaty in respect of the aid C 22/05: Aid to PP for investments related to the provision of universal postal services, because it had become without object ⁽⁵⁾ since the aid was never implemented.
- (11) By letter of 23 February 2006, the Polish authorities sent the Commission additional information in respect of the State aid case C 21/05: Compensation to PP for carrying out the universal postal service. They indicated however that in 2004 and 2005, no State compensation was granted to PP for carrying out the postal service obligation. The scheme in question was never funded and never applied in 2004 and 2005.
- (12) By decision of 9 January 2007, the Commission decided to terminate partially the proceedings under Article 88(2) of the EC Treaty in respect of the aid C 21/05: Aid to PP for carrying out the universal postal service for the period 2004-2005, because it has become without object since the aid was not implemented in 2004 and 2005. The proceedings under Article 88(2) of the EC Treaty remained open as for the period 1 January 2006 onwards ⁽⁶⁾. By letter of 3 January 2007 the Commission asked information on the aid scheme in question for the period 2006 onwards. The Polish authorities replied by letter of 1 February 2007.
- (13) PP held the status of Public Utility Company and exercised its activities on the basis of 'Act of 30 July 1997 on State Enterprise of public utility PP'. In its decision of 24 April 2007 concerning State aid case E 12/05: Unlimited State Guarantee to Poczta Polska, the Commission considered that the impossibility for PP to go bankrupt because of its legal status provided the undertaking with an unlimited State guarantee ⁽⁷⁾.
- (14) Under the plan adopted by the Council of Ministers on 11 April 2006, the transformation of the ownership of Poczta Polska was to take place in two stages, i.e. commercialization and privatisation. On 25 June 2008, Poland informed the Commission of the entry into force on 25 April 2008 of a new law dated 11 April 2008 amending the one providing PP the impossibility to be subject to ordinary bankruptcy proceedings. On the basis of the new law, it was not clear to the Commission though what legal regime applies to PP since its legal status did not appear to have been changed.
- (15) The first stage of transformation was implemented under Act of 5 September 2008 on commercialisation of the public utility PP ⁽⁸⁾, thereby PP was transformed from a State enterprise into joint-stock company (Spółka akcyjna) in which the Treasury holds 100 % of the shares. As a consequence, PP lost the legal status which prevented it to go bankrupt. The unlimited State guarantee in favour of PP has been thereby abolished and the company is now subject to ordinary bankruptcy proceedings.
- (16) Several meetings between the Polish authorities and the Commission were held on 27 June 2007, 20 July 2007, 26 September 2007 and 25 July 2008.
- (17) Following these meetings the Polish authorities transmitted complementary information which was registered by the Commission on 7 December 2007 (A/40109/a), 8 February 2008 (A/2536), 15 April 2008 (A/7047), 28 April 2008 (A/8137), 18 June 2008 (A/13261), 7 November 2008 (A/23609), 6 January 2009 (A/191), 2 February 2009 (A/2483), 29 April 2009 (A/10409), 15 June 2009 (A/14530), 4 September 2009 (A/19121), 14 September 2009 (A/19796), 25 September 2009 (A/20558), 1 October 2009 (A/20997) and 2 November 2009 (A/23309).

⁽⁴⁾ The Article 17 of the 'Act of 30 July 1997 on State Enterprise of public utility PP' stating that 'Polish Post shall receive ... subsidies from the State budget ... for financing the investments' has been annulled. The new Article 52.a in the Postal Law does not foresee the possibility to provide investment aid.

⁽⁵⁾ OJ C 223, 16.9.2006, p. 11.

⁽⁶⁾ OJ C 33, 15.2.2007, p. 9.

⁽⁷⁾ This guarantee qualified as aid within the meaning of Article 87(1) of the Treaty and, insofar covered all the activities of PP is unlimited in time and scope and is not remunerated, is incompatible with the common market. This State aid qualifies as existing aid within the meaning of Annex IV.3 point 1 of the Accession Treaty. On 25 April 2007, the Commission issued a recommendation to Poland proposing to adopt appropriate measures with regards to this guarantee, within the meaning of Article 18 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty. Since the Polish authorities already started the legislative process aimed to remove the State guarantee in favour of PP resulting from the impossibility for PP to be subject to bankruptcy proceeding and committed themselves to abolish it by 30 June 2008 at the latest, the Commission found that Polish authorities have addressed the Commission's competition concerns and closed the existing aid proceedings according to Article 19 of Regulation (EC) No 659/1999 (see OJ C 284, 27.11.2007).

⁽⁸⁾ Dziennik Ustaw No 180, item 1109.

II. DETAILED DESCRIPTION

II.1. The beneficiary

- (18) PP is the current national postal operator, which was established on 1 January 1992, by Ordinance of the Minister of Communication of 4 December 1991 and results from the transformation of the Office of Post and Telecommunications into postal and telecommunications units.
- (19) By way of 'Act of 12 June 2003 — Postal law' (hereinafter 'Postal Law')⁽⁹⁾, PP is entrusted⁽¹⁰⁾ with the obligation to provide the universal postal service on the whole territory of the Republic of Poland.
- (20) Through the implementation of the *Strategy for Development of PP for 2004-2006*, PP was transformed into a holding company. Consequent to these changes, the state-owned PP group is composed of the following subsidiaries:
- Bank Pocztowy S.A. which is 75 % owned by PP (hereinafter 'BP'),
 - Pocztylion-Arka Powszechne Towarzystwo Emerytalne S.A., a pension fund 33 % owned by PP,
 - Poczтовая Agencja Usług Finansowych S.A. a financial services company 60 % owned by PP (hereinafter 'PAUF'),
 - Post Media Serwis Sp. z o.o.⁽¹¹⁾, a formally leasing service provider focusing now on advertising, promotion activities and publishing; it is wholly owned by PP,
 - Postdata S.A. (an IT system provider 51 % owned by PP),
 - Pocztowe Towarzystwo Ubezpieczeń Wzajemnych, a mutual insurance association wholly owned by PP (hereinafter 'PTUW').
- (21) In 2007, the company provided its services through 8 692 post offices, of which 53 % were located in rural areas and 47 % in urban areas. PP is the largest employer in Poland; in 2006, it employed over 95 000 employees.
- (22) PP is mainly active in the postal sector. The company provides, besides the universal postal service (reserved and non-reserved), free services that are not of universal character such as express delivery services, philately, and distribution of press or direct marketing services.
- (23) As a result of the continuing downward trend in volumes of public postal services, particularly at rural offices, in order to make maximum use of infrastructure and human resources while respecting its obligatory accessibility requirement, the Polish Post Office has for several years been developing financial and other commercial activities as well as cooperating with some financial or insurance companies. Some loss-making commercial services are currently being eliminated in the frame of the 'corrective program' launched at the end of 2008. Moreover, the Polish Post is aiming at increasing in the near future the number and volume of services provided for Bank Pocztowy, PAUF and PTUW which together with the current process of renegotiating the transfer prices should, according to Poland's expectations, lead in some years to ensure PP group a satisfactory return from the activities carried out on behalf of these subsidiaries.
- (24) PP's financial activities include sale of products belonging to Bank Pocztowy (a subsidiary of the bank PKO BP and PP) i.e. loans, accounts and deposits, leasing services (through PP's subsidiary-Post Media Serwis), different financial services including money transfers towards banking accounts, delivery of cash to the addressee's home in the form of a Postal Cash Payment Instruction, collection of Radio and TV licence fees and processing of banking checks issued by different banks and cash credits. PP is also active in the insurance market with the distribution of insurance and finance products from enterprises holding capital ties with Poczta Polska, i.e. PAUF, OFE Pocztylion and TUW Pocztowe⁽¹²⁾. PP also manages a pension fund called Pocztylion -Arka PTE S.A.
- (25) Finally, PP also provides IT services through its subsidiary-Postdata and e-commerce services.
- (26) From an organisational perspective, PP consists⁽¹³⁾ of
- 4 business units (profit centres): postal services centre; licensed services centre; logistics centre and postal network centre,
 - 5 support units: information technology centre; the infrastructure centre; the financial services centre the security management centre and the accounting centre,
 - the general directorate.

⁽⁹⁾ OJ No 130 (1188 as amended).

⁽¹⁰⁾ Article 46.2. The obligation of performance of the public operator's tasks described within the Postal Law shall be entrusted to Poczta Polska.

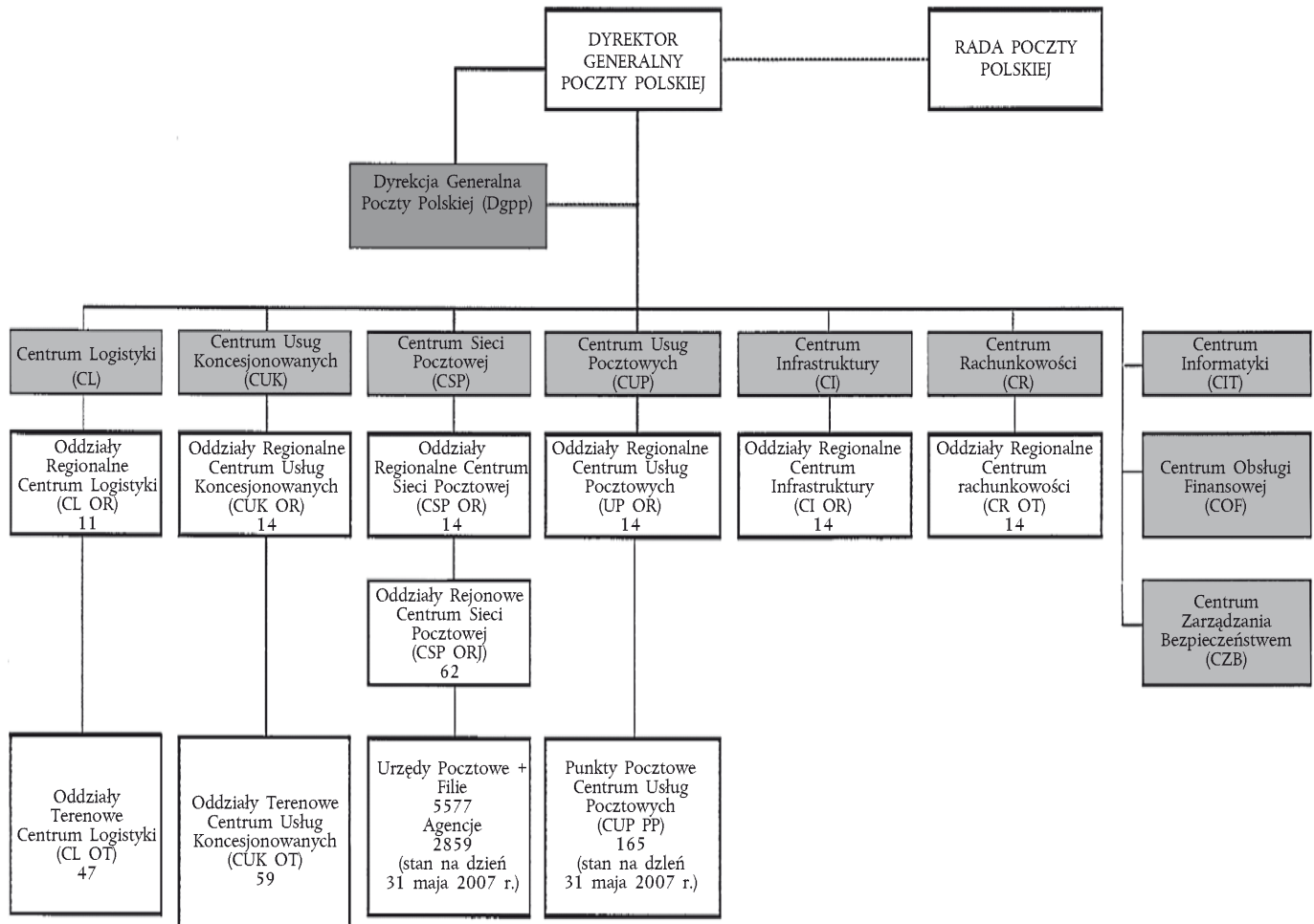
⁽¹¹⁾ Currently named POST-TEL Sp. z o.o. providing in addition IT activities.

⁽¹²⁾ Poczтовая Agencja Usług Finansowych S.A. (PAUF), Otwarty Fundusz Emerytalny Pocztylion (OFE Pocztylion) and Pocztowe Towarzystwo Ubezpieczeń Wzajemnych (PTUW).

⁽¹³⁾ The above mentioned structure has recently undergone several reorganisations. Most of the above centres have regional branches.

Schemat 1

Schemat Organizacyjny Poczty Polskiej
(Struktura organizacyjna obowiązująca do 31 lipca 2007r.)



- (27) During the financial year 2006 PP achieved a turnover of PLN 6 289 million ⁽¹⁴⁾, an operating profit of PLN 146 million and a net profit of PLN 124 million. As at 31 December 2006 the own capital amounted PLN 1 573 million, the total liabilities including provisions for liabilities PLN 2 597 million of which current-liabilities were PLN 1 525 million.

- (28) Poczta Polska provides services in 3 activity types:

- basic activity (universal postal services, contracted services and trade services),
- ancillary activity (auxiliary activities carried out for PP in-house needs ⁽¹⁵⁾ to support basic activities, sales and management e.g. transport services, protection of property and personnel dealing with cash convoys and storing),

⁽¹⁴⁾ If an estimative exchange rate of 1 EUR = 4 PLN is taken then the turnover would amount to EUR 1 572 mil.

⁽¹⁵⁾ If there is free capacity these activities such as transport, concession services, ancillary production can be provided to a external client.

— social activity (provision of services to employees such as housing, canteens, medical and education ⁽¹⁶⁾).

- (29) In 2006 99 % of PP's turnover was generated by basic activities, which consist of (i) universal postal services (reserved and non-reserved); (ii) contracted services (mainly other postal services falling outside the scope of the universal postal service, financial services like cash payments into bank accounts and management of Bank Pocztowy's loans and deposits, radio and television licence management and insurance mediation); and (iii) trade services (mainly sale of trade goods, philately, mail order of textbooks, trade in foreign currency).

II.2. The universal postal service entrusted to PP

- (30) By way of Article 46(2) of the Postal law of 12 July 2003 ⁽¹⁷⁾, PP is entrusted with the obligation to provide the universal postal service on the territory of the Republic of Poland.

- (31) Article 3(25) of the Postal law defines as universal postal services the postal services of:

- clearance, transport and delivery of:
 - letter items weighting up to 2 000 grams, including registered letters and insured letters with declared values,
 - postal parcels weighting up to 10 000 grams, including insured parcels,
 - postal items for blind persons,
- delivery of postal parcels sent from abroad weighting up to 20 000 grams,
- handling of postal money orders,

provided within domestic and international traffic on the territory of the Republic of Poland, in a consistent way on compatible conditions and at affordable prices, maintaining quality required by law and ensuring of emptying the mail box and delivery of the postal items at least on every working day and no less frequently than 5 days a week.

- (32) The conditions for the provisions of the universal postal service are defined by the Ordinance of the Minister of Infrastructure of 9 January 2004 on the conditions for the provision of universal postal services ⁽¹⁸⁾.

⁽¹⁶⁾ If there is free capacity these services such as medical services, catering services, rental of guest rooms and training facilities can be provided on a commercial basis to third persons.

⁽¹⁷⁾ 'The obligation of performance of the public operator's tasks described within the Act of Law shall be entrusted to Poczta Polska'.

⁽¹⁸⁾ OJ No 5 (34) as amended.

- (33) Routing times are defines as follows:

- priority letters: D + 1 82 %, D + 2 90 %, D + 3 94 %,
- non-priority letters: D + 3 85 %, D + 5 97 %,
- priority parcels: D + 1 80 %,
- non-priority parcels: D + 3 90 %.

- (34) A post office should be operated:

- for each 7 000 in habitants in urban areas,
- for each 65 sq km in rural areas.

- (35) Also each county (gmina) of over 2 500 inhabitants should have at least one post office. A county with less than 2 500 inhabitants can be served by a neighbouring county's post office or a mobile post office provided that it ensures a better quality of service or has a prior consent of local authorities. Every outlet should be open at least 5 days a week.

- (36) Article 47 of the Postal Law defines the services which are reserved for PP. These services are:

- clearance, transport and delivery of items of domestic:
 - letter items (currently with weight not exceeding 50 grams),
 - direct mail (currently with weight not exceeding 50 grams),
 - postal items other than those just mentioned above, posted in a way making it impossible to examine their content (currently with weight not exceeding 50 grams),
- clearance, transport and delivery of items of international mail deliveries (currently with a maximum weight limit of 50 grams).

- (37) Pursuant to Article 47 of the Postal Law fees for provision of universal postal services should be established with regard to the costs of their provision, should be uniform on the entire territory of the country, transparent and non-discriminatory.

- (38) Moreover the subsidisation of universal postal services which are not reserved with the income from reserved services is explicitly prohibited in the same law.

- (39) According to Article 12 of the 'Act of 30 July 1997 on State Enterprise of public utility PP' the Polish Post shall run its business basing upon its own plans, following the rule of cost efficiency and economic effectiveness.
- (40) On the basis of Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, Poland intends to abolish legal monopolies on postal services by 31 December 2012 at the latest.

II.3. The measure under assessment

- (41) On the basis of Article 17 of the 'Law of 30 July 1997 on State Enterprise of public utility PP' ⁽¹⁹⁾, on the basis of the 'Postal law', of the 'Ordinance of the Minister of Infrastructure of 9 January 2004 on the conditions for the provision of universal postal services' and of the 'Ordinance of the Minister of Finance of 24 December 2003', the Polish authorities intend to grant subsidies to PP to compensate potential losses incurred in connection with the provision of the universal postal service.
- (42) These subsidies will be granted *ex post* on the basis of the possible recorded losses of a certain financial year, if any. The amount of the subsidies will be limited to the amount of the incurred losses.
- (43) The scope of the Commission's in-depth assessment of the scheme focused on whether the measure is in line with the compatibility conditions set out in the Community framework for State aid in the form of public service compensation. Such examination mainly concentrated in obtaining reasonable assurance that the State will not overcompensate the net additional costs ⁽²⁰⁾ Poczta Polska will incur in discharging the universal public service obligation.

III. COMMENTS FROM INTERESTED PARTIES

- (44) No comments were received from other interested parties.

IV. COMMENTS FROM POLAND

- (45) Poland submitted its comments in the course of the investigation (see recital 17 above).

⁽¹⁹⁾ By the 'Act of 5 September 2008 on commercialization of the public utility PP' the 'Act of 30 July 1997 on State Enterprise of public utility PP' was partially annulled. The content of Article 17, concerning subsidies to PP for provision of universal postal services, was transferred to a newly created Article 52a in the existing Act of 12 June 2003.

⁽²⁰⁾ The Commission considers that the net additional cost of the public service obligation is the cost incurred in discharging the public service obligation, taking into account the relevant receipts and a reasonable profit for discharging those obligations.

IV.1. Information provided

- (46) Poland submitted information on PP's organisational structure, activities and relevant markets in which the undertaking is active (see section II.1), applicable legislation, pertinent accounting rules and methodology, different relevant data and reports from the National Regulatory authority on the compliance of the cost accounting system with Article 52 Postal Law and the Ordinance of the Minister of Finance of 24 December 2003 (hereinafter the 'Ordinance').
- (47) More particularly Poland made available to the Commission relevant legislation such as the Law of 30 July 1997 on State Enterprise of public utility PP, the Postal law of 12 July 2003 and its subsequent modification, the Ordinance of the Minister of Finance of 24 December 2003 and the Act of 5 September 2008 on commercialisation of the public utility PP.
- (48) Poland submitted detailed information on the accounting separation and the cost allocation methodology adopted by the postal operator in order to quantify the costs ⁽²¹⁾ of the universal postal service.
- (49) Poland delivered data on different categories of costs and revenues, results according to the area of activity ⁽²²⁾, detailed results for individual services, financial statements and other type of financial data.
- (50) All past reports ⁽²³⁾ issued annually by the National Regulatory Authority have been made available to the Commission.

IV.2. PP's accounting system

- (51) The Polish authorities indicated that PP's internal accounting system operates on the basis of consistently applied and objectively justifiable cost accounting principles, in conformity with the provisions of the Postal Law transposing into Polish legislation Article 14(2) of Directive 97/67/EC imposing separate accounts within the internal accounting system of the universal service providers.

⁽²¹⁾ See 'Company Cost Instruction' which establishes rules of cost recording and division, method and frequency of the calculation of keys, stages of cost settlement at the end of an accounting period and rules of determining the cost of rendering a service. It also defines the scope of responsibility of organizational units.

⁽²²⁾ Postal area: reserved-universal services (US), non-reserved US, and non-US; Financial services area and other services.

⁽²³⁾ Summary or complete reports provided for the years 2004, 2005, 2006 and 2007.

- (52) On the basis of Article 52(1) ⁽²⁴⁾ and Article 52(2) ⁽²⁵⁾ of the Polish Postal Law, PP must keep accounts in a way, which (i) allows costs to be calculated separately, for each reserved service, and collectively for non-reserved services (universal service as well as non-universal services) as well as (ii) enables the calculation of unit costs. In accordance with the Postal Law, on 24 December 2003, the Minister of Finance issued an Ordinance on the method of cost allocation of the operator providing the universal postal service ⁽²⁶⁾. This ordinance ⁽²⁷⁾, which entered into force on 1 January 2004, implements Article 14(3) of Directive 97/67/EC.
- (53) PP divides its integrated accounting system in three main categories:
- (a) Financial accounting system: expenses and income are recorded by type;
 - (b) Analytical accounting system: costs are allocated to PP's organisational units by cost centres;
 - (c) System of direct or indirect allocation of costs to products.
- IV.2.1. *System of allocation of costs*
- (54) Within the financial accounting system (a), expenses are recorded by type ⁽²⁸⁾.
- (55) Within the analytical accounting system (b), accounting records of costs and revenues cover:
- responsibility centres: i.e. the organisational units responsible for the provision of services,
 - distribution channels: i.e. units responsible for sales.
- (56) Within the system of allocation of costs to services (c), costs are divided into:
- direct costs: these costs can be directly ascribed to a specific service on the basis of direct measurement or source document. In 2006, they accounted for [...] ^(*) of PP's total costs. For example, these costs include the cost of forms required for particular services, final payments to foreign postal administrations or the cost for operating RTV subscription service units,
 - indirect costs: these costs, which cannot be directly attributed to services are written to the indirect cost accounts, and then allocated among services using specific allocation keys. In 2006, they accounted for [...] of PP's total cost. Main categories of indirect costs ⁽²⁹⁾ are:
 - (a) Operating costs ⁽³⁰⁾: in 2006, they accounted for [...] of PP's total costs. These costs relate to the technological process of rendering services such as clearance, sorting and delivery of postal items. This process involves the largest number of PP's workforce, which explains the high amount of these costs. Furthermore, these costs also include depreciation and maintenance of the equipment used in the technological process, such as sorting machines, conveyor belts, scales, etc. Operating costs are allocated to services using keys based on the time required to provide the services. Individual operations carried out in post offices, main offices and delivery areas are standardized ⁽³¹⁾. In 2006, PP counted about 600 standardized operations which are regularly updated. In 2006, the assessment covered 5 577 post offices, 242 main offices and 23 800 delivery areas;
 - (b) Transport costs ⁽³²⁾: in 2006, they accounted for [...] of PP's total costs. These costs include the cost of carrying mail cargoes by the Logistics Centre and the cost of postal cargoes carried

^(*) Business secret.

⁽²⁹⁾ Costs related with licensed-based services are not further explained in the text given its minor relative importance i.e. [...] of PP's total costs.

⁽³⁰⁾ Accounts 511 and 515: Costs of remunerations and surcharges on remunerations; amortization of computers and computer programs; telecommunication services; consumption of materials and exploitation forms; repairs and maintenance of postal equipment.

⁽³¹⁾ The process of the provision of individual services in the Polish Post was divided into detailed operations. A standard of working time which specifies how much time is needed to perform one activity has been assigned to each operation. Then, once a year, research into workload is carried out, during which the number of performed operations is noted down. Following that, the standard working time which is devoted to the provision of a given service is estimated.

⁽³²⁾ Account 512: Costs connected with the exploitation of postal wagons; costs of remunerations including surcharges of postal guards – related to the conveyance of postal matter; personal costs of the employees responsible for postal vans; personal costs of the employees of the Wagon Management Department.

⁽²⁴⁾ 'Operator providing universal postal services shall be obliged to maintain accounting books and cost accounting in a way enabling the cost calculation: 1) separately for every service from the reserved services area; 2) collectively for non-reserved services with separation on: a) universal postal services, b) services not belonging to universal postal services category.'

⁽²⁵⁾ 'Minister competent to public financial matters, in consultation with Minister competent to post and telecommunications shall establish by Ordinance, the method of cost allocation, based on the principle, that such a method should enable calculation of unit costs, having regard to section 1.'

⁽²⁶⁾ OJ No 232 (2327).

⁽²⁷⁾ See points 2.1.1 to 2.1.4 of the Ordinance of the Minister of Finance of 24 December 2003.

⁽²⁸⁾ Under the following headings: depreciation, materials used, energy used, transport services, repair services, third-party services, wages, employee services, advertising and publicity, taxation and charges, banking services, travel costs, miscellaneous.

by foreign carriers. Transport costs are allocated to services using keys mainly based on weight ⁽³³⁾ of the postal item transported;

- (c) Network maintenance costs ⁽³⁴⁾: in 2006, they accounted for [...] of PP's total costs. These costs concern post office maintenance, e.g. rent, energy, equipment, upkeep and maintenance of buildings, taxation and charges. According to Poland these costs are allocated among all types of services and not only to the public postal services for which that network was built and is maintained. They are attributed to services in function of the sum of (i) direct costs plus (ii) indirect operating costs plus (iii) indirect transport costs already attributed to services;

- (d) Other indirect costs ⁽³⁵⁾: in 2006, they accounted for [...] of PP's total costs. These costs include in particular the costs of the Logistics Centre related to the delivery of packages and cash-on-delivery items, the delivery and collection of express mail, telegrams, the costs of third-party services in the emptying of letter boxes, delivery of mail, non-addressed mail and forwarding and sorting services, the cost of domestic air transportation and third-party services. The costs of delivery of these items are allocated to services using keys mainly based on records of number of delivered items,

— other costs (or 'General costs' ⁽³⁶⁾): These common costs are allocated to services on the basis of a general allocator i.e. they are allocated proportionally, so according to the percentage surcharge of the previously allocated costs. Main categories of these costs are:

- (a) General, administrative and development costs ⁽³⁷⁾: in 2006, they accounted for [...] of the costs of all services. These costs relate in particular to expenditure for general administration, accounting and finance purposes, as well as development costs. They include: depreciation of buildings, structures and premises, as well as machines and equipment both for general use and those constituting equipment for administrative services work-

places, the costs of operating and maintaining administrative premises and their equipment, staff remuneration and contributions, stationery and office equipment used by administrative staff, the costs of development and implementation projects and other undertakings implemented at central level. These are assigned to a product using the 'cost to cost' methodology ⁽³⁸⁾;

- (b) Selling costs and commercial costs: in 2006, they accounted for [...] of the costs of all services.

— Selling costs ⁽³⁹⁾: these are the costs accruing to the sale of services, which also include the costs of maintaining sales, marketing costs and advertising costs. Selling costs are assigned to services using the 'cost to cost' methodology.

— Commercial costs ⁽⁴⁰⁾: these are the costs incurred in carrying out commercial activities, including the marketing and distribution of commercial products in post offices, at fuel stations, in buffets and philatelic items. These are mainly the costs of the storage of commercial goods, and the personnel and material costs of this activity. These costs are assigned to the cost of purchasing goods and materials sold.

- (c) Financial costs: those financial costs related with interest, exchange rate differences and lease of means of transport and other fix assets are included in the calculation of costs of services. In 2006 they accounted for [...] of the total cost of PP services.

- (57) PP's analytical accounting is carried out within the general accounting.

- (58) A considerable part of costs in the Polish Post constitute indirect costs for which there is a possibility to identify cost carriers and their measurement. 'Other costs', which may not be classified as direct or indirect, are allocated to services at the stage of unit cost calculation in proportion to the costs previously allocated on individual services ⁽⁴¹⁾.

⁽³³⁾ Records of the number of items x average item weight as given by statistical research.

⁽³⁴⁾ Account 510: Costs of amortization of buildings, facilities, generally applied machinery and equipment; costs of rents, real property taxes, payments for land use rights; municipal services; repairs and maintenance of buildings and facilities; energy and water supply; employing postal security guards in post offices; costs of cleaning.

⁽³⁵⁾ Account 514: Costs of external services related to the delivery of parcels and postal matter paid on delivery; express postal matter; collecting mail from mailboxes; costs of maintaining the Departments of Operation and Technical Supervision, costs of services related to delivery.

⁽³⁶⁾ 'Other costs' are costs of general nature which may not be classified as direct or indirect costs.

⁽³⁷⁾ Account 551.

⁽³⁸⁾ Costs are allocated in proportion to the costs previously allocated on service accounts.

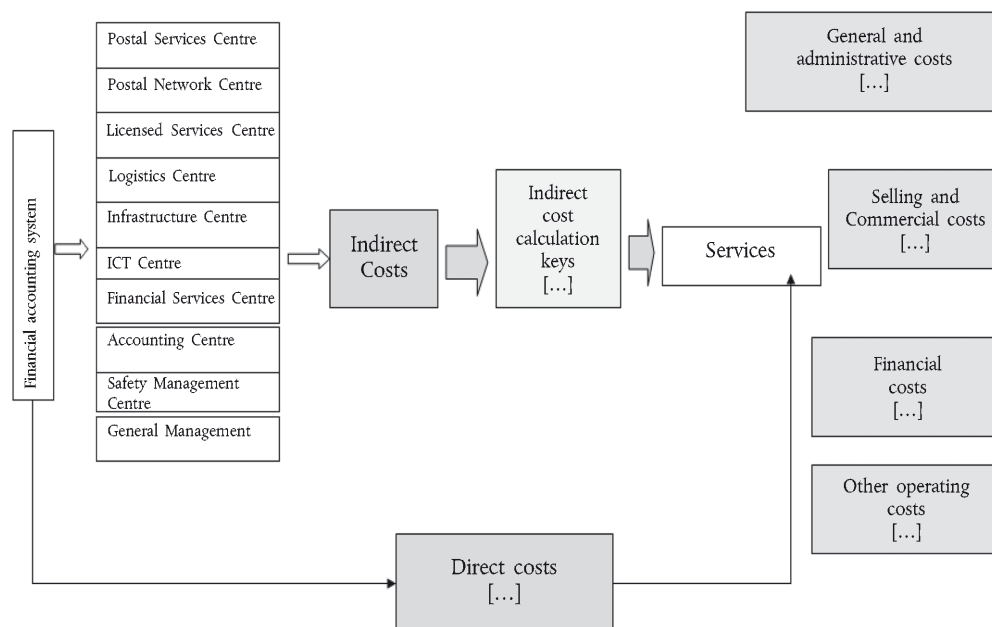
⁽³⁹⁾ Account 527.

⁽⁴⁰⁾ Account 513.

⁽⁴¹⁾ The Polish Post is planning to perform soon the first cost calculation using the ABC model. All the costs are entered into the accounts of the '5' group: 500-509 are service accounts into which the costs of the manufacture of individual services are entered; 510, 511, 512, 514 are the accounts into which indirect costs are entered; 527 and 551 are the accounts into which other costs are entered. Then the costs entered into the group of accounts '5' are transferred to accounts 710-719.

- (59) The methodology of the calculation of unit cost has been subject to changes e.g. the order of the allocation of 'other costs' settled by surcharge in proportion to the previously allocated direct and indirect costs was changed ⁽⁴²⁾. The calculation of unit cost in the Polish Post is carried out by the company's Accounting Centre.

PP's accounting model



IV.2.2. System of allocation of revenues

- (60) Revenues from sales originate from the postal, financial and other activities ⁽⁴³⁾ carried out by PP. Financial revenues include mainly dividends or interest received (e.g. on deposits, trade receivables). Other operating revenues mainly consist of revenues obtained from the disposal of non-financial fixed assets, compensation for damages, write-offs of overdue liabilities, cancellation of unused provisions and revenues from social welfare activities.
- (61) Revenues from sales can typically be directly allocated to services. Financial revenues and other operating revenues which can be directly assigned to a given group of services were allocated as follows:
- financial revenues from exchange rate differences: [...] of which are positive exchange rate differences caused as a result of settlements between the administrations for postal matter in foreign turnover were assigned to the group of (universal and non-universal) postal services and the other [...] of the revenues directly related to the sale of currencies were assigned to the third group 'others' ⁽⁴⁴⁾.
 - other operating revenues from subsidies on services subject to statutory exemption from charges: they were fully assigned to universal services which the exemptions referred to.

⁽⁴²⁾ In 2007 firstly 'financial costs' are allocated and then the surcharge for 'selling and commercial costs' and 'general, administrative and development costs' is calculated. In 2006 all three types of 'other costs' were allocated simultaneously using a common surcharge.

⁽⁴³⁾ E.g. Sale of trade goods acquired with the intention to sell in an unprocessed form, both retail and wholesale, consignment services, sale of municipal transport service rights, advertising, sale of transport services and other auxiliary services when the capacity exceeds in-house needs, etc.

⁽⁴⁴⁾ Sale of goods and materials

- (62) Financial revenues and other operating revenues which could not be assigned directly to services were assigned to service groups in proportions used for the allocation of financial costs and other operating costs to these service groups.

IV.2.3. Data on costs and revenues for PP's three service categories

- (63) PP's 151 services are grouped in 3 macro-categories: postal services, financial services and others. Each of the services has got a separate account. The breakdown of 2006 costs and revenues among PP's 3 main service categories is shown in Annex 1.

IV.3. Additional assurance on the adequacy of the accounting system

- (64) The Postal Law provides ⁽⁴⁵⁾ on the one hand, that the National Regulatory Authority properly ensures that PP keeps accounting records in accordance with the provisions of the Postal Law and of the Ordinance of 23 December 2003, and, on the other hand, that the auditing firm responsible for certifying the accounts of the universal service provider must also check that the accounts comply with the abovementioned rules on separate accounting.
- (65) According to Poland, the National Regulatory Authority (UKE) has effectively evaluated, among other issues, to what extent PP fulfilled the requirements resulting from Article 52 of the Postal Law and the Regulation of the Minister of Finance of 24 December 2003. In this examination it has always been concluded that (i) unit cost calculation is performed for each service from the reserved area and (ii) cost calculation procedures covered separately non-reserved universal postal services and services which do not belong to universal postal services meaning that PP kept its account books and cost statement in compliance with the requirements specified in Article 52 section 1 of the Postal Law. Moreover, the auditors got yearly reasonable assurance that PP allocated costs to services in a direct and indirect way and the allocations were performed according to the method defined in the Regulation of the Minister of Finance of 24 December 2003 regarding the method of dividing the costs incurred by the operator that provides universal postal services.
- (66) As a result of the annual verification carried out by the National Regulatory Authority a set of recommendations is proposed in the report. According to Poland procedures and guidelines have been introduced in the last years to improve the quality or the implementation

of the allocation keys used e.g. a direct cost control procedure was introduced at PP in which following tasks are foreseen to be made (a) re-assessing whether a certain type of direct cost can occur within a particular service (b) checking the correct allocation of direct costs between the services, e.g. the reserved and non-reserved services, business and priority services (c) monitoring the uniform approach to the recording of direct costs of services in each of the Regional Branches of the Accountancy Centre and (d) periodical reviewing of overheads in order to identify any costs unrelated to the provision of postal services.

IV.4. Compensation amount of the USO

- (67) According to Article 52a.1 ⁽⁴⁶⁾ of Postal Law PP has a right to receive a compensation for the loss incurred on the universal services but this amount cannot exceed the difference between costs of universal postal services provisions and income which is obtained from these services (see Article 52a.2 ⁽⁴⁷⁾).
- (68) According to Article 52a.4 'Subsidy for the year, in which the loss incurred is granted till 31 December of each year following the year, which the subsidy refers to, on the basis of submitted by the President of UKE, till 30 November of the year following the year, which the subsidy refers to, to Minister competent to post and telecommunications: 1) copy of the financial report of the public operator examined by the auditor, which is referred to in Article 52 paragraph 6; 2) information that the conditions, as referred to in Act of Law, under which universal services are entrusted are fulfilled; 3) information concerning verified requirements to maintain accounting books and cost accounting, as referred to in Article 52 paragraph 1 and 2.; 5. Provisions of Article 33a shall be respectively applicable to the subsidy, as referred to in paragraph 1'.
- (69) The Polish authorities indicated that no losses have been incurred for the provision of the universal postal service over the period 1998-2008. Hence, no State compensation took place over that period.
- (70) A more detailed breakdown of 2006 results within the postal services is shown in Annex 2.

⁽⁴⁵⁾ See Article 52 (Section 4, 5 and 6).

⁽⁴⁶⁾ Public operator obliged to provide universal postal services, shall receive from the State budget the subsidy to the provided universal postal services, if it incurs loss.

⁽⁴⁷⁾ The amount of the subsidy shall be established within the Act of Law – Budget Law, having regard to the principle, that total amount of subsidy cannot exceed the difference between costs of universal postal services provisions and income, which is obtained from these services.

- (71) According to the forecast figures for 2009-2011 a net surplus is expected to be posted in the UPS-area. Thus during the whole period of the scheme, i.e. 2006-2011, PP will presumably not receive any compensation for discharging the universal postal service obligations (see more detailed information on costs and revenues achieved and expected to be achieved in the universal postal service's area in Annex 3).

Table 1

(million PLN)

Universal postal services	2006	2007	2008	2009	2010	2011
Revenues (A)	[...]	[...]	[...]	[...]	[...]	[...]
Costs (B)	[...]	[...]	[...]	[...]	[...]	[...]
Surplus of the UPS (A)-(B) (*)	[...]	[...]	[...]	[...]	[...]	[...]

(*) After full allocation of results (including financial results and other operating) with the exception of extraordinary results.

IV.5. Conclusion

- (72) Poland quantified costs and revenues of the universal postal service on the basis of the accounting separation and allocation methodology indicated above.
- (73) Poland indicated that considering (i) the information provided by Poland on the cost accounting methodology and related procedures, (ii) the data provided (iii) the existing legal provision for compensation and (iv) the non-inclusion of a reasonable profit into the basis for calculating the compensation amount, the scheme is not liable to overcompensate PP for the discharge of the public service obligation.

V. ASSESSMENT

V.1. Qualification of the measure as State aid

- (74) According to Article 107(1) TFEU, 'save as otherwise provided in this Treaty, 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'.

V.1.1. Existence of State resources

- (75) In order to be qualified as State aid, advantages must be imputable to the State and be granted directly or indirectly by means of State resources.
- (76) In the case in point, the compensation that will be granted to PP for discharging its universal postal service

obligations will be paid from the State's budget. Specific legal instruments, like 'Law of 30.07.1997 on State Enterprise of public utility PP', 'Postal law', the 'Ordinance of the Minister of Infrastructure of 9 January 2004 on the conditions for the provision of universal postal services' and 'Ordinance of the Minister of Finance of 24 December 2003' are the legal basis for the granting of this compensation.

- (77) Therefore, the two above-mentioned cumulative conditions are met in the present case.

V.1.2. Selectivity

- (78) Moreover, Article 107(1) TFEU prohibits aid which 'favours certain undertakings or the production of certain goods', that is to say, selective aid.

- (79) The compensation will be granted exclusively to PP, thus it is selective.

V.1.3. Advantage

- (80) To constitute a State aid, a measure must confer an advantage to recipients.

- (81) It is apparent from the case-law of the Court of Justice of the European Communities that public service compensation does not constitute State aid within the meaning of Article 107(1) TFEU if it fulfils certain conditions⁽⁴⁸⁾. However, if public service compensation does not meet these conditions and if the general criteria for the applicability of Article 107(1) TFEU are satisfied, such compensation constitutes State aid.

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

— '(...) First, the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined (...).

— (...) Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner (...).

— (...) Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public services obligation, taking into account the relevant receipts and a reasonable profit (...).

⁽⁴⁸⁾ Judgments in Case C-280/00 *Altmark Trans* and *Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark* (2003) ECR I-7747 and Joined Cases C-34/01 to C-38/01 *Enirisorse v Ministero delle Finanze* (2003) ECR I-14243.

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

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

(84) In the case at hand, the Commission considers that the fourth criterion is not met.

(85) Firstly, the public service was not awarded as a result of an open public procurement procedure.

(86) Secondly, nor the Polish authorities have argued that PP is being compensated according to the costs of a typical undertaking within the sector, neither is the Commission in a position to conclude that the costs of PP are those of a typical well run undertaking. Moreover, the envisaged subsidies refer to incurred losses. Thus, it can be concluded that the selective measure in point ought to be considered as conferring an advantage to PP, which can be qualified as economic advantage within the meaning of Article 107(1) TFEU.

V.1.4. *Affectation of trade and distortion of competition*

(87) Article 107(1) TFEU also prohibits aid which affects trade between Member States and which distorts or threatens to distort competition.

(88) In its assessment of those two conditions, the Commission is required not to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition⁽⁴⁹⁾. When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.

(89) It is not necessary that PP itself be involved in intra-Union trade. Aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned. Furthermore, the strengthening of an undertaking which, until then, was not involved in intra-Union trade may place that undertaking in a position which enables it to penetrate the market of another Member State.

(90) As regards the letter segment outside the reserved area, three operators hold licences to render these services. These companies are PP, 'Dystrybucja Polska Sp. z o.o.' and 'Indesys Dominik Steinhaus'. According to the Polish authorities, the current position of Poczta Polska on this segment is still strong, because one of the competitors ('Dystrybucja Polska Sp. z o.o.') concentrates on the distribution of printed advertising and the other limits its activities to the Masovia Region.

(91) The Polish parcels and courier services segment is highly competitive. PP's market share of the parcels segment amount to [...] and its market share of the courier segment to [...] ⁽⁵⁰⁾. Companies operating in this market are companies providing high quality services charged at a high price (DHL, TNT, UPS) or companies providing basic services (e.g. General logistic systems, Opek, Schenker, X-Press Couriers, Blyskawica).

(92) PP's share in the advertising deliveries segment is approx. [...], whilst in the unaddressed printed forms segment it is approx. [...] ⁽⁵¹⁾. Despite the [...] market share of PP, an aggressive policy of the growing number of competitors is observed.

(93) Regarding financial services, the Commission recalls that the banking sector has been open to competition for many years. Progressive liberalization has enhanced the competition that may already have resulted from the free movement of capital provided for in the TFEU.

(94) PP's financial activities include sale of products belonging to Bank Pocztowy (a subsidiary of the bank PKO BP) i.e. loans, accounts and deposits, leasing services (through PP's subsidiary-Post Media Serwis), different financial services including money transfers towards banking accounts, delivery of cash to the addressee's home in the form of a Postal Cash Payment Instruction, collection of Radio and TV licence fees and processing of banking checks issued by different banks and cash credits. PP is also active in the insurance market with the distribution of insurance and finance products from enterprises holding capital ties with Poczta Polska, i.e. PAUF, OFE Pocztylion and TUW Pocztove. PP also manages a pension fund called Pocztylion -Arka PTE S.A.

⁽⁴⁹⁾ See for instance judgment of the Court in case C-372/97 *Italy v Commission* [2004] ECR I-3679, paragraph 44.

⁽⁵⁰⁾ Figures for 2006.

⁽⁵¹⁾ Figures for 2006.

(95) Due to the fact that the PP distributes insurance and financial products from subsidiary or related companies it is in competition with other banks, insurance companies and brokers. Additionally, over the recent years, PP has significantly broadened the range of its payment services to customers, adding to the traditional postal instruments a series of instruments that were formerly the domain of banks (debit and credit cards, credit transfers, standing debit orders for utility bills). These evolutions have increased the substitutability of the financial services offered by PP with those offered by banks.

(96) Financial institutions from different Member States operate in Poland, either directly through branches or representative offices, or indirectly by controlling Polish-based banks and financial institutions.

(97) To conclude, there is competition amongst companies from different Member States in the postal and financial services sectors. The public service compensation which might be granted to PP would strengthen the position of PP in relation to postal and financial undertakings established in Poland or other Member States which, as a consequence, might have more difficulties to enter the Polish market. Therefore, the measure is liable to distort competition and affect trade between Member States.

V.1.5. Conclusion

(98) Any compensation granted under the present scheme to PP would amount to State aid within the meaning of 107(1) TFEU.

V.2. Assessment of compatibility of the aid

(99) As mentioned in section I above, following decision of 9 January 2007, the proceedings under Article 88(2) of the EC Treaty remain open as for the period 1 January 2006 onwards.

(100) Point 25 of the 2005 Community framework for State aid in the form of public service compensation⁽⁵²⁾ (hereinafter the 'Framework') states that 'This framework will apply for a period of six year from the date of its publication in the *Official Journal of the European Union*'. Point 26 of the framework indicates that 'The Commission will apply the provisions of this framework to all aid projects notified to it and will take a decision on those projects after the framework is published in the Official Journal, even if the projects were notified prior to such publication'.

(101) The aid in question has been notified by the Polish authorities within the 'interim mechanism' procedure (see decision to initiate the procedure laid down in Article 88(2) of 25 June 2005). It follows that the applicable legal provisions for assessing the compatibility

of the scheme during the time period 2006-2011 is the Community framework for State aid in the form of public service compensation.

(102) The Commission considers that, 'at the current stage of development of the internal market, public service compensation which is State aid within the meaning of Article 107(1) TFEU may be declared compatible with the Treaty under Article 106(2) if it is necessary to the operation of the service of general economic interest and does not affect the development of trade to such an extent as would be contrary to the interests of the Union'.

(103) In order to achieve such balance, the Commission applies the provisions of the Framework to assess the compatibility of the case at hand. Under the Framework the three basic criteria of compatibility are that (i) the service in question is a genuine public service (i.e. qualifying it as a service of economic general interest is not a manifest error), that (ii) the service is entrusted to the undertaking by an official act that contains the elements specified in section 2.3 of the above mentioned Community framework, and that (iii) the undertaking is not overcompensated for the provision of public service (taking into account a reasonable profit).

V.2.1. Genuine service of general economic interest

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

(105) The public service obligation entrusted to PP is the universal postal service in accordance with the postal directive (see section II.2 above). The provision of universal postal services throughout the Polish territory in order to offer to the Polish population the same basic services at the same costs is a classic case of SGEL.

(106) Consequently, the universal postal service entrusted to PP qualifies as service of general economic interest within the meaning of Article 106 TFEU.

V.2.2. Need for an instrument specifying the public service obligations and the methods of calculating compensation (Entrustment)

(107) As indicated in the Framework, the concept of service of general economic interest within the meaning of Article 86 of the Treaty means that the undertaking in question has been entrusted with a special task. Responsibility of the operation of the service of general economic interest must be entrusted to the undertaking concerned by way of one or more official act.

⁽⁵²⁾ OJ C 297, 29.11.2005.

- (108) In the case at hand, the Postal law of 12 July 2003 and the 'Ordinance of the Minister of Infrastructure of 9 January 2004 on the conditions for the provision of universal postal services' constitute the legal instruments which define and entrust to PP the service of general economic interest represented by the universal postal service (see sections II.2, II.3 and IV.4 above).
- (109) In conformity with section 2.3 of the above mentioned Community framework, these acts specify, in particular:
- the precise nature of the public service obligation (universal postal service obligation) (Article 3.25 of the Postal Law),
 - the undertaking (PP) and territory concerned (the whole national territory) (Article 3.25 of the Postal Law),
 - the nature of the exclusive rights assigned to PP (Article 46.2 of the Postal Law).
- (110) Whereas Article 52 and 52.a of the Postal Law and the Ordinance of the Minister of Finance of 24 December 2003 already set some principles on compensation⁽⁵³⁾ these are insufficient to consider the requirement established in points 12(d) and 12(e) of the Framework as fully met.
- (111) Currently, according to point 2.2 of the 'Ordinance' the type of results to be allocated to services is limited to 'Costs of products, goods and materials sold', 'Selling costs', 'General and administrative costs' and 'Interest from liabilities financing postal services including foreign exchange rate differences'. Therefore, the Commission considers that not all parameters relevant for calculating compensation have been specified in the national acts. Due to the fact that certain costs and revenues⁽⁵⁴⁾ have been fully omitted in the national acts from the list of items to be allocated to services their subsequent controlling and reviewing has also been left out (see section V.2.3.3 below).
- (112) Article 52.a.4 establishes some requirements imposed on UKE to proceed with the approval of a subsidy compensating the postal operator for the discharge of the USO i.e. previous submission of (1) the financial report of the public operator examined by the auditor, (2) information of the fulfilment of entrustment conditions and (3) information concerning verified requirements to maintain accounting books and cost accounting as referred to in Article 52 paragraph 1 and 2. For the same reasons explained above, given that Article 52.2 makes a direct reference to the Ordinance and this only specifies the allocation of certain costs to services the Commission considers that not all parameters relevant for calculating compensation have been taken into account in the relevant national act(s). Consequently, if not all parameters relevant for calculating compensation were taken into account the requirement regarding the specification in the relevant national acts of the arrangements for avoiding any overcompensation has to be regarded as not fully met as well. The limited scope of the annual verifications carried out every year confirms this assertion (see further explanations in section V.2.3.5 below). Analogously, the provisions examined by the Commission do not seem to contain any arrangement for repaying any possible overcompensation.
- (113) Therefore, the Commission finds the requirements regarding the specification in the relevant national acts of (i) the parameters for calculating, controlling and reviewing the compensation (point 12(d) of the Framework) and of (ii) the arrangements for avoiding and repaying any overcompensation (point 12(e) of the Framework) as not fully met. Moreover, for the reasons explained above, the Commission considers adequate to clearly specify in the relevant national act the objective of the annual verification, namely ensuring that no overcompensation takes place.
- (114) To conclude, the entrustment does not contain all the elements required by the Framework for State aid in the form of public service compensation, namely those mentioned in point 12d and point 12e of the Framework. Consequently, the second criterion can only be deemed to be partially fulfilled and appropriate remedies to include the costs and revenues referred to in point 128.i) have to be adopted in order to assess if granting compensation to PP according to the measure at stake is necessary and to ensure the compatibility of that compensation.
- (115) The analysis of the implementation of the scheme in section V.2.3 below will show more clearly the consequences in the practice of an incomplete definition of parameters and of arrangements for avoiding overcompensation.
- V.2.3. No overcompensation*
- (116) Pursuant to paragraph 14 of the Framework '(...) the amount of the compensation does not exceed what is necessary to cover the costs in discharging the public service obligations, taking into account the relevant receipts and reasonable profit for discharging these obligations.' It also indicates that '(...) the costs to be taken into consideration include all the costs incurred in the operation of the services of general economic interest. (...) Where an undertaking also carries out

⁽⁵³⁾ E.g. The total amount of compensation cannot exceed the difference between costs of the provision of UPS and income, which is obtained from these services. See additional explanations in sections II.2, II.3, IV.4 and V.3.3 of the present decision.

⁽⁵⁴⁾ Following the same terminology used in the Profit&Loss Account the mentioning of next results was omitted in the Ordinance: i.e. 'Net revenues from sales of products, goods and materials', 'Other operating revenues', 'Other operating costs', 'Financial revenues', 'Financial costs' and 'Extraordinary results' (which correspond to items A, G, H, J, K and M in the 'Profit and Loss Account').

activities outside the scope of the services of general economic interest, only the costs associated with the service of general economic interest may be taken into consideration (...).

(117) PP's activities are not confined to the services of general economic interest (see section II.1 above).

(118) In order to conclude that this criterion is fulfilled it is necessary in this case to quantify the costs of the public service obligation (universal postal service) imposed on PP by the entrustment acts and then compare them with the advantages that will be granted to PP by the State.

(119) Article 52a of the Polish Postal Law already states clearly the prohibition to overcompensate '1. The Public operator obliged to provide universal postal services, shall receive from the State budget the subsidy to the provided universal postal services, if it incurs loss. 2. The amount of the subsidy shall be established within the Act of Law – Budget Law, having regard to the principle, that total amount of subsidy cannot exceed the difference between costs of universal postal services provisions and revenue, which is obtained from these services ...'.

V.2.3.1. Results actually incurred

(120) The Commission found that the sums of certain categories of revenues and costs indicated in the analytical accounting were also recorded in the financial statements. Due to the fact that the analytical accounting is carried out within the financial accounting⁽⁵⁵⁾ and this is subject every year to an independent audit, which resulted in no material observations, the Commission has no reason to doubt that the internal revenues and costs presented did actually incur.

V.2.3.2. Adequate separation of accounts for the purpose of calculating the net result of USO

(121) As PP is not only a provider of Services of General Economic Interest (SGEI) but also a provider of other commercial services Article 14(2) of Directive 97/67/EC imposes an obligation on the undertaking to separate accounts within the internal accounting.

(122) On the basis of Article 52(1) of the Postal Law, PP must keep accounts in a way, which allows costs to be calculated separately, for each reserved service, and

collectively for non-reserved services divided into universal postal services and services other than universal postal services.

(123) The Commission has checked that the internal accounting system clearly distinguish accounts for universal (divided into reserved and non-reserved) and non-universal services. Poland has submitted evidence of such separation by showing results by individual service accounts and aggregated results by group of services.

(124) As evidenced by the information provided to the Commission and by the annual examination carried out by the National Regulator PP's results are calculated for each reserved service separately⁽⁵⁶⁾ and collectively for each of the following groups (i) non-reserved universal postal services and (ii) other commercial services (outside the SGEI) in accordance with the requirements set out in Article 52(1) of the Postal Law.

(125) In particular, for the years 2006 and 2007, the reports of the National Regulatory Authority indicate that PP, as a public operator provider of universal postal services, conducted its bookkeeping and cost accounting in a way that makes it possible to separate costs for each reserved service and collectively for non-reserved services, distinguishing between universal postal service and non-universal postal services in accordance with the requirements set out in Article 52(1) of the Postal Law.

(126) On the basis of the information sent by Poland on PP's separation of accounts, on the evidence of external verification carried out regarding the proper division of accounting for universal and non-universal services and on the checks accomplished by the Commission it can be reasonably concluded that the accounting split between commercial activities and activities operated by PP under public service obligations is appropriate. The Commission is therefore of the opinion that PP adequately separates its accounts in a manner that makes cost calculation possible separately for each service from the reserved area and collectively for unreserved services with a division into UPS and non-UPS as specified in Article 14(2) of Directive 97/67/EC.

V.2.3.3. Full allocation of costs and revenues to services

(127) As part of the examination the Commission carried out a test of completeness of the financial data provided by reconciling PP's aggregated data from the analytical accounting with the Profit & Loss Account.

⁽⁵⁵⁾ Drawn following the Accounting Act of 29 September 1994.

⁽⁵⁶⁾ With the exception of 'other operating results', 'extraordinary results' and certain 'financial results' which were only attributed to group of services after having been requested by the Commission.

(128) The Commission found that (i) costs and revenues from certain categories i.e. 'other operating results' ⁽⁵⁷⁾, 'extraordinary results' and some 'financial results' were not distributed to services and that (ii) the Ordinance of the Minister of Finance of 24 December 2003 limited the type of costs to be allocated to services to 'Costs of products, goods and materials sold', 'Selling costs', 'General and administrative costs' and 'Interest from liabilities financing postal services including foreign exchange rate differences'. The relative importance of these costs and revenues, for which an allocation is not foreseen in the national provisions, accounted for 2,5 % and 1,5 % of their respective totals in the year 2006. Although the cost and revenues that have not been allocated to services can be regarded as marginal in the past in view of their relative importance, their importance might be material in the future.

(129) However, as regards the past, Poland has submitted new information in which such 'non-allocated results' were ex-post attributed to universal services (reserved and non-reserved) and non-universal services (broken down into postal, financial and other services). Moreover, Poland has submitted an explanation of the methodology used to allocate them to services. All this demonstrates that PP has delivered a reasonable methodology to allocate those results.

(130) The other categories of internal costs and revenues ⁽⁵⁸⁾ could be reconciled with the P & L account.

(131) Therefore, the Commission considers necessary the systematic distribution to services of all revenues and costs referred to in point 128.i), in compliance with the principle of full allocation of results and with the conditions set out in the Framework.

V.2.3.4. Proper method of cost allocation and its adequate implementation

(132) As stated above Article 52(2) of the Postal Law requires that the 'Minister competent to public financial matters, in consultation with Minister competent to post and telecommunications shall establish by Ordinance, the method of cost allocation, based on the principle, that such a method should enable calculation of unit costs, having regard to section 1'.

(133) In accordance with the above mentioned Article 52(2), on 24 December 2003, the Minister of Finance issued an Ordinance on the method of cost allocation of the operator providing the universal postal service which implements Article 14(3) of the Directive.

(134) The reports issued by the National Regulatory Authority indicate that PP allocated costs directly or indirectly to

the costs of services provided and performed this allocation as set out in the Ordinance of the Minister of Finance of 24 December 2003 on the method for allocating costs for providers of universal postal services. The National Regulatory Authority has yearly confirmed that PP's costs were assigned in the following way:

- (i) costs connected with only one service or group of services are directly assigned to this service or group of services on the basis of accounting vouchers;
- (ii) costs directly connected with several services are assigned to each service or group of services on the basis of analyzing the value of factors causing cost generation within a given service or group of services;
- (iii) in the case when it is not possible to assign costs in a direct way, costs connected with several services are assigned to each service or group of services on the basis of their relationship with a given group of costs directly connected with this service or group of services;
- (iv) in the case when it is not possible to assign costs in a direct or indirect way, other costs are assigned to each of the services on the basis of a general indicator calculated as a ratio of the costs directly and indirectly assigned to a given service or group of services to the total cost assigned to all the services and groups of services.

(135) Although in 2006 only [...] of costs were considered direct costs the Commission found no reason to put into question the correct division of costs into direct and indirect costs. Moreover, the checks carried out by the National Regulatory Authority and the auditors have concluded that 'the direct cost control has been implemented and functions effectively'.

(136) As for indirect costs (see section 'IV.2.1. System of allocation of costs' above) the Commission is of the opinion that the keys used to distribute the different major categories of indirect costs (i.e. operating costs, transport costs, network maintenance costs and other indirect costs) to services, though limited in number, are nevertheless reasonable.

(137) For example, it seems reasonable that the key used to distribute 'operating costs' is 'working time in minutes devoted to the performance of particular services' ⁽⁵⁹⁾ given the difficulty to precisely ascribe to service accounts costs for the performance of clearance, sorting and delivery activities connected with the provision of different services. The Commission is aware of the recent introduction in PP's accounting system of

⁽⁵⁷⁾ E.g. PP records other operating costs related with the business such as losses on disposal of non-financial fixed assets, costs of discontinued production, provision of services free of charge, penalties, fines and damages paid, provisions created on potential losses and reasonable risks on business operations and costs of social welfare activities. In 2006 PP recorded around PLN 147 million as other operating costs.

⁽⁵⁸⁾ See different submissions of aggregated results, title 'Results on services and activities of the Polish Post'.

⁽⁵⁹⁾ i.e. in distribution centres, in the Postal Network Centre and in the Postal Service Centre.

a more refined division of operating costs together with an increase in the number of allocation keys which should improve the accuracy of the internal accounting information.

Commission does not put into question the correct allocation of 'revenues from sales' to services.

- (138) Similarly the key 'weight of the postal item delivered' seems plausible for distributing 'transport costs'. Therefore, for the purpose of distributing transport costs to services the Commission accepts the assumption behind the established key that each kilo of any service takes up the cost element 'transport' in the same way.
- (139) In order for PP to be able to carry out the distribution of 'other indirect costs' to services it has to collect data on (i) weight of postal items delivered, (ii) volume/number of postal items delivered and (iii) working time required to perform the different operations. These statistics are collected by means of 'statistical research results' ⁽⁶⁰⁾, 'volumes of services values' ⁽⁶¹⁾ and 'research into workload' ⁽⁶²⁾ respectively. As for the research into workload this is carried out once a year during 1 month and covers all post offices, distribution centres and delivery regions. The process of provision of individual services is divided into very detailed operations performed by PP's employees for which a standard of working time is estimated based on such research. The Commission has no reason to doubt about the correctness of the periodicity of the data collected.
- (140) Last, the attribution to services of 'network maintenance costs' in function of the sum of (i) direct costs plus (ii) indirect operating costs plus (iii) indirect transport costs already attributed to services, though acceptable, seems to be more far away from the causal link than the above mentioned cost allocations.
- (141) Due to the nature of most of the revenues earned by PP they can be directly allocated to services. Hence, the
- (142) The Polish authorities had to provide the Commission, at its request ⁽⁶³⁾, with the distribution of all results according to categories of services (universal services broken down into reserved and non-reserved and non-universal services broken down into postal, financial and other services) as well as an explanation of the methodology used to allocate them to services. The fact that the required information was delivered demonstrates that this internal accounting information can be provided at the level of detail required. The Commission did not find any manifest error in the methodology applied to allocate 'other operating results' ⁽⁶⁴⁾, 'extraordinary results' ⁽⁶⁵⁾ and 'financial results' ⁽⁶⁶⁾ to group of services.
- (143) The Commission also notices that a significant part of PP's costs are allocated to services by means of a proportion method costs (around [...] of all costs were allocated to services in proportion of previously allocated costs notably those costs belonging to the category of 'other costs' i.e. 'general, administrative and development costs', 'selling costs' and 'certain financial costs' ⁽⁶⁷⁾). Consequently, efforts should be made to reduce as far as possible the relevance of the proportion method in PP's costing method so that a stronger relation between costs and services is achieved. In summary, the allocation methodology is acceptable but can be improved if the allocation keys used provide as much as possible for a link between the cost of the resources used and the service generated from those resources.
- (144) In this regard, PP has informed the Commission about the regular introduction of detailed provisions and
- ⁽⁶⁰⁾ On the basis of the statistical research the following is calculated in order to estimate weight/type of postal item: (1) average mass of letters and advertising mail in domestic and foreign turnover (outgoing movement) with a division into reserved and unreserved areas, (2) average mass of postal parcels in domestic and foreign turnover (outgoing movement) with a division into universal and contractual services, (3) average mass of letters and parcels in foreign turnover (ingoing movement), (4) indicators for the division of letters and advertising mail into reserved and unreserved area and (5) assortment structure of official postal matter (division into economy and priority postal matter) by content.
- ⁽⁶¹⁾ In order to estimate number of delivered items/type of service or group of services.
- ⁽⁶²⁾ In order to estimate working time/type of operation.
- ⁽⁶³⁾ The original submissions of results did not allocate certain results (i.e. 'other operating results', 'financial results' and 'extraordinary results') to services. Following the request of the Commission the Polish authorities provided aggregated data showing a distribution of all results into main categories of services.
- ⁽⁶⁴⁾ 'Other operating costs' are allocated proportionally to already allocated cost of services. 'Other operating revenue from subsidies to the services subject to statutory exemption from charges' was fully assigned to the group of universal services. The rest of 'Other operating revenue' is allocated proportionally to the allocation of other operating costs.
- ⁽⁶⁵⁾ In 2008 'extraordinary costs' (connected with losses incurred by postal offices in relation to natural disasters) and 'extraordinary revenues' (connected with the indemnities received after natural disasters) have been allocated to group of services in the same way as the costs of the postal network.
- ⁽⁶⁶⁾ Financial revenues (excluding the revenues that could be assigned directly to a group of service) were assigned to service groups in proportions used for the allocation of financial costs.
- ⁽⁶⁷⁾ Those financial costs related with interest, exchange rate differences and lease of means of transport and other fix assets.

procedures⁽⁶⁸⁾ as well as more refined allocation keys to better reflect the cause-and-effect links between the types of costs incurred and their allocation to services so as to improve the robustness in terms of accuracy of the internal accounting system. For the same purpose PP is also striving to completely introduce the Activity Based Costing in its management accounting which would definitely improve the traceability of costs of performing an activity to services.

(145) Similarly specific rules of dividing costs into direct and indirect as well as rules for the calculation of division keys are updated on a regular basis e.g. in 2007 a Procedure for Direct Cost Control⁽⁶⁹⁾ has been launched with the aim to introduce more unambiguous rules for the control of simple direct cost and common direct cost recorded on service accounts⁽⁷⁰⁾. In addition, the fact that the allocation keys for indirect costs are determined at the central level⁽⁷¹⁾ should contribute to ensure a more homogeneous application of those keys throughout the company. Furthermore, since 1 January 2007 Organisational Units of the Polish Post which calculate division keys have been obliged to submit keys to the Accounting Centre. In this respect the Commission acknowledges the improvements made in the control environment of PP, more particularly as regards the control procedures concerning the records of direct and indirect costs.

(146) Moreover, the National Regulatory Authority has been issuing recommendations to also eliminate some

⁽⁶⁸⁾ E.g. PP introduced the Company Cost Instruction in 2006 which unifies and describes the method of structuring the keys for the accounting of indirect costs and describes the method of attributing costs to services. The Company Cost Instruction is subject to regular updates. Moreover, in accordance with the direct cost control procedure introduced in 2007 at PP, the following steps are systematically carried out: (i) assessment whether a certain type of direct cost can occur within a particular service, (ii) checking the correct allocation of direct costs between the services and (iii) monitoring the uniform approach to the recording of direct costs of services in each of the Regional Branches of the Accountancy Centre. These guidelines also contain the procedure to be followed if any irregularities are found.

⁽⁶⁹⁾ Upon receipt of the balance sheet valuation of assets from the Main Ledger related to direct cost of services by Regional Branches, the Cost Calculation Department at the Accounting Centre Headquarters evaluates a possibility of the existence of a given type of direct cost on a given service, checks the correctness of the division of direct costs between services and verifies whether the approach to the recording of direct cost is coherent in particular Regional Branches. In the case of doubts related to the allocation of costs by type on a service the Cost Calculation Department employee asks the Regional Branch for explanations. The regional unit is obliged to once again check description of the source document on the basis of which the cost has been entered into the books and correctness of cost classification has been assessed. If it results from the verification that the cost has been recognised correctly the Cost Calculation Department at the Accounting Centre Headquarters is informed. If the direct cost has been incorrectly assigned to the services the entry is corrected and relevant information is submitted to the Cost Calculation Department.

⁽⁷⁰⁾ See 2007 report from the National Regulatory Authority.

⁽⁷¹⁾ By the Cost Calculation Department at the Accounting Centre.

other weaknesses⁽⁷²⁾ found during the annual verification exercise. According to the Polish authorities a number of recommendations expressed during the 2005 and 2006 exercise have already been implemented⁽⁷³⁾ or are on the way to be soon implemented. The Commission considers important that all open recommendations are put into effect as soon as possible in order to achieve a more robust internal accounting information system.

(147) Consequently, on the basis of the information provided by Poland about the applied cost allocation method, the Commission is of the opinion that the Polish Post uses allocation keys with a reasonable causal link between the cost ascribed to a service and the source of that cost. Additionally, the Commission acknowledges the efforts made by PP (i) to strengthen the control environment related with management information and (ii) to improve the allocation cost methodology, which are the basis for the future calculation of the compensation.

(148) However, as already mentioned above in section V.2.3.3, in order to properly calculate the net result for discharging the Universal Postal Obligation as well as the result outside the UPS, it should be ensured that no cost and revenue remains unallocated and that all results⁽⁷⁴⁾ (revenues and costs) are adequately allocated to each of the reserved and to the non-reserved services within the Universal Postal Service and to the non-Universal Postal Service.

V.2.3.5. Annual independent verification

(149) According to Article 52(3) Postal Law the operator providing universal postal services shall submit to the President of UKE a declaration on compliance with the requirements, which are referred to in section 1, annually, till 31 March of each year in respect to the preceding year. Moreover the President of UKE shall be obliged to verify the compliance with the requirements, which are referred to in sections 1 and 2 of Article 52(4).

⁽⁷²⁾ E.g. Weaknesses in the internal control environment such as lack of procedures to apply consistently allocation keys or to control the quality of input data, Excessive simplification of cost allocation methods.

⁽⁷³⁾ E.g. PP introduced the Company Cost Instruction in 2006 which unifies and describes the method of structuring the keys for the accounting of indirect costs and describes the method of attributing costs to services. The Company Cost Instruction is subject to regular updates. Moreover, in accordance with the direct cost control procedure introduced in 2007 at PP, the following steps are systematically carried out: (i) assessment whether a certain type of direct cost can occur within a particular service, (ii) checking the correct allocation of direct costs between the services and (iii) monitoring the uniform approach to the recording of direct costs of services in each of the Regional Branches of the Accountancy Centre. These guidelines also contain the procedure to be followed if any irregularities are found.

⁽⁷⁴⁾ 'Other operating results', 'financial results' and 'extraordinary results' should also be allocated to services.

(150) The 'Public operator shall be obliged to submit to the President of UKE, not later than 31 July of each year, in respect to preceding year, the financial report examined by the auditor, in the scope consistent with the Act of Law of 29 September 1994 r. on accounting (Journal of Law of year 2002 No 76, pos. 694 and of year 2003 No 60, pos. 535) and consistent with sections 1 and 2'.

(151) As stated above the Commission has received the detailed reports drafted yearly by the National Regulatory Authority in conjunction with an independent auditor on the fulfilment of the requirements to separate accounts and to allocate costs. It was concluded in those reports that PP's internal accounting was based on generally accepted accounting principles and, thus, was suitable for quantifying the extra-costs of the universal postal service entrusted to it, so complying with Article 14(3) of the postal Directive.

(152) In view of the fact that the analytical accounting is carried out within the general accounting it is as important to have the latter reviewed as well. Every year PP's financial statements are subject to an independent audit (see section V.2.3.1 above). Moreover, the auditor will also supervise the conformity of the accounting records with the detailed requirements of the Postal Law (i.e. Article 52).

(153) However, the fact that the annual reports issued by UKE in conjunction with an independent audit company always stated that the scope of the independent annual verification is limited to evaluating to what extent the public operator fulfilled the requirements resulting from Article 52 of the Postal Law and the 'Ordinance' and this is restricted to only examining certain types of costs ⁽⁷⁵⁾ demonstrate that the arrangements made so far for avoiding overcompensation are not sufficient if the remedies referred to in section V.2.3.3 above are not introduced. The Commission considers the scope of such verification as too limited to properly guarantee the fulfilment of the objective of the verification i.e. ensuring that no overcompensation takes place (see point 20 of the Framework and Article 52.a of the Postal Law ⁽⁷⁶⁾).

(154) Therefore, as already stated above in section V.2.2, the Commission considers necessary to include in the scope

⁽⁷⁵⁾ i.e. 'Costs of products, goods and materials sold', 'Selling costs', 'General and administrative costs' and 'Interest from liabilities financing postal services including foreign exchange rate differences' (See point 2.2 of the 'Ordinance').

⁽⁷⁶⁾ [...] having regard to the principle, that the total amount of compensation cannot exceed the difference between costs of universal postal services provisions and revenue, which is obtained from these services.

of the annual verification 'Other operating revenues', 'Other operating costs', 'Financial revenues', 'Financial costs' and 'Extraordinary results' as well as 'revenues from sales'.

(155) In conclusion, the Commission is of the opinion that the scope of the account's verification should be enlarged so as to ensure that all categories of costs and revenues relevant for the calculation of the compensation amount are taken into account.

V.2.3.6. No overcompensation expected for 2009-2011

(156) According to the forecast of the company (see figures below) PP is expected also not to incur in net losses for the discharge of the public service obligation in the coming years of the scheme (see more detailed information in Annex 3). Consequently, no compensation is foreseen by the scheme in question for the period 2009-2011.

Table 2

(000 PLZ)

	2006	2007	2008	2009	2010	2011
Revenues of the public service obligation	[...]	[...]	[...]	[...]	[...]	[...]
Costs of the public service obligation	[...]	[...]	[...]	[...]	[...]	[...]
Net surplus (*)	[...]	[...]	[...]	[...]	[...]	[...]
% Margin (Net surplus/ Revenues PSO)	[...]	[...]	[...]	[...]	[...]	[...]

(*) After full allocation of results (including financial results and other operating) with the exception of extraordinary results.

(157) As shown above PP's net surplus achieved by the UPS is constantly reducing year after year. Despite of this actual trend PP has forecasted a constant improvement of this financial result for the coming years of the scheme. The reasons explaining the change in the trend are based on the introduction of a cost optimization program launched at the end of 2008 which should lead to cost savings and consequently to a gradual improvement of PP's financial results. This program focused not only in the SGEL-area but also in PP's commercial area outside the SGEL e.g. some services provided under the loss-making auxiliary activity will not be offered in the future. In addition some measures have been designed to increase revenues both inside and outside the SGEL e.g. sale of unnecessary real state property, modernization of some financial services to enhance PP's competitiveness, etc.

- (158) The main assumptions made to calculate forecast figures lie in parameters such as expected degree of change in organisational structure, level of prices for the different postal services, variations in labour costs and other costs, number of employees or macroeconomic indicators (growth in GDP, unemployment rate, inflation rate, exchange rate EUR/PLN and USD/PLN).
- (159) Furthermore, as already stated above, although PP would be allowed under the Framework to 'enjoy a reasonable profit' the Polish authorities have communicated to the Commission that, according to the applicable national legislation, PP will only be compensated for losses incurred in connection with the provision of universal postal services. Consequently, the amount of compensation will not cover a reasonable profit, which represents an additional assurance for the future that no overcompensation will take place.
- (160) The Commission has no ground to put into question the assumptions made to calculate costs and revenues for the rest of the years of the scheme. Moreover, the improvements that are regularly being introduced in PP's control environment and internal accounting system provides additional assurance of the correct allocation of results to the SGEI and outside the SGEI.
- (161) As PP is planning to soon introduce a new costing model grounded in the Activity-based-costing (ABC), the Commission requests to be informed within 3 months from introduction of it or of any other significant change in PP's internal accounting system.

VI. TIME-FRAME OF THE AUTHORISATION

- (162) Poland initially requested the Commission to extend the investigation until 2012. However, in view of the fact that the current rules to assess compatibility of public service compensation i.e. the 'Community Framework for State aid in the form of public service compensation' will expire in 2011, the Polish authorities accept an approval of the scheme until the year 2011.
- (163) On the basis of the above, the Commission concludes that, if a compensation for the discharge of the public service obligation would be paid in accordance with the scheme under examination in the period 2006-2011, that compensation would constitute State aid under Article 107(1) TFEU which would be compatible under Article 106(2) of the TFEU provided that the below mentioned conditions are fulfilled.

VII. CONCLUSION

- (164) It derives from the above that the scheme meets the requirements set forth in the Framework for the

Commission to consider the scheme compatible provided that the following conditions are fulfilled: (1) Poland should improve the definition of the parameters for calculating controlling and reviewing the compensation so as to ensure that all results are ascribed to services following the accepted methodology, (2) Poland should improve the arrangements for avoiding and repaying overcompensation so as to ensure all results relevant for the calculation of the compensation are taken into account and that appropriate arrangements for repaying overcompensation are put in place, and (3) Poland ensure that the new costs allocation method remains compatible with the rules of Article 14 of Directive 97/67/EC and in this connection it should inform the Commission within 3 months from implementation of any significant change in PP's internal accounting system,

HAS ADOPTED THIS DECISION:

Article 1

The measure which Poland has introduced to grant to Poczta Polska compensation for net costs incurred in the discharge of its universal postal service obligation for the period 2006-2011 is considered compatible with the internal market within the meaning of Article 106(2) TFEU subject to the fulfilment of the conditions set out in Article 2.

Article 2

Poland must introduce the necessary provisions in order to:

1. improve the definition of the parameters for calculating controlling and reviewing the compensation so as to ensure that all results are ascribed to services following the accepted methodology;
2. improve the arrangements for avoiding and repaying overcompensation so as to ensure all results relevant for the calculation of the compensation are taken into account and that appropriate arrangements for repaying overcompensation are put in place;
3. ensure that the new costs allocation method remains compatible with the rules of Article 14 of Directive 97/67/EC and in this connection inform the Commission within 3 months from implementation of any significant change in PP's internal accounting system.

Article 3

Poland shall inform the Commission, within 2 months following notification of this decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to Poland.

Done at Brussels, 15 December 2009.

For the Commission

Neelie KROES

Member of the Commission

ANNEX I

A. Costs for the year 2006

(million PLN)

		Postal services	Financial services	Others	Total
1.	direct costs	[...]	[...]	[...]	[...]
2.	indirect costs:	[...]	[...]	[...]	[...]
2a	— operating costs	[...]	[...]	[...]	[...]
2b	— transport costs	[...]	[...]	[...]	[...]
2c	— network maintenance costs	[...]	[...]	[...]	[...]
2d	— other indirect costs	[...]	[...]	[...]	[...]
3 = 1 + 2	COST OF PROVIDING SERVICES	[...]	[...]	[...]	[...]
4.	general and administrative costs:	[...]	[...]	[...]	[...]
5.	selling and commercial costs	[...]	[...]	[...]	[...]
6.	financial costs	[...]	[...]	[...]	[...]
7.	Other operating costs	[...]	[...]	[...]	[...]
8 = 3 to 7	TOTAL COSTS	[...]	[...]	[...]	[...]

(%)

		Postal services	Financial services	Others	Total
1.	direct costs	[...]	[...]	[...]	[...]
2.	indirect costs:	[...]	[...]	[...]	[...]
2a	— operating costs	[...]	[...]	[...]	[...]
2b	— transport costs	[...]	[...]	[...]	[...]
2d	— network maintenance costs	[...]	[...]	[...]	[...]
2c	— other indirect costs	[...]	[...]	[...]	[...]
3 = 1 + 2	COST OF PROVIDING SERVICES	[...]	[...]	[...]	[...]
4.	general and administrative costs:	[...]	[...]	[...]	[...]
5.	selling and commercial costs	[...]	[...]	[...]	[...]
6.	financial costs	[...]	[...]	[...]	[...]
7.	Other operating costs	[...]	[...]	[...]	[...]
8 = 3 to 7	TOTAL COSTS	100,0	100,0	100,0	100,0

B. Revenues for the year 2006*(million PLN)*

		Postal services	Financial services	Others	Total
1.	Revenue from sales	[...]	[...]	[...]	[...]
2.	Financial revenues	[...]	[...]	[...]	[...]
3.	Other operating revenues	[...]	[...]	[...]	[...]
4 = 1 to 3	TOTAL REVENUES	[...]	[...]	[...]	[...]

(%)

		Postal services	Financial services	Others	Total
1.	Revenue from sales	[...]	[...]	[...]	[...]
2.	Financial revenues	[...]	[...]	[...]	[...]
3.	Other operating revenues	[...]	[...]	[...]	[...]
4 = 1 to 3	TOTAL REVENUES	100,0	100,0	100,0	100,0

ANNEX 2

Results within the postal services area — Year 2006

(thousand PLN)

Specification		Postal services				
		Universal		Total universal	Non-universal services	Total Postal services
		Reserved	Non-reserved			
		1	2	3 = 1 + 2	4	5 = 3 + 4
1	Revenue from sales	[...]	[...]	[...]	[...]	[...]
2	Financial revenues	[...]	[...]	[...]	[...]	[...]
3	Other operating revenues	[...]	[...]	[...]	[...]	[...]
A	Total revenues (A = 1 + 2 + 3)	[...]	[...]	[...]	[...]	[...]
4	Direct costs	[...]	[...]	[...]	[...]	[...]
5	Indirect costs (5 = 5a + 5b + 5c + 5d)	[...]	[...]	[...]	[...]	[...]
5a	Exploitation costs (technological of services)	[...]	[...]	[...]	[...]	[...]
5b	Costs of delivery of postal matter	[...]	[...]	[...]	[...]	[...]
5c	Fixed costs of maintaining postal network	[...]	[...]	[...]	[...]	[...]
5d	Other indirect costs	[...]	[...]	[...]	[...]	[...]
6	General enterprise costs	[...]	[...]	[...]	[...]	[...]
7	Selling costs	[...]	[...]	[...]	[...]	[...]
8	Financial costs	[...]	[...]	[...]	[...]	[...]
9	Other operating costs	[...]	[...]	[...]	[...]	[...]
B	Total Costs B = 4 + 5 + 6 + 7 + 8 + 9	[...]	[...]	[...]	[...]	[...]
C	Result C = A – B	[...]	[...]	[...]	[...]	[...]

ANNEX 3

Results of the universal postal service — 2006-2011*Revenues of Universal Postal Service*

(000 PLZ)

	2006	2007	2008	2009 (*)	2010 (*)	2011 (*)
Revenues of the public service obligation (**)	[...]	[...]	[...]	[...]	[...]	[...]

(*) Forecast figures.

(**) Extraordinary revenues not included.

Costs of Universal Postal Service

(000 PLZ)

	2006	2007	2008	2009 (*)	2010 (*)	2011 (*)
Costs of the public service obligation (**)	[...]	[...]	[...]	[...]	[...]	[...]
Direct costs	[...]	[...]	[...]	[...]	[...]	[...]
Indirect costs	[...]	[...]	[...]	[...]	[...]	[...]
Operating costs (technological services)	[...]	[...]	[...]	[...]	[...]	[...]
Cost of effecting postal deliveries	[...]	[...]	[...]	[...]	[...]	[...]
Fixed costs of maintaining the postal network	[...]	[...]	[...]	[...]	[...]	[...]
Other indirect costs	[...]	[...]	[...]	[...]	[...]	[...]
General costs (Enterprise-wide costs)	[...]	[...]	[...]	[...]	[...]	[...]
Selling costs	[...]	[...]	[...]	[...]	[...]	[...]
Financial costs	[...]	[...]	[...]	[...]	[...]	[...]
Other operating costs	[...]	[...]	[...]	[...]	[...]	[...]

(*) Forecast figures.

(**) Extraordinary costs were not included.