EUROPEAN COMMISSION

Brussels, 22.7.2019
C(2019) 5255 final

In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]		PUBLIC VERSION This document is made available for information purposes only.

Subject: **State aid SA.48492 (2019/NN) – Italy**
State compensations for reduced tariffs offered to publishers and not-for-profit organizations over the period 2017-2019

Excellency,

1. THE PROCEDURE

(1) On 21 May 2019, following pre-notification contacts with the Commission, the Italian authorities notified the compensation they envisage to pay to Poste Italiane S.P.A. for its obligation to offer reduced tariffs to publishers and not-for-profit organizations for the period 2017-2019. Since the aid was already granted, the case was registered as an NN (not notified) case.

(2) By letter dated 17 May 2019, Italy has accepted exceptionally that the decision be adopted and notified in English, for reasons of urgency.

2. DESCRIPTION

2.1. The beneficiary

(3) Poste Italiane S.P.A. (hereinafter "PI") is the main postal operator in Italy and had 134,190 *full time equivalent* employees, 12,822 post offices and a turnover of € 9,290 million in 2017[1]. Besides providing core postal services, PI offers integrated products, as well as communication, logistic and financial services all over Italy.

[1] PI's Annual Report 2017.

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(4) The main services delivered by PI as well as the corresponding turnover for 2015, 2016, and 2017 are presented in Table 1 below:

Table 1: PI's activities and revenues

		PI Revenues (million €)		
Activities	**Description**	**2015**	**2016**	**2017**
Postal Services	• Unregistered mail • Registered mail • Services for Publishers • Parcels and Express Courier	3,044	3,032	2,879
Financial Services	• Current accounts • Saving, financing and investment products	5,087	5,114	5,106
Other revenues	Other revenues	74	73	75
Revenue from sales and services		**8,205**	**8,219**	**8,060**
Other income from financial activies	Other income from financial activities	433	599	646
Other operating income	Other operating income	399	478	584
Total revenues		**9,037**	**9,295**	**9,290**

(5) Most of the postal services delivered by PI are part of the universal postal service (USO) which has been entrusted to PI since 1999[2].

(6) PI was partly privatised in 2015. On 27 October 2015, 38.2% of PI's shares started trading on the Milan stock exchange with the State retaining the rest of the shares (i.e. 61.8%). Currently, PI is controlled by the Italian Ministry of Economy and Finance ("MEF"), which holds 64.26% of the share capital, including a direct 29.26% interest and an indirect 35% interest through Cassa Depositi e Prestiti S.P.A, which in turn is controlled by the MEF. The remaining 35.74% of the share capital is represented by the free float.

2.2. The obligation of PI to offer reduced tariffs to publishers and not-for-profit organisations

(7) Article 2(20) of Law n. 662 of 23 December 1996[3] ("Law n. 662 of 1996") entrusted PI (at the time "Ente Poste Italiane") with the mission of offering a reduced tariff system for newspaper and book publishers as well as for not-for-profit organisations.

(8) Law n. 46 of 27 February 2004[4] further specified the beneficiaries of the reduced tariffs and the press products that were excluded from such reductions. This law also stipulated that the State would pay to PI the difference between the normal universal service tariff (the reference fee) and the reduced tariff, within the limits of the funds allocated in the State budget for that purpose.

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[2] The Commission has approved State compensations granted to PI for the delivery of the USO, see, *inter alia*, C(2015) 8545 final, State Aid SA.43243 (2015/N) – *Italy State compensations granted to Poste Italiane SpA for the delivery of the universal postal service over the periods 2012-2015 and 2016-2019*.

[3] Law of 23 December 1996, n. 662, "Misure di razionalizzazione della finanza pubblica", published in Official Gazzette n. 303 of 28 December 1996.

[4] Law of 27 February 2004, n. 46, "Conversione in legge, con modificazioni, del decreto-legge 24 dicembre 2003, n. 353, recante disposizioni urgenti in materia di tariffe postali agevolate per i prodotti editoriali", published in Official Gazzette n. 48 of 27 February 2004.

(9) By Ministerial Law Decree of 30 March 2010 on reduced postal tariffs for the publishing industry[5], the obligation of PI to offer reduced tariffs to publishers and not-for profit organisations as well as the compensation of PI were discontinued, starting from 1 April 2010. According to the Italian authorities, as a result of this Law Decree the burden of the new applicable tariffs was charged to PI, who applied the full tariffs of the universal postal service to publishers and not-for-profit organisations in the period from 1 April 2010 until 31 August 2010.

(10) The Interministerial Law Decree on tariffs for the shipping of publishing materials of 21 October 2010[6] introduced, starting from 1 September 2010, new tariff conditions for the publications of publishers registered in the ROC[7], book publishers and publications sent by not-for-profit organizations and war veterans' organization, diversified according to the level of product pre-working, packaging and homologation. However, this Interministerial Law Decree did not foresee any compensation for PI for providing those tariffs.

(11) The final term for the application of such tariffs was originally set for 31 December 2012, but was then prolonged up to 31 December 2013 by Law Decree n. 216 of 29 December 2011[8], and up to 31 December 2016 by Law n. 127 of 27 December 2013[9]. The reduced tariffs established by the Interministerial Law Decree of 21 October 2010 were therefore extended until the reinstatement of the new reduced rates, which ultimately occurred pursuant to Law Decree n. 244 of 30 December 2016 (so called Law Decree "Milleproroghe" or "Law Decree n. 244 of 2016"), converted by Law n. 19 of 27 February 2017 ("Law n. 19 of 2017"), and are therefore still in force.

(12) Law n. 19 of 2017 therefore reinstated, effective as of 1 January 2017, the system of reduced tariffs for publishers and not-for-profit companies set out by Decree of 21 October 2010, and reintroduced the tariff integration system in force before 1 April 2010 for PI, which is the subject of the present notification (see Section 2.3)[10].

(13) As of 1 January 2017 the reduced tariffs, pursuant to Law n. 19 of 2017, combined with Law n. 46 of 2004, apply to the postal shipping of:

a) Publishing products made by publishers of daily and periodical newspapers registered in the Registry of the Operators of Communication (ROC);

b) Publishing products made by book publishers;

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5 Ministerial Law Decree of 30 March 2010 on reduced postal tariffs for the publishing industry, Official Gazzette N. 75 of 31 March 2010.

6 Interministerial Law Decree of 21 October 2010 on tariffs for the shipping of publishing materials, except books shipped in parcels, made by entities listed in Article 1(1) of Law Decree of 24 December 2003, n. 353, converted with amendments by Law n. 46 of 27 February 2004, Official Gazzette n. 274 of 23 November 2010.

7 The ROC Register (“Registro degli Operatori di Comunicazione”) is the Italian Register for Communications’ Operators.

8 Official Gazzette n. 302 of 29 December 2011.

9 Official Gazzette n. 302 of 27 December 2013.

10 In particular, the compensation for PI is foreseen by Article 2(5) of Law Decree n. 244 of 30 December 2016, converted by Law n.19 of 2017.

c) Publishing products made by not-for profit associations and organizations identified at Article 1(3) of Law Decree n. 353 of 24 December 2003, registered in the ROC, and war veterans' organizations[11]; and

d) Promotional and propaganda publishing materials, even with the aim of fundraising, sent upon postal subscription, made by not-for-profit associations and organizations identified at Article 1(3) of Law Decree n. 353 of 24 December 2003 as well as by war veterans' organizations.

(14) The postal items targeted by the measure at issue normally fall in the universal service remit[12]: books; newspapers, magazines published by subjects registered in the ROC; informative publications from institutions, associations and other not-for-profit organisations.

2.3. The compensation to PI for offering reduced tariffs to publishers and not-for-profit organisations

(15) The legal basis for the new compensation that the Italian authorities intend to grant to PI for its obligation to offer the reduced tariffs to publishers and not-for profit organizations for the postal items defined in recital (13) is provided for by Article 2(5) of Law Decree 244 of 2016, converted by Law n. 19 of 2017.

(16) In particular, this provision reintroduces the ex-post reimbursement system by the Italian State to PI, as applicable until before 1 April 2010, for the reduced tariffs granted to publishers and not-for-profit organisations in relation to the postal items at stake.

(17) The Italian authorities note that such reimbursement system granted to PI is provided by the Department for Information and Publishing of the Presidency of the Council of Ministers within the limits of the financial resources purposely allocated that are available under the applicable legislation in force. The reimbursement, in particular, is related to the amount corresponding to the total reductions as actually applied based on a certified declaration by PI, including a detailed list of the tariff reductions applied to each beneficiary.

(18) According to the Italian authorities, there was a need to reintroduce the reduced tariffs and the related compensation to PI since the temporary application of the full tariffs led to difficulties to the undertakings operating in the sector and a subsequent reduction in shipping volumes, as explained in the explanatory report to Law n. 19 of February 2017[13].

(19) Law n. 19 of 2017, in combination with the applicable Italian Financial Laws, grants PI a public service compensation for offering reduced tariffs to publishers

[11] These subjects have been identified pursuant to Article 21(3) of Law Decree n. 216 of 29 December 2011, converted with amendments by Law n. 14 of 24 February 2012.

[12] This is acknowledged in Commission decision of 20.11.2012, State aid SA.33989 (2012/NN) – *Italy, State compensations for the delivery of the universal service over 2009-2011, State compensations for reduced tariffs offered to publishers, not for-profit organisations and electoral candidates over 2009-2011*, C(2012) 8230 final, OJ 2013/C 77/03.

[13] Report to Draft Law n. 2630 – conversion of Law Decree n. 244 of 30 December 2016, concerning the prorogation and definition of terms, available at the following link: http://www.senato.it/leg/17/BGT/Schede/Ddliter/dossier/47542_dossier.htm

and not-for-profit organisations for the period 2017-2019, amounting in total to a maximum of €171.74 million[14], divided as follows in the relevant years:

1. €57.53 million for 2017;
2. €59.32 million for 2018;
3. €54.89 million for 2019.

(20) According to the Italian authorities, the compensation for the reduced tariffs offered to publishers and not-for-profit organizations has not been paid yet, as the amounts are being kept in an escrow account pending the Commission's authorization. However, the Italian authorities confirmed that no standstill clause is laid down in the law.

3. ASSESSMENT

3.1. Presence of aid within the meaning of Article 107(1) TFEU

(21) According to Article 107(1) TFEU[15] "*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*".

3.1.1. Economic activity and notion of undertaking

(22) According to settled case law, the Commission must first establish whether the beneficiary is an undertaking within the meaning of Article 107(1) of the TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Any activity consisting in offering goods and services on a given market is an economic activity[16].

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14 The original allocation amounted to €180,000 million, as indicated in the Managerial Budget Plan for 2017-2019 of the 2017 Italian Financial Law, p. 78/122, Chapter 10.1 (1496), available at the following link: http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Attivit--i/Bilancio_di_previsione/Bilancio_finanziario/2017/Decreto-di/02_economia_e_finanze.pdf, was then reduced for the year 2017 by means of Law Decree n. 50 of 24 April 2017, Article 13, available at the following link: http://www.gazzettaufficiale.it/do/atto/serie_generale/caricaPdf?cdimg=17A0432000200010110001&dgu=2017-06-23&art.dataPubblicazioneGazzetta=2017-06-23&art.codiceRedazionale=17A04320&art.num=1&art.tiposerie=SG .
This was then reduced by the Managerial Budget Plan 2018-2020 of the 2018 Italian Financial Law, only as concerns the years 2018 and 2019, p. 109, Chapter 10.1 (1496), available at the following link: http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Attivit--i/Bilancio_di_previsione/Bilancio_finanziario/2018/Decreto-di/02_-_mef.pdf.
Finally, the 2019 Italian Financial Law, in the budget plan for 2019-2021 reduced, for the year 2019, the amounts for 2019 only to € 54,889 million, p. 101/154, Chapter 10.1 (1496), available at the following link: http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/attivita_istituzionali/formazione_e_gestione_del_bilancio/bilancio_di_previsione/bilancio_finanziario/2019-2021/LB/RIC/BB_2019_LB-04-DRC-020-MEF.pdf

15 The Treaty on the Functioning of the European Union; consolidated version: OJ C 326 of 26.10.2012, p.1.

16 Case 118/85 Commission v Italy [1987] ECR 2599; Case 35/96 Commission v Italy [1998] ECR I-3851.

(23) In this case, the Italian authorities acknowledge in their notification that the delivery of the postal items in questions at reduced tariffs is of an economic nature. PI offers postal services against remuneration on the Italian postal market and in competition with other providers. Therefore, offering postal services on this market constitutes an economic activity. The Italian State compensates PI for the provision of some of these postal services (press distribution) and therefore compensates an economic activity. For these reasons, with regard to the activities financed by the present measure, PI qualifies as an undertaking in the meaning of Article 107(1) TFEU.

3.1.2. State resources and imputability to the State

(24) In order to be qualified as State aid, a financial measure must be imputable to the State and granted directly or indirectly by means of State resources.

(25) Article 2(5) of Law Decree 244 of 2016 converted by Law n. 19 of 2017 clarifies that the Department for Information and Publishing within the Presidency of the Council of Ministries provides for the reimbursement to PI, pursuant to Article 3(1) of Law Decree n. 353 of 2003 converted by Law n. 46 of 2004 in the limits of the available resources, purposely allocated, in line with the applicable legislation in force.

(26) The compensation to PI at stake is financed by the State with funds stemming from Law n. 19 of 2017, converting Law Decree n. 244 of 30 December 2016, notably Articles 2(4) and (5) of the Law Decree, in combination with the Italian Financial Law for 2017 and the multiannual budget for the period 2017-2019[17].

(27) Therefore, the measure granted to PI has been financed through State resources and is imputable to the State.

3.1.3. Selectivity

(28) In order to be qualified as State aid, a financial measure must be selective.

(29) The Commission notes that the compensation for the reduced tariffs offered to publishers and not-for-profit organizations is granted exclusively to PI. Given that the present case concerns an individual aid measure, the economic advantage (see recitals (30) to (37)) is sufficient to support the presumption that the measure is selective[18]. In any case, it does not appear that other undertakings in the same or other sectors in a comparable factual and legal situation benefit from the same advantage. Hence, the measure is selective within the meaning of Article 107(1) TFEU.

3.1.4. Economic advantage to undertakings

(30) An advantage for the purposes of Article 107(1) TFEU is any economic benefit which an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention[19]. Only the effect of the measure on the

[17] Italian Law n. 232 of 11 December 2016, Official Gazzette n. 297 of 21 December 2016.

[18] See cases C-15/14 P, *Commission v MOL*, EU:C:2015:362, paragraph 60; C-270/15 P *Belgium v Commission*, EU:C:2016:489, paragraph 49; T-314/15 *Greece v Commission*, EU:T:2017:903, paragraph 79.

[19] Case C-39/94 *Syndicat français de l' Express international (SFEI) and others v La Poste and others* EU:C:1996:285, paragraph 60; and Case C-342/96 Kingdom of Spain v Commission of the European Communities EU:C:1999:210, paragraph 41.

undertaking is relevant, and not the cause or the objective of the State intervention[20].Whenever the financial situation of the undertaking is improved as a result of State intervention on terms differing from normal market conditions, an advantage is present.

(31) However, SGEI compensations granted to an undertaking do not constitute an economic advantage if the following cumulative conditions, strictly defined in the Altmark judgment[21] of the Court of Justice, are met:

1. First, the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined.

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

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

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

(32) This jurisprudence has been codified and further explained in the Commission's Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest[22] (hereinafter "the SGEI Communication").

(33) In the case at stake, the Commission begins its analysis on the nature of the compensation with the assessment under the requirements of the fourth Altmark criterion as further defined in section 3.6. of the SGEI Communication on "*Selection of provider*": "*In accordance with the fourth Altmark criterion, the compensation offered must either be the result of a public procurement procedure which allows for selection of the tenderer capable of providing those services at the least cost to the community, or the result of a benchmarking exercise with a typical undertaking, well run and adequately provided with the necessary means*."[23]

a) First sub-criterion: Appropriate public procurement procedure[24]

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

[21] Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* EU:C:2003:415, paragraph 95.

[22] OJ C 8 of 11.1.2012, p. 4.

[23] Para. 62 of the SGEI Communication.

[24] Paras. 63-68 of the SGEI Communication.

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

b) Second sub-criterion: Comparison with typical, well-run undertaking[25]

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

(36) The Italian authorities did not provide any information to the Commission as to whether the compensation was determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with means to meet the public service obligations, would have incurred, taking into account the relevant receipts and a reasonable profit from discharging the obligations.

(37) The Commission therefore concludes that the fourth Altmark criterion is not complied with in this case. As the conditions set out in the Altmark judgment are cumulative, failure to comply with any one of the four conditions leads to the conclusion that the financing measures under review grant an economic advantage within the meaning of Article 107(1) TFEU.

3.1.5. Affectation of trade and distortion of competition

(38) In order to be qualified as State aid, a measure must distort or threaten to distort competition and affect trade between Member States.

(39) A measure granted by a State is considered to distort or to threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes[26]. A distortion of competition is thus assumed as soon as a State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition. As regards the measure's effect on trade, it is not necessary to establish that the aid has an actual effect on trade between Member States but only whether the aid is liable to affect such trade[27]. In particular, the Union Courts have ruled that "*where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid*."[28]

(40) PI operates in the postal and financial sectors, where there is competition and intra-Union trade. In fact, it appears from a report published in 2018 by the

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[25] Paras. 69-77 of the SGEI Communication.

[26] Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* EU:C:1980:209, paragraph 11; and Joined cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta Mauro and others v Commission of the European Communities* EU:T:2000:151, paragraph 80.

[27] Case C 518/13 Eventech EU:C:2015:9, paragraph 65. Cases C 197/11 and C 203/11 Libert and others EU:C:2013:288, paragraph 76.

[28] Case C 518/13 Eventech EU:C:2015:9, paragraph 66. Cases C 197/11 and C 203/11 Libert and others EU:C:2013:288, paragraph 77. Case T-288/97 Friulia Venezia Giulia , EU:T:2001:115, paragraph 41.

European Commission[29] that the Italian mail market, although quite concentrated, is still subject to competition between postal operators.

(41) Furthermore, express mail services as well as parcel services dedicated to business customers and logistical services have been developed in Italy by private undertakings, some of which, like TNT, DHL, GLS, FedEX, are based in other Member States.

(42) The SGEI compensations granted to PI strengthen its economic position. PI operates in the postal sector which is competitive and where there is significant cross-border trading. In particular, PI faces competition from undertakings with activities in other Member States.

(43) Therefore, there appears to be trade between Member States in the postal sector and the public service compensation granted to PI strengthens its position vis-à-vis postal undertakings competing in intra-community trade.

(44) Furthermore, it is clear that the reduced tariffs render more difficult for any other postal operator than the one that receives the compensation to distribute the targeted postal items. The measure is therefore likely to prevent market entry in this particular segment of the market.

(45) As a conclusion, the compensations for reduced tariffs offered to publishers and not-for-profit organisations are liable to affect trade and distort competition.

3.1.6. Conclusion on the existence of aid

(46) For the reasons set out above, the Commission concludes that the compensation granted to PI constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the aid measure

(47) Pursuant to Article 108(3) TFEU and to Article 3 of Council Regulation No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union30, new aid measures must not be put into effect before the Commission has taken a decision authorising it. Aid measures are considered to be put into effect when the legally binding act providing for the aid is adopted.

(48) The Italian authorities explain that the measure has been ultimately established by the conversion of Law Decree 244 of 2016 by Law n. 19 of 2017. The Italian authorities note that considering that the notification followed the introduction of the compensation[31] the measure may constitute illegal aid in light of the fact that the amounts of the compensation have already been purposely allocated in the State budget[32].

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29 "*Main developments in the European Postal Sector (2013-2016)*", by Copenhagen Economics, July 2018, available at: https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/8/458/1537532765/main-developments-in-the-postal-sector.pdf

30 OJ L 248 of 24.9.2015, p.9.

31 Also pre-notification contacts began after the adoption of the law granting the compensation.

32 Law n.19 of 27 February 2017, Article 2(5).

(49) The Italian authorities have granted the compensation to PI for reduced tariffs offered to publishers and not-for-profit organizations for the years 2017-2019 by Article 2(5) of Law Decree n. 244 of 2016.The granting act does not contain any clause that makes the granting of the aid conditional on the approval by the Commission. Nevertheless, the Italian authorities committed to keep the amounts related to the compensation in a specific escrow account and not to pay out the aid before a Commission decision is adopted on the matter.

(50) Therefore, the Commission concludes that the compensation measure is to be considered as illegal aid.

3.3. Compatibility of the aid

(51) The Italian authorities submitted that the compensations granted to PI for the reduced tariffs offered to publishers and not-for-profit organizations constitute compensations for carrying out an SGEI, which is to be assessed for compatibility on the basis of Article 106(2) TFEU.

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

(53) In accordance with that provision, the Commission may declare compensation for SGEIs compatible with the internal market, provided that certain conditions are met. The Commission has laid down the conditions according to which it applies Article 106(2) TFEU in the 2012 SGEI Framework[33] and the 2012 SGEI Decision[34] (hereinafter together: "the 2012 SGEI package").

(54) Since the amounts of the SGEI compensations granted to PI for the reduced tariffs offered to publishers and not-for-profit organizations exceed €15 million per year, those compensations do not fall within the scope of the SGEI Decision, as set out in Article 2 thereof.

(55) State aid falling outside the scope of the 2012 SGEI Decision may be declared compatible with Article 106(2) TFEU if it is necessary for the operation of the SGEI concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union[35]. In this regard, the SGEI Framework sets out the guidelines for assessing the compatibility of the SGEI compensation.

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[33] Communication from the Commission: European Framework for State aid in the form of public service compensation, OJ C 8, 11.1.2012, p. 15-22.

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

[35] 2012 SGEI Framework, paragraph 11.

3.3.1. Compatibility assessment under the SGEI Framework

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

(56) The Commission recalls that, in the absence of specific Union rules defining the scope for the existence of an SGEI, Member States have a wide margin of discretion in defining a given service as an SGEI[36]. The Commission's competence in this respect is limited to checking whether the Member State has made a manifest error when defining a service as an SGEI[37].

(57) In that regard, the Union Courts have ruled that there are certain minimum criteria common to every SGEI and that the inability of a Member State to demonstrate that a particular service fulfils those criteria constitutes a manifest error in defining this mission as an SGEI[38]. According to the Union Courts, those criteria are the presence of an act of the public authority entrusting the operators in question with an SGEI and the universal and compulsory nature of that service[39].

(58) The Commission has further explained in its 2012 SGEI Communication that it considers it inappropriate to attach specific public service obligations to an activity which is already provided or can be provided for satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions[40]. The Commission's assessment in this regard is also limited to checking that the Member State has not made a manifest error.

(59) In the present case, the Commission considers that the Italian authorities have sufficiently demonstrated that their designation of the reduced tariffs offered to publishers and not-for-profit organizations as an SGEI is not vitiated by a manifest error.

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

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36 Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest Official Journal C8, 11.01.2012, p. 4-14, paragraph 46.

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

38 Case T-289/03 BUPA and Others v Commission, ibidem., §172

39 Case T-289/03 BUPA and Others v Commission, ibidem., §172

40 Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest Official Journal C8, 11.01.2012, p. 4-14, §48

decisions[41], as well as with regard to PI in relation to a very similar compensation granted for the years 2009-2011.[42]

(61) Second, the Italian authorities demonstrated that the SGEI consisting in the reduced tariffs offered to publishers and not-for-profit organizations meets the minimum requirements identified in the case law of the Union Courts to be qualified as a genuine SGEI. In particular, that SGEI has been entrusted to PI by acts of public authority, namely Article 2(4) of Law Decree n. 244 of 2016 converted into Law n. 19 of 2017, in combination with Law Decree n. 353 of 2003 converted into Law n. 46 of 2004, and Law n. 662 of 1996. Moreover, PI is legally obliged to offer the reduced tariffs to publishers and not-for profit organisations pursuant to Interministerial Decree of 21 October 2010.

(62) In addition, the obligation to offer reduced tariffs to publishers and not for profit organisations is closely related to the universal service obligations of PI. As the Commission has also accepted in previous decisions[43], although newspapers and periodicals are universal service items, the reduced tariffs define a mission which is distinct from the universal postal service because:

a) The public service mission pursues distinct objectives from the universal postal service: e.g. maintenance of the pluralism, which is connected with freedom of expression;

b) As compared to the universal postal service which is universal by definition and therefore offered to any citizen or company, the public service mission targets subjects belonging to the Registry of the Operators of Communication (ROC) or officially recognized as not-for-profit associations or organizations;

c) The compensations are granted and paid by an authority[44] which is different from the authority[45] granting the compensations for the delivery of the universal service.

(63) Third, the reduced tariffs offered to publishers and not-for-profit organizations SGEI does not appear to be a service that could feasibly be provided by undertakings operating under normal market conditions. PI has been entrusted with the Universal Service Obligation, which requires it to deliver postal services and integrated products across the territory of Italy. To carry out this obligation PI has developed a vast capacity and infrastructure, such as post offices, delivery vans, and delivery workers. By accessing this infrastructure and capacity for the distribution of the press, PI can realise both economies of scale and synergies with the universal service network, and it can therefore deliver this service at comparatively low cost.

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[41] Commission decision of 26.05.2014, Aide d'Etat SA.36512 (2014/NN) – *France, Des dispositifs compensatoires des missions d'aménagement du territoire, de transport et de distribution de la presse dévolues à La Poste*, C(2014) 3164 final, OJ 2014/C 280/01; Commission decision of 2.5.2013, State aid SA.31006 (2013/N) – B*elgium, State compensations to bpost for the delivery of public services over 2013-2015*, C(2013) 1909 final, OJ 2013/C 279/1.

[42] Commission decision of 20.11.2012, State aid SA.33989 (2012/NN) – *Italy, State compensations for the delivery of the universal service over 2009-2011*, *State compensations for reduced tariffs offered to publishers, not for-profit organisations and electoral candidates over 2009-2011*, C(2012) 8230 final, OJ 2013/C 77/03.

[43] Ibid.

[44] Dipartimento per l'Informazione e l'Editoria, Presidenza del Consiglio dei Ministri.

[45] Ministero dell'Economia e delle Finanze.

(64) For these reasons, the Commission considers that the compensation mechanism for the reduced tariffs identifies a service of general economic interest and is foreseen to compensate PI for the costs incurred for the fulfilment of its public service obligations.

(65) Finally, the Commission also takes account of the public consultation[46] organised by the Italian State in October 2018. In particular, the Italian authorities, namely the Department for Information and Publishing within the Presidency of the Ministries, organized a questionnaire with the support of Istituto Piepoli, an accredited polling agency in Italy, focusing on a number of key aspects concerning the reduced tariffs for publishers and not-for-profit organizations. The questionnaire addressed relevant points of the discounted postal tariffs, with a view to verifying the public interest perception for the protection of press diffusion, especially for the publishing materials at issue (newspapers, magazines, periodicals and publications of not-for-profit organizations such as communications for humanitarian initiatives, documents for donations etc.).

(66) The exercise considered sample representatives of the adult Italian population (18 years old +), publishers and not-for-profit organizations, and was carried out through phone interviews using mixed methodologies, including CATI (Computer Assisted Telephone Interviewing) and CAMI (Computer Assisted Mobile Interview), from call centres located all over Italy.

(67) The sample Italian population which was interviewed is represented based on geographic area distribution, distribution centre size, age, sex (47% male, 53% female), occupation, educational level, access to internet.

(68) The sample representative of interviews across the Italian population (on the whole, around 2000) include people who made a donation in favour of not-for profit organizations during the last year ("donors", around 300 interviews); people who read at least one newspaper or print magazine during the last three months ("readers", around 1400 interviews); people who received, during the last six months, at their homes, a publisher copy, either upon subscription (newspaper or periodical) or as a free-copy bundled to their membership of a not-for-profit organization/association ("subscribers", around 300 interviews).

(69) The consultation revealed that the reduced tariffs offered to publishers and not-for-profit organizations SGEI is considered as important by users. More in particular, the Italian citizens involved in the survey disclosed a significant support for the reduced tariffs: 52% of readers, 54% of subscribers and 46% of donors support the mission.

(70) In addition, the sample representative disagree with the hypothesis of stopping the tariff reductions: across all the targets investigated, about three out of four interviewees responded negatively to a possible interruption of this form of support. Respondents motivate this disagreement with the potentially recessive effects for the publishing market and for the not-for-profit sector. In particular, around one reader out of two declares that he/she would change his/her reading habits. Also, the change would affect 58% of the targeted subscribers and it

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[46] Paragraph 14 of the 2012 SGEI Framework requires that "*Member States show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account*".

would have particularly serious effects on donations: in this case, donations are deemed to decrease by 37% of current donors.

(71) With regard to interviews concerning editors and not-for-profit organizations, the results of the survey are even more straightforward. These interviewees unequivocally approve the reduced tariffs due to the fact (in particular for publishers) that they help them fight the so-called “digital divide”, ensuring information even to those who are not accustomed to the use of technological tools, and (according to not-for-profit associations) they would facilitate associations in encouraging donations. As a result, the possible suspension of the reduced tariffs is of concern for publishers and not-for-profit organisations. This prospect would in fact result in an increase in the price of press products (according to 90% of publishers) and a decrease in the number of subscribers (according to 88% of publishers), as well as damage to the freedom of the press and the quality of the press product and would ultimately negatively affect the propensity of Italians to read printed magazines.

(72) In conclusion, the public consultation on the reduced postal tariffs revealed that despite the fact that the Italian public opinion is not very informed about public support to the publishing sector as well as not-for-profit organizations, yet it is attached to the idea of receiving editorial products such as magazines, newspapers, and information materials related to social causes at home. For these reasons, a suspension of the reduced tariffs is likely to generate recessive effects on the publishing market because a significant share of subscribers and readers would change their habits, while donors think this may bring a decrease in the propensity to donate.

(73) For these reasons, the Commission considers that the public consultation revealed that Italy gave proper consideration to the public service needs related to the mission and that the interests of users and providers were taken into due account.

(74) Based on the above considerations, the Commission considers that Italy has not made a manifest error in qualifying the service as a SGEI.

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

(75) Pursuant to points 15 and 16 of the SGEI Framework, the responsibility for the operation of an SGEI must be entrusted by way of one or several acts, the form of which may be determined by the Member State. The act or series of acts must specify at least: the content and duration of the public service obligations; the undertaking and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the undertaking by the authority in question; the parameters for calculating, controlling and reviewing the compensation; and the arrangements for avoiding and recovering any overcompensation.

(76) The legal framework refers to the same framework which was assessed by the Commission in the decision of 22 November 2012 (C(2012)8230 final). Articles 2(4), (5) and (6) of Law Decree n. 244 of 2016 (also known as Law Decree

"Milleproroghe 2016"[47], converted into law by Law n. 19 of 27 February 2017), refers, for the substance, to Law n. 46 of 2004, which together with Law n. 662 of 1996 and Law n. 515 of 1993, clearly define and entrust to PI the service of general economic interest represented by the reduced tariffs offered to publishers and not-for-profit organisations.

(77) In light of the above, the Commission considers that the entrustment act satisfies the requirements of the SGEI Framework.

3.3.1.3. Duration of the period of entrustment

(78) Point 17 of the SGEI Framework requires that the duration of the entrustment is "*justified by reference to objective criteria such as the need to amortise non-transferable fixed assets*", whereby the duration should not exceed the depreciation for the most significant assets required to provide the SGEI.

(79) The Italian authorities confirmed that the entrustment of PI for the reduced tariffs is limited to three years, for the period 2017-2019, in order to allow the amortization of the costs of the activities that are necessary to supply the service.

(80) In light of the above, the Commission considers that the three-year period of entrustment is acceptable for the assessed case and that point 17 of the SGEI Framework is therefore complied with.

3.3.1.4. Transparency of financial relations between Member States and public undertakings

(81) Point 18 of the SGEI Framework requires that the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings[48].

(82) As the Italian authorities explained, Article 7(2) of Legislative Decree n. 261 of 1999[49] imposes separate accounts within the internal accounting system of PI. Article 7(3) of the Decree provides that the auditing firm responsible for certifying the accounts of the universal service provider must also check that the accounts comply with the rules on accounting separation.

(83) The Italian authorities further explained that the integrated accounting system of PI consists of:

a) The General Accounting System: costs and revenues are recorded in function of their nature (PI's chart of accounts is made of about […][*] accounts);

b) The Analytical Accounting System: the above costs are attributed to cost centres (around […]);

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47 Law 27 February 2017, n. 19, Conversion into Law, with amendments, of the Law Decree 30 December 2016, n. 244, extension and definition of terms. Extension of term for the exercise of legislative delegations, Official Gazzette n. 49 of 28 February 2017, Suppl. Ord. n. 14.

48 Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L 318 of 17.11.2006, p. 17–25.

49 Legislative Decree n. 261 of 22 July 1999 on the Implementation of Directive 97/67/CE on common rules for the development of the internal market of Community Postal Services and the improvement of quality of service, in Official Gazette, Serie Generale n. 182 of 5 August 1999.

* Confidential information.

c) The Activity Based Costing (ABC) System: this is a more advanced system of cost calculation that bases its analyses on the processes and activities carried out within the company, in order to identify the associated costs incurred to obtain products and/or services.

(84) The Activity-Based Costing system (hereinafter "ABC system") was adopted to comply with the obligation of separate accounts contained in the provisions of Articles 7(2) and 7(3) of Legislative Decree n. 261 of 1999, it complies with the applicable provisions of the 2012 SGEI Framework (in particular its paragraph 44) and is also in line with the sector specific requirements on separate accounting laid down in Article 14 of the Postal Services Directive[50].

(85) Already in its previous decisions in 2006[51], 2008[52], 2012[53] and 2015[54], the Commission concluded that the methodology used by PI to separate accounts between costs and revenues of the services of general economic interest and costs and revenues of commercial activities reflected a correct allocation of its costs among these different types of activities. Therefore, this methodology was found to be suitable to assess the costs and revenues from the various services provided by PI as well as for determining the extra costs of the universal postal service entrusted to it when applying the net accounting cost method.

(86) The cost allocation methodology has not been subject to any relevant modification since the Commission's last assessment of PI's accounting system, in its 2015 decision[55].

(87) The models on which the entire Cost Accounting is based essentially reflect PI’s organization (Mail division, Express Courier, Distribution Network, BancoPosta, etc.). Each model comprises production structures (Direct Production Costs) and central and peripheral structures (Indirect Production Costs). PI assigns direct production costs to products using the ABC method.

(88) In particular, as regards the press distribution mission specifically, PI’s analytical accounting system separates costs over four categories:

(a) Direct costs: these are the costs relating to components specifically used to obtain a given product or service. These are exclusively transport costs that are outsourced to external suppliers. This cost category represented […]% of all costs allocated to the press distribution mission in 2017.

(b) Direct production costs: these are the costs of divisional production structures whose activity contributes to the delivery of products or services. These are costs of production, i.e. (i) acceptance and sorting, performed at logistics centres; (ii) transport directly performed by PI; and (iii) delivery, performed by the delivery centres through postmen. These costs are allocated via specific drivers (e.g. FTE, square meters, “worked hours”,

50 Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, OJEU L15 of 21.1.1998, p.14, as amended.

51 Decision of 30 November 2006, case NN51/2006.

52 Decision of 30 April 2008, case NN24/2008.

53 Decision of 20 November 2012, case SA.33989 (2012/NN).

54 Decision of 4 December 2015, case SA.43243 (2015/N).

55 Ibid. fn [2].

number of vehicles). This cost category represented […]% of all costs allocated to the press distribution mission in 2017.

(c) Indirect production costs: these are the costs of the non-operational divisional structures, such as the general division and territorial area division structures, which have the task of developing production strategies for the post, financial and residual business, and of implementing them in full. These costs represent the contribution of press distribution services to the costs of the coordination structures of the operating divisions (in the case of press distribution services, mainly those of the postal services division). This cost category represented […]% of all costs allocated to the press distribution mission in 2017.

(d) Central costs: these are central support, orientation and control activity costs incurred for the purpose of ensuring operational consistency of the activities carried out by the divisions with central policies and strategies. These costs represent the contribution of press distribution services to the costs of coordination structures and company staff. This cost category represented […]% of all costs allocated to the press distribution mission in 2017.

(89) In view of the information provided by the Italian authorities, the Commission is satisfied that PI complies with Directive 2006/111/EC.

3.3.1.5. Compliance with Union public procurement rules

(90) Pursuant to point 19 of the SGEI Framework, "*aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary Union law*."

(91) The Italian authorities refer to the decision of 20 November 2012, where the Commission acknowledged that the entrustment to PI complied with Union public procurement rules, as the SGEI under assessment is supplied via the same network of the universal service and the only player able to carry out this mission in the Italian market is PI.

(92) The Italian authorities submit that the measures at issue are covered by the "sole provider exemption" pursuant to Article 32(2)(b) of Directive 2014/24/EU[56]. In support of their claim, they provided the following arguments:

a) PI, which is the operator providing the universal postal service in Italy, provides the SGEI at issue through the same network which it uses for the

[56] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement, OJ L 94, 28.3.2014, p. 65–242. The referred provision concerns works, supplies or services that can be supplied only by a particular economic operator for one of the following reasons: (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance; (ii) competition is absent for technical reasons; (iii) the protection of exclusive rights, including intellectual property rights. It is worth noting that the exceptions set out in points (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.

postal universal service. PI is, as such, the only player able to supply the SGEI in question on the whole national territory in compliance with the applicable requirements (in terms of price, quality, density and delivery frequency). Other operators that cover significant proportions of the Italian population with their own network do not serve the whole country and do not own a network having the density and quality which are necessary to provide the service, with particular reference to products (e.g. daily newspapers) that need to be delivered by a strict deadline;

b) The compensation which PI receives from the Italian State for the reduced tariffs in favour of publishers and not-for-profit organizations contributes only marginally to the maintenance of the network needed for the provision of the service. Therefore, this compensation would not suffice to enable a competitor to set up a network comparable to PI's network. In fact, because this compensation is not sufficiently high for the SGEI at issue to be provided independently from the postal universal service network, an operator other than PI would not have the economies of scale that make the provision of the SGEI at issue less costly for PI, which is, however, undercompensated for its universal service mission.

(93) The Italian authorities conclude that a public tender procedure would not have had an outcome other than the entrustment to PI. The Italian authorities argue that this conclusion is also confirmed by the outcome of some recent tender procedures for the provision of delivery services on the whole national territory[57].

(94) Finally, the Italian authorities add that the direct award at issue has a duration of only three years (from 2017 to 2019), which will allow the Italian authorities to re-examine the market in order to assess whether it is justified to keep the SGEI at issue.

(95) For the reasons explained above, PI appears to be the only player able to provide the SGEI in question on the whole national territory in compliance with the applicable requirements, At the same time, in these circumstances the compensation for the reduced tariffs would not enable a competitor to set up a network comparable to PI’s network. It is as such reasonable to conclude that the measures at issue are justified for technical reasons under the exception of Article 32(2)(b)(ii) of Directive 2014/24/EU. In addition, a similar conclusion is also in line with previous Commission practice[58] where similar measures were deemed compatible with Article 31(1)(b) of Directive 2004/18/EC[59].

(96) Therefore, the Commission considers that the compensated SGEI in question is covered by the sole provider exemption and thus can be entrusted through a negotiated procedure without prior publication according to Article 32(2)(b) of

[57] These include Istituto Poligrafico e Zecca dello Stato Spa, tender notice published on OJEU 2016/S 006-006892 of) January 2016; Equitalia Servizi Spa, tender notice published on the Official Gazzette of the Italian Republic n. 65 of 6 June 2012; Ministero delle Infrastrutture e Trasporti, tender notice published on the Official Gazzette of the Italian Republic n. 65 of 5 June 2013.

[58] Aide d'Etat SA.36512 (2014/NN) – France, Des dispositifs compensatoires des missions d'aménagement du territoire, de transport et de distribution de la presse dévolues à La Poste, Commission decision of 26.05.2014, C(2014)3164, OJEU C/280/2014.

[59] Directive 2004/18/EC has been repealed by Directive 2014/24/EU and Article 31(1)(b) of the former now corresponds to Article 32(2)(b)(ii) of Directive 2014/24/EU.

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement.

3.3.1.6. Absence of discrimination

(97) Paragraph 20 of the 2012 SGEI Framework provides that *'where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking'*.

(98) The SGEI of the reduced tariffs offered to publishers and not-for-profit organizations is not assigned to 'several undertakings', but only to PI. Therefore, the Commission considers that, because PI is the only entrusted entity there cannot be a question of discriminatory compensation between SGEI providers within the meaning of paragraph 20 of the 2012 SGEI Framework.

3.3.1.7. Amount of compensation

The net avoided cost methodology for determining the amount of the compensation

(99) Paragraph 21 of the 2012 SGEI Framework states that *"(...) the amount of the compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit"*. In this respect, paragraph 24 of the SGEI Framework states that *"[t]he net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible."*

(100) According to paragraph 25 of the 2012 SGEI Framework, *"Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation."*

(101) The Commission is satisfied that the compensation granted to PI for the concerned SGEI mission is based on the net avoided cost ("NAC") methodology, calculated as the difference between the net cost for the beneficiary of operating with the public service obligation and the net cost or profit of operating without this obligation.

Counterfactual scenario for the transport and distribution of the press

Design of the counterfactual scenario

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

(103) In the absence of the press distribution SGEI, PI would remain subject to the USO, which includes the obligation for PI to transport and deliver the press at a separate (and higher) USO-specific tariff. If PI was not subject to the press distribution SGEI, it would therefore seek to maximise its profit by optimising its press delivery tariffs, constrained by the maximum imposed by the USO tariff.

(104) Poste Italiane's choice of tariff in the counterfactual scenario depends crucially on two factors: (i) its delivery costs and (ii) changes in demand because of changes in price. If PI's press distribution service is loss making, it would generally seek to raise tariffs for two reasons: it would reduce the losses incurred per unit delivered and it would reduce the number of loss-making units that have to be delivered. If the press distribution service is profitable, then raising tariffs a priori increases the profit per unit delivered, but could lower the overall profit because of reductions in demand. The Italian authorities have confirmed that, given that the press distribution mission is a loss making activity, tariffs in the counterfactual scenario would increase. Volumes in the counterfactual scenario would therefore be lower.

(105) Reductions in demand because of an increase in the rate of the tariff (price) arise mainly from two sources: (i) the response of press editors and final customers or readers (direct demand effects); and (ii) the response of competitors such as transport and logistics firms offering similar services, as well as the existence of substitutes, such as kiosks or digital offerings (competitive constraints).

<u>Costs</u>

(106) PI's analytical cost accounting system is described in section 3.3.1.4. In the factual scenario, PI bases its costs for 2017 on the actual data from its accounting system (see **table 2** below), and then extrapolates to the years 2018-2019 based on the trends for 2015-2017.

Table 2: Volume and costs of the press distribution mission

PI's cost structure (mln)	**2015**		**2017**		**CAGR (*) 2015-2017**
	Value	%	Value	%	
Volume	[…]		[…]		[…]
Direct costs	[…]	[…]	[…]	[…]	[…]
Direct production costs	[…]	[…]	[…]	[…]	[…]
Acceptance and sorting	[…]		[…]		
Transport	[…]		[…]		
Delivery	[…]		[…]		
Indirect production costs	[…]	[…]	[…]	[…]	[…]
Central costs	[…]	[…]	[…]	[…]	[…]
Total costs	[…]	**100%**	[…]	**100%**	[…]

* *Compound annual growth rate*

(107) PI's total costs for the press distribution mission over the 2015-2017 period decreased from €[…] million to €[…] million, or by […]% per year. Over the same period, volumes decreased from […] million to […] million or by […]% per year.

This larger decrease shows that PI is able to realise economies of scale: as its volumes fall, costs fall less-than-proportionately.[60]

(108) Given the decreases in cost and volumes observed above, it follows that the press distribution mission had a cost elasticity to volume of […] over the 2015-2017 period.[61] This cost elasticity implies that upon a decrease in volumes, costs would decrease by […]% of that relative decline. By using this parameter, it is possible to calculate the evolution of costs in relation to changes in volume.

(109) The cost elasticity to volume takes into account the fact that with lower volumes PI would be less efficient and would have a higher unit cost in the counterfactual scenario. Given that volumes in the counterfactual scenario would be lower (see recital (104)), this relative increase in costs reduces PI's counterfactual profit and therefore the NAC.

(110) According to the Italian authorities, PI's cost elasticity to volumes is constant, i.e. it does not change regardless of the volume of units delivered by PI as part of its press distribution mission. A constant cost elasticity to volumes implies a certain cost structure that omits fixed costs.[62]

(111) The Commission considers that it is more appropriate to calculate the NAC by use of an assumed cost function that explicitly allows for the presence of fixed costs of press distribution charges. One such function is the linear cost function.[63] The delivery of the press has fixed costs: if volumes decrease by a certain amount, PI might for example be able to retire certain delivery vehicles, but it would not readily be in a position to close a logistics centre. By incorporating a fixed cost, a linear cost function has the property that the cost elasticity decreases with volume, and it is therefore comparatively lower when volumes are lower (since the fixed cost will represent a more significant amount of the total cost in this case). The Italian authorities have confirmed that a linear cost function well captures the fact that PI's press distribution mission has both fixed and variable costs.

(112) For the volumes observed in the counterfactual scenario, the use of the linear cost function results in a smaller decrease in costs, with the effect of lowering the NAC. This is therefore a conservative assumption.[64]

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60 The corollary is the more commonly understood concept of economies of scale, namely that as PI's volumes rise, costs rise less-than-proportionately.

61 The cost elasticity to volume is the ratio of the change in costs to the change in volumes, or […] / […] = […].

62 In particular, the cost elasticity to volumes is constant in the case of a log-linear cost function of the form $c = (x^\gamma)*(e^\alpha)$, with c being the total cost, x being the volume, and α and γ being parameters of the function, of which γ is the (constant) cost elasticity. The parameters α and γ can be obtained by making the cost function fit the observed cost figures of the press distribution mission at the 2015 and 2017 volumes.

63 A linear cost function is of the form $c = mx + b$, c being the total cost, m being the marginal cost (or slope), x being the quantity of items (volume) and b being the fixed cost. The cost elasticity of the linear cost function is $mx/(mx+b)$, and it therefore varies with volume. The parameters m and b can be obtained by making the cost function fit the observed cost figures of the press distribution mission at the 2015 and 2017 volumes.

64 By way of sensitivity analysis, the Commission also calculated the NAC by use of a non-linear cost function (which also incorporates a fixed cost) of the form $c = (x+ \alpha)^\gamma$, with c being the total cost, x being the volume, and α and γ being parameters of the function. While the non-linear cost function also lowers the NAC relative to the original, constant cost elasticity specification, it is the linear cost

(113) The NAC applies a logic of incrementality: only those costs that are incremental to the public service mission, i.e. which would not be incurred at all in its absence, should be taken into account for the calculation of the NAC. Cost accounting based on a separation of accounts works differently: pursuant to the Postal Directive[65], for example, costs that are common to various services can be allocated to each by use of a certain allocation key.[66]

(114) According to the Italian authorities, the figures in Table 2 concern only those costs that are incremental to the press distribution service. Direct costs concern transport costs that are outsourced to external suppliers specifically and only for the distribution of the press. Direct production costs such as acceptance and sorting are performed at logistics centres with clearly separate processes between the press distribution mission and other activities.

(115) Indirect production costs and central costs, however, are not so clearly incremental to the press distribution mission. They are common costs which Poste Italiane has allocated in part to the press distribution cost centre. While it is reasonable to assume that the costs of a coordination unit would decrease following a general downsizing of the press distribution mission, the Commission considers that the Italian authorities have not demonstrated conclusively that these costs are incremental to the press distribution mission in their entirety.

(116) In the absence of a clear and unambiguous demonstration of their full incrementality, these costs will not be taken into account for the calculation of the NAC. This assumption reduces PI's costs proportionately to volumes in both the factual and counterfactual scenario. By allocating fewer costs to the press distribution mission, the reduction in volumes in the counterfactual scenario results in a lower avoided cost in absolute terms. This is therefore a conservative assumption that has the effect of lowering the NAC.

(117) Because the cost elasticity of the linear demand function is not constant, it is not possible to use the cost elasticity to estimate changes in costs in relation to changes in volume (see recital (108)). In the linear demand function, however, changes in costs in relation to changes in volume can be calculated by use of the variable cost per unit. The variable cost expresses the part of PI's costs that changes in response to changes in volume.

function that results in the greatest downward adjustment of the NAC over the observed data. Thus the linear cost function is the most conservative assumption.

65 See Article 14 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. Article 14 applies to PI as it is also entrusted with the USO.

66 An example from a publication of the Commission concerning the SGEI Framework illustrates the difference of the two concepts for a universal service obligation (USO): *"[f]or instance, the costs of a postal sorting centre used both for parcels covered by the SGEI and for parcels outside the SGEI are allocated to the two categories of products in proportion to the number of parcels falling in each category. For instance 70% of the costs of the sorting centre are allocated to the SGEI and 30% to purely commercial services. Under the net avoided cost methodology, to determine the costs of the sorting centre attributable to the SGEI, it is necessary to determine whether the centre would have had to be kept in place if the undertaking no longer had a public service obligation."*
See http://ec.europa.eu/competition/publications/cpn/2012_1_11_en.pdf.

(118) Adjusted for the assumptions as described in the preceding recitals and by using the linear total incremental cost function, it follows from PI's real cost data (see table 2 above) that PI's variable cost per unit amounts to EUR […][67].

Tariffs

(119) The tariffs applied by PI for the distribution of the press depend e.g. on the weight and number of units to be delivered. According to the Italian authorities, the weighted average tariff that PI charged in 2017 is equal to EUR […] per unit.

(120) The USO tariffs for the notified period are established by the Interministerial Law Decree of 21 October 2010 and by AGCom Decision No. 266/18/CONS of 6 June 2018 for 2017 and 2018-2019 respectively. Expressed as the price of distribution per item, the weighted average USO tariffs for the counterfactual scenario have been forecast to be equal to EUR […] (2017) and EUR […] (2018-2019)[68] .

(121) The maximum USO tariff of EUR […] that PI can charge in the counterfactual is lower than its variable cost per unit (see recital (118)). Even in the optimal counterfactual scenario, therefore, PI would incur a loss on each item delivered. If PI were to set its tariff in the counterfactual scenario at any point below the USO tariff, it would increase its losses in two ways compared to setting it at the USO tariff: its loss per item distributed would increase, and it would have to deliver more loss-making items. In optimising the NAC, it is therefore clear that PI would set its counterfactual tariff at exactly the rate of the USO tariff, a ceiling to which it is bound.

Price elasticity of demand

(122) The reaction of PI's customers of press delivery services to changes in the price of such services is expressed by the price elasticity of demand. As described in recital (9), there was a 5-month period in 2010 when PI applied the USO tariffs to its press distribution mission. By observing the reduction in demand for PI's press delivery service that followed the increase in tariffs during this period, it is possible to obtain an estimate of the price elasticity of demand for PI's press distribution services. The advantage of this approach is that, because it is based on a real situation, in principle it takes account of all real constraints PI faced.

(123) The weighted average tariff per item distributed increased by […] in the identified period in 2010, from EUR […] to EUR […]. Given that volumes had already been declining before this tariff increase, not the entire subsequent decline in volumes should be attributed to the price increase. Volumes in January-March 2010 (i.e., before the price increase) decreased by […] compared to the same period a year earlier. Accounting for this pre-existing downward trend in press delivery volumes, the Italian authorities estimated that volumes decreased

67 The variable cost per unit can be estimated as the total variable cost divided by volume, where the variable cost is the total cost minus the fixed cost, and the fixed cost is the total cost at a volume of 0 (as provided by the estimated linear cost function).

68 In their notification, the Italian authorities estimated tariffs of €[…], €[…]and €[…] for 2017, 2018 and 2019 respectively. This estimation was based on expected tariff changes pre-dating the entry into force of the Interministerial Law Decree of 21 October 2010 and AGCom Decision No. 266/18/CONS. On balance, the USO tariffs used for the calculation of the NAC, which take these legal texts into account, are lower (adjusted for volumes), which leads to a downwards adjustment of the NAC.

by […] because of the increase in tariff and estimated a price elasticity of demand for PI's distribution of the press of […] in 2010.[69]

(124) This approach however does not take into account that readers and press editors may have subscriptions and contracts with PI lasting for longer periods, and would therefore not have been in a position to change their behaviour over a 5-month period. Hence, the demand effect of both final customers and press editors on an increase in the level of tariffs for the distribution of the press may have been underestimated and the elasticity of demand for price increases that lasted longer might be higher.

(125) Similarly, competitors would have been more likely to enter the market if the duration of the "high tariff" period was longer, also pointing to a potentially higher firm-specific price elasticity of demand for PI's press delivery services. Regarding the incentives for competitors to enter the market, however, it should be noted that although the USO tariffs for the distribution of the press are significantly higher than the press distribution tariffs, they are still very low: set in 2002[70], they were kept constant for 15 years, and were raised only in 2018 (see recital (120)). At EUR […] per item distributed, the tariff is still not nearly enough to cover PI's variable costs (see recital (118)). In addition, according to the Italian authorities PI's variable costs for providing the SGEI at issue are considerably lower than its competitors', since to a large extent it makes use of the existing USO infrastructure to deliver the press distribution SGEI. PI's competitors are unlikely to enter the market in those circumstances, regardless of the duration in which higher tariffs were to apply.

(126) Lastly, also when considering the existence of substitutes, a bigger effect may be expected over the notified period compared to the 5-month period in 2010. Since 2010, in fact, the market share of physical press has decreased considerably[71].

(127) To address the shortcomings identified above, the price elasticity of demand would have to be adjusted upwards (in absolute value), that is, the assumed demand would become more elastic. A more elastic demand would imply a larger reduction of demand for PI's services in the counterfactual scenario. As PI incurs a loss on each item delivered even in the counterfactual scenario (see recital (121), a larger reduction in volumes would lead to a lower counterfactual loss, and therefore a higher NAC.

(128) In light of the above, the Commission is satisfied that the use of the price elasticity as estimated in recital (123) constitutes a conservative assumption.

<u>Volumes</u>

(129) Because PI will seek to increase its tariffs up to the USO level in the counterfactual scenario (see recital (121)), there will be a reduction in demand and

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[69] The price elasticity of demand is equal to the ratio of the percentage change in demand to the percentage change in price, in the present case […] / […] = […]. We note that this elasticity refers specifically to the price or cost of distribution, which is only a part of the price of a magazine.

[70] Ministerial Decree by the Ministry of Communications of 13 November 2002, Tariffe per la spedizione di invii di libri e di stampe in abbonamento postale di cui alla lettera b) del comma 20 dell'art. 2 della legge 23 dicembre 1996, n. 662, published on the Official Gazzette of 10 December 2002, n. 289.

[71] See, for example, PI's 2016 Annual Report, p. 34, and PI's 2017 Annual Report, p. 31.

lower volumes as a result. The precise change in volumes can be estimated using the price elasticity of demand as established in recitals (122)-(123). In addition, PI further assumes a structural decline in volumes of […]% per year from […] million items in 2017 - a continuation of the decline in volumes over the 2015-2017 period (see table 2 above), which is reflected in both the factual and counterfactual scenarios.

Net avoided cost

(130) The identification of the costs (see recitals (106) - (118)), tariff (see recitals (119) - (121))**Error! Reference source not found.**, price elasticity of demand (see recitals (122) - (128)) and volumes (see preceding recital) permits the calculation of the profit of PI in both the factual and counterfactual scenarios. The NAC consists of the difference between these two profits and is equal to EUR [180-230] million over the 2017-2019 period (see **table 3** below).[72]

Table 3: Net avoided cost[73]

FACTUAL SCENARIO				
	2017	**2018**	**2019**	**Total (*)**
Volume (A), mln	[…]	[…]	[…]	[…]
Tariff (B)	[…]	[…]	[…]	
Unit variable cost (C)	[…]	[…]	[…]	
Revenues (D) = (A) * (B), mln	[…]	[…]	[…]	[…]
Variable costs (E) = (A) * (C) , mln	[…]	[…]	[…]	[…]
Variable economic result (F) = (D) - (E), mln	[…]	[…]	[…]	[…]
COUNTERFACTUAL SCENARIO				
Tariff (G)	[…]	[…]	[…]	
Tariff increase (H) = (G) / (B) - 1	[…]	[…]	[…]	
Price elasticity (I)	[…]			
Volume decline (J) = (A) * (H) * (I) , mln	[…]	[…]	[…]	[…]
Volume (K) = (A) + (J), mln	[…]	[…]	[…]	[…]
Revenues (L) = (K) * (G), mln	[…]	[…]	[…]	[…]
Variable costs (M) = (K) * (C) , mln	[…]	[…]	[…]	[…]
Variable economic result (N) = (L) - (M), mln	[…]	[…]	[…]	[…]
NET AVOIDED COST				
Net avoided cost (O) = (N) - (F), mln	[…]	[…]	[…]	[180-230]

** may not add up because of rounding*

3.3.1.8. Verification of overcompensation

(131) Point 49 of the SGEI Framework stipulates that Member States must ensure that the compensation granted for operating the SGEI meets the requirements set out in this Communication and in particular that undertakings are not receiving compensation in excess of the amount determined in accordance with the requirements set out in this section.

[72] According to the Italian authorities, the NAC was equal to € [190-240] million. The difference is due to the various conservative assumptions made by the Commission, as discussed in this section.

[73] Based on the assumption of the linear cost function. Because the fixed cost remains constant in response to changes in volumes, it is equal in the factual and the counterfactual scenarios and does not affect the NAC. It has therefore been excluded from the presentation.

(132) The Italian authorities confirmed in this respect that the exercise consisting in an assessment of the net avoided costs of the press distribution mission will be made at the end of the notified period. As a result of this, the Italian authorities commit to verify that PI is not receiving compensation in excess of what is set out in the SGEI Framework. In this regard, an assessment will be carried out upon the conclusion of the period for which the compensation is granted. If such assessment will demonstrate that the compensation received by PI is higher than the net costs related to the fulfilment of the public service mission at issue, a mechanism to repay the State of the excess amount will be implemented in the following year.

(133) The mechanism described in the recital above ensures that PI will not receive any overcompensation.

(134) In any case, the calculations carried out based on the information provided by the Italian authorities reflect that the maximum compensation amounts are considerably lower than the net cost related to the specific press distribution SGEI for the period 2017-2019.

(135) The table below shows the extra cost of the reduced tariffs and compares it to the maximum public service compensation granted to PI over the period 2017-2019:

Table 4: Absence of overcompensation in relation with reduced tariff compensations

Million €	**2017**	**2018**	**2019**
Revenue loss due to reduced tariffs	[…]	[…]	[…]
Maximum compensations for the reduced tariffs	**57,53**	**59,32**	**54,89**

(136) Consequently, the Commission considers that there is no overcompensation of PI for the compensation of the reduced tariffs.

3.3.1.9.Efficiency incentives

(137) Point 39 of the SGEI Framework stipulates that Member States, in devising the method of compensation, must introduce incentives for the efficient provision of an SGEI of a high standard, unless the Member State can duly justify that it is not feasible or appropriate to do so. In addition, point 40 of the SGEI Framework adds that "*efficiency incentives can be designed in different ways to best suit the specificity of each case or sector. For instance, Member States can define upfront a fixed compensation level which anticipates and incorporates the efficiency gains that the undertaking can be expected to make over the lifetime of the entrustment act*."

(138) The Italian authorities underlined that the compensation level provided to PI for the delivery of the SGEI is fixed and defined upfront at EUR 171.74 million for the years 2017-2019. In addition, as described in recitals (127) *et ss.* above, the SGEI mission at issue is undercompensated. These measures already appear as an incentive for PI to reduce the costs foreseen for the execution of the mission.

(139) The Commission considers that the fact that PI is undercompensated and that the amounts of the compensation are fixed and controlled by the State are essential

elements to introduce in themselves efficiency incentives which favour an efficient provision of the press distribution mission.

Conclusion on the amount of compensation

(140) In light of the above, the Commission considers that the method of compensation, specified in the entrustment act, fulfils the requirements of the SGEI Framework.

(141) The public service compensation granted to PI for the period 2017-2019 amounts to a maximum of EUR 171.74 million, and is divided as follows:

- EUR 57.53 million for 2017;
- EUR 59.32 million for 2018;
- EUR 54.89 million for 2019.

3.3.1.10. Transparency

(142) Pursuant to point 60 of the SGEI Framework, the Member State concerned must publish on the Internet or by other appropriate means information on: the results of the public consultation or other appropriate instruments referred to in point 14 of the SGEI Framework, the content and duration of the public service obligations, the undertaking and the territory concerned, the amounts of aid granted to the undertaking on a yearly basis.

(143) The Italian authorities confirmed that they will respect the transparency obligations as set forth at paragraph 60 of the 2012 SGEI Framework and that they will publish the following information on the website of the Department of Information and Publishing of the Presidency of the Council:

a) the content and duration of the public service obligations;

b) the undertaking and, where applicable, the territory concerned

c) the amounts of aid granted to PI on a yearly basis;

d) the results of the public consultation.

(144) Therefore, the Commission considers that the transparency requirements of the SGEI Framework are met.

3.3.1.11. Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union

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

(146) In such exceptional circumstances, the Commission may require additional conditions or request additional commitments from the Member State concerned

to mitigate serious distortions of competition, as stated in paragraph 53 of the SGEI Framework

(147) The Commission considers that the clarifications provided by the Italian authorities ensure that the exceptional circumstances that would require additional conditions are not present and that there are no reasons to require conditions or to request commitments from the Member State.

3.4. Conclusions on the compatibility of the aid

(148) Based on the foregoing considerations, the Commission concludes that the public service compensation granted to PI by Italy over the period 2017-2019 constitutes State aid under Article 107(1) TFEU which is compatible under Article 106(2) TFEU, as all the applicable conditions of the 2012 SGEI Framework are met.

4. CONCLUSION

The Commission regrets that Italy put the aid in question into effect for the period 2017-2019, in breach of Article 108(3) of the TFEU.

However, the Commission has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 106(2) TFEU.

The Commission notes that for the sake of urgency, Italy exceptionally accepts the adoption and notification of the Decision in English language.

Yours faithfully
For the Commission
Margrethe VESTAGER
Member of the Commission