

COMMISSION DECISION

of 21 March 2012

on the measure SA.31479 (2011/C) (ex 2011/N) which the United Kingdom plans to implement for Royal Mail Group

(notified under document C(2012) 1834)

(Only the English text is authentic)

(Text with EEA relevance)

(2012/542/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, 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 the provision(s) cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 10 June 2011, after informal (pre-notification) contacts with the Commission, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') notified a series of measures (see section 2.3) in favour of Royal Mail Group ('RMG').
- (2) By letter dated 29 July 2011, the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the notified measures in question.
- (3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (4) By letter dated 9 August 2011 the United Kingdom requested an extension of the deadline to respond until 14 September 2011, which was granted by the Commission by letter of 11 August 2011. The United Kingdom transmitted its observations on 8 September 2011.
- (5) The Commission received the following comments from interested parties:
 - 5 October 2011 UK Mail
 - 6 October 2011 Communication Workers Union
 - 6 October 2011 UPS
 - 7 October 2011 Deutsche Post

- 7 October 2011 DX Group
- 7 October 2011 Mail Competition Forum
- 7 October 2011 TNT
- 7 October 2011 Free Fair Post Initiative
- 9 October 2011 Secured Mail.

- (6) The comments received from interested parties were forwarded to the United Kingdom on 12 October 2011. The United Kingdom submitted its observations on the comments by letter registered on 16 November 2011.
- (7) On 22 August 2011 the Commission sent an information request to the United Kingdom, to which it replied by letter of 14 September 2011.
- (8) A meeting with UK authorities, RMG and its bankers took place on 20 September 2011 in which the latter provided more detailed information on the notified restructuring plan.
- (9) The Commission held several other meetings with the UK authorities on 12 October 2011, 10 and 23 November 2011 and 12 January 2012 to discuss the case. The United Kingdom submitted several pieces of additional information by e-mail or letter dated 30 September 2011, 20 October 2011, 7, 11, 18, 20, 28 and 30 November 2011, 6 December 2011 and 14 February 2012.
- (10) The United Kingdom authorities submitted final updates to the notification and clarifications on the restructuring plan on 17 February 2012.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. Context: liberalisation of the UK postal sector

- (11) The United Kingdom places the notified measures in the context of its wider policy for postal services and underlines the strategic importance of RMG to ensure the permanent provision of universal postal services.

⁽¹⁾ The initiation of proceedings was announced in OJ C 265, 9.9.2011, p. 2.

⁽²⁾ See footnote 1.

(12) The United Kingdom Government's policy is set out in the Postal Services Act ⁽³⁾ ('Postal Services Act 2011'), which received Royal Assent on 13 June 2011. The Act implements the recommendations of an independent review led by Richard Hooper ('Hooper Reports') ⁽⁴⁾ and, in summary:

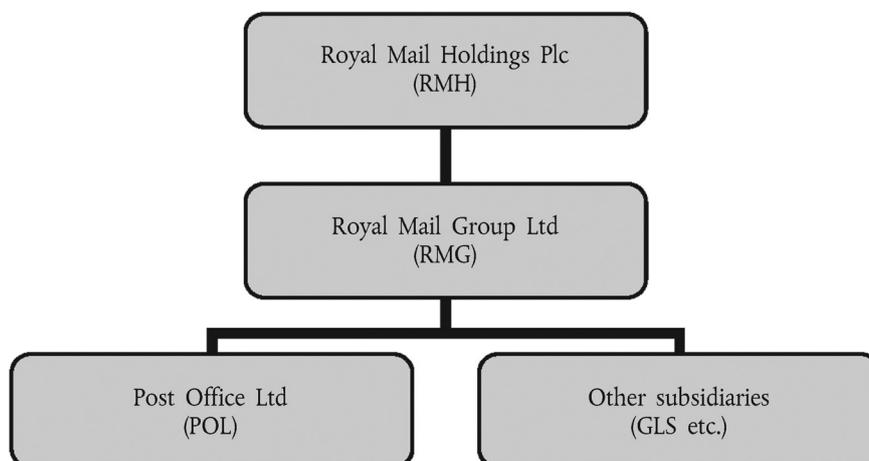
- (i) allows for private sector investment into RMG, with a view to injecting commercial disciplines and new capital;
- (ii) enables the transfer of the historic pension deficit to the United Kingdom Government leaving the company with a smaller fully funded scheme ('the pension relief');
- (iii) makes clear that Post Office Limited ('POL', the retail arm of RMG) is not for sale but will remain in State ownership;
- (iv) paves the way to modernise the regulation of the postal services sector; and
- (v) requires an employee share scheme which will hold at least 10 % of the equity in RMG by the time the UK Government has sold its entire shareholding in RMG.

2.2. Beneficiaries of the measures

2.2.1. Structure of the Royal Mail Group

- (13) RMG is 100 % State-owned through the Royal Mail Holdings plc ('RMH'). RMG is the United Kingdom's main postal operator and had a legal monopoly over certain basic letter services until the end of 2005 when the postal markets in the United Kingdom were fully liberalised. RMG is providing the collection, sorting, transportation and delivery of mail (letters, packets and parcels), using the 'Royal Mail' and 'Parcelforce Worldwide' brands.
- (14) The post office network is operated by POL, which is currently wholly owned by RMG (and hence by the UK Government). RMG and POL are separate legal entities though they are part of the same group. Consistent with the recommendations of the Hooper Reports, it is proposed that POL will remain in full public ownership after the reform and will become a sister company of RMG under RMH.
- (15) RMG has also other subsidiaries, notably General Logistics System BV ('GLS') which is RMG's European parcels business, providing parcel services, logistics and express services throughout Europe. The GLS network comprises subsidiary companies and network partners covering 36 European countries.

Chart 1: current organisational structure of RMG



2.2.2. Royal Mail Group (RMG)

(16) RMG has held a license to provide letter services in the United Kingdom under the Postal Services Act 2000 since 23 March 2001. Under the terms of its license, it

is required to discharge the universal service obligation ('USO'). These arrangements implement the requirements of 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 ⁽⁵⁾ ('Postal Services Directive'). RMG is required by its license to negotiate commercial agreements with any interested operator for access to its national network. New operators have tended to enter the market through such access agreements with RMG.

⁽³⁾ <http://services.parliament.uk/bills/2010-12/postalservices.html>

⁽⁴⁾ 'Modernise or Decline — Policies to maintain the universal postal service in the United Kingdom; an independent review of the UK postal services sector', 16 December 2008, available at <http://www.berr.gov.uk/files/file49389.pdf>, updated by Hooper's December 2008 report, 'Saving the Royal Mail's universal postal service in the digital age', available at: <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/s/10-1143-saving-royal-mail-universal-postal-service.pdf>.

⁽⁵⁾ OJ L 15, 21.1.1998, p. 14.

- (17) RMG is the only licensee in the United Kingdom postal market with universal service obligations. The main aspects of the current USO are (i) the delivery of postal packets (letters, packets and parcels) up to 20 kg every working day to the home or premises of every individual or other person in the United Kingdom (Mon-Sat delivery obligations for letters), (ii) at least one collection every working day from each access point, and a service of conveying, receiving, collecting, sorting and delivering postal packets at affordable prices determined in accordance with a uniform tariff, and (iii) the provision of a registered post service at prices determined in accordance with a uniform tariff.
- (18) RMG's license imposes price controls in relation to the provision of regulated services. The current price control was set in April 2006 for a four-year period, but has been extended to March 2012.
- (19) Furthermore, RMG is required by its license to allow customers and other postal companies access to its national network on a non-discriminatory basis and in practice most of the competitors to RMG have entered the market by using third party access to RMG's downstream network (for example final sorting of mail and delivery on the 'last mile' to customers).
- (20) Downstream access competition involves the third party operator collecting and processing the mail through its own network until delivered to RMG's sorting centres, where it is injected into RMG's network for final sorting and delivery to receiving customers. Under equivalent agreements known as 'customer direct access' agreements, high-volume customers may deliver their pre-sorted mail to RMG's mail centres for downstream delivery.
- (21) Competition in the United Kingdom's letter mail services has arisen through downstream access to RMG's network and not end-to-end competition between RMG and new entrants. Since the market opening in 2006, the letter volumes that other UK postal operators inject into RMG's downstream network have grown on average by more than 1 000 million items per annum and now account for over 45 % of the United Kingdom addressed inland mail market. RMG expects to lose even more market shares to its competitors in the coming years. For certain high volume markets, competitors are expected to achieve market shares of [...] (*).
- 2.2.3. *Post Office Limited (POL)*
- (22) POL, the so-called retail arm of RMG, is responsible for the network of around 11 500 Post Office branches. Just fewer than 400 of these are directly owned and managed by POL. All others are privately owned and operated by subpostmasters or franchise partners. POL is entrusted to maintain a network meeting certain access criteria for the UK population (99 % of the population to be within 3 miles (4,8 km) of an outlet, etc.).
- (23) POL does not currently have any employees as all personnel currently working for POL (except those who are self-employed) are seconded from RMG. Approximately 9 000 RMG employees are seconded and work wholly for POL.
- (24) POL provides retail counter services to RMG, whilst RMG provides shared back-office support services to POL. Furthermore, there are a number of shared services in place between RMG and POL (for example vehicle services, building security etc.) which are currently provided at cost by RMG. The provision of these services is currently subject to a service agreement between RMG and POL that will be replaced by a series of new service agreements when POL becomes a sister company of RMG.
- (25) In addition to being a provider of services of general economic interest ('SGEIs'), POL carries out some 'commercial' activities (such as selling telephony and insurance products) through its network and also through a direct internet sales channel.
- (26) On 23 March 2011, the Commission authorised GBP 180 million of public assistance to POL for the funding of its network of post offices during one year starting 1 April 2011 ⁽⁶⁾. The Commission also authorised the continuation, over the same period, of existing loan facilities funding the provision of cash services at post office counters. The Commission concluded that the aid is compatible with Union rules because it does not over-compensate the net costs of the public service tasks entrusted to POL.
- (27) On 24 January 2012, the United Kingdom has notified a package of measures in support of the SGEIs provided by POL, broadly similar to the measures authorised in 2011.
- 2.2.4. *Financial difficulties*
- (28) The United Kingdom considers RMG to be a firm in difficulty because it is currently facing severe financial difficulties (the reported financial figures refer to the consolidated results of RMG including all subsidiaries, if not stated otherwise):
- (i) the State of its balance sheet, in particular the substantial size of the pension deficit;
- (ii) its projected cash flow shortages;

(*) Business secret.

⁽⁶⁾ Commission Decision C(2011) 1770. The current authorisation of these measures expires on 31 March 2012.

- (iii) its future inability to repay its debts when they fall due in the absence of the notified measures;
- (iv) RMG's declining revenues from the letter business: between the 2008/09 and 2010/11 financial years, external revenue fell by 3,1 %, in the same period inland addressed delivered volumes decreased by 11,7 %.
- (29) RMG's balance sheet shows that the company had serious financial difficulties at the end of the 2010/11 financial year; both its working capital and net operating assets were negative.
- (30) According to the projections provided by the United Kingdom, RMG will have negative cash headroom [...], that is to say, it will not have sufficient funds to pay for its day-to-day operations, if the notified measures are not implemented. Consequently, RMG will also be unable to repay its existing loan facilities when they fall due in [...].
- (31) On the basis of these factors, RMG will face severe difficulty in meeting its payment obligations by [...] and subsequently will be unable to undertake a restructuring program and return to viability out of its own resources, leaving the firm in a situation where it must rely on State aid in order to ensure a return to economic viability and the uninterrupted availability of the public service.

2.3. Measures under investigation

2.3.1. Pension relief

- (32) The Postal Services Act 2011 envisages that the United Kingdom will assume responsibility for certain of the accrued liabilities under the Royal Mail Pension Plan ('RMPP'). The proposed measure will relieve RMG of the obligation to make good the deficit that has arisen under that scheme, thus relieving RMG of a significant financial burden.
- (33) According to the United Kingdom, the size and volatility of the RMPP is out of all proportion to RMG's current business and has proved to be a severe handicap to RMG's ability to compete on its own merits in the liberalised United Kingdom postal market. The United Kingdom believes that by taking certain liabilities over from the RMPP and thereby contributing to the restoration of RMG's viability, RMG will, as the sole universal service provider in the United Kingdom, have the ability to adapt to the liberalised industry environment through modernisation. The pension relief, as a consequence, will remove one of the principal obstacles to attracting private sector capital to RMG.
- (34) Besides the RMPP, RMG currently sponsors 3 other pension plans: the Royal Mail Senior Executives Pension Plan ('RMSEPP'), the Royal Mail Retirement

Savings Plan ('RMRSP') and the Royal Mail Defined Contribution Pension Plan ('RMDCPP'). The notified measure concerns only the RMPP and will not affect members of the RMSEPP, the RMRSP or the RMDCPP.

The RMPP

- (35) The RMPP is an occupational pension scheme for RMG's employees, including those employees seconded to and working wholly for POL⁽⁷⁾. It is a private sector scheme in the sense that it operates under normal UK pensions law as applied to private sector companies. As at 31 March 2011, the RMPP had approximately 436 000 members, of which approximately 130 000 were current employees accruing benefits in the scheme (active members), approximately 118 000 were former employees who had left service before retirement age and not yet drawn pension benefits (deferred members) and approximately 188 000 were pensioners.
- (36) The RMPP is governed by the Third Principal Trust Deed and Rules dated 21 December 2009, as subsequently amended (the 'Trust Deed'). The principal employer in relation to the scheme is RMG and the trustee is a company, Royal Mail Pensions Trustees Limited ('the Trustee'). In addition to the Trust Deed, the obligations of the Trustee and RMG under the RMPP are governed by legislation introduced by the Department for Work and Pensions applying to occupational schemes, set out, principally, in the Pension Schemes Act 1993, the Pensions Act 1995 and the Pensions Act 2004. The RMPP falls within the jurisdiction of the UK Pensions Regulator.
- (37) The RMPP is a defined benefit scheme, that is, benefits are determined by reference to a pension of a target amount at normal retirement age, related to the amount of the member's annual pay and length of service with the employer. This is in contrast to defined contribution schemes under which only the level of the contributions required from the employer/employee is specified. The contributions are invested and when a member retires, the value of the accumulated fund is used to provide the member with an income for life.
- (38) There are two main types of defined benefit scheme, known as final salary and career average. A final salary scheme provides a pension based on a stated fraction or percentage of the employee's final pensionable salary for each year of pensionable service. In contrast, a career average scheme provides a pension based on a stated percentage of the employee's average pay over the whole period of pensionable service (usually adjusted in some way to take account of inflation) for each year of pensionable service.

⁽⁷⁾ The RMPP and the other UK schemes sponsored by RMG do not cover employees of GLS.

(39) Until April 2008, benefits accrued by members of the RMPP were calculated on the basis of a final salary method. However, in April 2008 RMG implemented pension reforms by amendment of the RMPP rules which included changes to benefits accrued in respect of service from 1 April 2008, such that they are now calculated on the basis of a career average salary method rather than a final salary method (although benefits accrued in respect of service prior to that date will continue to be linked to a member's salary at the date of leaving service). Other reforms implemented on 1 April 2008 included raising the retirement age to 65 for service accrued from 1 April 2010 (benefits built up before that date can still be taken at age 60 without an early retirement reduction being applied) and closure of the RMPP to new members and joiners with effect from 1 April 2008. The RMPP was replaced with a defined contribution scheme for new members and joiners after 1 April 2008, the RMDCPP.

Previous measures to fund the pension deficit of the RMPP

(40) The United Kingdom points out that RMG's ability to amend the RMPP over time has been materially constrained. These constraints derive from general UK pensions law and from specific features of the RMPP scheme.

(41) Under UK law RMG has no power of veto over its contribution rate to the RMPP. The contribution rate is normally agreed between the sponsoring employer and the trustee of a pension scheme, but against a background where a failure to reach agreement within 15 months of the effective date of a valuation will lead to contributions being determined by the UK Pensions Regulator, which was established on 6 April 2005 by the Pensions Act 2004 and which enforces compliance with pensions legislation. The Pensions Regulator has made clear, among other things, that it expects schemes to have a certain level of solvency and that it expects trustees to seek recovery of any deficit as against that technical provisions funding target from the sponsoring employer 'as quickly as the employer can reasonably afford'.

(42) In that context, RMG agreed a memorandum of understanding with the Trustee in June 2006 to fund the RMPP deficit over 17 years, in addition to the annual payments RMG makes to the RMPP to fund the cost of the accrued benefits. Conditions included the establishment of the escrow accounts totalling GBP 1 billion secured in favour of the RMPP that were the subject of Commission Decision 2009/613/EC⁽⁸⁾.

(43) On 30 June 2010, RMG agreed on a further recovery plan with the Trustee aiming to fund the RMPP deficit by March 2047, by paying the following annual contributions:

(i) from 1 April 2009 to 31 March 2047: annual deficit payments of GBP 282 million per annum increasing in line with retail prices inflation;

(ii) from 1 April 2013 to 31 March 2023: additional contributions of 4,0 % of members' contributions.

(44) POL contributes a 7 % share of the deficit payments. The share is calculated on the basis of the number of employees seconded to POL in relation to RMG's total number of employees. POL's annual contribution to the pension deficit in the 2010-11 financial year was GBP 21 million.

Relief of pension deficit

(45) The United Kingdom authorities propose to set up a new statutory pension scheme which will be a liability of the UK Government and will have no legal connection to RMG or the RMPP. Certain part of accrued liabilities and assets held by RMPP will be transferred to the new scheme. It is intended that pension benefits accrued up to 31 March 2012 will be transferred to the scheme. The persons to whom this proposal applies include current pensioners, deferred members and active members of the RMPP.

(46) In broad terms, it is estimated that the new pension scheme will be taking over GBP 32 200 million of liabilities and associated assets of GBP 27 700 million (based on the 31 March 2011 actuarial valuation figures) and hence a deficit of GBP 4 500 million. After the pension relief on 1 April 2012, RMG will continue paying only the normal pension contributions for all members of the RMPP, who still work for RMG, and consequently only remain liable for new pension rights acquired after March 2012 (hereafter referred to as on-going RMPP scheme).

(47) The on-going RMPP scheme will immediately after the pension relief consist of approximately GBP 2 100 million⁽⁹⁾ of liabilities and a matching amount of assets remaining with RMG. RMG will continue to bear all future service costs, including liability for any current obligations under the RMPP to maintain a continuing final salary link together with certain enhancements (for example on early retirement) in respect of the historic pension benefits. This means that after the pension relief, RMG will continue to bear the risk that the historic liabilities for deferred members may increase by reason of any salary increases, which exceed price

⁽⁸⁾ OJ L 210, 14.8.2009, p. 16.

⁽⁹⁾ Based on latest estimates. Precise amount will depend on market movements to March 2012 and could be more or less than this amount.

inflation, as the pension benefits have to be linked to the current final salary level. RMG would also retain responsibility for the existing RMSEPP which shows liabilities of GBP 300 million and a deficit of approximately GBP 30 million (as valued at 31 March 2011).

2.3.2. Restructuring aid

The Restructuring of RMG

(48) To address its financial difficulties, in June 2011 RMG drew up a restructuring plan covering the period 2008-2016.

(49) RMG's plans, which are focused primarily on reduction of costs and revenue diversification, build on the significant restructuring measures that RMG has taken since 2002 (including implementing significant changes to the RMPP) to modernise its business and drive costs down. RMG's plan of June 2011 for restoring the company to viability is split into five key areas:

(i) operational modernisation, covering changes in all areas of RMG's activities and results in significant cost savings for the business;

(ii) corporate and back-office restructuring measures;

(iii) commercial transformation;

(iv) investment in a new IT Platform;

(v) cash generation initiatives.

(50) The restructuring plan aims to restore long-term viability of RMG. According to the United Kingdom, the ability to take structurally high levels of fixed cost out, enhance the overall regulatory environment and diversify revenues to replace lost revenues from declining mails volumes will promote a viable RMG capable of attracting private sector investment to ensure its long term future.

Debt reduction measures

(51) The United Kingdom claims that the restoration of RMG's long term viability is a central policy objective in order to achieve universal availability and effective discharge of the USO. According to the United Kingdom, the pension relief alone will not be sufficient to secure RMG's long term viability: even after the relief

of the deficit RMG cannot overcome its financial difficulties with its own resources or with funds obtained from market sources.

(52) Therefore, in addition to the pension relief, the United Kingdom also notified certain measures to strengthen RMG's balance sheet, consisting of:

(i) writing off a certain amount of debt owed by RMG to the UK Government (hereafter 'debt reduction measures'), expected to be up to GBP 1 700 million (plus accrued interest); and

(ii) RMH making available certain amounts in the 'Mails Reserve'⁽¹⁰⁾ to RMG by way of a revolving credit facility with a maximum drawdown of GBP 200 million.

2.4. Grounds for initiating the in-depth investigation

(53) The United Kingdom contended in its notification that the pension relief could be found compatible with the internal market as legacy costs from the pre-liberalisation period, based on the Commission practice. Furthermore, it claimed that the proposed measures are in line with the Guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹¹⁾ ('the R&R Guidelines'). The United Kingdom did not invoke Article 106(2) of the Treaty as justification for the notified measures during the procedure.

(54) In its Decision to initiate the formal investigation, the Commission questioned whether the pension relief could be found compatible as compensation for an exceptional burden resulting from RMG's past status as public sector monopoly. In 2007, the Commission indeed approved a French reform regarding the financing of the current and future pensions of the employees of La Poste with a civil servant status⁽¹²⁾. However, while the 2007 decision ensured that La Poste's effective social security costs were comparable to those of competitors; it seemed that relieving RMG from its whole pension deficit would put it in a better

⁽¹⁰⁾ RMG holds certain investments in Government securities or National Loan Fund deposits, classed as current assets and often referred to as the 'gilts'. They are subject to a specific legal regime of directions by the UK authorities under section 72 of the Post Office Act 2000. Following directions dated 30 January 2003, RMG placed these assets in a special reserve ('the Mails Reserve'), to be used for financing specific measures as directed.

⁽¹¹⁾ OJ C 244, 1.10.2004, p. 2.

⁽¹²⁾ Commission Decision 2008/204/EC of 10 October 2007 on the State aid implemented by France in connection with the reform of the arrangements for financing the retirement pensions of civil servants working for La Poste, (OJ L 63, 7.3.2008, p. 16).

position than an average UK company. The Commission wondered therefore whether the charges of which RMG was relieved correspond entirely to legacy costs within the meaning of the case-law of the Court of Justice of the European Union and whether there indeed would be a level playing field once the relief was implemented.

- (55) Furthermore, the Commission also expressed reservations about the restructuring plan's compatibility with the R&R Guidelines, notably regarding the prospect of a return to viability, the extent of RMG's contribution, and the level of compensatory measures.
- (56) According to the Commission, the United Kingdom did not convincingly demonstrate that the originally submitted restructuring plan would comply with the R&R Guidelines. In particular, the Commission doubted that RMG's role as the sole universal service provider and the liabilities resulting from its public sector monopoly legacy would justify mitigating the conditions of the R&R Guidelines and notably those ensuring that competition distortions are limited and that the cost of restructuring is shared by the required 50 % own contribution.
- (57) The Commission also considered that the duration of the original restructuring plan from 2008 to 2016 was particularly long and that the projections in the original restructuring plan were sensitive to changes in the assumptions such as total mail volumes. The Commission therefore expressed doubts as to the restoration of long-term viability of RMG by the implementation of the notified plan and to the robustness of the viability projections.

2.5. Modification to the notified measures after the opening of the formal investigation procedure

- (58) In the course of the discussions with the Commission during the formal investigation, the United Kingdom renounced part of the debt reduction of 1 700 million and reduced the notified debt reduction measures to GBP 1 089 million. Furthermore, the United Kingdom also renounced the notified GBP 200 million revolving credit facility. The Commission therefore no longer considers those measures to be notified but only the debt reduction measure amounting to GBP 1 089 million.
- (59) Furthermore, during the investigation, the United Kingdom provided an updated restructuring plan, covering a shorter restructuring period: 2010-2015. During that period RMG will undertake operational and industrial measures to restructure its business. The plan for restoring the viability of RMG can be split into the following key actions: labour related restructuring, structural restructuring to reduce its capacity and restructuring of IT systems.

Labour-related restructuring

- (60) Labour related restructuring is at the heart of the RMG's changes to ensure that a financially sustainable universal service can be provided for the long term in the United Kingdom. RMG has already made progress and intends to significantly reduce its workforce further through a programme of voluntary redundancy and natural attrition over the period of the plan. This alone represents around one third of the total relevant restructuring costs from the plan, and will reduce significantly one of RMG's core costs.
- (61) The restructuring plan envisages, over the course of the restructuring period, a reduction in RMG's headcount in UK Letters & Parcels and International (UKLPI) from approximately 160 000 people at the start of the year ending in March 2011 to approximately [...] people in March 2015. This represents a total reduction of approximately [...] in UKLPI between March 2011 and March 2015, representing the equivalent of around [...] a year. This labour-related restructuring includes a reduction of close to [...] central managers (over 1 000 of whom had already left by March 2011). Labour cost savings of GBP [...] million in real terms are forecast to be achieved between March 2010 and March 2015.
- (62) The labour changes proposed will impact virtually every part of the RMG's business. For example:
- (i) outdoor delivery and collections, which are labour intensive activities with high fixed costs, are being restructured; the restructuring is focused on achieving savings including by World Class Mail (see recital (68)) being introduced with savings arising from this comprehensive system for improving safety, customer service, quality and productivity in all delivery offices;
 - (ii) there is a move away from manual labour intensive processing to automated processing, with corresponding implications for labour;
 - (iii) close to [...] managers in central functions are also being removed.
- (63) The key elements of the labour restructuring cost included in the June 2011 restructuring plan are (i) redundancy payments, (ii) travel and outplacement costs and (iii) certain exceptional lump sum payments. Redundancy payments are expected to be approximately GBP [...] million from March 2010 to March 2015. Travel and outplacement costs (which are paid to staff

that have been retained but must now work at alternative facilities as part of the restructuring of RMG's infrastructure, including the closure of various mail centres) will amount to a cost of approximately GBP [...] million by 2014/15. Exceptional lump sum payments — which are required to sustain the pace and depth of change as they form a key part of the 2010 modernisation agreement with the Communication Workers Union amount to GBP [...] million. Those payments would not have been required with a slower, more conventional, pace of modernisation.

- (64) Those key elements of labour restructuring together amount to approximately half of the total relevant restructuring costs during the period from March 2010 to March 2015.

Structural restructuring to reduce capacity

- (65) In addition to the measures to address the labour force at RMG, the notified restructuring plan includes structural restructuring to reduce capacity in the business over the period. In total, the amount spent on structural restructuring represents approximately one third of the total relevant restructuring costs during the period from March 2010 to March 2015. In particular this element of the restructuring relates to the significant reduction of the mail centre network, which has a corresponding impact on labour.
- (66) Structural restructuring also consists of automation and, critically, new delivery methods to enable longer more flexible delivery spans. This again has significant implications for the workforce and forms a key part of restructuring.
- (67) The restructuring plan includes a one-off property rationalisation programme reducing the number of mail centres from 64 at the start of the financial year 2010/11 to [...] by March 2015, significantly reducing the RMG's footprint and streamlining its operations. The restructuring plan therefore envisages closure of [...] mail centres between 2010/11 and 2014/15 which equates to a [...] reduction across the network. During the year from March 2010 to March 2011 a total of 5 mail centres were closed.
- (68) In conjunction with this, RMG is introducing World Class Mail in all mail centres which will remain open. World Class Mail is a comprehensive system for improving safety, customer service, quality and productivity, and reducing breakdowns. World Class performance is achieved by involving all employees in attacking wasted time and resources caused by sub-standard reliability, and operating performance of processing systems. All mail centres will be part of

World Class Mail by the end of financial year 2011/2012 and World Class Mail is also being introduced in delivery offices.

- (69) In addition, the deployment of intelligent letter sorting machines will bring about a change in automated sorting and reduce the costs associated with manual sorting. These machines are considerably faster than existing methods and equipment, which have been used by RMG for nearly 20 years.
- (70) Further to this, the deployment of walk sequencing, which automates the sorting of letters to the order of delivery is being implemented. This is a critical part of the restructuring and requires the acquisition and deployment of compact sorter sequencer machines and results in changes to working practices for postmen and women working in delivery in particular. Automated sequencing of letters reduces manual sorting in delivery offices (and associated costs), and therefore allows for more efficient scheduling of start and finish times for delivery staff. Walk sequencing is a structural change to mail processing for RMG that will increase its productivity. RMG sequenced 0 % of mail in 2008; 1 % of mail in 2009, and 50 % by August 2011.
- (71) RMG's restructuring plan includes the automation of sorting of small parcels which is currently done manually. The company is determining the best solution to deploy during the restructuring period.
- (72) Finally, new delivery methods allow RMG to change from traditional delivery methods (on foot, by bicycle) to delivery mainly using secure trolleys (either manual or powered) and vans. These new methods represent a major change for RMG and the change being implemented, including the expenditure incurred, will facilitate longer, flexible delivery spans. This, in turn, allows RMG to reduce the number of delivery routes and outdoor delivery operating costs.
- #### IT restructuring
- (73) The restructuring includes business critical capital investment in IT over the period of the plan. To complement the labour changes, RMG is in the process of introducing handheld electronic devices to replace paper-based processes and therefore increase efficiency. One of their basic functions is to store customer signatures which confirm receipt of tracked items. The devices allow RMG to track items in real time. This removes the need for further processing of signatures and receipts on paper when the postman or woman has finished deliveries.

(74) In addition, RMG will be making other investment in IT and operations — including significant investment in several critical areas:

- (i) improving operational reporting capabilities;
- (ii) modernisation of human resources processes;
- (iii) enabling automatic reading of address information and use of the information for performance reporting;
- (iv) [...]; and
- (v) [...].

(75) The investment in systems and IT restructuring in total represents approximately one fifth of the total relevant restructuring costs during the period from March 2010 to March 2015.

Conclusions

(76) According to the United Kingdom, after the implementation of the pensions' measures and the completion of the restructuring measures, RMG is forecast to be in a position to:

- (i) cover its costs including depreciation and financial charges — in particular the company will have a positive free cashflow after interest and tax of GBP [...] million by March 2015;
- (ii) make a return on capital which will enable it to compete in the marketplace on its own merit — in particular the company will make a positive return on invested capital of [...] by March 2015; and
- (iii) generate cash from the underlying business (pre-asset sales) — in particular the company will have a positive operating free cashflow of GBP [...] million.

(77) This conclusion also applies on the basis of the reasonable downside scenario (an additional [...] decline in volumes over the period of the restructuring plan) submitted to the Commission on 30 November 2011 as part of the sensitivity analysis. Under such a downside scenario, by March 2015 RMG would be in a position to:

- (i) have a positive free cashflow after interest and tax of GBP [...] million by March 2015;
- (ii) make a positive return on invested capital of [...] by March 2015; and

(iii) have positive operation free cashflow of GBP [...] million.

(78) These forecasts are claimed to prove the robustness and strength of the proposed restructuring.

3. COMMENTS FROM INTERESTED THIRD PARTIES

(79) Comments on the opening decision were received from a wide range of interested third parties including RMG's smaller domestic competitors and their industry associations, its larger international peers, pressure groups and a workers union representing the majority of RMG staff.

Comments submitted by the Mail Competition Forum

(80) As an industry association of smaller postal operators in the United Kingdom, the Mail Competition Forum ('MCF'), places a great emphasis on the importance of a sound and viable RMG as the only company capable of fulfilling the universal service obligation in the United Kingdom, whilst at the same time voicing concerns that an artificially strengthened RMG could squeeze its smaller competitors out of an already difficult market by means of predatory pricing, margin squeeze and denial of access to essential facilities. In this context the MCF urges far reaching *ex ante* regulatory measures to protect smaller competitors and ensure that they have access to the Royal Mail network.

(81) MCF agrees with the United Kingdom in its assessment that RMG is a firm in difficulty and agrees with the application of the R&R Guidelines as the appropriate framework to assess the proposed measures. Moreover, it notes that the United Kingdom does not seek to justify the aid on grounds that such aid is necessary to sustain an SGEI, but it records that in case that any SGEI compensation to RMG would be authorised by the Commission, it would need to be coupled with rigorous safeguards to protect competition.

(82) The MCF believes that the measures should be confined to the strict minimum necessary and designed to deal with the pension deficit alone. MCF rejects any balance sheet repair measures or any other measures undertaken with a view to making the firm more attractive for a market economy investor. In this context MCF expresses scepticism about a privatisation of the firm.

(83) With respect to the own contribution of 50 % required under the R&R Guidelines for large undertakings, MCF urges a strict adherence to the prescribed threshold and recommends the divestiture of assets and seizure of loss-making activities to finance this.

(84) With regards to compensatory measures the MCF believes that a number of far reaching structural, fiscal

and regulatory measures are necessary including a reform of the UK Postal Services Act with a view to preventing the RMG from getting additional aid for the same purpose in the future, a full structural separation of the retail and network aspects of the business, and an end to the VAT exemption enjoyed by RMG for services which are outside the universal service.

Comments submitted by Secured Mail

- (85) Secured Mail points to the importance of RMG for the discharge of the USO in the United Kingdom. At the same time Secured Mail urges the Commission to ensure that RMG will not gain the opportunity to exploit its new found strength in a way which would endanger the smaller competitor's business model. Just as the Mail Competition Forum, Secured Mail emphasises the need for a sufficient own contribution financed through divestiture of assets, and seizure of loss-making activities. Furthermore Secured Mail would like to see regulatory action like a separation of the network and retail aspects of RMG businesses.

Comments submitted by UK Mail

- (86) UK Mail, a small domestic competitor comments that whilst the firm generally welcomed State aid to RMG with a view to safeguarding the effective discharge of the USO, the measures should only be authorised under strict adherence to the R&R Guidelines.

Comments submitted by DX

- (87) DX, another small domestic competitor also expresses concerns about strengthening RMG's position on the UK market in an unchecked fashion and advocates compensatory measures in order to make up for potential distortions of competition.

Comments submitted by the Communication Workers Union

- (88) The Communication Workers Union ('CWU') places the measures in the context of the wider modernisation efforts of RMG over the past years. CWU welcomes the aid measures but voices concerns about the level of stress put on the workforce by the restructuring process and points to the profound and sustained changes in the general working condition of Royal Mail employees. CWU asks the Commission to confine restructuring to a minimum with a view to limit the adverse effects on the general working conditions. CWU rejects an appraisal under the R&R Guidelines and opines that the Commission should authorise the aid as compensation for a service of general economic interest instead. CWU believes that no own contribution should be required from RMG and advocates a generous appreciation of the aid measures with a view to making the transition process as smooth as possible for RMG's workers.

Comments submitted by the Free and Fair Postal Initiative

- (89) The Free and Fair Postal Initiative ('FFPI'), a pressure group, generally welcomes the State aid measures in favour of RMG and only voices some concern about RMGs return to viability according to the restructuring plan. In light of the current economic climate FFPI questions the sale prospects and bemoans the lack of a comprehensive privatisation plan.

- (90) Furthermore the FFPI is keen to point out that all requirements of the R&R Guidelines must be met, especially as regards the own contribution which FFPI would like to be substantial (50 %) in line with the R&R Guidelines. Furthermore FFPI considers that far reaching compensatory measures should necessarily, include the sale of assets which are not essential to the discharge of the USO and especially guarantees with regards to market access for competitors.

- (91) FFPI furthermore submits that it rejects the application of a legacy cost reasoning pursuant to the *EDF*⁽¹³⁾ and *La Poste*⁽¹⁴⁾ decisions in this case on the grounds of substantial dissimilarities with the facts in this case, especially in respect of the pension systems in France and the United Kingdom.

Comments submitted by Deutsche Post

- (92) Deutsche Post places the aid requirement of RMG within the context of the liberalisation and process of the UK postal market and the consequential requirement for the incumbent ex- monopolist to adapt to the conditions of a competitive postal market and modernise its business practices accordingly. In this context Deutsche Post urges the Commission to ensure a uniform application of the law across all Member States in this regard. Subsequently Deutsche Post rejects the reasoning put forward by the United Kingdom that RMG presented an 'exceptional case' within the meaning of the R&R Guidelines and voices doubts about the applicability of the R&R Guidelines to the case.

- (93) In this context, Deutsche Post also argues on the basis of the judgment of the Court in *Combus*⁽¹⁵⁾ that, in the course of the privatisation of formerly State-owned universal service providers, the public compensation of pension costs — which go beyond the level normally assumed by private competitors — do not constitute aid. Deutsche Post claims that the relief of RMG's pension deficit should escape the prohibition of Art 107 of the Treaty on the grounds that this measure is designed to rectify a structural disadvantage within the meaning of the *Combus* judgment.

⁽¹³⁾ Commission Decision 2005/145/EC of 16 December 2003 on the State aid granted by France to EDF and the electricity and gas industries (OJ L 49, 22.2.2005, p. 9).

⁽¹⁴⁾ See footnote 12.

⁽¹⁵⁾ Case T-157-01 *Danske Busvognmænd v Commission* [2004] ECR II-917.

- (94) Deutsche Post also considers that the Commission would be obliged to take into account that RMG has already received compensation for its pension deficit in the form of higher stamp prices.

Comments submitted by TNT

- (95) TNT observes that the aid should be no more than the smallest amount strictly necessary to rescue RMG from its financial difficulties. At the same time TNT is concerned that RMG could use its new found strength to unduly restrict competition on the UK postal market in a bid to regain control of the market and recoup lost market shares.
- (96) In order to prevent such a move, TNT asks for far reaching measures as a compensation for State aid, including a guarantee of future network access, if possible by way of unbundling, and the end of the VAT exemption to strengthen the evolution of competition in the end to end delivery markets.
- (97) With respect to the proper legal framework, TNT agrees with the United Kingdom that the measures should be assessed as restructuring aid pursuant to the R&R Guidelines and rejects the notion of an analysis under Article 106(2) of the Treaty.

Comments submitted by UPS

- (98) In its statement UPS opines that the proposed aid measures could have severe implications on the postal market and produce effects beyond the markets directly targeted — in the express service parcel markets in the United Kingdom and Europe. In this context UPS raises doubts about the way in which the advantages for RMG have been calculated and the applicability of the R&R Guidelines to this case.
- (99) Furthermore, UPS has doubts about the compatibility of the measures under Article 107(3) of the Treaty and the R&R Guidelines.
- (100) With regard to compensatory measures UPS contends that the required measures must be proportional to the distortions of competition. UPS thereby rejects the notion forwarded by the United Kingdom that the burden of discharging the public service obligation should be taken into account when assessing the measures under the R&R Guidelines. UPS places a particular emphasis on the need to analyse and account for potential spill-over effects into neighbouring markets, should the measures not only strengthen RMG but also its subsidiaries, especially GLS.
- (101) With respect to the amount of aid, UPS emphasises that the amount should be limited to the strict minimum necessary and that a substantial own contribution should be made by RMG. In this context UPS expresses doubts over the presence of exceptional circumstances

which would allow for an own contribution below 50 %, as suggested by the United Kingdom. UPS furthermore believes in case that the Commission should accept the United Kingdom's reasoning in this regard, the own contribution should under no circumstances be lower than 40 % based on the Commission's decision practice in previous decisions.

- (102) With regards to the legacy cost reasoning under Article 107(3) of the Treaty, UPS points out that the measures could not be justified upon the basis of precedent (*La Poste*) or as a matter of principle, but require a comprehensive balancing test in which the positive effects of the measure are balanced against the way in which it distorts competition.

4. COMMENTS FROM THE UK AUTHORITIES

4.1. On the existence of aid and aid beneficiaries

- (103) The United Kingdom accepts that the notified pension relief and debt reduction measures constitute State aid within the meaning of Article 107(1) of the Treaty.
- (104) The United Kingdom maintains that there is no aid involved in the tax treatment of the transfer of net liabilities from RMG to the United Kingdom since the pension liabilities currently in RMG's accounts represent amounts which are as yet unpaid, and they are only tax deductible when payment is actually made. As such, RMG has not claimed tax relief for any of the liabilities in its accounts. According to the United Kingdom, it would be inequitable for RMG to be charged tax on the release of provisions, when it has not received tax relief on those provisions in the first place ⁽¹⁶⁾.
- (105) In response to the Commission's assertion in the opening decision that it is unclear whether POL would benefit from the debt reduction measures, the United Kingdom claims that POL's funding and accounting is ring-fenced from that of RMG. According to the United Kingdom, this is further assured by the fact that the businesses are legally separated.

4.2. On the compatibility of the pension relief as compensation for legacy pension costs under Article 107(3)(c) of the Treaty

- (106) The United Kingdom first of all maintains that there are significant parallels between the present case and the *La Poste* case. Although the United Kingdom acknowledges that the UK pension environment is different to that of France, and there is no UK specific comparator to RMG's scheme, this does not mean that the *La Poste* precedent

⁽¹⁶⁾ In reference to the Commission's decision in the *British Energy* case (Case No C52/03, Decision of 22 September 2004 (OJ L 142, 6.6.2005, p. 26)).

cannot be applied. The United Kingdom strongly believes that there are sufficient similarities between the two cases to merit a full application of the precedent, because both cases involve material economic risk and uncapped liabilities and because both cases involved inflexible schemes.

(107) Furthermore, the United Kingdom considers that, whilst there are parallels between the cases, the proposed solution for RMG is not as extensive or material as that for La Poste because the United Kingdom is only relieving RMG of its past liabilities and because the pension liabilities assumed by the United Kingdom are accompanied by the majority of the RMPP pension assets, such that the aid concerned is limited to the deficit rather than the amount of the liabilities.

(108) The United Kingdom also contends that the scale of RMG's pension liabilities is unusual due to a combination of factors that include the scale of RMG's employment costs, the indexation and early retirement arrangements, and the enhanced redundancy terms imposed by collective agreements with the unions. The United Kingdom submits that these liabilities can be regarded as 'stranded costs' within the meaning of previous Commission decisions on pension liabilities in the energy sector. This means that the pension deficit should be regarded as an irreversible (social) investment made before the liberalisation of the sector which turned unprofitable under the new conditions of sector liberalisation which could not be foreseen at the time when the decision was taken. The United Kingdom bases its stranded cost reasoning on the following factors:

(i) the shape and scale of the liabilities are directly linked to RMG's civil service and monopoly legacy;

(ii) the RMPP was less problematic to manage when it was in a monopoly environment; and

(iii) the generous entitlements granted to members, combined with the sheer number of active, deferred and retired members (which was unavoidable given RMG's USO), represent additional pension costs that RMG's competitors do not have to bear.

(109) During the course of the investigation, the United Kingdom has also provided further information on the abnormal nature of RMG's pension liabilities, which would be relieved as part of the UK Government's proposals. It further developed the initial analysis carried out by the expert Towers Watson who examined the level of abnormality inherent in the RMPP.

(110) This additional analysis compared the RMPP to the average private sector defined benefit scheme and according to the United Kingdom demonstrates that approximately GBP 6 900 million of the RMPP's pension liabilities relate to abnormally high costs when compared to the average scheme.

(111) This exceeds the level of the RMPP's pension deficit of GBP 4 500 million on an accounting basis at March 2011, which, according to the United Kingdom, suggests that all of RMPP's pension deficit could be considered abnormal.

4.3. On the compatibility of the debt reduction measures under the R&R Guidelines

(112) The United Kingdom first of all maintains that the Commission should apply the R&R Guidelines in such a way as to avoid a negative effect on the availability of the universal service in the United Kingdom. Consequently, the United Kingdom points out that RMG is indispensable to the availability of the universal service and argues that the difficulties of the firm endanger not only the survival of RMG as an undertaking but also the availability of the universal service in the United Kingdom. The United Kingdom therefore asks the Commission to take the legislative intent of Article 106(2) of the Treaty into account when assessing the measures under the R&R Guidelines. In support of its argument the United Kingdom points to case-law from the Court of Justice according to which the rules of the Treaty should be applied in consideration of the effective discharge and undistorted availability of the universal service in cases where an undertaking's ability to deliver a core service is threatened, and in particular where the survival of the undertaking delivering this service is threatened⁽¹⁷⁾.

(113) Hereby, the United Kingdom submits that the compatibility criteria under the R&R Guidelines should be qualified to the extent required to allow the measures to be implemented as contemplated in the restructuring plan in order to ensure that the UK Government's ability to meet its obligations under the Postal Services Directive is not jeopardised.

(114) Furthermore, the United Kingdom maintains that RMG is to be considered as a firm in difficulty within the meaning of the R&R Guidelines i.e. a firm that — bar State intervention — would be unable to obtain the necessary capital to stem losses which endanger its very survival from either its shareholders or market sources. In this respect the United Kingdom points to the severe financial difficulties of the firm caused by diminishing revenues, the considerable size of the pension deficit which causes a deeply troublesome balance sheet, and projected shortages in its cash flow positions.

⁽¹⁷⁾ *Commission v France*, C-159/94, ECR 1997, I-5815, paragraph 59.

- (115) In its submissions, the United Kingdom provided much more information on the restructuring plan. In particular it presented:
- (i) a more detailed description of the operational and industrial measures which RMG is undertaking to restructure its business and in respect of which the notified UK restructuring measures would also provide financial support;
 - (ii) the United Kingdom's clarification about the duration of the restructuring plan;
 - (iii) reassurance that, on the basis of the restructuring plan, the future viability of RMG is ensured, even in a reasonable downside scenario;
 - (iv) a clarification of the full extent of own contribution which RMG is providing towards its restructuring.
- (116) As regards the length of the restructuring plan, the United Kingdom contends that the Commission should take into account the pace at which it is possible to roll out the scale of operational restructuring required having regard to the scale of RMG's operations, its industrial relations environment and its obligation to continue providing the universal service to specified quality standards throughout the process.
- (117) As regards the restoration of the long-term viability and the deliverability of the restructuring plan, according to the United Kingdom it has been sufficiently demonstrated in the restructuring plan that RMG will return to viability by the end of the restructuring period in accordance with the R&R Guidelines.
- (118) The United Kingdom believes, based on the assessment of its financial advisors, that the delivery of the restructuring plan will restore RMG to viability by the end of financial year 2014/15 (that is to say by the end of March 2015). In practice this means that after the implementation of the pension relief and the completion of the restructuring measures which are relevant for State aid purposes, the United Kingdom forecasts that RMG should be in a position to bear all its costs, including depreciation and financial charges. Moreover the expected return on capital would be enough to enable the restructured RMG to compete in the market place on its own merits.
- (119) As regards the own contribution requirement, the view of the United Kingdom remains that the particular circumstances of this case justify a flexible approach to own contribution.
- (120) Nevertheless, the United Kingdom has clarified how RMG is also using its own resources to fund the costs associated with the restructuring activity set out in section 2.5.
- (121) The United Kingdom considers that any distortion of competition arising from the notified measures will be minimal. It also reiterates that RMG's subsidiary GLS is not directly impacted by the measures and there will therefore be no impact on competition from the measures in the European parcels and express markets in which GLS operates.
- (122) As regards compensatory measures, the United Kingdom maintains that the Commission should consider the extent to which this principle should be applied in order to avoid any action which would directly or indirectly obstruct RMG in its performance of the universal service.

4.4. On the comments from third parties

- (123) In response to the third party submissions the United Kingdom addresses the issues at hand thematically.
- (124) In response to the fears of potential spill-over effects on neighbouring markets via RMG subsidiary GLS the United Kingdom elaborates that GLS is not benefitting from the proposed aid measures due to the fact that GLS employees are neither currently nor have ever been part of the RMPP, and that its pension system has no connection whatsoever to the RMPP, making spill over effects impossible. Furthermore the United Kingdom stresses that the measures, however implemented will not have any effect any cash position of GLS.
- (125) In response to comments which question the level of debt deriving from the statutory pension contribution, the United Kingdom asserts that the size of the deficit was directly linked to the legacy costs incurred and that RMG should therefore be relieved of the deficit in its entirety.
- (126) With regards to the general compatibility of the measures with the R&R Guidelines the United Kingdom considers that the proposed measures fit within the scope of the R&R Guidelines. Furthermore the United Kingdom maintains its position expressed in the notification that the Commission should undertake its assessment of the proposed measures under Article 107(3) of the Treaty in the spirit of Article 106(2) of the Treaty.
- (127) In response to comments questioning the long term viability of RMG after the aid is granted, the United Kingdom rejects the concerns of the interested parties and submits that on the basis of the independent advice from its economic advisers, it firmly believed that RMG will return to viability and prosper in the long- term.

- (128) The United Kingdom rejects comments alleging that the amount of aid was not limited to the strict minimum necessary and in essence aimed at making RMG more attractive to potential investors with a view to realise a successful privatisation in the future. It explains that the measures were specifically designed to spend only the strict minimum necessary to secure the future of the universal service and restore RMG to viability to that end.
- (129) The United Kingdom furthermore rejects claims that the measures would lead to an undue distortion of competition since the benefits to consumers flowing from RMG's survival would significantly outweigh the limited degree of market distortion.
- (130) In response to the comments on the required own contribution, the United Kingdom rejects arguments forwarded by interested parties who question the existence of exceptional circumstances which would justify a deviation from the 50 % own contribution rule prescribed in the R&R Guidelines. The UK maintains its position voiced in the notification that the Commission should take account of RMG's public sector heritage and its public service burden when determining appropriate level of own contribution.
- (131) Furthermore the United Kingdom points out that the separation of POL from RMG already puts RMG in a position where it will lose business opportunities in the development of related fields such as personal banking and other usage of POL's infrastructure.
- (132) The United Kingdom also firmly rejects calls to divest its express parcel operator GLS as a compensatory measure as suggested in some of the third party comments. The United Kingdom clarifies that it considers GLS to be a vital part of RMG's overall strategy and that it regards the firm as crucial to the attainment of long term viability. In this context the United Kingdom is keen to stress that diversification of a firm's activities into more profitable areas is expressly recognised by the R&R Guidelines (paragraph 17) as a vital part of the recovery of a struggling enterprise. Furthermore the United Kingdom believes that a divestiture of GLS would threaten the viability of RMG in such a way that it would endanger not only the restructuring plan but also the provision of the universal service in the United Kingdom.
- (133) The United Kingdom emphasises its position with regards to the applicability of the legacy cost reasoning along the lines of the *La Poste, EDF* ⁽¹⁸⁾ and *OTE* ⁽¹⁹⁾ case-law to the present case. The United Kingdom maintains its position that, despite of the technical differences between the United Kingdom and French pension systems a sufficient logical analogy remained which allowed for a legacy cost reasoning to be applied to this case.
- (134) In response to comments which recommended assessing the measures under Article 106(2) of the Treaty rather than the R&R Guidelines pursuant to Article 107 of the Treaty, the United Kingdom again stresses its position that such a move would not be the appropriate step for RMG under the present circumstances. Nevertheless the United Kingdom believes that the Commission should bear Article 106(2) of the Treaty in mind in its application of the R&R Guidelines.
- (135) The United Kingdom also remarks on Deutsche Post's submission calling on the Commission to discount any proceeds already generated in favour of RMG with respect to its pension liabilities in the form of higher prices in price regulated areas from the pension relief. The United Kingdom seeks to refute this line of reasoning and expresses a belief that there is effectively no double counting between regulated prices and the pension deficit due to the methodology and regulatory arrangements employed by RMG and the past and present regulators which ensured that RMG would not receive funds for the same purpose twice.
- (136) The United Kingdom rejects Deutsche Post's submission that the assessment of State aid to former postal monopolies should be undertaken on an identical set of criteria to ensure a uniform application of Union law across the Member States, and argues instead that the Commission should be free to assess each case on its particular circumstances taking account of the particularities of each individual case.
- (137) Finally the United Kingdom comments on the many remarks and suggestions made by some third parties which the United Kingdom believes to fall within the scope of regulatory activity rather than this case. With regards to those issues, such as structural separation, transparency, review and cessation of certain activities, the United Kingdom is keen to stress that such measures are of a regulatory nature and should be raised in the appropriate forum with the national regulator rather than the context of State aid proceedings. In addition, the United Kingdom notes that the extent of the VAT exemption for postal services in the United Kingdom has already been considered by the Court of Justice of the European Union ⁽²⁰⁾ and is expected to be further reviewed by the UK tax authorities.

5. ASSESSMENT

5.1. Existence of aid under Article 107(1) of the Treaty and potential beneficiaries

- (138) Article 107(1) of the Treaty provides that 'any aid granted by a Member State or through State resources

⁽¹⁸⁾ See footnotes 12 and 13.

⁽¹⁹⁾ Commission Decision 2008/722/EC of 10 May 2007 on State aid C 2/06 (ex N 405/05) which Greece is planning to implement for the early voluntary retirement scheme of OTE (OJ L 243, 11.9.2008, p. 7).

⁽²⁰⁾ Case C-357/07, *TNT Post UK* [2009] ECR I-3025.

in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market'. In determining whether a measure constitutes State aid within the meaning of Article 107(1) of the Treaty, the Commission has to apply the following criteria: the measure must be imputed to the State and use State resources, it must confer an advantage on certain undertakings or certain sectors which distorts competition and it must affect trade between Member States.

5.1.1. State resources

- (139) Article 107(1) of the Treaty is concerned with aid granted by a Member State or through State resources. In other words, the measures in question must appear as the result of behaviour attributable to the State or must involve State resources.
- (140) As regards the pension relief, the United Kingdom's taking over of certain of RMG's accrued pensions liabilities is financed by State resources and is imputable to the State; the United Kingdom will set up a new statutory pension scheme which will be a liability of the UK Government and to which certain part of the accrued liabilities held by the RMPP will be transferred.
- (141) Concerning the debt reduction measures, those are clearly financed from State resources and imputable to the State: the United Kingdom will write off the debt from the outstanding loans that RMG currently owes to it.

5.1.2. Selective advantage

- (142) In order to ascertain whether the measures under scrutiny contain elements of State aid, it needs to be determined whether they confer an economic advantage on RMG in that they allow it to avoid costs that would normally have had to be borne by its own financial resources and have thus prevented market forces from producing their normal effect ⁽²¹⁾.
- (143) In this respect, it should also be borne in mind that several of the Court of Justice's rulings contradict the theory that compensation for a structural disadvantage exempts a measure from being qualified as aid. The Court of Justice has constantly held that the existence of aid is to be assessed in relation to the effects and

not in relation to the causes or objectives of State intervention ⁽²²⁾. The Court of Justice has also held that the concept of aid includes advantages granted by public authorities which, in various forms, reduce the charges which are normally included in the budget of an undertaking ⁽²³⁾. The Court of Justice has also clearly stated that the costs linked to remuneration of employees naturally place a burden on the budgets of undertakings, irrespective of whether or not those costs stem from legal obligations or collective agreements ⁽²⁴⁾. In that context, the Court of Justice has considered that the fact that State measures aim to compensate for additional costs cannot constitute grounds for disqualifying them from the definition of aid ⁽²⁵⁾.

- (144) The Commission takes the view that the liabilities a company bears under employment legislation or collective agreements with trade unions, such as pension costs, are part of the normal costs of a business which a firm has to meet from its own resources ⁽²⁶⁾. Those costs are inherent to the economic activity of the undertaking ⁽²⁷⁾. It does not matter in that regard whether the undertaking bears the pension costs by directly financing the pensions of its former staff or by paying contributions to a pension fund, which in turn uses the collected contributions to finance the pensions of the companies' employees. The decisive element is that, in one way or another, undertakings bear the full costs for pensions.
- (145) As regards the pension relief, the Commission observes that it will provide a financial advantage to RMG, given the effects on RMG of the deficit in the RMPP, and the obligations RMG has towards the RMPP under UK pensions law. These obligations include the payment of contributions, in particular to address the deficit, and are reflected in the fact that the deficit is recorded on RMG's balance sheet as required by rule 19 of the International Accounting Standards (hereinafter referred to as IAS). Therefore, the Commission finds that the taking over of certain accrued pensions liabilities by the United Kingdom will relieve RMG of financial obligations that

⁽²¹⁾ E.g. Case C-301/87 *France v Commission* [1990] ECR I-307, paragraph 41.

⁽²²⁾ Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13; Case 310/85 *Deufil v Commission* [1987] ECR 901, paragraph 8; Case C-241/94 *France v Commission* ECR I-4551, paragraph 20.

⁽²³⁾ C-387/92 *Banco Exterior* [1994] ECR I-877, paragraph 13; aforementioned judgment in Case C-241/94, paragraph 34

⁽²⁴⁾ Case C-5/01 *Belgium v Commission* [2002] ECR I-1191, paragraph 39

⁽²⁵⁾ Case 30/59 *Gezamenlijke Steenkolenmijnen in Limburg v High Authority* [1961] ECR 3, paragraphs 29 and 30; aforementioned judgment in Case C-173/73, paragraphs 12 and 13; aforementioned judgment in Case C-241/94, paragraphs 29 and 35; Case C-251/97 *France v Commission* [1999] ECR I-6639, paragraphs 40, 46 and 47; and Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato Venezia vuole vivere v Commission* [2011] ECR I-0000, paragraphs 90 to 96.

⁽²⁶⁾ *La Poste* decision (see footnote 12), recital 141, and R&R Guidelines (see footnote 11), recital 63.

⁽²⁷⁾ Case T-20/03 *Kahla v Commission* [2008] ECR II-2305, paragraphs 194 to 197. See also EFTA Court judgment of 22 August 2011 in Case E-14/10, *Konkurrenten.no AS v EFTA Surveillance Authority*, n.y.p., paragraph 86.

the undertaking would normally have had to bear and thus prevent market forces from producing their normal effect.

(146) Furthermore, the Commission observes that the pension relief not only confers an advantage on RMG, but also on its subsidiary POL as it relieves the latter of the obligation under the secondment arrangements with RMG to contribute to the pension deficit. GLS on the other hand is not considered to be a beneficiary of the pension relief in view of the fact that its employees are not part of the RMPP, and its pension system has no connection whatsoever to the RMPP.

(147) The Commission also notes that arguments intended to demonstrate that the pension costs borne by RMG are higher than those of its competitors are irrelevant for the purpose of finding whether the pension relief constitutes a State aid. However, their comparative level can be taken into consideration in the assessment of the compatibility of the pension relief.

(148) The Commission finds therefore that the pension relief provides a selective advantage to RMG and POL within the meaning of Article 107(1) of the Treaty.

(149) As regards the non-taxation of the release of the provisions made in the accounts as a result of the pension deficit, the Commission accepts the argument of the United Kingdom that this is justified because the building up of the provisions could not be deducted from tax. The pension liabilities currently in RMG's accounts represent amounts which are as yet unpaid under the RMPP and under UK tax legislation, tax relief is only available for pension contributions where and when those pension contributions are paid. As such, RMG has not claimed tax relief for any liabilities reflected in its accounts to date. Following the transfer of those liabilities to the new scheme, RMG will no longer be responsible for funding the RMPP and therefore will not claim any tax relief. As RMG will not be able to claim tax relief in respect of the related pension obligations which are currently reflected in its accounts, equally, it would not expect to suffer tax on the reversal of the accounts provisioning. Therefore, the Commission finds that the tax treatment of the pension relief does not involve a selective advantage for RMG and does therefore not constitute State aid.

(150) As regards the assessment whether the debt reduction measures provide a selective advantage, the Commission assesses this type of measures under the private creditor

test⁽²⁸⁾. This test asks whether a private creditor in the same situation would have acted the same way in order to maximise its chances to recover its credit. The Commission observes first that the United Kingdom has not claimed that it is acting in line with the behaviour of a private creditor in relation to the debt reduction measures and therefore it has not provided the Commission with any information that would enable it to apply such test. Second, the Commission is of the view that a private creditor would not have agreed to a reduction of his credit without demanding any further covenants or at least agreements on a rescheduling of the remainder of its credit with a view to maximise his chances of debt repayment after a successful restructuring. Therefore, the Commission finds that the debt reduction measures in the restructuring plan provide a selective advantage to RMG within the meaning of Article 107(1) of the Treaty.

5.1.3. Distortion of competition and affectation of intra-Union trade

(151) 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. In accordance with settled case-law⁽²⁹⁾, for a measure to distort competition and affect trade between Member States it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

(152) The UK postal market was fully opened to competition in 2006, while already being open to competition before that date in certain market segments (for example delivery of parcels and delivery of bulk mail in case of postings above 4 000 items and in general any postal service that was not reserved to a specific undertaking). In this context, it is sufficient to point out that RMG is competing with companies established in other Member States (such as Post NL or Deutsche Post) and is itself active on markets outside the United Kingdom through its express parcel subsidiary GLS. Therefore, the measures in question are liable to distort competition and affect trade between Member States.

5.1.4. Conclusion as regards the existence of aid

(153) In light of the above, the Commission concludes that both the pension relief as well as the debt reduction measures in the restructuring plan constitute State aid within the meaning of Article 107(1) of the Treaty.

⁽²⁸⁾ Case-342/96, *Spain v Commission (Fogasa)* [1999] ECR I-2459, par.31-34; Case-256/97, *Déménagements-Manutention Transport (DMT)*, [1999] ECR I-3913, par.24; Case T-152/99, *Hijos de Andres de Molina SA (HAMSA) v Commission* [2002] ECR II-3049, par.166.

⁽²⁹⁾ Case T-214/95, *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

5.2. Compatibility of the aid

(154) As the derogations provided for in Article 107(2) of the Treaty and Article 107(3)(a)(b) of the Treaty do clearly not apply, the Commission will assess to which extent the pension relief and the debt reduction measure can be found compatible with the internal market under Article 107(3)(c) of the Treaty.

(155) The United Kingdom has not invoked Article 106(2) of the Treaty as such as justification for the compatibility of the aid granted to RMG.

5.2.1. Compatibility of the pension relief as compensation for legacy pension costs under Article 107(3)(c) of the Treaty

(156) The Commission will assess whether the pension relief can be declared compatible pursuant to Article 107(3)(c) of the Treaty, which provides that aid to facilitate the development of certain economic activities or of certain economic areas may be declared compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(157) According to the case-law, the Commission may declare State aid compatible with the internal market if the aid contributes to the attainment of an objective of common interest⁽³⁰⁾, is necessary for the attainment of that objective⁽³¹⁾, and does not adversely affect trading conditions to an extent contrary to the common interest (proportionality).

(158) Postal services contribute to social, economic and territorial cohesion in the Union. The gradual opening of postal services to competition, which started at Union level in 1998, has brought about increased quality, greater efficiency and better responsiveness to users. Market opening has allowed the establishment of an internal market for postal services. It therefore contributes to the objective of the establishment of the internal market set out in Article 3(3) of the Treaty on European Union.

(159) However, during the process of liberalisation, the former incumbent may suffer from a competitive disadvantage because he is burdened with 'legacy costs', that is to say costs which come from commitments entered into prior

to the beginning of market opening and which can no longer be honoured under the same conditions in a competitive market environment because the historic operator is no longer able to pass on the corresponding costs to consumers.

(160) The Commission has recognised in its decision-making practice that the gradual transition from a situation of largely restricted competition to one of genuine competition at Union level must take place under acceptable economic conditions⁽³²⁾. Therefore, it has accepted in a number of decisions that Member States grant State aid to relief the historic operator of a part of its 'legacy' pension liabilities⁽³³⁾.

(161) In its Decision regarding the State aid granted to EDF⁽³⁴⁾, the Commission declared compatible with the common market State aid that relieved EDF of specific pension liabilities which exceeded those resulting from the general retirement arrangements and which had been defined during the monopoly period. The Commission stated that these liabilities were not dissimilar in nature to that of stranded costs in the electricity sector⁽³⁵⁾ and that aid to compensate excessive pension costs would therefore be treated in the same way as compensation for stranded costs. Therefore, the Commission declared that the same approach would be applied in the analyses of similar cases in the future.

(162) In its Decision of 10 October 2007 on the State aid granted to La Poste⁽³⁶⁾, the Commission declared compatible with the common market State aid that relieved La Poste of specific pension liabilities which exceeded those resulting from the ordinary pension arrangements and which had been defined during the monopoly period. These liabilities arose from, first, the higher pension contributions payable in respect of employees with civil servant status and, secondly, the requirement to ensure the equilibrium of its retirement scheme for these employees.

⁽³⁰⁾ Case T-162/06, *Kronoply v Commission* [2009] ECR II-1, especially paragraphs 65, 66, 74 and 75.

⁽³¹⁾ Case T-187/99, *Agrana Zucker und Stärke v Commission* [2001] ECR II-1587, paragraph 74; Case T-126/99, *Graphischer Maschinenbau v Commission* [2002] ECR II-2427, paragraphs 41 to 43; Case C-390/06, *Nuova Agricast* [2008] ECR I-2577, paragraphs 68 and 69.

⁽³²⁾ See Commission Communication relating to the methodology for analysing State aid linked to stranded costs, Commission letter SG (2001) D/290869 of 6.8.2001.

⁽³³⁾ Decision 2005/145/EC on the State aid granted by France to EDF and the electricity and gas industries (see footnote 13); Decision 2008/204/EC on the State aid implemented by France in connection with the reform of the arrangements for financing the retirement pensions of civil servants working for La Poste (see footnote 12); Commission Decision 2009/945/EC concerning the reform of the method by which the RATP pension scheme is financed (State aid C 42/07 (ex N 428/06)) which France is planning to implement in respect of RATP; Commission Decision of 20 December 2011 in case C 25/2008 concerning the Réforme du mode de financement des retraites des fonctionnaires de l'Etat rattachés à France Télécom, not yet published.

⁽³⁴⁾ See footnote 13.

⁽³⁵⁾ See also Commission Communication relating to the methodology for analysing State aid linked to stranded costs, adopted by the Commission on 26 July 2001.

⁽³⁶⁾ See footnote 12.

- (163) The Commission noted that the measures were limited to what was strictly necessary to establish a level playing field for social security contributions and ultimately would therefore favour the development of competition and further liberalisation of the postal sector. It further noted, by way of drawing a parallel with the *EDF* decision, that *La Poste* no longer recruited civil servants and that the future pensions payments of *La Poste* placed it in a comparable situation vis-à-vis its competitors as regards social security contributions.
- (164) In its Decision of 25 January 2012 concerning subsidies for the financing of the civil servants' pension costs at *Deutsche Post* ⁽³⁷⁾, the Commission verified, in line with its *La Poste* Decision, whether the social security contributions borne by *Deutsche Post* were equivalent to those of private competitors. The Commission found that, in addition to pension subsidies, *Deutsche Post* has also benefitted from dedicated stamp price increases to finance the civil servants' pension costs. Taking account of this extra relief, *Deutsche Post* had effectively borne significantly lower social contributions than private competitors in certain market segments. Accordingly the Commission declared the pension subsidies as partly incompatible with the internal market and ordered Germany to recover the incompatible share of the pension subsidies.
- (165) In its Decision on the same day in *BPost* ⁽³⁸⁾, the Commission found the State aid granted to *BPost* for the relief of civil servants' pension liabilities as compatible with the internal market under Article 107(3)(c) of the Treaty since it only relieved *BPost* of legacy pension costs without placing the company in a more favourable position than its competitors as regards the social security contributions. The Commission verified that the social security contributions borne by *Belgian Post* were equivalent to those of private competitors.
- (166) There are certain parallels between the case on *RMG* and previous case-law.
- (167) First of all, all cases involve material economic risk and involve uncapped liabilities: *RMG* bears the economic risk of a pension scheme which stems from *RMG*'s public monopoly legacy. The other postal incumbents bore a similar economic risk prior to being relieved of their liabilities, and were similarly disadvantaged when compared to their competitors. All cases concern aid beneficiaries in equivalent positions because their pension arrangements differed very significantly from the competitors' pension arrangements.
- (168) Second of all, as with the previous cases, the Commission considers that in the absence of any State intervention to relieve *RMG* of at least part of the pension liabilities, *RMG* would not be able to compete on its merits with its competitors. After all, leaving *RMG* with the pension deficit would lead to its bankruptcy. As mentioned in recital 29, *RMG* has shown at the end of the 2010/2011 financial year negative operating assets on its balance sheet. Even after a successful implementation of the restructuring plan *RMG* would remain with net liabilities of at least GBP 2 000 million without a relief of the pension deficit.
- (169) However, there are some factors which distinguish the previous cases from this case.
- (170) In the first place, the UK pension arrangements differ significantly from those in other Member States. Most occupational pension schemes are 'contracted out' of the State pension arrangements known as the State Earnings Related Pension Scheme. Most large employers run their own pension schemes. Under UK pension law, those schemes must provide a pension entitlement which meets certain standards, and employers have certain obligations to ensure that schemes are adequately funded. Under current accounting standards (IAS), employers must record deficits on such pension schemes on their balance sheets.
- (171) In this respect, the *RMPP* is in principle similar to pension funds of private competitors. The only difference between *RMG* and competitors lies in the fact that the level of pension liabilities — and thus the deficit of the *RMPP* — has arisen from terms and conditions which were agreed during the monopoly period and in line with the status of civil servants.
- (172) Furthermore, the terms and levels of other social costs (for example contributions to the State pension arrangement, contributions to health and unemployment insurances) do not differ between *RMG*'s employees and private competitors' employees.
- (173) Finally, *RMG* will remain liable for all newly accrued liabilities in the future as well as for new liabilities from an increase in the previously-acrued benefits of current employees as a result of future above-inflation wage increases. This means that *RMG* will continue to

⁽³⁷⁾ N.y.p., see Press release IP/12/45 and MEMO/12/37 of 25 January 2012.

⁽³⁸⁾ N.y.p., see Press release IP/12/45 and MEMO/12/38 of 25 January 2012.

bear the same level of pension costs for newly accrued pension rights. The notified pension relief will therefore only reduce historic pension liabilities up to the date of the pension relief on 1 April 2012, while RMG remains fully responsible for any deficit that may arise from newly accrued pension rights after the pension relief on 1 April 2012.

- (174) These differences justify an adjustment of the approach followed in previous cases to assess the compatibility of the measure at issue and to account for the specificities of the UK pension arrangements. In the previous cases, the compulsory social security contributions (for example the contribution to the social insurances for pension, health, and unemployment) were used as a benchmark but this is not appropriate in the current case.
- (175) First, as RMG bears — apart from the pension costs — the same level of costs as competitors for the other social insurances (for example the financing terms for health and unemployment insurances do not differ from those of competitors), the benchmarking has to be carried out with regard to the funding of pension's liabilities. It has to be ensured that RMG is placed in the same position as competitors in respect of their obligations as regards the financing of pension funds.
- (176) Second, in the previous cases, the Commission approved a level of aid such that the postal incumbent's future social costs were capped at the competitors' social contribution rates. The United Kingdom reform does not go that far but leaves RMG the full financial responsibility for any deficit that results from the newly accrued pension rights. Therefore, the comparison has to be done on the basis of RMG's accrued pension liabilities at the date of the pension relief on 1 April 2012.
- (177) Third, it is not straightforward to find a single benchmark for the level of competitors' pension costs because the pension benefits offered by the pension funds differ from one company to another. Each pension fund has individual arrangements with the sponsoring companies. At most, the comparison can be done based on an average of comparable pension funds.
- (178) Therefore, the Commission will assess whether RMG will, as a result of the pension relief, be placed in a comparable situation vis-à-vis its competitors and other UK companies as regards the liability for accrued pension deficits.
- (179) With regard to Deutsche Post's comment that the assessment should take into account the extent to which pension costs were passed on through increased regulated stamp prices, the Commission has reviewed the UK postal regulator's pricing decisions. The Commission finds that in the RMG case pension costs were evenly apportioned between the different business segments of RMG according to generally accepted cost allocation principles. This means that both the price-regulated as well as the other services in competition have carried an appropriate share of the pension deficit. It is therefore not true that in the RMG case the regulated prices financed a disproportionate share of pension costs for the benefit of the non-price regulated business segments. The UK postal regulator has ensured that all of RMG's business segments have equally and proportionally contributed to the financing of the RMPP's deficit and have not been placed in a better position than competitors.
- (180) The Commission will first assess the United Kingdom's contention that the current deficit of the RMPP can be fully relieved because the amount of liabilities which are due to more generous entitlements that the RMPP offered to its members exceeds the current deficit.
- (181) The United Kingdom has submitted a study to support its assertion that the pension deficit has been caused by abnormally high pension liabilities. This study estimates that the level of abnormal liabilities of the Royal Mail scheme is GBP 12,7 billion when compared to the liabilities that would result from a pension fund that offers pension benefits in line with the statutory minimum. An amount of GBP 6,9 billion of abnormal liabilities results when compared to the UK average pension fund's liabilities. As, in both cases, those liabilities would be higher than the current deficit of GBP 4,5 billion, the United Kingdom claims that a total relief of the pension deficit is justified.
- (182) First, the Commission refutes the comparison to the statutory minimum because the submitted data on the average UK pension schemes clearly shows that the majority of UK pension schemes offer benefits that go significantly beyond the statutory minimum.
- (183) Second, the Commission considers that the provided comparison to the average pension schemes must be critically reviewed because the different elements of the comparison show different degrees of quality and reliability.

		<i>(billion GBP)</i>
		Costs relative to average pension scheme
1	RMPP's retirement age of 60 compared to average retirement age of 63,5	3,5
2	Redundancy benefits	0,5
3	Deferred pension revaluation for employees who left service before 1991	1,1
4	Increases to paid-out pensions relating to pre-1997 service	1,9
TOTAL		6,9

of GBP 1,9 billion depend sensitively on the assumptions about the future behaviour of the private sector schemes and are therefore the least robust estimate out of the four items of legacy costs.

- (184) Compared to RMPP's retirement age of 60, the average retirement age was 63,5 across United Kingdom private sector schemes over the period 1990 to 2010. The difference in pension costs of GBP 3,5 billion is calculated based on reliable data.
- (185) The redundancy benefits of GBP 0,5 billion under the RMPP are an unusual feature for private sector schemes and are identified as pension costs that go beyond those of general pension arrangements.
- (186) For members of UK pension schemes who left active service prior to 1991, pension schemes are not required to provide inflationary increases on all their benefits in the period between leaving employment and retiring. However, the RMPP does provide inflationary increases on all benefits for such members. The United Kingdom was not able to provide exact numbers of private sector schemes that also offer deferred pension revaluation for pre-1991 leavers but assures the Commission that a clear majority of schemes do not provide such revaluation. In the calculation of the abnormal liabilities of GBP 1,1 billion, it is assumed without sufficient justification that 75 % of all private sector schemes would not offer such additional benefits.
- (187) Contrary to the RMPP, pensions accrued prior to 1997 are generally not required to increase once retirement benefits have started to be paid to the respective member of the scheme. However, 36 % of private sector schemes guarantee increases in line with inflation as does the RMPP. The other private sector schemes do not offer guaranteed increases in the same magnitude but it was common practice in the past that a majority of those schemes decided at their own discretion increases that came close to the guaranteed increases. The United Kingdom's expert doubts that this practice will continue in the future because also private schemes are now in deficit and may decide to cut back on the discretionary increases. The calculated legacy costs
- (188) As the United Kingdom itself admits, an analysis of legacy cost compared to an average benchmark is necessarily characterised by a certain margin of approximation given the diversity of UK pension schemes and the lack of detailed benchmarking data stretching back 20-30 years. While the United Kingdom considers that the estimates of the four items are considered reasonable based on their expert's experience, the United Kingdom notes nevertheless that the degree of confidence and level of external supporting data does vary by item.
- (189) The Commission considers that the estimates of legacy costs concerning the retirement age and the redundancy benefits are reliable because they are calculated based on objective data. Consequently, the Commission notes as an intermediate result of its assessment that the provided data by the United Kingdom on the abnormality of the pension liabilities would provide sufficient evidence to justify a (partial) relief from the pension deficit in so far as the aid was limited to the legacy costs stemming from these two items.
- (190) However, concerning the other items, the magnitude of abnormality depends sensitively on the assumptions made by the expert. Although the Commission recognises that the RMPP offered more generous benefits than average private sector schemes, it is difficult to exactly quantify them.
- (191) The Commission therefore concludes that although the submitted expert study is based on reasonable assumptions as regards abnormality resulting from early retirement age and redundancy benefits, it suffers from a lack of (historical) data on the other sources of abnormality and can therefore not be considered reliable enough to justify a complete relief of RMPP's pension deficit.
- (192) Moreover, the Commission is of the opinion that a total relief of the pension deficit would place RMG in a better position vis-à-vis its competitors and other UK companies as regards its pension liabilities. Indeed, when looking at the pension deficits that the FTSE 100 companies⁽³⁹⁾ show on their balance sheets, the vast majority of those companies with a comparable profile to RMG, currently do carry pension deficits due to the rising life expectancy of the pension schemes' members and the adverse conditions on the stock markets.

⁽³⁹⁾ The FTSE 100 Index is a share index of the 100 most highly capitalised UK companies listed on the London Stock Exchange.

- (193) In order to overcome these difficulties in assessing the compatibility of the aid at issue, the Commission has looked at the average pension deficits of companies with a profile similar to that of RMG.
- (194) The United Kingdom puts forward that the ratio of pension deficit to EBITDA (= Earnings before Interest, Tax, Depreciation, and Amortisation) provides a measure of the relative burden of the pension liabilities and a company's ability to fund such liabilities. The United Kingdom submitted the latest available accounting data from 2011 on the pension deficits and EBITDAs of the FTSE 100 companies. The Commission considers that on average, the FTSE 100 companies show a pension deficit that amounts to [16 to 23 %] of the EBITDA.
- (195) In contrast, RMG's pension deficit is significantly higher than its EBITDA — for example measured in relation to its 2011 EBITDA — RMG's pension deficit amounts to more than 12 times its EBITDA. As the letter business is highly labour intensive, RMG is particularly exposed to the increased pension deficits from the defined-benefit schemes that RMG entered into in the pre-liberalisation period. Compared to other companies of a similar profile, RMG is therefore in a worse financial situation in respect of its ability to cover the pension deficits from on-going revenues.
- (196) The Commission considers that the ratio of pension deficit to EBITDA provides a reasonable benchmark for the pension deficit that is generally assumed by UK companies with a comparable profile to RMG. Aid granted to relieve RMG of abnormal pension liabilities can therefore be considered as compatible insofar as RMG carries after the grant of the aid a liability on its balance sheet that is comparable to the pension deficit that a UK company of a similar size generally assumes on its balance sheet. Using as benchmark group the FTSE 100 companies, which show an average liability for pension deficits of [16 to 23 %] of their EBITDA, RMG should also retain a liability for a pension deficit that equals [16 to 23 %] of its EBITDA. This way, the pension relief will be limited to those pension costs that comparable private sector companies have generally not assumed.
- (197) The United Kingdom has calculated RMG's ratio of pension deficit to EBITDA based on RMG's realised EBITDA in 2011. However, the Commission considers that it is erroneous to use the 2011 EBITDA because the 2011 EBITDA is particularly low because of RMG's financial and operational difficulties.
- (198) To benchmark the pension deficit, the Commission finds it therefore appropriate to use the projected average EBITDA over the period from 2010 to 2015 to take account of the fact that RMG's profits are expected to increase in the coming years. As the average EBITDA is estimated to amount to GBP [...] million, the pension deficit that RMG should keep on its balance sheet after the pension relief amounts to GBP 150 million.
- (199) To correctly value the impact on RMG's balance sheet, further clarifications are necessary:
- (i) as the benchmarking is done on the level of the total exposure of a company to its pension deficit, the benchmarked deficit of GBP 150 million should be understood to include the deficits of all pension schemes that RMG currently sponsors;
 - (ii) the benchmark value of GBP 150 million represents RMG's total liability for historic pension deficits accrued at the date of the pension relief on 1 April 2012 in line with the generally accepted IAS rules.
- ### Conclusions
- (200) The Commission considers that in order to be considered as compatible with the internal market under Article 107(3)(c) of the Treaty, the pension relief must be limited such that RMG remains liable for a pension deficit that is in line with the average pension deficit that UK companies with a comparable profile assume on their balance sheets. Therefore, taking the average pension deficit of FTSE 100 companies as a benchmark, the pension relief under Article 107(3)(c) as compensation for legacy pension costs must be limited such that RMG will retain at the date of the pension relief on 1 April 2012 a liability of GBP 150 million on its balance sheet for the accrued deficits of the pension schemes that RMG sponsors.
- (201) Furthermore, the Commission notes that, contrary to previous cases, the pension relief will not affect RMG's on-going pension costs since the pension relief is restricted to the historic pension deficit accrued up to the date of the pension relief on 1 April 2012. As the RMPP was closed for new members on 31 March 2008 and currently active member of the RMPP agreed to a reduction in their pension benefits, RMG's defined-benefit exposure will decrease over time. The Commission considers therefore that RMG should not receive any aid in the future as compensation for legacy costs in respect of pension liabilities accruing after 31 March 2012 for RMPP members.

(202) The Commission considers that the implementation of these conditions will ensure that the pension relief will not place RMG in a better position than competitors concerning the liability for the accrued pension deficits as well as payment of on-going pension costs.

5.2.2. *Compatibility of the debt reduction measures under the R&R Guidelines*

(203) In line with the R&R Guidelines, in order for an aid to be compatible under Article 107(3)(c) of the Treaty it must comply with criteria for compatibility listed in section 3.2.2 of those Guidelines:

Eligibility

(204) The R&R Guidelines consider a firm to be in difficulties where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business. The R&R Guidelines also list some usual signs of such companies, such as mounting debt or falling or nil net asset value.

(205) As already set out in section 3.4 of the opening decision, RMG is a company in difficulty as defined in section 2.1 of the R&R Guidelines because RMG shows the usual signs of a such company: e.g. negative net worth of approximately GBP 3 000 million on its balance sheet at March 2011, declining revenues by 3 % from 2008 to 2011, and a negative cash-flow before interest of approximately GBP [...] million in the financial year 2011/2012.

(206) Although the pension relief, which the Commission considers to be a compatible aid for the compensation of pension legacy costs pursuant to Article 107(3)(c) of the Treaty in so far as it is limited such that RMG will retain GBP 150 million on its balance sheet, will reduce RMG's liabilities and improve its cash-flow, RMG's financial difficulties will not be resolved. Even after the pension relief, RMG's expected cash-flows before interest remain negative or only slightly positive. In any case, RMG would not be able to afford to repay its debt facilities of GBP [...] million when they fall due for repayment in [...]. In the same vein, even though the balance sheet is expected to show net assets of GBP [...] million after the pension relief, RMG will not reach a sufficiently high credit rating to be able to raise funds from the financial markets.

(207) In view of the above, the Commission considers that RMG qualifies as a 'firm in difficulty' in the meaning of

the R&R Guidelines and is consequently eligible for restructuring aid.

Restructuring plan and restoration of viability

(208) According to points 34-37 of the R&R Guidelines, the grant of aid must be conditional to the implementation of a restructuring plan endorsed by the Commission and to which the Member State has committed itself. The restructuring plan has to analyse in detail the problems which have led to the difficulties and to set out the means by which to restore the long-term viability and health of the firm within a reasonable timescale. It has to be ensured that the restructuring measures are appropriate to address the company's problems and enable the company to progress towards a new structure that allows it to stand on its own merits. The improvements in viability must derive mainly from internal measures.

(209) The restructuring plan must also be as short as possible and be based on the basis of realistic assumptions as to future operating conditions. The expected return on capital must be enough to enable the restructured firm to compete in the marketplace on its own merits.

(210) The updated restructuring plan submitted to the Commission by the United Kingdom covers the period 2010/2015.

(211) Indeed, RMG started in the financial year 2010/2011 to take significant measures to address its inefficiency problems in the letter business. In 2010 that RMG started to close loss-making mail centres to a larger extent, to deploy new machines for the automation of its sorting activities and to re-organise delivery offices according to the 'World Class Mail' efficiency programme.

(212) Furthermore, in 2010 the United Kingdom engaged in pre-notification contacts with the Commission to provide information about the envisaged restructuring measures and the need for restructuring aid.

(213) Starting from 2010 onwards, RMG has undertaken significant restructuring measures — as described in the restructuring plan — that have introduced a step-change in RMG's letter business. Those measures address the inefficiencies of the letter operations (overstaffing, lacking automation, too high number of mail sorting centres) compared to other European postal incumbent who have already undertaken those modernisation efforts and have achieved a financially sound standing.

- (214) RMG's proposed operational modernisation covers changes in all areas and results in significant cost savings for the business. The modernisation will deliver savings via the introduction of new technology and more effective working practices as RMG rolls out 'World Class Mail' operations throughout the letters network, which aims to raise productivity through the deployment of best practices. The operational modernisation is projected to result in annual cost savings of GBP [...] million (net of pay increases) by 2014/2015, driven by a headcount reduction of [...].
- (215) The Commission concludes therefore that the updated restructuring plan address appropriately the weaknesses of RMG's letter business and allows RMG to progress towards a new and sustainable structure. The improvement in RMG's profitability comes from the internal measures (for example closure of mail sorting centres, streamlining of internal processes and significant reduction of workforce) that increase RMG's productivity in a declining letter market.
- (216) The Commission further notes that according to the R&R Guidelines, the restructuring plan must ensure that the company returns to long-term viability. Since the restructuring plan shows that RMG will already reach profitability to sustain its operations by the end of the 2014/2015 financial year in March 2015 reach, it is therefore not necessary to provide any further aid after March 2015.
- (217) Viability will therefore be re-established in a restructuring period of five years, which the Commission considers to be a reasonable length of time⁽⁴⁰⁾. In the present case it does not appear possible to restore the long term viability of RMG within a shorter time period because of the extent of the restructuring — including a large change in RMG's business operations, staff reduction and closure of a huge number of mail centres — combined with the necessity to ensure the uninterrupted provision of the USO.
- (218) As regards the assumptions on the future supply and demand on the relevant markets, the Commission notes that the restructuring plan already assumes in the base-case scenario (see recital 76) an annual decline in letter demand by [...]. In view of the substitution of traditional letters by e-mail, the Commission agrees to base the projections on a substantial reduction of letter volumes. The United Kingdom has also provided financial projections of RMG under more pessimistic and optimistic scenarios: With the pessimistic scenario, the annual decline in the letter business would be [...] instead of [...] per year, while with the optimistic scenario would assume an annual decline of only [...].
- The expected demand would therefore decrease [...] faster in the pessimistic scenario and [...] slower in the optimistic scenario than in the base case. The Commission considers that those projections provide a realistic picture with a sufficiently broad range of outcomes (for example the expected letter volumes would after 10 years fall in a range of [...] of RMG's current volume).
- (219) The base-case business plan shows that RMG expects to break even in [...] and achieve a return of [...] % on invested capital after March 2015. Compared to postal incumbents in other Member States and private UK operators⁽⁴¹⁾, RMG's expected return is within the range of returns that those companies currently achieve. As the restructuring measures will bring RMG to a level of operational efficiency comparable to that of other postal operators, it is reasonable to expect that RMG will, in the long-term, generate profits in the same range as its peers.
- (220) With regard to the pessimistic scenario, RMG is expected to break even during financial year [...] and reach onwards a level of profitability to finance its operations and provide a return of [...] on invested capital from 2015. RMG will therefore also achieve long-term viability under less favourable market conditions.
- (221) In light of the above, the Commission is of the opinion that the restructuring plan is based on realistic predictions. The assumptions submitted with regard to the development of the market are plausible, and the forecasts made in the restructuring plan with regard to progress in terms of RMG' overall result therefore appear credible.
- (222) Having analysed and verified the updated restructuring plan, the Commission considers that that the plan complies with the requirements of points 34-37 of the R&R Guidelines and in particular it will restore the viability of RMG in line with the R&R Guidelines.
- Own contribution and minimum necessary
- (223) Pursuant to points 43-45 of the R&R Guidelines, the aid must be limited to the minimum necessary and the beneficiary is expected to make a significant contribution to the restructuring from its own resources or from external commercial financing. The R&R Guidelines clearly indicate that a significant part of the financing of the restructuring must come from own resources, including the sale of assets not essential to the firm's survival and from external financing at market terms. Such contribution must be real and must be as high as possible, at least 50 % for large firms. The Commission considers RMG to be a large firm within the meaning of the R&R Guidelines.

⁽⁴⁰⁾ Also in previous cases, the Commission has accepted restructuring periods of five years or more, e.g. in Commission Decision in the *Austrian Airlines* Case (OJ L 59, 9.3.2010, p. 1), in particular paragraph 296 (six years restructuring period).

⁽⁴¹⁾ The United Kingdom has submitted a benchmarking data on the profitability of other postal operators in the United Kingdom and Europe.

- (224) In the opening decision, the Commission raised doubts about the level of restructuring costs necessary to enable the restructuring. During the investigation, the UK authorities have provided a more detailed list of restructuring costs:

(million GBP)

		2010/2015 UK's proposal	2010/2015 Commission's assessment
Labour restructuring costs		[...]	[...]
— Redundancy payments	[...]		
— Travel and outplacement costs	[...]		
— Exceptional lump-sum payments	[...]		
Capacity restructuring costs		[...]	[...]
— Mail centre reduction	[...]		
— Flexible delivery methods	[...]		
— Walk sequencing deployments	[...]		
— Other investment operations	[...]		
— Intelligent letter sorting machines	[...]		
— Packets sortation	[...]		
IT restructuring costs		[...]	[...]
Pension deficit relief		150	150
Exceptional restructuring costs to Royal Mail of separating from Post Office Limited		[...]	0
Total		2 357	2 179

- (225) In that regard, the Commission notes that not all costs should automatically qualify as restructuring costs. According to the Commission, the costs for the separation of POL are not related to the restructuring of RMG's letter business but rather to the future privatisation of RMG and can therefore not be accepted as eligible restructuring costs.
- (226) However, the Commission does accept all costs that are related to the labour, capacity, and IT restructuring programs as eligible because they are necessary for RMG's letter business to catch up to industry standards and earn a sufficient return from its letter operations. Furthermore, the Commission accepts further relief of the remaining pension deficit as eligible financial restructuring costs to regain long-term viability.
- (227) Restructuring costs are primarily related to RMG's activities in the letter business that are of vital importance for both the maintenance of the universal postal service as well as RMG's role as provider of downstream access for the other postal operators. Both the labour and the capacity restructuring costs concern solely the modernisation efforts for the sorting centres and the downstream delivery of letters (for example 'on the last mile' to customers). Both facilities are essential for competitors who deliver their letters to the sorting centres for the final delivery to customer because they do not themselves possess downstream delivery networks.

- (228) In particular, the labour restructuring costs contain, inter alia, redundancy payments of GBP [...] million for leaving staff due to the closing down of sorting centres and the rationalisation of outdoor delivery; and GBP [...] million of travel and outplacement costs for staff that has been retained but now works at alternative locations.
- (229) The capacity restructuring consists of the automation of the sorting centres and the introduction of new delivery methods to achieve more efficient operations. The most important capacity restructuring cost items are inter alia:
- (i) GBP [...] million for the property rationalisation program reducing the number of mail centres from 64 in March 2010 to [...] by March 2015;
 - (ii) GBP [...] million for the implementation of new and more flexible delivery methods;
 - (iii) GBP [...] million for the investment of new sorting and walk sequencing machines.
- (230) The Commission concludes therefore that, in view of the own-contribution requirement of 50 % for large companies, the restructuring aid should not exceed the amount of 50 % of GBP 2 179 million.
- (231) The Commission in its opening Decision also questioned whether RMG would make a significant own contribution to the restructuring, as required by point 44 of the R&R Guidelines.
- (232) In response to the concerns raised by the Commission in its opening decision, the UK authorities have provided several details on the amounts considered as own contribution of RMG to the restructuring costs.
- (233) According to the latest submission, RMG will contribute to finance the costs of the 2010-2015 restructuring measures by the sale of assets and the additional funds from releasing of the pension escrow account as follows:

	<i>(million GBP)</i>
Sale of assets	[...]
Release of pension escrow account	[...]
Total own contribution	1 090

(234) The assets to be sold include the disposal of stakes in other companies as well as real estate property that are not essential to RMG's survival. In addition, RMG has sold or will sell real estates, vehicles, and equipment that are essential for the operations but are leased back. The complete list includes the following items:

- (i) sale of RMG's 20 % stake in Camelot plc, the operator of the UK national lottery, to a Canadian pension fund (OTPP) in June 2010;
- (ii) divestment of Romec Services Limited in April 2011;
- (iii) sale, or sale and leaseback, of certain mail centres and other properties. This includes the sale or sale and leaseback of sites in London, such as the [...]. Under the sale and leaseback programme, RMG has divested or will divest of the freehold interest in these properties, and has been granted a leasehold interest to use the properties by the new freeholder;
- (iv) sale of surplus land; and
- (v) sale and leaseback of equipment and vehicles.

(235) While the value of the sales that have already been concluded are based on the actual proceeds of the disposal (amounting up to GBP [...] million), the valuations of the future sales are conservative and based on RMG's experience with recent sale transactions.

(236) Further financial means are generated by the release of the RMG's pension escrow account upon implementation of the pension relief on 1 April 2012. As the Pension Trustee will no longer require the escrow account security, the amount of the RMG Escrows will revert to RMG. At that date, the RMG escrow (GBP 150 million) is expected to have accrued interest of GBP [...] million (resulting in a total value of GBP [...] million).

(237) Having verified that the measures regarding RMG's own contribution have already been implemented or will be completed by March 2015 and that, as confirmed by the United Kingdom, the sale values are on market terms, the Commission can accept that the amount of GBP 1 090 million constitutes an own contribution to the restructuring plan. Putting the own contribution in relation to the eligible restructuring costs, the Commission notes that 50 % of the restructuring costs are financed by own contribution from RMG and that the own-contribution requirement of the R&R guidelines for large companies is fulfilled.

(238) In view of RMG's own contribution, the Commission concludes therefore that the aid in the form of debt reduction measures of GBP 1 089 million is limited to the strict minimum of the necessary restructuring costs. In comparison to the initial notification of debt reduction measures of GBP 1 700 million and an additional GBP 200 million revolving credit facility, the restructuring aid in the form of a debt reduction of maximum GBP 1 089 million is now limited to 50 % of the necessary restructuring cost for the period from March 2010 to March 2015. The significant reduction in the aid amount compared to the initial notification ensures that RMG will not be left with surplus cash after the completion of the restructuring plan in March 2015.

Avoiding undue distortions (compensatory measures)

(239) Pursuant to points 38-42 of the R&R Guidelines, measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors. The aid must not unduly distort competition. This usually means a limitation of the presence which the company can enjoy on its markets at the end of the restructuring period. The compulsory limitation or reduction of the company's presence on the relevant market represents a compensatory factor in favour of its competitors. It should be in proportion to the distortive effects of the aid and to the relative importance of the firm on its market or markets.

(240) First, the Commission notes that at the moment, based on the existing regulatory conditions concerning access to its delivery network, RMG is an indispensable business partner for other UK postal operators since it delivers the competitors' letters on the 'last mile' to the customers. RMG fulfils therefore an essential function for the working of the UK postal market that is currently primarily based on upstream competition and not on end-to-end competition. Furthermore, the importance of RMG for the postal sector is clearly reflected by the comments of its competitors who emphasise the necessity of a healthy and sound RMG for downstream letter delivery and thereby the maintenance of the universal service. The restructuring of RMG will therefore provide economic benefits for the whole UK postal sector and allow all postal providers to provide better and more efficient services

(241) Therefore, when determining the required level of compensatory measures the Commission has to take account of the particular role played by RMG in the UK postal sector as universal service and access provider for all UK postal operators.

(242) In this respect, it has to be underlined that the significantly reduced restructuring aid — compared to the United Kingdom's initially notified restructuring aid measures of more than GBP 1 700 million — will primarily be used to secure the functioning of RMG's downstream network which is essential for safeguarding the permanent provision of universal postal services and ensuring, where applicable according to Article 38 of the Postal Services Act and the subsequent regulatory conditions (see below), the provision of access to its delivery network.

(243) As explained in recital (227), the debt reduction measure of GBP 1 089 million supports primarily the restructuring of RMG's essential downstream activities (for example sorting centres, delivery on 'last mile'). Both the labour restructuring costs of GBP [...] million as well as the capacity restructuring costs of GBP [...] million concern solely the downstream activities that are essential for universal service and the competitors' letter business. Also the remaining restructuring costs are for the most part related to those downstream activities.

(244) In view of RMG's key role in the downstream letter delivery that is vital for all UK postal operators, RMG's restructuring appears to have limited distortive effect on the current structure of UK postal sector. The restructuring in RMG's downstream network will bring about a more efficient and affordable service both for the general public as well as for the other UK postal operators who have to rely on access to RMG's downstream network as set out by the relevant regulatory provisions.

(245) The Commission has verified that the other UK postal operators will continue to have access to RMG's downstream network. The competent regulator — Office of Communications (Ofcom) — has proposed to impose access conditions upon RMG for the next seven-year regulatory period starting on 1 April 2012 requiring, inter alia, the fulfilment of the following conditions ⁽⁴²⁾:

- (i) RMG shall provide access to other postal operators on reasonable request and to offer such access on fair and reasonable terms;

⁽⁴²⁾ Statutory Notification of proposals to impose a regulatory condition in accordance with the Postal Services Act 2011; see Annex 12 to Ofcom's consultation on 'Review of regulatory conditions — postal regulation', published on 13 December 2011.

- (ii) RMG shall not unduly discriminate⁽⁴³⁾; brings economic benefits above and beyond the interests of the firm concerned, facilitating structural change and reducing hardship.
- (iii) RMG shall not obtain an unfair commercial advantage from allowing access to the network and shall not use information in its possession as a result of giving access for its own benefit;
- (iv) RMG shall set access prices so as to maintain a minimum level of margin between access prices and analogous retail services to avoid that other postal operators will be prevented from competing with RMG by means of margin squeezes.
- (246) The Commission considers that those conditions will effectively limit RMG's exercise of market power and appropriately safeguard the competitors' access to RMG's downstream network. They will therefore ensure for other UK postal operators that they can compete on their merits on the upstream markets with RMG and can maintain or even further expand their strong presence on the upstream market. The Commission considers therefore that those conditions can be considered as an appropriate compensatory measure in favour of RMG's competitors, which mitigate the adverse effects of the aid.
- (247) In this respect, the Commission takes note that [...] Ofcom will take a decision on mandatory access requirements for the next seven years as laid out in its proposals.
- (248) As the restructuring aid is essentially limited to those downstream activities in the general interest as well as in the interest of the other UK postal operators and does not enhance RMG's position on other upstream letter markets or in the express parcel markets, the Commission considers that the restructuring aid will lead to limited distortive effects to the detriment of competitors.
- (249) Second, the restructuring plan involves a significant reduction in employment that is due to the technical change and higher automation in the postal sector. In this respect, the Commission notes that it generally takes a favourable view of State aid to cover the social costs of restructuring. According to point 64 of the R&R Guidelines the Commission has no a priori objection to such aid when it is granted to firms in difficulty, for it
- (250) The Commission observes that a large part of the restructuring costs consists of redundancy payments as well as travel and outplacement costs based on agreements with the trade union. On the other hand, aid that will be granted to finance those labour-related costs benefits not only RMG but also the redundant employees. The Commission considers therefore that this aid for the labour-related restructuring facilitates structural changes and reduces hardship.
- (251) Third, the Commission notes that RMG will divest POL. In view of the future privatisation of RMG and therefore different owners of RMG and POL, RMG will lose direct control on the retail operations of POL and its market position will be weakened. In particular, it must be noted that the agreement between RMG and POL is limited to 10 years [...].
- (252) Contrary to the current situation, RMG will not anymore benefit from a retail network under its direct control but will have, as any of its competitors, to negotiate and contract its retail activities with an independent third party (e.g. comparable to DHL's service point network which is made up of independent retail shops (for example WHSmith and Staples shops)). Thereby, RMG will be placed on an equal level compared to its competitors and will not anymore benefit from its ownership of a fully fledged retail network. In particular, RMG will no longer be able to decide which other services and products (for example banking services) POL will offer which means that RMG loses leverage into other markets. The Commission considers therefore that the divestment of POL will limit RMG's presence on the UK postal market and can be considered as a measure mitigating the effect of the restructuring aid for RMG's competitors.
- (253) In view of the positive effects that RMG's more efficient downstream network will bring about for the general public, who has to rely on RMG as universal postal service provider, and to all UK postal operators, who need access to RMG's downstream network to have their letters delivered to customers, as well as the fact that a considerable share of the restructuring costs is for the benefit of redundant employees, and the divestment of POL the Commission considers that the competitive distortions resulting from the restructuring aid are rather limited such that no further compensatory measures are necessary.

⁽⁴³⁾ RMG may be deemed to have shown undue discrimination if it unfairly favours an activity carried on by it so as to place at a competitive disadvantage other postal operators.

One time, last time condition

- (254) Finally, the one time, last time condition as stipulated in point 72 and following of the R&R Guidelines is met, as RMG has not benefited from rescue and restructuring aid in the past.

Implementation and monitoring

- (255) According to point 47 of the R&R Guidelines, RMG must fully implement its restructuring plan and the United Kingdom has committed to the fulfilment of this obligation. The Commission will need to be kept informed of the progress in the implementation of the restructuring plan in conformity with points 49 and 50 of the R&R Guidelines.

Conclusion on the restructuring aid

- (256) The Commission finds that the five-year restructuring plan from 2010 to 2015 for RMG fulfils the conditions of the R&R Guidelines and that debt reduction measures in the amount of GBP 1 089 million constitute restructuring aid that is compatible with Article 107(3)(c) of the Treaty.

6. CONCLUSION

- (257) In line with previous case practice, the Commission can only allow aid as compensation for legacy pension costs to such an extent that the beneficiary is not placed in a better position than competitors in terms of the general obligations for contributions to social insurances.

- (258) Due to the peculiarity of this case, the Commission has adapted its compatibility assessment for aid to compensate for legacy pension costs and has carried out a comparison of RMG's current pension deficit to the pension deficits that UK companies of a comparable size carry on average on their balance sheet.

- (259) The Commission considers that the pension relief constitutes a compatible State aid for legacy pension costs pursuant to Article 107(3)(c) of the Treaty subject to the following two conditions:

- (i) at the date of the pension relief on 1 April 2012, RMG will retain on its balance sheet a liability of GBP 150 million that is in line with the average pension deficit of comparable UK companies;

- (ii) RMG will not receive any aid as legacy compensation for pension liabilities accruing after 31 March 2012 for members of the RMPP.

- (260) With regard to the notified restructuring aid, the Commission considers that the updated restructuring

plan covering the period 2010 to 2015 is appropriate and sufficient to address RMG's difficulties and to restore long-term viability. The Commission considers that RMG's own contribution to the restructuring costs limit the aid to a strict minimum of GBP 1 089 million. In view of the positive benefits that the restructuring brings to the efficiency of the whole UK postal sector, the unique position of RMG as universal service provider, the separation of POL, and that the restructuring aid facilitates to a large part the necessary reduction of RMG's workforce, the Commission finds that the aid of GBP 1 089 million does not create distortive effects that will be disproportionate to the positive effects of a successful restructuring of RMG,

HAS ADOPTED THIS DECISION:

Article 1

1. The notified measures in relation to the pension relief which the United Kingdom is planning to implement for Royal Mail Group constitute aid which is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union, provided that the conditions set out in paragraphs 2 and 3 are met.

2. At the date of the pension relief on 1 April 2012, Royal Mail Group shall retain a liability of GBP 150 million on its balance sheet for the accrued deficits that have resulted from the pension plans that it has sponsored.

3. The United Kingdom shall not grant State aid to Royal Mail Group as compensation for legacy costs in relation to newly accrued pension liabilities for members of the Royal Mail Pension Plan after the date of the pension relief on 1 April 2012.

Article 2

The debt reduction measures which the United Kingdom are planning to implement for Royal Mail Group, amounting to GBP 1 089 million, constitute aid which is compatible with the internal market under Article 107(3)(c) of the Treaty, provided that the restructuring plan notified to the Commission is implemented in full.

Article 3

The United Kingdom shall submit to the Commission annual reports on the implementation of the restructuring plan. The first report shall be submitted within one year from the notification of this decision to the United Kingdom. The subsequent reports shall be submitted within one year of the previous report until the end of the restructuring plan.

Article 4

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 21 March 2012.

For the Commission
Joaquín ALMUNIA
Vice-President
