

## AYUDA ESTATAL — GRECIA

**Ayuda estatal SA.35608 (2014/C) (ex 2014/N) — Ελληνικά Ταχυδρομεία (ΕΛΤΑ)/Hellenic Post (ELTA)  
— Compensación para la financiación del servicio postal universal****Invitación a presentar observaciones en aplicación del artículo 108, apartado 2, del Tratado de  
Funcionamiento de la Unión Europea**

(Texto pertinente a efectos del EEE)

(2014/C 348/04)

Por carta de 1.08.2014, reproducida en la versión lingüística auténtica en las páginas siguientes al presente resumen, la Comisión notificó a Grecia su decisión de incoar el procedimiento previsto en el artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea en relación con una parte de la medida de ayuda antes citada.

La Comisión decidió no plantear objeciones a la compensación de ELTA en forma de subvenciones directas con cargo al presupuesto del Estado para la prestación del servicio universal durante el régimen transitorio correspondiente a 2013-2014 o 2013-2015, como se describe en la carta que sigue al presente resumen.

Los interesados podrán presentar sus observaciones sobre el mecanismo del fondo de compensación durante el período 2015-2019 (o 2016-2020) respecto del cual la Comisión ha incoado el procedimiento en un plazo de un mes a partir de la fecha de publicación del presente resumen y de la carta siguiente, enviándolas a:

Comisión Europea  
Dirección General de Competencia  
Registro de Ayudas Estatales  
B-1049 Bruselas  
Fax nº: + 32 2 296 12 42

Dichas observaciones serán comunicadas a Grecia. Los interesados que presenten observaciones podrán solicitar por escrito, exponiendo los motivos de su solicitud, que su identidad sea tratada de forma confidencial.

**PROCEDIMIENTO**

El 20.6.2014, después de los contactos previos a la notificación mantenidos con la Comisión, la República Helénica presentó una notificación relativa al establecimiento de un mecanismo para compensar a Correos de Grecia S.A. (ELTA) por la prestación del servicio postal universal en todo el territorio de Grecia.

**DESCRIPCIÓN DE LA MEDIDA RESPECTO DE LA CUAL LA COMISIÓN INCOA EL PROCEDIMIENTO**

Para compensar a ELTA por el coste neto en el que incurre debido al cumplimiento de sus obligaciones como proveedor del servicio universal, la República Helénica quiere establecer, a través de una decisión ministerial (actualmente en fase de proyecto), un programa de compensación de cinco años basado en un fondo de compensación (en lo sucesivo denominado «el mecanismo del fondo de compensación») de 2015 a 2019 o de 2016 a 2020. Este mecanismo se basará en las contribuciones de los proveedores de servicios postales activos en el mercado griego (incluido ELTA), como lo permite el artículo 7 de la tercera Directiva sobre servicios postales.

El mecanismo del fondo de compensación comprende seis etapas:

**Etapas 1:** La medida notificada toma como base el cálculo inicial y la presentación por ELTA a la Comisión Helénica de Telecomunicaciones y Correos (EETT), en los tres meses siguientes al final del año de referencia, del importe de la compensación a la que tendría derecho. Este cálculo se hace de la siguiente manera: 1) cálculo del coste neto de la obligación de servicio universal (OSU) utilizando la metodología del coste evitado neto; 2) cálculo del coste neto en que se haya incurrido debido a la OSU; 3) cálculo del beneficio razonable al que ELTA tendría derecho; 4) determinación del importe de la compensación como el mínimo entre el coste neto de la OSU y el coste neto en que se ha incurrido debido a la OSU incrementado por el beneficio razonable.

**Etapas 2:** La EETT evaluará, en el plazo de 4 meses, el contenido del informe presentado por ELTA y pedirá a ELTA que corrija el análisis realizado y que aporte material de apoyo adicional o aclaraciones, según proceda.

**Etapa 3:** Una vez que se haya verificado el importe de la compensación, la EETT evaluará si este importe rebasa el umbral de carga injusta y debe por consiguiente concederse a ELTA.

**Etapa 4:** Si ELTA tiene derecho a percibir el importe de compensación, la EETT calculará la contribución al fondo de compensación de cada operador postal de la siguiente manera:

- Contribución fija para ELTA del 0,5 % de su volumen de negocio en el ámbito del servicio universal durante el ejercicio fiscal respectivo.
- Contribución básica para los demás operadores postales del 0,5 % de su volumen de negocio en el ámbito del servicio universal durante el ejercicio fiscal respectivo.
- La contribución básica se incrementará en un 0,5 % por cada 1 % de desviación positiva en la distribución geográfica del volumen total de envíos postales distribuidos, con respecto a la distribución geográfica correspondiente del proveedor del servicio universal en las prefecturas de Ática y Salónica (contribución incrementada)<sup>(1)</sup>.
- La contribución incrementada no puede rebasar en total el 10 % del volumen de negocio designado de cada operador postal.

**Etapa 5:** Si las contribuciones totales de los operadores superan el importe de compensación, la contribución de cada operador postal se reducirá en consecuencia. Sobre la base del cálculo de la EETT, se exigirá a los proveedores de servicios postales que paguen sus contribuciones al fondo de compensación en el plazo de dos meses.

**Etapa 6:** Pago de las contribuciones totales a ELTA. Si la cantidad total recaudada de los proveedores de servicios postales no es suficiente para cubrir el importe de compensación, mediante una decisión ministerial conjunta ese déficit se cubrirá con el presupuesto del Estado.

### EVALUACIÓN DE LA MEDIDA

A raíz de su evaluación, la Comisión concluye que el mecanismo del fondo de compensación en favor de ELTA constituye una ayuda estatal a efectos del artículo 107, apartado 1, del TFUE.

Puesto que el importe de la ayuda que se concedería a ELTA durante el período 2015-2019 (o 2016-2020) podría llegar a rebasar los 15 millones EUR al año, la Comisión ha evaluado el mecanismo del fondo de compensación con arreglo al marco revisado sobre ayudas estatales en forma de compensación por servicio público (en lo sucesivo, «el Marco SIEG de 2012») <sup>(2)</sup>, en el que se establecen las directrices para evaluar la compatibilidad de las compensaciones por SIEG superiores a 15 millones EUR al año.

A tenor de su evaluación, la Comisión concluye que el mecanismo del fondo de compensación cumple todas las condiciones del Marco SIEG de 2012 expuestas en las secciones 2.1 a 2.8. Como se explica en el apartado 51 del Marco SIEG de 2012, estos requisitos «suelen bastar para garantizar que la ayuda no falsea la competencia de forma contraria al interés de la Unión». Según el apartado 52 del Marco SIEG de 2012, «no obstante, podría ocurrir que, en algunas circunstancias excepcionales, queden sin resolver falseamientos graves de la competencia en el mercado interior y la ayuda afecte a los intercambios en forma tal que sea contraria al interés de la Unión».

En el presente caso, aunque la financiación de la OSU a través de un fondo de compensación es perfectamente aceptable y está prevista en la tercera Directiva sobre servicios postales, el nivel de las contribuciones solicitadas a los diferentes operadores (incluido ELTA) plantea cuestiones específicas en relación con el desarrollo del comercio de la UE.

La Comisión considera que, si las contribuciones solicitadas a los operadores postales que compiten con ELTA son demasiado elevadas, esto puede hacer que algunos competidores salgan del mercado (o al menos que salgan del ámbito del servicio universal) o puede disuadir a las empresas de entrar en el mercado, lo cual llevaría a un cierre del mercado postal (o al menos a una remonopolización del ámbito del servicio universal).

<sup>(1)</sup> En la práctica, el porcentaje de contribución de un operador determinado con respecto a su volumen de negocio asciende a 0,5 % + 0,5 %\* [diferencia en porcentaje entre la concentración urbana de los envíos distribuidos por ELTA en el perímetro de OSU y la concentración urbana del operador]. Por ejemplo, si ELTA presta un 60 % de sus servicios en zonas urbanas, cuando un operador distribuye el 79 % de sus envíos postales en zonas urbanas, su contribución equivale al 10 % de su volumen de negocio en la zona de OSU.

<sup>(2)</sup> Comunicación de la Comisión: Marco de la Unión Europea sobre ayudas estatales en forma de compensación por servicio público (2011), DO C 8 de 11.1.2012, p. 15.

En el presente caso, las contribuciones de otros operadores podrían llegar al 10 % <sup>(3)</sup>, es decir, serían 20 veces mayores que la contribución del 0,5 % de ELTA, y las autoridades griegas no han proporcionado una justificación económica de tal diferencia. La diferenciación basada en la distribución urbana propuesta por las autoridades griegas, cuyo objetivo es impedir que los competidores de ELTA sean demasiado selectivos, podría disuadir también a la competencia, ya que los operadores que se incorporasen por primera vez al mercado empezarían lógicamente a operar en las ciudades, antes de posiblemente extender sus actividades a zonas menos densamente pobladas.

La Comisión observa asimismo que la contribución máxima de los competidores sería mayor que el propio beneficio de ELTA en zonas urbanas [6-7 %] en 2010-2011, cuanto ELTA aún se beneficiaba de la zona reservada. A los nuevos participantes en el mercado les resultaría difícil alcanzar en el futuro un nivel de beneficio semejante en un mercado abierto a la competencia. El beneficio razonable calculado por las autoridades griegas [5,76 %-6,11 %] que corresponde al beneficio normal en el mercado es también inferior a la contribución máxima.

En estas circunstancias, la Comisión tiene serias dudas acerca de si el fondo de compensación previsto y, en particular, el nivel de las contribuciones financieras de los proveedores de servicios, no falsearía la competencia de una manera contraria a los intereses de la Unión.

Por consiguiente, en el marco de un procedimiento de investigación formal, la Comisión invita a las autoridades griegas y a las terceras partes a presentar sus comentarios en relación con el mecanismo del fondo de compensación y, en particular, con los siguientes aspectos:

- La base imponible (por ejemplo, ingreso o beneficio);
- El mecanismo de diferenciación entre operadores;
- El tope a las contribuciones de los competidores;
- La posibilidad de establecer un «período de gracia» para los recién llegados al mercado;
- Otros componentes existentes o deseables del mecanismo del fondo de compensación.

Para realizar este análisis, la Comisión necesitará información financiera detallada de los diferentes agentes del mercado postal (ELTA y sus competidores) que le permita evaluar el potencial impacto real sobre la competencia, y en particular sobre el nivel de beneficio de los competidores de ELTA, del fondo de compensación. En este contexto, la Comisión puede exigir a las empresas y asociaciones de empresas que le proporcionen directamente toda la información sobre el mercado necesaria para completar su evaluación de la medida de que se trata, según lo previsto en el artículo 6 *bis* del Reglamento de procedimiento <sup>(4)</sup>.

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<sup>(3)</sup> Las simulaciones correspondientes a 2009-2011 proporcionadas por las autoridades griegas muestran que varios operadores habrían alcanzado también bastante fácilmente el tope de contribuciones del 10 %.

<sup>(4)</sup> Reglamento (UE) n° 734/2013 del Consejo, de 22 de julio de 2013, que modifica el Reglamento (CE) n° 659/1999 por el que se establecen disposiciones de aplicación del artículo 93 del Tratado CE.

## TEXTO DE LA CARTA

## 1. PROCEDURE

- (1) On 20 June 2014, after pre-notification contacts with the Commission, the Hellenic Republic submitted a notification concerning the establishment of a mechanism for the compensation of Hellenic Post S.A. (**ELTA**) for the delivery of the Universal Postal Service over the whole territory of Greece.
- (2) By letter dated 2 July 2014, Greece agreed exceptionally to waive its rights deriving from Article 342 of the TFEU in conjunction with Article 3 of the EC Regulation 1/1958 and to have the Decision adopted and notified pursuant to Article 297 of the TFEU in English language.

## 2. DESCRIPTION

## 2.1. The beneficiary

- (3) ELTA was founded in 1828 and since 1996 it operates as a public limited company (S.A.). The State currently holds 90 % of ELTA's share capital and the remaining 10 % is owned by Hellenic Postbank <sup>(1)</sup>.
- (4) ELTA offers postal services, financial, banking/insurance services, retail products and courier services. In 2012, ELTA had a turnover of €400,59 million, with EBIT amounting to €1,65 million. 75 % of this turnover was generated through the provision of postal services, whilst the remaining 25 % of turnover derived from the handling of parcels (3,9 %), the provision of financial services (18,2 %) and other services (e.g. philately, retail merchandise, etc.) (2,9 %). In 2012, ELTA employed 9 230 staff.
- (5) ELTA is the larger provider of postal services in Greece. Pursuant to Law 4053/2012 <sup>(2)</sup>, transposing the 3<sup>rd</sup> Postal Directive <sup>(3)</sup> and fully liberalising the postal market in Greece on 1<sup>st</sup> January 2013, ELTA has been designated the Universal Service Provider (USP) until 31 December 2028. As a result of this and in conjunction with the geographic morphology of Greece, ELTA has to deliver this universal service through the largest retail network in Greece with more than 1 500 access points.
- (6) In particular, ELTA provides its services through 773 postal offices, 10 collection/sorting centres and 83 delivery units. The following table depicts the number of postal offices, collection/sorting centres and delivery units located in dense urban, urban, suburban and rural areas.

Table 1

**Number of postal offices, collection/sorting centres and delivery units in dense urban, urban, suburban and rural areas**

ELTA's network	
Postal Offices	773
Dense Urban	165
Urban	92
Suburban	275
Rural	241
Collection/Sorting Centers	10
Dense Urban	3
Urban	6
Suburban	1
Delivery Units	83

<sup>(1)</sup> Hellenic Postbank is 44,334 % owned by the Greek State.

<sup>(2)</sup> Government Gazette A' 44 of 7 March 2012.

<sup>(3)</sup> Directive 97/67/EC as amended by Directive 2002/39/EC and by Directive 2008/6/EC.

ELTA's network	
Postal Offices	773
Dense Urban	49
Urban	34
<b>Total</b>	<b>866</b>

- (7) ELTA is also entrusted with other services of general economic interest (SGEIs) such as basic banking services (receipts, payments of social benefits and pensions, payment of bills, cash payments) or the issuing of licences, certifications and certificates sent by the State to citizens. For the time being, no specific compensation is planned for these additional SGEIs and this notification only concerns the compensation of ELTA for the provision of the universal postal service.
- (8) ELTA has received on several occasions in the past investment aid to improve the delivery of its public services. For instance, on 25 January 2012, the Commission authorised a € 52 million grant from the Greek State to ELTA for the financing of modernization projects <sup>(4)</sup>.

## 2.2. The universal postal service entrusted to ELTA

- (9) Through the Postal Law 4053/2012, adopted on 7 March 2012, which implements the 3<sup>rd</sup> Postal Directive, ELTA has been entrusted with the universal postal service obligation (USO) for the period 2013-2028. The Ministerial Decision 'on the determination of the content of the Universal Postal Service' <sup>(5)</sup>, adopted on 28 February 2013 by the Deputy Minister for Development, Competitiveness, of Infrastructure, Transport and Networks, further clarifies the content of the USO.
- (10) The requirements regarding the provision of the USO by ELTA can be summarised as follows:
- *Products*: ELTA must collect, transport, sort and deliver postal items up to 2 kilograms and parcels of up to 20 kilograms, as well as registered and insured items.
  - *Collection & Delivery Frequency*: ELTA must collect and deliver mail items once a day on every working day (i.e. Monday to Friday) each week.
  - *Quality Targets*: ELTA has predefined quality targets for the priority (D+1) and non-priority mail (D+3).
  - *Network Density*: ELTA must offer nationwide collection and delivery, maintaining at least one access point for the collection of mail per 1 000 residents in urban areas, and at least one access point in every village in rural areas.
  - *Pricing*: ELTA must have uniform pricing, with affordable, cost-oriented, transparent and non-discriminatory tariffs, and provide special tariffs for the blind and the visually impaired.

## 2.3. The notified measures

- (11) To compensate ELTA for the net cost incurred due to the fulfilment of its obligations as the USP, the Hellenic Republic intends to establish a five-year compensation scheme based on a compensation fund (hereinafter 'The compensation fund mechanism') from 2015 to 2019 or from 2016 to 2020 (depending on the duration of the transitory regime defined below in paragraph (12)). The compensation fund mechanism will allow the compensation of ELTA by contributions from other postal services providers active on the Greek market. The possibility to establish such mechanism is provided for by article 7 of the 3<sup>rd</sup> Postal Directive <sup>(6)</sup>: 'Where a Member State determines that the universal service obligations [...] entail a net cost [...] and represent an unfair financial burden on the universal service provider(s), it may introduce [...] a mechanism for the sharing of the net cost of the universal service obligations between providers of postal services (and/or users)'.

<sup>(4)</sup> Decision of 25.01.2012 — SA.32562 (2011/N) — Aid to the Hellenic Post.

<sup>(5)</sup> Government Gazette 47B' of 28 February 2013.

<sup>(6)</sup> See article 1 para. 8 of Directive 2008/6/EC of the European Parliament and the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27.2.2008, p. 3.

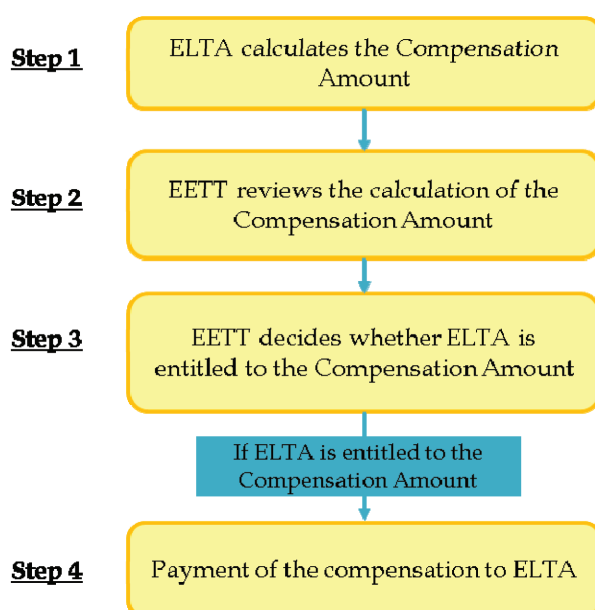
(12) Taking into consideration that the establishment of such a mechanism is novel and the postal services market in Greece has only recently been liberalised, the Hellenic Republic has decided to implement a two-year or three-year transitory State-funded compensation regime (hereinafter 'The transitory regime') before establishing the mechanism requiring the contribution of other postal services providers. The transitory regime (for years 2013, 2014 and, potentially, also 2015) will provide for the compensation of ELTA through State funding along the principles of the Commission Decision on the application of Article 106(2) of the Treaty to State aid in the form of public service compensation (hereinafter 'the 2012 SGEI Decision')<sup>(7)</sup>.

(13) The two notified measures are described below.

#### 2.3.1. Direct subsidies from the State during the transitory regime

(14) The Greek authorities will adopt a ministerial decision for the two-year (for years 2013 and 2014) or three-year transitory regime (for years 2013, 2014 and 2015) (hereinafter 'Ministerial Decision on the transitory regime'), based in particular on the decision of the Hellenic Telecommunications and Post Commission (EETT)<sup>(8)</sup> 'Determination of the methodology of the calculation of the net cost of the universal postal service provision'<sup>(9)</sup>.

(15) ELTA's compensation under the transitory regime will be established according to the following process:



#### **Step 1: ELTA calculates the Compensation Amount**

(16) Within 3 months from the end of the reference year, ELTA will submit, at its own initiative, to the EETT, a report setting out the calculation of the compensation amount ELTA is entitled to (hereinafter 'the Compensation Amount'), and all the relevant evidence/materials. The calculation will be based on the net avoided cost methodology as described in section 2.4 below.

#### **Step 2: EETT reviews the calculation of the Compensation Amount**

(17) The EETT will assess, within a four-month period, the content of the report submitted by ELTA and will request from ELTA corrections to the analysis carried out as well as additional supporting materials and/or clarifications, as appropriate.

#### **Step 3: EETT decides whether ELTA is entitled to the Compensation Amount**

(18) Once the Compensation Amount is approved by the EETT, the EETT will calculate the Unfair Burden Threshold, as described in section 2.5 below, and decide whether ELTA is entitled to the Compensation Amount.

<sup>(7)</sup> Commission Decision on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ 111.1.2012, L7, p. 3.

<sup>(8)</sup> EETT is an Independent Administrative Authority, which regulates, supervises and monitors the electronic communications and postal services market in Greece. More details on EETT's responsibilities can be found at the web page of EETT, available at: [http://www.eett.gr/opencms/opencms/EETT\\_EN/EETT/Responsibilities](http://www.eett.gr/opencms/opencms/EETT_EN/EETT/Responsibilities)

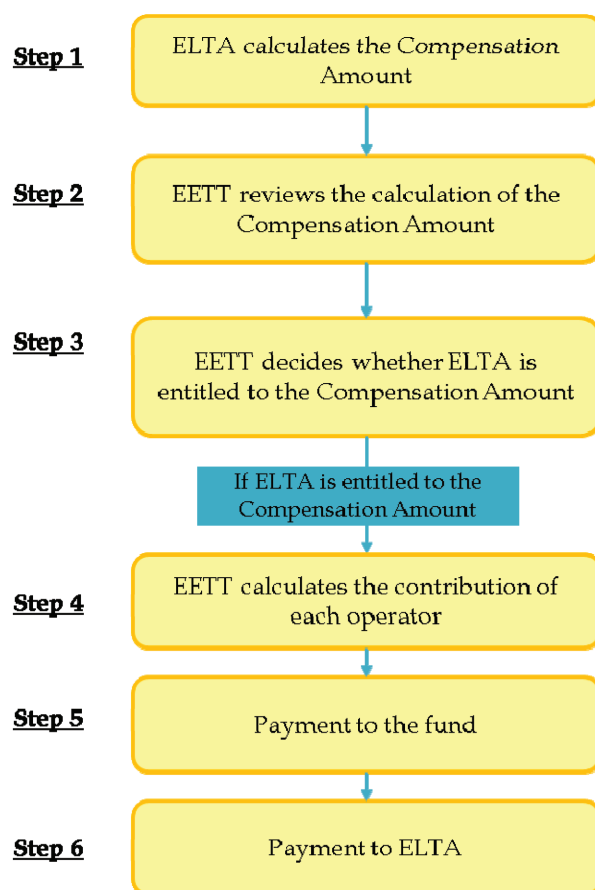
<sup>(9)</sup> See article 2 and article 8 para. 6.

**Step 4: Payment of the compensation to ELTA**

- (19) If ELTA is entitled to the Compensation Amount, the EETT will submit its assessment to the Minister of Development, Competitiveness, Infrastructure, Transport & Networks and the Minister of Finance (the Ministers).
- (20) The Ministers, by way of a Ministerial Decision, will order the transfer of the Compensation Amount to ELTA through the State budget if it is below € 15 million. Otherwise, the amount will be capped at € 15 million.

2.3.2. *The five-year compensation fund mechanism for the years 2015-2019 or 2016-2020*

- (21) For the compensation of the USO in the years 2015 to 2019 (inclusive) (or the years 2016 to 2020 inclusive, if the transitory regime is set to cover the years 2013 to 2015 inclusive), the Hellenic Republic intends to set up the compensation fund mechanism that will be financed through the contributions of the postal services providers active on the Greek market, including ELTA.
- (22) The Hellenic Republic has submitted a draft Ministerial Decision<sup>(10)</sup> describing the detailed rules governing the setting up and functioning of the compensation fund mechanism. ELTA's compensation with the compensation fund mechanism will be established according to the following process:

**Step 1: ELTA calculates the Compensation Amount**

- (23) Within 3 months from the end of the reference year, ELTA will submit, at its own initiative, to the EETT, a report setting out the calculation of the Compensation Amount and all the relevant evidence/materials. The calculation will be based on the net avoided cost methodology as described in section 2.4 below.

<sup>(10)</sup> (Draft) Ministerial Decision 'Determination of methodology of the procedure of sharing part of the net cost of universal postal service provision that burdens the Universal Service Provider and the postal operators during the period 2015-2019.'

**Step 2: EETT reviews the calculation of the Compensation Amount**

- (24) The EETT will assess, within a four-month period, the content of the report submitted by ELTA and will request from ELTA, corrections to the analysis carried out as well as additional supporting materials and/or clarifications, as appropriate <sup>(11)</sup>.

**Step 3: EETT decides whether ELTA is entitled to the Compensation Amount**

- (25) Once the Compensation Amount is approved by the EETT, the EETT will calculate the Unfair Burden Threshold, as described in section 2.5 below, and decide on whether ELTA is entitled to the Compensation Amount or not.

**Step 4: EETT calculates the contribution of each operator**

- (26) If ELTA is entitled to the Compensation Amount, the EETT will calculate the contribution in the compensation fund of each postal operator as follows:

- Fixed contribution for ELTA of 0,5 % of its turnover within the universal service area during the respective fiscal year.
- Basic contribution for the other postal operators of 0,5 % of their turnover in the universal service area during the respective fiscal year.
- The basic contribution will be increased by 0,5 % for every 1 % of positive deviation in the geographic distribution of the total volume of distributed postal items, as compared to the corresponding geographic distribution of the USP in the prefectures of Attica and Thessaloniki (the increased contribution) <sup>(12)</sup>.
- The increased contribution cannot exceed a total of 10 % of the designated turnover of each postal operator.

**Step 5: Payment to the fund**

- (27) If the total contributions from operators exceed the Compensation Amount, the contribution for each postal operator will be reduced accordingly. On the basis of EETT's calculation, the postal service providers will be required to pay their contributions to the compensation fund within a deadline of two months.

**Step 6: Payment to ELTA**

- (28) The total contributions are paid out to ELTA. If the total amount collected from the postal service providers is not sufficient to cover the Compensation Amount, then, by means of a Joint Ministerial Decision, such deficit will be covered by the State budget.

**2.4. Calculation of the Compensation Amount by ELTA**

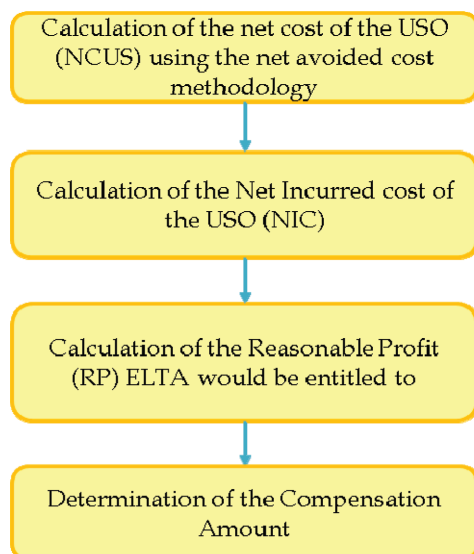
- (29) The two notified measures (direct subsidies for the transitory regime and the subsequent five-year compensation fund mechanism) rely both on the initial calculation by ELTA of the Compensation Amount it would be entitled to.

<sup>(11)</sup> All relevant information regarding the calculation of the net cost, the assessment of the existence of an unfair financial burden, and the determination of the amount of their contribution will be communicated to the compensation fund's potential contributors by the EETT to the extent that it is not confidential information to ELTA and dissemination of such information would not compromise the business and sustainability of ELTA. Should the contributors to the compensation fund disagree on the assessment of the cost, they have the right to file a petition for the annulment of the administrative act (Ministerial Decision) with the Council of State (Article 45 par. 1 of the Presidential Decree 19/1989 'Codification of laws related to the Council of State' (Gov. Gazette 8/A/1989)). Should the contributors disagree with the determination of their Contribution to the compensation fund, they have the right to file a petition for annulment against the respective Decision of EETT, before the Athens Administrative Court of Appeal (Article 78 of law par. 1 of the law 4070/2012 'Provisions regarding Telecommunications, Transport and Public Works' (Gov. Gazette 82/A/2012)).

<sup>(12)</sup> In practice, the percentage of contribution of a given operator on its turnover amounts to 0,5 % + 0,5 %\*[difference in percentage between the urban concentration of ELTA's distributed items in the USO perimeter and the urban concentration of the operator]. E. g. if ELTA offers 60 % of its services to urban areas, as soon as an operator distributes 79 % of its postal items in urban areas, its contribution is equal to 10 % of its turnover in the USO area.



(30) Such calculation is done in the following way:



#### 2.4.1. Calculation of the net cost of the USO using the net avoided cost methodology

##### 2.4.1.1. The Commercial Approach Method

- (31) The Greek authorities explain in their notification that, in order to calculate the net cost of the USO (NCUS) for the past year, ELTA uses an approach called the Commercial Approach Method (CAM), which relies on the net avoided cost methodology.
- (32) That CAM is based on two scenarios:
- The Factual scenario (which itself derives from a Base Case scenario as explained in paragraph (36)), where the USP provides the USO under the current legal framework, involving obligations as well as possible legal benefits; and
  - The Counterfactual scenario, where the former USP acts on a purely commercial basis, without any USO.
- (33) Each scenario (Factual and Counterfactual) is described along the same dimensions:
- First two types of products are distinguished: single piece mail and bulk mail;
  - These products can be delivered in different types of areas: dense urban, urban, semi-urban, semi-rural, rural, PO Box delivery, delivery from agents, post restante delivery.
- (34) For each segment [product] x [area type], volume, revenues and costs are estimated for both the Factual and Counterfactual scenario. In particular, the impact of the Counterfactual scenario on the different components of postal production chain (collection, sorting, transportation, delivery — see figure 1 below) is calculated following the methodology described in paragraphs (35) — (64).

**Figure 1: postal production chain**



(35) The CAM will comprise the following steps:

#### **Step 1: Defining the Factual Scenario:**

(36) The Factual scenario derives from the Base Case scenario in which the USP provides the USO under the current legal framework, involving obligations as well as possible legal benefits.

- (37) The Factual scenario includes additional considerations to the Base Case scenario concerning the market conditions for single piece and bulk mail, while also making some adjustments to incorporate implications due to competition. In particular, in the Factual scenario, it is assumed that, due to market liberalisation, competition will emerge for bulk mail products, therefore reducing the bulk mail volumes of ELTA and adversely affecting ELTA's respective revenues. Such loss is assumed to be partly recovered by: (a) cost cutting, and (b) increasing single piece mail prices (given the inelastic demand). In the Factual scenario for 2013, ELTA is assumed to achieve a 10 % cost saving due to increased efficiency as a response to the upcoming competition.

**Step 2: Defining the Counterfactual Scenario:**

- (38) This step involves identifying the alternative service offerings, meaning the part of the USO services that would not be provided or would be modified by a USP acting on a commercial basis<sup>(13)</sup>. The following axes are considered:
- (39) **Collection/Delivery Frequency and Quality Targets:** Under the USO, ELTA has predefined quality targets. In countries, such as Greece, with particular geographical characteristics (e.g. large number of small islands) it is often the quality constraint regarding delivery time which causes the additional cost (e.g. need for night shifts and overtime, plane transportation for the remote areas). This is the case particularly in the priority mail services (D+1), where the requirement of 87 % next day delivery is very difficult and costly to fulfil in a country such as Greece. The situation is further worsened by the decline in mail volumes and the subsequent decrease in economies of scale for ELTA. Moreover, under the USO, ELTA must collect and deliver mail items once a day on every working day (i.e. Monday to Friday) each week.
- (40) **Points of Service:** Under the USO, ELTA must offer nationwide collection and delivery, maintaining at least one access point for the collection of mail per 1,000 residents in urban areas, and at least one access point in every village in rural areas. Since Greece is a country with a large number of small islands and many remote areas with low population density, collection and delivery in these areas is likely to cause relatively high costs for ELTA.
- (41) **Pricing:** Under the USO, ELTA must have uniform pricing for single piece mail, with affordable, cost-oriented, transparent and non-discriminatory tariffs. It must also provide special tariffs for the blind and the visually impaired.
- (42) The requirement for uniformity of prices results in a situation where universal postal services are offered at a loss in remote areas (i.e. semi-rural and rural areas in the case of ELTA). Furthermore, the requirement for affordable prices prevents ELTA from charging the first priority mail at a premium to better reflect the higher costs that are associated with its provision.
- (43) In particular, ELTA's cost system allows for the differentiation between 5 geographical zones (dense urban, urban, semi-urban, semi-rural, and rural). In the following table the unit cost and price of 20gr. non-priority bulk mail, in each one of the geographical zones, is presented.

Table 2

**Price & Unit Cost per Geographical Zone — 20gr. non-priority bulk mail**

Geographical Zone	Unit Cost (€)	Current Price (€)	Profit (€)
Dense urban	[...] (*)	[...]	[...]
Urban	[...]	[...]	[...]
Semi-urban	[...]	[...]	[...]
Semi-rural	[...]	[...]	[...]
Rural	[...]	[...]	[...]

(\*) Business secret

<sup>(13)</sup> Examples of alternative service offerings of an USP acting on a commercial basis could be: discontinuing delivery to remote areas and/or to a part of the population with the highest delivery costs, reduce delivery frequency to three days, reduce D+1 delivery standards, etc.

- (44) As evidenced in the table, the delivery of 20gr. non-priority bulk mail in semi-rural and rural areas is provided at a loss. The situation is similar for other mail items.
- (45) **Impact on non-USO activities:** It is also important to note that the CAM assumes that the impact on revenues and costs arising from non-USO services of ELTA in the Counterfactual scenario (due to not having a universal service obligation) is immaterial. This is due to the fact that all non-USO services provided by ELTA are offered through its post offices, which would be kept under the Counterfactual scenario (see paragraph (71)). The resources used for the non-USO services would be unaffected in the Counterfactual scenario and for that reason, the Greek authorities have ignored, in the Factual and Counterfactual scenarios, the revenues and costs arising from non-USO services. The Greek authorities however recognize that in the absence of the USO, there may be lower sales of other products in its post offices. Consequently, an amount has been included in the Counterfactual scenario as an intangible benefit (see paragraphs (59) and (79) below).

**Step 3: Identifying Avoidable costs:**

- (46) The third step involves the estimation of the cost savings the USP would achieve under the Counterfactual scenario for each component of the postal production chain:
- (47) **Collection & Delivery Frequency:** If ELTA reduces the collection and delivery frequency, cost effects are identified in the activities of collection and delivery. In order to quantify these effects, the costs attributable to the specific segments are identified: ELTA's cost system allows for the differentiation between 5 geographical zones (dense urban, urban, semi-urban, semi-rural, and rural).
- (48) **Transportation:** Avoidable costs would also arise in the activity of transportation. ELTA's cost accounting system traces the transportation costs back to local transportation, transportation to remote areas, plane and sea transportation. It is assumed that a percentage of the transportation costs to remote areas would be avoidable under the Counterfactual scenario.
- (49) **Quality targets:** Under the Counterfactual scenario, priority mail would have no specific quality target but would be provided on a 'best effort' basis. Quality measurements would continue in urban areas so as to guarantee a high service level and reliability of delivery. The modification of the quality targets requirement would only affect the provision of priority mail services. The costs that would be avoided by the modification of the quality targets requirement are the costs that would be saved by the provision of the first priority mail on a 'best effort' basis. Under the Counterfactual scenario, there will be limited need for overtime and night shifts, thus most of payroll costs attributable to first priority mail services could be avoided. Plane transportation costs would also be avoidable.
- (50) Due attention is given in this process to the issue of double counting: Interdependencies exist between alternative service offerings and the associated calculation of avoidable costs. For example, if a service is discontinued, no savings resulting from the lowering of quality targets should be taken into account so as to avoid double counting. To neutralise this risk, the alternative service offerings are considered sequentially.

**Step 4: Estimating foregone revenue**

- (51) The fourth step involves the estimation of the foregone revenue resulting from the Counterfactual business strategy, by taking into account both direct demand effects (i.e. demand loss for products which would no longer be provided) and indirect demand effects (i.e. impact of a change in one service on the demand for other products of the USP).
- (52) The **direct revenue effect** concerns the revenue on products which would disappear or be provided at a different quality or price. As an example, ELTA would lose some of its revenue on mail distributed to sparsely populated areas if it reduced the frequency of deliveries to these areas. Likewise, revenues will be affected if tariffs change under an alternative service offering.
- (53) The **indirect revenue effect** concerns the revenue on products not targeted directly by the respective alternative business offering. The size of this loss depends on whether the discontinued and remaining services are substitutes or complements. For example, newspaper delivery and delivery to the entire parts of the country are complementary services. ELTA is likely to lose a significant part of revenues from daily newspaper delivery if it stops five day mail delivery in sparsely populated areas. Provision of priority and non-priority letters are substitute services. Demand for one type of mail can be replaced with the other type (at least to some extent).
- (54) Indirect revenue effects result from customers' responses to a changed service offering. For instance, if ELTA would prefer to reduce the delivery frequency in a certain area, some customers (e.g. large mailers) might switch to alternative means of communication, such as another postal operator, or electronic alternatives.

**Step 5: Accounting for intangible benefits**

- (55) In addition to cost and revenue effects implied by specific alternative service offerings, ELTA derives intangible and market benefits from being the USP. The fifth step of the commercial approach method estimates the value of any intangible and market benefits that ELTA might derive from its USO.
- (56) The intangible benefits that are taken into account in the calculation of the net USO costs are the following:
- (57) **VAT exemption for the USO:** The VAT exemption impacts ELTA's profit position through demand effects. Indeed, in general, the exempted postal service provider will have an advantage since its prices, which do not bear any VAT, will be lower than those of a similar postal provider, which is subject to VAT. For the postal customers that are VAT exempt and cannot claim back VAT (e.g. banks, insurance companies and public organisations), ELTA, being VAT exempt, has an advantage over the not exempted postal providers, which are obliged to include VAT in their prices. Thus, the VAT exemption has a positive effect on demand and for that reason it is considered an intangible benefit. However, for the postal customers that are not VAT exempted and can claim back their input VAT on the purchased postal services, ELTA's VAT exemption has no demand effect. In this context, in the Counterfactual scenario it is assumed that, in case that ELTA were not VAT exempt, it would incur a decrease in the demand for bulk mail by VAT exempt clients.
- (58) **Enhancement of brand value and enhanced advertising effect:** ELTA is assumed to achieve higher sales due to positive impact of brand (i.e. customer retention and acquisition) and more effective advertising thanks to higher visibility (better value for money). With regards to the enhanced advertising effect, the benefit is estimated by taking into account the saving in advertising expenses by ELTA due to its USP status.
- (59) **Demand complementarities:** USPs supply via the postal outlet network products that are not related to the USO. If customers are buying these products in conjunction with the purchase of universal service products, then, a demand complementarity occurs.
- (60) **Ubiquity** <sup>(14)</sup>: Due to the USO obligation, ELTA may enjoy better customer retention and acquisition when mailers move address.
- (61) **Philately market:** ELTA has the exclusive sale of stamps and the monopoly over philately market. The revenue arising from the sale of stamps in 2012 is about € 3,5 million, whereas the operating expenses attributed to this activity are approximately € 2,7 million.
- (62) **Grants:** ELTA receives EU grants (e.g. NSRF grants) due to its USP status. EU funding that was approved by the Commission's decision of 25 January 2012 (see paragraph (8)) will be taken into account, to the extent that it is linked to the provision of the postal USO.

**Step 6: Calculating the NCUS**

- (63) The NCUS is calculated as the difference between the USP's profit level in the Factual and Counterfactual scenario. By comparing these two scenarios, the CAM calculates to what extent the USP is 'worse-off' because of having the USO as opposed to pursuing alternative service offerings in the context of a competitive market.
- (64) The CAM thus evaluates the total commercial impact from discontinuing a given USO service by taking into account all relevant cost and revenue effects, and calculates the NCUS as the difference in profit with and without the USO. It therefore provides an estimate of the NCUS which, if fully compensated, would make the designated USP indifferent about whether to provide the USO or not in a liberalised market.

## 2.4.1.2. Implementation of the CAM for 2013

**Factual scenario**

- (65) In the Factual scenario for 2013, ELTA is assumed to reduce its bulk mail volumes by [...] % in the dense urban zone, [...] % in the urban zone and [...] % in the other three zones.

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<sup>(14)</sup> Given the fact that ELTA is present everywhere in Greece, there are intangible benefits that need to be taken into account.

- (66) The resulting loss is assumed to be partly recovered by a 10 % cost saving due to increased efficiency as a response to the upcoming competition and by a [...] % increase in single piece mail prices (combined with a [...] % volume loss due to price increases).

#### **Counterfactual scenario**

- (67) **Collection/Delivery Frequency and Quality Targets:** Customer surveys (conducted by PwC in collaboration with ELTA in Greece during 2012) indicate that residential customers have a low demand for frequent delivery, with the majority of them considering acceptable a collection and delivery of mail items every two or more days. Similar are the expectations of the business customers, of whom only a small proportion uses first priority mail, and who seem to be more concerned with achieving the lowest price possible.
- (68) As a result, it is assumed that, without the USO, ELTA would reduce the collection and delivery frequency and would provide first priority services on a commercial choice basis (without strict quality target for D+1). The impact of such a change has been estimated by ELTA to be the following for 2013:
- Decrease in overtimes and night shifts, with an estimated saving of € [...] million.
  - Decrease in air transportation costs, with an estimated saving of € [...] million.
  - Decrease in personnel costs for postmen, with an estimated saving of € [...] million (i.e. [...] % decrease in number of postmen with an annual cost per postman of € [...]).
  - Removal of the regulatory burden of monitoring Quality of Service with an estimated saving of € [...] million. Priority mail would have no specific quality target but would be provided on a 'best effort' and commercial choice basis.
  - Removal of regulatory burden in relation to costing/accounting separation with an estimated saving of € [...] million.
- (69) Moreover, it is assumed that ELTA will lose a percentage of the volume of postal items delivered under first priority mail category due to substitution, whilst the rest of the first class mail will be treated as second priority mail. This, combined with the reduction of street post boxes, is assumed to result in a [...] % decrease of the total volume of postal items for 2013.
- (70) **Points of Service:** It is assumed that, in the Counterfactual scenario, deliveries of postal items in rural and semi-rural areas would be discontinued and hence all costs associated with delivery will be avoided. For the remaining costs, only [...] % is assumed to be avoidable whereas the rest ([...] %) is assumed to be fixed and thus unavoidable. Fixed/unavoidable costs include mainly personnel costs <sup>(15)</sup>, as well as general and administrative costs, financial costs etc.
- (71) It is noted, however, that though the Counterfactual scenario in the NCUS calculation model assumes that the delivery of postal items in non-economic areas (rural and semi-rural areas) will cease, offices (shops) in such areas will continue to operate providing all other business such as financial services and parcel deliveries. To this end, the impact on revenues and costs arising from parcels, financial and other non-USO services that are handled through the traditional postal network of ELTA will be minimal; hence, they have been excluded (ignored) from both the Factual and Counterfactual scenario.
- (72) Moreover, it is assumed that ELTA will reduce its letter boxes thus leading to saving in costs of maintaining and servicing them of € [...] million for 2013.
- (73) **Pricing:** under the Counterfactual scenario, it is assumed that ELTA could change its pricing structure and, given the low price elasticity in the single mail letter market, ELTA would increase the price of the priority mail services to such an extent that it will cover the associated costs and produce a reasonable profit. It is assumed that ELTA will increase the price of the single piece by [...] %. Due to the fact that demand for single piece mail is rather inelastic, the volume decrease due to the higher price is not expected to exceed [...] %. The estimation for single piece mail price elasticity of [...] is based on customer surveys conducted by PwC in collaboration with ELTA during 2012 in Greece.

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<sup>(15)</sup> The Greek authorities consider that even in the counterfactual scenario, the concerned personnel would have to be kept. This is consistent in particular with their assumption that non-USO services would still be delivered. As the personnel to deliver these services (in particular in the retail network) would be in any case retained in the counterfactual scenario, the related cost would not be avoided. This finally leads to a conservative approach, as the net avoided cost would be even higher if these personnel costs were considered avoidable.

**Intangible benefits**

- (74) **VAT exemption for the USO:** In the calculation of the NCUS, it is assumed in the Factual scenario that, due to market liberalisation, competition will emerge for bulk mail products and will target business customers which are not VAT exempted. This results for instance in a [...] % loss in total bulk mail volume in dense urban areas.
- (75) This [...] % volume loss pertains solely to customers that are not VAT exempted, which account for c. [...] % of total ELTA's revenue. In essence, it is assumed that the volume loss for these not VAT exempted customers will be  $(\frac{[\dots]}{[\dots]} \times [\dots])$ . It is noted that this volume loss is assumed to be incurred regardless of ELTA's VAT exemption as a result of the USO.
- (76) In the Counterfactual scenario, where it is assumed that ELTA would no longer be VAT exempt, the model assumes an additional bulk mail loss volume attributed to the VAT exempted customers, which account for the remaining [...] % of total ELTA's revenue. The volume loss for these customers is assumed to equal the loss assumed for the not VAT exempted customers (i.e. [...]). Therefore, the additional bulk mail loss is estimated at  $[\dots] \times [\dots] = [\dots]$ .
- (77) The immediate influence of the VAT exemption is that ELTA cannot claim back its input VAT on its purchases. In this respect, it has been estimated that ELTA incurs a cost of € [...] million due to not recovering input VAT.
- (78) **Enhancement of brand value and enhanced advertising effect:** With regards to the enhanced advertising effect, the benefit is estimated by taking into account the saving in advertising expenses by ELTA due to its USP status. Indeed, in 2011, the advertising expenses of ELTA were approximately € [...] million, which is a relatively small amount if compared with the enhanced brand value of ELTA. The Greek authorities have assumed that in order for ELTA to achieve its current brand awareness, in case that it was a private company without ELTA's wide presence, the advertising expenses would have to be approximately € [...] million. Consequently, in the NCUS calculation model, the overall benefit is estimated at € [...] million for 2013.
- (79) **Demand complementarities:** An amount of € [...] million has been included in the Counterfactual scenario for 2013 as an intangible benefit due to the fact that ELTA may achieve higher sales of other products (as complement to the sale of USO products). This figure has been estimated taken into account that the revenue arising from non-USO services in 2013 is approximately € 74 million and a potential [...] % of this revenue has been derived as a result of the sales of these (non-USO) products in conjunction with the purchase of universal service products.
- (80) **Ubiquity:** In the NCUS calculation model, this benefit is estimated at € [...] million for 2013.
- (81) **Philately market:** Taking into account the potential decrease in sales of stamps in the next years due to the adverse economic environment and the electronic substitution and the non-operating expenses incurred by ELTA, this benefit is estimated to reach approximately € [...] million for 2013.
- (82) **Grants:** The NCUS calculation model assumes that ELTA would receive a total amount of € 36,5 million. This figure is the approved amount by the Greek State Agency responsible for EU funds and is apportioned equally in the next seven years. Consequently, annual grants amount to € 5,2 million for 2013.

**Synthetic results**

- (83) The table below present the result of the calculations of the Greek authorities for 2013 based on the methodology above (for more detailed results, see Annex I).

Table 3

**NCUS estimation for 2013**

Scenario	Revenue (M€)	Collection Cost (M€)	Sorting & Other Costs (M€)	Transportation Cost (M€)	Delivery Cost (M€)	Total Cost (M€)	Profit/Loss (M€)
<b>Factual</b>	<b>188,19</b>	[...]	[...]	[...]	[...]	<b>196,78</b>	<b>- 8,6</b>
<b>Counterfactual scenario</b>	<b>Services (*)</b>	<b>156,82</b>	[...]	[...]	[...]	<b>170,28</b>	<b>- 13,47</b>
	<b>Quality (**)</b>						<b>28,74</b>
	<b>Intangibles</b>						<b>- 8,95</b>
	<b>Total</b>						<b>6,32</b>

Scenario	Revenue (M€)	Collection Cost (M€)	Sorting & Other Costs (M€)	Transportation Cost (M€)	Delivery Cost (M€)	Total Cost (M€)	Profit/Loss (M€)
<b>NCUS (Counterfactual — Factual)</b>							<b>14,92</b>

(\*) Impact of a change in the perimeter of delivered services

(\*\*) Impact of a change in quality, number of points of service, frequency of delivery

(84) As it can be seen from table 3, the NCUS is estimated to amount to approx. € 14,9 million for 2013.

#### 2.4.2. Calculation of the net incurred cost of the USO

(85) The NIC calculation corresponds to the methodology based on cost allocation, which is an alternative method for calculating the net cost necessary to discharge the public service obligations. The NIC corresponds to the subtraction of the incurred costs of the USP in discharging the USO from the earned revenues in discharging the USO. Such calculation is rendered possible by the separation of accounts implemented in ELTA's cost accounting (see paragraphs (150)-(156)).

(86) The estimation of the NIC for 2013 is presented in the table below.

Table 4

#### NIC estimation (M€)

M€	2013
<b>USO Revenues</b>	204,13
<b>USO Costs</b>	225,68
<b>NIC (USO Cost — USO Revenues)</b>	<b>21,55</b>

#### 2.4.3. Calculation of the reasonable profit ELTA would be entitled to

(87) The Reasonable Profit ELTA is entitled to is calculated on the basis of the Return on Sales (ROS=EBIT/Turnover) for the USO with the following methodology:

#### Selection of samples of incumbent operators

(88) Two samples of incumbent operators were selected: incumbent postal operators of the countries belonging either in the Euro Area of 17 countries, or of 15 countries in the European Union. The following table presents the list of countries included.

Table 5

#### Selection of samples

Country	EA17	EU15
Belgium	Yes	Yes
Denmark — Sweden	No	Yes
Germany	Yes	Yes
Finland	Yes	Yes
France	Yes	Yes

Country	EA17	EU15
Ireland	Yes	Yes
Italy	Yes	Yes
Luxembourg	Yes	Yes
Slovakia	Yes	No
United Kingdom	No	Yes
Spain	Yes	Yes
Netherlands	Yes	Yes
Portugal	Yes	Yes
Austria	Yes	Yes
Estonia	Yes	No
Slovenia	Yes	No
Malta	Yes	No

**Calculation of the different ROS samples of operators**

(89) The following table summarises some key results with regard to the EBIT margin for the various groups considered.

Table 6

**ROS statistics**

	EA17	EU15	All
<b>Sample Size</b>	143	117	158
<b>Median</b>	<b>6,11 %</b>	<b>6,09 %</b>	<b>5,76 %</b>
<b>Mean</b>	5,89 %	6,00 %	5,55 %
<b>Standard Deviation</b>	4,76 %	4,56 %	4,94 %
<b>1st Quartile Cut-off</b>	3,11 %	3,16 %	2,22 %
<b>3rd Quartile Cut-off</b>	8,64 %	8,50 %	8,47 %
<b>Interquartile Mean</b>	5,82 %	5,74 %	5,47 %
<b>10th Smallest</b>	- 0,99 %	0,27 %	- 2,03 %
<b>10th Largest</b>	13,37 %	12,94 %	13,82 %



### **Determination of the Reasonable Profit range for ELTA**

- (90) The range proposed by the Greek authorities for the reasonable profit allowable to ELTA is 5,76 % - 6,11 % ROS, in view of the following justifications.
- (91) First, as evidenced in the table above, no significant variations are observed between the three groups. The annual median for the three groups ranges from 5,76 % to 6,11 %, reflecting the homogeneity of the companies taken into account in terms of geographic location, general economic conditions and operations.
- (92) Then, priority is to be given to the median ROS rather than the mean ROS, given that the former measure is less exposed to outliers than the latter <sup>(16)</sup>. The Greek authorities explain in this respect that they follow the same approach than in the Commission Decision on the bpost case (see footnote 98) <sup>(17)</sup>. In the bpost case, when assessing the default range for reasonable profit, the Commission also distinguished between periods when the postal operator faced a significant degree of risk and strong incentives to improve efficiency and periods when it faced a low level of risk.
- (93) In particular, in recital 315 the Commission found that '(...) a default range of [5,4-7,4 %] would appear to constitute an appropriate benchmark range of profit, at least for the periods when DPLP faced a significant degree of risk and strong incentives to become more efficient.' The Commission also stated in paragraph 320 that 'a default range of [3,6-4,8 %] would appear to constitute an appropriate benchmark profit range for the periods when DPLP faced a low level of risk.'
- (94) The level of risk incurred by the selected companies is considered to be low. This is due to the fact that the sample of selected companies includes low risk profile postal operators as they are incumbent companies that operate in a regulated environment. Therefore, the medians set out above reflect the ROS of companies facing low risk in offering their services.
- (95) The Greek authorities further note that the annual medians range from 5,76 % to 6,11 %, which falls into the Commission's default range of [5,4-7,4 %] mentioned in paragraph 315 of the bpost Decision.

#### 2.4.4. Determination of the Compensation Amount

- (96) The Compensation Amount that will be calculated by ELTA will correspond to the minimum between the net cost of the USO (NCUS), calculated using the Commercial Approach Method, and the Net Incurred Cost of the USO (NIC) increased by a Reasonable Profit (RP):

$$\text{Compensation Amount} = \text{Min (NCUS, NIC+RP)}$$

- (97) The table below presents the calculation of the Compensation Amounts for 2013.

Table 7

#### Compensation Amount (M€)

M€	2013
NCUS	14,92
NIC	21,55
RP	9,58
NIC + RP	31,13
<b>Compensation Amount</b>	<b>14,92</b>

<sup>(16)</sup> The mean is the arithmetic average of a set of numbers, or distribution, while the median is the middle point of a number set. The median is described as the numeric value separating the higher half of a sample, a population, or a probability distribution, from the lower half. While the mean has traditionally been the common measure of a mid-point in a sample, it has the disadvantage of being affected by any single value being too high or too low compared to the rest of the sample, which is why a median is sometimes taken as a better measure of a mid-point.

<sup>(17)</sup> See Commission Decision of 25 January 2012 in Case SA.14588 (C 20/2009) implemented by Belgium in favour of De Post-La Poste (now bpost), OJ L/170, 29.6.2012, p. 1.

(98) Based on the current estimations, the Compensation Amount for 2013 would be € 14,9 million.

### 2.5. Assessment of the unfair burden by the EETT

(99) ELTA can only be entitled to any of the two notified measures (direct subsidies for the transitory regime and the subsequent five-year compensation fund scheme) if EETT finds that the USO represents an unfair burden for ELTA (see paragraphs (18) and (25)). The Greek authorities have introduced this step in the compensation process to comply with the requirements of the 3<sup>rd</sup> Postal Directive<sup>(18)</sup>.

(100) In this respect, the Greek authorities indicated that ELTA would only be entitled to a compensation for discharging the USO if the Compensation Amount (determined according to the process previously described) is above a certain threshold (the Unfair Burden Threshold). Only in such case the USO burden would be excessive for the USP to bear. If the Compensation Amount does not exceed the Unfair Burden Threshold, then the burden for discharging the USO will not be considered as unfair to the USP.

(101) The Unfair Burden Threshold considered in the case of ELTA is the administrative cost of calculating and confirming the Compensation Amount (for the transitory regime) or the cost of calculating and confirming the Compensation Amount and the cost of establishing and operating the contributions-based mechanism (in the case of the compensation fund mechanism).

(102) If the Compensation Amount exceeds these administrative costs, ELTA will be entitled to the entire Compensation Amount. Conversely, if the Compensation Amount is equal or lower than the Unfair Burden Threshold, no compensation will be due and ELTA will have to bear the costs for discharging the USO.

(103) Moreover, they indicate that the Unfair Burden Threshold is in line with the principles underlying the 3<sup>rd</sup> Postal Directive, because:

— It will be calculated through a transparent model that will be previously known to market participants.

— It will be determined following a process managed by an independent entity, the EETT, which will ensure objectivity and transparency.

— It is proportionate, as it ensures that ELTA will not be compensated if the Compensation Amount is not material compared to the administrative costs of implementing the compensation fund mechanism.

— An unfair burden threshold based on the level of administrative costs has been considered as appropriate in the past by the European Committee for Postal Regulation and the European Regulator Group for Postal Services<sup>(19)</sup>.

## 3. EXISTENCE OF AID

(104) According to Article 107(1) TFEU '*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*'.

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

### 3.1. Direct subsidies in the transitory regime

#### 3.1.1. Aid imputable to the State and granted through State resources

(106) The compensation for the provision of the USO for the transitory regime is financed from the State budget. Therefore, it is imputable to the State and is granted through State resources.

<sup>(18)</sup> Article 7(3) of the 3<sup>rd</sup> Postal Directive: '*Where a Member State determines that the universal service obligations [...] entail a net cost [...] and represent an unfair financial burden on the universal service provider(s), it may introduce (a) a mechanism to compensate the undertaking(s) concerned from public funds; or (b) a mechanism for the sharing of the net cost of the universal service obligations between providers of postal services (and/or users)*'.

<sup>(19)</sup> See report prepared by frontier economics for the Commission: '*Study on the principles used to calculate the net costs of the postal USO*' ([http://ec.europa.eu/internal\\_market/post/doc/studies/2012-net-costs-uso-postal\\_en.pdf](http://ec.europa.eu/internal_market/post/doc/studies/2012-net-costs-uso-postal_en.pdf), section 9.3.1., pp. 125-126).

### 3.1.2. *Economic advantage to undertakings*

- (107) The Commission recalls that where the four cumulative Altmark conditions<sup>(20)</sup> are met, SGEI compensations granted to a company is deemed not to grant any economic advantage and this does not constitute State aid.
- (108) The four Altmark conditions are the following:
- (1) The recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined;
  - (2) The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;
  - (3) The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit;
  - (4) Where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.
- (109) The Greek authorities did not provide any evidence demonstrating the respect of all Altmark conditions nor argue in favour of their fulfilment.
- (110) Furthermore, the Commission considers that the fourth condition is clearly not met in the case of ELTA since the public service was not awarded as a result of an open public procurement procedure, nor have the Greek authorities argued or otherwise provided the element demonstrating that ELTA is compensated according to the costs of a typical undertaking within the sector. Therefore, the Commission is not in a position to conclude that ELTA's costs are those of a typical well run undertaking.
- (111) Thus, it can be concluded that the compensation ought to be considered as conferring an advantage to ELTA, which can be qualified as economic advantage within the meaning of article 107(1) TFEU.

### 3.1.3. *Selectivity*

- (112) Since the compensation for the provision of the USO for the transitory regime benefits only one undertaking (ELTA) and provides additional funds to that undertaking, the measure confers a selective advantage on ELTA.

### 3.1.4. *Affectation of trade and distortion of competition*

- (113) ELTA operates in the postal and financial sectors, where there is competition and intra-Union trade. In particular, there is significant competition in express mail, parcels and logistical services. Some of ELTA's competitors are based in other Member States.
- (114) The public support which would be granted to ELTA would strengthen the position of the company in relation to postal and financial undertakings established in Greece or other Member States which, as a consequence, might have more difficulties to enter or to remain in the Greek market. Therefore, the measure is liable to distort competition and affect intra-Union trade pursuant to Article 107(1) TFEU.

### 3.1.5. *Conclusion*

- (115) The compensation for the provision of the USO during the transitory regime in favour of ELTA amounts to State aid within the meaning of Article 107(1) TFEU.

## 3.2. **Compensation fund mechanism**

### 3.2.1. *Aid imputable to the State and out of State resources*

- (116) The compensation for the provision of the USO for the years 2015 to 2019 (or 2016-2020) is financed from a compensation fund which can be complemented if necessary with direct subsidies from the Greek State.

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<sup>(20)</sup> Judgment of the Court of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, case C-280/00 ECR [2003] page I-07747.

- (117) The part of the compensation that may be paid directly from the State budget is clearly imputable to the State and granted through State resources.
- (118) For the part of the compensation that is paid from the compensation fund, the main question that arises is whether such funding, which originally comes from private resources, constitutes a transfer of State resources imputable to the State.
- (119) It follows from the case-law of the Court of Justice that Article 107(1) TFEU covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector; indeed, the fact that these means remain constantly under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources<sup>(21)</sup>. Similarly, the originally private nature of the resources does not prevent them being regarded as State resources within the meaning of Article 107(1) TFEU<sup>(22)</sup>.
- (120) Conversely, the Court of Justice has refused to categorise as State resources contributions to a fund which have never been made available to the national authorities and which were only used to finance actions taken at the private initiative of the operators who financed them and benefitted from them<sup>(23)</sup>.
- (121) As clarified by the General Court<sup>(24)</sup>, the relevant criterion in order to assess whether the resources are public, whatever their initial origin, is that of the degree of intervention of the public authority in the definition of the measures in question and their methods of financing.
- (122) In the present case, it must be noted that:
- The Greek State appointed ELTA as the universal service provider and decided to set up a compensation fund to finance (at least partially) the net cost of the USO,
  - The Greek State decides whether the provision of the USO entails an unfair financial burden, which triggers the payment of the contributions to the fund by the postal operators and the payment from the fund to ELTA,
  - A public authority, EETT, calculates the compulsory contributions to be paid by postal operators, on the basis of criteria set in a Ministerial Decision, collects the funds into a bank account which it administers, therefore controlling the fund's resources, and finally pays out the total contributions to ELTA.
- (123) Consequently, it appears that the resources of the fund are under public control, as the State, through legislation, decides who has to contribute to the fund, how their level of contribution should be calculated, who benefits from these contributions and administers the fund. The Commission therefore considers that the compensations in favour of ELTA for the provision of the USO for the years 2015 to 2019 (or 2016-2020), that will be financed from a compensation fund, involve a transfer of State resources imputable to the State.

### 3.2.2. *Other conditions*

- (124) For the reasons detailed in sections 3.1.2, 3.1.3 and 3.1.4 above, the compensation for the provision of the USO for the years 2015 to 2019 confers an economic and selective advantage to ELTA and is liable to distort competition and affect intra-Union trade pursuant to Article 107(1) TFEU.

### 3.2.3. *Conclusion*

- (125) The compensation for the provision of the USO for the years 2015 to 2019 (or 2016-2020) in favour of ELTA amounts to State aid within the meaning of 107(1) TFEU.

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<sup>(21)</sup> See, to that effect, Case C-83/98 P *France v Ladbroke Racing and Commission* [2000] ECR I-3271, paragraph 50, and Case C-482/99 *France v Commission*, paragraph 37

<sup>(22)</sup> see, to that effect, Case T-358/94 *Air France v Commission* [1996] ECR II-2109, paragraphs 63 to 65

<sup>(23)</sup> See, to that effect, Case C-345/02 *Pearle and Others*, paragraphs 36 to 39

<sup>(24)</sup> See court case T-139-09, T-243-09, T-328-09 *France v. Commission Contingency Plans*

#### 4. COMPATIBILITY ASSESSMENT

##### 4.1. Direct subsidies in the transitory regime

- (126) Under certain conditions, Article 106(2) TFEU allows the Commission to declare compensation for SGEIs compatible with the internal market. The Decision for State aid in the form of public service compensation (hereinafter 'the 2012 SGEI Decision')<sup>(25)</sup> applies to compensation which is below € 15 million per year.
- (127) The Greek authorities foresee a payment to ELTA of € 14,9 million for the year 2013 for the provision of the USO. Furthermore, they have in any case committed to cap the compensation amount to a maximum of € 15 million during the transitory regime (2013-2014 or 2013-2015). Therefore the direct subsidies granted during this regime fall within the scope of the 2012 SGEI Decision.
- (128) Although under the 2012 SGEI Decision, Member States are exempted from the prior notification obligation provided for in Article 108(3) TFEU, the Greek authorities decided to notify the direct subsidies granted in the transitory regime to the Commission for legal certainty. According to recital 26 of the 2012 SGEI Decision, '*exemption from the requirement of prior notification for certain services of general economic interest does not rule out the possibility for Member States to notify a specific aid project. In the event of such a notification, or if the Commission assesses the compatibility of a specific aid measure following a complaint or ex-officio, the Commission will assess whether the conditions of this Decision are met.*'

##### 4.1.1. Genuine service of general economic interest as referred to in Article 106 TFEU

- (129) According to Article 2.1 of the 2012 SGEI Decision, the Decision '*applies to State aid in the form of public service compensation, granted to undertakings entrusted with the operation of services of general economic interest as referred to in Article 106(2) of the Treaty [...]*'.
- (130) The public service obligation entrusted to ELTA is the universal postal service which qualifies as an SGEI within the meaning of Article 106(2) TFEU and whose minimum requirements are laid down in Article 3 of the 3<sup>rd</sup> Postal Directive.
- (131) Considering the above, the Commission considers that Greece has complied with the conditions established in Article 2.1 of the 2012 SGEI Decision.

##### 4.1.2. Entrustment

- (132) According to Article 4 of the 2012 SGEI Decision, '*Operation of the service of general economic interest shall be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each Member State. The act or acts shall include, in particular:*
- the content and duration of the public service obligations;*
  - the undertaking and, where applicable, the territory concerned;*
  - the nature of any exclusive or special rights assigned to the undertaking by the granting authority;*
  - a description of the compensation mechanism and the parameters for calculating, controlling and reviewing the compensation;*
  - the arrangements for avoiding and recovering any overcompensation; and*
  - a reference to this Decision.*'
- (133) The Postal Law 4053/2012 of 7 March 2012, together with its future amended version of article 8<sup>(26)</sup>, the award contract between ELTA and the Minister of Infrastructure, Transport and Networks and the Ministerial decision of 28 February 2013 on the '*Determination of the content of the universal postal service*', clearly define and entrust to ELTA the universal postal service obligation for a period of 15 years until 31 December 2028, and cover both the notified transitory regime and compensation fund mechanism.

<sup>(25)</sup> Commission Decision of 20 December on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.01.2012, p. 3-10.

<sup>(26)</sup> To be adopted after the adoption the present Commission Decision. The initial Article 8 only referred to the compensation fund mechanism whereas the amended Article 8 will refer both to the compensation fund mechanism and the direct subsidies under the transitory regime.

- (134) The Decision 697/129/2013 of the EETT on the 'Determination of the methodology of the calculation of the net cost of the universal postal service provision' together with the future Joint Ministerial Decision of the Ministers of Finance and of Infrastructure, Transport, and Networks, referred to in the future amended version of article 8 of Law 4053/2012, define the compensation mechanism. The latter decision will also refer to the 2012 SGEI Decision, in compliance with article 4 of the 2012 SGEI Decision.
- (135) Finally, as the compensation is calculated and reviewed by the EETT before being actually paid out to ELTA, there is no risk of overcompensation.
- (136) As a conclusion, the Commission considers that ELTA's entrustment for the transitory regime complies with Article 4 of the 2012 SGEI Decision.

#### 4.1.3. Duration of the period of entrustment

- (137) Following Article 2.2 of the SGEI Decision, the period of entrustment should normally not exceed 10 years. However, 'where the period exceeds 10 years, this Decision only applies to the extent that a significant investment is required from the service provider that needs to be amortised over a longer period in accordance with generally accepted accounting principles'.
- (138) ELTA will be the USO provider for a period of 15 years. This duration is not uncommon for the universal postal service<sup>(27)</sup>. This is explained by the fact that to deliver the USO, ELTA needs several important groups of assets which depreciation period is particularly long (see for example table 8 below concerning ELTA's assets).

Table 8

#### Depreciation period of main assets

Main assets	Depreciation period (in years)
Central building	10-30
Sorting center buildings	10-30
Retail network buildings	10-30
Warehouses	10-30
Forklifts, cranes	6-7
Sorting machines	6-7
Office automation and small equipment	6-7
Central IT hardware & software	3,3
Cars, vans and trucks	6-9
Retail IT (workstations printers)	6-7
Bicycles and motorcycles	6-7

- (139) As regards more precisely the compliance of the notified measure with Article 2.2 of the 2012 Decision, it should be noted that the relevant entrustment acts for that measure (in the sense of the 2012 SGEI Decision) are the Postal Law 4053/2012 of 7 March 2012, the Decision 697/129/2013 of the EETT and the future Joint Ministerial Decision of the Ministers of Finance and of Infrastructure, Transport and Networks, referred to in the future amended version of Article 8 of Law 4053/2012, taken together as described in section 4.1.1 above. That entrustment only covers a period of 8 years in total for which the compensation method is defined: 2 or 3 years for the transitory regime and 5 years for the compensation fund mechanism. Such entrustment is shorter than 10 years and complies with Article 2.2 of the 2012 SGEI Decision.

<sup>(27)</sup> Similar durations exist in France (La Poste), Italy (Poste Italiane), Spain (Correos).

## 4.1.4. Compensation

**Amount of compensation**

- (140) According to Article 5.1 of the 2012 SGEI Decision, ‘*The amount of compensation shall not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit.*’
- (141) In their notification, the Greek authorities provided the Commission with a detailed description of their methodology to calculate the net cost of the USO as well as the corresponding calculation for 2013 (see section 2.4 above).
- (142) The CAM methodology which is used to calculate the net cost of the USO relies on the net avoided cost methodology which is foreseen in Article 5.2 of the 2012 SGEI Decision which provides that ‘*The net cost [...] may be calculated as the difference between the net cost for the undertaking of operating with the public service obligation and the net cost or profit of the same undertaking operating without the public service obligation.*’ In fact, the CAM is a stricter form of the general NAC methodology referred to in the 2012 SGEI Decision as the net avoided cost of the USO which corresponds to the NCUS is the maximum amount that can be granted to ELTA (see paragraph (96)).
- (143) The CAM methodology is based on sound principles; in particular, the adopted methodology ensures that the Counterfactual scenario corresponds to the commercial strategy that ELTA would follow in absence of USO constraints. In addition, the stepwise approach ensures that there is no double counting and allows to take into account all the cross-effects and collateral effects of the Counterfactual scenario.
- (144) It is also noticeable that the implementation of this methodology will be systematically reviewed by the EETT<sup>(28)</sup> and that the Greek authorities have decided to cap the Compensation Amount by the net incurred cost plus a reasonable profit which will implies that ELTA will not obtain more with the NAC methodology (and the CAM variant) than what it could have obtained under the accounting method.
- (145) The reasonable profit calculation also seems sound and the resulting estimation of 5,76 % - 6,11 % ROS<sup>(29)</sup> is well in line with previous estimations used by the Commission on markets that could be considered less risky than the Greek one (in particular, the Belgian market).
- (146) The counterfactual scenario used in the calculation provided for 2013 represents a credible picture of a counterfactual company that would be able to operate the activities that would be kept by ELTA in the absence of the USO. In particular, the profit level of the Counterfactual scenario in 2013 (see table 9 below) seems reasonable in light of the reasonable profit rate calculated for ELTA<sup>(30)</sup>.

Table 9

**Profitability of the Counterfactual scenario**

M€	2013
<b>Revenues</b>	156,82
<b>Profit/loss</b>	6,32
<b>ROS</b>	4,03 %

<sup>(28)</sup> As imposed by the Article 22a(1) of the 3<sup>rd</sup> Postal Directive.

<sup>(29)</sup> ROS = return on sales. The 2012 SGEI Decision foresees that — Article 5(8): *where, by reasons of specific circumstances, it is not appropriate to use the rate of return on capital, Member States may rely on profit level indicators other than the rate of return on capital to determine what the reasonable profit should be, such as the average return on equity, return on capital employed, return on assets or return on sales.* In the postal sector, the return on sales is very often used instead of return on capital as it only depends on accounting profit and sales data, which are both easily observable in the company’s accounts. In addition, the use of the ROS avoids the valuation and attribution of assets between different services, which would be necessary for a capital-based benchmark, and which can be a difficult exercise. ROS is often used in the postal sector to define a benchmark for the reasonable profit (see for example Commission Decision of 25 January 2012 in Case SA.14588 (C 20/2009) implemented by Belgium in favour of De Post-La Poste (now bpost), OJ L/170, 29.6.2012, p. 1).

<sup>(30)</sup> See also paragraph (145).

(147) Considering the above, the methodology used by the Greek authorities to calculate the Compensation Amount is in line with the requirements of the 2012 SGEI Decision. It can also be observed that it is also in line with the 3<sup>rd</sup> Postal Directive as ELTA will only receive compensation if the USO entails a net cost (calculated using the net avoided cost methodology) and represents an unfair burden (see paragraph (18)).

#### **Accounting separation**

(148) According to Article 5.9 of the 2012 SGEI Decision, *'Where an undertaking carries out activities falling both inside and outside the scope of the service of general economic interest, the internal accounts shall show separately the costs and receipts associated with the service of general economic interest and those of other services [...]*

(149) The Greek authorities indicated that, as the Universal Service Provider, ELTA is required to maintain separate accounts in its internal accounting system<sup>(31)</sup> and to implement a specific costing methodology, namely the methodology of 'Activity Based Costing'.<sup>(32)</sup>

(150) Pursuant to the Activity Based Costing methodology, cost incurred by ELTA is allocated on a per-activity basis. Further, the cost per activity is in turn allocated to the final products and services offered.

(151) The Activity Based Costing methodology includes the following three stages:

— Stage 1: The allocation of the Cost Elements<sup>(33)</sup> to ELTA's activities (namely 'Primary Activities' (which includes the USO), 'Supplementary Activities' and 'Supportive Activities') is carried out through costing rules. Under these rules, the Cost per Activity (Primary, Supplementary and Supportive) is calculated.

— Stage 2: The overall cost of the Supplementary and Supportive Activities is allocated to the Primary Activities.

— Stage 3: Having apportioned the cost to the Primary Activities, the cost allocation per Product and Services takes place separately for each Activity.

(152) Moreover, the accounting system applied monitors ELTA's revenues by calculating the operating result per product/service/service category.<sup>(34)</sup>

(153) The full allocation of operating results to services and the keeping of separate accounts is also monitored and verified by the EETT according to the Costing System Approval Decision No.589/137/13.01.2011 and article 10 of Law 4053/2012.<sup>(35)</sup>

(154) The Commission therefore considers that ELTA's accounting and cost allocation system allows for an allocation of costs and revenues between activities with a sufficient level of adequacy. It follows that Article 5 of the 2012 SGEI decision is complied with as regards the compensation for the transitory regime.

#### *4.1.5. Control of overcompensation*

(155) As the Compensation Amount is calculated each year ex-post on the basis of an appropriate methodology and systematically reviewed by the EETT, there is no risk of overcompensation. The compensation granted during the transitory regime complies with Article 6 of the 2012 SGEI decision.

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<sup>(31)</sup> Article 10 of Law 4053/2012.

<sup>(32)</sup> According to the Decision (301/28) of the National Commission of Telecommunications and Post (EETT) (Gov. Gaz/B/1993/31-12-200, Article 2, paragraph 1), ELTA have the obligation to implement a specific and well defined cost methodology (Activity Based Costing — ABC method). According to Article 11 of the Administration Contract between ELTA and the Hellenic Republic: 'the cost of universal postal services and the Services of General Economic Interest results from the accounting costing system approved by EETT and the costing system of the Universal Service provider, in accordance with the provisions of paragraph 2 of Article 20 of Law 2668/1998, as replaced by Article 9 of (Greek) Law 3185/2003'.

<sup>(33)</sup> The Cost Elements are: the payroll of the employees, the total expenses, and the depreciation of fixed assets.

<sup>(34)</sup> ELTA operates the ERP Oracle e-Business Suite 11.5.8 system, 11i basis, on Unix hp ux 32 which includes among others the sub-systems of General Ledger, Accounts Receivable, Fixed Assets and Budget. It is noted that each General Ledger Account (revenue side/expenses side) is monitored by the responsible operational department on a daily basis (through the Daily Transaction Sheet) at the highest level of analysis.

<sup>(35)</sup> See paragraph 4 thereof.



#### 4.1.6. Conclusion

(156) In view of the above, the Commission concludes that the State compensations in the form of direct grant for the delivery of the universal service for the transitory regime 2013-2014 or 2013-2015 are compatible with the TFEU under Article 106(2) TFEU, as they meet all the applicable conditions of the 2012 SGEI Decision.

#### 4.2. Compensation fund mechanism

(157) Under certain conditions, Article 106(2) TFEU allows the Commission to declare compensation for SGEIs compatible with the internal market. The revised Framework for State aid in the form of public service compensation (hereinafter 'the 2012 SGEI Framework')<sup>(36)</sup> sets out guidelines for assessing the compatibility of SGEI compensation which exceeds € 15 million per year.

(158) Even if the methodology that will be applied is well-known, the Compensation Amounts that will be calculated over 2015-2019 or 2016-2020 are unknown at this stage, and contrary to the transitory regime, the Greek authorities have not committed to cap the compensation to a maximum of € 15 million per year for that period. This is understandable from an economic viewpoint as the evolution of the postal market in Greece in the future<sup>(37)</sup> and the precise burden that the USO will represent for ELTA after the transitory regime is unknown.

(159) In such circumstances, the Commission considers necessary to assess the compensation fund mechanism under the 2012 SGEI Framework.

(160) According to the 2012 SGEI Framework, the following compatibility criteria apply:

##### 4.2.1. *Genuine service of general economic interest as referred to in Article 106 TFEU*

(161) The public service obligation entrusted to ELTA is the universal postal service which qualifies as an SGEI within the meaning of Article 106(2) TFEU and whose minimum requirements are laid down in Article 3 of the 3<sup>rd</sup> Postal Directive.

(162) Paragraph 14 of the 2012 SGEI Framework provides that: 'Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account.'

(163) However, according to paragraph 10 (d) of the 2012 SGEI Framework, the principles set out therein apply without prejudice to additional requirements flowing from sectoral Union legislation. As outlined in Article 3 of the 3<sup>rd</sup> Postal Directive, Member States shall ensure that the USO is provided in their territories according to minimum quality standard. Therefore, the USO is a genuine SGEI<sup>(38)</sup>. As the USO entrusted to ELTA described in paragraph (10) corresponds to the minimum requirements outlined in the 3<sup>rd</sup> Postal Directive, the Commission considers that Greece does not have to prove that it has given consideration to public service needs by way of a public consultation or other appropriate instruments. Moreover, the Greek authorities have carried out a public consultation on the compensation fund, as explained in paragraph (192) which is more specific.

(164) In light of the above, the Commission considers that Greece has complied with the conditions established in paragraph 14 of the 2012 SGEI Framework.

##### 4.2.2. *Need for an entrustment act specifying the public service obligations and the methods for calculating compensation*

(165) As indicated in Section 2.3 of the 2012 SGEI Framework, the concept of SGEI within the meaning of Article 106(2) TFEU means that the undertaking in question has been entrusted with the operation of the SGEI by way of one or more official acts.

(166) These acts must specify, in particular:

- The precise nature of the public service obligation and its duration;
- The undertaking and territory concerned (the whole national territory);
- The nature of the exclusive rights assigned to ELTA;

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<sup>(36)</sup> Communication from the Commission: European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.

<sup>(37)</sup> In particular the development of competition in this market.

<sup>(38)</sup> For example, Article 3(1) of the 3<sup>rd</sup> Postal Directive: 'Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.'

- The description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation;
  - The arrangements for avoiding and repaying any overcompensation.
- (167) As explained in paragraph (139) above, the Postal Law 4053/2012 of 7 March 2012, the award contract between ELTA and the Minister of Infrastructure, Transport and Networks and the Ministerial decision of 28 February 2013 clearly define and entrust to ELTA the universal postal service obligation.
- (168) The Decision 697/129/2013 of the EETT on the '*Determination of the methodology of the calculation of the net cost of the universal postal service provision*' together with the future Joint Ministerial Decision of the Ministers of Finance and of Infrastructure, Transport, and Networks, referred to in the future amended version of article 8 of Law 4053/2012 <sup>(39)</sup>, and the (Draft) Ministerial Decision on the '*Determination of methodology of the procedure of sharing part of the net cost of universal postal service provision that burdens the Universal Service Provider and the postal operators during the period 2015-2019*' define the compensation mechanism.
- (169) As the compensation is calculated and reviewed by the EETT ex-post, there is no risk of overcompensation.
- (170) As a conclusion, the Commission considers that ELTA's entrustment for the period 2015-2019 or 2016-2020 is in line with the 2012 SGEI Framework requirements.
- 4.2.3. *Duration of the period of entrustment*
- (171) The Commission considers that the duration of ELTA's entrustment is not excessive for the same reasons developed in section 4.1.2 above.
- 4.2.4. *Compliance with the Directive 2006/111/EC*
- (172) According to paragraph 18 of the 2012 SGEI Framework, '*aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings*' <sup>(40)</sup>.
- (173) As explained in paragraphs (150)-(156) above, the Commission considers that ELTA's accounting and cost allocation system allows for an allocation of costs and revenues between USO and non USO activities with a sufficient level of adequacy.
- (174) The Commission therefore considers that ELTA complies with Directive 2006/111/EC.
- 4.2.5. *Compliance with EU Public Procurement Rules*
- (175) According to paragraph 19 of the 2012 SGEI Framework, '*aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary EU legislation. Aid that does not comply with such rules and requirements is considered to affect the development of trade to an extent that would be contrary to the interests of the Union within the meaning of Article 106(2) of the Treaty.*'
- (176) Pursuant to article 7(2) of the 3rd Postal Directive <sup>(41)</sup>, Member States have the discretion to designate by law the postal USO operator and are not obliged to organize a tendering procedure for its selection.
- (177) The Commission considers that it is only in the case that Member States decide to organize a tendering procedure for the selection of the postal USO operator that public procurement rules would be applicable and that, therefore, the compatibility of the USO financing with the internal market would depend on whether the said rules have indeed been observed.
- (178) In the present case, the Greek authorities have opted for the direct entrustment by law to the incumbent operator, in conformity with the 3rd Postal Directive. It follows that public procurement rules are not applicable and that the direct entrustment of ELTA as the USO provider can be considered to be in line with paragraph 19 of the 2012 SGEI framework.

<sup>(39)</sup> Which will be adopted after the adoption of amended version of article 8 of Law 4053/2012.

<sup>(40)</sup> OJ L 318 17.11.2006, p. 17.

<sup>(41)</sup> Directive 97/67/EC as amended by Directive 2002/39/EC and by Directive 2008/6/EC.

#### 4.2.6. Absence of discrimination

- (179) According to paragraph 20 of the 2012 SGEI Framework, '[w]here an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking'.
- (180) The USO is only assigned to ELTA. Therefore, the Commission considers that there cannot be discrimination in the sense of paragraph 20 of the 2012 SGEI Framework.

#### 4.2.7. Amount of compensation

##### **Calculation of the net cost of the universal postal service**

- (181) According to paragraph 21 of the 2012 SGEI Framework, '[t]he amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit.' In this respect, paragraph 24 of the 2012 SGEI Framework foresees that '[t]he net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible.'
- (182) According to paragraph 25 of the 2012 SGEI Framework, 'Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation'.
- (183) The methodology used by the Greek authorities to calculate the Compensation Amount for the Compensation fund mechanism will be the same than the one used for the transitory regime. It is therefore in line with the requirements of the 2012 SGEI Framework and of the 3<sup>rd</sup> Postal Directive for the same reasons than developed in paragraphs (140)-(147).

##### **Efficiency Incentives**

- (184) Paragraph 39 of the 2012 SGEI Framework reads: 'In devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI of a high standard, unless they can duly justify that it is not feasible or appropriate to do so.'
- (185) As explained in section 2.4.1.1 above, the NCUS is calculated as the difference between the USP's profit level in the Factual and Counterfactual scenario. The Factual scenario is not a simple extrapolation of ELTA current situation (which corresponds to the Base Case scenario) but already embeds cost savings due to increased efficiency (10 % in the calculation for 2013). The profitability of the Factual scenario is therefore higher than what would be the profitability of the Base Case scenario. As a result the difference between the Counterfactual scenario and the Factual scenario (NCUS) is lower than what would be the difference between the Counterfactual scenario and the Base Case scenario. By factoring future cost savings in the calculation and thereby reducing the maximum allowable amount of compensation<sup>(42)</sup>, the methodology provides an efficiency incentive to ELTA.

##### **Amount of compensation and verification of the absence of overcompensation**

- (186) As each year the compensation will be calculated ex-post on the basis of an appropriate methodology and reviewed by the EETT, there is no risk of overcompensation and therefore the requirements of paragraph 49 of the 2012 SGEI Framework are complied with.

#### 4.2.8. Transparency

- (187) Paragraph 60 of the 2012 SGEI Framework states that: "For each SGEI compensation falling within the scope of this Communication, the Member State concerned must publish the following information on the internet or by other appropriate means:
- (a) the results of the public consultation or other appropriate instruments referred to in paragraph 14;
  - (b) the content and duration of the public service obligations;
  - (c) the undertaking and, where applicable, the territory concerned;
  - (d) the amounts of aid granted to the undertaking on a yearly basis".

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<sup>(42)</sup> Formula in (94) ensures that the compensation will always be lower or equal to the NCUS.

- (188) In their notification, the Greek State has committed to comply with the requirements of paragraph 60 (publication on the internet or by another appropriate mean) for 2015-2019 or 2016-2020.
- 4.2.9. *Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union*
- (189) As explained in paragraph 51 of the 2012 SGEI Framework, 'The requirements set out in sections 2.1 to 2.8 are usually sufficient to ensure that aid does not distort competition in a way that is contrary to the interests of the Union.'
- (190) According to paragraph 52 of the 2012 SGEI Framework, 'It is conceivable, however, that in some exceptional circumstances, serious competition distortions in the internal market could remain unaddressed and the aid could affect trade to such an extent as would be contrary to the interest of the Union.'
- (191) In the case at hand, although the financing of the USO through a compensation fund is in principle acceptable and foreseen by the 3<sup>rd</sup> Postal Directive, certain characteristics of the notified compensation fund mechanism may raise specific issues concerning the development of EU trade.
- (192) In particular, the Greek authorities have informed the Commission of the results of a public consultation on the (draft) Ministerial Decision on the compensation fund, which took place end of 2012. It appears that potential future contributors to the fund expressed strong concerns as regards the compensation fund mechanism and more precisely as regards the future level of their contribution to this fund that they considered disproportionate and putting at risk the sustainability of the postal market in Greece.
- (193) The Commission can understand the concerns expressed by competitors. Indeed, if the requested contributions from postal operators competing with ELTA are too high, this may either draw some competitors out of the market (or at least out of the universal service area) or deter companies from entering the market, leading to a foreclosure of the postal market (or at least to a re-monopolization of the universal service area<sup>(43)</sup>).
- (194) In the case at hand, the Commission notes that ELTA's contribution to the compensation fund is fixed at 0,5 % of its universal service revenues while the contributions from other contributors could range from 0,5 % to 10 % of their revenues in the universal service area (so potentially 20 times greater) depending on their ratio of urban distribution.
- (195) The differentiation based on urban distribution proposed by the Greek authorities could in itself be questioned. Its objective is to prevent cherry-picking (i.e. that ELTA's competitors focus on urban distribution which is the most profitable part of the universal service while ELTA would still have to bear the cost of delivering postal items in rural areas and the numerous islands, which is heavily unprofitable), but it could also discourage competition as new entrants would naturally start operating in cities where most of the market is before potentially extending their activities to less densely populated areas.
- (196) Moreover, besides the theoretical criticism of such differentiation, from a practical viewpoint, the concrete difference between ELTA's contribution and competitor's contribution seems prima facie extremely high and the Greek authorities did not provide an economic justification for it. This issue is all the more critical that the Greek authorities provided simulations showing that if the compensation fund had been in place over (2009-2011), several operators would have reached the cap of 10 % contributions while at the same time the total contribution to the fund would not cover the USO net cost (therefore these operators would not have benefited from any reimbursement).
- (197) The Commission also noted in its assessment that the maximum contribution requested from competitors would be higher than ELTA's own profit in urban areas [6-7 %] in 2010-2011 when ELTA still benefited from the reserved area. It should be difficult for new entrants to reach such a profit level in the future in a market open to competition. The reasonable profit calculated by the Greek authorities [5,76 %-6,11 %] (see section 2.4.3) which corresponds to the normal profit in the market is also lower than the maximal contribution.
- (198) In this context, the Commission has serious doubts whether the envisaged compensation fund and in particular the level of the financial contributions from providers of services, would not distort competition in a way that is contrary to the interests of the Union. The Commission notes that it is also doubtful that the compensation fund mechanism notified by the Greek authorities complies with the conditions of transparency, non-discrimination and proportionality requested by the 3<sup>rd</sup> Postal Directive<sup>(44)</sup>.

<sup>(43)</sup> This would be completely contrary to the liberalization objectives of the 3<sup>rd</sup> Postal Directive.

<sup>(44)</sup> See article 7(5) of the 3<sup>rd</sup> Postal Directive: 'Member States shall ensure that the principles of transparency, non-discrimination and proportionality are respected in establishing the compensation fund and when fixing the level of the financial contributions referred to in paragraphs 3 and 4.'

- (199) As provided for in paragraph 52 of the 2012 SGEI Framework, *'In such a case, the Commission will examine whether such distortions can be mitigated by requiring conditions or requesting commitments from the Member State'*.
- (200) The Commission intends to assess, in the framework of a formal investigation procedure, whether certain conditions or commitments from Greece would be necessary and sufficient to prevent serious competition distortion and/or an affectation of trade contrary to the interests of the Union.
- (201) Ensuring that the compensation fund mechanism strikes a right balance between the objectives of securing the USO on the one hand and allowing fair competition in the postal market in Greece on the other hand is a complex exercise in particular considering the relative novelty of such mechanisms <sup>(45)</sup>.
- (202) The Commission invites the Greek authorities and third parties to provide comments in respect of the compensation fund mechanism and in particular concerning the following areas:
- The tax base (for instance revenue or profit);
  - The differentiation mechanism between operators;
  - The cap on contributions from competitors;
  - The opportunity of a 'délai de grace' for new entrants in the market;
  - Other existing or desirable components of the compensation fund mechanism.
- (203) For its analysis, the Commission will need detailed financial information from the different actors in the postal market (ELTA and its competitors) to assess the real potential impact on competition, and in particular on ELTA's competitors' profit level, of the compensation fund. The information in question will consist mainly in the volume of items, revenues and costs of each competitor in the universal service area distinguished between Attica and Thessaloniki on the one hand and the rest of the country on the other hand.
- (204) The detailed financial information from ELTA's competitors above might be difficult to obtain by the Greek state. If the Commission encounters difficulties to obtain the information described in paragraph (203), it may require undertakings and associations of undertakings to provide it directly with all market information necessary to complete its assessment of the measure at stake, as provided for by Article 6a of the Procedural Regulation <sup>(46)</sup>.

#### 4.2.10. Conclusion

- (205) In view of the above, the Commission concludes that the State compensations for the delivery of the universal service over 2015-2019 (or 2016-2020) meet all the conditions of the 2012 SGEI Framework set out in its sections 2.1 to 2.8.
- (206) However, the Commission is concerned that the compensation fund envisaged for 2015-2019 (or 2016-2020) and in particular the level of the financial contributions from providers of services currently foreseen by the Greek authorities may raise serious competition distortions.
- (207) Therefore, the Commission considers it necessary to initiate the formal investigation procedure provided for in Article 108(2) TFEU in relation to the compensation fund mechanism.

### 5. CONCLUSION

First, the Commission has decided, on the basis of the foregoing assessment, not to raise objections to the compensation of ELTA in the form of direct grant from the State budget for the delivery of the universal service during the transitory regime (2013-2014 or 2013-2015) on the grounds that it is compatible with the internal market under Article 106 (2) TFEU.

Second, on the basis of the foregoing assessment, the Commission has decided to initiate the formal investigation procedure provided for in Article 108(2) TFEU in relation to the compensation fund and in particular the level of the financial contributions from providers of postal services foreseen by the draft Ministerial Decision 'Determination of methodology of the procedure of sharing part of the net cost of universal postal service provision that burdens the Universal Service Provider and the postal operators during the period 2015-2019.'

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<sup>(45)</sup> Although the possibility to implement such mechanism is enshrined in the 3<sup>rd</sup> Postal Directive, this is the first decision of the Commission on such a scheme.

<sup>(46)</sup> Council Regulation (EU) No 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

Acting under the procedure laid down in Article 108(2) TFEU, the Commission requests the Greek Republic to submit its comments and provide all such information as may help to assess the abovementioned fund, within one month of receipt of this letter. It also requests your authorities to forward a copy of this letter to the recipient of the aid immediately.

The Commission wishes to remind the Greek Republic that Article 108(3) TFEU has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

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

Considering the likely difficulties of the Greek authorities to obtain all the detailed financial information necessary for the Commission to complete its assessment of the measure at stake, the Commission may require undertakings and associations of undertakings to provide it directly with the relevant market information, as provided for by Article 6a of the Procedural Regulation.

The Commission notes that for the sake of urgency, Greece exceptionally accepts the adoption of the Decision in the English language.”

Table 10  
Factual scenario (calculation for 2013)

Product	Area Type	Postal Services Offered (Y/N)	Volume	Revenue (€)	Collection Cost (€)	Sorting & Other Costs (€)	Transportation Cost (€)	Delivery Cost (€)	Total Cost (€)	Profit / Loss (€)
Single Piece Mail	Dense Urban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Urban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Suburban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Semirural	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Rural	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	PO Box Delivery	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Delivery From Agents	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Post Restante Delivery	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Dense Urban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Urban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Suburban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Semirural	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Rural	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	PO Box Delivery	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Delivery From Agents	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Post Restante Delivery	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<b>Total</b>			[...]	€ 188 187 532	[...]	[...]	[...]	[...]	€ 196 783 822	-€ 8 596 290
									<b>Profit / Loss</b>	<b>-€ 8 596 290</b>

Table 11  
Counterfactual scenario (calculation for 2013)

Product	Area Type	Postal Services Offered (Y/N)	Volume	Revenue (€)	Collection Cost (€)	Sorting & Other Costs (€)	Transportation Cost (€)	Delivery Cost (€)	Total Cost (€)	Profit / Loss (€)
Single Piece Mail	Dense Urban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Urban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Suburban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Semirural	N	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Rural	N	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	PO Box Delivery	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Delivery From Agents	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Single Piece Mail	Post Restante Delivery	N	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Dense Urban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Urban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Suburban	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Semirural	N	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Rural	N	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	PO Box Delivery	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Delivery From Agents	Y	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulk Mail	Post Restante Delivery	N	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<b>Total</b>			[...]	€ 156 816 276	[...]	[...]	[...]	[...]	€ 170 283 819	-€ 13 467 543
									<b>Cost savings due to removal of quality burden, less frequent delivery and collection and reduction of points of service</b>	<b>€ 28 736 286</b>
									<b>Intangible benefits</b>	<b>-€ 8 950 000</b>
									<b>Profit / Loss</b>	<b>€ 6 318 743</b>