



Brussels, 10.8.2022
C(2022) 5706 final

COMMISSION DECISION

of 10.8.2022

**ON THE STATE AID
SA.57991 – 2021/C (ex 2021/NN)
implemented by Denmark
for USO compensation to Post Danmark A/S for 2020**

(Text with EEA relevance)

(Only the English version is authentic)

COMMISSION DECISION

of 10.8.2022

ON THE STATE AID SA.57991 – 2021/C (ex 2021/NN) implemented by Denmark for USO compensation to Post Danmark A/S for 2020

(Text with EEA relevance)

(Only the English version is authentic)

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

Table of Contents

1.	Procedure.....	3
2.	Description of the aid	4
2.1.	Beneficiary	4
2.2.	The Universal Service Obligation	6
2.3.	Previous USO compensation decisions for Post Danmark	7
2.4.	Budget	7
2.5.	Legal basis.....	7
2.6.	Duration.....	8
2.7.	Grounds for initiating the procedure	8
3.	Comments from interested parties	9
3.1.	Compliance with Directive 2006/111/EC	9
3.2.	Compliance with NAC methodology.....	10

3.2.1.	Input data for NAC.....	10
3.2.2.	Access to full NAC figures	11
3.2.3.	Assumptions made in counterfactual scenario of the NAC methodology	11
3.2.4.	Impact of downsizing on market share	12
3.2.5.	Intangible benefits.....	12
3.2.6.	USO is an advantage	15
3.2.7.	Stamps revenue	16
3.2.8.	Alleged double counting	16
3.2.9.	Benchmarking exercise	17
3.2.10.	Sorted-magazine mail.....	17
3.3.	Compliance with Directive 97/67/EC – Exclusive rights	17
4.	Comments from Denmark on the opening decision.....	18
4.1.	Lawfulness of the aid	18
4.2.	Compliance with Directive 2006/111/EC	19
4.2.1.	Description of how Post Danmark allocates costs	19
4.2.2.	Description of how Post Danmark allocates revenues.....	24
4.2.3.	Description of how Post Danmark keeps separate accounts	25
4.2.4.	Description of how Post Danmark’s accounting practices are supervised	25
4.2.5.	Denmark’s conclusion on the cost accounting.....	29
4.3.	Compliance with NAC methodology.....	29
4.3.1.	Input data for NAC.....	29
4.3.2.	Assumptions made in counterfactual scenario of the NAC methodology	29
4.3.3.	Denmark’s conclusion on the NAC methodology	34
5.	Comments from Denmark on comments of interested parties.....	34
5.1.	Compliance with Directive 2006/111/EC	34
5.2.	Compliance with NAC Methodology	35
5.2.1.	Assumptions made in the counterfactual	35
5.2.2.	Impact of downsizing on market share	36
5.2.3.	Intangible benefits.....	36
5.2.4.	USO is an advantage	42
5.2.5.	Stamps revenue	42
5.2.6.	Alleged double counting	44
5.2.7.	Benchmarking exercise	44
5.2.8.	Sorted-magazine mail.....	45
5.3.	Compliance with Directive 97/67/EC – exclusive rights.....	45

6.	Assessment of the aid.....	45
6.1.	Lawfulness	45
6.2.	Existence of aid.....	47
6.2.1.	Measure imputable to the State and through State resources.....	47
6.2.2.	Measure granted to an undertaking	47
6.2.3.	Advantage	48
6.2.4.	Selectivity.....	49
6.2.5.	Effect on trade and distortion of competition	49
6.2.6.	Conclusion on the existence of aid.....	50
6.3.	Compatibility.....	50
6.3.1.	Compatibility assessment under the 2012 SGEI Framework	50
6.3.2.	Conclusion on compatibility	82
6.4.	Conclusion.....	83

THE EUROPEAN COMMISSION,

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

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

Having regard to the Communication from the Commission — European Union framework for State aid in the form of public service compensation¹,

Having regard to Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service²,

Having called on interested parties to submit their comments pursuant to the provisions above-mentioned³ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letter dated 23 July 2021, the Commission informed Denmark that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) in respect of the compensation for Post Danmark for the provision of the universal postal service in 2020.

¹ 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.

² OJ L 15, 21.1.1998, p. 14.

³ State aid – Denmark – State aid SA.57991 (2021/C) (ex 2021/NN) – Denmark – USO compensation for Post Danmark 2020 – State aid SA.55918 (2020/FC) – Denmark – Alleged State aid for Post Danmark for USO in 2020 – Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union C/2021/5366 (OJ C 469, 19.11.2021, p. 8).

- (2) The Commission decision to initiate the procedure (“the opening decision”) was published in the *Official Journal of the European Union*⁴. The Commission called on interested parties to submit their comments.
- (3) Denmark submitted preliminary comments on 3 August 2021, together with a request for extension of the deadline to submit comments. On 1 October 2021, Denmark’s final comments were received. On 25 October 2021, Denmark complemented its final comments with an additional submission.
- (4) On 15 October 2021, the Commission informed the complainant by letter that its complaint registered under SA.55918(2020/FC) would be closed and that the investigation would continue under one case number, namely SA.57991(2021/C). With the same letter, the non-confidential version of the letter dated 23 July 2021 was shared with the complainant.
- (5) Following a request for extension of the deadline to submit comments, on 15 and 17 December 2021, the Commission received comments from in total five interested parties (see recital (26)). The Commission forwarded the comments from third parties to Denmark on 22 December 2021 and 3 January 2022, after removing the confidential information at the request of these parties. Denmark was given the opportunity to react. Following a request for extension of the deadline, Denmark’s comments on submissions from interested parties were received by letter dated 1 February 2022.
- (6) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958⁵, and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE AID

2.1. Beneficiary

- (7) The provision of postal services as an integrated part of the Danish government dates back to 1711. The nationwide circulation of postal items was introduced in 1865. Until 1995, the postal services in Denmark were conducted under the responsibility of the Ministry of Public Works.
- (8) By Act No. 88 of 8 February 1995⁶, Denmark transferred all of the activities of the postal service to Post Danmark, which was established as an independent public enterprise (‘SOV’). Pursuant to the Danish Postal Services Act⁷, Post Danmark had a legal monopoly on domestic and cross-border letters.
- (9) The Danish Minister of Transport established Post Danmark A/S as a State-owned limited liability company under Act No. 409 of 6 June 2002⁸. Pursuant to Section 4 of this Act, the State could sell up to 25 % of Post Danmark’s shares. In 2005, Post Invest S.A. (administered by CVC Capital Partners) acquired 22 % of the shares in Post Danmark and 3 % of the shares were offered to the employees. Post Invest S.A. sold its stake in the company back⁹ to Denmark, right before the company merged¹⁰

⁴ See footnote 3.

⁵ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁶ Lov om Post Danmark, Nr 88 of 8 February 1995, <https://www.retsinformation.dk/eli/lta/1995/88>.

⁷ Lov om postvirksomhed, Nr 89 of 8 February 1995, <https://www.retsinformation.dk/eli/lta/1995/89>.

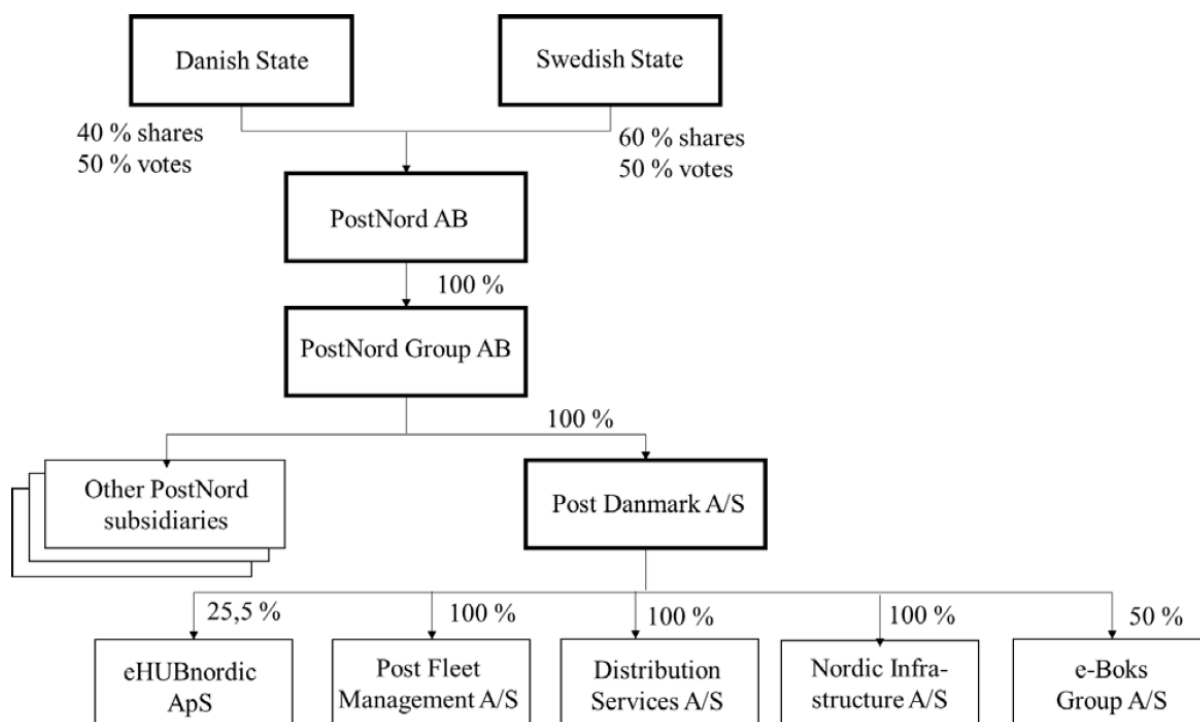
⁸ Lov om Post Danmark A/S, Nr 409 of 6 June 2002, <https://www.retsinformation.dk/eli/lta/2002/409>.

⁹ See: <https://www.cvc.com/media/press-releases/2009/02-02-2009-123603833>.

with the Swedish postal operator Posten AB in 2009¹¹. Following the merger, PostNord AB was created.

- (10) The intention behind the merger was to establish a more robust undertaking and to meet increasing pressure on one of the undertaking's core product, i.e. the distribution of letters. PostNord AB is co-owned by Denmark (40 %) and Sweden (60 %), while voting rights are shared 50-50, and it is the 100 % owner of PostNord Group AB ('PostNord Group'). The structure of the company is shown in **Figure 1**.

Figure 1 - Corporate structure of PostNord AB¹²



- (11) PostNord Group is mainly active on the Swedish, Danish, Norwegian and Finnish markets for postal services, and provides courier, cargo and logistics solutions in the Nordic region and in Europe.
- (12) Post Danmark is a wholly-owned subsidiary of PostNord Group and is active on the Danish postal markets, where it offers a variety of postal services such as the delivery of letters and parcels, and ensures the operation of a nationwide network of post offices.
- (13) Post Danmark has been operating in full competition with other postal operators since the liberalisation of the Danish postal market in 2011, in accordance with Directive 97/67/EC. Denmark has entrusted Post Danmark with the Universal

¹⁰ The legal basis for the merger was in Denmark provided by: Lov om ændring af lov om Post Danmark A/S, LOV nr 542 of 17 June 2008, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=120348>.

¹¹ Commission Decision of 21 April 2009, Case No COMP/M.5152 – Posten AB / Post Danmark A/S. Notification of 26/02/2009 pursuant to Article 4 of Council Regulation No 139/2004, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_5152.

¹² Compared to the decision initiating the formal investigation, small changes in the structure have taken place, i.e. Post Danmark now owns 100 % of Nordic Infrastructure A/S and e-Boks A/S has changed its name to e-Boks Group A/S.

Service Obligation (hereinafter ‘USO’) under the Danish Postal Act¹³. Post Danmark faces competition in all business segments, including the parcel market and the market for the distribution of newspapers and magazine mail.

2.2. The Universal Service Obligation

- (14) Post Danmark was designated as USO provider for 2020 through two individual licences. The first licence covers the period from 1 January 2020 until 30 June 2020 and was issued on 20 December 2019. The second licence, which was issued on 25 June 2020, covers the period from 1 July 2020 until 31 December 2020¹⁴.
- (15) The terms of the USO are fixed in the company’s individual licence issued on 30 May 2016¹⁵, which was due to expire on 31 December 2019, and was extended by the two licences.
- (16) The individual licence of 2016 includes provisions for service level, quality and prices and specifies e.g. that Post Danmark has a distribution obligation for products covered by the USO for at least 5 working days a week:
 - (1) Products covered by the distribution obligation are: addressed letters; addressed periodicals (daily, weekly and monthly) and other addressed items with standardised printed content (e.g. catalogues) weighing up to 2 kilos; addressed parcels weighing up to 20 kilos (with the exception of BtB¹⁶ parcels governed by contractual terms); and items for the blind weighing up to 7 kilos (delivered free of postage charges).
 - (2) Prices for services provided under the delivery obligation must be cost-based, transparent and non-discriminatory. Only single-piece items are required to be offered at uniform prices throughout the country. Single-piece items include stamped letters and parcels not covered by a contract with Post Danmark. The Danish Civil Aviation and Railway Authority approves the price for domestic ordinary letters weighing up to 50 grams sent as single-piece items. Post Danmark sets the price of other mail items.
 - (3) Furthermore, Denmark has opted to impose uniform tariffs on single-piece items in accordance with Article 12 of Directive 97/67/EC.
 - (4) The provision of services under the USO is subject to quality standards laid down in Post Danmark’s individual licence in accordance with Article 17 of Directive 97/67/EC. Those quality standards require that 93 % of all ordinary intra-national letters must be delivered within five working days and parcels within one. The quality standard for intra-Community cross-border express mail is that 85 % of such postal items must be delivered within three working days from submission and 97 % must be delivered within five working days from submission. The quality standard for addressed shipments of periodicals, magazines, journals, catalogues etc. is fixed by Post Danmark itself.
 - (5) Post Danmark has to maintain a nationwide service network of postal service points in order to meet its obligations under the USO.

¹³ See Postloven, LOV nr 1536 of 21 December 2010, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=135208>. The law has been amended several times.

¹⁴ Both licenses have as title “*Midlertidig tilladelse til Post Danmark A/S*”.

¹⁵ Danish Civil Aviation and Railway Authority, Ny individuel tilladelse til Post Danmark A/S, 2 June 2016, available at: <https://www.trafikstyrelsen.dk/da/Post/Lister/Publikationsliste>.

¹⁶ Business to Business.

- (17) The same requirements as those stated in recital (16) apply for the provision of USO for the year 2020.

2.3. Previous USO compensation decisions for Post Danmark

- (18) Denmark granted compensation to Post Danmark for the delivery of the USO over the period 2017-2019.
- (19) This USO compensation was approved by Commission decision SA.47707 of 28 May 2018 (“the 2018 Decision”)¹⁷.
- (20) The 2018 Decision was appealed by ITD, a Danish private business association for transport and logistics companies, and on 5 May 2021, the General Court upheld the Commission’s decision as regards the USO compensation¹⁸.

2.4. Budget

- (21) The budget for the aid measure is maximum DKK 225 million (approximately EUR 30 million¹⁹). In January 2020, Denmark already paid out of this budget approximately DKK 112 million, corresponding to exactly EUR 15 million for the first half of 2020²⁰ and is financed by the Danish’ State budget.

2.5. Legal basis

- (22) The legal basis for the measure is composed of the following legal texts:
- (1) The two individual licences issued to Post Danmark (recital (14)) which together entrusted the provision of the USO to Post Danmark for the whole of 2020 in accordance with the Danish Postal Act (“the Postal Act”) and subject to the terms set out in the individual licence of 30 May 2016, which was to expire on 31 December 2019 but has been extended.
 - (2) A decree (“akstykke”) was issued whereby the Minister for Transport requested the Financial Committee of the Danish Parliament to consent to pay the notified amount as compensation to Post Danmark for the postal USO imposed on Post Danmark for the period 1 January 2020 to 30 June 2020²¹;
 - (3) An aktstykke whereby the Minister for Transport requests the Financial Committee of the Danish Parliament to consent to payment of the notified amount as compensation to Post Danmark for the postal USO imposed on Post Danmark for the period 1 July 2020 to 31 December 2020²².

¹⁷ Commission Decision SA.47707(2018/N) of 28 May 2018, State compensations granted to PostNord for the provision of the universal postal service – Denmark, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47707.

¹⁸ Judgment of 5 May 2021, *ITD, Brancheorganisation for den danske vejgodstransport A/S and Danske Fragtmænd A/S v Commission*, Case T-561/18, EU:T:2021:240. ITD and Danske Fragtmænd have appealed the judgment to the Court of Justice (registered under C-442/21 P) on the USO compensation for 2017-2019.

¹⁹ Exchange rate of July 2022 (DKK 1 = EUR 0.13, see: https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-inforeuro_nl).

²⁰ Using the exchange rate in January 2020 (EUR 1 = DKK 7.47) as the compensation would be paid by 9 January 2020 at the latest, see recital (22)(4).

²¹ The decree is dated 27 November 2019 (nr. 2019-7298) and was endorsed by the Financial Committee on 19 December 2019.

²² The decree is dated 19 August 2020 (nr 2020-6466) and was endorsed by the Financial Committee on 27 August 2020.

- (4) A first agreement between Denmark and Post Danmark²³ was signed on 20 December 2019. The agreement provides for detailed principles for monitoring, calculating and reporting, including an ex-post control mechanism for the purpose of verifying that Post Danmark has not been overcompensated. The agreement specifies that the USO compensation for the period 1 January 2020 to 30 June 2020 will be granted under the SGEI Decision, amounts to EUR 15 million and will be paid by 9 January 2020 using the exchange rate of the relevant day.
- (5) A second agreement between Denmark and Post Danmark, dated 25 June 2020²⁴. The agreement provides for detailed principles for monitoring, calculating and reporting, including an ex-post control mechanism for the purpose of verifying that Post Danmark has not been overcompensated. The agreement specifies that the USO compensation for the period 1 July 2020 to 31 December 2020 amounts to DKK 112 million and contains a provision which states that the USO compensation for the second half of 2020 is granted subject to the Commission's approval.

2.6. Duration

- (23) The aid measure covers the year 2020.

2.7. Grounds for initiating the procedure

- (24) The Commission decided to initiate the formal investigation procedure because of its doubts regarding the compatibility of the USO compensation for Post Danmark for the year 2020 with the internal market. The current decision is limited to the assessment of the 2020 USO compensation and does not cover other separate measures²⁵ raised by interested parties in their comments to the opening decision. Some comments of the interested parties regarding such measures are nevertheless treated in the present decision as far as they are also relevant for the assessment of the 2020 USO compensation.
- (25) The Commission expressed doubts as regards:
- (1) the cost allocation methodology and notably the separation of accounts, following the Rigsrevisionen's report from 15 January 2021 (recitals (101) to (105) of the opening decision);
 - (2) the input data for the Net Avoided Cost (NAC) methodology as this data is linked to the cost allocation methodology with regard to which the Commission has also expressed doubts (see recitals (146) and (147) of the opening decision) ; and
 - (3) the effects of certain assumptions made on the costs and revenues of Post Danmark in the counterfactual scenario, namely the absence of impacts of the downsizing of the company (lower volumes related to the discontinuation of certain services in the counterfactual) and the closure of one sorting centre and

²³ Kontrakt vedrørende midlertidig kompensation til Post Danmark A/S for befordringspligten i Danmark, dated 20 December 2019.

²⁴ Kontrakt vedrørende midlertidig kompensation til Post Danmark A/S for befordringspligten i Danmark, dated 25 June 2020.

²⁵ In particular, State aid claims were made concerning a potential USO compensation for 2021 as well as a compensation fund that would have been in place in the years 2014-2016, and the income from stamps.

[5-10] distribution hubs on the unit costs of delivery postal items (recitals (148) to (151) of the opening decision).

3. COMMENTS FROM INTERESTED PARTIES

(26) The Commission has received comments from five interested parties. The interested parties are:

- (1) Brancheorganisationen for den danske vejgodstransport ('ITD'), a Danish private business association for transport and logistics companies²⁶;
- (2) Jørgen Jensen Distribution A/S ('JJD'), a Danish undertaking providing cargo transport with trucks and trailers, including transport of parcels. They also provide haulage services with pickup and delivery.
- (3) Specialforeningen for Logistik og Distribution ('SLD'), a Danish trade association of which all members are engaged in the provision of services for cargo transport and pallet transport. Two members are specifically engaged in the provision of parcels transport. Half of SLD's members provide international goods transport services and logistics.
- (4) Danske Medier, an entity representing approximately 300 privately owned media companies in Denmark. Danske Medier's members are mail/parcel distributors and some of them rely on Post Danmark for certain distribution services.
- (5) An anonymous party referred to as 'Undertaking 1'.

3.1. Compliance with Directive 2006/111/EC

- (27) With regard to the Commission's doubts, expressed in the opening decision, on compliance with Commission Directive 2006/111/EC²⁷ as requested by the SGEI Framework, interested parties made several comments.
- (28) ITD, Undertaking 1, JJD and SLD consider that the supervision of Post Danmark by the Transport Ministry has been inadequate, which leads to uncertainty as to whether Post Danmark's accounting practice is correct.
- (29) The same interested parties consider that the annual audits of Post Danmark's accounts by external auditors are not reliable notably because the "*Transport Authority did not ensure that the auditor examines whether Post Danmark has **registered date at a sufficient detailed level despite that it is required to do so by the Accounting Regulations**[²⁸]*" (emphasis added by the interested parties)²⁹.

²⁶ By email of 21 December 2021, the legal counsel of ITD informed the Commission that ITD's submission was also made on behalf of Danske Fragtmænd A/S, a Danish transport and logistics company.

²⁷ Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings.

²⁸ In Danish: "*regnskabsreglementet*". Note from the Commission: There were different Accounting Regulations in force over the years. The Accounting Regulation currently in force is the one from 2014: Regnskabsreglement for Post Danmark A/S, 26. juni 2014, available at: <https://www.postnord.dk/siteassets/pdf/finansiell-information/regulatoriske-regnskaber/regnskabsreglement.pdf>. The interested parties also make reference to the Accounting Regulations from 2006 and 2011 (see e.g. recital (33)).

²⁹ The quote is from page 3 of the Rigsrevisionen's report of 15 January 2020.

- (30) ITD, Undertaking 1 and SLD claim that Post Danmark’s cost accounting involves overcompensation because Post Danmark’s own internal accounting practice requires Post Danmark to allocate almost all of its common costs to the USO account instead of dividing them appropriately between the USO and the non-USO accounts.
- (31) ITD, Undertaking 1, SLD and JJD consider that given that Post Danmark’s cost accounting cannot be trusted, there is a risk that Post Danmark is being overcompensated.
- (32) ITD and Undertaking 1 consider that it is not sufficient that Denmark submits new information to allay the Commission’s doubts but that Denmark must guarantee that Post Danmark eliminates or replaces the “necessity rule”³⁰ in its “Principles and Methods” (i.e. its internal accounting rules) with an allocation rule based on dividing costs appropriately between the USO and non-USO accounts.
- (33) In addition, ITD and Undertaking 1 refer to page 22 of the Rigsrevisionen’s report, in which the Rigsrevisionen concluded that, in their view, Post Danmark’s cost allocation keys are not well-founded: “PwC’s examination [from 2014³¹] showed that Post Danmark’s implementation of the Accounting Regulations based on the incremental cost principle meant that the **majority of costs on all levels (sales, sorting, transport and distribution) was imposed on the USO accounts, even if the USO products constituted less than half of all of the products**” (emphasis added by ITD and Undertaking 1). This means, according to ITD and Undertaking 1, that the Accounting Regulations (from 2006 and 2011, see also recital (46) of the opening decision) required Post Danmark to allocate all common costs to the USO account.
- (34) Danske Medier considers that the amount of USO compensation calculated with the NAC methodology for 2020 is too high because it is based on the incremental cost allocation method, which allocates all costs that are necessary for carrying out the USO in their entirety to the USO account. They note that this method artificially increases the USO costs and that it should be changed so that common costs are appropriately divided between the USO and the non-USO account.
- (35) In addition, Danske Medier believes that Post Danmark is using the USO compensation to cover large losses incurred in its non-USO business.
- (36) Finally, Danske Medier further notes that supervision of PostNord Group is deficient due to its allegedly non-transparent corporate structure.

3.2. Compliance with NAC methodology

- (37) In general, all interested parties consider the NAC of DKK 394 million, as presented in the opening decision, too high and therefore do not exclude the possibility that the compensation of DKK 225 million may also be too high.

3.2.1. Input data for NAC

- (38) ITD, Undertaking 1, JJD and SLD note that the, in their view, flawed supervision of Post Danmark by the Transport Ministry has also given rise to the belief that it is

³⁰ Article 4(4)(c) of the 2006 and 4(3)(c) of 2011 Accounting Regulations states that: “*the [common] costs necessary to provide the universal service obligation shall be allocated to each of the services covered by the universal service obligation or to a group of services covered by the universal service obligation*”. The interested parties claim that even though these two Accounting Regulations are no longer in force, the “necessity rule” is still applied by Post Danmark as it is laid down in Post Danmark’s “Principles and Methods”.

³¹ Added by the Commission.

uncertain whether Post Danmark registered all data for the purposes of preparing its accounts and that this disqualifies all previous audits of Post Danmark and means that any additional external review by independent auditors that have relied on Post Danmark's annual audits are also not reliable.

3.2.2. *Access to full NAC figures*

(39) ITD, Undertaking 1, SLD, JJD and Danske Medier claim that the redaction of all the amounts that form part of the NAC calculation in the opening decision prevent the complainants from assessing any errors that might have been made by the Danish authorities in their calculations and from comparing the factual and counterfactual scenarios.

3.2.3. *Assumptions made in counterfactual scenario of the NAC methodology*

(40) With reference to the Commission's doubts that the assumptions linked to the downsizing of Post Danmark and the closure of a sorting centre and distribution hubs were not properly reflected in the counterfactual scenario (recitals (149) and (150) of the opening decision), ITD, Undertaking 1, JJD and SLD consider that it is not plausible to assume that the reduction in the business volume for letters in the counterfactual scenario would not result in an increase in Post Danmark's unit costs. In addition, ITD, Undertaking 1 and SLD further consider that the closure of a sorting centre and various distribution hubs in the counterfactual scenario would necessarily result in higher unit costs in the counterfactual scenario.

(41) ITD and Undertaking 1, consider that the impact of the discontinuation of certain services on costs in the counterfactual scenario is underestimated and the impact on revenues is overestimated. They refer in this regard to international letter and parcel distribution, free distribution service for the blind, countrywide business-letter distribution and full USO distribution service through postal outlets. All four elements are addressed in recitals (42) to (45).

3.2.3.1. *International letter and parcel distribution*

(42) ITD, Undertaking 1, SLD and JJD note that Denmark and Post Danmark have assumed that the distribution of postal items in the counterfactual scenario will partly rely on access to La Poste (the French national postal company) owned 'DPD network' on the basis of an existing cooperation agreement between DPD and PostNord AB. They observe that it cannot be assumed that Post Danmark's cooperation costs with DPD would be the same in the counterfactual scenario as in the factual scenario since in the counterfactual scenario Post Danmark would have much less bargaining power. They claim that this would result in the costs of having access to the DPD network being higher than what has been assumed by Denmark and Post Danmark in their NAC calculation.

3.2.3.2. *Free distribution service for the blind*

(43) ITD and Undertaking 1 note that in the 2018 Commission Decision³², it was assumed in the counterfactual scenario that Post Danmark would continue the free distribution service for the blind. They claim that this gratuitous service should then still be considered to be continued in the counterfactual scenario for the calculation of the

³² ITD refers to recital (11) of the 2018 Decision; however this recital does not refer to the distribution service for the blind, but merely mentions the beneficiary of the USO compensation for 2017-2019 (i.e. Post Danmark).

2020 USO compensation as well leading to higher costs than what has been assumed by Denmark and Post Danmark in their NAC calculation.

3.2.3.3. Countrywide business-letter distribution

- (44) ITD, Undertaking 1, SLD and JJD note that the countrywide business-letter distribution is assumed to be replaced by a business-letter distribution in large cities one day weekly. They consider that, since it is evidenced that (many) customers buy only from postal operators that can distribute across the entire country, if Post Danmark were to cease rural and small town business letter distribution, it would lose many customers and thus earn lower revenues in the counterfactual scenario than what has been assumed by Denmark and Post Danmark in their NAC calculation.

3.2.3.4. USO distribution service through postal outlets

- (45) ITD and Undertaking 1 note that the USO distribution service through “postal outlets” on smaller islands is assumed to be replaced with a limited range of distribution services at “service points” in the counterfactual scenario while in the 2018 Commission Decision, it was assumed that “postal outlets” on smaller islands would be closed without replacement³³. Since no reasons have been submitted for why this would no longer hold true, they consider that the postal outlets should be closed also in the counterfactual scenario for 2020 without any replacement.

3.2.4. *Impact of downsizing on market share*

- (46) ITD, Undertaking 1 and JJD consider that account should be taken of the fact that the downsizing in the counterfactual scenario would also cause Post Danmark to lose market share, thereby further reducing the revenues in the counterfactual scenario compared to what has been assumed by Denmark and Post Danmark in their NAC calculation. All three interested parties refer in this respect to a Commission Decision from 19 February 2018 concerning Czech Post in which, in their view, it was stated that downsizing leads to customer loss and lower revenues³⁴.

3.2.5. *Intangible benefits*

- (47) All interested parties consider that the Commission should have taken into account in the NAC methodology several other categories of intangible benefits, which according to them were not considered by Denmark and Post Danmark in their NAC calculation. The intangible benefits referred to are described in recitals (48) to (66).

³³ ITD refers to recital (153) of the 2018 Decision.

³⁴ Commission Decision SA.45281 (2017/N) and SA.44859 (2016/FC) – Czech Republic – State compensations granted to Czech Post for the provision of the universal postal service over the period 2013-2017, recital 116, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45281. Recital 116 provides as follows: “[...] it cannot be expected that all the estimated cost savings from the proposed closure of certain post offices in the counterfactual scenario can be achieved in full. When a post office is closed, the demand for the services provided by that office does not disappear entirely. This change in demand impacts both the costs and revenues and therefore has to be taken into account in the quantification of the impact of the counterfactual scenario. To model how demand would change the market, the Czech authorities have explained that they have used market surveys. According to the conducted surveys, some customers would choose to remain with Czech Post after the closure of their post office and would meet their demand for services at a different post office. Nevertheless, some demand would inevitably be lost as certain customers would switch to other competitors and some customers would choose to reduce their demand. As a result, Czech Post would lose revenue from postal and non-postal services [...]”.

3.2.5.1. Ubiquity

- (48) ITD, Undertaking 1, SLD and JJD note that the Commission considered in recitals (164) and (165) of the opening decision that it is not necessary to include ubiquity as an intangible benefit in the factual scenario in the NAC calculation. They illustrate this statement by referring to the judgement in case T-561/18³⁵, where the General Court held that distributors of catalogues, magazines and newspapers would also have recourse to non-USO distributors.
- (49) ITD and Undertaking 1 consider that argument of the General Court, upon which the Commission relied, to be wrong because not all of Post Danmark's customers would necessarily be prepared to buy from non-USO providers and many regulatory authorities have recognised that ubiquity normally constitutes a benefit for the USO provider, which holds true despite the recent shift in communication habits due to technological developments. To substantiate their statements, the interested parties refer to reports from the regulatory authorities in Belgium (IBPT) from 2014³⁶, France (ARCEP) from 2010³⁷, a report from Frontier Economics prepared for the Commission in 2013³⁸, a report from the European Regulators Group for Postal Services (ERGP) from 2014³⁹ and a study from WIK Consult prepared for DG GROW⁴⁰.
- (50) In addition, SLD considers that ubiquity is a huge benefit for Post Danmark. They claim that many customers only want to buy from a provider that operates countrywide and that customers are aware that the USO provider is the only one that can deliver all over the country, which is particularly relevant when moving to new areas. SLD in this respect refers to the same reports from ARCEP and Frontier Economics listed in recital (49) and a report from ERGP from 2011⁴¹.
- (51) JJD made similar comments, further claiming that countrywide coverage is key for e-commerce clients – such coverage generating almost 70 % of Post Danmark's net sales in 2020⁴² and that Post Danmark has many customers in rural areas.

3.2.5.2. Corporate reputation and brand value

- (52) ITD, Undertaking 1, SLD and JJD allege that having the USO entitles Post Danmark to print stamps with the word “Danmark” and to use the symbol of the golden

³⁵ Judgment of 5 May 2021, *ITD, Brancheorganisation for den danske vejgodstransport A/S and Danske Fragtmænd A/S v Commission*, Case T-561/18, EU:T:2021:240, para 155.

³⁶ Institut belge des services postaux et des télécommunications, Communication du conseil de l'IBPT du 21 Mai 2014 Concernant la Vérification du calcul du coût net du Service Universel Postal en Belgique. Attached to this communication is the following report: Tera Consultants, Vérification du calcul du coût net du service universel postal en Belgique - Rapport Général de l'étude Version en ligne avec le 4ème contrat de gestion, Mai 2014.

³⁷ Autorité de régulation des communications électroniques et des postes (ARCEP), Définition, typologie et méthodologie d'évaluation des avantages immatériels dans le cadre du service universel postal - Étude réalisée par le cabinet Wik Consult pour le compte de l'ARCEP, Mai 2010.

³⁸ Frontier Economics, Study on the principles used to calculate the net costs of the postal USO – A Report prepared for the European Commission, January 2013.

³⁹ European Regulators Group for Postal Services (ERGP), Exploration of challenges to overcome when implementing a net cost calculation methodology based on a reference scenario - Benchmark of experiences, 13 May 2014.

⁴⁰ Wik Consult (report prepared for the European Commission), User Needs in the Postal Sector and Evaluation of the Regulatory Framework, published 1 March 2021.

⁴¹ ERGP, Draft ERGP Report on Net Cost Calculation and Evaluation of a Reference Scenario, 24 November 2011), page 29.

⁴² Post Nord Annual and Sustainability Report 2020, 24 February 2021, p 21.

crowned coach horn in public post offices, which gives customers confidence in the services provided.

- (53) ITD and Undertaking 1 consider that, while the Commission argues that corporate reputation is only linked to letter distribution⁴³, most national authorities recognise that corporate reputation is linked to being a USO provider as such. SLD also claim that the brand-enhancing value of the USO is not only associated with letter distribution.
- (54) ITD, Undertaking 1, SLD and JJD claim that the ability to charge higher prices for postal services because of brand value should be taken into account but that this has been ignored by Denmark and Post Danmark in the NAC calculation.

3.2.5.3. Mailboxes

- (55) ITD, Undertaking 1, SLD and JJD claim that the right to install (red) mailboxes at public sector premises without charge and the value of having ownership of all mailboxes should be taken into account, while that right and that value have been ignored by Denmark and Post Danmark in the NAC calculation.

3.2.5.4. Stamps

- (56) ITD, Undertaking 1 and SLD consider that the issuing of stamps has an additional value by being a symbol of trust, ubiquity and corporate reputation as well as being linked to the access to an international network of worldwide transport providers, which should be taken into account.
- (57) To support their views, they refer in particular to the Commission's decision on Czech Post, which was confirmed by the General Court in case T-316/18: "*[t]he benefit arising from the USO provider's exclusive right to sell postage stamps and other tokens of value results from the fact that some sold stamps and tokens are never used (among others because they are kept for philately purposes). The value of this benefit is expressed financially as the sum of (i) the estimate of the value of sold and unused postage stamps and tokens of value and (ii) an estimate of revenues from the sale of postage stamps, tokens of value and other similar products for philately purposes.*"⁴⁴ (emphasis added by the interested parties)

3.2.5.5. Economies of scale

- (58) ITD, Undertaking 1 and JJD note that, as it appears from multiple press releases⁴⁵, Post Danmark does have economies of scale. Moreover, they claim that several studies⁴⁶ show that the USO provider uses its USO network for distributing non-USO products which is thus an indisputable economies of scale benefit that should be included in the NAC calculation.

⁴³ The interested parties refer to recitals (164) and (165) of the opening decision.

⁴⁴ Commission Decision SA.45281 (2017/N) and SA.44859 (2016/FC) – Czech Republic – State compensations granted to Czech Post for the provision of the universal postal service over the period 2013-2017, para 131, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45281.

⁴⁵ An article from the website postandparcel.info from 13 June 2012 concerning a partnership between "PostNord" and Post Danmark (the article provided by ITD is actually dated 4 June 2012) and two articles not referenced by the interested parties dated 15 November 2018 and 6 June 2017. The article dated 15 November 2018 apparently concerns distribution of letters in "Morsing" from "Thy" as the interested parties provide the following quote: "*[p]ost to Morsing inhabitants will, as of March, be distributed from the distribution center in Thy*". The article dated 6 June 2017 concerns a new parcel centre which was inaugurated by Post Danmark in Herning.

⁴⁶ From ARCEP, ERGP, and Frontier Economics (see recital (49)).

(59) SLD claims that Post Danmark as the USO provider has economies of scale not only through being able to use its USO network for non-USO activities but also through its sheer volume of parcels.

(60) Danske Medier considers that the exclusion of economies of scale resulting from the USO as an intangible advantage is wrong. They claim that Post Danmark has economies of scale in its sorting and distribution network as well as through their use of large sorting centres and specified vehicles targeted at specific kinds of distribution.

3.2.5.6. Bargaining power

(61) SLD claims that Post Danmark's market share through being the USO provider alone gives it bargaining power.

(62) ITD, Undertaking 1, JJD and SLD claim that reports⁴⁷ show that the views of the USO provider carry extra weight in the formation of policy by the government.

3.2.5.7. Advertising effects

(63) JJD and SLD claim that Post Danmark benefits from being able to use buildings, cars and postal workers' clothing with its logo for advertising purposes, while competitors have to pay for such advertising.

3.2.5.8. Demand complementarities

(64) JJD, with reference to the ERGP report⁴⁸ claims that USO providers use their USO network for providing non-USO services, which constitute a considerable benefit.

3.2.5.9. Parking/stopping exemptions

(65) ITD, Undertaking 1 and SLD and JJD claim that Post Danmark as the USO provider is allowed to park and stop without paying fines or fees which is of considerable value in bigger cities where competitors must pay for parking.

3.2.5.10. Access to public registers and customer/demand trends

(66) ITD, Undertaking 1, JJD and SLD consider that the USO provider has access to customer and demand information from public registers which can be used to better market postal products and thereby acquire and keep customers⁴⁹.

3.2.6. *USO is an advantage*

(67) Danske Medier claims that Post Danmark receives a net income from the USO and should therefore not receive a subsidy.

(68) In the same vein, ITD, Undertaking 1 and SLD consider that being entrusted with the USO is an advantage and not a disadvantage. SLD further notes that most USO providers would not be able to survive without the USO. They claim that the USO provides the operator with huge benefits and that Post Danmark's activities would become even further unprofitable if it lost the USO. Also, JJD considers that there is

⁴⁷ The reports referred to are: Postcomm, An assessment of the costs and benefits of Consignia's current Universal Service Provision, June 2001; and the ERGP and Frontier Economic report (recital (49)).

⁴⁸ The ERGP report, on page 28, states: "*demand complementarities imply that those sales of some loss-making USO products may result in increased sales of other (profitable) USO products. It is also possible that there is an impact on sales of profitable non-USO products and even non-mail products*".

⁴⁹ Reference is made to three reports ARCEP (2010), page 10; Frontier Economics (2013), page 111 (see recital (49)); and ERGP (2011), page 30 (see footnote 41).

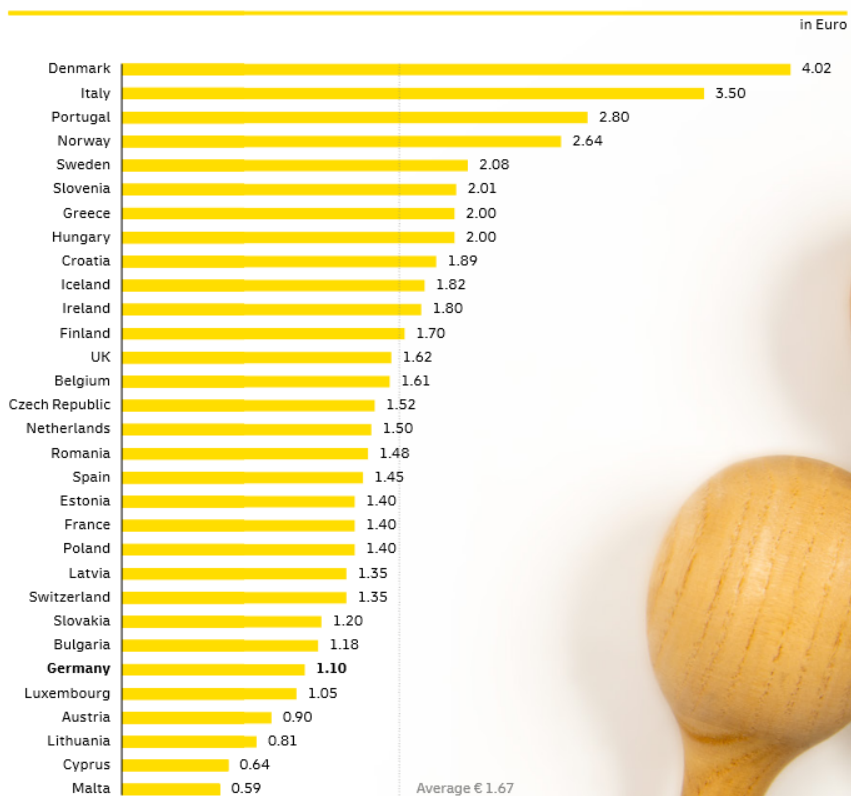
a misconception that the USO is a disadvantage for Post Danmark, and that it is actually a net benefit as there are multiple advantages associated with it.

3.2.7. Stamps revenue

- (69) ITD, Undertaking 1, JJD and SLD claim that, in the counterfactual scenario, Post Danmark would not be able to issue stamps. Therefore, they consider that its services would be cheaper in the counterfactual scenario than when they are paid for the sale of stamps in the factual scenario and that revenues in the counterfactual scenario in the NAC calculation for 2020 are too high. According to the interested parties, this is also confirmed by the Rigsrevisionen’s report, which found, according to the interested parties, that Post Danmark has been charging an unreasonably high profit for 50-gram letters: “[t]he investigation concluded that the profit for letters weighing up to 50 grams increased considerably in the period from 2011 to 2019” and that “[i]n the Rigsrevisionen’s opinion, this has meant that the Transport Authority did not have a sufficient basis for determining whether Post Danmark’s profits from stamps for letters were reasonable”. Figure 2 has been provided by the interested parties to substantiate this point.

Figure 2 – Nominal price for letter mail within Europe⁵⁰

Nominal price for letter mail within Europe



3.2.8. Alleged double counting

- (70) ITD and Undertaking 1 note that the fact that revenues generated on parcels are not based on revenue from the sale of stamps means that the Commission must carefully

⁵⁰ No source was provided; however, research by the Commission shows that it probably comes from a document produced by Deutsche Post from 2020 named “Letter prices in Europe, up-to-date international letter price survey”, available at: <https://www.dpdhl.com/content/dam/dpdhl/en/media-center/media-relations/documents/2020/dp-letter-prices-in-europe-2020.pdf>.

verify whether there is no double counting because other items in the NAC calculation may cover the same service as that designated under “franking”.

3.2.9. *Benchmarking exercise*

- (71) ITD, Undertaking 1 and SLD claim that the companies used by the Danish authorities for benchmarking, i.e. Danske Fragtmænd, Posten Norge and Deutsche Post, are not comparable to Post Danmark and thus the benchmarking exercise does not justify Post Danmark’s revenues in the counterfactual scenario.
- (72) ITD, Undertaking 1 and SLD note that all three companies are profitable companies with consistently positive EBIT (earnings before interest and tax) for the 2017-2019 period while Post Danmark has had a negative EBIT for that period both for its USO and non-USO activities.
- (73) The interested parties explain that, for 2019, Post Danmark’s EBIT margin was -4.4 % for the USO and -6.9 % for the non-USO (in total -11.3 %). They continue by stating that it seems unlikely that Post Danmark’s downsizing in the counterfactual scenario for 2020 could eliminate a total negative EBIT margin of 11.3 % and even ensure a profit generation of 3.8 %⁵¹. According to the interested parties, this is not plausible for a company with such a consistent loss-making record.
- (74) ITD and Undertaking 1 further note the following two differences between Post Danmark and the selected companies which disqualify them as appropriate comparisons for the benchmarking exercise:
- (75) Deutsche Post is not comparable to Post Danmark because, in 2019, only 24 % of Deutsche Post’s revenues came from domestic letter and parcel services and 70 % of Deutsche Post’s revenues stemmed from activities outside Germany. Therefore, Deutsche Post’s main business is not letter and parcels but logistics and freight services. Also, Deutsche Post’s Express non-USO segment is profitable while Post Danmark’s non-USO activities are unprofitable.
- (76) Posten Norge is not comparable to Post Danmark because Posten Norge is also foremost a logistic company since its letter and parcel segment represents only 31 % of its revenues while most of its revenues are generated from its logistics segment.

3.2.10. *Sorted-magazine mail*

- (77) Danske Medier claims that sorted-magazine mail (“Sorteret Magasinpost”) is offered at prices as low as DKK 3.50 (€0.45) according to the official price list. They claim that prices at this level are loss-making and that such a large discount should be incompatible with the USO provisions as Post Danmark should raise its prices to a level that prevents loss.

3.3. **Compliance with Directive 97/67/EC – Exclusive rights**

- (78) According to ITD, Undertaking 1 and SLD, Post Danmark has an exclusive right to issue and keep the revenues from selling stamps. The exclusive right, in their view, follows from the Universal Postal Union (‘UPU’) Convention⁵² that states in Article 6(2)(1) that: “*Postage stamps: shall be issued and put into circulation solely under the authority of the member country or territory, in conformity with the Acts of the*

⁵¹ The interested parties refer to tables 6 and 7 in para 144 of the opening decision.

⁵² The UPU, a United Nations body, sets the rules for international mail exchanges. The UPU Convention is available here: <https://www.upu.int/UPU/media/upu/files/aboutUpu/acts/manualsInThreeVolumes/actInThreeVolumesManualOfConventionMaj3En.pdf>.

Union”. They claim that these exclusive rights involve illegal and incompatible State aid to Post Danmark.

4. COMMENTS FROM DENMARK ON THE OPENING DECISION

4.1. Lawfulness of the aid

(79) Denmark maintains its position that the USO compensation for the first half of 2020 is compatible under the SGEI Decision when it was granted on 20 December 2019. It explains that, when Denmark granted the aid, there was no political willingness to finance the USO from the State budget after 30 June 2020. Various alternatives for the future of the USO in Denmark were being considered, including models where the USO would be altered significantly (to include fewer services). Because of the lack of political consensus, Post Danmark was granted USO compensation in the amount of EUR 15 million (approximately DKK 112 million) only for the first half of 2020. The USO compensation was paid out to Post Danmark on 6 January 2020.

(80) According to Denmark, it follows from the above that, on 20 December 2019, it had no indications that more USO compensation would be needed for the second half of 2020). When Denmark considered that more compensation was needed for 2020, it realised that the EUR 15 million ceiling of the SGEI Decision would be exceeded and therefore decided to notify the USO compensation for 2020 under the SGEI Framework.

(81) In addition, Denmark explains that Article 2(1), point (a), of the SGEI Decision refers to compensation already granted:

“This 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, which falls within one of the following categories:

(a) compensation not exceeding an annual amount of EUR 15 million for the provision of services of general economic interest in areas other than transport and transport infra-structure;

[...]” (emphasis added by Denmark).

(82) At the moment of notification and until the Commission approves more compensation for 2020, Denmark notes that only EUR 15 million has been granted (on 20 December 2019) and that this amount does not exceed the ceiling of EUR 15 million laid down in Article 2(1)(a) of the SGEI Decision. Moreover, Denmark notes that the Commission approval that also covers the second half year of 2020 would not be sufficient for the compensation to be considered granted as Denmark would also still have to implement that compensation. Therefore, as long as Denmark has not implemented more compensation for 2020 (and thereby exceeds EUR 15 million), the compensation for the first half of 2020 should be considered lawful.

(83) In this regard, the Danish authorities note an alleged paradox in the opening decision. Denmark explains that, if the Commission approves the USO compensation for 2020, the USO compensation for the first half of 2020 would be unlawful, but compatible; however, if the Commission concluded that the USO compensation for 2020 in its entirety was incompatible, the USO compensation for the first half of 2020 would be lawful, because in this scenario, the threshold in the SGEI Decision would not be exceeded.

- (84) Denmark considers that, because the period 1 January 2020 – 30 June 2020 will also be assessed under the SGEI Framework, there is no risk that the requirements for the two periods are different (footnote 35 of the opening decision). Furthermore, Denmark remarks that the legal basis and the provisions governing the USO compensation for Post Danmark are identical in both periods.
- (85) It follows, in the view of the Danish authorities, that, even if the Commission finds that the granting of compensation to Post Danmark for the first half of 2020 will be deemed to be unlawful when the compensation for the second half of 2020 is granted, this does not imply that, when the opening decision was issued, the USO-compensation granted to Post Danmark for the first half of 2020 was unlawful. The USO compensation for the second half of 2020 will be granted when the Commission’s Final Decision is adopted, since the agreement between Denmark and Post Danmark includes compensation which is conditional on the Commission’s approval. Thus, the Danish authorities are of the view that the notified USO compensation for both the first and second half of 2020 can be declared compatible in accordance with Article 106(2) TFEU and the SGEI Framework, and, as the compensation for the second half of 2020 will only be granted at this point in time, the issue of the unlawfulness of the compensation already granted for the first half of 2020 will not arise.

4.2. Compliance with Directive 2006/111/EC

- (86) To address the Commission’s doubts in relation to compliance with Directive 2006/111/EC, as expressed in recitals (101) to (104) of the opening decision, Denmark has explained how Post Danmark allocates its cost and revenues, how it keeps separate accounts and how this is supervised.

4.2.1. Description of how Post Danmark allocates costs

- (87) Denmark explains that the starting point for Post Danmark’s cost accounting is ensuring compliance with the Accounting Regulation⁵³, which transposes Article 14 of Directive 97/67/EC. In line with Section 5(1) of the Accounting Regulation, Post Danmark prepared in 2015 a “Description of applicable methodologies and principles for cost allocation and preparation of the separate regulatory accounts” (“the 2015 description”), which was approved by the Civil Aviation and Railway Authority in line with Section 6(2) of the Accounting Regulation⁵⁴.
- (88) Based on the 2015 description, Post Danmark has implemented both an allocation of costs and a categorisation of these costs which is explained below. Post Danmark allocates and categorises costs in parallel processes at the same time.
- (89) Post Danmark allocates all costs and revenues up to the level of EBIT to the various products (i.e. the services/products it offers such as parcels or letters, see also the example provided in recital (92)). The costs and revenues are retrieved from the Profit and Loss accounts in Post Danmark’s IT system, SAP⁵⁵. The cost accounting system includes all organisational units of Post Danmark, including all subsidiaries of Post Danmark A/S.

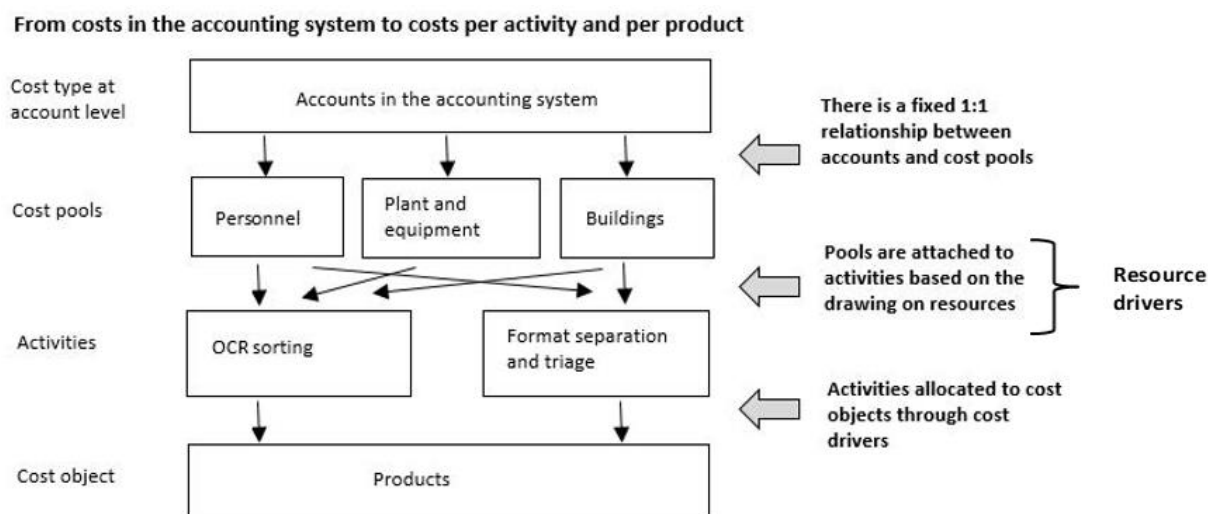
⁵³ For 2020, the applicable Accounting Regulation is the one from 2014 (see footnote 28).

⁵⁴ Danish Civil Aviation and Railway Authority, Description of principles and methodologies, Ref. TS40103-00031, 25 February 2015. The Civil Aviation and Railway Authority is the same authority referred to as “Transport Authority” in the quotes in recitals (29) and (69).

⁵⁵ A software system provided by the German undertaking SAP SE.

- (90) As can be seen in **Figure 3**, the activity-based costing ('ABC')-methodology is used to allocate core operational costs to the various products or services in the regulatory accounts (i.e. the accounts of Post Danmark prepared for regulatory purposes) based on an analysis of the origin of the costs.

Figure 3⁵⁶



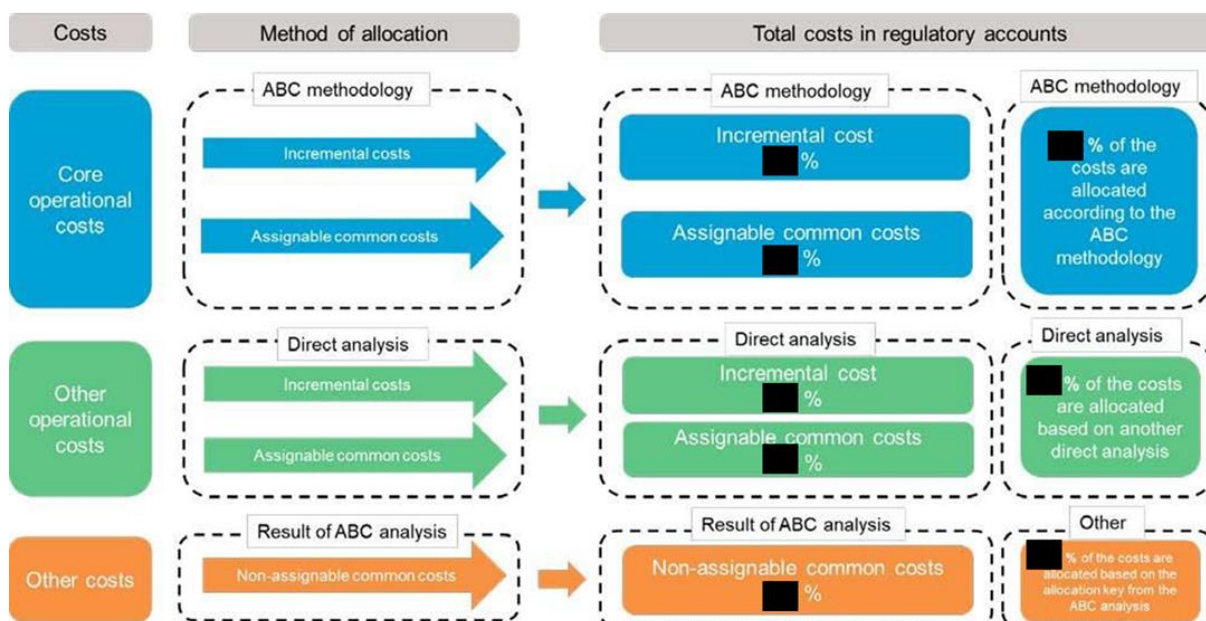
- (91) Denmark explains that both USO and non-USO costs are allocated based on the ABC methodology. As an example, infrastructure costs are also allocated to non-USO products if the USO and non-USO products share the same infrastructure.
- (92) An example of how costs are allocated to products or services is the sorting process of parcels, which consists of six **activities** (Production parcels machine-sorted collection; Production parcels machine-sorted spread; Parcels export; Parcels import; Production parcels arrival and departure; and Production, video encoding). For those six activities, personnel costs are incurred (i.e. a **cost pool**). There are [90-100] time-registration codes available to attribute personnel costs to activities (i.e. **resource drivers**). One example of a resource driver is the time-registration code "78720 Produktion MS pakker", which attributes personnel costs to the activities "production parcels machine-sorted collection" and "production parcels machine spread collection". Besides personnel, those activities can also draw resources from other cost pools, for example plant and equipment and buildings. The final step in the process is allocating the cost of an activity to the cost object (i.e. the product, which can be parcels, letters etc.). This is done by way of **cost drivers**. Examples of cost drives are quantities or number of visits.

⁵⁶ From the cost accounts in the accounting system, all costs are allocated to cost pools according to a 1:1 ratio, meaning that if the accounts show overall costs of EUR 1 million, the cost pools combined also add up to EUR 1 million. Definitions: cost pools are groups of costs that add value to the cost objects (i.e. products); activity is an action carried out by an employee or machine, it draws resources from the cost pools. Multiple activities can draw on resources in the same cost pool. Likewise, an activity can draw on resources in several different cost pools; resource drivers link the cost of a cost pool to an activity and is therefore an "allocation key". The resource drives can e.g. be the number of square meters in a building or the mileage when driving a vehicle; cost drivers link the activities to the cost objects. Examples are quantities (the quantities passing through the sorting centre are cost drivers), the number of scans at service points (service points are paid per parcel scanned/handed out) or number of visits.

- (93) Costs that are not allocated with the ABC methodology (i.e. costs that are not costs incurred in core processes have been labelled as “other operational costs” and “other costs”) are allocated based on a direct analysis and the result of the ABC methodology respectively (see **Figure 4**). Non-core operational costs are for example IT and the customer service centre. The direct analysis is comparable to the ABC methodology and means allocating common costs to products based on for example the time used by staff in the customer service centre for a question on a specific product.
- (94) Besides the cost allocation mechanisms, costs are also categorised as incremental costs⁵⁷, assignable common costs, and non-assignable common costs, in the regulatory accounts.
- (95) The above-mentioned three categories of costs are defined as follows:
- (1) If the cost relates only to one product, it is categorised as incremental. For example, the cost of invoices regarding terminal dues for outbound cross-border letters are assigned directly and fully to outbound cross-border letters. Both costs allocated to USO and non-USO products in this way can be categorised as incremental costs.
 - (2) Costs that will not cease to exist if an individual service is cancelled but are assignable to a group of two or more services, and distributed to those on the basis of a direct analysis, are categorised as assignable common costs. For example, IT and Post Danmark’s Customer Service Centre costs are assigned to the various products as assignable common costs based on a direct analysis e.g. of the time the staff use on each product. Both costs allocated to USO and non-USO products in this way can be categorised as assignable common costs.
 - (3) Other administrative costs related to support functions, for example HR, Finance, and Legal, where it is not possible to assign the costs based on a direct analysis (either through the ABC methodology or by direct analysis) to a service or a group of services, are attributed to the various products as non-assignable common costs using the ratio resulting from the ABC analysis (see orange boxes in figure 4). Both costs allocated to USO and non-USO products in this way can be categorised as non-assignable common costs.

⁵⁷ Denmark considers that incremental costs are costs that can be directly assigned to a single product based on analysis of the origin of the costs (in line with Article 14(3)(a) of Directive 97/67/EC). Such costs can be fixed and variable and will cease to exist in the short and medium term (3-5 years) if a service or product is cancelled. Denmark refers in this light to: Commission Decision 2001/354/EC of 20 March 2001 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/35.141 — Deutsche Post AG), L 125 of 5.5.2001, p. 27, recitals 6-17 (notably footnote 7), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001D0354&qid=1642512369951>; Judgment of the Danish Supreme Court, no 2/2008, UfR 2013.1342H, Post Danmark A/S mod Konkurrencerådet, pages 42-43, available at: https://konkurrencejura.dk/afgorelser/49313/pdf/hoejesteret_dom_af_15_februar_2013_-_post_danmark_as_mod_konkurrenceraadet_post_danmark_i_-_ekskluderende_diskrimination.pdf; and Competition Appeals Board’s Decision of 1 July 2005, case 2004-0001248, Post Danmark og Forbruger-Kontakt a-s mod Konkurrencerådet (Stadfæstet), page 94, available at: <https://www.kfst.dk/media/14150/20050701-kendelse-post-danmark-og-forbrugerkontakt-as-mod-konkurrenceraadet.pdf>.

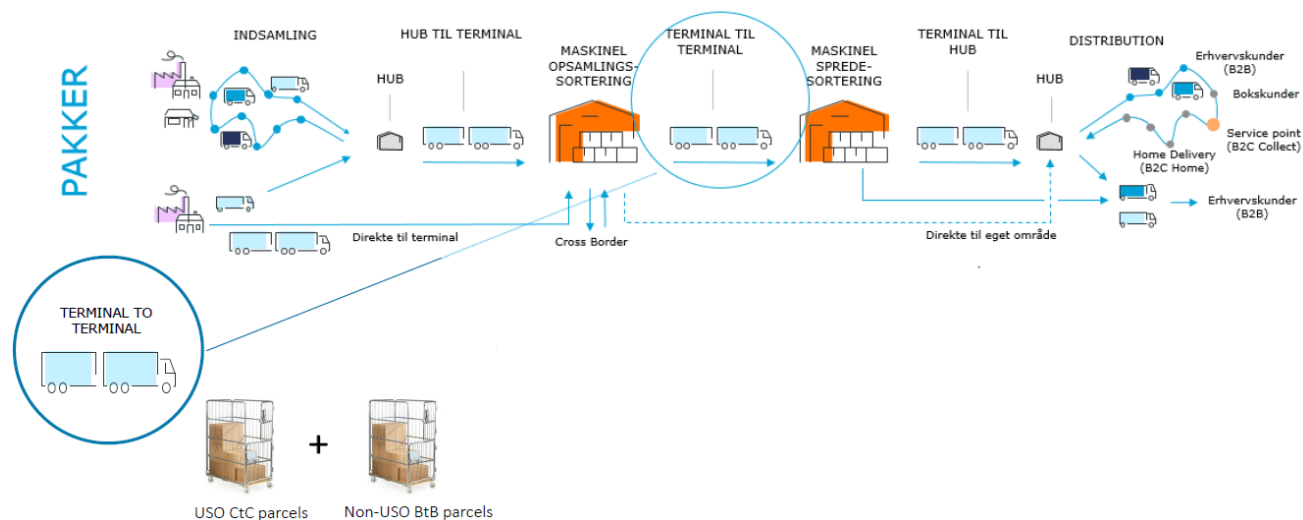
Figure 4 – Post Danmark’s categorisation of costs, figures based on 2020



- (96) Denmark explains that Figure 4 should be read as follows: By using the ABC methodology Post Danmark determines the resource allocation for one or more products via a direct analysis. If the costs in question are allocated to one product based on the cost driver (recital (92)), the costs are categorised as incremental costs (top arrow in blue). If the costs in question are allocated to more than one product, costs are categorised as assignable common costs (bottom arrow in blue).
- (97) Denmark has provided an example⁵⁸ in **figure 5** to illustrate how Post Danmark categorises the transport costs of addressed parcels from a private person to another private person (CtC) and addressed parcels to businesses (BtB). CtC is encompassed by the USO and BtB is not. The costs taken into account are the costs of transport, including pay to the driver, depreciation of the vehicle and fuel consumption. For each step in the process, costs are categorised in a similar way. See another example in recital (98). For both examples, the figures presented are illustrative.

⁵⁸ The examples are taken from a Deloitte report of 8 June 2021 with the title “*Independent external review of cost allocation in Post Danmark A/S and PostNord Logistics A/S pursuant to the terms of reference of 11 May 2021*”. The report was commissioned by the Danish Ministry of Transport.

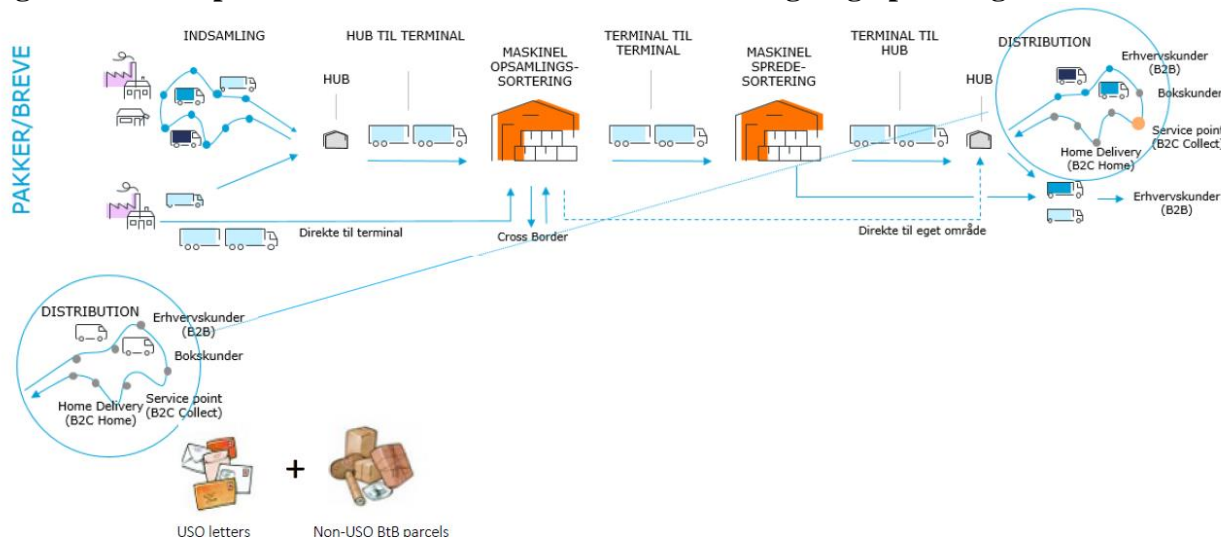
Figure 5 – Example of sorting centre to sorting centre transports of parcels



Number of hours (e.g. 7) * cost per hour (e.g. DKK 100)	= DKK 700
Total kilometers (e.g. 300) * km rate (e.g. DKK 2)	= DKK 600
Total costs = DKK 700 + DKK 600	= DKK 1 300
Total parcels sorted:	33 (10 USO and 23 non-USO)
Incremental costs ⁵⁹ for USO parcels: 10/33 * 1 300	= DKK 394
Incremental costs for non-USO parcels: 23/33 * 1 300	= DKK 906

(98) The example in **figure 6** concerns the distribution of both addressed letters weighing up to 2 kg and addressed parcels for businesses (BtB). The addressed letters are encompassed by the USO and the BtB parcels are not.

Figure 6 – Example of distribution of addressed letters weighing up to 2 kg and BtB



Number of USO letters delivered:	10
Time needed to deliver one letter:	10 seconds

⁵⁹ Transport of parcels between sorting centres are product-specific costs for parcels and therefore categorised as incremental costs.

Number of BtB parcels delivered:	10
Time needed to deliver one parcel:	90 seconds
Number of visits (co-visits) carrying USO letters and BtB parcels:	10
Costs of one visit:	DKK 100
Assignable common cost ⁶⁰ of delivering USO letters (100 sec/1000 sec * DKK 1 000)	= DKK 100
Assignable common cost of delivering BtB parcels (900 sec/1000 sec * DKK 1 000)	= DKK 900

(99) It follows from the above two examples that all products undergoing a specific process have costs allocated to them in proportion to the use of resources used by the products⁶¹.

Review of Post Danmark's cost accounting methodology

(100) Denmark further submits that in May 2021, the Danish Ministry of Transport commissioned the accounting firm Deloitte with the task of reviewing Post Danmark's cost accounting methodology. Post Danmark was the primary subject of this review. In addition, Deloitte examined the invoicing between Post Danmark and PostNord Logistics⁶². For this review, Deloitte had access to the regulatory accounts and underlying documentation of Post Danmark and PostNord Logistics. In addition, Deloitte has questioned both companies.

(101) Deloitte presented its conclusions on 30 August 2021⁶³:

- (1) Post Danmark has comprehensive descriptions of principles and methods, and recording systems, that serve as a basis for calculating costs and allocating them between universal services and non-universal services.
- (2) Post Danmark allocates costs directly to the individual activities, for example using the time recorded. Common costs are allocated using allocation keys.
- (3) Business transactions between subsidiaries of PostNord Group such as Post Danmark and PostNord Logistics are based on the same principles as Post Danmark's uses, i.e. time recording, hourly rates and allocation keys.

(102) During its review, Deloitte did not encounter anything that indicates that the accounting policies of Post Danmark are not in line with applicable Accounting Regulation and generally accepted accounting principles.

4.2.2. Description of how Post Danmark allocates revenues

(103) The amount of revenues to be attributed are determined from the Profit & Loss accounts in SAP. Most of the revenues correspond to direct sales registered in the invoicing system of Post Danmark and can therefore be attributed directly to the final products and services. The revenues that do not correspond to direct sales, and are

⁶⁰ Delivery includes both letters and parcels, so the costs incurred are assignable common costs for letters and parcels.

⁶¹ Page 8 of the report referred to in footnote 58.

⁶² Another subsidiary of PostNord Group.

⁶³ Deloitte, Background memorandum on Deloitte's review pursuant to "Terms of reference for an independent external review of cost allocation in Post Danmark A/S and PostNord Logistics A/S" of 11 May 2021, 30 August 2021.

therefore not in the invoicing system of Post Danmark, are allocated based on studies⁶⁴. Those studies ensure that there is a causal link between the registered revenues and the products and services that have generated these revenues.

4.2.3. Description of how Post Danmark keeps separate accounts

- (104) Denmark has explained that the separate regulatory accounts are prepared by Post Danmark in accordance with the applicable Accounting Regulation, which requires Post Danmark to separate its accounts in line with Directive 2006/111/EC. Denmark also argues that the Accounting Regulation adheres to Article 14(3) of Directive 97/67/EC, and that Post Danmark’s accounts are fundamentally based on a principle of causality, objectivity, transparency and consistency.
- (105) The regulatory accounts present accounts for each service which is part of the USO, and for each service which is not part of the USO, in line with section 5(6) of the Accounting Regulation. The separate regulatory accounts comprise of the net turnover, incremental costs, the result after incremental costs, assignable common costs, the result after assignable common costs, the non-assignable common costs and the EBIT result.
- (106) According to Denmark, the non-USO services have been allocated an appropriate share of incremental costs, assignable common costs and non-assignable common costs. The share of the allocated costs for both USO and non-USO services is notably in line with the turnover that the respective categories of services generate. **Table 1** shows the total figures in the regulatory accounts for 2020 for the USO services and non-USO services.

Table 1 – Total figures in the regulatory accounts for 2020

MDKK	USO services	Non-USO services
Total turnover	3.774*	1.610
Incremental costs	[...]	[...]
Assignable common costs	[...]	[...]
Non-assignable common costs	[...]	[...]
Result (EBIT)	-10	-16

* the notified compensation for providing the USO has been included in the total turnover

4.2.4. Description of how Post Danmark’s accounting practices are supervised

4.2.4.1. Supervision

- (107) Post Danmark’s cost accounting methodologies and principles for cost allocation and preparation of the separate regulatory accounts have been approved by the Danish Civil Aviation and Railway Authority (see recital (87), which is the same authority that checks whether Post Danmark complies with the Accounting Regulation (currently the one from 2014). In addition, a State-authorized accountant verifies

⁶⁴ For example, in order to isolate the turnover for domestic single-piece letters, the turnover for single-piece letters is divided into domestic single-piece letters and outgoing single-piece letters, respectively by a study (sampling).

each year whether the separate regulatory accounts are prepared in line with that same Accounting Regulation⁶⁵

4.2.4.2. Assessment by Rigsrevisionen of adequacy of supervision

- (108) At the request of the Danish Public Accounts Committee (“Statsrevisorerne”)⁶⁶, the Rigsrevisionen performed an investigation into the supervision of Post Danmark’s accounting practices. On 15 January 2021, the Rigsrevisionen published its findings in a report that was published on its website.
- (109) On the same day as the publication of Rigsrevisionen’s report, Statsrevisorerne published its assessment of the report from Rigsrevisionen⁶⁷.
- (110) The Statsrevisorerne took note of the main points listed in the report:
- (1) The Danish Civil Aviation and Railway Authority bases part of its supervision of Post Danmark’s accounting practice on opinions from Post Danmark’s external auditor, but the Authority has not required a certain level of assurance in the opinions⁶⁸.
 - (2) Contrary to the requirements of the Accounting Regulation, the Danish Civil Aviation and Railway Authority has not ensured that the external auditor examines whether Post Danmark’s registration of data is sufficiently detailed.
 - (3) The Danish Civil Aviation and Railway Authority has not had a sufficient basis for assessing whether the level of Post Danmark’s margins on single-piece letters was reasonable. The Danish Civil Aviation and Railway Authority has not had a written procedure for approving Post Danmark’s price of single-piece letters and has not determined objective criteria for what the Authority finds to constitute a reasonable profit.
 - (4) A PwC report from 2014⁶⁹ showed that – for 2013 – the majority of Post Danmark’s costs were allocated to the products falling under the USO even though USO products constituted less than half of the products in total.
- (111) The Statsrevisorerne made the following observations:
- (1) The supervision of Post Danmark’s accounting practice carried out by the Ministry of Transport in the period 2011 – 2019 has not been entirely adequate.
 - (2) The Ministry of Transport has not to a sufficient degree requested information about whether Post Danmark’s allocation of common costs and pricing are in

⁶⁵ All auditor's statements have so far been unqualified (i.e. without reservations) and have since 2014 been made with a high degree of certainty.

⁶⁶ Statsrevisorerne makes sure that taxpayers’ money is spent the way the Danish Parliament intended and that the money is managed as efficiently as possible. Members are appointed by the Parliament and may be Members of Parliament. It can call upon the Auditor’s General Office (i.e. Rigsrevisionen) to perform certain auditing tasks.

⁶⁷ This assessment is part of the Rigsrevisionen’s report from 15 January 2021 and included at the beginning of the report (“Statsrevisorerne’s bemærkning”).

⁶⁸ Assurance in auditing refers to the opinions issued by an auditor regarding the accuracy and completeness of the conclusion of the audit. For an auditor to provide a high level of assurance, it needs to reduce the risk that a material misstatement exists in the matter being audited. See in this light also the Rigsrevisionen’s report from 15 January 2021 which describes on page 14 that auditor statements have different levels of assurance, namely no assurance, limited degree of assurance, moderate degree of assurance and high degree of assurance. For the high degree of assurance, the auditor carries out an extensive review of the accounts.

⁶⁹ PwC, 4 December 2014, Trafikstyrelsen, Gennemgang af produktøkonomi for tjenester, omfattet af befdringspligten for Post Danmark A/S.

compliance with the legislation, or about the basis for the rejection of allegations of cross-subsidisation.

- (3) The consequence is among others that there may be doubt about whether Post Danmark's accounting practice is correct. Statsrevisorerne therefore encourages the Ministry of Transport to strengthen the supervision of Post Danmark.

4.2.4.3. Follow-up from the Minister of Transport to the findings of Statsrevisorerne and Rigsrevisionen

(112) Denmark explains that, on 11 February 2021, the Minister of Transport replied to Statsrevisorerne based on inputs from Post Danmark and KPMG (which is the accountant of Post Danmark since 2013), as well as PwC. In this reply, the Minister notes that the report from Rigsrevisionen first and foremost concludes that the Ministry of Transport has supervised the areas that it is required by law to supervise.

(113) In addition, the Minister corrects an, according to Denmark, erroneous conclusion that the PwC report 2014 showed that the majority of costs were allocated to the products falling under the USO even though USO products constituted less than half of the products in total:

- (1) According to Denmark, the PwC report did not contain information regarding the total number of USO and non-USO items, respectively. For that reason alone, the statement in the report from Rigsrevisionen (recital (33)) is factually wrong.
- (2) Furthermore, since the products are different in terms of characteristics, service requirements, and physical properties, and may undergo different operational processes, the number of USO and non-USO items would, in Denmark's view, not be a suitable parameter anyway for assessing whether the cost allocation is appropriate. The different types of items do not generate the same costs in the production chain⁷⁰.
- (3) Finally, Post Danmark regulatory accounts⁷¹ show e.g. for 2020 that the activities subject to the USO amounted to 70 % of the activities, calculated on the basis of turnover. In the same vein, the USO activities bore 70 % of the costs.

(114) The Minister explains that the PwC review found that Post Danmark's allocation of costs was reasonable, sound and in compliance with the regulatory requirements.

(115) The Minister nevertheless takes note of the in some respects inadequate supervision of Post Danmark's accounting practice and requires from the accounting year 2020 and onwards the following:

- (1) Formally agreeing with the external auditor, KPMG, that audit reports in connection with the annual accounts will be provided with a high level of assurance, as was the actual case for the reports for the financial years 2014 – 2019.

⁷⁰ For example, on the one hand the costs for delivering a BtB parcel (not part of the USO) is lower than the costs for home delivery of a BtC parcels (part of the USO). On the other hand, the costs for delivery of a domestic USO letter within 5 working days is lower than the delivery of a day-to-day non-USO letter.

⁷¹ <https://www.postnord.dk/om-os/finansiel-information/regulatorisk-regnskab>

- (2) Requiring Post Danmark’s external accountant to unambiguously state in its conclusion that the auditor has verified whether Post Danmark’s data registration is sufficiently detailed. The Minister notes that, in order to issue an opinion with a high level of assurance, such an examination of the data registration must be carried out and, thus, this has actually been the case for the period 2014 – 2019 where opinions with this level of assurance have been issued⁷², even if this was not formally required by the Danish Civil Aviation and Railway Authority⁷³. The fact that Post Danmark’s external accountant had to conclude already on the completeness and accuracy of the data used for the regulatory accounts follows from Section 3 of the Accounting Regulation, which states: “*Post Danmark shall ensure sufficiently detailed data recording so that Post Danmark's accounting systems and statistical systems at any time may form the basis for the product financial accounts mentioned in section 4.*” Compliance with Section 3 is a fundamental precondition for the separate regulatory accounts mentioned in Section 4 of the Accounting Regulation, which, in turn, need to be in compliance with the policies and methods as stated in Section 5 of the Accounting Regulation. Issuing an auditor’s report on the compliance of Post Danmark with Section 5(1) to (3) of the Accounting Regulation also indirectly means verifying the data recordings forming the basis of the regulatory account.
- (3) Requiring the Danish Civil Aviation and Railway Authority to prepare procedures and guidelines to obtain a better basis for assessing whether Post Danmark’s profits on postage relating to letters weighing up to 50 grams are fair. In May 2021, the Danish Civil Aviation and Railway Authority effectively established a written internal procedure approving the price of individually sent stamped domestic economy letters weighing up to 50 grams. This product is the only product subject to price regulation.

4.2.4.4. Rigsrevisionen’s conclusions following the reaction of the Minister of Transport

- (116) On 5 March 2021, Rigsrevisionen published a note assessing the reply from the Minister for Transport of 11 February 2021⁷⁴. In the note, Rigsrevisionen concludes that:
- (1) The measures taken by the Minister for Transport relating to the degree of assurance of the external auditor’s opinion and requiring that the auditor explicitly concludes on the data registration, are appropriate and may strengthen the supervision of Post Danmark’s accounting practice. Therefore, the Rigsrevisionen concluded that this part of the investigation was closed.

⁷² Post Danmark’s accountant KPMG has performed its examinations in accordance with the International Standard on Assurance Engagements 3000 (‘ISAE’) other than Audits or Reviews of Historical Financial Information and additional requirements under the Danish Accounting regulation in order to obtain reasonable assurance for the conclusion as to whether Post Danmark complied with the requirements laid down in Section 5(1) to (3) of the Accounting Regulations. KPMG’s work is based on inquiries to management and employees of Post Danmark, analytical procedures, spot checks of the calculation system used for the preparation of the financial accounts and Post Danmark’s financial statements. Notably the latter form a significant basis for the preparation of the regulatory accounts.

⁷³ Please note that the opinions in the period 2008-2013 issued by PwC had a limited (in Danish: ‘begrænset’) level of assurance but were based on an opinion from Deloitte on the model documentation that was issued with a high level of assurance.

⁷⁴ Folketinget Rigsrevisionen, Rigsrevisionens notat om beretning om tilsynet med Post Danmarks regnskabspraksis, March 2021, available at: <https://rigsrevisionen.dk/Media/A/F/404-21.pdf>.

- (2) It will continue to observe and report to Statsrevisorerne on the procedures for approval of Post Danmark's pricing and on initiatives taken by the Minister for Transport to assure that in possible future cases of doubt, the supervision will ensure that Post Danmark adheres to the applicable legislation.

4.2.5. *Denmark's conclusion on the cost accounting*

- (117) Thus, taking into account the changes in the supervision that will apply from 2020 and the actual cost allocation methods applied by Post Danmark, Denmark submits that the Commission can base its assessment of the compliance of Post Danmark's accounting practice with Directive 97/67/EC, Directive 2006/111/EC and the SGEI Framework on the regulatory supervision and the annual review by the independent auditors.

4.3. Compliance with NAC methodology

4.3.1. *Input data for NAC*

- (118) According to Denmark, the Rigsrevisionen notes that the external auditor has not explicitly been requested to verify the registration of input data. However, as explained in recital (115)(2) Post Danmark's external auditor (KPMG) has checked the actual data registration when they audited Post Danmark's accounts, as this is required in order to provide a statement with high assurance. For 2020, the same was done and this was specifically mentioned in the auditor's statement⁷⁵.

- (119) Therefore, Denmark argues that there should be no doubt that the NAC calculation for 2020 meets the requirements of Directive 2006/111/EC, as required by point 18 of the SGEI Framework.

4.3.2. *Assumptions made in counterfactual scenario of the NAC methodology*

- (120) In recitals (148) to (151) of the opening decision, the Commission raises doubts as regards the impact on the unit costs of Post Danmark following the suggested changes in the counterfactual scenario concerning:

4.3.2.1. Downsizing the company (lower volumes)

- (121) Denmark agrees that - as a general principle - lower volumes tend to lead to higher unit costs and vice versa (recital (149)(a) of the opening decision). Due to declining volumes of business letters, Post Danmark experienced increasing average total costs (ATC) for USO letter products in its regulatory accounts for a number of years. However, the counterfactual scenario reflects a situation where Post Danmark has optimised the letter service. The main adjustments made in the counterfactual are the closure of one letter-sorting centre and [5-10] distribution hubs, and reduced service in rural areas and smaller towns.

- (122) The (i) lower service level in rural areas and (ii) less extensive infrastructure in the counterfactual scenario provide for a lower overall cost level in the value chain in rural areas. This means that Post Danmark in the counterfactual scenario has managed to take out cost (compare table 4 and 6 in Section 6.3.1.7.1), so that the unit costs measured as the ATC in rural areas are lower in the counterfactual scenario than in the factual scenario.

- (123) Urban areas (as opposed to rural areas) are only affected by the less extensive infrastructure in the counterfactual scenario. In those areas, taking all factors into

⁷⁵ All auditor's reports since 2007 are available online: <https://www.postnord.dk/om-os/finansiel-information/regulatorisk-regnskab>.

consideration, the unit costs would remain at the same level in the counterfactual scenario as in the factual scenario.

- (124) Denmark therefore considers that the combination of effects as a consequence of the lower volumes and the reduction in infrastructure, are such that the overall units costs have not increased.

4.3.2.2. Closure of sorting centre and distribution hubs and impact on transport costs

- (125) Generally, one would expect that closing part of the infrastructure needed to provide a delivery service means an increase in transportation distances between the remaining parts of the infrastructure. Longer distances to be travelled would mean an increase in transport costs, while Denmark considered that transport costs would not increase in the counterfactual scenario, which led the Commission to express doubts on this point.

- (126) Denmark has explained that, in 2020, Post Danmark operated two sorting centres. The Decision on how many sorting centres and/or distribution hubs to operate was taken based on what is considered the optimal and most cost-efficient. Taking into account the number of items to be sorted, for the operations in 2020, a two-sorting centres structure was considered the most optimal and cost-efficient solution as the cost per item in the case of a single larger sorting centre would be higher. The change from two centres to one centre will occur when the volume to be sorted drops below a certain level. In the counterfactual scenario, the number of items will effectively drop below the level for continuing to operate two sorting centres. Denmark also highlights that as the USO-provider, Post Danmark is not always able to reduce capacity in response to developments in the postal market, if there is a risk that in the future such reductions would make it unable to fulfil the USO, which entails certain service level requirements that Post Danmark needs to comply with.

- (127) In a two-centre structure (**factual scenario**), each centre covers a geographical area, and sorting takes place in a two-step setup. Postal items collected in the geographical area connected to one of the centres are being ‘collection sorted’ upon arrival at the centre. Items that are to be distributed in the geographical area connected to the other sorting centre are then transported to the other centre. Before distribution, all postal items at the sorting centre (including those coming from the other centre) are ‘spread sorted’, whereby the items are sorted out to distribution hubs. [70-80] % of letter post originates from Eastern Denmark and therefore the sorting centre in Taastrup (Eastern Denmark) processes the most items.

- (128) In the **counterfactual scenario**, there would be only one sorting centre which will be sufficient for the reduced volume of postal items to be distributed. With only one sorting centre, transportation distances from collection to the sorting centre as well as transportation from the sorting centre to distribution hubs will increase. However, at the same time, transportation between the two centres will be avoided.

- (129) In a one-centre structure (**counterfactual scenario**), sorting takes place in a one-step setup, whereby the postal items are simultaneously collection sorted and spread sorted by geography and routes. This means that the items are not being transported to another sorting centre for ‘spread sorting’. This means that all letters in the one-centre setup only will go through one sorting in Eastern Denmark, while some letters in the factual scenario would go through two sorting processes.

- (130) Denmark notes that, taking into account the above (transport between sorting centres equals longer distance from remaining sorting centre to hubs and routes), in the NAC

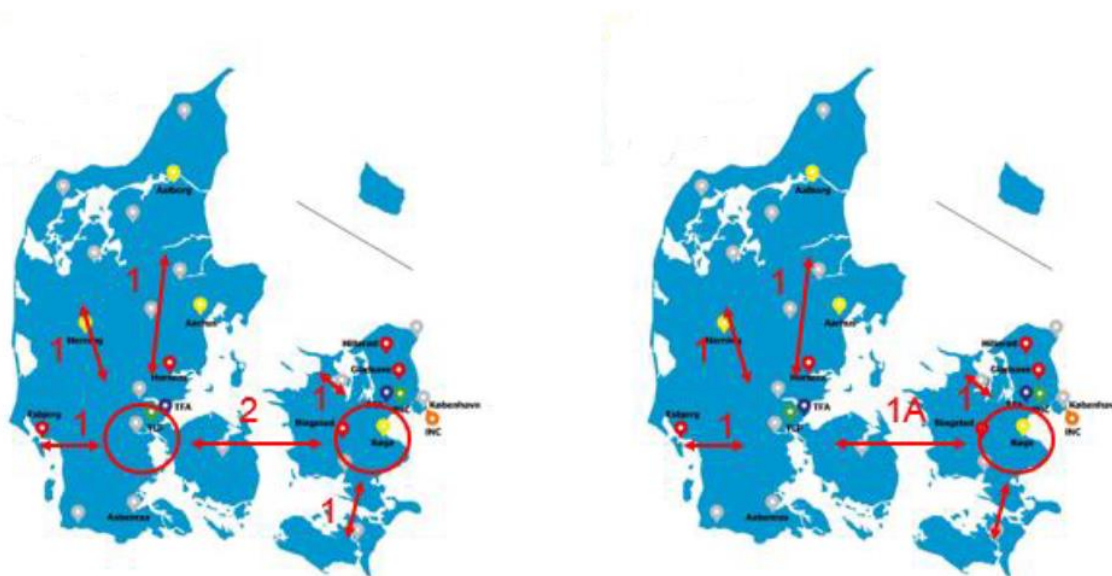
calculation, the total transport costs in the one-centre setup (counterfactual scenario) will remain at the same level and not change significantly compared to the setup with two sorting centres (factual scenario).

- (131) This further illustrated as follows: In the factual scenario, there are [5-10] daily routes from the sorting centre in the East to the sorting centre in the West and [5-10] daily routes from West to East. One trip is approximately [200-300]km, which means a daily aggregate distance of approximately [...]*[...] km = [...] km (see **figure 7**).

Figure 7 – Sorting centres

2 Centers

1 Center



1 & 1A – Center to/from hub transportation
 2 – Center to center transportation

- (132) Figure 7 shows two maps of Denmark. Red circles show the indicative location of sorting centres in Denmark. The map on the left shows the factual scenario structure with two centres whereas the map on the right shows the counterfactual scenario structure with one centre.

- (133) In the counterfactual scenario, transportation distances from collection to the single sorting centre, as well as transportation from the sorting centre to distribution hubs, will increase. However, at the same time transportation between the two centres will be avoided. Taking into account that most postal items are created in Eastern Denmark (recital (127)), the sorting centre in Eastern Denmark is maintained in the counterfactual and the sorting centre in Western Denmark would be closed⁷⁶. This means that transportation distances from the sorting centre to hubs and vice versa in Eastern Denmark are not affected by a one-centre structure.

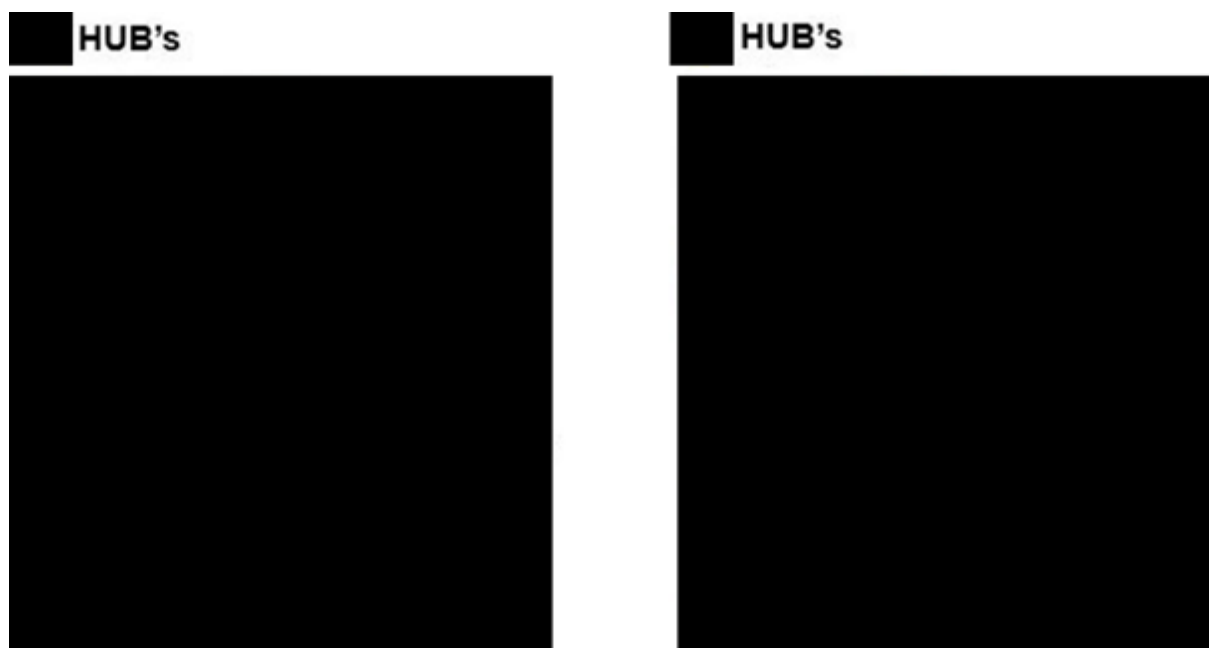
- (134) Also, transportation distances for postal items from Eastern Denmark to Western Denmark will be the same, the difference is simply that the distances are covered

⁷⁶ Denmark, for the sake of transparency, has pointed the Commission to the fact that, from 2023 onwards, Post Danmark will close down its sorting centre in Western Denmark in any event (PostNord press release dated 8 June 2022). Currently (in 2022), letter volume is around 700 000 per day. Over the next ten years, letter volume is expected to decrease to 300 000 per day. According to Denmark, this does not affect the NAC for 2020, as volumes in the factual scenario for 2020 still justified two sorting centres.

after the postal items are spread-sorted in a one-centre structure; whereas in the two-centre structure, the postal items are only geographically sorted before the postal items are en route to Western Denmark (The [5-10] routes from East to West equal approximately [...] * [...] km = [...] km, see recital (131) and “1A” in the map on the right in Figure 6).

- (135) Transportation distances to and from one sorting centre located in Eastern Denmark to hubs in Western Denmark will increase. However, these longer distances correspond to the routes in the factual scenario that are run between the sorting centres from Western Denmark to Eastern Denmark (approximately [...] * [...] km = [...] km – see recital (131) and “1A” in the map on the right in Figure 7).
- (136) Only transportation distances for items sent and received in Western Denmark will increase. However, according to Denmark, this does not imply that costs will also increase. Because the volume in the counterfactual scenario is lower than in the factual scenario, the items sent and received within Western Denmark can be included in the already existing [10-20] daily trips from East to West and vice versa. As explained in recitals (134) and (135), those [10-20] daily trips essentially remain also in the counterfactual scenario.
- (137) In conclusion, a total transportation distance of approximately [...] km ([...] + [...]) is covered in a one letter centre structure on the routes that cover “1A”. This is the same total distance as in the factual scenario.
- (138) Looking at the distribution hubs, Post Danmark operated [10-20] of them in 2020 (so in the **factual scenario**). Those [10-20] hubs were considered necessary in order to perform the USO in 2020. Post Danmark adjusts, on a continuous basis, its infrastructure to make it more cost-effective. For example, in 2018, Post Danmark still operated [20-30] hubs. The [10-20] hubs operated in 2020, therefore, reflect a significant downwards adjustment. Such a change is not surprising as the markets in which Post Danmark operates are not static, but volatile and dynamic. Volumes can change significantly from year to year and, therefore, infrastructure has been adjusted over the years because of changes in volumes.
- (139) The reduction in the number of distribution hubs from [10-20] to [10-20] in the **counterfactual scenario** would, as for the centres, also result in longer distances but this time between distribution hubs and service points. However, at the same time, the fewer distribution hubs corresponding to lower volumes also means that a number of routes between sorting centres and the distribution hubs are avoided in comparison to the factual scenario.
- (140) **Figure 8** shows that not all areas of the country are affected by the closure of [5-10] hubs in the counterfactual scenario. The areas affected are Funen, a part of South Jutland (both located in Western Denmark), and Central-, South- and West-Zealand (Eastern Denmark). In the affected areas, transport distances from the sorting centres to the distribution hubs will decrease as routes from the sorting centres will be sent in fewer directions, but transport to smaller depots/service points will still have to be carried out, so that the fewer directions end up with the transport distances remaining at same level as in the factual scenario. This is because there is still a need to transport to smaller depots/service points, which makes the fewer routes longer.

Figure 8 – distribution hubs



- (141) Based on one of the affected areas, for example, the area in Central- and West-Zealand, in the [10-20]-hub structure in the factual scenario there are daily routes to [...], [...] and [...], which adds up to transportation distances of [300-400] km from and to the sorting centre in Taastrup (sorting centre in Eastern Denmark)⁷⁷.
- (142) Within a hub structure of [10-20] hubs in the counterfactual scenario, the hub in [...] covers the areas of [...] and [...]. The transportation from Taastrup to [...] remains and is approximately [...] km return. The Hub [...] will have to prepare the letter products for the overall area (so its own area and the areas of the hubs in [...] and [...] in the factual scenario) before the postal items are ready for distribution. Subsequently, the prepared postal items are driven from [...] to [...] and from [...] to [...] where there are smaller depots/service points from where distribution to households starts. Routes from [...] to and from [...] and from [...] to and from [...] are approximately [...] km daily.
- (143) This means that a total transportation distance of [200-300] km ([...] km + [...] km) is covered in the counterfactual to be compared to [300-400] km in a [10-20]-hub structure see recital (141)).
- (144) On that basis, Denmark and Post Danmark therefore estimate that the total transportation costs in relation to the [10-20] hubs in the counterfactual scenario will remain approximately at the same level as the transportation costs in the factual scenario with [10-20] hubs, and the transportation costs will thereby not change significantly.

⁷⁷ [...] to [...] return is [...] km; [...] to [...] return is [...] km; and [...] to [...] return is [...] km: [...] + [...] + [...] = [300-400] km.

- (145) Finally, transport to service points is already being carried out. Even though larger quantities will be delivered to service points in rural areas in the counterfactual scenario, it will not lead to increased costs since the current capacity of the vehicles can handle these quantities as well. The discontinuation of distribution to households in rural areas and smaller towns does therefore not lead to increased transportation costs.
- (146) Taking into account the explanations in recitals (126) to (145), Denmark considers that, despite the fact that, in some limited cases, longer distances may need to be travelled to deliver a letter or parcel, transport costs do not increase.

4.3.2.3. Conclusion

- (147) Following the explanations in Sections 4.3.2.1 and 4.3.2.2, Denmark considers that the Commission's doubts as regards the impact on unit costs of Post Danmark, following the assumptions made in the counterfactual scenario, are fully addressed.

4.3.3. Denmark's conclusion on the NAC methodology

- (148) Considering the above, Denmark concludes that its NAC methodology is in line with the requirements set in the SGEI Framework and Directive 97/67/EC.

5. COMMENTS FROM DENMARK ON COMMENTS OF INTERESTED PARTIES

5.1. Compliance with Directive 2006/111/EC

- (149) In general, Denmark refers to its earlier submissions on the Rigsrevisionen's report, but also reacts in more detail to certain statements from the interested parties.
- (150) The interested parties claim that the Rigsrevisionen qualified the supervision of Post Danmark's accounting as inadequate (recital (28)). Denmark explains that this statement is not accurate. Rather, the Rigsrevisionen uses the wording "has not been entirely adequate"⁷⁸, which is according to Denmark far from calling the supervision "inadequate". This also follows from the rating scale used by the Rigsrevisionen. The Rigsrevisionen has labelled its report as "mild critique", which is the second best on the rating scale of Rigsrevisionen⁷⁹.
- (151) Interested parties also claim that the annual audits of Post Danmark's accounts by external auditors are not reliable (recital (29)) because: (i) there were no criteria determining when the audit has been satisfactory, and (ii) the Danish Civil Aviation and Railway Authority did not ensure that the auditor examined whether Post Danmark had registered data at a sufficiently detailed level. Denmark draws attention to the fact that the auditor's reports have been provided with a high level of assurance for the financial years 2014-2019. Furthermore, due to the report from Rigsrevisionen, the Ministry of Transport has specifically required that the external auditor continue to make an auditing with a high level of assurance from the accounting year 2020. A high level of assurance also implies that the actual data registration is checked by the auditor (recital (115)). Denmark explains that it has submitted the auditor's report for 2020 to the Commission and that it would follow from that report that a high level of assurance was given.
- (152) Denmark reiterates that it is incorrect when the interested parties claim (recital (33) and (34)) that all common costs are allocated to the USO. Instead, Post Danmark

⁷⁸ Danish: "ikke har været helt tilfredsstillende"

⁷⁹ See: <https://rigsrevisionen.dk/statsrevisorerne/statsrevisorernes-karakterskala>.

allocates costs (USO costs and non-USO costs) based on the draw on resources shown by the ABC analysis or other direct analysis on the origin of costs. Moreover, Denmark notes that ITD's claims are unsubstantiated and identical to those presented in case T-561/18, which the General Court rejected in its judgment of 5 May 2021⁸⁰.

5.2. Compliance with NAC Methodology

(153) Concerning the NAC methodology, Denmark stresses that, even if the NAC were to be found too high, this would not mean that the compensation would also be too high since the actual compensation only constitutes 58 % of the NAC⁸¹.

(154) To further ensure that no overcompensation takes place, and in line with its standard procedure, the Danish authorities will, with the assistance of a State-authorized auditor, conduct an ex-post review of the actual 2020 NAC, based on the actual figures for 2020.

5.2.1. Assumptions made in the counterfactual

(155) Besides the issues on which the Commission expressly noted its doubts (i.e. the downsizing of the company and the reduction in sorting centres and hubs), Denmark also makes the following remarks in relation to the interested parties' criticism of the counterfactual scenario (recitals (40) to (45)). A correct counterfactual scenario is not a scenario in which Post Danmark would completely cease its distribution of letter services in rural areas (and thereby forgoing all revenues it makes in those areas in the factual scenario). Rather, what is realistic is to optimise the services in rural areas. This implies a reduction in service level (for example no longer offering home delivery, but working with a collect option), but retaining distribution. This reduces costs and implies forgoing some revenues (but not all revenues).

(156) Interested parties considers that the free distribution for the blind would not be discontinued. Denmark confirms that the free distribution service for the blind would actually be discontinued⁸², as was already the case in the 2018 Decision (recital (160), Table 2 of that Decision).

(157) Specifically, as regards the DPD network (recital (42)), Denmark notes that this is a service that is marketed under the DPD trademark and already exists in the factual scenario and has its own network⁸³, which is completely separate and distinct from Post Danmark's current international mail and parcel distribution that it provides in line with the UPU Convention. The agreement with DPD is concluded by PostNord Group and therefore covers the Nordics. The agreement with DPD will remain in place at least in the coming years, as it has an initial end date of [...]. Discontinuation of Post Danmark's own cross-border postal service under the UPU Convention has no impact on the costs related to the DPD parcels.

⁸⁰ Judgment of 5 May 2021, *ITD, Brancheorganisation for den danske vejgodstransport A/S and Danske Fragtmænd A/S v Commission*, Case T-561/18, EU:T:2021:240, paras 292-293 and 295.

⁸¹ In addition, Denmark stresses that the compensation for Post Danmark's provision of the USO in 2020 is lower than the calculated net deficit of the USO derived from the regulatory accounts which, according to Denmark, is DKK 233 million in 2020. Despite the USO compensation, which is reflected as a revenue in the regulatory accounts, the USO services generated a net deficit of DKK 10 million, see: <https://www.postnord.dk/om-os/finansiel-information/regulatorisk-regnskab>.

⁸² See also ERGP report page 17 and Frontier economics report, page 58, both submitted by the interested parties.

⁸³ It is a network whereby PostNord Group hands over to DPD group their international parcel volumes shipped from the Nordics (Denmark, Sweden, Norway and Finland) to the rest of Europe and so does DPD group from their European network to the Nordics.

- (158) As to the alleged replacement of the countrywide business-letter distribution by a one day a week delivery in urban areas (recital (44)), Denmark notes that this allegation is wrong and that Post Danmark would continue to offer distribution of business letters in the counterfactual scenario, but with a lower service level (see recital (155)).
- (159) As to the replacement of postal outlets with service points on smaller islands (recital (45)), Denmark notes that contrary to the counterfactual presented in the 2018 Decision, Post Danmark will continue to offer single-piece items (letters and parcels) in the counterfactual for 2020 as, unlike the situation pertaining at the moment when the USO compensation for 2017-2019 was notified to the Commission, the distribution of single-piece items is now profitable in the factual scenario for 2020. The current profitability of single-piece items is the result of a combination of lower quantities against higher prices and the implementation of a new production model. For this reason, the postal outlets are retained; however, on smaller islands without a fixed link, the product offering in the outlets will be limited compared to the factual scenario. Letters and parcels can still be picked up at, and/or sent from, an outlet; however for example a parcel label should be purchased online, via an app, or at a postal outlet on the mainland. It would no longer be possible to buy such a label on a smaller island without a fixed link.

5.2.2. *Impact of downsizing on market share*

- (160) Denmark explains that the Czech Post case to which the interested parties refer (recital (46)) shows that closure of certain post offices in the counterfactual scenario may lead to a drop in volume, as certain customers would switch to competitors and some customers would choose to reduce their demand. However, Post Danmark does not close any post offices (or “outlets”) in the counterfactual scenario (recital (159)) and therefore Denmark considers that the Czech Post case is not relevant for the NAC calculation of Post Danmark’s USO for 2020.
- (161) Denmark agrees that the reduced service level in the counterfactual scenario, as a result of optimising the business letter service, would lead to a drop in volume. This would result in lost revenue for both USO products and non-USO products. Denmark submits that it has incorporated forgone revenue for both priority business letters and economy business letters in the NAC.

5.2.3. *Intangible benefits*

5.2.3.1. Ubiquity

- (162) Insofar as ubiquity is concerned (Section 3.2.5.1), Denmark refers to the conclusions of the General Court in case T-561/18. In that case, the General Court considered that the evidence presented by the applicants had not established that an intangible benefit linked to ubiquity should be included in the NAC calculation for the 2017-2019 period⁸⁴. As the interested parties rely on the same evidence, Denmark considers that the same conclusion should be drawn in the present case.
- (163) In addition, and this applies to all potential intangible benefits, ubiquity should only be included as an intangible benefit in the NAC calculation to the extent that Post Danmark would not maintain ubiquity in the absence of the USO and provided that Post Danmark has an advantage from such ubiquity. As Post Danmark maintains

⁸⁴ Judgment of 5 May 2021, *ITD, Brancheorganisation for den danske vejgodstransport A/S and Danske Fragtmænd A/S v Commission*, Case T-561/18, EU:T:2021:240, para 159.

ubiquity in the counterfactual scenario (geographic coverage is the same) mainly due to its parcel activities, the ubiquity does not result as such from the USO, but from other activities that will be maintained in the counterfactual. In this respect, Denmark points out that most of the evidence⁸⁵ provided by the interested parties to show that Post Danmark should have included ubiquity as an intangible benefit in the counterfactual relates to parcels and this would only support Denmark's argument. Another piece of evidence⁸⁶ is outdated and does not take into account the digitalisation carried out over since 2000.

- (164) As to another study from ARCEP⁸⁷ to which interested parties refer, Denmark explains that this study rather supports the assumption not to give any value to ubiquity in the counterfactual scenario. Indeed, the report found that, in a counterfactual scenario, the ubiquity of La Poste (the French postal company) would not be fundamentally changed and therefore any ubiquity resulting from the USO is not an intangible benefit for the purpose of calculating the NAC⁸⁸. The ARCEP report therefore only supports the conclusions of the General Court in paragraph 154 of T-561/18, namely that it must be considered whether ubiquity constitutes an intangible benefit, and that it should not be systematically considered as a benefit to be deducted in the NAC.
- (165) The IBPT report⁸⁹ submitted by ITD also support that conclusion as, following a specific assessment of Bpost's situation, it was found that ubiquity *does not* provide an intangible benefit to Bpost, because the only advantage Bpost obtains from being required to provide its services on the entire territory of Belgium, is increased volumes, which is a benefit captured in the counterfactual scenario⁹⁰.

5.2.3.2. Corporate reputation and brand value

- (166) As to whether corporate reputation is an intangible benefit for NAC purposes (Section 3.2.5.2), Denmark notes that there is no positive value in being the universal service provider in Denmark. Denmark acknowledges that this might however be different in other countries. In Denmark, service levels have been reduced (instead of day-to-day delivery there is now 5-day distribution) and prices have increased. This had led the general public to associate Post Danmark with an expensive and slow service. This also has an effect on parcels, for which day-to-day delivery exists as long as it is not a "maxi letter" which falls under the 5-day distribution.
- (167) Denmark considers that different analyses support the view that Post Danmark's corporate reputation is weak:
- (1) An image analysis conducted by Reputation Institute in 2019⁹¹ shows that PostNord's (Post Danmark operates under the name "PostNord" in Denmark) corporate brand performance is weak and that the brand equity has eroded over

⁸⁵ Quote from PostNord AB's 2017 Annual and Sustainability report (page 6) and the study from WIK Consult from 2021 (footnote 40).

⁸⁶ Report from Copenhagen Economics from 2008.

⁸⁷ ARCEP, Définition, typologie et méthodologie d'évaluation des avantages immatériels dans le cadre du Service Universel Postal" (2010).

⁸⁸ See footnote 87, page 42.

⁸⁹ IBPT, "Communication du conseil de l'IBPT du 21 May 2014 concernant la vérification du calcul du coût net du service universel postal en Belgique" (2014).

⁹⁰ See footnote 89, page 99.

⁹¹ Reputation Institute, PostNord Corporate Brand, In context of the 50 most prominent corporate brands, 22 May 2019.

the years. The Reputation Institute concludes that, when compared to its competitors, PostNord has a much lower brand strength, and that even newly established brands in the sector enjoy higher support. Furthermore, Reputation Institute recommends a significant increase of [...] going forward, as the current brand strength is a barrier to [...] or even [...].

- (2) A ranking provided by the Danish IFO Image Analysis shows that PostNord has scored relatively low in overall image since 2009 and that, since 2017, PostNord has maintained an absolute bottom position as the Danish company with the worst image of all companies included in the analyses.
- (168) In addition, Denmark notes that it is not correct that Post Danmark has the exclusive right to use the word “Danmark”. Under the UPU rules and the Postal Act, the stamps issued by Post Danmark need to contain the word “Danmark”; however, this is not an exclusive right more generally.

5.2.3.3. Mailboxes

- (169) Concerning the claim that Post Danmark has the right to install mailboxes at public premises (Section 3.2.5.3), Denmark indicates that Post Danmark needs to apply to the relevant authorities or companies that own the building, if it wants to install mailboxes on this building⁹². Roadside-installed mailboxes must be approved by local authorities. In general, all postal companies have the right to install mailboxes under certain conditions⁹³.

5.2.3.4. Stamps

- (170) The interested parties claim that unused stamps and stamps kept for philately purposes should be included as an intangible benefit in the NAC calculation and refer to the Commission decision from 2018 concerning Czech Post (Section 3.2.5.4).
- (171) In the counterfactual scenario, Post Danmark would either continue to issue stamps (e.g. marked “PostNord” instead of “Danmark”) and maintain its philately products or shift to labels instead of stamps. To be conservative, however, Post Danmark agrees to deduct an advantage in the form of unused stamps and philately.
- (172) In connection with Post Danmark’s annual accounts, Post Danmark’s liability is calculated in the form of customers’ unused stamps. For 2020, the amount has been settled at DKK 30 million. Denmark acknowledges that the interest-free loan that Post Danmark thereby obtains (in the form of unused stamps) is a benefit for Post Danmark. The benefit is calculated as the interest cost of an interest bearing loan of the same value as Post Danmark’s liability in the form of unused stamps. The interest rate is conservatively set at [0-5] %, and the value is therefore approx. DKK [...] in 2020:
- (173) Post Danmark considers the interest rate of [0-5] % to be conservative since it was based on a transfer pricing analysis of an intergroup loan of a considerable larger size than the 30 million DKK for unused stamps. Post Danmark has obtained specific information from PostNord Group of a loan based on the following assumptions:
- (1) start date of 1 January 2020;
 - (2) term of two years;
 - (3) principal of DKK 30 million.

⁹² General administrative order no. 727 on postal delivery and postal companies, section 13(2)

⁹³ General administrative order no. 727 on postal delivery and postal companies, section 13(1).

- (174) On this basis, Post Danmark has been provided with loan information on the following terms:
- (1) Working capital credit facility Cibor⁹⁴: [...]W⁹⁵ + [0-5] %
 - (2) A fixed interest rate of [0-5] % per year.
- (175) It follows that a loan of DKK 30 million would have a fixed interest rate of [0-5]% per year, which is well below the applied interest rate of [0-5] % per year. The resulting benefit amounts to DKK [...].
- (176) If Post Danmark shifted to labels, it must be assumed that unused labels would also exist. Therefore, including the whole benefit of DKK [...] is very conservative according to Denmark.
- (177) In addition, Denmark has calculated the profit for philately at DKK [...] million per year. Turnover on stamps, yearbooks, annual folders, etc., which are not used for franking, is in the order of DKK [...] million per year. This turnover is composed of DKK [...] million for the actual philately products and DKK [...] million for stamps that are not used, due to their apparent philatelic value⁹⁶, either because they are collected or lost without being used. To calculate the profit/loss the relevant costs that must be included are presented in **Table 2**.

Table 2 – Relevant costs to calculate benefit resulting from philately

Profit / Loss philately	DKK million
Turnover	[...]
Production of philately products	[...]
Design of stamps	[...]
Shipment	[...]
Customer line	[...]
Overhead	[...]
Profit/loss	[...]

5.2.3.5. Economies of scale

- (178) In regard to the comments made by the interested parties concerning the economies of scale that Post Danmark would enjoy because it uses its USO-network to distribute non-USO products (Section 3.2.5.5), Denmark states that economies of scale should only be included as an intangible benefit in the NAC calculation if it would not be maintained in the absence of the USO.

⁹⁴ Copenhagen Interbank Offered Rate.

⁹⁵ 'W' means weekly reference rate.

⁹⁶ To be differentiated from the unused stamps in recital (172).

- (179) In the counterfactual scenario, Post Danmark would maintain its nationwide network to distribute parcels, and Post Danmark would therefore have the same economies of scale as in the factual scenario.
- (180) Concerning the DPD Network⁹⁷ (recital (58)), Denmark notes that those activities are completely separate from Post Danmark's USO activities and based on an agreement with PostNord Group. The DPD network will be maintained in the counterfactual as it is currently operated in the factual scenario.
- (181) As to the article from 6 June 2017 concerning a new parcel centre in HI-Park, Herning (recital (58), footnote 45), Denmark explains that the parcel centre supports the strong growth experienced by Post Danmark in logistics, parcel distribution (mainly from e-commerce), and cargo. That article therefore only supports the view that Post Danmark would maintain its economies of scale in the counterfactual scenario.
- (182) As regards letters, the drastic decline in the letter volume in recent years has been a significant challenge for Post Danmark, as Post Danmark has many fixed costs that do not vary depending on how much mail is sent. Therefore, the costs per letter distributed by Post Danmark has risen sharply. Post Danmark's size has thus rather presented a substantial disadvantage as it has not been possible to adjust operations to face market developments. Therefore, contrary to the allegations of the interested parties, Post Danmark has not benefitted from economies of scale because of the USO.

5.2.3.6. Bargaining power

- (183) Bargaining power (see Section 3.2.5.6) should, according to Denmark, only be included in the NAC if it would worsen or disappear in the counterfactual. This is, according to Denmark, not the case and interested parties have not submitted evidence to the contrary.
- (184) Post Danmark's bargaining power is, according to Denmark, not related to the USO but to Post Danmark's size and the size of the PostNord Group. Therefore, Post Danmark would have the same bargaining power in the counterfactual scenario.
- (185) Concerning the argument taken from the 2011 ERGP report and the 2013 Frontier Economics report that, because of the USO, Post Danmark has easier access to politicians and stronger influence over the regulatory regime than its competitors, Denmark notes that those reports are 9 to 11 years old and outdated as they do not take the major digital disruption of the Danish postal market into account. Furthermore, the reports simply state that there may be benefits associated with being the universal service provider in terms of having influence on the regulatory authorities and politicians. The reports also state that there is "little evidence as to the benefits of this", and that there is no guidance on recommended types of evaluation methods, as more research is needed. In Denmark's view, such vague and open-ended statements do not constitute evidence.
- (186) In any event, Denmark submits that it keeps its ownership of Post Danmark and the regulatory regime in the postal sector legally and functionally separate. Contrary to the interested parties' allegations, Post Danmark does not have any particular political clout in the current political climate. Rather, the decline in the letter volume

⁹⁷ ITD refers to an article that is from 4 June 2012.

and the need for compensation for carrying out the USO has triggered a political debate on the future of the postal service.

- (187) Post Danmark does not have bargaining power beyond that of other large companies. On the contrary, negotiations with trade unions are affected by the expectation that Post Danmark will continue to live up to the highest standards in relation to, for example, wages. This weakens Post Danmark's bargaining position. The same applies to suppliers: Post Danmark does not have bargaining power beyond that of other large companies. On the contrary, Post Danmark is subject to Directive 2014/25/EU of the European Parliament and of the Council⁹⁸ (the Utilities Directive), and all contracts with suppliers are therefore subject to public procurement procedures.

5.2.3.7. Advertising effects

- (188) Insofar as advertising effects are concerned (Section 3.2.5.7), Denmark considers that it is clear, from recitals (134), (135) and (136) of the opening decision, that the intellectual property assets related to the USO resulting mainly from advertising on visible contact points (e.g. mailboxes, installations for customers' self-service collection of parcels, outlets, and some of Post Danmark's vehicles) have been taken properly into account in the NAC calculation. The advertising value of Post Danmark's contact points related to the USO has been calculated by the external consulting company Annalect A/S, which is specialised in marketing and consumer behaviour. Annalect A/S has assessed thoroughly and on an objective basis which contact points that should be included in the calculation.

5.2.3.8. Demand complementarities

- (189) Denmark considers that demand complementarities should only be included as an intangible benefit in the NAC calculation if they would not continue to exist in the counterfactual scenario (Section 3.2.5.8). However, Post Danmark's main products, letters and parcels, would be kept in the counterfactual scenario and any demand complementarities between these products would therefore continue to exist.
- (190) As regards other products, it could theoretically be possible to establish an intangible benefit in the form of demand complementarities. However, there is no evidence that there is any actual benefit. In effect, demand complementarities may just as well constitute a disadvantage if sales of profitable products lead to increased sales of non-profitable products. Denmark explains that Post Danmark has seen no evidence of a relevant, significant level of cross-selling between Post Danmark products when individuals deliver post in an outlet, or evidence that individuals experience a spontaneous demand for other Post Danmark products in this situation. When individuals put post in a mailbox, other products are simply not sold.
- (191) With business customers, sales processes involve professional buyers and decision makers in the customer's business. However, according to Denmark, Post Danmark has seen no evidence of causality to the effect that the sales work of one product generates a spontaneous demand for other Post Danmark products. This is even more so as there may be different decision-makers in the customer's business in relation to different postal products.

⁹⁸ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

5.2.3.9. Parking and stopping exemptions

(192) Denmark clarifies that Post Danmark does not benefit from any exemptions from bans on the parking and stopping of vehicles (Section 3.2.5.9). There are no provisions in the Postal Act or the Road Traffic Act (“Færdselsloven”) that provide Post Danmark with such exemptions. The interested parties seemingly base their claim on reports of ARCEP from 2010 and Frontier Economics from 2013, which state that universal service providers may enjoy such benefits and that universal service providers in some countries indeed enjoy such benefits. However, this is not the case for Post Danmark in Denmark.

5.2.3.10. Access to public registers and customer/demand trends

(193) Regarding the claim that Post Danmark has exclusive rights to access public registers regarding customer and demand information which can be used to market postal products more efficiently (Section 3.2.5.10), Denmark notes that *all* postal service providers can obtain address information from e.g. the Danish Central Personal Register (CPR) for a fee. However, only Post Danmark, as universal service provider, can receive addresses from CPR on persons who entered Denmark and newborns. In order to ensure equal access to address information, the Postal Act stipulates that the universal service provider, Post Danmark, is obliged to offer address information to other postal companies on non-discriminatory terms and prices based on costs only. Therefore, Post Danmark does not have any exclusive right or benefit. In addition, Denmark adds that the address information must not be used for marketing purposes⁹⁹.

5.2.4. *USO is an advantage*

(194) Reacting to the claims of interested parties in recitals (67) and (68), Denmark has explained that Post Danmark does not generate a net income from the USO. In 2020, the USO services returned a net deficit of DKK 10 million (recital (153), footnote 81), even when taking into account the USO compensation. Without the USO compensation for 2020, the net deficit is DKK 233 million.

5.2.5. *Stamps revenue*

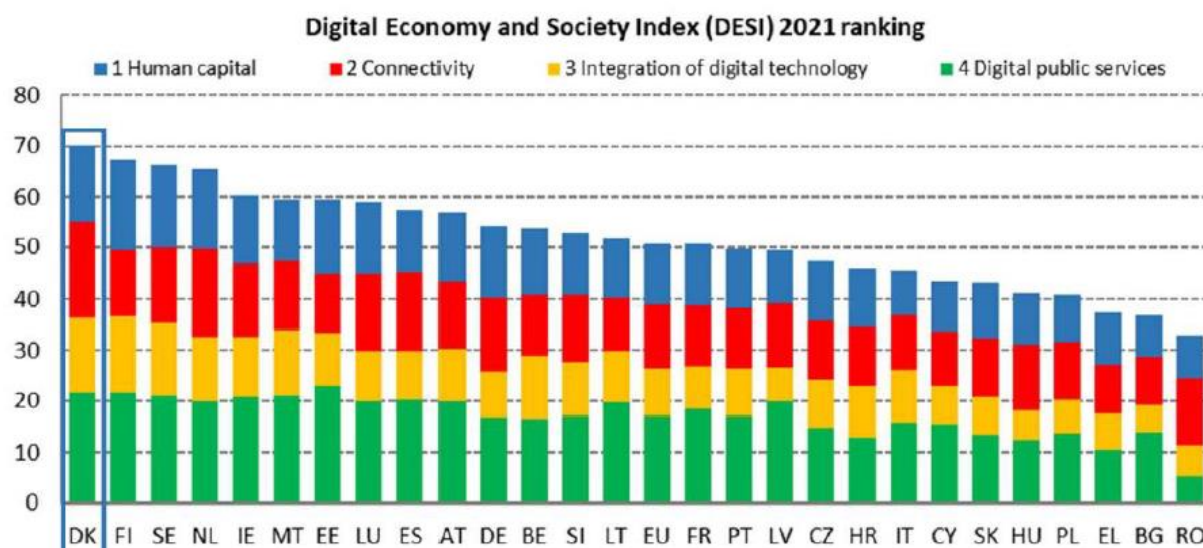
(195) Denmark considers that the interested parties misunderstand the role of stamps in Post Danmark’s operations (recital (69)). In no scenario do Post Danmark’s sources of revenue hinge on issuing stamps. A stamp is a means of advance payment for the distribution of a service and shows that the service has been paid for by the customer when placed on for example (an envelope for) a single-piece letter. There are also other ways to pay for the distribution of a letter, such as postage labels and postage codes. Today, postage codes are frequently used instead of stamps. Stamps cannot be used for bulk mail.

(196) It follows that the issuing of stamps also has no bearing on the price of Post Danmark’s letter services. In a hypothetical scenario where Post Danmark would discontinue the sale of stamps, this will not affect the price for sending letters. The price for domestic single-piece letters up to 50 grams must be approved by the Danish Civil Aviation and Railway authority. This mandatory approval keeps prices down and prevents Post Danmark for example from introducing “zone prices”. In the counterfactual scenario, Denmark has chosen a conservative approach by not raising the prices of single-piece letters up to 50 grams and thereby nor raising revenue.

⁹⁹ See comments to section 13 in the Postal Act.

- (197) When reacting to the graph that ITD has provided (recital (69)) showing the nominal price for letter mail within Europe, Denmark notes that ITD has not provided a source for this table. In addition, Denmark notes that the table does not show the prices for domestic single-piece 50-gram letters, it instead assumes that the table must reflect the prices of either the premium letter service (“Quick letter”), which is not part of the USO or the price of cross-border mail¹⁰⁰. Denmark does acknowledge that prices for USO letters in Denmark are generally higher than in other EU Member States. This is, according to Denmark, due to the “digitisation like no other EU Member State in the last two decades” in Denmark. Indeed, Denmark is top-ranked in the Commission’s Digital Economy and Society Index, see **figure 9**.

Figure 9 – Digital Economy and Society Index (DESI) 2021 ranking¹⁰¹



- (198) Denmark explains that, in the same index, it is stated that Denmark has the most e-government users in the EU (92 % of internet users use e-government”). This has led to a significant drop in letters, more than in other Member States and Post Danmark has been forced to increase prices more than its counterparts in other Member States have had to do in order to continue to be able to cover the fixed costs of meeting USO requirements.

- (199) As to whether the prices of domestic 50-gram letters are “unreasonably high” as claimed by ITD with reference to the Rigsrevisionen’s report, Denmark states that the Rigsrevisionen did not state that the prices are “unreasonably high”. In addition, Denmark notes that the Civil Aviation and Railway Authority has used a new procedure to approve a price increase of DKK 11 to DKK 12 in 2022. The new procedure looks at the profits of other European postal providers for letter prices, and those were in the range of 8.1 % to 26 %. The price increase from DKK 11 to DKK 12 resulted in a forecasted profit in 2022 of [>5] % to [<15] %. The price in 2020 was DKK 10 with an estimated profit of [$5-10$] %. Therefore, the new procedure used for the increase in 2022 shows that the price in 2020 does not lead to disproportionate profits. Therefore, there are no indications that Post Danmark has

¹⁰⁰ Note from the Commission: the title of the table is “nominal price for letter mail within Europe”, so it appears to be the prices for cross-border mail. This is confirmed by the following document prepared by the company Deutsche Post DHL: <https://www.dpdhl.com/content/dam/dpdhl/en/media-center/media-relations/documents/2020/dp-letter-prices-in-europe-2020.pdf>, page 12.

¹⁰¹ See the report for Denmark available on this website: <https://digital-strategy.ec.europa.eu/en/policies/countries-digitisation-performance>, page 3.

been charging unreasonably high prices or that the prices in the factual scenario do not reflect market prices.

5.2.6. *Alleged double counting*

- (200) Denmark agrees with ITD that the NAC should not include double counting. For this reason, particular attention was given to ensuring that it does not take place and that forgone revenues are not underestimated. ITD refers to the category “franking” in the NAC and that this might cover the same service as is covered by export mail, import mail, other mail, export parcels and import parcels.
- (201) Insofar as franking is concerned, Denmark gives the example of the discontinuation of the international postal services under the UPU Convention and other international postal agreements. The discontinuation of this service means an estimated forgone revenue of DKK [...] million, split among Export Mail (reduction in revenues from DKK [...] million to DKK 0), Import Mail (reduction in revenues from DKK [...] million to DKK 0), Export Parcels (reduction in revenues from DKK [...] million to DKK [...] million), Import Parcels (reduction in revenues from DKK [...] million to DKK [...] million) and other franking (reduction in revenues from DKK [...] million to DKK [...] million).

5.2.7. *Benchmarking exercise*

- (202) When Post Danmark is benchmarked against other operators (recitals (142) to (145) of the opening decision), Denmark explains that, contrary to what ITD asserts, the undertakings against which Post Danmark is benchmarked cannot, and do not have to, be the same as Post Danmark in terms of business structure and profitability. Specifically, as regards profitability, Denmark explains that the whole point of the benchmarking is to compare the actual profitability of other operators to the profitability in the counterfactual scenario of Post Danmark. Using the actual profitability of Post Danmark is irrelevant as that profitability is affected by the USO due to which Post Danmark’s operations could not be optimised.
- (203) Denmark explains that, while ITD (wrongly using the factual scenario) adds an EBIT of -4.4 % for the USO to an EBIT of -6.9 % for the non-USO (leading to an EBIT margin of -11.3 %), the correct way of calculating an overall EBIT is by weighing the different figures. Doing this would lead to a total EBIT of -5.2 % for the factual scenario.
- (204) As to the undertakings chosen for the benchmarking exercise, Denmark explains that Posten Norge, Deutsche Post DHL Group and Danske Fragtmænd have a comparable business structure and they all operate in the postal market. Posten Norge and Deutsche Post DHL Group still distribute a large number of letters, which makes them suitable for comparison as regards EBIT, labour productivity and cost effectiveness. In the counterfactual scenario Post Danmark will still provide letter delivery services. Danske Fragtmænd is relevant as it is one of the larger players on the Danish market for freight and parcel distribution and in Post Danmark’s counterfactual scenario, logistics revenue and the associated earning represent a larger share of the revenues than is the case in the factual scenario. This implies that Post Danmark would be more comparable to Danske Fragtmænd.
- (205) The benchmarking is done at group level as the companies are selected based on their total portfolio of products concerning mail, parcels and logistics. Benchmarking at segment level is not always possible as the accounts for each segment do not always use full cost distribution. Only for Deutsche Post DHL would this have been

possible insofar as letter and parcel services are concerned, leading to an EBIT of 7.9 % for 2019 for letters and parcels, compared to 6.5 % for the Group. It follows that the EBIT margin for letter and parcel services is in fact **higher** than the EBIT margin at group level.

- (206) To further enhance the robustness of the benchmarking, Denmark has also looked at the EBIT margin of General Logistics Systems Denmark A/S (GLS), which is Post Danmark's largest competitor on the Danish parcel market and therefore also suitable for comparison. GLS' EBIT for 2020 is 12.6 %¹⁰².

5.2.8. *Sorted-magazine mail*

- (207) Concerning the criticism of Danske Medier that the USO compensation is too high because Post Danmark is allowed to have artificially low USO prices for "Sorted-Magazine Mail", Denmark explains that, contrary to what Danske Medier claims, the price for Sorted-Magazine Mail in 2020 was DKK [5-10] per unit (EUR [0.669-1.339]) and not DKK 3.50 (EUR 0.47 ct). The price of DKK 3.50 only applies for customers that have more than 100 000 items that weigh 0.06 kg or less. This price would also only apply for the share of the lot that exceeds 100 000 items as a step-by-step model is used. For example, for the first 1 500 items, a price of DKK 8.66 (EUR 1.16) was charged in 2020¹⁰³. Considering that the price setting is different from what Danske Medier alleges, Denmark considers that Danske Medier's criticism should be rejected.

5.3. **Compliance with Directive 97/67/EC – exclusive rights**

- (208) Denmark indicates that Post Danmark does not have an exclusive right to issue and sell stamps. Rather it has the obligation to issue and sell stamps (Section 20 of the Postal Act¹⁰⁴). Directive 97/67/EC provides, in Article 8 thereof, that Article 7 thereof (which prohibits exclusive and special rights as means of financing the USO), does not prevent Member States from organising the issuance of stamps in accordance with national legislation¹⁰⁵. Therefore, even if it would be an exclusive right (which it is not) to issue stamps, then it is in line with Directive 97/67/EC.

6. **ASSESSMENT OF THE AID**

6.1. **Lawfulness**

- (209) In its opening decision, the Commission considered that Denmark had not respected the notification obligation by granting part of the 2020 USO compensation notified

¹⁰² Denmark has also provided updates of the EBIT for the other three comparators: Danske Fragtmænd A/S 1.3 %, Posten Norge AS 5.9 %, Deutsche Post DHL Group 7.3 %. All figures, including GLS, are derived from the annual reports of these companies.

¹⁰³ The most up to date prices are published in a transparent manner and available at: <https://www.postnord.dk/en/sending/prices>. The prices for 2020 are no longer available online, but were submitted by Denmark.

¹⁰⁴ To further substantiate this, Denmark refers to the political agreement of 27 May 2010 on ensuring universal service in a liberalised market, which was attached to the preliminary works of the Postal Act adopted on 21 December 2010 (LOV nr 1536 af 21/12/2010) and contains the following wording: "The designated Universal Service Provider... has an exclusive right and an obligation to issue stamps with 'Denmark' printed on them" (translation provided by Denmark). The original reads as follows: "*Den til enhver tid befordringspligtige virksomhed ..., har eneret og forpligtelse til at udstede frimærker påtrykt 'Danmark'*". Only the obligation to issue stamps is mentioned in the wording of the Postal Act (and not the exclusive right). In addition, the licence for Post Danmark to provide postal services mentions only an obligation to issue stamps.

¹⁰⁵ Judgment of 2 May 2019, *Asendia Spain*, C-259/18, EU:C:2019:346, para. 37.

under the SGEI Framework before Commission approval (recital (60) of the opening decision).

- (210) Indeed, Denmark has already granted and paid out half of the notified amount (EUR 15 million) to Post Danmark. According to Denmark, that part of the compensation was granted initially under the SGEI Decision, which allows aid for SGEIs to be granted without notification to the Commission as long as the aid does not exceed an annual amount of EUR 15 million (Article 2(1)(a) of the SGEI Decision) (see also the agreement covering the first half of 2020 referred to in recital (22)(4)).
- (211) Denmark explained that, at the time, no decision had been made as regards additional USO compensation to Post Danmark after June 2020 and beyond the amount of EUR 15 million. Moreover, Denmark indicated that there was no political willingness to finance the USO from the State budget beyond 30 June 2020 and that alternatives were being considered (see recital (79)). On that basis, Denmark submitted that USO compensation for the first half of 2020 should not be considered unlawful. As regards the USO compensation for the second half of 2020, Denmark has explained that in the legal basis the granting of the compensation is subject to Commission approval (recital (22)(5)).
- (212) The Commission takes note of Denmark's explanations but refers to the case-law of the Court of Justice of the European Union, pursuant to which State aid exemption regulations and decisions have to be applied restrictively¹⁰⁶. Hence, the SGEI Decision can only be used to the extent that the beneficiary receives a maximum of aid of EUR 15 million per year. It is the responsibility of the Member State at the point of using the SGEI Decision to ensure that the conditions set out in that Decision will be respected.
- (213) The Commission also considers that the USO compensation for the first and second halves of 2020 cannot be assessed separately. Indeed, despite the existence of two different licences, Post Danmark was entrusted with a single SGEI notably as the content of the USO is exactly the same in the two successive periods¹⁰⁷.
- (214) Denmark has notified the compensation for that single SGEI in 2020 under the SGEI Framework but has already granted and paid out part of the amount which has led the Commission to conclude that the notification obligation was not respected. Denmark made an additional argument, namely that the SGEI Decision applies to aid already granted (recital (81)) and that, at the moment of the opening decision, the only aid granted was the amount of EUR 15 million for the first half of 2022. Hence, according to Denmark, at least until the moment it implements further aid for the provision of the USO by Post Danmark, there is no unlawful aid. Further aid will

¹⁰⁶ Judgment of 5 March 2019, *Eesti Pagar AS v Ettevõtlike Arendamise Sihtasutus, Majandus- ja Kommunikatsiooniministeerium*, C-349/17, ECLI:EU:C:2019:172, para 60.

¹⁰⁷ The Commission considers that the architecture of the SGEI package would be rendered ineffective if it were to be considered that entrusting exactly the same service over two different consecutive periods (within the same year) suffices to define two separate SGEIs, artificially dividing the year and allowing the Member State to grant (and pay out) aid of up to EUR 15 million, irrespective of the overall amount of the compensation eventually granted for the whole year. Article 2(1), point (a), of the SGEI Decision, refers indeed to “*compensation not exceeding an annual amount of EUR 15 million for the provision of services of general economic [...]*” (emphasis added). The Commission recalls that, below the threshold of EUR 15 million per year, the SGEI Decision applies, with no notification obligation and lighter compatibility rules; over this threshold, the stricter requirements of the SGEI Framework must be respected.

only be implemented according to Denmark if the Commission were to approve such aid. The Commission does not agree with that reasoning. First, the verification that the conditions of the SGEI Decision are fulfilled necessarily has to take place before Member States decide to rely on the notification exemption allowed by the SGEI Decision. This is indicated in Article 3 of the SGEI Decision which provides that a public service compensation that meets the requirements in that decision is exempted from the prior notification obligation. Hence, the assessment of the conditions has to take place in advance in order to determine if there is a need to notify or not. Member States therefore have to ensure that the beneficiary will receive not more than EUR 15 million in one year before relying upon the SGEI Decision. Since Denmark notified the USO compensation for 2020 in an amount higher than EUR 15 million, the Commission must necessarily assume that this compensation will be granted in its assessment and therefore that Post Danmark will receive more than EUR 15 million in one year. It automatically follows from this that Denmark has not ensured, when applying the SGEI Decision, that its conditions would be respected.

- (215) Therefore, the Commission maintains its preliminary conclusion that the notification obligation was not respected, despite the additional explanations provided by Denmark.

6.2. Existence of aid

- (216) Pursuant to Article 107(1) TFEU, a measure qualifies as State aid if the following cumulative conditions are met: (i) it has to be imputable to the Member State and granted out of State resources, (ii) it has to confer an economic advantage to an undertaking, (iii) the advantage has to be selective, and (iv) the measure has to distort or threaten to distort competition and affect trade between Member States.

6.2.1. Measure imputable to the State and through State resources

- (217) In order to be qualified as State aid, a measure must be imputable to the State and granted directly or indirectly by means of State resources. State resources include all resources of the public sector¹⁰⁸ including resources of intra-State entities (decentralised, federated, regional or other)¹⁰⁹.
- (218) The compensation for the provision of the USO has already partly been paid by Denmark from the national budget (see recital (209)). The remaining part will also be paid by Denmark from its own budget, as established by the different relevant legal bases (see recital (22)). Moreover, the measure is imputable to the State as it is granted on the basis of State legislation (recital (22)).
- (219) Therefore, the notified measure is imputable to the State and is granted through State resources.

6.2.2. Measure granted to an undertaking

- (220) Public funding granted to an entity can only qualify as State aid if that entity is an undertaking within the meaning of Article 107(1) TFEU. The Court of Justice of the

¹⁰⁸ Judgment of 12 December 1996, *Compagnie nationale Air France v Commission*, Case T-358/94, EU:T:1996:194, para 56.

¹⁰⁹ Judgment of 14 October 1987, *Federal Republic of Germany v Commission*, Case 248/84, EU:C:1987:437, para 17; Judgment of 6 March 2002, *Territorio Histórico de Álava - Diputación Foral de Álava (T-92/00), Ramondín, SA and Ramondín Cápsulas, SA (T-103/00) v Commission*, Joined Cases T-92/00 and T-103/00, EU:T:2002:61, para 57.

European Union has consistently defined undertakings as entities engaged in an economic activity¹¹⁰. The qualification of an entity as an undertaking thus depends on the nature of its activity, with no regard to the entity's legal status or the way in which it is financed¹¹¹. An activity must generally be considered to be economic in nature where it consists in offering goods and services on a market¹¹².

- (221) In the present case, Post Danmark offers postal services against remuneration on the Danish postal market and in competition with other providers. For this reason, with regard to the activities financed by the USO compensation, Post Danmark qualifies as an undertaking in the meaning of Article 107 (1) TFEU.

6.2.3. *Advantage*

- (222) An advantage, for the purposes of Article 107(1) TFEU, is any economic benefit which an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention¹¹³. Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present. Only the effect of the measure on the undertaking is relevant, not the cause or the objective of the State intervention.

- (223) By receiving compensation for the provision of the USO in 2020, there is no doubt that Post Danmark's financial situation has improved. For this reason, there is a priori an advantage for Post Danmark as a result of the compensation.

- (224) However, pursuant to the judgment of the Court in the *Altmark* case¹¹⁴, the granting of an economic advantage can be excluded for compensation for costs incurred to provide an SGEI if the following four cumulative conditions are met:

- (a) the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined;
- (b) the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;
- (c) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public services obligation, taking into account the relevant receipts and a reasonable profit;
- (d) where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure that would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of

¹¹⁰ Judgment of 12 September 2000, *Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten*, Joined Cases C-180/98 to C-184/98, EU:C:2000:428, para 74.

¹¹¹ Judgment of 23 April 1991, *Klaus Höfner and Fritz Elser v Macrotron GmbH*, Case C-41/90, EU:C:1991:161, para 21; Judgment of 12 September 2000, *Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten*, Joined Cases C-180/98 to C-184/98, EU:C:2000:428, para 74.

¹¹² Judgment of 16 June 1987, *Commission v Italian Republic*, Case 118/85, EU:C:1987:283, para 7.

¹¹³ Judgment of 11 July 1996, *Syndicat français de l'Express international (SFEI) and others v La Poste and others*, Case C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of 29 April 1999, *Kingdom of Spain v Commission*, Case C-342/96, ECLI:EU:C:1999:210, para 41.

¹¹⁴ Judgment of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht*, Case, C-280/00, EU:C:2003:415, paras 87 to 95.

compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, which is well-run and adequately provided within the same sector, would incur, taking into account the receipts and a reasonable profit from discharging the obligations.

- (225) Due to the cumulative nature of the four *Altmark* criteria, if any of these criteria are not fulfilled, the compensation will be deemed to constitute an advantage within the meaning of Article 107(1) TFEU. The Danish authorities acknowledge that the fourth *Altmark* criterion is not fulfilled. The Commission also considers that the fourth *Altmark* criterion is not met since, in the absence of a public procurement procedure that allows for the selection of the tenderer capable of providing the service at the least cost to the community, the Danish authorities have failed to demonstrate that the level of compensation was determined on the basis of the analysis of the costs of a well-run undertaking within the same sector, taking into account the receipts and a reasonable profit.
- (226) Since at least one of the four cumulative *Altmark* conditions is not fulfilled in the present case, the compensation for delivering the USO confers an advantage on Post Danmark.

6.2.4. *Selectivity*

- (227) Article 107(1) TFEU requires that, in order to be defined as State aid, a measure favours "certain undertakings or the production of certain goods". The Commission notes that the USO compensation will be granted to Post Danmark only. Given that the present case concerns an individual aid measure, the identification of the economic advantage (see recitals (222) to (226)) is sufficient to support the presumption that the measure is selective¹¹⁵. In any event, it does not appear that other undertakings in the same factual and legal situation benefit from the same advantage or other sectors in a comparable situation benefit from such advantage. Hence, the measure is selective within the meaning of Article 107(1) TFEU.

6.2.5. *Effect on trade and distortion of competition*

- (228) Public support to undertakings constitutes State aid within the meaning of Article 107(1) TFEU if it "distorts or threatens to distort competition" and insofar as it "affects trade between Member States".
- (229) A measure granted by a State is considered to distort or to threaten to distort competition when it is liable to improve the competitive position of the recipient compared to that of other undertakings with which it competes¹¹⁶. A distortion of competition is assumed when a State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition.
- (230) As regards the effect on trade, the case-law of the Court of Justice of the European Union has established that any grant of aid to an undertaking exercising its activities

¹¹⁵ See Judgment of 4 June 2015, *Commission v MOL Magyar Olaj- és Gázipari Nyrt*, C-15/14 P, EU:C:2015:362, para 60; Judgment of 30 June 2016, *Kingdom of Belgium v Commission*, C-270/15 P, EU:C:2016:489, para 49; Judgment of 13 December 2017, *Hellenic Republic v Commission*, T-314/15, EU:T:2017:903, paragraph 79.

¹¹⁶ Judgment of 17 September 1980, *Philip Morris Holland BV v Commission*, Case 730/79, EU:C:1980:209, para 11; Judgment of 15 June 2000, *Alzetta Mauro and others v Commission*, Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 EU:T:2000:151, para 80.

in the internal market can be liable to affect trade between Member States¹¹⁷. It is not necessary to establish that the aid has an actual effect on trade between Member States.

- (231) As regards the present case, the Commission observes that Post Danmark operates in the Danish postal market. The Danish Postal market has been liberalised since 2011 (see recital (13)) and Post Danmark therefore operates in competition with other providers.
- (232) Certain competitors of Post Danmark, in particular undertakings providing parcel delivery services, are part of international groups which also operate in other Member States¹¹⁸. In addition, Post Danmark's parent company (via its subsidiaries) is active in other Member States (e.g. Sweden, Finland).
- (233) Therefore, the public service compensation granted to Post Danmark strengthens its position vis-à-vis other postal undertakings competing in intra-Union trade.
- (234) The Commission concludes that the notified measure is liable to affect trade and distort competition.

6.2.6. *Conclusion on the existence of aid*

- (235) Based on the above, the Commission concludes that the compensation for Post Danmark for the delivery of the universal postal service in 2020 fulfils the criteria established in Article 107(1) TFEU and therefore, the measure constitutes State aid within the meaning of that provision. Denmark does not dispute that conclusion.

6.3. Compatibility

6.3.1. *Compatibility assessment under the 2012 SGEI Framework*

- (236) Considering that the USO compensation benefiting Post Danmark amounts to State aid within the meaning of Article 107(1) TFEU, its compatibility with the internal market needs to be assessed.
- (237) The Danish authorities notified the measure as compensation for delivering an SGEI, namely the USO, under the SGEI Framework based on Article 106(2) TFEU.
- (238) Article 106(2) TFEU provides that "undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union."
- (239) In accordance with that provision, the Commission may declare compensation for SGEIs compatible with the internal market, provided that certain conditions are met. The Commission has laid down the conditions under which it applies Article 106(2) TFEU in the 2012 SGEI Decision and the 2012 SGEI Framework.
- (240) The Danish authorities have notified compensation of DKK 225 million (approx. EUR 30 million). To the extent that the compensation to be granted to Post Danmark

¹¹⁷ Judgment of 17 September 1980, *Philip Morris Holland BV v Commission*, Case 730/79, EU:C:1980:209, paras 11 and 12; Judgment of 30 April 1998, *Het Vlaamse Gewest (Flemish Region) v Commission*, Case T-214/95, EU:T:1998:77, paras 48, 49 and 50.

¹¹⁸ Examples are UPS and GLS.

exceeds EUR 15 million per year, that compensation does not fall within the scope of the 2012 SGEI Decision, as set out in Article 2 thereof.

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

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

- (242) As indicated in recital 46 of the Commission's SGEI Communication¹¹⁹, Member States have a wide margin of discretion regarding the nature of services that could be classified as services of general economic interest. The Commission's competence is limited to checking that the margin of discretion is applied without manifest error as regards the definition of the SGEI and to assessing any State aid involved in the compensation. Paragraph 56 of the 2012 SGEI Framework confirms Member States' wide margin of discretion to define SGEI.
- (243) Paragraph 14 of the 2012 SGEI Framework states 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."
- (244) The USO as defined in Article 3 of Directive 97/67/EC is recognised as a genuine SGEI¹²⁰. As a result, Member States do not have to prove, by way of a public consultation or other appropriate instruments, that they have given consideration to public service needs when entrusting an operator with the USO as defined in Article 3 of that Directive.
- (245) The Danish authorities have demonstrated that the USO entrusted to Post Danmark corresponds to the minimum requirements outlined in Article 3 of Directive 97/67/EC (see recital (28) and (29) of the opening decision. In addition, the Danish authorities relied on the option set out in Article 3(5) of that Directive and increased the weight limit of universal service coverage for postal parcels weighing up to 20 kilograms, and on Article 12 thereof to impose uniform tariffs for single-piece items (letters and parcels) and for the delivery of items to the blind for free. The Commission considers that Denmark therefore does not have to prove, by way of a public consultation or other appropriate instruments, that it has given consideration to public service needs and concludes that the requirement set out in paragraph 14 of the 2012 SGEI Framework does not apply in this instance.

¹¹⁹ Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.01.2012, p. 4).

¹²⁰ Article 3(1) of Directive 97/67/EC provides: "*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.*"

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

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

(247) As required by paragraph 16 of the 2012 SGEI Framework, such entrustment acts have to specify, in particular:

- (1) the precise nature of the public service obligation and its duration;
- (2) the undertaking and territory concerned;
- (3) the nature of the exclusive rights assigned to the undertaking;
- (4) the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and
- (5) the arrangements for avoiding and repaying any overcompensation.

(248) In the present case, the different documents together forming the entrustment act of Post Danmark as described in recital (22) specify:

- (1) the USO is imposed on Post Danmark through the individual licences issued to Post Danmark in December 2019 and June 2020 and covers the period from 1 January 2020 to 31 December 2020 (recital (14) and recital (22)(1)). These licences extend the licence issued in May 2016, which was due to expire on 31 December 2019 and which establishes the terms for the provision of the USO;
- (2) the compensation mechanism is described in two decrees submitted by the Ministry of Transport, Construction and Housing to the Financial Committee of the Danish Parliament, covering 2020 (recitals (22)(2) and (22)(3)); and
- (3) as regards detailed principles for monitoring and reporting, including an ex-post control mechanism for the purpose of verifying that Post Danmark has not been overcompensated, those are described in the agreements referred to in recitals (22)(4) and (22)(5)).

(249) Considering the above, the Commission concludes that the entrustment of Post Danmark for 2020 is in line with the relevant requirements of the 2012 SGEI Framework.

6.3.1.3. Duration of the entrustment

(250) As indicated in paragraph 17 of the 2012 SGEI Framework, "the duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI."¹²¹

(251) As described in recital (14), Post Danmark's USO licence covers one year. While the Danish authorities have not provided any specific data on the depreciation period of the most significant assets used in the delivery of the USO, the Commission considers, with reference to the practice in other Member States, that an entrustment

¹²¹ Communication from the Commission: European Framework for State aid in the form of public service compensation (OJ C 8, 11.1.2012, p. 15).

period of only one year can be accepted¹²². Moreover, as regards Post Danmark, the Commission had previously accepted a longer duration of three years from 2017 to 2019 (see the 2018 Decision). The 2018 Decision was upheld by the General Court in case T-561/18.

6.3.1.4. Compliance with Directive 2006/111/EC

- (252) 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”¹²³.
- (253) In the opening decision, the Commission expressed doubts regarding Post Danmark’s cost allocation methodology, and thereby the separation of accounts of Post Danmark (recital (101) of the opening decision). Those doubts arose following a report from the Rigsrevisionen, which raised doubts about the regulatory supervision of Post Danmark’s accounts and the validation of the accounts by external auditors (recital (104) of the opening decision).
- (254) The Commission indicated that only if the Danish authorities provide the necessary information to allay the doubts that result from the Rigsrevisionen’s conclusions and only when the cost accounting is reliable, could it conclude positively on the fulfilment of the requirements in paragraph 18 of the SGEI Framework.

6.3.1.4.1. Assessment of compliance with Directive 2006/111/EC and doubts expressed in opening decision

- (255) Denmark has explained in greater detail Post Danmark’s cost allocation methodology in response to the opening decision, including examples (recitals (87) to (102)); its allocation of revenues (recital (103)); its separation of accounts (recitals (104) to (106)); and its reading of the Rigsrevisionen’s report and the follow-up that was given to it (recitals (107) to (116)). On this basis, the Commission considers that its doubts have been adequately addressed.
- (256) Indeed, first, Post Danmark uses generally acceptable cost allocation methods, namely the ABC methodology for core operational costs, direct analysis for other operational costs and the result of the ABC methodology for other costs (recitals (89) to (92)). By using this methodology, Post Danmark allocates proportionally common costs to USO and non-USO services based on appropriate drivers. The ABC methodology is a particular system of the fully distributed cost allocation method, which complies with the applicable provisions of the 2012 SGEI Framework and is also in line with the sector specific requirements on separate accounting laid down in Article 14 of Directive 97/67/EC. The Commission has recognized the appropriateness of the ABC methodology in previous decisions¹²⁴.

¹²² For example, in France (La Poste), Italy (Poste Italiane), Spain (Correos) and Greece (ELTA), the period of entrustment is up to 15 years.

¹²³ Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings.

¹²⁴ For example, Commission Decision of 1 December 2020, SA.55270 (2020/N) – Italy - State compensations granted to Poste Italiane SpA for the delivery of the universal postal service for the period 2020-2024, recital 66, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55270.

- (257) Second, the review carried out by Deloitte presented on 30 August 2021 (recitals (101) and (102)) also supports the conclusion that the cost allocation methodology and separation of accounts of Post Danmark are correct. This review concluded that Post Danmark uses comprehensive principles, methods and recording systems to calculate and allocate its costs between the USO and non-USO services.
- (258) Deloitte’s findings are further supported by Post Danmark’s auditor KPMG that, when auditing the accounts for 2020, confirmed that data was correctly registered and approved the accounts for 2020 (recital (118)).
- (259) Finally, the total costs and revenues allocated to USO and non-USO services and thereby the separation of accounts in 2020 presented in **Table 3** (see also recital (106)) shows that allocation of costs is broadly consistent with the share of revenues of the different activities which clearly contradicts the allegation that all common costs would be allocated to the USO. The ratios indicated (approx. 70 % USO and 30 % non-USO for both costs and revenues) are similar for other years. The data for all years since 2007 is publicly available on Post Danmark’s website¹²⁵.

Table 3: Post Danmark’s account separation

Year	USO Services		Non-USO services		Total	
	Operating revenues	Operating costs	Operating revenues	Operating costs	Operating revenues	Operating costs
2020 (in DKK million)	3 774 (70.1 %)	3 784 (69.9 %)	1 610 (29.9 %)	1 626 (30.1 %)	5 384 (100 %)	5 410 (100 %)

- (260) The Commission also notes that the Rigsrevisionen confirmed in an official statement dated 5 March 2021 (see recital (116)) that its initial doubts had been allayed following the steps taken by the Minister of Transport following the report of the Rigsrevisionen. In addition, the Rigsrevisionen committed itself to continuing to observe Post Danmark’s pricing practices and the measures planned by the Minister to reinforce supervision of Post Danmark, and it undertook to report its findings to the Statsrevisorerne (recital (116)).
- (261) The Commission’s own verification of Post Danmark’s cost allocation and the confirmation of Rigsrevisionen that the measures taken by the Minister for Transport are appropriate have allayed the Commission’s doubts expressed in the opening decision, as regards compliance with paragraph 18 of the SGEI Framework.

6.3.1.4.2. Assessment of specific comments from interested parties on the compliance with Directive 2006/111/EC

- (262) With regard to the comment from interested parties, in recital (29), that the annual audits of Post Danmark’s accounts are not reliable, the Commission, using the reports from Deloitte (recital (257)) and KPMG (recital (258)), verified that the data registration was in fact done at a sufficiently detailed level.

¹²⁵ See <https://www.postnord.dk/om-os/finansiel-information/regulatorisk-regnskab> (percentages added by the Commission).

- (263) With regard to the requested elimination of the so-called “necessity rule” (recital (33)), the Commission notes that, for 2020, the relevant Accounting Regulation is the one from 2014 and that regulation does not contain a “necessity rule”. When looking at the principles and methods for 2020¹²⁶, there is no indication that Post Danmark has to allocate all common costs necessary for the provision of the USO to the USO account. Rather, the principles and methods state: “*Non-universal services thus include costs which the handling of these services gives rise to, on the one hand, all incremental costs, and on the other hand common costs relating to the operation and extension of the basic production and management system [i.e. the assignable common costs]. To this is added, a proportionate share of non-assignable common costs.*”¹²⁷ (emphasis added by the Commission). This shows that common costs are allocated to non-USO services and USO services alike. This also further illustrates that Post Danmark is required to apply two different processes in parallel. On the one hand, the costs allocation and, on the other hand, the labelling or categorisation of cost types as incremental costs, assignable common costs and non-assignable common costs (recital (94)).
- (264) Based on the description of the cost accounting, it does not appear that, in practice, Post Danmark allocates all of its common costs to the USO account but instead divides them appropriately between the USO and non-USO accounts (in reply to the comment in recital (30)).
- (265) Insofar as the review from PwC in 2014 is concerned (recital (33)) and would be relevant for the USO compensation in 2020, the Commission reaches the same conclusion as Denmark (recital (113)), namely that Rigsrevisionen’s reading of PwC’s statement was erroneous. Notably, the number of items is not a suitable parameter for assessing whether the cost allocation is appropriate as different items do not entail the same costs in the production chain. Indeed, for certain products, the cost of the “USO version” of a postal item (e.g. home delivery of USO letters within 5 workdays) is lower than the non-USO version (home delivery of a day-to-day non-USO letter) and for other products it is the other way round (like for BtB parcel (non-USO) and BtC¹²⁸ parcel (USO)). This assessment is confirmed by the ratio of the turnover attributable to the different activities, where approximately 70 % is attributable to USO and equally 70 % of costs is attributable to the USO (recital (259)). A similar ratio applies to 2013, which is the year covered by the PwC review.
- (266) Moreover, when looking at the exact wording of PwC in the 2014 review¹²⁹, the Commission notes that PwC observes that regarding distribution costs on routes with co-distribution, USO products bore more than half the costs even though they corresponded to less than half of the number of deliveries¹³⁰ (and not the number of items). PwC, explains that the reason for this is that in case of joint delivery of a USO and non-USO product, only the additional delivery time to also deliver the non-

¹²⁶ Available at: https://www.postnord.dk/siteassets/pdf/finansiel-information/regulatoriske-regnskaber/regulatorisk_regnskab_2020.pdf.

¹²⁷ Danish: “Til tjenester uden befordringspligt henregnes således omkostninger, som håndteringen af disse tjenester giver anledning til, dels alle inkrementelle omkostninger, dels fællesomkostninger vedrørende drift og udvidelse af det grundlæggende produktions- og styringssystem. Heril kommer en forholdsmæssig andel af ikke- henførbare fællesomkostninger.”

¹²⁸ Business to Consumer.

¹²⁹ Footnote 69.

¹³⁰ In the report, a delivery is calculated so that the individual product with and without universal service counts as one delivery per product, regardless of whether there are one or more items of the specific product per delivery.

USO product in the same mailbox as the USO product is allocated to the non-USO product. Based on this explanation, PwC, in 2014, not only found that the applied principles and methods for cost allocations followed the regulatory requirements, but also that the principles and methods were reasonable and sensible. Later Deloitte reached a similar conclusion in its review in 2021 (see recital (257)).

- (267) With respect to the comments from Danske Medier (recitals (34) to (36)), the Commission notes that the concept of “incremental costs”, the use of which according to Danske Medier leads to too-high USO compensation, is used to categorise costs, which is a process separate from the allocation of costs. It does not mean that all costs necessary for the provision of the USO are allocated to the USO when they are also necessary for non-USO services (see the example given in recital (97)). Insofar as Danske Medier’s assumption that Post Danmark is using the USO compensation to cover large losses incurred in its non-USO business is concerned, the Commission notes that it has not found proof for this and that, in any event, the USO following cost accounting in line with the applicable rules (SGEI Framework, Directive 97/67/EC and national accounting rules) creates a net deficit, both with and without USO compensation in 2020 (recital (153), footnote 81).
- (268) Concerning the alleged complex structure of PostNord Group and the effect this has on the supervision (recital (36)), the Commission notes that it is Post Danmark that is entrusted with the USO and not other entities of the group of which it forms part. The supervision should therefore focus on Post Danmark and this is actually the case. The corporate structure of PostNord Group is irrelevant for the purposes of supervising the accounting of Post Danmark for the purposes of the USO compensation granted to this entity.

6.3.1.5. Compliance with EU public procurement rules

- (269) 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."
- (270) Pursuant to Article 7(2) of Directive 97/67/EC, Member States are not obliged to organise a tendering procedure for the designation of the USO provider.
- (271) In the present case, the Danish authorities have opted for the direct entrustment of Post Danmark, in conformity with Directive 97/67/EC. It follows that public procurement rules are not applicable and that the direct entrustment of Post Danmark as the USO provider is in line with paragraph 19 of the 2012 SGEI Framework.

6.3.1.6. Absence of discrimination

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

(273) In accordance with section 14 of the Postal Act, the USO is only entrusted to Post Danmark. The Commission therefore concludes that the requirement of paragraph 20 of the 2012 SGEI Framework is not applicable.

6.3.1.7. Calculation of the net cost of the Universal Postal Service over 2020

(274) Following the opening decision, Denmark has provided additional information to substantiate the soundness of its calculation of net costs for which it uses the NAC methodology. In light of certain comments from interested parties and in order to further improve the NAC calculation, Denmark has modified certain parameters of the NAC.

6.3.1.7.1. Net Avoided Cost methodology

(275) According to paragraph 21 of the 2012 SGEI Framework, "The amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit." In this respect, paragraph 24 of the 2012 SGEI Framework provides that "The 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."

(276) 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."

(277) The NAC consists of the difference in profits of Post Danmark between the so-called factual scenario (corresponding to the actual situation, where Post Danmark operates with USO) and the counterfactual scenario (corresponding to a hypothetical situation, where Post Danmark is not entrusted with USO).

(278) In their original calculations, Denmark estimated that the NAC for 2020 amounted to DKK 394 million (ca. EUR 53 million). This has been adjusted to DKK 385.625 million following comments from interested parties (see recitals (172) to (177)), which is significantly higher than the notified compensation of DKK 225 million (approx. EUR 30 million). The NAC calculation submitted by Denmark is described in more detail below.

Description of factual scenario

(279) The factual scenario for the period 1 January to 31 December 2020 takes Post Danmark's ordinary operations into account and is based on Post Danmark's financial accounts for the period 1 January to 31 October 2020 and the projections made at the moment of notification (i.e. 12 March 2021, see recital (16) of the opening decision) for November and December 2020.

(280) The key market assumptions behind the estimated development in revenues in the period are as follows:

- (1) The BtC-market will experience substantial growth due to increased e-commerce.
- (2) Increased digitisation will continue to affect letter volumes as senders in the financial sector, as well as public authorities, are still in the process of converting their letters into digital post.

- (3) The market for newspapers and magazine mail is shifting towards omni-channel business models with combined focus on digital channels and print, which decreases the volumes in these postal services markets significantly.
- (281) The estimated revenues and costs of Post Danmark under the factual scenario correspond to the figures presented below in **Table 4**:

Table 4 – Factual scenario**Breakdown of revenues (MDKK)****1 January to 30 December 2020**

Economy mail	[...]
Export mail	[...]
Import mail	[...]
Magazines / newspapers	[...]
Other franking (includes stamps)	[...]
Others mail	[...]
Priority mail	[...]
BtB national	[...]
BtC collect	[...]
BtC home	[...]
CtX ¹³¹	[...]
Export parcels	[...]
Import parcels	[...]
Other logistics	[...]
Parcels other	[...]
Other operating income	[...]
Total revenues	[4500-5500]

Breakdown of Costs (MDKK)

Personnel costs	[...]
Other costs	[...]
Capital interests	[...]
Depreciation	[...]
Total costs	[-5500 {-}-4500]
Profit MDKK	[-500-0]

Description of counterfactual scenario

- (282) Denmark provided a counterfactual scenario with certain changes in Post Danmark's network and delivery process compared to the factual scenario.
- (283) In this scenario, the following USO activities would be discontinued since Denmark considers that they have an overall negative impact on Post Danmark's business absent the USO:
- (1) proclaim return receipt¹³²;

¹³¹ Consumer to other.

- (2) newspapers and magazines;
 - (3) international letter post items and parcel post items carried under the UPU Convention and other international postal agreements (which have been loss making in 2020 with a negative EBIT of around DKK [...] million). The discontinuation of the international letter post and parcel items under the UPU Convention also entail the closure of the international mail and parcel centre at Copenhagen airport. Post Danmark would only continue to offer inbound and outbound parcels under the franchise with DPD using the DPD network and their collaborators, and through PostNord Group's own intra-group network; and
 - (4) delivery of the free service for the blind.
- (284) In addition to discontinuing certain services, Post Danmark would optimise its services by making the following changes:
- (1) The business letter service in the counterfactual scenario would only include home delivery in larger cities and home delivery of such letters would discontinue in rural areas as well as in smaller towns. In rural areas and smaller towns, there will be a collect option. This would mean that Post Danmark would stop by each household for which it has a delivery in the larger cities one day of the week and, thus, be able to consolidate more items and significantly reduce the number of routes in rural areas and smaller towns.
 - (2) Post Danmark would close one letter-sorting centre and reduce the number of distribution hubs from [10-20] to [10-20].
 - (3) Pursuant to the USO obligations, Post Danmark is obliged to maintain full-service postal outlets, i.e. outlets offering all services encompassed by the USO, on a number of smaller islands. In the counterfactual scenario, Post Danmark would not offer full-service on smaller islands with no fixed link. Instead, a limited range of postal products would be available at the service points on these smaller islands. If the inhabitants of the small islands were to require services that are not available on that island, they would then have to buy the service online or visit a service point on the mainland.
 - (4) Post Danmark would reduce the number of mailboxes from 4,800 to [4,000-4,800]. A network of [4,000-4,800] mailboxes would be optimal from a commercial point of view in a scenario where Post Danmark has no USO constraints.
 - (5) Post Danmark would reduce the use of quality measurements. The individual licence from 2016 (as extended for 2020) requires Post Danmark to pay for an independent research institute to carry out monthly representative quality measurements of domestic letters subject to the USO.
- (285) In **Table 5**, a breakdown of the avoided costs and forgone revenues in the counterfactual scenario for each of the aspects listed in recital (283) and (284) is provided. The forgone revenues and avoided costs are broken down according to the differences between the factual and the counterfactual scenario.

¹³² Proclaim return receipts (*postforkyndelse* in Danish) are letters containing a writ or other document to be served on the recipient. Only the courts, public authorities other than the courts, and approved private boards of complaint or appeal can send proclaim return receipts.

Table 5 – Avoided costs and forgone revenues**Avoided Costs (MDKK)****1 January to 31 December 2020**

Optimising the business letter service	[...]
Discontinuation of the free service for the blind	[...]
Discontinuation of distribution of newspapers and magazine mail	[...]
International letter post and parcel post items under UPU	[...]
Optimising the number of mailboxes	[...]
Optimising product offering on small island without fixed link	[...]
Reduce the use of quality measurements	[...]
Discontinuation of proclaim return receipt	[...]
Total avoided costs	[1500-2500]

Forgone Revenues (MDKK)**1 January to 31 December 2020**

Optimising the business letter service	[...]
Discontinuation of the free service for the blind	[...]
Discontinuation of distribution of newspapers and magazine mail	[...]
International letter post and parcel post items under UPU	[...]
Optimising the number of mailboxes	[...]
Optimising product offering on small island without fixed link	[...]
Reducing the use of quality measurements	[...]
Discontinuation of proclaim return receipt	[...]
Total forgone revenues	[1500-2500]
Gross net avoided costs	[400-900]

- (286) The figures in **Table 6** below are obtained by adjusting the revenues and costs of the factual scenario (see **Table 4**) based on the impact of the assumptions of the counterfactual scenario (see **Table 5**).

Table 6 – Counterfactual scenario**Breakdown of revenues (MDKK)****1 January to 30 December 2020**

Economy mail	[...]
Export mail	[...]
Import mail	[...]
Magazines / newspapers	[...]
Other franking (includes stamps)	[...]
Others mail	[...]
Priority mail	[...]
BtB national	[...]
BtC collect	[...]
BtC home	[...]
CtX	[...]
Export parcels	[...]
Import parcels	[...]
Other logistics	[...]
Parcels other	[...]
Other operating income	[...]
Total revenues	[2500-3500]

Breakdown of Costs (MDKK)

Personnel costs	[...]
Other costs	[...]
Capital interests	[...]
Depreciation	[...]
Total costs	[-3500 {-}-2500]
Profit MDKK	[0-500]

Description of the process of calculating the NAC

- (287) The NAC corresponds to the avoided costs minus the forgone revenues of the counterfactual scenario, correcting for intangible benefits.

Avoided Costs

- (288) The avoided costs are indicated in **Table 5**. The main part of the cost savings would result from the reduction in personnel.

Forgone revenues

- (289) The forgone revenues are indicated in **Table 5** and include in particular the loss of business following the discontinuation of certain services.
- (290) Post Danmark has estimated the forgone revenues resulting from the optimisation of business services by applying its experience gained from previous changes in prices and product offerings. Post Danmark has continuously monitored customers' behaviour in relation to price changes, in particular, and has predicted customer behaviour using price elasticities and customer surveys.

Intangible benefits

- (291) Intangible benefits could contribute to the improvement in profitability that a postal services provider enjoys due to its status as the USO provider. They can often not be captured in the factual and counterfactual scenario but still need to be taken into account in the NAC calculation and are therefore usually accounted for separately.
- (292) Intangible benefits could include economies of scale and scope, advertising effects from intellectual property, demand effects due to the VAT exemption, universal coverage advantages, bargaining power and better customer acquisition.
- (293) The intangible benefits taken into account by Denmark for the calculation of the NAC are: (i) the VAT Exemption (A), (ii) intellectual property assets (B) and (iii) benefits from philately and unused stamps (C). The benefits associated with the VAT exemption and intellectual property assets together amount to DKK [...] million. The benefit from philately and unused stamps amounts to DKK 10.375 million. Denmark does not take into account (iv) economies of scale (D), (v) bargaining power (E) and (vi) universal coverage (F), since it does not consider those to be an intangible benefit. The interested parties have alleged that also several other intangible benefits should have been taken into account. Those are assessed in Section 6.3.1.7.3.1 below.

A - VAT exemption

- (294) According to the VAT Directive, implemented in the Danish Value Added Tax Act¹³³, the postal services encompassed by the USO are exempt from VAT. The VAT exemption does not apply to such services if individual terms have been negotiated. The exemption implies that Post Danmark has a competitive advantage with regard to customers who cannot deduct VAT, e.g. private citizens. The partial exemption from VAT has the downside that Post Danmark cannot deduct VAT paid for purchases related to the provision of VAT exempt services (USO).
- (295) The benefit is calculated based on a counterfactual scenario where all of Post Danmark's business is subject to VAT. The benefit of the VAT exemption comes from an increased demand for Post Danmark's products. In the absence of the VAT exemption, some prices would be higher for some customers (customers who cannot deduct VAT). This would lead to changed customer behaviour, which would mean a loss of revenue due to falling volumes. Customers' behaviour and the loss of revenue are calculated based on price elasticities. The calculations take into account that the VAT exemption, on the other hand, reduces the possibility of reclaiming VAT included in Post Danmark's input purchases.

¹³³ Danish Value Added Tax Act, LBK nr 1021 af 26/09/2019 (link: <https://www.retsinformation.dk/eli/lta/2019/1021>).

- (296) The calculations of the effect of being subject to VAT is based on the assumption that VAT will be charged in addition to current prices. Therefore, imposing VAT results in an increase in price of 25 % (VAT rate in Denmark), but only for the customers that cannot deduct VAT. For those customers there will be a change in behaviour. The forgone revenues resulting as a change in behaviour of those customers is calculated to be DKK [...] million (equivalent to [...] million items) and consists of:
- (1) A reduction in national mail (DKK [...] million, equivalent to [...] million items);
 - (2) A reduction in export mail (DKK [...] million, equivalent to [...] million items);
 - (3) A reduction in magazine mail (DKK [...] million, equivalent to [...] million items).
- (297) The reduction in costs incurred as a consequence of no longer being able to make use of the VAT exemption amounts to DKK [...] million. This amount includes increased VAT deduction possibilities (DKK [...] million, based on data from 2019) and DKK [...] million for cost savings due to a loss in shipments (i.e. single piece items, other letters and magazines together).
- (298) The benefit of being exempted from VAT on USO services without individually negotiated terms is therefore estimated to be DKK [...] million in 2020. **Table 7** presents the benefits that Post Danmark achieved from the USO VAT exemption during the year 2020.

Table 7

Valuation of VAT exemption (MDKK) in 2020

Reduction in costs	[...]
Loss of revenues	[...]
Value of VAT exemption	[...]

B - Intellectual property assets

- (299) Intellectual property assets related to the USO result in particular from the advertising on visible contact points, such as mailboxes, installations for customers' self-service collection of parcels, and some of Post Danmark's vehicles.
- (300) Post Danmark has estimated the benefits from intellectual property assets related to the USO, based on an assessment of branding value of Post Danmark (for all its services, i.e. USO and non-USO) made by an external market research analyst regarding 2020¹³⁴. The assessment of branding value is estimated in relation to the number of visible contact points established by Post Danmark based on the price for exposure per square meter for outdoor advertisements.
- (301) More precisely, the analyst calculated the exposure of Post Danmark by looking at the traffic (i.e. the number of people passing by or having contact with a visible

¹³⁴ Assessment made by Annalect A/S: Værdifastsættelse af befordringspligten, January 2020.

contact point). This traffic, in turn, is estimated based on the population size of a municipality/postal code.

- (302) Subsequently, the size of the contact points is looked at and a price per square meter, based on the price for an abri advertisement (i.e. an advertisement in a bus stop) is applied to it, adjusted for whether the contact point is in a good or bad location and how often people are contact with it. As regards vehicles, they are all assigned to a distribution area and therefore a specific geographical area. The number of vehicles in a certain area is divided over that area based on population size. Vehicles such as trailers and lifts are not included as they are not branded.
- (303) Overall, the branding value has decreased in recent years, mainly due to a lower level of mail activity of Post Danmark which has resulted in fewer vehicles being used today, for example, and the number of mailboxes being continuously optimised.
- (304) Taking into account the above, for 2020, the benefits from intellectual property assets of Post Danmark's USO business is estimated to be DKK [...] million.

C - Philately and unused stamps

- (305) The calculation of the intangible benefit resulting from philately and unused stamps is presented by Denmark in recitals (170) to (177) and amounts to DKK [...] million.

D - Economies of scale

- (306) The Danish authorities consider that Post Danmark does not benefit from economies of scale in the factual scenario as, in the context of the rapid decline in mail volume of letters, the size of Post Danmark has rather presented a significant challenge as it has not been possible to adjust operations to face market developments.

E - Bargaining power

- (307) The Danish authorities note that, as concerns suppliers, Post Danmark is subject to Directive 2014/25/EU, and that all contracts with suppliers are therefore subject to competition and the principles of equal treatment and transparency. On balance, the Danish authorities consider that Post Danmark does not enjoy bargaining power beyond that of other large companies.

F - Universal coverage

- (308) Denmark notes that, while there may be a benefit in the USO provider's universal coverage (both business- and private customers may find national coverage convenient and be obliged to use the services of the USO provider), this is considered as a strength in the e-commerce market and will therefore be maintained in the counterfactual scenario.
- (309) Therefore, the fact that Post Danmark is the Universal Service provider in Denmark and must uphold territorial coverage for that reason is not in itself an intangible benefit or a strength that should be taken into account in the calculation of the NAC.

6.3.1.7.2. Results of the NAC calculation

- (310) Taking into account **Table 5** and the value of the intangible benefits, the NAC amounts to DKK 385.625 million (**Table 8**).

Table 8**NAC Calculation (DKK million) 1 January to 31 December 2020**

Total avoided costs	[1500-2500]
Total forgone revenues	[1500-2500]
Gross avoided costs	[400-900]
Intangible benefits	[...]
Net avoided costs	385.625

6.3.1.7.3. Verification by Denmark of the reliability of the net avoided cost calculation

- (311) According to Denmark's calculations, Post Danmark would achieve an EBIT margin of 3.8 % in 2020 and an average labour productivity of 0.997 DKK million in the counterfactual scenario.
- (312) To assess whether the calculated indicators are realistic, Denmark has compared the key indicators in the counterfactual scenario with corresponding key indicators for three other companies in the postal and transport industry, at group level: Danske Fragtmænd A/S, Posten Norge AS and Deutsche Post DHL Group. The latter two have been chosen because they still distribute a significant amount of letters, the former because it is one of the largest players on the Danish market for freight and parcel distribution, which is important as in the counterfactual scenario logistics revenue and the associated earning represent a larger share of Post Danmark's revenues.
- (313) The comparison is made at group level, because then a selection of companies could be made on the basis of the total portfolio of products offered by them. It was not possible to make the comparison at segment level (i.e. letters, parcels and logistics), at least for Danske Fragtmænd and Posten Norge. In the case of Danske Fragtmænd, the turnover for freight includes parcels and it was not possible to determine the turnover only for parcels. For Posten Norge, the turnover in "mail" contains both postal mail and banking services and the turnover in "logistics" also contains parcels.
- (314) Denmark calculated EBIT margins and labour productivity for the three benchmark operators for the years 2017 to 2020¹³⁵. In addition, with the aim to further improve the reliability of the benchmarking exercise, Denmark has also provided the EBIT for General Logistics Systems Denmark A/S over 2020. This is Post Danmark's largest competitor on the Danish parcel market. A comparison of the results to the ones calculated in Post Danmark's counterfactual scenario (for 2020) is shown in **Table 9** and **Table 10** below.

¹³⁵ Compared to the opening decision, 2020 has been added as the data is available now.

Table 9 - Benchmarking Post Danmark's EBIT

Year	2017	2018	2019	2020	Average
Danske Fragtmænd A/S	0.8 %	2.7 %	1.9 %	1.3 %	1.675 %
Posten Norge AS	2.8 %	2.2 %	3.3 %	5.9 %	3.55 %
Deutsche Post DHL Group	6.2 %	5.1 %	6.5 %	7.3 %	6.275 %
General Logistics Systems Denmark A/S				12.6 % ¹³⁶	

Year	2020
Post Danmark A/S (counterfactual scenario)	3.8 %

Table 10 - Benchmarking Post Danmark's labour productivity (million DKK/FTE)

Year	2017	2018	2019	Average
Danske Fragtmænd A/S	2.853	3.094	3.043	2.997
Posten Norge AS	1.061	1.157	1.211	1.143
Deutsche Post DHL Group	0.873	0.843	0.869	0.862

Year	2020
Post Danmark A/S (counterfactual scenario)	0.997

(315) Based on the above data, Denmark considers that Post Danmark's estimates for EBIT and labour productivity are relatively conservative and well within the average figures seen within the sector. According to Denmark, these figures would confirm the reliability of the assumptions incorporated in the counterfactual scenario¹³⁷.

6.3.1.7.3.1. Commission's assessment of the NAC in light of the doubts expressed in the opening decision.

Input data

(316) Considering that the Commission's doubts as to the reliability of Post Danmark's accounts and cost allocation methodology have been sufficiently addressed (Section 6.3.1.4), the Commission no longer has doubts as to the input data for the NAC (recitals (146) and (147) of the opening decision).

Measurement of the impacts of certain assumptions

Impact of lower volumes on the unit cost of processing postal items

(317) The optimisation by Post Danmark of the services it would provide in the counterfactual means a downsizing of the business volume (recital (284)(1) and

¹³⁶ Financial year 2020/2021 runs from 1 April 2020 to 31 March 2021.

¹³⁷ Danske Fragtmænd A/S's labour productivity is something of an outlier. This can be explained by the fact that Danske Fragtmænd A/S is a transport and logistics company, which transports goods and offers warehouse facilities to customers. Delivery costs and the average price of goods are significantly higher than delivery costs and average prices for letters and parcels.

(284)(3)). A lower volume should, in principle, lead to higher unit costs. This is also acknowledged by Denmark (recital (121)). However, in the counterfactual scenario notified to the Commission, it is assumed that unit costs do not increase (recital (149)(a) of the opening decision). This, at first sight, inconsistent assumption was the reason the Commission expressed doubts in this regard in its opening decision.

- (318) Based on the comments received from Denmark (recitals (122) to (124)), the Commission understands that the normally expected increase in unit costs due to a lower business volume is countered in the counterfactual scenario by the reduction of the infrastructure (the closure of one letter-sorting centre and [5-10] distribution hubs) which leads to cost savings (both in urban and rural areas) as well as the reduction in service level in rural areas compared to the factual scenario.
- (319) The Commission agrees in principle that a reduction of the size of the infrastructure, and of quality of service implying also a reduction in personal costs should indeed have a downward effect on the unit costs of processing postal items.
- (320) Moreover, the Commission notes that, the overall reduction in items (letters and parcels) ([-40)-(-50)] %, see table 11) is comparable to the reduction in size/costs of the infrastructure (-50 % for sorting centres and [-(30)-(-40)] % for hubs), or the reduction in personnel costs ([-50)-(-60)] %, compare tables 4 and 6). This would support the idea that Post Danmark would optimise its activity and reduce its costs to a greater extent than the reduction in postal items allowing to maintain the unit costs stable. The Commission also considers the reduction in personnel costs credible based on the benchmarking exercise on labour productivity undertaken by Denmark (see table 10).
- (321) The Commission also notes that Post Danmark in the counterfactual scenario cuts costs significantly (from DKK [4500-5500] million to DKK [2500-3500] million). This could not have already been done in the same way in the factual scenario, despite the decline in volumes, because universal service providers cannot easily adapt to developments in the postal market, if there is a risk that in the future such adaptations would make it unable to fulfil the USO (see recital (126)).

Table 11 – Items (in millions)

Products	Factual		Counterfactual		Change in %	
	Number of items (urban)	Number of items (rural)	Number of items (urban)	Number of items (rural)	Urban	Rural
Economy mail	[...]	[...]	[...]	[...]	[...] %	[...] %
Export mail	[...]		[...]		[...] %	
Import mail	[...]	[...]	[...]	[...]	[...] %	[...] %
Magazines/newspapers	[...]	[...]	[...]	[...]	[...] %	[...] %
Other franking	[...]	[...]	[...]	[...]	[...] %	[...] %
Priority mail	[...]	[...]	[...]	[...]	[...] %	[...] %
BtB national	[...]		[...]		[...] %	
BtC collect	[...]		[...]		[...] %	
BtC home	[...]		[...]		[...] %	
CtX	[...]		[...]		[...] %	
Export Parcels	[...]		[...]		[...] %	
Import parcels	[...]		[...]		[...] %	
Total	[...]		[...]		[(-40)-(-50)] %	

(322) Finally, the Commission has run a sensitivity analysis on the NAC and found that even by increasing the unit costs by 5 % (which would be significant), Post Danmark would remain undercompensated (such increase would lead to a NAC of DKK [225-325] million, while the compensation is only DKK 225 million, see table 12).

Table 12 – NAC with sensitivity analysis

NAC Calculation (DKK million) 1 January to 31 December 2020	
Total avoided costs	[...]
Total forgone revenues	[...]
Gross avoided costs	[...]
Intangible benefits	[...]
Net avoided costs	[225-325]

Impact of the closure of a sorting centre and [5-10] distribution hubs on transport cost of postal items

- (323) Another assumption in the counterfactual regarding which the Commission expressed doubts was the reduction in number of sorting centres and distribution hubs. Denmark considers that this does not lead to an increase in the transport costs of delivering letters and parcels. The Commission expressed doubts regarding this consideration because of longer distances that need to be travelled in the counterfactual scenario to deliver a letter or parcel, which would normally tend to increase these transport costs (recital (149)(b) of the opening decision).
- (324) Denmark has shown that the total transport distance in the one-centre setup (counterfactual scenario) will remain at the same level and not change significantly compared to the setup with two sorting centres (factual scenario) (recital (130)). The examples provided in recitals (131) to (137) and (141) to (143) illustrate the soundness of Denmark's explanations.
- (325) Indeed, items sent from Eastern to Western Denmark will be sorted in the single remaining sorting centre (in Eastern Denmark). Denmark makes the reasonable assumption that with lower volumes, the sorting centre in Western Denmark would be closed. Indeed, most postal items originate in the East. An important reason for this is the fact that the capital Copenhagen is in the East. Items originating from the East and destined for the West will be transported to Western Denmark where they will be distributed to households after having passed through a hub. The distances travelled will be the same in this situation, with the only difference that there will not be a stop at a second sorting centre. It should be noted, in this regard, that, due to the geography of Denmark, items going from East to West in the counterfactual could not make a shortcut by directly going to a hub in a more straight line. All items from East to West in both the factual and counterfactual need to cross Snævringen, a body of water between the island of Funen and Denmark's mainland. The sorting centre in Western Denmark is located very close to this crossing (in Fredericia).
- (326) The same applies to items sent from Western to Eastern Denmark. In the counterfactual, they will no longer have to go via the sorting centre in Western Denmark, but the transport distances will remain the same.
- (327) In addition, nothing changes for items sent within Eastern Denmark in the counterfactual. The sorting centre remains in the counterfactual, so distances to and from the sorting centre will not change.

- (328) For items sent within Western Denmark, transport distances will be longer, as items will first need to be transported to Eastern Denmark to be sorted and subsequently be transported back to Western Denmark to be delivered, after passing through a hub. However, considering the lower volumes, the items sent between two addresses in the West can be included in the already existing transports between West and East (recital (136)) and therefore transport costs will not increase for those items.
- (329) Similar considerations apply to the reduction in hubs, where in the example provided the transport distances (and therefore the costs associated with it) even decrease.

Conclusion on the NAC and the risk of overcompensation of Post Danmark

- (330) The Commission considers that the NAC proposed by Denmark (see recitals (279) to (315)) generally meets the requirements of the 2012 SGEI Framework and is well in line with its decisional practice.
- (331) In particular, the assumptions made in the counterfactual scenario are reasonable, including the one that Post Danmark would become profitable in that counterfactual scenario (to be noted that even non-USO activities would benefit from an optimisation of the infrastructure and could therefore become more profitable¹³⁸).
- (332) The intangible benefits are also properly quantified based on a sound analysis and method (in particular the VAT exemption and the intellectual property assets). In addition, the Commission considers that taking into account philately and unused stamps made the outcome of the NAC more robust. The potential intangibles that have not been taken into account (economies of scale, bargaining power and universal coverage) is also properly explained by Denmark (recitals (306) to (309)).
- (333) Moreover, the doubts that the Commission originally had on the impact of certain assumptions made on NAC (see recitals (317) to (329)) are allayed.
- (334) First, the assumption of a relative stability of the unit cost of processing postal items appears reasonable in light of the very significant optimization of Post Danmark activities.
- (335) Second, the stability of transport cost is consistent with an overall reduction of transport distances in the counterfactual.
- (336) Third, the verification of the NAC by benchmarking with other undertakings further confirms the general reliability of the assumptions incorporated in the counterfactual scenario. In this light, the interested parties have argued that Deutsche Post DHL Group and Posten Norge are not suitable for comparison with Post Danmark as they only obtain a limited part of their revenues from letters and parcels. However, the Commission agrees with Denmark that the comparison should be done for the purposes of the counterfactual scenario as the NAC looks at the costs avoided in that scenario and therefore the companies used for benchmarking are relevant for comparison in the counterfactual scenario and do not necessarily have to be comparable in the factual scenario. From this angle, it makes sense to use Posten Norge and Deutsche Post DHL Group as Post Danmark will, in the counterfactual, no longer have the USO and therefore be primarily parcel- and logistics-based, while still providing letter delivery services but to a lesser extent, similar to Posten Norge and Deutsche Post DHL Group.

¹³⁸ Indeed, costs of the extensive infrastructure necessary for the USO is partly borne by non-USO services.

(337) Finally, the Commission has run a sensitivity check and notes that even if a significant increase of the unit cost would be considered (e.g. +5%), the compensation granted to Post Danmark is at such level that it would still remain undercompensated. The Commission has therefore no remaining doubt that the USO compensation to Post Danmark could be disproportionate.

6.3.1.7.4. Commission's assessment of claims from interested parties on the Net Avoided Cost methodology

(338) Several of the interested parties (recital (39)) consider that they should have access to the data on the basis of which the NAC is calculated (i.e. Tables 1 to 5 of the opening decision). Following the procedures and principles laid down in the Commission Communication on professional secrecy in State aid decisions¹³⁹, the Commission, in the same way as was done in the 2018 Decision (recital 160 of that Decision) has redacted those figures, as they concern business secrets that have actual or potential economic value whose use could result in economic benefit for other companies¹⁴⁰. Criteria that the Commission took into account and are relevant in the present case include the extent to which the information is known outside the company and the value of the information for the company and its competitors¹⁴¹. The redaction of NAC data is also in line with the Commission's case practice in the postal sector¹⁴².

(339) As to the comments from the interested parties on the effect of the downsizing of the company and the closure of sorting centres and hubs on the units costs, the Commission refers to recitals (317) to (329).

(340) As regards the alleged impact of the counterfactual scenario on the costs of the international parcel delivery by the DPD network (recital (42)), the Commission considers that the DPD network is a separate network, distinct from Post Danmark's international parcel delivery network under the UPU Convention in the factual scenario. The DPD network is regulated by an agreement with PostNord Group (not PostNord AB) and has an initial end date of [...]. Therefore, discontinuation by Post Danmark of its international parcel delivery service in the counterfactual scenario should not have an impact on the costs of the DPD network.

(341) As regards the allegation by ITD and Undertaking 1 that the free distribution for the blind should not be discontinued, as in the 2018 Decision (recital (43)), the Commission notes that is wrong. This service will be discontinued in the counterfactual scenario for 2020 and was also discontinued in the counterfactual presented in the 2018 Decision (recital 160, Table 2 of the 2018 Decision). This is also accounted for in the NAC (see **Table 5** of the present decision, line "Discontinuation of the free service for the blind").

(342) The interested parties considers that in the counterfactual scenario the countrywide business-letter distribution is to be replaced with business letter distribution in large cities one day weekly (recital (44)) and therefore that revenues in the counterfactual scenario are too high. It follows from the notified counterfactual scenario that this

¹³⁹ Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6).

¹⁴⁰ Paragraph 10 of the Communication on professional secrecy.

¹⁴¹ Paragraph 13 of the Communication on professional secrecy.

¹⁴² See for example Commission Decision of 19 February 2018, SA.45281 (2017/N) and State Aid SA.44859 (2016/FC) – Czech Republic - State compensations granted to Czech Post for the provision of the universal postal service over the period 2013-2017, recital 126 (Tables 23 to 27), available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45281.

consideration is wrong. In the counterfactual, Post Danmark still offers the distribution of business letters throughout the country. The counterfactual includes home delivery in larger cities 1 day a week and a collect option in rural areas and smaller towns. Therefore, Post Danmark will be able to reduce the number of routes notably in rural areas and smaller towns. The forgone revenues as a consequence of the discontinuation of home delivery in rural areas (and the optimization of the business letter service more broadly) has been included in the NAC (see recital (284)(1) and **Table 5**).

- (343) Concerning the claim from interested parties linked to postal outlets on smaller island (recital (45)), it should be noted that in the counterfactual for the USO 2020, Post Danmark will continue to offer single-piece items as currently it is a profitable part of the business (due to higher prices and cost savings due to the full implementation of the new production model¹⁴³, see recital (159)). For this reason, the outlets on small islands without a fixed link are retained notably to accommodate the increasing volumes in e-commerce. However, the product offering in those outlets will be changed. In the counterfactual scenario those outlets would no longer function as full-service outlets as in the factual scenario. This is accounted for in the NAC (see recital (344)).
- (344) The interested parties in recital (46) consider that the closure of postal offices should be taken into account in the counterfactual, as was also done in the situation of Czech Post. It follows from the counterfactual presented by Denmark that no postal offices will be closed in the counterfactual (recital (284)(3)). However, on smaller islands without a fixed link the service level will be reduced. The reduction in service levels and the effect on the number of priority business letters and economy business letters is taken into account in the counterfactual scenario (**Table 5**, see “Optimizing the business letter service” and “Optimizing product offering on small island without fixed link”).
- (345) In the comments on the opening decision, the different interested parties referred also to other categories of intangible benefits that should be reflected in the NAC. Those other alleged intangible benefits concern ubiquity, corporate reputation, economies of scale, bargaining power, advertising effects, demand complementarities, parking/stopping exemptions, access to public registers and demand trends.
- (346) As concerns intangible benefits other than those already addressed in the NAC calculation, the Commission concludes the following:
- (1) Ubiquity: The General Court found in the judgment in case T-561/18 that the applicants (of which one is among the interested parties in this case) have not established that ubiquity is an intangible benefit for Post Danmark as a consequence of the USO in the 2017-2019 period (see also recital (164)(a) of the opening decision). Moreover, the General Court explained that there is not always an advantage linked to ubiquity relating to the USO. In the present case, the interested parties rely on the same evidence and therefore, the Commission sees no reasons to depart from the conclusion of the General Court presented in paragraphs 150 to 159 in case T-561/18. In addition, ubiquity should only be taken into account in the NAC (i.e. be deducted from it) if it would not be maintained in the counterfactual scenario as that would mean that it is an advantage resulting from the USO. However, in the present case, the network

¹⁴³ The content of which is explained in e.g. recital (20) of the 2018 Decision.

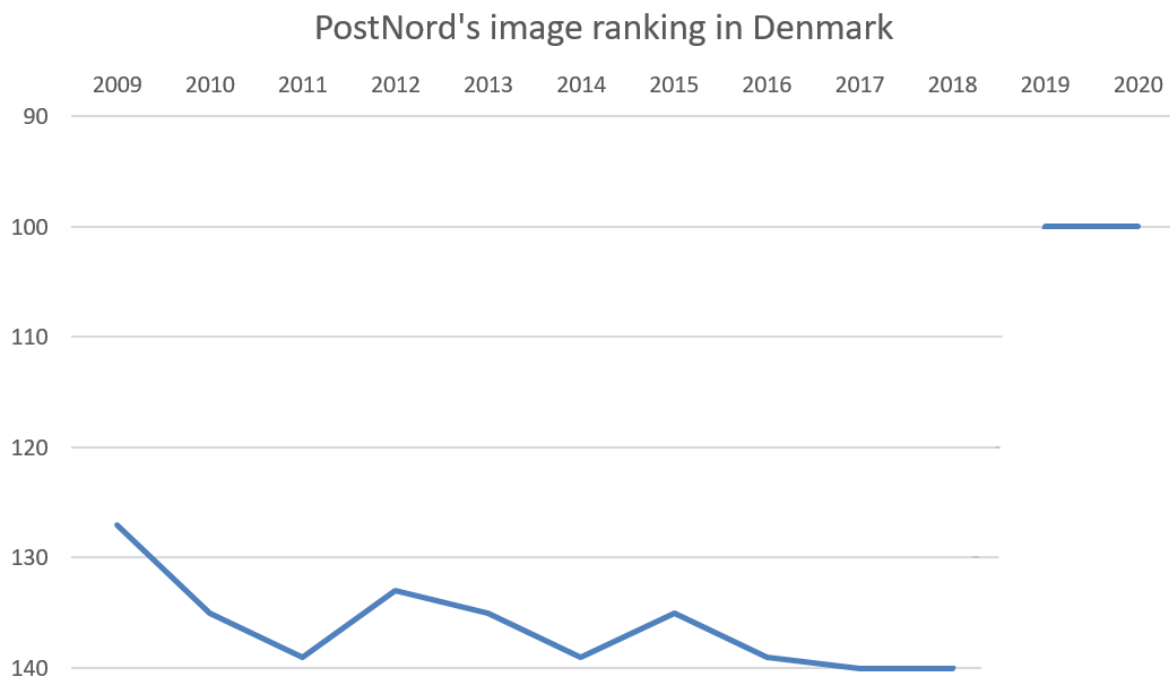
presence will be maintained, as the geographic coverage of Post Danmark is essentially the same as in the factual scenario due to the parcel and logistics activities¹⁴⁴. The fact that Post Danmark does not benefit from ubiquity also follows from its experience in the magazine market, in which other distributors are preferred by some over Post Danmark, despite their not being present everywhere. This was also confirmed by the General Court in T-561/18¹⁴⁵. A ERGP study from 2014, referred to by the interested parties cannot be used to support the applicants allegation: apart from the study itself already being six years old (compared to 2020, which is the year of the USO compensation subject of this decision), it relies upon an even older report from Copenhagen economics from 2008.

- (2) Corporate reputation / brand value: Post Danmark does not benefit from its corporate reputation and/or brand value as a consequence of the former monopoly it had and the current status as USO provider. Indeed, Post Danmark's image in Denmark is generally bad and associated with expensive and slow services. While there might be good reasons for such more expensive and slower services, namely declining letter volumes, this does not change the fact that there is no benefit resulting from reputation or brand value. This reputation also has a spillover to the parcel market on which the same branding is used. This is confirmed by three studies: (i) the reputation institute, in a study from 2019, ranked Post Danmark on place 49 in the list of the 50 most prominent brands in Denmark, qualifying it as "weak". It even stated that it could be a barrier to [...] or even [...]; (ii) in an update from 2020, it follows that Post Danmark's reputation is still weak and that corporate brands of competitors are ranked as "strong"; and (iii) the, according to Denmark, most comprehensive image benchmark tool in Denmark, Danish IFO Image Analysis, ranks the reputations of the 140 largest and most significant companies in Denmark (since 2019, the list contains 100 companies). Post Danmark, consistently ranks among the 13 companies at bottom of the list (best ranking in 2009 at 127) as shown by **Figure 10**.

¹⁴⁴ The evidence provided by the interested parties actually support the fact that ubiquity will be maintained in the counterfactual scenario. First, the 2017 Annual and Sustainability report (page 6) states that the benefits resulting from being able to reach all households is a strength in the e-commerce market, and therefore this is an advantage for the whole Nordic network (not only Denmark and Sweden). The Nordic network will be maintained in the factual and counterfactual. Second, the study from WIK consul indeed says that postal users still desire a ubiquitous postal service, but directly thereafter on page 134 it becomes clear that this ubiquity is due to increased e-commerce.

¹⁴⁵ Para 155.

Figure 10¹⁴⁶ – Post Danmark’s (which operates under the name “PostNord”¹⁴⁷) image in Denmark. Until 2019, the ranking contained 140 companies, since 2019, the ranking contains 100 companies.



- (3) Mailboxes: Insofar as to the right to install mailboxes at public sector premises, the value of Post Danmark’s ownership of mailboxes and the allegation that Post Danmark’s brand gives it the ability to charge premium prices are concerned, the Commission concludes as follows: First, Denmark has confirmed that Post Danmark does not have an exclusive right to install mailboxes at public sector premises (recital (168)). The owners of such premises need to give permission. The same applies to other (postal) companies that want to install certain objects at public sector premises. The Commission has not seen any evidence that shows the contrary. Second, Post Danmark does not enjoy enhanced corporate reputation and brand value because of the USO (recital (346)(2)) and this is also a reason why it cannot charge “premium prices”.
- (4) Stamps: Insofar as intangible benefits resulting from philately and unused stamps is concerned, the NAC has been adjusted in line with the calculations provided by Denmark (recital (305)), which the Commission considers reasonable and realistic.
- (5) Economies of scale: The Commission considers that economies of scale should only be taken into account as an intangible benefit if they are not maintained in the counterfactual scenario to avoid a double counting of the same advantage both through the revenues of the counterfactual scenario and intangible benefits. Considering that Post Danmark in the counterfactual scenario would

¹⁴⁶ Graph prepared by the Commission based on information derived from www.imageanalyser.dk and submitted by Denmark.

¹⁴⁷ For this reason alone, the allegation of the interested parties that Post Danmark has the exclusive right to use the word “Denmark” is already flawed. Post Danmark only needs to print the word “Denmark” on stamps, but has no exclusive right to use it.

maintain a nationwide network and would continue delivering a high volume parcels (in particular the domestic parcels activities will remain at the same level, see table 11), the economies of scale will also be maintained in the counterfactual. The reference of the interested parties to the “merger” between DPD and Post Danmark is irrelevant, as the services concerned are completely independent from the USO services and covered by an agreement between PostNord Group and DPD. Furthermore, PostNord Group will maintain the DPD operations in the counterfactual scenario in the same way as they are carried out in the factual scenario. Because all entities involved (DPD, PostNord Group and Post Danmark) will maintain the Nordic profile, there will be no change in the bargaining power from PostNord Group/Post Danmark towards DPD. Insofar as the parcel centre in Herning is concerned (article from 6 June 2017), the Commission notes that this centre only supports the assertion that the economies of scale will remain in the counterfactual scenario. Indeed, it is aimed at supporting the strong growth experience in the parcel and logistics sector.

- (6) Bargaining power: The Commission considers that bargaining power should only be taken into account as an intangible benefit if it worsened or disappeared in the counterfactual scenario. However, this is not the case as regards Post Danmark, and the interested parties have not submitted evidence to the contrary. Post Danmark’s bargaining power is not due to the USO, but due to its own size and the size of the group it is part of. The interested parties refer to two reports that allegedly would support that bargaining power (towards politicians and the regulatory authorities) is an intangible benefit (an ERGP report from 2011 and a Frontier Economics report from 2013). Besides the fact that those reports are 9 to 11 years old, they do not substantiate the interested parties’ claims. First, the reports state that there “might” (Frontier Economics) or “may” (ERGP) be benefits associated with being the universal service provider. The ERGP report also states that there is little evidence as to the benefits of having bargaining power vis-à-vis politicians and regulatory authorities. Frontier Economic considers that more research is needed in this regard. More generally, there are even indications that any bargaining power that Post Danmark would have is rather an intangible disadvantage as trade unions and employees will expect that Post Danmark lives up to the highest standards concerning wages and working conditions due to its public ownership. The above does therefore not affect the Commission’s conclusion that bargaining power does not have to be considered an intangible benefit to be taken into account in the NAC calculation.
- (7) Advertising effects: The Commission notes that intellectual property assets related to the USO, and resulting from advertising on visible contact points, have been taken into account (recital (299) to (304)).
- (8) Demand complementarities: According to the interested parties, demand complementarities are present as Post Danmark, when selling loss-making USO products, benefits from an increased sale of profitable USO and non-USO products¹⁴⁸. As for other intangible benefits, demand complementarities should

¹⁴⁸ Post Danmark offers the following non-USO services, all of them maintained in the counterfactual scenario: non-USO letters (quick letters, tracked letters DK, letters with return receipt), non-USO parcels (BtB parcels, DPD parcels, parcels exceeding 20kg), add on services such as delivery to post office boxes, pick-up and early delivery for bulk mail, address validation and handling of return letters,

only be considered if they cease to exist in the counterfactual. Parcels and letters will be kept in the counterfactual and potential demand complementarities between those two will therefore continue to exist. As to other products, there is no evidence that demand complementarities exist also for those products. Post Danmark no longer operates post offices where customers could, when buying a USO service, potentially be inclined to also buy products such as envelopes or stationary. The sale of such products could be done at service points, but those are outsourced to third parties such as petrol stations and supermarkets, and those third parties could potentially benefit from it, not Post Danmark.

- (9) Parking/stopping exemptions: Denmark has credibly explained that such exemptions do not exist in Denmark. The ARCEP report from 2010 to which the interested parties refer, mentions “certain countries” and gives the example of the UK¹⁴⁹. No reference is made to Denmark and the reason for this is because, as said, Denmark does not apply such exemptions. On that basis, the Commission concludes that it was correct not to take parking/stopping exemptions into account in the NAC.
- (10) Access to public registers: Denmark has explained that all postal companies themselves may create and use a recipient database. To establish and update the database, data can be obtained by all postal companies against payment from the Central Person Register (*Det Centrale Personregister* or “CPR”)¹⁵⁰. Post Danmark however is the only one that may obtain information from the CPR about named new-borns and people who entered Denmark and have an address in Denmark¹⁵¹. Pursuant to the licence (recital (22)(1)), Post Danmark must provide access to its own database on a transparent, non-discriminatory and cost-based basis, including information on new-borns and people who entered Denmark. Section 13(3) of the Postal Act prohibits Post Danmark and other postal companies to use the information from the database and public register for marketing or advertisement. Considering that Post Danmark cannot use information from public registers to its advantage, it is not an intangible benefit that should be taken into account in the NAC calculation.
- (347) Concerning the claims that Post Danmark receives a net income from the USO and that it is an advantage to have the USO rather than a disadvantage (recitals (67) and (68)) and that, therefore, Post Danmark should not be subsidised, the Commission notes that this is incorrect as the USO generated a net loss in 2020 (recital (194)).
- (348) Concerning the claim from interested parties that, because Post Danmark would not be able to issue stamps in the counterfactual scenario and therefore it needs to charge market prices, which are allegedly lower in the counterfactual, and its services would be cheaper, the Commission agrees with Denmark that no changes to the NAC are required (besides the stamps as an intangible benefit, see recital (346)(3)).
- (349) Stamps are one way of paying (in advance) for the distribution of a service. Other ways of paying for the distribution include labels and codes. The price of stamps also

and other mail services such as the internal postal service (handling a business’ incoming and internal mail/parcels), security scanning of mail and franking of a business’ mail.

¹⁴⁹ “Dans certains pays, les prestataires de service universel bénéficient de droits spéciaux pour le parking et/ou le stationnement. Au Royaume-Uni par exemple [...]”.

¹⁵⁰ Section 13(1) of the Postal Act.

¹⁵¹ Section 13(2) of the Postal Act.

has no link with the price for the distribution of single-piece letters. Only the prices for domestic single-piece 50-gram economy letters requires the approval of the Danish Civil Aviation and Railway authority. The rationale behind this approval process is to keep prices at a reasonable level and avoid that the USO provider sets its own prices with possible zoning as a consequence (i.e. customers in different parts of the country pay a different price, depending on whether they live in urban or rural areas). In the counterfactual scenario, a conservative approach has been chosen as the price for domestic single-piece 50-gram economy letters remains at the same level (the 2020 level).

- (350) The share of 50-gram economy letters in the overall number of items that Post Danmark processes is small. In 2020, the volume of this product was [...] million letters. The total number of domestic letters carried by Post Danmark was approximately [...] million, meaning that the price-regulated 50-gram economy letter is only a small part of the domestic letter volume.
- (351) The fact that prices for letter distribution services in Denmark (including regulated domestic single-piece 50-gram economy letters) are generally higher is due to the fact that in Denmark a very rapid digitalisation of letter services has taken place. This results in Denmark now being in the number one position in the Digital Economy and Society Index (recital (197))
- (352) As to whether the price of domestic single-piece economy letters suggests a too high profit for Post Danmark, the Commission concludes, first, that the quote provided by the interested parties (recital (69)) does not prove that Post Danmark's profits from stamps in Denmark are unreasonably high. The Danish Civil Aviation and Railway Authority has established a procedure to make sure that profits resulting from stamps are not too high and should be compared to profits of other European postal providers. In a study from McKinsey from 2019, the profit of European postal providers in the mail segment (i.e. letters) range from 8.1 % to 26 %.
- (353) The price in 2020 was DKK 10 or approximately EUR 1.34 taking into account the exchange rate of 1 January 2020¹⁵² (the increase from DKK 9 to DKK 10 took place on 1 January 2019) and the expected profit at the time was [5-10] %, so well within the range of what was considered reasonable in 2021 by using the new procedure referred to in recital (200). So, assuming that the same procedure would have been applied in 2020, it would have determined that the price of DKK 10 does not result in a disproportionate profit.
- (354) The graph provided by the interested parties shows the price levels of a letter sent within Europe and therefore has no relevance to the regulated price of domestic single-piece 50-gram economy letters.
- (355) The Commission has not determined the existence of any double counting in the NAC of Post Danmark (recital (70)). Insofar as franking is concerned, the Commission concludes that the category "other franking" in Tables 4 and 6 does not only encompass stamps, but also other ways of paying for the distribution of items (franking machines, online letter postage, unfranked replies (recipient pays) and postcards). The difference between the factual and the counterfactual scenario is around [10-20] % (i.e. the difference between Tables 4 and 6).

¹⁵² Taken from https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_nl.

- (356) Comparing this relatively small difference of [10-20] % to the effect of the discontinuation of other services on specific product categories shows that no double counting takes place. The example of the discontinuation of the international postal services under the UPU Convention, and other international postal agreements, highlights this because its effects are spread among different types of services. The discontinuation of international postal services under the UPU convention and other international postal agreements implies an estimated forgone revenue of DKK [...] million, split among Export Mail (reduction in revenues of 100 %), Import Mail (reduction of 100 %), Export Parcels (reduction of [...] %), Import Parcels (reduction of [...] %) and other franking as referred to in recital (355).
- (357) ITD, Undertaking 1 and SLD claim that the benchmarking exercise is flawed (recitals (311) and (315)) as Post Danmark would allegedly not be comparable to Posten Norge, Deutsche Post DHL Group and Danske Fragtmænd. The Commission considers that, as those other three companies have been chosen based on their full portfolio of products (so at group level), they are sufficiently similar to Post Danmark and therefore useful comparators. In addition, the conclusion of the interested parties is also based on a comparison of Post Danmark's factual scenario with the factual scenario of those companies. However, for a correct comparison, companies that are comparable with the counterfactual of Post Danmark should be chosen. This is what Denmark did when it selected Deutsche Post, Posten Norge and Danske Fragtmænd. By adding GLS to the comparators, the Commission considers that the already reliable benchmarking is even more reliable.
- (358) The Commission considers that the claim from Danske Medier concerning the allegedly too low prices is factually not proven. The prices for sorted-magazine mail are higher than what Danske Medier claims and, a priori, in line with market standard. Also, the low price referred to by Danske Medier (DKK 3.50) was in 2020 only applied for magazine mail in excess of 100 000 items and with a weight of 0.06 kg or less (the average weight of a magazine is approximately [...]-[...] grams).

6.3.1.8. Efficiency incentives

- (359) Paragraph 39 of the 2012 SGEI Framework states that: "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."
- (360) The provision of the services under the USO is subject to the quality standards laid down in Post Danmark's individual licence in accordance with Article 17 of Directive 97/67/EC (see recital (16)).
- (361) Post Danmark is required to appoint an independent external market analyst to monitor the fulfilment of the quality standards on domestic letters and to report the results to the Civil Aviation and Railway Authority every month. If Post Danmark fails to live up to the quality standards, a penalty is imposed¹⁵³.
- (362) In addition, Denmark plans to pay a fixed USO compensation to Post Danmark of, at most, DKK 225 million for 2020. The net cost of discharging the public service obligations has been calculated at DKK 385.625 million (see **Table 8**). The maximum compensation to be paid to Post Danmark amounts to only 58 % of the NAC of the USO. As long as it does not lead to overcompensation, Post Danmark is

¹⁵³ See in this regard also recital (284)(5) where it is explained that Post Danmark would optimise these quality measurements in the absence of the USO.

allowed to absorb all the efficiency gains achieved which constitutes a strong incentive for efficiency. The Commission also notes that, due to the quality standards and penalty system, these efficiency gains should not prejudice the quality of the service provided.

- (363) Considering the above, the Commission considers that Denmark has introduced sufficient incentives for the efficient provision of the USO.
- (364) As regards ITD's claim in the complaint that the NAC calculation violates paragraphs 39 to 43 of the SGEI Framework because any efficiency incentives would be unattainable by Post Danmark, the Commission notes that the SGEI Framework requires the introduction of efficiency incentives for the provision of the SGEI concerned. This is, however, not the same as the level of efficiency of the SGEI provider, to which ITD refers as regards Post Danmark (recital (41)(c) of the opening decision).
- (365) If it were demonstrated that a given SGEI provider would be an efficient provider at the outset or, if the cost of the USO were calculated taking into account an efficient provider, then the fourth Altmark criteria would in fact be met, and there would be no advantage for the USO provider in question, and thus such compensation would not constitute State aid.
- (366) In the present case, the Commission concluded that the fourth Altmark criterion was not met¹⁵⁴, and that the compensation to Post Danmark thus constituted State aid as the compensation to Post Danmark for the USO is not based on the net cost of an efficient provider.
- (367) It should further be noted that ITD's argument that, whatever efficiency standards will be applicable to Post Danmark, those will anyway be insufficient, is to be rejected. The quality criteria described in recital (16) are – as is also apparent from that recital – quality criteria which are laid down in Post Danmark's individual licence, and Post Danmark would, in accordance with Danish law, be required to comply with these quality criteria regardless of whether it received USO compensation. Those quality criteria are the same as in the period covered by the 2018 Decision¹⁵⁵. It should be noted in this regard, that the SGEI Framework clearly caters for the fact that efficiency incentives can be designed in a different way, and that one way to design such system could be for Member States to define upfront a fixed compensation which anticipates and incorporates the efficiency gains that the undertaking can be expected to make over the lifetime of the entrustment act¹⁵⁶, as has been done in the present case (recital (362)).
- (368) Moreover, as regards the USO compensation assessed in the 2018 Decision, the General Court concluded (along the same lines as the reasoning of the Commission in recitals (362) to (367)):

“the applicants are wrong to claim that the compensation at issue did not contain any efficiency incentives on the ground that its beneficiary, Post Danmark, was on the brink of bankruptcy and, therefore, could not be regarded as an efficient service provider. Such an argument is based on confusion between, first, efficiency incentives as required under paragraphs 39 to 43 of the SGEI Framework, which seek to ensure that the provision of an

¹⁵⁴ Recital (225) of the present decision and recital (70) of the opening decision.

¹⁵⁵ See recital (28) of the 2018 Decision.

¹⁵⁶ Paragraph 40 of the SGEI framework.

SGEI provides efficiency gains while ensuring quality service and, secondly, the idea that the NAC is calculated on the basis of an efficient service provider.

In that regard, the question whether the level of compensation needed must be determined on the basis of an analysis of the costs that an efficient service provider would have incurred in performing the USO is not relevant when assessing the compatibility of the aid in the context of the application of Article 106(2) TFEU. Taking into account the economic efficiency of the universal service provider would be tantamount to requiring that such a service always be provided under normal market conditions, which could potentially obstruct the fulfilment, in law or in fact, of the particular task assigned to undertakings entrusted with the operation of an SGEI. Article 106(2) TFEU is specifically intended to prevent such a situation”¹⁵⁷ (emphases added)

(369) Considering the above, the Commission does not share ITD’s doubts raised in the complaint, and concludes that there are efficiency incentives for the provision of SGEI.

6.3.1.9. Transparency

(370) 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 recital 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”.

(371) Paragraph 60(a) does not apply, as no public consultation has been carried out (see recital (245)). The Danish authorities already published the content, duration and identity of the undertaking on the internet¹⁵⁸. They have undertaken to publish the amount of aid granted to Post Danmark on the internet as well.

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

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

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

(374) Paragraph 54 of the SGEI Framework further states: "Serious competition distortions such as to be contrary to the interests of the Union are only expected to occur in exceptional circumstances. The Commission will restrict its attention to those

¹⁵⁷ Judgment of 5 May 2021, *ITD, Brancheorganisation for den danske vejgodstransport A/S and Danske Fragtmænd A/S v Commission*, Case T-561/18, EU:T:2021:240, paras 164 and 165.

¹⁵⁸ See footnote 15.

distortions where the aid has significant adverse effects on other Member States and the functioning of the internal market, for example, because they deny undertakings in important sectors of the economy the possibility to achieve the scale of operations necessary to operate efficiently."

- (375) The Commission recalls that additional requirements are only considered necessary in exceptional circumstances of serious distortions of competition that remain unaddressed by the other requirements of the 2012 SGEI Framework. In particular, the Commission restricts its attention to distortions where the aid has significant adverse effects on other Member States and the functioning of the internal market.
- (376) The Commission has not identified the need for additional conditions or commitments beyond compliance with the conditions of the SGEI Framework, as was the case in the 2018 Decision.
- (377) The Commission also notes that ITD identifies as an issue the fact that the USO compensation may be used for other activities than USO activities.
- (378) However, first, in this regard, as confirmed by the General Court, an assessment by the Commission as to whether public service compensation is compatible with the internal market consists in verifying, irrespective of whether the corresponding amount is actually allocated to it, whether such a public service exists and imposes a net cost on the undertaking responsible for providing it. This applies all the more for postal services, as the first paragraph of Part C of Annex I to Directive 97/67 provides that '*recovery or financing of any net costs of universal service obligations may require designated universal service providers to be compensated for the services that they provide under non-commercial conditions*'. The General Court in T-561/18 stated that the expression 'recovery or financing' used in that provision excludes any requirement that the transfer of funds corresponding to compensation for the universal service actually be used for the performance of such a service¹⁵⁹.
- (379) Second, Article 1, point (g), of Regulation 2015/1589 states that misused aid means aid used by the beneficiary in contravention of a Commission decision. The General Court in T-561/18 stated that only if it were established that Post Danmark had not fulfilled its obligations under the USO could it be found that the compensation at issue had been misused¹⁶⁰.
- (380) It follows from recitals (378) and (379) that, in the case at hand, USO compensation could be used for other activities than the USO and that this is not prevented by Directive 97/67/EC. Moreover, there is no indication that Post Danmark has not fulfilled its obligations under the USO and therefore no misuse of aid can be established.
- (381) Considering the above, the Commission concludes that in the case at hand there are no reasons to require conditions or to request commitments from the Member State.

6.3.2. Conclusion on compatibility

- (382) The Commission accordingly decides to consider the notified USO compensation for 2020 to be compatible with the internal market as it fulfils all conditions of the SGEI Framework.

¹⁵⁹ Judgment of 5 May 2021, *ITD, Brancheorganisation for den danske vejgodstransport A/S and Danske Fragtmænd A/S v Commission*, Case T-561/18, ECLI:EU:T:2021:240, paras 170 and 172.

¹⁶⁰ *Ibid*, para 176.

6.4. Conclusion

(383) The Commission finds that Denmark should have notified, to the Commission, State aid to the amount of EUR 15 million (approximately DKK 112 million, see recital (21)) corresponding to the compensation for the universal postal service for the first half of 2020 granted to Post Danmark. By not having notified the aid, Denmark has acted in breach of Article 108(3) TFEU. However, the Commission concludes that the overall aid measure is compatible with the internal market within the meaning of Article 106(2) TFEU as interpreted by the SGEI Framework.

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Denmark has partly implemented for Post Danmark A/S amounting to DKK 225 million is compatible with the internal market within the meaning of Article 106(2) TFEU.

Article 2

This Decision is addressed to the Kingdom of Denmark.

If the decision contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of the decision. Your request specifying the relevant information should be sent electronically to the following address:

European Commission
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Done at Brussels, 10.8.2022

For the Commission
Margrethe VESTAGER
Executive Vice-President

