

**EUROPEAN COMMISSION**  
Competition DG

Markets and Cases V: Transport, Post and other services  
State aids Post and Other services

Brussels, 16.12.2015  
COMP/F3/TL/MR/WD/ack\*2015/ 140018

Permanent Representation of  
Czech Republic  
15 Caroly Street  
1050-Brussels  
Belgium

**Subject: SA.42756 (2015/N) – Universal Service Obligation granted to Czech Post for the period 2015 – 2017**

Dear Sir/Madam,

By notification signed on 29 July 2015 and registered on 30 July 2015, the Czech authorities ("CZ-A") have notified to the Commission the above-mentioned measure. After an initial examination, the Commission services found the information to be incomplete and requested further information on 18 September 2015. The Czech authorities submitted their complete response on 4 November 2015.

Upon examination, the Commission services have concluded that the information is still incomplete, in that the information requested below is missing.

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**I. General information**

At the outset, the Commission services again stress that the present notification can only relate to the compensation granted to Czech Post ("CZP") for the period 2015 – 2017. Any compensation intended to be granted to the universal service provider from 2018 onward will have to be notified to the Commission once the universal service provider for that period has been chosen, provided that such compensation constitutes State aid.

- 1. Please confirm that the CZ-A agree to modify the duration for the current notification to the period 2015-2017.*

In their response of 4 November 2014, the CZ-A provided (in question 6) only the market shares for 2013-2014 in terms of volume for the companies with the most significant presence on the market.

**Please specify the name of the case and the case number in all correspondence.**

2. *Please also provide the absolute figures for volumes, as well as revenues (with the corresponding market shares).*

As regards the general description of the market, please note that the Commission services consider that courier and express services are not part of the relevant market for services falling within the scope of universal postal services, and should therefore not be taken into account for the implementation of a compensation fund mechanism.

3. *Please explain if and how the Czech Telecommunications Office ("CTO"), in its quality of regulator of the postal market, verifies the classification of services falling within the scope of universal service submitted by the postal service providers, in order to ensure the reliability of the data.*

## **II. Scope of the USO**

The Commission services note that CZP's obligation to provide the USO under Section 3 of Law 29/2000, as amended (the "Postal Services Act"), includes "the distribution of amount of money by postal order". As mentioned in section 3.2 below, this is an exclusive right granted to CZP in its quality as universal service provider, rather than a service within the scope of the USO.

The obligation laid out in Section 3(g) of the Postal Services Act also includes "services that must be provided on the basis of the commitments arising from the membership of the Czech Republic in the Universal Postal Union.

4. *Please explain (a) which services are covered by this provision, (b) what are their respective volumes and revenues, and (c) which share of the USO the services covered by this provisions constitute.*
5. *Please explain whether, with respect to the services covered by this provision, a public consultation in line with paragraph 14 of the 2012 SGEI Framework<sup>1</sup> was carried out.*

The Commission services also note that the Czech government has decided to set the minimum number of post offices required for the USO at 3 200. This requirement enters into force on 1 January 2016. The Commission services also note that previously, neither the Postal Services Act nor Ordinance 464/2012 set a specific minimum number of post offices. Finally, the Commission services observe that according to the information provided by the Czech authorities, the CTO considered that in 2013 only 2 108 of the 3 125 post offices operated by CZP were necessary, in line with the conditions set by Ordinance 464/2012, to provide the USO in the Czech Republic.

6. *Please explain (a) why the Czech government decided to set a specific minimum number of post offices, (b) why the number was set at 3 200, and (c) why it was considered that the minimum number of post offices required should be 50% higher than the number of post offices considered necessary by the CTO pursuant*

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<sup>1</sup> Communication from the Commission: European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.

to Ordinance 464/2012 and in fact higher than the number of post offices operated by CZP in 2013.

7. Please explain whether, with respect to the specific minimum number of post offices (3 200), a public consultation in line with paragraph 14 of the 2012 SGEI Framework was carried out.

### **III. The calculation of the net avoided costs ("NAC")**

The Commission services take note of the explanations provided by the CZ-A as regards the calculation of the NAC incurred by CZP in the provision of the USO in 2013. Further explanations are required as regards the following elements in the alternative scenario.

#### **3.1. Elements taken into account by CZP and the CTO**

##### **3.1.1. Closure of post offices**

The Commission services first agree that only the reduction of post offices that CZP is required to operate for the provision of the USO can enter into the net cost calculation. The costs related to post offices voluntarily operated by CZ-P cannot be taken into consideration.

8. Please provide a detailed explanation of the methodology used by both CZP and the CTO in arriving at their respective conclusions concerning the number of obligatory post offices to be closed in the alternative scenario. Please explain the differences between the respective conclusions of CZP and the CTO in detail.
9. Please provide a detailed explanation of the methodology used by both CZP and the CTO in arriving at their respective conclusions concerning the development of both costs and revenues connected to the closure of obligatory post offices. Please explain the differences between the respective conclusions of CZP and the CTO in detail.

##### **3.1.2. Delivery**

The Commission services understand that the alternative scenario is based on a distinction between territories with high delivery volumes and territories with low delivery volume. In the former territories, CZP would continue to deliver five times a week, whereas in the latter territories it would reduce its delivery frequency to every other day. The CZ-A explained that the CTO "analysed the nature of the costs from the perspective of dependence on volumes and delivery routes and projected the decrease of volumes into the cost of delivery".

10. Please provide a detailed explanation of the methodology used by both CZP and the CTO in arriving at their respective conclusions concerning the reduction of costs brought about by the envisaged change of delivery frequency. In particular, please explain in detail on the basis of which methodology it is decided in which territories the delivery frequency is reduced, and on the basis of which methodology the avoided costs and foregone revenues (if any) are calculated. Please explain the differences between the respective conclusions of CZP and the CTO in detail.

### 3.1.3. Other duties

According to the information submitted by the CZ-A, CZP claimed that as the USO provider, it was obliged to fulfil several duties which generated high costs. The CZ-A also suggest that the CTO did not accept all the duties invoked by CZP as being strictly related to the USO.

- 11. Please provide a list and description of the duties invoked by CZP as being strictly related to the USO, as well as the list of duties accepted by the CTO as being strictly related to the USO.*
- 12. As regards those duties accepted by the CTO as being strictly related to the USO, please elucidate their relationship with the USO, explaining why other postal services providers not entrusted with the USO would not comply with these duties, at least with a reduced scope.*
- 13. Please also explain why some duties invoked by CZP were not accepted by the CTO.*

### 3.1.4. Intangible and market benefits

The Commission services note that the CZ-A have not submitted any details on how the intangible and market benefits are calculated, but only provided the aggregate results of the analysis.

- 14. Please provide the table demonstrating the value for each intangible and market benefit listed in section 9 of Ordinance 466/2012.*
- 15. Please provide, for each intangible and market benefit, a detailed explanation of the methodology used by both CZP and the CTO in arriving at their respective conclusions concerning the value of each intangible and market benefit. Please explain the differences between the respective conclusions of CZP and the CTO in detail.*

### 3.1.5. Credibility analysis

The Commission services note that for the year 2013, CZP asked for compensation of the amount of amount CZK 1 775 million. At the same time, it appears that the CTO only accepted net costs of the USO of CZK 947 million.

- 16. Please confirm that the amounts of CZK 1 775 million estimated by CZP, and CZK 947 million accepted by the CTO, are the net costs calculated pursuant to the formula set out in section 5(2) of Ordinance 466/2012. Please also provide a breakdown of the net costs calculation using the formula set out in section 5(2) of Ordinance 466/2012.*

The CZ-A explained that a full analysis of the net costs of providing the USO has so far only taken place for 2013. Nevertheless, the CZ-A also provided that estimates for 2014 – 2017 prepared by CZP. The CZ-A explained that in providing these estimates, CZP did not take into account all the adjustments that the CTO introduced when verifying the net costs for 2013.

17. Please provide updates estimates for the years 2014 – 2017, taking into account the adjustments introduced by the CTO. The Commission services would base their further analysis on these updated estimates.

18. Please explain what "cancellation of OZ ICT" refers to.

Based on the CTO's calculation for 2013, and the estimates submitted for 2014 – 2017, it is possible to determine the profit margins (expressed as return on sales ("ROS")) that CZP would achieve if the full net costs were compensated:

Year	Total revenue in the alternative scenario	Profit in the alternative scenario	Profit margin in the alternative scenario
2013*	██████████	██████████	██████████ ROS
2014**	██████████	██████████	██████████ ROS
2015**	██████████	██████████	██████████ ROS
2016**	██████████	██████████	██████████ ROS
2017**	██████████	██████████	██████████ ROS

\* - value as approved by the CTO; \*\* - value as estimated by CZP.

The Commission services analyse the profitability indicator to assess whether the alternative scenario is credible, i.e. by comparing the profitability projected for the alternative scenario with a reasonable profit in the postal sector. The Commission service recall that in the 2012 *bpost* decision<sup>2</sup>, it considered that the reasonable profit margin in the postal sector would be between 5.4% - 7.4% ROS. In this light, the net costs estimated by CZP for 2014 – 2016 appear high.

As indicated in the table above, the Commission services' analysis yields a ROS of ██████████ for 2013. However, the CZ-A have submitted that for 2013 a compensation of the full net costs of CZP would lead to a ROS of 5.32%. The Commission services would like to understand the origin of this seeming inconsistency.

19. The CZ-A have indicated that for 2013, a compensation of the full net costs of CZP would lead to a ROS of 5.32%. Please indicate how this figure was calculated.

### 3.1.6. Reasonable profit

The Commission services would like to point out that the reasonable profit should not be added on top of the net cost, as this would lead to double counting (since it is already included in the counterfactual scenario).

<sup>2</sup> Commission Decision of 25 January 2012 in Case SA.14588 (C 20/2009) implemented by Belgium in favour of De Post-La Poste (now bpost), OJ L/170, 29.6.2012, p.1.  
[http://ec.europa.eu/competition/state\\_aid/cases/232315/232315\\_1314149\\_177\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/232315/232315_1314149_177_2.pdf)

20. *As the figures provided in the response of 4 November 2015 (for question 13) do not clearly show what the approach of the CZ-A is, please clarify whether the reasonable profit is added on top of the net cost.*

3.2. Elements seemingly not taken into account by CZP and the CTO – Other SGEI, exclusive rights, and contracts relying on CZP's postal network

The CZ-A submitted that apart from the USO, CZP is entrusted with a series of other SGEI (the Data Box Information System ("DBIS")); acting as the mediator for the payment of pension insurance benefits in cash; keeping records of the payers and collecting radio and television charges), exclusive rights (authorisation to operate the service of delivering a sum of money by postal order), and what appear to be additional exclusive rights (the sale of fee stamps on behalf of the Ministry of Finance; payment of social benefits by postal remittance; distribution of election ballots).

First, the Commission services would like to draw your attention to recital 30 of the 3<sup>rd</sup> Postal Directive, which reads: *"In cases where Member States decide to make accessible to the public, on their national territory, additional or complementary services, with the exception of those relating to the universal service obligations, as defined in this Directive, such as pensions and postal orders delivery in rural areas, these services should not be subject to any compensation mechanisms requiring the contribution of specific undertakings. Where appropriate, Member States may grant financing for such additional or complementary services in accordance with the Treaty rules on State aid."*

21. *If CZP already receives compensation for these SGEI and exclusive rights, as it would appear from the CZ-A's response of 4 November 2014, please explain how this compensation is excluded from the calculation of the net cost in order to avoid double counting.*

The Commission services are aware that at least some of these SGEI and exclusive rights entrusted to CZP are tied to CZP's status as the universal service provider (the DBIS, authorisation to operate the service of delivering a sum of money by postal order). Consequently, it would have to be assumed that in the alternative scenario, without obligation to provide the USO, CZP would not be entrusted with such SGEI and would not be granted such exclusive rights.

22. *Please provide a detailed explanation as to which SGEI and exclusive rights currently entrusted to CZP are connected to CZP's status as the USO provider.*

23. *With respect to all SGEI and exclusive rights currently entrusted to CZP and connected to CZP's status as the USO provider, please explain in detail how the loss of the entrustment with these SGEI and exclusive rights is accounted for in the alternative scenario.*

In the alternative scenario it is assumed that CZP would reduce its network by closing a number of postal offices. For the 2013 alternative scenario CZP assumed the closure of 692 postal offices, while the CTO approved the assumed closure of 352 postal offices. The delivery of certain SGEI (e.g. payment of pension insurance benefits in cash) and exclusive rights that are not connected with CZP's status as the USO provider could therefore be negatively impacted in the alternative scenario if it requires a comprehensive network of postal offices, i.e. relying on the currently existing postal offices network of CZP.

24. *Please explain which of these SGEI and exclusive rights would be impacted in the alternative scenario and explain in detail to which degree they would still be entrusted to CZP in the alternative scenario, despite the assumed network reduction.*

It could furthermore be argued that the assumption about the reduction of CZP's network is not completely realistic if CZP has entered into commercial contracts with third parties for services that need to be delivered over the assessed period 2015 – 2017 requiring a minimum number of offices with a certain coverage of the country. For example, in the framework of tenders, one condition could be the provision of services under terms similar or identical with those of the Postal Services Act. That means that, in the alternative scenario with a reduced network, CZP would either break those contracts (incurring certain penalties), or would need to find an alternative solution to fulfil the requirement of network size/coverage (e.g. either keeping in place the infrastructure necessary for their delivery or subcontracting with other parties, which would in any case entail an additional cost).

A similar situation arose in the recently decided Post Office Limited<sup>3</sup> case, where the SGEI in questions consisted in maintaining a very wide network. The UK authorities proposed as an alternative scenario a much smaller network, but did have contractual obligations with third parties that did not fit with such small network. They included in the alternative scenario some adjustments to account for that situation (for example some subcontracting was considered, see paragraph 39 of the decision).

25. *In this context, please address this point by providing (a) a list of contracts in CZP's portfolio (with banks, public administration, utilities etc.) that are impacted by the assumed reduction of the network in the alternative scenario; and (b) an estimation of the quantitative impact in terms of penalties for break of contract and/or costs entailed to ensure that they can be provided under the agreed terms.*

Finally, the Commission services note that the SGEI of keeping records of the payers and collecting radio and television charges was, according to the information provided, entrusted to CZP for an unlimited duration. Unlimited entrustments are not in line with the compatibility conditions set out in the 2012 SGEI Framework and the 2012 SGEI Decision<sup>4</sup>. The Commission service stress that this situation needs to be remedied as soon as possible.

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<sup>3</sup> [http://ec.europa.eu/competition/state\\_aid/cases/256622/256622\\_1651530\\_118\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/256622/256622_1651530_118_2.pdf)

<sup>4</sup> Commission Decision of 20 December on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, Official Journal L7, 11.01.2012, p. 3-10,

#### **IV. Other compatibility conditions**

##### **4.1. Accounting**

The accounts submitted by the CZ-A demonstrated that the provision of the USO was a profitable activity for CZP until 2012. From 2013 onward, the USO generated a deficit. Reversely, until 2012 (with the exception of 2011) the "other services" of CZP were loss making, but became profitable from 2013 onward. The CZ-A explained that in 2013 the "costing methodology changed in connection with the change of postal an commercial terms of the basic services" and that "[t]he costs of the other services include also the US burned costs which were allocated to these services based on the valid methodology of proportional allocation".

*26. Please explain in more detail the change in the accounting methodology that occurred in 2013, including why it was necessary. Please also explain what is meant by the "US burned costs" which were allocated to other services.*

*27. Please provide Table No. 5 in the Annex to Ordinance 465/2012, which the CZ-A referred to in their submission.*

##### **4.2. Duration of the entrustment**

The CZ-A submitted that entrustment period was determined with a view to providing the designated operator a sufficiently long entrustment period to obtain a return on investments.

*28. Please provide a concise overview of the most important assets needed for the provision of the USO and their respective depreciation periods.<sup>5</sup>*

##### **4.3. Transparency**

The CZ-A explained that according to section 34b(6) of the Postal Services Act, the CTO publishes its decision on the verification of the net costs for the provision of the universal services in the Postal Bulletin.

*29. Please clarify whether the CTO's decision on the verification of the 2013 net costs has already been published in the Postal Bulletin. Please provide, in any event, a copy of the CTO's decision on the verification of the 2013 net costs.*

#### **V. The compensation fund**

The Commission services understand that the compensation fund mechanism was established in the Postal Services Act with effect from 1 January 2013 onward. The process of activating the compensation fund mechanism for the year 2013 is currently ongoing. The Commission services thus infer that the compensation fund will, in

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<sup>5</sup> Commission Decision of 1 August 2014 in Case SA.35608 (2014/C) on Hellenic Post (ELTA) – Compensation for the financing of the universal postal service, OJ C/348, 3.10.2014, p.48, recitals 137-139.  
[http://ec.europa.eu/competition/state\\_aid/cases/253986/253986\\_1580512\\_16\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253986/253986_1580512_16_2.pdf)



principle, be activated for the years 2013 and 2014, whereas USO compensation from 2015 – 2017 will be based on the currently notified mechanism relying directly on the State budget.

The Commission services remind the CZ-A that a compensation fund mechanism set up in accordance with Article 7 of the 3<sup>rd</sup> Postal Directive<sup>6</sup> for the financing of the net costs of the USO constitutes State aid.<sup>7</sup> The Commission services further note that the amount apparently approved by the CTO as the net costs of the USO for 2013, namely CZK 947 million (ca. EUR 35 million), is above the threshold set in the 2012 SGEI Decision. Accordingly, any compensation granted to CZP to cover the net costs of the USO for 2013 – 2014 based on the compensation fund mechanism foreseen in the Postal Services Act has to be notified to the Commission under the 2012 SGEI Framework.

In this context, the Commission services note that the currently applicable section 34c of the Postal Services Act appears to establish a legal right of the entrusted USO provider to obtain compensation for the verified net costs of the USO on the basis of a compensation fund. Since State aid can be considered to have been granted at the moment that the beneficiary obtains a legal right to that aid,<sup>8</sup> the Commission services preliminarily conclude that CZP's right to obtain USO compensation via a compensation fund based on section 34c of the currently applicable Postal Services Act constitutes illegal State aid.

In addition to constituting illegal State aid, the Commission services have, on the basis of the available information, some doubt about compliance of the compensation mechanism established in section 34c of the currently applicable Postal Services Act with the requirements of the 2012 SGEI Framework. First, the questions posed above with respect to the calculation of the net costs (questions 8 - 23) are equally relevant for an assessment of the compensation fund mechanism. Secondly, although the financing of the USO through a compensation fund is in principle acceptable and foreseen by the 3<sup>rd</sup> Postal Directive, certain characteristics of the compensation fund mechanism may raise specific issues concerning the development of EU trade. The Commission service would therefore need to carry out an in-depth assessment of the precise set-up of the compensation fund before being able to conclude on its compliance with the 2012 SGEI Framework.

In the light of these considerations, the Commission services urge the CZ-A to notify the compensation fund mechanism to the Commission as soon as possible, and not to pay out any compensation from the compensation fund to CZP until the Commission has assessed and, provided that no serious doubts as to the compatibility of the measure are

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

<sup>7</sup> See for instance section 3.2. of the Commission Decision of 1 August 2014 in Case SA.35608 (2014/C) on Hellenic Post (ELTA) – Compensation for the financing of the universal postal service, OJ C/348, 3.10.2014, p.48.  
[http://ec.europa.eu/competition/state\\_aid/cases/253986/253986\\_1580512\\_16\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253986/253986_1580512_16_2.pdf)

<sup>8</sup> According to the jurisprudence, an aid measure qualifies as illegal aid if it has not been notified before the legally binding act by which the competent [national] authorities undertake to grant aid is adopted (Case T-109/01 *Fleuren Compost BV* [2004] ECR II-127, paragraph 74 and joined cases T-362/05 and T-363/05 *Nuova Agricast v Commission* [2008] ECR II-297, paragraph 80, and joined cases T-427/04 and T-17/05 *France and France Télécom v Commission* [2009] ECR II-4315, paragraph 321).

identified, approved the compensation fund mechanism established in section 34c of the currently applicable Postal Services Act.

## VI. The *Deggendorf* principle

In their request for information of 18 September 2015, the Commission services noted that the CZ-A did not commit to suspend the payment of any aid under the notified aid scheme to any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission Decision, until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest. The Commission services sought further clarification on why making the requested commitment was not possible for the CZ-A. In response, the CZ-A pointed to section 7 of Act No. 215/2004 regulating the recovery of aid.

The Commission services consider that the reference to Act No. 2015/2004 is not sufficient to provide the required safeguards. A general provision on the recovery of incompatible aid cannot replace the obligation of the CZ-A to ensure that no aid is granted to companies subject to an outstanding recovery order. The Commission services therefore inform the CZ-A that the notified measure can only be approved if compliance with the *Deggendorf* rule is ensured, e.g. by including a corresponding clause in the entrustment act.

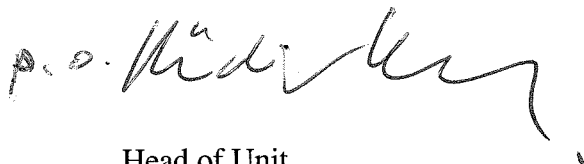
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Without this information, the Commission is unable to define its position on the proposed measure. Consequently, the period of two months within which it is required to do so will only start after the additional information is received. This should reach the Commission within 20 working days from the date of this letter.

In your reply you are kindly requested to inform the Commission services whether or not any of the information is confidential. Otherwise, the Commission services will consider that none of the information provided in your reply contains professional or business secrets.

This request for information is sent in English but a translation in Czech will follow. For the purposes of administrative efficiency, the Commission services would appreciate it if the reply to this request for information could be drafted in English and propose that any future exchanges related to this notification take place in English.

Yours faithfully,



Head of Unit  
Anna COLUCCI

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