COMMISSION DECISION

of 12 March 2002

on the aid granted by Italy to Poste Italiane SpA (formerly Ente Poste Italiane)

(notified under document number C(2002) 921)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2002/782/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above, [1],

Whereas:

I. PROCEDURE

(1) On 24 April 1997 the Commission received a complaint stating that Italy had granted State aid to Ente Poste Italiane (hereinafter EPI). The complainant asked the Commission to check whether the aid measures were justified under Community law. The Commission requested preliminary information by letters dated 27 May and 21 October 1997, to which the Italian authorities replied on 28 July 1997 and 2 and 23 February 1998.

(2) On 14 July 1998 the Commission decided to initiate proceedings under Article 93(2) (now Article 88(2)).

(3) By letter dated 4 August 1998 the Commission informed Italy of its decision to initiate proceedings under Article 88(2) of the EC Treaty in respect of the measures (hereinafter the opening decision).

(4) The Commission learnt from reports in the press that Italy was planning to grant additional aid, while the procedure was pending. By letter of 15 July 1998 the Commission asked for information on the new measures, which was furnished by the Italian Government by letter of 7 August 1998. The Commission decided to extend the Article 88(2) procedure to the new measures on 16 September 1998. Italy was informed of this decision by letter dated 12 October 1998 (hereinafter the extending decision).

(5) The Commission decisions to open and extend the procedure were published in the *Official Journal of the European Communities*. In both decisions the Commission invited interested parties to submit their comments on the measures referred to by the complainant and other measures identified by the Commission itself.

(6) Only the complainant submitted observations to the Commission by letters dated 2 March 1999 and 1 December 1999. The Commission forwarded the observations to Italy, which was given the opportunity to respond. Its comments were submitted by letter of 29 June 1999, registered by the Commission on 30 June 1999.

(7) The Italian authorities submitted further observations by letters of 23 October and 14 December 1998. The Commission requested additional information by letters of 15 December 1998, 25 February, 30 March and 16 December 1999, 11 May 2000 and 1 January 2001.

(8) The Italian authorities provided the information requested by letters of 17 February, 28 April, 29 June, 30 July, 20 August and 30 September 1999, 18 September and 21 February 2000, 23 January and 28 February 2001.

[1] OJ C 367, 27.11.1998, p. 5; OJ C 28, 3.2.1999, p. 5.

Meetings were held with the Italian authorities on 11 December 1998, 9 February, 12 March, 1 June, 15 June, 7 October and 26 October 1999. Meetings were held with the complainant on 28 July 1998, 15 January 1999, 28 April and 13 July 2000.

(9) By letter dated 6 December 2001, registered by the Commission on 13 December 2001, the complainant informed the Commission that it would be withdrawing the complaint that had triggered the investigation. The complainant said that, with the introduction of the postal Directive at the end of 1999, a new market situation had developed in Italy that nullified the complaint.

II. THE LEGAL BACKGROUND

The relevant Community legislation

(10) On 15 December 1997 the European Parliament and the Council adopted Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service [2] (hereinafter the postal Directive) which provides the general framework for a partial liberalisation of the postal sector at Community level. In this connection the Commission adopted a notice on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services [3] (hereinafter the postal notice) which sets out 'the Commission's interpretation of the relevant Treaty provisions and the guiding principles according to which the Commission intends to apply the competition rules of the Treaty to the postal sector in individual cases' [4].

(11) The postal Directive entered into force on 10 February 1998 and Member States were given one year to comply with it. The postal Directive and the postal notice can provide guidance in assessing the present case, even though some of the measures examined in this Decision were taken before their entry into force.

The postal Directive

(12) The postal Directive stipulates that Member States shall provide 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' [5]. This universal service should include at least postal items up to two kilograms and postal packages up to 10 kilograms. As regards the parcel service, the national authorities may increase the weight limit of the universal service up to 20 kilograms.

(13) In principle, the universal service is not reserved. However, the Directive also acknowledges that the provision of the universal service might require special compensation. Therefore, 'to the extent necessary to ensure the maintenance of universal service, the services which may be reserved by each Member State for the universal service provider(s) shall be ... correspondence ... the price of which is less than five times the public tariff for an item of correspondence in the first weight step of the fastest standard category ... provided that they weigh less than 350 grams' [6]. If necessary, cross-border mail and direct mail can also be reserved within the same limits.

(14) Article 14 of the Directive lays down precise rules, which the universal service providers must apply in order to establish a separate accounting system. It reads as follows:

> '1. Member States shall take the measures necessary to ensure, within two years of the date of entry into force of this Directive, that the accounting of the universal service providers is conducted in accordance with the provisions of this Article.
>
> 2. The universal service providers shall keep separate accounts within their internal accounting systems at least for each of the services within the reserved sector on the one hand and for the non-reserved services on the other. The accounts for the non-reserved services should clearly distinguish between services which are part of the universal service and services which are not. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

[2] OJ L 15, 21.1.1998, p. 14.
[3] OJ C 39, 6.2.1998, p. 2.
[4] Notice relating to postal services.
[5] Postal Directive, Article 3(1).
[6] Postal Directive, Article 7(1).

3. The accounting systems referred to in paragraph 2 shall, without prejudice to paragraph 4, allocate costs to each of the reserved and to the non-reserved services respectively in the following manner:

(a) costs which can be directly assigned to a particular service shall be so assigned;

(b) common costs, that is costs which cannot be directly assigned to a particular service, shall be allocated as follows:

(i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;

(ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;

(iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the reserved services and, on the other hand, to the other services.

4. (...)

5. National regulatory authorities shall ensure that compliance with one of the cost accounting systems described in paragraphs 3 or 4 is verified by a competent body which is independent of the universal service provider. Member States shall ensure that a statement concerning compliance is published periodically.

(...)'.

(15) The obligation referred to in paragraph 2 entered into force on 10 February 1999.

(16) The postal Directive was transposed into Italian legislation by Decree-Law No 261 of 22 July 1999 which entered into force on 6 August 1999. Article 7(2) of the Decree-Law reproduces Article 14(2) of the Directive. Article 7(3) of the Decree provides that the auditing firm responsible for certifying the accounts of the universal service provider must also check that the accounts comply with the abovementioned rules on separate accounting.

(17) Before the postal Directive entered into force, the Programme Contract of 17 January 1995 concluded between EPI and the Ministry of Telecommunications (hereinafter the 1995 contract) required EPI gradually to adopt a system of separate accounting complying with the principles of transparency, objectivity and equality of treatment in order to ensure effective competition for all non-reserved services. In particular, Article 11(2) of the 1995 contract stipulated that the separate accounting should ensure that there was no cross-subsidisation between reserved and non-reserved sectors. Article 12 required the Ministry and EPI to define the basic parameters of an accounting system capable of allocating the revenue, costs and capital used for the provision of each service on the basis of the activities required for its production.

(18) Article 13 provides that a certified auditing firm (società iscritta all'albo speciale delle società di revisione) must certify compliance with the principles of separation of accounts contained in Article 11 of the contract.

(19) The same obligation in Article 7 of the contract was incorporated into Law No 662 of 1996 which requires EPI to have separate accounts, in particular separating costs and revenue relating to services provided under a statutory monopoly from those obtained from services provided in a system of open competition.

(20) Lastly, the Directive of the President of the Council of Ministers of 14 November 1997 ([7]) requires the accounting system of the universal service provider to reflect the distinctions between postal services and financial services and to allow separate financial accounts for each cost centre to be established by allocating to each area of activity all the costs which concern that area.

(21) In order to comply with the obligation of separate accounts contained in these provisions as well as in Article 14 of the postal Directive and Article 7 of Decree-Law No 261/99, EPI and later PI adopted an accounting system based on the methodology called activity-based costing.

([7]) Italian Official Gazette No 293, 17.12.1997, p. 31, 'Guidelines for restructuring the Italian Post Office'.

(22) Activity-based costing differs from traditional costing. It reduces the pool of non-attributable common costs by tracing some of them through activities to products. This is done on the basis of statistical studies establishing causality links, on the one hand between activities and overhead consumption (cost drivers) and on the other between activities and products (activity drivers). This method is particularly suitable for industries with a high level of common costs like post offices.

(23) In line with the criteria set out in Article 14(4) of the postal Directive, PI allocated the whole cost of its operations on the basis of objective drivers to its different products (full and proportional cost allocations). First, it allocated the costs that can be attributed directly to a particular product to that product. It then applied the activity-based costing method to the remaining costs ([8]). With this method it is possible to determine the cost of each activity (e.g. managing, providing services, computerising the business, etc.) and the proportion of that activity which is 'consumed' by each product. Therefore any service sold by PI, whether universal or not, reserved or non-reserved, bears a proportionate amount of the total costs incurred by PI in producing that service. Unlike other postal operators, PI does not identify individual components of its costs (for instance the cost of maintaining post offices in unprofitable locations) as a cost attributable solely to the public service. In this way PI also allocates a proportion of the cost of the territorial network and any other common cost to the commercial services.

(24) This accounting system makes it possible to calculate the profit or loss of each product sold by PI.

(25) The auditors entrusted with the task provided for in Article 14(5) of the postal Directive, Article 13 of the 1995 contract and Article 7(3) of Decree-Law No 261 of 22 July 1999 have certified the separation of accounts of EPI and PI since 1996. No observations on the consistency and conformity of the separate accounts of EPI and PI have ever been made by the auditing firm.

(26) On the basis of the information provided by the Italian authorities, the Commission examined the activity-based costing methodology adopted by EPI and PI, the separate accounts and the annual audited reports and concluded that it reflects a correct allocation of PI costs among its different activities ([9]).

(27) Accordingly, given the particular circumstances of the present case, where the public postal operator provides, almost exclusively, services of general economic interest (see below), the Commission concludes that the separate accounting of EPI and PI can be used to assess the costs and revenues of the various services provided by the Italian public postal operator as well as to determine the net extra cost of the general service task entrusted to EPI and PI. Where the net extra cost of that task is higher than the overall value of the supplementary aid granted to PI, the Commission has no need to verify the existence of cross-subsidies benefiting a particular competitive activity of PI ([10]).

The postal notice

(28) The postal notice makes clear that 'cross-subsidisation does not distort competition when the costs of reserved activities are subsidised by the revenue generated by other reserved services since there is no competition possible as to these services. ... The same could be said of subsidising the provision of reserved services through revenues generated by activities open to competition' ([11]). However, postal operators 'should not use the income from the reserved area to cross-subsidise activities in areas open to competition' ([12]). The notice concludes that, if services were offered systematically and selectively at a price below average total costs, the Commission would, on a case-by-case basis, investigate the matter under Article 81, or under Article 81 and Article 86(1) or under Article 87 of the Treaty.

([8]) Only 0,8 % of the costs were deemed not to relate to the provision of services and were not allocated using the activity-based costing method.

([9]) On the basis of this information the Commission finds that the methodology has been applied consistently and on a statistically significant number of accounts and that the 'resource drivers' and the 'activity drivers' are objective since they are the result of thorough statistical and empirical research and analysis of EPI's structure. In addition, the system is revised and improved on a yearly basis.

([10]) Case T-106/95 FFSA [1997] ECR I-911, paragraph 188.

([11]) Postal notice, section 3.2.

([12]) Postal notice, section 3.4.

(29) According to the notice, 'the definition of the reserved area has to take into account the financial resources necessary for the provision of the service of general economic interest.' The notice underlines the need for internal accounting systems which identify separately costs and revenues associated with the provision of the different services.

(30) Section 3.4 of the notice states that the prices of competitive services should '... in principle be at least equal to the average total costs of provision. This means covering the direct costs plus an appropriate proportion of the common and overhead costs of the operator'.

The Italian postal market

(31) The postal service had been provided in Italy by Amministrazione Poste e Telegrafi (hereinafter APT), a branch of the Italian Ministry of Posts and Telecommunications, since the entry into force of Decree-Law No 884 of 14 June 1925.

(32) In addition to providing postal services, APT was responsible for collecting post office savings and providing a payment system. The collection of post office savings was introduced by Law No 2729 of 1875, subsequently amended by Decree of the President of the Republic No 156 of 1973. The obligation to provide a payment system was introduced by Decree No 1541 of 6 September 1917 and amended by the same Decree No 156/1973.

(33) Operating as part of the Ministry, APT was not entitled to set the rates and prices for its services, which were fixed by the Ministry itself. It had no independent legal status, was not a separate legal entity from the Ministry and had limited accounting autonomy. APT accounts were an integral part of the Ministry budget and had to be approved every year as part of the annual financial legislation concerning the State budget.

(34) During this period, any APT profits or losses were automatically transferred to the Treasury (responsible for the State budget).

(35) APT's poor financial performance coupled with the provision of low-quality services prompted the Italian Government to undertake a drastic transformation of the postal operator. It issued Decree-Law No 487 of 1 December 1993, converted into Law No 71/1994, which transformed the APT into EPI, an ente pubblico economico (separate accounting entity) with effect from 1 January 1994.

(36) Law No 71/1994 transferred to the newly established EPI all assets and liabilities, staff and business previously managed by APT. At the same time, the losses incurred at 31 December 1993 by APT were taken over by the Treasury.

(37) The 1995 contract entered into between EPI and the Ministry entrusted EPI with the following activities ([13]):

— provision of universal and reserved postal services (ordinary, express and registered mail, telex and telegraph services, etc.),

— provision of other non-reserved universal services (parcels weighing up to 20 kg, payment of State pensions, payment system, collection of post office savings on behalf of Cassa Depositi e Prestiti, postal current accounts, telex and telegraph services, etc.).

(38) The 1995 contract also allowed EPI to provide in open competition other postal, telecommunication, financial, insurance and distribution services.

(39) The 1995 contract also imposed other obligations in relation to the activities entrusted to EPI:

— binding quality standards for postal, financial and telecommunications services ([14]),

— for all services classified as universal (ordinary, express and registered mail, telex and telegraphic services, delivery of parcels up to 20 kg, payment of State pensions, collection of post office savings on behalf of Cassa Depositi e Prestiti, postal current accounts, etc.), an obligation to provide the said

([13]) Article 1 of 1995 contract.
([14]) Article 3(1) to (4) of the 1995 contract.

services throughout the Italian territory, irrespective of the economic equilibrium of post offices located in areas of little trade ([15]),

— for the distribution of newspapers and publications of non-profit organisations, application of a preferential tariff set by law, which is lower than the normal tariff otherwise applicable ([16]),

— other obligations (reduced rates for election campaigns, etc.) ([17]).

(40) It is thus clear that all the activities referred to in the previous recital were entrusted to EPI by the 1995 contract as services of general economic interest, the State having required the provision of those services to have a social and economic objective ([18]). EPI was required to provide all these services regardless of their profitability and to maintain a large network of post offices, even in areas where the turnover would not justify a direct presence from an economic point of view. Overall, EPI operates a network of over 14 000 offices throughout Italy.

(41) Lastly, as regards the possibility for EPI to set the prices for its services, a distinction must be made between different periods. Up to 1996 the Ministry controlled the price of the services provided by PI. Between 1997 and the entry into force of Decree-Law No 261/99 the Ministry retained control only for the services reserved to EPI, the latter being authorised by Law No 662/96 to set the price for other postal services freely. Following the implementation of the postal Directive, Decree-Law No 261/99 reintroduced a different degree of control by the Ministry in the fixing of the price for both reserved and non-reserved universal postal services.

(42) In order to offset the net cost borne by the firm in fulfilling its general interest task, the Italian State granted EPI various supporting measures:

— exclusive management throughout Italy of a number of services (so-called 'reserved services', as defined by Law No 662/1996, including ordinary, registered and insured mail, telex and telegraph services and stamp services ([19]),

— direct annual reimbursements in various forms ([20]).

(43) By Ministerial Decision of 1997 (CIPE decision of 10 December 1997) EPI was transformed into a joint stock company, Poste Italiane SpA (PI), with effect from 28 February 1998 ([21]). Relations between PI and the State continue to be regulated on a transitional basis by the 1995 contract until the new one is concluded ([22]).

(44) In 2000 a new Programme Contract was signed by PI, the Ministry of Telecommunications and the Treasury (hereinafter the new contract) ([23]). The new contract reflects developments in postal legislation since the 1995 contract and in particular the new market situation created following the introduction of the postal Directive.

(45) Unlike the 1995 contract, the new contract does not contain any universal obligation or any binding quality standard with regard to financial and telecommunication services.

([15]) Articles 3(6)(c) and 6(1) of the 1995 contract.
([16]) Article 6(2) of the 1995 contract.
([17]) Article 6(3) of the 1995 contract.
([18]) Article 6 of the 1995 contract, which *inter alia* concerns the public service obligations, refers to all the services classified as universal by the same contract in Article 1. Article 1 in turn refers to universal postal, financial and telecommunication services. For instance, in the past, the financial services in question have been described as a service provided in the interest of the population living in centres where there are no financial institutions who would otherwise not have access to the banking and financial market. By the same token Article 1(e) of the abovementioned 1997 Directive of the President of the Council of Ministers refers to the need to provide compensation for universal service obligations in the postal area and in the financial sector (postal banking).

([19]) The reserved area was redefined following the implementation of the postal directive by decision of the Ministry of Communication of 2 February 2000 (Italian Official Gazette No 29, 5.2.2000).
([20]) Indeed, as from 1994 the turnover generated in the reserved area has never been sufficient to cover the costs incurred by EPI and PI in providing the universal postal services.
([21]) In the present decision, for the sake of clarity the term EPI will be used to refer to both EPI and PI, save where otherwise specified.
([22]) PI's separate accounts of 1999 are based on the 1995 contract.
([23]) Italian Official Gazette No 221, 21.9.2000.

III. **DESCRIPTION OF THE MEASURES**

(46) The complainant alleges that non-notified State aid was granted to EPI in the form of:

— initial capital of ITL 50 billion (EUR 25 million);

— additional funding of ITL 1 287 billion (EUR 660 million);

— exemption from corporate equity tax ([24]).

(47) The complaint also refers to an additional measure, provided for in Law No 662/1996, consisting of the granting of ITL 300 billion to offset the costs of the preferential tariff for the press.

(48) In addition to the measure referred to in the complaint, the Commission decisions opening and extending the procedure referred to a number of measures that, in its view, might constitute State aid under Article 87. More precisely, it stated that in order to carry out its final assessment it needed more information on the following measures:

— a capital injection of ITL 1 337 billion (EUR 685 million) in EPI,

— exemption from the corporate equity tax,

— possible overpayment by the State for the franking, pension payment and post office savings collection services,

— reimbursement of the net costs relating to the universal service obligations (including the ITL 300 billion provided for by Law No 662/96 referred to in the complaint),

— financial support provided by the State for EPI's investment plan,

— payment by the State of the instalments (principal and interest) relating to loans obtained by EPI,

— the covering of APT losses incurred before 1993,

— a further capital injection when EPI was transformed into PI.

(49) In the extending decision the Commission referred to a debt write-off provided for by Law No 3 of 7 January 1999 (hereinafter the 1999 debt write-off). The Italian State decided to write off an amount APT owed to the Treasury which had been included in the EPI accounts. The write-off amounted to ITL 5 168 billion: more specifically, ITL 4 666 billion to close the so-called 'management of savings and money orders', ITL 479 billion for pensions paid to postal workers in 1993, and ITL 23 billion for pension provisions earmarked by the Treasury for a given category of workers made redundant between 1 January and 31 July 1994.

(50) In examining the financial relations between the State and PI the Commission must assess all the abovementioned measures under the State aid rules. To that end it must examine relations between PI and the State up to 1999, the year of formal adoption of the measure that, from a chronological point of view, is the last measure identified by the Commission decisions opening and extending the investigation.

(51) At present the Commission does not consider it necessary to extend its investigation beyond 1999 as it does not have any information relating to that period indicating that the Italian State overpaid PI to carry out its general interest tasks. The Commission naturally reserves the right to come to a different conclusion should it decide to investigate the financial relations between PI and the Italian State in the period after 1999 and subsequently obtain different information.

(52) For the purpose of conducting its investigation in an orderly and meaningful way, the Commission, in its opening decision, identified two different periods to be covered by its investigation. The first runs from 1959 to 1993 and the second from 1994 to 1999, the year of the last measure identified in the Commission decisions defining the scope of the present investigation.

([24]) As introduced by Decree-Law No 394/92; the temporary annual tax on all Italian companies of 0,75 % of the balance sheet net equity was later abolished with effect from the fiscal year 1998.

The period 1959 to 1993 and the measures relating to that period

(53) As stated in the opening decision, the Commission focused its analysis primarily on the measures taken after 1994 as their effect on competition is far greater. It should be noted, however, that when APT was transformed into a separate accounting entity (EPI) by Law No 71/94, the Treasury ordered the cancellation of all the cash advances with which it had been covering APT's losses from 1959 to 1993, totalling ITL 31 169 billion (EUR 15,9 billion).

(54) As indicated by the Italian authorities in their comments on the extending decision, the sum of ITL 4 689 billion must be added to this amount because it relates in reality to losses generated before 1994. The losses were identified at a later stage due to accounting difficulties, but they must be dealt with in the context of the time to which they actually relate. The sum consists of the first and second instalment of the 1999 debt write off provided for by Law No 3/99 and referred to in the opening decision.

(55) Overall, therefore, the State wrote off a debt of ITL 35 858 billion incurred by APT before 1994.

The period 1994 to 1999

(56) As indicated in the opening decision and afterwards in the extending decision, the Commission focused its investigation on the support granted after 1994, in particular up to 1999. As a result, the Commission investigation covers the legal and financial relations between Italy and EPI defined by Law No 71/94 and the 1995 contract.

(57) Law No 71/94 completely changed both the organisation of the postal service and the operating structure of APT by:

— allowing EPI a greater role in setting the rates for its services, on the basis of the criteria defined in the Programme Contract ([25]), with *ex post* control by the Ministry,

— defining, by means of appropriate agreements, the amount of the remuneration due to EPI for the financial services entrusted to it (post office savings, payment of pensions, etc.),

— providing for an accounting separation between the Ministry and the new entity in charge of the postal service (the newly established EPI),

— adopting the operational procedures of commercial undertakings, in terms of both decision-making processes and organisational structure (e.g. creating a Board of Directors which APT did not have).

(58) Law No 71/94, therefore, operated a drastic change in the provision of the postal service, especially as regards the possibility of offering new products and setting more competitive prices and conditions. In addition, it should be noted that the managerial autonomy of EPI was again increased by Law No 662/96 which gave EPI the power, for a short period until the entry into force of Decree Law No 261/99, to set the prices of all non-reserved services, without seeking clearance from the Ministry.

(59) The significance of the change was also reflected in the equity capital and funds allocated to EPI: this fact underlines the operational, organisational and accounting separation between APT and the new EPI.

(60) It can therefore be concluded that Law No 71/94 marks the start of a new period in the operation of the Italian public postal operator and in the manner in which the task previously entrusted to APT is regulated and financed by the State, entrusted to EPI and carried out by it.

(61) Once EPI was set up, the general legal instrument with the most significance for the purpose of the Commission investigation is the abovementioned 1995 contract since it regulates relations between EPI and the State. The contract governed relations between EPI and the Italian State up to and including 1999. During that period the competitive activity engaged in by EPI and later by PI ([26]) was limited to around 10 % of their respective turnover. In particular, according to the information at the Commission's disposal, it seems that during this period PI did not supply any significant parcel services specifically dedicated to business customers.

([25]) Article 8(2) of Law No 71/94; postal tariffs had previously been set directly by the Ministry of Posts and Telecommunications.

([26]) A service which is provided by PI and is not covered by a universal obligation or by any other general interest obligation.

(62) As stated above, a new contract entered into force in 2000 to regulate financial relations between PI and the Italian State and to allocate the supply of general economic interest services in the new market created after the implementation of the postal Directive.

(63) Under the new programme contract, a considerable number of services (i.e. all the financial and telecommunications services provided by PI, amounting to roughly 40 % of PI's turnover) previously classified as universal and subject to pre-determined quality standards are no longer so classified. It is therefore clear that the new contract marks another important change in the way the general economic interest task is entrusted to and carried out by EPI, and is defined and financed by the State. This change almost coincided with the entry into force of Decree-Law No 261/99 implementing the postal Directive and redefining the rules regulating the market for postal services in Italy. Since the period 1994 to 1999 is a homogeneous one it is reasonable for the Commission to treat these years together.

(64) On the basis of the information acquired in the course of the procedure, the Commission concludes that in the period 1994 to 1999 EPI and PI benefited from the following measures which might constitute State aid under Article 87 of the Treaty.

Table 1

Support measures granted to EPI and PI

(in ITL billions)

		1994	1995	1996	1997	1998	1999	Total
1	Initial capital injection into EPI	1 328						
2	Exemption from corporate equity tax	[...] (*)	[...]	[...]	[...]			
3	Initial capital injection into PI					3 000		
4	Reimbursement of cost of postal universal services	400	400	400		400	480	
5	Contribution to the cost of preferential distribution rates for newspapers			106	300	300	645	
6	Result of universal financial services	[...]	[...]	[...]	[...]	[...]	[...]	
7	Repayment of loans granted to APT	[...]	[...]	[...]	[...]			
8	Subsidised interest rate on loans	[...]	[...]	[...]	[...]	[...]	[...]	
	TOTAL	[...]	[...]	[...]	[...]	[...]	[...]	**17 960**

Source: Information from Italian authorities, balance sheets.
(*) Business secret.

(65) The calculation of the amounts shown is based on the moment when the aid was authorised for EPI or PI, rather than when it was actually paid, as the latter generally took place much later, in some cases even after some years. As a result, in terms of present value, the total amount of aid would be lower than indicated above: this is the potential maximum amount of the aid. The Italian authorities have not contested this prudent approach.

Detailed description of the measures relating to the period 1994 to 1999

(66) Article 7 of Law No 71/1994 provided for an initial injection of capital (fondo di dotazione) into EPI (measure 1) of ITL 50 billion, and then for an extraordinary capital injection of ITL 1 278 billion, to be granted as follows: ITL 968 billion in 1994, ITL 168 billion in 1995 and ITL 142 billion in 1996. The funds were aimed at helping the former APT to become a more competitive and commercially oriented body and at assisting EPI's business plan.

(67) Article 9 of Law No 71/1994 exempted EPI from the corporate equity tax (measure 2), which had been introduced by Decree-Law No 394 of 30 September 1992 and converted into Law No 461/1992. The tax was a temporary tax applicable to commercial undertakings over the period 1993 to 1998, and was calculated as 0,75 % of the net equity of the company as shown in the company's balance sheet. As EPI was a commercial undertaking, it would have been liable for the tax but was exempted under Article 9 of Law No 71/1994.

(68) The initial capital injection into PI (measure 3) was provided for by Article 53(13) of Law No 449 of 27 December 1997: the State would provide PI with a capital injection of ITL 3 000 billion in connection with the transformation of EPI into Poste Italiane SpA. The capital injection was to be granted in three tranches of ITL 1 000 billion in 1999, 2000 and 2001. The capital injection was entered into PI's accounts as from 1998, although the actual payment took place according to the above timetable.

(69) Reimbursement of the costs arising out of the postal public service obligations (measure 4) for the period 1994 to 1996 was provided for by Law No 662/1996. Law No 449/1997 provided for the reimbursement in 1998 and Law No 488/1998 for the reimbursement in 1999.

(70) The contribution to the costs of the subsidised rates for the distribution of newspapers and non-profit publications (measure 5) was regulated by Law No 662/1996 and its implementing measures (and previously by Law No 71/94, the 1995 contract and Law No 549/95). EPI and PI were obliged to apply substantially lower rates than the normal ones to the distribution of various kinds of publications which the State regarded as deserving special treatment. The State provided for the partial reimbursement of the difference between the normal rate and the reduced one by granting certain sums to EPI (see Table 1 above). Article 41 of Law No 448/1998 laid down that PI was to apply the normal rate for the distribution of these publications from January 2000. Accordingly the State ceased granting aid to PI for the distribution of newspapers ([27]).

(71) Measure 6 (result of universal financial services) covers the various payments made by the State and State bodies ([28]) for different financial services, entrusted to PI and classified by the 1995 contract as universal, which exceed the cost of providing all universal financial services. The amount shown is the operating margin for the universal financial services sector as a whole ([29]).

(72) Measure 7 (repayment of loans granted to APT) concerns the financing by the State of the investments made by APT and then transferred to EPI. Under Laws Nos 39/1982, 887/1984, 41/86 and 227/75, APT made a number of investments in order to upgrade its structures

([27]) The entry into force of the new law was postponed to 1 January 2002 by Law No 344/2000.

([28]) These payments are the sums that the State and other public bodies allocate to PI for the payment of pensions and other financial services as well as for the collection of post office savings. The latter service consists in collecting savings on behalf of the State (more precisely CDDPP) through current accounts (conti correnti postali) and savings products (buoni and libretti postali). For more details on the way these services operate see the opening decision.

([29]) Due to the lack of analytical accounting data, the amounts for 1994 and 1995 were rounded upwards by the Commission as the difference between total operating result and the operating result of the postal and telecommunications services.

and better perform its activities (such as mechanisation of the postal service). The laws provided that the State (the Treasury) would offset the annual payments made by the postal operator to reimburse loans granted by Cassa Depositi e Prestiti (hereinafter CDDPP) to finance the investments. The measure operated as follows: CDDPP granted the loans to APT; when EPI paid an instalment the Treasury reimbursed either both the interest and the principal (Law No 887/1984) or only the principal (Laws Nos 39/82, 41/86 and 227/75). As the Italian authorities have confirmed, when EPI was set up it continued to benefit from the investments made under those Laws. The same holds for PI.

(73) However, in 1998, 1999 and 2000 the Treasury did not reimburse PI for the instalments paid on the abovementioned loans, pursuant to Law No 449/97. Accordingly, the measure was not applied in those three years.

(74) Moreover, as regards the loans granted by CDDPP in respect of which EPI was liable for interest payments ([30]) (Laws Nos 39/1982 and 41/86 and some of the loans granted under Law No 227/75), the annual interest rate applied by CDDPP was 3,7 %, except for a portion of the loans granted under Law No 227/75 on which the interest rate averaged 9,75 %. As will be shown below, this interest rate is lower than the interest rate that APT could have obtained on the capital market (measure 8).

IV. COMMENTS FROM THIRD PARTIES

(75) The complainant was the only third party to submit observations on the opening and extending decisions. It did not present any particular arguments in its correspondence with the Commission concerning the compatibility of the measures in question with the common market or whether the measures distorted competition on the market in which PI was active.

(76) It is worth recalling, however, that the complainant's observations on the opening decision referred to additional assistance granted to EPI and PI in the period 1994 to 1999 which might have constituted additional State aid. In particular, the complainant alleged that Italy had refrained from imposing fines on EPI for failing to meet the obligations of the programme contract. The non-imposition of fines would have given EPI a financial advantage constituting State aid under Article 87.

(77) The Commission rejected this complaint by letter of July 1999 as the alleged infringement appeared to be unfounded and the 1995 contract did not provide for any sanctions. In the same letter the Commission invited the complainant to provide further data in support of its complaint. The complainant did not respond to the Commission's invitation.

V. COMMENTS FROM ITALY

(78) The Italian Government argued in its reply that: (i) none of the measures examined by the Commission constitute State aid but rather compensation — even if only partial — for the extra costs of the public service obligations imposed on EPI and PI; (ii) EPI and PI did not benefit from any over-compensation; in particular, the financial services provided to the State were remunerated at market prices or at prices lower than the actual costs incurred by EPI and PI for their provision, (iii) the measures must be seen as a one-off reorganisation of the postal service in Italy.

(79) As regards point (i), the Italian authorities argue that the total amount of compensation received by EPI and PI in various forms does not cover the net extra cost incurred by the firm in accomplishing its public service task. According to the Italian authorities, even if the measures identified by the Commission did constitute aid, EPI would still be under-compensated for its general interest obligations.

(80) With regard to point (ii), the Italian authorities argue that the financial services provided to the State by EPI and PI were remunerated at market prices and that therefore the firm did not enjoy any advantages. In particular, the remuneration provided by the State, through CDDPP, for the collection of post office savings and accounts was below the market remuneration for comparable services, i.e. bank current and savings accounts.

([30]) With regard to these loans the Treasury does not offset the outflow relating to the reimbursement of the interest.

(81) As far as point (iii) is concerned, the Italian authorities state that all the measures referred to by the Commission in its opening and extending decisions should not be regarded as separate operations. Rather, they constitute a single process initiated by Law No 71/1994 and aimed at transforming the postal operator from a branch of the public administration into a full commercial undertaking for listing on the stockmarket.

(82) Given the complexity of the financial and organisational relations between the former APT and the State, the process of identification of the initial net equity of EPI and PI has been gradual and lengthy, and the capital injections into EPI and PI of ITL 4 337 billion should be seen as aimed at separating the assets and liabilities of the newly formed EPI. As these measures therefore do not constitute the granting of fresh financial resources or the covering of losses generated by EPI and PI, they do not constitute State aid. Furthermore, the initial capital of ITL 6 047 billion granted to EPI was overestimated by ITL 2 100 billion and was reduced accordingly. The State was thus entitled to reintegrate EPI's initial equity by the same amount.

(83) According to the same line of reasoning, the exemption from the corporate equity tax is not State aid because it was justified by the fact that, if the State had levied the tax, it would also have had to grant a higher initial equity to EPI. By the same token the loans granted for APT's investments were to be paid for by the State (interests and principal). When EPI and PI substituted APT in respect of these investments, the State kept on paying for the loans as originally provided for. Thus the measure should not constitute State aid.

(84) Lastly, the Italian authorities argue that the Commission should not apply the market economy investor principle in assessing the funding measures concerning firms involved in the provision of services of general economic interest as such firms do not by definition operate in normal market conditions.

VI. ASSESSMENT OF THE MEASURES

(85) For a State measure to constitute State aid within the meaning of Article 87(1) of the Treaty, the following requirements must be fulfilled:

(a) it must be granted by a Member State or through State resources in any form whatsoever;

(b) it must distort or threaten to distort competition by favouring certain undertakings or products;

(c) it must affect trade between Member States.

(86) As regards the measures referred to in the opening decision (but not referred to by the complainant), the Commission concludes that they do not constitute State aid. The measures are the following:

— payments for the collection and distribution of post for the various public administrations,

— the third tranche of the 1999 debt write-off (ITL 23 billion).

(87) As regards the collection and distribution of post for the public administrations, it is a service that EPI provides to the State and which is paid for by the State. In general, the price for that service does not require analysis under Article 87 of the Treaty insofar as the State payment does not exceed the market price for that service.

(88) The State usually paid APT a flat-rate for the postal services supplied to the public administration. When EPI was set up, this payment system was not changed until 1997. Article 2(17) of Law No 662/1996 then stipulated that the service would be provided on the basis of the rates in force. No charges would be levied, however, for certain postal services (e.g. mail to and from the President of the Republic, the Pope, the unions, etc.). Accordingly, in the years following the adoption of that Law, the payment of postal services by the public administration does not pose any problems from the standpoint of the rules on State aid. The Italian authorities stated that, in 1997, the price paid by the State on the basis of Law No 662/1996 was about ITL 300 billion.

(89) In the period 1994 to 1996, the State paid on average ITL 330 billion which, taking account of the fact that certain services were free in the new system and that in Italy, in the first half of the 1990s and until 1997, the volume of post was constantly decreasing, is substantially in line with the price paid after 1996. The Commission concludes, therefore, that the measure did not give EPI a particular advantage and does not constitute State aid.

(90) The third tranche of the 1999 debt write-off totals ITL 23 billion for pension provisions earmarked by the Treasury for a given category of workers made redundant between 1 January and 31 July 1994.

(91) On the basis of information provided by the Italian authorities, the Commission has concluded that the debt write-off relating to 1999 does not constitute State aid.

(92) The pensions paid by the Treasury amounting to ITL 23 billion in the first half of 1994 should have been paid by the State as soon as EPI was set up, as in the case of any other commercial enterprise. The debt write-off did not confer any advantage on EPI since from the outset it constituted a debt incurred by the State.

(93) All the other measures described above may constitute State aid within the meaning of Article 87 of the Treaty as they involve State resources, favour the recipient and have a potential effect on trade between Member States.

Aid granted to Member States or through State resources in any form whatsoever

(94) As far as the nature of the funds is concerned, the Commission notes that funds granted in the form of capital injections and to cover APT's losses, funds granted for the pension payment service, contributions to the costs of the universal service obligations in the postal sector, the distribution of newspapers and the reimbursement of investments made by APT are all granted direct by the State out of its own budget.

(95) Thus there is no doubt that these measures constitute State resources.

(96) Although the exemption from the corporate equity tax does not involve direct cash outflow for the State, it nevertheless directly affects the public budget. The State, in fact, forgoes tax revenues which it is legally entitled to claim and which it would normally have claimed. It is thus clear that this measure also involves State resources.

(97) As regards the interest subsidies on loans granted by CDDPP and the funding granted by CDDPP for the financial services entrusted to EPI (e.g. collection of post office savings), the Commission notes that CDDPP was set up and is fully controlled by the Treasury, which appoints its managing board. According to Court of Justice case-law, in order to determine whether a measure can be considered to be State aid under Article 87 of the Treaty, 'no distinction should be drawn between cases where aid is granted directly by the State and cases where it is granted by public or private bodies established or appointed by the State' ([31]). Accordingly, although the funds did not derive directly from the State budget, it is clear that they have the characteristics of State resources.

Aid that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods

(98) Under Article 87(1), for a financial measure to be considered State aid, it must give the recipient an economic advantage. On the basis of this principle, the Court has on several occasions ruled that the notion of State aid within the meaning of Article 87 should not be limited to capital grants or subsidies but should also include all measures which, while not having the nature of a subsidy, are capable of producing the same economic effects ([32]).

(99) The covering of the losses incurred by APT gives an economic advantage to APT alone as it eliminates a cost which would normally have been included in its budget.

([31]) Case C-305/89 Italy v Commission [1991] ECR I-1603.

([32]) See Case C-387/92 Banco Exterior [1994] ECR I-877, paragraph 13, where the Court held that 'the concept of aid is thus wider than that of subsidy because it embraces not only positive benefits, such as subsidies themselves, but also interventions which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which ... have the same effect'.

(100) All the measures listed in Table 1 are capable of giving EPI and PI an economic advantage within the meaning of Article 87.

(101) As regards the capital contributions to both EPI and PI (measures 1 and 3) totalling ITL 4 328 billion, according to well-established case-law ([33]) capital injections made with State resources under conditions not acceptable to a private investor operating in a market economy confer a direct advantage on the recipient company and thus can constitute State aid under Article 87. The recipient may, in fact, use these resources to finance its expenditure and investments without the need to seek loans from financial institutions or to obtain an adequate return on the resources received.

(102) On the basis of EPI's past economic record and its predicted future performance, the State could not expect a return that would have been acceptable to a private investor. The former APT was so heavily loss-making and for such a long time that no private investor could reasonably have expected an acceptable return on an investment of ITL 1 328 billion in EPI. And indeed the latter's financial position in the first years following the injection continued to deteriorate.

(103) The same reasoning can be applied to the ITL 3 000 billion injected into PI, given that neither its previous nor its forecast results would encourage a private investor to expect an acceptable return. In particular, according to PI's business plan submitted by the Italian authorities as part of these proceedings, PI was expected to return to conditions of economic balance only in 2002, additional losses being expected over the period 1999 to 2001. The return on the investment, although the company was expected to break even in 2002 would not have been acceptable to a private investor operating in a market economy.

(104) Thus, as the two capital injections were granted under conditions that would have not been acceptable to a private investor, they are capable of conferring an economic advantage on the recipient within the meaning of Article 87(1).

([33]) Communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings operating in the manufacturing sector, OJ C 307, 13.11.1993, p. 3.

(105) The exemption granted to EPI from corporate equity tax (measure 2) may be regarded as a direct subsidy as it eliminates a cost item which would otherwise have been included in the budget of the recipient ([34]). The measure is thus capable of conferring an economic advantage.

(106) Measures 4 and 5 concern payments made exclusively to EPI and PI by the State or a public body. The measures are thus likely to give the recipient an economic edge over other firms.

(107) The State funding of the investments made by APT in upgrading its structure and improving its performance (measure 7), which was subsequently transferred to EPI, eliminates the cash disbursements that EPI would have incurred if it had had to pay for the investments itself. As stated above, APT was granted loans by CDDPP and was obliged to repay them. EPI inherited the obligation. The State measure in question, however, allowed the Treasury to offset the payments resulting from that obligation by reimbursing the amounts the firm pays each year to CDDPP.

(108) Thus the advantage deriving from this measure consists in the offsetting by the State of the sums that EPI pays every year to CDDPP to reimburse the loans. In practice, the effect of the measure does not differ in any respect from a direct grant of funds on a yearly basis ([35]).

(109) According to established case-law ([36]), the granting by State-controlled entities such as CDDPP of loans at a

([34]) See footnote 32.

([35]) As the Treasury reimburses principal and interest on loans granted under Law No 887 of 1984 the amount of the advantage comprises the annual repayment of principal and interest. For other loans the Treasury offsets the reimbursement of the principal, but the interest is paid by EPI and PI (Laws Nos 39/82, 41/86 and 227/75). In this case the advantage is limited to the annual repayment of the principal. However, as will be shown below, even when EPI paid the interest it benefited from an advantage due to the low interest rate.

([36]) Case C-142/87 Belgium v Commission [1986] ECR 231.

reduced interest rate (measure 8) may constitute State aid. As noted above, EPI was required to pay interest on certain loans granted by CDDPP. The average interest rate paid by EPI and then by PI on loans granted under Laws Nos 39/82, 41/86 and 227/75 was 3,7 % a year. The average interest rate on the remaining loans granted under Law No 227/75 was 9,75 %.

(110) In order to determine whether the interest rate gave PI an advantage, it is necessary to compare it with the rate which PI would have obtained in the same period on the capital market ([37]). The Commission believes that in the present case the average interest rate for long-term loans to businesses published by the Italian Central Bank is a reliable reference point ([38]). The difference between the interest rate actually paid by PI and the average interest rate for long-term loans to businesses constitutes the advantage enjoyed by PI. The amounts indicated in Table 1 are calculated accordingly ([39]).

(111) The Italian authorities have argued that some of the loans were used to finance investments in upgrading APT structures for the provision of general interest postal services. Had EPI paid a higher interest rate, the cost of the universal service would also have been higher.

(112) The Italian authorities have not been able to quantify the additional cost of the universal service that EPI would have borne if it had paid a higher interest rate, nor have they submitted detailed information to allow the Commission to estimate the amount. The Commission cannot therefore accept this argument.

(113) On the basis of the foregoing, it can be concluded that, apart from the public service obligations, all the abovementioned measures are likely to have conferred an advantage on EPI and then PI within the meaning of Article 87.

Aid that affects trade between Member States

(114) The third condition to be met for State measures to be covered by Article 87 is that they should have an actual or potential effect on trade between Member States. EPI operates in the postal and financial sectors, where competition is present either in a direct form from other operators providing the same service, including some based in different Member States, or indirectly from other operators providing substitutable services.

(115) There was some competition in the postal sector in Italy even before the gradual liberalisation promoted by Community legislation. In particular, express mail services, parcel services dedicated to business customers and logistical services have been developed in Italy by private undertakings, some of which are based in other Member States ([40]).

(116) As far as financial services are concerned (post office current and savings accounts and payment services), PI competes with operators offering financial products, such as banks and financial operators, that can to a large extent be substituted for PI's products. The post office current and savings accounts, which are used for both payment and savings purposes, are in competition with bank current accounts and saving products. It should be noted in this connection that PI has gradually integrated its payment system with the banking payment system to which all Italian banks are connected, thus enhancing substitutability between post office financial products and banking products.

(117) The banking sector has been open to competition for many years ([41]) and there is extensive trade between

([37]) Case T-16/96 Citiflyer [1998] ECR II-757.

([38]) According to Bankitalia statistics the latter rate was as follows: 1994 10,22 %, 1995 11,44 %, 1996 10,68 %, 1997 8,26 %; 1998 6,22 %; 1999 4,46 %. On some of the loans granted under Law No 227/75 the interest rate was 9,75 %. This rate became higher than the market rate from 1997 and so there is no aid element from that year onward. The 1994 rate is a Commission estimate on the basis of the data published by Bankitalia.

([39]) Difference between the average rate applied by banks on long- and medium-term loans to firms and the rate actually paid by EPI and PI to CDDPP, multiplied by the average amounts outstanding each year on the different loans granted by CDDPP for which the repayment of the interests is the sole responsibility of EPI.

([40]) TNT and DHL can be cited as examples of foreign-controlled undertakings.

([41]) See for instance Case 267/86 Van Eyke [1988] ECR 4769 and paragraph 23 of the Advocate-General's opinion; Case C172/80 Zuchner [1982] ECR 2021. See also Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ L 178, 8.7.1988, p. 5) and Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ L 335, 10.12.1989, p. 67).

Member States. Several banks from different Member States operate in Italy, either directly through branches or representative offices, or indirectly by controlling Italian-based banks and financial institutions.

(118) In the light of the foregoing it is clear that any State measure giving EPI or PI an economic advantage may affect trade between Member States under Article 87.

Services of general economic interest

(119) In order to assess a financial measure benefiting a firm entrusted with a general interest task, it is necessary to determine whether the aid aspect of the measure should be ignored owing to the specific public service obligations imposed on that firm ([42]). In other words, it is essential to check whether the financial measure in question provides more support than the additional net cost borne by the firm in fulfilling its tasks. As the Court of Justice has consistently held ([43]), Member States are entitled to ensure that undertakings entrusted with a general interest task perform their task in conditions of economic equilibrium. If the support does not exceed the net extra cost, then the measures do not constitute State aid since the firm does not in practice benefit from an advantage within the meaning of Article 87(1).

(120) As stated above, Italy has argued that all the measures examined by the Commission in this Decision are intended to offset the net extra cost incurred by PI in fulfilling its public service tasks. Italy has also stated that the support granted by these measures does not exceed the net extra cost incurred by PI.

(121) Having taken all this into account, the Commission must first assess the measures in question by considering the fundamental question of the proportionality of the compensation received by PI in relation to the net extra cost incurred in fulfilling its public service tasks in the period covered by the Commission's investigation (1994 to 1999).

(122) In its communication on services of general interest in Europe ([44]) the Commission stressed that the question of compensation should be examined in the light of three principles:

1. neutrality;

2. freedom of the Member States to define what they regard as public service;

3. proportionality.

(123) The first principle, neutrality, means that the Community is neutral as regard the public or private ownership of the firms providing the service. Compliance with this principle is not an issue in the present case.

(124) The freedom of Member States to define a service of general economic interest is limited only by the Commission's monitoring of abuses or obvious errors. 'However, in every case, for the exception provided for by Article 86(2) to apply, the public service mission needs to be clearly defined and must be explicitly entrusted through an act of public authority (including contracts). This obligation is necessary to ensure legal certainty as well as transparency vis-à-vis the citizens and is indispensable for the Commission to carry out its proportionality assessment' ([45]).

(125) With regard to 'definition' and 'entrusted' quoted above, the 1995 contract constitutes the legal instrument which sufficiently clearly defines and entrusts to EPI a number of general economic interest services.

(126) Proportionality means that the methods used to fulfil the general interest tasks should not create unnecessary distortion of trade or exceed what is necessary to guarantee the effective fulfilment of the task. The performance of the general interest service must be ensured and the firm entrusted with such tasks must be able to bear the specific burden and the extra net costs involved.

([42]) See Case C-53/00 Ferring paragraph 23, not yet reported.
([43]) See for example Case C-320/91 Corbeau [1993] ECR I-2533.
([44]) OJ C 17, 19.1.2001, p. 4.
([45]) Paragraph 22 of the communication.

(127) It is therefore necessary in this case to quantify the total net extra costs of the public service obligations imposed on EPI by the1995 contract and then compare the amount of the net extra cost with the advantages granted to EPI by the State.

(128) As indicated above, EPI complied with the postal Directive by introducing separation of accounts which makes a distinction between costs and revenues for the general interest products and costs and revenues for other products. In the present case, where PI was only marginally active outside the area of general economic interest services during the period under investigation, the Commission can quantify the net extra cost of the public service obligation imposed on EPI on the basis of the certified separation of accounts.

(129) As already stated, the system gives the operating result of each EPI product. By adding (profit) or subtracting (loss) the operating result of each service performed under a general interest obligation and the relevant portion of the financial charges, it is possible to calculate the total net extra cost incurred by the firm in fulfilling its general service task. In this method, all routes, profitable and unprofitable, are included in the calculation. At the same time, any income or positive margins achieved by certain general economic interest services as well as income generated in the reserved area are automatically deducted from the overall net extra cost of the general economic interest services. On the other hand, the costs and revenues of products for which no general interest obligation is imposed are not included (even when they are sold on unprofitable routes) in the calculation of the net extra costs of the general economic interest services.

(130) The Commission calculated that the net extra cost of the public service task ([46]) entrusted to EPI and then PI in the period 1994 to 1999 is as follows:

Table 2

Net extra cost of the general service task entrusted to EPI and PI

(in ITL billion)

1994	1995	1996	1997	1998	1999	Total
3 654	2 226	2 746	3 153	3 404	3 433	18 656

(131) The high net extra cost is due to a number of factors: (i) EPI regularly posted losses, even in the reserved area, while the largest part of its activity was concentrated in the universal service area; (ii) the heavy burden imposed by the preferential rate for newspapers and non-profit publications (which alone account for between one third and half of total net extra costs); (iii) the small number of postal items per capita sent in Italy in relation to the extent of the network (one of the worst items/network ratios in Europe); (iv) the low efficiency of the Italian postal operator.

(132) This method of calculating the net extra cost includes the advantage enjoyed by EPI through the exclusive right granted to it. As stated above, in order to enable EPI to perform its task the State granted an exclusive right to EPI, which, however, has consistently incurred losses in the exclusive area which would have been even higher had the State sought compensation for having granted that exclusive right. The losses are part of the net extra costs of the general economic interest services. Thus, although PI enjoys the undeniable advantage of being the only firm allowed to operate the reserved services, the advantage is not sufficient to cover the net extra costs owing to the particular features of the present case (e.g. inefficiencies and overstaffing at PI, one of the worst

([46]) It includes the net cost of providing all the services for which the State imposed a general service obligation. In practice it includes the losses generated by universal postal and telecommunication services, given that the universal financial services have been profitable. Due to the lack of accounting data for 1994 and 1995 the Commission has rounded up the net cost of the public services in those years on the basis of the average ratio of net cost of the public services to operating result in the period 1996 to 1998.

ratios in Europe of network size to number of items sent per capita). Accordingly, since the revenue generated in the reserved area is not sufficient to cover even the net extra cost of the reserved area itself, the Commission has, in deducting the revenue from the net extra cost of the general economic interest services, already taken account of the entire advantage enjoyed by PI through the exclusive right.

(133) As indicated in Table 1 the funds granted to EPI over the same period amount to ITL 17 960 billion. Given that over the relevant period the net extra cost of the public service task exceeds the financial support granted to EPI, the Commission concludes that the measures under examination plus the advantage given to EPI by the exclusive right has not led to overcompensation of the net extra cost of the general service task entrusted to EPI. Accordingly the measures referred to in Table 1 do not constitute State aid.

(134) Having reached this conclusion the Commission does not consider it necessary to check whether there has been any cross-subsidisation of the competitive activities engaged in by PI ([47]).

(135) As regards the period 1959 to 1993 and the covering of APT losses, the Commission notes that, prior to the adoption of Law No 71/94, the State did not reimburse any costs arising out of general interest obligations, it simply used cash advances to finance APT losses. The cancellation of the cash advances can be regarded as *ex post* reimbursement of the extra costs incurred by the APT in accomplishing its general service task. Furthermore, APT had a limited own-accounting system and inflows and outflows were included in the budget of the Ministry. Any imbalance between inflows and outflows was part of the State budget rather than the economic result of a separate legal entity. Finally, APT did not engage in any significant competitive activity. Thus APT losses can be due only to the provision of general economic interest services.

(136) The Commission concludes that the coverage of such losses is not out of proportion to the net extra cost of the general economic interest services entrusted to APT over a period of 34 years. Due account is to be taken of the fact that the net extra cost borne by PI in fulfilling its general economic interest task since 1994 amounts to some ITL 3 000 billion a year (see above). The Commission therefore confirms its opening decision on this point. In particular, it concludes that the sum of ITL 35 835 billion over a period of 34 years (1959 to 1993) does not exceed the net extra cost incurred by APT in providing the general economic interest services over that period.

VII. **CONCLUSIONS**

(137) The Commission concludes that the payments for the collection and delivery of mail for various public administrations and the third tranche of the 1999 debt write-off (ITL 23 billion) does not constitute State aid within the meaning of Article 87(1) of the Treaty.

(138) It also concludes that the coverage of losses incurred by APT prior to 1993 as provided for by Laws Nos 71/94 and 3/99 is not disproportionate to the net extra cost of the public service task entrusted to APT over the period 1959 to 1993 and accordingly does not constitute State aid under Article 87(1) of the Treaty.

(139) The Commission further finds that the supporting measures examined above, granted in the period 1994 to 1999, as well as the advantage enjoyed by EPI from the exclusive right granted to it did not result in overcompensation of the additional net costs of the general interest task entrusted to Ente Poste Italiane (now Poste Italiane SpA) over the same period and accordingly do not constitute State aid under Article 87(1) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The payments for the collection and delivery of mail for the different public administrations granted by the Italian

([47]) Case T-106/95 FFSA [1997] ECR I-911, paragraph 188.

authorities in the period in question and the debt write-off of ITL 23 billion provided for by Law No 3/99 do not constitute State aid within the meaning of Article 87(1) of the Treaty.

Article 2

The support granted by the Italian authorities to Poste Italiane SpA (formerly known as Ente Poste Italiane and before that as Amministrazione Poste e Telecomunicazioni) from 1959 to 1999 in the form of the measures examined in this Decision and the granting of exclusive postal rights have not resulted in any overcompensation of the net extra costs arising out of the general service task entrusted to it and accordingly do not constitute State aid under Article 87(1) of the Treaty.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 12 March 2002.

For the Commission

Mario MONTI

Member of the Commission