II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 16 July 2008

on a State aid scheme implemented by Italy to remunerate current accounts held by Poste Italiane with the State Treasury (C 42/06 (ex NN 52/06))

(notified under document number C(2008) 3492)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2009/178/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, 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] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 30 December 2005, Associazione Bancaria Italiana (ABI) complained to the Commission against various measures which it alleged benefited the banking activities of Poste Italiane SpA (PI). In particular, it claimed that Italy paid an interest rate of around 4 % on funds that were collected in postal current accounts and deposited in a current account held with the State Treasury, while the postal current accounts themselves were remunerated at a rate of around 1 %. PI's spread between deposit and loan rates [2] was greater than the 'market' spread, and thus constituted State aid.

(2) By letter dated 7 February 2006, the Commission put several questions to the Italian authorities. After requesting an extension of the deadline for an answer, Italy replied to the questions by letter dated 21 April 2006. A meeting took place with the Italian authorities and representatives of PI on 30 March 2006.

(3) By letter dated 26 September 2006, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure.

(4) The Commission's Decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments. The Italian authorities submitted comments by letters of 31 October 2006 and 29 December 2006, and ABI submitted comments by letter of 27 December 2006. To give the Italian authorities an opportunity to reply the Commission forwarded ABI's comments, by letter of 15 January 2007. The Italian authorities commented by letter dated 16 February 2007.

(5) By letter of 21 February 2007 the Commission requested additional information. Italy replied by letters dated 30 March 2007, 2 April 2007 and 1 June 2007.

(6) On 28 June 2007 and 24 October 2007, two meetings were held with the Italian authorities and representatives of PI. Following the latter meeting the Commission requested additional information, by letter of 25 October 2007, to which Italy replied on 27 November 2007.

[1] OJ C 290, 29.11.2006, p. 8.

[2] The loan rate is the interest rate PI receives from the Treasury for the funds deposited with the latter. The deposit rate is the interest rate PI pays to postal current account holders.

[3] See footnote 1.

(7) Italy sent supplementary information on 29 February 2008, and a meeting between the Italian authorities and the Commission took place on 4 March 2008.

(8) The Commission requested further information on 5 March 2008 and 3 April 2008, and Italy replied respectively on 7 March 2008 and 23 April 2008.

2. THE BUSINESS OF PI AND BANCOPOSTA – THE RELEVANT MARKETS

(9) PI is the universal postal service provider in Italy, which performs a universal postal service obligation ([4]) imposed by the Italian legislation governing the universal postal service ([5]). The service of general economic interest with which PI is entrusted does not include financial services.

(10) Besides providing the universal postal service, PI offers integrated communication, logistic and financial products and services throughout Italy. The main figures for 2006 are the following ([6]):

Total staff (annual average)	151 470
Regional areas	9
Branches	140
Post offices	13 893
MAIN FINANCIAL FIGURES OF POSTE ITALIANE GROUP	*EUR million*
Total revenue	17 055,6
Sales and service revenues	15 932,2
of which:	
— from postal services	5 339,4
— from financial services	4 382,5
— from insurance services	5 993,6
— from other services	216,7
Other revenue	1 123,3
Net profit	675,7
POSTAL SERVICES	*volumes (number of items)*
Products and services	
Mail (standard, priority, registered, insured, legal documents, other recorded mail)	3 522 792 200
Commercial mail (Postatarget, catalogues, unaddressed mail, etc.)	1 887 699 700
Periodicals (printed, gifts, books etc.)	1 216 045 800
Telegrams, fax, telex	17 442 800
Express delivery (Poste Italiane and SDA)	46 284 600
Parcels	16 052 000
POSTAL SAVINGS	
Savings books, savings certificates and postal current accounts: total	EUR 282 408 million
Life assurance policies: policies written	EUR 5 989 million
Conto Bancoposta: number of current accounts	4 880 000
Carta Postepay: number of cards issued	2 801 000

([4]) The universal service comprises the conveyance of items of correspondence and addressed printed matter weighing up to 2 kg and postal packages up to 20 kg, and services relating to registered items and insured items.
([5]) Legislative Order No 261 of 22 July 1999, published in GURI No 182 of 5.8.1999, and Ministry of Communications Order of 17 April 2000, published in GURI No 102 of 4.5.2000.
([6]) *Source:* PI's website, February 2008.

(11) According to the annual report, postal services accounted for 33,5 % of the group's total turnover in 2006, financial activities accounted for 27,5 %, and insurance business for 37,6 %. Financial services contributed 82 % to the operating profit of the PI group, and insurances services 18,7 %. Postal services showed an operating loss of EUR 4 million.

(12) PI's banking activities are operated through a fully integrated division called Bancoposta.

(13) Before December 2003, PI was wholly owned by the Italian State. In December 2003, the State transferred 35 % of the share capital in PI to Cassa Depositi e Prestiti ('Deposits and Loans Fund' – 'CDP'). CDP had been a State agency until late 2003, when it was converted into a limited company (SpA). Since then, although 30 % of its share capital has been transferred to 65 banking foundations ([7]), CDP has remained under the control of the State.

(14) PI is controlled by the State.

2.1. **Postal services**

(15) According to a recent study ([8]), before the implementation of the first Postal Directive ([9]) the Italian postal market was relatively open. Operators other than PI were already free to distribute direct mail and hybrid mail. Some local mail operators were delivering letters as subcontractors to PI. After the implementation of the Directive, the delivery of hybrid mail became part of the reserved area, and the subcontracting relationships were ended. Outgoing and incoming international mail falls entirely within the area reserved to PI. Since 1 January 2003 Italian legislation has incorporated the second Postal Directive, which provides for the full opening of the EU postal market to competition by 1 January 2009: it limits the reserved area to letters up to 100 g and three times the basic tariff for priority mail ([10]). From 1 January 2006, the reserved area is limited to letters up to 50 g and 2,5 times the basic tariff for priority mail ([11]). The postal market is now relatively open to competition *de jure*, since the delivery of direct mail is liberalised. The entry regulations are not regarded as severe ([12]).

(16) On 19 October 2006, the Commission proposed a new Postal Directive completing the single market for Community postal services. That Directive entered into force on 27 February 2008: it provides for the abolition of legal monopolies in postal services by 31 December 2010, though some Member States are permitted to extend the deadline to December 2012 ([13]).

([7]) Under Article 5 of Decree-law No 269 of 30 September 2003, converted into statute by an Act of 24 November 2003, the shares in CDP were assigned to the State. Foundations and other public or private parties may hold shares which together must not amount to more than a minority of the whole.

([8]) ECORYS-NEI, *Development of Competition in the European Postal Sector*, July 2005.

([9]) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

([10]) Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ L 176, 5.7.2002, p. 21).

([11]) Legislative Order No 383 of 23 December 2003, published in GURI No 22 of 28.1.2004.

([12]) See footnote 8.

([13]) 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).

2.2. **Financial services**

(17) Presidential Order No 144 of 14 March 2001 lays down rules governing the banking and financial services that can be provided by PI; this business is carried on by Bancoposta. The services comprise: collecting savings from the public in all forms; provision of payment services; foreign exchange intermediation; promotion and placement of loans granted by banks and other authorised intermediaries; performance of some investment services (trading on account of third parties and placement and collection of orders, thus excluding trading on own account and individual portfolio management, at least until 2007). PI is expressly prevented from engaging in financing.

(18) Bancoposta can be considered as a deposit institution and a financial intermediary. While it is not a bank, it uses PI's numerous post-office outlets for its own operations and to offer banking and other financial products.

(19) The 13 893 counters, at least one per municipality on average, make PI the biggest banking network in Italy, and should be regarded as an asset rather than a liability: most of their cost is covered by these financial services, and they are not considered a burden on the universal service provider ([14]).

(20) The rating agency Fitch notes in a report published in 2004 that PI/Bancoposta has 'a capacity to reach the overall [Italian] population that cannot be matched by domestic banks for the foreseeable future' ([15]). Moreover, Fitch considers that PI has put 'the development of financial services at the heart of [its] strategy'.

(21) PI offers a wide range of financial services competing with those offered by the banking system:

— services of direct and indirect collection of savings and lending,

— payment services,

— placement of financial and investment products.

(22) PI collects deposits directly via postal current accounts. Annual averages of total deposits in postal current accounts in the period 1995-2006 are shown in Table 1:

Table 1

(EUR billion)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Average deposits	[…] (*)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(*) Business secret.

(23) In 2001, PI launched the 'Conto BancoPosta' or BancoPosta account, a postal current account comparable to an ordinary bank account. Before the launch of the BancoPosta account, the postal current account was not an adequate retail instrument, because of the lack of associated services (such as credit and debit cards); postal current accounts were intended mainly for the public administration and companies writing large numbers of invoices (national utilities).

([14]) Study by PriceWaterhouseCoopers, *The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009*, Final Report, May 2006.

([15]) FitchRatings, special report, *The European Regulated Mail Sector: Tomorrow's deliveries*, 9 July 2004.

(24) Italy indicates that, over the period 2000-2007, the share of the Italian market for current accounts held by the postal current account was as follows:

Accounting date	Market share
31 December 2000	[3 – 8] %
31 December 2001	[3 – 8] %
31 December 2002	[3 – 8] %
31 December 2003	[3 – 8] %
31 December 2004	[3 – 8] %
31 December 2005	[3 – 8] %
31 December 2006	[3 – 8] %
31 December 2007	[3 – 8] %

(25) ABI states that PI's direct fund-raising has increased faster than that of its banking competitors. Between 1999 and 2004, direct bank fund-raising increased by 36 %, as against 94 % for postal current accounts ([16]). ABI argues that the growth of direct deposit-taking by PI significantly eroded fund-raising by banks: in 1999, postal accounts accounted for 2,2 % of direct fund-raising by banks and post office combined; by 2004 the share had risen to 3,1 %. ABI considers that this growth is due mainly to the attractive terms PI offers its account holders for equal services. For instance, the average deposit rate for current accounts with banks is somewhere around 0,6 %-0,7 %, while PI was offering 1 % in early 2005.

(26) In addition to direct collection via postal current accounts, PI also raises funds indirectly via the placement of postal savings books and savings certificates on behalf of CDP.

(27) In the last few years, PI has significantly broadened the range of its payment services to customers, adding to the traditional postal instruments (current account deposit receipts and postal money orders) a series of instruments that were formerly offered only by banks (debit and credit cards, credit transfers, standing debit orders for utility bills) ([17]).

(28) Finally, PI provides placement services for:

— bonds issued by banks and CDP,

— insurance policies written by Poste Vita ([18]),

— investment funds managed by the asset management company Bancoposta Fondi SGR ([19]),

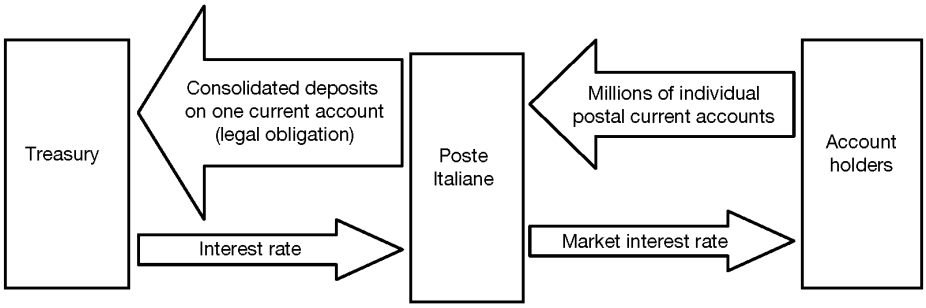
— loans granted by third parties: personal loans and mortgages are sold on behalf of banks.

([16]) ABI calculates the 94 % increase on the basis of PI's annual balance sheets. According to ABI, postal current accounts represented 4,6 % of total bank and postal current accounts in 1999 and 6,2 % in 2004.
([17]) In some cases, such as debit cards and standing debit orders, the service is provided by PI itself; in other cases, PI distributes third-party products (such as credit cards, which it distributes on behalf of banks).
([18]) Poste Vita SpA is a wholly owned subsidiary of PI.
([19]) Bancoposta Fondi SGR is a wholly owned subsidiary of PI.

3. THE MEASURES UNDER ASSESSMENT

(29) The relations between PI and the Treasury following the Order of 5 December 2003 ([20]) are illustrated in Figure 1:

Figure 1



(30) The measure under assessment here is Act No 266 of 23 December 2005 ([21]) (the 2006 Finance Act), implemented by an agreement *[convenzione]* between PI and the Ministry of Economic Affairs and Finance dated 23 February 2006 (the Agreement).

(31) The 2006 Finance Act states that PI and the Ministry of Economic Affairs and Finance are to determine the market parameters and the methods of calculation of the interest rate to be paid on the funds deposited in postal current accounts and held with the Treasury; it also provides that the interest payable by the Ministry for 2005 is to be reduced by EUR 150 million.

(32) The Agreement defines the practical mechanism for calculating the interest rates for a three-year period; it entered into force on 4 April 2006 ([22]), with retrospective effect from 1 January 2005. It is to expire on 4 April 2009. The yearly interest rate is essentially the weighted average of the annual average yields of 30-year multiannual Treasury bonds (BTPs) ([23]) (80 %), 10-year multiannual Treasury bonds (10 %) and 12-month ordinary Treasury bills (BOTs) ([24]) (10 %). The average annual yields on the government securities referred to in the Agreement are obtained by calculating the simple arithmetic average of the 24 quotation values noted on the first and 15th of each month by MTS SpA, the company managing the electronic platform for dealings in Italian government bonds and other fixed-term securities. The fact that the parameters are updated every 15 days means that the yields are variable and fluctuating. In the event of a shift in the rates curve that changes the relationship between long- and short-term rates, PI may request a review of the basket. Either party may withdraw from the Agreement, giving the other party notice at least six months before 31 December any year.

(33) The application of the methodology in the Agreement has led to the following results:

	2005	2006	2007
Interest rate (%)	3,90	4,25	4,70
Interest payable (EUR million)	1 336 ([1])	1 516	1 012

([1]) The interest paid for 2004 was EUR 1 356 billion. If the legislation that applied in 2004 had been applied again in 2005, the interest payable would have been at least EUR 150 million higher.

([20]) Published in GURI No 288 of 12.12.2003.
([21]) Published in GURI No 302 of 29.12.2005, Ordinary Supplement to the GURI No 211. The Act has retrospective effect from 1 January 2005.
([22]) The Agreement was approved by a ministerial order of 3 April 2006.
([23]) Buoni del tesoro poliennali.
([24]) Buoni ordinari del Tesoro.

(34) The interest for 2005 was paid in 2006, and the interest for 2006 was paid in 2007. Italy states that the interest for 2007 has not yet been paid.

(35) It was a requirement that funds collected in postal current accounts be deposited with the Ministry of Economic Affairs and Finance/Treasury (the Obligation) ([25]).

(36) By Act No 296 of 27 December 2006 (the 2007 Finance Act) ([26]) Italy amended the scheme of remuneration provided for in the 2006 Finance Act. Under the new Act, funds collected from private customers (funds collected via postal current accounts not held by the public administration) are to be invested by PI in euro area government bonds ([27]). The new Act removes the restriction on use by PI only in the case of funds collected from private customers. The Act provides that the new arrangements are to be introduced in stages by 31 December 2007. Funds deriving from customers other than private customers (about 25 %-30 % of the whole) are to be invested in the same way as before.

4. GROUNDS FOR INITIATING THE PROCEDURE

(37) In the decision that initiated these proceedings, in September 2006, the Commission said that in order to assess whether any advantage was being conferred on PI it might in theory be important to consider the components making up the positive margin enjoyed by PI as a result of the difference between the loan rate and the deposit rate ([28]). But the decision itself formally concluded that in the present case any advantage could derive only from the loan rate.

(38) The Commission doubted whether the scheme for determining the interest rate to be applied to the funds from current accounts deposited with the Treasury from 2005 onward provided an appropriate market reference.

(39) The Commission was of the view that to establish a market rate it would as a general rule be necessary to consider the interest rate that a private borrower would be prepared to pay PI for the funds deposited, in the light of their nature and volume. The rate defined by the Agreement might not be a market rate. In particular, PI's deposit with the Treasury was in a current account. The Treasury, and not PI, covered the liquidity risk associated with the funds deposited. The money collected and paid into the current account was used to finance ordinary budgetary needs. It was not clear whether, if the Treasury had to replace the present system of collection via PI, the alternative financing tool that it would use would consist essentially of long-term securities. Although Italy insisted that the recent growth in the funds collected in postal current accounts showed that the resources available to the Treasury were stable, the level of funding provided to CDP and the Treasury over the years had in fact varied greatly.

(40) In addition, given the specific position of PI, which was obliged by law to deposit with the State the money collected in its customers' current accounts, it was possible that no standard of comparison would be available on the market. Under such circumstances, the Commission would have to establish the cost of operating this account for PI (which should be possible with an efficient analytical accountancy system) and add a reasonable margin. This sum would indicate an ad hoc 'market' rate. Such an approach would also be justified if the Commission were to consider that PI was acting merely as a conduit to collect funds for the State through its widely spread post offices.

(41) If it should prove that the 2006 Finance Act and the Agreement had engendered State aid, the Commission was of the view that such aid was new, unlawful and incompatible.

5. COMMENTS FROM INTERESTED PARTIES

(42) In its letter of 27 December 2006, ABI's main comments are as follows.

([25]) The postal current account service is governed essentially by an Act of 1917, published in GURI No 219 of 6.9.1917, amended by Legislative Order No 822 of 22 November 1945, published in GURI No 12 of 15.1.1946. Until 2003 that legislation provided that funds collected via postal current accounts were to be deposited in an account with CDP bearing an interest rate equal to the average annual yield received by CDP on the capital managed by it, less 15 basis points. Under the Order of 5 December 2003 CDP has been succeeded in the relationships arising out of the postal current account service by the Treasury. The deposit obligation is laid down in Article 14 of the 1917 Act.

([26]) Published in GURI No 299 of 27.12.2006.

([27]) According to the Italian authorities, the funds collected in postal accounts belonging to private customers account for around 70 %-75 % of the total funds collected in postal accounts.

([28]) See footnote 2.

(43) ABI observes that the funds deposited with the Treasury represent a debt which the Treasury honours in the year following the deposit. As the Commission pointed out in the decision initiating the procedure, the liquidity risk associated with the deposited funds is covered by the Treasury, and not by PI. This means that if the funds transferred were to fall by comparison with the preceding year, the Treasury would have to remunerate Bancoposta at the rate fixed by the Agreement and return to PI the difference between the amounts deposited.

(44) According to ABI, the funds collected in the Treasury account have to be considered short term. Moreover, they are used to finance ordinary budget needs.

(45) Under the Ministerial Order of 5 December 2003, CDP opened two current accounts with the Treasury bearing a floating six-monthly interest rate equal to the simple arithmetic mean of the gross six-month interest rate on ordinary Treasury bills (BOTs) and the value of the monthly Rendistato index ([29]).

(46) In order to assess whether the remuneration given to PI for the funds deposited with the Treasury constitutes State aid, according to ABI, the interest rate paid to PI should be compared to the interest rate on short-term ordinary Treasury bills (12 months). In January 2005, the yield on a 12-month ordinary Treasury bill was 2,21 %, which was 1,69 % lower than the remuneration given to PI.

6. COMMENTS FROM ITALY

(47) In its letters of 31 October 2006, 29 December 2006, 16 February 2007, 30 March 2007, 2 April 2007, 1 June 2007, 27 November 2007, 29 February 2008, 7 March 2008, and 23 April 2008, Italy's main comments are as follows.

(48) The Finance Act and the Agreement specify that the interest payable to PI has to be set according to market parameters. The interest rate does not confer any advantage on PI.

6.1. Variation in the amounts deposited in postal current accounts

(49) According to Italy, postal current accounts can be compared with bank current accounts from 2001, when the new BancoPosta account was launched. Before 2001, the retail postal current account could not be considered a substitute for bank current accounts, because of the lack of adequate associated services (such as debit and credit cards), and was used mainly by public administration and companies writing large numbers of invoices (national utilities). According to Italy, the increase in the funds collected in postal current accounts since 2001 is consistent with the fact that the product had been launched recently.

(50) Before 2001, the variations in the amounts of funds deposited – including the significant reduction in the second half of the 1990s, in particular between 1996 and 1997 – were influenced by Act No 662 of 23 December 1996, which imposed the closure of the accounts that the Treasury had been using to pay State pensions; this led to a reduction of some EUR 11 billion in the deposits held on 1 January 1997. Between 1997 and 1999 several factors contributed to the decrease in the amounts of funds deposited. The Italian authorities argue that it is difficult to identify precisely the causes of these variations, owing partly to the nature of PI (which at that time was a public commercial institution) and to outside political factors. Since PI was converted into public limited company form in 1998, the net amounts deposited have been growing regularly and steadily.

6.2. Nature of the Agreement

(51) The Italian authorities argue that the Agreement between the Treasury and PI regulates a long-term instrument in a transparent fashion. The Agreement is not unlimited in time, but is for a three-year duration, and allows either party to revoke it if market conditions no longer guarantee consistency with the mechanism for calculating the remuneration of the deposit. These clauses aim at protecting both parties from the risk that, during the three-year period, particular market conditions or changes in the characteristics of deposits might arise and might affect the remuneration mechanism.

(52) According to the Italian authorities, the choice of the floating interest rate provided for in the Agreement meets the need for a rate in line with the market. In particular, the variable return is fair to both parties: it guarantees the Treasury that its financing costs will be

([29]) Since 1 October 1995 the Rendistato index has shown the average gross yield on multiannual Treasury bonds (BTPs) subject to taxation and having a residual maturity of more than one year (*source:* Banca d'Italia).

in line with the cost of its own medium-to-long-term debt, and it provides PI with a remuneration that is market oriented and consistent with the deposits it collects. The decision to align the mechanism on the market was taken in adverse market conditions, when the returns obtained under the Agreement, 3,9 % in 2005 and 4,25 % in 2006, were lower than the fixed rate of 4,35 % received by PI in previous years.

(53) Italy observes that since 2007 PI has begun actively managing its own liquidity, very prudently, on the basis of fixed interest rates guaranteeing it a definite return over a predetermined time horizon. This active funds management differs from the passive management provided for in the Agreement because it allows PI to build a portfolio based on definite returns and to allocate assets in line with the company's objectives, while taking on additional risks in the light of evaluated and approved risk scenarios. Since PI has had the possibility of implementing active funds management arrangements, it has adopted financial strategies designed to improve yields, and has obtained returns higher than those offered by the Agreement.

6.3. **Changes in the Obligation**

(54) The Italian authorities have informed the Commission that the Obligation requiring PI to deposit the money deriving from its postal current accounts with the Treasury has been terminated. The 2007 Finance Act amends the scheme in the 2006 Finance Act and provides that the funds collected by PI from private customers are to be invested in euro area government bonds. The new arrangements are to be completed by 31 December 2007. Italy considers that this change takes the funds raised by PI outside the rules on State aid, because the remuneration received is not paid by the State.

(55) This change in the legislation is in response to the Treasury's demand that PI be given greater financial independence, which has become necessary by reason of its economic and financial results and the size it has reached. The shift towards greater independence, which began in 1998, when PI was converted into a public limited company, was marked by the launch of the BancoPosta retail postal current account in 2001, and taken further in 2005 and 2006, when the fixed rate of interest on the funds deposited with the Treasury was abandoned and replaced by the market-oriented mechanism provided for in the Agreement, and again in 2007, when the Obligation was removed, at least in respect of funds from private customers.

(56) Italy points out that the gradual increase in PI's financial independence does not mean that the use of the funds is no longer subject to restriction. Moreover, at the time of the conclusion of the Agreement, the Treasury was obliged to take account of the legal obligations on PI, and could not anticipate possible legal changes, which fell outside its competence.

6.4. **Stability of the funds collected**

(57) In order to demonstrate that the funds collected are substantially stable over time, Italy points out that the standard deviation divided by the average of the deposit balances, which is a measure of the volatility of the deposit with the Treasury, diminished from 8 % in 2002 to 5 % in 2005; that the weight in average total deposits of the stable component in the deposits, which Italy defines for any one year as the minimum amount of deposits in that year, rose over the same period from 83,8 % to 89,5 %; and that the weight in average total deposits of the volatile component, defined as the difference between the average deposits and the minimum deposits in the particular year, fell over the same period from 16,2 % to 10,5 %.

(58) Italy has sent the Commission the conclusions of models of two kinds: PI's internal statistical models, and a model elaborated by PI in collaboration with the consultant […], which is aimed at identifying the prudential trend of funds collected in postal current accounts.

(59) In order to define mechanisms for the management of interest risk, the banking supervision authorities themselves recommend the use of models aimed at quantifying the prudential trends of the funds collected and the behavioural lifetime of funds collected in current accounts ([30]).

([30]) The prudential trend of the funds collected differs from their expected trend: the prudential trend is based on a conservative prediction (at a 99 % confidence level) of the minimum level of deposits in the years to come, in the light of the historic pattern of in- and outflows of deposits (the 'value at risk' or 'VaR' method), or, alternatively, on the assumption that the existing funds will be entirely withdrawn within a timespan of 10 years (the 'linear model'). The expected trend, on the other hand, is an estimate of how the funds deposited will develop based on a variety of macroeconomic scenarios and normal commercial policies.

(60) The internal models are based on an analysis of the daily deviation of the amounts of funds collected as compared with the averages, without referring to probability scenarios, but simply analysing the historical trends in the volume of current accounts. These models show that the daily series for the deposit with the Treasury has registered an upward trend since the launch of the retail current account (which now accounts for 75 % of the total funds collected in postal current accounts). The minimum level in a year (i.e. the stable component in the deposits) also displays an upward trend, and represents 90 % of average total deposits (from 85 % in 2002 to 92 % in 2006). Likewise, the internal models confirm that there is a volatile component in the deposits, defined as the difference between the average level in the year concerned and the minimum or stable component in that year, which in recent years has accounted for only about 10 % of the balance.

(61) The […] model, which Italy considers to be very conservative, shows that the 'behavioural lifetime' (*durata comportamentale*) of the total number of postal current accounts is different from the lifetime of a single postal current account. Some customers may indeed decide to close their account from one day to the next, but the effect on the overall funds collected by PI is marginal, because the number of customers' current accounts is high, the average deposit on these accounts is low, and new deposits arrive to replace the deposits withdrawn. The type of prudential model developed by […] is used by several Italian banks for the active management of liquidity, in order to determine the behavioural lifetime of their current accounts, and then to reflect this behavioural lifetime in a corresponding investment portfolio that takes account of their requirements in terms of asset-liability management (ALM).

(62) This model has been used by PI in order to identify the behavioural lifetime of the funds collected in postal current accounts (retail customers [31]) both in the period 2005-2006, when PI was obliged to deposit the funds collected in postal current accounts with the Treasury (passive fund management), and in the period from 1 January 2007, when PI began to invest the funds collected from private customers in euro area government bonds (active fund management).

[31] In 2006, deposits in postal current accounts owned by private persons (i.e. excluding public administration) amounted to EUR […], of which EUR […] belonged to retail customers and EUR […] to undertakings.

6.4.1. *Passive fund management*

(63) According to Italy, in the specific context of passive management of PI's liquidity, the […] model defines the criteria for identifying the behavioural lifetime of the funds collected in postal current accounts. The model seeks to quantify the lifetime of the stable and volatile components of the deposits identified by the internal models, on the basis of an analysis of the historical volatility of postal current accounts and on the probable behaviour of the account holders. In one variant of the model (namely the 'value at risk' or 'VaR' model, using a 10-year cut-off point), it indicates that approximately two thirds [32] of the funds have a very long life (which is considered to be the minimum level below which it is very unlikely that the amount of deposits will drop in 10 years), and one third has a life varying from 0 to 10 years (meaning that these deposits may have been withdrawn within 10 years). With this deposit profile, the corresponding (mirroring) investment portfolio will have an average life [33] of 4,1 years and a Macauley duration [34] of 3,2 years. In an alternative variant (the linear depreciation model, using a 10-year cut-off point), the corresponding investment portfolio will have an average life of 4,9 years and a Macauley duration of 3,8 years [35].

6.4.2. *Active fund management*

(64) According to Italy, in the specific context of active management of PI's liquidity, the […] model helps PI to determine the optimal asset allocation. On the basis of very prudential hypotheses, it indicates that it is reasonable for PI to adopt an asset allocation with an average life of four to five years.

(65) From 2007 onward, even though the model identified an almost unlimited lifetime for approximately two thirds of the deposits and a 0-10-year lifetime for the remainder, PI decided to work with an average life of […] years

[32] In the letter of 27 November 2007 the Italian authorities explain that, according to the […] model, two thirds of the funds collected in postal current accounts have an almost unlimited lifetime and one third a lifetime varying from 0 to 10 years. In the same letter they also say that the model has identified an almost unlimited lifetime for 70 % of the funds collected and a lifetime varying from 0 to 10 years for the remainder. Still referring to the […] model, the note on the […] study submitted by Italy to the Commission in the letter of 29 February 2008 indicates that the funds collected by PI that have an almost unlimited lifetime account for […] of the total.

[33] 'A period before the principal of a debt security (bond, debenture, note) is scheduled to be repaid' (*source:* BusinessDictionary.com website: http://www.businessdictionary.com/definition/average-life.html).

[34] Or the weighted average of capital and interest.

[35] In the letters sent by the Italian authorities, the terms *durata media* (average life) and *durata* (duration) are often used interchangeably, although they can refer to different concepts. This has no impact on the assessment made in this Decision.

because of market conditions at the time ([36]). The spread between five-year securities and 30-year securities is only 20 basis points (bp), and for this reason PI prefers to invest in a portfolio having a shorter average life than the one generated by the […] model: otherwise the higher risk carried by 30-year bonds would not be remunerated. In its letter of 28 February 2008, […] adds that the results of the model would allow PI to develop investment strategies having a longer average life than the one adopted so far (a maximum 10-year lifetime).

6.5. **Costs of management of postal current accounts**

(66) Regarding the description of the annual costs of collecting and depositing funds stemming from the current accounts of PI customers, as determined by PI's analytical accounting system, Italy states that the accounting system makes it possible to determine the total cost of PI's financial business, but not the costs for each single product; Italy observes that the percentage margins earned by PI/Bancoposta are smaller than those earned in the banking sector.

6.6. **The conformity with market criteria of the remuneration given to PI by the Treasury**

(67) The loan rate, which is essentially a long-term rate, is in line with the market, because the funds collected are by their nature long term. This is for the following reasons:

— the Obligation is unlimited in time; Italy points out that PI has no (possibly more rewarding) outlet for the use of the money collected from its customers' current accounts other than the account with the Treasury,

— Italy considers that the increase over time of the funds collected in postal current accounts confirms the stability of the resources for the Treasury ([37]) (the average of the funds deposited with the Treasury increased by 40 % over the period 2002-2005; the part of these funds having a seasonal nature is about 10 %),

— Italy considers that the Obligation penalises PI in its asset allocation, because it prevents PI from managing the funds in an active and potentially more advantageous fashion. In the absence of the Obligation, PI could have allocated its assets in line with the prudential characteristics and role of the company, by investing 10 % of its liquidity in short-term bonds and 90 % in long-term bonds. The Obligation gives the Treasury a source of financing with characteristics similar to those of a long-term investment,

— in addition to the letters from […] and […], which reached the Commission in April 2006, before the initiating decision, three private banks have written to confirm that the remuneration mechanism does not confer any advantage on PI (see recital 73).

(68) On the question whether PI's remuneration is in line with market criteria, Italy highlights four main issues: the conformity of the loan rate with market rates (see above); a comparison with the situation of La Banque Postale in France; the opinion of the PI's auditors; and the reference to market rates.

6.6.1. *Comparison with La Banque Postale*

(69) According to Italy, a comparison with the situation of La Banque Postale in France shows that La Banque Postale follows an asset-liability management or ALM strategy that uses a statistical model of a kind similar to that used by PI. The model identifies the stable and volatile components in the funds collected in postal current accounts. The stable component is invested in OECD government bonds, and the volatile component in short-term instruments.

([36]) Letter from the Italian authorities of 27 November 2007, ref. A/39763.

([37]) Before 11 December 2003, and the conversion of CDP into the private limited company CDP SpA, part of the money collected in postal current accounts was paid to CDP. For reasons that were primarily a matter of accounting, according to the Italian authorities, part of the funds collected went into an account with the Treasury (known as the 'free' account), while the remainder went into three other accounts earmarked by CDP for loans to local government. These three accounts were used for the loans service; the part of the funds collected that was not used for the granting of loans but which remained at CDP's disposal also went into the account with the Treasury. Since 11 December 2003 all the money in the earmarked accounts has been transferred to the Treasury, and added to the current account already in existence.

(70) On the basis of this ALM strategy, La Banque Postale achieved a yield of 4,4 % in 2005, as compared with a return under the Agreement of 3,9 %. In Italy's view La Banque Postale provides a practical example that shows that returns higher than those of the PI mechanism can be achieved by prudential management and by applying an average life of five years.

(71) A study conducted by […], entitled […] (hereinafter 'the […] study' or 'the study'), puts forward similar arguments for the comparability of the two enterprises. It says that in 2001 La Banque Postale launched an active fund management strategy similar to PI's, investing the 90 % stable component of its deposits in OECD government bonds spread over a 10-year period, and produced yields exceeding those of the Treasury mechanism. Using the same prudential investment constraints as PI, La Banque Postale achieved an average yield of about 4,45 % in the period 2004-2005.

6.6.2. *Auditors' opinion*

(72) PI's auditors agree that on the basis of their volatility and growth rates, the funds collected in postal current accounts are of a stable nature.

6.6.3. *Letters from private banks and consultants*

(73) Italy has provided the Commission with letters sent by private banks and consultants stating that the returns achieved by PI on the funds collected in current postal accounts and deposited with the Treasury are similar to market returns that PI could have achieved by implementing an appropriate investment and risk management strategy.

— Letter from […], 4 October 2006: […] states that in the absence of the constraint on use, PI could implement an appropriate ALM strategy aimed at minimising market and liquidity risk. PI's asset allocation strategy should take into account the projected duration profiles of the deposits on the basis of historical series and reasonable assumptions in order to establish the most appropriate investment strategy in terms of maturities and credit profile. As an example, […] compares the outcome achieved according to the methodology of the Agreement with the yield returned by the class I portfolio of Poste Vita SpA (which is controlled by PI), managed by […].

— Letter from […], 2 October 2006: on the basis of the data provided by PI ([38]), […] takes the view that it is perfectly reasonable for PI to link 10 % of the funds to short-term parameters and 90 % to long-term parameters. If PI was not required by law to deposit the funds with the Treasury, the short-term interest rate it would have to pay on the market in order to receive the remuneration provided by the Treasury (in a constant maturity swap) would be the six-month Euribor rate plus a spread of 0,43 % ([39]); […] is of the view that this is a yield perfectly consistent with what can be achieved by the management of government or high-grade corporate fixed-rate securities. […] concludes, therefore, that the yield obtained by PI under the Finance Act and the Agreement would be achievable in financial markets with a comparable risk profile.

— Letter from […], 4 October 2006: […] believes that by diversifying its investments, though preserving a portfolio of sovereign securities and possibly corporate securities with a rating of AA- or higher (no more than 20 %), PI could achieve annualised returns in line with the remuneration obtained in 2005 and 2006 on the basis of the rates in the basket.

— Letter from […], 20 January 2006: The bank takes the view that in 2005, on the funds from postal current accounts, PI could have obtained a return of 4 %, which is in line with the result achieved on Poste Vita class I funds of EUR 6 billion. This 4 % result is comparable to the 3,9 % paid to PI under the Agreement.

([38]) According to which at least 90 % of the deposit with the Treasury can be considered stable, while the remainder, although not usually subject to withdrawal, should on the basis of prudential assumptions be considered volatile.

([39]) The Italian authorities indicate that the spread to be applied to the six-month Euribor rate is about 1 % at the end of 2005, 0,4 % at the end of 2006 and 0,3 % at the end of October 2007.

— Letter from […], 13 January 2006: […] is of the opinion that the funds collected in postal current accounts can be considered permanent, because the Obligation is unlimited in time and because the upward trend in average deposits confirms the stability of these resources for the Treasury; if the Treasury were to replace this particular technical form of collection, it would issue long-term debt securities; given the cost of replacement, it seems reasonable that the rate of remuneration of the funds collected in PI's current accounts should be calculated on the basis of the return on long-term government bonds. […] compares the returns under the Agreement with the returns from the financial business of Poste Vita SpA. Over the period 2002-2005, the return on the activities of Poste Vita is not significantly different from the return determined by the Agreement mechanism.

6.6.4. *Comparison with the returns achieved on Poste Vita products*

(74) The Italian authorities consider that the remuneration obtained by PI on the funds deposited with the Treasury is in line with the remuneration obtained on the funds invested by Poste Vita. In particular, they contend that class I life assurance policies are products that can be considered comparable to postal current accounts, and that the average return from the management of these products (e.g. Posta Più) was 4,68 % over the period 2002-2006, which is in line with the average rate under the agreement of 4,55 %.

(75) The Italian authorities argue that postal current accounts and life assurance policies are comparable products from the point of view of financial management because postal accounts, though formally they are short-term products, are in reality similar to medium-term financial instruments with guaranteed capital and minimum rate of interest. Life assurance policies are in substance capitalisation products, which also have a guaranteed capital and minimum interest rate, a medium- to long-term maturity (usually 10 years), and the possibility of redemption at any time without penalty.

(76) The comparison between the remuneration paid to PI over the period 2002-2006 and the remuneration obtained by Posta Più over the same period is shown in Table 2.

Table 2

Year	Posta Più portfolio return (gross)	Agreement rate	Difference	Average financial life
2002	6,38 %	5,25 %	1,13 %	3,78
2003	5,11 %	4,69 %	0,42 %	2,66
2004	4,13 %	4,64 %	– 0,51 %	2,53
2005	4,00 %	3,90 %	0,10 %	3,62
2006	3,77 %	4,25 %	– 0,48 %	3,15
Average	4,68 %	4,55 %	0,13 %	3,148

6.6.5. *Comparison with the Treasury's cost of funding*

(77) The Italian authorities argue that indexing the return on the deposit with the Treasury to parameters linked to the Italian public debt is the only mechanism which would not penalise the Treasury and which is consistent with Treasury's character as an issuer, taking account of the Obligation to deposit the funds with the Treasury.

(78) Moreover, the Agreement gives PI a remuneration linked to long-term rates, which is in line with the nature of the funds collected. The Agreement also protects the Treasury against adverse market conditions, which could make the cost of this form of debt diverge from its own traditional cost of funding.

(79) The Italian authorities compare the rate provided for in the Agreement with the cost of funding calculated on the following basis:

— the funds are raised through the issue of multiannual Treasury bonds at 5, 10, 15 and 30 years,

— the period under consideration is 2001-2006,

— the weighted average of the issues referred to is calculated taking into account the weight and the cost of all the outstanding issues in the period.

Table 3

Year	5 years	10 years	15 years	30 years	Agreement rate	Average
2001	4,59 %	5,13 %		5,80 %		5,04 %
2002	4,58 %	5,09 %	5,46 %	5,73 %	5,25 %	5,03 %
2003	4,15 %	4,81 %	4,96 %	5,44 %	4,69 %	4,71 %
2004	3,95 %	4,66 %	4,85 %	5,35 %	4,64 %	4,56 %
2005	3,68 %	4,43 %	4,64 %	5,19 %	3,90 %	4,31 %
2006	3,47 %	4,35 %	4,54 %	5,06 %	4,25 %	4,21 %

(80) On the basis of the results Italy concludes that in the five years under consideration the cost of the Treasury's medium- and long-term debt was in line with the return obtained under the Agreement.

(81) Moreover, (i) the rate of the remuneration is indexed to parameters linked to Italy's public debt (government securities), which are the most appropriate reference for the Treasury's debts; (ii) the stability of the funding, verified by statistical models, and the Obligation imposed on PI make the duration of the investment for the most part permanent (without considering the specific precautions, such as the possibility of early withdrawal or the three-year term of the relationship, that protect the Treasury from unforeseen changes in the market); and (iii) the liquidity risk assumed by the Treasury is limited, given the proven stability of the postal funds, and is reflected in the linking of 10 % of such funding to a short-term parameter.

(82) Regarding the long-term element of the loan rate (90 %, comprising 10 % linked to the yield on 10-year government securities and 80 % linked to the yield on 30-year government securities), Italy considers that the Obligation on PI, which is a 'parametric investment' (*investimento di tipo parametrico*) remunerated at a loan rate defined by reference to a weighted average of the yield on government securities, is different from the obligation introduced in the 2007 Finance Act to invest directly in government securities freely selected and freely managed, which are 'direct investments' (*investimenti diretti*). In particular, the 'parametric investment' provided for in the Agreement earns a return that is variable and not manageable, and thus passively exposed to the fluctuation of the market. The 'parametric investment' is more rigid than direct investment in the event of market movements, and is tied for a maximum of 12 months (since the Agreement can be revoked by either party, subject to six months' notice), and its remuneration incorporates an ad hoc premium to compensate for the constraints on the investment itself. The premium, which Italy assesses at 0,25-0,50 percentage points, is in line with the average yield difference between 30-year multiannual Treasury bonds and 10-year multiannual Treasury bonds at historical lows (0,20-0,40 percentage points).

(83) The premium can be considered an ex post remuneration which compensates PI for the Obligation and the impossibility of managing its funds actively, and is a reasonable payment on the part of the Treasury, which is acting like a private borrower, taking into consideration the clauses in the Agreement protecting the Treasury against adverse market conditions (the possibility of termination, the three-year lifetime of the Agreement, and the fortnightly updating of the parameters).

6.7. **Comparison with alternative investment strategies (active management of funds)**

(84) The Italian authorities have sent the Commission the […] study in order to demonstrate that the remuneration provided for in the Agreement does not confer any advantage on PI.

(85) The […] study examines the following aspects.

(i) The reasons why the remuneration paid by the Treasury to PI on the deposit is a fair one:

— The investigation conducted by […] into the PI deposit base, which the […] study takes as given, reaches the conclusion that, after deduction of a component that is theoretically more volatile, the expected duration of the deposits is extremely long and virtually infinite. Similar approaches are ordinarily taken in the banking system.

— The features of the deposit base in terms of duration are transferred to the Treasury by law.

— The indexation of the payments by the Treasury reflect that approach, with 10 % being based on 12-month ordinary Treasury bills (the most volatile component), 10 % on 10-year multiannual Treasury bonds (the component which on more conservative assumptions might potentially fall over time), and n 80 % on 30-year multiannual Treasury bonds.

— The relationship is based on a long-term Obligation on PI and the Treasury.

— The constraints on PI as depositor incorporate implicit costs and burdens:

— The deposit at the Treasury cannot be considered a short-term risk-free asset, in view of PI's permanent obligation to keep its money with the Treasury. The yield on the deposit reflects that long-term obligation by paying for the implicit long-term risk of the Italian Republic, which is estimated in an extra return of 0,30 % (equal to the market spread paid by long-term government bonds over money market rates).

— PI is prevented from engaging in active fund management strategies (the quantitative analysis conducted by […] is aimed at establishing the burdens this imposes).

(ii) A comparison of PI's interest margin with the interest margin of comparable private-sector banks:

— The cost to PI of collecting deposits from retail customers is in line with the cost of retail deposits to private-sector banks, as the Commission has acknowledged.

— In fact the interest margin achieved by private-sector banks on the component deriving from deposits with their own networks is significantly higher that PI's (4,7 % in 2006, as opposed to 3,75 % for PI, and 4,6 % in 2005, as opposed to 3 %). In […]'s view these figures are proof that there is no State aid to PI.

(iii) A comparison of PI's tenor mismatch with those of its private-sector peers:

— According to the […] model, PI's deposit base has a 'virtually infinite' behavioural lifetime, which it prudentially estimates at least 60,8 % of the total (by the VaR method with a 10-year cut-off point). Under the Agreement, PI uses the proceeds of its deposit base to fund a long-term instrument, the deposit with the Treasury. To ascertain the behaviour of private-sector banks, an analysis was carried out of the accounts of banks specialised in funding the public sector, such as Dexia and Depfa, which were found to behave in the same way. These banks collect about 50 % of

their requirements on a medium- to long-term basis, financing the rest short term from repurchase transactions with the European Central Bank and deposits from financial intermediaries, and invest their funding in loans to public authorities, usually with maturities of from 10 to 50 years.

(iv) A quantitative analysis aimed at proving the benefit of active asset management:

— Starting in March 2007, PI invested in a portfolio of euro area government bonds, which it completed in December 2007, upon receipt of the residual portion of the deposit from the Treasury.

— Investment decisions made by PI, as well as taking account of the legal constraints and target yields for the company, were also based on the conditions and opportunities the market offered. At the beginning of 2008 the portfolio incorporated significant capital gains. The deposit held with the Treasury produced only current market yields, without any possibility of capital gains or losses, being tied to floating rates.

— In order to carry out a comparison that might confirm the superior profitability of active fund management over the yield under the Agreement, the data considered must relate to a longer period, having regard to the volatility of capital gains or losses. Leaving aside the higher overall yield currently achieved by PI's portfolio, the quantitative analysis is aimed at proving that skilful fund management can consistently produce higher returns over the longer term.

— The analysis is made up of two components, one looking at past performance (first two items below) and the second at the future (third item below):

— […] retrospectively adopts two strategies for the management of the funds on PI's deposit portfolio, one involving a duration similar to that of the portfolio of the […] study carried out by the VaR method (the 'benchmark portfolio') and the other using the criteria and investment constraints currently adopted by PI (the 'tactical strategy') ([40]), based on automatic quantitative models ([41]). The return obtained for the last 10 years under the tactical strategy has been higher than the return under the Agreement in the same period by approximately 1,62 % per annum (though this takes no account of transaction costs). But the return obtained over the two-year period 2005-2006, at 2,45 %, is lower than the return under the Agreement, which was 4,14 %.

— The case of La Banque Postale is referred to (see recital 69 above).

— Lastly, […] has identified certain fund management solutions which PI might implement in the near future, aimed at obtaining returns higher than those offered by passive investment in government bonds, but without adding significant incremental risks. The study provides a detailed description of these strategies. Briefly, they are:

— […],

— […],

— […],

— […].

In order to compare the performance of a fully indexed portfolio (the deposit with the Treasury) and a portfolio in which the funds are actively managed (first item above) Italy says that a significant timespan has to be considered – 10 years – including at least a full economic cycle. This is why the […] study compares the return provided for in the agreement with the returns deriving from alternative strategies over a period of 10 years rather than a shorter one. Shorter periods of analysis may take only certain phases of the economic cycle into consideration. When interest rates rise, fixed-rate portfolios tend to underperform as compared to floating-rate portfolios; when interest rates are falling the situation is reversed. During

([40]) Both strategies are described in more detail in recital 208(ii).

([41]) The model is automatic in the sense that investments are implemented automatically in the light of the market parameters and expected developments.

the period from 2005 to mid-2007 interest rates increased, and alternative investment strategies based on fixed interest rates, like the ones used by […], led to capital losses and generated a return lower than that provided for in the Agreement.

Over a 10-year period, according to the Italian authorities, investment portfolios based on floating rates can be compared to investment portfolios based on fixed rates, because capital gains and losses tend to offset one another. Over a 10-year period, returns on fixed-rate portfolios are substantially in line with returns on floating-rate portfolios. Active fund management clearly produces a better return than the passive (parametric) management provided for in the Agreement (for example, the yield on the benchmark proposed by […], which has an average life of five years, is in line with the return under the Agreement, which has an average life that is much longer).

Furthermore, the Italian authorities contend that the Commission should distinguish between risk in the short term and risk in the longer term. The value of fixed-rate securities with a maturity of 10 years can vary a great deal in the short term, but over the entire 10-year period fixed-rate bonds give a rate of return that being fixed is very reliable. All in all, over a 10-year period returns on fixed-rate portfolios tend to be in line with the returns on floating-rate portfolios, though the floating-rate portfolios are more risky, because they are subject to annual variations in interest rates.

True alternative investment management which maintains a measure of flexibility and makes use of all the financial instruments available on the market increases the possibility of obtaining results superior to those of a static portfolio such as the one provided for in the Agreement.

[…]

When the Agreement was concluded with the Treasury, Italy points out, the future trend in interest rates and the duration of the agreement were not known. The option for variable parameters was economically rational, according to Italy, because it was fair and reasonable for both parties, PI and the Treasury.

As regards the trade-off between risk and return, Italy considers that the postal current account deposit with the Treasury inevitably has a risk-return ratio less favourable than government bonds with a fixed rate and a lifetime of 1 to 10 years. According to Italy, securities with floating rates always have a volatility in terms of price that is lower than that of fixed-rate securities, which is directly proportional to the lifetime of the security. However, the concept of price volatility must not be confused with the concept of the volatility of returns: from a point of return, the Agreement may be riskier than a fixed interest-rate portfolio in terms of its impact on PI's interest margin (if interest rates are falling, floating-rate portfolios are riskier than fixed-rate portfolios, because they are not protected against repricing risks, and thus reduce PI's margin). A floating-rate instrument, therefore, has low price volatility and high return volatility. Moreover, the techniques used by PI to monitor the risks of managing postal current accounts, which are based on Basel II principles, assess the impact of interest rate variations on expected cash flows. This analysis, carried out over a 12-year period, shows that the highest risk derives from bonds expiring within the next 12 months (because they bear refinancing risk) and from some floating-rate bonds, and not from long-term fixed-rate bonds. Active management would allow PI to pursue a policy of yield enhancement consistent with the current market scenario and to modify its portfolio in the light of its return maximisation strategies.

According to the Italian authorities, the Agreement was based on floating rates because of the need to protect the interests of both sides: PI wanted a fair remuneration in line with the market, and the Treasury wanted the cost of financing to be in line with the cost of its own medium- to long-term debt.

Italy contends that if PI were to build a portfolio of infinite duration, it would consist of 60 % 30-year euro government securities and 50-year OAT bonds, and 40 % multiannual Treasury bonds with durations of 0-10 years. This highly theoretical and unlikely portfolio would have produced a return of 3,6 % in 2005, 3,65 % in 2006 and 3,7 % in 2007. Its return volatility would be very low, but because of its very long lifetime its risk exposure would be substantial.

(86) The […] study also indicates that the Obligation generates opportunity costs and risks for PI by limiting the spectrum of its investment options. The deposit with the Treasury was linked exclusively to the credit risk of the Italian Republic, preventing PI from seeking diversified investment opportunities in the euro government bond market. The credit risk was compounded by the liquidity risk, owing to the long-term nature of the deposit and the absence of early redemption rights. The opportunity costs associated with the impossibility of investing in a diversified portfolio of assets on the basis of credit risks are currently estimated to be in the region of 1 %-1,50 % per year, if AA European financial names in the bond market are considered, and in the region of 0,60 %-1 % per year, if AA European corporate names in the bond market are considered. The limitation on active management of a portfolio is difficult to evaluate: the example of La Poste, and active management of the trading system type investing in euro government securities, show that returns can be obtained that are higher than the return on the deposit with the Treasury.

(87) The Italian authorities justify the comparison between the Agreement mechanism (based on floating interest rates) and the automatic quantitative models used by […] aimed at proving the benefit of active management (based on fixed interest rates) by saying that the usual practice of market operators trading in bonds, and of PI since 2007, calls for investment in fixed-interest securities. They add that the comparison has to be made not between securities with floating rates and securities with fixed rates, but rather between active management and passive management of funds.

(88) Finally, Italy takes the view that the remuneration mechanism provided for in the Agreement, which applies short-term interest rates to the volatile component of the funds collected in postal current accounts, makes a proper estimate of the real liquidity risk borne by the Treasury.

Criticisms of ABI's comments

(89) According to Italy, the rate on postal current accounts cannot be indexed to short-term parameters (such as the yield on 12-month ordinary Treasury bills) because of the stability of the funds collected.

(90) Taking 2005 as the reference year, as ABI did, leads to a misleading analysis, because 2005 was the year when short-term interest rates were at their lowest: the yield on 12-month ordinary Treasury bills was 2,21 %, 1,69 % below the rate determined by the Agreement. The partiality of ABI's analysis is confirmed, according to Italy, by the fact that in February 2007 the yield on a 12-month ordinary Treasury bill was around 3,9 %, and the difference between that and the average of the Agreement basket, which was about 4,5 % at that time, was -0,60 %, almost one third of the difference indicated by ABI.

(91) As regards the comparison made by ABI with the remuneration obtained by CDP on its funds deposited with the State (a floating six-month rate equal to the simple arithmetic mean of the yield on six-month ordinary Treasury bills and the monthly Rendistato index), Italy contends that CDP cannot be compared to PI, being a different company in term of structure, business, objectives, operations, organisation and investment policies. Secondly, since the monthly Rendistato index represents a medium- to long-term rate, ABI contradicts itself when it argues that PI's funds deposited with the Treasury should be remunerated according to short-term parameters.

(92) Italy also observes that the funds collected in postal current accounts are unique in the market, and that it is difficult to identify any single substitute. But the stability of the funds collected allows them to be to be deemed equivalent in practice to a longer-term instrument for collecting funds, and renders the comparison with short-term 12-month bills irrelevant.

7. **ASSESSMENT OF THE MEASURES**

(93) The measure to be assessed is the scheme established by the 2006 Finance Act and the Agreement defining the loan rate paid by the Treasury for the deposits made by PI.

(94) In order to ascertain whether a measure constitutes State aid within the meaning of Article 87(1), the Commission has to assess whether the scheme:

— is granted by the State or through State resources,

— confers an economic advantage,

— is capable of distorting competition by favouring certain undertakings or the production of certain goods,

— affects trade between Member States.

7.1. **Use of State resources**

(95) In order to constitute State aid, advantages must be ascribable to the State and be granted directly or indirectly through State resources.

(96) The remuneration is paid by the Ministry of Economic Affairs/Treasury, under specific Acts, orders and agreements applicable to PI.

(97) The two cumulative conditions referred to above are therefore met. The interest paid to PI is paid out of State resources.

7.2. **Selectivity**

(98) Article 87(1) prohibits aid which 'favours certain undertakings or the production of certain goods', that is to say selective aid.

(99) Not all undertakings can maintain a remunerated current account with the Treasury, though in theory, considering the nature and economy of the system, they might benefit from such an arrangement. In any case, Italy has not demonstrated that the very limited number of operators benefiting from such accounts is justified by the nature and economy of the system.

(100) Moreover, the 2006 Finance Act and the Agreement apply to PI only.

(101) Consequently, the loan rates paid to PI are selective.

7.3. **Effect on trade between Member States and distortion of competition**

(102) Article 87(1) prohibits aid which affects trade between Member States and which distorts or threatens to distort competition.

(103) In its assessment of those two conditions, the Commission is required, not to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition ([42]). When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, those undertaking must be regarded as affected by that aid.

(104) It is not necessary that PI itself be engaged in intra-Community trade. Aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned. Furthermore, the strengthening of an undertaking which, until then, was not involved in intra-Community trade may place that undertaking in a position which enables it to penetrate the market of another Member State.

(105) As described in detail in Section 2 of this Decision, 'The business of PI and Bancoposta – the relevant markets', there was some competition in the postal sector in Italy even before the gradual liberalisation promoted by Community legislation.

(106) It is acknowledged that the main challenge to EU public postal operators has been increasing competitive pressure in all market segments – letter post, parcels and express services. While the parcel and express markets have been open for competition for decades, in the letter post segment legal monopolies have strongly impeded development of competition. In the perception of national regulatory authorities and public postal operators, competition in the parcel and express segments has been substantial at national as well as at international levels while in the letter post segment competition is still emerging ([43]).

([42]) See for example the judgment of the Court of Justice in Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 44.

([43]) Study by wik-Consult, *The Evolution of the Regulatory Model for European Postal Services*, July 2005.

(107) 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, like TNT and DHL, are based in other Member States. A report published in 2004 by the Commission ([44]) highlights the fact that several postal operators (Royal Mail of the UK, TPG of the Netherlands, Deutsche Post of Germany and La Poste of France) have acquired postal service businesses located in Italy.

(108) As regards financial services, the Commission would point out that the banking sector has been open to competition for many years. Progressive liberalisation has enhanced the competition that had already been launched by the free movement of capital provided for in the EC Treaty.

(109) Moreover, as already explained in a previous State aid case relating to PI, which was formerly Ente Poste Italiane ([45]), PI competes with banks and financial operators offering products which can to a large extent be substituted for PI's products. Most importantly, postal current accounts are in competition with bank current accounts in places where both banks and PI have outlets. In the last few years, too, PI has significantly broadened the range of the payment services it offers its customers, adding to the traditional postal instruments, such as current account deposit receipts and postal orders, a range of instruments that were formerly the province of banks (debit and credit cards, credit transfers, or standing debit orders for utility bills). In some cases (debit cards and standing debit orders) the service is provided by PI itself; in others PI distributes the products of third parties (banks, in the case of credit cards). These developments have increased the substitutability of the financial services offered by PI with those offered by banks.

(110) Banks and other players in the financial market in Italy are likely to be adversely affected by the aid. In particular, to the extent that the remuneration by the Treasury of the sums deposited by PI exceeds the relevant market benchmark, PI will have an incentive to expand its deposit collection business beyond the level that it would have chosen if it obtained only the remuneration that is normal in the market. The market opportunities for banks will be diminished correspondingly.

([44]) Study by wik-Consult, *Main Developments in the European Postal Sector*, July 2004. See in particular Table 5.1.6 'Geographical distribution and business focus of companies acquired by the "Big four" (1998 and before until June 2004)'.

([45]) Decision of 12 March 2002 (OJ C 282, 19.10.2002, p. 29).

(111) For the same reason, the Commission is of the view that the measure makes it more difficult for undertakings established in other Member States to penetrate the Italian market. 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. Recent cross-border capital transactions involving Italian banks such as Antonveneta and BNL exemplify the situation. Both types of market penetration are hampered by the strengthened market position of PI.

(112) To conclude, there is trade between Member States in the postal and financial services sectors. The loan rate strengthens the position of PI in relation to postal undertakings and banks competing in intra-Community trade. The measure is consequently liable to affect such trade and to distort competition.

7.4. **Economic advantage**

(113) To constitute State aid, a measure must favour the undertakings concerned.

7.4.1. *Context of the analysis*

(114) It has already been said that the loan rates payable under the 2006 Finance Act and the Agreement will confer an economic advantage if they are higher than the rate that a private borrower operating under market conditions would be prepared to pay to PI for the funds deposited, in the light of their nature and volume.

(115) The Commission's assessment of the measure will analyse whether the Agreement establishes a remuneration similar to what a private borrower in a market economy would have offered for the funds deposited, taking account in particular of the Obligation and the associated financial risks (Section 7.4.2). An adequate remuneration should reflect both the expected return and the risk, and not merely the performance in terms of return determined ex post.

(116) Furthermore, because of the Obligation, Italy has repeatedly maintained that PI has been put at a disadvantage, as it would have obtained higher yields in the absence of the Obligation. The Commission will analyse whether Italy's argument is well founded (Section 7.4.3).

(117) The assessment by the Commission involves a complex economic appraisal. Where the Commission adopts a measure involving such an appraisal, it enjoys a wide discretion ([46]).

(118) Finally, the Agreement, which entered into force on 4 April 2006, was concluded on 23 February 2006 ([47]). The analysis conducted by the Commission has to be made on the basis of the information available to the parties to the Agreement up to February 2006.

7.4.2. *The test of the prudent borrower operating in a market economy*

(119) In defining the loan rate, a prudent borrower operating in a market economy (hereinafter a 'private borrower') would essentially have considered the following factors:

— the gross volume of the funds deposited,

— the stable and volatile components in the deposits,

— the average life and variations of the deposits,

— the financial risks borne.

(120) These aspects are interrelated, and jointly determine the rate a private borrower would be willing to pay in a risk-return perspective. The present decision will discuss them one by one. It will then be possible to draw a conclusion regarding the structure and amount of the associated rates of interest, so that the difference between the rates established by the Agreement and the private borrower's rates can be quantified.

7.4.2.1. Gross volume of the funds deposited

(121) Before 2004, funds collected in postal current accounts were deposited not only with the Treasury but also with CDP ([48]). The following table shows the average volume of postal current accounts and the annual average deposit with the Treasury:

Table 4

(EUR billion)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Postal current accounts	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Deposit to Treasury	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(122) The large increase in the deposit with the Treasury from 2002 onward is linked to the creation of the BancoPosta account. Before the launch of the BancoPosta account, the postal current account was not an adequate retail instrument, because of the lack of associated services (such as credit and debit cards); it was used mainly by the public administration and companies writing large numbers of invoices (national utilities).

([46]) Judgment of the Court of First Instance in Case T-198/01 *Technische Glaswerke Ilmenau* [2004] ECR II-2717, paragraph 97.
([47]) It applies retrospectively from 2005.
([48]) Private borrowers would consider only the money they could use.

(123) The Italian authorities state that postal current accounts provide the Treasury with a stable and reliable source of funds which gives it an alternative to the market. In addition, Italy argues that in 2005-2006, when the Agreement was prepared and signed, the deposits in postal current accounts were expected to grow.

(124) In this context, EUR 35 billion from a single lender is a considerable loan. The Commission notes, however, that the Italian Treasury issued securities with both short and long maturities for a value of around EUR 400 billion annually over the period 2001-2005 ([49]), and that the issues were over-subscribed. Thus there was no shortage of funds on the market in that period.

(125) Furthermore, the Commission would observe that growth in deposits in postal current accounts does not necessarily mean an increase in the deposit with the Treasury, because the Obligation might, at least theoretically, be modified (see below).

7.4.2.2. Stable and volatile components in the deposits

(126) Normally, the remuneration that a private borrower would be willing to pay is a function of the lifetime of the funds provided. Funds that are committed for a long term are typically remunerated at a higher rate than funds that are committed only for a short period. In the case of the Agreement, none of the money is really committed: if the level of deposits collected by PI goes down, the amount of funds allocated to the Treasury goes down correspondingly. However, the historical level of funds and the development of funds over time show that a distinction can be made between a stable component of the deposits and a volatile component.

(127) As the Treasury here obtains access to a source of funding that is relatively stable, the Italian authorities hold that it is appropriate to base the remuneration on a benchmark that partially reflects the funds' long-term nature. The Commission shares the view that a private borrower would link the remuneration of the bulk of the funding, which is stable, to medium or long-term parameters, and the remuneration of the remainder, which is volatile, to short-term ones.

(128) As noted above, Italy has taken the stable component of total deposits in postal current accounts to be equal to the minimum level of the annual total deposits in postal current accounts. The difference between this minimum level of the annual total deposits and the annual average total deposits in postal current accounts constitutes the volatile component of the annual total deposits in postal current accounts.

(129) It has been confirmed by Italy, and verified by the Commission, that other financial institutions make a distinction between 'stable' and 'non-stable' to characterise the level of the deposits they collect in their ordinary business. They use different methodologies to draw this distinction ([50]), but the method proposed by the Italian authorities is one that is relatively simple to use. And the benchmark obtained using this method appears to be close to the outcome obtained using other approaches.

(130) The Commission can therefore accept the methodology proposed by Italy for differentiating between the stable and volatile components in the deposits.

([49]) In addition, the deposit lodged by PI with the Treasury represents only 2,8 % of the outstanding amount of government securities on 31 December 2005.

([50]) The prudential method used in the […] study appears to be a fairly commonly used example.

(131) Since 1995, the amounts lodged in absolute terms have been the following:

Table 5

(EUR billion)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Average total deposits in postal current accounts	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Average stable total deposits (*equal to lowest level of total deposits in the calendar year*)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Average volatile total deposits	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(132) The Commission has calculated that the stable and volatile components represent on average respectively 85,4 % and 14,6 % of the postal current accounts over the period 1995-2005, with a standard deviation for the volatile component of 4,1 %. Furthermore, in the most recent years, the volatile component of the deposits has been declining significantly, reaching 10,5 % in 2005 on a yearly basis. For monthly, quarterly and half-yearly periods, the volatile component of the deposits is on average close to or below 10 % for the periods 1995-2005 and 2001-2005. The first months of 2006 confirm this trend.

(133) In conclusion, the Commission is of the opinion that 90 % of the deposits in postal current accounts can be considered relatively stable and 10 % relatively volatile.

(134) As long as the Obligation stands, the Commission is of the view that, in percentage terms, the stable and volatile components of the deposits in postal current accounts would be mirrored in a deposit with a private borrower.

(135) Consequently, in line with the Agreement, a 10 % weight for the short-term component in the loan rate in the present case appears justified. The weight of the medium- and long-term element is therefore 90 %. It will be shown below that within the medium- and long-term element there is no need to enter into more detailed analysis regarding the 10 % weight given to the medium-term component and 80 % given to the long-term component.

7.4.2.3. Average life and variations in the deposits

(136) Analysing the liability side of the balance sheet for sources of funding requires a bank to understand the characteristics of its fund providers and funding instruments. To evaluate the cash flows arising from its liabilities, a bank would first examine the liabilities' behaviour under normal business conditions, ascertaining in particular:

— the normal level of roll-over of deposits and other liabilities,

— the effective maturity of deposits withdrawable on demand, such as current account deposits and many types of savings accounts,

— the normal growth in new deposit accounts.

(137) As in assessing roll-overs and new requests for loans, there are several techniques a bank might use to establish the effective maturities of its liabilities, such as using historical patterns of deposit behaviour. For sight deposits, whether of individuals or businesses, many banks conduct a statistical analysis that takes account of seasonal factors, interest rate sensitivities, and other macroeconomic factors. For some large wholesale depositors, a bank may undertake a customer-by-customer assessment of the probability of roll-over. The difficulty of establishing such estimates of liability behaviour has increased with the growing competition of investment alternatives to deposits. Assessments are also made of cash flows arising from a bank's liabilities under abnormal circumstances (bank-specific or general market problems).

(138) Against this background, the Commission has examined in depth the data transmitted by Italy regarding the statistical model used by PI to identify the prudential and estimated trends of funds collected in postal current accounts on the basis of an analysis of historical trends (the […] study) ([51]).

(139) The Commission stresses that the […] study is aimed at quantifying the behavioural lifetime of postal current account deposits, and that […] does not draw any conclusions regarding the lifetime of the deposit with the Treasury.

(140) In order to determine the relevant average life of the deposits, the Commission has here to consider two possible types of fund management: active and passive.

Passive fund management

(141) Italy argues that, within the specific context of the passive management of PI's liquidity in 2005 and 2006, the criteria for identifying the lifetime of the funds collected in postal current accounts are identified by the […] model. This probabilistic model is based on an analysis of postal current accounts' historical volatility and on the behaviour of PI's account holders ([52]), and identifies the behavioural dynamics of PI's customers with a 99 % confidence interval.

([51]) Even in the absence of a formal structured study, the Commission considers that PI and the Treasury would in any event have had access to similar data and results based on the history of postal current accounts and their future prospects.

([52]) The prudential trend is based on a conservative prediction of the minimum level of deposits in the years to come by reference to the historic pattern of the in- and outflows of deposits (VaR method).

(142) On the basis of the VaR specification of this model using a 10 year cut-off point, […]% of the funds have an 'almost unlimited' behavioural lifetime (in the sense that it is considered very unlikely that the amount of deposits will have dropped below the two-thirds level 10 years from now), and the remaining part has a lifetime varying from 0 to 10 years (i.e. it is expected that these deposits may be withdrawn within 10 years).

(143) The Commission takes the view that the passive management of funds by PI is the result mainly of the Obligation. It is therefore critical to assess how a private borrower would have analysed the Obligation and the maintenance of the Obligation over time ([53]).

(144) First, the effect of the Obligation is to transfer the average life of the overall funds collected in postal current accounts to the current account held by PI with the Treasury. Italy shares the opinion that the Obligation is a key argument for describing the bulk of the deposit with the Treasury as long term. Without the Obligation, the deposit by PI would be quite similar to a current account with a private borrower.

(145) Second, as shown by the figure below, the amounts deposited with the Treasury have varied significantly since 1995 ([54]).

Figure 2

[…]

(146) The variations are due in particular to changes in the relevant national legislation:

— there was a sudden fall in deposits in 1996 and 1997, when Act No 662 of 23 December 1996 imposed the closure of the accounts used by the Treasury to pay State pensions,

([53]) The Commission considers that a private market borrower would have carried out such an assessment, notably because of the gross amount involved (see for instance recital 137, where it is pointed out that for some large wholesale depositors, a bank may undertake a customer-by-customer assessment of the probability of roll-over).

([54]) Despite arguments put forward by Italy, there is no reason to limit the assessment in this regard to the data relating the period 2001-2006. While one might agree that the creation of the BancoPosta account has had a significant impact on deposits in postal current accounts, and even on the business model of PI's financial activities, a private borrower would have looked at a longer period.

— the introduction of the BancoPosta account, allowed by Act No 144/2001, led to a steep increase in deposits in postal current accounts in 2001,

— the deposit with the Treasury grew substantially in 2004 as compared with previous years as a result of the Ministerial Order of 5 December 2003 under which the Treasury took the place of CDP in relationships arising out of the postal current account service.

(147) The Italian authorities confirm that the legislative changes were made as a result of the Treasury's determination to give PI greater financial autonomy. This process, which began with the conversion of PI into a public limited company in 1998, was marked by the launch of the BancoPosta retail postal account in 2001.

(148) A similar event, which was not entirely predictable in 2005-2006 (especially as regards the precise date of its occurrence), took place again in early 2007, when the 2007 Finance Act significantly narrowed the scope of the Obligation. This led to a sharp fall in the money deposited by PI with the Treasury: in December 2007, the deposit with the Treasury accounted for only around 25 % of total deposits in postal current accounts. The Commission considers that at the time the Agreement was concluded a prudent operator should have anticipated this change in the legislation, and in particular the consequence of the change, i.e. the reduction in the amount deposited with the Treasury or private borrower as the case may be, because the trend towards greater independence in PI's financial management had started some years before.

(149) The Commission is of the opinion that when the Agreement was negotiated a private borrower would have expected the change in the Obligation to take place within no more than five years. As shown in Figure 2 and recital 146 above, over the period 1995-2005, at a time when the Treasury wanted to give PI greater financial autonomy, the legislation changed a first time in 1997, a second time four years later, and a third time two years after that. A private borrower would have taken this into account, and would have expected further changes in the legislation within a maximum of five years including a possible transitional period of some months. A prudent private borrower would not have expected to benefit from the postal deposit for a period longer than five years.

(150) In this context, Italy's argument that the lifetime of the Obligation is unlimited cannot be accepted. A private borrower could have regarded the Obligation as being of indefinite duration only if the relevant legislation were not open to amendment, which it obviously was in late 2005 (from ex post observation). Nor can the Commission accept another argument invoked by Italy, namely that at the time of the conclusion of the Agreement the Treasury was obliged to have regard to the Obligation and could not anticipate possible legal changes, which fell outside its competence. The Treasury, as a prudent borrower in a market economy, should have taken this very important aspect into account.

(151) In addition, the variations in the amounts deposited with the Treasury in the years 1995-2005, as a consequence of the legal changes, should also have induced a private borrower to take the five-year average life identified by the prudential model referred to above as an upper bound for the purpose of setting its own rate offering.

(152) Therefore, in the context of passive management of the funds, the Commission considers that in view of the strengthening of PI's financial autonomy (with the risk of changes in the law, leading to a significant reduction in the amount deposited with the Treasury or private borrower), a five-year maturity would have been regarded by a private borrower, when the Agreement was negotiated, as a maximum maturity for the purpose of setting its own offering.

Active fund management

(153) Italy considers that, in the specific context of the active management of PI's liquidity (which has become a reality from 2007 onward), the […] model supports PI's choice of optimal asset allocation and the trade-off between risk and return. In this context, and on the basis of a very prudential hypothesis, it is reasonable for PI to adopt an asset allocation having an average life of […] – […] years, depending on the model used ([55]).

(154) In this regard, the Commission notes that:

([55]) This second model proposed by […] is based on an even more conservative hypothesis ([…] year cut-off and distribution of the virtually infinite lifetime component over a […]-[…] year period), and gives an average life of […] or […] years (lifetime of […] to […] years), depending on whether one follows a VaR approach or a linear approach.

— for the active management of the deposits by PI, the Obligation must not be in force,

— the model is based on the assumption of a 10-year cut-off (i.e. the 10th year represents the moment of final extinction set for the component having virtually infinite lifetime),

— the basis for the definition of the (hypothetical) corresponding investment portfolio is the prudential trend ([56]),

— the lifetime of the global amount of funds collected in postal current accounts diverges from the lifetime of a single postal current account,

— the type of prudential model developed by […] is used by several Italian banks in the context of their active management of funds in order to determine the behavioural lifetime of their current accounts, and then to mirror this behavioural lifetime as part of their ALM.

(155) The Commission stresses that, in active fund management, the average life of the global amount of funds collected in postal current accounts is no more than five years.

(156) In conclusion, whether fund management is active or passive, the effective maturity of the deposits which would have been considered by a private borrower is no more than five years.

7.4.2.4. Provisional conclusion: the relevant benchmarks in the loan rate

(157) According to Italy, as we have seen, the stable component of the deposit, which is of a long-term nature, is reflected in the long-term element of the loan rate (90 %, made up of (i) 10 % linked to the yield of the 10-year multiannual Treasury bond, and (ii) 80 % linked to the yield of the 30-year multiannual Treasury bond). The volatile component is reflected in the short-term element of the loan rate (10 %, 12-month ordinary Treasury bill).

([56]) By contrast, the estimated trend gives an estimate of how the funds collected in postal current accounts will evolve on the basis of reasonable macroeconomic scenarios and normal commercial activities. This trend is used for the definition of budgetary objectives.

(158) The weighted maturity of the instruments composing the loan rate set by the Agreement is consequently 25 years.

(159) The Commission shares the view that a private borrower would link the remuneration of the bulk of the liquidity, which is stable, to medium- and long-term parameters, and the remuneration of the remaining part, which is volatile, to short-term ones.

(160) Because a private borrower would have estimated the effective maturity of the stable component of the deposits at a maximum of five years, the market remuneration of the stable component ought to be based on the yield of the five-year multiannual Treasury bond. The Commission considers that it makes sense to use these multiannual Treasury bonds as the medium- to long-term benchmark, because they are financing instruments that serve as a reference for investors.

(161) The short-term element of the loan rate refers to the volatile component of the deposit with the Treasury or private borrower. Every day, if the amounts deposited in postal current accounts fall in comparison to the previous day, the difference has automatically to be returned to PI. Under such circumstances, a private borrower would not invest the volatile component of the deposits in ordinary Treasury bills at 12 months.

(162) For managing the variations in deposits on a daily basis, the Commission believes that it is appropriate to refer to three-month ordinary Treasury bills and to overnight instruments ([57]). The remuneration paid to PI should reflect the interest rate on these two instruments.

(163) While several combinations of short-term instruments are theoretically possible, the Commission considers that a 50-50 split ([58]) between three-month ordinary Treasury bills and overnight instruments allows proper risk management and is in line with what would be done by a prudent market operator.

([57]) The 2005 annual report of the French La Banque Postale indicates that: 'Les opérations de bilan liées à la gestion de la partie volatile des fonds CCP (comptes courants postaux) constituent un moindre enjeu en terme de PNB mais permettent de garantir la liquidité quotidienne. À l'actif, les fonds correspondants sont soit placés en titres de transaction ou de placement (ayant la note la meilleure attribuée par une agence de notation de renommée internationale), soit prêtés à très court terme sur le marché interbancaire (notamment au travers de prises en pensions livrées). Les prévisions du compte courant représentatif de la partie volatile sur un horizon de 3 mois, et sur un pas quotidien, permettent d'anticiper les variations importantes de liquidité et de déterminer les modalités de placement'.

([58]) This means that an overnight volatility of 5 % is regarded as a maximum in normal times. Such an order of magnitude appears reasonable.

(164) Even though the overnight interbank interest rate relates to the monetary interbank market, and does not represent the Treasury's debt service burden, the Commission considers that it can be used as a proxy for the rate pertaining to overnight operations.

(165) The Commission would point out that following the 2007 Act PI began actively managing the funds deriving from postal current accounts. The average life of PI's investments in securities is […] to […] years ([59]). Of this figure 85 % is invested in bonds having a […] to […] year maturity, while the remainder is invested in instruments with a maximum maturity of […] year. These figures validate the Commission's conclusions *a posteriori*.

7.4.2.5. Financial risks

(166) In general, one can distinguish between four main types of financial risk:

— market risk (e.g. equity risk, etc.),

— credit risk (default risk),

— liquidity risk (funding liquidity risk and market liquidity risk),

— interest rate risk (yield curve risk, repricing risk).

(167) Taking into account the nature of the deposited funds, the Commission is of the view that the credit and market risks are very limited ([60]).

(168) The two main classes of risk for the deposited funds are interest rate risk and liquidity risk ([61]).

(169) Interest rate risk ([62]) is the risk that short-term interest rates may increase during the lifetime of the long-term investments, while long-term interest rates are locked in; or, to take an equivalent market-value perspective, that the market value of equity drops while the yield curve shifts up, given that the value of the assets will fall further than the liabilities if the liabilities have a shorter effective lifetime.

(170) However, the indexation mechanism of the Agreement includes a fortnightly resetting of the rates of the three components, which is why the indexation is floating. Thus the deposited funds are not subject to a risk of loss of capital, but only of loss of interest ([63]). With a floating interest rate, the risk is split between the parties.

(171) The funding liquidity risk relates to the ability to fund increases in assets and meet obligations as they become due ([64]). The management of liquidity is therefore an important activity of financial institutions or banks. The analysis of funding liquidity requires bank management not only to measure the liquidity position of the bank on an ongoing basis but also to examine how funding requirements are likely to develop under various scenarios, including adverse conditions ([65]).

([59]) The […] study speaks of to an average life of […] for PI's portfolio in 2007.

([60]) PI's annual report for 2005 indicates the following: '"Market risk" relates to financial assets that PI intends to sell. At present there are no assets held with the specific purpose of trading'.
'"Credit risk" is the risk that a debtor on whom PI has a claim might default. Since Gruppo Poste is not authorised to issue loans, this risk is limited to the financial instruments in the investment portfolio (issuer risk)'.

([61]) Basel Committee on Banking Supervision, *Principles for the Management and Supervision of Interest Rate Risk*, Bank for International Settlements, September 2003, pp. 6-8 (http://www.bis.org/publ/bcbs102.pdf?noframes = 1); Basel Committee on Banking Supervision, *The Management of Liquidity Risk in Financial Groups*, Bank for International Settlements, May 2006 (http://www.bis.org/publ/joint16.pdf?noframes = 1); Basel Committee on Banking Supervision, *Liquidity Risk: Management and Supervisory Challenges*, Bank for International Settlements, February 2008 (http://www.bis.org/publ/bcbs136.pdf?noframes = 1); *Principles of Liquidity Risk Management*, Institute of International Finance, March 2007, Appendix 1.

([62]) PI's annual report for 2005 indicates that '"Cash flow interest rate risk and hedging policy" relates to financial assets that are remunerated at a floating rate. The company may pursue a hedging policy making use of derivatives limited to specific ratings, concentrations or amounts'.

([63]) See also the letter from […] of 13 February 2006.

([64]) PI's annual report for 2005 indicates the following: '"Liquidity risk" is the risk that an entity may have difficulty finding sufficient funds to meet obligations deriving from financial instruments. Liquidity risk may arise out of an inability to sell financial assets quickly at a price close to fair value, or out of a need to raise funds at unfair rates. The risk is negligible, as the terms to maturity of investments and borrowings are substantially balanced'.

([65]) See Basel Committee on Banking Supervision, *Sound Practices for Managing Liquidity in Banking Organizations*, Basel, February 2000.

(172) In the present case, the funding liquidity risk and yield curve risk are borne entirely by the borrower, and not by PI. More specifically, in the hypothetical case that depositors were to withdraw their funds in a mass, the State would be obliged to provide PI with the money required to refund its depositors, and PI would not have to refinance itself.

(173) The Commission would point out that the scheme does not provide the same degree of certainty with respect to the cash available to the borrower. When an operator issues and sells bonds, the operator has the disposal of the whole sum for the whole term to maturity of the bonds. The deposit mechanism does not produce the same result, as the money available to the borrower changes every day and may even diminish significantly if adverse conditions are encountered.

(174) Consequently, the rate of interest paid to PI should in principle be lower than the rate offered on bonds having an equivalent maturity. The Commission therefore considers that there should be a markdown on the basic rate that a private borrower would offer, in order to take account of the funding liquidity risk.

(175) The Commission is aware that it is difficult to quantify the markdown for the liquidity risk precisely. In the present case, an appropriate markdown is already built into the Agreement and the Commission's methodology, which define a volatile component and link it to an interest rate based on very short-term instruments.

(176) Finally, the Commission considers that the arguments put forward by Italy regarding a supposed rigidity of the parametric investment defined by the Agreement have to be rejected, for the following reasons:

(i) they disregard the liquidity risk;

(ii) they are related to another argument put forward by Italy regarding the opportunity cost associated with the impossibility of conducting active fund management, which is discussed, and rejected, in Section 7.4.3 of the present Decision;

(iii) the claim that the Agreement provided for compensation for the alleged rigidity has been put forward only ex post. The Italian authorities have said that 'the rationale of the definition of the basket was not based on the determination of a spread compensating this limit on PI's autonomy' and that 'the agreed basket produced ex post a spread which, on the one hand, compensates PI of the investment constraint, and on the other hand is fair to the Treasury'. There is nothing to show that this ex post reasoning was considered during the negotiation on the Agreement, and it cannot be regarded as relevant for purposes of the present Decision.

7.4.2.6. Conclusion: definition of the rate offered by a private borrower; existence of State aid

(177) The rates provided for in the Agreement and the rates which according to the Commission's analysis would be offered by a private borrower ([66]) are compared below:

Table 6

	Agreement		Private Borrower	
	Instrument/yield	Weight	Instrument/yield	Weight
Stable component	30-year BTP bond	80 %	5-year BTP bond	90 %
	10-year BTP bond	10 %		
Volatile component	12-month BOT bond	10 %	3-month BOT bond	5 %
			Overnight interbank interest rate	5 %

([66]) In the private borrower methodology, as in the Agreement, the interest rates are computed using floating rate parameters (parameters reset every 15 days).

Table 6a

	Agreement rate	Private borrower rate
2005	3,90	2,81
2006	4,25	3,60
2007	4,70	4,23

(178) Because the benchmark instruments used in the Agreement have longer maturities than 'market' ones, and, as a consequence, have higher yields over the period concerned ([67]), and because the division of risk is more favourable to PI than if PI had to bear the liquidity risk on the funds deposited, the loan rate defined by Italy confers an advantage on PI.

(179) Therefore the scheme consisting of the payment of the loan rate by the Treasury for the funds deposited by PI under the 2006 Act and the Agreement constitutes State aid.

(180) Finally, the Commission would observe that there is no single combination of short-term and long-term instruments which would be the only one in line with the market. In the Commission's view it is the overall balance of the instruments used and of their respective weights that makes it possible to decide whether the loan rate complies with the principle of the prudent borrower operating in a market economy. The loan rate provided for in the agreement does not satisfy this test of proportionality, which a private borrower would have applied to the deposited funds.

7.4.3. *Analyses of investment policies pursued by PI in the absence of the Obligation*

(181) For the sake of comprehensiveness, and from a teleological point of view, it will be appropriate to enquire whether the possible alternative investments outlined by PI on the assumption that it was not subject to the Obligation would have offered yields similar to or higher than the one arrived at by the Agreement or by the Commission's own methodology.

(182) In the assessment that follows the Commission will analyse both the financial risk and the return, which are factors determining the conduct of a market operator engaging in financial transactions.

7.4.3.1. Summary of the arguments put forward by Italy ([68])

(183) Italy has argued that the Obligation penalises PI in its asset allocation, as PI is deprived of any other (possibly more rewarding) outlet for the use of the money collected from its customers' current accounts.

(184) According to Italy, in the absence of the Obligation, PI could have:

(i) invested the money collected from postal current accounts in instruments similar to the ones used by the PI's insurance divisions, and in particular Poste Vita SpA. Referring to letters sent by various financial intermediaries (see recital 73), the Italian authorities consider that the remuneration set by the Agreement is in line with the remuneration obtained by Poste Vita SpA on its

([67]) Even though, on the basis of today's long- and short-term interest rates, the interest rate curve is reversed, this could have not been anticipated when the Agreement was signed in 2005-2006.

([68]) For a more detailed presentation of the arguments put forward by Italy see Section 6.

invested funds (see recitals 74 et seq.). In particular, they say that class I life assurance policies are products that can be considered comparable to postal current accounts, and that the average yield on the management of these products (e.g. Posta Più) over the period 2002-2006 was 4,68 %, in line with the rate of the Agreement, which was 4,55 %; or

(ii) diversified its portfolio on the basis of credit risk (see recital 85(i)); or

(iii) adopted an active fund management strategy (see recital 85(iv)); appropriate fund management could have consistently produced a higher yield, as shown by past experience (La Poste case and active management on the trading system model) and by future developments.

(185) The Commission will demonstrate, first, that these alternative investment policies are not relevant to the present analysis, and, second, that their results cannot be used to show that the Agreement confers no advantage on PI.

(186) From a comparison between PI and private-sector banks, Italy also argues (recital 85(ii)) that the interest margins achieved by some private-sector banks on the deposit component of their funding is substantially higher than PI's. Moreover, the investment patterns of banks operating in the public sector are similar to those of PI (recital 85(iii)). These points show, it is argued, that PI does not enjoy State aid.

(187) The Commission will demonstrate that the comparisons made by Italy (notably in the […] study) are not meaningful.

7.4.3.2. General remarks on the relevance of the […] study and of the letters from financial intermediaries

(188) The […] study, and the letters sent by financial intermediaries to PI arguing that the rate of remuneration provided for in the Agreement is in line with the market, call for general comment from the Commission.

(i) The letters and the study may have been written in the course of commercial relations between their authors and PI. The Commission has to approach them with great caution.

(ii) The general conclusions of the […] study raise questions, as […] states that 'it is understood that the assumptions and the initial conclusion, as outlined in this presentation, are based on the informations (and their understanding by […]) provided by PI. Such information may be subject to different interpretation; therefore the analysis could lead to different solutions and conclusions'.

(iii) The interest rate provided for in the Agreement is indexed to parameters with floating rates. The use of these parameters was decided freely by the Treasury and PI, and is not a consequence of any legal constraint. The Commission shares the view of the Italian authorities that the choice of floating-rate parameters was a rational choice for the parties at the time the Agreement was negotiated.

The […] study, however, is based mainly on a comparison between the parameters of the Agreement and instruments with fixed interest rates.

Floating rates have been lower than fixed rates of similar lifetime ([69]). As an illustration, the table below indicates the annual average rates of Treasury issues of five- and 10-year multiannual Treasury bonds (BTPs), which have a fixed interest rate, and Treasury credit certificates (CCTs), which are seven-year instruments with a floating interest rate ([70]).

Table 7

(%)

	2000	2001	2002	2003	2004	2005	2006	2007
BTP 5 years	5,30	4,59	4,56	3,27	3,34	2,84	3,60	4,23
BTP 10 years	5,57	5,13	5,46	4,20	4,29	3,54	3,95	4,41
CCT 7 years	4,40	4,35	3,41	2,36	2,12	2,20	3,13	4,12

Furthermore, the study makes a comparison between the deposit with the Treasury and active fund management strategies (see below), and in the implicit return achieved by PI takes account of capital gains. But the Agreement mechanism cannot generate capital gains (or capital losses), because of its indexation to floating-rate parameters. In the reasoning put forward by Italy, a correct comparison for determining whether PI has been penalised by the Obligation would have to be based on floating-rate parameters. The interest rates that PI might theoretically have been able to achieve according to the study are irrelevant – and probably overestimated – notably because they rely on fixed-rate instruments ([71]).

(iv) Finally, the […] study and the letters compare instruments which carry different risks. For instance, as already explained (Section 7.4.2), the liquidity risk borne by PI is nil when the money is invested pursuant to the Agreement, whereas PI does bear a liquidity risk when it invests under normal circumstances. Similarly, investments in insurance products bear a market risk ([72]), while for the deposit with the Treasury (or private borrower) the market risk is of limited relevance. These risk-related aspects are never pointed out or quantified in a substantiated manner in the letters.

(189) The Commission consequently cannot conclude either from the letters from financial intermediaries or from the study that PI is penalised by the Obligation.

7.4.3.3. Comparison with insurance activities

(190) Even taking the Obligation into account, the Commission does not share the Italian authorities' view that class I life assurance policies sold by Poste Vita SpA are products that can be considered comparable to postal current accounts, because the nature of the resources is different. For instance:

([69]) Since 1997, CCT rates have been lower than five- and 10-year BTP rates, except in 1997 and 1998.

([70]) CCTs are floating-rate seven-year instruments. The interest is paid in six-monthly dividends indexed to the return on six-month BOT bills.

([71]) The argument put forward by Italy that returns on fixed-rate portfolios tend to be in line with returns on floating-rate portfolios over a 10-year period, so that the analysis has to cover a 10-year period, is considered and rejected in the Section 'Trading system active management' below.

([72]) PI's annual report for 2006 indicates that 'Market risk relates to financial assets that PI intends to sell. At the balance sheet date almost all of these items are attributable to financial instruments held by the company's subsidiary Poste Vita SpA in separately managed accounts (class I)'.

— life assurance policies are capitalisation products, whilst postal current accounts serve mostly to transfer money, by telephone, electronically or through deposits of cash at a post office counter; moreover, customers cannot generally replace current accounts with other banking products,

— the profitability of life assurance policies is much higher than that of postal current accounts,

— the tax arrangements for income from life assurance policies can be different from those for interest on postal current accounts.

(191) As a consequence, a comparison between the interest rates resulting from the Agreement and those deriving from the management of life assurance products is not relevant to the present analysis.

(192) Though it was not strictly necessary, the Commission has compared the return obtained under the Agreement with the average return on the management of Posta Più, an insurance product linked to separately managed class I accounts of Poste Vita SpA, and which Italy has presented as an alternative investment available to PI in the absence of the Obligation.

(193) The yield of Posta Più indicated by Italy is expressed in gross terms (before management costs) ([73]), and cannot be considered equivalent to what PI might have obtained on the market in the absence of the Obligation. The Commission is of the view that the loan rate provided for in the Agreement is more in the nature of a net rate, which is offered to the investor with all management costs deducted ([74]).

(194) In the following analysis the Commission has examined the figures year by year, and has also considered average figures, in order for example to limit the effect of rate volatility.

(195) The Commission has compared the rates stemming from the Agreement over the period 2005-2007 with the net yields of insurance products of Poste Vita SpA linked to the separately managed class I accounts (Posta Più and Posta Valore ([75]).

Table 8

(%)

	Net yields of Posta Più ([1])	Net yields of Posta Valore ([1])	Agreement rates	Private borrower rates
31 December 2005	3,00	3,08	3,90	2,81
31 December 2006	2,80	2,63	4,25	3,60
31 December 2007	2,71	2,46	4,70	4,23
Average	2,8	2,7	4,3	3,5

([1]) PI website.

([73]) The letters from the financial intermediaries also seem to refer to gross yields (see for instance the letter from […] of 4 October 2006).

([74]) The Commission considers that no significant transaction cost would occur in the private borrower methodology or under the Agreement.

([75]) The Commission has observed that other Poste Vita SpA products linked to separately managed accounts, such as Posta Pensione and Dinamica, are not comparable in terms of volume of business to Posta Valore and Posta Più. The total business of the separately managed Dinamica account amounts to EUR 120 million, while the Posta Più account exceeds EUR 6,5 billion. See also the letters from […].

(196) The rates defined by means of the Agreement are significantly higher than the net yields of Posta Più, which are regarded by Italy as an alternative investment policy open to PI in the absence of the Obligation.

(197) The rates defined by means of the Agreement are also higher than the net yields of Posta Valore.

(198) The difference would be even bigger if proper account were to be taken of the market and liquidity risks.

(199) In conclusion, a comparison between the interest rates resulting from the Agreement and those deriving from the management of life assurance products does not demonstrate that the Agreement confers no advantage on PI. In 2005, the yields deriving from the private borrower methodology and those of Posta Più and Posta Valore are broadly similar ([76]), and therefore do not change the overall assessment made by the Commission regarding the relevance of the private borrower methodology. On average, over the period 2005-2007, the yields deriving from the private borrower methodology are comparable to those of Posta Più and Posta Valore.

7.4.3.4. Alternative investment strategies

(200) The […] study indicates that the Obligation generates opportunity costs, associated in particular with the impossibility of investing in a diversified portfolio of assets on the basis of credit risks. For example, bonds issued by European corporate and financial names with an AA rating bear interest rates higher than government bonds by a minimum of 60 bp and a maximum of 150 bp.

(201) It should be pointed out, first of all, that in another State aid case relating to PI ([77]) Italy has indicated that the difference in pricing between different types of issuer (State, financial, banking and corporate) is very small: at the same risk rating, the difference in the cost of funding between the two extreme ranges, sovereign and corporate, is about 5-6 bp, and the difference between financial and corporate is about 2-3 bp.

(202) Second, the […] study itself acknowledges that portfolio investment strategies diversified by credit risk are exposed to a credit risk higher than that of government bonds or deposits. The […] study does not quantify this greater risk.

(203) Third, even if some data are provided on the spreads between government, financial and corporate bonds (with an AA rating), the Commission considers that these investments are also exposed to other risks which do not exist in the case of the deposit with the Treasury provided for in the Agreement. For example, PI does not bear any liquidity risk on the funds deposited, since the liquidity risk is borne entirely by the Treasury. This is not mentioned in the […] study, but it is relevant to an assessment of the case.

(204) Thus the brief reference in the study to one theoretical investment strategy does not demonstrate that no advantage is conferred on PI as a consequence of the Agreement, notably in terms of risk and return.

([76]) The rates would be even closer if proper account were taken of the market and liquidity risks of life assurance products.

([77]) State aid measure No C 49/2006 – Remuneration paid for the distribution of postal savings financial products.

7.4.3.5. Active fund management strategies

Comparison with the French operator *La Poste*

(205) Regarding the comparison made with the yield achieved in 2005 by Efiposte, the financial arm of the French postal operator La Poste, the Commission would observe that:

— in order to determine whether an advantage is conferred on an undertaking, the Commission does not compare situations in different Member States,

— the alleged lifetime of five years for Efiposte's investments is not clearly confirmed by the La Poste/Efiposte annual report ([78]),

— Efiposte's investments appear to have risk profiles different from those of PI; in particular, Efiposte is exposed to liquidity risk, which PI is not ([79]),

— the comparison made by Italy concerns one year only, which is too short to allow meaningful conclusions in the present case; and the comparison made in the […] study concerns the period 2004-2005, which differs from the period covered by the Agreement.

(206) Each of the above points is by itself sufficient to show that the comparison made by Italy is not conclusive.

Trading system active management

(207) Italy argues that active management of the trading system type, investing in government bonds, can generate substantial extra returns above the deposit market or the bond market.

(208) The Commission does not deny that some forms of active management may, in theory, generate returns higher those of other forms of fund management; but it considers that the […] does not allow any conclusions to be drawn that are relevant to the present case, for the following reasons:

(i) As a general remark, the […] study acknowledges that the effect of limiting the scope for actively managing a portfolio is difficult to evaluate.

(ii) As mentioned in recital 85, the study compares a baseline investment strategy (benchmark strategy), consisting of a mixture of 10-year multiannual Treasury Bonds (60 %) and of three-month ordinary Treasury bills (40 %), with an active trading system using a long-term signalling

([78]) In addition, Italy has not explained how the alleged yield of 4,4 % for 2005 was calculated, nor has […] explained in detail how it calculated the alleged yield of 4,45 % over the period 2004-2005.

([79]) However, Efiposte, the subsidiary of La Poste group in charge of investing the resources from postal cheque accounts (which are current accounts) in 2005, benefits from stable resources given by La Poste by means of contractually irrevocable term deposits (see Section 4-5 'Liquidity risks' of the 2005 management report of La Banque Postale/Efiposte). The risk split between La Poste and Efiposte, which belong to one group, is different from the situation encountered between PI and the Treasury.

approach (referred to as the 'tactical portfolio') ([80]). The performance metric relates to the benchmark portfolio. The portfolios are composed of fixed interest rate securities. In this context, Italy argues that, over a 10-year period, investment portfolios based on floating rates (such as the rate provided for in the Agreement) can be compared to investment portfolios based on fixed rates (such as the benchmark defined by […]), because capital gains will offset capital losses. Over a 10-year period, it is argued, returns on fixed-rate portfolios tend to be in line with returns on floating-rate portfolios. Moreover, according to Italy, the comparison between the remuneration provided for in the Agreement and the remuneration offered by active management fund strategies has to consider a significant time horizon – 10 years – in order to cover a full economic cycle. During the period from 2005 to the first half of 2007, interest rates rose, and alternative investment strategies based on fixed interest rates, like the ones used by […], provided a return lower than that provided for in the Agreement, because of capital losses. But the Commission cannot accept the methodology or the conclusions of the Italian authorities, for the following reasons.

— In an assessment for State aid purposes, the analysis of the possible advantage conferred by the Agreement has to be made ex ante, on the basis of the information available to the parties at the time the Agreement was concluded, which was February 2006. At the time of the conclusion of an agreement covering the period 2005-2009, no private investor would have analysed the historical series for rates over the period 1997-2007. From an economic point of view, the […] study performs an ex post analysis, based on financial indicators covering the period 1997-2007. But ex ante and ex post concepts are not comparable ([81]). First, realised capital gains or capital losses over the short term cannot be predicted reliably. Furthermore, it is well established that it is difficult for any given investor systematically to outperform the market, so that it would be difficult to argue that PI would ex ante be able to earn supra-normal returns, even in the short run. The Commission therefore takes the view that capital gains or losses should not be considered here, but that instead the focus should be on the yields that PI could be expected to achieve on an ex ante basis (that is to say the interest rate component in total returns) ([82]).

— Even if the annual average return over a 10-year horizon could be used in order meaningfully to compare the different investments (as the Italian authorities claim), the comparison would still have to address the expected performance of the alternative investment portfolios over the period for which the Agreement was concluded (see also point (iii)).

— If account were also to be taken of the capital gains (and losses) derived ex post, as Italy suggests, one would necessarily also have to consider the risk factors associated with these capital gains and losses. In comparing the performance of different portfolios, return cannot be dissociated from risk. As shown below (point (iii)), it is very unlikely that the risk-return performance of the active management portfolios would match that of the Agreement.

([80]) The […] study says that this approach 'compares the current level of yields and the steepness of the yield curve relative to recent history and indicates trades based on expectations of yield level and curve steepness mean reversion. For instance, the trading strategy essentially says that if yields are high then expect them to fall and position the investment portfolio with a longer lifetime than the benchmark'.

([81]) In fact, ex ante and ex post returns often move in opposite directions. This can be clearly seen in the case of zero coupon bonds. When required returns increase (for example owing to an increase in investors' risk aversion), the price of zero coupon bonds falls, resulting in an immediate loss in capital. The lower price then tends to grow towards the nominal value, at the higher expected rate of return. And vice versa.

([82]) It should also be borne in mind that the mechanism of the Agreement does not generate capital gains or losses, because it is indexed to floating-rate parameters.

— Benchmark and tactical strategy portfolios do not incorporate the liquidity risk aspect. In the present case, the liquidity risk is borne entirely by the borrower, and not by PI. More specifically, in the hypothetical case that depositors were all to withdraw their deposits at once, the funds needed to meet the demand would have to be provided by the borrower, that is to say the Treasury, and PI would not need to refinance itself at high rates or with substantial capital losses.

— According to Italy, the parties (PI and the Treasury) could not be aware of the future trend of the rate curve ([83]). Italy therefore considers that the choices made in the Agreement were rational. The Commission agrees that at the time the Agreement was negotiated, on the basis of the information available, the choice of variable parameters was a rational one for the parties to make. By choosing variable parameters the parties protected themselves against the risk of capital loss. The choice of parameters in the Agreement is not a consequence of any legal constraint. Moreover, as Italy has acknowledged, the Agreement allows either party to withdraw from the contract if market conditions no longer guarantee the consistency of the mechanism of calculating the remuneration of the deposit. These clauses are intended to protect both parties from the risk that during the three-year period special conditions might arise, linked to the market or to the characteristics of postal current accounts, which might alter the rationale of the remuneration mechanism. If the choice of floating-rate parameters had proved inappropriate the Agreement could have been amended. This did not happen. The Commission considers, therefore, that from a methodological point of view the use of portfolios based on fixe-rate securities in the […] study is not correct.

The Commission takes the view that each of the above arguments is by itself sufficient to show that the findings of the […] study regarding active management cannot be viewed as supporting the claim that the remuneration that PI obtains under the Agreement is in line with the market.

(iii) As a complement to point (ii) above, if the Commission were to accept the approach used by […] – which it does not – the results obtained by the model over the last 10 years would have been the following:

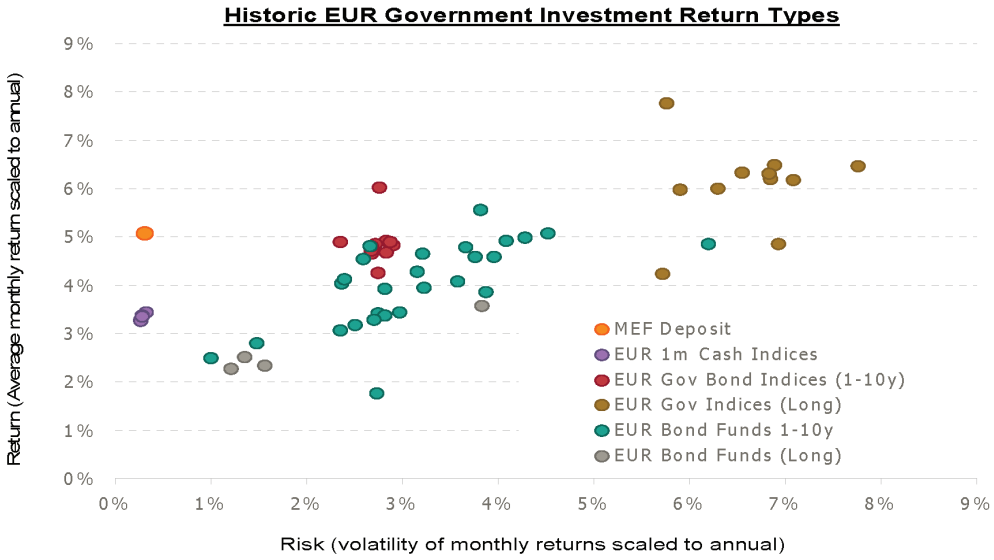
Table 9

(1997 to 2007)	Cash return	Agreement	Benchmark total return	Tactical strategy total return
Average return	3,30 %	5,15 % ([1])	5,02 %	6,78 %
Volatility of return	0,32 %	0,33 %	2,16 %	2,42 %
Sharpe ratio		146,74	0,93	1,66

([1]) The Italian authorities state that if the annual returns are calculated from January to January, rather than August to August, and on the assumption that the proceeds are not reinvested, the average return paid by the Treasury in accordance with the parameters of the Agreement is 4,94 %, rather than the 5,15 % indicated in the […] study.

([83]) At the relevant time, however, the parties also knew that since 1997 the interest rates on CCTs had been lower than those for five- and 10-year BTPs, except for 1997 and 1998. In addition, at the time the Agreement was concluded, in February 2006, the 2005 interest rates were already known.

Figure 3



From Table 8 it will be seen that the tactical strategy model generates a return substantially higher (176 bp higher) than the benchmark return, with only a modest increase in risk. According to Italy, this confirms that active management can be more efficient than the benchmark portfolio.

But the benchmark portfolio is not the deposit with the Treasury under the Agreement. The risk-return profile is completely different. The Sharpe ratios ([84]) of the benchmark portfolio and of the tactical strategy portfolio are significantly lower than the ratio of the Agreement. This is not surprising, because the greater returns on the benchmark and tactical strategy portfolios, as compared with the returns under the Agreement, come at the cost of a sharp increase in the volatility of the returns themselves. Furthermore, the benchmark and tactical strategy portfolios do not incorporate the liquidity risk, as they would need to;

(iv) Looking at the period relevant to the Agreement, the annual returns under the Agreement – and under the private borrower methodology – are higher than those deriving from the active funds management outlined by […]:

Table 10

(%)

	Trading strategy total return ([1])	Trading strategy interest income ([2])	Agreement rate	Private borrower rate
2005	2,78	2,18	3,90	2,81
2006	1,78	3,88	4,25	3,60
2007	3,58	3,88	4,70	4,23
Average	2,71	3,31	4,28	3,55

([1]) The return is already corrected by a 12 bp transaction cost required by active management.
([2]) The return includes only the interest component, without the capital gains or losses, and is already corrected by a 12 bp identified by […] as the level of transaction cost required by active management.

([84]) The Sharpe ratio is a measure of the excess return (or risk premium) per unit of risk in an investment asset or a trading strategy. It is used to characterise how well the return of an asset compensates the investor for the risk taken. When comparing two assets each with the same expected return against the same benchmark, the asset with the higher Sharpe ratio gives more return for the same risk. Investors are often advised to pick investments with high Sharpe ratios.

(v) In 2007, the first year of real active fund management conducted by PI, the portfolio had an average life of […] years, and its implicit return was 5,13 %, made up of 4,13 % in yield on the portfolio and 1 % in implicit capital gain. The Commission would point out, however, that capital gains (or capital losses) cannot be considered in an analysis ex ante. Thus no meaningful comparisons can be made between the total returns on the benchmark and tactical portfolios and the total returns under the Agreement. If anything, the 4,13 % return on active management in 2007 (fixed, without capital gains, and apparently without transaction costs) is lower than the 4,70 % rate obtained under the Agreement and the 4,23 % rate computed by the private borrower methodology. Moreover, in 2005, and on average over the period 2005-2007, the rates achieved by means of the private borrower methodology compare positively to those of the trading strategy.

(vi) The Commission notes that the […] study also analyses possible investment strategies for 2008. These scenarios are not relevant to the present Decision, as they relate to events obviously unknown at the time of the negotiation and conclusion of the Agreement.

(vii) Italy claims that the Agreement is subject to a repricing risk ([85]) higher than that of the benchmark and the tactical strategy. However, while it is true that for a 10-year period the average return on a fixed-rate bond with a 10-year maturity is known in advance, Italy's reasoning depends critically on an equality between the investment horizon and the asset portfolio maturity. In addition, the benchmark and the tactical strategy portfolio are baskets of fixed-income securities of various lifetimes. This means that they too are exposed to a significant repricing risk.

(209) In conclusion, the returns theoretically achievable by active fund management on PI's part, according to the […] study, are not comparable to the returns achieved under the Agreement (or the private borrower methodology), because the underlying financial instruments are different in nature. In particular, the risk profiles of the types of investment differ substantially. In addition, the study, which is based on ex post data (data which were unknown at the time of the negotiation of the Agreement), is not appropriate for an assessment for State aid purposes. The Commission therefore takes the view that the active management model explained in the […] study does not show that the Obligation penalises PI. Quite the reverse, in 2005-2007, when the Agreement applied, it appears that the proposed active fund management would have led to returns lower than those of the Agreement and of the private borrower methodology.

Comparison with alleged market peers

Comparison of PI's interest margin with the interest margin of comparable private-sector banks

(210) The […] study claims that PI's interest margin was lower in 2005 and 2006 than the average interest margin in the Italian private banking system.

(211) The Commission would draw attention to what was said in the decision initiating the procedure: 'The analysis of the elements constituting the spread between the loan/deposits rates is of relevance when assessing whether an advantage exists in favour of PI/BancoPosta. The Commission notes that a market spread may contain State aid elements under certain circumstances, notably when the loan and deposit rates individually are off market. This is not the case in the present case. The Commission considers the deposit rate offered on final consumer's current accounts is not constitutive of a State aid in favour of PI/BancoPosta. Notably, the setting of this rate does not include a transfer of State resource to PI/BancoPosta. Moreover, the rates offered over the period concerned appear to be within a market range, when comparing with interest rates offered by banks for similar products. Finally, the beneficiaries of the deposit rate are individuals. Therefore, at that stage, when examining the spread, the Commission comes to the conclusion that, in the present case, an advantage could only derive from the loan rates. The loan rate paid by the State gives an economic advantage if it were higher than the rate which would have been paid to PI/BancoPosta, under market circumstances, by a private borrower for the deposited funds, according to their nature and amount'.

(212) On the basis of the initiating decision, therefore, the comparison between the interest margins of PI and other banks in the private sector is irrelevant, and the only element to be analysed in the present decision is the interest rate paid by the State to PI for the funds deposited.

([85]) Repricing risk refers to the fact that the continuous roll-over of short term investments involves a higher interest rate risk than a long-term investment for which the investment horizon is identical to the residual term to maturity, and for which the average total return equals the yield.

(213) Moreover, there is no Italian private bank really comparable to PI in terms of balance-sheet structure. PI's liabilities are essentially made up of current accounts (postal current accounts). This is not the case with 'normal' banks, which rely notably on bonds, current accounts, savings accounts etc.

(214) The Commission would also point out that PI is not authorised to lend money to its customers; the personal loans and mortgages it offers are offered on behalf of other banks.

(215) In conclusion, the interest margins of PI and of private banks are different in their composition, and cannot be meaningfully compared.

Comparison of PI's tenor mismatch with those of its private-sector peers

(216) The […] study indicates that PI's postal current accounts are a long-term liability, given the high diversification and stable behaviour of its customers. It also indicates that it is common practice for the banking system to fund long-term assets in large part using deposits. In this respect, the study compares PI's asset and liability approach to those of private banks investing their funds in loans to the public sector (Depfa, Dexia, CCF etc.).

(217) According to […], those banks follow the same approach as PI, since they invest in very long-term public assets (above 15 years), and obtain funds from a mix of short-term and long-term sources. In particular, they collect about 50 % of their requirements on a medium- to long-term basis, financing the rest short term from repurchase transactions with the European Central Bank and deposits from financial intermediaries, and invest their funding in loans to public authorities, usually with maturities of from 10 to 50 years. On the basis of the above, […] concludes that PI's asset liability management (ALM) model is in line with that of its market peers, if not indeed more prudent.

(218) The Commission considers that no conclusions can be drawn from the comparison between PI's asset liability management and that of comparable operators, for the following reasons.

(219) First, PI's liabilities structure is not comparable to that of its market peers: almost 90 % of PI's liabilities is made up of postal current accounts, while hardly 50 % of the liabilities of private banks investing in public-sector assets is made of up repurchase transactions and short-term deposits: the rest derives from medium- and long-term funding.

(220) Second, the comparison with other banks is also vitiated by the fact that PI does not incur the risks to which they are exposed and for which they expect to be compensated on market terms.

(221) Third, […] rightly says that La Banque Postale cannot be compared with PI from 2006 onward, because La Banque Postale began lending to the private sector in that year ([86]); and for the same reasons no conclusions can be drawn from a comparison between PI and private banks operating in the public sector, because they also provide financing outside the public sector (for example, almost 50 % of Dexia loans are to non-public customers).

(222) Fourth, as already indicated in connection with the comparison with Efiposte/La Poste, in order to determine whether an advantage has been conferred on an undertaking the Commission does not compare the situation in different Member States.

(223) To close the comparison with alleged market peers, the Commission notes that 'CDP SpA's cash is deposited in an interest-bearing current account with the Central State Treasury, No 29814, entitled "Cassa DP SpA – gestione separata". Pursuant to Article 6(2) of the Order of the Minister for Economic Affairs and Finance of 5 December 2003, interest on the funds in that account is paid half-yearly at a floating six-month rate equal to the simple arithmetic mean of the gross yield on six-month ordinary Treasury bills and the movement of the Rendistato index. From 1 January 2006, following the merger of Infrastrutture SpA into CDP SpA (Article 1(79) et seq. of Act No 266 of 23 December 2005), interest-bearing current account No 20347, in the

([86]) According to the […] study, on p. 15, '2006 cannot be considered for the comparison since La Banque Postale (the new entity after the transformation of Efiposte in a commercial bank) started the lending activity to the private sector'.

name of ISPA, was renamed "Cassa DP SpA – gest. Patrimonio TAV". The Ministry of Economic Affairs and Finance pays six-monthly interest on deposits in this account at a rate equal to the average yield on the six-month ordinary Treasury bills issued during the previous six-month period. In order to make use of the treasury and disbursement services performed by the Banca d'Italia, CDP SpA continues to use the non-interest-bearing current account No 29815, entitled "CDP SpA – pagamenti". With the increasing use of interbank payment systems, recourse to the national treasury channel for in- and out-payments has declined considerably' ([87]). The Commission is aware of the difficulty of drawing useful conclusions from comparisons between PI and operators alleged to be comparable, which differ from PI in various ways. It can be seen from what has been said, however, that financial intermediaries investing in the public sector, like CDP, are not necessarily remunerated in line with long-term parameters ([88]).

(224) This confirms the Commission's view that for the purpose of this Decision no conclusions can be drawn from the comparison between PI and alleged market peers.

(225) The Commission concludes that the comparisons referred to above, between the interest margins of PI and the interest margins of banks operating in the private sector, and between the tenor mismatch of PI and the tenor mismatches of operators specialised in funding the public sector, are irrelevant, and do not show that the Agreement confers no advantage on PI.

7.4.3.6. Conclusions

(226) To sum up, the interest rate provided for in the Agreement can be compared with the rate for alternative investments in a risk-return perspective. For a similar level of risk, the Agreement provides returns higher than alternative investments, and for similar returns it is subject to lower risks.

(227) Italy itself takes the view that the deposit with the Treasury has a return-risk ratio higher than a fixed-rate portfolio would have. The Commission considers that a risk-return approach is more appropriate than an analysis based on return only.

(228) The Commission concludes that in the absence of the Obligation over the relevant period the possible alternative investments would not have allowed PI to achieve returns which in a risk-return perspective were similar to or better than those provided by the Agreement.

(229) The appropriateness of the private borrower methodology is therefore confirmed.

7.4.4. *Additional observations*

7.4.4.1. The nature of PI's role

(230) In its initiating decision of September 2006, the Commission said that given the specific position of PI, it was possible that no standard of comparison would be available on the market. Under such circumstances, the Commission would have to establish the cost of operating the account for PI and add a reasonable margin. Such an approach would also be justified if the Commission were to consider that PI was acting merely as a conduit to collect funds for the State through its widely spread post offices.

(231) As explained in Section 7.4.2, the Commission is satisfied that a standard of comparison can in fact be indentified on the market, using the private borrower approach.

(232) The Commission considers that the role of PI is not in any way confined to that of a conduit for collecting funds for the State. PI has been pursuing an active policy of developing its banking activities, notably by increasing the attractiveness of its postal current account. Besides, in another decision regarding PI, adopted in November 2006 ([89]), in a case where the postal operator was distributing postal savings books on behalf of CDP, and passing the money collected to CDP, the Commission took the view that that activity was not equivalent to the function of a conduit; the remuneration paid to PI was based on the annual average deposits on the savings books. Finally, even ABI does not consider that PI's remuneration should be based on its costs.

([87]) CDP SpA's annual report for 2006. CDP SpA's annual report for 2005 states: 'CDP SpA's cash is deposited in an interest-bearing current account with the Central State Treasury, No 29814, entitled "Cassa DP SpA – Gestione Separata". Pursuant to Article 6(2) of the Order of the Minister for Economic Affairs and Finance of 5 December 2003, interest on the funds is paid half-yearly at a floating six-month rate equal to the simple arithmetic mean of the gross yield on six-month ordinary Treasury bills and the movement of the monthly Rendistato index.'

([88]) Moreover, according to CDP's annual accounts for 2005, the average cost of funding was 2,3 %, and the spread between rates on assets and liabilities was 1,5 percentage points.

([89]) Commission Decision 2007/C 31/05 of 26 November 2006, remuneration paid for the distribution of postal saving financial products (see OJ C 31, 13.2.2007, p. 11).

7.4.4.2. Comparison with the cost of medium/long term funding of the Treasury

(233) Italy argues that the cost of medium- and long-term funding of the Treasury is often higher than the rate provided for in the Agreement (recitals 77 et seq.).

(234) The Commission would point out the following:

— a comparison with medium- and long-term funding is not enough by itself. Italy has not convincingly demonstrated that postal current accounts serve to finance only the Treasury's medium-to long-term needs. The Commission considers that the deposit is used to cover the general needs of the Treasury,

— about 60 % of Treasury issues are short-term instruments (BOTs and CTZs), having a maturity of no more than two years. The average maturity of the financial instruments issued by Italy in the period 2001-2005 (CCTs, CTZs, BTPs, BOTs) was about four years,

— the average rate of those issues was 2,47 % in 2005, 3,32 % in 2006 and 4,14 % in 2007 ([90]), well below the Agreement rates,

— in Table 3, the figures in the 'average' are calculated over the period from 2001 up to the year in question. For instance, the figure of 4,7 % in 2003 is the average for 2001, 2002 and 2003. Moreover, the average rate computed by Italy is based on funds raised by issuing 5-10-15-30-year bonds, while the Agreement rate includes a short-term component. The Commission considers, too, that there is no logical reason for Italy to exclude three-year bonds from the computation, as these could also be regarded as medium-term instruments. The Commission is of the view that the facts do not justify the use of this methodological analysis.

(235) Once again, each of the points set out above is sufficient by itself to show that the comparison made by Italy is not conclusive.

([90]) *Le emissioni del Tesoro* series, 2005, 2006 and 2007, available on http://www.tesoro.it/publicdebt and http://www.dt.tesoro.it

7.4.4.3. Other arguments

(236) In order to prove that the yield obtained by PI on the deposits it is required to hold with the Treasury is achievable in financial markets with a comparable risk profile, Italy has spoken of a hypothetical one-year swap operation against the Agreement rate. On the basis of current market conditions, Italy argues that the value of such a transaction would be six-month Euribor plus a spread of 1 % at the end of 2005, 0,40 % at the end of 2006 and 0,30 % in October 2007. Before presenting a much more detailed examination of the opportunity cost of the Obligation, […] indicates that the short-term interest rate that PI would have to pay on the market in exchange for the yield paid by the Treasury (a 'constant maturity swap') is six-month Euribor plus a spread of 0,43 %. The Commission considers that this argument, which has not been elaborated, is neither appropriate nor relevant to the present analysis.

7.4.4.4. Replies to the remaining observations from ABI

(237) ABI states that the two interest-bearing accounts with the Treasury opened by CDP pay interest every six months at a floating rate equal to the simple arithmetic mean of the gross return on six-month ordinary Treasury bills and the movement of the monthly Rendistato index.

(238) The Commission would make the following points:

— the nature of CDP's resources is different from that of the current accounts of PI's customers. CDP resources consist mainly of postal savings ([91]), while PI's resources derive from postal current accounts,

— like the remuneration paid to PI on the funds deposited with the Treasury, the remuneration paid to CDP includes both a short-term component, accounting for 50 %, and a medium- to long-term component, accounting for the other 50 %. The difference between the two remuneration mechanisms lies mainly in the weight of each of the components. However, ABI has not provided data pertaining to the stability or volatility of CDP's resources, which might have helped to determine the nature, average life and weighting of CDP's deposits.

([91]) In 2005, out of a balance-sheet total of EUR 150 billion, EUR 122 billion came from postal savings, and in 2006, out of a balance-sheet total of EUR 181 billion, EUR 145 billion came from postal savings (*source:* CDP annual reports 2005 and 2006).

(239) Therefore, no conclusive comparison between the CDP accounts with the Treasury and the PI account can be made.

7.5. **Lawfulness and compatibility of the State aid**

(240) Italy did not notify this new aid scheme in advance, and has consequently put it into effect unlawfully, contrary to Article 88(3) of the Treaty.

(241) It must now be determined whether the aid is compatible with the common market under any of the exemptions laid down in Article 87(2) and (3) of the EC Treaty.

(242) The aid is not compatible under Article 87(2). It is not aid having a social character, granted to individual consumers; nor aid to make good the damage caused by natural disasters or exceptional occurrences; nor aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany.

(243) Turning to the exemptions laid down in Article 87(3)(b) and (d), the aid in question is not intended to promote the execution of an important project of common European interest, or to remedy a serious disturbance in the economy of Italy, nor is it intended to promote culture or heritage conservation.

(244) Article 87(3)(c) states that aid may be considered compatible if it is intended to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest; but the measure at issue does not relate to investment or to job creation, and constitutes operating, unconditional aid. According to the Commission's established practice, such aid cannot be considered to facilitate the development of certain economic activities or of certain economic areas.

(245) The aid applies in the same way across the whole of the country, and therefore cannot be considered compatible under the provision for regional development in Article 87(3)(a) or (c).

(246) The Commission considers that this is operating aid which cannot be regarded as designed to favour the development of certain economic activities within the meaning of Article 87(3)(c) notably because that provision requires that the aid 'does not adversely affect trading conditions to an extent contrary to the common interest', a condition which in the Commission's opinion is not satisfied in the present case. The aid is not targeted to any general objective of common interest. Finally, the fact that it applies only to PI does not change the conclusion of the assessment, because the effects on trade between Member States and the effects of operating aid of this kind in terms of distortion of competition are particularly sensitive in the financial and postal sectors in which PI operates.

(247) Italy has never invoked any of these exemptions.

(248) In conclusion, the aid scheme is not compatible with the common market, and must be brought to an end.

(249) Any agreement relating to the remuneration to be paid by the Treasury to PI for the deposits not concerned by the 2007 Finance Act will have to be based on a detailed analysis of the nature of the funds and of the risks borne by the parties. The Commission would observe that the results of the […] study and of the statistics relating to the period before 2007 cannot be used without further investigation, because the nature of the funds may have changed. The […] study and the statistics were based mainly on deposits owned by private customers, and any funds transferred to the Treasury from 2007 onward would not come primarily from the same customers.

7.6. **Recovery**

(250) Article 14 of Regulation (EC) No 659/99 states that where negative decisions are taken in respect to unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. But the Commission is not to require recovery of the aid if this would be contrary to a general principle of Community law.

(251) The Commission considers that, in the present case, there is no general principle of Community law which stands in the way of recovery.

(252) In order to determine what must be recovered, it has to be considered how the status quo ante can be restored, assessing whether there is an alternative investment strategy which would have granted a similar advantage to PI in the absence of unlawful aid and in accordance with domestic rules which are compatible with Community law. The Commission is of the view that no 'normal' situation can be derived from the contradicting alternative investments suggested by Italy. The recovery cannot be determined in the light of various transactions which might have been implemented by the undertakings if they had not opted for the type of operation which was coupled with the aid. This would mean reconstructing past events on the basis of hypothetical elements. The only point of reference that the Commission can use is the methodology deriving from the principle of the private borrower operating in a market economy.

(253) The amount to be recovered in order to restore the previous situation, therefore, is the difference between (i) the yearly amount paid to PI under the Agreement and (ii) the amount resulting from the application of the private borrower approach (see Tables 6 and 6a).

8. **THE 2007 FINANCE ACT**

(254) Obviously the 2007 Finance Act was not mentioned in the decision to initiate the procedure. However, its can be assessed under the State aid rules without any difficulty.

(255) Under the 2007 Finance Act, the funds that PI collects from private customers in the course of its postal banking business are to be invested by PI in euro area government bonds. The interest paid on such bonds does not contain any State aid element, as it does not confer any selective advantage.

9. **CONCLUSION**

(256) The Commission finds that Italy unlawfully put into effect the aid scheme consisting of the payment of the loan rate by the Treasury for the deposits lodged by PI under the Finance Act 2006 and the Agreement, in breach of Article 88(3) of the Treaty.

(257) The scheme must be brought to an end. The illegal and incompatible State aids must be recovered.

(258) The 2007 Finance Act does not comprise State aid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid scheme for the remuneration of the current accounts held by Poste Italiane with the State Treasury under Act No 266 of 23 December 2005 and the Agreement of 23 February 2006 between the Ministry of Economic Affairs and Finance and Poste Italiane, which Italy has unlawfully put into effect in breach of Article 88(3) of the Treaty, is incompatible with the common market.

Article 2

Italy shall bring the scheme referred to in Article 1 to an end with effect from the date of adoption of this Decision.

Article 3

1. Italy shall recover the incompatible aid granted under the scheme referred to in Article 1 from the beneficiary.

2. The amount to be recovered shall be equal to the difference between the annual remuneration paid on current accounts held by Poste Italiane with the State Treasury under the Agreement referred to in Article 1 and the amount arrived at by applying the test of the prudent borrower operating in a market economy as shown in Table 6a in this Decision.

3. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.

4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.

5. Italy shall cancel all outstanding payments of aid under the scheme referred to in Article 1 with effect from the date of adoption of this Decision.

Article 4

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.

2. Italy shall ensure that this Decision is implemented within four months of the date of its notification.

Article 5

1. Within two months of the notification of this Decision, Italy shall submit the following information to the Commission:

(a) the total amount (principal and interest) to be recovered from the beneficiary;

(b) a detailed description of the measures already taken or planned in order to comply with this Decision;

(c) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 July 2008.

For the Commission

Neelie KROES

Member of the Commission