

Brussels, 19 December 2024
Case No: 88382
Document No: 1506023
Decision No 223/24/COL

[Non-confidential version]

[The information in square brackets is covered by the obligation of professional secrecy]

Ministry of Trade, Industry and Fisheries
PO Box 8090
Dep 0032 Oslo
Norway

Subject: Postal services in Norway

1 Summary

- (1) The EFTA Surveillance Authority ('ESA') wishes to inform Norway that, having assessed the information relating to compensation granted to Posten Bring AS ('Posten') for discharging its Universal Service Obligation ('USO') ('the measure'), ESA has doubts regarding (i) whether the measure constitutes State aid; (ii) if so, whether it constitutes existing or new aid; and (iii) if considered new aid, whether it is compatible with the functioning of the EEA Agreement.
- (2) Consequently, ESA has decided to open the formal investigation procedure pursuant to Articles 4(4) and 13 of Part II of Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'). The decision is based on the following considerations.

2 Procedure

- (3) On 18 March 2022, HeltHjem Netthandel AS ('the complainant'), an entity active in parcel delivery services in Norway, lodged a complaint with ESA alleging that the Norwegian postal incumbent Posten is in receipt of unlawful and incompatible State aid through non-notified compensation for the provision of services of general economic interest ('SGEI') in relation to Posten's USO. ⁽¹⁾
- (4) In short, the complainant questioned the measure's compliance with the 2012 SGEI Framework ('the SGEI Framework') ⁽²⁾ and Directive 97/67/EC ('the Postal Services Directive') ⁽³⁾ and, more broadly, the legality of the measure in the absence of a

⁽¹⁾ Email from the complainant of 19 December 2022, Document No 1344255.

⁽²⁾ [Framework for State aid in the form of public service compensation](#), OJ L 161, 13.6.2013, p. 12 (Annex II) and EEA Supplement No 34, 13.6.2013, p. 1.

⁽³⁾ 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 015 21.1.1998, p. 14), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 91/98 (OJ L 189, 22.7.1999, p. 64, EEA Supplement No 32, 22.7.1999 p. 154). Amended by 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), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 168/2002 (OJ L 38, 13.2.2003, p. 30, EEA

formal notification to and approval by ESA. In particular, the complainant contended that Posten is in receipt of 'overcompensation' for discharging the USO, which it uses to fund below-cost pricing in contested parcel markets.

- (5) The initial scope of the complaint extended to all USO compensation Posten has been granted for 2012 onwards. However, for the purposes of the present investigation, the complainant has limited the scope of its complaint to 2016 onwards. ⁽⁴⁾ Accordingly, this decision covers USO compensation to Posten for 2016 onwards, granted until 19 December 2024, hereafter 'the relevant period'. ⁽⁵⁾
- (6) On 5 April 2022, ESA forwarded the complaint to the Norwegian authorities, requesting them to comment on the allegations. ESA's email also contained a first request for information ('RFI'). ⁽⁶⁾ ESA received initial comments from the Norwegian authorities on 3 June 2022. ⁽⁷⁾ By email of 6 July 2022, ESA requested further clarifications. ⁽⁸⁾ On 21 September 2022, the Norwegian authorities provided additional comments. ⁽⁹⁾ ESA received observations from the complainant on Norway's comments on 30 November 2022 ⁽¹⁰⁾ and 6 January 2023. ⁽¹¹⁾
- (7) On 19 December 2022, ESA met with the Norwegian Communications Authority ('Nkom').
- (8) On 12 January 2023, ESA sent a second RFI to the Norwegian authorities, ⁽¹²⁾ who replied on 11 May 2023 and 15 June 2023. ⁽¹³⁾ On 5 July 2023, ESA received comments from the complainant on Norway's reply to the RFI. ⁽¹⁴⁾ On 13 October 2023, the Norwegian authorities submitted remarks on those comments. ⁽¹⁵⁾
- (9) On 3 November 2023, ESA received observations from Posten. ⁽¹⁶⁾ Posten requested meetings with ESA, which took place on 6 July and 22 November 2023.

Supplement No 9, 13.2.2003, p. 21) and 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), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 136/2020 (OJ L 173, 6.7.2023, p. 37, EEA Supplement No 52, 6.7.2023 p. 36).

⁽⁴⁾ Document No 1344255.

⁽⁵⁾ In accordance with the case law of the Court of Justice, aid is granted when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime, irrespective of the date of payment of the aid to the undertaking. See Judgment of 21 March 2013, *Magdeburger Mühlenwerke v Finanzamt Magdeburg*, C-129/12, EU:C:2013:200, paragraph 40.

⁽⁶⁾ Document No 1280691.

⁽⁷⁾ Cover letter Document No 1293316. Letter including 3 annexes with Document Nos 1293320 (main letter), 1293922, 1293318, 1293314. The deadline was extended, Document No 1287093.

⁽⁸⁾ Document No 1307584.

⁽⁹⁾ Cover letter filed as Document No 1314537. Letter is filed as Document No 1314529. The 20 annexes are filed as Document Nos 1314497, 1314499, 1314503, 1314513, 1314495, 1314501, 1314505, 1314507, 1314509, 1314511, 1314515, 1314517, 1314519, 1314521, 1314523, 1314525, 1314527, 1314531, 1314533, 1314535.

⁽¹⁰⁾ Document No 1344269.

⁽¹¹⁾ Document No 1344268.

⁽¹²⁾ Document No 1344237.

⁽¹³⁾ Document No 1376061.

⁽¹⁴⁾ Document No 1402422.

⁽¹⁵⁾ Document No 1402432.

⁽¹⁶⁾ Document Nos 1410427, 1410429, 141030, 1410431 to 1410431.

Posten sent supplementary information on 11 December 2023. ⁽¹⁷⁾ On 6, 8 and 21 November 2024, the Norwegian authorities sent further information. ⁽¹⁸⁾

3 Description of the measure

3.1 The beneficiary

- (10) The sole beneficiary of the measure is Posten Bring AS, the incumbent postal operator in Norway. Initially founded as *Postvesenet* in 1647, the national postal service began as a private enterprise operating under royal privilege. From 1719, the State assumed direct responsibility for its operation. *Postvesenet* was renamed *Postverket* in 1933 and *Posten* in 1987, organised within the public administration under the Ministry of Transport ('the Ministry').
- (11) In 1996, Posten was transformed into the State-owned special law company *Posten Norge BA*. In 2002, it was converted into the State-owned limited liability company *Posten Norge AS*. In 2017, ownership shifted from the Ministry to the Ministry of Trade, Industry, and Fisheries. In 2023, it was renamed *Posten Bring*. Hereafter, ESA will refer to the present entity and all predecessors as 'Posten'.
- (12) Currently, Posten is the parent company of a postal and logistics group operating primarily across the Nordic region. In 2023, Posten's turnover totalled NOK 24 billion, of which 78% was attributed to logistics operations and 22% to postal mail activities. Overall, 64% of the turnover was attributed to the Norwegian market. ⁽¹⁹⁾
- (13) Posten operates under two brands: '*Posten*' and '*Bring*'. Under the '*Posten*' brand, Posten delivers parcels and letters to private individuals throughout Norway. Under the '*Bring*' brand, *Posten* provides e-commerce and logistics solutions for corporate customers in the Nordic market (including Norway). ⁽²⁰⁾
- (14) From the mid-1900s, Posten's operations have been characterised by a universal presence throughout Norway. To this end, it maintained an extensive postal network, ensuring that all households and businesses had access to basic services.
- (15) Since then, the postal network has undergone several transformations. Notably, in the early 2000s, Posten began restructuring its fixed service point network, transitioning away from traditional post offices to a system of so-called '*post-in-shop*'. As a result, most of Posten's service points today are run by third parties in connection with convenience stores, kiosks, etc. ⁽²¹⁾ In recent years, Posten has also expanded its network with automated parcel lockers and boxes. In 2024, Posten's network comprised around 3 700 '*pick-up points*', including post-in-shop, collection points, automated parcel boxes and lockers, and post offices. ⁽²²⁾
- (16) Posten's operational value chain for handling letter mail and parcels can be described in five phases: (i) clearance, (ii) sorting, (iii) long-haul transportation, (iv)

⁽¹⁷⁾ Document No 1425176.

⁽¹⁸⁾ Document Nos 1505845 to 1505849 (submission of 6 November 2024), Document Nos 1505850 and 1505851 (submission of 8 November 2024), and Document Nos 1505852 and 1505853 (submission of 21 November 2024).

⁽¹⁹⁾ Posten Bring Integrated Annual Report 2023 p. 9, available at: <https://www.postenbring.no/en/reports/annual-reports/Integrated%20annual%20report%202023.pdf>

⁽²⁰⁾ See <https://www.postenbring.no/en/about-us/our-two-brands>

⁽²¹⁾ In sparsely populated areas, Posten also operates so-called 'mobile' service points.

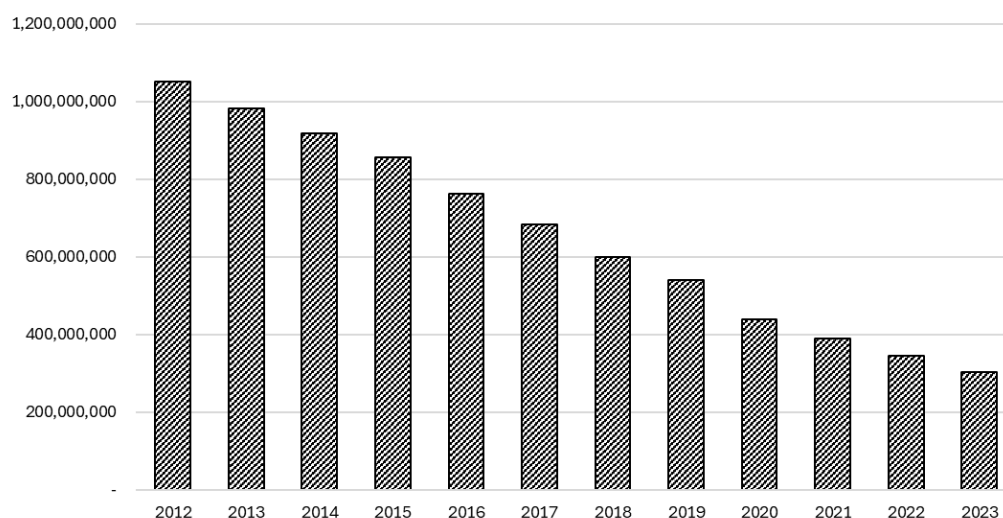
⁽²²⁾ <https://www.bring.no/magasinet/ehandel-og-logistikk/pakkeboks-nummer-6000>

local transportation and (v) last-mile distribution. Clearance involves collecting items from public mailboxes, service points, drop-off locations, and occasionally private mailboxes, followed by local transportation to sorting terminals. Sorting prepares mail for delivery using a combination of automated systems and manual handling. Long-haul transportation entails moving items over longer distances, typically via heavy trucks, from terminals to hubs for reloading. Local transportation involves moving items from hubs to distribution and service points. Finally, last-mile distribution covers the route-based delivery of items, including addressed and unaddressed mail, newspapers, and packets, to the recipients' private mailboxes.

3.2 The Norwegian market for postal services

- (17) The market for postal services in Norway has experienced significant changes over recent decades. While Posten historically maintained a statutory monopoly on letter mail services, a gradual liberalisation process began in 1997, culminating in the complete abolition of the 'reserved area' by 2016 and, thereby, full market opening.
- (18) Over the same period, traditional letter mail volumes dramatically declined, falling by 70% since 2012 or around 10-15% annually (see Figure 1 below). ⁽²³⁾ By 2023, the average Norwegian household received only 1.7 addressed letters per week. ⁽²⁴⁾ The volume decline is largely attributed to the increasing adoption of electronic means of communication, so-called '*e-substitution*'. In contrast, the markets for parcel delivery and logistics services have grown in importance, primarily driven by the rise of e-commerce. For example, between 2017 and 2022, Posten reported an average annual growth of 17% in parcel volumes. ⁽²⁵⁾
- (19) Currently, several providers are active in the markets for parcel delivery and newspaper distribution, largely based on their own facilities. However, Posten remains the only operator with a nationwide last-mile network for letter mail. ⁽²⁶⁾

Figure 1: Addressed letter mail volumes 2012–2023, Posten Bring AS



⁽²³⁾ Document No 1505852.

⁽²⁴⁾ Mandate of the 2024 Postal Expert Group, available at: <https://files.nettsteder.regjeringen.no/wpuploads01/sites/560/2024/02/Mandat.pdf>

⁽²⁵⁾ Analysis Mason report of 28 September 2023, available at <https://nkom.no/post/rapporter-om-posttjenester/rapporter-om-privatpersoners-og-bedrifiers-bruk-av-posttjenester-i-norge>, p. 4.

⁽²⁶⁾ *ibid.*

3.3 The current legal framework

- (20) The provision of postal services in Norway is governed by the Postal Act of 2016 ('the Postal Act') ⁽²⁷⁾ and the Postal Regulation of 2016 ('the Postal Regulation') ⁽²⁸⁾, which entered into force on 1 January 2016. The Postal Act serves as the legal basis for the USO. Pursuant to Section 57(1) of the Postal Act, Posten delivers the USO based on a 'temporary concession'. ⁽²⁹⁾ Nkom is the regulatory authority for postal services, tasked with ensuring compliance with the regulatory framework.

3.4 The Universal Service Obligation

- (21) The Norwegian authorities have explained that the objective of the USO is to ensure that all citizens and businesses across Norway have access to affordable and reliable basic postal services. ⁽³⁰⁾ In this regard, Chapter 2 of the Postal Act defines the scope of the obligation and sets out the requirements governing its provision.

3.4.1 The product scope of the USO

- (22) The 'product scope' of the USO entrusted to Posten is set out in Section 7(1)(1) of the Postal Act and comprises items falling within the following service categories:
- i) addressed letter post up to 2 kg ('USO letter post'), including subscription newspapers and magazines, and
 - ii) parcels up to 20 kg ('USO parcel post').
- (23) Section 7(1)(4) of the Postal Act further specifies that the USO includes services for registered and insured items up to 2 kg; Section 7(1)(5) extends the USO categories to cover cross-border items; and Section 7(1)(6) mandates the free delivery of certain items for the blind. ⁽³¹⁾
- (24) Regarding '*USO letter post*', the Norwegian authorities have explained that this category covers all addressed postal items up to 2 kg of any format fitting the standard dimensions for mailbox delivery, including letters and cards, bulky mail and mailbox packets. Accordingly, services for both single-piece and bulk mail fall within the scope of the USO. ⁽³²⁾ Conversely, for '*USO parcel post*', the Norwegian authorities have informed that this category is limited to single-piece parcels. Accordingly, bulk 'B2X' services ⁽³³⁾ fall outside the scope of the USO, and Posten is free to manage its portfolio of such services on a commercial basis.
- (25) Moreover, it follows from Posten's concession that Nkom may exempt an individual service from the scope of the USO if, after an overall assessment, it would impose an unreasonable burden on Posten, also taking into account the needs of users.

⁽²⁷⁾ [The Act of 4 September 2015 nr. 91](#), in Norwegian: *Lov om posttjenester (postloven)*.

⁽²⁸⁾ Regulation of 18 September 2015 nr. 1063, in Norwegian: *Forskrift om post (postforskriften)*.

⁽²⁹⁾ Currently the 2020 temporary concession, Document 1293318.

⁽³⁰⁾ Document No 1314529, p. 7.

⁽³¹⁾ These are defined in Section 20 of the Postal Regulation as correspondence, literature in whatever format, including sound recordings, and equipment made or adapted to aid the disability, sent to or by an organisation for the blind or sent to or by a blind or partially sighted person.

⁽³²⁾ Reply to the second request for information, Document No 1366814, p. 9.

⁽³³⁾ The term 'B2X' refers to services for the delivery of parcels sent from businesses to consumers (B2C), other businesses (B2B), or government entities (B2G).

(³⁴) Nkom may also exceptionally grant an exemption for an individual service if an equivalent service is already provided by Posten in accordance with the USO. (³⁵)

- (26) Point 1.3 of the concession further specifies that Posten must offer cash-on-delivery service for items up to 20 kg. The Norwegian authorities have clarified that Posten may introduce other supplementary or ‘add-on’ features to basic USO services, but such add-ons are not USO. Posten reports annually to Nkom on its services. According to the Norwegian authorities, there have only been minor changes to the service list over the years and no requests for exemptions. (³⁶) Table 1 provides an overview of the services encompassed by the USO during the relevant period.

Table 1: Services included in the USO during 2016-2024

Category	Service		Brand
Addressed letter post up to 2 kg	Single-piece letter mail	<i>Enkeltsender</i>	Posten / Bring
	Mixed format bulk mail	<i>Post blandede formater</i>	Bring
	Equal format bulk mail	<i>Post like formater</i>	Bring
	Newspapers bulk mail	<i>Aviser til abonnenter</i>	Bring
	Bulk mailbox packets	<i>Pakke-i-postkassen</i> (³⁷)	Bring
	Registered letter mail	<i>Rekommandert brev</i>	Posten / Bring
	Insured letter mail	<i>Verdibrev</i>	Posten / Bring
Parcel post up to 20 kg	Domestic parcels	<i>Norgespakke Stor 0-20 kg</i>	Posten
	Cross-border parcels	<i>Pakke Utland 0-20 kg</i>	Posten
	Cash-on-Delivery	<i>Postoppkrav 0-20 kg</i>	Posten / Bring

- (27) The Norwegian authorities have further informed that in 2017, Posten launched a separate service for mailbox packets, the so-called ‘*pakke-i-postkassen*’ or ‘PiP’ service. PiP was aimed at e-commerce retailers and entailed the delivery of packets containing goods to the recipient's mailbox. In this context, a dispute arose between Nkom and Posten over whether PiP constituted a letter post service, *prima facie* falling within the USO scope, or a ‘B2C’ parcel service (³⁸) excluded by ‘default’.
- (28) In 2018, Nkom took the position that PiP, with its 2 kg weight limit, mailbox size specifications and reliance on the postal delivery value chain, concerned an item falling within ‘*USO letter post*’. Nkom further held that PiP’s optional RFID tracking and collection agreement constituted ‘*supplementary services*’, dissociable from the basic features of PiP. (³⁹) Consequently, Posten was required to seek regulatory approval before excluding PiP from the USO. Posten disagreed, contending that PiP should be classified based on the content of the items (goods) and the market concerned, noting that e-commerce packets were recognised as parcels within the

(³⁴) Point 1.1 of the 2020 temporary concession, Document No 1293318.

(³⁵) *Ibid.*

(³⁶) Reply to the second request for information, Document No 1366814, p. 11.

(³⁷) Included in the USO during 2018-2020.

(³⁸) Business-to-Consumer service, see footnote 33.

(³⁹) Letter of 19 December 2018 from Nkom to the Ministry of Transport, Document No 1277651.

EEA under Regulation 2018/644/EC. ⁽⁴⁰⁾ Accordingly, Posten considered PiP to constitute a business service for bulk parcels falling outside the scope of the USO.

- (29) After a protracted appeals procedure, in December 2022, the Ministry took a final decision on the matter, holding that Section 7(1) of the Postal Act should be interpreted in line with the definition of '*postal item*' set out in Article 2(6) of the Postal Services Directive, consistent with the minimum universal service set out in Article 3(4) therein, which included '*postal parcels containing merchandise*'. ⁽⁴¹⁾ Accordingly, PiP involved a regulated item subject to supervision by Nkom.
- (30) However, during the interim period, Posten altered the specifications of PiP, raising the weight limit to 5 kg, integrating value-add features and making certain changes to its processing. As a result, Nkom took the view that the PiP service, with effect from 2021, constituted a business parcel service falling outside the scope of the USO. ⁽⁴²⁾ In the same decision, Nkom also held that a new consumer parcel service – *Norgespakke Liten 0-5 kg* – could be exempted from the USO, as the domestic scope of '*USO parcel post*' was satisfactorily fulfilled by *Norgespakke Stor 0-20 kg*.

3.4.2 The service level scope of the USO

- (31) It follows from Sections 7(1)(2) and 7(1)(3) of the Postal Act, as well as Posten's concession, that the USO services must be provided in accordance with certain defined service levels and quality standards, such as geographic coverage, servicing frequency (days per week), and routing times (days-to-delivery).
- (32) As explained by the Norwegian authorities, some of these requirements have evolved over time to reflect political priorities and changing market dynamics. For example, historically, Posten was required to carry out one clearance and one delivery six days per week (Monday-Saturday). In 2016, the delivery frequency obligation was reduced to five days per week (Monday-Friday) and, in 2020, to alternate-day delivery (Monday-Friday) in a two-week cycle ('2.5 days per week').
- (33) Concerning delivery speed, prior to 2018, Posten was required to maintain two classes of letter mail with different routing time targets: priority (85% D+1) and non-priority (85% D+4). This obligation was removed in 2018, allowing for a single mail flow (85% D+2). In 2020, the routing time target was further relaxed (85% D+3).
- (34) Pursuant to Section 26 of the Postal Regulation, Posten must report annually to Nkom on its fulfilment of the USO, including the service level requirements and quality standards. Failure to meet the requirements may be subject to penalties.

3.4.3 The pricing requirements of the USO

- (35) The services which form part of Posten's USO are subject to a number of regulatory requirements. Regarding pricing, the following principles must be respected.

⁽⁴⁰⁾ Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services, OJ L 112, 2.5.2018, p. 19, incorporated into the EEA Agreement by Joint Committee Decision 246/2021, OJ L, 2024/496, 22.2.2024, EEA Supplement No. 17, 22.2.2024, p. 33.

⁽⁴¹⁾ Decision of the Ministry of Transport of 2 December 2022, Document No 1338956.

⁽⁴²⁾ Document No 1414551, annex 5.

- (36) In accordance with Section 10 of the Postal Act, the USO services must be provided on open, objective and non-discriminatory terms at prices which are both cost-oriented and affordable. Furthermore, pursuant to Section 13 of the Postal Act, Posten is obliged to price addressed single-piece letters below 50 grams at a geographically uniform tariff. Finally, according to Section 14 of the Postal Act, Posten must fulfil Norway's obligations under the Convention of the Universal Postal Union ('UPU'). As a result, tariffs for distributing inbound cross-border mail are determined based on agreements between Posten and postal operators located in other countries or based on the so-called UPU-fixed 'terminal dues.'

3.4.4 The regulatory product accounts

- (37) Under Section 11 of the Postal Act, Posten must keep separate internal accounts for its USO and non-USO services and submit externally verified product accounts annually to Nkom. The principles for allocating costs and revenues between the USO and non-USO services and the structure to be followed in terms of service grouping and cost categorisation are set out in a decision by Nkom issued in 2017 ('the Accounting Instruction').⁽⁴³⁾ The regulatory accounts are accompanied by a report from Posten explaining the changes in the figures from the previous year.
- (38) According to the Norwegian authorities, the purpose of the accounting separation and the regulatory accounts is two-fold: 1) to ensure that prices are affordable and geared towards cost, and 2) to control for cross-subsidisation. In this regard, the requirement of cost-orientation entails that service prices take as a starting point the actual cost of producing and delivering the services, including a reasonable share of common cost and a return on the capital employed. Cross-subsidisation is deemed to exist if a service does not cover the '*relevant cost*' caused by it and another service covers more than its '*standalone cost*'. In that case, the former would be the recipient of a cross-subsidy, while the latter would be the source.
- (39) The Accounting Instruction provides that the regulatory accounts must assign all services to one of the following 'result units': 1) USO letter post, 2) USO parcel post, 3) banking SGEI, or 4) non-USO services. For each result unit, an overview of revenues and costs must be provided, including imputed interest on the capital employed (cost of capital), along with the resulting outcome.⁽⁴⁴⁾ The decision further clarifies that Nkom may request more disaggregated product-level costing models if deemed necessary for verifying whether individual services are cost-oriented. Such models are to be based on bottom-up costing of fully allocated cost.
- (40) Regarding the cost allocation principles, the Accounting Instruction provides that all costs are to be allocated directly to each result unit as far as possible. However, if allocation based on the causality principle is not feasible, costs should be allocated proportionately based on already allocated costs. The Accounting Instruction also provides a template for the regulatory accounts. Under this framework, the allocated costs for each result unit must be classified into four cost categories: '*avoided cost*', '*other product-specific cost*', '*product group cost*', and '*corporate cost*'.

⁽⁴³⁾ Nkom's 2017 Decision on Posten's product accounts and separate accounting, Document No 1314531.

⁽⁴⁴⁾ The Accounting Instruction provides that all revenues and costs must be fully allocated to the respective result units. However, exceptions can be made for extraordinary items that could misrepresent operational profitability, with such items requiring clear identification and explanation.

- (41) Each result unit must also account for the cost of capital, calculated as the product of the required rate of return and the capital employed by the different result units. In this regard, Posten is required to apply the Weighted Average Cost of Capital ('WACC') methodology, which incorporates the required rate of return on equity, as determined by Posten's owner ministry, and Posten's actual cost of debt.
- (42) Finally, the Accounting Instruction specifies that the accounts are to be reviewed by an external auditor. The auditor must issue a declaration confirming that the accounts comply with the regulation, including verifying that the product accounts are consistent with the audited annual accounts for external reporting. The auditor must also carry out controls on allocation keys, data registration and data processing to ensure that these align with the Accounting Instruction.

3.4.5 *The USO compensation mechanism*

3.4.5.1 The Net Avoided Cost methodology

- (43) Under Section 9 of the Postal Act, Posten may request compensation for the '*net cost*' of discharging the USO, provided it imposes an unfair financial burden on Posten. The Norwegian authorities have explained that the net cost is the difference in results between the factual scenario whereby Posten operates with the USO and a hypothetical scenario whereby Posten is free to pursue its commercial strategy, i.e., the so-called 'commercial counterfactual' or 'net avoided cost' ('NAC') methodology.
- (44) An instruction letter from the Ministry issued in 2002 outlines the principles and procedure for compensation in further detail ('the Compensation Instruction').⁽⁴⁵⁾ According to the Compensation Instruction, Posten must calculate the net cost separately for each element of the USO for which it seeks compensation. An external auditor must review the calculations. No cost of capital is accounted for, and the financial effects of planned efficiency measures are factored into the estimate. The input data and calculations must be submitted to the Ministry together with the auditor report. According to the Norwegian authorities, final compensation is contingent on the implementation of the efficiency measures.

3.4.5.2 Posten's counterfactual scenario

- (45) The Norwegian authorities have explained that Posten's commercial strategy, forming the basis for the counterfactual, is annually determined by Posten's Board of Directors. As such, it represents Posten's 'real' commercial strategy, which it is prepared to implement should the USO be amended. According to the Norwegian authorities, Posten's commercial strategy has therefore evolved over time in response to market developments, most notably the falling letter mail volumes.
- (46) Posten's Board of Directors determines Posten's future commercial strategy years in advance of its 'implementation' as a counterfactual in the USO net cost calculation. The description below outlines the changes and timing of Posten's strategic adjustments when these were implemented as counterfactuals.
- (47) In 2016, Posten's commercial counterfactual scenario entailed a geographically differentiated delivery frequency. It would deliver letter mail five days per week in

⁽⁴⁵⁾ Document No 1314505.

an area covering 95% of Norwegian households while reducing delivery to two days per week for the 5% most costly households to serve. ⁽⁴⁶⁾ In 2018, Posten's commercial strategy shifted to alternate-day delivery throughout the country. It would also discontinue overnight delivery of priority mail (D+1) by merging the priority and non-priority letter mail services into a single mail stream, with a D+2 delivery speed target. In 2020, Posten revised its commercial strategy further by reintroducing geographically differentiated delivery frequency. The 15% most expensive households would only have mail delivered once per week.

- (48) Finally, from 2022, Posten's commercial strategy entailed discontinuing last-mile delivery of letter mail altogether, transitioning to a model where letter mail would be delivered only to so-called 'pick-up points' (post-in-shop, automated lockers and boxes, etc.). To prepare for the shift, Posten's Board of Directors foresaw a transitional phase in 2021, where it would deliver letter mail only once per week throughout the country. In addition, throughout the period 2016-2025, Posten's commercial counterfactual entailed delivering items for the blind at ordinary rates.
- (49) The Norwegian authorities have further explained that Posten has consistently implemented its counterfactual strategy whenever regulatory conditions permitted. This occurred, for example, when the USO delivery frequency requirement changed from six to five days in 2016, when the requirement to maintain two mail streams was lifted in 2018, and when alternate-day delivery was introduced in 2020.
- (50) Table 2 summarises the USO elements where Posten's strategy diverged from the USO during 2016 – 2025, for which compensation was granted. ⁽⁴⁷⁾

Table 2: Posten's factual and counterfactual scenario during 2016-2025

Year	Factual scenario, operating with the USO	Counterfactual scenario, operating without the USO
2016	<ul style="list-style-type: none"> • Delivery six days per week until 30 June • Delivery five days per week from 1 July • Delivery of items for the blind free of charge 	<ul style="list-style-type: none"> • Delivery five days a week to 95% of households • Delivery two days a week to 5% of households • Delivery of items for the blind at ordinary rates
2017	<ul style="list-style-type: none"> • Delivery five days per week to 100% of households • Delivery overnight for priority letters (85% D+1) • Delivery of items for the blind free of charge 	<ul style="list-style-type: none"> • Delivery five days a week to 95% of households • Delivery twice days a week to 5% of households • Delivery of items for the blind at ordinary rates • Priority- and non-priority letters merged (85% D+2)
2018 - 2019	<ul style="list-style-type: none"> • Delivery five days per week to 100% of households • Delivery of items for the blind free of charge 	<ul style="list-style-type: none"> • Delivery 2.5 days per week to 100% of households • Delivery of items for the blind at ordinary rates
2020	<ul style="list-style-type: none"> • Delivery five days a week until 30 June • Delivery 2.5 days per week from 1 July • Delivery of items for the blind free of charge 	<ul style="list-style-type: none"> • Delivery 2.5 days per week for 85% of households • Delivery 1 day per week for 15% of households • Delivery of items for the blind at ordinary rates

⁽⁴⁶⁾ Document No 1366814, p. 20.

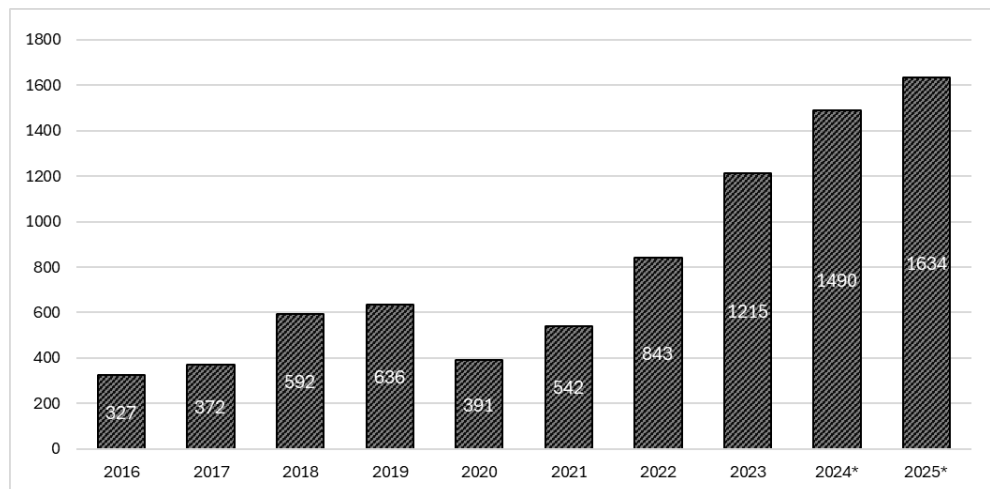
⁽⁴⁷⁾ Only the USO net cost element for which Posten received compensation is listed.

2021	<ul style="list-style-type: none"> • Delivery 2.5 days per week to 100% of households • Delivery of items for the blind free of charge 	<ul style="list-style-type: none"> • Delivery 1 day per week to 100% of households • Delivery of items for the blind at ordinary rates
2022 - 2025	<ul style="list-style-type: none"> • Delivery 2.5 days per week to 100% of households • Delivery of items for the blind free of charge 	<ul style="list-style-type: none"> • Delivery to pick-up points • Delivery of items for the blind at ordinary rates

3.4.5.3 The compensation procedure

- (51) Regarding the compensation procedure, the Norwegian authorities have explained that around 13 months in advance of the compensation year (Y-2), Posten is called upon to forecast its expected USO net cost for year Y. An update to the estimate takes place around 6-7 months in advance (Y-1). During this period, the Ministry and Posten engage in dialogue before the Ministry eventually submits a proposal to the Norwegian Parliament for public funding over the State budget. The proposed compensation is entered under Chapter 1370, post 70, of the budget submission. The State budget is adopted by the Parliament towards the end of the year (Y-1).
- (52) In this regard, the Norwegian authorities have explained that the budget submission has not always equalled the full amount as requested by Posten. For example, during 2016 – 2018, Posten's request for compensation to cover losses associated with handling registered mail from abroad was rejected. However, the Norwegian authorities have generally not found grounds to reject the counterfactual as such.
- (53) In the compensation year (Y), the ex-ante estimated compensation is paid to Posten in monthly instalments of equal shares. Around September of the following year (Y+1), Posten recalculates its USO net cost considering the actual costs, revenues and volumes in year Y. The Norwegian authorities have explained that this recalculation may include updates of critical assumptions of the counterfactual. Subsequently, the ex-post calculation, with explanatory documentation data files and the report from the external auditor is submitted for review to both the Ministry as the purchaser of the service, and to Nkom as the sector regulator. ⁽⁴⁸⁾
- (54) Upon receipt, the Ministry reviews the numbers to determine whether Posten was over- or under-compensated in year Y. If over-compensated, the Ministry requests Posten to reimburse the excess. If under-compensated, the Ministry prepares a proposal for an additional budget allocation to Posten. In both cases, interests are included based on the Norwegian Interbank Offered Rate (NIBOR). In case of additional allocation, the proposal follows the ordinary budget process and is submitted to the Parliament for approval by the end of the autumn session. The final settlement is completed by the end of year Y+1.
- (55) Figure 2 below shows the development in compensation paid to Posten for the USO net cost during 2016 – 2025 (figures for 2024 and 2025 are ex-ante estimates).

⁽⁴⁸⁾ Both the ex-ante and ex-post review by the external auditor are carried out in accordance with ISRS 4400 - Agreed-Upon Procedures Engagements.

Figure 2: Compensation to Posten during 2016 – 2025 (MNOK), total ⁽⁴⁹⁾

3.4.5.4 Reports from external consultants

- (56) The Norwegian authorities have explained that any significant changes to Posten's counterfactual have been communicated to the Ministry well in advance, enabling it to evaluate, *inter alia*, whether reductions in the scope of the USO should be considered. In such cases, the Ministry engages consultants to review Posten's business rationale, underlying assumptions, and projected net cost, as well as the potential impact on users and public expenditure should the USO be amended. ⁽⁵⁰⁾
- (57) During the period under review, two such substantial modifications to Posten's counterfactual strategy were made: in 2018, Posten's commercial strategy changed to alternate-day delivery of letter post to households instead of the five-day delivery frequency mandated by the USO at the time; and in 2022, Posten's commercial strategy further changed from delivery to households to delivery to pick-up points. Copenhagen Economics ('CE') reviewed the proposal for alternate-day delivery, while Oslo Economics ('OE') analysed the transition to pick-up point delivery.

3.4.5.4.1 The 2017 Copenhagen Economics Report

- (58) In 2016, Posten's Board of Directors decided that from 2018, its commercial strategy would change to a delivery frequency of 2.5 days per week. In March 2017, Posten presented its forecasts of USO net costs for the period 2018 – 2025 to the Ministry. In response, the Ministry engaged CE to conduct a study evaluating the implications for users and public expenditure of various USO scenarios. The assignment consisted of two tasks: 1) reviewing Posten's provisional 2018 net cost estimate and 2) assessing the socioeconomic impact of four policy options for USO delivery frequency for 2018-2025.
- (59) Regarding the provisional 2018 USO net cost estimate, the CE report reviewed all elements of Posten's compensation claim, including the credibility of the counterfactual scenario identified by Posten, the estimated cost and revenue effects, intangible benefits, reasonable return and efficiency requirements.

⁽⁴⁹⁾ Compensation for the banking SGEI is excluded from these figures. See section 3.5.1.

⁽⁵⁰⁾ Document No 1366814, p. 3.

- (60) In the final report ('the 2017 Copenhagen Economics Report'), CE found that the model used by Posten to calculate USO net costs adhered to international guidelines and the calculation of cost effects was more elaborate than in many other countries. Based on a significant number of cross-checks and robustness checks, CE found no reason to believe that the model should be biased. ⁽⁵¹⁾ CE highlighted that Posten used the model for a number of internal business decisions that were not linked to USO net costs. CE further found that the assumptions applied by Posten were generally conservative and could not detect any calculation errors. ⁽⁵²⁾
- (61) Nevertheless, CE suggested some adjustments to the assumptions in the 2018 estimate, entailing a reduction in the net cost of around 7-8%. ⁽⁵³⁾ The Norwegian authorities have clarified that CE's recommendations were incorporated into the final ex-ante compensation paid to Posten, but only when these involved adopting more conservative assumptions. However, they have informed that the ex-post adjustments generally found that Posten's assumptions had been more precise. ⁽⁵⁴⁾
- (62) With regard to intangible benefits, CE conducted a literature review, resulting in 16 examples of potential intangible benefits. ⁽⁵⁵⁾ CE concluded that 15 of these were either not relevant to the Norwegian context, not tied to the USO or already accounted for. They further found that one potential benefit (Posten's exclusive right to print 'Norge' and 'Noreg' on stamps) constituted a benefit, albeit insignificant. ⁽⁵⁶⁾

3.4.5.4.2 The 2020 Oslo Economics reports

- (63) In 2019, Posten decided that, from 2022, its commercial strategy absent the USO would involve discontinuing last-mile distribution of letter mail and transitioning to a system of delivery to pick-up points. To accelerate the decline in letter mail volumes, Posten would implement a significant tariff increase, aiming to reduce demand and ensure that the remaining volumes could be managed by the pick-up point network. To facilitate this transition, Posten planned a transitional period in 2021, during which it would deliver letter mail to all households once per week.
- (64) Posten has deliberated on the current commercial strategy since 2018, including in communication with the Ministry. ⁽⁵⁷⁾ It was formally adopted by Posten's Board of Directors on 20 June 2019 and subsequently presented to the Ministry on 25 June 2019. ⁽⁵⁸⁾ Prior to this decision, Posten had forecasted the cost of maintaining the current 2.5-day mailbox delivery from 2021 onwards, as required by the current USO, which indicated significant losses and, thus, a significant USO net cost.
- (65) To prepare for this shift, the Ministry engaged OE to conduct a study evaluating the implications on users and public expenditure of various USO scenarios. The assignment resulted in two reports: the first on the potential impact on public

⁽⁵¹⁾ The 2017 Copenhagen Economics report, Document No 1505847, p. 8.

⁽⁵²⁾ *Ibid.*

⁽⁵³⁾ *Ibid.*

⁽⁵⁴⁾ Document No 1366814, p. 27.

⁽⁵⁵⁾ The 2017 Copenhagen Economics report, Document No 1505847, p. 54.

⁽⁵⁶⁾ The 2017 Copenhagen Economics report, Document No 1505847, p. 54, stating that "due to the small size of the philately market, the benefit is likely to be limited and should thus not be included in the calculation of USO net costs".

⁽⁵⁷⁾ Document No 1410434.

⁽⁵⁸⁾ Document No 1410431.

expenditure ('the 2020 Oslo Economics Report') ⁽⁵⁹⁾ and the second on the potential impact on users ('the 2020 User Impact Report'). ⁽⁶⁰⁾

- (66) With regard to the estimated USO net cost – and thus the impact on public expenditure, OE conducted various sensitivity tests on Posten's projections for 2023. OE found that even with optimistic assumptions regarding the continuously declining letter mail volumes, Posten's losses for its mail operation would be significant if Posten maintained alternate-day letter mail delivery as required by the USO. Regarding the scenario entailing discontinuation of last-mile letter mail delivery, OE found that the projection was sensitive to changes in the estimated price/volume assumptions. ⁽⁶¹⁾

3.5 Other postal SGEIs ⁽⁶²⁾

3.5.1 Basic banking SGEI

- (67) During the period under review, until mid-2021, Posten was entrusted with an additional postal SGEI, requiring it to provide basic banking services throughout its mobile service point network on rural delivery routes (the 'banking SGEI').
- (68) The legal basis for the banking SGEI was the now-repealed Basic Banking Services Act. ⁽⁶³⁾ Section 2 of the Act obligated Posten to enter into an agreement with a bank to offer services for payments and deposits, payouts and withdrawals.
- (69) Compensation for the banking SGEI followed the net cost principle, with Posten's counterfactual entailing discontinuation of the banking services. Posten submitted its request for compensation in conjunction with the request for USO compensation, and the estimated net cost was subject to review by the external auditor. The amounts paid to Posten for the banking SGEI are set out below.

Compensation (NOK million)	2016	2017	2018	2019	2020	2021	2022	2023
Basic banking SGEI	16	15	11	9	5	2	-	-

- (70) As of 1 July 2021, the banking SGEI was abolished, and the Act repealed. ⁽⁶⁴⁾ For the purposes of the present decision, ESA will not assess compensation for the banking SGEI, as it appears to be a separate measure and has not been addressed by the complainant. However, any impact the banking SGEI may have on the USO compensation, or the compatibility assessment will be considered if relevant.

3.5.2 Tendered SGEI contracts

- (71) The Norwegian authorities have explained that reductions in the delivery frequency requirement of Posten's USO necessitated the simultaneous implementation of

⁽⁵⁹⁾ Document No 1506513.

⁽⁶⁰⁾ Document No 1414551, annex 2.

⁽⁶¹⁾ Document No 1506513, p. 15 ff.

⁽⁶²⁾ Not covered by the complaint nor by the present decision.

⁽⁶³⁾ [The Act of 21 June 2002 No. 44](#), in Norwegian: *Lov om tilbud av grunnleggende banktjenester gjennom Posten Norge AS' ekspedisjonsnett*.

⁽⁶⁴⁾ [The Act of 18 June 2021 No. 140](#), in Norwegian: *Lov om opphevelse av lov 21. juni 2002 nr. 44 om tilbud av grunnleggende banktjenester gjennom Posten Norge AS' ekspedisjonsnett*, and Regulation of 18 June 2021 No. 2028.

certain ‘compensating measures’ to ensure sufficient servicing. The legal basis for these measures is Section 7(2) of the Postal Act.

- (72) Specifically, the Norwegian authorities have tendered contracts for the distribution of newspapers on Saturdays and non-USO weekdays in areas without commercial service offerings, as well as for the delivery of braille books. As a result, during the relevant period, five separate public service contracts relating to postal services have been entrusted to various providers, currently as listed below.

Public Service Contract	Current provider	Value (2023)
Saturday Newspaper Distribution North	Aktiv Norgesdistribusjon AS	MNOK 63.0
Saturday Newspaper Distribution South	Aktiv Norgesdistribusjon AS	
Weekday Newspaper Distribution North	Posten Bring AS	MNOK 127.6
Weekday Newspaper Distribution South	Posten Bring AS	
Distribution of braille books	Norsk Bibliotekstransport AS	MNOK 0.1

- (73) For the purposes of the present decision, ESA will not assess compensation relating to the tendered SGEI contracts, as these constitute separate measures and have not been addressed by the complainant. ESA has no indication that any State aid has been involved in the compensation for the tendered SGEI contracts.

4 Historical developments

4.1 The legal framework

- (74) During the period under review, the statutory act governing the provision of postal services in Norway has changed a number of times based on both national considerations and to incorporate developments in the EEA legal framework.
- (75) At the entry into force of the EEA Agreement on 1 January 1994, the main legal act was the Postal Act of 1928 (‘the 1928 Postal Act’). ⁽⁶⁵⁾ This act was repealed in 1997 and replaced by the Postal Act of 1997, which entered into force on 1 July 1997 (‘the 1997 Postal Act’). ⁽⁶⁶⁾ The new act was supplemented by a regulation which took effect on the same date (‘the 1997 Postal Regulation’).
- (76) The 1997 Postal Act was subsequently amended to reflect the incorporation of Directive 97/67/EC into the EEA Agreement (‘the First Postal Services Directive’), ⁽⁶⁷⁾ with effect from 15 May 1999. ⁽⁶⁸⁾ Further amendments were made following

⁽⁶⁵⁾ [The Act of 8 July 1928 No 2](#), in Norwegian: *Lov om postvesenet*.

⁽⁶⁶⁾ [The Act of 29 November 1996 No 73](#), in Norwegian: *Lov om formidling av landsdekkende postsendinger*.

⁽⁶⁷⁾ 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 015 21.1.1998, p. 14), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 91/98 (OJ L 189, 22.7.1999, p. 64, EEA Supplement No 32, 22.7.1999 p. 154).

⁽⁶⁸⁾ Ot.prp. nr. 18 (1998-1999).

the incorporation of Directive 2002/39/EC into the EEA Agreement ('the Second Postal Services Directive'), ⁽⁶⁹⁾ with effect from 1 July 2003.

- (77) The 1997 Postal Act and the 1997 Postal Regulation were subsequently repealed and replaced by the current Postal Act and Postal Regulation, respectively, which both entered into force on 1 January 2016. Subsequently, with effect from 1 February 2023, Directive 2008/6/EC was incorporated into the EEA Agreement ('the Third Postal Services Directive'). ⁽⁷⁰⁾ However, according to the Norwegian authorities, at that time of incorporation, the provisions of the Third Postal Services Directive were already reflected in the current Postal Act and Postal Regulation. ⁽⁷¹⁾

4.2 The reserved area

- (78) Historically, Posten operated a legal monopoly on letter mail services, the so-called 'reserved area'. Since the entry into force of the EEA Agreement, the scope of the reserved area was gradually phased out and eventually abolished.
- (79) Under Section 3 of the 1928 Postal Act, the reserved area was confined to "regularly, and for remuneration, receive for delivery or distribution within the Kingdom and to distribute between Norway and abroad [...] closed letter mail" and "cards with written or with printed written messages" (unofficial translation). ⁽⁷²⁾ Section 3 further named Posten as the exclusive right holder to the reserved area.
- (80) With the enactment of the 1997 Postal Act, the scope of the reserved area was narrowed to cover closed, addressed letter mail under 350 grams costing less than five times the basic tariff for domestic priority mail within the first weight class. ⁽⁷³⁾ Initially, this definition encompassed letter mail containing books, catalogues, newspapers and magazines. However, these items were excluded with effect from 15 May 1999, following the incorporation of the First Postal Services Directive. ⁽⁷⁴⁾
- (81) Following the incorporation of the Second Postal Services Directive into the EEA Agreement and the subsequent amendment to the 1997 Postal Act, the scope of the reserved area was further reduced in two phases. First, from 1 July 2003 until 31 December 2005, it covered closed, addressed letter mail under 100 grams, costing less than three times the basic tariff for domestic priority mail within the first weight class. ⁽⁷⁵⁾ In addition, the amendment opened the market for all outgoing cross-border mail. Thereafter, the reserved area was reduced to closed letter mail

⁽⁶⁹⁾ 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), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 168/2002 (OJ L 38, 13.2.2003, p. 30, EEA Supplement No 9, 13.2.2003, p. 21).

⁽⁷⁰⁾ 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), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 136/2020 (OJ L 173, 6.7.2023, p. 37, EEA Supplement No 52, 6.7.2023 p. 36).

⁽⁷¹⁾ Prop. 109 L (2014-2015) p. 23.

⁽⁷²⁾ Section 3 of the 1928 Postal Act.

⁽⁷³⁾ Prop. 109 L (2014-2015) p. 8.

⁽⁷⁴⁾ Ot.prp. nr. 18 (1998-1999) p. 5-6.

⁽⁷⁵⁾ Section 6 of the 1997 Postal Act.

under 50 grams, costing less than 2.5 times the basic tariff of domestic priority mail within the first weight class. ⁽⁷⁶⁾

- (82) Finally, with the enactment of the current Postal Act, the reserved area was abolished, and the Norwegian market for postal services was fully liberalised. ⁽⁷⁷⁾

4.3 The universal postal service

- (83) Since the mid-1900s, Posten's operations have been characterised by its universal presence across Norway. According to the information provided by the Norwegian authorities, Posten was tasked with ensuring that all users had access to so-called 'basic services', which, at the entry into force of the EEA Agreement, encompassed clearance, transport and delivery of letter mail, parcels/light goods, newspapers, subscription magazines and marketing/mass distributions, six days per week. ⁽⁷⁸⁾ This task was considered Posten's state-imposed service obligation. ⁽⁷⁹⁾
- (84) The 1928 Postal Act did not formally impose or define the scope of the USO nor stipulate a compensation mechanism. Based on ESA's current understanding, this was instead decided politically by the Ministry and/or the Parliament and was set out in budgetary proposals and white papers ('St.meld.') to the Parliament, in addition to State budgetary decisions and subsequent granting letters to Posten.
- (85) More specifically, for the first half of the 1990s, Posten's USO and its financing were set out in St.meld. nr. 17 (1991 – 92) ('the 1991 Postal White Paper'), St.meld. nr. 41 (1995 – 96) ('the 1996 Postal White Paper'), annual budgetary propositions for the years 1992 – 1996, the Parliament's budgetary decisions for the same years, and the related granting letters to Posten. ESA understands that these documents collectively reflect Posten's obligations towards the public, as well as the principles governing how Posten was to be compensated for its public service mission.
- (86) With the enactment of the 1997 Postal Act, the provision of postal services for items falling within the reserved area required a concession from the Ministry. ⁽⁸⁰⁾ The 1997 Postal Act further named Posten as the exclusive right holder of the reserved area, and the granting of concessions was made contingent on discharging the USO. As such, between 1997 and 2013, four consecutive concessions were issued to Posten, as listed below. ⁽⁸¹⁾ Together with the 1997 Postal Act and the 1997 Postal Regulation, the concession regulated the scope and conditions of the USO.
- Concession of 1 October 1997 – 30 September 2001 (amended in 1999) ⁽⁸²⁾
 - Concession of 1 October 2001 – 31 December 2005 (extended to 2006) ⁽⁸³⁾
 - Concession of 1 January 2007 – 31 December 2010 (extended to 2012) ⁽⁸⁴⁾

⁽⁷⁶⁾ Section 6 of the 1997 Postal Act.

⁽⁷⁷⁾ Prop. 109 L (2014-2015) p. 8.

⁽⁷⁸⁾ St.meld. nr. 17 (1991-92), p. 31 and Ot.prp. nr. 64 (1995-1996), p. 3.

⁽⁷⁹⁾ St.meld. nr. 17 (1991-92), p. 31 and Innst. S. nr. 144 (1991-92), p. 12.

⁽⁸⁰⁾ Section 4 of the 1997 Postal Act, in conjunction with Section 5 of the 1997 Postal Regulation.

⁽⁸¹⁾ The concessions, their background and content are described in the submission by the Norwegian authorities of 21 September 2022, Document No 1314529, pages 6–17.

⁽⁸²⁾ Document No 1506856.

⁽⁸³⁾ Document No 1506857.

⁽⁸⁴⁾ Document No 1314515.

- Concession of 1 January 2013 – 31 December 2015 ⁽⁸⁵⁾

(87) With the enactment of the current Postal Act, a new system for entrustment was set out whereby the USO would be entrusted by means of an agreement or by administrative decision. Many of the provisions previously found in the concessions were implemented directly in the current Postal Act. However, as explained by the Norwegian authorities, this system has yet to be implemented. In the interim period, pursuant to the transitional provision in Section 57(1) of the current Postal Act, Posten has been granted three consecutive temporary concessions, as listed below.

- Temporary Concession of 1 January 2016 – 31 December 2017 ⁽⁸⁶⁾
- Temporary Concession of 1 January 2018 – 30 June 2020 ⁽⁸⁷⁾
- Temporary Concession of 1 July 2020 – currently in force ⁽⁸⁸⁾

4.4 The financing mechanism

- (88) According to a report by the Norwegian Auditor General supplied by the Norwegian authorities ⁽⁸⁹⁾, until the early 1990s, Posten's operations, including the USO, were financed via revenues from the reserved area, as well as from other activities, in particular the Postgiro payment service. Over time, proceeds from the latter activity contributed increasingly towards financing the fixed cost of maintaining a nationwide postal network. However, a change in public financial management in the early 1990s meant that proceeds from Postgiro would be substantially reduced, thus triggering a need for a new model for financing Posten's public service mission.
- (89) In 1991, the Ministry proposed a model of direct public compensation to Posten for the extra costs (*'merkostnader'*) of maintaining a mandatory service level in the regions. ESA understands that this principle was accepted by Parliament. ⁽⁹⁰⁾ It follows from the 1991 Postal White Paper that Posten would be the sole recipient of public compensation under the proposed financing model. ⁽⁹¹⁾

4.4.1 The 'Extra Cost' Methodology (1993-1995)

- (90) According to the information provided, during 1993-1995, the burden of the USO was defined as the difference in the cost level of Posten's network maintained in accordance with the State-imposed service levels and the cost level of a network maintained in accordance with commercial principles. ⁽⁹²⁾ This definition was operationalised as the difference between the cost levels in profitable parts of the network and unprofitable parts, as presented in the formula below. ⁽⁹³⁾

⁽⁸⁵⁾ Document No 1314507.

⁽⁸⁶⁾ Document No 1293314.

⁽⁸⁷⁾ Document No 1293322.

⁽⁸⁸⁾ Document No 1293318.

⁽⁸⁹⁾ Report of the Auditor General of 1999, Document nr. 3:6 (1999-2000) p. 11.

⁽⁹⁰⁾ Innst. S. nr. 144 (1991-92) p. 15, and subsequent parliamentary debate of 30 April 1992 (no. 230) on the future framework for the postal services. The Parliament had also earlier accepted this approach, cf. St.meld. nr. 17 (1991-92), p. 41.

⁽⁹¹⁾ St.meld. nr. 17 (1991-92), p. 42.

⁽⁹²⁾ St.prp. nr. 1 (1993-94) Samferdselsdepartementet.

⁽⁹³⁾ *Ibid.*

- (91) In terms of funding sources, in addition to the surplus from the reserved area, the USO cost was also financed via contributions from other basic postal services and dividends from the Postal Bank, with the residual subject to direct compensation.
- (92) Following parliamentary approval, the first direct compensation to Posten was paid in 1993 and amounted to NOK 550 million. ⁽⁹⁴⁾ ESA notes that this amount was intended to cover both the USO and some costs regarding reorganisations in Posten. While the details remain somewhat unclear, ESA currently understands that this model was applied in the years 1993, 1994 ⁽⁹⁵⁾ and 1995. ⁽⁹⁶⁾

(AVC unprofitable network - AVC profitable network) x volume unprofitable network	
+ Transportation costs unprofitable network	
+ Fixed cost unprofitable network	
= Extra cost	
<hr/>	
- Surplus from the reserved area	
- Contribution from non-reserved basic postal services	
- Interests on the Postal Bank funds	
= Net compensation	

4.4.2 The 'Net Avoidable Cost' Methodology (1996-2001)

- (93) With effect from the compensation year 1996, a revised model for estimating the USO burden was introduced based on the so-called 'net avoidable cost' methodology. ⁽⁹⁷⁾ Under this approach, it was assumed that Posten, from a purely commercial perspective, would cease providing non-profitable services or areas absent the USO. ⁽⁹⁸⁾ The implied counterfactual was thus a 'close down' scenario.
- (94) In operational terms, the revised model involved two steps: First, a regional cost analysis determined if closing a postal region would result in more cost avoided than income lost. Second, an activity cost analysis examined postal services in profitable regions (identified in the first step) to find unprofitable postal flows within or between the profitable regions, the termination of which would enhance overall profitability. The sum of the net losses constitutes the burden of the USO.
- (95) In terms of the funding sources, contributions from non-reserved basic services and dividends from the Postal Bank were removed from the mechanism, leaving the surplus from the reserved area and direct compensation to fund the USO net cost.

⁽⁹⁴⁾ Granting letter of 29 December 1992, Document No 1506893.

⁽⁹⁵⁾ St.prp. nr. 1 (1993-1994) Samferdselsdepartementet, p. 179, and the Report of the Auditor General of 1999, Document nr. 3:6 (1999-2000) p. 24.

⁽⁹⁶⁾ St.prp. nr. 1 (1994-1995) Samferdselsdepartementet, p. 190-191, and The Report of the Auditor General of 1999, Document nr. 3:6 (1999-2000) p. 24.

⁽⁹⁷⁾ Report of the Auditor General of 1999, Document nr. 3:6 (1999-2000) p. 24.

⁽⁹⁸⁾ See Submission by the Norwegian authorities of 21 September 2022, Document No 1314529, p. 4.

	(Revenues unprofitable postal regions - Cost unprofitable regions)
+	(Revenues unprofitable mail flows - Cost unprofitable mail flows)
=	Net Avoidable Cost

-	Surplus from the reserved area
=	Net compensation

4.4.3 The 'Commercial Counterfactual' Methodology (2002-2025)

- (96) With effect from the compensation year 2002, the model for estimating the burden of the USO was again revised, changing from a model based on the net avoidable cost methodology to the current "commercial counterfactual" model. ⁽⁹⁹⁾ ⁽¹⁰⁰⁾
- (97) While the previous methodology presumed that in the counterfactual scenario, the postal operator would stop serving loss-making areas or services, the commercial approach acknowledged that Posten, from a purely commercial perspective, could wish to maintain parts of the services absent the USO, but at reduced/adjusted service level, leading to a more refined calculation of what would happen in the absence of the USO. The revised model also simplified the calculation and provided a better overview of the cost associated with each element of the USO.
- (98) The commercial approach is explicitly based on two scenarios: the current situation where the provider operates with the USO under the legal framework, including requirements as well as possible benefits, and a hypothetical counterfactual situation, where the provider acts on a purely commercial basis, without any USO. As such, the commercial approach estimates the total commercial effect of discontinuing a given USO element in terms of both cost and revenue effects.

	Result without USO
-	Result with USO
=	Net Cost

-	Surplus from the reserved area
=	Net compensation

- (99) With St.meld. nr. 12 (2007-2008), the Norwegian authorities further introduced a control mechanism whereby the USO net costs would be re-estimated ex-post with updated numbers for the relevant year after it has passed. The stated aim of the policy was to avoid overcompensation for USO obligations. ⁽¹⁰¹⁾ The net cost was still paid out based on ex-ante estimates; however, in the event the ex-post check showed that Posten had been either over- or undercompensated, the compensation

⁽⁹⁹⁾ Str.prp. nr. 1 (2001-2002), chapter 22.

⁽¹⁰⁰⁾ Str.prp. nr. 1 (2001-2002), page 14.

⁽¹⁰¹⁾ St.meld. nr. 12 (2007-2008) Om verksemda til Posten Norge AS, p. 27.

would be adjusted accordingly. The ex-post control mechanism took effect from the compensation year 2009 ('the 2009 ex-post control mechanism').

- (100) Finally, with the abolishment of the reserved area in 2016, co-financing via monopoly profits no longer provided a source of funding, and all compensation to Posten from then onwards was financed directly over the State budget.

5 Arguments raised by the Complainant

- (101) According to the complainant, the measure fails to meet the *Altmark* criteria ⁽¹⁰²⁾ and therefore constitutes State aid. Moreover, in the complainant's view, the measure has not been granted based on an existing aid scheme and therefore amounts to new aid. Consequently, as the Norwegian authorities have not notified the aid to ESA, it considers the aid procedurally unlawful. Finally, the complainant considers the alleged unlawful aid to be incompatible with the EEA Agreement.
- (102) In summary, the complainant bases its position on the following considerations.

5.1 The measure constitutes State aid

- (103) According to the complainant, Posten has not been selected through a public procurement procedure and, to its knowledge, the Norwegian authorities have not performed a benchmarking exercise to determine if the compensation paid to Posten would be capable of fulfilling the fourth *Altmark* criterion. Even if they had performed such benchmarking, the complainant asserts it is by no means certain that the exercise would meet the high threshold for considering the fourth *Altmark* criterion fulfilled. As a result, the complainant submits that the measure confers an advantage to Posten and, consequently, that it constitutes State aid.
- (104) In the complainant's view, there can be no doubt that the other constitutive elements of Article 61(1) of the EEA Agreement are met, considering Posten is clearly an undertaking, the compensation it receives is selective and financed by State resources, and it is capable of distorting competition and affecting intra EEA-trade.

5.2 The measure constitutes new and unlawful aid

There is no aid scheme in place

- (105) Regarding the existence of an aid scheme, the complainant contends that no 'act' existed upon the entry into force of the EEA Agreement, which would have made individual aid awards possible without requiring further implementing measures.
- (106) In particular, the complainant points to the fact that the 1928 Postal Act did not contain any provision regarding the public financing of Posten or the scope of the USO. Considering the first direct payment to Posten took place in 1993, it further contends that an 'act' taking the form of a '*consistent administrative practice*' cannot have been in place just one year and one payment later. Finally, the complainant considers that the existence of an aid scheme is precluded because the Norwegian authorities had too much discretion to influence the amount and conditions under which the aid was granted, including the discretion to not grant aid at all.

⁽¹⁰²⁾ Judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 95.

- (107) Thus, the complainant argues that neither of the two definitions of an aid scheme in Article 1(d) of Part II of Protocol 3 is applicable, as both require an ‘act’ that is sufficiently detailed to limit the granting authority’s discretion to mere technical application and allow for a State aid assessment at the scheme level.

In any event, there have been substantial alterations

- (108) The complainant holds that even if there had been a scheme in place, a series of subsequent alterations to the scheme have changed its legal characterisation to new aid. In this regard, the complainant emphasises the following events.
- (109) *First*, the complainant highlights the numerous revisions to the Postal Act, noting that the 1928 Postal Act concerned only Postvesenet; later versions, especially the current Postal Act, do not explicitly designate the provider. It further asserts that while the alleged scheme was initially limited to Posten, it was later expanded to cover further beneficiaries as the current Postal Act also served as the legal basis for compensation to Aktiv Norgesdistribusjon for Saturday newspaper delivery. ⁽¹⁰³⁾
- (110) *Second*, the complainant considers that whenever the nature and scope of the USO have been redefined, there has been a potential effect on the compatibility assessment of the measure, and therefore such changes constitute alterations to the measure exceeding the threshold of changes of a purely administrative nature.
- (111) *Third*, the complaint considers that several substantial changes have been made to the methodology for determining the compensation. Specifically, the complainant asserts that while early models were based on compensating Posten for unprofitable post offices, from 2002 onwards, compensation amounts followed a model based on a ‘commercial counterfactual’ and unprofitable individual services.
- (112) *Fourth*, the complainant submits that the introduction of an ex-post control mechanism in 2009, along with the corresponding adjustment of the compensation, represented a substantial alteration to the earlier method, which relied solely on an ex-ante estimation. According to the complainant, this change entailed that Posten, from 2009 onward, would be compensated ex-post in full and thus did not bear any financial risk. Consequently, the change had implications for the permissible level of reasonable profit and efficiency incentives and thus affected its compatibility.
- (113) *Fifth*, the complainant considers that there have been important changes to the source of the financing of the scheme, with the phase-out and abolishment of the co-financing through Posten’s monopoly profits derived from its reserved area.
- (114) *Sixth*, the complainant asserts that the *implied* budget of the scheme has repeatedly been increased by more than 20% since the entry into force of the EEA agreement, considering the significant increases in the payments to Posten over the years.
- (115) Finally, the complainant argues that each concession should be considered as the award of new aid extending the period over which compensation could be granted or, alternatively, each annual approval of the aid by the Norwegian parliament.

⁽¹⁰³⁾ See section 3.5.2

5.3 The measure constitutes incompatible aid

- (116) According to the complainant, the measure fails to meet several provisions of the SGEI Framework and the Postal Services Directive, as summarised below.

5.3.1 *Not a genuine SGEI*

- (117) In the complainant's view, it would at first appear that the product scope of the USO is in line with the Postal Services Directive and therefore, the USO, *prima facie*, is a correctly defined SGEI for the purposes of paragraph 12 of the SGEI Framework.
- (118) However, according to the complainant, within the scope of applicability of the SGEI Framework, pursuant to its paragraph 14, EFTA States must show that they have given proper consideration to the public service need by way of public consultation or other appropriate instruments to take the interests of users and providers into account. As such, the complainant doubts that the Postal Services Directive would allow, let alone require, all services that entail delivery of letters up to 2 kg and parcels up to 20 kg to be considered USO, independently of public service needs. In support of its position, the complainant points to the approach taken by the Court of Justice in *Deutsche Post* with respect to 'add-on' services. ⁽¹⁰⁴⁾
- (119) Accordingly, the complainant holds that the Norwegian authorities have failed to consider, for each new service, whether it met a public service need, whether this need was not already met by an existing service, and whether add-on features of that service disqualified it from being encompassed by the USO.

5.3.2 *The entrustment is insufficient*

- (120) According to the complainant, there is no entrustment act in place satisfying the requirements set out in paragraph 16 of the SGEI Framework, letters (a), (d) and (e).
- (121) Regarding (a), the complainant submits that the nature and contours of the USO with which Posten has been entrusted lack precision as to the exact scope of the obligation; it can therefore not be considered sufficiently clearly defined. According to the complainant, it could well be argued that based on the manner in which Postens USO has been defined, it could also encompass express parcel services.
- (122) In its view, uncertainty also remains as to when a new service launched by Posten can, will or must be considered as falling within the USO. To support its claim, the complainant points to the protracted disagreement between Nkom and Posten regarding whether the PiP service fell within the scope of the USO. ⁽¹⁰⁵⁾ According to the complainant, Posten also appears to have too much freedom to introduce new services under the USO and to unilaterally terminate, replace, or duplicate such services, possibly leading to unjustified compensation claims.
- (123) The complainant further takes issue with the diverging approaches adopted by the Norwegian authorities regarding USO letter post and parcels in terms of the number of services covered. According to the complainant, for letter post, multiple offerings under the 2 kg weight limit are allowed, with unclear limits, while for parcel post,

⁽¹⁰⁴⁾ Judgment of 21 November 2019, *Deutsche Post AG and Klaus Leymann v Land Nordrhein-Westfalen*, Joined Cases C-203/18 and C-374/18, EU:C:2019:999.

⁽¹⁰⁵⁾ Document No 1344268, pages 2-3 referring to the statements of Posten in its appeal to the Ministry's decision of 15 December 2021 annexed to the submission, Document No 1383303.

only *Norgespakken* is recognised. It struggles to understand the rationale behind this difference in treatment and doubts it is compatible with the State aid rules.

- (124) Regarding (d), the complainant asserts that the entrustment act does not include a description of the compensation mechanism and the parameters for calculating compensation. While the concession is silent on the issue, it considers the Compensation Instruction outdated and insufficiently detailed and Section 9 of the Postal Act a mere implementation of the Postal Services Directive.
- (125) The complainant further holds that if the annual compensation calculations were seen as part of the entrustment, there would seem to be a mismatch in duration between the different entrustment acts. In its view, this mismatch may entail that the compensation is not based on parameters established in advance because that establishment would have to happen at the beginning of the entrusted period and not periodically and several times during the course of the entrustment.
- (126) Regarding (e), the complainant argues that the method for avoiding and recovering overcompensation, even if such mechanisms exist in practice, is not set out in the entrustment. It further holds that while the Compensation Instruction set out that Posten should be compensated ex-ante, Posten's compensation is, in reality, adjusted ex-post, *i.e.* in a manner inconsistent with the alleged entrustment.

5.3.3 The indefinite duration is not justified

- (127) In the complainant's view, an indefinite duration of the entrustment is inconsistent with paragraph 17 of the SGEI Framework, which requires the duration to be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. According to the complainant, no such justification has been provided, nor does it seem like such justification could be provided.

5.3.4 Compliance with public procurement rules seems doubtful

- (128) Regarding compliance with the public procurement rules, the complainant observes that Posten has been awarded concessions directly and doubts that these direct awards have been in compliance with the applicable procurement rules for all services included within the scope of the USO.

5.3.5 Posten likely receives overcompensation

- (129) While the complainant acknowledges the Norwegian authorities' prerogative to compensate Posten for fulfilling public service obligations, it contends that multiple indicators suggest that Posten is significantly overcompensated. According to the complainant, the excess funding enables Posten to cross-subsidise commercial services and thereby engage in below-cost pricing in contested markets. The complainant bases its position on the following observations.

5.3.5.1 General remarks

- (130) *First*, while the service level of the USO has become less burdensome over time, the annual payments to Posten keep increasing. In the complainant's view, this development cannot plausibly be attributed solely to falling letter mail volumes. Rather, it considers that a shrinking USO coupled with an expansion of commercial

services should result in a trend of decreasing compensation over time. ⁽¹⁰⁶⁾ The increasing trend under the scheme thus strongly indicates flawed calculations.

(131) *Second*, the complainant observes that the compensation Posten has received in recent years drastically surpasses the amounts forecasted in the 2017 Copenhagen Economics Report and the 2020 Oslo Economics Report. In particular, the complainant highlights the following findings:

- The 2017 Copenhagen Economics Report estimated that reducing the USO to 2.5 delivery days would entail a significant reduction in the required subsidy, projecting that the annual cost in 2025 would be NOK 340 million at most. Yet, in 2023, the actual cost is almost NOK 1.1 billion, more than thrice the most conservative estimate.
- The 2020 Oslo Economics Report estimated that the difference between 2.5 and 1-day weekly delivery frequency in 2023 would be NOK 130 million. However, in 2021, when Posten's counterfactual changed to one-day delivery while the USO remained at 2.5 days, the compensation amounted to NOK 542 million - a striking and concerning difference of 350%, the complainant claims.

(132) *Third*, the complainant considers that the USO net cost arises from the last-mile delivery to areas comprising 15% of households. Yet, when comparing the USO compensation to the cost of Posten's tendered contract for newspaper delivery on non-USO weekdays to this area, the complainant finds the compensation for the non-tendered USO contract (NOK 1 062.9 million) to be approximately 830% higher than the tendered compensation for newspaper delivery (NOK 127.6 million). ⁽¹⁰⁷⁾ In the complainant's view, a difference of this magnitude seems inexplicable.

(133) *Fourth*, the complainant argues that Posten's price offers in tenders for contracts with e-commerce retailers suggest that costs are incorrectly allocated between USO and non-USO services. According to the complainant, such misallocation of cost results in inflated compensation and cross-subsidisation of commercial services, which are ultimately provided at a loss. In this regard, the complainant points to its own cost of delivering e-commerce parcels, claiming it is at least as efficient, if not more efficient, than Posten. The complainant further points to Posten's price list for similar USO services, claiming these are far higher.

(134) As a further indication, the complainant refers to Posten's Q2-2022 and Q1-2023 reports, noting what it considers a mismatch between growing parcel volumes and falling revenue alongside rising compensation. These patterns, according to the complainant, indicate that State aid subsidises Posten's low-price strategy in parcel markets, as well as in markets for unaddressed mail and newspaper delivery.

(135) *Fifth*, the complainant argues that Posten's large discounts on USO services inflate the compensation. They highlight discounts of up to 16% for '*equal format bulk mail*' to be distributed in densely populated areas and point to the 2020 Oslo Economics Report, which revealed that Posten's average price per addressed letter [...] is significantly lower than the listed prices for single-piece letters (NOK 21) and '*mixed*

⁽¹⁰⁶⁾ Submission by the complainant of 5 July 2023, Document No 1414552, p. 7.

⁽¹⁰⁷⁾ Submission by the complainant of 30 November 2022, Document No 1344269, p. 17.

format bulk mail (NOK 14.90). The complainant thus considers it all but certain that Posten's discounts are financed by USO compensation.

- (136) *Sixth*, the complainant argues that Posten's counterfactual models lack rigorous scrutiny, with external auditors primarily verifying the models' correct application rather than assessing their suitability for determining the USO net cost. They highlight that while Posten sometimes aligns its factual scenario with the counterfactual, short time lags between defining new counterfactuals and adapting the USOs persist. Additionally, it contends that certain counterfactual elements, such as the 2021 'significant increase in letter mail rates,' remain unimplemented.
- (137) Finally, the complainant observes that Posten's regulatory accounts, as submitted to Nkom, appear to be an implementation of the 'cost allocation' or fully allocated cost ('FAC') methodology outlined in paragraph 28 of the SGEI Framework and highlights that compensation based on FAC would have led to drastically lower payments to Posten compared to when the current NAC methodology is applied.

5.3.5.2 Current counterfactual

- (138) Regarding the current counterfactual scenario, with delivery to pick-up points, the complainant finds this scenario entirely unrealistic for the following reasons:
- (139) *First*, the complainant claims that the credibility of the counterfactual scenario has not been adequately verified by the Norwegian authorities nor by OE. It asserts that the Ministry only performs a perfunctory audit, leaning instead on a purportedly robust analysis in the 2020 Oslo Economics Report. ⁽¹⁰⁸⁾ However, the complainant contends that OE merely performed a superficial review of Posten's net cost projections while the counterfactual itself was accepted as given. The complainant further points to concerns raised by OE regarding the feasibility of the modelled price increases, the capacity of service points to handle remaining letter volumes, and the need for alternative distribution providers if volumes exceed capacity.
- (140) *Second*, the complainant submits that a more realistic counterfactual scenario would entail introducing geographic differentiation in delivery, similar to PiP, which is delivered daily to 65% of the population. Pointing to providers in Sweden and Denmark, the complainant claims that it is commercially viable to deliver letter mail in densely populated regions, adding that it could itself deliver letter mail to homes in a large part of Norway without State aid, in particular if Posten stopped doing so.
- (141) *Third*, according to the complainant, the counterfactual seems to be based on highly implausible assumptions, for example, that Posten would expedite the same volume of parcels in each scenario. It does not consider it realistic that Posten, in the counterfactual, could maintain a profitable parcel service comparable to the current one in terms of delivery frequency, coverage and price. Pointing to the 2020 User Impact Report, ⁽¹⁰⁹⁾ it asserts that the report found that at least some businesses would switch parcel delivery providers if Posten stopped delivering to addresses.
- (142) *Fourth*, pointing to the 2020 User Impact Report, the complainant highlights that the result showed that users prefer weekly mailbox delivery rather than delivery to pick-

⁽¹⁰⁸⁾ See section 3.4.5.4.2 above.

⁽¹⁰⁹⁾ See section 3.4.5.4.2 above.

up points. In the event Posten would increase its prices four-fold, the report is clear that users' preference for mailbox delivery is even more pronounced.

- (143) *Fifth*, the complainant considers that the counterfactual inadequately accounts for synergy losses, emphasising that Posten's commercial services rely heavily on the same infrastructure as USO letter mail, thus creating substantial synergies and economies of scale. The complainant thus considers the [...] adjustment in the 2020 Oslo Economics Report unrealistic. Pointing to the NOK 15 billion turnover of Posten's commercial division, it contends that a synergy loss of only [$<1\%$] is implausible given the interconnected nature of Posten's operations.
- (144) *Sixth*, the complainant asserts that the cost impacts are not properly reflected. In this regard, the complainant points to the 2020 Oslo Economics Report, which estimated that reducing delivery frequency from 2.5 days to once a week – a 150% decrease – would lead to only a [10-25%] reduction in production costs despite the last-mile cost accounting for the bulk of variable costs. In the complainant's view, this points to a flawed model or incorrect assumptions.

5.3.5.3 Intangible benefits not accounted for

- (145) According to the complainant, the compensation does not take intangible benefits into account as required by the SGEI Framework and the Postal Services Directive.
- (146) It maintains that even if the 2017 Copenhagen Economics report was right in that there were no intangible benefits for Posten in 2018 (which the complainant doubts), this is no longer so. In the complainant's view, Posten's advertisement is inherently linked with its status as the country's traditional and ubiquitous postal supplier, utilising the slogan "*Nobody knows Norway better*". Thus, it considers that implementing the current counterfactual would substantially undermine Posten's brand, as evidenced by the 2020 User Impact Report, which found that both private and business customers would react negatively to its implementation.
- (147) In particular, the complainant considers that the combination of pick-up point delivery and a four-fold price increase would have a dramatic impact on Posten's reputation, brand image, cost structure, cross-selling abilities and synergies, etc., as well as the competitive landscape. In its view, the 100% geographical coverage is a major competitive advantage for Posten's commercial services. The complainant therefore contends that the Norwegian authorities should have undertaken a new assessment following the shift to the current counterfactual.

5.3.5.4 Reasonable return is too high

- (148) According to the complainant, when Posten's net cost is compensated ex-post in full, paragraph 36 of the SGEI framework requires that an allowance for reasonable return be capped at the relevant swap rate plus 100 basis points. As such, since Posten appears to be essentially compensated ex-post in full, its reasonable profit/cost of capital should thus not exceed a rate of approximately 4.5-5%.
- (149) The complainant further points to the 11.5% cost of capital included in Posten's regulatory accounts, which it considers fictitious, too high for the sector and, in essence, based on the return requirement set by the State as Posten's owner, but which has almost never been attained, and which could inflate the compensation. In this regard, the complainant observes that the cost of capital accounts for more

than 50% of the negative result on the USO services in 2020 and contrasts this to the EBIT-margin observed for DHL, DPF, FedEx, Royal Mail, PostNL, IN Poste, La Poste, Postnord and Posten, ranging from -1% to 6% in 2019.

- (150) Furthermore, the complainant considers that a lower cost of capital would have to decrease the compensation, as a smaller 'cost base' in the counterfactual would also entail a smaller total cost of capital than the factual scenario.
- (151) Finally, the complainant argues that within the profitability cost approach for estimating the USO net cost, reasonable profit cannot be added on top.

5.3.5.5 No efficiency incentives

- (152) According to the complainant, a compensation mechanism whereby Posten is paid ex-post in full does not provide for efficiency incentives as required by paragraphs 38-49 of the SGEI Framework. It further considers that the argument submitted by the Norwegian authorities that Posten has become more efficient over time is irrelevant, as efficiency incentives under the SGEI Framework need to include a financial risk or sanction if the efficiency targets are not met. In their view, efficiency incentives are methods meant to incentivise SGEI providers to *become* more efficient going forward by allowing them to retain (in part) potential efficiency gains.

5.3.6 *Inadequate accounting separation*

- (153) Regarding the requirement of accounting separation between USO and non-USO services, the complainant contends that the regulatory accounts lack sufficient granularity. Specifically, it argues that distinguishing solely between '*USO letter post*' and '*USO parcel post*' fails to meet the requirement under the Postal Services Directive that product accounts be prepared "*for each of the services and products.*"
- (154) The complainant further questions whether the regulatory accounting can address what it considers a series of formidable accounting complexities, such as the fact that all of Posten's USO parcel services are USO and non-USO at the same time.
- (155) In any event, the complainant argues that the mere existence of the dispute as to whether PiP amounted to a USO strongly indicates that there are flaws in Posten's cost allocation between USO and other services. In its view, the regulatory accounts submitted by Posten since 2017 (until 2020) are vitiated by the error of not including PiP. As such, due to the absence of correct reporting, Nkom has been unable to carry out its supervisory duties with regard to Posten's regulatory accounts.
- (156) Furthermore, the complainant suspects that the cost allocation between USO and non-USO services is faulty. In this regard, it notes that the 2020 product accounts appear to disproportionately allocate costs to the USO services (28%) compared to their share of revenue (16.5%). Additionally, the complainant argues that the short-term 'avoidable costs' for the USO services seem inexplicably low, considering last-mile costs typically constitute a significant portion of operators' overall delivery cost.
- (157) According to the complainant, it further appears that the Norwegian authorities assume that cross-subsidisation is avoided as long as there is a negative result for the USO services. However, it submits that cross-subsidisation may also occur if there is an incorrect allocation of cost between services.

- (158) Finally, the complainant asserts that no independent review of the cost accounting systems is carried out in line with Article 14(5) of the Postal Services Directive, and no periodic publishing of results has taken place. ⁽¹¹⁰⁾

5.3.7 Non-compliance with the cost-orientation principle

- (159) The complainant submits that the Norwegian authorities have misunderstood and misapplied the cost orientation principle outlined in Article 12 of the Postal Services Directive. According to the complainant, the Norwegian authorities interpret the cost-orientation requirement as merely a ceiling, assuming compliance as long as prices are low enough to ensure that USO services are provided at a loss. However, citing a report by the European Commission, the complainant asserts that the principle is intended not only to prevent excessive pricing but also to avoid prices falling below service-specific costs. Therefore, the complainant contends that each individual service within the USO must, at a minimum, cover such costs.

5.3.8 Additional requirements must be met

- (160) Finally, the complainant asserts that this case necessitates additional requirements to be met to ensure that the aid does not affect the development of trade contrary to the interests of the EEA in line with Section 2.9 of the SGEI Framework.
- (161) In particular, the complainant considers the following circumstances to be relevant: the indefinite duration (paragraph 55), entrustment without competitive selection procedure in a non-reserved market where similar services are provided and since the SGEI is offered at a tariff below the costs of any actual or potential provider (paragraph 56), the aid finances the creation and maintenance of an infrastructure that is difficult to replicate and which enables foreclosure (paragraph 58).

6 Comments by the Norwegian authorities

6.1 The measure does not constitute State aid

- (162) According to the Norwegian authorities, the public funding of Posten's USO fulfils all four *Altmark* criteria. Consequently, the measure does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement. ⁽¹¹¹⁾ In this regard, given the significant overlap between the *Altmark* criteria 1–3 and paragraphs 12–16 of the SGEI Framework, ESA notes that the comments received from the Norwegian authorities are further detailed in section 6.3 below.

6.1.1 The 1st Altmark criterion

- (163) Regarding the first *Altmark* criterion, which requires the SGEI to be genuine and clearly defined, the Norwegian authorities submit that the SGEI in question is subject to minimum harmonisation at the EEA level and, accordingly, the USO entrusted to Posten must be regarded as a genuine SGEI.

⁽¹¹⁰⁾ Submission by the complainant of 5 July 2023, Document number No 1414552, p. 19.

⁽¹¹¹⁾ Submission by the Norwegian authorities of 1 June 2022, Document number No 1293320, p. 2-4.

6.1.2 The 2nd Altmark criterion

- (164) Regarding the second Altmark criterion, the Norwegian authorities refer to Section 9 of the Postal Act, which establishes the parameters for calculating compensation using the NAC methodology. In response to the complainant's claim that Section 9 merely implements the Postal Services Directive and thus cannot qualify as an entrustment, the Norwegian authorities submit that statutory acts can certainly form part of an entrustment act.

6.1.3 The 3rd Altmark criterion

- (165) Concerning the third Altmark criterion, requiring there to be no overcompensation, the Norwegian authorities submit that the ex-post adjustment of the ex-ante compensation ensures that an accurate and justified compensation is paid. The Norwegian authorities further contend that Posten's counterfactual scenarios have always been conservative, reliable, robust and plausible. They note that Posten has consistently implemented the counterfactuals as soon as it has been free to do so.

6.1.4 The 4th Altmark criterion

- (166) Regarding the fourth Altmark criterion, which requires the compensated cost to be those of a typical undertaking, well-run and adequately provided with the necessary means, the Norwegian authorities submit that it is impossible to benchmark Posten's costs with other undertakings because there are no comparators. However, in their view, Posten qualifies as a well-run undertaking, as it has continuously transformed its operations and implemented structural changes to cut costs and improve efficiency. In this regard, the Norwegian authorities referred to the 2017 Copenhagen Economics Report, which found that Posten could not have done more to be even more efficient within the current regulatory framework.
- (167) Pointing to the judgment in *Chronopost*, the Norwegian authorities further assert that benchmarking or public procurement are not prerequisites for fulfilling the fourth Altmark criterion in the postal sector. ⁽¹¹²⁾ They contend that public authorities, when purchasing services, can rely on the "private acquirer test," which may be satisfied through tenders, benchmarking, or other assessment methods, based on objective, verifiable data. In their view, the same methods should be available when compensating for SGEI. They maintain that it is sufficient to establish that the choice of the operator leads to the provision of the service at the least cost to the public, thereby using the most economically efficient way to achieve the public service.

6.2 In any event, the measure constitutes existing aid

- (168) According to the Norwegian authorities, any State aid in favour of Posten should, in any event, be considered existing aid.
- (169) With reference to Article 1(b)(v) of Part II of Protocol 3, they assert that the measure did not constitute State aid upon the entry into force of the EEA Agreement and

⁽¹¹²⁾ Judgment of 3 July 2003, *Chronopost and Others*, joined cases C-83/01 P, C-93/01 P and C-94/01 P, EU:C:2003:388, paragraphs 36-39.

only became aid following the stricter interpretation of the fourth *Altmark* criterion in the 2012 SGEI Package. ⁽¹¹³⁾ ⁽¹¹⁴⁾ As a result, the measure constitutes *existing* aid.

- (170) With reference to Article 1(b)(i) of Part II of Protocol 3, the Norwegian authorities contend that the measure existed prior to the entry into force of the EEA Agreement, as Norway had funded the USO for many years at that point and paid the first direct compensation to Posten already in 1993. ⁽¹¹⁵⁾ Thus, they consider that an aid scheme exists based on *consistent administrative practice*, which forms an “act”.
- (171) The Norwegian authorities contend that, contrary to the complainant's claim, the fact that no aid was awarded during 2006-2008 does not prejudice the conclusion that the measure involves an aid scheme predating the EEA Agreement. Neither does the fact that the annual payments to Posten require parliamentary approval over the State budget. In other words, the Norwegian authorities do not consider these events to demonstrate that there was a need for further implementing measures. ⁽¹¹⁶⁾ Finally, the Norwegian authorities submit that the fact that there is only one beneficiary does not prejudice the existence of a scheme. ⁽¹¹⁷⁾

No substantial alterations after 1994

- (172) Moreover, the Norwegian authorities dispute that the alterations to the scheme put forward by the complainant suffice to turn the measure into new aid as these were not substantial amendments affecting the constituent elements of the scheme. ⁽¹¹⁸⁾
- (173) *First*, the Norwegian authorities maintain that they have consistently funded Posten's USO over the State budget since 1993 based on a counterfactual approach. In their view, the change to the strategic counterfactual methodology of calculating the appropriate net cost compensation therefore does not imply new aid, as it was an improvement to the existing compensation scheme already in place.
- (174) *Second*, regarding the changes to the scope of the USO, the Norwegian authorities argue that these have been “non-substantial”, have followed the evolution of the sector, and have only served to narrow the scope of the scheme.
- (175) *Third*, the Norwegian authorities reject the complainant's claim that the phasing out of Posten's “co-financing” from monopoly profits constitutes a substantial alteration. They assert that case law establishes that changes in the financing source are not substantial if they do not affect the scheme's constituent elements. They emphasise

⁽¹¹³⁾ The 2012 SGEI Package consists of the 2012 SGEI Framework, ESA's 2012 Guidelines on the application of the State aid rules to compensation granted for the provision of SGEI (‘SGEI Guidelines’), and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing SGEI (OJ L 7 11.1.2012, p. 3–10), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 225/2012 (OJ L 81, 21.3.2013, p. 28 Annex XVI Procurement EEA Supplement No 18, 21.3.2013, p. 34).

⁽¹¹⁴⁾ Submission by the Norwegian authorities of 21 September 2022, Document No 1314529, p. 3.

⁽¹¹⁵⁾ Submission by the Norwegian authorities of 13 October 2023, Document No 1405434, p. 23-24 in particular.

⁽¹¹⁶⁾ Norway refers to E-14/10 *Konkurrenten.no* [2011] EFTA Ct. Rep. 266, paragraphs 74-75.

⁽¹¹⁷⁾ Norway refers to the European Commission's State Aid Manual of Procedures (2013), paragraph 7.

¹¹⁸ Submission by the Norwegian authorities of 21 September 2022, Document No 1314529, p. 3.

that letter post, including letters previously within the reserved area, have always contributed to funding the USO through revenues.

- (176) *Fourth*, the Norwegian authorities dispute the complainant's claim that the USO compensation scheme has broadened its circle of potential beneficiaries. They assert that the complainant's reference to compensation to Aktiv Norgesdistribusjon for Saturday newspaper delivery is misplaced, as this compensation relates to separate public service contracts awarded through competitive tenders and is entirely unrelated to the USO net cost compensation scheme in question.
- (177) *Fifth*, the Norwegian authorities consider that the complainant's assertion that extending the compensation period with each concession or parliamentary approval constitutes a substantial alteration is unfounded. Referring to decisional practice from both ESA and the Commission, they maintain that such approvals represent individual aid grants, not extensions of the scheme.
- (178) *Sixth*, the Norwegian authorities contend that the complainant's assertion that budget increases over 20 percent constitute "substantial alterations" under Article 4(1) of Decision No 195/04/COL is unfounded. They argue that the complainant misinterprets the provision, which serves as a "safe harbour" rule and cannot be applied antithetically. In the Norwegian authorities' view, exceeding the 20 per cent threshold does not, by itself, imply a substantial alteration or justify firm conclusions.
- (179) Finally, regarding the introduction of the ex-post adjustment mechanism in 2009, the Norwegian authorities maintain that an improvement to the compensation model with the sole purpose of preventing overcompensation cannot turn an existing measure into new aid. They contend that this change to the procedure did not affect the basic right of Posten to receive compensation for the USO net cost.⁽¹¹⁹⁾

6.3 In any event, the measure constitutes compatible aid

- (180) If the measure should be found to entail new aid, the Norwegian authorities submit that the aid is compatible with the EEA Agreement, the SGEI Framework and the Postal Services Directive. In this regard, the Norwegian authorities base their position on the following considerations:

6.3.1 Genuine SGEI

- (181) The Norwegian authorities assert that the SGEI in question is subject to minimum harmonisation at the EEA level and, accordingly, the USO must be regarded as a genuine SGEI. They further submit that there is a clear market failure underpinning the USO, as the set of services would not be provided at the required service level across Norway on a commercial basis without public funding.
- (182) Furthermore, pointing to the judgment in *Inpost Paczkomaty and Others v Commission*,⁽¹²⁰⁾ the Norwegian authorities assert that the CJEU has held that the State does not have to prove that it has given due consideration to the public service needs by way of public consultation or by any other appropriate instruments under

⁽¹¹⁹⁾ With reference to the judgment of the General Court of 14 April 2021, *Verband Deutscher Alten- und Behindertenhilfe and CarePool Hannover*, Case T-69/18, EU:T:2021:189, paragraph 196.

⁽¹²⁰⁾ Judgment of 17 December 2020, *Inpost Paczkomaty and Others v Commission*, Joined Cases C-431/19 P and C-432/19 P, EU:C:2020:1051.

paragraph 14 of the SGEI Framework, insofar as the public service obligations correspond to the universal postal service requirements deriving from the Postal Services Directive.

- (183) In response to the complainant's claim that the Norwegian authorities, for each USO service, should consider the public service need, the Norwegian authorities assert that this would be tantamount to a requirement of having to conduct a public consultation. The Norwegian authorities contend that the PiP service fell within the notion of a 'postal item up to two kg' as set out in the Postal Services Directive.
- (184) Regarding *Deutsche Post*, ⁽¹²¹⁾ the Norwegian authorities submit that they have always followed an approach consistent with that ruling, including in the case of PiP, by distinguishing *basic* services from *add-on* services. Consequently, and contrary to the complainant's claim, the Norwegian authorities assert that *Deutsche Post* does not challenge the characterisation of Posten's USO as a genuine SGEI.

6.3.2 *The entrustment is proper*

- (185) With regard to paragraph 16(a) of the SGEI Framework, the Norwegian authorities submit that this requirement is fulfilled by the concessions issued to Posten and Sections 7 of the Postal Act. They assert that the disagreement between Posten and Nkom as to whether PiP was encompassed by the USO cannot undermine the fact that the USO has been clearly defined.
- (186) Regarding the complainant's assertion related to the diverging approaches taken by the Norwegian authorities regarding '*USO letter post*' and '*USO parcel post*', the Norwegian authorities submit that the complainant does not provide any reasoning why the difference in approach would result in the SGEI not being clearly defined. In any event, the Norwegian authorities submit that a defined public need, such as universal postal services, can be met by one or several services, depending on how the designated provider manages its offerings to comply with the USO.
- (187) With regard to paragraph 16(d) of the SGEI Framework, the Norwegian authorities submit that Section 9 of the Postal Act provides the parameters for compensation, with the more detailed rules set out in the Ministry's Compensation Instruction.
- (188) Finally, regarding paragraph 16(e) of the SGEI Framework, the Norwegian authorities submit that the ex-post controls of overcompensation have been applied based on a series of acts since 2009 as part of consistent administrative practice.

6.3.3 *The duration of the entrustment is justified*

- (189) Regarding the duration of the entrustment, the Norwegian authorities submit that there is no absolute requirement under *Altmark* that the entrustment must specify a duration or that the entrustment cannot be indefinite.
- (190) The Norwegian authorities further assert that the complainant's claim is, in any case, misleading, as Posten's concession may be unilaterally withdrawn by the Ministry and replaced by new concessions insofar as a public service need is still present. Finally, the Norwegian authorities add that the statement in paragraph 17

⁽¹²¹⁾ Judgment of 21 November 2019, *Deutsche Post AG and Klaus Leymann v Land Nordrhein-Westfalen*, Joined Cases C-203/18 and C-374/18, EU:C:2019:999.

of the SGEI framework is not meaningful in the present context as losses are never recouped when Posten, each year, foregoes profit compared to its counterfactual.

6.3.4 *Posten is not overcompensated*

- (191) Contrary to the complainant's claim, the Norwegian authorities contend that Posten has not been in receipt of overcompensation. In this regard, the Norwegian authorities submit the following remarks:
- (192) *First*, the Norwegian authorities assert that quantifying the revenue and cost in a net cost compensation model depends on complex economic assessments. As such, they consider it is settled case law that EEA States have a wide margin of discretion not only in defining the SGEI but also with regard to the conditions of its implementation, including the assessment of the net cost incurred in discharging the USO. According to the Norwegian authorities, ESA's competence is therefore limited to checking whether there is a manifest error of assessment.
- (193) *Second*, regarding the supposed trend of growing compensation to Posten despite reduced service level requirements under the USO, the Norwegian authorities contend that the observed increase is not indicative of flawed calculations. Instead, they assert that the rise is driven primarily by the growing profitability of the counterfactual scenario (without USO) relative to the factual scenario (with USO).
- (194) *Third*, the Norwegian authorities reject the complainant's comparison of Posten's USO letter mail costs to the cost of tendered newspaper distribution contracts, arguing it overlooks key differences in cost structures. They highlight that, unlike newspaper delivery, letter mail incurs high fixed costs for clearance and sorting due to the high volume of non-standardised items processed in centralised terminals. This costly "upstream" process, which is absent in newspaper delivery, makes the complainant's claim incorrect and based on a misrepresentation of the facts.
- (195) *Fourth*, the Norwegian authorities assert that they have consistently verified and controlled the counterfactuals presented by Posten and highlight that Posten has a 100% "track record" of implementing the counterfactuals once permitted. They contend that the complainant's claims that these counterfactuals are implausible and inadequately scrutinised therefore lack factual merit.
- (196) *Fifth*, the Norwegian authorities dispute the complainant's claim of cost misallocation, arguing it is based on a fundamental misunderstanding of the compensation framework. They clarify that the NAC method compares Posten's avoided costs and foregone revenues in a counterfactual scenario without USOs to its actual costs and revenues with USOs. As such, the mechanism does not rely on or involve the arbitrary allocation of common costs. Similarly, regarding the complainant's observation from Posten's quarterly report, the Norwegian authorities submit that it seems clear that the complainant erroneously views the public funding of net cost as a matter of compensating for Posten's loss of revenue in the letter mail segment that is not offset by increased revenues in the parcel segment.

6.3.4.1 Current counterfactual

- (197) Regarding the current counterfactual, with delivery to pick-up points, the Norwegian authorities submit the following comments.

- (198) *First*, the Norwegian authorities assert that the current counterfactual scenario has undergone scrutiny by implicitly forming part of the premise for Oslo Economics' assessment and thorough review by the Ministry. They note that Posten has made organisational changes and investments to prepare for the potential change to distribution to collection points under the USO. According to the Norwegian authorities, it would run contrary to commercial logic for Posten to undertake such investments if the commercial counterfactual was not both reliable and plausible.
- (199) *Second*, regarding the complainant's assertion that a more credible counterfactual would be geographically differentiated delivery, the Norwegian authorities contend that the core issue is not whether last-mile delivery could be profitable in some regions but whether delivery to pick-up points would be more profitable overall, considering the costs of a differentiated offer. They further suspect the complainant overlooks substantial "upstream" clearance and sorting costs, as well as higher delivery costs driven by higher volumes and "hit" rates, and shorter routes - all of which significantly impact profitability. In their view, comparisons to commercial letter mail services in Sweden and Denmark are also misplaced, given Norway's difficult topography and low population density.
- (200) *Third*, the Norwegian authorities further submit that the complainant's assertion that a 150% reduction in delivery frequency, leading to only a 15% reduction in production costs, reflects flawed modelling or incorrect assumptions is itself based on flawed assumptions. They contend that clearance and sorting represent significant cost drivers for letter mail, alongside last-mile delivery.

6.3.4.2 Intangible benefits are accounted for

- (201) According to the Norwegian authorities, the complainant's claim that intangible benefits from the USO are not accounted for is incorrect. Intangible benefits were assessed by CE in 2017, which concluded they were negligible and should be excluded from the compensation calculations.
- (202) Regarding the current counterfactual, the Norwegian authorities assert that Posten has considered the potential loss of intangible benefits and implemented measures since 2019, such as the roll-out of nearly 2,000 collection points. They have found no errors in Posten's assessment, which aligns with the European Commission's approach in *Post Danmark*. According to the Norwegian authorities, Posten's continued presence nationwide through service points, collection points, logistics, and digital solutions ensures there is no significant loss of ubiquity or brand value. It thus considers the complainant's assertion meritless.

6.3.4.3 Profit-level is appropriate

- (203) Regarding reasonable return, the Norwegian authorities explain that the calculation of Posten's net cost does not include the cost of capital but instead only calculates differences in operating costs and revenues between the factual and counterfactual scenarios. The Norwegian authorities further submit that it is largely for the EEA States to determine what is a reasonable profit for providers of postal USO.

6.3.4.4 Efficiency incentives are incorporated

- (204) The Norwegian authorities dispute the complainant's claim that the compensation model lacks efficiency incentives under paragraphs 39–41 of the SGEI Framework. They explain that Posten's planned efficiency measures in the factual scenario are

included in the ex-ante calculation and the gains achieved in the ex-post review. They stress that efficiency requirements have always been a part of the conditions for the compensation claim, as reflected in the Compensation Instruction.

- (205) The Norwegian authorities further contend that Posten operates with inherent efficiency incentives because its infrastructure, particularly its postal network, is shared with non-USO activities where it competes commercially. Inefficiencies would directly harm these commercial operations, creating a strong motivation for cost-effective service delivery. According to the Norwegian authorities, the significant efficiency efforts undertaken and achieved by Posten over the years, and still to this day, clearly demonstrate Posten's incentives for efficiency.
- (206) The Norwegian authorities also note that paragraph 40 of the SGEI Framework clarifies that the examples of efficiency arrangements are illustrative rather than exhaustive, as "efficiency incentives can be designed in different ways to best suit the specificity of each case or sector." They also consider this leeway to operate with different efficiency incentives to be supported by the Postal Services Directive, which provides that the EEA States are to consider "all means" to ensure cost efficiency, i.e. not limited to those mentioned in the SGEI Framework.
- (207) Finally, the Norwegian authorities highlight that in order to ensure that efficiency gains do not compromise the quality of universal services under the USO compensation scheme, Posten is required to report annually to Nkom and the Ministry. This allows the Norwegian authorities to monitor Posten's compliance with the quality and service standards set out in the Postal Act and its concessions. Failure to meet these standards may result in penalties.

6.3.5 Public procurement rules are not infringed

- (208) Regarding the public procurement rules, the Norwegian authorities dispute the allegation that it is doubtful whether the direct awards of concessions to Posten have been in compliance with the rules. Pointing to the decisional practice of the European Commission, they assert that when the State has opted for the direct entrustment of the USO pursuant to Article 4(2) of the Postal Services Directive, the public procurement rules are not applicable, and direct entrustment of the USO can thus be considered to be in line with paragraph 19 of the SGEI Framework.

6.3.6 Accounting separation is complied with

- (209) Regarding accounting separation, the Norwegian authorities submit that Posten's regulatory accounts show separately the costs and revenues for the USO and the non-USO services in accordance with Nkom's decision on accounting principles and that the accounts are controlled by an external auditor and Nkom. As such, the Norwegian authorities submit that Posten has complied with the obligation to keep separate accounts and attribute costs appropriately in compliance with paragraph 44 of the SGEI Framework and Article 14 of the Postal Services Directive.
- (210) Regarding PiP, the Norwegian authorities reiterate that Posten submitted separate product accounts for the years 2018-2020 in accordance with Nkom's decision, which demonstrated that the service was not loss-making. The Norwegian authorities further submit that the complainant's claim that Posten prices PiP and other individual parcel services at a loss is based on an overestimation of Posten's costs in the parcel segment and an underestimation of its letter mail costs. The

Norwegian authorities assert that while the last-mile cost is the most important avoided cost element in the current counterfactual, this does not mean that the last-mile cost is the predominant cost driver for letters and parcels. In their view, the complainant fails to take into account that clearance and sorting of letters is a massive cost-driver for letter mail services compared to parcels and newspapers.

- (211) Referring to the judgment in *Post Danmark*, ⁽¹²²⁾ the Norwegian Authorities further assert that the Commission, and thus ESA, can rely on the regulatory review at national level when verifying the quality of the cost accounting of the postal operator, and must not *a priori* engage in a detailed assessment, which would raise a number of practical difficulties, and likely also run contrary to the State's discretionary margin in assessing complex economic facts.
- (212) Finally, the Norwegian authorities assert that as long as the USO compensation to Posten does not entail overcompensation, the issue of cross-subsidisation of non-USO services is irrelevant, as the Postal Services Directive allows the postal operator to freely make use of its income, including public funding.

6.3.7 *The cost-orientation principle is complied with*

- (213) The Norwegian authorities submit that Posten's pricing is in accordance with Article 12 of the Postal Services Directive. They stress that while the notion of affordability implies that prices cannot be too high, the notion of cost-orientation implies that prices cannot be too low, thus pulling in opposite directions. In their view, striking the "correct" balance between the two principles depends on complex economic assessments, which will be specific to each EEA State.
- (214) Pointing to Advocate General Wahl's opinion in *Sandd*, the Norwegian authorities assert that Article 12 of the Postal Services Directive does not impose an obligation that each individual USO service must be cost-oriented. They also hold that Article 12, third indent, of the Postal Services Directive, expressly provides that the USO provider can conclude individual agreements with customers – not applying the price list would, therefore, not breach Article 12 of the Postal Services Directive.

6.3.8 *No exceptional circumstances*

- (215) The Norwegian authorities submit that there is no 'exceptional circumstance' within the meaning of paragraph 55 of the SGEI Framework. They assert that it is the Postal Services Directive, and not the Norwegian scheme, that regulates the designation of USO providers and the public funding. They assert that neither the Postal Services Directive nor the SGEI Framework precludes schemes of indefinite duration and that the duration of the Norwegian scheme is justified because Posten can never 'recoup' its losses when a more profitable counterfactual exists.
- (216) The Norwegian authorities further submit that there is no 'exceptional circumstance' within the meaning of paragraph 56 of the SGEI Framework. They argue that commercial operators do not provide ordinary letter mail services but rather "cherry-pick" profitable regions for parcel delivery services. Consequently, providing USO

⁽¹²²⁾ Judgment of 5 May 2021, *Danske Fragtmænd A/S and Others v Commission*, T-561/18, EU:T:2021:240.

services at affordable prices across all parts of Norway cannot be expected from the market in the foreseeable future.

- (217) According to the Norwegian authorities, there is also no ‘exceptional circumstance’ within the meaning of paragraph 58 of the SGEI Framework. They argue that the USO has not enabled Posten to foreclose the market for the universal services or any related markets. In support of their argument, they point out that several commercial operators have established themselves as competitors to Posten.

7 Presence of State aid

7.1 Introduction

- (218) Article 61(1) of the EEA Agreement reads as follows: “Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”
- (219) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

7.2 State resources and imputability

- (220) Pursuant to Article 61(1) of the EEA Agreement, for a measure to constitute State aid, it must be granted by the State or through State resources. Imputability of a measure to the State and the granting of an advantage through State resources are two separate and cumulative conditions for the existence of State aid, which are, however, often assessed together as they both relate to the public origin of the measure in question. ⁽¹²³⁾
- (221) Regarding imputability, the measure is, by definition, imputable to the State if the advantage is granted by a public authority. ⁽¹²⁴⁾ As to the requirement that State resources must be involved, those include all resources of the public sector. ⁽¹²⁵⁾ In the present case, the compensation to Posten for providing the USO is paid by the State over the State budget and is granted based on parliamentary approval. Consequently, at this stage, ESA considers that the measure is imputable to the State and granted through State resources.

7.3 Conferring an advantage on an undertaking

- (222) Only advantages granted to ‘undertakings’ are subject to State aid rules. The concept of an undertaking covers any entity that engages in an economic activity regardless of its status and the way it is financed. Hence, the public or private status of an entity, or the fact a company is partly or wholly publicly owned, has no bearing

⁽¹²³⁾ NoA, paragraph 38.

⁽¹²⁴⁾ NoA, paragraph 39.

⁽¹²⁵⁾ NoA, paragraph 48.

on whether or not the entity is an ‘undertaking’. ⁽¹²⁶⁾ An activity is economic in nature, where it consists in offering goods and services on a market. ⁽¹²⁷⁾

(223) In this regard, ESA notes that Posten is active in providing postal services, including those financed by the measure, in a fully liberalised market where it competes with other providers. At this stage, ESA therefore considers Posten an undertaking.

(224) The qualification of a measure as State aid requires that it confers an advantage to the recipient. An advantage within the meaning of Article 61(1) of the EEA Agreement is any economic benefit that an undertaking could not have obtained under normal market conditions, ⁽¹²⁸⁾ thus placing it in a more favourable position than competitors. ⁽¹²⁹⁾

(225) It follows from the judgment of the Court of Justice in *Altmark* that, for compensation granted to undertakings entrusted with an SGEI, the presence of an advantage within the meaning of Article 61(1) of the EEA Agreement can be excluded where the following four cumulative conditions are fulfilled: ⁽¹³⁰⁾

- i) *First*, the recipient undertaking must actually have public service obligations to discharge, and such obligations must be clearly defined.
- ii) *Second*, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner.
- iii) *Third*, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations.
- iv) *Fourth*, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

(226) The *Altmark* conditions are addressed in Section 3 of the SGEI Guidelines. ⁽¹³¹⁾ With regard to the first, second, and third *Altmark* criteria, ESA considers these to

⁽¹²⁶⁾ Judgment of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe*, C-74/16, EU:C:2017:496, paragraphs 41-42.

⁽¹²⁷⁾ NoA, paragraph 12.

⁽¹²⁸⁾ NoA, paragraph 66.

⁽¹²⁹⁾ See, for instance, Judgment of 5 June 2012, *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraph 90; Judgment of 15 March 1994, *Banco Exterior de España*, C-387/92, EU:C:1994:100, paragraph 14; and Judgment of 19 May 1999, *Italy v Commission*, C-6/97, EU:C:1999:251, paragraph 16.

⁽¹³⁰⁾ Judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 95.

⁽¹³¹⁾ [Guidelines on the application of the state aid rules to compensation granted for the provision of services of general economic interest.](#)

overlap with the requirements set out in paragraphs 12-16 of the SGEI Framework. ESA's assessment of compliance with these paragraphs is set out in section 10 of this decision, where ESA expresses 'doubts' regarding the measure's compliance with the requirements. Regarding the fourth *Altmark* criterion, at this stage, ESA preliminarily considers that this criterion is not fulfilled, as further explained below.

- (227) It is undisputed that Posten has not been chosen to discharge the USO based on a public procurement procedure. Consequently, for an advantage to be excluded, the level of compensation to Posten must be determined based on an analysis of the costs which a typical undertaking, well run and adequately provided with means, would have incurred in discharging the public service obligations.
- (228) In this regard, the Norwegian authorities have argued that Posten's adjustment to a competitive market, its implementation of structural changes to reduce costs, and its efforts to improve the overall efficiency of its postal network demonstrate that Posten is an efficient and well-run undertaking, thus fulfilling the fourth *Altmark* criterion. ⁽¹³²⁾ The Norwegian authorities have further referred to the 2017 Copenhagen Economics Report, which found that Posten could not have done more to be even more efficient within the current regulatory framework. ⁽¹³³⁾
- (229) Still, ESA does not consider that the Norwegian authorities have demonstrated that the compensation paid to Posten results from an analysis of the costs of a typical, well-run undertaking, in line with the requirement set out in paragraph (225) above. Merely observing that Posten has implemented efficiency measures is not sufficient to establish that its cost structure corresponds to that of a typical, well-run undertaking. In ESA's view, the 2017 Copenhagen Economics Report does not demonstrate that the compensation has been derived from such an analysis.
- (230) In light of the above, ESA cannot conclude at this stage that the compensation complies with the fourth *Altmark* criterion. As a result, the presence of an advantage granted to an undertaking for performing public service obligations within the meaning of Article 61(1) of the EEA agreement cannot be excluded.

7.4 Selectivity

- (231) Pursuant to Article 61(1) of the EEA Agreement, for a measure to involve State aid, it must be selective in that it favours "certain undertakings or the production of certain goods". Not all measures favouring economic operators fall under the notion of State aid, but only those which grant an advantage in a selective way to certain undertakings, categories of undertakings or certain economic sectors. ⁽¹³⁴⁾
- (232) At this stage, ESA considers the measure to be selective as it benefits only Posten ⁽¹³⁵⁾ and there are no indications that other undertakings in a comparable factual and legal situation would benefit from the same advantage.

7.5 Effect on trade and distortion of competition

- (233) The measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement. For these criteria to be fulfilled, it is not

⁽¹³²⁾ Document No 1314529, p. 27.

⁽¹³³⁾ Document No 1405434, p. 21-22.

⁽¹³⁴⁾ NoA, paragraph 117.

⁽¹³⁵⁾ NoA, paragraph 126.

necessary to establish that competition is actually being distorted and that the aid has a real effect on trade between EEA States. It suffices to examine whether the aid is liable to distort competition and affect trade. ⁽¹³⁶⁾ It is not even necessary that the beneficiary undertakings themselves be involved in trade between EEA States. Where an EEA State grants aid to undertakings, internal activity may be maintained or increased as a result, so that the opportunities for undertakings established in other EEA States to penetrate the market in that State are thereby reduced. ⁽¹³⁷⁾

- (234) The markets where Posten is active were fully liberalised in 2016 (see section 4.2). As a result, any advantage that Posten might have obtained could strengthen its position compared to competitors or reduce opportunities for undertakings established in other EEA States to enter the Norwegian market for postal services.
- (235) At this stage, ESA thus considers that the measure is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.

7.6 Preliminary conclusion on the existence of aid

- (236) Based on the information provided by the Norwegian authorities and the complainant, ESA takes the preliminary view that the measure fulfils the criteria in Article 61(1) of the EEA Agreement and therefore constitutes State aid.

8 Existing or new aid

8.1 Introduction

- (237) Different procedures apply depending on whether the aid is deemed new or existing aid. While implementation of *new aid* is prohibited without prior approval from ESA, Article 62(1) of the EEA Agreement and Article 1(1) of Part I of Protocol 3 sets out that ESA shall, in co-operation with the EFTA States, keep under constant review all systems of *existing aid* in those States. In the latter case, ESA can propose to the responsible EFTA State appropriate measures required for the progressive development of or by the functioning of the EEA Agreement, and such decisions only have effects for the future.
- (238) Where, following a preliminary examination, ESA is faced with persistent difficulties or doubts, in other words, serious difficulties, as regards the classification of a measure as existing aid or new aid, it is required to initiate the formal investigation procedure foreseen under Article 1(1) of Part I of Protocol 3. ⁽¹³⁸⁾
- (239) ‘New aid’ is defined in Article 1(c) of Part II of Protocol 3 as ‘all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid.’

⁽¹³⁶⁾ E-6/98 *Norway v ESA* [1999] EFTA Ct. Rep. 76; Judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 66; Judgment of 8 May 2013, *Libert and others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 77.

⁽¹³⁷⁾ Judgment of 19 December 2019, *Arriva Italia and Others*, C-385/18, EU:C:2019:1121, paragraph 43.

⁽¹³⁸⁾ Judgment of 5 September 2024, *Slovenia v Flašker and Commission*, C-447/22 P, EU:C:2024:678, paragraph 87.

(240) 'Existing aid' is defined in Article 1(b) of Part II of Protocol 3, numbers (i) to (v). In the present case, the Norwegian authorities have argued that the measure constitutes 'existing aid' by reference to the following subparagraphs of that Article:

- (i) 'aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA State, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement.' (...);
- (v) 'aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the European Economic Area and without having been altered by the EFTA State'.

(241) In the following, ESA will first assess whether the measure qualifies as an existing aid scheme put into effect before the entry into force of the EEA Agreement, within the meaning of Article 1(b)(i) of Part II of Protocol 3, including whether the Norwegian authorities have subsequently altered the measure, thereby calling into question the existing aid qualification. Thereafter, ESA will assess whether the measure qualifies as existing aid based on Article 1(b)(v) of Part II of Protocol 3.

8.2 Existence of an aid scheme

8.2.1 Introduction

(242) The Norwegian authorities have argued that the compensation to Posten is based on scheme that was put into effect before and is still applicable after the entry into force of the EEA Agreement pursuant to Article 1(b)(i) of Part II of Protocol 3.

(243) In this regard, Article 1(d) of Part II of Protocol 3 sets out the following two situations qualifying as 'aid scheme':

- i) 'any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner' and
- ii) 'any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount'.

(244) Individual aid is defined in Article 1(e) of Part II of Protocol 3 as 'aid not awarded on the basis of an aid scheme (...)'.

(245) ESA considers it appropriate to first assess whether the compensation is granted under a scheme meeting the second aid scheme definition and, thereafter, whether that aid scheme, and any aid awarded under it, could constitute existing aid on the basis that the scheme existed prior to the entry into force of the EEA Agreement.

8.2.2 Second aid scheme definition

(246) The second aid scheme definition entails the following three criteria:

- i) any act on the basis of which aid which is not linked to a specific project;
- ii) may be awarded to one or several undertakings; and
- iii) for an indefinite period of time and/or for an indefinite amount.

- (247) The term ‘act’ in Article 1(d) of Part II of Protocol 3 refers to the measures constituting an aid scheme from which it is possible to identify the essential characteristics necessary for that act to be classified as a State aid measure, for the purposes of Article 61(1) of the EEA Agreement. ⁽¹³⁹⁾
- (248) The practical effectiveness of State aid control speaks in favour of a broad interpretation of the term ‘act’. While Article 1(e) of Part II of Protocol 3 concerns aid in individual cases, point (d) of Article 1 covers aid in a large number of similar cases. The effectiveness of the surveillance work would be jeopardised if States were able to prevent an abstract aid scheme from being reviewed by moving from the statutory to the administrative level. ESA would then have to deal with all decisions individually, even if they are similar. ⁽¹⁴⁰⁾
- (249) While the term ‘act’ traditionally may refer to the measures which form the legal basis of an aid scheme, it may, in certain circumstances, also refer to a consistent administrative practice by the authorities of the EEA States, where that practice reveals a ‘systematic approach’, the characteristics of which satisfy the requirements laid down in Article 1(d) of Part II of Protocol 3. ⁽¹⁴¹⁾
- (250) As described in section 4.4, the Norwegian authorities have awarded compensation to Posten for the USO net cost since 1993. For the years 1993 – 1996, the practice was reflected in ministerial White Papers and the annual parliamentary approvals of the compensation together with the Ministry’s granting letters to Posten. From 1997, the policy was further specified in concessions (see section 4.3).
- (251) As a result, the existence of a consistent administrative practice in the sense of the case law referred to in paragraph (249) cannot be excluded. However, at this stage, ESA considers that further information is needed to form a definitive view. ESA also takes note of the complainant’s arguments concerning the supposed lack of consistency in the alleged consistent administrative practice (see paragraph (106)).
- (252) Furthermore, ESA’s current understanding is that the Norwegian authorities have awarded compensation directly to Posten (see sections 4.3 and 4.4) ⁽¹⁴²⁾ based on the evolving USO needs, which do not appear to be linked to a specific project. However, also in this regard, further information is needed for ESA to form a definitive view.

⁽¹³⁹⁾ Judgment in *Commission v Belgium and Magnetrol International*, C-337/19 P, EU:C:2021:741, paragraph 78.

⁽¹⁴⁰⁾ Opinion of Advocate General Kokott in *Commission v Belgium and Magnetrol International*, C-337/19 P, EU:C:2020:990, paragraphs 64 and 65.

⁽¹⁴¹⁾ Judgment in *Commission v Belgium and Magnetrol International*, C-337/19 P, EU:C:2021:741, paragraph 79. Existing ‘aid schemes’ have been held to encompass non-statutory customary law ESA Decision No 405/08/COL closing the formal investigation procedure with regard to the Iceland Housing Financing Fund (OJ L 79, 25.3.2010, p. 40 and EEA Supplement No 14, 25.3.2010, p.20), and administrative practice related to the application of statutory and non-statutory law. See Commission Decision No E-45/2000 Fiscal exemption in favour of Schiphol Group (OJ C 37, 11.2.2004, p. 13). Decision No 75/16/COL to propose appropriate measures regarding the use of publicly owned land and natural resources by electricity producers in Iceland as well as a combination of an unwritten old legal principle combined with widespread practice across the State.

⁽¹⁴²⁾ Except for some of the contracts tendered out (see section 3.5.2), and not covered by the present decision.

- (253) Lastly, neither the potential administrative practice discussed above nor any of the underlying documents and legal acts regulating the postal sector limit the timeframe within which it is possible to award USO compensation or the budget. Even if individual aid awards and concessions have had a limited duration and set out certain compensation parameters, the USO compensation system these form part of does not have a fixed duration. Therefore, it appears that the USO compensation can be awarded for an indefinite period of time and/or for an indefinite amount.
- (254) In light of the above, ESA cannot conclude at this stage whether the USO compensation directly awarded to Posten is granted under system that fulfils the second aid scheme definition set out in Article 1(d) of Part II of Protocol 3.

8.2.3 *Existence of the aid scheme before 1 January 1994 and alterations thereafter*

- (255) Assuming that the existence of an aid scheme can be established, ESA would further need to assess whether that scheme existed prior to the entry into force of the EEA Agreement and whether it has been 'altered' thereafter.
- (256) Regarding alterations, the Court of Justice stated in *Namur* that: 'the emergence of new aid or the alteration of existing aid cannot be assessed according to the scale of the aid or, in particular, its amounts in financial terms at any moment in the life of the undertaking if the aid is provided under earlier statutory provisions which remain unaltered. Whether aid may be classified as new aid or as alteration of existing aid must be determined by reference to the provisions providing for it.' ⁽¹⁴³⁾
- (257) In *Rittinger*, the Court of Justice further clarified that to constitute an alteration of existing aid, an amendment would have to be substantial, meaning that it cannot be of a 'purely formal or administrative nature' that would not affect the compatibility of the measure; rather, it would have to affect its 'constituent elements'. ⁽¹⁴⁴⁾
- (258) Based on the information submitted by the Norwegian authorities, it appears that, at least since 1993, Norway has awarded compensation to Posten for 'basic postal services' (see section 4.3). In this regard, ESA notes that while the Norwegian authorities might have defined the services in a more nuanced manner over time (such as by specifying the weight limits), in ESA's current understanding, the scope of the services eligible for compensation does not appear to have been broadened compared to the situation before 1 January 1994.
- (259) With respect to the principle of compensation, the information submitted by the Norwegian authorities indicates that aid has since 1993 been awarded with the aim of compensating Posten's USO net costs based on a counterfactual approach, *i.e.* by reference to an alternative commercial scenario (see section 4.4).
- (260) In this regard, ESA notes that the '*extra cost*' methodology introduced in 1993 was revised in 1996 by shifting to the '*net avoidable cost*' methodology and in 2002 by introducing the current '*commercial counterfactual*' methodology. In 2009, the Norwegian authorities also introduced an ex-post adjustment mechanism (see

⁽¹⁴³⁾ Judgment of 9 August 1994, *Namur-Les Assurances du Crédit SA v Office National du Dueroire and the Belgian State*, C-44/93, EU:C:1994:311, paragraph 28.

⁽¹⁴⁴⁾ Judgment of 13 December 2018, *Rittinger and Others*, C-492/17, EU:C:2018:777, paragraphs 57 to 59.

section 4.4.3). In ESA's preliminary view, this evolution in the methodology for determining the burden of the USO does not appear to exceed the foundational principles of the system as it was established prior to entry into force of the EEA Agreement. As a result, the different modalities of the methodology do not appear to amount to '*alterations*' within the meaning of the *Namur* and *Rittinger* case law.

(261) However, ESA takes note of the complainant's arguments concerning the changes to the Postal Acts, the scope of the USO, the compensation methodology and ex-post adjustment, and the source of financing (see paragraphs (108) to (114)). ESA will assess the merit of these arguments after receiving further information.

(262) Thus, although there are indications that the aid in question is awarded under an existing aid scheme, ESA cannot form a definitive view at this point due to the limited information at its disposal. Therefore, ESA invites the Norwegian authorities to submit further information on the content of the USO and the evolution of the principle for the USO compensation from its origins until today.

8.2.4 First definition of an aid scheme

(263) The first definition of an 'aid scheme' in Article 1(d) of Part II of Protocol 3 entails the following three criteria:

- i) any act on the basis of which the aid can be awarded;
- ii) which does not require any further implementing measures; and
- iii) which defines the potential aid beneficiaries in a general and abstract manner.

(264) Regarding the first condition, as explained in section 8.2.2, ESA cannot at this stage conclude whether the USO compensation under review is awarded on the basis of a 'consistent administrative practice' predating the EEA Agreement.

(265) Regarding the second condition, the Court of Justice has stated that the first and second condition are intrinsically linked: 'It is in the light of that act that it must be determined whether the grant of individual aid is conditional on the adoption of such measures or whether, on the contrary, that grant may be made on the basis of that act alone.'⁽¹⁴⁵⁾

(266) In her opinion in *Magnetrol*,⁽¹⁴⁶⁾ Advocate General Kokott further explained that: 'If, however, as is the case here, a consistent administrative practice constitutes the act, there are generally no further implementing measures since the consistent administrative practice already consists of a set of measures for granting individual aid. [...] In the case of a consistent administrative practice, a further implementing measure could simply amount to the individual administrator being granted, within the framework of that practice, a decision-making power enabling him or her to deviate from the treatment actually practised.'

⁽¹⁴⁵⁾ Judgment of 16 September 2021, *Commission v Belgium and Magnetrol International*, C-337/19, EU:C:2021:741, paragraph 106.

⁽¹⁴⁶⁾ Opinion of Advocate General Kokott of 3 December 2020, *Commission v Belgium and Magnetrol International*, C-337/19 P, EU:C:2020:990, paragraphs 101 to 106.

- (267) Furthermore, in section 8.2.3, ESA noted that the aid in question had been awarded to compensate Posten for the burden of the USO by reference to a commercial counterfactual scenario since 1993 (see paragraph (259)). ESA further considered that the scope of the services subject to the USO does not appear to have been broadened (see paragraph (258)). On a preliminary basis, ESA thus considers that the scheme does not require further implementing measures.
- (268) However, regarding the third condition, as set out in section 8.2.2, ESA considered that the Norwegian authorities have awarded USO compensation only to Posten since 1993 (see section 8.2.3). As a result, the potential beneficiaries are not defined in a 'general and abstract manner', as required by the first aid scheme definition. ESA therefore takes the preliminary view that the first aid scheme definition under Article 1(d) of Part II of Protocol 3 is not met in this case.
- (269) In light of the above, ESA notes that an assessment of the complainant's arguments regarding 'further implementing measures' (see section 5.2), is more appropriate if additional information is provided during the formal investigation.

8.3 Evolution of the European Economic Area

- (270) According to Article 1(b)(v) of Part II of Protocol 3, existing aid is 'aid which is deemed to be an existing aid because it can be established that at the time it was put into effect, it did not constitute an aid, and subsequently became an aid due to the evolution of the European Economic Area and without having been altered by the EFTA State. Where certain measures become aid following the liberalisation of an activity by EEA law, such measures shall not be considered as existing aid after the date fixed for liberalisation.'
- (271) In this regard, the Norwegian authorities contend that the measure only became aid following *Altmark*, as interpreted in the 2012 SGEI Package (see section 6.2).
- (272) However, ESA disagrees with this interpretation of Article 1(b)(v) of Part II of Protocol 3 and the 2012 SGEI Package. Rather, ESA considers that the *interpretation* given by the Court of Justice to EEA law is limited to *clarifying and defining* the meaning and scope of what corresponds to Article 61(1) of the EEA Agreement, unless the Court of Justice specifically places any temporal limitation on the scope of its findings which was not the case in *Altmark*. ⁽¹⁴⁷⁾
- (273) As the parties have not submitted any additional arguments on the applicability of Article 1(b)(v) of Part II of Protocol 3, ESA preliminarily concludes that this provision does not apply. However, considering the postal sector has been subject to several regulatory amendments under both Norwegian and EEA law (see sections 4.1 and 4.2), ESA cannot at this stage fully exclude the applicability of that provision.

8.4 Conclusion

- (274) Based on the above considerations, ESA currently has 'doubts' within the meaning of Article 4(4) of Part II of Protocol 3, and therefore invites the Norwegian authorities to submit further information on whether: i) the individual aid awards in question are granted under an aid scheme (see sections 8.2.2 and 8.2.4); ii) the scheme existed prior to the EEA Agreement, unaltered (see section 8.2.3); and (iii) Article 1(b)(v) of

⁽¹⁴⁷⁾ Judgment of 12 February 2008, *BUPA and Others v Commission*, T-289/03, EU:T:2008:29, paragraphs 158 and 159.

Part II of Protocol 3 on the evolution of the European Economic Area (see section 8.3) is applicable.

9 Lawfulness of the aid

- (275) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('Protocol 3'): 'The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. ... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.'
- (276) The Norwegian authorities did not notify the measures to ESA. ESA therefore reaches the preliminary conclusion that, provided the measure constitutes new aid subject to prior notification, the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

10 Compatibility of the aid

10.1 Introduction

- (277) Insofar as the compensation to Posten amounts to State aid within the meaning of Article 61(1) of the EEA Agreement, the Norwegian authorities assert that the aid constitutes compensation for SGEI, specifically the USO as defined by the Postal Services Directive. As such, the compatibility of the measure must be assessed based on Article 59(2) of the EEA Agreement in conjunction with the SGEI Framework.
- (278) Article 59(2) of the EEA Agreement provides that 'undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties.'
- (279) Accordingly, ESA may declare compensation for SGEI compatible with the EEA Agreement, provided certain conditions are met. ESA has laid down the conditions according to which it applies Article 59(2) of the EEA Agreement in the SGEI Framework. The Norwegian authorities contend that these conditions are fulfilled.

10.2 Genuine service of general economic interest

- (280) According to paragraph 12 of the SGEI Framework, the aid must be granted for a genuine and correctly defined SGEI. In this regard, ESA notes that the State enjoys a wide margin of discretion regarding the nature of services that can be classified as SGEI. ⁽¹⁴⁸⁾ ESA's competence is thus limited to checking that the margin of discretion is applied without manifest error and to assessing any State aid involved.
- (281) In this regard, paragraph 13 of the SGEI Framework clarifies that States cannot impose public service obligations for services that are, or could be, satisfactorily provided by the market. Paragraph 14 of the SGEI Framework further provides that

⁽¹⁴⁸⁾ SGEI Framework, paragraph 56.

when defining SGEIs, States should give proper consideration to the public service needs supported by way of public consultation or other appropriate instruments.

- (282) The product scope of the USO, as described in paragraphs (22) – (23), corresponds to the requirements outlined in Article 3 of the Postal Services Directive. ESA notes that Article 2(6) of the Postal Services Directive lists '*postal parcels containing merchandise*' as an item included in the harmonised USO. ESA therefore considers that the Norwegian authorities were not required to demonstrate, through public consultation or by other means, that the USO constitutes a genuine SGEI in accordance with the case law of the Court of Justice. ⁽¹⁴⁹⁾ Consequently, ESA preliminarily considers paragraphs 12-14 of the SGEI Framework to be fulfilled.
- (283) Regarding items for the blind, an obligation to provide such items free of charge is recognised in recital 16 of the Postal Services Directive as a public service which should be maintained despite market liberalisation. Such obligation is also recognised in Article 12 and Annex 1 of the Postal Services Directive. ⁽¹⁵⁰⁾ Thus, ESA considers that there is no need to prove the public service need.
- (284) Regarding the cash-on-delivery service (see paragraph (26)), ESA notes that this service is not listed in Article 3 of the Postal Services Directive. Rather, it appears to constitute a '*complementary service*' as referred to in recital 30 of Directive 2008/6/EC. ⁽¹⁵¹⁾ For ESA to determine whether the service constituted a genuine SGEI, the Norwegian authorities should, in principle, demonstrate the public service need. However, based on ESA's current understanding, this service has not formed part of Posten's compensation claim and may not have formed part of the USO as such. Nevertheless, ESA seeks further clarification from the Norwegian authorities.
- (285) Notwithstanding the remaining question regarding the cash-on-delivery service, based on the above, ESA preliminarily concludes that the postal services included within the scope of the USO form part of a correctly defined and genuine SGEI.

10.3 Need for a proper entrustment

- (286) As set out in paragraph 15 of the SGEI Framework, the concept of SGEI, within the meaning of Article 59 EEA, requires that the undertaking in question has been entrusted with the operation of the SGEI by way of one or more acts. As required by paragraph 16 of the SGEI Framework, such entrustment acts must specify:
- (a) the precise nature of the public service obligation and its duration;
 - (b) the undertaking and territory concerned;
 - (c) the nature of the exclusive rights assigned to the undertaking;
 - (d) the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and
 - (e) the arrangements for avoiding and repaying any overcompensation.
- (287) Regarding paragraph 15 of the SGEI Framework, it is ESA's current understanding that the entrustment is laid down in several acts, including the Postal Act and

⁽¹⁴⁹⁾ Judgment of 17 December 2020, *Inpost Paczkomaty and Others v Commission*, Joined Cases C-431/19 P and C-432/19 P, EU:C:2020:1051, paragraphs 65-66.

⁽¹⁵⁰⁾ The Third Postal Services Directive, see paragraph (77) above.

⁽¹⁵¹⁾ *Ibid.*

Regulation, the three temporary concessions to Posten, and the Compensation Instruction. ESA also understands that certain White Papers to the Parliament form part of the entrustment, as well as the annual parliamentary budget decisions.

- (288) Regarding paragraph 16(a) of the SGEI Framework, it follows from Section 7 of the Postal Act and points 1.1 and 1.3 of Posten's concessions that the product scope of the USO covers domestic and cross-border addressed letter post up to 2 kg, including subscription newspapers and magazines, and parcels up to 20 kg; services for registered and insured items up to 2 kg and certain items for the blind, as specified in Section 20 of the Postal Regulation, to be provided free of charge.
- (289) In this regard, ESA does not agree with the complainant's view that the USO categories '*letter post up to 2 kg*' and '*parcels up to 20 kg*' are not clearly defined. On the contrary, ESA considers this approach to effectively capture the range of postal items covered by the USO and, by extension, the services that would fall within its scope – subject to the exemption rule in point 1.1 of the concession and the exclusion rule for 'B2X' parcels (see paragraph (24)). This approach is also foreseen by the Postal Services Directive and is the norm for postal USOs. ⁽¹⁵²⁾
- (290) Furthermore, Section 7 of the Postal Act, together with Section 15 of the Postal Regulation and point 1.7 of Posten's concessions, lays down the specific obligations imposed on Posten with regard to the geographic coverage, clearance and delivery frequency, pricing principles and quality standards. Finally, it follows from Section 57(1) of the Postal Act, together with the annual budget decision of the Norwegian Parliament, that Posten is effectively entrusted on an annual basis.
- (291) Regarding paragraph 16(b) of the SGEI Framework, it follows from Posten's concessions, as well as Sections 3 and 57 of the Postal Act, that the USO is entrusted to Posten, covers the whole territory of Norway, including Svalbard, and entails the nationwide provision of the universal service as defined in Section 7.
- (292) With respect to paragraph 16(c) of the SGEI Framework, ESA notes that no exclusive rights are attached to the provision of the USO services as such, as the market for postal services was fully liberalised in 2016. However, it follows from Section 57(4) of the Postal Act, that Posten maintains an exclusive right to print '*Norge*' and '*Noreg*' on stamps.
- (293) Regarding paragraph 16(d) of the SGEI Framework, it follows from Section 9 of the Postal Act that compensation to Posten is to be based on the 'net cost' of discharging the USO, provided it imposes an unfair economic burden. The legislative history makes clear that the term 'net cost' in Section 9 refers to the difference in results between a scenario of operating *with* the USO and a scenario of operating *without* the USO, also considering other market benefits. ⁽¹⁵³⁾ ESA notes that Posten has been compensated based on this 'commercial counterfactual' approach since 2002, which aligns with the methodology required under the Postal Services Directive and the SGEI Framework. Consequently, and

⁽¹⁵²⁾ For reference, see Commission Decision of 14 May 2020, *USO compensation to Correos, 2011-2020*, SA.50872, (OJ C 260, 7.08.2020, p.1) paragraph 104; Commission Decision of 28 May 2018, *State compensations granted to PostNord for the provision of the universal postal service*, SA.47707, (OJ C 360, 5.10.2018, p.1), paragraph 128.

⁽¹⁵³⁾ Prop. 109 L (2014-2015) p. 67.

contrary to the complainant's claim, ESA considers it clear from the outset how compensation to Posten is to be determined.

- (294) Finally, concerning paragraph 16(e) of the SGEI Framework, it follows from the Compensation Instruction that Posten must present the net cost for each relevant USO element separately in the compensation claim, which must be documented and verified by an external auditor. The Compensation Instruction also stipulates that during the compensation year, payments will be disbursed in equal monthly shares. Furthermore, as established by St.meld. nr. 12 (2007-2008), an ex-post procedure is conducted in the following year, according to which the compensation claim is recalculated, subject to review by an external auditor. Any overcompensation is refunded to the State or, alternatively, under-compensation is reimbursed to Posten. Consequently, ESA considers the requirement in paragraph 16(e) of the SGEI Framework fulfilled.
- (295) ESA notes that the Norwegian authorities issued a revised Compensation Instruction in 2024, which codifies the long-established practice regarding the arrangements for avoiding and repaying overcompensation. In ESA's view, even if the earlier iteration of the Compensation Instruction did not outline these procedures, the consistent application of such safeguards, together with other official documents setting out the principle of ex-post adjustment and the amounts, demonstrates compliance with paragraph 16 (e) of the SGEI Framework. ⁽¹⁵⁴⁾
- (296) In light of the above considerations, ESA preliminarily considers that, during the relevant period, the USO has been properly entrusted to Posten.

10.4 Duration of the period of entrustment

- (297) According to paragraph 17 of the SGEI Framework, the duration of the period of entrustment should be justified by reference to objective criteria. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI.
- (298) In the present case, Section 57 of the Postal Act indicates that Posten's concession is temporary, lasting until the Norwegian authorities decide to transition to a system based on agreements with a provider or by administrative decision. The current concession, which came into force on 1 July 2020, has no defined end date. The available information in the case suggests, however, that the Norwegian authorities may unilaterally withdraw the concession. Thus, ESA currently understands that the USO is entrusted to Posten on an annual basis, starting with the Ministry's initiation of the compensation procedure and the subsequent State budget decision by the Norwegian Parliament approving the allocation to Posten for the following year. Nevertheless, ESA seeks further clarification from the Norwegian authorities.

10.5 Compliance with Directive 2006/111/EC

- (299) According to paragraph 18 of the SGEI Framework, aid will be considered compatible with the internal market on the basis of Article 59(2) of the EEA Agreement only where the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States

⁽¹⁵⁴⁾ See St.meld. nr. 12 (2007-2008), Om verksemda til Posten Norge AS, section 4.3.

and public undertakings as well as on financial transparency within certain undertakings. ⁽¹⁵⁵⁾

- (300) With respect to this requirement, ESA considers that the financial relations between the Norwegian authorities and Posten are transparent and in accordance with Directive 2006/111/EC. In particular, Posten maintains internal accounts which separate activities falling under the USO from non-USO activities based on clear, transparent, consistently applied and objectively justifiable cost accounting principles. In addition, ESA notes that the Norwegian authorities have ensured that Posten's accounts are subject to verification by an independent third party.

10.6 Compliance with EEA public procurement rules

- (301) According to paragraph 19 of the SGEI Framework, aid will be compatible only where the responsible authority, when entrusting the provision of the SGEI to the undertaking, has complied or commits to comply with the public procurement rules.
- (302) Pursuant to Article 4(2) of the Postal Services Directive, States have discretion to designate the universal service provider and are not obliged to organise a tendering procedure for its selection. Thus, ESA considers that it is only if the State decides to organise a tender for the selection of the provider under Article 7(2) of the Postal Services Directive that public procurement rules would be applicable. In the present case, the Norwegian authorities have opted for direct entrustment to Posten in conformity with the directive. Consequently, ESA currently has no concerns regarding compliance with paragraph 19 of the SGEI Framework.

10.7 Absence of discrimination

- (303) According to paragraph 20 of the SGEI Framework, where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking.
- (304) In the present case, as the USO is entrusted only to Posten, ESA considers this requirement to be inapplicable.

10.8 The USO net cost compensation

- (305) According to paragraph 21 of the SGEI Framework, the amount of compensation must not exceed what is necessary to cover the '*net cost*' of discharging the public service obligation, including a reasonable profit. In this regard, paragraph 24 of the SGEI Framework specifies that the net cost should be calculated using the NAC methodology when this is required by EEA or national law or otherwise when this is possible. Paragraph 25 of the SGEI Framework defines the NAC as the difference between the net cost for the provider operating *with* the public service obligation and the net cost or profit for the same provider operating *without* that obligation, taking account of intangible benefits to the SGEI provider as far as possible.
- (306) As described in section 3.4.5, the Norwegian authorities estimate the net cost of discharging the USO using the 'commercial counterfactual' NAC approach, which is consistent with the methodology required by paragraph 21 of the SGEI Framework. ESA notes that when calculating the NAC, the EFTA States have a

⁽¹⁵⁵⁾ OJ L 318, 17.11.2006, p. 17, incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 055/2007 (OJ L 266, 11.10.2007, p. 15, EEA Supplement No 48, 11.10.2007, p.12).

‘certain margin of discretion in choosing the data relevant’ and where such calculation is based on provisional data, ESA’s role is to review its plausibility. ⁽¹⁵⁶⁾

- (307) As described in section 3.4.2 and 3.4.5, both the service level requirements of the USO and Posten’s counterfactual scenarios have changed multiple times during the period under review. As a result, each compensation year reflects a distinct combination of factual and counterfactual scenarios, each pair often comprising several service components with unique modelling and associated assumptions. Table 3 provides a summary of the compensation paid to Posten between 2016 and 2024, as well as the provisional amount for 2025, for the USO elements where Posten’s counterfactual scenario diverged from the factual USO requirements.
- (308) During the preliminary investigation, the Norwegian authorities have provided ESA with certain information on the counterfactual scenarios and the modelling of the various NAC elements forming part of the compensation claim.
- (309) Generally, ESA finds Posten’s counterfactual scenarios credible in light of market developments, considering the significant decline in letter mail volumes (see Figure 1). In particular, geographically differentiated service levels, with lower delivery frequency in rural areas, and the eventual nationwide reduction in delivery frequency appear, from the outset, to have been plausible commercial strategies, aligning with the approach taken by other European postal operators.
- (310) ESA further notes that the 2017 Copenhagen Economics Report reviewed Posten’s estimated net cost of maintaining priority and non-priority letter mail (representing 54% of the net cost in 2017) and the shift to alternate-day delivery (representing 98% of the net cost in 2018), and found Posten’s modelling to be elaborate and its assumptions to be generally conservative (see section 3.4.5.4.1).
- (311) ESA further observes that Posten has implemented several counterfactual elements as soon as regulatory changes to the USO permitted. For instance, this occurred when the delivery frequency was reduced from six to five days in 2016 (counterfactual as of 2011), as well as with the merging of two mail streams in 2018 (counterfactual as of 2016), and the change to alternate-day delivery in 2020 (counterfactual as of 2018).
- (312) ESA further takes note of the fact that the modelling of cost and revenue effects are subject to annual review by an external auditor, both the ex-ante provisional estimate forming the basis for the monthly pay-out during the compensation year, as well as the ex-post adjustment. Although it appears the external auditor takes the counterfactual modelling as given, ESA finds comfort in the ex-ante and ex-post controls of the correct application of the model as such.
- (313) However, while the information provided so far, particularly for the period 2017 – 2018, has been detailed, ESA cannot yet conclude that the estimated cost and revenue effects for all USO elements in each compensation year have been modelled appropriately. Consequently, ESA seeks further information from the Norwegian authorities regarding some elements of the compensation claims for 2016 – 2020. This concerns, in particular, Saturday newspaper delivery in 2016,

⁽¹⁵⁶⁾ Judgment of 5 May 2021, *Danske Fragtmænd A/S and Others v Commission*, T-561/18, EU:T:2021:240, paragraph 114.

weekday delivery to 5% of households in 2016 and 15% of households in 2020, and delivery of items for the blind free of charge in all years 2016 – 2020.

- (314) With regards to the counterfactual as of 2022, with delivery to pick-up points, the complainant correctly points out that neither the review by the external auditor under ISRS 4400 nor the 2020 Oslo Economics Report appears to evaluate whether the counterfactual scenario, the modelling and underpinning assumptions, were realistic and appropriate. As a result, ESA cannot lean on these reports for comfort to the extent purported by the Norwegian authorities. Consequently, ESA seeks further information on the rationale, assumptions, models and figures underpinning the compensation claims for 2022 – 2025, as well as the transitional year 2021.
- (315) Finally, taking note of the complainant's arguments in sections 5.3.5.3 and 5.3.5.5, and paragraph (135), ESA seeks justification for the non-deduction of intangible benefits, clarifications regarding the pricing of USO and non-USO services and their potential impact on the NAC estimate, and additional information regarding the extent to which the compensation model incorporates efficiency incentives.

10.8.1 Comments from the complainant

- (316) Acknowledging the limited information currently available to the complainant, ESA will address certain assertions made regarding the current counterfactual.
- (317) Regarding the complainant's assertion in paragraph (136), that the 2021 tariff hike has not been implemented, ESA notes that it is only in the absence of the USO that Posten envisions such tariff adjustments – to curb demand and transition to pick-up point delivery. As such, Posten is not expected to start implementing elements of a counterfactual that could potentially exacerbate factual losses given the USO.
- (318) Regarding the complainant's assertion in paragraph (141) that businesses would switch parcel delivery provider if Posten stopped delivering to addresses, ESA notes that under the current counterfactual scenario, Posten would continue its parcel and packet services at the same service level as in the factual scenario, including delivery to addresses. ESA further notes that the model underpinning the 2022 compensation claim incorporates the standalone cost of such provision.
- (319) Regarding the complainant's assertion in paragraph (142) that users prefer mailbox delivery, particularly if Posten were to increase tariffs, ESA notes that the rationale behind the envisioned tariff increases is precisely to reduce demand for letter post services. ESA further notes that the 2020 Oslo Economics Report appears to question the feasibility of tariff increases in a potential scenario where the USO would be aligned with Posten's strategy. Absent the USO, Posten would not have to consider whether tariff increases would be 'politically feasible' as such.
- (320) Regarding the complainant's assertion in paragraph (140), that a geographically differentiated service offering would be a more credible counterfactual, similar to operators in Sweden and Denmark, ESA notes that all things considered, delivery to pick-up points could be *more* profitable and thus a more realistic counterfactual in the Norwegian context, given demographic, geographic and user particularities.
- (321) Regarding the complainant's assertion in paragraph (143), that synergy effects have not been sufficiently considered, ESA notes that the [...] cited in the 2020 Oslo Economics Report should be read in conjunction with the [NOK 100-300 million]

reported as 'compensating cost' in the table referred to by the complainant. ⁽¹⁵⁷⁾ ESA also notes that the model incorporates 'group effects' by incorporating indirect effects on commercial services remaining in the counterfactual.

- (322) Regarding the complainant's concern in paragraph (147), ESA notes that the average tariff increase cited in the 2020 Oslo Economics Report is outdated, as it has since been revised to an estimated average increase of 122 per cent. ESA further notes that, in the current counterfactual scenario, Posten would maintain a nationwide presence via its parcel and packet services and service point network.
- (323) Regarding the complainants' assertion in paragraphs (148) – (149) concerning the 11.5% WACC included in the regulatory accounts, ESA notes that this WACC has no impact on the compensation, considering the NAC model, as implemented by the Norwegian authorities, does not adjust for 'cost of capital' effects. Regarding the complainant's argument in paragraph (151) – (150), ESA notes that, within the framework of the NAC model, the 'cost of capital' can be accounted for.
- (324) Finally, regarding the complainant's assertion in paragraph (148), ESA notes that the profit element forming the basis of the complainant's argument pertains to an element of Posten's compensation claim, which was rejected, see paragraph (52).

⁽¹⁵⁷⁾ The 2020 Oslo Economics Report, page 5.

Table 3: Compensation to Posten during 2016-2025 (MNOK), by USO element

Difference between factual and counterfactual	2016	2017	2018	2019	2020	2021	2022	2023	2024*	2025*
Three weekday delivery days to 5% of households	133	153	-	-	-	-	-	-	-	-
Saturday delivery mail/newspapers	166	-	-	-	-	-	-	-	-	-
Two letter mail streams (priority and non-priority)	-	194	-	-	-	-	-	-	-	-
2.5 delivery days to 100% households	-	-	573	620	306	-	-	-	-	-
1.5 delivery days to 15% of households	-	-	-	-	72	-	-	-	-	-
1.5 delivery days to 100% of households	-	-	-	-	-	535	-	-	-	-
Delivery to households rather than pick-up points	-	-	-	-	-	-	838	1210	1485	1629.8
Items for the blind delivered free of charge	12	10	8	7	8	5	5	5	5	4
Net cost postal services (USO)	311	357	581	627	386	540	843	1215	1490	1634.8
Basic banking services in rural areas	16	15	11	9	5	2	-	-	-	-
Total Compensation	327	372	592	636	391	542	843	1215	1490	1634.8

10.9 Accounting Separation

- (326) Paragraph 44 of the SGEI Framework requires that where an undertaking carries out activities falling both inside and outside the scope of the SGEI, the internal accounts must show separately the costs and revenues associated with the SGEI and those of the other services. Paragraph 31 of the SGEI Framework provides that the costs to be taken into consideration may cover all the direct costs necessary to discharge the SGEI and an appropriate contribution to the common costs.
- (327) As described in section 3.4.4, pursuant to Section 11 of the Postal Act, Posten must keep separate accounts for its USO and non-USO services and submit externally verified product accounts annually to Nkom. The principles for allocating costs and revenues and the template to be followed in terms of service grouping and cost categorisation are set out in Nkom's Accounting Instruction. ⁽¹⁵⁸⁾
- (328) The Norwegian authorities have explained that the regulatory product accounts rely on the principles of Posten's internal cost accounting system. During the preliminary investigation, the Norwegian authorities and Posten therefore provided ESA with detailed information regarding the structure and principles of Posten's internal cost accounting system, including how costs are allocated between different services in the respective parts of the value chain (see paragraph (16)), as well as Posten's cost accounting of the PiP service in particular. ⁽¹⁵⁹⁾ The Norwegian authorities have also provided information on the most important allocation keys. ⁽¹⁶⁰⁾ A high-level summary of the main principles of the system is provided below.
- (329) Within Posten's internal cost accounting system, Posten distinguishes between two main cost categories: (1) Selling, General and Administrative expenses ('SG&As') and (2) operational costs. SG&As comprise expenses that cannot be attributed directly to the production of distinct services. These amount to approximately [...] of Posten's total costs. Conversely, operational costs are costs incurred in the service delivery, which can be directly or indirectly allocated to distinct services. These account for approximately [...] of Posten's total costs.
- (330) With regard to SG&As, a distinction is made between SG&A resources that form part of a particular business division and SG&As that are common to all divisions. SG&A costs are allocated in two steps. As a *first* step, SG&As pertaining to a particular division are assigned to that division in full, while SG&As common to all divisions are allocated between the divisions based on estimated resource use. SG&As allocated to the network division are further allocated to the mail and logistics divisions [...]. As a *second* step, SG&As allocated to the mail division and the logistics division are further allocated to individual services [...].
- (331) For operational costs, Posten relies on Activity-Based Costing (ABC). With this method, costs are attributed to individual services based on operational activities. If a particular activity relates exclusively to one service, the estimated cost is assigned to that service in full. If a particular activity relates to several services, the associated costs are allocated between the services using predefined allocation

⁽¹⁵⁸⁾ Document No 1314531.

⁽¹⁵⁹⁾ Submission by Posten Bring of 3 November 2023, Document No 1410427, p. 19.

⁽¹⁶⁰⁾ Document No 1366810.

keys. These keys correspond to identified cost drivers, such as the number of items, their format, volume and manageability (*i.e.* if certain actions are required). Depending on the nature of the cost, the allocation keys are typically established based on [...]. Each service is considered to consume the activity relative to its cost drivers and this consumption of the activity serves as the basis for the allocation of the cost of resources.

- (332) For Posten's regulatory product accounts, costs and revenues are assigned to service categories, so-called 'result units': '*USO letter post*', '*USO parcel post*', '*basic banking*' ⁽¹⁶¹⁾, and '*non-USO services*' as required by Nkom's Accounting Instruction. For each result unit, costs are classified into the following categories:
- i) '*avoided costs*', described as short-term volume-driven costs which can be avoided within a year after a volume decrease;
 - ii) '*other product-specific costs*', described as long-term volume-driven cost and service-specific costs that do not vary with short-term volume changes;
 - iii) '*product group costs*', described as costs which are not caused by a single product but which nonetheless can be attributed to a group of products; and
 - iv) '*corporate costs*', described as costs which cannot be attributed to either products or product groups via the causality principle.
- (333) ESA notes that the regulatory accounts are subject to annual review by an external auditor (EY) conducted in accordance with ISRS 4400, '*Agreed-Upon Procedures*' ('AUP'). As described in paragraph (42), the auditor must issue a report on its findings regarding compliance with Section 11 of the Postal Act and the Accounting Instruction, which includes carrying out controls on allocation keys, data registration and processing, and verifying that the product accounts are consistent with the external accounts. According to the AUP reports obtained for 2016 – 2023, it appears EY made no findings of inappropriate cost allocation. ⁽¹⁶²⁾ A summary of the result of the regulatory product accounts, along with an explanatory memo and the associated AUP report from EY, is published on Nkom's website. ⁽¹⁶³⁾
- (334) ESA notes recent case law confirming that independent review and monitoring by national regulatory authorities support a conclusion that the cost allocation is appropriate. ⁽¹⁶⁴⁾ Based on the available information, ESA finds no indication of improper implementation of the accounting separation requirement set out in paragraph 44 of the SGEI Framework. ESA thus preliminarily concludes that paragraph 44 of the SGEI Framework is fulfilled.

10.10 Exceptional circumstances

- (335) Section 2.9, paragraph 51 of the SGEI Framework sets out that sections 2.1 to 2.8 of the SGEI Framework are usually sufficient to ensure that aid does not distort competition in a way that is contrary to the interest of the EEA. However, in some exceptional circumstances, serious competition distortions in the internal market

⁽¹⁶¹⁾ The banking SGEI, as described in section 3.5.1.

⁽¹⁶²⁾ Document Nos 1506970, 1506971, 1314535, 1506975, 1506976, 1506977, 1506978.

⁽¹⁶³⁾ See https://nkom.no/post/tilbydere-med-leveringsplikt/posten-norge-as#postens_konsesjon

⁽¹⁶⁴⁾ See Judgments of the General Court of 15 October 2020, *První novinová společnost v Commission*, T-316/18, EU:T:2020:489, paragraphs 253-254; and of 5 May 2021, *ITD and Danske Fragtmænd v Commission*, T-561/18, EU:T:2021:240, paragraphs 294-297.

could remain unaddressed, and the aid could affect trade to such an extent that it would be contrary to the EEA interests. In such exceptional circumstances, ESA will examine whether distortions can be mitigated by requiring conditions or requesting commitments from the EFTA State.

- (336) ESA recalls that additional requirements are only considered necessary in exceptional circumstances of serious distortions of competition that remain unaddressed by the other requirements of the 2012 SGEI Framework. In the case at hand, ESA notes that the USO compensation under review may not meet all the criteria set out in the SGEI Framework. Consequently, assessing the need for additional requirements will not be considered until a final conclusion on the compatibility with the requirements set out in sections 2.1 to 2.8 has been reached.

10.11 Transparency

- (337) According to paragraph 60 of the SGEI framework, for each SGEI compensation falling within the scope of the framework, the EFTA State concerned must publish the following information on the internet or by other appropriate means:

- (a) the results of the public consultation or other appropriate instruments;
- (b) the content and duration of the public service obligations;
- (c) the undertaking and, where applicable, the territory concerned;
- (d) the amounts of aid granted to the undertaking on a yearly basis.

- (338) In the present case, ESA considers that paragraph 60(a) of the SGEI framework is not applicable, as the Norwegian authorities did not have to prove, by way of public consultation or other appropriate instruments, that the USO formed a genuine SGEI (see section 10.2). Regarding paragraphs 60(b) and (c) of the SGEI framework, ESA notes that this information is set out in Section 7 and Section 57(1) of the Postal Act, as well as Posten's temporary concession, ⁽¹⁶⁵⁾ which is available on the internet. Regarding paragraph 60(d) of the SGEI framework, ESA notes that the amount of aid granted to Posten on a yearly basis is set out in the annual Norwegian State budget, which is publicly available on the internet.

- (339) Based on the above, ESA preliminarily considers that paragraph 60 of the SGEI Framework is complied with.

10.12 Conclusion regarding the measure's compatibility

- (340) Based on the information provided, ESA cannot firmly conclude at this stage whether the compatibility conditions set out in the SGEI Framework, as further outlined in sections 10.2, 10.3, 10.4, 10.5, 10.6, 10.8, **Error! Reference source not found.**, 10.10, and 10.11 of this decision, are complied with. ESA therefore has 'doubts' and invites the Norwegian authorities to submit further information on compliance with these conditions and the measure's compatibility with the functioning of the EEA Agreement.

11 Conclusion

- (341) As set out above, ESA currently has doubts as to (i) whether the measure constitutes State aid; (ii) if so, whether it constitutes existing aid or new aid and; (iii)

⁽¹⁶⁵⁾ See https://nkom.no/post/tilbydere-med-leveringsplikt/posten-norge-as#postens_konsesjon

in case the measure were to be considered new aid, whether it is compatible with the functioning of the EEA Agreement.

- (342) Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, ESA hereby opens the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of ESA, which may conclude that the measure constitutes existing aid or is compatible with the functioning of the EEA Agreement.
- (343) ESA, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, **by 20 January 2025**, their comments and to provide all documents, information and data needed for the assessment of the measure in light of the State aid rules.
- (344) The Norwegian authorities are requested to immediately forward a copy of this decision to the potential aid recipient.
- (345) If this letter contains confidential information which should not be disclosed to third parties, please inform ESA **by 20 January 2025**, identifying the confidential elements and the reasons why the information is considered confidential. In doing so, please consult ESA's Guidelines on Professional Secrecy in State Aid Decisions ⁽¹⁶⁶⁾. If ESA does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on ESA's website: <http://www.eftasurv.int/state-aid/state-aid-register/>.
- (346) Finally, ESA will inform interested parties by publishing a meaningful summary in the Official Journal of the European Union and the EEA Supplement thereto. All interested parties will be invited to submit their comments within one month of the date of such publication. The comments will be communicated to the Norwegian authorities.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund
President
Responsible College Member

Stefan Barriga
College Member

Árni Páll Árnason
College Member

For Melpo-Menie Joséphidès
Director,
Legal and Executive Affairs

Placeholder for electronic authentication. Please do not delete

⁽¹⁶⁶⁾ [OJ L 154, 8.6.2006, p. 27](#) and EEA Supplement No 29, 8.6.2006, p. 1.