

**Translation**

Letter dated: 18 August 2014  
From: Office for Competition and Consumer Protection  
To: Mr C. Madero Villarejo, DG COMP  
Subject: Services of general economic interest (SGEI): the report to be submitted further to the SGEI Decision and the SGEI Framework.  
Encl.: 1. Social housing;  
2. Grants for meals sold in 'milk bars';  
3. Municipal waste management.

Further to your letters dated 25 February 2014 (ref.: DG COMP/A3/JW-jc-vn HT.2807 2013/018374) and 30 July 2014 (ref.: DG COMP/A3/PI-jc HT.2807-2014/077567) concerning the report to be submitted further to the SGEI Decision and the SGEI Framework, please find enclosed the report in question.

In Annex 1 we provide information on compensation for social housing awarded pursuant to Article 2(1)(c) of the Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7 of 11 January 2012). In Annexes 2 and 3 we describe other compensation for SGEI not exceeding an amount of €15 million awarded under Article 2(1)(a) of the Decision.

## **Annex 1. Social housing**

### **1. Contents of services entrusted as SGEI.**

Performance of management tasks in municipal buildings and premises designed for social policy and social assistance activities.

### **2. Form of entrustment**

Agreement of Wrocławskie Mieszkania Sp. z o.o. dated 2 October 2007 (Register A No 4798/2007) and Order No 6355/12 of the Mayor of Wrocław dated 21 December 2012 setting out the rules governing the commissioning and settlement of tasks entrusted for implementation by way of articles of association to Wrocławskie Mieszkania Sp. z o.o. with registered office at Wrocław.

The standard document for entrusting management activities is the Implementation Guidelines (plus annexes), which are appended to the rules annexed to Order No 6355/12 of the Mayor of Wrocław dated 21 December 2012.

### **3. Duration of entrustment**

Indefinite.

### **4. Exclusive or special rights**

No exclusive or special rights are awarded to the provider.

### **5. Compensation mechanism**

Details of the method used to establish the amount of remuneration and payment dates are set out in the Implementation Guidelines (plus annexes). Payment is effected on the basis of a VAT invoice.

### **6. Arrangements for avoiding and recovering any overcompensation**

Remuneration is strictly for management tasks and is effected on the basis of the above-mentioned Order of the Mayor.

### **7. Total amount of aid granted**

Aid totalling €49 110.53 was awarded in 2013.

## **Annex 2. Grants for meals sold in 'milk bars'**

### **1. Contents of services entrusted as SGEI.**

Compensation in the form of grants for meals sold in 'milk bars' (self-service bulk catering establishments, open to the general public, which produce and sell dairy/vegetarian dishes).

### **2. Form of entrustment.**

Grants are awarded by decision of the director of the tax chamber responsible for the locality adopted following an application from the operator, filed before commencement of the activity to be covered by the grant and subject to compliance with the requirements laid down in the Regulation of the Minister for Finance of 20 December 2010 on the rates and specific method and procedure of awarding and disbursing grants for meals sold in 'milk bars' (Journal of Laws 254, item 1705).

### **3. Duration of entrustment**

The period in which these services was provided is calculated from the date of the favourable decision handed down by the director of the tax chamber until the end of the calendar year in which the grant was awarded. Undertakings are required to calculate, by the 28th day of each month, the grant payable for the period from the beginning of the year to the end of the month prior to that in which the calculation was made. Services are entrusted on the basis of an application from the operator for a period of one year or less, with the option of reapplying the following year.

### **4. Exclusive or special rights**

No exclusive or special rights are awarded to providers of these services.

### **5. Compensation mechanism**

The director of the tax chamber awards grants on the basis of an application from operators. Grants for meals sold in 'milk bars' are paid to operators which:

1. run 'milk bars', i.e. self-service, alcohol-free, bulk catering establishments, open to the general public, producing and selling dairy/vegetable dishes forming part of all-day meals;
2. apply a catering mark-up of not more than 30 % of the value of the raw materials;
3. keep a record of the quantity and value of raw materials used to prepare the meals.

The grant is paid out on a monthly basis. Each grant payment decision is taken by the director of the tax chamber. The maximum amount set aside for grants is laid down in the Budget Act.

Grant values are established on the basis of the value of the raw materials purchased (40 %), increased by the catering mark-up applied by the operator (not exceeding 30 %), after deducting the value of natural losses of materials, the value of commercial goods and raw materials sold unprocessed and the value of raw materials used to make dishes in the milk bar sold to persons other than consumers eating meals there. For purchases of raw materials outside retail units, including purchases from wholesalers, at markets and direct from producers, the value of the raw materials has increased by 20 %. The basis for calculating the value of the grant payable is the quantity and value records kept on the raw materials used to make the meals in the 'milk bars'. These records are kept in such a way as to allow the value and quantity of the raw materials used and the amount of the grant payable to be determined.

## **6. Arrangements for avoiding and recovering any overcompensation.**

The aforementioned Regulation of the Minister for Finance also lays down the rules and conditions under which, if the grant statement is incorrect, it is to be corrected:

1. by the tax office at the stage of ongoing verifications of the quantity and value records;
2. by treasury officials in the context of periodic checks,
3. by the operators where they make their own corrections.

The results of these corrections form the basis for repayments by the operator of any excess amounts received along with interest on those amounts at the rates applicable for tax arrears.

If it fails to comply with the conditions laid down in the Regulation, the operator is required to correct the application and, if it receives a grant which is incompatible with the rules, it is required to repay it in whole or in part, in accordance with the corrected application. In the event of it being found that the rules laid down in the Regulation have been breached and the operator fails to correct the application, decisions are handed down by the directors of the tax chambers against which the operator may appeal to the second-instance body (i.e. the Minister for Finance). If the appeals body upholds the decision of the director of the tax chamber, the operator is entitled to bring a complaint before Warsaw Administrative Court and then before the Supreme Administrative Court. Warsaw Administrative Court rejected two complaints by operators in 2013, with the result that they had to repay the aid.

## **7. Total amount of aid granted**

2012 - PLN 22 041 000

2013 - PLN 19 680 000

## **8. Other quantitative information**

Checks were carried out on 2 729 aid award cases in 2011-12.

### **Annex 3. Municipal waste management.**

#### **1. Contents of services entrusted as SGEL.**

Maintaining cleanliness and order is one of the statutory duties of a municipal authority, as reflected in measures to endure cleanliness and order within the municipality and the creation of the necessary conditions for the maintenance of cleanliness and order. As such, it is the task of a municipal authority to establish a waste management system comprising waste collection from producers, transportation, recycling and disposal (in the interests of the local community). Under Polish law, local authorities are also required to establish and manage regional processing centres and sorting/collection points for municipal waste.

In the light of the above, local authorities award compensation for the provision of municipal waste management services. This entails, in particular, organising and operating the municipal waste collection system, including a system for sorting and collecting municipal waste and maintaining and running facilities and equipment for the recycling or disposal of municipal waste.

#### **2. Form of entrustment.**

A company which is solely owned by a local government authority (municipality) or an association of these authorities is a typical example of a provider of these services. In these circumstances, the obligation is imposed on operators by way of a resolution issued by the competent local government authority. Information on the contents of resolutions of this type was included in the Minister for Regional Development's guidelines on the rules for co-financing, under operational programmes, entities fulfilling public service obligations in connection with the waste management tasks of local government bodies. Under those Guidelines: 'The obligation to provide public services is placed on the municipal company by way of a resolution of the town council enshrining the company's incorporation or participation in it, which should indicate that the objective of the municipal company is to discharge the municipal authority's duty to meet the needs of residents within the scope of the municipal authority's remit.'

If the operator is required to manage waste from numerous municipalities which own the operator jointly, entrustment takes place on the basis of resolutions by the town councils concerned. If the operator is required to manage waste from numerous municipalities, but is owned by only one of these municipalities, then the municipal authority in question takes over from the other municipalities, on the basis of intermunicipal agreements, the duty to manage waste generated on their territories and subsequently instructs the operator to manage waste from its territory and from the territories of the municipalities with which it has concluded an agreement. All the detailed arrangements governing the provision of services and compensation (the award of compensation, its components and the rules for avoiding overcompensation) are set out in the implementing agreement between one or more local authorities and the operator.

#### **3. Duration of entrustment**

The average duration of entrustment is about 20 years. The duration of entrustment is this long because significant investments with a life cycle of as much as 30 years are required in order to provide the services.

#### **4. Exclusive or special rights**

Under the Maintaining Cleanliness and Order (Municipalities) Act and the Waste Act, the municipal authority owns the waste generated on its territory. This concerns the following categories of waste:

- mixed municipal waste;
- green waste;
- residues from sorted municipal waste destined for landfill. This waste flow is directed to the regional processing centres for municipal waste located in the municipality (region), which have exclusive rights to manage this waste. Other waste is transported to other facilities.

## **5. Compensation mechanism**

In view of the significant costs incurred in connection with building or expanding infrastructure at the start of the period in which waste management SGEI are provided, aid is required to part-finance these investments. The main components of compensation are, therefore, grants and preferential loans awarded to cover investment outlays. In a few cases, an annual grant is paid to cover current losses where these occur. In most cases the company to which SGEI have been entrusted is not engaged in any other activities, and therefore the total costs and revenue are taken into account when determining whether overcompensation has occurred. If the company is engaged in activities other than the SGEI entrusted to it, separate accounts must be kept for the SGEI. The overheads incurred for the SGEI are calculated using a methodology based on cost allocation.

## **6. Arrangements for avoiding and recovering any overcompensation.**

The implementing agreements contain provisions indicating that compensation may not result in an operator required to provide SGEI making in excess of a 'reasonable profit'.

Implementing agreements signed after 30 January 2012 use the Internal Rate of Return to measure the return on capital, and the 'reasonable profit' is calculated as the relevant average swap rate for the last quarter of the year before the implementing agreement was signed, plus 100 basis points.

Each year local authorities entrusting SGEI check whether the 'reasonable profit' rate calculated for the whole period of provision of services has been exceeded. If the 'reasonable profit' has been exceeded, the operator providing SGEI must repay the amount of overcompensation.

## **7. Total amount of aid granted**

2012 - PLN 325 820 000

2013 - PLN 208 450 000

## **8. Other quantitative information**

This aid was awarded to 22 entities in 2011-12.