

Official Journal of the European Union

L 268



English edition

Legislation

Volume 60

18 October 2017

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⁽¹⁾ Text with EEA relevance.

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2017/1861**of 29 July 2016****on State aid SA33983 (2013/C) (ex 2012/NN) (ex 2011/N) — Italy — Compensation to Sardinian airports for public service obligations (SGEI)***(notified under document C(2016) 4862)***(Only the English text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 30 November 2011 Italy notified a compensation scheme in favour of Sardinian airport operators for public service obligations (hereinafter 'PSOs') with the aim of strengthening and developing air transport. That notification was made via the electronic notification system of the Commission.
- (2) The Commission requested Italy to provide additional information on the notification by letters dated 30 January 2012, 24 April 2012 and 12 July 2012. Italy replied to those requests by letters dated 24 February 2012, 30 May 2012 and 9 August 2012.
- (3) On the basis of the information received that Italy might have put the measure into effect before the Commission had taken a decision authorising it, the Commission has decided to investigate the measure under chapter 3 of Regulation (EU) 2015/1589 ⁽²⁾ regarding unlawful State aid.
- (4) On 30 November 2012, Italy asked the Commission to indicate the timing for the decision and for certain clarifications concerning the procedure. The Commission replied by letter transmitted to Italy on 7 December 2012.
- (5) By letter dated 23 January 2013, the Commission informed Italy of its decision to initiate the procedure provided for in Article 108(2) of the Treaty ('Opening Decision') with regard to the notified scheme.

⁽¹⁾ OJ C 152, 30.5.2013, p. 30.

⁽²⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

- (6) Italy provided its comments on the opening decision on 21 March 2013 (with annexes received on 22 March 2013).
- (7) The Opening Decision was published in the *Official Journal of the European Union* on 30 May 2013. The Commission invited interested parties to submit their comments on the alleged aid measures.
- (8) On 10 April 2013, the Commission received comments on the case from Ryanair Ltd, as interested party. The Commission transmitted those comments to Italy by letter dated 3 May 2013. Italy has not submitted any observations on the comments from Ryanair.
- (9) The Commission subsequently received comments from the following interested parties:
- (a) Ryanair and a consultancy firm acting on its behalf, on 28 June 2013;
 - (b) GEASAR S.p.A., the airport operator of Olbia airport, on 1 July 2013;
 - (c) SOGEAAL S.p.A., the airport operator of Alghero airport, on 29 July 2013;
 - (d) SOGAER S.p.A., the airport operator of Cagliari airport, on 30 July 2013 and 2 August 2013;
 - (e) easyJet, on 30 July 2013.
- (10) On 31 July 2013, the Commission forwarded the non-confidential versions of the comments from GEASAR and SOGEAAL to Italy, which was thus given the opportunity to react. The Commission forwarded the comments from SOGAER and Ryanair to Italy on 2 August and those from easyJet, on 7 August.
- (11) On 27 September 2013, Italy informed the Commission that it had no observations on the comments from the three airport operators. On 20 and 21 November 2013, Italy sent its observations to the Commission regarding of Ryanair's comments. Italy did not provide any observations regarding easyJet's observations.
- (12) On 20 December 2013, Ryanair provided further comments, which were forwarded to Italy on 9 January 2014. Italy did not provide any observations on those comments.
- (13) On 17 January 2014 and 31 January 2014, Ryanair provided further comments, which were forwarded to Italy on 12 January 2015. Italy did not provide any observations regarding these comments.
- (14) By letter dated 25 February 2014, the Commission informed Italy of the adoption of the 2014 Aviation Guidelines ⁽³⁾ on 20 February 2014 and of the fact that those guidelines would become applicable to the case at hand from the moment of their publication in the Official Journal. The Commission gave Italy the opportunity to comment on the guidelines and their application within 20 working days of their publication in the Official Journal.
- (15) By letters dated 24 February 2014, the Commission also informed interested parties of the adoption of the 2014 Aviation Guidelines and of the fact that those guidelines would become applicable to the case at hand from the moment of their publication in the Official Journal. The Commission gave interested parties the opportunity to comment on the guidelines and their application within 20 working days of their publication in the Official Journal.
- (16) The 2014 Aviation Guidelines were published in the Official Journal on 4 April 2014. They replaced the 1994 Aviation Guidelines ⁽⁴⁾ as well as the 2005 Aviation Guidelines ⁽⁵⁾.
- (17) On 15 April 2014 a notice was published in the Official Journal inviting Member States and interested parties to submit comments on the application of the 2014 Aviation Guidelines to this case within 1 month of their publication ⁽⁶⁾.

⁽³⁾ Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).

⁽⁴⁾ Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (OJ C 350, 10.12.1994, p. 5).

⁽⁵⁾ Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).

⁽⁶⁾ OJ C 113, 15.4.2014, p. 30.

- (18) On 13 June 2014, SOGAER provided comments on the case in the context of the adoption of the new guidelines. GEASAR and SOGEAAL provided their comments on 16 June 2014 and easyJet on 4 July 2014. The comments from SOGAER, GEASAR, SOGEAAL and easyJet were transmitted to Italy by the Commission on 9 July 2014. Italy has not submitted any observations on those comments.
- (19) On 12 and 26 September 2014 Ryanair provided further comments on the case. The Commission forwarded those comments to Italy on 28 October 2014. Italy has not submitted any observations on those comments.
- (20) On 26 January 2015, Ryanair and a consultancy firm acting on its behalf provided further comments, which were forwarded to Italy on 4 February 2015. Italy has not submitted any observations on those comments.
- (21) On 27 February 2015 and 2 March 2015, Ryanair and a consultancy firm acting on its behalf provided further comments, which were forwarded to Italy on 24 March 2015. Italy has not submitted any observations on those comments.
- (22) On 18 March 2015, the Commission requested Italy to provide additional information on the case. Italy replied on 11, 18 and 19 May 2015.
- (23) On 31 March 2015, easyJet provided additional comments completing its original submission of 30 July 2013. On 1 and 14 May 2015 easyJet and a consultancy firm acting on its behalf provided further comments on the case. On 1 June 2015, easyJet provided additional comments on the case. All those comments were forwarded to Italy on 6 July 2015. On 17 September 2015, Italy submitted its observations on the comments from easyJet and the consultancy firm acting on its behalf.
- (24) On 29 June 2015, the Commission requested additional information from Italy. Italy replied partially on 14 July 2015 and sent the annexes to that reply on 10 September 2015.
- (25) On 17 July 2015 the Commission requested additional information from Italy. Italy replied on 11 September 2015.
- (26) On 8 and 14 October 2015, the Commission requested additional information from Italy. Italy replied on 5 November 2015.
- (27) On 24 November 2015, Italy provided further information on the case.
- (28) On 24 November 2015, the Commission requested additional clarifications from Italy. Italy replied on 27 November 2015.
- (29) On 4 December 2015, Ryanair and a consultancy firm acting on its behalf provided further information on the case, which was forwarded to Italy on 8 December 2015. Italy replied on 16 December 2015, indicating that it had no observations on those documents.
- (30) On 11, 16 and 17 December 2015, Italy submitted further comments on the case.

2. DETAILED DESCRIPTION OF THE AID

2.1. TITLE AND OBJECTIVES OF THE MEASURE

- (31) The notified scheme provides compensation for public service obligations to operators of airports located in Sardinia, with the aim of strengthening and developing air transport. Italy claims that those public service obligations relate to a service of general economic interest (hereinafter 'SGEI'). The scheme has been established pursuant to Article 3 of Regional law of Sardinia of 13 April 2010, No 10 ⁽⁷⁾, (hereinafter 'Law 10/2010').
- (32) This article defines the purpose of that scheme, which consists in strengthening air transport to and from Sardinia by extending flight operations, both in terms of frequencies in winter periods and the number of new destinations served. For this purpose, Sardinian airports were to channel this public financing to airlines as public service compensation.

⁽⁷⁾ Legge Regionale 13 aprile 2010, n.10 — Misure per lo sviluppo del trasporto aereo — Art. 3: Incentivi alla destagionalizzazione dei collegamenti aerei isolani.

- (33) The broader objective of the scheme is strengthening the regional economy by increasing flows of tourists, in particular outside the summer season.

2.2. GRANTING AUTHORITY

- (34) The Region of Sardinia (hereinafter 'the Region') is the granting authority. The Region benefits from the special status of autonomous region in Italy.

2.3. LEGAL FRAMEWORK

- (35) Article 3 of Law 10/2010 provides for funding in the form of compensation for public service obligations to Sardinian airport operators for the period 2010-2013. Law 10/2010 is implemented by decisions adopted by the Regional Executive.
- (36) Regional Decree No 122/347 of 17 May 2010 ⁽⁸⁾ states that the amounts defined by Law 10/2010 are at the charge of the regional budget.
- (37) The Sardinian Regional Executive has adopted several implementing acts, which define the conditions and arrangements for access to funding under Law 10/2010, as follows:
- (a) Sardinia's Decision No 29/36 of 29 July 2010 ⁽⁹⁾ defines the criteria, nature and duration of transport service for which funding could be granted, and sets out the guidelines for the drafting and assessment of the airports' plans of activities ('programmi di attività').
 - (b) Sardinia's Decision No 43/37 of 6 December 2010 ⁽¹⁰⁾ approves the plans of activities submitted by the airport operators for 2010 and the specific amount to be granted to each of them for 2010.
 - (c) Sardinia's Decision No 52/117 of 23 December 2011 ⁽¹¹⁾ establishes the annual amounts to be granted from the Region to the airport operators for the period 2011-2013 on the basis of the plans of activities presented by the airport operators in 2011.
- (38) Regional law of 19 January 2011, No 1 ⁽¹²⁾ reduced the contributions to be granted from the Region to the airports, as defined by Law 10/2010, to EUR 21 100 000 for 2011 and EUR 21 500 000 for 2012 and 2013.
- (39) Regional law of 30 June 2011, No 12 ⁽¹³⁾ establishes a mechanism of financial advances to be operated through the constitution of an *ad hoc* financial fund inside SFIRS ⁽¹⁴⁾. SFIRS is the financial in-house company of the Sardinian Region, which, as financial broker and operational branch of the Region, has been entrusted by the Region to set up and manage the regional fund aimed at granting financial advances as interest-bearing shareholder's financing ⁽¹⁵⁾. SFIRS is placed under direct control of and managed by the Region. Its role is to manage plans, policies and programs set out by the Region for the economic and social development of the territory. Its board of directors is appointed by the Region. The entrustment act No 15 of 9 August 2011 ⁽¹⁶⁾ entrusts SFIRS with the constitution and management of the 'airports regional fund' ⁽¹⁷⁾ ('the regional fund') aimed at granting financial advances to the contributions of the Region. Decision No 500 of 9 August 2011 ⁽¹⁸⁾ approves the detailed rules for implementation of the regional fund. Decision No 22 of 30 January 2012 ⁽¹⁹⁾ completes the rules set out in Decision No 500 of 9 August 2011.

⁽⁸⁾ Decreto Assessorato della Programmazione, Bilancio, Credito e Assetto del Territorio n. 122 del 17.5.2010.

⁽⁹⁾ Deliberazione della Giunta regionale No 29/36 del 29.7.2010 — Attuazione dell'art. 3 della L.R. 13 aprile 2010, n. 10. Misure per lo sviluppo del trasporto aereo.

⁽¹⁰⁾ Deliberazione della Giunta regionale No 43/37 del 6.12.2010 — Legge regionale 13 aprile 2010, No 10, Art. 3. Misure per lo sviluppo del trasporto aereo. Programmi di attività degli aeroporti.

⁽¹¹⁾ Deliberazione No 52/117 del 23.12.2011 — Legge regionale 13 aprile 2010, No 10. Misure per lo sviluppo del trasporto aereo. Programmi di attività triennio 2011-2013.

⁽¹²⁾ Legge Regionale 19 gennaio 2011, n. 1 — Disposizioni per la formazione del bilancio annuale e pluriennale della Regione (Legge finanziaria 2011).

⁽¹³⁾ Legge Regionale 30 giugno 2011, n.12 Art.4, commi 32 e 33.

⁽¹⁴⁾ Società Finanziaria Industriale Regione Sardegna SpA — www.sfirs.it — Financial broker under Articles 106 and 107 of Legislative Decree 1 September 1993 No 385.

⁽¹⁵⁾ 'Anticipazioni finanziarie a titolo di finanziamento soci oneroso'.

⁽¹⁶⁾ Atto di affidamento a SFIRS, rep. 15 del 9 agosto 2011.

⁽¹⁷⁾ Fondo regionale aeroporti.

⁽¹⁸⁾ Determinazione del Direttore del Servizio Pianificazione e Programmazione Sistemi di trasporto No 694 del 2 ottobre 2012 di integrazione del regolamento di attuazione del Fondo aeroporti a seguito della legge regionale No 15/2012.

⁽¹⁹⁾ Determinazione No 22 del 30.1.2012 — Legge regionale 30 giugno 2011, No 12 — Art. 4, commi 32 e 33 — Fondo regionale per anticipazioni finanziarie — Regolamento attuativo.

- (40) Regional law of 7 August 2012, n. 15 ⁽²⁰⁾ amends the regional law of 30 June 2011. Decision No 694 of 2 October 2012 ⁽²¹⁾ implements the regional law of 7 August 2012 and completes and amends the rules for implementation of the regional fund, by extending the application of the law of 30 June 2011 for the years 2012 and 2013.
- (41) Decision No 4/34 of 5 February 2014 ⁽²²⁾ modifies the allocation of the regional contributions for the year 2013, taking into account the reduction of the regional contributions decided in the context of the budget of the Region allocated to the financing of the activities pursuant to Law 10/2010 and the effective costs sustained by the three airport operators.

2.4. THE SCHEME

- (42) The notified scheme intends to develop air transport and make air connections to and from Sardinia less seasonal, which contributes to the overarching objective of attracting tourism and strengthening the regional economy. To that end, Law 10/2010 provides for funding in the form of compensation for public service obligations to Sardinian airport operators for the period 2010-2013.
- (43) The implementing decisions clarify that the objective of Law 10/2010 — to reduce seasonality — consists of extending the period during which flights are operated. This entails increasing the frequency of flights during the so-called mid-season (that is to say, the months flanking the summer season — April, May, September and October) or the winter season, and also the opening up of new routes to and from places not yet connected to Sardinia. The reasoning behind the scheme is to promote a regional air transport policy that strengthens the economic, social and territorial cohesion of the communities concerned by addressing the accessibility disadvantages facing Sardinia as an island.
- (44) The decisions referred to in Section 2.3 establish the three following activities:
- (a) *Increase of air traffic by airlines ('activity 1')*. Airlines and airport operators have to define, within detailed 'plans of activities', strategies to increase air traffic and favour de-seasonality of touristic flows, by defining routes of strategic interest, frequencies, capacity offer and subsequent traffic objectives. If those targets are met, financial compensation is received; if the targets are not met, penalties must be paid.
 - (b) *Promotion of Sardinia as a touristic destination by airlines ('activity 2')*. In the aforementioned 'plans of activities', airlines and airport operators should also define specific marketing and advertising activities aimed at increasing the number of passengers and at promoting the catchment area of the airport.
 - (c) Further promotional activities entrusted by airport operators to third service providers other than airlines ⁽²³⁾ on behalf of the Region ('activity 3').
- (45) Once the Region has approved the plans of activities, assessing the activities proposed therein on the basis of their economic impact on the airport and the Sardinian economic activity as a whole, it distributes accordingly the financial resources available for each year and each airport.
- (46) Compensation to airport operators is calculated on the basis of the estimated costs borne by airlines for flying the strategic routes, national or international, and meeting the passenger targets per year. Once the passenger targets have been defined, airport operators select the airlines requested to operate the services in question. Selected carriers receive the compensation which covers the difference between their operating costs and the actual or presumed revenues from passenger tickets.
- (47) The notification document from Italy mentions that the Region should approve the tender process organised by airport operators to select the interested airlines. The Commission has not been informed of any tender organised

⁽²⁰⁾ Legge Regionale 7 agosto 2012, No 15, Art. 2.

⁽²¹⁾ Determinazione Prot. No 7641 Rep. No 694 del 2 ottobre 2012 — Legge regionale 30 giugno 2011, No 12 — Art. 4, commi 32 e 33, modificata e integrata dalla legge regionale 7 agosto 2012, No 15, Art. 2 — Fondo regionale per anticipazioni finanziarie — Rimodulazione e integrazione Regolamento attuativo.

⁽²²⁾ Deliberazione No 4/34 del 5.2.2014 — Legge regionale 13 aprile 2010, n. 10. Misure per lo sviluppo del trasporto aereo. Riparto risorse annualità 2013.

⁽²³⁾ Advertising or tourist agencies for example.

by airport operators. According to Italy, airlines have been selected on the basis of the most attractive commercial offers submitted to airport operators upon publication of notices on their websites. As regards airports, the aid scheme is conceived to coordinate the development of the regional airport system by placing regional airports on a complementary position with each other ⁽²⁴⁾.

2.5. MARKETING ACTIVITIES UNDERTAKEN BY AIRLINES

- (48) The Law 10/2010 provides that, in the context of activity 2, airport operators have to conclude marketing agreements with airlines with a view to promoting Sardinia as a touristic destination. The plans of activities must therefore define specific strategies of marketing and advertising aimed at increasing the number of passengers and at promoting the catchment area of the airport.
- (49) Two different types of agreement have been entered into by airport operators, depending on the airline: either a single agreement including both airport services and marketing services or two separate contracts, as in the case of Ryanair, where there is an airport services agreement with Ryanair and a marketing services agreement with its fully-owned marketing company AMS (Airport Marketing Services). The agreements combine and link traffic increase and marketing measures and are based on a premium system according to the success of the traffic increase measures. Under the agreements, the carrier has to operate a defined flights programme and at the same time develop a marketing and advertising plan.
- (50) The marketing is based on a dedicated page on the airport destination on the carriers' website which sometimes includes a travel guide. The marketing is aimed at promoting the tourist and business attractions in the region and maximising the share of inbound foreign originating travellers.

2.6. AIRPORTS CONCERNED

- (51) In 2010, Sardinia counted five airports:
- (a) Alghero, the airport operator of which is SO.GE.A.AL S.p.A. ('SOGAAL')
 - (b) Cagliari-Elmas, the airport operator of which is So.G.Aer. S.p.A. ('SOGAER')
 - (c) Olbia, the airport operator of which is GEASAR S.p.A. ('GEASAR')
 - (d) Tortoli, the airport operator of which is GE.AR.TO. S.p.A. ('GEARTO')
 - (e) Oristano, the airport operator of which is SO.GE.A.OR. S.p.A. ('SOGAOR')
- (52) All these companies are limited liability companies. SOGEAAL and SOGAER are publicly held. GEASAR is controlled by the air carrier Meridiana.
- (53) Italy confirmed that, although Law 10/2010 refers to all Sardinian airports, the two minor airports of the island, Oristano and Tortoli-Arbatax (which have less than 200 000 passengers per year ⁽²⁵⁾), did not receive any financing pursuant to Law 10/2010.
- (54) Alghero is located in the north-west of Sardinia, Olbia in the north-east and Cagliari in the south. Distances and travel times by road between those airports are the following ⁽²⁶⁾:

Cagliari-Alghero 247 km — 2h40

Cagliari-Olbia 273 km — 2h51

Olbia-Alghero 136 km — 1h53

⁽²⁴⁾ Deliberazione No 29/36 of 29 July 2010, p. 1.

⁽²⁵⁾ The airport of Oristano, suspended in 2011, had around 7 000 passengers in 2010 and around 1 300 thousand in 2011. The airport of Tortoli-Arbatax had around 13 500 passengers in 2010 and around 2 800 passengers in 2011.

⁽²⁶⁾ Source: Google Maps.

2.6.1. CAGLIARI AIRPORT

- (55) The airport operator SOGAER is publicly owned, as the chamber of commerce of Cagliari (C.C.I.A. Cagliari) owns the majority of shares, as indicated in Table 1. The Region does not control the Cagliari chamber of commerce ⁽²⁷⁾, which is financed autonomously thanks to an annual fee paid by company members. The chamber of commerce is an autonomous public entity which is in charge of providing miscellaneous services the company members ⁽²⁸⁾.

Table 1

Shareholdership structure of SOGAER ⁽¹⁾:

	(%)
C.C.I.A. Cagliari	94,35
S.F.I.R.S. SpA	3,43
Banco di Sardegna SpA	1,05
Regione Autonoma Sardegna	0,72
Meridiana SpA	0,21
C.C.I.A.A. Oristano	0,10
Corsorzio Sardegna Costa Sud	0,06
Associazione Industriali Province della Sardegna Meridionale	0,04
CONFAPI Sardegna	0,03
Editorial Airon	0,01
Fima SpA	0,01

⁽¹⁾ The main shareholder of the airport has the intention to sell a 40 % of its shares in a very next future (source: 2013 Annual report).

- (56) In 2014, the airport handled 3 639 627 passengers ⁽²⁹⁾. It is located in the southern part of the island and constitutes its main airport in terms of traffic. Since 2007 SOGAER has owned the entire concession for the airport management. The airport operates domestic and international flights and the main airlines present at the airport are Ryanair, Meridiana, Alitalia CAI, Airone, easyJet, Volotea and AirBerlin. During the period 2007-2009, 69 % of the passenger traffic at the airport was recorded between April and October.
- (57) At 31 December 2013 SOGAER recorded a turnover of EUR 26,8 million and a positive net result of EUR 1,7 million. Total assets amounted to EUR 125,5 million.

2.6.2. ALGHERO AIRPORT

- (58) The airport operator of the Alghero airport, SOGEAAL, is 80,20 % owned by the Sardinian Region and 19,80 % owned by SFIRS SpA (in-house company owned by the Region) ⁽³⁰⁾. SOGEAAL started its activity in 1995 through a partial and temporary concession, which was transformed into a full concession in 2007 ⁽³¹⁾.

⁽²⁷⁾ Source: Italy in its communication to the Commission of 5 May 2016.

⁽²⁸⁾ The law No 580 of 29 December 1993 is regulating the status of the chambers of commerce in Italy.

⁽²⁹⁾ Source: Wikipedia.

⁽³⁰⁾ This shareholdership structure of SOGEAAL reflects the changes which happened in the course of 2010. The airport is currently undergoing privatisation.

⁽³¹⁾ Concessione di gestione totale.

- (59) The airport is located in the north-west part of the island. According to Italy, its catchment area covers approximately 35 % of the island and includes 450 000-600 000 inhabitants within the provinces of Sassari, Oristano and Nuoro. In terms of commercial passenger traffic, Alghero is the third airport of Sardinia, with a total of 1 639 374 passengers in 2014 ⁽³²⁾.
- (60) Three types of airlines operate at the airport: traditional ones such as Alitalia, Meridiana, Iberia and Lufthansa, low-cost ones such as easyJet and Ryanair and charter companies such as Tui Fly and Jet Time. During the period 2007-2009, 75 % of the passenger traffic at the airport was recorded between April and October.
- (61) At 31 December 2013 SOGEAAL recorded a turnover of EUR 15,9 million and a negative net result of EUR 1,5 million. Total assets amounted to EUR 42,0 million.

2.6.3. OLBIA AIRPORT

- (62) The operator of Olbia airport, GEASAR, has a majority of private shareholders ⁽³³⁾, as indicated in Table 2.

Table 2

Shareholdership structure of GEASAR

	(%)
Meridiana S.p.A.	79,79
C.C.I.A.A. di Sassari (Camera di Commercio)	10,00
C.C.I.A.A. di Nuoro (Camera di Commercio)	8,42
Regione Sardegna	1,59
Consorzio Costa Smeralda	0,20

- (63) GEASAR started its activity in 1989 with a partial concession for the management of Olbia airport. Olbia is located in the north-east part of Sardinia. The airport hosts traditional airline companies, such as Alitalia and Lufthansa, low-cost airlines such as easyJet and Vueling, and charter companies such as Smartwings and Mistral Air.
- (64) The airport had 2 127 718 passengers in 2014 ⁽³⁴⁾. It is mainly dedicated to passenger commercial traffic, domestic and international. The airport has a touristic vocation, as it serves the highly touristic *Costa Smeralda*. Therefore traffic is mostly concentrated between May and October: during the period 2007-2009, 84 % of the passenger traffic at the airport was registered between April and October.
- (65) At 31 December 2013 GEASAR recorded a turnover of EUR 27,0 million and a positive net result of EUR 2,8 million. Total assets amounted to EUR 57,3 million.

2.7. MECHANISM AND STRUCTURE OF THE FINANCING PUT IN PLACE BY THE SARDINIAN REGION

2.7.1. GLOBAL AMOUNT OF THE CONTRIBUTIONS COMMITTED BY THE SARDINIAN REGION

- (66) Originally, Article 3 of Law 10/2010 authorised the Region to grant airport operators EUR 19 700 000 for 2010 and EUR 24 500 000 for each of the subsequent years 2011, 2012 and 2013.

⁽³²⁾ Source: Airport's official website.

⁽³³⁾ Società per azioni costituita nel 1985.

⁽³⁴⁾ Source: Wikipedia.

- (67) Throughout the period, taking into account its own resources and the plans of activities presented by the airports, the Region progressively reduced the amounts originally committed to financing of the scheme as set out in Table 3.

Table 3

Compensation committed in favour of Sardinian airports — 2010-2013

(EUR)

	2010	2011	2012	2013	Total
Alghero	9 960 000	10 559 913,00	9 094 919,77	8 029 737,87	37 644 570,64
Cagliari	5 000 000	4 777 320,33	8 405 080,23	9 261 925,37	27 444 325,93
Olbia	4 000 000	3 057 654,00	4 000 000,00	4 208 336,76	15 265 990,76
Oristano	300 000	—	—	—	300 000
Total	19 260 000	18 394 887,33	21 500 000	21 500 000	80 654 887,33

- (68) Decision No 4/34 of 5 February 2014 modified the regional contribution for 2013 and provides for a global amount of EUR 17 500 000 for 2013 for the three airport operators as set out in Table 4.

Table 4

Compensation committed in favour of Sardinian airports — 2013 (according to Decision No 4/34 of 5 February 2014)

(EUR)

	Year 2013
Alghero	8 235 603
Cagliari	5 264 397
Olbia	4 000 000
Total	17 500 000

- (69) The final contributions resulting from the various modifications, actually granted by the Sardinian Region to the three airports, are set out in Table 5 ⁽³⁵⁾.

Table 5

Final compensation committed in favour of Sardinian airports — 2010-2013

(EUR)

	2010	2011	2012	2013	Total
Alghero	9 960 000	10 559 913	9 094 920	8 235 603	37 850 436
Cagliari	5 000 000	4 777 320	8 405 080	5 264 397	23 446 797
Olbia	4 000 000	3 057 654	4 000 000	4 000 000	15 057 654
Oristano	300 000	—	—	—	300 000
Total	19 260 000	18 394 887	21 500 000	17 500 000	76 654 887

⁽³⁵⁾ As explained in recital 53, financial compensation had originally been foreseen in favour of all Sardinian airports, including Oristano airport, but it was then cancelled.

- (70) The measure takes the form of direct grants from the Region to the Sardinian airport operators, which will then transfer the sums involved to the airlines and other entities involved. The grants are directly financed from the regional budget. Airport operators have to manage separate accounts to keep track of the amounts received.

2.7.2. THE PLANS OF ACTIVITIES AND THE ROUTES OF STRATEGIC INTEREST

- (71) The operators of the Sardinian airports are required to draft plans of activities and submit them to the Region for approval. Those plans of activities have to include the activities consisting in developing point-to-point air connections, with national and European destinations to and from Sardinian airports, to be achieved through agreements with airlines. To that end, the plan itself must indicate which initiatives, from among those listed ⁽³⁶⁾, the airport operators consider feasible in terms of the objectives of enhancing and making air transport less seasonal laid down by Law 10/2010.
- (72) The plans have to identify the routes of strategic interest (domestic and international) and the targets per year concerning flight frequency, load factor, new routes, number of passengers and marketing activity.
- (73) The plans of activities have to respect the following principles:
- (a) The routes of strategic interest cannot overlap with the routes already operated under a PSO regime ⁽³⁷⁾ on the basis of Regulation (EC) No 1008/2008 of the European Parliament and of the Council ⁽³⁸⁾.
 - (b) The financial contribution for each of the subsidised routes should decrease over time.
 - (c) The financial agreement concluded with airlines should include a plan for promotion of the local territory that should be consistent with the tourism-related communication strategy of the Region.
 - (d) Where the total compensation requested by the airports is higher than the total amount authorised by the regional budget, preference is given to international connections *vis à vis* domestic routes (except for destinations serving more than 3 million inhabitants), routes connecting major hubs, routes with a great traffic potential, routes for which services are to be provided throughout the year rather than on a seasonal basis and companies deciding to create an operational base in the local airport.
- (74) Operating the routes of strategic interest represents the SGEI that airlines should provide in exchange for compensation (subject to targets set for passenger traffic being met). The plans of activities should be backed up by appropriate economic and financial forecasts that illustrate the prospects for the profitability of the initiatives in question and indicate the financial requirements associated with those activities for each year concerned. These requirements include an indication of the level of own resources invested by the airport operator as well as the investment level of third parties benefiting from the traffic increase.
- (75) The actual 'plans of activities submitted by Italy during the formal procedure comply with the requirements set out in recital 73. They contain the mandatory information required by the Region such as a presentation of the subsidised transport offer, a detailed calculation of the compensation to be granted and the expected economic benefits of the public support.
- (76) Once the activity plans have been approved, the Region decides accordingly to grant annual financial resources to each airport, assessing the activities undertaken on the basis of the valuation of their economic impact on economic activity in Sardinia.

⁽³⁶⁾ See recital 44.

⁽³⁷⁾ Since 2000, PSOs have been imposed on domestic routes between Sardinian airports and airports on mainland Italy pursuant to Union air transport rules.

⁽³⁸⁾ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

- (77) The financing of the plans is as follows:
- (a) the beneficiary airport operator will receive a first instalment as an advance payment equal to 20 % of the total amount foreseen in the plans;
 - (b) 60 % of the total funding will be paid as an interim payment on receipt of a quarterly report;
 - (c) the payment of the last instalment will be paid within 60 days of receipt of the relevant documentation, after verification by the Region of the activity carried out, the results achieved and the costs incurred.
- (78) The plans of activities have been approved by two decisions of the Region:
- (a) Sardinian Decision No 43/37 of 6 December 2010 approved the plans of activities for 2010 submitted by the operators of Cagliari, Olbia, Alghero and Oristano and the specific amounts to be granted to each of them ⁽³⁹⁾.
 - (b) Sardinian Decision No 52/117 of 23 December 2011 approved the plans of activities submitted by the operators of Cagliari, Olbia and Alghero for the period 2011-2013. The annual passenger targets per airport and the breakdown of the compensation amongst the three airports are specified. The Decision further clarifies that the plans for 2011 have to be considered definitive since they concern activities already carried out, whilst the plans for the following 2 years, 2012 and 2013, are subject to change.

2.7.3. THE MONITORING PROCESS

- (79) It is for airport operators to prepare the plans of activities in accordance with the provisions of Law 10/2010 and its various implementation acts. They have to interact with airlines in the course of that preparation and the final plan has to be approved by the Region. Should the Region disagree or notice inconsistencies with the provisions of Law 10/2010, it can require changes to the plans of activities.
- (80) Airport operators are required by the Region to monitor the performance of airlines and to apply penalties for non-fulfilment of the targets defined *ex-ante*, in particular in terms of frequencies and passengers. This penalty mechanism must be provided for in the agreements with airline companies.
- (81) The decisions of the Regional Executive implementing the Law 10/2010 envisage a monitoring mechanism to be set up by the Region, to avoid overcompensation for the annual cost forecasted for the activities in question. The Region has to define *ex-ante* actions of control, check and eventually recover any over-compensation in particular by monitoring the actual number of flights and passengers.
- (82) The Region monitors the real costs sustained by airport operators for the implementation of the activities in question by checking the apposite documentation and reporting of the annual costs (invoices from airline companies to the airport operators). Airport operators have to report the financing of the activities to the Region, based on the invoices received from contractors (airline companies for activities 1 and 2 and other companies for activity 3). It also checks that the route subject to compensation is not a route subject to PSO under Regulation (EC) No 1008/2008.
- (83) The regional financing pursuant to Law 10/2010 can only be granted in the context of the afore-mentioned plans of activities, which have to be approved by the Region. As those plans were drawn up before the activities provided for by Law 10/2010 were carried out, there may be some variations in their implementation. Therefore, the mechanism organised by the Region provides that it should adapt its final contribution to variations in the implementation of the activities or in the costs sustained by airports ⁽⁴⁰⁾. Therefore the final contribution decided

⁽³⁹⁾ As regards Tortoli-Arbatax, the act mentions that the airport operator submitted the plan for the *triennium* only (not for 2010).

⁽⁴⁰⁾ In its communication to the Commission of 11 September 2015 (recital 14), Italy provides the example of GEASAR, which, in 2013, reduced its marketing activities compared to the initial provisions (within the activity 2 financed by the Region). The Region consequently reduced its final contribution.

by the Region takes into account the actual implementation of the plans of activities and the consistency of the activities for which financing is requested with the objectives of Law 10/2010 and with the touristic marketing plan of the Region. Where discrepancies are revealed, the final contribution is adapted by the Region ⁽⁴¹⁾.

- (84) The documentation submitted by Italy shows that airport operators have indeed reported to the Region on the public funding received (including supporting evidence such as invoices relating to the costs incurred) and provided evidence of marketing and promotion actions. The Region has checked that information and paid the remaining instalment to the airport operators.

2.7.4. FINANCIAL ADVANCES AND THE ROLE OF THE REGIONAL FUND

- (85) As already mentioned in Section 2.3, the Regional law of 30 June 2011 establishes the regional fund ⁽⁴²⁾ managed by SFIRS and financed by the Region.
- (86) The financial mechanism set up by the Region pursuant to Law 10/2010 is the following:
- (a) The financial resources relating to the implementation of the three activities are advanced by the airport operators to the airlines at the airports concerned (in the case of activities 1 and 2) and to the other service providers concerned (in the case of activity 3).
 - (b) Every year, following requests for pre-financing by airport operators, the Region decides that SFIRS — through the regional fund — should grant financial advances to the airports. The regional fund then grants the airport operators, upon request, financing against remuneration (commission fee and interest) as advance payment of the amount apportioned pursuant to Law 10/2010. The advance payment should correspond to a maximum of 85 % ⁽⁴³⁾ of the contribution committed by the Region to airport operators. The financial advance is subject to interest (Euribor 6 M + 2 % for 2010 and Euribor 6 M + 1,5 % for 2011-2013) and commission fee (1 % for 2010 and 0,50 % for 2011-2013), paid by airport operators to SFIRS.
 - (c) The Region subsequently confirms the definitive amounts to be granted to airport operators ('the contribution' of the Region), within the limits of its available resources and taking into account the amounts actually paid by the airport operators in the context of the implementation of the three activities. To that end, airport operators submit appropriate reports which: (i) indicate the results achieved and include an impact analysis; (ii) specify in detail the costs actually incurred by the airport for the initiatives carried out, also providing the necessary supporting documents (invoices or similar).
 - (d) From the amount of the regional contribution, the regional fund deducts a 4 % withholding fee, which is paid back to the Region. Once the final contribution has been decided, the regional fund grants the remaining part of the financing ⁽⁴⁴⁾ to the airport operator. The fund is supposed to grant the remaining part to the airport operator within a maximum of 6 months after the conclusion of the plans of activities.

2.8. FINANCIAL FLOWS

2.8.1. FINANCIAL FLOWS FROM THE REGION TO THE AIRPORT OPERATORS

- (87) Although the Region had committed to grant a total of EUR 76 654 887 throughout the period 2010-2013 (see Table 5), it actually transferred EUR 68 510 256 to airport operators for the financing of the three activities pursuant to Law 10/2010 ⁽⁴⁵⁾ (see Table 6, column A): EUR 35 516 988 for SOGEAAL, EUR 19 250 617 for SOGAER and EUR 13 742 651 for GEASAR.

⁽⁴¹⁾ Italy provides for that purpose the example of the Oristano airport, for which the Region refused a specific route forecasted in the plan of activities of the airport — Communication from Italy to the Commission of 5 May 2015, pp. 5-6.

⁽⁴²⁾ Fondo regionale per anticipazioni finanziarie — Legge Regionale 30 giugno 2011, n. 12, Art. 4, commi 32 e 33.

⁽⁴³⁾ With a maximum up to 90 % for 2011 — Cf. Determinazione prot. No 7641 rep. No 694 del 2/10/2012.

⁽⁴⁴⁾ This amount is equivalent to the contribution decided by the Region, less the 4 % withholding fee and the financial anticipation already granted to the airport operator.

⁽⁴⁵⁾ Italy provided the Commission with tables indicating the final amount committed by the Region.

- (88) The total financial advances transferred from the regional fund to airport operators amount to EUR 42 987 645 (Table 6, column B). The commission fee and interest charge are calculated from the financial advance and deducted by the fund when the financial advance is disbursed to the airport operator. The withholding fee represents 4 % of the contribution committed by the Region and is deducted by the fund from the contribution amount when disbursing the remaining part of the sum granted by the Region to the airport (after the financial advances have been paid) ⁽⁴⁶⁾.
- (89) Therefore, the net amount to be received by the airport operator (Table 6, column C) can be calculated as the contribution of the Region less the three financial charges (commission fee, interest charge and withholding fee). The amounts communicated by Italy as being the net amounts actually received by the airport operators (Table 6, column D), are slightly different from the theoretical amounts:
- (a) In the case of SOGEAAL, Italy explains that the airport operator should still receive EUR 167 661 from the Region in respect of the 2013 contribution.
- (b) The regional contributions to SOGAER and GEASAR for 2013 (EUR 4 946 576 and EUR 3 795 930 respectively) were decided on by the Region on 19 June 2014 and 10 June 2014 respectively, but were never paid ⁽⁴⁷⁾: Italy recognises that the regional decision constitutes a legally binding commitment to pay the amounts in question, which can be invoked before a national court. Nevertheless Italy decided to wait until the ongoing State aid proceedings have ended.

⁽⁴⁶⁾ The Commission notes that the Italian authorities do not explain why the financial advances reported in the Tables sometimes exceed the contribution fixed by the Region. However, these differences are not relevant for the purpose of assessing the aid measures since the Commission only retains the budgetary commitment (column A) and the amount effectively received by airport operators (column D) — See Table 14.

⁽⁴⁷⁾ 'Disposti ma non erogati'.

Table 6

Effective financial flows from the Region to the airport operators

SOGAAL — ALGHERO

(EUR)

Reference activity period	Contribution fixed up by the Region (A)		Financial advance (B)		Financial charges			Amount to be received by the airport operator (C)	Net amount effectively received by the airport operator (D)	Difference (C) — (D)
	Amount	Date of commitment	Amount	Date of payment	Withholding fee 4 %	Commission fee	Interest charge			
2010	8 517 963	7/11/2012	[...] (*)	20/09/2011	[...]	[...]	[...]	[...]	[...]	[...]
2011	9 041 162	12/11/2012	[...]	8/02/2012 & 23/08/2012	[...]	[...]	[...]	[...]	[...]	[...]
2012	9 062 413	3/06/2013	[...]	22/10/2012	[...]	[...]	[...]	[...]	[...]	[...]
2013	8 895 449	27/10/2014	[...]	17/10/2013	[...]	[...]	[...]	[...]	[...]	[...]
Total	35 516 988		[...]		[...]	[...]	[...]	[...]	[...]	[...]

(*) Business secret.

SOGAER — CAGLIARI

(EUR)

Reference activity period	Contribution fixed up by the Region (A)		Financial advance (B)		Financial charges			Amount to be received by the airport operator (C)	Net amount effectively received by the airport operator (D)	Difference (C) — (D)
	Amount	Date of commitment	Amount	Date of payment	Withholding fee 4 %	Commission fee	Interest charge			
2010	4 657 311	7/11/2012	[...]	10/09/2012	[...]	[...]	[...]	[...]	[...]	[...]
2011	4 777 320	7/11/2012	[...]	15/06/2012	[...]	[...]	[...]	[...]	[...]	[...]
2012	4 869 410	13/06/2013	—	—	[...]	—	—	[...]	[...]	[...]
2013	4 946 576	19/06/2014	—	—	[...]	—	—	[...]	[...]	[...]
Total	19 250 617		[...]		[...]	[...]	[...]	[...]	[...]	[...]

Reference activity period	Contribution fixed up by the Region (A)		Financial advance (B)		Financial charges			Amount to be received by the airport operator (C)	Net amount effectively received by the airport operator (D)	Difference (C) — (D)
	Amount	Date of commitment	Amount	Date of payment	Withholding fee 4 %	Commission fee	Interest charge			
2010	3 972 223	7/11/2012	[...]	19/09/2011	[...]	[...]	[...]	[...]	[...]	0
2011	2 945 363	7/11/2012	[...]	1/06/2012	[...]	[...]	[...]	[...]	[...]	0
2012	3 029 135	12/06/2013	—	—	[...]	—	—	[...]	[...]	0
2013	3 795 930	10/06/2014	—	—	[...]	—	—	[...]	[...]	[...]
Total	13 742 651		[...]	—	[...]	[...]	[...]	[...]	[...]	[...]

(EUR)

2.8.2. FINANCIAL FLOWS FROM THE AIRPORT OPERATORS TO AIRLINES AND THIRD SERVICE PROVIDERS FOR THE FINANCING OF THE THREE ACTIVITIES

- (90) The airport operators of Alghero, Cagliari, and Olbia have financed airlines and third service providers for the implementation of activities 1, 2 and 3 over the period 2010-2013. According to Italy, the compensation received by airport operators from the Region during the period 2010-2013 for the financing of activities 1, 2 and 3 has been passed on to airlines and third service providers. Airlines received financing for activities 1 and 2 and have been selected on the basis of the 'most attractive commercial offer' ⁽⁴⁸⁾. Third service providers in charge of marketing measures, such as advertising or tourist agencies, received financing for activity 3.
- (91) Table 7 summarises the financial flows from airport operators to airlines and third service providers for the financing of activities 1, 2 and 3.

Table 7

Financial flows from the airport operators to airlines and third service providers for the financing of activities 1, 2 and 3

SOGEAAL — ALGHERO

(EUR)

Reference activity period	Financing of the activities		
	activities 1 & 2	activity 3	Total (A)
2010	[...]	[...]	8 517 963
2011	[...]	[...]	9 041 162
2012	[...]	[...]	9 062 413
2013	[...]	[...]	8 895 449
Total	[...]	[...]	35 516 987 (100 %)

SOGAER — CAGLIARI

(EUR)

Reference activity period	Financing of the activities		
	activities 1 & 2	activity 3	Total (A)
2010	[...]	[...]	4 657 311
2011	[...]	[...]	4 977 946
2012	[...]	[...]	4 869 410
2013	[...]	[...]	4 946 576
Total	[...]	[...]	19 451 243 (100 %)

⁽⁴⁸⁾ See recital 47: although tenders had been foreseen by the Sardinian legal framework, no tender has been organised to select airline companies.

GEASAR — OLBIA

(EUR)

Reference activity period	Financing of the activities		
	activities 1 & 2	activity 3	Total (A)
2010	[...]	[...]	3 972 223
2011	[...]	[...] ⁽¹⁾	2 945 500
2012	[...]	[...]	3 029 160
2013	[...]	[...]	3 795 935
Total	[...]	[...]	13 742 818 (100 %)

⁽¹⁾ In its communication of 11 September 2015, Italy declares an amount of EUR [...] for the financing of activity 3 in 2011. In its communication of 16 December 2015 (report from Deloitte Financial Advisory S.r.l.), Italy mentions the amount of EUR [...] instead of EUR [...] without any justification for the difference.

- (92) Table 8 summarises the payments by the airport operators to airline companies for the financing of activities 1 and 2.

Table 8

Financial flows from the airport operators to airline companies for the financing of activities 1 and 2

SOGAAL — ALGHERO

(EUR)

	2010	2011	2012	2013	Total
Ryanair	[...]	[...]	[...]	[...]	[...]
AMS	[...]	[...]	[...]	[...]	[...]
easyJet	—	—	[...]	[...]	[...]
Volotea	—	—	—	[...]	[...]
Alitalia	[...]	—	—	—	[...]
Meridiana	[...]	—	[...]	—	[...]
Wizzair	—	—	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	35 221 513

SOGAER — CAGLIARI

(EUR)

	2010	2011	2012	2013	Total
Ryanair	[...]	[...]	[...]	[...]	[...]
AMS	[...]	[...]	[...]	[...]	[...]
easyJet	[...]	[...]	[...]	[...]	[...]
Germanwings	—	—	[...]	—	[...]
Tourparade	—	—	[...]	—	[...]

(EUR)

	2010	2011	2012	2013	Total
Air Berlin	—	—	—	[...]	[...]
Vueling	—	—	—	[...]	[...]
Volotea	—	—	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	19 018 170

GEASAR — OLBIA

(EUR)

	2010	2011	2012	2013	Total
Meridiana Fly	[...]	[...]	[...]	[...]	[...]
Air Italy	[...]	[...]	—	—	[...]
Air Berlin	[...]	[...]	[...]	[...]	[...]
easyJet	[...]	[...]	[...]	[...]	[...]
Norwegian	[...]	[...]	[...]	[...]	[...]
Jet2.com	—	[...]	[...]	[...]	[...]
NIKI	—	—	[...]	—	[...]
Vueling	—	—	—	[...]	[...]
Air Baltic	—	—	—	[...]	[...]
Volotea	—	—	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	12 683 623

2.8.3. CONCLUSION

- (93) As set out in Table 6, the financing provided by the Region has been fully transferred to airport operators, which themselves have even provided more financing than they received from the Region for the implementation of activities 1, 2 and 3 under their plans of activities. (The difference between the funding actually provided for the implementation of activities 1, 2, 3 (column B of Table 9) and the amount actually received from the Region by airport operators for carrying out these activities (column C of Table 9) amounts to EUR 12 733 760).

Table 9

Comparison between the financing provided by the Region and the amounts financed by airport operators for the implementation of the three activities pursuant to Law 10/2010

(EUR)

	Contribution fixed up by the Region (A)	Total amount financed by airports for the three activities (B)	Difference (A) – (B)	Net amount effectively received from the Region by airport operators (C)	Difference (B) – (C)
Alghero	35 516 988	35 516 987	1	33 028 346	2 488 641
Cagliari	19 250 617	19 451 243	– 200 625	13 607 197	5 844 045

(EUR)

	Contribution fixed up by the Region (A)	Total amount financed by airports for the three activities (B)	Difference (A) – (B)	Net amount effectively received from the Region by airport operators (C)	Difference (B) – (C)
Olbia	13 742 651	13 742 818	– 167	9 341 744	4 401 074
TOTAL	68 510 256	68 711 048	– 200 792	55 977 287	12 733 760

(94) In addition, as regards airlines, as set out in Table 8, the financing provided by the Region through airport operators to airlines for activities 1 and 2 has been passed on to the following companies:

- (1) Ryanair
- (2) AMS
- (3) Meridiana Fly
- (4) Air Italy
- (5) Air Berlin
- (6) easy Jet
- (7) Norwegian
- (8) Jet2.com
- (9) NIKI
- (10) Vueling
- (11) Air Baltic
- (12) Volotea
- (13) Tourparade
- (14) Alitalia
- (15) Wizzair
- (16) Germanwings.

3. GROUNDS FOR INITIATING THE PROCEDURE AND THE INITIAL ASSESSMENT BY THE COMMISSION

(95) According to the Opening Decision, the scope of the formal investigation procedure encompasses the following activities:

- (a) financial compensation from the Region to the three airport operators (SOGAAL, GEASAR and SOGAER) throughout the period 2010-2013 for the financing of activities 1, 2 and 3;
- (b) financial compensations provided by the three airport operators to airline companies for the financing of activities 1 and 2 throughout the period 2010-2013 ⁽⁴⁹⁾.

(96) The opening decision noted that since the Commission was investigating possible unlawful aid granted by the operator of Alghero airport in Case SA.23098 ⁽⁵⁰⁾, the present case covers only aid measures not examined in that case ⁽⁵¹⁾.

⁽⁴⁹⁾ The scope of the Opening Decision did not include the potential aid granted by airport operators to service providers other than airlines for activity 3. Therefore, the Commission cannot take a position on this aspect.

⁽⁵⁰⁾ Commission Decision (EU) 2015/1584 of 1 October 2014 on State aid SA.23098 (C 37/07) (ex NN 36/07) implemented by Italy in favour of Società di Gestione dell'Aeroporto di Alghero So.Ge.A.AL S.p.A. and various air carriers operating at Alghero airport (OJ L 250, 25.9.2015, p. 38).

⁽⁵¹⁾ See recitals 48-52.

- (97) Regarding the financial compensation from the Region to the three airport operators, the Commission reached the preliminary conclusion that the compensation granted to Sardinian airports constitutes State aid within the meaning of Article 107(1) of the Treaty and that, Italy had not respected the standstill obligation in Article 108(3) of the Treaty with respect to that compensation.
- (98) The Commission expressed its doubts on the compatibility of the compensation scheme for the airport operators with the internal market. In particular, the Commission reached the preliminary view that the compensation at issue could not be seen as compensation for a genuine SGEI entrusted to airport operators.
- (99) Regarding the financial compensation provided by the three airport operators to airline companies for the financing of activities 1 and 2, the Commission considered that it may involve State aid within the meaning of Article 107(1) of the Treaty and that it might be considered illegal under Article 108(3) of the Treaty, given that it appears to have been granted to the beneficiaries in violation of the standstill obligation. In particular, the Commission considered that the Region exercised control over the resources under consideration, which had been clearly committed in the regional budget for the precise purpose, among others, of subsidising air transport routes to and from the airports. Therefore the Commission considered that the transfers from the airport operators to the airlines were imputable to the State and involved State resources. The Commission also considered that the funding received by airlines reduces the costs that they would otherwise have to bear from their own resources if they were to operate the same flight schedule, and concluded that there was an economic advantage for airlines.
- (100) Furthermore, the Commission expressed its doubts whether the financial compensation paid to airlines operating at the airports of Alghero, Cagliari and Olbia can be considered compatible with the internal market pursuant to Article 107(3)(c) of the Treaty. In particular the Commission expressed its doubts regarding compatibility in accordance with the 2011 SGEI Decision ⁽⁵²⁾ in conjunction with Regulation (EC) No 1008/2008, the 2011 SGEI Framework ⁽⁵³⁾ in conjunction with Regulation (EC) No 1008/2008, and the 2005 Aviation Guidelines.

4. COMMENTS FROM ITALY ON THE OPENING DECISION

4.1. THE LAW 10/2010

- (101) Italy justifies the financial intervention based on Law 10/2010 for the period 2010-2013 by the development of air transport between Sardinia and domestic and European destinations with the aim of increasing touristic flows, in particular outside of the summer season, which is of great importance for the Sardinian economy.
- (102) The law assigns airports operators specific responsibility for fulfilling its objective and designing its conditions and criteria. In particular, airport operators have to elaborate 'plans of activities' subject to approval of the Region, which specify the actions to be undertaken to favour de-seasonality and increase of air transport. Those 'plans of activities' include a financial business plan, which presents the expected results and the financial resources needed to reach the objective.
- (103) The plans of activities have to respect the following conditions:
- (a) the routes covered by the plan have to be different from those already covered by public service compensation,
 - (b) an adequate promotion of the island has to be envisaged in the case of new routes or an increase in the operational period of flights.
- (104) When the financial resources needed exceed the budget of the Region, the required funds should be allocated according to the criteria defined in Sardinia's Decision No 29/36 of 29 July 2010 ⁽⁵⁴⁾ (priority to international routes, important hubs served, de-seasonality, highest flight frequency ...).

⁽⁵²⁾ Commission Decision 2012/21/EU 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, 11.1.2012, p. 3).

⁽⁵³⁾ Commission Communication on a European Union framework for State aid in the form of public service compensation (2011) (OJ C 8, 11.1.2012, p. 15).

⁽⁵⁴⁾ See footnote 4.

- (105) The Law 10/2010 provides for the three categories of activities to be financed by the Region, as referred to in recitals 44 et seq.
- (106) The various activities prepared by the airport operators are described in detail in the plans of activities of each airport and Italy has provided the Commission with tables summarising the activities carried out and the relevant regional financing. Italy argues that the activities had a positive impact for the Region, as in the period in question air traffic and related passengers inflows have increased.
- (107) Italy specifies that the main beneficiaries of the regional financing pursuant to Law 10/2010 are airlines: indeed, Law 10/2010 foresees the financing, throughout Sardinian airports, of airline companies willing to open or increase new routes and provides for the de-seasonality of existing routes in the period 2010-2013.

4.2. FINANCIAL ADVANCES

- (108) Regional law of 30 June 2011, No 12 ⁽⁵⁵⁾ states that the financial advances provided for by Law 10/2010 should bear interest. For this purpose, on 9 August 2011 ⁽⁵⁶⁾, the Region entrusted SFIRS with creating and managing a regional fund to manage those financial advances.
- (109) Italy argues that those advances are loans provided at market conditions: according to the rules governing the fund, financial loans bear an interest rate of Euribor 6M plus a 2 % spread for 2010 and a 1,50 % spread for 2011 and 2012. In addition, airport operators have to pay a management fee of 1 % of the financial advance for 2010 and 0,5 % for 2011. Italy is of the opinion that the market conditions of the financial advances have to be assessed using the Synthetic Cost Indicator (ISC) ⁽⁵⁷⁾, which takes into account all costs linked to the loans to be charged to the airport. Italy has provided the Commission with a table setting out details of the ISC for each financial advance granted. The ISC related to the financial advance to SOGAER is higher than the other ones and also higher than market conditions, as the financial advance was granted in September 2012 and the ISC calculation done for the whole year 2012.
- (110) Italy has provided the information set out in Table 10 regarding financial advances granted to the three airport operators for 2010 and 2011 and concludes that the financial advances were granted on financial conditions which were in line with conditions of similar operations on the market. Italy specifies that, for 2010 and 2011, the loans were intended to compensate airport operators for the amounts they had already transferred to airlines for the performance of the activities 1 and 2.

Table 10

Financial advances granted to the three airport operators for 2010 and 2011

Anticipazioni annualità 2010							
Società di gestione	sede	Importo erogato	Data di erogazione	Interessi addebitati sino al 2012	Commissioni addebitate	Costo complessivo	ISC al 2012
SOGEAAL SPA	Alghero	[...]	01/07/2011	[...]	[...]	[...]	[...]
SOGAER SPA	Cagliari	[...]	25/09/2012	[...]	[...]	[...]	[...]
GEASAR SPA	Olbia	[...]	27/09/2011	[...]	[...]	[...]	[...]
Anticipazioni annualità 2011							
Società di gestione	sede	Importo erogato	Data di erogazione	Interessi addebitati sino al 2012	Commissioni addebitate	Costo complessivo	ISC al 2012
SOGEAAL SPA	Alghero	[...]	02/01/2012	[...]	[...]	[...]	[...]
SOGAER SPA	Cagliari	[...]	05/07/2012	[...]	[...]	[...]	[...]
GEASAR SPA	Olbia	[...]	20/07/2012	[...]	[...]	[...]	[...]

⁽⁵⁵⁾ See footnote 8.

⁽⁵⁶⁾ Atto di affidamento a SFIRS, rep. 15 del 9 agosto 2011.

⁽⁵⁷⁾ ISC — Indicatore Sintetico di Costo.

4.3. OTHER INFORMATION

- (111) Italy points out that Regional Decree No 122/347 of 17 May 2010 ⁽⁵⁸⁾ is the administrative instrument which allows the funds allocated by Law 10/2010 to be effectively registered in the regional budget.
- (112) Italy specifies that, although Law 10/2010 refers to all Sardinian airports, the airport operators which were interested in benefitting from the activities are the operators of Alghero, Olbia and Cagliari. On 22 September 2010, the Oristano airport operator presented a plan of activities and financing of EUR 300 000 for 2010 was approved by the Region. However, the Oristano airport operator was wound up in May 2011 and the airport is now closed.
- (113) Italy has provided the Commission with tables summarising the activities undertaken and the relevant regional financing as well as the contracts concluded between SFIRS and airport operators.
- (114) Italy submits ⁽⁵⁹⁾ that State intervention was needed, as the airports would not have been able to cover the costs sustained for the financing of the activities pursuant to Law 10/2010. The three airport operators would not have been able to implement and finance the activities provided for by Law 10/2010, either through their own resources, or through bank financing.
- (a) Cagliari airport: the economic performance of the company was negative during the period 2007-2009 and, despite a positive EBITDA ⁽⁶⁰⁾, the business activity did not cover the depreciation costs, which lead to a negative EBIT ⁽⁶¹⁾. The company was characterised at that time by a constant economic and financial imbalance, which jeopardised its creditworthiness. In 2008, a capital increase of EUR 4,4 million was necessary to cover the accumulated losses. Because of this difficult financial situation, the airport operator was not able to cover the costs sustained for the implementation of the activities pursuant to Law 10/2010 with its own resources. Nor was it able to contract further external financing from financial institutions, which it would not have been able to reimburse because of insufficient generation of financial cash flows. During the period 2010-2013, the operational margin of the airport operator decreased slightly by 40 % in terms of EBIT and the 2013 annual financial report notes the under-capitalisation of the company and a financial situation which would become critical if the anticipated funding from the Region for 2014 was not paid ⁽⁶²⁾.
- (b) Alghero airport: the period 2007-2009 showed serious economic and financial difficulties with a negative net result higher than the shareholders' equity, the reason for a recapitalisation of the company which took place in 2009. The financial advances system managed by the Region was primarily targeted for SOGEAAL, in order to implement the activities provided for by Law 10/2010 without imposing any further burden on the company. The airport's EBITDA was positive only in 2007 and its EBIT was negative throughout the whole period, worsening to a level of EUR – 11,3 million in 2009. Equity had been continuously decreasing over the period concerned, reaching a negative amount of EUR – 4,8 million in 2009. The company was therefore not able to finance the activities in question with its own resources, nor to make further use of external bank financing because of its incapacity to reimburse the potential debt contracted. The period 2010-2013 saw a continuing negative operational margin in terms of EBIT, which changed from EUR – 3,6 million in 2010 to EUR – 1,5 million in 2013. The capital structure deteriorated during the period, as equity decreased by more than half to reach a level of EUR 2,4 million in 2013 for total assets of EUR 41,9 million ⁽⁶³⁾.
- (c) Olbia airport: throughout the period 2007-2009, the airport operator registered a significant economic slowdown mainly linked to the reduction in the number of passengers. EBITDA decreased by 22,8 % and EBIT by 41,3 % over the period. Despite positive net results, the company did not generate positive net cash flows because of an increase of the working capital and a substantial investment program in the period 2007-2009 (EUR 13,2 million). Global indebtedness increased by EUR 2 million over the period and further debt towards financial institutions was highly improbable as it might have jeopardised the financial balance

⁽⁵⁸⁾ See footnote 3.

⁽⁵⁹⁾ Italy provided the Commission with three reports presenting an economic and financial analysis of the airports with respect to the measures foreseen by Law 10/2010. The Commission bases its analysis on these reports.

⁽⁶⁰⁾ Earnings Before Interest, Taxes, Depreciation, and Amortisation.

⁽⁶¹⁾ Earnings Before Interest and Taxes.

⁽⁶²⁾ Source: Annual financial reports of SOGAER for the period 2010-2013.

⁽⁶³⁾ Source: Annual financial reports of SOGEAAL for the period 2010-2013.

of the company ⁽⁶⁴⁾. In addition, the financial situation of the airport operator meant it was not able to finance the activities with its own resources, as the generation of financial cash flows was not sufficient to cover the investments in working capital and fixed assets. A third option could have been a capital increase from the shareholders, in order to guarantee the necessary liquidity to finance the three activities provided for by Law 10/2010. To assess whether this would have been a valuable option, the investment required has been assessed from the point of view of a market economy investor. The analysis carried out by GEASAR ⁽⁶⁵⁾, on the basis of a standard methodology for the profitability assessment of an investment, shows that the Net Present Value (NPV) and the Internal Rate of Return (IRR) calculated on the agreements concluded between the airport operator and the airline companies were negative, which excludes any interest in a potential capital increase from the shareholders. The period 2010-2013 saw a relative stagnation in terms of EBITDA at a level of EUR 5,9 million. Although the EBIT margin and the net result slightly improved over the period, the company still had difficulty in generating positive net cash flows because of increases in the working capital and investments ⁽⁶⁶⁾.

5. COMMENTS FROM INTERESTED PARTIES

5.1. COMMENTS FROM RYANAIR

5.1.1. COMMENTS ON THE OPENING DECISION

5.1.1.1. *General considerations*

- (115) Ryanair points out that it flies only to Alghero and Cagliari and not to other Sardinian airports. The company stresses that its right to submit comments is hampered by the absence of a reasonably detailed description of the alleged aid to Ryanair, particularly regarding Cagliari airport. AMS and Ryanair are therefore unable to submit comments that fully address the arrangements between Ryanair, AMS and Cagliari airport.
- (116) Ryanair commissioned a consultancy firm to prepare a detailed MEIP ⁽⁶⁷⁾ comparator analysis, demonstrating that the charges paid by Ryanair at Cagliari airport are in line with or exceed those paid by Ryanair at comparable private or public-private airports, therefore complying with the MEIP.
- (117) Ryanair argues that they were not aware of the existence of Sardinian Regional Law 10/2010 when entering into arrangements with Cagliari and Alghero. Ryanair argues that AMS negotiated with the airport operators on a commercial basis, with reference to the terms applicable at comparable airports around Europe (in the case of Ryanair) and taking into account the relevant AMS rate card applicable at the time (in the case of AMS).
- (118) Ryanair argues that the Sardinian airports were the direct beneficiaries of the alleged aid, whereas the airlines were indirect beneficiaries. Ryanair notes that the Commission assumes that the aid has been provided to the airports following a formula, however only the components of that formula are provided in the Opening Decision, not the formula itself. This lack of information denies Ryanair its right to make comments in this respect.
- (119) Furthermore, even if the airports have received aid, the Commission cannot simply conclude that this has been passed on to the airlines, without any specific evidence supporting this assumption. Ryanair specifies that the Commission has not identified any element in the contracts between Cagliari Airport and Ryanair/AMS that could consist of State aid.
- (120) Finally, Ryanair contests the use of the 2005 Aviation Guidelines in the Opening Decision to determine whether aid was granted to the airports. In fact, the 2005 Guidelines do not provide a reliable reference framework for the assessment of alleged State aid to airports and low cost airlines.

⁽⁶⁴⁾ For that purpose GEASAR provides the Commission with a financial simulation assuming a new debt taken by the company to finance the measures pursuant to Law 10/2010 and concludes towards a worsening of the main financial indicators of the company.

⁽⁶⁵⁾ 'Valutazione economica degli accordi tra GEASAR S.p.A. e i vettori aerei stipulati nell'ambito della legge regionale n. 10/2010' — Deloitte Financial Advisory S.r.l. — 15/12/2015.

⁽⁶⁶⁾ Source: Annual financial reports of GEASAR for the period 2010-2013.

⁽⁶⁷⁾ Market Economy Investor Principle.

5.1.1.2. *Ryanair's arrangements with airports*

- (121) Regarding agreements with airports, Ryanair stresses the fact that it negotiates with airports on a genuinely commercial basis, which explains why the outcome of those negotiations varies from airport to airport. In assessing Ryanair's arrangements with airports, Ryanair points out that the Commission has to:
- (a) consider all relevant factors by assessing the agreements with airports, considering the implication of non-aeronautical revenues and network externalities;
 - (b) rely on comparator airports;
 - (c) take into account the market position of regional airports in Europe which remain more exposed to strong competition from neighbouring airports, while being barely conceived and managed on a commercial basis;
 - (d) consider the airports' long-term planning: regional airports do not respond to the application of a standard 5-year business plan;
 - (e) apply the single till approach, taking into account airport revenues generated both from aeronautical and non-aeronautical activities;
 - (f) integrate network externalities: an increased number of users of an airport makes it more valuable to other potential users and therefore increases its overall value;
 - (g) take into account that Ryanair's agreements with airports are not concluded on an exclusive basis: usually the airports under investigation have ample spare capacity to accommodate other airlines.
- (122) In assessing the fees paid by Ryanair to airports for the various services it receives, the significantly reduced needs of Ryanair compared to other airlines, due to its business model, have to be taken into consideration, as well as the substantial non-aeronautical revenues generated by airports thanks to Ryanair.

5.1.1.3. *Marketing agreements*

- (123) Ryanair reiterates that AMS's marketing agreements with airports are negotiated and concluded separately from Ryanair's agreements with the same airports. In particular, Ryanair and AMS specify that there is no advantage for AMS since AMS concludes marketing agreements with public and private airports. Public and private parties therefore compete for the limited space available for advertisement on Ryanair.com. Thus, AMS does not benefit from any advantage for the purpose of State aid law, as MEIP is satisfied throughout the conclusion of those agreements.
- (124) Moreover, Ryanair argues that the Commission failed to present any legal or factual basis to question the commercial rationale of the decision of the operators of Alghero and Cagliari airport to advertise on Ryanair.com, in circumstances where AMS offers its services at a market price. As a result, AMS is not in a position to exercise its right of defence.
- (125) Ryanair also presented two more studies on the changing trend of airport revenues. Over the years, airports have significantly increased their revenues from non-aeronautical services. According to Ryanair, advertising on Ryanair's website increases the proportion of inbound passengers and, therefore, the non-aeronautical revenues.
- (126) Ryanair states that marketing and advertising on the websites of all airlines has become a mainstream practice; this is particularly the case of airport companies, who have started to promote their brand on the internet especially through airlines' websites.
- (127) Ryanair specifies that AMS does not discriminate between airports, public authorities and other non-airport clients. Privately owned or controlled airports and other private parties have concluded agreements with AMS based on similar, non-discriminatory terms.

5.1.1.4. *State aid issues*

- (128) Ryanair is of the opinion that there is no imputation to the State in the measures at stake: simple approval by the Sardinian authorities of the airport's plans of activities is not sufficient for the imputation of a measure to the State.
- (129) Ryanair stresses that the selection of airlines on the basis of commercial bids — presented to airport operators following the publication of notices on their websites — represents itself a tender procedure. Moreover, there is no need for a tender when the airport-airline deal satisfies the MEIP and there is no SGEI/PSO applicable to the airline, as in this case.
- (130) Ryanair also raises doubts on the selective criteria challenged by the Commission, since any airline wishing to enter into arrangements with Alghero or Cagliari Airport could have done so.
- (131) Ryanair concludes by asserting that the situation in Sardinia arises out of the inadequacy of the rules governing public service obligations routes under Regulation (EC) No 1008/2008 and their application by the Italian authorities. As a result, Italian airports are faced with the following choices: (i) serving routes with public service obligations operated by traditional airlines, using small aircrafts and delivering small numbers of passengers at the cost of high subsidies (which would nevertheless not be sufficient to ensure low ticket prices); or (ii) entering into business relationships with low cost carriers, with guarantees on passenger volumes, use of large aircraft, delivery of large numbers of passengers, no subsidies and low ticket prices. Faced with such a choice, any market economy investor would have selected the second option.
- (132) In the light of those observations, Ryanair concludes that neither Ryanair nor AMS have been a beneficiary of State aid and that the Sardinian airports acted in line with the MEIP.

5.1.2. ECONOMIC MEIP ASSESSMENT WITH REGARD TO CAGLIARI INTERNATIONAL AIRPORT ⁽⁶⁸⁾

- (133) Ryanair instructed a consultancy firm to prepare a detailed MEIP comparator analysis, demonstrating that the charges paid by Ryanair at Cagliari airport are in line with or exceed those paid by Ryanair at comparable private or public-private airports, therefore complying with the MEIP. The consultancy firm acting on Ryanair's behalf sent the fully confidential version of that report directly to the Commission.
- (134) The analysis shows that the overall level of charges paid by Ryanair at Cagliari airport is, on average, higher than the comparable level of charges paid by the airline over the same period at the comparator airports. Specifically, the average charge paid by Ryanair at Cagliari Airport is 2,3 to 2,4 times higher than that paid by Ryanair at the comparator airports, on both a per-passenger and per-turnaround basis, over the period between 2006/07 and 2012/13.
- (135) The study concluded that the various agreements considered in the procedure were compatible with a level of charges that would have been offered to Ryanair by an airport-owning market economy investor in similar circumstances.

5.1.3. IDENTIFYING THE MARKET BENCHMARK IN COMPARATOR ANALYSIS FOR MEIP TESTS ⁽⁶⁹⁾

- (136) The consultancy firm acting on Ryanair's behalf believes that the Commission's approach of only accepting comparator airports in the same catchment area as the airport under investigation is flawed.
- (137) It argues that market benchmark prices obtained from comparator airports are not polluted by State aid given to surrounding airports. Therefore, it is possible to robustly estimate a market benchmark for the MEIP tests, as:

(a) comparator analyses are widely used for MEIP tests outside of the field of State aid;

⁽⁶⁸⁾ Oxera's Report dated 28 June 2013.

⁽⁶⁹⁾ Ryanair State aid cases, prepared for Ryanair by Oxera, 9 April 2013.

- (b) companies affect each other's pricing decisions only if their products are substitutes or complements;
- (c) airports in the same catchment area do not necessarily compete with each other, and the comparator airports used in the reports submitted face limited competition from State-owned airports within their catchment area (< 1/3 of commercial airports within the catchment area of comparator airports is fully State owned, and none of the airports within the same catchment area as comparator airports was subject to on-going State aid concerns (as of April 2013));
- (d) even where comparator airports face competition from State-owned airports within the same catchment area, there are reasons to believe their behaviour is in line with the MEIP (for example, where there is a large private ownership stake or where the airport is privately managed).
- (e) market economy investor airports will not set prices below incremental cost.

5.1.4. PRINCIPLES UNDERLYING PROFITABILITY ANALYSIS FOR MEIP TESTS ⁽⁷⁰⁾

- (138) The consultancy firm acting on Ryanair's behalf argues that its profitability analysis submitted to the Commission follows the principles that would be adopted by a rational private sector investor and reflects the approach apparent from Commission precedents. Indeed, the Terminal Value can be adjusted by a conservative assumption on the probability of whether the agreement will be renewed with Ryanair or whether similar terms will be agreed with other airlines. Incremental profitability of Ryanair agreements to the airports should be assessed on the basis of estimates of the NPV or IRR measures.

5.1.5. BRAND BUILDING: WHY AND HOW SMALL BRANDS SHOULD INVEST IN MARKETING ⁽⁷¹⁾

- (139) The study aims to set out the commercial logic underlying regional airports' decisions to buy advertising on Ryanair.com from AMS.
- (140) Since there is a large number of well-known and habitually used airports, weaker competitors must overcome static buying behaviour of consumers by finding a way to consistently communicate their brand message to a wide audience. Nevertheless, traditional forms of marketing communication require expenditure beyond their resources.
- (141) Instead, advertising via AMS:
- (i) offers an opportunity to reach a significant audience, consisting of consumers who are already considering a travel purchase;
 - (ii) entails relatively low costs (rate card at commercial rates for online communication);
 - (iii) allows communication during the purchasing phase;
 - (iv) offers the possibility of creative advertising.

5.1.6. RYANAIR'S SUBMISSION OF 20 DECEMBER 2013

- (142) Ryanair submitted comments on 20 December 2013, regarding the payments to AMS, Ryanair's wholly owned web advertising subsidiary.
- (143) Ryanair disagrees with the Commission's assessment of payments to AMS as costs to the airport as this approach disregards the value of AMS' services to the airport. Ryanair furthermore believes that the purchase of valuable marketing services at market rates should be considered separately from a related airport-airline contractual arrangement for the purposes of the market economy operator analysis.
- (144) In support, Ryanair submits an analysis from a consultancy firm acting on its behalf benchmarking the prices charged by AMS with the prices of comparable services offered by other travel websites. The analysis concludes that the prices charged by AMS were either lower than the average or within the mid-range of prices charged by comparator websites.

⁽⁷⁰⁾ Principles underlying profitability analysis for MEIP tests. Ryanair State aid cases, prepared for Ryanair by Oxera, 9 April 2013.

⁽⁷¹⁾ Prepared for Ryanair by Professor D.P. McLoughlin, 10 April 2013.

- (145) According to Ryanair, this shows that AMS' prices are in line with the market prices. The decision by a public airport to purchase AMS' services is therefore in line with the market economy operator test.
- (146) Ryanair asks the Commission to reassess its approach adopted for the analysis of AMS' contracts. Ryanair believes that AMS arrangements should be considered separately from Ryanair's airport services arrangements, being therefore subjected to a separate market economy operator test. Should the Commission insist on including AMS arrangements and Ryanair's airport services arrangements in a joint market economy operator test, the value of AMS services to the airport should at least not be disregarded.
- (147) The report of the consultancy firm acting on Ryanair's behalf of 20 December 2013 on AMS prices refers to the conclusions drawn in previously submitted reports by marketing advisers Mindshare (2004) and Zenobie Conseil (2011), as well as Professor McLoughlin's report (2012) outlining the importance of advertising for small brands. Those reports confirm that Ryanair has a strong pan-European brand, capable of applying a premium price for its advertising services.
- (148) In the analysis, AMS rates were compared with the advertising prices applied by a sample comparators' websites for the period 2004-2005, when the AMS rate card was first introduced, and 2013. The results show that ryanair.com has more than twice as many monthly visitors as the next most popular travel website, and that visitors are more likely to enter into other e-commerce transactions. These unique characteristics combined with high brand awareness allow Ryanair to charge a premium.
- (149) In conclusion, for both periods and across sectors, AMS rates were found to be lower than or within the range of prices charged by websites in the comparator sets.
- (150) In support, Ryanair submitted data on traffic to its United Kingdom homepage between November 2012 and November 2013, and in the period 2009-2012, as well as data on AMS services bought by several airports and AMS' agreements with those airports.
- (151) The Annex B.4 to Ryanair's submission of 20 December 2013 consists in the AMS Contract dated 27 March 2009. In particular, the contract states that 'Airport Marketing Services will provide a package of marketing services for the period 29 March 2009-28 March 2010 for the value of EUR 1 600 000,00. For the period from 29 March 2010 until 28 March 2014, the value of the internet services will amount to EUR 2 000 000,00 per annum and will be based on the Airport Marketing Services current Rate Card. [...]'

5.1.7. RYANAIR SUBMISSION OF 17 JANUARY 2014

- (152) Ryanair submitted a report prepared by a consultancy firm concerning the principles that it believes should apply to a market economy operator profitability test encompassing both the air services agreements concluded between Ryanair and the airports and the marketing agreements concluded between AMS and the same airports. Ryanair emphasises that this does not prejudice its position that AMS agreements and air service agreements should be subjected to separate market economy operator tests.
- (153) The report states that AMS-associated income should be included on the revenue side in a joint profitability analysis, where AMS expenditure is included on the cost side. In order to do so, the report proposes a cash-flow-based methodology, by which expenditures on AMS would be treated as an incremental operating expense.
- (154) The report submits that marketing activities contribute to creating and enhancing brand value, which is likely to generate business and profits over the duration and beyond expiry of the marketing agreements. Because of an agreement with Ryanair, other airlines are more likely to be attracted to the airport, increasing the flow of commercial operators and the airport's non-aeronautical revenues. Were the Commission to undertake a joint profitability analysis, those benefits should be taken into account by treating expenditure on AMS as an incremental operating expense, with incremental profits calculated net of AMS payments. In addition, a terminal value could be included in projected incremental profits in order to capture value accruing beyond expiry of its term.

- (155) In support of this approach, the report submits a summary of the results of studies that demonstrate how advertising can build brand value and improve customer loyalty. In particular, advertising on ryanair.com increases brand exposure for an airport. Specifically, smaller regional airports aiming to increase their traffic base can build their brand value by entering into advertising agreements with AMS.
- (156) Finally, the cash-flow approach is argued to be in line with State aid and non-State aid Competition decisions from the Commission, namely the case of BayernLB, where the Commission indicated that it would use a dividend discount valuation model to estimate cash flows and then assign a terminal value based on projected dividend growth, and the margin squeeze case relating to Telefónica, where the Commission incorporated a terminal value into its discounted cash flow analysis.

5.1.8. OXERA'S REPORT 31 JANUARY 2014: HOW SHOULD AMS AGREEMENTS BE TREATED WITHIN THE PROFITABILITY ANALYSIS AS PART OF THE MARKET ECONOMY OPERATOR TEST? PRACTICAL APPLICATION

- (157) On 31 January 2014 Ryanair communicated on the Commission State aid investigations in which it is currently involved. On the basis of studies commissioned to a consultancy firm, Ryanair discusses the practicalities of incorporating AMS within a joint AMS-ASA ⁽⁷²⁾ profitability analysis ⁽⁷³⁾ and argues how, in principle, under its understanding of the Commission's approach, AMS agreements can be incorporated within a joint AMS-ASA profitability analysis.
- (158) The approach adopted takes into account the potential for the ASA and AMS Agreements to sustain an airport's profits beyond the scheduled end of the ASAs.
- (159) Ryanair argues that Ryanair's presence at an airport could attract other passengers or airlines to use the airport. Advertising and promotion, as a result of the AMS Agreements, could lead to a greater traffic of Ryanair or non-Ryanair passengers, after the scheduled expiry of the ASA with Ryanair. Furthermore, it could also increase the non-aeronautical revenues of the airport. In Ryanair's opinion, this is an intuitive result, since almost all businesses in the economy will invest in marketing to improve profitability via product differentiation. Given the typical benefits of marketing, and the network effects associated with growth within airports, it would be therefore incorrect to assume that the only incremental revenues associated with AMS marketing will be Ryanair passengers using the airport during the lifetime of the ASA.

5.1.9. COMMENTS BY RYANAIR OF 12 SEPTEMBER 2014

- (160) Ryanair points out that the examination of the airport-airline arrangement must involve a Market Economy Operator analysis, as recognised by Section 3.5 of the 2014 Aviation Guidelines.
- (161) Furthermore, Ryanair argues that the 'capacity approach' to the allocation of investment costs is both legally correct under the *ex-ante* profitability test, and also correct as a matter of economics. Indeed, the 'actual usual approach' fails to reflect the fact that MEO profitability analyses must be carried out on an *ex-ante* basis.

5.1.10. ALLOCATION OF INVESTMENT COSTS ⁽⁷⁴⁾

- (162) The report of the consultancy firm acting on Ryanair's behalf highlights paragraph 64 of the new Aviation Guidelines and states that, in fact, the hypothetical new terminal or facilities are not required only for one specific airline but other airline companies also can benefit from them. It points out that it is not fair to attribute 100 % of the costs to one company even if it is the only company that operates in the airport, whereas the calculation of the costs based on the utilisation of the capacity created by the investments could be a good way.

⁽⁷²⁾ Airport Services Agreements.

⁽⁷³⁾ The joint AMS-ASA profitability analysis has been undertaken for all those airports for which the consultancy firm has been able to obtain the necessary data.

⁽⁷⁴⁾ Oxera's Report of 12 September 2014.

- (163) Ryanair stresses the critical difference in measuring utilisation with respect to capacity, rather than share of traffic. The airport of Angoulême is taken as an example, where Ryanair represented 95-97 % of traffic, but only 25-28 % of the capacity utilisation.
- (164) The consultancy firm provides the Commission with several examples, including the Alghero case ⁽⁷⁵⁾. In 2004 a new passenger terminal opened at Alghero Airport that significantly increased the airport's passenger capacity from about 0,8 million to 2,5 million. This increase in terminal capacity was reflected in SOGEAAL's business plans through increased rotations and passenger departures from 2004 onwards.
- (165) In conclusion, the note reports that the appropriate way to allocate investment costs is in relation to the expected share of capacity represented by a given airline agreement.

5.1.11. EVALUATION OF THE WIDER IMPACT OF AMS AGREEMENTS ON AIRPORT TRAFFIC ⁽⁷⁶⁾

- (166) The consultancy firm acting on Ryanair's behalf has examined the expected incremental profitability of the agreements from the airport's perspective, by analysing not only the costs of the AMS payments, but also the benefits, in terms of the increased attractiveness of the airport, and the potential both for higher levels of non-Ryanair passenger traffic and correspondingly higher levels of non-aeronautical revenues.
- (167) In order to demonstrate the wider impact of the AMS agreements, the Alghero Airport has been handled as a case study by the consultancy firm. The results of that analysis reveal a positive impact on SOGEAAL thanks to the marketing agreements signed with AMS. In particular the airport benefitted from (i) a possible increase in attractiveness for other airlines, (ii) a limited decline in passenger numbers due to the financial crisis and (iii) a potential audience of AMS advertising more than 50 times greater compared to similar arrangements with Alitalia.
- (168) Finally, the report argues that, in the absence of any empirical analysis of the impact of advertising on ryanair.com, it is incorrect to conclude that the only benefits of advertising on ryanair.com are to increase levels of Ryanair traffic, and that the benefits of the AMS agreements do not persist beyond the expiry date of the agreements.

5.1.12. THE ROLE OF COMPARATOR ANALYSIS IN MEOP ⁽⁷⁷⁾ ASSESSMENTS ⁽⁷⁸⁾

- (169) Ryanair argues that the Commission has not undertaken any assessment of the efficiency of the airports' costs when carrying out the profitability analyses. Therefore, they stress the fact that Ryanair is not in a position to know whether the deal is expected to be profitable for the airport.
- (170) The analysis conducted by the consultancy firm acting on Ryanair's behalf highlights the importance of a comparator analysis to understand the real costs of an airport. It introduces many examples of comparator analysis used by the Commission in recent years and stresses the fact that the Commission itself states that comparator analysis has a great importance in MEOP assessments.
- (171) In conclusion, Ryanair suggests using the comparator analysis at least as a cross-check on the results from the profitability analysis.

5.1.13. ECONOMIC MEOP ASSESSMENTS: COMPARATOR ANALYSIS INCLUDING AMS ⁽⁷⁹⁾

- (172) The study provided by Ryanair demonstrates how the results of the 2012 and 2013 at Lübeck and Cagliari airports do not change after the inclusion of AMS payments within the comparator analysis.

⁽⁷⁵⁾ See footnote 52.

⁽⁷⁶⁾ Oxera report of 26 September 2014.

⁽⁷⁷⁾ Market Economy Operator Principle.

⁽⁷⁸⁾ Communication from Ryanair of 26 January 2015.

⁽⁷⁹⁾ Communication from Ryanair of 27 February 2015.

- (173) It concludes that, over the period under consideration (2007-2013), net charges paid by Ryanair at Cagliari Airport have been, on average, higher than the average at the comparator airports. This implies that a market economic operator would have been likely to have offered similar arrangements to Ryanair. In particular, they argue that the result is not sensitive to the treatment of AMS payments, and is robust to various sensitivity checks.

5.1.14. ECONOMIC MEOP ASSESSMENT: CAGLIARI AIRPORT, PROFITABILITY ANALYSIS ⁽⁸⁰⁾

- (174) The study aims to demonstrate, through an *ex ante* analysis, that the ASA agreements of January 2007, December 2007 and December 2009 were considered profitable by SOGAER SpA (operator of Cagliari airport) and would have also been considered profitable by any other management company, in accordance with the 2014 Aviation Guidelines.
- (175) In particular, the profitability analysis based on the NPV calculation shows a positive outcome of the index for the whole period (2007 and 2009). Consequently the arrangements at CAG appear to be market-conform.
- (176) The evidence indicates that, under similar circumstances, a market economy operator of the Cagliari airport would have found it profitable to have been offered similar arrangements to those that were agreed between Ryanair and Cagliari Airport.

5.1.15. THE IMPACT OF RYANAIR'S OPERATIONS ON AIRPORTS' NON-AERONAUTICAL REVENUES ⁽⁸¹⁾

- (177) The consultancy firm acting on Ryanair's behalf considered that the start of Ryanair's operations had a significant positive impact on the level of per passenger non-aeronautical revenues of the airport. On this basis, the report claims that the approach used to date in its MEOP profitability analysis as well as in the Commission's analysis ⁽⁸²⁾ were conservative, as they did not include this increase in the airport revenues.
- (178) The report undertakes an empirical analysis using a sample of 57 European airports meant to be as similar as possible to the airports assessed in the present investigation. The result is that the start of Ryanair's operations ⁽⁸³⁾ in 29 of those airports led to an increase of around 12,0-13,7 % in non-aeronautical revenues per departing passenger in real terms (over and above inflation), this effect being statistically significant. This is likely to be due to Ryanair passengers spending more than passengers from other airlines, partly as a result of limited catering facilities provided on-board low-cost carriers, and as a result of the start of Ryanair's operations resulting in the development of the terminal—for example, by attracting additional retail outlets.
- (179) The report also finds that this effect held for low-cost carriers more generally. Due to the growth in the low-cost carrier industry with strong brands that carry significant levels of passenger traffic, the start of a low-cost carrier's operations at an airport could result in significant development of the airport and hence higher non-aeronautical revenues on a per-passenger basis. Based on the sample of airports considered, the start of operations by full-fare carriers, in contrast, does not have a significant impact on airports' non-aeronautical per passenger revenues.

⁽⁸⁰⁾ Report Oxera, 2 Mars 2015.

⁽⁸¹⁾ Oxera report prepared for Ryanair, 4 December 2015.

⁽⁸²⁾ The consultancy firm referred to the approach used by the Commission in the decisions for Pau and Nîmes airports, where the Commission calculated expected non-aeronautical revenues per departing passenger based on the observed data at the airport prior to signing the agreements, with adjustments for inflation.

Commission Decision (EU) 2015/1227 of 23 July 2014 on State aid SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia (OJ L 201, 30.7.2015, p. 109), in particular recital 414.

Commission Decision (EU) 2016/633 of 23 July 2014 on State aid SA.33961 (2012/C) (ex 2012/NN) implemented by France in favour of Nîmes — Uzès — Le Vigan of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited (OJ L 113, 27.4.2016, p. 32), in particular recital 436.

⁽⁸³⁾ The consultancy firm considered the start of Ryanair's operations as the year when Ryanair started 'significant' operations at an airport, defined as the first year in which Ryanair departing passengers exceeded 50 % of the maximum total number of Ryanair departing passengers carried in 1 year at the same airport over the period 1994-2012.

- (180) According to that report, the results highlight the conservative nature of the approach used to date in its MEOP profitability analysis as well as in the Commission's analysis. These analyses do not assume any accelerated growth in airports' non-aeronautical revenues on a per passenger basis and hence do not capture the wider benefits of Ryanair's operations from airports, but only uprated estimates of non-aeronautical revenues per departing passenger by the much lower rate of inflation. The consultancy firm therefore expected its MEOP analysis and the Commission's analysis to underestimate the expected profitability of Ryanair's arrangements at the airport.

5.2. COMMENTS FROM EASYJET

5.2.1. COMMENTS ON THE OPENING DECISION

5.2.1.1. *easyJet operations in Sardinia*

- (181) During the period 2010-2013, easyJet operated from Cagliari and Olbia airports.

The contract with Cagliari airport

- (182) The contract with Cagliari airport operator was signed on 14 December 2010, and was valid from 29 March 2010 to 28 March 2013 ⁽⁸⁴⁾. The total value of the Cagliari contract was EUR [...]; the contract provides that the airport operator of Cagliari airport should pay easyJet EUR [...] for the first year, EUR [...] for the second year and EUR [...] for the third.
- (183) The contract with Cagliari airport clarifies that, in order to boost the Region's economy and gain a suitable economic return, the Region decided to increase its marketing investments in the tourism industry and thus provided airport operators, year by year, with an amount to be spent for that purpose. easyJet committed to provide marketing activities, operate point to point flights, and reach passenger targets as indicated in the contract.
- (184) The contract includes a 3-year business and media plan prepared by easyJet and passenger targets to be reached by the airline company. An economic impact study — commissioned to an external consultant — is attached to the contract and measures the return of the investment, resulting from marketing activities.
- (185) Failure by easyJet to comply with the commitment to operate the routes and frequencies agreed would entitle SOGAER not to pay the corresponding amount. easyJet gave a commitment to pay all relevant and standard airport fees and taxes to SOGAER. Failure to pay the aforementioned fees and taxes would have been considered a breach of its obligations to SOGAER, which would have had the right to terminate the contract.
- (186) Article 5 of the contract with Cagliari airport specifies that the provision of financial support is made conditional upon the granting of the relevant funds by the Region.

Contracts with Olbia airport

- (187) The first contract with GEASAR was signed on 17 March 2011 and covered the period from 28 March 2010 to 27 March 2011 (EUR [...] one off payment). The second contract was signed on 25 January 2012 and covered the period from 27 March 2011 to 30 March 2013 ⁽⁸⁵⁾ (up to EUR [...] for the summer season 2011-winter season 2011/2012 and up to EUR [...] for the summer season 2012-winter season 2012/2013). The last contract with Olbia airport was signed on 1 March 2013 and covered the period from 27 March 2013 to 30 March 2014 (up to EUR [...]).
- (188) The contracts do not mention that the public funds granted for the development of air transport are from the Region.

⁽⁸⁴⁾ The Cagliari contract concerns the operation of the following routes: Stansted, Geneva, Basel, Schoenefeld.

⁽⁸⁵⁾ The Olbia contract concerns the operation of the following routes: Bristol, Basel, Geneva, London Gatwick, Milano Malpensa, Schoenefeld, Lyon, Orly and Madrid-Barajas.

- (189) easyJet states that the aim of the contract signed on 25 January 2012 was to further increase its operations within the airport by: (i) opening a new connection between Olbia and Madrid during summer season 2012; (ii) increasing the weekly frequency of transport from and to Berlin during winter season 2012/13; and (iii) developing the traffic flows in transit especially in the international markets, during the medium and low season. The purpose of the contract was to develop a marketing and advertising program with the financial participation of GEASAR.
- (190) easyJet prepared a business plan, examined by GEASAR, which produced its own business plan with the purpose of verifying the financial viability of the contract. The airport operator verified the value of the investment based on the outcome of its own business plan ⁽⁸⁶⁾.

5.2.1.2. Elements of State aid

- (191) In order to understand whether the measure in question has to be deemed State aid, easyJet goes through each of the criteria set out in Article 107(1) of the Treaty.

State resources

- (192) easyJet states that, although the contract with SOGAER specifically refers to the Sardinian regional Law 10/2010, pursuant to which the Region would grant such funds to the airport operator, there is no evidence that the funds received by easyJet from SOGAER and GEASAR were the same as those granted directly from the Region to the airport operators.
- (193) Firstly, easyJet argues that the reference to the regional law in the contract between SOGAER and easyJet in itself does not demonstrate a direct link between Sardinian regional funds and easyJet. Moreover, the fact that that reference was not made in the contract between GEASAR and easyJet further demonstrates that the Law 10/2010 mentioned in the other contract was not material in the relationship between the airport operators and easyJet.
- (194) easyJet believes that the Commission should make a specific assessment pertaining to the easyJet contracts in order to verify whether the funds easyJet received from the airport operators effectively came from the Region before reaching the conclusion that the measure in question is State aid.

The distortion of competition within the internal market

- (195) easyJet states that the compensation received is not sufficient to adversely affect competition. This is due to two main factors: the relatively low amount of compensation and the absence of airlines operating on the same routes as mentioned in the contracts.
- (196) easyJet is the only airline that operates all the routes mentioned in the contract with SOGAER and almost all the routes mentioned in the contract with GEASAR. Airport operators invited other airlines to operate the same routes through the publication on their websites of the invitation for airlines to provide business plans to operate routes from/to Cagliari and Olbia, but only easyJet acted upon this opportunity.
- (197) Since easyJet is the only airline operator on the relevant routes, no competitor can be harmed by the alleged aid. Thus, according to easyJet, there is no distortion of competition.

Absence of any economic advantage

- (198) easyJet states that the measure does not involve any economic advantage in its favour and bases its argumentation on the private investor principle.
- (199) easyJet states that SOGAER and GEASAR were able to assess on an *ex ante* basis the positive economic return of the contracts. The economic return is based on two factors: (i) easyJet gave a commitment to provide the

⁽⁸⁶⁾ Neither business plan has been communicated to the Commission.

marketing activities, operate the point-to-point flights, and reach the passenger targets provided for in the contracts; (ii) easyJet provided the airport operator with business plans that cover the period of the contracts as well as media plans, in order to allow the airport operator to verify the profitability; and (iii) the airport operator confirmed the return on the investment, resulting from the marketing activities.

- (200) Concerning the first point, easyJet clarifies that in both the Cagliari and Olbia contracts, it gave a commitment to operate a minimum schedule of operations and frequencies for the relevant routes.
- (201) Concerning the second point, the business plans provided by easyJet describe easyJet's offer in detail, so that airport operators may assess the profitability of the investments. easyJet clarifies that, on the basis of the information available at the time, both the airport operators concluded that the investments resulted in a significant economic return for the airports.
- (202) SOGAER based its decision to operate with easyJet on the result of an economic impact study, certified by an external consultant, which verified the return on the investment, concluding that it was very likely to result in a significant economic return and development for the airport. GEASAR declared in the contract that it had examined easyJet's business plan, evaluated the assumptions and the expected results and had produced its own business plan, confirming the economic interest in operating with easyJet.
- (203) The contracts with SOGAER and GEASAR significantly increased the number of passengers at Cagliari and Olbia airports, thus granting stable and increasing revenue from aeronautical and non-aeronautical activities.
- (204) easyJet believes that the contracts with SOGAER and GEASAR are based on purely commercial terms. Therefore the measure at hand cannot be considered State aid due to the fact that SOGAER and GEASAR acted as private investors looking for economic benefits.

5.2.1.3. *Compliance with the Altmark test and/or Article 106(2) of the Treaty*

- (205) easyJet affirms that the compensation granted to easyJet does not constitute illegal State aid as it fulfils all four criteria defined by the Court of Justice of the European Union in the *Altmark* judgment ⁽⁸⁷⁾ to establish whether public service compensation constitute State aid.
- (206) The measure constitutes compensation for the commitment to operate specifically identified strategic international routes to/from Cagliari and Olbia airports and provide the related marketing and advertising services, notably during the unprofitable off-peak season,. Furthermore its funding under the scheme is limited to (partial) compensation for the costs actually borne by easyJet in fulfilling its public service mission, and eventually allows easyJet to obtain a reasonable profit.
- (207) easyJet believes that the first Altmark condition (entrustment with a well-defined public service obligation) is met since the task of operating strategic international routes has been conferred on EasyJet by the State, and that public service task has been precisely defined. easyJet entered into binding contracts with SOGAER and GEASAR as a result of the Sardinia Law 10/2010 and subsequent implementing acts,. Such contracts impose specific obligations on easyJet to ensure that the principle of territorial continuity is upheld and that a sufficient number of flights is provided to carry passengers to/from Sardinia also during the off-season. The compensation under scrutiny relates to SGEI assigned to easyJet by the Region through SOGAER and GEASAR.
- (208) In analysing the second condition (parameters for calculating the compensation are defined in advance in an objective and transparent manner), easyJet submits that the contracts entrusting easyJet with the task of providing air transport services on the strategic routes sufficiently specify, in advance, the compensation for fulfilment of the task, since they indicate a fixed amount per year specifically relating to the operation of the routes concerned throughout the year.

⁽⁸⁷⁾ Judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415.

- (209) With reference to the third condition (compensation received does not exceed what is necessary to cover the costs and achieve a reasonable profit), easyJet states that the provision of air transport services specified in the contracts with SOGAER and GEASAR entails major fixed and operating costs for easyJet. [...] easyJet confirms that without the support received from the airports, it would never have operated any routes from Sardinian airports, except for during the peak season.
- (210) easyJet states that even the fourth Altmark condition is met (the compensation received does not exceed the costs of a well-run undertaking that is adequately equipped with the means to provide the public service). easyJet submits that it can be considered a typical undertaking, well run and adequately equipped with the means to provide the public service. What easyJet wants to highlight is that it is one of the best-run European airlines and is able to offer customers low fares due to its focus on efficiency, and reliance on high utilisation of fleet and intensive use of IT, which all drive down the cost per passenger.
- (211) Should the Commission consider that the Altmark conditions are not met, easyJet considers that all the conditions of Article 106(2) of the Treaty are met and that the activities were necessary for the fulfilment of services of general economic interest. The activities may therefore still be justified as compatible under the exception provided by Article 106(2) of the Treaty.

5.2.1.4. *The balancing test*

- (212) According to easyJet, even if the scheme falls outside the scope of regulations and guidelines, the positive outcome of the balancing test makes it fully legal, irrespective of the amount of aid or the size of the beneficiary. Aid is considered to have undue negative effects when:
- (a) it is granted to inefficient or dominant companies in declining sectors;
 - (b) it displaces private investment or research efforts;
 - (c) it discriminates against certain companies or technologies.
- (213) None of the competitive distortions that are commonly associated with problematic State aid are to be found in this case: (i) the recipients have not captured market shares at the expense of potentially more efficient competitors; (ii) foreign competitors have not been discriminated against to the advantage of 'national champions'; (iii) consumers have not lost out from not having access to cheaper or better products.
- (214) easyJet states that the scheme in question fulfils the requirements of necessity and proportionality. The scheme is necessary because easyJet would not otherwise operate the routes throughout the year. The scheme is proportional, because the contribution represents only a fraction of easyJet's operating costs.

5.2.1.5. *Conclusion*

- (215) easyJet concludes that it did not receive any illegal State aid from either Sardinian airports or Sardinian authorities during the period under investigation.

5.2.2. COMMENTS PROVIDED ON THE APPLICATION OF THE 2014 AVIATION GUIDELINES TO THE MEASURES AT STAKE

- (216) easyJet asserts that it has already demonstrated that it received no illegal State aid for a number of reasons, which are unaffected by the new guidelines. easyJet stresses that there are two methods, at Section 3.5 of the 2014 Aviation Guidelines, for determining whether agreements between airports and airlines satisfy the market economy operator test and, thus, are free of State aid.
- (217) The first is the benchmark method, but the Commission dismisses this method due to the substantial presence of State subsidies in the airport market.

- (218) The alternative method proposed consists in ascertaining whether the commercial arrangement concerned incrementally contributes to the profitability of the airport from an *ex ante* perspective (Section 3.5.2 of the 2014 Aviation Guidelines). easyJet specifies that 'the Commission considers *ex ante* incremental profitability analysis to be the most relevant criterion for the assessment of arrangements concluded by airports with individual airlines'. In the opinion of the company, that assessment should, in principle, be based on a business plan taking into account available information and foreseeable developments at the time when the agreement was concluded.
- (219) easyJet stresses that, as explained in the comments submitted on 30 July 2013, SOGAER and GEASAR were able to anticipate on an *ex ante* basis the positive economic return of the contracts.
- (220) easyJet notes that the positive economic return is based on the following factors: (i) easyJet gave a commitment to provide the marketing activities, operate the point-to-point flights and reach the passenger targets provided for in the contracts; (ii) easyJet provided the airport operator with business plans that cover the period of the contracts as well as media plans, in order to allow the airport operator to verify the profitability; and (iii) the airport operator confirmed the return on the investment, resulting from the marketing activities. easyJet points out that, based on the information available at the time, both airport operators concluded that the investments result in a significant economic return for the airports. In fact, SOGAER based its decision to enter into the contract with easyJet on the result of an economic impact study.
- (221) easyJet also points out that its advertising and marketing activities significantly increased the visibility of Cagliari and Olbia airports and therefore passenger flow on routes to those airports.
- (222) Regarding point 5.2 of the 2014 Aviation Guidelines, easyJet notes that there are some changes to the conditions under which airlines can receive aid for launching new routes. easyJet maintains that, for this case, under the new guidelines, more flexible arrangements, in terms of airport size and eligible destinations, could be justified for airports located in remote regions, as in this case on an island. easyJet submits that the new criteria for the admissibility of start-up aid are substantially fulfilled.
- (223) The company notes that point 5.2 of the 2014 Aviation Guidelines states that start-up aid to airlines will be considered to contribute to the achievement of an objective of common interest, if one of the following conditions is met: (i) the aid increases the mobility of Union citizens and the connectivity of the regions by opening new routes, or (ii) the aid facilitates regional development of remote regions. According to point 2.2 of the guidelines, 'remote regions' mean 'outermost regions, Malta, Cyprus, Ceuta, Melilla, islands which are part of the territory of a Member State, and sparsely populated areas'. easyJet retains that those criteria are both met. Furthermore, the requirement of a genuine transport need also appears to be fulfilled, due to the lack of real alternative transportation methods.
- (224) easyJet recalls that start-up aid can be granted to airlines departing from airports with fewer than 3 million passengers per year (point 142 of the Aviation Guidelines), and, on a case by case basis, also to those departing from airports with more than 3 and less than 5 million passengers per year (point 144). As regards Olbia airport — whose contract with easyJet was signed in 2011 — the traffic volumes registered in 2009 and 2010 amounted to, respectively, 1 621 945 and 1 591 821 passengers. With respect to Cagliari airport — whose contract with easyJet was signed in 2010 — the traffic volumes registered in 2008 and 2009 amounted to, respectively, 2 924 805 and 3 317 262 passengers. In any case, the Commission, in the opinion of easyJet, should conclude that the start-up aid is necessary pursuant to point 142 (in the case of Cagliari airport), or at least to point 144 of the 2014 Aviation Guidelines.
- (225) Concerning the appropriateness of State aid as a policy instrument, point 147 provides that that criterion is fulfilled if one of the following conditions is satisfied: (i) an *ex ante* business plan prepared by the airline establishes that the route receiving the aid has prospects of becoming profitable for the airline without public funding after 3 years, or (ii) in the absence of a business plan for a route, the airlines provide an irrevocable commitment to the airport to operate the route for a period at least equal to the period during which they received start-up aid. easyJet underlines the fact that the business plans drafted at the moment the contracts were signed confirmed the convenience and the sustainability of the agreements for the airports.

- (226) While no formal commitment to operate beyond the initial 3-year period was provided, *de facto* that condition is being currently fulfilled, as easyJet has continued to operate at Cagliari and Olbia airports, after the expiry of the agreement in 2013.
- (227) Regarding the existence of an incentive effect, easyJet recalls that start-up aid to airlines has an incentive effect if it is likely that, in the absence of the aid, the level of economic activity of the airline at the airport concerned would not be expanded. easyJet, referring to the comments that it submitted on 30 July 2013, points out that, without the support received from SOGAER and GEASAR, it would not have operated any of the routes concerned, outside the peak season.
- (228) With regard to the proportionality of the aid amount, easyJet estimates that that criterion was complied with in this case. Finally, concerning the avoidance of undue negative effects on competition and trade, easyJet states that the routes operated cannot be served by any high-speed rail service or other forms of transport. Furthermore, there are no other airports in the same catchment areas as Cagliari and Olbia airports.

5.2.3. ADDITIONAL COMMENTS ON MEOP ANALYSIS WITH REGARD TO OLBIA AIRPORT

- (229) easyJet states that the agreements with Olbia Airport are compliant with the market economy operator principle. To that end, easyJet provided the Commission with one report prepared by a consultancy firm. That study analyses the expected profitability of each marketing agreement concluded by easyJet with Olbia on a fully *ex ante* basis, in line with its understanding of the Commission's approach following the 2014 Aviation Guidelines and the recent case practice ⁽⁸⁸⁾.
- (230) The results show that, under relevant assumptions at the time when the 2010 and 2011 marketing agreements were signed, each agreement was expected to be sufficiently profitable ⁽⁸⁹⁾. Indeed, regarding the 2010 and 2011 Agreements, the NPV is strictly positive both in the reported base case and in multiple sensitivity tests, suggesting that a rational private investor would have been likely to offer similar agreements.
- (231) Thus the evidence presented indicates that, under similar circumstances, a rational market economy investor would have been willing to enter into similar agreements with easyJet, assuming reasonable *ex ante* expectations for GEASAR. That analysis implies that, by concluding the various agreements with easyJet, GEASAR was behaving in a manner similar to a private investor.

5.3. COMMENTS FROM GEASAR S.P.A. (AIRPORT OPERATOR OF OLBIA AIRPORT)

5.3.1. COMMENTS ON THE OPENING DECISION

- (232) Olbia airport mainly handles domestic and international commercial passenger traffic, with an emphasis on tourist traffic. Air traffic from and to Olbia airport peaks in the summer season, between May and October.
- (233) GEASAR stresses that the airport's location in an island region, such as Sardinia, means that:
- (a) it cannot be regarded as overlapping with airports in other Member States or in mainland Italy;
 - (b) Olbia airport is not in competition with the island's other airports (in particular Mario Mameli airport in Cagliari-Elmas and the Alghero-Fertilia airport). The three Sardinian airports cannot be considered to be mutually substitutable, as they have different catchment areas. The key reasons for their non-substitutability are: the island's topography, the scattered presence of the population across the territory, the long distances between them and the lack of fast road links between the island's different areas.

⁽⁸⁸⁾ Mainly Commission Decision 2004/393/EC of 12 February 2004 with its establishment at Charleroi concerning advantages granted by the Walloon Region and Brussels South Charleroi Airport to the airline Ryanair in connection with its establishment at Charleroi (OJ L 137, 30.4.2004, p. 1), and Commission Decision 2013/664/EU of 25 July 2012 on measure SA.23324 — C 25/07 (ex NN 26/07) — Finland, Finavia, Airpro and Ryanair at Tampere-Pirkkala airport (OJ L 309, 19.11.2013, p. 27).

⁽⁸⁹⁾ The analysis has been made without access to the airport to discuss the data obtained from public sources and easyJet, the information has been derived from the relevant marketing agreements, invoice data, ground-handling agreements, published tariffs and Olbia Airport's annual accounts.

- (234) Moreover, air traffic at Olbia airport is not in competition with the other modes of transport from and to Sardinia. The only alternative to reaching Sardinia by air is by sea, but with far longer journey times.

5.3.1.1. *The actions taken by GEASAR to implement Law 10/2010*

- (235) GEASAR submitted action plans for 2010 and for the 3-year period 2011-2013 to the Region, together with their respective funding applications. The Region approved the allocation of funding for those periods, by Decisions No 43/37 of 6 December 2010 and No 52/117 of 23 December 2011.
- (236) The actions actually implemented by GEASAR concerned solely activities 2 and 3 as provided for in Law 10/2010; they concerned activities to promote Sardinia as a tourist destination. GEASAR did not conclude any route development agreement under activity 1.

Activity 2

- (237) The airport operator published on its website the call for expressions of interest for the purpose of concluding marketing and advertising contracts implementing Law 10/2010. After receiving expressions of interest, GEASAR negotiated the proposals for marketing activities with the airlines, taking into account the tourism marketing plan drawn up by the Region as one of its planning instruments.
- (238) As a result, GEASAR concluded, for the period 2010-2013, *ad hoc* contracts with easyJet, Meridiana, Air Berlin, Fly Niki, Volotea, Norwegian, Air Italy, Jet2.com and Air Baltic. Most of the contracts had a duration of 1 or 2 years.
- (239) The contracts were based on the pre-requisite that the airlines concerned operated certain domestic or European routes from and to Olbia. That requirement was linked to the promotion of Sardinia as a tourist destination by the airlines.
- (240) The destination marketing and promotion activities which the carriers undertake to carry out using the budget provided under the contract, are set out in a specific media plan. More specifically, they consist in: (i) 'classical' advertising (that is to say, in town, in the media, in in-flight magazines, etc.); and (ii) 'online' advertising on the air carrier's website.

Activity 3

- (241) GEASAR entrusted to third parties, on behalf of the Region, several initiatives to promote Sardinia as a destination, such as advertising in the press and through television commercials, printing of maps with information on Sardinia, billboards and window stickers to be put up at the airport, consultancy contracts for planning promotional strategies, participation in sector fairs and press conferences, and promotion of the destination through the offer of travel packages by tourist agencies and a website promoting tourism in Sardinia.

Financial flows

- (242) The payment of activities 2 and 3 is advanced by the airport operator to the airlines and the other service providers concerned. GEASAR submitted reports of the activities implemented in the period 2010-2012, with costs actually incurred, to the Region. The Region should have then reimbursed the sums advanced by the airport operator.
- (243) The Region has partially reimbursed the costs incurred by GEASAR for the activities 2 and, because of its limited budgetary appropriations. The largest part of the funds disbursed by the Region under Law 10/2010 relates to activity 2, covering GEASAR's payments to airlines by way of consideration under marketing and advertising contracts.
- (244) Table 11 shows the financial flows from GEASAR.

Table 11

Financial flows from Olbia airport

	(EUR)			
	2010	2011	2012	TOTAL
activity 2	[...]	[...]	[...]	[...]
activity 3	[...]	[...]	[...]	[...]
Total reported by the airport operator to the Region	3 972 223	3 057 654	3 029 160	10 059 037
Right to contributions under Law 2010	3 972 223	2 945 363	3 029 160	9 946 747
Total contributions under Law 2010 reimbursed to the airport operator	3 400 000	2 599 000	3 029 160	9 028 160

5.3.1.2. Assessment under Article 107(1) of the Treaty

- (245) GEASAR is not the actual beneficiary of activities 2 and 3 and the Opening Decision contained an error in that it included GEASAR among the beneficiaries of the State aid provided for by Law 10/2010. GEASAR was not the beneficiary of the economic advantage deriving from the aid: the contributions granted by the Region under Law 10/2010 were simply 'passed on' by the airport operators to the ultimate beneficiaries, that is to say the airlines operating air links in the airports under examination. This also applies to the tourist promotion of Sardinia commissioned by the airport operators from other companies.
- (246) According to GEASAR, the contributions under Law 10/2010 do not constitute State aid since at least two of the four conditions for identifying State aid under Article 107(1) of the Treaty are not met:
- (a) activities 2 and 3 confer no advantage on GEASAR, which considers that the funds provided for by law 10/2010 are consistent with the MEIP: the sums paid by the Region, with regard to activities 2 and 3, consist of consideration for a service rendered and costs actually incurred by third parties. GEASAR also notes that the consideration paid to the airlines (activity 2) and the other service providers (activity 3) is consistent with current market prices. On the other hand, the funding granted by the Region under Law 10/2010 has generated a financial return for the Region over the medium-long term. The amount obtained by the Region in terms of increased tax revenue can be considered to be higher than the costs incurred by the Region in funding the activities under examination. The loans granted by SFIRS were also paid out under market conditions;
 - (b) activities 2 and 3 do not affect trade and do not distort competition: on account of its particular location, Olbia airport operates at local level, not competing with other national or European airports. Management, albeit partial, of Olbia airport was assigned to GEASAR in 1989, hence well before the judgment in *Aéroport de Paris* of 12 December 2000, which extended the applicability of State aid rules to the operation of airports.
- (247) GEASAR concludes that the contributions under Law 10/2010 do not constitute State aid, pursuant to Article 107(1) of the Treaty.

5.3.1.3. Assessment of compatibility pursuant to Article 107(3)(c) of the Treaty

- (248) In the alternative, GEASAR submits that, in any case, the contributions paid out under Law 10/2010 are compatible with the internal market pursuant to Article 107(3)(c) of the Treaty. Compatibility must be assessed in accordance with point 79 of the 2005 Aviation Guidelines ⁽⁹⁰⁾:
- (a) the aid is paid out to airlines with a valid operating licence issued by a Member State pursuant to Regulation (EC) No 1008/2008;

⁽⁹⁰⁾ The criteria in question have been examined by the Commission at points 133 *et seq.* of 'the Opening Decision'.

- (b) the funding at issue was aimed at reducing the seasonality of air traffic; accordingly, it promoted the opening of new routes or schedules, and did not concern airlines subject to public service obligations within the meaning of Regulation (EC) No 1008/2008;
 - (c) for the airlines concerned, the subsidised link was profitable;
 - (d) the funding covered the additional start-up costs of operating the new route or the new schedule; those costs are in line with current market prices;
 - (e) the initiatives under Law 10/2010 were adequately publicised among the various airlines interested in offering their services;
 - (f) the contracts include a system of penalties triggered by any airline's failure to comply with its commitments towards the airport.
- (249) GEASAR notes that the subsidies paid out under Law 10/2010 are granted to airlines for a slightly longer period (4 years instead of 3) and are of a greater intensity than allowed by the 2005 Aviation Guidelines, but adds that not all the contracts concluded with airlines have the duration set out in Law 10/2010; most importantly, it stresses that the Guidelines allow derogations from the intensity criteria they contain in the case of assisted and economically disadvantaged regions such as Sardinia.
- (250) The measures under examination are appropriate to incentivise development targets consistent with Union interests, and do not affect trade between Member States to an extent contrary to the common interest. In this regard, GEASAR refers to the European Parliament resolution of 10 May 2012 on the future of regional airports and air services in the EU ⁽⁹¹⁾, which stressed the importance of regional airports in the Union.
- (251) GEASAR believes that the assessment of the compatibility of the measures under examination with the internal market should take into account the key role played by Olbia airport in ensuring the territorial continuity of an island region such as Sardinia.

5.3.1.4. *Assessments under Article 106 of the Treaty*

- (252) GEASAR notes that the amounts paid out under Law 10/2010 do not constitute State aid on the basis of the Altmark criteria and, even if they did, they would be compatible under Article 106(2) of the Treaty.

Fulfilment of the Altmark criteria

- (253) As to the first condition in Altmark, GEASAR points out that the measures under examination are part of the Region's broader geographical and transport policy designed to ensure a minimum of air links between the island and the rest of the Union, covering the whole year.
- (254) According to GEASAR, the second and third conditions in Altmark are met: the parameters on the basis of which the compensation is calculated were established in advance in an objective and transparent manner, and there is no risk of over-compensation since GEASAR has only been partly reimbursed for the costs incurred.
- (255) GEASAR considers that it incurred costs as a private undertaking subject to normal market conditions; therefore, the fourth Altmark condition is also met.

Compatibility pursuant to Article 106(2) of the Treaty

- (256) GEASAR considers that this compatibility should be assessed in the light of the SGEI Decision of 2005 and, in the alternative, in the light of the SGEI Framework of 2011, *mutatis mutandis*.
- (257) GEASAR notes that the threshold set out in Article 2(1)(a) of the SGEI Decision of 2005 is met in that the amount of the public contribution was about EUR 4 million per year, and GEASAR's turnover was below EUR 100 million. The conditions in Articles 4, 5 and 6 of the SGEI Decision of 2005 are likewise met.

⁽⁹¹⁾ 2011/2196 (INI).

(258) As to the applicability of the SGEI Framework of 2011, GEASAR points out that:

- (a) the compensation was granted for a genuine and correctly defined service of general economic interest;
- (b) the responsibility for the operation of the service of general economic interest was entrusted to the undertakings concerned by way of one or more acts;
- (c) the amount of compensation does not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit.

5.3.2. COMMENTS PROVIDED ON THE APPLICATION OF THE 2014 AVIATION GUIDELINES TO THE MEASURES AT STAKE

- (259) GEASAR points out that the alleged aid at issue was granted before 4 April 2014 and that Section 8.6 of the 2014 Aviation Guidelines clarifies the date from which the compatibility criteria set out therein are to be applied. The Commission must therefore apply the principle set out in point 172 of the Guidelines to all cases concerning operating aid (pending notifications and unlawful non-notified aid) to airports even if the aid was granted before 4 April 2014. Section 5 of the Guidelines also sets out compatibility criteria for operating aid paid prior to 4 April 2014. On the other hand, the 2014 Aviation Guidelines do not apply to investment and start-up aid granted in breach of Article 108(3) of the Treaty before 4 April 2014. The Commission must apply to such types of aid 'the rules in force at the time when the aid was granted' (points 173 and 174 of the Guidelines).
- (260) GEASAR refers to the comments it submitted to the Commission on 1 July 2013 to demonstrate that it received no State aid. However, should the Commission nevertheless come to the conclusion that the public funding paid out under Law 10/2010 qualifies as operating aid of which GEASAR S.p.A. was the actual beneficiary, the airport operator maintains that any aid granted meets the compatibility criteria set out in the 2014 Aviation Guidelines.
- (261) GEASAR notes that under point 137 of the Guidelines, 'operating aid granted before the beginning of the transitional period', including aid paid before 4 April 2014, 'may be declared compatible' pursuant to Article 107(3)(c) of the Treaty, 'to the full extent of uncovered operating costs'. A further condition for such aid to be compatible is that:
- (a) 'the conditions in Section 5.1.2 are met, with the exception of points 115, 119, 121, 122, 123, 126 to 130, 132, 133 and 134';
 - (b) in particular, 'distortions of competition' will be taken into account.
- (262) GEASAR believes that all the compatibility conditions set out in the 2014 Aviation Guidelines have been met.

5.3.2.1. ***Contribution to a well-defined objective of common interest (points 113 and 114 of the 2014 Aviation Guidelines)***

- (263) GEASAR notes that any operating aid granted under Law 10/2010 certainly contributed to '*the achievement of an objective of common interest*'. This is confirmed by the objectives of 'strengthening the economic, social and territorial cohesion of the reference community' which the Region intended to pursue through adoption of Law 10/2010. Indeed, the public contribution granted was intended to promote the development of flight links between the island and the rest of the Union and to reduce their seasonality, and it made it possible to avoid 'any disruptions in the air traffic and connectivity' (point 113).
- (264) GEASAR S.p.A. maintains that Law 10/2010 did contribute to 'increas[ing] the mobility of Union citizens and the connectivity of the regions by establishing access points for intra-Union flights' (point 113(a)). It adds that Law 10/2010 'facilitate[d] regional development' (point 113(c)); indeed, Olbia airport is an essential gateway to tourist destinations in north-eastern Sardinia and Law 10/2010 has helped to reduce the seasonality of air traffic.

5.3.2.2. Need for State intervention (points 116, 117 and 118 of the 2014 Aviation Guidelines)

- (265) According to GEASAR, this requirement is also met, because Olbia airport falls within the category mentioned in point 118 of the Guidelines, namely airports unable to cover their operating costs. More specifically, Olbia airport falls under heading (d), 'airports with annual passenger traffic of 1-3 million'. In 2013 commercial passenger traffic amounted to 1 950 615 passengers.

5.3.2.3. Appropriateness of State aid as a policy instrument (point 120 of the 2014 Aviation Guidelines)

- (266) GEASAR believes that there were no other less distortive policy instruments or aid instruments that would have made it possible to attain the same objective, which was to ensure air links to north-western Sardinia, which at the time were mainly concentrated in the summer period, and thereby help overcome the lag in development affecting the area as a consequence of its peripheral location and isolation. Any aid received was used to maintain and develop commercial traffic, ensuring good links between the different Member States.

5.3.2.4. Existence of incentive effect (point 124 of the 2014 Aviation Guidelines)

- (267) GEASAR points out that any aid granted to it under Law 10/2010 was, in any event, strictly used to enable the development of traffic volumes and airport activity, which are considered to be consistent with the general interest objectives pursued. In the absence of public intervention, those aims would not have been achieved and Olbia airport would have incurred a significant decrease in its activity level over the course of the year.

5.3.2.5. Proportionality of the aid amount (aid limited to the minimum necessary) (point 125 of the 2014 Aviation Guidelines)

- (268) On this point, the airport operator refers to the relevant elements already available to the Commission and remarks that the public funds granted are intended to reimburse the operator for costs actually incurred in relation to the initiatives implemented under Law 10/2010.

5.3.2.6. Avoidance of undue negative effects on competition and trade (point 131 of the 2014 Aviation Guidelines)

- (269) GEASAR observes that any operating aid did not affect competition in any manner. The operator notes that on account of its geographical location, Olbia airport is an island operation with a geographically limited scope, not exposed to the competition of other national or Union airports. Moreover, on account of its characteristics, it is also not in competition with the other airports in Sardinia. Furthermore, Olbia airport does not compete with alternative modes of transport.
- (270) GEASAR lastly points out that, again in compliance with the 2014 Aviation Guidelines, Olbia airport is 'open to all potential users and (...) not dedicated to one specific user'. In the light of the foregoing, the company believes that any operating aid granted under Law 10/2010 is fully compatible with the criteria in point 5.1.2 of the 2014 Aviation Guidelines and should therefore be considered compatible with the internal market pursuant to Article 107(3)(c) of the Treaty.

5.4. COMMENTS FROM SOGEAAL S.P.A. (AIRPORT OPERATOR OF ALGHERO AIRPORT)

5.4.1. COMMENTS ON THE OPENING DECISION

- (271) SOGEAAL stresses that the location of the Alghero airport in an island region, such as Sardinia, means that:

- (a) Alghero airport cannot be regarded as overlapping with airports in other Member States or in mainland Italy;
- (b) Alghero airport not in competition with the island's other airports (in particular Mario Mameli airport in Cagliari-Elmas and the Olbia-Costa Smeralda airport). The three Sardinian airports cannot be considered to be mutually substitutable, as they have different catchment areas. The key reasons for their non-substitutability are: the island's topography, the scattered presence of the population across the territory, the long distances between them and the lack of fast road links between the island's different areas.

- (272) Moreover, air traffic at Alghero airport is not in competition with the other modes of transport from and to Sardinia. The only alternative to reaching Sardinia by air is by sea, but with far longer journey times.

5.4.1.1. *The actions taken by SOGEAAL to implement Law 10/2010*

- (273) SOGEAAL submitted action plans for 2010 and for the 3-year period 2011-2013 to the Region, together with the respective funding applications. The Region approved the allocation of funding for those periods, by Decisions No 43/37 of 6 December 2010 and No 52/117 of 23 December 2011.
- (274) SOGEAAL considered that, when implementing activities 1, 2 and 3 provided for in Law 2010, it took into account the profitability prospects estimated in the economic-financial plan.

Activity 1

- (275) After publicising its intention to conclude contracts for route development under Law 10/2010, SOGEAAL concluded agreements with Ryanair and easyJet, for the years 2010-2013, under which the airlines undertook to reach certain traffic targets, and on reaching them would receive from SOGEAAL, on the Region's behalf, a certain sum of money by way of success fee.

Activity 2

- (276) The airport operator published on its website its intention to conclude marketing and advertising contracts under Law 10/2010. SOGEAAL then concluded marketing and advertising contracts with AMS, Meridiana, Alitalia and WizzAir. The contracts were based on the pre-requisite that the airlines concerned operated certain domestic or EU routes from and to Alghero. That requirement was linked to the promotion of Sardinia as a tourist destination by the airlines.
- (277) The destination marketing and promotion activities which the carriers carry out using the contribution provided under the contract, include: (i) 'classical' advertising (that is to say, in town, in the media, in in-flight magazines, etc.); and (ii) 'online' advertising on the air carrier's website.

Activity 3

- (278) SOGEAAL entrusted to third parties, on behalf of the Region, several initiatives to promote Sardinia as a destination, including the creation of a website promoting tourism in Sardinia, classic and online advertising campaigns, and promotion of the destination through the offer of travel packages by tourist agencies.

Financial flows

- (279) The payment for the actions carried out under activities 1, 2 and 3 is made in the form of an advance by the airport operators to the airlines and the other service providers concerned. SOGEAAL submitted the reports of the activities implemented in the period 2010-2012, with costs actually incurred, to the Region. The Region must then reimburse the sums advanced by the airport operator.
- (280) The largest part of the funds disbursed by the Region under law 10/2010 relates to activities 1 and 2, covering SOGEAAL's payments to airlines by way of consideration under marketing and advertising contracts, as shown in Table 12.

Table 12

Financial flows from Alghero airport

(EUR)

	2010	2011	2012	TOTAL
activity 1	[...]	[...]	[...]	[...]
activity 2	[...]	[...]	[...]	[...]
activity 3	—	[...]	[...]	[...]

(EUR)

	2010	2011	2012	TOTAL
Total reported by the airport operator to the Region	8 517 962	9 041 162	9 062 413	26 621 538
Right to contributions under Law 2010	8 517 962	9 041 162	9 062 413	26 621 538
Total contributions under Law 2010 reimbursed to the airport operator	8 517 962	9 041 162	9 062 413	26 621 538

5.4.1.2. *Assessment under Article 107(1) of the Treaty*

- (281) SOGEAAL is not the actual beneficiary of activities 1, 2 and 3. SOGEAAL claims the Opening Decision contained an error in that it included SOGEAAL among the beneficiaries of the State aid provided for by Law 10/2010.
- (282) SOGEAAL was not the beneficiary of the economic advantage deriving from the aid: the contributions granted by the Region under Law 10/2010 were simply 'passed on' by the airport operators to the ultimate beneficiaries, that is to say, the airlines operating air links in the airports under examination. This also applies to the tourist promotion of Sardinia commissioned by the airport operators from other companies.
- (283) According to SOGEAAL, the compensation granted under law 10/2010 do not constitute State aid. Three of the four conditions for identifying State aid under Article 107(1) are not met. Activities 1, 2 and 3 do not affect trade and do not distort competition: on account of its particular location, Alghero airport operates at local level, not competing with any other national or European airports. Management, albeit partial, of Alghero airport was assigned to SOGEAAL in 1989, hence well before the judgment in *Aéroport de Paris* of 12 December 2000, which extended the applicability of State aid rules to the operation of airports.
- (284) Activities 1, 2 and 3 confer no economic advantage. SOGEAAL considers that the funds provided for by Law 10/2010 are consistent with the MEIP: the sums paid by the Region, with regard to all three activities consist of consideration for a service rendered and costs actually incurred by third parties. SOGEAAL also notes that the consideration paid to the airlines (activity 2) and the other service providers (activity 3) is consistent with current market prices.
- (285) The funding granted by the Region under Law 10/2010 has generated a financial return for the Region over the medium-long term. The amount obtained by the Region in terms of increased tax revenue can be considered to be higher than the costs incurred by the Region in funding the activities under examination. The loans granted by SFIRS were also paid out under market conditions.
- (286) SOGEAAL concludes that the contributions under Law 10/2010 do not constitute State aid pursuant to Article 107(1) of the Treaty.

5.4.1.3. *Assessment of compatibility pursuant to Article 107(3)(c) of the Treaty*

- (287) In the alternative, SOGEAAL submits that, in any case, the contributions paid out under Law 10/2010 are compatible with the internal market pursuant to Article 107(3)(c) of the Treaty. Compatibility must be assessed in accordance with point 79 of the 2005 Aviation Guidelines ⁽⁹²⁾:
- (a) the aid is paid out to airlines holding a valid operating licence issued by a Member State pursuant to Regulation (EC) No 1008/2008;
 - (b) the funding at issue was aimed at reducing the seasonality of air traffic and accordingly promoted the opening of new routes or schedules, and it did not concern airlines subject to public service obligations within the meaning of Regulation (EC) No 1008/2008;

⁽⁹²⁾ The criteria in question were examined by the Commission at points 133 *et seq.* of 'the Opening Decision'.

- (c) for the airlines concerned, the subsidised link was profitable;
 - (d) the initiatives under Law 10/2010 were adequately publicised among the various airlines interested in offering their services;
 - (e) the contracts include a system of penalties triggered by any airline's failure to comply with its commitments towards the airport.
- (288) SOGEAAL notes that the subsidies paid out under Law 10/2010 are granted to airlines for a slightly longer period (4 years instead of 3) and a greater intensity than allowed by the 2005 Aviation Guidelines but adds that not all the contracts concluded with airlines have the duration set out in Law 10/2010; most importantly, it stresses that the Guidelines allow derogations from the intensity criteria they contain in the case of assisted and economically disadvantaged regions such as Sardinia.
- (289) The activities under examination are appropriate to incentivise development targets consistent with Union interests and do not affect trade between Member States to an extent contrary to the common interest. In this regard, SOGEAAL refers to the European Parliament resolution of 10 May 2012 on the future of regional airports and air services in the EU, which stressed the importance of regional airports in the EU.
- (290) SOGEAAL believes that assessment of the compatibility of the measures under examination with the internal market should take into account the key role played by Alghero airport in ensuring the territorial continuity of an island Region such as Sardinia.

5.4.1.4. **Assessments under Article 106 of the Treaty**

- (291) SOGEAAL notes that the amounts paid out under Law 10/2010 do not constitute State aid on the basis of the Altmark criteria and, even if they did, they would be compatible under Article 106(2) of the Treaty.

Fulfilment of the Altmark criteria

- (292) As to the first condition in Altmark, SOGEAAL points out that the activities under examination are part of the Region's broader geographical and transport policy designed to ensure a minimum of air links between the island and the rest of the Union, covering the whole year.
- (293) According to SOGEAAL, the second and third conditions in Altmark are met: the parameters on the basis of which the compensation is calculated were established in advance in an objective and transparent manner, and there is no risk of over-compensation, since SOGEAAL has been only partly reimbursed for the costs incurred.
- (294) The costs considered were incurred by private, well run undertakings, hence the fourth Altmark condition is also met.

Compatibility pursuant to Article 106(2) of the Treaty

- (295) SOGEAAL considers that this compatibility should be assessed in the light of the SGEI Decision of 2005 and, in the alternative, in the light of the SGEI Framework of 2011, *mutatis mutandis*.
- (296) SOGEAAL notes that the threshold set out in Article 2(1)(a) of the SGEI Decision of 2005 is met in that the amount of the public contribution was about EUR 4 million per year, and SOGEAAL's turnover was below EUR 100 million. The conditions in Articles 4, 5 and 6 of the SGEI Decision of 2005 are likewise met.
- (297) As to the applicability of the SGEI Framework of 2011, SOGEAAL points out that:
- (a) the compensation was granted for a genuine and correctly defined service of general economic interest;
 - (b) the responsibility for the operation of the service of general economic interest was entrusted to the undertakings concerned by way of one or more acts;
 - (c) the amount of compensation does not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit.

5.4.2. COMMENTS PROVIDED ON THE APPLICATION OF THE 2014 AVIATION GUIDELINES TO THE MEASURES AT STAKE

- (298) SOGEAAL points out that the alleged aid at issue was granted before 4 April 2014 and that Section 8.6 of the 2014 Aviation Guidelines clarifies the date from which the compatibility criteria set out therein are to be applied. The Commission must therefore apply the principle set out in point 172 of the Guidelines to all cases concerning operating aid (pending notifications and unlawful non-notified aid) to airports even if the aid was granted before 4 April 2014. Section 5 of the Guidelines also sets out compatibility criteria for operating aid paid prior to 4 April 2014. On the other hand, the 2014 Aviation Guidelines do not apply to investment and start-up aid granted in breach of Article 108(3) of the Treaty before 4 April 2014. The Commission must apply to such types of aid 'the rules in force at the time when the aid was granted' (points 173 and 174 of the Guidelines).
- (299) SOGEAAL refers to comments it submitted to the Commission on 29 July 2013 to demonstrate that it received no State aid. However, should the Commission nevertheless come to the conclusion that the public funding paid out under Law 10/2010 qualifies as operating aid of which SOGEAAL was the actual beneficiary, the airport operator maintains that any aid granted meets the compatibility criteria set out in the 2014 Aviation Guidelines.
- (300) SOGEAAL notes that under point 137 of the Guidelines, 'operating aid granted before the beginning of the transitional period', including aid paid before 4 April 2014, 'may be declared compatible' pursuant to Article 107(3)(c) of the Treaty, 'to the full extent of uncovered operating costs'. A further condition for such aid to be compatible is that:
- (a) 'the conditions in Section 5.1.2 are met, with the exception of points 115, 119, 121, 122, 123, 126 to 130, 132, 133 and 134';
 - (b) in particular, 'distortions of competition' will be taken into account.
- (301) SOGEAAL believes that all the compatibility conditions set out in the 2014 Aviation Guidelines are met and notes that on 8 May 2014 it had already submitted remarks on compatibility with the 2014 Aviation Guidelines in procedure SA.23098-Aeroporto di Alghero.

5.4.2.1. *Contribution to a well-defined objective of common interest (points 113 and 114 of the 2014 Aviation Guidelines)*

- (302) SOGEAAL notes that any operating aid granted under Law 10/2010 certainly contributed to 'the achievement of an objective of common interest'. This is confirmed by the objectives of 'strengthening the economic, social and territorial cohesion of the reference community' which the Region intended to pursue through adoption of Law 10/2010. Indeed, the public contribution granted was intended to promote the development of flight links between the island and the rest of the Union and to reduce their seasonality, and it made it possible to avoid 'any disruptions in the air traffic and connectivity' (point 113).
- (303) SOGEAAL maintains that Law 10/2010 did in fact help to 'increas[ing] the mobility of Union citizens and the connectivity of the regions by establishing access points for intra-Union flights' (point 113(a)).
- (304) The same operator adds that Law 10/2010 'facilitate[d] regional development' (point 113(c)); this is particularly true of the Alghero airport catchment area, north-western Sardinia, which suffers from a marked lag in development.

5.4.2.2. *Need for State intervention (points 116, 117 and 118 of the 2014 Aviation Guidelines)*

- (305) According to SOGEAAL, this requirement is also met, because the Alghero airport falls within the category mentioned in point 118 of the Guidelines, namely airports unable to cover their operating costs. More specifically, Alghero airport falls under heading (d), 'airports with annual passenger traffic of 1-3 million'.

5.4.2.3. Appropriateness of State aid as a policy instrument (point 120 of the 2014 Aviation Guidelines)

- (306) SOGEAAL believes that there were no other less distortive policy instruments or aid instruments that would make it possible to attain the same objective, which was to ensure air links to north-western Sardinia, which at the time were mainly concentrated in the summer period, and thereby help overcome the lag in development affecting the area as a consequence of its peripheral location and isolation. Any aid received was used to maintain and develop commercial traffic, ensuring good connections between the different Member States.

5.4.2.4. Existence of incentive effect (point 124 of the 2014 Aviation Guidelines)

- (307) SOGEAAL points out that any aid granted to it under Law 10/2010 was, in any event, strictly used to enable the development of traffic volumes and airport activity, which are considered to be consistent with the general interest objectives pursued. In the absence of public intervention, those aims would not have been achieved and Alghero airport would have incurred a significant decrease in its activity level over the course of the year.

5.4.2.5. Proportionality of the aid amount (aid limited to the minimum necessary) (point 125 of the 2014 Aviation Guidelines)

- (308) On this point, the airport operator refers to the relevant elements already available to the Commission and remarks that the public funds granted are intended to reimburse the operator for costs actually incurred in relation to the initiatives implemented under Law 10/2010.

5.4.2.6. Avoidance of undue negative effects on competition and trade (point 131 of the 2014 Aviation Guidelines)

- (309) SOGEAAL observes that any operating aid did not affect competition in any manner. The operator notes that on account of its geographical location, Alghero airport is an island operation with a geographically limited scope, not exposed to the competition of other national or Union airports. Moreover, on account of its characteristics, it is also not in competition with the other airports in Sardinia. Furthermore, Alghero airport does not compete with alternative modes of transport.
- (310) SOGEAAL lastly points out that, again in compliance with the 2014 Aviation Guidelines, Alghero airport is 'open to all potential users and (...) not dedicated to one specific user'. In the light of the foregoing, the company believes that any operating aid granted under Law 10/2010 is fully compatible with the criteria in point 5.1.2 of the 2014 Aviation Guidelines and should therefore be considered compatible with the internal market pursuant to Article 107(3)(c) of the Treaty.

5.5. COMMENTS FROM SOGAER (AIRPORT OPERATOR OF CAGLIARI AIRPORT)**5.5.1. COMMENTS ON THE OPENING DECISION**

- (311) SOGAER disagrees with the approach taken by the Commission when it appears to apply the *Altmark* principle to SOGAER rather than to the carriers: SOGAER has never been asked by the Region to perform any service of general interest. SOGAER believes that the Region has not been able to produce any document giving a clear description of the public service obligations imposed by the airports precisely because the alleged obligations have never been understood to be obligations.

5.5.1.1. Mistaken identification of the beneficiaries

- (312) SOGAER disagrees with the conclusion reached by the Commission that SOGAER is a beneficiary of State aid under Law 10/2010. SOGAER takes the view that the aid scheme under investigation does not constitute operating aid to SOGAER or compensation paid to SOGAER for a service requested by the Region, namely selecting airlines able to achieve stated annual targets for frequency and passenger volume on strategic routes to and from Cagliari airport.
- (313) SOGAER argues that under that scheme, the Region provides compensation which is merely channelled through SOGAER, as part of a plan decided, financed and monitored by the Region, and is paid to airlines in return for operating new routes or developing existing routes to and from Sardinia. If there had been no new routes opened or existing routes expanded, SOGAER would have received no payment for the service provided.

- (314) SOGAER draws attention to the accounting obligation that was imposed on it: the Region reimbursed SOGAER for the funds that the latter had advanced to airlines, only after the Region accepted SOGAER accounts, which had to show that the airlines had received the entirety of the regional contributions. SOGAER maintains, therefore, that it was not a beneficiary of the aid in question and that it is incorrect to speak of financial support granted by the Region to SOGAER. SOGAER is not aware of any precedent for a Commission finding that a party is a beneficiary of State aid when its role is confined to passing on to third parties the public resources it has received. The service for which the Region was paying compensation was provided by the airline, and not by the airport operator. SOGAER adds that the advance payment granted by SFIRS did not involve any element of State aid. It was a loan that bore interest on market terms.

5.5.1.2. *Financial flows*

- (315) The payment of activities 2 and 3 is advanced by the airport operator to the airlines and the other providers concerned SOGEAAL submitted reports of the activities implemented in the period 2010-2012, showing the costs actually incurred, to the Region. The Region should then have reimbursed the sums advanced by the airport operator. Table 13 shows the related financial flows.

Table 13

Financial flows from Alghero airport

	(EUR)			
	2010	2011	2012	TOTAL
Activities 1 and 2	[...]	[...]	[...]	[...]
Activity 3	[...]	[...]	[...]	[...]
Total amount paid to airlines	4 537 447	4 941 510	4 262 250	13 741 207
Total reported from the airport operator to the Region	4 657 311	4 977 945	4 869 410	14 504 666
Entitlement to contributions under the Law of 2010	5 000 000	4 777 320	8 405 080	18 182 401
Total contributions under the Law of 2010 re-imbursed to the airport operator	4 250 000	4 060 722	0	8 310 722

5.5.1.3. *The beneficiaries of the measures*

- (316) SOGAER takes the view that the effective beneficiaries of the three activities defined under Law 10/2010 consisted of the island's tourist industry and indirectly the Region itself, thanks to the increased tax revenue resulting from the expansion of tourism.
- (317) As a condition of the grant made to them by the Region, the airports were required to pass on what they received so that they cannot be considered the effective beneficiaries. The same applies to the two main low-cost airlines operating in Cagliari, Ryanair and easyJet, both of whom were foreign companies aided by the Region to pursue regional objectives.

5.5.1.4. *Absence of State aid*

- (318) SOGAER analyses the component elements of a State aid measure and in particular considers the question whether the payment made conferred a competitive advantage. The company asserts that the regional compensation never covered more than a part of the additional costs borne by the carriers in order to open new routes or expand existing ones. It gives the example of Ryanair, for whom the compensation paid by the Region, passed on by SOGAER, covered about one tenth of the estimated cost of operating the routes requested.

- (319) SOGAER emphasises that the mechanism put in place amounts to a win-win solution: passengers can fly at competitive prices to and from the island, while the Region receives additional revenue deriving from tourism. The regional tourism and hospitality industry, the airlines and the airports also benefit as a result. SOGAER consequently contests the approach taken by the Commission, which seems to set out to break this virtuous circle.
- (320) SOGAER always chose carriers after publishing an invitation on its own website. The possibility of serving Cagliari was open to all interested carriers on the same economic terms. SOGAER argues that if the airlines in question manage to make greater profits than other airlines, thanks to their special business models, this cannot be attributed to State aid granted by the airport operator or by the Region. Nor can the carriers be penalised for it.
- (321) In conclusion, SOGAER takes the view that there is no State aid, because (i) the necessary undue advantage to the carriers is lacking; (ii) the private economy investor principle is satisfied, in view of the gains to the regional treasury, which are greater than the expenditure under Article 3 of Law 10/2010; and (iii) the aid goes to the tourism and hospitality industry on the island and is not on a scale such that it might have an effect on intra-Union trade.

5.5.1.5. *Services of general economic interest (SGEIs)*

- (322) SOGAER considers that the Commission's analysis of the selectivity of the advantage is excessively strict. The Commission argues that the Law 10/2010 refers not to specific routes but to the general objective of developing air transport. The Commission objects that this is contrary to the first *Altmark* criterion to give a clear definition of the requirements that the beneficiary undertaking must satisfy in order to obtain compensation for a service of general economic interest.
- (323) In SOGAER's view it was clear from the wording of the regional legislation that the compensation was to be given only to airlines that opened new routes or expanded existing ones. SOGAER considers that as an objective that obligation is sufficiently precise.
- (324) The Commission's approach to the definition of the parameters for calculating the compensation is similarly severe. SOGAER argues that the volume of compensation paid to the carriers was calculated by criteria more restrictive than those laid down by the Region, and that this should be enough to satisfy the second *Altmark* criterion.
- (325) As regards the third and fourth *Altmark* criteria, SOGAER says it published a specific notice in the *Official Journal of the European Union* in 2003, which was followed in June and August of the same year by an advertisement in the main European daily newspaper. No air carrier came forward, and SOGAER published a standing notice on its own website. SOGAER always avoided any form of overcompensation for the services requested, even where there was only one carrier interested and SOGAER's margin for negotiation was consequently tighter.
- (326) SOGAER is not aware of any legal act by which the Region gave airport operators the task of performing a public service obligation. The Commission's efforts to establish whether the level of compensation awarded to the airport operators was or was not proportionate are therefore doomed to failure.

5.5.1.6. *The private economy investor principle and the 2014 Aviation Guidelines*

- (327) SOGAER says that it conducted itself towards the low-cost airlines, Ryanair in particular, in the same way as airports under private management did. In support of this assertion it refers to the report of the consultancy firm acting on Ryanair's behalf dated 28 June 2013.
- (328) It argues that many of the compatibility criteria set out in the 2014 Aviation Guidelines are substantially met in the case at issue: (i) SOGAER managed aid or compensation for the opening of new routes or the expansion of existing ones on behalf of the Region; (ii) the compensation represented about one tenth of the average operating cost; and (iii) the airlines benefitting from the activities under assessment all held a valid operating licence. SOGAER therefore considers that if the Guidelines are interpreted on substantive rather than on formalistic lines it can be concluded that the aid at issue is compatible.

5.5.2. COMMENTS ON THE APPLICATION OF THE 2014 AVIATION GUIDELINES TO THE MEASURES AT ISSUE

- (329) SOGAER observes that the exemption provided for in point 137 of the Aviation Guidelines should be applied in the case of Cagliari airport even though the airport exceeds 3 million passengers. Otherwise Cagliari would be treated differently from the other two airports in Sardinia concerned by the activities under assessment.
- (330) SOGAER emphasises that the aid at issue served to facilitate the mobility of citizens of the Union to and from Cagliari, significantly increasing the number of intra-Union flights to and from the island's capital.
- (331) On the necessity of intervention on the part of the Region, SOGAER says that without the regional contributions to offset what SOGAER had passed on to airlines and other service providers, SOGAER's accounts would have shown a loss. There was no other way of achieving the objective of improving connections between the Region and the rest of the Union that might have entailed less distortion of competition.
- (332) SOGAER stresses that the Region always kept aid to the minimum, paying only in respect of items properly accounted for by the airport operator.
- (333) With regard to the prevention of adverse effects on competition and trade within the Union, SOGAER observes that the scheme was applicable to all the other regional airports, even though they were in competition with one another, thus allowing coverage of the respective differentials between operating costs and revenue.
- (334) Lastly, SOGAER asserts that if the Commission should take the view that the scheme under assessment constitutes operating aid to SOGAER, the aid should in any event be considered compatible with the internal market, since it is in line with the criteria and conditions in point 5.1.2 of the Aviation Guidelines.

6. OBSERVATIONS FROM ITALY ON INTERESTED PARTIES' COMMENTS

6.1. OBSERVATIONS FROM ITALY ON RYANAIR'S COMMENTS

- (335) The regional authorities dispute Ryanair's statements to the effect that the airports acted in accordance with the MEIP in maintaining commercial relations with airlines in order to increase passenger traffic and, consequently, revenues. In reality, the airport management companies only acted as intermediaries, engaged in nothing more than the transfer of resources to airlines.
- (336) According to the Region, the market economy investor in this instance was the Region, which weighed up the investment in terms of the positive economic impact for the territory.
- (337) Italy provided a note from the Italian National Civil Aviation Authority ⁽⁹³⁾, stating that the possibility for regional airports of advertising on the websites of low-cost airlines would represent an advantage for the tourism and commercial sectors, as regional airports do not benefit from the consolidated market positions and degree of guaranteed visibility of major airports.
- (338) Both Italy and the ENAC dispute Ryanair's statement to the effect that the situation in Sardinia resulted from inadequate rules on the routes subject to public service obligations under Regulation (EC) No 1008/2008 and their enforcement by the Italian authorities. Italy notes that the objective of territorial continuity is to ensure that all citizens can move around within national or Union territory under equal conditions in terms of quality and cost. The public service obligations authorised by Regulation (EC) No 1008/2008 allow any Union carrier to accept the terms of those obligations without financial compensation. If no carrier agrees to provide the service, a European tender is held, with provision for financial compensation. In this respect, the Italian authorities emphasise that commercial relations with carriers must be maintained directly by airports; the choice made by the State in ensuring that territorial continuity is maintained by way of public service obligations is, however, a different matter.

⁽⁹³⁾ Ente Nazionale per l'Aviazione Civile — ENAC.

6.2. OBSERVATIONS FROM ITALY ON EASYJET'S COMMENTS

- (339) Italy submitted observations on the comments of easyJet and of the consultancy firm acting on its behalf. Italy disagrees with both the overall approach and the conclusions drawn by the consultancy firm in its report on the '*Economic MEOP assessment of the agreements between easyJet and Olbia airport*'.
- (340) Italy rejects easyJet's claim for three reasons:
- (a) Italy considers that the MEOP should not be applied to the Olbia airport, because the operator of the airport is a private operator, GEASAR, and not a public one within the meaning of the Union rules on State aid. Its choices and actions are therefore based on market criteria, except if those choices are prescribed by *ad hoc* public regulations.
 - (b) In this case however, Italy assumes that, contrary to the claims of the consultancy firm, the marketing contracts in question were not signed by GEASAR seeking an alleged but non-existent profitability, but solely because they were required and regulated by a specific public measure. Law 10/2010 especially aims at incentivising air transport by granting contributions to airlines. Since the repeal of Law 10/2010, those activities have been discontinued.
 - (c) Thirdly, for Italy the contributions paid by the Region to the airport operator to cover the costs of the activities at issue only 'transited' through the airport management company, which transferred their entire amount to the actual beneficiary, *id est*, the airline concerned.
- (341) Then, should the claims of the consultancy firm be upheld, Italy estimates that its calculations are erroneous. The report of the consultancy firm is based on data found in the financial statements of GEASAR for the years starting from 2004, which show the revenues from airport traffic as well as the main economic data which form the year's operating results but do not show the analytical accounting data necessary to accurately perform the profitability analysis. The consultancy firm therefore overestimates the revenues induced by the contracts, particularly concerning non-aeronautical revenues. For Italy, the marketing contracts in question have a negative and not a positive balance, contrary to the assessment of the consultancy firm. This applies to the marketing contracts signed with easyJet as well as to the contracts signed with all the other airlines concerned. This, according to Italy, confirms the point that those agreements were signed in direct execution of Law 10/2010.
- (342) Last, Italy dismisses the inclusion of handling contracts signed by GEASAR with the airlines concerned in the analysis carried out by the consultancy firm. Handling contracts are typical contracts negotiated and executed on a business basis and concern the provision of services against the payment of monetary consideration by the airline. They are not related to Law 10/2010 and to the activities implemented under that law. The consideration shown in those contracts is based on the airport operator's usual business practice, which is to apply tariffs and discounts based on volume and other factors. Indeed, these contracts have remained in force even after the repeal of Law 10/2010, at similar or even lower prices than in the preceding years.

7. ASSESSMENT OF THE AID

7.1. INTRODUCTION AND SCOPE OF THE DECISION

- (343) It first must be assessed whether the funding provided by airport operators to airline companies in respect of activities 1 and 2 under Law 10/2010 during of the period 2010-2013 constitutes State aid within the meaning of Article 107(1) of the Treaty.
- (344) As set out in Section 2, the opening decision noted that since the Commission was investigating possible unlawful aid granted by the operator of Alghero airport in Case SA.23098 ⁽⁹⁴⁾, the present case covers only aid measures not examined in that case ⁽⁹⁵⁾.
- (345) While not all of payments by SOGEAAL for activities 1 and 2 are made under contracts examined in Case SA.23098, the large majority of those payments was assessed in that case. Moreover, it is not straightforward in

⁽⁹⁴⁾ Commission Decision (EU) 2015/1584 of 1 October 2014 on State aid SA.23098 (C 37/07) (ex NN 36/07) implemented by Italy in favour of Società di Gestione dell'Aeroporto di Alghero So.Ge.A.AL S.p.A. and various air carriers operating at Alghero airport (OJ L 250, 25.9.2015, p. 38).

⁽⁹⁵⁾ See recitals 51-54.

all cases to make a clear distinction given that the financial relationship between SOGEAAL and a given airline in the relevant period may be governed by various contracts only some of which have been considered in Case SA.23098. The Commission therefore considers that it is appropriate to exclude all agreements with airlines concluded by SOGEAAL under the scheme under assessment from the scope of the present proceedings ⁽⁹⁶⁾.

- (346) Furthermore, the scope of the Opening Decision did not include the potential aid granted by airport operators to service providers other than airlines for activity 3. Therefore, the Commission cannot take a position on that aspect. The second question to be assessed is whether the airport operators have received aid from the Region.

7.2. EXISTENCE OF AID

- (347) By virtue of Article 107(1) of the Treaty ‘..., any aid granted by a Member State 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 Member States, be incompatible with the internal market’.

- (348) The criteria in Article 107(1) of the Treaty are cumulative. Therefore, in order for the measures in question to constitute aid within the meaning of Article 107(1) of the Treaty all of the following conditions need to be fulfilled. Namely, the measures should must:

- (a) be granted by the State or through State resources;
- (b) favour certain undertakings or the production of certain goods;
- (c) distort or threaten to distort competition;
- (d) affect trade between Member States.

- (349) The Commission notes that the notified measures constitute an aid scheme within the meaning of point (d) of Article 1 of Regulation (EU) 2015/1589. On the basis of the legal framework described in Section 2 of this Decision, without further implementing measures being required in addition to those already described, individual aid awards can be made to undertakings (such as airlines) defined within Law 10/2010⁹⁷ in a general and abstract manner (i.e. no individual companies are designated).

7.2.1. FUNDING PROVIDED BY AIRPORT OPERATORS TO AIRLINE COMPANIES IN RESPECT OF ACTIVITIES 1 AND 2 (LAW 10/2010) IN THE PERIOD 2010-2013 — EXISTENCE OF STATE AID IN FAVOUR OF AIRLINE COMPANIES

- (350) In this subsection, it will be assessed whether the funding provided by the Region to airline companies through the operators of Sardinian airports under Law 10/2010 constitute State aid to the airline companies.

7.2.1.1. *Notion of undertaking and economic activity*

- (351) In accordance with Article 107(1) of the Treaty, State aid rules apply only where the recipient is an ‘undertaking’. The Court of Justice has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status or ownership and the way in which they are financed ⁽⁹⁷⁾. Any activity consisting in offering goods and services on a market is an economic activity ⁽⁹⁸⁾.
- (352) Airlines offer scheduled passenger air transport services on the market. Those services correspond to the ones defined for activity 1 (see recital 44) and consist in the operation of commercial flights and the transportation of passengers by air. They clearly carry out an economic activity.

⁽⁹⁶⁾ As regards the implementation of the scheme, the Commission notes that Italy had indicated already at the stage of the formal procedure in Case SA.23098 that the decision to conclude commercial agreements between SOGEAAL and airlines was made in accordance with the Region in its capacity as controlling shareholder of SOGEAAL (see in particular recital 383).

⁽⁹⁷⁾ See Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4) part 2.1 and associated case law, in particular the judgment of 12 September 2000, *Pavlov and others*, C-180/98, C-181/98, C-182/98, C-183/98 and C-184/98, EU:C:2000:428.

⁽⁹⁸⁾ Judgment of 16 June 1987, *Commission/Italy*, Case 118/85, EU:C:1987:283, paragraph 7; judgment of 18 June 1998, *Commission/Italy*, C-35/96, EU:C:1998:303, paragraph 36; judgment in *Pavlov and others*, EU:C:2000:428, paragraph 75.

- (353) AMS, which is not itself an airline but received funding in respect of activity 2, is a 100 % subsidiary of Ryanair. Consequently, Ryanair can be presumed to have exercised decisive influence over the behaviour of AMS. For the purpose of the application of State aid rules in this case and according to Commission practise ⁽⁹⁹⁾, AMS and Ryanair are considered to be a single undertaking in the sense of Article 107(1) of the Treaty. For ease of reference, AMS, being considered as a single undertaking with Ryanair, will also be considered as an airline.
- (354) Therefore the airline companies which benefitted from the funds provided by the Region through airport operators carry out an economic activity and are considered as undertakings for the purposes of Article 107(1) of the Treaty.

7.2.1.2. *State resources and imputability to the State*

- (355) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it. Resources of local authorities are, for the application of Article 107 of the Treaty, State resources.
- (356) The scheme originates from a regional law and is financed through resources originating from the Region. For the purposes of Article 107 of the Treaty, resources of regional local authorities are State resources and decisions of such authorities should be regarded as 'imputable to the State' ⁽¹⁰⁰⁾. The scheme as such is thus imputable to the State and financed through State resources for the purposes of State aid law.
- (357) The same is true for the financial flows from the airport operators to the airlines.
- (358) The airlines have received funding from the Region through the operators of Sardinian airports to open new routes or increase frequencies or extend periods of operation of existing routes, as described in particular in Table 8, and to provide marketing services.
- (359) The behaviour of the airport operators was determined by the Region through Law 10/2010 and the activity plans, which had to be approved by the Region before being put into effect. The mechanism put in place through Law 10/2010 provides that the Region is to transfer public funds to airport operators, which should, in turn, transfer them to airport operators in accordance with the detailed specifications of the activity plans approved by the Region. The activity plans were designed and proposed in the first place by airport operators but the Region reviewed the plans, approved them, and determined the funding provided to the airport operator on that basis. Through the approval of the detailed activity plans, the Region determined precisely how each airport operator should allocate the funding received from the Region to airlines. As described in Section 2.7.3, the monitoring process put in place (which determines the payment of the last instalment to airport operators) also ensures compliance with those obligations.
- (360) Therefore the airport operators can be considered as intermediaries between the Region and the airlines. They were implanting the aid scheme, transferring to the airlines in full the funding they received from the Region. In doing so, they acted in accordance with instructions received from the Region through the approved activity plans.
- (361) In view of the above, the payments by the airport operators to airlines for the financing of activities 1 and 2 are financed through State resources (to the extent that airport operators received funding from the Region to finance those activities ⁽¹⁰¹⁾) and are imputable to the State.

⁽⁹⁹⁾ For this purpose, see Commission Decision (EU) 2015/1227 of 23 July 2014 on State aid SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia (OJ L 201, 30.7.2015, p. 109), in particular recital 290. See also Commission Decision on Altenburg airport — not published yet.

⁽¹⁰⁰⁾ Judgment of 12 May 2011, *Région Nord-Pas-de-Calais/Commission* T-267/08 and T-279/08, EU:T:2011:209.

⁽¹⁰¹⁾ The limited amount of own financing of the measures by airport operators does not result from the latter's discretionary decisions, but reflects the fact that the Region has reduced *ex post* the level of public financing channelled to airport operators although the latter had already borne the corresponding cost of financing airlines. See Section 2.7 in particular recitals 83, 86 and 89.

7.2.1.3. *Economic advantage*

- (362) An advantage within the meaning of Article 107(1) of the Treaty is any economic benefit which an undertaking would not have obtained under normal market conditions, namely in the absence of State intervention. Only the effect of the measure on the undertaking is relevant, not the cause or the objective of the State intervention. Whenever a public authority provides an undertaking with funding which relieves it from costs that it should normally bear, this gives rise to an economic advantage.
- (363) No advantage is granted, however, if the funding can be considered as compensation for a public service in accordance with the criteria set out in the Altmark judgment. Moreover, no advantage is conferred when a Member State acts in accordance with the Market Economy Investor principle.
- (364) As a first step, it is necessary to examine the nature of the funding provided by the Region to airlines in the context of activities 1 and 2, and the extent to which it finances their activities or, in other words, relieves them from costs that they should normally bear.
- (365) In the context of activity 1, the Region requires the airport operators to enter into agreements with airlines that provide financial incentives to the latter to increase air traffic (notably during off-peak seasons). Airlines have to meet targets in terms of traffic; they receive financial compensation, if they meet those targets and incur penalties if they fail to do so. The corresponding payments result from the funding scheme channelled by the Region to airlines through airport operators, offsetting part of the costs incurred by those airlines in flying the routes concerned.
- (366) In the context of activity 2, the Region makes payments to airlines through airport operators in exchange for marketing services provided by the airlines concerned. Those payments cannot be considered as true consideration for marketing services, but also amount to payments to the airlines for increasing their activities in the Region. As will be seen below in recitals 368 *et seq.*, the scheme is designed in such a way that the marketing services to be provided by airlines in the context of activity 2 are intended to promote, in the first place, the air transport services provided by those same airlines from/to Sardinia.
- (367) Italy stressed in the notification documents ⁽¹⁰²⁾ that, under the scheme, the marketing actions funded by the Region in the context of activity 2 must be carried out by airlines and aim to increase the number of passengers on routes opened or extended as a result of the scheme ⁽¹⁰³⁾.
- (368) The fact that the marketing services in the context of activity 2 are to be provided by airlines rather than any other type of companies able to offer such services is, in itself, a factor which naturally leads those marketing services to promote, in the first place, the air transport services offered by the airlines concerned. Indeed, airlines usually promote regions and cities, in particular on their websites, when they operate flights to such regions and territories, with a view to enticing potential customers to use their services to fly to those areas. Furthermore, on the websites of airlines, the promotion of certain regions and cities is usually intrinsically linked to the promotion of the flights operated by the airlines to that region, or at least to information supplied on the existence and characteristics of those flights. For instance, in the case of Ryanair, one of the European airlines which has most developed the promotion of regions and cities on its website, the web pages dedicated to the promotion of regions and destinations rather systematically also provide information on flights operated by Ryanair to those regions and destinations ⁽¹⁰⁴⁾.
- (369) Furthermore, the act implementing Law 10/2010 that defines the content of the airports' activity plans ⁽¹⁰⁵⁾ provides that the marketing actions are to be carried out under activity 2 'in case new routes are opened or the flight operations period is extended' ⁽¹⁰⁶⁾. That provision establishes a clear link between the marketing services to

⁽¹⁰²⁾ Document 'OGGETTO: Attuazione della Legge regionale 13 aprile 2010, No 10 'Misure per lo sviluppo del trasporto aereo' Finanziamento degli aeroporti isolani per il potenziamento e lo sviluppo del trasporto aereo quale servizio di interesse economico generale', notified by Italy on 30 November 2011.

⁽¹⁰³⁾ 'Definizione, attraverso gli **stessi** Piani di attività', di adeguate strategie di marketing and pubblicità finalizzate all'incremento del numero di passeggeri nelle rotte oggetto della gara' (emphasis added), p. 7.

⁽¹⁰⁴⁾ See for instance the Milan page of Ryanair (<https://www.ryanair.com/gb/en/plan-trip/destinations/flights-to-milan>, visited on 6 July 2016).

⁽¹⁰⁵⁾ Deliberazione nr 29/36 of 29 July 2010.

⁽¹⁰⁶⁾ 'I programmi dovranno prevedere la realizzazione di attività in coerenza con le seguenti direttive: (...) deve essere prevista adeguata promozione del territorio **in caso di lancio di nuove rotte o di aumento di operatività dei voli**' (emphasis added), p. 3.

be carried out in the context of activity 2 and the opening of new routes or expansion of operations on existing routes. This means that the marketing services to be proposed in the activity plans should promote the new or extended air transport services themselves so as to stimulate the number of passengers using the services concerned. As already indicated in recital 367, this interpretation has been explicitly confirmed by Italy.

- (370) Moreover, it would be inconceivable that the marketing services in question, which necessarily have to be carried out by airlines, would be provided by airlines other than those operating the new or extended air transport services, to which the marketing services ought to be linked. An airline has very limited incentives to promote a competitor's services, even in exchange for remuneration.
- (371) Promoting its own destinations is part of the normal activities of an airline. The destinations and regions to which they fly is one of the features of their transport services that airlines normally advertise, together with a range of other aspects (airfares, comfort on board, in-flight services, reliability, ticket flexibility, frequent flyer programme etc.).
- (372) In view of the above, it can be concluded that payments made by the Region to airlines in the context of activity 2 subsidise the marketing costs that airlines should normally bear in the context of their air transport operations. Furthermore, insofar as they are linked to the opening of new routes or extension of operations on existing routes, those payments act as financial incentives to airlines to increase air traffic to Sardinia. In that respect, they are similar to the payments made in the context of activity 1, with the difference that they relate to a particular aspect of the airlines' air transport services, namely the promotion of those services.
- (373) In addition, as emphasised by Italy in the notification ⁽¹⁰⁷⁾, under the scheme, the marketing actions funded by the Region in the context of activity 2 must be part of the same activity plans referred to in the context activity 1 ⁽¹⁰⁸⁾. This establishes a further link between the opening and extension of routes (which is the objective of activity 1) and the marketing agreements to be concluded in the context of activity 2. This shores up the conclusion that the payments made by the Region to airlines through the airport operators in the context of activity 1 and activity 2 are similar in nature: they are essentially financial incentives subsidising part of the airlines' costs in exchange for expanding air transport operations by those airlines from/to Sardinia.
- (374) Furthermore, under the scheme, a clear distinction is made between marketing services to be provided in the context of activity 2, that is to say by airlines, and marketing services to be provided in the context of activity 3, that is to say by other types of companies, corroborates the finding that the services performed in the context of activity 2 serve a distinct purpose, different from activity 3, necessarily linked to the fact that the providers are engaged in air transport operations. Logically, that purpose can hardly be anything other than the increase in air traffic by the airlines concerned from/to Sardinia.
- (375) The Commission's review of the agreements concluded between airport operators and airlines in the context of the scheme illustrates that. For example, the easyJet agreements directly link airport services to marketing services. Point 3 of the agreement with Olbia airport's operator states that the carrier intends to increase its operation from/to Olbia and that, in order to expand such flight activities, the carrier has developed a marketing and advertising programme to promote the destinations and to develop the traffic flows in transit, especially towards the international markets.
- (376) An examination of the various marketing agreements concluded between airport operators and airlines in the framework of the scheme illustrates that the marketing services are directly linked to the flights operated by those airlines. Therefore the marketing services directly target travellers who could potentially use transport services offered by the airlines referred to in the marketing agreements.

⁽¹⁰⁷⁾ Document 'OGGETTO: Attuazione della Legge regionale 13 aprile 2010, No 10 'Misure per lo sviluppo del trasporto aereo' Finanziamento degli aeroporti isolani per il potenziamento e lo sviluppo del trasporto aereo quale servizio di interesse economico generale', notified by Italy on 30 November 2011.

⁽¹⁰⁸⁾ 'Definizione, attraverso gli **stessi** 'Piani di attività', di adeguate strategie di marketing and pubblicità finalizzate all'incremento del numero di passeggeri nelle rotte oggetto della gara' (highlight added), p. 7.

- (377) In conclusion, the payments by the Region via the airport operators to airlines in the context of both activity 1 and activity 2 must be considered as subsidies to the airlines for operating more flights to and from Sardinia.
- (378) It remains to be analysed whether the payments by the Region to airlines through airport operators for increasing their air transport operations to Sardinia constitute compensation for a public service obligation in accordance with the Altmark criteria and whether they comply with the MEOP.
- (379) The first criterion of the Altmark ruling is that the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined. As indicated in point 70 of the 2014 Aviation Guidelines, ‘as regards air transport services, public service obligations can only be imposed in accordance with Regulation (EC) No 1008/2008. In particular, such obligations can only be imposed with regard to a specific route or group of routes, and not with regard to any generic route originating from a given airport, city or region. Moreover, public service obligations can only be imposed with regard to a route to fulfil transport needs which cannot be adequately met by an existing air route or by other means of transport’ (footnotes omitted). Indeed, air transport is a sector where the Union legislator has decided to restrict the wide margin of discretion normally enjoyed by Member States when qualifying certain activities as SGEIs, by imposing conditions set out in Regulation (EC) No 1008/2008. However, routes that are the object of public service obligations in accordance with Regulation (EC) No 1008/2008, which exist in Sardinia ⁽¹⁰⁹⁾, are explicitly excluded from the scope of application of Law 10/2010, which is clearly designed as a system parallel to the system of public service obligations under Regulation (EC) No 1008/2008. Therefore, the funding provided by airport operators to airlines under Law 10/2010 cannot be considered as compensation provided to airlines for the operation of genuine services of general economic interest. As a result, one of the four cumulative conditions of the Altmark judgment, namely the first one, is not satisfied.
- (380) As to the application of the MEOP, it should first be noted that Italy has not relied on that principle ⁽¹¹⁰⁾. There are also no indications that the Region acted as a market economy operator in establishing the scheme; in fact, it is clear that it sought to achieve public policy objectives, in particular strengthening of the regional economy by attracting more tourist flows, rather than profits in its capacity as airport owner.
- (381) Second, the Region provides funding to airlines through various airport operators in the framework of a regional scheme applicable to several airports. It cannot be considered as an airport operator, all the more so since the Region only controls one of the airport operators concerned. Thus the ‘*ex ante* incremental profitability analysis’ presented in points 61 to 66 of the 2014 Aviation Guidelines cannot be applied in this case. According to that method, in order to assess whether an airport operator, when entering into arrangements with an airline, behaved as a market economy operator guided by profitability prospects would have done under similar circumstances, it should be assessed whether the arrangements in question could be expected, when they were concluded, to incrementally contribute to the profitability of the airport and are part of an overall strategy leading to profitability in the long term. However, this test is not applicable in this case because the measures under assessment are a scheme established by a public authority, for reasons of public policy, that covers several airports, and not an individual arrangement between an airport and an airline.
- (382) When granting the financing concerned to airlines in the context of activity 1 and activity 2, the Region could not expect any return that a profit-driven market economy operator would have taken into consideration in similar circumstances. The expected effects of the financing was an increase in the number of passengers travelling by air to Sardinia, which as such does not give rise to dividends, capital gains or any other form of profit for the Region. Italy has failed to identify any profitability element expected to arise for the Region as a result of the financing at issue. The main effect of the increase in air traffic is to stimulate economic development in the region, particularly at the level of certain sectors such as tourism, retail, restaurants etc., with positive effects on regional economic development and employment. However, according to settled case law ⁽¹¹¹⁾, such ‘public policy benefits’ would not be taken into consideration by a profit-driven market economy operator and are thus to be disregarded when applying the MEOP.

⁽¹⁰⁹⁾ Since 2000, public service obligations have been imposed on domestic routes between Sardinian airports and airports on mainland Italy pursuant to Union air transport rules.

⁽¹¹⁰⁾ See judgment of the Court of Justice of 5 June 2012, *Commission v EDF*, C-124/10, EU:C:2012:318, paragraph 82.

⁽¹¹¹⁾ See judgment in *Commission v EDF*, EU:C:2012:318, paragraph 79.

- (383) For the same reasons, a benchmarking exercise, as described in points 54 to 60 of the 2014 Aviation Guidelines, is not relevant in the present case.
- (384) In any event, Italy has not submitted any business plan, *ex ante* profitability analysis or internal documents showing clearly that an analysis conducted before the granting of the public financing revealed that financial returns such that a profit-driven market economy operator would take into consideration could be expected by the Region as a result of the financing in question. Nor did the Region carry out a benchmarking exercise, as defined in points 54 to 60 of the 2014 Aviation Guidelines. Italy failed in particular to provide a comparison of airport charges, net of any benefits provided to the airlines (such as marketing support, discounts or any other incentive), across a sufficient number of suitable 'comparator airports', whose operators behave as market economy operators.
- (385) This confirms that the Region did not behave vis-à-vis airlines as a market economy operator guided by profitability prospects.
- (386) In addition, despite the provisions of Law 10/2010, no tender procedure was put in place with a view to selecting airlines and funding the activity plans. Airport operators published notices on their respective websites and they chose the best offer, meaning that the financial support provided to airlines did not follow an open and transparent tender procedure. In addition, as already explained, the scheme is conceived in the first place to disburse public funds to airlines and this financing does not correspond either to compensation for genuine public service obligations or to remuneration for products or services fulfilling genuine needs of the Region. As a consequence, even if proper tender procedures had been followed to select airlines, this could not have ruled out the existence of an advantage.
- (387) Under these circumstances, there is also no scope for assessing the individual financial relationship between the airports and the airlines that result from the application of the scheme in the manner foreseen in points 53-66 of the 2014 Aviation Guidelines. Those points provide guidance to determine whether the prices charged by an airport that has public resources comply with the MEOP. In the present case, however, it is clear that the airport operators were not acting as market economy operators when entering into the various contracts with the airlines. They were implementing an aid scheme devised by the Region to increase air transport for the general benefit of the territory).
- (388) In view of all the above, the Commission concludes that the funding provided by the Region to airlines through airport operators for the financing of activities 1 and 2 in the framework of the scheme conferred an economic advantage on the airlines concerned.

7.2.1.4. *Selectivity*

- (389) In the present case, the financing of the scheme by the Region cannot be seen as a scheme of general application. The Commission considers indeed that the design and the implementation of the scheme was for the exclusive benefit of certain undertakings or certain sectors of activity, namely airlines funded by the Region through airport operators under the scheme under scrutiny⁽¹¹²⁾. Airlines flying to Sardinia, which have not concluded these agreements, did not benefit from the same financial support from the Region, or not under the conditions provided for by Law 10/2010. Since the beneficiaries of the economic advantage concerned are limited to some specific undertakings of a specific one sector (air transport), the measures are selective.

7.2.1.5. *Distortion of competition and effect on trade*

- (390) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. In accordance with settled case-law, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (391) The compensation paid to airline companies through airport operators is an economic advantage for the airlines in question, which is capable of strengthening their position on the market. The air transport sector is characterised by intense competition between operators from different Member States, in particular since the entry into

⁽¹¹²⁾ See in that regard the judgment of 30 June 2016, *Belgium v Commission*, C-270/15, EU:C:2016:489, in particular paragraph 50.

force of the third stage of liberalisation of air transport ('third package') on 1 January 1993. It follows that the measures affect trade between Member States and distorts or threatens to distort competition in the air transport sector.

- (392) Therefore, the financial compensation provided through airport operators to airline companies for the financing of activities 1 and 2 (Law 10/2010) in the period 2010-2013 distorts or threatens to distort competition and affects trade between Member States.

7.2.1.6. **Conclusion**

- (393) The Commission concludes funding provided by the Region to airlines through airport operators for the financing of activities 1 and 2 constitutes State aid to airline companies within the meaning of Article 107(1) of the Treaty.

7.2.2. EXISTENCE OF STATE AID IN FAVOUR OF THE AIRPORT OPERATORS

- (394) In this subsection, the question is whether the funding provided by the Region to the operators of Sardinian airports under Law 10/2010 constitutes State aid to those airports. The Commission will now assess whether the criterion related to the presence of an economic advantage is fulfilled.
- (395) An advantage within the meaning of Article 107(1) of the Treaty is any economic benefit which an undertaking would not have obtained under normal market conditions, namely in the absence of State intervention. Only the effect of the measures on the undertaking are relevant, not the cause or the objective of the State intervention. Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present.
- (396) As explained in Section 7.2.1, under Law 10/2010, the airport operators passed on in full funds received from the Region to finance financial incentives for the expansion of air transport services as well as marketing agreements, which they co-financed through their own resources. The airport operators were thus intermediaries and did not retain the funds received from the Region. Hence, they cannot be considered as the direct beneficiaries of the aid scheme.
- (397) However, since the financial incentives and marketing payments to the airlines were intended and had the effect of increasing air traffic, it must be assessed whether that increase in air traffic confers an indirect advantage to the airports concerned.
- (398) In its recent notice on the notion of State aid ⁽¹¹³⁾, the Commission indicated that '[...] indirect advantages should be distinguished from mere secondary economic effects that are inherent in almost all State aid measures (for example through an increase of output). For this purpose, the foreseeable effects of the measures should be examined from an ex ante point of view. An indirect advantage is present if the measures are designed in such a way as to channel its secondary effects towards identifiable undertakings or groups of undertakings. This is the case, for example, if the direct aid is, de facto or de jure, made conditional on the purchase of goods or services produced by certain undertakings only (for example only undertakings established in certain areas).'
- (399) The notice continues in a footnote ⁽¹¹⁴⁾ to that passage: 'By contrast, a mere secondary economic effect in the form of increased output (which does not amount to indirect aid) can be found where the aid is simply channelled through an undertaking (for example a financial intermediary) which passes it on in full to the aid beneficiary.'
- (400) The activities under assessment in this case have not been designed to channel their secondary effects towards the Sardinian airports. Instead, the activities have been designed to benefit a large group of undertakings in the region, in particular those offering services to tourists.

⁽¹¹³⁾ Point 116 of Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU, published on the 19 May 2016, http://ec.europa.eu/competition/state_aid/modernisation/notice_of_aid_en.pdf

⁽¹¹⁴⁾ See footnote 181.

- (401) As already established, the purpose of the scheme consists in channelling public funds to several airlines and other services providers with a view to opening new routes (or increasing frequencies) as well as advertising Sardinia as a touristic destination accessible by air transport. Under the mechanism put in place by the Region through Law 10/2010 (as described in Section 2.7.2), the Region transfers the corresponding public funds to airport operators, which should in turn pass them on to third parties in accordance with the detailed specifications of the activity plans approved by the Region. As described in Section 2.7.3, the monitoring process put in place (which determines the payment of the last instalment to airport operators) also ensures compliance with those obligations.
- (402) The Commission therefore concludes that the aid is channelled through the airport operators which pass it on in full to the airlines, which are the only real beneficiaries of the scheme. The airport operators should be considered *de jure* (because of the provisions of Law 10/2010) and *de facto* (because of the effective financial flows analysed by the Commission) as vehicles used to pass on public funding to airlines
- (403) The Commission notes that the airport operators may benefit from the increase in air traffic that is brought about by the aid to airlines under the scheme. Such effects are, however, similar to the positive effects on economic operators in other sectors whose revenues are linked to the number of air passengers, in particular tourism (car rental, hotels, restaurants, catering, fuelling, retail etc...). Those sectors are highly dependent on the number of passengers arriving at/departing from the Sardinian airports. Therefore, the Commission considers that the scheme has not been designed in such a way as to channel its secondary effects towards the airport operators, but rather so as to benefit the many tourism-related sectors in Sardinia.
- (404) Furthermore, the effect of the measures on airports is inherent in the nature and objective of the scheme, which is to increase air traffic to Sardinia by providing appropriate incentives to airlines. The fact that the airlines purchase airport services from the operators of the three Sardinian airports concerned is an inherent feature of the scheme and cannot be detached from it, given that the scheme consists in providing airlines with financial incentives to increase air traffic. It is thus not an additional, independent condition concerning the acquisition of goods or services that the Region added to the design of its scheme in order to produce an effect other than the main expected effect of the scheme, namely the increase in air traffic to Sardinia.
- (405) In the light of the foregoing, the Commission concludes that activities 1, 2 and 3 do not confer an indirect advantage on airport operators. Since one of the cumulative conditions for the presence of State aid is not fulfilled, the Commission also concludes that activities 1 and 2 do not constitute State aid.
- (406) For the reasons set out above, it is concluded that the airport operators concerned did not receive State aid within the meaning of Article 107(1) of the Treaty.

7.3. LAWFULNESS OF THE AID TO THE AIRLINES

- (407) The measures were notified to the Commission on 30 November 2011. However, Italy implemented the scheme without the Commission having approved it. Financing pursuant to Law 10/2010 was provided from the Region to airport operators and from airport operators to airlines throughout the period 2010-2013 ⁽¹¹⁵⁾.
- (408) In addition, no block exemption regulation covers the scheme at stake. In particular, the SGEI Decision is not applicable as the financing of airlines under the scheme cannot be considered as compensation for a genuine SGEI entrusted to airlines ⁽¹¹⁶⁾.
- (409) Thus, Italy has not complied with its obligations under Article 108 of the Treaty and therefore the financing of airlines under the scheme is considered as unlawful pursuant to Article 108(3) of the Treaty.

⁽¹¹⁵⁾ See Table 6 at Section 2.8.1.

⁽¹¹⁶⁾ See recital 379.

7.4. COMPATIBILITY OF THE AID TO THE AIRLINES

- (410) The burden of proof regarding the compatibility of aid with the internal market, by way of derogation from Article 107(1) of the Treaty, is borne principally by the Member State concerned. Italy notes ⁽¹¹⁷⁾ that Law 10/2010 has not been conceived as a scheme to support start-up routes and that the scheme does not fulfil all the compatibility criteria for start-up aid as defined in Article 79 of the 2005 Aviation Guidelines. Italy nevertheless suggests that the Commission should, in this case, apply point 81 of the 2005 Aviation Guidelines, which states that ‘The Commission may carry out a case-by-case assessment of aid or a scheme which fails to fully comply with these criteria [those of point 79], but the end result of which would be comparable.’ ⁽¹¹⁸⁾.

7.4.1. APPLICABLE LEGAL FRAMEWORK

- (411) As the activities cannot be considered as compensation to airlines for a genuine SGEI, the SGEI Framework based on Article 106(2) of the Treaty cannot apply in this case.
- (412) As regards start-up aid, the 2014 Aviation Guidelines state that ‘As regards start-up aid to airlines, the Commission will apply the principles set out in these guidelines to all notified start-up aid measures in respect of which it is called upon to take a decision from 4 April 2014, even where the measures were notified prior to that date. In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid, the Commission will apply to unlawful start-up aid to airlines the rules in force at the time when the aid was granted. Accordingly, it will not apply the principles set out in these guidelines in the case of unlawful start-up aid to airlines granted before 4 April 2014’ ⁽¹¹⁹⁾.
- (413) The 2005 Aviation Guidelines, in turn, stipulate that ‘the Commission will assess the compatibility of (...) start-up aid granted without its authorisation and which therefore infringes Article 88(3) of the Treaty [now Article 108(3) of the Treaty], on the basis of these guidelines if payment of the aid started after the guidelines were published in the Official Journal of the European Union’ ⁽¹²⁰⁾.
- (414) The regional financing was granted between 2010 and 2013, before the publication of the 2014 Aviation Guidelines. Therefore the Commission will apply the 2005 Aviation Guidelines for the assessment of the financial compensation provided by airport operators to airline companies for the financing of activities 1 and 2 (Law 10/2010) in the period 2010-2013.

7.4.2. ASSESSMENT OF THE COMPATIBILITY OF THE FINANCIAL COMPENSATION PROVIDED
BY AIRPORT OPERATORS TO AIRLINE COMPANIES FOR THE FINANCING OF ACTIVITIES 1 AND 2
(LAW 10/2010) IN THE PERIOD 2010-2013

- (415) Considering that the compatibility conditions for start-up aid enshrined in point 79 of the 2005 Aviation Guidelines are cumulative, it is only necessary to demonstrate that one of those conditions is not fulfilled in order to find that the aid to the airlines is not compatible. Nevertheless, the Commission will review several criteria set out in the 2005 Aviation Guidelines to assess the compatibility of the aid measures at hand.
- (416) Point 79(d) of the 2005 Aviation Guidelines requires the long-term viability and degressiveness of the measure at stake: ‘the route receiving the aid must ultimately prove profitable, i.e. it must at least cover its costs, without public funding. For this reason start-up aid must be degressive and of limited duration’. The activities defined under Law 10/2010 have never been defined to target the long-term viability of the routes in question and nothing in the system established by Law 10/2010 ensures that the aid amount is degressive over the period 2010-2013 ⁽¹²¹⁾. There is no indication that the routes concerned would become profitable for the airlines without the public funding.

⁽¹¹⁷⁾ Communication from the Sardinian Region of 18 May 2015, punto 10, p. 12.

⁽¹¹⁸⁾ Communication from Italy dated 18 May 2015 (reference 4812), as answer to a Commission request — pp. 12-13.

⁽¹¹⁹⁾ 2014 Aviation Guidelines, point 174.

⁽¹²⁰⁾ 2005 Aviation Guidelines, point 85.

⁽¹²¹⁾ See Table 5 in recital 69.

- (417) Point 79(e) of the 2005 Aviation Guidelines adds the criterion of compensation for additional start-up costs: 'the amount of aid must be strictly linked to the additional start-up costs incurred in launching the new route or frequency and which the air operator will not have to bear once it is up and running'. The regional financing is not related to specific start-up costs and nothing in the system established by Law 10/2010 ensures that the aid amount is limited to such costs. Italy has never adduced any evidence to show that the funding provided by the Region with respect to activities 1 and 2 was calculated on the basis of the airlines' start-up costs or limited to such costs. The Region, by financing airport operators, intended to develop air traffic through the opening of new routes, increasing the frequencies on existing routes, and the de-seasonality of existing routes and to improve regional development and tourism through marketing actions undertaken by airlines. The Region thus never intended to compensate airlines for additional start-up costs. Therefore this criterion is not fulfilled.
- (418) In addition, point 79(f) of the 2005 Aviation Guidelines sets out conditions of intensity and duration: 'The amount of aid in any 1 year may not exceed 50 % of total eligible costs for that year and total aid may not exceed an average of 30 % of eligible costs.' At no point has Italy mentioned the concept of 'eligible costs' as explained in the Guidelines nor any thresholds for such costs. Airport operators presented their plans of activities to the Region with an indication of the total amount of the costs incurred for the implementation of the measures. The Region then decided the amount to be granted to each airport operator per year, but that amount was never limited to 50 % of the costs incurred for 1 year. There is no evidence that the regional spending in respect of activities 1 and 2 amounted to twice the amount of the aid. Therefore this criterion is not fulfilled.
- (419) Point 79(h) of the 2005 Aviation Guidelines adds the criterion of the non-discriminatory allocation: 'any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services. The notification must in particular include the description of the route as well as the objective criteria in terms of the amount and the duration of the aid. The rules and principles relating to public procurement and concessions must be respected where applicable'. Neither the Region nor the airport operators organised proper tenders complying with the public procurement rules to select the airlines in charge of the implementation of activities 1 and 2. The notification document from Italy mentions that the Region should approve the tender process organised by airport operators to select the interested airlines. The Commission has not been informed of any tender organised by airport operators and, according to Italy, airlines have been selected on the basis of the most attractive commercial offers submitted to airport operators upon publication of notices on their websites. Therefore this criterion is not fulfilled.
- (420) Therefore the Commission considers that point 81 of the 2005 Aviation Guidelines cannot be applied in this case, as several of the criteria in point 79 are not fulfilled. Compliance with those criteria is essential for start-up aid to be considered compatible. Since the compatibility criteria in point 79 are not fulfilled, the aid is not compatible with the internal market.

7.4.3. CONCLUSION

- (421) The financial compensation provided by airport operators to airline companies for the financing of activities 1 and 2 under Law 10/2010 in the period 2010-2013 cannot be considered compatible with the internal market, as the compatibility criteria referred to in point 79 of the 2005 Aviation Guidelines are not fulfilled. The State aid granted to airlines by the Region therefore constitutes unlawful State aid which is incompatible with the internal market.

8. RECOVERY

- (422) According to the Treaty and the Court's established case-law, the Commission has power to require the Member State concerned to abolish or alter aid when it has found that that aid to be incompatible with the internal market ⁽¹²²⁾. The Court has also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ⁽¹²³⁾.

⁽¹²²⁾ See judgment of 12 July 1973, *Commission/Germany*, Case 70/72, EU: C:1973:87, paragraph 13.

⁽¹²³⁾ See judgment of 14 September 1994, *Spain/Commission*, C-278/92, C-279/92 and C-280/92, EU: C: 1994:325, paragraph 75.

- (423) In this context, the Court has established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ⁽¹²⁴⁾.
- (424) In line with the case-law, Article 16(1) of Regulation (EU) 2015/1589 states that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary [...]'.
- (425) Thus, given that the measures in question were implemented in breach of Article 108 of the Treaty, and are to be considered as unlawful and incompatible aid, they must be recovered in order to re-establish the situation that existed on the market prior to their being granted. Recovery should cover the time from when the advantage accrued to the beneficiary, that is to say when the aid was put at the disposal of the beneficiary, until effective recovery, and the sums to be recovered should bear interest until effective recovery.
- (426) Regarding the amounts to be recovered, the Commission will consider the amounts effectively paid by the Region and passed on by GEASAR and SOGAER to airlines throughout the period 2010-2013 for the implementation of measures 1 and 2. As shown in Table 6 in recital 89, airport operators have, in practice, provided more funding than they received from the Region: airport operators have been undercompensated by the Region since they must pay the financial interest on the financial advances received ⁽¹²⁵⁾ and since regional contributions for 2014 have not yet been paid to Cagliari and Olbia airport operators. Table 14 summarises these findings.

Table 14

Difference between the amount effectively paid to airlines for measures 1 and 2 and the financing received from the Region and passed to by GEASAR and SOGAER

(EUR)

	Contribution fixed up by the Region (A)	Net amount effectively received from the Region by airport operators (B)	Total amount paid by airport operators to airlines for measures 1 & 2 (C)	Difference (B) – (C)
Cagliari	19 250 617	13 607 197	19 018 170	– 5 410 973
Olbia	13 742 651	9 341 744	12 683 623	– 3 341 879
TOTAL	32 993 268	22 948 941	31 701 793	– 8 752 852

- (427) Table 15 shows the details of the annual payments made to airlines by GEASAR and SOGAER throughout the 4 years 2010-2013. Italy provided the Commission with each payment date.

⁽¹²⁴⁾ See judgment of 17 June 1999, *Belgium/Commission*, C-75/97, EU: C:1999:311, paragraphs 64 and 65.

⁽¹²⁵⁾ See Section 2.7.4.

Table 15

Payments received by airlines from the airports operators of Olbia and Cagliari

(EUR)

RYANAIR/AMS									
	2010		2011		2012		2013		TOTAL
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	
CAGLIARI	[...]	13/07/2010	[...]	22/07/2011	[...]	6/03/2012	[...]	24/06/2013	
	[...]	13/07/2010	[...]	22/07/2011	[...]	12/04/2012	[...]	24/06/2013	
	[...]	13/07/2010	[...]	22/07/2011	[...]	2/05/2012	[...]	24/06/2013	
	[...]	13/07/2010	[...]	26/09/2011	[...]	7/06/2012	[...]	13/08/2013	
	[...]	13/07/2010	[...]	26/09/2011	[...]	17/07/2012	[...]	06/09/13	
	[...]	13/07/2010	[...]	26/09/2011	[...]	02/08/12	[...]	06/09/13	
	[...]	13/07/2010	[...]	18/10/2011	[...]	14/09/2012	[...]	18/10/2013	
	[...]	13/07/2010	[...]	18/10/2011	[...]	02/10/12	[...]	11/11/2013	
	[...]	13/07/2010	[...]	3/11/2011	[...]	6/11/2012	[...]	9/12/2013	
	[...]	13/07/2010	[...]	06/12/11	[...]	5/12/2012	[...]	15/01/2014	
	[...]	11/08/10	[...]	04/01/12	[...]	7/01/2013	[...]	13/08/2013	
	[...]	11/08/10	[...]	31/01/2012	[...]	5/02/2013	[...]	14/05/2013	
	[...]	7/10/2010	[...]	22/07/2011	[...]	17/07/12	[...]	14/05/2013	
	[...]	10/02/11	[...]	17/07/2012	[...]	24/06/13	[...]	2/07/2013	
	[...]	10/02/11	[...]	12/07/11	[...]	2/07/2013	[...]	13/08/2013	
	[...]	10/02/11	[...]	26/07/2011	[...]	12/03/2012	[...]	6/09/2013	
	[...]	10/02/11	[...]	26/07/2011	[...]	17/04/2012	[...]	6/09/2013	
	[...]	12/07/2011	[...]	26/07/2011	[...]	8/05/2012	[...]	18/10/2013	
	[...]	12/07/2011	[...]	30/09/11	[...]	10/07/12	[...]	11/11/2013	
	[...]	26/07/11	[...]	30/09/11	[...]	6/09/2012	[...]	9/12/2013	
	[...]	26/07/11	[...]	30/09/11	[...]	6/09/2012	[...]	15/01/14	

(EUR)

RYANAIR/AMS									
	2010		2011		2012		2013		TOTAL
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	
	[...]	26/07/11	[...]	4/11/2011	[...]	19/10/2012	[...]	13/08/2013	
	[...]	26/07/11	[...]	14/11/2011	[...]	19/10/2012	[...]	13/02/2014	
	[...]	26/07/11	[...]	13/12/2011	[...]	14/11/2012	[...]	13/03/14	
	[...]	26/07/11	[...]	12/01/12	[...]	14/11/2012	[...]	3/09/2014	
	[...]	26/07/11	[...]	12/01/12	[...]	21/12/2012	[...]	13/02/14	
	[...]	26/07/11	[...]	12/01/12	[...]	8/02/2013	[...]	13/03/2014	
	[...]	26/07/11	[...]	12/01/12	[...]	10/07/2012	[...]	3/09/2014	
	[...]	26/07/11	[...]	26/07/2011	[...]	2/07/2013	[...]	14/04/2014	
	[...]	26/07/11	[...]	26/07/2011					
	[...]	26/07/11	[...]	26/07/2011					
	[...]	26/07/11	[...]	26/07/2011					
	[...]	26/07/11	[...]	26/07/2011					
	[...]	26/07/11	[...]	10/07/2012					
	[...]	11/07/2011	[...]	11/07/2011					
	[...]	02/04/10							
	[...]	02/04/10							
	[...]	6/07/2010							
	[...]	6/07/2010							
	[...]	6/07/2010							
	[...]	30/08/2010							
	[...]	30/08/2010							
	[...]	30/08/2010							

18.10.2017

EN

Official Journal of the European Union

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(EUR)

RYANAIR/AMS									
	2010		2011		2012		2013		TOTAL
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	
	[...]	5/10/2010							
	[...]	2/02/2011							
	[...]	2/02/2011							
	[...]	5/04/2011							
	[...]	5/04/2011							
	[...]	22/07/11							
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]		[EUR 8-20 mio]

(EUR)

[illegible]

									(EUR)
AIR BERLIN									
	2010		2011		2012		2013		TOTAL
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	
CAGLIARI							[...]	7/04/2014	
							[...]	13/05/2014	
							[...]	6/06/2014	
Total							[...]		[EUR 0-1 mio]
OLBIA	[...]	11/01/2011	[...]	4/01/2012	[...]	6/02/2013	[...]	4/12/2013 &	
	[...]	11/01/2011				12/03/2013 4/12/2013		26/06/2014	
	[...]	1/07/2011 & 12/07/2011							
	[...]	12/07/2011 & 4/11/2011							
	[...]	4/11/2011 & 04/01/12							
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]		[EUR 2-10 mio]

(EUR)									
MERIDIANA									
	2010		2011		2012		2013		TOTAL
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	
OLBIA	[...]	1/04/2015	[...]	31/12/2011	[...]	30/05/2013	[...]	30/06/2014	
	[...]	1/04/2015							
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]		[EUR 0-7 mio]

(EUR)

AIR ITALY

	2010	2011	TOTAL
	AMOUNT PAYMENT DATE	AMOUNT PAYMENT DATE	
OLBIA	[...] 17/05/2011 & 23/05/2011 & 02/08/2011	[...] 23/05/2011	
TOTAL	[...] [...]	[...]	[EUR 0-1 mio]

(EUR)

VUELING

	2013
	AMOUNT PAYMENT DATE
OLBIA	[...] 5/02/2014
CAGLIARI	[...] 17/03/2014
TOTAL	[EUR 0-1 mio]

(EUR)

VOLOTEA

	2012	2013	TOTAL
OLBIA	[...] 29/10/2012 & 16/01/2013 & 30/09/2013	[...] 15/07/2013 & 30/09/2013 & 29/01/2014 & 30/01/2014	[...]
CAGLIARI	[...] 23/04/2015	[...] 23/04/2015	[...]
TOTAL	[...] [...]	[...]	[EUR 0-1 mio]

(EUR)

NIKI		
	2012	
	AMOUNT	PAYMENT DATE
OLBIA	[...]	25/09/2012
TOTAL	[EUR 0-1 mio]	

(EUR)

TOURPARADE		
	2012	
	AMOUNT	PAYMENT DATE
CAGLIARI	[...]	22/08/2013
TOTAL	[EUR 0-1 mio]	

(EUR)

GERMANWINGS		
	2012	
	AMOUNT	PAYMENT DATE
CAGLIARI	[...]	18/04/2013
TOTAL	[EUR 0-1 mio]	

- (428) The global amount received from the Region by the two airport operators has been used to finance the three measures 1, 2 and 3. The Commission has not received any information from Italy regarding the exact allocation of the regional funds per type of measure and per air carrier. Therefore the Commission proposes an allocation per type of measure and per air carrier based on percentages deducted from the amounts shown in Table 16. As shown in Table 7 in recital 91 and repeated in Table 16, the distribution between measures 1 and 2 (paid to airlines) and measure 3 (paid to third service providers) is indicated as a percentage of the total.

Table 16

Financial flows from GEASAR and SOGAER to airlines and third service providers for the financing of measures 1, 2 and 3

SOGAER — CAGLIARI

(EUR)

Reference activity period	Financing of the activities		
	activities 1 & 2	activity 3	Total (A)
2010	[...]	[...]	4 657 311
2011	[...]	[...]	4 977 946
2012	[...]	[...]	4 869 410

(EUR)

Reference activity period	Financing of the activities		
	activities 1 & 2	activity 3	Total (A)
2013	[...]	[...]	4 946 576
Total	[...]	[...]	19 451 243 (100 %)

GEASAR — OLBIA

(EUR)

Reference activity period	Financing of the activities		
	activities 1 & 2	activity 3	Total (A)
2010	[...]	[...]	3 972 223
2011	[...]	[...]	2 945 500
2012	[...]	[...]	3 029 160
2013	[...]	[...]	3 795 935
Total	[...]	[...]	13 742 818 (100 %)

- (429) For each airport manager, the Commission applies the percentages representing the share of measures 1 and 2 in the overall financing provided by the airport managers, to the net amount effectively received by the two airport operators from the Region. The result obtained should tentatively indicate the real amount of public funding provided by the Region and spent for measures 1 and 2 (see Table 17).

Table 17

Indicative amount received from the Region and spent for measures 1 and 2

(EUR)

	Contribution fixed up by the Region (A)	Net amount effectively received from the Region by airport operators (B)	Net amount effectively received from the Region by airport operators and spent for measures 1 & 2
Cagliari	19 250 617	[...]	13 303 757 [...]
Olbia	13 742 651	[...]	8 621 496 [...]
TOTAL	32 993 268	22 948 941	21 925 253

- (430) The annual breakdown per airport and the part of the financing provided to airlines for the implementation of activities 1 and 2 and received from the Region, is indicated in the following tables:

Table 18

Annual breakdown per airport operator for the financing of activities 1 and 2

SOGAER — CAGLIARI

(EUR)

Reference activity period	Net amount effectively received by the airport operator (D)	Financing of activities 1 & 2	Part of the financing of the activities received from the Region (%)
2010	4 306 635	[...]	94,94
2011	4 426 733	[...]	89,56

(EUR)

Reference activity period	Net amount effectively received by the airport operator (D)	Financing of activities 1 & 2	Part of the financing of the activities received from the Region (%)
2012	4 570 389	[...]	96,27
2013	0	[...]	0,00
Total	13 303 757	19 018 170	

GEASAR — OLBIA

(EUR)

Reference activity period	Net amount effectively received by the airport operator (D)	Financing of activities 1 & 2	Part of the financing of the activities received from the Region (%)
2010	3 360 349	[...]	88,48
2011	2 577 381	[...]	96,44
2012	2 683 765	[...]	98,74
2013	0	[...]	0,00
Total	8 621 496	12 683 623	

- (431) The Commission will apply these percentages to the level of funding provided by each airport operator to the beneficiary airlines as shown in Table 15 in order to get the amount to be recovered per airport and per airline company. The indicative amounts to be recovered by Italy from the various airlines are indicated in Table 19, on the basis of the information made available to the Commission.

Table 19

Indicative amounts to be recovered from airlines

(EUR)

RYANAIR/AMS										TOTAL TO BE RECOVERED
	2010		2011		2012		2013		TOTAL	
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE		
CAGLIARI	[...]	13/07/2010	[...]	22/07/2011	[...]	6/03/2012	[...]	24/06/2013		
	[...]	13/07/2010	[...]	22/07/2011	[...]	12/04/2012	[...]	24/06/2013		
	[...]	13/07/2010	[...]	22/07/2011	[...]	2/05/2012	[...]	24/06/2013		
	[...]	13/07/2010	[...]	26/09/2011	[...]	7/06/2012	[...]	13/08/2013		
	[...]	13/07/2010	[...]	26/09/2011	[...]	17/07/2012	[...]	06/09/13		
	[...]	13/07/2010	[...]	26/09/2011	[...]	02/08/12	[...]	06/09/13		
	[...]	13/07/2010	[...]	18/10/2011	[...]	14/09/2012	[...]	18/10/2013		
	[...]	13/07/2010	[...]	18/10/2011	[...]	02/10/12	[...]	11/11/2013		
	[...]	13/07/2010	[...]	3/11/2011	[...]	6/11/2012	[...]	9/12/2013		
	[...]	13/07/2010	[...]	06/12/11	[...]	5/12/2012	[...]	15/01/2014		
	[...]	11/08/10	[...]	04/01/12	[...]	7/01/2013	[...]	13/08/2013		
	[...]	11/08/10	[...]	31/01/2012	[...]	5/02/2013	[...]	14/05/2013		
	[...]	7/10/2010	[...]	22/07/2011	[...]	17/07/12	[...]	14/05/2013		
	[...]	10/02/11	[...]	17/07/2012	[...]	24/06/13	[...]	2/07/2013		
	[...]	10/02/11	[...]	12/07/11	[...]	2/07/2013	[...]	13/08/2013		
	[...]	10/02/11	[...]	26/07/2011	[...]	12/03/2012	[...]	6/09/2013		
	[...]	10/02/11	[...]	26/07/2011	[...]	17/04/2012	[...]	6/09/2013		
	[...]	12/07/2011	[...]	26/07/2011	[...]	8/05/2012	[...]	18/10/2013		
	[...]	12/07/2011	[...]	30/09/11	[...]	10/07/12	[...]	11/11/2013		
	[...]	26/07/11	[...]	30/09/11	[...]	6/09/2012	[...]	9/12/2013		
[...]	26/07/11	[...]	30/09/11	[...]	6/09/2012	[...]	15/01/14			

(EUR)

RYANAIR/AMS										TOTAL TO BE RECOVERED
	2010		2011		2012		2013		TOTAL	
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE		
	[...]	26/07/11	[...]	4/11/2011	[...]	19/10/2012	[...]	13/08/2013		
	[...]	26/07/11	[...]	14/11/2011	[...]	19/10/2012	[...]	13/02/2014		
	[...]	26/07/11	[...]	13/12/2011	[...]	14/11/2012	[...]	13/03/14		
	[...]	26/07/11	[...]	12/01/12	[...]	14/11/2012	[...]	3/09/2014		
	[...]	26/07/11	[...]	12/01/12	[...]	21/12/2012	[...]	13/02/14		
	[...]	26/07/11	[...]	12/01/12	[...]	8/02/2013	[...]	13/03/2014		
	[...]	26/07/11	[...]	12/01/12	[...]	10/07/2012	[...]	3/09/2014		
	[...]	26/07/11	[...]	26/07/2011	[...]	2/07/2013	[...]	14/04/2014		
	[...]	26/07/11	[...]	26/07/2011						
	[...]	26/07/11	[...]	26/07/2011						
	[...]	26/07/11	[...]	26/07/2011						
	[...]	26/07/11	[...]	26/07/2011						
	[...]	26/07/11	[...]	10/07/2012						
	[...]	11/07/2011	[...]	11/07/2011						
	[...]	02/04/10								
	[...]	02/04/10								
	[...]	6/07/2010								
	[...]	6/07/2010								
	[...]	6/07/2010								
	[...]	30/08/2010								
	[...]	30/08/2010								
	[...]	30/08/2010								

(EUR)

RYANAIR/AMS										TOTAL TO BE RECOVERED
	2010		2011		2012		2013		TOTAL	
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE		
	[...]	5/10/2010								
	[...]	2/02/2011								
	[...]	2/02/2011								
	[...]	5/04/2011								
	[...]	5/04/2011								
	[...]	22/07/11								
	Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[EUR 8-20 mio]

(EUR)

EASYJET										TOTAL TO BE RECOVERED
	2010		2011		2012		2013		TOTAL	
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE		
OLBIA	[...]	21/10/2010	[...]	17/08/2012	[...]	19/07/2013 &	[...]	13/09/2013 &		
	[...]	21/10/2010				13/09/2013		2/05/2014		
	[...]	30/05/2011								
	[...]	30/05/2011								
Total	[...]		[...]		[...]		[...]		[EUR 0-10 mio]	[EUR 0-10 mio]
CAGLIARI	[...]	29/10/10	[...]	6/10/2011	[...]	16/11/12	[...]	24/09/2013		
	[...]	29/10/10	[...]	6/04/2012	[...]	16/10/13				
	[...]	17/08/2011	[...]	17/08/2012	[...]	24/09/2013				
	[...]	06/10/11								
Total	[...]		[...]		[...]		[...]		[EUR 0-10 mio]	[EUR 0-10 mio]

AIR ITALY					(EUR)	
	2010		2011		TOTAL	TOTAL TO BE RECOVERED
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE		
OLBIA	[...]	17/05/2011 & 23/05/2011 & 02/08/2011	[...]	23/05/2011	[...]	[...]
TOTAL	[...]		[...]		[EUR 0-1 mio]	[EUR 0-1 mio]
(EUR)						
VOLOTEA						TOTAL TO BE RECOVERED
	2012		2013		TOTAL	
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE		
OLBIA	[...]	29/10/2012 & 16/01/2013 & 30/09/2013	[...]	15/07/2013 & 30/09/2013 & 29/01/2014 & 30/01/2014	[EUR 0-1 mio]	[EUR 0-1 mio]
CAGLIARI	[...]	23/04/2015	[...]	23/04/2015	[EUR 0-1 mio]	[EUR 0-1 mio]
(EUR)						
AIR BALTIC					TOTAL TO BE RECOVERED	
	2013					
	AMOUNT		PAYMENT DATE			
OLBIA	[...]		15/10/2013 & 6/12/2013 & 3/02/2014			
TOTAL	[EUR 0-1 mio]				to be determined	

(EUR)

VUELING		TOTAL TO BE RECOVERED
	2013	
	AMOUNT	PAYMENT DATE
OLBIA	[...]	5/02/2014
CAGLIARI	[...]	17/03/2014
TOTAL	[EUR 0-1 mio]	
		to be determined

(EUR)

NORWEGIAN										TOTAL TO BE RECOVERED
	2010		2011		2012		2013		TOTAL	
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE		
OLBIA	[...]	19/04/2011	[...]	31/05/2012	[...]	31/12/2013	[...]	19/12/2014		
	[...]	19/04/2011								[...]
TOTAL	[EUR 0-1 mio]		[EUR 0-1 mio]		[EUR 0-1 mio]		[EUR 0-1 mio]		[EUR 0-1 mio]	[EUR 0-1 mio]

(EUR)

JET2.COM							TOTAL TO BE RECOVERED
	2011		2012		2013		
	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	AMOUNT	PAYMENT DATE	
OLBIA	[...]	20/12/2011	[...]	16/01/2013	[...]	16/05/2013 & 7/08/2014	
TOTAL	[EUR 0-1 mio]		[EUR 0-1 mio]		[EUR 0-1 mio]		[EUR 0-1 mio]
							to be determined

(EUR)

NIKI			TOTAL TO BE RECOVERED
	2012		
	AMOUNT	PAYMENT DATE	
OLBIA	[...]	25/09/2012	
TOTAL	[EUR 0-1 mio]		[EUR 0-1 mio]

(EUR)

TOURPARADE			TOTAL TO BE RECOVERED
	2012		
	AMOUNT	PAYMENT DATE	
CAGLIARI	[...]	22/08/2013	
TOTAL	[EUR 0-1 mio]		[EUR 0-1 mio]

(EUR)

GERMANWINGS			TOTAL TO BE RECOVERED
	2012		
	AMOUNT	PAYMENT DATE	
CAGLIARI	[...]	18/04/2013	
TOTAL	[EUR 0-1 mio]		[EUR 0-1 mio]

- (432) To take into account the actual advantage received by the airlines, the amounts indicated in Table 19 may be adjusted, according to the supporting evidence provided by Italy, in particular the exact date for all payments.
- (433) As explained at recital 353, for the purpose of the application of State aid rules in this case, AMS and Ryanair are considered to be a single undertaking. Therefore, Ryanair and AMS should be jointly and severally liable for the reimbursement of the total amount of the aid they received.
- (434) In addition, Italy should add recovery interest to the aid amount, calculated from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery ⁽¹²⁶⁾, in accordance with chapter V of Commission Regulation (EC) No 794/2004 ⁽¹²⁷⁾.

9. CONCLUSION

9.1. FUNDING PROVIDED BY AIRPORT OPERATORS TO AIRLINE COMPANIES IN RESPECT OF ACTIVITIES 1 AND 2 (LAW 10/2010) IN THE PERIOD 2010-2013 — EXISTENCE OF STATE AID IN FAVOUR OF AIRLINE COMPANIES

- (435) Italy unlawfully implemented the aid provided to airline companies operating at the two airports concerned, pursuant to Law 10/2010, for the financing of activities 1 and 2 throughout the period 2010-2013, in breach of Article 108(3) of the Treaty.

⁽¹²⁶⁾ See Article 16(2) of Council Regulation (EU) 2015/1589 precited.

⁽¹²⁷⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

- (436) The aid provided to airline companies operating at the airports concerned, pursuant to Law 10/2010, for the financing of activities 1 and 2 throughout the period 2010-2013 is incompatible with the internal market. The incompatible aid should be recovered from airline companies, which operated at Olbia and Cagliari airports and benefitted from financing of activities 1 and 2 pursuant to Law 10/2010. Italy should ensure that all national measures are taken to ensure that the aid recipients reimburse that undue advantage to it.

9.2. FINANCIAL COMPENSATION FROM THE REGION TO SARDINIAN AIRPORT OPERATORS FOR THE FINANCING OF ACTIVITIES 1, 2 AND 3 (LAW 10/2010) OVER THE PERIOD 2010-2013 — EXISTENCE OF STATE AID IN FAVOUR OF THE AIRPORT OPERATORS

- (437) The Commission considers that under the scheme established by Law 10/2010 over the period 2010-2013, the three airports managers SOGEAAL, SOGAER and GEASAR did not receive State aid within the meaning of Article 107(1) of the Treaty under the scheme established by Law 10/2010 during the period 2010-2013,

HAS ADOPTED THIS DECISION:

Article 1

1. The scheme that Italy established by Regional law of Sardinia of 13 April 2010, No 10 — *Misure per lo sviluppo del trasporto aereo* does not involve State aid within the meaning of Article 107(1) of the Treaty in favour of SOGEAAL S.p.A., SOGAER S.p.A., the operator of Cagliari-Elmas airport and GEASAR S.p.A., the operator of Olbia airport.
2. The scheme that Italy established by Law 10/2010 constitutes State aid within the meaning of Article 107(1) of the Treaty in favour of Ryanair/AMS, easyJet, Air Berlin, Meridiana, Alitalia, Air Italy, Volotea, Wizzair, Norwegian, JET2.COM, Niki, Tourparade, Germanwings, Air Baltic and Vueling, in so far as it relates to the operations of those airlines at Cagliari-Elmas airport and Olbia airport.
3. The State aid referred to in paragraph 2 has been put into effect by Italy in breach of Article 108(3) of the Treaty.
4. The State aid referred to in paragraph 2 is incompatible with the internal market.

Article 2

1. Italy shall recover the State aid referred to in Article 1(2) from the beneficiaries.
2. Taking into account that Ryanair and AMS constitute a single economic unit for the purpose of the present decision they shall be jointly liable for repayment of the State aid received by either of them.
3. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.
4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and to Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.
5. Italy shall cancel all outstanding payments of the aid referred to in Article 1(2) with effect from the date of adoption of this Decision.

Article 3

1. Recovery of the aid referred to in Article 1(2) shall be immediate and effective.
2. Italy shall ensure that this Decision is implemented within 4 months following the date of its notification of this Decision.

Article 4

1. Within 2 months following notification of this Decision, Italy shall submit the following information:
 - the list of beneficiaries that have received aid under the scheme referred to in Article 1(2) and the total amount of aid received by each of them under the scheme,
 - the total amount (principal and recovery interests) to be recovered from each beneficiary,
 - a detailed description of the measures already taken and planned to comply with this Decision,
 - documents demonstrating that the beneficiaries have been ordered to repay the aid.
2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 2 has been completed. It shall immediately submit, on simple request of the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 29 July 2016.

For the Commission
Margrethe VESTAGER
Member of the Commission

