

# Official Journal of the European Union

L 388



English edition

Legislation

Volume 63

19 November 2020

Contents

II *Non-legislative acts*

DECISIONS

★ **Commission Decision (EU) 2020/1671 of 2 August 2019 on State aid SA.47867 2018/C (ex 2017/FC) granted by France to Ryanair and Airport Marketing Services** (*notified under document C(2019) 5729*) <sup>(1)</sup> .....

1

<sup>(1)</sup> Text with EEA relevance.

EN

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.

The titles of all other acts are printed in bold type and preceded by an asterisk.



## II

*(Non-legislative acts)*

## DECISIONS

**COMMISSION DECISION (EU) 2020/1671****of 2 August 2019****on State aid SA.47867 2018/C (ex 2017/FC) granted by France to Ryanair and Airport Marketing Services***(notified under document C(2019) 5729)***(Only the French 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 those articles <sup>(1)</sup>, and having regard to their comments,

Whereas:

**1. PROCEDURE**

- (1) By letter dated 23 March 2017, the Commission received a complaint from the airline Air France <sup>(2)</sup> alleging that the airline Ryanair had enjoyed advantages between 2010 and 2015 in connection with its air transport operations to and from Montpellier airport. These advantages had allegedly been granted through marketing services agreements concluded by the Association for the Promotion of Tourist and Economic Flows (Association de promotion des flux touristiques et économiques – ‘APFTE’) with Ryanair or its subsidiary Airport Marketing Services (‘AMS’). On the basis of these agreements, the APFTE had paid Ryanair around EUR 8,5 million between 2010 and 2015.
- (2) By letter dated 24 May 2017, the Commission sent France a non-confidential version of the complaint and invited France to submit its comments and answer certain questions on the measures at issue. On 12 July 2017, the Commission sent a reminder asking France to provide the information requested by the letter of 24 May 2017.
- (3) France replied by letter dated 18 August 2017.
- (4) By letter dated 13 September 2017, the Commission asked France for further information. On 9 October 2017, France requested further time to reply, to which the Commission agreed by letter dated 18 October 2017.

<sup>(1)</sup> OJ C 406, 9.11.2018, p. 17.

<sup>(2)</sup> This complaint was submitted as a supplement to a previous complaint lodged on 27 November 2009 (SA.30328 (2010/CP)).

- (5) By letter dated 22 November 2017, France provided some of the information requested by the Commission.
- (6) On 22 December 2017, the Commission sent a reminder asking France to provide the answers to the remaining questions.
- (7) France replied by letter dated 29 January 2018.
- (8) By letter dated 4 July 2018, the Commission notified France of its decision ('the opening decision') to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the aid.
- (9) The Opening Decision was published in the *Official Journal of the European Union* <sup>(3)</sup>. The Commission called on interested parties to submit their comments on the aid in question.
- (10) The Commission received comments from Ryanair, the Region of Occitania, the Chamber of Commerce and Industry of Hérault, the Montpellier local authority structure Montpellier Méditerranée Métropole, the Pays de l'Or local authority structure Communauté d'agglomération du Pays de l'Or, [...] and the APFTE. On 15 April and 17 May 2019, the Commission sent Ryanair's comments to France (with a request for information) and asked the latter to comment on them. The Commission received France's comments by letter dated 13 June 2019 and the APFTE's comments by letter dated 21 June 2019. The comments of the other interested parties were sent to France on 18 June 2019.

## 2. GENERAL INFORMATION ON MONTPELLIER AIRPORT

### 2.1. Airport characteristics and traffic

- (11) Montpellier Méditerranée airport ('Montpellier airport') lies approximately 7 km from the centre of Montpellier, which is the capital of the department of Hérault, in the Region of Occitania in France. The airport is open to domestic and international commercial traffic.
- (12) An overview of passenger traffic at Montpellier airport in recent years can be found in Table 1 below. The airport handled nearly 1,85 million passengers in 2017 and 1,88 million in 2018.

Table 1

#### Commercial passenger traffic at Montpellier airport between 2010 and 2018 (number of passengers)

| Year                              | 2010             | 2011             | 2012             | 2013             | 2014             | 2015             | 2016             | 2017             | 2018             |
|-----------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Local passengers <sup>(1)</sup>   | 1 177 860        | 1 308 346        | 1 285 428        | 1 420 614        | 1 444 110        | 1 507 928        | 1 669 023        | 1 847 314        | 1 878 035        |
| Of which international passengers | 295 334          | 400 818          | 398 609          | 391 855          | 433 923          | 480 667          | 616 564          | 661 456          | 641 005          |
| Of which domestic passengers      | 882 526          | 907 528          | 886 819          | 1 028 759        | 1 010 187        | 1 027 261        | 1 052 459        | 1 185 858        | 1 237 030        |
| Passengers in transit             | 2 588            | 4 930            | 2 787            | 2 179            | 1 224            | 2 242            | 2 063            | 2 096            | 1 928            |
| <b>Total</b>                      | <b>1 180 448</b> | <b>1 313 276</b> | <b>1 288 215</b> | <b>1 422 793</b> | <b>1 445 334</b> | <b>1 510 170</b> | <b>1 671 086</b> | <b>1 849 410</b> | <b>1 879 963</b> |

<sup>(3)</sup> See footnote 1.

| Year                                        | 2010    | 2011    | 2012    | 2013    | 2014    | 2015    | 2016    | 2017    | 2018    |
|---------------------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <i>Of which low-cost airline passengers</i> | 275 341 | 378 980 | 397 819 | 441 388 | 464 170 | 507 965 | 577 198 | 679 148 | 708 273 |

<sup>(1)</sup> Passengers starting or ending their journey at Montpellier airport, as opposed to transit passengers.

Source: <http://www.aeroport.fr/view-statistiques/montpellier-mediterranee>, visited on 1 July 2019.

- (13) Several airlines <sup>(4)</sup> currently operate scheduled flights from Montpellier airport to destinations in France, other European countries and the Maghreb.
- (14) Aside from these scheduled flights, other commercial movements at Montpellier airport during the 2010-2018 period mainly involved flying club and business flights.
- (15) Ryanair served Montpellier airport between March 2002 and April 2019.
- (16) The first Ryanair flights at Montpellier took place in March 2002. Ryanair initially operated one scheduled route to Frankfurt-Hahn airport, situated in the German Land of Rhineland-Palatinate, and one scheduled route to London-Stansted airport (which ended in 2009). In 2008, Ryanair opened a route to Brussels-Charleroi airport (situated in Wallonia, Belgium), and in 2010 it opened a route to Leeds-Bradford airport (situated in Yorkshire, United Kingdom). A flight to Bristol was introduced and then ended in 2009. The Frankfurt-Hahn, Brussels-Charleroi and Leeds-Bradford routes were therefore already in operation when the APFTE was set up on 24 June 2010. A flight to Birmingham was introduced on 13 April 2011, and then ended in November 2013. Unlike Montpellier, the airports of Leeds-Bradford, Birmingham, Brussels-Charleroi and Frankfurt-Hahn are all Ryanair bases <sup>(5)</sup>.
- (17) Ryanair stopped operating the Montpellier-Leeds route in October 2017, and then the Montpellier-Hahn route in November 2018. In April 2019, Ryanair ended all operations at Montpellier airport when it stopped operating the Montpellier-Charleroi route.

Table 2

**Ryanair's share of commercial passenger traffic at Montpellier airport between 2010 and 2019**

| Year                                                                | 2010  | 2011  | 2012  | 2013  | 2014  | 2015  | 2016  | 2017  | 2018  | January-April 2019 |
|---------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------------------|
| Total traffic at the airport by number of passengers <sup>(1)</sup> | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...]              |
| Ryanair passengers by number of passengers <sup>(2)</sup>           | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...]              |
| — Hahn route                                                        | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] |                    |
| — Charleroi route                                                   | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...]              |

<sup>(4)</sup> Air Algérie, Air Arabia, Air France, Air France Hop!, Aer Lingus, British Airways, Chailair Aviation, easyJet, Eurowings, KLM, Norwegian, Royal Air Maroc, SAS Scandinavian Airlines, Transavia, TUI fly, Ural Airlines, and Volotea (source: <https://www.montpellier.aeroport.fr/vols-destinations/compagnies-aeriennes-montpellier/>, visited on 1 July 2019).

<sup>(5)</sup> Airports where at least one Ryanair aircraft and its crew are permanently based.

| Year                                                      | 2010          | 2011           | 2012           | 2013          | 2014          | 2015          | 2016          | 2017          | 2018         | January-April 2019 |
|-----------------------------------------------------------|---------------|----------------|----------------|---------------|---------------|---------------|---------------|---------------|--------------|--------------------|
| — Bradford route                                          | [...]         | [...]          | [...]          | [...]         | [...]         | [...]         | [...]         | [...]         |              |                    |
| — Birmingham route                                        |               | [...]          | [...]          | [...]         |               |               |               |               |              |                    |
| <b>Ryanair passengers as % of total passenger traffic</b> | <b>[5-10]</b> | <b>[10-15]</b> | <b>[10-15]</b> | <b>[5-10]</b> | <b>[5-10]</b> | <b>[5-10]</b> | <b>[5-10]</b> | <b>[5-10]</b> | <b>[0-5]</b> | <b>[0-5]</b>       |

(<sup>1</sup>) The Commission notes that the figures provided by the French authorities for the total number of passengers at the airport differ slightly from the figures published by Montpellier airport, which are set out in Table 1.

(<sup>2</sup>) The Commission notes that the total number of Ryanair passengers provided by the French authorities does not exactly match the sum of the number of Ryanair passengers per route provided by the French authorities.

Source: Information received from the French authorities.

(18) As apparent from Table 2, from 2010 onwards, the total number of Ryanair passengers flying to and from Montpellier airport accounted for only a relatively small share of the airport's passenger traffic (less than [10-15] %), i.e. between [...] and [...] passengers between 2010 and 2017.

(19) It will also be seen from Table 2 that the number of Ryanair passengers fell constantly from 2012. When we look at the number of Ryanair passengers from 2002 onward, it becomes clear that the decline in the number of Ryanair passengers at Montpellier airport began in 2006 (<sup>6</sup>).

(20) Montpellier airport lies 57 km from Nîmes-Alès-Camargue-Cévennes airport and 70 km from Béziers-Cap d'Agde airport, which both handle international scheduled and charter flights.

(21) In April 2019, Ryanair launched a route to Brussels-Charleroi from Béziers-Cap d'Agde airport. Ryanair has been operating a route between Nîmes and Charleroi since April 2006.

## 2.2. Operation and ownership of airport infrastructure

(22) Between 1964 and 2009 Montpellier airport was managed by the Chamber of Commerce and Industry of Montpellier ('CCIM'; the abbreviation is here also used to denote the Chamber of Commerce and Industry of Hérault (<sup>7</sup>)).

(23) On 23 June 2009, management of the airport was transferred to the public limited company Aéroport Montpellier Méditerranée ('AMM'), which is 60 % owned by the French State (i.e. the State administrative body at national level), 25 % by the CCIM, 7 % by the Departmental Council of Hérault, 6,5 % by the Region of Occitania (<sup>8</sup>), 1 % by the Communauté d'agglomération du Pays de l'Or (<sup>9</sup>) and 0,5 % by Montpellier Méditerranée Métropole (<sup>10</sup>) (<sup>11</sup>).

(24) The State owns the airport infrastructure and delegates its management and operation to AMM through a concession.

(25) AMM and Ryanair concluded the following agreements: [...].

(<sup>6</sup>) According to information received from the French authorities, the number of Ryanair passengers was as follows between 2002 and 2009: [...] (2002), [...] (2003), [...] (2004), [...] (2005), [...] (2006), [...] (2007), [...] (2008), [...] (2009).

(<sup>7</sup>) In December 2016, the Chambers of Commerce and Industry in Hérault (Béziers, Montpellier and Sète) merged into a single 'Chamber of Commerce and Industry of Hérault', which is based in Montpellier and has branch offices in Sète and Béziers.

(<sup>8</sup>) This region resulted from the merger of the Languedoc-Roussillon and Midi-Pyrénées regions in 2014.

(<sup>9</sup>) Formerly the Communauté de communes du Pays de l'Or.

(<sup>10</sup>) Formerly the Communauté d'agglomération de Montpellier.

(<sup>11</sup>) See <https://www.montpellier.aeroport.fr/societe-aeroport/aeroport-montpellier-mediterranee/presentation-aeroport-montpellier/> (visited on 1 July 2019).

### 3. GENERAL INFORMATION ON THE APFTE

#### 3.1. Creation and object

- (26) The APFTE is an association set up in June 2010 on the initiative of the CCIM in collaboration with several local and regional authorities – namely, the Regional Council of Languedoc-Roussillon (now the Region of Occitania), the Department of Hérault, the Communauté d'agglomération de Montpellier (now Montpellier Méditerranée Métropole), the Communauté de communes du Pays de l'Or, and the City of Montpellier (these being the 'public members' of the APFTE) – and with the participation of several local businesses <sup>(12)</sup>.
- (27) According to its constitution, the APFTE's object is to 'promote and develop tourism in the area, including business tourism, by entering into promotional agreements, purchasing internet advertising and marketing services or utilising any other advertising medium such as participation in fairs and exhibitions, in order to attract international customers' <sup>(13)</sup>.
- (28) However, despite the very broad formal object of promoting Montpellier and its area, the APFTE's brief, as envisaged when it was set up by the CCIM with the local authorities involved, was to enable the conclusion of 'marketing' or 'promotional' agreements with airlines, which the CCIM had previously concluded as airport manager <sup>(14)</sup>. The formal investigation confirmed that, in practice, the APFTE's work involved concluding and implementing such 'marketing' agreements with airlines <sup>(15)</sup>, with any other work serving to support that practice.
- (29) The nature of these marketing agreements will be analysed in more depth in recitals 152 et seq. and recitals 189 et seq.
- (30) The APFTE's *raison d'être* is explained by the change in the management of Montpellier airport in 2009. As airport manager, the CCIM contracted directly with airlines, not only to conclude airport service agreements, but also marketing agreements. The documents submitted by the French authorities show that this practice began in around 2001. Through these marketing agreements, the CCIM purchased 'marketing' services from certain airlines operating at Montpellier airport, particularly low-cost airlines. Under the agreements, the CCIM paid money to the airlines concerned in return for the promotion of Montpellier as a destination on the airline's website.

<sup>(12)</sup> The APFTE is governed by the Law of 1 July 1901 on association agreements and by its implementing decree of 16 August 1901.

<sup>(13)</sup> Article 3 of the constitution.

<sup>(14)</sup> These intentions are clear from several documents relating to the APFTE's operation, in particular the minutes of the APFTE's inaugural General Meeting of 24 June 2010: 'Since 2001, the Chamber of Commerce and Industry of Montpellier had encouraged the operation of low-cost airlines at Montpellier Méditerranée Airport. It had taken this approach in order to develop the airport given that it was the airport concession-holder. In July 2009, the CCIM had become a minority shareholder in the public limited company with supervisory board and board of management Aéroport Montpellier Méditerranée, owing to its national ranking. In other words, as the CCIM was no longer the airport concession-holder, it was no longer able to conclude agreements with low-cost airlines. It had therefore entered into discussions with the Regional Prefecture and all local authorities with a view to setting up a legal structure that could continue with the online marketing agreements.' See also the record of the CCIM's General Meeting of 29 March 2011: 'The Association for the Promotion of Tourist and Economic Flows (APFTE) had the aim of increasing the number of tourists arriving by air in particular. The association had taken over the agreements concluded by the CCIM with regard to promotion aimed at customers of airlines serving the airport. There have been two agreements to date: the first with AIRPORT MARKETING SERVICES, for routes served by Ryanair, and the second with [...], for the route to [...].'

<sup>(15)</sup> See also recital 195 for an agreement concluded with a marketing company unconnected with air transport, which has never been implemented.

Although it was only the CCIM that entered into the agreement with the airlines, the funds to purchase the marketing services came not only from the CCIM but also from local authorities, with which the CCIM in turn concluded bilateral agreements for the purpose. It was these same local authorities that joined with the CCIM in 2010 to set up and fund the APFTE<sup>(16)</sup>.

- (31) The documents relating to the operation of the APFTE and its founding public members, for example the minutes of the APFTE's inaugural General Meeting of 24 June 2010, show that the APFTE was set up after the CCIM became a minority shareholder in AMM in 2009. As the CCIM was no longer the airport concession-holder, it was no longer able to conclude agreements with low-cost airlines 'to encourage the operation of low-cost airlines at Montpellier Méditerranée Airport'. The APFTE was the result of 'discussions with the Regional Prefecture and all local authorities with a view to setting up a legal structure that could continue with the online marketing agreements' previously concluded by the CCIM as the airport concession-holder<sup>(17)</sup>. Continued cooperation with low-cost airlines was considered beneficial owing to its contribution to the local economy<sup>(18)</sup>.

<sup>(16)</sup> See the record of the CCIM's General Meeting of 26 May 2010, p. 6: 'The CCIM was the only party entering into agreements with the various marketing companies to promote tourism in our area. At the same time, the CCIM concluded agreements with the local authorities involved in promoting tourist flows. The CGEFI [General Economic and Financial Inspectorate] had taken the view that the CCIM was taking both legal and financial risks when it was no longer the concession-holder. However, the importance of these flows for local tourism was generally acknowledged. The cost of marketing amounted to EUR 1,8 million to date, but the economic benefits had been in the order of EUR 60 million. The CCIM and the local authorities agreed that this approach should be continued.' See also the minutes of the Regional Council of Languedoc-Roussillon of 20 July 2012, p. 1: 'In view of the changes in the management of Montpellier airport, an Association for the Promotion of Tourist and Economic Flows (APFTE) had been set up to continue the work of promoting the area carried on with the airlines serving Montpellier airport.'

<sup>(17)</sup> These intentions are clear from several documents relating to the workings of the APFTE, in particular the minutes of the APFTE's inaugural General Meeting, on 24 June 2010: '[The CCIM representative (who was elected President of the APFTE during this meeting)] welcomed all the participants and thanked them for having responded to the invitation, despite the very short notice. Tourist flows, i.e. customers coming mainly from northern Europe, brought to the region by low-cost airlines, were very important not only for all undertakings involved in tourism, but also for those involved in trade and property. 'Since 2001, the Chamber of Commerce and Industry of Montpellier had encouraged the operation of low-cost airlines at Montpellier Méditerranée Airport. It had taken this approach in order to develop the airport given that it was the airport concession-holder. In July 2009, the CCIM had become a minority shareholder in the public limited company with supervisory board and board of management Aéroport Montpellier Méditerranée, owing to its national ranking. In other words, as the CCIM was no longer the airport concession-holder, it was no longer able to conclude agreements with low-cost airlines. It had therefore entered into discussions with the Regional Prefecture and all local authorities with a view to setting up a legal structure that could continue with the online marketing agreements. This structure should be in the form of an association with three collegial bodies in order to meet the legal requirements imposed by the Fillon circular of January 2010 [...].'

With regard to the operation of the marketing agreements concluded with the airlines, the same minutes state as follows: 'Mr [...] spoke to say that he had been involved with the marketing agreements since 2001. These agreements were intended mainly to secure the advertising of Montpellier as a destination on the websites of various low-cost airlines. In return, and as with any kind of advertising on any type of media, invoices were issued for the service provided. Whatever the difficulties and the charges applied by the low-cost airlines, the benefits for local businesses were very significant. The association was currently the structure best suited to meeting the legal requirements, and would boost the area's development through this low-cost momentum' [...].

See also the public statement of the President of the APFTE, quoted in an article in *La Tribune Occitanie-Montpellier* of 8 April 2015: 'As local authorities could not conclude marketing agreements with airlines, the method identified involved an association', says [...], President of the APFTE. 'Subsidies are allocated from local authority budgets and the association signs the online marketing agreements. I can't see how this could be regarded as defrauding the taxpayer! The APFTE was set up by the CCIM in agreement with the State authorities, in particular the prefect, [...]. The file has just been passed to Montpellier Méditerranée Métropole.' (see <https://objectif-languedoc-roussillon.latribune.fr/entreprises/tourisme/2015-04-08/apres-le-gel-du-soutien-aux-compagnies-low-cost-a-montpellier-le-president-de-l-apfte-reagit.html>, visited on 1 July 2019).

See also the record of the Council of the Communauté de communes de Pays de l'Or of 23 June 2010, explaining the positive impact of the flow of low-cost airline passengers on the region: 'The operation of these airlines requires a financial contribution from local authorities in the form of start-up aid for new routes, granted for a maximum period of three years, followed by aid to promote the route, to be provided by purchasing advertising space on airline websites.'

<sup>(18)</sup> See the minutes of the APFTE's inaugural General Meeting of 24 June 2010: 'Whatever the difficulties and the charges applied by the low-cost airlines, the benefits for local businesses were very significant.'

- (32) It is therefore clear from the minutes of the APFTE's General Meeting that the association was regarded as 'the structure best suited to meeting the legal requirements, and would boost the area's development through this "low-cost" momentum'.
- (33) The association was initially set up with local private businesses as members, before public members subsequently became involved. This method was chosen by the CCIM to speed up the formation of the association, given that the appointment of representatives of local authorities and public bodies would take some time <sup>(19)</sup>.
- (34) In 2017, the CCIM and the other public members decided that the APFTE would cease operating from 2018 – without, however, ceasing to exist – owing to questions about its legality raised by domestic and European complaints and investigations <sup>(20)</sup>. According to the French authorities, the APFTE's General Meeting of 20 December 2017 confirmed the decision to stop using the association to promote tourist flows from the summer 2018 season. According to the French authorities, the APFTE informed Ryanair of this decision by letter dated 18 January 2018.

### 3.2. Composition and governing bodies

- (35) The APFTE has around 30 members, including about 20 <sup>(21)</sup> from private structures fully or partly engaged in tourism (hotels, tourist residences, etc.). The public members of the APFTE are representatives of the CCIM and representatives of the aforementioned local authorities, namely the Region of Occitania, the Department of Hérault, Montpellier Méditerranée Métropole, the Communauté d'agglomération du Pays de l'Or, and the City of Montpellier.
- (36) When the APFTE was set up, the public bodies involved decided that this association should have three collegial bodies, namely the General Meeting (ordinary and extraordinary), the Board (Conseil d'Administration), and the Executive Committee (consisting of the president, treasurer and secretary), in order to meet the legal requirements imposed by the French law on associations set up by local authorities, public institutions, public bodies and private-law undertakings <sup>(22)</sup>.
- (37) According to the APFTE's constitution, the General Meeting approves the accounts for the previous financial year, votes on the budget for the next financial year, debates and votes on all items placed on the agenda, and where necessary renews the members of the Board. The General Meeting comprises the paid-up members of the association and meets at least once a year. All its decisions are taken by a simple majority of the votes cast, except where they involve any contractual obligation with a value of more than EUR 10 000. In such cases, the General Meeting must decide by a two-thirds majority. This is the case, for example, with any marketing agreement with a value of more than EUR 10 000.
- (38) The constitution also provides for the APFTE to be administered by a Board consisting of at least nine members and at most twenty-five members appointed by the General Meeting. From among its members, the Board appoints an Executive Committee consisting of a president, one or more vice-presidents, a secretary and a treasurer, in accordance with the rules of procedure decided by the Board. The Board meets at the invitation of its president at least twice a year, at the request of half of its members provided that one third of its members are present. Decisions are taken by a majority of the votes cast for routine decisions and by a two-thirds majority for the signature of any commitment exceeding one year and with a value of more than EUR 10 000.

<sup>(19)</sup> See the minutes of the APFTE's inaugural General Meeting of 24 June 2010: 'The CCIM had taken the decision to set up this association with private businesses initially, because the local authorities and semi-public bodies would have to consider the appointment of their representatives, which would take some time.'

<sup>(20)</sup> See the record of the CCIM's General Meeting of 29 November 2017 ('The multiple investigations opened in France by the European Commission and the complaints made by Anticor [French anti-corruption association] against the APFTE and several of its funders had led the Prefect of Hérault in 2016 to ask the members of the APFTE to find a new method of funding these area marketing campaigns instead of using the APFTE. This firm request became a requirement in 2018'), the minutes of the CCIM's General Meeting of 24 January 2018, the minutes of the General Meetings of the Communauté d'agglomération du Pays de l'Or of 28 June 2017 and 22 February 2018, and the minutes of the Board meeting of 25 April 2017.

<sup>(21)</sup> The exact number of members varies from year to year.

<sup>(22)</sup> This is stated in the minutes of the APFTE's inaugural General Meeting of 24 June 2010.

- (39) According to the APFTE's constitution, the president represents the association in all civil acts and is invested with all necessary powers for this purpose. This covers the signature of agreements and contracts that may commit the APFTE. To date three different people have held the office of President of the APFTE. These people all had pre-existing links with the CCIM or with the French local authorities funding the APFTE.
- (a) The first President of the APFTE was a full member of the CCIM in 2010 and between 2016 and 2019, and a technical adviser within the CCIM from 2013 to 2015. This person was President of the APFTE from June 2010 to March 2011 and then again from December 2012 to at least 2018, and also Vice-President of the APFTE (with the capacity to act on behalf of the President of the APFTE) from October to December 2012.
- (b) The President of the APFTE between April 2011 and February 2012 also acted as a technical adviser within the CCIM between 2011 and 2012 <sup>(23)</sup>.
- (c) His successor (President from February 2012 to December 2012) was at the same time President of the Regional Economic, Social and Environmental Council of Languedoc-Roussillon (Conseil économique, social, et environnemental régional du Languedoc-Roussillon) and thus president of an institution of one of the local authorities belonging to the APFTE.
- (40) Furthermore, the minutes and records of the APFTE and its collegial bodies and committees show that the APFTE also had a committee consisting of the local authorities and the CCIM, but excluding the private members: the 'Governance Committee' (since March 2011), later the 'Committee on Finance'. These committees are not mentioned in the constitution.
- (a) The Governance Committee was intended to 'bring together the local authorities, as funders of the [APFTE]'. Its objective was to 'guide and confirm the strategic choices made in the development of routes and the associated budget. The Governance Committee meeting [was] preceded, where necessary, by a preparatory meeting with all the local authority technicians' <sup>(24)</sup>. This committee was formed at the request of the local authorities <sup>(25)</sup>, which wanted to ensure that the choice of marketing agreements to be funded was not determined solely by the new airport operator, AMM <sup>(26)</sup>. The records of the committee, as provided to the Commission, show that it consisted of representatives of the local authorities (Region, Department, Pays de l'Or, Agglomération de Montpellier, City of Montpellier), the CCIM and the Executive Committee of the APFTE. The records also refer to the presence of an AMM representative who proposed strategic choices to the funding members of the APFTE <sup>(27)</sup>.
- 
- <sup>(23)</sup> See the record of the CCIM's General Meeting of 2 February 2011: 'This association was formed to meet the demands of the General Economic and Financial Inspectorate, which no longer wanted the CCIM, which had become a minority shareholder in the public limited company Aéroport Montpellier Méditerranée, to continue as a party to agreements with low-cost airlines. The association was set up in July 2010 and the CCIM appointed Mr [President of the APFTE from June 2010 to March 2011] and Mr [...]. They had now to be replaced. The meeting of the Executive Committee on 27 January 2011 proposed to the General Meeting that the following should be appointed as representatives of the CCIM in the APFTE: [the person who was President of the APFTE between April 2011 and February 2012] and [...].'
- <sup>(24)</sup> See the record of the preparatory technical meeting of 28 March 2011 prior to the APFTE's Governance Committee meeting. This technical meeting brought together the Executive Committee of the APFTE, representatives of all the local authorities funding the APFTE (i.e. elected officers of the Region, the Department, the Communauté d'agglomération de Montpellier, the Communauté de communes du Pays de l'Or, and the City of Montpellier) and of the CCIM, and also a representative of Montpellier airport. At the end of the meeting, it was recorded that the Governance Committee 'should initiate a discussion regarding the development of tourist flows and make strategic choices on the various routes proposed by the airport'.
- <sup>(25)</sup> See the minutes of the APFTE's Governance Committee meeting of 8 April 2011.
- <sup>(26)</sup> See the minutes of the APFTE's Board meeting of 18 March 2011: 'This Committee would choose the destinations for the promotion of tourist and economic flows. The Agglomération de Montpellier refused to fund any action plans for the development of the area that it had not approved. The Department and the Region agreed that this Committee needed to be formed. The funding bodies wanted to be involved in creating a proper strategy for the tourist and economic development of their area. They did not want simply to endorse the choices made by Montpellier Airport.'
- See also the minutes of the APFTE's General Meeting of 18 March 2011: 'The local authorities were the funding bodies, and their participation and support were essential to this work.' 'The formation of a governance committee should also allow the funders to take part in decisions on the routes to be opened.'
- <sup>(27)</sup> See the conclusion in the record of the preparatory technical meeting of 28 March 2011 prior to the Governance Committee meeting: 'The Governance Committee should initiate a discussion regarding the development of tourist flows and make strategic choices on the various routes proposed by the airport.'

- (b) In addition, documents relating to the workings of the APFTE show that the Governance Committee was subsequently called the 'Funders Committee' from at least 2012, but involved the same institutions. The French authorities have confirmed that, according to the APFTE, the 'Funders Committee' is the same body as the 'Governance Committee', which had different names at different times.

### 3.3. Decision-making within the APFTE

- (41) According to the APFTE's constitution and the French authorities, the decision-making procedure followed within the APFTE for the conclusion of marketing agreements is as follows:

- Proposals on geographical areas to be targeted by tourist marketing services are submitted to the Board, which gives an opinion on them.
- The proposals are then submitted for approval by the General Meeting.
- If the General Meeting approves the proposals (by a two-thirds majority for any marketing agreement with a value of more than EUR 10 000), a public procurement procedure is launched.
- The results of the analysis of the tenders received are presented to the Board, which gives an opinion.
- The results are then submitted to the General Meeting, which may authorise the President to sign the contracts (by a two-thirds majority for any marketing agreement with a value of more than EUR 10 000; the decision is recorded in the minutes of the General Meeting).
- Depending on the applicable procedure, any rejection letters are written and sent.
- Depending on the applicable procedure, notification letters signed by the President and accompanied by the tender document and price schedule, both also signed by the President, are also written and sent to each of the successful tenders.

- (42) Although the information just cited does not say so, in practice, when proposals were put forward for geographical areas to be targeted by tourist marketing services, before the deliberations of the Board and General Meeting other parties played a part in making the budget choices and determining the policy of the APFTE (i.e. the marketing agreements to be concluded).

- (43) The records and minutes of the APFTE, its committees and its public members show that the choice of geographical areas to be targeted by tourist marketing services was actually made initially by the CCIM and AMM, and then from March 2011 onward – thus before any funds were effectively paid to the APFTE by the local authorities – by the local authorities and the CCIM<sup>(28)</sup>. The local authorities and the CCIM decided which agreements would be prioritised before they were submitted to the General Meeting. Since March 2011 the procedure has been as follows: apart from the bodies indicated in its constitution, the APFTE has had additional committees, in particular the Governance Committee (formed in March 2011) and the Funders Committee, which have been closely involved in selecting the marketing agreements submitted to the General Meeting. Before the Funders Committee was formed, AMM had significant influence over the choice of marketing agreements concluded by the APFTE. The local authorities then refused simply to endorse AMM's choices without having any room for manoeuvre, which explains why the Governance Committee was formed<sup>(29)</sup>.

<sup>(28)</sup> See recital 40.

<sup>(29)</sup> See the record of the first Governance Committee meeting of 8 April 2011: 'Mr[...], First Vice-President of the Languedoc-Roussillon Region, stated that he refused to approve the choices made by the Airport Company without prior discussion, and that if the method used to date were to continue the Region would no longer provide any funding.' '[...], President of the CCIM, wanted this Committee to decide the strategic areas of development.'

- (44) The question regarding the actual influence that the public members funding the APFTE had over the association's decision-making will be considered in further detail in the analysis of financial resources and the imputability of the measures to the State <sup>(30)</sup>.

#### 3.4. Financial resources

- (45) The APFTE's resources consist of (i) membership fees, as determined by the General Meeting, and (ii) annual contributions or subsidies paid by the various members of the APFTE in addition to their membership fees. Most of the APFTE's resources come from the annual contributions made by its member public entities, as illustrated by the table below. In practice, the membership fees of the APFTE's members represent only a small proportion of its income. As they have been set at EUR 50 or EUR 100 per member per year, their total annual amount has not exceeded EUR 1 550 since 2010.

---

<sup>(30)</sup> Recitals 106 et seq.

Table 3

## Origin of the APFTE's income between 2010 and 2019

| Year                                                                                                       | 2010                      | 2011              | 2012              | 2013              | 2014              | 2015              | 2016              | 2017              | 2018 <sup>(1)</sup> | 2019 <sup>(2)</sup> | 2010 to 2019                      |
|------------------------------------------------------------------------------------------------------------|---------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|---------------------|---------------------|-----------------------------------|
| <b>Subsidies from local authorities and the CCIM in EUR (proportion of this entity's contribution)</b>     |                           |                   |                   |                   |                   |                   |                   |                   |                     |                     |                                   |
| Regional Council of Languedoc-Roussillon (now the Region of Occitania)                                     | 283 670<br>(30 %)         | 550 000<br>(27 %) | 509 024<br>(25 %) | 550 000<br>(23 %) | 446 830<br>(28 %) | 587 696<br>(36 %) | 509 174<br>(32 %) | 355 239<br>(32 %) | 75 000<br>(34 %)    | 0                   | <b>3 866 633</b><br><b>(29 %)</b> |
| Hérault Departmental Council                                                                               | 283 670<br>(30 %)         | 559 746<br>(27 %) | 509 024<br>(25 %) | 550 000<br>(23 %) | 150 000<br>(10 %) | 0<br>(0 %)        | 111 092<br>(7 %)  | 0<br>(0 %)        | 0<br>(0 %)          | 0                   | <b>2 163 532</b><br><b>(16 %)</b> |
| Communauté d'agglomération de Montpellier (now Montpellier Méditerranée Métropole) and City of Montpellier | 283 670<br>(30 %)         | 730 473<br>(36 %) | 706 524<br>(35 %) | 747 500<br>(31 %) | 644 331<br>(41 %) | 747 500<br>(46 %) | 692 015<br>(44 %) | 505 865<br>(45 %) | 75 000<br>(34 %)    | 0                   | <b>5 132 878</b><br><b>(38 %)</b> |
| Communauté d'agglomération du Pays de l'Or                                                                 | 85 000<br>(9 %)           | 85 000<br>(4 %)   | 100 000<br>(5 %)  | 119 915<br>(5 %)  | 97 574<br>(6 %)   | 130 803<br>(8 %)  | 110 092<br>(7 %)  | 107 250<br>(10 %) | 21 500<br>(10 %)    | 0                   | <b>857 134</b><br><b>(6 %)</b>    |
| CCIM (now the Chamber of Commerce and Industry of Hérault)                                                 | 0 <sup>(3)</sup><br>(0 %) | 125 000<br>(6 %)  | 212 000<br>(10 %) | 440 000<br>(18 %) | 232 500<br>(15 %) | 150 000<br>(9 %)  | 150 000<br>(10 %) | 150 000<br>(13 %) | 51 000<br>(23 %)    | 0                   | <b>1 510 500</b><br><b>(11 %)</b> |

| Year                                                                                                    | 2010           | 2011             | 2012             | 2013             | 2014             | 2015             | 2016             | 2017             | 2018 <sup>(1)</sup> | 2019 <sup>(2)</sup> | 2010 to 2019      |
|---------------------------------------------------------------------------------------------------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|---------------------|---------------------|-------------------|
| <b>Membership fees of the various APFTE members</b>                                                     |                |                  |                  |                  |                  |                  |                  |                  |                     |                     |                   |
| Membership fees from EUR 50 to EUR 100                                                                  | 1 100          | 50               | 1 550            | 1 500            | 0                | 600              | 0                | 0                | 0                   | 0                   | <b>4 800</b>      |
| (Proportion of the membership fees within the APFTE's total budget)                                     | (0,117 %)      | (0,002 %)        | (0,076 %)        | (0,062 %)        | (0 %)            | (0,037 %)        | (0 %)            | (0 %)            | (0 %)               | (0 %)               | <b>(0,035 %)</b>  |
| <b>Subsidies from local authorities and the CCIM in euro (proportion of this entity's contribution)</b> |                |                  |                  |                  |                  |                  |                  |                  |                     |                     |                   |
| <b>APFTE's total budget in euro <sup>(4)</sup> (subsidies plus membership fees)</b>                     | <b>937 110</b> | <b>2 050 269</b> | <b>2 038 112</b> | <b>2 408 915</b> | <b>1 571 235</b> | <b>1 616 599</b> | <b>1 572 373</b> | <b>1 118 354</b> | <b>222 500</b>      | <b>0</b>            | <b>13 535 477</b> |

<sup>(1)</sup> Projected amounts according to the French authorities.

<sup>(2)</sup> Projected amounts according to the French authorities.

<sup>(3)</sup> However, the information received from the French authorities shows that the CCIM – between February and September 2010 – paid funds amounting to EUR [...] to Ryanair/AMS before the first marketing agreement of 16 September 2010 was concluded.

<sup>(4)</sup> It should be noted that, for some years, the subsidies were not approved and paid to the APFTE by the public members until the following year. This is apparent from the records of these public members available to the Commission. See also recital 49.

Source: information received from the French authorities.

- (46) The public contributions received by the APFTE were used mainly for the payments made under the marketing agreements concluded between the APFTE and the airlines, with the bulk – approximately EUR 8,5 million, i.e. [60-70] % of the APFTE's total budget from 2010 to 2019 <sup>(31)</sup> – being allocated to the marketing agreements concluded with Ryanair or its subsidiary AMS <sup>(32)</sup>.
- (47) Furthermore, an analysis of the decision-making processes of these public entities in approving their subsidies to the APFTE's budget indicates that they decided their contributions on the basis of the APFTE's 'projected promotional programme', defined by the public members funding the APFTE <sup>(33)</sup> and subsequently approved by the latter's General Meeting, which contains precise information on the planned use of the APFTE's resources. These programmes specifically mention the destinations covered by the promotional activities <sup>(34)</sup>.
- (48) The public contributions were paid in the form of subsidies to the APFTE on the basis of bilateral agreements concluded between the APFTE and the respective public entities. The French authorities have provided the Commission with most of these agreements, though without their annexes <sup>(35)</sup>.
- (49) The documents relating to the workings of the APFTE, submitted by the French authorities show that the public entities routinely paid their financial contributions for the budget years indicated in Table 3 at a point in time when the promotional programme had already been decided (with their participation) and the extension of the marketing agreements with Ryanair/AMS – described in detail in recitals 53 et seq. had already been concluded with Ryanair/AMS. For example:
- (a) The 2010 marketing agreement with AMS (valid from 1 July 2010 to 31 December 2011) was approved by the General Meeting on 16 September 2010 and signed on the same day by the APFTE. The funding agreements with the local authorities for the 2010 budget year that have been provided to the Commission were not signed until 2011, and those for the 2011 budget year were signed only between June and November 2011 <sup>(36)</sup>.

<sup>(31)</sup> See Table 4 in recital 82.

<sup>(32)</sup> See also recitals 82, 107 et seq.

<sup>(33)</sup> See the record of the preparatory technical meeting of 28 March 2011 prior to the Governance Committee meeting: 'On 8 April 2011, the Governance Committee will decide on the development plan for the promotion of tourist flows.'

<sup>(34)</sup> See for example resolutions No 10397 (29 September 2011) and No 11796 (25 July 2013) of the Communauté d'agglomération de Montpellier. In its resolution of 29 September 2011 approving a contribution of EUR 550 000 to the APFTE's budget for 2011, the Council of the Communauté d'agglomération de Montpellier stated as follows: 'The contribution of the Communauté d'agglomération de Montpellier (CAM) for 2011 is a maximum 25% of the total amount of the online marketing agreements for 2011, for which the estimated amount is EUR 2 095 972. This contribution is limited to a maximum of EUR 550 000 for the forward programme approved by the General Assembly on 20 April 2011. The programme of destinations annexed to the agreement comprises the [...], Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford, [...] and Birmingham routes. The contribution will be paid in proportion to the number of months during which these activities are carried out and on presentation of the corresponding invoices.'

<sup>(35)</sup> For the Region (Regional Council of Languedoc-Roussillon/Region of Occitania), the Commission has funding agreements concluded with the APFTE for the 2011 to 2017 budgets.

For the Department (Departmental Council of Hérault), the Commission has funding agreements concluded with the APFTE for the 2010 and 2014 budgets.

For the Communauté d'agglomération de Montpellier/Montpellier Méditerranée Métropole, the Commission has funding agreements concluded with the APFTE for the 2010 to 2016 budget years.

For the Communauté d'agglomération du Pays de l'Or, the Commission has funding agreements concluded with the APFTE for the 2010 to 2018 budget years.

For the City of Montpellier, the Commission has funding agreements concluded with the APFTE for the 2011 to 2015 budget years.

For the CCIM, the French authorities have not provided any agreements.

Other information that the Commission has obtained on the workings of the APFTE shows that the absence of agreements in the Commission's file does not mean that, for the year in question, the public body did not pay any subsidies (see Table 3 for the information received from the French authorities on the contributions of the public members to the APFTE's budget).

<sup>(36)</sup> For 2010, the CCIM did not contribute to the budget from the setting up of the APFTE, but advanced funds to the APFTE until the local authorities had approved their budgets, in particular so that the agreements concluded with AMS could be funded and maintained.

- (b) The amendment to the 2010 marketing agreement with AMS regarding the Birmingham route was approved by the General Meeting on 20 April 2011 and signed on 11 April 2011 by the APFTE. The funding agreements with the local authorities for the 2011 budget year provided to the Commission were signed only between June and November 2011 <sup>(37)</sup>.
- (c) The extension of the 2010 marketing agreement with AMS for 2012 was decided by the Governance Committee on 23 September 2011, and the General Meeting of 19 October 2011 was so informed <sup>(38)</sup> (the minutes of that meeting do not indicate that the General Meeting actually voted on the matter). The extension letter sent to AMS was signed by the President of the APFTE on 29 September 2011. The funding agreements with the local authorities for the 2012 budget year provided to the Commission were signed only between April and October 2012 <sup>(39)</sup>.
- (d) The extension of the 2010 marketing agreement with AMS for 2013 was signed on 23 February 2013 by the APFTE. The 2013 budget and the marketing action programme including payments to Ryanair on the basis of that agreement were decided by the APFTE's General Meeting on 4 July 2013 <sup>(40)</sup>. The funding agreements with the local authorities for the 2013 budget year that have been provided to the Commission were signed only between April and November 2013 <sup>(41)</sup>.
- (e) On 27 January 2014, the General Meeting authorised the President of the APFTE to sign new marketing agreements with Ryanair for 2014, following the 2013 invitation to tender. These agreements had already been concluded by the President of the APFTE on 22 November 2013. The funding agreements with the local authorities for the 2014 budget year that have been provided to the Commission were signed only between February and October 2014 <sup>(42)</sup>.
- (f) The extension of the 2013 marketing agreements with Ryanair for 2015 was approved by the General Meeting on 11 December 2014 and signed by the APFTE on 19 December 2014. The funding agreements with the local authorities for the 2015 budget year that have been provided to the Commission were signed only between June and December 2015 <sup>(43)</sup>.
- (g) The extension of the 2013 marketing agreement with Ryanair for 2016 was approved by the General Meeting on 30 May 2016 and signed by the APFTE on 22 April 2016. The funding agreements with the local authorities for the 2016 budget year that have been provided to the Commission were signed only between July and December 2016 <sup>(44)</sup>.

<sup>(37)</sup> The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2011 budget was approved on 18 July 2011.

<sup>(38)</sup> See the minutes of the APFTE's General Meeting of 19 October 2011: 'For 2012, the President informed the meeting that the funders, at the Governance Committee meeting of 23 September 2011 [...] had decided that the amount of their contributions would be in line with the four-quarters rule. The Association therefore had a budget of EUR [...] including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford.'

<sup>(39)</sup> The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2012 budget was approved on 31 January 2012.

<sup>(40)</sup> See the minutes of the APFTE's General Meeting of 4 July 2013: 'The budget and the online marketing action programme were decided. The action programme focused on: RYANAIR: Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham.'

<sup>(41)</sup> The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2013 budget was approved on 4 February 2013.

<sup>(42)</sup> The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2014 budget was approved on 20 June 2014.

<sup>(43)</sup> The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2015 budget was approved on 28 January 2015.

<sup>(44)</sup> The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2016 budget was approved on 23 June 2016.

- (h) The new 2017 marketing agreements with Ryanair were concluded by the APFTE on 19 May 2017 and approved by the APFTE's General Meeting on 25 April 2017. The funding agreements with the local authorities for the 2017 budget year that have been provided to the Commission were signed only between June and September 2017 <sup>(45)</sup>.
- (i) For 2018, the Commission does not have any information on the date of extension of the 2017 marketing agreement with Ryanair. However, the sole budget allocation agreement provided to the Commission, namely the agreement concluded between the APFTE and the Communauté d'agglomération du Pays de l'Or in March 2018, refers to the promotion of Montpellier in Wallonia, Rhineland-Palatinate and Yorkshire, which were destinations of Ryanair flights <sup>(46)</sup>. It seems that, for the final time, the budget for 2018 was approved by the APFTE's General Meeting on 20 December 2017 in order to honour the APFTE's existing commitments – including its commitments to Ryanair – before the contractual relations between the CCIM, local authorities and airlines were legally restructured <sup>(47)</sup>.
- (50) In addition, the minutes of APFTE's General Meeting show that, before the first payment of subsidies to the APFTE, the local authorities stated that they wanted to have some influence over the routes covered by the marketing agreements that they were to fund, which until that point had been determined by the airport operator AMM <sup>(48)</sup>. That is why the APFTE's Governance Committee was created before the local authorities agreed the subsidies to the APFTE for the first time.
- (51) Moreover, an analysis of the funding agreements shows that the local authorities retained the possibility of being repaid the funds under certain conditions (for example, some authorities reserved a right of repayment of the funds, a right to make pro rata payments for the promotional programme or a right to terminate the funding agreement if the APFTE failed to meet its contractual obligations, i.e. to carry out the promotional programme approved by the General Meeting). In particular:
- (a) The agreements concluded with the Region gave the latter the right to demand repayment of the subsidy if the APFTE did not use this for the agreed purposes. They also included a right to terminate the agreement.
- (b) The agreements concluded with the Department provided for a right of repayment of the subsidy to the Department if the APFTE used this for purposes other than those set out in the agreement. The description of the purposes of the 2010, 2011 and 2012 agreements explicitly included the conclusion of agreements with AMS. Moreover, the agreements contained a clause allowing the Department to terminate the agreement if the APFTE failed to meet its contractual obligations.
- (c) The agreements concluded with the Communauté d'agglomération de Montpellier provided for the subsidy to be paid in proportion to the number of months that the actions of the destination programme were carried out, and on presentation of the corresponding invoices. In addition, the agreements subjected the body's funding commitment to compliance by the APFTE with its contractual obligations, and included the right to terminate the agreement.

<sup>(45)</sup> The Commission does not have any funding agreements for the CCIM, but the record of the CCIM's General Meeting shows that its contribution to the APFTE's 2017 budget was approved on 28 June 2017.

<sup>(46)</sup> See recitals 74 et seq. for a description of the respective agreements concluded with Ryanair in 2017.

<sup>(47)</sup> This is apparent from the record of the CCIM's General Meeting of 18 January 2018.

<sup>(48)</sup> See the minutes of the APFTE's Board meeting of 18 March 2011: 'This Committee would choose the destinations for the promotion of tourist and economic flows. The Agglomération de Montpellier refused to fund any action plans for the development of the area that it had not approved. The Department and the Region agreed that this Committee needed to be formed. The funding bodies wanted to be involved in creating a proper strategy for the tourist and economic development of their area. They did not want simply to endorse the choices made by Montpellier Airport.'

- (d) The agreements concluded with the Communauté d'agglomération du Pays de l'Or subjected that authority's commitment to compliance by the APFTE with its contractual obligations (the agreements concluded with Ryanair/AMS expressly refer to this) and entitled the authority to demand repayment of the subsidy and to terminate the agreement if the APFTE failed to meet its contractual obligations.
- (e) The agreements concluded with the City of Montpellier required the APFTE to submit an activity report to that authority in order to demonstrate the progress made in the actions proposed by the APFTE on submission of the subsidy application. The French authorities have not provided these subsidy applications, but the Commission concludes from the circumstances of the case that they contain the promotional programme for the budget year in question. Moreover, the authority reserved the right to terminate the agreement if the APFTE failed to meet its contractual undertakings.

#### 4. DETAILED DESCRIPTION OF THE AID

##### 4.1. Actions

- (52) The measures that formed the subject of the formal investigation are the marketing agreements concluded between the APFTE and Ryanair or its subsidiary AMS. Between 2010 and 2018, Ryanair/AMS and the APFTE concluded three sets of marketing agreements.

##### 4.2. The agreement of 16 September 2010, its amendment and its renewal agreements

- (53) On 16 September 2010, less than three months after its creation, the APFTE concluded an agreement with AMS ('the 2010 agreement'), signed by the President of the APFTE without any prior invitation to tender.
- (54) The agreement was concluded for an initial term from 1 July 2010 to 31 December 2011.
- (55) Under this agreement, AMS undertook to provide the APFTE with a range of basic marketing services on Ryanair's website. In addition, the agreement itself states as follows: 'this Agreement is based on Ryanair's commitment to serve the area of Montpellier:
- with a route between Frankfurt-Hahn and Montpellier offering four flights per week in summer and at least two flights per week in winter,
  - with a route between Brussels South-Charleroi and Montpellier offering at least three flights per week throughout the year,
  - with a route between Leeds-Bradford and Montpellier offering at least two flights per week in summer' <sup>(49)</sup>.
- (56) The agreement details '*the annual bundled offer of marketing services*' that AMS undertakes to provide to the APFTE, which are summarised in points (a) and (b).
- (a) For 2010, this offer includes five paragraphs of 150 words each to be selected by the APFTE and placed under the heading 'Top Five Things to Do' on the 'Destination Montpellier' page of Ryanair's website; the presence of two links to a website selected by the APFTE, placed under the heading 'Top Five Things to Do' on the aforementioned 'Destination Montpellier' page; and the presence of one link to the website selected by the APFTE on the home pages of the British, German, Dutch and Belgian (French and Dutch) websites of [www.ryanair.com](http://www.ryanair.com) for 55 days. The price of these services was EUR [...].

<sup>(49)</sup> Clause 1.3 of the agreement.

(b) For 2011, the offer includes all the services provided in 2010, plus a 'graphic banner link-button (200x110px)' to be selected by the APFTE and placed on the 'Discover Europe' page of Ryanair's website for 12 months, and a presence as 'Destination of the Day' (text, image and link selected by the APFTE) on the home pages of the British, German, Dutch and Belgian (French and Dutch) websites of [www.ryanair.com](http://www.ryanair.com) for a total period of two weeks. The price of these services was EUR [...].

- (57) The agreement also expressly states that the prices for the marketing services offered by AMS 'are linked to Ryanair's commitment to serve the area of Montpellier with routes from Frankfurt-Hahn, Brussels-Charleroi and Leeds-Bradford [...]' and stipulates that, 'if this commitment is not met, the price will be revised through an amendment.'<sup>(50)</sup>.

#### 4.3. Amendment of 20 April 2011

- (58) The agreement of 16 September 2010 was altered by an amendment of 20 April 2011, which added a new Birmingham route to the three routes already mentioned in the agreement.

- (59) According to its own wording, the amendment 'is based on Ryanair's commitment to serve the area of Montpellier with a route between Birmingham and Montpellier offering two flights per week in summer'. It also provides for the APFTE to purchase the following marketing services from AMS:

— The presence of a link to a website selected by the APFTE, placed under the heading 'Airports and tourism' on the home page of the British website of [www.ryanair.com](http://www.ryanair.com) for 14 days per year.

— A presence as 'Destination of the Day' (text, image and link selected by the APFTE) on the home page of the British website of [www.ryanair.com](http://www.ryanair.com) for a total of one week per year.

- (60) The price of these services was EUR [...]. It was stipulated that the APFTE would pay this sum in monthly instalments of EUR [...], on receipt of the AMS invoices, for each of the months of April to October of each year during the period of application of this amendment.

#### 4.4. First letter of undertaking to renew the 2010 marketing services agreement

- (61) The APFTE sent a letter of undertaking to renew the 2010 agreement to AMS on 29 September 2011. The purpose of the letter was to renew the 2010 agreement for an additional period of one year, starting on 1 January 2012 and ending on 31 December 2012. According to its own wording, the APFTE undertook to renew the 2010 agreement on the basis of the following routes operated by Ryanair: Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford.

#### 4.5. Second letter of undertaking to renew the 2010 marketing services agreement

- (62) On 25 February 2013, a second letter of undertaking to renew the 2010 agreement was sent to AMS. The purpose of this letter was to renew the 2010 agreement for an additional period of one year, starting on 1 January 2013 and ending on 31 December 2013, 'on the basis of the following routes operated by Ryanair: Brussels South-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham'<sup>(51)</sup>.

<sup>(50)</sup> Clause 5.3 of the agreement.

<sup>(51)</sup> Amendment of 25 February 2013.

#### 4.6. The agreements of 22 November 2013

- (63) The marketing agreement concluded with AMS in 2010 had thus been extended up to the end of December 2013; as the expiry date approached the APFTE was obliged to put a new marketing agreement out to tender, '*destination by destination*', in order to comply with the rules on public procurement <sup>(52)</sup>.
- (64) On 2 October 2013, the APFTE therefore organised an invitation to tender for the purchase of marketing services intended to promote tourist and economic flows to Montpellier for 2014.
- (65) The invitation to tender indicated that tenderers should offer 'to promote tourist and economic flows to Montpellier through all available media on the market'. The following media examples were listed: 'radio campaigns; TV campaigns; communication on social networks (Facebook, Twitter, YouTube, etc.); participation in trade fairs; sponsorship of well-known events and visibility for Montpellier as a destination; training trips for professionals, press trips with journalists', and digital communication. According to the invitation to tender, 'In all cases, tenderers must include a link to the APFTE's website (go to Montpellier) on their own website'. This was the only imperative criterion to be met by the marketing service provider.
- (66) The invitation to tender also divided the contract into five 'lots', namely 'Brussels-Charleroi', 'Frankfurt-Hahn', 'Leeds', 'Birmingham' and '[...]'. For each of them, the invitation to tender indicates the criteria to be met in terms of air transport to be offered: a minimum annual offer of seats available for sale, a minimum annual volume of incoming passengers, the seasonality recommended for the contract (annual or seasonal route), a minimum number of flights per week, and a start date for the route.
- (67) The evident aim of the invitation to tender was therefore to select not just any online marketing services providers, but rather airlines offering such services in addition to their air transport activities and also undertaking to operate air transport services between Montpellier airport and the destinations indicated by the various 'lots', under the conditions detailed by the invitation to tender in terms of seasonality, flight frequencies, minimum number of incoming passengers, and start date of the routes.
- (68) The lots entitled 'Brussels-Charleroi', 'Frankfurt-Hahn', 'Leeds' and 'Birmingham' and the minimum flight frequencies indicated for these in the invitation to tender precisely corresponded to the four destinations already operated from Montpellier by Ryanair at the time when the invitation to tender was launched.
- (69) There was only one lot, '[...]', that did not correspond to a route served by Ryanair; it corresponded to a route served by another airline flying to Montpellier airport with which the APFTE had also previously concluded a marketing agreement. The maximum value of this lot, estimated at EUR [...] excluding taxes per year, was significantly less than the maximum value of the previous four (between EUR [...] and EUR [...] excluding taxes per year and per lot) <sup>(53)</sup>.
- (70) Ryanair was the only airline to submit a bid for the 'Brussels-Charleroi', 'Frankfurt-Hahn', 'Leeds' and 'Birmingham' lots.
- (71) Following the invitation to tender, four lots were awarded to Ryanair, which concluded agreements with the APFTE on 22 November 2013 ('the 2013 agreements') for the first three lots, with a total value of approximately EUR [...] for one year ('Brussels-Charleroi' for a fixed amount of EUR [...], 'Frankfurt-Hahn' for a lump sum of EUR [...]; and 'Leeds-Bradford' for a lump sum of EUR [...]).

<sup>(52)</sup> See for example the record of the APFTE's Executive Committee meeting of 4 July 2013, p. 1: '[The President of the APFTE] stated that the association was under an obligation to launch an invitation to tender for the online marketing agreements, as the agreement with Airport Marketing Services concluded in 2010 was about to expire', and p. 2: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination.'. See also the minutes of the APFTE's General Meeting of 4 July 2013.

<sup>(53)</sup> Following the invitation to tender, this '[...]' lot was awarded to the same airline with which the APFTE had previously concluded the marketing agreement for that destination.

(72) However, no agreement was concluded for the fourth lot, 'Birmingham'. The official reason was 'the lack of funding for this lot' <sup>(54)</sup>. The Commission notes that Ryanair stopped operating the route between Montpellier and Birmingham in November 2013.

(73) The 2013 agreements concluded with Ryanair for the 'Brussels-Charleroi', 'Frankfurt-Hahn' and 'Leeds' lots were extended twice, up to the end of 2016, for a total price of approximately EUR [...] per year:

— On 19 December 2014, in three letters signed by the President of the APFTE, the APFTE renewed with Ryanair, for 2015, the promotional services for each of the three destinations Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford, for a price of EUR [...] for Brussels-Charleroi, EUR [...] for Frankfurt-Hahn and EUR [...] for Leeds-Bradford.

— On 22 April 2016, in three letters signed by the President of the APFTE, the APFTE again renewed with Ryanair, for 2016, the promotional services for each of the three destinations, for a price of EUR [...] for Brussels-Charleroi, EUR [...] for Frankfurt-Hahn and EUR [...] for Leeds-Bradford.

#### 4.7. The agreements of 19 May 2017

(74) On 13 March 2017, the APFTE launched a new invitation to tender for the purchase of marketing services, for one year with options to extend, in order to encourage 'tourist and business flows' to Montpellier. The tender specifications divided the contract into various 'lots', each covering a European region. The lots covered those regions whose inhabitants were to be targeted by the marketing services in question.

(75) Unlike the 2013 invitation to tender, the specifications for this new invitation to tender did not explicitly refer to air transport activities or specific airports, but set out seven different lots entitled 'Wallonia', 'Rhineland-Palatinate', 'Yorkshire', '[...]', '[...]', '[...]' and '[...]'. The Commission observes that the lots entitled 'Wallonia', 'Rhineland-Palatinate' and 'Yorkshire' corresponded to the regions where the three airports served by Ryanair from Montpellier when the invitation to tender was launched were located <sup>(55)</sup>.

(76) The invitation to tender stated that the selection criteria would be weighted as follows: price of services 40 %, and technical value 60 %.

(77) There were two bids for each of the 'Wallonia', 'Rhineland-Palatinate' and 'Yorkshire' lots. Ryanair submitted bids for each of these lots. For each lot, there was a competing bid from an online marketing firm (not an airline), [...]. The bids submitted per lot were as follows:

— 'Wallonia' lot: Ryanair [...] euro, [...] [...] euro;

— 'Rhineland-Palatinate' lot: Ryanair [...] euro, [...] [...] euro;

— 'Yorkshire' lot: Ryanair [...] euro, [...] [...] euro

(78) All three lots were awarded to Ryanair, whose bid for each lot was exactly EUR [...] cheaper than the bid submitted by [...]. The French authorities have not provided any information showing that the APFTE queried this consistent price difference between the two competing bids.

(79) On 19 May 2017 the APFTE concluded agreements with Ryanair for an indicative amount of EUR [...] (for the Wallonia, Rhineland-Palatinate and Yorkshire agreements, respectively EUR [...] excluding taxes, EUR [...] excluding taxes and EUR [...] excluding taxes).

<sup>(54)</sup> See the record of the APFTE's Board meeting of 24 February 2014, p. 1.

<sup>(55)</sup> See recital 16.

- (80) In accordance with the tender specifications, these were agreements under which the marketing services would be provided and paid for only on the issue of purchase orders by the APFTE. The order forms issued by the APFTE show that the payments per target region (Wallonia, Rhineland-Palatinate, Yorkshire) were made in two stages: a payment for the 'spring/summer period' and another payment for the 'autumn/winter' period. The Commission notes that these periods correspond to the two seasons of the civil aviation calendar (April to September and October to March) defined by the International Air Transport Association (IATA).
- (81) The agreements concluded with Ryanair were the only agreements that the APFTE implemented as a result of this invitation to tender.
- (a) For the [...] and [...] lots, the successful tenderer was [...], which beat [...] (identical bid in terms of price, but different in terms of marketing services). The agreement concluded between the APFTE and [...] was also based on purchase orders. The bid amounted to EUR [...] for both lots combined. However, it is apparent from the information received from the French authorities that the APFTE never issued any purchase orders under this agreement.
- (b) For the [...] and [...] lots, only [...] submitted a bid (EUR [...] in total). For these lots the APFTE judged the invitation to tender to have been unsuccessful, because [...]’s bid was declared inadmissible on the grounds that the bid documents did not include the schedule of unit prices.

#### **4.8. Budget (origin of resources used to finance the aid)**

- (82) According to the information received from the French authorities, the APFTE paid the following sums to Ryanair/AMS from its budget.

Table 4

## Payments by the APFTE to Ryanair/AMS from 2010

|                                                    | 2010                                                             | 2011                                                             | 2012                                                             | 2013                                                             | 2014                                                             | 2015                                                             | 2016                                                             | 2017                                                                      | 2018                 | 2019  | 2010 to 2019 |
|----------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------------------------------|----------------------|-------|--------------|
| <b>Payments to Ryanair/AMS for the budget year</b> | [...]<br>(the payments were actually made between 2010 and 2011) | [...]<br>(the payments were actually made between 2011 and 2012) | [...]<br>(the payments were actually made between 2012 and 2013) | [...]<br>(the payments were actually made between 2013 and 2014) | [...]<br>(the payments were actually made between 2014 and 2015) | [...]<br>(the payments were actually made between 2015 and 2016) | [...]<br>(the payments were actually made between 2016 and 2017) | [...]<br>(the payments were actually made between 2018 and February 2019) | [...] <sup>(1)</sup> | [...] | 856 089 904  |
| <b>APFTE budget in EUR (see also Table 3)</b>      | 937 110                                                          | 2 050 269                                                        | 2 038 112                                                        | 2 408 915                                                        | 1 571 235                                                        | 1 616 599                                                        | 1 572 373                                                        | 1 118 354                                                                 | 222 500              | 0     | 13 535 477   |

<sup>(1)</sup> In 2017, the CCIM and the other public members decided that the APFTE would cease operating from 2018 – without, however, ceasing to exist – owing to questions about its legality raised by domestic and European complaints and investigations (see recital 34).

Source: Information received from the French authorities.

- (83) According to the French authorities, the APFTE did not pay Ryanair for marketing services beyond April 2019.

#### 4.9. Grounds for initiating the procedure

- (84) The Commission initiated the formal investigation on 4 July 2018 because it could not rule out the possibility that the measures described in recitals 52 et seq. constituted State aid to Ryanair and its subsidiary AMS.

### 5. COMMENTS BY INTERESTED PARTIES

#### 5.1. The complainant

- (85) The complainant stands by the arguments set out in its complaint, namely that the APFTE was a vehicle for transferring State aid to Ryanair/AMS.

#### 5.2. Ryanair

- (86) Ryanair contests the Commission's analysis. According to Ryanair, the marketing services provided by AMS and Ryanair had a market price and met the APFTE's needs. The APFTE's interest in concluding marketing agreements lay in attracting foreign tourists with significant purchasing power who might contribute to the development of tourist activities in the region. According to Ryanair, any marketing expenditure that the airline might have undertaken itself would not have specifically targeted foreign tourists, as tourist expenditure is not taken into account by Ryanair. As a result, the APFTE had an interest in marketing expenditure targeted at foreign tourists, whereas Ryanair, if it had undertaken marketing expenditure, would have been aimed just as much at passengers starting their journey in Montpellier and living in the region. Ryanair has also indicated that the load factor of its flights was determined mainly by its yield management <sup>(56)</sup>.
- (87) In the alternative, Ryanair contests the Commission's conclusions as regards the applicability of the market economy operator principle to the case, the determination of the aid beneficiary, the selectivity of the aid, and its imputability to the State.
- (88) AMS did not submit any comments.

#### 5.3. APFTE

- (89) The APFTE denies having granted any advantage to Ryanair. It describes the contested sums as market-price remuneration for a service provided. The APFTE states that it acted as a public purchaser of services and that the promotional actions carried out formed part of a comprehensive marketing strategy for Montpellier and its surrounding area.
- (90) The APFTE points out that the regions targeted by the invitations to tender were the subject of discussions and strategic choices of the General Meeting and the Board. It submits that the decisions taken by the association cannot be imputable to the State, and refers to the APFTE's method of working, as described in its constitution.
- (91) In the alternative, even supposing that the Commission were to maintain its position that the APFTE's public actions favoured Ryanair, the APFTE submits that these measures were compatible with the 2005 guidelines <sup>(57)</sup> on financing of airports and start-up aid to airlines departing from regional airports.

<sup>(56)</sup> Yield management aims to encourage Ryanair's potential customers to choose a specific destination at a price that is ideal for Ryanair. A key element of Ryanair's yield management is to determine the maximum price that passengers are prepared to pay for their plane ticket while ensuring optimal loading of the aircraft in order to maximise Ryanair's revenues and capture the European market. See Ryanair's 2011 annual report: 'Ryanair sets fares on the basis of the demand for particular flights and by reference to the period remaining to the date of departure of the flight, with higher fares charged on flights with higher levels of demand and for bookings made nearer to the date of departure. Ryanair also periodically runs special promotional fare campaigns.' ([https://www.ryanair.com/doc/investor/2011/Annual\\_Report\\_2011\\_Final.pdf](https://www.ryanair.com/doc/investor/2011/Annual_Report_2011_Final.pdf), visited on 1 July 2019).

<sup>(57)</sup> Communication from the Commission – Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).

- (92) In the further alternative, even supposing that the Commission were to conclude that Ryanair and AMS had received State aid, the APFTE considers that Ryanair and AMS should repay only the difference between the price paid in remuneration for these services and the market price, given that, in its opinion, the services fell within the APFTE's public policy tasks and the association clearly profited from them.

#### **5.4. Region of Occitania**

- (93) The Region of Occitania argues that the complaint is unfounded, as the APFTE's actions created tourist and economic benefits for all the local and regional stakeholders. It considers that the APFTE worked to develop a more international customer base and enabled undertakings in the sector to continue trading over a longer period.
- (94) It states that, within the APFTE, decisions to fund the marketing campaigns in order to develop the area's attractiveness for tourists were taken mainly by the General Meeting, with each member having one vote, generally by a qualified majority of two thirds.
- (95) The Region of Occitania adds that the APFTE acted through invitations to tender for the provision of services aimed at increasing the area's visibility and attractiveness. These invitations were open to all undertakings that could submit a bid complying with the tender specifications, including the complainant.

#### **5.5. Chamber of Commerce and Industry of Hérault ('CCI Hérault', formerly CCIM)**

- (96) The CCI Hérault considers that the APFTE's actions to promote the Montpellier area among the public in Belgium, the Netherlands, Germany, England and [...] were economically important to the area given their economic benefits. It adds that by pooling its members' interests the APFTE met the need for the economic and tourist development of the area, which was entirely within the APFTE's sphere of responsibility and that of the CCI Hérault.

#### **5.6. Montpellier Méditerranée Métropole**

- (97) Montpellier Méditerranée Métropole considers that an aggressive strategy to increase the area's attractiveness needs to be conducted in order to develop the area, support the economy and combat unemployment. It states that the APFTE is a non-profit association of public and private partners whose common objective is to take measures to promote and develop tourism, as tourism serves the interests of both public regional development and private business development.
- (98) Montpellier Méditerranée Métropole considers that the marketing services purchased by the APFTE were in line with its actual needs and purpose, and that those services were the subject of prior competitive tendering, so that there was no element of selectivity of any kind (Ryanair was successful in some of the invitations to tender organised by the APFTE). Moreover, Montpellier Méditerranée feels that those services cannot be classified as aid: firstly, no advantage was conferred, because the remuneration received by Ryanair did not exceed market prices; and secondly, the measures were not imputable to the State, because the APFTE's decisions took account of private structures, which formed the vast majority of its members and had significant decision-making power.

#### **5.7. [...]**

- (99) The [...], a member of the APFTE, considers that the association has provided a forum for discussions between private operators in various sectors of activity and representatives of local authorities. It adds that the decisions made within the association have been in the collective interest of all economic operators and inhabitants in the region. It submits that this pooling of effort by the public sector and the private sector has allowed the objectives of increasing the visibility and development of the city of Montpellier and its surrounding area to be achieved.

### 5.8. Communauté d'agglomération du Pays de l'Or

- (100) The Communauté d'agglomération du Pays de l'Or considers that the advertising measures carried out by the APFTE in order to promote the Montpellier area among the public in Belgium, the Netherlands, Germany and England were important for the area owing to the economic benefits they brought and were targeted at regions with significant economic and tourist potential for the Montpellier area.

## 6. COMMENTS BY FRANCE

- (101) France considers that the payments in question do not constitute State aid. Given the APFTE's structure and operation, as defined in its constitution, these measures are not imputable to the State. Furthermore, the objective of the agreements concluded with Ryanair/AMS was the promotion of a region through marketing, and the purchase of advertising by the APFTE – at a market price – was a legitimate measure contributing to regional economic development which did not confer any advantage on Ryanair and was not selective.

## 7. ASSESSMENT OF THE AID

### 7.1. Existence of aid within the meaning of Article 107(1) TFEU

- (102) By virtue of Article 107(1) TFEU, 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.
- (103) For a measure to be classed as State aid the following cumulative criteria therefore have to be met: 1) the beneficiary or beneficiaries must be undertakings within the meaning of Article 107(1) TFEU; 2) the measure must be granted through State resources and be imputable to the State; 3) the measure must confer an economic advantage on the beneficiary or beneficiaries; 4) the advantage must be selective; and 5) the measure must distort or threaten to distort competition and must be likely to affect trade between Member States.

#### 7.1.1. Concepts of undertaking and economic activity

- (104) According to settled case-law<sup>(58)</sup>, summarised in point 27 of the 2014 guidelines on State aid to airports and airlines<sup>(59)</sup> ('the 2014 guidelines'), the activity of airlines which consists in providing transport services to passengers or undertakings constitutes an economic activity.
- (105) As the beneficiaries of the measures are an airline and one of its wholly-owned subsidiaries providing marketing services, the Commission concludes that their activities are economic in nature within the meaning of Article 107(1) TFEU.

#### 7.1.2. Imputability to the State and state resources

- (106) According to settled case-law, Article 107(1) TFEU covers all aid granted through State resources without it being necessary to make a distinction whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid. A measure financed by such a body is therefore imputable to the State where the State decides to establish the measure and defines the conditions of use, management or distribution of those resources<sup>(60)</sup>. That aid is State aid is even more evident where the intermediary is a preferred policy instrument of a region, where it was set up to pursue the policy defined by the region, and where the decisions to grant an economic advantage are directly linked to the region<sup>(61)</sup>.

<sup>(58)</sup> See judgment of the General Court of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290, upheld by judgment of the Court of Justice of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01, ECLI:EU:C:2002:617, paragraphs 75 to 79; judgment of the General Court of 24 March 2011, *Mitteldeutsche Flughafen AG and Flughafen Leipzig Halle GmbH v Commission*, ECLI:EU:T:2011:117, Joined Cases T-443/08 and T-455/08, paragraphs 93 and 94.

<sup>(59)</sup> OJ C 99, 4.4.2014, p. 3.

<sup>(60)</sup> See judgment of the Court of Justice of 22 March 1977, *Steinike & Weinlig*, C-78/76, ECLI:EU:C:1977:52, paragraphs 21 et seq.; judgment of the Court of Justice of 2 February 1988, *Kwekerij Gebroeders van der Kooy BV v Commission*, C-67/85, C-68/85 and C-70/85, ECLI:EU:C:1988:38, paragraphs 35-36.

<sup>(61)</sup> See judgment of the General Court of 25 March 1999, *Forges de Clabecq SA v Commission*, T-37/97, ECLI:EU:T:1999:66, paragraph 69.

#### 7.1.2.1. Whether imputable to the State

- (107) From the formal investigation the Commission concludes that the measures are imputable to the State. The marketing services agreements were concluded between Ryanair or its subsidiary AMS, on the one hand, and the APFTE, on the other hand, in order to achieve the APFTE's objective of promoting the tourist flows generated by Ryanair for Montpellier and its area.
- (108) Ryanair contests the imputability of the APFTE's decisions and actions to the State on the grounds that the APFTE is a private association with the majority of its members coming from the private sector.
- (109) But the formal investigation has enabled the Commission to gather various facts – from the records and minutes of the APFTE and its public members, supplied by the French authorities, and from public statements made by the APFTE – which clearly show that, despite its status as a private association, consisting mainly of private sector members and according to its constitution taking decisions by a majority of two thirds at its General Meeting, the APFTE was in reality an instrument of the member local authorities of the APFTE and of the CCIM, and was intended to allow them to pursue their regional development policy objectives.
- (110) In line with the case-law of the Court of Justice<sup>(62)</sup>, the Commission has inferred that the APFTE's decisions were imputable to the French State within the meaning of Article 107(1) TFEU (through the CCIM and the local authorities involved) from a body of evidence showing that when it concluded the marketing agreements the association, far from enjoying complete independence, acted under the control and instructions of the public authorities. This evidence includes the following:

— the APFTE was designed by the CCIM and local authorities as a vehicle for public funding;

— the APFTE pursued a public policy objective;

— there were close links between the APFTE and the CCIM (and the local authorities);

— strategic choices were made by the public members of the APFTE;

— the APFTE was funded by its public members and the use of the APFTE's budget was controlled by the public members.

#### (a) The APFTE was designed by the CCIM and local authorities as a vehicle for public funding

- (111) As described in recitals 28 et seq., the APFTE was designed by public entities as a legal structure enabling the payment of public funds to Ryanair and other low-cost airlines.
- (112) From its creation on the initiative of the CCIM, the APFTE's true purpose – as apparent from a number of documents supplied by France and from public statements made by the APFTE<sup>(63)</sup> – was to provide a legal structure enabling public subsidies to be channelled to the chosen airlines, in particular Ryanair.

<sup>(62)</sup> See in particular judgment of the Court of Justice of 16 May 2002, *France v Commission* (Stardust Marine), C-482/99, ECLI:EU:C:2002:294, paragraphs 55 and 56.

<sup>(63)</sup> See footnotes 14 et seq.

- (113) The aforementioned documents show that the APFTE was set up as a direct result of the CCIM losing its status as manager of Montpellier airport, as described in recitals 26 et seq. The CCIM wanted to find a way of continuing to pay funds to the airlines through marketing agreements that the CCIM had previously concluded as airport manager.
- (114) The CCIM was therefore very active in setting up the APFTE with the aim of establishing a secure legal means of continuing to pay public subsidies to fund these marketing agreements with the airlines. These facts are clearly indicated by the initial resolutions of the APFTE, by the initial resolutions of the local authorities that approved the subsidies paid to the authorities, and by the initial resolutions of the CCIM <sup>(64)</sup>.
- (115) By way of example, there are the minutes of the Regional Council of Languedoc-Roussillon of 20 July 2012: 'In view of the changes in the management of Montpellier airport, an Association for the Promotion of Tourist and Economic Flows (APFTE) had been set up to continue the work of promoting the area carried on with the airlines serving Montpellier airport.' <sup>(65)</sup>.
- (116) The nature of these marketing agreements and the extent to which they were intended to promote Montpellier and its surrounding area will be analysed in more depth below, when the issue of the existence of an economic advantage to Ryanair is considered.

**(b) The APFTE pursued a public policy objective**

- (117) The APFTE's constitution <sup>(66)</sup>, and public statements and documents connected with the workings of the APFTE, show that its purpose was to pursue a public policy objective, namely the promotion and development of tourism on behalf of the local authorities and the CCIM. Documents relating to the setting up of the APFTE also show that, despite its status as a private association, the APFTE was an instrument designed by its public members to take certain measures on their behalf in respect of the development of tourism <sup>(67)</sup>.
- (118) Consequently, the APFTE is to be regarded as a 'body governed by public law' for purposes of European public procurement law, in that it was a body which was established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, which had legal personality, and which was financed for the most part by public bodies or authorities. It follows that the APFTE was a contracting authority, and that it was therefore subject to public procurement law in its contracting processes <sup>(68)</sup>.
- (119) The Commission observes that the APFTE was aware of its obligation to comply with the public procurement rules when it extended the agreements concluded with Ryanair in 2013 and 2017.
- (120) The Commission infers that, despite the APFTE's assertions regarding imputability, with particular reference to the decision-making power held by the private structures within the association, the APFTE did not regard itself as a simple private association, but as a body with a public policy task – namely the development of the local economy through tourism – that had to comply with the public procurement rules. The Commission regards this aspect as further evidence that the APFTE was no more than a legal device designed to facilitate the payment of public funds to airlines.

<sup>(64)</sup> See also footnote 17.

<sup>(65)</sup> See also the public statement of the President of the APFTE at the time, quoted in an article published online on the website of the regional newspaper La Tribune Occitanie-Montpellier on 8 April 2015: 'As local authorities could not conclude marketing agreements with airlines, the method identified involved an association', says [...], President of the APFTE. 'Subsidies are allocated from local authority budgets and the association signs the online marketing agreements. I can't see how this could be regarded as defrauding the taxpayer! The APFTE was set up by the CCIM in agreement with the State authorities, in particular the prefect, [...]. The file has just been passed to Montpellier Méditerranée Métropole.' (<https://objectif-languedoc-roussillon.latribune.fr/entreprises/tourisme/2015-04-08/apres-le-gel-du-soutien-aux-compagnies-low-cost-a-montpellier-le-president-de-l-apfte-reagit.html>, visited on 1 July 2019).

<sup>(66)</sup> See recital 27.

<sup>(67)</sup> See recitals 26 et seq.

<sup>(68)</sup> See Article 2(1)(1) and (4) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65), and previously Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

**(c) There were close links between the APFTE and the CCIM (or the local authorities)**

- (121) In addition to the facts relating to the setting up, object, funding and decision-making of the APFTE, the formal investigation has identified further links between the APFTE and its public members, particularly the CCIM, with the latter acting as a public agency under the supervision of the prefect of the Region of Occitania, who was informed of the activities and *raison d'être* of the APFTE, according to the documents received from the French authorities.
- (122) It is clear from the documents received from the French authorities that the CCIM provided logistical support to the APFTE, in particular by allowing the APFTE's committees and governing bodies to hold their meetings on the CCIM's premises and by making available to the APFTE the website used for its promotional activities <sup>(69)</sup>.
- (123) In addition, as mentioned in recital 39, the formal investigation has shown that the position of President of the APFTE was always given to people who also held a post in the CCIM or a local authority involved in the APFTE. Furthermore, the Commission has found evidence that the President was chosen essentially by the public members of the APFTE, and not by all the members of the APFTE meeting in the Board, as provided in the APFTE's constitution <sup>(70)</sup>. The summary of the decisions made by the Funders Committee meeting on 15 October 2012 shows that the President of the APFTE – who was absent for health reasons and wished to resign – 'wanted [...], former President of the Association, to replace him in these duties, which meant that the Board and the General Meeting would have to appoint him vice-president in accordance with the constitution so that he could chair the association's bodies.'
- (124) The formal investigation has also shown that, at the very least, the CCIM played an active role in the transfer of power between these two APFTE Presidents on 11 December 2012. The transfer of power between the outgoing President and the new President of the APFTE was conducted by the President of the CCIM at the APFTE's General Meeting on 11 December 2012 <sup>(71)</sup>.
- (125) This is typical of the close link between the APFTE and its public members given that, in the *de facto* operation of the APFTE, the President and the Executive Committee play a fundamental role in determining the APFTE's budget priorities (with the Funders Committee, consisting of the CCIM and the local authorities), which are then submitted to the General Meeting. In addition, according to the APFTE's constitution, it is the President who is authorised to legally commit the APFTE in relation to third parties, which gives him the power to sign and therefore conclude marketing agreements with airlines and also subsidy agreements with local authorities.
- (126) The Commission regards these facts as further evidence of the decisive influence of the APFTE's public members over the association, specifically in terms of the appointment of the APFTE's President. This influence ensured that the APFTE continued to conclude marketing agreements with the airlines, as initiated by the CCIM.

**(d) Strategic choices were made by the public members of the APFTE**

- (127) From the start, and despite the decision-making process described in the APFTE's constitution, it was the CCIM and the local authorities that steered the association's choices. The private members, despite their two-thirds majority in the General Meeting, did not have any chance to object to the strategic priorities chosen by the public entities or to impose their strategic choices on the public entities. The Commission has arrived at this conclusion on the basis of the following findings:

<sup>(69)</sup> See also recital 197.

<sup>(70)</sup> Article 6 of the constitution of the APFTE.

<sup>(71)</sup> An article reports that the transfer of power between the outgoing President and the new President of the APFTE was conducted by the President of the CCIM in the presence of the elected members and representatives of the partner local authorities on 11 December 2012. (see <https://heraultjuridique.com/entreprises/recherche/presidence-apfte-aeroport-de-montpellier-jean-yves-labattut-succede-a-gerard-maurice/>, published online in *Hérault Juridique* on 10 December 2012, visited on 1 July 2019). The same article states that the two APFTE Presidents were also elected members of the CCIM.

- (128) The formal investigation has shown that the APFTE's strategic choices, namely the choice of specific marketing agreements to be concluded with airlines, were ultimately predetermined by the CCIM and the other public members of the APFTE before the promotional programme was submitted to the Board or the General Meeting <sup>(72)</sup>. The private members therefore had the opportunity only to express an opinion, and not to determine the association's strategic choices without the public members being in agreement <sup>(73)</sup>.
- (129) The APFTE's bodies and committees that predetermined the choice of marketing agreements to be confirmed by the General Meeting – namely the Executive Committee, the Governance Committee and the Funders Committee <sup>(74)</sup> – consisted of representatives of the local authorities and the CCIM. The circumstances in which it was set up indicate that the Governance Committee (which later became the Funders Committee) was intended to formalise the practice that had been applied since the APFTE had been formed, namely that priority choices were made by the local authorities and the CCIM.
- (130) The Commission notes that the French authorities have not commented on the existence or role of the Governance Committee and the Funders Committee.
- (131) The minutes of the APFTE's inaugural General Meeting, mentioned in recital 33, show that the presence of private members in the APFTE was explained partly by the desire to set up the APFTE more quickly.
- (132) The minutes of this inaugural General Meeting also show that, before the association was set up, the CCIM and its legal adviser, and also the local authorities involved, had been seeking a legally stable structure to justify continuing to make payments to the airlines after 2009, being aware that these payments were difficult to justify <sup>(75)</sup>. The Commission concludes that the structure of the APFTE with its majority of private members – who, according to the constitution, were therefore in a position to determine the association's decisions <sup>(76)</sup> – was deliberately chosen by the public bodies concerned in order to conceal the real influence of the CCIM and the local authorities over the payment of funds to the airlines. From the point of view of private undertakings, participation in the APFTE had no disadvantages: their financial participation was symbolic and the financing of the marketing agreements by the public members of the APFTE was designed to contribute to increasing the impact on the local economy.
- (133) According to these same minutes, the CCIM representative (who was elected President of the APFTE during the meeting) explained the purpose of the APFTE to the private members present at the inaugural General Meeting, namely to continue concluding marketing agreements with the airlines. This CCIM representative stated that it was vital that 'the undertakings could give their opinion on the chosen action plan'. The expression 'give their opinion' betrays the real role that the CCIM had planned for the private members, despite their majority in the General Meeting, in particular the lack of any real decision-making power as regards the strategic and budget orientations of the association, which were to be determined by the public members. This implies that the APFTE's private members that were present at the time were aware of the fact that the strategic choices would be made by the CCIM and the local authorities, although the latter could take account of the opinions given by the private members.

<sup>(72)</sup> See the record of the preparatory technical meeting of 28 March 2011 prior to the APFTE's Governance Committee meeting: The purpose of the Governance Committee was to 'bring together the local authorities, as funders of the [APFTE]. This committee's objective was to guide and confirm the strategic choices made in the development of routes and the associated budget.'

<sup>(73)</sup> See for example the discussions on tourist flows [...] and [...], described in recital 136.

<sup>(74)</sup> See also recital 40 for these last two committees.

<sup>(75)</sup> See recital 31.

<sup>(76)</sup> See recital 41 for a description of the decision-making procedure followed within the APFTE in order to conclude marketing agreements, according to the constitution of the association and the French authorities.

- (134) Analysis of the minutes and records of the APFTE confirms this conclusion: although proposals made by the private members could be selected, this occurred only on a subsidiary basis if there were any budget lines remaining after the funding of the routes chosen by the public members, and thus in particular the routes operated by Ryanair <sup>(77)</sup>.
- (135) The APFTE's funds were always allocated in such a way that the projects defined by the public members were funded first, with the proposals of the private members being selected only on a subsidiary basis.
- (136) Even within the Funders Committee, only unanimously approved projects would receive funds, due to the funders determining the exact amount of their subsidies for a given year based on the chosen marketing agreements. This is evident from the discussion within the Funders' Committee on 29 January 2013 regarding the funding of 'tourist flows' to and from [...] (carried by an Italian airline) and [...] (carried by a Norwegian airline). The funding of these 'flows', which had initially been proposed by the APFTE's private members during the General Meeting of 29 January 2013 and subsequently supported by certain public members, was blocked by the refusal of the three main funders (the Regional Council of Languedoc-Roussillon, the Departmental Council of Hérault and the Communauté d'agglomération de Montpellier) to increase their financial contribution in order to include these two 'flows' in the 2013 budget. The CCIM, which was interested at the time in developing these 'flows', therefore unilaterally increased its subsidy for that year only so that these two 'flows' could be supported <sup>(78)</sup>.
- (137) The APFTE's minutes do not refer to either the mechanisms or the implementation of the marketing agreements concluded with AMS and Ryanair. The agreements constantly benefited from public funding, although the annual budgets were variable. This funding was never called into question in discussions within the APFTE, despite the fact that the public members provided no justification for its continuation. The public members simply renewed the agreements every year, describing them as 'historic destinations' or 'routes' in certain documents connected with the workings of the APFTE, without providing any further explanation.
- (138) The vote in the General Meeting was therefore simply a formality to show that the APFTE was operating correctly. This is particularly apparent for the 2012, 2013 and 2014 budget years, with regard to which the APFTE's commitment to Ryanair/AMS in fact preceded the authorisation of the strategic choices in the General Meeting:
- (a) With regard to the 2012 budget, the extension letter sent to AMS was signed on 29 September 2011 by the President of the APFTE. The extension of the 2010 marketing agreement with AMS for 2012 had been decided earlier by the Governance Committee on 23 September 2011. But the General Meeting was informed of this only on 19 October 2011 <sup>(79)</sup> (the minutes of that meeting did not in fact indicate that the General Meeting actually voted on the matter).

---

<sup>(77)</sup> See for example the APFTE's minutes of 19 October 2011: 'For 2012, the President informed the meeting that the funders, at the Governance Committee meeting of 23 September 2011 [...] had decided that the amount of their contributions would be in line with the four-quarters rule. The Association therefore had a budget of EUR [...] including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford.' See also the minutes of the APFTE's General Meeting of 29 January 2013: 'On the basis of this budget, the local authorities chose to maintain the tourist flows from Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham [...]. Routes to [...] and [...] were proposed. These flows were put forward by tourism enterprises that regarded these destinations as having a promising tourist public. The budget was not sufficient to select these two flows [...].'

<sup>(78)</sup> See the minutes of the CCIM's General Meeting of 15 April 2013.

<sup>(79)</sup> See the minutes of the APFTE's General Meeting of 19 October 2011: 'For 2012, the President informed the meeting that the funders, at the Governance Committee meeting of 23 September 2011 [...] had decided that the amount of their contributions would be in line with the four-quarters rule. The Association therefore had a budget of EUR [...] including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford.'

- (b) With regard to the 2013 budget, the extension of the 2010 marketing agreement with AMS for 2013 was signed by the APFTE on 23 February 2013. The 2013 budget and the marketing action programme including payments to Ryanair on the basis of that agreement were decided by the APFTE's General Meeting on 4 July 2013 <sup>(80)</sup>.
- (c) With regard to the 2014 budget, the President of the APFTE had signed the agreements with Ryanair on 22 November 2013, following the 2013 invitation to tender. However, it was not until 27 January 2014 that the General Meeting authorised the President to sign new marketing agreements with Ryanair.
- (139) The documents on the workings of the APFTE provided to the Commission show that voting within the association was always unanimous. The Commission notes that, within the Board and the General Meeting, the private members gave several opinions, particularly on the production of market studies, with the aim of ensuring that the funded flight routes were having economic benefits for the region. However, in the discussions in the General Meeting or Board, the private members never really objected, by voting against them, to the choices proposed by the Executive Committee, the Governance Committee or the Funders Committee. In addition, the Commission notes that the participation of private members in the General Meetings fell significantly year by year, compared with a more or less constant presence of representatives of the public members <sup>(81)</sup>. Thus the private members constantly supported the actions of the public members, even though their proposals were not taken up. This is explained particularly by the fact that the financial contribution of the private members was symbolic, while the economic benefits of the marketing agreements funded by the APFTE were at best positive and at worst non-existent. The private members therefore had no interest in entering into conflict with the APFTE's public members, who provided the funding.
- (140) In addition, as indicated in recitals 46 et seq., the public members controlled the APFTE's strategic choices by controlling their payments to the APFTE: it was apparent to any member of the APFTE that a marketing agreement that was not a priority in the eyes of the public members would not be funded by them <sup>(82)</sup>.
- (e) The APFTE was funded by its public members and the use of the APFTE's budget was controlled by the public members**
- (141) As described in recitals 45 et seq. and 107 et seq., with regard to the nature of the APFTE's financial resources, the public members of the APFTE – the local authorities and the CCIM – that initially determined the APFTE's budget choices by defining the APFTE's promotional programme, which contained the precise choice of marketing agreements, and tightly controlled the APFTE's subsequent use of their subsidies by making the subsidies conditional on the APFTE's implementation of the promotional programme.

#### 7.1.2.2. State resources

- (142) The payments made by the APFTE to Ryanair and AMS under the various marketing agreements described in recitals 52 et seq. were made using resources from the APFTE's general budget. As indicated in recitals 45 et seq., from the start, the APFTE was funded almost entirely ([95-100] %) by subsidies granted by local and regional public bodies, namely the Region of Occitania/Regional Council of Languedoc-Roussillon, the Department of Hérault, Montpellier Méditerranée Métropole/Communauté d'agglomération de Montpellier, the Communauté d'agglomération du Pays de l'Or, the City of Montpellier and the CCIM/Chamber of Commerce and Industry of Hérault <sup>(83)</sup>.

<sup>(80)</sup> See the minutes of the APFTE's General Meeting of 4 July 2013: 'The budget and the online marketing action programme were decided. The action programme focused on: RYANAIR: Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham.'

<sup>(81)</sup> The documents on the workings of the APFTE show that, whilst 21 private members took part in the APFTE's General Meeting in 2011, their number had dwindled to between 4 and 9 by 2013.

<sup>(82)</sup> See for example the APFTE's minutes of 19 October 2011: 'For 2012, the President informed the meeting that the funders, at the Governance Committee meeting of 23 September 2011 [...] had decided that the amount of their contributions would be in line with the four-quarters rule. The Association therefore had a budget of EUR [...] including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt Hahn and Leeds-Bradford.' See also the minutes of the APFTE's General Meeting of 29 January 2013: 'On the basis of this budget, the local authorities chose to maintain the tourist flows from Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham [...]. Routes to [...] and [...] were proposed. These flows were put forward by tourism enterprises that regarded these destinations as having a promising tourist public. The budget was not sufficient to select these two flows [...].'

<sup>(83)</sup> In the context of its commitment to the APFTE, the CCIM was carrying out its public policy task and acting under the supervision of the prefect, as shown by the documents received from the French authorities. The Commission must therefore consider the CCIM as a public body for the purposes of this assessment. See also judgment of the General Court of 13 December 2018, *Ryanair and Airport Marketing Services v Commission*, T-53/16, ECLI:EU:T:2018:943, paragraphs 81 et seq.

(143) These public entities tightly controlled the use of their funds by the APFTE in several ways:

(a) As described in recitals 49 et seq., an analysis of voting in the General Meeting, of the dates of signature of the marketing agreements and of the subsidy payments made year by year by the local authorities shows that the APFTE never had a budget placed at its disposal in advance that the association could have managed as it wished. The subsidies from the local authorities for a given budget year were always paid after the marketing agreements that the subsidies were intended to finance had been decided and signed. The local authorities were therefore always able to pay over their funds knowing precisely how the funds would be used<sup>(84)</sup>. This means that they could have refused to sign the funding agreements with the APFTE if they had not agreed with the choice made by the association. However, it also means that the APFTE, as an association, did not have a budget that it could freely use, but was obliged to request payment of the subsidies by the public members after the precise budget choices – decided by the public members themselves through the proposals of the Funders Committee – had been made. The Commission concludes that this practice at the very least had the effect (if not the object) of dissuading the APFTE's private members from voting in the General Meeting for budget choices that would not be agreeable to the APFTE's public members. The practice therefore enabled the public members effectively to control the use of the APFTE's budget.

(b) Furthermore, the analysis of the funding agreements in recital 51 shows that the APFTE's public members, through various contractual stipulations, ensured that their subsidies would be used for their strategic choices as set out in the APFTE's promotional programme for each budget year, whose content was decided by them<sup>(85)</sup>, thus preventing the private members from making budget choices independently.

(c) Lastly, since the APFTE Presidents authorised to sign the marketing agreements with Ryanair/AMS and the funding agreements with the funding members all had links to those funding members (whether the CCIM or the Region of Occitania)<sup>(86)</sup>, the APFTE's public members had further control over the APFTE's financial commitments and over the payment of subsidies to the APFTE.

(144) Thus the public members funding the APFTE tightly controlled the funds allocated to the APFTE until the funds were transferred to their final recipients. As a result, the funds in question retained their character of State resources when they were transferred by the APFTE to Ryanair or AMS.

(145) As explained in more detail in the previous chapter, on the imputability of the measures to the State, the Commission regards the APFTE as a body governed by private law set up by the public entities concerned in order to grant and manage payments of public funds to airlines<sup>(87)</sup>.

<sup>(84)</sup> See for example resolutions No 10397 (29 September 2011) and No 11796 (25 July 2013) of the Communauté d'agglomération de Montpellier. In its resolution of 29 September 2011 approving a contribution of EUR 550 000 to the APFTE's budget for 2011, the Council of the Communauté d'agglomération de Montpellier stated as follows: 'The contribution of the Communauté d'agglomération de Montpellier (CAM) for 2011 is a maximum 25% of the total amount of the online marketing agreements for 2011, for which the estimated amount is EUR 2 095 972. This contribution is limited to a maximum of EUR 550 000 for the forward programme approved by the General Assembly on 20 April 2011. The programme of destinations annexed to the agreement comprises the [...], Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford, [...] and Birmingham routes. The contribution will be paid in proportion to the number of months during which these activities are carried out and on presentation of the corresponding invoices.'

<sup>(85)</sup> See also recitals 107 et seq. on the imputability of the measures to the State.

<sup>(86)</sup> See recital 38.

<sup>(87)</sup> See also judgment of the Court of Justice of 13 September 2017, *ENEA v Prezes Urzędu Regulacji Energetyki*, C-329/15, ECLI:EU:C:2017:671, paragraph 23; judgment of the Court of Justice of 22 March 1977, *Steinike & Weinlig v Germany*, C-78/76, ECLI:EU:C:1977:52, paragraph 21; judgment of the Court of Justice of 13 March 2001, *PreussenElektra AG v Schleswig AG*, C-379/98, ECLI:EU:C:2001:160, paragraph 58.

- (146) As regards the part of the APFTE's budget made up of membership fees paid by the private members (less than [0-5] % of the APFTE's budget, as shown in Table 3), these membership fees formed part of the same cash resources as the payments made by the public members to the APFTE. Once they were incorporated into the APFTE's budget, the use of which was entirely controlled by the State (i.e. the public members of the APFTE), as described in this chapter and the next chapter, the Commission considers that these membership fees likewise constituted State resources <sup>(88)</sup>.

#### 7.1.2.3. Conclusion

- (147) On that basis, the Commission concludes that, from the start of its existence, the APFTE was designed and used by the CCIM and the local authorities concerned simply as a vehicle for paying public funds to Ryanair, without the association itself or its private members having any room for manoeuvre. The actions and decisions of the APFTE are therefore imputable to the State.
- (148) These observations support the statements mentioned in the opening decision made by the Regional Audit Chamber of Languedoc-Roussillon (Chambre Régionale des Comptes de Languedoc-Roussillon) <sup>(89)</sup>, which indicated in some of its reports that the APFTE was in reality no more than a vehicle for collecting public funds intended to finance marketing agreements.
- (149) As a result, the Commission considers that the measures are imputable to the State and were granted by France using State resources within the meaning of Article 107(1) TFEU.

#### 7.1.3. Economic advantage

- (150) In determining whether a State measure constitutes aid, it is necessary to establish whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions <sup>(90)</sup>.
- (151) It must be assessed whether the market economy operator principle applies to the agreements in question and, if so, whether the agreements comply with the principle.

##### 7.1.3.1. Joint assessment of an economic benefit granted to Ryanair and AMS

- (152) With regard to the agreements concluded between the APFTE and AMS or Ryanair, the Commission must firstly determine whether, for the purposes of identifying an economic advantage from which they may have benefited, Ryanair and its subsidiary AMS should be considered individually or jointly.
- (153) The Commission observes that AMS is a wholly-owned subsidiary of Ryanair. The Commission further notes that AMS was actually formed for the sole purpose of providing marketing services on the Ryanair website and that it does not carry out any other activities <sup>(91)</sup>.
- (154) Furthermore, Ryanair appears to be substitutable for AMS in its contractual relations with the APFTE. The APFTE initially concluded a marketing agreement with AMS (the 2010 agreement). Subsequently, the 2013 and 2017 agreements were concluded directly between the APFTE and Ryanair.

<sup>(88)</sup> In accordance with paragraphs 57 et seq. of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (C/2016/2946) (OJ C 262, 19.7.2016, p. 1).

<sup>(89)</sup> See recital 59 of the opening decision.

<sup>(90)</sup> See in particular judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

<sup>(91)</sup> See 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 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), recitals 314 to 315.

(155) In addition, the marketing services agreement concluded with AMS stipulates in its statement of purpose that it is 'linked to Ryanair's commitment to serve the area of Montpellier' <sup>(92)</sup>.

(156) For all these reasons, the Commission regards Ryanair and AMS jointly as the sole beneficiary of the measures in question <sup>(93)</sup>.

#### 7.1.3.2. Individual assessment of the marketing agreements

(157) According to France, the APFTE acted as a public purchaser of services that enabled it to carry out its public policy tasks. According to France, the marketing agreements were therefore not in any way linked to the airport services agreements, and their objective was to contribute to the region's economic development by attracting tourists.

(158) France has not provided any evidence that might show that the decision to conclude the marketing services agreements was taken on the basis of specific economic assessments that sought to determine the future profitability of concluding those agreements with Ryanair/AMS or the resulting economic benefits, either considering the marketing agreements on their own or looking at the marketing agreements in conjunction with the airport services agreements.

(159) Ryanair has not taken a clear position on the question whether the marketing agreements concluded with the APFTE and the airport services agreements concluded with AMM should be assessed in conjunction or separately: it argues that in any event Ryanair/AMS should not be regarded as a beneficiary of aid.

(160) In this case, by contrast with the majority of recent cases decided by the Commission that have involved Ryanair and State aid, the Commission has not established a link between the marketing agreements and the airport services agreements, for the following reasons.

(161) Firstly, the two types of agreement were concluded by two different legal persons pursuing different goals, namely AMM and the APFTE <sup>(94)</sup>, which cannot be regarded as a single economic entity.

(162) Although it cannot be ruled out that the two types of agreement were linked at the time when the CCIM was still the airport concession-holder, and was concluding both types of agreement with Ryanair/AMS, that potential link ceased to exist when AMM took over the management of the airport in 2009. As indicated in recital 28, the minutes of the APFTE's inaugural General Meeting on 24 June 2010 show that the setting up and funding of the APFTE were initiated by the CCIM, and supported by the local authorities concerned, in order to continue the practice of concluding marketing agreements with the low-cost airlines after the CCIM lost its status as concession-holder of Montpellier airport. Under the circumstances, the CCIM no longer wanted to take the financial and legal risks associated with the marketing agreements, and asked the local authorities concerned to participate directly in the marketing payments made to the airlines (which up to that point had been funded directly by the CCIM, as the bilateral funding agreements with the various authorities were finalised only at a later date) <sup>(95)</sup>.

<sup>(92)</sup> Articles 1 and 5.3 of the 2010 agreement.

<sup>(93)</sup> The Commission will therefore use 'Ryanair' in the rest of the assessment to denote the beneficiary of the measures in question.

<sup>(94)</sup> This has been expressly confirmed by the APFTE.

<sup>(95)</sup> See the proceedings of the CCIM's General Meeting of 26 May 2010, p. 6: 'The CCIM was the only party entering into agreements with the various marketing companies to promote tourism in our area. At the same time, the CCIM concluded agreements with the local authorities involved in promoting tourist flows. The CGEFI [General Economic and Financial Inspectorate] had taken the view that the CCIM was taking both legal and financial risks when it was no longer the concession-holder. However, the importance of these flows for local tourism was generally acknowledged. The cost of marketing amounted to EUR 1,8 million to date, but the economic benefits had been in the order of EUR 60 million. The CCIM and the local authorities agreed that this approach should be continued.'

- (163) Although the APFTE's public members are also shareholders in the airport, their participation in funding the marketing agreements is out of all proportion to their shareholding in the airport <sup>(96)</sup>. In particular, whilst the French State holds 60 % of the capital in AMM, it is not a member of the APFTE and does not contribute to its budget. The CCIM, which holds 25 % of the capital in AMM, contributed only [10-20] % of the APFTE's total budget from 2010 to 2019. The other subsidies paid to the APFTE between 2010 and 2019 – [80-90] % – came from the local authorities that together hold only 15 % of the capital in AMM.

Table 5

**Comparison of the proportion of contributions by the APFTE's public members to their shareholdings in AMM**

|                                                                     | Regional Council of Languedoc-Roussillon (now the Region of Occitania) | Hérault Departmental Council | Communauté d'agglomération de Montpellier (now Montpellier Méditerranée Métropole) and City of Montpellier | Communauté d'agglomération du Pays de l'Or | CCIM (now the Chamber of Commerce and Industry of Hérault) | French State (at national level) |
|---------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------|------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------|----------------------------------|
| <b>Participation in the funding of the APFTE (2010 to 2019) (%)</b> | [20-30]                                                                | [10-20]                      | [30-40]                                                                                                    | [0-10]                                     | [10-20]                                                    |                                  |
| <b>Shareholding in AMM (%)</b>                                      | 6,5                                                                    | 7                            | 0,5 <sup>(1)</sup>                                                                                         | 1                                          | 25                                                         | 60                               |

<sup>(1)</sup> Share of Montpellier Méditerranée Métropole. The City of Montpellier is not a shareholder in AMM.

- (164) This information shows that the funding provided for the marketing agreements by the APFTE's public members was not related to their participation in AMM's capital. If the marketing agreements had resulted in an increase in the revenue associated with the airport agreement, the APFTE's public members would have benefited from only 40 % of the additional revenue, whereas they would have contributed [95-100] % of the marketing expenditure. The individual situation of each of the APFTE's public members is also very different, and even more unfavourable in the case of the three main funders of the APFTE: the Region (6,5 % of the capital in AMM), the Department (7 % of the capital in AMM) and Montpellier Méditerranée Métropole (0,5 % of the capital in AMM), which together funded [80-90] % <sup>(97)</sup> of the APFTE's budget <sup>(98)</sup>.
- (165) In addition, the aforementioned minutes for 24 June 2010 show that, in concluding the marketing agreements, the APFTE and its members sought to promote the regional economy, with a view to the possible economic benefits of the marketing agreements for the region and various local businesses, and were not pursuing the interests that would be pursued by an operator (even in a minority capacity) of an airport or other business benefiting directly from the economic effects of the agreements.
- (166) When it has to be determined whether a public entity has acted as a market economy operator, considerations of regional policy are not relevant. And the formal investigation has not found anything to indicate that the contribution of the APFTE's public members to the marketing agreements had the aim of increasing the revenue they obtained from the airport, for example through the payment of a dividend or other bonus by AMM that might have reflected a positive effect of the marketing agreements on the airport's revenue.

<sup>(96)</sup> The situation of Montpellier airport is therefore different from the situation of Charleroi airport in Case T-196/04, *Ryanair v Commission*, ECLI:EU:T:2008:585, paragraphs 53 to 61, in which the General Court, in its judgment of 17 December 2008, regarded the Walloon Region and the airport operator BSCA as one single entity for the purposes of applying the principle of the private investor in a market economy, because the BSCA's shareholding reflected the dominant influence of the Walloon - Region.

<sup>(97)</sup> This figure also includes the contribution from the City of Montpellier. The City of Montpellier is not a shareholder in AMM. The French authorities have provided information only on the combined contributions of the City of Montpellier and Montpellier Méditerranée Métropole.

<sup>(98)</sup> See recitals 23 and 45.

- (167) On the basis of the aforementioned evidence, the Commission concludes that the links between the airport services agreements concluded by AMM and the marketing agreements concluded by the APFTE are not sufficient to justify assessing the two types of agreement in conjunction. The Commission has therefore assessed the marketing agreements in isolation.
- (168) Consequently, and given that the APFTE cannot be regarded as the airport operator, the incremental profitability method for assessing agreements between airports and airlines provided for in the 2014 guidelines <sup>(99)</sup> cannot be applied to the agreements in question.

#### 7.1.3.3. Applicability of the market economy operator principle

- (169) In determining whether a State measure constitutes aid, it is necessary to establish whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions <sup>(100)</sup>.
- (170) According to France, the APFTE considers that the payments in question do not constitute State aid because the sums paid by the APFTE to Ryanair/AMS corresponded to the market price of the services, which were purchased following an invitation to tender. In the APFTE's view, the services purchased also met the requirements of the APFTE and of its public policy tasks, namely the promotion of tourism and regional economic development. As a result, the APFTE acted as a public purchaser that was pursuing its public policy objective. The APFTE argues that, in this context, there was no need to carry out a profitability analysis in relation to the APFTE. According to the APFTE, therefore, the marketing agreements did not confer any economic advantage on Ryanair or AMS.
- (171) Ryanair puts forward the same arguments.
- (172) As regards the applicability of the market economy operator principle, it should be borne in mind that the comparison is not with any market economy operator in general but rather with a market economy operator in the situation of the APFTE.
- (173) Consideration has therefore to be given to the scope of the market economy operator principle with regard to the APFTE.
- (174) According to paragraph 77 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union ('the Notice on the notion of State aid') <sup>(101)</sup>: 'only the benefits and obligations linked to the role of the State as an economic operator – to the exclusion of those linked to its role as a public authority – are to be taken into account', which among other things means that no account is to be taken of public interest considerations such as regional development.
- (175) According to its constitution the APFTE's object is to 'promote and develop tourism in the area, including business tourism, by entering into promotional agreements, purchasing internet advertising and marketing services or utilising any other advertising medium such as participation in fairs and exhibitions, in order to attract international customers'. The public statements of members of the APFTE's bureau and the minutes and other documents concerning its workings referred to above show that the APFTE also seeks to pursue a regional policy objective <sup>(102)</sup>.

<sup>(99)</sup> See Section 3.5 of the 2014 guidelines.

<sup>(100)</sup> See in particular judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

<sup>(101)</sup> C/2016/2946 (OJ C 262, 19.7.2016, p. 1).

<sup>(102)</sup> See also recital 117.

- (176) The minutes, records and other documents regarding the APFTE submitted by the French authorities show that when it concluded the marketing agreements with Ryanair/AMS, the APFTE was acting only as a public authority, in particular with a view to developing the regional economy.
- (177) The benefits of marketing agreements in terms of developing regional tourism, namely the potential revenue generated by tourism for the region, are not relevant to an assessment of compliance with the market economy operator criteria.
- (178) In the present case the Commission does not have any evidence to indicate that, through the conclusion of the marketing agreements, the APFTE or its funding public members could have expected any financial gain as market economy operators – in particular a return on investment – aside from the development of tourism in the region, an objective deriving entirely from the role of the APFTE and its funding public members as public authorities.
- (179) The APFTE does not benefit from any increase in the revenue of the operator of Montpellier airport that might result from an increase in traffic. The APFTE does not operate Montpellier airport, and the members funding the APFTE are minority shareholders (40 %) in Montpellier airport. The French authorities have not put forward any gains linked to an increase in Montpellier airport's revenue that might have benefited the members of the APFTE that are also shareholders in the airport. No business plan was drawn up assessing such potential benefits before the decisions were made to conclude the marketing agreements with Ryanair. Even if the marketing agreements did have the objective or the effect of increasing passenger traffic, it would not have made sense for minority shareholders controlling 40 % of the airport to fund [95-100] % of the marketing agreements. Furthermore, the various minority shareholders in the airport contributed to the funding of the marketing agreements in proportions different to their shareholdings in the airport<sup>(103)</sup>, which likewise suggests that the decisions to conclude the marketing agreements had no economic link with the shareholdings held by some members of the APFTE. In conclusion, the marketing agreements were concluded with Ryanair by the APFTE exclusively with a view to a public policy objective pursued by the APFTE and its public members, which gained no benefit from them as economic operators.
- (180) Furthermore, as shown in detail in section 7.1.3.4(a), the Commission concludes that the purchase of marketing services by APFTE did not meet a real need but was in fact intended to subsidise Ryanair flights from and to Montpellier airport. Therefore, the Commission concludes that the market economy operator test is not applicable<sup>(104)</sup>. Furthermore, as indicated in section 7.1.3.4(b), the prices paid by APFTE to Ryanair/AMS for the purchase of marketing services are not in line with normal market conditions. Thus, even if the MEO test were applicable, it would not be satisfied.
- (181) Finally, the Commission notes that a measure is considered not to constitute an advantage where a State measure represents compensation corresponding to consideration for services provided by undertakings entrusted with a service of general economic interest in order to perform public service obligations, where those undertakings do not in fact enjoy a financial advantage and where the measure does not have the effect of putting those undertakings in a more favourable position than their competitors<sup>(105)</sup>. In the present case, however, there is no indication that Ryanair was subject to public service obligations.'

#### 7.1.3.4. Determination of the advantage conferred on Ryanair/AMS by the APFTE

- (182) The formal investigation has shown that the payments made on the basis of the marketing agreements were of the same nature as subsidies paid by a public authority to an airline to ensure an air service to an airport. The Commission has concluded that the payments made by the APFTE to Ryanair and AMS can be regarded as straightforward subsidies aimed at reducing the costs borne by Ryanair to operate scheduled flights to Montpellier, so that they confer an economic advantage on Ryanair.

<sup>(103)</sup> See recitals 164, 24 and recitals 45 et seq.

<sup>(104)</sup> See judgment of the General Court of 1 March 2017, *SNCM v Commission*, T-454/13, ECLI:EU:T:2017:134, paragraphs 232 and 233.

<sup>(105)</sup> See judgment of the Court of Justice of 2 September 2010, *Commission v Deutsche Post AG*, C-399/08, ECLI:EU:C:2010:481, paragraph 41 and judgment of the Court of Justice of 9 June 2011, *Comitato 'Venezia vuole vivere' and others v Commission*, C-71/09 P, ECLI:EU:C:2011:368, paragraph 92.

(183) In order to determine the existence of an advantage for Ryanair/AMS, the Commission has examined all the relevant circumstances of the case, in accordance with the Notice on the notion of State aid. For instance, there can be exceptional circumstances in which the purchase of goods or services by a public authority, even if carried out at market prices, may not be considered in line with market conditions, especially if the purchase does not meet the actual needs of the authority <sup>(106)</sup>.

(184) On the basis of a range of indicators examined during the formal investigation, the Commission has concluded that the purchase of marketing services from Ryanair did not meet an actual need of the APFTE. This is sufficient to establish the existence of an advantage conferred on Ryanair by the measures covered by the investigation.

(185) Moreover, the formal investigation has not found evidence to confirm the claim made by Ryanair/AMS and the French authorities that the marketing services were purchased at market prices.

**(a) Lack of any actual need for the APFTE to purchase marketing services from Ryanair/AMS**

(186) France, the APFTE, the CCIM, the local authorities having submitted comments and Ryanair have argued that the APFTE was a local tourism promotion association that purchased marketing services from Ryanair at market prices.

(187) The question at the heart of the Commission's assessment of the existence of an advantage conferred on Ryanair is whether the APFTE had an actual need for marketing services purchased from Ryanair/AMS in order to fulfil its public policy objective, namely the promotion of the city of Montpellier and its surrounding area <sup>(107)</sup>.

(188) The Commission has reached the conclusion that the purchase of marketing services from Ryanair/AMS did not meet an actual need of the APFTE, on the basis of the following findings:

— The purchase of marketing services served only as justification for the payments made to Ryanair to keep the latter at Montpellier airport; even if the marketing services had some marketing effect (*quod non*), it was not the main intention of the agreements, which must be viewed rather as concealed subsidies:

— there was no real intention on the part of the APFTE to advertise the region;

— Ryanair flight operations were targeted, rather than marketing services;

— Ryanair/AMS was targeted, rather than any online marketing service provider in general;

— there is no evidence showing that the APFTE was interested in the practical success of the marketing campaigns funded by its budget;

— the end of the marketing payments coincided with the cessation of flight operations by Ryanair;

— other State aid investigations conducted by the Commission have shown that marketing agreements have been used by Ryanair to conceal the payment of State aid.

<sup>(106)</sup> See paragraph 82 of the Notice on the notion of State aid and the case-law cited therein.

<sup>(107)</sup> See judgment of the General Court of 5 August 2003, *P&O v Commission*, T-116/01, ECLI:EU:T:2003:217, paragraphs 116 and 117.

— The marketing services of Ryanair/AMS could not promote the city of Montpellier and its surrounding area effectively:

— the APFTE's choice of Ryanair was not sufficiently justified in economic terms;

— Ryanair's marketing services did not have the alleged effect.

— Supposing the marketing services did have an effect, they benefited Ryanair more than anyone else, given that, as a private undertaking motivated by a desire for profitability, Ryanair has to carry out pricing and marketing measures to fill its aircraft.

(i) *The purchase of marketing services served only as justification for the payments made to Ryanair to keep the latter at Montpellier airport*

(189) The formal investigation has shown that, even if the marketing services purchased by the APFTE had some marketing effect<sup>(108)</sup>, that was not the main intention of the agreements, which must be viewed rather as concealed subsidies.

(190) Despite the object stated in its constitution, the APFTE, instead of purchasing marketing services in the strict sense of the term (i.e. advertising) in order to promote the area of Montpellier, sought through the agreements in question to support Ryanair's air transport services to Montpellier, by remunerating it for providing those services and by subsidising their promotion. Marketing in the strict sense of the term was no more than a side-effect of the APFTE's real object, as defined by the CCIM and the local authorities concerned<sup>(109)</sup>.

(191) The presentation as a marketing campaign was simply a tool to justify the payments made to Ryanair. The Commission has arrived at this conclusion on the basis of the following findings.

(1) *There was no real intention on the part of the APFTE to advertise the region*

(192) The Commission has gathered evidence indicating that there was no real intention on the part of the APFTE to advertise the region. Instead, the 'promotion' of the area referred to by the public bodies behind the APFTE consisted of keeping Ryanair at Montpellier airport in the hope that the local economy would profit from the economic benefits thus created.

(a) *The lack of any real intention on the part of the APFTE to advertise the region is indicated by the circumstances in which it was set up*

(193) An analysis of the resolutions, minutes and records of the APFTE and its public members clearly shows that the APFTE's real purpose was to continue supporting the airlines, particularly the low-cost airlines and especially Ryanair, after the manager of Montpellier airport changed<sup>(110)</sup>. The Commission concludes from the evidence

<sup>(108)</sup> The formal investigation has found evidence that the actual advertising effect of the marketing campaigns was small (see recitals 272 et seq.).

<sup>(109)</sup> For example, the record of the APFTE's Funders Committee meeting of 15 October 2012 show that the APFTE's website, which was officially intended to promote Montpellier and its surrounding area, had been designed by [the CCIM] without any real marketing function, but rather to officially justify the APFTE's 'marketing' expenditure: '[The President of the APFTE] broached the subject of the website and its maintenance. This website was needed in order to justify the communication expenditure incurred in order to bring significant numbers of European customers to the greater Montpellier area. It was proposed that the website should be improved and become a full-scale promotional website for the area.'

<sup>(110)</sup> See for example the record of the Regional Council of Languedoc-Roussillon of 20 July 2012, p. 1: 'In view of the changes in the management of Montpellier airport, an Association for the Promotion of Tourist and Economic Flows (APFTE) had been set up to continue the work of promoting the area carried on with the airlines serving Montpellier airport'; and p. 2: 'The flight routes through which the promotion will occur are Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford, Birmingham and [...]'. See also recital 28.

contained in the documents on the workings of the APFTE that the aim pursued by the CCIM and the associated local authorities in purchasing the online marketing campaigns was to grant extended start-up aid in order to ensure that Montpellier airport continued to be served by the airlines concerned. The public funds were therefore intended not to promote the city of Montpellier or its area, but to help promote a specific flight route in order to support it and ensure that it was maintained by the airline <sup>(111)</sup>.

(194) The APFTE's minutes show that in the association's understanding the term 'tourist flows' meant flows of air passengers carried by specific airlines, and not just any tourist flows whatever or flows of air passengers in general <sup>(112)</sup>. The minutes of the APFTE's initial meetings in particular use terms that clearly refer to flight operations, such as 'route' ['route', 'ligne' or 'axe' in French] <sup>(113)</sup>. Furthermore, the study used by the French authorities to prove that the economic benefits of the APFTE's actions were economically assessed by the local authorities <sup>(114)</sup> itself shows that those authorities were focusing solely on customers brought to the region by airlines.

(195) This is confirmed by the fact that all the other marketing agreements concluded and implemented by the APFTE <sup>(115)</sup> (and previously by the CCIM) which the Commission has examined as part of this investigation, though the sums involved were significantly lower than those paid to Ryanair/AMS, were concluded with airlines and not with conventional online marketing agencies.

(b) The lack of any real intention on the part of the APFTE to advertise the region is indicated by the initial state of its website, which was officially the centre of the promotional campaigns

(196) According to the French authorities, the website initially used by the APFTE was [www.flights-montpellier-mediterranean.com](http://www.flights-montpellier-mediterranean.com), which was set up in 2006 and belonged to the CCIM. In May 2013, this website was replaced by [goto-montpellier.com](http://goto-montpellier.com), which was also owned by the CCIM.

<sup>(111)</sup> See also the record of the Council of the Communauté de communes de Pays de l'Or of 23 June 2010; this document explains the contribution of low-cost traffic to the region, and states as follows: 'The operation of these airlines requires a financial contribution from local authorities in the form of start-up aid for new routes, granted for a maximum period of three years, followed by aid to promote the route, to be provided by purchasing advertising space on airline websites.' See also the statement of the former President of the APFTE made in an article in the newspaper 20 minutes, entitled 'marketing to attract customers' and published online on 23 November 2011: '[The President of the APFTE] rejects accusations of "blackmail" and "disguised subsidies". He explains: "If we don't conduct these marketing campaigns, some airlines will stay, but others will no longer be interested in Montpellier because the routes will no longer be attractive."' (see <https://www.20minutes.fr/montpellier/828538-20111123-marketing-attirer-clienteles>, visited on 1 July 2019). See also the minutes of the APFTE's inaugural General Meeting of 24 June 2010: 'Whatever the difficulties and the charges applied by the low-cost airlines, the benefits for local businesses were very significant. The association was currently the structure best suited to meeting the legal requirements, and would boost the area's development through this "low-cost" momentum'.

<sup>(112)</sup> See for example the record of the Council of the Communauté d'agglomération du Pays de l'Or of 28 June 2013, which, with regard to 'expenditure to support economic and tourist flows (2013 forecast)' clearly refers to 'the Ryanair routes (Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham)'. See also the minutes of the APFTE's inaugural General Meeting of 24 June 2010 ('Tourist flows, i.e. customers coming mainly from northern Europe, brought to the region by low-cost airlines, were very important not only for all undertakings involved in tourism, but also for those involved in trade and property').

<sup>(113)</sup> See for example the minutes of the APFTE's General Meeting of 18 March 2011 ('The formation of a governance committee should also allow the funders to take part in decisions on the routes to be opened'), the resolution of the Council of the Communauté d'agglomération du Pays de l'Or of 28 June 2013 (which, with regard to 'expenditure to support economic and tourist flows (2013 forecast)' clearly refer to 'the Ryanair routes (Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham)'), and the record of the preparatory technical meeting prior to the first meeting of the Governance Committee of 28 March 2011 ('The Governance Committee should initiate a discussion regarding the development of tourist flows and make strategic choices on the various routes proposed by the airport').

<sup>(114)</sup> BIPE, 'Etude des retombées socio-économiques du transport aérien en région Languedoc-Roussillon' [Study of the socioeconomic benefits of air transport in the Languedoc-Roussillon region], 4 April 2013 (see <http://montpellier.cci.fr/fichier/retombeescoaeroporl2012pdf/download>, visited on 1 July 2019).

<sup>(115)</sup> The Commission would point out that the agreement concluded with the undertaking [...] in 2017 was not implemented, owing to the APFTE's failure to issue purchase orders (see recital 81).

(197) The summary of the decisions made by the Funders Committee meeting on 15 October 2012 shows that the APFTE's website, which was officially presented as being a regional marketing tool (and the destination of links from the Ryanair website under the marketing agreements <sup>(116)</sup>), did not initially have any real marketing function, but formed part of the APFTE's stratagem to justify the payments made to the airlines. The President of the APFTE stated as follows: 'This website was needed in order to justify the communication expenditure incurred in order to bring significant numbers of European customers to the greater Montpellier area. It was proposed that the website should be improved and become a full-scale promotional website for the area.'

(c) The lack of any real intention on the part of the APFTE to advertise the region is indicated by the design of the legal structure that succeeded the APFTE

(198) Furthermore, the Commission observes that the documents on the workings of the APFTE submitted by France for the years 2017 and 2018 show that, when the APFTE stopped operating in 2018, the CCIM and the local authorities designed, and indeed implemented, a new legal structure for the marketing agreements, which involved the marketing purchases being taken over by 'a purchasing group, consisting of the local authorities and the CCI [of Hérault], which [picked up] the baton by no longer purchasing marketing services but rather flight routes' <sup>(117)</sup>. This no longer involved the marketing agreements concluded with Ryanair/AMS, as Ryanair was no longer serving Montpellier airport, but provides further evidence that the real purpose of the agreements concluded by the APFTE was to support flight routes.

(d) Conclusion on the lack of any real intention on the part of the APFTE to advertise the region

(199) The Commission therefore concludes that the APFTE was not engaged in marketing in the strict sense of the term, but in making payments intended to encourage airlines to allocate their capacity to Montpellier airport.

(200) The APFTE's desire to encourage Ryanair to keep operating from Montpellier is explained by the possibility that Ryanair might switch regional airports <sup>(118)</sup>. It is not surprising that regional airports should be in competition with each other to attract Ryanair. It should be mentioned in this context that in its final decision in Case SA.33961 (2012/C), concerning Nîmes airport (which is situated within the catchment area of Montpellier airport), the Commission found <sup>(119)</sup> that the marketing agreements concluded by the State with Ryanair/AMS between 2005 and 2010 were among a number of measures that constituted unlawful State aid granted to Ryanair/AMS <sup>(120)</sup>.

(201) Thus the APFTE's intention in concluding the agreements with Ryanair/AMS was not to promote Montpellier and its surrounding area through marketing campaigns in the strict sense of the term, but rather to encourage Ryanair to keep operating from Montpellier airport.

(2) Ryanair flight operations were targeted, rather than marketing services

(202) With regard to Ryanair/AMS, the APFTE decided to conclude the 2010, 2013 and 2017 marketing agreements with Ryanair/AMS in order to keep Ryanair at Montpellier airport. This is apparent, for example, from the minutes

<sup>(116)</sup> See recitals 56, 59 and 65.

<sup>(117)</sup> See the proceedings of the General Meeting of the Chamber of Commerce and Industry of Hérault of 24 January 2018.

<sup>(118)</sup> In the comments it submitted when the formal investigation was opened under Article 108(2) TFEU, Ryanair, as part of its argument that the situation of Montpellier airport was comparable to that of other airports for purposes of applying the market economy operator principle, confirms that it has a wide choice of airports in Europe (United Kingdom, Spain, France and [...]), which are in competition with each other for Ryanair's routes and capacity and which, from Ryanair's point of view, are substitutable.

<sup>(119)</sup> See Article 1(2) of the Decision (OJ L 113, 27.4.2016, p. 32).

<sup>(120)</sup> The decision was upheld by the judgment of the General Court of 13 December 2018, *Ryanair and AMS v Commission*, T-53/16, ECLI:EU:T:2018:943.

of the APFTE's General Meeting of 19 October 2011 (p. 5): 'This budget would enable us [...] to maintain the Frankfurt-Hahn, Brussels-Charleroi and Leeds-Bradford routes' <sup>(121)</sup>, and from an extract from the record of the CCIM's General Meeting of 31 January 2010: 'The Temporary Committee [...] had approved an additional amount of [...] to fund the online marketing agreement allowing the route with Birmingham to be maintained.'

(203) An analysis of the 2010 to 2017 marketing agreements and of the 2013 and 2017 invitations to tender confirms that the agreements and invitations to tender very specifically targeted the flight routes operated by Ryanair.

(204) The APFTE's agreements and invitations to tender were gradually adapted to conceal the link between the air services and the purchase of marketing services. The initial agreements were concluded without an invitation to tender and were based on clear commitments by Ryanair to operate certain routes. The later agreements were preceded by invitations to tender, and referred to Ryanair's operations at Montpellier airport less directly, but still sufficiently explicitly for Ryanair to be selected. The desire to support Ryanair's operations through the marketing agreements is evident in the clauses of the various marketing agreements, which refer directly or indirectly to Ryanair's operations at Montpellier airport with regard to the existing routes.

(a) The 2010 and 2013 agreements

(205) The 2010 agreement and its successive amendment and renewal agreements and also the 2013 agreements and their successive renewal agreements were based on precise commitments by Ryanair to operate routes to Montpellier airport and imposed clear obligations on Ryanair in this regard. The 2010 agreement explicitly referred to these commitments and made the marketing payments conditional on their fulfilment.

(206) The record of the APFTE's Executive Committee meeting of 4 July 2013 shows that the APFTE felt obliged to issue the 2013 invitation to tender when the 2010 marketing agreement that had been concluded with AMS expired, and that the APFTE wanted at the time to maintain the tourist flows covered by that agreement, namely the routes operated by Ryanair <sup>(122)</sup>.

(207) The tender specifications for the 2013 invitation to tender, which subsequently became contractual obligations, contained very precise requirements to be met by Ryanair in terms of air transport from Montpellier to Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford, whereas they were very general, not to say vague, on the nature of the marketing services to be provided. Moreover, it is striking that no agreement was ultimately concluded for the 'Birmingham' lot, which was a route that Ryanair had stopped operating between the publication of the tender specifications for the 2013 invitation to tender and the conclusion of the marketing agreements. This last point perfectly illustrates the connection between the marketing agreements concluded by the APFTE and the operation of routes by Ryanair.

<sup>(121)</sup> See also the minutes of the APFTE's General Meeting of 19 October 2011, p. 6: 'For 2012 ... the Association therefore had a budget of EUR [...], including taxes, which would allow the continuation only of the marketing agreements with AMS, i.e. for the historic destinations of Brussels-Charleroi, Frankfurt-Hahn and Leeds-Bradford'; or the record of the APFTE's bureau meeting of 4 July 2013, p. 1: '[The President of the APFTE] stated that the association was under an obligation to launch an invitation to tender for the online marketing agreements, as the agreement with Airport Marketing Services concluded in 2010 was about to expire', and p. 2: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination.'

<sup>(122)</sup> See p. 1 of the record: '[The President of the APFTE] stated that the association was under an obligation to launch an invitation to tender for the online marketing agreements, as the agreement with Airport Marketing Services concluded in 2010 was about to expire', and p. 2: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination.' See also the minutes of the APFTE's General Meeting of 4 July 2013, p. 3: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination. The President gave the members of the General Meeting an undertaking that a standard invitation to tender dossier would be sent, for information purposes, to all the local authorities, as requested by the Regional Council.'

(b) The 2017 agreements

- (208) In addition, although the 2017 agreement did not mention the airports served by Ryanair from Montpellier and did not contain any explicit obligation with regard to air transport to the airport, it clearly identified, as the target of the marketing activities, the inhabitants of the regions where the airports served by Ryanair from Montpellier were located<sup>(123)</sup>. The 'lots' defined in the tender specifications corresponded to the regions where the three airports served by Ryanair from Montpellier were located: Brussels-Charleroi ('Wallonia' lot), Frankfurt-Hahn ('Rhineland-Palatinate' lot) and Leeds-Bradford ('Yorkshire' lot) at the time.
- (209) The Commission has not identified any particular reason for choosing the three regions in question (Rhineland-Palatinate, Wallonia and Yorkshire) as targets of the marketing services, other than the fact that they were the only three regions already served by direct flights operated by Ryanair from Montpellier airport. If the APFTE had been motivated by a desire to engage in regional marketing, and thus to target a large number of potential tourists, it would have chosen more appropriate regions on the basis of the number of potential tourists, or a broader cross-section of regions. For example, the choice of Wallonia (around 3,5 million inhabitants) without including neighbouring Flanders (around 6,5 million inhabitants), which is situated within the catchment area of Brussels-Charleroi airport, is inexplicable. It is also striking that the invitation to tender chose Rhineland-Palatinate (around 4 million inhabitants) and not the neighbouring Länder within or at least very close to the catchment area of Frankfurt-Hahn airport, namely Hessen (around 6 million inhabitants, with its important cities of Wiesbaden (90 km from Frankfurt-Hahn airport) or Frankfurt am Main (120 km from Frankfurt-Hahn airport)), North Rhine-Westphalia (nearly 18 million inhabitants) and Saarland (nearly 1 million inhabitants), or larger urban areas such as Berlin (linked to Montpellier by a direct flight operated by the airline easyJet) or Düsseldorf (in the same catchment area as the city of Cologne, linked to Montpellier by a direct flight operated by the airline Eurowings). As regards the United Kingdom, aside from Yorkshire (around 5,2 million inhabitants), a larger number of tourists could have been targeted by including the neighbouring urban region of Greater Manchester (around 2,7 million inhabitants, situated less than 100 km from Leeds-Bradford airport) or the urban region of London (around 8,8 million inhabitants, with its airports at Gatwick, Heathrow and Luton being linked to Montpellier by direct flights operated by easyJet and British Airways).
- (210) With regard to the changes in the marketing agreements concluded by the APFTE with Ryanair/AMS between 2010 and 2017, the Commission notes that, between the conclusion of the 2010 and 2017 marketing agreements, the Commission had adopted decisions opening formal investigations in relation to Nîmes, Pau and Angoulême airports, among others, which also concerned marketing agreements concluded by Ryanair/AMS, and had subsequently adopted final decisions in these cases<sup>(124)</sup>. The Commission's intention in assessing the compliance of such marketing agreements with the State aid rules was therefore clear and known to the parties to the agreements.
- (211) In the general context of the contractual relations between the APFTE and Ryanair from 2010, it is clear that the 2017 agreement had the objective and intended effect, like the previous agreements, of supporting the existing air transport activities of Ryanair at Montpellier. The minutes of the Board meeting of 14 September 2016 show that

<sup>(123)</sup> See recitals 16 and 74.

<sup>(124)</sup> See for example 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). 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 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); 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, 25.09.2015, p. 38) Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA.33983 (2013/C) (ex 2012/NN) (ex 2011/N) Compensation paid to Sardinian airports for public service obligations (SGEs) (OJ L 268, 18.10.2017, p. 1).

the design of the 2017 invitations to tender was based on the desire to 'respond to legal issues' and provided for the entities involved in the economic and tourist development of the region to choose 'upstream, with regard to the strategic priorities that they wanted to develop, the area in which the region should be promoted'. The French term 'axe' had previously been used to mean flight routes<sup>(125)</sup>. It should also be noted that this agreement was to operate on the basis of the issue of purchase orders. The APFTE was therefore able to make the issue of purchase orders, and thus the payments to Ryanair, conditional on the maintenance of the frequency of the latter's air transport services to Brussels-Charleroi, Leeds and Frankfurt-Hahn.

- (212) The Commission regards the inclusion of obligations for Ryanair to operate flights as important evidence of the real object of the agreements concluded between the APFTE and Ryanair, namely the remuneration of Ryanair for continuing to operate at Montpellier airport.

(3) Ryanair/AMS was targeted, rather than any online marketing service provider in general

- (213) Furthermore, the criteria of the 2013 and 2017 invitations to tender were defined in such a way as to favour Ryanair's bids over the services of a conventional marketing service provider.

- (214) An analysis of the marketing agreements and corresponding invitations to tender shows that the decisive criteria defined by the APFTE and selected in the invitations to tender favoured AMS over conventional marketing service providers in particular by introducing the criterion of serving flight routes and needing to offer a website specific to the marketing service provider with enough traffic to offer online advertising on that site.

- (215) Although the APFTE concluded marketing agreements with several airlines, the formal investigation has not found any evidence to show that before concluding the 2010, 2013 and 2017 agreements that were the subject of the investigation the APFTE genuinely sought to conclude marketing agreements with an operator other than Ryanair/AMS. This is important for the analysis with regard to selectivity, but the Commission considers that the orientation of the choice of service provider towards AMS should also be taken into account as evidence of the lack of a market economy operator objective on the part of the APFTE. As indicated in recitals 326 et seq., which set out to show that the marketing agreements were selective, the Commission has concluded that the 2013 and 2017 invitations to tender were so designed that AMS would be awarded the marketing agreements in question.

- (216) The Commission has identified several points confirming that the APFTE favoured the services of Ryanair in the criteria it adopted for the invitations to tender for the 2013 and 2017 marketing agreements covered by the formal investigation.

- (217) The conclusion of the 2013 marketing agreements – described in recitals 63 to 73 – was preceded by invitations to tender for four different 'lots'. These 'lots', entitled 'Brussels-Charleroi', 'Frankfurt-Hahn', 'Leeds' and 'Birmingham', and the minimum frequencies indicated in the invitation to tender, corresponded precisely to the air transport services operated by Ryanair between Montpellier and Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham at the time when the invitation to tender was launched. The invitation to tender therefore clearly targeted airlines offering marketing services in addition to their air transport activities. At the time, for each destination, Ryanair was the only airline operating these routes, and it had already been operating them for some time (Birmingham since 2011 and the other destinations since 2010 at latest)<sup>(126)</sup>. It is therefore clear that the invitation to tender, by its very design, aimed to select Ryanair/AMS and not an online marketing service provider chosen according to the quality of the marketing services offered and the price charged.

<sup>(125)</sup> See recital 137.

<sup>(126)</sup> It should be noted that by the time the lots were awarded the Birmingham route had already been withdrawn (November 2013).

- (218) Furthermore, although the invitation to tender for lots 1 to 4 that led to the 2013 agreements mentions several very broadly defined categories of marketing services that tenderers can offer, it is clear from the terms of the invitation that the only marketing service that imperatively had to be provided was to include a link to the APFTE's website on the website of the marketing service provider <sup>(127)</sup>. Likewise, the only imperative marketing criterion that had to be met was to include 'a link to the APFTE's website (go to Montpellier) on their website'. This precisely corresponded to the AMS commercial model, in which AMS offered advertising space on Ryanair's website. This criterion excluded many marketing service providers that could have provided effective online marketing services, but that did not have a website of their own with as much traffic as Ryanair's website. The invitation to tender for lots 1 to 4 was therefore designed in such a way that no company could meet the selection criteria better than Ryanair/AMS.
- (219) Similarly, the invitation to tender of 13 May 2017 and the 2017 agreement were very general, not to say vague, about the nature of the marketing services to be provided by the successful tenderer. As indicated in recitals 208 et seq., it is clear that the invitation to tender was designed to select Ryanair rather than any marketing service provider chosen according to the nature of the services offered and the price charged.
- (220) As the invitation to tender also left the tenderer considerable freedom to choose the characteristics of the marketing services offered, it enabled Ryanair/AMS to choose the services in such a way that they primarily promoted its own air transport services to Montpellier on its website, a choice that was not penalised in the assessment of the invitation to tender because Ryanair was able to meet the only imperative condition of the tender by providing a link to the APFTE's website on Ryanair's own website.
- (221) For the 2017 agreement, it should also be noted that Ryanair was the only airline to serve the three regions covered by the first three lots of the invitation to tender. The Commission has been unable to identify any reasons for such a precise choice of regions other than a desire to target Ryanair's operations, the plausibility of which is also demonstrated in recitals 189 et seq. However, the assessment of tenders carried out by the APFTE shows that the ability of the marketing service provider to precisely target the regional public was not decisive in the choice of bid. For example, the APFTE based itself on the number of hits on Ryanair's website in the whole of Germany, and not on the number of hits on Ryanair's German website from people located in Rhineland-Palatinate. The Commission concludes that the specifications in the invitation to tender with regard to the regions to be covered served only to favour AMS over other marketing service providers.
- (222) The weighting of criteria in the 2017 invitation to tender (price of services 40 % and technical value 60 %) ensured that Ryanair would be chosen even in the event of a lower-priced competing bid. In the 2013 invitation to tender, the weighting of the selection criteria had put the price first (price of services 85 %, technical value as shown by the technical brief 15 %).
- (223) Furthermore, the marketing services ultimately purchased by the APFTE from Ryanair were confined to the services offered on Ryanair's website, even though the 2017 invitation to tender had been open to a very broad range of marketing services (beyond the services offered only on airline websites).
- (224) Lastly, it should be noted that all the other marketing agreements concluded and implemented by the APFTE <sup>(128)</sup> (and previously by the CCIM) which the Commission has examined as part of this investigation, though the sums involved were significantly lower than those paid to Ryanair/AMS, were concluded with airlines and not with conventional online marketing agencies.

<sup>(127)</sup> See recitals 63 et seq., in particular: 'In all cases, tenderers must include a link to the APFTE's website (go to Montpellier) on their own website'.

<sup>(128)</sup> The Commission would point out that the agreement concluded with the undertaking [...] in 2017 was not implemented, owing to the APFTE's failure to issue purchase orders (see recital 81).

- (225) An entity wanting solely to purchase marketing services to promote a given area would have no interest in including in the agreements concluded with the provider of those marketing services obligations regarding the operation of air transport services. Nor would it have any interest in including obligations of that kind in invitations to tender organised in order to purchase marketing services.
- (226) The inclusion of such highly detailed obligations in an agreement for the purchase of marketing services has the effect of financially supporting the provision of air services via the remuneration of the marketing services. This excludes from the outset marketing service providers that – despite their ability to promote the city of Montpellier effectively through marketing campaigns in the strict sense – do not offer air transport services.
- (227) For its part, Ryanair argues that the service to the destination (i.e. Montpellier) covered by the marketing agreements is explained by the concern to ensure that marketing is effective. It would be less attractive for customers of Ryanair/AMS, such as the APFTE, to purchase marketing on the Ryanair website if there were no flight route to Montpellier operated by Ryanair. The APFTE therefore focused on the promotion of tourist flows that could be developed with existing flight routes.
- (228) However, although this argument may make sense in the case of Ryanair/AMS customers such as local tourism enterprises (hotels, tourist attractions, restaurants, or car hire companies) genuinely seeking to market goods and services available at Ryanair destinations to Ryanair passengers, it is a circular argument here. Ryanair's argument is based on the principle that the APFTE was genuinely seeking to promote the Montpellier area, as effectively as possible, through online marketing campaigns. In reality, as indicated above <sup>(129)</sup>, the APFTE was seeking primarily to keep Ryanair at Montpellier airport through additional payments, justified as marketing expenditure for precise flight routes, in order to profit from the economic benefits for the region that derived from Ryanair's presence. The marketing agreements served as a legal structure for these payments.
- (229) The Commission observes that neither the French authorities nor Ryanair have provided any quantitative or qualitative evidence justifying the choice of Ryanair routes as the most appropriate marketing tool by comparison not only with other forms of advertising but also with other flight routes to Montpellier airport.
- (4) The APFTE was not interested in the practical success of the marketing campaigns
- (230) The Commission has not found any evidence to show that the APFTE assessed the potential impact of its budget either ex ante or ex post, whether by evaluating different service providers, by evaluating the impact of various marketing services, by assessing the impact of marketing campaigns targeted at different regions of northern Europe, or by analysing the costs and benefits of the marketing agreements concluded with Ryanair/AMS. The APFTE did not seek to conclude marketing agreements for the regions or destinations covered by Ryanair with an operator other than Ryanair/AMS, or to minimise its marketing expenditure. These various points support the Commission's conclusion that the APFTE's decisions to support Ryanair through marketing agreements were taken in the absence of any proper economic analysis.
- (231) For the APFTE, there was apparently no alternative to supporting Ryanair using the allocated budget. This also explains the APFTE's failure to question the result of the 2017 invitation to tender with regard to the price of the competing bid, which for each of the lots concerned was consistently EUR [...] above Ryanair's price <sup>(130)</sup>.
- (232) The documents concerning the APFTE's internal discussions show that, in the allocation of its marketing budget, the APFTE systematically favoured the payments planned for Ryanair and made the funding of the promotion of new destinations proposed by the APFTE's private members conditional on funds remaining after allocation of the payments to Ryanair/AMS, without ever questioning or reassessing the benefits of those marketing agreements.

<sup>(129)</sup> See recitals 26 et seq. and 192 et seq.

<sup>(130)</sup> See recitals 77 et seq.

- (233) In this context, the Commission has found no evidence to show that the APFTE was genuinely interested in understanding the concrete impact of the marketing campaigns, even though they were funded by over [60-70] % of its budget.
- (234) The aforementioned study on the economic benefits of air transport looks only at the number of incoming tourists, without determining the reason for their decision to travel to the region, or examining the real impact of the marketing services purchased from Ryanair/AMS. In particular, the study does not try to determine what the number of passengers coming to the region would be if they were attracted solely by the fact that Ryanair operated a service between their airport of origin and Montpellier, in the absence of any promotion on Ryanair's website <sup>(131)</sup>.
- (235) In the same way, the APFTE does not seem to have looked at the performance indicators for the marketing services purchased from Ryanair/AMS, for example the number of clicks on the APFTE's website or the number of flight tickets purchased during the marketing campaign. It should be noted here that at a meeting on 12 February 2019, in the presence of a representative of the French authorities, Ryanair said that for marketing agreements such as those concluded by the APFTE AMS did not offer its customers statistics which might have allowed the performance of the customer's marketing campaign to be measured and its effectiveness to be assessed. This is surprising, as one of the advantages of online marketing is being able to measure more easily the impact of marketing campaigns. Ryanair has in fact used this argument in reports submitted to the Commission to demonstrate the value of its website as an online advertising space.
- (236) Other marketing agreements concluded between Ryanair/AMS and private companies also show that contractual clauses can indeed be inserted that link the price of the marketing services to the actual number of customers obtained through these marketing campaigns.
- (237) Despite the fall in the number of Ryanair passengers at Montpellier airport from 2012 onward <sup>(132)</sup> – indicating the ineffectiveness of the marketing agreements, if these were actually intended to be effective – the documents on the workings of the APFTE's and the documents of its public members do not suggest that the effectiveness of the marketing agreements concluded with Ryanair/AMS was questioned by the APFTE's members.
- (5) The marketing payments coincided with the duration of Ryanair's flight operations
- (a) The end of the marketing payments coincided with the cessation of Ryanair's operations at the airport
- (238) Ryanair has not operated at Montpellier airport since the 2019 summer season, but offers a route to Brussels-Charleroi from Béziers airport, which is 70 km from Montpellier airport.
- (239) The cessation of Ryanair's operations at Montpellier airport coincided with the cessation of payments to Ryanair/AMS by the APFTE. According to the French authorities, the last payment to Ryanair/AMS was made in February 2019.
- (240) However, AMS could still have offered advertising for Montpellier on the Ryanair website. This would in fact have made sense in terms of the approach to marketing proposed by Ryanair <sup>(133)</sup> (but rejected by the Commission), given that Nîmes and Béziers airports – served in the 2019 summer season by several Ryanair flights from northern Europe, including Germany (Düsseldorf-Weeze), Belgium (Brussels-Charleroi) and the United Kingdom (Bristol, Edinburgh, London-Luton, London-Stansted, and Manchester) <sup>(134)</sup> – lie close to the city of Montpellier, so that on Ryanair's reasoning the Montpellier area would have benefited from the impact of an increased number of international/northern European tourists.

<sup>(131)</sup> BIPE, 'Étude des retombées socio-économiques du transport aérien en région Languedoc-Roussillon' [Study of the socioeconomic benefits of air transport in the Languedoc-Roussillon region], 4 April 2013 (see <http://montpellier.cci.fr/fichier/retombeescoaeroporl2012pdf/download>, visited on 1 July 2019). See also recital 290.

<sup>(132)</sup> See Table 2.

<sup>(133)</sup> See recitals 86 and 274.

<sup>(134)</sup> Ryanair operates flights from Béziers to the following destinations in northern Europe: Düsseldorf-Weeze, Brussels-Charleroi, Bristol, London-Luton, London-Stansted, Manchester, Edinburgh, Stockholm-Skavsta and Paris-Beauvais. The northern European destinations served by Ryanair from Nîmes airport are Brussels-Charleroi, London-Stansted and London-Luton.

(241) But in fact the APFTE or the legal structure that replaced it lost interest in promoting Montpellier and its surrounding area through Ryanair/AMS.

(242) If the marketing agreements with Ryanair/AMS had really had the supposed effect of increasing the flow of international tourists to Montpellier and the Montpellier area, the APFTE or its replacement would have been interested in maintaining the agreements in order to encourage the flow of international passengers arriving in the area via Béziers and Nîmes airports.

(b) The duration of the marketing campaign aimed at Birmingham coincided with the duration of the Montpellier-Birmingham route

(243) The Commission would point out that the marketing relations targeting Birmingham – the basis of additional payments to Ryanair/AMS through the amendment of 20 April 2011 to the marketing agreement of 16 September 2010 – were initiated in the month that Ryanair started the service between Birmingham airport and Montpellier.

(244) Furthermore, no agreement was ultimately concluded for the 'Birmingham' lot of the 2013 invitation to tender, which was a route that Ryanair had operated since 2011, but stopped operating between the publication of the invitation to tender specifications and the conclusion of the marketing agreements (); the Commission regards this as further evidence of the APFTE's intention to fund Ryanair's operations rather than investing in marketing in the strict sense <sup>(135)</sup>.

(6) Ryanair's practice observed in other cases

(245) The Commission also notes that the use of marketing agreements as a justification for payments to Ryanair in order to maintain Ryanair at a given regional airport is not unprecedented: in particular, the Commission's formal investigation in Case SA.33961, concerning Nîmes airport, showed that, in a situation where the load factor of a particular route had significantly decreased, Ryanair put pressure on the public entities concerned to purchase additional marketing services by threatening to stop operating the route if the financial contribution was not increased on a one-off basis <sup>(136)</sup>. With regard to Altenburg-Nobitz airport, the Commission's formal investigation in Case SA.26500 <sup>(137)</sup> found that, after the airport operator refused to pay a sum demanded by Ryanair as marketing fees for the 2011 summer schedule, Ryanair stopped operating at the airport in March 2011 <sup>(138)</sup>.

(ii) *The marketing services of Ryanair/AMS could not promote Montpellier and its surrounding area effectively*

(246) Even assuming that the marketing agreements did have effects of the kind alleged by Ryanair/AMS and the APFTE on the flow of international passengers, the Commission considers that there was no sufficient economic justification for dedicating over [60-70] % of the APFTE's budget to just Ryanair/AMS and to just those tourists coming from Brussels-Charleroi, Frankfurt-Hahn, Leeds-Bradford and Birmingham airports.

(247) As explained in the following chapter, neither the actual impact nor the maximum potential impact – alleged by Ryanair – of the marketing campaigns purchased by the APFTE from Ryanair/AMS would justify the price paid by the APFTE if it were acting as a market economy purchaser.

<sup>(135)</sup> See recital 207.

<sup>(136)</sup> See 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 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), recitals 102, 547 and 548.

<sup>(137)</sup> Commission Decision (EU) 2016/287 of 15 October 2014 on State aid SA.26500 – 2012/C (ex 2011/NN, ex CP 227/2008) implemented by Germany for Flugplatz Altenburg-Nobitz GmbH and Ryanair Ltd (OJ L 59, 4.3.2016, p. 22).

<sup>(138)</sup> See judgment of the General Court of 13 December 2018, *Ryanair and AMS v Commission*, T-165/16, ECLI:EU:T:2018:952, paragraph 258.

- (1) There was no sufficient economic justification for the APFTE's choice of Ryanair/AMS as a marketing service provider
- (a) The marketing campaigns were limited to Ryanair's website and customers
- (248) The 2010 agreement and its amendment clearly specified that the marketing services would be provided only on Ryanair's website and that Ryanair was under an obligation to serve Montpellier from Frankfurt-Hahn, Brussels-Charleroi and Leeds-Bradford <sup>(139)</sup>. As regards the 2013 invitation to tender, the only imperative criterion was that the marketing service provider should be able to provide a link on its website to the APFTE's website and to operate a certain frequency of flights <sup>(140)</sup>. Moreover, although the 2017 invitation to tender was open to a very broad range of marketing services (beyond the services offered only on airline websites), the services ultimately selected by the APFTE were selected on the basis exclusively of hits on Ryanair's websites.
- (249) Ryanair has never carried any more than 137 030 passengers per year to Montpellier airport, whereas the Montpellier area attracts 5 million tourists per year (2017 figures) according to statistics published by Montpellier Tourisme <sup>(141)</sup>.
- (250) This is all the more striking given that the services offered by Ryanair/AMS and purchased by the APFTE at a cost of over [60-70] % of its total budget consisted solely of the promotion of Montpellier as a destination in connection with Ryanair's flight operations, entirely through Ryanair's media outlets.
- (b) Ryanair's customers were not the most attractive market segment in terms of economic revenue for the region
- (251) According to Ryanair <sup>(142)</sup>, the marketing campaigns were intended particularly to alter the balance between passengers resident in Montpellier and international tourists visiting Montpellier among a total number of passengers predetermined by Ryanair's yield management <sup>(143)</sup>.
- (252) However, the maximum potential number of tourists arriving by air with Ryanair was very low. It should be noted that Ryanair's market share never exceeded [10-20] % of the passengers at Montpellier airport and went into constant decline after 2012. Among these passengers, the Ryanair marketing agreements – even assuming that they had the effect alleged by Ryanair – could have increased the proportion of international tourists only by a very small number.
- (253) In addition, the study provided by the French authorities to prove that the economic benefits of the APFTE's actions had indeed been the subject of an economic analysis by the local authorities <sup>(144)</sup> shows that, among the air passengers arriving in Languedoc-Roussillon, Ryanair's passengers did not have the greatest leverage effect in terms of spending in the region <sup>(145)</sup>.

<sup>(139)</sup> See recitals 56, 59 and 60.

<sup>(140)</sup> See recitals 65 et seq.

<sup>(141)</sup> See <https://www.montpellier-tourisme.fr/Preparer-Reserver/Pro-Presse/Chiffres-cles-Observatoire>, visited on 1 July 2019.

<sup>(142)</sup> See recitals 273 et seq.

<sup>(143)</sup> See footnote 56.

<sup>(144)</sup> BIPE, 'Etude des retombées socio-économiques du transport aérien en région Languedoc-Roussillon' [Study of the socioeconomic benefits of air transport in the Languedoc-Roussillon region], 4 April 2013 (see <http://montpellier.cci.fr/fichier/retombeescoaeroporl2012pdf/download>, visited on 1 July 2019).

<sup>(145)</sup> According to page 32 of the study, out of EUR 261 million spent by visitors arriving by air, passengers on Ryanair flights spent EUR 28 million in total (EUR 12 million spent by passengers from Brussels-Charleroi, EUR 7 million spent by passengers from Frankfurt-Hahn, EUR 5 million spent by passengers from Birmingham, and EUR 4 million spent by passengers from Leeds-Bradford), compared for example with EUR 80 million spent by passengers from Paris-Orly, EUR 63 million spent by passengers from Paris-Roissy, or EUR 25 million spent by passengers from London-Gatwick (plus EUR 7 million spent by passengers from London-Luton).

(254) Nor have the French authorities provided any information to show that Ryanair passengers were the most attractive target market segment in terms of future growth potential.

(255) Lastly, the Commission notes that, in terms of tourism and business travel, most of the customers of Montpellier and its surrounding area are domestic and not international. The 2017 activity report of the Tourism and Conference Office of Montpellier Méditerranée Métropole (*Office de Tourisme et des Congrès de Montpellier Méditerranée Métropole*) <sup>(146)</sup> shows that most of the economic benefits for Montpellier Méditerranée Métropole stem from domestic tourists: out of 1 552 245 overnight stays in hotels, the rate of overnight stays by foreign nationals was only 23 % out of 682 528 overnight stays in holiday homes, the rate of overnight stays by foreign nationals was only 10 %.

(c) Ryanair's marketing services had very little impact for the APFTE

(256) Among the services that Ryanair/AMS might have offered, the choices made by the APFTE in its purchases of marketing services made no sense if the intention was to promote the region.

(257) The online marketing services provided by Ryanair/AMS on the basis of the marketing agreements concluded with the APFTE consisted essentially in inserting messages and links on the Montpellier destination page of the Ryanair website, and inserting a link to the website designated by the APFTE on the English, German, Dutch and Belgian (in French and in Dutch) homepage of this same website.

(258) But the Montpellier destination page of the Ryanair website was targeted mainly at people who had already decided to use or were likely to consider using Ryanair's transport services to Montpellier. In other words, the information provided about Montpellier on Ryanair's website was unlikely to attract new customers.

(259) In this respect, it is worthwhile noting that the marketing agreements submitted by Ryanair that were concluded between private non-airport enterprises and AMS draw their marketing value from the possibility of selling tourist goods or services to passengers travelling with Ryanair. These potential travellers are identified as likely to travel to a clearly defined destination airport following their visit to Ryanair's website (purchase of ticket, search of available flights, etc.) and are therefore the target of marketing messages encouraging them to purchase goods or services at their destination airport.

(260) Ryanair's marketing value is therefore targeted at Ryanair customers who have already chosen their destination airport or whose visit to Ryanair's website indicates that they are likely to choose a specific destination airport, in order to encourage them to purchase a tourist service at their final destination. The Commission does not rule out the possibility that the marketing offered by AMS on Ryanair's website may have a value for certain enterprises interested in selling goods or services to Ryanair customers, such as a car rental company or a regional tour provider. But that is not the situation of a regional authority, which first and foremost has to ensure that potential tourists become interested in the region. For the APFTE, the benefit of such a marketing campaign is therefore very small, or indeed non-existent.

(d) The marketing services actually chosen by the APFTE from among Ryanair's potential services had even less impact

(261) Furthermore, only the English, German, Dutch and Belgian (in French and in Dutch) homepages of Ryanair's website were covered by the marketing services agreement. This is further evidence that the marketing services were designed essentially to promote Ryanair's services between Montpellier and the destinations that Ryanair undertook to serve, which had catchment areas situated in Germany, Belgium, the Netherlands and the United Kingdom.

<sup>(146)</sup> See pages 42 and 43 of the report, which is based on INSEE statistics <https://www.montpellier-tourisme.fr/Media/Files/Observatoire/Rapport-d-activite-2017> (visited on 1 July 2019).

- (262) The specific choice of Ryanair/AMS marketing services cannot be explained by any considerations of regional development apart from the intention to subsidise Ryanair's flights.
- (263) The Commission would point out that according to its constitution the APFTE's object is to 'promote and develop tourism in the area, including business tourism, by entering into promotional agreements, purchasing internet advertising and marketing services or utilising any other advertising medium such as participation in fairs and exhibitions, in order to attract international customers' <sup>(147)</sup>.
- (264) However, neither the APFTE's constitution nor the analyses provided by the French authorities or by Ryanair indicate that the APFTE's priority was to target passengers from narrowly defined northern European regions (namely Wallonia, Rhineland-Palatinate, Yorkshire and the Midlands), ignoring other similar markets such as the neighbouring regions mentioned in recital 209.
- (265) Ryanair claims that the marketing agreements helped to build the 'Montpellier' brand. If Ryanair's marketing did have an effect on the building of the Montpellier region brand among potential tourists that reached beyond Ryanair's own website, the APFTE could have used the marketing on Ryanair's website more effectively.
- (266) In particular, if the marketing services had been intended to advertise Montpellier and its region to all tourists and business travellers likely to be interested in the region, irrespective of the possibility being offered to them of travelling to Montpellier on Ryanair's flights alone, the APFTE would in all likelihood have asked for the link to a website of its choosing to be placed on all, or at least several language versions of, the Ryanair website homepage, and not just the four language versions mentioned above, which corresponded to destinations served from Montpellier by Ryanair. There are more than 20 different language versions of Ryanair's website. For example, it would have been possible to include the Italian, Castilian Spanish and Catalan versions of Ryanair's website, in order to reach potential tourists travelling from Italy or Spain (the Spanish border is two hours by road from Montpellier, and there are direct flights between Montpellier and these two countries offered by other airlines), or to include the Scandinavian versions of the website (targeting tourists in Scandinavia, which is also connected to Montpellier airport by direct flights offered by other airlines). However, Spanish or Italian tourists would have been attractive potential customers, given that, according to statistics published by Montpellier Tourisme for 2017, Spain was the leading country in terms of overnight stays by foreign customers in hotels and the second-placed country in terms of overnight stays by foreign customers in holiday homes. Italy was in fourth place in the holiday homes category <sup>(148)</sup>.
- (267) However, in this case, the choice of marketing media ensured that the marketing campaigns funded by the APFTE benefited only Ryanair's air transport services to Montpellier. These findings lead the Commission to conclude that, contrary to the assertions of Ryanair/AMS, the marketing agreements concluded with Ryanair did not contribute to the development of a 'Montpellier' brand.
- (e) The marketing campaigns ignored tourists not targeted by Ryanair's flight operations
- (268) As indicated in the previous chapter, the marketing campaigns purchased by the APFTE could not reach all Ryanair's customers. Moreover, the formal investigation, and in particular the information provided by Ryanair, has shown that the contribution made by AMS's marketing services was confined to the Ryanair environment and therefore mainly attracted potential Ryanair customers, without reaching other potential tourists not matching Ryanair's profile in terms of their origin, their choice of means of transport or their consumption behaviour.

<sup>(147)</sup> Article 3 of the constitution.

<sup>(148)</sup> See the statistics published on the website <https://www.montpellier-tourisme.fr/Preparer-Reserver/Pro-Presse/Chiffres-cles-Observatoire> (visited on 1 July 2019).

(269) As regards the geographical targeting, the Commission would point out that, in terms of tourism and business travel, most of the customers of Montpellier and its surrounding area are domestic and not international<sup>(149)</sup>. Moreover, the marketing agreements concluded with Ryanair/AMS at a cost of over [60-70] % of the APFTE's budget ignored foreign tourists who were not from Germany, Belgium or Great Britain. For example, the agreements ignored tourists from Spain, Italy and the United States, who, as the statistics referred to above show, actually contribute significantly to the economic benefits for Montpellier Méditerranée Métropole<sup>(150)</sup>. Furthermore, even among potential customers from Germany, Great Britain and Belgium, the targeting of the Wallonia, Rhineland-Palatinate, Yorkshire and Birmingham regions, while ignoring other regions of Germany, Great Britain and Belgium with a large number of inhabitants<sup>(151)</sup>, made no sense if the intention was to develop tourism.

(270) In addition, the Ryanair marketing campaigns did not target potential tourists – whether domestic or international – who chose other airlines or other means of transport such as trains (Montpellier is connected to the TGV network and has direct train links with Paris, Brussels and Spain), buses or cars. Ryanair itself has provided evidence in this respect, by indicating in particular that many customers go directly to the Ryanair website without using a search engine. Moreover, Ryanair refers to the low 'bounce rate' of the Ryanair website, which means that visitors to the homepage of the Ryanair website are likely to remain on the site and look at other pages instead of immediately leaving the site. This suggests that most visitors to the Ryanair website use the site specifically to purchase Ryanair flights rather than to look for ideas regarding possible destinations.

(271) Furthermore, Ryanair particularly attracts travellers interested in low prices, which rules out a large proportion of luxury tourism.

(2) The marketing campaigns did not have the effect alleged by Ryanair

(272) According to the APFTE, the Ryanair/AMS marketing campaigns served to promote Montpellier and its surrounding area in order to increase the economic benefits for the region.

(273) For its part, Ryanair/AMS argues that the marketing agreements predominantly affected not the load factor, but rather the proportion of Ryanair passengers accounted for by visiting passengers. However, the Commission is not convinced that the marketing agreements had this effect, for the following reasons.

(274) The Commission recalls that Ryanair explains the contribution of the marketing agreements as follows: the interest in concluding such an agreement for an airport or a region lies, on the one hand, in increasing the airport's visibility and the value of its brand ('brand building' to use Ryanair's words) and, on the other hand and more specifically, in increasing the proportion of visiting or incoming passengers from outside (tourists or business travellers compared with local passengers who live in the Montpellier region), because their economic benefits for the region are more significant.

(275) In this context of increasing the proportion of visiting passengers, Ryanair maintains that marketing agreements contribute less to an increase in the load factor of a given flight, which is determined mainly by the yield management carried out by Ryanair itself. The marketing campaigns allegedly help mainly to increase the proportion of the number of passengers predetermined by Ryanair's yield management that is accounted for by visiting passengers. With regard to the impact of marketing on passenger make-up, Ryanair alleges that without a marketing agreement, by default, the proportion between local passengers and visiting passengers is more or less the same for each flight. A marketing campaign for an airport or a region on Ryanair's website consequently helps to increase this proportion of visiting passengers.

<sup>(149)</sup> See recital 255.

<sup>(150)</sup> According to the report, the 'top 5 for overnight stays by foreign nationals in hotels' are as follows: 1. Spain, 2. United Kingdom, 3. Germany, 4. the United States and 5. Belgium. The 'top 5 for overnight stays by foreign nationals in holiday homes' are as follows: 1. Belgium, 2. Spain, 3. Germany, 4. Italy and 5. United Kingdom.

<sup>(151)</sup> See also recital 209.

- (276) However, the Commission would point out that this evidence shows that the purpose of the marketing agreements concluded with the APFTE was not to promote Montpellier as a destination through marketing campaigns, but rather – as indicated in recitals 189 et seq. to keep Ryanair at Montpellier airport. This means that the real impact of the marketing agreements in terms of advertising was not important to the contracting parties, which explains the choice of Ryanair/AMS made by the APFTE even though it was not economically justified, as shown in recitals 248 et seq.
- (277) Although this evidence is sufficient in itself to establish that the APFTE and its public members had no actual need of the marketing services of Ryanair/AMS <sup>(152)</sup>, the Commission will mention the evidence gathered by the formal investigation as regards the specific effects of the marketing agreements, given that Ryanair has commented on this issue.
- (278) The formal investigation has produced evidence, described in the following chapters, that the real advertising effect of the marketing campaigns was small.
- (a) The tangible contribution made by the marketing campaigns to the region is uncertain
- (279) First, the Commission concludes from the formal investigation that, contrary to the assertions of Ryanair and the APFTE, the tangible contribution made by the marketing campaigns is uncertain.
- (280) The formal investigation has not confirmed that customers genuinely seeking to promote a given region through advertising, without any link to the regional airport concerned, would have been interested in the marketing services actually provided by Ryanair/AMS at the price paid by the APFTE.
- (281) Moreover, there is no quantitative evidence of the tangible contribution made by the marketing campaigns purchased by the APFTE, but there is *prima facie* evidence that the marketing agreements concluded by the APFTE had no impact on the proportion of visiting tourists or on brand building.
- (b) Lack of quantitative evidence of the tangible contribution made by the marketing campaigns
- (282) As indicated in recital 229, there is no evidence quantitatively proving the alleged effect of the marketing agreements concluded by the APFTE with Ryanair/AMS.
- (283) Ryanair insists that the marketing agreements had a positive impact on the Montpellier region, or at least on its airport, owing to their effect of increasing the proportion of visiting tourists, and also on brand building and the future decisions of potential passengers. However, Ryanair argues that these effects are not measurable and consequently cannot be proven by statistics.
- (284) With regard to the main effect of the marketing agreements claimed by Ryanair, namely an increase in the proportion of visiting tourists using Montpellier airport, Ryanair confines itself to asserting that this effect is a known and obvious phenomenon in the sector. Despite its assertions, Ryanair has not provided any tangible evidence allowing the Commission to measure the positive effect of its marketing campaigns on Montpellier airport.

<sup>(152)</sup> See judgment of the General Court of 13 December 2018, *Ryanair and AMS v Commission*, T-165/16, ECLI:EU:T:2018:952, paragraph 258.

- (285) In short, neither Ryanair nor the French authorities have provided any evidence to show that the marketing agreements concluded by the APFTE had the effect of increasing the number of international tourists on the routes operated by Ryanair to Montpellier.
- (286) Although these were online marketing campaigns, Ryanair – even after having been asked to do so by the Commission – has been unable to provide statistics or performance indicators allowing the effect of the marketing agreements concluded with the APFTE to be measured (for example, a comparison of the proportion of international tourists from Mediterranean destinations with marketing agreements and without marketing agreements). It should be borne in mind that, according to Ryanair, AMS does not provide its customers with statistics allowing them to measure the performance of their online marketing campaigns and assess their effectiveness <sup>(153)</sup>.
- (c) Existence of *prima facie* evidence of the lack of effect of the marketing campaigns
- (287) What is more, the formal investigation has found *prima facie* evidence that the marketing agreements concluded by the APFTE had no impact on the proportion of visiting tourists or on brand building.
- (288) Ryanair argues that in the absence of a marketing agreement the proportion between passengers originating from the Montpellier region and visiting passengers would be determined arbitrarily by Ryanair's yield management <sup>(154)</sup>, which makes no distinction between incoming and outgoing passengers. The advantage of a marketing agreement, therefore, is that it increases the proportion of visiting tourists among the total number of passengers predetermined by Ryanair's yield management.
- (289) However, the argument put forward by Ryanair does not take account of the locational factors that make the Montpellier region particularly attractive to tourists by comparison with the Rhineland-Palatinate, Wallonia, Yorkshire or Midlands regions, and the influence of those factors on tourist flows between Montpellier and the airports of Frankfurt-Hahn, Leeds-Bradford, Birmingham and Brussels-Charleroi. Montpellier lies in a region that has been world-renowned for decades for its tourist assets, in particular its Mediterranean coast (87 kilometres of coastline with a large number of sandy beaches), mountains, vineyards, architectural and cultural heritage, tourist infrastructure and the mild climate compared with northern Europe. Even before Ryanair started operating from Montpellier airport, foreign tourists visiting the Montpellier region and foreign owners of second homes in Hérault came mainly from northern Europe, in particular Belgium, Switzerland, Germany, the Netherlands and the United Kingdom <sup>(155)</sup>. Moreover, the tourist attractiveness of the Montpellier region for passengers from Rhineland-Palatinate, Wallonia, Yorkshire or the Midlands is significantly higher than the attractiveness of those regions for passengers from Montpellier, particularly in summer. None of those regions, which all lie in northern Europe, offer a number and variety of tourist sites and climate and geographical conditions comparable to the Montpellier region. The flow of passengers is therefore by nature more towards Montpellier than from Montpellier to the other regions. This flow towards Montpellier stems from a demand that existed before the marketing agreements were concluded. This means that the proportion of visiting tourists among the passengers on Ryanair flights to Montpellier airport is naturally higher than the proportion of passengers having started their journey in Montpellier and travelling to Frankfurt-Hahn, Brussels-Charleroi, Leeds-Bradford or Birmingham, particularly in summer.
- (290) In addition, with regard to the effect on the proportion of visiting tourists and on brand building, Ryanair seems to want to attribute the benefit of its presence as an airline at a regional airport to the alleged effects of a marketing agreement for that region, without differentiating the real causal links. Ryanair has submitted arguments and documents intended to prove the positive influence of Ryanair's presence at an airport on the economic development of that airport and its brand building. However, this information shows that any increase in the number of

<sup>(153)</sup> See also recital 235.

<sup>(154)</sup> See footnote 56.

<sup>(155)</sup> For example, according to the article by Jean Rieaucu 'La Grande-Motte, une ville-station touristique' [La Grande-Motte: a resort-city] (Norois, 2000, Poitiers, Vol. 47, No 187, pp. 341-352), the foreign tourists visiting the resort of La Grande-Motte near to Montpellier between 1996 and 1999 were mainly Belgian, Swiss, German, Dutch and British. In 2006, almost 60% of second homes in Hérault that belonged to owners living abroad had Belgian, German or British owners, out of an approximate total number of 5 500 second homes (Geneviève Prady, 'Résidences secondaires: 30 000 propriétaires habitent à l'étranger', les Cahiers Transport Aménagement en Languedoc-Roussillon, No 32, December 2006).

visiting tourists stems merely from the fact that an airport in the region is being served by Ryanair. The arguments put forward by Ryanair in this context relate solely to the effects of Ryanair's presence at a given airport. It follows that these arguments have no relevance to the tangible benefit of marketing campaigns to the region. The information provided by Ryanair regarding the effect of its presence at a regional airport tends rather to indicate that a marketing agreement has no significant additional impact on the proportion of visiting tourists or on brand building. It is therefore clear that the choice of destination made by a Ryanair customer depends primarily on the offer of direct routes by Ryanair, given that Ryanair operates a point-to-point commercial model based entirely on direct routes. In such a situation, an additional marketing agreement does not offer any significant added value for the flow of visiting tourists.

(iii) *Supposing the marketing services did have an effect, they benefited Ryanair more than anyone else*

- (291) As indicated above, the Commission doubts that the marketing agreements concluded with Ryanair had a positive effect for the APFTE and its public funders. If the marketing agreements did have an effect, it was Ryanair that drew the most benefit. Assuming that these marketing campaigns did have the effect of encouraging customers of the airline Ryanair to purchase flight tickets to Montpellier, that effect would primarily have benefited Ryanair, and would have been the fruit of an effort to promote its services that Ryanair could have been expected to have taken on itself.
- (292) Although the Commission doubts that the marketing agreements concluded with Ryanair had any tangible effect, their potential effect might have been twofold. Firstly, a marketing campaign might have increased the load factor of the aircraft and, secondly, a marketing campaign might have helped to alter the balance between passengers visiting Montpellier and passengers living in the Montpellier region.
- (293) With regard to increasing the load factor of aircraft, the Commission notes that Ryanair's public statements indicate that the airline pursues an aggressive pricing strategy in order to win market share<sup>(156)</sup>. Ryanair achieves its load factor objectives through its pricing policy ('yield management')<sup>(157)</sup>.
- (294) Ryanair's yield management aims to encourage Ryanair's potential customers to choose a specific destination at a price that is ideal for Ryanair. A key element of Ryanair's yield management is to determine the maximum price that passengers are prepared to pay for their plane ticket while ensuring optimal loading of the aircraft in order to maximise Ryanair's revenues and capture the European market<sup>(158)</sup>. For Ryanair, there is a huge difference between high-season prices and low-season prices. This means that passengers travelling in high season are more profitable for Ryanair than passengers travelling in low season.
- (295) Thus particularly in summer, when tourist flows naturally head towards the south and especially hotter and sunnier destinations beside the sea, Ryanair has an interest in carrying as many passengers as possible who will be prepared to pay a high-season price. In the 2010 to 2019 period, for each of the destinations concerned, the number of flights operated in the summer season was higher than the number of flights in the winter season.

<sup>(156)</sup> See for example Ryanair's 2011 annual report, p. 44: 'When Ryanair commences new routes, its load factors initially tend to be lower than those on its established routes and its advertising and other promotional costs tend to be higher, which may result in initial losses that could have a material negative impact on the Company's results of operations as well as require a substantial amount of cash to fund. In addition, there can be no assurance that Ryanair's low-fares service will be accepted on new routes. Ryanair also periodically runs special promotional fare campaigns, in particular in connection with the opening of new routes. Promotional fares may have the effect of increasing load factors and reducing Ryanair's yield and passenger revenues on such routes during the periods that they are in effect. (See 'Item 4. Information on the Company—Route System, Scheduling and Fares.) Ryanair expects to have other substantial cash needs as it expands, including as regards the cash required to fund aircraft purchases or aircraft deposits related to the acquisition of additional Boeing 737-800s. There can be no assurance that the Company will have sufficient cash to make such expenditures and investments, and to the extent Ryanair is unable to expand its route system successfully, its future revenue and earnings growth will in turn be limited.' ([https://www.ryanair.com/doc/investor/2011/Annual\\_Report\\_2011\\_Final.pdf](https://www.ryanair.com/doc/investor/2011/Annual_Report_2011_Final.pdf), visited on 1 July 2019). See also the 2000 annual report, p. 7.

<sup>(157)</sup> See footnote 56.

<sup>(158)</sup> See also footnote 56.

- (296) Where there is a marketing campaign for a given region that is served by Ryanair, therefore, the promotion of destinations that allow Ryanair to obtain a high-season price will be in Ryanair's interest too, and if the marketing campaign has an impact Ryanair will benefit directly. Even in the absence of a marketing agreement, Ryanair would have an interest in carrying a high proportion of tourists wanting to visit Montpellier and its surrounding area.
- (297) In addition, a marketing campaign could help to attract passengers who would not have been persuaded by the price alone, or who would not have envisaged travelling with Ryanair to Montpellier if they had not been exposed to a marketing campaign. Passengers who are attracted through marketing campaigns consequently reduce the pressure on Ryanair to attract passengers solely through its pricing policy in order to achieve its load factor objectives.
- (298) If the marketing services sold to the APFTE did have an effect, therefore, this was likely to increase Ryanair's revenues and profits, particularly because Ryanair then had to reduce its prices less in order to fill its aircraft, or was enabled to increase the load factor of its aircraft.
- (299) As the 2013 and 2017 invitations to tender left the tenderer considerable freedom to choose the characteristics of the marketing services offered, they enabled Ryanair/AMS to choose the services in such a way that they primarily promoted its own air transport services to Montpellier on its website, a choice that was not penalised in the assessment of the invitation to tender because Ryanair was able to meet the only imperative condition of the tender by providing a link to the APFTE's website on Ryanair's own website.
- (300) It is clear in particular from Ryanair's annual reports and other documents provided by Ryanair in the course of the formal investigation that Ryanair does spend on marketing <sup>(159)</sup>, which enables it to attract passengers and helps to cover its fixed costs.
- (301) With regard to the impact of marketing campaigns on the balance between visiting and resident passengers, Ryanair has not provided any information on profit per passenger based on this typology. However, it is difficult to imagine that a marketing campaign likely to increase the number of tourists would not have a positive effect on the load factor or on fares, in which case Ryanair would benefit from that campaign in terms of filling its aircraft and improving the profitability of the route.
- (302) Lastly, Ryanair's annual reports show that the company has been making greater and greater profits from 'ancillary revenues', which, in addition to in-flight sales and supplementary services such as insurance and the like, include revenues from marketing agreements concluded with third parties such as hotel partners or car rental companies.

<sup>(159)</sup> See for example Ryanair's 2000 annual report, p. 8, or its 2011 annual report, p. 44.

(303) Although Ryanair claims that it is able to ensure a constant load factor, its annual reports show that for new destinations the load factor is often lower <sup>(160)</sup>, which would explain the need for additional marketing expenditure to compensate.

(304) In addition, other formal investigations conducted in State aid cases have shown that when load factors were insufficient Ryanair has in the past put pressure on regional airports, particularly by encouraging airport managers to increase their marketing budget in order to increase the load factor or to offset the losses that an insufficient load factor has caused <sup>(161)</sup>.

*(iv) Conclusion on the APFTE's actual need to purchase marketing services from Ryanair/AMS*

(305) The Commission concludes from the aforementioned evidence that neither the APFTE nor its public members actually needed the marketing services purchased from Ryanair/AMS, and that the purchase of those services was designed to justify the payments made to Ryanair for its flight operations, because the marketing services purchased were not genuinely capable of meeting the APFTE's public policy objectives.

**(b) Lack of evidence that the prices paid by the APFTE were in line with market prices**

(306) Establishing that the APFTE had no actual need to conclude the marketing agreements is sufficient to determine that an advantage was conferred. In this case, therefore, it is not necessary to determine whether the price paid for the marketing agreements was a market price, since the services provided did not constitute a real marketing service but rather corresponded to a subsidy for air transport services.

(307) However, given that Ryanair raised this point in its comments on the opening decision, the Commission would point out that the formal investigation has not found any evidence to show that the prices paid by the APFTE for the Ryanair/AMS marketing services were in line with market prices.

(308) According to Ryanair, AMS's marketing services had a market price. Ryanair puts forward the following arguments in support of its position:

— Compliance with public procurement rules guaranteed that the prices were market prices.

— AMS's prices were justified by the popularity of Ryanair's website.

— AMS's prices were favourable compared to those of other marketing service providers, and AMS's services were superior to the services of other marketing service providers.

— That the prices charged by Ryanair were market prices is proved by an economic analysis that Ryanair commissioned from an economic analysis firm, which compared Ryanair's rate card with the prices of other marketing service providers.

<sup>(160)</sup> See for example Ryanair's 2011 annual report, p. 44: 'When Ryanair commences new routes, its load factors initially tend to be lower than those on its established routes and its advertising and other promotional costs tend to be higher, which may result in initial losses that could have a material negative impact on the Company's results of operations as well as require a substantial amount of cash to fund. In addition, there can be no assurance that Ryanair's low-fares service will be accepted on new routes. Ryanair also periodically runs special promotional fare campaigns, in particular in connection with the opening of new routes. Promotional fares may have the effect of increasing load factors and reducing Ryanair's yield and passenger revenues on such routes during the periods that they are in effect. See 'Item 4. Information on the Company—Route System, Scheduling and Fares.' Ryanair expects to have other substantial cash needs as it expands, including as regards the cash required to fund aircraft purchases or aircraft deposits related to the acquisition of additional Boeing 737-800s. There can be no assurance that the Company will have sufficient cash to make such expenditures and investments, and to the extent Ryanair is unable to expand its route system successfully, its future revenue and earnings growth will in turn be limited.' ([https://www.ryanair.com/doc/investor/2011/Annual\\_Report\\_2011\\_Final.pdf](https://www.ryanair.com/doc/investor/2011/Annual_Report_2011_Final.pdf), visited on 1 July 2019). See also the 2000 annual report, p. 9.

<sup>(161)</sup> See 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 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), recitals 102, 547 and 548.

(i) *Lack of cost-benefit analysis, price comparison, or interest in minimising costs on the part of the APFTE*

- (309) As indicated in recital 230, the Commission has not found any evidence to show that the APFTE conducted a cost-benefit analysis or a price comparison or that it showed any interest in minimising costs for the marketing campaigns purchased from Ryanair/AMS.
- (310) Invitations to tender were organised for the 2013 and 2017 marketing agreements; the 2010 agreement and its successive amendment and renewal agreements were not preceded by an invitation to tender. For the 2010 agreement in particular, therefore, the APFTE does not seem to have tried to minimise the purchase cost of the desired marketing services.
- (311) Moreover, as indicated in recital 225, an entity wanting solely to purchase marketing services to promote a given area would have no interest in including in the agreements concluded with the provider of those marketing services obligations regarding the operation of air transport services. Nor would it have any interest in including obligations of that kind in invitations to tender organised in order to purchase marketing services. The inclusion of such obligations in agreements and invitations to tender significantly limits the number of undertakings that can provide the requested marketing services, without any objective reason<sup>(162)</sup>. The additional obligations in respect of air transport services are likely to increase the price of the marketing services by comparison with a marketing agreement that does not impose such obligations.

(ii) *The issue of invitations to tender did not guarantee market prices*

- (312) Contrary to Ryanair's assertions, the Commission concludes that, in the circumstances of this case, the issue of invitations to tender did not guarantee market prices.
- (313) Firstly, as shown in recitals 186 et seq., the invitation to tender was in reality for the granting of public funding. The Commission would point out that, in such a situation, the issue of an invitation to tender cannot rule out the possibility of an advantage<sup>(163)</sup>.
- (314) Secondly, the Commission concludes from the circumstances under which the two invitations to tender were organised and conducted that they could not guarantee a market price, because they were designed in such a way that Ryanair/AMS would emerge as the ideal candidate and would prevail over other candidates<sup>(164)</sup>. In the 2013 invitation to tender, no competitor submitted a bid for the Ryanair lots. In the absence of a competing bid, it is impossible to determine whether the bid submitted by Ryanair/AMS corresponded to a market price. With regard to the 2017 invitation to tender, the Commission notes that the competing bid for the Ryanair lots was exactly EUR [...] higher than Ryanair's bid for each of the lots, despite the fact that the services offered by Ryanair and by its competitor were very different in nature. Neither the 2013 invitation to tender nor the 2017 invitation to tender can therefore be used to answer the question regarding the market price of the services provided by Ryanair/AMS to the APFTE.
- (315) Moreover, at the time of the 2013 and 2017 invitations to tender, the Commission had already publicly announced its intention to target marketing agreements concluded directly between Ryanair/AMS and regional airports.
- (316) Lastly, Ryanair has been unable to identify a case in which Ryanair/AMS won an invitation to tender for a marketing agreement covering a region where there was no Ryanair aviation activity, which would have given a more definite idea of the appropriate price for regional marketing in the strict sense of the term<sup>(165)</sup>.

(iii) *The benchmarking submitted by Ryanair does not provide confirmation of the existence of a market price*

- (317) Furthermore, Ryanair claims that the prices paid by the APFTE for the Ryanair/AMS services were in line with market prices for those marketing services.

<sup>(162)</sup> See also paragraph 96 of the Notice on the notion of State aid.

<sup>(163)</sup> See paragraph 89 of the Notice on the notion of State aid.

<sup>(164)</sup> See also recitals 150 et seq.

<sup>(165)</sup> The example given by Ryanair has not been accepted by the Commission, because it involved an invitation to tender for marketing in a region in which Ryanair was in fact present at two airports.

- (318) However, the Commission concludes from the formal investigation that the arguments put forward by Ryanair do not demonstrate the existence of a market price.
- (319) In support of its argument, Ryanair has submitted a study commissioned from an economic analysis firm, which compares the prices of AMS's marketing agreements with the prices charged by other online marketing service providers and concludes that they were in line with market prices.
- (320) However, the Commission does not regard this analysis as providing a relevant basis for determining whether the marketing payments made by the APFTE to Ryanair/AMS were in line with market prices. The study submitted by Ryanair compares only the gross prices indicated on the rate cards of several marketing service providers, without taking account of discounts applied to arrive at the actual prices. From the formal investigation the Commission concludes that the granting of discounts on the gross prices indicated in rate cards is a common market practice, and that the discounts applied to marketing agreements can vary considerably from one agreement to another, even for the services of the same undertaking. Discounts are therefore a significant factor in a comparison of marketing service prices, a factor that should have been taken into account in the study submitted by Ryanair.
- (321) Furthermore, the study submitted by Ryanair suggests that there is no direct correlation between the number of visitors to a website and the price of an advertisement in terms of the cost per thousand displays (coût par mille affichages – 'CPM') <sup>(166)</sup> on that website. The Commission would point out that, in a market economy approach, the price that a customer is prepared to pay for a marketing service depends on the expected return on investment. The service providers compared in the study submitted by Ryanair and their prices in terms of CPM are clearly not comparable without taking account of other factors, omitted from the study, such as the purchasing posture of the visitor to the website. The study submitted by Ryanair does not contain any specific elements taking account of this factor. The study compares websites with very different numbers and traffic that target very different customers, whose readiness to purchase and intention to purchase vary to a greater or lesser extent. Among the sample chosen, some websites target customers wanting to buy plane tickets direct, whereas other websites target customers preparing for their next trip in a more general fashion.
- (322) The various other bilateral marketing agreements submitted by Ryanair at the Commission's request – the precise content of which is confidential – vary significantly in their durations, scope and prices. There is therefore no price transparency in this market.
- (323) Moreover, an analysis of the bids submitted for lots 4 and 5 of the 2017 invitation to tender shows that advertising for the region on websites comparable in terms of services – such as those of the railway companies SNCF and RENFE – could have been obtained at a much lower price.
- (324) Lastly, even if benchmarking had been possible in respect of the marketing agreements concluded by the APFTE (something the Commission was unable to confirm in the formal investigation), such benchmarking could not have shown that the APFTE was paying a market price. Given the real reason for concluding the marketing agreements, set out in detail in recitals 192 et seq., benchmarking could have shown only that the amount of the aid paid to Ryanair/AMS via the marketing agreements was sufficient to ensure that Ryanair served Montpellier airport.

#### 7.1.3.5. Conclusion

- (325) For these reasons, the Commission considers that the marketing agreements in question conferred an economic advantage on Ryanair.

<sup>(166)</sup> According to Ryanair, the prices of marketing campaigns on the Ryanair website are based on the CPM.

7.1.4. *Selectivity*

- (326) The measures in question are bilateral agreements concluded between the APFTE and Ryanair/AMS on terms which have not been made public and which were not subject to conditions of purchase standardised by the APFTE and applied to Ryanair's competitors.
- (327) France maintains that the putting out to tender of the 2013 and 2017 agreements proves that there was no selectivity, as the invitations to tender were open to all interested companies.
- (328) Ryanair has not put forward any arguments on the selectivity of the marketing agreements as such, but only in respect of the marketing agreements and the airport services agreements considered jointly. In this context, Ryanair complains that the Commission has not investigated whether other airlines wanting to serve Montpellier airport might have obtained the same terms.
- (329) The marketing agreements in question are individual measures, given that they were not concluded on the basis of an aid scheme within the meaning of Article 1(d) of Council Regulation (EU) 2015/1589 <sup>(167)</sup>, i.e. 'any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount'.
- (330) The 2010 marketing agreement (and its amendment and renewals) was concluded directly with AMS without a prior invitation to tender and without having been based on an act meeting the requirements of Article 1(d) of Regulation (EU) 2015/1589.
- (331) The minutes of the APFTE's inaugural General Meeting of 24 June 2010 reflect a clear desire to continue the previous agreements with Ryanair/AMS, without looking for an alternative service provider for those destinations and that budget, and in the absence of rules governing that type of payment.
- (332) With regard to the 2013 and 2017 marketing agreements, the Commission does not consider that the invitations to tender organised by the APFTE were sufficient to effectively open the procurement to other service providers.
- (333) The Commission would point out that between the conclusion of the 2010 and 2013 marketing agreements it had adopted decisions opening formal investigations into, among others, the French airports of Nîmes, Pau and Angoulême, which ended with negative final decisions, and which likewise concerned marketing agreements concluded by Ryanair/AMS. The Commission's intention to assess the conformity of such agreements with the State aid rules and the need for those concerned to halt or at least conceal their practices were therefore evident.
- (334) The APFTE's minutes and records show that it felt obliged to put the 2010 marketing agreements out to tender when they expired at the end of 2013, given the EU rules on public procurement. The APFTE also wanted to ensure that Ryanair would maintain 'the flows' – i.e. the tourist traffic generated by the flight routes operated by Ryanair to Frankfurt-Hahn, Brussels-Charleroi, Leeds-Bradford and Birmingham. This explains why the terms of the invitation to tender were oriented towards flight routes, rather than towards online advertising services <sup>(168)</sup>.

<sup>(167)</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU (OJ L 248, 24.9.2015, p. 9).

<sup>(168)</sup> See the record of the APFTE's Executive Committee meeting of 4 July 2013, p. 1: '[The President of the APFTE] stated that the association was under an obligation to launch an invitation to tender for the online marketing agreements, as the agreement with Airport Marketing Services concluded in 2010 was about to expire', and p. 2: 'As the agreement with Airport Marketing Services was about to expire, only the flows covered by that agreement would be put out to tender, destination by destination.'

- (335) As shown in recitals 63 et seq. and 202 et seq., the 2013 and 2017 invitations to tender were designed in such a way as to favour the services offered by Ryanair/AMS so as to continue paying Ryanair and keep it operating at Montpellier airport. Owing to the obligations imposed in terms of the destinations and regions concerned and the marketing services that had to be offered, no service provider other than Ryanair – either marketing firm or airline – was in a position to compete with Ryanair in these invitations to tender.
- (336) In 2013 Ryanair was the only company to bid for lots 1 to 4 of the invitation to tender, which concerned destinations already operated by Ryanair. On the other hand, Ryanair did not bid for lot 5 (the guide price for which was much lower than the guide prices for lots 1 to 4), which did not concern a Ryanair destination (another airline was already operating flights to that destination from Montpellier).
- (337) With regard to the 2017 invitation to tender, the Commission would point out that, at the end of this process, the APFTE implemented agreements with Ryanair only for the first three lots (for which the guide prices were much higher than the guide prices for lots 4 to 7). Thus the additional lots were clearly a device to make the choice of Ryanair following the invitation to tender appear more credible. Moreover, the competing bid for these three lots – which was very different in terms of the marketing services offered – was precisely EUR [...] higher for each lot, but the APFTE did not question this consistent price difference. In addition, the APFTE based its decision to choose Ryanair on the fact that its marketing offer was better targeted at the intended customers, although there was nothing to show that the marketing services offered by Ryanair genuinely targeted one of the regions mentioned in the invitation to tender (Wallonia, Yorkshire, and Rhineland-Palatinate). In the services actually provided by Ryanair on the basis of this marketing agreement, the targeting of regions was limited to the placement of the advertisement on specific language or national versions of the Ryanair website (English, German, Dutch, and Belgian (in French and in Dutch) websites), which shows that the targeting was more national than regional.
- (338) The Commission considers that, under those circumstances, the 2013 and 2017 invitations to tender were not such as to guarantee fair competition between Ryanair and other undertakings, and were not intended to do so.
- (339) The Commission concludes that the specifications of these 2013 and 2017 invitations to tender oriented the choice of successful tenderer towards Ryanair from the outset, and that the criteria applied to the choice of successful tenderer for lots 1 to 3 of the invitation to tender were designed to ensure that only Ryanair would be chosen.
- (340) The Commission therefore considers that the 2010, 2013 and 2017 marketing agreements and their amendments and renewals are one-off measures, concluded individually between the parties, containing specific contractual obligations and not applying public or otherwise predetermined tariffs applied by the APFTE. On the basis of those marketing agreements Ryanair and AMS received an economic advantage that they would not have received under normal market conditions. In accordance with settled case-law, it should be presumed that individual measures on the basis of which a beneficiary receives an advantage within the meaning of Article 107(1) TFEU are selective <sup>(169)</sup>.
- (341) Consequently, the Commission concludes that the economic advantage conferred on Ryanair by the 2010, 2013 and 2017 marketing agreements and their respective amendments and renewals is selective.

<sup>(169)</sup> See judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraphs 60 et seq. See judgment of the Court of Justice of 30 June 2016, *Commission v Belgium*, C-270/15 P, ECLI:EU:C:2016:489, paragraph 49. See also judgment of the General Court of 13 December 2018, *Ryanair and Airport Marketing Services v Commission*, T-53/16, ECLI:EU:T:2018:943, paragraphs 165 et seq., and judgment of the General Court of 13 December 2018, *Ryanair and Airport Marketing Services v Commission*, T-165/15, ECLI:EU:T:2018:953, paragraphs 402 et seq.

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

- (342) When financial aid granted by a Member State strengthens the position of undertakings compared with other undertakings competing in intra-Community trade, that trade must be regarded as affected by that aid. In accordance with the settled case-law<sup>(170)</sup> of the Court of Justice, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings in markets open to competition.
- (343) In the present case, Ryanair is in competition with other airlines on the intra-EU air transport market, which is a market characterised by keen competition between airlines. By distorting competition between airlines operating within the internal market, the agreements in question may also distort trade between Member States. Moreover, the arguments put forward by Ryanair with regard to the possible existence of an advantage show that regional airports in Great Britain, Spain, France or Italy are in competition to attract Ryanair, whereas, from Ryanair's perspective, these airports are substitutable<sup>(171)</sup>. The granting of aid to attract Ryanair to a specific regional airport may therefore also distort competition between airports within the European Union.
- (344) The Commission concludes that the agreements in question affect trade between Member States and distort competition.

#### 7.1.6. *Conclusion as regards the existence of aid*

- (345) In the light of the above, the Commission concludes that the measures in question constitute State aid within the meaning of Article 107(1) TFEU granted to Ryanair.

### 7.2. **Incompatibility of the aid with the internal market**

- (346) France has not provided any analysis of compatibility with the internal market, because it considers that the payments in question do not constitute State aid. For its part the Commission does not have any information to show that the measures in question are compatible with the internal market. The only basis of compatibility that might possibly be considered is Article 107(3)(c) TFEU, as interpreted by the 2014 guidelines with regard to start-up aid to airlines (Section 5.2.).
- (347) The Commission would point out that the marketing agreement of 16 September 2010, its amendment, the two letters of undertaking to renew the 2010 agreement and the agreements of 22 November 2013 were all concluded before the 2014 guidelines were published. On the subject of the compatibility of aid granted before the 2014 guidelines entered into force, point 174 of the 2014 guidelines refers to the rules in force at the time when the aid was granted, i.e. in this case the 2005 Community guidelines on financing of airports and start-up aid to airlines departing from regional airports<sup>(172)</sup> ('the 2005 guidelines'). The 2014 guidelines do apply to the marketing agreement of 19 May 2017.
- (348) Both the 2005 guidelines and the 2014 guidelines precisely define the principles of compatibility developed by case-law and the Commission's practice in its earlier decisions. Operating aid granted to airlines may be declared compatible by the Commission where it contributes to the development of smaller airports through a net increase in traffic on new routes, where the aid is necessary in the sense that it is not granted for a route already operated by the same or another airline or a similar route<sup>(173)</sup>, where it is limited in time and where the route for which the aid is granted is likely to become profitable<sup>(174)</sup>, where the amount is linked to the net development of traffic and where the aid is granted transparently and without discrimination, where it is not combined with any other type of aid and where the amounts paid comply with the proportionality principle<sup>(175)</sup>.

<sup>(170)</sup> See judgment of the General Court of 30 April 1998, *Het Vlaamse Gewest (Flemish Region) v Commission*, T-214/95, ECLI:EU:T:1998:77.

<sup>(171)</sup> See the non-confidential version of Ryanair's comments of 15 January 2019: 'Ryanair has a large choice of airports in Europe. Airports in the UK, Spain, France or Italy compete for Ryanair routes and capacity, and are substitutable from Ryanair's perspective. The similarities between the Airport and these other airports are significant enough to render them comparable for MEO test purposes.'

<sup>(172)</sup> Communication from the Commission – Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).

<sup>(173)</sup> See points 71 to 75 and 79(b) and (c) of the 2005 guidelines, and points 139, 140, 141 and 151 of the 2014 guidelines.

<sup>(174)</sup> See point 79(b), (d) and (i) of the 2005 guidelines, and point 147 of the 2014 guidelines.

<sup>(175)</sup> See point 79(g) and (h) and point 80 of the 2005 guidelines, and points 101, 150, 152 and 153 of the 2014 guidelines.

- (349) However, in the present case, none of the marketing agreements in question satisfy these tests.
- (350) In the light of the above, the Commission concludes that the State aid involved in the agreements in question is incompatible with the internal market.

### 7.3. Unlawfulness of the aid

- (351) Article 108(3) TFEU states that ‘the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid [...]. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.’.
- (352) In the present case, it is plain that the agreements concerned were implemented before being notified to the Commission.
- (353) The Commission has not identified any legal basis exempting France from notifying the aid.
- (354) The Commission therefore considers that the payments made to Ryanair on the basis of the 2010, 2013 and 2017 marketing agreements and their amendments and renewals constitute aid granted in breach of Article 108(3) TFEU.

## 8. RECOVERY

- (355) In accordance with the TFEU, if the Commission finds that aid is not compatible with the internal market, it is to decide that the Member State concerned must abolish or alter the aid <sup>(176)</sup>. The Union courts have consistently held that the aim of obliging a Member State to abolish aid found by the Commission to be incompatible with the internal market is to restore the previous situation <sup>(177)</sup>.
- (356) In this context, the Union courts have taken the view that this aim is achieved once the beneficiary has repaid the amounts granted by way of unlawful aid. By repaying the aid, the beneficiary forfeits the advantage which it has enjoyed over its competitors in the internal market, and the situation prior to payment of the aid is restored <sup>(178)</sup>.
- (357) In line with this 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’.
- (358) Consequently, given that the measures in question were implemented in breach of Article 108(3) TFEU and are considered to constitute incompatible aid, this aid must be recovered in full in order to restore the situation that existed in the internal market prior to its granting. The recovery must cover the period from when the aid was made available to the beneficiary until its actual recovery. The amount to be recovered must bear interest until its actual recovery.
- (359) The Commission regards Ryanair and AMS as a single economic entity <sup>(179)</sup>. Ryanair and AMS will therefore be jointly and severally liable for repaying the aid paid by the APFTE to either of them.
- (360) From the information available to the Commission on the date of adoption of this decision, the sums to be recovered are those that the APFTE actually paid to Ryanair or its subsidiary AMS between 2010 and 2019 on the basis of the marketing agreements concluded during that period, as indicated in Table 4 (see recital 82).

<sup>(176)</sup> Judgment of the Court of Justice of 12 July 1973, *Commission v Germany*, C-70/72, ECLI:EU:C:1973:87., paragraph 13.

<sup>(177)</sup> Judgment of the Court of Justice of 21 March 1990, *Belgium v Commission*, C-142/87, ECLI:EU:C:1990:125, paragraph 66.

<sup>(178)</sup> Judgment of the Court of Justice of 17 June 1999, *Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.

<sup>(179)</sup> See recital 156.

## 9. CONCLUSION

- (361) The Commission finds that France unlawfully implemented marketing agreements signed between the APFTE and Ryanair/AMS between 2010 and 2018 in breach of Article 108(3) TFEU. Given that the sums paid to Ryanair/AMS on the basis of these marketing agreements constitute aid incompatible with the internal market, they must be recovered in full in order to restore the situation that existed in the internal market prior to their granting,

HAS ADOPTED THIS DECISION:

### *Article 1*

The measures implemented by France on the basis of the marketing agreements concluded between the APFTE and Ryanair or its subsidiary Airport Marketing Services between 2010 and 2018 – namely the agreement of 16 September 2010, the agreements of 22 November 2013 and the agreements of 19 May 2017 (and their amendments and renewal agreements) – constitute State aid to Ryanair and its subsidiary Airport Marketing Services which is unlawful and incompatible with the internal market within the meaning of Article 107(1) TFEU.

### *Article 2*

1. France shall recover the aid referred to in Article 1 from the beneficiaries.
2. Ryanair and Airport Marketing Services are to be regarded as a single economic entity and are therefore jointly and severally liable for repaying the aid paid by the APFTE to either of them.
3. The sums to be recovered shall bear interest from the date on which they were placed at the disposal of the beneficiary until that of their actual recovery.
4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.
5. France shall cancel all outstanding payments of the aid referred to in Article 1 with effect from the date of notification of this Decision.

### *Article 3*

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

### *Article 4*

1. Within two months of notification of this Decision, France shall communicate the following information to the Commission:
  - (a) the total amount (principal and recovery interests) to be recovered from the beneficiaries;
  - (b) a detailed description of the measures already adopted and planned for the purpose of complying with this Decision;
  - (c) documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. France shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. At the Commission's request, it shall immediately submit all information on the measures already adopted and planned for the purpose of complying with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiaries.

*Article 5*

This Decision is addressed to the French Republic.

Done at Brussels, 2 August 2019.

*For the Commission*  
Margrethe VESTAGER  
*Member of the Commission*

---



ISSN 1977-0677 (electronic edition)  
ISSN 1725-2555 (paper edition)



**Publications Office of the European Union**  
L-2985 Luxembourg  
LUXEMBOURG

**EN**