

COMMISSION DECISION (EU) 2015/1226**of 23 July 2014****on State aid SA.33963 (2012/C) (ex 2012/NN) implemented by France in favour of Angoulême Chamber of Commerce and Industry, SNC-Lavalin, Ryanair and Airport Marketing Services***(notified under document C(2014) 5080)***(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⁽¹⁾,

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⁽²⁾, and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letter dated 26 January 2010, the airline Air France lodged a complaint about advantages which the airline Ryanair was allegedly enjoying at a number of regional and local French airports. In the case of Angoulême Brie Champniers airport ('Angoulême airport'), the complaint also referred to financial support allegedly received by the managing body of the airport, Angoulême Chamber of Commerce and Industry ('Angoulême CCI').
- (2) By letter dated 16 March 2010, the Commission sent the French authorities a non-confidential version of the complaint and asked them for explanations concerning the measures at issue. The French authorities sent answers by letters dated 31 May and 7 June 2010.
- (3) By letter dated 2 November 2011, Air France sent additional information in support of its complaint. The Commission forwarded this information to France and asked it for additional information by letter dated 5 December 2011. On 22 December 2011 the French authorities requested an extension of the deadline for replying, to which the Commission agreed by letter dated 4 January 2012. The French authorities sent their comments and their replies by letter dated 20 January 2012.
- (4) By letter dated 21 March 2012, the Commission notified France of its decision to initiate the formal investigation procedure laid down in Article 108(2) TFEU concerning the potential aid to Angoulême airport and to the airline Ryanair. The Commission decision (the 'opening decision') was published in the *Official Journal of the European Union*⁽³⁾ on 25 May 2012.
- (5) The French authorities sent their comments and their replies to the questions set out in the opening decision and to the Commission's subsequent questions by letters dated 22 May and 21 September 2012.
- (6) Air France, Ryanair and Airport Marketing Services ('AMS') submitted their comments within the deadlines provided for in the opening decision. By letters dated 20 August 2012 and 3 May 2013, the Commission forwarded these comments to the French authorities. France, by letters dated 12 September 2012 and 7 June 2013, informed the Commission that it did not have any additional observations to make in this respect.

⁽¹⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty, where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union', 'common market' by 'internal market' and 'Court of First Instance' by 'General Court'. The terminology of the TFEU will be used throughout this Decision.

⁽²⁾ OJ C 301, 5.10.2012, p. 1.

⁽³⁾ OJ C 149, 25.5.2012, p. 29.

- (7) The Commission received additional comments from Ryanair dated 13 April 2012, 10 April 2013, 20 December 2013, and 17 and 31 January 2014. These additional comments were sent to France by letters dated 13 July 2012, 3 May 2013, 9 and 23 January 2014 and 4 February 2014. France, by letters dated 17 July 2012, 4 June 2013, 29 January 2014, 3 February 2014 and 21 May 2014, informed the Commission that it did not have any additional observations to make in this respect.
- (8) On 24 February, 13 and 19 March 2014, following the adoption of the Guidelines on State aid to airports and airlines (the 'new guidelines') ⁽⁴⁾, the Commission invited France and the interested parties to submit their comments on the application of the new guidelines, in particular to the present case. On 19 March 2014, the French authorities submitted observations in this regard.
- (9) Furthermore, on 15 April 2014, a notice was published in the *Official Journal of the European Union* ⁽⁵⁾, inviting the Member States and interested parties to submit their comments, including in this case, in the light of the entry into force of the new guidelines. Air France and Transport & Environment submitted their comments within the stipulated deadlines. By letters dated 28 May 2014, the Commission forwarded these comments to the French authorities. France, by letter dated 21 May 2014, informed the Commission that it did not have any observations to make.

2. THE FACTS

2.1. Operators and owners of the airport infrastructure

- (10) Angoulême airport was managed by Angoulême CCI until 2011. By ministerial decree of 20 September 2002, the State, which owned the airport at that time, granted a concession over the airport to Angoulême CCI for five years. The agreement ⁽⁶⁾ concluded by Angoulême CCI with the state provided that Angoulême CCI was responsible for the construction, maintenance and operation of the airport. To that end, Angoulême CCI, acting as the operator and manager of Angoulême airport ('CCI-airport'), had separate accounting from Angoulême CCI's general department ⁽⁷⁾. By an order of the Prefect of 22 December 2006, the ownership of Angoulême airport was then transferred to the *Syndicat mixte des aéroports de Charente* ('SMAC'). SMAC therefore replaced the state as the conceding authority on 1 January 2007. From that date, all the investments and financing of the airport were the responsibility of SMAC.
- (11) SMAC is responsible for fitting out, equipping, maintaining, managing and operating Angoulême airport, and includes the *département* of Charente ('CG16'), the *Communauté d'agglomération du grand Angoulême* ('Comaga'), the *Communauté des communes de Braconne Charente* ('CCBC'), Angoulême CCI, the *Communauté des communes de Cognac* ('CCC') and the Cognac Chamber of Commerce and Industry. As stated in the opening decision ⁽⁸⁾, SMAC's statutes provide for the allocation between its members of the expenditure incurred in relation to Angoulême airport.
- (12) After extending the concession to Angoulême CCI until 31 December 2008, SMAC concluded a management subcontracting agreement with Angoulême CCI on 22 January 2009 ('2009 subcontracting agreement'). With effect from 1 January 2009, for a period of three years, the investments undertaken for airport operations were the responsibility of SMAC rather than CCI-airport.
- (13) Lastly, following a competitive tendering procedure, since 1 January 2012 the management and operation of the airport have been the responsibility of the private company SNC-Lavalin ⁽⁹⁾.

2.2. Airport characteristics and traffic

- (14) As was pointed out in the opening decision, Angoulême airport is located in the *département* of Charente and is open to national and international commercial traffic. It is located 75 km from Périgueux and Limoges airports, 80 km from Niort airport, and approximately 120 km from La Rochelle and Bordeaux airports.

⁽⁴⁾ OJ C 99, 4.4.2014, p. 3.

⁽⁵⁾ OJ C 113, 15.4.2014, p. 30.

⁽⁶⁾ Concession agreement of 22 April 2002 ('concession agreement').

⁽⁷⁾ Article 37 of the specifications in the concession agreement.

⁽⁸⁾ See recital 13 of the opening decision, Table 2.

⁽⁹⁾ As stated in recital 23 of the opening decision, SMAC decided to use a public procurement procedure.

Table 1

Airports neighbouring Angoulême airport ⁽¹⁾

	Niort	Périgueux	Limoges	La Rochelle	Bordeaux
Duration in mins	93	106	79	119	102
Distance in km	108	110	97	156	127

⁽¹⁾ The journey times and distances given in this table are taken from the Michelin route planner and use the criterion of the quickest journey time

- (15) A scheduled air service subject to a public service obligation (PSO) between Angoulême and Lyon, operated by Twin Jet, was discontinued in April 2007. In 2008 and 2009, Ryanair operated a service to London Stansted from April to October, with a frequency of three weekly rotations. From 2004 to 2011, the other commercial movements at Angoulême airport were mainly flights by flying clubs, helicopter clubs and business flights.
- (16) Passenger traffic at Angoulême airport, as summarised in Table 2 below, places it in category D of paragraph 15 of the 2005 Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports ⁽¹⁰⁾ (the '2005 Guidelines').

Table 2

Traffic and movements at Angoulême airport ⁽¹⁾

	Passengers	of which, Ryanair	% scheduled service	Movements
2004	5 496	0	85,53 %	26 731
2005	6 789	0	89,45 %	28 328
2006	6 553	0	94,26 %	24 381
2007	2 362	0	66,30 %	22 868
2008	25 596	24 494	95,69 %	22 650
2009	28 216	27 490	97,43 %	31 358
2010	345	0	0,00 %	24 632
2011 ⁽²⁾	394	0	0,00 %	26 060

⁽¹⁾ Traffic and movements according to the letter from the French authorities dated 20 January 2012.

⁽²⁾ Figures for January to November 2011

- (17) Analysis of Angoulême airport's financial situation shows that the management of the platform made substantial losses in the periods in question. The total contributions paid to the airport managing body for operating the airport during the period 2004-2011 were EUR 10 232 310 ⁽¹¹⁾. Non-state investments made by the airport managing body during the period 2004-2011 amounted to EUR 1 277 000. They were financed by the interested regional and local authorities, then by SMAC and CCI-airport ⁽¹²⁾.

⁽¹⁰⁾ OJ C 312, 9.12.2005, p. 1.

⁽¹¹⁾ See recital 28 of this Decision.

⁽¹²⁾ See recital 21 of this Decision.

3. DETAILED DESCRIPTION OF THE MEASURES

3.1. Financial support for the airport

3.1.1. Contractual framework for subsidies to the airport

- (18) Part of Angoulême airport's investments and operating deficit were paid for by CG16, Comaga and CCBC under a partnership agreement ⁽¹³⁾ ('2002 Agreement') with Angoulême CCI. This agreement followed the award by the state of a local public equipment concession. As a result, until 31 December 2006, CG16, Comaga and CCBC provided financial support to Angoulême CCI for operating the airport ⁽¹⁴⁾. SMAC took over the commitments referred to in the 2002 Agreement with effect from 1 January 2007.
- (19) Under the 2009 subcontracting agreement, SMAC covered the operating deficit of CCI-airport for the period 2009-2011. The breakdown of the contributions between the member organisations of SMAC in respect of the expenditure attributable to Angoulême airport remain, for this period, identical to that provided for by the 2002 Agreement.
- (20) Lastly, as noted above, SNC-Lavalin has been operating Angoulême airport since 1 January 2012 under a six-year public operating contract awarded by SMAC ⁽¹⁵⁾. Every participant in the call for tenders ⁽¹⁶⁾ had to propose a strategic development plan for a 'baseline scenario' ⁽¹⁷⁾ and a 'proactive scenario' ⁽¹⁸⁾. The delegating authority chose the second scenario.

3.1.2. Investments in infrastructure

- (21) Details of the contributions actually paid to CCI-airport by the different public authorities to finance investments in airport infrastructure are set out in the opening decision ⁽¹⁹⁾. The Commission points out that the non-state investments made by CCI-airport during the period 2004-2011 amounted to EUR 1 277 000. They were financed by the interested regional and local authorities (CG16, Comaga, CCBC), then by SMAC and CCI-airport.
- (22) These investments were intended to extend the runway by 50 metres so that Angoulême airport had the technical characteristics required to host airlines that could contribute to the growth of air traffic. The French authorities also argue that the work to fit out the airport and the modular installations were intended to comply with the regulations applicable to establishments serving the public.
- (23) With the exception of state prerogatives, SMAC has been responsible for the cost and supervision of investments for fitting out and equipment since 1 January 2012. Although no definitive programme has been drawn up, these investments were estimated at EUR 1 200 000 during the period 2012-2017 ⁽²⁰⁾.

⁽¹³⁾ Agreement of 23 May 2002 on the financing conditions for the operation and development of Angoulême Brie Champniers airport.

⁽¹⁴⁾ The breakdown of these contributions is set out in Table 2 of the opening decision.

⁽¹⁵⁾ Tender document by SNC-Lavalin dated 19 July 2011, accepted by SMAC on 8 August 2011 following talks on 23 June 2011.

⁽¹⁶⁾ Contract notice published on 9 March 2011 in the French Official Bulletin of Public Procurement Notices (*Bulletin Officiel des Annonces des Marchés Publics* — BOAMP) No 48-B, announcement No 222.

⁽¹⁷⁾ The baseline scenario corresponds to the objectives and results that the operator regards as realistic to verify and assume over the duration, and under the performance conditions, of the contract that is awarded to it, having regard to the economic circumstances, the specific features of the contract and the outlook for air transport, and of the situation and specific environment of the platform.

⁽¹⁸⁾ The proactive scenario is intended to ensure the development of scheduled commercial services. It evaluates the impact on the airport's accounts and, where appropriate, the operator's remuneration and the financial impact of the additional financial contributions to be provided by the *syndicat*, outside the contract.

⁽¹⁹⁾ See recital 30 of the opening decision (cited above), Table 3.

⁽²⁰⁾ Discussion by SMAC, 23 June 2011.

3.1.3. *Financing of the costs associated with state tasks*

- (24) The 2002 Agreement explicitly excludes from its scope investments directly linked to state tasks. According to the French authorities, these costs ⁽²¹⁾ cover operational expenditure, safety equipment ⁽²²⁾ and security equipment ⁽²³⁾. This expenditure can be broken down as follows:

Table 3

Security and safety expenditure

(EUR)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Safety	244 858	234 727	243 989	255 209	292 450	255 555	536 194	517 307	463 595	315 065
Security	59 490	108 626	120 002	130 078	111 919	59 943	276 869	254 428	57 206	45 269
Overheads	0	0	0	0	0	0	0	77 174	52 080	36 033
Total	304 348	343 353	363 991	385 287	404 369	315 498	813 063	848 909	572 881	396 367

- (25) This expenditure was covered, pro rata the depreciation charges, by the airport tax and additional subsidies from the Intervention Fund for Airports and Air Transport (*Fonds d'intervention pour les aéroports et le transport aérien* — FIATA), which were replaced from 2008 by an increase in the airport tax. The airport tax, which is established by Article 1609 *quater* of the General Tax Code, is collected by airport operators whose enplaned and deplaned traffic exceeds 5 000 passengers during the previous calendar year. A ministerial order lays down the list of airports concerned and the amount of the tax for each airport ⁽²⁴⁾.

- (26) According to the French authorities, the resources collected may be broken down as follows:

Table 4

Income from resources allocated to financing state activities

(EUR)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Revenue from the tax	45 560	48 704	26 087	30 657	32 673	11 995	130 734	82	1 359	1 644
Increase	0	0	0	0	0	0	786 190	838 362	582 712	133 340
FIATA	389 000	131 802	296 639	336 184	307 806	590 775	0	0	0	0
Total	434 560	180 506	322 726	366 841	340 479	602 770	916 924	838 444	584 071	134 984

3.1.4. *Operating subsidies*

- (27) Until 2008, CG16, Comaga and CCBC covered the operating deficit and paid the loan instalments in accordance with the 2002 Agreement; Angoulême CCI paid the balance of any deficit by a contribution from its general department ⁽²⁵⁾. The ceiling on the annual deficit covered by the parties to the 2002 Agreement, which was initially set at EUR 350 000, was increased from 2004. Lastly, SMAC offset the entire operating deficit of CCI-airport from 2008 and after 1 January 2009, the date on which SMAC made a commitment under the 2009 subcontract.

⁽²¹⁾ In addition to the financial flows associated with the state investments referred to in recital 24 of this Decision, the financial flows associated with operations are set out in recital 43, Table 4, of the opening decision.

⁽²²⁾ Fire engines, wildlife and bird hazard vehicles, fences.

⁽²³⁾ Equipment for checking passengers and their hold baggage.

⁽²⁴⁾ See Section 8.1.1.2 of this Decision.

⁽²⁵⁾ See recital 36 of the opening decision.

- (28) In total, the contributions paid to CCI-airport for the operation of Angoulême airport during the period 2004-2011 are as follows:

Table 5

Amount of operating subsidies received by CCI-airport

(thousand EUR)

Year	2004	2005	2006	2007	2008	2009	2010	2011
Grants	801,38	999,23	1 295,37	1 222,77	1 896,21	1 679,63	1 313,90	1 023,82

- (29) Since 2012, SNC-Lavalin has been operating the airport under a procurement contract. The baseline scenario and the proactive scenario described above (see footnotes 17 and 18) set out, on the basis of the forecast operating result, the maximum amount of the balancing contribution financed by SMAC and the level of the flat-rate remuneration awarded to the delegatee. The offers submitted by SNC-Lavalin were as follows:

Table 6

Ceiling on operating subsidies and remuneration granted to SNC-Lavalin (including taxes) — Baseline scenario

(EUR)

Year	2012	2013	2014	2015	2016	2017
Balancing contribution	401 000	364 000	374 000	357 000	350 000	342 000
Remuneration	179 400	179 400	179 400	179 400	179 400	179 400
Total	580 400	543 400	553 400	536 400	529 400	521 400

Table 7

Ceiling on operating subsidies and remuneration granted to SNC-Lavalin (including taxes) — Proactive scenario

(EUR)

Year	2012	2013	2014	2015	2016	2017
Balancing contribution	464 722	425 471	448 416	384 230	341 228	296 389
Remuneration	179 400	179 400	179 400	179 400	179 400	179 400
Total	644 122	604 871	627 816	563 630	520 628	475 789

3.2. Fee framework for Angoulême airport

- (30) Angoulême CCI took four successive fee decisions, of which the latter two were approved by SMAC:

Table 8

Aeronautical charges at Angoulême airport

(EUR)

	Charges as at 15.6.2003	Charges as at 1.12.2005	Charges as at 1.1.2009	Charges as at 1.6.2010
Landing	Several categories	Several categories	Several categories	Several categories

(EUR)

	Charges as at 15.6.2003	Charges as at 1.12.2005	Charges as at 1.1.2009	Charges as at 1.6.2010
B737-800 landing	284,56	296,77	296,81	305,94
Runway lighting	26,25	27,35	27,35	35,00
Parking (per hour and per tonne beyond 2 h)	0,25	0,26	0,26	0,27
EU passengers	3,61	3,76	2,76	2,85
Fee for disabled passengers/pas- sengers with reduced mobility ⁽¹⁾	—	—	—	0,42

⁽¹⁾ Fee for disabled passengers and passengers with reduced mobility (*passagers handicapés et à mobilité réduite* — PHMER).

- (31) Companies planning scheduled flights could be the subject of a specific agreement, depending on the services required. In that context, rebates could be granted ⁽²⁶⁾.

3.3. Relations with Ryanair

3.3.1. Contracts concluded with Ryanair and Airport Marketing Services

- (32) Following the publication of a European call for projects ⁽²⁷⁾, two contracts were concluded on 8 February 2008 between SMAC and, first, Ryanair and, second, Airport Marketing Services, a wholly owned Ryanair subsidiary ('AMS'). The purpose of these two contracts ('the 2008 Agreements') was to establish a scheduled air service between Angoulême and London Stansted.
- (33) The contract concluded with Ryanair concerns airport services (the 'Airport Services Agreement'). The contract concluded with AMS (the 'Marketing Services Agreement') relates to promotion and marketing of the route.
- (34) The 2008 Agreements were concluded for a duration of five years from the launch of the route ⁽²⁸⁾. Although no comparable agreement was concluded with another airline, the charges decision of 1 March 2009 sets out all of the charges measures. That decision refers to a 'contribution to the development of the route' of EUR 15, EUR 12 and EUR 9 per passenger respectively for the first three years after the launch of the route, limited to EUR 400 000, EUR 300 000 and EUR 225 000. The last measure does not feature in the 2010 charges decision.

3.3.2. Airport Services Agreement

- (35) Under the Airport Services Agreement, Ryanair undertook to operate three flights a week during the summer period ⁽²⁹⁾. Moreover, as stated in the opening decision ⁽³⁰⁾, SMAC granted Ryanair certain reductions in relation to the general schedule of charges in force:

Table 9

Airport charges applicable to Ryanair

(EUR)

Year	2008	2009	2010	2011	2012
Charge per passenger	1,18	1,44	2,1	2,76	2,76

⁽²⁶⁾ See recital 35, Table 9, of this Decision in relation to Ryanair.

⁽²⁷⁾ OJ S 144-179348, 28.7.2007.

⁽²⁸⁾ Article 2.1 in each of the two agreements.

⁽²⁹⁾ Article 4.1 of the Airport Services Agreement.

⁽³⁰⁾ See recitals 55 et seq. of the opening decision.

(EUR)

Year	2008	2009	2010	2011	2012
Landing charges per rotation	252,29	252,29	252,29	252,29	252,29
Ground handling charges per rotation	195	245	245	245	245

- (36) SMAC undertook to maintain the level of these charges for the duration of the contract and not to impose other charges, directly or indirectly ⁽³¹⁾. Lastly, the Airport Services Agreement provided that Ryanair would pay a penalty if it terminated the agreement ⁽³²⁾. If Ryanair terminated the agreement before the end of the third year of application, the clause provided that Ryanair would pay EUR 17 000 for the fourth year and EUR 8 500 for the fifth year.

3.3.3. Marketing Services Agreement

- (37) The Marketing Services Agreement is based explicitly on Ryanair's undertaking to operate the Angoulême-London Stansted route described in the Airport Services Agreement ⁽³³⁾. Under that agreement, AMS undertook to provide marketing services on Ryanair's website during the first three years of the agreement, in return for a payment by SMAC ⁽³⁴⁾.
- (38) Moreover, although the Marketing Services Agreement was signed by AMS, it ⁽³⁵⁾ provided that, if Ryanair terminated the agreement before the end of the third year of application, Ryanair would pay SMAC a penalty of EUR 50 000 for the fourth year and EUR 25 000 for the fifth year.

3.3.4. Implementation of the agreement by SMAC, Angoulême CCI and Ryanair/AMS

- (39) In 2008 and 2009, Ryanair's commercial activity accounted for between 95 % and 97 % of traffic at Angoulême airport. This activity used between 25 % and 28 % of the airport's overall theoretical capacity, estimated by the French authorities at 100 000 passengers per year.
- (40) The financial flows between the airport manager, SMAC, Ryanair and AMS from 2008 to 2010 are broken down as follows:

Table 10

Financial flows between 2008 and 2010

(EUR)

	2008	2009	2010	Total
Fees	54 086	70 294	0	124 380
Marketing support ⁽¹⁾	400 000	300 000	0	700 000
Net transfer ⁽²⁾	454 086	370 294	0	824 380

⁽¹⁾ The payments under the Marketing Services Agreement were made directly by SMAC to AMS.

⁽²⁾ The net transfer does not take account of other income or expenditure associated with Ryanair's activity.

- (41) The 2008 Agreements were not implemented after 2009. After having initially made the continuation of the service in 2010 conditional on the cessation of the payments provided for by the Marketing Services Agreement of EUR 225 000 for the third year and EUR 400 000 for the fourth year, then on the maintenance of the volume of services provided for in the Marketing Services Agreement but with a limit on the service to two months in summer instead of the eight months stipulated in the agreement, Ryanair gave notice that it would terminate the route.

⁽³¹⁾ Article 6 of the Airport Services Agreement.

⁽³²⁾ Article 10(3) of the Airport Services Agreement.

⁽³³⁾ Article 1 of the Marketing Services Agreement.

⁽³⁴⁾ See recital 60 of the opening decision.

⁽³⁵⁾ Article 7 of the Marketing Services Agreement.

- (42) On 28 June 2010, SMAC submitted a claim for damages to the Poitiers Administrative Court for the loss suffered because of cessation of operations. Ryanair referred the matter to the London Court of International Arbitration, whose jurisdiction SMAC has since challenged before the Council of State. The latter proceedings are currently pending.

4. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (43) In its decision to initiate the formal investigation procedure, the Commission expressed doubts about the financial support to the airport's operators ⁽³⁶⁾.
- (44) The Commission first expressed doubts about the scope of the non-economic activities likely to be paid for by the public authority. The Commission stressed that the inclusion of all of Angoulême airport's activities within the scope of a service of general economic interest (SGEI) was likely to be vitiated by a manifest error of assessment in the light of the first condition laid down by the *Altmark* ⁽³⁷⁾ judgment.
- (45) Second, the Commission had doubts about compliance with the second condition in the *Altmark* judgment, according to which the parameters used to determine the amount of compensation in respect of the activities carried on must be established in advance.
- (46) Third, the Commission had doubts about the level of compensation granted to SNC-Lavalin for the costs incurred in discharging the public service obligations (third condition laid down by *Altmark*). Fourth, the Commission had serious misgivings about the procedure for selecting the service providers (fourth condition in *Altmark*), including in relation to the period of operation guaranteed by SNC-Lavalin in the absence of any information on the competing bid.
- (47) Furthermore, the Commission expressed doubts about the measures granted to Ryanair. After establishing the existence of a potential link between the Airport Services Agreement and the Marketing Services Agreement, the Commission took the view that Ryanair had not paid a market price for the use of the airport services ⁽³⁸⁾.

5. COMMENTS BY FRANCE

5.1. Financial support for the airport

5.1.1. On the classification as aid

5.1.1.1. On the concept of economic activity

(a) Entities operating the airport

- (48) The French authorities point out first that SMAC has retained responsibility for investments and commercial policy. It is the sole signatory of the agreements with Ryanair. The French authorities take the view that this intervention in the operation of the airport is justified by the public interest tasks which are the responsibility of the public authorities.

(b) Legal basis for assessing the public financing of infrastructure

- (49) The French authorities consider that the assessment of the financing of the airport infrastructure should be carried out on the basis of the 1994 Guidelines ⁽³⁹⁾. They thus take the view that point 12 thereof excludes any scrutiny of this financing under the State aid rules. They add that the classification of airport activities and infrastructure was subject to legal uncertainty before the entry into force of the 2005 Guidelines. The position of the General Court of the European Union has not been sufficient to establish clearly the economic nature of the activities of managing and operating an airport.

⁽³⁶⁾ See recital 175 of the opening decision (cited above).

⁽³⁷⁾ Case C-280/00 Trans GmbH and Regierungspräsidium v Nahverkehrsgesellschaft Altmark GmbH [2003] ECR I-7747.

⁽³⁸⁾ See recital 240 of the opening decision (cited above).

⁽³⁹⁾ Community guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (OJ C 350, 10.12.1994, p. 5).

(c) Prerogatives of a public authority

- (50) The French authorities emphasise that the Commission, in its decision on Leipzig airport ⁽⁴⁰⁾, took the view that certain airport infrastructure associated with the exercise of prerogatives linked to public safety, firefighting and operating safety, could not be classified as economic activities. According to the French authorities, these security and safety measures ⁽⁴¹⁾ are financed by the revenue from the airport tax ⁽⁴²⁾. The tax is set every year in the light of the costs to be covered and collected for the benefit of the public or private bodies operating airports where activity exceeds 5 000 traffic units ⁽⁴³⁾. This mechanism is justified by the specific security and safety constraints that go beyond simple operating requirements.
- (51) The French authorities indicate that some of the expenditure is covered only partially ⁽⁴⁴⁾. Furthermore, the data declared by the airport operators may be checked in relation to the current year and the previous two years.
- (52) The French authorities state that this mechanism does not result in any overcompensation. First, the airport tax is not used to reimburse expenditure until the declared data have been checked. Second, the investments are compensated for pro rata the investment allocations. Next, any positive balance is carried over to the following years and carries charges payable by the operator. In this connection, the French authorities refer to a frequent financing deficit from the airport tax because of the increase in security and safety costs ⁽⁴⁵⁾.
- (53) Moreover, the French authorities point out that Angoulême CCI bears other costs related to the exercise of public powers, in accordance with the agreement and the concession specifications. In this regard, the operator provided the Air Flight Information Service (AFIS) ⁽⁴⁶⁾ when the state was not providing air traffic control. Furthermore, when the state was responsible for this activity, the operator paid the state a contribution towards the costs of the service ⁽⁴⁷⁾. In application of the subcontracting agreement signed by CCI and SMAC, it was Angoulême CCI that pursued the introduction of an AFIS service outside the hours of operation of air traffic control by the State. The French authorities consider that the costs resulting from these tasks, which were borne by Angoulême CCI, are as follows:

(thousand EUR)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
AFIS	113	114	115	117	125	122	82	63	44	37
Air traffic control	0	0	0	0	0	0	240	0	0	0
Total	113	114	115	117	125	122	322	63	44	37

- (54) Lastly, the French authorities refer to the financing by Angoulême CCI, the regional and local authorities and SMAC of renovation work on the control tower in 2004 and 2005 costing EUR 84 800 and work on runway lighting and an uninterruptible power supply for the aprons in 2008 costing EUR 89 300.

5.1.1.2. Existence of a selective advantage

- (55) With regard to the financing of infrastructure and operations outside the scope of state activities, the French authorities stress first that the public authorities which participated in the financing of Angoulême airport did not solely pursue profit. They also took account of the economic and social benefits to the region. As a result, the market economy investor test is not sufficient to justify this financing. However, the French authorities refer to SMAC's

⁽⁴⁰⁾ Commission Decision 2008/948/EC of 23 July 2008 on measures by Germany to assist DHL and Leipzig Halle Airport C 48/06 (ex N 227/06) (OJ L 346, 23.12.2008, p. 1).

⁽⁴¹⁾ The French authorities take the view that these activities include action against wildlife hazard.

⁽⁴²⁾ The arrangements for the airport tax are laid down in Article 1609 *quater* of the General Tax Code and by ministerial order of 30 December 2009 on returns to be made by airport operators to establish the passenger rate of the airport tax.

⁽⁴³⁾ One unit of traffic corresponds to one passenger or to 100 kg of mail or freight.

⁽⁴⁴⁾ For example, only 50 % of the cost of fencing is covered.

⁽⁴⁵⁾ Security and safety expenditure increased 6,4 times between 1999 and 2010.

⁽⁴⁶⁾ Air Flight Information Service (AFIS).

⁽⁴⁷⁾ The French authorities state that such a contribution was paid for the 2008 financial year.

desire to optimise the operation of the airport in order to limit the contribution that it paid. In support of their position, the French authorities refer to the contractual ceiling on the guaranteed deficit that was introduced following the call for tenders and the rationalisation of the forecast rate of investments for the duration of the agreement.

5.1.1.3. Effect on competition and trade

- (56) The French authorities maintain that the public financial support granted to Angoulême airport does not affect competition. Bearing in mind that Périgueux, Limoges, Niort, La Rochelle and Bordeaux airports are more than one hour's drive ⁽⁴⁸⁾ from Angoulême airport, they take the view that those airports should not be included in the latter's catchment area.
- (57) What is more, Niort airport is not suitable for commercial flights. Such traffic is virtually non-existent there. Périgueux airport can accommodate only twin turbo-prop aircraft having a seating capacity under 60, which do not correspond to the characteristics of the European medium-haul aircraft operated by most low-cost carriers. A review of the passenger traffic with London from Bordeaux, Limoges and La Rochelle does not reveal any significant variation in traffic linked to the opening and closing of the Angoulême-London Stansted route:

Pax London	Angoulême	Limoges	La Rochelle	Bordeaux
2007	0	0	112 257	83 171
2008	24 494	0	100 312	88 826
2009	27 490	94 133	60 432	80 073
2010	0	81 817	54 773	143 171 ⁽¹⁾

⁽¹⁾ This substantial increase in traffic is linked to the bringing into service of the Billi terminal, designed for low-cost airlines, in June 2010

- (58) Furthermore, the French authorities take the view that the rail connections to Angoulême do not compete with the air route to London. These markets are distinct because of the price and time differential with the TGV and Eurostar high-speed trains. In addition, the intermodality between the TGV and Bordeaux airport is practically nil because there is no high-speed link between Tours, Angoulême and Bordeaux.
- (59) More generally, the French authorities refer to the 2005 Airline Guidelines, which state that 'funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest'. Notwithstanding the above considerations, the French authorities take the view that only Bordeaux, Limoges and La Rochelle airports are potentially located in the catchment area of Angoulême airport, having regard to their traffic and characteristics.
- (60) However, the fact that Ryanair has opened routes to London Stansted from La Rochelle and Limoges airports means that airlines regard them as separate markets. In the same way, the journey time from the city of Angoulême to Bordeaux, Limoges and La Rochelle airports, which is similar to the flight time between Angoulême and London Stansted, is a dissuasive factor for the inhabitants of Angoulême.
- (61) Consequently, the French authorities consider that the criterion of effect on competition is not met and that the Commission's objections to the public financing in favour of Angoulême airport cannot be justified because one of the essential conditions for the application of Article 107(1) TFEU is not satisfied in this case.

⁽⁴⁸⁾ The French authorities base this threshold on the Commission decision of 16 May 2006, NN 21/06 United Kingdom — City of Derry Airport (OJ C 272, 9.11.2006, p. 13). Furthermore, they calculate the journey time using the Michelin route planner, taking as a reference the quickest journey time.

5.1.2. Compatibility with the internal market

5.1.2.1. Compatibility under Article 106(2) TFEU

- (62) The French authorities consider that the financing granted to the managers of Angoulême airport could be found compatible with the internal market and exempted from notification even in the event that not all the conditions established by the *Altmark* judgment were fulfilled. They take the view that this airport should be regarded overall as an SGEI intended to participate in regional economic development. According to the French authorities, such compatibility is directly based on Article 106(2) TFEU and on the Commission Decision 2005/842/EC (the ‘2005 SGEI Decision’) ⁽⁴⁹⁾ for the period before 30 January 2012. It is further based on Commission Decision 2012/21/EU (the ‘2011 SGEI Decision’) ⁽⁵⁰⁾
- (a) Period under the management of Angoulême CCI and Angoulême CCI associated with SMAC
- (i) Existence of entrustment
- (63) The French authorities consider that the entrustment of the public-service task to Angoulême CCI flows from Article 170-1 of the Code of Commerce. Under that provision, the establishment contributes ‘to economic development, to the attractiveness and land planning of the territory and to the support of undertakings and of their associations by fulfilling ... any public-service task and any task of general interest necessary to the accomplishment of those tasks’. To that end, ‘every establishment ... may carry out ... a task of creating and managing installations, in particular ... airports ...’.
- (64) The French authorities add that this legal framework supplements the acts conferring on Angoulême CCI the responsibility for managing and operating the airport. This has resulted in the entrustment to Angoulême CCI of the construction and management of airport infrastructure. The same applies to the decisions by which Angoulême CCI and the regional and local authorities involved determined their participation in the financing of the airport.
- (ii) Amount of compensation
- (65) The French authorities take the view that the budgetary and accounting framework applicable to Angoulême CCI ⁽⁵¹⁾ was such as to avoid any overcompensation.
- (66) In general, a specific budget item was allocated to airport activities. Moreover, the monitoring was the outcome of the vote on the airport budget, after validation by the Bureau ⁽⁵²⁾ of Angoulême CCI, by the elected members of Angoulême CCI. In this regard, the French authorities point out that the preparation of the budget is supported by documents concerning the state of operating transactions, self-financing capacity, capital transactions, the schedule of services provided and interdepartmental contributions and the schedule of employees and wage bill.
- (67) In the same way, the French authorities argue that the statutes of SMAC refer to its object, which consists entirely in providing a public airport service. The airport activities are the subject of a specific budget. The French authorities add that the budget is voted by the SMAC committee. Furthermore, any new measure and any exceeding of the previous budget by 5 % must be approved by qualified majority.
- (68) Lastly, the French authorities consider that reporting at regular intervals verifies that the budget voted is implemented, which precludes any overcompensation. The general meeting votes again in n+1 to accept the implemented budgets. A final level of monitoring is assured by sending the accounts of Angoulême CCI to the Prefecture, which checks that the accounts have been properly prepared. Until 31 December 2006, the Civil Aviation Authority issued an opinion on compliance. SMAC approves the initial, amended and implemented budgets in its capacity as concession-granting authority.

⁽⁴⁹⁾ Commission Decision 2005/842/EC of 28 November 2005 concerning the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005, p. 67).

⁽⁵⁰⁾ Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

⁽⁵¹⁾ Circular No 111 of 30 March 1992 setting the budgetary and accounting rules applicable to Angoulême CCI.

⁽⁵²⁾ The Bureau of Angoulême CCI is composed of elected members who take a decision on a draft budget, after any amendments have been made.

- (b) Period under the management of SNC-Lavalin and SMAC
- (i) Existence of entrustment
- (69) The French authorities take the view that the definition of the general economic interest tasks entrusted to SNC-Lavalin are included in the specifications of the call for tenders and the technical clauses⁽⁵³⁾. They say that the development of the airport platform is an integral part thereof.
- (ii) Amount of compensation
- (70) The French authorities state that the income statements of CCI-airport show that there is no overcompensation.
- (71) In addition to the separation of accounts guaranteed by the creation of a subsidiary of SNC-Lavalin⁽⁵⁴⁾, the absence of overcompensation is ensured by the monitoring carried out by SMAC⁽⁵⁵⁾, which is intended to avoid the overcompensation of its contribution to the cost of the tasks of general economic interest.
- (72) The French authorities also take the view that the remuneration of SNC-Lavalin was not unreasonable. First, the tenderer had to set the maximum guarantee requested by SMAC in order to balance its operation, under the baseline scenario (operation without commercial traffic) and the proactive scenario (operation with commercial traffic). If the proactive scenario had been accepted, the French authorities stress that the bid by SNC-Lavalin was the lowest in financial terms. Second, they maintain that the expenditure borne by SMAC during the 2012 financial year, without commercial traffic, was EUR 644 000 compared with EUR 810 000 in 2010.
- (73) Lastly, the French authorities point out that the burden of the property tax weighed on SMAC, which, as the property owner, had chosen not to pass it on to the operator.
- (74) The French authorities therefore consider that the financing granted to the operators of Angoulême airport may be declared compatible with the internal market on the basis of Article 106(2) TFEU and of the 2005 SGEI Decision for the period before 30 January 2012 and on the basis of the 2011 SGEI Decision after that.

5.1.2.2. Compatibility under Article 107(3)(c) TFEU

- (a) Infrastructure investments
- (75) If the Commission were to decide that the public subsidy for infrastructure investments constituted State aid within the meaning of Article 107(1) TFEU, the French authorities take the view that the subsidy should be regarded as compatible with the internal market in accordance with the 2005 Guidelines.
- (i) Clearly defined objective of general interest (criterion 1)
- (76) The French authorities take the view that economic and tourism development in the *département* of Charente is a clearly defined objective of general interest. They consider that Commission practice⁽⁵⁶⁾ authorises the public administration to regard the development of a regional airport as such an objective.
- (ii) The investments are necessary and proportional to the objective which has been set (criterion 2)
- (77) These investments satisfied the criteria of necessity and proportionality. In this context, the French authorities refer to a study⁽⁵⁷⁾ justifying the creation of a structure bringing together all of the regional and local authorities and the public and professional tourism bodies with the express interest of developing Angoulême airport rather than another infrastructure and carrying out an assessment of the minimum investments required.

⁽⁵³⁾ Under Article 8 of the specifications and the technical clauses, SNC-Lavalin must carry out of the state tasks, implement an AFIS service, perform tasks ensuring the safe use of the airport, the maintenance of the airport site and networks and ensure that the airport is able to accommodate scheduled commercial traffic.

⁽⁵⁴⁾ Société d'exploitation de l'aéroport d'Angoulême Cognac.

⁽⁵⁵⁾ The French authorities believe that this monitoring is provided for by the specifications in the call for tender.

⁽⁵⁶⁾ Commission Decision of 27 January 2007, N 491/06, Italy — Tortoli-Arbatax (OJ C 133, 15.6.2007, p. 3).

⁽⁵⁷⁾ The study was carried out by the *Alliance de conseils pour l'économie locale des services aéroportuaires*. It was delivered on 14 June 2006.

(iii) Satisfactory medium-term prospects for use (criterion 3)

- (78) The French authorities state that the same study forecast traffic in the medium term of more than 100 000 passengers per year, which would correspond to a satisfactory medium-term prospect for use. According to the French authorities, the forecasts were based on the assumption of an increase in the frequency of the first route to London and the opening of a second route.

(iv) Equal and non-discriminatory access to infrastructure (criterion 4)

- (79) The French authorities emphasise that access to the infrastructure was non-discriminatory. The only constraint on using the infrastructure at Angoulême airport was linked to the limit imposed by the capacity of the apron and the terminal. The incentives had been opened to any airline launching a new route, although only Ryanair had actually benefited.

(v) Absence of effect on trade contrary to the common interest (criterion 5)

- (80) The French authorities state that the mere fact that Angoulême airport is classified under category D of the 2005 Airline Guidelines is sufficient to demonstrate that competition is not affected to an extent contrary to the common interest.

(vi) Necessity and proportionality of the aid (criterion 6)

- (81) The French authorities consider that the 100 % public financing of the investments was necessary to maintain the airport's potential and development. They take the view that this requirement justified an allocation of the investment financing between SMAC and the operator by the subcontract dated 22 January 2009. This situation is to be distinguished from that which, from 2012, led SMAC to pay annual remuneration of EUR 179 400 for the provision of services following a call for tenders. The French authorities point out that this legal framework did not provide for SMAC to carry out investments, but that it should act as project manager for the investments proposed by the service provider or decided by SMAC.

(b) Operational financing

- (82) The French authorities state first that Angoulême CCI granted advances to the airport from 1984 to 2001. They consider that this period should remain outside the scope of the Commission's investigation. After this period, the other aid was paid by way of operating aid.
- (83) Then, leaving aside the financing of investments, the French authorities state that the deficit covered by the regional and local authorities was limited to EUR 350 000 in the 2002 and 2003 financial years⁽⁵⁸⁾. They add that, with regard to the 2004-2006 financial years, the decisions by the airport board were not minuted. The general department of Angoulême CCI provided the amount needed to balance the budget as implemented.
- (84) Lastly, the French authorities consider that the operational financing does not affect competition for the reasons cited in recitals 56 to 61 of this Decision. Accordingly, they believe that the criterion relating to an effect on competition is not fulfilled and that the public operational financing of Angoulême airport cannot constitute aid within the meaning of Article 107(1) TFEU.
- (85) The French authorities also argue that, if the financing in question were aid, it should be found compatible with the internal market and exempted from notification. In this regard, they rely on the 2005 Guidelines and the 2005 SGEI Decision.

5.2. Relations with Ryanair

5.2.1. On the classification as aid

- (86) The French authorities take the view, first, that the Airport Services Agreement and the Marketing Services Agreement must be assessed together. Second, they believe that SMAC did not reason as a prudent market-economy investor, for the reasons set out in recital 55 of this Decision. According to the French authorities, it is the absence of a response to the call for projects launched for the opening of international air routes that prompted Angoulême CCI, following a mandate approved by SMAC, to negotiate with Ryanair the opening of a route between London Stansted and Angoulême.

⁽⁵⁸⁾ This threshold was set by the partnership agreement of 23 May 2002.

- (87) They also stress the fact that the objective of the improvement works ⁽⁵⁹⁾ begun in 2006 was not to satisfy a specific company but to enable airlines to be accommodated. However, they point out that the absence of other airlines regularly using the airport resulted in virtually all of these investments being allocated to Ryanair.
- (88) With regard to the costs of commercial relations with Ryanair, the French authorities point out that the airport operator had to incur additional staff costs. They refer to a difference between forecast and actual costs:

Safety	Benchmark 2007	Change 2008/2007		Change 2009/2007		Change 2010/ 2007
		Forecast	Actual	Forecast	Actual	Forecast
Number of staff	5	+ 6	+ 6	+ 6	+ 6	+ 6
Full-time equivalent	4,6	+ 1,46	+ 1,35	+ 3	+ 1,35	+ 3
Wage costs (thousand EUR)	219,1	+ 137,4	+ 116,8	+ 109,3	+ 52,17	+ 133,1

Security	Benchmark 2007	Change 2008/2007		Change 2009/2007		Change 2010/ 2007
		Forecast	Actual	Forecast	Actual	Forecast
Number of staff	10	—	—	—	—	—
Full-time equivalent	0,7	+ 1,4	1,6	+ 2	+ 1,6	+ 2
Wage costs (thousand EUR)	42,5	+ 102,2	+ 86,2	+ 119,7	+ 115,6	+ 122,8

Assistance and reception	Benchmark 2007	Change 2008/2007		Change 2009/2007		Change 2010/ 2007
		Forecast	Actual	Forecast	Actual	Forecast
Number of staff	1	—	—	—	—	—
Full-time equivalent	0,3	+ 0,3	+ 0,3	+ 0,5	+ 0,5	+ 0,5
Wage costs (thousand EUR)	11	+ 20	+ 14	+ 30	+ 20	+ 30

- (89) The same applies to the additional costs other than staff costs associated with Ryanair's commercial activity:

Safety	Benchmark 2007	Change 2008/2007		Change 2009/2007		Change 2010/ 2007
		Forecast	Actual	Forecast	Actual	Forecast
(thousand EUR)	0	—	—	—	—	—

⁽⁵⁹⁾ Extension of the runway by 50 metres and extension, refitting and equipping of the terminal to enable handling of a 200-seat passenger aircraft. The amount of these investments was assessed at EUR 977 000.

Safety	Benchmark 2007	Change 2008/2007		Change 2009/2007		Change 2010/ 2007
		Forecast	Actual	Forecast	Actual	Forecast
Other costs	36,5	+ 269,1	+ 163,2	+ 316,9	+ 248,5	+ 326
including vehicle leases	0	+ 157,9	+ 138,4	+ 210,5	+ 223,5	+ 210,5
(thousand EUR)						
Security	Benchmark 2007	Change 2008/2007		Change 2009/2007		Change 2010/ 2007
		Forecast	Actual	Forecast	Actual	Forecast
Services provided	0	+ 118,6	+ 112,6	+ 253,2	+ 113,5	+ 263,2
(thousand EUR)						
Other costs (thousand EUR)	12,5	+ 16,8	+ 14	+ 14,8	- 4,5	+ 15,2
Assistance and reception	Benchmark 2007	Change 2008/2007		Change 2009/2007		Change 2010/ 2007
		Forecast	Actual	Forecast	Actual	Forecast
Services provided	5	+ 140	+ 96	+ 180	+ 90	+ 180
(thousand EUR)						
Other costs (thousand EUR)	5	+ 20	+ 10	+ 25	+ 12	+ 25

5.2.2. Compatibility with the internal market

- (90) The French authorities consider that some of the criteria in the 2005 Guidelines have not been complied with.
- (91) First of all, they state that Ryanair did not submit a business plan. They had felt that the degressive aid resulting in the signing of the 2008 Agreements was such as to allow the airline to make a satisfactory commercial margin.
- (92) Consequently, in the absence of a business plan, they emphasise that it is impossible to verify whether the aid intensity criterion is met. However, Angoulême CCI and SMAC, based on the information available on the creation of routes with public service obligations, did consider that this criterion was fulfilled.
- (93) The French authorities further believe that the upward annual trend of [...] (*) % in the number of passengers without an increase in rotations observed in 2008 and 2009 would likely have continued in 2010.
- (94) Lastly, as set out in recitals 56 to 60 of this Decision, the French authorities are of the opinion that the measures adopted do not affect trade to an extent contrary to the common interest.

5.3. The new guidelines

- (95) France formulated comments on the interpretation of the new guidelines, on the form and the substance, and expressed its agreement with their application to cases concerning measures implemented before they were published.

(*) Business secret

- (96) They note that the new guidelines are more flexible than the old guidelines as regards operating aid. France maintains that their retroactive application to all aid would therefore allow previous situations for certain airports to be treated less disadvantageously.

6. COMMENTS BY THIRD PARTIES

6.1. Comments by Air France

- (97) Air France considers that the measures granted in favour of Ryanair and its subsidiary AMS are particularly representative of Ryanair's commercial practices.
- (98) Air France has also submitted comments to the Commission on the application of the new guidelines to this case. It challenges the application of the new guidelines to cases relating to operating aid to airports, even where the aid was paid before the guidelines were published.
- (99) First, Air France takes the view that this is a retroactive application of the new guidelines which benefits unscrupulous operators by legitimising behaviour which did not comply with the rules applicable to the period during which the behaviour occurred. Conversely, that approach penalises operators which complied with the previous guidelines by refraining from receiving public funds.
- (100) Second, Air France emphasises that the retroactive application of the new guidelines to operating aid granted to airports is contrary to the general principles of law and to European case law.

6.2. Comments by Ryanair

- (101) The airline Ryanair ('Ryanair') disputes the assertion that the Airport Services Agreement that it concluded with Angoulême airport constitutes State aid.
- (102) It argues that its decision to launch a route from London Stansted to Angoulême reflected the wish to secure a low-cost base whose environment matched the characteristics of Angoulême airport. Moreover, the specific features of Angoulême airport were such as to incite it to offer a competitive schedule of airport charges. Despite the uncertainties linked to the opening of a new route⁽⁶⁰⁾, and as a result of the risk undertaken, Ryanair believes that the airport could reasonably expect to make a profit from the agreement concluded because of its success on other routes.
- (103) Ryanair also points out that the decision to terminate the London Stansted-Angoulême route was taken for commercial reasons. It claims that the revenue shortfall had reached [...] % in 2009 in relation to 2008⁽⁶¹⁾. It emphasises that it had negotiated in good faith, in application of Article 9 of the Airport Services Agreement, with a view to reaching a viable economic agreement with Angoulême airport. It states that it requested a reduction in airport charges in September 2009. After SMAC had refused the request on 3 February 2010, Ryanair states that it proposed to continue operating the route during July and August only, a proposal which SMAC rejected outright, resulting in the agreement being broken off.

6.2.1. State resources and imputability

6.2.1.1. Presence of state resources

- (104) Ryanair points out that not all CCI resources are generated by taxes. It takes the view that Article R. 224-6 of the Civil Aviation Code requires airports managed by a CCI to finance their expenditure from revenue generated by airport operations. Ryanair considers that Angoulême CCI provided the bulk of airport financing. By contrast, SMAC did not have any experience in running an airport⁽⁶²⁾.

⁽⁶⁰⁾ Ryanair points out that no scheduled commercial service had been undertaken to Angoulême by aircraft such as the ones it uses and that there was no benchmark to rely on to assess the route's profitability.

⁽⁶¹⁾ Ryanair attributes the fall in revenue to the increase in passenger charges in the United Kingdom, the increase in oil prices and the economic crisis as a whole.

⁽⁶²⁾ Ryanair emphasises that Angoulême CCI had led the negotiations.

6.2.1.2. Imputability of the measures to the state

- (105) Ryanair believes that the sole fact that Angoulême CCI is under the control of the state and that its resources are taxes is not sufficient to fulfil the criterion of imputability to the state.
- (106) It states that the organisational criterion, i.e. the public nature of a body, is not enough in itself to establish the imputability of the measure to the state⁽⁶³⁾. In this case, a distinction should be made between the CCIs and other public bodies⁽⁶⁴⁾. In this regard, Ryanair notes that Article L. 711-1 of the Commercial Code in force in June 2005 classifies CCIs as public economic entities (*établissements publics économiques*) and that a parliamentary report identifies their 'dual institutional nature' and raises doubts about how to classify them⁽⁶⁵⁾. Ryanair also points out that the state is not involved in their decision-making processes, its role being limited to administrative supervision⁽⁶⁶⁾.

6.2.2. Selective advantage

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

- (107) Ryanair considers that it and AMS should not be regarded as a single beneficiary of the measures in question.
- (108) First, the beneficiary of the Marketing Services Agreement was the airport; the objective was not to increase the load factor or the yield on Ryanair's route. Second, neither AMS's shareholding structure nor its objects are grounds for disputing the fact that the agreements in question had separate objectives. Ryanair also stresses that the two agreements were signed by different people⁽⁶⁷⁾, despite the sole management highlighted by the Commission.
- (109) Ryanair also notes that the conclusion of a marketing services agreement is not a precondition for opening a route. However, this practice is more frequent in the case of regional airports⁽⁶⁸⁾.

6.2.2.2. Joint assessment of the Airport Services Agreement and the Marketing Services Agreement

- (110) Ryanair challenges the joint assessment of the Marketing Services Agreement and the Airport Services Agreement. It stresses that marketing services agreements are a matter for AMS, a Ryanair subsidiary. They are negotiated and concluded separately from Ryanair's agreements with airports.
- (111) However, Ryanair points out that the company itself carries out the advertising campaigns for its destinations. It also notes that it placed advertising on its website for the benefit of third parties without the involvement of AMS. Lastly, Ryanair believes that the Commission, in its Decision on Bratislava airport⁽⁶⁹⁾, acknowledged that there is value to the advertising campaigns carried out on the company's website.

6.2.2.3. Principle of a prudent investor in a market economy

(a) Business plan

- (112) Ryanair states that investment decisions are not systematically preceded by a business plan. The fact that Ryanair, other companies and certain competition authorities⁽⁷⁰⁾ do not regard business plans as systematically useful is sufficient to establish that it is not realistic to make them a factor characterising the behaviour of a market economy investor.

⁽⁶³⁾ Ryanair cites the judgment of the Court of Justice in Case C-482/99 France v Commission [2002] ECR I-4397.

⁽⁶⁴⁾ Ryanair refers to Opinion No 351 654 handed down on 16 June 1992 by the Council of State.

⁽⁶⁵⁾ Report by Ms Catherine Vautrin, on behalf of the Economic Affairs Committee, No 2388, on the Draft Law on consular networks.

⁽⁶⁶⁾ Ryanair states that the exercise of this supervision does not mean that the state gives an opinion on the agreements at issue in this case.

⁽⁶⁷⁾ The Airport Service Agreement was signed by Michael Cawley, Vice-President of Ryanair, whereas the Marketing Services Agreement was signed by Eddie Wilson, a director of AMS.

⁽⁶⁸⁾ Ryanair refers to the airport's need to develop a brand image and to increase the share of incoming passengers in the total number of passengers passing through the airport.

⁽⁶⁹⁾ Commission Decision 2011/60/EU of 27 January 2010 on State aid C 12/08 (ex NN 74/07) — Slovakia — Agreement between Bratislava Airport and Ryanair (OJ L 27, 1.2.2011, p. 24).

⁽⁷⁰⁾ Ryanair refers to the position of the UK's Competition Appeal Tribunal of 21 May 2010 in Case 1145/4/8/09 Stagecoach group plc v Competition Commission, point 75.

(b) Remarks on the conditions for applying the market economy investor principle (MEIP)

- (113) Ryanair considers that the Commission cannot apply the market economy investor principle selectively. Referring to the position of the General Court ⁽⁷¹⁾, it stresses that the Commission must envisage the commercial transaction as a whole and examine all the relevant features of the measures and their context ⁽⁷²⁾.
- (114) Furthermore, Ryanair takes the view that the Commission must compare the agreements concluded between Ryanair and the public airports with those concluded with the airports partially or wholly owned by private investors. Ryanair refers to a study ⁽⁷³⁾ for the purpose of this analysis. Recalling the case law of the Court of Justice ⁽⁷⁴⁾, it states that it is only where no reference to a private investor is available that the Commission should adopt an approach based on costs.
- (115) Ryanair considers that the Commission's approach of only accepting comparator airports in the same catchment area as the airport under investigation is flawed ⁽⁷⁵⁾.
- (116) Ryanair argues that market benchmark prices obtained from comparator airports are not polluted by State aid given to surrounding airports. Therefore, it is possible to robustly estimate a market benchmark for the MEIP tests.
- (117) In fact:
- comparator analyses are widely used for MEIP tests outside the field of State aid,
 - companies affect each other's pricing decisions only to the extent that their products are substitutes or complements,
 - airports in the same catchment area do not necessarily compete with each other, and the comparator airports used in the reports submitted face limited competition from state-owned airports within their catchment area. Less than one third of commercial airports within the catchment area of comparator airports are fully state-owned, and none of the airports within the same catchment area as comparator airports was subject to ongoing State aid concerns (as of April 2013),
 - even where comparator airports face competition from state-owned airports within the same catchment area, there are reasons to believe their behaviour is in line with the MEIP (for example, where there is a large private ownership stake or where the airport is privately managed),
 - market economy investor airports will not set prices below incremental cost.
- (118) Ryanair states that the market economy investor principle must take account of the low economic value of regional airports ahead of the rapid development of their activity. With regard to the costs associated with their closure or maintenance in operation, Ryanair takes the view, recalling the case law of the General Court ⁽⁷⁶⁾, that any less costly alternative should be considered to be consistent with the market economy investor principle.
- (119) Ryanair therefore takes the view that the costs taken into account by the Commission should be the incremental costs rather than the average costs. Angoulême airport had an economically rational interest in pricing at marginal (or even lower) cost.

⁽⁷¹⁾ Case T-196/04 *Ryanair v Commission* [2008] ECR II-03643.

⁽⁷²⁾ In this regard, Ryanair refers to the non-aeronautical revenues and the network externalities.

⁽⁷³⁾ Study dated 25 June 2012 carried out by Oxera.

⁽⁷⁴⁾ Ryanair cites the judgment of the Court of Justice in Joined Cases C-83/01 P, C-93/01 P and C-94/01 P *Chronopost SA* [2008] ECR I-6993. It also refers to the European Union framework for State aid in the form of public service compensation (2011).

⁽⁷⁵⁾ Identifying the market benchmark in comparator analysis for MEIP tests. Ryanair State aid cases, prepared for Ryanair by Oxera, 9 April 2013.

⁽⁷⁶⁾ Case T-98/00 *Linde v Commission* [2002] ECR II-3961, paragraphs 43-54.

- (120) First, the greater the competition faced by an airport, the greater its incentive to reduce its prices to marginal cost.
- (121) Likewise, according to Ryanair, the Commission should take into account the specific nature of every airport ⁽⁷⁷⁾. In this regard, it is of the opinion that the highly competitive environment between regional airports leads them to compete with a view to concluding agreements with it. In doing so, these airports are acting in the same way as private investors.
- (122) The airport's desire to improve its image leads it to carry out advertising campaigns. This effect is all the stronger where the market power of regional airports is limited and they have an interest in attracting airlines that are able to develop their traffic.
- (123) Ryanair further states that the business plan applicable to those airports should imply that only a part of the fixed and infrastructure costs are deemed sunk costs. The time horizon of the business plan should be at least 15 years rather than a standard duration of 5 years.
- (124) In this context, Ryanair argues that the approach adopted should be the 'single-till' approach. Relying on the Commission's position in its decision on Bratislava airport ⁽⁷⁸⁾, Ryanair considers that non-aeronautical revenues, which account for approximately 50 % of the revenue of an airport, are of particular importance to under-used regional airports. It is the wish to develop these revenues to cover as many fixed costs as possible that explains the penalties provided for in the agreements concluded with Ryanair if the latter did not fulfil its commitments. Ryanair's activity increases the economic value of the airport, which is free to take advantage by attracting other airlines.
- (125) According to Ryanair, the interest of regional airports in concluding an agreement with an airline such as itself is increased by the network effects associated with the opening of a route ⁽⁷⁹⁾. Ryanair's view is that the interest of Angoulême airport in concluding an agreement with it was all the greater because the only alternative would have been to open routes with public service obligations operated by airlines using small aircraft such as Twin Jet. However, Ryanair emphasises that this second option would have involved an opportunity cost for the airport, since large airlines generate a lower cost per passenger.
- (126) Ryanair also takes the view that the Commission should take into account the network externalities generated by its activity. An agreement concluded with Ryanair acts as a 'magnet' for other airlines seeking increased visibility and better infrastructure. These network effects have a positive impact on aeronautical and non-aeronautical revenues ⁽⁸⁰⁾. Ryanair believes that the Commission took this approach in the decision on Bratislava airport ⁽⁸¹⁾. Airports therefore have an interest in concluding an agreement with an airline giving traffic commitments.
- (127) Ryanair points out that the agreements it concludes are not exclusive. Any other airline offering the same service as Ryanair could be granted identical operating conditions.
- (128) With regard to the profitability analysis, Ryanair argues that the following principles would be adopted by a rational private sector investor ⁽⁸²⁾:
- the assessment is undertaken on an incremental basis,
 - an *ex ante* business plan is not necessarily required,
 - for an uncongested airport, the 'single till' approach is the appropriate pricing methodology,
 - only those revenues associated with the economic activity of the operating airport should be considered,

⁽⁷⁷⁾ Ryanair refers to the position of the Commission in its Decision of 27 January 2010, cited in footnote 69, recital 111.

⁽⁷⁸⁾ See the decision cited in footnote 69.

⁽⁷⁹⁾ According to Ryanair, these externalities include: 1. The fact that the opening of a route to a regional airport sends a positive signal to other airlines about profitability prospects; to be specific, Ryanair states that Cityline was about to conclude an agreement with Angoulême airport to establish a scheduled service several weeks before Ryanair closed the route. 2. The presence of a large airline allows non-aeronautical services to be developed, which in return contributes to generating more traffic.

⁽⁸⁰⁾ Non-aeronautical revenues are stimulated in particular by the longer time spent in the airport by passengers not making a stopover. This feature is such as to attract commercial chains operating in airports.

⁽⁸¹⁾ See the decision cited in footnote 69.

⁽⁸²⁾ Principles underlying profitability analysis for MEIP tests. Ryanair State aid cases, prepared for Ryanair by Oxera, 9 April 2013

- the entire duration of the agreement, including any extensions, should be considered,
- future financial flows should be discounted in assessing the profitability of the agreements.

(129) Incremental profitability of Ryanair agreements to the airports should be assessed on the basis of estimates of the internal rate of return or net present value (NPV) measures.

(c) Application of the market economy investor principle

- (130) In general, Ryanair considers that Angoulême CCI had acted as a genuine private investor because its status, independent of the State, in itself constitutes evidence of compliance with the market economy investor principle. The fact that the funding of the airport investments had been provided by the member of SMAC provided further evidence, since the owners of the airport had an interest in increasing its value.
- (131) Ryanair emphasises that the assessment of the airport charges that it pays should be carried out against its reduced needs. Compared with other airlines, Ryanair argues that its business model requires fewer check-in desks, facilities and services, and the fact that it does not use stopovers reduces the duration and intensity of ground handling for its aircraft and increases the productivity of the crew in order to reduce reliance on airport services.
- (132) It also considers that, for the purposes of applying the market economy investor principle, certain European airports are substitutable for Angoulême airport because of their similarities⁽⁸³⁾. In this regard, Ryanair submits a comparative study which concludes that the airport charges levied by [...], [...], [...] and [...] airports, which are comparable to Angoulême airport, are on average lower than the charges at Angoulême airport⁽⁸⁴⁾.

Table 11

Airports comparable to Angoulême airport

Airport characteristics compared	Angoulême	[...]	[...]	[...]	[...]
Population of the airport town	45 000	168 000	157 000	31 400	121 000
Distance to the town (kilometres)	14	12	45	46	11,5
Largest city within 150 km (population)	Bordeaux (241 000)	[...] (441 000)	[...] (481 000)	[...] (76 000)	[...] (1 119 000)
Closest large airport (passengers in 2009)	Bordeaux (3 300 000)	[...] (1 800 000)	[...] (7 700 000)	[...] (2 800 000)	[...] (19 000 000)

- (133) Ryanair also states that the choices made by Angoulême airport after it had closed the route to London Stansted were such as to establish that the airport considered that a scheduled commercial service to the United Kingdom operated by a low-cost carrier was a credible solution. In this connection, it refers to the agreement concluded with SNC-Lavalin, which had a mandate to introduce an aggressive development scenario.
- (134) Moreover, Ryanair argues that a guaranteed level of passengers, such as the one it committed itself to, would limit the economic risk taken by an airport. As a result, the guarantee justifies a lower level of profitability than would be required by a private investor without the benefit of that clause.

⁽⁸³⁾ These similarities are due to the characteristics of the airports (located less than 150 kilometres from large cities and competing with other airports) and to the income levels in the regions surrounding them.

⁽⁸⁴⁾ On average over the period studied, airport charges at Angoulême airport were [...] % higher per rotation and [...] % higher per passenger. However, Oxera emphasises that Ryanair was not liable for the airport tax in 2009.

- (135) Ryanair also notes that the 'single till' approach⁽⁸⁵⁾ explains why an airport seeks to maximise its revenues by reducing the level of its airport charges. Ryanair therefore challenges the assessment that a negative price cannot be a market price. It believes that a negative airport charge may be consistent with the market economy investor principle if the expected level of non-aeronautical revenues is sufficiently high. In this case, Ryanair takes the view that a private investor could reasonably assume that the non-aeronautical revenues, which were zero, would develop as a result of the traffic that it could generate⁽⁸⁶⁾.
- (136) It argues that this approach is bolstered by the specificity of the situation of Angoulême airport. It judges that a market economy investor should regard infrastructure costs and fixed operating costs as sunk costs. That is all the more so in this case since Angoulême airport was likely to suffer from competition with the TGV high-speed train⁽⁸⁷⁾. Moreover, Ryanair maintains that if the closure of the airport had been another option, the market value of the assets net of closure costs would not have been significant. These sunk costs should therefore be ignored.
- (137) Furthermore, bearing in mind that Ryanair undertook to guarantee a minimum level of traffic, failing which it could face penalties, it considers that any commercial offer represents an improvement on the situation of an airport with the characteristics of Angoulême airport. The only condition is that its marginal revenues should be higher than its marginal costs, which would differentiate the situation of Angoulême airport from that analysed by the Court of Justice in the *Chronopost* judgment⁽⁸⁸⁾. Consequently, Ryanair states that, in this case, a private investor in a market economy would not necessarily seek a return on investment in the case of existing infrastructure. According to Ryanair, nor would such an investor require the contracting airline to participate in covering the operating costs incurred before the agreement was concluded.
- (138) Lastly, Ryanair states that the decisions taken by Angoulême airport were not specifically addressed to it.
- (139) Such is the case, first of all, with the decisions to adapt Angoulême airport. Most of these investments were carried out before it arrived. In the same way, it stresses that in many cases the recruitment contracts for members of staff were concluded or extended after it had left. Those decisions therefore formed part of the wider plan to position Angoulême airport in the low-cost carrier market⁽⁸⁹⁾. The decisions taken subsequently by SMAC once Ryanair had left, such as the choice of the scenario pursued by SNC-Lavalin, are evidence of this.
- (140) Lastly, Ryanair emphasises that Article 3 of the Airport Services Agreement stipulated that the operating conditions granted to it could be granted to any other airline. It states that the level of airport charges was in any event published by Angoulême airport.

(d) Comments relating to the payments to AMS

- (141) Ryanair disagrees with the Commission's preliminary assessment of the payments to AMS as costs to the airport since this approach disregards the value of AMS's services to the airport. Ryanair further believes that, for the purposes of the market economy operator analysis, the purchase of valuable marketing services at market rates should be considered separately from a related airport-airline contractual arrangement.
- (142) In support, Ryanair submits an analysis of benchmarking prices charged by AMS against prices for comparable services offered by other travel websites⁽⁹⁰⁾. The analysis concludes that prices charged by AMS were either lower than the average or within the mid-range of prices charged by comparator websites.
- (143) According to Ryanair, this shows that AMS's prices are in line with market prices and the decision by a public airport to purchase AMS's services is consistent with the market economy operator test. Ryanair further provides evidence of the services that are provided to the airports under AMS contracts, with the aim of showing the value of these services to the airports.

⁽⁸⁵⁾ See recital 124 of this Decision.

⁽⁸⁶⁾ Ryanair raises the possibility for the said investor to take the example of La Rochelle airport, which it believes to be similar.

⁽⁸⁷⁾ The decision to build the Angoulême-Bordeaux line was taken in July 2006, and the decision to build the Tours-Angoulême line was taken in June 2009.

⁽⁸⁸⁾ Judgment of the Court of Justice in Joined Cases C-83/01 P, C-93/01 P and C-94/01 P *Chronopost SA* [2008] ECR I-6993. However, Ryanair acknowledges that this approach should be refined if the fixed costs increase markedly once a certain activity threshold is reached. In that case, it takes the view that it would be more appropriate to take into account the net present value over a longer period.

⁽⁸⁹⁾ Ryanair believes that those investments would also have been carried out in its absence because the infrastructure investments went ahead despite the very low volume of passengers.

⁽⁹⁰⁾ Oxera, 'Are prices set by AMS in line with the market rate?', prepared for Ryanair, 20 December 2013.

- (144) According to Ryanair, should the Commission, despite its opposition to such an approach, insist on including AMS agreements and Ryanair's airport services agreements in a single market economy operator test, the value of AMS services to the airport should not be disregarded.
- (145) In addition, Ryanair refers to the conclusions of various reports confirming that it has a strong pan-European brand capable of attracting a premium for its advertising services.
- (146) Ryanair also submitted a report prepared by Oxera, its economic adviser, concerning the principles that it believes should apply to a market-economy operator profitability test encompassing both the air services agreements concluded between Ryanair and airports and the marketing agreements concluded between AMS and the same airports⁽⁹¹⁾. Ryanair emphasises that this does not prejudice its position that AMS agreements and air services agreements should be subject to separate market-economy operator tests.
- (147) The report states that AMS-associated income should be included on the revenue side for the purposes of a joint profitability analysis, whereas AMS expenditure should be included on the cost side. In order to do so, the report proposes a cash-flow-based method by which expenditure on AMS would be treated as incremental operating expenditure.
- (148) The report submits that marketing activities contribute to creating and enhancing brand value, which is likely to generate business and profits over the duration, but also beyond the expiry, of the marketing agreement. This would be the case where, because of an agreement with Ryanair, other airlines are attracted to the airport, in turn attracting commercial operators and increasing the airport's non-aeronautical revenues. According to Ryanair, were the Commission to undertake a joint profitability analysis, these benefits should be taken into account by treating expenditure on AMS as incremental operating expenditure, with incremental profits calculated net of AMS payments.
- (149) Ryanair considers in addition that a terminal value could be included in projected incremental profits at the end of the term of the air services agreement in order to capture the value accruing beyond the expiry of its term. The terminal value could be adjusted by a conservative assumption about the probability of whether the agreement will be renewed with Ryanair or whether similar conditions will be agreed with other airlines. Ryanair considers that this would allow an estimate of a lower bound for the benefits arising from the AMS and air services agreements jointly, taking into account the uncertainty of incremental profits beyond the expiry of the air services agreement.
- (150) In support of this approach, the above report submits a summary of the results of studies on the effect of advertising on brand value. These studies recognise that advertising can build brand value and improve customer loyalty. In particular, according to the report, advertising on ryanair.com increases brand exposure for an airport. The report adds that smaller regional airports aiming to increase their traffic base can build their brand value by entering into advertising agreements with AMS.
- (151) The report suggests that the cash-flow approach is to be preferred over a capitalisation approach under which AMS expenditure would be treated as capital expenditure on an intangible asset (i.e. the brand value of the airport). Marketing expenditure would be capitalised as an intangible asset and then amortised over its useful life, with a residual value at the end of the scheduled expiry of the air services agreement. This approach would, however, not capture additional benefits to the airport as a result of signing the air services agreement with Ryanair, and estimating intangible asset value due to brand expenditure and the length of the asset's useful life is difficult.

6.3. Comments by AMS

- (152) AMS disputes the assertion that the Marketing Services Agreement that it concluded with Angoulême airport constitutes State aid. The contract does not confer any selective advantage on it.

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

- (153) AMS emphasises that it has genuine company objects, which consist in the provision of marketing services on the internet. It states that most of its activity is intended to increase the value of the advertising space on Ryanair's website.

⁽⁹¹⁾ Oxera, 'How should AMS agreements be treated within the profitability analysis as part of the market economy operator test?' Prepared for Ryanair, 17 January 2014.

- (154) Furthermore, it points out that Ryanair has chosen to work with other intermediate structures to market other advertising space.
- (155) It follows that there are no grounds for taking the view that it is necessary to carry out a joint assessment of any economic benefit granted to Ryanair and AMS.

6.3.2. *Joint assessment of the Airport Services Agreement and the Marketing Services Agreement*

- (156) AMS considers that the increase in the number of passengers using Ryanair services is not the only benefit accruing to Angoulême airport from the Marketing Services Agreement. First, it notes that the contract concluded by the airport with AMS is different from the one concluded with Ryanair. Second, it emphasises that Ryanair promotes its services using its own resources. Accordingly, Angoulême airport does not help to promote Ryanair services by concluding a marketing services contract with AMS.
- (157) By way of illustration, AMS notes that Ryanair's load factor is invariably [...] % on average, regardless of whether or not a marketing services contract is concluded with it. Furthermore, AMS argues that the revenues accruing to Ryanair are identical for all passengers, either at arrival or departure from a particular airport.
- (158) In general, AMS notes that advertising campaigns benefit the providers of the advertising space themselves⁽⁹²⁾. In this case, that externality is reflected in the increasing popularity of Ryanair's website, regardless of whether the entity behind the advertising campaign is public or private. Since a private investor would not refrain from making an investment on the ground that third parties would benefit, AMS considers that Angoulême airport did not have to take into account the fact that Ryanair also benefited from its investment in advertising.
- (159) AMS takes the view that in this case Ryanair played a pioneering role since most airlines now commercialise the space available on their website. However, it believes that Ryanair's website was unusual in that it had an exceptional value⁽⁹³⁾. Accordingly, it was not comparable with the websites of other airlines.

6.3.3. *Criterion of a prudent investor in a market economy*

6.3.3.1. *Existence of an advantage in favour of AMS*

- (160) AMS considers that it did not benefit from any economic advantage within the meaning of Article 107(1) TFEU. It states that its services are directed to both private and public entities. It could therefore have benefited from the same measure by a private company. It adds that it does not force airports to buy its marketing services⁽⁹⁴⁾ and that the advertising space which it markets is a scarce resource for which there is high demand.

6.3.3.2. *The relationship between AMS services and the needs of its customers*

- (161) AMS considers that carrying out advertising campaigns is a necessity for regional airports. Their objective is to raise the profile of the services they offer. It adds that the major airport hubs themselves now feel that it is desirable to conduct advertising campaigns. The resulting image enhancement benefits the airports in question⁽⁹⁵⁾. In this connection, AMS states that this expenditure is a strategic investment comparable to those made by companies such as Coca-Cola, McDonald's and Nike.
- (162) This investment is all the more decisive because airports tend to generate almost half of their revenues from non-aeronautical activities. In this case, Angoulême airport had an even greater interest in generating traffic comprising international customers because regular passenger traffic was almost non-existent. On the contrary, AMS takes the view that Ryanair had no interest in contributing to these investments in advertising because it does not generate any additional revenue from inbound or outbound passengers.

⁽⁹²⁾ AMS takes the example of an advertising campaign published in a newspaper, which confirms its support role in carrying out such marketing operations, thereby enabling it to increase its fees or sell more advertising space, or a brand of soda whose advertising campaigns increase the sales of a distributor.

⁽⁹³⁾ AMS bases its assessment on a report published by Zénobie Conseil in May 2011. It also points out that Ryanair's website accounts for 4,5 billion page views per year, 80 % of direct visitors, a bounce rate of 17 %, an average visit duration of 9 minutes and 36 seconds per visitor and a high capacity of targeting potential customers.

⁽⁹⁴⁾ AMS points out that many airports choose not to advertise on Ryanair's website.

⁽⁹⁵⁾ Increase in inbound traffic via the airline on whose website the advertising campaign is located or any other airline; increase in non-aeronautical revenues by the installation of commercial operators.

- (163) AMS states that the promotion of the 'brand' of airports, and in particular regional airports, has become common practice. In this connection, it refers to the desire to increase the value and profile of the airport so that it becomes a destination chosen by travellers, to the fact that these investments are economically rational for both public and private investors, to the fact that these investments are also carried out by hubs, to the fact that airports have an interest in increasing the number of outbound passengers, and to the fact that what differentiates regional airports from hubs is that the former do not enjoy the same international profile. This strategy is independent of the airline chosen by travellers, since airports define their marketing investments in relation to the ability of the advertising space to target their potential customers.

6.3.3.3. The price of services provided by AMS

- (164) AMS states that its prices in relation to Angoulême airport are market prices. Comparing the contracts concluded with [...] and [...] airports, it maintains that it does not discriminate between airport and non-airport clients. Furthermore, it takes the view that making commercial use of the space available on Ryanair's website⁽⁹⁶⁾ is also likely to establish that the price of the service provided to Angoulême airport is a market price.
- (165) AMS argues that the Commission, in its decision on Bratislava airport cited in recital 111 of this Decision, took the view that it could not be excluded that a certain value could be attached to the mere presence of the name of an airport on Ryanair's website, provided that the airport is mentioned as a destination.
- (166) Furthermore, AMS notes that its rate card is objective and available on its website⁽⁹⁷⁾. The prices applied to the contract concluded with Angoulême airport are consistent with this framework. The prices have been set according to the type of page in question⁽⁹⁸⁾, the type of placement⁽⁹⁹⁾, the number of daily visitors and the number of routes to and from the airport.
- (167) Lastly, AMS states that the services it provides are more effective — because they are more targeted — than those provided through other traditional advertising platforms, such as newspapers. This is all the more so since the advertising it provides on Ryanair's website are 'fixed', whereas other websites rotate, and the prices laid down in the Marketing Services Agreement concluded with Angoulême airport were set using a 2007 price base, while traffic on Ryanair's UK website rose by 55 % between 2008 and 2012.

6.4. Comments by Transport & Environment

- (168) The comments by this non-governmental organisation under this procedure are limited to questioning the merits of the new aviation guidelines and of the decisions adopted by the Commission in the aviation sector, because of their environmental impact.

7. COMMENTS BY FRANCE ON THE COMMENTS BY INTERESTED PARTIES

- (169) The French authorities have indicated that they have no additional comments to make in response to the comments by interested parties.

8. ASSESSMENT OF THE AID MEASURES IN FAVOUR OF THE SUCCESSIVE AIRPORT MANAGERS

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

- (170) Under 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, in so far as it affects trade between Member States, is incompatible with the internal market.

⁽⁹⁶⁾ AMS is relying on a report carried out by Mindshare Ireland in June 2004.

⁽⁹⁷⁾ www.airportmarketingservices.com

⁽⁹⁸⁾ Homepage or page mentioning destinations.

⁽⁹⁹⁾ Link, banner, paragraph of text, format.

- (171) For a national 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 a selective advantage on its recipient(s); and 4) the measure must distort or threaten to distort competition and must be likely to affect trade between Member States.

8.1.1. Concepts of undertaking and economic activity

- (172) In order to determine whether the subsidies described above constitute State aid, it must be ascertained whether the beneficiaries are undertakings within the meaning of Article 107(1) TFEU.
- (173) The Commission would point out here that it is settled case-law that the concept of undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed⁽¹⁰⁰⁾. Moreover, the concept of economic activity covers any activity consisting in offering goods and services in a given market⁽¹⁰¹⁾.
- (174) In its *Leipzig-Halle airport* judgment, the Court of Justice confirmed that the operation of an airport for commercial purposes and the construction of airport infrastructure constitute economic activities⁽¹⁰²⁾. An airport operator engaged in economic activities, irrespective of its legal status and the way in which it is financed, necessarily constitutes an undertaking within the meaning of Article 107(1) TFEU and therefore the Treaty rules on State aid apply⁽¹⁰³⁾.
- (175) In the case at hand, the Commission would point out that the infrastructure in which investments financed by public subsidies were made, in particular the extension of the runway and work on the terminal, has been operated on a commercial basis by the successive airport operators. These operators have accordingly charged for the use of the infrastructure concerned.
- (176) The financing of this airport infrastructure and the potential operating aid involved have therefore served primarily to finance the economic activity of the commercial operation of the airport engaged in by its successive operators. It follows that the entities operating the infrastructure constitute undertakings within the meaning of Article 107(1) TFEU.

8.1.1.1. Entities engaged in the economic activity of operating the airport

- (177) The Commission would point out that CCI-airport performed the management and thus the commercial operation of Angoulême airport alone from 2002 to 2006.
- (178) As regards the periods after 2006, the Commission would point out that two distinct legal entities may be considered to be engaged jointly in an economic activity for the purposes of applying the State aid rules where they in fact provide goods or services jointly on a given market. On the other hand, an entity that is not itself engaged in providing goods or services on a market cannot be regarded as an undertaking solely on the grounds of its holding a share, even a controlling share, where that share gives rise only to the exercise of the rights attached to the status of shareholder or member⁽¹⁰⁴⁾. The Commission takes the view that during the period 2007-2011 SMAC and CCI-airport were jointly engaged in the commercial operation of Angoulême airport. The commercial revenues from the supply of airport services were set and collected by CCI-airport, which was also responsible for the operational management of the airport. At the same time, SMAC had the authority to enter into commercial commitments with third parties on behalf of the airport. It also had operational and financial responsibility for investments of a

⁽¹⁰⁰⁾ Judgments of the Court of Justice in Cases C-35/96 *Commission v Italy* [1995] ECR I-3851, paragraph 36; C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21; C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013, paragraph 14; and C-55/96 *Job Centre* [1997] ECR I-7119, paragraph 21.

⁽¹⁰¹⁾ Judgments of the Court of Justice in Case 118/85 *Commission v Italy* [1987] ECR 2599, paragraph 7; Case C-35/96 *Commission v Italy* [1995] ECR I-3851, paragraph 36; and Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 75.

⁽¹⁰²⁾ Judgments in Joined Cases T-443/08 and T-455/08 *Freistaat Sachsen and Others v Commission* ('Leipzig-Halle airport case') [2011] ECR II-1311, confirmed by the Court of Justice in its judgment of 19 December 2012 in Case C-288/11 P *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission* (not yet reported), paragraphs 42 and 43; see also judgment of the Court of First Instance in Case T-128/98 *Aéroports de Paris v Commission* [2000] ECR II-3929, confirmed by the Court of Justice in Case C-82/01P *Aéroports de Paris v Commission* [2002] ECR I-9297; and judgment of the Court of First Instance in Case T-196/04 *Ryanair v Commission* [2008] ECR II-3643, paragraph 88.

⁽¹⁰³⁾ See judgments of the Court of Justice in Joined Cases C-159/91 and C-160/91 *Poucet v AGV and Pistre v Cancava* [1993] ECR I-637.

⁽¹⁰⁴⁾ Judgment of the Court of Justice in Case C-222/04 *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze* [2006] ECR I-289, paragraphs 107 to 118 and 125.

commercial nature at the airport site. SMAC was directly involved in the supply of airport services, in particular through its involvement in the commercial management of the airport during this period, for example by concluding the 2008 agreements.

- (179) Likewise, the Commission would point out that the transfer of the management of Angoulême airport to SNC-Lavalin as of 1 January 2012 did not release SMAC from its responsibilities. Under the contractual framework established by the public procurement procedure of 6 July 2011, certain obligations have remained the responsibility of SMAC during the period of the contract.
- (180) First, SMAC is solely responsible for investment decisions. It finances the related expenditure ⁽¹⁰⁵⁾ even though this expenditure is indissociable from the activity of operating the airport ⁽¹⁰⁶⁾. Next, SMAC carries a significant share of the operating risk in so far as it guarantees, up to an annual ceiling, the equilibrium of the airport's accounts ⁽¹⁰⁷⁾. Lastly, SMAC has expressed the intention of directly financing support to airlines designed to implement the airport's commercial policy of re-opening a route between Angoulême airport and the British Isles.
- (181) The Commission therefore takes the view that, in the period starting on 1 January 2012, SMAC remains the joint operator of the airport.
- (182) The Commission accordingly finds that the economic activity of the commercial operation of Angoulême airport has been successively carried on by the following three groups of entities:
- CCI-airport for the period 2002-2006,
 - jointly by SMAC and CCI-airport for the period 2007-2011, and
 - jointly by SMAC and SNC-Lavalin as of 1 January 2012.

8.1.1.2. Exercise of public powers

- (183) The Commission would point out that not all activities engaged in by an airport manager are necessarily economic in nature. Activities relating to the exercise of public powers are in principle not economic in nature.
- (a) National system for financing state tasks in French airports
- (184) Various tasks performed by the successive managers of Angoulême airport relating to air traffic safety, security or environmental protection were financed by the public authorities between 2002 and 2012. This funding falls within the scope of the present formal investigation procedure.
- (185) In this connection, France has referred to the general system for financing state tasks in French airports laid down in national law and described below.
- (186) This system is based on a tax, the airport tax, and an additional financing instrument. The background to and rules governing these instruments, and the tasks financed by them, are described below.
- (187) In 1998 the Council of State ruled in its judgment in SCARA ⁽¹⁰⁸⁾ that safety and security tasks in airports were sovereign responsibilities incumbent on the state and that they therefore could not be charged to airport users. Following this ruling, Law No 98-1171 of 18 December 1998 on the organisation of certain air transport services and Article 136 of Law No 98-1266 of 30 December 1998 (1999 Budget Law) ⁽¹⁰⁹⁾ introduced the airport tax as of 1 July 1999. It is an earmarked tax in so far as the revenue from it can be used to finance certain expenditure only, namely the cost of tasks which France regards as sovereign responsibilities in airports. The above legal provisions also introduced an additional instrument to finance such tasks. The type of task financed by the airport tax and the additional financing instrument, and the rules governing the airport tax and the additional instrument, are set out below.

⁽¹⁰⁵⁾ Article 11 of the specification and technical specifications.

⁽¹⁰⁶⁾ Leipzig-Halle airport judgment, paragraph 107, see footnote 102.

⁽¹⁰⁷⁾ Article 15 of the specification and technical specifications.

⁽¹⁰⁸⁾ Judgment of the Council of State of 20 May 1998 in *Syndicat des Compagnies aériennes autonomes* ('SCARA').

⁽¹⁰⁹⁾ Now codified in Article 1609 *quater* of the General Tax Code.

- (188) French legislation, together with the more detailed regulatory provisions, sets out precisely which tasks can be financed by the airport tax. They are aircraft rescue and firefighting, wildlife hazard prevention⁽¹¹⁰⁾, the screening of hold baggage, passengers and cabin baggage, control of public access points to the restricted area⁽¹¹¹⁾, environmental protection measures⁽¹¹²⁾ and automatic border control using biometric identification. The reference to automatic border control using biometric identification was introduced into the legislation in 2008. Otherwise, the set of tasks eligible for financing by the airport tax has remained unchanged since it was introduced and corresponds to the tasks covered by the SCARA judgment. A number of national and European regulatory instruments set out the obligations incumbent on airport operators in relation to the performance of these tasks. For example, for aircraft rescue and firefighting, the regulations set out precisely the human and material resources to be put in place depending on the characteristics of the airport.
- (189) For any given airport, the airport tax is payable by all airlines using the airport. It is based on the number of passengers and the mass of freight and mail carried by the airline. The rate of airport tax per passenger or tonne of freight or mail is set annually for each airport, depending on the estimated cost of performing the tasks financed by the tax.
- (190) Each year airport operators draw up an annual statement of costs and traffic. These statements set out, for the previous year, the actual observed levels of traffic and the costs of performing the safety and security tasks⁽¹¹³⁾, and the amounts collected by way of the airport tax and the additional instrument for financing these tasks. They also contain estimates of traffic, costs and revenue related to safety and security tasks for the current year and the next two years. The statements are checked by the administrative authorities, who can also carry out on-site inspections. The rate of the tax is then set on this basis by an interministerial order.
- (191) As the tax rates are calculated on the basis of estimates of costs and traffic, an *ex post* adjustment mechanism has been put in place in order to ensure that the airport tax revenue, supplemented where appropriate by the revenue from the additional financing instrument described below, does not exceed the costs actually borne in the performance of the relevant tasks. The costs concerned include the operating and staff costs incurred in the performance of these tasks, depreciation for investments made in connection with these tasks, and the share of overheads related to these tasks⁽¹¹⁴⁾. Operators must keep multiannual accounts of the revenue from the airport tax and the additional financing instrument, and of the costs incurred in the performance of the relevant tasks. As soon as a positive balance is observed, it is carried over into the cumulative accounts for the preceding years, which may result in a positive or a negative balance. This balance is taken into account for setting the tax rate for the following year. In addition, any positive balance carries financial charges payable by the operator.
- (192) From the outset, the financing by way of the airport tax had to be supplemented by an additional financing instrument. This was because the costs of safety and security are not proportional to the volume of air traffic, unlike the airport tax revenue. It became clear that in airports with low traffic volumes, the airport tax rate would have had to be set at a high level judged to be difficult for users to accept if the safety and security costs were to be met. For these airports, provision was therefore made for setting the airport tax at a lower level than that required to cover costs and for using an additional financing instrument to finance the eligible tasks where required.
- (193) A number of different additional instruments succeeded one another in this regard. To start with, the French authorities used a specific fund, the Intervention Fund for Airports and Air Transport ('FIATA'), set up alongside the airport tax, also by Law No 98-1266 of 30 December 1998 as referred to above. It was the successor to the Air Transport Equalisation Fund ('FPTA'), initially reserved for financing air connections designed to promote regional development and territorial planning. A portion of the civil aviation tax was paid into it. FIATA was used to finance the same tasks as those financed by FPTA, extended to include those covered by the airport tax in order to supplement the latter for small airports. In practice, FIATA's functions were essentially divided into two separate

⁽¹¹⁰⁾ The concept of wildlife hazard includes bird strike hazard, covering collisions between aircraft and birds that are such as to endanger passengers and goods on board the aircraft.

⁽¹¹¹⁾ Performance of this task may include, for example, installing and maintaining barriers delimiting the public and restricted areas or installing a video surveillance system around the restricted area.

⁽¹¹²⁾ This task includes noise measures, in correlation with flight paths if appropriate, and air and water quality control in the areas surrounding airports.

⁽¹¹³⁾ Understood as tasks eligible for financing by the airport tax as described above.

⁽¹¹⁴⁾ Overheads are primarily linked to support functions such as human resource management, financial affairs, financial supervision of investments, purchases, non-specialised IT systems, legal department, general services, general management, accounting and management supervision.

'sections': an airport section for the supplementary coverage of safety and security tasks in small airports and an air transport section for subsidising air connections to promote regional development and territorial planning. Decisions on paying out FIATA grants for the supplementary financing of safety and security tasks were taken after consulting a management committee of FIATA's airport section.

- (194) In 2005 FIATA was closed, and the corresponding financing was taken over directly by the state budget for two years on the same terms, in particular as regards the opinion of a management committee. As of 2008, the state replaced this instrument by an increase in the airport tax, involving setting a tax that is higher than necessary to cover safety and security tasks in certain airports. The resulting surplus is redistributed to smaller airports in order to supplement the airport tax revenue collected by them.
- (195) As explained above, the annual statements by the airport operators, which are checked by the administrative authorities, indicate estimated and actual costs and revenue from both the airport tax and the additional instrument. Likewise, the annual accounts kept by the operators and used for calculating the balance of actual costs and revenue leading to a downwards adjustment of the tax and the imposition of financial charges on the operators if the balance is positive, show the revenue from both the airport tax and the supplementary instrument. The mechanism for declaring, checking and adjusting the financing designed to avoid the payment of public funds over and above the costs actually borne thus applies both to the airport tax and to the additional instrument.

(b) Evaluation of the general system for financing state tasks entrusted to French airports

- (196) As pointed out by the Commission in the new guidelines, the Court of Justice has held that activities that normally fall under the responsibility of the state in the exercise of its official powers as a public authority are not of an economic nature and in general do not fall within the scope of the rules on State aid⁽¹¹⁵⁾. Under the new guidelines⁽¹¹⁶⁾, activities such as air traffic control, police, customs, firefighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform those activities are considered in general to be of a non-economic nature.
- (197) In addition, the new guidelines stipulate that, for public funding of non-economic activities not to constitute State aid, it must be strictly limited to compensating for the costs to which they give rise and must not lead to undue discrimination between airports. With respect to the second condition, the guidelines state that, when it is normal under a given legal order that civil airports have to bear certain costs inherent in their operation, whereas other civil airports do not, the latter might be granted an advantage, regardless of whether or not those costs relate to an activity which in general is considered to be of a non-economic nature⁽¹¹⁷⁾.
- (198) The activities financed by the general system for financing state tasks in French airports as described in Section 8.1.1.2 relate to safeguarding civil aviation against acts of unlawful interference⁽¹¹⁸⁾, police tasks⁽¹¹⁹⁾, aircraft rescue and firefighting⁽¹²⁰⁾, air traffic safety⁽¹²¹⁾ and the protection of the natural and human environment⁽¹²²⁾. These activities can legitimately be regarded as falling under the responsibility of the state in the exercise of its official powers as a public authority. The Commission therefore takes the view that France rightly regards these tasks as incumbent on the state and therefore as non-economic for the purposes of the State aid rules.
- (199) It follows that France may also provide for public funding to compensate for the costs borne by airport managers in the performance of these tasks, in so far as such performance is imposed by national law on all airports indiscriminately and provided that the funding does not give rise to overcompensation or to discrimination between airports.

⁽¹¹⁵⁾ Judgments of the Court of Justice in Cases C-118/85 *Commission v Italy* [1987] ECR 2599, paragraphs 7 and 8, and C-30/87 *Bodson v Pompes funèbres des régions libérées* [1988] ECR 2479, paragraph 18.

⁽¹¹⁶⁾ Point 35.

⁽¹¹⁷⁾ Points 36 and 37.

⁽¹¹⁸⁾ The screening of hold baggage, passengers and cabin baggage and the control of public access points to the restricted area belong to this category.

⁽¹¹⁹⁾ Automatic border control using biometric identification belongs to this category.

⁽¹²⁰⁾ As indicated above, these three categories are explicitly mentioned in the new guidelines as examples of non-economic activities.

⁽¹²¹⁾ Wildlife hazard prevention belongs to this category.

⁽¹²²⁾ Environmental protection measures belong to this category.

- (200) First, it must be noted that the system described above applies to all civil airports in France, both as regards the scope of the tasks giving rise to compensation and as regards the financing instruments. The non-discrimination requirement is therefore met. While French legislation entrusts the performance of state tasks to airport managers, it lays the responsibility for financing these tasks on the State, not the airport managers. Thus the compensation from public funds for the costs of performing these tasks does not result in mitigating costs that should normally be borne by airport managers under the French legal system.
- (201) Second, it is clear from the description in Section 8.1.1.2 that the system laid down in the French legislation is based on strict mechanisms for checking costs on a before and after basis, thus ensuring that airport managers receive by way of the airport tax and the additional instrument only the amounts strictly necessary to cover the costs.
- (202) It follows that the financing received by French airport managers under this system, including at Angoulême airport, does not constitute State aid.

8.1.2. State resources and imputability to the state

8.1.2.1. Presence of state resources

- (203) Under the legal framework established by the 2002 agreement and the 2009 subcontracting agreement, a number of local authorities and other public authorities awarded grants to the successive operators of the airport. These authorities were CG16, Comaga, CCBC, SMAC and Angoulême CCI.
- (204) In order to ascertain whether the resources of Angoulême CCI constitute state resources, the Commission takes note of the fact that a public administrative body (*établissement public à caractère administratif*) constitutes an independent administrative entity subject to close supervision by the central administration of the French state⁽¹²³⁾. Moreover, Angoulême CCI's general budget includes tax revenue collected from companies entered in the trade and companies register. The Commission therefore takes the view that Angoulême CCI's resources are state resources.
- (205) In addition, local authority resources constitute state resources for the purposes of applying Article 107(1) TFEU⁽¹²⁴⁾. The members of SMAC who gave a contractual undertaking to pay into SMAC's accounts from their own resources are Chambers of Commerce and Industry, local authorities⁽¹²⁵⁾ or public bodies themselves made up of local authorities. The Commission therefore takes the view that SMAC's resources constitute state resources.

8.1.2.2. Imputability of the measures to the state

- (206) The Commission takes the view that the decisions by the public-law entities awarding the subsidies at issue are imputable to the state⁽¹²⁶⁾.
- (207) Moreover, the Commission notes that SMAC is a public body which has no employees and is administratively part of the local authorities which it groups together directly or indirectly. In addition, its budgetary decisions, which are binding on its members, are taken by a joint committee made up of representatives of its members. Taking account of these factors, the Commission finds that the decisions taken by SMAC relating to the activity of the airport are imputable to the State.

⁽¹²³⁾ In France, Chambers of Commerce and Industry are public administrative bodies. Generally speaking, they represent the general interests of trade, industry and services within their catchment area. Their tasks and prerogatives are laid down by law and they are subject to administrative and financial supervision by the State, through the agency of the Ministries for Finance and Infrastructure and Territorial Planning and Administration, each within its own sphere of responsibility. Regional and local chambers of commerce and industry are subject to the authority of the prefect of the region, assisted by the regional public finance officer (Article R 712-2 of the Commercial Code). The authority with supervisory power has a right of information. This means that it is the addressee of certain types of act. Acts are enforceable only if they have been addressed to the authority with supervisory power. Chambers of Commerce and Industry are governed by an assembly elected from among industry representatives in their catchment area.

⁽¹²⁴⁾ Judgment of the General Court in Joined Cases T-267/08 and T-279/08 *Région Nord-Pas-de-Calais v Commission* [2011] ECR II-1999, paragraph 108.

⁽¹²⁵⁾ In the case of CG16.

⁽¹²⁶⁾ See, for example, judgment of the Court of Justice in Case C-482/99 *France v Commission* [2002] I-4397, paragraphs 52 to 56.

- (208) As regards the measures taken by Angoulême CCI, the Commission would start by pointing out that Chambers of Commerce and Industry are public administrative bodies and as such are subject to public law. The Commission would also stress that French law classes Chambers of Commerce and Industry as '*corps intermédiaires de l'État*' (intermediary bodies of the State) and confers on them the task of contributing to economic development, the attractiveness and land planning of the territory and support for businesses and business associations ⁽¹²⁷⁾. The task of airport operation entrusted to the Chambers of Commerce and Industry also derives from their role of supporting local and regional development, even though the activity of operating an airport is in itself an economic activity ⁽¹²⁸⁾.
- (209) The Commission would also point out that Articles R712-2 et seq. of the Commercial Code place the Chambers of Commerce and Industry under the supervision of the representatives of the State. In this capacity, the authority exercising supervision has access to all CCI General Assemblies and can have items added to the agenda. In particular, decisions relating to initial, amending or implemented budgets are binding only once they have been approved, even tacitly, by the authority exercising supervision. In the case at hand, these budgets included financial transfers to the airport operators, including CCI-airport ⁽¹²⁹⁾, as set out in recitals 28 and 29 of this Decision ⁽¹³⁰⁾.
- (210) The Commission accordingly takes the view that Angoulême CCI, including CCI-airport, forms part of the public administration ⁽¹³¹⁾ and that the measures adopted by it in favour of the operators of Angoulême airport are necessarily imputable to the State.

8.1.3. *Selective advantage for the airport operators*

- (211) To determine whether a state measure constitutes aid to an undertaking, it must be determined whether the company in question enjoys an economic advantage enabling it to avoid costs that would otherwise have been borne by its own financial resources or whether it enjoys an advantage which it would not have received under normal market conditions ⁽¹³²⁾.
- (212) In the case at hand, the French authorities take the view that Angoulême airport in its entirety can be classed as an SGEI on account of its role in territorial planning and the economic and social development of the region. The financing granted to it does not therefore constitute State aid within the meaning of the *Altmark* ruling, because it does not confer on it a real advantage.
- (213) As the French authorities argue that the financial contributions made to the managers of Angoulême airport do not entail a selective advantage under the terms of the *Altmark* ruling, the Commission must examine whether the conditions laid down in that ruling are satisfied in this case. In this regard, it should be recalled that the Court ruled in that case that the compensation granted in discharging public service obligations does not constitute aid within the meaning of Article 107(1) TFEU when the following four criteria are all met:
- the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined (first condition),
 - the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner (second condition),

⁽¹²⁷⁾ Article L 710-1 of the Commercial Code provides: 'Departmental chambers or establishments belonging to the network of Chambers of Commerce and Industry each have the function, in their capacity as intermediary bodies of the State, of representing the interests of industry, trade and services to the public authorities or to foreign authorities. ... The network, and each establishment within it contributes to economic development, to the attractiveness and land planning of the territory and to the support of undertakings and of their associations by fulfilling within the terms set by decree any public-service task and any task of general interest necessary to the accomplishment of those tasks'.

⁽¹²⁸⁾ Article L 710-1 cited above: 'To this end, each departmental chamber or establishment in the network may carry out, in compliance with any sectoral plans applicable: ... 5. a task of creating and managing installations, in particular ports and airports'.

⁽¹²⁹⁾ The Commission would point out that no distinction need be made between Angoulême CCI and the specific airport management department known as CCI-airport for the purposes of applying the State aid rules, given that the airport management department does not have a separate legal personality that is distinct from that of Angoulême CCI, and simply forms part of the latter's internal organisational structure without any autonomy to take decisions, except where the day-to-day management of the airport is concerned. Moreover, neither France nor the third parties have argued that the measures subject to the formal investigation procedure should be attributed to this department alone.

⁽¹³⁰⁾ See, for example, judgment of the Court of Justice in Joined Cases 67, 68 and 70/85 *van der Kooy v Commission* [1988] ECR 219, paragraph 37.

⁽¹³¹⁾ See Commission Decision in State aid case N563/05 Aid granted by France to Ryanair (Toulon-London service) (OJ C 204, 26.8.2006, p. 4).

⁽¹³²⁾ See, for example, judgment of the Court of Justice in Case C-301/87 *France v Commission* [1990] ECR I-307, paragraph 41.

- the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations (third condition), and
 - where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations (fourth condition).
- (214) In its communication on the application of State aid rules to compensation granted for the provision of an SGEI ⁽¹³³⁾ (the SGEI Communication), the Commission provided guidance to clarify the requirements for compensation for services of general economic interest. The communication addresses the various conditions set out in the *Altmark* judgment, i.e. the concept of service of general economic interest within the meaning of Article 106 TFEU, the need for an entrustment act, the obligation to define the parameters of the compensation, the principles relating to the need to avoid overcompensation and the principles for selecting the service provider.
- (215) As the conditions laid down in the *Altmark* ruling are cumulative, the failure to satisfy any one of these conditions will result in the measure being classed as State aid within the meaning of EU law. Consequently, and in the light of the measures under scrutiny, the Commission considers it appropriate and adequate to examine the first and fourth *Altmark* conditions for all the periods under consideration.

8.1.3.1. Definition of the service of general economic interest (first condition)

(a) Framework for analysis

- (216) The first *Altmark* condition pertains to the definition of an SGEI task. This requirement coincides with that of Article 106(2) TFEU ⁽¹³⁴⁾, from which it transpires that undertakings entrusted with the operation of SGEIs are undertakings entrusted with a 'particular task' ⁽¹³⁵⁾. Generally speaking, the entrustment of a 'particular public service task' implies the supply of services which, if it were considering its own commercial interest, an undertaking would not assume or would not assume to the same extent or under the same conditions ⁽¹³⁶⁾. Applying a general interest criterion, Member States or the Union may attach specific obligations to such services.
- (217) However, the Commission considers that it would not be appropriate to attach specific public service obligations to an activity which is already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions. As for the question whether a service can be provided by the market, it must be borne in mind that the Commission's powers with regard to the definition of an SGEI are confined to verifying whether the Member State has made a manifest error in defining a service as an SGEI ⁽¹³⁷⁾.
- (218) Where specific Union rules exist, the Member States' discretion is further bound by those rules, without prejudice to the Commission's duty to carry out an assessment of whether the SGEI has been correctly defined for the purposes of State aid control ⁽¹³⁸⁾.
- (219) Generally speaking, the Commission does not rule out the possibility of defining the overall management of an airport as an SGEI. In this connection the new Aviation Guidelines indicate that such a definition is possible in well-justified cases ⁽¹³⁹⁾, such as where a region would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development. An assessment of whether there is a real public service requirement should take due account of other modes of transport, such as high-speed rail services or

⁽¹³³⁾ Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4).

⁽¹³⁴⁾ Judgment of the Court of First Instance in Case T-289/03 BUPA v Commission [2008] ECR II-81, paragraphs 171 and 224.

⁽¹³⁵⁾ See, in particular, judgment of the Court of Justice in Case 127/73 BRT v SABAM [1974] ECR 313.

⁽¹³⁶⁾ See SGEI Communication cited above, points 46 to 47.

⁽¹³⁷⁾ See SGEI Communication cited above, point 47.

⁽¹³⁸⁾ See SGEI Communication cited above, point 46.

⁽¹³⁹⁾ See points 69 to 73 of the new guidelines.

maritime links served by ferries. In such cases, public authorities may impose a public service obligation on an airport to ensure that the airport remains open to commercial traffic.

- (220) The Commission would also point out in this connection that, for an activity to be considered an SGEI, the general interest objective pursued by the public authorities must go beyond that of the development of certain economic activities or economic areas provided for in Article 107(3)(c) TFEU. The Court of Justice has held that SGEIs are services that exhibit special characteristics as compared with the general economic interest of other economic activities⁽¹⁴⁰⁾ and that undertakings entrusted with SGEI tasks are undertakings entrusted with a 'particular task'⁽¹⁴¹⁾. As a general principle, the Commission takes the view that defining the tasks carried out by an airport manager as an SGEI is justifiable only if all or part of the region served by the airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development.
- (221) In the opening decision, the Commission took the view that, while airport management tasks involving specific public service obligations, such as those related to keeping the airport operational or to infrastructure accessibility, could be regarded as an SGEI, developing the airport for commercial flights, independently of the existence of routes covered by a public service obligation, could not be defined as a service of general interest.
- (222) In this connection, the Commission would point out first that the airports with scheduled services closest to Angoulême airport are accessible only by a drive of more than one hour and thirty minutes⁽¹⁴²⁾. Second, although it is in a central location in the west of mainland France, Angoulême is not connected to the motorway network or the high-speed rail lines that serve the east of the country. In this connection, it must be noted that public service obligations were imposed for part of the period under review for the route between Angoulême and Lyon airports in accordance with the applicable EU legislation⁽¹⁴³⁾. The public service obligations concerned served to guarantee sufficient scheduled transport services to and from Angoulême⁽¹⁴⁴⁾.
- (223) Furthermore, the Commission would point out that average traffic at Angoulême airport during the periods under review fell and remained significantly below 200 000 passengers per year⁽¹⁴⁵⁾, and that the airport's operating account was structurally in deficit, as is clear from recital 17 above.
- (224) Given these inherent characteristics of Angoulême airport, it may be supposed that an economic entity considering its own commercial interest would not assume the management of this airport, or at least not under normal commercial conditions.
- (225) Accordingly, given Angoulême's geographic location in the light of its transport network, the absence of an airport nearby that could constitute a suitable alternative for passengers, the very low traffic volumes and the airport's loss-making situation, the Commission finds that France has not made a manifest error in defining the tasks of Angoulême airport's managers related solely to keeping the airport operational and to infrastructure accessibility as an SGEI. By contrast, the commercial development of an airport by introducing new air routes or expanding non-aeronautical activities does not in principle as such satisfy the general interest criterion for definition as an SGEI. In particular, the Commission takes the view that the compensation by the public authorities of the net costs incurred in the provision of an SGEI should not affect the economic incentive for an airport manager to enter into commercial relations with airlines.
- (226) Accordingly the Commission must determine, for each of the management periods at issue, which activities of the managers of Angoulême airport fall within the scope of an SGEI and which do not.

⁽¹⁴⁰⁾ Judgments of the Court of Justice in Cases C-179/90 *Merci Convenzionali Porto di Genova* [1991] ECR I-5889, paragraph 27, C-242/95 *GT-Link* [1997] ECR I-4449, paragraph 53, and C-266/96 *Corsica Ferries* [1998] ECR I-3949, paragraph 45.

⁽¹⁴¹⁾ See, for example, judgment of the Court of Justice in *BRT v SABAM*, cited above.

⁽¹⁴²⁾ See recital 14 of this Decision, Table 1.

⁽¹⁴³⁾ Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8), since replaced by Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3)).

⁽¹⁴⁴⁾ Article 4(1)(a) of Regulation (EC) No 2408/92, cited above.

⁽¹⁴⁵⁾ See Table 2 above.

(b) Scope of the SGEI

- (227) For the period 2002-06 when CCI-airport was operating the airport, the 2002 agreement was drawn up to ensure that public service tasks linked to land use planning restrictions around the airport and the continuity of the public service ⁽¹⁴⁶⁾ could be carried out. The purpose of the agreement was also to allow development of the airport. The preamble to this agreement states in this respect that the signatories 'have decided to combine their efforts to define and finance the development, planning and operating policy' for Angoulême airport.
- (228) Bearing in mind the arguments set out in recitals 221 to 226, the Commission finds that the management tasks described in the concession agreement and the related specification that are linked to keeping the airport operational and to infrastructure accessibility may be regarded as general interest tasks and that the definition of these tasks as an SGEI is not marred by any manifest errors of assessment.
- (229) By contrast, the objective of the commercial development of the airport by introducing new air routes or expanding non-aeronautical activities does not as such satisfy the general interest criterion for definition as an SGEI. It cannot be justified by the regional development objective cited by the French authorities.
- (230) In point of fact, however, the only compensation that was actually paid did not arise from the costs of opening new routes, the conclusion of contracts with new airlines or the expansion of non-aeronautical activities at Angoulême airport, but related solely to the activities that can be classed as an SGEI.
- (231) For the period 2007-2011 when SMAC and CCI-airport were jointly operating the airport, it must first be noted that SMAC's statutes of 21 December 2006 entrust it with the tasks of fitting out, equipping, maintaining, managing and operating Angoulême airport. Second, the management subcontracting agreement of 22 January 2009 between SMAC and Angoulême CCI transfers the responsibility for investments relating to the operation of the airport from CCI-airport to SMAC. Under the terms of the management subcontracting agreement, the other tasks related to the operation of the airport were assigned to CCI-airport.
- (232) In addition, according to SMAC's statutes, its object is to 'ensure the development of commercial passenger or freight air services, business, leisure or tourist flights, training and all related activities in support of this objective' at Angoulême and Cognac airports.
- (233) As set out in recital 225, management tasks linked solely to keeping the airport operational and to infrastructure accessibility may be regarded as general interest tasks; only these tasks can be defined as an SGEI without manifest error.
- (234) By contrast, as explained in recital 225, the development of commercial flights cannot be defined as an SGEI, even if it has the objective of promoting regional development. However it was only the commercial relationship with Ryanair that gave rise to costs borne by SMAC and CCI-airport that were specifically related to the development of new transport services. As SMAC and CCI-airport must be regarded as being jointly engaged in the economic activity of managing the airport vis-à-vis Ryanair, the compensation by SMAC for the additional costs incurred in connection with the 2008 agreements must be analysed as part of the assessment of any aid elements contained in those agreements.
- (235) The decision of 23 June 2001 by SMAC provided that the extra-contractual payments for the commercial development of the airport were to be paid directly by SMAC to the airlines. As a result, the financial measures corresponding to the development of new transport services cannot be regarded as an SGEI and will be analysed as part of the assessment of aid paid to Ryanair ⁽¹⁴⁷⁾.

⁽¹⁴⁶⁾ These obligations are mentioned in Articles 20 and 21 of the specification for the 2002 concession.

⁽¹⁴⁷⁾ See Section 9 of this Decision.

- (236) Lastly, the specification and technical specifications for the period of joint operation of the airport by SMAC and SNC-Lavalin that started on 1 January 2012 refer not only to tasks relating to keeping the airport operational and to infrastructure accessibility but also to the task of promoting the airport and developing its activity. Article 9 of the specification and technical specifications accordingly states, 'the operator is required to seek in the interests of the local economy and local tourism all means of developing airport activity and tourism'. It goes on to say that the operator must 'to this end promote the airport to current and potential users and to entities active in the fields of commercial and business aviation, tourism, air freight, training, aeronautical maintenance, or any entities carrying on activities that are complementary or related to the activity of the airport'.
- (237) In this connection, SMAC's report to the tender committee indicates that the development plan presented by SNC-Lavalin as part of a proactive scenario was key to the selection of its bid. Moreover, it is clear from the awarding decision and from the remuneration set out in the bid that the operator's intention at the time was to re-establish a passenger transport route from Great Britain and Ireland by a low-cost airline. According to the planned schedule, three routes would be successively opened over a period of six years at a rate of one new route every two years.
- (238) As set out in recital 225, management tasks linked solely to keeping the airport operational and to infrastructure accessibility may be regarded as general interest tasks and defining them as an SGEI is without manifest error.
- (239) By contrast, as explained in recital 225, the development of commercial flights cannot be defined as an SGEI, even if it has the objective of promoting regional development. The financial measures corresponding to these activities cannot therefore be regarded as being for the purpose of financing an SGEI.
- (240) However, the only compensation actually paid to the airport manager after January 2012 was not related to costs incurred in the development of commercial flights. The French authorities have undertaken to notify the Commission of any support granted in future by SMAC or its constituent entities to airlines for the purpose of operating routes out of Angoulême airport.

(c) Existence of entrustment

- (241) Only for the tasks that can justifiably be defined as an SGEI by the French authorities, the Commission must establish whether the manager or managers of Angoulême airport for each of the periods under review was or were actually entrusted with the performance of public service obligations by an entrustment act. In this connection, it must be borne in mind that the public service task must be assigned by way of an act or series of acts that, depending on the legislation in Member States, may take the form of a legislative or regulatory instrument or a contract. The Commission's approach, codified in the SGEI Communication, is to require that the act or series of acts must specify at least ⁽¹⁴⁸⁾:

- the content and duration of the public service obligations,
- the undertaking and, where applicable, the territory concerned,
- the nature of any exclusive or special rights assigned to the undertaking by the authority in question,
- the parameters for calculating, controlling and reviewing the compensation, and
- the arrangements for avoiding and recovering any overcompensation.

(i) The period 2002-06

- (242) For the period 2002-06, the concession for the construction, maintenance and operation of the airport was awarded to Angoulême CCI by ministerial order. The terms governing the concession were set out in the concession agreement between the minister responsible for civil aviation and CCI-airport signed for a period of five years. In

⁽¹⁴⁸⁾ See SGEI Communication cited above, point 52.

addition, some of the subsidies paid by the CCI and the contributions paid by the local municipalities to CCI-airport⁽¹⁴⁹⁾ were awarded on the basis of the 2002 agreement. Lastly, the procedure for adopting the budget for the airport, laid down in Circular No 111 of 30 March 1992 setting the budgetary, accounting and financial rules applicable to Angoulême CCI, ensured that the amounts at issue constituted real compensation and that overcompensation was avoided. It should also be noted that the procedure also included control mechanisms to ensure that there was no overcompensation⁽¹⁵⁰⁾. Moreover, up to 31 December 2006, the airport's accounts and budgets were also submitted to the Civil Aviation Authority, which had to deliver an opinion to the authority exercising supervision over Angoulême CCI before the accounts and budgets could be approved, the state being the conceding authority for the airport.

- (243) The Commission accordingly finds that the task of managing the airport was entrusted to Angoulême CCI by way of an entrustment act that satisfies the *Altmark* conditions.

(ii) The period 2007-2011

- (244) For this period, the public service tasks were entrusted to the managers by a series of acts. First, SMAC's statutes of 21 December 2006 entrust it with the tasks of fitting out, equipping, maintaining, managing and operating Angoulême airport. They also provide for SMAC's costs to be automatically entered in the budgets of its members⁽¹⁵¹⁾. Second, the management subcontracting agreement concluded on 22 January 2009 between SMAC and Angoulême CCI for a period of three years transfers the responsibility for investments relating to the operation of the airport from CCI-airport to SMAC. Under the terms of the management subcontracting agreement, the other tasks related to the operation of the airport were assigned to CCI-airport.

- (245) Lastly, the procedure for adopting the budget for the airport, laid down in Circular No 111 of 30 March 1992 setting the budgetary, accounting and financial rules applicable to Angoulême CCI, ensured that the amounts at issue constituted real compensation and that overcompensation was avoided. Control mechanisms were also built in to the procedure⁽¹⁵²⁾. In addition, CCI, as concession-holder until 31 December 2008 and then as sub-contractor until 31 December 2011, sent its initial, amending or implemented budgets (profit and loss, supply and use, self-financing capacity) to SMAC for approval by the latter in its capacity as conceding authority, in accordance with its statutes.

- (246) The Commission accordingly finds that the task of managing the airport was entrusted to SMAC and Angoulême CCI by way of an entrustment act that satisfies the *Altmark* conditions.

(iii) Period starting on 1 January 2012

- (247) The management and operation of Angoulême airport were entrusted to SNC-Lavalin by the acceptance of the bid on 8 August 2011 and by the specification and technical specifications for a period of six years⁽¹⁵³⁾. Although a number of obligations remained the responsibility of SMAC⁽¹⁵⁴⁾, these acts set out the obligations of the parties as part of the task of operating the airport.

- (248) The responsibilities incumbent on SNC-Lavalin as part of the task of operating the airport are listed and detailed in the specification and technical specifications. Under Article 8 of the specification, SNC-Lavalin is entrusted with the following tasks: performance of state tasks, implementation of an AFIS service, performance of tasks ensuring the safe use of the airport, maintenance of the airport site and networks and ensuring that the airport is able to accommodate scheduled commercial traffic. The relevant acts also define the method for calculating the remuneration to be paid to SNC-Lavalin by SMAC. The maximum compensation paid by SMAC derives from SNC-Lavalin's bid. Lastly, as concerns the regular checks to avoid overcompensation, the provisions of Title III of the tender specification set out the arrangements for monitoring by SMAC to ensure that there is no overcompensation

⁽¹⁴⁹⁾ See recital 18 of this Decision.

⁽¹⁵⁰⁾ The procedure is as follows: Each year Angoulême CCI defines the budgetary guidelines and each department draws up its budget accordingly. Each year, in the autumn, the general airport department submits a draft budget for years n, n+1 and n+2. The elected members of Angoulême CCI's Bureau examine the draft budgets and make any necessary changes. Once it has been endorsed by the Bureau, the budget for the airport, together with those of the other departments, is presented at a general meeting to the elected members of Angoulême CCI, who then vote on it. Implementation is subject to their voting in favour. Moreover, reporting is carried out at regular intervals in order to verify that the budget adopted is being implemented properly. During year n+1, the budget for year n is submitted to the general meeting with comments on any discrepancies. The general meeting votes again to accept the implemented budgets.

⁽¹⁵¹⁾ Article 17 of the statutes of SMAC.

⁽¹⁵²⁾ See footnote 150.

⁽¹⁵³⁾ Tender document by SNC-Lavalin dated 19 July 2011, accepted by SMAC on 8 August 2011 following a decision of 23 June 2011.

⁽¹⁵⁴⁾ See recital 23 of this Decision.

involved in the contribution from SMAC as against the costs of performing the general economic interest tasks entrusted to SNC-Lavalin.

- (249) The task of managing the airport must therefore also be considered to have been entrusted to SNC-Lavalin by way of an entrustment act that satisfies the *Altmark* conditions.
- (250) The Commission accordingly finds that, for each period of operation of Angoulême airport under review, an entrustment act did in fact entrust to the manager or managers the public service obligations consisting in keeping the airport operational and the infrastructure accessible. The first *Altmark* condition has therefore been satisfied in respect of the tasks referred to above.

8.1.3.2. Selection of the service provider (fourth condition)

- (251) The Commission also deems it appropriate to examine the fourth *Altmark* condition in respect of all the periods concerned.
- (252) In accordance with this condition, the compensation offered must either be the result of a public procurement procedure which allows for selection of the tenderer capable of providing those services at the least cost to the community (first sub-criterion), or the result of a benchmarking exercise with a typical undertaking, well run and adequately provided with the necessary means (second sub-criterion).

(a) First sub-criterion

(i) Periods 2002-06 and 2007-2011

- (253) For the period 2002-06, the concession to operate the airport was awarded to Angoulême CCI by ministerial order⁽¹⁵⁵⁾ of 20 September 2002 published in the Official Journal of the French Republic on 5 October 2002. For the period 2007-2011, it was the order of the Prefect of 21 December 2006 setting up SMAC and the subcontracting agreement of 2009 which entrusted SMAC with the task of fitting out, equipping, maintaining, managing and operating, directly or indirectly, Angoulême airport.
- (254) These unilateral and contractual administrative acts were quite clearly not adopted as the result of an open, transparent and non-discriminatory public procurement procedure whereby a number of potential bids could be compared and the compensation set in such a way as to rule out the presence of State aid.
- (255) Accordingly, for the periods mentioned above, the Commission finds that the terms of the procedure followed were not such as to ensure effective competition for the task of managing Angoulême airport. The procedure for selecting the managers of Angoulême airport therefore does not satisfy the first part of the fourth *Altmark* criterion in so far as it did not allow for selection of a tenderer capable of providing the services concerned at the least cost to the community.

(ii) Period starting on 1 January 2012

- (256) The management and operation of the airport were entrusted to the undertaking SNC-Lavalin following a public procurement procedure in accordance with Article 21 of Directive 2004/18/EC of the European Parliament and of the Council⁽¹⁵⁶⁾. Furthermore, prior to this procedure, the French authorities published a notice of a competitive public tender in the *Official Journal of the European Union*.
- (257) However, as the French authorities were not obliged to use a standard public procurement procedure, they had a wide margin of discretion in selecting a contractor⁽¹⁵⁷⁾. A procedure conferring such wide discretion on the adjudicating authority may restrict the participation of interested operators.

⁽¹⁵⁵⁾ Order granting the concession for Angoulême-Brie-Champniers airport to the Angoulême Chamber of Commerce and Industry (*Arrêté portant concession de l'aéroport d'Angoulême-Brie-Champniers à la Chambre de commerce et d'industrie d'Angoulême*).

⁽¹⁵⁶⁾ 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).

⁽¹⁵⁷⁾ The award criteria included the following: 'most economically advantageous tender assessed in the light of the criteria listed in the specification, the invitation to tender or negotiate, or the descriptive document'.

- (258) The Commission accordingly finds that the procedure employed in this instance is not in itself sufficient to satisfy the fourth *Altmark* condition⁽¹⁵⁸⁾.
- (259) The Commission must therefore assess whether the public procurement procedure employed in this instance allowed for selection of a tenderer capable of providing the services concerned at the least cost to the community.
- (260) The key contractual features are: (i) a six-year duration; (ii) a contractual commitment by the service provider to the ceiling on the contribution by SMAC to the balancing of the airport's accounts; (iii) a flat-rate remuneration for the service provided; and (iv) a performance incentive clause. Potential tenderers were invited to make a baseline offer (without commercial traffic) and an offer for a proactive scenario (with commercial traffic). The procurement report submitted to the tender committee points out that two competing bids were submitted. Besides SNC-Lavalin, the company APCO⁽¹⁵⁹⁾ also submitted a baseline scenario and a proactive scenario. For a technical value equivalent to that of SNC-Lavalin's bid for the proactive scenario, which was the one selected, the prices offered by the two competing bids for the whole of the period were:

(thousand EUR)

	Balancing contribution	Remuneration	SMAC's total expense
SNC-Lavalin	2 359	1 074	3 433
APCO	5 463	480	5 943

- (261) Moreover, SMAC's procurement report to the tender committee shows that each of the two tenderers submitted a baseline and a proactive scenario⁽¹⁶⁰⁾. The latter, which was the scenario chosen by the delegating authority, corresponds to the strategic plan for the commercial development of Angoulême airport. The report to the tender committee states that the remuneration of SNC-Lavalin, which won the bid, is the same for both scenarios. However, the ceiling on the balancing contribution borne by SMAC as proposed by the company in its bid does show a variation in the guaranteed balancing contribution ceiling. As the report indicates, the average additional annual amount borne is EUR 30 000 in the proactive scenario, although the additional amount is not distributed evenly across the period of performance of the contract. The difference between the baseline and the proactive scenarios is as follows:

(thousand EUR)

	2012	2013	2014	2015	2016	2017
Baseline scenario	405	364	374	357	350	342
Proactive scenario	465	425	448	384	341	296
Difference	+ 60	+ 61	+ 74	+ 27	- 9	- 46

- (262) The Commission accordingly finds that the delegating authority did not select the bid capable of providing the service concerned at the least cost to the community. The baseline scenario offered by SNC-Lavalin was more advantageous than the baseline scenario proposed by APCO, and was such as to ensure accessibility and the maintenance of operational conditions at Angoulême airport. On the other hand, the proactive scenario was designed to ensure the commercial development of the airport. This service was not essential to ensuring the first and in any event could not be regarded as a service of general economic interest. Therefore, the selection of the service provider was not based on the most economically advantageous tender capable of ensuring the provision of a public service at the least cost to the community.

⁽¹⁵⁸⁾ See point 66 of the SGEI Communication cited above.

⁽¹⁵⁹⁾ Set up in January 2011, APCO is a wholly owned subsidiary of Limoges and Haute-Vienne CCI. Its object is airport management consultancy, training of airport staff, the management and development of airports, ground handling and airport security.

⁽¹⁶⁰⁾ See recital 20 of this Decision.

- (263) As regards the extra-contractual payments for the commercial development of the airport, which the Commission does not regard as falling legitimately under the scope of the SGEI ⁽¹⁶¹⁾, the doubts expressed by the Commission in the opening decision have been lifted. The SMAC decision of 23 June 2001 provides for these measures to be paid directly by SMAC to the airlines. They will therefore be assessed in the light of the State aid rules as part of the assessment of the measures granted to Ryanair/AMS ⁽¹⁶²⁾.
- (264) The Commission accordingly finds that the terms of the procedure employed to award the contract to SNC-Lavalin were not such as to allow for selection of a tenderer capable of providing the services concerned at the least cost to the community and therefore that the first sub-criterion of the fourth *Altmark* condition has not been satisfied.
- (b) Second sub-criterion
- (265) For the periods 2002-2006 and 2007-2011, the French authorities had to demonstrate that the compensation had been established by reference to a medium-sized, well-run undertaking adequately equipped with the necessary resources.
- (266) The Commission notes in this respect that France has not provided information of this nature. The Commission also finds that the compensation was not determined with reference to a cost base established in advance or by comparison with the cost structure of other comparable airport managers. For the relevant periods, the Commission therefore does not have the necessary comparative data to assess whether the criterion has been satisfied in respect of the selection of the service provider.
- (267) The Commission therefore finds that the fourth *Altmark* condition is not satisfied for the periods 2002-06 and 2007-2011.
- (268) The same applies to the period starting on 1 July 2012, as the Commission does not have the necessary comparative data to assess whether the criterion has been satisfied in respect of the selection of the service provider. It must therefore find that the fourth *Altmark* criterion is not satisfied for this period either.
- (269) Given that the fourth *Altmark* criterion has not been satisfied, the Commission takes the view that the measures at issue did confer an advantage on the successive operators of Angoulême airport which they would not have received under normal market conditions.

8.1.4. *Effect on intra-EU trade and competition*

- (270) When financial aid from a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid. In accordance with the settled case-law of the Court of Justice ⁽¹⁶³⁾, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings in markets open to competition.
- (271) More generally, as Ryanair confirmed in its comments, airport managers in the EU compete with one another to attract airlines. Airlines decide which routes to operate and with what frequency based on a number of criteria. These criteria include not only the potential customers they can expect on the routes concerned but also the characteristics of the airports at either end of the route.
- (272) Airlines take into account such criteria as the type of airport services provided, population or economic activity around the airport, congestion, whether there is access by land, and the level of charges and overall commercial conditions for use of airport infrastructure and services. The charge level is a key factor, since public funding granted to an airport could be used to maintain airport charges at an artificially low level in order to attract airlines and may thus significantly distort competition ⁽¹⁶⁴⁾.

⁽¹⁶¹⁾ See recital 225 of this Decision.

⁽¹⁶²⁾ See Section 9 of this Decision.

⁽¹⁶³⁾ Judgment of the Court of First Instance in Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

⁽¹⁶⁴⁾ See point 43 of the new guidelines.

- (273) Airlines therefore allocate their resources, in particular in terms of aircraft and crew, to the various routes taking account in particular of the services offered by the airport managers and the prices charged by them for their services.
- (274) As the market for airport services is a market open to competition within the EU, the advantages granted to the successive operators of Angoulême airport are therefore likely to affect trade between Member States by artificially increasing the range of airport services provided there compared with normal market conditions. The Commission accordingly finds that the measures at issue are likely to distort competition and affect trade within the EU.

8.1.5. *Conclusion on the existence of aid*

- (275) In the light of all the considerations set out above, the Commission concludes as follows:
- given the specific characteristics of Angoulême airport, France made no manifest error of assessment in defining the management tasks linked solely to keeping the airport operational and ensuring the accessibility of its infrastructure as an SGEI for all the periods under review in this Decision,
 - by contrast, the economic development of the airport for commercial purposes cannot be defined as an SGEI for any of the periods concerned,
 - the public compensation awarded to finance the public service tasks that fall within the scope of the SGEI does not satisfy the fourth condition of the *Altmark* ruling for any of the periods covered by this Decision. These measures therefore constitute State aid within the meaning of Article 107(1) TFEU.

8.2. **Compatibility with the internal market of the measures in favour of the airport operators**

- (276) By way of a preliminary remark, it should be pointed out that only the public compensation paid to the successive managers of Angoulême airport for performing SGEI tasks must be assessed for compatibility with the internal market. As stated in recital 225, activities linked to developing the airport's commercial activity, including for the purposes of promoting regional development, cannot be defined as an SGEI. In this case, these activities did not give rise to the payment of compensation to the successive managers of Angoulême airport during the periods covered by this Decision.

8.2.1. *Compatibility of the aid granted to the airport operators*

- (277) In the Commission's view, the SGEI Decision of 2011 applies to the aid granted during all the periods covered by this Decision. Under Article 10(b) of the 2011 SGEI Decision, 'any aid put into effect before [31 January 2012] that was not compatible with the internal market nor exempted from the notification requirement in accordance with Decision 2005/842/EC but fulfils the conditions laid down in this Decision shall be compatible with the internal market and exempt from the requirement of prior notification'.
- (278) However, Article 4(f) of the 2011 SGEI Decision, which provides that the entrustment act must make explicit reference to that Decision, cannot be applied in this instance. As the aid at issue was granted before the entry into force of the 2011 SGEI Decision, it is impossible to require the entrustment acts concerned to refer to that Decision, without rendering Article 10(b) devoid of any useful effect. Furthermore, in the interests of procedural efficiency, the Commission considers that it can examine the application of the 2011 SGEI Decision to the aid granted before 31 January 2012 without first examining whether this aid was incompatible with Decision 2005/842/EC. The purpose of Article 10(b) of the 2011 SGEI Decision is to extend the scope of the Decision to incompatible aid granted before its entry into force, without excluding aid that might have been found compatible under Decision 2005/842/EC.

8.2.1.1. *Condition of scope*

- (279) Under the 2011 SGEI Decision, compensation for the provision of public services granted to undertakings entrusted with an SGEI may be regarded as compatible with the internal market if granted to an airport with an average annual traffic of no more than 200 000 passengers during the two financial years preceding that in which the service of general economic interest was assigned. The annual traffic at Angoulême airport did not exceed 200 000 passengers at any point between 2000 and 2012.

- (280) The measures at issue therefore fall within the scope of the 2011 SGEI Decision and must be assessed in the light of the conditions laid down therein.

8.2.1.2. Condition of entrustment (Article 4 of the 2011 SGEI Decision)

- (281) It follows from the Commission's assessment of compliance with the first and second *Altmark* criteria that a genuine SGEI was entrusted to the managers of Angoulême airport and that the conditions relating to the existence of an entrustment act were satisfied. Only airport management tasks related solely to keeping the airport operational and to infrastructure accessibility can be defined as an SGEI.

8.2.1.3. Condition of compensation (Articles 5 and 6 of the 2011 SGEI Decision)

(a) Periods 2002-2006 and 2007-2011

- (282) Under Article 5(1) of the 2011 SGEI Decision, the amount of compensation may not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit. In the case at hand, the compensation is limited to the necessary costs of discharging the public service by the procedure for defining the budget allocated to the airport. Point 2.6 of the circular describing this procedure requires Angoulême CCI, for the purposes of preparing the budget, to determine: (i) the state of operating transactions; (ii) the state of self-financing capacity; and (iii) the state of capital transactions. In addition, a number of documents have to be annexed to the budget proposal for approval (schedule of services provided and interdepartmental contributions and the schedule of employees and wage bill, etc.). The set of controls in place prior to the preparation of the budget is such as to ensure in advance that it is limited to what is necessary and justified in the light of Angoulême CCI's tasks. The information submitted by the French authorities shows that the aid granted served only to compensate for the operating deficit associated with the management of Angoulême airport. In addition the arrangements established by SMAC's statutes for monitoring the implemented budget *ex post* were such as to prevent any overcompensation. As a result, the amount of compensation did not exceed what was necessary to cover the costs incurred in discharging the public service obligations.
- (283) Furthermore, the existence of separate accounts meant that the activity of managing Angoulême airport could be kept separate from an accounting point of view. The CCI-airport accounts had a separate item for the activities of the airport. This was sufficient to ensure that there was no cross-subsidising to the benefit of other activities. The airport's accounts and budgets were also submitted to the Civil Aviation Authority, which had to deliver an opinion to the authority exercising supervision over Angoulême CCI before the accounts and budgets could be approved, the state being the conceding authority for the airport. The compensation was therefore actually used for the provision of the service concerned and the public authorities had put a procedure in place to ensure that there was no overcompensation. The Commission would none the less point out that this assessment does not apply to the costs incurred in relation to the activity of Ryanair, which was part of the commercial development task ⁽¹⁶⁵⁾.
- (284) Lastly, the Commission would point out that the information submitted by the French authorities demonstrates that the aid at issue served only to compensate for the airport's operating deficit during the relevant period and that the airport manager did not make any profit from it.

(b) Period starting on 1 January 2012

- (285) The invitation to tender stated quite clearly that the tenderer should set the remuneration for service provision for non-commercial operation (baseline scenario) and commercial operation (proactive scenario). The tenderer also had to set the maximum guarantee sought from SMAC for balancing the operating account in the two scenarios. SMAC also included in the invitation to tender a performance incentive clause (50%/50 %) in the event that SMAC's contribution was lower than the ceiling set in the bid; this clause is included in the specification. Moreover, as pointed out in recital 262 above, the baseline scenario offered by SNC-Lavalin, which was more advantageous than the baseline scenario proposed by APCO, was such as to ensure accessibility and the maintenance of operational conditions at Angoulême airport.
- (286) In addition, the compensation is calculated primarily with reference to the deficit actually incurred within a separate account for the airport ⁽¹⁶⁶⁾. The operator is required to have this separate account certified by an auditor and to submit its annual accounts to SMAC.

⁽¹⁶⁵⁾ See recital 225 of this Decision.

⁽¹⁶⁶⁾ Article 14-1 of the specification and technical specifications.

- (287) There is also provision for the public balancing contribution paid to SNC-Lavalin to be reduced if the amount required to balance the airport's accounts proves to be lower than the ceiling set in the accepted bid. This clawback arrangement reduces the risk of overcompensation *ex post*.
- (288) As regards the regular checks to avoid overcompensation, the provisions of Title III of the tender specification set out the arrangements for monitoring by SMAC to ensure that there is no overcompensation involved in the contribution from SMAC as against the costs of performing the general economic interest tasks entrusted to SNC-Lavalin.
- (289) As regards the compensation amount, the Commission would none the less point out that the contractual balance of the contract concluded between SMAC and SNC-Lavalin is based, not on the prior determination of a reasonable profit, but on a flat-rate remuneration. The Commission also takes note of the airport's very limited traffic to date, the mechanisms in place to calculate and monitor the compensation, the inclusion of the performance incentive clause referred to above and the fact that SNC-Lavalin's bid was the lowest in financial terms. In view of these factors, the Commission finds that the compensation granted under the contract between SMAC and SNC-Lavalin can be declared compatible with the internal market on condition that the French authorities ensure that the total amount of compensation paid to SNC-Lavalin over the duration of the contract does not exceed what is necessary to cover the net costs incurred in discharging the public service obligations only, excluding the costs of the airport's commercial development but including a reasonable rate of return on the capital invested.
- (290) In this connection, the French authorities are required to submit to the Commission within four months of the expiry of the contract between SMAC and SNC-Lavalin a report demonstrating that the amount of compensation granted to the latter, including a reasonable rate of return on the capital invested, has complied with Article 5 of the 2011 SGEI over the entire duration of the contract.

8.2.2. *Conclusion on the compatibility of the aid between 2002 and 2017*

- (291) In the light of the above, the Commission concludes that the aid already granted for the management of Angoulême airport since 2002, irrespective of who the managers were, is compatible with the internal market pursuant to Article 106(2) TFEU and the 2011 SGEI Decision⁽¹⁶⁷⁾.
- (292) However, as far as SNC-Lavalin is concerned, the Commission finds that the compensation granted under the contract between SMAC and SNC-Lavalin can be declared compatible with the internal market on condition that the French authorities demonstrate to the Commission that the total amount of compensation paid to SNC-Lavalin over the entire duration of the contract does not exceed what is necessary to cover the net costs incurred in discharging the public service obligations only, excluding the costs of the airport's commercial development but including a reasonable rate of return on the capital invested.
- (293) In this connection, the French authorities are required to submit to the Commission within four months of the expiry of the contract between SMAC and SNC-Lavalin a report demonstrating that the amount of compensation granted to the latter, including a reasonable rate of return on the capital invested, has complied with Article 5 of the 2011 SGEI over the entire duration of the contract.

9. ASSESSMENT OF THE AID MEASURES IN FAVOUR OF RYANAIR AND AMS

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

- (294) Although the 2008 agreements were formally concluded between SMAC and Ryanair/AMS, the Commission considers that, in order to assess the aid measures granted to Ryanair and AMS, the behaviour of SMAC and CCI-airport should be evaluated jointly. Indeed, as it has shown previously in recital 178, the Commission considers that SMAC and CCI-airport jointly operated Angoulême airport between 2007 and 2011.

⁽¹⁶⁷⁾ The Commission deems it expedient to point out that the aid measures that fall within the scope of the 2005 SGEI Decision would also be compatible with the internal market under that Decision and on the same grounds. For the purposes of the assessment in this case, the conditions for compatibility under the 2005 SGEI Decision are not substantially different from those of the 2011 Decision.

9.1.1. *Concepts of undertaking and economic activity*

- (295) For the purposes of determining whether the measures of the 2008 agreements constitute State aid, it is necessary to determine whether the beneficiaries, Ryanair and AMS, are undertakings within the meaning of Article 107(1) TFEU. It cannot be disputed that these two companies are entities engaged in the provision of air transport and advertising services. As such, they are engaged in economic activities.

9.1.2. *State resources and imputability to the state*

9.1.2.1. *Presence of state resources*

- (296) The 2008 agreements were concluded directly by SMAC. In the light of the evidence set out above in recitals 203 to 205 of this Decision, the Commission considers that the resources of SMAC constitute state resources.

9.1.2.2. *Imputability of the measures to the state*

- (297) SMAC's decision authorising signature of the 2008 agreements was approved unanimously by the public bodies that are members of SMAC, which is itself directly or indirectly composed of local authorities and chambers of commerce and industry. The Commission considers that it follows from the characteristics of those bodies that decisions of SMAC concerning airport activities are imputable to the state ⁽¹⁶⁸⁾.
- (298) Consequently, the Commission considers that the conclusion of the agreements entails the use of state resources within the meaning of Article 107(1) TFEU and that the decisions to conclude them are imputable to the state.

9.1.3. *Selective advantage*

- (299) In determining whether a state measure constitutes aid, it is necessary to establish whether the recipient undertaking receives a selective economic advantage which it would not have obtained under normal market conditions ⁽¹⁶⁹⁾.
- (300) In this regard, the Commission notes first of all that the measures at issue are selective in that they relate exclusively to Ryanair. The 2008 agreements were concluded prior to the publication of the public tariff decisions mentioning a similar measure, which were applicable from 1 March 2009, to all companies wishing to operate out of Angoulême airport. Moreover, the award of the London Court of International Arbitration (LCIA) of 18 June 2012 concerning Ryanair's termination of the 2008 agreements shows that bilateral negotiations took place between representatives of Ryanair and Angoulême CCI on the conditions for Ryanair's activities at Angoulême airport. The negotiations took place in September 2009, when Ryanair's representatives informed the representatives of CCI-airport of the financial difficulties encountered by the airline on the London Stansted-Angoulême route. The discussions show that the airport manager and Ryanair viewed their relations as being exclusive, since the former ruled out contacting another airline.
- (301) Secondly, in order to determine whether the agreements concluded conferred an economic advantage on Ryanair, the Commission must assess whether a hypothetical market economy operator (MEO) acting in the stead of SMAC and CCI-airport and guided by prospects of profitability would have concluded similar agreements.
- (302) In order to apply this principle, taking into account the facts of this case, the Commission considers that the following questions must first be answered:
- Should the marketing services agreement and the airport services agreement, which were signed at the same time, be analysed separately or together?
 - What benefits could a hypothetical MEO acting in the stead of CCI-airport have expected to gain from the marketing service agreements?

⁽¹⁶⁸⁾ See Section 8.1.2.2 of this Decision.

⁽¹⁶⁹⁾ See, in particular, judgment of the Court of Justice in Case C-342/96 Spain v Commission [1999] ECR I-2459, paragraph 41.

— For the purposes of applying the MEO principle, what is the relevance of comparing the terms of the airport services agreements referred to in the formal investigation procedure with the airport charges billed in other airports?

- (303) After answering these questions, the next step for the Commission is to apply the MEO principle to the various measures at issue.

9.1.3.1. Joint analysis of the Marketing Services Agreement and the Airport Services Agreement

- (304) In its decision to open the procedure, the Commission considered as a preliminary point that the airport services agreement and the marketing services agreement concluded between SMAC and Ryanair and AMS should be analysed jointly for the purposes of the application of the market economy operator principle. It is worth recalling in this connection that, according to the Court of First Instance⁽¹⁷⁰⁾, it is necessary to envisage the commercial transaction as a whole in order to determine whether a public entity has acted as a rational operator in a market economy. The Commission must therefore, when assessing the measures at issue, examine all the relevant features of the measures and their context.
- (305) In its comments, France supported the approach adopted by the Commission in its opening decision, which consisted in joint analysis of the airport services agreement and the marketing services agreement, which were concluded at the same time. However, some interested parties, such as Ryanair, have challenged this approach, arguing that the marketing services agreements must be analysed separately.
- (306) However, the Commission considers that analysis of all the elements of the case confirms the correctness of the approach adopted in the opening decision (see recitals 215 to 220 of the opening decision). It should be noted in this connection that none of the information submitted during the formal investigation procedure has cast doubt on the Commission's preliminary analysis.
- (307) Firstly, the marketing services agreement was concluded on the same date as the airport services agreement, and the two agreements were concluded between the same parties. AMS is a wholly-owned subsidiary of Ryanair and its directors are senior Ryanair executives. Thus, Ryanair and AMS constitute a single economic entity in the sense that AMS acts in accordance with the interests of Ryanair and under its control, and the profits it generates are destined for Ryanair, in the form of dividends or an increase in the value of the company. Moreover, as will be explained in detail below, the marketing services agreement is linked to Ryanair's operation of the route out of Angoulême airport. The marketing services agreement states that it stems from Ryanair's commitment to operate this route and it was also concluded at the same time as the airport services agreement between SMAC and Ryanair relating to the route. Consequently, the mere fact that SMAC concluded the marketing services agreements with AMS and not with Ryanair cannot prevent a marketing services agreement and an airport services agreement concluded at the same time from being considered as forming a single transaction.
- (308) Moreover, the Commission recalls that the marketing services agreement is linked to Ryanair's operation of air services to Angoulême airport. The Commission considers that the commercial relationship between SMAC and Ryanair, on the one hand, and SMAC and AMS, on the other, could be envisaged only in the unique context of Ryanair's launch of the Angoulême-London Stansted route. In this respect, it is important to note that an audit carried out on behalf of the Charente local authorities⁽¹⁷¹⁾ presents Ryanair as the direct recipient of the 'marketing aid' that the airline demands for the launch of a possible low-cost service. Thus, the French authorities point out that the 2008 agreements constitute a coherent and comprehensive contractual arrangement that is indivisible. It thus appears that, from the point of view of SMAC, there is an inseparable link between the marketing services agreement and the air services operated by Ryanair to Angoulême airport.
- (309) That assessment is reinforced by the provisions of the marketing services agreement, from which it is apparent that the agreement is based on Ryanair's commitment to operate the service that is, at the same time, the subject-matter of the airport services agreement. Article 1 of the marketing services agreement, relating to its object, stipulates that 'this agreement is based on Ryanair's commitment to operate an air service between Angoulême airport and London. The initial schedule of flights will be three flights a week during the spring/summer period, unless it is impossible due to force majeure'. The Commission also notes that certain clauses of the marketing services agreement make direct reference to Ryanair, to the point of considering it as a party to the agreement, even though the consensus was reached between SMAC and AMS. For example, Article 7 of the marketing services agreement provides that 'if the agreement is terminated by Ryanair at any time before the end of the third year of the agreement, Ryanair shall pay a

⁽¹⁷⁰⁾ Judgment of the Court of First Instance in Case T-196/04 Ryanair v Commission [2008] ECR II-3643.

⁽¹⁷¹⁾ Study carried out by Alliance ELSA dated 14 June 2006 on the outlook for Angoulême Brie-Champnier and Cognac-Chanteaubernard airports after 1 January 2007.

penalty of EUR 50 000 for the fourth year and EUR 25 000 for the fifth year, in proportion to each year and to the flight schedule'. Furthermore, the presentation report sent to the tenders committee states that SNC-Lavalin proposed to launch a new route to the British Isles in 2013 operated by a low-cost airline if SMAC granted the marketing aid requested, which it put at EUR 30-35/passenger departure. Therefore these arrangements establish a link between the choices made in the management of Angoulême airport and the marketing services agreement.

- (310) Ryanair's assertion made in the course of the present procedure that the marketing services agreement concluded between the airport and AMS was not intended to increase the occupancy rate of flights operated by Ryanair on the Angoulême-London route cannot call that conclusion into question. The purpose of the marketing agreement was to provide advertising space on the Ryanair website in order to promote Angoulême as a travel destination among visitors to the Ryanair site and hence among the customers of the airline. Assuming Ryanair's claim to be true and that the marketing agreement was unlikely to increase the number of passengers carried by Ryanair to/from Angoulême, it is difficult to understand what the advantage for the airport could be in concluding a marketing agreement of this kind.
- (311) Accordingly, the costs associated with the marketing services agreement were, for SMAC, attributable to the opening of the route between Angoulême and London Stansted. From SMAC's point of view, the benefits of the agreement could derive only from additional revenues linked to the passenger traffic on the Angoulême-London Stansted route, which was the only route operated by Ryanair to Angoulême airport.
- (312) The marketing services agreement is therefore inseparable from the airport services agreement concluded in parallel and the air transport services that constitute its subject-matter. The facts presented above show, moreover, that, in the absence of the routes in question (and hence of the airport services agreement relating to them), the marketing services agreement would not have made sound economic sense for Angoulême airport and consequently would not have been concluded. At that time, Ryanair was the only large airline that was flying to the airport and that could have increased traffic. If the airport wanted to promote traffic on other routes served by Ryanair's competitor airlines, it is reasonable to assume that it would not have advertised on Ryanair's website. As mentioned above, the marketing services agreement explicitly states that it stems from Ryanair's commitment to operate an air service between Angoulême airport and London Stansted and it provides, moreover, for marketing services that are essentially intended to promote that route.
- (313) In conclusion, in view of the foregoing, the Commission considers that the marketing services and airport services agreements ('the 2008 agreements'), which form a single transaction, should be analysed jointly in order to determine whether they constitute State aid.

9.1.3.2. The benefits that an MEO could have expected to gain from the marketing services agreements and the price that it would have been willing to pay for these services

- (314) In order to be able to apply the MEO principle to the case in point, the behaviour of CCI Angoulême and SMAC as signatories of the 2008 agreements must be compared with that of a hypothetical MEO in charge of operating Angoulême airport.
- (315) In analysing the transaction in question, an assessment should be made of the benefits that this hypothetical MEO, motivated by the prospect of profits, could gain from the marketing services. This analysis should not take into account the general impact of such services on tourism and the region's economic activity. Only the impact of these services on the airport's profitability counts, as this would be the only concern for a hypothetical MEO.
- (316) Thus, the marketing services are likely to stimulate passenger traffic on the air routes covered by the marketing services agreements and the corresponding airport services agreements since they are designed to promote these air routes. Although this impact will mainly benefit the airline concerned, it may also be of benefit to the airport manager. An increase in passenger traffic may lead to an increase in revenues generated by certain airport charges for the airport manager, as well as an increase in revenues from non-flight services, in particular from car parks, restaurants and other businesses.

- (317) There can therefore be no doubt that an MEO operating Angoulême airport in the stead of CCI-airport and SMAC would have taken this positive effect into account when considering entering into the marketing services agreement and the corresponding airport services agreement. The MEO would have taken into account the impact of the air route in question on future revenues and costs by, in this case, estimating the number of passengers using these routes, which would have reflected the positive effect of the marketing services. Moreover, this effect would have been evaluated for the entire term of operation of the air routes in question, as set out in the airport services agreement and the marketing services agreement.
- (318) When airport managers conclude an agreement for the promotion of certain air routes, it is possible for them to forecast the load ratio (or the load factor)⁽¹⁷²⁾ for the air routes in question and to take this into account when assessing future revenues. On this point, the Commission notes Ryanair's opinion that marketing services agreements do not just generate costs for an airport manager; they also bring possible benefits with them.
- (319) It is also necessary to determine whether other benefits could reasonably be expected and quantified for a hypothetical MEO operating Angoulême airport in the stead of CCI-airport and SMAC, i.e. other than the benefits from the positive effect on passenger traffic on the air routes covered by the marketing services agreement during the term of operation of these routes, as set out in the marketing services agreement or the airport services agreement.
- (320) Some interested parties support this argument, including Ryanair in its study of 17 January 2014. This study of 17 January 2014 is based on the premise that marketing services acquired by an airport manager, such as CCI-airport and SMAC, will help to improve the airport's brand image and, as a result, to sustainably increase the number of passengers using this airport and not just the numbers on the air routes covered by the marketing services agreement and the airport services agreement for the term of operation set out in these agreements. In particular, Ryanair found in its study that these marketing services will have a lasting positive impact on passenger traffic in the airport even after the marketing services agreement has expired.
- (321) It should first be noted that there is nothing to suggest that, when the marketing services agreement covered by the formal investigation procedure was entered into, the airport manager ever considered, still less quantified, the marketing services agreement's possible beneficial effects on air routes additional to those covered by the agreement, or the possibility of such effects continuing after the agreement had expired. Moreover, France did not suggest any method for estimating the possible value that a hypothetical MEO operating Angoulême airport in the stead of CCI-airport and SMAC could have placed on such effects when assessing whether or not to enter into the 2008 agreements. Accordingly, these effects, even if they were proved, were in any case not taken into account by the airport managers when signing the agreements with AMS and Ryanair.
- (322) In addition, from the information available, the sustainable nature of these effects also appears to be highly uncertain. It is possible that advertising Angoulême and the region on Ryanair's internet site may have encouraged people visiting this site to buy Ryanair tickets to Angoulême when the advertising was first posted or shortly thereafter. However, it is unlikely that the effect of this advertising on visitors lasted or had an influence on plane ticket purchases for more than a few weeks after its being posted on the Ryanair internet site. An advertising campaign is more likely to have a sustainable effect when the promotional activities involve one or more advertising media to which consumers are regularly exposed over a given period. For example, an advertising campaign involving mainstream TV and radio stations, popular internet sites and/or various advertising posters displayed outside or inside public places could have a sustainable effect if consumers are regularly exposed to these media. However, promotional activities limited to just Ryanair's internet site are unlikely to have an effect that lasts much past the end of the promotional campaign. Furthermore, even the holders of well-known trade marks continue to promote their trade marks through marketing campaigns, which would have no rational economic justification if Ryanair's line of argument were to be followed.
- (323) It is very likely that most people do not visit Ryanair's internet site frequently enough for the advertising there alone to leave them with an indelible memory of the promotion of a region on that site. This observation is well supported by two factors. First, under the marketing services agreement, the promotion of the Angoulême region on the homepage of the Ryanair site amounted to five paragraphs totalling 150 words in the 'Top Five Things To Do' section for the destination of Angoulême-Cognac and the presence of a simple link on the home page of www.ryanair.com to a site designated by SMAC during limited or even very short periods (24, 17 and 12 days a year over the first three years). Both the nature of these promotional activities (the presence of a simple link of limited

⁽¹⁷²⁾ The load ratio or load factor is defined as the proportion of places filled in the aircraft in operation on the air route in question.

promotional value) and their short lifespan would have severely limited the impact of these activities after the end of the promotion, all the more so since these activities were limited to just the Ryanair internet site and were not relayed by any other media. Secondly, the other marketing activities provided for in the agreement entered into with AMS were only in relation to the internet page for the destination of Angoulême. It is very likely that most people do not visit this page often, and if they do so, it is only because they are already potentially interested in this destination.

- (324) Thus, even if the marketing services did stimulate passenger traffic on the air routes covered by the marketing services agreement for their period of implementation, it is very likely that this effect was zero or negligible after this period and that the effect on other air routes was similarly insignificant.
- (325) Moreover, in the Ryanair studies of 17 and 31 January 2014, it was established that the likelihood of these benefits going beyond the air routes covered by these agreements or lasting after the term of operation for these routes, as set out in the marketing services and airport services agreements, was extremely small and could not be quantified with a degree of reliability that would be considered sufficient by a prudent MEO.
- (326) For example, according to the study of 17 January 2014 ‘... future incremental profits beyond the scheduled expiry of the airport services agreement are by nature uncertain’. Furthermore, this study proposes two methods of assessing *ex ante* the positive effects of marketing services agreements: an approach based on cash flow and an approach based on capitalisation.
- (327) The cash flow approach consists in evaluating the benefits of marketing services and airport services agreements by estimating the future revenues which may be generated by the airport manager through the marketing services and by the airport services agreements, less corresponding costs. The capitalisation approach consists in treating the improvement in the brand image of the airport through the marketing services as an intangible asset, acquired for the price laid down in the marketing services agreement.
- (328) However, the study emphasises the extent of the difficulties raised by the capitalisation approach, thereby demonstrating the lack of reliability of the results that such a method can produce, and the study itself prefers the cash-flow approach. In particular, the study shows: ‘The capitalisation approach should take into account only the proportion of marketing expenditure attributable to the intangible assets of an airport. However, it may be difficult to identify the proportion of marketing spending intended to generate future income for the airport (i.e. an investment in the airport’s intangible asset base), as opposed to those that generate current income for the airport’. It also stresses that, ‘to implement the capitalisation approach, it is necessary to estimate the average period during which an airport is able to retain a customer because of the AMS marketing campaign. In practice it would be very difficult to estimate the average length of customer retention following an AMS campaign owing to lack of adequate data’.
- (329) The study of 31 January 2014 proposed a practical application of the cash-flow approach. Under this approach, the benefits of the marketing services and airport services agreements that last even after the marketing services agreement has expired are expressed as a ‘final value’, calculated on the expiry date of the agreement. This final value is based on the incremental profits expected from the airport services and marketing services agreements in the final year of application of the airport services agreement. These profits are projected into the following period, the term of which is equal to the term of the airport services agreement, adjusted by the growth rate of the air transport market in Europe and a probability factor designed to reflect the capacity of the airport services agreement and the marketing services agreement to contribute to the airport’s profits after they have expired. According to the study of 31 January 2014, the capacity for producing lasting benefits depends on a number of factors ‘including greater prominence and a stronger brand, alongside network externalities and repeat passengers’, although no further details of these are given. Moreover, this method takes into account a discount rate which reflects capital costs.
- (330) The study suggests a probability factor of 30 %, which it considers prudent. However, this very theoretical study does not provide any serious evidence for this factor, neither quantitatively nor qualitatively. It does not base itself on any facts relating to Ryanair’s activities, air transport markets or airport services to substantiate this rate of 30 %. It does not establish any link between this rate and the factors that it mentions in passing (prominence, strong brand, network externalities and repeat passengers) and that are supposed to extend the benefits of the airport services agreement and the market services agreement beyond their expiry dates. Finally, it does not in any way base itself on the specific content of the marketing services provided for in the various agreements with AMS when analysing to what extent these services could influence the factors mentioned above.

- (331) Moreover, it does not prove that there is any likelihood that, on expiry of an airport services agreement and a marketing services agreement, the profits generated by the agreements for the airport manager in the final year of their application will continue in the future. Likewise, it provides no evidence that the growth rate of the air transport market in Europe is a useful indicator for measuring the impact of an airport services agreement and a marketing services agreement for a given airport.
- (332) A 'final value' calculated using the method suggested by Ryanair would therefore be highly unlikely to be taken into account by a prudent MEO when deciding whether or not to enter into an agreement.
- (333) The study of 31 January 2014 therefore shows that a cash flow method would lead to only very imprecise and unreliable results, as would the capitalisation method.
- (334) Moreover, neither France nor any interested party has provided any evidence that the method put forward by Ryanair in this study, or any other method aimed at quantifying the benefits outliving the airport services agreements and marketing services agreements, has been successfully implemented by the managers of regional airports comparable to Angoulême airport. France has not commented on the studies of 17 and 31 January 2014 and has therefore not approved their conclusions in the course of the present procedure.
- (335) Moreover, as stated above, the marketing services considered by the formal investigation procedure clearly target persons likely to use the route covered by the marketing services agreement. If this route is not renewed on expiry of the airport services agreement, it is extremely unlikely that marketing services will continue to have a positive effect on passenger traffic at the airport after the expiry date. It is very difficult for an airport manager to assess the likelihood of an airline continuing to operate a route on expiry of the term to which it has committed itself in the airport services agreement. Low-cost airlines in particular have demonstrated very dynamic management of the opening and closure of routes. Therefore, when entering into a transaction such as the one being examined in this formal investigation procedure, a prudent MEO would not count on an airline extending operation of the relevant route on expiry of the agreement.
- (336) Furthermore, and for the sake of completeness, it should be observed that a terminal value calculated in accordance with the methodology proposed by Ryanair in the study of 31 January 2014 is positive (and therefore has a positive effect on the expected profitability of the airport services agreement and the marketing services agreement) only when the incremental profits expected from such agreements during the last year of application of the airport services agreement are positive. The methodology consists in starting with the expected incremental profit for the last year of application of the airport services agreement and projecting it into the future by applying two factors. The first factor is the overall growth of the European aviation market and reflects the expected traffic growth. The second is a factor of 30 % representing approximately the probability that the execution of the recently expired agreements promotes the future conclusion of similar agreements likely to generate similar financial flows. Thus, if the expected future incremental profit for the last year of application of the airport services agreement is negative, the terminal value will also be negative, reflecting the fact that agreements similar to those which have recently expired would, like them, harm the profitability of the airport each year.
- (337) The study of 31 January 2014 envisages this case very briefly, confining itself to indicating in a footnote, without comments or explanations: '... no terminal value can be calculated if the incremental profits net of AMS payments are negative in the final year of the period in question' ⁽¹⁷³⁾. However, as will be shown below, all the agreements concerned in this case lead to forecast incremental cash-flows that are negative each year — and not only globally — in terms of net discounted value. Thus, for these agreements, a 'terminal value' calculated according to the methodology proposed by Ryanair would be zero or even negative. Taking account of such a terminal value would not therefore call into question the finding that the various agreements involve an economic advantage.
- (338) To conclude, it is clear from the above that the only benefit that a prudent MEO would expect from a marketing services agreement and would quantify when deciding on whether or not to enter into such an agreement, together with an airport services agreement, would be that the marketing services would have a positive effect on the number of passengers using the routes covered by the agreements in question for the term of operation of these routes, as set out in the agreements. The Commission considers that the other benefits would be deemed too uncertain to be regarded as quantified, and indeed such theoretical benefits were not taken into account by the managers of Angoulême airport at the time of conclusion of the agreements in question.

⁽¹⁷³⁾ Study of 31 January 2014, footnote 17.

9.1.3.3. The comparability of Angoulême airport to other European airports

- (339) Under the new guidelines for applying the MEO principle, the existence of aid to an airline using a particular airport can, in principle, be excluded if the price charged for the airport services corresponds to the market price, or it can be demonstrated through an *ex ante* analysis, that is to say one founded on information available when the aid is granted and on developments foreseeable at the time, that the airport/airline arrangement will lead to a positive incremental profit contribution for the airport ⁽¹⁷⁴⁾.
- (340) Furthermore, according to the new guidelines, 'when assessing airport/airline arrangements, the Commission will also take into account the extent to which those agreements may be regarded as forming part of an overall strategy of the airport expected to lead to profitability at least in the long term' ⁽¹⁷⁵⁾. However, under the first approach (a comparison with a 'market price'), the Commission doubts that, at the present time, an appropriate benchmark can be identified to establish a true market price for services provided by airports and considers an *ex ante* supplementary profitability analysis to be the most relevant criterion for the assessment of arrangements concluded by airports with individual airlines ⁽¹⁷⁶⁾.
- (341) It should be noted here that, in general, the application of the MEO principle based on an average price for other similar markets may prove helpful if such a price can be reasonably identified or deduced from other market indicators. However, this method cannot have the same relevance in the case of airport services. The reason for this is that the cost and revenues structure tends to vary greatly from one airport to another. This is because costs and revenues depend on how highly developed an airport is, the number of airlines using the airport, its capacity in terms of passenger traffic, the state of the infrastructure and related investments, the regulatory framework which can vary from one Member State to another, and any debts or obligations entered into by the airport in the past ⁽¹⁷⁷⁾.
- (342) Moreover, the liberalisation of the air transport market complicates any purely comparative analysis. As can be seen in the case in point, commercial practices between airports and airlines are not based on a list of public prices for individual services. Rather, these commercial relations are very varied. They include sharing risks with regard to passenger traffic and any related commercial and financial liability, standard incentive schemes and changing the spread of risks over the term of the agreements. Consequently, one transaction cannot really be compared with another based on a turnaround price or price per passenger.
- (343) Ryanair considers that it is possible to apply the informed investor in a market economy principle by using certain European airports as a benchmark. In this connection, it considers that some European airports are substitutable for Angoulême airport because of their similarities ⁽¹⁷⁸⁾. The study provided to the Commission in this regard compares the charges paid by Ryanair to Angoulême airport with the charges that the airline pays at these airports considered to be comparable. Ryanair claims that the charges applied by the other airports are lower than those of Angoulême airport.
- (344) However, the Commission considers that the methodology adopted for the above study is inoperative in so far as it limits itself to the benefits and payments resulting from the airport services agreement without taking into account the marketing services agreement. However, as indicated above, the Commission considers that the market economy operator principle must be applied after a joint analysis of the two linked contractual instruments. Accordingly, the findings of the comparative analysis provided by Ryanair cannot be accepted.
- (345) Thus, the charges paid by Ryanair for airport services at other airports cannot serve as benchmark for the application of the market economy operator principle.

⁽¹⁷⁴⁾ Point 53 of the new guidelines.

⁽¹⁷⁵⁾ Point 66 of the new guidelines.

⁽¹⁷⁶⁾ See points 59 and 61 of the new guidelines.

⁽¹⁷⁷⁾ See the Commission decision cited in footnote 69, recitals 88 and 89.

⁽¹⁷⁸⁾ Ryanair bases its analysis on a study produced by Oxera dated 25 June 2012.

- (346) Furthermore, the Commission notes that the price actually paid by Ryanair for use of the airport services of Angoulême airport was negative during the years 2008 and 2009. Admittedly, a negative price granted by an airport manager to an airline as a level of airport charges which does not cover the costs of the services involved may be consistent with the rational calculation of a market economy operator. This is, however, subject to the condition that that negative price is offset, over a period of time, by an expected increase in the revenues from the operation of an airline, whether these revenues have an aeronautical or a non-aeronautical origin. In the present case, the non-aeronautical revenues could not be sufficient and were unlikely to be developed to the extent necessary and sufficient during the five-year term of the airport services agreement.
- (347) Finally, airports for which a negative price might be justified are few in number and do not feature in the sample selected. In this regard, the Commission considers that the characteristics of the airports that make up the sample are too disparate to provide a satisfactory basis for analysis ⁽¹⁷⁹⁾.
- (348) Moreover, Ryanair has not shown how the airports mentioned in the study are sufficiently comparable in terms of traffic volume and type of traffic, type and level of airport services, the presence of a large city in the vicinity of the airport, the number of inhabitants in the catchment area, prosperity in the surrounding area, and the existence of different geographical areas likely to attract passengers ⁽¹⁸⁰⁾. Neither France nor any interested party has cited the existence of airports that are sufficiently comparable to Angoulême airport in terms of those various criteria.
- (349) In such conditions, the Commission considers that, in this context and taking into account all the information available to it, there are no grounds for departing from the approach recommended in the new aviation guidelines for applying the MEO principle to relations between airports and airlines, i.e. an *ex ante* analysis of supplementary (or incremental) profitability. This approach is justified by the fact that an airport manager has an objective interest in concluding a transaction with an airline if it can be reasonably expected that this transaction improves its profits (or reduces its losses) compared with a counterfactual situation in which the transaction was not concluded, irrespective of any comparison.

9.1.3.4. Conclusion on the method used for the application of the market economy investor principle

- (350) It follows from all of the foregoing that, to apply the market economy operator principle to the 2008 agreements, the Commission must jointly analyse the marketing services agreement and the airport services agreement concluded simultaneously and must determine whether a hypothetical market economy operator guided by prospects of profitability and managing Angoulême airport in the stead of CCI-airport and SMAC would have concluded such agreements. To this end, it is necessary to assess the incremental profitability of the 2008 agreements throughout their period of application, as the market economy operator would have assessed them when concluding the agreements, by estimating:
- the future incremental traffic expected from the implementation of the 2008 agreements, taking into account the effects of the marketing services on the load factor of the routes covered by the agreement,
 - the future incremental revenues expected from the implementation of the 2008 agreements, including revenues from aeronautical charges and ground handling services generated by the routes covered by these agreements and the non-aeronautical revenues from the additional traffic generated by the implementation of these agreements,
 - the expected future incremental costs of implementing the 2008 agreements, including operating costs and any incremental investment costs generated by the routes covered by these agreements, as well as the costs of marketing services.
- (351) These calculations should provide the future annual flows corresponding to the difference between incremental revenues and costs, to be discounted if necessary with a discount rate reflecting the cost of capital for the airport manager. A positive net discounted value indicates in principle that the relevant agreements do not confer an economic advantage while a negative net discounted value indicates the presence of such an advantage.

⁽¹⁷⁹⁾ One of the comparators chosen is based on classification in the category of airports with a traffic volume of less than 1 000 000 passengers per year. Since the airport charges applied by Angoulême airport are compared to those applied by airports whose annual traffic is several hundred thousand passengers per year, the resulting comparative analysis is made on a basis that is not precise enough to be acceptable.

⁽¹⁸⁰⁾ See point 60 of the new guidelines.

- (352) It should be noted that, in the context of such an assessment, Ryanair's arguments that the price of the marketing services acquired by SMAC is equivalent to or lower than what can be considered a 'market price' for such services is irrelevant. Indeed, a market economy operator guided by prospects of profitability would not be ready to acquire such services, even at a price lower than or equal to the 'market price', if it foresaw that, despite the positive impact of those services on the routes concerned, the incremental costs incurred by the agreements exceeded the incremental revenues in discounted value terms. In such a case, the 'market price' would be beyond its willingness to pay and it would therefore logically be led to waive the benefits in question.
- (353) For the same reasons, the fact that the prices provided for in the airport services agreement may be better than or in line with the prices charged by managers of slightly comparable airports is irrelevant in the context of this analysis, since they cannot be expected to lead to incremental revenues sufficient to cover the incremental costs.

9.1.3.5. Application of the market economy operator principle

- (354) For the purposes of assessing the 2008 agreements and in the light of the foregoing considerations, it should be recalled that both the existence and the amount of aid must be assessed in the light of the situation prevailing at the time of their conclusion ⁽¹⁸¹⁾, and more precisely, taking account of the information available and the developments foreseeable at that time.
- (355) The information provided by the French authorities emphasises that SMAC launched a forward study submitted on 14 June 2006 ⁽¹⁸²⁾. This study focuses on the prospects of Angoulême airport after 1 January 2007. Without going into detail, this document shows the major aggregates associated with the opening of a route operated by Ryanair between Angoulême and London. For an estimated potential traffic of 100 000 passengers per year, the findings of the study are as follows:

	Year 1	Year 2	Year 3
Negative balance of profit-and-loss account	56 000	56 000	56 000
Marketing aid	560 000	560 000	560 000
Annual expenditure charged to SMAC	616 000	616 000	616 000

- (356) This document does not correspond to a business plan in the light of which the Commission could undertake an assessment of compliance with the market economy operator criterion. The reference data used in these forecasts are not specified and the assumptions made are not sufficiently detailed. Moreover, this estimate is made over a three-year period whereas it was established, prior to the conclusion of the 2008 agreements, that they should be implemented over a period of five years. Finally, this study was conducted well ahead of the 2008 agreements. It was not intended to establish whether these agreements with Ryanair/AMS, as envisaged before their conclusion, were sufficiently profitable for the airport manager.
- (357) In any event, the Commission notes that these estimates tend to show that SMAC, as manager of Angoulême airport, did not act in line with the behaviour of a prudent market economy operator. It is clear from that 2006 forward study that SMAC could not already be unaware at that time that the opening of a route between Angoulême and London operated by a low-cost airline would translate into significant operating losses and consequently high financing needs.
- (358) Despite this information that SMAC had at the time of the conclusion of the 2008 agreements, SMAC did not consider it necessary to commission a business plan or any other equivalent prior economic analysis of agreements to be concluded with Ryanair and AMS, in order to support, from an economic point of view, its decision to undertake those commitments.

⁽¹⁸¹⁾ See, for example, judgment of the Court of First Instance in Case T-318/00 Freistaat Thüringen v Commission [2005] ECR II-4179, paragraph 125.

⁽¹⁸²⁾ This study was conducted by Alliance ELSA.

- (359) According to Ryanair, the absence of a business plan at the time of the conclusion of agreements such as those covered by the formal investigation procedure cannot be used as proof of failure to comply with the market economy operator principle.
- (360) The absence of a business plan, or more generally any quantitative cost-benefit analysis carried out prior to the conclusion of an agreement, is a serious indication that the MEO principle was not complied with. This is all the more true in this case since the manager of Angoulême airport possessed, prior to the conclusion of the 2008 agreements, information such as to cast doubt on its economic viability in the event of the conclusion of an agreement to develop a low-cost service to London.
- (361) The Commission considers it necessary to point out in this context that France has not provided any evidence to show that the airport manager carried out an analysis of the risk taken in relation to the profits that could be expected from the 2008 agreements at the time of their conclusion. France argues, instead, that SMAC's decision was based on the wish to ensure the continued existence of Angoulême airport and was guided by a regional development objective. However, this claim is further indication that the conclusion of the 2008 agreements with Ryanair and AMS was not guided principally by prospects of profitability.
- (362) The Commission considers that this conclusion is borne out by its evaluation of what would have been the cost-benefit analysis conducted by a prudent market economy operator in relation to the 2008 agreements.
- (363) To this end, the Commission conducted its own analysis by relying solely on the incremental costs and revenues of the 2008 agreements, as a market economy operator would have evaluated them *a priori*, in accordance with the new guidelines. The assumptions made and the results of the analysis are presented below.
- (364) The Commission considers it worth recalling in the context of this analysis that, following the adoption of the new guidelines, both France and the interested parties were invited to comment on the application to the present case of the provisions of these guidelines (see recitals 8 and 9). In the present case, neither France nor the interested parties contested the substance of the Commission's approach according to which, since it is impossible to define an appropriate benchmark to establish a true market price for the services provided by airports to airlines, the most relevant criterion for the assessment of the arrangements concluded between the two parties is an *ex ante* analysis of their supplementary profitability.
- (a) Time-frame
- (365) When deciding whether or not to conclude an airport services agreement and/or a marketing services agreement, an MEO would have chosen as a time frame for its assessment either the term of the agreements in question or the term stipulated in each agreement taken separately. In other words, it would have assessed the incremental costs and revenues during the term of application of the agreements.
- (366) There does not seem to be any justification for choosing a longer period. On the dates on which the agreements were concluded, a prudent MEO would not have counted on the agreements being renewed once they expired, whether under the same or new terms. This is all the more true since a normally prudent manager could not possibly fail to be aware that low-cost airlines such as Ryanair were and are known for being very responsive to market developments in their business dealings, both when starting up or shutting down routes and when increasing or decreasing the number of flights.
- (367) It should also be noted that, in applying the market economy operator principle, the fact that Ryanair did not operate certain routes throughout the entire period provided for in the 2008 agreements was not taken into account since that factor was neither known nor foreseeable at the time those agreements were concluded.
- (368) In what follows, the Commission will examine the assumptions used to analyse the 2008 agreements concluded with Ryanair/AMS as regards incremental revenues and costs and traffic, before proceeding to present the results of its analysis of these agreements.
- (b) Incremental traffic and forecast number of turnarounds
- (369) The analysis conducted by the Commission is based on the incremental traffic (i.e. the number of additional passengers) that a market economy operator managing Angoulême airport in the stead of SMAC could have estimated when concluding the 2008 agreements. In other words, the aim is to estimate the number of passengers that the manager of Angoulême airport could have expected, in 2008, to use the Angoulême-London service operated by Ryanair during the term of the agreement.

- (370) The incremental traffic forecast was calculated on the basis of the frequencies for the Angoulême-London route as provided for in the airport services and marketing services agreements and the resulting number of annual turnarounds.
- (371) Moreover, the Commission took into account the capacity of the aircraft used by Ryanair, namely Boeing 737-800s configured with 189 seats.
- (372) The Commission thus assumes a load factor of 85 % per flight. It is a hypothesis which is favourable to Ryanair, since an 85 % rate is high. Moreover, this rate is slightly above the average for the flights operated by Ryanair on its network⁽¹⁸³⁾ and equal to or above the load factor proposed by France for the various agreements in its reconstruction of the cost-benefit analyses. However, the Commission considers that this high load factor can be used, even if it constitutes a favourable assumption, to reflect a possible beneficial effect of the marketing services on the routes covered by the different agreements and in the absence of other elements quantifying the foreseeable impact of these services on the load factor.

Where the period of application of an agreement did not coincide with full calendar years, the Commission took it into account by calculating the forecast traffic, for each year of the agreement, on the basis of the number of days of the year the agreement should apply.

(c) Incremental revenues

- (373) As regards the 2008 agreements under analysis, the Commission sought to establish the incremental revenues, i.e. the revenues generated by the transaction, like a market economy operator would have foreseen it.
- (374) In application of the 'single till' principle, the Commission takes the view that aeronautical and non-aeronautical revenues should be taken into account.
- (375) The aeronautical revenues consists of the income from the various fees payable by the airline to the manager of the airport, namely:
- the 'landing charge', i.e. an amount per turnaround,
 - the 'passenger charge', i.e. an amount per passenger, and
 - the charge paid for the ground handling services, which takes the form of a fixed amount per turnaround in the airport services agreement.
- (376) The 2008 agreements set the amount of the passenger and landing charges directly. According to Article 7.1 of the airport services agreement, the amount of the charge per passenger was calculated on the basis of the adopted rates of Angoulême airport. However, Article 7.3 of the airport services agreement provides for promotional discounts applicable during the first three years. These discounts are 57,25 % in the first year, equivalent to EUR 1,18, 48 % in the second year, equivalent to EUR 1,44, and 24 % in the third year, equivalent to EUR 2,10. Furthermore, Article 7.2 of the same agreement fixed the landing charge at EUR 252,29 per landing. The amounts laid down in the agreement have thus been included in the analysis.
- (377) Moreover, according to Article 7.4 of the airport services agreement, the ground handling fee was EUR 195 in the first year. It also provided that the fee was increased to EUR 245 from the second year. This amount was therefore used by the Commission in its analysis.
- (378) In order to calculate the income from the three abovementioned aeronautical charges that a market economy operator would have expected, the Commission used the forecasts for the number of turnarounds (for the landing charge and the ground handling fee) and for additional traffic (for the passenger charge), as determined by the agreement and multiplied by the unit amounts of the fees, as determined above.
- (379) The non-aeronautical revenues are in principle roughly proportional to the number of passengers. The activity of the car parks, restaurants and other shops in the airport fluctuates in line with the number of passengers. The same applies to the revenues collected by the airport manager in connection with those activities. However, in the present case a large share of the non-aeronautical revenues comes from spending by the employees of the manager and of other undertakings when passenger traffic at Angoulême airport is not significant.

⁽¹⁸³⁾ See <http://corporate.ryanair.com/investors/traffic-figures/>

(380) As regards this amount of incremental non-aeronautical revenues, the Commission considers it likely that a reasonable market economy operator would have calculated it, when concluding the agreements, on the basis of the total non-aeronautical revenues of the airport immediately prior to the conclusion of the agreement in question. In the present case, the non-aeronautical revenues is largely generated by the spending of the employees of the manager and of the undertakings based at the airport when the passenger traffic is not significant. Finally, according to the information submitted by France, the sum of the incremental non-aeronautical income coming only from commercial traffic could be estimated at EUR [...] per year. The Commission considers that this estimate is reasonable.

(d) Incremental costs

(381) The incremental costs that could normally be expected from each transaction (including, where relevant, an airport services agreement and a marketing services agreement) by a market economy operator managing the airport instead of the managers of Angoulême airport fall into the three following categories:

- the cost of purchasing the marketing services,
- the incremental investment costs due to the investment made because of the transaction,
- the incremental operating costs, i.e. the operating costs (staff, miscellaneous purchases) likely to be generated by the execution of the transaction.

(382) As regards the costs of the marketing agreements, the Commission took into account the amounts provided for in the marketing services agreement. Article 3.1 of the marketing services agreement concluded with Ryanair provided for marketing services valued at EUR 400 000 in the first year, EUR 300 000 in the second year and EUR 225 000 in the third year. It is therefore those amounts that have been identified by the Commission as the cost of the marketing services.

(383) As with the traffic forecasts, the projected marketing payments do not necessarily represent the amounts actually paid, because certain events occurring after the agreements were concluded could lead to amounts different from those originally planned. This is the case, for example, where the agreement has been terminated early. However, these events should not be taken into account in applying the market economy operator principle since they are subsequent to the conclusion of the agreements. For the purpose of estimating the profitability of the 2008 agreements any market economy operator would refer to the amounts provided for when the agreement was signed.

(384) As regards the incremental investment costs, none have been accepted, since there is nothing in the case file to show that a market economy operator would have expected to carry out certain investments mainly because of the agreements which are the subject of the formal investigation procedure.

(385) In order to estimate the incremental operating costs foreseeable when the 2008 agreements were concluded, the Commission must rely on the analysis of the airport manager, since it was not able to estimate itself how a given agreement may affect the different cost items of the airport.

(386) The Commission notes that the estimate was carried out by CCI-airport and SMAC prior to the signing of the 2008 agreements and was therefore available at the time the agreements in question were concluded.

(e) Presentation of the results regarding the agreements concluded with Ryanair and AMS

(387) Having thus established for the agreement all the incremental revenues and incremental costs that a market economy operator would have foreseen, the Commission is able to determine, for the 2008 agreements and year-by-year throughout their term, the expected incremental flows (revenues minus costs). These results are set out below.

Table 12

The expected incremental flows from the 2008 agreements

	2008	2009	2010	2011	2012
Load factor	0,85	0,85	0,85	0,85	0,85
Passengers per flight	160,65	160,65	160,65	160,65	160,65

	2008	2009	2010	2011	2012
Passengers per turnaround	322	322	322	322	322
Turnarounds from April to October	93	93	93	93	93
Total passengers	29 946	29 946	29 946	29 946	29 946

Fees	2008	2009	2010	2011	2012
Fee per passenger	1,18	1,44	2,1	2,76	2,76
Landing charges per turnaround	252,29	252,29	252,29	252,29	252,29
Handling fee per turnaround	195	245	245	245	245

Incremental revenues	2008	2009	2010	2011	2012
Income from the passenger fee	35 336,28	43 122,24	62 886,6	82 650,96	82 650,96
Income from the landing charge	23 462,97	23 462,97	23 462,97	23 462,97	23 462,97
Income from the handling fee	18 135	22 785	22 785	22 785	22 785
Non-aeronautical revenues	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Incremental costs	2008	2009	2010	2011	2012
Handling and reception	[...]	[...]	[...]	[...]	[...]
<i>Of which: Staff</i>	[...]	[...]	[...]	[...]	[...]
<i>Of which: Other</i>	[...]	[...]	[...]	[...]	[...]
Marketing	400 000	300 000	225 000	0	0
Total	[...]	[...]	[...]	[...]	[...]

	2008	2009	2010	2011	2012
Revenues	[...]	[...]	[...]	[...]	[...]
Expenditures	[...]	[...]	[...]	[...]	[...]
Result	[...]	[...]	[...]	[...]	[...]

- (388) The Commission notes that in the 2008 agreements, all the annual incremental flows are negative, as shown in Table 12, despite the assumptions favourable to Ryanair that the Commission made, particularly as regards the incremental traffic and incremental costs. The Commission also notes that this conclusion would remain valid even if the incremental operating costs are totally excluded and if the only incremental costs used are the purchase costs of the marketing services.
- (389) Consequently, the Commission considers that the 2008 agreements concluded by SMAC with Ryanair and AMS confer an economic advantage on these two companies. As this advantage stems from specific contractual provisions with the airline concerned, it is selective.

9.1.4. *Effect on trade and competition*

- (390) 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 settled case-law⁽¹⁸⁴⁾, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings in markets open to competition.
- (391) Since the entry into force of the third air transport liberalisation package on 1 January 1993⁽¹⁸⁵⁾, air carriers are free to operate flights on intra-Community routes and benefit from unlimited cabotage authorisation. According to the Court of Justice, 'where an undertaking operates in a sector in which there is effective competition from producers from different Member States, any aid granted by the public authorities is liable to affect trade between the Member States and impair competition, inasmuch as its continuing on the market prevents competitors from increasing their market share and reduces their chances of increasing their exports'⁽¹⁸⁶⁾.
- (392) In the present case, it must be considered that the measures at issue were likely to reduce the operating costs of an airline and encourage operators to transfer a route from one airport to another airport. Consequently, the Commission considers that the measures in question distort competition and affect trade within the European Union.

9.1.5. *Conclusion on the existence of aid*

- (393) In the light of the foregoing, the Commission considers that Ryanair and AMS benefited from State aid by virtue of the 2008 agreements.

9.2. **Compatibility with the internal market**

- (394) The aid in question constitutes operating aid. Such aid may be declared compatible only in exceptional and duly justified circumstances.
- (395) It is also apparent from the case-law of the Court of Justice⁽¹⁸⁷⁾ that it fell to France to indicate the legal basis on which the aid at issue could be considered compatible with the internal market and to demonstrate that the conditions for such compatibility were met. In the decision opening the procedure, the Commission therefore requested France to indicate potential legal bases for compatibility and to demonstrate that the applicable conditions for compatibility were met, in particular in the event that the aid in question should be considered as start-up aid for the opening of new routes. France, however, has never argued that the measures under assessment constitute start-up aid compatible with the internal market and did not put forward other grounds of compatibility or reasoning on the basis of which a declaration of compatibility could be based. Furthermore, no interested party has adduced sufficient evidence to demonstrate the compatibility of these measures with the internal market.
- (396) The Commission nevertheless considers it useful to examine whether such aid could be declared compatible on the basis of their contribution to the opening of new routes.

⁽¹⁸⁴⁾ Judgment of the Court of First Instance in Case T-214/95 Vlaams Gewest v Commission [1998] ECR II-717.

⁽¹⁸⁵⁾ Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992, p. 1), Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8) and Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ L 240, 24.8.1992, p. 15).

⁽¹⁸⁶⁾ See, in particular, judgment of the Court of Justice in Case C-305/89 Italy v Commission [1991] ECR I-1603.

⁽¹⁸⁷⁾ Judgment of the Court of Justice in Case C-364/90 Italy v Commission [1993] ECR I-2097, paragraph 20.

- (397) In this connection, the new guidelines state: 'As regards start-up aid to airlines, the Commission will apply the principles set out in these guidelines to all notified start-up aid measures in respect of which it is called upon to take a decision from 4 April 2014, even where the measures were notified prior to that date. In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid, the Commission will apply to unlawful start-up aid to airlines the rules in force at the time when the aid was granted. Accordingly, it will not apply the principles set out in these guidelines in the case of unlawful start-up aid to airlines granted before 4 April 2014' ⁽¹⁸⁸⁾.
- (398) The 2005 Guidelines provide that 'the Commission will assess the compatibility of all aid to finance airport infrastructure, or start-up aid granted without its authorisation and therefore in breach of Article 88(3) of the Treaty, on the basis of these guidelines if payment of the aid started after their publication in the *Official Journal of the European Union*. In other cases, the Commission will carry out an assessment based on the rules applicable when the aid started to be paid' ⁽¹⁸⁹⁾.
- (399) Since the 2008 agreements were concluded after the entry into force of the 2005 Guidelines, these guidelines constitute the applicable legal basis.
- (400) In this regard, point 27 of the 2005 Guidelines states that operating aid granted to airlines (such as start-up aid) can only be declared compatible with the internal market under exceptional circumstances and under strict conditions in underprivileged regions, i.e. regions covered by the derogation set out in Article 107(3)(a) TFEU, the most remote regions and sparsely populated areas.
- (401) Since Angoulême airport is not located in a region of this type, this derogation does not apply to it.
- (402) The Commission notes that neither France nor any interested party has demonstrated the compatibility of these measures with the internal market, on the basis of the 2005 Guidelines or on any other basis.
- (403) Since the criteria laid down in point 79 of the 2005 Guidelines for start-up aid are cumulative, the Commission considers it appropriate to examine the criteria laid down in point 5.2(i) and (k) of the guidelines.
- (404) As regards criterion (i) (business plan demonstrating the viability and an analysis of the impact of the new route on competing routes), the Commission asked France to explain whether such business plans had been prepared, and if so to provide copies. Neither France nor any interested party has reported the existence of such business plans. Furthermore, it is clear from the statements of Ryanair/AMS that no business plan has been prepared showing, over a substantial period, the viability of the route after the aid has been granted. There was no *ex ante* analysis, based on the information available to the airline at the time of the conclusion of the 2008 agreements, establishing the viability of the air service between Angoulême and London-Stansted. Consequently, the criterion referred to in point (i) is not fulfilled.
- (405) Criterion (k) (Appeals) provides that appeal procedures must be provided for at Member State level to ensure that there is no discrimination in the granting of aid. The Commission notes that no appeal procedure was provided for at the time the 2008 agreements were concluded to remedy discrimination in the granting of start-up aid. The criterion in point (k) is therefore not fulfilled either.

9.3. Conclusion

- (406) The 2008 agreements concluded by SMAC with Ryanair and AMS, which are the subject-matter of this procedure, therefore constitute State aid incompatible with the internal market.

10. GENERAL CONCLUSION

- (407) Under Article 108(3) TFEU, Member States must notify any plans to grant or alter aid. The Member State concerned may not put its proposed measures into effect until the procedure has resulted in a final decision. In the present case, the French authorities have not notified the compensation received by the managers of Angoulême airport nor the 2008 agreements. In addition, the aid has been paid before the Commission has taken a final decision on it.

⁽¹⁸⁸⁾ Point 174 of the new guidelines.

⁽¹⁸⁹⁾ Point 85 of the 2005 Guidelines.

- (408) In the light of the above, the Commission considers that the compensation received by Angoulême airport constitutes illegal State aid, which is none the less compatible with the internal market under Article 106(2) TFEU.
- (409) However, the amounts paid under the 2008 agreements in respect of the activity of Ryanair and AMS constitute State aid that is illegal and incompatible with the internal market.

11. RECOVERY

- (410) According to settled case-law, when the Commission finds that aid is incompatible with the internal market, the Commission is competent to decide that the Member State concerned must abolish or alter the aid⁽¹⁹⁰⁾. According to Article 14 of Council Regulation (EC) No 659/1999⁽¹⁹¹⁾, '[w]here 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 (hereinafter referred to as a "recovery decision"). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law'.
- (411) The Commission's objective in requiring the Member State concerned to recover the aid incompatible with the internal market is to restore the previously existing situation⁽¹⁹²⁾. In this context, the Court has established that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage it enjoyed over its competitors. In this way, the situation prior to payment of the aid is restored⁽¹⁹³⁾.
- (412) In the present case, it appears that no general principle of EU law would run counter to the recovery of the unlawful aid found to exist. In particular, neither France nor the interested parties presented any arguments to that effect.
- (413) Consequently, France must take all necessary measures to recover from Ryanair and AMS the aid granted illegally through the 2008 agreements.
- (414) The amounts of aid to be recovered must be calculated as follows. The 2008 agreements must be regarded as giving rise to an annual amount of aid for each year during which the agreements were applied. Each of these amounts must be calculated from the negative part of the estimated incremental flows (revenues minus costs) at the time of the conclusion of the 2008 agreements, appearing in Table 12. Those amounts correspond to the sums that would have had to be deducted each year from the amount of marketing services (or that would have had to be added to the airport charges and ground handling charges invoiced to airlines) to ensure that the net discounted value of the agreement is positive, in other words that it is in line with the market economy operator principle.
- (415) In order to take account of the actual advantage received by Ryanair and AMS under the 2008 agreements, the amounts mentioned in the previous recital may be adjusted, in accordance with the supporting evidence provided by France, depending on (i) the difference between the actual payments as established *ex post* which were made by Ryanair in respect of the landing charge, the passenger charge and ground handling services under the airport services agreement, and the forecast flows (*ex ante*) corresponding to these items of revenues and listed in Table 12, and (ii) the difference between the actual marketing payments as established *ex post* which were made to Ryanair and AMS under the marketing services agreement and the corresponding forecast marketing costs (*ex ante*), as indicated in Table 12.
- (416) The Commission also considers that the actual advantage received by Ryanair and AMS is limited to the actual duration of the implementation of the 2008 agreements. After the termination of these agreements, Ryanair and AMS did not receive any payments in the form of marketing payments. Consequently, the amounts of aid calculated as indicated below and relating to the 2008 agreements are reduced to zero for the years when the agreement ceased to apply (in particular due to early termination by mutual agreement between the parties).

⁽¹⁹⁰⁾ See judgment of the Court of Justice in Case C-70/72 Commission v Germany [1973] ECR 813, paragraph 13.

⁽¹⁹¹⁾ Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽¹⁹²⁾ See judgment of the Court of Justice in Joined Cases C-278/92, C-279/92 and C-280/92 Spain v Commission [1994] ECR I-4103, paragraph 75.

⁽¹⁹³⁾ Judgment of the Court of Justice in Case C-75/97 Belgium v Commission [1999] ECR I-671, paragraphs 64 and 65.

- (417) Table 13 presents the relevant information concerning the amounts from which the amounts to be recovered are calculated. These amounts are composed of the incremental cash-flow (revenues minus costs) forecasts resulting from the application of the market economy operator principle, but with reductions for the years when the expiry date was not reached.

Table 13

Information on the amounts to be recovered from the 2008 agreements

Indicative amount of aid received under the scheme (EUR) ⁽¹⁾					Indicative amount of aid to be recovered (EUR) (Principal)
2008	2009	2010	2011	2012	
463 066	405 630	0	0	0	868 695

⁽¹⁾ As regards the calculation of interest, the grant of aid is deemed to have taken place on 31 December of the year in question

- (418) As explained above, the Commission considers that, for the purposes of applying the rules on State aid, Ryanair and AMS constitute a single economic entity and that the marketing services agreements and the airport services agreements concluded simultaneously on 8 February 2008 must be regarded as forming a single transaction. Consequently, the Commission considers that Ryanair and AMS are jointly liable for full repayment of the aid received under the 2008 agreements.
- (419) The amount of aid actually paid from 2008 to 2009 under the 2008 agreements comes to a total of approximately EUR 868 695.
- (420) The French authorities must recover the above amount within four months from the date of notification of this Decision.
- (421) In this regard, the French authorities must also add recovery interest to the amount of aid, to be calculated from the date on which the aid concerned was made available to the undertakings, in other words the actual date of each payment of aid, until it has been actually recovered ⁽¹⁹⁴⁾, in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽¹⁹⁵⁾. Given that, in the present case, the flows that make up the aid are complex and occur on a number of dates during the year, even continuously for certain categories of revenues, the Commission considers that it is acceptable for the calculation of recovery interest to consider that the time of payment of the aid concerned is at the end of the year, i.e. 31 December of each year.
- (422) A Member State encountering unforeseeable difficulties or circumstances overlooked by the Commission may submit those problems for consideration by the Commission together with proposals for suitable amendments. In such a case, the Commission and the Member State concerned must work together in good faith with a view to overcoming the difficulties whilst fully observing the provisions ⁽¹⁹⁶⁾ of the TFEU.
- (423) The Commission therefore invites France to submit to it without delay any problems encountered in the implementation of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The payments made by the *département* of Charente, the *Communauté d'agglomération du grand Angoulême* and the *Communauté des communes de Braconnne Charente* under the agreement of 23 May 2002 on the financing conditions for the operation and development of Angoulême Brie Champniers airport and by the *Syndicat mixte des aéroports de Charente* under

⁽¹⁹⁴⁾ See Article 14(2) of Regulation (EC) No 659/99 (cited above).

⁽¹⁹⁵⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

⁽¹⁹⁶⁾ See judgments of the Court of Justice in Cases C-94/87 *Commission v Germany* [1989] ECR 175, paragraph 9, and C-348/93 *Commission v Italy* [1995] ECR 673, paragraph 17.

the management subcontracting agreement of 22 January 2009 and the tender document of 8 August 2011 in favour of the Chamber of Commerce and Industry of Angoulême and SNC-Lavalin respectively constitute State aid within the meaning of Article 107(1) TFEU granted unlawfully by France, in breach of Article 108(3) TFEU.

2. The payments made to Ryanair and Airport Marketing Services by the *Syndicat mixte des aéroports de Charente* pursuant to the airport services agreement and the marketing services agreement concluded on 8 February 2008 constitute State aid within the meaning of Article 107(1) TFEU granted unlawfully by France, in breach of Article 108(3) TFEU.

Article 2

1. The payments made by the *département* of Charente, the *Communauté d'agglomération du grand Angoulême* and the *Communauté des communes de Braconne Charente* under the agreement of 23 May 2002 on the financing conditions for the operation and development of Angoulême Brie Champniers airport and by the *Syndicat mixte des aéroports de Charente* under the management subcontracting agreement of 22 January 2009 in favour of the Chamber of Commerce and Industry of Angoulême constitute State aid compatible with the internal market on the basis of Article 106(2) TFEU.

2. The payments made by the *Syndicat mixte des aéroports de Charente* in favour of SNC-Lavalin under the tender document of 8 August 2011 are compatible with the internal market on the basis of Article 106(2) TFEU, provided that France demonstrates to the Commission that the total amount paid over the duration of the agreement does not exceed what is necessary to cover the net costs incurred through discharging the public service obligations alone, excluding any costs relating to the commercial development of the airport, including a reasonable rate of return on the capital invested.

3. France shall communicate to the Commission, within four months of the expiry of the agreement concluded in 2011 between the *Syndicat mixte des aéroports de Charente* and SNC-Lavalin, a report showing that the amount of compensation granted to SNC-Lavalin, including a reasonable rate of return on the capital invested, complies with Article 5 of Decision 2012/21/EU throughout the duration of the agreement.

4. The aid granted in favour of Ryanair and Airport Marketing Services by the *Syndicat mixte des aéroports de Charente* under the airport services agreement and the marketing services agreement concluded on 8 February 2008 with Ryanair and Airport Marketing Services is incompatible with the internal market.

Article 3

1. France shall recover the aid referred to in Article 2(4) from the beneficiaries. Ryanair and Airport Marketing Services are jointly liable for repayment of the aid.

2. The sums to be recovered shall bear interest from the date on which they were made available to the beneficiaries until the date of their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 ⁽¹⁹⁷⁾ amending Regulation (EC) No 794/2004.

4. France shall cancel all outstanding payments of the aid referred to in Article 2(4) with effect from the date of adoption of this Decision.

Article 4

1. The recovery of the aid specified in Article 2(4) shall be immediate and effective.

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

⁽¹⁹⁷⁾ Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

Article 5

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

- (a) the amounts of aid to be recovered under Article 3;
- (b) a detailed description of the measures already taken and planned to comply with this Decision;
- (c) documents demonstrating that the beneficiaries have been given formal notice to repay the aid.

2. France shall keep the Commission informed of the progress of the national measures taken to implement this Decision until the aid referred to in Article 2(4) has been fully recovered. 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 6

This Decision is addressed to the French Republic.

Done at Brussels, 23 July 2014.

For the Commission

Joaquín ALMUNIA

Vice-President
