COMMISSION DECISION

of 11 June 2014

on State aid SA.26818 (C 20/10) (ex N 536/08 & NN 32/10) granted by Italy to the Stretto airport anagement company SO.G.A.S.

(notified under document C(2014) 3571)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2014/944/EU)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

(1) On 27 October 2008, the Italian authorities notified the Commission of the Region of Calabria's intention to grant aid in the form of capital injections to cover operational losses made by SO.G.A.S. SpA Società per la Gestione dell'Aeroporto dello Stretto ('SO.G.A.S.' or 'the recipient'): SO.G.A.S. is the company managing the Stretto or 'Strait' airport, which is the airport of Reggio Calabria.

(2) In the course of the preliminary examination the Commission became aware of other measures benefiting the same recipient which appeared to constitute unlawful State aid. The Commission therefore included those measures in its investigation.

(3) As the Commission had information suggesting that the State support had in fact been granted before the Commission could assess its compatibility with the internal market, it registered the case as non-notified aid, under the number NN 32/10.

(4) The Commission requested additional information regarding the notified measure on 27 November 2008, 23 February 2009 and 19 May 2009. Italy replied on 14 January 2009, 26 March 2009 and 9 October 2009.

(5) By letter dated 20 July 2010, the Commission informed Italy that it had decided to initiate the formal investigation procedure laid down in Article 108(2) of the TFEU in respect of the aid to SO.G.A.S. ('the opening decision').

(6) The Commission's decision to initiate the investigation was published in the *Official Journal of the European Union* ([2]). The Commission there called on interested parties to submit their comments.

(7) By letter dated 19 November 2010 the recipient submitted its comments on the opening decision. On 20 December 2010 the Commission forwarded the recipient's comments to the Italian authorities and asked for their reaction. The Commission sent a reminder on 8 March 2011, and received Italy's observations on 29 April 2011. The Commission received no other comments from interested parties.

(8) The Italian authorities submitted comments on the opening decision by letters dated 23 September 2010 and 15 December 2010.

([1]) OJ C 292, 28.10.2010, p. 30.
([2]) See footnote 1.

(9) By letter dated 30 March 2012 the Commission requested additional information on the measures under investigation. The Italian authorities provided the information requested by letter of 30 April 2012.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. **The recipient**

(10) The beneficiary of the measures is the manager of Reggio Calabria airport, SO.G.A.S.

(11) SO.G.A.S. is a limited company incorporated under Italian law in March 1981 and wholly owned by public bodies.

(12) Traffic at the airport increased from 272 859 passengers in 2004 to 571 694 passengers in 2012 ([3]).

2.2. **The contested measures**

(13) The measure notified by Italy is an injection by the Region of Calabria of EUR 1 824 964 in capital to cover losses incurred by SO.G.A.S. in 2004 and 2005.

(14) In June 2005 and June 2006 SO.G.A.S.'s public shareholders decided to cover the losses SO.G.A.S. had incurred in the two previous years (EUR 1 392 900 in 2004 and EUR 2 257 028 in 2005) by means of *pro rata* capital injections. At the time the Region of Calabria owned 50 % of the shares in the company, the remainder being held by the Municipality of Reggio Calabria, the Province of Reggio Calabria, the Province of Messina, the Municipality of Messina, Reggio Calabria Chamber of Commerce and Messina Chamber of Commerce.

(15) According to the information available to the Commission at the time of the opening decision, *pro rata* capital injections had already been carried out by the Province of Reggio Calabria, the Municipality of Messina, the Municipality of Reggio Calabria and Messina Chamber of Commerce.

(16) In 2006 SO.G.A.S. made further losses of EUR 6 018 982. In December 2007 SO.G.A.S.'s shareholders decided to convert the reserves of the company into capital and to reduce the capital to cover the remaining losses. However, this would take the capital below the minimum level required by Italian law for airport management companies. To bring the capital back into line with the legal requirements, SO.G.A.S.'s shareholders agreed to increase the capital by EUR 2 742 919. The capital was increased by converting bonds previously subscribed by some of the shareholders, for a total of EUR 2 274 919. The Region of Calabria was not among the shareholders that held the convertible bonds, and its stake in the capital of the company fell from 50 % to 6.74 %.

2.3. **Granting authority**

(17) For the measures at issue here the granting authority is the Region of Calabria.

(18) As explained above, public funds were also provided to SO.G.A.S. by the Province of Reggio Calabria, the Municipality of Reggio Calabria, the Province of Messina, the Municipality of Messina, Reggio Calabria Chamber of Commerce and Messina Chamber of Commerce, in the form of *pro rata* capital injections to cover the losses incurred in 2004, 2005 and 2006 and to bring the capital back into line with the legal requirements.

2.4. **Budget**

(19) The Italian authorities notified the injections of EUR 1 824 964, proportional to the Region of Calabria's stake in SO.G.A.S., which had been approved in June 2005 and June 2006. In addition, as explained above, the other public shareholders covered losses likewise amounting to EUR 1 824 964. There was a further injection of EUR 2 742 919 in December 2007.

(20) The total budget of the measures under assessment is therefore EUR 6 392 847.

([3]) According to publicly available information.

2.5. **Domestic court proceedings**

(21) The Region of Calabria decided not to put into effect the capital injections decided by the shareholders in June 2005 and June 2006 until there had been a decision by the Commission authorising them, and SO.G.A.S. brought proceedings against the Region before the Ordinary Court (*Tribunale*) of Reggio Calabria. The Court ruled in favour of SO.G.A.S., and a challenge lodged by the Region was dismissed in May 2009.

(22) Whilst acknowledging the Commission's competence to decide whether a State aid measure was compatible with the internal market, the Court considered that national courts had jurisdiction to decide whether a measure constituted State aid. The Court ruled that the public financing given in this case did not constitute State aid, because it was not liable to distort competition or to affect trade between Member States. The Court also observed that the principle of an investor in a market economy was satisfied, because at the time the aid was granted, irrespective of the losses incurred in 2004 and 2005, there were reasonable prospects of profitability in the long term.

(23) The Region challenged the ruling of the Court on the ground that the measure constituted State aid and consequently should not be implemented until the Commission had adopted an authorising decision. In December 2009 the Italian authorities informed the Commission that this action had been rejected and that no further procedural steps could be taken to oppose granting of the public contribution to SO.G.A.S.

3. **GROUNDS FOR INITIATING THE FORMAL INVESTIGATION**

(24) In the opening decision, the Commission took the preliminary view that the *pro rata* injections carried out by the Region and the other public shareholders to cover losses incurred in 2004 and 2005, and the capital injection decided by SO.G.A.S.'s shareholders in December 2007, amounted to State aid, on the following grounds:

(a) they consisted in a transfer of funds to SO.G.A.S. from a number of regional and local authorities, namely the Region of Calabria, the Province of Reggio Calabria, the Municipality of Messina and the Municipality of Reggio Calabria, or local autonomous bodies set up under public law, namely the Reggio Calabria Chamber of Commerce and the Messina Chamber of Commerce; they therefore involved State resources and were imputable to the State;

(b) they did not comply with the principle of an investor in a market economy, and thus conferred a selective advantage on SO.G.A.S.;

(c) they were liable to distort competition and affect trade between Member States.

(25) The Commission took the preliminary view that the disputed measures were incompatible with the internal market. First, Italy had explicitly stated that SO.G.A.S. was not entrusted with the provision of any service of general economic interest ('SGEI'). Second, the Italian authorities had confirmed that the measures did not relate to any specific airport investment; the Commission concluded, on a preliminary basis, that the compatibility of the measures could not be assessed under the criteria laid down by the guidelines on financing of airports and start-up aid to airlines departing from regional airports ('the 2005 aviation guidelines') ([4]). Third, notwithstanding their claim that SO.G.A.S. was a firm in difficulty within the meaning of the guidelines on State aid for rescuing and restructuring firms in difficulty ('the R&R guidelines') ([5]), the Italian authorities had also indicated that the measures were not part of a restructuring plan and that no such plan existed. Last, the Commission took the view that the measures were not compatible with the guidelines on national regional aid for 2007–2013 (hereinafter 'the regional guidelines') ([6]), which provided the framework for the assessment of aid granted on the basis of Article 107(3)(a) and (c) TFEU.

(26) As regards the legal actions brought in the Italian courts against the Region's refusal to pay its *pro rata* contribution pending authorisation by the Commission under the State aid rules, the Commission considered that, given the primacy of EU law over national law, and as long as the notification had not been formally withdrawn, Italy was bound to comply with the standstill clause laid down by Article 108(3) TFEU. The Commission therefore took the view that by virtue of the primacy of the standstill obligation in Article 108(3) TFEU the position taken by the national courts should have been disregarded, and that the Italian authorities should not have put the notified measure into effect as long as the State aid procedure was pending.

([4]) OJ C 312, 9.12.2005, p. 1, paragraphs 53–63.
([5]) OJ C 244, 1.10.2004, p. 2.
([6]) OJ C 54, 4.3.2006, p. 13.

4. COMMENTS FROM INTERESTED PARTIES

(27) The only interested party from whom the Commission received comments was the recipient, SO.G.A.S., which supported and supplemented the arguments submitted by the Italian authorities during the formal investigation.

4.1. The presence of aid

(28) SO.G.A.S. submitted that the measures under assessment did not constitute State aid because the criteria laid down in Article 107(1) TFEU were not all met. More specifically, SO.G.A.S. claimed that the measure: (i) did not affect trade between Member States, or in the alternative (ii) did not confer a selective economic advantage on SO.G.A.S. and (iii) did not distort or threaten to distort competition.

(29) SO.G.A.S. argued that the disputed measures were granted under normal market conditions and therefore complied with the market economy investor principle. They were in line with Articles 2446 and 2447 of the Italian Civil Code, which required the shareholders of a limited company that had lost over one third of its capital to compensate its losses in order to avoid the winding-up of the company. Failure on the part of the shareholders to cover the losses of SO.G.A.S., an airport management company, would have entailed the withdrawal (within the meaning of Article 13 of Ministerial Order (*DM*) No 521 of 12 November 1997) of the partial management of Stretto airport, which had been entrusted to SO.G.A.S. under Article 17 of Decree-law No 67 of 1997, and would have made it impossible in future to secure the full concession for the management of the airport, for which an application had been made to the Ministry of Transport. It was reasonable to suppose, therefore, that a private investor facing a similar choice would have acted in the same manner in order to increase the value of their shareholding.

(30) The recipient pointed out that the Ordinary Court of Reggio Calabria had commissioned an independent valuation of the company in June 2008, which estimated that the value of the company fell in a range between EUR 12 million and EUR 17 million.

(31) To evidence the company's prospects of profitability, the recipient submitted to the Commission a business plan drawn up for SO.G.A.S. in October 2008 by an external consultant, which forecast that the company would return to viability in 2013.

(32) A call for tenders for the partial privatisation of SO.G.A.S. had been published in July 2007. A bid for the acquisition of 35 % of SO.G.A.S.'s capital had been submitted by an Italo-Argentine consortium (*associazione temporanea di imprese* or '*ATI*'). The bid was considered economically disadvantageous by SO.G.A.S.'s shareholders. In March 2010 a new call for tenders for 35 % of SO.G.A.S.'s shares was published. According to SO.G.A.S. the two expressions of interest received in response, together with the initial bid from the consortium, showed that the market economy investor principle was satisfied.

(33) SO.G.A.S. also argued that the Commission was wrong to conclude that passengers using Stretto airport could also use in Catania, Lamezia Terme or Crotone airports, depending on their place of residence, and that the disputed measures consequently had the potential to distort competition between airport managers.

(34) First, Stretto airport and Catania, Lamezia Terme and Crotone airports were regional point-to-point airports whose catchment areas did not overlap. Nor did Stretto airport compete with any other airport in Italy or the Union. The particular geographical and infrastructural features of Calabria excluded any potential overlap between the catchment area of Stretto airport and those of neighbouring Italian airports. Lamezia Terme airport was more than 130 km away, at approximately one hour's driving time from Stretto. There was no rapid direct link between Stretto and Crotone airport, which was over three hours away. Catania airport was located in a different geographic region, at a distance of over 130 km, with a travelling time by car of 1hr30–1hr40.

(35) SO.G.A.S. provided a table showing a correlation index between the incoming flow of passengers at Stretto airport and those at Lamezia Terme, Crotone and Catania. The table showed, it said, that passengers travelling by Stretto airport constituted a new component in regional traffic. A closure of the airport would therefore result in the loss of part of the demand for air transport services, rather than in a redistribution to other airports. SO.G.A.S. also submitted a table to show that the measures under scrutiny had indeed created new demand for air transport services in the area, resulting in positive benefits both for air carriers interested in starting up new routes between Stretto and other domestic and EU airports, and for other airports, which found themselves handling increased demand.

(36) SO.G.A.S. rejected the Commission's preliminary finding that the measures had the potential to distort competition between airlines. The public financing had not been transferred to any air carrier through the granting of lower landing fees or other favourable terms. Landing charges and other operating conditions at the airport were set by the competent authority and did not leave any discretion to the airport manager. Finally, SO.G.A.S. contended that Stretto was served mainly by Alitalia (which provided six of the eight daily flights), and that there was no indication that charter or low-cost carriers were interested in starting up new routes departing from Stretto airport.

(37) SO.G.A.S. concluded that in assessing the impact of the measure on competition and trade between Member States, the Commission should have taken greater account of the specific circumstances, and should have found that the measure did not constitute State aid.

4.2. **The compatibility of the aid**

(38) On the question whether the measures could be held compatible under Article 107(3)(c) TFEU, SO.G.A.S. argued that the public financing under assessment was aimed at maintaining the operational continuity of the airport manager and the development of certain economic activities. This objective was justified by the fact that small airports did not generally generate sufficient revenues to cover the costs required to comply with safety and security requirements. In addition, Stretto airport, given the characteristics of the airport infrastructure and the consequent restrictions imposed by the national civil aviation authority ENAC ([7]), would have great difficulty in hosting charter and low cost airlines.

(39) In particular, in accordance with ENAC's parameters, Stretto airport was classed as a level II airport. This classification was based on the dimensions of the infrastructure, rather than on passenger volumes; it required airports with low passenger levels to incur the same costs in order to meet safety standards as airports with over a million passengers.

(40) Without the public financing under investigation, the airport would have been forced to exit the market, with negative consequences at regional level for the mobility of residents. This would also have prevented the shareholders from obtaining any return on their investment.

(41) Finally or in the alternative, SO.G.A.S. contended that Commission Decision 2005/842/EC ([8]) on services of general economic interest was applicable in the present case, and that the measures could in any event be held compatible with the internal market and exempted from the notification requirement on that basis.

(42) SO.G.A.S. argued that since the traffic at the airport did not exceed a million passengers a year in the reference period, the management of the airport was a service of general economic interest ('SGEI') within the scope of Article 2(1)(d) of Decision 2005/842/EC. SO.G.A.S. pointed out that under Decree-law No 250 of 25 July 1997, local authorities could hold shareholdings only in companies which were entrusted with a service of general economic interest. SO.G.A.S. had always been owned by local authorities in Calabria and Messina, which was presumptive evidence that the management of the airport qualified as an SGEI. In order to show that the management of the airport was indeed an SGEI, SO.G.A.S. submitted decisions of the Municipality of Reggio Calabria dated 27 July 2010 and 19 June 2010 which made reference to the importance of the airport services at regional level.

(43) Public service compensation was limited to the losses incurred by the airport manager in providing the SGEI, and therefore complied with the necessity and proportionality principles laid down by Article 5(1) of Decision 2005/842/EC. As for the absence of any act effectively entrusting the SGEI to the airport manager, SO.G.A.S. proposed that an agreement be drafted that would eliminate any doubt that the four Altmark ([9]) conditions were fulfilled in the case of Stretto airport.

([7]) Ente Nazionale per l'Aviazione Civile.
([8]) Commission Decision 2005/842/EC of 28 November 2005 on 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.
([9]) Judgment of the Court of Justice in Case C-280/00 *Altmark* [2003] ECR I-7747.

5. COMMENTS FROM THE ITALIAN AUTHORITIES

(44) In the opening decision the Commission noted that Italy had confirmed that SO.G.A.S. had not been formally entrusted with the provision of an SGEI, so that the compatibility of the disputed measures could not be assessed under the SGEI rules.

5.1. The question whether the airport's activities constitute an SGEI

(45) In the course of the investigation Italy contended that the measures under assessment constituted compensation for the provision of SGEIs by SO.G.A.S. In the absence of evidence to the contrary, the Italian authorities argued, an *ex post* assessment could conclude that in SO.G.A.S.'s case the EU requirements for SGEIs were met.

(46) Italy considered that the line taken by the Commission gave undue weight to the formal rather than the substantive requirements for SGEIs. In support of this claim, Italy provided a cursory assessment of the four Altmark criteria. Italy contended that SO.G.A.S. had in fact been entrusted with a public service mission. The mission was confirmed, directly and indirectly, by several administrative acts issued by the local authorities. Italy provided the minutes of a meeting of the municipal executive of Reggio Calabria that took place on 17 October 2007, at which the executive decided to subsidise the airport manager's losses, and the minutes of meetings of the same body that took place on 16 June 2009 and 31 December 2009, which it said showed that the activities of the the airport did constitute SGEIs. The minutes of the meeting of 17 October 2007 state that 'the Region of Calabria had taken the view that certain activities of Reggio Calabria airport were necessary for the provision of a service of general economic interest, and had imposed a number of public service obligations on SO.G.A.S. in order to ensure that the public interest was properly served; in such cases, the airport manager could be subsidised by the authorities for the additional costs arising out of the discharge of those obligations, which were such that it could not be ruled out that the overall management of the airport might be considered a service of general economic interest'.

(47) In more general terms, the Region of Calabria was party to a Protocol for the development of Lamezia Terme, Crotone and Reggio Calabria airports, which made it clear that airport services were public services essential to the economic and social development of the region, and consequently that they could be financed by means of EU, national or regional funds.

(48) Italy also emphasised that on 28 December 2008 the airport manager asked the shareholders to cover its losses specifically by virtue of its public service obligation, and argued that no private operator would provide the service of management of the airport on purely commercial terms. The first test in *Altmark* was therefore satisfied.

(49) The parameters on the basis of which the compensation was calculated could easily be inferred from SO.G.A.S.'s balance sheet, which provided a transparent statement of the operating costs. Public financing was limited to the amount of the losses, with no extra margin given to the recipient.

(50) With regard to the third Altmark test, Italy contended that in the case of public services the actions of a public shareholder were not comparable to those of a private investor. The conduct of a public body could be justified by objectives in the public interest which prevented the application of the market economy investor principle. In this case the conduct of the public shareholders was not motivated by commercial considerations, and consequently could not be compared to that of a market investor. Italy concluded that the third Altmark test, which appeared to require the application of the market economy investor principle, was not relevant in the case under scrutiny.

(51) Italy said that since SO.G.A.S.'s activities constituted a service of general interest, the capital injections could be considered compensation for the provision of such services, on the basis of an *ex post* assessment, and therefore did not constitute State aid.

5.2. The compatibility of the aid

(52) Italy stated that, were the measures be considered State aid, they should in any event be held compatible under Article 2(1) of Decision 2005/842/EC.

5.3. **No distortion of competition**

(53) Italy referred to paragraph 39 of the 2005 aviation guidelines, which stated 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'.

(54) The Italian authorities further argued that the airport's activities were not profitable. This was evidenced by the fact that, although the initial intention to partially privatise the company had been widely advertised, the procedure had ultimately been unsuccessful. Given that potential investors had to undertake to cover the losses expected in the following years, as stated in the business plan published in the tender, and given that the sole offer received was not considered economically advantageous, it was clear that the activity was by its nature loss-making. In addition, the fact that bidders were not prepared to cover potential future losses to an unlimited extent, but only up to pre-established limits, proved that there was no market attractive to investors, and this in turn meant that the measures could have no impact on trade between Member States.

6. **ITALY'S OBSERVATIONS ON THE COMMENTS SUBMITTED BY INTERESTED PARTIES**

(55) By letter dated 27 April 2012, the Italian authorities, on behalf of the Region of Calabria, sent the Commission observations on SO.G.A.S.'s comments.

(56) Italy supported SO.G.A.S.'s arguments, including SO.G.A.S.'s contention that the measures under assessment related to an SGEI, which in Italy's view meant that they could not be considered State aid.

(57) Italy also argued that the measures did not distort competition or affect trade between Member States.

7. **ASSESSMENT OF THE AID**

7.1. **The existence of aid**

(58) Article 107(1) of the TFEU states that except where otherwise provided in the 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 provision of certain goods, in so far as it affects trade between Member States, shall be incompatible with the internal market.'

(59) The criteria laid down in Article 107(1) are cumulative: the measures under scrutiny will constitute State aid within the meaning of Article 107(1) TFEU only if all the abovementioned conditions are fulfilled. Thus the financial support must

(a) be granted by the State or through State resources,

(b) favour certain undertakings or the production of certain goods,

(c) distort or threaten to distort competition, and

(d) affect trade between Member States.

(60) In its judgment in the *Leipzig-Halle airport* case ([10]), the General Court held that the construction and operation of a civil airport constituted an economic activity. The only exception is for certain activities which as a rule fall within the exercise of public powers and so cannot be considered economic activities. The State financing of such activities falls outside the scope of the State aid rules. There is no doubt, therefore, that SO.G.A.S. is an undertaking for the purpose of State aid law, in that it manages Stretto airport and offers airport services against remuneration to the economic operators (notably airlines) active in the airport.

7.1.1. *State resources*

(61) The concept of State aid applies to any advantage granted directly or indirectly, financed from public resources and granted by the State itself or by an intermediary body acting by virtue of powers conferred on it by the State. Thus it applies to all advantages granted by regional or local bodies of Member States, whatever their status and description ([11]).

([10]) Judgment of the General Court in Joined Cases T-443 and T-455/08 *Freistaat Sachsen and others* v *Commission* [2011] ECR II-1311.
([11]) Judgment of the Court of Justice in Case 248/84 *Germany* v *Commission* [1987] ECR 4013; judgment of the General Court in Joined Cases T-267/08 and T-279/08 *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis* v *Commission* [2011] ECR II-0000, paragraph 108.

(62) In paragraphs 27 and 28 of the opening decision the Commission noted that the measures under assessment consisted in a transfer of funds to SO.G.A.S. from several regional and local authorities, namely the Region of Calabria, the Province of Reggio Calabria, the Municipality of Messina and the Municipality of Reggio Calabria. The Commission therefore took the view that the disputed measures involved State resources and were imputable to the State. The Commission also considered the resources of the Italian chambers of commerce to be State resources. The chambers of commerce were public bodies, governed by public law, according to which they formed part of the public administration and were entrusted with public functions, and the Commission accordingly considered that their decisions were imputable to Italy. On that basis the resources of Messina Chamber of Commerce constituted State resources, and their transfer could be imputed to the State. In the course of the investigation neither Italy nor any interested party contested this preliminary finding.

(63) The Commission therefore confirms that all the measures under assessment were granted through State resources and are imputable to the State.

7.1.2. *Selective economic advantage*

(64) The public funding is selective, as it benefits a single undertaking, SO.G.A.S. It covers the losses incurred by SO.G.A.S. in conducting its ordinary business.

(65) In so far as the construction and operation of airport infrastructure is an economic activity, the Commission takes the view that public financing granted to SO.G.A.S., a manager of such infrastructure, which covers costs that the airport manager would normally have to bear itself, confers an economic advantage on SO.G.A.S., as it reinforces its market position and prevents market forces from having their normal effect ([12]).

(66) Although at the preliminary stage Italy stated that the airport had not been formally entrusted with the provision of an SGEI, the Commission notes that following the adoption of the opening decision Italy reconsidered its position, and claimed that the disputed public financing did in fact represent public compensation for the discharge of public service obligations ([13]).

(67) In its judgment in *Altmark* the Court of Justice set out the following tests for determining whether compensation for the provision of an SGEI conferred an advantage caught by Article 107 TFEU ([14]):

(1) the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined ('the first Altmark test');

(2) the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner ('the second Altmark test');

(3) 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 ('the third Altmark test');

(4) where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations ('the fourth Altmark test').

7.1.2.1. The first Altmark test

(68) The requirement of the first Altmark test coincides with the requirement laid down in Article 106(2) TFEU that the service must be clearly entrusted and defined ([15]).

([12]) Judgment of the Court of Justice in Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraph 41.

([13]) The observations submitted by the Italian authorities in the course of the formal investigation into the measures under scrutiny differ from the arguments they put forward before the Commission decided to open the formal investigation. In particular, the Commission said in the opening decision that Italy had confirmed that SO.G.A.S. had not been formally entrusted with the provision of an SGEI, and for this reason the compatibility of the disputed measures could not be assessed under the SGEI rules. In the course of the investigation, Italy stated that SO.G.A.S. had in fact been entrusted with the provision of an SGEI, and argued that the measures being analysed by the Commission constituted lawful compensation for the provision of a public service.

([14]) Case C-280/00 [2003] ECR I-7747.

([15]) Communication from the Commission: European Union framework for State aid in the form of public service compensation, paragraph 47 (OJ C 8, 11.1.2012, p. 15).

(69) First of all, Article 106(2) TFEU applies only to 'undertakings entrusted with the operation' of an SGEI. The Court of Justice has consistently underlined the need for an act entrusting the service ([16]). An entrustment act is necessary in order to define the obligations of the undertaking and of the State. In the absence of such an official act, the specific task of the undertaking is not known, and it cannot be determined what might be fair compensation ([17]). The need for a clear definition of the SGEI is therefore inherent in and inseparable from the idea of entrustment, and thus derives directly from Article 106(2) TFEU. When a service is entrusted to an undertaking, logically, it also needs to be defined.

(70) As long ago as the 2001 communication on services of general economic interest, the Commission drew attention to the link between the definition of entrustment and the necessity and proportionality of the compensation given for performing the SGEI under Article 106(2) TFEU ([18]). Paragraph 22 of the communication stated that 'in every case, for the exception provided for by Article 86(2) to apply, the public service mission needs to be clearly defined and must be explicitly entrusted through an act of public authority … This obligation is necessary to ensure legal certainty as well as transparency vis-à-vis the citizens and is indispensable for the Commission to carry out its proportionality assessment.' Entrustment and definition are thus a logical prerequisite of any meaningful assessment of the proportionate level of any compensation. The Union law courts have consistently underlined the need for a clear definition of public service obligations for the application both of the Altmark exception and of Article 106(2) TFEU ([19]).

(71) The 2005 Community framework for State aid in the form of public service compensation ([20]) confirms this approach. Paragraph 8 of the Framework states that public service compensation that constitutes aid within the meaning of Article 107(1) TFEU may be declared compatible with the internal market if the conditions laid down in the Framework are satisfied. Those conditions include, in particular, entrustment of the SGEI by way of one or more official acts which among other things specify the precise nature and duration of the public service obligations, the parameters for calculating, controlling and reviewing the compensation, and the arrangements for avoiding and repaying any overcompensation (paragraph 12 of the framework).

(72) The 2011 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 ([21]) also states that the SGEI and the public service obligations must be clearly defined beforehand. According to paragraph 51 of the communication, 'for Article 106(2) of the Treaty to apply, the operation of an SGEI must be entrusted to one or more undertakings. The undertakings in question must therefore have been entrusted with a special task by the State. Also the first Altmark criterion requires that the undertaking has a public service obligation to discharge. Accordingly, in order to comply with the Altmark case-law, a public service assignment is necessary that defines the obligations of the undertakings in question and of the authority.' Paragraph 52 states that the public service task must be assigned by way of one or more acts that must at least specify 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.

([16]) Case 127/73 *Belgische Radio en Televisie* v *SABAM and Fonior* [1974] ECR 313, paragraphs 19 and 20; Case 66/86 *Ahmed Saeed Flugreisen and Silver Line Reisebüro* v *Zentrale zur Bekämpfung unlauteren Wettbewerbs* [1989] ECR 803, paragraphs 55–57; Case 7/82 *GVL* v *Commission* [1983] ECR 483; Case 172/80 *Züchner* v *Bayerische Vereinsbank* [1981] ECR 2021.

([17]) Point 5.1 of the Commission staff working document of 20 November 2007 'Frequently asked questions in relation with Commission Decision of 28 November 2005 on 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, and of the Community Framework for State aid in the form of public service compensation — Accompanying document to the Communication on "Services of general interest, including social services of general interest: a new European commitment"', available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007SC1516:EN:HTML

([18]) Commission communication on services of general interest in Europe ('the 2001 SGEIs Communication') (OJ C 17, 19.1.2001, p. 4).

([19]) Case C-280/00 *Altmark* [2003] ECR I-7747, paragraph 87; Case T-137/10 *CBI* v *Commission,* 7 November 2012, not yet reported, paragraphs 97 and 98.

([20]) OJ C 297, 29.11.2005, p. 4.

([21]) OJ C 8, 11.1.2012, p. 4.

(73) However, the Italian authorities argue that the Commission approach is excessively formalistic, and that SO.G.A. S. was in fact entrusted with an SGEI; here they rely for the most part on documents postdating the approval of the measures at issue.

(74) According to Italy the fact that the management of Stretto airport constitutes an SGEI can be inferred from several regional decisions making reference to the public interest attached to airport services and their instrumental role in the economic development of the region. But those regional decisions do not provide any explicit definition of the alleged SGEI entrusted to the airport manager or any rules governing compensation. In addition, the acts in question were adopted from 2007 onwards, and therefore came after the alleged inception of the services of general economic interest, i.e. after the airport's activities in 2004–2006. Nor has Italy made available to the Commission any other document outlining the scope of the presumed public service obligations imposed on the recipient which predates 2004.

(75) The Commission therefore considers that in the case at issue the alleged SGEI has not been properly entrusted to the recipient.

(76) The Commission cannot accept the Italian authorities' argument that an SGEI can be compensated legitimately even where the service has not been defined *ex ante* as an SGEI and entrusted to the recipient on that basis. If that were the case Member States would be left free to reconsider the need to impose public service obligations at their own discretion *ex post*. Once an undertaking incurred operational losses, Member States could entrust that undertaking with public service obligations and grant compensation, as a means to support the undertaking, irrespective of any *ex ante* assessment of the actual need to provide the service in the general interest. This approach cannot be reconciled with the requirement that SGEIs must be entrusted to the undertaking concerned by way of one or more official acts, setting out among other things the nature and duration of the public service obligations, the parameters for calculating, controlling and reviewing the compensation, and the necessary arrangements for avoiding and repaying any overcompensation. The Italian authorities' claim that airport services are essential to the economic development of the region is not enough to show that the recipient was correctly entrusted with the SGEI, because the public service obligations and the rules governing compensation were not defined transparently in advance.

(77) Moreover, to do as the Italian authorities suggest, and consider that Member States may entrust SGEIs *ex post*, would give more favourable treatment to Member States that had acted in breach of the notification and standstill obligations. Such Member States would be able to argue that aid granted to an undertaking illegally was in fact necessary to cover the costs of a public service that happened to have been provided by the recipient without however being defined or entrusted to the undertaking beforehand. But Member States that set out to comply with their obligation to notify would have to entrust and define the SGEI clearly *ex ante*, in order to comply with the SGEI rules and the *Altmark* case-law.

(78) This would create an incentive for Member States not to notify new State aid, contrary to the well-established principle that Member States that do not notify State aid cannot be treated more favourably than Member States that do ([22]).

(79) In summary, the Commission concludes that the first Altmark test is not satisfied; the Commission also takes the view that the other Altmark tests are not satisfied either, for the reasons set out below.

7.1.2.2. The second Altmark test

(80) Parameters for the calculation of compensation have not been established in advance. The acts which according to the Italian authorities entrust the services do not detail the services to be provided by the recipient, and do not establish any mechanism for granting compensation for the public task allegedly entrusted to it.

7.1.2.3. The third Altmark test

(81) According to the third Altmark test, the compensation received for the discharge of public service obligations cannot exceed what is necessary to cover all or part of the costs incurred, taking into account the relevant receipts and a reasonable profit for discharging those obligations.

([22]) Case 301/87 *France* v *Commission* [1990] ECR 307, paragraph 11; Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to 6/98 and T-2323/98 *Alzetta Mauro and others* v *Commission* [2000] ECR II-2319, paragraph 79, with further references; Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 *Regione autonoma della Sardegna and others* v *Commission*, 20 September 2011, not yet reported, paragraph 91.

(82) The Commission cannot accept Italy's argument that because the financing was confined to offsetting operating losses the airport received only the public financing required for the discharge of public service obligations. A fundamental principle of the assessment of proportionality of compensation is that only the net costs incurred by the public operator for the discharge of the public service obligations may give rise to compensation. In the absence of a clear definition of the obligations imposed on the recipient, the Commission cannot unequivocally determine what costs should have been taken into account in the calculation of the compensation.

(83) Even where the overall management of an airport can be considered an SGEI, some activities which are not directly linked to the basic activities, including the construction, financing, use and renting of land and buildings for offices, storage, hotels and industrial enterprises located within the airport, and for shops, restaurants and car parks, fall outside the SGEI, and consequently cannot be subsidised under the rules on SGEIs. The Italian authorities have not provided any evidence to show that there has been no subsidisation of activities not directly linked to the core activities of the airport, as required by paragraphs 34 and 53(iv) of the 2005 aviation guidelines.

7.1.2.4. The fourth Altmark test

(84) The fourth Altmark test states that if compensation is not to comprise aid it must be limited to the minimum necessary. This test is deemed to be satisfied if the recipient of the compensation has been chosen following a tender procedure, or, failing that, if the compensation has been calculated by reference to the costs of an efficient undertaking.

(85) In the present case the recipient was not chosen following a public tender procedure. Nor has Italy given the Commission any proof that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the means 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. The Commission therefore considers that it cannot be concluded that the public financing at issue was determined on the basis of the costs of an efficient undertaking.

(86) Consequently, the Commission cannot find that the recipient provided the services at the least cost to the community.

(87) For the sake of completeness, the Commission observes that in the course of the investigation the recipient argued that that the measures complied with the market economy investor principle. Although the airport manager had recorded losses, it could fairly be presumed that the activity would yield a return.

(88) Contrary to the recipient's contention, the Commission points out, first of all, that Italy has not in the course of the investigation argued that the State invested in the airport manager in the expectation that it would be profitable, and has in fact maintained that the market economy investor principle is not applicable in the present case (see paragraph 49).

(89) Second, for an assessment on the basis of the market economy investor principle, it is necessary to determine whether, in similar circumstances, a private investor would have behaved in a similar way. The Court of Justice has held that although the conduct of a private investor with which that of a public investor pursuing economic policy aims must be compared need not be the conduct of an ordinary investor laying out capital with a view to realising a profit in the relatively short term, it must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy — whether general or sectoral — and guided by prospects of profitability in the longer term ([23]). In order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation ([24]). According to settled case-law, if a Member State relies on the market economy investor principle during the administrative proceedings, it must, where there is doubt, establish unequivocally and on the basis of objective and verifiable evidence that the measure implemented falls to be ascribed to the State acting as shareholder. That evidence must show clearly that, before or at the same time as conferring the economic advantage, the Member State concerned took the decision to make an investment, by means of the measure actually implemented, in the public undertaking ([25]).

([23]) See in particular Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraphs 20–22.
([24]) Judgment in *Stardust Marine*, paragraph 71.
([25]) See Case C-124/10 P *Commission* v *EDF*, paragraphs 82 and 83, and Joined Cases T-268/08 and T-281/08 *Land Burgenland (Austria) and Austria* v *Commission*, paragraph 155.

(90) The Commission cannot accept the recipient's claim that the measures under assessment were guided by the company's prospects of profitability, as outlined by the business plan aimed at restoring it to viability which was drawn up in 2008, after the measures in question had been decided. The Commission considers that a private investor would inject fresh capital into a company whose capital had dropped below the legal limit, such as SO.G.A.S., only if at the time of the injection the investor could expect the company to return to viability within a reasonable time. Given that neither the Italian authorities nor SO.G.A.S. have provided any concrete evidence dating from the time the measures were taken showing that the public authorities wanted to invest, and could reasonably expect an economic return on their investment that would have been acceptable to a private investor, and given that Italy has expressly confirmed that the market economy investor principle does not apply in the present case, the Commission concludes that the measures do not comply with the market economy investor principle.

7.1.2.5. Conclusion

(91) The Commission finds that none of the four tests set out by the Court of Justice in the *Altmark* case is satisfied here, and that the measures do not comply with the market economy investor principle. Consequently, the Commission concludes that the disputed measures, i.e. the capital injections to cover SO.G.A.S.'s losses in 2004, 2005 and 2006, confer an economic advantage on SO.G.A.S.

7.1.3. *Distortion of competition and effect on trade between Member States*

(92) With regard to distortion of competition, Italy points out that according to the 2005 aviation guidelines, 'funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest'. But this provision is concerned with the assessment of the compatibility of State aid under Article 107(3)(c) TFEU, and does not try to say that public funding of small airports does not constitute State aid within the meaning of Article 107(1).

(93) Moreover, paragraph 40 of the 2005 aviation guidelines also states that 'beyond these general indications, it is not possible to establish rules covering every possible case, particularly for airports in categories C and D. For this reason any measure which may constitute State aid to an airport must be notified so that its impact on competition and trade between Member States can be examined, and, where appropriate, its compatibility'.

(94) Stretto airport is is located at the southern end of the Italian peninsula and is one of three airports in the Region of Calabria. Traffic at the airport has constantly remained below a million passengers ([26]). At the time the measures under scrutiny were put into effect the airport therefore belonged to category D, 'small regional airports', for purposes of the 2005 aviation guidelines. However, the passenger traffic handled by the airport doubled from 2004 to 2012.

(95) The market for the management and operation of airports, including small regional airports, is a market open to competition, in which a number of private and public undertakings are active throughout the Union. This is illustrated by the fact that Italy set out to partially privatise Stretto airport and to that end published a call for tenders in 2007 that was open to undertakings from any EU Member State (see paragraph 32). The public funding of an airport manager may therefore distort competition in the market for airport infrastructure operation and management. Moreover, airports can compete with each other to attract traffic even if they have different catchment areas. To some extent, and for some passengers, different destinations are substitutable. Public funding of airports can therefore distort competition and have an effect on trade in the air transport market across the Union.

(96) At the material time Stretto airport mainly served domestic destinations and two international routes — Paris and Malta — and owing to the funds received the airport was able to stay on the market and significantly expand its operations; the Commission accordingly takes the view that the measures at issue may have distorted competition and affected trade between Member States.

7.1.4. *Conclusion on the existence of aid*

(97) The Commission concludes that the capital injections granted to SO.G.A.S. by its public shareholders to cover the losses it incurred in 2004, 2005 and 2006 constitute State aid within the meaning of Article 107(1) TFEU.

([26]) Public figures.

7.2. **The lawfulness of the aid**

(98) The measures under investigation were put into effect before formal approval by the Commission; hence Italy did not comply with the standstill obligation in Article 108(3) TFEU.

7.3. **The compatibility of the aid**

7.3.1. *Compatibility under the SGEI rules*

(99) SO.G.A.S. argues that the aid is compatible with the internal market under Article 106(2) TFEU.

(100) Article 106(2) provides that 'undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.'

(101) That Article provides for an exception to the prohibition of State aid contained in Article 107 TFEU to the extent that the aid is necessary and proportional to ensure the performance of the SGEI under acceptable economic conditions. Under Article 106(3) it is for the Commission to ensure application of this Article, among other things by specifying the conditions under which it considers that the criteria of necessity and proportionality are fulfilled.

(102) Prior to 31 January 2012, the Commission's policy for applying the exception in Article 106(2) TFEU was set out in the Community framework for State aid in the form of public service compensation ('the 2005 SGEIs Framework') ([27]) and Decision 2005/842/EC.

(103) On 31 January 2012 a new SGEIs package entered into force, which included the European Union framework for State aid in the form of public service compensation (2011) ('the 2011 SGEIs Framework') ([28]) and Commission Decision 2012/21/EU ([29]).

7.3.1.1. Compatibility under Decision 2005/842/EC

(104) The measures were taken in June 2004, June 2005 and December 2007. The recipient argues that the measures were exempted from the notification requirement by Decision 2005/842/EC.

(105) Decision 2005/842/EC declared that State aid in the form of public service compensation granted to undertakings in connection with SGEIs was compatible if it complied with the conditions the Decision set out. In particular, the Decision declared compatible State aid in the form of public service compensation to airports i) for which annual traffic does not exceed a million passengers, or ii) with an annual turnover before tax of less than EUR 100 million during the two financial years preceding that in which the service of general economic interest was assigned, if the airport receives annual compensation for the service in question of less than EUR 30 million ([30]).

(106) Decision 2005/842/EC applied only to aid under the form of public service compensation in connection with genuine services of general economic interest. In order to qualify for the exemption, public service compensation for the operation of an SGEI had also to comply with detailed conditions set out in Articles 4, 5 and 6 of the Decision ([31]).

(107) Article 4 of Decision 2005/842/EC required that the SGEI be entrusted to the undertaking concerned by way of one or more official acts specifying, among other things, the nature and the duration of the public service obligations, the parameters for calculating, controlling and reviewing the compensation, and the arrangements for avoiding and repaying any overcompensation. Article 5 of the Decision stated that the amount of compensation was not to exceed what was necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit. Finally, Article 6 of the Decision required Member States to carry out regular checks to ensure that undertakings were not receiving compensation in excess of the amount determined in accordance with Article 5.

([27]) OJ C 297, 29.11.2005.
([28]) OJ C 8, 11.1.2012.
([29]) 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).
([30]) Article 2(1)(a).
([31]) See Article 10 of the Decision for dates of entry into force, and in particular the application of Article 4(c), (d) and (e) and Article 6.

(108) For the reasons set out in section 7.1.2.1, the Commission finds that neither the recipient nor the Italian authorities have shown that SO.G.A.S. was entrusted with clearly defined public service obligations. Nor have they shown that the acts allegedly entrusting the service on which they relied set out any parameters for calculating, controlling and reviewing the compensation, or any arrangements for avoiding and repaying any overcompensation. The requirements of Articles 4, 5 and 6 of Decision 2005/842/EC relating to the content of the entrustment acts are therefore not met.

(109) The Commission consequently takes the view that the cover provided for the losses of the manager of Stretto airport was not compatible with the internal market or exempted from the notification requirement under Decision 2005/842/EC.

(110) In the same way, in the absence of a clear definition of the public service obligations imposed on SO.G.A.S., the measure cannot be considered compatible with the internal market and exempt from the requirement of prior notification on the basis of Article 10(b) of Decision 2012/21/EU either. The Commission has therefore considered whether the measure can be considered compatible with the internal market on the basis of paragraph 69 of the 2011 SGEIs Framework, according to which 'The Commission will apply the principles set out in this Communication to unlawful aid on which it takes a decision after 31 January 2012 even if the aid was granted before this date'.

7.3.1.2. Compatibility under the 2011 SGEIs Framework

(111) Paragraph 16 of the 2011 SGEIs Framework sets out the requirements for an SGEI to be considered validly entrusted. Paragraph 16(a) states that the act entrusting the service must indicate the content and duration of the public service obligations. Therefore, for the same reasons already set out in section 7.1.2.1, the aid measures at issue cannot be considered compatible under the 2011 SGEIs Framework. In particular, the overall management of the airport has not been clearly entrusted to the recipient as an SGEI. No legal document has been provided to the Commission that clearly defines in advance the SGEI entrusted to the recipient or the recipient's entitlement to compensation. Nothing has been submitted to the Commission to show that paragraphs 17 and 18 of the 2011 SGEIs Framework have been complied with.

(112) The Commission therefore takes the view that the aid measure under examination cannot be declared compatible with the internal market under Article 106(2) TFEU.

(113) For the sake of completeness the Commission would point out that according to paragraph 9 of the 2011 SGEIs Framework, SGEI compensation granted to firms in difficulty must be assessed under the guidelines on State aid for rescuing and restructuring firms in difficulty ('the R&R guidelines').

(114) During the earlier stages of the case Italy argued that SO.G.A.S. was a firm in difficulty within the meaning of the R&R guidelines. However, Italy also maintained that the measures under assessment were not part of a restructuring plan and that no such plan existed. In its opening decision, therefore, the Commission considered that the measures could not be deemed compatible with the R&R guidelines.

(115) In the course of the formal investigation Italy no longer claimed that the airport manager was in difficulty at the time the aid measures were taken, and that the aid could therefore be deemed compatible on the basis of the R&R guidelines.

(116) There is therefore no evidence that might enable the Commission to assess the compatibility of the measures on the basis of the R&R guidelines, and the Commission consequently cannot declare them compatible with the internal market under the R&R guidelines.

7.3.2. **Compatibility under the new aviation guidelines**

(117) On 31 March 2014, the Commission adopted a communication setting out guidelines on State aid to airports and airlines ('the new aviation guidelines') [32]. The new aviation guidelines apply to operating aid granted to airports before 31 March 2014.

[32] OJ C 99, 4.4.2014, p. 3.

(118) Operating aid granted before the entry into force of the new aviation guidelines may be declared compatible to the full extent of uncovered operating costs provided that the following conditions are met:

— contribution to a well-defined objective of common interest: this condition is fulfilled among other things if the aid increases the mobility of EU citizens and the connectivity of the regions or facilitates regional development ([33]),

— need for State intervention: the aid should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver ([34]),

— existence of incentive effect: this condition is fulfilled if it is likely that, in the absence of operating aid, and taking into account the possible presence of investment aid and the level of traffic, the level of economic activity of the airport concerned would be significantly reduced ([35]),

— proportionality of the aid amount (aid limited to the minimum necessary): in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place ([36]),

— avoidance of undue negative effects on competition and trade ([37]).

(119) According to the Italian authorities, the Region of Calabria faces critical difficulties caused by its outlying geographical position and underdeveloped freight mobility, largely as a result of the lack of adequate infrastructure. Italy has stated that the measures under scrutiny are part of a wider project of enhancement of the transport network in Calabria. The measures would enable SO.G.A.S. to improve the infrastructure and the services offered by the airport, in the light of the new regional strategy aimed at improving the transport network and guaranteeing improved access to the region.

(120) The Commission accordingly takes the view that the operating aid granted to SO.G.A.S. has contributed to the achievement of an objective of common interest by improving accessibility, connectivity, and regional development through the development of safe and reliable air transport infrastructure.

(121) According to the new aviation guidelines, smaller airports may have difficulties in ensuring the financing of their operation without public funding. Paragraph 118 of the new aviation guidelines states that airports with annual passenger traffic below 700 000 passengers per annum may not be able to cover their operating costs to a substantial extent. Traffic at Stretto airport has constantly remained below 700 000 passengers. The Commission therefore considers that the aid was necessary, in that it allowed an improvement in the connectivity of the Region of Calabria that the market would not have delivered by itself.

(122) Without the aid the activity of the recipient would have been significantly reduced if not terminated altogether. At the same time, the aid did not exceed the amount required to cover operating losses, and consequently did not exceed the minimum necessary for the aided activity to take place.

(123) No other airport is located in the same catchment area ([38]): as shown above, the closest airport is situated more than 130 km away. Moreover, Italy has confirmed that the airport infrastructure has been made available to all airlines on non-discriminatory terms. Neither in the information at the disposal of the Commission nor in the comments submitted by interested parties in the course of the investigation has it been suggested that there was any discrimination in access to the infrastructure.

(124) The Commission concludes that the conditions for compatibility laid down by the new aviation guidelines are met.

7.3.3. **Conclusion on the compatibility of the aid**

(125) The Commission concludes that the notified aid measure is compatible with the internal market under Article 107(3)(c) TFEU.

([33]) Paragraphs 137 and 113 of the new aviation guidelines.
([34]) Paragraphs 137 and 116 of the new aviation guidelines.
([35]) Paragraphs 137 and 124 of the new aviation guidelines.
([36]) Paragraphs 137 and 125 of the new aviation guidelines.
([37]) Paragraphs 137 and 131 of the new aviation guidelines.
([38]) The 'catchment area of an airport' is defined by the new aviation guidelines as a geographic market boundary that is normally set at around 100 km or around 60 minutes' travelling time by car, bus, train or high-speed train.

(126) This finding is reached under the rules on State aid, and is without prejudice to the application of other provisions of EU law such as EU environmental legislation.

8. **CONCLUSIONS**

(127) The Commission finds that Italy has implemented the aid in question unlawfully, in breach of Article 108(3) TFEU. In the light of the assessment set out above, however, the Commission has decided not to raise objections to the aid, on the ground that it is compatible with the internal market under Article 107(3)(c) TFEU and with the new aviation guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy has granted to the Stretto airport management company SO.G.A.S. SpA, amounting to EUR 6 392 847, is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 June 2014.

For the Commission
Joaquín ALMUNIA
Vice-President