DECISIONS

COMMISSION DECISION (EU) 2015/1344

of 1 October 2014

on State aid case SA.18857 (2012/C, ex 2011/NN) — Alleged aid to Västerås Airport and Ryanair Ltd

(notified under document C(2014) 6832)

(Only the Swedish text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

(1) By letter of 25 January 2012 the Commission informed Sweden that it had decided to initiate proceedings based on Article 108(2) of the Treaty on the Functioning of the European Union (hereafter 'the TFEU') in respect of certain measures implemented by the Swedish authorities in respect of Västerås Airport and Ryanair Ltd.

(2) Following several reminders and extensions of the deadline to reply, the Swedish authorities submitted their observations on the opening decision on 16 May 2012. Further observations were submitted on 12 November 2012, 5 March 2014 and 14 May 2014.

(3) By letter of 13 May 2012, Ryanair submitted comments on the opening decision. On 25 July 2012, the Commission forwarded a non-confidential version of those comments to the Swedish authorities.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ([2]). The Commission invited interested parties to submit their observations on the measures.

(5) On 16 July 2012, the Commission received three submissions in response to its invitation to third parties to provide their observations on the measures in question. The submissions were provided by Västerås Flygplats AB ('VFAB'), Ryanair and Ryanair's subsidiary Airport Marketing Services ('AMS'). Additional comments by Ryanair and AMS were received by the Commission on 20, 23 and 24 July 2012.

(6) By letter of 5 September 2012, the Commission forwarded VFAB's, Ryanair's and AMS's submissions to the Swedish authorities for comments. The Swedish authorities replied on 5 October 2012.

(7) Additional comments were submitted by Ryanair and AMS on 10 April 2013. The submissions were forwarded to Sweden for comments on 3 May 2013. Sweden replied, declining to comment, on 17 May 2013.

([1]) OJ C 172, 16.6.2012, p. 27.
([2]) Cf. footnote 1.

(8) On 20 December 2013 Ryanair submitted comments. The submissions were forwarded to Sweden for comments on 8 January 2014. Sweden replied, declining to comment, on 4 February 2014.

(9) Additional comments were submitted by Ryanair on 24, 27 and 31 January 2014, 7 February and 2 September 2014. These submissions were also forwarded to Sweden, which made no comments.

(10) By letter dated 24 February 2014 the Commission informed Sweden, VFAB, Ryanair, AMS and the complainant Scandinavian Airlines System ('SAS') of the adoption of the EU Guidelines on State aid to airports and airlines ([3]) (hereinafter: the '2014 Aviation Guidelines') and of the fact that these guidelines would become applicable to the measures covered by the formal investigation from the moment of their publication in the *Official Journal of the European Union*, and invited the addresses to submit their comments.

(11) The 2014 Aviation Guidelines were published in the *Official Journal of the European Union* on 4 April 2014 ([4]). They replaced the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports ([5]) (hereafter: the '2005 Aviation Guidelines') as from that date. ([6])

(12) On 15 April 2014 a notice was published in the *Official Journal of the European Union* inviting Member States and interested parties to submit comments on the application of the 2014 Aviation Guidelines in this case within one month of the publication date ([7]). The Swedish authorities provided their comments on 14 May 2014. The Commission received no comments from interested parties.

2. BACKGROUND TO THE INVESTIGATION AND CONTEXT OF THE MEASURES

2.1. VÄSTERÅS AIRPORT

(13) Västerås Airport is a small airport located approximately 100 km west of Stockholm. The airport was originally a military airfield opened in 1930 but the base was decommissioned by the air force in 1983. The airport was also opened for civilian air traffic in 1976.

(14) During the years 2000-2010, the civil air passenger operations at Västerås Airport can be summarised as follows:

Table 1

Passenger frequency and airlines active at Västerås Airport 2000-2010

Year	Number of landings	Number of passengers	Airlines active at the airport
2000	12 450	113 626	European Executive Express, SAS and Direktflyg
2001	18 708	185 302	European Executive Express, SAS, Direktflyg and Ryanair
2002	19 146	190 038	European Executive Express, SAS (terminated in October), Direktflyg, Ryanair and Skyways
2003	16 500	197 584	European Executive Express (terminated in October), Direktflyg, Skyways and Ryanair

([3]) Communication from the Commission — Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).
([4]) See footnote 3.
([5]) Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).
([6]) Recital 171 of the 2014 Aviation Guidelines.
([7]) OJ C 113, 15.4.2014, p. 30.

Year	Number of landings	Number of passengers	Airlines active at the airport
2004	17 599	242 376	SAS (limited activities started in November), Direktflyg (limited activities since May), Skyways (terminated in July) and Ryanair
2005	14 123	221 422	SAS (limited activities), Direktflyg (limited activities terminated in March) and Ryanair
2006	13 097	182 700	SAS (limited activities) and Ryanair ([1])
2007	13 994	178 795	SAS (terminated in March) and Ryanair
2008	11 973	186 612	Ryanair and Wizzair (started in May)
2009	15 193	174 495	Ryanair and Wizzair (terminated in October)
2010	14 420	150 793	Ryanair and City airlines (started in April, terminated in May)

Sources: Transportstyrelsen and information provided by the Swedish authorities (http://www.transportstyrelsen.se/sv/luftfart/Statistik/Flygplatsstatistik-/).

([1]) According to the Swedish authorities, Ryanair interrupted its activities at Västerås Airport between the end of October 2006 and 12 February 2007.

(15) In the years following the period covered by the investigation, passenger numbers were as follows: 142 992 in 2011, 163 472 in 2012 and 273 362 in 2013.

(16) In addition to civil air transport activities, Västerås Airport was used by the Aviation College of Sweden (Hässlö gymnasium), which provides education at high school level for airline pilots and aircraft mechanics, and by the Swedish National Agency for higher vocational education, which provides education for aircraft technicians. It is also used for military purposes as a transport base for international activities. In addition, a private aero club used the airport free of charge.

(17) The nearest ([8]) other airports are:

(a) Bromma, ca. 94 km or ca. 59 minutes by car;

(b) Arlanda, ca. 103 km or ca. 64 minutes by car;

(c) Örebro Airport, ca. 113 km or 70 minutes by car;

(d) Skavsta, ca. 133 km or ca. 108 minutes by car.

2.2. VFAB

(18) Västerås Airport is operated by VFAB, an undertaking which was established by the City of Västerås at the end of the 1990s. In 2000, the Swedish Civil Aviation Authority ('SCAA'), a public administration, through its subsidiary LFV Holding AB, took 40 % of the shares in VFAB. In December 2006, LFV Holding AB sold its share in VFAB back to the City of Västerås, which again became the sole shareholder. VFAB has thus been a fully publicly owned company during the whole period covered by this decision.

(19) VFAB owned the airport infrastructure which it operated until 2003 when the infrastructure was sold to Västerås Flygfastigheter AB, a company owned by the city of Västerås, to which VFAB pays rent for the use of the airport. For the period 2004-2010, the annual rent paid to Västerås Flygfastigheter AB varied between SEK 2,1 million and SEK 4,2 million.

(20) On the basis of its Annual Reports, VFAB suffered the following annual losses from its activities at Västerås Airport. (All values in million SEK.)

([8]) All distances in road kilometers, based on the fastest route. Source: maps.google.com, accessed 30 June 2014.

Table 2

Annual results of VFAB

Year	Revenues	Other operating support	EBITDA excl. operating support	EBIT excl. operating support	Net profit/loss excl. operating support
1999 ([1])	25,6	2,5	– 4,9	– 6,4	– 2,5
2000	25,1	2,3	– 8,5	– 11,2	– 12,7
2001	30,8	1,5	– 8,1	– 11,7	– 13,4
2002	30,9	1,1	– 7,0	–11,4	– 16,4
2003	26,2	1,0	– 15,8	– 18,6	– 21,2
2004	23,9	1,3	– 15,3	– 16,6	– 16,6
2005	24,0	1,1	– 17,9	– 19,1	– 19,2
2006	19,5	1,1	– 23,3	– 24,5	– 24,6
2007	20,9	—	– 22,0	– 23,1	– 22,9
2008	23,1	0,7	– 22,3	– 23,3	– 23,2
2009	22,9	1,6	– 24,6	– 25,8	– 25,8
2010	21,9	1,8	– 23,6	– 24,9	– 24,8
	TOTAL	**15,8**			

Source: Annual Reports of VFAB.

([1]) Since the airport operation is part of Västerås Flygfastigheter AB, the figures include real estate activities.

(21) 'Other operating support' for the years 1999 to 2006 included consists of State support under a nation-wide subsidy scheme for the operation of airports that are not directly owned by the State ('the Local Airport Scheme'). The support is set annually based on the loss of each airport.

(22) However, the support provided in the years 2008 to 2009 is not linked to the Scheme but concerns compensation granted by the State in payment for air traffic control services provided by Västerås Airport as part of the national air traffic control system.

(23) In order to partially cover the losses specified in Table 2 above, the owners of VFAB provided the following shareholders' contributions:

Table 3

Shareholders' contributions to VFAB during 2001-2010

Year	Amount (million SEK)
2003	38,5
2005	8

Year	Amount (million SEK)
2006	65,5
2008	47
2010	35
TOTAL	**194**

Source: Annual Reports of VFAB.

2.3. AIRPORT CHARGE AGREEMENTS BETWEEN VFAB AND RYANAIR

(24) According to the Swedish authorities, there is no price list, law or regulation which VFAB is obliged to apply in setting airport charges ([9]). Therefore, VFAB is free to decide on its charges. For users that have an agreement with VFAB, the applicable charges are fixed in their respective agreements. For ad hoc flights of users that have not entered into an agreement with VFAB, there is an official list of airport charges ([10]).

(25) Since April 2001, Ryanair has operated at Västerås Airport under the following agreements with VFAB.

2.3.1. **Agreement of 5 April 2001 ('the 2001 Agreement')**

(26) Under the terms of the 2001 Agreement ([11]), Ryanair shall for a period of […] (*) years operate scheduled passenger air services on an at least daily basis between Västerås and London-Stansted and, at Ryanair's election, between Västerås and other points on Ryanair's network utilising Boeing 737-800s and featuring 'low fares' service standards and passenger fare structure. Ryanair will guarantee a minimum of […] departing passengers per annum for each rotation of the services.

(27) The airport charges will be paid as a fixed unit price per departing passenger as follows:

Table 4

Airport charges per departing passenger

Period	Amount (SEK)	Max. amount per departing aircraft (SEK)
Until 31.3.2002	[…]	[…]
1.4.2002-31.3.2006	[…]	[…]
1.4.2006-31.3.2011	[…]	[…]

(28) VFAB's services include terminal and handling service consisting of liaison with local authorities and informing interested parties on movements of Ryanair's aircraft; load control, communications and departure control system; passenger and baggage services; aircraft servicing; provision and operation of fuelling equipment, etc.; flight operations and crew administration; supervision and administration; and security.

(29) Ryanair and VFAB shall respectively pay […] of any airport-related environmental, security and other charges imposed by governmental authorities.

([9]) The SCAA can make binding regulations on airport charges applicable to civil airports, but no such regulations applied in the period covered by this decision.
([10]) The Swedish authorities have submitted the lists that were valid in 2004 and 2007. For details, see the opening decision.
([11]) Although it was signed on 11 March 2002, the Agreement was to apply retroactively from 1 April 2001 (until March 2011).
(*) Information covered by professional secrecy.

(30) VFAB will pay Ryanair marketing support of SEK […] towards measures to promote the Ryanair flights to and from Västerås Airport.

(31) VFAB will provide reservations facility at the airport. In return, it will receive […] % commission on all Ryanair's fares sold by VFAB and […] % commission for each car rental booked by VFAB in conjunction with Ryanair flights.

2.3.2. **Addendum dated 1 February 2003 to the 2001 Agreement ('the 2003 Agreement')**

(32) On 1 February 2003, VFAB and Ryanair signed an Addendum to the 2001 Agreement ('the 2003 Arrangement'), in which the airport passenger charges were changed as follows.

Table 5

Airport charges according to the 2003 Addendum

Number of daily rotations [1]	1 rotation		2 rotations		3 rotations	
Period	Amount (SEK)	Limited to max. per departing aircraft	Amount (SEK)	Limited to max. per departing aircraft	Amount (SEK)	Limited to max. per departing aircraft
Until 31.3.2002	[…]	[…]	[…]	[…]	[…]	[…]
1.4.2002 to 31.3.2006	[…]	[…]	[…]	[…]	[…]	[…]
1.4.2006 to 31.3.2009	[…]	[…]	[…]	[…]	[…]	[…]
1.4.2009 to 31.3.2011	[…]	[…]	[…]	[…]	[…]	[…]
Number of daily rotations	4 rotations		5 rotations		6 rotations	
Until 31.3.2002	[…]	[…]	[…]	[…]	[…]	[…]
1.4.2002 to 31.3.2006	[…]	[…]	[…]	[…]	[…]	[…]
1.4.2006 to 31.3.2009	[…]	[…]	[…]	[…]	[…]	[…]
1.4.2009 to 31.3.2011	[…]	[…]	[…]	[…]	[…]	[…]

[1] Rotation is understood as a flight which arrives and then departs from the airport.

2.3.3. **Agreement of 31 January 2005 ('the 2005 Agreement')**

(33) On 31 of January 2005, an agreement replacing the 2001 and 2003 Agreements was concluded between VFAB and Ryanair ('the 2005 Agreement') for the period 1 January 2005 to […]. The 2005 Agreement makes the following changes to the previous Agreements:

(a) Ryanair will make between […] rotations a day and continue to guarantee a minimum of […] departing passengers per annum for each rotation;

(b) between 1 January 2005 and 31 March 2011, the airport charge was set at SEK […] per departing passenger. For the remaining duration of the contract the corresponding charge was set at SEK […]. However, according to the Swedish authorities, the charges agreed for the period after 1 January 2005 were not implemented and the airport charge effectively applied as of 1 January 2005 was SEK […] per departing passenger.

2.4. THE AGREEMENTS WITH RYANAIR AND AMS REGARDING MARKETING SUPPORT AND INCENTIVE PROGRAMMES

(34) VFAB signed two marketing agreements with Ryanair and Airport Marketing Services Ltd ('AMS'), a Ryanair subsidiary.

(35) The first agreement, signed on 12 June 2008 between VFAB and Ryanair Ltd, concerned advertising in Swedish and British press, in Ryanair's Inflight Magazine, on Ryanair.com website, email to UK subscribers, etc. Out of the total value of EUR […] of these services, VFAB agreed to pay EUR […].

(36) The second agreement ([12]) between VFAB and AMS, consisted of three parts, namely:

(a) marketing on Ryanair's UK homepage […] between 1 November 2010 and 31 March 2011 for a value of EUR […];

(b) marketing on Ryanair's UK homepage […] between 1 November 2010 and 31 October 2013 for a value of EUR […] per year, (EUR […] in total);

(c) incentive programme for new routes: it was agreed that […].

2.5. THE COMPLAINT

(37) In 2006, the Commission received a complaint from SAS alleging that the Swedish authorities via the agreements at Västerås Airport were granting State aid in favour of Ryanair. SAS argued that VFAB applied lower and not objectively justified (non-cost-related) airport charges to Ryanair than those imposed on SAS. The complainant also argued that the annual losses of VFAB were covered by public funds from the City of Västerås and the SCAA. Furthermore the complainant alleged that this aid would not be compatible with the internal market.

3. **GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE AND THE INVESTIGATION OF THE COMMISSION**

(38) The Commission initiated the formal investigation procedure since it had doubts as to the compatibility of the following measures with the State aid rules:

(a) The shareholders' contributions provided to VFAB between 2003 and 2010.

(b) The rent paid by VFAB to Västerås Flygfastigheter AB for use of the airport infrastructure between 2003 and 2010.

(c) The operating support granted to VFAB and other airports under the Local Airport Scheme in the period 2001 to 2010.

(d) The airport charges applied by VAFB to Ryanair between 2001 and 2010.

(e) The marketing support granted by VFAB to Ryanair and AMS in 2001, 2008 and 2010.

3.1. MEASURE 1: SHAREHOLDERS' CONTRIBUTIONS TO VFAB BETWEEN 2003 AND 2010

(39) In the opening decision, the Commission noted that VFAB was fully publicly owned and that the shareholders' contributions appeared to be imputable to the state and to constitute state resources.

(40) The Commission saw no indication that the contributions constituted compensation for services of general economic interest but it seemed rather that they were provided in order to cover losses from VFAB's commercial activities. On the basis of the available information, and given that VFAB had generated important losses for more than 10 years, the Commission had serious doubts that the shareholders had acted as market economy operators ('MEOs') when providing the contributions. It thus took the preliminary view that the shareholders' contributions constituted an economic advantage by relieving VFAB from costs that it should otherwise have borne.

(41) The Commission took the preliminary view that the shareholders' contributions constituted State aid and expressed doubts that this aid would be compatible with the internal market.

([12]) The deal was agreed in two side letters to the 2005 Agreement (both signed on 1 August 2010) and a marketing service agreement (signed on 17 August 2010).

3.2. MEASURE 2: RENT FOR THE AIRPORT INFRASTRUCTURE PAID BY VFAB BETWEEN 2003 AND 2010

(42) Based on the very limited information available, the Commission considered that there were preliminary indications that the rent paid for the use of the airport infrastructure could be lower than market rent.

(43) A subsidised rent would relieve VFAB of costs it would otherwise have to bear and thus constitute a selective advantage. The airport infrastructure is fully owned by the City of Västerås (via its daughter company Västerås Stads Strategiska Fastigheter AB) and the Commission took the preliminary view that the decision to set the rent involved state resources and was imputable to the state.

(44) The Commission consequently took the preliminary view that the rent, if below market rate, would constitute aid and expressed doubts that such aid would be compatible with the internal market.

3.3. MEASURE 3: THE OPERATING SUPPORT GRANTED TO VFAB AND OTHER AIRPORTS UNDER THE LOCAL AIRPORT SCHEME BETWEEN 2001 AND 2010.

(45) The basis for the support had been set out by law and the aid was granted annually by the Swedish authorities. The support was financed from the State budget. Therefore, the Commission considered that involved a transfer of State resources and was imputable to the state.

(46) The measure relieved certain category of airports from a financial burden that would otherwise have been borne by them. On the basis of the information available to the Commission, the support did not seem to be based on a public service obligation or to cover exclusively non-economic activities in the concerned airports. It was not in its capacity of a shareholder that the State provided the support and it did therefore not appear that MEO principle would apply. Therefore, the Commission found a priori that the operating support provided certain undertakings with a selective economic advantage in comparison with other undertakings.

(47) Since the beneficiaries of the measure were active on a market which is open for competition and on which there is trade between Member States, the measure distorts or threatens to distort competition and affect trade between Member States.

(48) Therefore, it appeared that the operating aid provided to VFAB and other airports which were not directly state-owned, amounted to State aid. On the basis of the available information, the Commission had doubts whether the aid in question was compatible with the Treaty.

3.4. MEASURE 4: THE AIRPORT CHARGES APPLIED BY VFAB TO RYANAIR BETWEEN 2001 AND 2010

(49) During the entire period subject to investigation, VFAB was 100 % publicly owned. In view of this and information on VFAB's governance structure, the Commission took the preliminary view that the setting of airport charges by VFAB involved state resources and was imputable to the state.

(50) To the extent that such airport charges would be set lower than the market price for the services provided by VFAB to Ryanair, the Commission considered that they would amount to a selective advantage to Ryanair. In this respect, the Commission noted that the airport charges applied by VFAB to Ryanair were manifestly lower than those applied to the complainant. The Commission further expressed doubts, based on the information available, that the conduct of VFAB in the setting of the airport charges to Ryanair would be consistent with the conduct of an MEO.

(51) On that basis, the Commission took the preliminary view that the airport charges agreed specifically with Ryanair under the 2001, 2003 and 2005 Arrangements were not concluded under normal market conditions and afforded Ryanair a selective economic advantage capable of constituting State aid.

(52) The Commission also doubted that such aid would be compatible with the internal market in particular in light of the provisions of the 2005 Aviation Guidelines.

3.5. MEASURE 5: MARKETING SUPPORT GRANTED BY VFAB TO RYANAIR AND AMS IN 2001, 2008 AND 2010

(53) As for Measure 5, the Commission took the preliminary view that the contracts entered into by VFAB involved the use of state resources and were imputable to the state.

(54) As regards the possible advantage of the marketing support agreements, the Commission doubted that the terms of the agreements would, on the part of VFAB, be consistent with the conduct of an MEO since the available evidence did not prima facie demonstrate that the agreement brought a commensurate economic value to VFAB. The Commission therefore took the preliminary view that these agreements provided an advantage to Ryanair by relieving it of costs it would otherwise have to bear in the course of its business and that this prima face advantage was elective as it applied to Ryanair/AMS exclusively ([13]).

(55) On the basis of the above, the Commission took the preliminary view that the marketing support granted to Ryanair/AMS involved State aid within the meaning of Article 107(1) TFEU. The Commission furthermore doubted that this aid would be compatible with the internal market, in particular in view of the provisions of the 2005 Aviation Guidelines.

4. **COMMENTS FROM SWEDEN**

(56) Sweden's comments in the formal investigation procedure are summarised below but will in the relevant parts be discussed in more detail in Section 6 'Assessment'.

4.1. MEASURE 1: SHAREHOLDERS' CONTRIBUTIONS TO VFAB BETWEEN 2003 AND 2010

(57) Sweden has, on substantially the same ground as those developed by VFAB (see recitals 63 to 65 below) argued that any support granted by state resources to VFAB could, in any event, not constitute State aid as they served to compensate losses stemming exclusively from non-economic activities at the airport or, alternatively, because they would constitute compensation for services of general economic interest (SGEI).

4.2. MEASURE 2: RENT FOR THE AIRPORT INFRASTRUCTURE PAID BY VFAB BETWEEN 2003 AND 2010

(58) Sweden contests that the rent paid for the use of the airport infrastructure would constitute State aid to VFAB.

(59) Sweden contests that the rent would be below market level. They point to the fact that under existing planning provisions, the land in question can only be used for airport operations, and that the level of rent must be assessed i.a. in view of the low profitability of this activity.

(60) Sweden furthermore argues that there is no concrete evidence in support of the Commission's prima facie doubts about the level of rent.

4.3. MEASURE 3: THE OPERATING SUPPORT GRANTED TO VFAB AND OTHER AIRPORTS UNDER THE LOCAL AIRPORT SCHEME IN PERIOD 2001 TO 2010.

(61) Sweden has argued that the operating support for non-state-owned airports should be considered as a operating aid scheme that is compatible with the internal market in the light of point 137 of the 2014 Aviation Guidelines.

5. **COMMENTS FROM INTERESTED PARTIES**

(62) The comments submitted by interested parties in the formal investigation procedure are summarised below but will in the relevant parts be discussed in more detail in Section 6 'Assessment'.

5.1. COMMENTS FROM VFAB

5.1.1. **Measure 1: Shareholders' contributions to VFAB between 2003 and 2010**

(63) VFAB argues that the vast majority of the airport services were provided to the schools operating there and to the aero-club (see recital 16). VFAB further argues that these users are not involved in economic activity and that provision of airport services to them would also be non-economic and hence fall outside the scope of State aid control, as would any public resources used to cover operating losses that have resulted from the provision of such services.

([13]) In this respect the Commission considered that it made no difference that part of the marketing support was provided via Ryanair's subsidiary AMS and not to Ryanair directly. The Commission noted that Ryanair had direct control of AMS at the time the agreements were signed and even appears to have signed one of the side letters on behalf of AMS. Also, the marketing service agreement between VFAB and AMS states that it is '*rooted in Ryanair's commitment to establish and operate routes a 4 per week services from London Stansted to VST …*'.

(64) To the extent that the airport activities would nevertheless be considered economic, VFAB considers that they constitute services of general economic interest (SGEI) and that any public support to cover the losses resulting from the provision of such SGEIs would not be State aid.

(65) Finally, VFAB argues that the shareholder contributions would be relevant for an assessment under State aid rules only to the extent that they were used to cover the losses related to VFAB's commercial operations, understood as the provision of airport services to commercial airlines. In this respect, VFAB considers that the shareholder contributions were conform with the conduct of an MEO as the airport's commercial operations were incrementally profitable (in the sense that the income derived from these operations covered the costs of the same operations and brought a profit).

5.1.2. **Measure 2: Rent for the airport infrastructure paid by VFAB between 2003 and 2010**

(66) VFAB disputes that the rent would be set under market levels given the existing land use restrictions and the negative profitability of airport operations at the premises.

(67) In any event, VFAB contests that the setting of the rent can be imputed to the state. Although the owner of the airport infrastructure, Västerås Flygfastigheter AB, is wholly owned by the City of Västerås, the firm operates at arm's length from its public shareholder and sets the rents of its properties based on commercial considerations. The level of rent would thus not be imputable to the state.

5.1.3. **Measures 4 and 5: Airport charges applicable to Ryanair from 2001 to 2010 and marketing support granted to Ryanair and AMS in 2001, 2008 and 2010**

(68) VFAB has argued that the commercial arrangements between VFAB, Ryanair and AMS were consistent, on the part of VFAB, with the conduct of an MEO and therefore do not constitute State aid.

(69) VFAB suffered from consistent losses in the period covered by the investigation as well as in the preceding years. However, according the VFAB these losses were imputable to the allegedly non-economic activities of the airport whereas the agreements with commercial airlines, including Measures 4 and 5, covered their incremental costs and brought an operating profit and therefore contributed positively to the financial result of VFAB.

(70) VFAB has also provided detailed financial information at the request of the Commission.

5.2. COMMENTS FROM RYANAIR

5.2.1. **Measure 4: Airport charges applicable to Ryanair from 2001 to 2010**

(71) Ryanair asserted that the airport charges applied by VFAB to Ryanair did not contain State aid, as they complied with the MEO principle.

(72) In a first step, Ryanair argued that, for the purposes of applying the MEO principle, the Commission should compare Ryanair's agreements with VFAB with agreements concluded with private and public private airport. Ryanair also submitted airport commissioned from the consultancy Oxera claiming that the airport charges paid by Ryanair at Västerås Airport were broadly in line with the charges applied at a number of 'comparator airports' and therefore satisfy the MEO test.

(73) Secondly, Ryanair argued that an airport in the situation of Västerås Airport at the material time would have complied with the MEOP simply by reducing its losses rather than by becoming profitable through the airport charge agreements. The Commission should therefore ask whether the contract was incrementally profitable for the airport. According to Ryanair, when assessing whether the contract complied with MEO principle, the Commission should thus only take the incremental costs of the airport, which are directly related to providing airport services to the airline in question, into account, and examine whether the total revenue (aeronautical and non-aeronautical) derived from the contract outweighs these incremental costs.

(74) In this respect, Ryanair has argued that for VFAB the incremental revenue arising from the arrangements with Ryanair exceeded the incremental cost of serving Ryanair. Ryanair has submitted, amongst other reports and documents in support of its submission, studies by the consultancy Oxera analysing the incremental profitability of the arrangements between VFAB and Ryanair and AMS.

5.2.2. **Marketing support granted by VFAB to Ryanair/AMS in 2001, 2008 and 2010**

(75) As regards the marketing agreements with VFAB, Ryanair stressed that AMS' marketing agreements are distinct from Ryanair's agreements with airports and should be assessed separately, since they cannot be considered a single beneficiary. The agreements were negotiated independently, related to different services, and were not subject to any linkage that would justify their consideration as a single source of alleged State aid. The conclusion of a marketing agreement with AMS is not a condition for the operation of routes by Ryanair to and from an airport.

(76) As to the value of marketing, Ryanair claimed that marketing space on Ryanair's website is a scarce resource and demand for that space is high, including from businesses other than airports. Ryanair considers that the marketing agreements between VFAB and Ryanair or AMS were compliant with the MEO principle.

(77) Ryanair has also argued that, in any event, the Commission had not demonstrated that Measures 4 and 5 involved the use of state resources or were imputable to the state.

5.3. COMMENTS FROM AIRPORT MARKETING SERVICES (AMS)

(78) AMS submitted that the Commission should not, contrary to what is suggested in the opening decision, treat VFAB's agreements with Ryanair (Measure 4) and its marketing agreements with AMS (Measure 5) as connected, but rather as two separate business transactions. AMS stated that it is a subsidiary of Ryanair with a real commercial purpose of its own, created in order to develop an activity that does not belong to the core business of Ryanair. AMS submitted further that in principle, AMS's marketing agreements with airports are negotiated and concluded separately from Ryanair's agreements with the same airports.

(79) According to AMS it makes inherent sense for a small regional airport to purchase marketing services from AMS. AMS asserted that these airports typically have a need to increase their brand recognition and that advertising on an airline website can increase the number of inbound passengers (foreign passengers generate more non-aeronautical revenue than outbound passengers originating from the region where the airport is located). The marketing agreements thus bring a real commercial value to VFAB.

(80) AMS further submitted that in concluding the marketing agreements under Measure 5, VFAB acted in line with the MEO principle, as advertising on Ryanair.com is said to represent a high real value for Västerås Airport and that the price charged by AMS was the market price for these services.

6. **COMMENTS FROM SWEDEN ON THIRD PARTY COMMENTS**

(81) Sweden did not comment on the third party comments.

7. **ASSESSMENT**

(82) By virtue of Article 107(1) TFEU 'any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

(83) The criteria provided for in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether a measure constitutes Stat aid within the meaning of Article 107(1) TFEU all of the following conditions need to be fulfilled, namely that the financial support should:

(a) be granted by the state or through state resources;

(b) provide a selective advantage, i.e. favour certain undertakings or certain goods;

(c) distort or threaten to distort competition; and

(d) affect trade between Member States.

7.1. MEASURE 1: SHAREHOLDERS' CONTRIBUTIONS TO VFAB BETWEEN 2003 AND 2010

7.1.1. **Existence of aid**

7.1.1.1. *Notion of undertaking (different margins)*

(84) In order to determine whether a measure falls within the scope of Article 107(1) TFEU, the Commission must first establish whether the beneficiary of the measure is an undertaking within the meaning of that article.

(85) It is settled case-law that the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed ([14]), and that any activity consisting in offering goods and services on a given market is an economic activity ([15]).

(86) In its judgement in the *Leipzig-Halle airport case*, the General Court confirmed that the operation of a civil airport is an economic activity, of which the construction of airport infrastructure is an inseparable part ([16]). Once an airport operator engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) TFEU ([17]).

(87) Regarding the moment in time from which on the construction and operation of an airport became an economic activity, the Commission recalls that the gradual development of market forces in the airport sector does not allow for a precise date to be determined. However, the European Courts have recognised the evolution in the nature of airport activities and in Leipzig/Halle Airport, the General Court held that from 2000 onward the application of State aid rules to the financing of airport infrastructure could no longer be excluded. Consequently, from the date of the judgment in Aéroports de Paris (12 December 2000) ([18]) the operation and construction of airport infrastructure must be considered as an economic activity falling within the ambit of State aid control.

(88) However, it should be noted that not all the activities of an airport operator necessarily are of an economic nature ([19]). The Court of Justice has held that activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid. Such activities include security, air traffic control, police, customs, etc. ([20]). The financing of such non-economic activities has to be strictly limited to compensation of the costs to which they give rise and may not be used instead to fund other economic activities ([21]).

(89) In the course of the formal investigation, Sweden and VFAB have contested the Commission's preliminary findings as regards VFAB's qualification as an undertaking, arguing that the majority of VFAB's activities are either not economic.

(90) In this respect Sweden and VFAB have argued that the following users of the airport were not undertakings but performed non-economic activities:

— Hässlögymnasiet (argued to be non-economic by being part of the national school system),

— the pilot training at the Scandinavian Aviation Academy,

— the activities of the not-for-profit aero club 'Hässlö flygförening', which was allowed to use the airfield free of charge.

([14]) Case C-35/96 *Commission v Italy* [1998] ECR I-3851, point 36; C-41/90 Höfner and Elser [1991] ECR I-1979, point 21; C-244/94 *Fédération Francaise des Sociétés d'Assurances* v *Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013, point 14; C-55/96 *Job Centre* [1997] ECR I-7119, paragraph 21.

([15]) See e.g. Case C-35/96 *Commission* v *Italy* [1998] ECR I-3851, paragraph 36; and Cases C-180/98 to 184/98 Pavlov [2000] ECR I-6451, paragraph 75.

([16]) Joint Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen* AG v *Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt* v *Commission*, (hereafter '*the Leipzig-Halle airport case*'), [2011], not yet published in ECR. See also Case T-128/89 *Aéroports de Paris* v *Commission* (hereinafter '*the Aéroports de Paris judgement*'), [2001] ECR II-3929, confirmed by the ECJ in case C-82/01 P [2002] ECR I-9297, and Case T-196/04 *Ryanair* v *Commission* (hereinafter '*the Charleroi case*') [2008] ECR II-3643, paragraph 88.

([17]) See e.g. Cases C-159/91 and C160/91, *Poucet* v *AGV* and *Pistre* v *Cancave* P [1993] ECR I-0637.

([18]) *Leipzig-Halle* judgment, paragraphs 42-43.

([19]) See e.g. Case C-364/92 *SAT Fluggesellschaft* v *Eurocontrol* [1994] ECR I-43.

([20]) Commission Decision N309/2002 of 19 March 2003 on Aviation security — compensation for costs incurred following the attacks of 11 September 2001.

([21]) Case C 343/95 *Cali & Figli* v *Servizi ecologici porto di Genova* [1997] ECR I-1547; Commission Decision N 309/2002 of 19 March 2003; Commission Decision N 438/2002 of 16 October 2002, Aid in support of the public authority functions in the Belgian port sector.

(91) According to Sweden these allegedly non-economic activities jointly accounted for the vast majority of the use of the capacity of the airport. Sweden has also argued that the commercial flights at the airport (defined as flights operated by airlines) were operationally profitable, that therefore all losses of VFAB were imputable to the non-economic activity and that consequently any public support to compensate for these losses would fall outside the scope of State aid rules.

(92) In essence, Sweden's position on this point consists in arguing that if the activity of a user of airport services is non-economic, then the provision of the airport services to that user is in itself not an economic activity.

(93) The Commission cannot agree with this view.

(94) As explained above, it is well-established that the offering of goods or services on a given market against remuneration constitutes an economic activity. An airport may, besides airport services narrowly defined (i.e. services provided to airlines ([22])), also provide other forms of services on a commercial basis, such as for instance the use of the airport infrastructure for other aeronautical activities against remuneration, e.g. by flight schools. Whether the buyers of these services, such as flight schools, are themselves undertakings is not relevant for the qualification of the airport as an undertaking since there is a market for the services in question.

(95) By Sweden's own admission, both Hässlögymnasiet and the Scandinavian Aviation Academy paid a consideration for the use of the airport. The provision of these services by the airport operator is therefore an economic activity irrespective of the nature of the school's own activity.

(96) The aero club was, according to Sweden and VFAB, allowed to use the airport without paying a consideration. However, the fact that the aero club does not pay for the services provided by the airport does not necessarily mean that these services are not economic. In any case, Sweden and VFAB have admitted that they did not, in their accounting, separate the costs generated by the aero club's use of the airport from that of the flight schools and thus there is no specific figure that can be safely imputed to this allegedly non-economic activity. Consequently, the services provided to the aero club do not affect the Commission's finding that VFAB is an undertaking.

(97) In the case at hand, the Commission finds that Västerås Airport is operated on a commercial basis. The airport operator charges users for the use of the airport infrastructure and for the services it provides at the airport. VFAB is thus an undertaking in the sense of Article 107(1) TFEU.

7.1.1.2. *State resources and imputability to the state*

(98) In order to constitute State aid, the measures in question have to be financed from state resources and the decision to grant the measure must be imputable to the state.

(99) The concept of State aid applies to any advantage granted through state resources by the state itself or by any intermediary body acting by virtue of powers conferred on it ([23]). Resources of local authorities are, for the application of Article 107 of the TFEU, state resources ([24]).

(100) In the present case, the shareholders' contributions have been decided on and provided by the owners of VFAB, i. e. by the City of Västerås and, for certain measures, by SCAA via its daughter company LFV Holding.

(101) As regards the City of Västerås, the shareholder contributions were decided by the elected City Council (kommunfullmäktige) and paid directly from the city budget.

(102) As regards LFV Holding, the Commission notes that the firm was fully owned by the SCAA, a public authority. Under its by-laws, LFV Holding cannot without the permission of the Swedish government form new subsidiaries or acquire shares. Members of the Swedish Parliament have the right to participate in Board meetings.

([22]) 2014 Aviation Guidelines, point 22(8).
([23]) Case C-482/99 *France* v *Commission* ('*Stardust Marine*') [2002] ECR I-4397.
([24]) Joined Cases T-267/08 and T-279/08, *Nord-Pas-de-Calais* [2011] REC I-1999, paragraph 108.

(103) The Commission, which notes that neither Sweden nor any third party has contested the preliminary findings of the opening decision on this point, therefore considers that Measure 1 is financed through state resources and is imputable to the state.

7.1.1.3. *Economic advantage*

Alleged SGEI

(104) VFAB has argued that the provision of airport services to the flight schools and aero club mentioned in recital 90 would in any event constitute services of general economic interest ('SGEI') and that the public support granted to VFAB would not constitute State aid as they would be compensation for losses which are exclusively attributable to the performance these SGEIs.

(105) Public authorities may indeed define certain economic activities carried out by airports or airlines as SGEI within the meaning of Article 106(2) TFEU and provide compensation for such services.

(106) According to the *Altmark* ([25]) case law, compensation for the provision of an SGEI does not entail a selective advantage within the meaning of Article 107(1) of the TFEU if the following four conditions are met:

(a) the beneficiary of the compensation must be formally entrusted with the provision and discharge of an SGEI, the obligations of which must be clearly defined;

(b) the parameters for calculating the compensation must be established beforehand in an objective and transparent manner;

(c) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the SGEI, taking into account the relevant receipts and a reasonable profit for discharging those obligations; and

(d) where the beneficiary is not chosen pursuant to a public procurement procedure that allows for the provision of the service at the least cost to the community, the level of compensation granted must be determined on the basis of an analysis of the costs which a typical undertaking, well run, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit.

(107) The conditions of the Altmark criteria are cumulative, meaning that all four must be met in order for public support not to qualify as State aid on these grounds.

(108) In the present case, the Commission notes that Sweden and VFAB have not adduced any evidence that the alleged public service obligations have been actually and clearly defined and formally entrusted to VFAB. Indeed, in this respect, VFAB refers only to the by-laws of VFAB in which the mission of the undertaking is defined first as 'covering the region's need of air transport' ([26]) ('tillgodose regionens behov av flygtransporter') and later as 'serving civil aviation at Västerås Airport' ([27]) ('betjäna den civila luftfarten vid Västerås Flygplats'). Neither of these formulations makes reference to the three alleged public service obligations and in any case they cannot be considered as clear and actual SGEI obligations (they rather appear to constitute a general description of the object of the undertaking). For this reason alone the public support to VFAB cannot be considered as falling outside the scope of State aid rules under the Altmark case law.

(109) In addition, the Commission notes than at least two other Altmark criteria would appear not to be met: there is no evidence of an *ex ante* definition of the compensation (but rather *ex post* compensation for unanticipated losses) and VFAB has not been chosen through a public procurement procedure and there is no evidence that the alleged compensation has been based on an analysis of the costs of a well-run undertaking (rather the opposite, as the level of support was defined simply by the need to make up for several years of continuous losses).

(110) VFAB's claim that the public support to VFAB falls outside the scope of State aid rules because it would be compensation for the discharge of a public service obligation can therefore not be accepted.

([25]) Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellschaft Altmark GmbH* ('*Altmark*' judgment), [2003] ECR I-7747, see points 86 to 93.
([26]) In the by-laws applying between 28 December 2000 and 28 January 2007.
([27]) In the by-laws applying from 23 January 2007.

The MEO principle

(111) An advantage within the meaning of Article 107(1) TFEU is any economic benefit which an undertaking would not have obtained under normal market conditions, i.e. in the absence of state intervention. Only the effect of the measure on the undertaking is relevant, neither the cause nor the objective of the state intervention. Whenever the financial situation of the undertaking is improved as a result of state intervention, an advantage is present.

(112) The Commission further recalls that 'capital placed directly or indirectly at the disposal of an undertaking by the state in circumstances which correspond to normal market conditions cannot be regarded as State aid'. In the present case, in order to determine whether the shareholder contributions grant VFAB an advantage that it would not have received under normal market conditions, the Commission has to compare the conduct of the public authorities providing the capital injections to that of an MEO who is guided by prospects of profitability in the long term.

(113) The assessment should leave aside any positive repercussions on the economy of the region in which the airport is located, since the Court has clarified that the relevant question for applying the MEO principle is whether 'in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have subscribed the capital in question'.

(114) In *Stardust Marine* the Court stated that, '[…] 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.' Furthermore, the Court declared in the *EDF* case that, '[…] for the purposes of showing that, before or at the same time as conferring the advantage, the Member State took that decision as a shareholder, it is not enough to rely on economic evaluations made after the advantage was conferred, on a retrospective finding that the investment made by the Member State concerned was actually profitable, or on subsequent justifications of the course of action actually chosen' ([28]).

(115) In order to be able to apply the MEO principle, the Commission has to place itself at the time when each decision to provide public funds to VFAB was taken. The Commission must also base its assessment on the information and assumptions which were at the disposal of the relevant local authorities at the time when the decision regarding the financial arrangements of the infrastructure measures at stake was taken.

(116) In the opening decision, the Commission set out its preliminary analysis of why the shareholders' contributions to VFAB constitutes an advantage to the firm and why, in particular, the MEO principle would not be met.

(117) The Commission first noted that VFAB has generated considerable losses for more than 10 years. Indeed, already at the time of the first shareholder contribution in 2003, VFAB was already at least (according to the information available to the Commission) in its fifth year of consistent losses. These losses continued without interruption throughout the period covered by the investigation such that, at the time of each shareholder contribution, VFAB was still loss-making. In these circumstances the Commission consider it very unlikely that a private investor would be willing to contribute with capital injections of in total SEK 194 million (approx. EUR 21,4 million) in order to cover such losses. Since VFAB has been fully state-owned during the entire period in question, there are no private owners with which a comparison could be made. The compliance with the MEO would in these circumstances only be demonstrated on the basis of strong prospects of long-term profitability of VFAB.

(118) Prior to the opening decision, the Swedish authorities argued that the shareholder contributions were made based on financial analysis similar to the ones made by the private owner of Skavsta airport (see 52 of the opening decision). However, as already noted in the opening decision, Sweden provided no concrete information showing that Skavsta's owners would have provided capital in circumstances similar to those of Västerås, and that comparability was unlikely also because Skavsta has a passenger levels 10 times higher than Västerås. No additional evidence has been provided on this point in course of the formal investigation.

([28]) Case C-124/10 P, *Commission* v *Electricité de France (EDF)*, not yet published, point 84.

(119) Prior to the opening decision, the Swedish authorities submitted very limited evidence intended to show that the City of Västerås and LFV Holding acted as normal market economy investors when contributing the capital. As noted in the opening decision, there are indications that the SCAA performed some kind of market analysis before its acquisition of shares in VFAB in 2000. According to the forecasts on which the purchase was made, the number of passengers at Västerås Airport should grow from 120 000 in 1999 to 600 000 within 8 years, which would result in a sustainable profitability of SEK 7-10 million per year. It was estimated that VFAB would reach break-even in 2003 with a passenger frequency of 400 000.

(120) These assumptions appeared however, as indicated in the opening decision, very optimistic in view of the previous performance of Västerås Airport, and no further evidence has been provided to substantiate the solidity of these projections (indeed, as described in Table 1 above, the passenger frequency declined instead of five-folding). By the end of 2006, LFV Holding AB sold its share back to the City of Västerås for SEK 1. According to the information submitted by the Swedish authorities, the reason was that the SCAA was not prepared to continue to provide shareholders' contributions as loss coverage to VFAB.

(121) The Commission further notes that according to VFAB's comments in the course of the investigation, the purpose of the shareholders' contributions from the City of Västerås and LFV holding was to 'cover the losses arisen in VFAB's operations' ([29]). VFAB has argued that most of these operations are non-economic and considers that the question whether the shareholders' contributions comply with the MEO principle has to be assessed only in relation to the return on the arrangements with the commercial airlines which, in VFAB's view, is the only part of the airport's operations that is economic. As these agreements were incrementally profitable, VFAB argues that the shareholders' contributions were in line with the MEO principle.

(122) Sweden has not contested these comments.

(123) The Commission first, for the reasons indicated above, does not accept VFAB's contention that the airports operations would have been largely non-economic and that the shareholders' contributions compliance with the MEO principle should be assessed only in relation to the return on VFAB's agreements with commercial airlines. VFAB is an undertaking and, from the shareholders' perspective, compliance with the MEO principle should be assessed in view of VFAB's financial result as a whole. In any case VFAB have not provided any substantiated figure that would allow separating its economic and non-economic activity.

(124) As regards the prospects that VFAB's results would provide a return on the shareholders' contributions that would have been acceptable to a private operator, the Commission notes that neither Sweden nor interested parties have submitted any information in the course of the investigation intended to alleviate the Commission's preliminary findings that the shareholders' contributions were not compliant with the MEO principle.

(125) Indeed, no evidence has been submitted that would complement the very limited evidence submitted prior to the opening and that would demonstrate that, in spite of the strong prima facie indications to the contrary (as summarised in recitals 119 to 121) the shareholders' contributions were provided on the basis of reasonable assumptions of a return that would be acceptable to an MEO in a similar situation.

(126) On the contrary, the Commission finds that its preliminary conclusions are corroborated by VFAB's own statements (see recital 121), which Sweden has not contested, that the shareholders' contributions were not given with a view to obtaining a return that would be acceptable to an MEO, but for the purpose of covering the losses generated by VFAB's operations on a continuous basis. Such continuous coverage of losses without any clear and credible prospects of an improvement in the performance of the firm leading to an acceptable return would not be acceptable to an MEO.

(127) Sweden has not submitted any information in respect of the doubts expressed in the opening decisions regarding in particular the very optimistic forecasts allegedly made prior to the first shareholders' contributions, nor has it submitted any evidence that the subsequent contributions were made on the basis of any form of assessment of future returns as opposed to the mere coverage of losses.

([29]) VFAB's comments of 16 July 2012, section 3.3.

Conclusion

(128) In view of the above, the Commission considers that an MEO would not have provided the shareholders' contributions. The evidence provided by the Member State does not substantiate that an assessment that would have been acceptable to an MEO was carried out when those contribution took place, but rather that the shareholders' contributions were intended to cover VFAB's losses on a continuous basis without a link to the performance of the firm. Therefore the shareholders' contributions provide an economic advantage to VFAB which it would not have obtained on normal market conditions.

7.1.1.4. *Selectivity*

(129) To fall within the scope of Article 107(1) TFEU a state measure must favour 'certain undertakings or the production of certain goods'. Hence, only those measures favouring undertakings in a selective way fall under the notion of State aid.

(130) In the case at hand, the shareholders' contributions only benefit VFAB and they are thus clearly selective within the meaning of Article 107(1) TFEU.

7.1.1.5. *Distortion of competition and effect on trade*

(131) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in the internal market, the latter must be regarded as affected by that aid ([30]). The economic advantage granted by the shareholder contributions to VAFB strengthened its economic position, as the airport operator was able to continue its business without bearing all of the inherent costs.

(132) As explained above, the operation of an airport is an economic activity. Competition takes place, on the one hand, between airports to attract airlines and the corresponding air traffic (passengers and freight), and, on the other hand, between airport managers, who may compete between themselves to be entrusted with the management of a given airport. Moreover, in particular with respect to low-cost carriers and charter operators, airports that are not located in the same catchment areas and even in different Member States can also be in competition with each other to attract those airlines.

(133) As mentioned in point 40 of the 2005 Aviation Guidelines and reaffirmed in point 45 of the 2014 Aviation Guidelines, it is not possible to exclude even small airports from the scope of application of Article 107(1) of the TFEU. Furthermore, point 45 of the 2014 Aviation Guidelines explicitly states that 'the relatively small size of the undertaking which receives public funding does not, as such, exclude the possibility that trade between Member States might be affected'.

(134) Västerås Airport has served between 113 626 and 242 376 passengers per year in the period covered by the formal investigation and currently serves ca. 273 000 passengers per year (figures for 2013). A significant proportion of air traffic originates from other Member States and there are, and have been, international flights from Västerås to destinations such as London-Stansted, Alicante and Malaga. It must be concluded therefore that VFAB operates in a market open to competition on a European scale.

(135) In light of these facts, it must be considered that public funding to VFAB distorts or threatens to distort competition and has at least a potential effect on trade.

7.1.1.6. *Conclusion*

(136) In light of the considerations above, the Commission finds that the public funding granted to VFAB in the form of shareholders' contributions between 2003 and 2010 (Measure 1) constitutes State aid within the meaning of Article 107 TFEU.

7.1.1.7. *Lawfulness of the aid*

(137) Pursuant to Article 108(3) of the TFEU, Member States must notify any plans to grant or alter aid, and may not put the proposed measures into effect until the notification procedure has resulted in a final decision.

([30]) Case T-214/95 *Het Vlaamse Gewest* v *Commission* [1998] ECR II-717.

(138) As the funds were already put at the disposal of VFAB, the Commission considers that Sweden has not respected the prohibition of Article 108(3) of the TFEU.

7.1.2. **Compatibility**

7.1.2.1. *The applicability of the 2014 and 2005 Aviation Guidelines*

(139) Article 107(3) of the TFEU provides for certain exemptions to the general rule set out in Article 107(1) of the TFEU that State aid is not compatible with the internal market. The aid in question can be assessed on the basis of Article 107(3)(c) of the TFEU, which stipulates that: 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest', may be considered to be compatible with the internal market.

(140) In this regard, the 2014 Aviation Guidelines provide a framework for assessing whether aid to airports may be declared compatible pursuant to Article 107(3)(c) of the TFEU.

(141) According to the 2014 Aviation Guidelines, if the unlawful investment aid was granted before 4 April 2014, the Commission will apply the compatibility rules in force at the time when the unlawful investment aid was granted.

(142) According to the 2014 Aviation Guidelines, the Commission considers that the provisions of its notice on the determination of the applicable rules for the assessment of unlawful State aid should not apply to pending cases of illegal operating aid to airports granted prior to 4 April 2014. Instead, the Commission will apply the principles set out in the 2014 Aviation Guidelines to all cases concerning operating aid (pending notifications and unlawful non-notified aid) to airports even if the aid was granted before 4 April 2014 and the beginning of the transitional period.

(143) The Commission has already concluded in recitals 136 to 138 that the shareholders' contributions constitute unlawful State aid granted before 4 April 2014.

7.1.2.2. *Distinction between investment and operating aid*

(144) In view of the provisions of the 2014 Aviation Guidelines referred to above, the Commission has to determine whether the measure in question constitutes unlawful investment or operating aid.

(145) According to point 25(r) of the 2014 Aviation Guidelines, investment aid is defined as 'aid to finance fixed capital assets; specifically, to cover the "capital costs funding gap"'. Moreover, according to point 25(r) of the Guidelines investment aid can relate both to an upfront payment (that is to say cover upfront investment costs) and to aid paid out in the form of periodic instalments (to cover capital costs, in terms of annual depreciation and costs of financing).

(146) Operating aid, on the other hand, relates to covering all or part of the operating costs of an airport, defined as 'the underlying costs of the provision of airport services, including categories such as costs of personnel, contracted services, communications, waste, energy, maintenance, rent, administration, etc., but excluding the capital costs, marketing support or any other incentives granted to airlines by the airport, and costs falling within a public policy remit'.

(147) In light of these definitions, it can be considered that the shareholders' contributions, which were used to cover VFAB's operating losses on a continuous basis, qualify as operating aid in favour of VFAB.

7.1.2.3. *Compatibility of operating aid pursuant to the 2014 Aviation Guidelines*

(148) Section 5.1 of the 2014 Aviation Guidelines set out the criteria that the Commission will apply in assessing the compatibility of operating aid with the internal market pursuant to Article 107(3)(c) TFEU. Notably, pursuant to point 172 of the 2014 Aviation Guidelines, the Commission will apply these criteria to all cases concerning operating aid, including pending notifications and unlawful non-notified aid cases.

(149) Under point 137 of the 2014 Aviation Guidelines, unlawful operating aid granted before the beginning of the transitional period (including aid paid before 4 April 2014) may be declared compatible to the full extent of uncovered operating costs provided that the following conditions are met:

(150) Contribution to a well-defined objective of common interest (points 113 and 114 of the 2014 Aviation Guidelines). This condition is fulfilled inter alia if the aid increases the mobility of EU citizens and the connectivity of the regions by establishing access points for intra-Union flights or facilitates regional development. Nevertheless, the duplication of unprofitable airports does not contribute to an objective of common interest.

(151) Need for state intervention (points 116 to 118 of the 2014 Aviation Guidelines). The aid should be targeted towards situations where it can bring about a material improvement that the market itself cannot deliver. In this respect, the Commission has noted the conditions that smaller airports face when developing their services and in attracting private financing are often less favourable than those faced by the major airports in the Union. Therefore, under present market conditions, smaller airports may have difficulties in ensuring the financing of their operation without public funding.

(152) Consequently, the Commission considers, under current market conditions, that:

— airports up to 200 000 passengers per annum may not be able to cover their operating costs to a large extent,

— airports with annual passenger traffic between 200 000 and 700 000 passengers may not be able to cover their operating costs to a substantial extent,

— airports with an annual passenger traffic of 700 000 to 1 million should in general be able to cover their operating costs to a greater extent, and

— airports with an annual passenger traffic of 1-3 million should on average be able to cover the majority of their operating costs.

(153) Appropriateness of State aid as a policy instrument (point 120 of the Aviation Guidelines). The Member States must demonstrate that the aid is appropriate to achieve the intended objective or resolve the problems intended to be addressed by the aid. An aid measure will not be considered compatible with the internal market if other less distortive policy instruments or aid instruments allow the same objective to be reached.

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

(155) Proportionality of the aid amount, i.e. aid limited to the minimum necessary (point 125 of the 2014 Aviation Guidelines). In order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place.

(156) Avoidance of undue negative effects on competition and trade (point 131 of the Aviation Guidelines). When assessing the compatibility of operating aid the Commission will take account of the distortions of competition and the effects on trade. Where an airport is located in the same catchment area as another airport with spare capacity, the business plan, based on sound passenger and freight traffic forecasts, must identify the likely effect on the traffic of the other airports located in that catchment area.

7.1.2.4. *Compatibility assessment of Measure 1*

Contribution to a well-defined objective of common interest

(157) The operating aid provided to VFAB has served to keep the airport in operation and allow it to maintain regular air connections both domestically and internationally.

(158) Västerås is Sweden's fifth largest city by population. It is located in the densely populated and economically prosperous area of central Sweden. Already in 1999 there were 450 000 inhabitants, i.e. about 5,5 % of the country's total population, within 45 minutes' travel time from the airport. Within the catchment area of the airport defined by a travel time of one hour there were 1 million inhabitants. According to estimates by the Swedish air traffic authorities in 2000, about 59 % of the passengers travelling from airports in central Sweden region (Mälardalsregionen) were residents of the area.

(159) However, the closest airports are located at more than 100 kilometres or more than one hour's driving distance (with the exception of Bromma which is at 59 minutes by car). By offering flights both domestically (at least until 2006) and to destinations within the EU (e.g. Oslo, Copenhagen, London) the airport has therefore contributed to increase mobility of EU citizens and increased accessibility by establishing access points for intra-Union flights at a central location of a densely populated region. These access points complemented the offer of other airports located at the margins of the catchment area (Bromma and Arlanda) as it provided flight connections within a convenient commuting perimeter based mainly on a business model (low-cost carriers) which is different from that pursued by Bromma and Arlanda. The Commission also notes that Västerås Airport has, according to estimates by Västerås City, directly and indirectly contributed to maintaining ca. 180 jobs in Västerås.

(160) The Commission concludes that the operating aid served to enhance accessibility between the Västerås area and other parts of Sweden and the EU and that the operating aid served a well-defined objective of common interest.

Need for state intervention

(161) As set out in point 118 of the 2014 Aviation Guidelines, the Commission considers that under current market conditions, the need for public funding to finance operating costs will, due to high fixed costs, vary according to the size of an airport and will normally be proportionately greater for smaller airports. The Commission considers that, under current market conditions, the relative financial viability of airports can be identified in relation to the size. Thus the Commission considers that airports up to 200 000 passengers per annum may not be able to cover their operating costs to a large extent and that airports with annual passenger traffic between 200 000 and 700 000 passengers may not be able to cover their operating costs to a substantial extent.

(162) As shown in recital 20 above, VFAB has been unable to cover its operating costs from at least 1999 and in the whole period under assessment.

(163) The Commission notes that in the period covered by the investigation, the number of passengers has been below 200 000 p.a. except for 2004 (242 376 passengers) and 2005 (221 422 passengers) where it still remained below 300 000.

(164) The Commission finds that VFAB was unable to cover it operating costs to a large or at lease substantial extent and that therefore there was a need for state intervention.

Appropriateness of the aid measure

(165) In the present case, the activity at Västerås Airport was jeopardised by its inability to cover its operating costs.

(166) Given the nature of this problem, the Commission consider that no other policy measure would have allowed the airport to continue its operations. The operating aid was limited to the extent of uncovered operating losses and was limited to the minimum necessary as it only compensated losses that actually occurred. Hence the compensation of losses is limited to the minimum and does not provide for any profits.

(167) In view of the above the Commission considers that the measure was appropriate to reach the desired objective of common interest.

Incentive effect

(168) The operating aid granted in the past served to maintain the airport operational. Without the aid, the airport would have to close down and it would not have been able to contribute to local accessibility. The aid amount has been limited to the extent of actual operating losses, as it compensated only the uncovered operating losses.

(169) In view of this, the Commission considers that the aid measure had an incentive effect.

Proportionality of the aid (aid limited to the minimum)

(170) Operating aid must be limited to the minimum necessary for the aided activity to take place.

(171) In the present case, the aid amount never exceeded the extent of uncovered operating losses. Therefore the Commission consider that the operating aid was proportional and limited to the minimum necessary for the aided activity to take place.

Avoidance of undue negative effects on competition and trade

(172) The Commission notes that there is only one airport located within Västerås Airport's catchment area as defined in point 25(12) if the 2014 Aviation Guidelines. In addition, Arlanda airport is located just outside the catchment area.

(173) However in respect of this airport — Bromma — the Commission first notes that it is located at the very extremity of Västerås Airport's catchment area (59 minutes by car) which is likely to reduce the potential for negative effects of the aid.

(174) Furthermore the Commission notes that the business models of Västerås Airport and Bromma have been quite different. Västerås has in the period covered by the investigation clearly focussed on low-cost carriers by developing its relationship with Ryanair, gradually shedding the domestic flights. Bromma's profile by contrast, has been on domestic flights to serve the central Stockholm area combined with some international destinations (e.g. Brussels, Helsinki) with traditional airlines, and Bromma's development (measured in number of passengers) has been very strong in the period covered by the investigation, going from 981 256 passengers in 2000 to 2 037 382 passengers in 2010 ([31]). In addition, as regards Arlanda, the Commission notes that it is located outside the assumed catchment area of Västerås Airport, which reduces the potential negative effects of the aid. In any event, in the case of Bromma, such negative effects are in addition made even less likely by the fact that Arlanda has also pursued a business model quite different from that of Västerås. Indeed, Arlanda, which is the main airport of the capital area, offers a large number of domestic and international destinations served by traditional airlines. Finally, the modest scale of traffic at Västerås Airport means that the effect of the aid is very unlikely to have had a material impact on the operations of Arlanda which is Sweden's largest airport ([32]).

(175) It is therefore very unlikely that the aid to Västerås Airport should have led to wasteful duplication or diverted business from Bromma or Arlanda.

(176) In view if the above the Commission considers that the undue negative effects on completion and on trade between Member States are limited.

Conclusion

(177) The Commission finds that the operating aid granted to VFAB through the shareholders' contributions granted between 2003 and 2010 (Measure 1) are compatible with the internal market.

7.2. MEASURE 2: THE ALLEGED REDUCED RENT PAID BY VFAB TO VÄSTERÅS FLYGFASTIGHETER AB FOR USE OF THE AIRPORT INFRASTRUCTURE

(178) In the opening decision ([33]), the Commission stated that there were indications that the rent may be below market rate. This relied essentially on a statement to that effect in an internal document of the City of Västerås. The Commission consequently asked the Swedish authorities to comment on these indications as well as on the estimated market rent. On the basis of the available indications the Commission nevertheless took the preliminary view that the rent procured an advantage to VFAB.

(179) Sweden and VFAB have contested that the rent has been set below market levels at any time between 2003 and 2010. In response to the request for clarifications made in the opening decision, they have argued that the statement in a document prepared for the Västerås City council, to which the opening decision refers, suggesting that the rent would be below market levels, does not rest on any figures or concrete explanations but is an unsubstantiated statement. Sweden and VFAB therefore have no means to comment on it in substance. Instead, they argue that any assessment of the market rent should be made in light of the fact that the property, under the relevant planning regulations, can only be used for airport activities and given the very low profitability of the operations, the present rent would appear market conform. In addition, the lease provides that the rent is adjusted if new investments are made.

([31]) Source: www.transportstyrelsen.se
([32]) By way of illustration, Arlanda had 18 263 926 passengers in 2000 (and 16 948 127 in 2010 (source www.transportstyrelsen.se).
([33]) See points 62 and 62 of the opening decision.

(180) In any event, Sweden and VFAB argue that the rent is set freely by VFAB on the basis of purely commercial considerations and that the Commission has failed to demonstrate that the decision to set the rent for VFAB would be imputable to the state.

(181) In this respect, the Commission notes the arguments of Sweden and VFAB that low (indeed negative) profitability of the airport activities in Västerås have an impact on the level of rent that can be charged.

(182) No other third party has commented on this point. The formal investigation has not brought forward any information that would allow substantiating that the rent paid by VFAB would be lower than what a private landlord could have charged under similar circumstances. The statement referred to in the opening decision has therefore not been substantiated any further. In these circumstances, the Commission finds that no evidence corroborates the preliminary indications of an advantage to VFAB. The Commission cannot conclude that State aid has been granted on the basis of unsubstantiated allegations.

(183) Consequently, the Commission finds that Measure 2, the rent paid by VFAB to Västerås Flygfastigheter AB for use of the airport infrastructure, does not constitute State aid.

7.3. MEASURE 3: THE OPERATING SUPPORT GRANTED UNDER THE LOCAL AIRPORT SCHEME IN THE PERIOD 2001 TO 2010

(184) The Swedish authorities have provided explanations as to the support provided by the state under the Local Airport Scheme in the period covered by the investigation; i.e. from 2001 to 2010. The scheme was further modified in 2011 ([34]).

(185) Although the legal basis of the Scheme has varied somewhat in the relevant period, the fundamental features of the Scheme have remained unchanged. As of 2007, the legal basis for the support is Regulation (2006:1577) on operating support for non-state-owned airports. In 2005, the total budget of the support amounted to SEK 103 000 000, which was provided to 22 airports in Sweden. During the period when the state, through LFH Holding, owned 40 % of the shares in VFAB, the operating support was reduced accordingly by 40 %.

(186) The objective of the Scheme has been to promote regional development and inter-regional connectivity, based on the Government's overarching responsibility for the national transport network and air transport infrastructure in particular.

(187) Eligible for aid were all airports with regular air traffic, irrespective of the form of ownership (but objectives of regional development, measured as distance to the three large national airports, should be taken into account in assessing the need for aid). However and airport lost its eligibility to aid as soon as it reached a traffic volume (normally set at 300 000 passengers per year) at which it was considered to have good prospects of profitability. As of 1 January 2007, the eligibility was further reduced when the Scheme excluded airports from which Stockholm could be reached in no more than two hours by public land transport.

(188) As regards the intensity of aid, the aid to an individual airport could not exceed that airport's operating losses. Sweden had in addition clarified that the original intention was that the aid should on average cover 75 % of the operating losses but that this in practice rarely exceeded 50 % on average.

(189) The last year in which aid under the Scheme was paid to Västerås Airport was 2006.

7.3.1. **Existence of aid**

(190) Sweden acknowledges that the Scheme constitutes State aid. As in the opening decision, the Commission notes that the criteria of Article 107 TFEU are met.

(191) The Scheme is clearly funded by state resources as it was funded mainly through the general budget and, to a lesser extent, through the budget of the SCAA which is a central government agency established by law. The aid is also imputable to the state as the Scheme was administered successively by the SCAA (1999 to 2005), the Civil Aviation Authority (2005-2010) and its successor administration the Swedish Transport Administration (as from 2010). These are all public authorities established and governed by law.

([34]) This decision covers the scheme in question until 2010.

(192) The Scheme clearly provides an advantage to its beneficiaries as they are relieved from operating losses that they would have otherwise have to bear in the course of the economic activity. The aid, which is given in the form of grants, is not given by the State with the prospect of seeking a return on its funds. This advantage is selective as it is only given to airports which are not owned by the central government and which meet the criteria of eligibility. Finally, the advantage is liable to distort competition and affect trade between Member States as there is competition between airports within the Union.

7.3.2. **Lawfulness of the aid**

(193) Pursuant to Article 108(3) of the TFEU, Member States must notify any plans to grant or alter aid, and may not put the proposed measures into effect until the notification procedure has resulted in a final decision.

(194) As the funds have been granted, the Commission considers that Sweden has not respected the prohibition of Article 108(3) of the TFEU. Therefore, the Scheme is unlawful as it was not notified to the Commission.

7.3.3. **Compatibility of the aid**

(195) As explained in recitals 137 to 141 the provisions of the 2014 Aviation Guidelines apply to pending cases of illegal operating aid to airports granted prior to 4 April 2014.

(196) The Scheme constitutes operating aid in accordance with the principles of the Guidelines as its purpose was precisely to make up for the operating funding gap of the airports, i.e. the shortfall between the airport revenues and the operating costs of the airports ([35]).

(197) The Scheme covered by this formal investigation was also put into place prior to 4 April 2014.

(198) The Commission will consequently asses the compatibility of Measure 3 in accordance with the compatibility provisions of the 2014 Aviation Guidelines for operating aid as explained in detail in recitals 147 to 154.

7.3.3.1. *Contribution to a well-defined objective of common interest*

(199) The objective of the Scheme has been to promote regional development and inter-regional connectivity, based on the Government's overarching responsibility for the national transport network and air transport infrastructure in particular.

(200) The Scheme limited the risk of duplication to a minimum by targeting small airports in areas with poor connectivity. In addition the Scheme explicitly excluded airports located close to the country's biggest airports (Arlanda, Landvetter and Sturup).

(201) The size of the country, the low population density and the often difficult driving conditions also mitigate the risk for duplication in the rare cases where two airports benefitting from the aid may have been located closer than the indicative distances of point 136 of the Guidelines. The Commission thus concludes that the Scheme contributed to a well-defined objective of common interest.

7.3.3.2. *Need for state intervention.*

(202) As explained above, airports lost eligibility under the Scheme when they were considered to have reasonable prospects to achieve profitability which was typically at around 300 000 passengers per annum. This is a conservative approach which ensures that the aid is only granted where there is a need for state intervention to ensure the operation of the airport.

(203) Indeed, the Commission considers that, under current market conditions, airports up to 200 000 passengers per annum may not be able to cover their operating costs to a large extent and airports with annual passenger traffic between 200 000 and 700 000 passengers may not be able to cover their operating costs to a substantial extent.

(204) Applying these categories to the airports covered by the Scheme, the Commission notes the following.

([35]) As defined in point 21 of the Guidelines.

(205) The vast majority of the airports that have befitted from Measure 3 are very small. Indeed of the 29 airports that have received aid at some time between 1999 and 2007, 24 had — at most — less than 200 000 passengers per year. Of these, 21 had less than 100 000 passengers per annum and 16 less than 50 000.

(206) Only three (Kristianstad, Västerås and Växjö) had, at their maximum in the period, more than 200 000 but still less than 300 000 passengers (but, at their lowest in the period, 62 639, 107 565 and 154 755 respectively). As shown above, Västerås received no aid under Measure 3 after 2006.

(207) Of the two remaining airports, the largest in the period was Skavsta (maximum 1 994 512, minimum 240 233). However, that airport received no more aid after 2004, the year when it exceeded 1 000 000 passengers for the first time ([36]). Göteborg City Airport (maximum 743 892, minimum 2 972) received aid only in 2003 (304 095 passengers) and 2004 (433 935 passengers) ([37]).

(208) The Commission considers, on this basis, that that aid under the Local Airport Scheme was granted where it was necessary to achieve the objective of common interest.

7.3.3.3. *Appropriateness (point 120 of the Guidelines)*

(209) Operating aid is the appropriate instrument to remedy the problems of the airports covered by the Scheme, i.e. their inability to fund their operations.

7.3.3.4. *Incentive effect (point 124 of the Guidelines)*

(210) As shown above, given the level of traffic and the eligibility criteria of the Scheme, it is most unlikely that the airports covered by the Scheme would be unable to finance their activities by themselves and thus maintain the desired level of activity without the aid. The Scheme therefore has an incentive effect.

7.3.3.5. *Proportionality (point 125 of the Guidelines)*

(211) The aid was limited to the minimum necessary since it never exceeded the operating funding gap (and on average rarely exceeded 75 % thereof).

7.3.3.6. *Avoidance of undue distortions of competition (points 131 of the Guidelines)*

(212) The airports covered by Measure 3 are typically small or very small, and spread out over the country and have large catchment areas by continental European standards.

(213) As shown above, the principles of the Scheme have excluded airports located close to the country's largest airports (Arlanda in Stockholm, Landvetter in Göteborg and Skurup close to Malmö), thereby reducing potential overlaps.

(214) Although in a few cases some airports covered by the Scheme may be located closer than the indicative distance criteria mentioned in point 136, the Commission recalls that these airports are very small and therefore that the distortion of competition is likely to be very limited.

7.3.4. **Conclusion**

(215) For the above reasons the Commission considers that the aid provided under the Local Airport Scheme in 2000 to 2010 was compatible with the internal market pursuant to Article 107(3)c of the TFEU.

7.4. ALLEGED AID TO RYANAIR AND AMS

7.4.1. **Existence of aid**

7.4.1.1. *Economic Activity and notion of undertaking*

(216) By providing air transportation services, airlines are performing an economic activity and therefore constitute undertakings in the sense of Article 107(1) of the TFEU. It must accordingly be analysed whether the agreements between the airlines and the airport in question, if imputable to the state and involving a transfer of state resources, granted the former an economic advantage.

([36]) Skavsta went from 980 000 passengers in 2003 to 1 350 000 in 2004. Source: Skavsta Airport website, http://www.skavsta.se/bulletin/3/kort-om-skavsta-passagerare.asp

([37]) Passenger numbers for 2003 and 2004 from http://www.transportstyrelsen.se/Global/Luftfart/Statistik_och_analys/pass2004.pdf

7.4.1.2. *State resources and imputability to the State*

(217) The Court of Justice held in the abovementioned *Stardust Marine* judgment that the resources of an undertaking incorporated under private law, whose shares are in majority publicly owned, constitute state resources.

(218) Concerning imputability, in its Stardust Marine judgment the Court of Justice furthermore held that the fact that the state or a state entity is the sole or majority shareholder of an undertaking is not sufficient to find that a transfer of resources by that undertaking is imputable to its public shareholders. According to the Court of Justice, even if the state was in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case could not be automatically presumed, since a public undertaking may also act with more or less independence, according to the degree of autonomy left to it by the state.

(219) According to the Court of Justice, indicators from which imputability might be inferred, are:

(a) the fact that the undertaking in question could not take the contested decision without taking account of the requirements of the public authorities;

(b) the fact that the undertaking had to take account of directives issued by governmental authorities;

(c) the integration of the public undertaking into the structures of the public administration;

(d) the nature of the public undertaking's activities and the exercise of these activities on the market in normal conditions of competition with private operators;

(e) the legal status of the undertaking;

(f) the intensity of the supervision exercised by the public authorities over the management of the undertaking; and

(g) any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains.

7.4.1.3. *State resources*

(220) During the entire period subject to the present decision, VFAB was 100 % owned by the state, either entirely by the City of Västerås or jointly by the City of Västerås and LFV Holding, a subsidiary of SCAA, a public body. The state, as the sole shareholder of VFAB and by appointing its board of directors, can be presumed to have full influence over VFAB and to control its resources. Thus, any advantage granted from VFAB's resources is granted through state resources.

7.4.1.4. *Imputability*

(221) The Commission first notes that according to the by-laws of VFAB, the purpose of the undertaking is to satisfy the region's air transport needs in compliance with the principles of public law which, apply to the activities of local administrations. Thus the general purpose of the company refers to objectives of general interest which are those typically pursued by public authorities and to the specific legal provisions applying to local administrations. Moreover, it is the City of Västerås (together with LFV Holding when the latter was a shareholder) which appoints the Board of VFAB ([38]).

(222) Furthermore, the decision to mandate the CEO of VFAB to conclude the original 2001 Arrangement with Ryanair was adopted by the Board made up of the ordinary members appointed by the City of Västerås ([39]).

(223) The by-laws furthermore require the undertaking to submit all important operational decisions to the City Council so that the latter can take a view on them.

(224) It is clear from the documents submitted in the course of the formal investigation that the City of Västerås has been directly involved in major commercial decisions. Thus, the evidence shows that in 2006, as the cost coverage agreement with LFV Holding was due to expire, the City Council debated the future commercial strategy

([38]) See, e.g. http://www.Västerås .se/politikdemokrati/stadensorganisation/bolag/Sidor/bolag.aspx
([39]) Minutes of the meeting of board of directors of VFAB of 18 October 2000.

of VFAB and took an explicit decision on the commercial strategy that the firm was to pursue in the period up to 2011. Thus, the public authority was directly involved in devising the commercial strategy of the airport operator and therefore it must be considered as involved in the decisions taken by the latter in the implementation of that strategy

(225) Based on these elements, it appears that the State must be considered as involved in the commercial decisions of VFAB, which is a company that cannot devise its market strategy regardless of the public authority's formal or informal directives. Hence, the Commission, which notes that Sweden has not disputed imputability, considers that VFAB's commercial arrangements with Ryanair and AMS under Measures 4 and 5 are imputable to the state.

7.4.1.5. *Economic Advantage*

(226) In order to assess whether an agreement between a publicly owned airport and an airline confers an economic advantage on the latter, it is necessary to analyse whether this agreement complied with the MEO principle. In applying the MEO test to an agreement between an airport and an airline, it must be assessed whether, at the date when the agreement was concluded, a prudent market economy operator would have expected this agreement to lead to a higher profit than would have been achieved otherwise. This higher profit is to be measured by the difference between the incremental revenues expected to be generated by the contract (that is, the difference between the revenues that would be achieved if the contract were concluded and the revenues that would be achieved absent the contract) and the incremental costs expected to be incurred as a result of the contract (that is, the difference between the costs that would be incurred if the contract were concluded and the costs that would be incurred absent the contract), the resulting cash flows being discounted with an appropriate discount rate. When assessing airport/airline arrangements, the Commission will also take into account the extent to which the arrangements under assessment can be considered part of the implementation of an overall strategy of the airport expected to lead to profitability at least in the long term (point 66 of the Guidelines).

(227) In this analysis, all the relevant incremental revenues and costs associated with the transaction must be taken into account. The various elements (discounts to airport charges, marketing grants, other financial incentives) must not be assessed separately. Indeed, as stated in the Charleroi judgment: 'It is … necessary, when applying the private investor test, to envisage the commercial transaction as a whole in order to determine whether the public entity and the entity which is controlled by it, taken together, have acted as rational operators in a market economy. The Commission must, when assessing the measures at issue, examine all the relevant features of the measures and their context […].'

(228) The expected incremental revenues must include in particular the revenues from airport charges, taking into account the discounts as well as the traffic expected to be generated by the agreement and the non-aeronautical revenues expected to be generated by the additional traffic. The expected incremental costs must include in particular all the incremental operating and investment costs that would not be incurred absent the agreement as well as the costs of the marketing grants and other financial incentives.

(229) The Commission also notes in this context that price differentiation (including marketing support and other incentives) is a standard business practice. Such differentiated pricing policies should, however, be commercially justified.

Application of the MEOP to the agreements in question, in particular with Ryanair

(230) For the purposes of the application of the MEOP in this case, it is first appropriate to assess the following questions:

(a) Should the marketing agreement and the arrangements on airport charges be considered jointly for the purposes of the MEOP or, as Ryanair and AMS have argued, separately?

(b) Is it relevant to compare the arrangements covered by the formal investigation with the airport charges applied in other airports for the purposes of applying the MEOP?

(231) The Commission will first address these two questions and then apply to MEOP to Measures 4 and 5.

Joint assessment of the marketing agreements and the arrangements on airport charges

(232) The Commission considers that two types of measures covered by the formal investigation in this case, namely the airport service agreement and the marketing agreements, must be evaluated together as one single measure. This approach concerns the airport services agreement concluded between VFAB and Ryanair, on the one hand, and the marketing agreements between VFAB and Ryanair as well as VFAB and AMS. Ryanair does not dispute that the marketing contract concluded directly between Ryanair and VFAB is to be assessed together with the airport charges agreement. Indeed, the two agreements together govern the commercial relationship between VFAB and Ryanair. In the Commission's view, the same applies for the marketing agreement with AMS, for the following reasons.

(233) There are several indications pointing towards the fact that these contracts are to be evaluated as one single measure since they have been concluded within the framework of a single transaction.

(234) First of all, AMS is a 100 % subsidiary of Ryanair. The marketing contract was signed on behalf of AMS by Mr Edward Wilson, who at the time was a Director with AMS and concurrently a Director with Ryanair. For the purpose of the application of State aid rules, AMS and Ryanair are considered to be a single undertaking, in the sense that AMS acts as an intermediary in the interest and under the control of Ryanair. For the present agreements, this can also be inferred from the fact that the marketing agreement states in its preamble '[…] www.ryanair.com, the website of the Irish low fares airline Ryanair'.

(235) Furthermore, these marketing agreements, although nominally made between VFAB and AMS, are explicitly side letters to the 2005 Agreement i.e. to the airport charge agreement of 31 January 2005 between VFAB and Ryanair. This clearly shows that the both parties did not dissociate between the airport service agreements and the marketing services agreement but considered them to be part of one single commercial arrangement (the Commission also notes that although the two side letters of 1 August are nominally made between VFAB and AMS, they are nevertheless signed on behalf of Ryanair Ltd).

(236) Second, the 2010 marketing agreement with AMS states in its first section, entitled 'Purpose of the Agreement', that the agreement is '[…]'. This formulation establishes an unambiguous direct link between the service agreement and this marketing agreement in the sense that one would not have been concluded without the other. The marketing agreement is based on the conclusion of the airport services agreement and the services provided by Ryanair. Indeed, the preamble furthermore states that VFAB intends to target Ryanair passengers in order to promote tourism and business opportunities in the region.

(237) Third, the marketing agreement states in its preamble that VFAB has decided to 'actively promote Västmanland and Västerås as a holiday destination for international air travellers and also as an attractive business centre.' This is an indication that the conclusion of the marketing agreement has as its primary and specific purpose to promote specifically Västerås Airport (and the surrounding area, Västmanland) among Ryanair's potential customers.

(238) In conclusion, the marketing service contract concluded by VFAB and AMS are thus indivisibly linked to the airport service agreements signed by Ryanair and VFAB. The above considerations demonstrate that without the airport service agreements, the marketing contracts would not have been concluded. Indeed, the marketing contract states explicitly that it is based on Ryanair's Västerås-London service, and essentially envisages marketing services aimed at promoting that route.

(239) For these reasons, the Commission considers it appropriate to analyse the airport service Arrangements between VFAB and Ryanair and the marketing agreement of 1 and 17 August 2010 jointly, with a view to determining whether they constitute State aid measures or not.

The feasibility of comparing Västerås Airport to other European airports

(240) Sweden as well as Ryanair has argued that the MEOP assessment should be performed by comparing the terms of the commercial arrangements between VFAB on the one hand and Ryanair and AMS on the other to the terms of comparable agreements at other airports.

(241) 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 if it can be demonstrated through an *ex ante* analysis that the airport/airline arrangement will lead to a positive incremental profit contribution for the airport. However, as regards the first approach (a comparison with the '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. It therefore considers an *ex ante* incremental profitability analysis to be the most relevant criterion for the assessment of arrangements concluded by airports with individual airlines.

(242) It should be noted that, in general, the application of the MEO principle based on an average price on other similar markets may prove helpful if such a price can be reasonably identified or deduced from other market indicators. However, this method is not as relevant in the case of airport services, as the structure of costs and revenues tends to differ greatly from one airport to another. This is because costs and revenues depend on how developed an airport is, the number of airlines which use 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.

(243) Moreover, as can be seen in the present case, commercial practices between airports and airlines are not always based exclusively on a published schedule of charges. 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.

(244) Finally, assuming that it could be established, based on a valid comparative analysis, that the 'prices' involved in the various transactions that are the subject of this assessment are equivalent to or higher than the 'market prices' established through a comparative sample of transactions, the Commission would, for all that, not be able to conclude from this that these transactions comply with the MEO test if it emerges that, when they were set, the airport operator had expected them to generate incremental costs higher than the incremental revenues. An MEO will thus have no incentive to offer goods or services at benchmarked 'market price' if doing so would result in an incremental loss.

(245) In such conditions, the Commission considers that, taking into account all the information available to it, an *ex ante* analysis of incremental profitability is the best approach to assess whether the commercial relations between VFAB and Ryanair granted Ryanair an advantage for the purpose of Article 107(1) TFEU.

7.4.1.6. *Assessment of Incremental Costs and Revenues*

(246) In order to assess whether an arrangement concluded by an airport with an airline satisfies the MEO test, expected non-aeronautical revenues stemming from the airline's activity should be taken into consideration together with airport charges, net of any rebates, marketing support or incentive schemes. Similarly, all expected costs incrementally incurred by the airport in relation to the airline's activity at the airport must be taken into account. Such incremental costs may encompass all categories of expenses or investments, such as incremental personnel, equipment and investment costs induced by the presence of the airline at the airport. For instance, if the airport needs to expand or build a new terminal or other facilities mainly to accommodate the needs of a specific airline, such costs should be taken into consideration when calculating the incremental costs. In contrast, costs which the airport would have to incur anyway independently from the arrangement with the airline should not be taken into account in the MEO test.

(247) In addition, the airport infrastructure must be open to all airlines and not dedicated to a specific airline in order to exclude that the advantage resulting from compatible aid to the airport operator is not passed on to a specific airline.

(248) Against this background, the Commission will assess whether the arrangements between VFAB and Ryanair, including the marketing agreements with AMS, will lead to a positive incremental profit contribution for the airport. This assessment has to be made in view of the situation of the airport at the time when the Agreements with Ryanair were made and on the foreseeable development about the business at the time.

(249) In 2001 Västerås Airport was an airport with significant underutilisation. In the 1990s it had relied on a business model where traditional airlines, essentially SAS, ensured regular connections to domestic and some foreign destination, principally Oslo and Copenhagen, which were attractive to business travellers form the Västerås region which put a premium on fast connections but were comparatively price insensitive. As an example, in the years 1999 and 2000, SAS ensured 4 daily connections with Copenhagen and Skyways ensured 3 daily connections to Göteborg, 3 daily connections to Malmö and 2 daily flights to Copenhagen.

(250) This business model failed in early 2000s when firms became more cost-conscious, a situation that was further aggravated by the fall in air travel that followed the terrorist events on 11 September 2001. Thus, SAS stopped flying from Västerås altogether in 2002 and Skyways which took over some of SAS's routes, abandoned Västerås in 2004. Traditional airlines has since only had very limited activity at Västerås Airport, as shown in Table 1 above.

(251) In 2001 Västerås Airport was thus faced with the fact that its traditional airline customers were contemplating to cut down their activities at the airport and unwilling to enter any long-term agreements that would bring the airport stable long-term revenue.

(252) In 2001 Västerås Airport had a very low rate of utilisation. Available maximum capacity was estimated at about 950 000 departing passengers per year, whereas the actual number of passengers was 93 487, i.e. less than 10 %.

(253) At the same time, the airport was operating with high fixed costs, the majority of which were, according to the figures submitted by Sweden, imputable to the non-airline-related activity at the airport which, in the years 2000 to 2010, accounted for between 72 % and 92 % of traffic at the airport ([40]). By contrast, the operation of commercial airlines had always incrementally contributed to the profitability of the airport.

(254) At that time, the natural avenue was to consider a development of low-cost airlines operations at the airport. According to estimates reported by the Swedish government's Ministry of Enterprise in a 1999 report on the prospects of Västerås Airport ([41]), low-cost airlines' market share in Europe was expected to grow from 3 % to 12 % in terms of passengers, an evolution that was expected to be particularly relevant in the wider Stockholm area which is marked by the high travel frequency of its residents. Indeed, other airports made the same assessment at the time and reoriented their business models along similar lines, e.g. Skavsta airport.

(255) It is in this context that VFAB envisaged entering into the Agreements with Ryanair which, contrary to SAS which was reducing its operations at the airport, and other traditional airlines, was prepared to envisage long-term contractual relationships and guarantee a minimum number of passengers that contribute towards the incremental profitability of the airport. The Commission finds that a private airport operator in the same situation would have probably followed the same strategy as VFAB as it appeared the only reasonable option to increase the traffic at the airport and thus its revenues.

(256) In this connection, Ryanair submitted a report commissioned from the consultancy Oxera which assesses the expected profitability of the VFAB-Ryanair Arrangements on an *ex ante* basis.

(257) The report examines the expected profitability of the 2001, 2003 and 2005 Agreements between VFAB and Ryanair, as well as the Marketing Service Agreement between VFAB and AMS. The expected profitability has been assessed at the time each Agreement was signed — i.e. the additional revenues expected to accrue to VFAB as a result of the agreements ('incremental revenues') have been compared against VFAB's expected additional costs as a result of the agreements ('incremental costs'). This assessment also considers the impact of a joint assessment of the profitability of the airport service arrangements and the marketing agreements which, for the reasons indicated in recitals 232 to 239, the Commission consider the correct approach.

(258) Oxera's assessment is based on documents and data that were available at the time of the negotiations of the Agreements using data from the periods prior to each agreement in order to inform the assumptions about reasonable expectations at the time of signing. The analysis builds on forecasts concerning several parameters:

([40]) Measured in flight movements, data from Transportstyrelsen reported by VFAB.
([41]) Luftfartsverket Km/DL 69.245, dated 15 January 2000.

total passenger traffic at Västerås Airport (based on levels of total traffic observed prior to signing each agreement, uprated by assumed growth in European air traffic), Ryanair passenger traffic (based on outturn data of Ryanair up until the signing of each agreement), aeronautical revenue (based on charges agreed in the arrangements and expected passenger forecasts), non-aeronautical revenue (forecasts based on outturn data prior to the signing of each agreement), incremental operating costs (based on *ex ante* estimates from VFAB), incremental marketing costs and investment costs (to the extent that the latter were expected to repaid through the commercial arrangements with airlines). For the purposes of checking the robustness of these *ex ante* assumptions, VFAB has provided data on aeronautical revenue, non-aeronautical revenue, operating costs and capital expenditure over the period 2000-2010.

(259) The sensitivity of the forecasts has been tested through various checks in order to see how the profitability of the arrangements would be affected by certain negative factors. The base case, which is the scenario based on the assumptions mentioned in recital 258, has been tested against the following sensitivities: (i) a discount rate of 10 % in the calculation of the NPV instead of the reference rates set out in the Commission's reference rate notice; (ii) passenger traffic (for Ryanair and at the airport) based on actual outturn levels rather than the *ex ante* assumptions; (iii) incremental operating costs estimated on a regression approach in which the estimates are tested and corrected against the actual effects of changes in passenger numbers on the airport's operating costs.

(260) The result of the assessment is that all the agreements were expected to be profitable at the time they were entered into. Indeed, even in all the 'stressed' scenarios (i.e. applying sensitivity checks), the NPV of each individual agreement was positive. Thus, in the most adverse scenario, the NPV for the 2001 Agreement was SEK 5,8 M, for the 2003 Agreement the NPV was SEK 8,7 M, for the 2005 Agreement (with the 2008 Marketing Agreement) the NPV was SEK 15,87 M and for the 2010 Marketing Agreement the NPV was SEK 9,9 M. A joint assessment of the combined NPV of all Agreements (performed as a check) indicates that the NPV would be SEK 22,2 M in the base case and SEK 13,7 M in the most adverse scenario.

(261) The conclusion of the assessment is therefore that based on an *ex ante* analysis, the expected profitability of the various Agreements covered by this investigation was positive, even under conservative assumptions.

(262) The Commission considers that this assessment, which is not contradicted by any evidence submitted in the course of the formal investigation, is plausible and supports the finding that under similar circumstances, an MEO investor would have been likely to enter into similar agreements.

(263) In addition, the Commission notes that Sweden has provided detailed financial *ex post* information which, inter alia, shows the incremental costs and revenue for Ryanair and all other airlines operating at Västerås Airport in the period covered by the formal investigation. This information is summarised in Table 6 (in which all costs for the marketing agreements with Ryanair and AMS have been allocated as an operating cost dedicated to Ryanair). The Commission notes that this data, although based on an *ex post* view, bears out the *ex ante* assessment that the deals with Ryanair would contribute to the profitability of Västerås Airport.

Table 6

Incremental costs and revenue from the airline at Västerås Airport All amounts in EUR.

Year	Total (Aviation and non-aviation) revenue per airline			Operating costs dedicated to specific airlines [1]			Incremental profitability	
	Airline A SAS	Airline B Ryanair	Airline C Other	Airline A SAS	Airline B Ryanair	Airline C Other	Ryanair	All airlines
2001	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
2002	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Year	Total (Aviation and non-aviation) revenue per airline			Operating costs dedicated to specific airlines (1)			Incremental profitability	
	Airline A SAS	Airline B Ryanair	Airline C Other	Airline A SAS	Airline B Ryanair	Airline C Other	Ryanair	All airlines
2003	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
2004	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
2005	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
2006	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
2007	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
2008	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
2009	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
2010	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(1) All costs paid under the marketing agreements with Ryanair and AMS have been assigned as operating costs dedicated to Ryanair.

(264) As regards the *ex ante* assumption at the time of the Agreements between VFAB and Ryanair, Sweden has explained that in this context, although no formal and fully fledged business plan was established, it was clear to VFAB that the Agreements would bring a positive incremental profit contribution. Given the under-utilisation of the airport, the incremental cost due to Ryanair operations could indeed expected to be relatively limited.

(265) According to Sweden, the airport charges agreed under the 2001 Agreement and non-aeronautical revenue were expected, *ex ante*, to cover the incremental costs stemming from the arrangement and bring to VFAB a profit of SEK […] per year.

(266) At the time of the 2003 Agreement, VFAB could base itself on the actual financial outcome of Ryanair's operations in 2001-2002 which confirmed the 2001 *ex ante* assessment that the deal would bring a positive incremental profit contribution. According to what was known at the time, VFAB assessed that the changes introduced by the 2003 Arrangement would cover the incremental costs stemming from Ryanair's arrangements and bring VFAB a profit of SEK […] per year. When the 2005 Agreement was entered into, VFAB could base itself on the actual outcome of Ryanair's operations at the airport between 2001 and 2004 which had brought a consistent positive contribution to the airport's incremental profit. VFAB's assessment at the time was that the airport charges combined with the non-aeronautical revenue stemming from the contract would cover the costs stemming from Ryanair's operations and from 2007 bring the airport a profit of SEK […] per year.

(267) In connection with LFV Holding's disengagement from VFAB in 2006 the City of Västerås also performed a review of the business prospects of the airport in order to decide on its future strategy as single remaining shareholder (as mentioned in recital 224). At that time, the city considered several scenarios, in particular: (a) 'business as usual', i.e. to continue with the existing commercial strategy and unchanged cost structures; or (b) to pursue the existing scale and orientation of the airport — retaining the Ryanair operations — but at the same time seek to reduce staff costs in line with a 'basic airport' model. This assessment indicated that scenario (b) — i.e. to continue operations along the existing commercial lines, including the arrangements with Ryanair, whilst seeking to reduce staff costs — would be the financially most beneficial as it would reduce losses to the City compared to other commercial options that were considered. This analysis consequently confirmed the assessment that the arrangements with Ryanair (including the marketing arrangements) were economically rational.

(268) When assessing airport/airline arrangements the Commission, should also assess the extent to which the arrangements can be considered part of the implementation of an overall strategy of the airport to lead to profitability at least in the long term. In this respect, the Commission has to take into account the factual evidence that was available, and the developments that could reasonably be expected, at the time when arrangements were made, in particular the prevailing market conditions, notably the market changes induced by the liberalisation in the air transport market, the market entry and development of low-cost carriers and other point-to-point carriers, changes in the organisational and economic structure of the airport industry as well as the degree of diversification and complexity of the functions undertaken by airports, the enhancement of the competition between airlines and airports, the uncertain economic environment due to the changes in the prevailing market conditions or any other uncertainty in the economic environment have to be taken into account. The Commission notes that, as described in recitals 249 to 255, several reasons (such as the loss of business of the traditional airlines and the prospect of incrementally profitable, long-term arrangements with a guaranteed number of passengers with the commercially dynamic low-cost airlines) led Västerås Airport to consider the commercial arrangements with Ryanair, which made a positive contribution to VAFB's profitability, to be a necessary step in a strategy to ensure its future viability and profitability.

(269) The Commission further notes that the infrastructure at Västerås Airport is open to all airlines and not dedicated to a specific airline. It also notes that, as shown in Table 6, the airline operations at Västerås Airport have been incrementally profitable in the whole period covered by the decision.

(270) In the light of these considerations, accepting that the activity resulting from the arrangements with Ryanair could be expected to create incremental revenue on an *ex ante* view, the Commission accepts that by entering into the airport charge agreements with Ryanair (Measure 4) and the marketing agreements with Ryanair and AMS (Measure 5), VFAB acted like an MEO. Therefore, the measures did not grant Ryanair or AMS any economic advantage.

8. **CONCLUSION**

(271) The Commission finds that Sweden has unlawfully implemented the shareholders' contributions provided to VFAB between 2003 and 2010 in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, the Commission finds that this State aid is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

(272) The Commission finds that the rent paid by VFAB to Västerås Flygfastigheter AB (Measure 2) does not constitute State aid.

(273) The Commission finds that Sweden has unlawfully implemented the Local Airport Scheme between 2001 and 2010 (Measure 3) in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, this aid scheme is however compatible with the internal market pursuant to Article 107(3)(c) TFEU.

(274) The Commission finds that the commercial arrangements between VFAB, on one side, and Ryanair and AMS, on the other side (Measures 4 and 5) do not constitute State aid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Sweden has implemented in the form of shareholders' contributions provided to VFAB between 2003 and 2010 (Measure 1) is compatible with the internal market.

Article 2

The State aid scheme which Sweden has implemented in the form of the operating support provided to VFAB and other airports under the Local Airport Scheme (Measure 3) between 2001 and 2010 is compatible with the internal market.

Article 3

The rent paid by VFAB to Västerås Flygfastigheter AB between 2003 and 2010 (Measure 2) does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 4

The Airport charges applied by VFAB to Ryanair between 2001 and 2010 (Measure 4) do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 5

The marketing support granted by VFAB to Ryanair and AMS in 2001, 2008 and 2010 (Measure 5) does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 6

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 1 October 2014.

For the Commission
Joaquín ALMUNIA
Vice-President