COMMISSION DECISION (EU) 2015/1584

of 1 October 2014

on State aid SA.23098 (C 37/07) (ex NN 36/07) implemented by Italy in favour of Società di Gestione dell'Aeroporto di Alghero So.Ge.A.AL S.p.A. and various air carriers operating at Alghero airport

(notified under document C(2014) 6838)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

(1) On 22 December 2003 the Commission received a complaint from the Italian air carrier Air One S.p.A. ('Air One'), alleging that managers of several Italian airports had granted unlawful aid to Ryanair Ltd ('Ryanair') by means of several agreements setting up operating conditions at the airports. The airports concerned were Alghero, Pescara and Rome, managed respectively by Società di Gestione dell'Aeroporto di Alghero So.Ge.A.AL S.p.A. ('So.Ge.A.AL'), SAGA S.p.A. and Aeroporti di Roma S.p.A., as well as the airports of Pisa, Treviso and Bergamo ('Orio al Serio').

(2) By letter of 11 June 2004 Air One called upon the Commission to define its position with regard to its complaint in accordance with Article 265 of the Treaty and introduced an application for failure to act before the General Court. The Court dismissed the action [2].

(3) By letter of 9 July 2004 the Commission forwarded a non-confidential version of the complaint to Italy. After the Commission agreed to an extension of the deadline, Italy's comments on the complaint were submitted by letters of 5 October 2004 and of 5 November 2004.

(4) Additional information was requested by the Commission by letter of 14 March 2005. After the Commission agreed to an extension of the deadline, Italy submitted the requested information by letter dated 17 June 2005. By letter of 30 June 2005 Italy submitted further information to the Commission.

(5) By letter of 21 November 2005 Air One requested the Commission to extend its investigation to Bari and Brindisi airports. By letter of 18 May 2006 Air One formally called upon the Commission to define its position under Article 265 of the Treaty. The Commission replied by letter of 14 July 2006.

(6) By letters of 26 October 2006 and 10 January 2007 Air One limited its objections to the presumed aid granted under the agreements signed between the Alghero airport manager, So.Ge.A.AL, and Ryanair. On 12 February 2007 Air One called upon the Commission to comply with Article 265 of the Treaty.

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[1] OJ C 38, 12.2.2008, p. 19 and OJ C 40, 12.2.2013, p. 15.
[2] Judgment of 10.5.2006 in case T-395/04, *Air One SpA v Commission of the European Union* [2006], ECR II — 1347.

(7) By letters of 27 June 2006 and of 30 November 2006 the Commission requested further information from Italy. That request was partially addressed by Italy's letter of 17 January 2007. The Commission requested additional information from Italy by letter dated 19 February 2007. Italy replied to that request by letters dated 16 March 2007 and 26 March 2007.

(8) Having examined the information supplied by Italy, on 12 September 2007 the Commission decided to open the investigation procedure laid down in Article 108(2) of the Treaty ('the 2007 Decision'). The 2007 Decision was published in the *Official Journal of the European Union* ([3]). The Commission invited interested parties to submit their comments on the measures under investigation.

(9) By letters dated 15 October 2007 and 22 October 2007 Italy requested the Commission to extend the deadline to submit its observations on the assessment in the 2007 Decision. The Commission granted an extension of the deadline by letter of 23 October 2007. Italy submitted its observations on the 2007 Decision on 14 November 2007.

(10) The Commission published a corrigendum to the 2007 Decision on 12 February 2008 ([4]).

(11) On 18 February 2008 Ryanair submitted its observations on the assessment in the 2007 Decision. So.Ge.A.AL submitted its observations on the same date. Further information was submitted by So.Ge.A.AL by letter dated 16 June 2008. On 20 February 2008 Italy forwarded to the Commission the observations of the Sardinian Region ('RAS').

(12) The observations of Ryanair and So.Ge.A.AL were forwarded to Italy by letter dated 28 February 2008.

(13) By letter of 20 June 2008 Air One supplemented its original complaint. The Commission sent that submission to Italy for comments on 10 December 2008. By letter dated 15 January 2009 the Italian authorities requested an extension of the deadline to submit comments on Air One's submission. The Commission agreed to extend the deadline by letter dated 20 January 2009. On 13 February 2009 Italy submitted its observations to the Commission.

(14) On 1 September 2008 the Commission contacted Ecorys Netherlands BV ('Ecorys') to carry out an economic valuation in relation to several on-going State aid investigations, including the one concerning Alghero airport. The analysis addressed, inter alia, the behaviour of the airport manager So.Ge.A.AL and the local authorities with respect to the agreements concluded between So.Ge.A.AL and air carriers and the extent to which the arrangements with the air carriers operating at Alghero airport were compliant with the Market Economy Operator Principle ('MEOP'). Ecorys submitted its final report on 30 March 2011 ('the Ecorys Report').

(15) By letter of 5 March 2010 Ryanair submitted to the Commission further information concerning all on-going State aid investigations involving Ryanair, among which the one related to Alghero airport.

(16) On 30 March 2011 the Commission sent a request for additional information to Italy. By the same letter, the Commission forwarded to Italy the English version of the Ecorys Report.

(17) The Commission sent a request for information to Ryanair on 8 April 2011. Ryanair replied to that request by letter dated 22 July 2011.

(18) By letters dated 23 May 2011 and 30 May 2011 Italy requested an extension of the deadline to provide the information requested by the Commission on 30 March 2011. By the same letter, Italy requested the translation into Italian of the English version of the Ecorys Report. On 1 June 2011 Italy confirmed the translation request. On 1 August 2011 the Commission sent to Italy the translation into Italian of the Ecorys Report.

(19) By letters dated 31 August 2011 and 9 September 2011, Italy (both RAS and the Italian Ministry of Transport) replied to the Commission's request for information of 30 March 2011.

(20) By letter dated 19 October 2011 the Commission forwarded Ryanair's reply of 22 July 2011 to Italy. By letter dated 16 November 2011 Italy asked for an extension of the deadline for comments. By the same letter Italy

([3]) OJ C 12, 17.1.2008, p. 7.
([4]) See footnote 1.

asked for the translation into Italian of the Economic Market Economy Investor Principle Assessment Report (the '2011 MEOP Report') attached to Ryanair's reply. By letter of 17 November 2011 the Commission agreed to extend the deadline. On 23 January 2012 the Commission sent the Italian version of the 2011 MEOP Report to Italy. On 15 February 2012 Italy submitted its comments on Ryanair's observations, notably on the 2011 MEOP Report.

(21) On 17 February 2012 the Commission sent a request for information to Ryanair concerning a series of on-going State aid investigations, including the one on Alghero airport. Ryanair replied to this request by letter of 16 April 2012.

(22) On 27 June 2012 the Commission extended the formal investigation procedure to include additional measures taken by Italy that were not subject to Air One's complaint ('the 2012 Decision') ([5]). The 2012 Decision was published in the *Official Journal of the European Union*. The Commission invited interested parties to submit their comments on the measures under investigation.

(23) Italy submitted its observations on the 2012 Decision on 31 August 2012, 3 October 2012, 19 October 2012, 22 October 2012 and 20 February 2013. The Commission received comments from four interested parties: So.Ge.A.AL, Ryanair, Airport Marketing Services Ltd ('AMS') and Unioncamere. Ryanair's submission included an updated MEOP report ('the 2013 MEOP report'). The Commission forwarded the comments from interested parties to Italy, which was given the opportunity to react. Italy's observations on the comments submitted by interested parties were received on 6 September 2013 and 13 November 2013.

(24) Several submissions were received from Ryanair on 20 December 2013, 17, 24 and 31 January 2014. The Commission forwarded all submissions relevant to Alghero airport to Italy on 9 January 2014 and 5 February 2014. On 24 February 2014 Italy asked for the translation into Italian of the submissions from Ryanair forwarded to it by letter of the Commission of 5 February 2014. By letter of 8 April 2014 the Commission forwarded to Italy the Italian version of Ryanair's submissions as requested.

(25) By letter dated 23 December 2013 the Commission requested additional information from Italy on the measures subject to the investigation. After an extension of the initial deadline set, Italy provided a partial reply to the Commission's request on 18 February 2014. On 4 March 2014 Italy was reminded of its obligation to provide a comprehensive reply to all questions addressed to it in the Commission's letter of 23 December 2013. Italy provided the information requested by letter of 25 March 2014.

(26) On 14 March 2014 the Commission informed Italy and the interested parties to the procedure that the Commission guidelines on State aid to airports and airlines ('the 2014 Aviation Guidelines') ([6]) were adopted on 20 February 2014 and invited Italy to submit comments within 20 working days of the publication of the 2014 Aviation Guidelines. Italy did not reply to the Commission's letter 14 March 2014.

(27) The Commission requested further information from Italy by letter of 21 March 2014. After an extension of the initial deadline set, Italy provided the information requested on 25 April 2014 and 8 May 2014.

(28) The 2014 Aviation Guidelines were published in the *Official Journal of the European Union* on 4 April 2014. They replaced the 2005 guidelines on financing of airports and start-up aid to airlines departing from regional airports ('the 2005 Aviation Guidelines') ([7]).

(29) 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. So.Ge.A.AL submitted its comments on 8 May 2014. So.Ge.A.AL's comments were forwarded to Italy on 22 May 2014.

(30) The Commission requested further information from Italy by letter of 26 May 2014. Italy provided the information requested on 10 June 2014, 28 July 2014, 20 and 27 August 2014, 1 and 19 September 2014.

([5]) See footnote 1.
([6]) OJ C 99, 4.4.2014, p. 3.
([7]) OJ C 312, 9.12.2005, p. 1.

(31) By letter of 11 September 2014, Italy informed the Commission that it exceptionally accepts that this Decision be adopted in English only.

2. **GENERAL INFORMATION ON ALGHERO AIRPORT**

(32) Alghero airport is situated in the North-West of the Italian island of Sardinia. Alghero was initially set up as military airport and opened to civilian traffic in 1974. Airport infrastructures and facilities are owned by the State through the *Ente Nazionale Aviazione Civile* ('ENAC'), which is the Italian National Civil Aviation Authority.

(33) As regards the distance between Alghero airport and the other Sardinian airports, Alghero airport is located 128 km from Olbia airport, 133 Km from Oristano airport, 225 Km from Tortolì — Arbatax airport and 235 km from Cagliari airport ([8]). According to Italy, due to its geographical position and the specific features of the transport network (road and rail modes), Alghero airport is not substitutable with any of those neighbouring airports.

(34) Passenger traffic at the airport increased from 663 570 in 2000 to over 1 million in 2005 and nearly 1,6 million in 2013.

Table 1

Passenger traffic at Alghero airport

Year	Passengers
2000	663 570
2001	680 854
2002	803 763
2003	887 127
2004	997 674
2005	1 078 671
2006	1 069 595
2007	1 299 047
2008	1 379 791
2009	1 506 080
2010	1 387 287
2011	1 513 245
2012	1 512 954
2013	1 563 020

(35) Ryanair has been the main airline using the airport since 2000. However, other airlines, including other low-cost carriers, have also operated at the airport since 2000 (Germanwings, Air Italy, Air Dolomiti, Air Vallée, Meridiana, Alpi Eagles, bmibaby, easyJet, Air One, Volare, Alitalia) ([9]).

([8]) See http://servizi.aci.it/distanze-chilometriche-web.

([9]) In the course of the investigation Italy informed the Commission that the legal successor of Volare is CAI Second S.p.A., a subsidiary of Alitalia — Compagnia Aerea Italiana S.p.A. Likewise, Air One S.p.A. merged with Alitalia — Compagnia Aerea Italiana S.p.A.

(36) At Alghero airport, fees charged to airlines are usually set on the basis of a published schedule of airport charges which includes the following items: take-off and landing charge, passenger charge, security charge, baggage screening charge and ground handling service charge.

3. **MANAGEMENT OF ALGHERO AIRPORT**

3.1. So.Ge.A.AL

(37) So.Ge.A.AL was established in 1994 as the manager of Alghero airport. The company had an initial capital of ITL 200 million (EUR 103 291,4), entirely subscribed by local public bodies. The majority of the capital was held (directly or indirectly through Società Finanziaria Industriale Regione Sardegna — SFIRS S.p.A ('SFIRS') by the RAS. SFIRS was set up as investment company of RAS ([10]).

(38) Although the composition of So.Ge.A.AL's capital varied in the course of the years, since 1994, the company has always been wholly owned by public bodies: the Chamber of Commerce of Sassari, the Province of Sassari, the Municipality of Sassari, the Municipality of Alghero, RAS and SFIRS S.p.A.

(39) In 2010 So.Ge.A.AL's shares were held 80,20 % by RAS and 19,80 % by SFIRS.

3.2. THE MANAGEMENT CONCESSION

(40) On 28 May 2007 So.Ge.A.AL signed with ENAC a Convention for the forty-year 'comprehensive' management concession ([11]) of Alghero airport ('the Convention') ([12]). Prior to 2007, Alghero airport was managed by So.Ge.A.AL on the basis of a 'temporary' management concession awarded to it on 11 February 1999.

(41) In Italy the concession for the management of an airport is awarded by ENAC based on the assessment of the sustainability of a business plan, which includes an action plan, an investment plan and an economic-financial plan. In the action plan the airport manager outlines its economic programming strategies as well as the organisational structure. The investment plan consists of a brief report on the planned actions and their technical, economic and administrative feasibility. The economic-financial plan illustrates the financial balance of the airport management.

(42) According to Article 8 of the Convention, So.Ge.A.AL's proceeds consist of:

(a) user fees of airports as per Italian Law No 324 of 5 May 1976 and subsequent modifications;

(b) loading and unloading fees for goods transported by air as per Italian Law No 117 of 16 April 1974;

([10]) RAS holds 100 % of the share capital of SFIRS. SFIRS prepares plans and programmes and drafts guidelines targeting the region's economic and social development.

([11]) Airport infrastructure is owned by ENAC, which either operates it directly or assigns it to third parties via concessions. Traditionally, four types of airport management models existed in Italy: (i) airports managed directly by the State, which was responsible for the construction and maintenance of all airport infrastructure, incurred all costs and retained all revenue; (ii) airports managed under a *temporary* concession, in which case the airport manager, on the basis of a temporary authorisation, could operate the airport infrastructure and retain the revenues from commercial activities; (iii) airports managed under a *partial* concession, in which case the airport manager retained all revenues resulting from the use of passenger and freight terminals and main airport services (e.g. handling), while the State through ENAC retained all revenue from airport charges (landing and departure fees, aircraft parking fees and passenger embarking fees); (iv) airports managed under a *comprehensive* concession, in which case the airport manager was responsible for the management of all infrastructure (including airside) and the provision of all airport services and collected all revenues derived from airport operations for a duration of up to forty years. As of 2007 ENAC may provisionally entrust holders of *partial* concessions (including those only *temporarily* entrusted with the management of the infrastructure) with the management of the airport under a *comprehensive* management regime, by limiting the right to use revenues from user rights to the urgent measures required for the airport manager to perform its activity, as laid down in an action plan (*Piano di interventi*).

([12]) The Inter-Ministerial Decree 125 T for the award of the concession to So.Ge.A.AL was issued on 3 August 2007.

(c) concession fees for security services determined in accordance with Italian Law 248/2005 and subsequent modifications;

(d) revenues deriving directly or indirectly from running the airport, as well as from the use of airport areas and facilities by third parties, provided for in the Italian Legislative Decree No 18/1999.

(43) Airport managers must pay an annual concession fee to ENAC for the right to manage the airport, in the amount and according to the procedures defined by the relevant laws in force (for details on the setting of concession fees see recitals 155 to 157).

(44) Based on Article 12 of the Convention, each year beginning with the year of award of the concession, the airport manager must submit to ENAC a report on the status of implementation of the action plan. In addition, the airport manager must submit to ENAC for approval, no longer than six months prior to the expiry of each four-year period of the concession, the business plan (including the investment plan and the action plan) for the following four-year period. Penalties apply in case of non-compliance by the airport manager with those obligations.

(45) According to Article 14*bis* of the Convention, the concession will be revoked and the Convention legally terminated in the event of: (i) non-implementation within the set deadlines of the measures described in recital 44; (ii) delay of more than 12 months in paying the concession fee owed by the airport manager; (iii) bankruptcy or (iv) non-achievement of economic-financial balance by the end of the first four-year period.

3.3. THE PUBLIC POLICY REMIT

(46) By letter of 18 February 2014 Italy claimed that So.Ge.A.AL does not carry out activities falling within the scope of the public policy remit ([13]).

(47) So.Ge.A.AL would however make available airport premises for the purpose of the provision of certain services by the State in its exercise of public powers and bear the costs for the maintenance and administration of the areas in question.

(48) By letter of 10 June 2014 ([14]) Italy reconsidered its position and claimed that the costs incurred in the administration of those airport premises would fall within the public policy remit. As regards the legal framework, Italy submitted that there are legal rules strictly imposing those costs on airport managers. In particular, the airport manager is bound to make available to ENAC and other public entities (the Air Border Police, the Customs Agency, the Finance Guard, the Office of Maritime, Air and Border Health, the Italian Red Cross, the Fire service, the Police) certain airport areas and bear the corresponding administration and maintenance costs ([15]). The obligation on airport managers to make available to public entities airport premises and to bear the respective costs was laid down by the Framework Convention for the award of the management of Italian airports referred to by the Italian Disposition No 12479 of 20 October 1999 of the Ministry of Transport and Navigation, adopted in application of Ministerial Decree No 521 of 1997. The relevant provisions were transposed in the Convention, which lays down in its Article 4(1)(c) the obligation on the airport manager 'to carry out the activities required to support the activities within the responsibility of the State, of the emergency and health services, within airport premises'. According to Italy the total operating costs incurred by So.Ge.A.AL in the maintenance of those areas in the period 2000-2010 amounted to EUR 2 776 073 ([16]).

(49) In addition, Italy submitted that EUR 1 284 133 of the total costs of investment in the new terminal would represent the costs of construction of areas which So.Ge.A.AL is bound to make available to public entities and would therefore also qualify as costs incurred in the provision of activities falling within the public policy remit (see also recital 86).

([13]) In that respect, the Commission recalls that the Court has held that activities that normally fall under the responsibility of the State in the exercise of its official powers as a public authority are not of an economic nature and in general do not fall within the scope of the rules on State aid. See in this sense Case C-118/85 *Commission v Italy* [1987] ECR 2599, paragraphs 7 and 8, Case C-30/87 *Bodson/Pompes funèbres des régions libérées*, [1988] ECR I-2479, paragraph 18, Case C-364/92 *SAT/Eurocontrol*, [1994] ECR I-43, paragraph 30 and Case C-113/07 P *Selex Sistemi Integrati v Commission*, [2009] ECR I-2207, paragraph 71.

([14]) In reply to Commission's request of information of 26 May 2014.

([15]) Paragraphs 7 and 8 of Article 4 and Article 11 of the 2007 Convention.

([16]) Annex 22 of letter of Italy of 10 June 2014.

3.4. CONCESSION FEES PAID BY So.Ge.A.AL

(50) The (management and security) concession fees paid by So.Ge.A.AL between 2000 and 2010 are shown in Table 2 ([17]).

Table 2

Concession fees paid by So.Ge.A.AL during 1998-2010 (EUR)

Description	1998	1999	2000	2001	2002	2003	2004
Management concession fee to the Ministry	139 572	166 505	243 880	266 205	312 950	371 912	418 358
Security concession fee	—	—	—	—	—	—	—
Total	**139 572**	**166 505**	**243 880**	**266 205**	**312 950**	**371 912**	**418 358**
Description	2005	2006	2007	2008	2009	2010	Total
Management concession fee	473 836	119 197	171 019	232 130	267 009	171 005	2 643 514
Security concession fee	7 092	37 324	45 439	48 205	52 618	48 571	239 249
Total	**480 928**	**156 539**	**216 458**	**280 335**	**319 627**	**219 575**	**2 882 763**

3.5. FINANCIAL SITUATION OF So.Ge.A.AL

(51) So.Ge.A.AL's financial results were negative during the period 2000 - 2010. According to Italy, the poor performance of the company was the result of the delay in the award of the 'comprehensive' concession for the management of the airport. Following the award of the concession, the economic crisis resulted in a sharp down-turn in passenger numbers which affected negatively the airport activity.

(52) In August 2011 Italy submitted to the Commission a report assessing the financial situation of Alghero airport during the period 2000-2010 ('the Accuracy Report') ([18]). Based on the Accuracy Report So.Ge.A.AL's annual financial results were as follows:

Table 3

Financial results of So.Ge.A.AL 2000 – 2010 (in thousand EUR)

Year	Result
2000	(32,2)
2001	(790,7)
2002	(47,3)
2003	(951,0)
2004	(2 981,7)

([17]) In addition to the concession fee paid for the management of the airport, as of 2005 So.Ge.A.AL also paid a 'security concession fee', for the right to provide security services at the airport and charge fees for security services.

([18]) 'Project Nuraghe — Il caso So.Ge.A.AL', 29 August 2011, prepared by Accuracy, submitted to the Commission by letter of Italy of 31 August 2011, Annex 1.

Year	Result
2005	(2 064,7)
2006	(1 108,2)
2007	(1 800,8)
2008	(4 577,3)
2009	(12 404,1)
2010	(1 847,2)

(53) In the course of the investigation Italy submitted to the Commission So.Ge.A.AL's annual reports ('Relazione sulla gestione del bilancio') for the period 2000 – 2010 ([19]).

(54) So.Ge.A.AL reported a loss of ITL 1 530 960 048 in 2001. So.Ge.A.AL reported negative figures in 2002 and 2003 as well.

(55) So.Ge.A.AL closed 2004 with a EUR 2 981 688 loss. It continued to mark up losses in 2005 and 2006. It further recorded a EUR 1 801 000 loss in 2007 despite being awarded the 'comprehensive' concession for the management of the airport on 3 August 2007. Based on the 2007 annual report, unforeseen events worsened So.Ge.A.AL's financial performance in 2007.

(56) So.Ge.A.AL reported losses worth EUR 4 577 000 in 2008 and EUR 12 404 126 in 2009.

(57) In its 2009 annual report, So.Ge.A.AL took note that based on the 2007 Convention it had to break-even within four years from the award of the concession. Considering its poor financial situation in 2009, So.Ge.A.AL proposed the preparation and adoption of an updated business plan which it described as necessary to bring forecasts more in line with market developments. In that sense the business plan prepared by Roland Berger (see recitals 64-70) was considered insufficiently reliable.

(58) A EUR 1 847 165 loss was further reported for 2010. Reportedly traffic figures continued to develop positively, even in what was a difficult economic environment impacted by the volcanic ash crisis, which had led to the temporary closure of European air space.

4. **THE BUSINESS PLANS**

(59) Since 1999, So.Ge.A.AL has drawn up several business plans, which are briefly summarised in recitals 60 to 75.

4.1. THE 1999 BUSINESS PLAN

(60) The 1999 business plan covers the period between 1999-2007 in two successive phases:

(a) 1999-2001: over that period, So.Ge.A.AL planned in particular a capital increase, the launch of its privatisation, the award of the 'comprehensive' concession, investments in airport infrastructure, the start-up of new scheduled flights by two airlines and the definition of a marketing and commercial development plan;

(b) 2002-2007: this phase was due to be devoted to the development of the business based on the improved airport infrastructure.

(61) The business plan assumed the award of the 'comprehensive' concession in 1999, following an increase in So.Ge.A.AL's capital to ITL 6 billion.

([19]) Letters of Italy of 26 October 2012 and 18 February 2014.

(62) The business plan assumed a diversification of airline connections by attracting two fast growing low-cost airlines as major growth driver. One air carrier was to take up operations from Alghero airport on the Alghero — Milan route in 1999 and a second one to start-up the Alghero — London route in 2000, with three flights per week operated at discounted promotional fees for the first year.

(63) The traffic forecasts showed Alghero airport reaching 1 million passengers in 2004 up to 1,1 million in 2007 as a result of the start-up of new routes by the two air carriers mentioned in recital 62, which at the time the business plan was prepared were negotiating airport services agreements with So.Ge.A.AL.

4.2. THE ROLAND BERGER PLAN

(64) The 2004 plan prepared for So.Ge.A.AL by consultancy Roland Berger ('the Roland Berger Plan') provided for a detailed forecast for the period 2004-2008. The main elements of the business plan were:

(a) Increase in low-cost traffic from 20 to 44 % of the overall traffic at the airport, up to 620 000 passengers in 2008;

(b) Growth in non-aeronautical revenues from 2,2 EUR/pax to 5 EUR/pax ([20]);

(c) Growth in aeronautical revenues from 6,8 EUR/pax in 2003 to 7,47/7,75 EUR/pax in 2008;

(d) EUR 42,6 million of investments in infrastructure and equipment, of which EUR 41,3 million would be covered by public funding.

(65) In order to understand how Alghero airport performed against the market, its performance was benchmarked against that of comparable airports:

(a) handling revenues and revenue from non-aeronautical sources such as parking, rental cars, fuel flow, and retail and food concessions were reportedly below sector average; spend per passenger varied from half to one third of that recorded by small airports, and was less than one fifth of that of larger airports;

(b) poor revenue performance was confirmed by the spend per passenger in line with that of Puglia airport, which recorded a negative net operating result;

(c) operating costs were however aligned with the best performing Italian airports.

(66) The projections developed in the Roland Berger Plan depicted future operating revenues and expenses of the airport manager based on two scenarios: development of the airport under a 'temporary' concession scenario versus a 'comprehensive' concession scenario. Under the first scenario the airport was expected to continue to mark up losses until 2008, whereas under the second, the airport would breakeven already in 2005 based on annual revenues higher by 7 % on average in a 'comprehensive' concession scenario as compared to the 'temporary' scenario (largely due to higher non-aeronautical revenues — a more efficient advertising business, car park operation and fuel sales were expected to drive commercial income upwards). Financial outcomes for aeronautical activity were expected to be negative even in a 'comprehensive' concession scenario.

(67) The Roland Berger Plan showed underperforming handling income largely on account of low-cost traffic. Handling was expected to continue generating losses on the medium term even in an optimistic approach. It was estimated that the foregone revenues deriving from the handling of low-cost traffic would equal EUR 3,2 million in 2008.

([20]) Airports have two key elements of income: aeronautical income, which is derived from charges levied on airlines for their use of the facilities by both aircraft and passengers, and commercial income derived from commercial activities at the airport site including retailing, car parking, catering and office/property rentals.

(68) Based on the Roland Berger Plan, the airport's primary focus in order to reverse previous declines and reach breakeven point was to drive commercial revenue, until the point where spend per passenger was brought in line with that of comparable airports (from EUR 2,2 to EUR 5 per passenger). Low-cost traffic was expected to be the main non-aeronautical revenue generator for the period 2004-2008 and to mitigate losses in aeronautical business. The projections showed 620 000 low-cost passengers in 2008.

(69) The Roland Berger Plan also noted that a continuation of the management of the airport under a 'temporary concession' could require the recapitalisation of So.Ge.A.AL to cover operational losses.

(70) The Roland Berger Plan was updated twice, in 2007 and 2008, to take into account developments in the sector. The updates proposed concrete actions for the development of the airport in the period 2008-2011, by increasing both aeronautical revenues — notably from the handling business, and non-aeronautical revenues.

4.3. THE BUSINESS PLAN FOR THE AWARD OF THE CONCESSION

(71) So.Ge.A.AL's business plan drawn up in view of the award of the comprehensive concession was approved in September 2005 and provided for a forecast of revenues and costs for the forty-year duration of the concession for the management of the airport, on the assumption that the concession would be granted to So.Ge.A.AL in 2006.

(72) Forecasts of annual traffic showed a steady year-on-year increase of 4,5 % until 2010, 2,6 % from 2011 to 2025 and 3,78 % during 2006-2025, to around 2 800 000 million passengers approaching 2045. Non-aeronautical revenue was budgeted to increase from an annual EUR 2 929 000 in 2006 to EUR 8 814 000 in 2045. Likewise, aeronautical revenues were expected to increase from EUR 9 288 000 in 2006 to EUR 29 587 000 at the end of the forty-year period. The forecasts assumed a 20 % reduction in aeronautical revenues upon the airport reaching the 2 million passengers ceiling and the consequent entry on the market of an additional provider of ground handling services in accordance with the EU rules on ground-handling at European airports ([21]).

(73) EUR 143,3 million of capital expenditure were foreseen between 2006 and 2045. The plan included a detailed programme of capital investments per year during 2006 – 2045 and listed the sources of financing (private or public) for these investments.

4.4. THE 2010 REORGANISATION AND RESTRUCTURING PLAN

(74) The 2010 reorganisation and restructuring plan was endorsed by RAS in September 2010. The plan provided for a comprehensive analysis of the economic situation of So.Ge.A.AL for the period 2000-2010 and projected the company's return to viability in 2012, also taking into account a recapitalisation of the company envisaged for 2010.

(75) According to the 2010 reorganisation and restructuring plan, So.Ge.A.AL's poor performance until 2010 was the result of inadequate management, inefficient ground handling activity, infrastructure deficiencies and insufficient aeronautical and non-aeronautical revenues.

5. **MEASURES SUBJECT TO INVESTIGATION**

(76) The following measures are subject to the investigation opened and extended by the 2007 and 2012 Decisions respectively:

(a) Measures in favour of the airport manager So.Ge.A.AL:

— Capital injections by RAS and other public shareholders;

— Contributions for 'fittings and works' from RAS;

— Financing of airport infrastructure and equipment by the State.

(b) Potential aid in various agreements concluded with airlines using the airport as of 2000.

([21]) Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).

5.1. MEASURES IN FAVOUR OF So.Ge.A.AL

5.1.1. **Measure 1 — Capital injections**

(77) Italian law requires airport managers to maintain a minimum level of capital depending on traffic volumes ([22]): for airports with traffic between 300 000 and 1 million passengers, the minimum capital required was set at EUR 3 million, whilst for traffic between 1 million and 2 million, the threshold was set at EUR 7,5 million. In the course of the investigation Italy maintained that the capital injections carried out by So.Ge.A.AL's public shareholders primarily aimed at restoring the company's capital eroded by losses to the level imposed by national law.

(78) Based on the information provided by Italy, between 2000 and 2010, So.Ge.A.AL's public shareholders injected fresh capital in the company on several occasions as follows ([23]):

Table 4

Operations on So.Ge.A.AL's capital

Year	Description	Meeting of So.Ge.A.AL's Shareholders Assembly	Capital injection (EUR)
2003	Injection to restore capital eroded by losses and increase capital to EUR 7 754 000	9 May 2003	5 198 000
2005	EUR 3 933 372,17 injection to restore capital eroded by losses	29 April 2005	3 933 372,17
2007	EUR 3 797 185 injection to restore capital eroded by losses	31 October 2007	3 797 185
2009	EUR 5 649 535 injection to restore capital eroded by losses	26 January 2009	5 649 535
2010	EUR 12 508 306 injection to restore capital eroded by losses	21 May 2010	12 508 306

5.1.2. **Measure 2 — Financing of 'fittings and works'**

(79) According to the information provided by Italy, from 1998 to 2009, So.Ge.A.AL received contributions from RAS for 'fittings and works' for a total amount of EUR 6 540 269.

(80) In its comments on the 2012 Decision Italy clarified that the main objective of the 'fittings and works' measures was to upgrade airport infrastructure. Italy referred to the general definition of public works ('lavoro pubblico') provided in Article 2, paragraph 1 of the Italian Law No 109 of 11 February 1994 ('Legge quadro in materia di lavori pubblici') ([24]), namely the 'activities of construction, demolition, restoration, renovation and maintenance of works and installations, including defence of the environment and bioengineering' ([25]). Italy clarified that the funding in question was eventually used for the financing of the works on the passenger terminal, upgrading of the external road connections, upgrading of the aircraft parking areas as well as equipment necessary for the operation of the airport.

([22]) See in particular Article 3 of Ministerial Decree 521/1997.
([23]) Letter of Italy of 31 August 2011, Annexes 7 and 23. For the breakdown of the public financing between the public shareholders, including contributions by SFIRS for 2007, 2009 and 2010, see Annex 1 (Accuracy Report) of that letter, p. 40.
([24]) Letter of Italy of 22 October 2012.
([25]) This definition was implemented by Article 3, paragraph 8 of the Legislative Decree No 163 of 12 April 2006 ('Codice dei contratti pubblici relativi ai lavori, servizi e furniture').

(81) Based on those clarifications, in the assessment conducted in this Decision, the Commission analysed the financing of 'fittings and works' (Measure 2) and the subsidies for infrastructure investments (Measure 3) together, as a series of measures financing the creation and upgrading of infrastructure and equipment.

5.1.3. **Measure 3 — Financing of airport infrastructure and equipment**

(82) Table 5 details the infrastructure investments carried out during 2000-2010, which were partly financed by public funds ([26]).

Table 5

Infrastructure investments 2000-2010

Investment	Date of binding commitment for the public financing	Investment costs (EUR)	Public financing (EUR)	Source of the public financing
New departures area	1994	109 773,59	109 774	RAS
Restructuring of the arrivals area ('Ristrutturazione zona arrivi')	1996	1 442 990,23	1 350 812	RAS
New terminal	1997	17 325 483,05	15 012 344,72	ENAC
Upgrading of the pavement of the taxiway	1997	4 175 608,09	3 861 392	ENAC
Lateral safety zones	1998	429 894,54	417 102	RAS
TOTAL	**n.a.**	**23 483 749,5**	**20 751 424,72**	**ENAC**
X-ray baggage control system	2003	208 782,99	191 082,99	ENAC
Restructuring of the old passenger terminal ('Ristrutturazione vecchia aerostazione passeggeri')	2003	2 406 862,57	1 623 967	ENAC
Upgrading of the apron	2003	7 499 177,02	6 905 599	ENAC
Upgrading of the taxiway	2003	7 287 065,75	6 755 162	ENAC
Upgrading of the runway	2003	6 702 055,64	6 323 883	ENAC
Perimeter control system	2003	6 073 054,61	5 951 919	ENAC
Anti-explosive equipment ('Carrello antideflagrante')	2004	76 001,29	76 000	ENAC
TOTAL	**n.a.**	**53 736 749,37**	**48 579 036,23**	**n.a.**

([26]) Letter of Italy of 8 May 2014.

(83) In addition, in the period 2000-2010 RAS granted to So.Ge.A.AL direct grants for the acquisition of equipment (internal communication devices, software, vehicles, etc.) for a total amount of EUR 4 680 281,44.

(84) According to Italy ([27]), an amount of EUR 25 431 706,16 of the public financing had been legally committed before 2000, namely the date of the *Aéroports de Paris* judgment ([28]). In particular:

(a) State financing laid down by the CIPE ([29]) Decision of 29 August 1997: the funding was used for the construction of the new passenger terminal and upgrading of the taxiway;

(b) Regional financing granted to So.Ge.A.AL based on the Framework Agreement between RAS and the Ministry of Transport of 5 August 1996, Italian Regional Laws No 2 of 29 January 1994 and No 9 of 15 February 1996: the funding was directed towards the restructuring of the old terminal and the construction of lateral safety zones. In addition, pursuant to those Regional Laws, regional financing was granted to So.Ge.A.AL for the financing of equipment.

(85) According to Italy before the award of the 'comprehensive' concession in 2007, the State retained responsibility for infrastructure investments while the airport manager was a mere executor of the infrastructure works approved by the State.

(86) By letter of 10 June 2014 ([30]) Italy also submitted that, out of the total costs of investment in the new terminal, EUR 1 284 133 would qualify as costs incurred in the provision of activities falling within the public policy remit, as corresponding to the costs of construction of the terminal areas which So.Ge.A.AL is bound to make available to public entities (see also recital 49).

5.2. MEASURES IN FAVOUR OF AIRLINES USING THE AIRPORT

(87) The investigation covers several agreements entered into by So.Ge.A.AL with various airlines flying from Alghero airport, which, in the 2007 and 2012 Decisions, were considered by the Commission as possibly constituting State aid to the airlines concerned.

(88) According to Italy the agreements with air carriers were negotiated by the Director-General of So.Ge.A.AL, who reported to the Board of Directors on the status of the negotiations and the content of the agreements. So.Ge.A.AL's Board of Directors approved the terms of the agreements prior to their signature ([31]).

5.2.1. **Measure 4 — Agreements signed by So.Ge.A.AL with Ryanair/AMS**

(89) Since 2000, Ryanair has been the main airline operating at Alghero. Two types of agreements have been signed between Ryanair and its subsidiary AMS on the one hand, and So.Ge.A.AL, on the other.

(i) Airport Services Agreements ('ASAs')

(90) The Airport Services Agreements ('ASAs') signed from 2000 onwards between Ryanair and So.Ge.A.AL, laid down Ryanair's operating conditions at Alghero airport and the level of airport charges due by the airline. Ryanair committed to meeting pre-defined flight/passenger targets against a success fee to be paid by So.Ge.A.AL. Penalties were laid down in case such targets were not fully met.

(ii) Marketing Services Agreements

(91) The marketing services agreements relate to the advertising of the Alghero destination on the official website of Ryanair. Since 2006, they were signed with Ryanair's 100 % subsidiary AMS and concluded on the same dates as the ASAs signed by Ryanair.

([27]) Letter of Italy of 8 May 2014.
([28]) Case T-128/89 *Aéroports de Paris v Commission* [2000] ECR II-3929
([29]) *Comitato interministeriale per la programmazione economica.*
([30]) In reply to Commission's request of information of 26 May 2014.
([31]) Letter of Italy of 18 February 2014, Annex A.

(92) In recitals 93 to 109, the Commission summarises the main provisions of the agreements (the ASAs and the marketing services agreements) signed by So.Ge.A.AL and Ryanair/AMS.

5.2.1.1. *The 2000 ASA with Ryanair*

(93) The first ASA between Ryanair and So.Ge.A.AL was agreed on 22 June 2000 for a period of 10 years.

(94) Based on the 2000 ASA, Ryanair was to operate at least one return flight per day between London and Alghero and to pay So.Ge.A.AL an amount of ITL […] (*) per turnaround. Ryanair was also to submit annually a sales and marketing plan and indicate results obtained in the operation of the route, as well as development prospects.

(95) So.Ge.A.AL undertook to provide terminal and handling services to Ryanair. The airport manager was to 'pay or credit' a monthly amount equivalent to the amount payable by Ryanair for handling fees, with a cap for the first year of the agreement. So.Ge.A.AL also undertook to pay annually to Ryanair a fixed amount and an additional amount should a second return flight be added to its schedule.

5.2.1.2. *The 2002 ASA and marketing agreement with Ryanair*

(96) Ryanair signed a second ASA with So.Ge.A.AL on 25 January 2002, which superseded the 2000 ASA and covered the period between 1 January 2002 and 31 December 2012. Based on that agreement Ryanair was to pay So.Ge.A.AL EUR […] per turnaround for handling services. Ryanair was to pay airport fees and security charges as per the published schedule of charges.

(97) On the same date, a marketing agreement was signed between So.Ge.A.AL and Ryanair, which covered the same period as the 2002 ASA. Ryanair undertook to carry out advertising and promotional activities on its web page and other media at its discretion to promote the connection Alghero — London in consultation with So.Ge.A.AL. Based on this agreement So.Ge.A.AL was to pay marketing contributions of EUR […] for the first daily year round rotation on each route and EUR […] for the second daily summer-only rotation on each route.

5.2.1.3. *The 2003 ASA and marketing agreement with Ryanair*

(98) On 1 September 2003, So.Ge.A.AL signed with Ryanair a new ASA, for a period of eleven years (with the possibility of an extension for an additional period of 10 years), superseding the 2002 ASA.

(99) Based on the 2003 ASA, Ryanair was to continue to fly to London and depending on the success of previous agreements in terms of traffic flows, Ryanair was to set up a new daily flight to Frankfurt-Hahn or to any other points on the Ryanair network. Ryanair was to pay So.Ge.A.AL EUR […] per turnaround for handling services. In turn, the airline was to pay airport fees and security charges as per the published schedule of charges.

(100) On 1 September 2003, a marketing services agreement was also signed, which covered the same period as the 2003 ASA. Based on that agreement So.Ge.A.AL was to pay marketing contributions of (i) EUR […] per annum for the first daily year-round rotation on each international route, (ii) EUR […] for the second daily summer-only rotation on each route, and (iii) a one-off introductory marketing contribution of EUR […] in respect of the first year of operation of each international route other than the London route and a further EUR […] for each of the second and third years of operation of such new route.

(101) Ryanair was to continue its daily scheduled passenger air services between Alghero and London and inaugurate additional daily passenger air services between Alghero and Frankfurt Hahn and/or any other points on the

(*) Covered by the obligation of professional secrecy.

Ryanair network ('the Services'). Ryanair was also to carry out, in consultation with So.Ge.A.AL, any service and activity customarily offered by advertising, sales promotion and public relations companies, acting in the same field, such as (but not limited to):

— design, arrange, produce, develop, test, implement, maintain and update web links and the Ryanair website and undertake any other measures which are deemed appropriate by Ryanair as being capable of generating, maintaining and/or promoting the advertising efforts with respect to bookings by customers through the internet to and from Alghero airport;

— design advertising in English or other language (if appropriate) adapted to the internet medium and undertake sales promotion and public relations as being capable of generating, maintaining and/or promoting the awareness of the Services by customers through the internet;

— design, arrange and produce advertising material or any other relevant method of promoting the Services;

— design, arrange and produce advertising material or any other relevant method of promoting Alghero airport in the United Kingdom and in any other country in which Ryanair inaugurates a route of the Services;

— educate the press about the Services and thereby influence the general public, make them more familiar with the region surrounding Alghero airport and encourage them to fly on the routes in question;

— arrange to link one website proposed by So.Ge.A.AL and agreed with Ryanair to Ryanair's internet website subject to such website not containing any direct on-line hotel or car hire reservation function.

5.2.1.4. *The 2006 ASA with Ryanair and marketing agreement with AMS*

(102) On 3 April 2006, a new ASA was agreed between So.Ge.A.AL and Ryanair, which replaced the 2003 ASA and was effective from 1 January 2006 to 31 December 2010, with the possibility of a five-year extension.

(103) Associated with that agreement was a supplemental agreement signed on 3 April 2006 for the period 1 January 2006-31 December 2010, which stipulated the overall passenger targets to be achieved by Ryanair and the success fee payable by So.Ge.A.AL. It also provided for penalties to be incurred by Ryanair in case of non-fulfilment of the passenger targets.

(104) The 2006 marketing agreement was signed with AMS (rather than Ryanair) on 3 April 2006 and covered the same period as the ASA. The agreement was rooted in Ryanair's commitment to operate certain EU routes and to meet certain targets as to the level of passengers. AMS offered So.Ge.A.AL online advertising services in exchange for EUR […] per year.

5.2.1.5. *The 2010 ASA with Ryanair and marketing agreement with AMS*

(105) In the early part of 2010, So.Ge.A.AL and Ryanair expressed their intention to renew the terms of their existing relationship by negotiating a new agreement and signed a Memorandum of Understanding (MoU) on 10 March 2010. The MoU states that 'starting from March 2010 Ryanair and So.Ge.A.AL shall negotiate in good faith in order to redefine the terms and the provisions of their partnership'.

(106) On this basis, a new ASA was subsequently signed between So.Ge.A.AL and Ryanair on 20 October 2010, which replaced the 2006 ASA. This agreement laid down new fees and incentive structure for the period between 1 January 2010 and 31 December 2013, with the possibility for a five-year extension upon expiry of the initial term of the agreement.

(107) So.Ge.A.AL undertook to pay success fees for targeted numbers of flights and certain levels of passenger traffic, while Ryanair undertook to pay for handling fees and airport charges, and to carry out sales promotion and public relations activities.

(108) A marketing agreement was signed on the same day for a four-year duration with a possibility to extend it for a further four years. AMS offered So.Ge.A.AL a package of online advertising services in exchange for the following annual rates: EUR […] for 2010; EUR […] for 2011; EUR […] for 2012; EUR […] for 2013. As in 2006, the marketing agreement was rooted in Ryanair's commitment to operate certain EU routes and to meet certain passenger targets.

(109) Upon request by the Commission, Italy reconstructed the *ex ante* profitability analysis of the agreements with Ryanair based on the incremental costs and revenues that could be reasonably expected by a market economy operator acting in lieu of So.Ge.A.AL at the time of the conclusion of each of these agreements during the period under investigation, i.e. 2000-2010 (the '2014 MEOP Report') ([32]). According to Italy, So.Ge.A.AL expected the agreements with Ryanair to be profitable for the airport at the time they were concluded.

5.2.2. **Measure 5 — Agreements with other carriers**

(110) At the time the 2012 Decision was adopted, the Commission noted that So.Ge.A.AL appeared to also have granted discounts on airport charges to carriers other than Ryanair. Although the Commission was aware that So.Ge.A.AL had concluded marketing agreements with other carriers as well, insufficient information on those agreements were provided to the Commission at that stage.

(111) By letter dated 18 February 2014 Italy provided the Commission with a profitability analysis based on *ex post* data of the arrangements with Alitalia, Meridiana and Volare in order to demonstrate that it was economically justified from the airport's perspective to conclude the agreements with these airlines. No analysis of the agreement with Germanwings had been provided at that date.

(112) Subsequently, by letter dated 25 March 2014, Italy provided to the Commission an analysis of the profitability of the agreements concluded by So.Ge.A.AL with Air One/Alitalia, Meridiana, Volare and Germanwings which sought to demonstrate that these agreements were expected to be profitable for So.Ge.A.AL on an *ex ante* basis.

(113) Finally, on 10 June 2014 Italy submitted to the Commission an analysis of the expected profitability of the handling agreements concluded by So.Ge.A.AL with bmibaby, Air Vallée and Air Italy.

(114) The agreements concluded by So.Ge.A.AL with carriers other than Ryanair subject to the investigation in this case are presented in recitals 115 to 132.

5.2.2.1. *Agreements with Germanwings, Volare, Meridiana and Alitalia*

(115) So.Ge.A.AL concluded handling and marketing agreements with Germanwings, Volare, Meridiana and Alitalia.

(i) Germanwings

(116) The handling agreement between Germanwings and So.Ge.A.AL was signed on 19 March 2007 and was set to apply as of 25 March 2007. Based on this agreement Germanwings was to pay So.Ge.A.AL EUR […] per turnaround for handling services.

(117) On 25 March 2007, a marketing agreement was signed between Germanwings and So.Ge.A.AL by which the carrier undertook to operate certain EU routes and to meet certain passengers and frequency targets. The agreement was to apply from 25 March 2007 to 31 October 2009. However, Germanwings only operated from Alghero airport in 2007. According to Italy the carrier decided to stop operations from Alghero airport as it could not generate sufficient traffic to break even from a financial perspective.

(118) The marketing agreement laid down a 'start-up' contribution amounting to EUR […] to be paid by So.Ge.A.AL to Germanwings 'in order to promote Alghero airport in increasing the volume of departing passengers by opening a new route'.

([32]) Letter of Italy of 18 February 2014.

(119) The marketing agreement also set out success fees to be paid by So.Ge.A.AL to Germanwings if the airline met the stipulated traffic targets. The agreement also specified penalties to be paid by Germanwings to So.Ge.A.AL in the event that the airline either cancelled over 10 % of its flights or did not meet the stipulated traffic targets.

(ii) Volare

(120) On 29 November 2007, Volare signed a handling and a marketing agreement with So.Ge.A.AL.

(121) The handling agreement set out goals to be met by the carrier in terms of number of passengers and flights per year, and the corresponding success fees to be paid by So.Ge.A.AL.

(122) The marketing agreement laid down an annual marketing fee of EUR […] to be paid by the airport manager as 'advertising support for the first year of activity'. The marketing agreement applied during from 28 October 2007 to 31 October 2010.

(iii) Meridiana

(123) Meridiana operated from Alghero airport in 2000, 2001 and 2010.

(124) In 2000 and 2001, Meridiana did not operate scheduled services from Alghero airport, and only provided flight services based on charter demands. As such, no formal handling agreements were signed between So.Ge.A.AL and Meridiana. The carrier paid So.Ge.A.AL published airport charges for all airport services.

(125) Meridiana did not operate from the airport between 2002 and 2010. In 2010, Meridiana took up operations from the airport and signed a marketing agreement as well as a handling agreement with So.Ge.A.AL.

(126) The handling agreement was signed on 28 April 2010 and covered the period between April 2010 and April 2011. Based on this agreement Meridiana was to pay So.Ge.A.AL EUR […] per turnaround for handling services.

(127) The marketing agreement was signed on 20 October 2010 and covered the period between June 2010 and October 2010. The agreement specified a one-off payment of EUR […] (excluding VAT) to be paid by So.Ge.A.AL to Meridiana relating to the start-up of routes to/from Milan, Verona and Bari in summer 2010. The payment was conditional on Meridiana meeting certain traffic targets. According to Italy, during the time for which the agreement with Meridiana applied retrospectively, So.Ge.A.AL had been negotiating with the carrier similar terms which were eventually included in the signed agreement. In this sense, Italy provided to the Commission a draft agreement which was being negotiated at the time by Meridiana and So.Ge.A.AL dated 7 June 2010.

(iv) Air One/Alitalia

(128) Until 2010, Air One/Alitalia did not sign any formal agreement with So.Ge.A.AL and paid So.Ge.A.AL published airport charges for all airport services. Until 2010, So.Ge.A.AL did not provide ground-handling services to Air One/Alitalia.

(129) In 2010, So.Ge.A.AL started to provide ground-handling services to Air One/Alitalia. This led to Air One/Alitalia signing a handling agreement with So.Ge.A.AL. The two parties also entered into a marketing agreement relating to Air One/Alitalia's start of international routes from Alghero airport.

(130) The marketing agreement was signed on 20 October 2010 and covered the period from 7 June 2010 to 30 September 2010. Italy provided to the Commission the draft agreement which had been negotiated at the time by Alitalia and So.Ge.A.AL in May 2010. The signed agreement specified a one-off marketing payment of EUR […] to be received by Air One/Alitalia for providing marketing services to So.Ge.A.AL in that period, with the possibility of the agreement being extended to 2011 and 2012.

(131) The handling agreement was signed between Air One/Alitalia and So.Ge.A.AL on 30 November 2010 for a period of six years and specified handling charges to be paid by Air One/Alitalia to So.Ge.A.AL for domestic and international routes.

5.2.2.2. *Handling agreements with other carriers*

(132) The Commission also investigated the ground handling agreements concluded by So.Ge.A.AL with Air Italy, Bmibaby and Air Vallée. The agreements were concluded for a duration between one month (Air Vallée) and more than two years (Air Italy) and specified handling charges to be paid by the carriers.

Table 6

Handling agreements with Air Italy, Bmibaby and Air Vallée

Date of conclusion	Carrier	Duration
28.5.2008	Air Italy	1.6.2008-31.12.2010
29.7.2010	Bmibaby	29.5.2010-30.9.2010
2010	Air Vallée	9.8.2010-30.8.2010

6. **THE ECORYS REPORT**

(133) In the course of the investigation, the Commission asked Ecorys to produce a report on the financial performance of So.Ge.A.AL and to establish whether the airport manager behaved like a market economy operator when concluding agreements with air carriers. The Ecorys Report was delivered on 30 March 2011.

(134) The Ecorys Report concluded that So.Ge.A.AL's conduct was MEOP-compliant. Ecorys considered that the business strategy pursued by So.Ge.A.AL bore fruit. Such strategy implied that the airport manager submitted an application for the 'comprehensive' concession for the management of the airport, that the capacity of the terminal was extended, and that agreements were signed with low-cost carriers aimed at incentivising international traffic flows. Ecorys concluded that from a MEO's perspective the conclusion of the agreements with Ryanair was a rational decision in that those agreements ensured a considerable increase in traffic which was expected to drive both aeronautical and non-aeronautical income. According to Ecorys, So.Ge.A.AL could reasonably expect that in the long run the benefits derived by such agreements would outweigh incremental costs.

7. **GROUNDS FOR INITIATING THE PROCEDURE**

7.1. EXISTENCE OF AID TO So.Ge.A.AL

(135) As concerns potential aid to the airport manager, the Commission noted that prior to the *Aéroports de Paris* judgment, the development and operation of airport infrastructure did not qualify as economic activity within the meaning of Article 107(1) of the Treaty ([33]). Since part of the measures under assessment was decided before 2001, the Commission noted that it would have to assess whether they stemmed from legally binding commitments taken before the *Aéroports the Paris* ruling was issued, namely 12 December 2000 ([34]) and hence fell outside the scope of State aid rules.

([33]) *Aéroports de Paris* judgement cited. See also Commission guidelines on the Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ C 350, 10.12.1994, p. 5.

([34]) See Commission Decision of 21 March 2012 in case C76/2002 *Avantages consentis par la Région Wallonne et Brussels South Charleroi Airport à la companie aérienne Ryanair* and Commission Decision of 25 April 2012 in case SA.33961 *Plainte Air France — Aéroport de Nîmes.*

(136) The Commission also recalled that, to the extent financing of activities which normally fell within the responsibility of the State in the exercise of public powers was limited to cover costs and was not used to finance other economic activities ([35]), such financing was not subject to State aid rules. At the time of adoption of the 2012 Decision, the Commission did not have sufficient information on the nature (economic or not) of the activities carried out by So.Ge.A.AL and of infrastructure related costs financed by the measures subject to the investigation, nor whether certain costs were inherently linked to activities within the public policy remit. The Commission invited Italy to clarify which activities must be considered as non-economic in nature and which costs linked to such activities, if any, had been financed by the measures covered by the Commission's investigation.

7.1.1. **Measure 1 — Capital injections**

(137) The Commission expressed serious doubts that the capital injections would be MEOP-compliant. It noted that So.Ge.A.AL had constantly operated at a loss since 2000 and that its financial performance seemed to worsen following the award of the 'comprehensive' concession. This seemed to contradict Italy's claim that the poor results of the company were primarily justified by the impossibility to exploit fully airport related activities based on the partial/temporary concession.

(138) The Commission further noted that Italy had at that time only provided *ex post* considerations in support of its claims that the measures were guided by profitability prospects. Such analysis in addition seemed to relate to the overall benefit derived by RAS from an increase in air traffic levels and therefore to revenues that a private investor would not take into account in the analysis of the profitability of its investment. On that basis the Commission took the preliminary view that the capital injections provided the airport manager with an advantage and constituted operating aid to the latter.

(139) The Commission finally noted that, even if So.Ge.A.AL met the conditions to qualify as a firm in difficulty under the Guidelines on State aid for rescueing and restructuring firms in difficulty ([36]), no element had been submitted to the Commission by Italy to support the conclusion that such aid would comply with the compatibility requirements of those guidelines.

7.1.2. **Measure 2 — Contributions for fittings and works**

(140) Insufficient information was provided to the Commission on the contributions for fitting and works worth EUR 6 540 269 granted to So.Ge.A.AL by RAS between 1998 and 2009. Italy was invited to specify the exact nature of the costs subsidised by RAS.

7.1.3. **Measure 3 — Investments in airport infrastructure and equipment**

(141) The Commission noted that between 2001 and 2010 So.Ge.A.AL paid EUR 3 042 887 to the State in fees for the use of the airport infrastructure, whilst the State financed infrastructure investments for EUR 46 940 534 and equipment for EUR 284 782 during 2004 to 2010.

(142) The Commission further noted that the award of the comprehensive concession to So.Ge.A.AL in 2007 did not appear to have led to an increase in the level of the concession fees. On that basis the Commission took the preliminary view that the concession fee was manifestly disproportionate to the public funding made available by the State in relation to infrastructure investments. The Commission therefore preliminarily considered that So.Ge.A.AL might have received an advantage by paying a concession fee below market price.

([35]) See judgment of 18 March 1997 in case C-343/95, *Cali & Figli/Servizi ecologici porto di Genova* [1997] I-1547; Commission Decision of 19 March 2003 in case N309/2002 *Sûreté aérienne — Compensation des coûts à la suite des attentats du 11 septembre 2001* and Commission Decision of 16 October 2002 in case N438/2002 *Subventions aux régies portuaires pour l'exécution de missions relevant de la puissance publique*.

([36]) OJ C 244, 1.10.2004, p. 2.

(143) Italy was invited to provide any *ex ante* business plan which would demonstrate the profitability prospects of infrastructure investments carried out by public entities at Alghero airport which could support the claim that such investments were MEIP-compliant.

7.2. PRELIMINARY VIEWS ON COMPATIBILITY OF AID TO So.Ge.A.AL

(144) The Commission expressed doubts as to the compatibility under Article 107(3) of the Treaty of aid to So.Ge.A.AL under the 2005 Aviation Guidelines.

(145) Although the measures seemed to meet an objective of general interest which was clearly defined, insufficient information was provided to the Commission to assess whether the infrastructure at Alghero airport was necessary and proportional to the objective set. Nor did the Commission have sufficient elements to assess the perspectives for the use of such infrastructure in the medium term. The Commission also had doubts whether the airport infrastructure was made available to air carriers on non-discriminatory terms.

(146) Finally, given that certain infrastructure investments appeared at that stage to result from So.Ge.A.AL's contractual obligations towards Ryanair, the Commission had doubts on the necessity of any aid to finance such investments.

7.3. POTENTIAL AID TO THE AIRLINES

(147) The Commission took the preliminary view that the decisions concerning airlines' operating conditions at Alghero airport were likely to involve State resources and be imputable to the State.

7.3.1. **Measure 4 — Agreements signed by So.Ge.A.AL with Ryanair/AMS**

(148) The Commission noted first that AMS is a 100 %-owned subsidiary of Ryanair, set up with the specific aim of supplying marketing services via the website of Ryanair, and which does not provide other services. On that basis the Commission took the preliminary view that in order to assess the presence of a selective advantage, Ryanair and AMS had to be considered as one single entity. The Commission also took the view that, when assessing whether the measures in relation to Ryanair/AMS were market conform, the behaviour of So.Ge.A.AL had to be assessed together with the behaviour of RAS and/or other public shareholders of So.Ge.A.AL during the period under investigation. The Commission considered that, for the purpose of the MEOP assessment, the ASAs and the marketing agreements and their financial consequences could not be severed and must therefore be subject to a joint assessment.

(149) The Commission recalled that regional development considerations could not be taken into consideration for the application of the MEOP. It also observed that according to the information at its disposal at that stage no business plan or *ex ante* analysis of the agreements signed with Ryanair/AMS had been prepared as the basis for So.Ge.A.AL's decision to enter such arrangements.

(150) On that basis, the Commission expressed doubts that So.Ge.A.AL and RAS behaved as a market economy investor in their relationship with Ryanair/AMS.

7.3.2. **Measure 5 — Agreements with air carriers other than Ryanair**

(151) The Commission noted that substantial discounts on airport charges were applied by So.Ge.A.AL to air carriers other than Ryanair, for instance depending on the start-up of new routes and increase in traffic levels. The Commission invited Italy to provide any *ex ante* business plans, studies or documents assessing the profitability for the airport manager of each of the agreements with the airlines operating at the airport or, should such documents be unavailable, So.Ge.A.AL's latest budget forecasts prepared prior to the conclusion of those agreements. On this basis, the Commission expressed doubts that So.Ge.A.AL and RAS behaved as a market economy investor in their relationship with the carriers operating at the airport.

8. **COMMENTS FROM ITALY**

(152) The Commission notes that, in addition to the replies to the requests for information by the Commission, Italy has in the course of the investigation made various submissions. However, although the Commission accepted a one-month extension of the deadline laid down by Article 6(1) of the Procedural Regulation ([37]) for Member States to submit their comments following a decision opening the formal investigation by the Commission, only one of Italy's submissions was made within this extended deadline, namely Italy's letter of 31 August 2012. Italy's submissions of 3 October 2012, 19 October 2012, 22 October 2012 and 20 February 2013 were submitted after the expiry of the deadline.

(153) This section therefore deals only with the observations provided by Italy in its letter of 31 August 2012. The arguments put forward in Italy's subsequent letters which are of relevance to the assessment in this case were presented in Sections 3 – 5.

8.1. POTENTIAL AID TO THE AIRPORT

(i) On the repayment of losses and capital injections

(154) Italy recalled that airport managers are required by law to observe certain capital thresholds. According to Italy the capital injections under assessment in this case aimed to restore So.Ge.A.AL's capital to the required standards.

(ii) On the public financing for fittings and works

(155) Italy explained that prior to 2003, the concession fees to be paid by airport managers having obtained the 'comprehensive' concession was set at 10 % of the user fees as per Italian Law No 324 of 5 May 1976 as subsequently amended, and the fee for loading and unloading goods transported by air as per Italian Law No 117 of 16 April 1974.

(156) As of 2003 the annual concession fees were determined with reference to the airport's Work Load Units (WLU, or units of load corresponding to one passenger or one hundred kilograms of goods or mail), which were in turn determined on the basis of traffic data published yearly by the Ministry of Infrastructure and Transport-ENAC.

(157) By virtue of Italian Law 296 of 27 December 2006, the annual concession fee for airport managers was increased so as to guarantee revenues of EUR 3 million in 2007, EUR 9,5 million in 2008 and EUR 10 million in 2009 respectively to the Italian Treasury.

8.2. POTENTIAL AID TO THE AIRLINES

(158) Italy did not comment on the potential aid to the airlines operating at Alghero airport within the deadline laid down by Article 6(1) of the Procedural Regulation for Member States to submit their comments following a decision opening the formal investigation by the Commission.

9. **COMMENTS FROM INTERESTED PARTIES**

(159) The Commission notes that the comments of interested parties cover a wide range of arguments. For instance, in its numerous submissions to the Commission Ryanair detailed the underlying principles and assumptions which it considers should serve as the basis for the Commission's MEOP analysis of the agreements with airlines. So.Ge.A.AL claimed that there exist numerous grounds on the basis of which the measures subject to the assessment in its favour could be declared compatible with the internal market.

([37]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

9.1. COMMENTS FROM So.Ge.A.AL

9.1.1. **Potential aid to the airport manager**

(i) On economic activity

(160) So.Ge.A.AL underlines that the public funding granted to it to cover costs incurred in the provision of services falling within the public policy remit does not constitute State aid. So.Ge.A.AL did not detail the nature or amount of such costs.

(161) So.Ge.A.AL considers that all measures under assessment in this case concerning the financing of infrastructure, equipment and 'fittings and works' had been legally committed before the *Aéroports de Paris* ruling and should therefore be excluded from State aid scrutiny. As concerns the period after 12 December 2000, So.Ge.A.AL recalls that Italy had already submitted evidence of the non-economic character of certain activities carried out by the airport manager. On that basis the Commission should attribute part of the public financing in question to costs incurred in the provision of non-economic activities.

(162) So.Ge.A.AL further notes that the 2012 Decision is not clear as to the nature and scope of the presumed aid to the airport manager. In particular, it would be unclear whether the intention of the Commission was to qualify the totality of the financing for infrastructure works as State aid or, in the alternative, to consider that only the difference between the market based concession fee, which So.Ge.A.AL would have had to pay to the State for the improved infrastructure and the concession fee actually paid by the airport manager would qualify as aid. It argued that the first option could not be reconciled with the fact that the State retained at all material times ownership of the airport infrastructure. So.Ge.A.AL cannot therefore be considered as beneficiary of investment aid. At any rate, So.Ge.A.AL submits that it had not benefitted from any undue economic advantage even if the second option was favoured.

(ii) On non-distortion of competition

(163) So.Ge.A.AL underlines that no distortion of competition can arise as a result of public financing granted to it. Given the remote location of Alghero airport, its catchment area ([38]) does not overlap with that of any other airport in Italy or other Member States. Neither is the airport competing with other airports on the island, given the distance between them and the absence of reliable land connections. So.Ge.A.AL adds that the three Sardinian airports handle different types of traffic. Furthermore, air transport would not compete with other transport means for the traffic to and from the island.

(164) So.Ge.A.AL does not accept the argument brought forward by the Commission in the 2012 Decision that several airport managers compete for the management of airport infrastructure. So.Ge.A.AL was awarded the first 'partial' concession ([39]) for the management of the airport in 1995 and therefore long before the *Aéroports de Paris* ruling. As from 1995 So.Ge.A.AL would merely act as manager of the infrastructure at Alghero airport, and its activity would therefore not be in competition with that of any other airport manager.

(iii) On absence of any economic advantage to So.Ge.A.AL

(165) So.Ge.A.AL submits that the capital injections would be MEIP-compliant. According to So.Ge.A.AL, the economic rationale of the measures should be assessed separately and distinctly for two periods: prior and following the award of the 'comprehensive' concession to So.Ge.A.AL in 2007.

(166) So.Ge.A.AL claims that the recapitalisations undertaken prior to 2007 were guided by the need to safeguard its business, in view notably of the award of the 'comprehensive' concession which it had already on 18 January 1999. Based on information available at the time the decisions to inject capital into the company were taken, the

([38]) Defined by the 2014 Aviation Guidelines as the area within a radius of 100 kilometres or around 60 minutes travelling time by car, bus, train or high-speed train from the airport.

([39]) On 10 May 1995 So.Ge.A.AL was awarded the first 'partial' concession for the supply of handling services, based on contracts to be signed with air carriers. A second 'partial' concession was awarded to So.Ge.A.AL for catering services on 20 October 1995. On 11 February 1999 So.Ge.A.AL was awarded the temporary right to manage the airport under a 'comprehensive' concession.

perspective of being awarded the 'comprehensive' concession was of crucial importance to So.Ge.A.AL's shareholders, to the extent it would have allowed the airport manager to fully capitalise on airport activities and therefore increase aeronautical and non-aeronautical revenues. Public shareholders would have had no viable alternative but to recapitalise the company and were justified in doing so given that the delay in the award of the concession was caused by external events which could not be imputed to the company. So.Ge.A.AL argues that the Commission must take that into account in its MEOP assessment. So.Ge.A.AL adds that the measures would also be justified based on the forecasted increase in passenger volumes as a result of low-cost strategy followed as of 1999.

(167) The capital injections carried out in 2009 and 2010 were driven by the need to safeguard the operability of the airport manager, notably in view of the improved viability perspectives resulting from the award of the 'comprehensive' concession. The fact that So.Ge.A.AL did not recover its profitability after the award of the concession was due to a market scenario that differed significantly from what had been forecasted, which affected considerably the development of air traffic in that period, namely the economic downturn and the consequent economic challenges faced by international airlines. In that sense So.Ge.A.AL suffered a 1,8 % drop in traffic levels. In addition, So.Ge.A.AL claims that traffic could not develop as it had been projected due to the delay in the execution of infrastructure works (which should have started already in 2004 but had not yet been initiated in 2009). Finally, the failure by ENAC to revise the airport charges upwards, irrespective of the formal request introduced in that sense by So.Ge.A.AL, has to be taken into account.

(168) It was in that context that So.Ge.A.AL developed corrective actions in view of reaching economic balance, such as the reorganisation of its activities, the cut in operating costs and investment measures in infrastructure. Those actions are assessed in detail in the 2010 reorganisation and restructuring plan.

(169) So.Ge.A.AL rejects the argument of the Commission that no *ex ante* analysis was carried out before the measures were put into effect. So.Ge.A.AL's public shareholders presumably undertook the measures in question on the basis of business plans developed *ex ante*. Evidence to that effect would be the documents submitted to the Commission in the course of the investigation, in particular:

(a) So.Ge.A.AL's business plan of 15 March 1999;

(b) the minutes of So.Ge.A.AL's Board of Directors meeting of 8 April 2000;

(c) the business plan for the award of the forty-year concession of September 2005;

(d) the Roland Berger Plan, as updated in 2007 and 2009;

(e) the reorganisation and restructuring programme 2010-2012;

(f) the Accuracy report.

(170) So.Ge.A.AL further recalls that the conformity of the capital injections with the MEOP principle were already established by the Ecorys Report, the Accuracy Report and the Roland Berger Plan.

(171) The Commission would have failed to give proper consideration to the specific character of the air traffic sector in Italy in light of the applicable Italian regulations. In its assessment of the situation prior to and following the award of the comprehensive concession to So.Ge.A.AL, the Commission should have taken into account the fact that the recapitalisations resulted from a legal obligation, whose non-observance would have triggered the revocation of the concession. So.Ge.A.AL's shareholders thus favoured the most cost-efficient option in deciding to recapitalise the company.

(172) So.Ge.A.AL considers that, in carrying out the capital injections, its public shareholders have acted in the same way a MEO would have acted in similar circumstances in that the injections guaranteed the public investors a positive return in the medium to long term. According to So.Ge.A.AL, the airport activities generate tax income in an amount superior to that of the public financing granted to it.

(173) So.Ge.A.AL also claims that the capital injections would not confer the airport manager an economic advantage within the meaning of the Altmark jurisprudence ([40]). The overall management of the airport would qualify as service of general economic interest ('SGEI') given the need to guarantee accessibility of the island and therefore the capital injections in question would amount to compensation for the provision of an SGEI by the airport.

(174) So.Ge.A.AL would have been entrusted with the provision of the SGEI by the Convention. The partial concessions awarded to So.Ge.A.AL prior to 2007 may equally be considered as entrustment acts. So.Ge.A.AL further notes that from a purely legal point of view airport managers are compelled to observe certain obligations in respect of the management of airports, which inevitably take into account the public interest. Such obligations refer to the guarantee of a sufficient quality of the services, the observance of security standards, continuity and regularity of the services.

(175) The second and third conditions deriving from the Altmark ruling would be observed given that So.Ge.A.AL has only been compensated to the level required to offset losses, more specifically to the level required to bring capital back in line with legal requirements after such losses had been covered. So.Ge.A.AL further adds that airport managers are by law required to keep separate accounting between core and non-core activities.

(176) Finally, So.Ge.A.AL claims that the fourth Altmark criterion would also be complied with, without however providing any material evidence in that respect.

(iv) On compatibility

(177) According to So.Ge.A.AL the compatibility of potential aid to the airport should be assessed by the Commission under:

(a) the Regional Aid Guidelines;

(b) the Rescue and Restructuring Guidelines;

(c) Article 106(2) of the Treaty;

(d) the 2014 Aviation Guidelines.

(178) First, So.Ge.A.AL submits that the measures in question were granted to Alghero airport to compensate for the disadvantage stemming from the insularity of the Sardinian region. On that basis the Commission should declare the aid compatible with the internal market under Article 107(3)(a) of the Treaty.

(179) Second, So.Ge.A.AL claims that all measures under assessment were granted to allow So.Ge.A.AL to undergo restructuring, in order to ensure its return to viability. In that sense So.Ge.A.AL submitted that, as concerns the 2009 and 2010 capital injections, So.Ge.A.AL prepared a restructuring plan, namely the 2010 reorganisation and restructuring plan, which identified the factors having had a negative impact on the company and which proposed corrective actions aiming at a reduction in costs and a revision of the business policy. That plan envisaged a significant own contribution from So.Ge.A.AL to the restructuring.

(180) Third, as concerns compatibility of the aid under Article 106(2) of the Treaty, So.Ge.A.AL argues that the compensation granted to it for the provision of SGEIs was constantly below the ceiling laid down by Article 2(1)(a) of the 2005 SGEI Decision ([41]), namely EUR 30 million per annum, and its turnover was below EUR 100 million. So.Ge.A.AL adds that prior to 2004 the 1 million passengers ceiling in Article 2(1)(d) of the 2005 SGEI Decision was also observed. The provisions in Articles 4, 5, 6 of the 2005 SGEI Decision would also be observed given that the compensation was granted to the company in connection with correctly defined SGEIs and entrusted to So.Ge.A.AL by one or more entrustment acts, and that such compensation did not exceed what was necessary for the provision of the SGEIs.

([40]) Case C 280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I 7747.

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

(181) Fourth, So.Ge.A.AL submits that aid to the airport for infrastructure investments, equipment, fittings and works should be deemed compatible on the basis of the 2005 Aviation Guidelines. The infrastructure in question would be proportional to the objective pursued and would have medium term prospects for use in the meaning of the 2004 Aviation Guidelines. The infrastructure was also put at the disposal of airlines on non-discriminatory terms. Furthermore, trade was not affected to an extent contrary to the common interest and the public financing was necessary and proportionate.

9.1.2. **Measures in favour of the airlines operating at the airport**

(182) The Commission would be correct in considering So.Ge.A.AL and RAS together for the purpose of the application of the MEOP principle. In adopting the measures in question RAS and So.Ge.A.AL behaved in the same way an MEO would have in similar circumstances. So.Ge.A.AL would have derived no economic advantage from marketing contributions granted by RAS in favour of airlines using Alghero airport. The contributions in question have only transited through the airport manager to be eventually granted to airlines.

(183) So.Ge.A.AL submits that any aid to airlines operating at Alghero airport in the form of lower airport charges or marketing contributions should be deemed compatible with the internal market under Article 107(3)(a) or (c) of the Treaty and the 2005 Aviation Guidelines.

(184) To support that conclusion, So.Ge.A.AL puts forward that the potential aid was granted to companies licenced to provide air transport services by a Member State, for routes linking a regional airport falling within the C or D category as defined by the 2005 Aviation Guidelines, with another Union airport. The funding did not concern routes subject to public service obligations ('PSOs') within the meaning of Regulation (EC) No 1008/2008 of the European Parliament and of the Council ([42]) and the agreements concluded with the airlines laid down penalties to be applied in case of non-observance of their commitments by the airlines.

(185) Whilst admitting that the grants in question were granted to airlines for a longer period and with a higher intensity than permitted under the 2005 Aviation Guidelines, So.Ge.A.AL underlines that the agreements with airlines did not have a duration longer than three years, and that the 2005 Aviation Guidelines allow derogations concerning intensity levels in the case of disadvantaged regions.

9.1.3. **Applicability of the 2014 Aviation Guidelines**

(186) In its comments on the applicability of the 2014 Aviation Guidelines, So.Ge.A.AL recalls that none of the measures under assessment in favour of the airport amounts to State aid. However, should the Commission conclude that any of those measures constitute operating aid to So.Ge.A.AL, it submits that all compatibility conditions laid down by the 2014 Aviation Guidelines are observed.

10. **COMMENTS FROM OTHER INTERESTED PARTIES**

(187) Ryanair, AMS and Unioncamere provided their observations in the course of the investigation.

10.1. COMMENTS FROM RYANAIR

(188) Ryanair submitted its comments on the 2012 Decision on 12 March 2013. Ryanair referred to its previous submissions in this case before the adoption of the 2012 Decision, as well as to several other submissions concerning a number of State aid investigations concerning potential aid to Ryanair.

(189) Ryanair's main comments as they result from those submissions are summarised in recitals 190 to 226.

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

(i) On AMS

(190) Ryanair rejects the preliminary conclusion of the Commission that Ryanair and AMS must be considered as a single entity, and that the ASAs and the marketing services agreements as well as their financial consequences should be assessed jointly for the purpose of assessment of the economic advantage.

(191) Neither the ownership structure of AMS nor its purpose would support that approach. The ASAs concluded with Ryanair and the marketing services agreements concluded with AMS would be separate and independent, they would relate to different services and would not be subject to any contractual or other link between them justifying their consideration as a single set of measures.

(192) The marketing services agreements benefitted So.Ge.A.AL as purchaser of advertising services. Those agreements constituted an investment to enhance the brand of the airport and would have led to an increase in the number of inbound passengers, and consequently in non-aeronautical income. They were not intended to improve the load factor or yield on Ryanair routes nor contingent on any assumed benefit such airport advertising on Ryanair.com provides to Ryanair.

(193) In addition, the conclusion of a marketing services agreement with AMS is not a condition for the operation of routes by Ryanair to and from an airport. Indeed, many airports served by Ryanair do not conclude agreements with AMS. In general, the need for specific marketing aimed at building the brand of an airport and influencing the proportion of inbound passengers arises at less well-known airports where the brand of the airport is not visible and inbound traffic needs to be stimulated.

(194) It would thus be perfectly rational for such an airport to spend funds for such a purpose, and the fact that Ryanair may or may not also benefit through that advertising would be commercially irrelevant to the airport. A private investor will not abstain from an investment simply because other parties may also gain from a growth of its business.

(195) Ryanair's agreements with So.Ge.A.AL were normal commercial agreements compliant with the MEOP, and the same applies with regard to AMS's agreements with So.Ge.A.AL, since AMS concludes marketing agreements at the same rates and in respect of comparable volumes with both public and private airports, tourism bodies, car rental groups, hotel reservation websites, insurance companies, telecommunications service providers ([43]).

(196) That approach is consistent with the line taken by Ryanair in other submissions sent to the Commission in the course of the investigation. In those other submissions Ryanair disagrees with the Commission's assessment of payments to AMS as costs to the airport. According to Ryanair that approach would disregard the value of AMS' services to the airport ([44]). By buying advertising space, airports can increase the proportion of incoming passengers on Ryanair flights, who tend to spend more than outgoing passengers on non-aeronautical goods and services. Doing this makes commercial sense for the airports ([45]). Ryanair believes that the purchase of marketing services at market rates should be severed from any other airport-airline contractual arrangements for the purposes of an MEOP assessment. Should the Commission insist on including AMS arrangements and Ryanair airport services arrangements in a joint MEO test, the value of AMS services to the airport should not be disregarded.

(ii) On imputability/State resources

(197) Ryanair considers that the Commission's view that the public authorities were involved in the adoption of the measures under review involving Ryanair and AMS is not supported by evidence. It could not be assumed — and it has yet to be shown — that the public authorities were actually involved in the adoption of the measures.

([43]) Letter of Ryanair of 22 July 2011.
([44]) Letter of Ryanair of 20 December 2013.
([45]) Letter of Ryanair of 15 September 2009.

(198) The argument that 'So.Ge.A.AL is wholly owned by public authorities which "interfered in the decisional process of So.Ge.A.AL"' would be insufficiently evidenced inasmuch as it is solely based on the sole organic criterion of appointment of the Board of Directors of So.Ge.A.AL by its public shareholders. Neither would the 2002 agreement, wherein Sardinia undertook to cooperate with Ryanair with the aim of developing tourism and the employment rate in the region prove that public authorities were involved, in one way or another, in the adoption of the measures taken by So.Ge.A.AL towards Ryanair or AMS after the signature of that agreement. Furthermore, the circumstance that So.Ge.A.AL and Sardinia signed subsequent agreements in 2004, 2005, 2006 and 2007 for co-marketing contributions would only support the position that Sardinia was financing So.Ge.A.AL, but not that it was directing So.Ge.A.AL's action towards Ryanair or AMS.

(199) Ryanair is not aware of or responsible for agreements between So.Ge.A.AL and RAS, has not prompted or demanded such agreements, and therefore the arrangements Ryanair and AMS have with So.Ge.A.AL should not be affected by arrangements between So.Ge.A.AL and RAS.

(200) Neither would Ryanair qualify as an indirect recipient of State aid. The Commission cannot simply presume that State aid has been granted to the airlines operating at the airport without evidence establishing the actual existence of an advantage through State aid. As long as the terms of the commercial relationship between Ryanair and an airport can be justified under the MEOP, any recovery obligation cannot extend to Ryanair. Ryanair criticizes the Commission's consideration that any incentive granted by a public airport to an airline automatically qualifies as State aid even if only part has been financed through public resources. Ryanair submits that the Commission's reluctance to investigate the issue of imputability of measures to the State does not reflect the 2005 Aviation Guidelines, which imply that the decision to redistribute public resources to an airline should be imputable to the public authorities in order to constitute aid ([46]).

(iii) On comparator analysis

(201) Ryanair argues that according to the case law ([47]), a comparator analysis should be the primary test used to verify the presence of aid to airlines and the cost-based test should only be used if it was impossible to compare the situation of the alleged grantor of aid with that of a private group of undertakings. Ryanair further states that when assessing the agreements concluded by airport managers with the airlines, the network externalities resulting from the agreements should also be considered. In a different submission Ryanair agreed that both comparator and cost-based methods of analysis are standard business practice ([48]).

(iv) On ex ante profitability

(202) Ryanair essentially argues that the Commission's entire reasoning in the 2012 Decision was vitiated by an erroneous application of the MEO test, which would have derived from an inaccurate presumption that an *ex ante* business plan was required to conclude that the MEOP was complied with. Business plans are not a *sine qua non* for the commercial actions of private investors ([49]). Whilst such plans may prove beyond doubt that a public body was acting as a private investor, the absence of such plan would not suffice to conclude that a public body was not acting as a private investor.

(203) In any event, in this case the Commission would have already admitted in the 2012 Decision that Alghero airport provided a basic *ex ante* analysis, which should be considered sufficient. The Commission is not in a position to assess what constitutes an 'acceptable' business plan and should not try to do so.

(204) Ryanair further notes that the Commission obtained an MEOP analysis from Ecorys, which concluded that the Ryanair agreements were MEOP-compliant, and that So.Ge.A.AL's losses arose due to the significant and unforeseeable delays of the State in awarding the 'comprehensive' concession. Unforeseeable inefficiencies and delays

([46]) Letter of Ryanair of 15 December 2009.
([47]) Letters of Ryanair of 12 March 2013 and 15 December 2009.
([48]) *Assessing State aid to low cost carriers*, 26 October 2011, prepared for Ryanair by Simon Pilsbury, Managing consultant at Oxera.
([49]) Letter of Ryanair of 22 July 2011.

should be neutralized in an MEOP analysis since they can also be faced by private airports during the normal course of business, whether due to State failures or the acts of other private enterprises upon which the airport relies.

(205) Furthermore, Ryanair submitted a series of notes prepared by Oxera, and an analysis prepared by Professor Damien P. McLoughlin.

Oxera Note 1 — Identifying the market benchmark in comparator analysis for MEO tests. Ryanair State aid cases, prepared for Ryanair by Oxera, 9 April 2013

(206) Oxera believed that the Commission's approach of only accepting comparator airports in the same catchment area as the airport under investigation is flawed.

(207) Oxera argued that market benchmark prices obtained from comparator airports are not polluted by State aid given to surrounding airports. Therefore, it is possible to robustly estimate a market benchmark for the MEO tests.

(208) This is because:

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

(b) companies affect each other's pricing decisions only to the extent that their products are substitutes or complements;

(c) airports in the same catchment area do not necessarily compete with each other, and the comparator airports used in the reports submitted face limited competition from State-owned airports within their catchment area (< 1/3 of commercial airports within the catchment area of comparator airports is fully State owned, and none of the airports within the same catchment area as comparator airports was subject to on-going State aid concerns (as of April 2013);

(d) even where comparator airports face competition from State-owned airports within the same catchment area, there are reasons to believe their behaviour is in line with the MEO principle (for example, where there is a large private ownership stake or where the airport is privately managed);

(e) MEO airports will not set prices below incremental cost.

Oxera Note 2 — Principles underlying profitability analysis for MEO tests. Ryanair state aid cases, prepared for Ryanair by Oxera, 9 April 2013

(209) Oxera argued that the profitability analysis undertaken by Oxera in its reports submitted to the Commission follows the principles that would be adopted by a rational private sector investor and reflects the approach apparent from Commission precedents.

(210) The principles underlying the profitability analysis are:

(a) the assessment is undertaken on an incremental basis;

(b) an *ex ante* business plan is not necessarily required;

(c) for an uncongested airport, the single till approach is the appropriate pricing methodology;

(d) only those revenues associated with the economic activity of the operating airport should be considered;

(e) the entire duration of the agreement, including any extensions, should be considered;

(f) future financial flows should be discounted in order to assess profitability of the agreements;

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

Analysis of Professor Damien P. McLoughlin — Brand building: why and how small brands should invest in marketing, prepared for Ryanair, 10 April 2013

(211) The paper aimed to set out the commercial logic underlying regional airports' decisions to buy advertising on Ryanair.com from AMS.

(212) The paper argued that there are a large number of very strong, well known, and habitually used airports. Weaker competitors must overcome static buying behaviour of consumers to grow their business. Smaller regional airports need to find a way to consistently communicate their brand message to as wide an audience as possible. Traditional forms of marketing communication require expenditure beyond their resources.

Oxera Notes 3 and 4 — How should AMS Agreements be treated within the profitability analysis as part of the market operator test? 17 and 31 January 2014

(213) Ryanair submitted further reports by its consultant Oxera. In those reports, Oxera discussed the principles which, according to the airline, should be taken into account in the profitability analysis of, on the one hand, ASAs between Ryanair and the airports and, on the other hand, the marketing agreements between AMS and the same airports as part of the MEO test ([50]). Ryanair emphasised that those reports do not in any way change its position presented earlier that the ASAs and the marketing agreements should be analysed under separate MEO tests.

(214) The reports indicated that the profits generated by AMS should be included as revenues in a joint analysis regarding profitability while the expenses of AMS would have to be incorporated in the costs. To do this, the reports suggested the application of a cash-flow-based methodology to the joint profitability analysis, meaning that the expenditure by airports on AMS could be treated as incremental operating expenses.

(215) The reports emphasised that marketing activities contribute to the creation and support of the brand's value, which is able to generate effects and benefits, not only for the duration of the agreements with an airline, but also after its termination. That would especially be the case if, due to the fact that Ryanair has concluded an agreement with an airport, other airlines establish themselves at the airport, which will in turn attract more shops to install themselves there and therefore bring in more non-aeronautical revenues for the airport. According to Ryanair, if the Commission proceeds to undertake a joint analysis of profitability, those benefits have to be taken into account by treating the expenses of AMS as incremental operating costs, net of AMS payments.

(216) Furthermore, Ryanair was of the opinion that a terminal value would have to be included in the projected incremental profits at the end of the airport services agreement in order to take into account the value generated after the termination of the agreement. The terminal value could be adapted on the basis of a 'renewal'-probability, measuring the expectation that profits will persist after the termination of the agreement with Ryanair or if similar conditions would be agreed with other airlines. Ryanair considered that it would then be possible to calculate a lower limit for benefits generated jointly by the agreement with AMS and the airport service agreement, reflecting the uncertainties of incremental profits after the termination of the airport services agreement.

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

(217) In support of that approach, the reports presented a synthesis of the results of studies on the effects of marketing on the value of a brand. Those studies recognise that marketing can support the value of a brand and can help to build a customer base. According to the reports, for an airport marketing on Ryanair.com especially increases the visibility of the airport's brand. Moreover, the reports stated that especially smaller regional airports wishing to increase their air traffic could therefore increase the value of their brand by concluding marketing agreements with AMS.

(218) The reports lastly indicated that a cash-flow-based approach was to be preferred over the capitalisation approach, in which the expenses of AMS would be treated as capital expenditure of an intangible asset (that is, the value of the brand) ([51]). The capitalisation approach would only take into account the proportion of marketing expenditure that is attributable to the intangible assets of an airport. The marketing expenses would be treated as intangible assets, and then depreciated for the duration of the agreement, taking into consideration a residual value at the foreseen termination of the ASA. That approach would not take into account the incremental profits brought by the conclusion of an ASA with Ryanair. It is also difficult to calculate the value of the immaterial asset due to the expenses of the brand and the time period of use of the asset. The cash-flow method is more appropriate than a capitalisation approach, since the latter would not capture the positive benefits to the airport that are expected to arise as a result of signing an ASA with Ryanair.

(v) The 2011 and 2013 MEOP reports

(219) Oxera was asked by Ryanair to undertake a test based on the MEOP which was submitted to the Commission on behalf of Ryanair in July 2011 (the '2011 MEOP Report') ([52]). The 2011 MEOP report presented results of a profitability analysis of the 2000 and 2010 ASAs between So.Ge.A.AL and Ryanair, based on information which, according to Ryanair, would have been available to So.Ge.A.AL at the time these agreements were concluded. The 2011 MEOP Report did not include an analysis of the expected profitability of the 2002, 2003 and 2006 ASAs.

(220) Building on the 2011 MEOP Report, an updated report was submitted to the Commission in March 2013 (the '2013 MEOP Report') ([53]), which estimates the expected profitability of the ASAs not considered in the 2011 MEOP Report (namely, the 2002, 2003 and 2006 ASAs).

(221) According to Ryanair, the *ex ante* assessment of the profitability of the 2000, 2002, 2003, 2006 and 2010 ASAs would suggest that all of these agreements were expected to be profitable for the airport at the time when they were signed. The expected profitability of each agreement between So.Ge.A.AL and Ryanair was assessed taking into account expected incremental cost and incremental revenue forecasts, including aeronautical and non-aeronautical revenues and the costs of the financial incentives offered to Ryanair. The fact that the resulting NPVs are all positive would presumably confirm that it was rational to conclude the agreements with Ryanair.

(222) When applying the MEO test in relation to the ASAs, the 2011 and 2013 MEOP Reports do not consider the agreements between So.Ge.A.AL and AMS for the provision of marketing services. According to Ryanair the agreements with AMS are separate from Ryanair's ASAs with the airport, in that the former concern the provision of marketing services to airports (rather than flights/passengers) at a market price and should therefore not be considered.

(vi) On non-selectivity of airport charges to Ryanair

(223) Ryanair rejects the Commission's view that any discount granted by Alghero airport should be treated as State aid, even where all airlines could benefit from the discounts. First, according to Ryanair, if all airlines get discounts, then the appropriate counterfactual price may be the lowest level of discount, rather than the published charges. Second, that approach fails to take into account any element of differential costs and benefits of serving the different airlines. An assessment of cost-reflectivity is a necessary step to assess whether a discount

([51]) Oxera paper, 'How should AMS agreements be treated within the profitability analysis as part of the market economy operator test? — Practical application' prepared for Ryanair, 31 January 2014.
([52]) Oxera's report, 'Economic MEOP assessment, Alghero Airport', prepared for Ryanair, 22 July 2011.
([53]) Oxera's report 'Economic MEOP Assessment: updated profitability analysis — Alghero Airport', prepared for Ryanair, 12 March 2013.

to a particular airline is State aid. Relatively low charges, by themselves, do not necessarily constitute State aid, and, consistent with the findings of Ecorys, the lower charges reflect lower levels of service requested by Ryanair.

(224) In this case the discounts that Ryanair received were offered in recognition of the significant commercial risk that Ryanair took when establishing scheduled year-round operations at an airport that was unknown at the time ([54]).

(vii) On distortion of competition

(225) The Commission appears not to exclude competition between Alghero and Cagliari or Olbia airports, despite respectively 235 and 128 kilometres of mountainous relief separating these airports, and the absence of motorways in Sardinia. According to Ryanair, it would be uncertain whether any State aid at Alghero airport could result in a distortion of competition, and what the Commission believes to be the scope of such distortion.

(viii) On compatibility

(226) Ryanair considers that the arrangements between Ryanair and the airport did not involve State aid. In that sense Ryanair considers the potential applicability of the 2005 Aviation Guidelines in this case as irrelevant.

10.2. COMMENTS FROM AMS

(i) On AMS and the Ryanair website

(227) AMS supports the comments submitted by Ryanair regarding AMS. The Commission's assumption that the marketing fees paid to AMS in return for marketing services constitute aid (to Ryanair) and treating AMS and Ryanair as one beneficiary of State aid would be flawed. AMS offers marketing services that are justified by their own separate purpose and priced at their market value.

(228) Furthermore, Ryanair's decision to engage an intermediary to sell advertising space on its website would not be unusual. AMS has been successful in promoting and selling advertising space to numerous companies throughout Europe, both private and public.

(229) Ryanair's website presents particularly desirable characteristics for marketing: it is one of the most popular travel websites in the world; the average duration of each visit to Ryanair's website is extremely long; advertising for an airport on the Ryanair website uniquely targets potential passengers to that airport, ensuring that very little or no advertising spend is wasted, contrary to advertising in newspapers, radio, TV and other less focused media targeted at the general public.

(ii) On the absence of advantages to AMS or Ryanair

(230) AMS concludes marketing agreements with both public and private airports, tourism bodies, car rental groups, hotel reservation websites, insurance companies, telecommunications service providers.

(231) The rates at which advertising space is provided by AMS, and the volumes in which it is acquired, do not discriminate between public and private advertisers. Ryanair and AMS do not force airports to buy marketing services, and many airports in fact choose not to advertise on the Ryanair website. No State aid can arise from AMS's arrangements with public airports or their managers such as So.Ge.A.AL, when AMS could just as easily sell the website space to a private company, at a comparable price.

([54]) Letter of Ryanair of 22 July 2011.

(232) AMS presented several reasons which would justify SO.GE.A.AL purchasing marketing services from AMS to advertise on Ryanair.com, which are summarised in what follows.

(233) First, advertising on Ryanair's website is an investment in brand recognition. Airport managers of peripheral airports face significant challenges in getting their 'brand' recognised by passengers, airlines and non-aviation commercial managers, all of whom constitute potential sources of income for airports. Increased brand recognition can benefit the airports in a number of mutually inclusive and complementary ways, notably it may attract (i) inbound passengers from the airline on whose site the airport is advertising; (ii) potential customers browsing one airline's website on which an airport is advertising to fly to that airport on another airline that has routes to the airport; (iii) another airline to fly to that airport, and (iv) commercial managers (such as, airport retail chain stores).

(234) Second, advertising on Ryanair's website increases the proportion of inbound passengers. There is a trend among airports towards generating almost half of their revenue from non-aeronautical operations. From a regional airport's perspective, inbound passengers arriving to, and then departing from, the airport are much more likely to generate non-aeronautical income for the airport than local passengers using the airport to fly to foreign destinations.

(235) Third, marketing and advertising on the website of all airlines has become mainstream practice. Ryanair's website has exceptional value as a marketing venue for a wide range of travel-related products and services. It has become general practice for airports to carry out a portion of their brand promotion on the websites of airlines. In this case Alghero airport appears to have purchased advertising services not only from AMS, but also from Meridiana and Alitalia.

(236) Fourth, AMS' services are priced at their market value. A number of non-airport private customers from a range of industries purchase marketing services from AMS. Ryanair routes are not offered to those customers, yet they are happy to provide consideration in return for AMS's services. Those private customers, acting as market economy investors, clearly attach commercial value to AMS' services on a standalone basis, as do public and private airports throughout the Union. Those private comparator elements would be by themselves sufficient to demonstrate that AMS's prices are real market prices.

(iii) On the financing of So.Ge.A.AL by Sardinia

(237) The Commission regards So.Ge.A.AL as a mere conduit through which regional financing is channelled to Ryanair/AMS to be ostensibly used for marketing purposes. However, according to AMS the Commission failed to adduce evidence that So.Ge.A.AL had no autonomy as regards the use of the funds made available by RAS, and could therefore not use them for other purposes.

(238) So.Ge.A.AL appears to have been paying a fixed concession fee to the State, and did not share its revenues with the State. So.Ge.A.AL's owner, RAS, had a direct interest in increasing So.Ge.A.AL's long term profitability for instance by financially supporting its marketing efforts in order to enhance its brand image. Such conduct would be in line with the MEO test and would benefit RAS.

(239) AMS adds that it would be possible that part of the funding to So.Ge.A.AL could be considered a compensation for the provision of SGEIs. Alghero airport facilitates the provision of air services in a region that is isolated and otherwise difficult to reach.

(iv) Conclusion

(240) AMS concluded that it has not been the beneficiary of State aid and that So.Ge.A.AL and RAS acted in line with the MEOP towards AMS.

10.3. COMMENTS FROM UNIONCAMERE

(241) Unioncamere underlines that, without questioning the concept of economic activity in the Court of Justice's case-law, an activity that is *per se* economic cannot always be considered provided *on* a market, in the sense that such activity is or could realistically be provided in competition with other operators.

(242) Unioncamere admits that in similar circumstances a private investor would likely not have undertaken the measures under scrutiny in favour of the airport. The Commission should nonetheless take into account the fact that a public investment in an airport is often driven by considerations which are not similar to those of a private investor. A public investor has different expectations from those related to the profitability of the investment, and pursues at the same time objectives of a more general nature, such as the safeguard of the economy and regional development. While admitting that based on the case law of the Court such considerations cannot be taken into account for the purpose of MEOP analysis, Unioncamere submits that the public funding to Alghero airport did not aim to maintain afloat an undertaking which would not otherwise be competitive, but rather to support regional development. Given the specific geography of Sardinia, the presence of a dedicated airport is a priority for the public authorities.

(243) Unioncamere concludes that the Commission should apply the MEOP taking into account the objective of the measure to support regional and economic development, 'in other words should consider the measures as undertaken in the exercise of public powers'.

(244) Unioncamere considers that the compatibility of the measures under assessment in favour of So.Ge.A.AL should be assessed under Article 107(3)(c) of the Treaty.

11. **COMMENTS FROM ITALY ON INTERESTED PARTIES COMMENTS**

(245) Italy only commented on Ryanair's and Unioncamere's observations.

11.1. ON COMMENTS FROM RYANAIR

(246) As concerns the measures in favour of Alghero airport, Italy submitted that the airport operates in a remote region and therefore an overall SGEI mission to the airport 'could not be excluded'.

(247) Italy supports Ryanair's claim that smaller airports have no choice but to invest in their image so as to ensure viability prospects. In that sense, advertising on the websites of low cost companies would be common practice. Italy also underlines that the airport has acquired similar services from other airlines such as Germanwings, Volare, Meridiana and Alitalia.

(248) Italy confirms that AMS's services are priced at market rates. Prices are made available on the AMS website and rates applicable to So.Ge.A.AL were in line with those published.

(249) Italy concludes that AMS did not benefit from State aid and that So.Ge.A.AL and RAS acted in line with the MEOP.

11.2. ON COMMENTS FROM UNIONCAMERE

(250) Italy agrees that public investment in an airport is often justified by considerations which are not similar to those of a private investor as public investors also pursue objectives of a more general nature, such as economic and regional development.

12. **ASSESSMENT**

12.1. MEASURES IN FAVOUR OF SO.GE.A.AL

12.1.1. **Existence of aid within the meaning of Article 107(1) of the Treaty**

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

(252) The criteria laid down in Article 107(1) of the Treaty are cumulative. Therefore, in order to determine whether the measures under investigation constitute State aid within the meaning of Article 107(1), all the conditions mentioned in recital 251 need to be fulfilled. Namely, the financial support should:

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

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

(c) distort or threaten to distort competition,

(d) affect trade between Member States.

12.1.1.1. *Economic activity and concept of undertaking*

(253) According to settled case law, the Commission must first establish whether So.Ge.A.AL is an undertaking within the meaning of Article 107(1) of the Treaty. 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 ([55]). Any activity consisting in offering goods or services on a given market is an economic activity.

(254) In its *Leipzig/Halle Airport* judgment, the Court of Justice confirmed that the operation of an airport for commercial purposes and the construction of the airport infrastructure constitute an economic activity ([56]). Once an airport manager engages in economic activities by offering airport services against remuneration, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) of the Treaty, and the Treaty rules on State aid are therefore capable of applying to advantages granted by the State or through State resources to that airport manager ([57]).

(255) Regarding the moment in time from which 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 the date of the judgment in *Aéroports de Paris* (12 December 2000), the application of State aid rules to the financing of airport infrastructure could no longer be excluded. Consequently, from 12 December 2000 onwards, the operation and construction of airport infrastructure must be considered as an activity falling within the scope of State aid control. Conversely, the Commission cannot now put into question, on the basis of State aid rules, financing measures granted to airport managers before 12 December 2000 ([58]).

(256) The Commission therefore finds that from 12 December 2000 onward, So.Ge.A.AL was engaged in an economic activity and that it constitutes an undertaking in the sense of Article 107(1) of the Treaty. Consequently, in what follows the Commission assesses the State aid qualification and, for those measures which qualify as State aid, the compatibility with the internal market, of the measures granted as of 12 December 2000. The Commission will not however put into question measures that were decided before 12 December 2000 and thus need not assess those measures in this Decision.

([55]) Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21; C-160/91 *Poucet and Pistre v AGF and Cancava* [1993] ECR I-637, paragraph 17; Case C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36.

([56]) Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission* [2012] not yet reported; see also Case T-128/89 *Aéroports de Paris v Commission* [2000] ECR II-3929, confirmed by case C-82/01P *Aéroports de Paris v Commission* [2002] ECR I-9297 and case T-196/04 *Ryanair v Commission* [2008] ECR II-3643.

([57]) Cases C-159/91 and C-160/91 *Poucet v AGV and Pistre v Cancave* [1993] ECR I-637.

([58]) 2014 Aviation Guidelines, point 29.

(257) Italy has provided data on capital expenditure (including financing of infrastructure, equipment and 'fittings and works') committed before 12 December 2000 (see recital 84). On this basis, the Commission concludes that it is not entitled to examine and call into question an amount of EUR 25 431 706,16 decided before that date.

12.1.1.2. *Public policy remit*

(258) While So.Ge.A.AL must be considered to constitute an undertaking in the sense of Article 107(1) of the Treaty at least as of 12 December 2000, it must be recalled that not all activities of an airport manager are necessarily of an economic nature ([59]).

(259) The Court of Justice has held that activities that normally fall under the State's 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.

(260) Therefore, the financing of activities falling within the public policy remit or of infrastructure directly related to those activities in general does not constitute State aid ([60]). At an airport, activities such as air traffic control, police, customs, firefighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform these activities are generally considered to be of a non-economic nature ([61]).

(261) However, public financing of non-economic activities must not lead to undue discrimination between airlines and airport managers. Indeed, it is established case-law that an advantage is present when public authorities relieve undertakings of the costs inherent to their economic activities ([62]). Therefore, if in a given legal system it is normal that airlines or airport managers bear the costs of certain services, whereas some airlines or airport managers providing the same services on behalf of the same public authorities do not have to bear those costs, the latter may enjoy an advantage, even if those services are considered in themselves as non-economic ([63]).

(262) As mentioned at recital 49, by letter of 10 June 2014 Italy claimed that So.Ge.A.AL carried out certain activities falling within the public policy remit. In particular, Italy submitted that the costs (investment costs or operating expenses) arising from the obligation on airports to make available to ENAC and other local public entities (the Air Border Police, the Customs Agency, the Red Cross, the Fire Brigade, the Police) airport premises and to bear administration/maintenance costs of those premises are to be considered as falling within the public policy remit. Such obligation is laid down in the national legislation and applies to all airport managers in Italy. According to Italy the total costs incurred by So.Ge.A.AL in the maintenance of those areas in the period 2000-2010 amounted to EUR 2 776 073 ([64]).

(263) The Commission is of the view that, generally, such costs can be considered as relating to activities that fall within the public policy remit. However, in this case the Commission notes that the national legislation does not lay down any entitlement of airport managers of compensation for the costs borne for such activities. Therefore, under the applicable legal system, Italian airports normally have to bear the relevant costs themselves. Consequently, costs related to the provision and maintenance of spaces and premises necessary for the performance of the activities listed in recital 262 should be considered to constitute normal operating expenses of airport managers ([65]). Therefore operating costs (referred to in recital 48) and investment costs (referred to in recital 49) related to the provision and maintenance of premises reserved for the activities mentioned in recital 262 do not qualify as public policy remit costs and the financing of those costs by the public authorities is capable of constituting State aid to So.Ge.A.AL.

([59]) Case C-364/92 *SAT Fluggesellschaft v Eurocontrol* [1994] ECR I-43; 2014 Aviation Guidelines, point 34.
([60]) Commission Decision of 19 March 2003 in case N 309/2002, cited.
([61]) See, in particular, Case C-364/92 *SAT Fluggesellschaft v Eurocontrol* [1994] ECR I-43, paragraph 30 and Case C-113/07 P *Selex Sistemi Integrati v Commission* [2009] ECR I-2207, paragraph 71; 2014 Aviation Guidelines, point 35.
([62]) See Case C-172/03 *Wolfgang Heiser v Finanzamt Innsbruck* [2005] ECR I-01627, paragraph 36, and case-law cited.
([63]) 2014 Aviation Guidelines, point 37.
([64]) Letter of Italy of 10 June 2014, Annex 22.
([65]) See 2014 Aviation Guidelines, point 37.

12.1.1.3. *State resources and imputability to the State*

(264) As the Court established in its *Stardust Marine* ruling, 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 ([66]). Resources of intra-state entities (decentralised, federated, regional, local, or other) of the Member States are, for the purpose of application of Article 107 of the Treaty, State resources ([67]). In addition, the measures adopted by such entities, whatever their legal status and description, fall, in the same way as measures taken by the central authority, within the ambit of Article 107 ([68]).

(265) In this case, the subsidies from RAS for 'fittings and works' (Measure 2) were granted to So.Ge.A.AL directly from the regional budget and therefore amount to State resources and are imputable to the State. Likewise, the co-financing by the State of airport infrastructure and by RAS of equipment at Alghero airport (Measure 3) was financed directly through State resources.

(266) As to the five capital injections which took place in the period 2000-2010, for a total amount of EUR 31 086 398 (Measure 1), since they were carried out and thus financed by So.Ge.A.AL's public shareholders, namely the Chamber of Commerce of Sassari, the Province of Sassari, the Municipality of Sassari, the Municipality of Alghero, RAS and SFIRS, they ought to be regarded as financed through State resources.

(267) A separate issue to be explored is whether those transfers of State resources are also imputable to the State. Decisions taken by the Chamber of Commerce of Sassari, the Province of Sassari, the Municipality of Sassari, the Municipality of Alghero and RAS — as public authorities or local autonomous public bodies governed by public law which considers them part of the public administration and which are entrusted with public policy tasks (such as the Chamber of Commerce of Sassari) — are imputable to the State.

(268) As regards SFIRS, it is settled case law that the imputability to the State of a measure taken by a public undertaking can be established either by 'organic' or 'structural' indicators or by indications that the State has been involved, or was unlikely to be absent, from the decision that lead to the concrete measure. The Court established a non-exhaustive set of possible indicators relevant for the question of state imputability, such as ([69]):

(a) the fact that the undertaking through the intermediary of which the aid has been granted had to take into account directives issued by governmental bodies;

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

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

(d) the legal status of the undertaking (public law or ordinary company law);

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

(f) 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.

(269) The investigation in this case confirmed the initial assessment of the Commission that the capital injections are to be considered the result of conduct imputable to the State and that SFIRS did not engage in the capital injections under investigation only out of profit-maximising considerations.

(270) SFIRS was set up as investment company of RAS, with the task to prepare plans and draft guidelines targeting the region's economic and social development. The main objective of SFIRS is thus not to maximise profit but rather to act as an instrument of RAS to foster the economic development of Sardinia. Also, in a meeting of So.Ge.A.AL's Shareholder Assembly of 30 April 2004, the RAS representative discarded the operating loss

([66]) Case C-482/99 *France v Commission* ('*Stardust Marine*') [2002] ECR I-4397.
([67]) Joined Cases T-267/08 and T-279/08, *Nord-Pas-de-Calais* [2011], not yet published, paragraph 108.
([68]) Judgment of the Court of 6 March 2002, joint cases T-127/99, T-129/99, T-140/99 *Diputación Foral de Álava and others v Commission*, Rec 2002, p. II-1330, paragraph 142.
([69]) *Stardust Marine* judgement, cited.

recorded by the airport manager in 2003 in the light of the 'strategic role assumed by the airport at regional level.' ([70]). This indicates that RAS attached particular importance to the development of the airport, an objective which it pursued through its investment vehicle SFIRS together with So.Ge.A.AL's other public shareholders. In addition, SFIRS intervention was concomitant with that of the other public shareholders.

(271) Therefore, the Commission concludes that the capital injections involve State resources and are imputable to the State. The Commission also notes that Italy has not contested this finding in the investigation.

12.1.1.4. *Economic advantage*

(272) An advantage within the meaning of Article 107(1) of the Treaty is any economic benefit which an undertaking would not have obtained under normal market conditions, namely in the absence of State intervention ([71]). In this regard, financing of costs incurred in the provisions of SGEI does not confer an economic advantage on the recipient to the extent that the conditions laid down by the Court in the Altmark case ([72]) are observed (see recitals 273-278). Only the effect of the measure on the undertaking is relevant, neither the cause nor the objective of State intervention ([73]). In what follows, the Commission first assesses whether the measures at issue (Measures 1, 2 and 3) comply with the Altmark conditions, and second, analyses whether they were granted in normal market conditions in accordance with the MEOP.

12.1.1.4.1. Non-observance of the Altmark criteria

(273) During the investigation So.Ge.A.AL claimed that it was entrusted with the provision of an SGEI. So.Ge.A.AL claims it discharged PSOs, enshrined in the Convention (see recitals 173-176).

(274) Conversely, in its observations on the 2012 Decision Italy had not claimed that the overall management of the airport, or part of its activities, would qualify as SGEI and therefore that the measures under scrutiny would constitute compensation for the discharge of PSOs. In response to the observations submitted in the course of the investigation by Ryanair, Italy had merely confirmed that 'it could not be excluded that the airport manager provided a public service' (see recital 246). Late in the investigation procedure, in reply to a request for information from the Commission, Italy — on behalf of RAS — stated that So.Ge.A.AL would in fact provide SGEIs which would have been entrusted to it:

(a) as concerns the management of the airport, by means of the different Conventions signed by So.Ge.A.AL with the State;

(b) as concerns the airport infrastructure, by means of the different acts laying down its financing by public funds.

(275) In case of undertakings entrusted with the provision of an SGEI, in order to conclude whether or not the measures under assessment constitute an advantage within the meaning of Article 107(1) of the Treaty, the Commission must examine observance of the conditions set out by the Court in its judgement in the Altmark case. Those conditions may be summarised as follows:

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

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

(c) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations ('Altmark 3');

([70]) Letter of Italy of 18 February 2014, Annex 17.
([71]) Case C-39/94 *Syndicat français de l'Express international (SFEI) and others v La Poste and others* [1996] ECR I-3547, paragraph 60 and case C-342/96 *Kingdom of Spain v Commission of the European Communities* [1999] ECR I-2459, paragraph 41.
([72]) *Altmark* judgement, cited.
([73]) Case 173/73 *Italian Republic v Commission of the European Communities* [1974] ECR 709, paragraph 13.

(d) where an SGEI mission is not entrusted to an undertaking pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations ('Altmark 4').

(276) The Commission first assesses observance of the Altmark 2 criterion. Given that the Altmark criteria have to be complied with cumulatively, non-observance of either one of those conditions would lead to the conclusion that the presence of an advantage cannot be excluded on the basis of this test, even if the services provided by So.Ge.A.AL qualify as SGEIs.

(277) In this case the parameters for the calculation of the compensation to the airport manager for the provision of SGEIs were not established in advance. In fact, no explicit reference to any compensation to be granted by the State to the airport manager for the provision of airport services is made in the Convention. This alone suffices to conclude that the Altmark 2 criterion is not met in this case.

(278) Giving that the four Altmark conditions are not cumulatively observed in this case, the Commission concludes that the presence of an advantage cannot be excluded on the basis of this test, even to the extent the services provided by So.Ge.A.AL would qualify as SGEIs.

12.1.1.4.2. Compliance with the MEOP

(279) 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' ([74]).

(280) In this case, in order to determine whether the public financing of Alghero airport conferred So.Ge.A.AL 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 funding in question to that of a market economy investor who is guided by prospects of profitability ([75]).

(281) The assessment should leave aside any positive repercussions on the economy of the region in which the airport is located, beyond those affecting the profits expected by the public entities granting the measures. Indeed, the Court has clarified that the relevant question for applying the MEOP 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' ([76]).

(282) 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.' ([77]).

(283) 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.' ([78]).

(284) Therefore, in order to be able to apply the MEOP, the Commission has to place itself at the time when each decision to provide public funds to So.Ge.A.AL was taken. Also, the Commission should in principle base its

([74]) *Stardust Marine* judgement, cited, paragraph 69.
([75]) Case C-305/89 *Italy v Commission* ('ALFA *Romeo*') [1991] ECR I-1603, paragraph 23; Case T-296/97 *Alitalia v Commission* [2000] ECR II-03871, paragraph 84.
([76]) Case 40/85 *Belgium v Commission* [1986] ECR I-2321.
([77]) *Stardust Marine* judgement, cited, paragraph 71.
([78]) Case C-124/10P *European Commission v Électricité de France* ('*EDF*') [2012], not yet published, paragraph 85.

assessment of the profit-driven character of investment decisions on the information and assumptions which were at the disposal of the public authorities at the time when the decisions to provide So.Ge.A.AL with funding were taken. Point 63 of the Aviation Guidelines provides that arrangements concluded between airlines and an airport can be deemed to satisfy the MEO test when they incrementally contribute, from an *ex ante* perspective, to the profitability of the airport. While this criterion reflects the logic of the MEO test, it has been spelt out only recently and refers to individual arrangements rather than to the overall business, as is more often the case when applying the MEO test. Therefore, the Commission recognises that it may be difficult for the relevant Member State and for the operators concerned to provide full contemporaneous evidence in respect of arrangements concluded many years ago and will take that into account when applying the criterion at stake in the present case.

(i) Financing of airport infrastructure (including 'fittings and works') and equipment

(285) As mentioned in recital 81, in the assessment conducted in this Decision, the Commission analysed the subsidies for infrastructure and equipment (Measure 3) and the financing of 'fittings and works' (Measure 2) together, as a series of measures financing the creation and upgrading of infrastructure and equipment.

(286) Costs related to the construction and operation of an airport, including investment costs, are normally borne by the airport operator so that covering a part of those costs relieves it of a burden that it would normally have to bear.

(287) It should be determined whether, when providing investment grants to finance infrastructures, equipment, fittings and works at Alghero airport, the public authorities could reasonably expect a return on investment in any form and to an extent that would make their investments profitable for them.

(288) Italy did not explicitly argue that the investment grants complied with the MEOP. Nor did Italy present a business plan with calculations regarding the expected profitability of the investment grants, whether done *ex ante* or reconstructed on the basis of information available and foreseeable developments at that time.

(289) As regards grants provided by the State, it should be noted that in exchange for the right to manage the airport infrastructure, So.Ge.A.AL pays a concession fee to the State. Italy submitted that the concession fees owed by airport managers are set in reference to traffic volumes and do not therefore aim to remunerate State investments in airport infrastructure. There is no indication that, when financing certain investments at Alghero airport, the State could expect an increase in the traffic and a related increase in the concession fees that would be of a sufficient magnitude to make its expenses profitable.

(290) The Commission considers that, given the inherent and significant uncertainties related to the infrastructure projects, the State's investment grants are not in line with the type of analysis that a prudent investor would have undertaken for such projects. Since there is no indication that the financing in question was expected to yield a normal return, the Commission considers that the financing granted by the State after 12 December 2000 did not comply with the MEOP and conferred an advantage to the airport manager.

(291) The public funding for equipment is not MEOP-compliant either since there was neither an *ex ante* business plan, nor a sensitivity analysis of any underlying profitability assumptions showing what financial return RAS could reasonably expect to draw from the investment subsidies that it granted to So.Ge.A.AL. It is not even clear that RAS could expect any return since unlike the State, it does not receive any concession fee from So.Ge.A.AL.

(292) Furthermore, even if one were to assume that the dividends that it might receive and the potential increase in the value of the shares that it owns in So.Ge.A.AL, as its main shareholder, could be considered as a possible source of financial returns that can be taken into account in the application of the MEOP in this context ([79]), it is

([79]) The Commission does not take a definitive view on this point in this Decision.

sufficient to note that So.Ge.A.AL had generated significant losses in every year in the period subject to investigation (starting in 2000). Hence, neither the State nor RAS could reasonably expect its funding of infrastructure or equipment at Alghero airport in this period to improve the financial situation of So.Ge.A.AL to such an extent that the latter would pay sufficient dividends, or that the value of So.Ge.A.AL's shares would increase as a result of this funding to such an extent as to make the public funding 'profitable'. Neither Italy nor third parties have provided elements which would suggest that this is the case.

(293) Therefore, Measure 2 and Measure 3 do not comply with the MEOP and have conferred an economic advantage on So.Ge.A.AL.

(ii) Capital injections between 2000 and 2010

(294) Both Italy and So.Ge.A.AL have claimed that the capital injections carried out by So.Ge.A.AL's public shareholders in the period 2000 — 2010 would comply with the MEOP. Even though the airport manager had consistently recorded losses since 2000, it would be legitimate to assume that the activity would yield a return, notably given the imminent award to So.Ge.A.AL of the 'comprehensive' concession. When adopting each of the measures in question, public shareholders would have acted as prudent market economy investors.

(295) Given that at the time the capital injections were decided So.Ge.A.AL was in a precarious financial situation, it was the Commission's preliminary view in the 2012 Decision that a market economy investor would have required the implementation of a plan to restore the company's viability. The Commission considered that a private investor would only inject fresh capital in a company whose capital had dropped below the level that is legally required, as was the case for So.Ge.A.AL, if he could expect the company to return to viability within reasonable timescales. No such plan had at that time been provided to the Commission and, as explained in recitals 301 to 311, the various business plans prepared by or for So.Ge.A.AL over the period during which the capital injections were carried out did not form a sound basis which shareholders guided by profitability prospects would have found sufficient to expect a reasonable return.

(296) In the course of the investigation Italy provided the Commission with several documents it claimed should be considered as the business plans on which the decisions to recapitalise So.Ge.A.AL were based. Italy also claimed that from the perspective of a private investor, the compensation of So.Ge.A.AL's losses might be validly justified not only by the presence of a strategic restructuring programme with good long-term profit prospects, but also by considerations other than mere financial profitability, notably more general public interest objectives such as regional development. The business plans submitted by Italy are detailed in recitals 59-75.

(297) In that regard the measures implemented by the State, RAS and SFIRS, are not in line with the behaviour of a market economy investor guided by profitability prospects. Throughout the period 2000 to 2010, the State, RAS and SFIRS constantly provided the financial support necessary to keep So.Ge.A.AL alive. The Commission considers that So.Ge.A.AL's financial situation was such that no private operator would have covered its losses over such a long duration, without a credible and realistic prior assessment showing that it would be more cost-effective to continue covering losses instead of restructuring the company.

(298) The Commission cannot accept either Italy's argument that public interest objectives should be taken into account when assessing the business rationale of a public investor. Based on settled case law, if the public shareholders were acting as a private market investor, they would not be guided by public interest objectives and the investment would have to be profitable in itself.

(299) Since in the course of the investigation So.Ge.A.AL claimed that the economic rationale of the measures should be assessed separately before and after the award of the comprehensive concession in 2007, the Commission assesses in turn the capital injections carried out in the period 2000-2007 and 2008-2010.

Capital injections in the period 2000 - 2007

(300) So.Ge.A.AL stated that the recapitalisations undertaken prior to 2007 were guided by the need to safeguard the business of the company, in view notably of the imminent award of the comprehensive concession. Based on information available at the time the decisions to inject capital into the company were taken, the perspective of the comprehensive concession being awarded was of crucial importance to So.Ge.A.AL's shareholders.

(301) In that sense the Commission considers that So.Ge.A.AL's business plans cannot be considered as a realistic basis for predicting the company's future performance in the period 2000 — 2010. Those plans made isolated reference to capital injections which would be required to bring capital back in line with legal requirements. In addition, they do not contain any indications that at the time the capital injections under investigation were decided, So.Ge.A.AL's public shareholders expected the company's return to viability and a return on their investment (in terms of dividends paid or increase in the value of the company's shares) which would outweigh the amount of the capital invested in the company. Nor do the plans contain an analysis of alternative scenarios that a diligent private investor would require before undertaking such substantial capital injections into the company.

(302) The Commission notes that only one of the documents referred to by Italy as business plans predates the date of the first capital injection decision. Although the 1999 business plan mentions that So.Ge.A.AL would need to be recapitalised, it does not provide for an assessment showing that it would be more cost-effective for the company's shareholders to cover losses of the airport manager instead of adopting restructuring measures aimed at increasing the efficiency of the airport manager within a timeframe acceptable to a private investor. Moreover, the 1999 business plan does not indicate that So.Ge.A.AL would become profitable following the capital injections.

(303) In addition, the 1999 business plan was based on the assumption So.Ge.A.AL would be awarded the comprehensive concession that same year. The Commission considers that a prudent private investor would have reassessed the strategy and considered restructuring options when it became evident that award of the concession would be delayed and the objective of a return to profitability was not going to be achieved.

(304) No measures were proposed to restructure So.Ge.A.AL in the Roland Berger plan either, the only business plan assessing So.Ge.A.AL's financial situation under two scenarios — 'comprehensive' versus 'temporary' concession. The Roland Berger plan concluded that So.Ge.A.AL would continue to record losses in a temporary concession scenario without however proposing any remedial measures. Such lack of information would have dissuaded any private investor from pursuing the strategy in question, in particular giving the lack of any certainty in respect of the actual date of award of the comprehensive concession to So.Ge.A.AL. The Commission also notes that the Roland Berger plan was considered to be insufficiently reliable by So.Ge.A.AL itself (see recital 57).

(305) The 2005 business plan was drawn up in view of the award of the comprehensive concession. While it provided for a forecast of revenues and costs for the forty-year duration of the concession for the management of the airport, on the assumption that the concession is granted to So.Ge.A.AL in 2006, the plan did not propose measures to address the weaknesses of the underperforming handling business, which was considered in the 2004 Roland Berger plan as below sector average and was expected to continue generating losses on the medium term.

(306) On this basis, the Commission considers that none of the above-mentioned plans forms what a prudent market economy operator would have considered as a reliable basis to carry out the investments in question.

Capital injections in the period 2008-2010

(307) A private investor would in any event have re-assessed the strategy in the 2010 business plan, in particular given that by virtue of Article 14*bis* of the Convention, the concession was to be revoked if So.Ge.A.AL did not reach viability within four years from the date such concession entered into effect, namely by 2011. The 2010 plan however projected the company's return to viability only one year later than 2011, i.e. in 2012, also taking into account a recapitalisation of the company envisaged for 2010.

(308) The shareholders' decision to continue covering So.Ge.A.AL's losses with no restructuring programme in place even when economic performance following the award of the comprehensive concession showed that an upturn in profitability within the timelines imposed by the Convention was unlikely, cannot be equated to the conduct of a private investor.

(309) Furthermore, So.Ge.A.AL stated that unforeseen events had a negative impact on its results after 2007 and referred in particular to the effects on its turnover of the economic downturn as a consequence of which the company would have recorded a 1,8 % fall in passenger traffic. In addition, So.Ge.A.AL claimed that traffic did not develop as it had been forecasted due to the delay in the execution of infrastructure works at the airport and the lack of a revision by ENAC of the level of airport charges.

(310) In that respect the Commission notes that Italy did not provide any means of evaluating the effects of the unforeseen events in question. There is no evidence that the 1,8 % drop in traffic could be imputed to the economic crisis.

(311) On that basis, the decisions to recapitalise So.Ge.A.AL do not appear to have been based on economic evaluations comparable to those which, in the relevant circumstances, a rational private market investor in a similar situation would have carried out, before making such investments, in order to determine their future profitability.

(312) The Commission also notes that both Italy and So.Ge.A.AL confirmed that the capital injections were primarily agreed so as to satisfy regulatory requirements. However, the Commission considers that compliance with regulatory capital requirements cannot by itself justify that a private market investor injects further capital into the company. Investors are often obliged by law to contribute additional equity to firms whose capital base has been eroded by continuous losses to below a predetermined level. Private investors faced with such a situation would also consider all other options — including the liquidation or run-down ([80]) — and choose the one which is financially the most advantageous.

(313) Consequently, the Commission concludes that the capital injection decisions So.Ge.A.AL did not comply with the MEOP and therefore provided So.Ge.A.AL with an economic advantage.

12.1.1.5. *Selectivity*

(314) In order to fall within the scope of Article 107(1) of the TFEU, a State measure must favour 'certain undertakings or the production of certain goods'. Hence, only those measures favouring undertakings which grant an advantage in a selective way may qualify as State aid.

(315) In the case at hand, the Commission notes that Measures 1, 2 and 3 have only been provided to So.Ge.A.AL and are therefore selective within the meaning of Article 107(1) of the TFEU.

12.1.1.6. *Affectation of trade and distortion of competition*

(316) In order to be qualified as State aid, a financial measure must affect trade between Member States and distort or threaten to distort competition. In its assessment of those two conditions, the Commission is not required to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable given the circumstances to affect such trade and distort competition ([81]). When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.

(317) As assessed in recitals 253-257, 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, which may compete between themselves to be entrusted with the management of a given airport. In this respect, the Commission underlines that notably with respect to low-cost carriers and charter operators, airports that are not located in the same catchment areas and in different Member States may also be in competition with each other to attract those airlines.

([80]) See Commission communication to the Member States (OJ C 307, 31.11.1993, p. 3), paragraph 36.
([81]) See for instance Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 44.

(318) 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 Treaty on the grounds that their financing by public authorities could not distort competition or affect trade between Member States. 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.'

(319) Alghero airport currently serves ca. 1,5 million passengers per year. The 2005 business plan provided by Italy foresaw passenger numbers to steadily increase by 4,5 % until 2010, 2,6 % from 2011 to 2025 and 3,78 % during 2006-2025, to around 2 800 000 million passengers approaching 2045. Furthermore, since 2000 Alghero airport has been serving a number of international destinations. In light of these facts, it must be considered that the economic advantage conferred on So.Ge.A.AL through the various measures at issue distorted or threatened to distort competition and were at least liable to affect trade between Member States.

12.1.1.7. *Conclusion on the existence of aid*

(320) Therefore, the Commission considers that the capital injections and the public financing for infrastructure, including 'fittings and works', and equipment constitute aid to So.Ge.A.AL.

12.1.2. **Lawfulness of the aid**

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

(322) The measures at issue have all been put into effect without being authorised by the Commission. Furthermore, based on the assessment in recitals 323 to 327 the aid measures under investigation in favour of So.Ge.A.AL cannot be considered as exempted from the notification requirement on the basis of the 2005 SGEI Decision, applicable to aid granted before 31 January 2012.

(323) The 2005 SGEI Decision exempted from the notification requirement State aid in the form of public service compensation granted to undertakings in connection with SGEIs which comply with the conditions stipulated therein. In particular, the 2005 SGEI Decision declared compatible State aid in the form of public service compensation to airports (i) for which the annual traffic does not exceed 1 000 000 passengers, (ii) with an annual turnover before tax of less than 100 million during the two financial years preceding that in which the SGEI was assigned, which receive annual compensation of less than EUR 30 million.

(324) The 2005 SGEI Decision only applied to aid in the form of public service compensation for a genuine SGEI. In order to benefit from an exemption, public service compensation for the operation of an SGEI had to also comply with the conditions set out in Articles 4, 5 and 6 thereof.

(325) Article 4 of the 2005 SGEI Decision required that the SGEI be entrusted to the undertaking concerned by way of one or more official acts, setting out, inter alia, the nature and duration of the public service obligations, the parameters for calculating, controlling and reviewing the compensation, and the necessary arrangements for avoiding and repaying any overcompensation. Article 5 of the 2005 SGEI Decision laid down that the amount of compensation had to be limited to what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit. Finally, Article 6 of the 2005 SGEI Decision required Member States to carry out regular controls to ensure that undertakings are not receiving compensation in excess of the amount determined in accordance with Article 5.

(326) According to Italy and So.Ge.A.AL, in this case the SGEI qualification of the management of Alghero airport should be inferred from the Convention. However, no explicit definition of the alleged SGEI mission entrusted to So.Ge.A.AL nor the rules governing So.Ge.A.AL's right to compensation were laid down in the Convention. Nor has So.Ge.A.AL made available to the Commission any other document outlining the scope of the presumed PSOs it had to discharge. Therefore, the Commission considers that the alleged entrustment act has not imposed genuine PSOs on the airport manager. Nor has it laid down the parameters for calculating, controlling and reviewing the compensation, and the necessary arrangements for avoiding and repaying any overcompensation. The requirements of Articles 4, 5 and 6 of the 2005 SGEI Decision relating to the content of the entrustment acts are therefore not met.

(327) The Commission considers that on this basis it cannot be concluded that the aid to So.Ge.A.AL was exempted from the notification requirement on the basis of the 2005 SGEI Decision.

(328) Therefore, the Commission concludes that Italy did not respect the stand-still obligation laid down by Article 108(3) of the Treaty and the measures at issue thus constitute unlawful State aid.

12.1.3. **Compatibility of the aid**

(329) Given that Measures 1, 2 and 3 constitute State aid within the meaning of Article 107(1) of the Treaty, their compatibility can be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article and Article 106(2) of the Treaty.

12.1.3.1. *Applicability of the Aviation Guidelines*

(330) Article 107(3) of the Treaty provides for certain exemptions to the general rule set out in Article 107(1) 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 Treaty, 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.

(331) 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 Treaty.

(332) According to the 2014 Aviation Guidelines, the Commission considers that the 'Commission notice on the determination of the applicable rules for the assessment of unlawful State aid' ([82]) applies to unlawful investment aid to airports. In that respect, 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. Accordingly, the Commission applied the principles set out in the 2005 Aviation Guidelines in the case of unlawful investment aid to airports granted before 4 April 2014. For unlawful investment aid granted before the entry into force of the 2005 Aviation Guidelines, when no compatibility criteria for investment aid to airports existed, the Commission must assess compatibility directly based on Article 107(3)(c) of the TFEU, also taking into account its decision practice. In this regard, the Commission considers that, for the purpose of assessment of the compatibility of investment aid granted to So.Ge.A.AL before the entry into force of the 2005 Aviation Guidelines, the criteria laid down by those guidelines should be applied by analogy.

(333) According to the 2014 Aviation Guidelines, the Commission considers that the provisions of the 'Commission 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 applied the principles set out in the 2014 Aviation Guidelines to all cases concerning operating aid to airports (pending notifications and unlawful aid) even if the aid was granted before 4 April 2014.

([82]) OJ C 119, 22.5.2002, p. 22.

12.1.3.2. *Investment or operating aid*

(334) 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"'. 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).

(335) Operating aid means 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' ([83]).

(336) In the course of the investigation ([84]) Italy claimed that the public financing of airport infrastructure investments could generally be assessed:

(a) as investment aid at the level of the full amount of the funding made available to So.Ge.A.AL to cover investment costs, or alternatively

(b) as operating aid, amounting to the difference between a market based concession fee, if any, and the concession fee effectively due by the airport manager for the right to manage the airport.

(337) Italy claimed that in this case the public financing in question must not be qualified as investment aid to So.Ge.A.AL. This is first because the State retained ownership of the infrastructure in question and second because prior to the date of award of the comprehensive concession in 2007, the airport manager was not responsible for investments in infrastructure at Alghero airport, but rather acted on behalf of the State for the maintenance of the airport infrastructure.

(338) In the light of the position taken by Italy and the definitions provided for in the 2014 Aviation Guidelines, it can be considered that:

(a) the capital injections after 12 December 2006, which were used to cover annual operating losses of So.Ge.A.AL, constitute operating aid in favour of So.Ge.A.AL;

(b) the State financing for infrastructure, 'fittings and works', and equipment until the award of the comprehensive concession in 2007 constitutes operating aid in favour of So.Ge.A.AL. Indeed, prior to this award it was not for So.Ge.A.AL to finance investments at Alghero airport, but for the State as owner of the airport. Therefore, State financing for infrastructure, 'fittings and works', and equipment did not relieve So.Ge.A.AL of investment costs it should have normally borne. In order to act in accordance with the MEOP, the State should have required an increase in the concession fee due by So.Ge.A.AL to ensure the profitability of their investments. It follows that the aid takes the form of a concession fee (which for an airport manager such as So.Ge.A.AL constitutes an operating cost) that was lower than it should have been. Since following the award of the comprehensive concession for the management of the airport infrastructure investments fell within the responsibility of So.Ge.A.AL, the public financing of such investment constitutes investment aid. However, in any event, in what follows the Commission has assessed the compatibility with the internal market of the financing of infrastructure investments at Alghero (i) under the assumption that it would constitute investment aid (see recitals 339-367) as well as (ii) under the assumption that they would constitute operating aid (see recitals 368-374). As part of its assessment under (ii), the Commission also analysed the compatibility with the internal market of the capital injections (Measure 1), which clearly constitute operating aid.

12.1.3.3. *Compatibility of the aid for infrastructures and equipment (Measure 2 and 3) under the assumption that it is investment aid*

(339) The Commission first notes that according to the 2005 Aviation Guidelines, eligible costs of investments in an airport must be limited to construction of airport infrastructure and equipment (runways, terminals, aprons, control tower) or facilities that directly support them (fire-fighting facilities, security or safety equipment). Eligible

([83]) Point 25(v) of the 2014 Aviation Guidelines.
([84]) Letter of Italy of 8 May 2014.

costs must exclude costs not directly linked to the airport's core activities, including the construction, financing, use and renting of land and buildings, not only for offices and storage but also for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks.

(340) In this case the public funds were directed to the financing of the new passenger terminal, the renovation of the old terminal, the upgrading of the taxiway, the expansion of aircraft parking areas, the upgrading of the runway, the realisation of the baggage control system and the implementation of a system of perimeter control. Those investment costs are eligible for financing under the 2005 Aviation Guidelines.

(341) As concerns compatibility with the internal market of the public financing under investigation, in accordance with point 61 of the 2005 Aviation Guidelines, the Commission examines in particular whether:

(a) the construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.);

(b) the infrastructure is necessary and proportional to the objective which has been set;

(c) the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;

(d) all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;

(e) the development of trade is not affected to an extent contrary to the Union interest.

(342) In addition to the requirement to satisfy specific compatibility criteria specified in the 2005 Aviation Guidelines, State aid to airports, as any other State aid measure, should have an incentive effect and be necessary and proportional in relation to the aimed legitimate objective in order to be cleared as compatible ([85]). Therefore, in addition to the criteria listed in recital 341, the Commission assessed the incentive effect as well the necessity and proportionality of the aid in question.

(i) Clearly defined objective of general interest

(343) The measures under assessment aimed, inter alia, at financing the construction of a new terminal with a capacity of 2 000 000 passengers because the old terminal (capacity of 800 000 passengers) was congested already in 2003 ([86]). In addition, the investment aid was used to finance a number of measures that helped adapting the airport to new safety and security requirements with a view to keeping it fully operational.

(344) According to Italy, the overall aim of the financing of the infrastructure at Alghero airport was the development of safe and viable transport infrastructures and regional connectivity. According to Italy, regional airports have an instrumental role to play in promoting accessibility to catchment areas and the investments at issue improve airport safety, security and efficiency, whilst contributing towards the achievement of wider regional development objectives.

(345) Besides, Italy underlines that the GDP per capita in Sardinia is, on average, much lower than in Italy, and the unemployment rate is substantially higher than the Italian average. For example, between 2003 and 2012, the average unemployment rate in Sardinia was 13,3 % compared with 7,9 % in Italy. Therefore, any increase in traffic flows arising from the development of infrastructure at Alghero airport is likely to produce associated social and economic benefits for Sardinia, in terms of both economic and social cohesion, as well as the development of the island.

(346) Those comments are consistent with the conclusions of the Accuracy Report, which acknowledged that the development of the air transport sector in Sardinia is particularly important for the area's regional development. The Accuracy Report highlights an example of the potential magnitude of the positive economic benefits arising from developing aviation infrastructure in Sardinia. According to a study mentioned in the Accuracy Report, the development of air transport infrastructure at Cagliari Airport (based in Sardinia) led to positive economic effects of approximately EUR 140 million per year.

([85]) See for instance Commission Decision in case SA.34586 — *Greece — Chania Airport Modernisation*, recital 49.
([86]) The 'reconstruction' of the old terminal mentioned in Table 5 above relates to the expansion/construction of the new terminal and is therefore included in the description of the aid for the new terminal.

(347) In addition, the only convenient mode of transport to/from Sardinia is air travel, apart from ferry services, which however involve considerably higher travel times. For example, although Sardinia is served by ferry routes from Spain and mainland Italy, the average duration of a ferry journey is in excess of nine hours.

(348) The development of infrastructure at Alghero airport was therefore part of Sardinia's plans to improve connectivity through the development of regional airports. Accordingly, the Commission can conclude that the public funding provided for infrastructure upgrading at Alghero airport meets the clearly defined objectives of improving safe and viable transport infrastructure and regional accessibility. Therefore, the development of infrastructure at Alghero airport was in the common interest, as the investments were expected to generate positive external effects in terms of economic and social development.

(ii) Necessary and proportionality of the infrastructure to the set objective

(349) Investment aid can only be declared compatible when it is necessary and proportionate to the set objective of general interest. That is in particular the case when the investment does not constitute a duplication of an existing under-utilised infrastructure.

(350) The State aid to fund the investments at Alghero airport was required in order to increase the airport's capacity and therefore ensure its long-term viability. Before the investments were undertaken, Alghero airport's capacity was only 800 000 passengers. Alghero airport had reached capacity constraints in 2003 and 2004, and, therefore, investments were required to enable it to handle more passengers. In addition, certain improvements required to meet safety standards were implemented, which facilitated a better use of the existing airport infrastructure and thereby contributed to the regional development and connectivity of the airport's catchment area.

(351) The investments led to an increase in the airport's capacity from 800 000 passengers in 2003 to 2 000 000 passengers in 2004. As of 2011, passenger traffic at the airport reached approximately 70 % of the airport's capacity. According to Italy, it is foreseeable that passenger traffic would have been at higher levels if the financial crisis had not occurred.

(352) The Ecorys Report acknowledges that the development of tourism required the expansion of Alghero airport's terminal capacity in order to accommodate the anticipated growth in traffic. As mentioned above, according to the Ecorys Report, prior to the investments being undertaken at Alghero airport, the development of the tourism sector was impeded by a lack of international connectivity. Indeed, So.Ge.A.AL's business plan from 2004 predicted that total passenger numbers at the airport would increase by approximately 30 % in 2008 compared to levels prior to the expansion of the airport's capacity in 2004. This level of passenger traffic could not have been accommodated without the investments.

(353) In addition, the new investments did not constitute a duplication of existing non-profitable infrastructure since the three closest airports are not located in the same catchment area (see recital 33). Although Alghero airport is one of three airports on Sardinia (together with Cagliari and Olbia) that serve commercial airlines, neither of the other two airports is located in the same catchment area. Olbia and Cagliari are located, respectively, 128 km and 235 km away from Alghero airport. In its 2007 Decision, the Commission concluded that Alghero airport is not substitutable with these other two airports, due to its location and the features of the transport network in Sardinia. The investments did not therefore constitute a duplication of existing non-profitable infrastructure.

(354) The Commission can therefore conclude that the supported investments were necessary and proportional to the objectives of connectivity and regional economic development, the furtherance of which the measures at issue effectively contribute to.

(iii) Medium-term prospects for use, in particular as regards the use of existing infrastructure

(355) The investments allowed Alghero airport to be compliant with airport safety requirements and to adapt to the transport needs of its catchment area.

(356) Upon award of the 'comprehensive' concession for the management of Alghero airport, So.Ge.A.AL was rolling out an investment program to adapt airport infrastructure and equipment in order to deal with the growth in numbers of passengers carried. In total, based on the 2005 business plan the planned investments at Alghero airport over the period of the concession amounted to EUR 143,3 million ([87]).

(357) So.Ge.A.AL's business plan from 2004 predicted that total passenger numbers at Alghero airport would increase by approximately 30 % in 2008 compared to levels prior to the expansion of the airport's capacity in 2004. That level of passenger traffic could not have been accommodated without the investments under assessment in this case. Later developments by and large confirm these expectations. Indeed, So.Ge.A.AL has been able to achieve a significant growth in its traffic in line with its expectations. As of 2011, passenger traffic at the airport reached approximately 70 % of the airport's capacity. According to Italy, passenger traffic would have been at higher levels if the financial crisis had not occurred.

(358) Therefore, the Commission concludes that in the medium term, the upgraded infrastructure offered good perspectives for use.

(iv) Equal and non-discriminatory access to the infrastructure

(359) According to the information submitted by Italy, and notwithstanding any justified price differentiation applied in individual airline agreements, the infrastructure has always been open to all potential users without discrimination.

(v) The development of trade is not affected to an extent contrary to the Union interest

(360) Until 2005 Alghero qualified as category D airport as defined by point 15 of the 2005 Aviation Guidelines. The 2005 Aviation Guidelines laid down that funding to category D airports is unlikely to distort competition or affect trade to an extent contrary to the common interest. On that basis, in the 2012 Decision the Commission considered that before 2005 the aid did not affect trade to an extent contrary to the common interest. Neither Italy nor interested parties have contested this preliminary finding in the course of the investigation.

(361) Besides, no other airport is located in the same catchment area. As shown in recital 33, the closest airport is situated more than 120 km away, in a region where road connections are mediocre, which reinforces the finding that Alghero airport is not substitutable to any significant extent by the other Sardinian airports from the passengers' perspective.

(362) Consequently, the Commission concludes that funding granted for the upgrading of the infrastructure (including 'fittings and works') and equipment of Alghero airport did not distort competition to an extent contrary to the Union interests.

(vi) Incentive effect, necessity and proportionality of the aid

(363) The Commission must also establish whether the State aid granted to Alghero airport changed the behaviour of the beneficiary undertaking in such a way that it engages in activity that contributes to the achievement of a public-interest objective that (i) it would not carry out without the aid, or (ii) it would carry out in a more restricted or different manner. In addition, the aid is considered to be proportionate only if the same result could not be reached with less aid and less distortion. This means that the amount and intensity of the aid must be limited to the minimum needed for the aided activity to take place.

(364) In this case the investment grants mainly related to the upgrading of the aprons, runway and taxiway, as well as the terminal. Long payback periods associated with investments in infrastructure, combined with the significant complexities and risks associated with large projects, imply that there may be difficulties attracting private capital. Smaller airports, such as Alghero airport, may face particular difficulties attracting private capital at the appropriate price to be able to undertake the necessary infrastructure projects.

([87]) As laid down by the '*Programma di Intervento "Investimenti" of the Programma di sviluppo per l'affidamento della gestione quarantennale*' approved in September 2005.

(365) According to the information submitted by Italy, absent the aid these investments could not have been carried out. Indeed, in view of the financial situation of So.Ge.A.AL, which accumulated losses throughout the 2000-2010 period under investigation to an extent that required a number of capital injections by the public authorities, it is clear that So.Ge.A.AL was not in a position to contribute significantly more to the financing of these investments than it actually did and had no possibility to obtain outside funding on the market. It can therefore be considered that the aid measures at stake were necessary and proportional to the need to meet the expected demand of airlines and passengers in the catchment area.

(366) The Commission therefore considers that the aid is limited to the minimum necessary for the aided activity to take place.

(vii) Conclusion

(367) The Commission considers that should the measures under scrutiny, which provide for public support for infrastructure investments at Alghero airport, be regarded as investment aid, they are compatible with the internal market pursuant to Article 107(3)(c) of the Treaty.

12.1.3.4. *Compatibility of the aid to So.Ge.A.AL (Measures 1, 2 and 3) under the assumption that they constitute operating aid*

(368) Operating aid granted before the entry into force of the 2014 Aviation Guidelines, that is before 4 April 2014, may be declared compatible provided that the following conditions are met:

(a) Contribution to a well-defined objective of common interest: this condition is fulfilled, inter alia, if the aid increases the mobility of Union citizens and connectivity of the regions or facilitates regional development ([88]);

(b) Appropriateness of State aid as a policy instrument: 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 ([89]);

(c) Need for State intervention: the aid should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver ([90]);

(d) Existence of incentive effect: this condition is fulfilled if it is likely that, in the absence of operating aid, and taking into account the possible presence of investment aid and the level of traffic, the level of economic activity of the airport concerned would be significantly reduced ([91]);

(e) Proportionality of the aid amount (aid limited to the minimum necessary): in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place ([92]);

(f) Avoidance of undue negative effects on competition and trade ([93]).

(369) The various operating measures granted to So.Ge.A.AL, which included in particular several capital injections, were aimed to allow the company to have enough capital to continue operating viably, both from an economic and a legal point of view. Similarly, the decisions of the public authorities to finance certain investments without requiring a corresponding increase in the concession fees paid by So.Ge.A.AL also contributed to maintaining the company afloat since higher concession fees would have translated in higher operating costs further worsening the financial situation of the company. Therefore, all these measures contributed to keeping Alghero airport up and running. In view of the role played by the airport in the accessibility of the region and regional economic development, as explained in recitals 343-348, the Commission considers the operating aid to So.Ge.A.AL contributed to the achievement of an objective of common interest.

([88]) Paragraphs 137 and 113 of the 2014 Aviation Guidelines.
([89]) Paragraphs 137 and 120 of the 2014 Aviation Guidelines.
([90]) Paragraphs 137 and 116 of the 2014 Aviation Guidelines.
([91]) Paragraphs 137 and 124 of the 2014 Aviation Guidelines.
([92]) Paragraphs 137 and 125 of the 2014 Aviation Guidelines.
([93]) Paragraphs 137 and 131 of the 2014 Aviation Guidelines.

(370) Since Alghero airport was loss-making in the period under investigation (see Table 3), it was the operating aid which enabled the airport to continue operations ensuring connectivity of the Sardinia region. Therefore the Commission considers that the operating aid granted to Alghero airport was an appropriate instrument to achieve the objective of common interest.

(371) As regards necessity, the 2014 Aviation Guidelines require that the operating aid brings about a material improvement that the market itself cannot deliver. The Commission considers this to be the case as, absent the aid in question, So.Ge.A.AL would likely have been forced to exit the market, depriving Sardinia of a transport infrastructure which plays a significant role in its accessibility and development (tourism).

(372) Moreover, absent the aid the activity of the beneficiary would have been significantly reduced if not terminated altogether. The measures under investigation were limited to the minimum necessary to offset losses and allow So.Ge.A.AL to observe capital requirements and continue to operate viably. Such measures were necessary to keep the company afloat even once the effects of all the other (operating and investment) aids under investigation are taken into account. Therefore, the Commission concludes that all operating aid to So.Ge.A.AL was necessary and limited to the minimum necessary for the aided activity to take place.

(373) As stated in above, no other airport is located in the same catchment area. Moreover, Italy has confirmed that the airport infrastructure is made available to all airlines on non-discriminatory terms.

(374) On that basis, the Commission concludes that the compatibility conditions laid down by the 2014 Aviation Guidelines are complied with and therefore the measures are compatible with the internal market under Article 107(3)(c).

12.2. MEASURES IN FAVOUR OF AIRLINES OPERATING AT THE AIRPORT

12.2.1. **Existence of aid within the meaning of Article 107(1) of the Treaty**

(375) In this section, the Commission assesses whether the various agreements between So.Ge.A.AL and several airlines that fall within the scope of the investigation, constitute State aid to the airlines concerned within the meaning of Article 107(1) of the Treaty.

12.2.1.1. *State resources and imputability to the State*

(376) Any economic advantage involved in the contractual relations with the airlines operating at Alghero airport was not granted directly by the State, but by the state-owned airport manager So.Ge.A.AL. Assuming that such an economic advantage is present in any of the agreements under investigation, it is necessary to establish whether this advantage was financed through State resources and is imputable to the State.

(377) According to an established case-law, the resources of public undertakings (namely, undertakings on which the public authorities can exercise, be it directly or indirectly, a dominant influence), also qualify as State resources because these resources 'constantly remain under public control, and therefore [are] available to the competent national authorities' ([94]). In line with that case law, as So.Ge.A.AL is a public undertaking, its resources have to be considered as State resources for the purposes of Article 107(1) of the Treaty. Indeed, according to Article 2 of the Transparency Directive, a dominant influence by the public authorities shall be presumed when public authorities hold a major part in the company's subscribed capital, control the majority of the votes attaching to shares issued by the company, or can appoint more than half of the members of the undertaking's administrative, managerial or supervisory board. In the case of So.Ge.A.AL it appears that all three of these noncumulative criteria for presuming dominant influence by the State are met.

(378) So.Ge.A.AL and Ryanair contest the imputability to the State of the agreements with the airlines, while Italy and Unioncamere confirm it.

([94]) See for example case C-278/00 *Greece v Commission* [2004] I-03997, C-482/99 *France v Commission* [2002] I-04397 and joined Cases C-328/99 and C-399/00 *Italy and SIM 2 Multimedia v Commission* [2003] I-04035, paragraph 33.

(379) Both So.Ge.A.AL and Ryanair have in the course of the investigation claimed that the agreements concluded by Alghero airport with the airlines could be imputed to the State only based on an objective finding showing that the State had intervened in So.Ge.A.AL's decision to enter the agreements in such a way as to determine or influence them, in the sense that So.Ge.A.AL would have adopted a different behaviour had it been able to make an independent decision; they contended that this was not the case for either of So.Ge.A.AL's public shareholders. Based on case-law, the agreements concluded by So.Ge.A.AL with the airlines operating at the airport may be found to contain State aid pursuant to Article 107(1) of the Treaty only if the State was in a position to control So.Ge.A.AL and if the public authorities have 'been involved, in one way or another, in the adoption of those measures'. However, 'it cannot be demanded that it be demonstrated, on the basis of a precise inquiry, that in the particular case the public authorities specifically incited the public undertaking to take the aid measures in question.' ([95]). In order to conclude whether a specific measure can be imputed to the State the Commission may base its reasoning on 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 ([96]).

(380) As the Court established in Stardust Marine, the imputability of a measure to the State can be established either by 'organic' or 'structural' indicators or by indications that the State has been involved, or was unlikely to be absent, from the decision that led to the concrete measure. In the same judgment the Court established a non-exhaustive set of possible indicators relevant for the question of state imputability, as detailed in recital 268: the fact that the undertaking through the intermediation of which the aid has been granted had to take into account directives issued by governmental bodies; the integration of the public undertaking into the structures of the public administration; the nature of the undertaking's activities and the exercise of the latter on the market in normal conditions of competition with private operators; the legal status of the undertaking; the intensity of the supervision exercised by the public authorities over the management of the undertaking; and 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.

(381) The investigation in this case has confirmed that the conclusion of the agreements with the airlines is imputable to the State.

(382) First, the public ownership of So.Ge.A.AL, which translates into the entirety of the votes in the Shareholders Assembly and Board of Directors, implies that the State must be regarded as having an influence on So.Ge.A.AL's decision-making processes and being involved in the decisions taken by the company. Sardinia, given its participation in So.Ge.A.AL, has a majority of votes in the shareholders meeting. According to So.Ge.A.AL's Statutes, each nominal share entitles to one vote in the shareholders general meeting. The members of the Board of Directors are appointed to represent proportionally the majority shareholders' and the minority shareholders' participations.

(383) Second, the Commission notes that at no time has Italy claimed that the decision to enter the agreements with the airlines was taken by So.Ge.A.AL autonomously with no involvement of its shareholders. On the contrary, by letter of 18 February 2014, Italy submitted that:

— the agreements with the airlines have been negotiated by the Director-General of So.Ge.A.AL;

— the Director-General informed the Board of Directors on the status of the negotiations, the content of the agreements and the development prospects of the agreements in question;

— the Board of Directors approved generally with unanimity of the votes, the terms of the agreements with airlines prior to their signature.

(384) Moreover, Italy clarified that the conclusion of the agreements with the airlines operating at the airport for the promotion or start-up of new routes from Alghero was carried out in agreement with Sardinia and was an integral part of Sardinia's strategy to increase tourist flows to and from the island ([97]). In addition, the Commission considers that the nature of So.Ge.A.AL's activities (airport management) is another indication that the measures at stake are imputable to the State given that regional airports are often seen by local and regional authorities as an important tool for fostering local economic development.

(385) Third, in what follows the Commission shows that sufficient indications exist to the effect that the regional authorities have in fact incited the conclusion of the agreements in question, in particular — but not limited to — the agreements with the main airline operating at the airport, Ryanair. Those indications constitute evidence of imputability to the State in the sense of the *Stardust Marine* case-law ([98]).

([95]) *Stardust Marine* judgement, cited, paragraphs 52 and 53.
([96]) *Stardust Marine* judgement, cited, paragraph 56.
([97]) Letter of Italy of 18 February 2014, Annex A.
([98]) Case C-482/99 *France v. Commission*, cited.

(i) Regional authorities were informed of and were expected to contribute to the costs resulting from the agreements with the airlines

(386) The minutes of the meetings of the Board of Directors submitted by Italy in the course of the investigation demonstrate that Sardinia was informed of and consulted on the negotiation and agreed to the conclusion of contracts with the airlines operating at Alghero airport.

(387) By way of example, the minutes of the Board of Directors of 9 March 2000 indicate that the Board of Directors unanimously approved the agreements with airlines proposed by So.Ge.A.AL. So.Ge.A.AL reported in particular on the negotiations with Volare, Ryanair, Italair, Alpi Eagles, Air Dolomiti, Azzura and Gandalf Air. As concerns Volare, it was reported that a new agreement under negotiation laid down a fixed payment of 4 550 000 per air traffic movement ('ATM') and EUR 3 000 per passenger for a load factor of 60 %. The minutes of the Board of Directors of 18 December 2006 demonstrate that the Board of Directors was informed of the progress of the negotiations of the 2007 agreement with Germanwings.

(388) The consultation and agreement of the public authorities on the agreements concluded with the airlines operating at the airport was therefore not limited to Ryanair. For instance, based on the minutes of the Management Board of 10 February 2002, the start-up by French carrier Auris of a route to Paris was decided only subject to explicit agreement by the shareholders including their commitment to cover any resulting financial obligations.

(389) The involvement of the public authorities in the decision to conclude agreements governing the operations of various carriers at Alghero airport as detailed in recitals 382 to 388 is a strong indication that the public authorities were generally involved in the conclusion of such agreements, even for carriers not mentioned in the evidence detailed in recitals 382 to 388.

(ii) When concluding the agreements with the airlines, So.Ge.A.AL acted on mandate from the public authorities

(390) The Commission considers that sufficient indications exist that the conclusion of the agreements with the airlines was incited and coordinated by the State. For example, according to the minutes of the Shareholders Assembly meeting of 5 October 2001 So.Ge.A.AL was negotiating, 'in agreement with the shareholders', the start-up of an important route for Sardinia, namely the Alghero–London route, and temporarily bore the resulting costs, 'which should have been borne by the public entities'.

(391) The minutes of the Board of Directors meetings also demonstrate that, in concluding the agreements with the airlines, the management had to take the requirements of the public authorities into account. By way of example, in the meeting of the Board of Directors of 30 July 2004 the President of the Board informed of a meeting between different regional entities on the potential development of Ryanair's activities at the airport. Assurances were required from Sardinia as concerns the financing by regional funds of the costs connected with traffic development initiatives.

(392) The fact that, when concluding the agreements in question, So.Ge.A.AL acted under the influence of Sardinia is also evident in the 2000 ASA signed with Ryanair, which lays down that 'So.Ge.A.AL, having interested the territory's institutional bodies, among which the Autonomous Regional government, and having received ample interest and consent regarding the initiative in question, is concluding with the aforementioned [i.e. Ryanair] for the payment of an economic contribution sufficient to cover the entire undertaking of the present Agreement' (Preamble).

(393) According to the minutes of the meeting of the Board of Directors of 17 July 2009 it is clear that So.Ge.A.AL considered the co-marketing contributions to Ryanair as the result of political choices at regional level. Consequently, So.Ge.A.AL considered that the required financial means had to be ensured by the regional authorities. The company also inquired on the negotiating margin with the carrier, if any, 'given that So.Ge.A.AL's shareholders had not given the Board a mandate to terminate the agreement with the airline'.

(394) In the course of the investigation Ryanair claimed that the public authorities' interference in the decisional process of So.Ge.A.AL would have been insufficiently proven by the Commission. The circumstance that 'So.Ge.A.AL and Sardinia signed agreements in 2004, 2005, 2006 and 2007 for co-marketing contributions' would only support the position that Sardinia was financing So.Ge.A.AL, but not that it was directing So.Ge.A.AL's action towards Ryanair or AMS.

(395) The Commission cannot accept Ryanair's argument. First, as mentioned in recital 384, in the course of the investigation Italy explicitly confirmed that the conclusion of the agreements with the airlines was an integral part of Sardinia's strategy to increase tourist flows to and from the island. The references to the discussions between So.Ge.A.AL and its public shareholders underlying the regional and economic development objective pursued by RAS in respect of the agreements concluded by So.Ge.A.AL with carriers operating at Alghero airport show that So.Ge.A.AL implemented regional policies within the instructions and guidelines received from the public entities.

(396) Therefore, the Commission concludes that the agreements entered into by So.Ge.A.AL and various carriers operating at Alghero airport and which are subject to the formal investigation procedure are imputable to the State.

12.2.1.2. *Economic advantage*

(397) In the course of the investigation Italy claimed that, when concluding each of the agreements with airlines that fall within the scope of this investigation, So.Ge.A.AL acted as a prudent MEO guided by profitability perspectives would have done in a similar situation, such that the measures under assessment do not confer any economic advantage that the airlines would not have obtained under normal market conditions.

12.2.1.2.1. General considerations

(398) According to the 2014 Aviation Guidelines, by virtue of the MEOP, aid to an airline using an airport can, in principle, be excluded where:

— the price charged for the airport services corresponds to the market price, or

— it can be demonstrated through an *ex ante* analysis, namely an analysis based on the data which would have been available at the moment the measures in question were decided, that the airport/airline arrangement could be expected to lead to a positive incremental profit contribution for the airport ([99]).

(399) In addition, according to the 2014 Aviation Guidelines, '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.' ([100]).

(400) As concerns the first approach mentioned at recital 398 (comparison of the price charged for airport services with the market price), the Commission has strong doubts that an appropriate benchmark can be defined so as to establish the market value of the services provided by airports. At present the Commission considers *ex ante* incremental profitability analysis to be the most relevant criterion for the assessment of arrangements concluded by airports with individual airlines ([101]).

(401) It is worth noting in this sense that in general the application of the MEOP in reference to an average price observed on comparable markets may be reliable to the extent a market price may be identified or deducted from other market indicators. However, that method is in general unreliable in the case of airport services. Indeed, the structure of costs and revenues tend to differ quite significantly from one airport to another. Those costs and revenues depend on the development of the airport, the state of the airport infrastructure, the number or aid carriers operating at the airport, the airport's capacity, the regulatory framework at national level, which may be different from one Member State to another, as well as the deficits and obligations incurred by the airport in the past.

([99]) 2014 Aviation Guidelines, point 53.
([100]) 2014 Aviation Guidelines, point 66.
([101]) 2014 Aviation Guidelines, points 59 and 61.

(402) Moreover, the liberalisation of the air transport market complicates any purely comparative analysis. As can be seen in this 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 adapting the spread of risks during the term of the agreements. Consequently, one transaction cannot easily be compared with another based on a turnaround price or price per passenger.

(403) In the course of the investigation Ryanair has claimed that in order to exclude an economic advantage that would not be obtained under normal market conditions the charges in the agreements with the airlines operating at Alghero airport have to be compared with charges paid by Ryanair at similar airports over an appropriate timeframe. […] Airports have been selected by Ryanair as the most relevant comparators for the purposes of this analysis ([102]).

(404) […] is ultimately owned by […], which is in turn owned by various local authorities from the […] area. Ryanair noted that […]'s annual reports do not provide any indication of State funding, and that the airport has made profits every year since at least […]. Ryanair's operations at […] Airport started in […]. The airport has consistently been privately owned, which in Ryanair's view would suggest that the airport can be used as a comparator in the application of the MEO test.

(405) According to Ryanair, the results from comparing the data on charges paid by Ryanair at Alghero airport with charges at comparable airports are mixed. If it is assumed that no municipal tax is returned to the region, the charges payable by Ryanair at Alghero airport are, on average, lower than those at comparators on both a per-passenger and a per-aircraft basis. However, if it is assumed that a proportion of the municipal tax — specifically, 66 %, based on information provided by Ryanair — is returned to the region, average charges paid by Ryanair at Alghero airport are higher than at those paid at […] Airport, although still lower than those paid at […] Airport. Ryanair suggests that this could be partly explained by the lower GDP in Sardinia, compared with the GDP in […] and […].

(406) Hence, Ryanair acknowledges that the results from the comparison of charges paid by Ryanair at Alghero airport with those paid at […] Airports are mixed and that the differences in the results may be due to a number of reasons, such as the choice of comparator airports.

(407) The Commission agrees that a benchmarking of airport charges cannot be excluded outright as a possible approach to assess the presence of aid to airlines. However, the identification of a benchmark requires that a sufficient number of comparable airports providing comparable services under normal market conditions can be selected. According to paragraph 54 of the 2014 Aviation Guidelines, an appropriate benchmark among airports whose managers behave as MEO has to be identified on the basis of available and relevant market prices. This benchmark should take into account indicators such as traffic volumes, type of traffic, the importance of freight and the relative importance of revenue stemming from the non-aeronautical activities of the airport, type and level of airport services provided, proximity of the airport to a large city, number of inhabitants in the catchment area of the airport, prosperity of the surrounding area (GDP per capita), and the different geographical areas from which passengers could be attracted.

(408) In that respect the Commission notes that, even if some airports are privately owned or managed without social or regional considerations, the prices charged by these airports might be strongly influenced by the prices charged by other publicly subsidized airport managers as these latter prices are taken into account by airlines during their negotiations with the privately owned or managed airports.

(409) In this case, the Commission notes that Ryanair itself considered that as Alghero airport is located on an island, with not many large cities or airports in proximity, it is difficult to find comparators with nearly identical characteristics. Ryanair further noted that the mixed results of the benchmarking exercise could be explained by the difference in GDP in Sardinia, compared with the GDP in the areas where potential comparator airports are located.

([102]) The 2011 MEOP Report.

(410) Finally, the Commission notes that even if reliable comparators were available, a benchmarking exercise would in any event not have been possible in the present case. Indeed, the arrangements under investigation include airport services and marketing agreements which lay down different 'prices', namely different airport charges, handling charges and the marketing fees. Some of those charges depend on the number of passengers, some on the number of turnarounds, whilst others are fixed. Therefore each of those agreements imply complex financial flows between the airport manager and the airlines (and their subsidiaries) operating at the airport, namely airport charges, handling fees and marketing fees.

(411) Therefore the Commission considers that a comparison between the airport charges charged by So.Ge.A.AL to the airlines operating at Alghero airport with the airport charges payable at comparator airports would not provide any useful indication for the purpose of applying the MEOP. In order for such a benchmarking exercise to produce reliable results, it would be necessary that at least comparable arrangements are found at the comparator airports, which should include in particular similar marketing payments and handling fees. Given the specificity and complexity of the arrangements at stake, the Commission considers that such benchmarking exercise cannot be carried out, notably also given that the prices charged for handling services and marketing services are rarely made public and would therefore not be readily available for the purpose of such exercise. Neither has Ryanair provided such data for the two comparators.

(412) In any event, even if it would be assumed that a benchmarking exercise could be carried out with similar arrangements in force at comparable airports, which would lead the Commission to conclude that the 'prices' in question are equivalent or even superior to the 'market price', the Commission could not conclude on this basis that the arrangements under investigation are market-conform if it would turn out that at the moment the arrangements in question were entered into by the airport manager, the later could have reasonably expected that they would result in incremental costs in excess of incremental revenues. Indeed, a MEO would not have had any interest in offering its goods or services at 'market price' if this was expected to result in incremental losses.

(413) Therefore the Commission considers that the airline arrangements at airports put forward by Ryanair as allegedly relevant comparators cannot constitute an appropriate benchmark to establish the market price for services provided by So.Ge.A.AL to the different airlines at Alghero airport. In the absence of an identifiable market benchmark, the Commission considers that the *ex ante* incremental profitability analysis is the relevant criterion for the assessment of arrangements concluded by the airport with individual airlines.

(414) 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 […]' ([103]).

(415) 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 such as incremental personnel, equipment and investment costs induced by the presence of the airline at the airport as well as the costs of the marketing grants and other financial incentives. On the contrary, costs which the airport would have to incur anyway independently from the arrangement with the airline should not be taken into account in the MEOP assessment.

(416) The Commission also notes in this context that price differentiation (including marketing support and other incentives) is a standard business practice. There can be various reasons for not offering the same conditions to all airlines. In particular, it can be rational to offer specific financial incentives (including in the form of marketing grants) and specific discounts to the published airport charges to airlines that bring a high number of passengers to the airport. Those favourable conditions can be objectively justified by the expected additional

([103]) *Charleroi* judgment, cited, paragraph 59.

traffic, in view of the non-aeronautical revenues brought about by that additional traffic ([104]) and also because, even if the margin per passenger generated by the airport charges paid by the airline is reduced by the discounts and financial incentives, this margin may be significant in absolute terms in light of the numbers of passengers at stake. For the purposes of assessing whether such discounts and financial incentives confer an economic advantage, it must be determined whether, when the airport manager took the decision to offer them, it could reasonably expect this decision to be profitable, or in other words, to lead to a higher profit (or lower losses) than would be achieved in the counterfactual situation.

(417) Besides, the Commission notes that the agreements concluded by So.Ge.A.AL with the airlines operating at the airport were part of the long term strategy of the airport. It is evident from So.Ge.A.AL's business plans (see recitals 59-75) that it relied on low-costs airlines as major growth driver and that it was expected to reverse previous declines and return to viability once it was awarded the comprehensive concession for the management of Alghero airport. Therefore, the condition mentioned at recital 399 is satisfied by all contracts under assessment. It results from all that precedes that for each agreement under investigation, if it can be established that at the time when it was concluded, a MEO guided by profitability prospects and acting in lieu of So.Ge.A.AL could have expected the future incremental costs to be generated by the agreement to be offset by future incremental revenues, then this agreement complies with the MEOP and does not constitute State aid.

12.2.1.2.2. On the joint assessment of the ASAs with Ryanair and marketing agreements with AMS

(418) In the 2012 Decision, the Commission considered that for the purpose of application of the MEOP, the ASAs with Ryanair and the marketing services agreements with Ryanair and AMS and their financial consequences had to be assessed together as one single measure. Ryanair did not dispute that the marketing agreements concluded directly between Ryanair and So.Ge.A.AL in 2002 and 2003 should be assessed together with the 2002 and 2003 ASAs.

(419) However, Ryanair rejected the preliminary conclusion of the Commission that Ryanair and AMS must be considered as a single entity and a given ASA entered into by So.Ge.A.AL and Ryanair, and a marketing service agreement entered into by So.Ge.A.AL and AMS at the same time should be assessed jointly for the purpose of assessment of the existence of an economic advantage. According to Ryanair, the ASAs concluded with Ryanair and the marketing services agreements concluded with AMS would be separate and independent, they would relate to different services and would not be subject to any contractual or other link between them justifying their consideration as a single set of measures. That view was supported by AMS.

(420) In that sense, the Commission notes that there are several indications clearly pointing towards the fact that the agreements are to be evaluated as one single measure since they were concluded within the framework of a single transaction.

(421) First, the agreements were concluded by the same parties at the same time:

(a) 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 in the interest and under the control of Ryanair. For the present agreements, this can also be inferred from the fact that the respective marketing agreement states in its preamble that 'AMS has the exclusive license to offer marketing services on the travel website www.ryanair.com, the website of the Irish low fares airline Ryanair.' Therefore, if So.Ge.A.AL intended to promote a Ryanair destination and the surrounding regions, then this can only be done via AMS;

(b) The respective agreements in all cases were concluded on the same dates.

(422) Second, the preambles of the 2006 and 2010 marketing agreements with AMS state that the 'website www.ryanair.com provides a unique opportunity for targeting millions of potential Ryanair passengers and presents extensive information about airports, cities and regions that Ryanair operates to'. This indicates that the purpose of the marketing agreement is not generally to promote Sardinia, but more specifically to maximise ticket sales

([104]) This refers to revenues flowing to the airport manager as a result of the additional business of car parks, shops, restaurants etc. generated by the additional passengers.

for the Ryanair destination Alghero. Indeed, the preambles state that So.Ge.A.AL is to target Ryanair passengers in order to promote tourism and business opportunities in the region, and in particular Alghero airport as a destination.

(423) Third, the marketing agreements with AMS state in their first section, entitled 'Purpose of the Agreement', that they are 'rooted in the Ryanair's commitment to operate on routes between Alghero and EU destinations' (the 2006 agreement mentions London-Stansted, Barcelona Gerona, Frankfurt Hahn, Pisa, Liverpool and Rome). This wording establishes an unambiguous direct link between the airport service agreements and the marketing agreements in the sense that one would not have been concluded without the other. The marketing agreements are based on the conclusion of the airport services agreements and the services provided by Ryanair.

(424) Fourth, the marketing agreements state in their preamble that So.Ge.A.AL has decided to 'actively promote the city of Alghero and the region 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 agreements has as its primary and specific purpose to promote specifically Alghero airport and the surrounding region and is therefore linked to the conclusion of the airport services agreement by Ryanair.

(425) Fifth, the marketing agreements can be terminated immediately by So.Ge.A.AL in the event that Ryanair stops operating the abovementioned routes. This demonstrates again that the marketing agreements and the ASAs are inseparably linked.

(426) Finally, the Commission notes that it is clear from the analysis of So.Ge.A.AL's 2000 annual report that the marketing support had been asked by Ryanair as a condition for the operation of the London route at the time the 2000 ASA was entered into. This reading is also confirmed by the fact that the marketing support costs were considered by So.Ge.A.AL an operational cost of the Ryanair route, rather than an investment in brand development as claimed by Ryanair and AMS.

(427) In conclusion, the marketing service agreements concluded by So.Ge.A.AL and AMS are indivisibly linked to the ASAs signed by Ryanair and So.Ge.A.AL. The considerations in recitals 421 to 426 demonstrate that without the ASAs, the marketing services agreements would not have been concluded. For those reasons, the Commission concludes that the ASAs and the marketing services agreements are not severable and therefore finds it necessary to analyse each marketing service agreement together with the ASA that was concluded at the same time, with a view to determining whether such a transaction constitutes State aid.

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

(428) For the purpose of application of the MEO test in this case the conduct of RAS and So.Ge.A.AL has to be compared with that of a prudent MEO entrusted with the management of the Alghero airport, guided by profitability prospects. This 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 test 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' ([105]).

(429) When analysing the measures in question, it is necessary to examine the benefits that this hypothetical MEO, motivated by the prospect of profits, could gain from purchasing marketing services. This analysis should not take into account the general impact of such services on tourism and the region's economic performance. Only the impact of those services on the airport's profitability should be taken into account, as this would be the only concern for a hypothetical MEO.

([105]) Case 40/85 *Belgium v Commission* [1986] ECR I-2321.

(430) Marketing services have in principle the potential to stimulate passenger traffic on the air routes covered by marketing service agreements and the ASAs, as the marketing services are designed to promote those air routes. Although this impact will mainly benefit the airline concerned, it may also be of benefit to the airport manager. In addition, an increase in passenger traffic may lead to an increase in revenues generated by certain airport charges for the airport manager, as well as an increase in non-aeronautical revenues, in particular from car parks, restaurants and other businesses located at the airport, and whose turnover fully or partly accrue to the airport manager.

(431) Therefore, an MEO operating Alghero airport instead of So.Ge.A.AL and RAS would have taken this possible positive effect into account when considering entering into a marketing service agreement and the corresponding ASA. The MEO would have taken into account the impact of the air route in question on future revenues and costs by, in this case, estimating the increase in the number of passengers using those routes, which would have reflected the possible positive effect of marketing services in the form of a higher expected load ratio (or load factor) ([106]) for those air routes. Moreover, this effect would have been evaluated for the entire term of operation of the air routes in question, as set out in the airport service agreement and the marketing service agreement.

(432) The Commission agrees with Ryanair on this issue, namely that marketing service agreements do not just generate costs for the airport manager, they can also be expected to bring benefits with them.

(433) In addition, it has to be determined whether other benefits such as brand image could reasonably be expected and quantified for a hypothetical MEO operating Alghero airport, that is to say, other than the benefits from the positive effect on passenger traffic on the air routes covered by the marketing service agreement during the term of operation of these routes, as set out in the marketing service agreement or the airport service agreement.

(434) Ryanair supports this argument, in particular in its study of 17 January 2014. The study is based on the theory that marketing services acquired by an airport manager will help to improve the airport's brand image and, as a result, to sustainably increase the number of passengers using this airport and not just the numbers on the air routes covered by the marketing service agreement and the airport service agreement for the term of operation set out in these agreements. In particular, Ryanair argued in its study that these marketing services will have sustainable positive effects on passenger traffic in the airport even after the marketing service agreement has expired. This view is shared by Italy and the benefits of the marketing services have been taken into consideration in the reconstructed *ex ante* profitability analysis of the agreements with Ryanair as summarised in Table 8 below.

(435) It should first be noted that there is nothing to suggest that, when the marketing service agreements covered by the formal investigation procedure were entered into, the airport manager or RAS ever considered, still less quantified, the marketing service agreements' possible beneficial effects on air routes additional to those covered by the agreements, or the possibility of such effects continuing after the agreements had expired.

(436) In addition, the sustainable nature of those effects cannot be assessed based on the information available. It is possible that advertising Alghero airport and the Sardinian region on Ryanair's internet site may have encouraged people visiting this site to buy Ryanair tickets to Alghero airport as long as the advertising was posted or just thereafter. However, it is highly unlikely that the effect of this advertising on visitors lasted or had an influence on plane ticket purchases for more than a few weeks after its being posted on the Ryanair internet site. An advertising campaign is more likely to have a sustainable effect when the promotional activities involve one or more advertising media to which the consumers are regularly exposed over a given period. For example, an advertising campaign involving general TV and radio stations, popular internet sites and/or various advertising posters displayed outside or inside public places could have a sustainable effect if consumers are regularly exposed to these media. However, promotional activities limited to just Ryanair's internet site are highly unlikely to have an effect that lasts much past the end of the promotion.

(437) In fact, it is very likely that most people do not visit Ryanair's internet site frequently enough for the advertising there alone to leave them with a clear recollection of the region concerned. This argument is well supported by

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

two factors. Firstly, under the terms of the marketing service agreements, the promotion of Alghero and the Sardinian region on the homepage of the Ryanair internet site was limited to one paragraph of 150 words under 'Top Five Things To Do' on the Alghero destination page and the presence of a link on the www.ryanair.com homepage leading to a site made available by So.Ge.A.AL. The Commission considers that the type of promotional activities (a simple link with a limited marketing value) severely reduced the effect of these activities after the end of the promotion, in particular as these activities were limited to just the Ryanair internet site and were not supported by any other media. Secondly, the marketing activities set out in the agreements entered into with AMS largely related to the internet page for the destination of Alghero airport. It is very likely that most people do not visit this page often; if and when they do, it is probably only because they are already interested in this destination.

(438) Thus, even if the marketing services did increase passenger traffic on the air routes covered by the marketing service agreements for their period of implementation, it is very likely that this effect was zero or negligible after this term.

(439) It also follows from the Ryanair studies of 17 and 31 January 2014 that the generation of benefits going beyond the air routes covered by these agreements or lasting after the term of operation for these routes, as set out in the marketing service agreements and airport service agreements, was extremely uncertain and could not be quantified with a degree of reliability that would be considered sufficient by a prudent MEO.

(440) Thus, for example, according to the study of 17 January 2014, 'future incremental profits beyond the scheduled expiry of the airport service agreement are inherently uncertain'. Moreover, this study suggests two methods for evaluating *a priori* the positive effects of marketing service agreements: a 'cash flow' methodology and a 'capitalisation' methodology.

(441) The 'cash flow' methodology involves evaluating the benefits of marketing service agreements and airport service agreements by assessing the future revenues which may be generated by the airport manager through marketing services and the airport service agreement, minus corresponding costs. In the 'capitalisation' methodology, improvement of the brand image of the airport through marketing services is treated as an intangible asset, acquired for the price laid down in the marketing service agreements.

(442) However, the study of 17 January 2014 highlights the major difficulties presented by the 'capitalisation' approach and shows that the results produced by this method may be unreliable; it suggests that the 'cash flow' approach would be better. In particular, the study finds that 'the capitalisation approach should only take into account the proportion of marketing expenditure that is attributable to the intangible asset base of an airport. However, it may be difficult to identify the proportion of marketing expenditure that is targeted towards generating expected future revenues for the airport (namely an investment in the intangible asset base of the airport) as opposed to generating current revenues for the airport.' It also stresses that 'in order to implement the capitalisation-based approach, it is necessary to estimate the average length of time that an airport would be able to retain a customer due to the AMS marketing campaign. In practice, it would be very difficult to estimate the average period of customer retention following an AMS campaign due to insufficient data.'

(443) The study of 31 January 2014 proposes a practical application of the 'cash flow' approach. Under this approach, the benefits of marketing service agreements and airport service agreements which last even after the marketing service agreement has expired are expressed as a 'terminal value' that is calculated on the agreement's expiry date. The terminal value is calculated from the airport's incremental profits (net of AMS payments) in the last year of the ASA, adjusted to take into account the growth rate for the air transport market in Europe and the probability factor designed to reflect the airport service agreement's and marketing service agreement's capacities to contribute to the airport's profits after they have expired. The same method of calculating the 'terminal value' has been proposed by Italy in the 2014 MEOP report (see recital 471).

(444) According to the study of 31 January 2014, the capacity for producing lasting benefits depends on various factors 'including greater prominence and a stronger brand, alongside network externalities and repeat passengers', although no details are given about these factors.

(445) The study of 31 January 2014 suggests a probability factor of 30 %, which it considers prudent. However, the study does not provide any serious evidence for this factor, neither quantitatively nor qualitatively. It does not base itself on any facts relating to Ryanair's activities, air transport markets or airport services to substantiate this rate of 30 %. It does not establish any link between this rate and the factors that it mentions in passing (prominence, strong brand, network externalities and repeat passengers) and that are supposed to extend the benefits of the airport service agreement and market service agreement beyond their expiry dates. Finally, it does not in any way base itself on the specific content of marketing services provided for in the various agreements with AMS when analysing to what extent these services could influence the factors mentioned in recital 444.

(446) Moreover, it does not prove that there is any likelihood that, on expiry of the ASA and the marketing service agreement, the profits generated by those agreements for the airport manager in the final year of their application will continue in the future. Likewise, it provides no evidence that the growth rate of the air transport market in Europe is a useful indicator for measuring the impact of an airport service agreement and a marketing service agreement for a given airport.

(447) A 'terminal value' calculated using the method suggested by Ryanair and Italy would therefore be highly unlikely to be taken into account by a prudent MEO when deciding whether or not to enter into an agreement. The study of 31 January 2014 therefore shows that a 'cash flow' approach would only lead to very uncertain and unreliable results, as would the 'capitalisation' method.

(448) Moreover, the marketing services clearly target persons likely to use the route covered by the marketing service agreement. If this route is not renewed on expiry of the airport service agreement, it is unlikely that marketing services will continue to have a positive effect on passenger traffic at the airport after the expiry date. It is very difficult for an airport manager to assess the likelihood of an airline continuing to run a route on expiry of the term to which it has committed itself in the airport service agreement. Low-cost airlines, in particular, have shown that, when it comes to opening and closing routes, they are very responsive to market conditions which, more often than not, change very quickly. For instance, in the present case Italy submitted that Germanwings decided to stop operations from Alghero airport after only one year and therefore its agreement with So.Ge.A.AL did not run its full duration (the carrier had concluded a three-year agreement with the airport) as it could not generate sufficient traffic to break even. It also results from the documents in the case file that Ryanair had at least once (in 2009) re-evaluated its operations from Alghero airport. Therefore, when entering into a transaction such as the one being examined in this case, a prudent MEO would not rely on an airline company extending the operation of the route in question on expiry of the agreement.

(449) Last but not least, the Commission notes that this approach of including a 'terminal value' followed by Italy in the reconstruction of the *ex ante* profitability analysis of the 2006 and 2010 agreements, has not been applied by Italy when considering the profitability of agreements signed with other airlines operating at the airport, although marketing agreements have been concluded with the airport manager. Italy's argumentation on this point relies on the fact that the number of potential visitors to the websites of airlines other than Ryanair is significantly lower than the audience of ryanair.com. Given this far lower popularity, it would not be relevant to quantify a terminal value in the analysis of the profitability of the agreements with other airlines. Nevertheless, the Commission notes that up to 2006 marketing agreements had been signed by So.Ge.A.AL with Ryanair rather than AMS. A terminal value has not been considered to account for the future benefits derived after the end of the term of the marketing agreements concluded by So.Ge.A.AL with Ryanair in 2002 and 2003.

(450) To conclude, it is clear from recitals 428 to 449 that the only benefit that a prudent MEO would expect from a marketing service agreement, and which it would quantify when deciding on whether or not to enter into such an agreement, together with an airport service agreement, would be that the marketing services would have a positive effect on the number of passengers using the routes covered by the agreements in question for the term

of operation of these routes, as set out in the agreements. The Commission considers that any other possible benefits are too uncertain to be quantified and taken into account.

12.2.1.2.4. Assessment of Incremental Costs and Revenues

(451) In view of the considerations in recitals 398 to 450, for the purpose of application of the MEOP principle, the Commission must (i) analyse each of the ASAs jointly with the marketing agreements if there is one, including when such agreement was signed with AMS, and (ii) determine the incremental costs and revenues that could have reasonably been expected from each joint transaction, taking into account the effect of the marketing agreements on the expected load factors.

Agreements with Ryanair

(452) The ASAs concluded by So.Ge.A.AL with Ryanair are presented in Table 7:

Table 7

The ASAs concluded by So.Ge.A.AL with Ryanair

Agreement (date of signature)	Period during which the agreement was set to apply
2000 ASA (22 June 2000)	22 June 2000-21 June 2010
2002 ASA (25 January 2002)	1 January 2002-31 December 2012
2003 ASA (1 September 2003)	1 September 2003-1 September 2014
2006 ASA (3 April 2006)	1 January 2006-31 December 2010
2010 ASA (20 October 2010)	1 January 2010-31 December 2013

(453) Italy asserts that So.Ge.A.AL has drawn up several business plans relating to the overall development of the airport at various points in time between 2000 and 2010. Those business plans include some forward looking estimates on the passenger numbers and revenues, as well as some information on costs. However, none of those business plans is specific to a particular agreement signed between So.Ge.A.AL and the airlines operating at Alghero airport or AMS. Furthermore, they do not cover the entire period of So.Ge.A.AL's agreements with those airlines.

(454) As mentioned above, Italy prepared reconstructed *ex ante* profitability analyses of the agreements with Ryanair based on the incremental costs and revenues that could be reasonably expected by a MEO acting in lieu of So.Ge.A.AL at the time of the conclusion of each of these agreements during the period under investigation, i.e. 2000-2010, as summarised in Table 8. Based on these analyses, So.Ge.A.AL could reasonably expect the agreements with Ryanair to be profitable for the airport at the time they were concluded.

(455) The 2000 business plan of So.Ge.A.AL has been used in the reconstructed analysis of the expected profitability of the 2000, 2002 and 2003 ASAs, whilst the 2004 and 2009 business plans have been used in the reconstructed analysis of the 2006 and 2010 ASAs.

(456) However, it has not been possible to infer all of the incremental revenues and costs associated with each agreement with Ryanair from So.Ge.A.AL's business plans. For those categories of incremental revenues and costs which could not have been inferred from the business plans, Italy based its analysis of the incremental profits of the agreements concluded by So.Ge.A.AL with Ryanair on the provisions of the ASAs and marketing agreements.

(457) Table 8 sets out the NPVs of the cash flows expected from the Ryanair agreements based on the 2014 MEOP Report. The fact that those NPVs are all positive would confirm that it was rational for the airport manager to conclude the agreements with Ryanair.

Table 8

NPVs of the cash flows expected from the Ryanair agreements — 2014 MEOP Report [1]

Agreement	NPV over the duration of the agreement (million EUR) [2]
The 2000 ASA	[4–8] (*)
The 2002 ASA	[3–6]
The 2003 ASA	[9–12]
The 2006 ASA	[6–9]
The 2010 ASA	[9–12]

[1] The analysis includes a 'terminal value' to account for future benefits for So.Ge.A.AL arising after the expiry of the 2006 and 2010 agreements (see recital 471) and excludes the period for which the 2006 and 2010 agreements applied retrospectively (see recital 485).
[2] Commission's reference rates have been applied to discount the expected cash flows.
(*) Covered by the obligation of professional secrecy.

(458) The assumptions taken into account for the purpose of the reconstructed profitability analysis are detailed in recitals 459-471.

(i) Aeronautical revenues

(459) Italy took into account different categories of aeronautical revenues, notably revenues from charges such as landing, ground handling and ticketing. Where available, the charges laid down in the ASAs were used. For those charges not specified in the ASAs, assumptions have been based on invoice data provided by Ryanair. Italy however explained that Ryanair's invoice data on charges is consistent with So.Ge.A.AL's published charges for all airport services, apart from handling. A discount on handling charges, reflecting the scale of the carrier's operations at the airport, was granted to Ryanair, which was reflected in the ASAs.

(460) In order to derive incremental aeronautical revenues, So.Ge.A.AL supplemented the information on Ryanair passengers and turnarounds from the ASAs, with information derived from the business plans.

(461) The 2000, 2002 and 2003 ASAs did not stipulate any traffic projections. Therefore, traffic forecasts underpinning the analysis of the 2000, 2002 and 2003 ASAs have been derived from So.Ge.A.AL's 2000 business plan, which contained projections for Ryanair's traffic at the airport. Although the 2006 and 2010 ASAs did stipulate certain traffic targets for Ryanair, Italy explained that these targets did not reflect So.Ge.A.AL's expectations of the overall level of Ryanair traffic at the airport. Rather, So.Ge.A.AL considered the targets represented minimum contractual commitments from Ryanair. Therefore, for the 2006 and 2010 ASAs, traffic

projections have been based on the business plans drawn up by So.Ge.A.AL at the closest point in time prior to the 2006 and 2010 ASAs being signed (namely, traffic projections are based on So.Ge.A.AL's 2004 and 2009 business plans).

(462) Given that So.Ge.A.AL's business plans do not cover the entire period of its contractual agreements with the airlines, in order to extend the profitability analysis over the entire life of the Ryanair agreements, forecasts of air traffic (rotations) and passenger departures have been developed for the years not covered by the business plans in two steps. First, the number of Ryanair turnarounds was forecast by updating the number of turnarounds for the last year contained in the business plan, assuming an annual growth in turnarounds of 19 %. This growth factor is based on the average expected growth from the 2000 business plan over the period between 2004 and 2006. Second, the number of departing passengers for the remaining period was derived from the annual seat capacity, implied by the number of turnarounds, assuming a load factor of 82 %, i.e. Ryanair's network wide average load factor at the time the agreements were signed.

(ii) Non aeronautical revenues

(463) The assumptions for non-aeronautical revenues have been based on the business plans drawn up by So.Ge.A.AL at the closest point of signing each ASA, as set out in Table 9:

Table 9

Assumptions on expected non-aeronautical revenue

Agreement	Non-aeronautical revenue per departing passenger (EUR)	Source
2000 ASA	1,96–2,38	2000 business plan
2002 ASA	2,17–2,38	2000 business plan
2003 ASA	2,17–2,38	2000 business plan
2006 ASA	4,31–4,64	2004 business plan
2010 ASA	6,02–6,47	2009 business plan

(464) For the period of each ASA not covered by the respective business plans, the last available forecast of non-aeronautical revenues per departing passenger has been carried forward in each year until the end of the agreement. For example, in the 2000 business plan, the last year for which a forecast is available is 2006. According to the business plan, in 2006 non-aeronautical revenues per departing passenger were EUR 2,38. For each remaining year of the 2006 ASA, the same level of non-aeronautical revenues per departing passenger has been assumed.

(iii) Incremental costs

(465) In the absence of information about the expected incremental costs associated with serving Ryanair at the time each of the ASAs was signed, incremental costs were estimated by Italy based on the relationship between the airport's operating costs and passenger numbers.

(466) A regression approach was followed to identify how operating costs vary as passenger numbers change, in order to estimate the incremental costs that could have been reasonably expected by So.Ge.A.AL at the time of signing

the ASAs with Ryanair. In the first step, regression analysis was carried out to identify the impact of a change in the airport's passenger numbers on the airport's operating costs. In the second step, the estimate of the additional operating costs as a result of the Ryanair agreements was derived from the results in the first step combined with forecasts of the number of Ryanair passengers.

(467) The following components of costs were considered:

(a) incremental staff costs

(b) incremental costs of goods and services, security, inventories and materials

(c) payments towards new route incentives, marketing, and/or success fees to Ryanair or AMS

(d) concession costs

(468) *Staff costs*: So.Ge.A.AL's business plan of 2000 includes the costs of additional staff required as a result of the agreements with Ryanair up to 2006. Therefore, for the purposes of the assessments of the 2000, 2002 and 2003 ASAs, incremental staff costs have been obtained from So.Ge.A.AL's 2000 business plan. The 2004 and the 2006 business plans however do not provide data on incremental costs. To derive estimates of staff costs that are incremental to the Ryanair agreements beyond 2006, statistical analysis was carried out based on data on the airport's aggregate staff costs, in order to determine the proportion of costs that varied with changes in passenger numbers ([107]). The estimate of the additional staff costs was then derived from the regression results combined with the estimated number of Ryanair passengers.

(469) *Other costs*: Similarly, regression analysis has been carried out to estimate the incremental costs of goods and materials ([108]), services ([109]), security, inventories, as these costs were not mentioned in the business plans. New route incentives, marketing and/or success fees payable to Ryanair have been included as a cost to the airport. Incremental concession costs ([110]) have been based on per-unit costs at the airport level, multiplied by the traffic forecasts for Ryanair.

(470) According to Italy, So.Ge.A.AL did not aim to recover the cost of the new passenger terminal from charges paid by Ryanair. In other words, the investment costs connected to the new terminal are not imputable to any of the Ryanair agreements and therefore are not part of the incremental costs.

(471) Marketing payments to AMS have been taken into account as costs to the airport. At the same time, a 'terminal value' was added as revenue to the airport to account for the benefits of the marketing service agreements and airport service agreements which in Italy's view last even after the expiry of the marketing service agreement. The 'terminal value' is calculated based on the same approach followed by Ryanair and detailed in recitals 443-446.

(472) Table 10 presents the NPV ([111]) of the cash flows which could have been expected from the Ryanair agreements based on the assumptions detailed in recitals 459 to 471.

([107]) The incremental cost data used in the regression pre-date the conclusion of the 2006 and 2010 agreements which would have been available to So.Ge.A.AL at the date the airport manager entered the agreements in question. However, since costs data are only available for the period 1998–2010, if a similar approach was followed for the 2000, 2002 and 2003 agreements there would be only two, three and four points available respectively to conduct the regression analysis, which is insufficient to obtain robust results. Consequently, for these agreements the regression is based on costs data for the period 1998–2010.

([108]) Costs of materials, advertising, stationary, fuel, boarding passes, assistance notes, luggage labels, uniforms for employees.

([109]) Costs of vehicle insurance, maintenance and repair of equipment and vehicles, other vehicle expenses, radio frequencies, maintenance of check-in equipment.

([110]) As of 2003 the annual concession fees paid by airport managers are determined on the basis of traffic data published yearly by the Ministry of Infrastructure and Transport-ENAC. See in this sense recital 156 of this Decision.

([111]) The NPV of a time series of expected cash flows, both incoming and outgoing, is defined as the discounted sum of the individual expected cash flows over the relevant period. The NPV is a standard tool used by undertakings to assess the profitability of a project.

Table 10

NPVs of the cash flows expected from the Ryanair agreements — 2014 MEOP report

Agreement (date of signature)	Period during which the agreement was set to apply	NPV over the duration of the agreement (million EUR) [1]
2000 ASA (22 June 2000)	22 June 2000 — 21 June 2010	[4 – 8]
2002 ASA (25 January 2002)	1 January 2002 — 31 December 2012	[3 – 6]
2003 ASA (1 September 2003)	1 September 2003 — 1 September 2014	[9 – 12]
2006 ASA (3 April 2006)	1 January 2006 — 31 December 2010	[6 – 9]
2010 ASA (20 October 2010)	1 January 2010 — 31 December 2013	[9 – 12]

[1] Commission's reference rates have been applied to discount the expected cash flows.

(473) The Commission takes note that for the purpose of the profitability analysis of the 2006 and 2010 ASAs, Italy considered a duration of 10 years for the 2006 ASA and nine years for the 2010 ASA, rather than the period during which the agreement was set to apply initially, namely five and four years respectively. Italy did however also provide to the Commission the results of the profitability analysis when taking into account the initial duration of the 2006 and 2010 ASAs as strictly defined in those agreements.

(474) In defence of its position, Italy argued that at the time of signing each of the agreements with Ryanair, So.Ge.A.AL had reasonable expectations that these would be renewed on similar terms. In particular, based on the explicit provision in the 2006 ASA that the agreement could be extended for an additional five-year term until 1 January 2016, So.Ge.A.AL expected this agreement to be renewed on similar terms. Similarly, the 2010 ASA was expected to cover the period between 1 January 2010 and 31 December 2013, with the potential for the ASA to be extended for an additional five-year term until 31 December 2018.

(475) The Commission cannot accept this argument.

(476) First, neither the 2006 nor the 2010 agreement lays down its automatic prolongation once the agreement has run its full duration.

(477) The 2006 ASA rather lays down that So.Ge.A.AL undertakes, upon expiry of the term of the agreements, to renegotiate a suitable airport use service package with Ryanair for an additional five-year term, provided that certain conditions are met, notably the carrier meets its obligations in terms of marketing services in full and So.Ge.A.AL obtains the concession to operate the airport beyond 1 January 2011. The Commission considers that based on that provision alone, in 2006 So.Ge.A.AL could not have relied on an extension, not the least on similar terms, such extension being hypothetical and depending in particular on Ryanair's willingness to accept it. Indeed, the above-mentioned provision does not legally bind Ryanair to the conclusion of a new agreement with the airport manager, nor does it provide any certainty in respect of the observance by either party of the conditions in question, notably in view of the significant uncertainty surrounding the award of the comprehensive concession to the airport operator at that time.

(478) The Commission considers that the 2010 ASA provides even less certainty as to its potential extension. Article 2 — 'Term' reads: 'the agreement may be extended for an additional five-year period under the conditions and terms set forth herein, or as amended by the parties, provided that prior written consent can be reached by both parties at least six months prior to the expiry of the initial term. (…) Any subsequent renewal of this agreement shall be negotiated between the Parties, at least six months before the expiry of the additional term.' It is therefore evident that any extension of the agreement would have been subject to negotiations between the parties and could not therefore have been assumed by So.Ge.A.AL at the time the 2010 ASA was signed.

(479) Second, the Commission notes that there is evidence in the case file that in 2009 tensions between So.Ge.A.AL and Ryanair put the contractual relation with the carrier at risk. At that time Ryanair had conditioned the continuation of its operations at Alghero airport on the conclusion of a supplemental agreement. In fact, it is apparent from the minutes of So.Ge.A.AL's Board of Directors of 7 July 2009, 9 September 2009 and 23 February 2010 provided by Italy that the decision of the airport manager to eventually sign the new ASA with Ryanair for a five-year period took into account the fact that the latter agreement did not lay down penalties for the early termination of the agreement. In particular:

— Ryanair had been forcefully asking for the conclusion of a supplemental agreement, which 'will certainly result in the increase of the value of co-marketing contributions'. Should such agreement not be signed immediately, the carrier would cease operation of all routes from Alghero airport ([112]);

— a document outlining the evolution of the arrangements with Ryanair and the current state of the relations with the airline, putting forward what in Ryanair's view would be the following steps, which included the cancellation or the reduction of the frequency of intra EU flights and their replacement with national routes was discussed ([113]);

— the Board inquired on the negotiating margin, if any, in respect of the contractual relation with Ryanair, 'given that the shareholders had not given the Board a mandate to terminate the agreement with the carrier' ([114]).

(480) It also results from the minutes of So.Ge.A.AL's Shareholders Assembly of 26 October 2001 that the company considered the termination of the 2000 ASA before its expiry and that this generated long debates among the shareholders.

(481) On this basis the Commission concludes that at the time the 2006 and 2010 Ryanair ASAs were concluded, So.Ge.A.AL could not have expected that those agreements are prolonged, or at least could not have expected that they are prolonged under the same contractual terms.

(482) The Commission also notes that based on the information submitted by Italy, the agreement with another airline subject to the investigation, Germanwings, did not run its full duration and the carrier only operated from the airport in 2007. Italy has in the course of the investigation clarified that the airline had decided to cease operations from the airport as it could not generate sufficient traffic to break even from a financial perspective.

(483) The Commission therefore concludes that for the purpose of the profitability analysis of the 2006 and 2010 ASAs, only the period laid down by the ASAs, namely five years for the 2006 ASA and four years for the 2010 ASA should be taken into account (the NPVs in Table 10 were calculated based on the initial duration of the agreements, as set out in the ASAs).

(484) Besides, the Commission notes that the 2006 and the 2010 ASAs and marketing services agreements signed between So.Ge.A.AL, Ryanair and AMS, applied retrospectively, as follows:

(a) the 2006 ASA and the marketing services agreement were signed on 3 April 2006, but applied retrospectively from 1 January 2006;

(b) the 2010 ASA and the marketing services agreement were signed on 20 October 2010, but applied retrospectively from 1 January 2010.

([112]) Minutes of So.Ge.A.AL's Board of Directors of 7 July 2009.
([113]) Minutes of So.Ge.A.AL's Board of Directors of 9 September 2009.
([114]) Minutes of So.Ge.A.AL's Board of Directors of 23 February 2010.

(485) The Commission also notes that, according to So.Ge.A.AL, the terms of the agreements that were being discussed with Ryanair and AMS in the periods to which the 2006 and 2010 agreements applied retrospectively (i.e. January 2006 to April 2006, in the case of the 2006 agreements, and January 2010 to October 2010, in the case of the 2010 agreements) were similar to the terms of the agreements that were eventually signed in April 2006 and October 2010. In other words, the agreements concluded in April 2006 and October 2010 simply formalised terms which were agreed before, ahead of the period during which these agreements applied retrospectively. On that basis the Commission considers that considering each agreement over its scheduled duration is in line with an *ex ante* approach and that therefore in the analysis of the profitability of the 2006 and 2010 agreements, the period for which the agreements applied retrospectively should not be excluded.

(486) However, based on the grounds detailed above, the Commission considers that the benefits a prudent MEO would expect from a marketing service agreement would be strictly limited to the term of operation of the carrier at the airport, as set out in the airport service agreement. On this basis the Commission considers that any 'terminal value' aiming to reflect future benefits of the marketing services beyond the term of application of those agreements should be left out from of the analysis. The Commission also notes that Italy has not considered a 'terminal value' to account for benefits derived after expiry of the term of the agreements concluded by So.Ge.A.AL with Alitalia, Meridiana, Volare and Germanwings (see recital 528).

(487) Furthermore, the Commission finds that the approach taken by Italy in estimating the passenger numbers, and calculating on that basis the expected incremental aeronautical and non-aeronautical revenues (without prejudice to the assessment in the previous recital concerning the 'terminal value'), is sound. Although the Commission considers that the assumptions concerning the traffic projections should normally be exclusively based on the route frequencies and passenger targets stipulated in the ASAs and the load factor that could have been reasonably expected by So.Ge.A.AL at the time each ASA with Ryanair was concluded, given that at the time the 2006 and 2010 ASAs where signed So.Ge.A.AL expected Ryanair traffic to exceed the minimum targets set out in the agreements, the Commission agrees that So.Ge.A.AL's expectations at the time the agreements were signed, as set out in the business plans, represent the most accurate source for inferring So.Ge.A.AL's forecasts of Ryanair traffic at the time of signing the 2006 and 2010 ASAs.

(488) The Commission in addition considers that So.Ge.A.AL's expectations of Ryanair's load factor, at the time of signing each of the agreements, as reasonable, since they were based on its experience and knowledge of the airline's business model.

(489) The Commission notes that, according to Italy, So.Ge.A.AL did not aim to recover the cost of the new passenger terminal from charges paid by Ryanair. In this respect, it indeed appears that it was the development of tourism in general which required the expansion of Alghero airport's terminal capacity in order to accommodate anticipated growth in traffic. Prior to the investments being undertaken at Alghero airport, despite significant potential, the development of the tourism sector was impeded by a lack of international connectivity. Alghero airport had reached capacity constraints in 2003 and 2004, and, therefore, investments were required to enable the airport to handle more passengers. So.Ge.A.AL's business plan from 2004 predicted that total passenger numbers at the airport would increase by approximately 30 % in 2008 compared to levels prior to the expansion of the airport's capacity in 2004. While it is clear from the business plans drawn up by So.Ge.A.AL at various times in the period under investigation that the airport manager relied on low-costs airlines as major growth driver (and that the company would return to viability once it was awarded the comprehensive concession), this objective was not linked to the relationship with any specific airline. Indeed, none of the ASAs with Ryanair mentions any investments to be carried out by the airport manager. In this sense, the Commission notes that the investment in the expansion of the terminal was approved by CIPE in 1997 and therefore long before Ryanair started operations at Alghero airport. The application to ENAC for the comprehensive concession was part of So.Ge.A.AL's strategy with the objective to enhance the tourism sector by attracting low cost carriers. This strategy required the expansion of the terminal capacity to accommodate the anticipated traffic growth, a 'comprehensive' concession to ensure efficient and effective operations of the airport and contracts with low cost carriers. On this basis, the Commission accepts that the investment costs connected to the new terminal are not imputable to any of the Ryanair agreements and therefore are not part of the incremental costs.

(490) The Commission further notes that expected incremental costs have been estimated by Italy following a bottom-up approach. A regression analysis has been followed to identify how operating costs vary as passenger numbers change, in order to estimate incremental costs which could have expected by So.Ge.A.AL at the time of signing the ASAs with Ryanair. In the first step, a regression analysis has been carried out to identify the impact of a

change in the airport's passenger numbers on the airport's operating costs. In the second step, the estimate of the additional operating costs as a result of the Ryanair agreements has been derived from the results of the first step combined with forecasts of the number of Ryanair passengers.

(491) For the 2006 and 2010 ASAs, the incremental cost data used by Italy in the regression pre-date the conclusion of the agreements which would have been available to So.Ge.A.AL at the date the airport manager entered the agreements in question. However, since costs data are only available for the period 1998 – 2010, if a similar approach was followed for the 2000, 2002 and 2003 agreements there would be only two, three and four data points available respectively to conduct the regression analysis. The Commission agrees that this would be insufficient to obtain robust results. Absent sufficient *ex ante* data to allow to reconstruct the profitability analysis based on data which would have been available to So.Ge.A.AL at the time the agreements in question were signed, the Commission exceptionally (see recital 284) considers that for these agreements a regression based on outturn data for the whole period 1998-2010 is an acceptable proxy to what the reasonable expectations of a MEO would have been.

(492) Based on the assumptions detailed above, the Commission has reconstructed the *ex ante* profitability analysis of the agreements with Ryanair based on the incremental costs and revenues that could be reasonably expected by a market economy operator acting in lieu of So.Ge.A.AL at the time of the conclusion of each of the agreements under investigation in the present case. Indeed, it is clear from the various business plans drawn up by So.Ge.A.AL that the airport manager forecasted traffic growth based on its strategy to enhance the tourism sector by attracting international low-cost traffic, which was considered to produce a considerably higher passenger turnover than domestic activities ([115]).

(493) The table below presents the NPV of the cash flows expected from the Ryanair agreements based on the assumptions detailed above.

Table 11

NPVs of the cash flows expected from the Ryanair agreements

Agreement	Period during which the agreement was set to apply	NPV over the duration of the agreement (million EUR) ([1])
2000 ASA	22 June 2000–21 June 2010	[4–8]
2002 ASA	1 January 2002–31 December 2012	[3–6]
2003 ASA	1 September 2003–1 September 2014	[9–12]
2006 ASA	1 January 2006–31 December 2010	[3–6]
2010 ASA	1 January 2010–31 December 2013	[2–4]

([1]) Commission's reference rates have been applied to discount the expected cash flows.

(494) As the expected discounted result is positive for each of the Ryanair agreements, the Commission is satisfied that each of the ASAs with Ryanair was expected to be profitable at the time they were concluded and therefore in concluding the agreements in question So.Ge.A.AL did not grant an economic advantage to Ryanair and therefore do not constitute State aid.

([115]) Although this strategy bore fruit and So.Ge.A.AL has been able to achieve a significant growth in traffic volumes in line with its expectations, the airport manager has not been able to match the traffic growth with increasing profitability despite financial support from the public authorities. This was largely due to the significant delays in the award of the 'comprehensive' concession.

Agreements with carriers other than Ryanair

Agreements with Alitalia, Volare, Meridiana and Germanwings

(495) The Commission investigated So.Ge.A.AL's handling and marketing agreements with Alitalia, Volare, Meridiana and Germanwings, detailed in Table 12:

Table 12

So.Ge.A.AL's agreements with Alitalia, Volare, Meridiana and Germanwings

Alitalia		
30.11.2010	Handling agreement	1.12.2010–1.12.2015
20.10.2010	Marketing agreement	7.6.2010–30.9.2010
Volare		
29.11.2007	Handling agreement	28.10.2007–31.10.2010
29.11.2007	Marketing agreement	28.10.2007–31.10.2010
Meridiana		
28.4.2010	Handling agreement	4.2010–4.2011
20.10.2010	Marketing agreement	6.2010–10.2010
Germanwings		
19.3.2007	Handling agreement	25.3.2007–31.10.2009
25.3.2007	Marketing agreement	2007–2009

(i) On the joint assessment of the handling and marketing agreements

(496) The Commission first notes that in each case, there are strong indications that those agreements were negotiated and concluded as part of a single transaction and are therefore to be evaluated as one single measure. In particular:

(a) the marketing agreement with Meridiana, which applied retroactively for the period June–October 2010 laid down in Article 1 — 'Purpose of the Agreement' that: 'Meridiana undertakes to operate the abovementioned routes [Milan, Verona, Bari] according to the predefined operational programmes and therefore to operate a Communication and Marketing programme in agreement with So.Ge.A.AL'. Furthermore, the agreement lays down the possibility for renewal of the agreement subject to Meridiana meeting certain passenger targets;

(b) under the marketing agreement, which applied retroactively for the period June–September 2010, Alitalia was to define a Communication and Marketing Programme having as object the promotion of the region, also by means of the start-up of the new routes (Barcelona, Paris and Brussels);

(c) the handling and marketing agreements with Volare were concluded on the same date. The marketing agreement with Volare lays down: 'This Supplemental Agreement represents a substantial part of the Standard Ground Handling Agreement. Therefore, it will remain in force until the Standard Ground Handling Agreement is terminated, for whichever reason, at which time this Supplemental Agreement and all rights and obligations provided hereby shall also terminate.' The marketing agreement also sets passenger targets which the carrier undertakes to achieve;

(d) the marketing agreement with Germanwings 'lays down the goals and targets to be achieved by Germanwings according to AHO's [Alghero's] requests. The parties confirm that the parameters used for the objective statement of the reaching of the above-mentioned goals and targets will be represented by the yearly number of passengers and flights operated by Germanwings to/from AHO [Alghero]'. The agreement lays down success fees and a one-off contribution to be paid by So.Ge.A.AL.

(497) Therefore, the Commission considers that there is a clear link between the airport service agreements and the marketing agreements in that the latter were based on the conclusion of the airport services agreement and the services provided by the carriers.

(ii) On the approach followed to estimate incremental costs and revenues

(498) No *ex ante* analysis of the profitability of the agreements with those airlines was carried out by So.Ge.A.AL prior to their conclusion. As mentioned above, by letter dated 25 March 2014 Italy provided to the Commission a reconstructed *ex ante* analysis of the profitability of the agreements concluded with Air One/Alitalia, Meridiana, Volare, Germanwings based on the data which would have been available to a MEO acting in lieu of So.Ge.A.AL at the time the agreements in question were concluded as well as foreseeable developments at that time.

(499) According to Italy, the approach followed for the reconstructed analysis reflects the methodology that would have been adopted by a MEO and the results from the profitability assessment of those agreements would demonstrate that these agreements were also expected to be profitable for So.Ge.A.AL on an *ex ante* basis.

(500) The analysis is based on the approach set out in recitals 501 to 524.

(501) *Incremental aeronautical revenues* were derived by applying the relevant airport charges expected to be paid by each airline, combined with the traffic forecasts for the respective airline for all services other than ground handling. Aeronautical revenues from ground handling are based on charges negotiated between So.Ge.A.AL and each airline. The traffic forecasts are based on either the airline's traffic levels in the year prior to signing the agreement or the traffic targets stipulated in the relevant agreements.

(502) *Incremental non-aeronautical revenues* are based on So.Ge.A.AL's expectations at the time the 2007 and 2010 agreements with the airlines were signed concerning non-aeronautical revenues of around EUR 5,00–6,00 per departing passenger as a result of the development of the new terminal (see also Table 9).

(503) *Incremental operating costs* have been derived by taking into account the categories of incremental costs that So.Ge.A.AL expected at the time of signing each agreement with Air One/Alitalia, Volare, Meridiana and Germanwings and included: incremental staff costs, incremental handling costs, incremental costs of goods, services and materials, incremental concession costs, and the one-off marketing payments relating to new routes and success fees.

(504) Regression analysis was carried out on passenger numbers and costs at the airport-level to identify the impact of a change in Alghero airport's passenger numbers on the airport's total costs.

(505) For the purpose of the profitability analysis of the 2010 agreements with Alitalia and Meridiana, Italy has run the regression on cost data for the period pre-dating the signature of the agreements, i.e. 1998–2009, which would have been available to So.Ge.A.AL at the date it entered the agreements in question.

(506) However according to Italy the number of available data points prior to the signing of the 2007 agreements with Germanwings and Volare (1998–2006) is very low. The resulting estimates of incremental staff and materials costs are EUR 2,7 and EUR 9,3 per departing passenger respectively, which is considered as unusually high. The addition or deletion of a single data point has in this case a material impact on the results. On this basis the profitability analysis yields a negative NPV for Germanwings while the NPV of the Alitalia agreement remains positive. According to Italy the estimates from the cost regressions become more stable as the number of data points increases and therefore for the 2007 agreements with Germanwings and Volare the regression should cover the full period 1998–2010.

(507) In the second step, the estimates of total additional costs as a result of the specific agreements between So.Ge.A.AL and the respective airlines were derived based on the results in the first step combined with the respective forecasts of each airline's passenger numbers.

(a) Expected incremental costs of handling, goods, services and materials over the duration of each agreement are based on average handling costs per ATM and the average costs of goods, services and materials per passenger at the airport level in the year immediately prior to the signing of the agreement. These unit costs are uprated by expected inflation in each year and are multiplied by the respective traffic forecasts for each airline;

(b) Concession costs vary with the number of passengers. Incremental concession costs are based on average concession costs per passenger at the airport level in the year before each agreement was signed, multiplied by traffic forecasts for the respective airline and uprated by inflation.

(508) The load factors assumed in the profitability analysis of the agreements concluded with Alitalia, Germanwings, Volare and Meridiana are based on So.Ge.A.AL's prior knowledge and experience of each airline's operations and business model ([116]), as detailed in Table 13.

Table 13

Load factors assumptions

Airline	Load factor
Air One/Alitalia	n.a.
Germanwings	60
Volare	50
Meridiana	65

— Air One/Alitalia

(509) Traffic projections for Air One/Alitalia over the duration of the handling agreement were derived in the following manner:

(a) traffic projections associated with the start of the three international routes to/from Barcelona, Brussels and Paris are based on the marketing agreement. It was assumed that Air One/Alitalia would operate three flights per week for each route;

(b) traffic projections for domestic flights are based on the number of flights operated by Air One/Alitalia in 2009, uprated by an assumption that domestic traffic would increase by 1 % per year.

([116]) For Germanwings and Meridiana the load factor is specified in the agreements with So.Ge.A.AL. For Volare, the load factor is based on So.Ge.A.AL's prior knowledge of the airline's operations. As Volare operated a number of domestic routes, a lower load factor was assumed. In case of Alitalia, the traffic forecasts have not been derived from a particular assumption for the load factor as Alitalia operated different models of planes (with the maximum number of seats per plane varying from 90 to 180), depending on the day of the week and the season. Traffic forecasts have been derived based on prior experience and knowledge of the airline's operations.

(510) The traffic projections were used to derive expected incremental revenues and expected incremental costs. Expected incremental aeronautical revenues are based on the traffic projections and the published airport charges for all services apart from handling. The handling charges are based on the 2010 handling agreement. Expected non-aeronautical revenues were derived as detailed in recital 502.

(511) Expected incremental costs were derived based on the assumptions detailed in recitals 503–508 and include the one-off marketing payment from So.Ge.A.AL to incentivise Air One/Alitalia's launch of international routes from Alghero airport.

(512) Based on those assumptions, the NPV of the cash flows expected from the 2010 agreements with Air One/Alitalia, as calculated by Italy is presented in Table 14.

Table 14

NPVs of the cash flows expected from the 2010 Air One/Alitalia agreement (million EUR)

Year	2010	2011	2012	2013	2014	2015
Incremental profits	[0–1]	[3–6]	[3–6]	[3–6]	[3–6]	[3–6]
NPV [1] (over the duration of the agreement)	[10–14]					

[1] Using a discount rate of 2,45 %.

— Volare

(513) The traffic forecasts for Volare are based on the ATMs set out in the marketing agreement, namely 28 flights in 2007, 207 flights for 2008 and 2009 and 180 flights for 2010.

(514) Incremental aeronautical revenues were based on the published airport charges and the handling agreement, combined with the traffic projections. Incremental non-aeronautical revenues were estimated in line with the approach described in recital 502.

(515) Incremental costs were based on the average per-unit charges and the traffic projections based on the assumptions detailed in recitals 503-508 and include the one-off payment of EUR […] for the first year of activity.

(516) In the calculation of the NPV shown in Table 15 the regression analysis was based on cost data pre-dating the signing of the agreement, namely 1998-2006.

Table 15

NPVs of the cash flows expected from the 2007 Volare agreement (thousand EUR)

Year	2007	2008	2009	2010
Incremental profits	[13–18]	[50–100]	[100–125]	[100–125]
NPV [1] (over the duration of the agreement)	[250–300]			

[1] Using a discount rate of 6,42 %.

— Meridiana

(517) The traffic forecasts for Meridiana underpinning the assumptions on expected incremental revenues and incremental costs are based on the number of ATMs on the routes to/from Milan, Verona and Bari, as specified in the 2010 marketing agreement.

(518) Incremental aeronautical revenues were based on the published airport charges and the handling agreement, combined with the traffic projections. Incremental non-aeronautical revenues were estimated in line with the approach described in recital 502.

(519) Incremental costs were based on the average per-unit charges and the traffic projections as detailed in recitals 503-508 and include the one-off payment of EUR […].

(520) The Commission notes that the marketing agreement with Meridiana was set to apply for one year, in the period between June 2010 and October 2010 and laid down that it could be extended to cover the years 2011 and 2012 if the number of passengers carried by the airline exceeded certain minimum thresholds. Italy explained that at the time of signing the agreements, So.Ge.A.AL expected that Meridiana would deliver the required minimum level of passenger traffic, and therefore that Meridiana would renew the marketing (and consequently the handling) agreement with So.Ge.A.AL on similar terms.

(521) Based on those assumptions, the NPV of the cash flows expected from the 2010 agreements with Meridiana is presented in Table 16. As shown in Table 16, for the purpose of the profitability analysis, Italy took into account the period 2010-2013.

Table 16

NPVs of the cash flows expected from the 2010 Meridiana agreement for the period 2010-2013 (thousand EUR)

Year	2010	2011	2012	2013
Incremental profits	– [150–200]	[400–450]	[400–450]	[400–450]
NPV [1] (over the duration of the agreement)	[950–1 100]			

[1] Using a discount rate of 2,24 %.

— Germanwings

(522) The traffic forecasts for Germanwings are based on the target ATMs stipulated in the 2007 agreement and underpin SO.GE.A.AL's expectations of incremental revenues and incremental costs at the time the agreement was entered into.

(523) Incremental aeronautical revenues were based on the published airport charges and the 2007 agreement, combined with the traffic projections. Incremental non-aeronautical revenues were estimated in line with the approach described in recital 502.

(524) Incremental costs were based on the average per-unit charges and the traffic projections and include the one-off payment of EUR […] in the first year, as well as the success fees (the analysis assumes that Germanwings would have met the passenger targets). In the calculation of the NPV shown in Table 17 the regression analysis has been based on cost data pre-dating the signing of the agreement, namely 1998–2006.

Table 17

NPVs of the cash flows expected from the 2007 Germanwings agreement (thousand EUR)

Year	2007	2008	2009
Incremental profits	– [130–150]	– [20–30]	– [5–10]
NPV (1) (over the duration of the agreement)	– [150–200]		

(1) Using a discount rate of 6,42 %.

(iii) Assessment

(525) The Commission agrees to the soundness of the approach taken by Italy in estimating the passenger numbers, and calculating on that basis the expected incremental aeronautical and non-aeronautical revenues.

(526) The same holds true with respect to the calculation of incremental costs, which include marketing payments. However, the Commission considers that the regression analysis should be based on data which would have been available to So.Ge.A.AL at the moment the agreements were entered into, and should therefore only be run for the period predating the signature of those agreements, namely, in this case 1998 — 2006 for the agreements with Germanwings and Volare and 1998–2009 for the agreements with Alitalia and Meridiana.

(527) As opposed to the 2000, 2002 and 2003 agreements with Ryanair, for which the Commission accepted that no meaningful regression can be run on the basis of *ex ante* cost data and therefore, cost data for the period 1998 - 2008 was used as proxy to what a reasonable MEO would have expected at the time those agreements were concluded (see recital 491), in the case of the 2007 agreement with Germanwings and the 2010 agreement with Meridiana more data points are available to conduct the regression on *ex ante* cost data, which would have been available to So.Ge.A.AL at the time it entered into the agreements in question. In addition, the Commission also notes that a similar approach was accepted by Italy for the analysis of the 2006 Ryanair agreements, which pre-date the signing of the 2007 agreement with Germanwings.

(528) Furthermore, the Commission takes note of Italy's approach of not considering a 'terminal value' to account for benefits derived after expiry of the term of the agreements concluded by So.Ge.A.AL with Alitalia, Meridiana, Volare and Germanwings. That approach is in line with the Commission reasoning as developed in recitals 445–450.

(529) The Commission also notes that, similarly to the 2006 and 2010 ASAs with Ryanair, the marketing agreements with Meridiana and Alitalia applied retrospectively between June 2010 and October 2010. So.Ge.A.AL explained that during that period, So.Ge.A.AL had been discussing terms similar to the agreement that was later signed with Meridiana and Alitalia on 20 October 2010. The Commission therefore agrees that this approach is consistent to that of a MEO.

(530) Finally, the Commission takes note that the marketing agreement with Meridiana (applicable in the period between June 2010 and October 2010) laid down that it could be extended to cover the years 2011 and 2012 if the number of passengers carried by the airline exceeded the minimum thresholds stipulated therein. Italy explained that at the time of signing the agreements, So.Ge.A.AL expected that Meridiana would deliver the required minimum level of passenger traffic, and therefore that Meridiana would renew the marketing (and consequently the handling agreement) with So.Ge.A.AL on similar terms.

(531) The Commission cannot accept that argument. First, the handling agreement with Meridiana did not lay down any explicit provision on its possible renewal. Such clause was only included in the marketing agreement. Whilst the Commission agrees that the possible extension of the marketing agreement assuming Meridiana met traffic targets, would result in the extension for a similar duration of the handling agreement with the carrier, the fact remains that at the time the handling agreement was signed, no legal obligation bound Meridiana to continue operations from the airport beyond the initial terms of the agreement, namely April 2011. In addition, the marketing agreement was signed on 20 October 2010, i.e. more than six months after the handling agreement

was signed. The Commission considers that in April 2010, when the handling agreement was signed, So.Ge.A.AL could not rely on the renewal of either of the agreements on similar terms, such renewal being hypothetical. Therefore, the Commission considers that the profitability analysis Therefore, the Commission considers that the profitability analysis should only take into account the initial duration of the agreement of one year.

(532) At the same time, the Commission takes note of Italy's approach to justify So.Ge.A.AL's expectations in respect of the renewal of the handling agreement simply based on the possibility of an extension of the marketing (rather than the handling) agreement. The Commission considers that that approach makes the argument expressed in the course of the investigation by Ryanair and AMS that the marketing and airport services agreements can be easily severable as difficult to accept.

(533) The Commission has re-constructed the analysis based on the considerations in recitals 525 to 532. The resulting NPVs for those agreements at the time when they were concluded, over the period during which they were set to apply, are presented in Table 18.

Table 18

NPVs of the agreements between So.Ge.A.AL and Air One/Alitalia, Meridiana, Volare and Germanwings

Airline	Period during which the agreement was set to apply	NPV over the duration of the agreement (thousand EUR)
Volare	2007–2010	[250–300]
Air One/Alitalia	2010–2015	[12 500–13 000]
Meridiana	2010–2011	– [150–200]
Germanwings	2007–2009	– [150–200]

(534) As the expected discounted result is negative for the Meridiana and Germanwings agreements, the Commission finds that So.Ge.A.AL did not act like a MEO in concluding those agreements. The airport manager could not have expected to cover at least the incremental costs brought about by any one of those contracts. As So.Ge.A.AL thus did not behave like a MEO, its decision to conclude the agreements on those terms granted Germanwings and Meridiana an economic advantage.

(535) The overview of the incremental costs and revenues that could have been expected at the time the agreements with Meridiana and Germanwings were concluded is summarised in Table 19.

Table 19

Incremental profitability of agreements with Germanwings and Meridiana

Germanwings	2007	2008	2009
Expected Passengers	15 000	15 000	15 000
Expected Incremental Aeronautical Revenue	[…]	[…]	[…]
Expected Incremental Non-Aeronautical Revenue	[…]	[…]	[…]
Expected Incremental Costs	[…]	[…]	[…]
Costs Marketing Support	[…]	[…]	[…]
Expected Nominal Result	**– 140 482**	**– 24 616**	**– 8 745**

Meridiana	2010
Expected Passengers	59 631
Expected Incremental Aeronautical Revenue	[…]
Expected Incremental Non-Aeronautical Revenue	[…]
Expected Incremental Costs	[…]
Costs Marketing Support	[…]
Expected Nominal Result	**– 175 174**

(536) In contrast, the agreements with Volare and Alitalia could have been expected to lead to a positive discounted result. Therefore, in concluding those agreements, So.Ge.A.AL did not grant an economic advantage to those carriers.

(iv) Conclusion

(537) Based on the profitability analysis submitted by Italy of the agreements concluded by So.Ge.A.AL with Alitalia and Volare, the Commission is satisfied that it would have been rational for a MEO guided by profitability prospects to accept the terms of those agreements at the date at which they were signed. Therefore those agreements do not involve aid to the air carriers.

(538) However, based on the assessment in recitals 525 to 536, the Commission concludes that it was not rational for So.Ge.A.AL to conclude the agreements with Meridiana and Germanwings. Each of those agreements involves an economic advantage to the air carrier concerned.

Agreements with bmibaby, Air Italy and Air Vallée

(539) As mentioned above, by letter of 10 June 2014, Italy provided the Commission with the *ex ante* analysis of the profitability of the agreements concluded by So.Ge.A.AL with the other airlines subject to the investigation, i.e, bmibaby, Air Italy and Air Vallée.

(540) The relevant handling agreements signed between So.Ge.A.AL and Air Italy, Air Vallée and bmibaby are summarised in Table 20:

Table 20

Handling agreements with bmibaby, Air Italy and Air Vallée

Airline	Expected duration of the agreement	Handling charge per turnaround
Air Italy	1 June 2008 – 31 December 2010	600
Air Vallée	9 August 2010 – 30 August 2010	300
Bmbaby	29 May 2010 – 30 September 2010	700

(541) The methodology followed by Italy to examine the incremental profitability of the agreements concluded between So.Ge.A.AL and Air Italy, Air Vallée and bmibaby is detailed in recitals 542 to 545.

(542) Incremental aeronautical revenues include revenues from landing charges, baggage handling fees, passenger fees, aircraft handling and ticketing. All charges, other than handling, were based on the airport's published scheme of charges. Incremental non-aeronautical revenues have been estimated in line with the approach described in recital 502.

(543) Expected incremental costs include costs relating to staffing ([117]), handling, goods, services and materials, as well as an allocation of So.Ge.A.AL's concession costs. As the relevant agreements signed between So.Ge.A.AL with Air Vallée and bmibaby did not concern marketing services, the analysis does not consider payments for marketing. A regression analysis was carried out on passenger numbers and costs at the airport-level based on *ex ante* data which would have been available to So.Ge.A.AL at the moment the agreements in question were entered into, namely 1998–2007 for the agreement with Air Italy and 1998–2009 for the agreements with Air Vallée and bmibaby.

(544) Table 21 summarises the incremental profits expected to accrue to So.Ge.A.AL from the agreement with Air Italy. The NPV of the incremental profits that So.Ge.A.AL could have expected from the agreement with Air Italy amounts to EUR 99 330 ([118]).

Table 21

NPVs of the cash flows expected from the 2008 Air Italy agreement (EUR)

Year	2008	2009	2010
Incremental profits	[30 000–40 000]	[30 000–40 000]	[30 000–40 000]
NPV ([1]) (over the duration of the agreement)	[90 000–110 000]		

([1]) Using a discount rate of 6 %.

(545) Table 22 summarises the incremental profits expected to accrue to So.Ge.A.AL from the agreements with Air Vallée and bmibaby. The NPVs of the incremental profits that So.Ge.A.AL could have expected from the agreements with Air Vallée and bmibaby amount to EUR 3 399 and EUR 25 330 respectively ([119]). According to Italy the estimates of the NPV are relatively low because the agreements concluded between So.Ge.A.AL, Air Vallée and bmibaby were expected to cover a period of one year (or less than one year) only.

Table 22

NPVs of the cash flows expected from the agreements with Air Vallée and bmibaby (EUR)

	Air Vallée	Bmibaby
Incremental profits	[3 000–3 500]	[25 000–26 000]

(546) The Commission notes that the approach taken by Italy in estimating the passenger numbers, and calculating the expected incremental aeronautical and non-aeronautical revenues, and incremental costs of the agreements concluded by So.Ge.A.AL with Air Italy, Air Vallée and bmibaby is the same as the one employed for the agreements with the other carriers. Consequently, the Commission concludes that those agreements were expected to be profitable for So.Ge.A.AL at the time they were signed.

12.2.1.3. *Selectivity*

(547) The economic advantage identified in recital 534 was granted on a selective basis, as only Meridiana and Germanwings benefited from it. The advantage derives from airport services and marketing agreements negotiated individually by the two carriers which have not been concluded with the other carriers operating at

([117]) Due to low traffic commitments, no additional personnel was required to serve Air Vallée or bmibaby.
([118]) Using a discount rate of 5,55 %.
([119]) Using a discount rate of 2,24 %.

the airport under the same terms. Indeed the Commission notes that all agreements subject to the investigation in this case are substantially different and result in different cash flows between So.Ge.A.A.AL and the carriers operating from Alghero airport.

12.2.1.4. *Distortion of competition and effect on trade*

(548) A measure granted by a State is considered to distort or to threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes ([120]). For all practical purposes, a distortion of competition can thus be assumed as soon as a State grants a financial advantage to an undertaking in a liberalised sector where there is (at least potential) competition. The case law of the European Courts has established that any grant of aid to an undertaking exercising its activities in the internal market can be liable to affect trade between Member States ([121]).

(549) Since the entry into force of the third package on the liberalisation of air transport on 1 January 1993 ([122]), air carriers can freely operate flights on intra-European connections. As the Court of Justice observed,

'where an undertaking operates in a sector in which […] producers from various Member States compete, any aid which it may receive from the public authorities is liable to affect trade between the Member States and impair competition, inasmuch as its continuing presence on the market prevents competitors from increasing their market share and reduces their chances of increasing exports.' ([123]).

(550) The Commission has found that So.Ge.A.AL granted a selective advantage to Germanwings and Meridiana. Those airlines are active on a liberalised, competitive market and the advantage they received was liable to improve their competitive position on the market for air transport services to/from Alghero airport to the detriment of other Union air carriers. In this light, the Commission finds that the advantage granted to Germanwings and Meridiana is liable to distort competition and affect trade between Member States.

12.2.1.5. *Conclusion on the agreements with the airlines*

(551) Therefore, the Commission concludes that the measures adopted by So.Ge.A.AL pursuant to the 2010 agreement with Meridiana and the 2007 agreement with Germanwings involved State aid to those airlines, amounting to approximately EUR 175 174 and EUR 140 482, respectively. Since the aid involved in each of these agreements was put into effect without being authorised by the Commission, it constitutes unlawful State aid.

12.2.2. **Compatibility of aid to the airlines**

(552) As regards start-up aid, the 2014 Aviation Guidelines state that:

'the Commission will apply the principles set out in these guidelines to all notified start-up aid measure in respect of which it is called upon to take a decision from 4 April 2014, even where the measures were notified prior that date. In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid, the Commission will apply to unlawful start-up aid to airlines the rules in force at the time when the aid was granted. Accordingly, it will not apply the principles set out in these guidelines in the case of unlawful start-up aid to airlines granted before 4 April 2014.'

([120]) Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 267, paragraph 11 and joined cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta Mauro and others v Commission of the European Communities* [2000] ECR II-2325, paragraph 80.

([121]) Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980], ECR 2671, paragraphs 11 and 12 and Case T-214/95 *Het Vlaamse Gewest (Flemish Region) v Commission of the European Communities* [1998] ECR II-717, paragraphs 48-50.

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

([123]) Case C-305/89 *Italy v Commission* [1991] ECR I-1603, paragraph 26.

(553) The 2005 Aviation Guidelines, in turn, stipulate that:

'the Commission will assess the compatibility of […] start-up aid granted without its authorisation and which therefore infringes Article 88(3) of the Treaty [now Article 108(3) of the Treaty], on the basis of these guidelines if payment of the aid started after the guidelines were published in the *Official Journal of the European Union*.'

(554) As the agreements with Meridiana and Germanwings were concluded after the publication of the 2005 Aviation Guidelines in the Official Journal on 9 December 2005, those guidelines constitute the applicable legal basis for the assessment of their compatibility with the internal market.

12.2.2.1. *Compatibility assessment pursuant to 2005 Aviation Guidelines*

(555) The 2005 Aviation Guidelines set out in point 79 several conditions to be complied with in order for start-up aid to be found compatible with the internal market under Article 107(3)(c) of the Treaty.

(i) The aid is paid to air carriers with a valid operating licence issued by a Member State pursuant to Regulation (EEC) No 2407/92

(556) In this case the beneficiaries are air carriers as defined by Regulation (EC) No 1008/2008 ([124]). The first condition set forth by the 2005 Aviation Guidelines is therefore fulfilled.

(ii) The aid is paid for routes linking a regional airport in category C or D to another EU airport

(557) As of 2005 Alghero airport qualified as a category C regional airport pursuant to the 2005 Aviation Guidelines. The aid was granted to airlines opening new routes from Alghero airport to other airports located in the Union. The second condition is thus observed.

(iii) The aid will apply only to the opening of new routes or new schedules, which will lead to an increase in the net volume of passengers. This aid must not encourage traffic simply to be transferred from one airline or company to another. In particular, it must not lead to a relocation of traffic which is unjustified with regard to the frequency and viability of existing services leaving from another airport in the same city, the same conurbation ([125]) or the same airport system ([126]), which serve the same or a similar destination under the same criteria

(558) The aid was granted to encourage airlines to launch new routes from Alghero airport to one or more Union destinations, thereby leading to an increase in the net volume of passengers. There is no other airport in the same city or conurbation. In addition, none of the routes in question was served by a high-speed rail service. The third condition set forth by the 2005 Aviation Guidelines is thus fulfilled.

(iv) The route receiving the aid must ultimately prove profitable, namely it must at least cover its costs, without public funding. For this reason start-up aid must be degressive and of limited duration

(559) Aid to Germanwings and Meridiana was limited to the duration of the agreements concluded with So.Ge.A.AL, namely one and three years respectively However, no condition was imposed in the agreements by which the routes operated by the carriers from Alghero airport had to be ultimately profitable on a stand-alone basis. The Commission further notes that, while the amount of aid received by Germanwings as listed in Table 19 was degressive, Germanwings ceased operations at Alghero airport in 2007 and therefore never operated without public funding.

([124]) Following the entry into force of Regulation (EC) No 1008/2008, Regulation (EEC) No 2407/92 has been repealed and, according to Article 27 of Regulation (EC) No 1008/2008, references to the repealed Regulation shall be construed as references to Regulation (EC) No 1008/2008.
([125]) Regulation (EEC) No 2408/92.
([126]) As defined under Article 2(m) of Regulation (EEC) No 2408/92.

(v) The amount of aid must be strictly linked to eligible costs

(560) Eligible costs are defined in the 2005 Aviation Guidelines as the 'additional start-up costs incurred in launching the new route or frequency […] which the air operator will not have to bear once it is up and running'. Italy has not claimed that the financing to Germanwings and Meridiana was limited to cover eligible costs and that regular operating costs would not be subsidised. This condition is therefore not complied with.

(vi) The degressive aid may be granted for a maximum period of three years. The amount of aid in any one year may not exceed 50 % of total eligible costs for that year and total aid may not exceed an average of 30 % of eligible costs

(561) The agreements with the airlines in question make no reference to the costs of the airlines and do not lay down that the aid must be limited to a certain percentage of the eligible costs. The Commission therefore finds that this condition is not fulfilled.

(vii) The period during which start-up aid is granted to an airline must be substantially less than the period during which the airline undertakes to operate from the airport in question

(562) The Commission notes that no condition was imposed that the routes opened by the carriers be viable after the period when their operation is subsidised.

(viii) The aid payments must be linked to the net development of the number of passengers transported

(563) The Commission notes that there is a clear link between the number of passengers carried and the amount of aid. In particular, the agreements with Germanwings and Meridiana set out success fees to be paid by So.Ge.A.AL if the airlines met the stipulated traffic targets.

(ix) Any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services. The notification must in particular include the description of the route as well as the objective criteria in terms of the amount and the duration of the aid

(564) In the course of the investigation Italy claimed that the airport's intention to conclude agreements with airlines interested in opening new routes departing from Alghero airport had been sufficiently advertised among the potential interested carriers. However, no evidence was provided in that respect. In particular, no indication exists that Alghero airport made its intention to grant aid to the airlines, and the conditions of the granting of such aid, known in good time and with adequate publicity. The procedure for selection of the air carriers was therefore not sufficiently clear to ensure the non-discriminatory treatment of applicants of interested carriers.

(x) When submitting its application, any airline which proposes a service to a public body offering to grant start-up aid must provide a business plan showing, over a substantial period, the viability of the route after the aid has expired. The public body should also carry out an analysis of the impact of the new route on competing routes prior to granting start-up aid

(565) Neither Italy nor interested parties have provided evidence in the investigation that carriers had to provide a business plan for the routes in question beforehand to demonstrate the viability of the route in question on a standalone basis after a certain period. Neither has So.Ge.A.AL claimed to have carried out an assessment of the impact of the new routes in question on other routes. This condition is therefore not observed.

(xi) States must ensure that the list of routes receiving aid is published annually for each airport, in each instance indicating the source of public funding, the recipient company, the amount of aid paid and the number of passengers concerned

(566) There is no indication that Alghero airport published yearly the list of routes receiving public financing, indicating the source of financing, the air carrier, the amount of aid actually paid and the number of passengers carried. This condition is therefore not complied with.

(xii) Where applicable, appeal procedures must be provided for at Member State level to ensure that there is no discrimination in the granting of aid

(567) Italy has not claimed that appeal procedures were in place to deal with complaints regarding the granting of the aid to carriers operating routes from Alghero airport. This condition is therefore not observed.

(xiii) Penalty mechanisms must be implemented in the event that a carrier fails to keep to the undertakings that it gave in relation to an airport when the aid was paid. A system for recovering aid or for seizing a guarantee initially deposited by the carrier will allow the airport to ensure that the airline honours its commitments

(568) The Commission notes that the agreements with the carriers lay down a system of penalties in case the airlines to not observe the traffic targets stipulated therein. This condition is thus fulfilled.

(xiv) Start-up aid cannot be combined with other types of aid granted for the operation of a route, such as aid of a social nature granted to certain categories of passengers and compensation for discharging public services. In addition, such aid cannot be granted when access to a route has been reserved for a single carrier under Article 4 of Regulation (EEC) No 2408/92, and in particular paragraph 1(d) of that Article. Also, in accordance with the rules of proportionality, such aid cannot be combined with other aid granted to cover the same costs, including aid paid in another State

(569) Italy confirmed that the aid in question was not granted for the start-up of routes subject to PSOs under Regulation (EC) No 1008/2008. However, Italy has not confirmed that the aid was not combined with other aid to cover the same costs.

(570) Therefore, the aid to the airlines cannot be found to constitute compatible start-up aid under the 2005 Aviation Guidelines. The State aid implemented for Meridiana and Germanwings therefore constitutes unlawful and incompatible State aid that must be recovered.

12.3. CONCLUSION

(571) Therefore, the Commission finds that:

(a) Italy implemented investment aid to Alghero airport in violation of Article 108(3) of the Treaty. The investment aid is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty;

(b) The subsidies referred to in recital 257 granted to the manager of Alghero airport before 12 December 2000 fall outside the scope of this Decision;

(c) Italy implemented operating aid to Alghero airport in violation of Article 108(3) of the Treaty. The operating aid is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty;

(d) The airport services (or handling) agreements and the marketing agreements concluded by So.Ge.A.AL with Ryanair, Air One/Alitalia, Volare, bmibaby, Air Vallée and Air Italy do not constitute State aid;

(e) The handling and marketing agreements concluded by So.Ge.A.AL with Meridiana and Germanwings constitute unlawful and incompatible State aid.

13. **RECOVERY**

(572) In accordance with the Treaty and the Court of Justice's established case-law, the Commission is competent to decide that the Member State concerned must abolish or alter aid ([127]) when it has found that it is incompatible

([127]) Case C-70/72 *Commission v Germany* [1973] ECR 813, paragraph 13.

with the internal market. The Court has also consistently held that the obligation on a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([128]). In that context, the Court has stated that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ([129]).

(573) Following that case-law, Article 14 of Council Regulation (EC) No 659/99 ([130]) laid down that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.'

(574) Therefore, the State aid mentioned in Table 19 implemented for Meridiana and Germanwings must be reimbursed to Italy insofar as it has been paid out.

(575) Regarding the amounts to be recovered, the Commission will consider the *ex ante* analysis of expected incremental costs and revenues of the agreements as set out in Table 19, with the following additional considerations:

a) For each agreement or combination of agreements at stake, the annual aid amount to recover should correspond to the annual negative incremental cash flow at the time when the decision was taken to sign the agreement, for each year of application of the contract. Those negative cash flows correspond to the amount of financing needed for the net present value of the agreement to be positive, thus for the agreement to be market conform.

b) The Commission considers that the timeframe to take into consideration for the profitability analysis for Germanwings is 2007. As mentioned in recital 117, Germanwings operated from Alghero airport only in 2007. Indeed, the effective advantage received by the airline company is limited to the effective duration of the agreements at stake, as once the agreement has been terminated, Germanwings has not received any more advantage from the airport.

(576) Table 23 indicates the indicative recovery amounts (negative incremental flows) with the corresponding reductions for the Germanwings agreement which has not run its full duration.

Table 23

Information about the indicative amounts of aid received, to be recovered and already recovered

Identity of the beneficiary	Total indicative amount of aid received (in EUR)	Total indicative amount of aid to be recovered (in EUR) (Principal)	Total amount already reimbursed (in EUR)	
			Principal	Recovery interest
Germanwings	140 482	140 482		
Meridiana	175 174	175 174		

(577) To take account of the actual advantage received by the airlines and its subsidiaries under the agreements, the amounts indicated in Table 23 may be adjusted, according to the supporting evidence provided by Italy, based on (i) the difference between, on the one hand, actual payments as presented *ex post*, that were made by the airlines with regard to the airport charges and, on the other hand, the forecasted cash flows (*ex ante*) on these items of income and shown in Table 19, and (ii) the difference between, on the one hand, the actual marketing payments as presented *ex post* which were paid to the airlines under marketing agreements and, other the other hand, the marketing costs as foreseen *ex ante*, corresponding to the amounts indicated in Table 19.

([128]) Joined cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-04103, paragraph 75.
([129]) Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraphs 64-65.
([130]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

(578) In addition, Italy has to add to the aid amount the recovery interests, calculated from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery ([131]), according to Chapter V of Commission Regulation (EC) No 794/2004 ([132]). As in the case at stake cash flows corresponding to the aid amounts are complex and were paid at different dates throughout the year, and both contracts only ran for one year each, the Commission considers that it is acceptable for the calculation of the recovery interests to consider that the time of payment of the aid to Germanwings and Meridiana is the date of (early) termination of the respective agreements.

HAS ADOPTED THIS DECISION:

Article 1

1. The direct grants for infrastructure, fittings and works and equipment which Italy granted to Alghero airport constitute State aid within the meaning of Article 107(1) of the Treaty. The State aid was granted by Italy in violation of Article 108(3) of the Treaty.

2. The State aid referred to in paragraph 1 is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty.

Article 2

1. The capital injections which Italy implemented for Alghero airport constitute State aid within the meaning of Article 107(1) of the Treaty. The State aid was granted by Italy in violation of Article 108(3) of the Treaty.

2. The State aid referred to in paragraph 1 is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty.

Article 3

The measures which Italy implemented for Ryanair, Air One/Alitalia, Volare, bmibaby, Air Vallée and Air Italy do not constitute State aid within the meaning of Article 107(1) of the Treaty.

Article 4

1. The measures which Italy implemented for Meridiana and Germanwings constitute State aid within the meaning of Article 107(1) of the Treaty. The State aid was granted by Italy in violation of Article 108(3) of the Treaty.

2. The State aid referred to in paragraph 1 is incompatible with the internal market.

Article 5

1. Italy shall recover the incompatible State aid referred to in Article 4 from the beneficiaries.

2. The sums to be recovered shall bear interest from the date on which they were deemed to be put at the disposal of the beneficiaries until their actual recovery.

([131]) Regulation (EC) No 659/1999, cited, Article 14, paragraph 2.
([132]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

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

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

Article 6

1. Recovery of the aid referred to in Article 5 shall be immediate and effective.

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

Article 7

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

(a) the total amount of aid received by the beneficiaries;

(b) the total amount (principal and recovery interests) to be recovered from each beneficiary;

(c) a detailed description of the measures already taken and planned to comply with this Decision;

(d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 4 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 8

This Decision is addressed to the Italian Republic.

Done at Brussels, 1 October 2014.

For the Commission
Joaquín ALMUNIA
Vice-President