II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2018/628

of 11 November 2016

on State aid SA.24221(2011/C) (ex 2011/NN) implemented by Austria for the Klagenfurt airport, Ryanair and other airlines using the airport

(notified under document C(2016) 7131)

(Only the German version 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 provision(s) cited above ([1]), and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 5 October 2007 a competitor of the Irish Airline Ryanair plc (hereinafter: 'Ryanair') on the European air passenger transport market, who requested not to have its identity disclosed, lodged a complaint with the Commission alleging that Ryanair has been granted unlawful State aid by the Federal State of Carinthia, the City of Klagenfurt, Kärnten Werbung Marketing & Innovationsmanagement GmbH (hereafter: 'Kärnten Werbung') and the Airport of Klagenfurt (hereinafter 'KLU') via its operating company Kärntner Flughafen Betriebsgesellschaft mbH (hereinafter 'KFBG').

(2) By letter of 11 October 2007 the Commission forwarded the complaint to Austria and requested information. The Austrian authorities responded by letter dated 2 January 2008.

(3) The Commission requested additional information from the Austrian authorities by letters dated 15 November 2010 and 24 March 2011. The Austrian authorities responded by letters dated 28 January 2011 and 30 May 2011.

(4) On 8 April 2011 the Commission invited Ryanair to provide certain information. Ryanair submitted the information by letter dated 4 July 2011. On 15 July 2011 the Commission forwarded the submission of Ryanair to the Austrian authorities, which provided their comments by letter of 20 September 2011.

(5) After having examined the information supplied by the Austrian authorities, the Commission decided on 22 February 2012 to open the investigation procedure laid down in Article 108(2) of the Treaty on the

([1]) OJ C 233, 3.8.2012, p. 28.

Functioning of the European Union ('TFEU'). The decision to open the formal investigation procedure (hereinafter 'the opening decision') was transmitted to Austria on the same date and was subsequently published in the *Official Journal of the European Union*. The Commission invited interested parties to submit their comments on the measure ([2]).

(6) By letter dated 13 March 2012 Austria requested the Commission to extend the deadline to submit its observations about the Commission's opening decision. The Commission granted an extension of the deadline by letter of 19 April 2012. Austria submitted its observations on 16 May, 11 June and 31 August 2012.

(7) By letters dated 20 June 2012, 5 October 2012, 3 May 2013 and 28 May 2014 the Commission forwarded interested parties' observations to Austria.

(8) By letter dated 24 February 2014 the Commission informed Austria and the interested parties to the procedure that the Commission guidelines on State aid to airports and airlines ([3]) (hereinafter 'the 2014 Aviation Guidelines') were adopted on 20 February 2014 and invited them to submit comments on the application of the new EU Guidelines on State aid to Airport and Airlines to this investigation. Austria replied by letter of 20 March 2014.

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

(10) By letter of 28 May 2014 the Commission requested further information from Austria regarding a marketing contract between the KLU and Ryanair signed on 22 January 2002. The Commission had previously learned from this contract by a submission of an interested party (Ryanair). By letter of 11 June 2014 Austria replied to this request.

(11) After having examined the information supplied by the Austrian authorities, the Commission decided on 23 July 2014 to extend the investigation procedure. The decision to extend the formal investigation procedure ([5]) (hereinafter 'the extension decision') was transmitted to Austria on the same date and was subsequently published in the *Official Journal of the European Union*. The Commission invited interested parties to submit their comments on the measure.

(12) Austria submitted its observations on the measure which was the object of the extension decision by letter dated 20 August 2014. The Commission received comments from interested parties. It forwarded them to Austria, which was given the opportunity to react; its comments were received by letter dated 17 December 2014.

(13) By letters dated 1 December 2014, 5 February 2015, 24 April 2015 and 11 December 2015 the Commission forwarded interested parties' observations to Austria.

(14) The Commission requested additional information from the Austrian authorities by letters dated 15 December 2014, 13 January 2015, 5 February 2015, 19 March 2015 and 25 September 2015. The Austrian authorities responded by letters dated 28 January 2015, 12 February 2015, 31 March 2015, 14 April 2015 and 11 November 2015.

2. DESCRIPTION OF THE MEASURES AND GROUNDS FOR INITIATING THE PROCEDURE

2.1. Introduction

(15) This case deals with several measures that concern KLU as well as different airlines operating at KLU:

— KLU has been financed by its shareholders from 2000 to 2010,

([2]) Commission decision SA.24221 (ex CP 281/2007) — Austria — Klagenfurt Airport — Ryanair and other airlines using the airport (OJ C 233, 3.8.2012, p. 28).
([3]) Communication from the Commission — Commission guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).
([4]) Communication from the Commission — Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).
([5]) Commission decision SA.24221 (ex CP 281/2007) — Austria — Klagenfurt Airport — Ryanair and other airlines (OJ C 348, 3.10.2014, p. 36).

— KLU operated an incentive scheme as of 2005 to the benefit of several airlines,

— KLU entered into several agreements with Ryanair, Leading Verge.com Limited (hereinafter 'LV'), Airport Marketing Services (Jersey) Limited (hereinafter 'AMS'), Hapag Lloyd Express, Tuifly, Air Berlin and Austrian Airlines (hereinafter 'AUA').

2.2. **General presentation of Klagenfurt Airport**

(16) KLU is located at the outskirts of the city of Klagenfurt, which is the capital of the Austrian Federal State Carinthia (*Bundesland Kärnten*). Carinthia is a mountainous region in the south of Austria.

(17) KLU was founded in 1915 as a military air base. Soon after that it was used for both military and civil purposes and this dual utilisation continues until today.

(18) KLU is owned and operated since 1939 by KFBG which is held by several shareholders. Until 2003 the shares were held by the Republic of Austria (60 %), the State of Carinthia (20 %) and Klagenfurt city (20 %). In April 2003 the State of Carinthia took over the shares of the Republic of Austria, committing itself to keep the airport open for military purposes. Since 2003 the shares were therefore held by the State of Carinthia (80 %) and Klagenfurt city (20 %). In November 2008 the 80 % share of the State of Carinthia in the Airport were transferred to Kärntner Landes- und Hypothekenbank-Holding.

(19) The airport has a main runway of 2 720 metres, which remained unchanged since 2000. Its terminal has a maximum capacity of 600 000 passengers. The passenger numbers have evolved as follows:

Table 1

Traffic figures at KLU

Year	Total passengers	Movements	Freight in kg
2000	235 503	8 325	78 931
2001	226 701	7 133	67 159
2002	259 717	6 894	29 939
2003	313 557	6 979	47 347
2004	486 274	8 810	57 881
2005	522 697	8 907	53 212
2006	409 004	7 718	41 563
2007	469 033	8 103	34 894
2008	429 889	7 679	23 935
2009	410 512	7 785	30 153
2010	425 933	7 482	13 443
2011	375 307	6 451	206
2012	279 045	4 576	0
2013	258 421	4 262	0
2014	224 846	3 920	0
2015	227 625	3 922	0

(20) KLU is located in Carinthia, the southernmost state of Austria. As Carinthia is situated within the Eastern Alps it is known for its mountains, such as the Hohe Tauern Range, Carnic Alps and Karawanken and tourism is one of the major industries. Due to this alpine situation, Carinthia has a continental climate with long harsh winters.

(21) KLU is situated at the following distances/travelling time by car to other airports. It has to be noted however that these indications for travelling time can only be met under best conditions, and will often take longer due to blocked roads and congested tunnels because of adverse weather conditions and too much traffic volume for the tunnels.

— Ljubljana airport (Slovenia): 80 km, 1 h 30

— Graz airport (Austria): 128 km, 1 h 10

— Maribor airport (Slovenia): 137 km, 1 h 47

— Trieste airport (Italy): 203 km, 1 h 51

— Salzburg airport (Austria): 223 km, 2 h

— Venezia airport (Italy): 282 km, 2 h 34

— Treviso airport (Italy): 290 km, 2 h 43

2.3. **Entities involved in the measures at Klagenfurt Airport**

2.3.1. *Destinations Management GmbH*

(22) Destinations Management GmbH (hereafter: 'DMG') is a 100 % subsidiary of KFBG. DMG is provider of different services to KLU in the aerospace sector, such as travel agency services, event manager and consultant to attract airlines to the destination of Klagenfurt.

2.3.2. *Kärnten Werbung, Marketing & Innovationsmanagement GmbH*

(23) Kärnten Werbung is owned by Kärntner Landes- und Hypothekenbank-Holding (until November 2008 by the State of Carinthia) (60 %), the Chamber of Economy of Carinthia (30 %) and the Chamber of Employees (10 %). The purpose of the company is marketing activities for the tourism in Carinthia. Kärnten Werbung is financed by its shareholders, i.e. by the Kärntner Landes- und Hypothekenbank-Holding, the Chamber of Economy of Carinthia and the Chamber of Employees. It is controlled by the supervisory board which is nominated by the shareholders.

2.3.3. *Kärntner Landes- und Hypothekenbank-Holding*

(24) Kärntner Landes- und Hypothekenbank-Holding (hereafter: 'KLH') was a legal person governed by public law and established in 1990 by the Kärntner Landesholding-Gesetz (KLH-G) ([6]). The KLH was a legal person *sui generis* and holder of special rights. KLH was not a corporation under commercial law. KLH was however registered in the Commercial Register under a company number. KLH also did not publish balance sheets or annual accounts, but rather, in accordance with § 28 KLH-G, made them available to the government of the State of Carinthia. KLH acted as owner company (holding), i.e. State assets agency for the shares which the State of Carinthia holds in the former regional mortgage bank of Carinthia (Kärntner Landes Hypothekenbank) and other companies, such as the Land Kärnten Beteiligungen GmbH, the Kärntner Vermögensverwaltungs GmbH et al. KLH owns 80 % of the shares of KFBG.

(25) According to its statutes, the purpose of KLH was to acquire, hold, administer and divest assets, in particular shares in companies, and to found companies. KLH was to carry out a strategic holding policy for all its companies to guarantee synergy effects, clear competences and carry out a centralised controlling. KLH had to carry out its business in the interest of the State of Carinthia. The operative business was carried out by the companies themselves. For the direct and indirect financing and support of projects by KLH a special fund called 'Zukunft Kärnten' was established by the State of Carinthia. The core of the fund consisted of EUR 500 million.

([6]) The government of the State of Carinthia decided on 28 April 2016 to dissolve KLH without liquidation. The assets of KLH were moved into the new special purpose vehicle 'Kärntner Beteiligungsverwaltung' (K-BVG). As this decision describes and deals with a period of time in which KLH still existed the name 'KLH' is used throughout this decision.

(26) The board of KLH was appointed by the supervisory board of KLH. The supervisory board on its part was appointed by the government of the State of Carinthia. It is stipulated in the statutes that the members of the supervisory board shall represent the proportions of the political parties represented in the government of the State of Carinthia. Moreover, the supervisory board had to agree with any investment decision of the board above the amount of EUR 50 000. According to § 5 of the statutes of KLH, KLH was under a constant supervision by the government of the State of Carinthia. The government of Carinthia had to ensure that all decisions of KLH were in the interest of the State of Carinthia.

2.3.4. *Leading Verge.Com Limited*

(27) LV is a 100 % subsidiary of Ryanair and is active as marketing company for Ryanair.

2.3.5. *Airport Marketing Services (Jersey) Limited*

(28) AMS is a 100 % subsidiary of Ryanair. Its main activity is to sell advertising space on the Ryanair website. AMS has the exclusive license to offer marketing services on the website www.ryanair.com of Ryanair.

2.4. **Financing of Klagenfurt Airport by the City of Klagenfurt, the State of Carinthia and other entities**

(29) In the period between 2000 and 2010 KLU received from its shareholders as well as the Federal Ministry for the Interior and the Federal Ministry of Finances financial contributions. These different contributions to KFBG and DMG are represented in the following table.

Table 2

Financial contributions to KFBG

Year of contribution	State of Carinthia to KFBG	City of Klagenfurt to KFBG	KLH to DMG	KLH (Zukunftsfonds) to DMG	State of Carinthia to DMG	Federal Ministries to KFBG
2000	36 336	0	0	0	0	24 000
2001	145 349	0	0	0	0	24 000
2002	90 840 + 180 000 + 134 500	90 840	0	0	1 000 000	27 000
2003	377 964 + 96 850 + 88 500	181 680	0	0	0	553 000
2004	1 424 100 + 120 000 + 25 000 + 5 280	181 680	0	0	0	878 000
2005	1 193 579	151 400	0	0	0	642 000
2006	1 149 887	0	0	0	0	791 000
2007	459 855	104 000	0	0	0	824 000

Year of contribution	State of Carinthia to KFBG	City of Klagenfurt to KFBG	KLH to DMG	KLH (Zukunftsfonds) to DMG	State of Carinthia to DMG	Federal Ministries to KFBG
2008	800 000	247 000	570 000	0	0	1 134 000
2009	800 000	93 000	615 000	115 969	0	682 000
2010	473 600	300 000	0	346 179	0	896 000
2011	800 000	304 000	0	473 925	0	0

2.5. **The Airport Incentive Scheme of Kärntner Flughafen Betriebs GmbH of 2005**

(30) The schedule of charges of KLU is approved every year by the Federal Ministry for Transport and consists of Part I 'Tarifordnung' and Part II 'Entgeltordnung'. Part I deals with the following tariffs: landing fee (per turnaround), passenger fee (per departing passenger), parking fee (per turnaround) and infrastructure fee (airside: per turnaround, landside: per passenger). The infrastructure fee is for the use of the airport central infrastructure and applies when a ramp/traffic handling service is provided. It consists of the air side infrastructure tariff which depends on the maximum take-off weight (hereafter 'MTOW') of the aircraft and the number of seats and a landside infrastructure tariff per departing passenger.

(31) Part II ('Entgeltordnung') deals with the ground handling services. The fees for ground handling services are divided into two groups: services which have to be paid for independently of the range of the use; traffic handling charge ('THC') and ramp handling charge ('RHC') and individual services which have to be paid only with respect to the individual use. The amount of the THC and RHC depends on the MTOW of the aircraft. The THC is between EUR 337 and 3 886, the RHC is between EUR 226 and 2 404.

(32) In 2005 KFBG introduced an incentive scheme (hereinafter '2005 incentive scheme') for airlines with and from destination of Klagenfurt airport with the objective to enhance the creation of new flight destinations (hereinafter 'destinations incentive'), to intensify existing flight connections (hereinafter 'frequency incentive') and to strengthen and secure existing flight connections (hereinafter 'passenger incentive'). The scheme entered into force 1 September 2005 and ended 31 December 2008. In December 2008 the incentive scheme was extended until 2013.

(33) The destinations and frequency incentive scheme granted incentives as a percentage rebate on certain airport charges (landing fee, infrastructure fee airside, ramp handling charge) which are laid down in the schedule of charges of KLU.

(34) The passenger incentive scheme was an absolute amount paid per passenger of a departing flight from KLU fixed for the whole duration of the scheme. The incentive was deducted from the same fees as for the destinations and frequency incentive. The amount was indicated as a maximum amount. If the flights were increased or decreased the amount was adapted respectively but not above the maximum amount.

(35) A combination of the destinations and frequency incentive with the passenger incentive was possible insofar as all forms of incentives could be combined but not cumulated for the same passengers. This means that the passenger numbers on which are based the destinations and frequency incentives were deducted from the overall passenger number when calculating the passenger incentive.

(36) The incentive scheme was published on the website of KLU and was open to all airlines operating on KLU but applied only for scheduled flights, charter flights were excluded. The application had to be based on a prior agreement between KFBG and the airline on the planned frequencies and routes.

(37) The incentive was refunded by KFBG at the end of a calendar year. At that moment the airline had to prove the number of passengers and flights from and to the destination of KLU.

Table 3

Incentives at KLU since 2005

Year	Destinations incentive on Landetarif, luftseitiger Infrastrukturtarif and Vorfeldabfertigungsentgelt	Frequencies incentive on Landetarif, luftseitiger Infrastrukturtarif and Vorfeldabfertigungsentgelt	Passenger incentive (maximum) per departing passenger (EUR)
2005-2008	1st year: 70 %	1st year: 60 %	7,62
2009	2nd year: 60 %	2nd year: 50 %	5,06
2010	3rd year: 50 %	3rd year: 40 %	4,85
2011			4,85

Table 4

Overview of the amounts of incentives paid to airlines at KLU since 2005

(in thousand EUR)

	2013	2012	2011	2010	2009	2008	2007	2006	2003-2005
Passenger-Incentive:									
Austrian Airlines Group	[…] (*)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…] (1)
Ryanair	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	
TUIFly (HLX)					[…]	[…]			
Airberlin			[…]	[…]	[…]				
Lufthansa		[…]	[…]						
Germanwings	[…]	[…]							
Destinations-Incentive:									
Lufthansa			[…]	[…]	[…]	[…]			
Robin Hood					[…]				
Ryanair			[…]	[…]	[…]	[…]			
TUIFly (HLX)						[…]	[…]	[…]	
Airberlin			[…]	[…]					
Condor	[…]	[…]	[…]						
Frequency-Incentive:									
Austrian Airlines Group									
Germanwings		[…]	[…]	[…]	[…]				
SUM	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(*) Covered by the obligation of professional secrecy.
(1) The amounts in parentheses represent the amounts of incentives paid to AUA retrospectively pursuant to the settlement agreement presented in Section 2.9.

Table 5

Application of incentives since 2005

		Passenger-Incentive	Destination-Incentive	Frequency Incentive
Austrian Airlines	1.1.-31.12.2002 [1]	1.1.2003 [1]-26.10.2013		
Lufthansa	1.1.-31.12.2002	1.1.2003-31.12.2003 and 1.1.2004-29.3.2008 and 30.3.2011-31.1.2012	30.3.2008-29.3.2011	
Lufthansa				
Air Alps	1.1.-24.1.2002			
Air Direct	4.3.-10.6.2002			
Styrian Spirit	17.12.2005-15.3.2006			
Robin Hood			9.9.2009-1.10.2009	
Ryanair	27.6.2002-29.10.2005	19.12.2006-5.11.2013	27.10.2008-31.3.2011	
Tuifly	30.8.2003-31.3.2008	1.4.2008-24.10.2009	14.12.2006-30.3.2008	
Air Berlin		25.10.2009-31.10.2011	4.11.2010-31.10.2011	
Germanwings		25.10.2012-26.10.2013		25.10.2009-24.10.2012
Condor			16.12.2011-31.3.2013	

[1] The application of the incentives to AUA before 2005 was pursuant to the settlement agreement presented in Section 2.9.

2.6. **The agreements with Ryanair, LV and AMS**

2.6.1. *The 2002 agreements*

(38) In November 2001 DMG opened a tender for a scheduled flight connection between London and Klagenfurt. The tender was published in the Official Journal of 14 November 2001, p. 219, and in the official procurement journal of the Federal Ministry of Economy and Labour. The tender offered a contract for a direct daily scheduled flight London-Klagenfurt and back for at least 100 000 passengers per year from a central London airport with a duration of 3 years and an option to extend for 5 years. As a reward DMG offered:

— A contribution to the marketing activities of the airline with a fixed amount of ATS 2 million (EUR 145 345,67), the marketing support has to be used for the publicity and marketing of the flight connection, the use has to be proved every half year.

— A 97 % refunding of the turnaround fees (airport charges, station and ground handling fees and the air traffic control fee) of Klagenfurt airport. These fees arise when landing in KLU.

(39) The tender foresaw also an alternative offer with 4 flights a week and 60 000 passengers from London In this case the reward offered was a marketing support of ATS 1 million (EUR 72 672,82) and a 97 % refunding of the turnaround fees.

(40) The public tender did not result in any offer and was withdrawn consequently. In the following a negotiated procedure without previous publication was carried out and resulted in a contract with Ryanair.

2.6.1.1. The airport services agreement between KFBG and Ryanair of 22 January 2002

(41) On 22 January 2002 KFBG and Ryanair concluded an agreement which entered into force on 27 June 2002 for a period of 5 years with an automatic renewal for further 5 years provided that Ryanair fully complies with its obligations under that agreement.

(42) Ryanair was obliged under the agreement to operate passenger air services between KLU and London-Stansted Airport (hereafter: 'STN') commencing around the date of entering into force of the Agreement utilising a B737 aircraft on at least a daily basis with low fares and 348 rotations per year or 87 rotations per calendar quarter.

(43) According to the agreement, Ryanair pays KFBG an all-inclusive fee of EUR […] per rotation in respect of landing and take-off fees, lighting charges, noise and night fees, ramp and passenger handling, infrastructure charge, local Air Traffic Control and charges for the services at KLU.

(44) Ryanair collects on the passenger tickets an amount of EUR […] per departing passenger as a passenger services charge for the Airport. Ryanair also collects on the passenger tickets an amount of EUR […] (fixed by the Austrian Government) per departing passenger as a security fee for the Airport.

(45) Ryanair produces in conjunction with DMG a periodic marketing plan for the flight connections for KLU. Ryanair has complete discretion in the application of the marketing support received with the only condition that it has to link the appropriate tourist websites to Ryanair's website and to incorporate appropriate logos wherever feasible.

(46) KFBG is obliged to provide airport terminal and handling services for the services of Ryanair (including free branding space at the ticketing and check-in desks and boarding gates), to provide public relations functions such as local press conferences to announce new destinations, to procure the payment by DMG to LV of an amount of EUR […] per year in respect of the daily rotation commencing on 27 June 2002, payable quarterly in advance at EUR […]. To the extent that this amount is not paid by DMG to LV, KFBG has to pay the shortfall to Ryanair.

2.6.1.2. The marketing agreement between DMG and LV of 22 January 2002 (the first marketing agreement)

(47) On 22 January 2002 DMG and LV concluded an agreement which entered into force on the same date with a duration until 26 June 2007 with an automatic renewal for further 5 years provided that LV fully complied with its obligations under that agreement.

(48) According to the agreement, DMG appoints LV to initiate marketing measures aimed at making the province of Carinthia better known in the English speaking world and to arrange for legally licensed air carriers of Ryanair to provide new scheduled passenger air services from locations within the United Kingdom and/or continental Europe to KLU using aircraft with a capacity of not less than 140 seats ('the Services').

(49) The convened 'Services' should continue to be 348 rotations per annum (87 rotations per quarter) — the marketing agreement referred to the rotations as mentioned in the airport services agreement between KFBG and Ryanair. LV undertakes to procure the introduction and continuation of the 'Services' and to generate a promotional plan and web links to DMG's homepage and other promotion of promoting the 'Services' including links between tourist websites to LV's air operator client's websites.

(50) DMG pays EUR […] per year in respect of the daily rotation payable quarterly in advance at a rate of EUR […] (this payment is also mentioned in the contract between KFBG and Ryanair of 22 January 2002). This amount is also mentioned in the contract between KFBG and Ryanair, there it is stipulated that KFBG has to 'procure' the payment of DMG to LV.

2.6.1.3. The marketing agreement between DMG and AMS of 22 January 2002 (the second marketing agreement)

(51) On 22 January 2002 DMG and AMS concluded an additional marketing agreement which entered into force the same date for duration of 5 years with a possible extension for additional 5 years.

(52) According to this agreement, DMG appoints AMS to establish, on or before 1 May 2002, and operate two links on www.ryanair.com to websites chosen by DMG, which profile the attractions of the Federal State of Carinthia. AMS will provide additional services if the parties so decide according to Articles 5.1 and 5.2 of the agreement.

(53) DMG pays for the described services of AMS EUR […] per annum.

2.6.1.4. The side letter of the marketing agreement between DMG and LV of 22 January 2002 (the third marketing agreement)

(54) This agreement is a side letter to the marketing agreement between DMG and LV of 22 January 2002 (the first marketing agreement) and was signed by both parties on 22 January 2002 and entered into force on the same day.

(55) It was agreed between the parties that 'in relation to the contract between LV and DMG dated 22 January 2002 a further marketing payment for additional and intensified marketing measures within the duration of contract, in the amount of EUR […] will be payable by DMG to LV on 1 May 2002.'

2.6.1.5. Summary of the payments under the different agreements with Ryanair and its subsidiaries

Table 6

Payments of KFBG to Ryanair 2002-2005 in EUR according to the marketing agreements

Year	2002	2003	2004	2005
Refunding of turnaround fees	[…]	[…]	[…]	[…]
Payments under the first marketing agreement	[…]	[…]	[…]	[…]
Payments under the second marketing agreement	[…]	[…]	[…]	[…]
Payments under the third marketing agreement (the side letter to first marketing agreement)	[…]			

(56) All 2002 agreements between KFBG, DMG, Ryanair, LV and AMS ended on 29 October 2005, when Ryanair stopped to operate the passenger air services between KLU and STN due to economic reasons.

2.6.2. *The 2006 agreements*

2.6.2.1. The airport services agreement between KFBG and Ryanair of 23 August 2006

(57) On 23 August 2006 KFBG and Ryanair concluded an agreement which entered into force the same day for a 3-a-week-service operated from 19 December 2006 until 21 April 2007. The agreement was based on the published tariffs of KLU and the incentive scheme introduced in September 2005.

(58) Ryanair was obliged to establish and operate STN-KLU-STN with a 3-a-week-service which would generate at least 8 000 departing passengers for the term of the contract. Ryanair was obliged to pay the official charges of KLU. The incentive scheme granted Ryanair an incentive of EUR 7,62 per departing passenger on the new scheduled service.

(59) The Agreement contained the possibility to be extended for a period of 5 years from 22 April 2007 to 21 April 2012.

2.6.2.2. The marketing agreement between DMG and AMS of 21 December 2006

(60) On 21 December 2006 DMG and AMS concluded a marketing agreement which entered into force the 28 February 2007. The Agreement was linked to Ryanair's commitment to operate a route between STN and KLU for the period 19 December 2006 to 21 April 2007 (ref. para 61).

(61) AMS was obliged under the agreement to provide a package of marketing services per year with the value of EUR […] according to the current AMS rates. These marketing services included a link from www.ryanair.com to a website designated by DMG, a content designated by DMG on the Klagenfurt/Carinthia destination page and email offers advertising the region of Klagenfurt/Carinthia sent to subscribers of the website. Additional marketing services exceeding that amount could be decided by the two parties according to Article 5 of the agreement. The websites designated by DMG could not provide flights, car rental, accommodation and any services that in future might be offered by www.ryanair.com but they could present tourist attractions and business opportunities of Klagenfurt/Carinthia.

(62) DMG was obliged to pay for the marketing services the EUR […] in monthly instalments on the basis of invoices.

(63) The agreement contained the option to be extended for a period of 5 years from 22 April 2007 to 21 April 2012. The basis of the Agreement was a year-round, 3-a-week-service STN-KLU-STN. The yearly package of marketing in its content and rates were to be adapted amicably each year.

2.7. **The agreements with Hapag Lloyd Express (HLX) and Tuifly**

(64) In November 2002 DMG opened a second tender for a scheduled flight connection between Klagenfurt and another European city (London and cities with less than 500 km distance being excluded). The tender was published in the *Official Journal of the European Union* of 11 December 2002, p. 240, and in the official procurement journal of the Austrian Federal Ministry of Economy and Labour. The tender offered a contract for a direct daily scheduled flight Klagenfurt — a European City and back with 348 flights (rotations) per year with duration of 5 years and an option to extend for 5 years. As a reward DMG offered:

(a) A contribution to the marketing activities of the airline with a fixed amount of EUR 145 000, the marketing support had to be used for the publicity and marketing of the flight connection, the use has to be proved every half year.

(b) A 95 % refunding of the turnaround fees (airport charges, station and ground handling fees and the air traffic control fee) of KLU. These fees arise when landing in KLU.

(65) The second public tender did not result in any offer and was withdrawn consequently. In the following a negotiated procedure without previous publication was carried out and resulted in an agreement with HLX.

(66) According to the information submitted by Austria, the cooperation agreement between KFBG and HLX started on 30 August 2003 and continued until 31 March 2008. It was concluded in written form only by contracts signed on 24 May 2004 and 4 June 2004. The agreement included the possibility to be prolonged by both parties.

(67) HLX was obliged to establish and operate Klagenfurt-Köln/Bonn with a 6-a-week-service, as well as Klagenfurt-Hannover with a 3-a-week-service. HLX was obliged to pay for these air services the official charges of KLU as set out in the schedule of charges of KLU.

(68) HLX was also obliged to provide a package of marketing services for KLU, such as commercials for the new destinations in local, regional and national medias, as well as in the internet and with billboard advertising in the public. HLX was obliged to feature a positive presentation of KLU on its website as well as a direct link to the website of KLU.

(69) KFBG was obliged to pay for the costs of initiating the new services and the marketing services connected with the new air service the one-off amount of EUR […]. In addition KFBG was obliged to pay for each of the new destinations a monthly amount for marketing services of EUR […] as of 1 October 2003 and a monthly amount of EUR […] as of 1 May 2004 until 31 March 2008.

(70) A third tender was opened by DMG in December 2003 for a scheduled flight connection between Klagenfurt and another European city (London and cities with less than 500 km distance being excluded). The tender was published in the *Official Journal of the European Union* and in the official procurement journal of the Federal Ministry of Economy and Labour on 30 December 2003. The tender offered a contract for a direct daily scheduled flight Klagenfurt — a European City and return with 3-7 flights (rotations) per week with duration of 5 years. As a reward DMG offered:

(a) A contribution to the marketing activities of the airline with a fixed amount of EUR 29,90 per departing passenger.

(b) A 98 % refunding of the turnaround fees (airport charges, station and ground handling fees and the air traffic control fee) of KLU. These fees arise when landing in KLU.

(71) The third public tender did not result in any offer and was withdrawn consequently. In the following a negotiation procedure without previous publication was carried out and resulted in an extension of the agreement with HLX: two additional destinations, namely Hamburg and Berlin, were added to the air services offered by HLX as of 1 May 2004.

(72) The Austrian authorities explained that the amounts paid to HLX for marketing services corresponded approximately to the refunding of turnaround fees as foreseen in the second and third tender made by DMG in November 2002 and December 2003 ([7]). According to Austria the details of the agreement with HLX corresponded to the conditions of the second and third tenders made by KFBG.

(73) In January 2007 HLX and another undertaking named 'Hapag-Lloyd Flug' were merged into the new undertaking TUIfly. TUIfly continued the air services of HLX. Following this merger, KFBG concluded a follow-up agreement with TUIfly on 10 December 2008. This agreement entered into force on 1 April 2008 and expired automatically on 31 March 2013.

(74) According to this agreement Tuifly was obliged to operate in the International Air Transport Association (hereinafter 'IATA') summer flight schedule 2008 Klagenfurt-Köln with a 7-a-week-service, Klagenfurt-Hannover with a 2-a-week-service, Klagenfurt-Berlin with a 3-a-week-service and Klagenfurt-Hamburg with a 2-a-week-service which would generate at least 50 000 departing passengers. In the IATA winter flight schedule 2008/2009 Tuifly was obliged to operate Klagenfurt-Köln with a 7-a-week-service, Klagenfurt-Hannover with a 4-a-week-service, Klagenfurt-Berlin with a 4-a-week-service and Klagenfurt-Hamburg with a 4-a-week-service which would generate at least 40 000 departing passengers.

(75) Tuifly was also obliged under the agreement to provide a comprehensive package of marketing services for KLU and the region of Carinthia. These marketing services included the presentation of Klagenfurt as tourist destination in two monthly newsletters, on a special last-minute-website, on the starting website of Tuifly, on the website for services to KLU, in on-board cards and on-board magazines, in the respective summer and winter schedule of the Tuifly services, in a special video in the on-board TV programme, aircraft branding and various press events.

([7]) However as stated in recitals 65 and 71 the refunding of the turnaround fees in the two tenders is not identical.

(76) KFBG was obliged to pay for these marketing services a yearly amount of EUR […] as well as the one-off amount of EUR […] for the aircraft branding.

2.8. **The agreement with Air Berlin**

(77) Starting with the IATA winter flight schedule 2009/2010 Air Berlin took over the city flights network of Tuifly. Following this takeover, KFBG and Tuifly signed on 28 October 2009 a contract to terminate their agreement of 10 December 2008 with effect on 25 October 2009. DMG concluded a follow-up agreement with Air Berlin for the period 25 October 2009 to 31 March 2013. This agreement was signed on different dates, i.e. on 8 July 2010, 13 October 2010 and 25 October 2010. The agreement included the possibility to be prolonged by both parties.

(78) According to this agreement Air Berlin was obliged to operate in the IATA winter flight schedule 2009/2010 Klagenfurt-Köln with a 4-7-a-week-service (a minimum of 4 services and a maximum of 7 services per week to be decided by Air Berlin), Klagenfurt-Berlin with a 5-6-a-week-service, Klagenfurt-Hannover with a 2-a-week-service and Klagenfurt-Hamburg with a 5-6-a-week-service which would generate in that summer flight schedule at least 31 000 departing passengers in total. Air Berlin was obliged to operate in the IATA summer flight schedule 2010 Klagenfurt-Köln with a 5-6-a-week-service, Klagenfurt-Berlin with a 4-5-a-week-service, Klagenfurt-Hannover with a 2-a-week-service and Klagenfurt-Hamburg with a 3-4-a-week-service which would generate in that winter flight schedule at least 42 000 departing passengers in total.

(79) Air Berlin was obliged to operate in the IATA winter flight schedule 2010/2011 Klagenfurt-Düsseldorf with a 2-3-a-week-service, Klagenfurt-Berlin with a 3-a-week-service, and Klagenfurt-Hamburg with a 2-3-a-week-service which would generate at least 19 000 departing passengers. Air Berlin was obliged to operate in the IATA summer flight schedule 2011 Klagenfurt-Düsseldorf with a 2-3-a-week-service, Klagenfurt-Berlin with a 3-4-a-week-service, and Klagenfurt-Hamburg with a 2-a-week-service which would generate at least 28 000 departing passengers.

(80) Air Berlin was also obliged under the agreement to provide a comprehensive package of marketing services for KLU and the region of Carinthia such as the presentation of Klagenfurt on the main website of Air Berlin, in the German and Dutch newsletters, at the web-check in, the boarding pass receipts, as screensavers in various print and TV media on board of the aircrafts and at regional press events.

(81) DMG was obliged to pay for these marketing services for the flight schedule 2009/2010 the amount of EUR […], for the flight schedule 2010/2011 the amount of EUR […].

2.9. **The agreement with Austrian Airlines of 20 October 2005**

(82) Since 1 October 2003 AUA unilaterally reduced its payments for the turnaround fees due at that time at KLU. On 17 November 2003 KFBG brought against AUA a civil law action at the local district court concerning the airport fees still due. AUA submitted on 7 January 2004 a defence plea in this proceeding. In addition AUA filed on 17 October 2004 an application at the national cartel court under national competition law because of abuse of a dominant position by KFBG.

(83) On 20 October 2005 KFBG and AUA signed a settlement agreement concerning the period of 1 October 2003 until 20 October 2005. In this settlement agreement the two parties agreed to end the two litigations at the local district court and the national cartel court.

(84) AUA agreed to pay EUR […] to KFBG.

(85) Both parties agreed that the incentive scheme of KFBG of 1 September 2005 became part of the settlement agreement and was to be applied for AUA as of 1 October 2003.

2.10. **Grounds for initiating the procedure in February 2012 and extending the procedure in July 2014**

(86) In its opening decision and extension decision, the Commission raised doubts regarding the following measures:

2.10.1. *Financing of Klagenfurt Airport by the City of Klagenfurt, the State of Carinthia and other entities*

(87) The Commission expressed doubts whether public payments made by the shareholders of KFBG as well as the Federal Ministry for the Interior and the Federal Ministry of Finances for the financing of KLU in the period between 2000 and 2010 constitute State aid and, if this is the case, whether this State aid is compatible with the internal market.

2.10.2. *The Airport Incentive Scheme of Kärntner Flughafen Betriebs GmbH of 2005*

(88) The Commission raised doubts whether the discounted airport charges under the incentive scheme of 2005 amounted to State aid and, if so, whether this State aid is compatible with the internal market.

2.10.3. *The agreements with Ryanair, LV and AMS in 2002 and 2006*

(89) In its opening decision, the Commission expressed doubts whether Ryanair and its subsidiary LV benefitted from State aid by concluding the agreements in 2002 with KFBG and DMG, and, if so, whether this State aid is compatible with the internal market.

(90) In its extension decision, the Commission expressed doubts whether two additional contracts concluded in 2002 between DMG and AMS as well as LV, that have to be taken into consideration for an accurate analysis of all the contracts concluded in 2002, constitute State aid, and, if this is the case, whether this State aid is compatible with the internal market.

(91) The Commission also raised doubts in its opening decision whether Ryanair and its subsidiary AMS benefitted from State aid by concluding the agreements in 2006 with KFBG and DMG, and, if this is the case, whether this State aid is compatible with the internal market.

2.10.4. *The agreements with Hapag Lloyd Express (HLX) and Tuifly*

(92) The Commission raised doubts whether HLX/Tuifly benefitted from State aid by concluding agreements with KFBG, and, if so, whether this State aid is compatible with the internal market.

2.10.5. *The agreement with Air Berlin*

(93) The Commission also expressed doubts whether Air Berlin benefitted from State aid by concluding agreements with KFBG, and, if so, whether this State aid is compatible with the internal market.

2.10.6. *The agreement with Austrian Airlines of 20 October 2005*

(94) The Commission raised doubts whether the settlement agreement between KFBG and AUA of 20 October 2005 constitutes State aid, and, if this is the case, whether this State aid is compatible with the internal market.

3. **COST-BENEFIT ANALYSES SUBMITTED BY THE AUSTRIAN AUTHORITIES**

(95) The Austrian authorities submitted that KFBG in general did not prepare *ex ante* cost-benefit analyses before concluding agreements with the airlines nor before introducing the incentive scheme in 2005.

(96) In order to enable the Commission to assess the measures under investigation, Austria submitted reconstructed *ex ante* cost-benefit analyses for all agreements concluded between KFBG/DMG and various airlines as well as for the incentive scheme of 2005.

(97) For the reconstruction of these analyses the Austrian authorities used only data and information available at moment of concluding the agreements and the incentive scheme and provided for the duration of each agreement estimated values.

4. COMMENTS FROM AUSTRIA

(98) The Austrian authorities first recalled the great public interest in operating KLU in Carinthia. KLU is not only an important link between the region of Carinthia and other regions and Member States. KLU also has to be operated because of responsibilities of public administration and military obligations. The State of Carinthia is obliged to operate KLU for military operations of the Republic of Austria.

(99) Secondly the Austrian authorities declared that it is not possible to substitute KLU with other airports, as a journey to other alternative airports (Ljubljana, Maribor, Trieste or Graz) through the alpine State of Carinthia can take with adverse weather conditions easily much more time than the same distance in non-alpine regions. The catchment area of an airport in an alpine region such as Klagenfurt should therefore be adjusted accordingly.

(100) Thirdly Austria submitted that the financing of KLU would have been profitable during the last 20 years if the costs of contracts with various airlines were not taken into account. An analysis of the costs of operating KLU should be undertaken by using an incremental cost approach.

(101) Austria agreed that all of the measures under investigation have been granted through State resources and are imputable to Austria.

(102) However, Austria fails to see the economic advantage received by KFBG through the financing of its shareholder. Austria argues that the amounts paid by the shareholders only compensated KFBG for the costs stemming from the marketing contracts with different airlines and the benefit of these marketing activities were not only for KLU, but also for the city of Klagenfurt and the State of Carinthia. Some of the costs of KLU for public administrative obligations should normally be borne by the State of Carinthia and could therefore be paid by the State of Carinthia or Federal Ministries.

(103) Moreover, Austria submitted that the operation of KLU should be qualified as a service of general economic interest ('SGEI'), as there is a public interest and obligation for the State of Carinthia to operate KLU, given the need to guarantee accessibility of the region of Carinthia.

(104) As regards the agreements between KLU and the airlines and the incentive scheme, Austria submitted the following comments. Austria fails to see the economic advantage for the different airlines operating at KLU, as some of the contracts contained the conditions of prior public tenders of KLU and therefore seemed to have respected market conditions. Equally the incentive scheme of 2005 was in line with market conditions.

(105) Regarding the selectivity of the measures under investigation, Austria argues that all airlines could participate at the prior public tenders, so that the subsequent contract with individual airlines could not be qualified as being selective. Moreover, as KLU is not substitutable with any other airport, there is no distortion of competition or effect on trade given.

(106) The Austrian authorities have not carried out any independent evaluation of the outcome of the marketing activities provided under the various marketing agreements, but claim that there is a positive effect in the passenger numbers of KLU resulting from the permanent cooperation and the success of the flight connections

(107) With regard to the settlement agreement concluded between KFBG and AUA, Austria argues that the conclusion of that agreement reflected as well a measure motivated only by considerations of a private economic operator.

(108) Concerning the incentive scheme, the Austrian authorities submitted that KLU acted like a private economic operator when initiating the incentive scheme at KLU. The reductions of airport charges offered in the incentive scheme reflected market conditions.

5. COMMENTS FROM INTERESTED PARTIES

5.1. Austrian Airlines, Lufthansa, Germanwings

(109) AUA, Lufthansa and Germanwings submitted their comments in two common submissions. They claimed in their submissions that the opening decision included several legal faults; a lack of reasoning for the imputability to the state and the participation of public authorities, a lack of reasoning for the market economic operator test ('MEO test'), an overly long period from the submission of a complaint in 2007 until the opening of the procedure on 22 February 2012.

(110) In addition the three airlines believed that the airport charges of KLU fulfilled the conditions of the MEO test. Concerning the financing of the airport the three airlines claim that this should not be subject to the State aid control, as they offered air services that improved the connection of the region of Carinthia with other regions and Member States. Concerning the profitability of KLU the three airlines commented that KLU could have been operated with profit without the reductions of airport charges for certain airlines and submitted their estimations with regard to the overall reductions of which certain other airlines profited.

(111) AUA, Lufthansa and Germanwings stated that the incentive scheme of KLU could not be compared to airports such as Frankfurt/Hahn or Lübeck (as commented by Austria), as these airports are marked by the fact that they are fitted to meet the needs of Ryanair. Ryanair is the predominant airline at these airports, which is not the case for KLU. The three airlines also explained their views on the calculation of the costs of the airport.

5.2. Ryanair

5.2.1. *Comments made directly by Ryanair*

(112) Ryanair objects against the decision of the Commission to initiate the formal investigation procedure as regards the 2002 and 2006 agreements with KLU. Ryanair stated that these agreements complied with the market economy investor principle, and hence did not involve State aid.

(113) Ryanair essentially argues that no advantage has been conferred to it since the agreements reflect normal market conditions.

(114) Concerning the issue of marketing support, Ryanair argued that the discounts granted by KLU were in line with industry practice as many privately or publicly held airports ([8]) applied the same or greater level of discounts for new destinations.

(115) Furthermore, Ryanair points out that the Commission seemed to apply a wrong cost-based test, as the costs for infrastructure and fixed operating costs should be considered sunk costs, and it seemed rational for KLU as a private investor to price at levels corresponding to the marginal costs.

(116) Ryanair contests that it benefitted from a selective advantage through discounts for airport charges at KLU. Ryanair received access to the infrastructures of KLU in a non-discriminatory way, as the services were publicly tendered and no other airline was interested, nor was any other airline rejected. Ryanair received the discounts in recognition of the significant commercial risk that Ryanair took when establishing scheduled operation to an airport that was unknown at the time.

(117) Concerning the contracts concluded with AMS Ryanair strongly objects to a joint assessment of Ryanair's separate agreements with KFBG together with the marketing agreements concluded with AMS. The conclusion of a marketing agreement with AMS is not a condition for the operation of routes by Ryanair to and from KLU.

(118) Ryanair stated that the Commission has ignored the value of marketing services on Ryanair's website as one of the most popular travel websites in the world.

(119) According to Ryanair, the involvement and imputability of Austrian authorities at the measures under review involving Ryanair or AMS is not demonstrated.

([8]) Ryanair listed as examples the airports of […].

(120) Additionally Ryanair criticises the following shortcomings. The costs related to security should be outside the scope of an airport's economic activity. As none of the arrangements between Ryanair and KLU involved State aid, the applicability of the 2005 Aviation Guidelines is irrelevant. A lack of business plan does not exclude that a public body has acted as a commercial actor. The definition of the catchment area of KLU is incoherent with other State aid cases.

5.2.2. *Reports and analyses provided by Ryanair*

(121) Lastly, Ryanair submitted a series of notes prepared by the consultancy firm Oxera, as well as an analysis prepared by Professor Damien P. McLoughlin.

5.2.2.1. Oxera Note 1 — Economic MEIP ([9]) Assessment for Klagenfurt Airport, prepared for Ryanair by Oxera, 4 July 2011

(122) Ryanair has appointed Oxera to carry out an assessment whether the agreements between Ryanair and the fees paid by Ryanair at KLU conform to the market economy investor principle. Not included in the assessment is the Marketing Services Agreement between DMG and AMS of 21 December 2006.

(123) Oxera carries out two analyses: a comparator analysis and a profitability analysis. Oxera identifies […] and […] airports as comparator for KLU, based on a range of characteristics. Oxera compares the charges paid by Ryanair in these airports deducting the marketing support payments Ryanair receives under the 2002 agreement with DMG, but not the payments it receives under the 2006 Marketing Services Agreement. It compares the charges paid per turnaround and per passenger and comes to the conclusion that the charges at KLU have always been higher than at the two other airports.

(124) Oxera's profitability analysis is an *ex ante* assessment based on incremental costs and revenues and a single till approach ([10]) and only concerns the 2002 agreements. It comes to the conclusion that the 2002 agreements were profitable for the airport and had a positive net present value.

5.2.2.2. Oxera Note 2 — Economic MEIP Assessment for Klagenfurt Airport, prepared for Ryanair by Oxera, 31 August 2012

(125) The analysis focuses on the Airport Service Agreement between KFBG and Ryanair for the period between 2002 and 2006 as well as the marketing arrangements between DMG and LV, covering the period from 27 June 2002 to 27 June 2007. The analysis undertaken by Oxera does not consider the agreements between DMG and AMS.

(126) Oxera has compared the overall charges paid by the airline at KLU with the respective charges paid at five comparator airports between 2002/2003 and 2010/2011. In particular, the charges have been expressed in two ways, on a charge per passenger and on a charge per turnaround basis, and initially aggregated into a measure of total charges. Total charges have subsequently been converted into charges per turnaround or charges per passenger, to enable the comparison across the six airports.

(127) The results show that the overall level of charges paid by Ryanair at KLU is on average approximately five times higher than the comparable level of charges paid by the airline over the period under investigation at the comparator airports. It is understood that this is due to the higher prices typically charged by Austrian airports. This suggests that the charges paid by Ryanair at KLU are compatible with a level of charges that would have been offered to Ryanair by an airport-owning market economy investor in similar circumstances. The arrangements analysed in this report are therefore consistent with the MEIP.

([9]) This acronym stands for 'Market Economy Investor Principle'.

([10]) Under the single till approach, revenues accruing to the airport operator from all the activities of the airport, including commercial non-aeronautical activities such as the operation of shops, restaurants and car parks, are taken into consideration for the purposes of determining the level of airport charges. This contrasts with the dual till principle, where only revenues from aeronautical activities (essentially airport charges and ground handling fees) are taken into consideration when setting airport charges.

5.2.2.3. Oxera Note 3 — Identifying the market benchmark in comparator analysis for MEO tests. Ryanair State aid cases, prepared for Ryanair by Oxera, 9 April 2013

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

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

(130) Oxera argues that this is because:

— Comparator analyses are widely used for MEO tests outside of the field of State aid.

— Under standard economic theory companies affect each other's pricing decisions only to the extent that their products are substitutes or complements. If two companies compete in separate economic markets, and therefore do not compete with one another, the companies will have a negligible impact on each other's pricing decisions. Therefore, implicit in the Commission's comments about the comparator analysis is an assumption that the comparator airports, and any airports that may benefit from aid, compete with one another.

— Airports in the same catchment area do not necessarily compete with each other, and the comparator airports used in the reports submitted face limited competition from State-owned airports within their catchment area (less than one third of commercial airports within the catchment area of comparator airports is fully State owned, and none of the airports within the same catchment area as comparator airports was subject to ongoing State aid concerns (as of April 2013)).

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

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

5.2.2.4. Oxera Note 4 — Principles underlying profitability analysis for MEO tests. Ryanair State aid cases, prepared for Ryanair by Oxera, 9 April 2013

(132) Oxera argues 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.

(133) The principles underlying the profitability analysis are:

— the assessment is undertaken on an incremental basis,

— an *ex ante* business plan is not necessarily required,

— for an uncongested airport, the single till approach is the appropriate pricing methodology,

— only those revenues associated with the economic activity of the operating airport should be considered,

— the entire duration of the agreement, including any extensions, should be considered,

— future financial flows should be discounted in order to assess profitability of the agreements,

— 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).

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

(134) The paper aims to set out the commercial logic underlying regional airports' decisions to buy advertising on ryanair.com from AMS.

(135) The paper argues 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.

5.2.2.6. Oxera Note 5 — Are prices set by AMS in line with the market rate?, prepared for Ryanair by Oxera, 20 December 2013

(136) This note presents the results from comparing prices set by AMS for advertising on ryanair.com, with rate card ([11]) prices for similar advertising services of other European travel websites. The objective of this analysis is to provide an independent assessment of whether the price set by AMS for its services is in line with the market price.

(137) The analysis has been conducted for 2004 and 2005, when the AMS rate card was first introduced, and based on the rate card of November 2013. In both cases, AMS rates have been compared with a sample of website advertising prices. Only advertisements placed on the homepage of each website have been considered.

(138) The results of the analysis demonstrate that AMS rate card priced for advertising space on ryanair.com are, in both cases, below or in line with the rate card prices. Therefore, the results provide evidence that rate card prices set by AMS are market conforming and meet the MEO test.

(139) Oxera points out that these conclusions are in line with the earlier findings from Ryanair's expert marketing advisers, Mindshare (2004) and Zenobie Conseil (2011).

5.2.2.7. Oxera Notes 6 and 7 — How should AMS Agreements be treated within the profitability analysis as part of the market operator test?, prepared for Ryanair by Oxera, 17 and 31 January 2014

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

(141) The reports indicate 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 suggest 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.

(142) The reports emphasise that marketing activities contribute to the creation and support of the brand's value, which helps to generate effects and benefits not only for the duration of the contract, but also after its termination. This would especially be the case if, due to the fact that Ryanair has concluded an agreement with this 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.

([11]) 'Rate card' is a standard term in the advertising industry. It is a printed list of advertising rates charged by print and broadcast media or companies offering advertising spaces on their website.

(143) Furthermore, Ryanair is of the opinion that a terminal value has 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 are 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 services agreement, reflecting the uncertainties of incremental profits after the termination of the airport services agreement.

(144) To supplement this approach, the reports present 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, in the case of an airport, marketing on ryanair.com increases the visibility of the brand in particular. The reports moreover state that smaller regional airports wishing to increase their air traffic can therefore especially increase the value of their brand by concluding marketing services agreements with AMS.

(145) The reports lastly indicate that a cash-flow-based approach is to be preferred over a capitalisation approach, in which the costs of marketing services provided by AMS would be treated as capital expenditure on an intangible asset (that is, the value of the brand). 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 capital expenditure in an intangible asset, and then depreciated for the duration of the contract, taking into consideration a residual value at the foreseen termination of the airport services agreement. This approach would not take into account the incremental profits which the conclusion of the airport services agreement with Ryanair would bring in and it is also difficult to calculate the value of the intangible 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 the airport services agreement with Ryanair.

5.2.2.8. Oxera Note 8 — Allocation of investment costs, prepared for Ryanair, 12 September 2014

(146) The note discusses how airport infrastructure investment costs should be allocated to airline agreements, in the circumstances where it is appropriate to treat such costs as relevant to an incremental profitability assessment of an airline agreement, when applying the market economy operator principle (MEOP).

(147) Oxera states that the appropriate way to allocate investment costs is in relation to the expected share of capacity represented by a given airline agreement. Thus, the consultancy company highlights the critical difference of measuring utilisation with respect to capacity, by reporting the cases of Alghero, Västerås, Reus and Girona.

5.2.2.9. Oxera Note 9 — Evaluating the wider impact of AMS Agreements on airport traffic, prepared for Ryanair by Oxera, 26 September 2014

(148) This report sets out how to empirically test whether AMS Agreements have wider benefits in terms of enhancing an airport's brand value and generating network externalities.

(149) Oxera has underlined that the Commission has so far never concluded through an empirical analysis that the only benefits of advertising on ryanair.com are to increase levels of Ryanair traffic.

(150) Oxera discusses the possible wider benefits of the AMS agreements in light of the qualitative evidence provided by the Alghero Airport. In fact, it is understood that the increase in levels of non-Ryanair traffic operating from Alghero Airport is thought to be at least partly due to the benefits of advertising on ryanair.com. Oxera states that it is therefore plausible that advertising on ryanair.com could have a wider long-term impact on traffic levels at airports, beyond increasing levels of Ryanair traffic.

(151) However, the consultancy firm recognises that, due to information asymmetry, it is not possible to appropriately control for all the changes happening in the market at the same time. Oxera therefore highlights the need for a more robust analysis of the long-term impact of advertising on ryanair.com on traffic at the airports.

(152) Oxera suggests different statistical approaches that could be followed by the Commission to examine the impact of advertising on ryanair.com on both non-Ryanair and Ryanair traffic at airports.

(153) Oxera outlines that, if the empirical analysis demonstrates that there are wider benefits of advertising on ryanair.com, it would be important to account for these benefits appropriately within the Airport Services Agreement and the AMS *ex ante* profitability analysis under the Commission's approach. As a suggestion, the benefits could be included through the incorporation of the terminal value within the profitability analysis to reflect the value created by marketing activities.

5.2.2.10. Oxera Note 10 — Economic MEOP assessment: Klagenfurt Airport — profitability analysis, prepared for Ryanair by Oxera, 3 November 2014

(154) The report analyses the expected profitability of the 2006 Airport Services Agreement on an *ex ante* basis. The document also presents sensitivity checks on the results from the 2011 MEOP Report regarding the expected profitability of the 2002 Airport Services Agreement.

(155) Oxera has examined the expected profitability of each agreement under several scenarios around the base case. Oxera affirms that the base case aims to reflect Klagenfurt's assumptions in so far as these are verified by information from the airport, at the time of signing the Airport Services Agreements.

(156) The expected profitability of each agreement has been measured by Oxera with the Net Present Value (NPV) methodology. The NPVs of each of the agreements were expected to be positive, thus the results from the profitability analysis indicate that the 2002 Airport Services Agreement and the 2006 Airport Services Agreement were sufficiently profitable such that an MEO investor would have been likely to offer similar terms.

(157) The analysis of the expected profitability of the 2002 Airport Services Agreement presented in the report demonstrates that the overall conclusions from Oxera's 2011 report are robust to a number of sensitivity checks. These sensitivity checks include changes to the discount rate, incremental costs, non-aeronautical revenues and investment costs.

(158) Combined with the results from the comparator analysis, the provided evidence shows that the arrangements are in line with the MEOP. Furthermore the arrangements at Klagenfurt appear to be market-conform, even under a number of sensitivities regarding the assumptions underlying the analysis. The evidence indicates that, under similar circumstances, a MEO investor would have found it profitable to have offered similar arrangements to those agreed between Ryanair and KLU.

(159) Finally, Oxera refers to the cost-benefit analysis undertaken by the Austrian Authorities — covering the period from 27 June 2002 to 29 October 2005 — and claims that the analysis should not be relied on for assessing the compatibility with the MEOP since; (i) the analysis appears to model the conditions of the public tender for the operation of a direct route between Klagenfurt and London issued by DMG in November 2011, rather than the conditions in the 2002 Airport Services Agreement; (ii) the analysis does not appear to be on a fully *ex ante* basis, as it covers only the period during which Ryanair actually operated at the airport, rather the term specified in the 2002 Airport Services Agreement; and (iii) the implied aeronautical charges from the cost-benefit analysis submitted by the Austrian Authorities are significantly lower than those specified in the 2002 Airport Services Agreement.

5.2.2.11. Oxera Note 11 — Why is comparator analysis an important supplement to profitability analysis in MEOP assessments?, prepared for Ryanair by Oxera, 26 January 2015

(160) The note explains why comparator analysis should be relied on in MEOP assessments of airport-airline deals, at least as a cross-check of the results from the profitability analysis. In fact, Oxera highlights that, in line with the approach advocated by the Commission in its notion of aid notice ([12]) and in other sectors (e.g. sea ports sector), comparator analysis should play an important role in MEOP assessments of airport-airline deals.

([12]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1). At the time of the submission of Oxera in January 2015 this documents was published as a draft for public consultation.

(161) This is particularly the case when no assessment of the efficiency of the airport's costs is undertaken as part of the profitability analysis. In fact, as a market economy operator would be expected to manage their costs efficiently, in order for the MEOP assessment to deliver a robust conclusion, it is important to examine the efficiency of the airport's costs.

(162) Furthermore, Oxera argues that it is possible for an airline to pay the same level of charges at two airports with similar characteristics. However, if one of the airports is not efficient, it could be concluded that the airport-airline agreement is not in line with the MEOP.

(163) Oxera underlines that, when signing deals with the airport, Ryanair is not in a position to be able to observe the efficiency of the airport's costs, while the airport can assess whether a deal is likely to be profitable.

(164) In conclusion, it is understood that the current approach of the Commission to assess the compatibility of airport-airline deals with the MEOP, provides Ryanair with insufficient legal certainty when signing deals with airports.

5.2.2.12. Oxera Note 12 — Economic MEOP assessments: comparator analysis, including AMS, Addendum to Oxera's 2010 report, 10 April 2015

(165) The note examines the impact of undertaking a joint Airport Services Agreement and AMS comparator analysis at KLU, in light with the Commission's approach. Oxera underlines that the analysis does not prejudices Ryanair's position of treating the Airport Services Agreements and AMS agreements separately.

(166) The analysis has been based on the same set of comparator airports as in Oxera's 2012 report at KLU. The stability of the ownership and funding structure of the airports has been checked in order to ensure the accuracy of the comparison.

(167) Over the period under consideration, net charges paid by Ryanair at KLU net of marketing payments received by Ryanair and AMS have been higher than average net charges at the comparator airports, on both a per departing passenger and a per turnaround basis. This implies that a market economy operator would have been likely to have offered similar arrangements to Ryanair.

(168) The results from the joint Airport Services Agreement and AMS comparator analysis are therefore consistent with the interpretation that the arrangements between Ryanair, AMS and KLU were in line with the MEOP test and with the findings from Oxera's 2012 report.

5.2.2.13. Oxera Note 13 — The impact of Ryanair's operations on airports' non-aeronautical revenues, 4 December 2015

(169) In this report, Oxera examined the impact of Ryanair's operations on airports' non-aeronautical revenues, on a per passenger basis. Oxera considered that the start of Ryanair's operations had a significant positive impact on the level of per passenger non-aeronautical revenues of the airport. On this basis, Oxera claimed that the approach used to date in its MEOP profitability analysis as well as in the Commission's analysis ([13]) were conservative, as they did not include this increase in the airport revenues.

(170) Oxera undertook an empirical analysis using a sample of 57 European airports meant to be as similar as possible to the airports under State aid investigation. Oxera found that the start of Ryanair's operations ([14]) in 29 of these airports led to an increase of around 12,0-13,7 % in non-aeronautical revenues per departing passenger in real

([13]) Oxera referred to the approach used by the Commission in the decisions for Pau and Nîmes airports, where the Commission calculated expected non-aeronautical revenues per departing passenger based on the observed data at the airport prior to signing the agreements, with adjustments for inflation.
Commission Decision (EU) 2015/1227 of 23 July 2014 on State aid SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia (OJ L 201, 30.7.2015, p. 109), point 414.
Commission Decision (EU) 2016/633 of 23 July 2014 on State aid SA.33961 (2012/C) (ex 2012/NN) implemented by France in favour of the Chamber of Commerce and Industry of Nîmes — Uzès — Le Vigan, of Veolia Transport Aéroport de Nîmes, of Ryanair and of Airport Marketing (OJ L 113, 27.4.2016, p. 32), point 436.

([14]) Oxera considered the start of Ryanair's operations as the year when Ryanair started 'significant' operations at an airport, defined as the first year in which Ryanair departing passengers exceeded 50 % of the maximum total number of Ryanair departing passengers carried in one year at the same airport over the period 1994-2012.

prices (over and above inflation), this effect being statistically significant. According to Oxera, this was likely to be due to Ryanair passengers spending more than passengers from other airlines, partly as a result of limited catering facilities provided on-board low-cost carriers, and/or as a result of the start of Ryanair's operations resulting in the development of the terminal — for example, by attracting additional retail outlets.

(171) Oxera also found that this effect held for low-cost carriers more generally. Oxera suggested that, due to the growth in the low-cost carrier industry with strong brands that carried significant levels of passenger traffic, the start of a low-cost carrier's operations at an airport could result in significant development of the airport and hence higher non-aeronautical revenues on a per-passenger basis. Based on the sample of airports considered, Oxera stated that the start of operations by full-fare carriers on the contrary did not have a significant impact on airports' non-aeronautical per passenger revenues.

(172) According to Oxera, these results highlighted the conservative nature of the approach used to date in its MEOP profitability analysis as well as in the Commission's analysis. These analyses did not assume any accelerated growth in airports' non-aeronautical revenues on a per passenger basis and hence did not capture the wider benefits of Ryanair's operations from airports, but only uprated estimates of non-aeronautical revenues per departing passenger by the much lower rate of inflation. Oxera therefore expected its MEOP analysis and the Commission's analysis to underestimate the expected profitability of Ryanair's arrangements at the airport.

5.3. **AMS**

(173) AMS submitted the following comments.

5.3.1. *On AMS and the Ryanair website*

(174) AMS claims that the Commission should not treat Ryanair and AMS as a single entity and the Marketing Services Agreements between AMS and DMG as a complement to the agreement between the Airport and Ryanair. AMS offers marketing services that are justified by their own separate purpose, priced at their market value and negotiated and concluded separately from Ryanair's agreements with the same airports.

(175) 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.

(176) 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.

5.3.2. *On the absence of advantages to AMS or Ryanair*

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

(178) 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. Thus, no State aid can arise from AMS's arrangements with public airports or their subsidiaries. AMS has concluded with several privately owned or privately controlled airports (such as […] and […]) as well as other private parties agreements on similar, non-discriminatory, terms.

(179) Concerning the commercial interest that an Airport would have to advertise on ryanair.com, AMS criticises the conclusion drawn by the Commission in the opening decision, as there is no legal basis to question the commercial rationale of DMG, as well as the Airport to advertise on Ryanair's website, in circumstances where AMS offers services at a market price.

(180) AMS presented several reasons which would justify DMG purchasing marketing services from AMS to advertise on ryanair.com, which are summarised in what follows.

(181) 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-aeronautical 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).

(182) 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.

(183) Third, marketing and advertising on the website of all airlines has become a mainstream practice. Ryanair.com has exceptional value as a marketing venue for a wide range of travel-related products and services. Nevertheless, even if Ryanair has been a pioneer in this field, it would be erroneous to conclude that airports do not publicise themselves on other airline websites.

5.3.3. *On the pricing of AMS' services*

(184) AMS' services are claimed to be priced at their market value. To substantiate this argument, AMS alleges that (i) the fact that a number of non-airport private customers from different industries, such as […], purchase marketing services from AMS is, by itself, sufficient to demonstrate that AMS's prices are real market prices, (ii) the decision of the Tribunal Administrative of Marseille ([15]) and the Bratislava case ([16]), draw attention to the value of AMS' marketing products and the advantages that the counterpart can gain while entering into such arrangements and (iii) the prices charged by AMS are based on objective criteria ([17]) and transparently provided on its website ([18]).

(185) AMS also mentions the report of Zenobie Conseil and a study from an independent consultancy firm submitted to the Commission, in order to clarify that AMS' services are neither valueless nor overpriced, as implied by the Commission.

(186) AMS points out that the opening decision did not establish that the decisions of DMG are imputable to the State, since the Commission simply relies on an organic criterion of ultimate State ownership borrowed from its analysis of the agreement with LV (itself based on an analogy with KFBG's decisions). AMS therefore asks the Commission to provide a more robust examination.

6. COMMENTS FROM AUSTRIA ON INTERESTED PARTY COMMENTS

6.1. Austria's comments on interested party submissions by Austrian Airlines, Lufthansa, Germanwings

(187) Regarding the first and second submission of the three airlines from 23 July 2012 and 18 September 2012, the Austrian authorities state that they were in contact with KFBG and Lufthansa only with respect to legibility of certain tables in the documents under investigation.

([15]) Judgement of the Tribunal Administratif of Marseille of 20 October 2009, in which the Court found that the agreement between the airport of Marseille and AMS allowed the airport to receive real consideration consisting of marketing services.

([16]) Commission Decision 2011/60/EU of 27 January 2010 C 12/08 (ex NN 74/07) — Slovakia — Agreement between Bratislava Airport and Ryanair (OJ L 27, 1.2.2011, p. 24), paragraph 114. The Commission found that even when an airport does not pay for additional marketing on Ryanair's website, when it simply appears as a destination on the website, it cannot be excluded that a certain value could be attached to it (see recital 114). The Commission concluded that the agreement under investigation complied with the market economy operator principle.

([17]) Objective criteria such as the type of placement of the advertisement (links, banners, text paragraphs, length and screen layout of the advertisement) and the daily number of visitors on the page as well as the number of routes to and from the airport.

([18]) See http://airportmarketingservices.com/pdfs/ratecard.pdf

(188) Regarding the argument that there is no State aid, Austria refers to its submission from 15 May 2012. Austria particularly agrees with Lufthansa's argumentation regarding the legal assessment of rebates.

(189) With regard to the schedule of charges covered by the Austrian authorities in its first submission from 2008, Austria reiterates that its statement merely pointed at the existence of schedules of charges at other airports. Airports Frankfurt/Hahn and Lübeck are in fact not comparable with KLU, considering their different economic structure.

(190) Concerning the claimed 'sham tender', Austria states that the authorities in Carinthia were planning a call for tender for the introduction of a route connecting London and Klagenfurt. In particular, the tender concerned a generic flight to London. Austria affirms that there is no evidence of a limitation of the requested services for Stansted or for any other London airport.

(191) In addition, Austria recalls that it is possible to initiate a tender, even if this is not a legal obligation. Therefore, the argument that a tender was not strictly necessary is without substance. Austria further recalls the economic function of tenders. A tender creates transparency with regards to the existence of demand and the conditions for demand. This enables the potential bidder to formulate an offer, which is indicative for the market price. The fact that no eligible bidder has made a proposal demonstrates that the demanded price was below the market price. An accurately exercised tender procedure requires that the call has been properly publicised and that potential buyers have sufficient time to formulate their proposals. The Austrian authorities stress that the notices advertised by KLU complied with these requirements.

6.2. **Austria's comments on interested party submissions by Ryanair and AMS**

(192) Austria underlines that, for Carinthia and KLU, advertising on ryanair.com made sense only if Ryanair served the airport. Only in that case, the targeted customers could translate their initial interest into an effective purchase. The same applies to the routes to and from London, which are designed to improve local mobility.

(193) Furthermore, Austria supports a number of statements from Ryanair:

— according to Austria, no investments can be attributed to Ryanair's presence at the airport,

— as demonstrated in the current case, discounts and incentives comply with the MEOP,

— the lack of a business plan does not in itself contradict the fulfilment of the MEOP.

(194) Regarding AMS' comments, the Austrian authorities underline the strategic purpose underlying advertising on the internet, especially on ryanair.com. In fact, Ryanair's website target group is in line with Carinthia's and KLU's client portfolio. A private investor would therefore be willing to enter into such advertising agreements with AMS.

7. **ASSESSMENT OF THE EXISTENCE OF AID**

(195) The Commission has analysed whether the following measures qualify as State aid:

— the financing of KFBG,

— the 2005 incentive scheme,

— the conclusion of the settlement agreement between KFBG and AUA with the application of the 2005 incentive scheme to AUA,

— the 2002 air service agreements with Ryanair and the 2002 marketing agreements with AMS and LV,

— the 2006 agreements with Ryanair and AMS,

— the 2003 agreement with HLX,

— the 2008 agreement with Tuifly,

— the 2009 agreements with Air Berlin.

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

(197) The criteria in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the measure in question constitutes aid within the meaning of Article 107(1) TFEU all of the following conditions need to be fulfilled:

— the beneficiary is an undertaking within the meaning of Article 107(1) TFEU, which implies that it engages in an economic activity,

— the measure in question is financed by State resources and is imputable to the State,

— it confers an economic advantage,

— this advantage is selective,

— the measure in question distorts or threatens to distort competition and may affect trade between Member States.

7.1. **The financing of KFBG and DMG**

(198) As further described in recitals 30 et seq. above, KFBG benefited from repeated financial support from its shareholders, the Federal Ministry of the Interior and the Federal Ministry of Finances. These financial contributions were used to cover annual operating losses of KFBG/DMG due to the costs linked to the marketing contracts of KFBG with different airlines.

7.1.1. *Economic activity and notion of undertaking*

(199) According to settled case law, the Commission must first establish whether KFBG and DMG are undertakings within the meaning of Article 107(1) TFEU. 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 ([19]). Any activity consisting in offering goods or services on a given market is an economic activity ([20]).

(200) In its Leipzig/Halle Airport judgment the General Court confirmed that the operation of an airport for commercial purpose and the construction of the airport infrastructure for commercial purpose constitute an economic activity ([21]). Once an airport operator 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) TFEU, 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 operator ([22]).

(201) Regarding the moment in time as of 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 Court of Justice of the European Union has recognised

([19]) Judgment of 18 June 1998, *Commission* v *Italy*, C-35/96, ECLI:EU:C:1998:303; Judgment of 23 April 1991, *Höfner and Elser*, C-41/90, ECLI:EU:C:1991:161; Judgment of 16 November 1995, *Fédération Française des Sociétés d'Assurances* v *Ministère de l'Agriculture et de la Pêche*, C-244/94, ECLI:EU:C:1995:392; Judgment of 11 December 1997, *Job Centre*, C-55/96 ECLI:EU:C:1997:603.

([20]) Judgment of 16 June 1987, *Commission* v *Italy*, 118/85, ECLI:EU:C:1987:283; Judgment of 18 June 1998, *Commission* v *Italy*, 35/96, ECLI:EU:C:1998:303.

([21]) Judgment of 24 March 2011, *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG* v *Commission* and *Freistaat Sachsen and Land Sachsen-Anhalt* v *Commission*, joined cases T-455/08 and T-443/08, ECLI:EU:T:2011:117, in particular paragraphs 93-94; confirmed by the judgment of 19 December 2012, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH* v *Commission*, C-288/11 P, ECLI:EU:C:2012:821; see also judgment of 12 December 2000, *Aéroports de Paris* v *Commission*, T-128/98, ECLI:EU:T:2000:290, confirmed by the judgment of 24 October 2002, *Aéroports de Paris* v *Commission*, C-82/01 P, ECLI:EU:C:2002:617, and the judgment of 17 December 2008, *Ryanair* v *Commission*, T-196/04, ECLI:EU:T:2008:585.

([22]) Judgments of 17 February 1993, *Poucet* v *AGV and Pistre* v *Cancave*, C-159/91 and C-160/91, ECLI:EU:C:1993:63.

the evolution in the nature of airport activities and in its judgment in Leipzig/Halle Airport, the General Court held that from 2000 onward the application of State aid rules to the financing of airport infrastructure could no longer be excluded ([23]). Consequently, at least as of the date of the judgment in Aéroports de Paris, 12 December 2000 ([24]), the operation and construction of airport infrastructure must be considered an economic activity falling within the ambit of State aid control.

7.1.1.1. Single economic unit

(202) Before examining the nature of the activities carried out by KFBG and DMG, however, the Commission recalls that two separate legal entities may be considered to form one economic unit for the purpose of the application of State aid rules. That economic unit is then considered to be the relevant undertaking.

(203) As the Court of Justice held, '[i]n competition law, the term 'undertaking' must be understood as designating an economic unit […] even if in law that economic unit consists of several persons, natural or legal.' ([25]). In this respect, the Court has ruled that several entities can be deemed to perform an economic activity together, thereby constituting an economic unit, under specific conditions.

(204) To determine whether several entities form an economic unit, the Court of Justice looks at the existence of a controlling share or functional, economic or organic links ([26]).

(205) In this case, the Commission considers that KFBG and DMG are so closely connected that they must be considered to constitute one single economic unit for the purposes of State aid rules. It must be recalled that DMG is a 100 % subsidiary of KFBG, giving KFBG the power to control DMG via the shareholder assembly.

(206) In practice, the available information demonstrates that important decisions regarding KLU are regularly taken at the level of KFBG, with instructions then being passed down to DMG.

(207) In conclusion, the Commission considers that the links between KFBG and DMG are sufficiently close to treat the two entities as one economic unit. In particular, DMG is economically and legally entirely dependent on KFBG and does not have a commercial will of its own. For the purpose of the application of Union State aid law, KFBG/DMG therefore form one undertaking.

7.1.1.2. Economic activity

(208) KFBG/DMG are engaged in constructing, maintaining and operating KLU. KFBG/DMG offer airport services and charge users — commercial aviation operators as well as non-commercial general aviation users — for the use of the airport infrastructure, thereby commercially exploiting the infrastructure. Following from the case law cited in recitals 200 and 201, it must be concluded that KFBG/DMG were engaged in an economic activity at least as of the date of judgment in Aéroports de Paris (that is to say, 12 December 2000) onward.

(209) It is clear from the submission of Austria that KLU had already prior to 2000 successfully attracted commercial aviation as well as general aviation.

(210) It is therefore concluded that from 12 December 2000 onward, KFBG/DMG were engaged in an economic activity and constitute, as a single economic unit, an undertaking for the purposes of Article 107(1) TFEU.

7.1.1.3. Public policy remit

(211) While KFBG/DMG must therefore be considered to constitute an undertaking for the purposes of Article 107(1) TFEU, it must be recalled that not all activities of an airport owner and operator are necessarily of an economic nature ([27]).

([23]) Judgment in *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG* v *Commission and Freistaat Sachsen and Land Sachsen-Anhalt* v *Commission*, footnote 21 above, ECLI:EU:T:2011:117, in particular paragraphs 84 and 158.

([24]) Judgement *Aéroports de Paris* v *Commission*, paragraph 24 above, ECLI:EU:T:2000:290, confirmed by the judgment of 24 October 2002, *Aéroports de Paris* v *Commission*, C-82/01 P, ECLI:EU:C:2002:617.

([25]) Judgment of 12 July 1984, *Hydrotherm*, C-170/83, ECLI:EU:C:1984:271, paragraph 11. See also the judgment of 14 October 2004, *Pollmeier Malchow* v *Commission*, T-137/*02, ECLI:EU:T:2004:304*, paragraph 50.

([26]) Judgement of 16 December 2010, *AceaElectrabel Produzione SpA* v *Commission*, C-480/09 P, ECLI:EU:C:2010:787, paragraphs 47 to 55; Judgment of 10 January 2006, *Ministero dell'Economia e delle Finanze* v *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 112.

([27]) Judgment of 19 January 1994, *SAT Fluggesellschaft* v *Eurocontrol*, C-364/92, ECLI:EU:C:1994:7.

(212) The Court of Justice ([28]) has held that activities that normally fall under a 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. Such activities may include, for example, security, air traffic control, police, customs. The financing has to be strictly limited to compensation of the costs to which they give rise and may not be used instead to fund other economic activities ([29]).

(213) 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 ([30]). 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 those activities are considered in general to be of a non-economic nature ([31]).

(214) However, public financing of non-economic activities necessarily linked to the carrying out of an economic activity must not lead to undue discrimination between airlines and airport managers. Indeed, it is established case law that there is an advantage when public authorities relieve undertakings of the costs inherent to their economic activities ([32]). 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 do not have to bear those costs, the latter may enjoy an advantage, even if those services are considered in themselves as non-economic. Therefore, an analysis of the legal framework applicable to the airport operator is necessary in order to assess whether under that legal framework airport managers or airlines are required to bear the costs of the provision of some activities that might be non-economic in themselves but are inherent to the deployment of their economic activities.

(215) Austria submitted that the costs arising from the airport security measures pursuant to § 1, 2, 8, 9 and 13 *Luftfahrtssicherheitsgesetz of 1992* (Aviation Security Law, hereinafter: 'LSG') are to be considered falling within the public policy remit. KFBG had received from 2000-2010 the reimbursement of the following amounts:

Table 7

Reimbursement by the Federal Ministry of Interior Affairs and the Federal Ministry of Finances 2000-2010

(EUR)

2000	24 000
2001	24 000
2002	27 000
2003	553 000
2004	878 000
2005	642 000
2006	791 000

([28]) Judgment of 16 June 1987, *Commission* v *Italy*, 118/85, ECLI:EU:C:1987:283, paragraphs 7 and 8, and judgment of 4 May 1988, *Bodson* v *Pompes funèbres des régions libérées*, 30/87, ECLI:EU:C:1988:225, paragraph 18.
([29]) Judgment of 18 March 1997, Diego *Cali & Figli* v *Servizi Ecologici Porto di Genova*, C-343/95, ECLI:EU:C:1997:160; Commission Decision N309/2002 of 19 March 2003; Commission Decision N438/2002 of 16 October 2002, Aid in support of the public authority functions in the Belgian port sector (OJ C 284, 21.11.2002, p. 2).
([30]) Commission Decision N309/2002 of 19 March 2003.
([31]) See, in particular, judgment of 19 January 1994, *SAT Fluggesellschaft* v *Eurocontrol*, C-364/92, ECLI:EU:C:1994:7, paragraph 30 and judgment of 26 March 2009, *Selex Sistemi Integrati* v *Commission*, C-113/07 P, ECLI:EU:C:2009:191, paragraph 71.
([32]) See, amongst others, judgment of 3 March 2005, *Wolfgang Heiser* v *Finanzamt Innsbruck*, C-172/03, ECLI:EU:C:2005:130, paragraph 36, and case-law cited.

(EUR)

2007	824 000
2008	1 134 000
2009	682 000
2010	896 000

(216) The Commission notes, that pursuant to § 8, 9 and 13(2) LSG only the costs related to the provision and maintenance of spaces and premises necessary for the performance of the activity as described in § 1 and 2 LSG may be reimbursed. According to § 1 and 2 LSG the airport operator is obliged to guarantee the precautionary protection of civil aircrafts including the people on board or boarding the aircraft of dangerous attacks with arms, ammunition and war material and any other dangerous devices. To this end, airport operator have to carry out effective security controls. All other costs that are not related to this activity must be borne by the airport operator.

(217) The Commission is of the view that the carrying out of effective security controls to guarantee the precautionary protection of civil aviation has to be considered to be an activity of non-economic nature as explained in point 35 the 2014 Aviation Guidelines. Therefore, as regards operating expenses incurred between 2000 and 2010 for this activity, the Commission considers that those costs for which the airport operator is entitled to reimbursement pursuant to § 8, 9 and 13 LSG qualify as public policy remit costs.

(218) According to the information submitted by Austria, the practical implementation of the reimbursement procedure of the claims of the airport, that had to be documented in detail, provided a double check by the fiscal authority and the Federal Ministry of Interior. An overcompensation was therefore excluded. KFBG could separate the costs of the public policy remit from other costs with a complicated recording system that attributed the costs to the individual flights operated at KLU.

(219) The Commission also notes that the *Luftfahrtssicherheitsgesetz* as a federal law was applied uniformly at all Austrian airports and that there was no discrimination between airport managers.

(220) The Commission therefore concludes that the reimbursement of the operating costs incurred between 2000-2010 in relation to § 1, 2, 8, 9 and 13 LSG falls within the public policy remit and is therefore exempted from the scrutiny under State aid rules.

(221) Austria also submitted that KLU is used regularly by Austrian military forces as well as police interventions and the Christophorus-Air-Emergency. The Commission agrees that these activities can be considered responsibilities of public administration. As the Austrian authorities however have not demonstrated that KFBG has received reimbursement for the costs of these activities, the conditions for the reimbursement of public remit costs are not fulfilled.

(222) In conclusion, the Commission considers that all costs, which are not considered costs under public policy remit pursuant to § 1, 2, 8, 9 and 13 LSG, qualify as an economic activity.

7.1.2. *State resources and imputability to the State*

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

(224) 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 ([33]). Resources of local authorities are, for the application of Article 107 TFEU, State resources ([34]).

([33]) Judgment of 16 May 2002, *France* v *Commission*, C-482/99, ECLI:EU:C:2002:294.
([34]) Judgment of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d' agglomération du Douaisis*, joint Cases T 267/08 and T 279/08, ECLI:EU:T:2011:209, paragraph 108.

(225) In this case, the relevant measures — namely financial contributions to KFBG and DMG — were granted from the budget of the local authorities. The financial contributions came directly from the State of Carinthia, the city of Klagenfurt and KLH. The financial contributions provided by the State of Carinthia and the city of Klagenfurt have to be considered State resources. The same holds for KLH: KLH was a legal person governed by public law and established in 1990 by the KLH-G, which also contains the statutes of KLH. KLH acted as owner company (holding), i.e. State assets agency for the shares which the State of Carinthia holds in different involvements. KLH managed a special fund called 'Zukunft Kärnten' for the direct and indirect financing of projects. This fund consisted of EUR 500 million that were provided from the budget of the State of Carinthia. Thus, all financial contributions KFBG received from KLH have to be considered State resources.

(226) Concerning imputability, in its *Stardust Marine* judgment the Court of Justice furthermore held that the fact that the State or a State entity is the sole or majority shareholder of an undertaking is not sufficient to find that a transfer of resources by that undertaking is imputable to its public shareholders ([35]). According to the Court of Justice, even if the State was in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case could not be automatically presumed, since a public undertaking may also act with more or less independence, according to the degree of autonomy left to it by the State.

(227) According to the Court of Justice, indicators from which imputability might be inferred, are ([36]):

— the fact that the undertaking in question could not take the contested decision without taking account of the requirements of the public authorities,

— the fact that the undertaking had to take account of directives issued by public authorities,

— the integration of the public undertaking into the structures of the public administration,

— the nature of the public undertaking's activities and the exercise of those activities 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,

— 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.

(228) The Commission considers that the financial contributions to KFBG and DMG are imputable to the State. The relevant measures of the State of Carinthia and the city of Klagenfurt — namely the financial contributions to KFBG and DMG — were granted directly from the budget of the local and regional authorities. Thus the Commission considers that they are imputable to the State.

(229) The same holds for the financial contributions KFBG and DMG received from KLH. The State of Carinthia was not only in a position to control KLH and exercised a dominant influence over its operations, it also had actual control over the financial contributions KFBG received from KLH. The legal status of KLH shows that KLH was a legal person *sui generis* with the only mandate to manage the State assets in the interest of the State of Carinthia. Also the nature of KLH's activities points to the fact that its activities were solely in the interest of the State of Carinthia: KLH held 80 % of the shares of KFBG and thus actively represented the State of Carinthia's interest in the existence and maintenance of a viable and performing airport at Klagenfurt for the State of Carinthia. Also the content of the measures KLH carried out for the State of Carinthia indicated that KLH was acting for the State of Carinthia: the decision to give financial contributions was important for the existence of KLU and therefore to a great extent in the interest of the State of Carinthia.

(230) Moreover, according to the statutes of KLH, the board of KLH was appointed directly by the supervisory board of KLH. The supervisory board was appointed directly by the government of the State of Carinthia. It is stipulated in the statutes that the members of the supervisory board shall represent the proportions of the political parties represented in the government of the State of Carinthia. Moreover, the supervisory board had to agree for any investment decision of the board above the amount of EUR 50 000. According to § 5 of the statutes of KLH, KLH was under a constant supervision by the government of the State of Carinthia. The government of Carinthia had to ensure that all decisions of KLH were in the interest of the State of Carinthia.

([35]) Judgment of 16 May 2002, *France* v *Commission*, C-482/99, ECLI:EU:C:2002:294, paragraphs 51 *et seq*.
([36]) *Ibid*.

(231) It follows from the above that KLH's supervisory board had to agree on any decision taken by KLH's board concerning the financing of KFBG above EUR 50 000. The members of the supervisory board represented the political parties of the government of Carinthia. In addition, the government of the State of Carinthia supervised these decisions and had to ensure by this supervision that they were taken in the interest of the State of Carinthia. This was confirmed by the Austrian authorities, which declared that the government of Carinthia was involved in all decisions concerning the financing of KFBG by KLH.

(232) In the light of these considerations, the Commission considers that there are sufficient indicators to find that the financial contributions by KLH are imputable to the State.

7.1.3. *Economic advantage*

7.1.3.1. Market Economy Operator Principle

(233) An advantage within the meaning of Article 107(1) TFEU is any economic benefit which an undertaking would not have obtained under normal market conditions, that is to say, in the absence of State intervention ([37]). Only the effect of the measure on the undertaking is relevant, not the cause nor the objective of the State intervention ([38]). Whenever the financial situation of the undertaking is improved (compared to normal market conditions) as a result of State intervention, an advantage is present.

(234) 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' ([39]). In this case, in order to determine whether the public financing of KLU grants KFBG/DMG 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 direct investment grants and financial contributions to that of a MEO who is guided by prospects of profitability in the long-term ([40]).

(235) The assessment should leave aside any positive repercussions on the economy of the region in which the airport is located, since the Court has clarified that the relevant question for applying the MEO principle is whether 'in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectorial considerations, would have subscribed the capital in question' ([41]).

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

(237) The financial contributions by the State of Carinthia, the city of Klagenfurt and KLH essentially served to cover KFBG's and DMG's losses. According to elements submitted by Austria, the financial contributions were partly granted to cover losses that were caused by the costs incurred by KFBG through marketing contracts concluded between KFBG and DMG with different airlines. The Commission is of the opinion that such costs, which occurred through marketing contracts with airlines, have to be considered normal operating costs of an airport operator. Indeed, such costs derived from contractual obligations entered into by the airport operator with airlines. Under those arrangements, the airport operator purchases from an airline marketing services for the promotion of the air transport services offered by the airline in question, to the benefit of both the airport operator and the airline. Therefore, the financial contributions in the end served to cover a part of the normal operating expenses of KFBG/DMG, thereby relieving both undertakings of an economic burden they would normally have to bear.

([37]) Judgment of 11 July 1996, *Syndicat français de l'Express international (SFEI) and others* v *La Poste and others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60 and judgment of 29 April 1999, *Kingdom of Spain* v *Commission of the European Communities*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.
([38]) Judgment of 2 July 1974, *Italian Republic* v *Commission of the European Communities*, 173/73, ECLI:EU:C:1974:71, paragraph 13.
([39]) Judgment of 16 May 2002, *France* v *Commission*, C-482/99, ECLI:EU:C:2002:294, paragraph 69.
([40]) Judgment of 21 March 1991, *Italy* v *Commission*, C-305/89, ECLI:EU:C:1991:142, paragraph 23; Judgment of 12 December 2000, *Alitalia* v *Commission*, T-296/97, ECLI:EU:T:2000:289, paragraph 84.
([41]) Judgment of 10 July 1986, *Belgium* v *Commission*, 40/85, ECLI:EU:C:1986:305.

(238) Austria did not explicitly argue that the financial contributions complied with the MEO principle. It rather submitted that closing the airport was never a realistic option for the local authorities and that, given the need and obligation to operate the airport, it was economically sensible to attract more commercial aviation. At other points, Austria argued that the financial contributions for the airport were motivated by the will to economically invigorate the region and underlined the importance of the airport for the regional economy.

(239) However, social and regional considerations cannot be taken into account when conducting the MEO test. While it could, in principle, be accepted that even non-repayable grants to a company that is entirely owned by the State could qualify as market-conform investments, Austria has not presented a business plan or any *ex ante* calculations such as a sensitivity analysis or underlying profitability assumptions regarding the expected profitability of the financial contributions. Austria has not explained why a MEO would continue injecting capital into an undertaking that generates losses. Austria has therefore not submitted that the financial contributions were normal market investments.

(240) Finally, the Commission notes that according to the information submitted by the Austrian authorities, since 2002, KFBG/DMG have generated losses in most of the relevant years, if the financial contributions received from public authorities for the costs of the marketing contracts with airlines are disregarded when considering the net results of the respective years.

(241) The Commission concludes that the financial contributions in favour of KFBG/DMG could not be expected to generate a reasonable return on investment for the entities providing them, and were thus not provided under normal market conditions. In this light, the financial contributions must be qualified as granting an economic advantage to KFBG/DMG.

7.1.3.2. Service of general economic interest

(242) Austria argued that the financing of KFBG and DMG through payments of the State of Carinthia, the city of Klagenfurt as well as KLH would be in line with the requirements of the Altmark jurisprudence ([42]) and would therefore not constitute an advantage. The overall management of the airport would qualify as SGEI given the need to guarantee accessibility of the region of Carinthia and therefore the financing in question would amount to compensation for the provision of an SGEI by the airport.

(243) In case of undertakings entrusted with the provision of an SGEI, in order to conclude whether the measures under assessment constitute an advantage within the meaning of Article 107(1) TFEU, 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:

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

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

— 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),

— 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).

(244) The Commission first assesses observance of the Altmark 4 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 KFBG/DMG qualify as SGEIs.

(245) Altmark 4 criterion provides that the compensation must be the minimum necessary for an efficient undertaking in order to escape State aid qualification. This criterion is deemed to be fulfilled if the recipients of the compensation have been chosen following a tender procedure ensuring the provision of services at the least costs for the community or, failing that, the compensation has been calculated by reference to the costs of an efficient undertaking.

([42]) Judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C 280/00, ECLI:EU:C:2003:415.

(246) According to the information submitted by Austria, the beneficiary has not been chosen following a public tender procedure. The State of Carinthia has not organised a tender for the operation of KLU but has established the company KFBG operating the airport.

(247) Moreover, the evidence does not show that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations. Indeed, there is no element in the file suggesting that an analysis of the costs that a typical airport manager would incur when operating an airport comparable to KLU has been performed for the purposes of setting the level of the financial contributions granted to KFBG. The Austrian authorities have not provided any such analysis. The financial contributions for KFBG simply seem to cover the financial needs of KFBG without any prior analysis of the costs.

(248) Consequently, there is no evidence to support the argument that KFBG provides airport services at the least cost to the community.

(249) Furthermore, all the calculations of compensations were one-off payments that were not part of a compensation mechanism designed *ex ante*. In the present case the parameters on the basis of which the SGEI compensation should be calculated have not been established in advance, nor in an objective and transparent manner. Therefore, Altmark 2 is not fulfilled either.

(250) Since the Altmark criteria are cumulative, it is sufficient at this stage for the Commission to observe that either the second or the fourth criterion are not met in the present case to conclude that the measures at issue cannot be considered free of State aid based on the Altmark judgement. The question, whether the operation of KLU amounts to an SGEI or whether Austria made a manifest error in the definition of the SGEI can be left open. The Commission therefore concludes that the measure provides KFBG with an economic advantage.

7.1.4. *Selectivity*

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

(252) In the case at hand, the financial contributions only benefit KFBG/DMG. The measures are thus selective by definition within the meaning of Article 107(1) TFEU.

7.1.5. *Distortion of competition and effect on trade*

(253) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in the internal market, the latter must be regarded as affected by that aid ([43]). The economic advantage granted by the direct investment grants and the financial contributions in this case to the airport operator strengthen its economic position, as the airport operator was able to set up its business without bearing all of the inherent investment and operating costs.

(254) As assessed in recitals 208 *et seq*., 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. Moreover, in particular with respect to low cost carriers and charter operators, airports that are not located in the same catchment areas and even in different Member States can also be in competition with each other to attract those airlines.

(255) 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) TFEU. Furthermore, point 45 of the 2014 Aviation Guidelines explicitly states that 'the relatively small size of the undertaking which receives public funding does not, as such, exclude the possibility that trade between Member States might be affected.'

([43]) Judgment of 30 April 1998, *Het Vlaamse Gewest* v *Commission*, T-214/95, ECLI:EU:T:1998:77.

(256) KLU serves since 2012 approximately 230 000 passengers per year, and has served as many as approximately 520 000 passengers per year from 2004 to 2007 in the past. As observed in recital 21 KLU is located in the vicinity of Ljubljana Airport (80 km) and within 2 hours' drive from six other airports. There are international flights from KLU to destinations such as London, Frankfurt, Munich, Hamburg or Vienna. The runway at Klagenfurt is of sufficient length (2 720 m) and allows airlines to serve medium-haul international destinations. In the light of these facts, it must be considered that public funding to KFBG/DMG distorts or threatens to distort competition and has at least a potential effect on trade between Member States.

(257) Against this background, the public financing granted to KFBG/DMG must be considered liable to distort competition and have an effect on trade between Member States.

7.1.6. *Conclusion*

(258) In the light of the above considerations, the Commission considers that the public funding granted to KFBG/DMG in the form of financial contributions between 2000 and 2010 constitutes State aid within the meaning of Article 107(1) TFEU.

7.2. **The 2005 incentive scheme**

7.2.1. *Economic activity and notion of undertaking*

(259) The 2005 incentive scheme offers discounts for airlines for providing specific air transport services. In particular it offered discounts for new flight destinations, for intensified existing flight connections and for more frequent and more reliable existing flight connections as described in recitals 33 to 38.

(260) By providing such air transport services, airlines are performing an economic activity and therefore constitute undertakings within the meaning of Article 107(1) TFEU. It must be analysed whether the 2005 incentive scheme granted the airlines using KLU an economic advantage.

7.2.2. *Economic advantage*

(261) Where an airport has public resources at its disposal, aid to an airline can, in principle, be excluded where the relationship between the airport and the airline satisfies the MEO test.

(262) Under the 2014 Aviation Guidelines ([44]), the existence of aid to an airline using a particular airport can, in principle, be excluded if the price charged for the airport services corresponds to the market price, or if it can be demonstrated through an *ex ante* analysis — that is to say one founded on information available when the aid is granted and on developments foreseeable at the time — that the airport/airline arrangement will lead to a positive incremental profit contribution for the airport and is part of an overall strategy leading to profitability in the long term. The second approach means that it must be assessed whether, at the date when an agreement was concluded, a prudent market economy operator would have expected the agreement to lead to a higher profit than would have been achieved otherwise. That higher profit is to be measured by the difference between the incremental revenues expected to be generated by the agreement (that is, the difference between the revenues that would be achieved if the agreement were concluded and the revenues that would be achieved in the absence of the agreement) and the incremental costs expected to be incurred as a result of the contract (that is, the difference between the costs that would be incurred if the agreement were concluded and the costs that would be incurred in the absence of the agreement), the resulting cash flows being discounted with an appropriate discount rate.

(263) However, as regards the first approach (a comparison with the 'market price'), the Commission does not consider that, at the present time, an appropriate benchmark can be identified to establish a true market price for services provided by airports ([45]). It therefore considers an *ex ante* incremental profitability analysis to be the most relevant criterion for the assessment of arrangements concluded by airports with individual airlines.

([44]) See the 2014 Aviation Guidelines, point 53.
([45]) See the 2014 Aviation Guidelines, point 59.

(264) It should be noted that, in general, the application of the MEO principle based on an average price on other, similar markets may prove helpful if such a price can be reasonably identified or deduced from other market indicators. However, this method is not as relevant in the case of airport services, as the structure of costs and revenues tends to differ greatly from one airport to another. This is because costs and revenues depend on how developed an airport is, the number of airlines which use the airport, its capacity in terms of passenger traffic, the state of the infrastructure and related investments, the regulatory framework which can vary from one Member State to another and any debts or obligations entered into by the airport in the past ([46]).

(265) 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 vary to a great extent. They include sharing risks with regard to passenger traffic and any related commercial and financial liability, standard incentive schemes and changing the spread of risks over the term of the agreements. Consequently, one transaction cannot really be compared with another based on a turnaround price or price per passenger.

(266) In addition, benchmarking is not an appropriate method to establish market prices if the available benchmarks have not been defined with regard to market considerations or the existing prices are significantly distorted by public interventions. Such distortions appear to be present in the aviation industry, for reasons explained in points 57 to 59 of the 2014 Aviation Guidelines:

'Publicly owned airports have traditionally been considered by public authorities as infrastructures for facilitating local development and not as undertakings operating in accordance with market rules. Those airports' prices consequently tend not to be determined with regard to market considerations and in particular sound ex ante profitability prospects, but essentially having regard to social or regional considerations.

Even if some airports are privately owned or managed without social or regional considerations, the prices charged by those airports can be strongly influenced by the prices charged by the majority of publicly subsidised airports as the latter prices are taken into account by airlines during their negotiations with the privately owned or managed airports.

In those circumstances, the Commission has strong doubts that at the present time, an appropriate benchmark can be identified to establish a true market price for services provided by airports. This situation may change or evolve in the future […]'.

(267) Moreover, as the Union courts have recalled, benchmarking by reference to the sector concerned is merely one analytical tool amongst others to determine if a beneficiary has received an economic advantage which it would not have obtained in normal market conditions ([47]). As such, while the Commission may use that approach, it is not obliged to do so where, as in the present case, it would be inappropriate to do so.

(268) In its study of 9 April 2013 (Oxera note 3), Ryanair essentially argues that the MEO test can be applied based on a comparison with the commercial arrangements of other European airports.

(269) It should firstly be noted that, during the procedure, neither Austria nor any interested third party has suggested to the Commission a sample of comparison airports that may be used in this case and that are sufficiently comparable to KLU in terms of traffic volume, type of traffic, type and level of airport services provided, proximity of the airport to a large city, number of inhabitants in the catchment area, prosperity of the surrounding area, and different geographical areas from which passengers could be attracted.

([46]) See Commission Decision 2011/60/EU of 27 January 2010 on State aid C 12/08 (ex NN 74/07) Slovakia — Agreement between Bratislava Airport and Ryanair (OJ L 27, 1.2.2011, p. 24), recitals 88 and 89.

([47]) See, as regards benchmarking by reference to profitability (as opposed to pricing) in the sector, judgment of 3 July 2014, *Spain and Ciudad de la Luz* v *Commission*, joined cases T-319/12 and T-321/12, ECLI:EU:T:2014:604, paragraph 44.

(270) The Oxera study of 4 July 2011 was limited to a comparison between charges paid by Ryanair at […] and […] airports, and the charges paid by Ryanair under the airport services agreements at KLU. The study did not assess whether the sample of benchmark airports fulfilled all the criteria spelled out in the 2014 Aviation guidelines, as it only assessed traffic volumes, type of airport traffic and prosperity of the surrounding area ([48]).

(271) Even if a sample of comparison airports had been available, a comparative method would have been totally unworkable in this case. As showed above, the incentive scheme to be analysed offers different discounts for airlines for providing very specific air transport services (for new flight destinations, for intensified existing flight connections and for more frequent and more reliable existing flight connections). Moreover, regarding the marketing agreements between KFBG and the airlines, complex packages have to be analysed. The packages consist of an airport services agreement and a marketing services agreement (sometimes combined within the same legal medium). These transactions involve several 'prices', namely the various airport charges, price of the ground handling services and price of the marketing services, some of which depend on the number of passengers and others on the number of aircraft movements, with others involving fixed amounts. Each of these transactions therefore leads to a complex set of financial flows between the airport operator and the airline and its subsidiaries, consisting of the revenue from the airport charges, revenue linked to the ground handling services and revenue linked to the marketing services.

(272) Accordingly, a comparison between just the airport charges invoiced by the KFBG to the airlines concerned and the airport charges invoiced at the comparison airports would not provide any useful indication as to whether the MEO test was satisfied. At the very least, in order to validly compare the transactions covered by this assessment, it would be necessary to identify, for the airports in the comparison sample, a set of comparable transactions, which must particularly include equivalent marketing services and equivalent ground handling services. Identifying such a sample of comparable transactions would prove impossible, given that the transactions covered by this assessment are so complex and specific, and all the more so as the prices of ground handling services and marketing services are rarely made public and would be difficult to obtain in order to form a basis for comparison.

(273) Lastly, assuming that it could be established, based on a valid comparative analysis, that the 'prices' applied in the various transactions covered by this assessment were equivalent to or higher than the 'market prices' established using the sample of comparison transactions, the Commission could not, however, conclude that those transactions corresponded to the market price if it proved that, on their conclusion, the airport operator may have expected them to lead to incremental costs higher than the incremental revenues. An MEO would not in fact be interested in offering goods or services at the 'market price' if this led to an incremental loss.

(274) The Commission considers it appropriate to reiterate in the context of this analysis that, following the adoption of the 2014 Guidelines, both Austria and the interested parties were invited to submit comments on the application of those guidelines to the present case (see recital 8). In the event, neither Austria nor the interested parties disputed in substance the Commission's approach according to which, where an appropriate benchmark cannot be identified to establish a true market price for the services provided by airports to airlines, the most relevant criterion for assessing the arrangements concluded between these two parties is an *ex ante* incremental profitability analysis.

(275) In the light of all the above, the Commission considers that the approach generally recommended in the 2014 Guidelines for applying the MEO test to relationships between airports and airlines, namely the *ex ante* incremental profitability analysis, must be applied to the present case ([49]).

(276) This approach is justified by the fact that an airport operator may have an objective interest in concluding a transaction with an airline where it may reasonably expect this transaction to improve its profits (or reduce its losses) compared to a counterfactual situation in which this transaction is not concluded, regardless of any comparison with the conditions offered to airlines by other airport operators, or even with the conditions offered by the same airport operator to other airlines.

([48]) See point 60 of the 2014 Aviation guidelines for further criteria to be assessed.
([49]) See point 59 of the 2014 Aviation Guidelines.

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

(278) The Commission also notes in this context that price differentiation is a standard business practice. Such differentiated pricing policies should, however, be commercially justified.

(279) The 2005 incentive scheme was introduced to enhance the competitiveness of KLU. When drawing up the 2005 incentive scheme, the operator of KLU analysed passenger numbers, airport movements as well as the financial results of the previous years. According to Austria, a market comparison undertaken at that time showed that KLU due to its high average fixed costs was a particularly expensive airport in Austria.

(280) The Commission observes that since 1 October 2003 AUA had unilaterally reduced its payments for the turnaround fees due at KLU. Although on 20 October 2005 KFBG and AUA signed a settlement agreement concerning the payment of turnaround feed during the period of 1 October 2003 until 20 October 2005, KFBG had to face considerable shortfalls regarding the payments of airport charges from October 2003 to October 2005. In addition, all 2002 agreements between KFBG, DMG, Ryanair, LV and AMS ended suddenly in October 2005, when Ryanair stopped to operate the passenger air services between KLU and STN due to economic reasons. All these factors together led KLU to reconsider its pricing policy and to introduce the 2005 incentive scheme.

(281) According to the information submitted by Austria, a detailed *ex ante* profitability study was prepared by the executive board of KFBG and authorised by the supervisory board of KFBG.

(282) When assessing this *ex ante* profitability study, the Commission observes that KFBG prepared a comprehensive study on the basis of its full cost basis accounting system. This *ex ante* cost-benefit analysis contains a detailed formula for the calculation of the full costs of KFBG. The costs are split into different cost factors that cover all costs incurred when operating the airport (landing tariff, infrastructure landing tariff, infrastructure air tariff, passenger tariff, traffic handling fee, ramp handling fee). The profitability study also contains a detailed explanation on how the cost factor of EUR […] for the costs depending on the number of flights, i.e. MTOW, and of EUR […] depending on the number of passengers were calculated, based on the cost calculation system of KFBG in force at the time. As 51 % of the traffic handling was subcontracted to Tyrolean Airways, these costs were indicated in the cost calculation as costs of services of a third party. The capitalisation interest rate of 8 % as indicated by KFBG was calculated according to the Weighted Average Cost of Capital method and corresponded to the rate as published by Vienna airport as of 2002. As non-aeronautical income, KFBG listed income factors such as the airport shops, the parking at the airport, the freight storehouse and the income from rent and lease agreements. The average income of these sources less the costs of these sources, measured on the basis of observed data from recent years, resulted in an average non-aeronautical income of EUR […] per passenger. Brought down to a round figure, KFBG indicated EUR […] of non-aeronautical income per passenger. All those underlying assumptions appear reasonable. In particular, they are based on cost and revenue observations and, in the case of cost data, on an elaborate cost measurement system.

(283) These established values for costs and incomes of KFBG were used subsequently in the cost-benefit analysis in different calculation models. These models represented different envisaged routes from and to KLU with different aircrafts and under the assumption of varying degrees of capacity utilisation. The routes chosen corresponded to typical routes of interest of a small regional airport such as Klagenfurt airport. Those analyses are in line with the incremental costs method set out in the Aviation Guidelines, as they measure whether the revenues expected from the additional traffic under each model could be expected to cover the corresponding incremental costs and a reasonable profit. On request of the Commission, Austria submitted additional models, with the aim of covering all typical scenarios and possible routes of interest for KFBG in 2005.

(284) Austria has submitted that KLU expected that no additional investments would be required to provide additional airport services to airlines attracted by the 2005 incentive scheme. In this context, the Commission observes that the 2005 incentive scheme offered discounts only for new airlines, new connections, or increased passenger numbers with the consequence that it did not impact negatively on the status quo at the airport. The Commission notes that particularly after the departure of Ryanair in October 2005 KLU had spare capacities, with the consequence that additional traffic could be handled without the need to upgrade infrastructure or

acquire additional equipment or hire new staff. Austria confirmed that there was no need to hire new staff or to expand existing infrastructure or other equipment in order to serve new airlines or connections (for instance the existing baggage belts and personnel were sufficient). Hence, the Commission concludes that the incremental costs were limited to the incentives offered by the 2005 incentive scheme.

(285) Moreover, KLU expected that with any new airline or connection, aeronautical as well as non-aeronautical revenues would be generated. Given that the level of costs remained stable, any new airline or connection would, according to Austria, provide a positive contribution to the airport's profitability. KLU could therefore expect from an *ex ante* perspective that any new airline or connection would lead to an increase of revenues as no investments were necessary at the same time. The Commission is of the view that indeed the 2005 incentive scheme has been incrementally profitable form an *ex ante* perspective.

(286) This conclusion is reinforced by the fact that KFBG indeed managed to attract a number of new airlines (such as Air Berlin, Robin Hood, Condor, Lufthansa, Germanwings), to intensify existing destinations (AUA), and to establish new connections after the introduction of the 2005 incentive scheme. KLU's discount-based strategy to increase its business was successful. The available data finally demonstrates that the 2005 incentive scheme resulted in a gradual increase of revenue for the airport (aviation and non-aeronautical revenues from EUR […] in 2006 to EUR […] in 2010).

(287) The Commission further notes that when assessing the 2005 incentive scheme, it should also assess the extent to which the arrangements can be considered part of the implementation of an overall strategy of the airport to lead to profitability at least in the long term. In this respect, the Commission has to take into account the factual evidence that was available and the developments that could reasonably be expected at the time when the 2005 incentive scheme was made, in particular the prevailing market conditions. Notably, the Commission should take into account the market changes induced by the liberalisation in the air transport market, the market entry and development of low cost carriers and other point-to-point carriers, changes in the organisational and economic structure of the airport industry as well as the degree of diversification and complexity of the functions undertaken by airports, the enhancement of the competition between airlines and airports, the uncertain economic environment due to the changes in the prevailing market conditions or any other uncertainty in the economic environment. The Commission notes that, as described in recitals 279-280, several reasons (such as the shortfalls regarding the payments of airport charges from October 2003 to October 2005 by AUA as well as the departure of Ryanair as of October 2005) led KLU to consider the 2005 incentive scheme a necessary step in ensuring its future viability and profitability.

(288) Finally, the Commission notes that the airport infrastructure of KLU is open to all airlines and not dedicated to a specific airline. Likewise the 2005 incentive scheme was published on the website of KLU and was open to all interested airlines.

7.2.3. *Conclusion*

(289) In the light of these considerations, the Commission concludes that KLU acted like a MEO when adopting the 2005 incentive scheme. Therefore, the measure did not grant the affected airlines any economic advantage and did not constitute State aid within the meaning of Article of 107(1) TFEU. It has to be emphasised that this conclusion only holds for airlines to which the 2005 incentive scheme was applied as such. Whenever the application of the scheme to a given airline was combined with a bilateral agreement, for instance a marketing agreement, this conclusion does not automatically apply. Indeed, in such circumstances, the combined effects of the incentive scheme and of the bilateral agreement have to be taken into account when applying the MEO principle.

7.3. **The conclusion of the settlement agreement with AUA and the application of the 2005 incentive scheme to AUA**

7.3.1. *Economic activity and notion of undertaking*

(290) AUA, by providing air transport services, performs an economic activity and therefore constitutes an undertaking within the meaning of Article 107(1) TFEU.

7.3.2. *Economic advantage*

(291) In order to assess whether an agreement between a publicly-owned airport with public resources at its disposal and an airline confers an economic advantage on the latter, it is necessary to analyse whether that agreement complied with the MEO principle as described above under recitals 261 to 278.

7.3.2.1. Time frame for the Assessment of incremental costs and revenues

(292) When deciding on whether to enter into an airport services agreement and/or a marketing services agreement, a MEO will choose a time frame for its assessment based on the term of the agreement. In other words, a prudent MEO will assess the incremental costs and revenues for the term of application of the agreement.

(293) In this case a particularity has to be observed for the situation of KFBG at the moment of signing the agreement with AUA. On 20 October 2005 KFBG had to take into consideration not only the development of its contractual relation with AUA for the future, but also the past until October 2003. Since 1 October 2003 AUA had unilaterally reduced its payments for the turnaround fees due at that time at KLU. On 17 November 2003 KFBG therefore brought against AUA a civil law action at the local district court concerning the airport fees still due. When signing the settlement agreement on 20 October 2005 following this dispute, KFBG therefore had to take into consideration not only the future airport charges to be paid by AUA but also the still outstanding airport charges of the past period, which it hoped to recover.

7.3.2.2. Assessment

(294) On 20 October 2005 KFBG and AUA signed a settlement agreement concerning the period from 1 October 2003 to 20 October 2005. In this settlement agreement the two parties agreed to end two different ongoing litigations. The first litigation at the local district court concerned the civil law action of KFBG against AUA concerning the airport fees still due. The second litigation concerned an action of AUA against KFBG in competition law at the national cartel court.

(295) The following points were agreed within the settlement agreement:

— AUA agreed to pay EUR […] to KFBG,

— both parties agreed that the 2005 incentive scheme became part of the settlement agreement and was to be applied for AUA as of 1 October 2003.

(296) Austria asserts that KFBG/DMG did not prepare an *ex ante* business plan before concluding the settlement agreement with AUA.

(297) It explained that prior to the signature of the settlement agreement, KFBG, KLH and the law firm representing KFBG in both court proceedings had evaluated in detail the legal and economic advantages and disadvantages of signing the agreement. To demonstrate these evaluations and considerations Austria has submitted numerous reports and protocols submitted by the management board of KFBG to the supervisory board of KFBG ([50]) as well as the available legal documents of the legal proceedings.

(298) From these documents the following conclusion can be drawn:

(299) On the one hand, AUA had in October 2005 a total debt of EUR […] of unpaid turnaround fees towards KLU. For this reason KFBG had brought a civil law action at the local district court against AUA, as it believed that AUA was not entitled to unilaterally reduce its payments as of October 2003. As KFBG had fulfilled its obligations from its air service agreement with AUA, it seemed consequent for KFBG to take legal action.

(300) On the other hand it has to be observed that AUA submitted on 7 January 2004 a lengthy defence plea in this proceeding. In addition AUA filed on 17 October 2004 an application at the national cartel court under national competition law because of abuse of a dominant position by KFBG. KFBG was therefore facing strong legal opposition of AUA while trying to enforce its claims of payment of the full airport charges by AUA.

([50]) See reports of the 167. until 173. meeting of the supervisory board of KFBG of 29 July 2004, 8 October 2004, 1 December 2004, 4 March 2005, 4 May 2005, 30 September 2005 and 12 December 2005.

(301) At the same time, the economic situation of KFBG was seriously affected by the outstanding airport charges and the length of the ongoing dispute. The reports of the supervisory board of KFBG ([51]) demonstrate that the outstanding airport charges had a very negative impact on the liquidity of KFBG and that as a consequence the shareholders of KFBG were obliged to give KFBG a grant of EUR […]. This need for cash is confirmed from the cash flow statements of KFBG of the years 2003-2005.

(302) As the legal documents of the proceeding show, there was no possibility for KFBG to request a preliminary injunction against AUA for payment, as the conditions for this legal instrument were not fulfilled in the situation of KFBG. At the same time, AUA refused to pay the total amount of turnaround fees as it claimed that these turnaround fees were much higher than the turnaround fees Ryanair was paying at the same time at KLU. AUA claimed equal treatment with Ryanair and based its alleged right to equal conditions with Ryanair on several arguments: KLU's obligation to contract and its duty for equal treatment; KLU's abuse of a dominant position and the protection against unfear competition. Moreover AUA claimed that KLU had violated § 63 Luftfahrtgesetz National Aviation Act, hereinafter 'LFG') and § 20 Zivilflugplatz-Betriebsordnung (Civil Airport Operating Regulation, hereinafter 'ZFBO'). According to § 63 LFG civil airports have to be made accessible under the same conditions to all participants of aviation. According to § 20 ZFBO the airport fees have to be based on objective characteristics. As these legal arguments were prima facie not completely unfounded, KFBG could not be sure that AUA would lose the civil law proceeding at the local district court.

(303) Moreover, as the correspondence between KFBG and AUA in the two legal proceedings demonstrates, AUA threatened KFBG during the proceedings to discontinue serving KLU as an AUA destination. The AUA service between Klagenfurt und the Austrian capital Vienna was and still is the most important air service connection for KLU. It was therefore essential for KFBG to maintain its regular connection to the AUA hub of Vienna. As a consequence of this threat, KFBG searched in 2004 and 2005 for alternative airlines to ensure a flight connection to Vienna in case AUA would indeed stop its services to KLU.

(304) As Austria declared, KFBG did not manage to find another alternative airline that would offer similar services as AUA between KLU and Vienna airport. The discontinuation of the services of AUA would have meant for KLU to lose its main airline which would have led to liabilities exceeding the assets.

(305) Upon request by the Commission, Austria produced a detailed reconstructed *ex ante* analysis of the financial situation of KFBG on 20 October 2005.

Table 8

Reconstructed ex ante analysis of four different scenarios between KFBG and AUA

Calculation of scenarios on basis of extrapolation of 2005	Scenario 1 Including AUA as full Paying Agent	Scenario 2 Complete omission AUA	Scenario 3 Including AUA with Incentive	Scenario 4 Process year AUA
Earnings	[…]	[…]	[…]	[…]
Annual earnings	[…]	[…]	[…]	[…]
Cash Flow	[…]	[…]	[…]	[…]
Cash Flow after investments	[…]	[…]	[…]	[…]
Basis 2005 in TEUR Departing passengers	[…]	[…]	[…]	[…]
Revenues Aviation	[…]	[…]	[…]	[…]

([51]) See report of the supervisory board of KFBG of 4 May 2005 (point 5), 1 December 2004 (point 3), 8 October 2004 (point 8) and 29 July 2004 (point 7).

Calculation of scenarios on basis of extrapolation of 2005	Scenario 1 Including AUA as full Paying Agent	Scenario 2 Complete omission AUA	Scenario 3 Including AUA with Incentive	Scenario 4 Process year AUA
Incentive	[…]	[…]	[…]	[…]
Value adjustment Revenues AAG				[…]
Revenues Aeronautical	[…]	[…]	[…]	[…]
Other revenues	[…]	[…]	[…]	[…]
Earnings	[…]	[…]	[…]	[…]
Material expenses	[…]	[…]	[…]	[…]
Personnel expenses	[…]	[…]	[…]	[…]
Depreciation	[…]	[…]	[…]	[…]
Operating expenses	[…]	[…]	[…]	[…]
Project costs	[…]	[…]	[…]	[…]
Reimbursement Marketing cooperations	[…]	[…]	[…]	[…]
Earnings	[…]	[…]	[…]	[…]
Financial result	[…]	[…]	[…]	[…]
Annual results	[…]	[…]	[…]	[…]
Cash flow (Net profit plus Afa)	[…]	[…]	[…]	[…]
Necessary replacement investments per year TEUR 1 500-2 000	[…]	[…]	[…]	[…]
Cash Flow after investments	[…]	[…]	[…]	[…]

Project AAG Destination Vienna and Frankfurt 2005	
MTOW (Vienna and Frankfurt)	[…]
Departing passengers (Vienna and Frankfurt)	[…]
Rotations	[…]
Project revenues	[…]
Project costs/marginal costs	
Traffic Handling (*)	[…]
Flight dependent	[…]
Passenger dependent	[…]
Total project costs rounded	[…]
Project success rounded	[…]
Incentive rounded	[…]

(*) Traffic handling costs are not incurred by KFBG as the traffic handling of AUA is carried out by its subsidiary Tyrolean Airways and not by KFBG.

(306) In preparing the analysis in Table 8, Austria took the following considerations into account. The analysis presents four different scenarios and their respective financial results for KFBG:

(a) the scenario of continuing the agreement with AUA paying the full airport charges as prior to October 2003 (the situation if AUA would have continued to pay the charges);

(b) the scenario of a complete discontinuation of all services at KLU by AUA;

(c) the scenario of continuation of the agreement with AUA with application of the 2005 incentive scheme (signing the settlement agreement); and

(d) the scenario with a continuation of the agreement with AUA continuing to pay only part of the airport charges due (the situation without signing the settlement agreement).

(307) The Commission takes note, that only the last three scenarios were possible alternatives for KFBG in the situation of the litigations with AUA, as the first scenario was only of theoretical nature. Out of these three scenarios however only the third scenario seemed to be a reasonable alternative for a MEO being in the situation of KFBG. In the fourth scenario in which KFBG would not have signed the settlement agreement and AUA would have continued to pay only part of the airport charges, the financial situation of KFBG and its liquidity would have further deteriorated. In comparison with the other scenarios the scenario four would have led to a clear negative cash flow for the future of KFBG. Even worse would have been the result in scenario two, in case AUA would have discontinued its services to KLU as a result of not signing the settlement agreement and continuation of the litigations. In this scenario the cash flow would have been even worse for KFBG for the future.

(308) In light of these considerations, the Commission notes that the third scenario was the only reasonable scenario to choose for a MEO in the situation of KFBG in October 2005. The third scenario meant that AUA would pay the airport charges due, but not the full amount, i.e. only EUR […] of the total debt of EUR […]. A MEO would have taken the partial losses of the airport charges into account in evaluating the positive effects of the settlement agreement: Due to the settlement agreement nearly two thirds of the total debt would be paid by AUA, leading to a positive cash flow in the future, removing the liquidity problems of KLU and assuring at the same time the continuation of the regular air services of AUA at KLU. The expected discounted result of the third scenario was positive.

(309) Therefore, the Commission concludes that from an *ex ante* perspective, a private MEO would have signed the settlement agreement instead of choosing one of the other alternatives.

7.3.3. *Conclusion*

(310) The Commission finds that KFBG/DMG acted like a MEO in concluding the settlement agreement with AUA. Therefore, the decision to conclude the settlement agreement did not grant AUA any economic advantage and does not constitute State aid within the meaning of Article 107(1) TFEU.

7.4. **The 2002 agreements with Ryanair, LV and AMS**

7.4.1. *Economic activity and notion of undertaking*

(311) Ryanair provides air transport services. LV and AMS provide marketing services. Providing such services is an economic activity. Ryanair, LV and AMS therefore constitute undertakings within the meaning of Article 107(1) TFEU.

7.4.2. *State resources and imputability to the State*

(312) In order to constitute State aid, the measures in question have to be financed from State resources and the decision to grant the measure must be imputable to the State. For the criteria used to assess the existence of State resources and imputability to the State reference is made to recitals 224 to 232.

(313) The Commission notes that KFBG/DMG are owned 100 % by the State. Until 2003 the shares of KFBG/DMG were held by the Republic of Austria 60 %, the State of Carinthia 20 % and Klagenfurt city 20 %. In April 2003

the State of Carinthia took over the shares of the Republic of Austria. Since 2003 the shares were therefore held by the State of Carinthia 80 % and Klagenfurt city 20 %. KFBG/DMG must thus be considered public undertakings within the meaning of Article 2(b) of Commission Directive 2006/111/EC ([52]) whose funds are State resources.

(314) The 2002 agreements with Ryanair, AMS and LV are also imputable to the State. First, this was declared by Austria with the explanation that the State of Carinthia was involved in the conclusion of all marketing agreements between KFBG/DMG and the airlines. More generally, the State of Carinthia was kept informed about the evolution related to all agreements via the management and supervisory boards of KFBG and DMG. The State of Carinthia saw the conclusion of the different agreements as being in the interest of Carinthia. Second, the State of Carinthia financed the marketing costs occurred through the marketing agreements concluded by KFBG/DMG.

(315) Austria also explicitly confirmed this involvement with reference to the 2002 agreements with Ryanair and AMS. This participation and involvement of the government in the 2002 agreements is further confirmed by the minutes of the meetings of the government of the State of Carinthia, in which the conclusion of the air service agreements as well as the marketing agreements were discussed ([53]).

(316) Further, the costs of these 2002 agreements were borne by the State of Carinthia and the City of Klagenfurt (see Section 7.1), a financing by the State which was agreed prior to the conclusion of the agreement with the airline and which required that the State of Carinthia at least implicitly agrees with the agreements.

(317) The organic structure and influence chain is a further indicator of imputability of the conclusion of the agreement package to the State. As described in recitals 228 to 232, the decisions of the State of Carinthia and the city of Klagenfurt were imputable to the State. Both shareholders of KFBG appointed the supervisory board of KFBG/DMG (which in turn appointed the management) with the result that the supervisory board (and management) of KFBG also represented the proportions of the political parties represented in the government of the State of Carinthia. The state of Carinthia and the city of Klagenfurt, as the sole shareholders of KFBG/DMG and by appointing the supervisory boards of KFBG/DMG (which in turn appoint the management), can be presumed to have a dominant influence over KFBG/DMG, and can control its resources.

(318) When concluding the agreements with Ryanair, KFBG also actively represented the State of Carinthia's interest in the existence and maintenance of a viable and performing airport at Klagenfurt for the State of Carinthia.

(319) Austria confirmed that the agreements concluded between KFBG/DMG and Ryanair and its subsidiaries are imputable to the State of Carinthia in the sense of the *Stardust Marine* ([54]) jurisprudence.

(320) In the light of these considerations, the Commission considers that there are sufficient indicators to find that the conclusion of the 2002 agreements between KFBG/DMG and Ryanair/LV/AMS are imputable to the State.

7.4.3. *Economic advantage*

7.4.3.1. Application of the Market Economy Operator Principle to the 2002 agreements with Ryanair, LV and AMS

(321) With regard to the application of the MEO principle reference is made to the description at recitals 261 to 278 above.

(322) In order to apply this principle, taking into account the facts of this case, the Commission considers that the first step should be to address the following issues:

— whether the marketing services agreement and the airport services agreements should be analysed separately or together,

([52]) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).
([53]) See for example minutes of meeting of government of State of Carinthia of 29 January 2002, pp. 1-5.
([54]) Judgment of 16 May 2002, *France* v *Commission*, C-482/99, ECLI:EU:C:2002:294.

— what benefits a hypothetical MEO acting in place of KFBG/DMG could have expected to gain from marketing services agreements,

— the relevance, for the purposes of applying the MEO principle, of comparing the terms of the airport services agreements referred to in the formal investigation procedure with the airport charges billed at other airports.

(323) After addressing the above issues, the next step for the Commission will be to apply the MEO principle to the 2002 agreements with Ryanair, LV and AMS.

(a) *Regarding an analysis of the marketing services agreements and the airport services agreement together*

(324) The Commission considers that in applying the MEO test, two types of measures covered by the formal investigation in this case, namely the airports service agreement and the three marketing services agreements, must be evaluated together as one single measure. This approach concerns the airport services agreement concluded between Ryanair and KFBG, on the one hand, and the marketing services agreements between DMG and LV as well as AMS, on the other hand.

(325) There are several indications pointing towards the fact that those agreements should be evaluated as one single measure since they were entered into within the framework of a single transaction.

(326) First of all, the contracts were entered into by essentially the same parties:

(1) LV is a 100 % subsidiary of Ryanair. The two marketing services agreements were signed on behalf of LV by Mr Sean Coyle, director of LV who had also a number of managerial positions at Ryanair such as director of scheduled revenue as well as head of route selection, profitability, network strategy, capacity allocation, investor relations and commercial director. For the purpose of the application of State aid rules, LV and Ryanair are considered to be a single undertaking, in the sense that LV acts as an intermediary in the interest and under the control of Ryanair. This can also be inferred from the fact that the two marketing services agreements state in their preamble that 'DMG wishes to appoint LV to […] provide new scheduled passenger air services from locations within the United Kingdom and/or continental Europe to using environmentally-friendly modern jet aircraft with a capacity of not less than 140 sets ('the Services')'. The first marketing agreement of 22 January 2002 also states that 'Operation of the Services should continue to be 348 rotations per annum (87 rotations per quarter) with effect from […].' These statements demonstrate how strongly these marketing agreements are interlinked with the airport services agreement between Ryanair and KFBG.

(2) AMS is also a 100 % subsidiary of Ryanair. The marketing services agreement was signed on behalf of AMS by Mr Eddie Wilson, director of AMS who had also managerial positions at Ryanair such as director of personnel and in-flight. For the purpose of the application of State aid rules, AMS and Ryanair are considered to be a single undertaking, in the sense that AMS acts as an intermediary in the interest and under the control of Ryanair. For this agreement, this can also be inferred from the fact that the marketing services agreement refers in its preamble several times to the website of Ryanair: 'DMG wishes to appoint AMS to provide internet links to the highly successful travel website www.ryanair.com. […] AMS has successfully developed and continues to operate the travel website www.ryanair.com. […] the parties have decided involving the use of the www.ryanair.com website as a marketing tool[…].' These statements show the identical interest of AMS and Ryanair in this agreement.

(3) DMG is a 100 % subsidiary of KFBG. As it was noted in recital 313 et seq., the decisions of KFBG to conclude airport services agreements with airlines such as Ryanair were imputable to the State. The controlling influence over KFBG/DMG was, in this regard, exercised by the State of Carinthia. Considering, however, that it was always the State of Carinthia which appointed KFBG's and DMG's supervisory boards, and that the State of Carinthia effectively financed part of the losses of KFBG/DMG (thereby having significant influence on both and a larger financial interest in these undertakings), it can safely be considered that the State of Carinthia had effective control over KFBG/DMG. As regards the commercial relationship between Ryanair and KFBG on the one hand, and LV and DMG on the other hand, the Commission finds that the interest of KFBG and DMG in entering into the respective agreements converged to a very large degree: both were interested in increasing traffic at the Airport, and it made little difference whether KFBG concluded both contracts or whether DMG concluded the marketing contract instead. In this light, the fact that the airport service agreement was concluded with KFBG while the marketing services agreement was concluded with its dependent subsidiary cannot militate against assessing the agreements as one commercial transaction.

(327) Second, the four agreements were also all concluded at the same point in time, as they were all four signed on 22 January 2002.

(328) Third, the airport services agreement between Ryanair and KFBG refers directly to the marketing payments of EUR […] per year by DMG to Ryanair's duly authorised professional media consultants, i.e. LV: 'KLU shall procure the payment by DMG to Ryanair's duly authorised professional media consultants of an amount of […] Euro per annum, in respect of the daily rotation of the Services commenting on 27 June 2002[…]'. This statement clearly links the marketing payments to the daily services of Ryanair.

(329) Fourth, according to the first marketing agreement, 'in case the airport services should fall below the stated minimum level in any quarter, DMG shall be entitled to inform LV forthwith in writing that it intends to suspend payment of the amounts […] and that if the service level has not been restored to such minimum level during such quarter this Agreement shall terminate forthwith[…]' This demonstrates yet again that the marketing services agreement and the airport services agreement are inseparably linked.

(330) Fifth, the minutes of the meetings of the government of State of Carinthia show that the government of Carinthia evaluated signing the various agreements as one operation. The decision to conclude a marketing contract with LV/AMS was directly linked to the decision to conclude also an airport services agreement with Ryanair ([55]).

(331) In conclusion, the marketing services agreements concluded by DMG and LV as well as AMS are indivisibly linked to the airport service agreement signed by Ryanair and KFBG. The above considerations demonstrate that without the airport services agreement, the marketing services agreements would not have been concluded. Indeed, the marketing services agreements state explicitly that they are based on a new airport service form the United Kingdom to Klagenfurt, and essentially envisage marketing services using the travel website www.ryanair.com aimed at promoting that service. At the same time, it appears that the conclusion of the airport services agreement was also closely linked to the marketing services agreements: under the obligations of Ryanair the airport services agreement states that 'Ryanair, in conjunction with DMG, will produce a periodic marketing plan for the services for discussion with information of KLU […] linking the appropriate tourist websites to Ryanair's website and incorporating appropriate logos whenever feasible.' This statement clearly links the airport services agreement with the marketing agreements of DMG and AMS as well as LV of the same date.

(332) These elements of the various marketing services agreements show that the marketing services stipulated in these agreements are, in terms of both their duration and their nature, closely linked to the air transport services offered by Ryanair, as defined in the marketing services agreements and covered by the corresponding airport services agreement. The marketing services agreements even indicate that they are rooted in Ryanair's commitment to operate the transport services in question. The marketing services agreements are therefore indissociable from the airport services agreement that they echo and that forms their purpose.

(333) For those reasons, the Commission considers it appropriate to analyse the airport services agreement and the marketing services agreements of 22 January 2002 jointly, with a view to determining whether they constitute State aid.

(334) Austria has agreed in its comments to the extension decision with the approach taken in the extension decision to analyse together the airport services agreement and marketing services agreements signed at the same time.

(335) On the other hand, certain interested parties, particularly Ryanair and AMS, question this approach as they consider that the marketing services agreements should be analysed separately. In its comments to the extension decision Ryanair objected to the joint assessment of the airport services agreements and the marketing services agreements (referring also to previous submissions on that subject) ([56]) as they were signed by different entities and were not linked with each other. Ryanair claimed that the conclusion of a marketing agreement was not a condition for the operation of routes by Ryanair to and from an airport. This approach however is not in line with a statement of Sean Coyle, a director of Ryanair, in an email of 4 August 2005 to Mr Johannes Gatterer, CEO of KFBG at the time: '[…]the operation is currently loss making and these losses are not sustainable into the future. I appreciate you have 5-year agreement in relation to the marketing amount of EUR […] and naturally on

([55]) See for example minutes of meeting of government of State of Carinthia of 29 January 2002, pp. 1-5.
([56]) See, e.g. reply to question 4 of Ryanair's submission of 4 July 2011.

cessation of the services no further quarterly payment falls due and this agreement ceases in line with main contract[…]' ([57]). This statement clearly links the marketing services agreement to its main contract, the airport services agreement.

(336) Moreover, the facts on record confirm that the approach taken in the extension decision and approved by Austria, is well-founded as it has been demonstrated in recitals 324 to 333 et seq. Therefore, the airport service agreements and marketing services agreements should be assessed jointly.

(337) Austria also submitted in its comments to the extension decision, that the second marketing services agreement between DMG and AMS of 22 January 2002 was never executed by the parties. Austria claimed that this agreement never materialised, i.e. AMS never undertook the marketing services mentioned therein and DMG never paid for these services EUR […] per annum as stipulated in the agreement. As proof for this statement, Austria submitted a letter of the tax consultant of DMG stating that following intensive research in the book keeping of the years 2002-2005 no trace could be found of a payment of EUR […] per annum on the basis of the second marketing services agreement. Austria could however not reply to the question why the third marketing services agreement supposedly was to replace the second marketing services agreement, as there is no documentation available from that time in the archives of KFBG and no employee available of that time that could reconstruct the events that led to the signature of the third marketing services agreement. Ryanair has not supported this argument in its submission of comments to the extension decision, as it has not mentioned an eventual replacement of the second marketing services agreement.

(338) The Commission notes that in the wording of the third marketing is no indication that it replaces or supersedes the second marketing agreement.

(339) As there is no documentation on the alleged replacement apart of the attestation of the absence of a payment on the grounds of the second marketing services agreement, the Commission comes to the conclusion that the evidence available does not prove Austria's view. Moreover, the Commission notes, that even when assuming that the second marketing services agreement was never executed, this would have no impact on the assessment of the costs that a reasonable MEO would have expected: there was no reason that a reasonable MEO would have expected at the moment of the signature of the three marketing services agreements that one of them would not be executed in the future. Therefore, even when assuming that the second agreement indeed was not executed this would not have any impact on the assessment of the incremental costs.

(b) *Regarding the benefits that an MEO could have expected to gain from marketing services agreements and the price that it would have been willing to pay for those services*

(340) In order to be able to apply the MEO principle to the case at hand, the behaviour of KFBG/DMG as signatories of the airport services agreement with Ryanair and the marketing services agreements with AMS and LV must be compared to that of a hypothetical MEO in charge of operating KLU.

(341) When analysing the transaction in question, it is necessary to assess 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 these services on the airport's profitability should be taken into account, as this would be the only concern for a hypothetical MEO.

(342) Thus, marketing services should stimulate passenger traffic on the air routes covered by marketing services agreements and the corresponding airport services agreements, as the marketing services are designed to promote those air routes. An increase in passenger traffic may lead to an increase in revenues generated by certain airport charges for the airport operator, as well as an increase in non-aeronautical revenues, in particular from car parks, restaurants and other businesses.

(343) There can therefore be no doubt that an MEO operating KLU in the stead of KFBG/DMG would have taken this positive effect into account when considering entering into the marketing services agreements and the

([57]) Email of 4 August 2005, 18:22h, from Mr Sean Coyle (Ryanair) to Mr Johannes Gatterer (KFBG).

corresponding airport services agreement. The MEO would have taken into account the impact of the air route in question on future revenues and costs by, in this case, estimating the number of passengers using these routes, which would have reflected the positive effect of marketing services. Moreover, this effect would have been evaluated for the entire term of operation of the air routes in question, as set out in the airport services agreement and the marketing services agreements.

(344) When an airport operator enters into an agreement for the promotion of certain air routes, it is standard practice to estimate the load ratio (or the load factor) ([58]) for the air routes in question and to take this into account when assessing future revenues. The Commission agrees with Ryanair on this issue, that is to say, that marketing services agreements do not just generate costs for the airport operator, they also bring benefits with them.

(345) In addition, it has to be determined whether other benefits could reasonably be expected and quantified for a hypothetical MEO operating KLU in the stead of KFBG/DMG, that is to say, other than the benefits from the positive effect on passenger traffic on the air routes covered by the marketing services agreement during the term of operation of these routes, as set out in the marketing services agreements or the airport services agreement.

(346) Certain interested third parties ([59]) support this argument, in particular Ryanair in its study of 17 January 2014. The study of 17 January 2014 is based on the theory that marketing services acquired by an airport operator, such as KFBG/DMG, will help to improve the airport's brand image and, as a result, to sustainably increase the number of passengers using the airport and not just the numbers on the air routes covered by the marketing services agreements and the airport services agreement for the term of operation set out in those agreements. In particular, Ryanair found in its study that the marketing services will have sustainable positive effects on passenger traffic in the airport even after the marketing services agreements have expired.

(347) It should first be noted that there is nothing to suggest that, when the marketing services agreements were entered into, the airport operator ever considered, still less quantified, the marketing services agreements' possible beneficial effects on air routes additional to those covered by the agreement, or the possibility of such effects continuing after the agreements had expired. Moreover, Austria did not suggest any method for estimating the possible value that a hypothetical MEO operating KLU in the stead of KFBG/DMG could have placed on such effects when assessing whether to enter into the agreements in 2002.

(348) In addition, the sustainable nature of these effects cannot be assessed based on the information available. It is possible that advertising Klagenfurt and the region on Ryanair's internet site may have encouraged people visiting that site to buy Ryanair tickets to Klagenfurt when the advertising was first posted or just thereafter. However, it is unlikely that the effect of the advertising on visitors lasted or had an influence on plane ticket purchases for more than a few weeks after it was posted on the Ryanair internet site. An advertising campaign is more likely to have a sustainable effect when the promotional activities involve one or more advertising media to which consumers are regularly exposed over a given period. For example, an advertising campaign involving 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 those media. However, promotional activities limited to just Ryanair's internet site are unlikely to have an effect that lasts much past the end of that promotion.

(349) Thus, even if the marketing services increased passenger traffic on the air routes covered by the marketing services agreements for the period of their implementation, it is likely that this effect was negligible after that period and that the effect on other air routes was similarly insignificant.

([58]) 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.

([59]) See comments of AMS in recital 184. AMS argues that its services are priced at market value, as several non-airport private customers from different industries have concluded marketing agreements with AMS. This argument concerning an alleged market price however does not change the conclusion of the Commission that a prudent MEO would have expected a negative result from the marketing agreement, see recital 362.

(350) 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 marketing services agreements or lasting after the period of their implementation for these routes, as set out in the marketing services agreements and airport services agreement, was extremely uncertain and could not be quantified with a degree of reliability that would be considered sufficient by a prudent MEO.

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

(352) The 'cash flow' approach involves evaluating the benefits of marketing services agreements and airport services agreements by assessing the future revenues which may be generated by the airport operator through marketing services and the airport services agreement, minus corresponding costs. In the 'capitalisation' approach, 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 services agreement.

(353) However, the study 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:

'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 (i.e. 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.'

(354) The study of 31 January 2014 proposes a practical application of the 'cash flow' approach. Under this approach, the benefits of marketing services agreements and airport services agreements which last even after the marketing services agreement has expired are expressed as a 'terminal value' that is calculated on the agreement's expiry date. This terminal value is calculated based on the incremental profits expected from the airport services agreement and marketing services agreement in the final year of application of the airport services agreement. Those profits are extended into the following period, the term of which is equal to the term of the airport services agreement, and are adjusted to take into account the growth rate for the air transport market in Europe and the probability factor designed to reflect the airport services agreement's and marketing services agreement's capacities to contribute to the airport's profits after they have expired. According to the study of 31 January 2014, the capacity for producing lasting benefits depends on various factors 'including greater prominence and a stronger brand, alongside network externalities and repeat passengers', although no details are given about these factors. Moreover, this method takes into account a discount rate which reflects capital costs.

(355) The study suggests a probability factor of 30 %, which it considers prudent. However, this very theoretical study does not provide any serious evidence for this factor, either quantitatively or qualitatively. It does not base itself on any facts relating to Ryanair's activities, air transport markets or airport services to substantiate this rate of 30 %. It does not establish any link between this rate and the factors that it mentions in passing (prominence, strong brand, network externalities and repeat passengers) and that are supposed to extend the benefits of the airport services agreement and market service agreement after their expiry dates. Finally, it does not in any way base itself on the specific content of marketing services provided for in the various contracts with AMS when analysing to what extent those services could influence those factors.

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

(357) A 'terminal value' calculated using the method suggested by Ryanair would therefore be highly unlikely to be taken into account by a prudent MEO when deciding whether to enter into an agreement.

(358) 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.

(359) Moreover, neither Austria nor any interested third party has provided any evidence that the method put forward by Ryanair in the study of 31 January 2014, or any other method aiming to quantify the profits after expiry of airport services agreements and marketing services agreements, has been successfully implemented by regional airport operators comparable to Klagenfurt's operator. Austria has not made any comments on the studies of 17 and 31 January 2014.

(360) Moreover, a terminal value calculated using the method put forward by Ryanair is only positive (and, therefore, only tends to increase the profitability of the airport services agreement and marketing services agreements) if the incremental profit expected from these agreements in the final year of application of the airport services agreement is positive. If it is negative, taking the terminal value into account will usually reduce the profitability of the agreements. It will be demonstrated below that the 2002 agreements resulted in negative incremental cash flows.

(361) Moreover, as stated above, the marketing services target the route covered by the marketing services agreement. If this route is not renewed on expiry of the airport services 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 operator 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 services 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. 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.

(362) To conclude, in light of the arguments presented above, the only benefit that a prudent MEO would expect from a marketing services agreement, and which it would quantify when deciding on whether to enter into such an agreement, together with an airport services agreement, would be that the marketing services would have a positive effect on the number of passengers using the routes covered by the agreements in question for the term of operation of those 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 and that no such benefits have been concretely demonstrated in the present case.

(c) *The feasibility of comparing Klagenfurt airport to other European airports*

(363) Regarding the feasibility of a comparison versus the *ex ante* analysis of incremental profitability of the 2002 agreements, reference is made to the assessment under recitals 262 to 278.

(364) Regarding the comparison of KLU with other airports, Ryanair submitted the Oxera study of 4 July 2011. This study was limited to a comparison between charges paid by Ryanair at […] and […] and airports, and the charges paid by Ryanair under the airport services agreements at KLU. That study did not factor in the specific marketing services agreements ([60]) at KLU in comparison to those possibly offered in other airports. However, for

([60]) The study only assessed the first marketing agreement of 22 January 2002 between LV and DMG (see recital 47), leaving aside the second and third marketing agreement as well as the marketing agreements concluded in 2006.

each route covered by the agreements at issue the relevant marketing services agreement had to be assessed jointly with the corresponding airport services agreement. As such, the elements invoked in the Oxery study of 4 July 2011 did not fulfil the most basic requirement for benchmarking, namely a 'sufficiently precise definition of the economic activities concerned' so that comparable market operators could be identified.

(365) In addition, the Oxera study of 4 July 2011 did not establish a dependable point of reference for market prices of airport services. Although the study describes the chosen comparator airports as '*majority privately owned and funded, or otherwise operating as market economy investors*', […] airport is owned by Manchester Airports Group, which itself has majority State ownership, while the Oxera study of 4 July 2011 does not claim that […] airport is operated on a market economy basis. As for […] Airport, the study states that the airport has consistently been privately owned, but omits to mention that […] airport was loss-making before it was sold in 2013, a factor which would call into question whether the low airport charges invoked as a point of reference in this case were sustainable for a MEO.

7.4.3.2. Conclusion on the terms for applying the market economy operator test

(366) It is clear from all the above that, in order to apply the MEO test to the agreements in question, the Commission must analyse each marketing services agreement together with the corresponding airport services agreement, and must assess whether a hypothetical MEO, motivated by the prospect of profits and operating KLU in place of KFBG, would have entered into these transactions. To this end, the Commission must determine the incremental profitability of the agreements as it would have been assessed by the MEO at the time of their conclusion, by estimating, for the entire period of application of the agreements:

— the future incremental traffic expected from the implementation of these agreements, possibly taking into account the effects of the marketing services on the load factors of the routes covered by the agreements,

— the future incremental revenues expected from the implementation of these agreements, including revenue from airport charges and ground handling services, generated by the routes covered by these agreements, as well as non-aeronautical revenue from the additional traffic generated by the implementation of these agreements,

— the future incremental costs expected from the implementation of these agreements, including operating costs and any incremental investment costs generated by the routes covered by these agreements, as well as marketing service costs.

(367) These calculations will provide the future annual flows corresponding to the difference between incremental revenues and costs, which are to be discounted, if necessary, by a rate reflecting the cost of capital for the airport operator. A positive net present value indicates in principle that the agreements in question do not confer an economic advantage, whereas a negative net present value reveals the presence of such an advantage.

7.4.3.3. Time frame for the Assessment of incremental costs and revenues

(368) When deciding on whether to enter into an airport services agreement and/or a marketing services agreement, a MEO will choose a time frame for its assessment based on the term of the agreements in question or the term set in each individual agreement. In other words, it will assess the incremental costs and revenues for the term of application of the agreements.

(369) There does not seem to be any justification for choosing a longer period. On the date of signature of the agreements, a prudent MEO will not count on the agreements being renewed once they have expired, whether under the same or new terms. Moreover, a generally prudent operator would be aware that low-cost airlines such as Ryanair have always been and are known for being very responsive to market developments, both when starting up or shutting down routes and when increasing or decreasing the number of flights.

(370) As a time frame for an assessment of the agreements in question a MEO would have chosen as a starting point the date of the simultaneous signature of all four agreements, i.e. the 22 January 2002. As an end date a MEO would have taken the end date as stipulated in each agreement. This was after a period of 5 years, i.e. 26 June 2007 in case of the airport services agreement between Ryanair and KFBG and of the first marketing agreement between DMG and LV. In case of the second marketing agreement between DMG and AMS the agreement entered into force for a 5-year initial term, i.e. until 21 January 2007. The third marketing agreement between DMG and LV indicated no precise duration, but had as main purpose the one-off payment of EUR […] by DMG to LV on 1 May 2002. Therefore 1 May 2002 would mark the end of the application of the agreement.

(371) The possibility to extend the agreements as foreseen in two of the agreements would not be taken into consideration by a prudent MEO. The extension of the agreements was automatic under the condition that Ryanair fully complied with its obligations as set out in the agreement. The extension was thus dependant on Ryanair's future behaviour and for that reason, on the date of signature a prudent MEO in the same situation as KFBG would not have been in a position to expect that this automatic extension would necessarily take place. This view seems to be confirmed by the fact that all four agreements between KFBG, DMG, Ryanair, LV and AMS ended ahead of time on 29 October 2005, when Ryanair stopped to operate the passenger air services between KLU and STN due to economic reasons.

(372) Even when taking into account a prolongation of the agreements for 5 further years, this would not lead to another result of an *ex ante* assessment. When assessing such prolongation under the same terms as for the first 5 years, it would lead to the same results, i.e. negative incremental cash flows.

7.4.3.4. Assessment

(373) For the purpose of assessing the agreements in question and given the above findings, it should be noted that both the existence and the amount of aid in these agreements have to be assessed in the light of the situation prevailing at the time they were signed and, more specifically, in the light of the information available and developments foreseeable at that time.

(374) Austria asserts that KFBG/DMG did not prepare any *ex ante* market study, business plan or profitability calculation before concluding individual airport services agreements with various airlines, nor did it prepare any *ex ante* market study, business plan or profitability calculation before concluding individual marketing services agreements.

(375) According to Ryanair, the lack of a business plan when agreements such as those covered by the formal investigation procedure are signed cannot be used as evidence that the MEO test is not satisfied.

(376) The lack of a business plan indicates that the agreements signed with Ryanair, LV and AMS do not satisfy the MEO test, particularly as neither Austria nor KFBG have been able to provide, in respect of these agreements, any profitability calculation, even incomplete, that was carried out before the agreements were signed.

(377) The Commission therefore invited Austria during the procedure to reconstruct the profitability analysis that an MEO would have carried out before signing the agreements with Ryanair, LV and AMS in 2002, based on the objective information known to KFBG/DMG when these agreements were signed and on the foreseeable developments.

(378) Upon the Commission's request, Austria prepared an overview of the incremental costs and revenues that could have been expected at the time the relevant agreements were concluded. Austria prepared that data for each of the agreements concluded, as summarised in Table 9.

Table 9

Incremental profitability of contracts with Ryanair, LV and AMS of 2002 prepared by Austria

5 years			
Capital interest rate:		8 %	
Passenger incentive:		0,00	
Daily connections		348	Rotations per year
LFZ (B737-800):		189	Seats
MTOW (B737-800):		75	MTOW

Calculation model

Empirical values according to Agreements						
Rotation		348	348	348	348	348
Load		70 %	70 %	70 %	70 %	70 %
Passenger departing		46 040	46 040	46 040	46 040	46 040
5-year period		1	2	3	4	5
per rotation		[…]	[…]	[…]	[…]	[…]
per departing passenger		[…]	[…]	[…]	[…]	[…]
per departing passenger — sec. fee		[…]	[…]	[…]	[…]	[…]
per departing passenger — security fee		[…]	[…]	[…]	[…]	[…]
(Vienna tax administration)						
Revenues Aviation		[…]	[…]	[…]	[…]	[…]
Surplus non-aeronautical per passenger		[…]	[…]	[…]	[…]	[…]
Surplus aeronautical		[…]	[…]	[…]	[…]	[…]
costs contribution Carinthia advertisement		[…]	[…]	[…]	[…]	[…]
costs contribution City Klagenfurt		[…]	[…]	[…]	[…]	[…]
costs contribution State Carinthia		[…]	[…]	[…]	[…]	[…]
		[…]	[…]	[…]	[…]	[…]
Revenues Project		[…]	[…]	[…]	[…]	[…]
Marketing Agreement Leading Verge by		[…]	[…]	[…]	[…]	[…]
DMG 23.5.2002		[…]	[…]		[…]	[…]
Project costs on marginal cost basis						
Traffic Handling third parties 51 %		[…]	[…]		[…]	[…]
Austro Control — aviation safety		[…]	[…]		[…]	[…]
Project costs (2002)						
flight dependent	[…]	[…]	[…]		[…]	[…]
passenger dependent	[…]	[…]	[…]		[…]	[…]

Empirical values according to Agreements						
Project costs/Expenses		– 1 986 100	– 986 100	– 986 100	– 986 100	– 986 100
Surplus		[…]	[…]	[…]	[…]	[…]
discount factor		[…]	[…]	[…]	[…]	[…]
	[…]	[…]	[…]	[…]	[…]	[…]
The cost — benefit analysis shows a discounted positive result of EUR				1 540 000		

fees according to Agreement 22.1.2002				
per rotation all-inclusive fee	[…]			
per departing passenger	[…]			
per departing passenger security fee	[…]			
(*) (fixed by Austrian government)				
Traffic Handling 2002	[…]			
Austro Control	[…]			

(*) Security Fee, which accrued to the airport and was at the same time paid to the Vienna tax administration.

(379) In preparing Table 9, Austria took the following considerations into account:

(a) The expected incremental traffic, i.e. the expected incremental passenger numbers were calculated from the envisaged number of flights per week (348 rotations per year to London with 189 seats, a maximum take-off weight of 75 tonnes and a load factor of 70 %) and extrapolated for the duration of the airport services agreement with Ryanair. As a result Austria indicated 46 040 passengers per year.

(b) The expected incremental aeronautical revenues (handling and landing charges on the basis of the airport charges at the time; EUR […]per rotation and EUR […] per departing passenger) were calculated over the duration of 5 years of the airport services agreement on the basis of the conditions agreed on with Ryanair. For the incremental revenues per rotation Austria indicated EUR […] per year and for the incremental revenues per departing passenger Austria indicated EUR […] per year. The security fee of EUR […] was not taken into account, as it was passed on by KFBG directly to the respective Austrian public authorities, i.e. an amount in transit. As a result Austria indicated EUR […] per year.

(c) The expected incremental non-aeronautical revenues (parking charges, spending in the terminals, etc.) were calculated over the duration of the airport services agreement. Austria estimated EUR […] per departing passenger in its analysis, calculating this amount from the average non-aeronautical revenue per passenger over the period of the years 2000-2004. As a result Austria indicated EUR […] per year.

(d) In addition Austria included as incremental revenues the payments KFBG received from the State of Carinthia (EUR […] as an one-off payment in 2002, EUR […] per year), from the city of Klagenfurt (EUR […] per year) and from Kärnten Werbung (EUR […] per year) in its analysis.

(e) As expected incremental costs, i.e. as costs arising because of the transaction with Ryanair, LV and AMS that would not materialise in the counterfactual scenario Austria indicated the following payments:

— Payments specified in the first marketing agreement between LV and DMG (EUR […] per year) as well as the payment specified in the third marketing agreement (side letter to the first marketing agreement) between LV and DMG (the one-off payment of EUR […]).

— Payments to a third party (Tyrolean Airways) as a subagent for the provision of ground handling services. Austria explained that Tyrolean Airways has operated since decades at KLU as a subagent for ground handling services. The price of ground handling services is published every year in the schedule of tariffs of KLU. According to the outsourcing contract between KFBG and Tyrolean Airways, KFBG will pay the subagent a certain percentage of the published price for ground handling services depending on the type of airline. Low cost airlines can opt for 'basic ground handling services' with fewer services included whereas all other airlines have to choose 'complete ground handling services' with all ground handling services included. The subagent contract indicates that KFBG pays for the low cost airlines 51 % of the ground handling services and for the other airlines 67,9 % of those services. The 51 % of ground handling services comprise the cost of materials used by Tyrolean Airlines for the ground handling services. Austria indicated payments of EUR […] per year.

— Payments to the public undertaking Austro Control, which is in charge of the security of the Austrian airspace. Austro Control is the air traffic controller at KLU and operates the air control tower. Austria indicated for the services of Austro Control payments of EUR […] per rotation, i.e. EUR […] per year.

— Incremental operating costs from the expected incremental traffic over the duration of the agreement: EUR […] per additional rotation and per ton of MTOW and EUR […] per additional departing passenger. Austria declared that these two values are the best estimates for these values that could be established for an *ex ante* estimation of a MEO at the moment of the signature of the agreements. These values are derived from the cost accounting system in place in 2002 (BAB 2002) which comprised the cost factors of landing tariff, passenger tariff and ramp handling fee, traffic handling fee, infrastructure tariff and hangar service fee. In addition to these estimated fees and tariffs Austria increased the amount with a security margin to ensure that the estimation of the expected incremental operating costs would not be too optimistic. This result was divided by the respective reference parameter, i.e. the expected number of passengers and MTOW. As a result Austria estimated EUR […] incremental operating costs per rotation and EUR […] incremental operating costs per passenger.

(f) Austria declared that KFBG did not expect in February 2002 any incremental investment costs due to the additional traffic. KLU had at that time considerable spare capacity and the additional traffic was supposed to fill these capacities. The terminal of KLU had a total capacity of 600 000 passengers per year and in 2001 around 227 000 passengers used KLU. The expected incremental traffic of 46 040 passengers would therefore not require any investments as the existing terminal could accommodate the incremental traffic.

(g) The discount rate used by KFBG was based on the discount rate of 8 %, which was the discount rate used and published by the airport of Vienna.

(380) The Commission finds that the approach taken by Austria in estimating the passenger numbers and calculating on that basis the expected incremental aeronautical revenues is sound. The same holds true with respect to the incremental costs of the ground handling services by a third party and the costs for payments for Austro Control. Also the estimation of the incremental operating costs per rotation and per passenger as well as the discount rate of 8 % is estimated with a sound approach. According to the data available for the expected incremental traffic the statement of Austria regarding incremental investment costs seems also reasonable.

(381) Having analysed the information provided by Austria, the Commission however disagrees in some of the points of the analysis and therefore will amend the analysis at the following points:

(a) As expected incremental non-aeronautical revenues Austria estimated EUR […] per departing passenger in its analysis, calculating this amount from the average non-aeronautical revenue per passenger over the period of the years 2000-2004. However, in an analysis for the 2002 agreements performed in February 2002, a prudent MEO would have rather used the average non-aeronautical revenue over the period of the years 1997-2001. From the information submitted by Austria this average for the years 1997-2001 was indeed EUR […]. The Commission will therefore use the value of EUR […] per departing passenger in this analysis. The new result is therefore EUR […] per year.

(b) The Commission disagrees with Austria on the inclusion as incremental revenues of the payments KFBG received from the State of Carinthia (EUR […] as an one-off payment in 2002, EUR […] per year), from the city of Klagenfurt (EUR […] per year) and from Kärnten Werbung (EUR […] per year) in its analysis. These amounts were granted as operating support to finance the 2002 agreements with Ryanair and its subsidiaries (see Section 7.1 above). According to point 63 of the Aviation Guidelines, 'The airport should demonstrate that […] it is capable of covering all costs stemming from the arrangement'. If additional support is needed, the MEO test is not fulfilled. This implies that any public support cannot be considered incremental revenue,

failing which the provision would be void of meaning. The Commission will therefore not take into account the payments received from the State of Carinthia, the city of Klagenfurt and from Kärnten Werbung as incremental revenues.

(c) The Commission notes that Austria included in its analysis as expected incremental costs only the payments specified in the first marketing agreement between LV and DMG (EUR […] per year) as well as the payment specified in the third marketing agreement (side letter to the first marketing agreement) between LV and DMG (the one-off payment of EUR […]). Contrary to this, the Commission will also take into account the payments specified in the second marketing agreement between DMG and AMS (EUR […] per year). Austria did not include this payment, as it claims that this agreement was replaced by the third agreement and did not enter into force. The Commission notes that Austria did not submit any documents to prove this argument, it only declared the absence of any documents for payments in the accounting sheets of KFBG to demonstrate that no payment was carried out by KFBG under the second marketing agreement. Even when assuming that Austria correctly recalls these facts, the Commission will nevertheless take the second marketing agreement into account in the analysis, as there is no reason why a reasonable MEO could have expected or foreseen in February 2002 when signing that contract that this agreement would not be implemented and payments would not be made later on. A MEO had to assess the agreements according to the situation prevailing at the time they were signed and, more specifically, under the information available and developments foreseeable at that time. The second marketing agreement therefore has to be taken into account in the *ex ante* analysis.

(382) In view of these necessary amendments, the Commission has carried out its own analysis by using directly the incremental profitability analysis as submitted by Austria and amending this analysis only where necessary as summarised in Table 10.

Table 10

Incremental profitability of contracts with Ryanair, LV and AMS of 2002 as corrected by the Commission

Contact period: 5 years		
Capital interest rate:	8 %	
Passenger Incentive:	0,00	
Daily connections:	348	Rotations per year
LFZ (B737-800):	189	Seats
MTOW (B373-800):	75	MTOW

Calculation model

Empirical values according to Agreements					
Rotation	348	348	348	348	348
Load	70 %	70 %	70 %	70 %	70 %
Passenger departing	46 040	46 040	46 040	46 040	46 040
5 year period	July 2002-June 2003	July 2003-June 2004	July 2004-June 2005	July 2005-July 2006	July 2006-June 2007
EUR […] per rotation	[…]	[…]	[…]	[…]	[…]

Empirical values according to Agreements						
EUR […] per departing passenger		[…]	[…]	[…]	[…]	[…]
Revenues Aviation		[…]	[…]	[…]	[…]	[…]
Surplus non-aeronautical per passenger		[…]	[…]	[…]	[…]	[…]
Surplus non-aeronautical		[…]	[…]	[…]	[…]	[…]
Incremental revenues		[…]	[…]	[…]	[…]	[…]
Marketing Agreement LV-DMG		[…]	[…]	[…]	[…]	[…]
Marketing Agreement AMS-DMG		[…]	[…]	[…]	[…]	[…]
Side letter LV-DMG		[…]	0	0	0	0
Project costs marginal costs basis						
Traffic Handling third parties 51 %		[…]	[…]	[…]	[…]	[…]
Austro Control — aviation safety		[…]	[…]	[…]	[…]	[…]
Project costs (2002)						
Flight dependent	[…]	[…]	[…]	[…]	[…]	[…]
Passenger dependent	[…]	[…]	[…]	[…]	[…]	[…]
Incremental costs		[…]	[…]	[…]	[…]	[…]
Incremental cash flows		[…]	[…]	[…]	[…]	[…]
Discount factor		[…]	[…]	[…]	[…]	[…]
Net Present Value	[…]	[…]	[…]	[…]	[…]	[…]

7.4.3.5. Conclusion on economic advantage

(383) As the expected discounted result is negative for the 2002 agreements with Ryanair, LV and AMS, the Commission finds that KFBG/DMG did not act like a MEO in concluding those agreements. The Airport could not have expected to cover the incremental costs brought about by those agreements. As KFBG/DMG did not behave like a MEO, its decision to conclude the agreements on those terms granted Ryanair, LV and AMS an economic advantage. Austria's argument that KFBG organised tenders to conclude agreements for the respective routes does not exclude the presence of the advantage as concluded by the Commission. A MEO operating an airport can in principle organise an open tender to offer financial incentives to an airline in order to increase traffic. A open tender may indeed be a suitable manner to maximise the profits generated by such incentives. However, if none of the bids submitted following such a tender can be expected by the airport operator to contribute, from an *ex ante* standpoint, to the profitability of the airport, then the MEO in question would not conclude any agreement even with the successful bidder, because it is not economically rational to conclude agreement reducing profits or increasing losses ([61]). If a public entity of a Member State decides to provide support, for public policy reasons, to a certain activity and tenders out, for example, the amount of funding provided, the mere fact that a tender is organised does not rule out the presence of State aid, but may only minimise the amount of aid ([62]).

([61]) See the 2014 Aviation Guidelines, point 63.
([62]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01) (OJ C 262, 19.7.2016, p. 1), point 89.

7.4.4. *Selectivity*

(384) The economic advantage was granted on a selective basis, as only one airline, namely Ryanair, benefitted from it.

(385) In this context, the argument advanced by Austria that the discounts on airport charges granted to airlines flying from Klagenfurt were not selective must be rejected. Austria argued that the discounts were open to all airlines wishing to operate from Klagenfurt, which allegedly rendered them non-selective.

(386) The Commission observes that the individual agreements concluded with Ryanair diverges from the schedule of charges and from agreements with other airlines, thus containing individually-negotiated conditions.

7.4.5. *Distortion of competition and effect on trade*

(387) 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. For all practical purposes, a distortion of competition is thus assumed as soon as a State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, 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.

(388) Since the entry into force of the third package on the liberalisation of air transport on 1 January 1993 ([63]), air carriers can freely operate flights on intra-European connections. As the Court of Justice has 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.' ([64]).

(389) The Commission has found that KFBG/DMG granted a selective advantage to Ryanair, LV and AMS. Ryanair with its subsidiaries is active on a competitive, Union-wide market and the advantage these undertakings received was liable to improve their competitive position on that market. In this light, the Commission finds that the advantage granted to Ryanair, LV and AMS is liable to distort competition and affect trade between Member States.

7.4.6. *Conclusion*

(390) For the foregoing reasons, the Commission finds that Ryanair, LV and AMS have received State aid, amounting to EUR […] in net present value terms.

7.5. **The 2006 agreements with Ryanair and AMS**

7.5.1. *Economic activity and notion of undertaking*

(391) Ryanair provides air transport services. AMS provides marketing services. Providing such services is an economic activity. Ryanair and AMS are therefore undertakings within the meaning of Article 107(1) TFEU.

7.5.2. *State resources and imputability to the State*

(392) In order to constitute State aid, the measures in question have to be financed from State resources and the decision to grant the measure must be imputable to the State. For the criteria used to assess the existence of State resources and imputability to the State reference is made to recitals 224 to 232.

([63]) 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).

([64]) Judgment of 21 March 1991, *Italy* v *Commission*, C-305/89, ECLI:EU:C:1991:142, paragraph 26.

(393) The Commission notes that KFBG/DMG are owned 100 % by the State. Until 2003 the shares of KFBG/DMG were held by the Republic of Austria (60 %), the State of Carinthia (20 %) and Klagenfurt city (20 %). In April 2003 the State of Carinthia took over the shares of the Republic of Austria. Since 2003 the shares were therefore held by the State of Carinthia (80 %) and Klagenfurt city (20 %). KFBG/DMG must thus be considered public undertakings within the meaning of Article 2 (b) of Directive 2006/111/EC whose funds are State resources.

(394) The 2006 agreements with Ryanair, AMS and LV are also imputable to the State. For the general involvement of the State of Carinthia in the activities of the airport, in particular the conclusion of the marketing agreement with the airlines, see above reference (314) et seq.

(395) Further, the Republic of Austria explicitly confirmed this involvement also with reference to the 2006 agreements with Ryanair and AMS.

(396) In the light of these considerations, the Commission considers that there are sufficient indicators to find that the conclusion of the 2006 agreements between KFBG/DMG and Ryanair/AMS are imputable to the State.

7.5.3. *Economic advantage*

7.5.3.1. Market Economy Operator Principle

(397) Regarding the current lack of comparable airports and agreements and the *ex ante* analysis of incremental profitability of the 2006 agreements reference is made to the assessment under recitals 261 to 278.

(398) Regarding the comparison of KLU with other airports, Ryanair submitted the Oxera study of 4 July 2011. This study was limited to a comparison between charges paid by Ryanair at […] and […] and airports, and the charges paid by Ryanair under the airport services agreements at KLU. That study made no attempt to factor in the specific marketing services agreements at KLU in comparison to those possibly offered in other airports. However, for each route covered by the agreements at issue the relevant marketing services agreement had to be assessed jointly with the corresponding airport services agreement. As such, the elements invoked in the Oxery study of 4 July 2011 did not fulfil the most basic requirement for benchmarking, namely a 'sufficiently precise definition of the economic activities concerned' so that comparable market operators could be identified.

(399) In addition, the Oxera study of 4 July 2011 did not establish a dependable point of reference for market prices of airport services. Although the study describes the chosen comparator airports as 'majority privately owned and funded, or otherwise operating as market economy investors', […] airport is owned by Manchester Airports Group, which itself has majority State ownership, while the Oxera study of 4 July 2011 does not claim that […] airport is operated on a market economy basis. As for […] Airport, the study states that the airport has consistently been privately owned, but omits to mention that […] airport was loss-making before it was sold in 2013, a factor which would call into question whether the low airport charges invoked as a point of reference in this case were sustainable for a MEO.

7.5.3.2. Market Economy Operator Principle — Regarding an analysis of the marketing services agreements and the airport services agreement together

(400) The Commission considers that in applying the MEO test, the airport services agreement concluded between Ryanair and KFBG, on the one hand, and the marketing services agreement between DMG and AMS, on the other hand, must be evaluated together as one single measure.

(401) Indeed, as for the 2002 agreements, there are several indications pointing towards the fact that the 2006 agreements should be evaluated as one single measure since they were entered into within the framework of a single transaction.

(402) First, according to the marketing agreement, 'this agreement is rooted in Ryanair's commitment to operate on a route between STN and KLU[…]'. This statement refers to the airport services agreement between Ryanair and KFBG and demonstrates yet again that the marketing services agreement and the airport services agreement are inseparably linked.

(403) Second, the contracts were entered into by essentially the same parties. The Commission refers to recital 326 regarding the subsidiary AMS of Ryanair and regarding the subsidiary DMG of KFBG.

(404) Third, according to both agreements they both lasted until 21 April 2007, i.e. they were in force for an identical period of time. This contemporaneous expiry of both agreements after the same period of time also shows that both agreements are linked and depended on each other.

(405) In conclusion, the marketing services agreement concluded by DMG and AMS is thus indivisibly linked to the airport services agreement signed by Ryanair and KFBG. The above considerations demonstrate that without the airport services agreement, the marketing services agreement would not have been concluded. Indeed, the marketing services agreement states explicitly that it is based on a 3-a-week-service between STN and KLU, and essentially envisages marketing services using the travel website www.ryanair.com aimed at promoting that service between STN and KLU.

(406) For those reasons, the Commission considers it appropriate to analyse the airport services agreement of 23 August 2006 and the marketing services agreement of 21 December 2006 jointly, with a view to determining whether they constitute State aid.

(407) Austria has agreed in its comments to the extension decision with the approach taken in the extension decision to analyse together the airport services agreement and marketing services agreement signed at the same time.

(408) On the other hand, certain interested parties, particularly Ryanair and AMS, question this approach as they consider that the marketing services agreement should be analysed separately. In its comments to the extension decision Ryanair objected to the joint assessment of the airport services agreements and the marketing services agreements (referring also to previous submissions on that subject) ([65]) as they were signed by different entities and were not linked with each other. Ryanair claimed that the conclusion of a marketing agreement was not a condition for the operation of routes by Ryanair to and from an airport.

(409) The facts however confirm that the approach taken in the extension decision and approved by Austria, is well-founded as it has been demonstrated in recitals 324-333. Therefore the airport service agreement and the marketing services agreement should be assessed jointly.

7.5.3.3. Time frame for the Assessment of incremental costs and revenues

(410) A MEO will assess the incremental costs and revenues for the term of application of the agreements. This time frame seems realistic for the same reasons as set out in the recitals 368-369 above.

(411) As a time frame for an assessment of the agreements in question a MEO would have chosen as a starting point the date of the signature of the marketing agreement on 21 December 2006, which complemented the airport service agreement. Both agreements ended on 21 April 2007.

(412) The possibility to extend the agreements as foreseen in two of the agreements would not be taken into consideration by a prudent MEO. On the date of signature a prudent MEO would not have sufficient indications to rely on the agreements of a low-cost airline being renewed. The end date for the assessment would therefore be the 21 April 2007.

7.5.3.4. Assessment

(413) Regarding the assessment of the agreements in question reference is made to the findings in recitals 373 to 377.

(414) Upon the Commission's request, Austria prepared an overview of the incremental costs and revenues that could have been expected at the time the relevant agreements were concluded. Austria prepared that data for each of the agreements concluded, as summarised in Table 11.

Table 11

Incremental profitability of contracts with Ryanair and AMS of 2006 prepared by Austria

4 months	
Capital interest rate:	8 %

([65]) See, e.g. reply to question 4 of Ryanair's submission of 4 July 2011.

Passenger-Incentive:	7,62
3 x weekly connection	54
LFZ (B737-800):	189
MTOW (B737-800):	67

Calculation

Empirical values according to Agreements		
Rotation		54
Load:		85 %
Departing passengers		8 675
		Pass. Inc.
Incentives		7,62
4 months		1
Landing fee		[…]
Ramp Handling		[…]
Traffic Handling		[…]
Infra air		[…]
Infra land		[…]
Pax tariff		[…]
Incentive		[…]
Total revenues		[…]
Surplus non-aeronautical per passenger		[…]
Surplus non-aeronautical		[…]
Surplus Project		[…]
AMS marketing contributions		[…]
(Agreement 21 December 2006)		
Project costs marginal costs basis		
Traffic Handling third parties 51 %		[…]
Security fee EUR 8		[…]

Empirical values according to Agreements				
Project costs according to BAB 2005				
Flight dependent			[…]	[…]
Passenger dependent			[…]	[…]
Project costs/expenses				[…]
Missing amount				[…]
Fees according to Agreement				
Landing fee	[…]	per turnaround		
Ramp Handling	[…]	per turnaround		
Traffic Handling	[…]	per turnaround		
Infra air	[…]	per turnaround		
Infra land	[…]	per departing passenger		
Pax tariff	[…]	per departing passenger		
Slot coordination	[…]	per turnaround		
Security fee	[…]	per departing passenger		
Passenger-Incentive	[…]	per departing passenger		
ACG-fee	[…]	per turnaround		

(415) In preparing Table 11, Austria took the following considerations into account:

(a) The expected incremental traffic, i.e. the expected incremental passenger numbers were calculated from the envisaged number of flights per week (54 rotations during the foreseen period with 189 seats, a maximum take-off weight of 67 tonnes and a load factor of 85 %) and extrapolated for the duration of the airport services agreement with Ryanair. As a result Austria indicated 8 675 passengers for the foreseen period.

(b) The expected incremental aeronautical revenues (handling and landing charges on the basis of the airport charges at the time) were calculated over the duration of the 4 months of the airport services agreement on the basis of the conditions agreed on with Ryanair. As incremental revenues Austria indicated EUR […] in total for the 4 months.

(c) Austria indicated that the total aeronautical revenue of EUR […] included a reduction due to the application of the incentive scheme for airlines of KFBG which was in force since 1 September 2005. The scheme had the objective to strengthen and secure existing flight connections by means of a passenger incentive. The application of this incentive lead to a reduction of EUR […].

(d) The expected incremental non-aeronautical revenues (parking charges, spending in the terminals, etc.) were calculated over the duration of 4 months of the airport services agreement. Austria estimated EUR […] per departing passenger in its analysis, calculating this amount from the average non-aeronautical revenue per passenger over the period of the years 2001-2005. As a result Austria indicated EUR […] for the period of 4 months.

(e) As expected incremental costs, i.e. as costs arising because of the transaction with Ryanair and AMS that would not materialise in the counterfactual scenario Austria indicated the following payments:

— Payments specified in the marketing agreement between AMS and DMG (EUR […] per year).

— Payments to a third party (Tyrolean Airways) as a subagent for the provision of ground handling services as described in recital 379 point (e). Austria indicated payments of EUR […] per year.

— Payments for security purposes to the respective Austrian public authorities: the security fee of EUR […] per year was taken into account, as it was stipulated in the agreement between KFBG and Ryanair that KFBG had to pay this fee.

— Incremental operating costs from the expected incremental traffic over the duration of the agreement: EUR […] per additional rotation and per tonne of MTOW and EUR […] per additional departing passenger. Austria declared that these two values are the best estimates for these values that could be established for an *ex ante* estimation of a MEO at the moment of the signature of the agreements. These values are derived from the cost accounting system in place since 2005 (BAB 2005) which comprised the cost factors of landing tariff, passenger tariff and ramp handling fee. The cost accounting system BAB 2005 showed in detail the different primary costs, secondary costs and overhead costs that added up to the total costs. Austria explained in details the procedural method how KFBG derived the incremental costs from certain positions of the primary costs.

(f) Austria declared that KFBG did not expect in December 2006 any incremental investment costs due to the additional traffic. KLU had at that time considerable spare capacity and the additional traffic was supposed to fill these capacities. The terminal of KLU had a total capacity of 600 000 passengers per year and at the end of 2006 around 409 000 passengers used KLU. The expected incremental traffic of 23 000 passengers would therefore not require any investments as the existing terminal could accommodate the incremental traffic.

(g) The discount rate used by KFBG was based on the discount rate of 8 %, which was the discount rate used and published by the airport of Vienna.

(416) Having analysed the information provided by Austria, the Commission finds that the approach taken by Austria in estimating the passenger numbers and calculating on that basis the expected incremental aeronautical revenues, is sound. The same holds true with respect to the expected incremental aeronautical revenues, the reduction due to the incentive scheme, the expected incremental non-aeronautical revenues, incremental costs of the ground handling services by a third party and the costs for payments for Austro Control. Also the estimation of the incremental operating costs per rotation and per passenger as well as the discount rate of 8 % is estimated with a sound approach. According to the data available for the expected incremental traffic the statement of Austria regarding incremental investment costs seems also reasonable.

7.5.3.5. Conclusion on economic advantage

(417) As the expected discounted result is negative for the agreements of 2006 with Ryanair and AMS, the Commission finds that KFBG/DMG did not act like a MEO in concluding those agreements. The Airport could not have expected to cover the incremental costs brought about by those agreements. As KFBG/DMG thus did not behave like a MEO, its decision to conclude the agreements on those terms granted Ryanair and AMS an economic advantage.

(418) This result for the 2006 agreements does not contradict the fact that the 2005 incentive scheme (which was applied in the 2006 agreements) as such did not involve an economic advantage as explained in recitals 261-288. The 2006 agreements consist in the application of that scheme in combination with a marketing agreement. The 2006 agreements thus deviate from the normal application of the 2005 incentive scheme. It is the amount of that deviation that represents the economic advantage for the 2006 agreements.

7.5.4. *Selectivity*

(419) The economic advantage was granted on a selective basis, as only one airline, namely Ryanair, benefitted from it. In this context, the Commission also notes that the 2006 agreements with Ryanair were diverging from the schedule of charges as well as from agreements with other airlines.

7.5.5. *Distortion of competition and effect on trade*

(420) The Commission finds that the advantage granted to Ryanair and AMS is liable to distort competition and affect trade between Member States for the reasons stated in recitals 387-389 above.

7.5.6. *Conclusion*

(421) For the foregoing reasons, the Commission finds that Ryanair and AMS have received State aid, amounting to EUR 141 326.

7.6. **The 2003 agreement with HLX**

7.6.1. *Economic activity and notion of undertaking*

(422) HLX, by providing air transport services, performs an economic activity and therefore constitutes an undertaking within the meaning of Article 107(1) TFEU.

7.6.2. *State resources and imputability to the State*

(423) In order to constitute State aid, the measures in question have to be financed from State resources and the decision to grant the measure must be imputable to the State. For the criteria used to assess the existence of State resources and imputability to the State reference is made to recitals 224 to 232.

(424) The Commission notes that KFBG/DMG are owned 100 % by the State. Until 2003 the shares of KFBG/DMG were held by the Republic of Austria (60 %), the State of Carinthia (20 %) and Klagenfurt city (20 %). In April 2003 the State of Carinthia took over the shares of the Republic of Austria. Since 2003 the shares were therefore held by the State of Carinthia (80 %) and Klagenfurt city (20 %). KFBG/DMG must thus be considered public undertakings within the meaning of Article 2 (b) of Directive 2006/111/EC whose funds are State resources.

(425) The 2003 agreement with HLX is also imputable to the State for the same reasons as explained above in recital 314. Austria also explicitly confirmed the active involvement of the State of Carinthia and the city of Klagenfurt in the conclusion of the 2003 agreements with HLX.

(426) Further, the costs of the 2003 agreements were borne by the State of Carinthia and the City of Klagenfurt (see Section 7.1) which the Commission considers a further strong indication of imputability as explained above in recital 314.

(427) The Commission therefore considers that the conclusion of the 2003 agreement between KFBG/DMG and HLX is imputable to the State.

7.6.3. *Economic advantage*

7.6.3.1. Market Economy Operator Principle

(428) Regarding the current lack of comparable airports and agreements and the *ex ante* analysis of incremental profitability of the 2006 agreements reference is made to the assessment under recitals 261 to 278.

7.6.3.2. Time frame for the Assessment of incremental costs and revenues

(429) A MEO will assess the incremental costs and revenues for the term of application of the agreements. This time frame seems realistic for the same reasons as set out in the recitals 368 to 369 above.

(430) As a time frame for an assessment of the agreement in question a MEO would have chosen as a starting point the starting date of cooperation and the operation of the air transport services by HLX, i.e. the 30 August 2003. Indeed, even if the contract was formally signed later, available information suggests that the content of the agreement was effectively agreed by the parties before that date, at which air transport operations were launched under the agreement. The agreement ended on 31 March 2008.

(431) The possibility to extend the agreement would not be taken into consideration by a prudent MEO. On the date of conclusion of such an agreement a prudent MEO would not have sufficient indications to rely on the agreements of a low-cost airline being renewed. The end date for the assessment would therefore be the 31 March 2008.

7.6.3.3. Assessment

(432) Regarding the assessment of the agreements in question reference is made to the findings in recitals 373 to 377.

(433) Upon the Commission's request, Austria prepared an overview of the incremental costs and revenues that could have been expected at the time the relevant agreement was concluded as summarised in Table 12.

Table 12

Incremental profitability of contract with HLX of 2003 as prepared by Austria

4 years and 7 months		
Capital interest rate:	8 %	
Passenger-Incentive:	0,00	
LFZ (B737-700):	148	Seats
MTOW (B737-700):	68	MTOW

Calculation model

Empirical values according to Agreements							
Rotations:		770	996	996	996	655	
Load:		70 %	70 %	70 %	70 %	70 %	
Departing passengers:		79 772	103 186	103 186	103 186	67 858	
		Pass. Inc.	Pass. Inc.	Pass. Inc.	Pass. Inc.	Pass. Inc.	
Incentives:		0	0	0	0	0	
Period 4 years and 7 months		1	2	3	4	5	Project total
Landing fee		[…]	[…]	[…]	[…]	[…]	
Ramp Handling		[…]	[…]	[…]	[…]	[…]	
Traffic Handling		[…]	[…]	[…]	[…]	[…]	
Infra air		[…]	[…]	[…]	[…]	[…]	
Infra land		[…]	[…]	[…]	[…]	[…]	
Pax tariff		[…]	[…]	[…]	[…]	[…]	
Incentive		[…]	[…]	[…]	[…]	[…]	
Revenues Aviation		[…]	[…]	[…]	[…]	[…]	[…]
Airline contribution	[…]	No approach because of gross value method					
Cost contribution as represented by non-covered costs							
Cost contribution State Carinthia							
		[…]	[…]	[…]	[…]	[…]	
		[…]	[…]	[…]	[…]	[…]	[…]

Empirical values according to Agreements							
Surplus non-aeronautical per passenger		[…]	[…]	[…]	[…]	[…]	
Revenues non-aeronautical		[…]	[…]	[…]	[…]	[…]	[…]
Project revenues		[…]	[…]	[…]	[…]	[…]	
Marketing volume according to co-operation agreement		[…]	[…]	[…]	[…]	[…]	[…]
Corrected as presented under project costs		[…]	[…]	[…]	[…]	[…]	
Corrected as presented under project costs		[…]	[…]	[…]	[…]	[…]	
Project cost on marginal costs basis							
Traffic Handling Third Parties 51 %		[…]	[…]	[…]	[…]	[…]	[…]
(Austro Control — aviation safety)		[…]	[…]	[…]	[…]	[…]	[…]
(Security fee)		[…]	[…]	[…]	[…]	[…]	[…]
Project costs approach according to BAB 2002							
Flight dependent	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Passenger dependent	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Sum Project costs							[…]
Total costs		[…]	[…]	[…]	[…]	[…]	[…]
Surplus		[…]	[…]	[…]	[…]	[…]	[…]
Discount factor		[…]	[…]	[…]	[…]	[…]	
	[…]	[…]	[…]	[…]	[…]	[…]	
The cost-benefit analysis shows a discounted positive result of EUR						[…]	

(434) In preparing Table 12, Austria took the following considerations into account:

(a) The expected incremental traffic, i.e. the expected incremental passenger numbers were calculated from the envisaged number of rotations per year (996 rotations during the foreseen period per year, with the exception of 770 rotations in the first year and 655 rotations in the last year) with 148 seats, a maximum take-off weight of 68 tonnes and a load factor of 70 %) and extrapolated for the duration of the airport services agreement with HLX.

(b) The expected incremental aeronautical revenues (handling and landing charges on the basis of the airport charges at the time) were calculated over the duration of the airport services agreement on the basis of the conditions agreed on with HLX. As incremental revenues Austria indicated EUR […] in total.

(c) The expected incremental non-aeronautical revenues (parking charges, spending in the terminals, etc.) were calculated over the duration of the airport services agreement. Austria estimated EUR […] per departing passenger in its analysis. As a result Austria indicated EUR […] per year.

(d) In addition Austria included as incremental revenues the payments KFBG received from the State of Carinthia (EUR […] per year) in its analysis.

(e) As expected incremental costs, i.e. as costs arising because of the transaction with HLX, that would not materialise in the counterfactual scenario Austria indicated the following payments:

— Payments for marketing services as specified in the marketing agreement between KFBG and HLX; EUR […] in the first year; EUR […] in the following years and EUR […] in the last year.

— Payments to a third party (Tyrolean Airways) as a subagent for the provision of ground handling services as described in recital 379 point (e). Austria indicated payments of EUR […] per year.

— Payments for security purposes to the respective Austrian public authorities: The security fee of EUR […] per year was taken into account, as it was stipulated in the agreement between KFBG and HLX that KFBG had to pay this fee. Similarly, the fee of EUR […] per year for Austro Control was taken into account as KFBG had to pay this fee according to the agreement.

— Incremental operating costs from the expected incremental traffic over the duration of the agreement: EUR […] per additional rotation and per tonne of MTOW and EUR […] per additional departing passenger. Austria declared that these two values are the best estimates for these values that could be established for an *ex ante* estimation of a MEO at the moment of the signature of the agreements. These values are derived from the cost accounting system in place since 2002 (BAB 2002) which comprised the cost factors of landing tariff, passenger tariff and ramp handling fee. The cost accounting system BAB 2002 showed in detail the different primary costs, secondary costs and overhead costs that added up to the total costs. Austria explained in details the procedural method how KFBG derived the incremental costs from certain positions of the primary costs.

(f) Austria declared that KFBG did not expect in August 2003 any incremental investment costs due to the additional traffic. KLU had at that time considerable spare capacity and the additional traffic was supposed to fill these capacities. The terminal of KLU had a total capacity of 600 000 passengers per year and at the end of 2002 around 220 000 passengers used KLU. The expected incremental traffic of 103 000 passengers would therefore not require any investments as the existing terminal could accommodate the incremental traffic.

(g) The discount rate used by KFBG was based on the discount rate of 8 %, which was the discount rate used and published by the airport of Vienna, and commonly used by KFBG in its financial calculations.

(435) The Commission finds that the approach taken by Austria in estimating the passenger numbers and calculating on that basis the expected incremental aeronautical revenues is sound. The same holds true with respect to the incremental costs of the ground handling services by a third party and the costs for payments for Austro Control. Also the estimation of the incremental operating costs per rotation and per passenger as well as the discount rate of 8 % is estimated with a sound approach. According to the data available for the expected incremental traffic the statement of Austria regarding incremental investment costs seems also reasonable.

(436) Having analysed the information provided by Austria, the Commission however disagrees in some of the points of the analysis and therefore will amend the analysis at the following points:

(a) As expected incremental non-aeronautical revenues, Austria estimated EUR […] per departing passenger in its analysis, calculating this amount from the average non-aeronautical revenue per passenger over the period of the years 2000-2004. However, in an analysis for the 2003 agreement, August 2003, a reasonable MEO would have used the average non-aeronautical revenue over the period 1999-2002, immediately preceding the entry into application of the agreement. From the information submitted by Austria this average for the years 1999-2002 was indeed EUR […]. The Commission will therefore use the value of EUR […] per departing passenger in this analysis. The new corrected result is therefore EUR […] per year.

(b) The Commission disagrees with Austria on the inclusion as incremental revenues of the payments KFBG received from the State of Carinthia (EUR […] per year) which were granted as operating support to finance the 2003 agreement with HLX (see Section 7.1 above) for the same reasons as explained above (see recital 381).

(437) The Commission also corrected the amounts of marketing payments, as the indicated amounts did not correspond to the amounts stipulated in the agreement of 24 May 2004. The Commission consequently used the exact amounts of marketing payments as indicated in the agreement.

(438) In view of these necessary amendments, the Commission has corrected the analysis where necessary as summarised in the following Table 13.

Table 13

Incremental profitability of contract with HLX of 2003 as prepared by Austria and corrected by the Commission

Contract period: 4 years and 7 months		
Capital interest rate:	8 %	
Passenger-Incentive:	0,00	
LFZ (B737-700):	148	Seats
MTOW (B737-700):	68	MTOW

Calculation model

Empirical values according to Agreements						
Rotations:	770	996	996	996	581	
Load:	70 %	70 %	70 %	70 %	70 %	
Departing passengers:	79 772	103 186	103 186	103 186	60 192	
Incentives already accounted for in airport charges:	0	0	0	0	0	
Period: 4 years and 7 months	Aug. 2003-Aug. 2004	Aug. 2004-Aug. 2005	Aug. 2005-Aug. 2006	Aug. 2006-Aug. 2007	Aug 2007-March 2008	Project total
Landing fee	[…]	[…]	[…]	[…]	[…]	
Ramp Handling	[…]	[…]	[…]	[…]	[…]	
Traffic Handling	[…]	[…]	[…]	[…]	[…]	
Infra air	[…]	[…]	[…]	[…]	[…]	
Infra land	[…]	[…]	[…]	[…]	[…]	
Pax tariff	[…]	[…]	[…]	[…]	[…]	
Incentive	0	0	0	0	0	
Revenues Aviation	[…]	[…]	[…]	[…]	[…]	[…]
Surplus non-aeronautical per passenger	[…]	[…]	[…]	[…]	[…]	
Surplus non-aeronautical	[…]	[…]	[…]	[…]	[…]	[…]
Project revenues	[…]	[…]	[…]	[…]	[…]	[…]
Marketing payments according to cooperation agreement	[…]	[…]	[…]	[…]	[…]	[…]

Empirical values according to Agreements							
Project cost on marginal costs basis							
Traffic Handling Third Parties 51 %		[…]	[…]	[…]	[…]	[…]	[…]
(Austro Control — aviation safety)		[…]	[…]	[…]	[…]	[…]	[…]
(Security fee)		[…]	[…]	[…]	[…]	[…]	[…]
Project costs approach according to BAB 2002							
Flight dependent	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Passenger dependent	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Sum Project costs							[…]
Total costs		[…]	[…]	[…]	[…]	[…]	[…]
Surplus		[…]	[…]	[…]	[…]	[…]	[…]
Discount factor		[…]	[…]	[…]	[…]	[…]	
	[…]	[…]	[…]	[…]	[…]	[…]	
The cost-benefit analysis shows a discounted negative result of EUR						[…]	

7.6.3.4. Conclusion on economic advantage

(439) As the expected discounted result is negative for the agreement of 2003 with HLX, the Commission finds that KFBG did not act like a MEO in concluding this agreement. The Airport could not have expected to cover the incremental costs brought about by this agreement. As KFBG thus did not behave like a MEO, its decision to conclude the agreement on those terms granted HLX an economic advantage.

7.6.4. *Selectivity*

(440) The economic advantage was granted on a selective basis, as only one airline, namely HLX, benefitted from it. In this context, the Commission also notes that the 2003 agreement with HLX diverged from the schedule of charges as well as from agreements with other airlines.

7.6.5. *Distortion of competition and effect on trade*

(441) The Commission finds that the advantage granted to HLX is liable to distort competition and affect trade between Member States for the reasons stated in recitals 387-389 above.

7.6.6. *Conclusion*

(442) For the foregoing reasons, the Commission finds that HLX has received State aid, amounting to EUR […] in net present value terms.

7.7. **The 2008 agreement with Tuifly**

7.7.1. *Economic activity and notion of undertaking*

(443) Tuifly, by providing air transport services, is performing an economic activity and therefore constitutes an undertaking within the meaning of Article 107(1) TFEU.

7.7.2. *State resources and imputability to the State*

(444) In order to constitute State aid, the measures in question have to be financed from State resources and the decision to grant the measure must be imputable to the State. For the criteria used to assess the existence of State resources and imputability to the State reference is made to recitals 224 to 232.

(445) The Commission notes that KFBG/DMG are owned 100 % by the State, namely 20 % by the city of Klagenfurt and 80 % by KLH. As described in recitals 24-26, KLH was a legal person *sui generis* governed by public law. KFBG/DMG must thus be considered to constitute public undertakings within the meaning of Article 2 (b) of Directive 2006/111/EC. The Commission considers that any advantage granted from KFBG/DMG's resources would signify a loss of State resources, thus constituting a transfer of State resources for the reasons set out in recital 313.

(446) The 2008 agreement with Tuifly is also imputable to the State. As described in recitals 228-232, the decisions of KLH and the city of Klagenfurt were imputable to the State. Both shareholders of KFBG appointed the supervisory board of KFBG/DMG (which in turn appoint the board) with the result that the supervisory board (and board) of KFBG also represented the proportions of the political parties represented in the government of the State of Carinthia. Moreover, the supervisory board had to agree with any investment decision of the board above the amount of EUR 50 000. According to § 5 of the statutes of KLH, KLH was under a constant supervision by the government of the State of Carinthia. The government of Carinthia had to ensure that all decisions of KLH were in the interest of the State of Carinthia.

(447) When concluding the agreement with Tuifly, KFBG/DMG also actively represented the State of Carinthia's interest in the existence and maintenance of a viable and performing airport at Klagenfurt for the State of Carinthia.

(448) Austria declared that the State of Carinthia was involved in the decision to conclude the 2008 agreement with Tuifly it was well informed about the agreement via the management and supervisory boards of KLH, KFBG and DMG. The State of Carinthia saw the conclusion of the agreement as being in the interest of Carinthia. Austria confirmed that the agreements concluded between KFBG/DMG and Tuifly are imputable to the State of Carinthia in the sense of the *Stardust Marine* ([66]) jurisprudence.

(449) In the light of these considerations, the Commission considers that there are sufficient indicators to find that the conclusion of the 2008 agreement between KFBG/DMG and Tuifly is imputable to the State.

7.7.3. *Economic advantage*

7.7.3.1. Market Economy Operator Principle

(450) Regarding the *ex ante* analysis of incremental profitability of the agreement with Tuifly reference is made to the assessment under recitals 263-279.

7.7.3.2. Time frame for the Assessment of incremental costs and revenues

(451) A MEO will assess the incremental costs and revenues for the term of application of the agreements. This time frame seems realistic for the same reasons as set out in recitals 368-369 above.

(452) As a time frame for an assessment of the agreement in question a MEO would have chosen as a starting point the starting date of cooperation and the operation of the airport services, i.e. the 1 April 2008. The agreement ended on 31 March 2013.

7.7.3.3. Assessment

(453) Regarding the assessment of the agreements in question reference is made to the findings in recitals 373 to 377.

(454) Upon the Commission's request, Austria prepared an overview of the incremental costs and revenues that could have been expected at the time the relevant agreement was concluded as summarised in Table 14.

([66]) Judgment of 16 May 2002, *France* v *Commission*, C-482/99, ECLI:EU:C:2002:294.

Table 14

Incremental profitability of contract with Tuifly of 2008 as prepared by Austria

5 years		
Capital interest rate:	8 %	
Passenger-Incentive:	0,00	
LFZ (B737-700):	148	Seats
MTOW (B737-700):	68	MTOW

Gross value presentation

Calculation model

Empirical values according to Agreements						
Rotations:	836	836	836	836	836	
Load:	70 %	70 %	70 %	70 %	70 %	
Departing passengers:	86 610	86 610	86 610	86 610	86 610	
	Pass. Inc.	Pass. Inc.	Pass. Inc.	Pass. Inc.	Pass. Inc.	
Incentives:	0	0	0	0	0	
5-year period	1	2	3	4	5	Project total
Landing fee	[…]	[…]	[…]	[…]	[…]	
Ramp Handling	[…]	[…]	[…]	[…]	[…]	
Traffic Handling	[…]	[…]	[…]	[…]	[…]	
Infra air	[…]	[…]	[…]	[…]	[…]	
Infra land	[…]	[…]	[…]	[…]	[…]	
Pax tariff	[…]	[…]	[…]	[…]	[…]	
Incentive	[…]	[…]	[…]	[…]	[…]	
Security fee	[…]	[…]	[…]	[…]	[…]	
Security fee	[…]	[…]	[…]	[…]	[…]	
Slot Coordination Fee	[…]	[…]	[…]	[…]	[…]	
Transfer to SCA Vienna	[…]	[…]	[…]	[…]	[…]	
Seating fee — per departing passenger […]	[…]	[…]	[…]	[…]	[…]	
Transfer to subagents for passenger handling	[…]	[…]	[…]	[…]	[…]	
Revenues according to fee regulation	[…]	[…]	[…]	[…]	[…]	[…]

Empirical values according to Agreements							
Airline contribution — no approach according to the gross value method							
Cost contribution as represented by non-covered costs							
Cost contribution Land Kärnten and Kärntner Landesholding							
		[…]	[…]	[…]	[…]	[…]	
		[…]	[…]	[…]	[…]	[…]	[…]
Surplus non-aeronautical per passenger		[…]	[…]	[…]	[…]		
Surplus non-aeronautical		[…]	[…]	[…]	[…]	[…]	[…]
Project Revenues		[…]	[…]	[…]	[…]	[…]	[…]
Marketing volume according to co-operation agreement		[…]	[…]	[…]	[…]	[…]	[…]
Corrected as presented under project costs		[…]	[…]	[…]	[…]	[…]	
Corrected as presented under project costs		[…]	[…]	[…]	[…]	[…]	
Project cost on marginal costs basis							
Traffic Handling third parties 51 %	[…]	[…]	[…]	[…]	[…]	[…]	
(Austro Control — aviation safety)	[…]	[…]	[…]	[…]	[…]	[…]	
Security fee	[…]	[…]	[…]	[…]	[…]	[…]	
Project costs according to BAB 2007							
Flight dependent	[…]	[…]	[…]	[…]	[…]	[…]	
Passenger dependent	[…]	[…]	[…]	[…]	[…]	[…]	
Total costs		[…]	[…]	[…]	[…]	[…]	[…]
Total sum project costs/marginal costs		[…]	[…]	[…]	[…]	[…]	[…]
Surplus		[…]	[…]	[…]	[…]	[…]	[…]
Discount factor		[…]	[…]	[…]	[…]	[…]	
	[…]	[…]	[…]	[…]	[…]	[…]	
The cost-benefit analysis shows a discounted positive result of EUR						[…]	

(455) In preparing Table 14, Austria took the following considerations into account:

(a) The expected incremental traffic, i.e. the expected incremental passenger numbers were calculated from the envisaged number of rotations per year (801 rotations during the foreseen period per year with 148 seats, a maximum take-off weight of 68 tonnes and a load factor of 70 %) and extrapolated for the duration of the airport services agreement with Tuifly.

(b) The expected incremental aeronautical revenues (handling and landing charges on the basis of the airport charges at the time) were calculated over the duration of the airport services agreement on the basis of the conditions agreed on with Tuifly. As incremental revenues Austria indicated EUR […] in total.

(c) The expected incremental non-aeronautical revenues (parking charges, spending in the terminals, etc.) were calculated over the duration of the airport services agreement. Austria estimated EUR […] per departing passenger in its analysis. As a result Austria indicated EUR […] per year.

(d) In addition Austria included as incremental revenues the payments KFBG received from the State of Carinthia (EUR […] per year) in its analysis.

(e) As expected incremental costs, i.e. as costs arising because of the transaction with Tuifly, that would not materialise in the counterfactual scenario Austria indicated the following payments:

— Payments for marketing services as specified in the marketing agreement between KFBG and Tuifly, i.e. EUR […] every year.

— Payments to a third party (Tyrolean Airways) as a subagent for the provision of ground handling services as described in recital 379 point (e). Austria indicated payments of EUR […] per year.

— Payments for security purposes to the respective Austrian public authorities: The security fee of EUR […] was taken into account, as it was stipulated in the agreement between KFBG and Tuifly that KFBG had to pay this fee. The fee of EUR […] per year for Austro Control was taken into account as KFBG had to pay this fee according to the agreement.

— Incremental operating costs from the expected incremental traffic over the duration of the agreement: EUR […] per additional rotation and per tonne of MTOW and EUR […] per additional departing passenger. Austria declared that these two values are the best estimates for these values that could be established for an *ex ante* estimation of a MEO at the moment of the signature of the agreements. These values are derived from the cost accounting system in place since 2007 (BAB 2007) which comprised the cost factors of landing tariff, passenger tariff and ramp handling fee. The cost accounting system BAB 2008 showed in detail the different primary costs, secondary costs and overhead costs that added up to the total costs. Austria explained in details the procedural method how KFBG derived the incremental costs from certain positions of the primary costs.

(f) Austria declared that KFBG did not expect in April 2008 any incremental investment costs due to the additional traffic. KLU had at that time considerable spare capacity and the additional traffic was supposed to fill these capacities. The terminal of KLU had a total capacity of 600 000 passengers per year and at the end of 2007 around 210 000 passengers used KLU. The expected incremental traffic of 83 000 passengers would therefore not require any investments as the existing terminal could accommodate the incremental traffic.

(g) The discount rate used by KFBG was based on the discount rate of 8 %, which was the discount rate used and published by the airport of Vienna, and commonly used by KFBG in its financial calculations.

(456) The Commission finds that the approach taken by Austria in estimating the passenger numbers and calculating on that basis the expected incremental aeronautical revenues, is sound. The same holds true with respect to the incremental costs of the ground handling services by a third party and the costs for payments for Austro Control. Also the estimation of the incremental operating costs per rotation and per passenger as well as the discount rate of 8 % is estimated with a sound approach. According to the data available for the expected incremental traffic the statement of Austria regarding incremental investment costs seems also reasonable.

(457) Having analysed the information provided by Austria, the Commission however disagrees in some of the points of the analysis and therefore will amend the analysis at the following points:

(a) As expected incremental non-aeronautical Austria estimated EUR […] per departing passenger in its analysis, calculating this amount from the average non-aeronautical revenue per passenger over the period of the years 2000-2004. However, in an analysis for the 2008 agreement, done in April 2008, a reasonable MEO would have used the average non-aeronautical revenue rather over the period 2003-2007, immediately preceding

the conclusion of the agreement. From the information submitted by Austria this average for the years 2003-2007 was indeed EUR […]. The Commission will therefore use the value of EUR […] per departing passenger in this analysis. The new corrected result is therefore EUR […] per year.

(b) The Commission disagrees with Austria to include as incremental revenues the payments KFBG received from the State of Carinthia (EUR […] per year) in its analysis for the reasons set out in recital 381.

(458) The Commission also corrected the amounts of marketing payments, as the indicated amounts did not correspond with the amounts stipulated in the agreement of 1 April 2008. The Commission consequently used the exact amounts of marketing payments as indicated in the agreement.

(459) In view of these necessary amendments, the Commission has corrected the analysis where necessary as summarised in the following Table 15.

Table 15

Incremental profitability of contract with Tuifly of 2008 as prepared by Austria and corrected by the Commission

Contract period: 5 years		
Capital interest rate:	8 %	
Passenger-Incentive:	0,00	
LFZ (B737-700):	148	Seats
MTOW (B737-700):	68	MTOW

Gross value presentation

Calculation model

Empirical values according to Agreements						
Rotations:	836	836	836	836	836	
Load:	70 %	70 %	70 %	70 %	70 %	
Departing passengers:	86 610	86 610	86 610	86 610	86 610	
Incentives:	0	0	0	0	0	
Period: 5 years	1	2	3	4	5	Project total
	April 2008-March 2009	April 2009-March 2010	April 2010-March 2011	April 2011-March 2012	April 2012-March 2013	
Landing fee	[…]	[…]	[…]	[…]	[…]	
Ramp Handling	[…]	[…]	[…]	[…]	[…]	
Traffic Handling	[…]	[…]	[…]	[…]	[…]	
Infra air	[…]	[…]	[…]	[…]	[…]	
Infra land	[…]	[…]	[…]	[…]	[…]	
Pax Tarif	[…]	[…]	[…]	[…]	[…]	
Incentive	[…]	[…]	[…]	[…]	[…]	

Empirical values according to Agreements							
Sec. fee		[…]	[…]	[…]	[…]	[…]	
Sec. fee (Vienna tax administration)		[…]	[…]	[…]	[…]	[…]	
Slot Coordination Fee		[…]	[…]	[…]	[…]	[…]	
Transfer to SCA Vienna		[…]	[…]	[…]	[…]	[…]	
Seating fee — per departing passenger	[…]	[…]	[…]	[…]	[…]	[…]	
Transfer to subagents for passenger handling		[…]	[…]	[…]	[…]	[…]	
Revenues according to fee regulation		[…]	[…]	[…]	[…]	[…]	[…]
Surplus non-aeronautical per passenger		[…]	[…]	[…]	[…]	[…]	
Surplus non-aeronautical		[…]	[…]	[…]	[…]	[…]	[…]
Project revenues		[…]	[…]	[…]	[…]	[…]	[…]
Marketing payments according to co-operation agreement		[…]	[…]	[…]	[…]	[…]	[…]
Project cost on marginal costs basis							
Traffic Handling Third Parties 51 %	[…]	[…]	[…]	[…]	[…]	[…]	
Austro Control — aviation safety	[…]	[…]	[…]	[…]	[…]	[…]	
Security fee	[…]	[…]	[…]	[…]	[…]	[…]	
Project costs approach according to BAB 2002							
Flight dependent	[…]	[…]	[…]	[…]	[…]	[…]	
Passenger dependent	[…]	[…]	[…]	[…]	[…]	[…]	
Sum Project costs/marginal costs		[…]	[…]	[…]	[…]	[…]	[…]
Total costs		[…]	[…]	[…]	[…]	[…]	[…]
Surplus		[…]	[…]	[…]	[…]	[…]	[…]
Discount factor		[…]	[…]	[…]	[…]	[…]	
	[…]	[…]	[…]	[…]	[…]	[…]	
The cost-benefit analysis shows a discounted positive result of EUR						[…]	

7.7.3.4. Conclusion on economic advantage

(460) As the expected discounted result is negative for the agreement of 2008 with Tuifly, the Commission finds that KFBG did not act like a MEO in concluding this agreement. The Airport could not have expected to cover the incremental costs brought about by this agreement. As KFBG thus did not behave like a MEO, its decision to conclude the agreement on those terms granted Tuifly an economic advantage.

7.7.4. *Selectivity*

(461) The economic advantage was granted on a selective basis, as only one airline, namely Tuifly, benefitted from it. In this context, the Commission also notes that the 2008 agreement with Tuifly diverged from the schedule of charges as well as from agreements with other airlines.

7.7.5. *Distortion of competition and effect on trade*

(462) The Commission finds that the advantage granted to Tuifly is liable to distort competition and affect trade between Member States for the reasons stated in recitals 387-389 above.

7.7.6. *Conclusion*

(463) For the foregoing reasons, the Commission finds that Tuifly has received State aid, amounting to EUR […] in net present value terms.

7.8. **The 2009 agreement with Air Berlin**

7.8.1. *Economic advantage*

7.8.1.1. Market Economy Operator Principle

(464) Regarding the *ex ante* analysis of incremental profitability of the agreement with Air Berlin reference is made to the assessment under recitals 263-279.

7.8.1.2. Time frame for the Assessment of incremental costs and revenues

(465) A MEO will assess the incremental costs and revenues for the term of application of the agreements. This time frame seems realistic for the same reasons as set out in the recitals 368-369 above.

(466) As a time frame for an assessment of the agreement in question a MEO would have chosen as a starting point the starting date of cooperation and the operation of the airport services, i.e. 25 October 2009. The agreement ended on 31 March 2013.

(467) Regarding the possibility to extend the agreements, this possibility of prolongation of the agreement as foreseen in the agreement would not be taken into consideration by a prudent MEO. On the date of conclusion of such an agreement a prudent MEO would not have sufficient indications to rely on the agreements of a low-cost airline being renewed. The end date for the assessment would therefore be 31 March 2013.

7.8.1.3. Assessment

(468) Regarding the assessment of the agreements in question reference is made to the findings in recitals 373-377.

(469) Upon the Commission's request, Austria prepared an overview of the incremental costs and revenues that could have been expected at the time the relevant agreement was concluded as summarised in Table 16.

Table 16

Incremental profitability of contract with Air Berlin of 2009 as prepared by Austria

3 years 4 months		
Capital interest rate:	8 %	
Passenger-Incentive:	0,00	
LFZ (B737-700):	148	Seats
MTOW (B737-700):	68	MTOW

Gross value presentation

Calculation model

Empirical values according to Agreements							
Rotations:		801	801	801	333	0	
Load:		70 %	70 %	70 %	70 %	70 %	
Departing passengers:		82 984	82 984	82 984	34 499	0	
		1	2	3	4	5	Project total
Landing fee		[…]	[…]	[…]	[…]	0	
Ramp Handling		[…]	[…]	[…]	[…]	0	
Traffic Handling		[…]	[…]	[…]	[…]	0	
Infra air		[…]	[…]	[…]	[…]	0	
Infra land		[…]	[…]	[…]	[…]	0	
Pax tariff		[…]	[…]	[…]	[…]	0	
Incentive		[…]	[…]	[…]	[…]	0	
Security fee		[…]	[…]	[…]	[…]	0	
Security fee (Vienna tax administration)		[…]	[…]	[…]	[…]	0	
Slot Coordination Fee	[…]	[…]	[…]	[…]	[…]	0	
Transfer to SCA Vienna		[…]	[…]	[…]	[…]	0	
Revenues according to fee regulation		[…]	[…]	[…]	[…]	0	[…]
Turnaround Cleaning	[…]	[…]	[…]	[…]	[…]		
Airline contribution — no approach according to the gross value method							
Cost contribution as represented by non-covered costs							
Cost contribution Land Kärnten and Kärntner Landesholding							
		[…]	[…]	[…]	[…]	[…]	
		[…]	[…]	[…]	[…]	[…]	[…]
Surplus non-aeronautical per passenger		[…]	[…]	[…]	[…]	[…]	
Surplus non-aeronautical		[…]	[…]	[…]	[…]	[…]	[…]
Project revenues		[…]	[…]	[…]	[…]	[…]	[…]
Marketing volume according to cooperation agreement		[…]	[…]	[…]	[…]	[…]	[…]

Empirical values according to Agreements							
Corrected as presented under project costs		[…]	[…]	[…]	[…]	[…]	
Corrected as presented under project costs		[…]	[…]	[…]	[…]	[…]	
Project cost on marginal costs basis							
Traffic Handling Third Parties 51 %	[…]	[…]	[…]	[…]	[…]	[…]	
Austro Control	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Security fee (completely paid by Airline)	[…]	[…]	[…]	[…]	[…]	[…]	
Project costs approach according to BAB 2002							
Flight dependent	[…]	[…]	[…]	[…]	[…]	0	
Passenger dependent	[…]	[…]	[…]	[…]	[…]	0	
Sum Project costs/marginal costs		[…]	[…]	[…]	[…]	[…]	[…]
Total costs		[…]	[…]	[…]	[…]	[…]	[…]
Surplus		[…]	[…]	[…]	[…]	[…]	[…]
Discount factor		[…]	[…]	[…]	[…]	[…]	
	[…]	[…]	[…]	[…]	[…]	[…]	
The cost-benefit analysis shows a discounted positive result of EUR						[…]	

(470) In preparing Table 16, Austria took the following considerations into account:

(a) The expected incremental traffic, i.e. the expected incremental passenger numbers were calculated from the envisaged number of rotations per year (801 rotations during the foreseen period per year with 148 seats, a maximum take-off weight of 64 tonnes and a load factor of 70 %) and extrapolated for the duration of the airport services agreement with Air Berlin. As a result Austria indicated 82 984 passengers per year for the foreseen period.

(b) The expected incremental aeronautical revenues (handling and landing charges on the basis of the airport charges at the time) were calculated over the duration of the airport services agreement on the basis of the conditions agreed on with Air Berlin. As incremental revenues Austria indicated EUR […] in total.

(c) The expected incremental non-aeronautical revenues (parking charges, spending in the terminals, etc.) were calculated over the duration of the airport services agreement. Austria estimated EUR […] per departing passenger in its analysis. As a result Austria indicated EUR […] per year.

(d) In addition Austria included as incremental revenues the payments KFBG received from the State of Carinthia (EUR […] per year) in its analysis.

(e) As expected incremental costs, i.e. as costs arising because of the transaction with Air Berlin, that would not materialise in the counterfactual scenario Austria indicated the following payments:

— Payments for marketing services as specified in the marketing agreement between KFBG and Air Berlin, i.e. EUR […] every year.

— Payments to a third party (Tyrolean Airways) as a subagent for the provision of ground handling services as described in recital 379 point (e). Austria indicated payments of EUR […] per year.

— The payments for security purposes to the respective Austrian public authorities were paid entirely by Air Berlin and therefore not listed as incremental costs for the airport operator.

— Incremental operating costs from the expected incremental traffic over the duration of the agreement: EUR […] per additional rotation and per tonne of MTOW and EUR […] per additional departing passenger. Austria declared that these two values are the best estimates for these values that could be established for an *ex ante* estimation of a MEO at the moment of the signature of the agreements. These values are derived from the cost accounting system in place since 2008 (BAB 2008) which comprised the cost factors of landing tariff, passenger tariff and ramp handling fee. The cost accounting system BAB 2008 showed in detail the different primary costs, secondary costs and overhead costs that added up to the total costs. Austria explained in details the procedural method how KFBG/DMG derived the incremental costs from certain positions of the primary costs.

(f) Austria declared that KFBG did not expect in October 2009 any incremental investment costs due to the additional traffic. KLU had at that time considerable spare capacity and the additional traffic was supposed to fill these capacities. The terminal of KLU had a total capacity of 600 000 passengers per year and at the end of 2008 around 180 000 passengers used KLU. The expected incremental traffic of 83 000 passengers would therefore not require any investments as the existing terminal could accommodate the incremental traffic.

(g) The discount rate used by KFBG/DMG was based on the discount rate of 8 %, which was the discount rate used and published by the airport of Vienna. This is the discount rate commonly used by KFBG in its financial calculations.

(471) The Commission finds that the approach taken by Austria in estimating the passenger numbers and calculating on that basis the expected incremental aeronautical revenues is sound. The same holds true with respect to the incremental costs of the ground handling services by a third party and the costs for payments for Austro Control. Also the estimation of the incremental operating costs per rotation and per passenger as well as the discount rate of 8 % is estimated with a sound approach. According to the data available for the expected incremental traffic the statement of Austria regarding incremental investment costs seems also reasonable.

(472) Having analysed the information provided by Austria, the Commission however disagrees in some of the points of the analysis and therefore will amend the analysis at the following points:

(a) As expected incremental non-aeronautical Austria estimated EUR […] per departing passenger in its analysis, calculating this amount from the average non-aeronautical revenue per passenger over the period of the years 2000-2004. However, in an analysis for the 2009 agreement, done in October 2009, a reasonable MEO would have used the average non-aeronautical revenue rather over the period of the years 2004-2008. From the information submitted by Austria this average for the years 2004-2008 was indeed EUR […]. The Commission will therefore use the value of EUR […] per departing passenger in this analysis. The new corrected result is therefore EUR […] per year.

(b) The Commission disagrees with Austria to include as incremental revenues the payments KFBG received from the State of Carinthia (EUR […] per year) in its analysis for the reasons set out in recital 381.

(c) The Commission also corrected the amounts of marketing payments, as the indicated amounts did not correspond with the amounts stipulated in the agreement of 25 October 2010. The Commission consequently used the exact amounts of marketing payments as indicated in the agreement.

(473) In view of these necessary amendments, the Commission has corrected the analysis where necessary as summarised in the following Table 17.

Table 17

Incremental profitability of contract with Air Berlin of 2009 as prepared by Austria and corrected by the Commission

Contract period: 3 years 5 months		
Capital interest rate:	8 %	
Passenger-Incentive:	0,00	

LFZ (B737):	148	Seats
MTOW (B737):	68	MTOW

Gross value presentation

Calculation model

Empirical values according to Agreements							
Rotations:		801	801	801	333	0	
Load:		70 %	70 %	70 %	70 %	70 %	
Departing passengers:		82 984	82 984	82 984	34 499	0	
		1	2	3	4	5	Project total
Landing fee		[…]	[…]	[…]	[…]	[…]	
Ramp Handling		[…]	[…]	[…]	[…]	[…]	
Traffic Handling		[…]	[…]	[…]	[…]	[…]	
Infra air		[…]	[…]	[…]	[…]	[…]	
Infra land		[…]	[…]	[…]	[…]	[…]	
Pax tariff		[…]	[…]	[…]	[…]	[…]	
Incentive		[…]	[…]	[…]	[…]	[…]	
Security fee		[…]	[…]	[…]	[…]	[…]	
Sec. fee (Vienna tax administration)		[…]	[…]	[…]	[…]	[…]	
Slot Coordination Fee	[…]	[…]	[…]	[…]	[…]	[…]	
Transfer to SCA Vienna		[…]	[…]	[…]	[…]	[…]	
Revenues according to fee regulation		[…]	[…]	[…]	[…]	[…]	[…]
Turnaround Cleaning	[…]	[…]	[…]	[…]	[…]		
Surplus non-aeronautical per passenger		[…]	[…]	[…]	[…]	[…]	
Surplus non-aeronautical		[…]	[…]	[…]	[…]	[…]	[…]
Project revenues		[…]	[…]	[…]	[…]	[…]	[…]
Marketing volume according to cooperation agreement		[…]	[…]	[…]	[…]	[…]	[…]
Project cost on marginal costs basis							
Traffic Handling Third Parties 51 %	[…]	[…]	[…]	[…]	[…]	[…]	
Austro Control	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Security fee (completely paid by Airline)	[…]	[…]	[…]	[…]	[…]	[…]	

Empirical values according to Agreements							
Project costs approach according to BAB 2002							
Flight dependent	[…]	[…]	[…]	[…]	[…]	[…]	
Passenger dependent	[…]	[…]	[…]	[…]	[…]	[…]	
Sum Project costs/marginal costs		[…]	[…]	[…]	[…]	[…]	[…]
Total costs		[…]	[…]	[…]	[…]	[…]	[…]
Surplus		[…]	[…]	[…]	[…]	[…]	[…]
Discount factor		[…]	[…]	[…]	[…]	[…]	
	[…]	[…]	[…]	[…]	[…]	[…]	
The cost-benefit analysis shows a discounted positive result of EUR						[…]	

7.8.1.4. Conclusion on economic advantage

(474) As the expected discounted result is positive for the agreement of 2009 with Air Berlin, the Commission finds that KFBG/DMG acted like a MEO in concluding this agreement. The Airport could expect to cover the incremental costs brought about by this agreement. As KFBG/DMG thus behaved like a MEO, its decision to conclude the agreement on those terms granted Air Berlin no economic advantage. Moreover, there are indications that in 2009, KFBG was engaged in a strategy and long-term effort towards overall profitability of KLU.

7.8.2. *Conclusion*

(475) For the foregoing reasons, the Commission finds that Air Berlin has not received any State aid.

7.9. **Conclusion on existence of aid**

(476) For the reasons set out above, the financing of KFBG and the agreements with Ryanair and its subsidiaries as well as the agreements with HLX and Tuifly constitute State aid within the meaning of Article 107(1) TFEU.

8. **LAWFULNESS OF THE AID**

(477) Pursuant to Article 108(3) TFEU, 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.

8.1. **The financing of KFBG**

(478) As the funds to finance KLU have already been put at the disposal of KFBG/DMG, the Commission considers that Austria has not respected the prohibition of Article 108(3) TFEU ([67]).

(479) Furthermore, based on the assessment in recitals 480 to 483 the aid measures under investigation in favour of KFBG/DMG cannot be considered exempted from the notification requirement on the basis of the 2005 SGEI Decision ([68]), applicable to aid granted before 31 January 2012.

(480) 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; or (ii) with an annual turnover before tax of less than EUR 100 million during the 2 financial years preceding that in which the SGEI was assigned, which receive annual compensation of less than EUR 30 million.

([67]) Judgment of 14 January 2004, *Fleuren Compost* v *Commission*, T-109/01, ECLI:EU:T:2004:4.
([68]) 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).

(481) In order to benefit from an exemption, public service compensation for the operation of an SGEI had to comply with the conditions set out in Articles 4, 5 and 6 thereof. 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.

(482) According to Austria, the operation of KLU could be considered a SGEI. The Commission is however of the opinion that the SGEI qualification of the management of KLU cannot be inferred from the information submitted by Austria. Neither an explicit definition of the alleged SGEI mission entrusted to KFBG/DMG nor the rules governing KFBG/DMG's right to compensation were laid down by Austria. Nor has KFBG/DMG made available to the Commission any other document outlining the scope of the presumed SGEI it had to discharge. Therefore, the Commission considers that there is no entrustment act that has imposed a genuine SGEI on the airport manager of KLU. Nor has the State of Carinthia 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.

(483) The Commission considers that on this basis it cannot be concluded that the aid to KFBG/DMG was exempted from the notification requirement on the basis of the 2005 SGEI Decision.

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

8.2. **The 2002 and 2006 agreements with Ryanair, LV and AMS**

(485) The State aid granted to Ryanair and its subsidiaries on the basis of the agreements of 2002 and 2006 was granted without being notified. The State aid granted to Ryanair and its subsidiaries therefore constitutes unlawful aid.

8.3. **The 2003 agreement with HLX and the 2008 agreement with Tuifly**

(486) The State aid granted to HLX and Tuifly on the basis of the agreements of 2003 and 2008 was granted without being notified. It therefore constitutes unlawful aid.

9. **ASSESSMENT OF THE COMPATIBILITY OF THE AID**

9.1. **The financing of KFBG**

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

9.1.1. *Compatibility pursuant to the 2014 Aviation Guidelines*

(488) As Austria did not provide arguments that the aid should be approved directly under Article 107(3) TFEU (nor the beneficiaries of the aid), the 2014 Aviation Guidelines provide a framework for assessing whether aid to airports may be declared compatible pursuant to Article 107(3)(c) TFEU.

(489) According to point 172 of the 2014 Aviation Guidelines, the Commission considers that the provisions of the notice on the determination of the applicable rules for the assessment of unlawful State aid ([69]) should not apply to pending cases of illegal operating aid to airports granted prior to 4 April 2014. Instead, the Commission will apply the principles set out in the 2014 Aviation Guidelines to all cases concerning operating aid (pending notifications and unlawful non-notified aid) to airports even if the aid was granted before 4 April 2014 and the beginning of the transitional period.

(490) The Commission has already concluded in recital 478 that the financial contributions for KFBG/DMG constitute unlawful State aid granted before 4 April 2014.

(491) In view of the provisions of the 2014 Aviation Guidelines referred to in recital 492, the Commission has to determine whether the measure in question constitutes unlawful investment or operating aid.

(492) According to recital 18 in point 25 of the 2014 Aviation Guidelines, investment aid is defined as 'aid to finance fixed capital assets; specifically, to cover the "capital costs funding gap"'. Moreover, according to point 107 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).

(493) Operating aid, on the other hand, means aid 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' ([70]).

(494) It can be considered that the financial contributions, which were used to cover annual operating losses of KFBG/DMG due to the costs of the marketing contracts of KFBG with different airlines, constitute operating aid in favour of KFBG/DMG.

(495) Section 5.1.2 of the 2014 Aviation Guidelines sets out the criteria that the Commission will apply in assessing the compatibility of operating aid with the internal market pursuant to Article 107(3)(c) TFEU. Pursuant to point 172 of the 2014 Aviation Guidelines, the Commission will apply those criteria to all cases concerning operating aid, including pending notifications and unlawful non-notified aid cases.

(496) Unlawful operating aid granted before the date of publication of the 2014 Aviation Guidelines may be declared compatible to the full extent of uncovered operating costs provided that the following conditions ([71]) are met:

— *contribution to a well-defined objective of common interest*: this condition is fulfilled, inter alia, if the aid increases the mobility of citizens of the Union and connectivity of the regions or facilitates regional development ([72]),

— *need for State intervention*: the aid must be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver ([73]),

— *appropriateness of State aid as a policy instrument*: this condition is fulfilled, if the Member State can demonstrate that the aid is the appropriate measure to achieve the intended objective ([74]),

([69]) Commission notice on the determination of the applicable rules for the assessment of unlawful State aid (OJ C 119, 22.5.2002, p. 22).
([70]) Recital 22 in point 25 of the 2014 Aviation Guidelines.
([71]) According to point 137 of the 2014 Aviation Guidelines, not all of the conditions set out in Section 5.1 of the Guidelines apply to operating aid granted in the past.
([72]) Point 137, 113 and 114 of the 2014 Aviation Guidelines.
([73]) Point 137 and 116 of the 2014 Aviation Guidelines.
([74]) Point 137 and 120 of the 2014 Aviation Guidelines.

— *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 ([75]),

— *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 ([76]),

— *avoidance of undue negative effects on competition and trade* ([77]).

9.1.1.1. Contribution to a well-defined objective of common interest

(497) The operating aid under assessment that comprises the losses of KFBG/DMG since 2000 and the corresponding financial contributions by the City of Klagenfurt, the State of Carinthia and KLH as demonstrated in Table 2, had the objective of maintaining the appropriate level of operation of KLU.

(498) According to point 113 of the 2014 Aviation Guidelines, operating aid to airports will be considered to contribute to the achievement of an objective of common interest if it increases the mobility of Union citizens and the connectivity of the regions, combats air traffic congestion at major Union hub airports or facilitates regional development.

(499) KLU is important for the economic development of the region of Carinthia, for which a good connection to the Austrian capital Vienna and the main German business centres is indispensable. KLU further satisfies connectivity needs of the region in particular in view of its tourism sector for alpine summer and winter sports. The business profile of KLU corresponds to these needs of the region, offering a comfortable infrastructure for a number of scheduled flights to the main business centres in Germany (Berlin, Hamburg, Köln-Bonn and in the past also Munich) as well as Vienna.

(500) Operating aid to Klagenfurt Airport therefore contributed to the connectivity and development of the region. According to the information provided by Austria in the annual statements of accounts of KFBG the development of Klagenfurt Airport was also based on a sound passenger forecast.

(501) Furthermore, it needs to be assessed whether a possible duplication of airport infrastructure could militate against finding that the operation of KLU meets a clearly defined objective of common interest.

(502) In this respect, the 2014 Aviation Guidelines define the catchment area as a geographic market boundary that is normally set around 100 km and around 60 minutes traveling time by car, bus, train or high-speed train. At the same time, the 2014 Aviation Guidelines allow to deviate from the standard definition of the catchment area of a given airport in order to take into account the specificities of each particular airport. In this respect, the size and shape of the catchment area may vary from airport to airport, including its business model, location and the destinations it serves.

(503) Taking into account this concept, it can be assumed that Graz airport (128 km from Klagenfurt), Maribor airport (137 km from Klagenfurt), Trieste airport (203 km from Klagenfurt) and Salzburg airport (223 km from Klagenfurt) are not located in the same catchment area.

(504) Ljubljana airport in Slovenia is however nearby. The shortest distance by road from Klagenfurt to Ljubljana airport is 80 km and crosses the Karawanken mountain range, via the Loibl mountain pass, at 1 068 metres above sea level. The Austrian authorities pointed out that a travelling time of less than 60 minutes by car or bus is unrealistic, firstly, as that road is narrow, winding and steep and is difficult to negotiate even under normal conditions and in particular in the winter season, and secondly, as that road is closed several times every year due to rock fall or mudslides. The shortest alternative would be the motorway to the city of Villach and through the Karawanken road tunnel, but that distance would be around 130 km. There is no high-speed train connection, and travelling time by train is between 2 hours 10 minutes and 2 hours 48 minutes. In view of this geographical situation, it can therefore be concluded that Ljubljana airport is not in the catchment areas of KLU, as the travelling time between the two airports will often be longer than under best travelling conditions.

([75]) Point 137 and 124 of the 2014 Aviation Guidelines.
([76]) Point 137 and 125 of the 2014 Aviation Guidelines.
([77]) Point 137 and 131 of the 2014 Aviation Guidelines.

(505) Moreover, KLU and Ljubljana Airport pursue business models that are significantly different from each other: Klagenfurt offers mainly scheduled flights connecting Klagenfurt with main business centres such as Vienna, Berlin, Hamburg or Köln-Bonn and some charter flights to a number of holiday destinations. The destinations served at KLU are therefore limited to the need of the population of Carinthia, which is a fast and easy access to the main German speaking business centres and at the same time an easy access of tourists to the tourism industry in Carinthia.

(506) Ljubljana airport as the main Slovenian airport of the Slovenian capital has more than 1 million annual passengers and offers a wide range of international destinations for scheduled and charter flights all over Europe with a focus on eastern European States.

(507) The Commission therefore considers that the operating aid granted to Klagenfurt Airport contributed to the achievement of the objective of common interest of improving the connectivity and regional development of the Carinthia region through the operation of transport infrastructure to meet the transport needs of the region.

9.1.1.2. Need for State intervention

(508) According to point 116 et seq. of the 2014 Aviation Guidelines, operating aid to airports will be considered necessary if it brings about a material improvement that the market itself cannot deliver. The guidelines further recognise that the need for public funding to finance operating costs will normally be proportionately greater for smaller airports due to high fixed costs and that airports with annual passenger traffic between 200 000 and 700 000 passengers may not be able to cover their operating costs to a substantial extent.

(509) After having served as many as approximately 520 000 passengers per year in the past, the annual passenger numbers of KLU have stabilised at around 230 000, which is well below 700 000 passengers. The airport was not able to generate enough revenues to cover its operating costs to a substantial extent, which the 2014 Aviation Guidelines identify as typical for airports of this size. Absent the aid in question, KFBG/DMG would likely have been forced to exit the market, depriving Carinthia of a transport infrastructure which plays a significant role in its accessibility and development (tourism).

(510) Therefore the Commission considers that the operating aid to Klagenfurt Airport is necessary.

9.1.1.3. Appropriateness of State aid as a policy instrument

(511) According to point 120 of the 2014 Aviation Guidelines operating aid should be an appropriate policy instrument to achieve the intended objective or resolve the problem to be addressed. Since KLU was loss-making at operating level the only appropriate instrument was operating aid that enabled the airport to continue operations ensuring connectivity of the Carinthia region. Other instruments such as investment aid or regulatory measures do not seem appropriate to address the financial problems of KLU at the operating level. Therefore the Commission considers that the operating aid granted to KLU is an appropriate instrument.

9.1.1.4. Existence of incentive effect

(512) According to point 124 of the 2014 Aviation Guidelines the operating aid has an incentive effect if it is likely that in the absence of the operating aid and taking into account the possible presence of investment aid and the level of air traffic, the level of the economic activity of the airport would be significantly reduced.

(513) The transport needs of the Carinthia region, which expressed in passenger numbers have stabilised over the years 2004-2010 at the level of 400 000 passengers per annum (and have only since 2012 fallen down to 230 000 passengers per annum). Despite rather stable passenger numbers the airport was in the past however not able to cover its operating costs. The figures Austria submitted showed that without the operating aid the airport would have made significant losses in most of the relevant years ([78]). Therefore, without the operating aid, KFBG would

([78]) According to the figures Austria submitted without the operating aid the net income would have been for 2002 EUR – 1 401 180; for 2003 EUR 145 056; for 2004 EUR – 1 597 060; for 2005 EUR – 758 979; for 2006 EUR – 778 887; for 2007 EUR 230 145; for 2008 EUR – 703 000; for 2009 EUR – 1 324 969.

have had to reduce traffic in order to reduce costs and losses, or otherwise, would have probably gone bankrupt, which would have probably led to the cessation of activity of the airport. Therefore, without the operating aid, the airport could not have maintained the level of traffic and its economic activity would have to be reduced.

9.1.1.5. Proportionality of the aid amount (aid limited to the minimum necessary)

(514) As regards necessity, the measures under investigation were limited to the minimum necessary to offset losses and allow KFBG/DMG to observe capital requirements and continue to operate viably. The aid was necessary to keep the company afloat and did not exceed the amount required to cover operating losses. The aid was therefore limited to the minimum necessary.

(515) Therefore, the Commission considers that the operating aid to KLU is proportionate.

9.1.1.6. Avoidance of undue negative effects on competition and trade

(516) According to point 131 of the 2014 Aviation Guidelines when assessing the compatibility of operating aid to the airport, the Commission will take into account the distortions of competition and the effects on trade. An indication of potential competition distortions or effect on trade may be the fact that the airport is located in the same catchment area as another airport with spare capacity.

(517) As demonstrated in recital 503 et seq., taking into account the concept of a catchment area of around 100 km and travelling time of 60 minutes, it can be assumed that Ljubljana airport is not in the catchment area of Klagenfurt area.

(518) Moreover, Austria has confirmed that the airport infrastructure of KLU is made available to all airlines on non-discriminatory terms. KLU can be accessed, without any particular restrictions, by any airline wanting to use it. This infrastructure can therefore be accessed in an equal and non-discriminatory manner within the meaning of the 2014 Guidelines.

9.1.2. *Conclusion*

(519) On the basis of the above, the Commission concludes that the operating aid granted to KLU is compatible with Article 107(3)(c) TFEU in the light of the compatibility conditions laid down in Section 5.1.2 of the 2014 Aviation Guidelines.

(520) The Commission further considers that since it found the operating aid to KFBG/DMG to be compatible under the 2014 Aviation Guidelines, it does not have to consider any other grounds of potential compatibility put forward by Austria.

9.2. **Agreements with airlines — Applicable legal framework**

(521) The Commission notes that Austria has not advanced any arguments to show that the aid granted to Ryanair and its subsidiaries is compatible with the internal market.

(522) Following the case law ([79]) of the Court of Justice, the Commission recalls that it is Austria's responsibility to indicate the legal basis on which a State aid measure could be found compatible with the internal market and to demonstrate that all required conditions are met. In the opening decision the Commission requested Austria to provide information on whether compatibility could be established pursuant to the 2005 Aviation Guidelines or directly under the TFEU. Austria, however, did not make any submissions with a view to showing that the relevant conditions for compatible start-up aid under the 2005 Aviation Guidelines or directly under the TFEU were met. Nor did the interested parties who submitted comments put forward any arguments demonstrating the compatibility of the State aid measure with the internal market.

([79]) See judgment of 28 April 1993, *Italian Republic* v *Commission of the European Communities*, C-364/90, ECLI:EU:C:1993:157, paragraph 20.

9.2.1. *The 2002 agreements with Ryanair*

(523) The 2002 agreements were signed before the 2005 Aviation Guidelines were published on 9 December 2005. With regard to the compatibility of aid granted before this date, point 85 of the 2005 Aviation Guidelines and point 174 of the 2014 Aviation Guidelines refer to the rules applicable at the time when the aid was granted.

(524) Before the 2005 Aviation Guidelines were adopted, the Commission had adopted the 1994 Aviation Guidelines ([80]). However, those guidelines did not specifically deal with the issue of operating aid aimed at promoting outbound air traffic from regional airports. This issue in fact gradually appeared as a result of a build-up of congestion at certain large European airports and the development of low-fare airlines, which did not yet exist in 1994. Consequently, the 1994 Aviation Guidelines do not provide any relevant basis of compatibility for the aid to airlines in the present case. The Commission must therefore assess the compatibility of the aid in question directly on the basis of Article 107(3)(c) TFEU.

(525) In this respect, it should be noted that the Commission's assessment of this type of State aid has been refined over time, although some points have remained unchanged. These points stem from the general principles governing the compatibility of aid in accordance with the aforementioned provision of TFEU.

(526) Accordingly, in the decision on Manchester airport of June 1999 ([81]), the Commission found that reductions in airport charges granted in a non-discriminatory and time-limited manner as measures aimed at promoting new routes were compatible with the rules on State aid.

(527) Subsequently, in its decision of February 2004 on Charleroi airport ([82]), the Commission explained that 'Operational aid measures intended to help the launch of new airlines or strengthen certain frequencies may be a necessary tool for the development of small regional airports. The measures may indeed persuade the interested companies to take the risk of investing in new routes. However, in order to declare such aid compatible on the basis of Article 87(3)(c) TFEU, it should be determined whether this aid is necessary and in proportion to the objective sought, and whether it affects trade to an extent that is contrary to the common interest'. The Commission therefore identified certain conditions to be met in order for this operating aid to be declared compatible, in particular the following:

— the aid must contribute to the objective of Community interest of developing a regional airport through a net increase in traffic on new routes,

— the aid must be necessary in the sense that it is not granted for a route already operated by the same or another airline or a similar route,

— the aid must have an incentive effect in the sense that it must help to develop an activity that, after a certain period, is likely to become profitable, which implies that the aid is limited in time,

— the aid must be proportional, i.e. the amount must be linked to the net development of traffic,

— the aid must have been granted transparently and without discrimination and must not be combined with other types of aid.

(528) The 2005 Aviation guidelines and the 2014 Aviation guidelines precisely define these compatibility principles, but it remains the case that operating aid granted to airlines may be declared compatible by the Commission where it contributes to the development of smaller airports through a net increase in traffic on new routes, where the aid is necessary in the sense that it is not granted for a route already operated by the same or another

([80]) Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (94/C 350/07) (OJ C 350, 10.12.1994, p. 5).

([81]) See Decision NN 109/98 of 14 June 1999 entitled 'United Kingdom, Manchester Airport'.

([82]) Commission Decision 2004/393/EC of 12 February 2004 concerning advantages granted by the Walloon Region and Brussels South Charleroi Airport to the airline Ryanair in connection with its establishment at Charleroi (OJ L 137, 30.4.2004, p. 1). This decision was annulled by the judgment of 17 December 2008, *Ryanair Ltd* v *Commission of the European Communities*, T-196/04, ECLI:EU:T:2008:585. However, it shows how the Commission's assessment of the aid in question has developed.

airline or a similar route, where it is limited in time and where the route for which the aid is granted is likely to become profitable, where the amount is linked to the net development of traffic and where the aid is granted transparently and without discrimination, and where it is not combined with any other type of aid.

(529) In this regard, in paragraph 212 of the opening decision, the Commission stated that it would assess the compatibility of the 2002 agreements with Ryanair, AMS and LV in the light of these criteria. It should be noted that neither Austria nor any interested third party has disputed the application of these criteria.

(530) In conclusion, the Commission takes the view that, in this case, the compatibility of the 2002 agreements should be assessed in the light of the aforementioned principles directly on the basis of Article 107(3)(c) TFEU.

9.2.2. *The 2006 agreements with Ryanair*

(531) 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 measures 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.'

(532) 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) EC [now Article 108(3) TFEU], 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*.'

(533) As the agreements of 2006 with Ryanair 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.

9.2.3. *The 2003 agreement with HLX*

(534) The 2003 agreement with HLX was signed before the 2005 Guidelines were published on 9 December 2005. With regard to the compatibility of aid granted before this date, the Commission refers to recitals 523 to 530.

(535) In conclusion, the Commission takes the view that, in this case, the compatibility of the 2003 agreement with HLX should be assessed in the light of the aforementioned general principles directly on the basis of Article 107(3)(c) TFEU.

9.2.4. *The 2008 agreement with Tuifly*

(536) Regarding the applicable legal framework reference is made to recitals 531-533. As the agreement of 2008 with Tuifly was 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.

9.3. **The 2002 agreements with Ryanair, LV and AMS**

9.3.1. *Compatibility assessment pursuant to Article 107(3)(c) TFEU: the aid must be limited in time and involve a route likely to become profitable*

(537) The Commission notes that, despite its invitation in this respect, Austria did not provide any viability study for the Klagenfurt-London route covered by the 2002 agreements to prove that the aid granted through the

agreements in question was justified. Accordingly, based on the facts on record, it seems that, for the authorities that granted the aid in question, there was no clear prospect of the Klagenfurt-London route becoming viable without aid in the short term. The Commission stresses in this respect that the explanations submitted by the Austrian authorities on the economic benefits of the route operated by Ryanair analyse the impact that they might have on the region's development, but do not include projections of the future viability of these routes or other routes likely to be operated by Ryanair in the future.

(538) Moreover, the Commission notes that, although these measures were limited in time, the 5-year term of each agreement was not necessary for or proportional to the costs incurred in launching a new route given that, in the aviation sector, a contractual term of less than 3 years is usually sufficient.

(539) The Commission therefore considers that the 2002 agreements do not meet the condition that the measures must be limited in time and involve routes likely to become profitable. As this condition is not fulfilled, there is no necessity for the Commission to assess the other conditions mentioned above.

9.3.2. *The aid must be proportional, i.e. the amount must be linked to the net development of traffic.*

(540) Austria has not submitted any information as to how the aid involved in the agreements at issue would relate to the net development of traffic. In particular, no indication has been provided as to the start-up costs incurred by Ryanair for launching the Klagenfurt-London route and there is no provision in the 2002 agreements ensuring that the aid granted to Ryanair will be limited to a reasonable fraction of those costs. The Commission therefore considers that the 2002 agreements do not meet the requirement that the aid must be proportional, i.e. the amount must be linked to the net development of traffic.

9.3.3. *Conclusion*

(541) The Commission considers that the 2002 agreements with Ryanair and its subsidiaries constitute unlawful aid incompatible with the internal market.

9.4. **The 2006 agreements with Ryanair and AMS — Compatibility assessment pursuant to 2005 Aviation Guidelines**

(542) Given that the compatibility conditions for start-up aid enshrined in point 79 of the 2005 Aviation Guidelines are cumulative, the Commission considers that it is only necessary to demonstrate that one of those conditions is not fulfilled in order to find that the aid to the airlines is not compatible. The Commission starts its analysis with the condition set out in point 79(d) of the 2005 Aviation Guidelines.

(543) Point 79(d) of the 2005 Aviation Guidelines requires, inter alia, that the amount of aid granted in any one year does not exceed 50 % of total eligible costs for that year and total aid does not exceed an average of 30 % of eligible costs. Eligible costs are defined 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'.

(544) In the opening decision the Commission observed that the agreements of 2006 with Ryanair did not provide for any connection between the aid granted and the eligible costs. Austria was therefore asked to provide details on the relationship between the aid and the eligible costs. Neither Austria nor the third parties commenting on the opening decision provided any such information. In this light, and considering that the agreements with the airlines in question make no reference to the costs of the airlines, let alone the eligible costs, the Commission finds that the compatibility condition enshrined in point 79(d) of the 2005 Aviation Guidelines is not fulfilled.

(545) In conclusion, the aid to Ryanair cannot be found to constitute compatible start-up aid, as at least one of the compatibility conditions is not fulfilled. The Commission considers that the 2006 agreements with Ryanair and its subsidiaries constitute unlawful aid incompatible with the internal market.

9.5. **The 2003 agreement with HLX**

9.5.1. *Compatibility assessment pursuant to Article 107(3)(c) TFEU*

(546) The compatibility of the 2003 agreement with HLX should be assessed in the light of the abovementioned principles directly on the basis of Article 107(3)(c) TFEU.

9.5.2. *The aid must be limited in time and involve a route likely to become profitable*

(547) The Commission notes that, despite its invitation in this respect, Austria has not provided any viability study for the new routes covered by the 2003 agreement to prove that the aid granted through the agreements in question was justified. Accordingly, based on the facts on record, it seems that, for the authorities that granted the aid in question, there was no clear prospect of the new routes becoming viable without aid in the more or less short term. The Commission stresses in this respect that the explanations submitted by the Austrian authorities on the economic benefits of the routes operated by HLX analyse the impact that they might have on the region's development, but do not include projections of the future viability of these routes operated by HLX.

(548) Moreover, the Commission notes that, although these measures were limited in time, the 4-year term of the agreement was not necessary for or proportional to the costs incurred in launching a new route given that, in the aviation sector, a contractual term of less than 3 years is usually sufficient.

(549) The Commission therefore considers that the 2003 agreement with HLX does not meet the condition that the measures must be limited in time and involve routes likely to become profitable. As this condition is not fulfilled, there is no necessity for the Commission to assess the other conditions mentioned above.

9.5.3. *Conclusion*

(550) The Commission considers that the 2003 agreement with HLX constitutes unlawful aid incompatible with the internal market.

9.6. **The 2008 agreement with Tuifly — Compatibility assessment pursuant to 2005 Aviation Guidelines**

(551) Given that the compatibility conditions for start-up aid enshrined in point 79 of the 2005 Aviation Guidelines are cumulative, the Commission considers that it is only necessary to demonstrate that one of those conditions is not fulfilled in order to find that the aid to the airlines is not compatible. The Commission starts its analysis with the condition set out in point 79(d) of the 2005 Aviation Guidelines.

(552) Point 79(d) of the 2005 Aviation Guidelines requires, inter alia, that the amount of aid granted in any one year does not exceed 50 % of total eligible costs for that year and total aid does not exceed an average of 30 % of eligible costs. Eligible costs are defined 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'.

(553) The Commission observed that the agreement of 2008 with TUIfly did not provide for any connection between the aid granted and the eligible costs. Austria was therefore asked to provide details on the relationship between the aid and the eligible costs. Neither Austria nor the third parties commenting on the opening decision provided any such information. In this light, and considering that the agreements with the airlines in question make no reference to the costs of the airlines, let alone the eligible costs, the Commission finds that the compatibility condition enshrined in point 79(d) of the 2005 Aviation Guidelines is not fulfilled.

(554) In conclusion, the aid to Tuifly cannot be found to constitute compatible start-up aid, as at least one of the compatibility conditions is not fulfilled. The Commission considers that the 2008 agreement with Tuifly constitutes unlawful aid incompatible with the internal market.

10. **CONCLUSION**

(555) The Commission finds that Austria has unlawfully granted State aid to KFBG in breach of Article 108(3) TFEU. However, these subsidies are aid compatible with the internal market on the basis of Article 107(3)(c) TFEU.

(556) Furthermore, the Commission finds that the airport and marketing services agreements signed between KFBG and Ryanair and its subsidiaries in 2002 and 2006 involve State aid, which was granted in breach of Article 108(3) TFEU and which are aid incompatible with the internal market on the basis of Article 107(3)(c) TFEU.

(557) The Commission also finds that the airport and marketing services agreement signed between KFBG and HLX in 2003 involves State aid, which was granted in breach of Article 108(3) TFEU and which is aid incompatible with the internal market on the basis of Article 107(3)(c) TFEU.

(558) The Commission finally finds that the airport and marketing services agreement signed between KFBG/DMG and Tuifly in 2008 involves State aid, which was granted in breach of Article 108(3) TFEU and which is aid incompatible with the internal market on the basis of Article 107(3)(c) TFEU.

11. **RECOVERY**

(559) According to settled case-law of the Court of Justice, when the Commission has found that aid is incompatible with the internal market, it is competent to decide that the Member State concerned must abolish or alter it ([83]).

(560) According to Article 14 of Council Regulation (EC) No 659/1999 ([84]), 'Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a 'recovery decision'). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law'. According to settled case-law of the Court of Justice, where aid is regarded by the Commission as incompatible with the internal market, the purpose of the obligation imposed on the State is to re-establish the previously existing situation ([85]). In this respect, the Court of Justice considers that the purpose is achieved when beneficiaries have repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage that they enjoyed over competitors. In this way, the situation prior to payment of the aid is restored ([86]).

(561) In this case, it appears that no general principle of Union law prevents recovery of the unlawful and incompatible aid identified in this Decision. In particular, neither Austria nor the interested third parties have presented any arguments in this respect.

(562) Austria must therefore take all necessary measures to recover from Ryanair and its subsidiaries, HLX and Tuifly the unlawful aid granted through the agreements in question.

11.1. **Determination of the aid amounts**

(563) The aid amounts to be recovered for each agreement and amendment must be determined as follows. Each transaction under review (consisting, where applicable, of an airport services agreement and a marketing services agreement) must be regarded as having given rise to an annual aid amount for each year that the agreements

([83]) Judgment of 12 July 1973, *Commission of the European Communities* v *Federal Republic of Germany*, 70/72, ECLI:EU:C:1973:87, paragraph 13.
([84]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).
([85]) Judgment of 14 September 1994, *Kingdom of Spain* v *Commission of the European Communities*, Joined Cases C-278/92, C-279/92 and C-280/92, ECLI:EU:C.1994:325, paragraph 75.
([86]) Judgment of 17 June 1999, *Kingdom of Belgium* v *Commission of the European Communities*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64-65.

forming the transaction applied. Each of these amounts is calculated using the negative part of the projected incremental flow (revenues less costs) at the time when the transaction was concluded. These amounts in fact correspond to the sums that should be deducted each year from the amount for the marketing services (or that should be added to the airport charges and ground handling charges invoiced to the airlines) so that the net present value of the agreement is positive, in other words so that this complies with the MEO principle.

(564) In order to take account of the effective advantage received by the airline and its subsidiaries under the agreements, the amounts referred to above recital may be adjusted, using evidence provided by Austria, according to the difference between, on the one hand, the actual marketing payments, as determined *ex post*, that were made to the airline or its subsidiaries under the marketing services agreement and, on the other hand, the corresponding (*ex ante*) projected marketing costs.

11.2. **Effective termination dates of certain agreements**

(565) In addition, the Commission considers that the effective advantage received by the airline is limited to the effective term of the agreement in question. In effect, after the termination of each agreement, Ryanair and its subsidiaries did not receive any payments under these agreements and did not benefit from access to the airport infrastructure and ground handling services under these agreements. Consequently, the aid amounts calculated as indicated above and associated with a given agreement are reduced to zero for the years in which the agreement ceased to apply (particularly due to early termination of the agreement by the airlines).

(566) As a result, the aid amounts to be recovered from Ryanair and AMS for certain agreements that did not run to term must be reduced to zero for the period from the effective termination date of the agreement to the termination date stipulated when the agreement was signed. This point applies to all agreements of 22 February 2002, which did not remain in force until 27 June 2007, but ceased to apply on 29 October 2005 when Ryanair closed its airport services with its last flight service to London.

(567) Likewise, the aid amounts to be recovered from Tuifly for the agreement of 2008 that did not run to term must be reduced to zero for the period from the effective expiry date of the agreement to the expiry date stipulated when the agreement was signed. This applies to the period as of 25 October 2009 when Tuifly offered its last flight service from KLU.

11.3. **Marketing payments taken into account**

(568) Regarding the payments specified in the second marketing agreement between DMG and AMS (EUR […] per year), the Commission took this agreement into account in its assessment of the MEO test. Likewise, the payments specified in the second marketing agreement will be taken into account in this chapter in calculating the aid amount to be recovered.

(569) Austria claimed that the second agreement was replaced by the third agreement and did not enter into force. Austria however did not submit any documents to prove this argument and only declared the absence of any documents for payments in the accounting sheets of KFBG to demonstrate that no payment was carried out by KFBG under the second marketing agreement.

(570) As the Commission did not receive any written evidence from Austria to demonstrate the correctness of this declaration, the second marketing agreement will also be taken into account for the calculation of the recovery amount. This amount may be adjusted at a later stage, using evidence provided by Austria.

(571) The following tables give information on the different amounts to be used to calculate the indicative amounts to be recovered. These amounts consist of the negative parts of the incremental flows (incremental revenues less incremental costs) established by applying the MEO test, with reductions for the periods of time in which the payments were not due yet after their signature or when the agreements did not run to term.

Table 18

Information about the indicative amounts of aid received and to be recovered from Ryanair and its subsidiaries

(EUR)

	Indicative amount of the aid received under the various agreements						Indicative amount of the aid to be recovered
Identity of the beneficiary/agreement	July 2002-June 2003	July 2003-June 2004	July 2004-June 2005	July 2005-Oct. 2005	2006	2007	
Ryanair, LV and AMS: agreements of 22.2.2002	1 248 180	248 180	248 180	82 727			1 827 267
Ryanair and AMS: agreements of 21.12.2006						141 326	141 326

Table 19

Information about the indicative amounts of aid received and to be recovered from HLX

(EUR)

	Indicative amount of the aid received under the agreements						Indicative amount of the aid to be recovered
Identity of the beneficiary/agreement	Aug. 2003-Aug. 2004	Aug. 2004-Aug. 2005	Aug. 2005-Aug. 2006	Aug. 2006-Aug. 2007	Aug. 2007-March 2008		
HLX agreement of 2003	1 418 984	2 273 855	2 273 855	2 273 855	1 326 414		9 566 963

Table 20

Information about the indicative amounts of aid received and to be recovered from Tuifly

(EUR)

	Indicative amount of the aid received under the agreements						Indicative amount of the aid to be recovered
Identity of the beneficiary/agreement	April 2008-March 2009	April 2009-Oct. 2009	April 2010-March 2011	April 2011-March 2012	April 2012-March 2013		
Tuifly agreement of 2008	789 955	344 136					1 134 091

(572) As explained in recital 326, the Commission considers that, for the purpose of applying the State aid rules, Ryanair, LV and AMS form a single economic entity, and that the marketing services agreements and the corresponding airport services agreements must be regarded as forming a single transaction between this entity and KFBG/DMG. Consequently, the Commission considers that Ryanair, LV and AMS are jointly and severally responsible for repaying all the aid received through the agreements signed in 2002 and 2006, with an indicative principal amount of EUR 1 827 267 and EUR 141 326.

(573) The Commission considers that HLX is responsible for repaying all the aid received through the agreement signed in 2003 with an indicative principal amount of EUR 9 566 963. HLX was founded in 2002 and belonged to the alliance TUI Airlines. On 15 January 2007, HLX was merged with Hapagfly, previously Hapag-Lloyd Flug, to the common brand Tuifly and as of July 2010 incorporated as such. For this reason, Tuifly can be considered to be the legal successor of HLX and therefore is liable and responsible for repaying all the aid which HLX received ([87]).

(574) The Commission considers that Tuifly is responsible for repaying all the aid received through the agreement signed in 2008 with an indicative principal amount of EUR 1 134 091.

(575) The Austrian authorities must recover the amounts indicated above within 4 months of the date of notification of this Decision.

(576) The Austrian authorities must also add recovery interest to the aid amount, which shall be calculated from the date on which the aid in question was put at the disposal of the undertaking, namely on each effective date of granting of the aid, until the date of its effective recovery ([88]), in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ([89]). In this respect, the start date as from which to calculate the recovery interest begins shall refer to the date at which the individually aid amounts i.e. the instalments were granted ([90]).

(577) In accordance with settled case-law, if a Member State encounters unforeseen and unforeseeable difficulties or perceives consequences overlooked by the Commission, it may submit those problems for consideration by the Commission, together with proposals for suitable amendments. In such a case, the Commission and the Member State concerned must work together in good faith with a view to overcoming the difficulties whilst fully observing the provisions of the TFEU.

(578) The Commission invites Austria to submit to it any problem encountered in implementing this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The public funding granted to KFBG/DMG in the form of financial contributions between 2000 and 2010 constitutes State aid which is compatible with Article 107(3)(c) TFEU.

Article 2

The 2005 incentive scheme of KLU does not constitute State aid within the meaning of Article 107(1) TFEU.

Article 3

The settlement agreement between KFBG and AUA does not constitute State aid within the meaning of Article of 107(1) TFEU.

Article 4

The airport services agreement concluded by KFBG with Air Berlin on 8 July 2010 does not constitute State aid within the meaning of Article 107(1) TFEU.

([87]) Transfer of liability in instances of merged companies were confirmed, inter alia, in the judgement of 12 February 2015, *European Commission* v *French Republic*, C-37/14, ECLI:EU:C:2015:90, recitals 83-86; Judgment of 16 December 2010, *AceaElectrabel Produzione SpA* v *European Commission*, C-480/09, ECLI:EU:C:2010:787, recitals 67-68.

([88]) See Article 14(2) of Regulation (EC) No 659/1999.

([89]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

([90]) As provided in the submission from the Austrian authorities on 8 and 10 June 2016 (email).

Article 5

The State aid amounting to EUR 1 827 267 unlawfully put into effect by Austria in breach of Article 108(3) TFEU, in favour of Ryanair, LV and AMS is incompatible with the internal market.

Article 6

The State aid amounting to EUR 141 326, unlawfully put into effect by Austria in breach of Article 108(3) TFEU, in favour of Ryanair and AMS is incompatible with the internal market.

Article 7

The State aid amounting to EUR 9 566 963 unlawfully put into effect by Austria in breach of Article 108(3) TFEU, in favour of HLX is incompatible with the internal market.

Article 8

The State aid amounting to EUR 1 134 091 unlawfully put into effect by Austria in breach of Article 108(3) TFEU, in favour of Tuifly is incompatible with the internal market.

Article 9

1. Austria shall recover the aid referred to in Articles 5 to 8 from the beneficiaries.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 as last amended by Commission Regulation (EC) No 271/2008 ([91]).

4. Austria shall cancel all outstanding payments of the aid referred to in Articles 1 to 4 with effect from the date of adoption of this decision.

Article 10

1. Recovery of the aid referred to in Articles 5 to 8 shall be immediate and effective.

2. Austria shall ensure that this decision is implemented within 4 months following the date of notification of this Decision.

Article 11

1. Within 2 months following notification of this Decision, Austria shall submit the following information to the Commission:

(a) the total amount (principal and recovery interests) to be recovered from the beneficiaries;

(b) a detailed description of the measures already taken and planned to comply with this Decision;

(c) documents demonstrating that the beneficiaries have been ordered to repay the aid.

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

2. Austria 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 Articles 5 to 8 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 12

This Decision is addressed to the Republic of Austria.

Done at Brussels, 11 November 2016.

For the Commission
Margrethe VESTAGER
Member of the Commission