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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1682

of 29 June 2023

concerning the renewal of the authorisation of dimethylglycine sodium salt as a feed additive for chickens for fattening (holder of the authorisation: Taminco BV) and repealing Implementing Regulation (EU) No 371/2011

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting and renewing such authorisation.
- (2) Dimethylglycine sodium salt was authorised for a period of 10 years as a feed additive for chickens for fattening by Commission Implementing Regulation (EU) No 371/2011 ⁽²⁾.
- (3) In accordance with Article 14(1) of Regulation (EC) No 1831/2003, an application was submitted for the renewal of the authorisation of dimethylglycine sodium salt as a feed additive for chickens for fattening, requesting the additive to be classified in the additive category 'zootechnical additives' and in the functional group 'other zootechnical additives: (improvement of zootechnical parameters)'. That application was accompanied by the particulars and documents required under Article 14(2) of that Regulation.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 5 May 2021 ⁽³⁾ that the applicant had provided evidence that the additive remains safe for chickens for fattening, the consumers and the environment under the conditions of use currently authorised. It also concluded that the additive is not a skin irritant but may be an eye irritant and skin sensitiser.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Implementing Regulation (EU) No 371/2011 of 15 April 2011 concerning the authorisation of dimethylglycine sodium salt as a feed additive for chickens for fattening (OJ L 102, 16.4.2011, p. 6).

⁽³⁾ EFSA Journal 2021;19(5):6621

- (5) The Annex to Implementing Regulation (EU) No 371/2011 erroneously provides for the description of the functional group 'zootechnical additives (improvement of zootechnical parameters)'. The opinion of the European Food Safety Authority ('the Authority') of 7 December 2010 ⁽⁴⁾ stated that the additive has the potential to increase performance in chickens for fattening. The term 'zootechnical' is too generic and may encompass different functions, while not expressing the specific effects of the additive. Therefore, in order to be in line with the opinion of the Authority, the functional group of the feed additive should refer to the improvement of performance parameters. In addition, the Authority concluded in its opinion of 7 December 2020 ⁽⁵⁾ that the additive is efficacious at a level of 1 000 mg/kg, consequently, a minimum level should be established.
- (6) In accordance with Article 5(4), point (c), of Commission Regulation (EC) No 378/2005 ⁽⁶⁾, the Reference Laboratory set up by Regulation (EC) No 1831/2003 considered that the conclusions and recommendations reached in the previous assessment are applicable for the current application.
- (7) The assessment of dimethylglycine sodium salt shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the authorisation of that additive should be renewed. In addition, the Commission considers that appropriate protective measures should be taken to prevent adverse effects on the health of the users of the additive.
- (8) As a consequence of the renewal of the authorisation of dimethylglycine sodium salt as a feed additive, Implementing Regulation (EU) No 371/2011 should be repealed.
- (9) Considering that the functional group should appear on the label of the feed additive, of the premixtures and compound feed containing it, it is necessary to provide for a transitional period allowing feed business operators to make the necessary adaptations to the labels.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Renewal of the authorisation

The authorisation of the substance specified in the Annex, belonging to the additive category 'zootechnical additives' and in the functional group 'other zootechnical additives: (improvement of performance parameters)', is renewed subject to the conditions laid down in that Annex.

Article 2

Repeal of Implementing Regulation (EU) No 371/2011

Implementing Regulation (EU) No 371/2011 is repealed.

⁽⁴⁾ EFSA Journal (2011); 9(1):1950

⁽⁵⁾ EFSA Journal 2021;19(5):6621

⁽⁶⁾ Commission Regulation (EC) No 378/2005 of 4 March 2005 on detailed rules for the implementation of Regulation (EC) No 1831/2003 of the European Parliament and of the Council as regards the duties and tasks of the Community Reference Laboratory concerning applications for authorisations of feed additives (OJ L 59, 5.3.2005, p. 8).

*Article 3***Transitional measures**

1. The substance specified in the Annex and premixtures containing that substance, which are produced and labelled before 24 March 2024 in accordance with the rules applicable before 24 September 2023 may continue to be placed on the market and used until the existing stocks are exhausted.
2. Compound feed and feed materials containing the substance specified in the Annex, which are produced and labelled before 24 September 2024 in accordance with the rules applicable before 24 September 2023 may continue to be placed on the market and used until the existing stocks are exhausted if they are intended for chickens for fattening.

*Article 4***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 June 2023.

For the Commission
The President
Ursula VON DER LEYEN

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						mg of additive/kg of complete feedingstuff with a moisture content of 12%			
Category of zootechnical additives. Functional group: other zootechnical additives (improving performance parameters).									
4d4	Taminco BV.	Dimethylglycine sodium salt	<i>Additive composition</i> Dimethylglycine sodium salt with a purity of at least 97 % Solid form <i>Characterisation of the active substance</i> Sodium N,N-dimethylglycine produced by chemical synthesis. Dimethylaminoethanol (DMAE)≤ 0.1 % Chemical formula: C ₄ H ₉ NO ₂ Na CAS number; 18319-88-5 EINECS number: 242-206-5 <i>Analytical method ⁽¹⁾</i> For the determination of dimethylglycine sodium salt in the feed additive and premixtures: liquid chromatography (HPLC) with diode array detection (DAD), detection at 193 nm. For the determination of the active substance in compound feed: gas chromatography (GC) using pre-column derivatisation and flame ionisation detection (FID).	Chickens for fattening	—	1 000	1 000	For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address the potential risks resulting from their use. Where those risks cannot be eliminated by such procedures and measures, the additive and premixtures shall be used with personal breathing eye and skin protective equipment.	24 September 2033

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>.

DECISIONS

COMMISSION DECISION (EU) 2023/1683

of 26 July 2022

on the measure SA.26494 2012/C (ex 2012/NN) implemented by France in favour of the operator of La Rochelle airport and certain airlines operating at that airport

(notified under document C(2022) 5145)

(Only the French text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof, ⁽¹⁾

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

Having called on interested parties to submit their comments pursuant to those articles, ⁽²⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letters dated 28 July 2008, 20, 22 and 23 September 2008, 1 and 21 October 2008 and 20 November 2008, complaints were lodged with the Commission by a number of citizens concerning advantages that had allegedly been granted to the airline Ryanair at La Rochelle-Île de Ré airport ('the airport'), and financial contributions allegedly received by the airport. The complaints referred to the report on the final findings of the Poitou-Charentes Regional Court of Auditors ('CRC') of 13 May 2008 ('CRC report') on the management of the La Rochelle Chamber of Commerce and Industry ('CCI').
- (2) By letter dated 17 March 2009, the Commission sent the French authorities a non-confidential version of the complaints and asked them for their comments concerning the measures at issue. This letter was resent by the Commission on 25 May 2011. By letter of 20 June 2011, the French authorities requested an extension of the deadline for their reply until 26 July 2011, to which the Commission agreed by letter of 21 June 2011. The French authorities asked for a further extension of the deadline to 26 August 2011, which the Commission again accepted in its letter of 28 July 2011. The French authorities finally sent the requested answers by letter dated 30 August 2011.

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

⁽²⁾ OJ C 130, 4.5.2012, p. 10, and OJ C 113, 15.4.2014, p. 30.

- (3) By letter of 11 April 2011, the Commission requested additional information from Ryanair, which replied by letter of 22 July 2011. The Commission forwarded these comments to France for its remarks by letter of 14 October 2011. In the absence of any response, the Commission sent a reminder on 16 November 2011. By letter of 21 November 2011, the French authorities informed the Commission that they did not wish to respond to Ryanair's comments.
- (4) By letter dated 8 February 2012, the Commission informed France of its decision ('the opening decision') to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) regarding the aid potentially granted by the CCI to the airlines Ryanair, Jet2, Flybe, Aer Arann, easyJet and Buzz.
- (5) By letter dated 22 February 2012, the Commission asked France to provide further information. By letter dated 12 March 2012, France requested a further extension of the deadline for replying to the requests for additional information made in the opening decision and the letter of 22 February 2012. On 13 April 2012, France submitted its comments together with the information and documents requested by the Commission in the opening decision. Given that certain information was missing, the Commission sent a reminder to France by letter dated 19 April 2012. The French authorities finally sent their answers by letter dated 27 April 2012.
- (6) On 16 April 2012, Ryanair sent the Commission its comments on other cases in which it was involved and asked the Commission to take its comments into account for all the State aid cases involving Ryanair.
- (7) The Commission decision was published in the *Official Journal of the European Union* ⁽³⁾ on 4 May 2012. The Commission invited interested parties to submit their comments on the measures in question within one month of the publication date.
- (8) By letter dated 16 July 2012, the Commission again asked France to provide further information. France replied by letter dated 16 August 2012 (and the corrigendum thereto, dated 5 September 2012).
- (9) The Commission received comments from interested parties. The CCI submitted its comments on 24 July 2012. On 1 June 2012, Ryanair's subsidiary, Airport Marketing Services ('AMS'), submitted its comments. Moreover, on 1 June 2012, 3 June 2013, 3 February 2014 and 10 April 2015, Ryanair submitted a series of comments and economic analysis reports prepared by an economic analysis consultancy firm (Oxera).
- (10) The Commission also received comments from a number of other interested parties, including public entities ⁽⁴⁾, undertakings ⁽⁵⁾, associations ⁽⁶⁾ and individuals.
- (11) In addition, on 11 April 2013, 23 December 2013, 9 and 31 January 2014, 7 February 2014, 28 March 2014, 27 January 2015, 7 December 2015 and 1 April 2019, Ryanair submitted a set of general comments, all relating to several State aid cases initiated by the Commission and involving Ryanair. On 15 and 29 September 2014, Ryanair also submitted economic analysis reports drawn up by Oxera relating to several State aid cases involving Ryanair.

⁽³⁾ OJ C 130, 4.5.2012, p. 10.

⁽⁴⁾ Conseillers du Commerce Extérieur [Foreign Trade Advisers] (30.5.2012), Department of Charente-Maritime (8.6.2012), Office de Tourisme de La Rochelle [La Rochelle Tourist Office] (4.6.2012), Poitou-Charentes CCI (1.6.2012), Angoulême CCI (4.6.2012), Charente-Maritime Tourisme [Charente-Maritime Tourist Board] (1.6.2012), Communauté d'Agglomération de La Rochelle [Authority for the La Rochelle Conurbation] (4.6.2012), Royan Town Hall (29.5.2012), Vendée Tourisme [Vendée Tourist Board] (30.5.2012) and the Region of Poitou-Charentes (10.7.2012).

⁽⁵⁾ Doc Services (18.5.2012), Fontaine Pajot (21.5.2012), Le Richelieu (25.5.2012), Atlandis (26.5.2012), Le Relais du Bois (30.5.2012), Groupe Cafés Merling (31.5.2012), Grand Pavois (30.5.2012), Cuisines Villeger (23.5.2012), Irium (4.6.2012), Sogerma (29.5.2012), La Rochelle Événements (29.5.2012).

⁽⁶⁾ Amicale Rivedoux [a local community association] (21.5.2012), Club Hotelier du Pays Rochelais-Ile de Ré [Hoteliers Association of La Rochelle-Ile de Ré] (31.5.2012), Envol Vert [an environmental association] (3.6.2012), Ile de Ré Tourisme [Ile de Ré Tourist Board] (1.6.2012), Association des Professionnels du Nautisme Rochelais [La Rochelle Association of Sailing Professionals] (30.5.2012), Union Départementale des Offices du Tourisme et des Syndicats d'Initiative de Charente-Maritime (UDOTSI) [Charente-Maritime Association of Tourist Information Offices] (1.6.2012), Destination La Rochelle (25.5.2012).

- (12) By letters dated 15 June 2012, 3 May 2013, 9 and 23 January 2014, 4 February 2014, 2 July 2014, 12 September 2014, 19 May 2015, 16 December 2015 and 17 May 2019, the Commission sent France the comments made by interested parties. The Commission gave France the opportunity to respond to these comments. France replied to these letters on 13 July 2012, 25 July 2012, 29 January 2014, 23 May 2014, 18 December 2015 and 24 June 2019. In its letter of 13 July 2012, France informed the Commission that it had no observations to make in respect of the comments submitted, notwithstanding the remarks it had already sent in connection with the Marseille Provence airport case ⁽⁷⁾. In addition, by letters of 25 July 2012, 29 January 2014, 23 May 2014 and 18 December 2015, France informed the Commission that it did not wish to submit any observations on the comments by third parties.
- (13) The Commission sent letters to France and the interested third parties that had already submitted comments informing them of its intention to assess the compatibility of the aid measures in question with the internal market based on the EU Guidelines on State aid to airports and airlines ⁽⁸⁾ ('the 2014 Guidelines'). The Commission invited the recipients of these letters to comment in this connection, if they so wished. In addition, on 15 April 2014 a notice was published in the *Official Journal of the European Union* ⁽⁹⁾ inviting France and interested third parties to submit their comments in this connection.
- (14) France submitted its comments on the 2014 Guidelines on 19 March 2014.
- (15) The Commission received comments from the CCI (11 June 2014), Communauté d'Agglomération de La Rochelle [Authority for the La Rochelle Conurbation] (6 June 2014), Union Départementale des Offices du Tourisme et des Syndicats d'Initiative (UDOTSI) [Charente-Maritime Association of Tourist Information Offices] (13 May 2014), Angoulême CCI (7 May 2014), Irium Holding Group SAS (2 May 2014), Groupe Cafés Merling (30 April 2014) and the NGO Transport & Environnement (13 May 2014). By letter dated 2 July 2014, the various comments were forwarded to France, which did not wish to make any response.
- (16) By letter dated 19 May 2015, the Commission asked France to provide further information. France replied by letters dated 4 August 2015, 18 November 2015, 4 December 2015 and 14 March 2016.
- (17) By letter dated 18 November 2016, the Commission asked France to provide further information. France replied by letters dated 20 December 2016, 15 February 2017, 11 July 2017 and 20 July 2017.
- (18) By letter dated 29 March 2017, the Commission asked France to provide further information. France replied by letter dated 18 August 2017.
- (19) By letter dated 19 May 2017, the Commission asked France to provide further information. France replied by letters dated 18 August 2017 and 15 November 2017.
- (20) By letter dated 18 August 2017, the Commission asked France to provide further information. France replied by letter dated 16 April 2018.
- (21) By letter dated 5 December 2017, the Commission asked France to provide further information. France replied by letter dated 16 February 2018.
- (22) By letter dated 9 April 2019, the Commission asked France to provide further information. France replied by letter dated 21 June 2019.

2. LA ROCHELLE-ÎLE DE RÉ AIRPORT

- (23) La Rochelle-Île de Ré airport is located in La Rochelle, in the Department of Charente-Maritime in France, 5 km north-west of La Rochelle and 2 km from the Île de Ré bridge. The airport is open to national and international commercial traffic.

⁽⁷⁾ Commission Decision (EU) 2016/1698 of 20 February 2014 concerning measures SA.22932 (2011/C) (ex NN 37/2007) implemented by France in favour of Marseille Provence Airport and airlines using the airport (OJ L 260, 27.9.2016, p. 1).

⁽⁸⁾ Communication from the Commission – Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).

⁽⁹⁾ OJ C 113, 15.4.2014, p. 30.

- (24) In 1936, the French State, the city of La Rochelle and the CCI took the decision to open an airport. This decision fell within the scope permitted under the Law of 20 June 1933 amending the Law of 9 April 1898 on chambers of commerce. The Law of 9 April 1898 on chambers of commerce, as initially worded, stated that 'chambers of commerce and industry may be declared concession-holders for public works or entrusted with public services, in particular those relating to seaports and waterways'. The Law of 20 June 1933 extended this provision to airports. The aerodrome opened in 1939.
- (25) The airport's main runway is 2 255 metres long and 45 metres wide. France estimates that the airport's theoretical maximum annual capacity is 700 000 passengers.
- (26) The airport is operated by the CCI, which is also the airport's owner. The accounts of the 'airport arm' ('airport arm' or 'CCI-Airport') are separate from those of the CCI's general arm ('the CCI's general arm') ⁽¹⁰⁾.
- (27) An overview of passenger traffic at La Rochelle airport over recent years can be found in Table 3 below. In accordance with point 15 of the 2005 Community guidelines on financing of airports and start-up aid to airlines departing from regional airports ⁽¹¹⁾ ('the 2005 Guidelines'), La Rochelle airport is a category D airport, i.e. a 'small regional airport'.
- (28) During the period under investigation, the airport was mostly used by low-cost airlines, namely Ryanair, Airlinair (renamed Hop in 2013), Flybe, easyJet, Jet2 and Buzz. Routes are operated on an annual or seasonal basis, or on a more ad-hoc basis for charter flights. The airport is also used for leisure flights, military flights and official service flights.
- (29) According to France, the routes in operation during the period covered by the formal investigation procedure were as follows:

Table 1

Air traffic operated at La Rochelle airport from 2001 to 2006

	2001	2002	2003	2004	2005	2006
Commercial movements	3 414	3 114	2 891	1 850	1 949	2 714
of which scheduled routes	3 200 ⁽⁴⁾	2 929	2 741	1 636	1 797	2 487
other	214	185	150	214	152	227
Movements of tourist and business aircraft	24 919	25 462	26 537	25 333	20 084	23 033
of which private aircraft aircraft belonging to flying clubs	12 382	10 984	12 113	11 329	6 909	8 102
aircraft belonging to flying clubs	12 537	14 478	14 424	14 004	13 175	14 931
Movements of military aircraft and official service aircraft	1 890	2 179	2 285	1 616	844	1 298
Others (including aerial work)	4 063	4 516	4 458	4 633	3 696	5 629
Total movements	34 286	35 271	36 171	33 432	26 573	32 674

⁽¹⁰⁾ The CCI's general arm is responsible for the CCI's other activities, such as representing the interests of businesses in the La Rochelle region. It also provides services for those businesses, offering assistance with creating, developing and transferring a business and providing initial and ongoing training.

⁽¹¹⁾ OJ C 312, 9.12.2005, p. 1.

	2001	2002	2003	2004	2005	2006
Passenger traffic on scheduled routes	72 912	89 339	92 427	97 521	125 858	178 938
La Rochelle-Paris	23 312 ⁽⁵⁾	9 132 ⁽⁶⁾	18 785			
La Rochelle-Clermont-Ferrand	20 060	23 263	22 194	5 909		
La Rochelle-London	25 227 ⁽⁴⁾	54 544	51 448 ⁽⁸⁾	72 092	79 373	100 168
La Rochelle-Southampton				17 335 ⁽⁹⁾	17 328	16 290
La Rochelle-Birmingham					19 286 ⁽¹¹⁾	12 229
La Rochelle-Dublin						22 357 ⁽¹²⁾
La Rochelle-Bristol						12 943 ⁽¹³⁾
La Rochelle-Lyon	4 313	2 364		2 185 ⁽¹⁰⁾	9 871	14 951
La Rochelle-Bordeaux		36 ⁽⁷⁾				
Other commercial passengers	3 712	2 387	1 375	2 821	1 705	1 934
of which national	2 381	740	497	1 313	367	1 067
international	1 331	1 647	878	1 508	1 338	867
Total number of passengers embarked or disembarked	76 681	91 854	93 802	100 404	127 563	180 888
Of which passengers in transit (counted once only)	57	128	31	62	0	16
Freight traffic	0	0	0	0	0	0

Source: French authorities.

Launch of scheduled routes:

- (4) La Rochelle-London route launched on 5 April 2001
- (5) La Rochelle-Paris route suspended on 1 October 2001
- (6) La Rochelle-Paris route taken over by Air Jet on 15 July 2002, then by Air Atlantique in May 2003, and subsequently suspended on 31 December 2004
- (7) La Rochelle-Bordeaux route operated by Air Jet from 15 July to 19 August 2002
- (8) La Rochelle-London route suspended in April 2003 (takeover of Buzz by Ryanair)
- (9) La Rochelle-Southampton route launched on 24 June 2004 by Flybe
- (10) La Rochelle-Lyon (via Poitiers) route launched on 14 October 2004 by Airlinair
- (11) La Rochelle-Birmingham route launched on 27 March 2005 by Flybe
- (12) La Rochelle-Dublin route launched on 29 April 2006 by Ryanair
- (13) La Rochelle-Bristol route launched on 21 July 2006 by easyJe

Table 2

Air traffic operated at La Rochelle airport from 2007 to 2011

	2007	2008	2009	2010	2011
Commercial movements	3 398	3 464	2 650	2 925	3 833
of which scheduled routes	3 069	3 042	2 320	2 511	3 400
other	329	422	330	414	433
Movements of tourist and business aircraft	21 699	22 311	21 112	20 041	19 934
of which private aircraft aircraft belonging to flying clubs	7 332	7 162	7 800	7 080	6 705
aircraft belonging to flying clubs	14 367	15 149	13 312	12 961	13 229
Movements of military aircraft and official service aircraft	1 376	1 489	1 598	1 760	1 306
Others (including aerial work)	6 501	5 948	4 785	5 010	4 606
Total movements	32 974	33 212	30 145	29 736	29 679
Passenger traffic on scheduled routes	217 493	209 668	162 822	186 034	223 396
La Rochelle-Lyon	17 754	18 524	15 196	15 524	18 968
La Rochelle-London (Stansted)	112 257	100 312	60 348	54 773	65 966
La Rochelle-Birmingham	9 824	7 607	4 917	4 681	4 708
La Rochelle-Southampton	16 789	11 786	10 720	12 978	12 413
La Rochelle-Dublin	14 578	19 960	20 198	17 182	13 985
La Rochelle-Bristol	21 572	13 391	14 224	14 572	14 126
La Rochelle-Manchester ⁽¹⁾	5 102	6 498	2 693	3 697	2 679
La Rochelle-London (Gatwick) ⁽²⁾	19 617	14 289	9 158	11 799	16 707
La Rochelle-Glasgow ⁽³⁾		2 692	1 516	1 537	
La Rochelle-Edinburgh ⁽⁴⁾		8 360	6 068	3 158	4 103
La Rochelle-Leeds Bradford ⁽⁵⁾		4 434	4 152	4 404	4 875
La Rochelle-Cork ⁽⁶⁾		1 815	2 881	2 584	
La Rochelle-Brussels ⁽⁷⁾			10 546	16 320	17 140
La Rochelle-Nice ⁽⁸⁾			205		
La Rochelle-Cork ⁽⁹⁾				10 366	10 392
La Rochelle-Oslo ⁽¹⁰⁾				12 459	13 677
La Rochelle-Porto ⁽¹¹⁾					17 167
La Rochelle-Paris ⁽¹²⁾					6 490
Other commercial passengers	2 595	4 670	5 902	5 395	5 452
Total number of passengers embarked or disembarked	220 577	215 145	168 969	191 599	229 214
Of which passengers in transit (counted once only)	489	807	245	170	366
Freight traffic	0	0	0	0	0

Source: French authorities.

Launch of scheduled routes:

- (1) La Rochelle-Manchester route launched by Flybe on 22 May 2007
 - (2) La Rochelle-London Gatwick route launched by easyJet on 14 July 2007
 - (3) La Rochelle-Glasgow route launched by easyJet on 3 May 2008
 - (4) La Rochelle-Edinburgh route launched by Jet2 on 17 May 2008
 - (5) La Rochelle-Leeds Bradford route launched by Jet2 on 24 May 2008
 - (6) La Rochelle-Cork launched route by Aer Arann on 24 May 2008
 - (7) La Rochelle-Brussels route launched by Ryanair on 5 June 2009
 - (8) La Rochelle-Nice route launched by Airlinair on 16 May 2009
 - (9) La Rochelle-Cork route launched by Ryanair on 1 June 2010
 - (10) La Rochelle-Oslo route launched by Ryanair on 2 April 2010
 - (11) La Rochelle-Porto route launched by Ryanair on 28 March 2011
 - (12) La Rochelle-Paris route launched by Airlinair on 8 April 2011
-

- (30) Table 3 below shows the total number of inbound and outbound passengers that used the airport between 2000 and 2012.

Table 3

Traffic and movements at La Rochelle airport

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Passengers on scheduled routes	72 912	89 339	92 427	97 521	125 858	178 938	217 493	209 668	162 822	186 034	223 493	236 736
Other commercial passengers	3 712	2 387	1 375	2 821	1 705	1 934	2 595	4 670	5 902	5 395	5 452	
Commercial movements	3 414	3 114	2 891	1 850	1 949	2 714	3 398	3 464	2 650	2 925	3 833	4 184
Non-commercial movements	30 872	32 157	33 280	31 582	24 624	29 960	29 576	29 748	27 495	26 811	25 846	22 058
Total movements	32 286	35 271	36 171	33 432	26 573	32 674	32 974	33 212	30 145	29 736	29 679	26 242
Freight	0	0	0	0	0	0	0	0	0	0	0	0

Source: French authorities and, for the 2012 figures, <http://www.aeroport.fr/view-statistiques/la-rochelle-ile-de-re> (2012 figures cover all passenger traffic).

3. DESCRIPTION OF THE MEASURES

- (31) The measures subject to the formal investigation procedure relate to:
- financial support given to the airport operator by various public bodies and authorities from 2001 until the formal investigation procedure was launched on 8 February 2012;
 - the various agreements signed by the airport operator with airlines from 2001 until the formal investigation procedure was launched on 8 February 2012.

3.1. Measures in favour of the airport

3.1.1. Financing of operations

3.1.1.1. Subsidies for public-remit tasks

- (32) Between 2001 and 2011, the public authorities financed various public-remit tasks carried out by La Rochelle airport relating to safety and security (see Table 4 below). This funding falls within the scope of the formal investigation procedure.
- (33) According to France, this funding covers the cost of the public-remit tasks, implementation of which falls to the airport operators and payment, to the State. The funding comes under the general system for financing public-remit tasks in French airports as established in national law. This system is based on a tax levy – the airport tax – and an additional financing instrument. The background to and rules governing these instruments, and the tasks financed by them, have already been described in a number of recent Commission decisions ⁽¹²⁾. However, the Commission wishes to highlight the following aspects that must be considered when examining the measures covered by this Decision.
- (34) By law, airport safety and security tasks are entrusted to airport operators ⁽¹³⁾. They take the requisite action pursuant to EU and national law and cover the related costs. They are then reimbursed via the airport tax, the revenue from which is earmarked exclusively to cover the cost of the general interest tasks relating to safety and security.
- (35) The principles governing the operation of this financing instrument and the categories of expenditure that can be covered are set out in detail in two reference texts ⁽¹⁴⁾. The airport tax is collected by public or private entities operating aerodromes which, in the last calendar year for which figures are available, recorded traffic figures (embarked or disembarked) in excess of 5 000 traffic units (one traffic unit = one passenger or 100 kg of mail or freight).
- (36) In accordance with Article 1609 *quater* of the General Tax Code, 'At each aerodrome, the revenue from the tax shall be allocated to funding fire-fighting and rescue services, wildlife hazard prevention, security measures and environmental protection measures. A percentage of the tax revenue, set annually by means of an [interministerial] order, shall be used to fund automatic border control equipment using biometric identification installed in airports. The amount of the levy shall be set on the basis of the financing needs of each aerodrome, taking particular account of the services provided to comply with the regulations in force and the expected trend in traffic figures, costs and the operator's other revenue'.

⁽¹²⁾ See in particular recitals 32 to 43 of Commission Decision (EU) 2016/633 of 23 July 2014 on State aid SA.33961 implemented by France in favour of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited (OJ L 113, 27.4.2016, p. 32), 'the Nîmes airport decision'. See also recitals 98 to 108 of Commission Decision (EU) 2015/1227 of 23 July 2014 on State aid SA.22614 (C 53/2007) 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), 'the Pau airport decision'.

⁽¹³⁾ Articles L.6332-3 and L.6341-2 of the Transport Code.

⁽¹⁴⁾ Article 1609 *quater* of the General Tax Code on the airport tax and Interministerial Order of 30 December 2009 on the arrangements for the issuing of statements by aerodrome operators for the purpose of establishing the amount of the airport tax passenger levy.

- (37) The amount of the levy is therefore set annually for each individual airport based on the safety and security costs to be covered. To that end, aerodrome operators draw up an annual statement of costs and traffic figures. These statements are sent to the local civil aviation safety authority, which checks and approves them in the light of the legislation in force. The amount of the levy is calculated by the French Civil Aviation Authority (*Direction générale de l'aviation civile*), which carries out a further check on all the declared figures, taking into account the cumulative results from previous years. The amount of the levy is then laid down in an interministerial order published in the French official gazette.
- (38) Moreover, Article 1609 *quatervicies* of the General Tax Code lays down that the figures declared by airport operators may be subject to checks by the French Civil Aviation Authority.
- (39) The rules for managing this process were initially set out in a Circular and, from 2010 onwards, the applicable rules were those laid down in the Interministerial Order of 30 December 2009 on the arrangements for the issuing of statements by aerodrome operators for the purpose of establishing the amount of the airport tax passenger levy. The rules are applied in the same way to all French airports.
- (40) In addition to the airport tax, the operator of La Rochelle airport also received State subsidies through the Intervention Fund for Airports and Air Transport ('FIATA'). The FIATA was designed to supplement the revenue from the airport tax, which is often insufficient for airports with low traffic volumes as they cannot impose too high a levy on their users. In 2008, the State replaced the FIATA with a surcharge on the airport tax, resulting in the amount of the levy being higher than what is necessary to cover the safety and security costs at certain airports. This creates a surplus which is redistributed to the smallest airports in order to supplement their revenue from the airport tax.
- (41) With reference to the regulatory procedure set out above, France sent the Commission an overview of all the subsidies granted to La Rochelle airport through State resources for public-remit tasks. These subsidies are set out in Table 4 below:

Table 4

Costs associated with public-remit tasks (safety and security) and subsidies paid to the airport for those tasks

Type of subsidy (in EUR)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
	TRAFFIC VOLUME												
Passenger traffic (outbound)	35 792	38 447	45 550	45 000	49 742	63 879	85 000	110 373	106 558	84 254	97 732	105 000	867 327
	SAFETY COSTS												
Aircraft fire and safety service and wildlife hazard prevention	185 530	340 269	349 369	338 767	424 281	632 622	831 688	1 078 998	1 154 601	1 032 451	1 064 607	1 094 887	8 528 070
(I) Subtotal safety	185 530	340 269	349 369	338 767	424 281	632 622	831 688	1 078 998	1 154 601	1 032 451	1 064 607	1 094 887	8 528 070
	SECURITY COSTS												
c - Facilities and devices for screening hold baggage	0	26 861	82 377	100 260	66 892	70 061	81 959	139 873	153 985	115 817	133 765	162 862	1 134 712
d - Access control to the restricted area	0	12 156	103 357	116 640	143 567	136 576	291 479	299 638	333 183	252 696	224 432	275 219	2 188 943
e - Screening of persons and cabin baggage	26 678	88 383	242 405	292 520	224 156	212 870	278 708	514 374	561 421	408 859	461 662	584 155	3 896 191
(II) Subtotal security (c+d+e)	26 678	127 400	428 139	509 420	434 615	419 507	652 146	953 885	1 048 589	777 372	819 859	1 022 236	7 219 856
	TOTAL COSTS SAFETY AND SECURITY												
Total costs safety/security (I+II)	212 208	467 669	777 508	848 187	858 896	1 052 129	1 483 834	2 032 883	2 203 190	1 809 823	1 884 466	2 117 123	15 747 916
Overheads	-	-	-	-	-	-	-	-	-	180 982	188 447	211 712	581 141
Aerodrome operator safety and security charges	-	-	-	-	-	-	-	-	-	-	2 526	8 556	11 082
(A) Total costs	212 208	467 669	777 508	848 187	858 896	1 052 129	1 483 834	2 032 883	2 203 190	1 990 805	2 075 439	2 337 391	16 340 139
	AIRPORT TAX												
Levy per passenger	3,81	4,57	7,62	9,50	9,50	9,50	10,00	11,00	11,00	11,00	11,50	12,00	-

Type of subsidy (in EUR)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Cost per passenger	5,93	12,16	17,07	18,85	17,27	16,47	17,46	18,42	20,68	21,48	19,28	20,16	-
Freight charge	0,60	0,60	1,50	1,50	1,50	1,50	1,50	1,00	1,00	1,00	1,00	1,00	-
	RESOURCES												
Revenue from the tax	123 922	153 602	299 727	386 996	382 047	688 583	881 780	1 165 248	1 177 494	979 163	1 077 272	1 410 860	8 726 694
Proceeds from surcharge from 2008	-	-	-	-	-	-	-	-	971 951	952 978	1 090 920	1 415 945	4 431 794
Local authority subsidies	0	0	0	0	0	0	0	0	0	0	0	0	0
Other resources	0	0	0	0	0	0	0	0	0	0	0	0	0
Airport subsidies (formerly FIATA)	77 749	232 332	266 000	156 509	672 904	566 717	387 664	380 024	-	-	-	-	2 739 599
(B) Total resources	287 652	503 158	644 687	543 505	1 054 951	1 255 300	1 269 444	1 545 272	2 149 446	1 932 141	2 168 191	2 826 805	21 739 249
	BALANCE												
Annual balance for public-remit tasks (B-A)	75 444	35 489	- 132 821	- 304 682	196 055	203 171	- 214 390	- 487 611	- 53 745	- 58 664	489 414	- 935 430	- 1 187 770
Cumulative balance	88 765	124 853	- 3 947	- 302 830	- 106 684	84 044	- 134 396	- 618 967	- 678 360	- 763 570	- 696 547	- 231 759	- 3 239 418
Financial charges	599	4 021	5 799	90	- 12 443	- 4 050	3 040	- 5 648	- 26 546	- 25 729	- 24 626	- 23 799	- 110 292
Discount rate	4,50 %	4,50 %	4,50 %	4,88 %	4,11 %	3,40 %	3,80 %	4,30 %	4,25 %	3,65 %	3,12 %	3,30 %	-
Multiannual balance for public-remit tasks (discounted cumulative balance)	89 364	128 874	1 852	- 302 739	- 119 127	79 994	- 131 356	- 624 615	- 704 906	- 789 299	- 721 173	- 255 558	- 3 348 689

Source: French authorities.

3.1.1.2. Alleged underinvoicing of services supplied by the CCI's general arm to La Rochelle airport

- (42) The CCI's general arm provides services that are common to its various arms, including the airport arm, notably accounting, IT and human resources services. Table 5 below shows the services invoiced by the CCI to La Rochelle airport.

Table 5

Amounts invoiced by the CCI's general arm to its airport arm during the period under investigation

	General administration	Communications	HR	Accounting	IT	Studies/projects	Costs	Invoiced contributions
2001								33 160
2002								100 000
2003								100 000
2004								100 000
2005								100 000
2006	100 000		62 000					162 000
2007	33 100	22 500	32 300	105 400	2 700	42 200	238 200	230 000
2008	34 730	23 700	51 090	109 800	2 130	92 750	314 200	314 000
2009	22 907	25 360	32 440	105 477	1 920	23 905	212 009	212 000
2010	36 411	11 489	26 420	96 502	5 274	39 499	215 595	210 000
2011	38 495	12 111	18 223	106 954	5 408	29 048	210 239	210 000
2012	36 120	25 552	12 631	102 988	5 288	29 147	211 726	210 000

Source: French authorities.

- (43) The French authorities clarified the following points with regard to the services provided by the CCI to La Rochelle airport.
- The general administration costs cover costs pertaining to two sub-services, namely the cost of the 'elected officers' sub-service, which is calculated according to the number of agendas dealt with, and the cost of the 'Directorate-General' service, which is calculated according to the time spent by the Director on each service.
 - With regard to communications services, CCI-Airport does not have a communications department and uses the communications service of the CCI's general arm. At the end of the year, the cost of the communications service is calculated according to the time spent on, and costs incurred by, each service and activity.
 - The cost of the human resources services depends on the number of payslips issued.

- As for accountancy services, the number of accounting entries is assessed and the cost of the service is distributed on a *pro rata* basis according to the number of entries.
 - The cost of the IT service is calculated based on the cost breakdown of each IT item.
 - With regard to the studies/projects service, the time spent on a given project and/or task is the most relevant criterion for assessing the cost.
- (44) Furthermore, the French authorities pointed out that the amounts invoiced between 2001 and 2005 were lump-sum amounts. In 2006, the first allocation key was introduced and the allocation keys were then refined for the 2007-2012 period. An allocation key is a means of allocating costs using a fixed proportion or percentage depending on the nature of the indirect cost in order to determine the share that corresponds to a given business area (and/or service). Allocation keys assume the existence of a proportional relationship between the cost and the service provided. The allocation keys shown in Table 5 are based on six different criteria depending on the service supplied by the CCI's general arm to the airport. Allocation keys are based on assumptions, regardless of the field in which they are used. As a result, in the present case, unless it can be demonstrated that the factors chosen or the calculation techniques used for the keys were completely unrealistic or seriously flawed, it cannot be considered that the keys are incorrect or undervalued. The French authorities have confirmed that the criteria used as the basis for the allocation keys are objective and relevant.
- (45) Lastly, the French authorities specified the amounts invoiced as well as the trends in passenger traffic figures between 2001 and 2012.
- From 2001 to 2005, a total amount of EUR 433 160 was invoiced. Over the same period, traffic rose but the average annual figure remained below 100 000 passengers.
 - In 2006, a total amount of EUR 162 000 was invoiced. That year, the airport's passenger numbers rose significantly, reaching 180 890, i.e. an increase of 42 % on 2005.
 - From 2007 to 2012, a total amount of EUR 1 386 000 was invoiced. In 2007, passenger numbers exceeded 200 000.

3.1.1.3. Alleged overinvoicing of the services supplied by the CCI to Rochefort/Saint-Agnant airport

- (46) From 1 January 2002 to 30 June 2006, the Director of La Rochelle airport and a secretary helped to manage and operate Rochefort/Saint-Agnant airport ('Rochefort airport') under a services agreement concluded in partnership with the Rochefort Chamber of Commerce and Industry ⁽¹⁵⁾. La Rochelle CCI was selected to manage Rochefort airport on 11 July 2001 following a competitive tendering procedure.
- (47) The subject of the services agreement was the management and operation of Rochefort airport, covering aspects such as general administration services, services relating to works and the procurement of equipment, and services for users.
- (48) Over the entire duration of the agreement (2002-2006), the total cost of the services provided was EUR 991 235 ⁽¹⁶⁾. La Rochelle CCI received EUR 293 264 for these services.

⁽¹⁵⁾ These services were provided in accordance with an agreement between a consortium comprising Rochefort CCI and La Rochelle CCI, of the one part, and the Syndicat Mixte de l'aéroport de Rochefort [Rochefort airport joint authority], of the other part.

⁽¹⁶⁾ Table 21 in the CRC report.

3.1.1.4. Repayable advances granted by the CCI's general arm

Table 6

Breakdown of repayable advances 2001-2012

(in EUR)

Year	Advances
2001	405 887
2002	233 872
2003	-
2004	875 355
2005	1 756 644
2006	-
2007	718 708
2008	1 419 571
2009	1 015 624
2010	131 034
2011	179 406
2012	325 098
TOTAL 2001-2012	7 061 199

Source: French authorities.

- (49) From 2001 to 2012, the CCI's general arm made repayable advance payments to the airport for a total cumulative amount of EUR 7 061 199. These repayable advances were granted with no return-on-capital requirement. According to France, these are loans which the airport is required to repay. The advances are recorded as assets in the balance sheet of the CCI's general arm and as liabilities in the airport's balance sheet, with the CCI using the airport's real estate holdings as collateral to guarantee recovery of the loans.
- (50) The French authorities stated that the purpose of the repayable advances was to provide the airport with the necessary liquidity to launch infrastructure-related investment projects, on the one hand, and, on the other, to balance the budget and thus cover – temporarily, since these were advance payments – the airport's operating deficit.

3.1.1.5. Financial contributions from local authorities to promotional measures implemented by La Rochelle airport

- (51) The CCI received subsidies from the Region of Poitou-Charentes, the Department of Charente-Maritime and the Communauté d'Agglomération de La Rochelle to contribute to promotional measures implemented by La Rochelle airport. Table 7 below provides an overview of these various subsidies.

Table 7

Financial contributions expected from and actually paid by the various local authorities towards the promotional measures implemented by La Rochelle airport

(in EUR)

Expected financial contributions	2001	2002	2003	2004	2005	2006	2007 ⁽¹⁾	2008	2009	2010	2011	2012	2013
Department of Charente-Maritime			76 225	144 500	144 500	144 500				190 000	190 000	190 000	171 000
Communauté d'Agglomération de La Rochelle			76 225	144 500	144 500	144 500				190 000	190 000	190 000	171 000
Region of Poitou-Charentes			115 000	42 500	42 500								
TOTAL			267 450	331 500	331 500	289 000				380 000	380 000	380 000	342 000
Financial contributions actually paid	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Department of Charente-Maritime			76 225	0	0	0				190 000	190 000	190 000	171 000
Communauté d'Agglomération de La Rochelle			76 225	144 500	144 500	144 500				190 000	190 000	190 000	171 000
Region of Poitou-Charentes			115 000		85 000								
TOTAL			267 450	144 500	229 500	144 500				380 000	380 000	380 000	342 000

Source: French authorities.

⁽¹⁾ According to the information provided by the French authorities, between 2007 and 2009 no financial contributions were made to promotional measures implemented by La Rochelle airport.

- (52) These contributions were paid under agreements between the CCI of the one part and the Department of Charente-Maritime, Communauté d'Agglomération de La Rochelle and the Region of Poitou-Charentes of the other part.
- (53) The French authorities were only able to provide the Commission with two agreements concluded in 2010, one with the Department of Charente-Maritime and the other with the Communauté d'Agglomération de La Rochelle ⁽¹⁷⁾.
- (54) Under both agreements from 2010, the Department of Charente-Maritime and the Communauté d'Agglomération de La Rochelle undertook to finance part of the 'promotional measures that the CCI planned to launch targeting foreign tourists and in particular the markets in London, Dublin, Oslo and Brussels, since routes are operated to those cities' ⁽¹⁸⁾. However, the agreements do not specify the type of promotional measures to be implemented by the CCI or the service providers. In particular, the agreements do not mention the fact that the service providers will be airlines or their subsidiaries.

3.1.2. *Investment grants*

- (55) Between 2001 and 2005, several local authorities and the European Regional Development Fund (ERDF) granted subsidies to La Rochelle airport ('investment grants') to finance various investments totalling around EUR 3 million (see Table 8 below):
- the General Council of Charente-Maritime granted the airport an equipment allocation worth EUR 46 000 in 2001 and an allocation worth EUR 744 000 in 2005;
 - the Regional Council of Poitou-Charentes granted the airport an equipment allocation worth EUR 744 000 in 2005;
 - the Communauté d'Agglomération de La Rochelle granted the airport an equipment allocation worth EUR 967 000 in 2005;
 - the ERDF granted the airport a subsidy of EUR 485 000 in 2005.
- (56) These grants financed a number of investments, including:
- the construction of a new departure and arrivals hall;
 - the strengthening, lengthening and widening of the runway;
 - the strengthening and widening of the taxiway;
 - the strengthening and extension of the aircraft stands;
 - and the creation of a settling basin to bring the airport into line with the Water Act.
- (57) The French authorities also stated that the investments were intended in particular to ensure that the aircraft commonly used by European airlines (B737, A320) could operate safely by expanding the runway to a width of 45 metres (La Rochelle was one of the few commercial airports with a 30-metre-wide runway), lengthening it by 115 metres to the west (in order to partly address the impact of the displaced threshold on the landing distance), and by adapting the taxiways and aprons to allow aircraft to move around safely. Furthermore, certain investments enabled the airport to fulfil its environmental protection obligations (Water Act).
- (58) The French authorities stated that La Rochelle airport did not receive any grants to finance the construction of a fee-paying car park in 2006 and its subsequent expansion in 2008.
- (59) Table 8 below provides an overview of all the investment measures for which investment grants were made.
- (60) According to the French authorities, the share of the investments not covered by grants was financed by the CCI, the owner and operator of the airport.

⁽¹⁷⁾ These agreements were sent to the Commission on 4 June 2012.

⁽¹⁸⁾ Introductory remarks in the agreements between the CCI and the Department of Charente-Maritime and the Communauté d'Agglomération de La Rochelle, signed on 29 June 2010 and 16 July 2010, respectively.

Table 8

Overview of all measures for which investment grants were made

(in EUR)

Nature of the investment	Total investment cost	Date subsidy granted	Contributing public body	Amount of subsidy
Renovation and upgrading (including runway)	5 876 000	4.1.2001	General Council	46 000
		2.12.2005	ERDF	485 000
		29.10.2004	General Council	744 000
		14.3.2005	Regional Council	744 000
		23.3.2005	Communauté d'agglomération	967 000
TOTAL				2 986 000

Source: French authorities.

3.2 Measures in favour of the airlines*3.2.1. Remarks concerning airport charges*

- (61) According to France, all of the airport services provided by the airport operator to the various airport users are priced in accordance with its scale of charges for airport services. Each proposed charge is submitted to the Economic Consultative Committee ('Cocoeco') for its opinion, thereby allowing airport users to be consulted regarding the charges in force (airlines, workers' unions, companies carrying out aerial work, associations). Thus, according to France, increases in non-aeronautical charges are submitted to the Cocoeco each year. Each charge the operator proposes is also sent to the Prefect of the Department before it comes into force, together with the Cocoeco's opinion.
- (62) France sent the Commission the scales of charges for airport services that applied from 2001 to 2013. France also sent the Commission all of the opinions issued by the Cocoeco between 2001 and 2013, though not for 2005, as the Cocoeco did not meet that year.
- (63) France also stated that the runway lighting charge is paid by airlines depending on whether civil aviation rules governing movements at night or during bad weather apply (in such instances, the air navigation service is responsible for determining whether or not lighting must be used) or if the pilot requests lighting. According to the French authorities, the requisite information on whether or not lighting has been used during an aircraft movement is provided by the La Rochelle air navigation service, thus allowing the amount to be invoiced by the operator to the airline.
- (64) France states that the airport receives the following non-aeronautical charges: (i) charges for the occupation of state-owned property (fixed part and variable part based on the turnover generated) for the following activities: car parks, car-hire companies, aircraft hangars, restaurant, shops, advertising and (ii) various services provided for a fee.

3.2.2. Agreements with the airlines

- (65) The Commission's investigation covers the agreements governing payment for services provided by the airport for the airlines' aeronautical activities ('airport services agreements') and the agreements governing payment for marketing services provided by the airlines to the airport ('marketing services agreements') entered into by the CCI and the airlines from 2001 until the formal investigation procedure was launched on 8 February 2012.

- (66) The Commission has examined the airport charges agreements and/or the marketing services agreements entered into by the CCI and the following airlines: Ryanair/AMS, Jet2, Flybe, Aer Arann, Buzz and easyJet.

3.2.2.1. Agreements signed with Ryanair/AMS

- (67) According to France, the following table contains all of the agreements concluded by the CCI with Ryanair and AMS during the period under investigation:

Table 9

List of agreements entered into by the CCI and Ryanair/AMS

No	Agreements	Date signed	Period covered by the agreement
1	CCI-Ryanair airport services agreement	10.12.2003	1.5.2003-30.4.2006
A	CCI-Ryanair marketing services agreement (UK and others)	1.12.2003	1.5.2003-31.12.2003
B	CCI-Ryanair marketing services agreement (UK and others)	3.6.2004	1.1.2004-30.4.2006
C	CCI-AMS marketing services agreement No 1 (UK)	1.4.2006	1.5.2006-31.4.2009
D	CCI-AMS marketing services agreement No 2 (Ireland)	1.4.2006	1.5.2006-31.4.2009
2	CCI-Ryanair airport services agreement No 1 (UK)	1.5.2006	1.5.2006-30.4.2009
3	CCI-Ryanair airport services agreement No 2 (Ireland)	1.5.2006	1.5.2006-30.4.2009
4	CCI-Ryanair airport services agreement	1.2.2007	1.2.2007-30.4.2009
E	Amendment to CCI-AMS marketing services agreement	1.6.2007	1.6.2007-30.9.2007
F	Amendment to CCI-AMS marketing services agreement	21.9.2007	28.10.2007-29.3.2008
G	CCI-AMS marketing services agreement No 1 (UK)	17.9.2009	1.1.2009-31.12.2011
H	CCI-AMS marketing services agreement No 2 (Belgium)	17.9.2009	1.1.2009-31.12.2011
I	CCI-AMS marketing services agreement No 3 (Ireland)	17.9.2009	1.1.2009-31.12.2011
J	Amendment to CCI-AMS marketing services agreement	17.9.2009	1.1.2009-31.12.2011
5	CCI-Ryanair airport services agreement	13.1.2010	1.5.2009-30.4.2012
6	Amendment No 1 to CCI-Ryanair airport services agreement	1.2.2010	1.2.2010-31.3.2013
K	CCI-AMS marketing services agreement	25.2.2010	31.3.2010-30.3.2013
L	Amendment No 1 to CCI-AMS marketing services agreement	23.6.2010	23.6.2010-30.3.2013
7	Amendment No 2 to CCI-Ryanair airport services agreement	28.1.2011	28.1.2011-30.4.2012

No	Agreements	Date signed	Period covered by the agreement
M	Amendment No 2 to CCI-AMS marketing services agreement	11.2.2011	28.3.2011-30.3.2013
N	Amendment No 3 to CCI-AMS marketing services agreement	11.2.2011	31.3.2011-30.3.2013

(a) Airport services agreements concluded by the CCI and Ryanair

(68) As shown in Table 9, the CCI and Ryanair concluded several agreements setting airport charges and groundhandling service charges during the period under investigation.

(69) For all of the airport services agreements covered in this section, France stated that:

- the rates of the airport charges set out in the agreements are those approved by the Coccoeco and apply to all airlines;
- the CCI does not provide any groundhandling services other than refuelling;
- Ryanair was not invoiced for the runway lighting charge because it only operated flights during the day and therefore did not require the use of lighting.

(70) It is thus clear from scrutiny of these agreements that the airport charges applied to Ryanair under each agreement correspond to the general rate card as approved by the Coccoeco.

— *Agreement 1: agreement of 10 December 2003*

(71) This first agreement, signed on 10 December 2003 by the CCI and Ryanair, applying retroactively for a period of 3 years from 1 May 2003, set the amount of airport charges applicable to Ryanair. Under the agreement, Ryanair undertook to operate a daily route between La Rochelle airport and London Stansted and to potentially launch one or several routes to Brussels-Charleroi, Frankfurt-Hahn or to any other airport, provided that the routes in question enabled Ryanair to operate out of La Rochelle airport for at least 340 days per year in each year covered by the agreement.

(72) Under Article 2(b) of Agreement No 1 of 10 December 2003, Ryanair was also required to pay a groundhandling charge of EUR [...] for each BAe 146-300 aircraft, EUR [...] for each Boeing 737-300 and EUR [...] for each Boeing 737-800. France initially argued in its letter of 30 August 2011 that, other than refuelling, the CCI 'does not provide any other groundhandling services' and that 'users conclude agreements directly with a private third party for groundhandling services'. In its reply of 12 April 2012, France further explained that the CCI had acted merely as an intermediary between Ryanair and Atlantica, the groundhandling company. According to the CCI, the airport services agreement of 10 December 2003 between the CCI and Ryanair merely specified the pricing set by Atlantica. France and the CCI state that, from 2007 onwards, Ryanair dealt with Atlantica directly. This responsibility was transferred to Atlantica under the groundhandling agreement of 1 February 2007, which kept the charge set out in the previous agreement with regard to groundhandling services for Ryanair's Boeing 737-800 aircraft.

— *Agreement 2: agreement of 1 May 2006*

(73) This agreement was concluded by the CCI and Ryanair on 1 May 2006 for a period of 3 years. Under the agreement, Ryanair undertook to operate a route between La Rochelle and London Stansted generating passenger traffic of at least 95 000 passengers per year.

— *Agreement 3: agreement of 1 May 2006*

(74) This agreement was concluded by the CCI and Ryanair on 1 May 2006 for a period of 3 years. Under the agreement, Ryanair undertook to operate a route between La Rochelle and Dublin generating passenger traffic of at least 45 000 passengers per year.

— *Agreement 4: agreement of 1 February 2007*

- (75) This agreement implicitly replaced Agreement 2 and was concluded by the CCI and Ryanair on 1 February 2007, expiring on 30 April 2009. Under the agreement, Ryanair undertook to operate a daily route between La Rochelle airport and London Stansted and to potentially launch one or several routes to Brussels-Charleroi, Frankfurt-Hahn or to any other airport. It also undertook to operate out of La Rochelle airport for at least 340 days per year in each year covered by the agreement. From 1 February 2007 onwards, Atlantica provided groundhandling services for Ryanair under the groundhandling agreement referred to in recital 71.

— *Agreement 5: agreement of 13 January 2010*

- (76) This agreement was concluded by the CCI and Ryanair on 13 January 2010, applying retroactively from 1 May 2009 for a period of 3 years. Under the agreement, Ryanair undertook to operate a daily route between La Rochelle airport and London Stansted, Dublin and Brussels-Charleroi and to potentially launch one or several routes to any other airport served by Ryanair.
- (77) This agreement was amended twice by means of the two amendments set out below:

— *Agreement 6: amendment No 1 of 1 February 2010 to Agreement 5 of 13 January 2010*

- (78) This amendment to Agreement 5 of 13 January 2010, in force until 31 March 2013, set out the routes to be operated by Ryanair from La Rochelle airport starting in the 2010 summer season on the following terms:
- London Stansted: minimum traffic of 53 000 passengers (inbound and outbound) for each full year;
 - Dublin (summer only): minimum traffic of 17 000 passengers (inbound and outbound) for each full year;
 - Brussels-Charleroi (summer only): minimum traffic of 17 000 passengers (inbound and outbound) for each full year;
 - Oslo Rygge (summer only): minimum traffic of 17 000 passengers (inbound and outbound) for each full year.
- (79) This amendment supplemented Agreement 5 of 13 January 2010.

— *Agreement 7: amendment No 2 of 28 January 2011 to Agreement 5 of 13 January 2010*

- (80) By means of this amendment to Agreement 5 of 13 January 2010, Ryanair undertook to operate a summer-only route to Porto starting in the 2011 summer season with minimum passenger traffic of 17 000 passengers (inbound and outbound) for each full year.

(b) *Marketing services agreements between the CCI and Ryanair/AMS*

- (81) As shown in Table 9, the CCI also concluded a number of marketing agreements. Between 2003 and 2006, the CCI concluded these agreements with Ryanair; from 2006 onwards, they were concluded with AMS, a wholly owned subsidiary of Ryanair.

— *Agreement A: agreement of 1 December 2003 with Ryanair*

- (82) On 1 December 2003, an agreement was concluded between the CCI and Ryanair, applying retroactively from 1 May 2003 until 31 December 2003. Ryanair undertook to operate a daily route between La Rochelle airport and London Stansted from 1 May 2003 and to potentially launch one or several additional routes to Frankfurt-Hahn, Brussels-Charleroi or to any other airport, operating at least 340 days per year.
- (83) Under this agreement, Ryanair undertook to display on its website three web links to tourism websites relating to the La Rochelle region, and to launch a campaign to promote its routes to La Rochelle airport.
- (84) The CCI paid Ryanair EUR [...]:
- EUR [...] upon signature of the agreement;

— EUR [...] upon presentation by Ryanair of a summary of the marketing campaigns implemented and their cost, which was required to be at least EUR [...].

— *Agreement B: agreement of 3 June 2004 with Ryanair*

- (85) On 3 June 2004, an agreement was concluded between the CCI and Ryanair covering the period from 1 January 2004 to 30 April 2006. Ryanair undertook to operate a daily route between La Rochelle airport and London Stansted from 1 January 2004 and to potentially launch one or several additional routes to Frankfurt-Hahn, Brussels-Charleroi or to any other airport, operating at least 340 days per year. Ryanair also committed to a load factor of at least 60 % for its flights.
- (86) Under this agreement, Ryanair undertook to display on its website web links to tourism websites relating to the La Rochelle region.
- (87) The CCI paid Ryanair EUR [...] per year, a figure that would be reduced if Ryanair did not achieve its load factor targets. This amount would then be recalculated based on the number of passengers transported. Payments were to be made quarterly and any overpayments would be offset the following year.
- (88) The Commission did not receive any documents indicating the exact amount paid by the CCI to Ryanair for the following 2 years.

— *Agreement C: agreement of 1 April 2006 concluded with AMS concerning the UK*

- (89) On 1 April 2006, the CCI and AMS concluded a 3-year agreement, entering into force on 1 May 2006. This agreement is linked to Ryanair's undertaking to operate a route between La Rochelle and London Stansted with a minimum of 95 000 passengers per year.
- (90) Under this agreement, AMS undertook to provide various marketing services on the website www.ryanair.com for a sum of EUR [...] per year, or EUR [...] per month. These entailed:
- including a link to a website designated by the CCI on the www.ryanair.com English-language homepage ⁽¹⁹⁾ for 56 days, for a sum of EUR [...];
 - featuring four paragraphs of 150 words in the 'Five things to do' section on the La Rochelle destination page of Ryanair's website, for a sum of EUR [...];
 - including two links to a website designated by the CCI in the status bar on the La Rochelle destination page of Ryanair's website, for a sum of EUR [...];
 - including a link to a website designated by the CCI in the 'Five things to do' section on the La Rochelle destination page of Ryanair's website, for a sum of EUR [...];
 - sending an email promoting La Rochelle to subscribers to Ryanair's website in the UK and Ireland, for a sum of EUR [...].
- (91) Additional services could be agreed between the parties. The CCI would make monthly payments for these services on the basis of invoices sent by AMS.

— *Agreements D and E: agreement of 1 April 2006 and the amendment thereto of 1 June 2007 concluded with AMS concerning Ireland*

- (92) On 1 April 2006, Agreement D was concluded by the CCI and AMS covering a 3-year period and entering into force on 1 May 2006. This agreement is linked to Ryanair's undertaking to operate a route between La Rochelle and Dublin with a minimum of 45 000 passengers per year.
- (93) Under this agreement, AMS undertook to display on Ryanair's website, www.ryanair.com, a link to a website designated by the CCI for 212 days per year, for a sum of EUR [...] per year, or EUR [...] per month. Additional services could be agreed between the parties. The CCI would make monthly payments for these services on the basis of invoices sent by AMS.

⁽¹⁹⁾ Original English: 'the www.ryanair.com English language homepage'.

- (94) Agreement D was amended on 1 June 2007 by means of an amendment (Agreement E) making changes to the marketing services for 2007: AMS undertook to display on the Ryanair website a link to a website designed by the CCI for 45 days between June and September 2007 instead of 212 days per year, for a sum of EUR [...].

— *Agreement F: agreement of 21 September 2007 concluded with AMS concerning the UK*

- (95) On 21 September 2007, CCI-Airport signed Agreement F, which related to marketing services for Ryanair's UK website. Agreement F amended Agreement C and made provision for marketing services in addition to those already scheduled, namely sending five additional promotional emails during winter 2007/2008 to the 255 000 English-speaking subscribers on Ryanair's mailing list. The cost of these additional services would be EUR [...].

— *Agreement G: agreement of 17 September 2009 concluded with AMS concerning the UK*

- (96) On 17 September 2009, the CCI and AMS concluded a 3-year agreement, applying retroactively from 1 January 2009. This agreement is linked to Ryanair's undertaking to operate a route between La Rochelle and London Stansted with a minimum of 53 000 passengers per year.

- (97) Under this agreement, AMS undertook to provide various marketing services for a sum of EUR [...] per year. These entailed:

— displaying a link to a website designated by the CCI on the UK homepage of Ryanair's website, www.ryanair.com, for 22 days, for a sum of EUR [...];

— featuring one paragraph on the La Rochelle destination page of Ryanair's website, for a sum of EUR [...];

— displaying a link to a website designated by the CCI in the status bar on the La Rochelle destination page of Ryanair's website, for a sum of EUR [...].

- (98) The total amount for these services was EUR [...], to which a discount was applied. Additional services could be agreed between the parties.

— *Agreement H and J: agreement of 17 September 2009 and the amendment thereto concluded with AMS concerning Belgium*

- (99) On 17 September 2009, the CCI and AMS concluded a 3-year agreement, applying retroactively from 1 January 2009 (Agreement H). This agreement is linked to Ryanair's undertaking to operate a route between La Rochelle and Brussels-Charleroi with a minimum of 9 000 passengers in the first year and 16 000 passengers in the following 2 years.

- (100) Under this agreement, AMS undertook to display on the Netherlands/Belgium homepage of the Ryanair website (www.ryanair.com) ⁽²⁰⁾ a link designated by the CCI for 95 days in the first year and 160 days in the following 2 years. The cost of these services was EUR [...] and EUR [...] respectively, with the CCI being charged EUR [...] in the first year and EUR [...] in subsequent years. Additional services could be agreed between the parties.

- (101) This agreement was amended the same day by means of Agreement J, by virtue of which AMS undertook to display a link to the website designated by the CCI on the Netherlands/Belgium homepage of the Ryanair website, www.ryanair.com, for an additional 10 days in 2009. The cost of this additional service would be EUR [...].

— *Agreement I: agreement of 17 September 2009 with AMS concerning Ireland*

- (102) On 17 September 2009, the CCI and AMS concluded another 3-year agreement, applying retroactively from 1 January 2009 (Agreement I). This agreement is linked to Ryanair's undertaking to operate a route between La Rochelle and Dublin with a minimum of 17 000 passengers per year.

⁽²⁰⁾ Original English: 'the website www.ryanair.com Netherlands/Belgium homepage'.

- (103) Under this agreement, AMS undertook to display a link to a website designated by the CCI on the homepage of the Irish version of Ryanair's website, www.ryanair.com, for 200 days. The charge for this service was EUR [...], to be invoiced to the CCI at an annual cost of EUR [...]. Additional services could be agreed between the parties.

— *Agreement K: agreement of 25 February 2010 with AMS*

- (104) On 25 February 2010, the CCI and AMS concluded a 3-year agreement, entering into force on 31 March 2010 (Agreement K). This agreement replaced and cancelled the previous agreements between the parties.

- (105) In 2009, three marketing services agreements were entered into covering each of the markets where promotional measures were planned, namely the United Kingdom, Ireland and Belgium. However, in 2010, the parties concluded a single agreement for all three of these markets.

- (106) This agreement is linked to Ryanair's operation of routes connecting La Rochelle airport to the United Kingdom, Ireland, Belgium and Norway (the latter being a new route). Although the agreement does not contain any requirements in terms of passenger numbers or flight frequency, it does lay down that, in the event of a reduction in frequency or the cancellation of one of the routes in question, the marketing services package would be modified accordingly.

- (107) Under this agreement, AMS undertook to provide various marketing services for a sum of EUR [...] per year. These entailed:

- featuring five paragraphs in the 'Five things to do' section of Ryanair's website;
- displaying three links on Ryanair's website;
- displaying a link on the homepage of the Irish, Norwegian and Netherlands versions of Ryanair's website for 90 days;
- displaying a link on the homepage of the UK version of Ryanair's website for 50 days.

- (108) Additional services could be agreed between the parties.

- (109) This agreement was amended by means of the three amendments set out below:

— *Agreement L: amendment No 1 to Agreement K of 25 February 2010 concerning Ireland*

- (110) The first amendment to Agreement K of 25 February 2010 was signed on 23 June 2010. This amendment is linked to Ryanair's undertaking to operate a route between La Rochelle and Cork. Under this agreement, AMS undertook to extend to 70 days the period during which a link to a website chosen by the CCI would be displayed on Ryanair's website, www.ryanair.com, for a sum of EUR [...].

— *Agreement M: amendment No 2 to Agreement K of 25 February 2010 concerning Portugal*

- (111) Under this agreement, signed on 11 February 2011, AMS undertook to provide various marketing services for a sum of EUR [...], to be invoiced at an annual cost of EUR [...]. These entailed:

- displaying a link to a website designated by the CCI in the 'Airports and Tourism' section of the homepage of the Portuguese version of Ryanair's website, www.ryanair.com, for 365 days per year;
- presenting La Rochelle (text, image and link chosen by the CCI) on the homepage of the Portuguese version of Ryanair's website, for 4 weeks a year.

— *Agreement N: amendment No 3 to Agreement K of 25 February 2010 concerning Norway*

- (112) A third amendment to Agreement K of 25 February 2010 was signed in 2011. Under this agreement, AMS undertook to provide various marketing services for a sum of EUR [...], to be invoiced at a cost of EUR [...] in the first year and EUR [...] in the second year.

(113) In the first year (from 31 March 2011 to 31 October 2011), the services were as follows:

- presenting La Rochelle (text, image and link chosen by the CCI) on the homepage of the Norwegian version of Ryanair's website, for 6 weeks a year.
- featuring a banner chosen by the CCI in the status bar on the right-hand side of the homepage of the Norwegian version of Ryanair's website, for 4 months per year.

(114) In the second year (from 31 March 2012 to 31 October 2012), the services were as follows:

- presenting La Rochelle (text, image and link chosen by the CCI) on the homepage of the Norwegian version of Ryanair's website, for 3 weeks a year.
- featuring a banner chosen by the CCI in the status bar on the right-hand side of the homepage of the Norwegian version of Ryanair's website, for 3 months per year.

3.2.2.2. Agreements with Flybe, Aer Arann and Jet2

(a) Charges decision of 27 March 2008

(115) The charges decision of 27 March 2008 submitted to the Cocco sets out incentives for the launching of new scheduled routes. This pricing decision provides for a system of degressive discounts on aeronautical charges, limited to 3 years for the launch of new routes or the continued operation of existing routes during the winter scheduling season. The pricing decision sets out the conditions for granting these discounts:

- the discount for the launch of new scheduled routes ⁽²¹⁾ is granted subject to the following conditions: (i) new scheduled route (seasonal or annual), (ii) launch of operations in 2008 and (iii) with more than 2 000 seats offered in the spring-summer IATA season;
- the discount for the operation of winter routes is granted subject to the following conditions: (i) existing route that had never been operated in the IATA winter season prior to 2008 and (ii) measures applicable to the winter season only.

(116) The discounts available under these incentive measures are set out in Table 10 below.

Table 10

Discounts on airport charges provided for under the pricing decision of 27 March 2008

	Year 1	Year 2	Year 3
Landing charge	- 75 %	- 50 %	- 25 %
Runway lighting	- 75 %	- 50 %	- 25 %
Parking	- 75 %	- 50 %	- 25 %
Passenger charge	- 75 %	- 50 %	- 25 %

Source: French authorities.

(b) Agreement with Jet2

(117) On 4 July 2008, the CCI concluded an airport charges agreement with the airline Jet2 covering a period of 3 years and applying retroactively from 12 May 2008, for services to Edinburgh and Leeds ⁽²²⁾.

⁽²¹⁾ According to France, the definition of new scheduled route is the definition used in the 2005 Guidelines.

⁽²²⁾ The agreement of 12 May 2008 between the CCI and Jet2 also refers to a route between La Rochelle and Belfast that was planned for the 2009 season. However, according to the French authorities, the La Rochelle-Belfast route was never launched.

- (118) This agreement also makes provision for the granting of significant discounts on airport charges, corresponding to those set out in Table 10. Jet2 committed to offering at least 2 000 seats each season, failing which the discounts would be reduced by 5 % the following year.
- (119) Under this agreement, the CCI would make a 'contribution to support marketing' of EUR [...] in year 1 (2008) and, in years 2 and 3 (in theory, 2009 and 2010), it would pay a marketing contribution, the amount of which would be 'adjusted on the basis of the flight schedule'. Under the agreement, the amount of the marketing contribution could be adjusted by means of an amendment based on the load factor achieved and developments with regard to the flight schedule. In order for the contribution to be paid, the agreement stipulates that Jet2 was required to submit an invoice accompanied by supporting documents (marketing plan, invoices for promotional activities undertaken). Moreover, to qualify for the aid, Jet2 undertook to offer at least 2 000 seats per route for each IATA spring-summer season. Under the agreement, if the number of seats referred to above was not achieved during the period in question, Jet2 would not be eligible to receive the marketing contribution for the corresponding year.
- (120) In its letter of 30 August 2011, France informed the Commission that a sum of EUR [...] was paid by the CCI in 2008 and 2009, but that the CCI did not make any payments to Jet2 in 2010.
- (c) Agreements with Flybe and Aer Arann
- (121) The Commission's investigation covers the airport charges agreements between the CCI and Flybe and Aer Arann:
- agreement concluded on 18 March 2009 with Flybe covering a period of 3 years and applying retroactively from 3 May 2008, for a service to Glasgow;
 - agreement concluded with Aer Arann covering a period of 3 years with effect from 24 May 2008 (the date of signature is not mentioned in the agreement), for a service to Cork.
- (122) These two agreements make provision for the granting of significant discounts on airport charges, corresponding to those set out in Table 10. Under the two agreements, the airlines committed to offering at least 2 000 seats each season, failing which the discounts would be reduced by 5 % the following year.
- (123) According to France, these discounts were granted in accordance with the conditions set out in the pricing decision for charges of 27 March 2008.

3.2.2.3. Agreements with Buzz

- (124) According to the CRC report, the airline Buzz, a subsidiary of KLM, launched the first low-cost route between La Rochelle and London Stansted in spring 2001 ⁽²³⁾. The CRC report states that Buzz was subject to airport charges in accordance with the rate cards in force at the time. The CRC report also notes that Buzz benefited from promotional measures and communication expenditure totalling EUR 59 068,51 in 2001 and 2002. Lastly, the CRC notes that the route was effectively taken over by Ryanair in 2003, with the CCI invoicing Ryanair for its services under the same conditions that applied to Buzz until the end of the year.
- (125) France points out that a single agreement, the agreement of 8 November 2002, was entered into with Buzz. The airport services agreement of 8 November 2002 between the CCI and Buzz relates to the scheduled services operated by Buzz to La Rochelle airport and the conditions for using the infrastructure, covering a period of 3 years.
- (126) France also points out that the promotional measures and communication expenditure concerning Buzz referred to in the CRC report in fact relate to communication activities carried out under an agreement concluded with Maison de la France and not with Buzz. Thus, according to the CCI, no marketing payments were made to Buzz.

⁽²³⁾ According to the CRC, 'the launch of the La Rochelle-London Stansted route in 2001 was the subject of a retroactive services agreement dated 8 November 2002 (...) covering a period of 3 years with effect from 25 March 2001'.

3.2.2.4. Relationship with easyJet

- (127) The CRC report mentions that easyJet ‘requested EUR [...] in marketing support’ for the Bristol route in 2006, support which, at the time the report was finalised, was allegedly the subject of an oral agreement.
- (128) France points out that, contrary to the information contained in the CRC report, easyJet did not receive any financing for marketing or advertising services. According to France, although the possibility of such a contribution was discussed informally during negotiations between the airport and easyJet, this never came to fruition and thus no marketing support agreement was ever concluded with easyJet.

4. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (129) The Commission considered it necessary to initiate the formal investigation procedure in order, on the one hand, to examine all the financial contributions made by the various public authorities and bodies to the CCI, the operator of La Rochelle airport, between 2001 and the date of the opening decision, as described in section 3.1, and, on the other hand, to assess potential aid granted to the airlines under all of the agreements between the CCI and the airlines, described in section 3.2.2, between 2001 and the date of the opening decision (8 February 2012).

4.1. Measures in favour of the airport

- (130) On analysing the financial contributions made to the CCI, the operator of La Rochelle airport, the Commission expressed its view regarding the possible existence of aid within the meaning of Article 107(1) TFEU and its doubts about the compatibility of any aid with the internal market, within the meaning of Article 107(3)(c) TFEU.

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

- (131) The French authorities stated that some of the financing granted by the State was for the purpose of covering the costs of public-remit tasks that did not constitute an economic activity within the meaning of Article 107(1) TFEU. However, such financing must only be used to cover the costs resulting from those tasks and cannot be allocated to other economic activities ⁽²⁴⁾. The Commission considered that it did not have enough information on the precise nature of the costs of the public-remit tasks and that it could also not rule out that the airport gained an advantage by having those costs covered.
- (132) France also stated that the financing in question did not constitute an advantage within the meaning of Article 107(1) TFEU. France also considers that the management of La Rochelle airport as a whole is a service of general economic interest. The Commission therefore examined the financial support measures for the CCI in the light of the *Altmark* case-law ⁽²⁵⁾. The Commission considered that France had not demonstrated fulfilment of any of the four conditions laid down in the *Altmark* judgment; these criteria must be met in order to rule out the existence of an advantage when compensating costs arising from a service of general economic interest.
- (133) With regard to the compatibility of the financial contributions made to the CCI in the light of the market economy operator principle, the Commission could not rule out that the financial contributions in question had given the CCI a selective advantage over the entire period covered by the Decision. Consequently, it could not rule out that these measures constituted State aid.

4.1.1.1. Financing of infrastructure and of public-remit tasks

- (134) The Commission stated that it did not have any evidence that would enable it to consider that the infrastructure subsidies from public bodies were financially profitable or that there was any expectation of a financial return.

⁽²⁴⁾ Judgment of the Court of 18 March 1997, C-343/95, ECLI:EU:C:1997:160; Commission Decision of 19 March 2003 (State aid N309/2002) (OJ C 148, 25.6.2003) and Commission Decision of 16 October 2002 (State aid N438/2002) - Subsidies to the port authorities for carrying out public-authority tasks (OJ C 284, 21.11.2002).

⁽²⁵⁾ Judgment of the Court of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, C-280/00, ECLI:EU:C:2003:415.

- (135) As regards the subsidy to finance public-remit tasks, the Commission had doubts, as explained previously, as to the exact nature of the costs borne by the State and which, according to the French authorities, relate to the exercise of public authority powers.

4.1.1.2. Financing of operations

- (136) The Commission, basing its assessment on the CRC report, considered that certain financial transfers between the accounts of the CCI's general arm and those of its airport arm did not appear to have been made as purely commercial transactions.
- (137) First, it would appear that the CCI's general arm underinvoiced some of the services it provided to the airport, as the airport's accounts do not reflect the real cost of those services. The Commission did not rule out the possibility that the purpose of the alleged underinvoicing was to mitigate the loss made by the airport between 2001 and 2006.
- (138) Next, it appears that the airport's operation was financed by means of repayable advances, paid from the CCI's general budget to its airport accounts, which appear to constitute financial resources granted at zero cost.
- (139) The Commission also considered that the amounts paid to the CCI for the management and operation of Rochefort airport appeared to exceed what would be expected under normal market conditions, given the lack of traffic at the airport.
- (140) Moreover, of the amount received by La Rochelle airport for the provision of these services, EUR 40 000 did not cover the costs incurred by the CCI in providing the services, but was in fact a 'service provider's fee', equating to an average rate of 16 % of the total amount invoiced for these services.
- (141) As regards the financial contributions towards the operation of certain routes paid to the CCI by various public authorities, the Commission questioned whether these measures were in fact payments to the airport, given that the payments went through the airport's accounts, or whether they were aid to the airlines in question.

4.1.2. *Compatibility of the aid within the meaning of Article 107(3)(c) TFEU*

- (142) The Commission applied the 2005 Guidelines in order to assess the compatibility of the investment measures with the internal market ⁽²⁶⁾. The Commission considered that it did not have all of the information required to enable it to assess the compatibility of the measures in question using the criteria in the 2005 Guidelines.
- (143) The Commission also had doubts regarding the compatibility with the internal market of the potential overcompensation of public-remit tasks, and the potential granting of operating aid to the CCI.

4.2. Measures in favour of the airlines

- (144) As regards the assessment of the measures in favour of the airlines, the Commission also expressed its view regarding the possible existence of aid within the meaning of Article 107(1) TFEU and its doubts about the compatibility of such aid with the internal market within the meaning of Article 107(3)(c) TFEU.

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

- (145) The Commission assessed the existence of a selective advantage in the agreements concluded with the airlines by examining whether, in similar circumstances, a private airport operator operating under normal market economy conditions would have entered into commercial agreements similar to those concluded by the CCI.

⁽²⁶⁾ When analysing certain measures adopted prior to the publication of the 2005 Guidelines, the Commission's earlier decision-making practice must be taken into account. The criteria that emerged from earlier decision-making practice were consolidated into the 2005 Guidelines, thus making the Guidelines directly applicable to these measures.

- (146) First, the Commission noted that, during the period under investigation, the airport was operating at a loss in every financial year and, according to the CRC report ⁽²⁷⁾, the charges applied by the airport discriminated between the different airlines ⁽²⁸⁾. For all of these reasons, the Commission doubts whether the airport acted as a prudent investor in its commercial dealings with the airlines serving La Rochelle airport.
- (147) In order to determine if the airport operator acted as a prudent market economy investor motivated by the prospect of profits ⁽²⁹⁾, the Commission considered that the agreements concluded had to be assessed for each period in question, looking at the time they were signed.

4.2.1.1. Existence of a selective advantage in the agreements concluded with Ryanair/AMS

- (148) The Commission considered that the airport services agreements and marketing services agreements had to be assessed together, as Ryanair and AMS formed a single beneficiary of the measures in question. Moreover, the Commission considered that the signing of the marketing services agreements was conditional on the conclusion of airport services agreements, the sole expected benefit of the marketing services agreements being an increase in the number of Ryanair passengers using the airport.
- (149) The Commission expressed doubts as to whether the airport operator, by signing the airport services agreements and marketing services agreements, had behaved as a prudent market economy operator pursuing a structural policy, whether general or sectoral, and motivated by the prospect of profits in the medium to long term. The Commission observed that there were no market studies and/or business plans relating to the various agreements signed with Ryanair/AMS and providing economic justification for the airport's decision to enter into such commitments with Ryanair/AMS.
- (150) According to France, the economic rationale for concluding these agreements was the benefits they would bring for business and tourism in the region. However, the Commission pointed out that regional development considerations could not be taken into account for the purposes of the prudent investor test ⁽³⁰⁾.
- (151) The Commission had doubts about the airport charges applied to Ryanair, with particular regard to the agreement signed on 10 December 2003, which granted Ryanair an exemption from the runway lighting charge.
- (152) The Commission noted that various public entities were involved in financing the cost of the marketing services agreements. It therefore considered whether it was appropriate to assess the airport's conduct jointly with the conduct of the State or of the other public authorities that oversee the airport operator or are involved in financing it.
- (153) The Commission also questioned whether the groundhandling services covered by the successive agreements with Ryanair, particularly the groundhandling agreement between Ryanair and the CCI of 10 December 2003, actually existed. In its reply of 30 August 2011, France stated that the CCI did not provide any groundhandling services.
- (154) For all these reasons, the Commission considered it had doubts as to whether the airport and the public entities that had contributed or were contributing to Ryanair's operating costs had acted as a prudent market economy investor by concluding the agreements under investigation.

⁽²⁷⁾ The CRC report of 13 May 2008 published the airport's financial results for 2001 to 2006. The fact that the airport also made a loss after 2006 was mentioned by France in its letter of 30 August 2011.

⁽²⁸⁾ According to the CRC report, Airlinair was the only airline that paid the lighting charge, while the low-cost airlines were exempt from the charge during the winter season, and even in summer for flights operated at night as defined in aviation regulations (see Chapter 3.1 of the report).

⁽²⁹⁾ Judgment of the Court of 21 March 1991, *Italy v Commission* ('Alfa Romeo'), C-305/89, EU:C:1991:142, paragraph 20, and Judgment of the Court of First Instance of 12 December 2000, *Alitalia v Commission*, T-296/97, ECLI:EU:T:2000:289, paragraph 84.

⁽³⁰⁾ Judgment of the Court of First Instance of 21 January 1999 in joined Cases T-129/95, T-2/96 and T-97/96, *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission*, ECLI:EU:T:1999:7, paragraph 120.

4.2.1.2. Existence of a selective advantage in the agreements concluded with Jet2, Flybe and Aer Arann

- (155) The Commission noted that the agreements signed with the airlines Jet2, Flybe and Aer Arann gave rise to substantial discounts on charges ⁽³¹⁾ and that, according to France, these discounts were applied in a non-discriminatory manner to all the airlines that met the criteria set out in the pricing decision of 27 March 2008 (see section 3.3.2.2).
- (156) However, the Commission observed that, as mentioned by France, the airport was making a loss during the period under investigation. The profitability of these incentives was calculated on the basis of estimated operating costs, thus relieving the airlines of the obligation to contribute towards the financing of the infrastructure used. The Commission therefore considered that these incentives were liable to deprive the airport of operating income that was vital for ensuring its financial viability.

4.2.1.3. Existence of a selective advantage resulting from the amounts paid to Jet2, easyJet and Buzz in exchange for marketing services

- (157) In response to a request for additional information, France referred to amounts paid to Jet2 in 2009 totalling EUR [...] for its marketing services. Moreover, the CRC report mentions that easyJet 'requested EUR [...] in marketing support' for the Bristol route in 2006 ⁽³²⁾, and that Buzz benefited from promotional measures and communication expenditure totalling EUR 59 068,51 in 2001 and 2002.
- (158) The Commission considered that it did not have enough information at its disposal showing that the amounts paid did not constitute aid, or that the payments were made in accordance with the prudent investor principle and that the marketing services rendered in exchange for those payments corresponded to the amounts paid.

4.2.2. *Compatibility of the aid within the meaning of Article 107(3)(c) TFEU*

- (159) The Commission considered that the compatibility of the measures granted following the publication of the 2005 Guidelines ought to be assessed in the light of those Guidelines, and that the compatibility of the measures granted prior to the publication of the Guidelines ought to be assessed in line with the Commission's decision-making practice at the time the measures were granted. However, the Commission also noted that, by adopting the 2005 Guidelines, it had consolidated its decision-making practice with regard to assessing the compatibility of aid granted to airport operators and that the criteria set out in the Guidelines were also applicable to measures granted before the Guidelines were published.
- (160) The Commission considered that, in the light of the information at its disposal, it harboured doubts as to the compatibility with the internal market of the measures in favour of the airlines.

5. COMMENTS BY INTERESTED PARTIES

- (161) The Commission received comments from the following interested parties:

- the CCI, Ryanair and AMS;
- the following undertakings: Doc Services, Fontaine Pajot, Le Richelieu, Atlantis, Le Relais du Bois, Groupe Cafés Merling, Grand Pavois, Cuisines Villeger, Irium, Sogerma et La Rochelle Événements;
- the following associations: Amicale Rivedoux [a local community association], Club Hotelier du Pays Rochelais-Ile de Ré [Hoteliers Association of La Rochelle-Ile de Ré], Envol Vert [an environmental association], Ile de Ré Tourisme [Ile de Ré Tourist Board], Association des Professionnels du Nautisme Rochelais [La Rochelle Association of Sailing Professionals], Union Départementale des Offices du Tourisme et des Syndicats d'Initiative de Charente-Maritime (UDOTSI), Destination La Rochelle;

⁽³¹⁾ 75 % in the first year, 50 % in the second year and 25 % in the third year.

⁽³²⁾ Chapter 5.1.1 of the CRC report.

- the following public entities: Conseillers du Commerce Extérieur [Foreign Trade Advisers], Department of Charente-Maritime, Office de Tourisme de La Rochelle [La Rochelle Tourist Office], Poitou-Charentes CCI, Angoulême CCI, Charente-Maritime Tourisme [Charente-Maritime Tourist Board], Communauté d'Agglomération de La Rochelle [Authority for the La Rochelle Conurbation], Royan Town Hall, Vendée Tourisme [Vendée Tourist Board] and the Region of Poitou-Charentes;
- and individuals.

5.1. Comments by the CCI

- (162) The comments made by the CCI follow on from those sent by France on 12 April 2012, with the CCI providing additional information with respect to France's comments.

— *Comments on measures in favour of the airport*

- (163) First, the CCI considers that the measures examined by the Commission were not liable to affect competition, since neither of the two airports located in the catchment area for La Rochelle airport (Rochefort/Saint-Aignan and Niort) offered commercial flights. It also contests the assertion that Angoulême airport is in the same catchment area as La Rochelle airport, given that it is located two hours away by car.
- (164) With regard to investment aid, the CCI considers that part of the investment aid under investigation was earmarked for public-remit tasks relating to safety and security and as a result does not constitute State aid. This applies to the tasks and infrastructure financed by the security charge and the infrastructure used for the following non-economic activities: security/screening checkpoint, customs checks and the hangar providing parking space for three fire-fighting vehicles.
- (165) The CCI also considers that it has been entrusted with a service of general economic interest ('SGEI'). Under Article L.170-1 of the Commercial Code, the CCI is entrusted with ensuring the economic development, attractiveness and spatial planning of the area, and the management of the airport on its territory contributes to achieving these aims. The CCI highlights the fact that La Rochelle is cut off. It is the only French conurbation with more than 150 000 inhabitants that is not served by a motorway. In addition, it does not have a high-speed rail link, nor are there any plans for such a link to be built, and it currently takes more than three hours to reach Paris by train.
- (166) In the alternative, the CCI considers that the financing of infrastructure ought to be deemed compatible aid in the light of the Commission's practices between 2000 and 2005 and in the light of the 2005 Guidelines.
- (167) As regards the underinvoicing of services supplied by the CCI's general arm to CCI-Airport, the CCI stresses that provision of the services in question is pooled for the various arms of the CCI and that the services are structural in nature (accounting, IT, human resources), with their cost being distributed among all the arms of the CCI. It is therefore to be expected that the invoicing of the services is not underpinned by commercial logic and that the amounts invoiced are lower than they would be for an external organisation. According to the CCI, this is in line with the case-law of the Court, which accepts that the provision of services to entities within the same network does not always follow a purely commercial approach ⁽³³⁾.
- (168) With regard to the overinvoicing of the services supplied to Rochefort/Saint-Aignan airport, the CCI takes the view that the contested amounts do not constitute additional invoicing, even while traffic exceeded the number of flights set out in the specifications for the services.
- (169) As for the repayable advances, the CCI argues that they cannot be regarded as subsidies, since they are loans that the airport is required to repay. The advances were in fact financing that was moved from one internal CCI budget heading to another, which explains why no interest was charged. Moreover, the CCI considers that it acted as would a private operator by addressing the liquidity needs of its airport.

⁽³³⁾ Judgment of the Court of 3 July 2003, *Chronopost SA*, C-83/01, ECLI:EU:C:2003:388.

- (170) Thus the CCI takes the view that, even if the Commission were to consider the financing for operations to be State aid, it should be considered compatible aid based on the 2014 Guidelines.

— *Comments on measures in favour of the airlines*

- (171) As regards the agreements between the airport and the airlines, first, the CCI considers that the agreements cannot be considered imputable to the State on the basis of the criteria set out in the *Stardust* judgment ⁽³⁴⁾.
- (172) The CCI also considers that the price paid by the airport in its marketing services agreements did not exceed the market price. It notes in particular that the price paid by La Rochelle airport for its marketing services was in line with, or even below, the market price and was based on the rate card available on AMS' website.
- (173) The CCI considers that the agreements with AMS were concluded in the pursuit of profitability, as they would improve the appeal of the airport and its overall relationship with Ryanair. The CCI takes the view that the 2003-2018 business plan, which took into account marketing costs to assess the airport's relationship with Ryanair, shows that there was a long-term prospect of profitability.
- (174) With regard to the airport charges paid by the various airlines, the CCI points out that Ryanair's exemption from the lighting charge is explained by the fact that the airline only operates daytime flights, meaning that lighting is not required.
- (175) With respect to the discounts on airport charges granted to certain airlines, the CCI considers that the sole aim of the discounts was for new routes to be launched and that the discounts were time-limited and non-discriminatory. Furthermore, it notes that the airport charges had a positive impact on the airport's profitability.
- (176) As for the amounts paid to Jet2 for marketing services, the CCI applies the same reasoning as that set out above with respect to Ryanair and AMS. The CCI points out that, contrary to the claims made by the CRC in its report, easyJet did not receive any remuneration for marketing services.
- (177) With regard to the financial contributions made by public entities towards the operation of flight routes, the CCI disputes the notion that local authority financing of marketing agreements was taken into consideration in the airport's business plan. In its view, the local authorities in question signed up to these marketing services agreements in the context of their general interest task of promoting their local area.

5.2. Comments by Ryanair and AMS

- (178) Ryanair disputes the Commission's analysis in the opening decision. Ryanair considers that the Commission ought to use the comparative method when carrying out the prudent investor test. Ryanair also provided several financial studies based on the comparative method with the aim of demonstrating that the airport services agreements concluded between Ryanair and La Rochelle airport were in line with the market economy operator principle.
- (179) Ryanair is also critical of the Commission's decision to assess the agreements with Ryanair and AMS jointly. Ryanair also refutes the notion that the measures implemented by the CCI were imputable to the State or involved the use of State resources.
- (180) In addition, Ryanair provided an economic study that sought to demonstrate that the agreements signed by Ryanair with La Rochelle airport were in line with the market economy operator principle when using the *ex ante* incremental profitability analysis method. According to this study, the analysis should not be limited to the actual duration of the agreements but should also consider their theoretical duration, taking into account any options to extend the agreements as provided for in the agreements themselves. The study is based on the average changes in Ryanair's traffic figures at a number of other airports from which it operates.

⁽³⁴⁾ Judgment of the Court of 16 May 2002, *French Republic v Commission (Stardust)*, C-482/99, ECLI:EU:C:2002:294.

- (181) Ryanair also considers that AMS' prices are in line with market prices and that the decision by a public airport to purchase AMS' services is consistent with the market economy operator test.
- (182) Ryanair also provided an economic report which sought to demonstrate that the agreements concluded with Ryanair and AMS were in line with the market economy operator principle when analysed together (an approach contested by Ryanair).
- (183) Lastly, Ryanair criticises the Commission's assessment of the marketing services agreements with AMS whereby their only value is a potential increase in the number of passengers travelling with Ryanair while the agreements are in force, giving them no terminal value after their expiry. According to Ryanair, the airport services agreements and marketing services agreements generate incremental revenue while in force and a terminal value after their expiry. The terminal value of the marketing services agreements lies in an increase in traffic to the airport after expiry, as a result of its enhanced reputation.
- (184) AMS also contests the Commission's analysis. First, AMS considers that the expected benefits of its marketing services agreements for airports are not limited merely to an increase in the number of passengers travelling with Ryanair. According to AMS, visitors to Ryanair's website who are likely to be influenced by its advertising are not exclusively Ryanair customers and are likely to travel with other airlines. AMS also notes that the presence of a marketing services agreement between a given airport and Ryanair does not influence the load factor of its aircraft operating out of that airport.
- (185) AMS also contests the Commission's decision to assess the agreements with Ryanair and AMS jointly. Lastly, AMS explains that advertising on Ryanair's website allows an airport to attract more inbound passengers, who are more likely to spend money than outbound passengers, and thus increase its non-aeronautical revenue.

5.3. Observations submitted by other interested parties

- (186) A number of individuals and the association Envol Vert informed the Commission that they supported the procedure that had been launched and denounced the subsidies received by Ryanair. Some individuals also question the true extent of the economic benefits generated by La Rochelle airport.
- (187) The other interested parties all highlight the contribution made by La Rochelle airport to the development of tourism and the economy in the area. They also stress that closing the airport would have a detrimental impact, particularly, for certain interested parties, with regard to their own economic activity.
- (188) Angoulême CCI points to the absence of competition between the airports of Angoulême and La Rochelle.
- (189) Poitou-Charentes CCI expressed its support for the European Parliament resolution ⁽³⁵⁾ on the future of regional airports and air services in the European Union which seeks to acknowledge the role regional airports play in developing local economies.
- (190) The Region of Poitou-Charentes stresses that it did not pay any direct subsidies to the airport, only to the CCI, to enable it to carry out its tasks successfully.
- (191) The UDOTSI considers it crucial to maintain funding that enables the airlines receiving that funding to pursue and expand their activities at La Rochelle airport. The UDOTSI notes that a reduction in financing would lead to a drop in tourism in Charente-Maritime, which would have a negative impact on the local economy.
- (192) The Communauté d'Agglomération de La Rochelle and the Department of Charente-Maritime note that their contribution to the marketing campaigns carried out under the marketing agreements concluded with the CCI was within their remit and was in line with their mission to promote their local area. The Communauté d'Agglomération notes that it joined forces with the CCI under a general marketing agreement which enabled it to

⁽³⁵⁾ European Parliament resolution of 10 May 2012 on the future of regional airports and air services in the EU (2011/2196(INI)).

benefit from a reduction on the rates charged by AMS. Lastly, the Communauté d'Agglomération also notes that it has no direct interest in the management of La Rochelle airport and therefore considers that its financial participation should not be included in the airport's business plan.

6. OBSERVATIONS AND COMMENTS BY FRANCE

6.1. Measures in favour of the airport

— General interest of the airport

- (193) France argues that all the activities of the airport (including commercial aviation activities) constitute services of general interest, particularly the development of the region's economy and tourism, such that no amount granted to the airport's operators can be regarded as State aid.

— Investment grants

- (194) France does not share the Commission's opinion ⁽³⁶⁾ regarding the applicability of the *Aéroports de Paris* ⁽³⁷⁾ case-law to the infrastructure support measures granted prior to the publication of the 2005 Guidelines. It considers that the 1994 Guidelines ⁽³⁸⁾ should be applied, particularly point 12 thereof, by virtue of which infrastructure aid is not subject to State aid control by the Commission. According to France, the departure from previous case-law in the *Aéroports de Paris* judgment, whereby the activities of managing and operating an airport were identified as economic activities, related to a major European hub and concerned a legal issue unconnected with airport financing, and could therefore not be considered directly binding on the Member States with regard to the financing of airport infrastructure, while the only text in force at the time, the 1994 Guidelines, clearly indicated that airport infrastructure projects constituted general economic policy measures falling outside the scope of State aid control. Moreover, France considers that the Commission's practice was in line with the 1994 Guidelines ⁽³⁹⁾. Given this climate of legal uncertainty, France considers that it acted in accordance with the only document with legal force at the time, the 1994 Guidelines.
- (195) Moreover, France considers that none of the disputed investment aid measures are liable to affect competition and that they should therefore be excluded from the scope of the Commission's investigation.
- (196) According to France, the investments are in line with the prudent market economy investor principle. France states that the various investment measures are justified by the airport's chronic problems with insufficient handling capacity. According to France, the CCI decided to address these constraints by investing in increasing the airport's handling capacity. France maintains that the various investment decisions were systematically determined by the results of forecasting studies and of business plans drawn up *ex ante* in 2000, 2002 and 2008. Based on these studies, France considers that the CCI acted on the basis of reasonable assumptions when choosing, by means of a decision of 21 February 2003, to seek funding from the various public authorities referred to above.
- (197) France considers that its investments were limited and that, from a financial perspective, the airport's approach was always very measured when making investments, as it waited until it was at saturation point before deciding to carry out work that had become crucial.

⁽³⁶⁾ Opening decision, recitals 162 and 163.

⁽³⁷⁾ Judgment of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290.

⁽³⁸⁾ Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (OJ C 350, 10.12.1994, p. 5).

⁽³⁹⁾ Commission Decision of 30 March 1999, Italy, Airport on the island of Elba, State aid NN 638/1998 (OJ C 67, 17.3.2004, p. 9); Commission Decision of 14 June 1999, United Kingdom - Manchester airport, State aid NN 109/98 (OJ C 65, 13.3.2004, p. 5), recital 6.

- (198) In the alternative, France considers that, if the Commission were to consider that the measures under investigation constituted State aid, it ought to consider them compatible with the internal market, as the measures were granted in order to perform general economic interest tasks that fulfil the conditions laid down in Article 106(2) TFEU. The French authorities take the view that La Rochelle airport as a whole could be considered an SGEI since its key tasks are to ensure that the area it serves is accessible and to enable economic and social development and encourage tourism.
- (199) In the further alternative, France argues that the infrastructure aid is compatible with the internal market under the 2005 Guidelines.

— *Financing of operations*

- (200) First, France considers that aircraft firefighting and wildlife hazard prevention services are tasks within the remit of a public authority that are essential for airport safety and that they should therefore be excluded from the scope of the Commission's investigation concerning La Rochelle airport.
- (201) France also states that the financing granted to La Rochelle airport is not liable to affect competition within the meaning of Article 107(1) TFEU and thus the measures assessed do not constitute State aid.
- (202) In the alternative, France considers that, if the Commission were to consider that the measures under investigation constituted State aid, it ought to consider them compatible with the internal market in the light of the 2014 Guidelines.

6.2 Measures in favour of the airlines

— *Discounts on charges for Jet2, Flybe and Aer Arann*

- (203) France notes that the discount scheme that applied to Jet2, Flybe and Aer Arann was degressive, time-limited and applied to any airline that met the conditions set out in the CCI's charges decision of 27 March 2008, which established the scheme.
- (204) According to France, this type of discount, which is accessible to all and granted for a limited period, does not constitute aid within the meaning of Article 107(1) TFEU, since the measure is not selective and does not affect competition.

— *Marketing support measures*

- (205) France notes the need for growing regional airports to promote their services and their region via marketing campaigns in order to increase their passenger numbers.
- (206) Furthermore, France notes that, in accordance with Commission practice, if a service is paid for at market price, there can be no finding of State aid.
- (207) France stresses the complex nature of assessing the market price of marketing services, which must take into account the exact nature of the service provided, arrangements for oversight, its influence on traffic and the benefits generated. The French authorities would like these practices to be subject to a comprehensive assessment, so as not to disadvantage certain airports compared with others.
- (208) The French authorities share the Commission's opinion, set out in recitals 205 and 214 of the opening decision, concerning the need for a joint assessment of the airport services agreements and the marketing services agreements, as well as for a joint approach to the various public authorities and the CCI with regard to the financing of marketing services agreements.
- (209) France considers that it is not in a position to prove that the marketing agreements concluded with Ryanair/AMS comply with the private investor in a market economy principle, since this principle excludes any regional development considerations, whereas the decision by the various local and regional authorities to participate in financing those agreements was based on regional development considerations. Moreover, France considers that the private investor in a market economy test is not well suited to airports with fewer than 1 million passengers per year, which need to consider aspects other than their own profitability.

- (210) France stresses the positive impact of the airport's activities on regional development and therefore considers it natural that the local and regional authorities, which strive to develop the economy and tourism in their territory, use services allowing them to promote it and to attract visitors.
- (211) France notes the economic benefits generated by the airport. For example, in 2010, passengers using low-cost airlines to fly into La Rochelle airport spent around EUR 30 million.
- (212) As for the CCI, the French authorities give the following justification for the use of marketing services: 'as regards the considerations which led the CCI to conclude the agreements under investigation, the possibility of placing advertisements about La Rochelle airport and its region, as well as all destinations served by the airport, on a website with as many visitors as Ryanair's represented an opportunity to attract additional customers which the CCI, wishing to increase the airport's traffic and therefore revenues, naturally seized'. France adds that 'from the point of view of La Rochelle airport, its marketing support strategy has borne fruit since it has resulted in a sharp increase in the number of passengers over the period, leading to a steady increase in airport charges and in non-aeronautical revenues ...'.
- (213) As for the amounts paid to Jet2 for marketing services, the French authorities apply the same reasoning as that set out above with respect to Ryanair/AMS.
- (214) France also points out that, contrary to the information contained in the CRC report from 2008 and included in recital 39 of the Commission's opening decision, easyJet did not receive any financing for marketing or advertising services.

7. ASSESSMENT OF THE MEASURES

7.1. Measures in favour of the airport

- (215) In this part the Commission will assess the various financial support measures granted to the airport, as described in Section 3.1.

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

- (216) Under Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is incompatible with the Treaty.
- (217) For a measure to be classed as State aid, therefore, all of the following criteria have to be met:
- the beneficiary must be an undertaking within the meaning of Article 107(1) TFEU, which presupposes that it carries on an economic activity;
 - the measure in question must be granted through State resources and be imputable to the State;
 - the measure must confer a selective advantage on its beneficiary or beneficiaries;
 - the measure in question must distort or threaten to distort competition and be likely to affect trade between Member States.

7.1.1.1. Concepts of undertaking and economic activity

(a) General framework

- (218) As the Commission reiterated in the 2014 Guidelines ⁽⁴⁰⁾, from the date of the judgment in *Aéroports de Paris* (12 December 2000) ⁽⁴¹⁾, the operation and construction of airport infrastructure must be considered as falling within the ambit of State aid control. Conversely, due to the uncertainty that existed prior to that date, public authorities could legitimately consider at the time that the financing of airport infrastructure did not constitute State aid and, accordingly, that such measures did not need to be notified to the Commission. It follows that the Commission cannot now bring into question, on the basis of State aid rules, financing measures granted before 12 December 2000.

⁽⁴⁰⁾ Points 28 and 29 of the 2014 Guidelines.

⁽⁴¹⁾ Judgment of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290.

- (219) In the present case, the investment grants were made after 12 December 2000, as was the potential operating aid, the examination of which covers the period from 1 January 2001. The French authorities cannot therefore rely on legal uncertainty when it comes to classifying La Rochelle airport's activity as non-economic, since the measures at issue were taken after 12 December 2000.
- (220) That being said, as also pointed out in the 2014 Guidelines, not all the activities of an airport are necessarily of an economic nature ⁽⁴²⁾. Activities that normally fall under the responsibility of the State in the exercise of its official powers as a public authority are not of an economic nature and in general do not fall within the scope of the rules on State aid.
- (221) The investment grants made in 2001 and 2005 (see Table 8) were used in particular to finance investments relating to the departure and arrival hall, runway, taxiway and aircraft stands. This infrastructure and equipment is commercially operated by the CCI, which is the airport operator and which charges users for the cost of these assets. These investments are therefore intrinsic to the airport's commercial activity. The investment grants made between 2001 and 2005 were thus to the benefit of economic activities.
- (222) With regard to the concepts of undertaking and economic activity, the financing of this airport infrastructure and the potential operating aid therefore served primarily to finance the economic activity of the commercial operation of the airport engaged in by the CCI and therefore fall within the scope of the rules on State aid.

(b) Special case of subsidies for tasks falling under the public-authority remit

- (223) As shown in Table 4, the formal investigation procedure covers subsidies (in particular from the FIATA) which financed various security-related investments, namely facilities and devices for screening hold baggage, access control to the restricted area, and screening of persons and cabin baggage. The investments also aimed to increase safety, as vehicles were purchased for the aircraft fire and safety service. These various subsidies were granted under the general system for financing public-remit tasks in French airports, described in recitals 32 et seq.
- (224) As pointed out by the Commission in the 2014 Guidelines, the Court of Justice has held that activities that normally fall under the responsibility of the State in the exercise of its official powers as a public authority are not of an economic nature and in general do not fall within the scope of the rules on State aid ⁽⁴³⁾. According to the 2014 Guidelines, activities such as air traffic control, police, customs, aircraft 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 ⁽⁴⁴⁾.
- (225) The 2014 Guidelines also state that, in order not to be classed as State aid, the public funding of such non-economic activities should be strictly limited to compensating the costs to which they give rise and must not lead to undue discrimination between airports. The Guidelines specify with regard to this second condition that, when it is normal under a given legal order that civil airports have to bear certain costs inherent to their operation, whereas other civil airports do not, the latter might be granted an advantage, regardless of whether or not those costs relate to an activity which in general is considered to be of a non-economic nature ⁽⁴⁵⁾.

— *The non-economic nature of the activities financed*

⁽⁴²⁾ Points 34 and 35 of the 2014 Guidelines.

⁽⁴³⁾ Judgment of the Court in Case C-118/85, *Commission v Italy*, ECLI:EU:C:1987:283, paragraphs 7 and 8, and judgment of the Court of 4 May 1988, *Bodson v Pompes funèbres des régions libérées*, C-30/87, ECLI:EU:C:1988:225, paragraph 18.

⁽⁴⁴⁾ Point 35 of the 2014 Guidelines.

⁽⁴⁵⁾ Points 36 and 37 of the 2014 Guidelines.

- (226) The activities financed by the general system for financing public-remit tasks in French airports, as described in recitals 32 et seq., relate to safeguarding civil aviation against acts of unlawful interference ⁽⁴⁶⁾, police tasks ⁽⁴⁷⁾, aircraft rescue and firefighting ⁽⁴⁸⁾, air traffic safety ⁽⁴⁹⁾, and the protection of the natural and human environment ⁽⁵⁰⁾. These activities can legitimately be regarded as falling under the responsibility of the State in the exercise of its official powers as a public authority. Consequently, France may legitimately regard these tasks as ‘falling under the public remit’, in other words as non-economic, under the rules on State aid. It may therefore provide for public financing to compensate the costs incurred by airport operators in carrying out these tasks in so far as these are entrusted to them by national law and provided that this financing does not give rise to overcompensation or discrimination between airports.

— *Strictly limited compensation and non-discriminatory financing*

- (227) It is clear from the description in recitals 32 et seq. that the system laid down by French law is based on strict cost control mechanisms, both *ex ante* and *ex post*, ensuring that airport operators receive, through the airport tax and additional financing instrument, only those amounts strictly needed to cover the costs.
- (228) Moreover, since this system applies to all French civil airports in terms of both the types of task giving rise to compensation and the financing mechanisms, the non-discrimination condition is met. While French legislation entrusts the performance of public-remit tasks to airport managers, it lays the responsibility for financing these tasks on the State, not the airport managers. Thus, the compensation from public funds for the costs of performing these tasks does not result in mitigating costs that should normally be borne by airport managers under the French legal system.
- (229) This national system has applied to La Rochelle airport since the beginning of the period under investigation. As a result, the financing received under this system does not constitute State aid in favour of the airport.

7.1.1.2. State resources and imputability to the State

- (230) The following local authorities and public authorities have granted subsidies to the operator of La Rochelle airport: the French State, the Region of Poitou-Charentes, the Department of Charente-Maritime, the Communauté d’agglomération de La Rochelle and La Rochelle CCI’s general arm.

(a) La Rochelle CCI’s general arm

- (231) To determine whether the resources of chambers of commerce and industry constitute State resources and whether their use is imputable to the State, the Commission notes first of all that Article L 710-1 of the Commercial Code classifies chambers of commerce and industry as an ‘intermediate State authority’. More specifically, chambers of commerce and industry are public bodies under French law. Article L 710-1 of the Commercial Code currently in force states ‘CCI France, the regional chambers of commerce and industry, local chambers of commerce and industry and inter-chamber groups are public bodies supervised by the State and administered by elected managers’.
- (232) Article L 710-1 of the Commercial Code also specifies the tasks of chambers of commerce and industry: ‘The network [of chambers of commerce and industry] and each establishment or departmental chamber within it shall contribute to economic development, to the attractiveness and spatial planning of the territory and to the support of undertakings and of their associations by fulfilling within the terms set by decree any public-service task and any task of general interest necessary to the accomplishment of those tasks.’

⁽⁴⁶⁾ This category includes screening of hold baggage, screening of passengers and cabin baggage, and access control to the restricted area.

⁽⁴⁷⁾ This category includes automated border controls through biometric identification.

⁽⁴⁸⁾ As indicated above, these three categories are explicitly referred to in the 2014 Guidelines as examples of non-economic activities.

⁽⁴⁹⁾ This category includes wildlife hazard prevention.

⁽⁵⁰⁾ This category includes environmental control measures.

To this end, each establishment or departmental chamber in the network may carry out, in compliance with any applicable sectoral plans:

1. general interest tasks conferred on it by laws and regulations;
2. support, mentoring, liaison and advisory tasks with those starting up or taking over businesses and with businesses in general, in accordance with the applicable laws and regulations on competition law;
3. a support and advisory task to encourage the international development of businesses and the export of their production, in partnership with the agency referred to in Article 50 of Law No 2003-721 of 1 August 2003;
4. a task to encourage initial or ongoing vocational training, in particular through public and private educational establishments that it sets up, manages or finances;
5. a task to set up and operate facilities, particularly port and airport facilities;
6. profit-making tasks conferred on it by a public entity or that may prove necessary for the fulfilment of its other tasks;
7. any expert assessment, consultation or research task requested by public authorities on an issue relating to industry, commerce, services, economic development, vocational training or spatial planning, without prejudice to any work that it may initiate.'

(233) The list of tasks of chambers of commerce and industry, given in Article L.710-1 of the Commercial Code and cited above, thus shows that their *raison d'être* and primary objective is to undertake the general interest tasks conferred on them by law, i.e. mainly to represent the interests of industry, commerce and services before public authorities, support local business, and develop the attractiveness and spatial planning of their regions. The industrial and commercial activities of chambers of commerce and industry are ancillary to their general interest tasks and are designed to help them undertake those tasks.

(234) This legislation has evolved since it was drawn up in 2005 into its current version, but its fundamental principles have remained unchanged. Similarly, the rules in force before Article L 710-1 of the Commercial Code was drawn up were based on the same principles. Throughout the period under investigation, chambers of commerce and industry such as the CCI have thus remained public bodies set up by law, administered by elected managers and supervised by the State. Furthermore, as intermediate State authorities, they have continued to be entrusted with general interest tasks consisting of representing the interests of industry, commerce and services before national and foreign public authorities, contributing to the attractiveness and spatial planning of the regions and supporting business.

(235) The Commission would also point out that Articles R 712-2 et seq. of the Commercial Code place the chambers of commerce and industry under the supervision of the representatives of the State. In this capacity, the authority exercising supervision has access to all CCI general assemblies and can have items added to the agenda. The supervisory authority must also be informed of certain important decisions specified in the regulations (regarding, for example, budget, recourse to borrowing, granting of guarantees to third parties, transfers, acquisitions or extensions of financial holdings in civil or commercial companies, etc.). In particular, decisions relating to initial, amending or implemented budgets are binding only once they have been approved, even tacitly, by the authority exercising supervision.

(236) Moreover, the general budget of chambers of commerce and industry includes tax revenue collected from companies entered in the trade and companies register. The resources of chambers of commerce and industry therefore consist in particular of tax revenues (the tax to cover the costs of chambers of commerce and industry, established by Article 1600 of the General Tax Code), subsidies or commercial resources arising out of training and transport infrastructure management activities. As a result, chambers of commerce and industry do not have to rely solely on their commercial revenue to cover their costs. This tends to corroborate the conclusion that the industrial and commercial activities of chambers of commerce and industry are ancillary to their general interest tasks and are designed to help them undertake those tasks.

(237) In the light of all of the above, chambers of commerce and industry such as the CCI must be regarded as public authorities and all their decisions, just like those of the national government or local and regional authorities, must be regarded as ‘imputable to the State’, within the meaning of the case-law on State aid ⁽⁵¹⁾, with their resources constituting State resources. The General Court of the European Union has also endorsed this approach in several judgments concerning aid granted to airlines by the CCIs of Nîmes, Angoulême and Pau ⁽⁵²⁾.

(b) Local authorities

(238) The resources of the local authorities which granted subsidies to the airport, namely the Region of Poitou-Charentes, the Department of Charente-Maritime and the Communauté d’agglomération de La Rochelle, are State resources within the meaning of Article 107(1) TFEU ⁽⁵³⁾. Furthermore, the conduct of such authorities falls, in the same way as measures taken by the central authority, within the ambit of that article, if the conditions laid down in that provision are satisfied ⁽⁵⁴⁾. Accordingly, the decisions of the local authorities investigated in the present case must be regarded as imputable to the State (in the broad sense) within the meaning of the case-law on State aid.

(239) The payments for the management and operation of Rochefort airport were made by the airport joint authority (Syndicat Mixte de l’Aéroport), which comprised various local authorities ⁽⁵⁵⁾, and therefore also constitute State resources, the granting of which is imputable to the State.

(c) The State

(240) The subsidies to cover the ‘public-remit’ tasks were financed by the FIATA, a fund managed by the State, or directly from the State budget, and therefore constitute State resources, the use of which is imputable to the State.

(241) The infrastructure development is partly financed by the ERDF. This funding is regarded as constituting State resources since it is granted under the control of the Member State concerned ⁽⁵⁶⁾. It is also imputable to the State in so far as the decision to use it is taken by the French authorities.

(242) As a result, all of the measures in favour of La Rochelle airport covered by this investigation are imputable to the State and financed through State resources.

7.1.1.3. Selective advantage

(243) To assess whether a State measure confers an advantage on an undertaking under Article 107(1) TFEU, it must be determined whether the undertaking in question enjoys an economic advantage enabling it to avoid having to bear costs which would normally have had to be met out of its own financial resources or whether it enjoys an

⁽⁵¹⁾ For example, judgment of the Court of First Instance of 12 December 1996, *Compagnie nationale Air France v Commission*, T-358/94, ECLI:EU:T:1996:194, paragraphs 58 to 61, judgment of the General Court of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d’agglomération du Douaisis v Commission*, T-267/08 and T-279/08, ECLI:EU:T:2011:209, paragraph 108.

⁽⁵²⁾ Judgment of the General Court of 13 December 2018, *Ryanair DAC v Commission*, T-53/16, ECLI:EU:T:2018:943, paragraphs 85-89; judgment of the General Court of 13 December 2018, *Ryanair DAC v Commission*, T-111/15, ECLI:EU:T:2018:954, paragraph 89; judgment of the General Court of 13 December 2018, *Ryanair DAC v Commission*, T-165/15, ECLI:EU:T:2018:953, paragraphs 97-106.

⁽⁵³⁾ Judgment of the General Court of 12 May 2011, *Région Nord-Pas-de-Calais*, T-267/08 and T-279/08, ECLI:EU:T:2011:209, paragraph 108.

⁽⁵⁴⁾ Judgment of the Court of First Instance of 6 March 2002, *Diputación Foral de Álava and others v Commission*, T-127/99, T-129/99 and T-148/99, ECLI:EU:T:2002:59, paragraph 142.

⁽⁵⁵⁾ Until 2007, the joint authority comprised the General Council of Charente-Maritime, the Communauté d’agglomération du Pays Rochefortais, and the intermunicipal authorities of Pays Royannais, Ile d’Oléron, Sud Charente and bassin de Marennes.

⁽⁵⁶⁾ As regards the classification of ERDF resources as State aid, see Commission Decision of 22 November 2006, South Yorkshire Digital Region Broadband Project, State aid N 157/2006 (OJ C 80, 13.4.2007, p. 1), recital 29, and Commission Decision of 15 June 2006, Development of infrastructure on Krievu Sala for relocation of port activities out of the city centre, State aid N 44/2010 (OJ C 215, 21.7.2011, p. 21), recitals 69 and 70.

advantage which it would not have received under normal market conditions ⁽⁵⁷⁾. It is also necessary to determine whether the measure in question can be regarded as public service compensation fulfilling the conditions of the *Altmark* judgment ⁽⁵⁸⁾.

(a) Concept of service of general economic interest and application of the *Altmark* judgment

- (244) It must first be ascertained whether the various measures to be assessed can be regarded as public service compensation granted for the provision of a genuine service of general economic interest (SGEI).
- (245) In this regard, it should be recalled that the Court of Justice ruled in the *Altmark* judgment that public service compensation does not constitute State aid within the meaning of Article 107(1) TFEU when four cumulative conditions are met. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Third, the compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. Lastly, where the undertaking that is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs that a typical undertaking, well-run and adequately provided with the relevant means, would have incurred.
- (246) In order to apply these conditions, the first point to be examined is the existence of a genuine SGEI.
- (247) In the present case, France considers that the management of the airport as a whole should be regarded as an SGEI. France mainly based its argument relating to the existence of a genuine SGEI for La Rochelle airport as a whole on the airport's contribution to local economic development. France considers that the task of developing air traffic, entrusted to CCI-Airport by the CCI 'can be regarded as a public service obligation within the meaning of the *Altmark* case-law.' According to France, this task concerns the 'economic and tourism development of the area', which requires, in its opinion, '(i) an increase in passenger flows, generating income and jobs for the regional economy [...] and (ii) the development of the enterprise zone situated adjacent to the airport'. As regards this enterprise zone, France refers to several undertakings established there and states that, under Article L 170-1 of the Commercial Code, the CCI has 'a task to set up and operate facilities, particularly port and airport facilities' ⁽⁵⁹⁾.
- (248) The Commission does not share this view. To assess the extent to which the operation of an airport is an SGEI, the need in the general interest met by that activity must be analysed.
- (249) Point 69 of the 2014 Guidelines states 'for an activity to be considered as an SGEI, it should exhibit special characteristics as compared with ordinary economic activities'. According to the case-law of the Court, an SGEI is a service that exhibits special characteristics as compared with those of other economic activities ⁽⁶⁰⁾ and undertakings entrusted with SGEI tasks are undertakings entrusted with a 'particular task' ⁽⁶¹⁾. Generally speaking, the entrustment of a 'particular public service task' implies the supply of services which, if it were considering its own commercial interest, an undertaking would not assume or would not assume to the same extent or under the same conditions ⁽⁶²⁾.

⁽⁵⁷⁾ Judgment of 14 February 1990, *France v Commission*, C-301/87, ECLI:EU:C:1990:67, paragraph 41.

⁽⁵⁸⁾ Judgment of the Court of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, C-280/00, ECLI:EU:C:2003:415.

⁽⁵⁹⁾ France's comments on the opening decision.

⁽⁶⁰⁾ See judgment of the Court of 10 December 1991, *Merci Convenzionali porto di Genova*, C-179/90, ECLI:EU:C:1991:464, paragraph 27; judgment of 17 July 1997, *GT-Link A/S*, C-242/95, ECLI:EU:C:1997:376, paragraph 53, and judgment of 18 June 1998, *Corsica Ferries France SA*, C-266/96, ECLI:EU:C:1998:306, paragraph 45.

⁽⁶¹⁾ See, in particular, judgment of 27 March 1974, *BRT v SABAM*, C-127/73, ECLI:EU:C:1974:25.

⁽⁶²⁾ See communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4), paragraphs 46 and 47.

- (250) Point 69 of the 2014 Guidelines also states 'the general interest objective pursued by public authorities cannot simply be that of the development of certain economic activities or economic areas provided for in Article 107(3)(c) of the Treaty' ⁽⁶³⁾. It is not disputed that, by improving a region's accessibility, particularly when it breaks its isolation, an airport can have positive effects on local economic development. However, the simple fact that the presence and activity of an airport generate direct and indirect jobs and stimulate the activity of local undertakings, in particular in the tourism sector, cannot be regarded as a relevant criterion for establishing the existence of a genuine SGEL.
- (251) As a result, the contribution of La Rochelle airport to local economic development, which is the main factor highlighted by France in support of its theory regarding the existence of a genuine SGEL, is not in itself a relevant factor as long as it is considered separately from the contribution of that airport to the region's accessibility.
- (252) Moreover, point 72 of the Guidelines provides, 'As far as airports are concerned, the Commission considers that it is possible for the overall management of an airport, in well-justified cases, to be considered an SGEL. [...] the Commission considers that this can only be the case if part of the area potentially served by the airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development. Such an assessment should take due account of other modes of transport, and in particular of high-speed rail services or maritime links served by ferries' ⁽⁶⁴⁾.
- (253) As regards La Rochelle airport's contribution to the region's accessibility, it should be noted that La Rochelle is connected, for example, to Paris and Bordeaux by frequent rail services, with travel times of around 3 hours and 2 hours 30 respectively. As regards the road network, La Rochelle is close to the A837, A10 and A83 motorways, which connect it directly to several major French cities, in particular Bordeaux and Nantes. In the light of this information, it cannot be argued that part of the area potentially served by La Rochelle airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development.
- (254) Lastly, France's comments do not address the observation in the opening decision calling into question France's argument that a genuine SGEL exists for La Rochelle airport as a whole. The Commission had stated that the management of La Rochelle airport 'also includes activities not directly linked to the airport's core activities such as the construction, financing, use and renting of land and buildings, both for offices and storage and for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks. Finally, while the French authorities consider that all the airport activities in question constitute public service obligations, there is no provision for separate accounts for the revenue from commercial activities.' By considering that these activities not directly linked to the airport's core activities are part of the public service obligations, France has ignored the fact that the activities do not exhibit special characteristics as compared with other economic activities, and that economic operators assume the same services to the same extent or under the same conditions outside the airport as within it. Consequently, by considering that all the activities of the airport constitute public service obligations, France has committed a manifest error of assessment in defining the SGEL.
- (255) The Commission also notes that the accounting records submitted for the airport, in particular the 2001-2014 financial plan, do not distinguish between the airport's core activities and other activities. On the contrary, it appears that the operating deficits recorded for the period under investigation were subsequently offset by the cash advances provided by the CCI's general arm and also covered by this Decision. This was intended to balance the accounts without distinguishing between the airport's core activities.
- (256) As a result, in the light of all of the above and of the arguments submitted by France, the Commission takes the view that France has committed a manifest error of assessment in claiming that the management of La Rochelle airport as a whole was an SGEL. In particular, the activity of the La Rochelle airport operator consisting in handling commercial passenger transport flights at the airport cannot be regarded as a genuine SGEL. It therefore follows that, in so far as

⁽⁶³⁾ See also Commission Decision of 16 November 2004, France, Project for a high-capacity telecommunications network in the Pyrénées-Atlantiques, State aid N 381/2004 (OJ C 162, 2.7.2005, p. 5), recital 53.

⁽⁶⁴⁾ Point 72 of the 2014 Guidelines.

the various financial support measures covered by this assessment were intended to finance the operation of the airport's activity as a whole, they cannot be regarded as financial compensation granted with a view to the management of a genuine SGEI.

- (257) Furthermore, even if all or part of the management of La Rochelle airport could validly be defined as an SGEI, the measures in question would still not satisfy the cumulative conditions of the *Altmark* judgment. They do not satisfy the first, second and fourth conditions of that judgment, as will be demonstrated below in the light of the communication on the application of the State aid rules to compensation granted for the provision of SGEIs ⁽⁶⁵⁾ ('the SGEI communication').

— *Clearly defined public service obligations discharged by the undertaking (first condition)*

- (258) According to the *Altmark* judgment, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined.

- (259) As France has committed a manifest error of assessment by classifying the management of the airport as a whole as an SGEI and as the measures covered by the present investigation were used to finance the airport's operation as a whole, the first *Altmark* condition is not satisfied.

- (260) In addition, according to the SGEI communication ⁽⁶⁶⁾, in order for the first *Altmark* condition to be satisfied, the public service task must be assigned by way of one or more acts that, depending on the legislation in Member States, may take the form of legislative or regulatory instruments or agreements. Moreover, the act or series of acts must at least specify the content and duration of the public service obligations, the undertaking and, where applicable, the territory concerned, the nature of any exclusive or special rights assigned to the undertaking by the authority in question, the parameters for calculating, controlling and reviewing the compensation, and the arrangements for avoiding and recovering any overcompensation. The only acts produced by France which could possibly fulfil this function are Article L 170-1 of the Commercial Code, the CCI decisions of 21 February 2003 and 25 June 2004, and the procedure for adopting the budget for the airport laid down in Circular No 111 of 30 March 1992 ⁽⁶⁷⁾ ('Circular No 111'), which are supposed to provide guarantees to avoid overcompensation.

- (261) However, it appears that none of these acts clearly defines the public service obligations. In particular, the acts do not specify the content and duration of the public service obligations or the methods for calculating and reviewing any financial compensation mechanism. As a result, the acts do not meet the requirements of the first *Altmark* condition, even without considering the fact that the obligations imposed on CCI-Airport do not form a genuine SGEI.

— *Compensation parameters established in advance in an objective and transparent manner (second condition)*

- (262) The exceptional subsidies and repayable advances received by CCI-Airport are all exceptional measures granted on an ad hoc basis to cover necessary investment costs and finance the airport's operating deficit. They did not therefore stem from calculation parameters that were established in advance.

- (263) It should be noted that CCI-Airport's tasks for the 2000-2012 period are set out in its basic acts. However, these acts did not provide for any financial compensation mechanism for the CCI, based on parameters established in advance in an objective and transparent manner.

⁽⁶⁵⁾ See communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4).

⁽⁶⁶⁾ Ibid., paragraph 52.

⁽⁶⁷⁾ Circular No 111 of 30 March 1992 laying down the budget, accounting and financial rules applicable to the ACFCI (Assembly of French Chambers of Commerce and Industry), CRCIs (regional chambers of commerce and industry), CCIs (chambers of commerce and industry) and GICs (inter-chamber groups).

(264) Nor does the procedure for setting compensation, contained – in France's view – within the procedure for adopting the budget for the airport laid down in Circular No 111, provide for any financial compensation mechanism for the operator.

(265) As a result, the financial support measures granted to CCI-Airport do not satisfy the second *Altmark* condition.

— *Fair compensation for costs arising from public service obligations (third condition)*

(266) The compensation must not 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.

(267) There is no provision for the CCI to pay additional compensation for the commercial use of any additional infrastructure financed by the region.

(268) France states that this additional infrastructure is necessary to discharge the public service tasks and that its construction helps to balance the airport's finances. However, it appears that these facilities are intrinsic to the economic activity of operating the airport and are aimed in particular at developing the airport. The facilities therefore do not meet the general interest criterion described above.

(269) As a result, the compensation does not satisfy the third *Altmark* condition. Even though the *Altmark* conditions are cumulative, and it is sufficient for one of them not to be satisfied for the Commission to be unable to exclude the existence of an advantage for the airport operator, the Commission will still analyse the fourth *Altmark* condition.

— *Arrangements for selecting the service provider (fourth condition)*

(270) The fourth *Altmark* condition provides that the compensation granted must either be the result of a public procurement procedure which allows for selection of the tenderer capable of providing those services at the least cost to the community (first sub-criterion), or the result of a benchmarking exercise with a typical undertaking, well run and adequately provided with the necessary means (second sub-criterion).

(271) The CCI was not chosen to operate the airport following a tender procedure and the Commission does not have any information indicating that the amounts of the financial support measures that it received may have been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the relevant means, would have incurred.

(272) As a result, the financial support measures granted to CCI-Airport do not satisfy the fourth *Altmark* condition.

(273) Since the four *Altmark* conditions are not satisfied, the various measures in favour of the airport operator cannot be regarded as public service compensation granted for the operation of an SGEI. The Commission cannot therefore, at this stage, exclude the existence of an advantage for the airport operator.

(b) Assessment of the existence of a selective economic advantage

(1) Investment grants

(274) As regards the investment grants totalling around EUR 3 million for a new departure and arrival hall, strengthening, lengthening and widening the runway, strengthening and widening the taxiway, strengthening and extending the aircraft stands and creating a settling basin to bring the airport into line with the Water Act, France has not put forward any arguments to support the view that the various public authorities which made those grants could have expected a return on their investment likely to satisfy a market economy operator having acted in their place. It appears rather that the investment grants were made by the various public authorities to contribute to regional development. The public authorities therefore acted in the exercise of their public service tasks.

- (275) In the light of the above, the investment grants do not satisfy the market economy operator test. The investment grants therefore conferred an economic advantage on CCI-Airport. These grants in fact reduced the investment costs that CCI-Airport should have borne, without any prospect of a sufficient return on investment for the authorities which made the grants. In addition, as these advantages benefited a single undertaking, they are selective.

(2) Repayable advances

- (276) With regard to the repayable advances totalling EUR 8,77 million, it should first be noted that they are equivalent to interest-free loans granted by the CCI's general arm to CCI-Airport. According to France, an advance should be regarded as a current account contribution that a shareholder would make to its subsidiary. France adds that a private shareholder does not carry out a profitability analysis for such advances since they are in fact loans intended to enable the subsidiary to develop its activities for the benefit of the shareholder. In France's view, this applies even more in the present case, since it is a financial transfer between parts of the same legal entity, namely the CCI. According to France, these advances therefore involve no financial risk for the CCI since it owns the land and infrastructure, the value of which far exceeds the amount of the advances ⁽⁶⁸⁾. Such an argument might be relevant only if, by granting these advances to allow the continued operation of La Rochelle airport, the CCI expected the airport to become profitable in the medium to long term, allowing the CCI not only to see these advances repaid, but also to receive a 'return on its investment' remunerating the capital committed, through any profits made by the airport.
- (277) The Commission therefore asked France about the profits that the CCI might expect from granting these repayable advances. In its reply ⁽⁶⁹⁾, France did not produce any study or analysis establishing that a hypothetical profit could be expected from granting those subsidies. France merely referred to the documents establishing the role of the owner using all means to ensure the long-term development of its airport.
- (278) At the time when it granted the various repayable advances, the CCI did not have sufficient guarantees of the airport's operation becoming profitable and allowing CCI-Airport to repay the advances granted while leaving a profit margin big enough to remunerate the capital committed by the CCI's general arm. The repayable advances were granted from 2001. At that time, the airport's accounting result was already negative. Finally, in the absence of the repayable advances, CCI-Airport's results would have been even worse, thus ruling out any prospect of a return on the capital invested.
- (279) In the light of all these factors, the CCI could not have considered that there was any likelihood of it receiving any return in the short to medium term on the capital that it had committed through the advances granted to CCI-Airport. The CCI could even have legitimately harboured serious doubts that CCI-Airport would one day be able to repay it.
- (280) Furthermore, while repayment of the advances was to start in 2014, there was no provision for the airport arm to pay any interest rate properly remunerating the loan granted to it by the CCI.
- (281) Given all of the above, the CCI did not act towards its airport arm as a market economy operator motivated by credible and documented profitability prospects would have done.
- (282) In conclusion, the repayable advances conferred an economic advantage on CCI-Airport. In addition, as these advantages each benefited a single undertaking, they are selective.

(3) Alleged overinvoicing of the services supplied by the CCI to Rochefort Saint-Agnant airport

- (283) As regards the alleged overinvoicing of the services supplied by the CCI to Rochefort Saint-Agnant airport, France claims that this was done under a service agreement concluded in partnership with Rochefort CCI. According to France, the CCI was selected to manage Rochefort airport on 11 July 2001 following competitive tendering.

⁽⁶⁸⁾ France's letter of 18 November 2015.

⁽⁶⁹⁾ France's letter of 26 May 2014.

- (284) Where a sale of services is carried out following a competitive, transparent, non-discriminatory and unconditional tender procedure, in line with the principles of the TFEU on public procurement, it can be presumed that the sale is in line with market conditions ⁽⁷⁰⁾.
- (285) In the present case, France has provided evidence that the invitation to tender was: (i) competitive, since all tenderers could take part in the invitation to tender; (ii) transparent, since it was published in the press and all tenderers were duly informed; (iii) non-discriminatory, since the selection criteria were objective and specified in advance; and (iv) unconditional, since there were no specific conditions. Moreover, the selection criterion was linked to the price.
- (286) In view of the above, the information made available to the Commission proves that the tender procedure was open, transparent and unconditional. The Commission therefore concludes that the price of the services provided by the CCI does in fact constitute a market price which does not confer an advantage on the CCI.

(4) Alleged underinvoicing of services supplied by the CCI's general arm to the airport

— 2001-2005 period

- (287) The information made available to the Commission indicates that between 2001 and 2005 the payments were lump-sum amounts and that there was no analytical allocation key based on objective criteria. Although France's explanations suggest that the lump-sum amounts were granted under market conditions, several elements cast doubt on the absence of State aid, in particular the absence of an analytical allocation key.
- (288) In particular, between 2001 and 2005, the payments made by CCI-Airport for the services provided by the CCI's general arm were around 50 % lower than the payments made for the same services in the 2006-2012 period (see Table 5), with a sharp increase when the allocation key was introduced. The introduction of an analytical distribution key from 2006 onwards thus showed that the services provided by the CCI's general arm were manifestly underinvoiced. The Commission therefore concludes that the alleged underinvoicing of the services supplied by the CCI's general arm to the airport between 2001 and 2005 provided CCI-Airport with a selective economic advantage.

— 2006-2012 period

- (289) As regards the alleged underinvoicing of the services supplied by the CCI's general arm to the airport between 2006 and 2012, France claims that the cost of the services common to the CCI's various arms, such as structural services linked to accounting, IT, human resources, etc., was distributed among those arms according to an analytical allocation key and was thus allocated based on objective criteria. France also alleges that the CCI carried out a detailed analysis according to changing business volumes and that the allocation key is fully in line with changes in the airport's traffic. In addition, France claims that the use of the allocation key was checked every year, since the CCI's accounts are endorsed by a co-auditor as a result of the consolidation of the accounts for the CCI group.
- (290) The Commission considers that, for the 2006-2012 period, France has demonstrated that an allocation key was introduced, based on six objective and relevant criteria according to the services supplied by the CCI's general arm to the airport:
- for the general administration of the airport, the cost of the 'elected officers' sub-service was calculated according to the number of agendas dealt with for steering committee and general assembly meetings concerning the airport, and the percentage obtained was applied to the costs of the CCI presidency; the cost of the 'Directorate-General' service is calculated according to the time spent by the Director-General in decision-making meetings, with staff representatives, monitoring investments, etc. In the light of the above, the Commission concludes that the services are needs-based and are invoiced according to their costs. Moreover, the information made available to the Commission proves that the allocation key was correctly applied;

⁽⁷⁰⁾ 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, paragraphs 89 et seq. (OJ C 262, 19.7.2016, p. 1).

- communication: the cost of the service was calculated according to the time spent for each arm of the CCI;
- accounting and management control: the cost of the service was calculated according to the percentage of the number of accounting entries;
- IT: the cost of the service was calculated according to the number of IT stations installed (purchases, maintenance, analysis and implementation of hardware and software developments, etc.);
- human resources: the cost of the service was calculated according to the permanent staff of the airport;
- project service: the cost of the service was calculated according to the time spent by the service following major investments (including the extension of the departure hall and terminal) on a case-by-case basis depending on the projects and calls for tenders.

(291) These criteria are objective and relevant as they relate to the time spent and the work actually done.

(292) Furthermore, the Commission considers that France has demonstrated that the allocation key was correctly applied since every year the keys are checked to ensure the most realistic result. In addition, the conceptualisation and choice of criteria and the calculation method are also checked by auditors.

(293) In view of the above, the Commission concludes that the alleged underinvoicing of the services supplied by the CCI's general arm to the airport between 2006 and 2012 did not confer an advantage on the airport and therefore does not constitute aid.

(5) Financial contributions from the various local authorities towards the promotional measures implemented by La Rochelle airport

(294) The Commission considers that the financial contributions from local authorities towards the promotional measures implemented by La Rochelle airport must be regarded as constituting support for financing the operation of the airport and not as financing of airlines.

(295) In contrast, the French authorities and the CCI consider that these contributions should be regarded as purchases of marketing services by the local authorities and therefore as financing of airlines. The CCI submits that the authorities joined the marketing agreements to achieve the objectives which they had set themselves in the context of their general interest tasks and, in particular, to benefit from a price reduction from AMS for a group purchase ⁽⁷¹⁾. Similarly, the French authorities consider that the airport served as a central purchasing body ⁽⁷²⁾.

(296) However, an analysis of the facts does not confirm the version put forward by the French authorities and the CCI. Several elements indicate that the contributions from local authorities must be regarded as financing for the operation of the airport.

(297) As stated in the 2014 Guidelines, it is not uncommon for airport operators to offer airlines incentives in the form of marketing support. This is particularly the case for regional airports, which may find it more difficult to attract airlines than airports in the vicinity of large cities. The costs linked to marketing agreements with airlines can therefore be considered as normal operating costs of an airport operator ⁽⁷³⁾. As a result, the contributions from local authorities were used to cover part of the normal operating expenses of La Rochelle airport.

(298) In addition, the contributions from local authorities were granted to La Rochelle airport, which used them to develop its economic activity by concluding marketing services agreements on its own behalf with airlines. Moreover, the following elements indicate that the contributions do not constitute purchases of marketing services by local authorities.

⁽⁷¹⁾ The CCI's comments of 10 June 2014, p. 27.

⁽⁷²⁾ Memo from the French authorities of 11 April 2018, p. 9.

⁽⁷³⁾ See Commission Decision of 11 November 2016, SA.24221, Klagfurt airport - Aid to Ryanair and other airlines, recital 237.

- (299) First of all, as stated in Section 3.1.1.5, the contributions were paid under agreements between the CCI on the one hand and the Department of Charente-Maritime, Communauté d'agglomération de La Rochelle and Region of Poitou-Charentes on the other. The agreements do not specify the type of promotional measures to be undertaken by the CCI or the service providers to which they will be entrusted. In particular, the agreements do not mention the fact that the service providers will be airlines or their subsidiaries. In its comments of 4 June 2012, the CCI also states 'the airport emphasises that the public authorities, when undertaking to support the marketing promotion measures at La Rochelle airport, in no way intend to bind themselves to a particular marketing service operator. This is sufficiently clear from the marketing agreements which they conclude, since the name of the operator of those services is not even mentioned in them' ⁽⁷⁴⁾. It thus appears that the CCI enjoyed considerable autonomy as regards the choice of promotion measures and the providers of those services.
- (300) Secondly, the various marketing agreements concluded by the CCI with the different airlines and their subsidiaries make no mention of the involvement of local authorities in the financing of the CCI's marketing measures.
- (301) Lastly, it appears that in some cases the CCI concluded marketing agreements with airlines without having a legal guarantee that it would receive the subsidies from the public authorities. For example, the CCI concluded several marketing agreements with airlines between 2004 and 2006 based on a business plan providing for an annual financial contribution of EUR 144 500 from the Department of Charente-Maritime. However, no financial contribution was ultimately paid by the Department of Charente-Maritime.
- (302) These different elements thus indicate that the contributions from the various local authorities must be regarded as financing the operating costs of the airport.

7.1.1.4. Distortion of competition and effect on competition and trade between Member States

- (303) The Commission had expressed doubts in the opening decision relating to potential competition between La Rochelle airport and other nearby airports, such as those in Angoulême, Rochefort and Niort.
- (304) Point 25 of the 2014 Guidelines defines the catchment area of an airport as a geographic market boundary that is normally set at around 100 kilometres or around 60 minutes travelling time by car, bus, train or high-speed train. However, point 25 goes on to say that the catchment area of a given airport may be different and needs to take into account the specificities of each airport. The size and shape of the catchment area varies from airport to airport, and depends on various characteristics of the airport, including (i) its business model, (ii) location and (iii) the destinations it serves.
- (305) As regards Angoulême airport, the Commission notes first of all that the airport is more than two hours by car and 150 km away from La Rochelle airport. The distance between the two airports is thus significantly greater than that referred to in point 25 of the 2014 Guidelines. In principle, this is likely to exclude Angoulême airport from the catchment area of La Rochelle. The Commission also notes that La Rochelle and Angoulême airports have relatively different business models. During the period considered (2001-2012), La Rochelle airport's activities were mainly based on passenger transport on scheduled services to European destinations operated by low-cost airlines such as Ryanair and easyJet (see recital 29). By contrast, Angoulême airport's activities varied considerably during that period: (i) between 2004 and 2007, a single scheduled domestic service (subject to public service obligations) was operated between Angoulême and Lyon; (ii) between 2008 and 2009, a single scheduled service to London Stansted was operated by Ryanair from April to October; (iii) between 2010 and 2011, no scheduled service was operated from Angoulême airport ⁽⁷⁵⁾.

⁽⁷⁴⁾ The CCI's comments of 4 June 2012, paragraph 34.

⁽⁷⁵⁾ See Commission Decision of 23 July 2014 on State aid SA.33963 (2012/C) (ex 2012/NN) implemented by France in favour of Angoulême Chamber of Commerce and Industry, SNC-Lavalin, Ryanair and Airport Marketing Services (OJ L 201, 30.7.2015, p. 48) recitals 15 and 16.

- (306) The Commission also notes that during the period considered (2001-2012), the two destinations served from Angoulême airport (Lyon and London Stansted) were also served from La Rochelle airport in parallel. As regards London Stansted, the Commission notes that between 2008 and 2009 Ryanair operated a service to that destination from both airports, which might indicate that the airlines regard them as separate markets. Moreover, the closure of the route to Angoulême did not lead to passengers switching to the La Rochelle-London Stansted service.
- (307) The Commission therefore considers that La Rochelle airport is not located in the catchment area of Angoulême airport.
- (308) As regards Niort and Rochefort airports, the Commission notes that they are located 60 minutes by car (75 km) and 50 minutes by car (54 km) respectively from La Rochelle airport. However, as mentioned in recital 304, the catchment area of a given airport may be different and needs also to take into account other characteristics of the airport, such as its business model and the destinations it serves. As regards the business model, La Rochelle airport's activities – mainly based on passenger transport on scheduled services operated by large commercial airlines such as Ryanair and easyJet – differ fundamentally from those of Niort and Rochefort airports. As pointed out by France, Niort and Rochefort airports are mainly dedicated to the activities of flying clubs and light aircraft and do not handle public air carriers. Moreover, neither airport is equipped with any services to handle airlines operating scheduled routes ⁽⁷⁶⁾, unlike La Rochelle airport, which handles several airlines offering scheduled services to various destinations in France and Europe.
- (309) The Commission thus considers that Niort and Rochefort airports are not substitutes for La Rochelle airport as a passenger airport for scheduled services operated by large commercial airlines
- (310) Nonetheless, the Commission considers that La Rochelle airport competes with other airports, even those located outside its catchment area. EU airport operators compete with each other to attract airlines. Airlines decide which routes to operate and with what frequency based on a number of criteria. These criteria include not only the potential customers they can expect on the routes concerned but also the characteristics of the airports at either end of the route.
- (311) Airlines take into account such criteria as the type of airport services provided, population or economic activity around the airport, congestion, whether there is access by land, and the level of charges and overall commercial conditions for use of airport infrastructure and services (including the existence and amount of incentives and marketing support measures offered to airlines). The level of charges, incentives and support measures is a key factor, since public funding granted to an airport could be used to attract airlines and may thus significantly distort competition.
- (312) Consequently, airlines allocate their resources, particularly aircraft and crew, to the various routes by looking at the services offered by airport operators and the prices charged for those services, among other criteria.
- (313) It is clear from the above that the various measures granted to La Rochelle airport and covered by this investigation are likely, in so far as they conferred an economic advantage on that undertaking, to have strengthened its position compared with other European airport operators. Consequently, these measures may have distorted competition and affected trade between Member States.

7.1.1.5. Conclusion on the existence of aid

- (314) The subsidies for public-remit tasks and the alleged underinvoicing of the services supplied by the CCI's general arm to the airport between 2006 and 2012 do not constitute State aid. The investment grants, the underinvoicing of the services supplied by the CCI's general arm to La Rochelle airport between 2001 and 2005, the repayable advances received by La Rochelle airport and the subsidies from local authorities intended to contribute to measures promoting La Rochelle airport constitute State aid to La Rochelle airport.

⁽⁷⁶⁾ These services include groundhandling services, security services and level 1 aircraft rescue and firefighting services.

7.1.2. *Unlawful nature of the State aid*

- (315) The investment grants, the underinvoicing between 2001 and 2005, the repayable advances and the subsidies intended to contribute to promotional measures which the CCI received from the Department of Charente-Maritime, the Region of Poitou-Charentes and the Communauté d'agglomération de La Rochelle were implemented without being notified, in breach of Article 108(3) TFEU.
- (316) 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 ('the 2005 SGEI Decision') lays down the conditions under which certain aid granted by way of public service compensation may be exempt from the notification requirement laid down in Article 108(3) TFEU. According to France, the measures granted to CCI-Airport meet these conditions. The Commission considers that this is not the case.
- (317) First, the management of La Rochelle airport as a whole cannot be regarded as a genuine SGEI, as demonstrated in recital 261. Consequently, as the various aforementioned measures were granted to finance the management of the airport as a whole, they do not meet the criteria laid down by the 2005 SGEI Decision.
- (318) Secondly, as indicated previously, even if the management of the airport as a whole could be classified as an SGEI, none of the measures in question would constitute public service compensation the parameters of which were established in advance in an objective and transparent manner. As pointed out in recital 273, the measures in question do not satisfy the conditions of the *Altmark* judgment.
- (319) In the light of the above, the investment grants, the underinvoicing between 2001 and 2005, the repayable advances and the subsidies intended to contribute to promotional measures which the CCI received from the Department of Charente-Maritime, the Region of Poitou-Charentes and the Communauté d'agglomération de La Rochelle constitute unlawful aid.

7.1.3. *Compatibility of the aid with the internal market*

7.1.3.1. *Compatibility of the investment aid*

- (320) The measures at issue concern the investment grants paid to CCI-Airport by various public authorities (the Region of Poitou-Charentes, the Department of Charente-Maritime and the Communauté d'agglomération de La Rochelle) and under the ERDF. As mentioned above, these investment grants reduced the investment costs that the CCI would normally have had to bear and therefore constitute investment aid.
- (321) The investment aid was granted before 4 April 2014, the date from which the 2014 Guidelines applied. According to the Guidelines, the Commission applies to unlawful investment aid to airports the rules in force at the time when the aid was granted ⁽⁷⁷⁾.
- (322) With regard to the grants made from 2005 onwards, the 2005 Guidelines were in force at the time and should therefore be applied.
- (323) However, the grants made between 2000 and 2005 were granted to CCI-Airport before the entry into force of the 2005 Guidelines, at a time when there was no specific compatibility criterion for investment aid to airports. The Commission must therefore assess those grants directly on the basis of Article 107(3)(c) TFEU, taking into account its decision-making practice in this regard. It should be recalled that the Commission's decision-making practice with regard to the assessment of the compatibility of aid granted to airport operators was consolidated by the 2005 Guidelines. The Commission therefore considers that the compatibility with the internal market of the grants made between 2000 and 2005 should be assessed in the light of the principles set out in the 2005 Guidelines and in the light of case-law ⁽⁷⁸⁾.

⁽⁷⁷⁾ Point 173 of the 2014 Guidelines.

⁽⁷⁸⁾ Judgment of the Court (Grand Chamber) of 22 September 2020, C-594/18 P, *Republic of Austria v Commission*, ECLI:EU:C:2020:742, paragraph 20.

(324) State aid to airports, like any other State aid, must be necessary to facilitate the development of an economic activity and proportionate to that objective in order to be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU. The Commission will therefore assess compliance with the criteria of necessity and proportionality in addition to the aforementioned criteria from the 2005 Guidelines.

(325) To establish the necessity and proportionality of the aid, the Commission must also verify that the amount of the aid is limited to what is strictly necessary to achieve the objective pursued ⁽⁷⁹⁾.

(a) Eligibility of investment costs

(326) The Commission notes first of all that, according to the 2005 Guidelines, costs eligible for investment aid to an airport must be limited to the investment costs of airport infrastructure properly speaking (runways, terminals, aprons, etc.) or the costs of facilities that directly support them (firefighting facilities, security or safety equipment). However, the costs of commercial activities not directly linked to the airport's core activities such as the construction, financing, use and renting of land and buildings, not only for offices and storage but also for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks must be excluded from eligible costs.

(327) The various investment grants from the ERDF, the Region of Poitou-Charentes, the Department of Charente-Maritime and the Communauté d'agglomération de La Rochelle amounting to almost EUR 3 million were used to finance the construction of a new departure and arrival hall, the strengthening, lengthening and widening of the runway, the strengthening and widening of the taxiway, the strengthening and extension of the aircraft stands, and the creation of a settling basin to bring the airport into line with the Water Act.

(328) The runway, taxiway, aircraft stands, settling basin and terminal are part of the airport infrastructure and fall within the scope of State aid control as defined in recital 218. Consequently, the investments costs of this infrastructure are eligible.

(b) The aid facilitates the development of an economic activity

(329) The investment grants were used to build a new departure and arrival hall, strengthen, lengthen and widen the runway, strengthen and widen the taxiway, strengthen and extend aircraft stands, and create a settling basin to bring the airport into line with the Water Act.

(330) The resizing of the runway (by 45m in width and 115m in length), taxiway and aircraft stands have enabled La Rochelle airport to handle aircraft with a capacity of 100-200 seats such as the B737 and A320 and to target new markets where those aircraft are most used (Great Britain, Belgium, Iberian Peninsula) by adapting to the specific safety standards of those aircraft. This meets an objective of regional economic and tourism development, which enhances the attractiveness of La Rochelle airport and thereby aims to increase the number of passengers travelling to the region.

(331) The extension of the terminal made it possible to adapt the terminal to the continual increase in traffic and thus handle passengers in compliance with an acceptable level of safety, security and comfort, which was previously lacking, as pointed out in January 2000 by a study on the buildings. The study noted that 100 passengers were passing through at peak times and, as a result, the public hall was significantly undersized, causing congestion and delays in security procedures and consequently in boarding and disembarking aircraft. The financing has thus improved the safety and operation of infrastructure, which is essential to achieve the objectives of regional development and increased tourism.

⁽⁷⁹⁾ See Commission Decision of 18 February 2011 on State aid NN 26/2009 – Greece – Ioannina airport development, recitals 69 and 70. See also judgment of the General Court of 18 January 2012, *Djebel v Commission*, T-422/07, ECLI:EU:T:2012:11, paragraphs 122 and 123 and the case-law cited.

- (332) It should also be noted that La Rochelle airport is an important link between Europe and the La Rochelle region. In that respect, the airport is key to the economic and tourism development of the region. The absence of an airport at La Rochelle or a significant reduction in its handling potential would be likely to undermine this role, as business travellers in particular generally wish to minimise their journey times, especially so as to be able to make return trips on the same day. As a result, if business travellers to and from La Rochelle had to use an airport that was not in the immediate vicinity of the city, this could be regarded as a barrier to developing economic activity.
- (333) La Rochelle airport also handles major tourist flows linked in particular to its proximity to the île de Ré with its seaside resorts. This positive impact was assessed in a 2008 CCI memo on a strategy for controlled growth. The memo states that the economic contribution of the airport to the conurbation corresponds to spending by low-cost airline passengers in the local economy during their stay (EUR 33 million in 2007). In addition, 167 jobs were based at the airport in 2008. A report on air transport and tourism development produced by ODIT France in 2008 featured a ratio allowing the total economic contribution of La Rochelle airport to the local economy to be estimated at EUR 100 million in 2008.
- (334) For all these reasons, the investment grants received by CCI-Airport contributed to the economic development of La Rochelle and its region, given the airport's impact on tourism and economic activity in general.
- (335) These grants also contributed to the region's accessibility, particularly for tourists and business travellers. In that respect, it should be noted that La Rochelle airport is not located in the same catchment area as Angoulême airport (see recitals 305 to 307).
- (336) As regards Niort and Rochefort airports, the Commission considers that they are not substitutes for La Rochelle as an airport for passenger transport on scheduled services operated by large commercial airlines (see recital 309).
- (337) As a result, investment aid enabling La Rochelle airport to increase its handling capacity contributes to the region's accessibility to a certain extent, as it avoids passengers and airlines having to choose an imperfect substitute.
- (338) Moreover, the TGV line linking La Rochelle to Paris, an international transport hub, is only high speed from Saint Pierre des Corps, and it thus takes 3 hours to reach Paris by this mode of transport. The TGV Atlantique project, which will connect the cities of Poitiers, Angoulême and Bordeaux at full speed, does not include La Rochelle.
- (339) It therefore appears that, despite the existence of alternative means of transport to air transport, the investment grants have helped to improve the region's accessibility and economic development.

(c) The infrastructure is necessary and proportionate to the objective

- (340) The investments aimed to improve the operation and ensure optimum use of existing infrastructure, in particular because part of the infrastructure was unusable owing to non-compliance with safety standards or because the investment makes it possible to adapt the airport to a foreseeable increase in passenger numbers.
- (341) In carrying out the investments relating to the enlargement of the airport runway, which was undersized and inadequate, CCI-Airport confined itself to an extension of 115 metres, which was sufficient to meet its market objectives as set out in recital 330, i.e. to adapt to aircraft with a maximum capacity of 200 seats. This extension had also been recommended by the study carried out in January 2000 by the Service Spécial des Bases Aériennes Sud-Ouest. The traffic recorded in subsequent years confirms those findings.
- (342) As indicated in recital 331, the work on the (equally undersized) terminal, financed by the investment grants, did not lead to significant capacity increases but aimed only to ensure the undersized infrastructure could handle existing traffic and cope better with peak periods.
- (343) These investments, therefore, did not exceed what was necessary for the airport to continue handling existing traffic smoothly, including at peak times. The investments were therefore necessary and proportionate to the objective set.

(d) The infrastructure has satisfactory medium-term prospects for use

- (344) It should be noted that between 2005 and 2007, the traffic at La Rochelle airport fluctuated between around 120 000 and around 220 000 passengers a year and that traffic has always increased over the years. It was therefore reasonable in both 2005 and 2007 to expect prospects for significant and increased use.
- (345) These prospects therefore justified the investments aimed at keeping the infrastructure in a condition to handle existing traffic and at coping with the annual growth of the airport, without however significantly increasing capacity.
- (346) It should be borne in mind in that regard that the work to resize the La Rochelle runway was intended to handle higher capacity aircraft and adapt to the safety standards specific to certain aircraft, with the ultimate aim of promoting an increase in the number of passengers travelling to the region. In addition, extension of the terminal made it possible to adapt the terminal to the continual increase in traffic and thus handle passengers in compliance with an acceptable level of safety, security and comfort, and to avoid congestion and delays in security procedures and consequently in boarding and disembarking aircraft. The investment grants financed runway renovation and upgrade work designed to keep the infrastructure in a condition to continue handling the existing types of aircraft and volume of traffic without significant increases in capacity, and to improve the operation of the airport at peak times. In conclusion, the infrastructure financed therefore had satisfactory medium-term prospects for use when the investment grants were awarded.

(e) Access to infrastructure in an equal and non-discriminatory manner

- (347) La Rochelle airport is open to the various airlines wishing to use it without any particular restrictions. The infrastructure can therefore be accessed in an equal and non-discriminatory manner within the meaning of the 2005 Guidelines.

(f) Absence of effect on trade contrary to the common interest

- (348) As mentioned above, La Rochelle airport is a category D airport under the 2005 Guidelines. Paragraph 39 of the Guidelines states 'funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest'.
- (349) Moreover, it follows from recitals 304 and 309 that La Rochelle airport is not in competition in its catchment area with another airport with the same business model which would be likely to be negatively affected by the measures in question. Niort and Rochefort airports serve different market segments and they are therefore only imperfect substitutes for each other. Angoulême airport is not located in the catchment area of La Rochelle airport.
- (350) Moreover, the investment grants at issue were not used to finance significant capacity increases, such as would have changed the classification of the airport under the 2005 Guidelines. The main impact of the investment grants at issue was thus to maintain the airport in so far as, in the absence of those grants, it would not have been able to continue operating or could have done so only under worse conditions. However, the grants did not lead to the creation of new capacity which could have competed with other airports, as shown in Table 11.

Table 11

Capacity used in terms of passenger numbers over the 2002-2010 period

Year	Capacity used
2002	91 726
2003	93 763
2004	100 342

2005	127 563
2006	180 964
2007	220 088
2008	214 338
2009	167 724
2010	191 429

Source: French authorities.

(351) Lastly, after the investment grants had been made, there was no significant shift of airlines from Angoulême to La Rochelle, nor were any services from Angoulême withdrawn and replaced by new services to the same destinations from La Rochelle.

(352) Taking into account all the positive and negative effects of the grants in question, the Commission takes the view that the investment grants did not affect trade to an extent contrary to the common interest.

(g) Necessity and proportionality of the aid

(353) It is considered necessary and proportionate to invest in better operation and optimal use of existing infrastructure, in particular when part of the infrastructure is unusable since it does not comply with safety standards ⁽⁸⁰⁾, or because the investment makes it possible to adapt the airport to a foreseeable increase in passenger numbers ⁽⁸¹⁾.

(354) As regards the work on the undersized runway, taxiway and aircraft stands, the airport's strategy was to open new routes and develop its traffic, and it therefore required expansion of this infrastructure.

(355) As regards the work carried out on the terminal, the airport infrastructure was not suitable for the continual increase in passenger traffic, resulting in delays and congestion. The resizing of the airport was therefore both necessary and proportionate for handling the influx of passengers.

(356) The investment grants accounted for EUR 2 986 000 out of an investment of EUR 5 876 000, i.e. an aid intensity of 50.8 %, which is acceptable given the airport category.

(357) Moreover, all the information available shows that this aid can be regarded as necessary and proportionate given that the CCI would not have been able to finance the investments in question without the aid and would not have been in a position to make any significantly higher contribution than it did.

(358) Table 12 below summarises the net income of La Rochelle airport over the 2002-2012 period and its self-financing capacity, which is the sum of the net income and non-cash charges (essentially depreciation and provisions for liabilities and charges). Self-financing capacity consists of the sums generated by the activities of an undertaking that are available to finance investments, the undertaking's working capital, loan repayments, savings and dividends paid to shareholders.

⁽⁸⁰⁾ Commission Decision of 16 May 2006 on State aid NN 21/2006, United Kingdom – City of Derry Airport (OJ C 272, 9.11.2006, p. 13), recitals 57 and 58.

⁽⁸¹⁾ Commission Decision of 27 April 2010 on State aid N 41/2010, Latvia – State aid related to investments in Riga airport infrastructure (OJ C 143, 2.6.2010, p. 22), recitals 35-37.

Table 12

Net income and self-financing capacity of La Rochelle airport

(EUR thousand)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Income	1 581	2 220	2 529	3 021	4 063	4 048	4 292	3 777	4 773	5 203	5 415
Expenditure	1 756	2 295	2 510	3 355	4 801	4 607	5 020	4 548	4 970	5 694	5 911
Net income	- 175	- 75	19	- 334	- 738	- 559	- 728	- 771	- 197	- 491	- 496
Self-financing capacity	5	228	- 84	5	298	- 195	- 259	- 679	46	- 2	- 30

Source: French authorities.

(359) This table shows that the airport accumulated losses between 2002 and 2012. In addition, the airport's self-financing capacity varied between EUR 298 000 and – EUR 679 000 a year during that period. In 2004 and 2005, when almost all the investment grants were paid, the airport's self-financing capacity was only – EUR 84 000 and EUR 5 000 respectively, which was very low compared with the costs of the investments made (total cost of the investments in 2004 and 2005: EUR 5 830 000) ⁽⁸²⁾. The resources generated by the airport's activities were thus far from sufficient to make any significant contribution to the financing of these investments.

(360) The available data show that the financial result was EUR 19 000 in 2004 and – EUR 334 000 in 2005, the years when almost all the investment grants were paid. These figures must be compared with the airport's net income after the grants, i.e. – EUR 738 000 in 2006 and – EUR 559 000 in 2007. Thus, financing all or even a significant part of the investments in question from the airport's own resources would have very considerably increased its losses, which were already substantial.

(361) Furthermore, given the long-term nature of the losses, it is unlikely that the CCI would have been able to finance a significant part of the investments in question by increasing its debt, which was around EUR 226 000 in 2005 and EUR 341 000 in 2006 ⁽⁸³⁾.

(362) The investment grants were therefore necessary to carry out the investments that they financed. In other words, they had an incentive effect because the CCI would not have undertaken the investments without the grants. Moreover, they comply with the principle of proportionality as the CCI could not have significantly increased its contribution to the financing of these investments.

(h) Conclusion on the compatibility of the investment aid

(363) For the reasons explained above in this section, the Commission considers that the investment grants for the 2001-2005 period constitute aid compatible with the internal market on the basis of Article 107(3)(c) TFEU.

(364) This conclusion is based on the criteria set out in the 2005 Guidelines for investment aid to airports. It is without prejudice to any assessment of any future investment aid to La Rochelle airport that the Commission may be required to make based on the 2014 Guidelines.

⁽⁸²⁾ Table submitted by the French authorities on 14 November 2017 in reply to question 9.

⁽⁸³⁾ Annex 6 to the CCI's supplementary final reply of 14 November 2017 (business plan 2001-2014, borrowing and other financial liabilities line).

7.1.3.2. Compatibility of the operating aid

- (365) As already demonstrated, France has committed a manifest error of assessment in claiming that the management of La Rochelle airport as a whole was an SGEL. In particular, the activity of the La Rochelle airport operator consisting in handling commercial passenger transport flights at the airport cannot be regarded as a genuine SGEL. In so far as the various financial support measures covered by this investigation were intended to finance the operation of the airport's activity as a whole, they cannot be regarded as public service compensation granted with a view to the management of a genuine SGEL.
- (366) Moreover, as shown above, none of the financial support measures covered by this investigation stemmed from a financial compensation mechanism for which the parameters were established in advance in an objective and transparent manner, accompanied by parameters for controlling and reviewing the compensation and arrangements for avoiding and repaying any overcompensation. As a result, the measures in question do not satisfy the cumulative conditions established by the European Union framework for State aid in the form of public service compensation ⁽⁸⁴⁾, which is applicable to this case *ratione temporis*.
- (367) Consequently, these measures cannot be declared compatible with the internal market on the basis of Article 106(2) TFEU.
- (368) The Commission will analyse the measures covered by this assessment in the light of the various criteria laid down in Article 107(3)(c) TFEU.
- (369) The measures at issue concern financing linked to the operation of the airport: zero-rate repayable advances, underinvoicing of services supplied by the CCI's general arm to La Rochelle airport between 2001 and 2005 and subsidies which the CCI received from local authorities to contribute to measures promoting La Rochelle airport.
- (370) These measures constitute operating aid in so far as they were intended to finance the operation of La Rochelle airport rather than specific investments made within the airport. This operating aid was granted unlawfully before 4 April 2014, the date of application of the 2014 Guidelines, in which the Commission stated that it would apply the principles set out in those Guidelines to all ongoing cases concerning operating aid to airports, even if that aid was granted before 4 April 2014 ⁽⁸⁵⁾.
- (371) According to the 2014 Guidelines, operating aid granted to airports before 4 April 2014 may be declared compatible to the full extent of uncovered operating costs provided that the conditions set out in Section 5.1.2 are met ⁽⁸⁶⁾. The conditions set out in Section 5.1.2 of the 2014 Guidelines are analysed below.

– The aid facilitates the development of an economic activity

- (372) The repayable advances and underinvoicing financed the operating deficit of La Rochelle airport and thus allowed it to continue operating. As regards the subsidies from local authorities intended to contribute to measures promoting La Rochelle airport, the purpose of those subsidies was to finance promotional measures the objective of which was to develop the activity of the airport.
- (373) As already explained in recitals 329 and 332, the activity of La Rochelle airport has a positive impact on the economic development of the La Rochelle region, in particular in the tourism sector.
- (374) Local economic development is recognised by the 2014 Guidelines as an objective of common interest that could justify operating aid granted to an airport before 4 April 2014, if certain conditions are met.
- (375) It is undeniable that La Rochelle airport has led to a large influx of tourists to the La Rochelle region and has had a positive impact on the region and the local economy.

⁽⁸⁴⁾ Communication from the Commission – European Union framework for State aid in the form of public service compensation (2011) (OJ C 8, 11.1.2012, p. 15).

⁽⁸⁵⁾ Point 172 of the 2014 Guidelines.

⁽⁸⁶⁾ Point 137 of the 2014 Guidelines.

- (376) This positive impact was assessed in a 2008 CCI memo on a strategy for controlled growth. The memo states that the economic contribution of the airport to the conurbation corresponds to spending by low-cost airline passengers in the local economy during their stay (EUR 33 million in 2007) and the number of jobs based at the airport (167 in 2008).
- (377) The report on air transport and tourism development produced by ODIT France in 2008 featured a ratio allowing the total economic contribution of La Rochelle airport to the local economy to be estimated at EUR 100 million in 2008. In addition, 167 jobs were based at the airport in 2008.
- (378) Moreover, expenditure per passenger and overall expenditure were calculated during annual surveys between 2006 and 2014, the results of which are as follows:

Table 13

Expenditure per passenger and overall expenditure in the La Rochelle region

(in EUR)

Year	Expenditure per passenger	Overall expenditure
2006	336	17,8 million
2007	471	33 million
2008	367	27,4 million
2009	Not assessed	Not assessed
2010	532,58	30 million
2011	548,97	35 million
2012	558,62	37 million
2013	482,80	27,4 million
2014	578,44	33 million

Source: French authorities.

- (379) Table 13 above shows that the economic contribution of the airport to the La Rochelle region increased over the 2006-2014 period, expenditure per passenger rising from EUR 336 in 2006 to EUR 578,44 in 2014.
- (380) According to the 2014 Guidelines, where an airport is located in the same catchment area as another airport with spare capacity, the business plan, based on sound passenger and freight traffic forecasts, must identify the likely effect on the traffic of the other airport located in that catchment area ⁽⁸⁷⁾. La Rochelle airport does not compete in its catchment area with another airport with the same business model. Niort and Rochefort airports serve different market segments and they are therefore only imperfect substitutes for each other (see recitals 308 and 309). Angoulême airport is not located in the catchment area of La Rochelle airport. It can therefore be concluded that the likely effect of the La Rochelle traffic on the neighbouring airports was taken into account and that a significant impact was ruled out.
- (381) The Commission therefore considers that the operating aid granted to La Rochelle airport contributed to the objective of economic development and connectivity of the La Rochelle region.

⁽⁸⁷⁾ Point 114 of the 2014 Guidelines.

(b) Need for State intervention and appropriateness of the aid as a policy instrument

- (382) The operating aid was necessary to ensure that La Rochelle airport's operation was financially viable and it therefore continued to operate. From a budgetary point of view, the aid in question was necessary because the airport was not financially viable and generated a cash deficit. In view of its results, the airport would have been unable to finance more from its own funds.
- (383) Furthermore, the 2014 Guidelines acknowledge that 'under present market conditions, smaller airports may have difficulties in ensuring the financing of their operation without public funding' ⁽⁸⁸⁾. The Guidelines specify that airports with up to 700 000 passengers a year may not be able to cover their operating costs to a substantial extent. La Rochelle airport is one of the smaller airports, as its traffic is not expected to exceed 300 000 passengers before 2020 and did not exceed 200 000 passengers before 2007.
- (384) According to the 2014 Guidelines, it should be examined whether other policy instruments or aid instruments could have been used and would have been less distortive of competition ⁽⁸⁹⁾. As already pointed out, the airport recorded a substantial operating deficit every year during the 2002-2012 period (except in 2004). In order to keep it in business and provide it with the necessary liquidity to operate, it was therefore difficult, in this context, to envisage any instruments other than non-repayable operating subsidies, such as the subsidies for marketing measures and the underinvoicing, and interest-free repayable advances without a specific repayment deadline.
- (385) The operating aid for La Rochelle airport was thus necessary and appropriate.

(c) Incentive effect and proportionality of the aid

- (386) According to the 2014 Guidelines, it should be ascertained whether, in the absence of the operating aid, the level of economic activity of the airport would have been significantly reduced and whether, in addition, the aid was limited to the minimum necessary for the aided activity to take place ⁽⁹⁰⁾.
- (387) Since La Rochelle airport was not financially viable, its activity would have been significantly reduced to ensure its finances were balanced or even completely discontinued without the support measures to finance its operating costs. The aid therefore had an incentive effect within the meaning of point 124 of the 2014 Guidelines.
- (388) Furthermore, it is apparent from Table 12 that the various operating subsidies were limited to the amounts needed to ensure the airport's financial viability, without going beyond that. With the exception of 2004, when the accounting result was positive (EUR 19 000), the accounting result was always negative, indicating that the operating aid for the airport never exceeded the sums necessary to maintain a balanced accounting result.
- (389) The specific case of the repayable advances granted by the CCI's general arm stemmed from the obligation to present a balanced budget for the airport, which was imposed on the CCI by the concession agreement. The amount of the advances was set each year when the budget was drawn up, in order to ensure it was balanced. The preparation of budgets for airports managed by chambers of commerce and industry is subject to strict procedures intended to ensure that public contributions used to balance the budget are limited to the minimum necessary.
- (390) The Commission thus considers that the various operating subsidies received by CCI-Airport were limited to the minimum.

(d) Assessment of distortions of competition and effects on trade

- (391) According to the 2014 Guidelines, when assessing the compatibility of operating aid granted before 4 April 2014, the Commission takes account of the distortions of competition and the effects on trade ⁽⁹¹⁾.

⁽⁸⁸⁾ Point 117 of the 2014 Guidelines.

⁽⁸⁹⁾ Point 120 of the 2014 Guidelines.

⁽⁹⁰⁾ Points 124 and 125 of the 2014 Guidelines.

⁽⁹¹⁾ Points 131 and 137 of the 2014 Guidelines.

- (392) Aid granted to a Union airport can potentially have a negative effect on all Union airports. All Union airports are in competition with each other to attract airlines, in the context of the internal air transport market. In the case of operating aid allowing the airport to remain economically viable, the intensity of this general effect on other airports depends on the volume of activity of the aided airport, which can be expressed in particular by number of passengers, routes and frequencies.
- (393) It should be noted in this regard that, during the period considered (2001-2012), La Rochelle airport remained a small airport. La Rochelle airport is one of the smaller airports, as its traffic is not expected to exceed 300 000 passengers before 2020 and did not exceed 200 000 passengers per year before 2007. La Rochelle airport's volume of activity therefore remained modest. The general effect of the aid granted to this airport on all the other airports was therefore relatively limited.
- (394) However, the effects of operating aid granted to a given airport on another airport increase if the two airports are close to each other. In particular, when one of the airports is located within the catchment area of the other, the competition between them to attract airlines wanting to serve the region in question is especially intense. Moreover, when there are routes from each of these two airports to the same destination, these airports are in competition to attract passengers wanting to travel to this destination, who have a choice between the two airports for this journey.
- (395) Angoulême airport is not located in the same catchment area as La Rochelle airport (see recitals 305 to 307).
- (396) As regards Niort and Rochefort airports, the Commission considers, for the same reasons as those set out in recitals 308 and 309, that the subsidies in question for La Rochelle airport are not such as to distort competition with Niort and Rochefort airports.
- (397) As a result, the operating aid in question had a limited impact on the airports neighbouring La Rochelle airport.
- (398) Taking into account all these positive and negative effects of the aid in question overall, the Commission takes the view that this aid did not affect trade to an extent contrary to the common interest.
- (399) In the light of the information set out above regarding the impact of the aid in question on competition and trade, and given the important contribution of this aid to the economic development of the area in which La Rochelle airport is located, particularly due to its beneficial impact on local tourism and business in the region, the Commission considers that the aid in question did not affect competition and trade to an extent contrary to the common interest.

(e) Conclusion on the compatibility of the operating aid

- (400) In view of the above, the repayable advances, the exceptional operating subsidies, the underinvoicing of the services supplied by the CCI's general arm to La Rochelle airport between 2001 and 2005 and the subsidies for promotional measures constitute aid compatible with the internal market within the meaning of Article 107(3)(c) TFEU.
- (401) This conclusion is based on the specific criteria set out in the 2014 Guidelines for assessing the compatibility of operating aid granted to airports before 4 April 2014. It is without prejudice to any assessment of any future aid to La Rochelle airport that the Commission may be required to make based on the rules laid down by the 2014 Guidelines for aid granted after 4 April 2014.

7.2. Measures in favour of the airlines

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

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

(403) For a measure to be classed as State aid, therefore, all of the following criteria have to be met:

- the beneficiary must be an undertaking within the meaning of Article 107(1) TFEU, which presupposes that it carries on an economic activity;
- the measure in question must be granted through State resources and be imputable to the State;
- the measure must confer a selective advantage on its beneficiary or beneficiaries;
- the measure in question must distort or threaten to distort competition and be likely to affect trade between Member States.

7.2.1.1. Concept of an undertaking

(404) For the purposes of determining whether the measures assessed constitute State aid, it is necessary to determine whether the beneficiaries, Ryanair/AMS and Jet2, are undertakings within the meaning of Article 107(1) TFEU. It cannot be disputed that these two companies are entities engaged in the provision of air transport and advertising services. As such, they are engaged in economic activities.

7.2.1.2. State resources and imputability to the State

(405) The various agreements that are subject to the formal investigation procedure were concluded between the airlines, on the one hand, and the CCI, on the other.

(406) The Commission would first point out that in order to specifically assess the imputability to the State of the measures at issue (i.e. the public payments granted under those agreements), it is irrelevant to distinguish between the CCI as a whole, the CCI's general arm and CCI-Airport. CCI-Airport does not have its own legal personality distinct from that of the CCI, and the various agreements were concluded by the CCI president or under his control. CCI-Airport is not a distinct entity with its own decision-making autonomy, other than with regard to the day-to-day operation of the airport. It therefore follows that the conduct of CCI-Airport and the CCI as a whole must be assessed together, in terms of their relations with the airlines and their subsidiaries, in order to apply the market economy operator test. The Commission would point out that this approach has already been followed in its decision-making practice ⁽⁹²⁾.

(407) As already established in Section 7.1.1.2, the CCI is a public authority, all of whose resources must be regarded as State resources and all of whose decisions are imputable to the State within the meaning of the case-law on State aid.

(408) The CCI and Ryanair state in their comments that the agreements concluded by the CCI with the airlines cannot be considered imputable to the State.

(409) First of all, Ryanair and the CCI dispute the imputability to the State of the various measures at issue, claiming that the State has no influence on decisions by chambers of commerce and industry and merely exercises a supervisory role. Ryanair and the CCI mainly base their argument on the fact that there is no functional integration of the CCIs into State structures, since all the members of the governing bodies of chambers of commerce and industry are traders or managers of commercial companies, with no position being reserved for a representative of the State. Ryanair also points to a Council of State opinion tending to show that chambers of commerce and industry are independent of the State. According to this opinion, the fact that chambers of commerce and industry 'are attached to the State, in so far as any public body must technically be attached to a legal person, does not in itself imply any subordination'.

(410) Contrary to what Ryanair and the CCI maintain in their comments, it is irrelevant in this respect that chambers of commerce and industry are administered by persons elected by traders and business leaders with no position being reserved for a representative of the State. Chambers of commerce and industry are, in this respect, like local and regional authorities, which are managed by local elected officials independent of the State (in the strict sense), and not by civil servants appointed by other public authorities. Moreover, national parliaments are also composed of elected representatives. However, parliaments form one of the essential public authorities in a democratic State.

⁽⁹²⁾ Commission decision on Nîmes airport, cited above in footnote 12, recital 306.

- (411) In addition, the degree of influence or control exercised by the State (in the strict sense) over the activities of chambers of commerce and industry is also entirely irrelevant as these bodies are themselves public authorities. The situation of chambers of commerce and industry differs from that of public undertakings, in respect of which the Court clarified the criteria for imputability to the State in the *Stardust Marine* judgment ⁽⁹³⁾. In the case of a measure taken by a public undertaking that has the primary vocation of carrying out an economic activity, it must be determined whether the public authorities controlling that undertaking, for example due to the capital share that they hold in said undertaking, are involved in the adoption of the measure in question. The situation of a chamber of commerce and industry is different in that such a body is itself part of the public administration, or an 'intermediate State authority', and therefore a public authority created by law to satisfy general interests. As a result, in order to determine whether a decision of a chamber of commerce and industry is imputable to the State (as broadly defined by the case-law on State aid), it is not necessary to determine whether another public authority (for example, the State in the strict sense or a local authority) has been involved in the decision in question. In reality, such a decision necessarily meets the imputability criterion.
- (412) This approach has previously been followed by the Commission in its decision-making practice and has been endorsed by the case-law. Accordingly, the Commission stated with regard to the Chamber of Commerce and Industry of Var, 'owing to its status as a public body under French law, it pursues its activity in a defined geographical area, is managed by elected members and has tax resources collected from undertakings registered in the Register of Trade and Companies, and therefore falls within the category of "public authorities" within the meaning of Commission Directive 2000/52/EC. It is not therefore necessary to determine whether the measure is imputable to the State within the meaning of the *Stardust Marine* case-law' ⁽⁹⁴⁾. In particular, the General Court has endorsed this approach in recent judgments concerning aid granted to airlines by Nîmes CCI and Pau CCI: 'the Commission was correct to take the view [...], on the basis of all those factual elements, that CCIs such as the CCIPB had to be considered as public authorities all of whose decisions, just like those of the central administration or local authorities, were necessarily imputable to the State' ⁽⁹⁵⁾. This analysis also applies to the CCI in the present case.
- (413) The CCI also considers that the activity carried out in the present case, the operation of La Rochelle airport, is an economic activity carried out under normal conditions of competition with private operators. However, that argument is redundant because there is nothing to preclude an economic activity from being carried out by a State body ⁽⁹⁶⁾, such as a chamber of commerce and industry ⁽⁹⁷⁾. Moreover, as demonstrated above in Section 7.1.1.2, the *raison d'être* and primary objective of chambers of commerce and industry lies in the general interest tasks conferred on them by law. The industrial and commercial activities of chambers of commerce and industry are thus ancillary to their general interest tasks and are designed to help undertake those tasks.
- (414) For all of the above reasons, the arguments of the CCI and Ryanair are irrelevant, and the various agreements concluded by the CCI and subject to this investigation must be regarded as imputable to the State and involving the use of State resources.
- (415) On the basis of all of the above, the Commission therefore considers that the conclusion of those agreements involves the use of State resources within the meaning of Article 107(1) TFEU and that the decisions to conclude those agreements are imputable to the State.

7.2.1.3. Selective advantage in favour of Buzz and easyJet

- (416) As regards Buzz, as pointed out in Section 3.2.2.3, France clarified that no marketing payments were made to Buzz as the promotional measures and communication expenditure concerning Buzz referred to in the CRC report in fact relate to communication activities carried out under an agreement concluded with Maison de la France and not with Buzz. Moreover, these promotional measures were not linked to Buzz. The formal investigation procedure thus removed the Commission's doubts as to the existence of potential aid to Buzz.

⁽⁹³⁾ Judgment of 16 May 2002, *France v Commission*, C-482/99, ECLI:EU:C:2002:294, paragraph 52.

⁽⁹⁴⁾ See the Commission Decision of 22 June 2006 in State aid case N 563/2005 – France – Aid to Ryanair for the air service between Toulon and London (OJ C 204, 26.8.2006, p. 4), recital 16.

⁽⁹⁵⁾ See judgment in *Ryanair DAC v Commission*, T-53/16, cited above in footnote 53, points 85 to 89. See judgment in *Ryanair DAC v Commission*, T-165/15, cited above in footnote 53, paragraph 101.

⁽⁹⁶⁾ See judgment of the Court of 23 April 1991, *Höfner and Elser*, C-41/90, ECLI:EU:C:1991:161, paragraph 21.

⁽⁹⁷⁾ See judgment *Ryanair DAC v Commission*, T-53/16, cited above in footnote 53, paragraphs 90 to 91.

- (417) As regards easyJet, as pointed out in Section 3.2.2.4, France clarified that, contrary to the information contained in the CRC report, easyJet did not receive any financing for marketing or advertising services. The formal investigation procedure thus removed the Commission's doubts as to the existence of potential aid to easyJet.

7.2.1.4. Selective advantage in favour of Flybe and Aer Arann conferred by the agreements concluded with the CCI during the period under investigation

- (418) The agreements signed with the airlines Flybe and Aer Arann gave rise to substantial discounts on charges, which constitutes an advantage in favour of those airlines.
- (419) The agreements were concluded in the context of the conditions set out in the CCI's charges decision of 27 March 2008, which provided for a system of degressive discounts on airport charges, limited to 3 years for the launch of new routes or the continued operation of existing routes during the winter scheduling season.
- (420) It transpires that this discount scheme applied to any airline operating or wishing to operate from La Rochelle airport and meeting the conditions set out in the charges decision of 27 March 2008. Any airline could benefit from these discounts for the launch of new routes or the continued operation of existing routes during the winter scheduling season. Moreover, there is no indication that those conditions had the effect of limiting the benefit of the discounts to certain airlines.
- (421) Thus, since the discount scheme was designed and applied in a non-discriminatory manner, the advantage conferred on Flybe and Aer Arann is not selective ⁽⁹⁸⁾. Consequently, the discount scheme applied to Flybe and Aer Arann does not constitute aid within the meaning of Article 107(1) TFEU, since the condition of selectivity is not met.

7.2.1.5. Existence of an advantage in favour of Ryanair/AMS and Jet2 in the agreements concluded with the CCI during the period under investigation

- (422) As regards Ryanair's exemption from runway lighting charges, the formal investigation procedure made it clear that the exemption was due to the fact that Ryanair's flights were operated during the day and did not therefore require the use of lighting. That exemption therefore does not entail any economic advantage in favour of Ryanair.
- (423) As regards the groundhandling services provided for in the successive agreements concluded with Ryanair, in particular agreement 1, the formal investigation procedure removed the Commission's doubts as to the actual existence of those services. As indicated in recital 72, the CCI acted only as an intermediary between Ryanair and Atlantica (the groundhandling company), and agreement 1 merely specified the pricing set by Atlantica. The groundhandling services provided for in the successive agreements concluded with Ryanair do not therefore entail any economic advantage in favour of Ryanair.
- (424) As regards the other measures, in order to determine whether the agreements concluded confer an advantage on the airlines concerned, the Commission should in principle examine whether, in similar circumstances, an airport operator operating under normal market economy conditions would have entered into commercial agreements similar or identical to those concluded by the CCI.
- (425) For the purpose of assessing the agreements in question, it should be noted that both the existence and the amount of aid in these agreements must be assessed in the light of the situation prevailing at the time they were signed ⁽⁹⁹⁾. Therefore, to determine if the airport operator acted as a prudent market economy investor motivated by the prospect of profits ⁽¹⁰⁰⁾, the agreements signed must be assessed for each period in question, i.e. at the time they were signed.

⁽⁹⁸⁾ See, inter alia, judgment of the Court of 21 December 2016, *Commission v Hansestadt Lübeck*, C-524/14 P, ECLI:EU:C:2016:971, paragraphs 40 to 67.

⁽⁹⁹⁾ See judgment in *Ryanair DAC v Commission*, T-165/15, cited above in footnote 94, paragraphs 71 to 72.

⁽¹⁰⁰⁾ See *Alfa Romeo* judgment referred to in footnote 30, paragraph 20 and *Alitalia v Commission* judgment referred to in footnote 30, paragraph 84.

(426) After examining various methodological considerations concerning the method used to apply the prudent operator test on the one hand and that used to reconstruct the business plans on the other, the Commission will analyse the various measures in question.

(a) Methodological considerations concerning the method used to apply the prudent operator test

(427) The following methodological issues should be examined in order to determine the method used to apply the prudent operator test:

- 1) Should the marketing services agreements and the airport services agreements be analysed separately or together?
- 2) For the purposes of applying the MEO principle, how appropriate, with regard to the incremental profitability analysis, is a comparative analysis of the terms of the airport services agreements examined under the formal investigation procedure against the airport charges billed at other airports?
- 3) What benefits might a hypothetical MEO have taken into account when signing the marketing services agreements?
- 4) What time frame would an MEO have chosen to assess the merits of signing an airport services agreement and/or a marketing services agreement?

(1) Joint analysis of the airport services agreements and marketing services agreements

(428) For the purposes of applying the prudent market economy investor test, the Commission must determine whether the airport services agreements and marketing services agreements concluded by the CCI with Ryanair and AMS, as referred to in Table 9, should be assessed together ⁽¹⁰¹⁾.

(429) France has stated that it agrees ⁽¹⁰²⁾ with the approach taken in the opening decision, which consisted of assessing together the airport services agreements and marketing services agreements signed jointly.

(430) However, Ryanair contests this approach, as it believes the marketing services agreements concluded with AMS should be analysed separately from the airport services agreements concluded with Ryanair. AMS also believes that the agreements it signed with the CCI have an intrinsic commercial interest that is distinct from that of the airport services agreements.

(431) It is therefore appropriate to consider whether, as Ryanair states, the marketing services agreements have an interest that is distinct from that of the airport services agreements. To answer this question, the following questions must be addressed:

- Should Ryanair and its subsidiary AMS be considered individually or jointly for the purposes of determining the existence of an economic advantage?
- What was the task performed by the CCI when purchasing the marketing services?
- Is there an indissociable link between the airport services agreements and the marketing services agreements?

Joint or separate analysis of Ryanair and AMS for the purpose of determining the existence of an economic advantage

(432) With regard to the agreements concluded between the CCI on the one part and Ryanair and AMS on the other, the Commission must firstly determine whether, for the purpose of identifying an economic advantage from which they may have benefited, Ryanair and its subsidiary AMS should be considered individually or jointly at the time when the agreements were signed.

⁽¹⁰¹⁾ It should be specified that the matter of the joint assessment of the airport services agreements and marketing services agreements is not applicable to Jet2. CCI-Airport concluded a sole agreement with Jet2, which included provisions relating to airport services and the payment of a marketing contribution.

⁽¹⁰²⁾ Reply from France of 13 April 2012, paragraph 253.

- (433) The Commission notes first of all that, when the agreements were signed, AMS was a wholly-owned subsidiary of Ryanair whose managers were senior executives of Ryanair⁽¹⁰³⁾, and that the company was created for the sole purpose of providing marketing services on Ryanair's website and did not carry out any other activities. AMS acted in the interests and under the control of Ryanair, and its profits went to Ryanair in the form of dividends or increased company value. Consequently, Ryanair can be presumed to have exercised decisive influence over the behaviour of AMS.
- (434) Moreover, while the marketing services were first purchased under two agreements with Ryanair on 1 December 2003 and 1 January 2004, it was subsequently from AMS that the CCI purchased marketing services under agreements concluded from 1 April 2006. The fact that AMS replaced Ryanair as marketing services provider to the CCI also reveals that Ryanair and its subsidiary AMS are connected with respect to the various agreements concluded with the CCI.
- (435) Moreover, the Commission notes that the marketing services agreements concluded with AMS all specify in their statement of purpose that they are linked only to Ryanair's undertaking to operate flights from La Rochelle airport.
- (436) Thus, the fact that AMS carries out a different activity from that conducted by Ryanair cannot obscure the highly complementary nature of these two activities: the operation of and advertising for airlines.
- (437) Lastly, the Commission would point out that this approach has already been taken in its recent decision-making practice⁽¹⁰⁴⁾ and is supported by case-law⁽¹⁰⁵⁾.
- (438) For all these reasons, the Commission therefore believes that the measures in favour of Ryanair and AMS should be assessed jointly in order to determine whether there was an economic advantage, as Ryanair and AMS form a single beneficiary of the measures in question⁽¹⁰⁶⁾.

The task performed by the CCI when purchasing the marketing services

- (439) One approach would be to consider that the CCI signed the marketing services agreements as the airport operator⁽¹⁰⁷⁾, and therefore to compare its conduct with that of a hypothetical airport operator motivated by the prospect of profits.
- (440) Another approach would be to consider that the CCI acted as a body entrusted with a general interest mission, namely the economic development of La Rochelle and its region, and that it purchased these marketing services in order to fulfil that mission, regardless of its capacity as the operator of La Rochelle airport. This second approach is based on the fact that the CCI is invested by law with such an economic development task.

⁽¹⁰³⁾ See the report of the Aquitaine Regional Audit Chamber on the Chamber of Commerce and Industry of Pau-Béarn, issued on 19 October 2006, which concludes in particular that 'AMS is simply an offshoot of Ryanair, managed by two senior Ryanair executives'. The report can be consulted at www.ccomptes.fr/fr/CRC02/documents/ROD/AQR200701.pdf

⁽¹⁰⁴⁾ In this regard, see the Commission Decision concerning Pau airport, referred to in footnote 12, in particular recital 290. Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA.33983 (2013/C) (ex 2012/NN) (ex 2011/N) — Italy — Compensation to Sardinian airports for public service obligations (SGEI) (OJ L 268, 18.10.2017, p. 1), in particular recital 353.

⁽¹⁰⁵⁾ See judgment in *Ryanair DAC v Commission*, T-165/15, cited above in footnote 53, paragraph 184. judgment in *Ryanair DAC v Commission*, T-53/16, cited above in footnote 53, paragraphs 207 to 212.

⁽¹⁰⁶⁾ The Commission will therefore sometimes use 'Ryanair/AMS' in the rest of the assessment to denote the beneficiary of the measures in question.

⁽¹⁰⁷⁾ Without prejudice to any public policy objectives of local economic development that the operator might have pursued in signing the agreements in question.

- (441) Under this alternative approach, it should be verified both that the services in question meet an 'actual need' of the public purchaser (for example because they may be linked to an effort to maximise the economic impact resulting from the aid paid for regional development), and that they were acquired at a price below or equal to a 'market price' ⁽¹⁰⁸⁾, whether that market price was determined following a call for tenders or via an alternative method.
- (442) The Commission notes that neither France ⁽¹⁰⁹⁾ nor the CCI ⁽¹¹⁰⁾ explicitly stated in their observations that they were acting for public policy reasons when concluding the marketing service agreements.
- (443) It is true that France argued, in recital 210, that the measures would allow the airport's activities to have a positive impact on regional development and therefore considers it 'natural' that the local and regional authorities, which strive to develop the economy and tourism in their territory, use services allowing them to promote it and to attract visitors. However, the Commission notes that this assertion is not shared by the CCI (see recital 445) and is counterbalanced by the comments following the opening of the formal investigation procedure, set out in recital 212, in which France considers that 'as regards the considerations which led the CCI to conclude the agreements under investigation, the possibility of placing advertisements about La Rochelle airport and its region, as well as all destinations served by the airport, on a website with as many visitors as Ryanair's represented an opportunity to attract additional customers which the CCI, wishing to increase the airport's traffic and therefore revenues, naturally seized'. France adds that 'from the point of view of La Rochelle airport, its marketing support strategy has borne fruit since it has resulted in a sharp increase in the number of passengers over the period, leading to a steady increase in airport charges and in non-aeronautical revenues...'.⁽¹¹¹⁾
- (444) In addition, the Commission notes that in the present case France has not – beyond the general considerations concerning regional development referred to in the previous recital – established precisely how it calibrated the financing of airlines with a view to pursuing that public interest objective which, moreover, it neither precisely defined nor accompanied with measurable criteria. The Commission thus observes that France has not produced any quantified *ex ante* economic analysis that could be used to establish, causally and unequivocally, the economic effect of the financing measures in achieving the public interest objective of regional development.
- (445) For its part, the CCI has provided elements that lend weight to the first approach. In its observations of 4 June 2012, the CCI stated that 'the prospect of profits was what prompted the CCI to conclude the [marketing] agreements'. The CCI also stated that 'the considerations which led the CCI to conclude the agreements under examination were of a purely commercial nature, and the commercial advantage that those agreements would generate for the airport had been duly assessed. The possibility of placing advertisements concerning La Rochelle airport and its region, as well as all destinations served by the airport, on a website with as many visitors as Ryanair's represented an opportunity to attract additional customers from abroad which the CCI, wishing to increase the airport's traffic and therefore revenues, naturally seized'. In the same observations, the CCI concluded that 'as well as improving the image of the airport and the attractiveness of the region it serves, the marketing agreements concluded by La Rochelle airport with AMS also contributed to the overall profitability of the relationship with Ryanair [...], since the advertising in question raised additional aeronautical and non-aeronautical revenues generated by foreign passengers brought to the airport by Ryanair and attracted to that destination through this targeted and efficient advertising'. These factors suggest that, according to the CCI, its conduct should be assessed in the same way as that of an airport operator ⁽¹¹¹⁾.
- (446) The Commission considers that the first of the two approaches mentioned above should apply. It is common practice for an airport operator, in the course of its economic activity, to conclude arrangements with airlines which lay down different charges and, in certain cases, grant substantial incentives and marketing support to those airlines ⁽¹¹²⁾. In this regard, the Commission considers that, in principle, the conclusion of marketing services agreements falls within the economic activity of an airport operator ⁽¹¹³⁾.

⁽¹⁰⁸⁾ See for example the judgment of the Court of First Instance of 28 January 1999, *BAI v Commission*, T-14/96, ECLI:EU:T:1999:12, paragraphs 75 and 76 and the judgment of the Court of First Instance of 5 August 2003, *P & O European Ferries (Vizcaya), SA and Diputación Foral de Vizcaya v Commission*, T-116/01 and T-118/01, ECLI:EU:T:2003:217, paragraph 117.

⁽¹⁰⁹⁾ See recitals 205 to 214.

⁽¹¹⁰⁾ See recitals 171 to 177.

⁽¹¹¹⁾ The market price that France or the CCI should have paid to develop the regional economy through support to airlines therefore does not need to be established here, since the latter approach is not the one taken by France or the CCI.

⁽¹¹²⁾ Point 7 of the 2014 Guidelines.

⁽¹¹³⁾ It should also be noted that Section 3.5 of the 2014 Guidelines provides that, for the purpose of applying the private market economy operator principle, incentives and marketing support must be taken into account in the assessment.

- (447) Therefore, for the purpose of determining the existence of an advantage in favour of the airlines, the first approach, referred to in recital 439, should be used; this consists of comparing the conduct of the CCI with that of a hypothetical market economy operator, motivated by the prospect of profits and operating La Rochelle airport in place of the CCI. The Commission points out that this approach was the one already taken in the 2014 Guidelines ⁽¹¹⁴⁾ and in its recent decision-making practice ⁽¹¹⁵⁾, which has been endorsed by case-law ⁽¹¹⁶⁾
- (448) This conclusion, established for the agreements concluded with Ryanair and AMS, also applies to the agreement with Jet2, for the same reasons.

Indissociable nature of the marketing services agreements and airport services agreements

- (449) The Commission has identified two scenarios. In the first, one or more marketing services agreements are signed at the same time as an airport services agreement and constitute a single transaction. In this case, the MEO assessment is carried out on all the agreements forming the transaction. Under the second scenario, the marketing services agreement(s) are not signed at the same time as an airport services agreement. In this case, the assessment of the transaction will focus solely on the marketing services agreements. However, the MEO assessment will take into account the airport services agreement in force at the time when the marketing agreements were signed in order to evaluate the CCI's revenues.
- (450) The Commission therefore believes that each of the marketing services agreements referred to in Table 9 should be assessed in order to ascertain if they may be indissociably linked to one or more other airport services agreements or even, where applicable, to other marketing services agreements. With a view to assessing the indissociable nature of this link, the Commission deems it necessary to make the following observations.
- (451) First of all, the fact that some marketing services agreements were concluded by the CCI with AMS and not Ryanair does not prevent the marketing services agreements from being assessed jointly with the airport services agreements. Both types of agreement were concluded by the same parties given that, as established in recitals 432 to 438, Ryanair and AMS must be regarded as forming a sole economic entity.
- (452) Other factors set out below point to very close links between certain marketing services agreements and airport services agreements concluded jointly.
- (453) Firstly, the Commission notes that the process by which the marketing agreements were concluded with AMS or Ryanair is closely linked to the conclusion of airport services agreements with Ryanair.
- (454) As shown in Table 9, most marketing services agreements were concluded almost at the same time as an airport services agreement. For example, the marketing services agreements signed with Ryanair on 1 December 2003 and 1 January 2004 were signed at practically the same time as the airport services agreement of 10 December 2003. Similarly, the marketing services agreements concluded with AMS on 1 May 2006 were concluded just one month after the airport services agreement of 1 April 2006 and took effect on 1 May 2006, with an identical duration of 3 years.
- (455) Moreover, the CCI did not hold a tendering procedure and did not actually consider any providers other than AMS or Ryanair, which reinforces the indissociable link between the processes by which both types of agreement were concluded.
- (456) Secondly, examination of the content of the agreements confirms a close relationship of dependence between the marketing services agreements and the air routes operated by Ryanair from La Rochelle airport.
- (457) First of all, the services provided by AMS, even where they are aimed at promoting La Rochelle and its region, focus solely on the routes operated by Ryanair and no other airline.

⁽¹¹⁴⁾ Paragraph 53 of the 2014 Guidelines.

⁽¹¹⁵⁾ See for example the Commission Decision (EU) 2015/1227.

⁽¹¹⁶⁾ See judgment in *Ryanair DAC v Commission*, T-165/15, cited above in footnote 53, paragraphs 329 to 334.

- (458) Next, the assessment of the marketing services to be performed by AMS also indicates that those services are by agreement focused entirely on Ryanair's website, which is described as the 'main marketing tool' in several marketing services agreements ⁽¹¹⁷⁾, and in particular on the versions of the site accessible from countries from which Ryanair operates a route to La Rochelle. Under the terms of the various marketing agreements, the marketing services to be performed by AMS include the following: (i) insertion of links on the page corresponding to the destination of La Rochelle on Ryanair's website; (ii) insertion of links to the website designated by the CCI on the UK, Belgian, Netherlands, Portuguese, Irish and Norwegian homepages of Ryanair's website (corresponding to the points of origin of Ryanair's routes to La Rochelle airport); (iii) insertion of paragraphs in the '5 things to do' section on the La Rochelle destination page of Ryanair's website; (iv) sending of emails promoting La Rochelle to British and Irish subscribers to Ryanair's website ⁽¹¹⁸⁾; (v) presentation of La Rochelle on the homepage of the Norwegian and Portuguese versions of Ryanair's website ⁽¹¹⁹⁾. However, Ryanair's website is designed primarily as the ticket sales platform for routes operated by Ryanair, and only in a very secondary sense as a tool to promote the destinations served by Ryanair, which include La Rochelle ⁽¹²⁰⁾.
- (459) Moreover, as explained in recitals 81 to 114, the marketing services agreements concluded with Ryanair (agreements A and B) contain Ryanair's commitment to operate certain routes, while marketing services agreements D, G, H, I, J and K concluded with AMS explicitly indicate that they are 'rooted in Ryanair's commitment to operate' ⁽¹²¹⁾ certain air routes covered by underlying airport services agreements. The presence of these clauses shows that the marketing services agreement would not have existed if Ryanair had not operated the routes covered by the marketing services agreement. This conclusion is not called into question for agreements C, E and F, which are merely amendments to pre-existing agreements and the new provisions of which do not cast doubt on the link between the operation of the aforementioned routes by Ryanair and the marketing services.
- (460) Finally, the amounts paid to Ryanair under certain marketing services agreements (agreements A and B) are determined by the number of rotations carried out by Ryanair. By way of illustration, Article 3 of agreement A concluded with Ryanair states that 'if Ryanair does not attain an annualised average load factor of 60 % on at least 340 rotations in each calendar year [...] the payment will be recalculated in proportion to the number of passengers carried' ⁽¹²²⁾. The inclusion of this provision shows that the essential aim of the marketing services agreement is not, generally speaking, to promote La Rochelle and its region but, much more specifically, to help Ryanair achieve quantified objectives for carrying passengers to La Rochelle.
- (461) It follows from the above considerations that the services provided for in these marketing services agreements are closely linked to the air transport services offered by Ryanair, which are referred to in the marketing services agreements and covered by the corresponding airport services agreements. Far from being designed in general and indistinct terms to increase leisure and business travel to La Rochelle and its region, the marketing services specifically target people likely to use Ryanair's transport services covered by the marketing services agreements, which means their primary objective is to promote those services.
- (462) The marketing services agreements are therefore indissociable from the airport services agreements signed jointly and from the air transport services covered by them. The facts presented above also indicate that there is nothing to support the hypothetical argument that, in the absence of the air routes in question (and therefore the associated airport services agreements), the marketing services agreements would still have been signed.

⁽¹¹⁷⁾ Agreements of 1.4.2006 and 17.9.2009 concluded with AMS.

⁽¹¹⁸⁾ Agreements of 1.4.2006, 17.9.2009 and 25.2.2010 concluded with AMS.

⁽¹¹⁹⁾ Amendments to the agreement of 25.2.2010.

⁽¹²⁰⁾ The particularly small section of Ryanair's website dedicated to promoting tourism, coupled with the fact that the La Rochelle region is just one of dozens of destinations covered by commercial promotion measures on Ryanair's website, makes the presentation of the La Rochelle region on Ryanair's website of much lower importance than the sale of tickets and services sold by the airline.

⁽¹²¹⁾ Article 1 of the marketing services agreements, concerning its purpose, which states: 'This Agreement is rooted in Ryanair's commitment to operate routes...'

⁽¹²²⁾ Original English: '... if Ryanair does not attain an annualised average load factor of sixty per cent (60 %) on at least 340 rotations in each calendar year ... the payment will be recalculated in proportion to the number of passengers carried ...'.

- (463) It should also be noted that France has itself highlighted the link between the payments laid down in the marketing services agreements and the routes operated by the airlines: 'The development of an airport depends entirely on the increase in its volume of passengers, hence the need to carry out publicity campaigns aimed at increasing awareness of the routes served by the airport, the region's tourist spots, etc. The publication of advertisements on websites with high visitor numbers therefore constitutes an essential service rendered to any growing regional airport. This need has created, particularly among low-cost companies, practices consisting of offering airports marketing and advertising services' ⁽¹²³⁾ (emphasis added by the Commission). It is clear from this statement that the payments laid down in the marketing services agreements were an integral part of the commercial relationship between the CCI and the airlines for the operation and development of routes. It also follows that the purpose of those payments was not only to promote visits to La Rochelle and its region in general, but above all to promote specifically those routes run by airlines operating from La Rochelle airport.
- (464) In light of the above, the Commission will base its specific assessment of the agreements referred to in Table 9 on a body of evidence relating, *inter alia*, to whether the following were identical or similar: (i) the date on which the agreements were signed; (ii) the geographical route(s) in question; (iii) the volume of passengers referred to therein; (iv) cross-references between marketing and passenger transport activities; (v) any other element manifestly connecting the agreements. It may thus follow from this assessment that certain marketing services agreements were not part of a joint transaction with an airport services agreement (and must therefore be assessed individually), whereas other agreements should be assessed jointly as a set.

— *Set of agreements 1-A*

- (465) The Commission notes that CCI-Airport signed an airport services agreement (agreement 1) on 10 December 2003, i.e. a few days after marketing services agreement A was signed on 1 December 2003. Moreover, the duration of marketing services agreement A (from 1 May 2003 to 31 December 2003) is covered entirely by the period of application of agreement 1, i.e. 1 May 2003 to 30 April 2006. Finally, the annual traffic obligations in both agreements and the routes operated are identical. The Commission therefore considers that these two agreements constitute one single transaction and that, accordingly, they should be assessed jointly.

— *Agreement B*

- (466) The Commission notes that CCI-Airport signed marketing services agreement B on 3 June 2004, i.e. nearly 6 months after airport services agreement 1 was signed, even though the agreement states 'this agreement is made the 1st of January 2004' ⁽¹²⁴⁾.
- (467) Even though the two agreements have the same expiry date and include similar traffic obligations and routes, the Commission notes that France has not given reasons for the postponement of the signing of the agreement until 3 June 2004, even though it is presented as having been concluded on 1 January 2004. The Commission therefore concludes that agreement B should be assessed separately.

— *Set of agreements 2-3-C-D*

- (468) The Commission notes that CCI-Airport signed two airport services agreements (agreements 2 and 3) on 1 May 2006, i.e. just one month after marketing services agreements C and D were signed on 1 April 2006. These four agreements also cover the same operating period, i.e. 1 May 2006 to 30 April 2009. In addition, agreements 2 and C on the one hand and agreements 3 and D on the other, signed one month apart, relate to the same airports (London-Stansted for agreements 2 and C and Dublin for agreements 3 and D) and include identical traffic obligations (95 000 passengers for London-Stansted and 45 000 passengers for Dublin). Furthermore, the marketing services agreements relating to these two airports are identical, the only exception being the traffic obligations, the amounts paid for marketing services and the volume of those marketing services. The same applies to the airport services agreements, which are identical except for the traffic obligations. The Commission therefore considers that these four agreements constitute one single transaction and that, accordingly, they should be assessed jointly.

⁽¹²³⁾ Reply from France of 13 April 2012, paragraph 247.

⁽¹²⁴⁾ Original English: 'this agreement is made the 1st of January 2004'.

- (469) The Commission notes that one of the key indicators is the fact that all four agreements were signed around the same time (less than one month apart), while the subsequent agreement (agreement E) was signed more than a year later. In addition, the Commission notes that the two airport services agreements and the two marketing services agreements were signed on the same days (1 April and 1 May 2006 respectively). Finally, the Commission emphasises that a separate assessment of agreements 2 and C on the one hand and 3 and D on the other would not, in any event, affect the conclusion reached on the advantage conferred (see Table 18).

— *Agreement E*

- (470) On 1 June 2007, CCI-Airport signed agreement E, which relates to the marketing services on Ryanair's Irish website. This amendment to agreement D was therefore signed more than a year after agreement D itself, and unlike the other marketing services agreements assessed above, it was not signed alongside an airport services agreement. Moreover, the next agreement signed by CCI-Airport and Ryanair/AMS is agreement F, which was signed almost 4 months after agreement E and does not relate to Ryanair's Irish website. Agreements E and F also relate to two separate routes (Dublin and London-Stansted respectively). The Commission therefore considers that agreement E should be assessed separately.

— *Agreement F*

- (471) On 21 September 2007, CCI-Airport signed agreement F, which relates to the marketing services on Ryanair's UK website. This amendment to agreement C was therefore signed more than a year after agreement C itself and, like agreement E, it was not signed alongside an airport services agreement. Moreover, the next agreement signed by CCI-Airport and Ryanair/AMS is agreement G, which was signed nearly 2 years after agreement F. The Commission therefore considers that agreement F should be assessed separately.

— *Set of agreements G-H-I-J*

- (472) The Commission notes that, on 17 September 2009, CCI-Airport signed four marketing services agreements concerning the routes operated by Ryanair from La Rochelle to London-Stansted (agreement G), Brussels Charleroi (agreements H and J) and Dublin (agreement I). These four agreements cover the same operating period, i.e. 1 January 2009 to 31 December 2011. Furthermore, the contents of marketing services agreements G, H and I is identical, the only exceptions being the traffic obligations and the price and volume of the marketing services. As regards agreement J, this is an amendment to agreement H, the sole purpose of which is to apply an increase — albeit a small one — in the fee for marketing services already laid down in agreement H, which was signed on the same day. The Commission therefore considers that these four agreements constitute one single transaction and that, accordingly, they should be assessed jointly.

- (473) Airport services agreement 5 was signed on 13 January 2010. It covers the period from 1 May 2009 to 30 April 2012. The Commission notes that this agreement concerns the airports of London-Stansted, Brussels Charleroi and Dublin (with the possibility for Ryanair to operate one or more other routes to La Rochelle), like the set of agreements G-H-I-J. However, the Commission observes that the period of application of agreement 5 differs from that of set G-H-I-J and that it was signed almost 5 months later than that set. The Commission notes that agreement 5 does not actually impose any traffic obligations on Ryanair and does not include any marketing services paid to Ryanair/AMS. In reality, it merely retroactively formalises the unit amount of the airport charges which Ryanair had been required to pay from 1 May 2009. The Commission therefore considers that agreement 5 should not be assessed as if it formed part of the set of agreements G-H-I-J.

— *Set of agreements 6-K*

- (474) The Commission notes that CCI-Airport signed an airport services agreement (agreement 6) on 1 February 2010, i.e. less than one month before marketing services agreement K, which was signed on 25 February 2006. Agreement 6 concerns the airport services to be provided to Ryanair for the routes to London-Stansted (UK), Dublin (Ireland), Brussels Charleroi (Belgium) and Oslo Rygge (Norway) for the period 28 March 2010 to 31 March 2013. It also includes traffic obligations for Ryanair. Meanwhile, agreement K governs the marketing services which were to be provided on the Irish, Norwegian, Netherlands and UK versions of Ryanair's homepage during the period 28 March 2010 to 31 March 2013. In light of the above, the Commission considers that agreement 6 and agreement K should be assessed jointly.

- (475) As regards agreement 5, although like agreement K it was signed in early 2010, the Commission notes that it covers a period prior to that of agreement K. Furthermore, agreement 5 does not include any routes to Norway, while agreement K governs the marketing services to be provided on the Norwegian version of Ryanair's homepage. With regard to the next agreement signed by CCI-Airport and Ryanair/AMS (marketing services agreement L), this was signed almost 4 months after agreement K and relates to Cork airport, which is not covered by airport services agreement 6. The Commission therefore considers that agreement 5 and agreement L cannot be attached to the set of agreements 6-K.

— *Agreement L*

- (476) On 23 June 2010, CCI-Airport signed agreement L, which relates to the marketing services on Ryanair's Irish website. This amendment to agreement K was therefore signed almost 4 months after agreement K itself and was not signed alongside an airport services agreement. Moreover, the next agreement signed by CCI-Airport and Ryanair/AMS (agreement 7) was signed almost 7 months after agreement L and does not relate to Ryanair's Irish website. The Commission therefore considers that agreement L should be assessed separately.

— *Set of agreements 7-M and agreement N*

- (477) The Commission notes that CCI-Airport signed an airport services agreement (agreement 7) on 28 January 2011, i.e. just two weeks before marketing services agreements M and N, which were signed on 11 February 2011. These three agreements do not precisely cover the same operating period: agreement 7, which does not specify any expiry date, is an amendment to agreement 5 with an expiry date in principle on 30 April 2012, while agreements M and N would expire on 30 March 2013. Moreover, agreement 7 specifies a traffic commitment of 17 000 annual passengers, while agreements M and N merely specify marketing services without any traffic commitment.
- (478) The Commission notes that the common purpose of agreements 7 and M is the new route which Ryanair intends to open from La Rochelle to Porto (Portugal). Given the coinciding signature dates and route, the Commission considers that the fact that marketing services agreement M is shorter than airport services agreement 7 does not affect the general observation that CCI-Airport and Ryanair manifestly decided to organise the operational, commercial and financial management of the new route to Porto jointly via these two agreements, in the same way as other destinations operated by Ryanair from La Rochelle airport.
- (479) As regards agreement N, the only factor it has in common with agreements 7 and M is the coinciding dates of signature, as agreement N is an amendment to agreement K that covers only the marketing services connected with the route operated to Oslo Rygge (Norway) (but was signed more than a year later). Furthermore, as stated above, agreement N does not include any traffic obligations. Agreement N is therefore unrelated to agreement M and agreement 7, from which it can be separated.
- (480) Finally, the Commission notes that the subsequent marketing services agreement signed between the two parties was concluded on 26 October 2012, long after agreements 7, M and N were signed ⁽¹²⁵⁾. For these various reasons, the Commission therefore considers that agreements 7 and M constitute one single transaction and that they must be assessed jointly, while agreement N should be assessed separately.

— *Conclusion on the method of assessing jointly the agreements concluded by CCI-Airport with Ryanair/AMS*

- (481) It follows from the foregoing that each of the following sets of agreements should be treated as one single measure, in order to assess their profitability. Some marketing services agreements did not form a single transaction with an airport services agreement. These marketing services agreements will be assessed taking into account the revenue generated by the airport services agreement in force.

⁽¹²⁵⁾ In any event, outside the period covered by this decision.

Table 14

List of sets of agreements concluded between the CCI and Ryanair/AMS

N°	Agreements	Date of signature	Period to which the agreement relates
1	CCI-Ryanair airport services agreement	10.12.2003	1.5.2003-30.4.2006
A	CCI-Ryanair marketing services agreement	1.12.2003	1.5.2003-31.12.2003
B	CCI-Ryanair marketing services agreement	1.1.2004	1.1.2004-30.4.2006
C	CCI-AMS marketing services agreement 1 (United Kingdom)	1.4.2006	1.5.2006-30.4.2009
D	CCI-AMS marketing services agreement 2 (Ireland)	1.4.2006	1.5.2006-30.4.2009
2	CCI-Ryanair airport services agreement 1 (United Kingdom)	1.5.2006	1.5.2006-30.4.2009
3	CCI-Ryanair airport services agreement 2 (Ireland)	1.5.2006	1.5.2006-30.4.2009
4	CCI-Ryanair airport services agreement	1.2.2007	1.2.2007-30.4.2009
E	Amendment to the CCI-AMS marketing services agreement	1.6.2007	1.6.2007-30.9.2007
F	Amendment to the CCI-AMS marketing services agreement	21.9.2007	28.10.2007-29.3.2008
G	CCI-AMS marketing services agreement 1 (United Kingdom)	17.9.2009	1.1.2009-31.12.2011
H	CCI-AMS marketing services agreement 2 (Belgium)	17.9.2009	1.1.2009-31.12.2011
I	CCI-AMS marketing services agreement 3 (Ireland)	17.9.2009	1.1.2009-31.12.2011
J	Amendment to the CCI-AMS marketing services agreement (Belgium)	17.9.2009	1.1.2009-31.12.2011
5	CCI-Ryanair airport services agreement	13.1.2010	1.5.2009-30.4.2012
6	Amendment 1 to CCI-Ryanair airport services agreement	1.2.2010	1.2.2010-31.3.2013
K	CCI-AMS marketing services agreement	25.2.2010	31.3.2010-30.3.2013
L	Amendment 1 to CCI-AMS marketing services agreement	23.6.2010	1.6.2010-1.9.2010
7	Amendment 2 to CCI-Ryanair airport services agreement (Portugal)	28.1.2011	28.1.2011-30.4.2012
M	Amendment 2 to CCI-AMS marketing services agreement (Portugal)	11.2.2011	28.3.2011-30.3.2013
N	Amendment 3 to CCI-AMS marketing services agreement (Norway)	11.2.2011	31.3.2011-30.3.2013

— Agreement concluded with Jet2

(482) As already mentioned in recitals 117 to 120, the CCI signed an agreement with Jet2 on 4 July 2008. First and foremost, this agreement includes provisions relating to airport services and provides for the granting of significant discounts on airport charges. The agreement also provides for the payment of a marketing contribution linked to the operation of the La Rochelle-Leeds route. This agreement must therefore be regarded as a single measure whose profitability, like the agreements concluded by the CCI with Ryanair/AMS, will be examined by the Commission in Section 7.1.1.3.

(2) Choice of analysis method between comparative analysis and incremental profitability analysis

(483) According to the 2014 Guidelines, by application of the MEO principle, the existence of aid to an airline using a particular airport can, in principle, be excluded if the price charged for the airport services corresponds to the market price (comparative analysis), 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 ⁽¹²⁶⁾ (incremental profitability analysis).

(484) It should be noted first of all that, according to the case-law, the Commission may, without committing an error, analyse in detail the most appropriate assessment method to choose for the purpose of applying the MEO test. The case-law has recognised that the Commission may favour one method over the other if it considers that method to be more suitable ⁽¹²⁷⁾. In particular, the case-law has recognised the absence of a hierarchy between the two methods ⁽¹²⁸⁾.

(485) As regards the first approach (comparative analysis), the Commission has serious doubts as to whether it is currently possible to define an appropriate benchmark to establish a true market price for services provided by airports. It therefore considers an incremental profitability analysis to be the most appropriate approach for the assessment of arrangements concluded by airports with individual airlines ⁽¹²⁹⁾.

(486) The Commission considers it appropriate to reiterate in the context of this analysis that, following the adoption of the 2014 Guidelines, both France and the interested parties were invited to submit comments on the application of those Guidelines to the present case.

(487) It should be noted in this regard that, in general, the application of the MEO test based on an average price observed in other similar markets (comparative analysis) may prove helpful where a market price can be reasonably identified or deduced from other market indicators. However, this method cannot be as relevant in the case of airport services. The costs and revenues structure tends to differ significantly from one airport to another. These costs and revenues depend on the airport's state of development, the attractiveness of its catchment area, the number of airlines operating from/to the airport, available capacity in terms of passenger traffic, the state of the infrastructure and the regulatory framework, which may vary from one Member State to another, as well as the historical debts and obligations of the airport ⁽¹³⁰⁾.

(488) Moreover, the liberalisation of the air transport market complicates any purely comparative analysis. As the present case amply demonstrates, commercial arrangements between airports and airlines are not necessarily based on a list of public prices for individual services. These commercial relationships vary widely. They include the sharing of risks in terms of traffic and any related commercial and financial liability, the generalised use of incentive mechanisms (for example, in the form of discounts connected with the number of routes or passengers carried), and variations in the spread of risk over the term of the agreements. As a result, it is difficult to compare transactions based on a price per rotation or per passenger.

⁽¹²⁶⁾ Paragraph 53 of the 2014 Guidelines.

⁽¹²⁷⁾ See judgment in *Ryanair DAC v Commission*, T-165/15, cited above in footnote 53, paragraph 143.

⁽¹²⁸⁾ See judgment in *Ryanair DAC v Commission*, T-165/15, cited above in footnote 53, paragraph 145.

⁽¹²⁹⁾ 2014 Guidelines, points 59 and 61.

⁽¹³⁰⁾ See Commission Decision 2011/60/EU of 27 January 2010 on State aid C 12/08 — Slovakia — Agreement between Bratislava Airport and Ryanair, recitals 88 and 89 (OJ L 27, 1.2.2011, p. 24).

- (489) Ryanair considers that the MEO test can be applied by carrying out a comparative analysis using certain European airports as a benchmark. In this respect, it believes that certain European airports are substitutable for La Rochelle airport due to their similarities and has provided the study of 1 June 2012 compiled by Oxera ⁽¹³¹⁾ comparing the airport charges paid by Ryanair at La Rochelle airport with the airport charges paid at those airports regarded as comparable. It concludes that the charges paid at La Rochelle are not significantly lower. Ryanair has also provided an addendum to the study of 1 June 2012 ⁽¹³²⁾ in order to take into account the payments received by Ryanair/AMS under the marketing services agreements.
- (490) However, a comparative method is impractical in this case, in any event. As proven above, the transactions to be analysed are complex packages consisting 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 groundhandling 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 groundhandling services and revenue linked to the marketing services.
- (491) The analysis prepared by Oxera and submitted by Ryanair on 10 April 2015 (amendment to the study of 1 June 2012) illustrates the major difficulties in establishing an appropriate comparison of airport charges and marketing support to Ryanair in the different airports.
- (492) First, Oxera's study itself specifies that 'it is not possible to identify comparator airports that are used by Ryanair that are similar on all possible characteristics, and that are also likely to behave in the manner of market economy operator airports. The adopted approach has therefore been to identify a range of comparator airports that are similar to La Rochelle airport on the basis of a variety of characteristics' ⁽¹³³⁾. In the present case, the Commission notes that, while the selection criteria for the five airports considered ⁽¹³⁴⁾ each include one of the seven criteria listed in point 60 of the 2014 Guidelines, it nonetheless observes that the comparators are similar to La Rochelle airport only in relation to one or two of the seven criteria. Moreover, only Grenoble (GNB) and Maastricht (MST) airports offer a benchmark specific to the operation of La Rochelle airport, namely the number of passengers and the volume of Ryanair's operations at those airports. The other airports examined were selected on the basis of criteria (such as the system of ownership, the existence of public funding or the GDP of the region, or the share of low-cost carriers) which, given that their link to the measurement of the costs and revenues of each airport is too remote, are insufficient on their own to serve as a basis for the level of airport charges and of marketing services used in the benchmarking exercise. Therefore, the Commission questions the representative nature of the selected sample of comparator airports.
- Secondly, the figures produced by Oxera show that the net charges paid by Ryanair in the various airports selected for the comparison differ significantly. In its study, Oxera calculated the level of airport charges paid by Ryanair to these five airports net of all marketing contributions paid to AMS and Ryanair (which means that the study compares the airport charges paid by Ryanair after deducting its marketing revenues). However, these figures show substantial variations between comparators.
- Average net charges per rotation. The average net charges per rotation paid by Ryanair to La Rochelle amount to [100; 150] % of the net charges paid by Ryanair in the five comparators. However, the spread of values shows that there is no homogeneous group of comparable airports. Thus, depending on the year, the average net charges paid by Ryanair to La Rochelle vary between [-50; 0] % and [150; 200] % of the average net charges paid by Ryanair in the airports examined by Oxera. This spread clearly shows that the sample used is not

⁽¹³¹⁾ Study of 8.10.2012 carried out by Oxera, 'Economic MEIP Assessment, La Rochelle Airport'.

⁽¹³²⁾ Amendment of 10.4.2015 to the study of 1.6.2012 carried out by Oxera, 'Economic MEOP assessment: comparator analysis including AMS, La Rochelle Airport'.

⁽¹³³⁾ Original English: 'it is not possible to identify comparator airports that are used by Ryanair and that are similar to LRH [La Rochelle airport] on all possible characteristics, and that are also likely to behave in the manner of market economy operator airports. The adopted approach has therefore been to identify a range of comparator airports that are similar to LRH [La Rochelle airport] on the basis of a variety of characteristics'. Oxera analysis of 10.4.2015, p. 3.

⁽¹³⁴⁾ Knock (NOC), Prestwick (PIK), Grenoble (GNB), Bournemouth (BOH) and Maastricht (MST).

homogeneous and representative. Similarly, for a given airport, the amount of net charges paid by Ryanair is highly variable and can triple in the space of a year, which is further proof that it is neither possible nor appropriate to establish a comparison of net airport charges.

- Average net charges per passenger. As with net charges per rotation, the spread of values shows that Oxera's sample of airports does not allow a stable or reasonable comparison to be made. Depending on the year, the average net charge paid by Ryanair to La Rochelle varies between [-50; 0] % and [150; 200] % of the average net charge paid by Ryanair at the airports selected by Oxera, and the net charges per passenger paid by Ryanair at any given airport can vary up to threefold depending on the year.

(493) It is revealing that neither Ryanair nor Oxera attempted to determine a market price corresponding, for a sample of airports comparable to La Rochelle, to the net price of airport charges (airport charges less marketing support). If such a comparison made it possible to determine a market price, Ryanair's experience with numerous European airports would certainly have allowed it to be established.

(494) 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 ⁽¹³⁵⁾.

(495) 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 incremental profitability analysis, must be applied to the present case. 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 with a counterfactual situation in which this transaction is not concluded ⁽¹³⁶⁾, regardless of any comparison with the conditions offered to other airlines or with the conditions offered by other airport operators.

(3) The potential benefits an MEO might have taken into account when signing the marketing services agreements with airlines

(496) It is clear from all the above that, in order to apply the MEO test, the conduct of the CCI must be assessed in relation to the conduct of a hypothetical MEO operating La Rochelle airport in its place. The marketing services agreements in question must be assessed jointly with the corresponding airport services agreements, where they form a single transaction (see recital 464 for the assessment criteria) ⁽¹³⁷⁾. Moreover, as indicated in recital 481, although some marketing services agreements were not part of a single transaction with an airport services agreement, they will nonetheless be assessed taking into account the revenues generated by the airport services agreement in force, for the purpose of measuring the profitability of the marketing services agreement in question.

(497) In analysing each of the transactions listed in Table 14, the benefits that this hypothetical MEO, motivated by the prospect of profits, could expect from the marketing services should be determined. This analysis should not take into account the general impact of such services on the region's tourism and economic activity. Only the effects of these services on the airport's profitability may be considered, as it is these alone that would be taken into account by the hypothetical MEO used in this analysis ⁽¹³⁸⁾.

⁽¹³⁵⁾ Judgment in *Ryanair DAC v Commission*, T-165/15, cited above in footnote 53, paragraphs 176 to 178.

⁽¹³⁶⁾ In other words, if the incremental profitability expected from this transaction is positive.

⁽¹³⁷⁾ A given marketing services agreement must be analysed together with the corresponding airport services agreement as if they form a single transaction. Thus, there are as many separate transactions as there are 'pairs' of marketing services agreements and airport services agreements.

⁽¹³⁸⁾ Commission Notice on the notion of State aid, referred to in footnote 71, paragraph 77.

- (498) Although the impact of the marketing services has not been proven, it is not inconceivable that they may slightly boost passenger traffic on the air routes covered by the marketing services agreements and corresponding airport services agreements, given that they are designed to promote those routes. However, Ryanair has indicated that the presence of a marketing services agreement had only a very slight impact on the load factor of its aircraft, as the yield management actions (adjusting prices to demand) were adjusted to achieve the load factor targets⁽¹³⁹⁾. The impact of the marketing services agreements on the increase in passenger numbers has thus not been confirmed by Ryanair. It therefore appears that the main impact of the marketing services agreements is to encourage Ryanair to operate flights to La Rochelle airport.
- (499) It should be determined whether a hypothetical MEO operating La Rochelle airport in place of the CCI could reasonably expect and quantify benefits other than those resulting from the positive effect on the opening, maintaining and passenger traffic of the routes covered by the marketing services agreement for the operating period of those routes, as set out in the marketing services agreement or airport services agreement.
- (500) Ryanair supported this hypothesis in its study of 17 January 2014. This study is based on the theory that marketing services purchased by an airport operator, such as the CCI, may help to improve the airport's brand and, as a result, permanently increase the number of passengers using this airport, and not just the numbers on the routes covered by the marketing services agreement and airport services agreement over the operating period of these routes, as set out in these agreements. In particular, Ryanair found in its study that these marketing services may have a lasting positive impact on passenger traffic at the airport, even after the marketing services agreement has expired.
- (501) It should first be noted that there is nothing in this case to suggest that, when the marketing services agreements covered by the formal investigation procedure were signed, the CCI ever considered, and still less quantified, any positive effects of the marketing services agreements going beyond the routes covered by these agreements or, in terms of time, going beyond the expected operating period of the routes in question. Moreover, neither France nor the CCI has proposed any method for estimating the possible value that a hypothetical MEO operating La Rochelle airport in place of the CCI would have given to these effects when assessing whether to enter into the marketing services agreements and airport services agreements. Finally, the marketing services purchased from Ryanair/AMS were primarily aimed at people likely to use the air routes referred to in the marketing services agreements.
- (502) This conclusion, established for the agreements concluded with Ryanair and AMS, also applies to the airport services and marketing services agreement with Jet2, for the same reasons.
- (503) Furthermore, the lasting nature of these effects also seems very doubtful. It is possible that advertising La Rochelle and its region on the Ryanair website may have encouraged people visiting this website to buy Ryanair tickets to La Rochelle when this advertising was first posted or just after. However, it is unlikely that the effect of this advertising on visitors lasted or had an influence on their ticket purchases for more than a few weeks after it was posted on the Ryanair website. An advertising campaign is likely to have a lasting 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 on mainstream television and radio stations, a series of websites and/or various billboards displayed outdoors or in public places may have a lasting effect if consumers are regularly exposed to these media. However, promotional activities limited to certain pages of Ryanair's website alone are unlikely to have an effect that lasts much beyond the end of the promotional campaign. It is very likely that most people will not visit Ryanair's website often enough to leave them with a lasting impression of the advertising for this region.
- (504) France and the CCI have not provided any information in the course of the formal investigation procedure that would counter this observation. This observation is also well supported by two factors.

⁽¹³⁹⁾ Submissions of 15.12.2009, 13.6.2014 and 29.3.2019 in particular.

- (505) Firstly, some of the marketing operations referred to in the agreements concluded with Ryanair/AMS related in the first instance to the homepage of Ryanair's website. These services consisted simply of a link to a website designated by the CCI for often limited or very short periods of time:
- No display period for the links referred to in agreements A and B;
 - Display of the sponsored link for 56 days annually for 3 years according to agreement C;
 - Display of the sponsored link for 212 days annually for 3 years according to agreement D, but for 2007 the display period is reduced to 45 days according to agreement E amending agreement D;
 - Display of the sponsored link on Ryanair's UK website for 22 days annually for 3 years under agreement G;
 - Display of the sponsored link on Ryanair's Netherlands/Belgian website for 95 days for the first year and 160 days for the second and third year under agreement H;
 - Display of the sponsored link on Ryanair's Irish website for 200 days annually for 3 years under agreement I;
 - Display of the sponsored link on Ryanair's Belgian website for 10 days annually for 3 years under agreement J;
 - Display of the sponsored link for 90 days on Ryanair's Irish, Norwegian and Netherlands website and 50 days on its UK website annually for 3 years under agreement K;
 - Display of the sponsored link on Ryanair's Irish website for 70 days under agreement L;
 - Display of the sponsored link on Ryanair's Portuguese website for 365 days under agreement M for a period of 2 years;
 - Display of the sponsored link on Ryanair's Norwegian website for 6 weeks (approximately 42 days) for the first year and 4 weeks (i.e. 24 days) for the second and third years according to agreement N.
- (506) Both the nature of these promotional activities (presence of a single link with limited promotional value), their short lifespan and the erratic frequency with which they were displayed during the period in question (since only the Porto route was continuously promoted for two years) would have significantly limited the effect of these activities once they were over, particularly as they were limited to Ryanair's website alone and were not displayed on any other media. In other words, these promotional activities were unlikely to leave the people exposed to these activities with a lasting impression of the advertising in question and a lasting interest in La Rochelle and its region.
- (507) Secondly, the other marketing activities provided for in the agreements concluded with Ryanair/AMS related only to the pages of Ryanair's website covering the destination of La Rochelle. As a general rule, this last type of promotional activity is targeted only at an audience that is by definition limited, without frequent exposure to the advertising. Furthermore, with regard to the La Rochelle destination page of the Ryanair website, this is less likely to be frequently visited than the website's homepage, since it is devoted to a specific Ryanair destination and not to all its activities. Thus, given the low probability of frequent visits to the La Rochelle destination page of Ryanair's website, the promotional activities displayed on that page are unlikely to create a lasting memory of the attractions of La Rochelle and its region in people with access to it. Moreover, the La Rochelle page of the Ryanair website is very likely to be accessed, most of the time, as a result of a potential interest in this destination or in Ryanair's services to it. The advertising on this page is therefore unlikely to generate new interest in this destination among people unaware of or not having any interest in this destination.
- (508) In this respect, it is revealing that the marketing services agreements submitted by Ryanair that were concluded between private non-airport enterprises (car hire, local tourist activities) and AMS draw their marketing value from the possibility of selling tourist goods or services to passengers travelling with Ryanair. Potential travellers are identified as likely to travel to a clearly defined destination airport following their visit to Ryanair's website (purchase of ticket, search of available flights, etc.) and are therefore the target of marketing messages encouraging them to purchase goods or services at their destination airport. The value of Ryanair's marketing services is therefore based on the ability to target Ryanair customers who have already chosen their destination airport or whose visit to Ryanair's website indicates that they are likely to choose a specific destination airport, in order to encourage them to purchase a tourist service at their final destination. The Commission does not rule out the

possibility that the marketing offered by AMS on Ryanair's website may have value for certain third-party enterprises interested in selling goods or services to Ryanair customers, such as a car rental company or a regional walking tour provider. However, this is not the case for the operator of an airport wishing to bring about a lasting increase in the number of passengers using the airport. As explained in recital 501, people consulting the La Rochelle page of Ryanair's website are highly likely already to have a potential interest in that destination or Ryanair's services to it. Thus, for the CCI, the effect of the marketing activities carried out on the pages of Ryanair's website covering the destination of La Rochelle, in terms of attracting passengers, is very low or even non-existent.

- (509) As a result, although the marketing services may have increased passenger traffic on the routes covered by the marketing services agreements for the period of those services, it is very likely that this effect after this period or on other routes was zero or negligible.
- (510) The Ryanair studies of 17 and 31 January 2014 also indicate that the likelihood of the benefits of the marketing services agreements going beyond the routes covered by these agreements or lasting beyond the operating period of these routes, as set out in the marketing services agreements and airport services agreements, was very small and could not be quantified with a degree of reliability that would be considered sufficient by a prudent MEO.
- (511) Accordingly, for example, the Ryanair study of 17 January 2014 indicates that 'future incremental profits beyond the scheduled expiry of the Airport Service Agreement are inherently uncertain' ⁽¹⁴⁰⁾. Furthermore, this study proposes two methods for the *ex ante* assessment of the positive effects of marketing services agreements: a 'cash flow' approach and a 'capitalisation' approach.
- (512) The 'cash flow' approach involves assessing the benefits of the marketing services agreements and airport services agreements in the form of future revenues generated for the airport operator by the marketing services and by the airport services agreement, minus corresponding costs. The capitalisation approach consists in treating the improvement in the brand of the airport through the marketing services as an intangible asset, acquired for the price laid down in the marketing services agreement.
- (513) However, the study reveals the extent of the difficulties raised by the capitalisation approach, thereby demonstrating the lack of reliability of the results that such a method can produce, and the study itself prefers the cash-flow approach. In particular, the study states: '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' ⁽¹⁴¹⁾. 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' ⁽¹⁴²⁾.
- (514) Ryanair's study of 31 January 2014 proposed a practical application of the cash-flow approach. Under this approach, the benefits of the marketing services and airport services agreements that last even after the marketing services agreement has expired are expressed as a 'terminal value', calculated on the expiry date of the agreement. This terminal value is based on the incremental profits expected from the airport services and marketing services agreements in the final year of application of the airport services agreement. This method involves taking the

⁽¹⁴⁰⁾ Original English: '... future incremental profits beyond the scheduled expiry of the Airport Service Agreement are inherently uncertain'.

⁽¹⁴¹⁾ Original English: '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'.

⁽¹⁴²⁾ Original English: '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'.

incremental profit expected in the final year of application of the airport services agreement and projecting it into the future for the same period as the term of the airport services agreement, but adjusted by the growth rate of the air transport market in Europe and a probability factor deemed to reflect the capacity of the airport services agreement and marketing services agreement to contribute to the airport's profits beyond their expiry. According to the study of 31 January 2014, this capacity to produce lasting benefits depends on various factors '... including greater prominence and a stronger brand, alongside network externalities and repeat passengers' ⁽¹⁴³⁾, although no details are given about these factors. Moreover, this method takes into account a discount rate that reflects capital costs.

- (515) The study suggests a probability factor of 30 %, which it considers prudent. However, this highly theoretical study does not provide any serious quantitative or qualitative evidence for this factor. It is not based 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 deemed to extend the benefits of the airport services and marketing services agreements after their expiry dates. Finally, it does not refer in any way to the specific content of the marketing services provided for in the various agreements with AMS when analysing to what extent these services could influence the factors mentioned above.
- (516) Moreover, the study does not prove that there is any likelihood that, on the expiry of an airport services agreement and marketing services agreement, 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 a marketing services agreement for a given airport.
- (517) 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 or not to enter into an agreement.
- (518) 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.
- (519) Moreover, neither France nor any interested third party has provided any evidence that the method put forward by Ryanair in this study, or any other method aiming to take into account and quantify the benefits extending beyond the expiry of the airport services agreements and marketing services agreements, is actually used by regional airport operators comparable to La Rochelle's operator. France has not for that matter commented on the studies of 17 and 31 January 2014 and thus has not approved their conclusions.
- (520) Moreover, as stated above, the marketing services clearly target people likely to use the routes covered by the marketing services agreements. If these routes are not renewed on the expiry of the airport services agreement, it is unlikely that the 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 operate a route on the expiry of the term to which it has committed itself in the airport services agreement. Low-cost airlines in particular have proven to be very dynamic in terms of launching and withdrawing routes. According to a report by Oxera drafted for ACI Europe, in 2011, between 15 % and 20 % of the routes operated by European airports with fewer than 5 million passengers closed ⁽¹⁴⁴⁾. Therefore, when entering into a transaction such as those being examined in this formal investigation procedure, a prudent MEO could not rely on an airline being willing to extend the operation of the route in question on the expiry of the agreement.

⁽¹⁴³⁾ Original English: '... including greater prominence and a stronger brand, alongside network externalities and repeat passenger'.

⁽¹⁴⁴⁾ Study of 15.9.2017 carried out by Oxera, 'The continuing development of airport competition in Europe', figure 4.8, p. 41. <https://www.oxera.com/wp-content/uploads/2018/07/The-continuing-development-of-airport-competition-in-Europe-report-for-ACI-Europe.pdf>

- (521) Furthermore, it should be noted that a terminal value calculated using the method proposed by Ryanair in the study of 31 January 2014 will be positive (and therefore will have a positive effect on the projected return on the airport services agreement and marketing services agreement) only where the incremental profit expected from these agreements in the final year of application of the airport services agreement is positive. This method involves taking the incremental profit expected in the final year of application of the airport services agreement and projecting it into the future by applying two factors. The first factor is the overall growth of the European air transport market and reflects the expected traffic growth. The second is a factor of 30 % that approximately represents the probability of the agreements that are due to expire encouraging the future signature of similar agreements likely to generate similar financial flows. Thus, if the expected future incremental profit for the last year of application of the airport services agreement is negative, the terminal value will also be negative (or at most will be zero), reflecting the fact that agreements similar to those which have recently expired would, like them, reduce the profitability of the airport each year.
- (522) Ryanair's study of 31 January 2014 envisages this scenario very briefly, confining itself to indicating in a footnote, without comments or explanations: '... no terminal value can be calculated if the incremental profits net of AMS payments are negative in the final year of the period in question' ⁽¹⁴⁵⁾. However, as will be shown further on in recitals 580 to 642, all the agreements in this case involve projected incremental flows that have a negative net present value each year, and not just overall. As a result, for these agreements, a 'terminal value' calculated using the method proposed by Ryanair would be zero or even negative. Taking account of such a terminal value would not therefore call into question the finding that the various agreements involve an economic advantage.
- (523) Finally, in a third study dated 26 September 2014, Ryanair reiterated that the airport services agreements and marketing services agreements generate incremental profits while in force and a terminal value after their expiry. Therefore, according to Ryanair, the signing of an initial agreement with Ryanair increases the possibility that a new agreement will be concluded on its expiry, with Ryanair or other airlines. Moreover, the terminal value of the marketing services agreements lies in an increase in traffic to the airport after expiry, as a result of its enhanced reputation. While Ryanair proposes a method for empirically testing its hypotheses, it cannot implement it as it does not have the necessary data. Lastly, the report does not take into account the possible network externalities in its analysis.
- (524) To conclude, it is clear from the above that the only benefit that a prudent MEO would expect from a marketing services agreement and would quantify when deciding on whether or not to enter into such an agreement, together with an airport services agreement, would be of two kinds: (i) on the one hand, the prospect of airlines operating flights at La Rochelle airport in accordance with the airport services agreements which the airlines were motivated to conclude as a result of the marketing services agreements, and (ii) on the other, a potential marginal positive effect of the marketing services on the number of passengers using the routes covered by the agreements in question (slight stimulation of traffic on the routes covered by the marketing services agreements and the corresponding airport services agreements). Any other benefits would be deemed too uncertain to be regarded as quantified, and there is nothing to suggest that they were taken into account by the CCI.
- (4) What time frame would an MEO have chosen to assess the merits of signing an airport services agreement and/or a marketing services agreement?
- (525) When assessing the merits of entering into an airport services agreement and/or a marketing services agreement, an MEO would have chosen the term of the agreements in question as the time frame of its assessment. In other words, it would have assessed the incremental costs and revenues for the period of application of the agreements.

⁽¹⁴⁵⁾ Study of 31 January 2014, footnote 17. Original English: '... no terminal value can be calculated if incremental profits net of AMS payments are negative in the last year of the period under consideration'.

- (526) There does not seem to be any justification for choosing a longer period. On the dates when the agreements were signed, a prudent MEO would not have relied on these agreements being renewed on their expiry since, as explained in recital 520, low-cost airlines such as Ryanair and Jet2 are very dynamic in terms of launching and withdrawing routes, or increasing and reducing frequencies.
- (527) Moreover, for certain agreements, the effective start date of the activities covered by the agreement was not the date of signature of the agreement. In this case, the actual start date and not the date of signature was taken as the starting point, for situations where the date of signature precedes the actual start date ⁽¹⁴⁶⁾.
- (528) In situations where Ryanair did not operate certain routes throughout the period covered by the agreement, the MEO assessment is based on the scheduled duration of the agreement since the early termination of the agreements was neither known nor foreseeable at the time that they were concluded. An airport operator would have based its traffic forecasts on the commitments undertaken by Ryanair when the contract was signed and which bound the company.
- (529) In what follows, the Commission will examine the agreements concluded with each of the airlines with regard to traffic, revenues and incremental costs in the light of the assumptions made, before presenting in turn the outcome of the analysis of those agreements.
- (5) Conclusions on the method by which the market economy operator test will be applied
- (530) It is clear from all the above that, in order to apply the MEO test to the measures in question, the Commission must analyse each marketing services agreement together with the corresponding airport services agreement (whether the latter forms part of the set of agreements listed in Table 14 or whether it was merely in force when the marketing agreement was concluded ⁽¹⁴⁷⁾) and must assess whether a hypothetical MEO, motivated by the prospect of profits and operating La Rochelle airport in place of the CCI, would have signed these agreements. To this end, it is necessary to determine the incremental profitability of the agreements as it would have been assessed by the MEO at the time they were signed, 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 groundhandling 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 the costs of the marketing services.
- (531) These calculations should provide the future annual flows corresponding to the difference between incremental revenues and costs, to be discounted, if necessary, by a rate reflecting the cost of capital for the airport operator. A positive net present value (NPV) 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.
- (532) It should be noted that, in this assessment, the arguments of the CCI and Ryanair that the price of the marketing services purchased by the CCI is equivalent to or less than what may be regarded as a 'market price' for such services are irrelevant. Indeed, a hypothetical MEO motivated by the prospect of profits would not be prepared to purchase such services, even at a price lower than or equal to the 'market price', if it foresaw that, despite the positive impact of those services on the routes concerned, the incremental costs incurred by the agreements exceeded the incremental revenues in discounted value terms. In such a case, it would not be willing to pay the 'market price' and it would therefore logically decide to do without the services in question.

⁽¹⁴⁶⁾ See Table 9.

⁽¹⁴⁷⁾ See recital 496.

(b) Methodological considerations concerning the reconstruction of business plans

- (533) During the procedure, the Commission invited France to submit incremental cost, revenue and profitability estimates for the various agreements concluded between the CCI and Ryanair/AMS, which may have been produced prior to the signature of these agreements. In response to that invitation, France stated that no analysis had been carried out by La Rochelle airport before signing the marketing agreements and therefore provided a retrospective reconstruction of the business plans corresponding to each of the marketing services agreements referred to in Table 9, as well as a reconstruction of the business plan of the agreement concluded with Jet2 (taking into account the relevant parameters of the corresponding airport services agreements for the analysis of the agreements signed with those two airlines). The purpose of this retrospective analysis, however, is to replicate the financial analysis that should have been carried out before signing the marketing services agreements, taking into account the data available to the airport at the time.

(1) Model used for the reconstruction of business plans

- (534) France retrospectively reconstructed the business plans using a 'base scenario' setting out the assumptions that would have reasonably been made by a market economy operator. This analysis is based on assumptions of traffic, aircraft load factors, aeronautical and non-aeronautical revenues per passenger, operating costs per passenger, marketing expenses, and the duration of the agreements. In order to calculate the net present value of each agreement, France reconstructed a business plan showing the following revenue and cost items:

Table 15

Model used for the reconstruction of the business plans

Agreement [x]			
	Year N	Year N+1	Etc....
Number of rotations per year (a)	See agreement		
Number of aircraft seats (b)	See section 7.2.1.5(b)(2) below		
Number of seats offered (c)	$c=a*b*2$		
Average load factor (d)	See section 7.2.1.5(b)(2) below		
Total number of passengers (inbound and outbound) (e)	$e=c*d$		
Landing charge (f)	$f=a*\text{unit charge as adopted by the CCI or included in the airport services agreement}$		
Aircraft parking charge (g)	0 (see section 7.2.1.5(b)(3) below)		
Lighting charge (h)	0 (see section 7.2.1.5(b)(3) below)		
Charge for persons with disabilities and reduced mobility (i)	$i=e*\text{unit charge as adopted by the CCI or included in the airport services agreement}/2$		
Passenger charge (j)	$j=e*\text{unit charge as adopted by the CCI or included in the airport services agreement}/2$		
Groundhandling services (k)	0		
Total aeronautical revenue (l)	$l=f+g+h+i+j+k$		
Non-aeronautical revenues (m)	$m=e*\text{unit incremental margin (see section 7.2.1.5(b)(3) below)}$		

Agreement [x]			
	Year N	Year N+1	Etc....
Total revenues (n)	$n=l+m$		
<i>Incremental costs (o)</i>	$o=e*\text{unit incremental cost}$ (see section 7.2.1.5(b)(4) below)		
<i>Marketing costs (p)</i>	See marketing agreement		
Total costs (q)	$q=o+p$		
Incremental cash flow (r)	$r=n-q$		
NPV	$\sum_{v=0}^u \frac{r_v}{(1+t)^v}$ Where: — v refers to the year of the agreement in question, $v=0$ corresponds to the start of the agreement, — u refers to the total duration of the agreement (in years) — r_v is the incremental cash flow (r) for year (v) of the agreement — t is the selected discount rate ⁽¹⁾		

⁽¹⁾ For all agreements, France has applied a discount rate of 6 %. This rate corresponds to that proposed by France in similar cases on which the Commission has already been called upon to rule (see, for example, the Commission's decision on Pau airport, cited above in footnote 12). On the other hand, as the Commission's reconstruction of business plans (in the base scenario) leads to yearly incremental flows that are all negative over the period covered, the net present value of the agreements is necessarily negative regardless of the discount rate used.

- (535) While the Commission generally considers the assumptions made by France concerning revenue per passenger and the duration of the agreements to be reasonable, other assumptions made by France are not always reasonable or realistic. First, France has made methodological errors common to all the reconstructions (such as underestimating the incremental aeronautical operating costs and including contributions granted by local authorities to cover general marketing expenditure as incremental revenue). Second, as will be established in the section on the individual assessment of the agreements, as well as the methodological errors common to all the reconstructions carried out by France, the reconstructions of certain business plans suffer from other specific methodological problems.
- (536) Consequently, the Commission has carried out its own analysis by reconstructing, in a base scenario, the incremental costs and revenues of the various sets of agreements, as an MEO would have calculated them *ex ante*, in order to apply the MEO test.
- (537) The Commission also carried out a sensitivity analysis of the way in which the net present value of these agreements was calculated, by varying some of the assumptions. To do so, the Commission deliberately used assumptions which are by definition unrealistic as they were not used in its base scenario (a scenario which already takes a favourable approach to the airline). The likelihood of these assumptions occurring, or the major and immediate changes in the management of the airport that they would require, is very low (see recitals 575 to 578). The net present value calculation resulting from the change in these parameters (the simultaneous occurrence of which is also statistically more than unlikely) is the 'imprudent scenario' (see recitals 574 to 578). In any event, this scenario would be manifestly unrealistic to a reasonable and prudent investor, who would have no option but to rule it out.
- (538) The differences in assessment between France and the Commission (in particular the assumptions for operating costs and marketing expenditure) give rise to major differences in the result obtained when calculating the net present value of the sets of agreements. The different traffic assumptions have a significant impact on certain agreements, while the load factor assumptions have a limited impact on the result obtained when calculating the net present value of the agreements, without altering the Commission's conclusion as to whether the net present value is negative or positive.

(1) Incremental traffic and number of projected rotations (agreements with Ryanair and AMS)

- (539) The analysis conducted by the Commission is based on the incremental traffic (in other words, the number of additional passengers) that an MEO operating La Rochelle airport in place of the CCI could have predicted when the agreements were signed. For the 2006 set of agreements (marketing agreements C and D and airport services agreements 2 and 3) for example, this involves determining the number of passengers that the La Rochelle airport operator could have expected, in 2006, to use the La Rochelle-London Stansted route operated by Ryanair, over the term of the agreement.
- (540) The incremental traffic forecast was calculated on the basis of the number of routes and frequencies stipulated in the various airport services agreements and marketing services agreements, and on the resulting number of annual rotations. Some agreements include targets in terms of number of rotations, other agreements include targets in terms of passenger numbers, while others do not mention any targets.
- (541) For retroactive agreements, signed after their implementation date (such as agreement A), only traffic generated after signature has been taken into account, since an agreement cannot generate traffic before it is signed.
- (542) The Commission's traffic forecasts are for the most part lower than those used by the CCI to reconstruct its *ex post* business plans, in particular for certain marketing agreements signed without traffic targets. In one case, the projections adopted by the Commission are higher than those adopted by the airport. These corrections will be detailed for each measure (agreement or set of agreements presented in Table 14).
- (543) The Commission notes in general that overestimates of traffic are linked to the following analytical problems. First of all, the reconstruction carried out by France exceeds the volume of traffic included in the agreements. A prudent operator would not make such an overestimation, without further explanation (not provided by France for any of the agreements).
- (544) Secondly, for certain retroactive agreements (the start date of the agreement precedes the date on which it was signed), France based its reconstruction on the traffic already achieved before the agreement was signed. It is doubtful that a prudent operator would incur marketing services expenses in connection with flights already operated. Instead, a prudent operator would rely on the future traffic generated by the marketing services agreement. Finally, the argument that a prudent investor could have considered the business relationship over a longer time frame than the strict duration of the agreement is not based on any economic study or evidence as demonstrated in recitals 525 to 529.
- (545) Furthermore, the Commission took into account the capacity of the aircraft used by Ryanair, mainly Boeing 737-800s (189 seats), and to a lesser extent Boeing 737-300s (148 seats) or BAe 146-300s (110 seats).
- (546) The Commission applied a load factor varying year-to-year and corresponding to the average observed over the two preceding years (with an average rate of 80 % for 2003 and 2004, as applied by the CCI). This assumption is the most credible, adopting as it does the approach of an airport operator who uses the most directly relevant information at its disposal when drawing up the business plan. This method also makes it possible, from 2005 onwards, to use as a basis the load factors observed during periods when the marketing agreements were in force and thus to reflect any beneficial effect of the marketing services on the number of passengers using the routes. On this point, the Commission notes that between 2003 and 2013, the load factor of Ryanair's aircraft serving La Rochelle airport fell from 81 % to 70 %, while La Rochelle airport used much more optimistic assumptions (between 75 % and 85 %) to prepare its business plans.

Table 16

Aircraft load factor

Year	Aircraft load factor	Average rate known for the two years preceding date T ⁽¹⁾
2003	0,81	0,8
2004	0,78	0,8
2005	0,78	0,80
2006	0,74	0,78
2007	0,72	0,76
2008	0,72	0,73
2009	0,78	0,72
2010	0,74	0,75
2011	0,73	0,76
2012	0,71	0,74
2013	0,70	0,72

⁽¹⁾ For 2003 and 2004, the two preceding years are not relevant (no Ryanair flights). The 80 % scenario (France's base scenario) was used.

(547) Where the period of application of an agreement did not coincide with full calendar years, the Commission took this into account by calculating, for each year of application of the agreement, the projected traffic in proportion to the number of days in the year when the agreement was to apply.

(1) Incremental revenues (agreements signed with Ryanair and AMS)

(548) For each transaction covered by its analysis, the Commission has sought to determine the incremental revenues, i.e. the revenues generated by the transaction, as an MEO would have predicted them.

(549) Applying the 'single-till' principle, the Commission takes the view that both aeronautical and non-aeronautical revenues should be taken into account.

— *Aeronautical revenues*

(550) Aeronautical revenue consist of the proceeds from the various charges to be paid by the airline to the airport operator, namely:

- the landing charge, i.e. an amount per rotation;
- the passenger charge, i.e. an amount per rotation;
- the charge paid for groundhandling services, which takes the form of a fixed amount per rotation in the various airport services agreements.
- the 'parking charge', i.e. an amount per rotation,
- the 'runway lighting charge', i.e. an amount to be paid based on the application of the civil aviation rules in case of movements at night or in poor visibility,
- the charge for assistance for disabled persons and those with reduced mobility ('PHMR' charge).

- (551) The landing charge and passenger charge applied by the CCI are in principle regulated charges for access to the airport infrastructure, which are applied to all user airlines following a process of consultation and which are published. For the various airport services agreements, the Commission has used, as projected unit amounts for the landing charge and passenger charge, the published charges in force when the agreements were signed, plus indexation of 2 % per year in so far as it was reasonable to predict that the regulated charges would increase each year in line with inflation. The system of regulated airport charges does not provide for automatic indexation, but allows operators to adapt charges over time following a consultation process. Under these circumstances, the Commission takes the view that an MEO would have assumed that the charges would increase each year in line with inflation, by using an inflation rate of 2 %, which is the target rate of the European Central Bank ('ECB') for the euro area ⁽¹⁴⁸⁾.
- (552) The charges for groundhandling services are not regulated, but are negotiated bilaterally. At La Rochelle airport, groundhandling services are provided by Atlantica. Consequently, these services are not taken into account in the airport's business plan and only rents paid by Atlantica to La Rochelle airport are taken into account (under 'non-aeronautical profit').
- (553) The parking charges correspond to the use by aircraft of parking infrastructure and equipment, except private infrastructure. The rates depend on the parking duration and the characteristics of the aircraft. However, the business plans drawn up to assess the profitability of the agreements signed with Ryanair and Jet2 do not provide for payment for the parking charge, in theory because the parking duration is less than two hours, for which airlines are not required to pay the charge.
- (554) The runway lighting charge is set by the tariff schedule published by the airport for each aircraft movement at night or in poor visibility requiring the use of runway lighting. However, the business plans drawn up to assess the profitability of the agreements signed with Ryanair and Jet2 do not provide for any lighting charge, as the flights are operated during the day.
- (555) Finally, the charge for assistance for disabled persons and those with reduced mobility (the 'PHMR' charge) must also be taken into account; this applies to each departing passenger (EUR 0,50 per passenger from June 2008).
- (556) In order to calculate the proceeds from the above-mentioned airport charges, which an MEO would have expected from each agreement, the Commission has used the forecasts of the number of rotations (for the landing charge) and the number of corresponding passengers (for the passenger and PHMR charge), determined for each agreement, and has multiplied these by the unit amount of each charge.

— *Non-aeronautical revenues*

- (557) La Rochelle airport assessed the incremental non-aeronautical margins related to passenger traffic. These margins cover the activities of car parks, restaurants and other businesses located in the airport, as well as margins related to fuel sales and rents. These are margins and not revenue, as input costs are deducted. Therefore, when reconstructing business plans, no costs will have to be deducted to establish the airport operator's incremental margin.
- (558) The Commission generally considers it likely that a prudent market economy operator would have determined the incremental non-aeronautical margin when concluding a new agreement on the basis of the incremental non-aeronautical margins of the previous year, corresponding to the best known estimate. This is the assessment produced by La Rochelle airport. However, in the specific case of La Rochelle airport, the Commission takes into account the investments made between 2003 and 2013, involving the construction of car parks, restaurants and shops. Taking into account only previous margins observed when assessing the profitability of a new agreement would mean failing to take prospective account of known projects for the development of non-aeronautical

⁽¹⁴⁸⁾ 'In the pursuit of price stability, the ECB aims at maintaining inflation rates below, but close to, 2 % over the medium term'. See <http://www.ecb.europa.eu/mopo/intro/html/index.en.html>

activities (linked, for example, to new investments being brought into operation), and thus limiting too strictly the growth prospects of incremental non-aeronautical revenues. The Commission therefore reconstructed the business plans by taking the view that, at the time when a new agreement is signed, the non-aeronautical margin per passenger to be considered corresponds to the average non-aeronautical margin of the previous year multiplied by a 'prospective' correction coefficient reflecting the expected prospects of new investments (car parks, commercial areas). The correction coefficient varies from year to year depending on the projects planned by the airport, and the projected non-aeronautical margin corresponds to that which can reasonably be expected by the airport operator over several years (and not only in the subsequent year):

Table 17

Average non-aeronautical margin

Year	Non-aeronautical margin year n-1 (EUR per passenger)	'Prospective' correction coefficient	'Prospective' average non-aeronautical margin applied by the Commission
2003	1,09	30 %	1,42
2004	1,40	10 %	1,54
2005	1,59	20 %	1,91
2006	1,33	60 %	2,13
2007	1,74	30 %	2,26
2008	2,14	10 %	2,35
2009	2,15	10 %	2,36
2010	2,29	10 %	2,52
2011	2,36	10 %	2,59
2012	2,45	5 %	2,57
2013	2,48	5 %	2,61

(559) The increase in the correction coefficient applied in some years reflects the introduction of new non-aeronautical services during the period (car park in 2006, restaurant in 2008, shops in 2009). In the absence of an assessment provided by the CCI of the expected non-aeronautical margins upon the signature of new agreements, this approach is a way of assessing the expected margins of new non-aeronautical activities. The incremental non-aeronautical margins per passenger applied by the Commission are on average [15-20] % higher than those submitted by the CCI, and the reconstructions carried out by the Commission therefore maximise the incremental profitability of the sets of agreements entered into by the airport and Ryanair. The Commission notes that the average annual margin correction is even higher than that suggested by Oxera in the study of 4 December 2015 ⁽¹⁴⁹⁾, according to which the start of Ryanair's operations in a sample of 29 airports leads to an increase of around 12.0-13.7 % in non-aeronautical revenues per departing passenger, in real terms.

⁽¹⁴⁹⁾ Oxera's study of 4.12.2015, 'The impact of Ryanair's operations on airports' non-aeronautical revenues'.

(560) The Commission also takes the view that an MEO would have projected the indexation of this margin over time for each year covered by a new set of agreements, in order to reflect inflation. The Commission applied a rate of 2 % per year in this regard ⁽¹⁵⁰⁾.

(561) In any event, the Commission chose to use assumptions of non-aeronautical profits exceeding those used by La Rochelle airport in order to take account of the development of parking, catering and commercial activities over the period 2003-2013.

(1) Incremental costs (agreements signed with Ryanair and AMS)

(562) The incremental costs that could be expected *ex ante* from each transaction (consisting of an airport services agreement and a marketing services agreement) by an MEO operating the airport in place of the CCI fall into the following categories:

- marketing services purchase costs;
- incremental investment costs, due to investments made as a result of the transaction;
- incremental operating costs, namely operating costs (staff, sundry purchases) likely to be generated as a result of the transaction.

(563) As regards the costs of the marketing services agreements, the Commission notes that France wrongly excluded from the marketing costs the contributions granted by local authorities (Department of Charente-Maritime and Communauté d'agglomération de La Rochelle) to cover CCI-Airport's general marketing expenditure.

(564) As established in recitals 294 to 302, France should have included all the amounts paid to Ryanair by CCI-Airport, since the contributions from the various local authorities constitute financing of the airport's normal operating costs. Thus, it was CCI-Airport which held the budget appropriations intended to finance the marketing services and bore all the associated management risk.

(565) Furthermore, it should be borne in mind that, in order to determine whether the agreements signed by La Rochelle airport with Ryanair and Jet2 led to an advantage being granted to those companies, the conduct of La Rochelle airport must be compared with that of an airport operator operating under normal market economy conditions. An MEO must, by definition, finance its own operations. Point 63 of the 2014 Guidelines states, moreover, that in order for an agreement with an airline to be found to comply with the market economy operator principle, '[the airport] must demonstrate that ... it is in a position to bear all the costs generated by the agreement ...'.

(566) The 2014 Guidelines also state that '[i]n order to assess whether an arrangement concluded by an airport with an airline satisfies the MEO test, expected non-aeronautical revenues stemming from the airline's activity should be taken into consideration together with airport charges, net of any rebates, marketing support or incentive schemes' ⁽¹⁵¹⁾ and state that '[a]ny public support, such as for example marketing agreements directly concluded between public authorities and the airline, designed to offset part of the normal costs incurred by the airport in relation to the airport/airline arrangement will likewise be taken into account' ⁽¹⁵²⁾.

⁽¹⁵⁰⁾ For the same reason, the Commission applied an indexation of 2 % to airport charges and incremental operating costs.

⁽¹⁵¹⁾ Point 64 of the 2014 Guidelines.

⁽¹⁵²⁾ 2014 Guidelines, footnote 62.

- (567) Finally, if public financial contributions could be excluded from marketing costs in business plans, this would mean that any unprofitable project or transaction could be brought into line with the MEO test simply by the granting of a sufficient public subsidy. This approach would render Article 107 TFEU ineffective and would run counter to the principle that the analysis of the existence of State aid involves determining whether the undertaking has received 'an economic advantage which it would not have obtained under normal market conditions' ⁽¹⁵³⁾.
- (568) For the reasons mentioned above, the Commission considers that any public support earmarked for marketing expenses (even if not specific to a particular agreement or set of agreements) cannot be deducted from marketing costs in the profitability analysis on which the MEO test is based. Consequently, the Commission has taken into account all the amounts provided for in the various marketing services agreements in the reconstruction of the business plans linked to the signing of the agreements referred to in Table 14.
- (569) The fees for the marketing services set out in the agreements do not necessarily represent the amounts actually paid, because certain events occurring after the agreements were signed resulted in deviations from these initial figures. This is particularly the case where the agreement was terminated early. However, these events should not be taken into account in applying the market economy operator principle since they are subsequent to the conclusion of the agreements.
- (570) With regard to incremental investment costs, it should be noted that, according to France, no investment had to be made within La Rochelle airport as a result of the various agreements under review. Accordingly, and given that there is nothing to indicate that a market economy operator would have expected to have to make certain investments due to one or more of the agreements covered by the formal investigation procedure, no incremental investment cost has been taken into account in this analysis.
- (571) To estimate the incremental operating costs, the Commission cannot use the reconstruction provided by France and the CCI. While the CCI has estimated the variable costs at a maximum of EUR 55 000 per year (excluding marketing expenses) for traffic of around 200 000 passengers, i.e. an average cost of EUR 0.27 per passenger, no explanation has been provided concerning the methodology used to obtain this estimate. In addition, this estimate does not reflect the actual incremental costs of La Rochelle airport: not only is the estimate of EUR 0.27 per passenger very different from the estimates provided by Oxera ⁽¹⁵⁴⁾ for other airports for which the Commission has opened formal investigation proceedings ⁽¹⁵⁵⁾, the financial data of La Rochelle airport also show that the incremental aeronautical operating costs are EUR 3.83 per passenger on average over the period.
- (572) The Commission reconstructed the incremental operating costs, excluding marketing costs, on the basis of the information provided by France (the airport's profit and loss statement and balance sheet). To do so, the Commission proceeded as follows:

— Extraction of annual operating costs for the carrying of passengers on the basis of CCI-Airport's financial statements. These costs are limited to operating costs and do not take into account the cost of capital (amortisation). This assumption most likely underestimates the true incremental costs, as part of the amortisation of investments corresponds to costs related to the incremental operation of the airport to handle new passengers (Oxera, entrusted by Ryanair to analyse the situation at other airports, took into account certain amortisations to calculate incremental operating costs) ⁽¹⁵⁶⁾;

⁽¹⁵³⁾ Judgment of 29 April 1999, *Kingdom of Spain v Commission*, C-342/96 P, ECLI:EU:C:1999:210, paragraph 41; see also Commission Decision (EU) 2018/628 of 11 November 2016 on State aid SA.24221 (2011/C) (ex 2011/NN) implemented by Austria for Klagenfurt airport, Ryanair and other airlines using the airport (OJ L 107, 26.4.2018, p. 1), recital 381(b).

⁽¹⁵⁴⁾ Studies of 13 June, 11 September, 22 September, 10 October and 6 November 2014 carried out by Oxera.

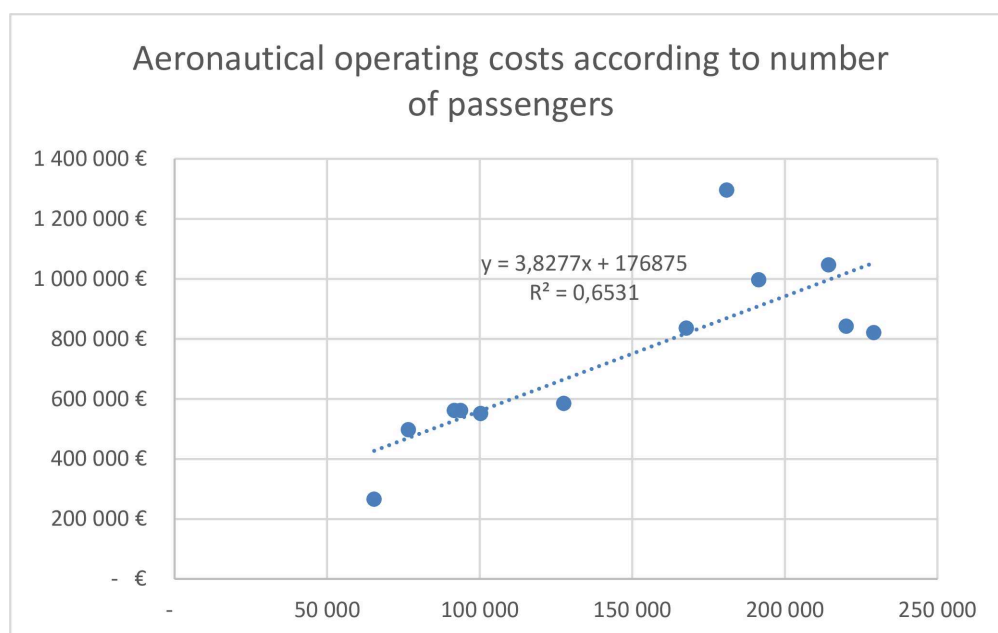
⁽¹⁵⁵⁾ Commission Decision of 16 October 2013, *Spain, Alleged aid to Ryanair and other airlines and possible aid to Girona and Reus Airports*, SA.33909 (2013/C) (ex 2013/NN, ex 2011/CP) (OJ C 120, 23.4.2014, p. 24); Commission Decision of 30 May 2012, *France, Beauvais Tillé airport*, SA.33960 (2012/C) (2012/NN), (OJ C 279, 14.9.2012, p. 23); Commission Decision of 4 April 2012, *France, Carcassonne airport*, SA.33960 (2012/C ex 2012/NN) (OJ C 254, 23.8.2012, p. 11).

⁽¹⁵⁶⁾ Study of 31.5.2013 carried out by Oxera, '*Economic MEIP assessment : profitability analysis – La Rochelle*', annexed to Ryanair's observations of 31.05.2013, section 2.5, pages 10 and 12.

- Deduction of operating costs linked to the public-authority remit and covered by State financing;
- Deduction of costs covered by subsidies linked to public service obligations or SGEIs;
- Deduction of costs corresponding to the payments for the marketing services set out in the marketing agreements concluded with the airlines (in view of the fact that this expenditure is already taken into account separately in the reconstruction of the profitability of the contested measures. They are thus shown under cost item (p) in Table 15;
- Deduction of operating costs related to non-aeronautical revenues. In the absence of data provided by the CCI, the Commission estimated the operating costs related to non-aeronautical revenues. This estimate was made by applying the percentage of non-aeronautical revenues out of the airport's total revenues to the annual operating costs ⁽¹⁵⁷⁾. This percentage varied between 19 % and 41 % from 2001 to 2010, with an average of 26 %. This method may, on the face of it, overestimate the operating costs associated with non-aeronautical revenues, since non-aeronautical services are proportionally more capital-intensive and less operating cost-intensive than aeronautical services ⁽¹⁵⁸⁾. In any event, this is the best achievable estimate in the absence of other data provided by France;
- Analysis of the evolution of aeronautical operating costs calculated on the basis of changes in the number of passengers. The graph below shows the relationship between aeronautical operating costs and the number of passengers, and the comparative evolution of aeronautical operating costs and passenger numbers. This graph clearly shows that aeronautical operating costs increase in line with passenger traffic, which would not be the case if incremental costs were limited to EUR 55 000 per 200 000 passengers.

Graph 1

Aeronautical operating costs according to number of passengers



Source: La Rochelle airport data. Commission analysis.

⁽¹⁵⁷⁾ Obtained after deducting costs related to the public-authority remit, costs covered by compensation for public service obligations or SGEIs, marketing costs, and amortisation.

⁽¹⁵⁸⁾ For example, the construction of shops or car parks entails significant construction costs but relatively low operating costs once the concession has been granted.

(573) This analysis shows that the change in the number of passengers and the evolution of operating costs are also closely correlated. This analysis remains conclusive, despite more erratic annual changes in costs (for which France has not provided any justification). The incremental aeronautical operating cost reconstructed on the basis of annual data, adjusted for the annual inflation recorded by France, is EUR 3,83 per passenger for 2006 (halfway between 2001 and 2011). The Commission will apply to this cost a change corresponding to an inflation rate of 2 % for the other years (negative before 2006, zero in 2006 and positive after 2006) ⁽¹⁵⁹⁾.

(1) Sensitivity analysis

(574) When reconstructing the business plans for each set of agreements, the Commission systematically performed a sensitivity analysis in order to test the robustness of the reconstruction concerned. To this end, it varied the following four parameters so as (unreasonably and imprudently) to boost the profitability of the set of agreements under consideration (resulting in an overly optimistic scenario for the airport operator and the airlines that had concluded the relevant agreements): number of rotations per year, aircraft load factor, amount of non-aeronautical revenue, and aeronautical incremental operating costs.

(575) For the number of rotations per year, as will be specified for each set of agreements listed in Table 14, the Commission set a more ambitious rotation target than followed from the terms of the agreements analysed. This target was set arbitrarily and was not based on any elements of fact or law, or any forecasting. A prudent airport operator would not increase the target in such a way in the base scenario of its business plan.

(576) In its alternative scenario, the Commission used an aircraft load factor of 85 %, which was at no time observed during the period under consideration but which has been adopted by the Commission in its reconstructions in other recent decisions on French airports. A prudent airport operator would not increase the load factor in such a way in the base scenario of its business plan, as it does not reflect the specific features of the routes involved.

(577) For non-aeronautical revenue, in its alternative scenario the Commission increased the non-aeronautical unit margin by 20 % compared with the base scenario, for which the calculation method is set out in recitals 557 to 561 and which is already based on more favourable assumptions than those provided by France. A prudent airport operator would not adopt such an increase in the base scenario of its business plan, as it is not based on any realistic prospects.

(578) For incremental operating costs, in its alternative scenario the Commission applied a 50 % reduction compared with the base scenario, for which the calculation method is set out in recitals 533 and 534.

(579) The net present value calculated as a result of varying these four parameters thus provides an alternative scenario that the Commission regards as an 'imprudent scenario'.

(a) Individual analysis of the sets of agreements concluded with Ryanair/AMS

(580) France submitted an individual analysis of each marketing services agreement (taking into account the airport services agreements in force). Although the Commission takes the view that some agreements are linked and should therefore be regarded as forming a single transaction, a profitability analysis will be given for each marketing services agreement, confirming the analysis per set of agreements.

⁽¹⁵⁹⁾ The Commission favoured a multi-year reconstruction of incremental operating costs rather than a year-by-year reconstruction. In theory, a year-by-year reconstruction, based on the financial data for the previous year, would also simulate knowledge of the incremental operating costs that the CCI would have had when signing a new agreement. However, the data provided by France did not permit this type of analysis, as the financial data provided included major unexplained increases or decreases between each year. A year-by-year analysis would thus have concluded that incremental costs in some years were negative, meaning that the CCI would have had an interest in investing excessively high amounts in new agreements with airlines, whereas for other years the incremental costs would have been so high as to make it advantageous for the CCI to close the airport. In the absence of any elements allowing annual financial flows to be reconstituted, the Commission therefore relied on a multi-year approach.

- (581) The results of the reconstruction of profitability for the sets of agreements (as listed in Table 14) carried out by France and by the Commission in its base and 'imprudent' scenarios (and for the individual agreements or sets of agreements mentioned in the following sections) are shown in the following table:

Table 18

Net present value of agreements and sets of agreements concluded with Ryanair/AMS

(thousand EUR)

Set of agreements	Net present value		
	Scenario France	Base scenario Commission	'Imprudent' scenario
1-A	[...]	[- 350; - 250]	[- 200; - 100]
B	[...]	[- 900; - 800]	[- 450; - 350]
2-C	[...]	[- 1 150; - 1 050]	[- 400; - 300]
3-D	[...]	[- 650; - 550]	[- 300; - 200]
2-3-C-D	not reconstructed	[- 1 750; - 1 650]	[- 650; - 550]
E	[...]	[- 150; - 50]	[0; 100]
F	[...]	[- 100; 0]	[- 100; 0]
G	[...]	[- 700; - 600]	[- 150; - 50]
H	[...]	[- 200; - 100]	[- 100; 0]
I	[...]	[- 250; - 150]	[- 100; 0]
J	[...]	[- 100; 0]	[- 100; 0]
HJ	not reconstructed	[- 250; - 150]	[- 100; 0]
GHIJ	not reconstructed	[- 1 200; - 1 100]	[- 200; - 100]
6-K	[...]	[- 2 150; - 2 050]	[- 1 150; - 1 050]
L	[...]	[- 100; 0]	[- 100; 0]
7-M	[...]	[- 300; - 200]	[- 150; - 50]
N	[...]	[- 150; - 50]	[- 100; 0]
7-M-N	not reconstructed	[- 400; - 300]	[- 150; - 50]

- (582) The features specific to each set of agreements and relevant for this analysis will be outlined in the following sections. First, the Commission will examine whether the reconstruction of the business plans for the agreement or set of agreements in question is methodologically sound. The Commission has already mentioned in this connection that France made errors that were common to all the agreements (or at least occurred frequently in most of them), in particular as regards:

— overestimating the expected traffic ⁽¹⁶⁰⁾,

— conducting an unsound assessment of non-aeronautical revenue ⁽¹⁶¹⁾,

⁽¹⁶⁰⁾ See recitals 543 to 546.

⁽¹⁶¹⁾ See recitals 557 to 561.

- excluding local authority contributions to general marketing expenditure from incremental revenue ⁽¹⁶²⁾ when calculating the costs of the marketing services agreements,
- underestimating aeronautical incremental operating costs ⁽¹⁶³⁾,
- frequently using an unjustified aircraft load factor ⁽¹⁶⁴⁾.

(583) However, as already indicated in recitals 535 and 536, besides the common methodological errors referred to above, the reconstructions of each business plan are marred by other specific methodological issues, which will be set out in the following recitals in respect of each set of agreements. The Commission will present its own analysis by reconstructing a 'base scenario' and an 'imprudent' scenario as explained in recital 574.

(1) Set of agreements 1-A

— *Reconstruction by France of the business plan for agreement A*

(584) France proposed a reconstruction for agreement A, based on the parameters for airport services agreement 1.

(585) Besides the methodological errors common to all the reconstructions produced by France and set out in section 7.2.1.5(b), the reconstruction of the business plan for agreement A displays other specific methodological problems.

(586) In the reconstructed business plan for agreement A, France set the number of incremental rotations stemming from the marketing services agreement at 350. In doing so, it overestimated the number of routes to be operated by Ryanair, whose only firm commitment was to operate 340 routes over the year.

(587) France also wrongly assumed that a prudent operator would have agreed to pay for the marketing services before the date of signature of the agreement (agreement A was signed on 1 December 2003 for a period from 1 May 2003 to 31 December 2003).

(588) The Commission accordingly finds that the reconstruction of the business plan for agreement A as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plans for the set of agreements 1-A*

(589) The Commission reconstructed the business plan for the set of agreements 1-A. To this end, in addition to the corrected parameters that apply to all the agreements ⁽¹⁶⁵⁾, the Commission adopted the following specific parameters:

- capacity of 110 seats per aircraft for agreement A (in 2013, Ryanair used aircraft with a capacity of 110 seats, and on signing the agreement in December 2013 the CCI's airport arm could not have been unaware of this factor);
- number of incremental rotations: 40 under agreement A (estimate of the number of incremental rotations expected between signature of agreement A on 1 December 2003 and its expiry on 31 December 2003 ⁽¹⁶⁶⁾);

⁽¹⁶²⁾ See recitals 563 to 568.

⁽¹⁶³⁾ See recitals 570 to 573.

⁽¹⁶⁴⁾ See recitals 542 to 547.

⁽¹⁶⁵⁾ See recitals 539 to 579 for details on each of these parameters.

⁽¹⁶⁶⁾ The estimate was reached as follows: France stated that in 2003 Ryanair had operated 288 rotations at La Rochelle airport, all to London Stansted. This figure was more or less final as at 1 January 2003, when the CCI's airport arm signed agreement A with Ryanair. An investor would have used this historical traffic figure to estimate the number of flights per year that could be expected for the remaining month of the agreement still to be performed (December 2003). If this figure is spread over the duration of the agreement (8 months), the number of flights can be estimated *pro rata temporis* for the last month of the agreement (December 2003) as $288 \times \frac{1}{8}$, or 36. As a precaution, the Commission rounded this figure up to 40 rotations.

- aircraft load factor estimated as the average of the load factors of the two years preceding the year in which the marketing agreement was signed (80 %, as also estimated by France);
- 100 % payment for the marketing services set out in the agreements.

(590) As can be seen from the result of the reconstruction of the business plan for the set of agreements 1-A in Table 18, the net present value for this set of agreements is negative.

(591) As set out in recitals 574 to 579, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, as explained, it varied four parameters very favourably in order to increase the profitability of the agreements under consideration: load factor set at 85 %, non-aeronautical margin increased by 20 %, incremental operating costs reduced by 50 %, and lastly an increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission adopted for agreement A a hypothetical scenario (not demonstrated by France) in which the airport services agreement signed on 1 December 2003 was taken to reflect the negotiating positions of the CCI's airport arm and Ryanair as at 1 April 2003 and knowledge of traffic as at 1 December 2003. In this hypothetical situation, the number of rotations per year is estimated at 288, corresponding to the actual number of rotations carried out, which was more or less known as at 1 December 2003. In this alternative scenario, the net present value for the set of agreements 1-A is still negative.

(2) Agreement B

— *Reconstruction by France of the business plan for agreement B*

(592) France proposed a reconstruction for agreement B, based on the parameters for airport services agreement 1.

(593) Besides the methodological errors common to all the reconstructions produced by France and set out in recitals 539 to 579, the reconstruction of the business plan for agreement B displays other specific methodological problems.

(594) First, it is doubtful that a prudent operator would have signed an agreement in which Ryanair's marketing services commitments were even less specific than for agreement A ⁽¹⁶⁷⁾. A prudent operator's sole objective is to run the airport at a profit. However, an increase in traffic is not a guarantee of the profitability of marketing services, and a prudent operator is concerned with obtaining maximum financial efficiency from its expenditure. A prudent operator would therefore seek maximum efficiency from any marketing services procured. It is accordingly doubtful that an operator concerned with profitability would sign an agreement whose terms were not precisely defined or quantified (number of links displayed, duration of display on Ryanair's website and frequency of display are not defined) and the efficiency or effectiveness of which cannot be assessed by the airport operator. No prudent operator would be prepared to sign an agreement without being able to make even a cursory assessment of its effect on the use of the routes concerned and the profitability of the transaction.

(595) The Commission further notes that the reconstruction done by France is marred by another specific methodological error. France took into account a duration of 3 full years with 340 rotations per year, although the agreement covers only 2 years and 4 months, which affects the number of rotations and the marketing fee used for the reconstruction.

(596) The Commission accordingly finds that the reconstruction of the business plan for agreement B as provided by France cannot be accepted.

⁽¹⁶⁷⁾ The only commitment by Ryanair to promote La Rochelle is set out as follows in agreement A: 'Ryanair shall make available web links to tourism websites in keeping with the destination (other than sites incorporating a direct online booking facility for accommodation car rental or any other service provided online directly by Ryanair) in order to facilitate the internet-based promotion of the Services to users of the Ryanair website www.ryanair.com.'

— *Reconstruction by the Commission of the business plan for agreement B*

(597) The Commission reconstructed the business plan for agreement B. To this end, in addition to the corrected parameters that apply to all the agreements ⁽¹⁶⁸⁾, the Commission adopted the following specific parameters:

- aircraft unit capacity of 148 passengers (as proposed by France);
- number of incremental rotations: 199 rotations per year for the first year of the agreement (signed on 3 June 2004), 340 rotations per year for the second year of agreement B, 123 for the last year of agreement B (expiring on 30 April 2006);
- estimate of aircraft load factor understood as the average of the load factors of the two years preceding the year in which the marketing agreement was signed (80 %, as also estimated by France, without any justification being provided);
- 100 % payment for the marketing services contained in the agreements.

(598) As can be seen from the result of the reconstruction of the business plan for the set of agreements B in Table 18, the net present value for this set of agreements is negative.

(599) As set out in section 7.2.1.5(b)(5), the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, as explained, it varied four parameters unreasonably and imprudently in order to increase the profitability of the agreements under consideration: load factor set at 85 %, non-aeronautical margin increased by 20 %, incremental operating costs reduced by 50 %, and lastly an increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission adopted for agreement B a hypothetical scenario (not demonstrated by France) in which the marketing services agreement signed on 3 June 2004 was taken to reflect the negotiating positions of the CCI's airport arm and Ryanair as at 1 January 2004 and knowledge of traffic as at 3 June 2004. In this theoretical situation, the number of rotations per year is presumed to reach 340. In this alternative scenario the net present value for agreement B is still negative

(1) Set of agreements 2-3-C-D

— *Reconstruction by France of the business plans for agreements C and D*

(600) France proposed separate reconstructions for agreements C and D based on the economic parameters of airport services agreements 2 and 3 respectively. However, as set out in recitals 468 and 469, the set of agreements 2-3-C-D in fact forms a single measure. Moreover, besides the methodological errors common to all the reconstructions produced by France and set out in section 7.2.1.5(b), the reconstruction of the business plans for agreements C and D displays one other specific methodological problem: France applied an aircraft load factor of 80 % for agreements C and D, which was not based on any detailed economic justification. A prudent investor would adopt a method for estimating future traffic hypotheses. France estimated the number of rotations per year at 340 for agreement C and 156 for agreement D for the years 2007 and 2008, but while it adjusted this figure *pro rata temporis* to 104 for 2006, it did not allocate any rotation to 2009, even though agreement D specified that Ryanair would operate flights until its expiry on 30 April 2009 (see recital 92). The Commission accordingly finds that the reconstruction of the business plans for agreements C and D as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plans for the set of agreements 2-3-C-D*

(601) The Commission reconstructed the business plan for the set of agreements 2-3-C-D. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted the following specific parameters:

⁽¹⁶⁸⁾ See section 7.2.1.5(b) for details on each of these parameters.

- 100 % payment for the marketing services set out in the agreements;
- aircraft load factor estimated as the average of the load factors of the two years preceding the year in which the set of agreements was signed (78 %, compared with 80 % as estimated by France);
- 340 rotations per year for agreement C, and 160 per year for agreement D, as set out in the agreements (95 000 passengers for agreement C and 45 000 for agreement D).

(602) As can be seen from the result of the reconstruction of the business plan for the set of agreements 2-3-C-D in Table 18, the net present value for this set of agreements is negative. As a precaution, the Commission also calculated the net present value separately for agreements 2-C and 3-D using the same amended parameters as for the set of agreements 2-3-C-D in the base scenario, and this was also negative.

(603) As with the set of agreements 1-A, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A, except for the increase to the number of rotations per year. For this last parameter, specific to each business plan reconstruction, the sensitivity analysis keeps 340 rotations per year for agreement C and 160 per year for agreement D, as in the base scenario. In this alternative scenario, the net present value for the set of agreements 2-3-C-D, and for agreements 2-C and 3-D, is still negative.

(1) Agreement E

— *Reconstruction by France of the business plan for agreement E*

(604) France proposed a reconstructed business plan for agreement E based on airport services agreement 4, and found that the agreement could result in an increase in the number of incremental rotations per year (50). However, it did not substantiate this figure.

(605) Agreement E amended agreement D by reducing for 2007 the period during which the link designated by the CCI's airport arm would be displayed on Ryanair's Irish website from 212 to 45 days, and the price of the marketing service from EUR [...] to EUR [...]. The Commission observes that for the years 2006 and 2007 the average number of passengers actually carried on the Dublin route was not as high as 45 000, but came to around 20 000 passengers per year (at the time of the signature of agreement E in June 2007, traffic forecasts for 2007 were easy to assess in so far as airlines plan their schedules ahead by IATA season – April to October and November to March). The clear intention of the parties was to cut the costs of the marketing services to reflect the traffic volumes observed, which were significantly lower than those included in agreement D. A prudent operator would accordingly have taken into account an expected traffic volume of around 20 000 passengers per year as observed during the period spent under the same agreement, despite Ryanair's contractual undertaking to achieve a volume of 45 000 passengers per year. In particular, no penalty is written in to the agreement in the event of Ryanair's not meeting the traffic targets. The only consequence of its not meeting the traffic targets was the renegotiation of agreement D (with a reduction in the amount paid for marketing services to EUR [...]) for the months from June to September, as indicated in recital 94) and the signature of agreement E to reflect the traffic figure's settling at around 20 000 passengers ⁽¹⁶⁹⁾.

(606) The Commission accordingly finds that the reconstruction of the business plan for agreement E as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plan for agreement E*

(607) The Commission reconstructed the business plan for agreement E. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted a specific parameter, namely a traffic volume equal to the average of the traffic volumes observed during 2006 and 2007, that is around 20 000 passengers (or 70 rotations with the corrected load factor).

⁽¹⁶⁹⁾ It is revealing that traffic on the La Rochelle-Dublin route remained stable at between 14 000 and 20 000 passengers per year between 2007 and 2011.

(608) As can be seen from the result of the reconstruction of the business plan for agreement E in Table 18, the net present value for this agreement is negative.

(609) As with the other sets of agreements, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A (changes that were unreasonable and imprudent), except for the increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission took into account for agreement E:

— a volume of traffic equal to the average observed during 2005 and 2006, that is around 20 000 passengers (or 70 rotations with the corrected load factor).

(610) In this alternative scenario the net present value for the reconstructed agreement E is still negative.

(1) Agreement F

— *Reconstruction by France of the business plan for agreement F*

(611) France proposed a reconstruction for agreement F, based on airport services agreement 4. Besides the methodological errors common to all the reconstructions produced by France and set out above, the reconstruction of the business plan for agreement F displays other specific methodological problems:

— France took into account a duration of 3 full years, although the agreement covered only the 3 months of winter 2007/2008.

— The marketing payments for the years 2007, 2008 and 2009 are estimated by France to come to EUR [...], EUR [...] and EUR [...] respectively. However, under the agreement the marketing service, namely sending five additional promotional emails during winter 2007/2008 to the 255 000 English-speaking subscribers on Ryanair's mailing list, came to only EUR [...].

— For the years 2007, 2008 and 2009, France used load factors of 75 %, 76 % and 80 %, which were not based on any detailed economic justification. However, a prudent investor would adopt a method for estimating future traffic hypotheses.

— France deemed that agreement F could lead to a very significant increase in incremental rotations per year (400). However, the agreement was confined to the sending of five promotional emails as explained above. In the Commission's view, given its extremely limited scope (in terms of duration, volume and type of services offered, and the general ineffectiveness of such services as set out in recital 524, together with the low amount paid in fees to Ryanair/AMS), it is impossible for this agreement to give rise to incremental demand substantiating an increase of 400 in the rotations operated by Ryanair. France moreover did not provide any evidence to support this hypothesis.

(612) The Commission accordingly finds that the reconstruction of the business plan for agreement F as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plan for agreement F*

(613) The Commission reconstructed the business plan for agreement F. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted the specific parameter of there being no additional rotations. No prudent investor would expect an increase in the traffic operated by Ryanair based solely on this amended agreement, the very limited nature of which is set out in recital 611. France has not provided any evidence of a corresponding formal or informal commitment from Ryanair to increase traffic, or of a market study establishing a causal link between the type of marketing services covered by the amended agreement and the expected increase in traffic.

(614) As can be seen from the result of the reconstruction of the business plan for agreement F in Table 18, the net present value for this agreement is negative.

(615) As with the other sets of agreements, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A, except for the increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission took into account that:

- in the alternative scenario, an operator could quite hypothetically have expected traffic proportional to the amount of the marketing contribution based on the traffic included in the initial agreement C. In other words, if in agreement C a marketing services fee of EUR [...] corresponded to a traffic commitment of 95 000 passengers, then a marketing services fee of EUR [...] (as per agreement F) could have led the operator to expect traffic of $95\,000 \times (50\,000 / 578\,000) = 8\,213$ passengers, or around 30 rotations ⁽¹⁷⁰⁾.

(616) In this alternative scenario the net present value for the reconstructed agreement F is still negative.

(1) Set of agreements G-H-I-J

— *Reconstruction by France of the business plan for the set of agreements G-H-I-J*

(617) France proposed a separate reconstruction for agreements G, H, I and J, based on airport services agreements 4 and 5. France estimated the number of rotations at 200 per year for agreement G, 35 per year for the first year and thereafter 60 per year for agreement H, 70 per year for agreement I, and 35 per year for the first year and thereafter 60 per year for agreement J. However, as set out in recitals 472 and 473, the set of agreements G, H, I and J in fact forms a single measure. Moreover, besides the methodological errors common to all the reconstructions produced by France and set out above, the reconstruction of the business plans for each of the agreements G, H, I and J displays other specific methodological problems:

- France applied an aircraft load factor of 75 % to 80 % for agreement G, and 85 % for agreements H, I and J, which was not based on any detailed economic justification. However, a prudent investor would adopt a method for estimating future traffic hypotheses.
- For agreement J, France took the view that it could produce an increase in the number of incremental rotations per year (35 in 2009, 60 in 2010 and 60 in 2011). However, as set out in recitals 472 and 473, agreement J must be assessed jointly with agreements G, H and I.
- Even supposing agreement J could be separated out from agreements G, H and I, which is not the case, the Commission would point out that it could not have been reconstructed as proposed by France. As an amendment to agreement H signed on the same day, its scope is limited to publishing on Ryanair's Belgian website the commercial link designated by the CCI's airport arm for an additional 10-day period for a sum of EUR [...]. By way of comparison, agreement H signed on the same day, which agreement J supplements, covers the same service on Ryanair's Netherlands/Belgian website for a 95-day period for a sum of EUR [...] in the first year and a 160-day period for a sum of EUR [...] in each of the two following years. France assumes that agreement H generates a number of incremental rotations of 35 in 2009, 60 in 2010 and 60 in 2011. For an equivalent service for a period of time that is 10 to 16 times shorter, France assumed that agreement J generated a number of incremental rotations equal to agreement H.

The Commission accordingly finds that the traffic estimate for agreement J as reconstructed by France is manifestly unrealistic and that it is impossible for this agreement to generate incremental demand substantiating France's proposed increase. France moreover did not provide any evidence to support this hypothesis.

⁽¹⁷⁰⁾ Assuming a load factor of 85 % already substantiated in recital 576. Number of rotations rounded up to the nearest ten.

(618) The Commission accordingly finds that the reconstruction of the business plans for agreements G, H, I and J as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plans for the set of agreements G-H-I-J*

(619) The Commission reconstructed the business plan for the set of agreements G-H-I-J. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted the following specific parameters:

- 100 % payment for the marketing services set out in the agreements;
- aircraft load factor estimated as the average of the load factors of the two years preceding the year in which the marketing agreement was signed (72 %);
- number of rotations: 200 per full year for agreement G, 40 per full year for the first year 2009 and then 60 per full year for agreements H et J ⁽¹⁷¹⁾, 70 per full year for agreement I;
- as the agreements were signed on 17 September 2009, the rotations referred to above were adjusted *pro rata temporis* for 2009.

(620) As can be seen from the result of the reconstruction of the business plan for the set of agreements G-H-I-J in Table 18, the net present value for this set of agreements is negative. As a precaution, the Commission also calculated the net present value separately for agreements G, H, J, and I using the same amended parameters as for the set of agreements G-H-I-J in the base scenario, and this was also negative.

(621) As with the set of agreements 1-A, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A, except for the increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission assumed that for each of the agreements G, H and I the number of rotations would be similar to the number of rotations estimated in the third indent of recital 619, without any *pro rata temporis* correction for the late signature of the agreement, as in the base scenario (in other words, even if the agreement is signed retroactively, the number of rotations is the same as for a full year), that is 200 per full year for agreement G, 40 per full year for the first year 2009 and then 60 per full year for agreement H and 70 per full year for agreement I.

(622) For agreement J, in the alternative scenario, an operator could quite hypothetically have expected traffic proportional to the amount of the marketing contributions based on the traffic included in agreements G, H and I. In other words, if in agreements G, H and I a marketing services fee of EUR [...] corresponded to a traffic commitment of 79 000 passengers, then a marketing services fee of EUR [...] (as per agreement J) could have led the operator to expect a number of rotations corresponding to traffic of $79\,000 \times ([...]/[...]) = 2\,983$ passengers, or around 10 rotations per year ⁽¹⁷²⁾. In this alternative scenario, an operator could have expected 320 rotations per year for 2009, 340 for 2010 and 340 for 2011 for the set of agreements G-H-I-J.

(623) In this alternative scenario, the net present value for the set of agreements G-H-I-J, and for agreements G, H, I and J separately, is still negative.

(1) Group of agreements 6-K

— *Reconstruction by France of the business plan for agreement K*

⁽¹⁷¹⁾ See recitals 99 to 101 for the characteristics of these two agreements that make them indissociable.

⁽¹⁷²⁾ Assuming a load factor of 85 % already substantiated in recital 576. Number of rotations rounded up to the nearest ten.

(624) France proposed a reconstruction for the set of agreements 6-K. France estimated the number of rotations at 370 in 2010, then 400 per year in 2011 and 2012. Besides the methodological errors common to all the reconstructions produced by France and set out above, the reconstruction of the business plan for the set of agreements 6-K displays other specific methodological problems:

- The annual fee for marketing services used in the reconstruction for the years 2010, 2011 and 2012 comes to EUR [...]. However, under agreement K, the fee for marketing services is EUR [...].
- For the years 2010, 2011 and 2012, France adopted load factors of 80 %, 80 % and 85 % respectively, which were not based on any detailed economic justification. A prudent investor would adopt a method for estimating future traffic hypotheses.

(625) The Commission accordingly finds that the reconstruction of the business plan for the set of agreements 6-K as provided by France cannot be accepted.

- *Reconstruction by the Commission of the business plan for the set of agreements 6-K*

(626) The Commission reconstructed the business plan for the set of agreements 6-K. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted the following specific parameters:

- 100 % payment for the marketing services set out in the agreements;
- aircraft load factor estimated as the average of the load factors of the two years preceding the year in which the set of agreements 6-K was signed (75 %);
- number of rotations per year of 370. Airport services agreement 6 comprises a commitment from Ryanair to operate routes to London Stansted (53 000 passengers per year), Dublin (17 000 passengers per year), Charleroi (17 000 passengers per year) and Oslo Rygge (17 000 passengers per year). This corresponds to around 370 rotations with a load factor of 75 %.

(627) As can be seen from the result of the reconstruction of the business plan for the set of agreements 6-K in Table 18, the net present value is negative.

(628) As with the other sets of agreements, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A-B, except for the increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission took into account the hypotheses submitted by France, namely 370 in 2010, then 400 per year in 2011 and 2012. In this alternative scenario the net present value for the reconstructed set of agreements 6-K is still negative.

(1) Agreement L

- *Reconstruction by France of the business plan for agreement L*

(629) France proposed a reconstruction for agreement L, based on airport services agreement 6. France estimated the number of rotations at 40 per year. Besides the methodological errors common to all the reconstructions by France and set out above, the reconstruction of the business plan for agreement L displays other specific methodological problems:

- France took into account a duration of 3 full years, although the marketing service was to be provided for only 70 days, which is less than 3 months.

- The marketing payment for the years 2010, 2011 and 2012 is estimated by France to be EUR [...] per year. However, under the agreement, there is a single marketing service with no suggestion of its being repeated every year.
- For the years 2010, 2011 and 2012, France adopted load factors of 75 %, 77 % and 80 % respectively, which were not based on any detailed economic justification. However, a prudent investor would adopt a method for estimating future traffic hypotheses.
- France deemed that agreement F could lead to a significant increase in incremental rotations per year (40 per year, or 120 for the period 2010-2012). However, the agreement is confined to the publication of a single link to an internet site designated by the CCI's airport arm for a short period (70 days). In the Commission's view, given its extremely limited scope (in terms of duration, volume and type of services offered, and the general ineffectiveness of such services as set out in recital 524, together with the low amount paid in fees to Ryanair/AMS), it is impossible for this agreement to give rise to incremental demand substantiating an increase of 120 in the rotations operated by Ryanair. France moreover did not provide any evidence to support this hypothesis.

(630) The Commission accordingly finds that the reconstruction of the business plan for agreement L as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plan for agreement L*

(631) The Commission reconstructed the business plan for agreement L. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted the following specific parameters: no additional rotations and no improvement in the aircraft load factor. No prudent investor would expect an increase in the traffic operated by Ryanair based solely on this amended agreement, the very limited nature of which is set out in recital 110. France has not provided any evidence of a corresponding formal or informal commitment from Ryanair to increase traffic, or of a market study establishing a causal link between the type of marketing services covered by the amended agreement and the expected increase in traffic. Marketing services agreement L comprises no traffic commitment on the part of Ryanair.

(632) As can be seen from the result of the reconstruction of the business plan for agreement L in Table 18, the net present value for this agreement is negative.

(633) As with the other sets of agreements, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A, except for the increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission took into account for agreement L that:

- in the alternative scenario, an operator could quite hypothetically have expected traffic proportional to the amount of the marketing contribution paid to Ryanair/AMS for the marketing services on the basis of the traffic included in the initial agreement 6-K. In other words, if in agreement 6-K a marketing services fee of EUR [...] corresponded to a traffic commitment of 104 000 passengers, then a marketing services fee of EUR [...] (as per agreement L) could have led the operator to expect a number of rotations corresponding to traffic of $104\,000 \times ([...]/[...])$, or around 20 rotations ⁽¹⁷³⁾;

- in this alternative scenario the net present value for agreement F as reconstructed is still negative.

⁽¹⁷³⁾ Assuming a load factor of 85 % already substantiated in recital 576. Number of rotations rounded up to the nearest ten.

(1) Set of agreements 7-M

— *Reconstruction by France of the business plan for agreement M*

(634) France proposed a reconstructed business plan for agreement M, based on airport services agreement 7. France estimated the number of rotations at 70 in 2011, 80 in 2012 and 85 in 2013. Besides the methodological errors common to all the reconstructions produced by France and set out above, the reconstruction of the business plan for agreement M displays other specific methodological problems:

— France applied an aircraft load factor of 85 % for the 3 years covered by the reconstruction for agreement M, which was not based on any detailed economic justification. However, a prudent investor would adopt a method for estimating future traffic hypotheses.

— France estimated that the number of incremental rotations would come to 70, 80 and 85 respectively for the 3 calendar years covered by the agreement (2011, 2012 and 2013), making 235 rotations in total. However, the agreement is confined to posting on Ryanair's Portuguese website a link to the website designated by the CCI's airport arm for 365 days per year, and promoting La Rochelle as a flagship destination on Ryanair's Portuguese website for 4 weeks per year (for an annual amount of EUR [...]). Moreover, the services covered by this agreement are set to be provided for only 2 years and therefore a prudent investor would not have produced a business plan including a third year. Lastly, in the Commission's view, given its extremely limited scope (in terms of duration, volume and type of services offered, and the general ineffectiveness of such services as set out in recital 524, together with the low amount paid in fees to Ryanair/AMS), it is impossible for this agreement to give rise to incremental demand substantiating an increase in the rotations operated by Ryanair. France moreover did not provide any evidence to support this hypothesis.

(635) The Commission accordingly finds that the reconstruction of the business plan for agreement M as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plan for the set of agreements 7-M*

(636) The Commission reconstructed the business plan for the set of agreements 7-M. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted the following specific parameters:

— aircraft load factor estimated as the average of the load factors of the two years preceding the year in which the set of agreements was signed (76 %);

— number of incremental rotations estimated at 60. Based on the above aircraft load factor, and the nominal capacity of the type of aircraft used by Ryanair (189 seats for a Boeing 737-800), the Commission calculated that the number of rotations corresponding to Ryanair's commitment to carry 17 000 passengers under agreement 7 comes to 60.

(637) As can be seen from the result of the reconstruction of the business plan for the set of agreements 7-M in Table 18, the net present value for this set of agreements is negative. As a precaution, the Commission also calculated the net present value for the set of agreements 7-M-N (signed at the same time) using the same amended parameters as for the set of agreements 7-M in the base scenario, and this was also negative.

(638) As with the set of agreements 1-A, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A, except for the increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission deemed for its sensitivity analysis that an operator could not have expected, as France proposes, 70 and 80 rotations per year for the two years of agreement M (as compared with 60 and 60 in the base scenario). In this alternative scenario, the net present value for the 7-M set of agreements is still negative ⁽¹⁷⁴⁾.

⁽¹⁷⁴⁾ As a precaution, the Commission also assessed the net present value of a hypothetical set of agreements 7-M-N in order to forestall any highly hypothetical question as to whether agreement N should be included in the set of agreements 7-M (any such question is highly unlikely given the reasons that the Commission set out in detail in recitals 477 to 480 for distinguishing the agreements 7-M and N). It thus transpires that a reconstruction of the set of agreements 7-M-N would have produced a negative net present value of -EUR 371 000 in the base scenario and -EUR 145 000 in the alternative scenario.

(1) Agreement N

— *Reconstruction by France of the business plan for agreement N*

(639) France proposed a reconstructed business plan for agreement N, based on airport services agreement 6. Besides the methodological errors common to all the reconstructions produced by France and set out above, the reconstruction of the business plan for the agreement N displays other specific methodological problems:

— Agreement N amends agreement K and targets additional travellers (on top of those targeted by agreement K) from Oslo (Rygge). It covers the inclusion on Ryanair's Norwegian website of a link to a website designated by the CCI's airport arm for 6 weeks per year in the first year (3 weeks in the second year), and an advertising banner for La Rochelle on Ryanair's Norwegian website for 4 months per year (3 months in the second year) for only EUR [...] in the first year and EUR [...] in the second year, or EUR [...] over the duration of the agreement. Agreement N does not include any additional traffic commitments.

— For the years 2011 and 2012, France assumed load factors of 80 % and 82 %, which are not based on any detailed economic justification. However, a prudent investor would adopt a method for estimating future traffic hypotheses.

— France deemed that agreement N could lead to a very significant increase in incremental rotations per year (400), or 800 over the duration of the agreement. However, the scope of this agreement is extremely limited. The services described above are very limited in duration, volume (limited display of a single link and a single banner on Ryanair's very dense website, the overall effectiveness of which the Commission doubts, as set out in recital 524) and in the fee paid to Ryanair/AMS. Accordingly, the Commission doubts whether this agreement can give rise to incremental demand substantiating an increase of 800 in the rotations operated by Ryanair. France moreover did not provide any evidence to support this hypothesis.

(640) The Commission accordingly finds that the reconstruction of the business plan for agreement N as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plan for agreement N*

(641) The Commission reconstructed the business plan for agreement N. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted the following specific parameter:

— No additional rotations. No prudent investor would expect an increase in the traffic operated by Ryanair based solely on this amended agreement, which contains no commitment on the part of Ryanair to increase the number of rotations. This position is confirmed by the fact that the CCI's airport arm paid for marketing services on this route (under agreement K) only on the basis of corresponding traffic commitments by Ryanair under agreement 6. However, France has not provided any evidence of a corresponding formal or informal commitment from Ryanair to increase initial traffic on signing agreement N, or of a market study establishing a causal link between the type of marketing service covered by the amended agreement and the expected increase in traffic. Marketing agreement N contains no traffic commitment on Ryanair's part.

— As can be seen from the result of the reconstruction of the business plan for agreement N in Table 18, the net present value for this agreement is negative.

— As with the other sets of agreements, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A, except for the increase in the number of rotations per year. For this last parameter, adjusted individually for each business plan reconstruction, the Commission considers that, in the alternative scenario, an operator could quite hypothetically have expected traffic proportional to the amount of the marketing contribution on the basis of the traffic included in the initial agreement K. In other words, if in agreement K a marketing services fee of EUR [...] corresponded to a traffic

commitment of 17 000 passengers, then a marketing services fee of EUR [...] for the first year (EUR [...] for the second year) as per agreement F could have led the operator to expect a number of passengers corresponding to traffic of $17\,000 * ([...] / [...])^{(175)}$, or around 30 rotations ⁽¹⁷⁶⁾ for the first year (20 rotations in the second year using the same formula).

(642) In this alternative scenario the net present value for agreement N is still negative.

(1) Agreements 4 and 5

(643) Agreements 4 and 5 are stand-alone airport services agreements that are not associated with any marketing services agreements. They do not involve any remuneration paid to Ryanair/AMS.

(644) As set out in recital 70, the rates for the airport charges contained in the airport services agreements with Ryanair (including agreements 4 and 5) correspond to the prices applied to all airlines as per the general rate card approved by the Cocco. Consequently, these agreements do not confer a selective advantage on Ryanair/AMS.

(a) Analysis of the agreement of 4 July 2008 with Jet2

— *Methodological approach*

(645) As set out in recitals 117 and 119, the agreement between the CCI and Jet2 contains both clauses covering airport charges and clauses on the prices of the marketing services. The methodological approach set out for the agreements concluded between the CCI and Ryanair therefore also applies to the analysis of the profitability of the agreement between the CCI and Jet2, except for the elements detailed in recitals 646 to 653.

(646) As regards non-aeronautical revenue, unlike for the agreements with Ryanair and AMS, the CCI's airport arm does not base its reconstruction on incremental revenue based on the average revenue per passenger observed, but on commissions per passenger of:

— EUR 0,57 for car rental companies

— EUR 0,47 for fuel

— EUR 0,97 for parking

— EUR 0,10 for shops as from 2009

— or, taking inflation into account, an incremental unit revenue of EUR 2,01 in the first year, EUR 2,14 in the second year and EUR 2,17 in the third year.

(647) As regards operating costs, France provided an estimate calculated as the sum of staff costs and other variable costs as fixed amounts, to which apparent inflation of 2 % is applied in the last year of the agreement. France provided no justification for these costs. The Commission observes that the average cost per passenger calculated on the basis of the data provided by France comes to EUR 0,37-0,38 over the 3 years, that is slightly higher than the rate used for the agreements with Ryanair and AMS. The Commission finds that, as with the cost used by France for those reconstructions (EUR 0,27), the incremental cost used for the agreement concluded with Jet2 is manifestly vastly underestimated (see recitals 571 and 573 in this connection).

— *Reconstruction by France of the business plan for the agreement of 4 July 2008*

(648) France proposed a reconstruction of the business plan for the agreement of 4 July 2008. Besides the methodological errors common to all the reconstructions done by France for the Ryanair/AMS agreements (and reproduced for the Jet2 agreement), as set out in recital 582, the reconstruction of the business plan for the agreement of 4 July 2008 displays other specific methodological problems:

⁽¹⁷⁵⁾ This is the share of expected traffic for Oslo Rygge out of the total traffic planned under agreement 6, assigned to the marketing service fee set per year under agreement K (EUR 986 200).

⁽¹⁷⁶⁾ Assuming a load factor of 85 % already substantiated in recital 576. Number of rotations rounded up to the nearest ten.

- France estimated the traffic objective used in the reconstruction for 2008, 2009 and 2010 at 7 874, 12 189 and 12 361 passengers respectively. The corresponding annual fee for marketing services was estimated at EUR [...], EUR [...] and EUR [...]. However, the agreement with Jet2 included a commitment of only 2 000 passengers per route launched per season (Edinburgh and Leeds) for the first year only, which comes to 4 000 passengers and not 7 874 as proposed by France. For the second and third years, the agreement contained no firm commitment with respect to the traffic provided by Jet2 or the marketing services fee (the agreement merely provided for subsequent renegotiation depending on the flight schedules ultimately adopted). Including in the reconstruction proposed by France the above traffic and marketing services fee forecasts for the second and third years therefore presupposes that CCI-Airport had reliable traffic estimates to hand. However, France did not provide any document to demonstrate that, at the time the agreement was signed, Jet2 had given any formal or informal commitments on which CCI-Airport could rely to form a firm idea of Jet2's traffic commitments departing from La Rochelle airport beyond the first year.
- For the 3 years, France assumed load factors of 70 %, 71 % and 72 % respectively, which are not based on any detailed economic justification, especially since the agreement makes payment of the marketing services fee in the first year conditional on a much lower load factor of 60 %. A prudent investor would adopt a method for estimating future traffic hypotheses.

(649) The Commission accordingly finds that the reconstruction of the business plan for the agreement of 4 July 2008 as provided by France cannot be accepted.

— *Reconstruction by the Commission of the business plan for the agreement of 4 July 2008*

(650) The Commission reconstructed the business plan for the agreement of 4 July 2008. To this end, in addition to the corrected parameters that apply to all the agreements, the Commission adopted the following specific parameters:

- traffic estimated at 4 000 passengers for the first year and zero for the last two years. As set out above, no prudent airport operator would expect traffic objectives without some commitment, however informal, from the airline. The Commission therefore confined its assessment to the first year;
- aircraft load factor estimated as the average of the load factors for the traffic operated by Ryanair in the two years preceding the year in which the agreement was signed (73 %); a prudent operator could have based their estimates on the actual load factor of an airline operating several routes out of La Rochelle airport. The load factor used by the Commission is in fact higher than that proposed by France, and probably higher than a prudent operator could expect for a new route and a new airline less well known than Ryanair, which had already been operating for several years at the airport;
- use of incremental unit non-aeronautical revenue equal to that used for Ryanair (EUR 2,35 in 2008, EUR 2,40 in 2009 and EUR 2,45 in 2010). This prudent hypothesis takes the more logical approach of assuming that all passengers have the same purchasing behaviour (irrespective of the airline used).

(651) As can be seen from the result of the reconstruction of the business plan for the agreement of 4 July 2008 in Table 19, the net present value for this agreement is negative.

(652) As with the other agreements, the Commission also deemed it prudent to conduct a sensitivity analysis in order to test the robustness of the reconstruction's base scenario. To this end, the Commission duplicated the parameter changes applied to the set of agreements 1-A signed with Ryanair, except as regards the following parameters:

- for the number of rotations per year, an operator could have adopted the hypothetical assumption that Jet2 would operate two routes in the first year and in the second and third years;

- for the load factor, the Commission took the factors proposed by France, as set out in recital 648;
- for the airport charges, the Commission applied the discounts agreed;
- for the marketing services fee, the Commission took an amount of EUR [...] for the 3 years covered by the agreement, assuming that the two routes would be maintained over the whole duration of the agreement.

(653) In this alternative scenario, it is apparent from Table 19 that the net present value for the reconstructed agreement of 4 July 2008 is very slightly positive (EUR 3 511). Given the highly optimistic nature of the assumptions made (in particular the 50 % drop in incremental operating costs and a 20 % increase in non-aeronautical revenue) and the very slightly positive figure for net present value reconstructed in this alternative scenario, the Commission thinks it very unlikely that a prudent operator would have chosen to sign the agreement of 4 July 2008 with Jet2, given the negative net present value in the base scenario.

Table 19

Net present value of the agreement of 4 July 2008 signed with Jet2

(thousand EUR)

Set of marketing agreements	Net present value		
	Scenario France	Base scenario Commission	Alternative scenario Commission
Jet2	[0; 100]	[- 100; 0]	[0; 100]

(a) Conclusion on the existence of an advantage

(654) The analysis set out in recitals 580 to 653, and in particular Tables 18 and 19, shows that all the agreements under which remuneration was paid to Ryanair/AMS and Jet2 for marketing services have a negative net present value ⁽¹⁷⁷⁾. It follows from recital 531 that each of these agreements confers an advantage on either Ryanair/AMS or Jet 2. By contrast, as set out in recital 644, agreements 4 and 5 do not confer an economic advantage on Ryanair/AMS.

7.2.1.6. Selective nature of the advantage conferred on Ryanair/AMS and Jet2

(655) With the exception of airport services agreements 4 and 5 with Ryanair, the agreements or sets of agreements concluded by the CCI with Ryanair/AMS and Jet2 provide for the payment of remuneration to these airlines for the marketing services provided by them. The remuneration of these marketing services is a specific feature of the relationship between the airport and these airlines, resulting as it does from direct negotiations between the CCI and each airline concerned, rather than from prices applicable to all airlines. The agreements contain terms agreed specifically between La Rochelle Airport and Ryanair/AMS and Jet2 and they are accordingly selective.

(656) As regards airport services agreements 4 and 5 concluded with Ryanair, as set out in recital 644, they do not confer a selective advantage on Ryanair/AMS as the aeronautical charges contained therein correspond to the prices applicable to all airlines in accordance with the general rate card approved by the Cocoeco.

⁽¹⁷⁷⁾ The agreements or sets of agreements covering several years also have a negative net present value for each year of the agreement.

7.2.1.7. Distortion of competition and effect on competition and trade between Member States

- (657) When aid granted by a Member State strengthens the position of certain undertakings compared with other undertakings competing in the internal market, the latter must be regarded as affected by that aid. In accordance with settled case-law ⁽¹⁷⁸⁾, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings in markets open to competition.
- (658) Since the entry into force of the third air transport liberalisation package on 1 January 1993 ⁽¹⁷⁹⁾, nothing prevents EU air carriers from operating flights on routes within the EU and benefiting from unlimited cabotage authorisation.
- (659) The advantages (the existence of which has been established above) that the airlines received under the various agreements covered by this investigation have therefore strengthened their position with regard to all other EU air carriers that are actually competing or may compete with these airlines for the routes that they operate. As a result, they have distorted or threatened to distort competition and have affected intra-Community trade.

7.2.1.8. Conclusion on the existence of aid

- (660) With the exception of airport services agreements 4 and 5 concluded with Ryanair, all the measures represented by the sets of agreements and amendments thereto concluded with Ryanair/AMS (see Table 14) and Jet2 meet the tests set out in Article 107(1) TFEU and therefore constitute State aid.

7.2.2. Unlawful nature of the State aid

- (661) As these measures were implemented without having been authorised by the Commission, they constitute unlawful aid.

7.2.3. Compatibility of the aid with the internal market

- (662) It is settled case-law ⁽¹⁸⁰⁾ that it falls to France to indicate on what legal basis the aid in question could have been regarded as compatible with the internal market and to prove that the conditions of compatibility were met. The Commission therefore invited France, in the opening decision and in a request for further information, to indicate what the legal bases for compatibility might be and to demonstrate that the applicable conditions for compatibility were met, particularly if the aid in question were to be regarded as start-up aid for the launch of new routes. However, France did not suggest any basis for compatibility or provide any arguments to justify a finding that the aid was compatible with the internal market. In particular, at no point did France claim that the measures under scrutiny constituted compatible start-up aid. Furthermore, no interested third party has attempted to prove that these measures are compatible with the internal market.
- (663) Nevertheless, the Commission considers it useful, for the sake of completeness, to assess to what extent this aid could be declared compatible by virtue of its contribution, if any, to the launch of new routes or new frequencies.
- (664) The Commission points out that the aid in question was tied to launching new air routes, increasing flight frequency on existing routes or continuing operation of routes that might otherwise have been withdrawn. The Commission therefore finds that it may constitute operating aid for promoting air traffic departing from a regional airport. In this connection, it should be pointed out that operating aid is rarely likely to be declared compatible with the internal market as it usually distorts conditions of competition in the sectors in which it is granted.

⁽¹⁷⁸⁾ Judgment of the Court of First Instance of 30 April 1998, *Het Vlaamse Gewest (Flemish Region) v Commission*, T-214/95, ECLI:EU:T:1998:77.

⁽¹⁷⁹⁾ Council Regulations (EEC) Nos 2407/92, 2408/92 and 2409/92 (OJ L 240, 24.8.1992).

⁽¹⁸⁰⁾ See judgment of 28 April 1993, *Italy v Commission*, C-364/90, ECLI:EU:C:1993:15797, paragraph 20.

7.2.3.1. Measures pre-dating the entry into force of the 2005 Guidelines

- (665) Some of the aid measures in question (set of agreements 1-A and agreement B) were granted before the 2005 Guidelines were published on 9 December 2005 ⁽¹⁸¹⁾. With regard to the compatibility of aid granted before this date, paragraph 85 of the 2005 Guidelines and point 174 of the 2014 Guidelines refer to the rules applicable at the time when the aid was granted.
- (666) Before the 2005 Guidelines were adopted, the Commission had adopted the 1994 Guidelines ⁽¹⁸²⁾. However, these guidelines did not specifically deal with the issue of operating aid for promoting air traffic departing from regional airports. This issue took shape gradually as a result of a build-up of congestion at certain large European airports and the emergence of low-cost operators, which did not yet exist in 1994. Consequently, the Commission takes the view that the 1994 Guidelines cannot be applied to the case at hand. The Commission must therefore in principle assess the compatibility of the aid in question directly on the basis of Article 107(3)(c) TFEU.
- (667) 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 elements have remained unchanged. These elements stem from the general principles governing the compatibility of aid in accordance with the aforementioned provision of the Treaty.
- (668) Accordingly, in the decision on Manchester airport of June 1999 ⁽¹⁸³⁾, the Commission found that reductions in airport charges granted in a non-discriminatory and time-limited manner for the promotion of new routes were compatible with the rules on State aid.
- (669) Then, in decision 2004/393/EC on Charleroi Airport ⁽¹⁸⁴⁾, the Commission found 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) of the Treaty, 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' ⁽¹⁸⁵⁾. 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 economic development of a regional airport through a net increase in traffic on new routes ⁽¹⁸⁶⁾;
 - 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 ⁽¹⁸⁷⁾;
 - 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 means that it must be limited in time ⁽¹⁸⁸⁾;
 - the aid must be proportional, i.e. the amount must be linked to the net increase in traffic ⁽¹⁸⁹⁾.
 - the aid must have been granted transparently and without discrimination and must not be combined with other types of aid.

⁽¹⁸¹⁾ See Section 3.2.2.1.

⁽¹⁸²⁾ Guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector (OJ C 350, 10.12.1994, p. 5).

⁽¹⁸³⁾ Decision of 26 May 1999 on State aid NN 109/98 — Manchester Airport (OJ C 65, 13.3.2004).

⁽¹⁸⁴⁾ 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). The decision was annulled by the judgment of 17 December 2008 in *Ryanair Ltd v Commission*, T-196/04, ECLI:EU:T:2008:585. It nevertheless illustrates the evolution of the Commission's approach to assessing this type of aid.

⁽¹⁸⁵⁾ See Commission Decision 2004/393/EC, recital 279.

⁽¹⁸⁶⁾ See recitals 283 to 297.

⁽¹⁸⁷⁾ See recitals 288 to 309.

⁽¹⁸⁸⁾ See recitals 311 to 317.

⁽¹⁸⁹⁾ See recitals 318 to 325.

- (670) Furthermore, in paragraph 234 of the opening decision, the Commission indicated that it proposed to examine the compatibility of this aid in the light of Article 107(3)(c) TFEU, with neither France nor any interested third party objecting to this approach.
- (671) State aid to airlines, like any other State aid, must be necessary to facilitate the development of an economic activity and proportionate to that objective in order to be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU.
- (672) In conclusion, the Commission takes the view that, in the case at hand, the compatibility of the set of agreements 1-A and agreement B should be assessed in the light of the aforementioned general principles.
- (673) The Commission will therefore assess the compatibility of these measures in the light of the above criteria and of the case-law ⁽¹⁹⁰⁾.

— *Contribution to the economic development of a small regional airport through a net increase in traffic on new routes*

- (674) The set of agreements 1-A and agreement B are tied to the opening of a new route and the maintenance of the existing route to London Stansted. They therefore contributed to a net increase in traffic departing from La Rochelle airport, while also having the objective of contributing to the continued operation of the existing route to London Stansted.

— *The aid is not granted for a route already operated by the same or another airline or a similar route*

- (675) The set of agreements 1-A and agreement B covered not only the launch of new routes, but also the continued operation of the existing route to London Stansted. In this connection, the Commission takes note of the fact that on 10 April 2003 Ryanair bought Buzz, which had been operating this route since 1 April 2001 under the agreement of 8 November 2002 referred to in section 3.2.2.3. Moreover, agreement B covered this same route to London Stansted already operated by Ryanair under the set of agreements 1-A. The set of agreements 1-A and agreement B therefore do not meet the condition that the measure must not be granted for a route that is already operated or a similar route.

— *The measures are limited in time and involve routes that are likely to become profitable*

- (676) When the La Rochelle-London Stansted route was launched by Buzz in 2001, no airline was operating that route. When the set of agreements 1-A was signed, Buzz had been operating the route for close on 2 years under the agreement of 8 November 2002, but that agreement did not include any marketing fee. By contrast, the agreements that followed the set of agreements 1-A and laid down the terms on which this route was operated, namely agreement B (with an expiry date of the end of April 2006), the set of agreements 2-3-C-D (with an expiry date in 2009), the set of agreements G-H-I-J (with an expiry date at the end of 2011) and the set of agreements 6-K (with an expiry date at the end of March 2013) all included compensation (in the form of payments for marketing services) to Ryanair/AMS. This route was therefore financed for 10 years after the expiry of the set of agreements 1-A and 7 years after the expiry of agreement B. This additional duration is of particular importance. The Commission also notes the absence of other airlines on this route.
- (677) Furthermore, the Commission observes that France did not provide any viability study for the various routes and frequencies covered by the set of agreements 1-A and agreement B. 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 these routes and frequencies becoming viable without aid in the more or less short term. It should also be noted that the set of agreements 1-A and agreement B concerned a number of different routes, some of which were not even identified at the time when the agreements were signed, which confirms that the authorities concerned did not have any information likely to reassure them that these routes were viable.

⁽¹⁹⁰⁾ Judgment of the Court (Grand Chamber) of 22 September 2020, C-594/18 P, *Republic of Austria v Commission*, ECLI:EU:C:2020:742, paragraph 20.

(678) The Commission stresses lastly that the information submitted by the French authorities on the economic impact of the air routes operated by Ryanair analyses the characteristics of Ryanair customers and the impact that they may have on the region's development, but does not include projections of the future viability of these routes or other routes likely to be operated by Ryanair in the future.

(679) The Commission therefore concludes that the set of agreements 1-A and agreement B do not meet the condition that the measures must be limited in time and involve routes likely to become profitable.

— *The amount of aid is linked to a net increase in traffic*

(680) The amounts of aid granted under the set of agreements 1-A and agreement B are not linked to an increase in traffic since, although they cover the launch of new routes, the launch is a hypothetical one and the main object of the agreement is the continued operation of the exiting route to London Stansted. The Commission therefore finds that the set of agreements 1-A and agreement B do not meet the criterion of a link between the amount of aid and a net increase in traffic.

— *The aid must have been granted transparently and without discrimination and must not be combined with other types of aid*

(681) According to France, the CCI had in the past conducted research into the marketing services offered on the websites of a number of companies, which resulted in it deciding that the type of service offered by AMS was best suited to its needs and strategy. The CCI found that airlines other than Ryanair, accounting for a minority share of the traffic at La Rochelle airport, were unable to offer a valid substitute to the website of Ryanair, the airport's headline carrier.

(682) Thus, the aid granted under the set of agreements 1-A and agreement B was negotiated bilaterally, in a non-transparent manner and without any procedure for ensuring that there was no discrimination such as a public call for tenders. This aid therefore does not meet the condition of transparency and non-discrimination.

(683) The Commission accordingly finds that the State aid granted under the set of agreements 1-A and agreement B cannot be declared compatible with the internal market.

7.2.3.2. Measures post-dating the entry into force of the 2005 Guidelines

(684) As the 2005 Guidelines provide the reference framework applicable from their entry into force until the adoption of the 2014 Guidelines, the Commission considers that the 2005 Guidelines should be applied to the other aid measures at issue. The Commission is bound to observe the guidelines that it adopts, unless they are contrary to the Treaty, which neither France nor Ryanair or Jet2 has argued or proven.

(685) The Commission thus takes the view that the compatibility of the following aid measures should be assessed in the light of the 2005 Guidelines and the case-law ⁽¹⁹¹⁾:

- set of agreements 2-3-C-D;
- agreement E;
- agreement F;
- set of agreements G-H-I-J;
- set of agreements 6-K;
- agreement L;
- set of agreements 7-M;
- agreement N;
- the agreement concluded with Jet2 on 4 July 2008.

⁽¹⁹¹⁾ Judgment of the Court (Grand Chamber) of 22 September 2020, C-594/18 P, *Republic of Austria v Commission*, ECLI:EU:C:2020:742, paragraph 20.

- (686) State aid to airlines, like any other State aid, must be necessary to facilitate the development of an economic activity and proportionate to that objective in order to be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU. The Commission will therefore assess compliance with the criteria of necessity and proportionality in addition to the aforementioned criteria from the 2005 Guidelines.
- (687) The 2005 Guidelines specify, first, that the Commission's communications and other measures on regional aid allow operating aid granted to airlines (such as start-up aid for new routes) to be declared compatible only under exceptional circumstances and under strict conditions in underprivileged regions of Europe, i.e. regions covered by the derogation set out in Article 107(3)(a) TFEU, the most remote regions and sparsely populated areas ⁽¹⁹²⁾. As La Rochelle airport is not situated in this type of region, this derogation does not apply.
- (688) The 2005 Guidelines go on to state that small airports often do not have the passenger volumes necessary for them to reach critical mass and the break-even point, and therefore that airlines are not always prepared, without appropriate incentives, to run the risk of opening routes from unknown and untested airports. Hence, in accordance with the 2005 Guidelines, the Commission can accept public aid being paid temporarily to airlines under certain conditions, if this provides them with the necessary incentive to create new routes or new schedules from regional airports and to attract the passenger numbers which will enable them to break even in the long term ⁽¹⁹³⁾.
- (689) The specific compatibility criteria are set out in paragraph 79 of the 2005 Guidelines. The Commission finds that several of these criteria are not met, specifically:
- *Long-term viability and degressiveness (criterion d), absence of a business plan (criterion i), and duration and intensity (criterion f)*
- (690) None of the measures were structured to ensure that the aid was degressive and confined to a percentage of eligible costs, which are not referred to in the agreements concerned or, as far as the Commission is aware, in any other document at the CCI's disposal at the time the agreements were concluded.
- (691) Moreover, there is no evidence that a business plan was submitted in advance to allow an assessment of the long-term viability of the measures. Accordingly, and in the absence of any other information to the contrary, the Commission concludes that the aid in question was not granted for routes likely to become viable without aid. Furthermore, the successive aid measures for the routes to London Stansted and Brussels-Charleroi (from 2003), Dublin (from 2006), Oslo (from 2010) and Porto (from 2011) suggests that Ryanair would not have operated these routes if they had stopped being subsidised.
- (692) The Commission accordingly concludes that the aforementioned criteria are not met by any of the measures in question.
- *Link with new routes or additional frequencies on existing routes (criterion c)*
- (693) The Commission notes that the agreements at issue were in some cases concluded with a view to the launch of new routes, but primarily in order to ensure the continued operation of existing routes:
- As regards agreement C, recital 89 points out that it simply commits Ryanair to operating a route between La Rochelle and London Stansted with a minimum of 95 000 passengers per year. However, recitals 82 and 85 show that agreements A and B already covered a daily route between London Stansted and La Rochelle. In its traffic estimate for the set of agreements 1-A and agreement B, the Commission calculated that the annual traffic on this route would never exceed 86 000 passengers. The Commission accordingly finds that these measures meet criterion (c).
- As regards agreement D, recital 92 points out that it commits Ryanair to operating a (new) route between La Rochelle and Dublin with a minimum of 45 000 passengers per year. The Commission accordingly finds that this measure meets criterion (c).

⁽¹⁹²⁾ Paragraph 27 of the 2005 Guidelines.

⁽¹⁹³⁾ Paragraphs 71 and 74 of the 2005 Guidelines.

- As regards agreement G, recital 96 points out that it commits Ryanair to operating a route between La Rochelle and Dublin with a minimum of 53 000 passengers per year, which represents an increase of 8 000 passengers compared with agreement D. The Commission accordingly finds that this measure meets criterion (c).
- As regards agreement H, recital 99 points out that it commits Ryanair to operating a new route between La Rochelle and Brussels-Charleroi with a minimum of 9 000 passengers per year in the first year and 16 000 passengers in the following years. The Commission accordingly finds that this measure meets criterion (c).
- As regards agreement I, recital 102 points out that it commits Ryanair to operating a route between La Rochelle and Dublin with a minimum of 17 000 passengers per year. However, under the previous agreement D, Ryanair was already operating this route with a higher traffic objective (45 000 passengers per year). The Commission accordingly finds that this measure does not meet criterion (c).
- Under agreement K, Ryanair undertook, as set out in recital 106, to operate a new route to Norway. As described in recital 78 above, in airport services agreement 6, which the Commission regards as forming a single measure together with agreement K (see section 7.2.1.5(b)(4)), Ryanair gave no undertaking with respect to frequency, but did make the following traffic commitments: 53 000 passengers to London Stansted, 17 000 passengers to Dublin, 17 000 passengers to Brussels-Charleroi and 17 000 passengers to Oslo-Rygge. The Commission notes that these commitments are stable for the Dublin route, slightly higher for the Brussels-Charleroi route (1 000 passengers, or roughly +6%), but very much lower for the London-Stansted route (-28 000 passengers compared with the objective of 95 000 passengers set in agreement C, or a drop of 30%). The inclusion of a new route to Norway with traffic set at 17 000 passengers does not compensate for the overall drop in traffic under agreement K (-10 000 passengers⁽¹⁹⁴⁾). The Commission accordingly finds that this measure does not meet criterion (c).
- Under agreement L, Ryanair undertook, as set out in recital 110, to operate a new route to Cork. However, Ryanair made no commitment in terms of traffic or flight frequency. The Commission accordingly finds that this measure does not meet criterion (c).
- Agreements E, F, J, M and N do not contain any traffic or frequency commitments. The Commission accordingly finds that these measures do not meet criterion (c).

(694) Criterion (c) is thus met only by agreements C, D, G and H.

- *Compensation for additional start-up costs (criterion e)* ⁽¹⁹⁵⁾

(695) The Commission considers that, for each of the measures in question, this criterion was not met. The amounts paid by the CCI were not intended to represent a portion of the additional start-up costs, for which, to the Commission's knowledge, estimates were never produced by Ryanair/AMS or Jet2 and supplied to the CCI.

- *Link with the development of the route (criterion g)* ⁽¹⁹⁶⁾

(696) The Commission notes that the marketing services agreements signed with Ryanair and Jet2 are not designed to increase the number of passengers flying with these two airlines. It is true that some of these agreements coincide with the launch of certain routes and some include frequency or passenger number commitments as set out in sections 3.2.2.1 and 3.2.2.2. However, the Commission finds that these commitments do not change over the duration of the agreement and that there is no real traffic development incentive scheme equivalent to that in

⁽¹⁹⁴⁾ The overall traffic commitment variation resulting from agreement K, calculated on the basis of the individual traffic variation on each route thus comes to: 0+1 000-280 000+17 000= -10 000 passengers.

⁽¹⁹⁵⁾ The amount of aid must be strictly linked to the additional start-up costs incurred in launching the new route or frequency and which the air operator will not have to bear once it is up and running.

⁽¹⁹⁶⁾ Aid payments must be linked to the net development of the number of passengers transported.

similar cases recently investigated by the Commission ⁽¹⁹⁷⁾. Thus there is no discount or penalty linked to the actual growth in traffic. The aid amounts paid to the airlines are therefore not linked to the actual development of routes. Accordingly, the Commission considers that this criterion is not met by any of the measures in question.

— *Non-discriminatory allocation (criterion h)* ⁽¹⁹⁸⁾

(697) The Commission observes that in the case at hand, the agreements were negotiated directly with the airlines concerned, and there was no publicity. This therefore means that the aid was granted without any competitive procedure in which other potentially interested airlines could have offered to operate the routes concerned, under the same terms, in order to benefit from the start-up aid.

(698) Consequently, the criterion referred to in point (h) is not met.

(699) In the light of all the above, the Commission considers that none of the unlawful aid granted to Ryanair/AMS and Jet2 through the agreements covered by this investigation meets all the criteria established by the 2005 Guidelines. Accordingly, the aid resulting from the following measures is incompatible with the internal market:

- the set of agreements 2-3-C-D;
- agreement E;
- agreement F;
- the set of agreements G-H-I-J;
- the set of agreements 6-K;
- agreement L;
- the set of agreements 7-M;
- agreement N;
- the agreement concluded with Jet2 on 4 July 2008.

8. CONCLUSIONS

(700) The Commission accordingly finds, first, that the subsidies for tasks falling under the public-authority remit paid to La Rochelle Airport and the alleged underinvoicing of the services supplied by the CCI's general arm to the airport between 2006 and 2012 do not constitute State aid.

(701) The Commission also finds that France unlawfully implemented investment grants paid between 2001 and 2006 in breach of Article 108(3) TFEU. However, these investment grants constitute aid compatible with the internal market on the basis of Article 107(3)(c) TFEU.

(702) The Commission then finds that France unlawfully implemented a number of operating aid measures in favour of La Rochelle Airport (underinvoicing of the services supplied by the CCI's general arm to La Rochelle Airport between 2001 and 2005, repayable advances received by La Rochelle Airport and subsidies from local authorities intended to contribute to measures promoting La Rochelle Airport) in breach of Article 108(3) TFEU. However, these operating aid measures constitute aid compatible with the internal market on the basis of Article 107(3)(c) TFEU.

⁽¹⁹⁷⁾ For example, the agreement referred to in recital 99 of the Commission's decision on Nîmes Airport cited in footnote 12 contained 'an incentive scheme for the development of traffic'. It involved the payment by the Nîmes CCI of a contribution of EUR 5,50 per passenger (from the 1st to the 49 999th passenger), EUR 6,50 per passenger (from the 50 000th to the 99 999th passenger) and EUR 10 (from the 100 000th to the 129 999th passenger). It also included a penalty of EUR 5,65 per passenger to be paid by Ryanair if the traffic target was lower than 71 000 passengers.

⁽¹⁹⁸⁾ Any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services.

- (703) The Commission furthermore finds that, with the exception of the airport services agreements 4 and 5 with Ryanair, the various airport services and marketing services agreements concluded between the CCI and Ryanair, AMS and Jet2 covered by the formal investigation procedure involve State aid implemented in breach of Article 108(3) TFEU and which is incompatible with the internal market.
- (704) Lastly, the Commission finds that the exemption from runway lighting charges enjoyed by Ryanair does not involve State aid. Similarly, the Commission concludes that the airlines Flybe, Aer Arann, Buzz and easyJet did not receive State aid for their operations at La Rochelle airport.

9. RECOVERY

- (705) According to the settled case-law of the Court of Justice, when the Commission has found that aid is incompatible with the internal market, it must order the Member State concerned to abolish or alter it ⁽¹⁹⁹⁾.
- (706) Pursuant to Article 16 of Council Regulation (EU) 2015/1589 ⁽²⁰⁰⁾, ‘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 (‘recovery decision’). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Union law’. The Court has consistently held that where aid is found by the Commission to be incompatible with the internal market, the purpose of recovery is to re-establish the previously existing situation ⁽²⁰¹⁾. In this respect, the Court of Justice considers that the purpose is achieved when aid recipients have repaid the amounts granted by way of unlawful aid, with interest, thus forfeiting the advantage that they enjoyed over competitors. In this way, the situation prior to payment of the aid is restored ⁽²⁰²⁾.
- (707) In the case at hand, it appears that no general principle of Union law prevents recovery of the unlawful and incompatible aid identified in this Decision. In particular, neither France nor the interested parties presented any arguments to that effect.
- (708) France must therefore take all necessary measures to recover from Ryanair, AMS and Jet2 the unlawful aid granted through the agreements in question.
- (709) Table 20 below gives the amounts paid according to France by the CCI to Ryanair/AMS up to 2011 for the marketing services.

Table 20

Amounts paid to Ryanair/AMS and Jet2 between 2003 and 2013

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Ryanair/ AMS		[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Jet2							[...]		[...]	[...]	[...]

- (710) Table 20 gives only the overall amounts for the payments made each year under the various marketing services agreements. France did not, however, provide a table showing a link between the amounts set in the agreements and the amounts actually paid each year under each agreement.

⁽¹⁹⁹⁾ Judgment of 12 July 1973, *Commission v Germany*, C-70/72, ECLI:EU:C:1973:87, paragraph 13.

⁽²⁰⁰⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁽²⁰¹⁾ Judgment of the Court of 14 September 1994, *Spain v Commission*, C-278/92, C-279/92 and C-280/92, ECLI:EU:C:1994:325, paragraph 75.

⁽²⁰²⁾ Judgment of the Court of 17 June 1999, *Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.

(711) The aid amounts to be recovered must therefore be established as follows:

- The amount to be recovered must be calculated for each of the incompatible aid measures referred to in recital 699. For each measure examined, the amount of aid corresponds to the net present value of each measure, calculated as the sum of the discounted incremental cash flows per year as set out in Table 15.
- As France did not provide a reliable reconstruction of the net present value for each of the measures, the reconstruction proposed by the Commission (based on the base scenario) will have to serve as a basis for calculating the amount of aid to be recovered.

(712) In order to reflect the actual advantage enjoyed by the airline and its subsidiaries under the agreements, France must adjust the amounts referred to in recital 711 as follows:

- France can adjust the amount of incremental aeronautical costs taken into account in the calculation based on evidence of payments actually made, which France should provide.
- France must take into account any difference between payments actually made by the airline under the airport services agreements, as observed after the event, and the planned (*ex ante*) flows corresponding to these revenue items. These adjustments must be based on proof of actual payments made, which France should provide.
- France must take into account any difference between marketing payments actually made to the airline or its subsidiaries under the marketing services agreement, as observed after the event, and the corresponding planned (*ex ante*) marketing costs. These adjustments must be based on proof of actual payments made, which France should provide.
- France must take into account any difference between the planned (*ex ante*) duration of the various agreements (airport services and marketing services agreements) and their actual duration. In the case of early termination of some of the agreements, the airline in principle 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. These adjustments must be based on proof of actual payments made, which France should provide.

(713) As explained in recital 451, the Commission considers that, for the purpose of applying the State aid rules, Ryanair and AMS form a single economic entity, and that the marketing services agreements and airport services agreements that were signed together must be regarded as forming a single transaction between this entity and the CCI. The Commission therefore finds that Ryanair and AMS are jointly liable for repayment of the aid received under the agreements signed between 2003 and 2011 (before the date of adoption of the opening decision referred to in recital 4, that is 8 February 2012). By contrast, only Ryanair is required to repay the aid under the set of agreements 1-A and agreement B, as they were concluded directly between the CCI and Ryanair without the involvement of AMS.

(714) The aid to be recovered from Jet2 must follow the methodological principles set out in recitals 711 to 713. As the amount of aid to be recovered from Jet2 cannot exceed EUR 200 000, it cannot be ruled out that the aid amount may be below the exemption threshold in the *de minimis* Regulation ⁽²⁰³⁾. However, neither the French authorities nor the interested parties claimed that this Regulation might apply during the formal investigation procedure.

(715) The French authorities must recover the amounts indicated above within 4 months of the date of notification of this Decision.

⁽²⁰³⁾ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

(716) The French authorities must also add to the aid amount the amount of recovery interest, which must 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 disbursement of the aid, until the date of its effective recovery ⁽²⁰⁴⁾, in accordance with Chapter V of Commission Regulation (EC) No 794/2004 as amended by Commission Regulation (EU) No 2015/2282 ⁽²⁰⁵⁾. Given that, in the case at hand, the flows making up this aid are complex and occur on several dates during the year, and are even continuous for certain categories of revenue, the Commission takes the view that it is acceptable, in calculating the recovery interest, to consider that the moment of payment of the aid concerned is at the year end, namely 31 December of each year in question.

(717) In accordance with settled case-law, if a Member State encounters unforeseen and unforeseeable difficulties or becomes aware of consequences overlooked by the Commission, it may submit those problems for consideration by the Commission, together with proposals for suitable amendments. In such cases, the Commission and the Member State must work together in good faith with a view to overcoming the difficulties whilst fully observing the provisions of the TFEU ⁽²⁰⁶⁾.

(718) The Commission invites France to submit to it any problem that it may encounter in implementing this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The repayable advances granted by the general arm of the La Rochelle Chamber of Commerce and Industry to its airport arm from 2001 to 2012 constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was granted unlawfully by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

2. The underinvoicing of services provided by the general arm of the La Rochelle Chamber of Commerce and Industry to its airport arm from 2001 to 2005 constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was granted unlawfully by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

3. The financial contributions granted by the Department of Charente-Maritime, the Communauté d'Agglomération de La Rochelle and the Region of Poitou-Charentes to La Rochelle Airport for promotional work carried out by La Rochelle Airport constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was granted unlawfully by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

4. The investment grants granted by the General Council of Charente-Maritime, the Regional Council of Poitou-Charentes, the Communauté d'agglomération de La Rochelle and the ERDF between 2001 and 2005 constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was granted unlawfully by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

5. The remuneration for services supplied to Rochefort/Saint-Agnant Airport by the La Rochelle Chamber of Commerce and Industry does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

⁽²⁰⁴⁾ See Article 16(2) of Regulation 2015/1589 (cited in footnote 175).

⁽²⁰⁵⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1), and Commission Regulation (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) No 794/2004 as regards the notification forms and information sheets (OJ L 325, 10.12.2015, p. 1).

⁽²⁰⁶⁾ See for example the judgment of 2 February 1989, *Commission v Germany*, C-94/87, ECLI:EU:C:1989:46, paragraph 9, and judgment of 4 April 1995, *Commission v Italy*, C-348/93, ECLI:EU:C:1995:95, paragraph 17.

6. The alleged under-invoicing of services provided by the general arm of the La Rochelle Chamber of Commerce and Industry to its airport arm from 2006 to 2012 does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
7. The subsidies granted by the FIATA to cover tasks falling under the public-authority remit performed by La Rochelle Airport do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
8. The State aid referred to in paragraphs 1 to 4 is compatible with the internal market on the basis of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

1. The airport services agreements concluded between the La Rochelle Chamber of Commerce and Industry and Ryanair respectively on 1 February 2007 and 13 January 2010 do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
2. The airport services agreement concluded between the La Rochelle Chamber of Commerce and Industry and Aer Arann for the Cork (Ireland) route does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
3. The airport services agreement concluded between the La Rochelle Chamber of Commerce and Industry and Flybe on 18 March 2009 for the Glasgow (Scotland) route does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
4. The promotional measures and communication expenditure relating to the airline Buzz and mentioned in the CRC report do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
5. The alleged marketing services procured from easyJet mentioned in the CRC report do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 3

1. The following measures, which involve State aid unlawfully granted by France jointly to Ryanair and Airport Marketing Services in breach of Article 108(3) of the Treaty on the Functioning of the European Union, are incompatible with the internal market:
 - (a) the airport services agreement signed on 10 December 2003 between the La Rochelle Chamber of Commerce and Industry and Ryanair and the marketing services agreement signed on 1 December 2003 between the La Rochelle Chamber of Commerce and Industry and Ryanair;
 - (b) the marketing services agreement signed on 1 January 2004 between the La Rochelle Chamber of Commerce and Industry and Ryanair;
 - (c) the airport services agreements signed on 1 May 2006 between the La Rochelle Chamber of Commerce and Industry and Ryanair and the marketing services agreements signed on 1 April 2006 between the La Rochelle Chamber of Commerce and Industry and Airport Marketing Services;
 - (d) the amendment signed on 1 June 2007 to the marketing services agreement signed on 1 April 2006 between the La Rochelle Chamber of Commerce and Industry and Airport Marketing Services;
 - (e) the marketing services agreement signed on 21 September 2007 between the La Rochelle Chamber of Commerce and Industry and Airport Marketing Services;
 - (f) the marketing services agreements signed on 17 September 2009 between the La Rochelle Chamber of Commerce and Industry and Airport Marketing Services;

- (g) the amendment signed on 1 February 2010 to the airport services agreement signed on 13 January 2010 between the La Rochelle Chamber of Commerce and Industry and Ryanair and the marketing services agreement signed on 25 February 2010 between the La Rochelle Chamber of Commerce and Industry and Airport Marketing Services;
- (h) the amendment signed on 23 June 2010 to the marketing services agreement signed on 25 February 2010 between the La Rochelle Chamber of Commerce and Industry and Airport Marketing Services;
- (i) the amendment signed on 28 January 2011 to the airport services agreement signed on 13 January 2010 between the La Rochelle Chamber of Commerce and Industry and Ryanair and the amendment signed on 11 February 2011 to the marketing services agreement signed on 25 February 2010 between the La Rochelle Chamber of Commerce and Industry and Airport Marketing Services;
- (j) the amendment signed on 11 February 2011 to the marketing services agreement signed on 25 February 2010 between the La Rochelle Chamber of Commerce and Industry and Airport Marketing Services.

2. The State aid unlawfully granted by France to Jet2 in breach of Article 108(3) of the Treaty on the Functioning of the European Union, under the airport and marketing services agreement signed on 4 July 2008 by the La Rochelle Chamber of Commerce and Industry with Jet2, is incompatible with the internal market.

Article 4

- 1. France shall recover the State aid referred to in Article 3 from the beneficiaries. Ryanair and Airport Marketing Services are jointly and severally liable for repaying the aid referred to in Article 3(1).
- 2. The amounts to be repaid shall bear interest from the date on which the aid was paid to the beneficiaries until the date on which it is effectively recovered.
- 3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.
- 4. France shall cancel all outstanding payments of the aid referred to in Article 1 with effect from the date of adoption of this Decision.

Article 5

- 1. Recovery of the aid referred to in Article 3 shall be immediate and effective.
- 2. France shall ensure that this Decision is implemented within 4 months of the date of its notification.

Article 6

- 1. Within 2 months of notification of this Decision, France shall submit the following information to the Commission:
 - (a) aid amounts to be recovered under Article 4;
 - (b) calculation of recovery interest;
 - (c) a detailed description of the measures already taken and planned to comply with this Decision;
 - (d) documents demonstrating that the beneficiaries have been given formal notice to repay the aid.
- 2. France shall keep the Commission informed of the progress of the national measures adopted pursuant to this Decision until the aid referred to in Article 3 has been recovered in full. It shall immediately submit, on simply being asked 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 interest already recovered from the recipients.

Article 7

This Decision is addressed to the French Republic.

Done at Brussels, 26 July 2022.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2023/1684**of 31 August 2023****concerning certain interim emergency measures relating to African swine fever in Italy***(notified under document C(2023) 5984)***(Only the Italian text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ⁽¹⁾, and in particular Article 259(2) thereof,

Whereas:

- (1) African swine fever is an infectious viral disease affecting kept and wild porcine animals and can have a severe impact on the concerned animal population and the profitability of farming causing disturbance to movements of consignments of those animals and products thereof within the Union and exports to third countries.
- (2) In the event of outbreaks of African swine fever in kept porcine animals, there is a serious risk of the spread of that disease to other establishments of kept porcine animals.
- (3) Commission Delegated Regulation (EU) 2020/687 ⁽²⁾ supplements the rules for the control of the listed diseases referred to in Article 9(1), points (a), (b) and (c), of Regulation (EU) 2016/429, and defined as category A, B and C diseases in Commission Implementing Regulation (EU) 2018/1882 ⁽³⁾. In particular, Articles 21 and 22 of Delegated Regulation (EU) 2020/687 provide for the establishment of a restricted zone in the event of an outbreak of a category A disease, including African swine fever, and for certain measures to be applied therein. In addition, Article 21(1) of that Delegated Regulation provides that the restricted zone is to comprise a protection zone, a surveillance zone, and, if necessary, further restricted zones around or adjacent to the protection and surveillance zones.
- (4) Commission Implementing Regulation (EU) 2023/594 ⁽⁴⁾ lays down special disease control measures regarding African swine fever. In particular, Article 3, point (a), of that Implementing Regulation provides for the establishment of a restricted zone in the case of an outbreak of African swine fever in kept porcine animals, in accordance with Article 21(1) of Delegated Regulation (EU) 2020/687.
- (5) Italy has informed the Commission of the current African swine fever situation on its territory, following the confirmation of one outbreak of that disease in kept porcine animals in the Lombardy Region on 18 August 2023 and, in accordance with Delegated Regulation (EU) 2020/687 and Implementing Regulation (EU) 2023/594, it has established a restricted zone, which comprises protection and surveillance zones, where the general disease control measures laid down in Delegated Regulation (EU) 2020/687 are applied, in order to prevent the further spread of that disease.

⁽¹⁾ OJ L 84, 31.3.2016, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2020/687 of 17 December 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and the Council, as regards rules for the prevention and control of certain listed diseases (OJ L 174, 3.6.2020, p. 64).

⁽³⁾ Commission Implementing Regulation (EU) 2018/1882 of 3 December 2018 on the application of certain disease prevention and control rules to categories of listed diseases and establishing a list of species and groups of species posing a considerable risk for the spread of those listed diseases (OJ L 308, 4.12.2018, p. 21).

⁽⁴⁾ Commission Implementing Regulation (EU) 2023/594 of 16 March 2023 laying down special disease control measures for African swine fever and repealing Implementing Regulation (EU) 2021/605 (OJ L 79, 17.3.2023, p. 65).

- (6) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, it is necessary to identify at Union level the restricted zone, which comprises protection and surveillance zones for African swine fever in Italy in collaboration with that Member State.
- (7) Given the urgency of the epidemiological situation in the Union as regards the spread of African swine fever, it is important that the measures laid down in this Implementing Decision apply as soon as possible.
- (8) Accordingly, pending the opinion of the Standing Committee on Plants, Animals, Food and Feed, the restricted zone in Italy should be established immediately and listed in the Annex to this Decision and the duration of that zoning fixed.
- (9) This Decision is to be reviewed at the next meeting of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Italy shall ensure that:

- (a) a restricted zone which comprises a protection zone and a surveillance zone is established immediately by Italy in accordance with Article 21(1) of Delegated Regulation (EU) 2020/687, subject to the conditions laid down in that Article;
- (b) the protection and surveillance zones referred to in point (a) comprise at least the areas listed in the Annex to this Decision.

Article 2

This Decision shall apply until 18 November 2023.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 31 August 2023.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

Areas established as the restricted zone in Italy as referred to in Article 1	Date until applicable
Protection zone: all Municipalities of Pavia Province, in Lombardia Region contained within two circles of radius of 10 km, centred on: — Latitude 44,992703; Longitude 9,116519 — Latitude 45,124925, Longitude 8,993081 — Latitude 45,121351; Longitude 9,009241	28.11.2023
Surveillance zone: all Municipalities of Pavia Province, in Lombardia Region, not already included in restricted zones I and II as listed in Annex I to Commission Implementing Regulation (EU) 2023/594 and Isola Sant'Antonio, Molino dei Torti, Alzano Scrivia and Guazzora Municipalities, in Alessandria Province, Piedmont Region	28.11.2023

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