



Brussels, 27.06.2012
C(2012) 4221 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>	<p style="text-align: center;">PUBLIC VERSION</p> <p style="text-align: center;">WORKING LANGUAGE</p> <p style="text-align: center;">This document is made available for information purposes only.</p>
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Subject: State aid C 37/2007 (ex NN 36/2007) SA.23098 – Italy

Aeroporto di Alghero

Sir,

The Commission wishes to inform Italy that, after having examined the information supplied by your authorities in relation to the measure mentioned above, it has decided to extend the investigation procedure laid down in Article 108 (2) Treaty on the Functioning of the European Union ("TFEU").

1. PROCEDURE

1. By letter of 22.12.2003 the Commission received a complaint from Air One S.p.A., an Italian air carrier, alleging that operators managing different Italian airports have granted unlawful aid to the airline Ryanair Ltd. ("Ryanair") by means of several agreements setting up operating conditions at the Italian airports. The complainant indicated that the airports concerned were Alghero, Pescara and Rome airports managed respectively by SOGEAAL S.p.A. ("SOGEAAL"), SAGA S.p.A. and Aeroporti di Roma S.p.A. as well as the airports of Pisa, Treviso and Bergamo (Orio al Serio).
2. By letter of 11.06.2004 the plaintiff formally called upon the Commission to define its position with regard to its complaint in accordance with Article 265 TFUE and introduced an application for failure to act before the General Court ("GC"). The GC dismissed the action on the ground that "it is not possible to consider that, as of the

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time when formal notice was given, the duration of the investigation of the complaint was unreasonable"¹.

3. By letter of 09.07.2004 the Commission transmitted a non-confidential version of the complaint to Italy. By letter of 30.07.2004 the Italian authorities requested an extension of the deadline to provide comments. Such an extension was agreed upon by the Commission by letter of 10.08.2004. The comments were transmitted by Italy by letters of 05.10.2004 and of 05.11.2004.
4. Additional information was requested by the Commission from Italy by letter of 14.03.2005. An extension of the deadline was requested by the Italian authorities by letter of 11.04.2005. The Commission agreed to extend the deadline by letter of 16.04.2005. The Italian authorities submitted the requested information by letter dated 17.06.2005. By letter of 30.06.2005 the Italian authorities sent further information to the Commission's services.
5. By letter of 21.11.2005 the plaintiff requested the Commission to extend its investigation to Bari and Brindisi airports. By letter of 18.05.2006 the complainant formally called upon the Commission requesting it to define its position under Article 265 TFUE. To this letter the Commission replied by letter of 14.07.2006.
6. Subsequently, by letters of 26.10.2006 and 10.01.2007 the plaintiff limited its objections to the presumed aid granted under the agreements signed between the Alghero airport operator, SOGEAAL, and Ryanair. On 12.02.2007 the complainant called upon the Commission to act in this respect in compliance with Article 265 TFUE.
7. By letters of 27.06.2006 and of 30.11.2006 the Commission requested further information to Italy which has been partially transmitted by letter dated 17.01.2007. Another request for information was sent to Italy by letter dated 19.02.2007. The Italian authorities replied by letters dated 16.03.2007 and 26.03.2007.
8. After having examined the information supplied by the Italian authorities, on 12.09.2007 the Commission decided to open the investigation procedure laid down in Article 108 (2) TFEU. The decision was transmitted to Italy in the same date and was subsequently published in the Official Journal².
9. By letter dated 15.10.2007 and 22.10.2007 Italy requested the Commission to extend the deadline to submit its observations about the Commission's decision to open the investigation procedure. The Commission granted an extension of the deadline by letter of 23.10.2007. Italy submitted its observations on 14.11.2007.
10. By letter dated 31.1.2008 the Italian authorities informed the Commission of a mistake in the Commission's decision published on 17.1.2008³. The Commission

¹ Judgment of 10.05.2006 in case T-395/04, Air One Spa v. Commission of the European Union.

² Commission decision C37/2007 – Italy - Air One/Ryanair - Aéroport d'Alghero, OJ C 12 of 17.1.2008, p.7.

³The mistake concerned the figures: in page 13, paragraphs 49 and 51, instead of being: «[tra 70 000 e 80 000]», it was: «[tra 7 000 000 e 8 500 000]».

replied by letter of 5.2.2008. The Commission published a corrigendum to its decision of 12 September 2007 on 12.02.2008⁴.

11. On 18.02.2008 Ryanair submitted its observation on the Commission's decision to open the investigation procedure. On the same date SOGEAAL submitted its observations on the Commission's decision to open the investigation procedure, complemented with further information sent by letter dated 16.06.2008. On 20.02.2008 the Commission received the observations of the Sardinia Region.
12. By letter dated 28.02.2008 the Commission forwarded third parties' observations (Ryanair and SOGEAAL) to Italy.
13. By letter of 20.06.2008 Air One S.p.A. submitted to the Commission a supplement of the original complaint. This supplement was sent to Italy for comments by letter dated 10.12.2008.
14. By letter dated 15.1.2009 the Italian authorities requested to extend the deadline for submitting the comments. The Commission agreed to extend the deadline by letter dated 20.01.2009. On 13.2.2009 the Italian authorities submitted to the Commission's services their observations.
15. On 01.09.2009 the Commission signed a consultancy contract with Ecorys Netherlands BV to make a report on a financial evaluation in relation to on-going state aid investigations regarding Alghero airport ("Ecorys Report"). Ecorys submitted its final report on 30.03.2011.
16. By letter of 05.03.2010 Ryanair submitted to the Commission further information concerning all the on-going state aid investigations involving Ryanair, among which the one related to Alghero airport.
17. On 30.03.2011 the Commission sent a request for additional information to Italy and it also communicated to Italy a copy of the Ecorys Report for comments.
18. A request for information was sent to Ryanair on 08.04.2011. Ryanair replied by letter dated 22.07.2011.
19. By letters dated 23.05.2011 and 30.5.2011 the Italian authorities requested an extension of the deadline to provide the information requested by the Commission on 30.3.2011. The Italian authorities also requested the translation to Italian of the English version of the Ecorys report. On 14.06.2011 Italy confirmed the translation request and at the same time Italy dropped the request for an extension of the deadline to provide the answer. On 01.08.2011 the Commission sent to Italy the translation of the Ecorys Report.
20. By letters dated 31.08.2011 and 09.09.2011 respectively the Region of Sardinia and the Italian Ministry of Transport submitted the reply to the request for information of 30.03.2011.
21. By letter dated 19.10.2011 the Commission transmitted Ryanair's observations to Italy. By letter dated 16.11.2011 Italy asked an extension of the deadline for

⁴ OJ C 38 of 12.2.2008., p.19.

comments. The Italian authorities also asked for the translation to Italian of the English version of the Economic Market Economy Investor Principle ("MEIP") Assessment Report made for Ryanair by Oxera that the Italian authorities were asked to comment. By letter of 17.11.2011 the Commission agreed the extension of the deadline. On 23.01.2012 the Commission sent the translation of the Oxera Report to Italy.

22. On 15.02.2012 Italy submitted its comments on Ryanair's observations and on the Oxera Report in particular.
23. On 17.02.2012 the Commission sent a questionnaire to Ryanair concerning a series of on-going state aid investigations, including on Alghero airport. Ryanair replied by letter of 16.04.2012.

2. GENERAL INFORMATION CONCERNING THE AIRPORT

2.1. Alghero Airport

24. Alghero Airport is situated in the North-West of Sardinia. Because of the low living standards and poorly developed infrastructure network the region has been qualified as an objective 1 region under the EU's Structural Funds policy from 2000 to 2006.
25. Alghero airport was originally built as a military airport and in 1974 it was transformed to a civil airport. Its infrastructure was extended during the 1960's and 1980's, following the demilitarisation of flight assistance services.
26. Alghero airport is located 128 km from the closest airport, Olbia (devoted to seasonal tourism with high spending profile) and 235 km from the second closest airport, Cagliari (focused on regular flights with high relevance to business passengers). The other two airports of the Island although closer to Alghero offer partially different services: Oristano, 133 Km southwards, on the West coast between Olbia and Cagliari, so far has had limited operational activity, and Tortoli-Arbatax, 225 Km eastwards, mostly serves connections during summer⁵.
27. According to the information submitted by Italy, based on the a trip distance of 60 minutes, the airport serves an area covering 35% of the Sardinian island, including provinces of Sassari, Oristano and Nuoro, with a population ranging from 450.000 to 650.000 inhabitants. The area also hosts a dense industrial network⁶. The Italian authorities mention that due to its geographical position and the features of the transport network (road and rail modes), Alghero airport is not substitutable with the other existing airports at Sardinia.
28. In 2011 the airport had more than 1.5 million passengers. From 2000 to 2011, the traffic has substantially increased, passing from less than 1 million until 2004, to 1

⁵ The distances are those resulting at <http://servizi.aci.it/distanze-chilometriche-web>.

⁶ Letter of Italy of 31 August 2011, annex 3.

million in 2005, and progressively reaching the level of today as from 2009. The evolution of the traffic between 2000 and 2011 is represented in the table below⁷.

Table 1 – Passenger traffic evolution at Alghero airport

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
663.570	680.854	803.763	887.127	997.674	1.078.671	1.069.595	1.299.047	1.379.791	1.506.080	1.387.287	1.513.245

29. The Alghero airport infrastructure is owned by the Italian State. It is currently managed by SOGEAAL, a publicly owned company (see Section 2.2. below).
30. In accordance with the information provided by Italian authorities, the main airline using the airport since 2000 has been Ryanair.
31. Ryanair began its operations at Alghero airport in 2000. The first route was launched between Alghero and London Stansted in June 2000, and routes were added from Alghero to Frankfurt Hahn in October 2003, and Alghero to Gerona in February 2004. Additional routes have been added in subsequent years.
32. Other airlines, including low cost carriers ("LCC"), have been operating at the airport since 2000 (Germanwings, Air Italy, Air Dolomiti, Air Vallée, Meridiana, Alpi Eagles, Bmibaby, EasyJet, Air One, Volare, Alitalia)⁸. Most recently, Air One has become the second biggest operator at the airport.
33. Notably, Ryanair has currently 64 out-coming and 66 incoming flights per day, compared with the 46 out-coming and 56 incoming flights of Air One and a range of 1 to 5 flights operated by other LCC carriers⁹.

2.2. Evolution of the management of the airport since 1995

34. Before the airport reform enacted in 1993¹⁰ the airport was managed directly by the State. In 1997 the Italian authorities established a national body for civil aviation – Ente Nazionale per l'Aviazione Civile ("ENAC"), created in order to oversee the

⁷ See at <http://www.assaeroporti.it/ViewPasseggeriProg.asp?mese=12&anno=2011&lingua=it> figures referred to "commercial traffic", net of "general aviation"). These figures are substantially overlapping to the ones reported in the letter of Italy of Italy of 31 August 2011, annex 27.

⁸ The list of the airlines is not exhaustive and it is based on the information at the disposal of the Commission.

⁹ See Alghero airport website at www.aerportodialghero.it.

¹⁰ Law no. 537/1993, in particular Art. 10, par. 13. Based on the same law the undertakings managing the airports could be held by public or private shareholders, with the objective among others of progressively privatising the sector and accordingly diverting infrastructure investments from public to private funds. The establishment of procedures and requirements therewith related were put in place progressively in the years following the reform. Different types of concession agreements were envisaged under the Italian law, notably under Articles 38 and 704 of the Navigation Code, as amended, e.g. full management concession, partial management concession and urgent partial management concession, granting the concessioner different degrees of management autonomy. See annex 5 to the submission of comments by Italy of 14 November 2007.

aviation sector in Italy¹¹. Since then, the airport infrastructure is assigned to ENAC for free, which in turn assigns it to third parties via concessions¹². Such a concession and the related conventions regulate the conditions for the use of the airport infrastructure by the assignee – the airport manager.

35. The airport managers pay a concession fee to ENAC while they can benefit of revenues from both aviation-related activities (e.g. landing and parking rights, boarding passengers rights, fuelling royalties) and non-aviation activities (e.g. commercial activities or rent of spaces). In particular, the revenues of airport operators can include: (i) the airport rights, decided by the State through ENAC; (ii) the handling fees, decided by the airport operator and "notified" to the Ministry of Transport (in case of non-opposition, they are considered approved). These are subject to a transparent and non-discriminatory negotiation with air carriers and these can get discounts; (iii) the revenues for commercial activities (supplied directly or assigned to third parties)¹³. Besides, airport managers can engage in handling activities inasmuch as they keep separate accounts¹⁴.
36. In 1995 a partial and provisional concession¹⁵ for managing Alghero airport was assigned to SOGEAAL without a public tender¹⁶. This was followed by other partial concession acts which successively broadened the scope of the original concession by adding parts and areas of the airport and in parallel licenses for activities. In 1999 SOGEAAL applied for the full concession to operate the airport and it finally obtained the full management concession on 3 August 2007. None of these steps implied public tender. For the entire period the ownership of the airport has remained with the State.

2.2.1. Ownership of SOGEAAL

37. Since its creation in 1994, SOGEAAL has been owned entirely, directly or indirectly, by public bodies. Among the shareholders there were Chamber of Commerce of Sassari, Province of Sassari, Municipality of Sassari, Municipality of

¹¹ ENAC is the Italian Authority committed to oversee the technical regulation, the surveillance and the control of the civil aviation. It has been set by Legislative Decree 25 July 1997, no. 250.

¹² See Articles 692 and 693 of the Italian Navigation Code (R.D. 30 March 1942, no. 327) and Article 8 of Legislative Decree 25 July 1997, no. 250.

¹³ See annex 5 to the submission of comments by Italy of 14 November 2007.

¹⁴ The obligation is foreseen in Article 7 of Legislative Decree 13 January 1999, no 18, implementing Directive 96/67/CE.

¹⁵ The partiality refers to the availability pro-quota of airport infrastructure, while the provisional nature refers to the expectation of the award of the full concession.

¹⁶ This assignment implied a derogation from the obligation to tender out the airport concessions. Such obligation was introduced since 1997 but did not apply to existing concessions, providing that the concessioners complied with the requirements by law, see Ministerial Decree 12 November 1997, no. 521, in particular Artt. 6, 7 and 8. The derogation was later confirmed by Article 3, par. 2, of Legislative Decree 96/2005, making reference to the concession already assigned as well as to the procedure for the assignment of the concession triggered by requests submitted before the enactment of the same Decree and based on the Ministerial Decree no 521/1997.

Alghero, Sardinian Region, Società Finanziaria Industriale Regione Sardegna - SFIRS S.p.A. (hereinafter also "SFIRS")¹⁷.

38. The composition of the capital varied in the course of the years. Since 2009 the Sardinian Region acquired the control over SOGEAAL (before that date none shareholders had more than 50% of the shares) and since 2010 it acquired, directly and through SFIRS, the entire capital.

2.2.2. *From the partial and provisional concession to the full concession*

39. Italian authorities have provided details on the evolution of the management of Alghero airport as follows¹⁸.
40. In 1994 SOGEAAL was established for the purpose of managing Alghero airport with an initial capital of 200 million ITL (EUR 103 291.4), provided by several local public bodies. The majority of the capital was made available by the Sardinian Region.
41. On 10 May 1995 SOGEAAL received the first partial and provisional concession, complemented by a convention¹⁹. It referred to the use of infrastructure for the supply of handling services, on the basis of contracts to be signed with air carriers, in return of fees to be paid to the State. With reference to first concession act, the amount of the fees was determined in the act and established by reference to other administrative acts²⁰.
42. This concession also contains a clause (under letter (i)) that stipulates that the profits made in the course of the business in the maintenance and improvement of the infrastructure have to be re-invested *"in order to guarantee the modernisation of premises and services aimed at the air traffic"*.
43. Pursuant to the concession contract, ENAC has the power to withdraw the concession via an advance notice of thirty days *"for reasons of public interest"* and take back the assigned airport infrastructure, jointly with additional works realised on it. In this latter case the payment of an indemnity was to be defined on the basis of Article 42 of the Navigation Code. SOGEAAL also had an obligation to give back the infrastructure in the same condition as it was received would the concession been terminated for any reason (under letters (c), (d) and (e)). This provisional concession was due to expire at the signature of the final concession.

¹⁷ According to the website at <http://www.sfirs.it/>, SFIRS S.p.A. is a company 100% owned by the Sardinian region. The undertaking supports the Region in the implementation of its plans, programs and guidance, participating to the local economic and social development.

¹⁸ See annex 6 and annex 1 (Ecorys Report), p. 23, to the letter of Italy of 31 August 2011.

¹⁹ The 2007 decision recalls that, on the basis of the information provided by Italian authorities, since 1996 the airport was managed jointly by the Sardinia region and SOGEAAL, with specific tasks assigned to the each of them (see points 11 – 17 of the 2007 decision).

²⁰ E.g. the 1995 concession act recalls the Circular of Ministry of Finance no. 62567 of 4 February 1989, as amended by Ministerial Decree of 20 July 1990. For the amount of fees over the period 2000 to 2010 see paragraph 86 below.

44. A second partial concession was awarded on 20 October 1995 for catering services. In 1997 the Inter-ministerial Committee for Economic Planning ("CIPE")²¹ approved to expand the capacity of the airport up to 2 million passengers.
45. On 16 October 1998 SOGEAAL was authorised by the Ministry of Transport²² to occupy the airport for the execution of works on infrastructure detailed in a specific plan attached to the request to access the areas concerned. To this aim it was enabled to receive the airport taxes and the revenues from passenger rights, which it had to invest on the same works (under Articles 1 and 2 of the concession act)²³. On 12 January 1999 SOGEAAL requested the full concession of the airport²⁴.
46. On 25 May 2000 ENAC granted SOGEAAL the concession to provide security services (passengers and baggage control). At the end of 2000, SOGEAAL received the concession to provide parking services and the authorisation to carry out the relative works on infrastructure. In 2004 and 2005 SOGEAAL was awarded the concession to provide respectively retail and advertising services.
47. Following the assignment of the "certification" as airport in 2004, pursuant to the national rules set out by ENAC²⁵, SOGEAAL was awarded the full concession by Inter-Ministerial Decree 125 T of 3 August 2007 for the duration of 40 years starting from the same date. A new convention between ENAC and SOGEAAL was signed on 28 May 2007.
48. In 2010 SOGEAAL became the only entity providing handling services at the airport, following the acquisition on 30 November 2010 of its sole handling competitor EAS, a business branch of Alitalia (formerly of Air One).
49. Following the award of the full concession in 2007 and the previously mentioned acquisition in 2010, SOGEAAL renegotiated substantially the terms of handling and marketing agreements signed until then with Ryanair²⁶.

3. THE 2007 DECISION TO OPEN THE FORMAL INVESTIGATION PROCEDURE

50. The measures subject to the Commission decision of 12 September 2007 (hereinafter "the 2007 decision"), set out on the basis of the information at the disposal of the Commission at that date, can be summarised as follows:
- **Potential State aid to SOGEAAL for the operation of the airport by means of:**

²¹ CIPE is the Italian political decision-making body in the economic and financial spheres with a coordination function in the planning of the economic policy.

²² The legal basis for the authorisation is Article 17 of Decree Law 25 March 1997 no. 67 converted by Law 23 May 1997 no. 135.

²³ In this respect, see the minutes of the board of SOGEAAL of 8 April 2000 in annex 7 to the submission of Italy of 14 November 2007.

²⁴ Pursuant to Article 6 of Ministerial Decree 12 November 1997, no. 521, which foresees that within 6 months from its enactment the existing concessioners could ask for the total concession and the request had to be complemented with further acts within the following 9 months. The Decree has been published on the Official Journal on 9 April 1998 but required implementing acts to be adopted within two months.

²⁵ See letter by Italy of 31 August 2011, annex 26, p. 1.

²⁶ See annex 1 (Accuracy Report), p. 12, to the letter of 31 August 2011 submitted by Italy.

- i) Compensations and financial support measures granted by the Sardinia Region to SOGEAAL in the period between 2002 – 2006²⁷ (totalling EUR [7 – 8,5]* million) with the objective to compensate Ryanair for the marketing support.
 - ii) Capital increase in SOGEAAL of 2005 by its shareholders (amounting to EUR 4 million)²⁸.
- **Potential State aid to the air carriers operating at Alghero airport and in particular:**
- i) Potential State aid to Ryanair in the form of reduced airport charges. The 2007 decision makes reference in particular to the agreements signed between SOGEAAL and Ryanair before 2007.
 - ii) Potential State aid to other air carriers operating at Alghero airport in the form of reduced airport charges. In the 2007 decision, the Commission makes reference in particular to the conditions granted to other airlines therein operating, in particular to Europe Air Post, Air Vallese, Air Dolomiti and Alpi Eagles.
 - iii) Marketing support granted to Ryanair by means of the agreements signed between SOGEAAL and Ryanair before 2007. This support was granted in the form of one-off contributions (since 2002) and success fees (since 2007) for the opening up of new routes from the Alghero airport.

51. In the 2007 decision the Commission considered that all the measures in question might contain elements of State aid under Article 107(1) TFEU and it expressed the doubts on the compatibility of these potential illegal aids with the internal market.

4. GROUNDS FOR THE PRESENT EXTENSION OF THE INVESTIGATION PROCEDURE

52. On the basis of the most recent information submitted by the Italian authorities²⁹ it appears that the State financed, between 2003 and 2010, investments in the airport infrastructure for approximately EUR 47 million in total, out of EUR 52 million of total investments. An additional amount of EUR 285 000 was granted by the State for equipment (i.e. x-ray devices, software) between 2003 and 2004.

53. Moreover, according to the information supplied by Italy, it appears that in the period from 1998 to 2009 the Sardinian Region granted SOGEAAL an amount of EUR 6 540 269 to finance "fittings and works"³⁰.

54. It is not clear at that stage on the basis of the documents submitted by Italy whether the contributions granted by Sardinia cover the difference between the total

²⁷ The final year 2006 was considered in connection with the documentary evidence provided by Italy at that time.

* The professional secrecy in the present version of the decision, under Commission Communication C(2003) 4582 of 1 December 2003 (OJ C 29, 9.12.2003, p. 6), has been replaced by brackets ([...]).

²⁸ The amounts and dates indicated in the 2007 decision are based on the information available to the Commission at that stage of the procedure.

²⁹ Letters of the Italian authorities of 31 August 2011 (Sardinia Region) and 9 September 2011 (Ministry of Transport) and relative annexes.

³⁰ These are defined by Italian authorities as "*contributi in conto impianti e lavori*".

investments and the investments financed by the State considered in the paragraph above. Moreover, elements in the file might indicate that the investment funds by the State and by Sardinia submitted by Italian authorities are not exhaustive and other should be considered.

55. Finally, on the basis of the information submitted by Italy, it also appears that some of the examined measures in the context of the 2007 decision, notably in the form of capital increases and of contracts signed with air carriers, were granted before and beyond the period assessed by the same decision, which covers 2005 as regards the capital increase and the contracts signed with air carriers from 2002 to 2006.

56. The Commission considers thus necessary for an accurate analysis of all the measures in favour of the airport manager and its customer airlines, to extend the scope of the investigation to:

- i) all measures granted to SOGEAAL as from 2000, including capital injections and repayment of losses, the financing of the airport infrastructure and equipment by the State, and the fittings and works by the Region Sardinia, and to
- ii) all measures granted to Ryanair and its subsidiaries, and to the other airlines using the airport from 2000.

5. DETAILED DESCRIPTION OF THE MEASURES UNDER INVESTIGATION

57. The present chapter aims at summarizing all the measures under investigation (measures examined in the 2007 decision and the measures subject to the present extension of the investigation procedure). The measures under investigation can be summarized as follows:

- All the measures in favour of the airport manager SOGEAAL granted since 2000 as outlined below (Section 5.1 of the present decision):
 - i) Capital injections and compensation of losses by the Sardinian region and other public shareholders (Section 5.1.2);
 - ii) Contributions for fittings and works from the Sardinian Region (Section 5.1.3);
 - iii) Financing of airport infrastructure and equipment by the State (Section 5.1.4).
- All agreements concluded with the airlines using the airport from 2000 (Section 5.2 of the present decision);

58. The following sections will describe in details all the measures subject to the present decision to extent the investigation procedure.

5.1. Measures in favour of SOGEAAL

59. From the information provided by the Italian authorities it results that SOGEAAL received funds from the Sardinian Region and its shareholders in the form of repayment of losses, rebuilding of capital and in the form of contributions for fittings and works (see Sections 5.1.2 and 5.1.3).

60. In addition, in the period between 2004 and 2010 the State financed the investments in the airport infrastructure, and in 2003 and 2004 it also granted contributions to finance airport equipment (see Section 5.1.4 below). In both cases, it appears that SOGEAAL received directly the funds. As regards investments, evidence in the file suggests that funding investments might have been granted even before 2003³¹. The analysis which follows is based on the specific allegations submitted by Italy as regards the investment funds, without prejudice of further elements that might be submitted or clarified at a later stage.

5.1.1. Financial situation of SOGEAAL

61. According to the information submitted by Italy SOGEAAL's financial results during the period considered by the present decision have been negative. Considerations on SOGEAAL's financial situation are expressed in the 2007 decision, also based on the business plan laid down by the advisor Roland Berger in 2004 (see points 45 – 48 of the 2007 decision). The elements set out below aim at complementing the arguments already put forward by the Commission.

62. The Italian authorities submitted a report titled "Project Nuraghe – Il caso Sogeaal" of 29 August 2011 that assesses the financial situation of the airport in the period between 2000 and 2010, prepared by the advisor Accuracy ("Accuracy Report")³². The Accuracy Report mentions the financial results of SOGEAAL between 2000 and 2010 as reported in the table below. The table reports figures on revenues and costs, as well as the amounts granted by SOGEAAL for the co-marketing contributions and symmetrically the co-marketing contributions received from Sardinia (for these latter see below Section 5.2.1.1).

Table 2 – Financial results of SOGEAAL in the period 2000 - 2010

Statement of Income (K EUR)	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Avio revenues	3 934,9	4 034,6	5 345,7	5 795,2	6 213,2	6 550,4	6 671,4	8226,3	8 619,9	9 644,1	9 557,2
Non-avio revenues	331,1	489,8	717,8	833,3	1 173,4	1 459,6	1 945,8	2 568,3	3 713,8	2 866,7	2 771,9
Other revenues	360,7	346,9	1 155,8	920,1	958,0	1 515,1	1 429,3	958,3	356,9	325,4	340,4

³¹ See Ecorys Report of 17 September 2010, p. 40 ff and Annex G of the same report, refers to a total investment for EUR 69 785 577 for investments decisions undertaken before 2001 and until 2008. Annex G also gives details on the use of the funds for specific works, date and suppliers.

³² Letter of Italy dated 31 August 2011, annex 1.

Costs	(3 072,0)	(3 297,7)	(3 733,7)	(3 878,2)	(5 242,0)	(4 592,8)	(5 161,7)	(5 337,8)	(5 295,0)	(5 249,0)	(5 660,5)
Costs for personnel	(1 105,6)	(1 491,4)	(2 611,5)	(3 149,5)	(3 629,3)	(3 999,2)	(4 735,9)	(5 905,7)	(7 176,9)	(7 036,9)	(7 214,0)

Co-marketing contributions	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Co-marketing costs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

TOTAL GAINS (LOSSES)	(32,2)	(790,7)	(47,3)	(951,0)	(2.981,7)	(2.064,7)	(1.108,2)	(1.800,8)	(4.577,3)	(12.404,1)	(1.847,2)
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Source: Accuracy Report, p. 30.

63. It can be observed from the above table that since 2000 SOGEAAL has been operating at losses. These losses considerably increased in 2008 (about 2,5x comparing to 2007) and in 2009 (about 2,7x comparing to 2008), i.e. after the award of the full concession.
64. According to the Italian authorities, the negative results of SOGEAAL were mainly due first to the only partial concession to operate the airport and, following the full concession in 2007, to the economic crisis.
65. The Accuracy Report comments on the table specifying that the profits were conditioned by *"the costs / revenues for territorial marketing contributions borne / received in the period considered"*. However, the Report adds that marketing contributions to be paid to Ryanair are *"to be considered outside the operational return on investments since they represent the costs sustained by Sardinia in order to favour the local economic development"*.
66. According to the Accuracy Report in the period following the assignment of the full concession, [...] ³³. In particular the loss of EUR 12 million in 2009 is indicated as due to the lack of financial transfer from the Sardinian Region.
67. A more comprehensive analysis of the economic situation of SOGEAAL in the period considered and the forecast for 2011 and 2012 is reported in the Plan for the Reorganisation and Restructuring ("Plan") approved by SOGEAAL's Board on February 2010 ³⁴. This Plan outlines the reorganisation process that was started by the new management.
68. In the above mentioned Plan, the negative results by SOGEAAL until 2010 are considered due to a series of causes, ranging from the inadequate organisation and management of the company, to the inefficient management of the handling fees, to

³³ Annex 1 (Accuracy Report), p. 30 ff..

³⁴ Letter of the Italian authorities, of 31 August 2011, Annex 3.

infrastructure deficiencies, to critical factors in both the aviation and non-aviation revenues.

69. The Plan identifies the critical areas of the business and envisages several actions to be undertaken in order to restructure the company. [...] ³⁵.
70. The Plan also notices the lack as of that date of fundamental instruments for the planning of the airport strategy although due by law, i.e. the Airport Development Plan and the Contract of Program.
71. Among the envisaged actions, the Plan sets the recovery of an efficient economic management and the operational efficiency as well as the renegotiation of the existing marketing and handling contracts with carriers. The strategy pursued is to attract more carriers besides Ryanair. For the years 2011 and 2012, the Plan makes positive forecasts also in view of the recapitalisation of the company envisaged for 2010.

5.1.2. Repayment of losses and increase of SOGEAAL's capital by Sardinia and other public shareholders

72. The Italian authorities argue that Italian law requires airport operators to maintain a certain minimum level of capital depending on the traffic level to be managed ³⁶: for airports between 300 000 and 1 000 000 passengers the minimum share capital is EUR 3 million, whilst for traffic level between 1 000 000 and 2 000 000 the threshold is set at EUR 7 500 000.
73. In view of the financial situation of SOGEAAL starting at least from 2000, this requirement has implied for Alghero an increase in capital in 2004 and in 2005 (see table 3 below). Based on the information available at this stage and notably according to the information in the documents submitted by Italian authorities, these operations had a form of both increase of capital in SOGEAAL and compensations of losses registered by SOGEAAL.
74. These operations were carried by the shareholders of SOGEAAL represented by all public bodies: Chamber of Commerce of Sassari, Province of Sassari, Municipality of Sassari, Municipality of Alghero, Sardinian Region (also through SFIRS, owned 100% by the Region). The operations on the capital by all shareholders since its establishment are summarised in the table below, with details on the amounts granted by Sardinia and/or SFIRS ³⁷.

Table 3 – Operations on SOGEAAL's capital by Sardinia, SFIRS and other public shareholders

Year	Description of the operations	Total amount	Contributions given by Sardinia Region and SFIRS (EUR)

³⁵ Letter of the Italian authorities, of 31 August 2011, Annex 3, p. 22 ff.

³⁶ See in particular Article 3 of Ministerial Decree 521/1997.

³⁷ Letter of Italian authorities dated 31 August 2011, annexes 7 and 23. Annex 7 defines the operations since 2003 as "repayment of losses", whilst annex 23 as "rebuilding of capital". For the split between different funds by shareholders, including the contributions by SFIRS, for years 2007, 2009, 2010, annex 1 (Accuracy Report), p. 40.

1994	Establishment of the company	ITL 200 000 000	15 494 (Sardinia)
1998	Capital increase	ITL 6 000 000 000	1 038 078 (Sardinia)
2001	Capital increase and conversion to euro	EUR 3 102 000	n.a.
2003	Repayment of losses and capital increase	EUR 546 000 (Repayment of losses) EUR 7 754 000 (targeted capital increase)	2 079 200 (Sardinia)
2005	Repayment of losses/rebuilding of capital	EUR 3 933 372	1 495 500 (SFIRS)
2007	Repayment of losses/rebuilding of capital	EUR 3 797 185	711 445 (Sardinia) 1 155 500 (SFIRS)
2009	Repayment of losses/rebuilding of capital	EUR 5 649 535	1 596 710 (Sardinia) 2 593 400 (SFIRS)
2010	Repayment of losses/rebuilding of capital	EUR 12 508 306	10 000 000 (Sardinia) 2 508 300 (SFIRS)
TOT		EUR 25 888 398	EUR 15 440 927 (SARDINIA) EUR 8 152 700 (SFIRS)

75. From the documents available it appears that SOGEAAL was created in 1994 with the specific purpose of managing Alghero airport and as a result of the reform of the airport system enacted in Italy since 1993 (see Section 2.2 above).

76. The Italian authorities submitted that the capital increases in 2005 aimed at re-establishing the amount of EUR 7 745 000 in connection with legal and economic aspects³⁸:

- Legal aspect: losses in 2003 and 2004 (amounting to EUR 3 932 000) lowered the capital below the threshold provided for by the law³⁹ which in the case of Alghero amounted to EUR 7,5 million;
- Economic aspects: Alghero passed from 590.000 passengers in 1999 to 1 million of passengers in 2004 mainly due to the presence of Ryanair. The injection of capital would have allowed SOGEAAL to operate the level of traffic reached in view of profitability. In this respect, the Accuracy analysis also mentions studies showing that the range between 0,5 to 1,5 million passengers is the threshold for profitability prospects in the airport business;
- Moreover, SOGEAAL was waiting for the management of the airport as a whole, and all the connected revenues.

³⁸ Letter of the Italian authorities dated 31 August 2011, Annex 1 (Accuracy Report), pp. 38 and 40.

³⁹ Ministerial decree no. 521/1997 provides for a minimum threshold for the airport manager on the basis of passengers or freight operated.

77. SOGEAAL's board meeting of 29 April 2005⁴⁰ specifies the nature of the operation on the capital provided for in the same date. Following losses on capital corresponding to EUR 3 933 372, the shareholders decided first to reduce correspondingly the capital and then to increase it by the same amount. Essentially, the operation amounted to a repayment of losses.

78. As regards the subsequent operations in 2007, 2009, and 2010, the Italian authorities submit that three injections of capital - each for EUR 7 754 000 for a total amount of around EUR 22 000 000 - aimed at covering the losses and re-build the capital.

79. The underlying reasons were in this case, according to the Italian authorities, not legal but purely economic: [...].

5.1.3. Contributions for fittings and works

80. According to the information provided by Italy, from 1998 to 2009 Sardinia granted to SOGEAAL contributions for "fittings and works" for a total amount of EUR 6 540 269. Details of these contributions are reported in the table below⁴¹.

Table 4 - Contributions granted by Sardinia for fittings and works

Year	Contribution given by Sardinia Region for equipment and work (EUR)
1998	1.093.236
1999	1.141.774
2000	1.059.326
2001	136.347
2002	1.117.146
2003	407.627
2004	1.570.923
2008	10.467
2009	3.423
Total	6.540.269

81. Although the Italian authorities limited to refer to the legal basis for the grants without specifying the exact nature of the expenditure, it appears that their aim was connected with infrastructure funding⁴².

5.1.4. Airport infrastructure

82. As mentioned above, the management of the airport infrastructure was assigned to SOGEAAL with progressive concession acts (see Section 2.2 above). The airport infrastructure has always been owned by the State.

⁴⁰ Letter of Italy of 31 August 2011, annexes 25 and 26.

⁴¹ Letter of Italy of 31 August 2011, annex 23. The table reported in the document defines the contributions as given for fittings and work ("*impianti e lavori*").

⁴² The contributions are specifically referred to as investments in infrastructure e.g. in Article 31 of Regional Law 20 January 1994, n. 2 (one of the legal acts referred to by Italian authorities).

5.1.4.1. Infrastructure and equipment contributions granted by the State

83. It results from the information submitted by the Italian authorities that in the period between 2004 and 2010 the State financed investments in the airport infrastructure for a total amount of EUR 46 940 534. In 2003 and 2004 the State also granted contributions for equipment for a total amount of EUR 284 782,99. The table below details the breakdown of these public contributions⁴³.

Table 5 – Contributions granted by the State for infrastructure and equipment (EUR)

Year	Original cost of works	Contributions for works	Contributions for Equipment
2003	-	-	208.782,99
2004	16 844 754,16	14 632 655	76 000,00
2005	1 962 949,73	1 779 060	n.a.
2009	32 749 033,05	30 365 474	n.a.
2010	93 210,33	163 345	n.a.
Total	51 649 947,27	46 940 534	284 782,99

84. The information in the file seems to suggest that funding investments might have been granted even before 2003. In particular, the Ecorys Report of 17 September 2010 refers to a total investment for EUR 69 785 577 for investments decisions undertaken and reported by SOGEAAL before 2001⁴⁴.

85. Moreover, according to the information provided by Italy, SOGEAAL has plans for the period covering 2011 – 2013 to use public funds, including national, European and national funds for special projects⁴⁵ for a total amount of around EUR 22 million. The overall investment would be aimed at improving the airport infrastructure (EUR [...] million) and redeveloping the commercial area with new retail spaces, as well as creating a multi-storey car park (EUR [...] million)⁴⁶.

⁴³ Letter of Italy of 31 August 2011, annex 9.

⁴⁴ See Ecorys Report p. 40 ff. and Annex G. Annex G also gives details on the use of the funds for specific works, date and suppliers.

⁴⁵ Since the budget law of 2003 (law 27 December 2002, no. 289), the so called FAS funds have been used by Italian authorities, in addition to national and European funds, to finance specific development projects in underdeveloped areas of the country.

⁴⁶ See annex 1 (Accuracy Report), p. 27, to 2011 submission. There is a slight difference in the amount indicated in another document: Accuracy Report mentions EUR 21,1 million, while annex 3 (Reorganizational plan) mentions EUR 22,2 million.

5.1.4.2. Concession fees paid by SOGEAAL

86. In the period between 2000 and 2010 SOGEAAL paid concession fees⁴⁷ as shown by the table below.

Table 6 - Concession fees paid by SOGEAAL (EUR)

Description	1998	1999	2000	2001	2002	2003	2004
Concession fee for Ministry	139.572	166.505	243.880	266.205	312.950	371.912	418.358
Concession fee for security service	-	-	-	-	-	-	-

Total	139.572	166.505	243.880	266.205	312.950	371.912	418.358
	2005	2006	2007	2008	2009	2010	Total
Concession fee for Ministry	473.836	119.197	171.019	232.130	267.009	171.005	2.643.514
Concession fee for security service	7.092	37.324	45.439	48.205	52.618	48.571	239.249
Total	480.928	156.539	216.458	280.335	319.627	219.575	2.882.763

5.2. Measures in favour of airlines using the airport as from 2000

5.2.1. Contracts signed between SOGEAAL and Ryanair/AMS

87. Since 2000, Ryanair has been the main airline operating at Alghero (see Section 2.1 above). Since then several agreements have been signed between Ryanair and its subsidiary Airport Marketing Services (thereafter "AMS"), and SOGEAAL. They can be grouped into two categories:

- Airport (and Marketing) Services Agreements: These agreements, signed since 2000 between Ryanair and SOGEAAL, set up conditions of the operation of Ryanair at the airport and the level of airport charges. In these agreements Ryanair commits to meet flight/passenger targets against a success fee to be paid by SOGEAAL, complemented by penalties. They also contain clauses providing for certain advertising activities committed by Ryanair. Targets to be met and specific services to be provided are set out in annexes and/or in supplemental agreements or side acts.
- Marketing Services Agreements: These agreements relate to the advertising of the destination on the official website of Ryanair. Since 2006, they have been signed with Ryanair's 100% owned daughter company AMS and negotiated in the same dates of Airport Services Agreements.

88. The agreements signed between SOGEAAL and Ryanair/AMS result from the table below⁴⁸:

⁴⁷ On legal and contractual basis for the fees see Section 2.2.2.

Table 7 - Agreements between SOGEAAL and Ryanair/AMS

DATE	OBJECTIVES	DURATION
22/06/2000	<p>Airport / Marketing Services Agreement (Ryanair)</p> <p>Ryanair will operate at least [...] per day between London and Alghero. Ryanair will pay ITL [...] per each turnaround (Premises and Art. 2).</p> <p>Ryanair shall present [...] a sales and marketing plan and indicate results already obtained as well as development prospects (Art. 2).</p> <p>SOGEAAL undertakes to provide terminal and handling services (as detailed in Annex A). SOGEAAL will "pay or credit" a [...] amount equivalent to the amount payable by Ryanair for handling fees, [...]. SOGEAAL undertakes to pay annually a certain amount and an additional amount should [...] be added to its schedule (Art. 3).</p> <p>"Considering that all contributions are paid by regional institutions" Ryanair accepts that the contract could be transferred to one of the regional institutions concerned (Art. 5).</p>	22/06/2000 – 21/06/2010
25/01/2002	<p>Airport / Marketing Services Agreement (Ryanair)</p> <p>Ryanair will pay EUR [...] per each turnaround; it will pay the handling fees as published time by time, airport taxes, and security charges (Art. 2).</p> <p>Ryanair undertakes to carry out advertising and promotional activities on its web page and other media at its discretion in order to promote the connection Alghero-London in consultation with SOGEAAL (Premises and Art. 3).</p> <p>SOGEAAL will pay a certain amount for the [...] rotation [...]. SOGEAAL will provide a passenger desk in a primary location in the main terminal of the airport for dealing with all operations connected with Ryanair flights in exchange for commission on tickets. SOGEAAL will pay for equipment and personnel, including training. Free branding spaces are reserved to Ryanair (Art. 4).</p> <p>Ryanair is party to the protocol with Sardinia signed on 24 January 2002 recognising the significant contribution to the economy of Sardinia created by Ryanair through the connection London – Alghero.</p>	01/01/2002 – 31/12/2012
01/09/2003	<p>Airport / Marketing Services Agreement (Ryanair)</p> <p>Ryanair will continue to fly to London and based on the success of previous contracts in term of traffic flow, Ryanair will set up a new daily flight to Frankfurt-Hahn or to any other points with low cost characteristics (Art. 2).</p> <p>Ryanair will pay EUR [...] per each turnaround; it will pay the handling fees as published and updated, airport taxes, and security charges (Art. 2).</p> <p>SOGEAAL shall pay marketing contributions for the [...] round frequency and certain one-off marketing contribution for the [...] years of operation of each international new route. SOGEAAL will "provide or procure the provision of aircraft handling" and related services, beyond procuring a dedicated desk in primary location of the airport (Art. 3).</p>	30/10/2003 – 31/12/2014 (possible extension for other 10 years)

⁴⁸ The letter of the Italian authorities of 31 August 2011, annexes 10.1, 10.2, 11.1, 11.2, 12.1 to 12.5, 20.1 to 20.6. The table is based on the list of contracts signed by SOGEAAL and Ryanair provided by Italian authorities and it follows the structure and organisation of the documents submitted (e.g. bundles of annexes). When indicated in brackets, the definition refers to the definition used by Italian authorities. Some of the items considered are complete contracts while others are simple addenda or annexes to main contracts, with no other comments (e.g. the contract to which they refer).

03/04/ 2006	<p>Airport Services Agreement⁴⁹</p> <p>"Supplemental Agreement to Airport Services Agreement"</p> <p>Ryanair commits among other things to provide advertising services, while SOGEAAL undertakes to pay for targeted number of flights and certain levels of passenger traffic. Other clauses are similar to those present in earlier contracts.</p> <p>The supplemental agreement sets out goals to be met by Ryanair in terms of number of flights and passengers per year, from 2006 to 2010, and the corresponding "success fees" to be paid by SOGEAAL. It also provides for penalties to be incurred by Ryanair in case of non-fulfilment of the target in terms of number of passengers.</p> <p>Marketing Services Agreement (AMS)</p> <p>The agreement is rooted in Ryanair's commitment to operate certain EU routes and to meet certain level of passenger targets (art. 1). AMS offers SOGEAAL on line advertising services (e.g. space on its website www.ryanair.com) in exchange for EUR [...] per year.</p>	01/01/20 06 – 31/12/20 10
01/01/ 2007	<p>"Supplemental Agreement to Airport Services Agreement"</p> <p>It refers to the contract of 3 April 2006.</p> <p>It sets out goals to be met by Ryanair in terms of number of flights and passengers per year, from 2008 to 2010, and the corresponding "success fees" to be paid by SOGEAAL. It also provides for penalties to be incurred by Ryanair in case of non-fulfilment of the target in terms of number of passengers.</p>	01/01/20 07 – 31/12/20 10
n.a.	<p>"Side Letter to the main Agreement – New Route Alghero – Düsseldorf NRN"</p> <p>The main contract to which this Side Letter relates is not mentioned. It refers to the conditions laid down in the Supplemental Agreement to Airport Services of 2007.</p> <p>It sets out goals to be met by Ryanair for the new route in terms of number of flights and passengers per year, from 2006 to 2010, and the corresponding "Success fees" to be given by SOGEAAL. It also provides for penalties to be incurred by Ryanair in case of non-fulfilment of the target in terms of number of passengers.</p>	2006 – 2010
n.a.	<p>"Side Letter to the main Agreement updated to 25th Jun 2008"⁵⁰</p> <p>It refers to the conditions laid down in the Supplemental Agreement to Airport Services of 2007. The main contract to which this Side Letter relates is not identified..</p> <p>It sets out goals to be met by Ryanair for the new routes in terms of number of flights and passengers per year, from 2008 to 2010, and the corresponding "Success fees" to be given by SOGEAAL. It also provides for penalties to be possibly incurred by Ryanair.</p>	2008 – 2010
09/07/ 2009	<p>"Side Letter to the main Agreement"</p> <p>It refers to the conditions laid down in the Supplemental Agreement to Airport Services of 2007. The main contract to which this Side Letter relates is not identified.</p> <p>It sets out goals to be met by Ryanair for the new routes in terms of number of flights and passengers per year, from 2008 to 2010, and the corresponding "success</p>	2009 – 2013

⁴⁹ There are annexes to the main contract (which is however not specifically identified) referring to the same date: "Annex I - Handling Agreement – Non-base handling and related services provided by the Airport"; Annex II Services to be provided by Airport Authority; Annex III Reservation facilities and commissions".

⁵⁰ In 2008 a series of annexes were signed: "Supplemental Handling Agreement – Annex I Handling and related services applicable to Ryanair flights - Annex II Services to be provided by airport authority - Annex III Reservations facility and commissions - Exception List", the validity of which is not specified.

	fees" to be paid by SOGEAAL. It also provides for penalties to be incurred possibly by Ryanair in case of non-fulfilment of the target in terms of number of passengers.	
21/10/2009	<p>"Side Letter to the main Agreement (07/07/2009)"</p> <p>It refers to the conditions laid down in the Supplemental Agreement to Airport Services of 2007. The main contract to which this Side Letter relates is not identified.</p> <p>It sets out goals to be met by Ryanair for the new routes in terms of number of flights and passengers per year, from 2008 to 2010, and the corresponding "Success fees" to be given by SOGEAAL. It also provides for penalties to be possibly incurred by Ryanair.</p>	2009 – 2013
20/10/2010	<p>Airport Services Agreement (Ryanair)</p> <p>In the package SOGEAAL undertakes among other things to pay success fees for targeted number of flights and certain levels of passenger traffic, while Ryanair undertakes to pay for handling fees and airport charges, and to carry out sales promotion and public relations activities.</p> <p>Marketing Services Agreement (AMS)</p> <p>AMS offers SOGEAAL a package of online advertising services (e.g. space on its website www.ryanair.com) in exchange for progressive rates: EUR [...] for 2010; EUR [...] for 2011; EUR [...] for 2012; "Airport Marketing Services will provide additional marketing services for the amount exceeding EUR [...]" in the context of potential further cooperation. Also in this case, as in 2006, the contract is rooted in Ryanair's commitment to operate certain EU routes and to meet certain levels of passenger targets (art. 1).</p>	01/01/2010 – 31/12/2013

5.2.1.1. Marketing contributions and success fees paid to Ryanair/AMS

89. According to the information provided by the Italian authorities, from 2000 to 2010 Ryanair/AMS received a total amount of EUR [30 000 000 – 35 000 000], as detailed in the table below⁵¹.

Table 8 – Sums paid to Ryanair / AMS by SOGEAAL (EUR)

	2000	2001	2002	2003	2004	2005
Ryanair	[...]	[...]	[...]	[...]	[...]	[...]
AMS						
Total	[...]	[...]	[...]	[...]	[...]	[...]

	2006	2007	2008	2009	2010	TOTAL
Ryanair	[...]	[...]	[...]	[...]	[...]	
AMS	[...]	[...]	[...]	[...]	[...]	
Total	[...]	[...]	[...]	[...]	[...]	[30 000 000 – 35 000 000]

⁵¹ Annex 14 to submission by Italian authorities of 31 August 2011.

90. The Italian authorities also provided data on the total sums received by Ryanair from 2006 to 2010 as "*success fees*" for having met the objectives in terms of passengers transported and flights operated per year, pursuant to the supplemental agreement of 2006 (see paragraph 37 of the 2007 decision). These sums, net of the penalties applied, are reported in the table below⁵².

Table 9 – Success fees paid to Ryanair (EUR)

2006	[...]
2007	[...]
2008	[...]
2009	[...]
2010	[...]
TOTAL	[20 000 000 – 25 000 000]

91. The amount of the sums paid to Ryanair resulting from table 8 (net of sums paid to AMS) and table 9 (bonus fees paid to Ryanair) seem partially overlapping, i.e. the sums are the same in 2006, 2007 and 2009, not the same in 2008 and 2010, but the status of the success fees to Ryanair relatively to the marketing contributions is not clear. In other word, it is not clear whether or not table 8 is exhaustive as regards all sums paid to Ryanair, inclusive of all bonus fees.

92. It results from the information provided by the Italian authorities that the Sardinian Region was involved in the decision making of SOGEAAL on the marketing services and it endorsed all decisions taken by the airport operator. [...] ⁵³.

93. Notably, the Sardinian region would have reimbursed the marketing contributions as the regional territory was considered the main beneficiary, e.g. in term of development of tourism. [...].

94. According to submissions by Italy, following this first convention, SOGEAAL and Sardinia entered into other successive conventions in 2004, 2005, 2006 and 2007 for *co-marketing contributions*⁵⁴.

95. The breakdown of the co-marketing contributions is set out in the table below, which updates the table in paragraph 49 of the 2007 decision⁵⁵.

Table 10 – Co-marketing contributions granted by Sardinia to SOGEAAL (and compared with co-marketing contributions paid by SOGEAAL to Ryanair/AMS) (EUR)

⁵² Annex 16 to submission by Italian authorities of 31 August 2011.

⁵³ Letter of the Italian authorities dated 31 August 2011, annex 24. See also points 18 and 49 ff of the 2007 decision.

⁵⁴ Letter of the Italian authorities dated 31 August 2011, p. 36.

⁵⁵ Letter of the Italian authorities dated 31 August 2011, annexes 22 and 23.

Year	Contributions by Sardinia to SOGEAAL	Marketing contributions by SOGEAAL to Ryanair
2000	[...]	[...]
2001	[...]	[...]
2002	[...]	[...]
2003	[...]	[...]
2004	[...]	[...]
2005	[...]	[...]
2006	[...]	[...]
2007	[...]	[...]
2008	[...]	[...]
2009	[...]	[...]
2010	[...]	[...]
Total	[10 000 000 – 15 000 000]	[30 000 000 – 35 000 000]

96. The table reports contributions to SOGEAAL until 2008. As for the following period, on 25 June 2009, Sardinia issued a decision by which it committed to refund airport operators, including SOGEAAL, the costs for marketing activities. The amount attributed to Alghero is EUR [1 000 000 – 1 500 000] in 2008 and EUR [1 500 000 - 2 000 000] in 2009⁵⁶. Italy further alleges that measures similar to those under scrutiny apply equally over the period 2008 – 2013 to other airport operators active in Sardinia, according to the Regional Transportation Plan⁵⁷.

97. The Italian authorities allege that the advertising activities that SOGEAAL engaged into with Ryanair were comparatively more effective than any other marketing activity. As an example, they mention the marketing campaign carried out by Alitalia for SOGEAAL during May-September 2010⁵⁸.

98. Finally, Italy submitted the yearly average contribution per passenger paid out by SOEAAAL to Ryanair. This ranged from EUR [1 – 5] in 2000 to EUR [5 – 10] in 2004. In particular, Italy submitted a table which amends and updates the table reported in paragraph 34 of the 2007 decision⁵⁹.

⁵⁶ Letter of the Italian authorities dated 31 August 2011, Annex 2.

⁵⁷ Letter of the Italian authorities dated 31 August 2011, p. 13.

⁵⁸ The marketing campaign is summarised in a power point presentation submitted by Italian authorities in annex 4 to the letter dated 31 August 2011. It included initiatives in different languages through the Alitalia website, its newsletters, and different newspapers. SOGEAAL paid the campaign EUR [...].

⁵⁹ Letter of the Italian authorities dated 31 August 2011, Annex 15.

5.2.1.2. Airport Services Agreements: Sums paid by Ryanair

99. In the same period from 2000 to 2010, Ryanair paid SOGEAAL a total amount of EUR [25 000 000 – 30 000 000] for all airport services. The table below sets out the total sums paid by Ryanair per year⁶⁰.

Table 11 – Sums paid by Ryanair to SOGEAAL (in EUR)

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

100. Italy also provided details on the split per year for: handling fees; boarding and landing rights; freight fees; passenger rights; parking fees; security services fees; ticketing fees; sub-rental of spaces fees; other activities.

101. On the whole, it results from the above (comparing tables 8 and 11) that the total amount of fees paid by Ryanair to SOGEAAL in the period between 2000 to 2010 was lower than the total amount of marketing contributions received by Ryanair/AMS.

102. On the basis of the information available at this stage, in general, the fares applied by SOGEAAL were based on the standard fares (i.e. IATA fares) but departed from them and foresaw discounts in case of fewer services (e.g. low number of staff employed, turn around timing, no toilet services) and new routes and traffic increase ([25 – 35%] of discount). [...] ⁶¹

5.2.2. Agreements with air carriers other than Ryanair

103. Since 2000 Ryanair has been the main air carrier operating at the Alghero airport. However, starting later in time SOGEAAL signed also airport services contracts with other carriers, including Volare, Germanwings, Air Italy, Air Dolomiti, Air Vallée, Meridiana, Alpi Eagles, Bmibaby, Alitalia, EasyJet, Air One. Some of these contracts have been already considered in the 2007 decision (paragraphs 42 - 44).

104. Italy submitted copy of the "handling agreements" signed by SOGEAAL with other carriers. These contracts are detailed in the table below⁶².

Table 12 - Handling agreements with carriers other than Ryanair

Date	Fees	Carrier	Duration
19/03/2007	[...]	Germanwings	25/03/2007 – 31/10/2009

⁶⁰ Letter of the Italian authorities dated 31 August 2011, annex 14.

⁶¹ Ecorys Report, p. 52.

⁶² See annexes from 31.1 to 31.5 to the 2011 submissions.

29/11/2007	[...]	Volare	28/10/2007 – 31/10/2010
25/05/2008	[...]	Air Italy	01/06/2008 – 31/12/2010
30/03/2010	[...]	Meridiana Fly	01/04/2010 – 30/04/2011
29/07/2010	[...]	Bmibaby	29/05/2010 – 30/09/2010
Not available	[...]	Air Vallée	09/08/2010 – 30/08/210

105. It results that SOGEAAL also signed a ground handling contract with Air One⁶³. Currently Air One represents the second carrier operating at Alghero airport (see Section 2.1 above). This contract has not been provided by Italy.

106. SOGEAAL also signed in 2007 and 2010 marketing agreements with other LCCs which contain among others marketing fees. They result from the table below.

Table 13 - Marketing Agreements with carriers other than Ryanair

Date	Carrier	Scope	Duration
25/03/2007	Germanwings	Supplemental Agreement to the Standard Handling agreement Germanwings undertakes to operate certain EU routes and to meet passengers and flights' goals. The agreement provides for penalties to be incurred possibly by the carrier in case of non-fulfilling the targets, and a start-up contribution of EUR [...] to be paid by SOGEAAL.	25/03/2007 – 31/10/2009
29/11/2007	Volare	Supplemental Agreement to the Ground Handling agreement for Airport Services It sets out goals to be met by Volare for EU routes in terms of number of passengers and flights per year, and the corresponding "Success fees" to be paid by SOGEAAL. The contract also contemplates an advertising support fee of EUR [...] to be paid by SOGEAAL.	28/10/2007 – 31/10/2010
20/10/2010	Meridiana Fly	Marketing agreement SOGEAAL undertakes to invest up to EUR [...] for certain marketing and advertising services to Meridiana Fly.	07/06/2010 – 31/10/2011
20/10/2010	Alitalia	Marketing agreement SOGEAAL will pay EUR [...] to Alitalia for its	07/06/2010 – 30/09/2010

		promotion and advertising activities.	
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107. A further agreement with Air Italy in 2008 resulting from the Ecorys Report⁶⁴ has not been provided by Italy.

5.2.3. Comparison of tariffs applied to Ryanair and other carriers

108. The graph below represents the evolution of the revenues from the fares applied to Ryanair and to other carriers for airport services⁶⁵.

[...]

109. The graphs show that since 2000 to 2010 Ryanair benefitted of conditions which were substantially lower for handling and landing/boarding fees⁶⁶. The first graph clearly demonstrates that the average handling revenue from Ryanair is lower than the overall average handling revenue at least until 2010. The second graph makes it evident that airport services fees (based on turn-around) paid by Ryanair were below the average fees paid by other carriers.

110. In this respect, the Italian authorities allege that SOGEAAL was available to offer the same conditions to all carriers over the years, providing they met the appropriate requirements and asked for the same kind and level of services. At the same time they acknowledge that no specific advantage has been given to Ryanair in the period 2008 – 2010 and there was a progressive alignment of fees applied to different carriers in the period 2007 – 2010, whilst no reference is made to differences in the period beforehand⁶⁷.

5.3. ECORYS report

111. In the context of the investigation, the Commission asked Ecorys Netherlands BV to make a report on the financial evaluation of SOGEAAL and to establish whether the publicly owned airport operator behaved like a private investor in a market economy. The final Ecorys Report was submitted on 30 March 2011.

112. The conclusion reached by the consultant is that "all in all... given the circumstances SOGEAAL acted as a private investor. The Region of Sardinia did not act as a private investor though was driven by other motives namely enhancing tourism at the island for further economic development".

113. The approach taken in the Ecorys report lies on a series of cases or scenarios, notably a business case, i.e. the case on which the State based its investment decisions, considered against a base case implying data considered most realistic at the time of the decision making, and other potential scenarios, from rose-coloured to

⁶⁴ See Ecorys Report, p. 50 ff.

⁶⁵ Excerpt of Annex 1 (Accuracy Report), p. 17, to the letter of Italy of 31 August 2011.

⁶⁶ On the contrary, the graph concerning the passenger boarding and safety rights/taxes shows uniformity of average revenue per passenger and average revenue generated by Ryanair: see Accuracy Report Annex 1 to submission by Italy of 31 August 2011, p. 18. This is linked to the fact that passenger rights are subject to regulatory measures and established by ENAC and cannot be freely negotiated by the parties.

⁶⁷ Letter of Italy of 31 August 2011, p. 22.

worst case. The base case is reconstructed by assessing the underlying assumption based on historical data and information provided in documents and interviews considering the business environment at the time of the decision.

114. Ecorys Report considers the strategy pursued by SOGEAAL successful. The strategy implied the application for a full concession, the expansion of the terminal capacity, and contracts signed with low cost carriers aimed at incentivise their international traffic flows. Indeed, at that time tourism industry had significant potential and it lacked international connectivity. Given the development of low cost carrier market it was like a "perfect match". Also the legal framework (the reform of the airport sector in Italy in the nineties) provided the opportunity to ensure efficient and effective delivery of the strategy.
115. As for the contracts signed between SOGEAAL and air carriers, the consultant specifically concludes that "from a private investor principle the agreements with LCCs most notably Ryanair made sense. They ensured significant increases in traffic which would drive both aviation and non-aviation income". The conclusion refers to both the handling rates and the marketing support. SOGEAAL could expect that in the long run the benefits would outweigh the additional costs and considered discounts to LCC justified in view of lower cost of service.
116. The Ecorys Report identifies the main cause of the constant negative profitability of SOGEAAL - despite the 10% of traffic growth per year – to be the severe delay in the granting of the full concession to SOGEAAL. Rather than the expected 9 months this took 8 years. In the meantime, SOGEAAL acquired several concessions for specific activities though its ability to develop non-aviation business was constrained and it was not allowed to receive aviation fees.
117. The consultant also reviews the ex-post analysis performed in 2007 by Roland Berger on behalf of SOGEAAL with the objective to validate the decision-making in 1999⁶⁸. The objective of the review was to assess the reasonableness of the ex-post analysis and assess whether there were any major deviation from the reconstructed business case.

6. ASSESSMENT

118. For the assessment of the present case, the Commission first refers to the analysis made in the 2007 decision. The analysis which follows summarizes and complements the analysis carried out in the 2007 as regards the new measures taken under scrutiny, without any prejudice of all considerations therein expressed.
119. In order to assess the measures at stake, it is necessary to distinguish between:
- 1) the potential aid to the airport manager SOGEAAL, related to (a) capital injections and compensation of losses by the Sardinian region and other public shareholders; (b) contributions for fittings and works from the Sardinian Region; and (c) financing of airport infrastructure and equipment by the State. These measures are addressed in Section 6.1 below; and

⁶⁸ The status of the 2007 Roland Berger analysis considered in the Ecorys Report is not clear compared with the Roland Berger business plan dated 5 March 2004 taken into account in the 2007 decision.

2) the potential aid to the airlines using the airport, related to all agreements concluded with those airlines as from 2000. These measures are assessed in Section 6.2 below.

6.1. Potential aid to SOGEAAL

120. On the basis of the information at the disposal of the Commission and in view of the elements mentioned in the Section 5.1 above it results that SOGEAAL might have benefitted from State aid in the form of various contributions granted by different public bodies, such as: (a) repayment of losses and reconstitution of capital mostly financed by Sardinia (Section 5.1.2, paragraphs 72 to 79 and table 3 above); (b) contributions for fittings and works financed by Sardinia (Section 5.1.3, paragraphs 80 - 81 and table 4 above); and (c) financing of airport infrastructure and equipment investments (Section 5.1.4, paragraphs 82 to 86 and table 6 above) not reflected in the amounts of the concession fees paid by SOGEAAL.

121. As regards the co-marketing contributions granted to SOGEAAL by Sardinia, these are assessed thereafter, under the different context of measures in favour of airlines: indeed, although they transited through SOGEAAL, they finally were granted to air carriers which signed contracts with SOGEAAL.

122. The Commission underlines that insofar as the measures considered fall within the notion of aid, under Article 107(1) TFEU, they will be considered illegal under Article 108(3) TFEU, since on the basis of the information available at this stage the measures have been granted to the beneficiaries without prior notification.

6.1.1. Existence of aid

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

124. The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) TFEU, all of the following conditions need to be fulfilled. Namely, the financial support should

- be granted by the State or through State resources,
- favour certain undertakings or the production of certain goods,
- distort or threaten to distort competition, and
- affect trade between Member States.

125. With respect to the assessment of the presence of State aid in the measures that were undertaken by the Sardinian Region and other public bodies, and in particular the reasons for which the Commission considers the measures as involving the use of State resources, being imputable to the State and threatening to distort trade and competition in the internal market, the Commission refers to the analysis already

made in the 2007 decision. The following analysis summarizes and complements the analysis in the 2007 decision and relates to the period as from 2000.

126. In order to determine whether the measures could constitute State aid, it first needs to be verified whether SOEGAAL, the beneficiary of the measures, is an undertaking under Article 107(1) TFEU subject to State aid rules.

6.1.1.1. Notion of aid and economic activity

127. In this context, according to settled case law⁶⁹, the concept of undertaking includes all entities carrying out economic activities, regardless of its legal status or the way in which it is financed, and it constitutes economic activity all activities implying the supply of goods and services in a given market. Therefore, inasmuch as an airport operator carries out economic activities it constitutes an undertaking and consequently it can fall within the scope of Article 107(1) TFEU.

128. In this context the Commission notes that the principle that the commercial exploitation of an airport constitutes an economic activity has been established in the *Aéroport de Paris* judgment of 12 December 2000⁷⁰. In this judgment the Tribunal ruled that the provision of airport facilities to airlines and the various service providers by a public corporation, in return for a fee at a rate freely fixed by the latter, and the management of those facilities are economic activities, and although those activities are carried out on publicly-owned property, they do not for that reason form part of the exercise of a task conferred by public law.

129. In its judgment *Aéroport de Leipzig-Halle*, the Tribunal confirmed that the exploitation of an airport for a remuneration constitutes an economic activity which includes the building of airport infrastructure⁷¹. Therefore, it follows from the fact the airport operators carry out economic activities regardless their legal status and the way they are financed, they constitute undertakings under Article 107 (1), TFEU, and falls within the scope of State aid rules⁷². Likewise, the Tribunal has confirmed that the objectives of regional, economic and transport policy pursued through the construction or the extension of airport infrastructure are not relevant for the purpose of determining the economic nature of the activity⁷³.

130. In this respect the Commission notes that Alghero Airport is the object of a commercial exploitation by SOGEAAL, which progressively expanded the activities therein, by providing as from 1995 handling services and then adding security parking, catering, retail, advertising services and so on, until getting the full management of the airport in 2007 (see above Section 2.2.2.). Therefore, SOGEAAL is, at least as concerns the exploitation of the airport, an undertaking for

⁶⁹ Joined Cases C-180/98 to C-184/98 Pavlov and Others [2000] ECR I-6451. Joined Cases C-209/78 to C-218/78 Van Landewyck [1980] ECR 3125; Case C-244/94 FFSA and Others [1995] ECR I-4013; Case C-49/07 MOTOE [2008] ECR I-4863.

⁷⁰ See case T-128/98 *Aéroports de Paris v Commission* [2000] ECR II-3929, in particular paragraphs 107-109, 121-122, 125. This judgment has been confirmed by the Court in case C-82/01 P [2002] ECR I-9297. See also T-196/04 *Ryanair v Commission* [2008] ECR II-3643, paragraph 88.

⁷¹ See joint cases T-455/08 *Flughafen Leipzig-Halle GmbH v Commission* and T-443/08 *Freistaat Sachsen et Land Sachsen-Anhalt v Commission*, paras. 93, 95, 100 and 119..

⁷² See joint cases C-159/91 *Poucet/AGV* and C-160/91 *Pistre/Cancava* [1993] I-637.

⁷³ See *Leipzig-halle* above mentioned, paragraphs 102 and ff..

the purpose of EU competition law. The commission invites the Italian authorities to provide information on the joint management of the airport in the period which covers the partial and provisional concession of the airport granted to SOGEEAL until the full concession.

131. The Commission moreover notices that until the *Aéroport de Paris* judgment, the case law of the Commission considered that the development and management activity of airport infrastructure were not considered economic activities within the scope of Article 107 (1) TFUE⁷⁴.
132. According to the information at its disposal the Commission notes in this respect that some of the measures were undertaken before the period examined in the 2007 decision i.e. before 2002⁷⁵. Therefore, as regards the funding of infrastructure at Alghero airport, the Commission will have to assess whether the investments concerned are outside the scope of the investigation inasmuch as they stem from legally binding commitments taken before the *Aéroports de Paris* ruling was issued, i.e. 12 December 2000⁷⁶.
133. Moreover, not all activities of an airport operator are necessarily of an economic nature. It is necessary to distinguish between its activities and to establish to what extent its activities are of an economic nature⁷⁷. The Court of Justice also clarified that the activities which normally fall within the responsibility of the State in the exercise of the public power have not an economic nature⁷⁸. Such activities include in particular air safety⁷⁹, control of air traffic, police, customs⁸⁰. Their financing must be limited to the costs generated by them and cannot be used for other economic activities⁸¹.
134. Likewise, the 2005 Guidelines stipulate that "activities including safety, air traffic control, police and customs" fall outside the scope of State aid rules⁸².

⁷⁴ See case *Aéroports de Paris* above mentioned. See Commission guidelines in 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.

⁷⁵ In particular, repayment of losses and increase in capital (Section 5.1.2) and contributions for fittings and works (Section 5.1.3)

⁷⁶ See Commission decisions of 21 March 2012 in case C76/2002 *Avantages consentis par la Région Wallonne et Brussels South Charleroi Airport à la compagnie aérienne Ryanair* and of 25 April 2012 SA.33961 *Plainte Air France - Aéroport de Nîmes*.

⁷⁷ Case C-364/92 *SAT Fluggesellschaft v Eurocontrol* [1994] ECR I-43.

⁷⁸ *Ibid.*

⁷⁹ Pursuant to Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security (OJ L 355 of 30.12.2002, p. 1), "aviation security" shall mean "the combination of measures and human and natural resources intended to safeguard civil aviation against acts of unlawful interference (Article 2, par. 3). The basic common rules in the aviation security are based on recommendations laid down in document no. 30 of the European Civil Aviation Conference (ECAC) and defined in the annex to Regulation (EC) No 2320/2002.

⁸⁰ Commission decision of 19 March 2003 in case N309/2002 *Sûreté aérienne - Compensation des coûts à la suite des attentats du 11 septembre 2001*.

⁸¹ See judgment of 18 March 1997 in case C-343/95, *Cali & Figli/Servizi ecologici porto di Genova* [1997] I-1547; Commission decision of 19 March 2003 in case N309/2002 and Commission decision of 16 October 2002 in case N438/2002 *Subventions aux régions portuaires pour l'exécution de missions relevant de la puissance publique*.

⁸² Para. 33 of the 2005 Aviation Guidelines.

135. At this stage, the Commission cannot rely on sufficient information on the exact nature (economic or not) of the activities carried out by SOGEAAL and of infrastructure and infrastructure related costs (fitting and equipment) financed by the measures considered in the present investigation as well as on whether other costs are inherently linked to activities within the public policy remit.
136. Therefore the Commission invites the Italian authorities to clarify which activities must be considered as non-economic and which costs are linked to those activities and have been financed by the measures covered by the Commission investigation.
137. In the absence of any precise information in this respect the Commission cannot identify the contributions relating to non-economic activities and it must consider that all contributions may have been used to finance economic activity of the Alghero airport operator.

6.1.1.2. Presence of State resources and imputability of the measures to the State

138. In the 2007 decision the Commission has already stated the reasons why it considers that the measures at stake involve the use of the State resources and why it considers that these measures are imputable to the State (points 64 to 71 of the 2007 decision). Essentially, they refer to the fact that SOGEAAL's resources are subject to the control of the State, SOGEAAL's decisions are imputable to the State and reimbursements by Sardinia Region to Ryanair are financed by public authorities with public funds. The Commission considers that the same analysis applies *mutatis mutandis* to the measures beyond the period examined by the 2007 decision.
139. Additionally the Commission considers the following elements. As for the contributions granted by bodies different from the Region of Sardinia, the Commission notes that: (i) Province of Sassari, Municipality of Sassari, and Municipality of Alghero are local authorities⁸³; (ii) the Chamber of Commerce of Sassari belongs to the system of Chambers of Commerce of Italy. Chambers of commerce are public entities with autonomous status as provided for by law⁸⁴. Their task is set by the law and consists in supporting and developing the system of undertakings within the local economies in which they operate. Within their autonomy, they carry out the activities attributed by law and any other activities delegated by the State, the regions and other public entities or institutions, or cooperate with them for the pursuit of their tasks. Their governance depends on regional governments through the appointment of the members of representative bodies; (iii) SFIRS is a company entirely held by Sardinia and subject to its control

⁸³ See the judgment of 12 mai 2011 in jointed cases T-267/08 and T-279/08, Région Nord-Pas-de-Calais, paragraph 108.

⁸⁴ See in particular Law 29 December 1993 no. 580, Legislative Decree 31 March 1998 no. 112 and Legislative Decree 15 February 2010.

and direction. Its statutory purpose includes inter alia the support to the region in the implementation of the economic initiatives undertaken⁸⁵.

140. Therefore the Commission considers at this stage that the measures taken by the above mentioned public entities in favour of SOGEAAL have been granted through State resources and are imputable to the State.

141. With respect to the financing of the airport infrastructure the Commission notes it was financed directly by the State and by the Region Sardinia.

142. Therefore the Commission considers at this stage that the measures taken by the above mentioned public entities in favour of SOGEAAL have been through State resources and are imputable to the State.

6.1.1.3. Selective advantage

143. To assess whether a measure involves State aid, the analysis has to focus on whether the undertaking benefits from an economic advantage which enables it to avoid having to bear costs which would normally have had to be met out of the undertaking's own financial resources, thereby preventing market forces from having their normal effect, or that it would not have received under normal market conditions⁸⁶.

The 2007 decision

144. In its 2007 decision the Commission first made the reference to the Italian Court of auditors' report of 2007 from which it results that in the light of losses over the years and the fact that SOGEAAL only manages (or has only managed) part of Alghero airport (meaning that it cannot avail of non-aviation revenue to compensate for losses resulting from its aviation related business). SOGEAAL needs public intervention to carry out its operations.

145. In relation to the presence of an advantage in the 2007 decision the Commission considered that SOGEAAL appeared to benefit from an advantage in two different ways:

- On the one hand, the Sardinia Region compensated SOGEAAL from 2002 to 2007 for an important part of the expenditures related to the Ryanair agreement. The Commission considered that at least part of SOGEAAL's losses was caused by the payments made to Ryanair
- On the other hand, the public shareholders of SOGEAAL have carried out in 2005 a capital increase of SOGEAAL by 4 million EUR. With respect to the capital increase, the Commission mentioned that SOGEAAL was at the time of the capital increase a loss-making undertaking, and that it seemed at the time that the public shareholders could not reasonably expect that their investment would deliver a return on investment that would be acceptable to a private investor active in the sector.

⁸⁵ SFIRS is a financial broker under Articles 106 and 107 of Legislative Decree 1 September 1993 no. 385. In this role, it cooperates in the application of policies and plans set out by Sardinia for the economic and social development of the territory.

⁸⁶ Case T-358/94, *Air France v Commission* [1996] ECR I-307, paragraph 41.

146. In relation to the newly examined measures, i.e. the repayment of losses and rebuilding of capital by the shareholders of SOGEAAL, contributions for fittings and works and financing of the infrastructure, the Commission has to examine "whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have subscribed the capital in question"⁸⁷. The conduct of such private investor can be the conduct of a private holding company or a private group of undertakings pursuing a structural policy and guided by prospects of profitability in the longer term⁸⁸. With respect of the measures mentioned in the Sections 5.1, 5.2. and 5.3 of the present decision, the Commission notes the following.

Operations on the capital

147. SOGEAAL was created by using public funds with the purpose of managing Alghero airport. According to the information provided by the Italian authorities, in the course of the years there were several injections in its capital which were specifically intended to cover past losses and rebuild the capital, in order to meet legal and economic requirements.

148. Notably, as regards repayments of losses and increases of capital in 2005, 2007, 2009 and 2010 the contributions granted to SOGEAAL by the different public shareholders amounted to around EUR 26 million. As for the operations realised in 2001 and 2003, the information and documents provided by Italy do not indicate clearly their nature and amount.

149. In this respect the Commission notes that SOGEAAL has been constantly loss-making at least since 2000. The Italian authorities submit that the main reason of the persisting negative results is that the airport operator could not fully exploit the potentiality of the airport management due to the partial concessions.

150. In this respect, the Commission notices that when SOGEAAL gained the full concession in 2007, with the associated possibility of gaining non-aviation related revenues and retaining airport taxes (with no particular lock-in clause, as in the previous period⁸⁹), its financial situation did not improve. On the contrary, losses in 2008 increased about 2,5x compared to 2007, and in 2009 about 2,7x compared to 2008. As regards this latter financial year, in which losses exceeded EUR 12 million, the lack of transfer of funds by the Sardinian region is expressly indicated in the Accuracy Report as having heavily affected the net profit (see above paragraph 66).

151. Italy pointed out the perspective break even due among others the acquisition of Alitalia's business branch in 2010, which will allow a more efficient use of resources and economies of scale and scope, the proceedings underway with ENAC for the update of the level of airport taxes and rights and finally the expected potential positive revenues in the commercial activities.

⁸⁷ Joined Cases T-129/95, T-2/96 and T-97/96, *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission* [1999] ECR II-17, paragraph 120.

⁸⁸ Case C-305/89, *Italy v Commission* [1991] ECR I-1603, paragraph 20.

⁸⁹ See above Section 2.2.1, paragraph 45.

152. As to the profitability of the business, Italy provided only *ex post* analysis, including a Reorganisation and Restructuring Plan approved in 2010 to recover the financial situation of the company which shows that losses were caused among others by the policy endorsed by SOGEAAL towards LCCs. This seems consistent with the 2004 Roland Berger business plan (already considered in the 2007 decision) which assumes that the aviation business towards LCCs bears physiological losses, whilst the equilibrium should come from the non-aviation revenues.
153. The same 2010 Plan lists among other causes of the losses the inadequate organisation and management of SOGEAAL, the negative impact of the low cost strategies endorsed by the past management and the fact that airport services fees applied to air carriers are below cost. Furthermore, on the basis of the information overall submitted by Italy it seems uncontested that SOGEAAL constantly relied on public contributions to maintain its financial equilibrium.
154. Conversely, it appears from the arguments submitted by Italy that the awaited benefit from SOGEAAL's actions was awaited in terms of increase of traffic flow and spillover effects on the territory. The average economic impact per passenger was quantified as EUR 205, leading to an overall impact on the "territory" of EUR 142 million per year. On the same line, the 2004 Roland Berger report estimates the additional revenue generated from the inflow low cost traffic attracted with the measures as to around EUR 84 million for the entire economy of Sardinia. However, these figures relate to the overall economic benefit for the Region resulting from the increase in air traffic and therefore to revenues that a private investor would not take into account in the calculation of the profitability of its investment because he could not appropriate those revenues.
155. Therefore, the Commission has strong doubts that a market investor would have covered losses and rebuilt the capital in such a company.
156. In this respect, the Commission invites the Italian authorities to provide clarifications and comments.

Contributions for fittings and works

157. On the basis of the information provided by Italy, between 1998 and 2009, Sardinia granted SOGEAAL contributions for fitting and works for a total amount of EUR 6 540 269. The Commission is, at this stage, lacking precise information on the nature of the measure at stake. Therefore, the Italian authorities are invited to specify the exact nature of the expenditure related to the financing of fittings and works and clarify in particular whether these costs relate to the financing of airport infrastructure or rather to the operating costs of SOGEAAL.
158. Insofar as these contributions relate to the financing of the airport infrastructure, as it seems to result from their legal basis⁹⁰, the same arguments considered below for the financing of the infrastructure investment apply *mutatis mutandis*.
159. The Commission invites the Italian authorities to provide comments on this approach.

⁹⁰ See above Section 5.1.2, footnote 42.

Investments in the airport infrastructure

160. In relation to the financing of the airport infrastructure, the Commission notes on the basis of the information submitted by Italy that the airport infrastructure belongs to the Italian State by law (see paragraphs 29 and 34). SOGEAAL has the concession to use this infrastructure and operate the airport (see paragraphs 34 to 36 and 39 to 49).
161. The Italian authorities submitted a series of partial and temporary concession acts between 1995 and 2007 and a full concession act concluded in August 2007 for 40 years, that mention the conditions for the use of the infrastructure, as well as a list of concession fees paid by SOGEAAL for the use and management⁹¹ of the airport in the period between 1998 and 2010.
162. Notably, in the period 2001 to 2010 SOGEAAL paid fees for the use of airport infrastructure for EUR 3 042 887, whilst the State in the period 2004 to 2010 financed infrastructure investments for EUR 46 940 534 and equipment for EUR 284 782. Furthermore, the Commission observes that it does not appear that the grant of the full concession in 2007 has led to an increase in the amount of the concession fees, as could be expected from the fact that SOGEAAL thereafter had full availability of the infrastructure and received all revenues thereof.
163. With this regard, the Commission observes that it does not clearly appear in the concession contracts whether SOGEAAL had the obligation to realise investments in the infrastructure on its own expenses. The partial concession act of 10 May 1995, letter *i*), stipulates that there exists an obligation for the airport operator to re-invest the profits in the managing and modernisation of the airport and services. There is no specific provision in case no profits were realised. Likewise, the partial concession act of 16 October 1998 authorised SOGEAAL to retain the revenues from passengers rights and taxes in order to realise works on the infrastructure, despite it lacking the full concession (see paragraph 45).
164. The Commission thus observes that the concession fee appears to be manifestly out of proportion with the amounts paid by the State in relation to infrastructure investments. The progressive enlargement of the scope of the concession and the award to SOGEAAL of the overall concession in 2007 do not appear to be reflected in the amount of the concession fee either.
165. For the above reasons the Commission has doubts on whether the concession fee paid by SOGEAAL is set up at market price. Therefore the Commission preliminarily concludes that by entrusting this infrastructure to SOGEAAL without an adequate economic counterpart SOGEAAL has obtained an advantage over its competitors that it would not have obtained under normal market conditions.
166. The Italian authorities and third parties are invited to submit their comments. In Particular, Italy is invited to provide any business plan or ex-ante plans which would demonstrate the financial profitability of the investments done at Alghero airport by public authorities.

⁹¹ See above Section 2.2.1 describing the successive concession acts and the system for setting the airport fees as well as the renting fees for the airport.

167. The Italian authorities are also invited to clarify in particular:

- What the conditions of the concession are with regard to the financing of the infrastructure and on which legal base they are applied;
- To what extent the concession fee was set up in the course of the years to reflect (if it was the case) the successive entrustment of the airport infrastructure to SOGEAAL and the progressive enlargement and improvement of airport infrastructure;
- Whether there has been any analysis on the intended use of the additional infrastructure financed by the State resources;
- Details on possible plans to finance the Alghero airport infrastructure for the future by using public resources.

Conclusions on the selective advantage

168. For the reasons stated above, at this stage the Commission has doubts on whether the compensation of SOGEAAL's losses associated with the capital rebuilding as well as the granting of contributions for fittings and works, and the financing of the airport infrastructure have been remunerated in line with the market investor principle.

169. Therefore, the Commission considers at this stage that these measures have granted an advantage to SOGEAAL. The advantage is selective in so far as it has been granted specifically to SOGEAAL.

6.1.1.4. Effect on trade between member States

170. When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-EU trade, the latter must be regarded as affected by that aid⁹². In accordance with settled case law⁹³, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

171. The measures described above are capable of affecting competition and trade for the reasons indicated in points 100-104 of the 2007 decision. Moreover, the Commission notes that many operators are in competition for the management of airport infrastructure, including local and regional airports (notably Infratil, Vinci, Veolia Transdev, etc.). Aid to SOGEAAL may therefore distort competition in the markets for airport infrastructure operation. As the market of airport services is open to competition at EU level, any aid to the airport operator also risks to affect trade between Member States.

6.1.1.5. Conclusion on the existence of the aid

172. Therefore, the Commission concludes at this stage that the measures under scrutiny constitute State aid to SOGEAAL.

⁹² Case 730/79, *Philip Morris* [1980] ECR I-2671, paragraph 11.

⁹³ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717, paragraph 46.

6.1.2. *Compatibility with the internal market of the operating aid*

173. As regards the assessment related to the potential State aids in the form of repayment of SOGEAAL's losses and associated capital rebuilding, the Commission refers to the analysis of the compatibility with the internal market in the 2007 decision, which applies *mutatis mutandis* to the measures granted after 2007. The arguments which follow are intended to complement such analysis.
174. Inasmuch as these measures are of nature to lower the operating costs of SOGEAAL, they would constitute operating aid. According to the case law of the Court, such operating aid is in principle incompatible with the internal market⁹⁴.
175. Additionally, all or at least some capital injections to SOGEAAL might have been granted under the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁹⁵. Even if SOGEAAL would qualify as a firm in difficulty within the meaning of these Guidelines⁹⁶, the Commission has no element at this stage to conclude that the aid would meet the requirements of those guidelines.
176. Therefore the Commission has doubts at this stage whether the potential State aids granted to SOGEAAL can be declared compatible with the internal market. The Commission invites the Italian authorities to comment on any possible compatibility basis for the measure at issue.

6.1.3. *Compatibility with the internal market of the investment aid*

177. As regards the assessment of potential State aid to SOGEAAL in form of financing of infrastructure investments, equipment and fittings, the Commission refers to the analysis of the compatibility of the measures with the internal market in the 2007 decision which applies *mutatis mutandis* to the measures after 2007. The arguments which follow are intended to complement such analysis.
178. The 2005 Guidelines on financing of airports⁹⁷ provides that "The Commission will assess the compatibility of all aid to finance airport infrastructure, or start-up aid granted without its authorisation and which therefore infringes Article 88(3) of the Treaty, on the basis of these guidelines if payment of the aid started after the guidelines were published in the Official Journal of the European Union. In other cases, the Commission will carry out an assessment based on the rules applicable when the aid started to be paid".
179. The Commission notes that some of the measures under assessment have been granted before the publication of the 2005 Guidelines (e.g. part of the infrastructure financing by the State), whilst others have been granted thereafter (e.g. the

⁹⁴ Case T-459/93 *Siemens SA v Commission*, ECR [1995] II-01675, paragraph 48. See in that sense also judgment of 8 July 2010, *Freistaat Sachsen v Commission* (T-396/08) (cf. paragraphs 46-48); C-156/98, *Germany v Commission*, ECR I-6857 (paragraph 30).

⁹⁵ OJ C 244, 1.10.2004, p. 2-17.

⁹⁶ Points 9 to 13 Rescue and Restructuring Guidelines.

⁹⁷ Community guidelines on financing of airports and start-up aid to airlines departing from regional airports, published on the O.J. on 9.12.2005, par. 85, thereafter the "2005 Guidelines".

contributions for fittings and works by Sardinia). Inasmuch as the 1994 Guidelines⁹⁸ are not applicable to the case at stake, the Commission applies directly Article 107 (3) TFEU for the compatibility of the measure taking into account, in particular, of its past practice in this area.

180. In this respect, the Commission has consolidated its practice as to the evaluation of the compatibility of aid granted to airport operators through the adoption of the 2005 Guidelines. The criteria set out therein are therefore applicable to the analysis of the compatibility of measures of aid to financing of infrastructure granted both before and after the 2005 Guidelines were published.

181. The 2005 Guidelines provide a framework for assessing whether infrastructure aid to airport operators may be declared compatible pursuant to Article 107 (3) of the TFEU.

182. In accordance with point 61 thereof, the Commission examines in particular whether:

- the construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.);
- the infrastructure is necessary and proportional to the objective which has been set;
- the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;
- all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
- the development of trade is not affected to an extent contrary to the common interest.

183. In order to assess whether the aid compatible, the Commission should also check that it is necessary and proportional (e.i. limited to the minimum amount required to fulfil its objective⁹⁹).

(i) Construction and operation of the infrastructure meets a clearly defined objective of general interest

184. The Italian authorities state that the importance of Alghero airport for the regional economy is shown in the Regional Transportation Plan ("Regional Transportation Plan") of 27.11.2008. The general objective set forth in the document is to develop infrastructure and air services. Air transport represents an essential component in order to improve national and international mobility of residents and tourists. Alghero is among the airports considered in the Plan. Regional

⁹⁸ 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.

⁹⁹ It is constant case law that the Commission can declare an aid compatible only if it is necessary for achieving an objective of common interest that otherwise would not be attained by the aid beneficiary in the absence of the aid (cf. case 730/79, Philipp Morris, paragraph 17; case C-390/06, Nuova Agricast, paragraph 68; case T-162/06, Kronoply, paragraph 65; case T-422/07, Djebel/Commission).

Government's approach was based on guidelines on development of regions and consistent with European soft law¹⁰⁰.

185. This follows the adoption since 2001 of other political acts laying down a clear regional policy of promoting Sardinian airports so as to allow developing relations between Sardinia and the rest of Europe with a considerable number of new routes and services, mainly provided by low-cost airlines. The 2008 Regional Transportation Plan reiterates the importance of air transport as the key for the economic development of an insular region like Sardinia with high unemployment rates and territorial dispersion.

186. The Italian authorities also highlighted that Sardinia's GDP (EUR 23 billion as at 2011) is mainly based on services, amounting to EUR 18 billion, among which EUR 4 billion from tourism¹⁰¹.

187. Therefore, considering that Sardinia is an island, that the other airports of the region are not in the same catchment area and that tourism is a very important economic activity for the Region, the Commission considers at this stage that the measures related to the construction and development of infrastructure at Alghero airport seem to meet a clearly defined objective of general interest. The Italian Authorities and third parties are invited to comment on this point.

(ii)The infrastructure is necessary and proportional to the objective which has been set

188. Italian authorities have not submitted arguments or analysis setting out the link between the policy objectives pursued and the measures undertaken at Alghero airport.

189. Therefore, Commission is not in a position to assess whether the infrastructure at Alghero airport is necessary and proportional to the objective that has been set.

190. The Commission invites the Italian authorities to provide details on the utilisation and capacity of the airport and on the necessity of the infrastructure notably with reference to the level of utilisation compared with the competitive situation with other airports.

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

191. The Commission has preliminary doubts on the existence of satisfactory perspectives for the use of Alghero airport infrastructure in the medium term.

192. According to the 2008 Regional Transportation Plan, in 2007 over 5.7 million passengers were traveling through Sardinian airports (more than 4% of all domestic and international traffic of Italian airports), and local infrastructure were considered able to accommodate over 10 million of passengers. In this regard, the Commission

¹⁰⁰ See Opinion of the Committee of Regions on "The capacity of regional airport" of 02.07.2003 (2003/C256/09) and the Communication from the Commission "An action plan for airport capacity, efficiency and safety in Europe" of 24.1.2007 (COM(2006) 819 final).

¹⁰¹ See annex 1 (Accuracy Report), p. 4.

observes that there are other four airports in the region, among which at least two, Cagliari and Olbia, have the same characteristics as Alghero.

193. Nonetheless, the Italian authorities have not provided a forecast for the development of traffic at Alghero airport or a business plan for the airport apart from the Reorganisation and Restructuring Plan approved by the board in February 2010 (see paragraphs 61 to 71 above).

194. In this respect, the Commission observes that the 2010 Plan, assuming as baseline 2008 - 2009 and making forecasts for 2010 – 2012, mainly focuses on actions to be undertaken in relation to the difficult economic situation of the company and recalls the need to lay down fundamental strategic plans and programs, also due by law, with the objective to improve potentially the financial situation in 2011 and 2012 (see in particular paragraphs 66 to 71 above). It is not clear at this stage whether SOGEAAL has elaborated any further business plan and such strategic documents.

(iv) All potential users of the infrastructure have access to it in an equal and non-discriminatory manner

195. At this stage, it is not clear whether all airline operators had non-discriminatory and equal access since it is questionable whether the airport charges reductions applied in the same way to all airlines.

196. The information submitted by the Italian authorities seems to suggest that SOGEAAL applied different airport services fees to Ryanair (notably handling fees) compared with other low cost carriers.

197. The Commission therefore has doubts on whether this criterion is fulfilled.

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

198. Until 2004 Alghero was a category D airport. According to point 15 and 39 of the 2005 Guidelines, funding granted to category D airports are considered unlikely to distort competition or affect trade to an extent contrary to the common interest.

199. Therefore, the Commission preliminarily takes that view that the aid does not affect trade to an extent contrary to the common interest until 2004.

200. However, the Commission does not dispose of enough information to definitively conclude on this point as concerns the remaining period. In such a situation, it cannot exclude that the development of trade would be affected to an extent contrary to the common interest.

201. The Commission invites the Italian authority to supply information on the substitutability of Alghero with other airports in the island and with other transport infrastructure offering other modes of transport, notably ports, and invites third party to comment on this point.

202. Therefore, the Commission at this stage has doubts as to whether this criterion is complied with.

Necessity and proportionality of the aid

203. In addition to the mentioned criteria¹⁰² and in order to establish the necessity, the aid must be limited to the minimum that is necessary to reach the established objective. Italian authorities did not provide a calculation that shows the funding gap incurred which then would need to be covered by aid.

204. Moreover, due to the contractual obligations towards Ryanair, SOGEAAL was obliged to undertake the infrastructure investments. This raises serious doubts about the necessity of the aid. The Commission invites the Italian authorities to provide further information whether and to what extent the public financing of the measures in question was aimed at changing the behaviour of the aid beneficiary. The Commission invites Italy also to provide any document or information that could be relevant in order to prove the proportionality of the aid measure at stake.

205. Therefore, the Commission has at this stage doubts as to whether the aid is necessary and proportionate.

206. On the basis of the considerations above, the Commission has doubts whether the criteria set out in the 2005 Guidelines are complied with cumulatively in the present case, and whether the investment aid can be declared compatible with the internal market.

6.1.4. Conclusion on the measures in favour of SOGEAAL

207. For the reasons set out above and on the basis of the information available at this stage, the Commission has doubts whether the operational aid and investment aid granted to SOGEAAL are compatible with the internal market.

6.2. Potential aid to the airlines operating at Alghero airport

208. According to the information in possession of the Commission and considering the elements reported in Section 5.2 above, it appears that air carriers have received various contributions directly from SOGEAAL or transited through it by means of several agreements entered into with SOGEAAL as from 2000 (see paragraphs 89 to 108 above).

209. Inasmuch as the measures considered fall within the notion of aid, under Article 107(1) TFEU, they will be considered illegal under Article 108(3) TFEU, since on the basis of the information available at this stage the measures have been granted to the beneficiaries without prior notification.

6.2.1. Existence of aid

210. With respect to the assessment of the presence of State aid in the measures that were undertaken by SOGEAAL in relation to its customer airlines, and in particular on effect on intra-EU trade and competition, the Commission refers to the analysis made in the 2007 decision.

¹⁰² Commission decision of 18.02.2011, NN 26/2009 – Greece- Enlargement of airport Ioannina, paragraphs 69 and 70.

211. The following analysis summarizes and complements the analysis in the 2007 decision and it relates to the period from 2000. It concerns all air carriers operating at Alghero airport since 2000.

6.2.1.1. Presence of State resources and imputability of the measures to the State

212. Concerning the presence of State resources, in the 2007 decision the Commission considered that as SOGEAAL is 100% owned by public bodies and as there are indications that these public bodies interfered in the decision making of this company, the decision concerning the operating conditions for the airline companies operating at Alghero airport are likely to involve the use of State resources and are likely to be imputable to the State. The Commission made in particular reference to the 2002 Convention where the Region undertook to cooperate with Ryanair with the aim of developing tourism and employment in the Region.

213. According to submissions by Italy, following this first convention, SOGEAAL and Sardinia entered into other successive conventions in 2004, 2005, 2006 and 2007 for *co-marketing contributions*¹⁰³.

214. In view of the extended scope of the investigation, the Commission considers that the same analysis is likely to apply to all the other measures in relation to all other airlines operating at Alghero airport for the whole period under investigation and it invites third parties to comment.

6.2.1.2. Selective advantage

215. With respect to the presence of an advantage to the airlines operating at Alghero in its decision of 2007, the Commission assessed the presence of an advantage for the airlines in the form of reduced handling charges and marketing contributions and/or other contributions.

216. In the 2007 decision the Commission in particular observed that the handling charges for Ryanair were set lower compared to the other airlines and it considered that these reduced charges might have involved granting of an advantage to Ryanair over its competitors. With regard to the contracts concluded with Europe Air Post, Air Vallese, Air Dolomiti and Alpi Eagles, the Commission noted that it did not have enough information on the charges these companies pay. The Commission concluded that in view of the fact that reductions granted to the air carriers are not limited in duration and may discriminate between companies, these measures may entail the grant of State aid to Ryanair and other air carriers operating at Alghero airport.

217. In the 2007 decision the Commission recalled that SOGEAAL had been operating with high losses and the described agreements with Ryanair were not likely to have been concluded without the financial support of the Sardinian region.

¹⁰³ See above Section 5.2.1.1, paragraph 96.

The Commission concluded as well that the marketing support to Ryanair "does not appear to correspond to market conditions".

218. In view of the fact that the present decision as regards measures towards airlines extends the timeframe of the investigation to the period as from 2000, the Commission must assess whether similar doubts exist in relation to the measures undertaken by SOGEAAL throughout the entire period of the investigation, i.e. as from 2000. Besides the considerations in the 2007 decision, the Commission observes the followings.
219. A measure constitutes state aid only if the beneficiary receives a selective advantage which it would not have received under normal market conditions¹⁰⁴.
220. First, the Commission notes that the advantage could be selective in so far as the measures under scrutiny regard only the air carriers having entered into agreements with the airport manager.
221. Second, for the purpose of identifying if the agreements in questions represent an advantage to those air carriers, the Commission has to identify if in principle, under similar circumstances, a private airport manager operating within normal market conditions would have agreed to identical or similar conditions to those agreed by SOGEAAL.
222. Third, the Commission notes that SOGEAAL was continuously loss-making for the entire period from 2000 to 2010. The analysis submitted by Italy shows that the policy towards LCCs and the managing of handling fees were among the reasons of such negative results.
223. For the reasons above, which are relevant to all measures under scrutiny, the Commission doubts that SOGEAAL has acted as a private investor in its commercial relationships with the air carriers operating at Alghero airport.
224. It is worth recalling that for the appreciation of the existence and the importance of potential aid elements in the contracts in question the Commission has to compare the behaviour of SOGEAAL to that of a private operator at the time of the conclusion of those contracts¹⁰⁵.

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

225. Since SOEGAAL signed agreements with both Ryanair and AMS, the Commission has to decide first of all whether, for the purpose of identifying any economic advantage of which they might have benefitted, Ryanair and its daughter company AMS have to be considered individually or rather jointly.

Joint appreciation of the economic advantage to Ryanair and AMS

226. The Commission notes first that AMS is a 100%-owned daughter company of Ryanair, managed by the same managers.

¹⁰⁴ See case C-342/96, *Espagne v Commission* [1999] ECR I2459, paragraph 41.

¹⁰⁵ See case T-318/00, *Freistaat Thüringen v Commission* [2005] ECR II-4179, p. 125; Case C-482/99 *Stardust Marine* [2002] ECR I-04397.

227. As to the agreements signed in 2000, 2002, and 2003, which laid down airport services to be supplied by SOGEAAL and certain targets to be met by Ryanair, associated to compensations to be paid to Ryanair for certain advertising activities, these have been signed directly between SOGEAAL and Ryanair.
228. In 2006 and 2010 SOGEAAL signed respectively two separate agreements with Ryanair for airport services and with AMS for marketing services. However, in both cases, they have been signed at the same dates (3 April 2006 and 20 October 2010 respectively) and for the same duration (until 31 December 2010 and 31 December 2013 respectively). The agreements for marketing services signed by AMS are expressly rooted in Ryanair's commitments to meet certain targets on the routes operated (Art. 1 of both contracts, see table 7 above).
229. Finally, the Commission notes that AMS has been created with the specific aim of supplying marketing services via the website of Ryanair and it does not provide any other service.
230. Therefore for the reasons stated above the Commission concludes at this stage that in order to assess the presence of a selective advantage, Ryanair and AMS have to be considered as one single entity¹⁰⁶. The Commission invites the Italian authorities and the third parties to provide comments in this respect.

Joint analysis of Marketing Services Contracts and Airport Services Contracts

231. In order to apply the market economy operator test, the Commission has to decide if the airport services agreements and the marketing services agreement, despite being signed separately, have to be assessed jointly (see Section 5.2, paragraphs 88 to 103 and tables 7 to 11 of the present decision). In this context, the Commission will evaluate whether the airport services agreements were conditioned upon the marketing services agreements. In this respect, the Commission considers the situation as follow.
232. In a first phase, covering 2000, 2002, and 2003, there have been single contracts with Ryanair setting out airport services and routes targets, besides certain marketing services. Notably, the first contract entered into with Ryanair and SOGEAAL in 2000 for a duration of 10 years contained provisions on both airport services and new route targets: at least [...] per day and potentially [...] on the route Alghero - London. SOGEAAL committed to "pay or credit" monthly amounts corresponding to the amount due by Ryanair for handling fees for the said connection. Therefore the contract implied clearly a compensation mechanism of debts and credits between handling fees to be paid by Ryanair *vis à vis* contributions to be paid (or credited) by SOGEAAL. In this sense, SOGEAAL sustained the costs that should have been paid by Ryanair for its operation in Alghero airport. The contract also recalls the commitment by the Regional institutions to bear the costs of all contributions to Ryanair. The contract signed in 2002 updated the terms of the first contract. In 2003, given the success of the first contract in terms of passenger flows, SOGEAAL signed another contract for the initiation of a route to Frankfurt-Hahn.

¹⁰⁶ Consistently with other Commission decisions, see e.g. decisions of 25 January 2012 in case SA.22614 – *Aéroport de Pau*, and of 8 February 2012 in case SA.26494 – *Aéroport de La Rochelle*.

233. In a second round of negotiations, covering 2006 and 2010, SOGEAAL and Ryanair/AMS signed separate agreements for Airport Services Agreements and Marketing Services Agreements. Nonetheless, as discussed above, the two types of agreements continued to constitute a package. These agreements were signed at the same date and for the same duration, and the overall scope was the same as the previous contracts. Moreover, the two Marketing Services Contracts were expressly rooted in Ryanair's commitments to operate certain routes and to meet certain passenger targets, pursuant to the airport / marketing services contracts signed together with it.
234. The mechanism in this case relied on airport services fees to be paid by Ryanair and success fees / marketing services to be paid by SOGEAAL linked to targeted number of flights and levels of passenger traffic. Several supplemental agreements and side letters progressively updated and complemented the main agreements, setting out goals to be met by Ryanair in terms of number of flights and passengers per year and the corresponding "success fees" to be awarded by SOGEAAL, as well as the list of airport services to be provided and the routes of reference. They also provided for penalties to be incurred by Ryanair should the goals not be met.
235. An overview of all agreements signed by SOGEAAL and Ryanair/AMS is reported in table 7 of paragraph 88. The Italian authorities are invited to comment on the contents of the table and/or to amend and to provide clarifications when needed, so as to allow the Commission to rely on a clear representation of the situation.
236. The Commission first notes that these agreements have from the one side the objective of laying down the operating conditions for Ryanair, including handling fees, and from the other side to set out the marketing contributions to be paid to Ryanair in respect of marketing support and of passenger and/or flight targets.
237. Second, the Commission observes that the marketing support is directly linked to the routes operated by Ryanair and therefore the decision to conclude or not a marketing contract with Ryanair/AMS is directly linked to the decision to conclude also an airport services contract. It appears thus that the marketing agreements would have not been concluded if Ryanair had not operated these exact routes at the airport concerned.
238. Third, the Commission observes that the only potential benefit for the airport to conclude such agreements would be an increase of number of passengers on the flights operated by Ryanair. Load factors and traffic estimates are however an essential component of the profitability analysis that an airport has to make before entering into an agreement with an airline, in order to assess the expected benefits in terms of the increased inflow of passengers.
239. Fourth, concerning the marketing agreements with AMS of 2006 and 2010, the Commission observes that they have been concluded with the company which is 100% owned by Ryanair and they were signed in the same dates of and were explicitly rooted in the contracts signed by Ryanair.
240. Thus to evaluate if the airport behaved as a market investor when entering into relations with Ryanair/AMS the Commission take the preliminary view that both the airport service agreements and the marketing agreements and their financial

consequences have to be assessed together¹⁰⁷. The Commission invites Italy and the third parties to comment on this approach.

241. The Commission highlights that the elements set out above confirm the doubts already expressed in its opening decision of 29 November 2007 on Pau airport¹⁰⁸ concerning the nature of marketing contracts, the rationale of which seemed to be to lower Ryanair's costs. In the context of this decision, the Commission therefore considered the marketing services agreement and the airport services agreement jointly for the purpose of the analysis of compatibility. The Commission has also followed this approach in its decision of 25.01.2012 to extend the procedure regarding the same airport, as well as in its decisions of 08.02.2012 and 23.03.2012 on La Rochelle and Angoulême airports¹⁰⁹.

Joint assessment of SOGEAAL with its public shareholders, notably Sardinia

242. In the case at stake the Commission notes that part or all of the marketing costs have been compensated directly by the Sardinian region, transiting however through the accounts of the airport operator (see above Section 5.2.1.1, paragraphs 89 to 98).

243. Notably, in the period between 2002 and 2008 the Region reimbursed a total amount of EUR [10 000 000 – 15 000 000] for co-marketing contributions in connection with the agreements signed with air carriers for marketing activities and committed to grant additional EUR [2 500 000 – 3 500 000] for 2008 and 2009 (see Section 5.2.1 above, paragraph 95, table 10).

244. The Commission notes that these compensations appear to relate mostly to the operation of Ryanair at least until 2007 and possibly also of other air carriers afterwards. Therefore, although the compensations partially transited through the accounts of SOGEAAL, the Commission considers at this stage that they have to be considered in the context of the measures granted to Ryanair and other carriers at the airport. The Commission invites the Italian authorities and the third parties to comment on this approach.

245. In addition, the Commission observes that the Sardinian region has been, during the investigated period, an important shareholder in SOGEAAL until getting the entire control and ownership since 2009¹¹⁰ and it had thus financial interests in the management of the airport. In view of the legal and economic relationship between SOGEAAL and the Sardinian Region, the Commission considers at this stage that by granting these measures, the behaviours of SOGEAAL and the Sardinian Region have to be assessed together. This approach is consistent with the arguments submitted by Italy.

246. Thus when assessing whether the measures in relation to Ryanair/AMS were market conform, the Commission takes the preliminary view that the behaviour of SOGEAAL has to be assessed together with the behaviour of the Sardinian region

¹⁰⁷ The same (preliminary) conclusions have been expressed by the Commission in the decisions SA.26714 - *Aéroport de Pau* and SA. 26494 - *Aéroport de La Rochelle*.

¹⁰⁸ See Commission decision of 29 November 2007, OJ C41 of 15 February 2008, p. 11.

¹⁰⁹ See Commission decisions SA.26494 - *Aéroport de la Rochelle*, and SA.33963 - *Aéroport d'Angoulême*.

¹¹⁰ See the ownership of SOGEAAL during the investigated period, Section 2.3.

and/or other entities that had an ownership stake in SOGEAAL during the investigated period as from 2000¹¹¹. The Commission invites third parties to comment on this approach.

Market investor principle

247. In essence, pursuant to the MEIP when a public authority invests in an enterprise on terms and in conditions which would be acceptable to a private investor operating under normal market economy conditions, the investment is not a state aid.
248. For the appreciation of the contracts in view of the reasoning above detailed, it is important to note that the existence and the importance of elements of aid in those contracts, they have to be assessed against the situation existing at the time of their conclusion (see above paragraph 226 and ff.).
249. The Italian authorities submit that the development of Alghero airport falls within the objectives of the Regional government, since through it the entire economy received inputs. Moreover, the Italian authorities highlight that the development of the airport through the enhancement of its international dimension was considered the way to maximise the expected results. Indeed, when at the end of '90s Alitalia ceased to have Alghero airport among its priorities, it was believed that the best option was to look at other carriers. The chosen option was to develop the international traffic with low cost carriers, originally with Ryanair. It was considered that in such a way the natural capacity of the airport could be fully exploited, by reaching up 2 million passengers from the 600.000 it then had.
250. In this context, Italy also relied on the conclusions reached in the Roland Berger study submitted with the comments to the opening decision on 14 November 2007 and in the Ecorys Report (both described above in Section 5.3, paragraphs 112 to 118). These took into account in particular the negative factors affecting the financial results of SOGEAAL (the crisis, the inefficient management of handling, the delay in the concession, and so on).
251. The Commission notes first that, according to the jurisprudence, the considerations of regional development cannot be taken into consideration for the application of the market investor principle¹¹².
252. Second, the Commission observes that according to the information at its disposal there was no business plan or ex ante analysis concerning the contracts

¹¹¹ In the Judgment of the Court of First Instance of 17 December 2008, Ryanair/Commission (T-196/04, [2008] ECR II-3643) concerning the agreements concluded between the Walloon Region and the Charleroi airport with Ryanair, the Wallon Region owned directly or indirectly, at the examined period, 96,28% in the company BSCA managing the airport and it owned the airport infrastructure. In the light of these particular circumstances and the legal and economic relationship between BSCA and the Walloon Region, the Court considered that it is "necessary, when applying the private investor test, to envisage the commercial transaction as a whole in order to determine whether the public entity and the entity which is controlled by it, taken together, have acted as rational operators in a market economy. The Commission must when assessing the measures at issue, examine all the relevant features of the measures and their context" (paragraph 59).

¹¹² See Judgment of the Court of 21 January 1999, T-129/95, T-2/96 and T-97/96, Neu Maxhütte Stahlwerke and Lech-Stahlwerke/Commission, Rec.[1999], p.II, paragraph 120

signed with Ryanair/AMS giving ground to the economic decision of SOGEAAL to engage vis-à-vis Ryanair/AMS.

253. The only document considering the contracts with Ryanair preceding the 2007 decision is the SOGEAAL's board meeting of 8 April 2000 in which the initiative related to the connection Alghero – London by Ryanair was discussed and endorsed by the board, given the importance for the initiative for the regional territory. The discussion also considered the potential financial commitment by the shareholders in terms of contributions to be given to Ryanair for advertising and promotion, quantified in around ITL [100 – 1 000] million (around EUR [50 000 – 500 000]) per year and proposed to set up a monitoring body for the correct use of the funds.
254. As regards the Ecorys report, the Commission notes that the conclusion herein is based on a series of assumptions, inter alia that Sardinia would have reimbursed marketing contributions and SOGEAAL would have received the full concession in the foreseen 9 months from the application. In this respect, it has to be stressed that the report is not concerned of showing that the joint behaviour of SOGEAAL and of the Region is market conform. The analysis also highlights shortcomings, such as the lack of rationale for the level of discount in the handling fares applied to carriers, compared with IATA fares, which was "not supported by specific commercial analysis performed by SOGEAAL or others".
255. Furthermore, the Commission considers that both the Ecorys Report (2011) and the Roland Berger analysis (2007) are ex post analysis carried out as if they were ex ante, tentatively assuming fall back options and relying on figures and data possibly available at the time of the decision making. It is not clear at this stage the connection if any between the 2007 Roland Berger report and the Roland Berger business plan of 2004 considered in the 2007 decision.
256. No ex ante analysis has been carried out by the airport operator SOGEAAL and / or by regional or national authorities¹¹³. As flagged in the Report, the 1999 business plan used by SOGEAAL to base its 1999 onwards decision has been provided to the consultant in the form of a simple excel spreadsheet. Further clarifications, comments and motivation of assumptions and methodology of this business plan, as well as a sizeable report produced by Roland Berger in 2007, were provided ad hoc to Ecorys in the course of the deployment of its analysis (meetings, etc.). In this connection, the consultant noted the "slightly unconventional approach" in the production of a business plan "in the form of only an excel sheet" vis-à-vis to what was effectively a strategic decision of great significance to SOGEAAL, Alghero airport and the greater Region of Sardinia¹¹⁴.
257. As for the use of the airport, the Commission notes that during long periods of time Ryanair has been the only airline offering scheduled flights at the airport and it is still now the main LCC offering the vast majority of connection to and from the airport.

¹¹³ Ecorys Report, p. 16: "At the time no [business case] was prepared by the State in an explicit manner. The decisions taken at the time were based on high level assumptions of improved profitability and wider impact to the region".

¹¹⁴ Ecorys Report, p. 60.

258. For all the reasons above detailed, the Commission cannot conclude that SOGEAAL and the Sardinia Region taken together behaved as a market economy investor in their relationship with Ryanair/AMS by granting discounts and marketing contributions.

259. Therefore the Commission invites Italy and interested parties to submit information and comments on the preliminary view expressed.

Existence of a selective advantage in the agreements concluded with other carriers

260. The analysis conducted above in the preceding sections on the joint appreciation of the Airport Services Agreements and the Marketing Services Agreements between SOGEAAL and Ryanair and the assessment of their selective nature apply *mutatis mutandis* to the contracts signed between SOGEAAL and other air carriers.

261. Italian authorities submitted information on handling agreements signed by SOGEAAL with other airlines operating at Alghero since 2000, notably with Germanwings in 2007, Volare in 2007, Air Italy in 2008, Meridiana Fly in 2010, Bmibaby in 2010, and Air Vallè (year not available). SOGEAAL also signed a ground handling contract with Air One, currently the second carrier operating at Alghero airport. A copy of this agreement has not been provided by Italy (see above Section 5.2.2, paragraphs 104 to 108 and tables 12 and 13). In this respect, it has to be noted that some of the mentioned companies might have undergone changes in the ownership in the course of the proceedings. In particular, with regard to Volare and Air one, the Commission notes that these companies have been taken over respectively by Alitalia Linee Aeree Italiane and Alitalia-CAI¹¹⁵. Therefore, inasmuch as those companies benefitted of illegal and incompatible aid, the Commission will have to examine whether those aids was transferred to their successors following the takeover. In that case, the respective successor could be liable to repay that aid.

262. SOGEAAL signed agreements with LCCs which contain marketing fees, notably with Germanwings in 2007, Volare in 2007, Meridiana Fly in 2010, and Alitalia in 2010 (see above Section 5.2.2, paragraphs 108 and table 12). A marketing contract has apparently been signed with Air Italy in 2008 but this contract has not been provided by Italy.

263. According to the information available at this stage, substantial discounts on airport charges have been applied by SOGEAAL also to air carriers different from Ryanair, departing from standard fares, e.g. depending on new routes and traffic increase ([25-35%] of discount) and passenger volume increase.

264. At this stage the Commission cannot rely on detailed information on all contracts signed between SOGEAAL and carriers different from Ryanair, on the nature of the reduction of handling fees, on the marketing contributions granted to

¹¹⁵ Volare was acquired by Alitalia Linee Aeree Italiane S.p.A., see decision by Italian Competition Authority of 5 July 2006 in case C7667 and of 25 June 2008 in case IC7667B. Subsequently, the assets of Alitalia Linee Aeree Italiane S.p.A. and Air One were acquired by Alitalia-CAI, see decisions by Italian Competition Authority of 3 December 2008 in case C9812 and of 11 April 2012 in case C9812B.

air carriers and their possible profitability for SOGEAAL. The Italian authorities are therefore invited:

- to submit all the relevant handling and marketing contracts with carriers different from Ryanair entered into since 2000;
- to state if they consider that the reduction of fees and the granting of marketing contributions represent state aid and if so for which reasons;
- in case they consider that the reductions of fees and the granting of marketing contributions do not represent state aid, Italian authorities are invited to supply all reasons, as well as evidence that the reductions applied and the contributions granted are market conform. In particular, the Italian authorities should provide all ex-ante business plans, studies or documents assessing the profitability for the airport operator of entering into each of the deals with airlines; if these documents are unavailable, the latest budget forecasts of SOGEAAL prepared before the conclusion of these deals should at least be provided.

Conclusion on the existence of selective advantage

265. On the basis of the information submitted by Italy, the Commission observes that SOGEAAL has been operating at losses. Although it has been argued by Italy that the financial situation of SOGEAAL was the consequence of the partial and provisional concessions that SOGEAAL had before 2007, SOGEAAL continued to register losses after 2007, reaching a peak in 2009 (EUR 12 million in losses), when it was granted the full concession to operate the airport .

266. The fact that the full concession was granted some years after compared with the initial plan does not, in the view of the Commission, explain the considerable reductions in the airport services fees aggravated the financial situation of SOGEAAL. Analysis submitted by the Italian authorities indicates that one of the reasons for the negative results was the policy adopted by SOGEAAL towards LCCs and the management of handling and passengers rights (see above Section 5.1.1.1, paragraphs 61 to 71).

267. In addition, the Commission considers that the financial support granted to SOGEAAL may have contributed to subsidize the operation of the air carriers at the airport.

6.2.1.3. Conclusions on existence of aid to the airlines operating at Alghero airport

268. In the light of the foregoing analysis, the Commission considers at this stage that the relevant measures may involve State aid within the meaning of Article 107(1) TFUE.

6.2.2. *Compatibility with the internal market*

269. At this stage, the Commission has doubts on the compatibility of the potential aid granted to air carriers operating at the Alghero airport for the same reasons exposed in paragraphs 120 to 157 of the 2007 decision . The Commission invites Italy and third parties to comment on this matter. The Commission considers that the

analysis of the compatibility of the measures with the internal market applies *mutatis mutandis* to the measures before 2002 and from 2007 onwards.

7. CONCLUSION

270. In view of the preliminary conclusions set up above the Commission doubts whether the measures in relation to SOGEAAL and in relation to the airlines operating at Alghero airport do not entail granting of State aid which is incompatible with the internal market.

271. The Italian authorities are invited to reply the attached questionnaire and fill in the attached table which synthesizes most of the information requested in this decision. In doing so, they should take into account the specific situation of the evolution in the management of Alghero airport. In particular, as to the costs items, the specific co-managing situation until 2007 has to be considered and the costs of SOGEAAL have to be added to the costs of the co-operator (Sardinia region or other entities) and duplication should be avoided.

272. Additionally, the Italian authorities are invited to provide the following information and supporting documents:

- Clarifications on whether or not Alghero airport is based in the same catchment area as other airports in Sardinia, in particular Cagliari and Olbia, and indications on the degree of competition with other type of transport infrastructures e.g. by ports;
- Information on the joint management of the airport in the period which covers the partial and provisional concession to SOGEAAL in 1995 until the granting of the full concession in 2007;
- Clarifications on the table representing SOGEAAL's financial situation reported at page 30 of Accuracy report and on the inputs included and excluded. Connected with this, please submit a clear overview on the financial situation of SOGEAAL since 2000 and the balance sheets from 2000 to now;
- The Accuracy Report specifies that the SOGEAAL's profits were conditioned by "the costs/revenues for territorial marketing contributions borne/received in the period considered" and that the marketing contributions to be paid to Ryanair are "to be considered outside the operational return on investments since they represent the costs sustained by Sardinia in order to favour the local economic development". We invite the Italian Authorities to provide clarifications on these statements;
- Clarification on the nature and rationale of the operations on SOGEAAL's capital carried out since 2000, including the 2001 operation (reported by Italy as *capital increase and conversion to euro*) and 2003 (reported as *repayment of losses and capital increase*), specifying the role of Sardinia region in those operations;
- Copy of all conventions complementing the successive concession acts, from the original dated 10 May 1995 to the final full concession awarded on 3 august 2007;

- As regards the investments on airport infrastructure and fees paid by airport manager, clarifications and supporting documents on: (a) conditions of the concession with regard to the financing of the infrastructure and legal basis on which they are applied; (b) a comprehensive overview of the system of fees applied to SOGEAAL, by also specifying the legal framework and explaining to what extent the concession fees were set up in the course of the years to reflect (if it was the case) the successive entrustment of the airport infrastructure to SOGEAAL and the progressive enlargement and improvement of airport infrastructure; (c) whether there has been any analysis on the intended use of the additional infrastructure financed by the State resources; (d) details on possible plans to finance the Alghero airport infrastructure for the future by using public resources.
- Clarifications on what is meant by "fittings and works" as regards contributions given by the Region of Sardinia referred to annex 23 to the 2011 submission (see table 4 above), by specifying the nature of the expenditure and indicating whether the amount referred to covers the difference between the total amount of investments and the investments financed by the State;
- Clarifications on the nature of the infrastructure investments by the State (see table 5 above) and on the entity which paid the difference between the original costs of works and the contributions (if the reply to the question above is negative). Please also indicate if besides the funding of investments referred to in the table, there were other contributions for investments paid by the State in connection with the investment decision by SOGEAAL before 2003 and provide details;
- Ex-ante business plans, studies or documents assessing the profitability for: (a) the operations on SOGEAAL's capital, including its establishment; (b) the decision by the airport operator of entering into each of the deals with airlines that are covered by this decision. These should include the Roland Berger business plan of 2004 (mentioned in the 2007 decision) and of 2007 (mentioned in the Ecorys report). If such documents are unavailable, please provide the latest budget forecasts of SOGEAAL available before carrying out the operations on capital and the conclusion of the deals with carriers.
- Comments, amendments when needed and clarification on table 7 setting out all contract signed with Ryanair/AMS. Please also provide a comprehensive and reasoned overview analysis on the entire series of contracts, so as to allow the Commission to rely on a clear picture of the situation;
- Clarify the inconsistencies, if any, in figures between the success fee bonuses referred to in table 8 and the contributions for co-marketing referred to in table 9 paid out to Ryanair/AMS.
- Any agreement, convention, understanding, protocol and alike between the Region of Sardinia and Ryanair (e.g. the one dated 24.1.2002 and implementing acts of 30.4.2002), and/ or with SOGEAAL (e.g. the one dated 30.12.2002) connected with the contributions to the given by SOGEAAL to Ryanair or other airlines;

- Any airport services agreement, handling agreement or marketing services agreement entered into with air carriers different from Ryanair since 2000 which has not been already provided (e.g. with Air One for handling and Air Italy for marketing);
- Clarify if you consider that the reduction of fees and the granting of marketing contributions represent state aid and if so for which reasons. If they consider that the reductions of fees and the granting of marketing contributions do not represent state aid, Italian authorities are invited to supply all reasons, as well as evidence that the reductions applied and the contributions granted are market conform. In particular, the Italian authorities should provide all ex-ante business plans, studies or documents assessing the profitability for the airport operator of entering into each of the deals with airlines; if these documents unavailable, the latest budget forecasts of SOGEAAL available before the conclusion of these deals should at least be provided;
- Information enabling the Commission to assess any changes in the ownership of the air carriers different from Ryanair which have signed contracts with SOGEAAL, in particular as concerns the legal successor of Volare and Air One.
- Arguments as regards potential State aid as compatible with the internal market, as concerns both measures granted to SOGEAAL and to air carriers.

8. DECISION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108 (2) of the Treaty on the Functioning of the European Union, requests Italy to submit its comments and to provide all such information as may help to assess the measures, within one month of the date of receipt of this letter.

The measures under scrutiny include: 1) the potential aid to the airport manager SOGEAAL, related to (a) capital injections and compensation of losses by the Sardinian region and other public shareholders; (b) contributions for fittings and works from the Sardinian Region; and (c) financing of airport infrastructure and equipment by the State (assessed in Section 6.1 above); and 2) the potential aid to the airlines using Alghero airport, related to all agreements concluded with those airlines as from 2000 (assessed in Section 6.2 above).

Italy will supply a non-confidential version of its comments and information provided. Otherwise the Commission will adopt a decision on the basis of the information in its possession.

It requests your authorities to forward a copy of this letter to the potential recipients of the aid immediately. In this context, Italy will endeavour to not disclose to the undertakings concerned information relating to other undertakings and covered by confidentiality under Commission Communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions.

The Commission wishes to remind Italy that Article 108 (3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Italy that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication. The interested parties are also required to supply a non-confidential version of their comments.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. In this context and for the purpose of the protection of confidentiality Italy is invited to consult the undertakings mentioned in the present decision with the aim to ensure that it does not contain information covered by professional secrecy under the above said Commission Communication. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language.

Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Bruxelles
Fax: +32 2 296 12 42
Stateaidgreffe@ec.europa.eu

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex I – Questionnaire

1. Please fill in the table attached in Annex II taking into account the following considerations:

- **Column 1**

Please specify the total maximum annual capacity of the airport as a whole in number of passengers as well as in number of aircraft movements and in mass of freight (tons) per annum.

Please specify in your explanations, which of the airport's infrastructure is used for both freight and passenger transport (e.g. the runway) and indicate which part of the airport's infrastructure determines its maximum annual capacity (i.e. the "bottlenecks").

- **Columns 2**

Please specify the capacity utilisation at the airport. For commercial passenger flights (mean scheduled traffic and charter flights, excluding general aviation), please provide figures per airline operating from your airport expressing the capacity use per airline by the number of passengers on one hand and by aircraft movements on the other.

For commercial freight flights, we ask you to provide us aggregated data showing capacity use by freight flights by the mass of air freight and by aircraft movements. Commercial freight flights refer to pure freight flights without passengers and excluding also belly hold freight transported in passenger aircraft. The belly hold freight should be disregarded for the aircraft movement calculation as it is moved together with passengers and thus counted in there.

For general aviation and other use of the airport's capacity please provide the capacity use expressed as aggregated yearly figure of aircraft movements. Belly hold freight transported in passenger aircraft should be counted in passenger airline aircraft movements.

- **Column 3**

Please specify which capacity of the airport has not been utilised in a given year, i.e. basically the delta between columns 1 and 2.

- **Column 4**

Please specify total annual total costs of the airport (including costs for public remit activities) for commercial passenger traffic as defined further above.

- **Column 5**

Please specify public remit costs resulting from activities concerning air traffic management, customs and police. If you deem further cost categories falling into the public remit, please specify them separately. Costs such as depreciation / amortisation / financing costs, etc. should be excluded from the operating costs.

- **Column 6 and 7**

Please specify operating costs of the airport for commercial passenger traffic as defined further above including and without public remit costs. Public remit costs should be those referred to under column 5. Operating costs should cover expenses for personnel, contracted services, materials/equipment/supplies, communications/energy/waste, insurance/claims/settlements, lease/rent/

concessions, general/administrative costs, cost of working capital and other operating expenses. Operating costs dedicated to a specific airline (e.g. personnel hired to provide service for one particular airline) should be stated in column 7. Costs such as depreciation / amortisation / financing costs, etc should be excluded from the operating costs.

- **Columns 8 and 9**

Costs of capital of the airport for commercial passenger traffic as defined further above should cover the costs associated with the funding of investments, i.e. costs of depreciation and costs of financing an investment (total interests excluding the financing of working capital). Costs of capital dedicated to a specific airline (e.g. depreciation of a hangar dedicated to one particular airline) should be stated in column 9. Please explain, whether any of the cost of capital is relevant for the EBITDA calculation.

- **Columns 11 to 14**

Aviation and non-aviation revenues should be stated for each airline. When revenues cannot be attributed directly to one specific airline, please specify which key you use to attribute revenues to a specific airline. Please also specify the amount and nature of other revenues which cannot be attributed to a specific airline. When revenues cannot be attributed to airline-related commercial activities, please indicate the amount of such revenues and state reasons.

- **Columns 15**

Please specify whether the airport was granted public support to cover operating costs and/or cost of capital. Please add narrative explanations describing the nature of the public support granted. Please specify whether this public support was aimed at financing commercial passenger traffic or commercial freight traffic.

Please state, whether the airport was granted a Public Service Obligation (PSO) and whether the airport receives a public remuneration for providing services of general economic interest (SGEI). If it does, please provide also a narrative explanation as to the nature of the PSO and SGEI, respectively.

- **Column 16 and 17**

Please provide the airport's EBITDA (Earnings before interest, taxes, depreciation and amortisation) and its EAT (Earnings After Tax) as figures and in addition we ask you to submit us the calculation of both EBITDA and EAT per year. Please demonstrate in the calculation to what extent the EBITDA is influenced by costs or revenues directly related to the use of infrastructure

2. Please provide a copy of your cash flow statements for the years 2000 and 2011.

ANNEX II

ANNEX II																
	1			2									3			
Year	Maximum total annual capacity			Actual capacity use for...									Unused capacity			
	in number of passengers	in number of aircraft movements	in mass of freight (tons)	Commercial Passenger flights...						Commercial Freight Flights		General Aviation	Other use (Military, Training, etc.)	in number of passengers	in number of aircraft movements	in mass of freight (tons)
				by Airline A		by Airline B		by Airline C		All airlines together		All flights together	All flights together			
				in number of passengers	in number of aircraft movements	in number of passengers	in number of aircraft movements	in number of passengers	in number of aircraft movements	in mass of freight (tons)	in number of aircraft movements	in number of aircraft movements	in number of aircraft movements			
2000																
2001																
2002																
2003																
2004																
2005																
2006																
2007																
2008																
2009																
2010																
2011																

4	5		6		7			8		9			10	
Total Costs commercial passenger traffic (including costs for public remit activities) (6+8)	Public remit costs commercial passenger traffic		Operating costs commercial passenger traffic		Operating costs dedicated to a specific airline (commercial passenger traffic)			Cost of capital commercial passenger traffic		Cost of capital dedicated to a specific airline (commercial passenger traffic)			Cost of capital referring to investment before 2000	
	Operating costs	Cost of capital	including public remit	excluding public remit	Airline A	Airline B	Airline C	including public remit	excluding public remit	Airline A	Airline B	Airline C	including public remit	without public remit

11			12			13	14	15			16	17
Aviation revenues per airline (commercial passenger traffic)			Non-aviation revenue per airline (commercial passenger traffic)			Other revenues commercial passenger traffic (excluding public support granted and compensation for public remit)	Total revenue (11+12+13)	Public Support granted (commercial passenger traffic)			EBITDA (including public support granted and compensation for public remit)	Earnings after tax (including public support granted and compensation for public remit)
Airline A	Airline B	Airline C	Airline A	Airline B	Airline C			for operating costs	for cost of capital	SGEI/PSO grants		