



Brussels, 16.10.2013

C (2013) 6615 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>This document is made available for information purposes only.</p>
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Subject: State aid SA.33909 (2013/C, ex 2013/NN, ex 2011/CP) – Spain
Alleged aid to Ryanair and other airlines and possible aid to Girona and Reus Airports

Sir,

The Commission wishes to inform Spain that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108 (2) of the Treaty on the Functioning of the European Union (hereinafter: “TFEU”).

1. PROCEDURE

- (1) By email of 18 November 2011, the Commission received a complaint alleging that unlawful state aid had been provided by Spain at Girona-Costa Brava airport (hereinafter “Girona airport”) and Reus airport in favour of Ryanair¹. This complaint was registered under the State aid case number SA.33909 (2011/CP).
- (2) By letter of 5 December 2011 the Commission forwarded this first complaint to Spain and requested information. Spain transmitted its comments on 20 January 2012.

¹ Ryanair is an Irish low-cost airline. In 2011, Ryanair had 75.8 million passengers on over 1,500 routes across Europe and Morocco from 50 bases.

- (3) By letter of 23 May 2012, the Commission received a second complaint from a competitor airline user of Barcelona-El Prat airport (hereinafter “Barcelona airport”), also alleging unlawful State aid provided by Spain at Girona and Reus airports in favour of Ryanair in the form of marketing and promotion agreements. This complaint was also registered under State aid case number SA.33909 (2011/CP).
- (4) By letter of 19 June 2012 the Commission forwarded this second complaint to Spain and requested information. Spain transmitted its comments on 14 August 2012, and 16 August 2012.
- (5) The information supplied being incomplete, by letter of 27 August 2012 the Commission sent a reminder to Spain to request the missing information. Spain replied to this request on 11 September 2012 and 21 September 2012.
- (6) By letters of 5 November 2012 and 20 December 2012 the Commission requested further information from Spain. Replies to these requests were received on 28 November 2012 and 21 January 2013 respectively.

2. DESCRIPTION OF THE MEASURES

2.1. The complaints

2.1.1. First complaint

- (7) The first complainant, a private citizen, alleges an agreement by the Generalitat de Catalunya (hereinafter “Catalan government”) and other Catalan public authorities to grant illegal state aid of EUR 45million to Ryanair to continue operating from Girona and Reus airports for the period 2012-2017. The complainant sent a copy of the press article on which his allegations were based².

2.1.2. Second complaint

- (8) The second complainant, a competitor airline user of Barcelona airport, alleges aid granted to subsidize the activities of Ryanair at Girona and Reus airports. These allegations were based on information extracted from various press articles³.
- (9) The complainant alleges that the funding for the aid is either from public authorities or other public-sector bodies, such as the Associació per a la Promoció i el Desenvolupament de les Comarques Gironines (or the Association for the Promotion and Development of the Girona Region, hereinafter “AGI”) and de Màrqueting i Serveis de les Comarques Gironines SLU (Management and Marketing services of Girona Ltd., hereinafter “GMS”), the latter controlled by AGI.

² El Economista, 17 November 2011, "Ryanair se queda en Reus y Gerona por 45 millones".

³ "Ryanair condiciona a ayudas públicas el aumento de actividad en Girona" El País of 20 February 2006, "The Best Way to Deal with Low-Cost Carriers" Air Scoop report dated October 2009, "Ryanair recibe ayudas de 80 millones de euros en España" Expansión of 21 December 2010, "Los aeropuertos de Girona y Reus buscan alternativas a Ryanair" Expansión of 24 January 2011, "Ryanair dejará también el aeropuerto de Lleida" La Vanguardia of 18 March 2011, "Ryanair se va de Reus y tensa la cuerda por las ayudas" Expansión of 30 June 2011, "Ryanair elevará su actividad en El Prat este año un 300%, hasta 2,9 millones de usuarios" Expansión of 6 April 2011, "El doble juego de Ryanair en España golpea al sector" El Economista of 7 November 2011, "Ryanair exige que no suban las tasas" La Vanguardia of 17 November 2011, "Nueve millones para seguir volando" ABC of 17 November 2011, "El Govern pagarà 45 millones para que Ryanair siga en Girona y Reus" Expansión of 17 November 2011, "Cataluña ata a Ryanair a Girona con más Subvenciones" El País of 11 January 2012.

- (10) The complainant states that such aid in respect of Girona and Reus airports has been paid since 2004 and 2007 respectively.
- (11) The complainant states further that the aid has been granted under marketing and promotion agreements entered into between Ryanair and the Catalan public authorities. Through such agreements, airlines agree to name some of their aircrafts after the financing city, and launch other activities aimed at enhancing tourism in that city (e.g. to mention the city in their in-flight magazines). Furthermore, Ryanair has conditioned the agreements for 2012 onwards on there being no increase in airport taxes.
- (12) With regard to the marketing and promotion services purchased, the complainant alleges that no private investor would be willing to pay a similar amount of money for the marketing and promotion services provided, and that the amounts received by Ryanair therefore do not comply with the market economy operator principle (hereinafter: "MEOP").
- (13) The complainant alleges that the purpose of the aid is to ensure certain annual levels of passengers in the Girona and Reus airports, and to establish new routes from and to those airports. Furthermore, the measures basically pursue an increase in airport traffic, as without the aid the traffic drops drastically, which shows that the airlines operating some routes from and to the Girona and Reus airports cannot operate under normal market conditions.
- (14) The complainant states that since 2011, Ryanair has also been operating from Barcelona airport, and that the aid mentioned above in respect of Girona and Reus airports allows Ryanair to cross-subsidise its services at Barcelona, and to therefore offer artificially low prices for its flights to and from Barcelona airport.
- (15) With regard to a possible basis for compatibility of the aid, the complainant states that the aid granted to Ryanair is clearly incompatible with the internal market as it does not meet the criteria established in paragraph 79 of the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports⁴, (hereinafter the "2005 Aviation Guidelines").
- (16) Overall, the complainant alleges its business as an airline operator at Barcelona airport, is affected by the aid paid to Ryanair at Girona and Reus airports, which allows it to operate at all three airports under more advantageous conditions than the complainant.

2.2. General information about Barcelona, Girona and Reus airports

Catchment area

- (17) Catalonia is served by three main airports, namely Barcelona, Girona and Reus⁵.
- (18) The main airport in Catalonia in terms of passenger numbers is Barcelona airport which is located 14.4km south west of Barcelona city centre⁶.

⁴ OJ C 312, 9.12.2005, p. 1

⁵ In Catalonia, there is also Sabadell airport, which handles mainly training flights, (source: www.aena.es), and Lleida-Alguaire airport which began operations in February 2010, and which in the first half of 2011 handled 27,000 passengers. (Source: www.aeroportlleida.cat).

⁶ All distances and travelling times by car have been taken from www.maps.google.com. The nearby airports mentioned are those within a 90 minute drive.

- (19) Girona airport is located in the province of Girona in North East Catalonia. It is approximately 14.7km from the city of Girona, 95.7km north east of Barcelona and 106km from Perpignan in France. In terms of distances to other nearby airports, Barcelona airport is 106km or 66mins away by car, Aeroport Sud de France Perpignan-Rivesaltes (hereinafter “Perpignan airport”) is 113km or 70mins by car.
- (20) Reus airport is located in the province of Tarragona in South West Catalonia. It is approximately 4.2km from the city of Reus, 11km from Tarragona, and 105km south west of Barcelona. In terms of distances to other nearby airports, Barcelona airport 97.8km or 60mins away by car, and Lleida-Alguaire airport is 111km or 82minutes by car.

Passenger numbers

- (21) In 2012, Barcelona airport handled 35,145,176 passengers. In the same year Girona airport handled 2,844,682 passengers, and Reus airport handled 937,446 passengers.
- (22) Table 1 describes how passenger numbers have evolved at Girona and Reus airports since 2002, and the percentage of passengers travelling with Ryanair. The main user of both airports during this period has been Ryanair, however numerous other airlines have also used the airports during this time⁷.

Table 1: Passenger traffic at Girona and Reus airports for 2002 - 2012

Year	Passenger traffic at Girona airport		Passenger traffic at Reus airport	
	Total Passengers	Of which % Ryanair	Total Passengers	Of which % Ryanair
2002	557,187	2.4	764,704	0.58
2003	1,448,796	66.8	846,731	2.13
2004	2,962,988	82.1	1,138,112	31.44
2005	3,533,564	86.7	1,382,254	40.75
2006	3,614,254	86.8	1,380,267	46.64
2007	4,848,604	88.2	1,306,784	46.28
2008	5,510,970	91.6	1,278,074	48.99
2009	5,286,970	95.8	1,706,615	69.44
2010	4,863,954	95.2	1,419,851	70.94
2011	3,007,977	91.3	1,362,683	70.11
2012	2,844,682	Unknown	937,446	Unknown

The airport operator – Aena Aeropuertos S.A.

- (23) Barcelona, Girona and Reus airports are all operated by Aena Aeropuertos S.A. (hereinafter "Aena").
- (24) Aena manages 47 airports out of the 49 airports that are currently in active use in Spain, and participates directly and indirectly in the management of 26 more airports around the world. It handles more than 200 million passengers per annum⁸.

⁷ Those which have had over 100,000 annual passengers at Girona airport include Britannia Airways Ltd, MyTravel Airways, Spanair, and Transavia Holland B.V. Those which have had over 100,000 annual passengers at Reus airport during this period include Britannia Airways Ltd, MyTravel Airways, ThomsonFly.com, Air 2000 Ltd, First Choice Airways Ltd, Thomson Airways Ltd, and Thomas Cook Airlines (UK) Ltd.

⁸ Source: www.aena.es

- (25) Aena is a wholly owned subsidiary of Aena Group, which is itself owned by the Spanish state. Aena Group's other activities are principally air navigation services in Spain. However, Aena Group's airport management and air navigations functions have only been formally separate since a reform of the organisation in June 2011.

Airport charges

- (26) The airport charges levied by all Aena airports are listed in a charge schedule published biannually on the company's website. These schedules include all payments due by customer airlines to Aena, for both terminal (passenger-based) and landing (aircraft weight-based) charges, as well as other ancillary dues. The charges are subject to approval by the Spanish Parliament as a part of the State Budgetary Act, under power set out in Article 68.3 of Law 1/2011 of 4 March.
- (27) The current level of the various charges levied is based on a grouping system created as part of the reforms to Aena in June 2011.⁹ In this system, all Aena airports are divided into the following five groups based on their annual passenger traffic:
- **Group I:** Madrid-Barajas and **Barcelona**.
 - **Group II:** Alicante, Gran Canaria, Tenerife, Malaga-Costa del Sol and Palma de Mallorca.
 - **Group III:** Bilbao, Fuerteventura, **Girona**, Ibiza, Lanzarote, Menorca, Santiago, Seville, Tenerife Norte and Valencia.
 - **Group IV:** Almeria, Asturias, Coruña, Granada-Jaen, Jerez, La Palma, Murcia, **Reus**, Santander, Vigo and Zaragoza.
 - **Group V:** Albacete, Algeciras, Badajoz, Burgos, Ceuta, Córdoba, Cuatro Vientos, Hierro, Huesca, La Gomera, León, Logroño, Melilla, Sabadell, Salamanca, San Sebastian, Son Bonet, Pamplona, Torrejón, Vitoria and Valladolid.
- (28) The charges are set on a sliding scale, whereby the largest airports (i.e. Group I) pay the most for a given service, and the smallest airports (i.e. Group V) pay the least. Barcelona airport is in Group I, Girona airport is in Group III and Reus airport is in Group IV.

Financial data for Girona and Reus airports

- (29) Aena operates a network model, and historically has not had financial information available for individual airports. However, since 2009, data at the level of individual airports have been available as part of the profit and loss accounts. These are shown for Girona and Reus airports for the period 2009-2011 in Table 2.

Table 2: Key financial data for Girona and Reus airports in 2009 – 2011 (€ million)

Year	Girona airport			Reus airport		
	2009	2010	2011	2009	2010	2011
Turnover	39.26	36.94	24.85	12.31	10.54	10.21
EBITDA	21.31	20.91	6.79	-3.04	-0.68	-1.85
Net result	11.14	10.55	-2.56	-6.13	-4.64	-7.06

⁹ Prior to the reform of Aena in June 2011, there was a similar grouping system, with the airports split into 6 different groups for the purpose of setting landing charges, and 7 different groups for the purpose of setting terminal charges.

2.3. Marketing agreements in relation to Girona airport

- (30) Several so-called cooperation agreements relating to the purchase of marketing services from airlines have been concluded in relation to Girona airport. These agreements do not cover all airlines that have use Girona airport.
- (31) Each agreement was concluded between an airline and one of the following public entities

Asociació Girona Centre Logístic (GiCL)

- (32) "Asociació Girona Centre Logístic" or "Girona Logistics Centre Association", (hereinafter "GiCL") is a non-profit association that aims to promote internationally Girona and the Northern Catalonia region as a logistical centre.
- (33) GiCL acts as an intermediary association of the following entities in Girona:
- Catalan government,
 - Chambers of Commerce of Girona, Palamos and Sant Feliu
 - Council of Girona.
 - County Councils of l'Alt Empordà, Baix Empordà and La Selva Gironès
 - Councils of El Far de l'Emporda, Figueres, Girona, Vilamalla and Vilobí d'Onyar
 - Carriers Association: ASETRANS Girona
 - Federation of Business Organizations of Girona: FOEG
 - International Freight Forwarders Association and Allied: ATEIA Girona
 - Tourist Board of Costa Brava Girona, S.A.
- (34) The Spanish authorities stated that GiCL finances its activities primarily through grants and contributions from partners.

Asociació per a la Promoció i el Desenvolupament de les Comarques Gironines - AGI

- (35) AGI (or the Association for the Promotion and Development of the Girona Region) is a non-profit association registered in the Register of Associations of the Department of Justice of the Catalan government.
- (36) AGI's founding partners are CIMALSA (a public company of the Catalan government entrusted with promoting, developing and managing infrastructures and centres for goods transport and logistics)¹⁰, Tourism Consortium of Catalonia (currently known as the Catalan Agency of Tourism in Catalonia), Girona Provincial Council and the Chamber of Commerce of Girona. On 25 November 2011 the City Council of Girona and the Costa Brava Tourism Board also joined the board of AGI.
- (37) AGI's mission is the promotion of Girona infrastructures which contribute to the development of Girona as a portal to Catalonia.¹¹

Gestió de Màrqueting i Serveis de les Comarques Gironines SLU - GMS

- (38) GMS (or Management and Marketing Services of the Counties of Girona Ltd) is a limited liability company. The objective of GMS is the hiring, management and

¹⁰ See: <http://www.cimalsa.cat/empresa/presentaciocs.htm>

¹¹ Definition taken from AGI Ryanair contract of 01/03/2006, see table 3.

delivery of advertising and marketing, the contracting, management and delivery of economic development services, the contracting, management and delivery of tourism promotion, the provision of all types of advertising, economic and tourism development linked to Girona airport and also the realisation of all kinds of promotional activities for Girona.

- (39) The activities of GMS are solely the buying and selling of services. GMS is owned outright by AGI.

2.3.1. Details of contracts with Ryanair

- (40) Table 3 contains a summary of the information contained in the marketing agreements with Ryanair for Girona airport that the Commission has received copies of.

Table 3: Marketing agreements with Ryanair for Girona airport for 2003 - 2015

Airline	SPV signatory	Period of validity	Key conditions contained in contract	Payment to be made to airline.
Ryanair	GiCL	15/03/2003-14/03/2004	Ryanair to provide GiCL with advertising space on its website related to destination of Girona or to Girona airport. Ryanair to use Girona Airport as a base of operations in Catalonia.	[...] EUR
Ryanair	GiCL/AGI An amendment of the contract on 01/11/2005 changed the counterparty from GiCL to AGI.	01/03/2004-28/02/2006	Ryanair to provide GiCL with advertising space on its website, which shall appear on the Ryanair homepage for 120days/year. ¹² Ryanair to provide GiCL with external branding on aircraft based in Girona. Ryanair to publicise the region to its passengers, and to cooperate with ground-based publicity campaigns such as the distribution of brochures. Penalty clause of €500,000 if no increase in passengers or planes based at Girona by February 2007. Penalty clause of €500,000 if increase of 500,000 annual passengers not met by the end of 2007.	[...] EUR in first year, [...] EUR in second year. In the initial GiCL contract the payment for the second year was [...] EUR, but this amount was reduced to [...] EUR by the amendment of 01/11/2005.
		<u>Contract extension:</u> 01/03/2006-30/05/2006	No change	[...] EUR
		<u>Contract extension:</u> 01/06/2006-31/12/2006	No change	[...] EUR
Ryanair	GMS	01/01/2009-31/12/2011	(a) The placement of external advertising on 11 planes in 2009, 14 planes in 2010, and 14 planes in 2011 based at Girona airport. (b) Direct advertising to travellers in Ryanair's aircraft. (c) External publicity on 5 new planes to be	Price per item: (a) [...] EUR / year, (b) [...] EUR /year, and (c). [...] EUR /month per plane, paid from the arrival date of each new

¹²

The amendment of the contract on 01/11/2005 changed the agreed intervals for 80days/year subject to a policy of de-seasonalisation of the tourist sector.

Airline	SPV signatory	Period of validity	Key conditions contained in contract	Payment to be made to airline.
			based at Girona airport. Increase of at least 20 flights per day by the end of 2011.	plane based at Girona airport. Overall annual amounts for item (c) are capped per calendar year: 2009: [...] EUR 2010: [...] EUR 2011: [...] EUR
		<u>Annex:</u> 01/11/2010-31/10/2011	Advertising on overhead lockers on 15 planes from 1 June 2011 to 31 October 2011. Placement of articles in in-flight magazine	No change
Ryanair	GMS	25/03/2012-24/03/2015 With automatic two year extension: 25/03/2015-24/03/2017	(a) Advertising on overhead lockers on 20 planes for 8 months each year (b) The placement of external advertising on 8 planes all year round. (c) Placement of articles in in-flight magazine (d) Use of the Catalan language for Ryanair website and cabin announcements.	Price per item: (a) [...] EUR / year, (b) [...] EUR /year, (c) [...] EUR /year. Overall total: [...] EUR /year

2.3.2. Details of contracts of GMS with other airlines

- (41) The Commission has copies of a number of marketing agreements from 2007 onwards, signed with a number of other airlines apart from Ryanair, with respect to their operations at Girona airport; all of these contracts were signed with GMS. These are detailed in table 4.

Table 4: Marketing agreements for Girona airport for other airlines for 2007 - 2013

Airline	SPV signatory	Period of validity	Key conditions contained in contract	Payment to be made to airline.
Transavia ¹³ France	GMS	01/01/2008-31/12/2010	(a) Transavia to add a banner advertisement to the Girona destination page of its website, and where there is content related to Girona airport. (b) Transavia to promote the destination Girona, 10 times a year as part of the marketing "Supersale" this company carried out in web. GMS will cede commercial advertising space on 250 bus shelters in the Girona airport area for 15 days in 2008 and for another 15 days in 2009. Minimum of 166 flights per year on the Paris route.	Price per item: (a) [...] EUR /year, (b) [...] EUR /year, Overall total: [...] EUR /year
Transavia Airlines CV, (Netherlands).	GMS	01/01/2008-31/12/2010	All conditions same as Transavia France contract except flight minimum of 166 flights per year applies to the Rotterdam route.	As above

¹³

Transavia is a Dutch low cost airline operating from various Dutch airports. Transavia is wholly owned by the Air France KLM Group. Transavia France is the French subsidiary, with its main base at Paris Orly airport. (See: www.transavia.com).

Airline	SPV signatory	Period of validity	Key conditions contained in contract	Payment to be made to airline.
Transavia Airlines CV, (Netherlands).	GMS	15/04/2010-14/04/2013 ¹⁴	All conditions same as earlier Transavia Airlines CV contract except: Transavia promote the destination Girona, 15 times a year as part of the marketing "Supersale" this company carried out in web. Minimum of 210 flights per year on the Rotterdam route.	Price per item: (a) [...] EUR /year, (b) [...] EUR /year, Overall total: [...] EUR /year
Spanair ¹⁵	GMS	01/04/2007-30/12/2007 The contract had an automatic one year extension, but was terminated on 01/08/2008 by mutual agreement.	Spanair to add a banner advertisement to the Girona destination page of its website. Spanair to place external advertising (branding) on one plane of the Spanair fleet. Cooperate with ground-based publicity campaigns Use of Catalan language for cabin announcements on Madrid route. Spanair to offer promotional tariffs to business customers. Obligation to renegotiate the contract if Girona-Madrid-Girona route no longer operated.	2007: [...] EUR 2008: [...] EUR
Andalus ¹⁶	GMS	01/12/2009-31/12/2012	Placement of external advertising (branding) on an Andalus plane. Inclusion in in-flight magazine of 2 reports proposed by GMS per year. Adverts for region on cabin headrests. Web link to promotional material from Andalus website. Organization of a promotional flight to and from Menorca with journalists and public authorities. Use Catalan language on the Andalus website and for cabin announcements. Penalty clause of 50% reduction in payments, if 3 routes and 125 annual flights not operated.	2009/2010: [...] EUR 2011: [...] EUR 2012: [...] EUR
Wizz Air ¹⁷	GMS	01/09/2011-31/12/2012 Automatic 2 year extension	Wizz Air to add a promotional link to the Girona destination page of its website. Adverts for region placed in newsletters to Wizz Air Ukrainian subscribers. Monitoring Committee to verify spending in	01/09/2011-31/03/2012: [...] EUR 01/04/2012-31/12/2012:

¹⁴ The Commission has no confirmation as to whether the earlier 3year 1 January 2008 contract with Transavia Airlines CV which had yet to expire, was annulled at the time of the signature of the 15 April 2010 contract.

¹⁵ Spanair was a Spanish airline with its main hub at Barcelona airport. The Commission notes the bankruptcy and cessation of operations of Spanair S.A. in January 2012. See www.spanair.com.

¹⁶ Andalus was a small Spanish airline with a hub at Málaga-Costa del Sol Airport. The Commission notes the bankruptcy and cessation of operations of the airline.

¹⁷ Wizz Air is a Hungarian airline and Member of the European Low Fares Airlines Association. Wizz Air group includes two operating airlines, namely Wizz Air Hungary and Wizz Air Ukraine. The business model of the airlines is linked with secondary, regional airports. The airline operates on approximately 250 routes.

Airline	SPV signatory	Period of validity	Key conditions contained in contract	Payment to be made to airline.
			second period. Termination clause if Wizz Air ceases operations at Girona airport.	[...] EUR
JAT ¹⁸	GMS	15/04/2011-14/04/2012 Automatic 2 year extension	Various adverts on boarding passes, headrests, and tray tables. Articles and adverts in in-flight magazine. Banner advert on JAT Airways website. Adverts in mainstream media in Serbia, including use of chosen logo. Free airplanes tickets for press, (max 5 per flight for Spain). Minimum of 44 flights per year on the Belgrade route.	[...] EUR /year
Transaero ¹⁹	GMS	01/04/2012-31/12/2013 Automatic 1 year extension	Advertising on Transaero website and on aircraft. ²⁰ In determining the price of the marketing purchased, a monitoring committee will consider the schedule of Transaero flights, which will initially operate weekly frequency of operation on Moscow route. Termination clause if Transaero ceases operations at Girona airport.	2012: [...] EUR 2013: [...] EUR

2.3.3. *Overall value of marketing support payments to airlines and airport charges paid by the airlines to Aena*

(42) The Spanish authorities have supplied the Commission with the information in table 5 on the overall value of payments made to airlines under these agreements during the period 2003-2012.

Table 5: Value of marketing agreements for Girona airport in 2003 – 2012 (€)

Year	Ryanair	Transavia	Spanair	Andalus	Wizz Air	Jat	Transaero	Total
2003	[...]							[...]
2004	[...]							[...]
2005	[...]							[...]
2006	[...]							[...]
2007		[...]	[...]					[...]
2008	[...]	[...]	[...]					[...]
2009	[...]	[...]		[...]				[...]

¹⁸ JAT Airways is a Serbian airline with a hub at Belgrade Nikola Tesla Airport. See www.jat.com.

¹⁹ Transaero is a Russian airline with hubs at airports in Moscow, Saint Petersburg and Yekaterinburg. See www.transaero.ru.

²⁰ The details of the marketing and advertising services provided are listed in an Annex to the contract that the Commission has not received a copy of.

2010	[...]	[...]		[...]				[...]
2011	[...]	[...]			[...]	[...]		[...]
2012	[...]				[...]		[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

(43) At Girona airport the total charges levied by Aena since 2003 are set out in table 6.

Table 6: Value of airport charges at Girona airport for 2003 - 2012

Year	Ryanair	Transavia	Spanair	Andalus	Wizz Air	Jat	Transaero	Total
2003	[...]		[...]			[...]		[...]
2004	[...]		[...]		[...]	[...]		[...]
2005	[...]		[...]		[...]	[...]		[...]
2006	[...]		[...]		[...]	[...]		[...]
2007	[...]	[...]	[...]		[...]		[...]	[...]
2008	[...]	[...]	[...]		[...]	[...]	[...]	[...]
2009	[...]	[...]	[...]	[...]	[...]	[...]		[...]
2010	[...]	[...]		[...]		[...]		[...]
2011	[...]	[...]	[...]			[...]	[...]	[...]
2012	[...]	[...]				[...]	[...]	[...]
Total	169,294,964	2,693,004	1,333,555	82,604	825,252	154,965	141,028	174,525,372

(44) The difference at Girona airport between the charges paid by the airlines and the amount they receive in marketing payments each year is summarised by table 7.

Table 7: Net value of airport charges paid by airlines after deduction of marketing payments, Girona airport for 2003-2012

Year	Ryanair	Transavia	Spanair	Andalus	Wizz Air	Jat	Transaero	Total
2003	[...]		[...]			[...]		[...]
2004	[...]		[...]		[...]	[...]		[...]
2005	[...]		[...]		[...]	[...]		[...]
2006	[...]		[...]		[...]	[...]		[...]
2007	[...]	[...]	[...]		[...]		[...]	[...]
2008	[...]	[...]	[...]		[...]	[...]	[...]	[...]
2009	[...]	[...]	[...]	[...]	[...]	[...]		[...]
2010	[...]	[...]		[...]		[...]		[...]
2011	[...]	[...]	[...]		[...]	[...]	[...]	[...]
2012	[...]	[...]			[...]	[...]	[...]	[...]

Total	158,716,672	2,088,004	675,255	17,006	1,041,950	119,765	125,617	162,784,269
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2.4. Marketing agreements in relation to Reus airport

(45) Agreements for the purchase of marketing services from airlines have been concluded in relation to Reus airport. These agreements do not cover all airlines that have used Reus airport during this period.

2.4.1. Details of contracts with Ryanair

(46) Table 8 contains a summary of the information contained in the marketing agreements with Ryanair for Reus airport that the Commission has received copies of.

Table 8: Marketing agreements with Ryanair for Reus airport for 2008 - 2013

Airline	Counterparties	Period of validity	Key conditions contained in contract	Payment to be made to airline.
Ryanair	Catalan government, Tarragona Provincial Council, Reus Town Council and Reus Chamber of Commerce.	24/10/2008-23/10/2011 Date of signature: 12/02/2008 Superseded by new agreement below of 08/11/2010.	On Ryanair website: Placement of logos. Information about the region in the "Destinations" section, and inclusion of local interest links. Website always translated into Catalan, and Reus airport to be shown as a base. The creation of a specific guide for the "Free Travel Guides". Articles in Ryanair in-flight magazine. Two multiple emails to be sent to the company's client database with information about the destination. Aircraft branding on two aircraft. The use of Catalan for the instructions given to Reus passengers. Commitments for flight frequencies, and numbers of planes based per season, with termination of contract option if targets not met.	[...] EUR /year
Ryanair	As above, plus the Tarragona Chamber of Commerce.	01/11/2010-31/12/2013 Date of signature: 08/11/2010 With retroactive effect from: 01/11/2010.	As above.	[...] EUR /year

(47) With regard to the 12 February 2008 contract with Ryanair, the Commission has no information about any earlier agreements, but notes that the 12 February 2008 refers to an agreement between the "Camp de Tarragona Board" and Ryanair that was valid until 24 October 2007, "to implement flights to several European destinations". The 12 February 2008 agreement also specified that "the parties will honour fully the terms of the previous agreements and in particular, the financial consideration due to Ryanair under the terms of the letter from Ryanair to the Catalan Government on 17 January 2008".

(48) The agreement also sets out the intention to create an SPV to be called the "Societat de Promoció de l'Aeroport de Reus S.L.", to promote Reus airport, with the signatories of the agreement from the Region as the shareholders.

(49) The 8 November 2010 contract with Ryanair also refers to an earlier agreement between the Camp de Tarragona Board and Ryanair that was valid until 24 October 2007, named the "Pacte de Boella".

2.4.2. Details of contracts with other airlines

(50) The Commission does not currently have copies of any agreements that may have been signed with Jet2 and Tui in relation to the amounts paid to these airlines in 2012 for their operations at Reus airport.

(51) *Overall value of marketing support payments to airlines and airport charges paid by the airlines to Aena*

(52) The Spanish authorities have supplied the Commission with the information in table 9 on the overall value of payments made to airlines under these agreements during the period 2008-2012.

Table 9: Value of marketing agreements for Reus airport for 2008 – 2012 (€)

Year	Ryanair	Jet2	Tui	Total
2008	[...]			[...]
2009	[...]			[...]
2010	[...]			[...]
2011	[...]			[...]
2012		[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]

(53) At Reus airport the total charges levied by Aena since 2003 are set out in table 10.

(54) The Commission does not have information on the charges paid by Jet2 and Tui at Reus airport during this period.

Table 10: Value of airport charges at Reus airport for 2003 - 2012

Year	Ryanair
2003	[...]
2004	[...]
2005	[...]
2006	[...]
2007	[...]
2008	[...]
2009	[...]
2010	[...]

2011	[...]
2012	[...]
Total	33,231,637

- (55) The difference between the charges paid by the airlines and the amount they receive in marketing payments each year is summarised by table 11. This does not however take into account the data for Jet2 or Tui, because the Commission does not have the airport charges information. The Commission also notes that it has no information on any marketing payment made to Ryanair in 2012.

Table 11: Net value of airport charges paid by airlines after deduction of marketing payments, Reus airport for 2003-2012

Year	Ryanair
2003	[...]
2004	[...]
2005	[...]
2006	[...]
2007	[...]
2008	[...]
2009	[...]
2010	[...]
2011	[...]
2012	[...]
Total	23,692,044

3. ASSESSMENT

- (56) The Commission has to analyse whether the marketing support measures may qualify as state aid in favour of the airlines, and additionally or alternatively in favour of Girona and Reus airports.
- (57) 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."*
- (58) 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 threatens to distort competition, and
 - affect trade between Member States.
- (59) Spain is of the opinion that neither Ryanair, nor other airlines using Girona and Reus airports nor the airports concerned benefited from State aid.
- (60) According to Spain, the primary objective of the marketing agreements in question is to increase the economic and touristic development of Catalonia through the provision of marketing services. Therefore, Spain is of the opinion that it cannot be inferred that either the purpose or effect of these agreements, nor the economic considerations they involve, is anything other than for the touristic promotion of Catalonia.
- (61) In this regard, Spain considers that the marketing agreements concluded with Ryanair and other airlines using Girona and Reus airports correspond to the purchase of marketing services at a market price.
- (62) In this regard, the Commission makes two observations. First, it does not appear that the public entities that have concluded these marketing agreements have done so in the context of any economic activity that they carry out and for their own economic interest, but rather in the context of a task of promoting the general economic development of the area of Girona and Reus. (In the case of Girona this task is set for entities in question by the public authorities). Second, the Commission observes that the marketing agreements at stake are predicated upon precise commitments by airlines to operate routes or to base aircrafts at Girona or Reus airports, within a defined period of time, (see sections 2.3 and 2.4). As previously described in detail, the marketing agreements under assessment include also clauses and conditions for airline's operation at both airports. Such clauses and conditions included in these agreements involve penalties, if the number of passengers actually carried by the airline does not reach certain thresholds, or a link between the prices of the marketing services and the frequency of flights actually operated by the airline. Furthermore, the agreements at stake provide that a significant reduction in flight services operated by the airline could constitute a cause for resolution of the agreement. Moreover, certain agreements at stake aim specifically at purchasing publicity for Girona or Reus airports, even though the public entities entering into these agreements have no financial stake in the airport infrastructure or operator.
- (63) The Commission considers that all marketing agreements in question (see section 2.3) contain conditions, which may have the effect of generating additional operations at Girona and Reus airports and have a significant impact on airport's commercial strategy. Therefore, those agreements appear to be different from promotion activities that a public authority may carry out for the general benefit of the community it represents in that they seem to be specifically targeted at developing the activity of Girona and Reus airports.
- (64) In conclusion, even if the agreements concluded with Ryanair and other airlines using Girona and Reus airports correspond to the purchase of marketing services by public authorities at a market price, they seem to grant a specific advantage to the airport operator of Girona and Reus, as they allow that operator to develop the activity of those airports, without bearing the costs that it would normally have to bear to achieve such development. Since the marketing agreements provide for payments directly to the airlines, they may also generate an advantage for those airlines by lowering the costs that they would normally have to bear in order to fly to or from a given destination.

- (65) For the purpose of assessing the existence of such advantages the Commission has to apply the Market Economy Operator ("MEO") Test, i.e. has to assess whether a private operator, in a position similar as much as possible to that of the public authorities involved, would have concluded similar marketing agreements.
- (66) In this connection, the Commission observes that in the Charleroi Judgement²¹, the General Court established 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, including those relating to the situation of the authority or authorities responsible for granting the measures at issue.*

*Accordingly, contrary to what is stated by the Commission, **the financial links** binding the Walloon Region to BSCA are not irrelevant, since it cannot a priori be excluded that the Walloon Region not only took part in the activity carried out by BSCA, but also obtained financial consideration for granting the measures at issue.*

In the present case, it must therefore be concluded that the Walloon Region and BSCA ought to have been regarded as one single entity for the purposes of application of the private investor principle" (emphasis added)

- (67) In the present case the marketing support agreements are concluded by public entities that seem to have neither any financial links nor any link of other nature with the airport operator.
- (68) In relation to Girona, those entities are controlled and financed by public authorities that are different and enjoy a wide degree of autonomy from the Spanish State, which controls Aena. In relation to Reus, those entities are public authorities that are different and enjoy a wide degree of autonomy from the Spanish State, which controls Aena. In both cases, they seem to receive no financial consideration from the marketing agreements they conclude.
- (69) Therefore, the Commission doubts that in the present case it can assess compliance with the MEO test by considering that Girona and Reus airports and the public entities should be regarded as single entities for the purposes of application of the MEO test. The Commission invites the Spanish authorities and interested parties to comment on the issue of whether in the present the Girona and Reus airports and the public entities should be regarded as single entities for the purposes of application of the MEO test.
- (70) Assuming that Girona and Reus airports and the public entities should be regarded as single entities for the purposes of application of the MEO test, the marketing agreements and airport charges offered to the airlines will have to be assessed together as they would appear to be respectively costs and revenues of the same activity of developing the airports of Girona and Reus, carried out by the hypothetical single entities made up of those public entities and Girona and Reus airports.

²¹ Case T-196/04 Ryanair v Commission [2008] ECR II-3643, paragraph 59-61 ("*Charleroi Judgement*"). See also Case T-228/99 and T-233/99, Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission, ECR[2003] II-00435, paragraph 270.

- (71) Insofar as it is found that the MEO would have offered the same airport charges and marketing support package to the airlines, than the hypothetical single entities made by those public entities and Girona and Reus airports would appear to have granted no State aid to the airlines concerned. Conversely if the MEO test is not satisfied it would appear that the hypothetical single entities made up of those public entities and Girona and Reus airports granted to the concerned airlines an advantage that they would not have obtained under normal market conditions.
- (72) On the other hand, if the behaviour of the airport operator and that of the public entities involved cannot be assessed together, then there may be an indirect State aid to the airport operator, insofar as the public entities could be alleviating the airport from costs that it should normally bear in order to develop its activity and a direct State aid to the airlines concerned, that receive payments that they would not have received under normal market conditions.

3.1. Aid nature of financial arrangements with regard to presence of airlines at Girona airport

3.1.1. State resources and imputability to the State

- (73) As has been stated by the Court²² for the measures to be qualified as State aid in the sense of Article 107 (1) TFEU, (a) they have to derive from the State resources, either indirectly or directly and (b) they have to be imputable to the State.
- (74) In the case at hand, at all times the State exercised direct or indirect control on the resources under consideration.
- (75) The marketing agreements have been concluded between GiCL, GMS and AGI and the airlines using Girona airport.²³

Marketing Support - GiCL

- (76) The GiCL concluded two marketing agreements with Ryanair on 15/03/2003 and 01/03/2004. The second agreement was signed on behalf of GiCL by its president, while the first did not specify the role of the signatory representing GiCL.
- (77) As previously stated, GiCL is a non-profit association that aims to promote Girona and the Northern Catalonia region internationally as a logistical centre. The promotion of a region as a place to do business is a normally a task that is carried out by public authorities.
- (78) Indeed, as previously stated, GiCL acts as an intermediary association for local public authorities in the Girona area, which include the Catalan government, the Council of Girona and various County Councils and local Councils.
- (79) As previously stated, GiCL finances its activities primarily through grants and contributions from partners, which includes also grants from local public authorities.

Marketing Support - AGI

- (80) On 01/11/2005, AGI took over the 01/03/2004 marketing agreement with Ryanair. The amendment was signed on behalf of AGI by its chairman, who was the same signatory who signed the earlier agreements with Ryanair as president of GiCL. In the

²² See Case C-482/99 *France v Commission (Stardust Marine)* [2002] ECR I-4397.

²³ See section 2.3.

later amendments of 01/03/2006 and 01/06/2006, the same signatory was described as president of AGI.

- (81) As previously stated, AGI is a non-profit association whose partners are CIMALSA (a public company of the Catalan government entrusted with promoting, developing and managing infrastructures and centres for goods transport and logistics), Tourism Consortium of Catalonia (currently known as the Catalan Agency of Tourism in Catalonia), Girona Provincial Council and the Chamber of Commerce of Girona. On 25 November 2011 the City Council of Girona and the Costa Brava Tourism Board also joined the board of AGI.
- (82) As previously stated, AGI's mission is the promotion of Girona infrastructures which contribute to the development of Girona as a portal to Catalonia. However, that mission is not carried out as an economic activity, but rather in the interest of the general economic development of the region as a tourist destination and a place to do business. Those tasks are normally carried out by public authorities in the context of their general responsibility to promote the economic development of the local communities that they represent. It would appear therefore that GiCL is an instrument that the local public authorities have set up to carry out some of their general responsibilities.
- (83) At the present stage, the Commission does not have information as to whether, CIMALSA, the Tourism Consortium of Catalonia, the Chamber of Commerce of Girona and the Costa Brava Tourism Board are controlled by the local public authorities. However, Girona Provincial Council is itself a public authority. Therefore, the decisions of AGI are not taken autonomously but with the involvement of the public authorities.

Marketing Support - GMS

- (84) Of the many contracts signed by GMS from 01/01/2008 onwards, with Ryanair and various other airlines, (see tables 3 and 4), the roles of the signatories were specified were either as directors or as administrators of GMS.
- (85) As previously stated, the objective of GMS is the hiring, management and delivery of advertising and marketing, the contracting, management and delivery of economic development services, the contracting, management and delivery of tourism promotion, the provision of all types of advertising, economic and tourism development linked to Girona airport and also the realisation of all kinds of promotional activities for Girona. Moreover, GMS is owned and controlled by AGI.
- (86) Given that all three of GiCL, AGI and GMS seem to be at least partially financed by the State, at the present stage, the payments made to airlines under the marketing agreements seem to be granted through State resources.
- (87) On the basis of the elements above the Commission concludes at this stage that the marketing agreements appear to be imputable to the State. The Commission invites Spain and interested parties to comment this point further, in particular with regard to the organisational and decisional structure of these entities, their statutory mission, their financing from each of their shareholders, whether they receive any economic benefit from carrying out their statutory activities, and any other element regarding the decision making process of these entities with regards to the signature of the marketing agreements with airlines using Girona airport.

3.1.2. *Economic advantage and the application of the Market Economy Operator Principle*
Girona airport and the public entities are regarded as a single entity for the purposes of application of the MEO

- (88) As previously described, assuming that Girona airport and the public entities should be regarded as a single entity for the purposes of application of the MEO test, the marketing agreements and airport charges offered to the airlines will have to be assessed together.
- (89) In assessing whether the arrangements in relation to the presence of airlines at Girona airport (i.e. marketing agreements and schedule of airport charges) do not involve any advantage that those airlines would not have obtained under normal market conditions, the Commission has to examine whether in similar circumstances a market economy operator would have entered into the same or similar commercial arrangements as the public entities involved in the present case (i.e. GiCL, GMS, AGI and Aena, the operator of Girona airport). Accordingly, any public funding granted in circumstances which correspond to normal market conditions is not regarded as State aid.²⁴
- (90) As previously stated, Spain is of the opinion that the arrangements in question correspond to normal market conditions (i.e. purchase of marketing services). According to Spain, these agreements have been signed with various airlines in order to promote Catalonia as a tourist destination. Spain stated that Aena does not perform any selection process for airlines that wish to use this airport. All airlines that meet the legal and administrative requirements required by current legislation may operate at Aena airports under the same conditions and no direct agreements involving discounts or any other financial support have been signed by Aena and Ryanair or any other airline using the Girona airport.
- (91) In this regard, the Commission considers that in order to assess the economic advantage to the airlines, the relationship between the airline and the airport must be assessed in terms of both the costs of marketing services and the costs of airport charges.
- (92) The Commission further notes in this regard that price differentiation (including marketing support and other incentives) is a standard business practice.²⁵ However, such differentiated pricing policies should be commercially justified.²⁶
- (93) According to the principles established in the case law, the Commission has to compare the conduct of public authorities to a market economy operator, who must be guided by prospects of profitability at least in the long term (i.e. the Market Economy Operator test, referred to hereinafter "MEO test").²⁷ This assessment should be based on available information and foreseeable developments at the time when the public funding was granted and it should not rely on any analysis based on a later situation.²⁸

²⁴ "Stardust Marine" judgment, paragraph 69. See also Case C-303/88 *Italy v Commission*, [1991] ECR I-1433, paragraph 20.

²⁵ Without prejudice to the compliance with all other relevant competition and sectoral legislation, such as the Articles 101 and 102 of the TFEU, as well as the Directive No 2009/12 on airport charges

²⁶ See Commission Decision in Case C12/2008 – Slovakia - Agreement between Bratislava Airport and Ryanair, OJ L 27, 1.2.2011, p.24, and Commission Decision in Case C25/2007 – Finland – Tampere Pirkkala airport and Ryanair, not yet published in OJ.

²⁷ Case C-305/89 *Italy v Commission* [1991] ECR I-1603, paragraph 20; Case T-296/97 *Alitalia v Commission* [2000] ECR II-3871, paragraph 84. ("*Alfa Romeo*").

²⁸ "*Stardust Marine*" judgment, paragraph 71.

The assessment should also leave aside any positive repercussions (i.e. any social, regional-policy or sectoral development considerations) on the economy of the region in which the airport is located.²⁹

- (94) At the current stage Spain has not submitted an ex ante business plan or any other ex ante forecast data to substantiate its opinion that the measures at stake comply with the MEO test. Therefore, the Commission will conduct its preliminary assessment on the basis of available data (i.e. actual data) provided by Spain for the period 2003 to 2012. The Commission invites Spain to provide an ex ante business plan or any other forecast data for the overall agreed duration of the arrangements at stake.
- (95) The Commission notes that the MEO test should take into account all costs incurred by the airport manager in relation to the airline's activity at the airport.³⁰ Such incremental costs should encompass all categories of expenses or investments, such as incremental personnel and equipment costs, as well as, depending on the circumstances of the measure, rebates, marketing support or incentive schemes.³¹ On the contrary, costs which the airport manager would have to incur anyway independently from the arrangement with the airline do not need to be taken into account in the MEO test.
- (96) Similarly all revenue stemming from airline's activity should be taken into account in the MEO test. Such revenue includes the non-aeronautical revenues³² stemming from the airline's activity, airport charges and any other revenue related to the services provided by the airport to the airline (e.g. ground handling).
- (97) The Commission considers that a preliminary calculation of the overall contribution of the arrangements to the profitability of Aena, in relation to the presence of airlines at Girona airport, can be made by subtracting the total value of marketing support from the total value of airport charges. This preliminary calculation does not take into account other incremental costs (such as incremental infrastructure investment costs, and incremental variable costs such as incremental personnel and equipment costs) and other incremental revenue (such as non-aeronautical revenue).
- (98) Table 12 summarises the preliminary revenue and cost calculations in relation to the arrangements between airlines using Girona airport and the public authorities³³:

Table 12: Approximation of the overall contribution, before incremental infrastructure investment costs, of the arrangements in relation to the presence of airlines at Girona airport for the period 2003 – 2012

Period taken into account 2003 – 2012, € million	Ryanair	Transavia	Spanair	Andalus	Wizzair	Jat	Transaero	Total
Total value of airport charges	169.295	2.693	1.334	0.083	0.825	0.155	0.141	174.525

²⁹ 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. See also case C-40/85, *Kingdom of Belgium v Commission*, [1986], ECR 02321, paragraph 13.

³⁰ "*Charleroi*" judgment, paragraph 59.

³¹ Any public support designed to offset part of the normal costs incurred by the airport operator in relation to the measure at stake will likewise be taken into account. This is irrespective of whether such support is directly granted to the airline concerned, or channelled through the airport operator or another entity.

³² Non-aeronautical revenues are notably parking fees, shop rental fees, etc.

³³ These values are taken from the totals in tables 5,6 and 7 for the entire period 2003-2012.

Total value of the marketing support	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Overall contribution of the arrangement	158.717	2.088	0.675	0.017	0.712	0.120	0.126	162.784

- (99) According to Spain, in order to respond to the demand for capacity due to the significant growth of Ryanair, during the period 2002-2008 at Girona airport, it was necessary to adapt infrastructure investment plans in order to have the infrastructure that would provide adequate levels of service. Therefore, over the period 2000 – 2012, several investments were made in the infrastructure of the airport, which had total cost of €142.46 million.
- (100) The Commission invites Spain to provide further information on the link between the decision to build the infrastructure and the presence of Ryanair or other airlines at Girona airport. In particular information on how the investment plans changed due to the growth of Ryanair, whether the infrastructure without these investments was inadequate to meet the capacity generated by Ryanair or other airlines serving the airport, and any specific link between the arrival of Ryanair or of other airlines using the airport and the investments made.
- (101) The Commission notes that total overall contribution of the arrangement of €162.784 million as listed in table 12, is greater than the infrastructure investment costs for this period.
- (102) The Commission observes that the arrangements with Ryanair and also other airlines therefore appear to provide on an overall basis a positive incremental contribution for the operator of Girona airport.
- (103) However, the Commission considers that this appearance of a positive incremental contribution must be qualified by the following factors:
- (104) Firstly, the assessment is based on actual (ex post) data. Those data do not cover the entire agreed business relationship between the public entities the airport operator and the airlines, insofar as the calculation of incremental contribution does not include the non-aeronautical and/or any other revenues stemming from airline's activity at the airport and the entire duration of the business relationship (i.e. the marketing agreements).
- (105) Secondly, the costs and revenues under considerations were not discounted at an appropriate rate of return of the airport operator (i.e. does not take into account (opportunity) costs of capital of the airport operator).³⁴ The Commission considers that the appropriate cost of capital is that of the airport operator, since the comparison being carried out is that with a hypothetical airport operator operating under normal market conditions. The Commission notes in particular that the marketing support payments and the payments of airport charges and the infrastructure investment by Aena was spread out over a period of many years, and as such appropriate discounting of these costs could make a significant difference to the calculation of the incremental contribution.

³⁴ The (opportunity) costs of capital are reflected in the discount rate and may correspond to the weighted average costs of capital of the airport operator.

- (106) Thirdly, the useful life of many of the infrastructure investments made may be greater than the period being considered, which implies that only their amortised cost relevant to this period should be taken into consideration.
- (107) Fourthly, the Commission notes that the period over which the airport charges have been netted off against the marketing support payments is 2003-2012, which is not exactly the same as the period during which the infrastructure investment occurred, 2000 – 2012.
- (108) Finally, the calculation also does not take into account the airport charges that the infrastructure investment may have generated for other airlines that operated from Girona airport during this period, but did not conclude marketing agreements.
- (109) Even though the Commission considers that the above calculation of positive incremental contributions of the arrangements in question to the profitability of the airport manager provides an indication that the agreements could be regarded as in line with MEO test, and therefore might not confer an advantage on the airlines³⁵, in absence of data from an ex ante stand point corresponding to the relevant period of the arrangement, the Commission cannot conclude at this stage that the arrangements are in line with the MEO test. Therefore the Commission cannot confirm that the arrangements do not grant to the airlines involved an advantage that they would not have received under normal market conditions.
- (110) In view of the above, the Commission considers at this stage that the marketing agreements assessed together with airport charges relating to the operation of airlines at Girona airport may confer an advantage on the airlines that they would not have obtained under normal market conditions.

The behaviour of the airport operator and that of the public entities involved cannot be assessed together

- (111) Assuming that the behaviour of the airport operator and that of the public entities involved cannot be assessed together then there may be an indirect State aid to the airport operator and a direct State aid to the concerned airlines that receive payments that they would not have received under normal market conditions.
- (112) In this regard, the Commission observes that the marketing agreements at stake are aimed at an increase of airline's activity at Girona airport. Moreover, the above calculation indicates that airport/airline arrangements on the basis of these agreements appear to result in a positive contribution for the airport manager.
- (113) According to the relevant case law, the grant of an advantage that the undertaking would not have received under normal market conditions or the relief from an economic burden, such as costs that would normally be included in the budget of an undertaking, can constitute an advantage.³⁶

³⁵ Conversely, were the arrangements shown to be not in line with the MEO test, an advantage may be conferred on the airlines.

³⁶ Case C-387/92 Banco Exterior de España [1994] ECR I-877, paragraph 13; Case C-156/98 Germany v Commission [2000] ECR I-6857, paragraph 25; Case C-6/97 Italy v. Commission [1999] ECR I-2981, paragraph 15; Case C-172/03 Wolfgang Heiser v Finanzamt Innsbruck [2005] ECR I-1627, paragraph 36; Case C-126/01, Ministère de l'Économie, des Finances et de l'Industrie v GEMO SA [2003] ECR I-13769, paragraphs 28 to 31; Case T-565/08, Corsica Ferries France SAS v Commission [2012] ECR, paragraphs 137 and 138.

- (114) The Commission observes that no actual direct payments have been made by the public entities to Aena, the airport operator. Nevertheless, there may be an indirect State aid to the airport operator, insofar as the public entities could be alleviating the airport from costs that it should normally bear in order to develop its activity.
- (115) The Commission observes that the conclusion of the marketing agreements in question by the public entities relating to the operation of airlines at Girona airport appears to relieve Girona airport of costs inherent in its economic activity of operating an airport, such as the cost of developing airport traffic by attracting and retaining airlines or increasing the frequency of flights. Since it would appear that this relief of costs is in no way counter-balanced by any remuneration to the public entities, then an advantage would appear to be conferred on Girona airport.³⁷
- (116) By the same token, the payments made under the marketing agreements to the concerned airlines may constitute direct State aid to those airlines, insofar as they receive payments that they would not have received under normal market conditions.
- (117) The Commission invites Spain and interested parties to comment on its preliminary findings on the above matter and clarify whether the marketing agreements in relation to the Girona airport constitute State aid in favour of the concerned airlines and/or the airport operator. In this context, the Commission also invites Spain and interested parties to clarify whether marketing agreements have been concluded with all airports in the region in a general effort to develop the connectivity of the region, or rather with a specific airport (Girona).
- (118) The Commission further invites Spain and interested parties to comment on the framework of analysis that should be followed in the present case and to provide further information necessary for the assessment of the profitability of the arrangements in question from an ex ante point of view, in particular with regard to the forecasted airport revenue (including airport charges and non-aeronautical revenue) and the incremental costs stemming from the airline's activity at the airport, as well as an indication about the discount rate applicable in the present case. The Commission invites Spain also to provide copies of any marketing agreements in relation to Girona airport not yet provided to the Commission.
- (119) In particular the Commission notes that apparently no agreement was signed with Ryanair to cover the years 2007 and 2008.
- (120) The Spanish authorities are also invited to update table 5 to reflect the value of any recent payments made under these agreements, and to explain any discrepancies between the terms set out in the marketing agreements and the payments made in any given year, including for instance why a payment of €465,000 was made to Ryanair in 2008 when apparently no agreement was in force, and why no payment has been made to Transavia for 2012 when apparently there is an agreement in force.

3.1.3. *Selectivity*

- (121) Article 107 (1) TFEU requires that a measure, in order to be defined as State aid, favours "*certain undertakings or the production of certain goods*". The Commission notes that the marketing support, which is subject to assessment, was granted exclusively to Ryanair and to those airlines in operation at Girona airport that signed

³⁷ Conversely, were the arrangements in question to indicate a negative incremental contribution to the airport, then no advantage would be conferred on Girona airport.

marketing agreements. The Commission further notes that those marketing agreements relate to the development of a specific airport (that of Girona) and not to operations at any other airports in Spain. Therefore, the measure appears to be selective within the meaning of Article 107(1) TFEU, with regard to specific airlines and specific airports.

3.1.4. Distortion of competition and effect on trade

- (122) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in the internal market, the latter must be regarded as affected by that aid. In accordance with settled case-law³⁸, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

Air passenger transport sector

- (123) The marketing support is capable of strengthening the position of the airlines on the market for air transport and airport services. Moreover, the air transport sector is characterised by intense competition between operators from different Member States, in particular since the entry into force of the third stage of liberalisation of air transport ("third package") on 1 January 1993³⁹. It follows that the granting of marketing support to one airline but not to others affects trade between Member States and distort or threaten to distort competition in the air passenger transport sector.
- (124) On the basis of what precedes, the economic advantage which certain airlines using Girona airport may receive strengthens their position vis-à-vis their competitors in the European market for air passenger transport services.

Airport sector

- (125) Airports of all sizes (Girona airport has around 2.8 million passengers per year) compete to attract airlines. In this context the Commission notes that the majority of the passengers at both airports travel on international flights to or from destinations within the EU. As mentioned in paragraph 40 of the 2005 Aviation Guidelines, it is not possible to exclude even smaller airports from the scope of application of Article 107 (1) of the TFEU.
- (126) In view of the above, the measures at stake are capable of affecting competition between airport operators by strengthening the attractiveness of Girona airport for airlines.
- (127) Moreover, the economic advantage, which the airport receives, will strengthen its position vis-à-vis its competitors on the European market of providers of airport services, since the market for the provisions of airport services is not closed to competition at EU level.

Conclusion

- (128) For these reasons the Commission takes the preliminary position that the measures under examination distort or threaten to distort competition and affect trade between Member States.

³⁸ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

³⁹ See Council Regulations (EEC) No 2407/92, 2408/92, 2409/92 published in OJ L 240, 28.8.1992.

3.1.5. *Conclusion – aid to airlines and/or to Girona airport*

(129) On the basis of the above, the Commission takes the preliminary view that the marketing support granted to Ryanair and other airlines may constitute state aid within the meaning of Article 107(1) TFEU to the airlines concerned. Moreover, in the present case, taking in particular account of the strong link between the marketing agreements and the commitment of Ryanair of using Girona airport, the marketing support may also constitute aid to the airport concerned.

3.2. Aid nature of financial arrangements with regard to presence of airlines at Reus airport

3.2.1. *State resources and imputability to the State*

Marketing Support

(130) The Commission applies the same reasoning as for the aid nature of financial arrangements with regard to presence of airlines at Girona airport (section 3.1.1 further above), with the difference being that the marketing agreements were concluded directly between different parts of the of the Spanish state, and two chambers of commerce, and airlines using Reus airport.

(131) The Commission notes that the counterparties for the first marketing support agreement signed with Ryanair on 12 February 2008 were the Catalan government, Tarragona Provincial Council, Reus Town Council and Reus Chamber of Commerce. The Commission further notes that the counterparties for second agreement of 8 November 2010 were the same but with the addition of Tarragona Chamber of Commerce.

(132) Thus, the marketing support granted under the marketing agreements at stake is financed through State resources and are imputable to the State.

3.2.2. *Economic advantage and the application of the Market Economy Operator Principle* *Reus airport and the public entities are regarded as a single entity for the purposes of application of the MEO*

(133) As previously described, assuming that Reus airport and the public entities should be regarded as a single entity for the purposes of application of the MEO test, the marketing agreements and airport charges offered to the airlines will have to be assessed together. In assessing whether the arrangements in relation to the presence of airlines at Reus airport (i.e. marketing agreements and schedule of airport charges) are void of any aid, the Commission has to examine whether in similar circumstances a market economy operator would have entered into the same or similar commercial arrangements as the public authorities involved in the present case. The Commission invites Spain and interested parties to clarify if, and on the basis of which considerations, the behaviour of those public authorities (i.e. Catalan government, Tarragona Provincial Council, Reus Town Council) and that of Reus airport should be taken together for the purpose of the application of the MEO test.

(134) As previously noted in section 3.1.2, the MEO test should take into account all costs incurred by the airport manager in relation to the airline's activity at the airport.

(135) The Commission notes that over the period 2003-2012, €33.231 million airport charges were levied on Ryanair, who received €9.539 million in marketing payments during that period, giving a net positive contribution of the overall arrangement of €23.692 million.

- (136) According to Spain, the strong passenger growth at Reus airport, in particular because of Ryanair, obliged Aena, whose role involves meeting the demand for capacity that arises at any of its airports, to make numerous investments in the infrastructure of the airport. Over the period 2002 – 2012, these infrastructure investments amounted to an overall total of €118.47 million.
- (137) The Commission invites Spain to provide further information on the link between the decision to build the infrastructure and the presence of Ryanair or other airlines at Reus airport. In particular information on how the investment plans changed due to the growth of Ryanair, whether the infrastructure without these investments was inadequate to meet the capacity generated by Ryanair or other airlines serving the airport, and any specific link between the arrival of Ryanair or of other airlines using the airport and the investments made.
- (138) The Commission notes that the investment in infrastructure far exceeds the net positive contribution for the overall arrangement.
- (139) The Commission observes that the arrangements with Ryanair therefore do not appear to provide on an overall basis a positive incremental contribution for the operator of Reus airport.
- (140) However, the Commission considers that this appearance of a negative incremental contribution must be qualified by the factors mentioned in paragraphs (100), and (104) to (106), as well as the following factors:
- (141) Firstly, the calculation does not taken into account the timing of the infrastructure investments over the 2002-2012 period, and as such no discounting at an appropriate rate of return of the airport operator has taken place.
- (142) Secondly, the Commission notes that the period over which the airport charges have been netted off against the marketing support payments is 2003-2012, which is not exactly the same as the period during which the infrastructure investment occurred, 2002 – 2012.
- (143) Finally, the calculation neither takes into account the extra airport charges that the infrastructure investment may have generated from other airlines that operated from Reus airport during this period, nor does it take into account the €436,000 paid to Jet2 and Tui in the form of marketing support. (See table 9).
- (144) The Commission considers that the above calculation of negative incremental contributions of the arrangements in question to the profitability of the airport manager provides an indication that the agreements may not be in line with MEO test, and therefore might confer an advantage on the airlines. However, in absence of data from an ex ante stand point corresponding to the relevant period of the arrangement, the Commission cannot take a definitive position on this issue at this stage. Therefore the Commission cannot confirm that the arrangements grant to the airlines involved an advantage that they would not have received under normal market conditions.
- (145) In view of the above, the Commission considers that the marketing agreements relating to the operation of airlines at Reus airport may confer an advantage on the airlines that they would not have obtained under normal market conditions.

The behaviour of the airport operator and that of the public entities involved cannot be assessed together

- (146) Assuming that the behaviour of the airport operator and that of the public entities involved cannot be assessed together then there may be an indirect State aid to the

airport operator and a direct State aid to the concerned airlines that receive payments that they would not have received under normal market conditions. The Commission observes that the above calculation indicates that airport/airline arrangements on the basis of these agreements appear to result in a negative contribution for the airport manager. Therefore, at this stage there would appear to be no advantage for the airport operator in relation to the marketing agreements relating to the Reus airport. However, there would seem to be an advantage for the concerned airlines in relation to the payments made to them under the marketing agreements, insofar as those airlines receive payments that they would not have received under normal market conditions.

- (147) The Commission invites Spain and interested parties to comment on its preliminary findings on the above matter and clarify whether the marketing agreements in relation to the Reus airport constitute State aid in favour of the concerned airlines and/or the airport operator. In this context, the Commission also invites Spain and interested parties to clarify whether marketing agreements have been concluded with all airports in the region in a general effort to develop the connectivity of the region, or rather with a specific airport (Reus).
- (148) The Commission invites Spain to provide copies of any agreement with Jet2 and Tui, as well as any other such agreements concluded with airlines in relation to Reus airport, including the aforementioned "Pacte de Boella" with Ryanair.
- (149) Spain is also invited to update table 9 to reflect the value of any recent payments made under these agreements and to explain any discrepancies between the terms set out in the marketing agreements and the payments made in any given year, including for instance why no payment has been made to Ryanair for 2012 when apparently there is an agreement in force.
- (150) With regard to agreements with airlines operating at Reus airport, the Commission invites Spain to confirm whether the aforementioned "Societat de Promoció de l'Aeroport de Reus S.L." has concluded any such agreements, and indeed whether such an entity was formed.
- (151) The Commission invites Spain to provide information on the charges paid by Jet2 and Tui at Reus airport for the years in which they were party to marketing agreements in relation to their operations at that airport.

3.2.3. Selectivity and Distortion of competition and effect on trade

- (152) The assessment made under sections 3.1.3 and 3.1.4 applies *mutatis mutandis* to the marketing agreements relating to the Reus airport.

3.2.4. Conclusion – existence of aid to airlines and/or to Reus airport

- (153) On the basis of the above, the Commission takes the preliminary view that the marketing support granted to Ryanair and other airlines may constitute state aid within the meaning of Article 107(1) TFEU to the airlines concerned. Moreover, in the present case, taking in particular account of the strong link between the marketing agreements and the commitment of Ryanair of using Reus airport, the marketing support could also constitute aid to the airport concerned, even though at this stage the agreements appear to result in a negative contribution for the airport manager, taking into account the factors mentioned in paragraphs (100), and (104) to (106), and (141) to (143) above.

3.3. Compatibility of aid

(154) As previously stated, the Spanish authorities do not consider the financial arrangements (in particular the marketing agreements) with regard to the activity of airlines using Girona and Reus airports constitute State aid within the meaning of Article 107(1) TFEU, no arguments have been brought forward as to its compatibility with the internal market.

(155) According to the case-law of the Court, it is up to the Member State to invoke possible grounds of compatibility, and to demonstrate that the conditions for such compatibility are met.⁴⁰

3.3.1. *Compatibility of the marketing support granted to airlines using Girona and Reus airports*

(156) The Commission has doubts, whether the marketing agreements can be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU. Neither do the measures under assessment appear to qualify for any other exception provided for by the Treaty. Therefore, at the current stage the Commission cannot exclude that the agreements regarding marketing support involve illegal and incompatible state aid. In relation to marketing support, the Commission must have regard to the 2005 Aviation Guidelines, which sets out a number of conditions to be complied with in order for start-up aid to be found compatible with Article 107(3)(c) TFEU.

(157) The complainant states that the marketing support cannot be considered to meet the criteria for "start-up aid" set out in the 2005 Aviation Guidelines. The Commission notes indeed that no business plan was drawn up ex ante that demonstrated that the routes would eventually become profitable without aid (point 79(d) of the 2005 Aviation guidelines). In addition, the requirements for publicity have apparently not been met (point 79(j) of the 2005 Aviation guidelines).

(158) Therefore, the Commission at this stage concludes that insofar as the marketing agreements contain a State aid element for the airlines involved then that aid would be incompatible.

3.3.2. *Compatibility of the operating aid granted to Girona and Reus airports*

(159) At present the Commission does not see any legal basis on which it could consider compatible the possible State aid granted to the airports of Girona and Reus.

3.3.3. *Conclusion*

(160) Therefore, at this stage of the assessment the Commission has doubts that the measures in question are compatible with the internal market. The Commission invites Spain to submit all the information necessary to enable it to assess whether the measures in question can be considered as compatible with the TFEU.

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 Spain to submit its comments and to provide all such information as may help to assess the aid measures, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

⁴⁰ Case C-364/90, Italy/Commission.

The Commission wishes to remind Spain 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 Spain 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 interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. 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

