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Subject: **State aid SA.43964 – Sweden**
Kalmar Öland Airport – entrustment of a Service of General Economic Interest

Madam,

1. PROCEDURE

- (1) By letter dated 9 December 2015, Sweden notified to the Commission a public service compensation linked to the entrustment to Kalmar Öland Airport AB (hereinafter: "Kalmar airport") of a Service of General Economic Interest (hereinafter: "SGEI").
- (2) The Commission requested further information on the measure by letters dated 17 February 2016, 13 May 2016, 22 July 2016 and 26 September 2016.
- (3) By letters dated 14 March 2016, 26 May 2016, 10 June 2016, 1 September 2016 and 10 October 2016 Sweden provided the additional information requested by the Commission.

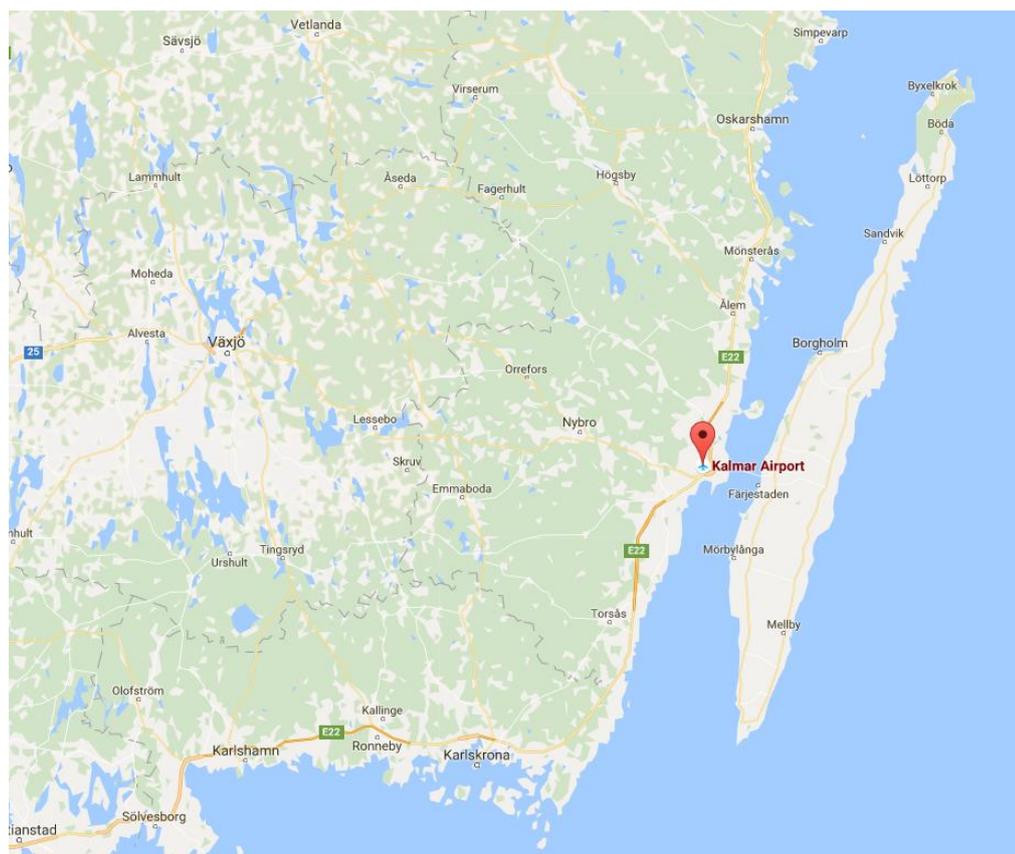
2. DESCRIPTION OF THE MEASURES

Kalmar Öland Airport

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- (4) Kalmar Öland airport is located in Kalmar County, Sweden. The airport primarily serves the Kalmar Municipality as well as the neighbouring municipalities of Mönsterås, Nybro, Torsås, Emmaboda, Oskarshamn, Högsby, Hultsfred, Kalskrona and Lessebo, as well as Borgholm and Mörbylånga, which are located on the island of Öland. Öland island is located to the east of the mainland to which it is solely connected by a 6 km bridge.

Graph 1: Map indicating location of Kalmar Airport, Öland island, Växjö and Ronneby¹



- (5) The population density in Kalmar County, the region where the airport is located is 21 inhabitants/km² (the EU average is 116 inhabitants/km²). The city of Kalmar (located 5 km from the airport) has only around 65 000 inhabitants. The population of Kalmar County amounts to around 237 000 inhabitants. The island of Öland is relatively sparsely populated (around 18.8 inhabitants/km²) and has approximately 25 000 inhabitants. They represent some 13% of Kalmar airport's annual domestic traffic.
- (6) A territorial review carried out by the OECD in 2012 found that the region faces the challenge of a stagnating / falling population. Between 1991 and 2009 population losses occurred in particular in rural areas and on the island of Öland².

¹ www.google.com/maps

² OECD Territorial Reviews, Småland-Blekinge, 2012, p. 40 f.

- (7) Currently, the airlines SAS, Kalmarflyg, BMI Regional and Sparrow Aviation offer flights from Kalmar airport to Stockholm Arlanda, Stockholm Bromma, Berlin Tegel, Göteborg Landvetter, Halmstad and Kristianstad. In addition, the airport is used by charter operators offering flights to Croatia, Mallorca, Gran Canaria, Turkey, Sicily and Rhodes.
- (8) The passenger traffic in the Kalmar Öland airport in the last six years is presented in the table below:

Year	2010	2011	2012	2013	2014	2015
No of passengers	166 461	176 877	185 530	204 828	213 869	222 848

- (9) In 2014 approximately 180 000 passengers out of 214 000 travelled to Stockholm.
- (10) The closest airports to Kalmar airport are:
- *Ronneby airport* which serves around 200 000 passengers per year is located around 108 km from Kalmar airport, about 1h25 minutes by car.
 - *Växjö airport* which serves around 180 000 passengers per year is located around 115 kilometers from Kalmar airport, around 1h25 by car.
- (11) Since 2007, Kalmar airport is owned and operated by Kalmar Öland Airport AB. Kalmar Öland Airport AB is owned by Kalmar Kommunbolag AB, which in turn is owned by the municipality of Kalmar.

Entrustment of a service of General Economic Interest

- (12) The Swedish authorities provided the Commission with a copy of an entrustment act of 25 January 2016 whereby the Municipal Assembly of Kalmar tasked Kalmar airport to carry out a Service of General Economic Interest. The entrustment foresees that:
- (i) Kalmar airport shall ensure that commercial air traffic to and from the airport can be operated during the period of validity of the entrustment act. The airport operator's obligations, therefore, include management of the airport infrastructure so that it meets the requirements for the operation of commercial traffic in terms of safety, accessibility and emergency preparedness.
 - (ii) The airport shall provide services to the extent that they are necessary for the operation of commercial traffic, such as baggage handling, checking in of passengers, refuelling and de-icing of aircrafts. The airport shall keep separate accounts and will report separately on the activities covered by the SGEI and other economic and non-economic activities.

- (iii) The airport shall be open to all airlines wishing to take-off and land under the prevailing commercial conditions and within the published opening hours in order to ensure that there is no discrimination.
- (iv) All financial links between Kalmar airport and airlines shall be compatible with the Market Economy Operator Test, as defined in in the 2014 Aviation Guidelines³ (hereinafter: "the Aviation Guidelines").
- (v) As a basis for the calculation of compensation, Kalmar airport shall, ahead of each year's annual closing, report the following information concerning the accounting year just ended:
 - Kalmar airport's net cost for the SGEI covered by the entrustment act;
 - Other activities that have been conducted by Kalmar airport during the year, and what combined net cost and/or combined net profit these activities have entailed;
 - Key indicators for the efficiency of the operation compared to comparable airports in Sweden (currently Norrköping Airport AB, Smaland Airport AB, Örnsköldsvik Airport AB, Jönköping Airport AB, Skellefteå City Airport AB, Midlanda Flygplats AB and Karlstad Airport AB) which, at a minimum, cover the airports' annual average number of employees, total operating costs, number of passengers and aircraft movements. If Kalmar airport reports less positive developments during the year than the comparison airports, an acceptable explanation for this must be submitted, as well as what measures will be undertaken to boost efficiency.

Reporting pursuant to the first two indents above shall take place using the cost allocation methodology provided for in points 28–31 of the *Commission Communication on European Union framework for State aid in the form of public service compensation*⁴ (hereinafter: "the SGEI Framework").

- (vi) Compensation to Kalmar airport for the operation of the SGEI shall be established each year on a retrospective basis. The compensation may not exceed the net cost of the SGEI reported by the company in accordance with the requirements mentioned above. If it later emerges that the compensation exceeds what is necessary to cover the net costs of the SGEI, including a reasonable profit, the airport has to repay the overcompensation to the municipality. If Kalmar airport is less efficient than its comparison airports, it needs to supply an acceptable explanation; otherwise the compensation may not exceed the net cost which the airport would have incurred if its efficiency had been equivalent to that of the comparison airports.

³ Guidelines on State aid to airports and airlines. OJ C 99 of 4.4.2014, p. 3.

⁴ European Union framework for State aid in the form of public service compensation. OJ C 8 of 11.1.2012, p.15.

- (13) The entrustment is in force until 31 December 2025.
- (14) In addition, the Swedish authorities clarified that Kalmar airport is run on a non-profit basis. In other words, whereas running the airport services is not profitable overall, this does not mean that all the services are loss making. This means that potential profits made in areas not covered by the SGEI, for example the renting out of premises, advertising revenues, car parking, may reduce the SGEI compensation.
- (15) Sweden also provided examples of the way in which 'acceptable explanations' for a lack of efficiency would be interpreted. Such examples are force majeure events and other extraordinary events or circumstances beyond the control of Kalmar Öland Airport, including industrial actions, adverse weather conditions, extra costs due to (unforeseen) increased security or unforeseen restructuring in the region that will affect Kalmar Öland Airport negatively.
- (16) Kalmar Municipality has stated that due to the standstill obligation of Article 108 (3) of the TFEU, as well as the Swedish Local Government Act and the Act on application of the European Union's State aid rules, Kalmar Municipality is unable to grant State aid to Kalmar airport until the Commission has approved the State aid in question. Prior to Commission approval, the entrustment act is not a legally binding instrument to allocate aid, nor can it be cited in a national court.

3. ASSESSMENT OF THE MEASURE

3.1. Presence of aid within the meaning of article 107(1) TFEU

- (17) According to Article 107(1) TFEU⁵ *"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"*.
- (18) The criteria laid down in Article 107(1) are cumulative. Therefore, in order to determine whether the notified measure constitutes State aid within the meaning of Article 107(1) TFEU, all the above mentioned conditions need to be fulfilled. Namely, the financial support should:
- be granted by a Member State and through State resources,
 - favour certain undertakings or the production of certain goods,
 - distort or threaten to distort competition,
 - affect trade between Member States.

State resources and imputability to the State

⁵ The Treaty on the Functioning of the European Union; consolidated version: OJ C 326 of 26.10.2012, p.1.

- (19) The compensation is to be paid by Kalmar Municipality, which is a local authority. Therefore, the measure is financed by public funds constituting State resources and is imputable to the State.

Economic activity and notion of undertaking

- (20) According to settled case law, the Commission must establish whether Kalmar airport is an undertaking within the meaning of Article 107(1) of the TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.⁶ Any activity consisting in offering goods and services on a given market is an economic activity.⁷
- (21) In its "Leipzig-Halle airport" judgment the Court of Justice confirmed that the operation of an airport for commercial purpose and the construction of airport infrastructure constitute an economic activity⁸. Once an airport operator engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) of the TFEU, and the Treaty rules on State aid therefore apply⁹.
- (22) In this regard, the Commission notes that the airport in question is operated on a commercial basis as any air carrier that wants to use the airport can do so against payment of applicable airport fees. It follows that the entity operating the airport constitutes an undertaking for the purposes of Article 107(1) of the TFEU.

Selective economic advantage

- (23) The Commission recalls that SGEI compensations granted to an undertaking may not constitute an economic advantage under certain strictly defined conditions.
- (24) In its Altmark judgment¹⁰, the Court of Justice held that where a State measure must be regarded as compensation for services provided in order to discharge

⁶ Case C-35/96 Commission v Italy [1998] ECR I-3851; C-41/90 Höfner and Elser [1991] ECR I-1979; Case C-244/94 Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche [1995] ECR I-4013; Case C-55/96 Job Centre [1997] ECR I-7119.

⁷ Case 118/85 Commission v Italy [1987] ECR 2599; Case 35/96 Commission v Italy [1998] ECR I-3851.

⁸ Joint Cases T-455/08 Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG c/ Commission and T-443/08 Freistaat Sachsen and Land Sachsen-Anhalt c/ Commission, (hereafter: "Leipzig-Halle airport case"), [2011] ECR II-01311, confirmed by the ECJ, Case C-288/11 P Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission, [2012], not yet published in the ECR,; see also Case T-128/89 Aéroports de Paris v Commission [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P, ECR 2002 Page I-9297, and Case T-196/04 Ryanair v Commission [2008], ECR II-3643.

⁹ Cases C-159/91 and C-160/91, Poucet v AGV and Pistre v Cancave [1993] ECR I-637.

¹⁰ Case C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH. See also point 42 et seq. of the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest Official Journal C8, 11.01.2012, p. 4-14.

public service obligations those may not enjoy a real advantage if the following cumulative criteria ('Altmark criteria'), are met:

1. The recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined. (**First Altmark criterion**)
2. The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. (**Second Altmark criterion**)
3. The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. (**Third Altmark criterion**)
4. Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means to meet the public service obligations, would have incurred, taking into account the relevant receipts and a reasonable profit from discharging the obligations (hereinafter a "typical undertaking"). (**Fourth Altmark criterion**)

- (25) In its *Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest*¹¹ (hereinafter "the SGEI Communication"), the Commission further clarifies the conditions, laid down by the Altmark criteria.
- (26) Given that the Altmark criteria are cumulative, non-compliance with any one of these conditions would lead to the qualification of the measure under review as providing an advantage within the meaning of Article 107 TFEU. Therefore, the Commission will begin its analysis by assessing whether the fourth Altmark criterion is met (i.e. whether the selection of the undertaking providing the SGEI was based on a public procurement procedure or, alternatively, whether the SGEI compensation granted is based on the analysis of costs of a typical, well-run undertaking).
- (27) The airport operator was not selected with a public procurement procedure for the public service obligations it is entrusted with.
- (28) Therefore, for the fourth Altmark criterion to be fulfilled, it has to be verified whether *"the Member State can show that the cost structure of the undertaking entrusted with the operation of the SGEI corresponds to the average cost structure of efficient and comparable undertakings in the sector under*

¹¹ OJ C 8 of 11.1.2012, p. 4.

consideration." Should this be the case, *"the amount of compensation that will allow the undertaking to cover its costs, including a reasonable profit, is deemed to comply with the fourth Altmark criterion¹²".*

- (29) Sweden did not provide any analyses showing that the cost structure of Kalmar airport corresponds to the average cost structure of efficient and comparable undertaking operating an airport.
- (30) The efficiency mechanism, included in the entrustment act, under which the compensation can be reduced if the airport reports less positive developments during the year than the comparison airports (seven public-owned, small regional Swedish airports) is not relevant in this respect, especially because there is no particular evidence showing that these airports are run efficiently in the sense of the fourth Altmark criterion.
- (31) Neither did Sweden provide detailed analysis showing that applying the so-called "Basic airport" concept (described in recital (52)) results *per se* in the cost structure of an efficient, well run undertaking in the sector in question. It merely mentioned that the staffing level is estimated to be about half that of other comparable airports in the EU.
- (32) Consequently, the Commission considers that Sweden has failed to demonstrate¹³ that the fourth Altmark criterion is complied with in this case. As the conditions set out in the Altmark judgment are cumulative, failure to comply with any one of the four conditions necessarily leads to the conclusion that the financing measures under review grant an economic advantage in the sense of Article 107(1) TFEU.

Distortion of competition and effect on trade

- (33) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.
- (34) In accordance with settled case law¹⁴, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (35) The Commission considers that any economic advantage granted to an airport operator from public resources can strengthen the beneficiary's position vis-à-vis its competitors on the market of providers of airport services. Many operators are in competition for the management of airport infrastructure in Europe, including local and regional airports. In addition, airport operators compete for air carriers to operate from their airports. Aid to Kalmar airport may therefore distort competition in the markets for airport infrastructure operation by reinforcing its economic position and by reducing business opportunities for competing airports.

¹² See point 75 of the SGEI Communication.

¹³ Case T-674/11 TV2/Danmark, para. 126.

¹⁴ Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717.

- (36) Therefore, the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

Legality of the measure

- (37) Pursuant to the standstill clause of Article 108(3) TFEU and to Article 3 of Council Regulation No 2015/1589 of 13 July 2015 *laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union*¹⁵, State aid must not be put into effect before the Commission has taken a decision authorising such aid.
- (38) As explained in recital (15), Kalmar Municipality will respect the standstill obligation.

Conclusion on the existence and legality of the aid

- (39) For the reasons set out above, the Commission concludes that the compensation granted to Kalmar airport constitutes State aid within the meaning of Article 107(1) TFEU and that Sweden has respected the standstill obligation of Article 108(3) TFEU.

3.2. Compatibility of the aid

- (40) Article 106(2) TFEU provides that *"Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union."*
- (41) Pursuant to Article 106(3) it is for the Commission to ensure the application of that provision. In part 4.2 of the Aviation Guidelines, the Commission specifies that for airports where the average annual traffic exceeds 200 000 passengers State aid can be declared compatible pursuant to Article 106(2) TFEU if the conditions of the SGEI Framework are met. Since the average annual passenger traffic in the two years before the 2016 entrustment act to Kalmar airport was above 200 000 it must conform to the SGEI Framework.

3.2.1. Genuine service of general economic interest as referred to in Article 106 of TFEU

- (42) Point 12 of the SGEI Framework requires that the aid must be granted for a genuine and correctly defined service of general economic interest.

Arguments put forward by Sweden

¹⁵ OJ L 248 of 24.9.2015, p.9.

- (43) Sweden considers that the very existence of Kalmar airport is necessary for the region for the socioeconomic reasons. However, it is not possible, due to economic reasons, to operate the airport without systematic public support.
- (44) In view of Sweden, the flights from Kalmar airport are absolutely crucial for accessibility to and from the Swedish capital, but also for international connections to and from the area in question. In 2014 and 2015 27% of domestic travellers from Kalmar airport use Stockholm as a hub and 29% travelled to and from Stockholm over the same day.
- (45) For example, there is no high-speed train to Kalmar and there are no direct train connections from Kalmar to Stockholm. A train journey to Stockholm takes, in this case, more than 4h30. The distance from Kalmar to Stockholm by car is 411 km, and the driving time is over four hours. There is no ferry from Kalmar or Öland to Stockholm. The Swedish authorities quote the OECD report, which highlights the fact that the *"connectivity and transport infrastructure is in serious need of improvement"* and that *"there are significant bottlenecks in internal road and rail connectivity"* in the region¹⁶. Kalmar County commissioned a prospective study from WSP Analysis & Strategi in 2011 to assess the importance of Kalmar airport for the development of the region, which confirms that *"Kalmar's location means that the airport is needed as long as rail travel remains insufficiently competitive"*¹⁷.
- (46) Sweden considers that the airport is also an absolute necessity for businesses to exist, invest or re-establish themselves in the area in question, and for attracting and retaining skills and resources. A recent Swedish study on air travel and businesses has highlighted the importance in particular for the manufacturing industry of access to flights to Stockholm, so that they can stay in touch with their headquarters in the Swedish capital and have access to Stockholm's service sector¹⁸. Sweden highlighted that the OECD report confirms that the prosperity of the region of Kalmar has mostly been sustained by low to medium technology SMEs and that the region has one of the highest shares of employment in manufacturing in Sweden.
- (47) According to Sweden, as a result of the above, the area needs fast connections, primarily to Stockholm, but also abroad. It is of vital importance for the public and for citizens' opportunities to interact with Europe and the rest of the world, both for business and for leisure. The speed, reliability and scope of the flights mean that there is no realistic alternative for most of the inhabitants, businesses and visitors in this area.

¹⁶ OECD Territorial Reviews, Småland-Blekinge, 2012 (http://www.keepeek.com/Digital-Asset-Management/oecd/urban-rural-and-regional-development/oecd-territorial-reviews-smaland-blekinge-sweden-2012_9789264169517-en#page1).

¹⁷ Framtidsstudie - Kalmar flygplats betydelse för ut utvecklingen i regionen (<http://www.kalmarolandairport.se/images/uploads/dokument/framtidsrapport.pdf>).

¹⁸ Ferguson, Shon and Forslind, Rikard, *Flyget och företagen*, SNS Förlag, Stockholm, 2016, p. 40.

- (48) Moreover, Sweden informed the Commission that a report, carried out by WSP Analysis & Strategi in 2011, estimates that the closure of Kalmar airport would lead to revenue losses of SEK 16.5 billion in the long term and a loss in tax revenues of some SEK 5 billion in the catchment area of Kalmar airport. It also foresees a loss of approximately 4.500 jobs over the next 25 years. These figures show what the activities directly related to the airport add to society (at municipal, regional and national level) in terms of direct economic value and jobs.
- (49) Sweden also considers that it is crucial for the inhabitants of the region served by Kalmar airport that the County Council can use the airport for its air ambulance service. This is in particular the case, because Kalmar County Council has not specialist care for a number of very serious conditions, such as for example prematurely-born children or seriously ill children, patients with burn injuries or burn injuries or trauma patients. The airport provides the possibility to transport these patients to Linköping, Stockholm or other hospitals where they can receive the necessary care. The air ambulance was used 77 times in 2014 and 63 times in 2015.
- (50) In particular, Sweden points out that the island of Öland, which is part of Kalmar airport's catchment area and has about 25.000 inhabitants, would have much worse accessibility if the airport were to close. Sweden emphasizes that it takes around 1h20 for example to travel by car to Kalmar airport from Byxelkrok on Öland. Should Kalmar airport no longer exist it would take about 2h45 to travel from Byxelkrok to Växjö or Ronneby airports.
- (51) Sweden also considers that the airport is not able to function without systematic financial support. It submitted an overview of Kalmar airport's expected financial development for the years 2016 – 2023 which according to Sweden clearly demonstrates that it will need financial support during and beyond this timeframe.
- (52) Sweden mentioned that Kalmar airport applied the Basic Airport concept, which means that all staff at the airport carries out more than one task in order to boost efficient use of resources. As a result, Kalmar airport currently has a workforce which, according to Sweden, is almost half the size of comparable airports within the EU. Kalmar airport currently has 38.3 annual FTEs (full-time equivalents). With a normal system, the number of annual FTEs would be 69. This saving, which directly reduces operating costs, amounts, according to Sweden, to almost SEK 21 million per year.
- (53) Despite the above efficiency efforts, Sweden considers that the airport will be unable to generate a profit for the foreseeable future. It expects to operate at a loss of between SEK 6 to 8 million per year for the period from 2015 to 2023. The main reason for this deficit being high fixed costs.
- (54) It should be mentioned that Sweden expects that commercial activities falling outside the scope of the SGEI, such as renting out premises, advertising revenues, car parking, etc. will generate a surplus of around SEK 6 to SEK 7

million annually, which is used to finance the other activities of the airport, including the SGEI, thereby reducing the need for public funding.

Assessment

- (55) The Commission will verify whether the aid is granted for a genuine and correctly defined service of general economic interest in the light of provisions laid down in part 4.1 of the Aviation Guidelines.
- (56) In point 69 of the Aviation Guidelines, the Commission, referring to Article 106(2) of the Treaty and the first Altmark criterion, underlines that an SGEI should exhibit special characteristics as compared with ordinary economic activities. Its objective cannot simply be that of development of certain economic areas or activities.
- (57) The definition of the overall management of an airport as SGEI must satisfy the criteria laid out in point 72 of the Aviation Guidelines, according to which such definition is only *“possible in well-justified cases if part of the area potentially served by the airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development. Such an assessment should take due account of other modes of transport, and in particular of high-speed rail services or maritime links served by ferries. In such cases, public authorities may impose a public service obligation on an airport to ensure that the airport remains open to commercial traffic.”*
- (58) The first question is thus whether and to what extent the city of Kalmar and its direct vicinity, in particular the island of Öland, would be isolated without Kalmar airport. In the assessment of this question, it should be verified whether any airport represents an acceptable alternative for both the general population and companies.
- (59) The two closest airports to Kalmar airport are Växjö and Ronneby airports.
- (60) Växjö airport serves around 180 000 scheduled passengers per year travelling to Stockholm, Oslo, Prague, Alicante, Weeze and a number of charter routes to holiday destinations, mainly in Europe. The airport is located around 115 kilometres north-west from Kalmar airport and around 120 km to the north-west of Kalmar.
- (61) The fastest way to get to Växjö airport from Kalmar is by car, which takes at least 1h25. However, the travelling time for residents of the island of Öland can amount to 3h by car. There is no direct train linking Kalmar and Växjö airport and it takes around 1h45 to travel by public transport (bus).
- (62) Ronneby airport is located around 108 km to the south-west of Kalmar airport and 113 km to the south-west of Kalmar. The airport serves around 200 000 passengers per year. There are regular flights to Stockholm, as well as a limited number of charter flights.

- (63) Again the fastest way to get to the airport from Kalmar is by car. It takes about 1h25. The travelling time for residents of the island of Öland can amount to 3h by car. There is no direct train from Kalmar to Ronneby airport. By public transport (bus) the trip takes between 2h30 and 3h50.
- (64) The Commission considers that a travelling time to an airport of 1h30 by car provides an acceptable level of connectivity for the large majority of regions in Europe¹⁹. However, in this particular case, it must be considered that the inhabitants of the island of Öland do not have an alternative to using Kalmar airport. For inhabitants of the island of Öland, who can only reach mainland Sweden via the bridge located near Kalmar, it can take up to 1h20 to reach Kalmar and therefore nearly 3 hours to reach Växjö or Ronneby airport. In case of traffic or snow in winter, it may take even longer to reach those airports from Öland.
- (65) Due to the travel time, in particular from the island of Öland it will be nearly impossible to travel to Stockholm without an overnight stay from Växjö or Ronneby airports. Early morning flights to Stockholm from these airports leave between 6.25 and 6.45 and cannot be reached by public transport from Kalmar and most cities in its catchment area. The later flights at 9.25 and 9.50 can be reached from some destinations in the catchment area of Kalmar. The possibility of a one-day return trip is especially important for companies, both from the point of view of costs and attractiveness for employees. As mentioned above, current 29% of domestic travellers from Kalmar airport fly to Stockholm over the day.
- (66) Considering the above, the Commission considers that Växjö and Ronneby airports cannot, without Kalmar airport, provide sufficient connectivity to the Swedish capital and the rest of Europe for part of inhabitants living in the catchment area of Kalmar airport, in particular the inhabitants of the island of Öland.
- (67) As that the closest airports, i.e. Växjö and Ronneby do not represent an acceptable alternative, the Commission considers that it is not necessary to assess whether these two airports would be able to absorb the current traffic existing at Kalmar airport.
- (68) As far as other means of transport are concerned, the Commission considers that they do not provide a real alternative to air transport. The Commission notes in particular the findings of the OECD report²⁰ pointing to the worrisome gap in rail accessibility of Kalmar County and the absence of high-speed rail. As far as the Commission is aware this situation has not substantially changed since the report was issued. Due to the lack of maritime connections the region would not be able to connect to a satisfactory extent with the main Swedish cities and the rest of Europe.

¹⁹ Commission Decision on Skelleftea Airport (SA.38757), point 69.

²⁰ OECD Territorial Reviews, Småland-Blekinge, 2012, p. 158.

- (69) The Commission considers that a lack of acceptable connections to the Swedish capital and to the rest of Europe would significantly deteriorate the standard of living of the inhabitants of the region and would reduce the current activities and business perspectives for international and/or export oriented companies in particular. This would, for obvious reasons, prejudice the social and economic development of the area in question.
- (70) The Commission therefore considers that Sweden did not commit a manifest error of assessment in finding that the area in question would be isolated from the rest of the Union without Kalmar airport to an extent that would prejudice its social and economic development.
- (71) The Commission therefore considers that the conditions of point 72 of the Aviation Guidelines are fulfilled.
- (72) In point 73 of the Aviation Guidelines, the Commission specifies that the scope of public service obligations imposed on airports should not encompass the development of commercial air transport services.
- (73) The entrustment in question does not cover the development of commercial air transport services (see recital ((12))). Therefore, the Commission considers that point 73 of the Aviation Guidelines is complied with.
- (74) Sweden also confirmed that car parks as well as services concerning renting premises to restaurant and café services, and other sales outlets, i.e. services that are not necessary for the operation of commercial traffic to and from the airport, do not receive any type of support.
- (75) In light of the above, the Commission considers that the aid is to be granted for a genuine and correctly defined service of general economic interest, in line with the SGEI Framework and the Aviation Guidelines.

3.2.2. Need for an entrustment act specifying the public service obligations and the methods for calculating compensation

- (76) Pursuant to points 15 and 16 of the SGEI Framework, responsibility for the operation of the SGEI must be entrusted by way of one or several acts, the form of which may be determined by the Member State. The act or series of acts must specify at least: the content and duration of the public service obligations; the undertaking and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the undertaking by the authority in question; the parameters for calculating, controlling and reviewing the compensation; and the arrangements for avoiding and recovering any overcompensation.
- (77) The act adopted by the Municipal Assembly of Kalmar on 25 January 2016 entrusts Kalmar airport with the task of carrying out a SGEI. This act states the undertaking, the content and the duration of the public service obligation, the compensation method as well as the arrangements for avoiding and recovering any potential overcompensation. The act also clarifies that the SGEI is

entrusted by reason of and pursuant to conditions set up in relevant provisions of the SGEI Framework.

- (78) The entrustment act provides that the final compensation paid to Kalmar airport is due to cover the net costs of the SGEI, which is calculated on the basis of the observed factual operating loss of the SGEI in a given year. Any profits generated by commercial activities not falling within the scope of the SGEI will be used to reduce the SGEI compensation, as the airport is a public non-profit undertaking.
- (79) In light of above, the Commission considers that both the content of the act of entrustment and the way it was adopted are in line with the SGEI Framework.

3.2.3. *Duration of the period of entrustment*

- (80) Point 17 of the SGEI Framework requires that the duration of the period of entrustment is "*justified by reference to objective criteria*".
- (81) Sweden informed the Commission that the 10-year period specified in the act of entrustment refers to the airport's current maximum amortisation period. After the 10-year period, the Swedish authorities will review the decision to entrust an SGEI to Kalmar airport.
- (82) The Commission notes that operating of an airport requires a large number of tangible assets that depreciate over a long period, therefore, the 10-year period included in the entrustment act can be considered as appropriate.
- (83) In light of above, the Commission considers that the 10-year period of entrustment included in the entrustment act is acceptable in this case and point 17 of the SGEI Framework is complied with.

3.2.4. *Compliance with the Directive 2006/111/EC*

- (84) Point 18 of the SGEI Framework requires that the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings²¹.
- (85) The SGEI in question was entrusted to the company fully owned by Kalmar Municipality that is, however, a separate legal entity with its own accounts. In addition, the entrustment act requires the company to report activities covered by the entrustment separately.
- (86) Nevertheless, according to Article 5 of the Directive 2006/111/EC, this Directive does not apply to companies whose total net turnover is less than EUR 40 million during the two financial years preceding the year in which it is entrusted with the operation of an SGEI.

²¹ Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings. OJ L 318 of 17.11.2006, p. 17–25.

- (87) Sweden informed the Commission that Kalmar airport has not, in any financial year, had a turnover which exceeded this threshold. For instance, in years 2013 and 2014 the company's turnover was approximately EUR 4.6 million and 4.8 million, respectively. Therefore, the Commission considers that point 18 of the SGEI Framework is not applicable in this case.

3.2.5. *Compliance with Union public procurement rules*

- (88) Pursuant to point 19 of the SGEI Framework, aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary Union law.
- (89) The Commission notes, that the act of entrustment in question applies to the operation of an airport. The part of the act which has the most value is the provision of services. The companies' compensation for the SGEI consists mainly of the right to use the SGEI to obtain payment from third parties, mainly airlines. Only a small part of the companies' compensation is made up of public grants. The act of entrustment, therefore, constitutes a service concession which is not covered by either the Classic Directive²² or the Utilities Directive²³.
- (90) By the time the entrustment took place (before 18 April 2016), the awarding of public service concessions to a third party was only covered by the TFEU principles of equal treatment, transparency and non-discrimination on grounds of nationality and transparency²⁴.
- (91) In that regard, the Commission notes that the EU Court of Justice has, in its case-law, established a concept of in-house provision of services²⁵, according to which if an economic operator is controlled by public authorities and commits the major part of its activities towards these controlling authorities, it is considered to be an in-house entity in relation to these authorities. According to the Court, such a relation falls outside the scope of the EU Public Procurement Rules.

²² Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. OJ L 134, 30.4.2004, p. 114–240.

²³ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating procurement procedures of entities operating in water, energy, transport and postal services sectors. OJ L 134, 30.4.2004, p. 1–113.

²⁴ For example, case C-458/03 Parking Brixen. This changes for municipal decisions taken as of 18 April 2016 by when Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts must have been transposed by the Member States.

²⁵ For example, case C-107/98, Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia.

- (92) For the entrustment being assessed, the Commission notes, based on the available information, that Kalmar airport is owned and operated by Kalmar Öland Airport AB. Kalmar Öland Airport AB is owned by Kalmar Kommunbolag AB, which in turn is wholly owned by the municipality of Kalmar. The board of Kalmar Öland Airport AB is appointed by the Municipal Council of Kalmar. Therefore it can be concluded that the Municipality of Kalmar indirectly owns and controls Kalmar airport. In addition, the operation of the airport, entrusted to it by the controlling contracting authority – Kalmar Municipality, is Kalmar Öland Airport AB's major activity. Therefore, the Commission considers that the concept of in-house provision of services applies in this case and the entrustment in question is not covered by the EU rules on public procurement.
- (93) Therefore, the public procurement rules, referred to in the SGEI Framework, are not applicable in this case.

3.2.6. *Absence of discrimination*

- (94) Point 20 of the SGEI Framework requires that where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking.
- (95) Since the airport's overall management was entrusted to one undertaking, the point 20 of the SGEI Framework is not applicable in this case.

3.2.7. *Amount of compensation*

- (96) Pursuant to points 21 and 22 of the SGEI Framework, "*the amount of compensation must not exceed what is necessary to cover the net cost²⁶ of discharging the public service obligations, including a reasonable profit*", "*the amount of compensation can be established on the basis of either the expected costs and revenues, or the costs actually incurred, or a combination of the two (...)*".
- (97) The entrustment of an SGEI to Kalmar airport stipulates that the compensation shall not exceed the net cost of the SGEI, including a reasonable profit in the given year.
- (98) Pursuant to point 24 of the SGEI Framework the net cost of discharging the public service obligations should be calculated using the net avoided cost methodology²⁷. In point 27 of the SGEI Framework, the Commission allows to apply alternative methods for calculating the net cost necessary to discharge the public service obligation in cases where the use of the net avoided cost methodology is not feasible or appropriate.
- (99) The net avoided cost methodology requires the establishment of the company's costs and revenues in a hypothetical scenario in which there is no SGEI.

²⁶ In this context, net cost means net cost as determined in point 25 of the SGEI Framework or costs minus revenues where the net avoided cost methodology cannot be applied.

²⁷ Net avoided cost methodology is summarized in points 25 – 26 of the SGEI Framework.

Sweden informed the Commission that in the case of Kalmar airport, all services not covered by the entrustment act (e.g. car parking at the airport) are dependent on the existence of the SGEI. Therefore, no relevant hypothetical scenario can be applied in which only the other activities are conducted, which means that the net avoided cost methodology cannot be used.

- (100) Therefore, the entrustment act obliges Kalmar airport to report its net cost for the public service obligation using the cost allocation methodology – an alternative methodology, defined in points 28 – 31 of the SGEI Framework. Following the report Kalmar airport delivers ahead of each year's financial closing, the airport receives a compensation which does not exceed the net costs of the SGEI, including a reasonable profit.
- (101) Potential profits made by the airport in areas not covered by the SGEI may reduce the SGEI compensation amount, as the airport is run on a non-profit basis.
- (102) The Commission notes that a proper application of the cost allocation methodology, based on costs actually incurred prevents possible overcompensation.
- (103) Point 38 of the SGEI Framework states that in cases in which the *"SGEI is not connected with a substantial commercial or commercial risk, for instance because the net cost incurred in providing the service of general economic interest is essentially compensated ex post in full, the reasonable profit may not exceed the level that corresponds to the level specified in paragraph 36"*. Point 36 reads: *"A rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points is regarded as reasonable in any event"*.
- (104) Sweden confirmed that it may reimburse a reasonable profit, which would not exceed the profit margin calculated in line with point 36 of the SGEI Framework described above.
- (105) Point 39 of the SGEI Framework stipulates that Member States in devising the method of compensation must introduce incentives for the efficient provision of an SGEI of a high standard, unless the Member State can duly justify that it is not feasible or appropriate to do so.
- (106) In this regard, the entrustment act requires from Kalmar airport to provide annually key figures for the efficiency of the operation compared to comparable in size airports in Sweden which, at a minimum, cover the airports' annual average number of employees, total operating costs, number of passengers and aircraft movements. If Kalmar airport reports less positive developments during the year than the comparison airports, an acceptable explanation for this must be submitted, as well as information on what measures will be undertaken to boost efficiency. If the airport's operator does not supply an acceptable explanation, the compensation may not exceed the net cost which the company would have incurred if its productivity

development for the relevant key figure had been equivalent to that of the comparison airports.

- (107) Moreover, Sweden informed the Commission that the efficiency has been improved through, *inter alia*, the "Basic Airport" concept (described in recital(52)).
- (108) The Commission, therefore, considers that the method of compensation, applied to the entrustment of an SGEI to Kalmar airport, fulfils the requirements of the SGEI Framework.

3.2.8. *Transparency*

- (109) Pursuant to point 60 of the SGEI Framework, the Member State must publish on the internet or by other appropriate means information on: the results of the public consultation or other appropriate instruments referred to in point 14 of the SGEI Framework, the content and duration of the public service obligations, the undertaking and the territory concerned, the amounts of aid granted to the undertaking on a yearly basis.
- (110) Sweden provided a report with a socio-economic cost estimate for Kalmar airport to the Commission, which was prepared by the WSP Analysis & Strategi in 2011. The result of this study carried out before the adoption of the entrustment act showed that there was a clear and real need of Kalmar airport, which was confirmed by subsequent studies. The WSP report is published on the airport's website²⁸.
- (111) Sweden also informed the Commission that Kalmar airport carries out passenger studies twice a year with the aim of obtaining a basis for decisions enabling the provision of the right service to its passengers. Subjects of the questions include whether the airport's range of routes meets the respondents' travel needs, and whether the airport is satisfactory in terms of accessibility and services. The results of the studies are reported to the Municipality and conclusions are published on the airport's website.
- (112) Sweden also published, all further information referred to in point 60 of the SGEI Framework on the airport's website.
- (113) Moreover, Sweden informed that the public has access to all relevant information via the principle of public access to documents which is laid down in the Swedish constitution. Minutes, decisions, annual accounts, etc. of Kalmar Municipality, Kalmar Region, Kalmar Kommunbolag AB and Kalmar airport are all covered by this principle, and are, without delay, released on request. The person requesting the release of this information does not have to have any particular status or state any reasons for the request.
- (114) Therefore, the Commission considers that the transparency requirements of the SGEI Framework are met.

²⁸ <http://www.kalmarolandairport.se>

3.2.9. *Conclusions on the compatibility of aid*

(115) Based on the foregoing considerations, the Commission considers that the entrustment to Kalmar airport of an SGEI by Kalmar Municipality fulfils the conditions laid down in the SGEI Framework and is compatible with Article 106(2) TFEU.

4. CONCLUSION

The Commission has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 106(2) of the Treaty on the Functioning of the European Union.

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. 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 on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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Yours faithfully
For the Commission

Margrethe VESTAGER
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